EMPLOYMENT UPDATE

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The Impact of the #MeToo Movement on Employment Law

The movement to end sexual harassment, the #MeToo movement, took hold across the globe and in doing so it changed workplaces, and it changed the way that courts and tribunals assessed allegations of sexual harassment. That impact is felt most acutely in employment law. The #MeToo movement and the changes that have followed demonstrate the power that the masses have in focusing and redefining the understanding of an issue.

Although most of us associated the #MeToo movement with the Weinstein trial and the twitter hashtag use started by Alyssa Milano, the movement began much earlier. Tarana Burke, an American activist conceived of the "Me Too" movement, the purpose being to help other women with similar experiences stand up for themselves. This was a result of what Burke described as a life changing conversation with a 13 year old girl while Burke was working at a youth camp. The girl was being sexually abused and learning of her experience motivated Burke to want to do something to help. This resulted in the creation by Burke of Just Be Inc., which was a non-profit organization helping victims of sexual harassment and assault. In 2007 Burke renamed it to "Me Too".

In 2014, largely in response to the allegations of sexual harassment and assault by Jian Ghomeshi, the first online movement concerning sexual abuse in western countries on a significant scale began when #BeenRapedNeverReported began being used on social media. The purpose was to give voice to survivors of sexual assault and harassment. The Twitter hashtag was created by two journalists. The journalists used the hashtag to tweet support for the women who alleged they were assaulted by the former CBC radio host. The journalists themselves revealed that they had both been raped years before but had never reported the assaults. Around the same time as the Ghomeshi allegations, awareness about Canada's missing and murdered Indigenous women was also increasing. That same year, allegations were made about Bill Cosby with dozens of women coming forward with allegations of sexual assault.

> The #BeenRapedNeverReported hashtag generated a lot of discussion, debate, and conversations, but not a tangible change in the way sexual assault and harassment was handled.

That set the backdrop for the #MeToo movement which was larger in scale. It is arguable that the increased scale was fundamental to leading to tangible and substantial changes in the way sexual assault and harassment were seen and to substantive changes in workplace culture. On October 5, 2017 the New York Times published an article reporting on the results of an investigation they had conducted where they found previously undisclosed allegations against Mr. Weinstein that stretched over nearly three decades. The investigation revealed repeated incidents of sexual harassment involving famous actresses and a number of settlements to keep the harassment quiet.

The #MeToo movement began shortly after the publication of the New York Times article when Alyssa Milano posted on Twitter "If all the women who have been sexually harassed or assaulted wrote 'Me too' as a status, we might get a sense of the magnitude of the problem". That Tweet was posted at approximately noon on October 15, 2017 and by the end of the day the hashtag had been used more than 200,000 times. By October 16 the hashtag had been tweeted more than 500,000 times and was used by more than 4.7 million people on FaceBook in the first 24 hours. Tens of thousands of people replied with #MeToo stories including a number of high profile posts and responses from a variety of American celebrities including Gwyneth Paltrow, Ashley Judd, Jennifer Lawrence and Uma Thurman. Widespread media coverage and discussion of sexual harassment led to a variety of high

profile firings.

The incredible momentum gained from the #MeToo movement resulted in shifts in workplaces and in the legal environment around sexual harassment. The support for victims that the movement demonstrated resulted in increased reporting of incidents of sexual harassment.

Shifts were seen in workplaces. We saw an increased focus on bullying and harassment policies and stronger legislative requirements for policies to lessen the occurrence of bullying and harassment.

The increased awareness created by the movement resulted in greater public scrutiny. The discussions generated an increased understanding of the consequences of sexual harassment and dispelled myths about reporting. This increased understanding extended to our Courts and Tribunals and resulted in not only increased awards for victims of sexual harassment and assault but also a different manner of assessing evidence in sexual harassment and assault cases.

BULLYING AND HARASSMENT POLICIES

The #MeToo movement demonstrated to institutions and employers the significant jeopardy that they could face for sexual harassment in their workplace. That jeopardy was not only financial in terms of damage awards, it included significant reputational risk and underscored the significant negative impact that sexual harassment can have on the workplace as a whole. The Canadian government responded with changes to the labour code which increased the responsibility of employers around bullying and harassment policies. Since 1985 the Canada Labour Code has required employers to take reasonable steps to prevent sexual harassment in the workplace, to establish sexual harassment policies and to have in place confidential complaint procedures. In November 2017 Bill C-65 was introduced and the #MeToo movement is thought to have led to its rapid adoption in 2018. Bill C-65 provides amendments to the Canada Labour Code contained in the *Workplace Harassment and Violence Prevention Regulations*. The Bill amends parts of the Canada Labour Code which support workers who want to file a complaint and provides guidance to federally regulated employers in addressing the allegations. The amendment requires employers to conduct a third party investigation into the complaint and to follow the resulting recommendations. In addition, federal employers are required to:

- conduct a workplace assessment;
- develop a workplace harassment and violence prevention policy;

- develop and implement violence and harassment training; and
- establish a thorough process for dealing with incidents.

Employers who fail to comply could be fined up to $250,000.

The high level of awareness around harassment in the workplace brought about by the #MeToo movement also led to the International Labour Organization adopting C190 – *Violence and Harassment Convention*, 2019. The terms of the Convention detailed expectations on members to ensure that they have in place policies to address violence and harassment, a comprehensive strategy to address harassment, enforcement and monitoring mechanisms, remedies and support for victims, the development of tools, guidance, education and training, and the implementation of an effective means of inspection and investigation of cases of violence and harassment. Following adoption of the Convention, Canada began consulting with the provinces and territories on ratifying the Convention, furthering the discussion on the importance of strong anti-harassment policies in workplaces.

The *Workers Compensation Act* imposes a duty on every employer to ensure the health and safety of its workers, which includes taking all reasonable steps to prevent or otherwise minimize workplace bullying and harassment and eliminate or otherwise minimize workplace violence. Occupational health and safety legislation in British Columbia requires employers to implement procedures for responding to reports or incidents of bullying and harassment and the procedures must ensure that bullying and harassment is prevented or minimized in the future. To meet their legal obligations employers are required to take the following steps:

1. develop a policy statement with respect to workplace bullying and harassment reflecting that it is not acceptable or tolerated;
2. take steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;
3. develop and implement procedures for workers to report incidents or complaints of workplace bullying and harassment, including procedures for workers to report on the employer, supervisors, or persons acting on behalf of the employer;
4. develop and implement procedures for how the employer will deal with complaints, such as investigations, follow-up and record-keeping;
5. inform workers of the policy statement and the steps taken by the employer to prevent or minimize workplace bullying and harassment;
6. train supervisors and workers on how to recognize the potential for bullying and harassment, how to respond to it, the procedures for reporting and how the employer will deal with incidents and complaints;
7. annually review the policy statement and the implemented procedures; and
8. adhere to its own policies and procedures.

The discussions generated by the #MeToo movement undoubtedly led to a greater understanding of the necessity for compliance with WorkSafe requirements. Additionally, with the greater understanding of the consequences of sexual harassment achieved by the movement, it resulted in heightened attention to complaints.

INCREASED NUMBER OF COMPLAINTS

The #MeToo movement initially led to a flood of high-profile allegations of sexual assault and harassment. Statistically, there is evidence that reports of sexual harassment in the workplace generally increased after the movement. The movement generated support for victims which in turn led to increased feelings of safety with reporting.

Sexual harassment may be reported either to the police or in a civil context such as complaints of sexual harassment in the workplace. Complaints of sexual harassment in the workplace may form the basis of a human rights complaint or a constructive dismissal action.

The 1999 General Social Survey on Victimization found 78% of sexual assaults were not reported to the police. Reasons given for non-reporting included:

- the incident was dealt with in another way;
- the incident was not deemed important enough;
- it was considered to be a personal matter;
- they did not want the police involved;
- they felt that the police could not do anything about it;
- they believed that the police would not help them;
- they feared revenge by the offender; and
- they sought to avoid publicity regarding the issue.

In a workplace environment, reluctance to report sexual harassment has been linked to primarily three reasons:

1. Women fear that no one will do anything about the problem. If the harassment is occurring in an organization in which the leadership does not speak out about harassment, does not have in place procedures for reporting harassment or does not act quickly on reports of harassment, victims will be discouraged from reporting.
2. Women are afraid that they will be blamed. Historically a strategy in defending against sexual assault or harassment was suggesting that women had "invited" the assault or harassment by their dress or demeanor, and evidence was challenged as not being credible for a lack of contemporaneous reporting or some other reason.
3. Women fear hurting the harasser. This view stems from an attitude that "boys will be boys" which is used as an excuse for inappropriate behaviour.

It is self-evident how the #MeToo movement and the support

generated for victims through the movement would address many of the reasons for non-reporting. That is confirmed through surveys conducted by Statistics Canada. It was found that there were more police-reported sexual assaults in 2017 than in any other year since 1998. Reporting peaked in October 2017 and the number of reports in October and November of 2017 were higher than any other calendar month since comparable data became available in 2009.

Sexual assault reports involving an accused with whom the victim had a business relationship, such as a co-worker, service provider or a client, were statistically noted to have increased after the #MeToo movement began as well. Data from Canadian police services demonstrates the #MeToo movement coinciding with a substantial increase in the number of police-reported sexual assaults, with reports peaking in October of 2017, with an increase of 46% from October of 2016. That doesn't mean that more sexual assaults were occurring but rather that a combination of factors that existed after the #MeToo movement began likely contributed to an increased willingness to report.

Those factors include increased sources of support and encouragement to report given the shift in conversations that followed the commencement of the #MeToo movement, increased recognition of sexual assault and harassment and increased police support.

UNDERSTANDING OF SEXUAL HARASSMENT

The #MeToo Movement generated a discussion of what sexual harassment is and its consequences. That in turn led to a better understanding of the way in which sexual harassment gets reported and the reality that many myths that previously existed regarding sexual harassment simply were not valid. The 2017 #MeToo movement sprang from high profile sexual harassment cases that had at their core an imbalance of power. Much of the focus of the movement was on how power imbalances facilitate and enable the occurrence of sexual harassment. That recognition of the role of power in sexual harassment can also be seen to be reflected in the manner in which sexual harassment is defined and how that definition has evolved since the movement. Commentary in decisions post the commencement of the #MeToo movement demonstrate that changed understanding.

The leading case defining sexual harassment is the Supreme Court of Canada's decision in *Janzen*[1] in 1989. *Janzen* involved a claim by two waitresses after a cook at the restaurant began making sexual advances. The women sought help from the manager of the restaurant who said he was unable to do anything about it. Eventually the sexual advances were replaced with threatening behaviour. Rather than acting on the inappropriate behaviour, the manager fired the women.

The women brought a claim under the *Manitoba Human Rights Act* alleging a violation of their right to equal opportunity by firing them because of their sex. The Tribunal held that the women had been subjected to sexual harassment and awarded damages. The Court of Queen's Bench upheld the decision which was then overturned by the Manitoba Court of Appeal, with the appeal court finding that sexual harassment was not discrimination on the basis of sex and that the employer could not be held vicariously liable for the conduct of the employee. The Supreme Court of Canada unanimously disagreed finding that the conduct did constitute discrimination on the basis of sex. Chief Justice Dickson, writing for the court, stated that discrimination on the basis of sex is where there is a "practice or attitude which had the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender". The oft repeated legal test for sexual harassment was set out at 1284 as follows:

> Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. It is […] an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

The increased understanding of the nature of sexual harassment is demonstrated in post #MeToo movement decisions. In *Arana v. RSY Contracting and another (No. 3)*[2] , the Tribunal summarized the range of conduct that falls within the definition of sexual harassment as follows (at para. 95):

> Sexual harassment is discrimination on the basis of sex: *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252. It encompasses "any sexually oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity": Arjun P. Aggarwal, Sexual harassment in the Workplace (1987), cited in *Janzen* at para. .49. It may be blatant, such as with leering, grabbing, or sexual assault, or it may be more subtle, such as with sexual innuendos or propositions: *Janzen* at para. 49. Its effect is to import sexual behaviour into the workplace in a manner that harms the victims' working

environment and attacks their dignity. At its root, sexual harassment is about an abuse of power: *Al-Musawi v. One Globe Education Services*, 2018 BCHRT 94 at para. 30; *British Columbia Human Rights Tribunal v. Schrenk,* 2017 SCC 62 at para. 43.

This post #MeToo movement decision demonstrates the shift from simply recognizing that sexual harassment involves an abuse of power to a recognition that sexual harassment has at its very root an abuse of power. That is recognition that the very reason for sexual harassment is the abuse of power, rather than a simple recognition that sexual harassment involves an abuse of power.

That increased understanding is also evident in the manner in which courts and tribunals have been dealing with myths and stereotypes around sexual harassment since the movement. For example, it is recognized that evidence of a complainant's prior sexual history to argue a greater propensity to consent to the encounter at issue is presumptively inadmissible because of its reliance on myths and stereotypes.[3]

Further invalid myths and stereotypes have been identified by the Human Rights Tribunal[4]. Those are:

1. A lack of protest – the Tribunal recognized that it is not necessary for a complainant to expressly object to the conduct and the law recognizes that a person's behaviour "may be tolerated and yet unwelcome at the same time".
2. A delay in reporting – a person may choose not to report for a variety of reasons including fear of negative job-related consequences, not being believed, attacks on their reputation, or the difficult nature of investigations.
3. Participation in prior behaviour – a pattern of consent does not support a finding that the conduct was welcome, that the person is less worthy of belief, or that it is unreasonable to know that the conduct would be unwelcome.

The Supreme Court of Canada upheld the Court of Appeal's decision to set aside an acquittal noting that the error of the trial judge was in judging the complainant's credibility based solely on the correspondence between her behaviour and the expected behaviour of the stereotypical victim of sexual assault and doing so constituted an error of law.[5] The passage from the trial decision referenced by the Court was as follows:

> …given the length of time that these events occurred over, and the fact that the most serious event occurred months before [the complainant] complained, I would have expected some evidence of avoidance, either conscious or unconscious. There was no such evidence. As a matter of logic and common sense, one would expect that a victim of sexual abuse would demonstrate behaviours consistent with that abuse or at least some change of behaviour such as avoiding the perpetrator.

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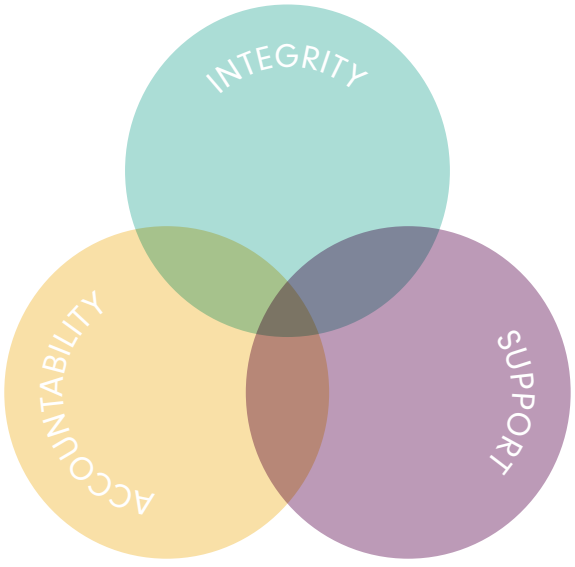

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> While I recognize that everyone does not react in the same way, the evidence suggests that despite these alleged events the relationship between the accused and the complainant was an otherwise normal parent/child relationship. That incongruity is significant enough to leave me in doubt about these allegations.

In the Ontario Superior Court of Justice[6], comments with respect to the dangers of relying on myths to assess credibility were made. Specifically, the court stated:

> ---In particular, a woman who has been the victim of a sexual assault will not necessarily exhibit immediate symptoms of trauma. She might, or might not, be weepy. She might, or might not, be depressed and withdrawn. She might, or might not, be hysterical. Or she might cover up any of those kinds of emotions with an exterior of jocularity. The fact that AB spent some time in lighthearted texts with Mr. Tissawak and other friends does not mean she was not assaulted. Women who have been assaulted might still get a pedicure or go out for dinner with friends. These things are all irrelevant. Equally irrelevant is the tone and nature of the text messages between AB and Mr. Tissawak on Saturday, some of which had sexualized overtones. The suggestion that this is somehow inconsistent with having been sexually assaulted the night before is completely without merit and has no foundation in the reality of womens' lives. There simply is no "normal" or "typical". I have not taken any of this conduct into account in reaching my decision.

A further example of this is *A.B. v. Joe Singer Shoes Limited*[7] where an award of $200,000 for injury to dignity was made. This case was a "he said, she said" case and required the adjudicator to assess credibility. The manner in which assessments of reporting was made shows the impact of the #MeToo movement. The respondent had argued that the complainant's evidence was not credible because she never reported the assaults to her family doctor. The complainant explained the failure to report as being a result of her being ashamed and embarrassed. In accepting that evidence, the Tribunal member stated as follows:

> [120] Though no one argued it before me, the SCC's decision in *R. v. W.(R.)*, 1992 CanLII 56 (SCC), at p. 136, is instructive. The SCC found that, when assessing credibility, it was a reversible error of law to rely upon the stereotypical assumption that sexual assault survivors are likely to report the assault in a timely manner, stating (at p. 136):
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> > This reference [to evidence that the older children had not raised concerns about the conduct at issue] reveals reliance on the stereotypical but suspect view that the victims of sexual aggression are likely to report the acts, a stereotype which found expression in the now discounted doctrine of recent complaint. In fact, the literature suggests the converse may be true; victims of abuse often do not disclose it, and if they do, it may not be until a substantial length of time has passed.
>
> [122] I agree, as the Tribunal did in *Presteve*, with the expert evidence given in other Tribunal cases that women who experience sexual misconduct often do not report or disclose this conduct due to feelings of shame, humiliation and embarrassment. My finding is supported by the fact that the applicant testified to exactly these feelings.

All of these decisions demonstrate the impact that the #MeToo movement has had on society's understanding of the consequences of sexual harassment, which has influenced the way that our courts and tribunals are assessing sexual harassment.

HEIGHTENED PUBLIC SCRUTINY

The #MeToo movement brought to the forefront the prevalence of sexual assault and harassment in workplaces and the misuse of power that accompanies it. That in turn brought public pressure to hold institutions and workplaces to account. The impact on triers of fact of this public pressure can be seen in decisions such as *Conklin v. University of British Columbia (No. 2)*[8]. This case concerned a claim by a fired university academic advisor that his employment was terminated due to his sexual orientation, and thus discriminatory. The advisor had posted a bio on a gay dating app and in the bio he referenced both that he was an employee of UBC and that he resided in the student residence. When UBC learned of the bio, they terminated his employment. The terminated employee brought a human rights complaint, alleging discrimination on the basis of sexual orientation.

In dismissing the complaint, the tribunal member said as follows:

> [77] Ultimately, while there may not be a policy prohibiting relationships between employees and students outright, I am of the view — particularly in this #MeToo moment of heightened public awareness and scrutiny of the use of power on campuses and in workplaces — that UBC has an obligation to safeguard against its employees exploiting or otherwise abusing their positions of trust in their interactions with students. UBC is not only an employer, it is a student services provider and as such it has obligations to all of its various stakeholders. There is,

> in my mind, no question that UBC is under an obligation to investigate employees who are in positions of trust and suspected of cultivating sexual relationships with students whether by seeking them out expressly or through sheer disregard of their status as students.

The complainant applied for reconsideration and specifically stated that raising and relying on the #MeToo Movement was an error of such magnitude that the matter must be reconsidered by a different Human Rights Tribunal member. The Tribunal commented at paras 50-51:

> [50] Mr. Conklin argues that the reference to #MeToo was offensive in its own right given the movement is to support survivors of sexual violence. In my view, however, the movement as it has manifested in our broader culture captures more than that, encapsulating a new public pressure to hold institutions and organizations to account for individuals abusing their positions. My reference to the movement, in passing, was meant to suggest that institutions like UBC are resultingly subject to heightened public scrutiny in the current cultural moment.
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> [51] What was not a passing aside was my reliance on the principle that UBC is under an obligation to investigate employees suspected of cultivating sexual relationships with students. That was not based on the #MeToo movement, as a reading of that paragraph with the reference stripped out plainly shows. The reference arose strictly as the current surrounding cultural context in which the decision was being written, but changed nothing about the evidence before me, which was that Mr. Conklin had anonymous sexual relationships with at least 20 students as a result of his activities on the App, as he acknowledged when UBC expressed concerns during the first meeting that his profile suggested this was the case. While I will acknowledge I could have expressed the thought more clearly at the time, a plain reading of the paragraph as a whole, in the context of the surrounding paragraphs, shows that the passing reference is not a sufficient foundation on which to grant a reconsideration of the entire decision.

The decision demonstrates how the #MeToo movement has created heightened public pressure to hold institutions and organizations accountable for individuals abusing their positions of power.

This was also demonstrated in the Alberta Court of Appeal decision of *Calgary (City) v Canadian Union of Public Employees Local 37*[9]. This decision arose from a grievance which had proceeded to arbitration. The grievor had been terminated after it was found that he had grabbed and squeezed a co worker's breast without her consent. The union grieved the termination which proceeded to arbitration. The arbitrator determined that as the conduct was at the lower end of the sexual harassment spectrum termination was too great a disciplinary response and substituted a suspension. This was based in part on a conclusion that the employee that had been subject to the sexual harassment did not appear to be traumatized in a significant way. The City applied for judicial review and the Alberta Court of Queens Bench upheld the arbitrator's decision which then led to the City further appealing to the Court of Appeal. The Court of Appeal allowed the appeal and in so doing commented on the evolving social context within which allegations of harassment must be assessed. The Court stated as follows:

> [41] The arbitrator's categorization led her astray and caused her to focus on factors that are not current with present day analysis of sexual assault and are inconsistent with the social context and evolving attitudes of what is acceptable in the workplace. Here, one of those factors was the complainant's response to the sexual assault.
>
> [42] This Court and the Supreme Court have held that it is an error to rely on what is presumed to be the expected conduct of a victim of sexual assault: *R. v. ARD*, 2017 ABCA 237 at para 8 and 28; *R. v. DD*, 2000 SCC 43 at para. 63. While these statements were made in the context of criminal proceedings, the caution about these types of errors should apply equally to arbitrators adjudicating sexual assault grievances.
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> [43] The arbitrator commented that the complainant "does not appear to have been traumatized in any significant way by the contact". In the proportionality analysis required under the *William Scott* test, the presence of significant harm or distress to the complainant may be an aggravating factor. However, the converse line of reasoning that the absence of distress on behalf of the complainant is a mitigating factor, is impermissible.
>
> [44] The arbitrator clearly articulated the impact of the assault on the complainant as forming part of the basis of her reasoning that termination was a disproportionate response to the grievor's conduct. This error adds to the unreasonableness of the arbitral award. A deferential standard of review does not serve to insulate this type of reasoning from appellate review.
>
> [45] Additionally, social context is intimately connected to what is relevant in assessing a grievance for sexual harassment and also the labour relations between employers and unions. A court may take notice of reliable and relevant social research and socio-economic data in order to understand the social framework in which the facts of a particular case are to be adjudicated and to

> formulate a more fully informed analysis of the law: see for example *Willick v. Willick*, 1994 CanLII 28 (SCC), [1994] 3 SCR 670 at 700 – 704, 119 DLR (4th) 405 as per L'Heureux-Dube.
> …
> [52] A finding that sexual assault is serious misconduct is consistent with the growing concerns for safety and respect in the workplace and other policies and legislation whose goal it is to protect vulnerable groups, and it will assist employers and unions in fighting against the prevalence and damaging effect of this intolerable conduct. There is absolutely no place in the workplace for touching, rubbing, forced kissing, fondling or any other physical contact of a sexual nature where one party does not consent. It is objectively clear that sexual assault is wrong and acknowledging that sexual assault is serious misconduct sends a strong message to all employees about societal values and acceptable workplace behavior.

How the #MeToo movement has permeated the courts' analysis of sexual harassment and assault can be seen in another arbitrator's decision in Saskatchewan. In *Unifor, Local 922 and Nutrien Ltd. (Hedlin), Re*[10]. At paragraph 69, Arbitrator Wallace specifically referenced the #MeToo movement, noting as follows:

> [69] The Union contends that Laing's statement that "there are few words more emotive than harasser" is today truer than ever "in this #MeToo generation". I note here that the #MeToo movement is intended to bring change to society by providing women who have been sexually abused or harassed with a safe environment to speak out. The #MeToo movement does not define workplace harassment. Our laws define harassment. The bottom line is that if something fits within the definition of harassment, then it is harassment. Incidents of harassment can occur along a wide spectrum. For example, sexual harassment can include many things from sexist jokes to degrading suggestive comments to stalking to sexual assault. If the elements of harassment set out in legislation and/or policy are met, then there is harassment. I do not take Arbitrator Laing to suggest that employers should ignore an incident of proven harassment because it might be a less serious form of harassment. Indeed, letting these less serious incidents go without response is often one of the reasons more serious harassing behaviour happens.

Courts have also recognized that the #MeToo movement has given victims the courage to come forward when they previously had not. In *Laurie and Bell Media, Re.*[11] the defense to allegations of sexual harassment was in part that the complaints had been made in retaliation. The victims testified that the changing climate in the workplace which followed the #MeToo movement gave them the courage to speak out. In accepting this evidence, the Court said as follows:

> [205] I found this evidence from Complainant #1 to be sincere, and I accept it. I also note that as many of the women testified, the fallout from the sexual assault allegations against Harvey Weinstein and harassment allegations against other prominent media personalities that emerged almost weekly in late 2017 and early 2018 triggered a seismic shift in the way that these types of events were considered and handled by employers. Some witnesses mentioned that as these events were unfolding, another senior employee accused of sexual harassment at Bell Media was also being investigated and was also eventually dismissed from the network. The idea that these events, both at CTV News and outside, gave the women who met with Ms. Hayward courage to come forward when they did, despite having received the unwelcome messages for years, strikes me as entirely believable.
>
> [206] In the end, the above finding is not vital to my determination of this case. There is voluminous written evidence before me supporting the allegations that Mr. Laurie sent persistent, unwanted and inappropriate messages to these women for years prior to the complaints being filed. He does not deny doing so. The fact that the Complainants only chose to come forward when they did does not erase this fact.

CONCLUSION

The #MeToo movement brought a sea change in the way in which sexual harassment was viewed. It led to increased pressure on businesses to not only avoid the reputational loss associated with sexual harassment claims but also the exposure to financial consequences. It led to increased reporting and to increased public scrutiny of sexual harassment and decreased acceptance. It contributed to a greater understanding of the nature of sexual harassment and its consequences and that in turn led to changes in the way triers of fact assessed evidence in sexual harassment cases. Most significantly, the movement has forever changed workplaces. V

1. *Janzen v. Platy Enterprises Ltd.* [1989] 1 SCR 1252
2. 2019 BCHRT 97
3. *R. V. Seaboyer* 2019 SCC 33
4. *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12
5. *R. v. A.R.J.D.,* 2018 SCC 6
6. *R. V. Nyzik*, 2017 ONSC 4392, at para. 192
7. 2018 HRT 107
8. 2018 BCHRT 262
9. 2019 ABCA 388
10. 2020 CarswellSask 678
11. 2020 CarswellNat 5204