

# REPORT

## Survey on Sexual Harassment and Violence in the Practice of Law

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#### **Provincial Helpline for Victims of Sexual Assault**

Telephone: 1 888 933-9007  
Website: <https://www.cvasm.org/fr/services-ligne-telephonique>

#### **Provincial help line of the Regroupement québécois des CALACS (Centres d'aide et de lutte contre les agressions à caractère sexuel)**

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Website: [www.rqcalacs.qc.ca](http://www.rqcalacs.qc.ca)

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## List of acronyms

HR:	human resources
LLP:	limited liability partnership
M:	men
NPO:	non-profit organization
PAMBA:	assistance program for members of the Barreau
SC:	sexual coercion
SH:	sexual harassment
USA:	unwanted sexual attention
W:	women

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# HIGHLIGHTS

## Survey on Sexual Harassment and Violence in the Practice of Law

### DOCUMENTED VIOLENCE

The highlights of this report are based on three categories of violence (Fitzgerald et al. 1999). The first is sexual harassment (SH), which refers to verbal and non-verbal behaviours not aimed at sexual cooperation but that convey insulting, hostile and degrading attitudes. The second is unwanted sexual attention (USA), which refers to verbal and non verbal behaviour that is offensive, unwanted and unreciprocated and includes attempted rape and sexual assault. The last one is sexual coercion (SC), which is characterized by extortion in return for future job-related considerations. In this survey:

- **Sexual harassment** was the category of violence most reported by all respondents. Sexual harassment acts were the most reported by both women (50.2%) and men (21.7%). For example, several accounts evoked comments made under the guise of jokes such as, *“Are you ready for your first case of sexual assault? This means that... I’m the aggressor and you’re the victim!”* (woman, personal experience).<sup>1</sup>
- The forms of **unwanted sexual attention** most frequently reported by women (27.1%) were being touched in a way that made them feel uncomfortable. For example, *“In the photocopy room at the office, while I was with my back to the door, a partner grabbed my butt”* (woman, personal experience).
- 20.6% of female respondents and 12.3% of male respondents said that someone had tried in the course of their professional practice to establish an intimate or sexual relationship with them despite their efforts to discourage them.
- Almost 2% of women who responded to the statement “Had sex with you when you did not want to” said yes.
- **Sexual coercion** is the least reported category of violence, but it should not be overlooked, as it has serious repercussions for victims. Nearly one woman in 20 (4.2%) reported having suffered negative consequences after refusing to engage in sexual activities.
- A significant proportion of the violence reported has occurred over the past 5 years, ranging from 33% (attempt to have sex without consent) to 80% (threat of disseminating sexually compromising information on the internet).

### HIGH-RISK CONTEXTS AND ENVIRONMENTS

- The analysis of respondents’ answers confirms a phenomenon well documented in previous research: **some groups are more at risk** of experiencing sexual violence. Social relationships have a major influence, which means that women, members of the LGBTQ+ community and racialized individuals experience more sexual harassment and violence.
- Acts of sexual harassment and violence are committed by a wide variety of people in a wide range of positions. However, a large proportion of the acts mentioned in the survey were committed by colleagues in the organization where the victim worked.
- **Hierarchical relationships** are particularly significant in exacerbating all forms of violence and in making some people vulnerable. Generally speaking, female victims tend to hold subordinate **employment positions**, for example, as associates or articling students.
- Violence is experienced in all **contexts** of professional practice. In their accounts, respondents referred more broadly to the formal context of work (in meetings, at the courthouse, in office spaces, during training) and informal work-related contexts (after work reception, the virtual environment, etc.).

<sup>1</sup> Throughout the report, quotes are accompanied by details about the respondent’s gender and the type of account shared (personal experience, as a witness, or as a confidant). However, to ensure confidentiality, no further details are provided.

## FAR-REACHING CONSEQUENCES

- The various forms of violence have far-reaching consequences for the victims' careers that translate into different individual behaviours or strategies, including changing habits, organizing work differently or changing career path.

Of those who answered the various questions on the impact of violence:

- 68% of women and nearly 39% of men said they avoided contact with the perpetrator.
- Nearly one in five women said they had experienced various difficulties in pursuing their professional activities. The same proportion of women said they had changed their career path. Here is an example: *"I put an end to my dream of being a lawyer (a dream I'd had since elementary school) after a horrible articling period and career start"* (woman, personal experience).
- Sexual violence also has negative effects on victims' physical and psychological health. 13% of female respondents and 4% of male respondents said they had experienced some psychological problems as a result of the violence they had suffered.
- acts confided that they had had nightmares about the event and had thought about it without wanting to.
- 17% of female respondents and 5% of male respondents said they had been constantly on guard and on alert following the violence they had suffered. For some, the situation affected their health and professional activities: *"I'm always afraid to run into him at the courthouse. It happened once and I hid in the bathroom"* (woman, personal experience). Some victims have even tried to harm themselves (self-mutilation 0.4%) or take their lives (0.3%).

## DISCLOSURE, WHISTLEBLOWING, REPORTING

- As seen in other studies on the subject, people disclose more often than they report or blow the whistle. Disclosure is the act of talking about events without it necessarily implying any whistleblowing or reporting, which involves approaching an official body.
- Disclosure is made mainly to friends and family or co-workers. 22% of the women and 19% of the men who responded to the questionnaire disclosed sexual violence to their superior; 5% of men and women disclosed sexual violence to the person in their organization responsible for harassment issues; 2% of women and 5% of men disclosed it to PAMBA; and 0.4% of women and 1% of men disclosed it to the syndic of the Barreau.
- Reporting and whistleblowing, which imply approaching official bodies, are minimal considering the amount of sexual violence. 1% of the men and women who answered the question on reporting had reported sexual violence to the police or the syndic of the Barreau. However, the analysis of the results, particularly the qualitative results, shows that the phenomenon is much more widespread and that, under the law, several of the acts recounted could amount to sexual assault.
- Respondents gave several reasons for not reporting sexual violence to organizational entities or resources. First of all, 60% of the women and 50% of the men who answered this question thought that the situation had not been serious enough to report, while 30% of women and 25% of men wanted to put the incident behind them.
- 25% of the women who answered the question said they had not reported sexual violence because even though they had wanted the incidents to stop, they had not wanted to file a formal complaint. They also feared reprisals from the perpetrator or people around them.
- Another reason respondents cited was a lack of trust in the people or resources put in place by their organizations.
- Those who disclosed or reported sexual harassment reported diverse reactions from those they confided in. While many said they had received support, the qualitative accounts indicate a significant lack of support.
- Although victims can report and blow the whistle on perpetrators, in the accounts they shared, respondents emphasized the impunity enjoyed by those in positions of power.

## THE IMPORTANCE OF WITNESSES AND CONFIDANTS

- Witnesses and confidants play a crucial role in cases of sexual violence. The literature on the subject maintains not only that more and more people are coming forward as witnesses and confidants, but also that their role in supporting victims and helping to reduce violence is paramount.<sup>2</sup>
- 22% of those who responded to the questions about witnesses said that they had witnessed an incident. 49% of women and 53% of men who witnessed an incident said they had intervened.
- 29% of the women and more than 20% of the men who answered the questions on confidants said that someone in their professional circle had confided in them.
- The accounts show that victims sometimes confide in someone soon after the incident, but many accounts show that victims share their experience only long after the event. The #metoo/#moiaussi movement, which raised social awareness of sexual violence, seemed to be a trigger for some to speak out.
- The accounts of witnesses and confidants demonstrate that gender and hierarchical power relations have a significant impact, particularly on the careers of women.

## AWARENESS AND DESIRED ACTIONS

- The results, including accounts from those who have experienced, witnessed or been confided in with sexual violence, shows a professional culture that promotes silence and impunity in the face of sexual harassment and violence.
- Some respondents explained that harassment and violent behaviour are considered part of the professional culture (*"I thought such acts were normal. I was starting to practice, and I thought, since it was a male environment ..."* (woman, personal experience)) or the organizational culture (*"this kind of behaviour was tolerated at the firm"* (woman, personal experience)), or they attributed these behaviours to social causes (*"women have to deal with it daily"* (woman, personal experience)).
- In terms of the assistance desired, it appears that most victims resort to services outside the organization, which may be due to a lack of trust, as mentioned in several of the accounts, but also to the perception that organizations are not proactive in this area.
- Several of the women (41%) and men (26%) who commented on this issue maintained that the Barreau is not proactive enough in raising awareness about sexual harassment and violence.

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<sup>2</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016) online (pdf): UQAM <[https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)>; Joan Brockman, "An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003" in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237; "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; and Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.



Many respondents stressed that everyone should be accountable to remove the burden from the victims. In this respect, respondents stressed the need for real change in organizational culture by working on the professional culture.

It is therefore recommended that the Barreau:

- 1) create a working group dedicated to reviewing this report and elaborating courses of action;
- 2) consult with the main stakeholders concerned by the survey to discuss the results and the actions they will be able to take to combat sexual harassment and violence;
- 3) disseminate the results to the members of the Barreau with a view to discussing and acknowledging the importance of their contribution, and
- 4) make the results of the survey and the courses of action that will be implemented accessible to the general public so that the work carried out can more widely benefit other professions.

## Introduction

The survey documented in this report started with a collaboration between a research team from Université Laval and the Barreau du Québec as part of a concerted action project (2015–2018) funded by the Fonds de recherche du Québec – Société et Culture, in collaboration with the Secrétariat à la condition féminine. The project, led by Professor Sophie Brière, was entitled “Les femmes dans les métiers et professions traditionnellement masculins : une réalité teintée de stéréotypes de genre nécessitant une analyse critique, systémique, comparative et multidisciplinaire.”<sup>3</sup> The research focused on 11 professions historically held by men in which women have been gradually integrated over the past few decades.

In the practice of law, the project focused on the integration, advancement and retention of women lawyers. Although the research questions did not directly address gender-based violence, the results showed that this type of violence is present in all professions, including the practice of law.<sup>4</sup>

The findings of Professor Brière’s team are consistent with those of the Barreau du Québec and more specifically the committee on women in the profession (*Comité sur les femmes dans la profession*) after various studies and analyses. Faced with the importance of the topic but acknowledging the lack of recent data on the subject, the Barreau decided to commission the Université Laval team to document sexual harassment and violence.

The objectives of this survey were to

- 1- collect data on sexual harassment and violence in the professional practice of law;
- 2- identify the different forms of violence, the contexts in which they occur, their impact, exacerbating factors and the roles of witnesses and confidants; and
- 3- identify existing organizational practices or practices that need to be strengthened or put in place.

This report has achieved these objectives and is divided as follows. The report first presents the literature review, the conceptual and analytical framework and the methodology proposed by the research team. The report then presents the results, which provide an overview of the different forms of violence reported by respondents; the different contexts in which violence occurs as well as the factors that exacerbate violence; and the roles of witnesses and confidants. Finally, considering these results and the findings in the literature, the report proposes courses of action and makes recommendations.

## Disclaimer

It should be noted that all members of the Barreau were invited to complete the online questionnaire, whether or not they had experienced harassment or violence. Since participation was voluntary and the sample was one of convenience, the results presented in this report are based on the experiences of the respondents and cannot be considered representative of all members of the Barreau du Québec.

The results are **used to show that problems exist** rather than the relative incidence of these problems among the various groups. Note that details are provided in the methodology section, which also highlights the limits of the research.

<sup>3</sup> The full report of this research project is available online: <<http://www.scf.gouv.qc.ca/fileadmin/Documents/Egalite/Rapport-scientifique-femmes-metiers-masculins.PDF>>.

<sup>4</sup> Isabelle Auclair & Dominique Tanguay, “Les violences genrées sont partout, même en milieu de travail : diverses expériences analysées à la lumière du continuum des violences” in Isabelle Auclair, Lorena Suelves Ezquerro & Dominique Tanguay, eds, *Violences genrées : enjeux et résistances* (Les Presses de l’Université Laval, 2019).

# 1. Findings from the literature on sexual harassment and violence in the practice of law

This section presents the essence of the literature on sexual harassment and violence in the practice of law, mainly in Western countries.

In Quebec, the literature on sexual harassment or violence in the practice of law is virtually non-existent and very often addresses these issues in an incidental manner<sup>5</sup>. In most cases, the authors merely describe the state of the law applicable to disciplinary proceedings based on sexual harassment or sexual violence or identify the sections of the law that prohibit these acts. Moreover, there are far fewer articles for Canada than for the United States, where the literature is replete with dozens of studies on the subject. New Zealand, England, Australia and France have also produced relevant empirical and theoretical research on the issue and, as in Canada and the United States, the professional orders (law societies) have been highly involved in the research.<sup>6</sup>

## 1.1 What international literature tells us

Sexual harassment in the legal profession is an observable phenomenon in most Western countries. It has been addressed from several angles by legal researchers (disciplinary law, labour law, employer obligations, ethical dimensions, etc.), social science researchers (prevalence, causes, consequences) and feminist researchers (definition, foundations, gender dynamics, ways to combat sexual harassment).

Sexual harassment took on varying degrees of importance in the studies reviewed. Historically, researchers produced general studies on the reality of women lawyers, bias and discrimination against them<sup>7</sup> and their retention in the profession,<sup>8</sup> and it was within the framework of these studies that respondents were asked questions about sexual harassment. Without discarding these analytical frameworks,<sup>9</sup> researchers

<sup>5</sup> Jo-Anne Demers & Attieha R. Chamaa, "Le harcèlement sexuel en milieu professionnel : y a-t-il lieu de s'inquiéter ?" in Barreau du Québec, Service de la formation continue, *Développements récents en déontologie, droit professionnel et disciplinaire* (2016), Vol. 416, (Cowansville: Éditions Yvon Blais, 2016); Dominique Savoie & Viateur Larouche, "Le harcèlement sexuel au travail: définition et mesure du phénomène" (1988) 43 *Ind Rel* 509; Brigitte Deslandes, "Les infractions disciplinaires à caractère sexuel" in École du Barreau du Québec, *Collection de droit 2019-2020*, Vol. 1: "Éthique, déontologie et pratique professionnelles" (Montreal: Yvon Blais, 2019) 213; Fiona M. Kay, "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 *McGill LJ* 699; Ejan Mackaay, *L'état de la profession d'avocat au Québec en 1991: résumé des principales conclusions du sondage général des membres du Barreau* (Montreal: Barreau du Québec, 1991); Barreau du Québec, *Women in the Legal Profession* (Montreal: Barreau du Québec, 1992); Comité sur les problématiques actuelles reliées à la pratique privée et l'avenir de la profession, *Les avocats de pratique privée en 2021* (Montreal: Barreau du Québec, 2011).

<sup>6</sup> "Barristers' Working Lives 2017" (2017), online (pdf): [The Bar Council <https://www.barcouncil.org.uk/resource/working-lives-2017-harassment-and-bullying-pdf.html>](https://www.barcouncil.org.uk/resource/working-lives-2017-harassment-and-bullying-pdf.html); "National Attrition and Re-engagement Study (NARS) Report" (2014), online (pdf): [Law Council of Australia <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be666b/NARS%20Report.pdf>](https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be666b/NARS%20Report.pdf); "Workplace Environment Survey" (2018), online: New Zealand Law Society <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society <https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>*; "Report of The Florida Bar Special Committee on Gender Bias" (2017), online (pdf): [The Florida Bar <https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>](https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf).

<sup>7</sup> Joan Brockman, Denise Evans & Kerri Reid, "Feminist Perspectives for the Study of Gender Bias in the Legal Profession" (1992) 5 *CJWL* 37; Fiona M. Kay & Elizabeth Gorman, "Women in the Legal Profession" (2008) 4 *Ann Rev Law Soc Sc* 299; Fiona M. Kay & Joan Brockman, "Barriers to Gender Equality in the Canadian Legal Establishment" (2000) 8:2 *Fem Leg Stud* 169; Joan Brockman, "Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia" (1992) 17 *Queen's LJ* 91; Joan Brockman, "Bias in the Legal Profession: Perceptions and Experiences" (1992) 30:3 *Alta L Rev* 747; Joan Brockman, "An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003" in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237; Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001); Fiona M. Kay, "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 *McGill LJ* 699; Mark Hansen, "9th Circuit Studies Gender Bias: Survey finds 60 percent of female lawyers sexually harassed in last five years" (1992) 78:11 *ABA J* 30; Cynthia Fuchs Epstein et al, "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession" (1995) 64 *Fordham L Rev* 291; Elizabeth K. McManus, "Intimidation and the Culture of Avoidance: Gender Issues and Mentoring in Law Firm Practice" (2005) 33 *Fordham Urb LJ* 217.

<sup>8</sup> Joan Brockman, "Leaving the Practice of Law: The Wherefores and the Whys" (1994) 32:1 *Alta L Rev* 116; Joan Brockman, "'Resistance by the Club' to the Feminization of the Legal Profession" (1992) 7:2 *CJLS* 47; Fiona M. Kay, Stacey Alarie & Jones Adjei, "Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice" (2013) 20:2 *Ind J Global Leg Stud* 22.

<sup>9</sup> "National Attrition and Re-engagement Study (NARS) Report" (2014), online (pdf): [Law Council of Australia <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be666b/NARS%20Report.pdf>](https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be666b/NARS%20Report.pdf); Joan C. Williams, Marina Multhaup, Su Li & Rachel Korn, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* (Chicago: American Bar Association Publishing, 2018), online (pdf): [American Bar Association <https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf>](https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf); Women Lawyers of Utah, "The Utah Report: The Initiative on the Advancement and Retention of Women in Law Firms" (2010), online (pdf): [Ms. JD <https://ms-jd.org/files/wlu\\_report\\_final.pdf>](https://ms-jd.org/files/wlu_report_final.pdf).

now address sexual harassment in studies on the working conditions of lawyers,<sup>10</sup> as well as harassment or intimidation<sup>11</sup> in the practice of law that cover sexual harassment to varying degrees. For example, a recent International Bar Association study on harassment in the practice of law comprises two sections: one on sexual harassment and one on bullying<sup>12</sup> in the legal profession. Sexual harassment is therefore no longer considered an interesting phenomenon, exclusively with respect to the status of women in the profession but seems to be considered a phenomenon that affects the working conditions and climate of all those who practice law. Finally, some studies now consider sexual harassment a subject of study in its own right and devote comprehensive research to this phenomenon.<sup>13</sup>

Moreover, these studies have adopted rather broad definitions of sexual harassment and sexual violence. Some studies have opted for a definition of sexual harassment that includes a wide range of behaviours. A recent study conducted in the United States identified five types of sexual harassment to show that this form of violence can be broken down into behaviours that do not necessarily involve sexual advances:

Their responses to the Sexual Experiences Questionnaire (SEQ) revealed five typical profiles of harassment: low victimization, gender harassment, gender harassment with unwanted sexual attention, moderate victimization, and high victimization. The vast majority of harassment victims fell into one of the first two groups, which described virtually no unwanted sexual advances.<sup>14</sup>

Leskinen, Cortina and Kabat have emphasized the need to pay more attention to forms of harassment at the beginning of the continuum, which do not necessarily involve sexual behaviour, but rather harassing behaviour rooted in gender inequalities, which they refer to as “gender harassment”:

Our research underscores the need to broaden legal and scientific conceptualizations of sexual harassment, so that gender harassment can be recognized as a harmful and objectionable condition of employment, even when not paired with unwanted sexual attention. ... Our results suggest that further revision is in order, to prohibit not just sexually predatory conduct, but also behavior that creates a hostile work environment for members of one sex but contains no sexual advance—that is, gender harassment. As we have shown, gender harassment does not simply provide a backdrop for other kinds of harassment; it is the *modal form* of sex-based harassment faced by women at work (at least in male-dominated domains).<sup>15</sup>

<sup>10</sup> Fiona M. Kay, Stacey Alarie & Jones Adjei, “Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice” (2013) 20:2 *Ind J Global Leg Stud* 22; “Conditions de travail et expériences des discriminations dans la profession d’avocat.e en France” (2018), online (pdf): *Défenseur des droits* <<https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapp-eng-avocats-a4-num-02.05.2018.pdf>>.

<sup>11</sup> On an international level, see “Anonymous Survey about Harassment and Bullying in the Practice of the Criminal Law” (2018), online (pdf): *New Zealand Criminal Bar Association* <<https://www.criminalbar.org.nz/sites/default/files/Bullying%20Survey%20Final.pdf>>; “Workplace Environment Survey” (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; see also Lynne Townley & HHJ Kaly Kaul QC, “In the Age of ‘Us Too?’: Moving Towards a Zero-Tolerance Attitude to Harassment and Bullying at the Bar—A Report on the Association of Women Barristers’ Roundtable on Harassment and Bullying with Recommendations” (Association of Women Barristers, 2019), online (pdf): *City University of London* <[https://www.city.ac.uk/\\_data/assets/pdf\\_file/0006/492594/AWB-Anti-Bullying-Round-Table-Report-Oct-2019.pdf](https://www.city.ac.uk/_data/assets/pdf_file/0006/492594/AWB-Anti-Bullying-Round-Table-Report-Oct-2019.pdf)>, which focused, however, on the notion of bullying and the broad concept of harassment, which includes sexual harassment: “We considered that the issue of sexual assault, harassment and other sexual misconduct had been the emphasis of much of the dialogue in the light of the ‘#Me Too’ movement, so other types of equally prevalent (non-sexual) harassment also needed to be looked at” (at 8).

<sup>12</sup> Note that the concept of bullying is not presented in relation to sexual violence. Bullying and sexual harassment are two distinct subjects of study in this survey, which are however linked by the broad concept of “harassment.” See Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

<sup>13</sup> “Submission into the National Inquiry into Sexual Harassment in the Australian Workplace” (2019), online (pdf): *Women Lawyers Association of New South Wales* <<https://womenlawyersnsw.org.au/wp-content/uploads/2019/04/WLANSW-Submission-Sexual-Harassment-Inquiry-28-Feb-2019-final-draft.pdf>>; “Rapport sur le harcèlement sexuel au sein de la profession d’avocat” (2018) at 22, online (pdf): *Union des jeunes avocats de Paris* <<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>>; Stephanie Ann Scharf, *The Problem of Sexual Harassment in the Legal Profession and Its Consequences* (American Bar Association Commission on Women in the Profession, 2018), online (pdf): *Scharf Banks Marmor LLC* <<https://www.scharfbanks.com/sites/default/files/assets/docs/report.pdf>>.

<sup>14</sup> Emily Leskinen, Lilia Cortina & Dana Kabat, “Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work” (2011) 35:1 *L & Human Behavior* 25 at 25; see also L. Camille Hébert, “Sexual Harassment is Gender Harassment” (1995) 43 *U Kan L Rev* 565.

<sup>15</sup> Emily Leskinen, Lilia Cortina & Dana Kabat, “Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work” (2011) 35:1 *L & Human Behavior* 25 at 36.

The studies reviewed show the importance of having a broad understanding of the phenomenon. In its recent study, the International Bar Association focused on harassment in the practice of law but defined two distinct subjects of study: sexual harassment and bullying. However, the report notes the proximity of the two concepts and stresses the importance of considering the specific dynamics of each of these phenomena.<sup>16</sup> Bullying is conceptualized in this study as exposure to aggressive behaviour or disrespect by a supervisor, co-worker or third party, while sexual harassment is defined as “unwanted sex related behaviour” or “unwanted or unwelcome [conduct], and which has the purpose or effect of being intimidating, hostile, degrading, humiliating or offensive.”<sup>17</sup> However, the authors point out that in this study, the “concept of sexual harassment is not confined to overtly sexualised behaviour and includes sex-based harassment (such as sexist comments).”<sup>18</sup> A reproduction of the list of behaviours used by Pender to measure sexual harassment shows the broad definition of this phenomenon, which is not limited to behaviours of a sexual nature, as specified in this excerpt:

Being looked at in an inappropriate manner which made you feel uncomfortable; Sexual or sexually suggestive comments, remarks or sounds; Sexist comments, including inappropriate humour or jokes about sex or gender; Receiving sexually explicit content or propositions via email or social media; Being the subject of sexist behaviour on work WhatsApp groups; Receiving sexually explicit presents, cards or letters; Inappropriate physical contact, for example patting, pinching, brushing up against the body and any inappropriate touching or feeling; Implicit or explicit demands for sexual favours in exchange for employment or promotion; Implicit or explicit demands for sexual favours in exchange for a favourable performance appraisal; Implicit or explicit demands for sexual favours in exchange for work opportunity (ie, to be involved in a matter); Sexual propositions, invitations or other pressure for sex; Seriously inappropriate physical contact, for example kissing, fondling or groping; Physical assault or rape.<sup>19</sup>

In addition, researchers who have focused on the practice of law have been interested mainly in sexual harassment in the broadest sense. We have not identified any studies dealing with sexual violence in the practice of law in Canada. Even studies on sexual harassment often do not address the issue of sexual violence. In fact, as shown by the list of behaviours previously cited, certain acts that could qualify as sexual assault (“seriously inappropriate physical contact, for example kissing, fondling or groping; physical assault or rape”) are often included in the broader notion of sexual harassment.<sup>20</sup>

<sup>16</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>, p. 17.

<sup>17</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>18</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>, p. 17.

<sup>19</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>, p. 118. L'intimidation est mesurée à partir de la liste de comportements suivante : « Being deliberately given too much or too little work, or work inadequate to the position; Overbearing supervision, undermining of work output or constant unproductive criticism; Misuse of power or position; Ridicule or demeaning language; Implicit or explicit threats, other than relating to the categories above; Exclusion or victimisation; Exclusion from or bullying via social media, including work WhatsApp groups; Malicious rumours; Being blocked from promotion or training opportunities due to a protected characteristic (such as race, sex, religion); Unfounded threats or comments about job security; Violence, threatened or actual » (p. 117).

<sup>20</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

## 1.2 Surveys conducted in the Canadian provinces over the past three decades

Without claiming to provide an exhaustive list, this section presents the key surveys conducted in Canada among lawyers to document the phenomenon of sexual harassment. This overview shows that for the past three decades, sexual harassment has been a known issue that has been addressed, but which remains a major obstacle for women lawyers, despite the efforts made by the various provincial law societies.<sup>21</sup>

In Quebec, two general surveys, *Sondage Général des Membres du Barreau* and *Women in the Legal Profession*, were conducted in collaboration with the Barreau in 1991 and 1992.<sup>22</sup> According to these surveys, between 11% and 15% of women lawyers experienced sexual harassment in their work, mainly by a colleague or superior, while the incidence of harassment by a client was much lower.<sup>23</sup> A 1986 survey of Quebec lawyers under 35 years of age, specifically targeting this category of members of the Barreau, revealed that 40% of women lawyers considered sexual discrimination as the most unpleasant aspect of their jobs.<sup>24</sup> According to Fiona M. Kay, “these studies, although few in number, reveal a pattern of gender inequity characterized by a gap in earnings for equivalent work, difficulties reconciling career and family responsibilities, and problems of sexual harassment and discrimination.”<sup>25</sup>

The Law Society of Alberta studied the ability of the legal profession to adapt to the increasing number of women that have entered the practice since 1991, in particular through the work of the Women in the Legal Profession ad hoc committee. The initial mandate of the committee was to present a clear picture of women in the profession and the barriers they face to fully participating in the profession, with the goal of making recommendations to remove these barriers. Sexual harassment was already a known problem at the time.<sup>26</sup>

In 1991, a survey on bias and discrimination in the legal profession was conducted among active members of the Law Society of Alberta, which led the author to conclude that “[s]exual harassment exists in the legal profession in Alberta, as it does in other provinces. This survey did not canvas the effects of sexual harassment on women, and it was clear from some of the comments that some lawyers do not understand these effects.”<sup>27</sup>

Similarly, a survey on gender bias in the practice of law was conducted in 1990 among members of the Law Society of British Columbia.<sup>28</sup> It found that one third of women (33.7%) had experienced sexual harassment in the form of unwanted sexual advances from a male lawyer, while 10.2% of men reported witnessing female lawyers being sexually harassed in this way. In contrast, only 3.5% of female lawyers witnessed sexual harassment against a male lawyer in the form of unwanted sexual advances by other lawyers, and 4.1% of men reported being sexually harassed in this way. In addition, 68.2% of women reported experiencing sexual harassment in the form of unwanted sexual jokes or comments from a male lawyer, and 34.5% of men reported witnessing sexual harassment in this form against a female lawyer.<sup>29</sup>

In 1991, the Canadian Bar Association established the Task Force on Gender Equality to address the status of women in the legal profession in Canada. In 1993, the Task Force published the report entitled *Touchstones for Change: Equality, Diversity and Accountability*. The report concluded that “more than one in three female lawyers have experienced sexual harassment in the form of unwanted sexual advances” and that “two thirds of female lawyers have experienced sexual harassment in the form of sexual comments, teasing and joking.”<sup>30</sup> The Task Force called the situation alarming.

<sup>21</sup> Fiona M. Kay et Joan Brockman, « Barriers to Gender Equality in the Canadian Legal Establishment » (2000) 8(2) *Feminist Legal Studies* 169; Fiona M. Kay et Elizabeth Gorman, « Women in the Legal Profession » (2008) 4 *Annu. Rev. Law Soc. Sci.* 299.

<sup>22</sup> Mackaay, E. *L'État de la Profession D'Avocat au Québec en 1991: Résumé des Principales Conclusions du Sondage Général des Membres du Barreau*, Montréal Barreau du Québec, 1991; Barreau du Québec, *Women in the Legal Profession*, Montréal, Barreau du Québec, 1992.

<sup>23</sup> Mackaay, E. *L'État de la Profession D'Avocat au Québec en 1991: Résumé des Principales Conclusions du Sondage Général des Membres du Barreau*, Montréal Barreau du Québec, 1991; Barreau du Québec, *Women in the Legal Profession*, Montréal, Barreau du Québec, 1992.

<sup>24</sup> E. Bilodeau, « Qui êtes-vous, jeune avocat? », *Le Journal du Barreau*, 15 Décembre 1988.

<sup>25</sup> Fiona M. Kay, « Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec » (2002) 47 *McGill LJ.* 699, p. 712.

<sup>26</sup> Anne McLellan, “Where Have All the Women Gone?” (2008) 45 *Alta L Rev* 259.

<sup>27</sup> Joan Brockman, “Bias in the Legal Profession: Perceptions and Experiences” (1992) 30:3 *Alta L Rev* 747 at 785

<sup>28</sup> On February 6, 1990, a 4-page questionnaire was emailed to all those who were members of the Law Society of British Columbia as at January 29, 1990, and who resided in the province. The last response was received on September 28, 1990. 1,873 questionnaires were returned, representing a 30% response rate. Women responded in greater proportion (697 out of 1,310—53%) than men (1,117 out of 4,924—23%).

<sup>29</sup> Joan Brockman, “Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia” (1992) 17 *Queen's L.J.* 91.

<sup>30</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 74.



In the decade that followed, further surveys were conducted to assess how the situation of women lawyers had evolved since these surveys were conducted. In 2003, Joan Brockman, Merrill Cooper and Irene Hoffart surveyed lawyers in Alberta. In an article presenting the results of the survey, Joan Brockman concluded that sexual harassment continued to be a problem in the legal profession:

Assuming that there is an increase in observed sexual harassment, the good spin on it is that men today are probably more likely to recognize sexual harassment when it occurs. Sexual harassment has had much media and legal coverage since 1991. It may be that the increase in sexual harassment observed by women is also an increase in awareness. 1991 was only two years after the Supreme Court of Canada recognized sexual harassment as a form of sex discrimination. On the negative side, sexual harassment still exists and it is a major barrier to women's equality in the legal profession and elsewhere.<sup>31</sup>

In 2013, Micheline Gleixner and Louise Aucoin looked at how the situation of women lawyers in Canada had evolved since the 1993 publication of the report of the Canadian Bar Association Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Responsibility*.<sup>32</sup> They presented some of the initiatives implemented by the various provincial law societies to address sexual harassment. After reviewing the various initiatives, they concluded:

[TRANSLATION]

Despite the progress made and the growing awareness of the issue by many entities within the legal profession, and despite the measures taken to achieve substantive gender equality, women continue to be subject to discriminatory stereotypes and sexism that operate to the detriment of professional opportunities. Although instances of overt discrimination appear to have decreased, sexual harassment has not yet been eliminated.<sup>33</sup>

The situation in Canada is similar to that in most Western countries.<sup>34</sup> In France, at the request of the Fédération nationale des unions de jeunes avocats (FNUJA), the Défenseur des droits conducted a survey in 2018 to describe the working conditions of lawyers in France and analyze the forms and frequency of the discrimination they experience. The report entitled *Conditions de travail et expériences des discriminations dans la profession d'avocat.e en France* shows that women witness or are subject to hostile jokes, comments or behaviour in much greater proportions than their male counterparts.<sup>35</sup> Similarly, in Australia, the Law Council's National Attrition and Re-engagement Study (NARS) Report shows the extent of this phenomenon, with one in four Australian women lawyers having experienced sexual harassment in the workplace, a situation that led many women to consider changing jobs in the following five years.<sup>36</sup> A study conducted in 2018 by the International Bar Association of 6,980 lawyers in 135 countries shows that one in three women lawyers and one in 14 men lawyers have experienced sexual harassment in the workplace.<sup>37</sup>

<sup>31</sup> Joan Brockman, "An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003" in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237 at 247.

<sup>32</sup> Micheline Gleixner & Louise Aucoin, "Être juriste au féminin : une réalité émergente ou une quête illusoire?" (2013) 92 Can Bar Rev 235 at 237: [TRANSLATION] "The purpose of this article is to determine whether the legal profession has evolved and progressed in response to the findings and recommendations of the report entitled *Touchstones for Change: Equality, Diversity and Accountability, the first major study on gender equality in the legal profession undertaken by the Canadian Bar Association (CBA) twenty years ago.*"

<sup>33</sup> Micheline Gleixner & Louise Aucoin, "Être juriste au féminin : une réalité émergente ou une quête illusoire?" (2013) 92 Can Bar Rev 235 at 260.

<sup>34</sup> "Barristers' Working Lives 2017" (2017), online (pdf): The Bar Council <<https://www.barcouncil.org.uk/resource/working-lives-2017-harassment-and-bullying-pdf.html>>; "Upholding Professional Standards 2017/18" (2018), online (pdf): Solicitors Regulation Authority <<https://www.sra.org.uk/globalassets/documents/sra/research/upholding-professional-standards-2017-18.pdf?version=4a1ab8>>; "Anonymous Survey about Harassment and Bullying in the Practice of the Criminal Law" (2018), online (pdf): New Zealand Criminal Bar Association <<https://www.criminalbar.org.nz/sites/default/files/Bullying%20Survey%20Final.pdf>>; "Workplace Environment Survey" (2018), online: New Zealand Law Society <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; "Report of the New Zealand Law Society Working Group" (2018), online: New Zealand Law Society <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; Joan C. Williams, Marina Multhaup, Su Li & Rachel Korn, *You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* (Chicago: American Bar Association Publishing, 2018), online (pdf): American Bar Association <<https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf>>.

<sup>35</sup> "Conditions de travail et expériences des discriminations dans la profession d'avocat.e en France" (2018), online (pdf): *Défenseur des droits* <<https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapp-eng-avocats-a4-num-02.05.2018.pdf>>

<sup>36</sup> "National Attrition and Re-engagement Study (NARS) Report" (2014), online (pdf): *Law Council of Australia* <<https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>>.

<sup>37</sup> Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

Sexual harassment also affects articling students. From May 8 to June 17, 2019, the Law Society of Alberta conducted an online survey of 736 articling students and new lawyers, as well as 407 recruiters and articling supervisors from Alberta, Saskatchewan and Manitoba. The survey focused on discrimination and harassment during recruitment or articling, the skills acquired during articling and the level of preparedness for practice, as well as the quality of supervision. The survey found that 32% of articling students had experienced gender or racial harassment or discrimination. These students felt that there were no resources available to help them address these situations or that the process available would negatively impact them.<sup>38</sup>

Researchers are also looking at people who were not subject to sexual harassment but witnessed it.<sup>39</sup> In an interesting reflection, Joan Brockman compared the results of a study she conducted in Alberta in 1991 with those of her most recent study for that province in 2003. She noted an increase in the proportion of men who witnessed sexual harassment of a female lawyer by another male lawyer and explained this result by the improved ability of today's men to recognize sexual harassment, in part because of the increased media and legal coverage of sexual harassment since the 1990s.<sup>40</sup>

A study published in 2019 by Statistics Canada also found that men are slightly more likely to witness inappropriate sexual behaviour in their workplace. The results of this survey show that 56% of men and 53% of women witnessed inappropriate sexual behaviour in their workplace during the 12 months prior to the survey.<sup>41</sup> The situation appears to be different in France, where women are much more likely to notice sexual harassment in the form of sexist jokes, comments or behaviour against a lawyer than men: [TRANSLATION] "Only 21.2% of women think sexual harassment is not at all frequent, while 46.9% of male lawyers share this belief."<sup>42</sup> However, as in Canada, more than half of female lawyers (52.3%) witnessed sexist behaviour or acts: [TRANSLATION] "27.1% of them noted that sexist behaviour or acts are 'very or somewhat frequent' and 25.2% noted that they occur but are 'not very frequent.'"<sup>43</sup>

### 1.3 Causes and consequences of sexual harassment in the legal profession

The literature reviewed documents some of the causes and consequences of sexual harassment and violence. In this section, we will present some of these aspects.

In France, the *Union des jeunes avocats de Paris* published a report in 2018, entitled *Rapport sur le harcèlement sexuel au sein de la profession d'avocat*. The report contains a comprehensive study of the characteristics of the legal profession that explain why women are particularly at risk of experiencing sexual harassment. These characteristics are based on the changing demographics of the profession and the existence of strong hierarchical relationships and relationships of dependence.<sup>44</sup>

<sup>38</sup> "Articling Program Assessment Research Report" (2019), online (pdf): Law Society of Alberta [https://dvybat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report\\_September-27\\_2019.pdf](https://dvybat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report_September-27_2019.pdf), see also A. Sidiq Ali & The Law Society of Upper Canada, Summary of Articling Experience Survey Results (Mississauga: Research & Evaluation Consulting Inc., 2017), online (pdf): Law Society of Ontario Gazette <http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>.

<sup>39</sup> Kieran Pender, Us Too? Bullying and Sexual Harassment in the Legal Profession (London: International Bar Association, 2019) at 49, online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

<sup>40</sup> Joan Brockman, "An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991 2003" in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237 at 247.

<sup>41</sup> Adam Cotter & Laura Savage, "Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the Survey of Safety in Public and Private Spaces", Juristat (Statistics Canada, 2019), online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/fr/pub/85-002-x/2019001/article/00017-fra.pdf?st=2iG7gcr>.

<sup>42</sup> "Conditions de travail et expériences des discriminations dans la profession d'avocat.e en France" (2018) at 19, online (pdf): *Défenseur des droits* <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapp-eng-avocats-a4-num-02.05.2018.pdf>

<sup>43</sup> "Conditions de travail et expériences des discriminations dans la profession d'avocat.e en France" (2018) at 20, online (pdf): *Défenseur des droits* <https://www.defenseurdesdroits.fr/sites/default/files/atoms/files/rapp-eng-avocats-a4-num-02.05.2018.pdf>

<sup>44</sup> "Rapport sur le harcèlement sexuel au sein de la profession d'avocat" (2018), online (pdf): *Union des jeunes avocats de Paris* <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>.



As in Canada, studies conducted in various contexts show that with the feminization of the profession and the demands of feminist movements against sexual harassment, sexual harassment has become more visible and reported. The report of the Union des jeunes avocats de Paris shows that, [TRANSLATION] “despite the feminization of the profession, female lawyers find themselves in a less favourable and more precarious situation than their male counterparts, who make partner more often and more easily.<sup>45</sup> EDespite the increase in the number of women lawyers, women leave the profession more often and much more quickly; they are associates rather than partners and are promoted less easily and less quickly than men: 30% of partners are women, while 70% are men. Moreover, in 2015, women were paid on average more than 50% less than their male colleagues.<sup>46</sup> This pay gap and the inequalities experienced by women lawyers lead to the second factor in the emergence of sexual harassment in the profession: authority relationships between women and men. According to the report, [TRANSLATION] “... the structures and practice of the legal profession are particularly conducive to bringing together lawyers in positions of authority (a) and vulnerability (b), which may explain the higher recurrence of sexual harassment compared to other sectors, despite the ethical rules governing it (c).<sup>47</sup> )” In fact, law is a particularly hierarchical profession, and the existence of power relationships can exacerbate acts of harassment and reinforce the inequalities that contribute to the vulnerability of certain individuals and groups to sexual violence: [TRANSLATION] “the competitive pressure when entering the profession (finding several formative and qualifying articling programs, then the first position as an associate, etc.) and practicing it (acquiring new clients and developing relationships with existing clients, making partner, setting up one’s own practice, etc.) gives rise to a certain degree of vulnerability.<sup>48</sup> Finally, in the collective consciousness, lawyers are expected to exhibit absolutely exemplary conduct. Such stereotyping can contribute [TRANSLATION] “to denying the reality of sexist and sexual violence and thus to maintaining the silence surrounding it.”<sup>49</sup>

In Canada, Joan Brockman, Denise Evans and Kerri Reid seem to share this view:

[O]ne of the myths of sexual harassment is that it is confined to working class women. Not only is this view false, but women in professional and specialized areas are sometimes more at risk because they move in much smaller circles and are often easier to “blackball” permanently within their area of work. The legal profession is a small world. Sexual harassment and a “sexist atmosphere” at law school and in the practice of law can have a detrimental effect on the work women do and on their self-esteem ...<sup>50</sup>

Several studies show that sexual harassment is more prevalent in medium and large law firms. Thus, most research emphasizes the importance of changing the law firm culture.<sup>51</sup>

In addition to providing information on the prevalence of sexual harassment and its causes, research also provides important insights into the resulting phenomena.

Sexual harassment has always been a significant barrier to the retention and advancement of women in the legal profession in Canada, particularly in private practice.<sup>52</sup>

Lawyers who were subject to sexual harassment describe psychological effects that include stress, depression, shame, anger, irritation, distress, anxiety and loss of self-confidence. In addition, sexual harassment also has negative repercussions on women’s careers, including unwanted transfers, career interruption, resignation, job loss, wrongful dismissal, low productivity, reduced job satisfaction, and loss of motivation and commitment to work.<sup>53</sup>

<sup>45</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, en ligne :

<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>.

<sup>46</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, en ligne :

<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>.

<sup>47</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, en ligne :

<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>, p. 44.

<sup>48</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, en ligne :

<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>, p. 45.

<sup>49</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, en ligne :

<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>, p.46.

<sup>50</sup> J. Brockman, D. Evans & K. Reid, “Feminist Perspectives for the Study of Gender Bias in the Legal Profession” (1992) 5 C.J.W.L. 37

<sup>51</sup> Anne McLellan, “Special Issue: Law Society of Alberta 100th Anniversary Conference “Canadian Lawyers in the 21st Century” Where Have All the Women Gone?”, (2008) 45 *Alta L. Rev.* 259.

<sup>52</sup> S. Elizabeth Foster, « The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners? », (1995) 42 *UCLA L. Rev.* 1631, p. 1666; Micheline Gleixner et Louise Aucoin, « Être juriste au féminin : une réalité émergente ou une quête illusoire? », (2014) 92 *Revue du Barreau canadien* 1; Fiona M. Kay et Joan Brockman, « Barriers to Gender Equality in the Canadian Legal Establishment » (2000) 8(2) *Feminist Legal Studies* 169.

<sup>53</sup> Fiona M. Kay et Elizabeth Gorman, « Women in the Legal Profession » (2008) 4 *Annu. Rev. Law Soc. Sci.* 299.

Moreover, focussing on sexual harassment does not always have the desired effect of reducing its prevalence to strengthen the position of women in the legal community. On the contrary, drawing attention to the wrong issues or taking the wrong approach when raising awareness of the prevalence of sexual harassment has resulted in further segregation of women.<sup>54</sup> It can make it difficult for women to find mentors, prevent them from being invited to networking activities outside of work or mean they are offered fewer opportunities to work on major cases that would require time away from home or work outside normal office hours, etc.<sup>55</sup> According to the Canadian Bar Association's Task Force on Gender Equality (1993), many lawyers saw sexual harassment as a risk to be neutralized rather than an opportunity to examine and question their behaviour. This perception led to even greater exclusion of women since it was felt that by avoiding contact, the risk of being accused of sexual harassment would decrease. Instead, this exclusion meant that women were deprived of many opportunities in their careers without the incidence of sexual harassment being reduced. The issue of sexual harassment therefore has the potential to create or reinforce gender segregation in the profession.<sup>56</sup>

#### 1.4 Conclusion: an issue in society and the practice of law

The literature review shows that the issue of sexual violence in the practice of law is significant, but that it is part of a broader context of social relations that mark all spheres of society. Sexual violence can therefore occur in all social or employment contexts. For example, a survey on sexual harassment at work conducted in 2014 by the French Institute of Public Opinion (IFOP) showed that 30% of French women professionals or executives had experienced sexual harassment at work, compared to 20% of all French women aged 18–64. This phenomenon could be explained by the higher level of responsibility of these women: [TRANSLATION] “Women who recognize themselves as victims of sexual harassment are often women with a certain level of responsibility (30% of professionals and executives).”<sup>57</sup> These findings are confirmed in a survey entitled “Observatoire du harcèlement sexuel - Volet 1 : Les Françaises et le harcèlement sexuel au travail,”<sup>58</sup> conducted by the IFOP in 2018: 40% of managers (or professionals) had been sexually harassed, while the average among French women as a whole was 32%. In fact, “gender-based sexual harassment” is a form of harassment that particularly affects women managers, intellectual professionals and executives.<sup>59</sup> The same findings were made in Switzerland: [TRANSLATION] “Members of the executive and legislative bodies, senior public servants, corporate managers and executives (39.3%) ... particularly often experienced (at least) potentially unwelcome behaviour during the previous 12 months.”<sup>60</sup>

To conclude, the literature review shows the extent of sexual violence in the practice of law, its causes and consequences, and the importance of taking action.

<sup>54</sup> Andrea Macerollo, « The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation », (2008) 25 *Windsor Rev. Legal & Soc. Issues* 121

<sup>55</sup> Andrea Macerollo, « The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation », (2008) 25 *Windsor Rev. Legal & Soc. Issues* 121

<sup>56</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 78; Andrea Macerollo, “The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation” (2008) 25 *Windsor Rev Legal Soc Issues* 121.

<sup>57</sup> Institut français d'opinion publique, *Enquête sur le harcèlement sexuel au travail*, 2014, online: [https://www.ifop.com/wp-content/uploads/2018/03/2551-1-study\\_file.pdf](https://www.ifop.com/wp-content/uploads/2018/03/2551-1-study_file.pdf).

<sup>58</sup> Ifop study for the VieHealthy.com website by self-administered online questionnaire from January 26 to 29, 2018, of a sample of 2,008 women, representative of the female population living in metropolitan France aged 15 and over.

<sup>59</sup> Institut français d'opinion publique, *Observatoire du harcèlement sexuel - Volet 1 : Les Françaises et le harcèlement sexuel au travail*, 2018, online: [https://www.ifop.com/wp-content/uploads/2018/03/3980-1-study\\_file.pdf](https://www.ifop.com/wp-content/uploads/2018/03/3980-1-study_file.pdf)

<sup>60</sup> Silvia Strub, Marianne Schär Moser, *Risque et ampleur du harcèlement sexuel sur le lieu de travail – Une enquête représentative en Suisse alémanique et en Suisse romande*, (Bern: Federal Office for Gender Equality, State Secretariat for Economic Affairs SECO, 2008).

## 2. The continuum—a theoretical framework for analyzing sexual violence

### 2.1 Theoretical conceptualization of sexual harassment and violence

Much of the literature on sexual harassment and violence in the practice of law draws on feminist theories. In this context, harassment is defined as “a form of social control, and ... one example of the gender-based problems which a large number of women face in both their private and their working worlds.”<sup>61</sup> Sexual harassment is often seen as an act of violence and empowerment in the context of unequal power relations:

Sexual harassment in all societies and in all social classes hampers the integration of women into the labor market. Sexual harassment, commonly understood as the “unwanted imposition of sexual requirements in the context of a relationship of unequal power,” is a form of violence against women. Like rape, it generally occurs not out of sexual arousal, but rather from a desire to assert power over the victim or to “punish” or “control” the victim.<sup>62</sup>

Sexual and gender harassment involve power relationships and can be dismissed easily in a society which devalues women. Women who complain are “discounted or disbelieved”, and they are often blamed for provoking the event. Sexual harassment is to some extent a product of gender structure and gender symbolism. “It is grounded in and reinforced by a combination of structural (economic and occupational) factors and cultural-interactive themes and processes (primarily the visual objectification of women).” So long as women are objectified, they will never achieve equality in the workplace or any other place.<sup>63</sup>

Along the same lines, sexual harassment is often considered a form of gender discrimination. However, some writers see it as a mere ethical breach rather than an act of power, especially in the context of gender relations or gender inequalities.

### 2.2 The sexual violence continuum

To design the questionnaire on sexual harassment and violence in the practice of law, the Université Laval team and the Barreau du Québec drew on the one developed and used in the “Enquête Sexualité, Sécurité et Interactions en Milieu Universitaire (ESSIMU),” conducted by Manon Bergeron, professor of sexology at Université du Québec à Montréal (UQAM) and holder of the Research Chair on Sexist and Sexual Violence in Higher Education. For the purposes of that survey, as well as the one underlying this report, the researchers used the following definition to describe sexual violence:

[TRANSLATION]

Based on a broad definition of sexual violence, the focus is on different types of manifestation, such as sexual assault, exhibitionism, voyeurism, sexual harassment, cyberstalking, unwanted touching, threat of rape, sexual extortion and various forms of unwanted or non-consensual sexual behaviour. This inclusive definition of sexual violence is consistent with the definition presented by the U.S. Centers for Disease Control and Prevention in their recommendations for sexual violence surveillance (Basile, Smith, Breiding, Black & Mahendra, 2014). Since it is not limited to sexual harassment or assault as defined by law, this terminology covers a broader spectrum of experiences. Beyond physical brutality, it characterizes certain verbal behaviours and extends to cyber environments. It is also part of a paradigm that allows us to conceive of sexual violence as a desire for domination in a context of unequal power relations (Brockman, Evans & Reid, 1992; MacKinnon, 1979) and in its gender, systemic and continuum dynamics, as proposed by numerous feminist researchers and activists since the pioneering work of Kelly (1987) and Hanmer (1977).<sup>64</sup>

<sup>61</sup> J. Brockman, D. Evans & K. Reid, “Feminist Perspectives for the Study of Gender Bias in the Legal Profession” (1992) 5 *C.J.W.L.* 37

<sup>62</sup> Deborah Zalesne, « Sexual Harassment Law in the United States and South Africa: Facilitating the Transition from Legal Standards to Social Norms », (2002) 5 *Harv. Women's L.J.* 143 at 144.

<sup>63</sup> J. Brockman, D. Evans & K. Reid, “Feminist Perspectives for the Study of Gender Bias in the Legal Profession” (1992) 5 *C.J.W.L.* 37.

<sup>64</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016) at 2–3, online (pdf): UQAM [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)

The different expressions of violence are neither static nor exclusive, and they combine, transform and multiply.<sup>65</sup> The concept of a continuum of gender-based violence, developed by sociologist Liz Kelly,<sup>66</sup> allows us to go beyond the simple hierarchy of abuse to highlight the link between the different violent manifestations and their correlation with unequal social relations.<sup>67</sup> There are several categorizations of the continuum consistent with the research objects and the desired level of analysis. For this questionnaire, we have chosen to use the categorization proposed by Bergeron et al.<sup>68</sup> and inspired by Fitzgerald et al.<sup>69</sup> because it focuses specifically on the different forms of sexual violence by proposing three categories:

- 1) **sexual harassment** (verbal and non-verbal behaviours not aimed at sexual cooperation but that convey insulting, hostile and degrading attitudes);
- 2) **unwanted sexual attention** (verbal and non-verbal behaviour that is offensive, unwanted and unreciprocated and includes attempted rape and sexual assault); and
- 3) **sexual coercion** (extortion in return for future job-related or academic considerations).

This categorization within the framework of the continuum approach [TRANSLATION] “allow us to highlight the reprehensible nature of behaviours that are socially trivialized, or even minimized, by both the aggressors and the victims themselves.”<sup>70</sup> We have made this theoretical choice of the continuum because it allows us to document all violent acts, even acts that are generally trivialized (such as sexist jokes) but which are often precursors to other forms of violence. Recognizing that the various forms of violence are interwoven and may accumulate allows us to better understand their effects on the personal and professional path of the members of the Barreau. In this respect, the analysis of sexual violence through the prism of the continuum is rooted in a feminist framework, which implies considering the impact of unequal social relations on the exacerbation of violence. Like the rest of society, the legal world is marked by different social relations, including gender relations. These relationships are part of social structures and practices that promote the reproduction of gender inequalities, which are at the root of sexual harassment and violence. As Bergeron et al. point out, [TRANSLATION] “[t]his is about power relations that ‘create’ gender as a system of division, as a marker of inequality between women and men, intertwined with other social markers such as age, socio-economic status, ethnic origin, sexual orientation or the fact of living with a disability (Cardi, Naudier & Pruvost, 2005; Kergoat, 2010; Scott & Varikas, 1988; Pfefferkorn, 2007).”<sup>71</sup>

In focusing on the practice of law, the approach chosen for this survey allows us to consider the diversity of contexts and circumstances in which sexual harassment and violence occur, but also the different power relations, particularly those based on gender, that structure the legal profession and can affect the reproduction of the continuum. In the legal profession, gender inequalities seem to be reinforced by the recent feminization of this traditionally male profession, which is struggling to adapt and where most women still face various challenges, including the scarcity of female partners, pay gap, less important cases, more departures and shorter careers, etc. The practice of law is also characterized by hierarchical relationships—either within a firm (articling students, junior lawyers, senior lawyers, counsel, partners) or within the profession (judiciary, professional order, firms of different sizes)—marked by differences in status, prestige, financial, political and social capital, etc. In this sense, it is essential to consider the culture of the legal profession, as several writers view it as a major reason for sexual violence in the legal profession.<sup>72</sup>

The analysis of the continuum therefore seeks to understand how social and organizational power relations can contribute to exacerbating the various forms of sexual harassment and violence. Based on this understanding, this study aims to propose courses of action to counter these violent acts.

<sup>65</sup> Auclair, I. 2016, *Le continuum des violences genrées dans les trajectoires migratoires des Colombiennes en situation de refuge en Équateur*, Thèse de doctorat, Université Laval at 13

<sup>66</sup> Kelly, L., 1987 «The Continuum of Sexual Violence», pp. 46-60 dans J. Hanmer et M. M (eds). *Women, Violence and Social Control*, Atlantic Highlands, Humanities Press International.

<sup>67</sup> Auclair, I., D.Tanguay, «Les violences genrées sont partout, même en milieu de travail : diverses expériences analysées à la lumière du continuum des violences» dans *Violences genrées : enjeux et résistances.*, Auclair, I., Suelves Ezquerro, L., & Tanguay, D. Eds, Les Presses de l'Université Laval, 2019

<sup>68</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU (Montreal: Université du Québec à Montréal, 2016)* at 20, online (pdf): UQAM [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)

<sup>69</sup> Fitzgerald, L. F., Magley, V. J., Drasgow, F. et Waldo, C. R. (1999). Measuring sexual harassment in the military: The Sexual Experiences Questionnaire (SEQ—DoD). *Military Psychology*, 11(3), 243-263. doi: 10.1207/s15327876mpi1103\_3

<sup>70</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU (Montreal: Université du Québec à Montréal, 2016)* at 3, online (pdf): UQAM [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf). Page 3.

<sup>71</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU (Montreal: Université du Québec à Montréal, 2016)* at 3, online (pdf): UQAM [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf). Page 3

<sup>72</sup> J. Brockman, D. Evans & K. Reid, “Feminist Perspectives for the Study of Gender Bias in the Legal Profession” (1992) 5 *C.J.W.L.* 37

### 3. Methodological clarifications—a collaborative process

Data was collected using the questionnaire method, also known as a “sample survey.”<sup>73</sup> We chose to use an online questionnaire to collect data because it allowed us to reach a larger number of people. Moreover, considering the sensitive subject of the survey, i.e., sexual harassment and violence, an online questionnaire proved highly appropriate to collect data and ensure the confidentiality of the respondents.

The legal literature on the subject is generally the result of legislative, jurisprudential or doctrinal research and analyses on the legal or ethical rules on harassment.<sup>74</sup> In addition, many of the reports or articles listed are based on studies produced by social science researchers to provide an overall picture of the situation of sexual harassment at one time or another in the practice of law or the historical development of sexual harassment<sup>75</sup>.

Social science researchers conduct quantitative or qualitative empirical research. Quantitative research aimed at documenting the prevalence of sexual harassment is generally conducted in collaboration with the various provincial law societies, which provide researchers with contact information for their members. This type of research is usually conducted through mailed questionnaires or, in more recent research, through an e-mail to the respondents' work address that includes an electronic link. These are census surveys, with no margin of error, since all members (including inactive members) are asked to respond.<sup>76</sup> The correspondence is generally accompanied by a letter from the heads of the partner law societies to encourage participation by the members concerned, who have from a few weeks to a few months to complete the questionnaire.<sup>77</sup> The prevalence of sexual harassment is often measured over the previous two to five years, rather than over the entire career, to get a current picture of the situation.<sup>78</sup> In terms of identifying violence, the “self-labelling” method requires respondents to label their experience, without any explanation on the meaning of the different labels, whereas the “behavioural” method requires respondents to select the behaviours experienced from a list provided.

We can see that the approach adopted in this survey is methodologically consistent with previous research, particularly in the social sciences. In the following subsections, the methodological approach will be explained in more detail.

<sup>73</sup> A., Blais et Durand, C. 2009. Le sondage. Dans B. Gauthier (dir.), *Recherche sociale – De la problématique à la collecte des données* (p. 445-488). Ste-Foy, Canada : Presses de l'Université du Québec.

<sup>74</sup> Brigitte Deslandes, “Les infractions disciplinaires à caractère sexuel” in *École du Barreau du Québec, Collection de droit 2019-2020, Vol. 1: “Éthique, déontologie et pratique professionnelles”* (Montreal: Yvon Blais, 2019) 213; Jo-Anne Demers & Attieha R. Chamaa, “Le harcèlement sexuel en milieu professionnel : y a-t-il lieu de s'inquiéter ?” in Barreau du Québec, Service de la formation continue, *Développements récents en déontologie, droit professionnel et disciplinaire* (2016), Vol. 416, (Cowansville: Éditions Yvon Blais, 2016); Lisa Pfenninger, “Sexual Harassment in the Legal Profession: Workplace Education and Reform, Civil Remedies, and Professional Discipline” (1994) 22 Fla St UL Rev 171; Amanda De-Vincis, “Navigating the Borders: A Proposal for General Civility Legal Ethics on Sexual Harassment” (2000) 13 Geo J Leg Ethics 521; Deborah L. Rhode, ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* (Chicago: American Bar Association, 2001), online (pdf): *Women in the Legal Profession, Stanford Center on the Legal Profession* <[http://womenlaw.stanford.edu/pdf/aba\\_unfinished\\_agenda.pdf](http://womenlaw.stanford.edu/pdf/aba_unfinished_agenda.pdf)>; Audrey Wolfson Latourette, “Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives” (2005) 39 Val U L Rev 859; Nancy Levit, “Lawyers Suing Law Firms: The Limits on Attorney Employment Discrimination Claims and the Prospects for Creating Happy Lawyers” (2011) 73 U Pitt L Rev 65; Alex B. Long, “Employment Discrimination in the Legal Profession: A Question of Ethics?” (2016) U Ill L Rev 445; Wendy N. Hess, “Addressing Sexual Harassment in the Legal Profession: The Opportunity to Use Model Rule 8.4(g) to Protect Women from Harassment” (2019) 96 U Det Mercy L Rev 579.

<sup>75</sup> M. Michelle Gleixner & Louise Aucoin, “Être juriste au féminin : une réalité émergente ou une quête illusoire?” (2013) 92 Can Bar Rev 235; Fiona M. Kay & Joan Brockman, “Barriers to Gender Equality in the Canadian Legal Establishment” (2000) 8:2 Fem Leg Stud 169; Fiona M. Kay & Elizabeth Gorman, “Women in the Legal Profession” (2008) 4 Ann Rev Law Soc Sc 299; Anne McIellan, “Where Have All the Women Gone?” (2008) 45 Alta L Rev 259; Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993); Canadian Bar Association, *Ten Years into the Future: Where Are We Now After Touchstones*, (Ottawa: Canadian Bar Association, 2003); Ann J. Gellis, “Great Expectations: Women in the Legal Profession: A Commentary on State Studies” (1991) 66:4 Ind LJ 941; Johnny Darnell Griggs, “The Cobbler’s Children: Sexual Harassment in Law Firms” (2001) 61 Or St B Bull 25.

<sup>76</sup> “Articling Program Assessment Research Report” (2019), online (pdf): *Law Society of Alberta* : [https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report\\_September-27\\_2019.pdf](https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report_September-27_2019.pdf).

<sup>77</sup> Joan Brockman, “Bias in the Legal Profession: Perceptions and Experiences” (1992) 30(3) *Alberta Law Review* 747; Joan Brockman, “Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia” (1992) 17 *Queen’s L.J.* 91; Law Society of Alberta, *Articling Program Assessment Research Report*, Alberta, 2019, online (pdf): [https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report\\_September-27\\_2019.pdf](https://dvbat5idhx7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report_September-27_2019.pdf).

<sup>78</sup> Joan Brockman, “Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia” (1992) 17 *Queen’s L.J.* 91; Joan Brockman, “Bias in the Legal Profession: Perceptions and Experiences” (1992) 30:3 *Alta L Rev* 747; Joan Brockman, “An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003” in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237.



### 3.1 Adaptation of questionnaire to document violence

Between the summer of 2017 and the spring of 2018, the Université Laval team and the Barreau du Québec team jointly developed a questionnaire adapted to the practice of law based on the questionnaire used for the *Enquête Sexualité, Sécurité et Interactions en Milieu Universitaire* (ESSIMU).<sup>79</sup> The questionnaire was then tested in different ways.

First, the preliminary questionnaire was emailed and pre-tested with a diverse sample of ten members of the Barreau. The group was composed of men and women and included respondents from various regions of Quebec. The purpose of this step was to test the flow and comprehension of the questionnaire. Since the questionnaire had already been submitted to and approved by the board of directors of the Barreau, the objective of this pre-test was to validate the comprehension of the various questions and identify potential technical problems that could arise when answering the questions. The same individuals who had participated in the pre-test were then invited to form a focus group, and a meeting lasting approximately one and a half hours was held in January 2018 with the research team to discuss the questionnaire and the obstacles that respondents might encounter. Some of the respondents who could not participate in the focus group submitted their comments to the research team in writing. The pre-test allowed us to adjust the wording of certain questions and finalize the adaptation of the questionnaire to the reality of the legal environment. The final version of the questionnaire was composed of 11 sections and included both open-ended and closed questions, which allowed us to both document prevalence and illustrate real-life situations.

### 3.2 Data collection and analysis

On October 11, 2018, the questionnaire was launched via an e-mail from Université Laval to all those concerned (27,137 people, including members of the Barreau and articling students whose e-mail address the Barreau had on file),<sup>80</sup> inviting them to participate in the survey. On the same day, the Bâtonnier of the Barreau du Québec officially announced the launch of the survey. In addition, several strategies were used to recruit the sample. All members of the Barreau as well as articling students were invited to participate on a voluntary basis (convenience sampling), whether or not they had experienced violence. The objective was to paint a broad picture of the situation, including the reality of those who had experienced violence, those who had witnessed violence or been confided in, and those who had not experienced any violence. In the fall of 2018, three reminders were sent, spaced out in time, and the data collection was completed on December 19, 2018. In addition to the email reminders sent by Université Laval, the Barreau made calls for participation on several platforms, including the *Journal du Barreau*, as well as during various speeches by the Bâtonnier of the Barreau.

At the end of the collection phase, a total of 3,785 questionnaires were accepted as valid for analysis, meaning that after eliminating missing values, the sample size was 3,785 respondents (n=3785). The survey therefore had a response rate of 14.5% of members of the Barreau, which is consistent with what can be observed in other studies of this type. Quantitative research using questionnaires had response rates of between 13% and 54%, with the highest rates achieved more frequently in less recent studies (50%,<sup>81</sup> 29 %<sup>82</sup>, 43 %<sup>83</sup> and 54 %<sup>84</sup> from 1992 to 1994, compared with 13%,<sup>85</sup> 23 %<sup>86</sup> and 28,1 %<sup>87</sup> in 2003, 2017 and 2019<sup>88</sup>) and conducted mostly among inactive members who were no longer practicing. Moreover, the research results show that women are more likely to respond than men (62% response rate for women versus 47% for men,<sup>89</sup> 53% for women

<sup>79</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016), online (pdf): UQAM [https://chairevssmes.ugam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.ugam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)

<sup>80</sup> For articling students, prior consent to receive the email was required. Therefore, only those who had given their consent had received the email.

<sup>81</sup> Joan Brockman, « Bias in the Legal Profession: Perceptions and Experiences » (1992) 30(3) *Alberta Law Review* 747.

<sup>82</sup> Joan Brockman, « Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia » (1992) 17 *Queen's L.J.* 91.

<sup>83</sup> Joan Brockman, « "Resistance by the Club" to the Feminization of the Legal Profession », (1992) 7(2) *Canadian Journal of Law and Society* 47-92.

<sup>84</sup> Joan Brockman, « Leaving the practice of law: the wherefores and the whys » (1994) 32:1 *Alberta Law Review* 116.

<sup>85</sup> Joan Brockman, « An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003 » dans Elizabeth Sheehy et Sheila McIntyre (dir.), *Calling for Change: Women, Law, and the Legal Profession*, Ottawa, University of Ottawa Press, 2006, p. 237-251.

<sup>86</sup> Law Society of Alberta, *Articling Program Assessment Research Report*, Alberta, 2019, online (pdf): [https://dvbat5idxxh7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report\\_September-27\\_2019.pdf](https://dvbat5idxxh7ib.cloudfront.net/wp-content/uploads/2019/09/LSA-Articling-Program-Assessment-Final-Report_September-27_2019.pdf).

<sup>87</sup> A. Sidiq Ali & The Law Society of Upper Canada, Summary of Articling Experience Survey Results (Mississauga: Research & Evaluation Consulting Inc., 2017), online (pdf): <http://www.lawsocietygazette.ca/wp-content/uploads/2018/01/Summary-of-Articling-Experience-Survey-Results.pdf>.

<sup>88</sup> Les taux de réponses pour des études qui partagent cette méthodologie sont semblables à l'international. 26% en Nouvelle-Zélande en 2018 (voir New Zealand Law Society, *Workplace Environment Survey*, 2018, en ligne : [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0009/122679/Report-28-May-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0009/122679/Report-28-May-2018.pdf)); 26,4% en Angleterre en 2017 (voir The Bar Council, *Barristers' Working Lives 2017*, 2017, online (pdf): [https://www.barcouncil.org.uk/media/664669/barristers\\_working\\_lives\\_2017\\_harassment\\_and\\_bullying.pdf](https://www.barcouncil.org.uk/media/664669/barristers_working_lives_2017_harassment_and_bullying.pdf)); 53% aux États-Unis en 2011 (voir Emily Leskinen, Lillia Cortina et Dana Kabat, « Gender Harassment: Broadening Our Understanding of Sex-Based Harassment at Work », (2011) 35(1) *Law and Human Behavior* 25); et 22,5% en Floride en 2017 (voir The Florida Bar Special Committee on Gender Bias, *Report Received by The Florida Bar Board of Governors*, 2017, en ligne : <https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>). Note, however, that some of these studies were based on stratified sampling.

<sup>89</sup> Joan Brockman, « Bias in the Legal Profession: Perceptions and Experiences » (1992) 30(3) *Alberta Law Review* 747.

versus 23% for men,<sup>90</sup> 60% for women versus 33% for men,<sup>91</sup> 17% for women versus 10% for men<sup>92</sup>). The tendency for women lawyers to respond to these surveys in greater proportions than men was also observed internationally<sup>93</sup> and can be explained by women's interest in issues that are particularly relevant to them<sup>94</sup> but also by what Combessie identifies as the social distance of men from these issues.<sup>95</sup> The notion of social distance refers to the fact that men may feel less concerned by surveys and questionnaires on sexual violence insofar as they are less often victims.<sup>96</sup>

Refusal to answer the questionnaires can be seen as a reflection of the position of those who were invited to participate on this issue:

Sociological analysis seeks to understand how the responses collected in quantitative studies are processed, but it only marginally considers so-called "total non-response," in the sense of an individual's refusal to participate in the survey when the questionnaire is administered. In a way, however, refusals constitute responses that are sociologically significant. Although individuals have a legitimate right to refuse to participate in a survey and do not need to justify their refusal, in some cases, refusal is a spontaneous reflection of the individual's reaction to the survey topic. Moreover, an individual's refusal is interesting in that it allows us to understand their position on the subject of study, a topic ...<sup>97</sup>

The entire body of data was analyzed between January and December 2019. The results processed during this period are presented in this report. On the quantitative level, descriptive analyses were conducted. This type of analysis makes it possible to examine and describe the distribution of variables in the sample. Descriptive analyses also make it possible to determine the characteristics of the individuals that make up the sample. More specifically, frequency distribution was used to provide an overview of the situations of violence experienced by members of the Barreau. Frequency distribution makes it possible to organize and classify data by calculating the number of times each value appears in the data, which in turn allows for a quick distinction between high and low scores.

It should be borne in mind that the descriptive analyses presented in this report relate only to study participants. Since responses were not randomly selected or weighted according to the type of respondent, the results presented cannot be considered representative of all members of the Barreau. The descriptive analyses presented in this report serve only to show the existence of a problem. Furthermore, these analyses do not establish cause and effect relationships.

On the qualitative level, codification using categories and codes (corresponding to the different aspects covered by the questionnaire, i.e., types of violence, impact, obstacles encountered, strategies suggested, etc.) made it possible to analyze the accounts of respondents who had experienced violence, those who had witnessed it and those who had been confided in.

<sup>90</sup> Joan Brockman, "Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia" (1992) 17 *Queen's L.J.* 91.

<sup>91</sup> Joan Brockman, « "Resistance by the Club" to the Feminization of the Legal Profession », (1992) 7(2) *Canadian Journal of Law and Society* 47-92.

<sup>92</sup> Joan Brockman, « An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003 » dans Elizabeth Sheehy et Sheila McIntyre (dir.), *Calling for Change: Women, Law, and the Legal Profession*, Ottawa, University of Ottawa Press, 2006, p. 237-251.

<sup>93</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>; The Bar Council, *Barristers' Working Lives 2017*, 2017, en ligne : [https://www.bar-council.org.uk/media/664669/barristers\\_working\\_lives\\_2017\\_harassment\\_and\\_bullying.pdf](https://www.bar-council.org.uk/media/664669/barristers_working_lives_2017_harassment_and_bullying.pdf); Criminal Bar Association, *Anonymous Survey about Harassment and Bullying in the Practice of the Criminal Law*, 2018, en ligne : <https://www.criminalbar.org.nz/sites/default/files/Bullying%20Survey%20Final.pdf>; ABA Journal et Working Mother Media, *#MeToo Workplace Study*, 2018, en ligne (pdf) : [https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo\\_snapshot\\_final\\_revised\\_7-18.mbb.pdf](https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo_snapshot_final_revised_7-18.mbb.pdf); Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report*, 2014, en ligne : <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>.

<sup>94</sup> Centre d'expertise des grands organismes, *Les meilleures pratiques en matière de sondages en ligne*, 2006, online (pdf) : <[https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures\\_pratiques\\_sondages\\_en\\_ligne.pdf](https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures_pratiques_sondages_en_ligne.pdf)>.

<sup>95</sup> Jean-Claude Combessie, *La méthode en sociologie*, 5th ed (Paris: La Découverte, 2007) 37; see also "Manual on Victimization Surveys" (2009) at 138 (which mentions disinterest), online (pdf): *United Nations Office on Drugs and Crime* [https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Manual\\_Victimization\\_French\\_030210.pdf](https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Manual_Victimization_French_030210.pdf)

<sup>96</sup> Alice Debauche et al, *Présentation de l'enquête Virage et premiers résultats sur les violences sexuelles (2017)*, online (pdf): Institut national d'études démographiques <[https://www.ined.fr/fichier/s\\_rubrique/26153/document\\_travail\\_2017\\_229\\_violences\\_sexuelles\\_enquete\\_fr.pdf](https://www.ined.fr/fichier/s_rubrique/26153/document_travail_2017_229_violences_sexuelles_enquete_fr.pdf)>; see also Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019) at 20–21, online: International Bar Association <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>: "In promotional material regarding the survey, it was made clear that responses were sought from all members of the profession, not only those who had suffered from bullying or sexual harassment. Nevertheless, some respondents expressed concern that targets would be more likely to respond to the survey than those who had not experienced bullying or sexual harassment."

<sup>97</sup> Emmanuel Pagès, "Les 'justifications' de non réponse à un questionnaire administré par téléphone dans le cadre d'une enquête sociologique: le cas des technologies embarquées dans l'automobile" (October 13, 2011), online (blog): *Automobile et sécurité routière\_Le blog de Emmanuel Pagès* <<http://auto-et-sociologie.over-blog.fr/article-considerations-sur-les-justifications-de-refus-a-la-passation-d-un-questionnaire-administre-par-tele-86476927.html>>, taken from the appendix entitled "Recueil de meilleures phrases de refus à la passation du questionnaire" of the thesis entitled *Approche sociologique de la conduite instrumentée. Formes de la cognition distribuée en conduite automobile* (2008), Vol.2, at 10–11; see also Jean Chiche, "L'absence de réponse dans les enquêtes: y a-t-il de bonnes solutions?" in *Société française de statistique*, Les cafés de la statistique (January 10, 2016) at 7–8.

### 3.3 Limitations

Every survey, research or questionnaire has its limitations. Since the results of this survey are based on non-probability and convenience sampling that is based on the responses of voluntary respondents, it is impossible to provide an estimate of sampling error. This report presents the incidence of sexual harassment and violence reported in the study sample and not the prevalence of these forms of violence among the members of the Barreau.<sup>98</sup> The results and analyses presented in this report show that problems and issues exist rather than the relative incidence of these problems in the various groups. Furthermore, the results reported are consistent with those of earlier studies.<sup>99</sup>

Another limitation is that, given the exceptionally low response rate of articling students, the analysis focused on members of the Barreau. On the other hand, the structure of the questionnaire made it possible to document the respondents' entire career, including their articling experience. The accounts of witnesses and confidants also shed light on the articling context. Therefore, the data collected makes it possible to include this stage in the analyses. It should also be noted that all members of the Barreau were invited to participate in the online questionnaire, regardless of whether or not they had experienced harassment or violence, which made it possible to document both first-hand accounts and accounts of witnesses and confidants, as well as the responses of those who had not experienced, witnessed or been confided in with sexual violence.

### 3.4 Ethical considerations

The research team used Lime survey, a web platform hosted by the APTI service of Laval University's Faculty of Social Sciences, as a host server. The server meets the confidentiality and data management requirements of Laval University's ethics committee.<sup>100</sup> In addition, respondents signed a consent form and, considering the sensitive subject matter, support resources were proposed in the initial email, the consent form and the questionnaire. The data was secured and anonymized by the research team at the beginning of the analysis to ensure the confidentiality and future safety of respondents.

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<sup>98</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016), online (pdf): UQAM <[https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)>.

<sup>99</sup> Lavoie, F., Parent, S., Auclair, I. et Bergeron, M. (2017). *Violences sexuelles en milieu universitaire, résultats de l'Enquête Sexualité, Sécurité et Interactions en Milieu Universitaire (ESSIMU)* : Portrait de la situation à l'Université Laval. Université Laval.

<sup>100</sup> As part of the second phase of the project entitled "Les femmes dans les métiers et professions traditionnellement masculins : une réalité teintée de stéréotypes de genre nécessitant une analyse critique, systémique, comparative et multidisciplinaire," the approval number of the research ethics committee of Université Laval is 2015-271 phase 2/27-03-2018.



### 3.5 Descriptive portrait of respondents

On average, the 3,785 respondents were called to the bar in 2001.

Table 1 presents the socio-demographic profile of the sample. The average age was 40 years. 62.9% of the respondents were women, which can be explained by the subject of the questionnaire, a topic that is of greater interest to them<sup>101</sup> since, according to the literature,<sup>102</sup> women are more likely to experience sexual violence. Most respondents (89.8%) were born in Canada, while 6.9% were racialized and 0.7% identified as Aboriginal. 1% of respondents were permanent residents at the time of the survey. Finally, 7.2% said they had a disability or health issue, and 1.4% were unsure about this statement. Concerning the distribution by region, it should be noted that 52.7% of respondents were from Montreal, 19.4% from Quebec City and 27.9% from other regions. Table 1 presents the sociodemographic profile of respondents.

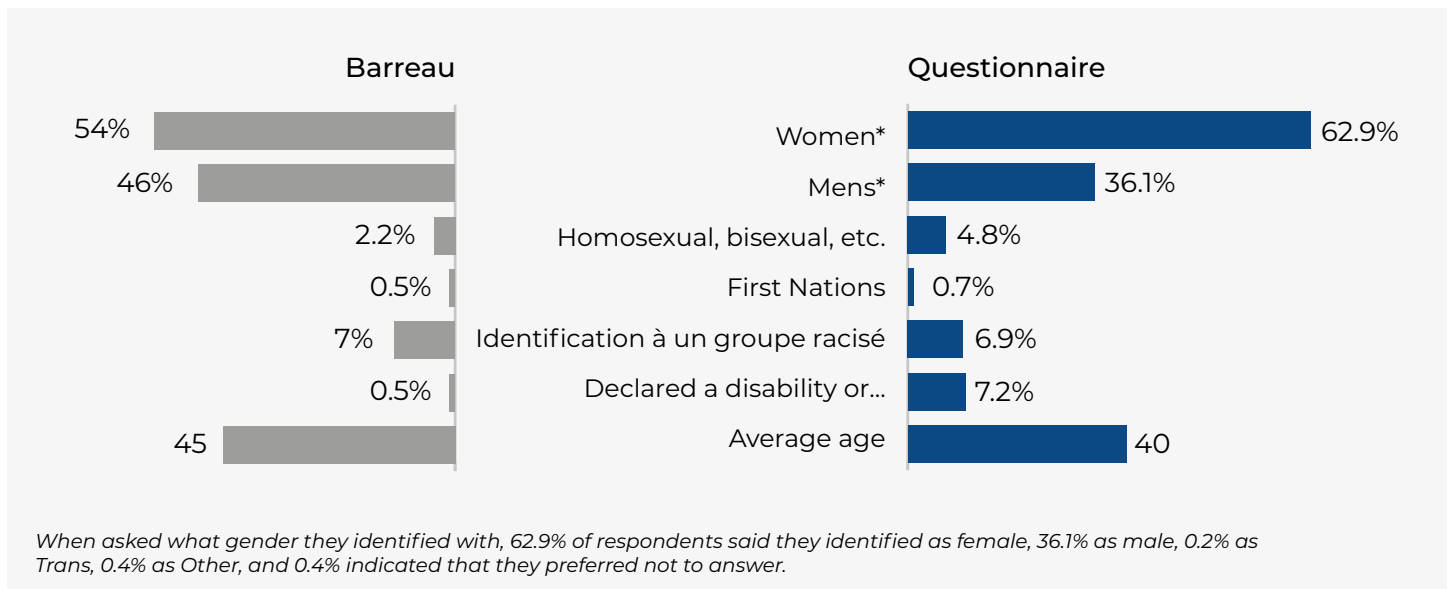
<b>Table 1: Socio-demographic Profile of Respondents</b>
The average age was 40 years.
62.9% of respondents identified as female.
89.8% of respondents were born in Canada.
6.9% of respondents identified as racialized.
4.8% of respondents identified as a sexual minority.
0.7% of respondents identified as Aboriginal.
1% of respondents were permanent residents.
7.2% of respondents said they had a disability or health issue; 1.4% answered this question with “not sure.”
52.7% of respondents were from Montreal, 19.4% from Quebec City and 27.9% from other regions.

While not completely representative of the sociodemographic data for members of the Barreau in terms of the proportion of respondents, our sample is close, as shown in Figure 1.

<sup>101</sup> “Les meilleures pratiques en matière de sondages en ligne” (2006), online (pdf): *Centre d'expertise des grands organismes* <[https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures\\_pratiques\\_sondages\\_en\\_ligne.pdf](https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures_pratiques_sondages_en_ligne.pdf)>.

<sup>102</sup> Joan Brockman, “Bias in the Legal Profession: Perceptions and Experiences” (1992) 30:3 *Alta L Rev* 747; Joan Brockman, “Gender Bias in the Legal Profession: A Survey of Members of the Law Society of British Columbia” (1992) 17 *Queen’s LJ* 91; Joan Brockman, “Resistance by the Club’ to the Feminization of the Legal Profession” (1992) 7:2 *CJLS* 47; Joan Brockman, “An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003” in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237; Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: International Bar Association <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>; “Barristers’ Working Lives 2017” (2017), online (pdf): The Bar Council <<https://www.barcouncil.org.uk/resource/working-lives-2017-harassment-and-bullying-pdf.html>>; “Anonymous Survey about Harassment and Bullying in the Practice of the Criminal Law” (2018), online (pdf): New Zealand Criminal Bar Association <<https://www.criminalbar.org.nz/sites/default/files/Bullying%20Survey%20Final.pdf>>; ABA Journal & Working Mother Media, “#MeToo Workplace Study” (2018), online (pdf): Working Mother <[https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo\\_snapshot\\_final\\_revised\\_7-18.mb\\_.pdf](https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo_snapshot_final_revised_7-18.mb_.pdf)>; “National Attrition and Re-engagement Study (NARS) Report” (2014), online (pdf): *Law Council of Australia* <<https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>>; Jean-Claude Combesse, *La méthode en sociologie*, 5th ed (Paris: La Découverte, 2007) 37; see also “Manual on Victimization Surveys” (2009) at 138 (which mentions disinterest), online (pdf): *United Nations Office on Drugs and Crime* <[https://www.unodc.org/documents/data-and-analysis/Crime-data-EGM-Feb10/Manual\\_Victimization\\_English\\_surveys\\_2009\\_final.pdf](https://www.unodc.org/documents/data-and-analysis/Crime-data-EGM-Feb10/Manual_Victimization_English_surveys_2009_final.pdf)>; Emmanuel Pagès, “Les ‘justifications’ de non réponse à un questionnaire administré par téléphone dans le cadre d’une enquête sociologique : le cas des technologies embarquées dans l’automobile” (October 13, 2011), online (blog): *Automobile et sécurité routière\_Le blog de Emmanuel Pagès* <<http://auto-et-sociologie.over-blog.fr/article-considerations-sur-les-justifications-de-refus-a-la-passation-d-un-questionnaire-administre-par-tele-86476927.html>>, taken from the appendix entitled “Recueil des meilleures phrases de refus à la passation du questionnaire” of the thesis entitled *Approche sociologique de la conduite instrumentée. Formes de la cognition distribuée en conduite automobile* (2008), Vol. 2, 10–11; see also Jean Chiche, “L’absence de réponse dans les enquêtes: y a-t-il de bonnes solutions?” in *Société française de statistique, Les cafés de la statistique* (January 10, 2016) 7–8.

**Figure 1: Comparison Between Members of the Barreau and the Sample**



According to data from the Barreau’s 2018–2019 annual report, 54% of the members of the Barreau are women, while they accounted for 62.9% of respondents.<sup>103</sup> The higher number among respondents is most likely due to the nature of the questionnaire, as mentioned above. 46% of the members of the Barreau are men, while in our sample they represent 36%. According to the Barreau data, 2.2% of its members identify as a sexual minority (homosexual, bisexual, etc.), while sexual minorities represent 4.8% of our sample. This difference can be explained once again by the subject of the study, which is likely to be of greater interest to sexual minorities since they are more often victims of sexual violence<sup>104</sup> and therefore feel more concerned, as seen above. Individuals who identify as First Nations represent 0.5% of the members of the Barreau and 0.7% of our sample. Individuals who identify as racialized represent 7% of the members of the Barreau and 6.9% of our sample. 0.5% of the members of the Barreau identify as having a disability, while these individuals represent 7.2% of our sample. This difference can be explained by the fact that in the annual declaration that members of the Barreau must complete regarding their socio-demographic information, they are asked whether they identify as a “person with a disability.” However, in the questionnaire for this survey, respondents were asked about their physical and mental health or any other health condition.<sup>105</sup> The average age of respondents was 40 years, compared with 45 years for the members of the Barreau. Finally, according to the Barreau’s 2018–2019 annual report, 50.4% of the members are from the Montréal area, 13.45% from Quebec City and 27.35% from other regions.

To complete the profile of the sample, members of the Barreau were asked questions about the type and area of practice and the size of the firm in which they were practising at the time of responding to the questionnaire. The data shows that 50.6% of respondents worked in a company or organization (whereas this category represents 40% of members of the Barreau),<sup>106</sup> 39.7% worked in private practice (whereas 36% of members of the Barreau work in private practice), 8.1% were not working at the time of the survey (20% of members of the Barreau reported being on parental leave, unemployed, students, on sick leave, not practicing law or retired according to the 2017 data)<sup>107</sup> and 1.6% preferred not to answer these questions on the questionnaire.

<sup>103</sup> The data in this section was taken from the 2018-2019 annual report of the Barreau du Québec, published on March 31, 2019. It should be noted that the Barreau counted 27,581 members on that date, whereas the number of members at the time of data collection in the fall of 2018 was 27,137, which makes it impossible to perfectly measure the representativeness of the sample.

<sup>104</sup> Centre d’expertise des grands organismes, *Les meilleures pratiques en matière de sondages en ligne*, 2006, en ligne : <[https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures\\_pratiques\\_sondages\\_en\\_ligne.pdf](https://grandsorganismes.gouv.qc.ca/fileadmin/Fichiers/Publications/Mesure%20de%20la%20satisfaction/Meilleures_pratiques_sondages_en_ligne.pdf)>.

<sup>105</sup> The question was worded as follows: [TRANSLATION] “Do you have a disability or medical condition that affects your daily life, whether related to your physical condition, mental health, or any other health condition?”

<sup>106</sup> Data for all members of the Barreau were taken from “*Sous la loupe de la diversité 2017*, Édition spéciale du Barreau-mètre, La profession en chiffre” (2017), online (pdf): Barreau du Québec <https://www.barreau.qc.ca/media/1238/barreau-metre-diversite.pdf>

<sup>107</sup> “*Sous la loupe de la diversité 2017*, Édition spéciale du Barreau-mètre, La profession en chiffre” (2017), online (pdf): Barreau du Québec <https://www.barreau.qc.ca/media/1238/barreau-metre-diversite.pdf>

Most of the respondents employed by a company or organization (45.7%) were working in the public service. 24.8% were working in the private sector, 12.5% for para-public agencies and the rest were employed by non-profit organizations (NPOs), professional corporations, unions, universities and other workplaces.

Most of the respondents in private practice (44.4%) were working in a general partnership, limited liability partnership (LLP) or corporation. Of the remaining respondents, 27.5% were self-employed; 12.0% were practicing in a cost-sharing partnership and/or nominal partnership with or without associate lawyers; 7.9% were employed as associate lawyers by a nominal partnership; 4.2% were self-employed and employed one or more associate lawyers; 3.1% were working as associate lawyers for a self-employed lawyer; and 0.8% preferred not to answer. Of those who reported working in private practice, 38.1% were associate lawyers, 27.1% were equity partners, 9.6% were non-equity partners and 11.6% preferred not to answer.<sup>108</sup>

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<sup>108</sup> Since the question on private practice status was not worded in the same way as in the Barreau's annual report, it is impossible to compare the responses presented in this report with those provided in the Barreau's annual report.

## RESULTS

The following six sections present the results of the survey on sexual harassment and violence in the practice of law. Section 4 discusses the different forms of violence experienced throughout the career and in the five years preceding the survey. Section 5 presents the contexts in which the violence occurred, specifying who is most likely to experience violence and who the perpetrators are. Section 6 highlights the personal and professional repercussions experienced by members of the Barreau who have experienced sexual harassment and violence. Section 7 focuses on data regarding the disclosure, whistleblowing and reporting of violent acts. Finally, section 8 highlights the role played by witnesses or confidants.

### 4. Types of violence experienced<sup>109</sup>

The various sections of the questionnaire have made it possible to document several aspects of the problem of sexual violence in the practice of law in Quebec. This section outlines the types of sexual violence (sexual harassment, unwanted sexual attention and sexual coercion) and its frequency, the status of the victims and perpetrators as well as the contexts in which the acts occurred. Where possible, accounts have been used to illustrate the results more concretely.

As stated in section 2, the types of sexual violence identified in the questionnaire are part of a continuum. Three categories of violence can be identified.<sup>110</sup> The first is sexual harassment (SH), which refers to verbal and non-verbal behaviours not aimed at sexual cooperation but that convey insulting, hostile and degrading attitudes. The second is unwanted sexual attention (USA), which refers to verbal and non-verbal behaviour that is offensive, unwanted and unreciprocated and includes attempted rape and sexual assault. The last one is sexual coercion (SC), which is characterized by extortion in return for future job-related considerations.

In question 12 of the questionnaire, respondents were asked how many times, during their professional career, someone ... The question was then completed with 25 items, which could be answered with [TRANSLATION] “never; 1; 2–3; 4–5; more than 5 times;” respondents could also specify whether the acts had occurred in the previous five years. Figures 2 to 6 present the details of the sub-components (items) of each type of sexual violence as well as the corresponding incidence according to gender. The following should be noted:

- The results presented in Figures 2 to 6 include all responses of “1; 2–3; 4–5; more than 5 times,” i.e., they include the responses of all those who responded that they had experienced at least one incident.
- The N differs for each item because respondents had the option of answering or not answering each question.
- **The % therefore refers to those who responded to the item rather than all respondents.**
- The supplementary tables in Appendix 2 provide details about the Ns for each item for those who responded positively or negatively to each question.

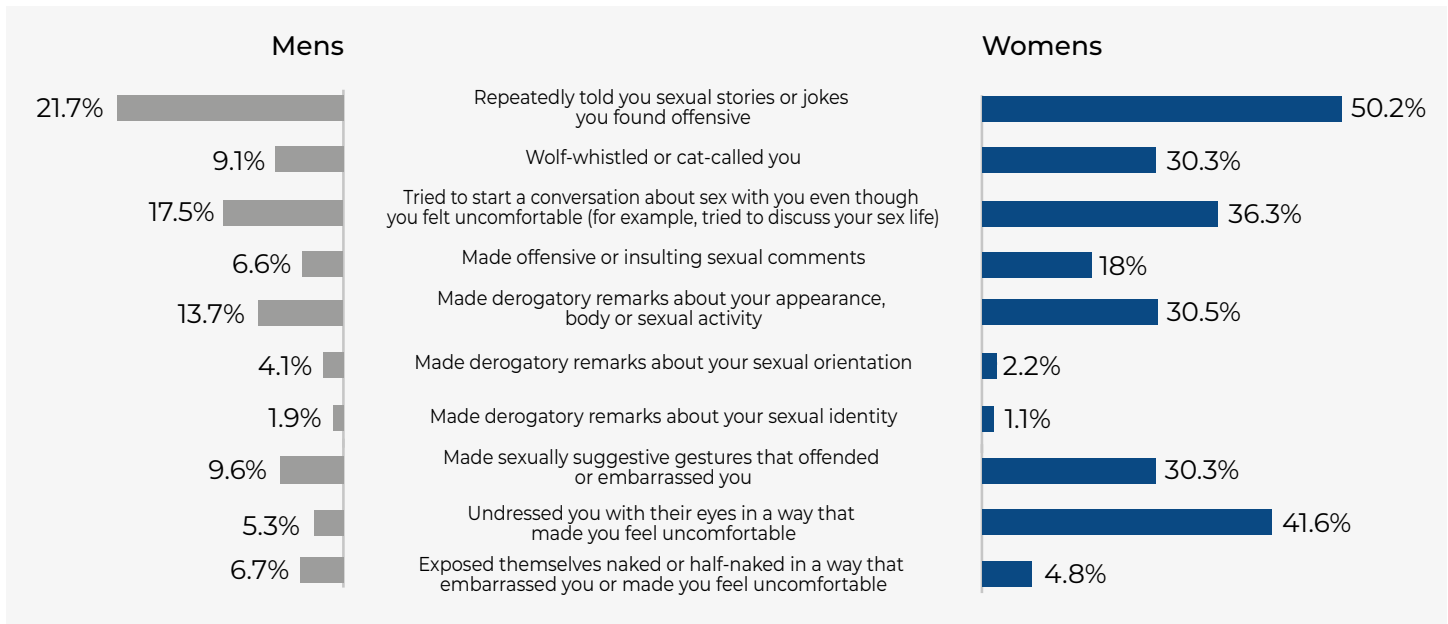
<sup>109</sup> Methodological precisions: for the question on the forms of violence (question 12), 20% of respondents chose the option [TRANSLATION] “I prefer not to answer.” It should also be noted that the N is different for each item (each of the 25 forms of violence) because respondents had the option of responding or not responding to each of these items. Also, according to the analysis, the N refers to the number of people who responded or the number of incidents.

<sup>110</sup> Louise F. Fitzgerald, Michele J. Gelfand & Frits Drasgow, “Measuring Sexual Harassment: Theoretical and Psychometric Advances” (1995) 17:4 *Basic and Applied Social Psychology* 425, DOI: <10.1207/s15324834basp1704\_2>; Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l’enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016), online (pdf): UQAM [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)

## 4.1 Sexual harassment

The most common category of sexual violence reported is sexual harassment, as shown in Figure 2, which lists the responses to the 10 items related to this category.

**Figure 2: Sexual Harassment**



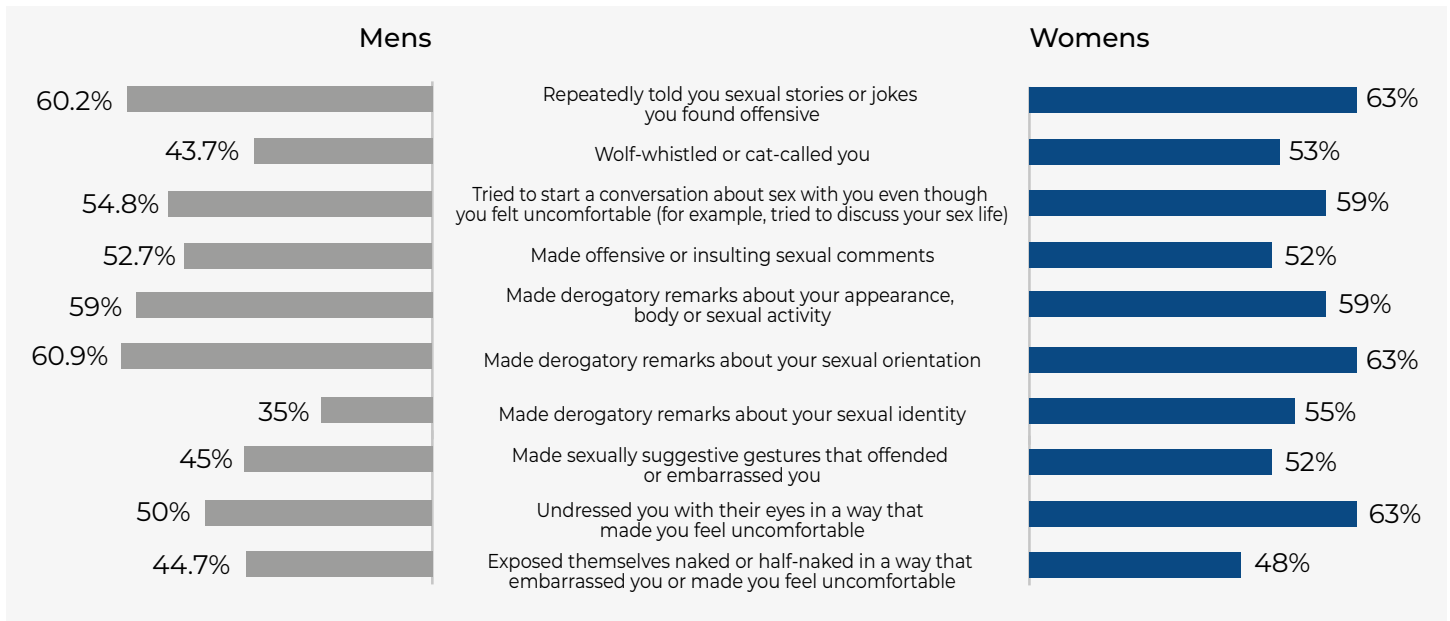
More specifically, nearly half (50.2%) of the women who answered the question had been repeatedly told offensive sexual stories or jokes, 41.6% reported that someone had undressed them with their eyes in a way that had made them feel uncomfortable, and 36.3% reported that someone had tried to start a conversation about sex with them even though they had felt uncomfortable. A third of women respondents had been wolf whistled or cat called (30.3%), had received derogatory remarks about their appearance, body or sexual activity (30.5%) and had been subjected to sexually suggestive gestures that had offended or embarrassed them (30.3%). The following were other sexual gestures reported by women: made offensive or insulting sexual comments (18%); exposed themselves naked or half naked in a way that embarrassed you or made you feel uncomfortable (4.8%); made derogatory remarks about your sexual orientation (2.2%); and made derogatory remarks about your sexual identity (1.1%).

The acts of sexual harassment most commonly reported by men were as follows: repeatedly told you sexual stories or jokes you found offensive (21.7%); tried to start a conversation about sex with you even though you felt uncomfortable (17.5%); made derogatory remarks about your appearance, body or sexual activity (13.7%); made sexually suggestive gestures that offended or embarrassed you (9.6%); wolf-whistled or cat-called you (9.1%); exposed themselves naked or half-naked in a way that embarrassed you or made you feel uncomfortable (6.7%); and made offensive or insulting sexual comments (6.6%). Having someone undress them with their eyes in a way that made them feel uncomfortable and receiving derogatory remarks about their appearance or sexual orientation were also among the acts reported by men.

Figure 3 shows the percentage of respondents who reported having experienced sexual harassment and who had experienced it in the previous five years. The table below shows that in most cases, more than 50% of respondents had experienced sexual harassment in the previous five years.

### Figure 3: Percentage of Respondents Who Reported Having Experienced Sexual Harassment and Who Had Experienced It in the Previous Five Years

Note: These percentages relate to the sample of respondents who reported having experienced sexual harassment (see Figure 2) rather than all respondents.



The following quotes illustrate different experiences of sexual harassment. It should be noted that these accounts come both from people who have directly experienced these acts and from witnesses and confidants:

[TRANSLATION]

*"I was in the practice chamber and I was bending over to take a document out of my briefcase. I was wearing a robe. A lawyer who was clearly 40 years older than me said, 'It's been years since I've had a woman your age kneeling in front of me.' I had never spoken to this lawyer before. He made the comment in a way that another young lawyer and a young articling student could hear it."* (Woman, personal experience).

[TRANSLATION]

*"Are you ready for your first case of sexual assault? This means that... I'm the aggressor and you're the victim!"* (Woman, personal experience)

[TRANSLATION]

*"Aren't you afraid to be with me in the cubicle (at the courthouse)? I could rape you, you know?" (said a lawyer 40 years her senior)."* (Woman, confidante)

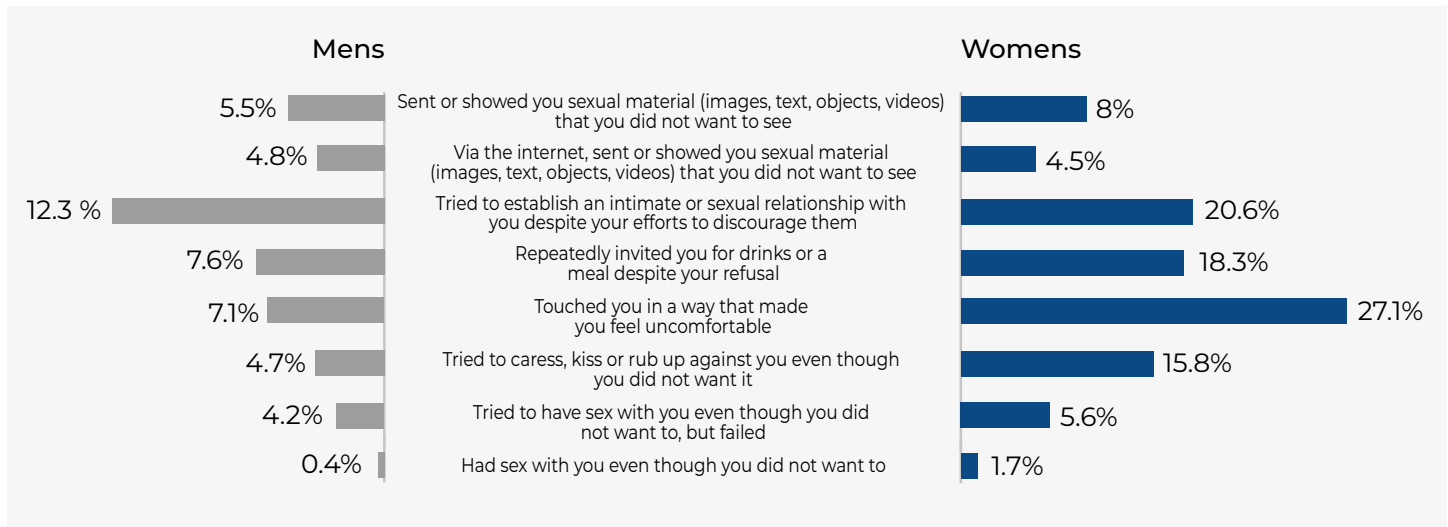
[TRANSLATION]

*"A colleague at work was interested in a female colleague. His interest in her became inappropriate. At a party, the harasser had clear intentions. So I took the victim back to her room and asked the harasser to stop immediately."* (Man, witness)

## 4.2 Unwanted sexual attention

Figure 4 presents the eight items corresponding to unwanted sexual attention received by respondents.

**Figure 4: Unwanted Sexual Attention**



Four of the unwanted sexual attentions were reported by at least one in ten respondents who answered this question. 27.1% of the women who answered this question said they had been touched in a way that had made them feel uncomfortable, 20.6% had been in one or more situations where someone had tried to establish an intimate or sexual relationship with them despite their efforts to discourage them, 18.3% said that they had been repeatedly invited for drinks or a meal despite their refusal and, finally, 15.8% of the women said that someone had tried to caress, kiss or rub up against them even though they had not wanted it. Respondents also experienced other unwanted sexual attentions: sent or showed you (via the Internet) sexual material that you did not want to see. Finally, almost 6% of women reported that someone had tried to have sex with them even though they had not wanted to but had failed, and almost 2% of women responded positively to the statement [TRANSLATION] “had sex with you even though you did not want to”.

In comparison, 12.3% of men reported that someone had tried to establish an intimate or sexual relationship with them despite their efforts to discourage them. The other most common attentions experienced by men were as follows: repeatedly invited you for drinks or a meal despite your efforts to discourage them (7.6%); touched you in a way that made you feel uncomfortable (7.1%); and sent or showed you sexual material that you did not want to see (5.5%).

The following table shows the percentage of respondents who reported having experienced unwanted sexual attention and who had experienced it in the previous five years. The table shows that in most cases, nearly 50% of respondents had experienced unwanted sexual attention in the previous five years.



**Figure 5: Percentage of Respondents Who Reported Having Experienced Unwanted Sexual Attention and Who Had Experienced It in the Previous Five Years**

Note : Ces pourcentages se réfèrent à l'échantillon de personnes ayant mentionné avoir vécu des comportements sexuels non désirés (voir figure 4) et non à toutes les personnes participantes.



The following quotes illustrate different forms of unwanted sexual attention that respondents experienced or witnessed or that were confided in them:

[TRANSLATION]

*"In the photocopy room at the office, while I was with my back to the door, a partner grabbed my butt."* (Woman, personal experience)

[TRANSLATION]

*"At a business meeting, opposing counsel grabbed my head and forced me to kiss him. Opposing counsel put his hands on my butt while we were walking to a hearing room at the courthouse. A judge put his hand on my thigh at a dinner for judges and lawyers. A client told me he wanted to fuck me on my desk while we were alone in my office."* (Woman, personal experience)

[TRANSLATION]

*"Two different colleagues, on two separate occasions, raped me while I was unable to give informed consent (drunk). The first time it happened during an after-work reception and the second time after an after-work reception."* (Woman, personal experience)

[TRANSLATION]

*"A colleague told me that another colleague had put a rape pill in her drink during an after-work reception (and she woke up with the smell of the colleague's breath on her body; she would never have consented to having sex with him)."* (Woman, confidante)

[TRANSLATION]

*"When I was an articling student and early on in my practice, there were several occasions when a partner of the firm came into my office, pulled down his pants and asked me to comment."* (Woman, personal experience)

[TRANSLATION]

*"A colleague came into my office with his pants down and rubbed his testicles. I had to tell him firmly to leave my office."* (Woman, personal experience)

[TRANSLATION]

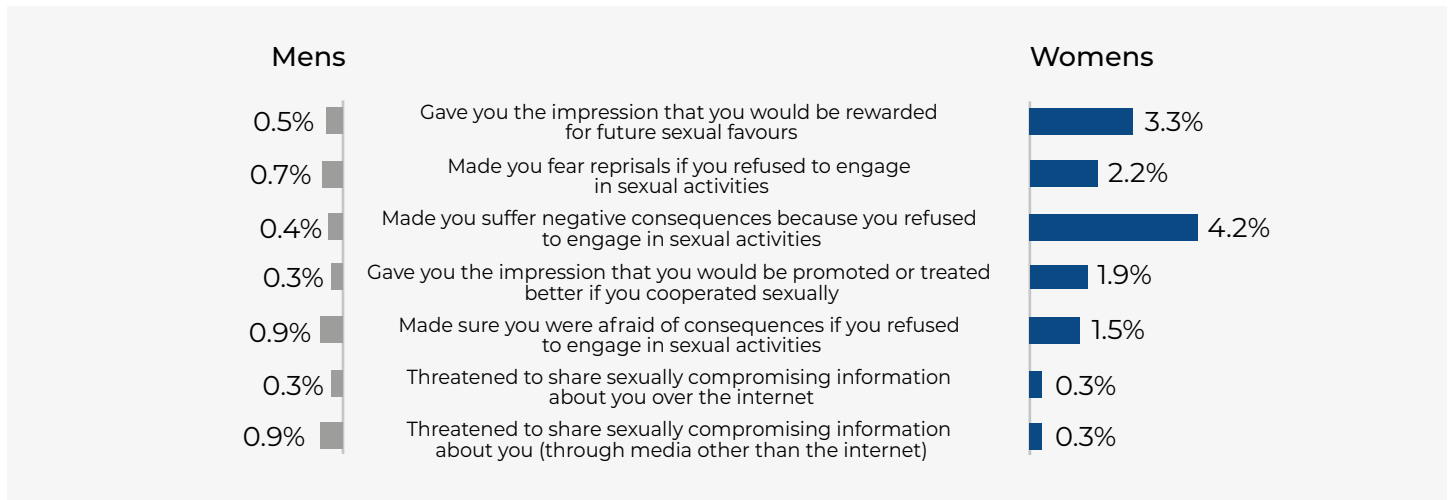
*"The individual, a woman, was my articling supervisor. I tried to resist, but she persisted. We had sex for several months. I was finally able to end the relationship, despite her insistence. She is about 15 years older than me."* (Man, personal experience)



### 4.3 Sexual coercion

Members of the Barreau also experienced acts of sexual coercion, seven of which were included in the questionnaire.

**Figure 6: Sexual Coercion**



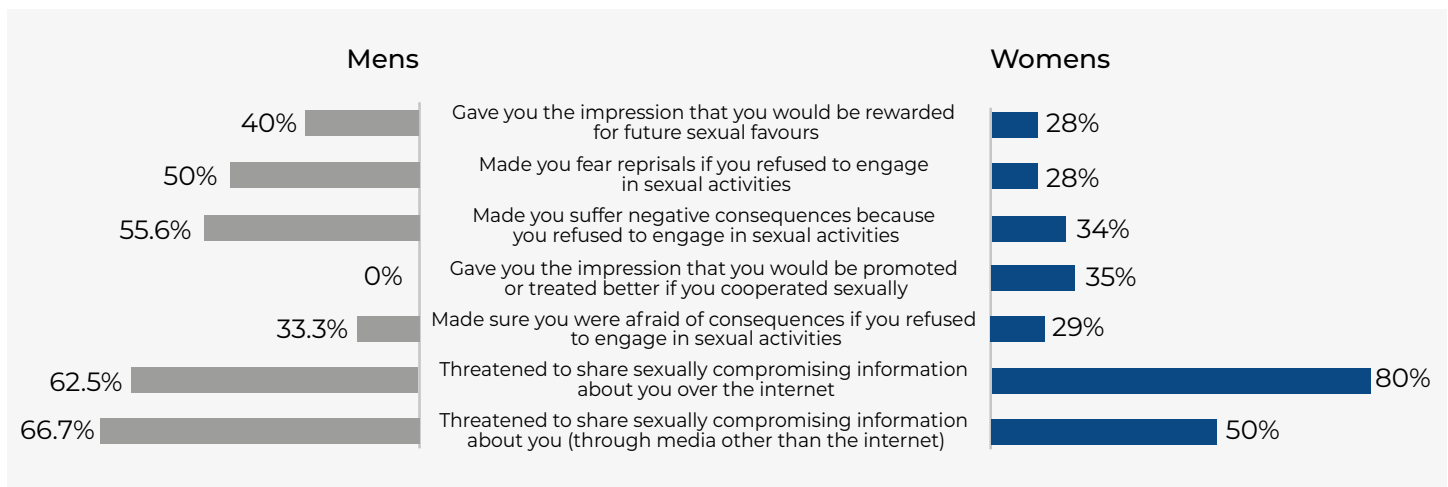
Nearly one woman in 20 (4.2%) who experienced sexual violence said that she had suffered negative consequences because she had refused to engage in sexual activities, 3.3% said that they had been given the impression that they would be rewarded for future sexual favours, and 2.2% of women reported that they had been made to fear reprisals if they refused to engage in sexual activities. Other experiences included being given the impression that they would be promoted or treated better if they cooperated sexually (1.9%) and making sure they would be afraid of consequences if they refused to engage in sexual activities. Finally, 0.3% of female members of the Barreau said that someone had threatened to share sexually compromising information about them (over the Internet or through other media).

As is the case for other categories of sexual violence, men experienced less sexual coercion. Nevertheless, some men reported incidents, the most common of which are as follows: made sure you were afraid of consequences if you refused to engage in sexual activities; threatened to share sexually compromising information about you (through media other than the internet); and made you fear reprisals if you refused to engage in sexual activities.

Figure 7 shows the percentage of respondents who reported having experienced sexual coercion and who had experienced it in the previous five years.

## Figure 7: Percentage of Respondents Who Reported Having Experienced Sexual Coercion and Who Had Experienced It in the Previous Five Years

Note: These percentages relate to the sample of respondents who reported having experienced sexual coercion (see Figure 6) rather than all respondents.



The following quotes from the accounts of respondents who experienced violence help us understand how sexual coercion is used:

[TRANSLATION]

*“A partner who made me feel that to get work, I had to have sexually oriented conversations with him (always going on about it and ‘sulking’ when I changed the subject). This partner was known at the firm for this kind of behaviour—yet he is still employed by the firm.”* (Woman, personal experience)

[TRANSLATION]

*“My articling supervisor came to see me to tell me that we were alone in the office; he told me, ‘let’s lock the doors and get naked.’ He then asked me to go to his office to talk about my future. He asked me to sleep with him.”* (Woman, personal experience)

[TRANSLATION]

*“On the night of the office party, after we left the party and were sitting at a snack bar ..., my colleague repeatedly asked me to have sex with him or he would end our friendship. When I steadfastly refused, he insisted and added that there would be consequences for my career if I continued to refuse him and that I would see the difference at the office starting Monday. I still said NO. [He] was right ...; by refusing to sleep with him, I ruined my career at the firm.”* (Woman, personal experience)

[TRANSLATION]

*“Request to have a sexual relationship and business opportunities (in the sense of ‘I will take charge of your career’ in exchange for sex) during a negotiation meeting with opposing counsel.”* (Woman, personal experience)

[TRANSLATION]

*“A client who hit on me in an obvious and persistent way, presumably to make me feel obliged to comply. This was manipulation.”* (Man, personal experience)

[TRANSLATION]

*“He is a colleague who helped me a lot early on in my career. I owe him a lot in terms of client development. He is increasingly making sexual allusions: when I ask him legal questions, he suggests that I go under his desk... if I ask him for the slightest service, I owe him a sexual favour, etc.”* (Woman, personal experience)

## 5. Contexts in which violence occurs

In order to obtain a complete picture of the different forms of violence experienced by respondents, it is important to understand in what contexts this type of violence is most likely to occur. When we consider the practice environment and status of those who experience violence as well as the perpetrators', we can see that certain social groups are at greater risk and that certain contexts are more conducive to exacerbating violence.

### 5.1 Groups most at risk

Analysis of the data shows that certain social groups are at greater risk of experiencing sexual harassment or violence. According to the data collected, in addition to women, who are more affected than their male colleagues by each of the categories of violence, racialized individuals and those who identify as a sexual or gender minority are more at risk of experiencing sexual violence.

More specifically, in their accounts, men who identify as homosexual reported different violent experiences and emphasized the difficulties experienced by men who do not fit the heteronormative standard.<sup>111</sup> These include [TRANSLATION] *"...the unspoken, willful ignorance that I was not just another heterosexual guy. By persistently questioning me about my 'girlfriend,' or my lack of a girlfriend, my colleagues made repeated and hurtful assaults that made me think that there was simply no place for me as a gay man in private practice"* (man, personal experience). Another member of the Barreau maintained that [TRANSLATION] *"in addition to constant remarks about my sexual orientation (often jokingly made, but with just as many negative consequences), the worst incident for me was when two partners of the firm invited me to a business dinner with an openly gay client and made it clear that it would be in the firm's best interest for me to accept his advances. I was deeply disgusted by this behaviour"* (man, personal experience).

In addition, some accounts of those who experienced violence, as well as testimonies of confidants and witnesses, indicate that belonging to a minority ethnic group can exacerbate violent behaviour. For example, one respondent noted that [TRANSLATION] *"as visible minorities, we often face racism and comments about our sex life. We are often seen as sexual objects by our peers. We often find ourselves in awkward situations."* One witness supported these comments, stating that in his work environment, [TRANSLATION] *"several partners made sexual comments about female lawyers and articling students, often in an elevator, sometimes in the hallways. Sometimes the comments included racist and sexist comments, often in relation to their physical appearance."* This excerpt highlights the fact that young female articling students are particularly vulnerable. Their vulnerability is underpinned by several accounts, of which the following is an eloquent example: [TRANSLATION] *"When you are young and just starting out in your career, it is extremely difficult to assert yourself and explicitly refuse repeated sexual propositions or clearly state that it is unacceptable to be subject to sexual or psychological harassment."*

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<sup>111</sup> Heteronormativity is an implicit socio-cultural framework in which heterosexuality is the norm. People who do not meet this norm are marginalized and discriminated against. See especially Janik Bastien Charlebois, "Au-delà de la phobie de l'homme : quand le concept d'homophobie porte ombrage à la lutte contre l'hétérosexisme et l'hétéronormativité" (2011) 17:1 Reflets 112.

## 5.2 Respondents' practice environment when experiencing sexual violence

Those who responded that they had experienced different forms of violence had the opportunity to specify their practice environment when the violence occurred. Table 2 shows that, for all three categories of violence, private practice is the environment in which respondents experienced the greatest proportion of sexual harassment or violence.

**Table 2: Respondents' Practice Environment When the Violence Occurred**

12 D. In what environment were you practicing?	Women					Men				
	Private practice (firm)	Public or para-public agency	Private company	Other <sup>112</sup>	TOTAL	Private practice (firm)	Public or para-public agency	Private company	Other	TOTAL
Harassment	<b>58%</b>	27%	12%	3%	4968	<b>55%</b>	27%	14%	3%	1175
Unwanted sexual attention	<b>59%</b>	25%	13%	3%	1986	<b>64%</b>	26%	8%	2%	535
Sexual coercion	<b>68%</b>	19%	12%	1%	244	<b>63%</b>	22%	10%	5%	41

As with the responses to the question about the practice environment at the time of the incidents, the accounts given include all practice environments, although private practice stands out strongly. This finding is consistent with the literature on the subject in the practice of law.<sup>113</sup> A member of the Barreau recounted as follows: [TRANSLATION] *"In 16 years of practice, I witnessed several incidents of varying degrees of severity (except rape or aggravated sexual assault). Sexual harassment affects mainly young female lawyers or articling students. It seemed to be more prevalent in private practice, from dirty jokes to explicit insinuations and direct invitations. After-work receptions or office parties (Christmas) are conducive to this kind of slip-up"* (man, witness). Another account, of a female lawyer, shows that the experience differs, depending on the practice environment. She recounted as follows: [TRANSLATION] *"In private practice, clients often insisted on social networking or invitations to do activities outside the professional context. A lot of positive comments about my physical appearance, marital status, etc. I wasn't particularly offended or traumatized, but I found it annoying. In the public service, I no longer have this problem"* (woman, personal experience).

<sup>112</sup> Some respondents provided details when they checked the "Other" box. Some of the details included self employed, university, legal aid, employer association, accounting firm, legal department, DPCP, bar school, department of justice, NPO, professional corporation, international organization, labour union, government agency, court or tribunal.

<sup>113</sup> Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: International Bar Association <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>; "National Attrition and Re-engagement Study (NARS) Report" (2014), online (pdf): Law Council of Australia <<https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>>; S. Elizabeth Foster, "The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?" (1995) 42 UCLA L Rev 1631 at 1666; Micheline Gleixner & Louise Aucoin, "Être juriste au féminin : une réalité émergente ou une quête illusoire?" (2013) 92 Can Bar Rev 235; Fiona M. Kay & Joan Brockman, "Barriers to Gender Equality in the Canadian Legal Establishment" (2000) 8:2 Fem Leg Stud 169.

### 5.3 Individuals who experience violence

The data collected shows the respondents' status at the time they experienced violence. The statuses of the respondents who answered question 12A are presented in Tables 3 (female respondents) and 4 (male respondents).

**Table 3: Female Respondents' Status When the Violence Occurred<sup>114</sup>**

Women	Student	Articling student	Staff lawyer/ associate	Manager/ partner	TOTAL
HS	7%	23%	59%	11%	6218
CSND	7%	18%	61%	14%	2241
CS	10%	21%	59%	9%	24

**Table 4: Male Respondents' Status When the Violence Occurred**

Men	Student	Articling student	Staff lawyer/ associate	Manager/ partner	TOTAL
HS	5%	13%	57%	24%	1331
CSND	3%	9%	58%	30%	564
CS	2%	12%	42%	44%	43

Tables 3 and 4 show that, in general, women who experienced violence were in subordinate employment positions. 59% of the sexual harassment incidents reported took place when the women were staff lawyers or associates and 30% when they were students or articling students. Similarly, 61% of women were employed as a staff lawyer or associate and 25% were articling students or students when they experienced unwanted sexual attention. The same trend can be observed for sexual coercion, with 59% of the incidents taking place when the women were staff lawyers or associates and 31% when they were students or articling students. One man said that he had witnessed [TRANSLATION] "sexual jokes or innuendoes towards young female lawyers and articling students when they were visibly uncomfortable. At the two 'large' firms where I practiced early on in my career, it was well known that some partners saw articling students as 'fresh meat.'" For men, 57% of sexual harassment incidents occurred when they were staff lawyers or associates and 24% when they were managers or partners. Men experienced 58% of unwanted sexual attention when they were staff lawyers or associates and 30% when they were managers or partners. Finally, 44% of sexual coercion incidents experienced by men occurred when they were managers or partners and 42% when they were staff lawyers or associates.

<sup>114</sup> The percentages in Tables 3 and 4 refer to the incidents.

## 5.4 Perpetrators

Tables 5 to 8<sup>115</sup> present the status of those who committed acts of sexual harassment, unwanted sexual attention and sexual coercion.

**Table 5: Status of Perpetrators (Women)**

W	Total N	Colleague (my org.)	Partner (other org.)	Potential client	Client	Former client	Opposing counsel	Opposing party not represented by counsel	Judge	Other
HS	7875	<b>39%</b>	15%	4%	12%	1%	6%	2%	2%	17%
CSND	3203	<b>35%</b>	12%	2%	11%	1%	3%	1%	1%	<b>35%</b>
CS	375	<b>42%</b>	8%	2%	4%	0%	1%	0%	1%	<b>42%</b>

The results show that the women who answered question 12B of the questionnaire (*What was the status of the person(s) who committed the above-mentioned acts?*) reported that most of these acts had been committed by colleagues in their organization or individuals whose status they referred to as “Other” than those proposed in the questionnaire. The responses to this option, specifying the status of the individual who committed the acts, show the diversity of statuses and contexts in which acts of sexual harassment and violence occurred. The following are some examples (in alphabetical order) of these “other” statuses: *accountant, clerk, computer consultant, corporate vice-president, courthouse security, director, expert for the opposing party, HR advisor, investigator, lawyer-manager, lecturer at the bar school, legal technician, member of the Board of Directors, municipal councillor, notary, peace officer, person in the contact network, police officer, potential employer, president, private expert, spouse of a client, stenographer, support staff, union member, witness being examined, etc.*

Table 6 provides details on the status of colleagues in the organization. This table highlights the fact that acts of sexual harassment and unwanted sexual attention experienced by women were perpetrated mostly by staff lawyers or associates and partners, while acts of sexual coercion were committed mostly by partners.

**Table 6: Details—Perpetrators in My Organization (Women)**

W	Total N	Law student	Articling student	Staff lawyer/ associate	Partner	Manager <sup>116</sup>	Other
HS	4104	2%	4%	36%	37%	11%	10%
CSND	1360	1%	3%	36%	38%	11%	11%
CS	167	0%	0%	20%	68%	10%	2%

<sup>115</sup> The percentages in Tables 5 to 8 refer to the incidents.

<sup>116</sup> The questionnaire stated: [TRANSLATION] “*Manager of my organization who is not a lawyer.*”

**Table 7: Status of Perpetrators (Men)**

M	Total N	Colleague (my org.)	Partner (other org.)	Potential client	Client	Former client	Opposing counsel	Opposing party not represented by counsel	Judge	Other
HS	1613	<b>47%</b>	13%	4%	13%	1%	4%	1%	1%	14%
CSND	915	<b>36%</b>	7%	2%	12%	1%	3%	1%	0%	<b>36%</b>
CS	51	<b>35%</b>	6%	0%	16%	0%	2%	4%	0%	<b>35%</b>

Like their female colleagues, the men who answered question 12B reported that these acts had been committed mostly by colleagues in their organization or individuals whose status they referred to as “Other” (see examples above) than those proposed in the questionnaire. Table 8 provides details on the status of colleagues in the organization. This table shows that acts of sexual harassment and unwanted sexual attention experienced by men were perpetrated mostly by staff lawyers and associates, while acts of sexual coercion were committed mostly by partners.

**Table 8: Details—Perpetrators in My Organization (Men)**

M	Total N	Law student	Articling student	Staff lawyer/ associate	Partner	Manager	Other
HS	1024	2%	4%	42%	27%	9%	15%
CSND	373	2%	6%	42%	19%	5%	27%
CS	17	6%	0%	6%	65%	0%	18%

Based on both quantitative and qualitative analysis, a hierarchical relationship seems to be an aspect that can exacerbate sexual violence. The data also shows that women more often suffer sexual violence at the hands of someone of higher hierarchical status and men by individuals of equal hierarchical status. The diversity in the status of the perpetrators can be seen in the tables above and in the quotes from the accounts.

[TRANSLATION]

*"In a meeting with my boss, a lawyer, and [my] client, my boss said that I'm so smart, he'll take my upper body and my client my lower body. I didn't say anything or do anything. I just kept looking at the documents." (Woman, personal experience)*

[TRANSLATION]

*"One colleague in particular always made sexual insinuations about me in front of me and all the other colleagues, including my bosses. Everyone thought it was funny and laughed. I'd been a lawyer only for a few months and was on contract, so I didn't dare say anything, but I didn't laugh either. The things he said were very crude and vulgar (for example: 'I'm sure her nipples are this color,' 'I'd like to do x, y, z to her,' 'I'm sure she's never done anal; I could show her,' etc.)." (Woman, personal experience)*

[TRANSLATION]

*"The highest person in the organization called me into his office and told me two explicit sexual jokes before telling me why he had called me." (Woman, personal experience)*

[TRANSLATION]

*"I had an interview with a potential client. ... During the interview, the client suddenly took off his clothes (shirtless) to show me a scar ... It was an extremely uncomfortable moment ... I didn't want to take the mandate, but I didn't feel safe refusing it either." (Woman, personal experience)*

[TRANSLATION]

*"My boss and articling supervisor told me that my blouse could be more open, that he didn't mind a 'pair of boobs'." (Woman, personal experience)*

## 5.5 Context of violence

In order to provide an overview of the general context in which violence occurs and propose solutions to eradicate it, it is important to understand the specific contexts in which acts of sexual violence are committed.

More specifically, question 12G made it possible to document the contexts in which the violence experienced by the respondents occurred. Respondents were offered 11 response options: 1) In the general work context (for example, during a meeting with a colleague at another firm, at the courthouse, etc.); 2) In the context of teaching or training activities; 3) During a work meeting; 4) At a business breakfast; 5) At a business lunch; 6) At a business dinner; 7) At an after-work reception; 8) At a social event where I represented my organization; 9) In an informal context unrelated to work; 10) In the virtual environment; 11) In another context.

The results show that violence is experienced in the different spheres of work. However, certain contexts are particularly conducive to sexual harassment and violence. The respondents' accounts indicated more broadly the general work context, meetings, after work receptions, informal contexts unrelated to work and the virtual environment as places where they had experienced sexual violence. The qualitative data also allows us to identify more informal settings such as office activities (parties and after-work receptions) as particularly precarious situations. The context of parties and after-work receptions, in which alcohol is consumed, are highlighted also in the literature<sup>117</sup> as situations conducive to sexual harassment and violence. Several accounts, such as the following, bring this point forward:

<sup>117</sup> Margaret Bazley, *Independent Review of Russell McVeagh*, 2018, online: <https://www.russellmcveagh.com/getmedia/cc682d64-46a1-40e3-987b-cd82223bea24/Inde>.



[TRANSLATION]

*"During office dinners and after-work receptions, the female lawyers in my office are systematically sexually harassed. Sexual jokes, inappropriate questions about their sex life, inappropriate comments, unwanted advances through words and physical gestures, bets on who will succeed in sleeping with whom. Everything goes. And it's done publicly, in front of everyone, and no one says anything, that it's unacceptable." (Man, witness)*

[TRANSLATION]

*"As part of a training/team building event organized for the firm's professionals, there was an after-work reception. Some colleagues started making 'jokes' about my sex life, my potential partners, the diseases I had probably caught. There was no end to it. Associates, partners and the managing partner of the firm were having a blast, and nobody wanted to support me and put an end to this nightmare because you don't confront the 'big bosses' of the firm so you won't get on their wrong side... It was one of the most humiliating experiences of my life. I had to leave the reception." (Woman, personal experience)*

According to the data collected, being away from home for work-related activities (convention, symposium, retreat, trial in another city, etc.) is also conducive to sexual violence. Several respondents, including the following two, recounted their experiences:

[TRANSLATION]

*"I was a student, an articling student and then a lawyer at a large law firm, which was known for respecting the adage 'work hard, play harder.' Drinking parties paid for by partners were common, and during those evenings, there were few times when there was no open talk of sex, sleeping with someone, getting indecently close, a late-night request... it was commonplace. I always had the impression that participating in these evenings was tantamount to 'accepting' these rather disturbing behaviours." (Woman, personal experience)*

[TRANSLATION]

*"Most of the incidents occurred while I was a lawyer on a long-lasting case (out of town) and was forced to stay there with opposing counsel and the co accused, away from family, friends and colleagues. That year was one of the worst of my life. I got patted on my butt in public, had pictures taken of my breasts, was excluded from important negotiations, subject to sexist comments, and so on. As a result of these incidents, I questioned my career choice." (Woman, personal experience)*

The general work context was also mentioned several times. Whether it was in the context of meetings with colleagues or clients or in the performance of their duties at the courthouse, those who participated in the survey mentioned the different environments of their practice:

[TRANSLATION]

*"The incident that affected me the most took place at the Palais de justice ... Two lawyers represented the opposing party. We held a negotiation session in one of the small [meeting] rooms. When one of the lawyers closed the door, he jokingly said to me, [TRANSLATION] 'aren't you afraid of being raped,' while closing the door behind him. I was alone in the room with the two of them. This form of intimidation continued for almost two years (talking to me two inches from my face, standing in front of the door to stop me from leaving, shouting on the phone and then sending an email alleging the opposite, etc.). I did not file a complaint for the sake of my client, whose case was just starting." (Woman, personal experience)*

[TRANSLATION]

*"At the courthouse, in the hallways or in the courtroom, a colleague often made sexual comments to me that made me blush." (Woman, personal experience)*

[TRANSLATION]

*"I once feared for my safety in a cubicle at the courthouse." (Woman, personal experience)*

We can clearly see that sexual harassment, unwanted sexual attention and sexual coercion occur in many places. In addition to the contexts listed in the questionnaire, respondents could provide details on other contexts in which these acts occur. The following are some examples (in alphabetical order): *activities for articling students, activity organized by the Barreau, annual lawyers' retreat, at the office late at night, at the office when meeting with clients, break room, business trip, Christmas party, convention, courthouse, elevator, hotel, job interview, office meeting, office party, out-of-office appointment, parking lot, prison, social activity at the office, symposium, training activity, etc.* One respondent noted that sexist jokes were made everywhere.

## 6. Impact

Sexual violence has a significant impact on the lives of those who have experienced it. The purpose of question 13 of the questionnaire was to document the impact of sexual harassment and violence on the personal and career path of respondents. Table 9 presents these results.

**Table 9: Impact**

As a result of these experiences, have you...	Women		Men	
	Total N	% yes	Total N	% yes
experienced difficulties in pursuing your professional activities (e.g., lack of concentration, hesitation in requesting new mandates, difficulties with client development...)?	1416	22%	525	9%
avoided contact with the perpetrator?	1453	68%	532	39%
reorganized your work (e.g., switched files with a colleague, withdrawn from a case, etc.)?	1400	19%	521	11%
intended to change career path (new organization or position)?	1402	23%	520	7%
changed career path (new organization or position)?	1404	19%	521	6%
changed certain habits or your use of social networks?	1394	10%	519	5%
experienced difficulties in your emotional, sexual or intimate life?	1391	8%	519	3%
increased your consumption of alcohol or drugs?	1388	6%	518	2%
changed certain lifestyle habits (e.g., sleep, diet)?	1392	11%	520	3%
felt certain physical ailments (e.g., headaches, nausea, pain)?	1392	11%	518	2%
experienced certain psychological problems (e.g., anxiety, disability, depression, etc.)?	1397	13%	520	4%
had nightmares about the incident or thought about it without wanting to?	1403	22%	521	7%
tried hard not to think about it or made an effort to avoid situations that reminded you of the incident?	1401	16%	519	6%
been constantly on guard, on alert or easily startled?	1398	17%	517	5%
felt that you were numb or detached from others, activities or the environment?	1390	8%	519	3%
tried to harm yourself?	1385	0.4%	515	0%
tried to take your life?	1377	0.3%	511	0%

Table 9 shows the diversity of the impact, which can be physical, psychological and occupational. The findings show that more than half of women (68%) and 39% of men avoided contact with the person who committed the acts. Victims often favour individual strategies such as avoidance, behavioural changes or professional changes. Some change the way they dress: [TRANSLATION] “On several occasions, the partner in my office made derogatory remarks about the way I dress. *For example, ‘You’re sexy today’ when I wore a skirt. Since then, I no longer dare to wear a skirt*” (woman, personal experience). Another respondent recounted feeling protected when wearing a robe because it allowed her to [TRANSLATION] “*avoid glances and remarks about my breasts and other body parts. I seemed to gain more respect this way. Long live the robe! I felt good and protected in it*” (woman, personal experience). With respect to making changes to their clothing, one respondent said that she regretted having to do so [TRANSLATION] “*to attract less attention...as if I was responsible*” (woman, personal experience).

The fact that victims feel they have to change their habits in order to protect themselves also affects their career path. One respondent summarized the situation by stating that [TRANSLATION] “this one experience completely changed the path of my career” (woman, personal experience). In everyday professional life, this feeling translates in various ways. Some felt they had to change their work schedule: [TRANSLATION] “*I changed my work schedule; I work more from home to avoid the person*” (woman, personal experience). One respondent recounted that harassment had led her to no longer want to answer the telephone, a central work tool: [TRANSLATION] “*A lawyer from another firm insisted so many times that I go out for a drink with him that when the phone rang, I didn’t dare answer for fear of having to say ‘no’ again*” (woman, personal experience).

Violent incidents can have a significant negative impact on the careers of these individuals, who often feel uncomfortable in their workplace, which is no longer safe. Nearly one in five women said they had experienced various difficulties in pursuing their professional activities. For some, this meant avoiding professional and social environments and activities: [TRANSLATION] “*Because of the inappropriate culture within the firm where I worked, I avoided participating in social events such as Christmas parties, client development cocktails and recruitment activities as much as possible in order to avoid finding myself in embarrassing situations*” (woman, personal experience).

In addition, more than one in five women said they had intended to change their career path, and almost one in five women said they had actually changed their career path. The literature on sexual violence in the practice of law also emphasizes that sexual violence is a major obstacle to the retention and career advancement of women lawyers.<sup>118</sup> The following quotes demonstrate the impact of violence on the career path of women. We can see that gender-based social relations also affect the impact:

[TRANSLATION]

*"The one reporting an incident is seen as a leper, and people in the community TALK. The person reporting an incident is troublesome. Everyone knows [that it happens, but that it's better not to talk about it]. That's what we women tell each other when something happens. Like, don't stay alone with such and such, etc. Such and such molested Ms. x at the party. It's like gossip, but actually, we warn each other. Besides, when we say something, we look weak, and being in the boys' club is out of the question afterwards. And it's by being in the boys' club that you move up."* (Woman, witness)

[TRANSLATION]

*"I just quit my job, while the harasser stayed on."* (Woman, personal experience)

[TRANSLATION]

*"After refusing to flirt with him and accept his advances, he (a partner) ... took away all my mandates and psychologically harassed me at the office and convinced most of my colleagues to avoid me. I left the organization once my contract was up."* (Woman, personal experience)

[TRANSLATION]

*"I gave up my dream of being a lawyer (a dream I had had since elementary school) after a horrible articling period and career start."* (Woman, personal experience)

[TRANSLATION]

*"My practice environment, especially when I was in private practice, the fact that few women were working in this field and that clients (and partners practicing in this field) were not working with many women, and hence the inappropriate comments, looks, sexual jokes, while I was an articling student or young lawyer contributed to my change of practice area."* (Woman, personal experience)

[TRANSLATION]

*"I was about to be made partner when these incidents (harassment) occurred. I quit my job and moved abroad in part to no longer have any contact with this partner."* (Woman, personal experience)

<sup>118</sup> S. Elizabeth Foster, "The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?" (1995) 42 UCLA L Rev 1631 at 1666; Micheline Gleixner & Louise Aucoin, "Être juriste au féminin : une réalité émergente ou une quête illusoire?" (2013) 92 Can Bar Rev 235; Fiona M. Kay & Joan Brockman, "Barriers to Gender Equality in the Canadian Legal Establishment" (2000) 8:2 Fem Leg Stud 169.

Sexual violence also affects the physical and psychological health of victims. These observations also emerge from the literature on sexual harassment and violence in the practice of law.<sup>119</sup> In our study, 13% of female respondents and 4% of male respondents said that they had experienced some psychological problems. One lawyer recounted that her experience nearly twenty years earlier still caused her to be afraid: [TRANSLATION] *“(as an articling student) I was harassed by a lawyer for several months (touching me at the office, insisting that I go to dinner with him, have a drink, forcefully kissing me in the elevators, waiting for me in the evening at my other job, etc.) ... All of this happened 18 years ago, and I am still sometimes afraid that I might run into him”* (woman, personal experience). For many women, this fear turns into anxiety: [TRANSLATION] *“Since the events, I try not to be alone and ask someone I trust to accompany me. In spite of everything, every time I see him, I am anxious and feel sick (stomach aches, nausea...)”* (woman, personal experience). Those who have been raped also fear having sexually transmitted diseases: [TRANSLATION] *“I was afraid of having an STD and I had to do some tests”* (woman, personal experience).

22% of women and 7% of men who answered question 13 of the questionnaire said they had had nightmares about the incident and had thought about it without wanting to: [TRANSLATION] *“I had nightmares. I didn't know if I could protect myself and I felt anguished. I adjusted and changed my life to prevent further assaults. I was constantly worried, and I constantly tried to make sure I would be able to escape another sexual assault. I was terrified to be alone at the office at night”* (woman, personal experience). In addition, 17% of female respondents and 5% of male respondents said that they were constantly on guard and on alert, which affected their health and their professional activities: [TRANSLATION] *“I'm constantly afraid to run into him at the courthouse. It happened once and I hid in the bathroom”* (woman, personal experience). Some even tried to harm themselves (0.4%) or take their lives (0.3%).

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<sup>119</sup> Fiona M. Kay & Elizabeth Gorman, “Women in the Legal Profession” (2008) 4 Ann Rev Law Soc Sc 299.

## 7. Do people disclose, report or blow the whistle on sexual violence?

Respondents who had experienced at least one type of violence documented in the questionnaire had the option of answering different questions to specify whether they had disclosed, reported or blown the whistle on the incidents and, if so, to whom they had spoken about them and within what timeframe. 72% of the women and 46% of the men who answered question 14 of the questionnaire ([TRANSLATION] “*Following an incident of harassment or violence in a professional context, some people confide in someone, while others hesitate to do so. Have you talked about these incidents to someone other than the perpetrator?*”) had disclosed the violence to at least one person. Table 10 shows that the respondents talked about it mainly to someone in their personal circle. The second choice for talking about the violence experienced for both men and women was with a colleague, followed by a supervisor.

**Table 10: Individuals to Whom the Incidents Were Disclosed**

Those who spoke about the incidents did so with the following:	Women		Men	
	N	%	N	%
Someone in their personal circle	696	74%	136	67%
A colleague	637	68%	123	61%
Your supervisor	210	22%	39	19%
The person in your organization responsible for harassment issues	49	5%	10	5%
PAMBA	21	2%	6	3%
Syndic of the Barreau	4	0.4%	3	1%
An aid organization	5	0.5%	1	0.5%
Other	52	6%	14	7%

In line with the literature on sexual violence, reporting and whistleblowing, which involve approaching official bodies, were minimal compared to the number of incidents that had occurred. It is interesting to note that recent studies<sup>120</sup> generally ask questions about the actions taken by victims after an incident of sexual harassment or violence. The results of these studies and this survey show few cases of whistleblowing.

The consequences of whistleblowing (stress, procedures, the prospect of being labeled, reputation as a troublemaker) contribute to these low rates of whistleblowing. In our study, 1% of men and women answered “yes” to question 18 ([TRANSLATION] “*Have you reported or blown the whistle on any incidents to the police?*”), which represents only 10 women and 2 men, while the analysis of the results, particularly the qualitative analysis, shows that the problem is of far greater magnitude and that, under the law, several of the acts recounted could amount to sexual assault, for example, unwanted attempts to have a sexual relationship, unwanted sexual relationship and attempts to have unwanted physical contact with sexual connotations (kissing, rubbing, caressing). Similarly, only 1% of the men and women who answered question 19 ([TRANSLATION] “*Have you reported or blown the whistle on any incidents to the syndic of the Barreau?*”) stated that they had, representing 6 women and 2 men.

<sup>120</sup> Kami Haeri, “L’avenir de la profession d’avocat” (2017) at 88, online (pdf): *Ministère de la Justice* [http://www.justice.gouv.fr/publication/rapport\\_kami\\_haeri.pdf](http://www.justice.gouv.fr/publication/rapport_kami_haeri.pdf), p. 88.

Table 11 presents the results of question 20A, which asked respondents whether they had reported or blown the whistle on the incidents to organizational entities or resources.

**Table 11: Respondents Who Reported or Blew the Whistle on Incidents to Organizational Entities or Resources**

	Women (N886)			Men (N189)		
	No	Yes, some	Yes, all	No	Yes, some	Yes, all
N	664	170	52	144	27	18
%	75%	19%	6%	76%	14%	10%

Those who had disclosed or reported the acts reported diverse reactions from the individuals in whom they had confided. While many said they had received support, the qualitative accounts show a significant lack of support. A first example is that of a lawyer who was insistently propositioned to have sex by a colleague during an office event. She recounted as follows: [TRANSLATION] “[He told me that] I was very attractive, etc. He grabbed me and whispered in my ear, ‘Don’t you want to go to the bathroom to have sex.’ I told him no and he insisted. I had to be very firm to prevent him from pulling me away. The next day, I reported the situation to my [superior]. He was his friend and did nothing” (woman, personal experience). Another example highlights the significance of power relationships, which can make disclosure, reporting or whistleblowing difficult: [TRANSLATION] “One day, when I was alone with him (a partner), he grabbed my butt. I immediately pushed him away and he claimed that he had made a clumsy gesture, that his hand had slipped. The following day he tried to joke about the incident, telling me, with a smile on his face, that his office door was wide open to me if I needed anything, including talking about sexual harassment situations. Then he laughed and left” (woman, personal experience).

Those who answered question 20B ([TRANSLATION] “After experiencing incidents of sexual harassment or violence, some victims do not report the acts to organizational entities or resources for various reasons. If you have not reported/blown the whistle on all incidents to your organization’s entities or resources, please indicate which of the following reasons apply to you”) gave several reasons for not reporting the incidents to organizational entities or resources. 60% of the women believed that the situation had not been serious enough to report, as this lawyer stated: [TRANSLATION] “The subtlety of certain acts makes it more difficult to report them. I think, for example, of colleagues hugging me or taking me by the waist. Seemingly benign, these acts are unwanted and make me feel uncomfortable” (woman, personal experience). Nearly a third (30%) of women wanted to put the incident behind them and stop thinking about it, or they feared negative consequences for their job. Finally, 25% of them wanted the incidents to stop, but did not want to file a formal complaint; they also feared reprisals from the perpetrator or people around them, or they did not trust the people or resources made available by their organization: [TRANSLATION] “At that time, the risk of reprisals was too great to act. Moreover, pointing out an injustice in an environment that should preserve justice is absurd and does not inspire confidence in the judicial system” (woman, personal experience). 50% of men did not report the incident because they believed that the situation had not been serious enough to report, and 25% simply wanted to put the incident behind them and stop thinking about it.

Some respondents said that it was unnecessary to disclose or report the incident to another person or an entity since: [TRANSLATION] “I spoke directly with the person concerned, making him aware that his words and gestures were inappropriate, and it never happened again afterwards” (woman, personal experience). Other respondents explained that these behaviours are considered part of the professional culture ([TRANSLATION] “I thought that such acts were normal. I was starting out and I thought that since it was a male environment ...” (woman, personal experience)), the organizational culture ([TRANSLATION] “these behaviours were tolerated within the firm” (woman, personal experience)) or the social culture ([TRANSLATION] “that’s what everyday life is like for all women” (woman, personal experience)). The construction of gender-based social relationships can also prevent men from disclosing incidents when certain acts of sexual harassment or violence are trivialized, as one respondent recounted: [TRANSLATION] “When a man is harassed...there were different standards at the time. A friend to whom I confided the situation thought it was cool” (man, personal experience). This quote causes us to question the double standard in terms of the gender of the perpetrator and the victim.



In addition, some respondents gave the lack of information about what to do ([TRANSLATION] *“The incident took me totally by surprise, and I didn’t know how to deal with it”* (woman, personal experience)) or the fear and shame that victims feel as reasons for not disclosing incidents. Other respondents talked about feelings of guilt:

*“A vice-president put his hand up my skirt quite high during a contract signing session; I was shocked. I didn’t say anything, went to the other side of the table and kept a low profile. Nobody saw anything, I think, and I didn’t think to report this incident. I blocked it out of my mind. I found it disgusting, and I had no respect for him, his skills or his authority, but I didn’t feel threatened. I regret not having said anything because I later found out that he had done the same thing to other women. I hope it was limited to what he did to me, but sometimes I wonder about it, and sometimes I feel guilty for being a coward and not having said anything.”*  
(Woman, personal experience)

People in subordinate or precarious positions (especially articling students and young female lawyers) are also less likely to report or blow the whistle on incidents. One respondent recounted: [TRANSLATION] *“A judge in the criminal division tried to kiss me. We were alone. ... I was 24 years old and an articling student. I didn’t report him ... I froze and then I walked away from him”* (woman, personal experience). Reporting an incident can be fraught with consequences, especially for the victim’s career, as this lawyer, who was an articling student at the time of the incident, reported: [TRANSLATION] *“I didn’t say anything for fear of having to find another articling position or even failing”* (woman, personal experience). Along the same lines, another woman stated as follows: [TRANSLATION] *“Articling supervisors have immense power over articling students. I experienced a situation of sexual harassment during my articling period with the Barreau. ... When I decided to decline invitations to restaurants, etc., the lawyer who was responsible for me during my articling period told me that there was no more work for me. ... I felt isolated and powerless in the face of the situation”* (woman, personal experience). Another lawyer explained as follows: [TRANSLATION] *“Because of this person’s power in the workplace, and even though other women had already left the workplace because of this lawyer’s behaviour, I didn’t dare report him. I realized that these women’s complaints had not yielded any results. Since I politely refused the advances, I also suffered tacit reprisals from this influential lawyer”* (woman, personal experience).

The literature emphasizes that the fear of reprisals effectively discourages victims from reporting incidents. As the Canadian Bar Association’s Gender Equality Task Force maintains: “The closed nature of the profession means that the fear of retaliation is well-founded. This is particularly true in dealing with inappropriate behaviour by partners and judges because of the enormous power disparity and lack of overarching authority structure.”<sup>121</sup> According to Haeri, the same situation prevails in France:

For obvious reasons, many women do not dare forward their complaints to the relevant authorities; this subject is clearly shrouded in silence. The situation is likely to worsen as competition in the labour market stiffens. Moreover, sexist acts and words are often difficult to prove. They are also often insidious and trivialized, presented as humorous or as part of a relaxed atmosphere, valued as being free of “political correctness.” In addition, they are sometimes perceived by women as part of a “culture of sexism” without justifying proceedings, which can be difficult to go through and undertake in a competitive professional environment.<sup>122</sup>

<sup>121</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability*. The Report on Gender Equality in the Legal Profession (Ottawa: Canadian Bar Association, 1993) at 72.

<sup>122</sup> Kami Haeri, “L’avenir de la profession d’avocat” (2017) at 88, online (pdf): Ministère de la Justice [http://www.justice.gouv.fr/publication/rapport\\_kami\\_haeri.pdf](http://www.justice.gouv.fr/publication/rapport_kami_haeri.pdf), p. 88.

Although victims can report and blow the whistle on incidents, the respondents' accounts strongly reflected the impunity enjoyed by those in positions of power. One lawyer stated that there is a need to [TRANSLATION] *"[e]nsure that remedies exist and are effective against influential partners in large law firms. From my perspective and the perspective of other young female lawyers around me, senior partners of large law firms enjoy impunity. It is up to the victims to leave these environments because the firms would never decide to get rid of a star lawyer or rainmaker"* (woman, personal experience). Several respondents pointed out the virtual impunity of partners in cases of sexual violence. Another lawyer stressed the importance of considering these hierarchical relationships, which affect both the occurrence of violence and the victims' room for manoeuvre: [TRANSLATION] *"Clearly explain that the most vulnerable people are young women (articling students or lawyers). And pay special attention to private firms, which are places of high performance, business development and I would dare say male chauvinism. ... We must also and above all talk to the older lawyers, the partners, those in power. Explain to them that certain acts are unacceptable and remind them of the notion of vitiated consent in the case of a person who has power over us, a figure of authority. ... I am proud to be a lawyer, but that has to change"* (woman, personal experience). Several respondents also emphasized the urgency of changing the organizational culture in the wake of the #metoo movement.

## 8. The role of witnesses and confidants

The survey targeted all members of the Barreau, whether or not they had experienced sexual harassment or violence. In addition to questions designed to document the experiences of victims, the questionnaire also allowed respondents to describe their experiences as witnesses or confidants. The role of witnesses and confidants is crucial in cases of sexual violence. The literature on the subject maintains not only that more and more people are coming forward as witnesses and confidants, but also that their support and their help in reducing violence is of great importance.<sup>123</sup>

More specifically, the questionnaire asked respondents whether they had witnessed or been confided in with one or more forms of sexual violence in their workplace and if so, whether they had intervened.

Almost one quarter of those who answered Question 23A ([TRANSLATION] “*In the course of your professional practice, have you witnessed any form of sexual harassment or violence?*”), i.e., 22%, answered in the affirmative. 49% of the women and 53% of the men who had witnessed such acts said that they had intervened. Most male and female witnesses mentioned the following four types of intervention:

1. First, witnesses said they had tried to interrupt what was going on and divert the conversation to another topic.
2. Next, witnesses said they had tried to intervene by telling the perpetrator to stop the behaviour immediately.
3. Witnesses also said that they had told those present why they thought it was a problem.
4. Finally, to a lesser extent, witnesses also reported that they had not intervened at the time of the incident, but afterwards. Subsequent actions may include confronting the perpetrator, reporting the incident, or telling the victim to avoid the perpetrator.

The following excerpts from witness accounts support the testimony of those who were directly subject to sexual harassment, unwanted sexual attention or sexual coercion. These accounts highlight the diverse contexts and statuses of the perpetrators. Several testimonies also support the results of the previous sections by demonstrating that networking situations such as after-work receptions are contexts in which sexual violence is exacerbated and that gender-based social relations and hierarchical power relations have a significant impact, particularly for the women who are the target of the violence:

[TRANSLATION]

*“An associate made sexual and violent threats to the firm’s receptionist.” (Woman, witness)*

[TRANSLATION]

*“I’ve heard of a gay judge who keeps asking one of my gay lawyer friends to become Facebook friends. When he runs into him, it’s obvious that the judge is interested in this lawyer. He regularly asks him why he won’t accept his friend request. It’s embarrassing for my friend,” (Woman, witness)*

[TRANSLATION]

*“A judge offered one of my lawyer friends to be his mistress. She tried to make a joke of it, but he kept going and insisting, convinced that he was charming. She was to plead before him the following week.” (Woman, witness)*

<sup>123</sup> Manon Bergeron et al, *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l’enquête ESSIMU* (Montreal: Université du Québec à Montréal, 2016) online (pdf): UQAM <[https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)>; Joan Brockman, “An Update on Gender and Diversity Issues in the Legal Profession in Alberta, 1991-2003” in Elizabeth Sheehy and Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 237; “Report of the New Zealand Law Society Working Group” (2018), online: New Zealand Law Society <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; and Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

[TRANSLATION]

*“At events involving alcohol, I have repeatedly witnessed men being insistent or inappropriate with women (in word and in deed) when the women were clearly expressing their discomfort or the wish for these behaviours to stop.” (Man, witness)*

[TRANSLATION]

*“[I witnessed] [an] assistant making photocopies being caressed.” (Woman, witness)*

[TRANSLATION]

*“A senior male colleague stood behind a junior female lawyer in the lawyers’ lounge at the courthouse and mimicked having sex from behind as she leaned over and rummaged through her briefcase. When he saw me coming, he laughed and left the lounge without saying a word.” (Woman, witness)*

[TRANSLATION]

*“There are too many of them. Young women being targeted by older men for sex, inappropriate offers from supervisors, requests for oral sex, requests for same-sex relationships in exchange for business ties and cases, forcing young lawyers to attend nude dance performances, accompanied by comments; requests from clients to have relationships with multiple partners; specific clothing requests in terms of skirt length and type of underwear; ...” (Man, witness)*

Many witnesses, particularly of sexual harassment, intervened during or after the incidents to put an end to these behaviours. The following accounts illustrate some of these interventions:

[TRANSLATION]

*“A colleague at work was interested in a female colleague. His interest in her became inappropriate. At a party, the harasser had clear intentions. So I took the victim back to her room and asked the harasser to stop immediately.” (Man, witness)*

[TRANSLATION]

*“At a Christmas party, where the person was intoxicated ... he tried to follow a female colleague to the bathroom. He entered the bathroom. When he came out, I saw him. I told him right away, ‘you don’t go to the ladies’ bathroom, wake up.’” (Man, witness)*

[TRANSLATION]

*“A lawyer repeatedly told an assistant that her underwear was giving her beautiful boobs and other meaningless things; I even showed him the jurisprudence on harassment, but in vain. He continued until he retired less than two years ago.” (Man, witness)*

[TRANSLATION]

*“A partner used to make sexual comments about young female lawyers, articling students or assistants. I barely noticed it because he was careful when I was around, knowing that I would snub him in front of everyone... after an assistant complained to me, I took him to lunch and made it clear that this situation was unacceptable and that he had to stop, or he would be asked to leave since we had a great team and I didn’t want to have this kind of problem at the office. He looked surprised; it seemed like he thought the younger generation thought he was ‘cool,’ but when I told him that the girls were complaining about his foolishness, he was a little embarrassed and put an end to it.” (Man, witness)*

[TRANSLATION]

*"A young articling student was verbally harassed by one of the partners. He called her names (bitch, whore, dumb, etc.). I intervened, told the young woman to leave the conference room and asked the partner in question to stop and never address the young woman in that way again or I would file a complaint against him myself. He was one of the people who harassed me at this firm." (Woman, witness)*

[TRANSLATION]

*"I can't stand harassment, and every time I see inappropriate behaviour, I talk to the harasser, who often sees it as a joke, to make him realize that his behaviour is unacceptable and that he is causing the other person damage. I also make him understand all the remedies available to the victim and the problems he could face. In general, confronting the harasser solves the problem." (Woman, witness)*

[TRANSLATION]

*"These are mostly jokes in bad taste about women or gay people. As far back as I can remember, I have always intervened to stop these jokes because they make everyone uncomfortable and inappropriate." (Woman, witness)*

Some respondents indicated that harassing behaviour and sexual violence tend to be less accepted. The following respondent spoke about a change in male colleagues, who intervene more often than before: [TRANSLATION] *"These behaviours have been common throughout my career and are downplayed by everyone, although things are changing. [There is] less tolerance for this kind of talk, especially from male colleagues, who never said anything before."* Despite these changes, several accounts point to the persistence of a culture that promotes silence and impunity, which has an impact not only on disclosure, as seen above, but also on the actions taken by witnesses or confidants. It is a systemic issue:<sup>124</sup>

[TRANSLATION]

*"It was more like systemic harassment. All the girls in the office were experiencing it, and we were talking about it among ourselves. I once warned an articling student about a partner. I don't know what happened after that." (Woman, witness)*

[TRANSLATION]

*"I tried to help a female colleague who had experienced the same kind of harassment I had experienced at the hands of a senior lawyer and superior. The situation was delicate since this lawyer was 'untouchable' within the organization. It was unlikely that I could report the incident to a superior; this lawyer had already been cleared for similar allegations in an administrative investigation. My colleague finally left the organization... I don't know why. I also left the organization." (Woman, witness)*

Almost a third (29%) of women and more than one in five men who answered the question on being confidants said they had been confided in by someone in their professional circle. The accounts show that victims sometimes confide in someone quickly, but many respondents reported that they had been confided in long after the incident. Heightened social awareness of sexual violence in the context of the #metoo/#moiaussi movement seems to have prompted some people to speak out. Like witnesses, in their accounts, confidants referred to acts and contexts that support those recounted in the previous sections:

[TRANSLATION]

*"I was confided in by someone who had experienced the following in the workplace and/or from co-workers: sexual harassment characterized by vexatious comments, sexual and sexist jokes; unwanted sexual advances; unwanted touching." (Woman, confidante)*

[TRANSLATION]

*"Repetitive and constant sexual text messages, at all hours of the night, from the lawyer in charge of her articling period." (Woman, confidante)*

<sup>124</sup> Systemic issues refer to the effects of systems of oppression (particularly those related to sexism, racism, classism or colonialism) that manifest themselves in unequal social relations, which exacerbate certain forms of violence.

[TRANSLATION]

*“At a Christmas party, a male colleague kissed a female colleague with her consent. When she refused to go any further, he almost tore her dress and underwear.” (Man, confidant)*

[TRANSLATION]

*“One of my colleagues once told me that she had been threatened by a client who was being detained that if she didn’t do a good job in his case, he would go and sexually assault her once he was released from detention, describing how he would do it.” (Woman, confidante)*

[TRANSLATION]

*“One person disclosed to me that someone had tried to force himself on her at a conference. The assailant was intoxicated. The victim was able to get rid of the assailant. It seems that the experience has left her unscarred, but she prefers not to run into this lawyer.” (Woman, confidante)*

[TRANSLATION]

*“A colleague accompanied my former boss to a golf tournament. A client of this boss dragged her into a corner, tried to kiss her and grabbed her butt. She managed to free herself and leave.” (Woman, confidante)*

[TRANSLATION]

*“Unfortunately, the legal community is still full of prejudice against women, and some female colleagues told me that they had received extremely derogatory comments about their physical appearance and how it affected their perceived level of professional competence; they were also told that it would be impossible or difficult to climb the ladder as a result. Some colleagues were even threatened (by e-mail nonetheless) that their reputation would be tarnished if they did not cooperate. One colleague had to move to another city to avoid dealing with the person in question.” (Woman, confidante)*

[TRANSLATION]

*“She was caught up with opposing counsel, who asked her if she was afraid of being raped by them. The violence didn’t stop there, of course. There was much more. They used constant intimidation and degrading comments.” (Woman, confidante)*

[TRANSLATION]

*“Her boss put pressure on her to sleep with her and when she resisted, he put her through hell by shouting at her and discrediting her.” (Woman, confidante)*

[TRANSLATION]

*“A client sent a picture of his penis to one of my lawyer employees.” (Woman, confidante)*

[TRANSLATION]

*“An experienced associate told me that a senior partner had unzipped his pants and thrust his penis in her face. In a context that was neither intended nor desired, neither directly nor remotely. Classic situation of a powerful dirty old man trying to bang a beautiful young girl.” (Man, confidant)*

[TRANSLATION]

*“One colleague, a young associate, was [pressured] to have sex for years by the senior partner with whom she worked closely and who provided practically all of her work. She finally agreed to sleep with him. After that, whenever she tried to end the relationship, he stopped giving her work.” (Woman, confidante)*



Confidants reported a variety of reactions. The most common reaction was listening to the victim. Some confidants suggested that the victim avoid the perpetrator and, to a lesser extent, that the victim file a complaint with the police. These reactions are reflected in the following accounts:

[TRANSLATION]

*"It was sexual assault...she was already seeing a shrink, but I went with her to the station to file a complaint."* (Woman, confidante)

[TRANSLATION]

*"A lawyer told me that she had been sexually assaulted by a more senior partner at our firm at an international conference. She asked me not to report the incident to the executive committee because she was afraid of repercussions."* (Woman, confidante)

[TRANSLATION]

*"An articling student told me that a partner had told her, while she was alone in his office, with the door closed, 'I'd like you on your knees,' implying that he wanted her to perform oral sex. I told her to go to HR, but she told me that she had gone there and been told 'yes, but Mtre... is a senior partner of the firm.'"* (Woman, confidante)

[TRANSLATION]

*"A colleague asked me for my advice because she was being sexually harassed by another member of the firm. I interceded with this member, and the colleague later told me that the harassment had stopped."* (Man, confidant)

[TRANSLATION]

*"A colleague was the target of repeated unwanted advances. She wanted to fix the problem herself, which she did. But she wanted to confide in me and ask for advice, and I listened to her and gave her advice."* (Man, confidant)

[TRANSLATION]

*"An older administrative judge was bothering a female articling student and a young female lawyer daily, to the point where they confided in me. I knew this judge well and intervened so that he would stop his daily visits to their office."* (Man, confidant)

[TRANSLATION]

*"A colleague, an assistant, told me that a male colleague had told her, 'You, I'm going to f\* you on the photocopier.' She was in tears when she told me about it. I went to see the colleague in question, equal to me in rank, and told him to stop, otherwise I would report him to our superiors."* (Woman, confidante)

The above accounts illustrate the important role that witnesses and confidants can play. In addition, these accounts support the testimonies presented in the previous sections by victims of sexual violence.

# COURSES OF ACTION AND RECOMMENDATIONS

Based on the survey results, the following sections propose courses of action and recommendations. First, section 9 presents the respondents' suggestions based on their answers to the questions aimed at documenting the assistance they would like to receive in case of sexual harassment and violence. Section 10 presents a summary of the recommendations suggested in the literature. Section 11 concludes the report with possible courses of action for the Barreau, which may inspire the Barreau and the legal community as a whole regarding the actions they should implement.

## 9. Courses of action recommended by respondents

In order to be proactive and raise awareness, but also to intervene in case of sexual harassment or violence, in addition to the prevalence of the various forms of sexual harassment and violence experienced, the questionnaire aimed to document the assistance and actions desired by the members of the Barreau, whether or not they had experienced sexual harassment or violence. The following are the results concerning the type of assistance desired and the courses of action suggested by respondents.

### 9.1 Type of assistance desired

It appears that, of the possible answers, the respondents (N2846) who shared their opinion on question 22 ([TRANSLATION] *"If one day you were to experience sexual harassment or violence by someone in your professional circle (or if you have already experienced such situations), what type of assistance would you like to receive from your organization?"*) desire services outside the organization the most. 51.7% of respondents would like to obtain psychological support from an organization or resource outside their organization, while 41.9% would like to receive information on possible remedies from a person or resource outside the organization in order to report the acts.

Some respondents would like to receive support from within the organization. 28% of respondents who answered this question said they would like to receive psychological support from a counsellor paid for by their organization or under the insurance plan provided by the organization. 24.8% said they would like to receive information on the remedies available to them from a person or resource within their organization so that they can report the acts. Finally, 18.7% said they did not want any assistance.

In addition to giving quantitative answers, respondents were given the opportunity to clarify their answers or make additional suggestions. For example, one female respondent stated that [TRANSLATION] *"depending on the seriousness and with this proviso, those involved should have the possibility to resolve the problem, but if the harassment or acts are repetitive, internal and external resources are required to resolve the situation."* Another female respondent highlighted the gender dimension: [TRANSLATION] *"[We] simply need men in our organizations to recognize that these are common behaviours and to be trained to intervene and help us respond to them instead of having us bear the burden of (1) justifying why these behaviours are inappropriate and make us feel uncomfortable, and (2) defending ourselves, and confronting and punishing the perpetrators."* Several accounts highlight the importance of organizational accountability and of acting, raising awareness and punishing. One female respondent said, [TRANSLATION] *"I want my employer to take action to ensure a healthy work environment."*

### 9.2 How organizations and the Barreau can help raise awareness

With this in mind, the last question of the questionnaire (26), which consisted of 2 sub questions, aimed to document how organizations and the Barreau can help raise awareness and combat sexual harassment and violence.

Nearly two thirds (65%) of the women who answered the sub-question on organizations thought that organizations should have clear and transparent policies (information, procedures, support); 63% thought that they should raise awareness and provide information on the subject (rules, obligations, policies, etc.); and 60% thought that a list of options (including confidential options) to obtain support and report sexual violence should be developed and made available at the organizational level. For their part, 57% of men thought that organizations should have clear and transparent policies (information, procedures, support), and 54% thought that it is necessary to raise awareness and provide information (rules, obligations, policies, etc.).

It should be noted that most respondents believe that their organization is not proactive enough in terms of the measures it should take to combat sexual harassment and violence. This view is confirmed by the accounts shared, which once again highlight the impunity associated with an organizational and professional culture where such violence is considered systemic:

[TRANSLATION]

*“Management and HR decided to remove the victim rather than the perpetrator from the workplace, which I deplore. I have the impression that she, rather than he, was punished.”*  
(Woman, witness)

[TRANSLATION]

*“The person was harassed by a colleague for an extended period; she even received threats of physical violence. Resource persons at the firm were aware of the situation but took no action to stop the harassment or support the victim. Two years later, some action was taken against the harasser, but still no support or assistance was provided to the victim, whose reputation and career path were significantly affected.”* (Woman, confidante)

[TRANSLATION]

*“A lawyer working at a large firm told me that a senior partner had touched her genitals. She complained to human resources. She signed a confidentiality agreement and left the firm.... She had difficulty finding employment afterwards because she could not disclose the reason for her departure, and there were rumours about her in the community.”* (Woman, confidante)

[TRANSLATION]

*“Several women have told me that they were subject to sexual microaggressions in the course of their professional practice, from insistent or unsolicited invitations to go for a drink to inappropriate compliments. Each time one of them confided in me, we discussed the remedies available and how the aggressor had trivialized the act in question.”* (Man, confidant)

Regarding the manner in which the Barreau could raise awareness in the legal community and combat sexual harassment and violence, nearly two-thirds (61%) of the women who answered this question said that the Barreau should have clear and transparent policies (information, procedures, support). 58% of women said that the Barreau should develop, publicize and make available a list of options (including confidential options) to obtain support and report sexual violence. 58% still said that it is necessary to run awareness campaigns. 57% maintained that the Barreau should be more proactive in reminding victims of the possibility of reporting incidents to the office of the syndic, and finally, half of women respondents believe that the Barreau should provide training on this subject.

Nearly half (47%) of the men who answered this question said that the Barreau should adopt clear and transparent policies (information, procedures, support); 46% said that victims should be assured that their request with the office of the syndic will be processed and followed up; 45% said that the Barreau should remind victims that they can report incidents to the office of the syndic; 44% said that a list of options (including confidential options) to obtain support and report incidents should be developed, publicized and made available. Finally, 43% of male respondents said that it is important to run awareness campaigns.

Several women (41%) and men (26%) who completed this section of the questionnaire maintained that the Barreau is not proactive enough in raising awareness about sexual harassment and violence.

### 9.3 Who should act?

The qualitative data provides us with information on respondents' perception of those responsible for combating sexual violence in the practice of law.

Respondents were divided on whether or not the Barreau, as a professional corporation dedicated to the protection of the public, is responsible for combating sexual violence against its members. Some respondents maintained that it is, while others believed doing so is not part of the Barreau's mandate. The following two quotes illustrate this division:

[TRANSLATION]

*"The Barreau's mission ... is not to protect lawyers. I don't trust the Barreau to protect and help lawyers."* (Woman)

[TRANSLATION]

*"It's obvious that the Barreau does not accept such behaviour. It is the common voice of intolerance of all organizations that would perhaps make a difference. But the Barreau has the right pretext to start the process; it represents law and justice."* (Woman)

Some respondents suggested that complaints should be received by someone independent and outside the Barreau. Many respondents saw the possibility of creating an ombudsman position as a positive step. The following quote illustrates this idea: [TRANSLATION] "I don't think that reporting incidents to the office of the syndic is the solution. In this case, the problem is with the entity. It's too big. I think an ombudsman would be better, or at least something smaller and more personalized like an individual or a small group of well identified individuals" (woman). Another respondent maintained that [TRANSLATION] "[t]he syndic is not the appropriate resource. Complaints should be handled by third parties."

### 9.4 Action to be taken

Many respondents stressed that everyone should be accountable to take the burden off the victims and emphasized the need for a real change in organizational culture by working on the professional culture.

One respondent suggested that [TRANSLATION] "*clearly, the Barreau is not doing enough. Most senior male lawyers in private practice have a flat-earth mentality, and feminism is generally not welcome. What is also needed is a change in culture. Women must be given a more prominent role*" (man). This excerpt emphasizes the idea that a cultural change should be part of a more inclusive and feminist approach that aims to reduce the systemic inequalities experienced by women. The idea of the need for a cultural change is also reflected in the accounts of other respondents, who placed more emphasis on professional culture:

[TRANSLATION]

*"The legal profession is unfortunately still a male chauvinist environment ... The situation is changing with the increasing ratio of new female lawyers being admitted to the Bar and a more egalitarian mentality among young lawyers and young men more generally. That said, an environment where power is glorified and alcohol is flowing leads to abuse. No matter how hard the Barreau tries, there must be a change in mentality. Mere training will not change the perspective of some lawyers. They will simply be more afraid of getting caught. It takes a clear position from the Barreau, statistics, information on what is being experienced to change the mentality. The legal community is small; women lawyers do not want to be [excluded] from firms if they report incidents. There is thus a lot of groundwork to be done."* (Woman)

For this culture change to take place, organizations must have clear policies in place. Respondents felt that it is also important to have clear and timely complaint processes in place. Finally, respondents suggested imposing exemplary penalties, for example, coercive measures and monetary penalties for organizations that do not protect their employees. One lawyer suggested that [TRANSLATION] "*[s]ince lawyers are officers of the court, the syndic should impose exemplary penalties*" (man).

From a proactive viewpoint, the importance of prevention and awareness-raising emerged strongly from the data. Some respondents proposed mandatory, others optional training. Respondents also mentioned the importance of integrating sexual violence training into the École du Barreau curriculum. Others believe that training should target specific groups (students, lawyers, judges, etc.). In all cases, several respondents stressed that training would not be sufficient to solve the problem:

[TRANSLATION]

*“Mandatory training seems like a good idea. I think it’s the only way to reach people with inappropriate behaviours, who would certainly not come to optional training, since they themselves are not aware of the problem. Awareness campaigns are also necessary, but not only for more serious types of harassment and assault, but also to raise awareness of the reality of women in the profession more generally and of all the comments/jokes we hear or that are made about us.” (Woman)*

Various respondents emphasized the importance of considering the groups most vulnerable to various forms of violence. The results have shown that women, especially those in subordinate positions, are significantly more at risk of experiencing sexual violence. In this respect, respondents proposed better articling supervision. It was also suggested to document violence among [TRANSLATION] *“... other members of the community (students, secretaries, etc.)”* (woman). In that way, it would be possible to consider the various realities, other than those of lawyers, of people working in the legal field. Many respondents felt that awareness-raising and structural changes are important: [TRANSLATION] *“The problem runs much deeper than professional practice—it’s a question of mentality and education...”* (woman). According to several respondents, these structural and long-term changes must therefore be accompanied by short- and medium term action. Respondents suggested developing a tool kit to help victims react in these situations, but also adding a section to the code of professional conduct to penalize abusive behaviour towards members of the public and/or the profession.

## 10. Courses of action suggested in the literature

The courses of action to combat sexual harassment and violence proposed in the various studies on the subject are generally organized into four categories: 1) information, prevention and training; 2) law enforcement; 3) example-setting by managers and employees; and 4) changes in organizational culture.<sup>125</sup> These categories will be briefly discussed in the following four subsections.

### 10.1 Information, prevention and training

The International Bar Association survey found that in Canada, respondents were significantly less likely to have experienced sexual harassment when sexual harassment or violence training was provided in their workplace.<sup>126</sup> This suggests that training can be effective.

Still within the context of training and awareness-raising, some research<sup>127</sup> suggests that gender-bias training should be included in law school curricula or a mandatory part of continuing education for lawyers. Some law societies have committed to actively evaluating and implementing such training.<sup>128</sup> Others require law firms to provide gender bias training on an annual basis.<sup>129</sup>

Various studies also suggest that law societies should develop tools to provide information and raise awareness about sexual harassment and violence in the profession, or promote the tools available, by making them easily accessible (for example, by including lists of resources on law society websites).<sup>130</sup> However, a cautionary note is required here. The focus on sexual harassment does not always have the desired effect of reducing its prevalence to cement women's place in the legal community. On the contrary, awareness raising or training on the prevalence of sexual harassment that draws attention to the wrong issues or takes the wrong approach may result in further exclusion and discrimination against women. These consequences can manifest themselves, for example, in the difficulty women have in finding mentors, in the fact that they are no longer invited to networking activities outside of work, that they are offered fewer opportunities to work on major cases that would require time away from home, work outside normal office hours, etc.<sup>131</sup>

The literature also shows that rather than examining their behaviour, some male lawyers have looked at sexual harassment as a risk that needs to be neutralized and have chosen to further exclude women. This choice is based on the idea that avoiding contact with women reduces the risk of being accused of sexual harassment, which has the effect, on the one hand, that the problem of sexual harassment and violence itself is not being addressed and, on the other hand, that the inequalities experienced by women are exacerbated because they are further excluded. This situation ultimately has a negative effect on the career paths of women lawyers.<sup>132</sup>

<sup>125</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d'avocat*, 2018, online (pdf): <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>.

<sup>126</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, online (pdf): <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>127</sup> The Florida Bar Special Committee on Gender Bias, *Report Received by The Florida Bar Board of Governors*, 2017, online (pdf): <https://www-mex-dia.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>.

<sup>128</sup> The Florida Bar Special Committee on Gender Bias, *Report Received by The Florida Bar Board of Governors*, 2017, online (pdf): <https://www-mex-dia.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>; New Zealand Law Society, *Report of the New Zealand Law Society Working Group*, 2018, online (pdf): [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf); Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d'avocat*, 2018, en ligne : <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>; Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, online (pdf): <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>129</sup> New Zealand Law Society, *Report of the New Zealand Law Society Working Group*, 2018, online (pdf): [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf); Sheila Thomas and Shivani Sutaria, « Eliminating Sexual Harassment in Your Law Office », (2003) 20(1) *GPSolo* 30.

<sup>130</sup> The Florida Bar Special Committee on Gender Bias, *Report Received by The Florida Bar Board of Governors*, 2017, online (pdf): <https://www-mex-dia.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>.

<sup>131</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 78; Andrea Macerollo, "The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation" (2008) 25 Windsor Rev Legal Soc Issues 121.

<sup>132</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 78; Andrea Macerollo, "The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation" (2008) 25 Windsor Rev Legal Soc Issues 121.



In addition, victims of harassment and violence (a large proportion of whom are women) may want to avoid working too closely with men or change their work organization to avoid situations that leave them vulnerable. These individual strategies may also have a negative impact on their career advancement. The issue of sexual harassment therefore has the potential to create or reinforce gender segregation in the profession.<sup>133</sup> This warning reinforces the importance of a participatory approach in which stakeholders are consulted on possible recommendations to ensure that they are adjusted to the context and that they consider all forms of violence and the social relationships that exacerbate them.

Some researchers have recommended creating specific programs within law societies. For example, Carrington Trepel “recommended the creation of a boundaries program for the Law Society of Manitoba. The boundaries program is a means of helping lawyers to avoid future charges of harassment against them.”<sup>134</sup> Others have recommended creating ombudspersons (Canada), as the Law Society of British Columbia has done,<sup>135</sup> or designated persons (France) within law societies.<sup>136</sup> As the results of this questionnaire show, respondents suggested the ombudsperson option. It should be noted, however, that according to Joan Brockman, the effectiveness of such a system is highly dependent on the appointee.<sup>137</sup> Some researchers believe that managers should also be trained to deal with sexual harassment situations.<sup>138</sup> Others have suggested publicizing reports on the prevalence of sexual harassment to raise awareness within the profession.<sup>139</sup> Finally, some have recommended that law societies take a clear stance against sexual harassment and violence and disseminate and publicize their stance. In other words, the commitment of the law societies could be part of a larger campaign to raise awareness and record incidents to clearly define behaviours of sexual harassment and violence. This type of campaign could provide concrete examples that would allow people who are experiencing, have experienced or are likely to experience violence and those who commit these acts to clearly identify unacceptable behaviour, but also to identify how to prevent sexual harassment and violence and the remedies available.<sup>140</sup> Knowledge of the political or other remedies is clearly important, but knowledge alone is not enough. These remedies must also be enforceable.

## 10.2 Application of existing policies to manage sexual harassment and violence

Law societies in Canada and abroad generally suggest that policies and codes of ethics or conduct as well as ethical offences relating to sexual harassment or violence be reviewed to ensure they are clear and sufficient and definitions are correct.<sup>141</sup>

<sup>133</sup> Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability. The Report on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) at 78; Andrea Macerollo, “The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation” (2008) 25 Windsor Rev Legal Soc Issues 121.

<sup>134</sup> Brenlee Carrington Trepel, “A Review of the Current Legal Landscape The Law Society of Manitoba’s Equity Ombudsperson Program”, (2011) 35:1 Man LJ 277.

<sup>135</sup> Law Society of British Columbia, Women in the Legal Profession Subcommittee, *Women in the Legal Profession: A Report of the Women in the Legal Profession Subcommittee*, Vancouver, Law Society of British Columbia, 1991.

<sup>136</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, online (pdf): <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>; Brenlee Carrington Trepel, “A Review of the Current Legal Landscape The Law Society of Manitoba’s Equity Ombudsperson Program”, (2011) 35:1 Man LJ 277.

<sup>137</sup> Joan Brockman, “The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession” (1997) 35:2 Osgoode Hall LJ 209 at 239. She considered the ombudsperson at the time highly qualified for the job, as she pointed out the following qualities: “Gail H. Forsythe, British Columbia’s first and present ombudsperson, is a lawyer with a degree in education and a Master of Laws degree, and with experience in mediation and conflict prevention, and thus is very well qualified for the job. She is also very accessible, and works within a framework of complete confidentiality.”

<sup>138</sup> Anne McLellan, “Special Issue: Law Society of Alberta 100th Anniversary Conference “Canadian Lawyers in the 21st Century” Where Have All the Women Gone?”, (2008) 45 *Alta L Rev* 259, para. 35.

<sup>139</sup> Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, online (pdf): <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>140</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d’avocat*, 2018, online (pdf): <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>; Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, online (pdf): <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>141</sup> The Florida Bar Special Committee on Gender Bias, *Report Received by The Florida Bar Board of Governors*, 2017, online (pdf): <https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>; Women Lawyers Association of New South Wales, *Submission into the National Inquiry into Sexual Harassment in the Australian Workplace*, 2019, online (pdf): <https://womenlawyersnsw.org.au/wp-content/uploads/2019/04/WLANSW-Submission-Sexual-Harassment-Inquiry-28-Feb-2019-final-draft.pdf>; New Zealand Law Society, *Report of the NZLS-Working-Group-December-2018*, 2018, online (pdf): [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf); Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, International Bar Association, online (pdf): <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

Recommendations also include adding specific prohibitions on retaliation against good-faith complainants.<sup>142</sup>

In addition, several recommendations suggest establishing a specialized and flexible reporting process, either within the Barreau or one of its bodies (commission, committee, etc.) or within law firms, as suggested by the New Zealand Law Society:<sup>143</sup>

An effective complaints process must, at a minimum:

- provide an accessible, fair and impartial mechanism for resolving complaints;
- respond to unacceptable behaviour in an effective way;
- ‘do no harm’—the process must not re-traumatise any person affected by unacceptable behaviour;
- provide appropriate sanctions;
- provide measures to rehabilitate the person behaving unacceptably.<sup>144</sup>

It should be noted that the results of our survey of members of the Barreau also indicate that in addition to being specialized and flexible, complaint processes should also be fast and efficient.

In addition, some of the recommendations in the literature relate directly to reporting by lawyers in solo practice and small firms, while others relate directly to reporting in large firms. Since each of these practices presents different challenges to reporting,<sup>145</sup> these processes should include short- and long-term support measures for victims of harassment or violence.<sup>146</sup> The results of this survey also prompt us to reflect on processes that take into consideration the different social relationships as well as the roles of witnesses and confidants, who may also require guidance or organizational support.

Some studies propose that law societies or law firms set up reception or listening units for those who have experienced sexual harassment or violence and wish to report it. Examples are the *Commission ordinaire Harcèlement et Discrimination du Barreau de Paris* or the Specialist Complaints Unit, which is made up of non-lawyers whose mandate is described below.<sup>147</sup>

The SCU would:

- receive complaints (anonymously if desired) that the complainant considers to be sensitive;
- provide (non-legal) support to a complainant;
- provide information about making a formal complaint and allow the complainant to decide whether to make a formal complaint.<sup>148</sup>

As discussed in the previous sections of this report, the members of the Barreau who responded to our survey also suggested that a kit be developed to equip victims of sexual harassment or violence with the tools to take action. The results also show the importance of including tools for or adapting these kits to different audiences (either according to employment status or based on whether they are victims, witnesses or confidants, and considering the reality of members of the groups most vulnerable to such violence).

<sup>142</sup> “Report of the New Zealand Law Society Working Group” (2018), online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf).

<sup>143</sup> New Zealand Law Society, *Report of the New Zealand Law Society Working Group*, 2018, online (pdf): [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf); Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report*, 2014, en ligne : <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>; Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession*, 2019, Londres, *International Bar Association*, en ligne : <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>.

<sup>144</sup> “Report of the New Zealand Law Society Working Group” (2018) at 64, online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf)

<sup>145</sup> “Report of The Florida Bar Special Committee on Gender Bias” (2017), online (pdf): *The Florida Bar* <https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>.

<sup>146</sup> “Report of the New Zealand Law Society Working Group” (2018), online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf).

<sup>147</sup> “Report of the New Zealand Law Society Working Group” (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; Kami Haeri, “L’avenir de la profession d’avocat” (2017), online (pdf): *Ministère de la Justice* <[http://www.justice.gouv.fr/publication/rapport\\_kami\\_haeri.pdf](http://www.justice.gouv.fr/publication/rapport_kami_haeri.pdf)>; “Rapport sur le harcèlement sexuel au sein de la profession d’avocat” (2018), online (pdf): *Union des jeunes avocats de Paris* <<http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>>.

<sup>148</sup> “Report of the New Zealand Law Society Working Group” (2018) at 77, online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>.

Other studies, such as the one published by the New Zealand Law Society, suggest that the approach to confidentiality in the complaint process should be reviewed. It is suggested to

Adopt a more flexible, two-staged approach to confidentiality for complaints and decisions about bullying, sexual violence and harassment, discrimination and related conduct involving:

- a presumption of confidentiality during the early stage of the process;
- removal of the presumption of confidentiality in respect of the lawyer's identity at the decision stage of the process;
- appropriate safety mechanisms must be built into the process to allow for varying the confidentiality restrictions, seeking suppression in appropriate cases, and protecting the identity of complainants and witnesses.<sup>149</sup>

There are also studies that suggest that alternative processes to manage complaints should be put in place as part of the disciplinary process.<sup>150</sup> In addition, some researchers recommend that firms clearly inform their employees of the processes in place to report incidents and publicize their policies so that victims can assert their rights.<sup>151</sup><sup>152</sup> Other studies suggest that complainants be given a proper place in the disciplinary process, be kept informed of the progress of the proceedings and be able to be represented and heard during the proceedings.<sup>153</sup>

In addition, the creation of safe firms has been proposed for articling students who would lose their articling period as a result of reporting an incident or who would like to leave an environment where they are experiencing harassment.<sup>154</sup> It should be noted that articling students are at high risk of experiencing sexual harassment and violence and that the respondents in our survey have stressed the importance of better articling supervision.

Several law societies in Canada and abroad have suggested the creation of a body or committee dedicated to sexual harassment and violence, in particular to reflect on it, propose measures and monitor the implementation of the measures developed.<sup>155</sup> The existence of sexual harassment or violence policies in organizations in itself is insufficient. Even where policies and measures do exist, they may be incomplete, may not have been adapted, may not be used or may not be used effectively. Several of the studies reviewed have taken a critical look at the content of these policies (in particular whether they do or do not consider the social inequalities that exacerbate violence) as well as their effectiveness in changing the mentalities, behaviours and cultural constructs that contribute to the reproduction of violence. For example, Zalesne argues that in the current system, organizations:

... often work to prevent legal intervention, without addressing the inherent sexism that underlies claims of sexual harassment. In this way, economic costs have not been sufficient in making companies responsive to normative demands. Law is only useful as an impetus for social change if it has cultural legitimacy. Sexual harassment law will only have the requisite legitimacy when those in power in the workplace understand the physical, psychological, economic, and moral harm of sexual harassment, and why it amounts to sexual discrimination.<sup>156</sup>

<sup>149</sup> "Report of the New Zealand Law Society Working Group" (2018) at 87, online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf)

<sup>150</sup> "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf).

<sup>151</sup> Since 2018, the *Act respecting labour standards* (CQLR, c N-1.1) has required all employers to adopt a sexual or psychological harassment prevention and complaint processing policy. Also, the *Act to prevent and fight sexual violence in higher education institutions* (CQLR, c P-22.1) has required institutions of higher education—including the *École du Barreau*—since 2019 to set up policies and resources to prevent and fight sexual violence.

<sup>152</sup> SStephanie Ann Scharf, *The Problem of Sexual Harassment in the Legal Profession and Its Consequences* (American Bar Association Commission on Women in the Profession, 2018), online (pdf): Scharf Banks Marmor LLC <<https://www.scharfbanks.com/sites/default/files/assets/docs/report.pdf>>; Sheila Thomas & Shivani Sutaria, "Eliminating Sexual Harassment in Your Law Office" (2003) 20:1 *GPSolo* 30.

<sup>153</sup> Kami Haeri, *L'avenir de la profession d'avocat*, 2017, online (pdf): [http://www.justice.gouv.fr/publication/rapport\\_kami\\_haeri.pdf](http://www.justice.gouv.fr/publication/rapport_kami_haeri.pdf).

<sup>154</sup> Union des jeunes avocats de Paris, *Rapport sur le harcèlement sexuel au sein de la profession d'avocat*, 2018, online (pdf): <http://www.uja.fr/wp-content/uploads/2018/12/Rapport-UJA-Commission-Egalite%CC%81-Harce%CC%80lement-sexuel-20172018.pdf>.

<sup>155</sup> "Report of The Florida Bar Special Committee on Gender Bias" (2017), online (pdf): *The Florida Bar* <<https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>>; "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

<sup>156</sup> Deborah Zalesne, "Sexual Harassment Law in the United States and South Africa: Facilitating the Transition from Legal Standards to Social Norms" (2002) 5 *Harv Women's LJ* 143 at 148-149.

In a critical analysis of the effectiveness of current policies against sexual violence and harassment, Foster raises the significance of the glass ceiling—that is, the observation that there is an invisible ceiling that prevents women from taking on greater responsibility—that persists in the legal field and that must be taken into consideration in our reflection to truly change the organizational culture. Building on Ezold's comments, Foster explains that "importance lies in its confirmation of the virtual impossibility of relying on judicial remedies to dismantle the legal profession's 'glass ceiling.' This Comment accordingly suggests that the glass ceiling can only be eradicated by fundamentally changing the culture and economics of the legal profession."<sup>157</sup> This structural change must be supported and carried by those in positions of power and decision-making.

### 10.3 Example-setting by managers and employees

Several recommendations from the literature<sup>158</sup> remind firms of the importance of implementing sexual harassment and violence policies and, more generally, codes of conduct, at the same time emphasizing the importance of enforcing them. Partners should personally emphasize the firm's zero-tolerance policy, encourage employees to come forward and ensure that allegations are taken seriously. When someone reports sexual harassment or violence, research recommends that the incident be investigated by an impartial person. It is also stated that if the facts are proven, perpetrators must be sanctioned even if they are a partner or a person in a position of authority.<sup>159</sup> These suggestions are consistent with the results of this survey, which show that power relationships contribute not only to the exacerbation of violence, but also to impunity.

In her research, Bazley (2018) also notes the importance of a clear commitment by partners and managers to stop sexual harassment:

Fifth, cultural change of the magnitude contemplated by this review takes persistent and consistent effort to embed. Building on the work the firm has already begun, it is imperative that the Board, Chief Executive, and every partner are committed to the proposed transformation of the firm's culture and that they have a 10-year plan to implement, monitor, and audit the change.<sup>160</sup>

Some of the recommendations found in the literature are aimed at establishing reward mechanisms within law societies for firms dedicated to combating sexual harassment or promoting diversity. This measure is also seen as a means of identifying clear targets and best practices for employers interested in receiving a "designation" or other award.<sup>161</sup>

Still others seek to establish a regulatory framework that would enable law societies to better monitor and regulate legal workplaces. Such a framework would no longer be based solely on the individual responsibility of the perpetrators of acts of harassment or violence, but also on the accountability of the workplace, which could be achieved by imposing minimum obligations on workplaces (e.g., implementation of policies, management's obligation to report incidents, ongoing training of employees on these issues, and the obligation to conduct periodic workplace climate surveys); reviewing and monitoring compliance with these obligations (implementation of a compliance program,<sup>162</sup> monitoring and auditing powers granted to the Barreau); putting in place deterrents to non compliance; and prohibiting the use of confidentiality agreements to cover up sexual harassment.<sup>163</sup>

<sup>157</sup> S. Elizabeth Foster, "The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?" (1995) 42 UCLA L Rev 1631 at 1633.

<sup>158</sup> See e.g. "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf)

<sup>159</sup> "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>; ABA Journal & Working Mother Media, "#MeToo Workplace Study" (2018), online (pdf): Working Mother <[https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo\\_snapshot\\_final\\_revised\\_7-18.mb.pdf](https://www.workingmother.com/sites/workingmother.com/files/attachments/2018/07/metoo_snapshot_final_revised_7-18.mb.pdf)>; "National Attrition and Re-engagement Study (NARS) Report" (2014), online (pdf): Law Council of Australia <<https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>>; Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: *International Bar Association* <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>; Philip Bogdanoff, "Me Too: Eliminating Sexual Bias and Harassment at your Law Firm" (2018) 33 Me Bar J 23; Stephanie Ann Scharf, *The Problem of Sexual Harassment in the Legal Profession and Its Consequences* (American Bar Association Commission on Women in the Profession, 2018), online (pdf): Scharf Banks Marmor LLC <<https://www.scharfbanks.com/sites/default/files/assets/docs/report.pdf>>; Sheila Thomas & Shivani Sutaria, "Eliminating Sexual Harassment in Your Law Office" (2003) 20:1 GPSolo 30.

<sup>160</sup> Margaret Bazley, *Independent Review of Russell McVeagh* (2018), online: Russell McVeagh <https://www.russellmcveagh.com/getmedia/cc682d64-46a1-40e3-987b-cd82223bea24/Inde>.

<sup>161</sup> "Report of The Florida Bar Special Committee on Gender Bias" (2017), online (pdf): The Florida Bar <<https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>>; "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>.

<sup>162</sup> "A compliance programme could incorporate a mandatory policy, training schedule, reporting requirements and data collection about unacceptable behaviour in the workplace (through climate surveys). A practice would then be measured against its own compliance programme." ("Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>).

<sup>163</sup> "Report of the New Zealand Law Society Working Group" (2018), online: *New Zealand Law Society* [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0007/129922/Report-of-the-NZLS-Working-Group-December-2018.pdf).



Other recommendations suggest that employers should be responsible for providing a workplace free of sexual harassment.<sup>164</sup> This idea also emerged from the qualitative data of our survey. Employer accountability would help to reduce the responsibility placed on the victims of violence. Law societies have also proposed to maintain an ongoing dialogue with the managers of law firms of all sizes and to establish a collaborative process to study and analyze sexual harassment and violence.<sup>165</sup> This collaboration could help raise awareness of the issues, but workplaces must still become accountable by virtue of a clear stance on the part of their managers.

Finally, given the low rates at which violent acts are disclosed and reported, research suggests that employers should be required to report incidents of harassment to the Barreau. Others suggest that lawyers should be required to report to the Barreau any sexual harassment they witness.<sup>166</sup> According to the New Zealand Law Society, in such cases an effective reporting mechanism should include a duty for employers to report incidents, appropriate exceptions, protection for those who report incidents and processes to facilitate reporting, as well as monitoring of compliance with the duty to report.<sup>167</sup>

In addition to improving the way in which sexual harassment and violence complaints are received and processed, one aspect that emerges to ensure real change is a change in organizational culture.

#### 10.4 The importance of a change in organizational culture

Both the literature and the results of our survey suggest that a real change in organizational culture would have the greatest transformative power. Most of the research emphasizes the importance of changing the corporate culture of law firms.<sup>168</sup> For example, Mclellan explains as follows:

Law societies, as regulators with the best of intentions, have proven unable to transform the traditional structures of law practice. Regulation, even when carried out with a commitment to best practices, has its limitations for a profession like law. After 13 years in government, I am well aware of the limitations of regulatory regimes to effect desired societal change. Law societies can establish guidelines; they can inform, educate and cajole; they can discipline their members who are proven guilty of discrimination, harassment, or other forms of misconduct. But the culture and structure of private practice has remained remarkably stable, or perhaps more appropriately, static. If law firms think of themselves as businesses and act more and more like businesses, then maybe we should expect that key members of firms, perhaps members of the executive committee or the senior managing partner, take the same kinds of management and leadership courses that now are required for senior managers and leaders in other businesses. “Tone at the top” is key to change. And if those who have influence and power in law firms (real or perceived) signal that new and more flexible ways of practicing law are not only tolerated but also actively encouraged and valued, then things will begin to change.<sup>169</sup>

<sup>164</sup> Women Lawyers Association of New South Wales, *Submission into the National Inquiry into Sexual Harassment in the Australian Workplace*, 2019, online: <https://womenlawyersnsw.org.au/wp-content/uploads/2019/04/WLANSW-Submission-Sexual-Harassment-Inquiry-28-Feb-2019-final-draft.pdf>.

<sup>165</sup> “Report of The Florida Bar Special Committee on Gender Bias” (2017), online (pdf): The Florida Bar <<https://www-media.floridabar.org/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>>; Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (London: International Bar Association, 2019), online: International Bar Association <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

<sup>166</sup> “Report of the New Zealand Law Society Working Group” (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>.

<sup>167</sup> “Report of the New Zealand Law Society Working Group” (2018), online: *New Zealand Law Society* <<https://www.lawsociety.org.nz/professional-practice/practising-well/bullying-and-harassment/resources-and-reports/>>.

<sup>168</sup> Anne Mclellan, “Where Have All the Women Gone?” (2008) 45 *Alta L Rev* 259.

<sup>169</sup> Anne Mclellan, “Where Have All the Women Gone?” (2008) 45 *Alta L Rev* 259.

It also reinforces the importance for people in leadership positions in organizations to lead by example, including by maintaining the highest standards of behaviour, providing alternative, inclusive and safe networking activities, and promoting a zero-tolerance approach. The literature gives a concrete example of events involving alcohol, which, according to our data, are situations that exacerbate sexual violence. In her report on the investigation of harassment at the Russell McVeagh law firm in New Zealand, Margaret Bazley points out as follows:

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. Junior lawyers and other young staff were encouraged to drink to excess. After the incidents the firm moved decisively to address these issues and began to change the culture. Two and a half years later, during my review, I was not told of any recent instances of sexual harassment, sexual assault, or alcohol fuelled misbehaviour.<sup>170</sup>

The aspects presented in this section highlight the importance, but more importantly, the potential effects of real change. For changes to be structural and have an impact on organizational and professional culture, all those involved, especially those in management and leadership positions, must commit to, support and promote actions and measures aimed at a workplace free of violence.

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<sup>170</sup> Margaret Bazley, *Independent Review of Russell McVeagh*, 2018, online: <https://www.russellmcveagh.com/getmedia/cc682d64-46a1-40e3-987b-cd82223bea24/Inde>.



## **11. Recommended courses of action**

In view of the important findings and the courses of action suggested by survey respondents and the studies conducted on the subject, it is recommended that the Barreau initiate a consultation process with its members to determine their own courses of action. This process is crucial, as members should have the opportunity to discuss the content of the report and agree on courses of action that can be implemented in the workplace. We believe that such courses of action will have a much better chance of being implemented if they come from the members, who will then be responsible for applying them in the context of their own workplace.

It is therefore recommended that the Barreau

1. create a working group dedicated to reviewing this report and elaborating action plans;
2. hold consultations with the main stakeholders concerned by the survey to discuss the results and the actions they will be able to take to combat sexual harassment and violence;
3. disseminate the results to the members of the Barreau to discuss and acknowledge the importance of their contribution, and
4. make the results of the survey and the courses of action that will be implemented accessible to the general public so that the work carried out can more widely benefit other types of workplaces.

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## Appendix 1—Description of Questionnaire

The questionnaire, which is an adaptation of the questionnaire developed by the ESSIMU team,<sup>171</sup> consisted of 26 questions, including sub-questions. The following is a presentation of each section of the questionnaire.

### Section 1: Socio-demographic characteristics (Questions 1 to 11)

This section contains a series of questions that provide a general picture of the respondents. Studies show that certain factors (such as age, gender, sexual orientation, ethnicity or disability) can exacerbate harassment, unwanted sexual attention and violence. Taking these factors into account allows for a better understanding of the situation.

### Section 2: Work-related incidents (Question 12)

This section contains questions about incidents of harassment, unwanted sexual attention or sexual violence that may occur in the workplace. Work-related incidents include activities directly or indirectly related to professional practice and interactions with colleagues, superiors, subordinates, current, past and future clients, etc. The questions in this section were intended to quantify the frequency of incidents.

### Section 3: Potential impact (Question 13)

This section deals with the possible impact of incidents of sexual harassment or violence in a professional context. Only respondents who said that they had experienced sexual violence and/or harassment were asked to complete this section. This section also allowed respondents to add details on the impact of the violence experienced in writing and without space restriction.

### Section 4: Disclosure and support (Questions 14 to 16)

The purpose of this section was to document the disclosure of incidents (to whom they were disclosed and how long it took the victim to talk about them).

### Section 5: Reactions of others (Question 17)

This section documents the reactions of those in whom victims of sexual violence confided.

### Section 6: Reporting/whistleblowing (Questions 18 to 20)

This section was intended to document the reporting of sexual harassment and violence: to whom did respondents report the incident and, if they did not report it, what was the reason for not doing so.

### Section 7: Account of events (Question 21)

This section gave respondents the opportunity to testify about experiences of sexual harassment or violence in the context of professional practice. The individual accounts provide a better understanding of the acts, contexts and places surrounding the sexual violence experienced by respondents.

### Section 8: Type of assistance desired (Question 22)

In this section, respondents had the opportunity to describe the type of assistance they would like to receive if they were to experience (or had experienced) sexual harassment and violence by someone in their professional circle.

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<sup>171</sup> Bergeron et coll. (2016). *Violences sexuelles en milieu universitaire au Québec : Rapport de recherche de l'enquête ESSIMU*. Montréal : Université du Québec à Montréal. [https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU\\_COMPLET.pdf](https://chairevssmes.uqam.ca/wp-content/uploads/sites/124/Rapport-ESSIMU_COMPLET.pdf)



### **Section 9: Witnesses or confidants (Questions 23 and 24)**

This section provided witnesses and confidants with the opportunity to document their experiences. Here we wanted to learn more about how often people witnessed incidents, whether they intervened, and how they had intervened. Witnesses could submit their accounts in writing without space restrictions. We also wanted to know more about how often people had been confided in and their reactions. Confidants also had the opportunity to submit their accounts in writing with no space restrictions.

### **Section 10: Your opinion (Question 25)**

Section 10 was designed to test the level of agreement and disagreement with statements about victim responsibility, consent and stereotypes related to sexual harassment and violence.

### **Section 11: Raising awareness (Question 26)**

The purpose of this section was to tap into respondents' opinions on how, as a workplace, legal organizations could be involved in raising awareness and combating sexual harassment and violence.

## Appendix 2—Supplementary Tables<sup>172</sup>

<b>Supplement to Figure 2: Sexual Harassment</b>	<b>Men (N)</b>	<b>Women (N)</b>
Repeatedly told you sexual stories or jokes you found offensive	1140	1912
Wolf-whistled or cat-called you	1137	1900
Tried to start a conversation about sex with you even though you felt uncomfortable	1137	1896
Made offensive or insulting sexual comments	1136	1890
Made derogatory remarks about your appearance, body or sexual activity	1138	1885
Made derogatory remarks about your sexual orientation	1136	1880
Made derogatory remarks about your sexual identity	1135	1875
Made sexually suggestive gestures that offended or embarrassed you	1134	1875
Undressed you with their eyes in a way that made you feel uncomfortable	1133	1869
Exposed themselves naked or half-naked in a way that embarrassed you or made you feel uncomfortable	1137	1867

<b>Supplement to Figure 4: Unwanted Sexual Attention</b>	<b>Men (N)</b>	<b>Women (N)</b>
Sent or showed you sexual material that you did not want to see	1136	1870
Via the internet, sent or showed you sexual material that you did not want to see	1133	1874
Tried to establish an intimate or sexual relationship with you despite your efforts to discourage them	1135	1866
Repeatedly invited you for drinks or a meal despite your refusal	1136	1870
Touched you in a way that made you feel uncomfortable	1133	1865
Tried to caress, kiss or rub up against you even though you did not want it	1131	1867
Tried to have sex with you even though you did not want to, but failed	1129	1865
Had sex with you even though you did not want to	1128	1862

<b>Supplement to Figure 6: Sexual Coercion</b>	<b>Men (N)</b>	<b>Women(N)</b>
Gave you the impression that you would be rewarded for future sexual favours	1129	1863
Made you fear reprisals if you refused to engage in sexual activities	1129	1866
Made you suffer negative consequences because you refused to engage in sexual activities	1124	1862
Gave you the impression that you would be promoted or treated better if you cooperated sexually	1125	1859
Made sure you were afraid of consequences if you refused to engage in sexual activities	1128	1859
Threatened to share sexually compromising information about you over the internet	1126	1865
Threatened to share sexually compromising information about you through media other than the internet	1129	1863

<sup>172</sup>N is the number of individuals who responded positively or negatively to each question.



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