#METOO Movement, Guillotine Justice and the Law of Sexual Harassment

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Prepared with the assistance of Madelena Viksne
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CP24 with Nathan Downer
We Were Weinsteined...

Not just a man, he has become a movement...
Since Weinstein...

120 men (and counting) have been accused including...

<table>
<thead>
<tr>
<th>Accused</th>
<th>Position</th>
<th># of Accusations</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harvey Weinstein</td>
<td>Movie Producer</td>
<td>57</td>
<td>Fired</td>
</tr>
<tr>
<td>James Toback</td>
<td>Screenwriter and producer</td>
<td>300+</td>
<td>None</td>
</tr>
<tr>
<td>Ben Affleck</td>
<td>Actor and director</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Chris Savino</td>
<td>Nickelodeon animator</td>
<td>12+</td>
<td>Fired</td>
</tr>
<tr>
<td>Roy Price</td>
<td>CEO Amazon</td>
<td>1</td>
<td>Quit after leave</td>
</tr>
<tr>
<td>Matt Zimmerman</td>
<td>NBC News booker</td>
<td>Multiple</td>
<td>Fired</td>
</tr>
<tr>
<td>Josh Besh</td>
<td>Celebrity chef</td>
<td>25+</td>
<td>Resigned</td>
</tr>
<tr>
<td>Mark Halperin</td>
<td>Journalist</td>
<td>12</td>
<td>Fired</td>
</tr>
<tr>
<td>Gilbert Rozon</td>
<td>Just For Laughs</td>
<td>9</td>
<td>Resigned</td>
</tr>
</tbody>
</table>
### Since Weinstein...

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<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeremy Piven</td>
<td>Actor</td>
<td>3</td>
<td>None</td>
</tr>
<tr>
<td>Dustin Hoffman</td>
<td>Actor</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Kevin Spacey</td>
<td>Actor</td>
<td>24</td>
<td>Fired, show &amp; movie dropped, police</td>
</tr>
<tr>
<td>Brett Ratner</td>
<td>Director</td>
<td>6</td>
<td>None</td>
</tr>
<tr>
<td>Hamilton Fish</td>
<td>President, The New Republic</td>
<td>Multiple</td>
<td>Resigned</td>
</tr>
<tr>
<td>Nick Carter</td>
<td>Backstreet Boys</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Richard Dreyfus</td>
<td>Actor</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Tom Sizemore</td>
<td>Actor</td>
<td>1</td>
<td>None</td>
</tr>
</tbody>
</table>
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<th>Consequence</th>
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</thead>
<tbody>
<tr>
<td>Louis C.K.</td>
<td>Comedian</td>
<td>5</td>
<td>Netflix special &amp; movie cancelled</td>
</tr>
<tr>
<td>Larry Nassar</td>
<td>National Team Doctor US Gymnastics</td>
<td>3+</td>
<td>Pledged guilty, faces 25 years in prison additional criminal charges, 125 civil lawsuits</td>
</tr>
<tr>
<td>Oliver Stone</td>
<td>Director</td>
<td>2</td>
<td>None</td>
</tr>
<tr>
<td>Danny Masterson</td>
<td>Actor</td>
<td>3</td>
<td>None</td>
</tr>
<tr>
<td>Andrew Kreisberg</td>
<td>Showrunner “Arrow” and “Supergirl”</td>
<td>19</td>
<td>Suspended</td>
</tr>
<tr>
<td>Charlie Rose</td>
<td>PBS and CBS host</td>
<td>Multiple</td>
<td>None</td>
</tr>
<tr>
<td>Matt Lauer</td>
<td>The Today Show</td>
<td>Multiple</td>
<td>Fired</td>
</tr>
<tr>
<td>James Franco</td>
<td>Actor</td>
<td>5+</td>
<td>None</td>
</tr>
</tbody>
</table>
### Dirty Politics...

<table>
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<th># of Accusations</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patrick Brown</td>
<td>Ex-head of the Conservative Party</td>
<td>2</td>
<td>Resigned</td>
</tr>
<tr>
<td>George W. Bush Sr.</td>
<td>41st POTUS</td>
<td>7</td>
<td>None</td>
</tr>
<tr>
<td>Roy Moore</td>
<td>U.S. Senate Candidate, endorsed by Trump</td>
<td>2 teenage women sexual assault and 6+ other women</td>
<td>Pressure to step aside, state GOP standing by him, lost election</td>
</tr>
<tr>
<td>Stephen Bittel</td>
<td>Florida Dem. Party Chairman</td>
<td>Multiple</td>
<td>Resigned</td>
</tr>
<tr>
<td>Jack Latvala</td>
<td>Senator</td>
<td>Multiple</td>
<td>Senate Ethics Investigation</td>
</tr>
<tr>
<td>Dan Schoen</td>
<td>Minnesota State Democratic Sen.</td>
<td>Multiple</td>
<td>Resigned</td>
</tr>
<tr>
<td>Tony Cornish</td>
<td>Minnesota State Republican Rep.</td>
<td>Multiple</td>
<td>Resigned</td>
</tr>
<tr>
<td>Al Franken</td>
<td>U.S. Sen. (D-Mich)</td>
<td>At least 4</td>
<td>Senate ethics investigation, resigned</td>
</tr>
<tr>
<td>Michael Fallon</td>
<td>British Defence Secretary</td>
<td>2</td>
<td>Resigned</td>
</tr>
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The #METOO Movement: A Reckoning

- In its first week, #metoo was used on Twitter > 1 Million times
- #metoo was used on Facebook by more than 4.7 million people in 12 million posts during the first 24 hours
- On Facebook, more than 45% of people in the US are friends with someone who posted a message using #metoo
- Over 5 billion people saw a #metoo tweet
- 30.1% of people using the hashtag in the first week were men
- Canadians came behind only the US and UK for most #metoo tweets
- The tweet had global variations, all with the same purpose:
  - French #balancetonporc
  - Spanish #YoTambien
  - Arab countries, #وانا_ايضا# وأنا_كمان and #وانا_كمان
Protests and Momentum

• The Women’s March 2018
  • 2nd anniversary of the Women’s March on Washington, to protest Trump’s presidency, sexual assault & feminist issues
  • Museum curators are collecting protest signs as “signs of our time”

• #metoo Movement
  • No longer just an online presence

• Time Magazines Person of the Year: The Silence Breakers

• #TimesUp Black Dress Protest
  • against Sexual Misconduct and Gender Inequity in the Workplace
  • Hollywood takes a stand at the Golden Globes
  • Time’s Up Legal Defense Fund
Not Everyone Understands

I DON’T SEE WHAT ALL THE FUSS IS ABOUT!

YOU DID NOTHING WRONG!

WEINSTEIN
The Importance of Language

- In the *Criminal Code of Canada*, all sexual offences are called Sexual Assault:
  - The lines were clearer when we differentiated between sexual assault and rape
  - In the media, it appears this is confusing the conversation
- Sexual Assault is not ONLY referring to Rape
- Sexual Misconduct ≠ Sexual Assault
dudes who are saying “it’s scary to hook up with women now, it’s like I don’t know what’s ok and what isn’t”

uhh.. why don’t you ask her? She’s literally right right there
Have We Gone Too Far?

• The Aziz Ansari accusation has brought this question to the forefront.

• The #metoo movement was not necessarily intended to capture sexual misconduct like his.

• Raises important questions about the way women and men interact with one another and the world differently.

• Should spark conversations about how we deal with intimate relationships and one another, and how we are taught to do so.

• The movement hasn’t gone too far, BUT the reporting of accusations must be even-handed and informed, and needs to contribute to the conversations around respect, power and consent in sexual relationships.
The Court of Public Opinion: Patrick Brown

Guilty before proven guilty?

- Patrick Brown resigned within 24 hours of accusations coming out
- No chance to refute his accusers before public opinion and the lack of support from his party forced him to do so
- Conflict of interest ≠ sexual assault
- Media has a responsibility to be careful and cognizant in their reporting when
  - When they are not, it undermines the purpose of the movement
- “Accused” should be able to face their accusers
A Question of Power...

“I am a 28 year old woman trying to make a living and a career. Harvey Weinstein is a 64 year old, world famous man and this is his company. **The balance of power is me: 0, Harvey Weinstein: 10**”.

- Lauren O’Connor,
  Former employee of The Weinstein Company
• Consent must be given freely and continuously
• Non-verbal signs are difficult to read, so ASK
• Consent can be withdrawn at any time
• Consent is an impossibility in relationships where there is a power imbalance such as between boss and employee, doctor and patient, coach/teacher and student, adult and minor, or articling students and partners.
• In the workplace context, if a person has the ability to control or make decisions which would affect the other’s career, there can be no consent.
Where is the Line?

We know that 40% of people have, at some point in time, been involved in a workplace relationship or workplace romance. This begs the question….where is the line?

Human Rights Legislation

Prohibition Against Sexual Harassment and Reprisal

7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.
(3) Every person has a right to be free from,

a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.
Occupational Health and Safety Act

Section 32.0.1

• Employers with more than 5 employees must prepare policies on workplace violence and harassment

• Policies must be:
  • In writing
  • Reviewed at least annually
  • Posted visibly in the workplace
Employers must develop a reviewable program for implementing the workplace harassment policy. The program must include procedures for:

- Reporting to the employer or supervisor
- Reporting to someone else if the employer or supervisor is the harasser
- Investigating complaints
- Protecting complainant information where possible
- Corrective action
The Canadian Context

• **43%** of Canadian women and **12%** of Canadian men say they have experienced sexual harassment at work

• **87%** of people believe the next generation will experience the same amount of sexual harassment as the current generation

• **4/5** people believe the next generation will experience the same amount sexual assault as the current generation
The Government of Canada conducted a self-selecting public consultation survey online in February-March 2017:
*all percentages are the percent of total respondents

- **Respondents who reported workplace harassment or sexual harassment** in the past 2 years reported that they experienced these behaviours more than once
  - 60% experienced general harassment, 30% sexual harassment, 21% violence, 3% sexual violence
  - 94% who experienced sexual harassment were women
  - 44% experienced harassing behaviour from a co-worker
The Canadian Context

• Men were more likely to experience non-sexual harassment then women

• People with disabilities or members of visible minorities were more likely to experience harassment then other groups
An Institutional Issue

• In many cases where powerful or influential individuals are accused, the employer protects the harasser

• Ex. Weinstein’s employment contract:

  “You will pay the company liquidated damages of $250,000 for the first such instance, $500,000 for the second such instance, $750,000 for the third such instance, and $1,000,000 for each additional instance.”

• As long as he paid, he could keep his job.

• Since the scandal:
  • box office flops
  • pulled 5 movies from its release schedule
  • reportedly, its employees, assets and old projects may be acquired by a new company under a new banner and with a board led by women
Resolutions: The “Apology”

“I came of age in the 60’s and 70’s, when all the rules about behaviour and workplaces were different. That was the culture then…”

“…I want a second chance in the community but I know I’ve got work to do to earn it... I have been trying to do this for 10 years and this is a wake-up call…”

Excuse: I am an older man.
The “Older Men” Exception

Silvera v. Olympia Jewellery Corp. 2015

Michelle’s Story:
• Michelle Silvera
  • Administrative assistant at a jewellery store
  • Salary: $28,000/year

• Michelle’s boss would:
  • Ask her to model pieces of jewellery and asking her to unbutton her shirt “so he could see the pendant clearly”
  • Insist on driving her home
  • Show her pictures of naked women on his computer
  • Give her uninvited massages
  • Touch her breasts and buttocks without her consent
The “Older Men” Exception

Silvera v. Olympia Jewellery Corp. 2015

• After taking time off for surgery, Michelle was fired
  • The business claimed she was terminated for cause due to her “prolonged absence from work”

• Michelle brought an action for wrongful dismissal, sexual assault and battery, racial and sexual harassment
The “Older Men” Exception

Silvera v. Olympia Jewellery Corp. 2015

The Ontario Superior Court awarded Ms. Silvera (who was a 1½ year employee earning $28,000 a year) $312,056.56.

- $90,000.00 - general and aggravated damages
- $30,000.00 - human rights general damages
- $33,924.75 - loss of future income
- $10,000.00 - punitive damages
- $42,570.00 - costs of future therapy and care
- $90,344.63 - wrongful dismissal
- $15,000.00 - Michelle’s daughter under Family Law Act
- $37.18 - subrogated OHIP claim
The “Kevin Spacey” Exception: Minors

E.T. v. Dress Code Express Inc. 2017

- E.T. was 14 years old.
- She worked at a retail store called Dress Code Express as a general helper.
- She worked 3-4 days a week for just under two months.
- E.T. was sexually harassed by her employer.
- Her employer (the owner) made comments about her body and her virginity.
The “Kevin Spacey” Exception: Minors

E.T. v. Dress Code Express Inc. 2017

• E.T. was forced to give her employer massages.
• He would make comments of a sexual nature about customers and compare her to customers at the store.
• E.T.’s employer warned her not to engage in sexual activity with black people.
• Her employer would routinely enter her physical space, often brushing past her so that his crotch would touch her.
The “Kevin Spacey” Exception: Minors

E.T. v. Dress Code Express Inc. 2017

- The HRT found that E.T.’s employer had created a “poisoned work environment” in which she felt forced to give him a massage or lose her job and that E.T. experienced sexual and racial harassment.
- The HRT awarded E.T. $15,000 for the harm caused by the discrimination.
  - For loss of dignity, injury to her feelings and self-respect
- The employer and the business were made jointly and severally liable
- The age of the applicant was an aggravating factor
  - She was 14 and her employer was 65
What is One Day Worth?

*De Anna Granes v. 2389193 Ontario Inc. and Rajnessh Dutta 2016*

De Anna’s Story:

• De Anna was a server at a restaurant called Houston Avenue Bar and Grill in Barrie.

• In September 2013, the restaurant got a new part-owner, Mr. Dutta.
What is One Day Worth?

De Anna Granes v. 2389193 Ontario Inc. and Rajnessh Dutta 2016

• On his first day, De Anna’s new boss sat at the bar while she worked, and said things like
  • “I want to take you home”
  • “We are going to have our own party”
  • “You know I love you right?”
• Throughout her shift, De Anna’s boss:
  • Grabbed her breast
  • Came up behind her and touched her
  • Caressed her arms, thighs and stomach
  • Grabbed her and backed her into a wall even though she said no to all of his advances.
The day after the incident, De Anna came into work and had a panic attack. She brought a complaint to the police but there was not enough evidence. De Anna told the General Manager, who attempted to help but was told by the owners “to make the issue go away” and was fired when he did not. The owners met with De Anna and told her:
  “put on that pretty little smile of yours and do your job”
  “take the hurt out of your heart and throw it away”
What is One Day Worth?

De Anna Granes v. 2389193 Ontario Inc. and Rajnessh Dutta 2016

• De Anna requested, as accommodation, that Mr. Dutta not be present when she worked for a while, but the owners refused.
• She was forced to resign as she was anxious and distraught, and the restaurant refused to accommodate her.
• De Anna made under minimum wage
  • Server wage - $8.90/hour in 2014.
• All of the harassment happened on February 1, 2014.
• The restaurant failed to act, when the complaint was brought to it two days later.
What is One Day Worth?

De Anna Granes v. 2389193 Ontario Inc. and Rajnessh Dutta 2016

• De Anna was awarded damages $29,440.52
  • $20,000 for injury to dignity, feelings and self-respect
    • Exacerbated by the failure of the employer to act
  • $9,440.52 for wage loss

• Company faced consequences:
  • Joint and severally liable for the financial damages
  • Mr. Dutta was ordered to complete Human Rights101 training
  • The restaurant was required to adopt a written policy for dealing with complaints and discrimination within 3 months
  • The restaurant had to implement mandatory training within 6 months
Criminal Consequences

Criminal Charges *R. v. J.P.* 2017

• A Halifax woman in her mid-20’s came forward recently, alleging her supervisor sexually abused her for months
  • Repeatedly groping her
  • Making sexual comments under the guise of “fooling around”
  • Pulling her onto his lap
  • Putting his hand under her skirt
  • Touching her breasts
  • Opening her blouse
  • Repeatedly telling her he wants to have sex with her
Criminal Consequences

Criminal Charges R. v. J.P. 2017

• One incident was caught on video
• Complaints were brought to other managers, who were unsupportive of her complaint and did nothing
• She filed criminal charges
• The supervisor was sentenced to 8 months of house arrest and a year of probation for sexual assault
• He is a permanent resident in Canada and may face deportation.
What to Do: Due Diligence

Next Steps

• Recognize that HR issues are about the heart and soul of an organization
• Good corporate governance necessitates strong HR policies
• Annual review of complaints and Annual review of code of conduct
• Annual training
  • Training should be specific to every section of the protected ground but highlight gender, race and disability and harassment and bullying
• Revise sexual harassment policies
What to Do: Due Diligence

Next Steps

• Identify leaders, those who people feel comfortable with to address those issues
• Formal complaint process
• Informal complaint process
• Ensure employees know their complaints are held in confidence, though may not be confidential if action is required
• The message should be clear: the Company does not tolerate harassment, assault or abuse of power from any of its employees.
Questions?
Contact Us

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