

President of the WABA Oct 13, 2020

Dear Members,

Last week I introduced a Procedure for grievances concerning sexual harassment, workplace bullying, and discrimination.

An email from me introducing the Procedure has caused offence to some members.

Offence is the very last thing anyone would want to precipitate, on the introduction of a new initiative, especially an initiative of this type.

It is, obviously, also the very last thing anyone would want to occur at the end of their term as President.

Those factors, some of the things I explain in this note and, I hope, my own assurance, should persuade the members who have been offended, that the causing of offence was entirely unintentional.

I have spoken to members over the past week including some of the members who were offended, it is clear beyond argument that the offence is genuine, I can see why they feel offended, and I am sorry that I have caused this to happen.

Delay

I need to say something about the delay in addressing the matter.

About twenty members initiated communications with me in response to the introduction of the Procedure on a range of matters. Half of those were members expressing criticism or agreeing with criticism of my covering email. Half were members raising other matters.

I wanted to speak personally to some of the members who had offered criticism or who had been offended and I also wanted to speak personally to some of the members who had raised other matters. In light of the criticism, I also made contact with other members, men and women, and also Judicial and Honorary members including senior women to seek some other perspectives. I also wanted a little time to reflect on what had been said and written.

I also wanted to make contact with Elspeth Hensler. From inception, which was before the news from the High Court, Elspeth has been the Bar Council steward for this initiative. Although Bar Council fully backed it, Elspeth had the full carriage of the initiative. So ordinarily I, as President, would have the benefit of Elspeth's counsel on how best to deal with any matters touching on the initiative. Also, given the nature of the problem that had arisen, I did not consider it was appropriate to attempt to deal with them without Elspeth's input and views on the problem.

Last week and still, Elspeth is on holiday in the far North West, and has been mostly out of telephone and internet range. I managed to speak with Elspeth once late last week, when she came within telephone and internet range, at the

same time she was downloading her emails, including on this matter, and once again yesterday, and I have now, to the extent possible in the circumstances, had the benefit of Elspeth's input and views.

Finally on delay, this note is not as short as a communication offering an apology ought usually be, I have done my best to make it brief, but the introduction of the Procedure is an important matter for the Bar, and a proper explanation is important to the maintenance of harmony at our Bar. Some of the delay is because of the time taken to prepare this note.

What I have heard

These are among the things that I have heard from discussion about my email:

- I seemed to assume everyone's experience of the Bar has been the same as mine.
- I appeared to believe that if nothing was reported or noticed, it did not happen.
- I have created the impression of denying the problems of the past.
- I appeared to be asking members to promote a false message externally.
- I have created the impression my heart is not in it.
- I am going through the motions with something that I do not think necessary.

I am very sorry those messages were heard. To the extent they are a state of mind, none of them were my state of mind, at any time. To the extent they are meanings taken from what I wrote, none are meanings I intended to convey. To the extent there is a request, it was not what I was asking of anyone, and not what I wanted done. My heart was in it and I do think it is necessary.

Having listened to the members I have spoken with, and heard their perspectives, and also some of their experiences, I can also understand why some members have read my email in the ways they have and why offence has been taken.

As to the last two points, when I heard the news from the High Court, my shock was that a person of such intellect, experience and seniority who had been appointed to that office lacked the emotional intelligence to know that the conduct was wrong or the self discipline not to do it, by the absence of a mechanism that had effect on the conduct, and by both matters being seriously aggravated by the number of complainants.

I thought the priority must be to stop the risk for the future and that what should be done was to harness the shock that was felt by so many, to get in place at our Bar the best possible systems and procedures, to prevent it from happening and, which seemed to be related, to provide a way for people to address it quickly and

safely if it occurs again, and to me that meant, make this happen. That is what has now happened.

Some further information and explanation

I include this only for the purpose of helping to alleviate offence and show the good faith at all times existing in the introduction of the Procedure. With Elspeth's permission, which she has told me she is happy to give, I am able to tell you that I involved Elspeth in my preparation of the email. I provided a draft on which Elspeth provided suggestions, which I incorporated into the final version which you have seen. The terms of the final version were approved by Elspeth. I can assure members there was no debate or disagreement of any kind between Elspeth and me as to the terms of the email, and we dealt with the drafting by the exchange of a couple of friendly emails.

It is therefore thanks to Elspeth's high principles that I am able to claim that I know my limitations. It is my hope that some of the heat that has been generated might cool with knowledge that in respect of the email, as with all aspects of the matter, I did not attempt to navigate this territory alone and sought input from someone who is undoubtedly an experienced and well respected woman at our Bar.

I had the conduct of the drafting, and I do not shy away from full responsibility for the email. There are other drafting problems for which I am responsible, that have contributed to the problem.

I will note them briefly:

- The part under '*Is there a problem*' I intended to relate really to the issue of sexual harassment but the drafting was too loose.
- I gave insufficient attention to the issue of discrimination, which remains a pervasive problem in our society.
- My focus was on the Bar in the sense of us together as members of the Bar and I gave insufficient attention to the position of non-legal staff or the interaction between the Bar and solicitors.
- My focus was, in hindsight perhaps a little too much, on making sure we did nothing to stem the increasing flow of women joining our Bar by creating the impression that they are likely to experience sexual harassment at our Bar, or leaving the fact of the introduction of Procedure open to being used to create that impression.

On the last point, I should say because it is of central importance, that Elspeth and I both remain of the view that it would not be accurate to create an impression among women lawyers interested in joining the Bar that they are likely to experience sexual harassment at our Bar.

Broader Problem

My email is in any event only part of the problem. A broader problem is that I did not know enough about these issues.

In part, that arises from the culture that exists that stops women from talking about these issues. We are still in a situation where people are unwilling or unable to discuss sexual harassment, and even if it is discussed are unwilling to name those involved. This is a significant problem and the sooner we face up to that and position ourselves to discuss it openly, the better placed we will be to fix the situation.

One of the purposes of the Procedure is to end this problem and also to ensure that we have an appropriate means of getting information of this type to the attention of Bar Council so that the extent of the problem can be appreciated.

The grievance policy is well conceived and well drafted, and I am confident that it will serve this purpose in the future and that it is an important step in improving The WA Bar.

In my view, the more who take a genuine and constructive interest in the affairs of our Bar the better. I thank the members who did so by initiating communication with me in response to the introduction of the Procedure, whether on the issue of my covering email or on other issues and whether publically or privately. I thank members, some of whom are Judicial or Honorary members, who spoke to me at my request about these issues. In particular, I thank those who initiated contact and spoke with me on a confidential basis.

I have replied or will separately reply to each piece of correspondence that has been sent to me on this matter.

While my term as President will shortly come to an end, I commend to all members the suggestion made both by Julie Taylor SC and Amanda Forrester SC that there be an ongoing, constructive and open conversation about these matters, and I look forward to that occurring.

Regards

A handwritten signature in black ink, appearing to be 'Stephen Davies', with a stylized, flowing script.

Stephen Davies SC
President