



**Is there any way to stop unwelcome sexual comments from my senior counsel without sounding like a prude/causing offence/committing assault?**

Yes. We hear you. We wish this were still not a thing. Unwelcome comments of a sexual nature from a superior are not funny. They are not light banter. They are an exercise in power and impunity in which you have no share. If you are, say, female and the comments are about specific women or women generally, you may feel diminished and alienated as a result. You may also experience a sudden and debilitating epiphany that despite years of education, despite having excelled in so many ways as a multi-faceted, complex and intelligent human being you, or people like you, are in the eyes of a respected superior, no more than an object. Your response will determine whether you are complicit in this objectification or whether you resist that and invite possible retaliation. It puts you in the awful position of having to navigate carefully each word, each step, each action to avoid potentially career limiting consequences. And, always, the question will be, 'Did I invite these comments?' We assure you, dear querent, that nothing you did, not even the way you dressed, can be said to have 'provoked' the uncivil, unprofessional or even criminal behaviour of another person. Those victim blaming attitudes belong to a different era and, we can only hope in the case of the NSW District Court, a different month.

Because you are a barrister, we know you know about Bar Rule 123 and avenues of informal and formal complaint to chambers and the Bar Association. We say nothing more about these.

What you are looking for is guidance in the moment.

For the first time, we can offer none.

You see, when it happened to us (surprise! #ustoo) we played for time, we pretended it did not affect us, we laughed nervously, we avoided eye contact. We were complicit in our own objectification because it seemed like the safest option in a world which had shown us that there are consequences for those who resist such conduct and none for those who commit it. We sought self-preservation but found, instead, self-abasement. And that was not the only time.

So in answer to your question, *is there any way to stop this?*, we do not offer up simplistic homilies requiring you to assert yourself in the moment and, therefore, shoulder the entire burden of stopping this behaviour yourself. In truth, there must also be *consequences* both for the unwelcome conduct and for any retaliatory behaviour against those who refuse to be complicit. *Consequences* may actually prevent the conduct in the first place and, if not, it emboldens others to speak out against it. In the meantime, kudos to you if you can brush off your silk's words with a confident, 'Look, those comments are not ok. Please stop them and let's get back to work'. You have more self-possession than we ever had. Go you!

**I was in an interlocutory hearing the other day when my opponent, a fairly senior member of the bar, made repeated comments to the judge to the effect that I was either incompetent or that I was misleading the court. After the judge suggested that counsel take the matter outside to 'work it out', my opponent became visibly angry at me in front of our respective solicitors and repeated his vague allegations about me. In the end, we agreed orders, but the whole thing was so soul destroying that I had to take five minutes in the ladies' bathroom to collect myself before I could go back into Court. I cannot, for the life of me, understand what I had done wrong. How can I stop this from happening again?**

First up, were you incompetent and misleading the court? We assume not. We say this for two reasons. First, no rational advocate highlights the general incompetence of opposing counsel in front of instructors. Why risk a better opponent at final hearing? Secondly, such a serious allegation as misleading the court should be made with appropriate care and with sufficient particulars so as to leave no one in any doubt as to the substance and basis of the conduct. That is, you should not be left guessing as to what you had done wrong.

Barristers are duty bound to use court appearances and process responsibly. Any allegations they make about any person must be reasonably justified by the material then available to the barrister and not made principally in order to harass or embarrass a person: Bar Rules 61, 64 and 65.

Interestingly, there is no equivalent Bar Rule to Rule 32 of the *Solicitors' Conduct Rules 2015* which precludes solicitors from making allegations of unsatisfactory professional conduct or misconduct against a fellow practitioner without a proper basis. However, we hardly think its omission from the Bar Rules is a licence for counsel to do so.

If the behaviour was unreasonable and could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence then it is no more than workplace bullying. It should not happen: Bar Rule 123.

If it happens again in Court, stand up and state firmly that opposing counsel ought to desist from making such serious allegations without a proper basis. If it happens outside the court remember the words of Sun Tzu: 'To secure ourselves against defeat lies in our own hands, but the opportunity of defeating the enemy is provided by the enemy himself'. If you can, use the rant as an opportunity to understand where your opponent perceives the weaknesses and strengths of your respective cases to be. Ask questions. Heck, take notes. Give nothing away. Then defeat him.

**BN**