

## SEXUAL ABUSE

# Effecting change in a difficult practice area

How **Gluckstein's** Sexual Abuse and Assault team employs sharp legal minds, empathy, and education to advocate for clients – and change – in one of the most factually, legally, and emotionally challenging areas of law

**WHEN SIMONA JELLINEK** began practising in 1996, nobody focused on sexual assault as a practice area. Lawyers took on cases here and there, which is how Jellinek, coming from a medical malpractice background, fell into it.

“For me, the defining moment was the first client,” Jellinek recalls. “There was a sadness there that I had never seen before.”

The client feared she wouldn't be believed and would be seen as a junkie nobody cared about, which was how she'd been viewed her whole life, and “that got to me,” Jellinek says. She adds that shortly thereafter she was involved in the Maple Leaf Gardens litigation and “after that, there was no coming back – I knew this was where I'd spend my life helping.”

Now one of Canada's most experienced lawyers in this field, Jellinek is senior counsel at Gluckstein Lawyers where she leads the Sexual Abuse and Assault team. Her decades of work in the area have highlighted the importance of working with the right people with the right knowledge and left her with one simple truth: these can't be run as car accident cases – they're a totally different beast.

“Sometimes it's the Wild West, and we've battled prejudices, close-mindedness, and even, frankly, evilness,” Jellinek says. “Survivors come to us in trust and faith, by and large without a voice. When they reach out, we're more than willing to help in any way we can.”

The incredibly difficult subject matter takes an extensive emotional toll on stakeholders, with the clients that come to Jellinek's team some of society's most vulnerable. As they are often struggling with complex mental health and psychological issues, from a legal standpoint it's challenging to isolate the impact of the assault from pre-existing conditions and subsequent events, presenting difficulties in establishing causation.

Assessing negligence in historical cases, where standards from decades ago must be applied, further complicates legal analysis. Conflicting decisions or reinterpretations of rulings, along with fluctuating concepts like vicarious liability and non-delegable duties, also make these cases more legally nuanced than typical personal injury matters. Dealing with people who don't understand the area, given not only the sensitive nature of the subject matter but also the intricacies of the factual and legal constructs, makes it that much harder. Education and advocacy are core to Jellinek's team's approach.

Staying current with case law while engaging in extensive research – particularly in increasingly applicable areas like psychological profiles, brain imaging techniques, and PTSD – to expand legal arguments, collaborating with other lawyers to share knowledge and improve outcomes for survivors, participating in initiatives through sexual assault centres

and Sixties Scoop organizations, and fiercely advocating for legislative change are some of the ways the Gluckstein group strives to make change not only for the clients sitting in front of them but sexual violence survivors across the country.

“My biggest achievement was being instrumental in getting rid of the limitation period in 2016,” Jellinek recalls, adding that she also serves on the Ontario Trial Lawyers Association Board of Directors and that the firm was one of the founding members of the Sexual Assault Lawyers Association (SALA) in Canada.

“As a firm, it's important to do this kind of work to push things forward. We want to be the best at what we do and give back.”

In an area that calls for a blend of expertise, empathy, and grit few practitioners have, an inexperienced lawyer can adversely affect somebody's case – and their lives – horribly. Jellinek cautions lawyers to enter this area for the right reasons: to provide people impacted with the option to find resolution and move forward. Factually, legally, and emotionally difficult, it's not an area in which to dabble.

“Being trauma-informed goes a long way in not only helping you deal with cases but helping clients and even opposing counsel as well,” Jellinek says. “If you decide to take this route, make it your mainstay and become an expert. It's a difficult one that you take home with you – it's not for the weak.” 