

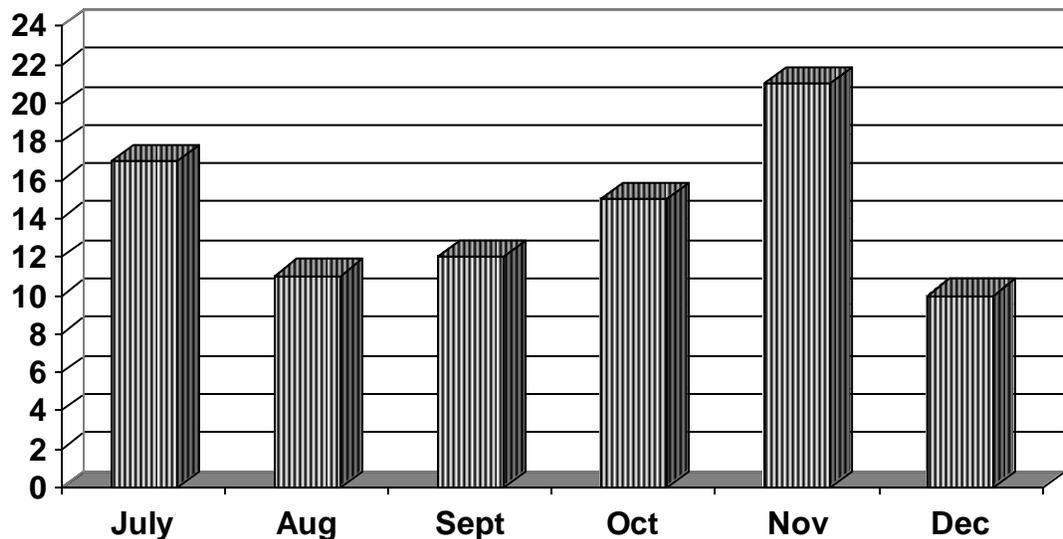
**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF UPPER CANADA**

**For the period from July 1, 2009 to December 31, 2009**

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## OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this reporting period (July 1 to December 31, 2009), 87 individuals contacted the DHC Program with a new matter.<sup>1</sup>
2. The volume of new contacts was distributed as follows:



3. Of the 87 individuals who contacted the DHC, 55 (63%) used the telephone to make their initial contact, 29 (33%) used email, 1 used a fax communication and 2 used regular mail.
4. Of the 87 new contacts with the Program, 34 (39%) were made by men and 53 (61%) were made by women.

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<sup>1</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

5. During this reporting period, the DHC provided services to four (4) individuals in French. All other persons who contacted the DHC received Program services in English.

## **DISCRIMINATION AND HARASSMENT COMPLAINTS AGAINST LAWYERS**

6. Of the 87 new contacts with the Program, 33 individuals made human rights based discrimination or harassment complaints against lawyers. Twelve (12) of these complaints were made by members of the public and 21 were made by members of the legal profession (either lawyers, law students, or paralegals).

### **Complaints against Lawyers from within the Legal Profession**

7. During this reporting period, there were 21 complaints of discrimination or harassment against lawyers from members of the legal profession. Of these
  - a. two (2) were made by paralegals, two (2) were made by law students, and the remaining 17 complaints were made by lawyers; and
  - b. fifteen (15) were made by women (including two complaints from female paralegals); six (6) were made by men (including two complaints by male articling students).
8. Fifteen (15) of the 21 complaints (71%) from within the legal profession arose in the context of the complainant's employment or a job interview.

9. Three (3) complaints from within the legal profession were made against opposing counsel in the context of ongoing litigation.
10. Two complaints related to services provided by a lawyers' organization and one complaint was a client complaint made by a lawyer who had retained another lawyer to represent him.
11. The following grounds of discrimination were raised in the complaints from members of the legal profession: sex, disability, race, religion, age, family status, marital status, ethnic origin, and place of origin.
12. Seven (7) complaints were based (in whole or in part) on sex:
  - a. Three women complained about sexist treatment and/or sexual harassment by male opposing counsel. Specifically, one complainant was a criminal defence lawyer who complained about sexist conduct by a Crown Attorney. One complainant was a paralegal who complained about sexual harassment by a male opposing counsel. The third complainant was a female lawyer who was representing herself in a family law matter and complained about sexist comments by the male opposing counsel in her case, including crude sexual remarks.
  - b. Two female lawyers complained about pregnancy-related discrimination in their employment.
  - c. One female lawyer complained that her employer was refusing to accommodate pregnancy-related health concerns.

- d. One female lawyer complained about systemic gender-based discrimination in her employment.
13. Seven (7) complaints were based (in whole or in part) on disability:
- a. Three individuals complained that their employer was failing to accommodate their disability. Specifically, a male lawyer who suffers from depression and anxiety reported that his firm was refusing to accommodate his illness. A female lawyer who suffers from infertility complained that her employer was unwilling to accommodate certain medical restrictions imposed by her treating physicians. Finally, a disabled female lawyer reported that she was required to resign from her job because of her firm's unwillingness to accommodate her.
  - b. Two individuals complained about employment-related discrimination based on disability. Specifically, a female lawyer reported that her employer was refusing to permit her to return to work after a prolonged medical leave, despite documentation from her treating physician attesting to her fitness to return to work. A male lawyer complained that his employment contract was not renewed because of his employer's negative stereotypical assumptions about his professional abilities based on his disability.
  - c. A male lawyer complained about systemic discrimination against disabled lawyers, in respect of a service provided to lawyers by a lawyers' organization.
  - d. A disabled lawyer retained another lawyer to represent him in a legal matter. The complainant felt that the lawyer whom he hired

treated him in a discriminatory manner based on his disability. The lawyer resigned from the file and the complainant felt that this, too, was because of the lawyer's unwillingness to accommodate his disability.

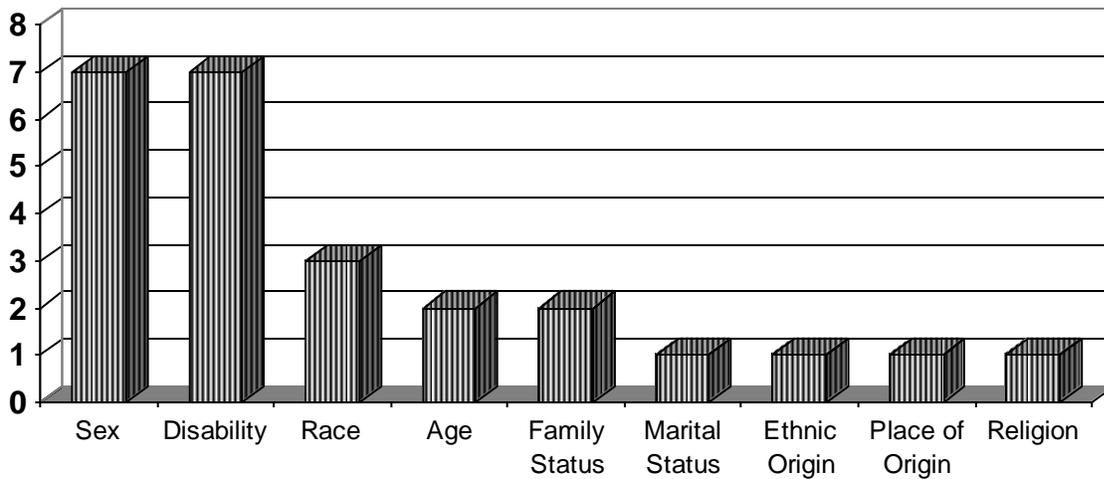
14. Three (3) complaints were based (in whole or in part) on race:
  - a. A Black female paralegal complained about derogatory racialized remarks made by her coworkers about her appearance.
  - b. A woman lawyer of colour complained about systemic racial discrimination in her workplace, including routine under-valuation of her contribution and her employer's tendency to give credit to other employees for work that she had performed.
  - c. A male articling student of colour complained about racial harassment by his principal at his firm.
  
15. Two complaints were based in part on age. A male lawyer and a female lawyer each complained about systemic age discrimination in respect of services provided to them by a lawyers' organization.
  
16. Two complaints were based in part on family status. A female lawyer complained that her employer was assigning a disproportionately higher workload to her than to others in her practice group because she had no children (and no spouse). Another female lawyer reported that she was the sole caregiver for her elderly ailing parents and that her employer was refusing to accommodate her parental-care needs.

17. One complaint was based in part on marital status. A single female lawyer complained that her employer was assigning a disproportionately higher workload to her than to others in her practice group because she had no spouse (and no children).
18. One complaint was based on ethnic origin. A male law student complained that he was asked inappropriate questions about his ethnicity during a job interview by a law firm. He was not hired for the position and felt that his ethnicity might have been a factor in the employer's decision.
19. One complaint was based on religion. A Muslim lawyer complained that her employer was unreasonably refusing to accommodate her request for time off work in order to observe religious holy days.
20. One complaint was based on place of origin. A female lawyer reported that she was denied a service by a lawyers' organization based on her place of origin.
21. In summary, the number of complaints<sup>2</sup> in which each of the following prohibited grounds of discrimination was raised are:
  - a. sex 7 (3 sexual harassment and 3 pregnancy-related)
  - b. disability 7

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<sup>2</sup> The total exceeds 21 because some complaints involved multiple grounds of discrimination.

- c. race 3
- d. age 2
- e. family status 2



- f. marital status 1
- g. ethnic origin 1
- h. place of origin 1
- i. religion 1

Grounds Raised in Complaints by Members of the Profession

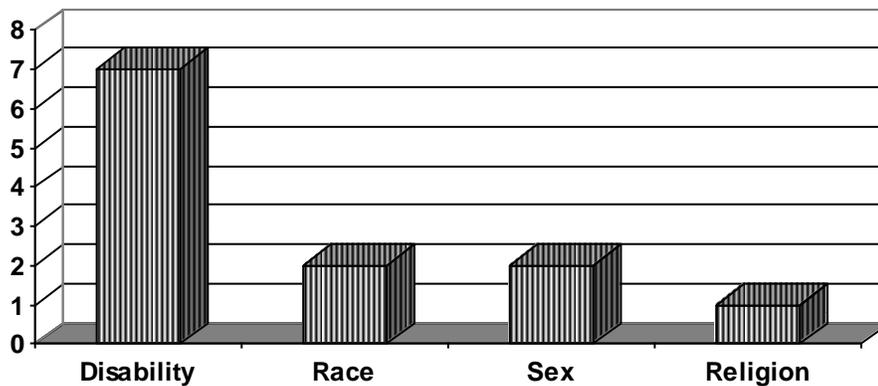
**Complaints against Lawyers from Members of the Public**

22. During this reporting period, 12 members of the public made complaints of human rights based discrimination or harassment against lawyers.

23. Nine (9) of the 12 public complaints were made by women and 3 were made by men.
24. Of the 12 public complaints:
  - a. 5 arose in the context of the complainant's employment;
  - b. 4 involved litigants complaining about the conduct of opposing counsel; and
  - c. 3 involved clients complaining about the conduct of their own lawyer or of a lawyer that they attempted to retain.
25. The following grounds of discrimination were raised in the public complaints: disability, sex, religion, and race.
26. Seven (7) of the public complaints were based on disability as a ground of discrimination:
  - a. Three disabled litigants complained about the conduct of opposing counsel in their cases. Two women reported that the opposing lawyer was exploiting their disability and refusing to accommodate them in the litigation process. A male litigant reported that the opposing counsel derided and mocked his disability and humiliated him both in court and outside the courtroom.
  - b. Two disabled women reported that their employers were refusing to accommodate their disabilities. One worked as a legal assistant and the other worked as a law clerk.

- c. Two disabled women complained about lawyers who were refusing to represent them. The women felt that their disabilities were a factor in the lawyers' decisions.
27. Two (2) of the public complaints were based on race:
- a. An Aboriginal male litigant complained that the opposing counsel in his case treated him in a rude and disrespectful manner due to racial bias.
  - b. An Aboriginal man complained about racial discrimination by his own lawyer.
28. Two (2) of the public complaints were based on sex:
- a. A woman complained about sexual harassment by her own male lawyer; and
  - b. A law clerk reported that her employment was terminated after she announced that she would be taking a maternity leave.
29. One complaint was based on religion. A Muslim law clerk reported that her employer was refusing to accommodate her religious observance.
30. In summary, the number of complaints in which each of the following grounds of discrimination was raised are as follows:
- a. disability                    7
  - b. race                            2
  - c. sex                              2
  - d. religion                        1

Grounds raised in Public Complaints



## COMPLAINTS AGAINST PARALEGALS

31. During this reporting period, there were three (3) discrimination and harassment complaints against paralegals.
32. Two of the complaints against paralegals were made by other paralegals, one of whom was a student.
33. One of the complaints against a paralegal was made by a member of the public.
34. All of the complaints against paralegals were made by women.
35. The complaints against paralegals arose in a variety of contexts. One involved a litigant complaining about the opposing paralegal in her case, one involved a student complaining about her instructor, and one was a paralegal complaining about the conduct of another paralegal with whom she had professional dealings.

36. The following grounds were raised in the complaints against paralegals: sex, race, and disability:
- a. A female litigant complained about offensive sexist remarks made by the male paralegal on the opposing side of her case.
  - b. A female paralegal student reported that her paralegal instructor was harassing her based on her disability.
  - c. A female paralegal complained about racial harassment by another paralegal with whom she had professional dealings.

## **SERVICES PROVIDED TO COMPLAINANTS**

37. In a number of cases, complainants who contacted the DHC program were given advice and strategic tips on how to handle their situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).
38. Complainants who contacted the DHC were also advised of various avenues of redress open to them, including (but not limited to),
- a. complaining to the respondent's supervisor or managing partner;
  - b. filing an internal complaint within their workplace;
  - c. filing an application with the Ontario Human Rights Tribunal;
  - d. filing a complaint of professional misconduct with the Law Society; and
  - e. retaining a lawyer for advice regarding possible legal actions.
39. Complainants were also provided with information about each of these options, including,

- a. what (if any) costs might be involved in pursuing an option;
  - b. whether legal representation is required in order to pursue an option;
  - c. how to file a complaint or make a report (eg. whether it can be done electronically, whether particular forms are required, etc.);
  - d. the processes involved in each option (eg. investigation, conciliation, hearing, etc.);
  - e. what remedies might be available in different *fora* (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
  - f. the existence of time limits for each avenue of redress.
40. Complainants were told that the options available to them are not mutually exclusive.
41. Complainants were given information about who to contact in the event that they decided to pursue any of their options.
42. Some complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights commission, or other organizations.
43. In addition to being advised about the above-noted options, where appropriate, complainants were offered the intervention or mediation services of the DHC Program. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a

confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in reaching a mutually satisfactory resolution of the complaint.

44. The DHC mediation services sometimes involve formal mediation sessions, including a meeting of the parties (with or without their respective counsel) and the execution of a mediation agreement prior to the meeting. In other instances, the DHC assists parties in attempting to reach a resolution to their dispute through informal intervention (eg. by shuttle diplomacy, telephone discussions and/or email exchanges with the parties, etc.).
45. During this reporting period, the DHC's mediation/intervention services were offered in a number of different matters. In one case, the respondent refused to participate, preferring instead to conduct an internal investigation of the complainant's allegations. In each other instance, where mediation/intervention was provided upon the mutual consent of the parties, a successful resolution was reached.

## **SUMMARY OF GENERAL INQUIRIES**

46. Of the 87 new contacts with the DHC during this reporting period, 13 involved general inquiries relating to issues within the Program's mandate. These inquiries included:
  - a. questions about the scope of the DHC Program's mandate;
  - b. questions about the services offered by the DHC;

- c. requests from the public for promotional materials about the DHC Program;
- d. requests for education seminars or training workshops on anti-harassment in legal workplaces; and
- e. inquiries about the data collected by the DHC.

## **MATTERS OUTSIDE THE DHC MANDATE**

47. During this reporting period, the DHC received a number of calls and emails relating to matters outside the Program's mandate. These contacts included complaints about the conduct of judges, complaints about lawyers outside Ontario, complaints about workplace harassment or discrimination that did not involve lawyers or paralegals, and complaints against lawyers that did not involve discrimination or harassment issues (eg. sharp practice, allegations of breach of confidentiality, client billing disputes, etc.).
48. There were also several complaints about lawyers' lack of civility, bullying, and intimidation tactics. These complaints came from both members of the public (either clients complaining about their own lawyer's conduct or litigants complaining about the conduct of opposing counsel) and members of the legal profession (typically lawyers complaining about the conduct of opposing counsel on a file). Most of the complainants characterized the respondents' conduct as "harassing", but no human rights grounds were alleged/raised in the complaints.

49. In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
50. All of these individuals were referred to other agencies, including the Human Rights Legal Support Centre, the Law Society's complaints department and the Law Society's Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to each person.
51. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

## **PROMOTIONAL ACTIVITIES**

52. The Law Society maintains a bilingual website for the DHC Program.
53. Periodic advertisements are placed (in English and French) in the Ontario Reports to promote the Program.
54. During this reporting period, the DHC made initial contact with representatives of a number of professional associations that have a high number of paralegal members. These contacts were made in the hope of increasing the visibility of the DHC program among paralegals.

55. French, English, Chinese and Braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.
56. Contact information about the Program is provided to multiple community organizations across the province, so that referrals to the Program can be made.

### **EDUCATIONAL ACTIVITIES**

57. Throughout this reporting period, the DHC worked closely with the Director of the Equity Initiatives Department at the Law Society to develop and deliver anti-discrimination and anti-harassment training workshops in law firms across the province.