

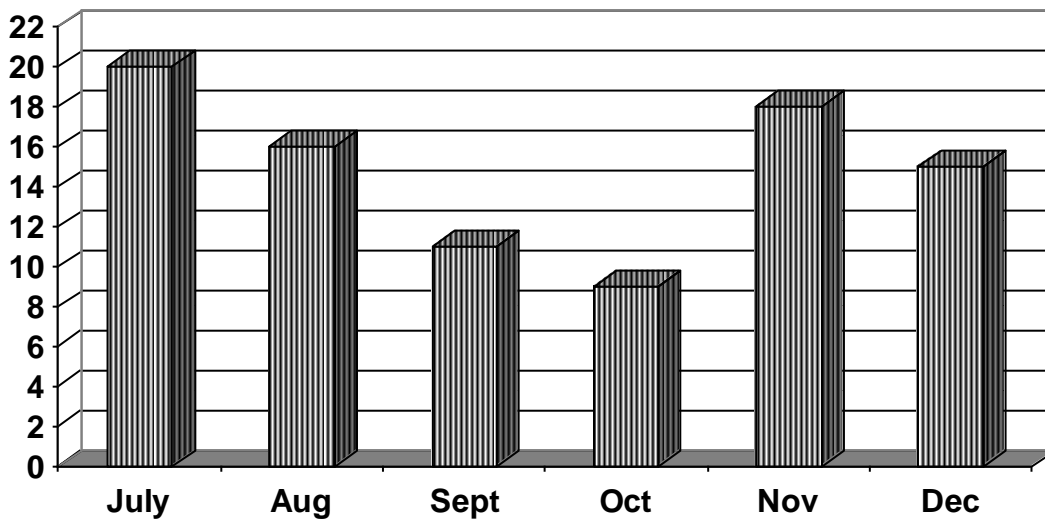
**REPORT OF THE ACTIVITIES OF
THE DISCRIMINATION AND HARASSMENT COUNSEL
FOR THE LAW SOCIETY OF UPPER CANADA**

For the period from July 1, 2010 to December 31, 2010

**Prepared By Cynthia Petersen
Discrimination and Harassment Counsel**

A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this six month reporting period, 89 individuals contacted the DHC Program with a new matter.¹
2. There was an average of 14.8 new contacts per month, which is consistent with the average over the past 8 years. The volume of new contacts was distributed as follows:



3. Of the 89 individuals who contacted the DHC, 64 (72%) used the telephone to make their initial contact and 25 (28%) used email.
4. During this reporting period, one individual was provided services in French. The remaining 88 new contacts with the Program were provided services in English; one required translation from Cantonese.

¹ 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.

B. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

5. Of the 89 new contacts with the Program, 33 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario. This is consistent with the average volume of complaints over the past 8 years.
6. One complaint was made against a paralegal. The remaining 32 complaints were made against lawyers.
7. The complaint against a paralegal was made by a paralegal member of the Law Society.
8. Of the 32 complaints against lawyers, 16 (50%) were made by members of the public and 16 (50%) were made by members of the Law Society. Of the 16 complaints by members of the legal profession, none was made by a paralegal.

C. COMPLAINTS AGAINST LAWYERS FROM MEMBERS OF THE BAR

9. In this reporting period, there were 16 complaints against lawyers by members of the Law Society. Fourteen (14) of these complaints were made by lawyers and 2 were made by law students.
10. Of the 16 complaints by members of the legal profession, 11 (69%) were made by women and 5 were made by men.
11. Of the 14 complaints by lawyers, 11 (79%) were made by women and 3 were made by men. This is consistent with the ratio of female/male complainants over the past 8 years.
12. Of the two (2) law student complaints, one was made by a woman and one was made by a man.

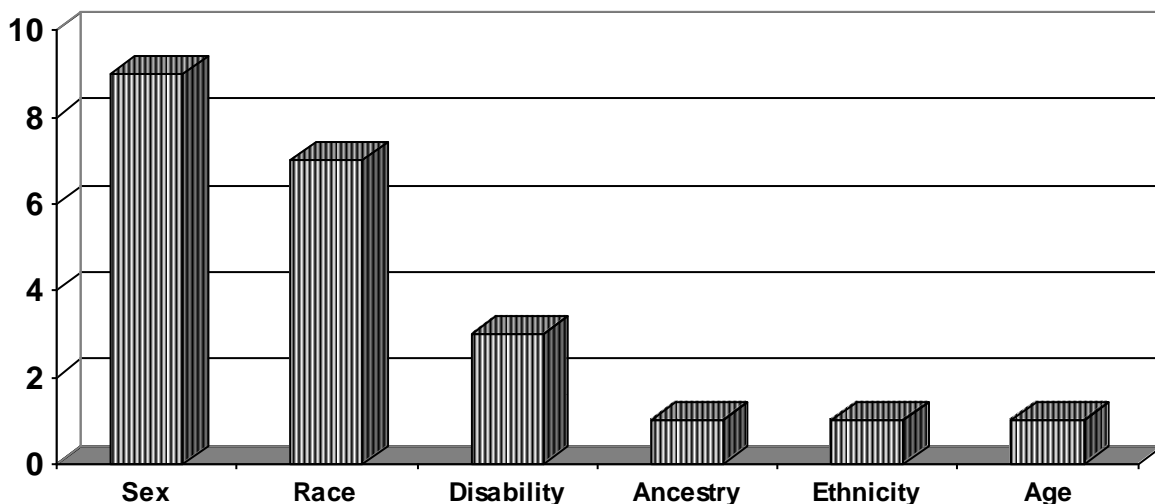
13. Eleven (11) of the 14 complaints by lawyers (79%) arose in the context of the complainant's employment.
14. The remaining complaints by lawyers arose in a variety of different contexts. One was against a lawyer who was working as co-counsel with the complainant, one was against an opposing counsel in litigation, and one was against a lawyer who was providing a public service to the complainant.
15. Both of the law student complaints arose in the context of the complainant's employment or a job interview.
16. There were 9 complaints based (in whole or in part) on sex. Of these,
 - four (4) involved allegations of sexual harassment, including reports of inappropriate remarks (e.g. comments about women's breasts), unwelcome sexual overtures, and an incident of sexual assault (i.e., non consensual touching) – three of these complaints arose in the complainant's employment context (i.e., harassment by their employer or a colleague) and one arose between co-counsel (who worked at different firms); and
 - three (3) included pregnancy as a ground of discrimination. One involved an employer's failure to accommodate a lawyer with a high-risk pregnancy and the other two involved allegations of discrimination in the workplace based on pregnancy and maternity leave.
17. There was one law student complaint of discrimination based on sex in the workplace. It did not involve either sexual harassment or pregnancy related issues.
18. All of the sex-based complaints were made by female complainants. All of the respondents in the sexual harassment complaints were male.

19. There were seven (7) complaints based (in whole or in part) on race, including one of the law student complaints.
- Two of these race-based complaints were made by Black women, one was made by a First Nations woman, and one was made by an Asian women. All reported racial discrimination and harassment. Two also reported sexual harassment and one also reported discrimination based on a perceived disability. Two of these complaints arose in the context of the complainants' employment, one arose in the context of a co-counsel relationship and one arose in the context of obtaining a public service from another lawyer.
 - Two men complained about discrimination based on race and ethnicity. Both self-identified as being from a visible racialized minority, but neither specified their race. One was a lawyer who complained about racial discrimination and harassment by a number of opposing counsel. The other was a law student who complained about racial discrimination by prospective employers in the articling job application process.
20. There were three (3) complaints based (in whole or in part) on disability (or perceived disability). Two of the complainants were female and one was male. Two of the complaints involved allegations of a lack of appropriate accommodation in the workplace and one involved allegations of discrimination in the delivery of a public service by a lawyer. Both of the accommodation cases involved individuals who self-identified as having psychiatric disabilities.
21. There were also complaints made by lawyers based (in whole or in part) on ancestry, ethnic origin, and age. The age discrimination case involved an issue of mandatory retirement.

22. In summary, the number of complaints² by lawyers and law students in which each of the following prohibited grounds of discrimination was raised are:

- sex 9 (4 sexual harassment; 3 pregnancy)
- race 7
- disability 3
- ethnic origin 1
- ancestry 1
- age 1

Grounds Raised in Complaints by Members of the Bar



D. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

23. During this reporting period, there were 16 complaints against lawyers made by members of the public.

² The total number exceeds 16 because some complaints involved multiple grounds of discrimination.

24. Twelve (12) of the public complaints (75%) were made by women and 4 (25%) were made by men.
25. Of the 16 public complaints:
- nine (9) involved clients complaining about their own lawyer (or a lawyer that they attempted to retain);
 - six (6) involved employees complaining about a lawyer in their workplace; and
 - one (1) involved a litigant who was complaining about the conduct of opposing counsel.
26. There were seven (7) complaints based (in whole or in part) on sex. Of these, five (5) involved allegations of sexual harassment. Three of the sexual harassment cases arose in the context of the complainant's employment (i.e., a lawyer sexually harassing an employee). Two involved client complaints about their own lawyers. All of the sexual harassment complainants were female and all of the respondents were male. The allegations included inappropriate leering, sexual comments, display of pornography, unwelcome sexual overtures and sexual assault (including a rape). Both of the client complaints involved allegations of non-consensual sexual touching/assault.
27. Only one of the sex-based complaints was made by a man. He reported that a female lawyer refused to represent him in a family law matter because he is male.
28. There were three (3) public complaints based (in whole or in part) on race. One was a client complaint about denial of services; the complainant was male and did not identify his race. He alleged that a lawyer was refusing to represent him because of his ethnicity and race. The other two race-based complaints arose in the context of the complainants' employment. One was made by an Asian woman who reported racial harassment by lawyers in her workplace. The other was made

by an Aboriginal woman who complained about racial harassment and discrimination based on race and ancestry by a lawyer in her workplace.

29. There were three (3) public complaints based on disability. Two involved clients who felt demeaned by their lawyers' patronizing conduct and one involved an employee of a law firm whose medical confidentiality was breached by her boss (a lawyer).

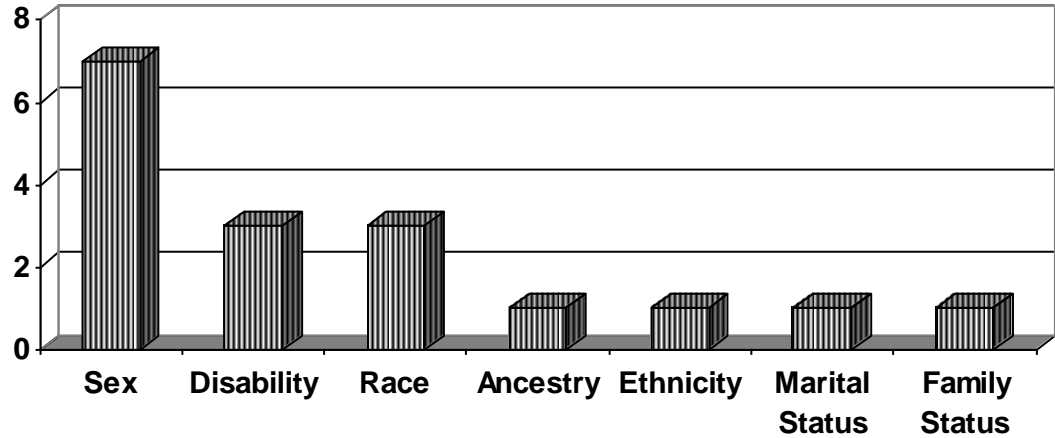
30. There were also public complaints based on marital status and family status. Both involved allegations that lawyers were refusing, on discriminatory grounds, to provide services to the complainants who were seeking to retain them as counsel.

31. In summary, the number of public complaints³ in which each of the following grounds of discrimination was raised are as follows:

- sex 7 (5 sexual harassment)
- disability 3
- race 3
- ethnic origin 1
- ancestry 1
- marital status 1
- family status 1

Grounds Raised in Public Complaints

³ The total exceeds 16 because some complaints were based on multiple grounds of discrimination.



E. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

32. In this reporting period, there were no complaints against lawyers or law students by paralegals.

F. COMPLAINTS AGAINST PARALEGALS

33. In this reporting period, the DHC received only one complaint of discrimination and harassment against a paralegal.⁴
34. The complaint was made by a female paralegal. She alleged gender-based bullying and sexist harassment by male paralegals in her workplace.

G. SERVICES PROVIDED TO COMPLAINANTS

35. The DHC provides a variety of services to lawyers and law students who have made discrimination or harassment complaints, such as the victims of sexual harassment and/or sexual assault, lawyers who are experiencing workplace difficulties relating to a maternity leave, or lawyers with disabilities who have confronted discriminatory barriers to employment or challenges in obtaining

⁴ There was a second complaint about a paralegal, but the complainant simply left a voicemail message and did not provide contact information so that she could be reached. She did not follow up, so no specific information was obtained about the nature of her complaint. It may or may not have been within the mandate of the DHC program.

appropriate workplace accommodation. The DHC provides these individuals with referrals to other agencies and resources, informal mentoring, safe counsel, and general (non-legal) advice – some on an ongoing basis.

36. Complainants who contacted the DHC with new matters during this reporting period were advised of various avenues of redress open to them, including:

- speaking to their union representative (if they are unionized);
- filing an internal complaint within their workplace;
- making a complaint to the law firm that employs the respondent lawyer;
- filing an Application with the Human Rights Tribunal of Ontario;
- filing a complaint with the Law Society;
- where appropriate, contacting the police; and
- contacting a lawyer for advice regarding possible legal claims.

37. New complainants were also provided with information about each of these options, including:

- what (if any) costs might be involved in pursuing an option;
- whether legal representation is required in order to pursue an option;
- referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
- how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc.)
- the processes involved in each option (eg. investigation, conciliation, mediation, hearing, etc.)
- what types of remedies might be available in different *fora* (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, public interest remedies); and
- the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).

38. Complainants were told that the options available to them are not mutually exclusive.
39. In some cases, upon request, strategic tips and coaching were provided to complainants about how to handle a situation without resort to a formal complaints process (e.g. confronting the offender, documenting incidents, speaking to a mentor).
40. Some complainants were referred to other agencies/organizations (such as the Lawyer's Assistance Plan and the Human Rights Legal Support Centre) or were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

H. MEDIATION / CONCILIATION

41. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation or conciliation/intervention services of the DHC Program.
42. Whenever formal mediation is offered, the nature and purpose of mediation is 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 negotiating the terms of a mutually satisfactory resolution of the complaint. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into discussions with the DHC.
43. Where informal conciliation/intervention services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the

complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as a go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent.

44. Many complainants have declined the offer of the DHC's mediation and conciliation service, notwithstanding that the service is free, confidential, and in the case of formal mediation, is subject to a mutual "without prejudice" undertaking by both parties. The reasons why complainants have declined mediation are varied and include: complainants desiring to have a fact-finding investigation, complainants believing that the respondent will not participate in good faith, and complainants wanting to create a formal record of the respondent's misconduct through an adjudicative process.
45. During this reporting period, three complainants requested formal mediation.⁵ However, two of the respondents refused to participate.⁶ Consequently, only one formal mediation session was conducted (by one of the Alternate DHC). The mediation involved an in-house counsel who initially made a sexual harassment complaint against her employer (including personal allegations against another lawyer) and later made a sex discrimination/reprisal complaint when her employment was subsequently terminated. The mediation was successful and the settlement agreement included both personal and public interest remedies.

⁵ Some of the complaints arose in a prior reporting period, but the complainants requested mediation during this reporting period.

⁶ In both cases, the complainants were lawyers alleging racial discrimination and harassment in their workplaces. The respondent lawyers/employers indicated that they were not willing to participate in mediation with the DHC. Both cases involved in-house counsel.

46. In addition to the mediation session described above, a number of informal interventions were conducted by the DHC during this reporting period (at the complainants' request).
- Upon the request of a lawyer with a psychiatric disability, the DHC contacted his employer to discuss his concerns about the law firm's failure to accommodate him appropriately. The parties were subsequently able to develop a mutually-agreeable accommodation plan without the DHC's further involvement.
 - Upon the request of a legal assistant working in a law firm, the DHC contacted her boss (a lawyer in the firm) and spoke to him about an inappropriate sexual joke that he had allegedly made in the workplace. The lawyer acknowledged the impropriety and apologized. The complainant (to the best of my knowledge) was satisfied and did not pursue the matter further.
 - Upon the request of a female associate in a law firm, the DHC contacted a male partner in the firm and spoke to him about her perception that he was engaging in gender-based bullying and intimidation of female employees. She alleged that, among other things, he had used sexist profanities ("bitch") when speaking to her in anger. He denied the allegations. No resolve was achieved. I do not know whether the complainant pursued the matter further.
 - Upon the request of a legal assistant, who had taken time off work due to a disability, I contacted her boss (a lawyer) and discussed her concerns about breaches of confidentiality regarding her medical condition. The respondent lawyer denied some of the allegations made by the complainant, but provided assurances of privacy going forward, which were satisfactory to the complainant. To the best of my knowledge, the matter was thereby resolved.

- Upon the request of a man who had been denied legal representation by a family law lawyer, I contacted the lawyer and asked her to provide an explanation to him for her decision. His perception was that she was refusing to represent him based on his sex, which she denied. She agreed to provide him with an explanation. The complainant never contacted the DHC again, so I do not know whether the matter was resolved to the complainant's satisfaction or whether he pursued it further in some other forum.

I. SUMMARY OF GENERAL INQUIRIES

47. Of the 89 new contacts with the DHC during this reporting period, 20 involved general inquiries. These contacts included:

- inquiries by law firms about how best to handle internal harassment complaints;
- inquiries by lawyers about their personal responsibilities (eg. whether there is an obligation to disclose a disability or pregnancy to an employer);
- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC and confidentiality;
- requests from the public for promotional materials about the DHC Program;
- inquiries about the data collected by the DHC;
- inquiries about the Law Society's complaint process;
- questions from law firms about the availability of model policies on equity issues ; and
- inquiries about the Rules of Professional Conduct and human rights legislation as they apply to lawyers in practice in Ontario.

J. MATTERS OUTSIDE THE DHC MANDATE

48. During this reporting period, the DHC received 36 calls and emails relating to matters outside the Program's mandate.
49. These contacts included complaints about judges and complaints about workplace harassment that did not involve lawyers or paralegals.
50. There were several harassment complaints against lawyers that did not involve any human rights issues or prohibited grounds of discrimination (e.g. bullying, demeaning and intimidating behaviour by co-workers, employers, opposing counsel, etc.) There were also complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (e.g. lack of civility, unethical practices, etc.).
51. In addition, some individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
52. Many of these individuals were referred to other agencies, including (but not limited to) the Law Society's Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to each person.
53. Although there are a number 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.

K. PROMOTIONAL ACTIVITIES

54. The Law Society maintains a bilingual website for the DHC Program.
55. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.

56. 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.
57. The DHC works closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver Discrimination and Harassment Prevention and Violence Prevention workshops to law firms across the province. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.
58. Given the relatively low number of complaints by and about paralegals, I believe that the Law Society should focus more resources on promoting awareness about the DHC Program among paralegals and their clients.