

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

For the period from 1 July 2018 to 31 December 2018

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Discrimination and Harassment Counsel

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A. INTRODUCTION

1. The Discrimination and Harassment Counsel (DHC) serves two important functions:
 - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
 - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that it can better address systemic issues of discrimination and harassment in the legal professions.
2. The DHC services are provided without charge to members of the public as well as to licensees.
3. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in the Ontario *Human Rights Code*, which would also be conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any human rights grounds does not fall within the mandate of the DHC Program.
4. The complaints reported to the DHC arise in a variety of contexts, such as:
 - (c) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
 - (d) participants in litigation – whether they are clients, lawyers or paralegals – who have experienced discrimination or harassment by opposing counsel or opposing paralegals; and
 - (e) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced sexual harassment,

racial harassment, and/or workplace discrimination based on intersecting or distinct grounds of sex, race, ethnic origin, disability.

5. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals seeking service in French.

B. SERVICES PROVIDED BY THE DHC

6. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals with an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who understands discrimination and harassment issues and who is committed to promoting diversity and equity in the legal profession.
7. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and support to complainants to assist them in identifying and evaluating their options to resolve their concerns. The nature of services provided is outlined below.

Counselling, Data Collection and Coaching for Self-Help

8. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
9. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for systemic change.

10. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
11. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with DHC. This may be appropriate in situations where the complainant wishes to remain anonymous but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and then have the DHC educate or remind them of their obligations. Even though DHC cannot make any factual findings, such calls are effective to provide education and guidance to respondent licensees.

Information about Avenues of Recourse

12. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
 - (f) speaking to their union representative (if they are unionized and the complaint relates to their employment);
 - (g) filing an internal complaint within their workplace (if the complaint relates to their employment);
 - (h) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
 - (i) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (j) filing a formal complaint of professional misconduct with the Law Society;
 - (k) contacting the police (where criminal conduct is alleged);
 - (l) applying to the Criminal Injuries Compensation Board;

- (m) filing a complaint about an articling principal with the Law Society's Articling Program; and
 - (n) contacting a lawyer and/or Human Rights Legal Support Centre for legal advice regarding possible civil causes of action.
13. Complainants are 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) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service (actual referrals to lawyers or paralegals are not made by the DHC);
 - (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are required, where to locate the requisite forms, etc.);
 - (e) what processes are involved in pursuing any of the available options (e.g. investigation, conciliation, mediation, adjudication, etc.);
 - (f) what general types of remedies that might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
 - (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

Resolution Services

14. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
15. 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 settlement of the issues raised in the complaint.
16. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice” undertaking by both parties.
17. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant’s concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant’s counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.

18. Some complainants are not interested in the DHC's resolution services because they are seeking an adjudicative process to create a formal record of the respondent's misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC's offer of resolution services. On occasion, however, respondents decline to participate.
19. During this reporting period no mediation/conciliation processes have been pursued although multiple informal resolutions have been used.

Referrals

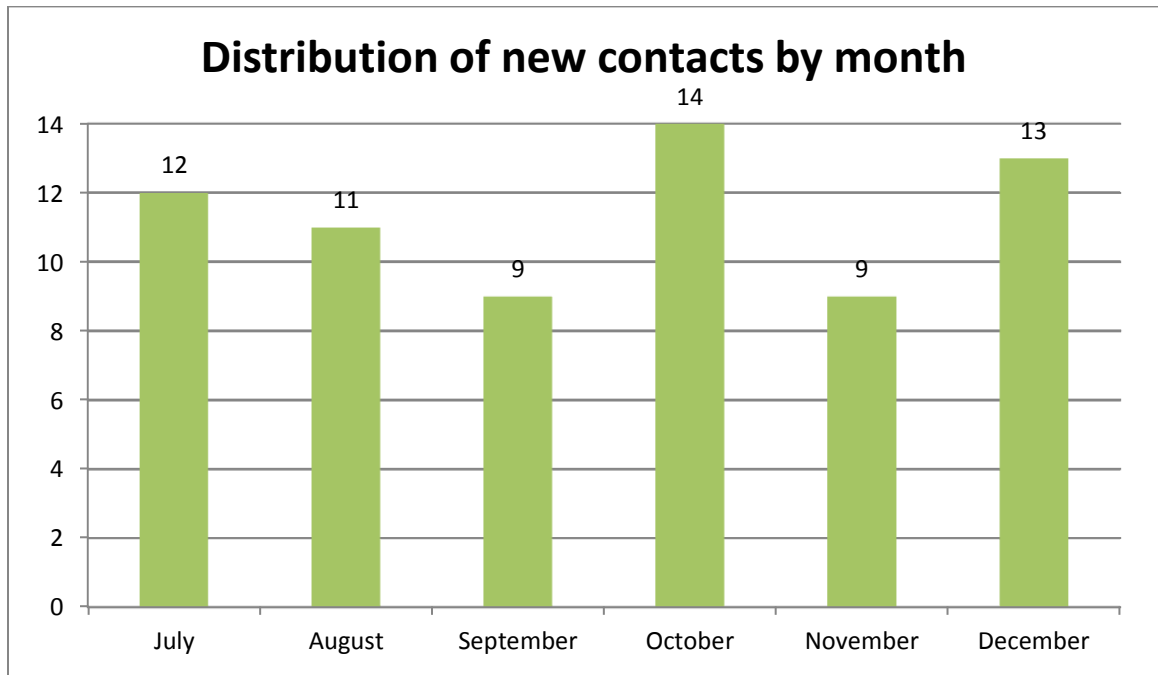
20. The DHC refers some complainants to other agencies or organizations (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.
21. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

22. During this reporting period, 68 individuals contacted the DHC Program with a new matter.¹ This represents an average of 11 new contacts per month. This represents a decrease over the rate of new contacts during the previous year.

¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

The volume of new contacts with the Program was distributed monthly as shown in the following chart.



23. During this reporting period, no individuals sought French-language services.

C. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

24. Of the 68 new contacts with the Program, 25 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. One complaint concerned the conduct of a paralegal. The remaining 24 complaints were about lawyers' conduct. Two of the complaints against lawyers involved complaints from multiple clients.

25. The one complaint about a paralegal was made by a member of the public.

26. Of the 24 complaints about lawyers, 5 were made by members of the public, 1 was made by a person within the justice system, 18 were made by individuals within the legal professions.

Complaints about Lawyers by Members of the Legal Profession

27. The 18 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession:

16 complaints by lawyers; and
2 complaints by articling students.

28. Of the 18 complaints against lawyers made by members of the legal profession:

11 (61%) were made by women, a third of whom (4) voluntarily self-identified as racialized women and/or women with disabilities;

7 (39%) were made by men, all of whom voluntarily identified as having a disability or being Indigenous, racialized or a member of the LGBTQ community.

29. Both of the 2 complaints against lawyers made by articling students (100%) were made by women. The complaints identified combinations of sexual harassment and/or discrimination based on family status.

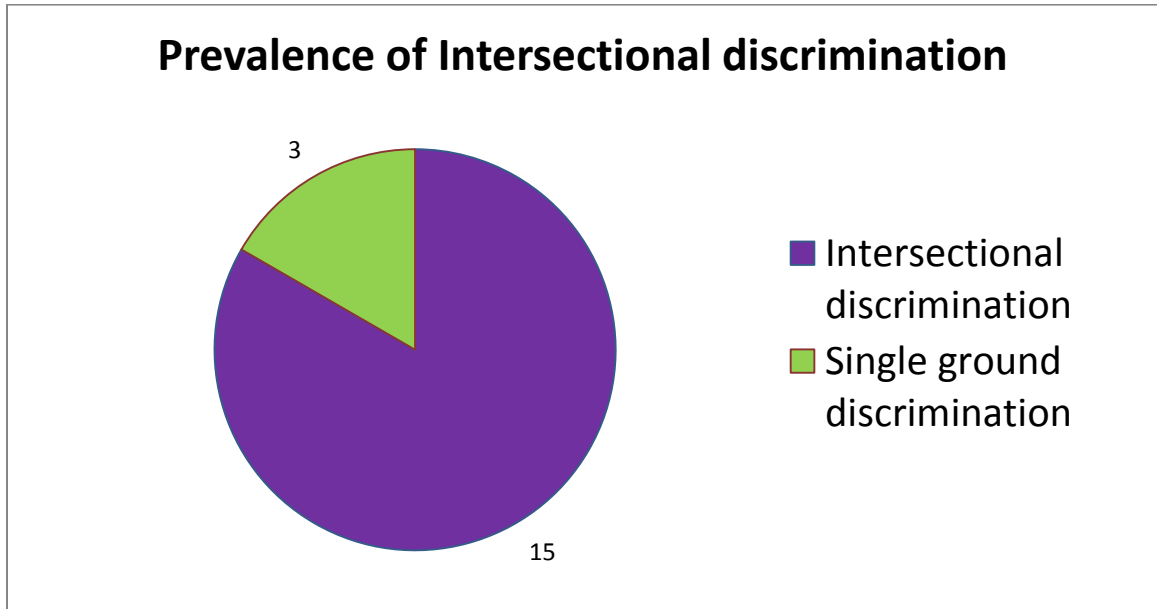
30. Of the 18 complaints from members of the legal profession, 10 complaints (56%) related to the complainants' employment, including both complaints from students. The remaining complaints (8) related to interactions with lawyers in other professional contexts.

31. Of the complaints from members of the legal profession:

15 complaints (83%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, Indigeneity, sexual orientation, religion and family status. All of the complaints made by men (7) raised intersecting dynamics of discrimination and harassment based on disability, race, Indigeneity and sexual orientation.

3 complaints raised only a single ground of discrimination. All three of

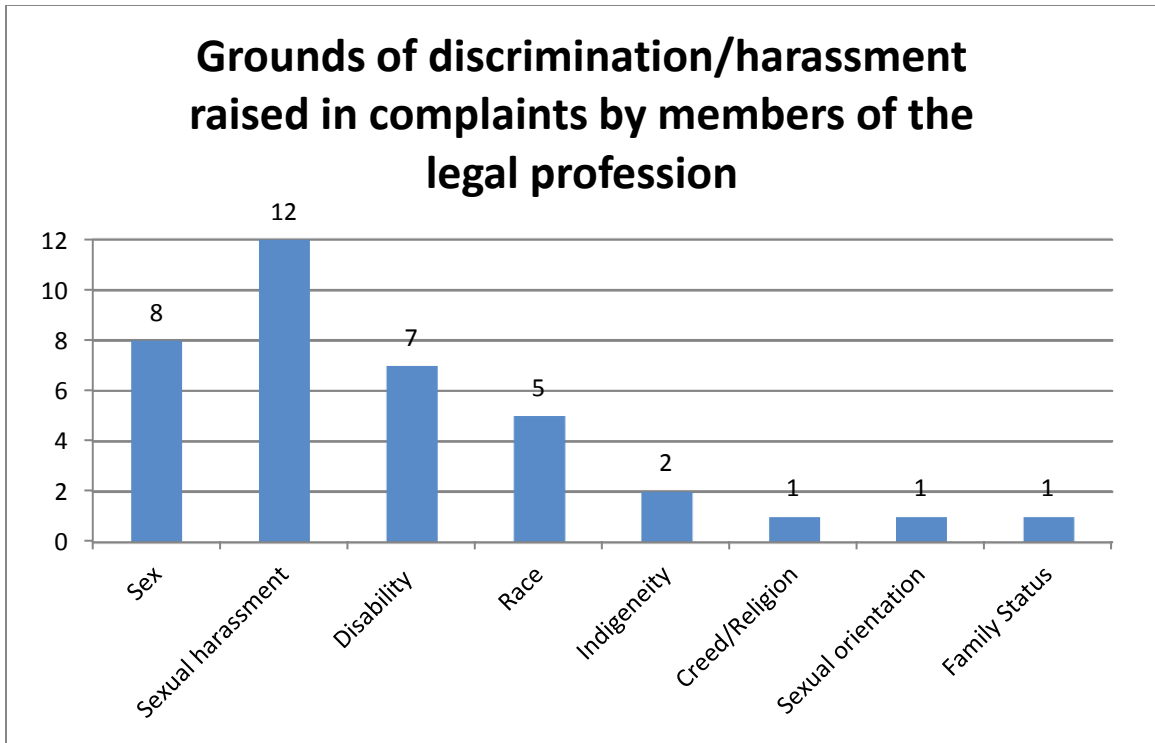
these single-ground complaints were made by women regarding sexual harassment.



32. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by lawyers and articling students about the conduct of other lawyers. The total exceeds 18 as most complaints raised more than one ground of discrimination

Sex	8
Sexual harassment	12
Disability	7
Race	5
Indigeneity	2
Creed/Religion	1
Sexual orientation	1
Family Status	1

The distribution of grounds of discrimination and harassment are depicted in the table on the following page.



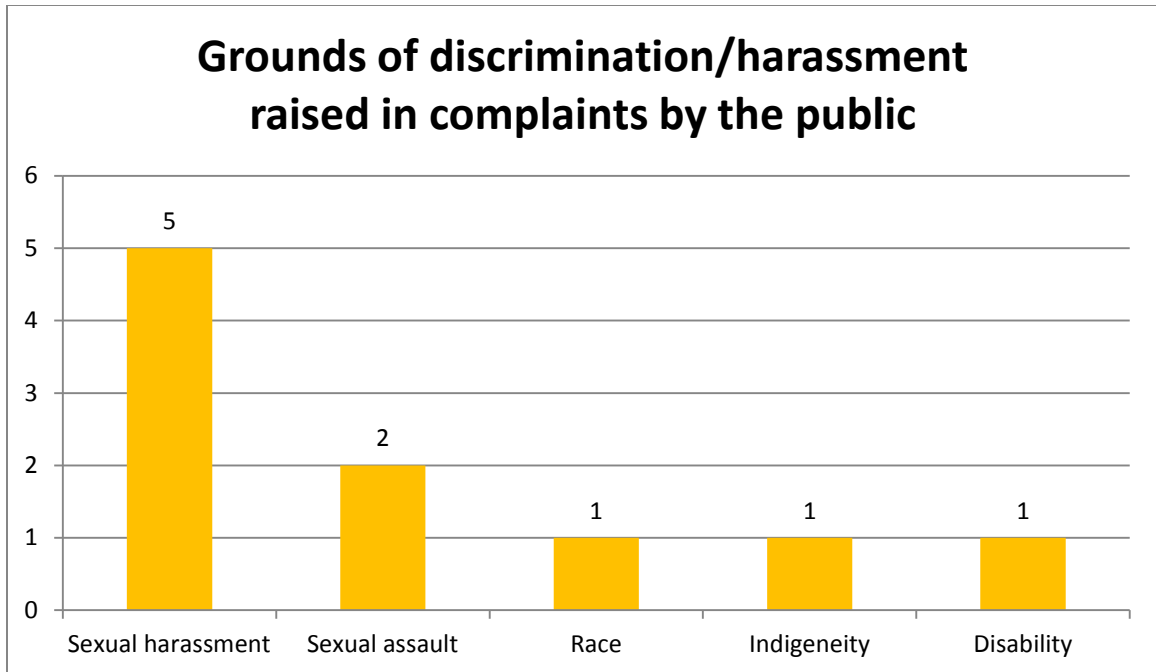
33. The complaints with respect to employment typically involved a power (seniority) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:
- (a) Sexual harassment, including verbal harassment; sexually explicit harassment and comments; persistent unwanted contact outside of work, including one conviction for criminal stalking; sexual advances and persistent pressuring of complainant(s) for sexual relationships; disparaging women in front of colleagues; physical sexual harassment; and the employer's failure to respond appropriately when complaints of harassment were raised;
 - (b) Racial harassment, including verbal harassment, verbal and physical harassment; and the employer's failure to respond appropriately when complaints of harassment were raised;

- (c) Discriminatory questions being asking during interviews of lawyers and articling/summer students;
 - (d) Harassment with respect to disability, including verbal harassment, verbal abuse, refusal to accommodate; and
 - (e) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
34. The range of behaviour identified in complaints about lawyers in other professional settings included sexual and/or racial harassment; discriminatory treatment with respect to Indigenous clients and clients with disabilities; discriminatory conduct in the context of public legal events; and failure to accommodate disability.

Complaints about Lawyers by Members of the Public

35. During this reporting period, 6 complaints were made about lawyers by members of the public: 5 complaints were made by clients who reported discrimination or harassment by their own lawyer; 1 complaint was made about a lawyer outside of a lawyer-client relationship.
36. The grounds of discrimination and harassment raised by the public were sex, sexual harassment, race and disability. The grounds exceed 6 because complaints raised intersecting grounds of discrimination and harassment:

Sexual harassment	5
Sexual assault	2
Race	1
Indigeneity	1
Disability	1



37. The behaviour identified in complaints relating to the complainant's own lawyer included:
- (a) Sexual harassment;
 - (b) Sexual assault;
 - (c) Racial harassment;
 - (d) Harassment and predatory business development practices with respect to Indigenous clients; and
 - (e) Failure to accommodate a client's disabilities.

Complaints about Paralegals

38. One complaint was made against a paralegal, raising issues of harassment on the basis of disability.

D. MATTERS OUTSIDE THE DHC MANDATE

39. During this reporting period, the DHC received 43 contacts by phone or email relating to matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.
40. The majority of these new contacts were inquiring about discriminatory and/or harassing behaviour by individuals who are not licensees and so are beyond the Law Society's and DHC's mandate, including employers, landlords, healthcare providers or others. The DHC office redirects these callers to contact other appropriate agencies.
41. The second largest category of new contacts outside the DHC mandate involved complaints about the conduct of Ontario lawyers and paralegals that did not involve discrimination or harassment on *Human Rights Code* grounds but that did involve reports of behaviour that reflects breaches of the *Rules of Professional Conduct* or *Paralegal Rules of Conduct* or potentially criminal conduct. These callers were redirected to the Law Society Complaint Services office and/or police.
42. In a continuing trend, a notable number of out-of-mandate contacts involved lawyers and students raising complaints about abusive employment relationships within the legal profession. The behaviours they reported included being subjected to verbal abuse, threats and humiliation; not being paid for hours worked; being forced to work 100+ hours per week every week; being subject to bullying. While these matters fall outside the mandate of the DHC, they are significant enough a trend that they warrant being brought to the Law Society's attention.
43. An explanation of the DHC's mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program's mandate. All new contacts raising matters outside the DHC mandate were referred to other

agencies for assistance.

44. There were also a number of calls seeking information about the DHC mandate – including calls from legal and non-legal businesses seeking training on discrimination and harassment issues.

E. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

45. During this reporting period, the DHC undertook a variety of proactive activities to raise awareness of the DHC’s services, including:
 - (a) Media interviews to raise awareness of the DHC’s mandate, including in the [Law Times](#) and the [Toronto Star](#);
 - (b) Lai-King Hum participated in the panel “Implementing Strategies to Combat Discrimination” at the RODA (Roundtable of Diversity Association) 4th Annual Conference in Partnership with the OBA: “Accelerating a Culture Shift in the Legal Profession”;
https://www.cbapd.org/details_en.aspx?id=ON_18OBA1128C
 - (c) Launching a Twitter account: @DH_Counsel; and
 - (d) Participating in continuing professional development events.
46. Throughout this reporting period, periodic advertisements continued to be placed (in English and French) in the *Ontario Reports* to promote the DHC Program within the legal profession. The LSO continues to maintain a bilingual website for the DHC Program.