

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

For the period from July 1, 2015 to December 31, 2015

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A. INTRODUCTION

1. The DHC provides a wide range of services to individuals who confidentially report discrimination or harassment complaints about lawyers, articling students or paralegals. Complaints are received from both members of the public and members of the legal profession.
2. The complaints arise in a variety of contexts, such as clients who report misconduct by their own lawyer or paralegal, articling students who report workplace harassment by lawyers, and lawyers who report discriminatory treatment by opposing counsel in their cases.

B. SERVICES PROVIDED TO COMPLAINANTS

3. The DHC does not provide legal advice. General information and advice are provided to assist complainants in evaluating their options and resolving their complaints.
4. In some cases, upon request, strategic tips and/or coaching are provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).
5. Student complainants whose articles are terminated or who decide to withdraw from their articles before completion also receive counselling and advice from the DHC about transferring their articles, as well as support in their job search for a new articling position. They are also referred to appropriate resources within the Law Society.

6. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
 - confronting the respondent licensee directly with their concerns;
 - speaking to their union representative (if they are unionized and their complaint relates to their employment by a lawyer or paralegal);
 - filing an internal discrimination or harassment complaint within their workplace;
 - making a complaint to the respondents supervisor/manager or to the firm that employs the respondent;
 - filing an Application with the Human Rights Tribunal of Ontario;
 - filing a complaint about professional misconduct with the Law Society;
 - reporting to the police (where criminal conduct is alleged); and
 - consulting a lawyer for legal advice regarding possible claims and causes of action.

7. Complainants are 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 or Application (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.)
 - the general types of remedies that may potentially 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).
8. Complainants are told that the options available to them are not mutually exclusive.
9. Some complainants are referred to other agencies/organizations (such as the Law Society's Member Assistance Program, the Human Rights Legal Support Centre, or the Law Society's Lawyer Referral Service) or are directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

C. MEDIATION / CONCILIATION

10. When appropriate, complainants are offered the mediation or conciliation services of the DHC Program.
11. 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.
12. 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 the complainant elects to have the DHC contact the respondent, written instructions must be provided. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into mediated discussions with the DHC.
13. Where informal conciliation 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 an impartial 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. Conciliation can be conducted by an in-person meeting or using shuttle diplomacy.
14. Some complainants decline the offer of the DHC's mediation and conciliation services, notwithstanding that the services are free, confidential, and in the case

of formal mediation, subject to a mutual “without prejudice” undertaking by both parties. The reasons why complainants decline mediation are varied and include: a complainant desiring to have a fact-finding investigation, believing that the respondent will not participate in good faith, wanting to create a formal record of the respondent’s misconduct through an adjudicative process, and/or hoping to have professional discipline imposed on the respondent.

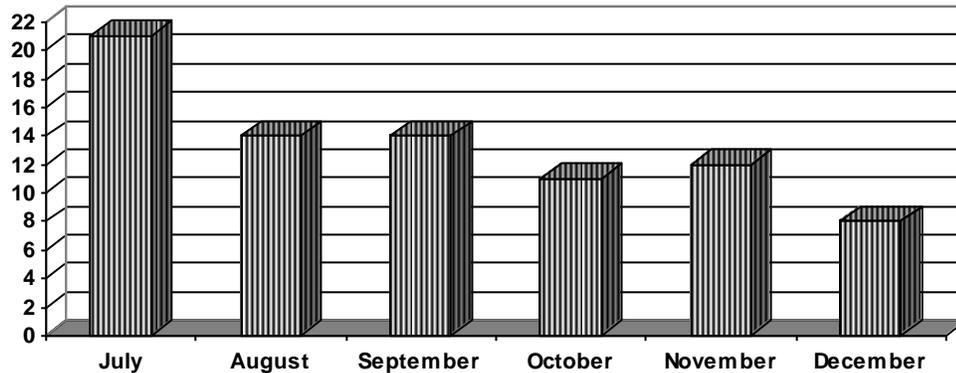
15. Some respondents refuse to participate in mediation or conciliation, but that is relatively rare. Most respondents are open to participating in an informal mechanism for resolving complaints against them.
16. During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. There were, however, a number of informal interventions made at complainants’ request, including (for the first time) conciliation of a complaint made against a paralegal. The DHC spoke with the respondents in several cases and was, in each instance, successful in achieving mutually satisfactory resolutions to complaints.

D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this six month reporting period, 80 individuals contacted the DHC Program with a new matter.¹ This represents average of 13 new contacts per month.

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.

18. The volume of new contacts with the Program was distributed as follows:



19. Of the 80 individuals who contacted the DHC, 48 (60%) used the telephone to make their initial contact and 30 (38%) used email. Two individuals contacted the DHC in person.
20. During this reporting period, three (3) individuals were provided services in French.² The remaining clients of the Program were provided services in English.

E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

21. Of the 80 new contacts with the Program, 20 individuals reported specific complaints of discrimination or harassment by a licensee (lawyer or paralegal).
22. In this reporting period, 2 complaints were made against paralegals. The remaining 18 complaints were made against lawyers.

² One of the francophone callers raised a matter outside the DHC's mandate. The other two francophone callers made general inquiries. None of the francophone contacts (during this reporting period) reported a complaint about a licensee.

23. One of the complaints against paralegals was made by a member of the public and the other was made by a paralegal candidate. Of the 18 complaints against lawyers, 5 (28%) were made by members of the public and 13 (72%) were made by licensees.

F. COMPLAINTS AGAINST LAWYERS BY LICENSEES

24. Twelve (12) of the complaints against lawyers were made by other lawyers. One complaint about a lawyer was made by a paralegal. (There were no complaints by articling students during this reporting period.)
25. The sole complaint by a paralegal involved a female complainant who reported sexual harassment by a male lawyer who was her employer.
26. Of the 12 complainants who were lawyers, 11 were female and only one was male.
27. Ten (10) of the 12 complaints made by lawyers (83%) arose in the context of the complainant's employment. The other two complaints were about the conduct of opposing counsel. (One of the complainants who reported workplace issues also complained about opposing counsel's conduct.)
28. There were 6 complaints against lawyers based (in whole or in part) on sex. Of these,
- Three (3) involved allegations of workplace sexual harassment:
 - An associate lawyer complained about sexual harassment by the managing partner of her law firm. Her complaint included an allegation of wrongful dismissal as a reprisal for rejecting his advances.

- An in-house counsel complained about sexual harassment by her supervisor.
 - An associate in a small law firm reported that her work environment was poisoned by pervasive sexual harassment by male partners (including sexual jokes, unwelcome sexual overtures, demeaning sexist comments about women, etc.).
 - Three (3) involved complaints about gender-based workplace discrimination:
 - A partner in private practice complained about the sexist behaviour of her male partners and of a male opposing counsel.
 - A government lawyer complained about discrimination by opposing counsel based on her race (she identified as Black) and gender.
 - A government lawyer complained about systemic gender-based discrimination in her workplace.
29. All of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
30. There were 4 complaints against lawyers based on disability:
- Two government lawyers (both female) complained about employment discrimination based on their disabilities.

- A lawyer in private practice reported harassment and workplace bullying based on his disability, as well as discriminatory termination of his employment.
- A lawyer in private practice complained that her employer was refusing to accommodate her disability.

31. There were 2 complaints based (in whole or in part) on race:

- A Black female government lawyer complained about discrimination by opposing male counsel based on her race and gender.
- An Asian female government lawyer complained about discrimination and harassment (bullying, intimidation, disrespectful and differential treatment) by opposing male counsel.

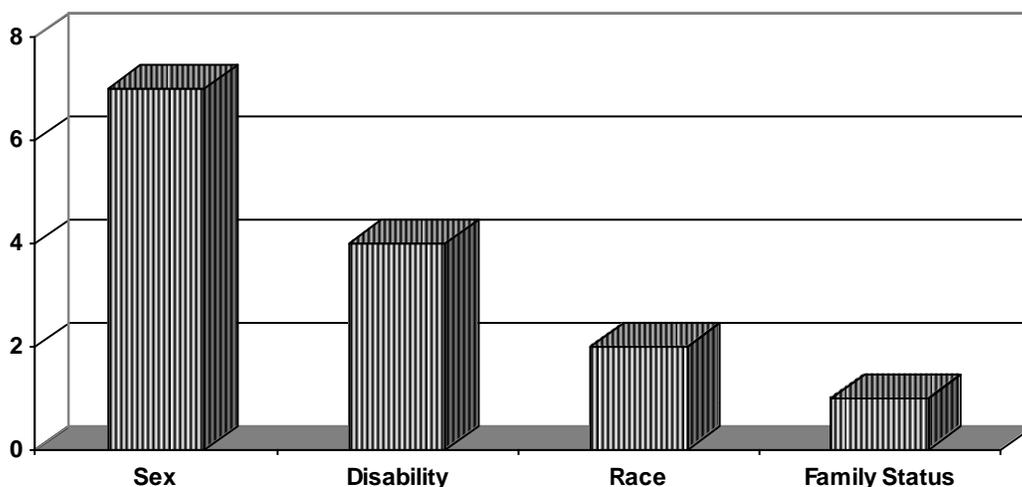
32. There was one complaint of discrimination in employment based on family status. A government lawyer reported that she suffered employment reprisals after seeking accommodation of her childcare responsibilities.

33. In summary, the number of complaints³ by licensees in which each of the following prohibited grounds of discrimination was raised are:

- sex 7 (including 4 sexual harassment complaints)
- disability 4
- race 2
- family status 1

³ The total number exceeds 13 because one of the complaints involved two intersecting grounds of discrimination (race and sex).

Grounds Raised in Complaints against Lawyers by Licensees



G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

34. During this reporting period, there were 5 complaints about lawyers made by members of the public.
35. Four (80%) of the public complaints were made by women and one was made by a man.
36. Of the 5 public complaints, 2 involved clients complaining about the conduct of their own lawyer and 3 involved litigants complaining about the conduct of opposing counsel in their respective cases.
37. There were 2 complaints from members of the public based on sex. Both were client complaints by women about sexual harassment by male lawyers (unwelcome romantic overtures and sexual advances).

38. There were 2 complaints from members of the public based on disability. Both involved litigants who were complaining about opposing counsel:

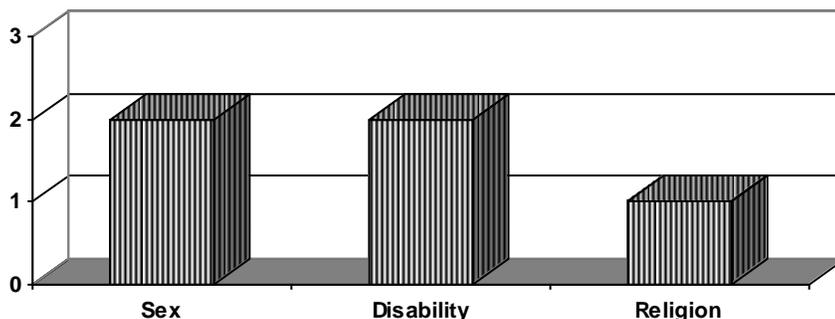
- A woman with a vision impairment reported that opposing counsel was refusing to comply with court orders to provide her with documents in an accessible format.
- A man reported that opposing counsel was stereotyping and stigmatizing him and making demeaning comments based on his mental health disability.

39. There was one complaint from the public based on religion. A Muslim male litigant reported that opposing counsel in his case made an offensive anti-Islamic comment.

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

- sex 2
- disability 2
- religion 1

Grounds Raised in Complaints about Lawyers by Members of the Public



H. COMPLAINTS AGAINST PARALEGALS

41. During this reporting period, there were 2 complaints against paralegals:
- A female paralegal candidate reported sexual harassment by her employer (a male paralegal) during her student placement; and
 - A female administrative assistant reported that her employer (a female paralegal) was refusing to accommodate her disability in the workplace.

I. GENERAL INQUIRIES

42. Of the 80 new contacts with the DHC during this reporting period, 18 involved general inquiries about matters within the mandate of the DHC program but did not involve reports of misconduct by licensees.

J. MATTERS OUTSIDE THE DHC MANDATE

43. During this reporting period, the DHC received 42 calls and emails relating to matters outside the Program's mandate (such as complaints about workplace harassment that did not involve a licensee, complaints about discrimination by neighbours or the police, and complaints about lawyers that did not involve any allegations of discrimination or harassment, eg. a complaint that a lawyer was exceeding the limits of his restricted practice).
44. An explanation of the DHC's mandate, role and duties was provided to each person who called with a matter outside the Program's mandate. Some of these individuals were referred to other agencies for assistance. Although there are a number of these "outside mandate" contacts during every reporting period, 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

45. The LSUC maintains a bilingual website for the DHC Program. Periodic advertisements are placed (in English and French) in the *Ontario Reports* to promote the DHC Program. In addition, French and English brochures are placed in circulation in law firms, community centres, libraries, government agencies, faculties of law, etc.

46. The DHC also personally engages in a number of educational activities that increase the visibility of the program and promote awareness of the DHC's services. During this reporting period, the DHC worked closely with the Law Society's Director of Equity (Josée Bouchard) to design and deliver *Discrimination and Harassment Prevention* and *Violence Prevention* workshops to law firms across Ontario and also within the Law Society (for Law Society managers and staff). Presentations were also made to first year law students at Queen's University, Faculty of Law.