

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

For the period from January 1, 2016 to June 30, 2016

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Table of Contents

	Page
A. INTRODUCTION	1
B. SERVICES PROVIDED TO COMPLAINANTS.....	1
Coaching, Counselling and Self-Help	1
Information about Avenues of Recourse	3
Mediation/Conciliation	4
Referrals.....	6
C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM.....	7
D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS	8
Complaints about Lawyers by Other Members of the Legal Profession	8
Grounds Raised in Complaints by Members of the Legal Profession	14
Complaints about Lawyers by Members of the Public	14
Grounds Raised in Complaints by Members of the Public	17
Complaints about Articling Students.....	18
Complaint about Paralegal	18
E. GENERAL INQUIRIES	18
F. MATTERS OUTSIDE THE DHC MANDATE	19
G. PROMOTIONAL ACTIVITIES.....	20

A. INTRODUCTION

1. The Discrimination and Harassment Counsel (DHC) provides a range of services to individuals who have concerns or complaints about alleged discrimination or harassment by licensed lawyers or paralegals, or by students in the licensing process. The DHC services are provided without fee to members of the public, as well as to licensees. 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* and 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.

2. The complaints reported to the DHC arise in a variety of contexts, such as clients who report that they have been subjected to sexual harassment by their own lawyer or paralegal, racialized lawyers who are experiencing workplace discrimination from colleagues based on race and/or ethnic origin, employees in law firms who confront discriminatory barriers to advancement based on disability or who experience challenges in obtaining appropriate workplace accommodation based on their disability, and paralegals who are experiencing discriminatory racist, sexist or homophobic treatment by opposing counsel in their cases.

3. The DHC services are usually delivered by Cynthia Petersen, but there are two Alternate Counsel (David Bennett and Lynn Bevan) who replace Ms. Petersen when she is unavailable (due to illness, vacation or scheduling conflicts) or unable to act (due to conflict of interest). During this reporting period, Mr. Bennett, delivered the DHC services during one week in February and one week in June 2016.

B. SERVICES PROVIDED TO COMPLAINANTS

Coaching, Counselling and Self-Help

4. The DHC provides complainants with an opportunity to discuss their concerns confidentially with a knowledgeable and sympathetic listener who understands equity

issues and who is committed to promoting equity in the legal profession. For some complainants, the ability to talk through their issues confidentially with an objective outsider is all they want.

5. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly and informally without resort to any

external formal complaints process (e.g. confronting the offender, documenting incidents).

Information about Avenues of Recourse

6. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):

- (a) speaking to their union representative (if they are unionized and the complaint relates to their employment);
- (b) filing an internal complaint within their workplace (if the complaint relates to their employment);
- (c) making a complaint to the respondent licensee's employer (e.g. the managing partner of a law firm);
- (d) filing an Application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
- (e) filing a formal complaint with the Law Society;
- (f) contacting the police (where criminal conduct is alleged);
- (g) applying to the Criminal Injuries Compensation Board (where applicable);
- (h) contacting a lawyer for legal advice regarding possible civil causes of action.

7. 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 (actual referrals to lawyers or paralegals are not made by the DHC);

- (d) how to file a complaint, Application or report (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) the processes involved in each option (e.g. investigation, conciliation, mediation, adjudication, etc.);
- (f) the 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) the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).
- (h) complainants are advised that the options available to them are generally not mutually exclusive (but some exceptions apply).

Mediation/Conciliation

8. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution (mediation or conciliation) services.

9. 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 issues raised in the complaint.

10. 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 her/his willingness to participate (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.

11. Where informal conciliation services are offered, the complainant is advised that the DHC could 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.

12. Many complainants decline the offer of the DHC’s mediation and conciliation services for a variety of reasons, including: a desire to have a fact-finding investigation, a belief that the respondent will not participate in good faith, and a desire to create a formal record of the respondent’s misconduct through an adjudicative process. When complainants elect to attempt mediation, most respondent licensees are receptive to the DHC’s offer of mediation services. On occasion, however, respondents decline to participate. In all cases, the parties’ wishes are (of course) respected.

13. During this reporting period, there was one in-person mediation meeting conducted by the DHC (Cynthia Petersen) in a case involving multiple complainants and allegations of systemic workplace discrimination based on race, sex, disability, religion and family status. The complainants in that case were licensees. (That mediation process is still ongoing.) In several other cases involving complainants who were members of the public, the DHC intervened informally as a conciliator, communicated with the parties involved and was able to assist them in reaching mutually satisfactory resolutions to the complainants’ concerns. In one instance, the DHC’s intervention did not achieve a

satisfactory result for the complainant, who then elected to pursue other avenues of recourse.

Referrals

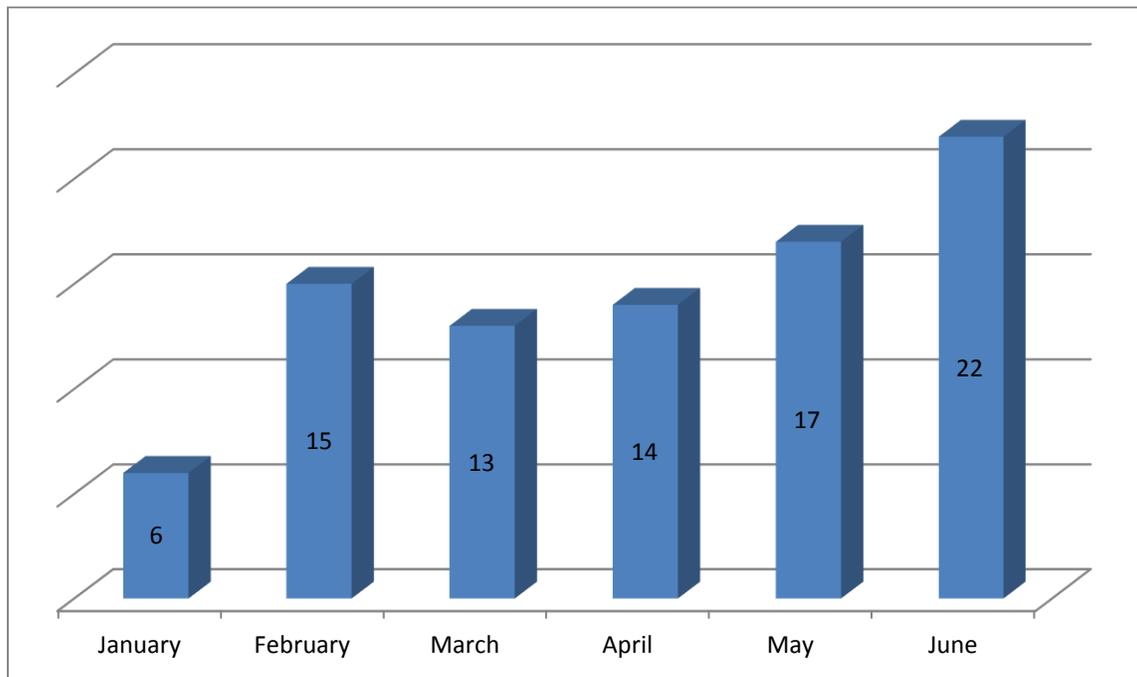
14. The DHC refers some complainants to other agencies or organizations (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the ARCH or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

15. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

16. During this reporting period, 87 individuals contacted the DHC Program with a new matter.¹ This represents an average of 14.5 new contacts per month.

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



18. During this reporting period, 3 individuals were provided services in French.² The remaining clients of the Program were provided services in English.

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.

² Two of the francophones made general inquiries (i.e., they were not complaining about the conduct of a licensee.) The third francophone was a lawyer who complained about discrimination based on his accent (place of origin) by opposing counsel.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

19. Of the 87 new contacts with the Program, 36 individuals reported complaints of alleged discrimination or harassment by a licensee. One complaint was about a paralegal and two were about articling students. The remaining 33 complaints were all about lawyers' conduct.

20. Of the 33 complaints about lawyers, 11 were made by members of the public and 22 were made by other licensees or students in the licensing process.

Complaints about Lawyers by Other Members of the Legal Profession

21. In this reporting period, there were 22 complaints about lawyers made by members of the legal profession. Seventeen (17) of these complaints were made by other lawyers

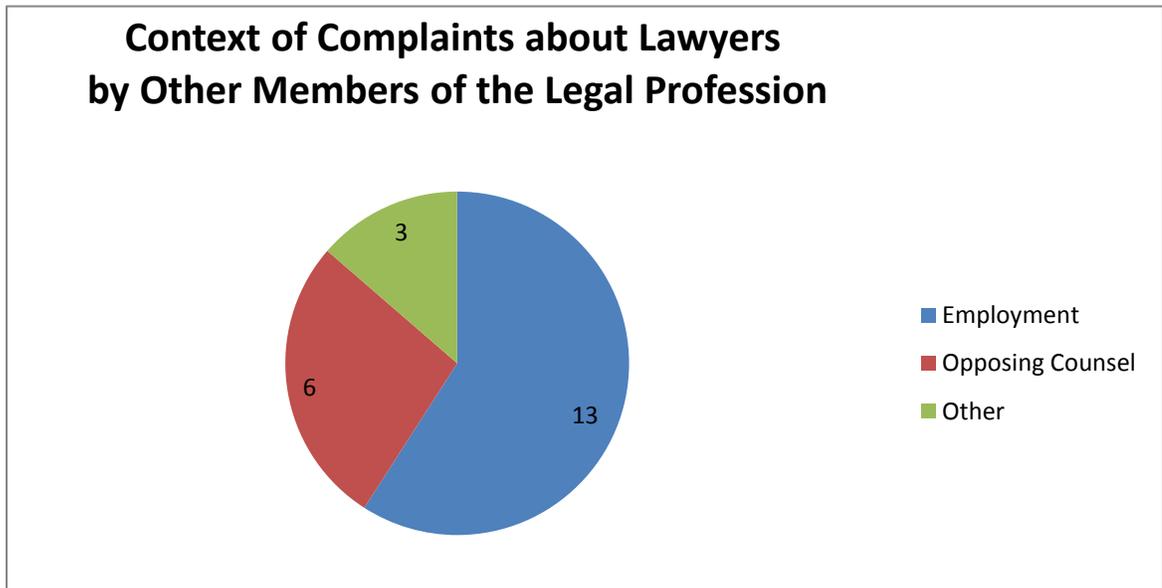
and 5 were made by articling students. (There were no complaints about lawyers made by paralegals.)

22. Of the 22 complaints against lawyers by members of the legal profession, 16 (73%) were made by women and 6 (27%) were made by men. Four (4) of the five student complainants were female.

23. Of the 22 complaints from members of the legal profession, 13 (59%) arose in the context of the complainants' employment (or job search), including all of the student complaints.

24. Six (6) complaints by lawyers (27%) arose in the context of litigation and involved allegations of misconduct by opposing counsel.

25. The remaining three (3) complaints by lawyers arose in a variety of circumstances in which the parties were professionally acquainted.



26. During this reporting period, there were 8 complaints against lawyers based in whole or in part on disability:

- (a) a female lawyer complained that a former colleague (another lawyer) made disparaging remarks about her disability;
- (b) a female student in an LPP placement complained about her employer's (a lawyer's) failure to accommodate her disability in the workplace;
- (c) a male lawyer complained about workplace discrimination based on his disability and gender expression;
- (d) a South Asian female litigator complained about discrimination based on her disability and race by a Tribunal member (an adjudicator who is a licensee);
- (e) a female lawyer in private practice reported that her employment was terminated based on her disability;
- (f) a female lawyer working in government complained about workplace discrimination by her supervisor (another lawyer) based on her disability;
- (g) a female articling student reported that her Principal harassed her based on her disability and violated her privacy by disclosing her confidential medical information to others in the workplace; and
- (h) a South Asian female (public sector) lawyer with a disability complained about systemic workplace discrimination based on her disability, race and sex.

27. During this reporting period there were 7 complaints based in whole or in part on race, 2 of which involved discrimination based on Indigenous ancestry:

- (a) a Black female in-house lawyer complained about racist treatment by a white male lawyer in her workplace (e.g. micro aggressions, racial stereotyping and demeaning comments);

- (b) a Chinese female lawyer complained about racial discrimination and harassment by a white female opposing counsel (e.g. racial remarks, unduly adversarial approach, personalized hostility);
- (c) a South Asian female litigator complained about discrimination based on race and disability by a Tribunal member (i.e., a licensee acting as an adjudicator);
- (d) an Indigenous female lawyer complained about racial discrimination in her workplace based on her aboriginal ancestry;
- (e) an Asian female litigator complained about racist mistreatment by opposing counsel in one of her cases;
- (f) a South Asian female (public sector) lawyer with a disability complained about systemic workplace discrimination based on race, sex and disability; and
- (g) a white male lawyer called to report sexist and racist mistreatment of an Indigenous female lawyer who is his colleague, consisting of rude and disparaging comments by another male lawyer in their workplace.

28. During this reporting period, there were 6 complaints against lawyers based in whole or in part on sex.

- (a) a female articling student reported sexual harassment by her Principal, a senior male partner in her firm;
- (b) a female lawyer complained about historical sexual harassment by a male partner at her former law firm;
- (c) a female lawyer called to complain about the sexual harassment of another female lawyer in her firm by a senior male partner;
- (d) a female lawyer complained about gender-based bullying by a male opposing counsel who, among other things, called her a “bitch”;

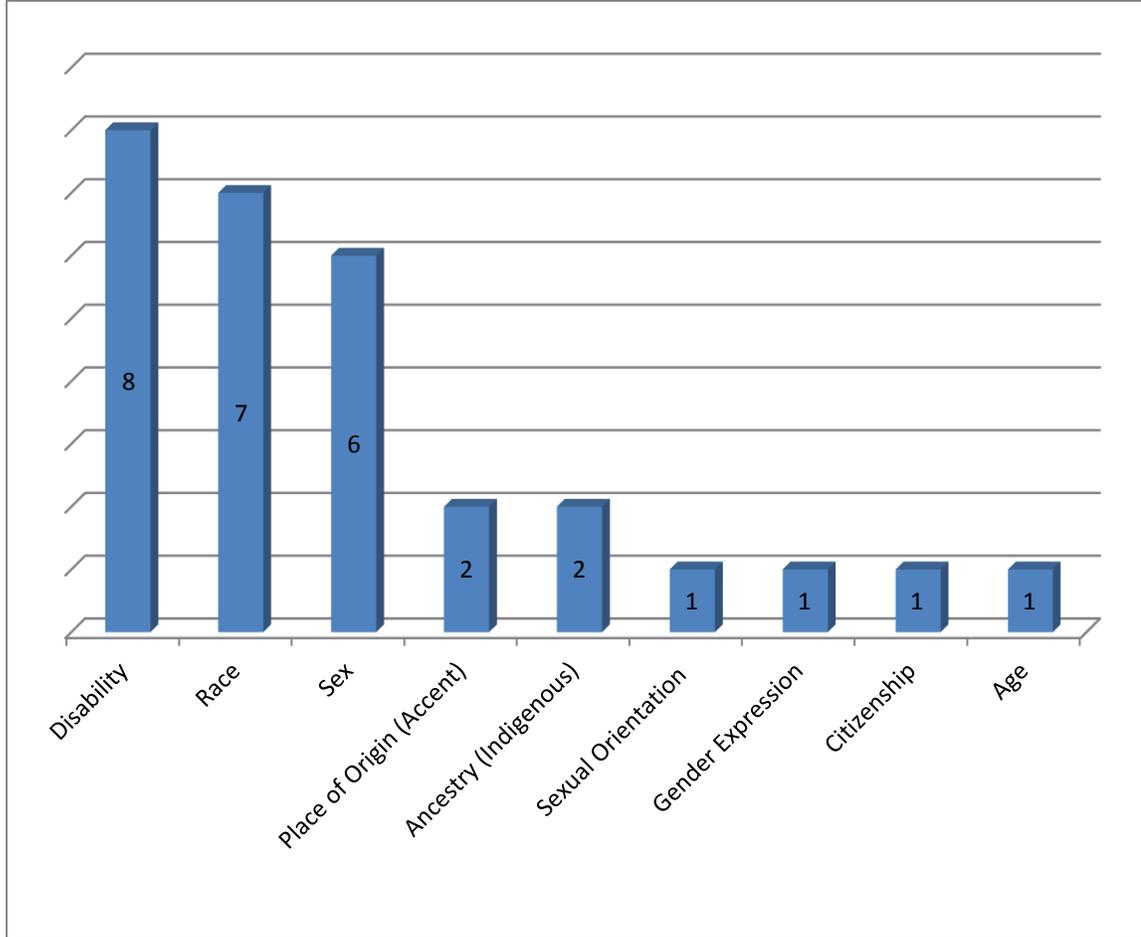
- (e) a male lawyer called to report the sexist and racist discriminatory behaviour of another male lawyer in his office toward an indigenous female lawyer who worked with them; and
 - (f) a female racialized lawyer with a disability who works in the public sector complained about discriminatory barriers to advancement in her workplace based on her sex, race and disability
29. Two complaints against lawyers were based on place of origin. In both cases, the complainants were male lawyers who reported disrespectful and disparaging treatment by opposing counsel based on their accents (one was French and the other was German).
30. There was one complaint based on sexual orientation by a gay male lawyer who reported experiencing discriminatory treatment from a licensee who was providing him with a service.
31. One male articling student reported discrimination based on age. He complained about a legal clinic's job advertisement for a lawyer under 30 years old.
32. A female law student complained about employment discrimination based on citizenship. She had been denied an articling position because of her immigration status.
33. In summary, the following prohibited grounds of discrimination were raised with the following frequency³ in complaints by lawyers and articling students about the conduct of other lawyers:

Disability	8
Race	7
Sex	6 (including 3 sexual harassment)
Ancestry (Indigenous)	2
Place of Origin	2 (accent discrimination)

³ The total of the numbers in this paragraph exceeds 22 because several of the complaints involved multiple intersecting grounds of discrimination.

Citizenship	1
Sexual Orientation	1
Gender expression	1
Age	1

Grounds Raised in Complaints by Members of the Legal Profession

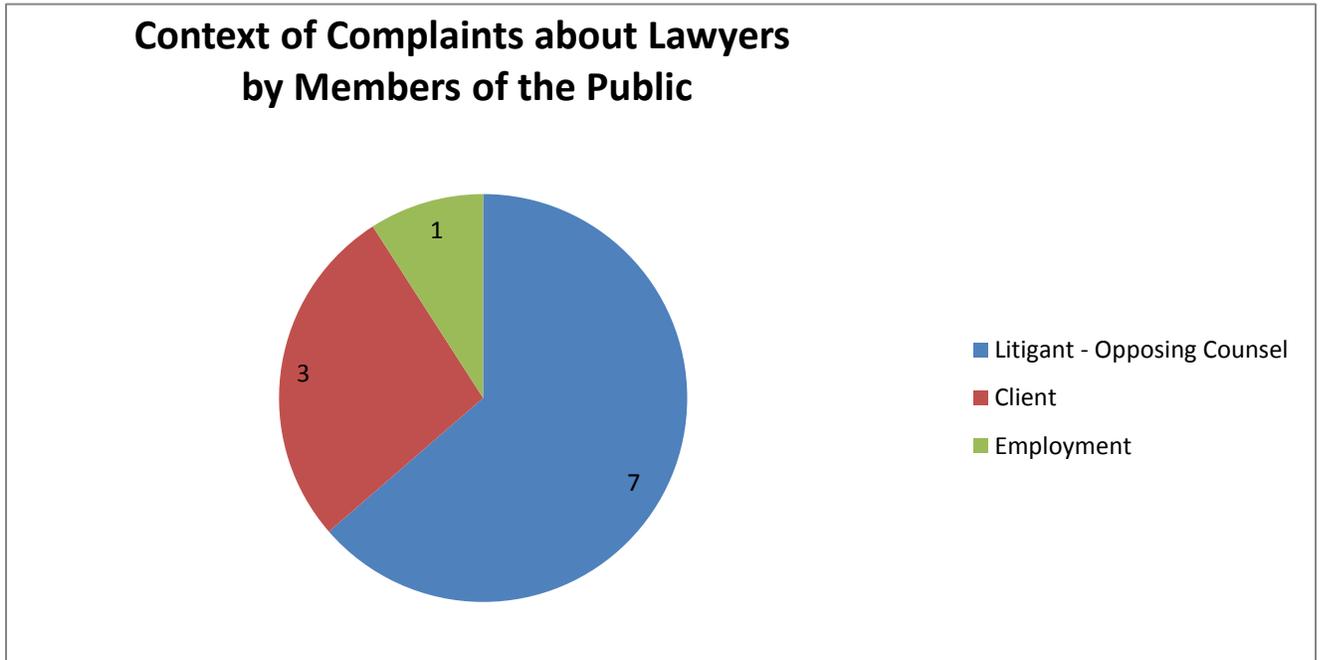


Complaints about Lawyers by Members of the Public

34. During this reporting period, there were a total of eleven (11) complaints about lawyers from members of the public.

35. Seven (7) of these public complaints were made by litigants about opposing counsel in their cases. Three (3) of the public complaints were made by clients

(complaining about their own lawyer) and one arose in the context of the complainant's employment by a lawyer.



36. Six (6) of the complaints from members of the public were based on disability:
- (a) three (3) female self-represented litigants and two (2) male self-represented litigants complained about disrespectful and discriminatory treatment by

opposing counsel, including offensive remarks based on their disability (e.g. one complainant reported that opposing counsel called him a “retard”);

- (b) a woman complained that her own lawyer was discriminating against her in the delivery of legal services, based on her disability.

37. There were three public complaints based in whole or in part on race (one also involved discrimination based on religion and one involved discrimination based on Indigenous Ancestry):

- (a) a Black man complained about offensive racist comments by his own lawyer;
- (b) a self-represented Indigenous litigant complained about offensive racist remarks made by opposing counsel during a Tribunal hearing;
- (c) a Muslim man complained that the opposing lawyer in his family case made disparaging remarks about him based on race and religion.

38. There were two sexual harassment complaints about lawyers from members of the public:

- (a) a female law clerk complained about sexual harassment by a senior male partner in her firm; and
- (b) a female client reported sexual assault by a male lawyer who she had retained to represent her.

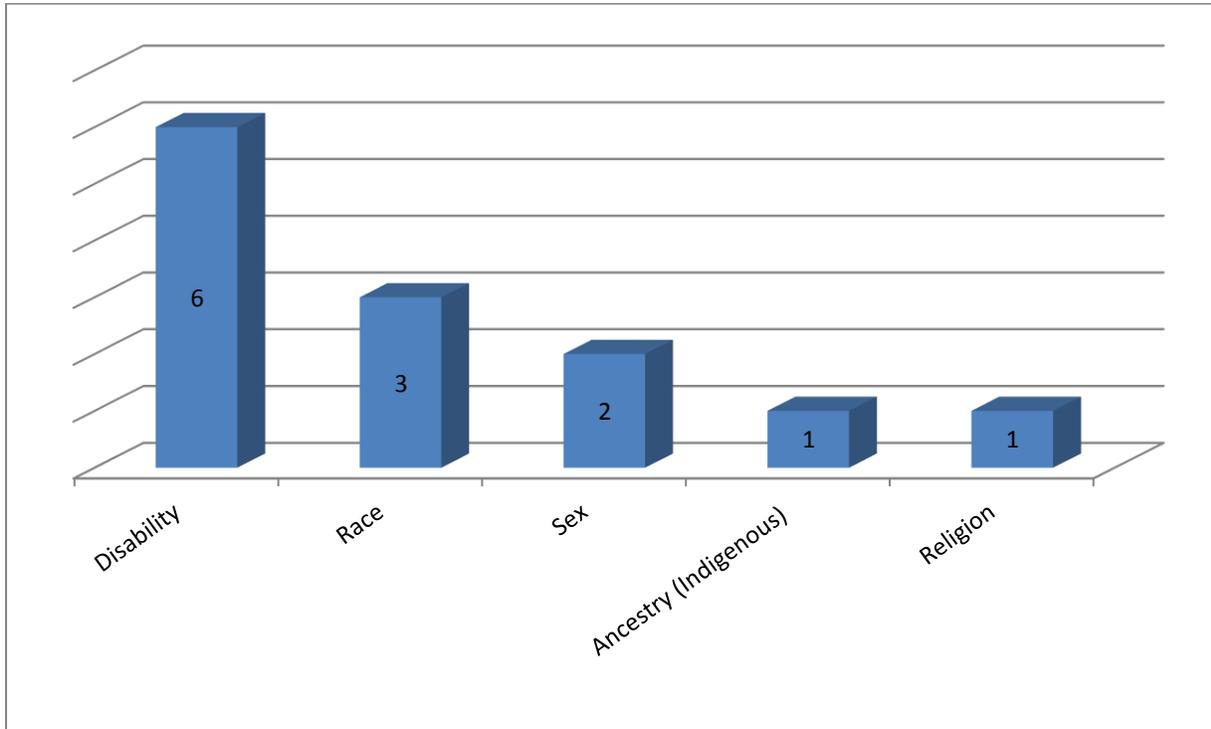
39. In summary, the following prohibited grounds of discrimination were raised with the following frequency⁴ in complaints about lawyers by members of the public:

Disability	6
Race	3
Sex	2 (both involving sexual harassment)

⁴ The total of the numbers in this paragraph exceeds 11 because two of the complaints involved two intersecting grounds of discrimination.

Religion	1
Ancestry (Indigenous)	1

Grounds Raised in Complaints by Members of the Public



Complaints about Articling Students

40. There were two complaints about articling students during this reporting period. Both involved allegations of sexual misconduct:

- (a) a female articling student reported that she had been sexually assaulted by a male articling student who was also employed in her firm; and
- (b) a male lawyer called to complain about a male articling student who was sexually harassing a female administrative assistant in their workplace.

Complaint about Paralegal

41. During this reporting period, there was only one complaint about a paralegal. A woman reported discrimination (denial of services) based on her disability by a paralegal that she had attempted to retain.

E. GENERAL INQUIRIES

42. Of the 87 new contacts with the DHC during this report, 22 involved general inquiries. These contacts included:

- (a) inquiries by lawyers about their professional responsibilities relating to equity issues;
- (b) inquiries by lawyers with disabilities about mentoring programs and other services available to them, networking and job search opportunities, and career coaching;
- (c) questions about the scope of the DHC Program's mandate and the services offered by the DHC; and
- (d) inquiries about the Law Society's complaints process.

F. MATTERS OUTSIDE THE DHC MANDATE

43. During this report period, the DHC received 29 calls and/or emails relating to matters outside the Program's mandate. These contacts included complaints about the conduct of lawyers licensed in other provinces (those complainants were referred to the appropriate individuals in other provincial law societies). Most of these complaints did not involve a licensee (e.g. they consisted of police complaints, complaints about judges, complaints about landlords).

44. There were some complaints about the conduct of Ontario licensees that did not fall within the program's mandate. These included allegations of incivility or breach of confidentiality, billing disputes and a few allegations of workplace harassment (eg.

bullying and intimidation) in which there were no allegations based on prohibited grounds of discrimination.

45. 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. Many of these individuals were referred to other agencies for assistance.

46. Although there are a significant 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 brief contact with the Program.

G. PROMOTIONAL ACTIVITIES

47. The LSUC maintains a bilingual website for the DHC Program.

48. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program within the legal profession.

49. French and English brochures about the program are regularly circulated to legal clinics, community centres, law firms and faculties of law.

50. During this reporting period, the DHC (Cynthia Petersen) provided training to lawyers in two large firms about prevention of workplace harassment. She also delivered multiple seminars (on harassment) to students enrolled at the University of Ottawa and Queen's University law schools, and appeared as a guest lecturer on the topic of sexual harassment in the legal profession in a class on Gender Equality and the Law at Osgoode Hall law school. One of the Alternate DHC, Lynn Bevan, spoke on a panel organized by the Law Society dealing with resources for licensees experiencing mental health issues.