

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

For the period from July 1, 2016 to December 31, 2016

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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. 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 DHC services are provided without fee to members of the public, as well as to licensees.
3. 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, lawyers who are experiencing workplace discrimination based on race, Indigenous ancestry, 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 for their disability-related needs, and paralegals who are experiencing discriminatory racist, sexist or homophobic treatment by opposing counsel in their cases.
4. 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 July, one week in August, three weeks in September and all of December. Ms. Bevan handled once case in December, in which Mr. Bennett had a conflict of interest.

B. SERVICES PROVIDED TO COMPLAINANTS

Coaching, Counselling and Self-Help

5. The DHC provides complainants 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.
6. For some complainants, the ability to talk through their issues confidentially with an objective outsider is all they want.
7. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.

Information about Avenues of Recourse

8. 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 the respondent's law firm or supervisor of a respondent who works in-house or in government);
 - (d) filing an Application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (e) filing a formal complaint of professional misconduct with the Law Society;
 - (f) contacting the police (where criminal conduct is alleged);

- (g) applying to the Criminal Injuries Compensation Board; and
 - (h) contacting a lawyer and/or Human Rights Legal Support Centre for legal advice regarding possible civil causes of action.
9. 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 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) 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 for a (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).

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

Resolution Services

10. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
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 settlement of the issues raised in 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 her/his 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.
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, 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.

14. 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.

Referrals

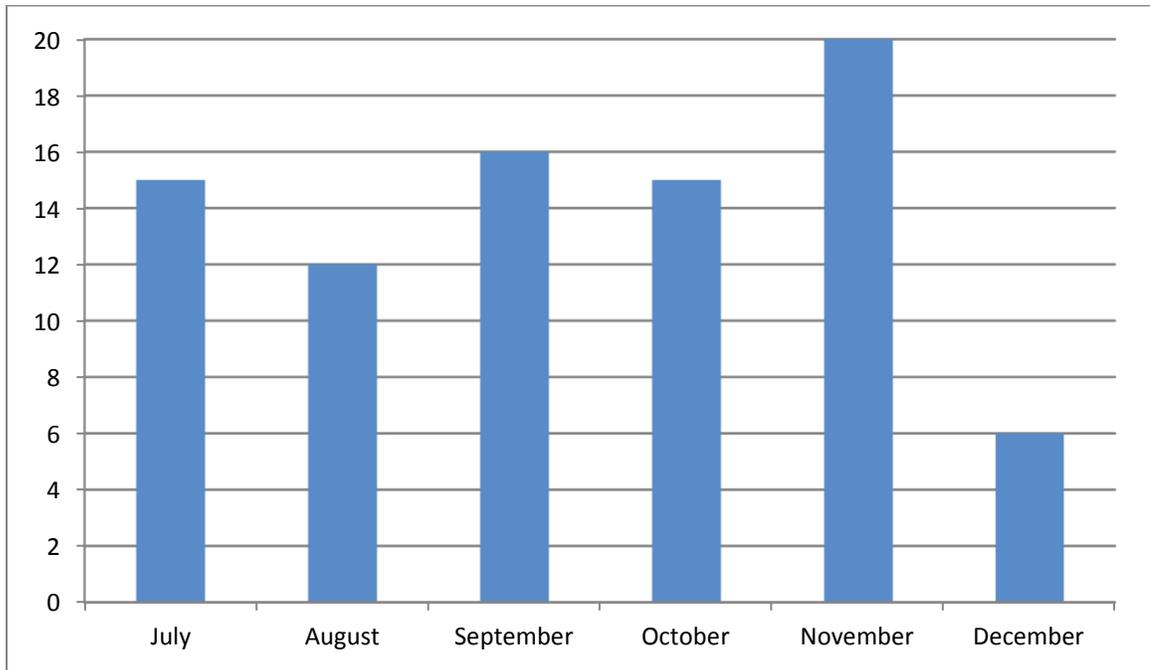
15. The DHC refers some complainants to other agencies or organizations (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the ARCH or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available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

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this reporting period, 84 individuals contacted the DHC Program with a new matter.¹ This represents an average of 14 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. Individuals who had multiple communications with the DHC about the same matter are only counted once.

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



19. During this reporting period, two individuals were provided services in French. Neither of them made a specific complaint about the conduct of a licensee. Rather, they contacted the DHC to make general inquiries about the DHC services and the Law Society's complaints process.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

20. Of the 84 new contacts with the Program, 29 individuals reported complaints of alleged discrimination or harassment by a licensee. Two complaints were about the conduct of paralegals. The remaining 27 complaints were about lawyers' conduct.
21. Of the 27 complaints about lawyers, 16 were made by members of the public and 11 were made by members of the legal profession.

Complaints about Lawyers by Members of the Legal Profession

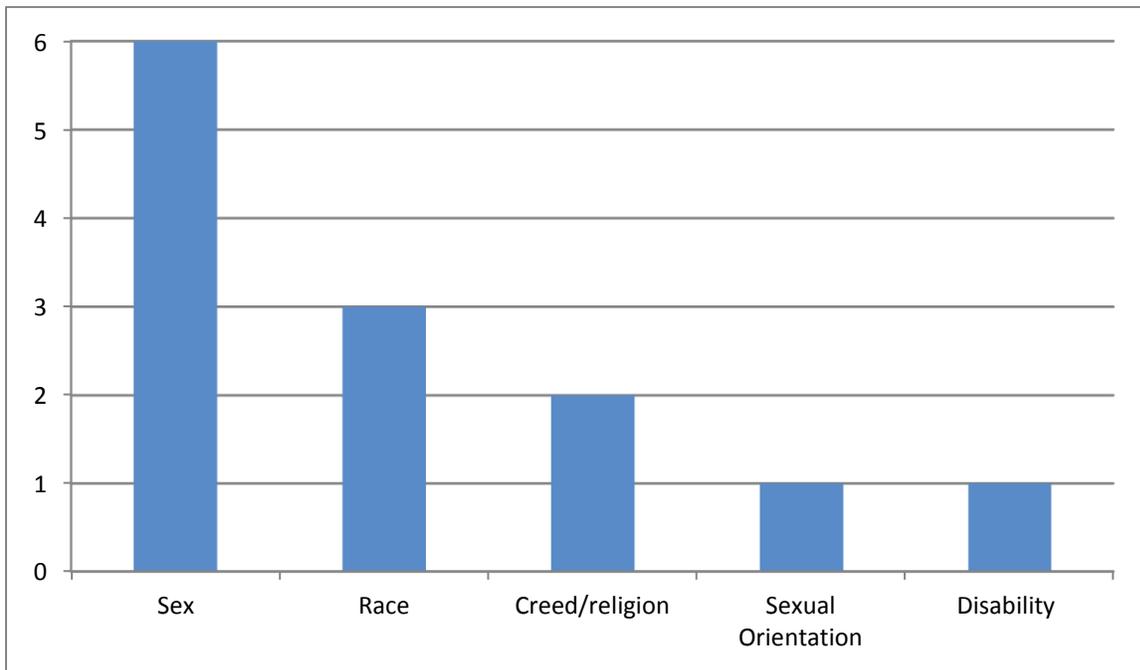
22. In this reporting period, there were 11 complaints about lawyers made by members of the legal profession. Eight (8) of these complaints were made by other lawyers and 3 were made by articling students. There were no complaints about lawyers made by paralegals.
23. Of the 11 complaints against lawyers by members of the legal profession, 8 (73%) were made by women and 3 (27%) were made by men. All 3 student complainants were female (100%).
24. Of the 11 complaints from members of the legal profession, 7 (64%) arose in the context of the complainants' employment, including all 3 of the student complaints (100%). Two (2) complaints by lawyers arose in the context of litigation and involved allegations of misconduct by opposing counsel. One complainant was a professional acquaintance of the respondent lawyer and one was related to the respondent lawyer (i.e., a family member).
25. There were 6 complaints against lawyers based in whole or in part on sex:
 - (h) A female articling student in private practice reported that she was sexually assaulted by her male principal at an after-hours work-related social event;
 - (i) A female articling student in private practice reported that the partners at her firm mis-handled her complaint about a sexual assault by a client and committed reprisals against her for having made the complaint;
 - (j) A female lawyer in private practice complained about a male opposing counsel's paternalistic and sexist communications with her;
 - (k) An in-house female lawyer reported that she was experiencing anti-Black racism and sexism from a male colleague;

- (l) A female lawyer in private practice complained about regular sexual and sexist comments made by two male partners and two male associates in her firm; and
 - (m) A female lawyer working at a clinic reported that she was experiencing both anti-Black racism and sexism in interactions with other lawyers at her workplace.
26. There were 3 complaints based in whole or in part on race:
- (a) The two aforementioned Black women lawyers reported experiencing both racism and sexism at work; one case involved a complaint about micro-aggressions committed by a particular white male colleague and the other raised more systemic discrimination issues; and
 - (b) A male lawyer complained about an advertisement placed by another lawyer in a racist hate-promoting publication.
27. There were two complaints based on creed (religion):
- (a) A female articling student in a private firm complained that her principal was harassing her for taking the Jewish holidays off work; and
 - (b) A female government lawyer complained that her supervisor was refusing to grant her time off work to observe Jewish holidays.
28. One complaint was based on disability. A male lawyer reported that opposing counsel mocked him based on his disability.
29. One complaint was based on sexual orientation. A gay male lawyer reported that his father, also a licensee/lawyer, had physically assaulted him because of his sexual orientation and had subsequently made a false statement to police.

30. In summary, the following prohibited grounds of discrimination were raised with the following frequency² in complaints by lawyers and articling students about the conduct of other lawyers:

Sex	6 (including 3 sexual harassment)
Race	3
Creed/Religion	2
Disability	1
Sexual Orientation	1

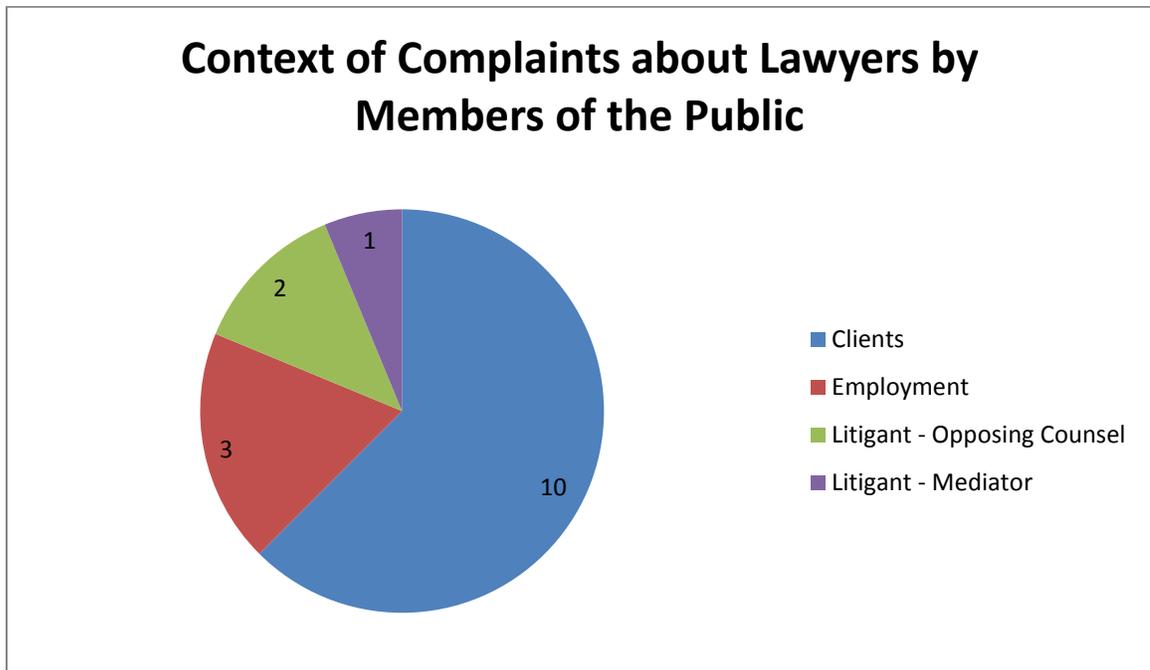
Grounds Raised in Complaints by Members of the Legal Profession



² The total of the numbers in this paragraph exceeds 11 because some of the complaints involved two intersecting grounds of discrimination.

Complaints about Lawyers by Members of the Public

31. During this reporting period, there were a total of sixteen (16) complaints about lawyers from members of the public. Thirteen (81%) of these complainants were women and three (3) were men.
32. Ten (10) of these public complaints were made by clients who reported discrimination or harassment by their own lawyer or by a lawyer who they were seeking to retain. Three complaints arose in the context of the complainant's employment (i.e. complaints about the conduct of lawyers for whom they worked), 2 involved complaints by litigants about the conduct of opposing counsel and one involved a litigant who complained about the conduct of a mediator (licensee) in her case.



33. Seven (7) of the complaints from members of the public were based in whole or in part on disability:
- (a) A man with a disability complained that his lawyer was failing to communicate with him in an accessible manner;

- (b) Two women with disabilities reported that their respective lawyers were failing to accommodate their disability-related needs;
 - (c) Two other women with disabilities reported that their respective lawyers had harassed them based on their disability, including verbal abuse (one of these complainants also reported that her lawyer treated her in a sexist manner);
 - (d) A woman complained that her own lawyer provided her with substandard discriminatory treatment based on her disability; and
 - (e) A female litigant with a mental health condition complained that the mediator in her case (who was a licensee) refused to accommodate her disability during the mediation process (and also behaved in a sexist manner toward her).
34. There were six (6) public complaints based in whole or in part on sex:
- (a) A woman reported that a male lawyer whom she had retained to provide her with summary advice made unwelcome sexual advances toward her;
 - (b) Two women employed as legal assistants (in different firms) reported that they had been sexually assaulted by male lawyers in their respective firms;
 - (c) A woman complained about differential and substandard service from her male lawyer based on her sex (and socio-economic status);
 - (d) A female litigant complained about the sexist, threatening and abusive conduct of her ex-husband who was representing himself in their family law dispute; and
 - (e) As noted above, a female litigant with a disability reported that the mediator in her case treated her in a sexist manner.

35. There were three (3) public complaints based in whole or in part on race. As noted below, two of these complaints also involved other intersecting grounds:

- (a) A female Muslim law clerk complained that the lawyer for whom she worked was making racist and anti-Islamic comments (race and creed);
- (b) An Iranian-Canadian man complained about derogatory remarks made by his own lawyer based on his race and place of origin; and
- (c) A woman complained that a clinic lawyer discrimination against her based on race.

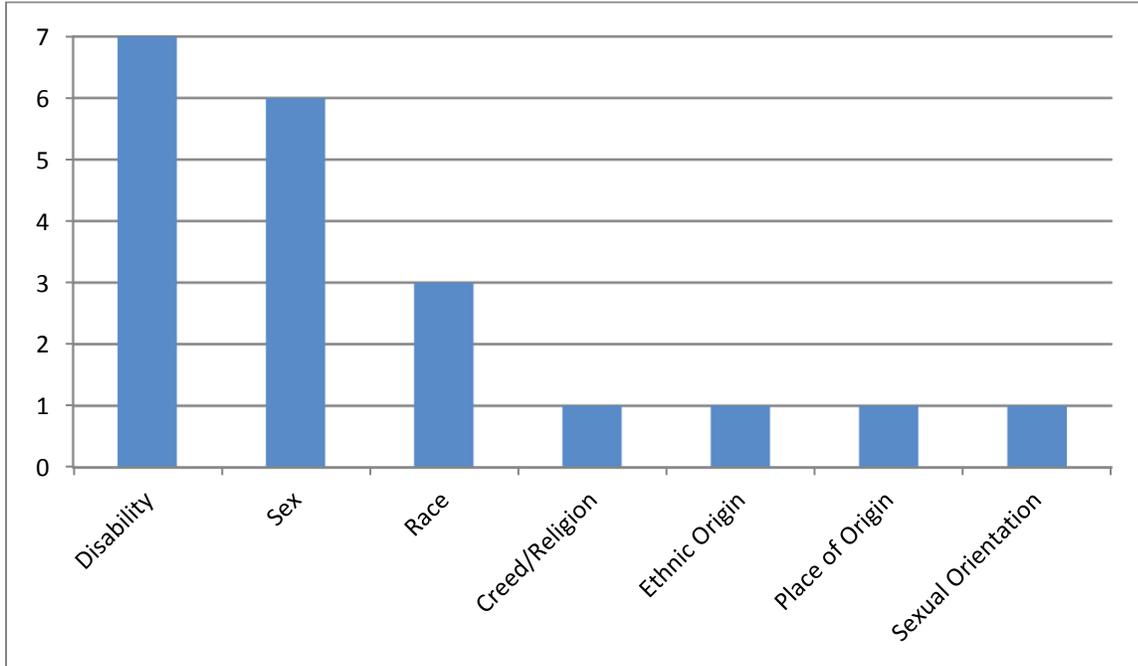
36. One public complaint was made by a gay man involved in a family law dispute who reported that opposing counsel was treating him in a derogatory manner based on his sexual orientation and Italian ethnic origin.

37. In summary, the following prohibited grounds of discrimination were raised with the following frequency³ in complaints about lawyers by members of the public:

Disability	7
Sex	6 (3 involving sexual harassment or assault)
Race	3
Creed/Religion	1
Place of Origin	1
Sexual Orientation	1
Ethnic Origin	1

³ The total of the numbers in this paragraph exceeds 16 because some of the complaints involved two intersecting grounds of discrimination.

Grounds Raised in Complaints by Members of the Public



Complaints about Paralegals

38. During this reporting period, there were two complaints against paralegals:

- (a) One complainant was a female paralegal candidate who reported racial harassment and discrimination by a male paralegal with whom she worked during her placement; and
- (b) The other complainant was a male paralegal with a disability who reported that a female paralegal with whom he was professionally acquainted had mocked his disability.

E. GENERAL INQUIRIES

39. Of the 84 new contacts with the DHC during this report, 19 involved general inquiries. These contacts included:

- (a) Inquiries by lawyers about their professional responsibilities relating to equity issues;
- (b) Inquiries by lawyers about mentoring programs and other support services available to them;
- (c) Questions about the scope of the DHC Program's mandate and the resolution services offered by the DHC; and
- (d) Inquiries about the Law Society's complaints process.

F. MATTERS OUTSIDE THE DHC MANDATE

- 40. During this reporting period, the DHC received 36 calls and/or emails relating to matters outside the Program's mandate.
- 41. Many of these new contacts were about the conduct of individuals who are outside of the Law Society's and DHC's mandate (e.g. landlords, police, judges). There were a few complaints about the conduct of lawyers licensed in other jurisdictions; those complainants were referred to the appropriate individuals in other provincial law societies or to American bar associations.
- 42. There were some complaints about the conduct of Ontario licensees that did not fall within the program's mandate. These included billing disputes and allegations of incivility or breach of confidentiality/privilege.
- 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. Many of these individuals were referred to other agencies for assistance.
- 44. 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 AND EDUCATIONAL ACTIVITIES

45. During this reporting period, Alternate DHC David Bennett delivered lectures to incoming first year law students during orientation at Queen's University regarding discrimination and harassment issues, professional obligations, and the services of the DHC.
46. Cynthia Petersen participated in a panel discussion on "Dealing with Discrimination in the Workplace: Strategies for Responding to Challenges Faced by Racialized Licensees" at RODA-OBA's 2nd Annual Diversity Conference in Toronto.
47. Cynthia Petersen gave an interview that was published in *Flare* magazine in an article about sexism in the legal profession (<http://www.flare.com/culture/a-canadian-lawyer-responds-to-new-us-anti-discrimination-rule/>).
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 periodically circulated to legal clinics, community centres, law firms and faculties of law.
50. The LSUC continues to maintain a bilingual website for the DHC Program.