

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

For the period from July 1, 2014 to December 31, 2014

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

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A. INTRODUCTION

1. The DHC provides a wide range of services to individuals who make 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 that they have been subjected to sexual harassment and/or sexual assault by their lawyer or paralegal, lawyers who are experiencing workplace discrimination relating to a maternity leave, law firm employees with disabilities who confront discriminatory barriers to employment or challenges in obtaining appropriate workplace accommodation, and paralegals, articling students and lawyers who are experiencing discriminatory (eg. racist, sexist, homophobic) treatment by opposing counsel in their cases.
3. The DHC provides complainants with safe counsel, coaching, information, referrals to other agencies and resources, informal mentoring, and general (non-legal) advice about options and avenues of recourse – some on an ongoing basis. The DHC also provides mediation services, described below.

B. SERVICES PROVIDED TO COMPLAINANTS

4. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
 - confronting the respondent lawyer or paralegal 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 law firm that employs the respondent lawyer;
 - 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.
5. 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, 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.)

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

C. MEDIATION / CONCILIATION

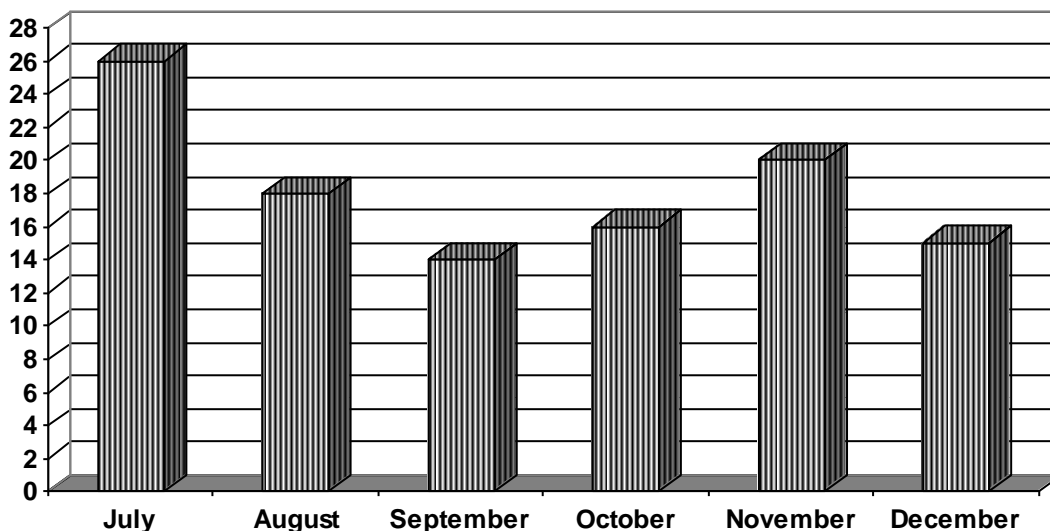
10. In addition to being advised about the above-noted options, where appropriate, complainants are offered the mediation or conciliation/intervention services of the DHC Program.

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/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.
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. During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. Formal mediation was not requested by any complainants.
16. There were, however, a number of informal interventions made at complainants' request. The DHC spoke with the respondents in several cases and, in all but one instance, was thereby able to achieve resolutions to complaints.

D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this six month reporting period, 109 individuals contacted the DHC Program with a new matter.¹ This represents average of 18 new contacts per month.
18. The volume of new contacts with the Program was distributed as follows:



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.

19. Of the 109 individuals who contacted the DHC, 72 (66%) used the telephone to make their initial contact and 37 (34%) used email.
20. During this reporting period, four (4) individuals were provided services in French. The remaining clients of the Program were provided services in English.

E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

21. Of the 109 new contacts with the Program, 36 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.
22. In this reporting period, 2 complaints were made against paralegals. The remaining 34 complaints were made against lawyers. There were no complaints about articling students.
23. The 2 complaints against paralegals were made by members of the public. Of the 34 complaints against lawyers, 18 (53%) were made by members of the public and 16 (47%) were made by members (including student members) of the Law Society.

F. COMPLAINTS AGAINST LAWYERS BY LICENSEES

24. In this reporting period, there were 16 complaints against lawyers by members (or student members) of the Law Society. Nine (9) of these complaints were made by lawyers and 7 were made by articling students. There were no complaints about lawyers made by paralegals.
25. Of the 16 complaints by members of the Law Society, 14 (87%) were made by women and 2 (13%) were made by men. All of the student complainants were female.

26. Of the 9 complaints made by lawyers, 6 (67%) arose in the context of the complainant's employment. Of the remaining 3 complaints, one complaint was made against a lawyer who was providing a public service to the complainant, one was made about opposing counsel involved in litigation, and one was made about a lawyer with whom the complainant was professionally acquainted.
27. All of the student complaints arose in the context of the complainants' employment.
28. There were 11 complaints against lawyers based (in whole or in part) on sex. Of these,
 - Six (6) involved allegations of sexual harassment:
 - Three (3) female students reported sexual harassment by their male principal or by a male partner in their firm. (In one case, the allegations included unwanted sexual touching and the withholding of wages for refusal to submit to sexual advances.)
 - A female junior associate in private practice reported sexual harassment by a male partner in her firm.
 - A female lawyer employed in a government legal office reported suffering employment reprisals for having made a sexual harassment complaint against her male manager.²
 - A female lawyer reported stalking by a male lawyer with whom she was professionally acquainted.

² This same complainant also reported racial harassment by a different supervising lawyer.

- Four (4) involved complaints about gender-based harassment and discriminatory behaviour by male lawyers, including inappropriate comments about women's bodies and misogynist name calling ("bitch"). Two female lawyers and one female articling student reported such behaviour by male lawyers in their workplace and one female lawyer reported such behaviour by an opposing counsel in one of her cases.
 - One involved allegations by an articling student of discrimination in employment based on her pregnancy.
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 3 complaints against lawyers based (in whole or in part) on disability:
- A male law student reported that an offer of articles was rescinded after the employing sole practitioner learned that he had a disability.
 - A female articling student reported that her principal was not providing appropriate workplace accommodation relating to her disability.
 - A male lawyer claimed that he was being subjected to discrimination based on his disability in the provision of services by another lawyer.
31. There were 2 complaints based (in whole or in part) on race. Both involved Black female lawyers who reported racial discrimination in their employment. One of these complaints was against a supervising female lawyer to whom the complainant reported (in a government legal office) and the other was against a male co-worker of the complainant in private practice.

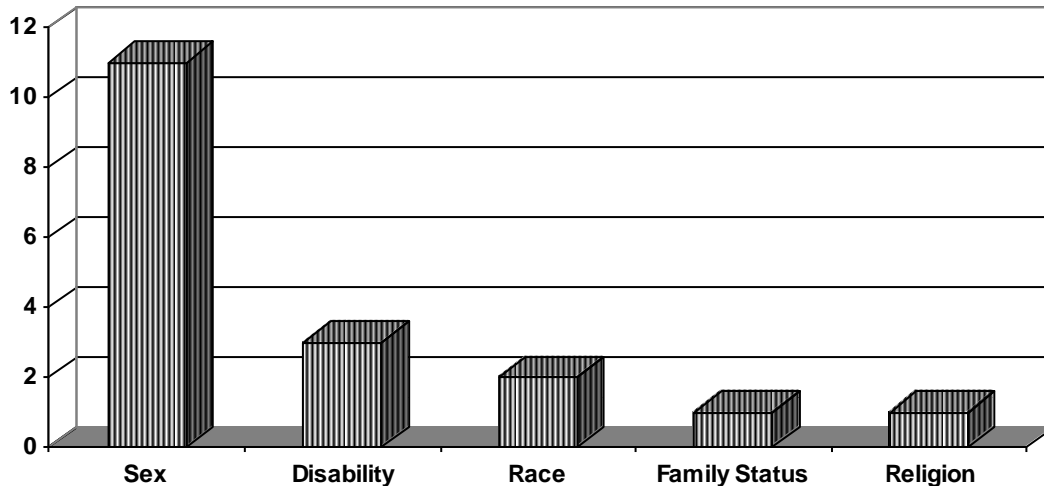
32. There was one complaint of discrimination in employment based on family status, involving the denial of a female lawyer's request for flexible work hours to enable her to meet her parenting/childcare needs.

33. There was one complaint based on religion. A female lawyer reported that her employer made derogatory statements about her religion.³

34. In summary, the number of complaints⁴ by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:

- sex 11 (6 sexual harassment; 1 pregnancy)
- disability 3
- race 2
- family status 1
- religion 1

Grounds Raised in Complaints against Lawyers by Members of the Bar



³ This complainant also reported the use of inappropriate sexist language by a male coworker.

⁴ The total number exceeds 16 because a number of complaints involved multiple grounds of discrimination.

G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

35. During this reporting period, there were 18 complaints against lawyers made by members of the public.
36. Thirteen (72%) of the public complaints were made by women and 5 (28%) were made by men.
37. Of the 18 public complaints:
- Twelve (12) involved clients complaining about the conduct of their own lawyer;
 - Four (4) involved litigants complaining about the conduct of opposing counsel in their cases; and
 - Two (2) involved employment-related complaints by individuals working in law firms.
38. There were 9 complaints from members of the public based (in whole or in part) on sex:
- Seven (7) of these complaints involved allegations of sexual harassment:
 - Five (5) of these consisted of complaints by clients about sexual harassment by their own lawyer.
 - One complaint was by a litigant who alleged that she was being sexually harassed by the opposing counsel in her case.

- One complaint was by a legal assistant employed in a law firm who reported sexual harassment by her boss.

Six of the sexual harassment complainants were female and all of the respondent lawyers were male. One of the sexual harassment complainants was male, but he was calling on behalf of his female partner who he claimed had been subjected to sexual harassment by her male lawyer.

- One client complained about sexist remarks and discriminatory treatment by her male lawyer based on her pregnancy.
- One man complained about the anti-male (and ageist) discriminatory recruitment and hiring practices of a lawyer who advertised a job posting for a “young female” legal assistant.

39. There were 8 complaints from members of the public based on disability:

- Three (3) litigants with disabilities complained about the discriminatory conduct and/or derogatory comments of opposing counsel in their cases.
- Five (5) clients complained about their lawyers’ failure to accommodate their disability-related needs by providing accessible legal services.

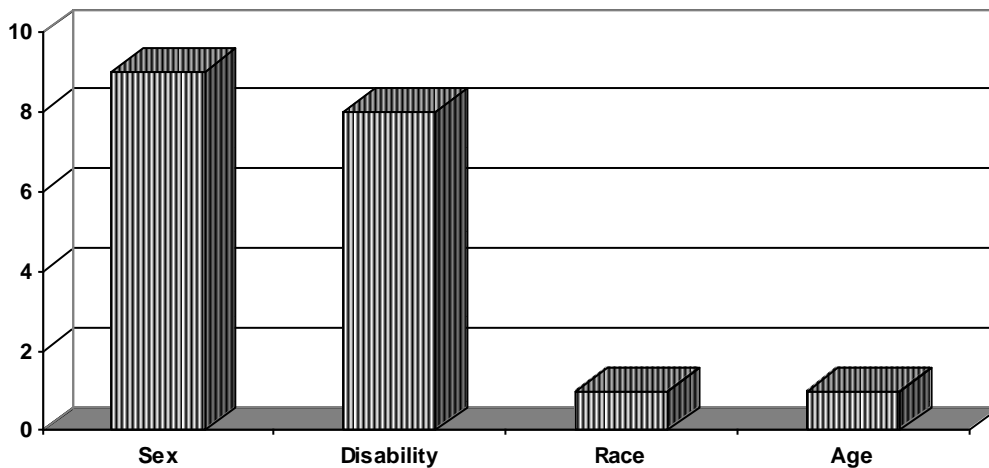
40. There was one complaint from the public based on race. A client complained about derogatory racist language used by his lawyers.

41. There was one complaint from the public based in part on age. As previously mentioned, a man complained about a lawyer who advertised a job posting for a “young female” legal assistant.

42. In summary, the number of public complaints⁵ in which each of the following grounds of discrimination was raised are as follows:

- sex 9
- disability 8
- race 1
- age 1

Grounds Raised in Complaints by Members of the Public



H. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

43. During this reporting period, there were no complaints about lawyers by paralegals.

⁵ The total of these numbers exceeds 18 because one of the complaints involved multiple intersecting grounds of discrimination.

I. COMPLAINTS AGAINST PARALEGALS

44. During this reporting period, there were 2 complaints against paralegals.⁶ Both were made by members of the public and both were based on the prohibited ground of sex:

- A female client complained about gender based discriminatory language used by a male paralegal who was representing her; and
- A woman complained about sexual harassment by a male paralegal with whom she was acquainted.

G. GENERAL INQUIRIES

45. Of the 109 new contacts with the DHC during this reporting period, 20 involved general inquiries about matters within the mandate of the DHC program and did not involve reports of misconduct by licensees.

H. MATTERS OUTSIDE THE DHC MANDATE

46. During this reporting period, the DHC received 45 calls and emails relating to matters outside the Program's mandate.

47. These contacts included complaints about paralegals and lawyers that did not involve allegations of discrimination or harassment based on human rights grounds (such as allegations of unethical behaviour, confidentiality breaches, bullying, or incivility). They also included complaints about discriminatory and/or

⁶ There were three additional complaints about the conduct of paralegals, but they did not raise issues of discrimination or harassment based on human rights grounds. They involved allegations of bullying and intimidation. The data regarding these complaints are captured later in this report, in the section about contacts "outside the mandate" of the DHC program because harassment complaints only fall within the mandate of the program if they include allegations of harassment based on prohibited grounds enumerated in the Ontario *Human Rights Code* and the Law Society's Rules.

harassing conduct by non-licensees, such as judges, landlords and non-legal employers.

48. Several individuals contacted the DHC to obtain a referral to a lawyer to deal with a harassment or discrimination case. They were referred to the Law Society's Lawyer Referral Service.
49. 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.
50. 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.

J. PROMOTIONAL ACTIVITIES

51. The LSUC maintains a bilingual website for the DHC Program. During this reporting period, the website content was reviewed and updated. The new revised website should be on-line shortly. It will be fully compliant with the requirements of the *Accessibility for Ontarians with Disabilities Act*.
52. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program. In addition, French and English brochures (updated in 2013) continued to be placed in circulation in legal clinics, law firms, community centres, libraries, government agencies, faculties of law, etc.
53. The DHC works 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). In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the DHC Program's services.