

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

For the period from July 1, 2011 to December 31, 2011

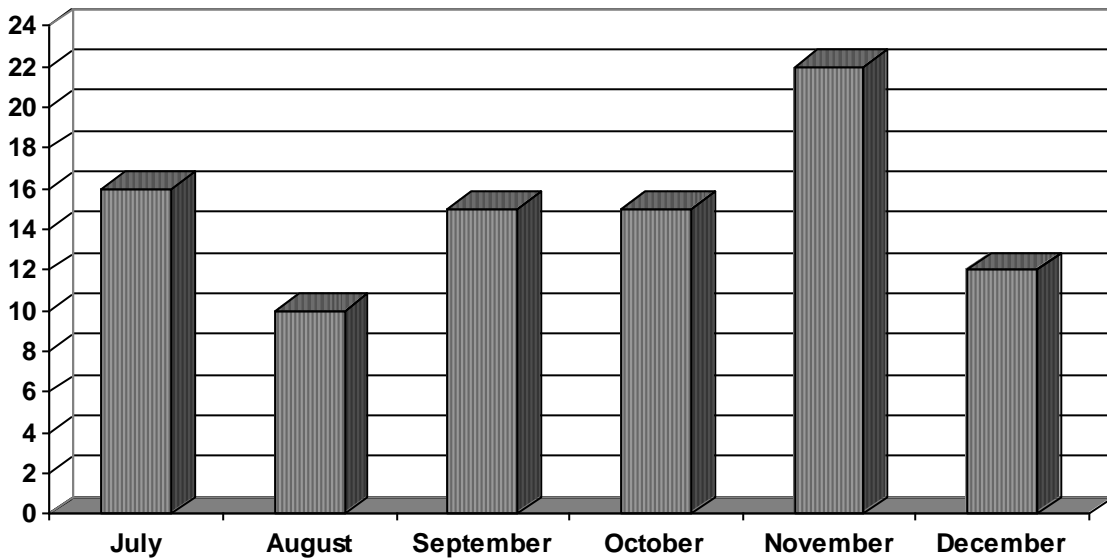
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A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this six month reporting period, 90 individuals contacted the DHC Program with a new matter.¹ This represents average of 15 new contacts per month.
2. The volume of new contacts with the Program was distributed as follows:



3. Of the 90 individuals who contacted the DHC, 60 (67%) used the telephone to make their initial contact, 27 (30%) used email, and 3 used a fax.
4. During this reporting period, two individuals were provided services in French. The remaining 88 new contacts with 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 matter are not counted in this number.

B. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

5. Of the 90 new contacts with the Program, 28 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.
6. One complaint was made against a paralegal. The remaining 27 complaints were made against lawyers.
7. The complaint against a paralegal was made by a member of the public.
8. Of the 27 complaints against lawyers, 17 (63%) were made by members of the public and 10 (37%) were made by members of the Law Society.

C. COMPLAINTS AGAINST LAWYERS BY MEMBERS OF THE BAR

9. In this reporting period, there were 10 complaints against lawyers by members of the Law Society. Eight (8) of these complaints were made by lawyers and 2 were made by articling students. None was made by a paralegal.
10. One of the articling student complainants was francophone. All of the other complainants were anglophone.
11. Of the 10 complaints by members of the legal profession, half (5) were made by women and half (5) were made by men. The complaints by lawyers were evenly divided between male and female complainants (4 each). The complaints by articling students were also evenly divided (one male and one female complainant).
12. Of the 8 complaints made by lawyers, 4 (50%) were made against opposing counsel involved in litigation, 2 (25%) arose in the context of the complainant's

employment or a job interview, and 2 (25%) were made against lawyers with whom the complainants were professionally acquainted.

13. Both of the law student complaints arose in the context of the complainants' employment.
14. There were 3 complaints based (in whole or in part) on sex. Of these,
 - One (1) involved allegations of sexual harassment by a lawyer with whom the complainant was professionally acquainted;
 - One (1) involved allegations of discrimination based on pregnancy in the context of the complainant's employment; and
 - One involved allegations of sexist discriminatory behaviour by opposing counsel.
15. Of these sex-based complaints, the sexual harassment complainant was male and the respondent to his complaint was female. The other two complainants were female and the respondents to their complaints were male.
16. Both of the articling student complaints were based on race. Both involved allegations of inappropriate racial slurs and discriminatory behaviour by the students' employers (including employment discrimination against the female complainant based on her accent).
17. There were 4 complaints based on sexual orientation. These included 3 complaints by lawyers who were representing gay or lesbian clients and who complained about the homophobic comments of opposing counsel in their cases. One complaint was made by a lesbian lawyer who felt ostracized and shunned by her professional peers in the small community in which she was practising

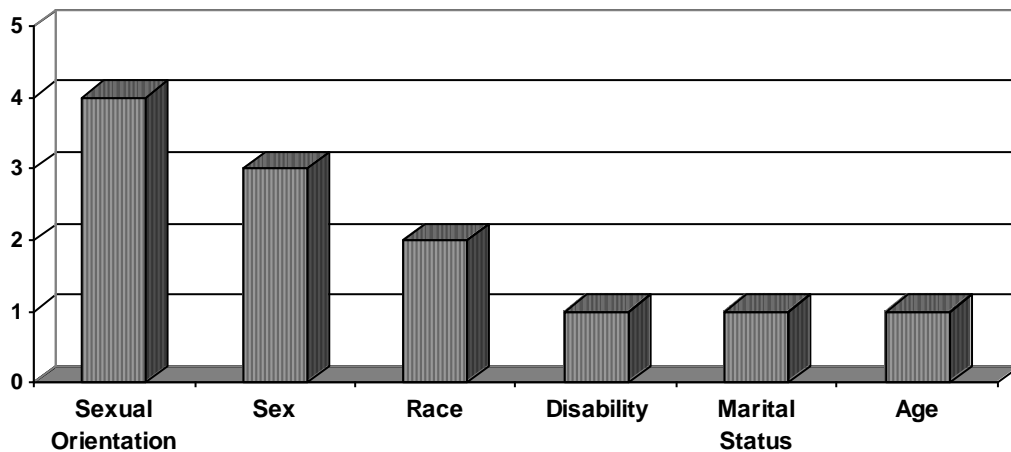
law. She also reported that she suffered discrimination from another lawyer who refused to rent her office space because of her sexual orientation.

18. There was also one complaint made by a lawyer based on disability, age and marital status. It involved inappropriate questions asked during a job interview.

19. In summary, the number of complaints² by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:

- Sexual orientation 4
- sex 3 (1 sexual harassment; 1 pregnancy)
- race 2
- disability 1
- age 1
- marital status 1

Grounds Raised in Complaints by Members of the Bar



² The total number exceeds 10 because some complaints involved multiple grounds of discrimination.

D. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

20. During this reporting period, there were 17 complaints against lawyers made by members of the public.
21. Twelve (12) of the public complaints (71%) were made by women and 5 (29%) were made by men.
22. Of the 17 public complaints:
 - five (5) involved clients complaining about their own lawyer (or a lawyer that they attempted to retain);
 - five (5) involved employees complaining about a lawyer in their workplace;
 - six (6) involved litigants complaining about the conduct of opposing counsel in their cases; and
 - one (1) involved a complaint about a lawyer by his neighbour.
23. There were six (6) public complaints based (in whole or in part) on sex. Of these,
 - three (3) involved allegations of sexual harassment;
 - one (1) involved allegations of discrimination based on pregnancy;
 - one (1) involved a discriminatory job advertisement; and
 - one (1) involved allegations of sexist conduct by opposing counsel toward a female litigant.
24. Only one of the sex-based complaints was made by a man. He complained about a lawyer's job advertisement for a legal assistant which specified that female applicants would be given preference. All of the other complainants in the

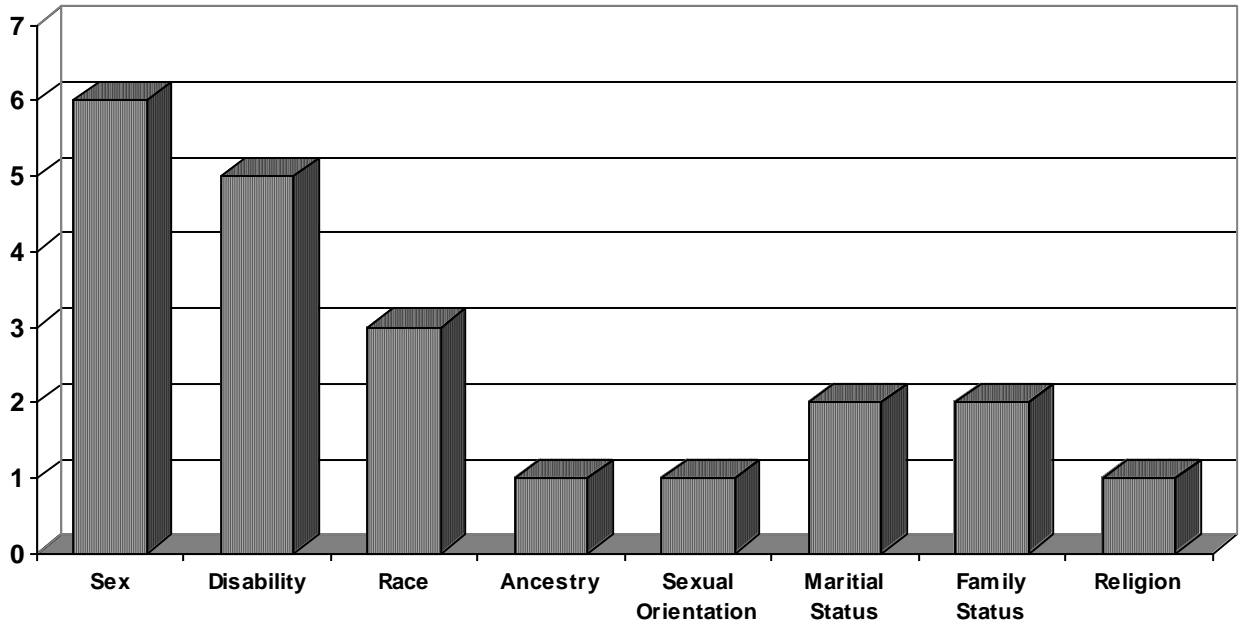
sex-based complaints were female and all of the respondents to these complaints were male.

25. Two of the sexual harassment cases arose in the context of the complainant's employment (i.e, a lawyer sexually harassing a legal assistant). One involved a client complaining about her own lawyer and included very serious allegations of sexual assault. All of the sexual harassment complainants were female and all of the respondents were male.
26. The pregnancy-related complaint arose in the context of the complainant's employment as a legal assistant at a law firm.
27. There were three (3) public complaints based (in whole or in part) on race:
 - Two (2) of these complaints were made by litigants who alleged that opposing counsel in their cases had made disparaging racist remarks. One of the complainants was a First Nations woman. Her complaint included allegations of racist remarks based on her aboriginal ancestry.
 - The third complaint based on race arose in the context of a dispute between neighbours, during which a lawyer allegedly made demeaning racist comments about south Asians.
28. There were five (5) public complaints based (in whole or in part) on disability:
 - Three (3) of these complaints involved clients who felt that their lawyers were not accommodating their disabilities appropriately. One included a complainant whose lawyer had withdrawn from his retainer and allegations that the lawyer did so because of his unwillingness to accommodate the client's psychiatric disabilities.
 - Two (2) of these complaints involved litigants with disabilities who reported disparaging remarks made by opposing counsel in their cases.

29. There were 2 public complaints based on marital status and 2 based on family status:
- A woman who worked as a legal assistant at a law firm alleged that she was not being accommodated by her employer based on her marital and family status (i.e., single mother) and that her employment was terminated because of her request to have her child care responsibilities accommodated.
 - A woman who was involved in family law litigation complained about discriminatory remarks made by opposing counsel about her family status and marital status.
30. There was one complaint by a client alleging a discriminatory remark made by his lawyer about his religion (Catholicism).
31. There was one complaint by a gay litigant about homophobic remarks made by opposing counsel in his case.
32. In summary, the number of public complaints³ in which each of the following grounds of discrimination was raised are as follows:
- sex 6 (3 sexual harassment, 1 pregnancy)
 - disability 5
 - race 3
 - ancestry 1
 - marital status 2
 - family status 2
 - religion 1
 - sexual orientation 1

³ The total exceeds 17 because some complaints were based on multiple grounds of discrimination.

Grounds Raised in Public Complaints



E. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

33. During this reporting period, there were no complaints against lawyers or law students by paralegals.

F. COMPLAINTS AGAINST PARALEGALS

34. During this reporting period, the DHC received only one complaint against a paralegal. The complaint was made by a member of the public who was self-represented in litigation. The paralegal was representing the party opposite him. He complained that she (the paralegal) made discriminatory remarks and engaged in harassment based on his disability.

G. SERVICES PROVIDED TO COMPLAINANTS

35. The DHC provides a wide range of services to individuals who make discrimination or harassment complaints about lawyers, law students or paralegals. 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 difficulties 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. The DHC provides these individuals with safe counsel, coaching, information, referrals to other agencies and resources, informal mentoring, and general (non-legal) advice – some on an ongoing basis. The DHC also provides mediation services, described below.
36. Complainants who contacted the DHC with new matters during this reporting period were advised of various avenues of recourse open to them, including:
- speaking to their union representative (if they are unionized);
 - filing an internal 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 with the Law Society;
 - where appropriate, contacting the police; and
 - contacting a lawyer for advice regarding possible legal claims.

37. New complainants were also 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.)
 - what types of remedies might 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).
38. Complainants were told that the options available to them are not mutually exclusive.
39. In some cases, upon request, strategic tips and coaching were 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).
40. Some complainants were referred to other agencies/organizations (such as the Lawyer's Assistance Plan and the Human Rights Legal Support Centre) or were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

H. MEDIATION / CONCILIATION

41. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation or conciliation/intervention services of the DHC Program.
42. 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. 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 both parties are willing to participate, they are required to sign a mediation agreement prior to entering into discussions with the DHC.
43. 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.
44. Many 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: complainants desiring to have a fact-finding investigation, complainants believing that the respondent will not participate in good faith, and complainants wanting to

create a formal record of the respondent's misconduct through an adjudicative process.

45. During this reporting period, there were no formal mediation sessions conducted by the DHC. There were, however, a number of informal interventions made at complainants' request.
46. The DHC spoke with the respondents in numerous cases and was thereby able to achieve a resolution or partial resolution of many complaints. These interventions occurred in matters involving:
 - a job advertisement for a legal assistant that expressed a preference for female applicants (the advertisement was removed but no apology or acknowledgement of wrongdoing was forthcoming);
 - a client who felt that his lawyer was not accommodating his disability (complaint was resolved to the client's satisfaction by negotiating accommodation measures that were acceptable to both parties);
 - an associate lawyer who was feeling pressured by her firm to work during her maternity leave and who feared for her job security because of her pregnancy (complaint was partially resolved; pressure to work during her leave ceased but complainant continued to fear for her job security);
 - a legal assistant who quit her job because of sexual harassment by her male boss (no resolution achieved; complainant is pursuing legal action against the firm and lawyer in question);

- a litigant with a disability who complained about discriminatory conduct by a paralegal representing the party opposing him (complaint resolved based on undertakings given by the paralegal); and
- a male lawyer who was sexually harassed (pursued romantically and stalked) by a female lawyer with whom he was professionally acquainted (complaint resolved based on apology and promise by the respondent that her behaviour would cease).

G. SUMMARY OF GENERAL INQUIRIES

47. Of the 90 new contacts with the DHC during this reporting period, 24 involved general inquiries. These contacts included:

- inquiries by law firms about how best to handle internal harassment complaints;
- requests for sensitivity training for lawyers who were respondents to harassment complaints;
- inquiries by lawyers about their personal responsibilities (eg. whether there is an obligation to disclose a disability or pregnancy to an employer);
- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC and confidentiality;
- requests from the public for promotional materials about the DHC Program;
- inquiries about the data collected by the DHC;
- inquiries about the Law Society's complaint process; and

- questions from law firms about the availability of model policies on equity issues.

H. MATTERS OUTSIDE THE DHC MANDATE

48. During this reporting period, the DHC received 38 calls and emails relating to matters outside the Program's mandate.
49. These contacts included complaints about judges and complaints about workplace harassment that did not involve lawyers or paralegals.
50. There were several harassment complaints against lawyers that did not involve any human rights issues or prohibited grounds of discrimination (eg. bullying, demeaning and intimidating behaviour by co-workers, employers, opposing counsel, etc.) There were also complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (eg. lack of civility, unethical practices, breach of confidentiality, etc.). A few complaints involved billing disputes and clients who thought that their lawyer was overcharging.
51. In addition, some individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
52. 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, including (but not limited to) the LSUC's Lawyer Referral Service.
53. Although there are a 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 contact with the Program.

I. PROMOTIONAL ACTIVITIES

54. The LSUC maintains a bilingual website for the DHC Program.
55. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.
56. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.
57. The DHC continues to work closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver Discrimination and Harassment Prevention and Violence Prevention workshops to law firms across the province. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.