

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

**For the period from January 1, 2013 to June 30, 2013**

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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, law students or paralegals.
2. The complaints arise in a wide variety of contexts, such as clients who report that they have been subjected to sexual harassment 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.
3. The DHC provides these individuals with confidential 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.

## **B. SERVICES PROVIDED TO COMPLAINANTS**

4. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
  - 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 of professional misconduct with the Law Society;
  - where appropriate, contacting the police; and
  - contacting a lawyer for advice regarding possible legal claims.
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 or paralegals 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 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).
6. Complainants are advised 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. Some complainants are referred to other agencies/organizations (such as the Lawyer's Assistance Plan 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.

**(a) Mediation / Conciliation**

9. 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.
10. 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.
11. 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.
12. 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.

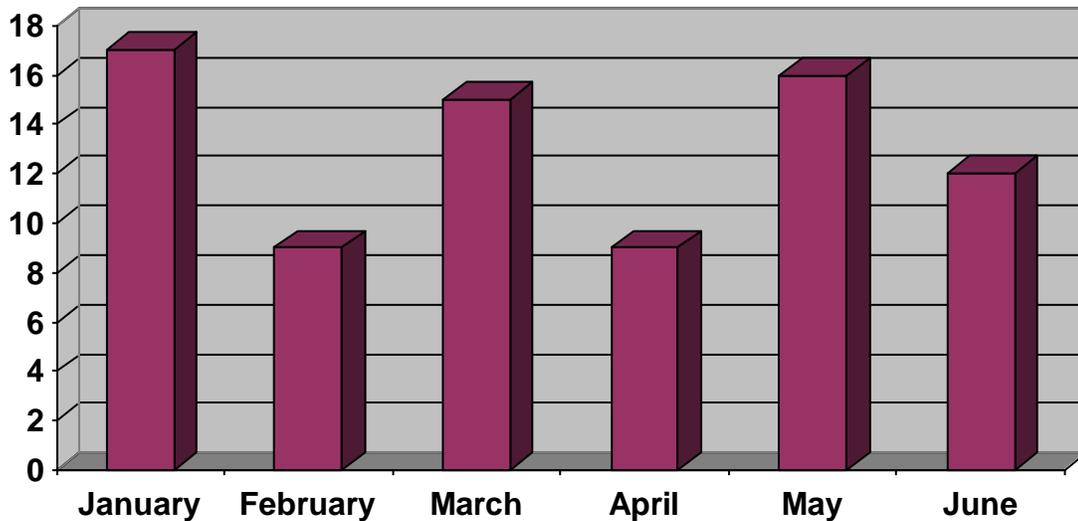
Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as a go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent.

13. 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: 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.
14. During this reporting period, there was one formal in-person mediation session conducted by the DHC, in the context of a client complaint. The mediation was successful and the parties agreed to the terms of a protocol for future communications, enabling them to maintain their solicitor-client relationship.
15. In one other case, also involving a client complaint, the complainant requested formal mediation but the responding lawyer declined to participate.
16. During this reporting period, there were also a number of informal interventions made at complainants' request. The DHC communicated with the respondent lawyers in several cases. In some, but not all cases, the DHC was thereby able to achieve a resolution to the complaint.

**C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM**

17. During this six month reporting period, 78 individuals contacted the DHC Program with a new matter.<sup>1</sup> This represents average of 13 new contacts per month.

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



19. Of the 78 individuals who contacted the DHC, 43 (55%) used the telephone to make their initial contact and 35 (45%) used email.

20. During this reporting period, one individual was provided services in French. The remaining clients of the Program were provided services in English.

**D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS**

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<sup>1</sup> 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.

21. Of the 78 new contacts with the Program, 36 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario. A total of 3 complaints were made against paralegals. The remaining 33 complaints were made against lawyers.
22. Two of the 3 complaints against paralegals were made by other paralegals and one was made by a member of the public. Of the 33 complaints against lawyers, 21 (64%) were made by members of the public and 12 (36%) were made by members of the legal profession (i.e., by lawyers, articling students and paralegals).

**(a) Complaints against Lawyers by Members of the Legal Profession**

23. In this reporting period, there were 12 complaints against lawyers by members of the legal profession. Five (5) of these complaints were made by lawyers, 5 were made by articling students, and 2 were made by a paralegals. All of the complainants were anglophone.
24. Half of the 12 complaints by members of the legal profession were made by women and half were made by men:
  - The two paralegal complainants were both female.
  - Four (4) of the 5 articling student complainants were male.
  - Of the 5 lawyer complainants, 3 were female and 2 were male.
25. All of the 5 complaints made by lawyers arose in the context of the complainant's employment. Both of the paralegals complaint and all but one of the articling student complaints also arose in the context of the complainants' employment.

One law student complaint was regarding a law professor and arose in the context of the complainant's education.

26. There were 5 complaints based (in whole or in part) on disability:

- Three male articling students each complained about their respective employer's refusal to accommodate their disability. (One of these students also complained about racial harassment and accent discrimination in his employment – see below).
- Two female lawyers with disabilities complained about employment-related discrimination. One complained about unfair treatment by her employer, including discriminatory restrictions on her career advancement, and the other complained about barriers to employment based on her disability.

27. There were 4 complaints based (in whole or in part) on race:

- A South Asian male articling student complained about racial harassment, as well as accent discrimination, in the context of his employment. (This complainant also reported that his employer was refusal to accommodate his disability.)
- A Black female paralegal complained about racial discrimination in the context of her employment.
- A male First Nations law student complained about discriminatory conduct and comments by a law professor based on his aboriginal ancestry.<sup>2</sup>

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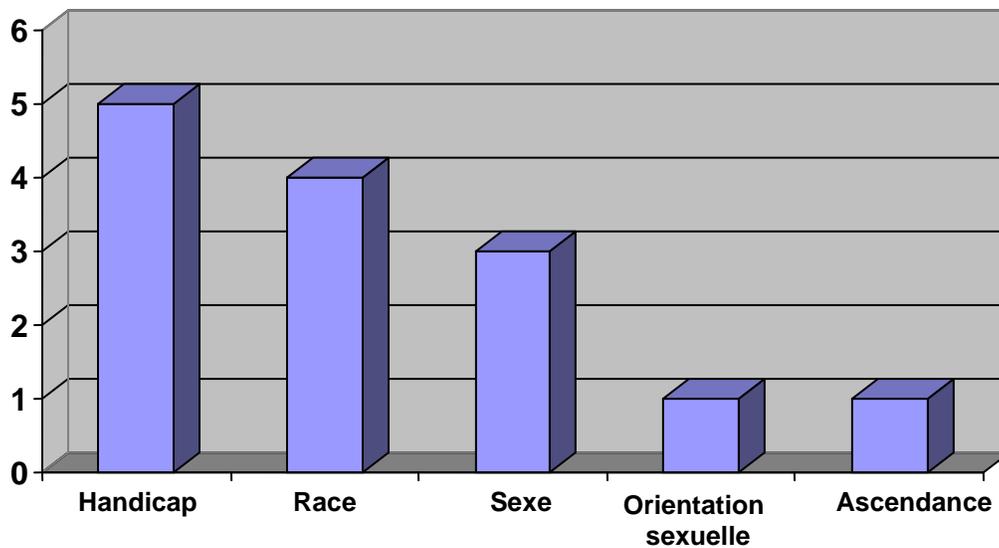
<sup>2</sup> This complaint is recorded as a complaint based on both race and ancestry.

- A self-described racialized lawyer complained about racial harassment by one of his co-workers, who was a female lawyer.
28. There were 3 complaints based (in whole or in part) on sex:
- Two (2) complaints involved allegations of sexual harassment by a lawyer with whom the complainants worked. Both of these complainants were female; one was an articling student and one was a junior associate. Both respondents were senior male partners in the complainants' respective firms. One of the complaints included allegations of sexual assault.
  - One complaint involved allegations by a female paralegal of discrimination based on pregnancy in the context of her employment.
29. All of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
30. There was one complaint by a gay male lawyer of workplace harassment by co-workers based on his sexual orientation.

31. In summary, the number of complaints<sup>3</sup> by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:

- disability 5
- race 4
- sex 3 (2 sexual harassment; 1 pregnancy)
- sexual orientation 1
- ancestry 1

Grounds Raised in Complaints against Lawyers by Members of the Legal Profession



<sup>3</sup> The total number exceeds 12 because some complaints involved multiple grounds of discrimination.

**(b) Complaints against Lawyers by Members of the Public**

32. During this reporting period, there were 21 complaints against lawyers made by members of the public. All of the complainants were anglophone.
33. Thirteen (13) of the public complaints (62%) were made by women and 8 (38%) were made by men.
34. Of the 21 public complaints:
- thirteen (13) involved clients complaining about their own lawyer, former lawyer, or a lawyer whom they attempted to retain;
  - four (4) involved litigants complaining about the conduct of opposing counsel in their cases;
  - two (2) involved employees complaining about a lawyer in their workplace;
  - one (1) involved a complaint about a lawyer who was sitting as a Tribunal member; and
  - two (2) involved complaints about the social media posts of lawyers.
35. There were 9 public complaints based (in whole or in part) on disability:
- Three (3) clients complained about their respective lawyer's failure to accommodate their disability, including one complaint about a lawyer's refusal to provide materials in an accessible format.
  - Three (3) clients complained about discriminatory treatment by their own lawyer (eg. use of condescending tone, dismissive and/or derogatory language, mocking behaviour) based on their disability.

- Three litigants with disabilities complained about the discriminatory conduct and/or comments of opposing counsel in their cases.

36. There were 7 public complaints based (in whole or in part) on sex:

- Four (4) of these sex-based complaints involved allegations of sexual harassment by female clients of male lawyers, including one allegation of sexual assault.
- A female litigant complained about sexist remarks made by a lawyer who was sitting as a Tribunal member / adjudicator.
- Two men complained about social media posts by male lawyers. One complaint related to a job advertisement for a “female law clerk” and the other complaint was about sexist and anti-Islamic tweets posted by a lawyer. The twitter account in question was linked to the respondent lawyer’s law firm and was part of how the lawyer marketed his practice. (The objectionable tweets also included anti-Islamic remarks – see below.)

37. There were 4 public complaints based (in whole or in part) on race:

- Two people complained about denial of legal services based on their race. One of these complainants was a First Nations man.<sup>4</sup> The other was a female complainant who did not disclose her race.
- A First Nations woman complained about an abusive and racially derogatory letter that she received from her former counsel.<sup>5</sup>

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<sup>4</sup> This complaint is recorded as a complaint based on both race and ancestry.

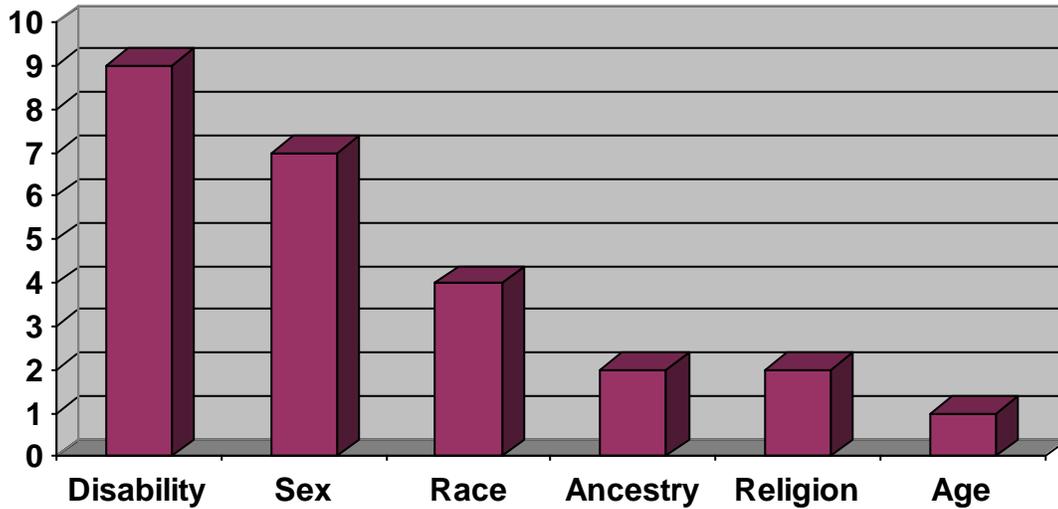
<sup>5</sup> This complaint is recorded as a complaint based on both race and ancestry.

- A man involved in litigation complained about racist remarks made by the opposing counsel in his case.
38. There were 2 public complaints based (in whole or in part) on religion. Both of these complaints involved allegations that the responding lawyers had made anti-Islamic comments. One complainant was a Muslim man involved in family law litigation who complained about verbal and written remarks made by the opposing counsel in his case. The other complainant was a man who reported offensive tweets posted by a lawyer. The tweets in question also included sexist remarks (see above) and anti-Christian remarks.
39. There was 1 public complaint based in part on age. A man reported that his elderly mother was being mistreated by her lawyer in a discriminatory fashion because of her disability and because of her advanced age.
40. In summary, the number of public complaints<sup>6</sup> in which each of the following grounds of discrimination was raised are as follows:
- disability 9
  - sex 7 (4 sexual harassment)
  - race 4
  - ancestry 2
  - religion 2
  - age 1

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<sup>6</sup> The total number exceeds 21 because some complaints involved multiple grounds of discrimination.

Grounds Raised in Public Complaints against Lawyers



**(c) Complaints against Paralegals**

41. During this reporting period, there were 3 complaints against paralegals. Two of these complaints were made by paralegals and one was made by a member of the public:

- A female paralegal complained about age discrimination by another paralegal in the context of her employment.
- A lesbian paralegal complained about homophobic conduct and comments by a paralegal who was opposing her in litigation.
- A female Muslim paralegal complained about anti-Islamic harassment by another female paralegal with whom she was professionally associated.

## **E. SUMMARY OF GENERAL INQUIRIES**

42. Of the 78 new contacts with the DHC during this reporting period, 13 involved general inquiries. These contacts included:

- inquiries by employers about how best to handle internal harassment complaints against lawyers;
- inquiries by lawyers about their professional responsibilities relating to equity issues;
- questions about the scope of the DHC Program's mandate, the services offered by the DHC, and confidentiality;
- inquiries about the Law Society's complaint process; and
- questions from law firms about the availability of model policies on equity issues.

## **F. MATTERS OUTSIDE THE DHC MANDATE**

43. During this reporting period, the DHC received 29 calls and emails relating to matters outside the Program's mandate.

44. These contacts included complaints about judges and about lawyers licensed in other provinces. They also included complaints about workplace harassment that did not involve any licensees.

45. There were complaints against licensees that did not fall within the program's mandate. These included allegations of incompetence, breach of civility, and breach of client confidentiality, as well as some billing disputes (i.e., clients

alleging that their lawyers were overcharging). They also included harassment allegations that were not based on any prohibited grounds of discrimination (eg. allegations of bullying, intimidation, abuse of power, etc.)

46. 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.
47. 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.

#### **G. PROMOTIONAL ACTIVITIES**

48. The LSUC maintains a bilingual website for the DHC Program.
49. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program.
50. 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.
51. 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.

52. During this reporting period, the DHC made a presentation about the DHC Program at Windsor University Faculty of Law and at the First National LGBTQ Service Providers Summit, held in Toronto in June 2013.