

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

**For the period from January 1, 2012 to June 30, 2012**

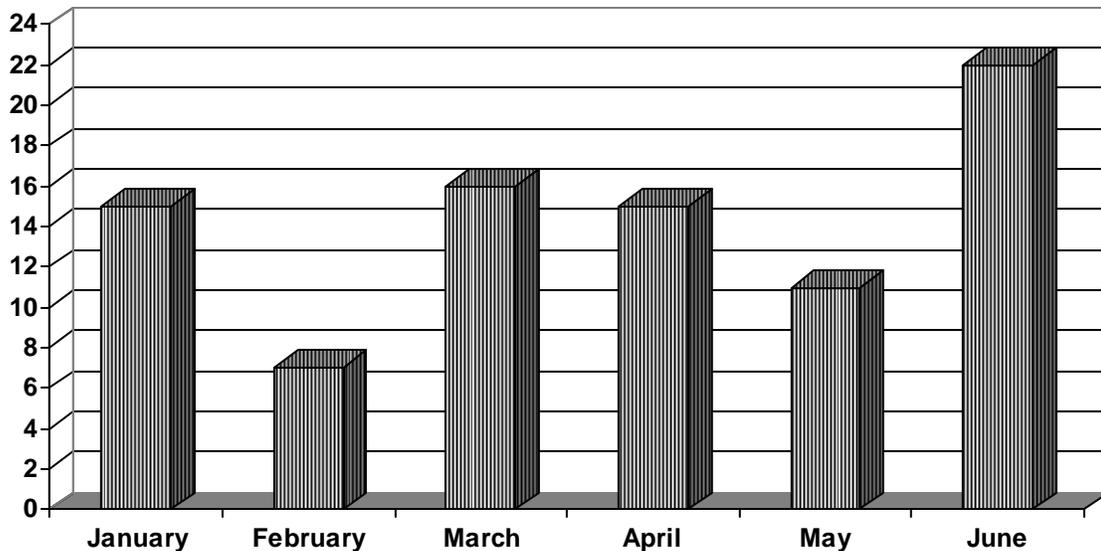
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**A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM**

1. During this six month reporting period, 86 individuals contacted the DHC Program with a new matter.<sup>1</sup> This represents an average of 14.3 new contacts per month, which is consistent with the average (14.8) over the past nine years.
2. The volume of new contacts with the Program was distributed as follows:



3. Of the 86 individuals who contacted the DHC, 45 (52%) used the telephone to make their initial contact and 41 (48%) used email.
4. All of the individuals who contacted the DHC Program during this six month period were provided services in English. The DHC services are also available in French.

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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 matter are not counted in this number.

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

5. Of the 86 new contacts with the Program, 34 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario. This volume of complaints is consistent with previous reporting periods. The total number of complaints per reporting period has varied considerably over the past nine years and has averaged 28 complaints for every 6 month period since January 2003.
6. Of the 34 complaints received by the DHC, one was made against a paralegal and the remaining 33 complaints were against lawyers.
7. The complaint against a paralegal was made by a paralegal candidate/student.
8. Of the 33 complaints against lawyers, 13 (39%) were made by members of the public and 20 (61%) were made by members of the Law Society. Over the past nine years, public complaints have constituted an average of 55% of all complaints received by the DHC program. There are typically more public complaints than complaints from within the legal profession in any given reporting period, except in 2009 and 2010, when the complaints from within the profession exceeded the public complaints. Thus there appears to be, in recent years, a proportionate increase in complaints from members of the bar.

**C. COMPLAINTS AGAINST LAWYERS BY LAWYERS AND ARTICLING STUDENTS**

9. In this reporting period, there were 20 complaints against lawyers by members of the Law Society. Thirteen (13) of these complaints were made by lawyers, 6 were made by articling students, and one was made by a paralegal.

10. Of the 20 complaints against lawyers by members of the legal profession, 14 (70%) were made by women and 6 (30%) were made by men. Nine (9) of the 13 lawyers who made complaints were female, 4 of the 6 articling student complainants were female, and the one paralegal who made a complaint was female.
11. Of the 13 complaints made by lawyers, 9 (69%) arose in the context of the complainant's employment, 3 (23%) were made against lawyers with whom the complainants were professionally acquainted, and 1 arose in the context of the delivery of a service to the complainant by the respondent lawyer. These figures are consistent with the trend in complaints by lawyers over the past nine years; employment-related complaints have constituted the overwhelming majority (78%) of all complaints from within the legal profession.
12. Of the 6 law student complaints, 5 (83%) arose in the context of the complainants' employment and one related to the provision of a service to the complainant. This is also typical of the trend in student complaints over the past nine years, which have overwhelmingly arisen in the context of the student's employment or a job interview.
13. During this reporting period, the one complaint made by a paralegal against a lawyer arose in the context of the complainant's employment.
14. Of the 20 complaints against lawyers by members of the Law Society, there were 13 complaints based, in whole or in part,<sup>2</sup> on sex. Of these,
  - seven (7) involved allegations of sexual harassment;

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<sup>2</sup> Some complaints were based on two or more intersecting grounds of discrimination, including sex. See also paragraph 3 below.

- four (4) involved allegations of discrimination based on pregnancy in the context of the complainant's employment; and
  - two (2) involved allegations of systemic gender discrimination in employment.
15. With respect to the 7 sexual harassment complaints, there were 3 male complainants and 4 female complainants. All of the respondents (alleged harassers) were male lawyers:
- A male lawyer contacted the DHC in respect of a female associate in his office who he believed, based on interactions that he had witnessed, was the victim of sexual harassment by a senior male partner in their firm;
  - A male lawyer complained about inappropriate sexual innuendo and remarks that were being made to him by another male lawyer in his firm (eg. oral sex jokes);
  - A male lawyer complained about persistent expressions of affection and unwelcome romantic solicitations from a female lawyer with whom he was professionally acquainted;
  - Three female lawyers and one female paralegal each complained about sexual harassment by male lawyers within their respective workplaces. The particulars of their complaints included allegations of unwelcome flattering comments on their appearance, inappropriate sexual remarks (eg. "do these pants make my penis look big?"), unwanted sexual advances, a refusal to provide an employment reference as a reprisal for rejecting sexual advances, and pressure to reconcile after the break-down of a consensual sexual/romantic relationship with threats to undermine the

complainant's relationship with clients if she did not accede to the male lawyer's wishes.

16. There were four (4) complaints based, in whole or in part,<sup>3</sup> on race:
  - Two articling students complained about systemic racial discrimination with respect to their employment; one of the students also complained about racial harassment (eg. inappropriate questions about his ethnic and racial heritage, insulting derisive remarks about his name);
  - An associate lawyer complained about systemic racial discrimination in her employment; and
  - A lawyer complained about race discrimination by another lawyer in the context of the delivery of a service to her.
17. There were 2 complaints based, in whole or in part, on sexual orientation. One of these complaints was made by a female associate who reported experiencing systemic discrimination in her employment based on her sexual orientation and race. The other complaint involved an allegation that a lawyer who presented at a Continuing Professional Development seminar made an inappropriate joke about lesbians.
18. There were two complaints based, in whole or in part, on disability. An articling student complained about harassment and discrimination in employment based on disability and an associate lawyer also complained about discrimination based

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<sup>3</sup> Some complaints were based on multiple intersecting grounds. For example, one of the student complainants mentioned in this paragraph complained about both racist and homophobic discrimination in employment. The associate lawyer mentioned in this paragraph complained about systemic discrimination based on both race and sex in her employment (eg. inadequate mentoring for minority female lawyers in her firm, poor hire-back rates for minority female articling students, poor retention of minority female lawyers due to lack of professional supports, etc.).

on disability (and sex/pregnancy) in the context of her employment. The latter complaint included allegations that her employment was wrongfully terminated because of a disability that she disclosed to her employer.

19. There were also one complaint based on religion and one complaint based on family status. These complaints involved allegations that the complainants' employers failed to accommodate the complainants' religious observance and parental obligations.

20. In summary, the number of complaints<sup>4</sup> by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised is:

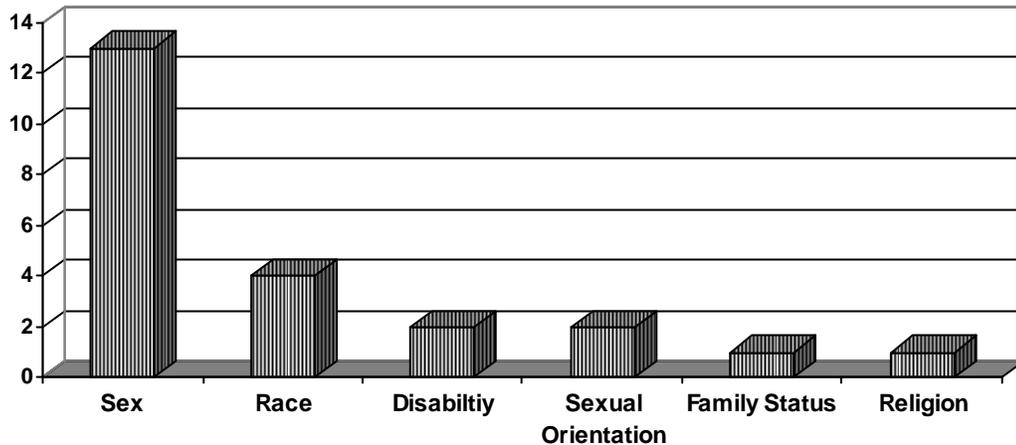
sex	13	(7 sexual harassment; 4 pregnancy)
race	4	
disability	2	
sexual orientation	2	
religion	1	
family status	1	

21. This distribution of grounds is consistent with the types of complaints typically received by the DHC. Over the past nine years, approximately 50% of all complaints against lawyers have been based (in whole or in part) on sex, with disability and race being the next two most frequently cited grounds of discrimination. Of the sex-based complaints, sexual harassment is the most common allegation and pregnancy-related complaints are also very common.

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<sup>4</sup> The total number exceeds 20 because some complaints involved multiple grounds of discrimination.

Grounds of Discrimination Raised in Complaints by Members of the Law Society



**D. COMPLAINTS AGAINST LAWYERS BY MEMBERS OF THE PUBLIC**

22. During this reporting period, there were 13 complaints against lawyers made by members of the public.
23. Ten (10) of the public complaints (77%) were made by women and 3 (23%) were made by men.
24. Of the 13 public complaints:
  - six (6) involved clients complaining about their own lawyer or a lawyer that they attempted to retain;
  - six (6) involved litigants complaining about the conduct of opposing counsel in their cases; and
  - one involved an employee complaining about the conduct of a lawyer in her workplace.

25. There were four (4) public complaints based, in whole or in part, on sex. Of these,
- three (3) involved allegations of sexual harassment; and
  - one (1) involved a female client who complained about sexist remarks made by her own male lawyer.
26. Two of the sexual harassment complaints were client complaints made by women who reported that their respective lawyers had harassed them; one of complainants alleged that her lawyer sexually assaulted her. The third sexual harassment complaint was made by a female law clerk against a male lawyer in her workplace.
27. There were two (2) public complaints based, in whole or in part, on race:
- one complaint was raised by a prospective client who reported that she was denied legal services and representative based (in part) on her race; and
  - one complaint was made by a litigant who reported that the opposing counsel in her case used a derogatory racial insult to describe her (Black female) lawyer.

28. There were six (6) public complaints based, in whole or in part, on disability:

- five complaints involved litigants who reported that the opposing counsel in their respective cases made derogatory or disparaging remarks about their disability and/or mocked their disability; and
- one complaint was made by a law clerk who reported harassment in her employment based on disability.

29. There were two public complaints based on family status:

- a prospective client reported that a lawyer refused to act for her (in part) because of her family status; and
- a client complained about discrimination based (in part) on her family status by her own lawyer.

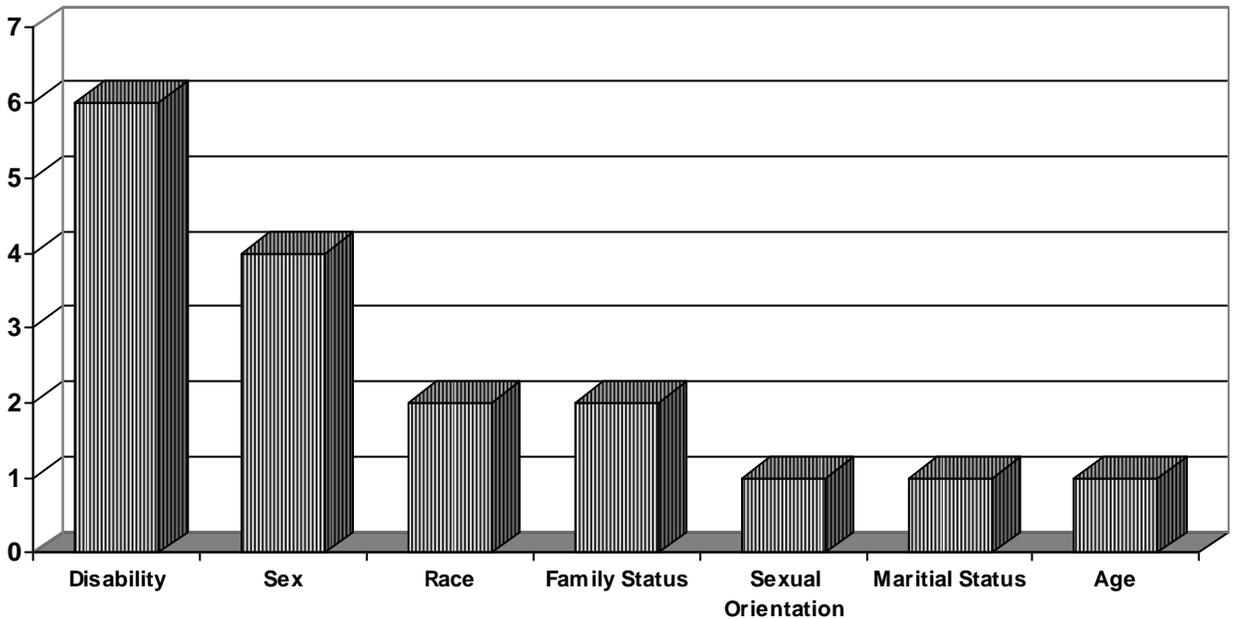
30. There were also complaints based on each of the following grounds:

- a lesbian law clerk complained about harassment in her employment based on her sexual orientation;
- a client complained about discrimination based (in part) on her marital status by her own lawyer; and
- a man complained on behalf of his elderly mother that her lawyer was failing to represent her properly and was discriminating against her based on her age.

31. In summary, the number of public complaints<sup>5</sup> in which each of the following grounds of discrimination was raised is as follows:

disability	6
sex	4 (3 sexual harassment)
race	2
family status	2
age	1
sexual orientation	1
marital status	1

Grounds Raised in Public Complaints



<sup>5</sup> The total exceeds 13 because some complaints were based on multiple grounds of discrimination.

**E. COMPLAINTS AGAINST LAWYERS BY PARALEGALS**

32. During this reporting period, there was only one complaint against a lawyer by a paralegal. The complainant was female. Her arose in the context of her employment and involved allegations of sexual harassment by a male lawyer in her workplace.

**F. COMPLAINTS AGAINST PARALEGALS**

33. During this reporting period, the DHC received only one complaint against a paralegal. The complainant was a paralegal student who reported that one of his instructors, who is a paralegal, made disparaging remarks about his disability in front of other students.

**G. SERVICES PROVIDED TO COMPLAINANTS**

34. The DHC provides a wide range of services to individuals who make discrimination or harassment complaints about lawyers, articling 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.

35. Complainants who contact the DHC with are advised of various avenues of recourse open to them, including (where applicable):
- speaking to their union representative;
  - 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 professional misconduct complaint with the Law Society;
  - contacting the police; and
  - contacting a lawyer for advice regarding possible legal claims.
36. Complainants are 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);
  - the mechanics of 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).

37. Complainants are told that the options available to them are not mutually exclusive.

38. In some cases, upon request, strategic tips and 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).

39. 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, ARCH, or other organizations.

#### **H. MEDIATION / CONCILIATION**

40. 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.

41. Whenever formal mediation is offered, the nature and purpose of mediation is explained to the complainant, 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. Written consent must be provided before the DHC contacts the respondent. If both parties are willing to participate in mediation, they are required to sign a mediation agreement prior to entering into discussions with the DHC.

42. 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.
43. 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.

44. During this reporting period, there was only one formal mediation session conducted by the DHC,<sup>6</sup> but there were a number of informal interventions made at complainants' request. The DHC spoke with the respondents in several of the sexual harassment cases and was thereby able to achieve a resolution of those complaints.<sup>7</sup> In one particularly serious and complicated sexual harassment case, involving allegations by one partner against another partner in the same firm, the DHC assisted the parties in reaching an agreement through mediation that achieved a resolution to the issues raised in the complaint.

## **G. GENERAL INQUIRIES**

45. Of the 86 new contacts with the DHC during this reporting period, 18 involved general inquiries. These contacts included:

- an inquiry by the partner at a law firm about how best to handle an internal harassment complaint;
- a request by a law firm for sensitivity training for a lawyer who was found to have engaged in sexual harassment;
- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC and confidentiality;
- inquiries about the data collected by the DHC; and
- inquiries about the Law Society's complaint process.

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<sup>6</sup> An Alternate DHC may have conducted other mediation sessions during a period of vacation coverage for the DHC.

<sup>7</sup> The Alternate DHC also conducted some informal interventions at complainants' request during periods of vacation coverage for the DHC.

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

46. During this reporting period, the DHC received 34 calls or emails relating to matters outside the Program's mandate. These contacts included complaints about workplace harassment that did not involve any lawyers or paralegals and complaints about judges.
47. 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, undisclosed conflict of interest, etc.). A few complaints involved billing disputes and clients who thought that their lawyer was overcharging.
48. In addition, a few individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
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. Many of these individuals were referred to other agencies, including (but not limited to) the LSUC's Lawyer Referral Service.
50. 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 AND EDUCATIONAL ACTIVITIES**

51. The LSUC maintains a bilingual website for the DHC Program.
52. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.
53. 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.
54. During this reporting period, the DHC continued to work closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver Discrimination and Harassment Prevention workshops and Violence Prevention workshops to law firms. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.