

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

For the period from July 1, 2012 to December 31, 2012

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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 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 (e.g. racist, sexist, homophobic) treatment by opposing counsel in their cases.
3. 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.

B. SERVICES PROVIDED TO COMPLAINANTS

4. Complainants who contact the DHC are 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.
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 (e.g. whether it can be done electronically, whether particular forms are required, etc.)
 - the processes involved in each option (e.g. investigation, conciliation, mediation, hearing, etc.)
 - the general types of remedies might be available in different *fora* (e.g. 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 (e.g. 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.

C. 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

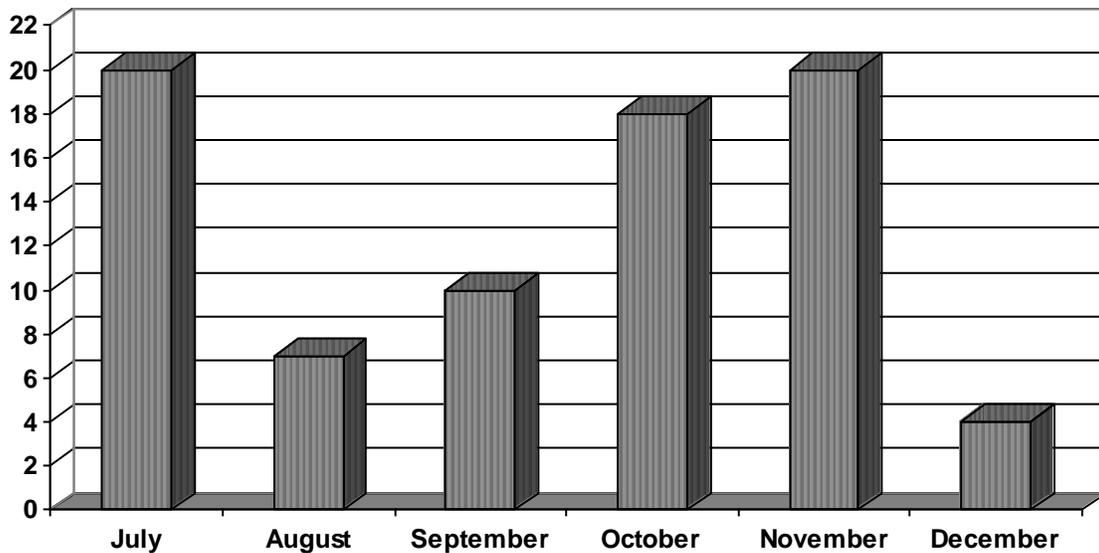
representative, but rather as a go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent.

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. The mediation was successful and the parties entered into Minutes of Settlement to resolve the complaint.
15. In one other case, the complainant requested formal mediation but the responding lawyer declined to participate.
16. During this reporting period, there were a number of informal interventions made at complainants' request. The DHC spoke with the respondent lawyers in several cases and was thereby able to achieve resolutions to complaints.

D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this six month reporting period, 79 individuals contacted the DHC Program with a new matter.¹ 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 79 individuals who contacted the DHC, 60 (76%) used the telephone to make their initial contact and 19 (24%) 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.

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.

E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

21. Of the 79 new contacts with the Program, 37 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.
22. In this reporting period, two complaints were made against paralegals. The remaining 35 complaints were made against lawyers.
23. The two complaints against paralegals were made by members of the public. Of the 35 complaints against lawyers, 21 (60%) were made by members of the public and 14 (40%) were made by members (including student members) of the Law Society.

F. COMPLAINTS AGAINST LAWYERS BY MEMBERS OF THE BAR

24. In this reporting period, there were 14 complaints against lawyers by members of the Law Society. Ten (10) of these complaints were made by lawyers, 3 were made by articling students, and one was made by a paralegal.
25. One of the lawyer complainants was francophone. All of the other complainants were Anglophone.
26. Of the 14 complaints by members of the legal profession, 13 (93%) were made by women and one was made by a man. The paralegal complainant and all of the articling student complainants were female. One of the lawyer complainants was male.
27. Of the 10 complaints made by lawyers, 9 (90%) arose in the context of the complainant's employment. One complaint was made against a lawyer who was providing a public service to the complainant.

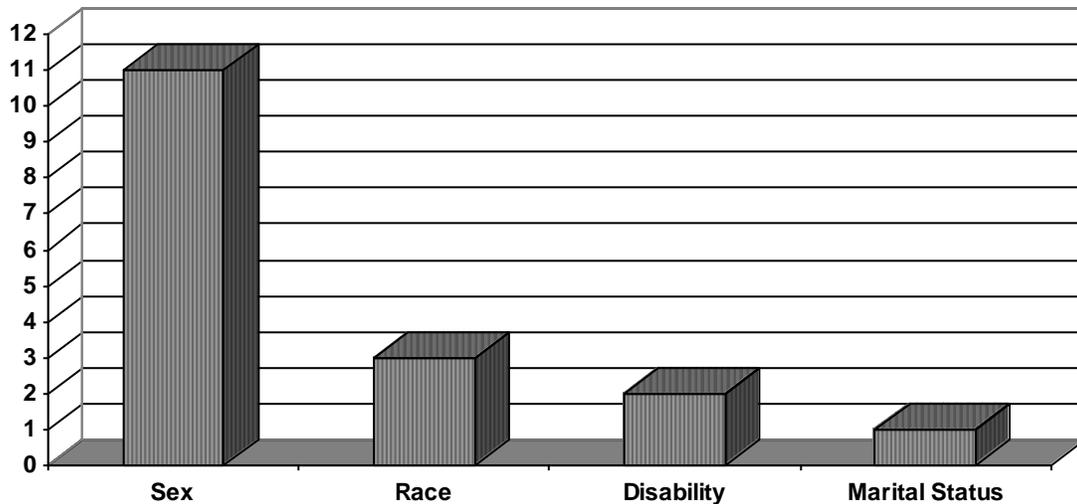
28. The paralegal complaint and all of the articling student complaints arose in the context of the complainants' employment.
29. There were 11 complaints based (in whole or in part) on sex. Of these,
 - Six (6) involved allegations of sexual harassment and/or sexual assault by a lawyer with whom the complainant worked – always a senior male lawyer in the workplace or male partner, where the complainant worked in a private firm;
 - Two (2) involved allegations of discrimination based on pregnancy involving termination of the complainant's employment; and
 - Three (3) involved allegations of sex discrimination in employment and/or sexist comments by male co-workers.
30. All of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
31. There were 3 complaints based (in whole or in part) on race. One of the articling students who complained about sexual harassment also reported discrimination in her employment based on race. The sole francophone complainant, a female lawyer, complained about employment discrimination based on both sex and race. Another lawyer complained about racist workplace comments made by her co-worker.
32. There were two complaints by lawyers based on disability. A male lawyer with a disability complained about discrimination by another lawyer who was providing him with a public. A female lawyer with a disability complained about her employer's failure to accommodate her medical needs.

33. There was one complaint by a lawyer of workplace harassment by co-workers based on her marital status (i.e., based on the identity of her spouse).

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

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

Grounds Raised in Complaints by Members of the Bar



G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

35. During this reporting period, there were 21 complaints against lawyers made by members of the public.

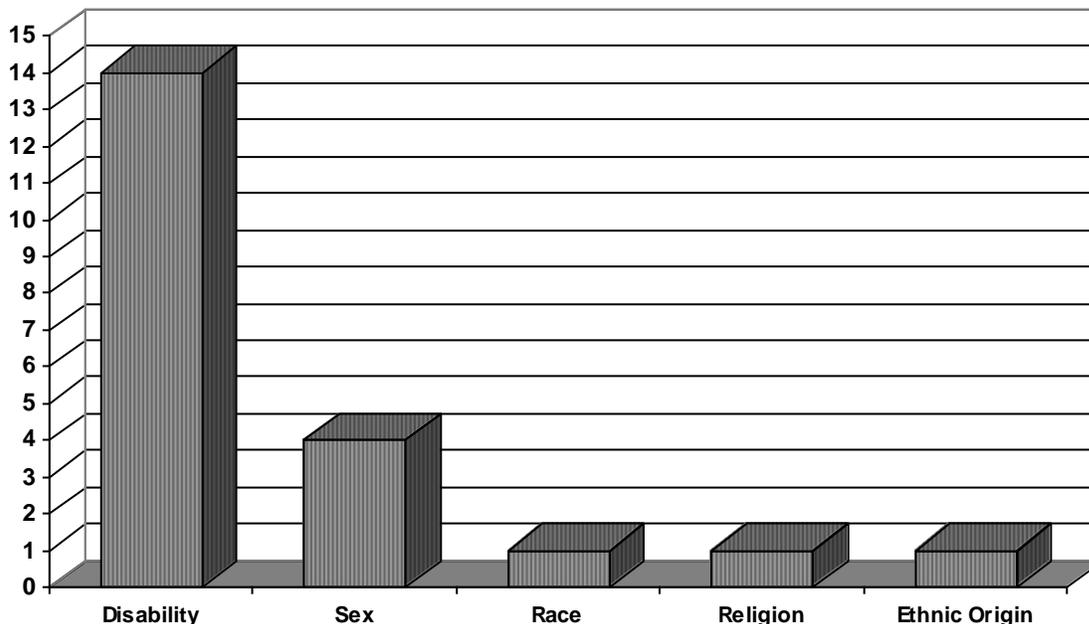
² The total number exceeds 14 because some complaints involved multiple grounds of discrimination.

36. Eleven (11) of the public complaints (52%) were made by women and 10 (48%) were made by men.
37. Of the 21 public complaints:
- thirteen (13) involved clients complaining about their own lawyer (or a lawyer that they attempted to retain);
 - one (1) involved an employee complaining about a lawyer in her workplace;
 - four (4) involved litigants complaining about the conduct of opposing counsel in their cases;³
 - two (2) involved complaints lawyers who were business associates of the complainant; and
 - one (1) involved a complaint about a lawyer who was providing a public service.
38. There were fourteen (14) public complaints based (in whole or in part) on disability:
- Five (5) clients complained about their lawyer's failure to accommodate their disability.
 - Five (5) clients complained about discriminatory treatment by their own lawyer (e.g. condescending tone, use of dismissive and/or derogatory language, mocking behaviour) based on their disability.
 - One individual reported that a lawyer refused to represent her because of her psychiatric disability.
 - Three litigants with disabilities complained about the discriminatory conduct and/or comments of opposing counsel in their cases.

³ These include complaints by criminal accused against Crown prosecutors, as well as complaints by litigants about opposing counsel in civil cases.

39. There were four (4) public complaints based (in whole or in part) on sex. Three of these complaints involved allegations of sexual harassment.
40. Two of the sex based complaints were made by men. One male complainant was a criminal accused who alleged that the female Crown prosecutor in his case was engaging in anti-male sex discrimination. The other male complainant was calling on behalf of his wife, whom he reported was being sexually harassed by a male lawyer she had retained. Two women complained about sexual harassment by lawyers. One was a legal assistant who reported being sexually harassed by her male boss. The other was a therapist who called on behalf of a female patient, who had reported that she (the patient) had been sexually assaulted by her male lawyer.
41. There was one (1) public complaint based on race. An Asian man reported racist remarks made by a white lawyer who was providing a public service.
42. There was one (1) public complaint based on ethnic origin and one (1) based on religion. In each of these complaints, the complainant and the respondent lawyer were business associates. Both cases involved allegations of inappropriate discriminatory remarks.
43. In summary, the number of public complaints in which each of the following grounds of discrimination was raised is as follows:
- disability 14
 - sex 4 (3 sexual harassment)
 - race 1
 - ethnic origin 1
 - religion 1

Grounds Raised in Public Complaints



H. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

44. During this reporting period, there was one complaint against a lawyer by a paralegal. A female paralegal reported sexual harassment, including stalking behaviour and cyber/internet harassment, by a former colleague (male lawyer).

I. COMPLAINTS AGAINST PARALEGALS

45. During this reporting period, there were two complaints against paralegals. Both were made by members of the public:

- A college student complained about discriminatory treatment by her instructor (a paralegal) based on her disability.
- An Asian man complained about derogatory racist remarks and mistreatment by a paralegal whom he had retained to represent him.

G. SUMMARY OF GENERAL INQUIRIES

46. Of the 79 new contacts with the DHC during this reporting period, 11 involved general inquiries. These contacts included:

- inquiries by law firms or other legal employers (e.g. law clinics) about how best to handle internal harassment complaints;
- inquiries by lawyers about their professional responsibilities relating to equity issues;
- 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;
- 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

47. During this reporting period, the DHC received 31 calls and emails relating to matters outside the Program's mandate.

48. These contacts included complaints about judges and complaints about workplace harassment that did not involve lawyers or paralegals.

49. There were several workplace harassment complaints against lawyers (by other lawyers or support staff in the workplace) that did not involve any human rights issues. The complaints were not based on any prohibited grounds of discrimination; rather, they involved allegations of bullying, intimidation, abuse of

power, etc. There were also complaints of unprofessional conduct by lawyers that did not involve allegations of discrimination or harassment (e.g. lack of civility, breach of confidentiality). A few complaints involved billing disputes and clients who thought that their lawyer was overcharging.

50. 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.
51. 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.

J. PROMOTIONAL ACTIVITIES

52. The LSUC maintains a bilingual website for the DHC Program.
53. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program.
54. 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.
55. 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.