

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

For the period from January 1, 2014 to June 30, 2014

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A. INTRODUCTION

1. The Discrimination and Harassment Counsel (DHC) provides a range of services to individuals who have complaints or concerns about alleged discrimination or harassment by lawyers, articling students or paralegals.¹
2. The complaints/concerns arise in a 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,² informal mentoring, and general (nonlegal)³ 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):

¹ In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in the Ontario *Human Rights Code* and/or the Law Society's codes of conduct for licensees. Personal harassment that is not based on any human rights grounds (eg. intimidation and bullying) does not fall within the mandate of the DHC Program.

² The DHC does not, however, provide a lawyer referral service.

³ The DHC does not provide any legal advice or representation to complainants.

- speaking to their union representative (if they are unionized and their complaint relates to their employment);
- filing an internal complaint within their workplace;
- making a complaint to the respondent licensee's employer (eg. the managing partner of a law firm);
- filing an Application with the Human Rights Tribunal of Ontario;
- filing a formal complaint of professional misconduct with the Law Society;
- contacting the police (where criminal conduct is alleged); and
- contacting a lawyer for legal 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 that 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 ARCH or 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.

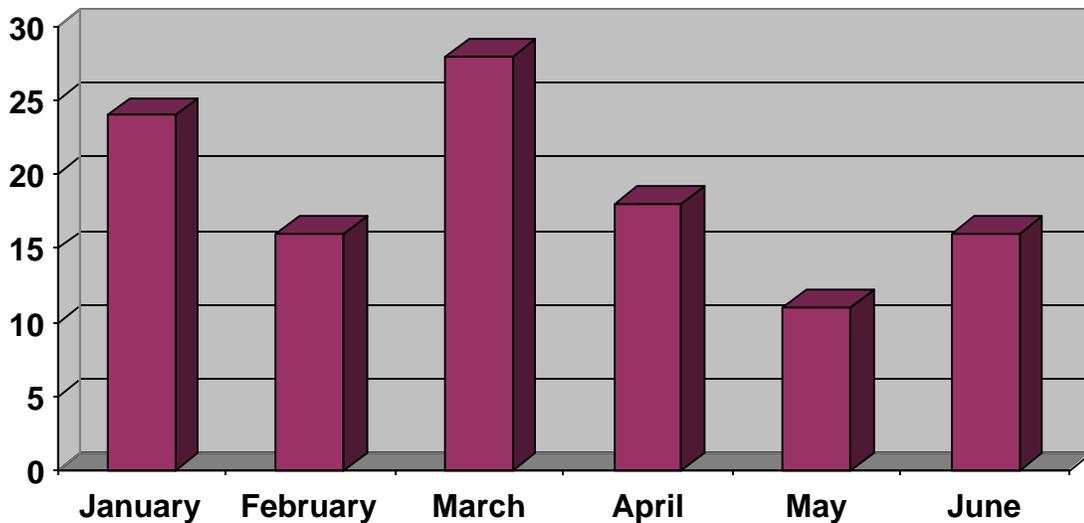
11. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate (written consent to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) 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 were no formal in-person mediation sessions conducted by the DHC. One complainant requested mediation but the respondent was unwilling to participate. There were, however, a number of cases in which the DHC intervened informally as a conciliator, communicated

with the parties involved and was able to assist them in reaching a mutually satisfactory resolution to the complainant's concerns.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

15. During this reporting period, 113 individuals contacted the DHC Program with a new matter.⁴ This represents an average of 18.8 new contacts per month.

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



17. Of the 113 individuals who contacted the DHC, 62 (55%) used the telephone to make their initial contact and 48 (45%) used email. Three (3) individuals approached the DHC in person at events at which she (Cynthia Petersen) was speaking.

⁴ 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. Individuals who had multiple communications with the DHC about the same matter are only counted once.

18. During this reporting period, two individuals were provided services in French.⁵ The remaining clients of the Program were provided services in English.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

19. Of the 113 new contacts with the Program, 40 individuals made specific complaints of alleged discrimination or harassment by a lawyer or paralegal in Ontario. A total of 3 complaints were made against paralegals. The remaining 37 complaints were made against lawyers.
20. Two of the 3 complaints against paralegals were made by members of the public; the third complaint was made by another paralegal.
21. Of the 37 complaints against lawyers, 17 (46%) were made by members of the public and 20 (54%) were made by members of the legal profession (i.e., other lawyers, articling students and paralegals).

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

22. In this reporting period, there were 20 complaints against lawyers by members of the legal profession. Thirteen (13) of these complaints were made by lawyers, 3 were made by articling students, 3 were made by paralegals and one was made by a paralegal candidate. All of the complainants were anglophone.⁶

⁵ Both of these francophone individuals made general inquiries. Neither of them was complaining about the conduct of a specific licensee.

⁶ By describing these individuals as “anglophone”, I mean to convey that the complainants spoke English and sought services from the DHC in English, rather than French. For some of them, English was not their first language.

23. Of the 20 complaints by members of the legal profession, 16 (80%) were made by women and 4 (20%) were made by men. The sole paralegal candidate complainant was female, 2 of the 3 paralegal complainants were female, and 2 of the 3 articling student complainants were female. Eleven of the 13 lawyer complainants were female.
24. Nine of the 20 complaints from members of the legal profession arose in the context of the complainants' employment. All three articling student complaints arose in the context of the complainants' employment, though one of the respondents was neither the complainant's employer nor her co-worker, but rather a lawyer who shared office space with her employer.
25. Four of the complaints by lawyers arose in the context of complainants who were receiving non-legal services from another licensed lawyer (i.e., the respondent lawyer worked for a public service provider).
26. Three of the complaints from members of the legal profession, including two complaints by paralegals, arose in the context of litigation and involved allegations of misconduct against opposing counsel.
27. Three of the complaints from members of the legal profession, including one complaint by a paralegal, involved allegations of misconduct against a lawyer with whom the complainant was professionally acquainted.
28. The sole complaint by a paralegal candidate arose in the context of the complainant's education (she was being instructed by the respondent lawyer).
29. There were 9 complaints based (in whole or in part) on disability:

- 8 -

- A male lawyer whose employment was terminated alleged that the termination was discriminatory based on his disability.

Two lawyers (one male and one female) each complained about harassment and discriminatory treatment from other lawyers who were providing them with a public service.

- Two female lawyers and one female articling student complained that their respective employers were failing or refusing to accommodate their disabilities.
- A female lawyer complained about employment discrimination based (in part) on her disability.
- A male articling student complained about workplace harassment by his principal based (in part) on his disability.
- A female paralegal candidate reported that one of her instructors (a licensed lawyer) was discriminating against her based on her disability.

30. There were 8 complaints based (in whole or in part) on sex:

- Five of these complaints included allegations of sexual harassment:
 - (i) A female articling student reported sexual harassment and sexual assault by a male lawyer with whom she was professionally acquainted.
 - (ii) A female paralegal complained about sexual harassment (offers of professional reward for sexual favours) by a male lawyer with whom she was professionally acquainted.

□

- (iii) A female lawyer reported unwelcome sexual solicitation by a senior male partner in her law firm.
- (iv) A female lawyer complained about inappropriate and unwelcome sexual remarks by a male opposing counsel.
- (v) A male law student complained about unwelcome sexual remarks made by his male principal about one of his female colleagues (another articling student).

- A female lawyer complained about a sexist remark made by an opposing male counsel.
- Two female lawyers complained about employment discrimination based (in part) on gender.

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

- A Black male paralegal complained about racial harassment by lawyers with whom he was professionally acquainted.
- A female lawyer complained about employment discrimination based (in part) on her race. (She did not identify her race.)
- A Black female paralegal complained about racial discrimination by opposing counsel in her case.
- A female lawyer complained about racially derogatory remarks made by the opposing counsel in one of her cases.

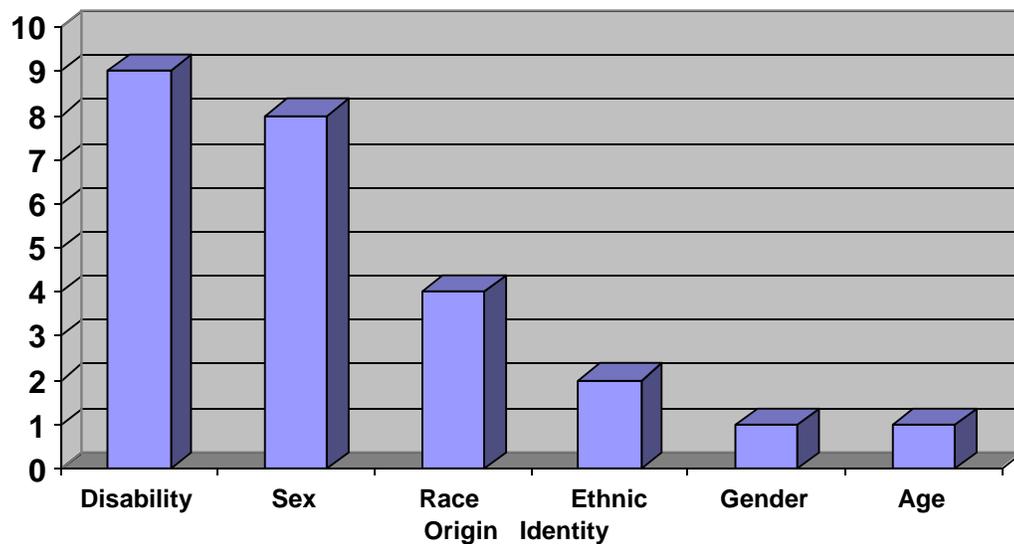
32. There were two complaints based (in whole or in part) on ethnic origin:
A female lawyer (a new Canadian with foreign credentials) complained about discrimination based (in part) on her ethnic origin by a lawyer who was providing her with a public service.
- A female lawyer complained about systemic employment discrimination based on (in part) her ethnic origin.
 - There was one complaint based on gender identity.⁷ A transsexual lawyer complained about discriminatory conduct from another lawyer who was providing her with a public service.
33. There was one complaint based (in part) on age. One female lawyer complained about discriminatory treatment based on age by a licensee who was providing her with a public service.
34. In summary, the number of complaints⁸ by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:
- disability 9
 - sex 8 (5 sexual harassment)
 - race 4
 - ethnic origin 2

⁷ Historically, complaints based on gender identity have been counted as complaints based on sex. However, the Law Society's rules of conduct for licensees were recently amended to reflect amendments to the Ontario *Human Rights Code*, such that "gender identity" and "gender expression" are now separate enumerated grounds of discrimination, so complaints based on gender identity will be tracked separately.

⁸ The total number exceeds 20 because some complaints involved multiple grounds of discrimination.

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- gender identity 1
- age 1

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



(b) Complaints against Lawyers by Members of the Public

35. During this reporting period, there were 17 complaints against lawyers made by members of the public. All of the complainants were anglophone.⁹
36. Thirteen (13) of the public complaints (76%) were made by women and 4 (24%) were made by men.

⁹ See footnote 6 above.

37. Of the 17 public complaints:

- eleven (65%) involved clients complaining about their own lawyer, former lawyer, or a lawyer who they attempted to retain;
- four (23%) involved litigants complaining about the conduct of opposing counsel in their cases;

one involved an employee complaining about lawyers in his workplace;

- one involved a complaint about a lawyer with whom the complainant was personally acquainted.

38. There were 8 public complaints based (in whole or in part) on disability:

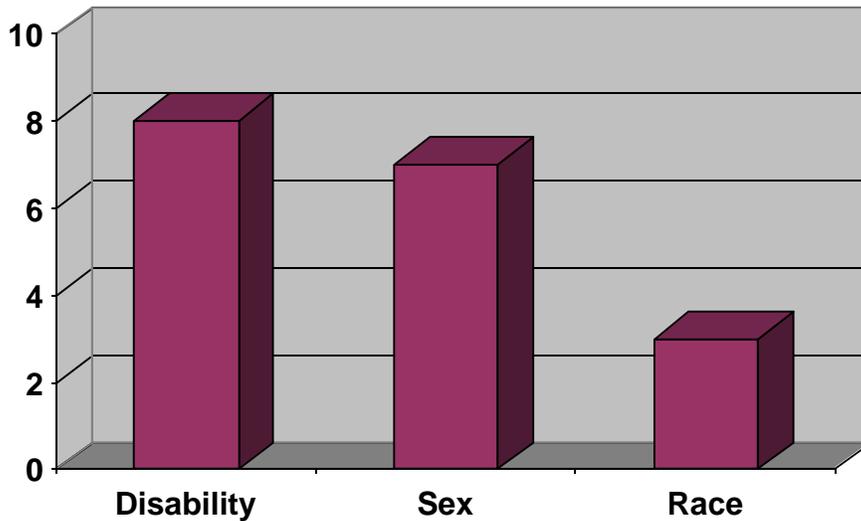
- Six of these were client complaints:
 - (i) Five women complained about their respective lawyer's refusal or failure accommodate their disabilities; in one case, the lawyer allegedly threatened to withdraw his services when the client insisted on accommodation;
 - (ii) A woman complained that her lawyer was discriminating against her and taking advantage of her based on her disability;
- Two litigants (one male and one female) complained about harassment by opposing counsel in their respective cases based on their disabilities.

39. There were 7 public complaints based (in whole or in part) on sex;

□

- Five of these complaints involved allegations of sexual harassment:
 - (i) Three women complained about sexual harassment by their own respective (male) lawyers, including one complaint that included allegations of lewd comments and requests for sexual favours;
 - (ii) One woman complained about sexual harassment by a male lawyer who she was seeking to retain;
 - (iii) One woman complained about sexual harassment and stalking by her ex-husband (who is a licensee);
 - A female litigant complained about harassment by opposing counsel based (in part) on gender.
 - A male administrative assistant complained about gender-based employment discrimination by lawyers in his workplace (i.e., preferential treatment of female administrative assistants).
40. There were 3 public complaints based (in whole or in part) on race:
- A female client reported rude racially motivated comments made by her own counsel.
 - Two self-represented litigants (one male and one female) complained about racial discrimination by the opposing counsel in their respective cases.

Grounds Raised in Public Complaints against Lawyers



(c) Complaints against Paralegals

41. During this reporting period, there were 3 complaints against paralegals.

42. Two of these complaints were made by members of the public, both of whom were litigants who alleged misconduct by the opposing paralegal in their respective cases. One woman alleged that the opposing paralegal made derogatory racist remarks about her. A self-represented male litigant alleged that the opposing paralegal in his case mocked his disability, as well as his wife's disability, and made disparaging ableist remarks about them.

43. One of the complaints against a paralegal was made by a female paralegal who alleged employment discrimination based on her age.

E. GENERAL INQUIRIES

44. Of the 113 new contacts with the DHC during this reporting period, 25 involved general inquiries. These contacts included:

- inquiries by lawyers about how best to respond to unwelcome and/or offensive comments by co-workers and/or opposing counsel;
- inquiries by law firms about how best to handle internal harassment complaints made by their employees;
- inquiries by lawyers about their professional responsibilities relating to equity issues;
- inquiries by articling students and lawyers about their disclosure obligations (relating to such issues as a non-visible disability or pregnancy);
- questions about the scope of the DHC Program's mandate, the services offered by the DHC, and/or confidentiality; and
- inquiries about the Law Society's complaints process.

F. MATTERS OUTSIDE THE DHC MANDATE

45. During this reporting period, the DHC received 48 calls and/or emails relating to matters outside the Program's mandate.

46. These contacts included complaints about the conduct of judges and of lawyers licensed in other provinces. They also included numerous complaints about workplace harassment in which the respondent was not a licensee.

47. There were some complaints about Ontario licensees that did not fall within the program's mandate. These included allegations of incivility, some billing disputes (i.e., clients alleging that their lawyers were overcharging), and a few of alleged workplace harassment (eg. bullying and intimidation) in which there were no allegations based on prohibited grounds of discrimination.
48. 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 for assistance.
49. Although there are a significant number of these "outside mandate" contacts (about 8 per month or 2 per week on average during this 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.

G. PROMOTIONAL ACTIVITIES

50. The LSUC maintains a bilingual website for the DHC Program.
51. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program.
52. The DHC brochure was recently revised and update. French and English copies of the brochure will be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.
53. The DHC continues to work closely with the Law Society's Director, Equity (Josée Bouchard) to design and deliver *Discrimination and Harassment*

Prevention and Violence Prevention workshops to law firms across the province.

Two such workshops were presented during this reporting period. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the Program's services.

54. During this reporting period, the DHC made a presentation about the DHC program and resources to the annual Law Union conference in Toronto (in March 2014). Ms. Petersen spoke on a panel entitled, "Looking Inward at the Lawyer and Paralegal Professions: Bullying, Discrimination, and Mental Health". Ms. Petersen also delivered the annual Thomas Feeney lecture at the Faculty of Law at the University of Ottawa (in March 2014), speaking on the topic of "Preventing and Responding to Discrimination and Harassment in the Legal Profession -

Progress and Challenges." Both of these public presentations were well attended by large audiences and both resulted in subsequent new contacts with the DHC program from audience participants.