

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

**For the period from July 1 to December 31, 2003**

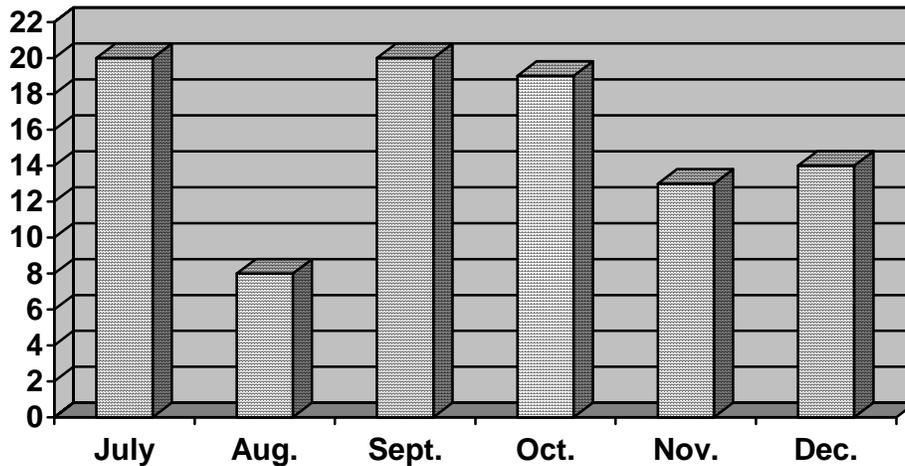
**Prepared by Cynthia Petersen**

## Overview of New Contacts with the DHC Program

(July 1 to December 31, 2003)

### *Number of New Contacts*

1. During this reporting period, 94 individuals contacted the DHC Program. On average, there were 16 new contacts per month, distributed as follows:



2. This represents an increase in the volume of new contacts relative to the first six months of 2003, during which there were 86 new contacts with the DHC Program (on average 15 per month).

### *Method of Communication*

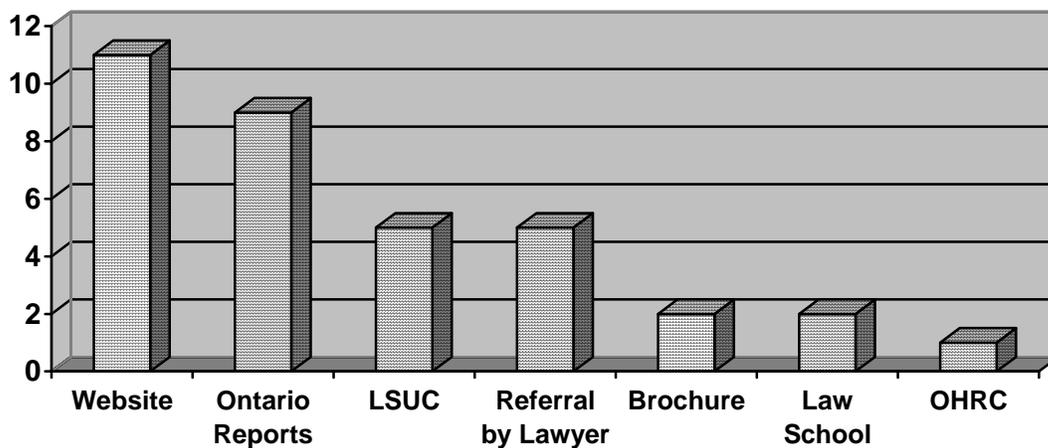
3. During this reporting period, 70 individuals (74%) made their first contact with the Program by telephone, 23 individuals (25%) made their first contact with the Program by email, and 1 individual (1%) made contact with the Program by fax.
4. This represents a slight increase in the frequency of electronic access to the DHC Program relative to the first six months of 2003, when only 21% of individuals used email to contact the DHC.

### *Language of Communication*

5. The DHC Program services are offered in English and French. During this reporting period, of the 94 new contacts with the Program, 7 individuals (7.5%) communicated with the DHC in French. This represents an increase relative to the first 6 months of 2003, when only 3 individuals out of 86 (3.5%) communicated with the DHC in French.
6. In an effort to improve access to the DHC Program, the promotional brochures for the Program have recently been translated into Cantonese. The Chinese brochures are being printed and will begin to be circulated in 2004.

### *Source of Referral to the DHC Program*

7. Individuals who contacted the DHC Program by telephone with issues that are within the DHC mandate were asked how they heard about the Program. Callers either could not recall or advised that they had learned about the Program's existence from the following sources:



8. While I was occupying the DHC position on an interim basis, there were no advertisements for the Program in the Ontario Reports. My appointment to the position was advertised in the OR's in October 2003 and since then, there have been regular advertisements in both English and French for the Program in the OR's. These advertisements appear to be effective and should be continued, given the high percentage of individuals who identified the OR's as the source of their knowledge of the Program. Within the legal profession, 75% of callers who contacted the Program identified the ORs as their source of knowledge.

## **Matters Outside the DHC Mandate**

9. Of the 94 new contacts during this reporting period, 34 (36%) related to matters outside the scope of the DHC mandate.
10. This represents a decrease relative to the first six months of 2003, when 35 out of 86 contacts (41%) were outside the DHC mandate.
11. One of the calls that I received, which was outside of the DHC mandate, involved a complaint of sexual harassment against a lawyer in Quebec who was not a member of the LSUC.
12. Two of the calls outside of the DHC mandate consisted of individuals seeking legal representation or a referral to a lawyer for a discrimination or harassment matter.
13. The remaining contacts that related to matters outside of the DHC Program can be grouped into two categories:
  - complaints of harassment or discrimination that do not involve a lawyer or the legal profession (eg. complaints against landlords, the police, ex-spouses, non-legal employers, and correctional facilities) and
  - complaints against lawyers that do not involve any equity or human rights issues (eg. billing disputes or allegations of insurance fraud, breach of solicitor-client privilege, and misrepresentation).
14. Whenever I was contacted by an individual relating to a matter outside the scope of the DHC mandate, I explained the mandate to them and, whenever possible, referred them to another organization for information and assistance, such as a union, human rights commission, the Lawyer Referral Service, or the LSUC.
15. Dealing with these “outside mandate” contacts typically does not consume much time, but they nevertheless constitute a drain on DHC Program resources. Consequently, in an effort to reduce the volume of contacts related to matters outside the DHC mandate, the promotional brochures for the Program have been revised to clarify the scope of the DHC’s mandate. The revised brochures are being printed and will begin to be circulated in 2004. The DHC website will also soon be revised with a view to clarifying the scope of the mandate. When the Program posters are reprinted, a similar revision will be made.

## **Inquiries Within the DHC Mandate**

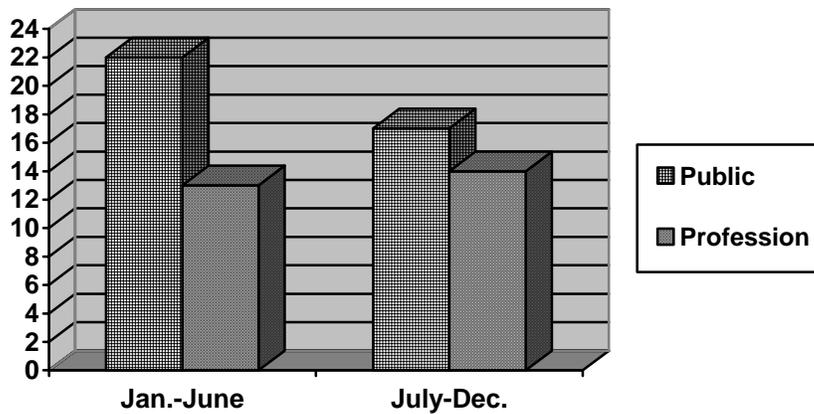
16. Of the 60 new contacts relating to matters within the mandate of the DHC Program, 29 (48%) involved general inquiries rather than complaints about incidents of discrimination or harassment. This represents an increase relative to the first six months of 2003, when 19 out of 51 new contacts within the mandate (37%) involved general inquiries.
17. Most of the general inquiries (25 out of 29) came from within the legal profession. The inquiries included:
  - calls from members of the legal profession who wanted clarification and/or information regarding their employment rights and obligations in circumstances where they thought that discrimination might occur (eg. a lawyer undergoing sex-reassignment surgery, a lawyer returning from a maternity leave, a pregnant lawyer interviewing for jobs);
  - calls from members of the legal profession who had suffered discrimination and/or harassment and were seeking a referral to support resources (eg. counseling services for victims of sexual harassment, alcohol addiction counseling services, depression counseling services);
  - law schools, legal clinics and law firms inquiring about educational workshops provided by the DHC;
  - legal employers seeking information regarding the development of equitable recruitment practices;
  - legal employers seeking information regarding the development of workplace harassment and discrimination policies;
  - law students and other researchers seeking access to data collected by the DHC;
  - law schools inquiring about equity guidelines for interviewing articling students;
  - members of the public and of the legal profession inquiring about the LSUC Rules of Professional Conduct and issues of discrimination or harassment; and
  - members of the public and of the legal profession seeking information and/or clarification of the DHC Program's mandate and services.

## Discrimination and Harassment Complaints

18. During this reporting period, 31 individuals contacted the DHC Program with complaints of discrimination and/or harassment against a lawyer or law firm in Ontario.

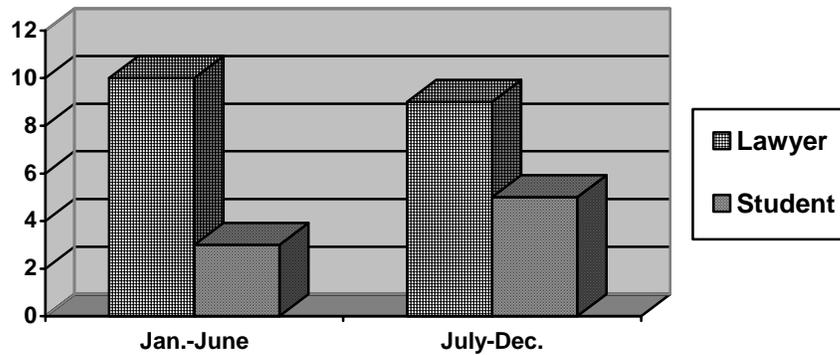
### *Public / Profession Ratio*

19. A little more than half of the complaints (17 or 55%) came from members of the public, with the remaining 45% (14) coming from members of the legal profession. Relative to the first six months of 2003, there was a slight decrease in the number and proportion of complaints from the public:



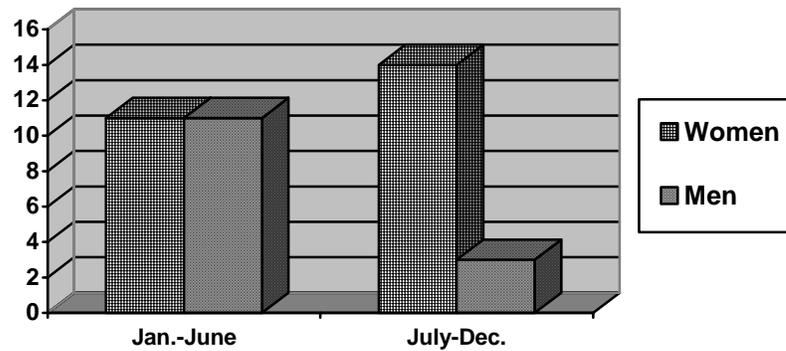
### *Profession: Lawyer / Student Ratio*

20. Five (5) of the 14 complaints from within the profession were from student members of the bar. Relative to the first six months of 2003, there was a slight increase in the number and proportion of complaints from students.



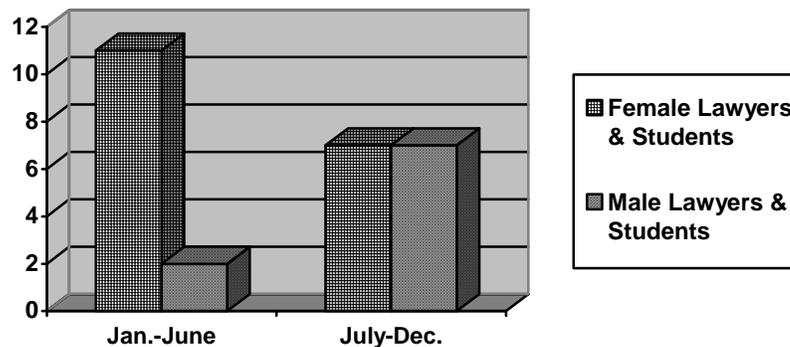
***Public: Male / Female Ratio***

- 21. Of the 17 lay individuals who contacted the Program with a complaint of discrimination or harassment, the overwhelming majority was female (14 or 82%).
- 22. During the first six months of 2003, the 22 complaints from the public were evenly divided between men (11) and women (11).
- 23. There was therefore a significant increase in the proportion of public complaints from women:



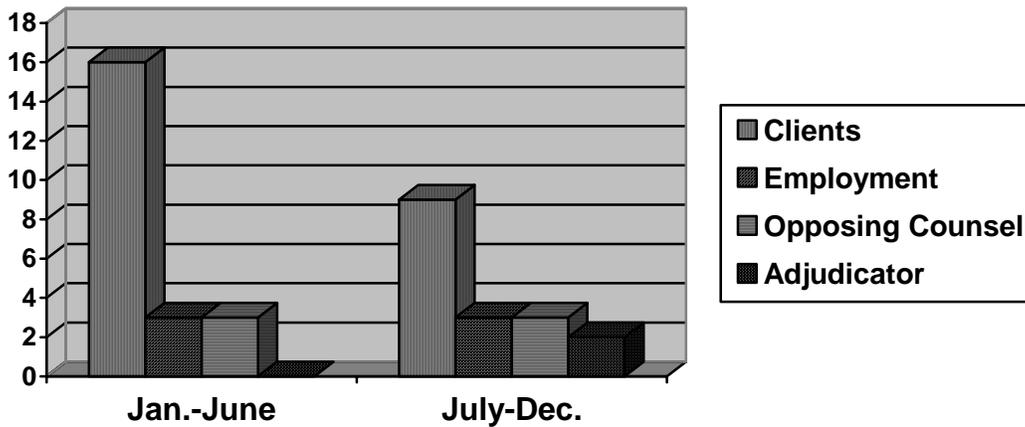
***Profession: Male / Female Ratio***

- 24. The 14 complaints from within the profession were evenly divided between men (7) and women (7). Of the five student members of the bar who contacted the Program with a complaint, 3 were women and 2 were men.
- 25. Relative to the first six months of 2003, the overall number of complaints from within the profession remained relatively constant (13 in the first six months and 14 in the last six months), but there was a significant increase in the number and proportion of complaints from men. During the first six months of 2003, only 2 out of 13 complaints from within the profession were made by men:



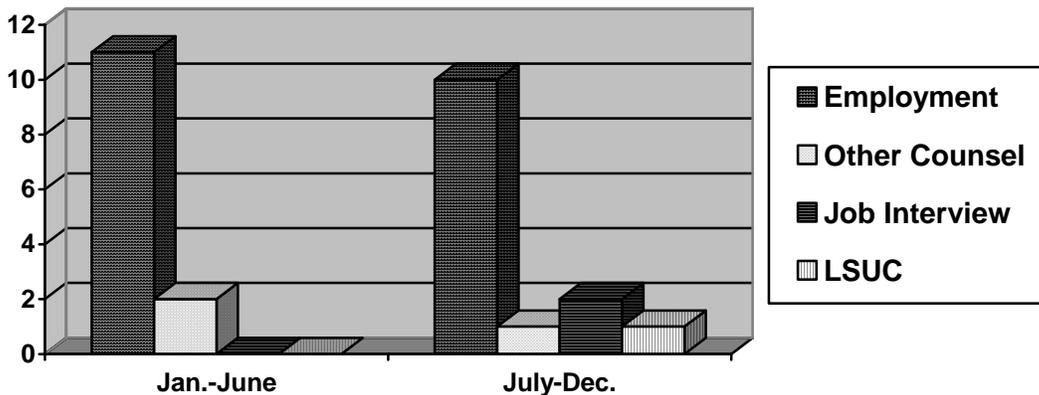
***Context of Public Complaints***

26. Of the 17 complaints from members of the public:
- 3 involved individuals complaining about their employer;
  - 9 were clients complaining about their own lawyer,
  - 3 were litigants complaining about counsel representing an opposing party, and
  - 2 were litigants complaining about an adjudicator.
27. This data is similar to the data collected in the first six months of 2003, during which there were 22 complaints from members of the public,
- 3 involving employment situations,
  - 16 involving complaints by clients, and
  - 3 involving litigant complaints against opposing counsel.
28. The following chart demonstrates the contexts in which public complaints arose during the first half and second half of 2003.



*Context of Complaints from Within the Profession*

29. Of the 14 complaints from within the profession,
- 7 lawyers and 3 law students complained about their employer,
  - 1 lawyer and 1 law student complained about discriminatory remarks made during a job interview,
  - 1 student complained against the LSUC and
  - 1 complained about another lawyer outside of an employment context.
30. This data is similar to the data collected in the first six months of 2003, during which there were 13 complaints from the profession,
- 11 of which involved lawyers (8) and law students (3) complaining about their employer and
  - 2 of which involved lawyers complaining about other counsel in non-employment related situations.
31. The following chart demonstrates the contexts in which complaints from within the profession arose during the first half and second half of 2003.



32. During this reporting period (July 1 to December 31, 2003), the respondents in the 10 employment-related complaints from members of the profession included 5 government employers (federal, provincial and municipal), 3 law firms, 1 sole practitioner and 1 company with an in-house legal department. The 2 complaints involving job interviews involved a government employer and a law firm as respondents.

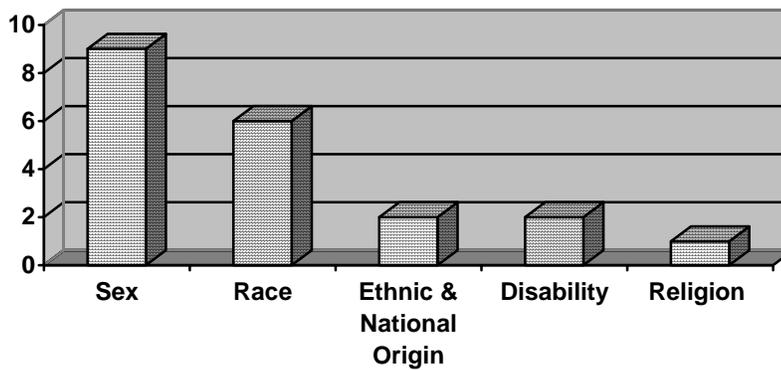
### *Nature of Public Complaints*

33. The 17 complaints made by members of the public were based on the following prohibited grounds of discrimination: race, ethnic origin, national origin, sex, disability and religion. A number of the complaints were based on multiple intersecting grounds, as described below.
34. Approximately half (8) of the 17 public complaints involved discrimination based on race, ethnicity or national origin, or racial harassment:
  - Two litigants complained about the conduct of a lawyer representing an opposing party; one alleged race discrimination and the other discrimination based on ethnic and national origin.
  - Six individuals complained about the conduct of their own counsel. Of these six clients, three alleged discrimination based on race, one alleged discrimination based on ethnic and national origin, and two alleged racial harassment. The two complaints of racial harassment also included complaints of sexual harassment, and one of these also included religious harassment.<sup>1</sup>
35. Approximately half (8) of the 17 public complaints involved sexual harassment (i.e., inappropriate touching, unwanted sexual overtures and sexist or sexual remarks).
  - Of the 8 sexual harassment complaints, 3 were made by employees who were complaining about a coworker, their supervisor and/or their employer.
  - Five of the sexual harassment complaints were made by clients of lawyers. As noted above, two of these involved racial harassment as well as sexual harassment, and one also included religious harassment.
36. Two of the 17 public complaints involved disability. One individual complained about discrimination based on disability by an adjudicator and another individual complained about harassment based on disability by a lawyer representing an opposing party in litigation.
37. One litigant complained about sex discrimination by an adjudicator.

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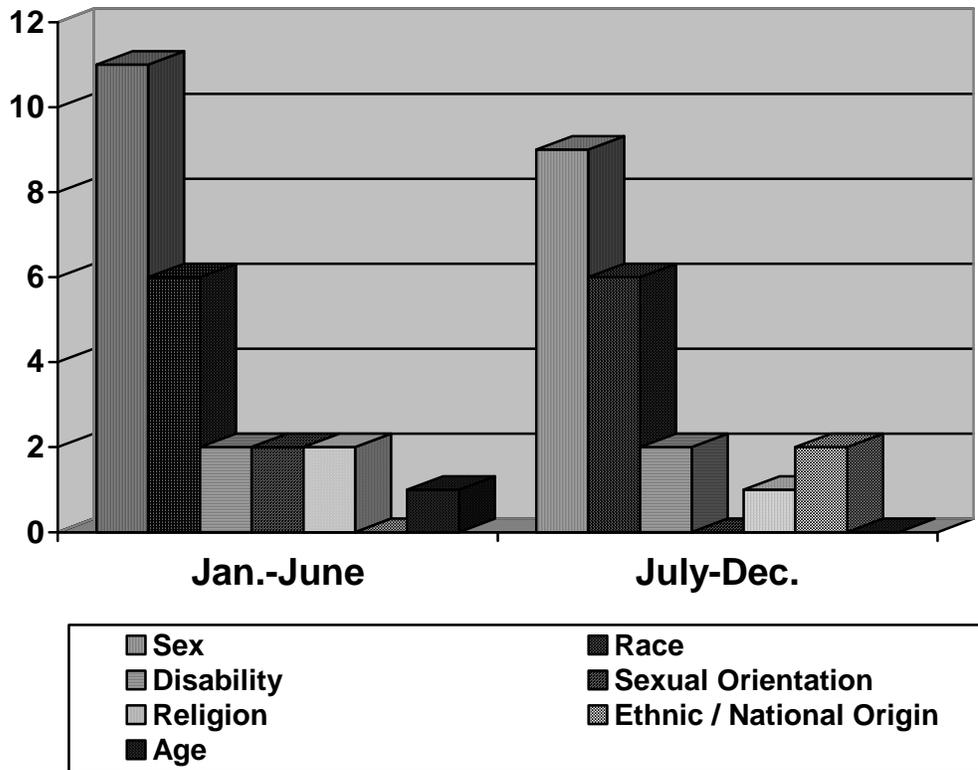
<sup>1</sup> For the purposes of data collection, I have adopted the jurisprudential definitions of harassment and discrimination as follows: **Harassment** means a course of vexatious comment or conduct, based on a prohibited ground, that is known or ought reasonably to be known to be unwelcome. **Discrimination** means differential treatment involving the denial of a benefit or imposition of a burden based on a prohibited ground. Failure to accommodate (eg. disability, religion, etc.) is a form of discrimination.

38. As noted earlier, almost all (14) of the 17 public complaints were made by women. The 3 public complaints made by men consisted of the two above-mentioned disability-related complaints and the client complaint about discrimination based on ethnic and national origin.
39. In summary, sex was raised in 9 (53%) of the 17 public complaints, race was raised in 6 (35%) of the complaints, ethnic and national origin was raised in 2 (12%) of the complaints, disability was raised in 2 (12%) of the complaints and religion was raised in 1 (6%) complaint. (As noted above, a number of the complaints involved multiple intersecting grounds of discrimination, which explains why the percentages do not add up to 100%).
40. The following chart demonstrates the number and proportion of public complaints in which each of the prohibited grounds of discrimination was raised:



41. During the first six months of 2003, sex was raised in 11 (50%) of the 22 public complaints made to the DHC, race was raised in 6 (27%) of the complaints, disability was raised in 2 (9%) of the complaints, sexual orientation was raised in 2 (9%) of the complaints, religion was raised in 2 (9%) of the complaints and age was raised in 1 (4%) complaint. (As mentioned above, the percentages do not add up to 100% because a number of the complaints involved multiple intersecting grounds of discrimination.)

42. The following chart compares the number of public complaints in which each ground was raised during the first half and second half of the 2003 year:

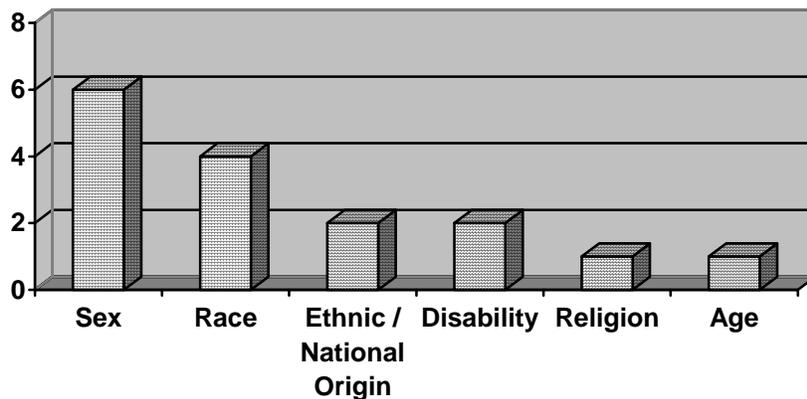


### *Nature of Complaints Within the Profession*

43. The 14 complaints made by members (and student members) of the Law Society were based on the following prohibited grounds of discrimination: race, ethnic origin, national origin, sex, disability, age and religion. A number of the complaints were based on multiple intersecting grounds.
44. Of the 14 complaints made by lawyers and law students, 4 involved race discrimination:
- two male lawyers and one male law student complained about racial discrimination at work (one combined with discrimination based on ethnic and national origin) and
  - one female articling student complained about racist remarks made during a job interview.
45. Two (2) of the 14 complaints from within the profession were based on ethnic and national origin. Both were made by male law students. One (as mentioned above) was

combined with race discrimination and arose in an employment context. The other was a complaint about discriminatory treatment by the LSUC.

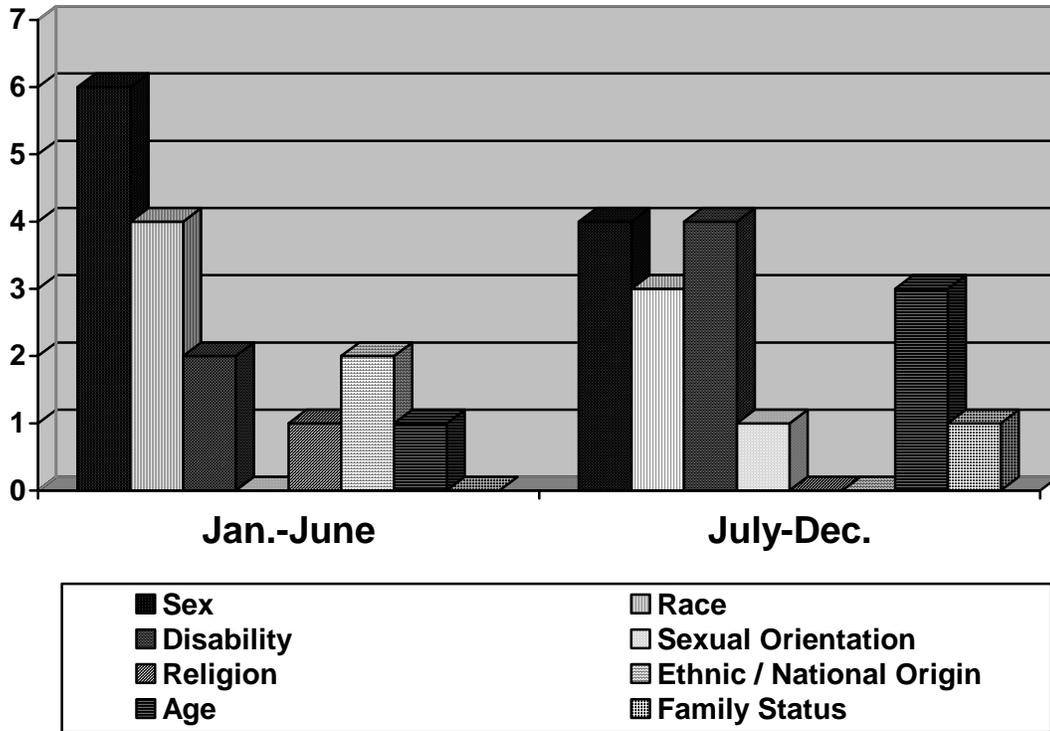
46. Three (3) of the complaints from within the profession involved sexual harassment at work (i.e., sexist remarks, inappropriate touching, sexual solicitation). Two of these complainants were female and one was a male calling on behalf of a female co-worker.
47. Three (3) of the complaints from within the profession involved sex discrimination, one of which was combined with age discrimination. All of these complainants were female. Two were employees and one was a job applicant; two were pregnant and alleged discrimination based on their pregnancy.
48. There was 1 complaint of age discrimination (combined with sex discrimination) at work.
49. Two lawyers (one male and one female) complained about discrimination and harassment based on disability. Both complaints included elements of failure to accommodate.
50. One complaint involved discrimination based on religion, in which the respondent was another counsel who was not a co-worker.
51. In summary, sex was raised in 6 (43%) of the 14 complaints made by members of the profession, race was raised in 4 (29%) of the complaints, ethnic and national origin was raised in 2 (14%) of the complaints, disability was raised in 2 (14%) of the complaints, religion was raised in 1 (7%) complaint and age was raised in 1 (7%) complaint. (As explained above, since a number of the complaints involved multiple intersecting grounds of discrimination, the percentages do not add up to 100%).
52. The following chart demonstrates the number and proportion of complaints from members of the profession in which each of the prohibited grounds of discrimination was raised:



53. During the first six months of 2003, sex was raised in 4 (31%) of the 13 complaints made by members of the profession (including one complaint based on pregnancy), disability was raised in 4 (31%) of the complaints, race was raised in 3 (23%) of the complaints,

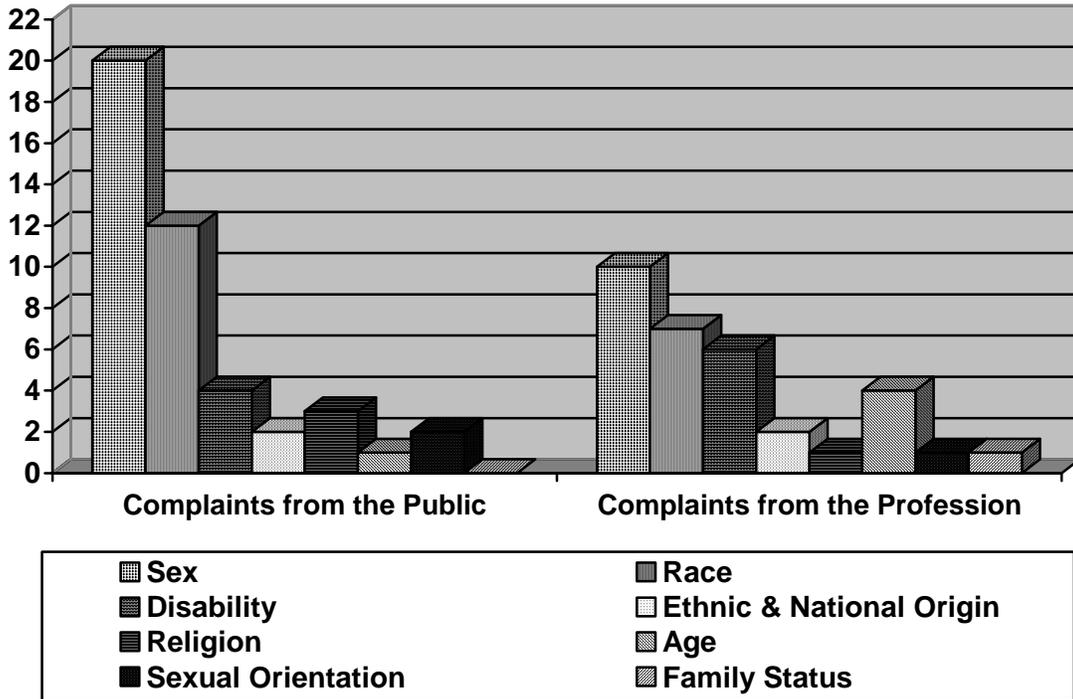
age was raised in 3 (23%) of the complaints, sexual orientation was raised in 1 (8%) complaint, and family status was raised in 1 (8%) complaint. (As explained above, since a number of the complaints involved multiple intersecting grounds of discrimination, the percentages do not add up to 100%).

54. The following chart compares the numbers of complaints from within the profession in which each ground was raised during the first half and second half of the 2003 year:



## Total Complaints in 2003

55. The following chart demonstrates the total number of public (39) and professional (27) complaints in which each ground of discrimination was raised in 2003:



56. Sex was raised in 30 out of a total of 66 complaints (45%) in 2003.
57. Race was raised in 19 out of a total of 66 complaints (29%) in 2003.
58. Disability was raised in 10 out of a total of 66 complaints (15%) in 2003.
59. Ethnic and national origin were raised in 4 out of a total of 66 complaints (6%) in 2003.
60. Religion was raised in 4 out of a total of 66 complaints (6%) in 2003.
61. Age was raised in 5 out of a total of 66 complaints (7.5%) in 2003.
62. Sexual orientation was raised in 3 out of a total of 66 complaints (4.5%) in 2003.
63. Family status was raised in 1 out of a total of 66 complaints (1.5%)

## Services Provided to Complainants

64. Complainants who contacted the DHC were advised of the various avenues of redress open to them, including:
- reporting to the police (where criminal conduct is involved),
  - filing an internal complaint or a grievance within the workplace (including, where appropriate, contacting their union or employee association for assistance),
  - filing a complaint with a human rights commission (usually the Ontario Human Rights Commission, but sometimes the Canadian Human Rights Commission),
  - making a complaint to the Law Society,
  - making a complaint to a judicial council, and
  - contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation, *Charter* equality claim).
65. I also provided complainants with information regarding each of these options, including:
- what (if any) costs might be involved in pursuing each option,
  - whether legal representation is required to pursue an option,
  - how to file a complaint or make a report (eg. whether it can be done electronically on line, by telephone, or in writing; whether particular forms are required; etc.),
  - the process involved in each option (eg. investigation, conciliation, hearing, etc.),
  - what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.), and
  - the time limits for each avenue of redress (or, in some instances, complainants were advised to immediately seek legal advice regarding the application of time limits in their case).

66. In every case, complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.
67. Complainants were also given information about who to contact in the event that they decided to pursue any of their options. Sexual harassment and sexual assault complainants were provided with direct contact information for the Sexual Misconduct Unit within the Law Society's investigations department.
68. In many cases, upon request, I provided "coaching" or strategic tips on how to handle a situation without resort to a formal complaint process (eg. confronting the offender, writing a letter of complaint to the managing partner of the law firm in question).
69. In some cases, I also directed complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.
70. In some cases, I referred complainants to support services, such as OBAP (the Ontario Bar Assistance Program); to specialized advocacy services, such as ARCH (a legal resource center for persons with disabilities); or to lawyer and law student associations such as BLSAC (the Black Law Students Association of Canada).

### **DHC Mediation Services**

71. In addition to outlining the options mentioned above, I offered complainants the (free) mediation services of the DHC Program.
72. I explained the nature and purpose of mediation, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that I act as a neutral facilitator to attempt to assist the parties to reach a resolution of the complaint.
73. Most complainants did not opt for mediation. Many expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to resolving their complaint. Many also expressed a belief that the respondent would not be willing to participate in mediation, though they did not authorize me to contact the respondent to inquire about their willingness.
74. During this reporting period, two individuals initially requested mediation services, but both subsequently changed their minds, notwithstanding that in each case, the respondent was willing to participate.
75. In two cases, the complainant asked me to intervene in an informal fashion, to advise the respondent of the existence and nature of their complaint and attempt to resolve it without entering into a formal mediation process. In one instance, a successful resolution was

achieved through my intervention. In the other case, the complainant decided to abandon the informal process and pursue instead a formal complaint to the Law Society.

### **Outcomes of Complaints**

76. In the overwhelming majority of cases, I provided information to complainants regarding their options, answered their questions, then had no subsequent contact with them, so it is impossible for me to report on the outcomes of their complaints.
77. Although many complainants indicated to me their intention to file an LSUC complaint or a human rights complaint, or to pursue another formal or informal resolution process, I am unable to confirm whether they actually followed through on their stated intentions.
78. While some complainants maintain ongoing contact with me and/or advise me of the ultimate outcome of their complaints, the numbers are so few as to render data collection insignificant.
79. This report therefore does not include any data regarding the outcome of complaints.

## Demographic Survey of Complainants

80. Individuals who contacted the DHC by telephone with complaints of harassment or discrimination that were within the Program mandate were asked whether they would be willing to participate in a short demographic survey to enable me to record anonymous statistical data about them.
81. During this reporting period (July 1 to December 31, 2003), 19 surveys were conducted. Ten (10) public complainants and 9 members (or student members) of the Law Society were surveyed, with the following results:

	<u>Profession</u>	<u>Public</u>
<b><i>Gender/Sex:</i></b>	4 female 4 male 1 transgender	7 female 3 male
<b><i>Race / Ethnicity:</i></b>	1 Black 1 Latin American 1 South Asian 6 White/Caucasian	2 Black 1 Iranian 1 Southeast Asian 6 White/Caucasian
<b><i>Sexual Orientation:</i></b>	8 Heterosexual 1 Bisexual	10 Heterosexual
<b><i>First Language:</i></b>	7 English 1 French 1 Spanish	6 English 2 French 1 Khmer 1 Persian
<b><i>Disability:</i></b>	1 disabled	3 disabled
<b><i>Age:</i></b>	1 was 18-24 years old 2 were 25-34 years old 6 were 35-49 years old	3 were 25-49 years old 5 were 35-49 years old 2 were 50-64 years old
<b><i>Region of Residence:</i></b>	4 Greater Toronto Area 1 National Capital Region 1 Central Ontario	5 Greater Toronto Area 1 National Capital Region 4 Southwestern Ontario

82. During the first six months of 2003, 28 surveys were conducted; 21 members of the public and 7 members of the profession were surveyed. The combined results of all the surveys conducted in 2003 are as follows:

	<u>Profession</u>	<u>Public</u>
<b><i>Gender/Sex:</i></b>	9 female 6male 1 transgender	18 female 13 male
<b><i>Race / Ethnicity:</i></b>	2 Black 1 Latin American 1 South Asian 12 White/Caucasian	1 Aboriginal 1 Arab 3 Black 1 Chinese 1 Iranian 1 Korean 1 South Asian 2 Southeast Asian 20 White/Caucasian
<b><i>Sexual Orientation:</i></b>	15 Heterosexual 1 Bisexual	29 Heterosexual 2 Lesbian/Gay
<b><i>First Language:</i></b>	13 English 2 French 1 Spanish	21 English 4 French 1 Cantonese 1 Hindi 1 Khmer 1 Korean 1 Malay 1 Persian
<b><i>Disability:</i></b>	6 disabled	7 disabled
<b><i>Age:</i></b>	3 were 18-24 years old 6 were 25-34 years old 7 were 35-49 years old	1 was 18-24 years old 8 were 25-34 years old 12 were 35-49 years old 6 were 50-64 years old
<b><i>Region of Residence:</i></b>	5 Greater Toronto Area 4 National Capital Region 1 Central Ontario	15 Greater Toronto Area 2 National Capital Region 7 Southwestern Ontario 4 Central Ontario 2 Eastern Ontario 1 Northern Ontario

## **Promotional Activities**

83. During this reporting period, a number of promotional activities were undertaken to enhance the visibility of the Discrimination and Harassment Counsel Program.
84. First, my appointment as DHC in September was announced in the Ontario Reports, as well as various other legal publications, such as the Lawyer's Weekly and Ontario Gazette.
85. Second, since my appointment in September, regular bi-weekly advertisements for the Program have been placed (alternating in English and French) in the Ontario Reports.
86. The French and English brochures for the Program were revised to more accurately reflect the scope of the mandate of the DHC. The brochure was also translated to Chinese. The new brochures will be in circulation in 2004.
87. I was also invited to speak about the DHC Program to students in a class on Anti-discrimination Law in the Faculty of Law at York University (Osgoode Hall Law School).

## **Educational Activities**

88. I continued to conduct workshops on harassment and discrimination with the Director of Equity for the Law Society, Josee Bouchard. We respond to requests from law firms and legal clinics to meet with their staff and/or lawyers, law students and partners. Our workshops are tailored to their specific needs. We provide information on recent developments in the law and training with respect to their internal complaints policies and other avenues of redress. We assist them in learning to identify and respond appropriately to incidents of discrimination or harassment in their workplaces.
89. In addition to their educational function, these workshops also serve to promote the DHC Program, because attendees are provided with information about the Program and the resources that it offers.

## **Networking**

90. I continue to cooperate with my counterparts in other provinces by sharing resources, data and ideas.
91. During this reporting period, I also met with the staff of the Ontario Bar Assistance Plan (OBAP) to share information and determine how we might be able to assist one another in fulfilling our respective mandates.

## **Program Improvements**

92. I provided the Director of Equity with a list of suggestions regarding improvements that could be made to the DHC Program, such as the appointment of an Alternate DHC to assume my responsibilities in the event that I am temporarily unable to perform them. My suggestions are being considered and some have begun to be implemented.

## **Budget**

93. There were a number of expenses incurred relating to the promotional activities described above (eg. printing of new brochures, translation of brochure). In addition, letterhead, envelopes and business cards were designed and printed for the Program. All of these expenses were paid directly by the Law Society out of the DHC Program budget.
94. During this reporting period, I billed the LSUC a total of \$29,287.00 for fees in connection with the DHC services, \$1,342.01 for disbursements, and \$2,138.75 in GST.