

TAB 7.1.1

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

For the period from January 1, 2015 to June 30, 2015

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D. INTRODUCTION

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

The complaints/concerns reported to the DHC arise in a variety of contexts, such as (for example) clients who complain that they have been subjected to sexual harassment by their lawyer or paralegal, lawyers who are experiencing workplace discrimination 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 confidential coaching, information, referrals to other agencies and resources,² informal mentoring, and general (non-legal) advice – some on an ongoing basis. The DHC also provides mediation and conciliation services, described below.

The services are typically delivered by Cynthia Petersen, but there are two Alternate Counsel who replace Ms. Petersen when she is unavailable (due to illness or vacation) or unable to act (due to conflict of interest). During this reporting period, one of the Alternate Counsel, David Bennett, delivered the DHC services during one week in January, two weeks in February, and part of a week in June 2015.

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 provide a lawyer referral service.

E. SERVICES PROVIDED TO COMPLAINANTS

Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):

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 civil claims.

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).

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

In some cases, 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).

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.

Mediation / Conciliation

In addition to being advised about the above-noted options, where appropriate, complainants are offered mediation or conciliation services.

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.

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.

Where informal conciliation services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant's concerns, with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel, advocate or representative, but rather as an impartial 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.

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.

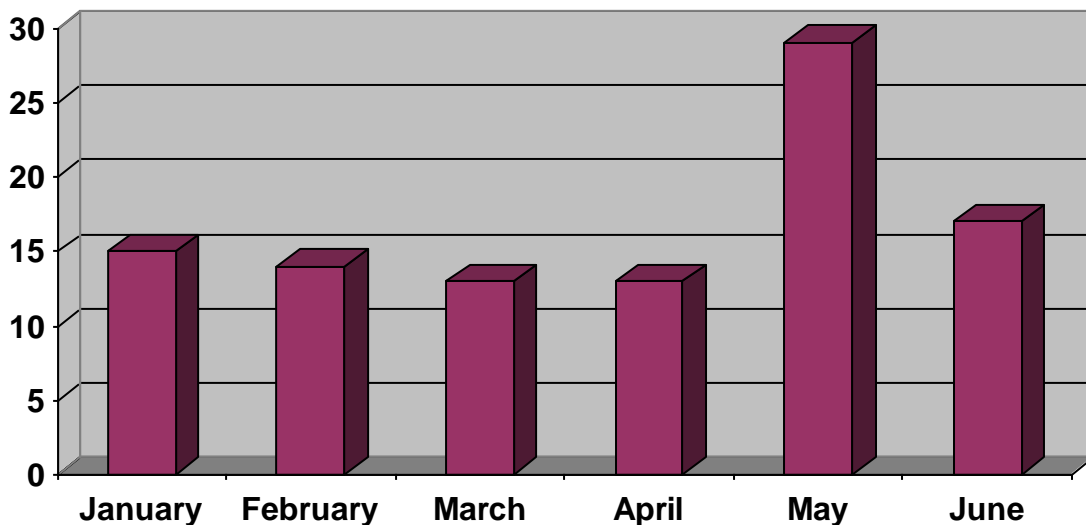
During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. There were, however, several cases in which the DHC intervened informally as a conciliator, communicated with the parties involved and was

able to assist them in reaching a mutually satisfactory resolution to the complainant's concerns (eg. by developing an employment accommodation plan for a licensee with a disability).

F. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

During this reporting period, 101 individuals contacted the DHC Program with a new matter.³ This represents an average of 17 new contacts per month.

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



The higher volume of new contacts in May 2015 is largely attributable to the DHC's (Ms. Petersen's) presentation on a Law Society panel about mental health in the legal profession. The panel generated a significant number of new contacts from

³ 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.

individuals who were either in the audience or who viewed the panel discussion via the internet.

Of the 101 individuals who contacted the DHC during this reporting period, 70 (69%) used the telephone to make their initial contact with the program and 30 (31%) used email.

During this reporting period, 3 individuals were provided services in French.⁴ The remaining clients of the Program were provided services in English.

G. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

Of the 101 new contacts with the Program, 28 individuals reported complaints of alleged discrimination or harassment by a licensee. A total of 3 complaints were made against paralegals. The remaining 25 complaints were made against lawyers.

Of the 3 complaints against paralegals, one was made by another paralegal, one by a lawyer, and one by a member of the public.

Of the 25 complaints against lawyers, 10 were made by members of the public and 15 were made by members of the legal profession (i.e., other lawyers, articling students, paralegals or paralegal candidates).

Complaints against Lawyers by Members of the Legal Profession

In this reporting period, there were 15 complaints about lawyers made by members of the legal profession. Nine (9) of these complaints were made by other

⁴ Two of the francophones made general inquiries and were not complaining about the conduct of a specific licensee. The third francophone complained about a licensee, but his allegations did not include human rights-based discrimination and harassment and his complaint was therefore outside the mandate of the DHC program.

lawyers, 4 were made by articling students, one was made by a paralegal and one was made by a paralegal candidate. All of the complainants were anglophone.⁵

Of the 15 complaints by members of the legal profession, only 3 (20%) were made by men. The paralegal, paralegal candidate and four articling student complainants were all female and 6 of the 9 lawyer complainants were women.

Twelve (12) of the 15 complaints (80%) from members of the legal profession arose in the context of the complainants' employment, including all of the articling student complaints, as well as the complaints by the paralegal and paralegal candidate.

Two complaints by lawyers arose in the context of litigation and involved allegations of misconduct against opposing counsel.

One complaint by a lawyer involved allegations of misconduct against another lawyer with whom the complainant was professionally acquainted.

There were 9 complaints based (in whole or in part) on sex:

Five (5) of these complaints included allegations of sexual harassment:

A male lawyer complained about sexual harassment and stalking by a female lawyer with whom he was professionally acquainted;

Two female articling students complained about sexual harassment by male senior partners in their firms;

A female lawyer complained about sexual harassment by a male colleague in her workplace; and

⁵ By "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.

A female lawyer complained about sexual harassment by a senior male partner in her firm. (She also reported that her workplace was poisoned by sexist, transphobic and homophobic remarks made by the same partner.)

A female articling student complained about sexist (and racist) comments and discriminatory treatment by male lawyers in her firm;

Two female lawyers complained about gender-based discriminatory treatment by senior male lawyers in their respective firms; and

A female lawyer complained that male opposing counsel in one of her cases was engaging in sexist conduct, including name calling.

There were 4 complaints based (in whole or in part) on disability:

A male lawyer complained about his employer's refusal to accommodate his disability in the workplace;

A female paralegal complained about workplace discrimination based on her disability;

A female paralegal candidate complained about discriminatory treatment by a male lawyer in her workplace during a work placement; and

One of the female lawyers who complained about sexual harassment in the workplace also complained about her employer's failure to accommodate her disability.

All of the above complainants self-identified as persons with mental health disabilities.

There were 3 complaints based (in whole or in part) on race:

A Black male lawyer complained that the opposing counsel in one of his cases (a Crown Attorney) was engaging in racial discrimination and harassment;

An Asian female articling student complained about racist (and sexist) comments and discriminatory treatment by lawyers in her firm; and

A Black female lawyer complained about racist remarks made by a white senior male lawyer in her firm.

There was one complaint based on place of origin. A foreign trained female lawyer complained about employment discrimination based on her place of origin.

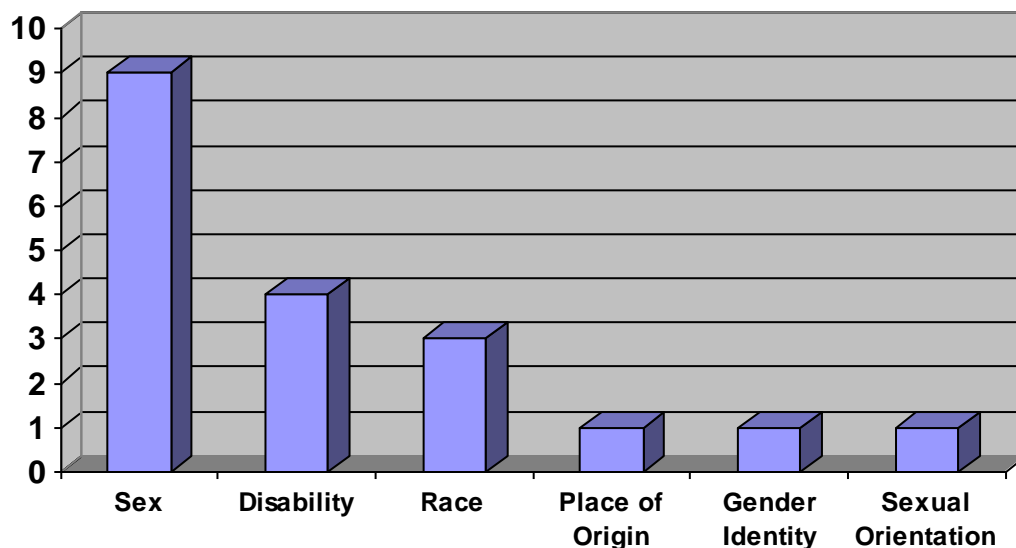
There was one complaint based in part on sexual orientation and gender identity. One of the complainants who reported sexual harassment by a senior male partner in her firm also reported that the same partner frequently made offensive homophobic and transphobic remarks in the workplace.

In summary, the number of complaints⁶ by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:

sex	9	(5 sexual harassment)
disability	4	
race	3	
place of origin	1	
gender identity	1	
sexual orientation	1	

⁶ The total number exceeds 15 because some complaints involved multiple grounds of discrimination.

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



Complaints against Lawyers by Members of the Public

During this reporting period, there were 10 complaints about lawyers made by members of the public. All of the complainants were anglophone.⁷

Eight (8) of the public complaints (80%) were made by women and 2 (20%) were made by men.

Of the 10 public complaints:

4 involved clients complaining about their own lawyer;

3 involved employees complaining about a lawyer in their workplace;

⁷ See footnote 5 above.

one involved a litigant complaining about the conduct of opposing counsel in her case;

one individual complained about harassment by her next-door neighbour, who was a lawyer; and

one complainant was a real estate agent who complained about harassment by a lawyer who was her client.

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

Five (5) of these complaints involved allegations of sexual harassment:

Two female clients complained about sexual harassment by their respective male lawyers, including unwelcome sexual touching and romantic overtures;

Two female administrative assistants employed in law firms complained about sexual harassment by their respective male bosses (lawyers), including employment reprisals for having rejected sexual advances and unwelcome sexual comments about female colleagues in the workplace; and

A female real estate agent complained about sexual harassment and stalking by a male lawyer who was one of her clients.

A female litigant complained about the sexist conduct of opposing counsel in her case;

A woman complained about gender-based harassment by a male lawyer who was her neighbour; and

There was one complaint based on religion and race. A Muslim man complained that his own lawyer had engaged in offensive name-calling based on his religion and race.

There was one complaint based on disability. A woman employed in a law firm complained about her employer's discriminatory treatment based on her disability (an addiction).

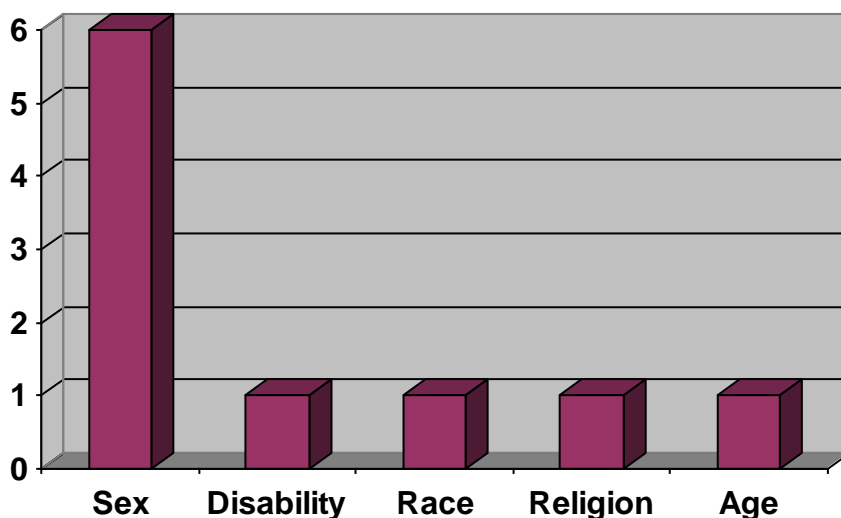
There was one complaint based on age. A man called on behalf of an elderly friend who was being subjected to discriminatory treatment by his lawyer based on his advanced age.

In summary, the number of complaints⁸ by members of the public in which each of the following prohibited grounds of discrimination was raised are:

sex	7	(5 sexual harassment)
disability	1	
race	1	
religion	1	
age	1	

Grounds Raised in Public Complaints against Lawyers

⁸ The total number exceeds 10 because some complaints involved multiple grounds of discrimination.



Complaints against Paralegals

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

One of the complaints was based on race. The complainant was also a paralegal and was professionally acquainted with the respondent paralegal, who had posted racist remarks on social media in a forum used by other paralegals. Both the complainant and respondent were female; the complainant self-identified as Black.

One of the complaints was made by a female lawyer who reported that the respondent male paralegal was engaging in sexist behaviour in their workplace.

One of the complaints was made by a member of the public. A male self-represented litigant reported that the paralegal representing the opposing party in his case had made derogatory and demeaning comments about the complainant's religion and disability.

In summary, the number of complaints⁹ against paralegals in which each of the following prohibited grounds of discrimination was raised are:

race	1
sex	1
religion	1
disability	1

H. GENERAL INQUIRIES

Of the 101 new contacts with the DHC during this reporting period, 25 involved general inquiries. These contacts included:

inquiries by lawyers about their professional responsibilities relating to equity issues;

inquiries by lawyers with disabilities about their disclosure obligations, mentoring programs and other services available to them, job search opportunities, career advice, etc.

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.

⁹ The total number exceeds 3 because some complaints involved multiple grounds of discrimination.

I. MATTERS OUTSIDE THE DHC MANDATE

During this reporting period, the DHC received 48 calls and/or emails relating to matters outside the Program's mandate. These contacts included complaints about the conduct of lawyers licensed in other provinces. They also included several complaints about workplace harassment in which the respondent was not a licensee.

There were some complaints about Ontario licensees that did not fall within the program's mandate. These included allegations of incivility, one billing dispute (i.e., a client alleging that her lawyer was overcharging), and several allegations of workplace harassment (eg. bullying and intimidation) in which there were no allegations based on prohibited grounds of discrimination.

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.

Although there are a significant number of these "outside mandate" contacts (about 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.

J. PROMOTIONAL ACTIVITIES

The LSUC maintains a bilingual website for the DHC Program, which was significantly revised and updated during this reporting period.

Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program.

French and English brochures about the program are regularly circulated to legal clinics, community centres, law firms and faculties of law.

During this reporting period, the DHC (Cynthia Petersen) presented on two continuing professional development panels: The Law Society's panel on *Fostering Wellness – A Discussion of Mental Health in the Legal Profession* and an OBA/SOGIC panel entitled *One Year Out – LSUC's Model Policy on LGBT Inclusion in Law Firms*. Both of these events were well attended by large audiences and both resulted in subsequent new contacts with the DHC program from audience participants.

Ms. Petersen also gave a lecture on "Lawyer Self Care" to a class of upper year law students at Osgood Hall law school. The lecture covered the issue of coping with discrimination and harassment and the services provided by the DHC program.

The DHC (Ms. Petersen) was also interviewed by journalists who published articles in both the *Lawyers' Weekly* and the *Law Times* about the DHC Program. She was interviewed and quoted by a reporter who published an article in the *National Post* newspaper about sexual harassment in law firms.