

**REPORT OF THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL
JANUARY 1 TO JUNE 30, 2004**

Prepared by:
Cynthia Petersen

July 29, 2004

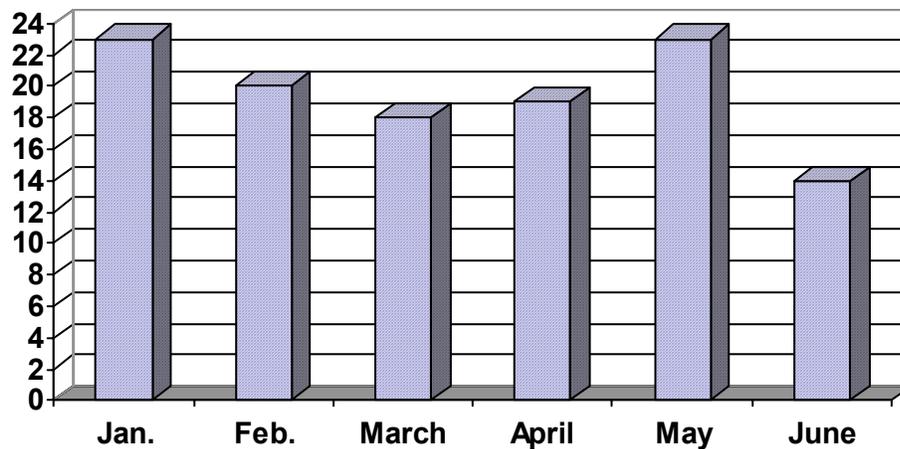
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Overview of New Contacts with the DHC Program

Number of New Contacts

1. During this reporting period (January 1 to June 30, 2004), 117 individuals contacted the DHC Program. On average, there were 19.5 new contacts per month, distributed as follows:



2. This represents a significant increase in the volume of new contacts relative to the first six months of 2003, during which there were 86 new contacts (on average 15 per month) and the last six months of 2003, during which there were 94 new contacts (on average 16 per month).

Method of Communication

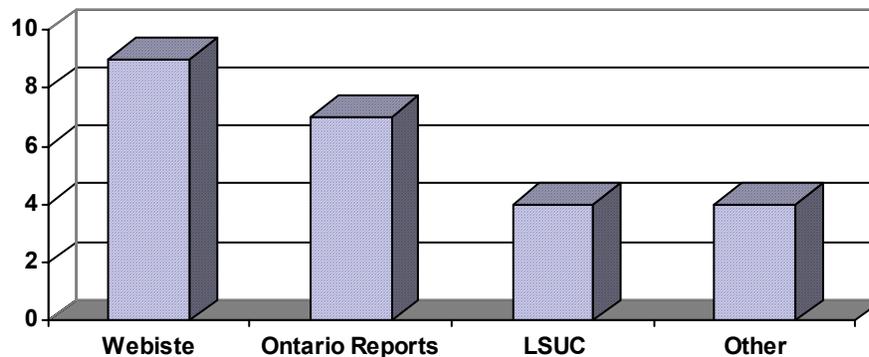
3. The DHC toll-free telephone line remains the most common way in which individuals make contact with the Program. During this reporting period, 94 people (80%) made their first communication with the Program by telephone, and 23 people (20%) used email to contact the Program.

Language of Communication

- The DHC Program offers services in English and French. During this reporting period, of the 117 new contacts with the Program, 2 individuals communicated with the DHC in French. In 2003, a total of 10 individuals (out of 180) communicated with the DHC in French.

Sources of Referral to the DHC Program

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



- The "other" category shown on the above chart includes one individual who was referred by a family member who is a lawyer, one individual referred by a psychologist, an individual who had previously used the DHC service, and a law student who saw the DHC make a presentation during the Bar Admissions Course.
- Two individuals who contacted the DHC Program with issues that are outside the Program's mandate indicated that they were referred to the DHC by the Office of the Ombudsperson of Ontario. The DHC will write to the Ombudsperson to clarify the scope of the Program's mandate in order to avoid further inappropriate referrals in the future.

Matters Outside the DHC Mandate

8. Of the 117 new contacts with the DHC during this reporting period, 41 (35%) related to matters outside the scope of the Program's mandate.
9. The contacts that related to matters outside the Program's mandate can be grouped into three categories:
 - complaints of discrimination against judges;
 - complaints of discrimination or harassment against non-lawyers (eg. complaints against landlords, the police, non-legal employers, and unions); and
 - complaints against lawyers that do not involve any equity or human rights issues (eg. billing disputes, conflicts of interest, and negligence allegations).
10. Individuals who contacted the DHC with matters outside the scope of the Program's mandate were, whenever possible, referred to another organization for information or assistance, such as a judicial council, the Law Society, a human rights commission, or the Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to these individuals.
11. These "outside mandate" contacts typically do not consume much of the DHC's time, but they nevertheless constitute a drain on DHC Program resources. I am therefore making ongoing efforts to reduce the volume of these contacts. The promotional brochures for the Program were revised last year to clarify the scope of the mandate and the new brochures have begun to enter circulation. The DHC website will similarly be revised this year.

Inquiries Within the DHC Mandate

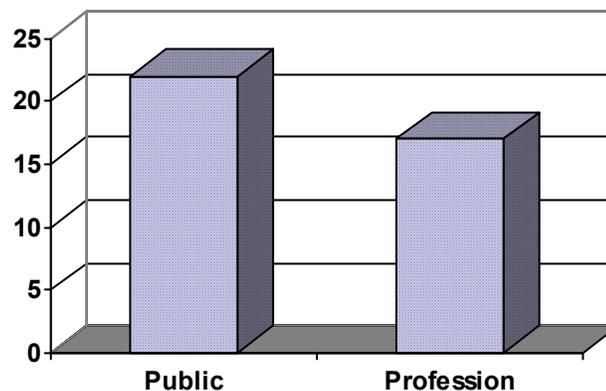
12. Of the 76 new contacts relating to matters within the mandate of the DHC Program, 37 (49%) involved general inquiries rather than complaints about incidents of discrimination or harassment.
13. Inquiries came primarily from within the legal profession, but also from members of the public. The inquiries included:
 - questions from lawyers and articling students regarding their rights and obligations in employment contexts involving equity issues, such as questions about parental leave, about protection from possible reprisals for making a human rights complaint, and about disclosure obligations relating to a disability or pregnancy;
 - questions about whether simultaneous complaints could be filed at both the LSUC and the Ontario Human Rights Commission;
 - calls from members of the legal profession who had suffered discrimination or harassment and were seeking a referral to support resources (eg. addiction counselling services, depression counselling services, peer support, stress management counselling);
 - law faculties and government legal departments inquiring about educational and/or promotional workshops provided by the DHC;
 - 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 and to other data on equity issues in the legal profession;
 - members of the public and of the legal profession inquiring about the LSUC Rules of Professional Conduct and equity issues; and
 - members of the public and of the legal profession seeking clarification of the DHC Program's mandate and services.

Discrimination and Harassment Complaints

14. During this reporting period, 39 individuals contacted the DHC Program with complaints of discrimination or harassment against a lawyer, law firm, or legal clinic in Ontario.
15. This represents a slight increase over the last reporting period (July to December 2003), in which 31 complaints were made to the DHC, and the previous reporting period (January to June 2003), in which 35 complaints were made.

Public / Profession Ratio

16. A little more than half of the complaints (22 or 56%) came from members of the public, with the remaining (17 or 44%) coming from members of the legal profession.



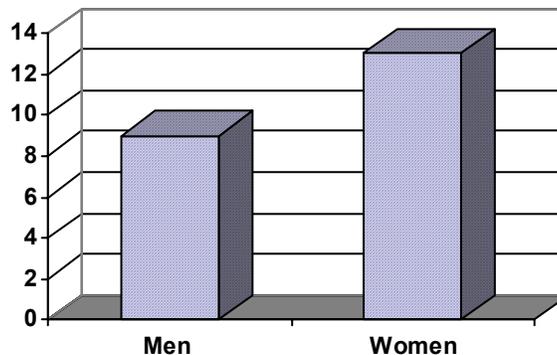
17. This ratio is relatively constant in comparison with the last reporting period, in which 55% of complaints came from the public.

Profession: Lawyer / Student Ratio

18. Of the 17 complaints from within the legal profession, 3 were made by student members of the bar. This represents a decrease in the number and proportion of complaints from students relative to the last reporting period, in which more than a third of complaints from within the profession were made by students.

Public: Male / Female Ratio

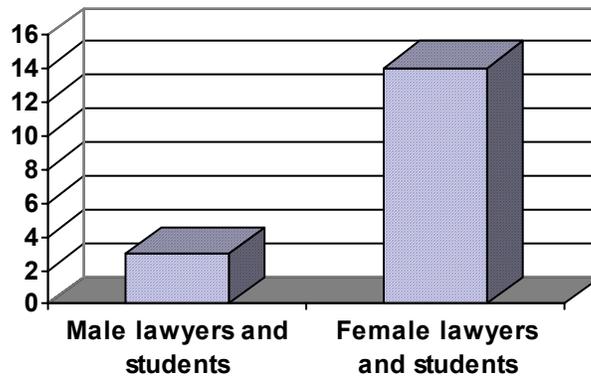
19. Of the 22 lay individuals who contacted the DHC Program with a complaint of discrimination or harassment, 13 were female (59%) and 9 were male (41%).



20. One of the men who contacted the Program was calling on behalf of his wife and was complaining about sex discrimination by his wife's lawyer.
21. Of the total number of complaints from the public in 2003, 64% were made by women and 36% by men. There was therefore a slight increase in the proportion of complaints by men (41%) in the first six months of 2004.

Profession: Male / Female Ratio

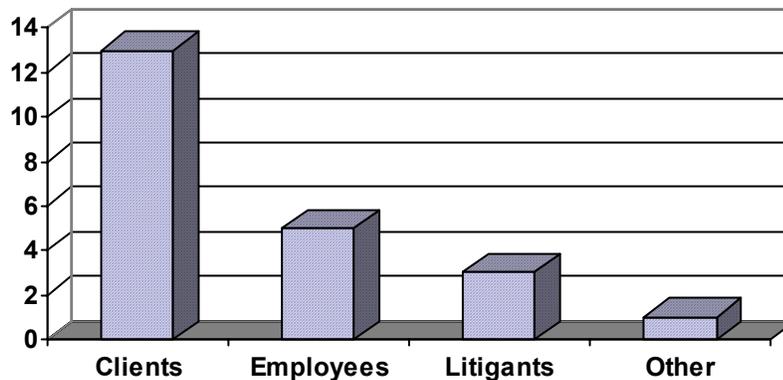
22. Of the 17 complaints from within the legal profession, the overwhelming majority (14 or 82%) were made by women, and only 3 (18%) were made by men.



23. One of the male lawyers who contacted the Program was doing so on behalf of a female non-lawyer who worked in his office and who was the victim of sexual harassment by another male lawyer in the office.
24. Of the 3 student members of the bar who contacted the DHC Program with a complaint, 2 were female and 1 was male.
25. In 2003, two thirds of the total complaints from within the profession were made by women.

Context of Public Complaints

26. Of the 22 complaints from members of the public:
- 5 involved individuals complaining about their employer;
 - 13 were clients complaining about their own lawyer or a legal clinic;
 - 3 were litigants complaining about counsel representing an opposing party; and
 - 1 was an individual complaining about a lawyer who worked for the public service.
27. The following chart depicts the contexts in which public complaints arose during this reporting period:



28. Overall, 59% of the public complaints involved clients of lawyers, 23% involved employees of law firms or legal departments, and 14% involved litigants complaining about opposing counsel.
29. Relative to the data collected in 2003, there was a slight decrease in the proportion of client complaints and corresponding increase in the proportion of employee complaints. In 2003, 66% of public complaints were made by clients, 15% were made by employees, and 15% were made by litigants complaining about opposing counsel.

Context of Complaints Within the Profession

30. Of the 17 complaints from within the profession,
- 7 lawyers and 2 law students complained about their employer;
 - 2 lawyers and 1 law students complained about a co-worker;
 - 4 lawyers complained about another lawyer outside of their employment context (usually opposing counsel); and
 - 1 lawyer called on behalf of a staff member in his office who was the victim of harassment by another lawyer in the office.
31. Thus 76% of all complaints from within the profession arose in the context of the complainant's employment.
32. In 2003, 85% of all complaints from within the profession arose in the context of the complainant's employment or in the context of a job interview.

Nature of Public Complaints

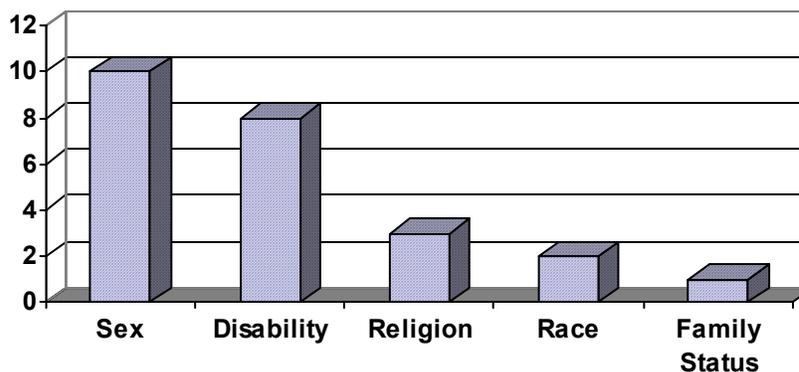
33. The 22 complaints made by members of the public were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, family status and religion.
34. Almost half (10) of the public complaints involved discrimination based on sex. Of these,
- 4 involved female clients complaining about sexual harassment by their own male lawyer;
 - 3 involved female staff who worked in a law office and were complaining about discrimination by their employer based on pregnancy and/or maternity leave; and
 - 3 involved other sex discrimination complaints by women – 2 by clients of male lawyers and 1 by a woman who worked in a law office and was complaining about her employer.
35. One of the public complaints involved a female staff member of a law firm who complained that her family status (as a single mother) was not being

accommodated by her employer and that she was suffering discrimination at work because of her child care responsibilities.

36. More than a third (8) of the public complaints were based on disability. Of these,
- 4 involved clients who complained that their own lawyer (or a legal clinic serving them) was exploiting their disability in a discriminatory fashion or was failing to accommodate their disability;
 - 3 involved litigants who complained that opposing counsel was harassing them based on their disability; and
 - 1 involved a complaint that a public service lawyer was failing to accommodate an individual's disability in providing a service.
37. The remaining 5 public complaints were based on religion and race. Of these,
- 4 involved clients who complained that their own lawyer had discriminated against them – 2 based on their race and 2 based on their religion; and
 - 1 involved an employee who complained that his employer had discriminated against him based on his religion.
38. In summary, sex was raised in 10 (45%) of the 22 public complaints, disability was raised in 8 (36%) of the complaints, religion was raised in 3 (14%) of the complaints, race was raised in 2 (9%) of the complaints and family status was raised in 1 (4%) complaint.¹

¹ Since some of the complaints involve multiple grounds of discrimination, the percentages do not add up to 100%

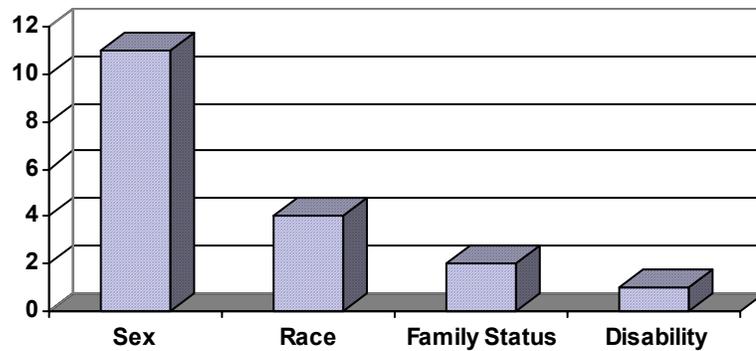
39. The following chart depicts the number and proportion of public complaints in which each of the prohibited grounds of discrimination was raised during this reporting period:



Nature of Complaints Within the Profession

40. The 17 complaints made by members (and student members) of the Law Society were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, and family status.
41. The majority (65%) of complaints from the profession involved sex discrimination. Of these
- 5 involved complaints of sexual harassment in the workplace (2 women lawyers complained about sexual harassment by a male colleague; 1 female student complained about sexual harassment by a male student; 1 female student complained about sexual harassment by a male lawyer; and one male lawyer called on behalf of a female non-lawyer in his office who was being sexually harassed by another male lawyer);
 - 4 involved female lawyers complaining about discrimination at work based on their pregnancy and/or the fact that they had taken maternity and parental leaves; and
 - 2 involved female lawyers complaining about sex discrimination by other counsel outside of their employment context.
42. Two complaints from within the profession were based on family status. Both complaints were made by students, one male and one female. Both students complained that their employer was discriminating against them based on their child care obligations.

43. Approximately one quarter of the complaints from within the profession were based on race. Of these,
- 2 involved complaints of race discrimination at work (one by a lawyer and one by a law student); and
 - 2 involved complaints about opposing counsel who had made racially derogatory remarks during litigation.
44. One lawyer complained that her disability was not being properly accommodated by her employer.
45. In summary, sex was raised in 11 (65%) of the 17 complaints from within the profession, race was raised in 4 (24%) of the complaints, family status was raised in 2 (12%) of the complaints, and disability was raised in 1 (5%) complaint.
46. The following chart depicts the number and proportion of complaints from members of the profession in which each of the prohibited grounds of discrimination was raised:



Summary of Total Complaints²

47. Overall, of the 39 public and professional complaints received during the first 6 months of 2004,
- sex was raised in 21 complaints (54%) -- pregnancy was specifically raised in 7 complaints (18%) and 9 complaints involved sexual harassment (23%);
 - disability was raised in 9 complaints (23%);
 - race was raised in 6 complaints (15%);
 - religion was raised in 3 complaints (8%); and
 - family status was raised in 3 complaints (8%).
48. In comparison, in 2003, out of a total of 66 public and professional complaints,
- sex was raised in 30 complaints (45%) -- pregnancy was specifically raised in 3 complaints (4%) and 17 complaints involved sexual harassment (28%);
 - race was raised in 19 complaints (29%);
 - disability was raised 10 complaints (15%);
 - age was raised in 5 complaints (8%)
 - ethnic and national origin were raised in 4 complaints (6%);
 - sexual orientation was raised in 3 complaints (5%); and
 - family status was raised in 1 complaint (2%).

² Since some of the complaints involve multiple grounds of discrimination, the percentages do not add up to 100%

Demographic Survey of Complainants

49. Individuals who contacted the DHC by telephone with complaints of harassment or discrimination were asked whether they would be willing to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them. During this reporting period 33 surveys were conducted. Twenty one (21) public complainants and 12 members of the Law Society (including 2 student members) were surveyed, with the following results:

	<u>Profession</u>	<u>Public</u>
<i>Gender/Sex</i>	10 female 2 male	13 female 8 male
<i>Race/Ethnicity</i>	1 Black 2 Chinese 1 South Asian 8 White/Caucasian	1 Aboriginal 1 Arab 1 Chinese 1 Filipino 2 South Asian 1 Southeast Asian 14 White/Caucasian
<i>Sexual Orientation</i>	10 Heterosexual 2 Lesbian/Gay	20 Heterosexual 1 Lesbian/Gay
<i>First Language</i>	10 English 1 Chinese 1 Patois	15 English 1 French 1 Chinese 1 Dutch 1 Persian 1 Punjabi 1 Tagalog
<i>Disability</i>	2 disabled	11 disabled
<i>Age</i>	7 were 25-34 years old 5 were 35-49 years old	6 were 25-49 years old 10 were 35-49 years old 3 were 50-64 years old 2 were 65+ years old
<i>Region of Residence</i>	7 Greater Toronto Area 1 Central Ontario 2 Southwestern Ontario 2 Unknown	10 Greater Toronto Area 1 National Capital Region 3 Southwestern Ontario 1 Central Ontario 2 Northern Ontario 4 Unknown

Services Provided to Complainants

50. 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; and
 - contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation, *Charter* equality claim).
51. Complainants were also provided with information regarding each of these options, including:
- what (if any) costs might be involved in pursuing an 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 applicable time limits in their case).
52. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.

53. 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.
54. In some cases, upon request, strategic tips were provided on how to handle a situation without resort to a formal complaints process (eg. confronting the offender, speaking to a mentor, writing a letter of complaint to the managing partner of the law firm in question).
55. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.
56. In some cases, complainants were referred to support services, such as OBAP (the Ontario Bar Assistance Program) or to legal associations such as BLSAC (the Black Law Students Association of Canada).

Mediation Services

57. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.
58. Where mediation was offered, the nature and purpose of mediation were 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 to reach a mutually satisfactory resolution of the complaint.
59. During this reporting period, one complainant opted for mediation, but the respondent did not agree to participate. One other complainant initially requested mediation, but later changed her mind before the respondent was contacted.
60. Most complainants who rejected the offer of mediation expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of 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.
61. Where appropriate, complainants were also offered the option of having the DHC intervene informally, to contact the respondent and advise them of the complainant's concerns in an effort to resolve the complaint without resort to a

formal mediation process. Two complainants opted for this approach. In one case, the complaint was resolved to the complainant's satisfaction through the informal intervention of the DHC. In the other instance, the complainant remained unsatisfied and indicated that he would pursue a formal complaint to the Law Society.

Promotional Activities

62. During this reporting period, a number of promotional activities were undertaken to enhance the visibility of the DHC Program.
63. In March 2004, I spoke on a panel at the “Re-imagining Touchstones” conference on women in the legal profession, hosted by the University of Ottawa Faculty of Law.
64. I also spoke on an International Women’s Day panel organized by the Department of Justice in Toronto in March 2004.
65. In May 2004, I was invited to address the students in the Bar Admissions course in Toronto; my speech was broadcast to other students across the province.
66. I communicated with career counselling services in various faculties of law throughout the province to ensure that they are aware of the DHC Program and that they disseminate information regarding the program to graduating law students.
67. Throughout this reporting period, regular bi-weekly English and French advertisements for the DHC Program have been placed in the Ontario Reports.
68. Bilingual brochures for the Program continue to be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.

Educational Activities

69. In January 2004, I participated in a half-day Continuing Legal Education seminar organized by the Law Society on “Responding to Harassment and Discrimination in the Legal Workplace”.
70. In February 2004, I conducted workshops in law firms on harassment and discrimination, together with the Director of Equity for the Law Society, Josée Bouchard. Our workshops are tailored to the specific needs of the law firms and/or legal clinics that invite us to speak to their staff and/or lawyers. We provide information about recent developments in the law, training with respect to their internal complaints policies, and information about external avenues of redress for discrimination and harassment. We assist them in learning to identify and respond appropriately to incidents of harassment or discrimination within their workplaces.

71. In addition to their educational function, these workshops and Continuing Legal Education seminar also serve to promote the DHC Program, because attendees are provided with information about the Program and the resources that it offers.

Coordination with Alternate DHC

72. Earlier this year, the Law Society appointed Sylvia Davis as Alternate DHC to assume the duties and responsibilities of the DHC when Cynthia Petersen is temporarily unavailable (eg. due to illness, vacation, or conflict of interest). Ms. Davis acted as DHC for 3 weeks in March and April 2004, while Ms. Petersen was out of the country, and again for two weeks in June 2004, while Ms. Petersen was recovering from surgery. The transition was smooth in both cases.