

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

For the period from January 1, 2009 to June 30, 2009

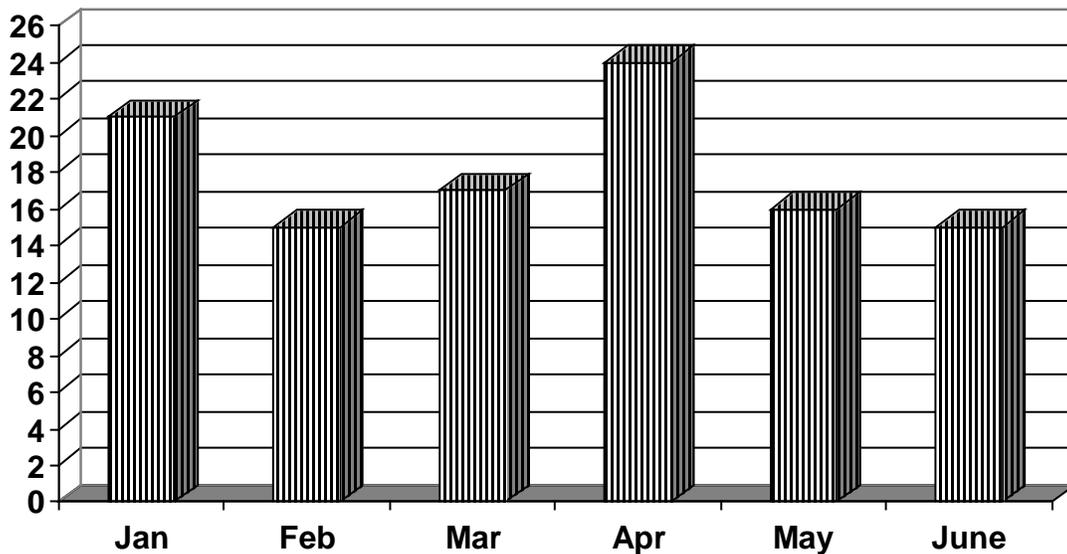
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A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this six month reporting period (January 1 to June 30, 2009), 108 individuals contacted the DHC Program with a new matter.¹
2. This number represents a significant increase in the volume of new contacts with the program in recent years. By comparison, there were only 66 new contacts with the program during the previous six months (July to December 2008). There were 79 new contacts with the program during the first six months (January to June) of 2008. Over the past six years, there have been on average 14 new contacts with the program each month. During this reporting period, there was an average of 18 new contacts per month.
3. The volume of new contacts was distributed as follows:



¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

4. Of the 108 individuals who contacted the DHC, 79 (73%) used the telephone to make their initial contact, 27 (25%) used email, one (1) used a fax communication, and one (1) contacted the DHC in person.
5. During this reporting period, three (3) of the new contacts with the Program were made by francophones, who were provided services in French. All other individuals who contacted the Program received the DHC services in English.

B. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

6. Of the 108 new contacts with the Program, 34 individuals raised specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.
7. This number represents a significant increase in complaints in recent years. There were only 22 complaints in the previous six month period (July to December 2008). Similarly, there were 22 complaints made during the first six months of 2008. There were only 35 complaints in total in 2007.
8. During this reporting period, one complaint was made against a paralegal. The remaining 33 complaints were made against lawyers.
9. The relatively low number of complaints against paralegals is likely attributable to the fact that the Program's mandate was only recently expanded to deal with complaints about the conduct of paralegals. (There was only one complaint against a paralegal in 2008, the first year in which the Program's mandate included such complaints.)
10. Of the 33 discrimination and harassment complaints against lawyers, 16 were made by members of the public, one (1) was made by a paralegal, and 16 were made by members of the bar.

11. This was the first reporting period, since the inception of the DHC program, in which no complaints were made by student members of the bar. There have been, on average, 3 student complaints against lawyers per six month reporting period in the past 6 years.

C. COMPLAINTS AGAINST LAWYERS FROM MEMBERS OF THE BAR

12. In this reporting period, there were 16 complaints against lawyers made by members of the bar.
13. Thirteen (13) of the complaints by lawyers (81%) were made by women. Three (3) of the complaints were made by men.
14. Twelve (12) of the complaints by lawyers (75%) arose in the context of the complainant's employment.
15. The remaining complaints arose in a variety of different contexts. Two (2) complaints were against lawyers who were providing a public service to the complainants. One (1) complaint was against a lawyer who was working in the same practice area and geographic region as the complainant. One (1) complaint arose out of a social interaction between two acquainted lawyers.
16. The following grounds of discrimination were raised in the complaints from members of the bar: sex (including gender identity and pregnancy), disability, race, family status, and record of offences. Particulars of the complaints follow.
17. Eleven (10) complaints were based (in whole or in part) on sex. All but one of these complaints were made by women:

- four (4) women lawyers complained about sexual harassment and/or sexual assault by male lawyers (two of these complaints arose in the context of the complainant's employment);
 - three (3) women lawyers complained about employment discrimination based on pregnancy (ranging from denial of advancement opportunities, to failure to accommodate breast feeding, to wrongful termination of employment);
 - a male lawyer complained that he was suffering discrimination in his employment based on his sex;
 - an Asian female lawyer complained about discriminatory treatment at work based on an intersection of her sex and race; and
 - a transsexual lawyer complained about discrimination based on gender identity from a lawyer who was providing her with a public service.
18. Four (4) complaints by lawyers were based (in whole or in part) on disability
- three female lawyers complained about their respective employers' failures to accommodate their disabilities (one call to the DHC was made by the complainant's counsel); and
 - one male lawyer complained about his employer's failure to accommodate his disability (and his elder care needs).
19. Two (2) complaints by lawyers were based (in whole or in part) on family status:
- one woman complained that her employer was refusing to accommodate her child care responsibilities; and
 - one man complained that his employer was refusing to accommodate his elder care responsibilities (as well as his own disability).
20. One (1) complaint by a lawyer was based in part on race. She reported discrimination by her employer in respect of her career advancement based on her race and sex.

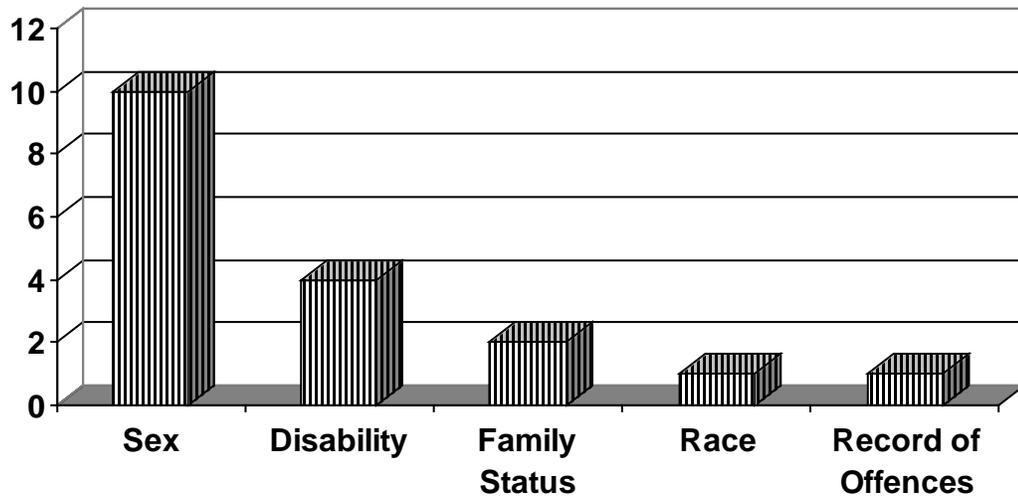
21. One (1) complaint by a lawyer was based on record of offences. The complainant had a criminal conviction for which he had received a pardon. He reported that another lawyer violated his privacy and confidentiality rights by disclosing this information and felt that the other lawyer discriminated against him in the provision of a public service.

22. In summary, the number of complaints by lawyers² in which each of the following prohibited grounds of discrimination was raised are:

- sex 10 (4 involving sexual harassment, 3 involving pregnancy and 1 involving gender identity)
- disability 4
- family status 2
- race 1
- record of offences 1

² The number exceeds 16 because some complaints involved multiple grounds of discrimination.

Grounds Raised in Complaints by Members of the Profession



D. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

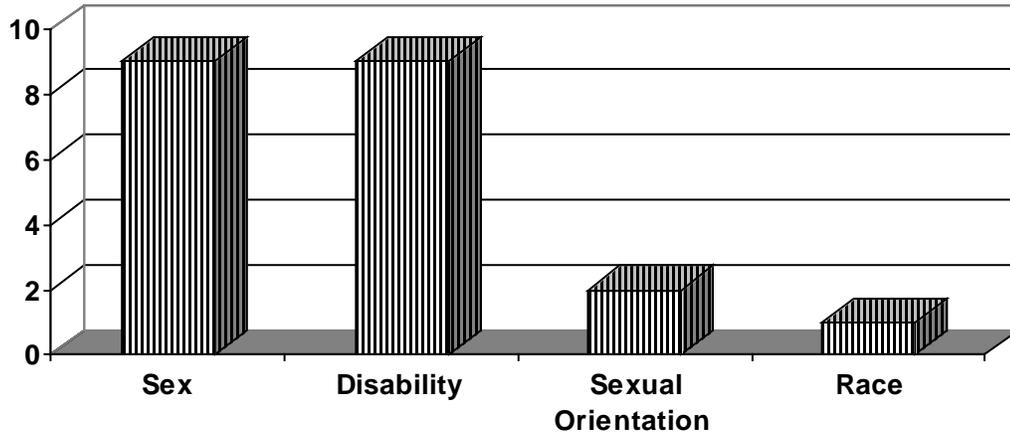
23. During this reporting period, there were 16 complaints against lawyers made by members of the public.
24. Twelve (12) of the public complaints were made by women (75%) and 4 were made by men.
25. Of the 16 public complaints:
 - Nine (9) involved clients complaining about their own lawyer or a lawyer retained by their union to represent their interests;
 - Three (3) involved employees complaining about discrimination by a lawyer in their workplace;
 - Two (2) involved litigants who were complaining about the conduct of opposing counsel in their case;

- One (1) involved a complaint against an adjudicator who is also a lawyer; and
 - One (1) involved a complaint against a lawyer who was the complainant's neighbour.
26. The following grounds of discrimination were raised in one or more of the complaints from the public: sex, disability, sexual orientation and race. Particulars of the complaints follow:
27. Nine (9) public complaints were based (in whole or in part) on sex. All of these complaints were made by women:
- Five (5) women complained that they were sexually harassed by their male lawyers (or former lawyers);
 - One (1) woman complained that she suffered sexual harassment at work (and was also discriminated against based on her disability);
 - One (1) lesbian woman complained that she was subjected to sexist and homophobic harassment by a male lawyer at work and that her employment was wrongfully terminated because of discrimination based on sex and sexual orientation;
 - One (1) lesbian woman complained that she was being stalked and threatened by a male lawyer who was her neighbour; she felt that this harassment was based on her sex and sexual orientation.
 - One (1) female litigant complained about sexist (and ableist) remarks made by a male opposing counsel.
28. Nine (9) public complaints were based (in whole or in part) on disability:
- Two (2) disabled woman complained about discrimination in their employment based on their disabilities (one also reported sexual harassment);

- One (1) male client complained about discrimination by his lawyer based on his mental disability;
 - Two (2) female clients complained that their lawyers (one male and one female) exploited their vulnerability and took advantage of them based on their mental disabilities; one of the complainants also reported a sexual assault by her (male) lawyer.
 - One (1) female client complained that her lawyer denigrated her and failed to accommodate her mental disability.
 - One (1) man complained about discrimination by an adjudicator based on his disability; and
 - Two (2) litigants (one male and one female) complained about discriminatory ableist remarks and assumptions made by opposing counsel in their cases (the woman also complained about sexist remarks made by opposing counsel).
29. Two (2) public complaints were based (in whole or in part) on sexual orientation:
- Two (2) lesbian women complained about sexist and homophobic harassment, one in the context of her employment (by a male co-worker) and one by her male neighbour.
30. One public complaint was based on race. A man complained about racist remarks made by his own lawyer.
31. In summary, the number of complaints³ in which each of the following grounds of discrimination was raised are as follows:
- sex 9 (6 involving sexual harassment)
 - disability 9
 - sexual orientation 2
 - race 1

³ The total exceeds 16 because some complaints were based on multiple grounds of discrimination.

Grounds Raised in Public Complaints



E. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

32. In this reporting period, the DHC received one complaint against a lawyer by a paralegal. The paralegal was a woman who had retained a male lawyer to represent her in a legal matter. She complained about sex discrimination and sexual harassment by the lawyer.

F. COMPLAINTS AGAINST PARALEGALS

33. In this reporting period, the DHC received only one complaint against a paralegal. The complaint was made by a male paralegal student who felt that his instructors (also paralegals) were discriminating against him on the basis of race and disability (among other grounds not enumerated in the Law Society's *Rules of Professional Conduct*).

G. EXAMPLES OF COMPLAINTS

34. The following are random examples of the complaints by lawyers received by the DHC Program during this reporting period:

- A female lawyer complained that she was subjected to lewd jokes, sexist remarks, sexual comments, and sexual advances by a male co-worker.
- A male lawyer with an ailing parent complained that his employer was unreasonably refusing to transfer him to a different office location in order to accommodate his disability and his elder-care responsibilities.
- An Asian female lawyer complained that she was denied promotional opportunities at work because of discrimination based on her race and sex. She was advised by her employer that she failed in a job competition because she was too passive and not sufficiently aggressive to be a successful litigator. She felt that this evaluation was based on racist/sexist stereotypes rather than on a fair assessment of her actual skills and performance.
- A disabled female lawyer complained that her employer was refusing to provide her with appropriate modified duties, within her medical restrictions, so that she could return to work after an extended health-related absence.
- A female lawyer who is the mother of an infant complained that her employer was failing to accommodate her child-care and breast-feeding needs.
- A female lawyer complained that her employment with a private firm was terminated during her maternity leave. She felt that the dismissal was wrongful and was discriminatory based on her sex/pregnancy.
- A female lawyer who had recently undergone sex reassignment complained that another female lawyer was discriminating against her based on her gender identity in the provision of a public service. The lawyer in question was refusing to acknowledge the complainant's female identity.
- A female lawyer reported that she was sexually assaulted by a male lawyer in a social situation.

- A young female associate complained that she was subjected to sexual advances by the (male) Head of her department and that she suffered employment-related reprisals when she rejected his unwelcomed overtures.
- A lawyer called on behalf of a client, who was a disabled female lawyer, seeking mediation services to resolve a dispute about the client's allegation that her employer discriminated against her by failing to take her disability into account in setting performance standards. The client's contract of employment had not been renewed.
- A disabled female lawyer who had retained counsel to represent her in a legal matter complained that her counsel had exploited her vulnerability and taken advantage of her based on her disability.

35. The following are random examples of complaints from members of the public during this reporting period:

- A woman complained that she was subjected to unwelcomed sexual advances by her male lawyer, who threatened to cease representing her on the eve of her trial because she rejected his overtures.
- Another woman complained that her male lawyer offered to provide her with free legal representation in exchange for sex.
- Another woman complained that she was being stalked by her former (male) lawyer.
- A lesbian who worked as a legal assistant reported sexist and homophobic harassment in her workplace, as well as wrongful termination of employment based on her sex and sexual orientation.
- A disabled woman who worked as a legal assistant reported sexual harassment by a male lawyer in her workplace, as well as wrongful termination of employment based on her disability.
- Another disabled woman who worked in a law firm also reported discrimination based on disability in her workplace.

- A middle eastern man complained that his lawyer made racist remarks about his ethnic background.
- A disabled female client complained that her former lawyer had exploited her mental disability and had sexually assaulted her.
- A disabled woman complained that her former counsel had denigrated her and had failed to accommodate her mental disabilities.
- A disabled man complained that his former lawyer had terminated their retainer and refused to keep acting for him because of his mental disability.

H. SERVICES PROVIDED TO COMPLAINANTS

36. Complainants who contacted the DHC were advised of various avenues of redress open to them, including:

- filing an internal complaint within their workplace;
- filing an Application with the Human Rights Tribunal of Ontario;
- filing a complaint with the Law Society; and
- contacting a lawyer for advice regarding other possible legal actions.

37. Complainants were also provided with information about each of these options, including:

- what (if any) costs might be involved in pursuing an option;
- whether legal representation is required in order to pursue an option;
- referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
- how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc.)

- the processes 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 existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).
38. Complainants were told that the options available to them are not mutually exclusive.
39. Complainants were given information about who to contact in the event that they decided to pursue any of their options.
40. In some cases, upon request, strategic tips were 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).
41. Some complainants were referred to other agencies/organizations and/or were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.
42. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program. 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 in reaching a mutually satisfactory resolution of the complaint.

43. A number of mediation sessions were conducted during this reporting period. Informal interventions were also conducted by the DHC, upon complainants' request, to assist parties in resolving their disputes.

G. SUMMARY OF GENERAL INQUIRIES

44. Of the 108 new contacts with the DHC during this reporting period, 22 involved general inquiries relating to equity issues within the Program's mandate. These contacts included:

- inquiries by lawyers about their responsibilities under the LSUC's Rules of Professional Conduct (in respect of the duty to accommodate disabled employees and appropriate boundaries for sexual and social interactions with co-workers);
- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC;
- requests from the public for promotional materials about the DHC Program;
- inquiries about the data collected by the DHC; and
- inquiries about the Rules of Professional Conduct and human rights legislation as they apply to lawyers in practice in Ontario.

H. MATTERS OUTSIDE THE DHC MANDATE

45. During this reporting period, the DHC received a number of calls and emails relating to matters outside the Program's mandate.
46. These contacts included complaints about judges, complaints about workplace harassment that did not involve lawyers or paralegals, and complaints about

discrimination that did not involve any paralegals or members of the bar (eg. complaints against landlords, the CAS, the police, etc.).

47. There were also complaints against lawyers that did not involve any human rights issues (eg. allegations of breach of confidentiality, client billing disputes, bullying and intimidating behaviour by opposing counsel, etc.) One mediator contacted the DHC to complain that she had witnessed a lawyer verbally abusing an articling student (no human rights violation was alleged).
48. In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.
49. All of these individuals were referred to other agencies, including (but not limited to) the LSUC's Lawyer Referral Service. An explanation of the scope of the Program's mandate was provided to each person.
50. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

I. PROMOTIONAL ACTIVITIES

51. The LSUC maintains a bilingual website for the DHC Program.
52. Throughout this reporting period, periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program.
53. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.

54. In March 2009, David Bennett (Alternate DHC) gave a presentation on the Program to the first year class of law students at the University of Windsor. This is an annual event. Lynn Bevan (Alternate DHC) gave the lecture in March 2008 and Cynthia Petersen has done it in previous years. Ms. Petersen has been invited to give the lecture again in March 2010.
55. In May 2009, Cynthia Petersen (DHC) was interviewed on film about the DHC Program, as part of a resource to be made available to bar admissions students.
56. In June 2009, Cynthia Petersen was interviewed by the *Lawyers' Weekly* for an article that was published about the Programs' 10th anniversary.

J. NOTE RE: ALTERNATE COUNSEL

57. It should be noted that, during this reporting period, the DHC duties were fulfilled primarily by Alternate Counsel David Bennett, with assistance from Alternate Counsel Lynn Bevan, because Cynthia Petersen was on leave for much of the time.
58. Ms. Petersen was on a sabbatical leave from January 1 to March 31, 2009 and was on a medical leave (following a motor vehicle accident) from May 27 to August 31, 2009.
59. There was a smooth transition of all DHC files and services were uninterrupted.