

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

JULY 1 TO DECEMBER 31, 2004

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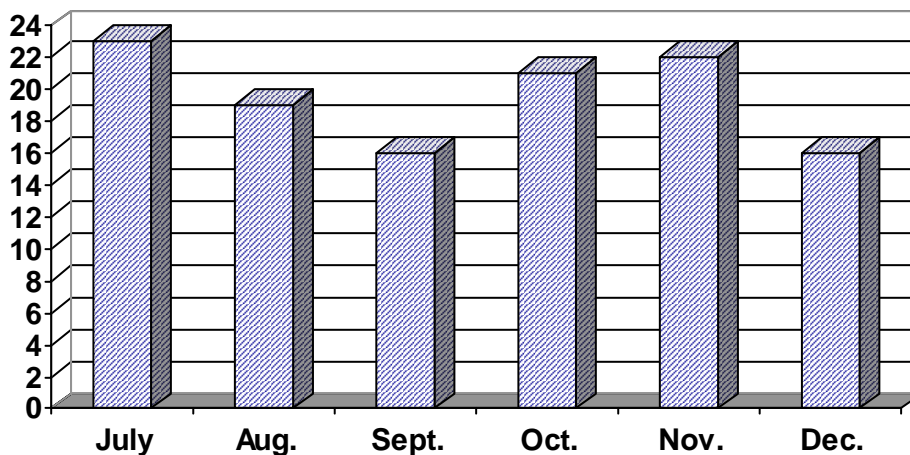
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Overview of New Contacts with the DHC Program

Number of New Contacts

1. During this reporting period (July 1 to December 31, 2004), 117 individuals contacted the DHC Program. On average, there were 19.5 new contacts per month, distributed as follows:



2. There were the same number of new contacts (117) during the preceding six months (January 1 to June 30, 2004).
3. Overall, there was a significant increase in the total number of new contacts in 2004 (234) relative to 2003 (180).

Method of Communication

4. The DHC toll-free telephone line remains the most common way in which individuals initiate contact with the Program, but the use of email and fax has increased in the past year. During the previous three reporting periods, approximately 80% of new contacts were made by telephone, with the remainder by email. During this reporting period, 80 people (68%) made their first communication with the Program by telephone, 34 people (29%) used email and 3 people use fax.

Language of Communication

5. The DHC Program offers services in English and French. During this reporting period, of the 117 new contacts with the Program, 4 individuals communicated with the DHC in French.
6. In 2004, a total of 6 individuals (out of 234) communicated with the DHC in French. This represents a decrease relative to the previous year, when a total of 10 individuals (out of 180) communicated with the DHC in French.
7. I intend to enhance promotion of the French services offered by the program.

Summary of General Inquiries

8. Of the 117 new contacts with the DHC during this reporting period, 40 (34%) involved general inquiries.

9. Inquiries came primarily from within the legal profession, but also from members of the public. The inquiries included:

questions about the scope of the DHC Program's mandate;

questions about the mediation service offered by the DHC;

questions from employees in legal workplaces (both lawyers and non-lawyers) regarding their rights and obligations in employment contexts involving equity issues, such as inquiries about protection from possible reprisals for making a harassment complaint, and about disclosure obligations relating to disability or pregnancy;

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);

inquiries about educational workshops and/or promotional materials provided by the DHC;

law firms and legal clinics seeking information regarding the development of workplace equity policies;

law students and other researchers seeking access to data collected by the DHC; and

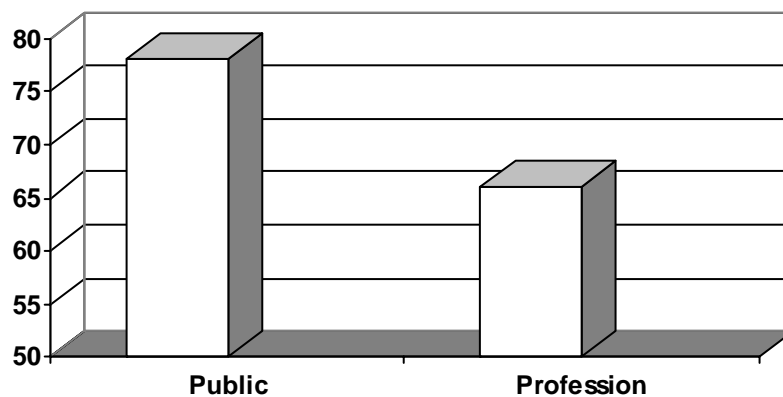
inquiries about the LSUC Rules of Professional Conduct and equity issues.

Summary of Discrimination and Harassment Complaints

10. During this reporting period, 39 individuals contacted the DHC Program with specific complaints of discrimination or harassment against a lawyer, law firm, or legal clinic in Ontario.
11. This is the same number of complaints received during the first six months of 2004.
12. Overall, there were a total of 78 complaints received by the DHC in 2004, compared to 66 complaints in 2003.

Public / Profession Ratio

13. Of the 39 complaints received during this reporting period, 20 were from members of the legal profession and 19 were from members of the public.
14. In the previous three reporting periods, approximately 55% of complaints have consistently come from the public. In this reporting period, the ratio of public complaints to professional complaints was almost equal.
15. Over the past two years (2003 and 2004), there have been a total of 78 complaints from members of the public and 66 complaints from members of the profession:



Total Complaints 2003-2004

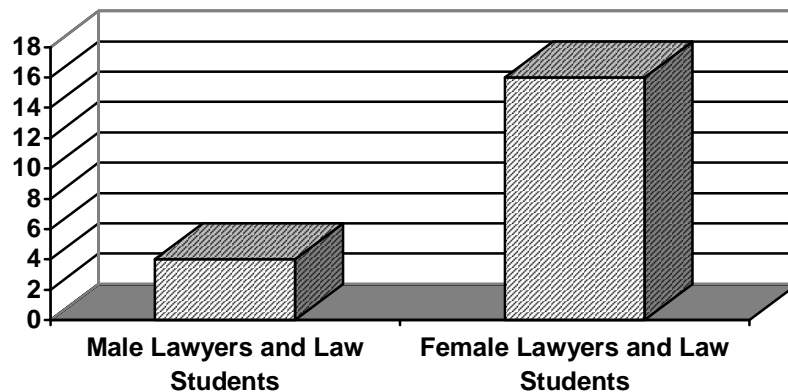
Complaints from within the Legal Profession

Law Student Complaints

16. Of the 20 complaints from within the legal profession during this reporting period, 3 were made by student members of the bar (either summer students or articling students).
17. A total of 6 complaints were made by law students in 2004 and a total of 8 complaints were made by law students in 2003.

Male / Female Ratio

18. Of the 20 complaints from within the legal profession, the overwhelming majority (16 or 80%) were made by women.¹



19. Similarly, during the first six months of 2004, 82% (14 of 17) of the complaints from within the legal profession were made by women.
20. In 2003, the proportion of complaints from male lawyers and law students was greater, but the majority of complaints from within the profession were still made by women. Out of 37 complaints in 2004, 30 were made by female

¹ One of the male lawyers who contacted the program during this reporting period was complaining about inappropriate sexist remarks that another male lawyer had directed toward female witnesses and female courtroom personnel.

lawyers and law students. Out of 27 complaints in 2003, 20 were made by female lawyers and law students.

21. All of the students who contacted the DHC Program with a complaint during this reporting period were female.
22. In 2004, 5 of the 6 student complainants who contacted the program were women. In 2003, 5 of the 8 student complainants were women.

Context of Complaints

23. Of the 20 complaints from within the legal profession,
 - 12 lawyers and 3 law students complained about their employer or about colleagues at their work;
 - 4 lawyers complained about another lawyer outside of their employment context (usually opposing counsel); and
 - 1 lawyer complained about a Tribunal member.
24. Thus 75% of all complaints from within the profession during this reporting period arose in the context of the complainant's employment.
25. In 2004, 76% of all complaints from within the profession arose in the context of the complainant's employment. 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 Complaints within the Profession

26. The 20 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 (including pregnancy), disability, race, and sexual orientation.

27. Thirteen complaints from within the profession involved sex discrimination. Of these

6 involved complaints of sexual harassment in the workplace:

⇒ 3 women lawyers and one female law student complained about sexual harassment by male lawyers in their workplace;

⇒ 1 gay male lawyer complained about sexual harassment by a female lawyer at work; and

⇒ 1 gay male lawyer complained about sexual harassment by a male lawyer at work;

2 involved women (one lawyer and one student) who complained about discrimination at work based on their pregnancy and/or the fact that they had taken a maternity leave;

2 involved female lawyers complaining about gender-based threatening and abusive behaviour by male lawyers in their workplace;

1 involved a female lawyer who complained about her employer's differential treatment of lawyers based on sex and about systemic gender barriers to advancement within her workplace; and

2 involved lawyers (one male and one female) complaining about male lawyers who made inappropriate sexist remarks during the course of litigation; the female complained about remarks that were directed towards her, whereas the male complained about remarks that were directed towards female witnesses and courtroom personnel.

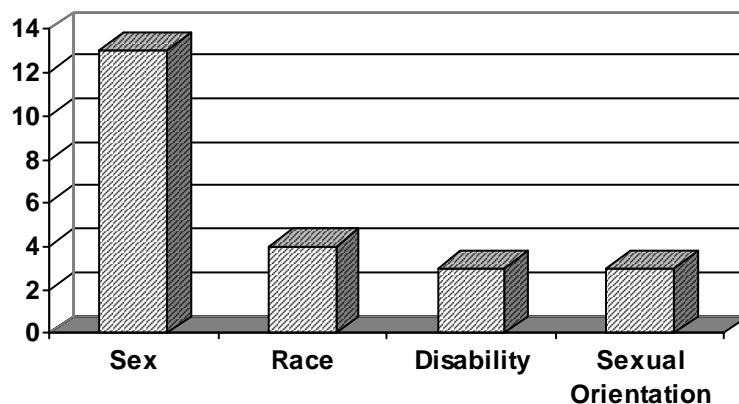
28. Three complaints from within the profession were based on disability:

1 involved a female lawyer who complained that her disability was being exploited and that she was being sexually harassed by a male lawyer at work;

1 involved a lawyer who complained that her employer was failing to accommodate her mental disability; and

1 involved a lawyer who complained that opposing counsel was refusing to accommodate her hearing impairment.

29. Four complaints from within the profession were based on race. Of these,
- 2 (one male and one female) involved complaints of race discrimination and racial harassment at work;
 - 1 involved a female lawyer who complained that another counsel had made racially disparaging remarks during litigation; and
 - 1 involved a Black female litigator who complained about racist treatment by a tribunal member.
30. Three of the complaints were based at least in part on sexual orientation:
- one of the complainants was a lesbian articling student who complained about homophobic harassment by lawyers in her workplace; and
 - two of the complainants were gay male lawyers who complained about sexual harassment; both felt that their sexual orientation was relevant to their experience of harassment in the workplace.
31. In summary, sex was raised in 13 (65%) of the 20 complaints from within the profession, race was raised in 4 (20%) of the complaints, disability was raised in 3 (15%) of the complaints, and sexual orientation was raised in 3 (15%) complaints.² 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:

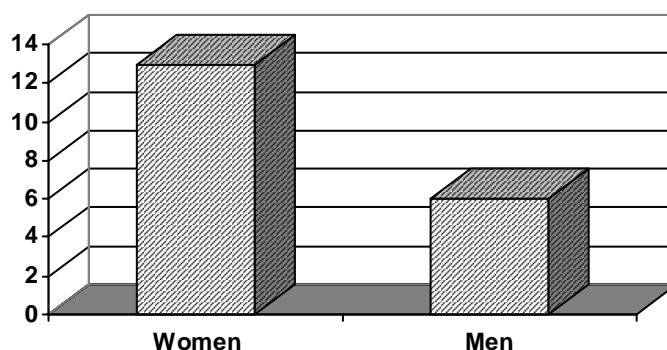


² The percentages do not add up to 100% because some of the complaints involved multiple intersecting grounds.

Public Complaints

Male / Female Ratio

32. Of the 19 lay individuals who contacted the DHC Program with a complaint of discrimination or harassment during this reporting period, 13 were female (68%) and 6 were male (32%).³



33. Of the total number of complaints received from the public in 2004, 63% were made by women. The ratio of male/female public complaints in 2003 was relatively constant; 64% of all public complaints in 2003 were made by women.

Context of Public Complaints

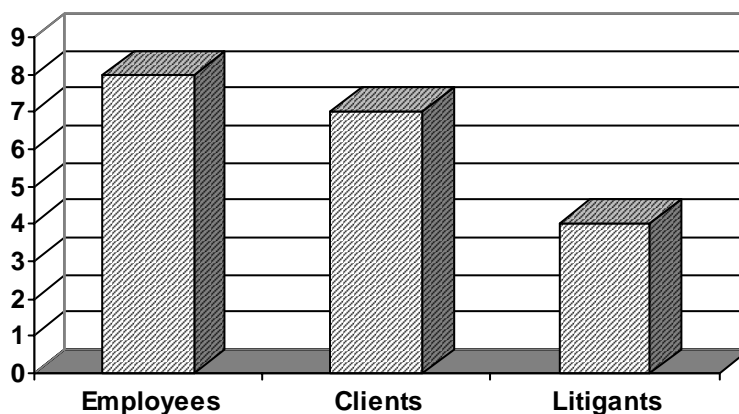
34. Of the 19 complaints from members of the public:

8 involved individuals complaining about their employer or about a lawyer with whom they work;

7 were clients complaining about their own lawyer or a lawyer they had attempted to retain; and

4 were litigants complaining about counsel representing an opposing party or defendants in a criminal proceeding complaining about Crown counsel.

³ One of the men who contacted the Program was calling on behalf of a woman who had been subjected to sexual abuse by a male lawyer.



35. Overall, in 2004, 46% of public complaints involved clients or prospective clients of lawyers, 32% involved employees, and 17% involved litigants or criminal defendants complaining about opposing/Crown counsel.
36. By comparison, 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.

Nature of Public Complaints

37. The 19 complaints made by members of the public were based on one or more of the following prohibited grounds of discrimination: sex (including gender identity, pregnancy and sexual harassment), disability, race, ancestry, religion and sexual orientation.
38. Nine of the public complaints involved discrimination based on sex (including pregnancy, gender identity, and sexual harassment). Of these,
- 2 involved female clients complaining about sexual harassment by their own male lawyer; 1 involved a female grievor complaining about sexual

harassment by her union's counsel;⁴ and 1 was a man calling on behalf of a woman who had been subjected to sexual abuse by her male lawyer.

2 involved female employees in law firms who complained about sexual harassment by male lawyers;

1 involved a female employee in a law office who complained about discrimination by her employer based on pregnancy;

1 involved a transsexual women who complained about discriminatory transphobic treatment by opposing counsel in on ongoing family law matter; and

1 involved a male litigant who complained about anti-male sexist remarks made by female opposing counsel in an ongoing family law matter.

39. Approximately one third (6) of the public complaints were based on disability. Of these,

1 involved a client who complained that his own lawyer was exploiting his hearing impairment in a discriminatory fashion and was failing to accommodate his disability;

1 involved a woman who complained that she was denied legal services on the basis of a mental disability;

1 involved a litigant who complained that opposing counsel was exploiting his disability in a discriminatory manner; and

3 involved female employees in law firms who complained that their employer was not accommodating their disabilities.

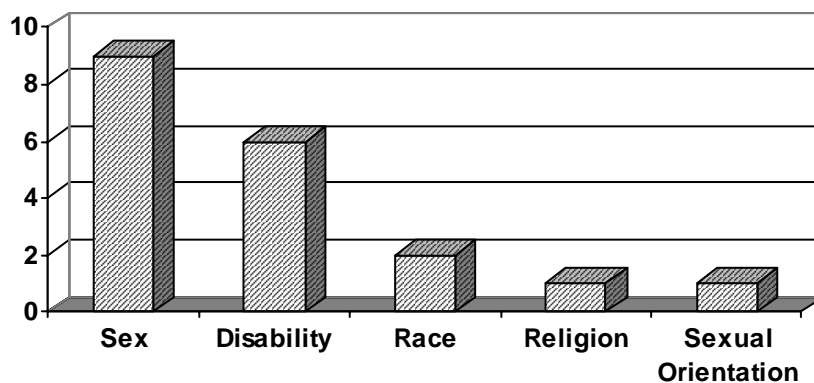
40. Two of the public complaints were based on race and/or ancestry:

1 involved a Black male defendant in a criminal proceeding who complained about racist conduct by the Crown counsel who was prosecuting his case; and

1 involved a Metis man employed in a law firm, who complained about discriminatory treatment in his employment based on his race/ancestry.

⁴ Although union counsel is retained by the union and not the grievor, I have considered this complaint to be a "client" complaint.

41. One public complaint involved a client who stated that his own lawyer discriminated against him on the basis of his religion.
42. One public complaint involved a lesbian employed in a law firm who complained about harassment by lawyers in her workplace based on her sexual orientation.
43. In summary, sex was raised in 9 (47%) of the 19 public complaints (including one complaint based on gender identity), disability was raised in 6 (32%) of the complaints, race and/or ancestry was raised in 2 (11%) of the complaints, religion was raised in 1 (5%) complaint and sexual orientation was raised in 1 (5%) complaint.
44. 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:



Summary of Total Complaints 2004

45. Overall, of the 78 complaints of discrimination and harassment against lawyers in 2004,

sex was raised in 43 complaints (55%) -- of these, pregnancy was specifically raised in 10 complaints (13%), gender identity was raised in 1 complaint, and 20 complaints involved sexual harassment (26%);

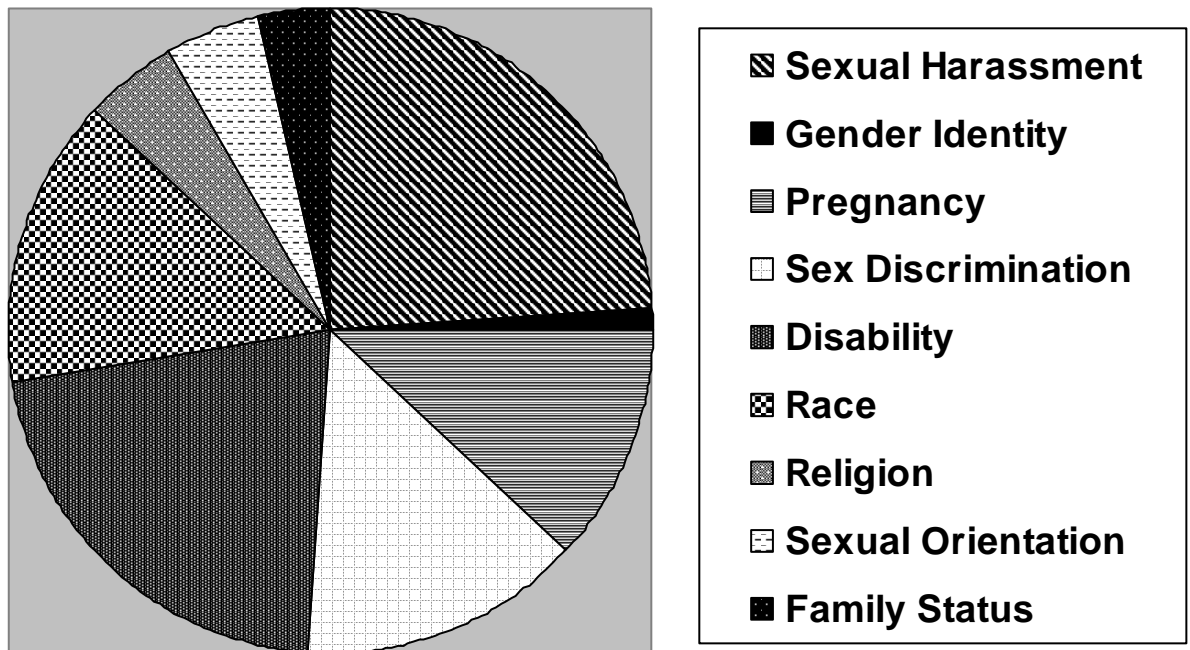
disability was raised in 18 complaints (23%);

race and/or ancestry was raised in 12 complaints (15%);

religion was raised in 4 complaints (5%);

sexual orientation was raised in 4 complaints (5%); and

family status was raised in 3 complaints (4%).



Summary of Total Complaints 2003

46. In comparison, in 2003, out of a total of 66 discrimination and harassment complaints against lawyers,

sex was raised in 30 complaints (45%) – of these, pregnancy was specifically raised in 3 complaints (4%), gender identity was raised in 1 complaint and 17 complaints involved sexual harassment (28%);

race was raised in 19 complaints (29%);

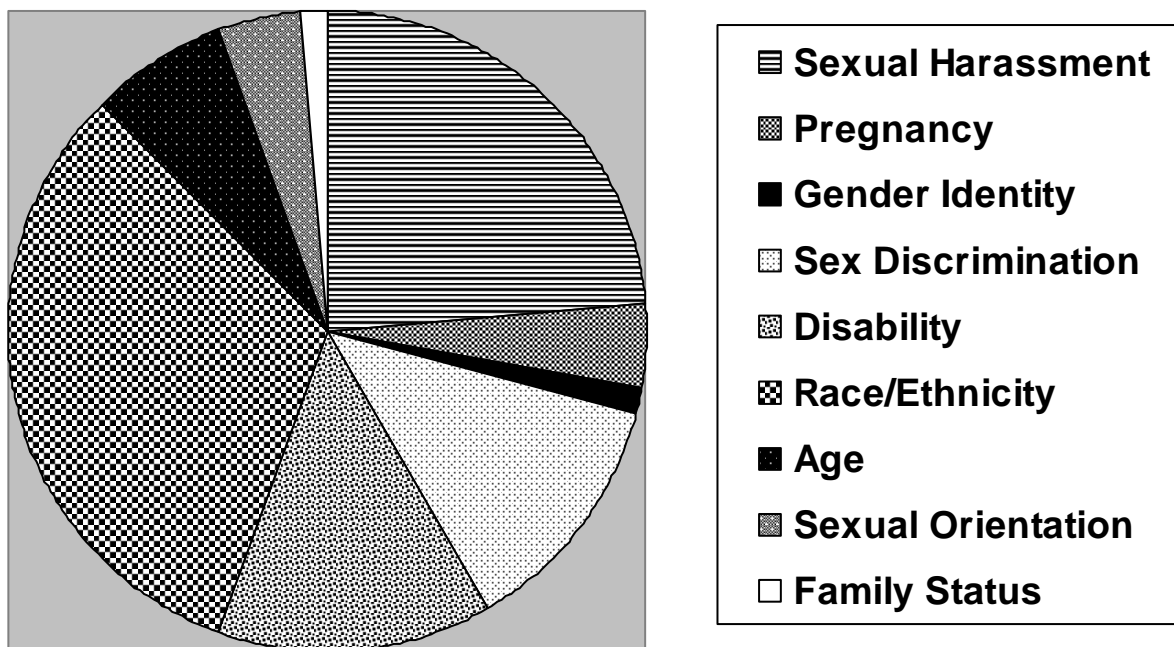
disability was raised 10 complaints (15%);

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%).



Examples of Complaints

47. The following are examples of the types of discrimination and harassment complaints received by the DHC over the past two years:

A transsexual woman involved in a family dispute with her ex-wife complained about her ex-wife's lawyer who, among other things, continued to refer to her in correspondence, pleadings and submissions as "he" and "him" despite repeated requests to cease doing so.

A female articling student complained that a male articling student in her office had sexually assaulted her. She had not reported the rape to the police.

A blind man who was representing himself in litigation complained about a letter he received from counsel for the opposing party which stated "I wish I could see things from your perspective, but I can't get my head that far up my ass."

A female associate complained about a male partner in her firm who stated to her, during a disagreement in front of articling students employed by the firm, "fuck you bitch".

A Chinese man complained that his lawyer treated him in a dismissive and demeaning manner (eg. ordering him to "sit down" in front of other parties, cutting him off when he spoke, patronizing him, etc.) that was different from how the man observed the lawyer interacting with other white clients.

A Black woman lawyer complained about the conduct of a white male lawyer who snapped at her in anger, called her a "fucking bitch" in front of other parties, told her that she was an example why "women shouldn't practice law" and called her "an Afro ethnic".

A secretary in a legal clinic complained that she was pressured not to take a year of pregnancy/parental leave and then was demoted on the day that she returned to work from her leave.

A lesbian articling student in a law firm complained that associates in the firm started asking her unwelcome and intrusive personal questions about her sexual practices after she came out to them. When she expressed her discomfort regarding their inquiries, they began to criticize her work and indicated to partners that she should not be hired back.

A senior female associate in a private law firm complained that male associates were given better work and had more advancement opportunities within her firm. She also complained about differential partnership structures within her firm that disadvantaged women partners relative to male partners.

A Black female litigator working in a government office complained about systemic racial discrimination in her workplace, consisting primarily of preferential treatment of white lawyers in her office (who were given better files and more advancement opportunities).

A female lawyer working in a government office complained that she was given substandard work after her return from pregnancy/parental leave. She felt she was being put on a “mommy track” that would stifle her advancement opportunities within her department.

A female client complained that her male lawyer always insisted on meeting her outside his office, constantly told her how attractive she was, and put his hands around her waist while alone in an elevator.

A female lawyer complained about a male opposing counsel who, in front of their respective clients, called her “uppity” and said that the “women’s liberation movement” had made life difficult for men like him.

A female associate in a law firm returned from maternity leave and was told that she would not be receiving a salary increase. Other male associates in the office all received increases.

A secretary in a legal clinic complained that a male lawyer tried to “grope” her and pull her toward him when they were working alone.

A secretary in a law firm complained that one of the male lawyers in her office repeatedly tried to hold her hand, stroked her hair, and frequently commented on her appearance.

A female lawyer complained about harassment by a male lawyer in her office with whom she had had a consensual intimate/sexual relationship. After she ended the relationship, he repeatedly insulted and embarrassed her in front of clients and physically shoved her while in the office.

A Filipino woman complained that her lawyer had made a racially derogatory remark by referring to her as a “monkey”.

A Black female lawyer complained about a white female lawyer who called her a “nigger” in the presence of other parties.

A receptionist at a law firm complained that she was terminated when she advised her new employer that she would be taking a maternity leave. The employer told her that he would not have hired her if he had known she was pregnant.

A secretary in a law firm, who has fibromyalgia, complained that her boss (a lawyer) was refusing to accommodate her disability and was violating confidentiality with respect to her medical condition in the workplace.

A female associate in a law firm complained that a male partner always hugged her when they parted after work-related social events. On the last occasion before she contacted the DHC, the partner had attempted to kiss her on the lips after a client dinner.

A female associate in a small law firm was given a good performance review and was told that she would be assigned a full-time secretary to assist her with her growing practice. After she announced that she was pregnant, her employer advised her that she would not be assigned a secretary.

A female associate complained about a male partner who regularly shouted at her, shook his fist in anger, called her “lazy” and “stupid” and said she must have “slept her way to getting hired” at the firm.

A secretary in a law firm complained that a male lawyer in her office asked her “how about a blow job before you go home?” one night when they were working late together.

A man complained on behalf of a female friend, an impoverished woman with a drug addiction, who was charged with drug-related offences and whose male lawyer agreed to act for her pro bono if she performed sexual acts on him.

A number of lawyers with various disabilities (eg. hearing impairment, diabetes, depression, anxiety) complained that their employers were failing to accommodate them.

A number of lawyers with child care obligations, including some with seriously ill children, complained that their employers were refusing to accommodate their family status by making flexible work arrangements for them.

A lesbian secretary in a law firm complained that lawyers in the office began harassing her after she announced that she intended to marry her same-sex partner.

A woman complained that her lawyer repeatedly commented on her appearance and always insisted on hugging her after their meetings, even though she had advised him that it made her uncomfortable.

Demographic Survey of Complainants

48. 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 27 surveys were conducted. Eleven (11) public complainants and 16 members of the Law Society (including 3 student members) were surveyed, with the following results:

Gender/Sex	21 Female 5 Male 1 Transsexual / Female
Age	11 were 25-34 years old 13 were 35-49 years old 3 were 50-64 years old
Race/Ethnicity	1 Aboriginal 1 Black 1 Korean 1 Metis 1 South Asian 2 Southeast Asian 20 White / caucasian
Sexual Orientation	4 Lesbian/Gay 23 Heterosexual
First Language	25 English 2 French
Disability	4 Disabled
Region of Residence	13 Greater Toronto Area 7 Southwestern Ontario 3 Central Ontario 2 National Capital Region 1 Northern Ontario 1 Outside Ontario

Services Provided to Complainants

49. 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).
50. 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 statutory time limits in their circumstances).
51. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.

52. 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.
53. 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).
54. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.
55. 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

56. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.
57. 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.
58. During this reporting period, two complainants opted for mediation and in both cases, the respondent agreed to participate. One of the complaints was successfully mediated and the other attempt at mediation failed. In the latter case, both the complainant and respondent were represented by counsel in the mediation meeting.
59. 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.

60. 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 both cases, the complaint was resolved to both parties' satisfaction through the informal intervention of the DHC.

Matters Outside the DHC Mandate

61. Of the 117 new contacts with the DHC during this reporting period, 36 related to matters outside the scope of the Program's mandate.
62. All but one of these misdirected contacts came from members of the public. One call was made by an articling student who was experiencing personal harassment by her principal at work, but not harassment based on any prohibited grounds of discrimination under the *Human Rights Code*.
63. The overwhelming majority of contacts that related to matters outside the Program's mandate involved either (1) complaints of discrimination or harassment against non-lawyers (eg. against landlords, the police, non-legal employers, etc.) or (2) complaints against lawyers that do not involve any equity or human rights issues (eg. client billing disputes, conflicts of interest, negligence allegations, etc.). A few individuals called the DHC to seek a referral to a lawyer.
64. 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 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.
65. These "outside mandate" contacts typically do not consume much of the DHC's time, but they nevertheless constitute a drain on Program's resources. I have therefore been making ongoing efforts to reduce the volume of these misdirected contacts. The promotional brochures for the Program were revised in 2003 to clarify that the DHC only provides assistance in respect of human rights complaints against lawyers. Recently, the DHC website was similarly revised to clarify the mandate of the program.
66. Although it is too soon to tell whether these clarifications are having their desired effect, it is worthy of note that there has been an incremental decrease in the proportion of calls that are outside the Program's mandate. During the first half of 2003, 40% of calls related to matters outside the Program's mandate; during the second half of 2003, 36% of calls were outside the mandate; during the first half of 2004, 35% of calls were outside the mandate; and during the latter half of 2004, 30% of calls were outside the mandate.



Promotional Activities

67. During this reporting period, a number of promotional activities were undertaken to enhance the visibility of the DHC Program.
68. I was invited to address the incoming class of first year law students at the University of Windsor Faculty of Law.
69. I was also invited to speak to lawyers employed by the Department of Justice and to lawyers employed by two different Toronto law firms about the DHC Program and the services it provides.
70. 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.
71. Throughout this reporting period, regular bi-weekly English and French advertisements for the DHC Program were placed in the Ontario Reports.
72. Bilingual brochures and Braille brochures for the Program were circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.