

TAB 8.3.1

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

For the period from July 1, 2013 to December 31, 2013

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A. INTRODUCTION

1. The DHC provides a wide range of services to individuals who make discrimination or harassment complaints about lawyers, articling students or paralegals. Complaints are received from both members of the public and members of the legal profession.
2. The complaints arise in a variety of contexts, such as clients who report that they have been subjected to sexual harassment and/or sexual assault 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.
3. The DHC provides complainants with safe counsel, coaching, information, referrals to other agencies and resources, informal mentoring, and general (non-legal) advice – some on an ongoing basis. The DHC also provides mediation services, described below.

B. SERVICES PROVIDED TO COMPLAINANTS

4. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
 - confronting the respondent lawyer or paralegal directly with their concerns;
 - speaking to their union representative (if they are unionized and their complaint relates to their employment by a lawyer or paralegal);

- filing an internal discrimination or harassment complaint within their workplace;
 - making a complaint to the law firm that employs the respondent lawyer;
 - filing an Application with the Human Rights Tribunal of Ontario;
 - filing a complaint about professional misconduct with the Law Society;
 - reporting to the police (where criminal conduct is alleged); and
 - consulting a lawyer for legal advice regarding possible claims and causes of action.
5. 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 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 may 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).

6. Complainants are told that the options available to them are not mutually exclusive.
7. In some cases, upon request, 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).
8. Student complainants whose articles are terminated or who decide to withdraw from their articles before completion also receive counselling and advice from the DHC about transferring their articles, as well as support in their job search for a new articling position. They are also referred to appropriate resources within the Law Society.
9. Some complainants are referred to other agencies/organizations (such as the Law Society's Member Assistance Program and 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.

C. MEDIATION / CONCILIATION

10. In addition to being advised about the above-noted options, where appropriate, complainants are offered the mediation or conciliation/intervention services of the DHC Program.
11. 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.

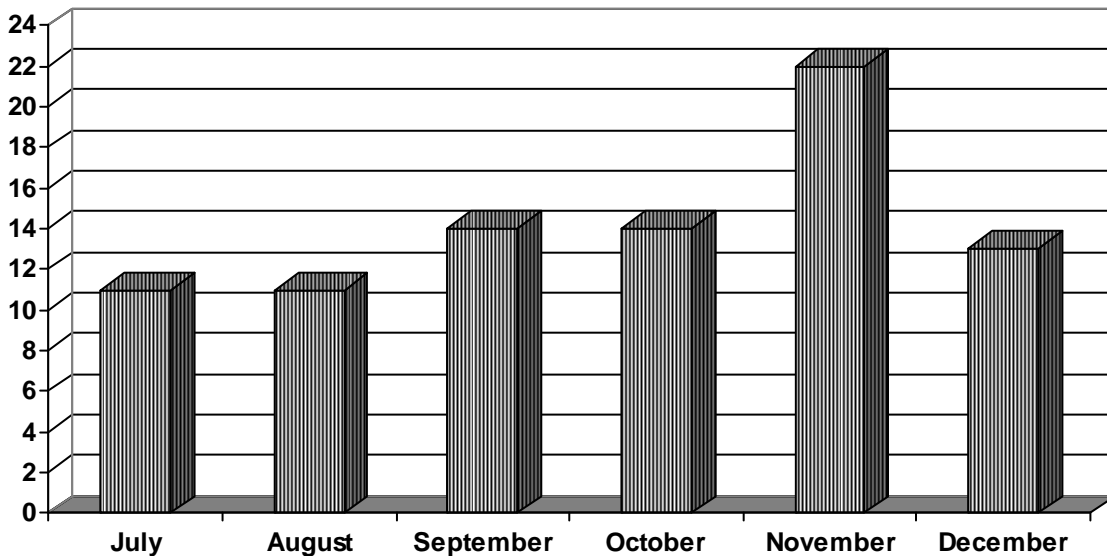
12. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate. If the complainant elects to have the DHC contact the respondent, written instructions must be provided. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into mediated discussions with the DHC.
13. Where informal conciliation/intervention services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as a 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.
14. 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.
15. During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. Formal mediation was not requested by any complainants.

16. There were, however, a number of informal interventions made at complainants' request. The DHC spoke with the respondent lawyers in several cases and was thereby able to achieve resolutions to complaints.

D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this six month reporting period, 85 individuals contacted the DHC Program with a new matter.¹ This represents average of 14 new contacts per month.

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



19. Of the 85 individuals who contacted the DHC, 48 (56%) used the telephone to make their initial contact and 37 (44%) used email.

¹ 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.

20. During this reporting period, 5 individuals were provided services in French. The remaining clients of the Program were provided services in English.

E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

21. Of the 85 new contacts with the Program, 27 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.²
22. In this reporting period, 3 complaints were made against paralegals. The remaining 24 complaints were made against lawyers. There were no complaints about articling students.
23. The 3 complaints against paralegals were made by members of the public. Of the 24 complaints against lawyers, 10 (42%) were made by members of the public and 14 (58%) were made by members (including student members) of the Law Society.
24. During this reporting period, all complainants were provided services in English.³

F. COMPLAINTS AGAINST LAWYERS BY MEMBERS OF THE BAR

25. In this reporting period, there were 14 complaints against lawyers by members of the Law Society. Seven (7) of these complaints were made by lawyers and 7 (50%) were made by articling students or law students. There were no complaints about lawyers made by paralegals.

² The other new contacts with the program either involved general inquiries or complaints about licensees that did not include allegations of discrimination or harassment and were therefore outside the mandate of the DHC program. These contacts are summarized below.

³ A number of francophones contacted the DHC during this reporting period and were provided services in French, but they did not raise specific complaints about discrimination or harassment by a lawyer, articling student or paralegal.

26. Of the 14 complaints by members of the legal profession, 8 (57%) were made by women and 6 (43%) were made by men. Four (4) of the 7 student complainants (57%) were female and 4 of the 7 lawyer complainants (57%) were female.
27. Of the 7 complaints made by lawyers, 4 (57%) arose in the context of the complainant's employment. Of the remaining 3 complaints, one complaint was made against a lawyer who was providing a public service to the complainant, one was made about opposing counsel involved in litigation, and one was made about a former colleague with whom the complainant no longer worked.
28. Four (4) of the 7 student complaints (57%) arose in the context of the complainants' employment or a job interview for an articling position. The remaining 3 student complaints arose in the context of the complainants' education and involved complaints about the conduct of law professors who are licensees.
29. There were 7 complaints against lawyers based (in whole or in part) on sex. Of these,
 - Three (3) involved allegations of sexual harassment. One involved a law student complaining about her professor, one involved a government lawyer complaining about her supervisor, and one involved a lawyer complaining about her former colleague with whom she no longer worked.
 - Two (2) involved complaints by articling students about sexist remarks made by a senior partner in their firm (one of the student complainants was female and the other was male).
 - One involved allegations by a lawyer of discrimination based on pregnancy in the context of her employment; and

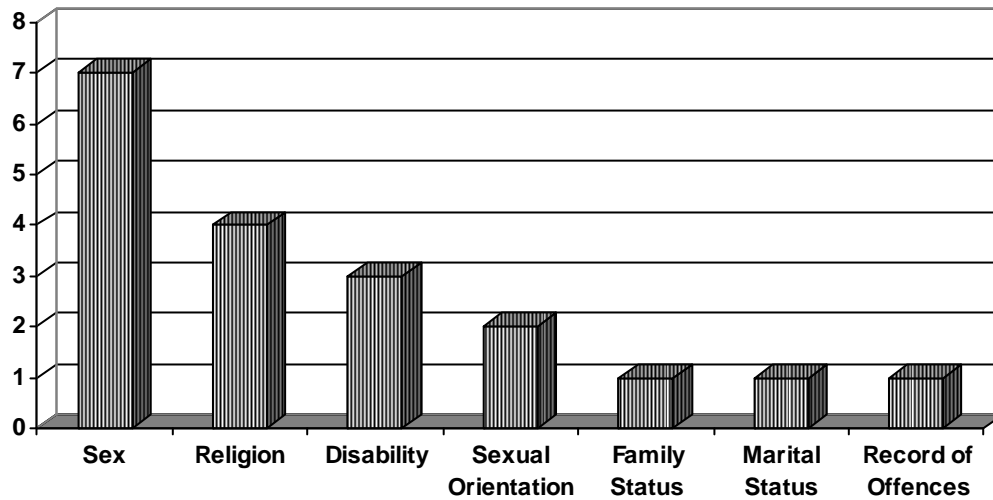
- One law student complained about sexist remarks made by her professor.
30. All but one⁴ of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
31. There were 4 complaints against lawyers based (in whole or in part) on religion. All of these complaints arose in the context of the complainants' employment:
- A Jewish student complained about inappropriate questions regarding his religion during a job interview for an articling position at a law firm.
 - Two articling students (one male and one female) complained about anti-Muslim remarks made by a senior partner in their firm.
 - A Muslim lawyer complained about hostile anti-Muslim comments made to him by a senior partner in his firm.
32. There were 3 complaints based on disability. Two of these complaints (one by a male lawyer and one by a female articling student) arose in the context of the complainants' employment and involved allegations of a failure to provide appropriate workplace accommodation. The third complaint was made by a male law student who reported harassment by a law professor, including derogatory comments about his disability.
33. There were 2 complaints based on sexual orientation. Two articling students (one male and one female) complained about homophobic remarks made by a senior male partner in their firm.

⁴ A male articling student complained about sexist comments made by a senior male partner in his firm. That student also reported that the same partner made homophobic and anti-Muslim remarks. A female articling student in the same firm made similar complaints about the same partner.

34. There was one complaint based on family status. A female lawyer reported that opposing counsel made offensive remarks about her family status.
35. There was one complaint based on marital status. A male law student complained about inappropriate questions raised during a job interview for an articling position with a law firm.
36. There was one complaint based on record of offences. A lawyer reported that he was denied a service by another lawyer based on a conviction for which he had received a pardon.
37. In summary, the number of complaints⁵ by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:
- sex 7 (3 sexual harassment; 1 pregnancy)
 - religion 4
 - disability 3
 - sexual orientation 2
 - family status 1
 - marital status 1
 - record of offences 1

⁵ The total number exceeds 14 because a number of complaints involved multiple grounds of discrimination.

Grounds Raised in Complaints against Lawyers by Members of the Bar



G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC

38. During this reporting period, there were 10 complaints against lawyers made by members of the public.

39. Half (50%) of the public complaints were made by women and half were made by men.

40. Of the 10 public complaints:

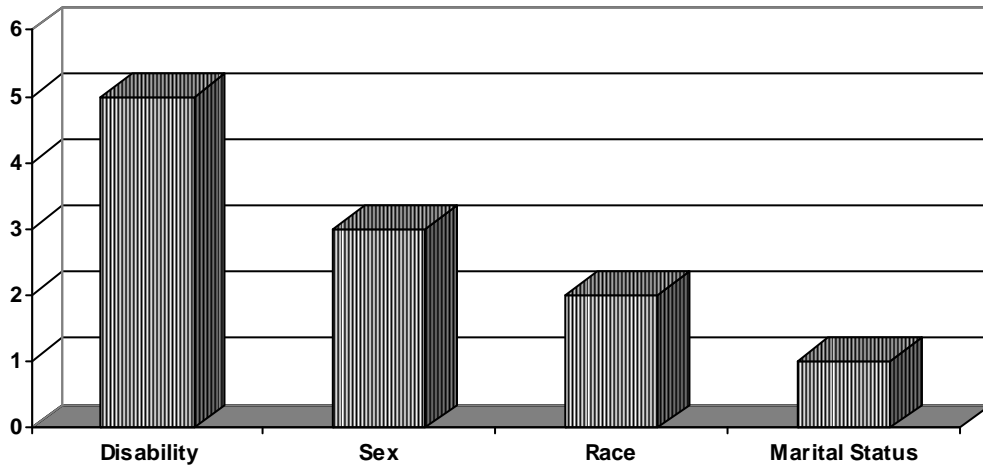
- Five (5) involved litigants complaining about the conduct of opposing counsel in their cases;
- Three (3) involved clients complaining about their own lawyers; and
- Two (2) involved employment-related complaints by individuals working in law firms.

41. There were 5 public complaints based (in whole or in part) on disability:

- Three (3) litigants with disabilities complained about the discriminatory conduct and/or derogatory comments of opposing counsel in their cases.
 - Two (2) clients complained about discriminatory remarks made by their own lawyers, their lawyers' failure to accommodate their medical needs, and (in one case) their lawyer's breach of confidentiality regarding their medical information.
42. There were 3 public complaints based (in whole or in part) on sex.
43. Two (2) of the sex-based complaints were made by men. Both were litigants who complained about remarks made by opposing counsel (one alleged anti-male sexist comments and the other alleged misogynist comments). In both cases, the respondent lawyer was male. The third sex-based complaint was made by a woman who reported employment discrimination by a lawyer based on both her sex and marital status.
44. There were 2 public complaints based on race. A Black female litigant complained about a racially derogatory comment made to her by opposing counsel. An Asian man complained about racial discrimination by a lawyer who was representing him.
45. In summary, the number of public complaints⁶ in which each of the following grounds of discrimination was raised are as follows:
- disability 5
 - sex 3
 - race 2
 - marital status 1

⁶ The total of these numbers exceeds 10 because some of the complaints involved multiple intersecting grounds of discrimination.

Grounds Raised in Public Complaints



H. COMPLAINTS AGAINST LAWYERS BY PARALEGALS

46. During this reporting period, there were no complaints about lawyers by paralegals.

I. COMPLAINTS AGAINST PARALEGALS

47. During this reporting period, there were 3 complaints against paralegals.⁷ All were made by members of the public and all involved allegations of sexual harassment:

- A male student complained that his male paralegal instructor made unwelcome sexually suggestive remarks to him;

⁷ There were two additional complaints about the conduct of paralegals, but neither raised issues of discrimination or harassment based on human rights grounds. The data regarding these complaints are therefore captured later in this report, in the section about contacts “outside the mandate” of the DHC program.

- A woman complained about the conduct of a male paralegal who was her ex-boyfriend and who was stalking her and harassing her after the breakdown of their relationship, including harassment in her workplace; and
- A man called on behalf of his fiancée, who was experiencing sexual harassment by a male paralegal whom she had retained to represent her.

G. GENERAL INQUIRIES

48. Of the 85 new contacts with the DHC during this reporting period, 18 involved general inquiries about matters within the mandate of the DHC program and did not involve reports of misconduct by licensees.

H. MATTERS OUTSIDE THE DHC MANDATE

49. During this reporting period, the DHC received 40 calls and emails relating to matters outside the Program's mandate.
50. These contacts included complaints about paralegals and lawyers that did not involve allegations of discrimination or harassment based on human rights grounds (such as allegations of unethical behaviour, confidentiality breaches, or bullying and incivility). They also included complaints about the conduct of judges, landlords and employers, none of whom were licensees.
51. Several individuals contacted the DHC to obtain a referral to a lawyer to deal with a harassment or discrimination case. They were referred to the Law Society's Lawyer Referral Service.

52. 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. Some of these individuals were referred to other agencies.
53. Although there are a number of these "outside mandate" contacts during every 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

54. The LSUC maintains a bilingual website for the DHC Program.
55. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program.
56. The Program's French and English brochures were updated, revised and reprinted in December 2013. The new brochures should be in circulation early in 2014 (to legal clinics, law firms, community centres, libraries, government agencies, faculties of law, etc.).
57. The DHC continues to work closely with the Law Society's Equity Advisor (Josée Bouchard) to design and deliver *Discrimination and Harassment Prevention* and *Violence Prevention* workshops to law firms in Ontario. In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the DHC Program's services.