



TAB 8

Equity and Indigenous Affairs Committee

Report on the Activities of the Discrimination and Harassment Counsel

October 22, 2020

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Purpose

The Equity and Indigenous Affairs Committee submits the following reports to Convocation for information:

1. Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Ontario for the period of January 1, 2020 to June 30, 2020 (**TAB 8.1**); and
2. Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Ontario for the period of July 1, 2019 to December 31, 2019 (**TAB 8.2**).

Context

The DHC provides regular reports on its activities to the Equity and Indigenous Affairs Committee as outlined in subsection 20(1) of By-law 11, *Regulation of Conduct, Capacity and Professional Competence*.

Due to the COVID-19 pandemic and other factors, the Equity and Indigenous Affairs Committee was delayed in considering the DHC reports for the period from July 1, 2019 to December 31, 2019. Consequently, the 2019 report was presented to the Equity and Indigenous Affairs Committee along with the 2020 report at the October 8, 2020 Committee meeting. The DHC Counsel, Fay Faraday, and the Alternative DHC Counsel, Lai-King Hum and Natasha Persaud, reported on the DHC's activities from January 1, 2020 to June 30, 2020 and July 1, 2019 to December 31, 2019. The reports provide a summary of data, including new contacts, languages in which services were provided, and new complaints. The reports were referred to Convocation for information by the Equity and Indigenous Affairs Committee on October 8, 2020.

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

For the period from 1 January 2020 to 30 June 2020

Prepared by Fay Faraday
with Lai-King Hum and Natasha Persaud

Discrimination and Harassment Counsel

August 2020

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A. INTRODUCTION

1. Under their respective *Rules of Professional Conduct* and *Paralegal Rules of Conduct*, lawyers and paralegals licensed in Ontario have legal and ethical obligations as professionals to deliver their services and engage in and conduct their employment practices in a manner that is free of discrimination and harassment.
2. Rules 6.3 and 6.3.1 of the *Rules of Professional Conduct* set out these professional obligations as follows:

6.3-3 A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1, 6.3.1-2 and 6.3-3.

3. The “requirements of human rights laws in force in Ontario” which lawyers have a “special responsibility to respect” are the prohibitions against both discrimination or harassment on prohibited grounds of discrimination listed in the Ontario *Human Rights Code*. The discrimination or harassment must have taken place within one of the social areas recognized in the *Human Rights Code* (discrimination or harassment in relations to goods, services and facilities; accommodation; employment; contracts; and vocational associations).

4. These *Rules of Professional Conduct* are supplemented by 29 paragraphs of commentary that provide guidance on the interpretation and application of these *Rules* and outline how they are anchored in equivalent legal obligations under the provincial *Human Rights Code* and *Occupational Health and Safety Act*.
5. Rule 2.03 of the *Paralegal Rules of Conduct* holds paralegals to professional standards of human rights compliance as follows:
 - (3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.
 - (4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.
 - (5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.
 - (6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
 - (7) A paralegal shall ensure that his or her employment practices do not offend this rule.
6. The Discrimination and Harassment Counsel (DHC) program was established in 1999 as an independent office funded by, but operating at arm's length from, the Law Society of Ontario. The DHC began operating in the fall of 1999 to provide information to and support individuals who had experienced discrimination or harassment by licensees contrary to their binding rules of professional conduct as

a means to help eradicate discrimination in the legal profession.¹

7. In carrying out its functions, the DHC supports the LSO's core regulatory function of holding licensees accountable for compliance with their *Rules of Professional Conduct* and *Paralegal Code of Conduct*. This is necessary to ensure that public trust in the self-governing legal profession is not eroded by abuses of power through discriminatory or harassing behaviour by professionals.
8. The DHC can be accessed by email at assistance@dhcounsel.on.ca, toll free by phone at 1-877-790-2200, or through direct message on Twitter @DH_Counsel.
9. The DHC serves two important functions:
 - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
 - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that the regulator can better understand the dynamic and nature of concerns about discrimination and harassment that are being raised in the legal professions and address possibly systemic issues of discrimination and harassment in the legal professions. This statistical data is released publicly to support public accountability of a profession that is self-governing.
10. The DHC services are provided without charge to members of the public as well as to licensees.
11. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in

¹ In its current mandate, the DHC does not provide representation or legal advice to individuals, nor does the DHC investigate or decide complaints.

the Ontario *Human Rights Code*, in one or more of the five social areas to which the *Code* applies. This is the discriminatory conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any of the listed prohibited grounds does not fall within the mandate of the DHC Program.

12. The complaints reported to the DHC arise in a variety of contexts, including but not limited to:
 - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
 - (b) participants in litigation – whether they are clients, witnesses, articling students, paralegals or lawyers – who have experienced discrimination and/or harassment by opposing counsel or opposing paralegals and justice system employees (such as court/tribunal staff, law firm staff, process servers, etc.) who have experienced discrimination and/or harassment by licensees in the course of litigation;
 - (c) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced harassment and/or discrimination by licensees in the workplace based on intersecting or distinct grounds of prohibited discrimination;
 - (d) service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing and/or have experienced discrimination and/or harassment by licensees in the context of professional training programs, continuing professional education programs, public or privately hosted legal events; and
 - (e) members of the public, service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing or have experienced discrimination and/or harassment by

licensees in other contexts which implicate the licensees' professional obligations.

13. For complaints that do not fall within the DHC Program's mandate, the DHC will provide information and guidance about other resources that the individual can access.
14. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals who seek service in French.

B. SERVICES PROVIDED BY THE DHC

15. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who is an expert in discrimination and harassment law and issues, who has skills of mediation and conciliation regarding human rights, who has skills of cultural competence, and who is committed to promoting compliance with professional ethical standards in the legal professions.
16. The DHC also supports lawyers and paralegals to comply with their professional rules of conduct by participating in continuing professional education events to advance licensees' training on the substantive legal issues and best practices to ensure compliance with their codes of conduct and human rights laws.
17. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and guidance to complainants to assist them in identifying and evaluating their options to resolve their concerns, provides information to licensees

to support best practices, and where appropriate, provides focused mediation or conciliation. The nature of services provided is outlined below.

Counselling, Data Collection and Coaching for Self-Help

18. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
19. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants, this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for change.
20. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
21. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with the DHC. This coaching of respondent licensees aims to ensure that they understand their professional obligations regarding human rights compliance in their service delivery and workplaces and that they move toward best practices. This informal coaching may be appropriate in situations where the complainant wishes to remain anonymous but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and educate or remind the respondent of their professional and legal obligations. Even though the DHC cannot make any factual findings, such calls are effective in providing education and guidance to respondent licensees.

Information about Avenues of Recourse

22. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
 - (a) speaking to their union representative (if they are unionized and the

- complaint relates to their employment);
- (b) filing an internal complaint within their workplace (if the complaint relates to their employment);
 - (c) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
 - (d) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (e) filing a formal complaint of professional misconduct with the Law Society;
 - (f) contacting the police (where criminal conduct is alleged);
 - (g) filing a complaint about an articling principal with the Law Society's Articling Program;
 - (h) contacting the Human Rights Legal Support Centre for legal advice on Human Rights Tribunal of Ontario matters; and
 - (i) contacting a lawyer regarding possible civil causes of action.
23. Complainants are provided with information about each of these options, including:
- (a) what (if any) costs might be involved in pursuing an option;
 - (b) whether legal representation is required in order to pursue an option;
 - (c) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service, <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>, (actual referrals to specific lawyers, paralegals or law firms are not made by the DHC);
 - (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are

required, where to locate the requisite forms, etc.);

- (e) what processes are involved in pursuing any of the available options (e.g. investigation, conciliation, mediation, adjudication, etc.);
- (f) what general types of remedies might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
- (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

Resolution Services

- 24. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
- 25. 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 settlement of the issues raised in the complaint.
- 26. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice”

undertaking by both parties.

27. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant's concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
28. Some complainants are not interested in the DHC's resolution services because they are seeking an adjudicative process to create a formal record of the respondent's misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC's offer of resolution services. On occasion, however, respondents decline to participate.
29. During this reporting period two formal mediation processes were requested by complainants. One mediation was successfully completed during the reporting period. Multiple informal resolutions have been used.

Referrals

30. The DHC refers some complainants to other agencies or organizations where appropriate (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the

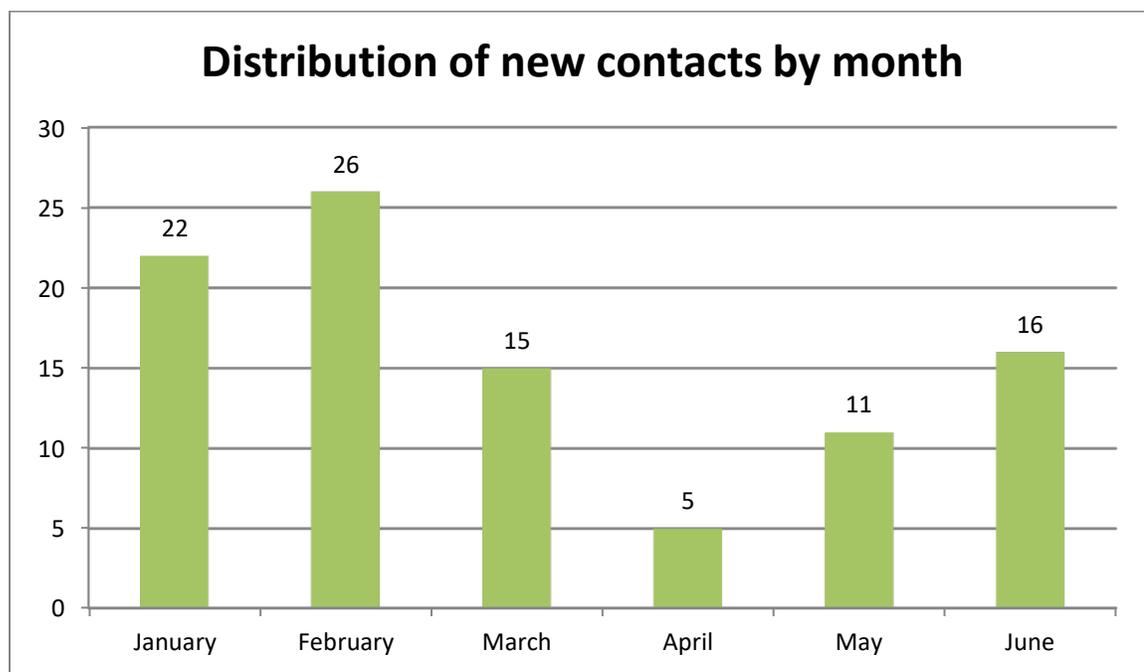
Law Society, the Ontario Human Rights Commission, or other organizations.

31. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

32. Despite a notable slow down in new contacts to the DHC during March to May 2020 during the height of the COVID-19 pandemic, this reporting period had the most contacts since early 2018. In January-June 2020, 95 individuals contacted the DHC with a new matter,² for an average of 15.8 new contacts per month. This is up 9% from July to December 2019 and up 19% from January to July 2019.

33. The volume of new contacts with the Program was distributed monthly as shown in the following chart.



34. During this reporting period, one new contact requested services in French.

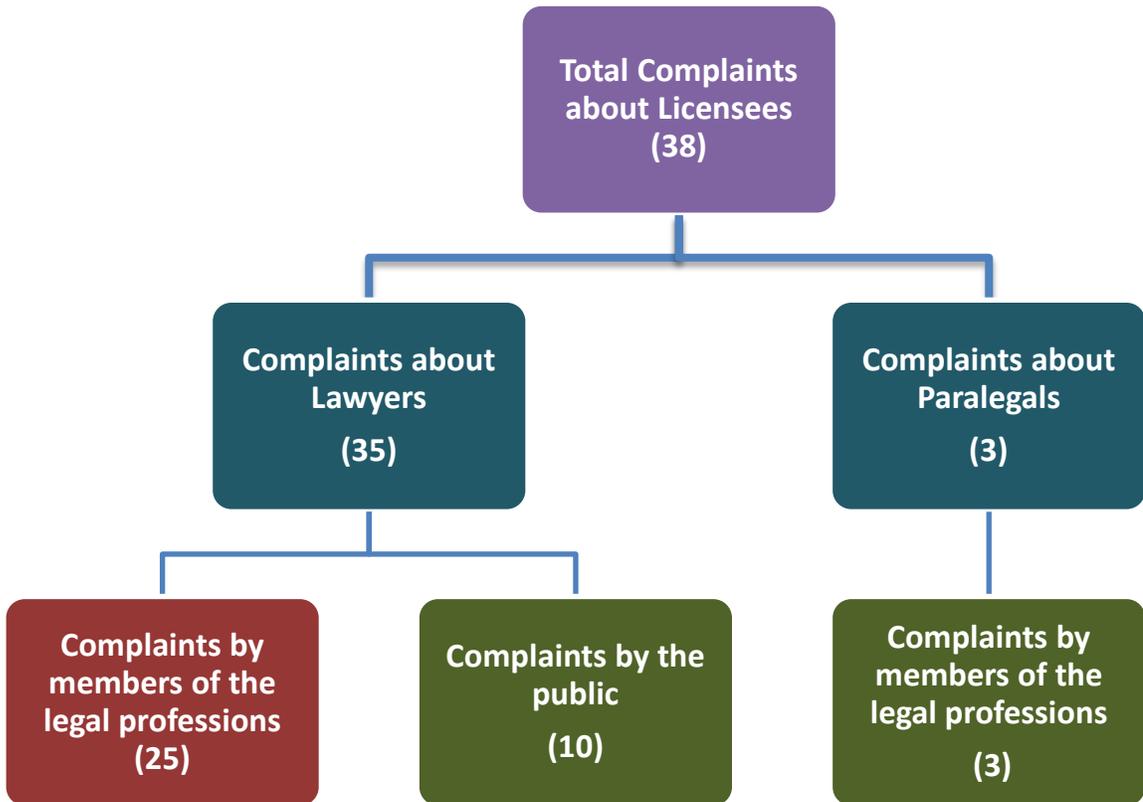
² Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

- 35. Of the 95 new contacts with the Program, 38 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. Three complaints concerned the conduct of a paralegal. The remaining 35 complaints were about lawyers' conduct.
- 36. All three complaints about paralegals were made by other paralegals.

Of the 35 complaints about lawyers, 10 were made by members of the public, and 25 were made by individuals or groups within the legal professions. The breakdown of complaints made about licensees can be represented as follows:

Source of Complaints Against Licensees – Chart 1



Complaints about Lawyers by Members of the Legal Profession

37. The 25 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system:

16 complaints by lawyers;

5 complaints by articling students, LPP students, or law students;

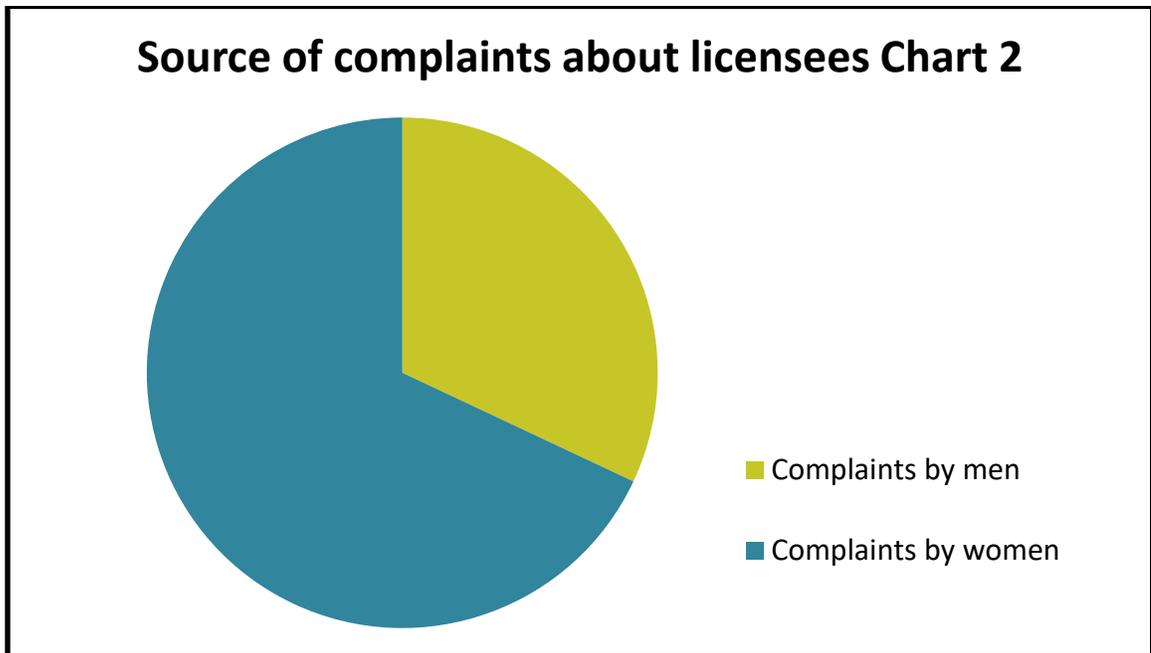
4 by paralegals; and

0 by non-licensee staff at legal workplaces.

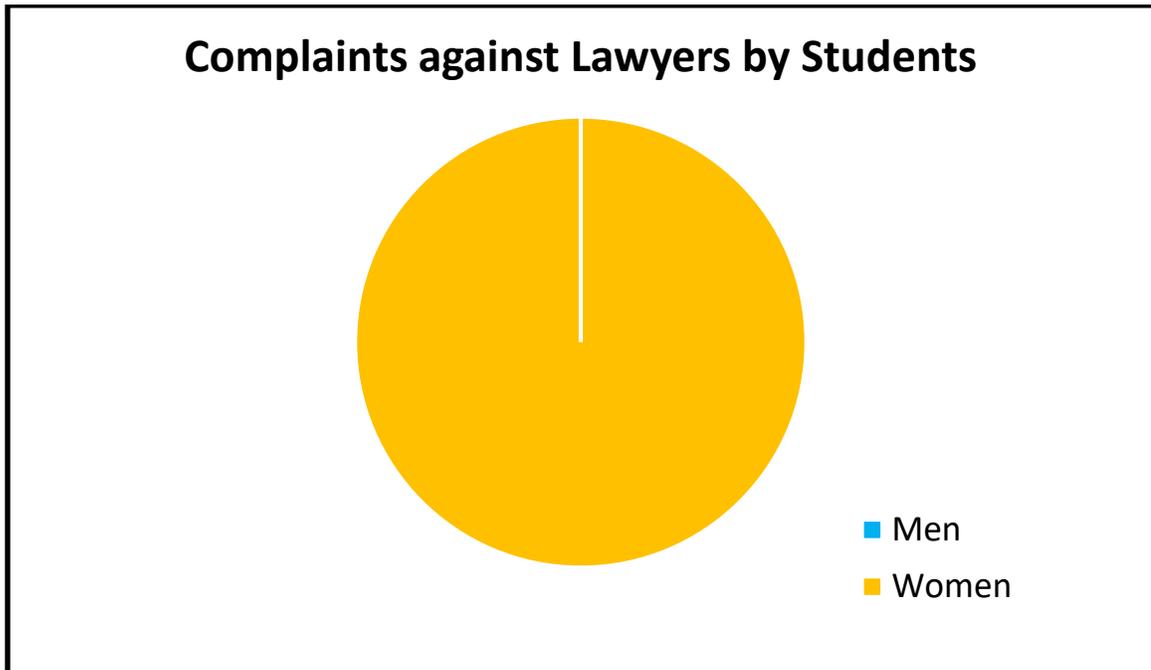
38. Of the 25 complaints against lawyers made by members of the legal profession:

17 (68%) were made by women, 12 of whom (70%) voluntarily self-identified as racialized women and/or women with disabilities;

8 (32%) were made by men, 7 of whom (89%) are racialized or have disabilities.



39. All 5 of the complaints made by students were made by women.

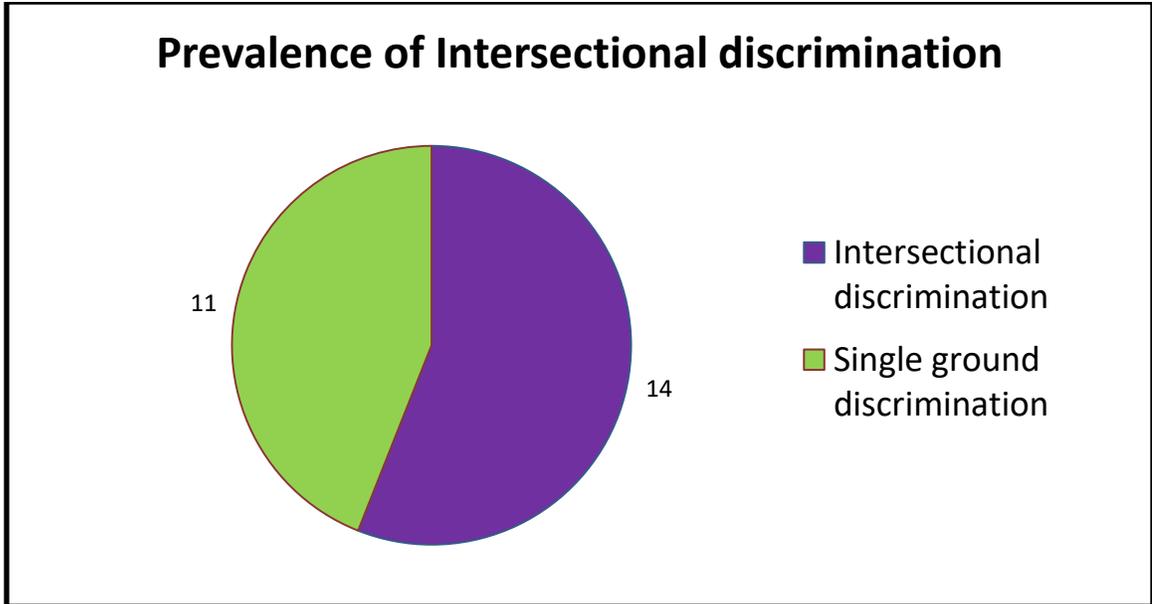


40. Of the 25 complaints from members of the legal profession, 18 complaints (72%) related to the complainants' employment and 2 complaints (8%) related to training contexts. The remaining 5 complaints (20%) related to interactions with lawyers in other professional contexts.

41. Of the 25 complaints from members of the legal profession:

14 complaints (56%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, ethnic origin, age, and family status.

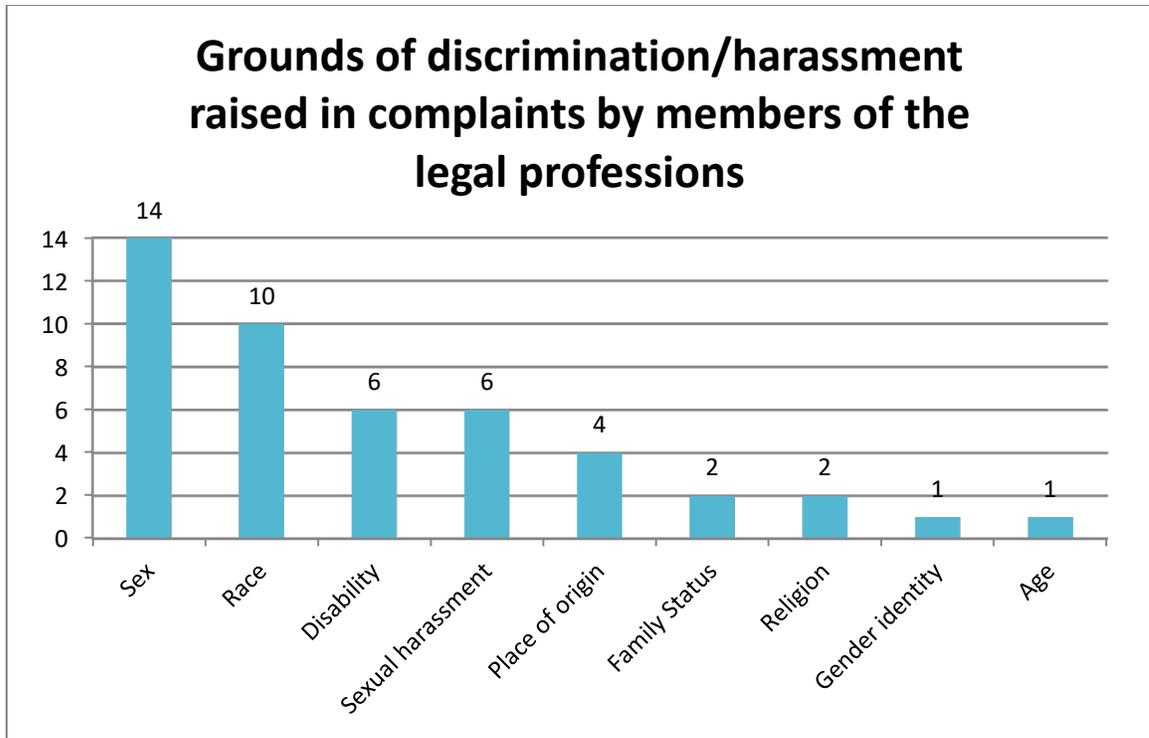
11 complaints (44%) raised a single ground of discrimination, primarily sexual harassment and disability.



42. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by members of the legal profession about the conduct of lawyers. The total exceeds 25 as most complaints raised more than one ground of discrimination

Sex	14
Race	10
Disability	6
Sexual harassment	6
Place of origin	4
Family status	2
Religion	2
Gender identity	1
Age	1

The distribution of grounds of discrimination and harassment are depicted in the table on the following page.



43. The complaints with respect to employment typically involved a power (seniority, security of employment) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:
- (a) Sex discrimination including employers routinely making disparaging comments about women and discrimination due to pregnancy and/or maternity leave;
 - (b) Sexual harassment, including verbal harassment, sexually harassing and demeaning comments about the complainant in front of colleagues and/or in other professional settings; sexually explicit harassment and comments; and physical harassment. It is striking that all the complaints about sexual harassment in this reporting period were so severe that complainants either left their jobs or were terminated when they complained.

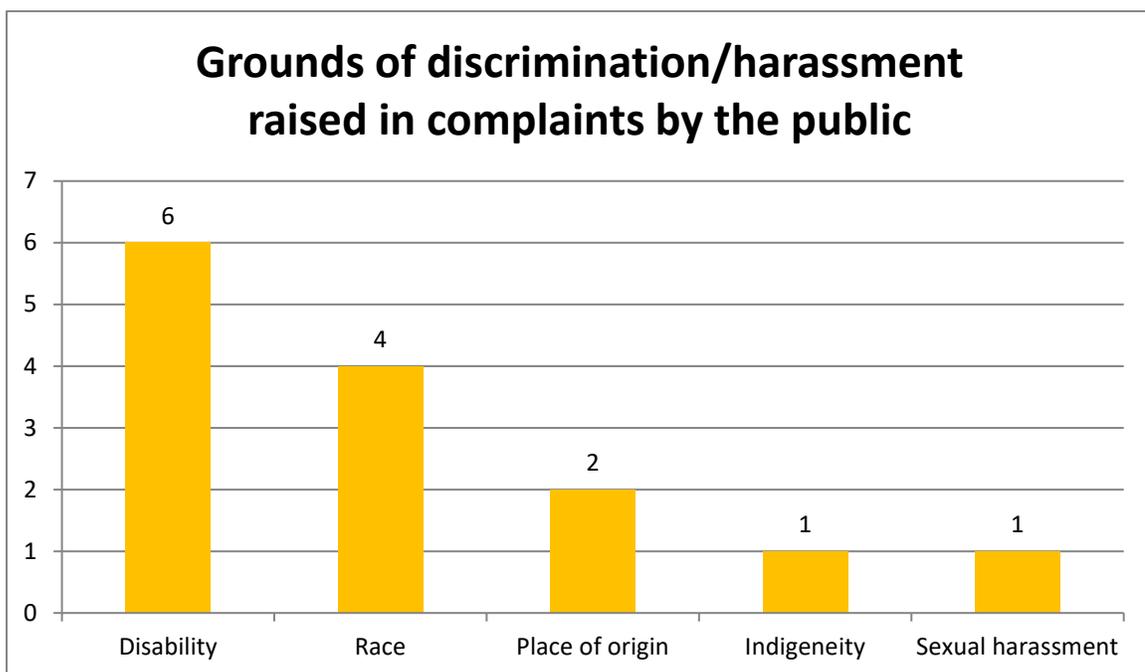
- (c) Racial discrimination and harassment, including verbal harassment; racist comments; abusive monitoring and discipline; being held to higher standards than non-racialized co-workers; social isolation in the workplace; and the employer's failure to respond appropriately when complaints of harassment were raised. Several complainants indicated that they had left their employment because of the racial discrimination in the workplace and one was terminated when they complained about race-based harassment.
 - (d) Discrimination and harassment with respect to disability, verbal abuse for seeking accommodation, refusal to accommodate disabilities, and reprisals up to and including termination;
 - (e) Verbal harassment with respect to ethnic origin, holding the complainant to a higher standard than others, and public criticism and loss of opportunities due to the complainant's "accent";
 - (f) Harassment and refusal to accommodate with respect to family status, gender identity, age, and religion; and
 - (g) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
44. The range of behaviour identified in complaints about lawyers in other professional settings included targeted sexist and racist comments directed at individuals in public settings; sexual and/or racial harassment; harassment on the basis of place of origin; and failure to accommodate disability.

Complaints about Lawyers by Members of the Public

45. During this reporting period, 10 complaints were made about lawyers by members of the public: 5 complaints were made by clients who reported discrimination or harassment by their own lawyer; 5 complaints were made about opposing counsel.
46. The grounds of discrimination and harassment raised by the public were disability, race, place of origin, Indigeneity and sexual harassment. The grounds exceed 10

because complaints raised intersecting grounds of discrimination and harassment:

Disability	6
Race	4
Place of origin	2
Indigeneity	1
Sexual harassment	1



47. The most commonly reported behaviour about a complainant's own lawyer was a failure to accommodate disabilities or providing lesser service to clients with disabilities; and racial and sexual harassment, including sexual assault and pressure to enter a sexual relationship with the lawyer.
48. Complaints about opposing counsel involved verbal abuse in relations to Indigeneity, race, place of origin and disability and refusal to agree to accommodations in the context of legal proceedings.

Complaints about Paralegals

49. The three complaints made about paralegals were made by other paralegals in the context of employment and in other professional contexts. The discriminatory conduct complained of included sexual assault, sexual harassment, pressure to

enter sexual relationship, misogynist comments, and publicly demeaning comments based on race and place of origin.

E. MATTERS OUTSIDE THE DHC MANDATE

50. During this reporting period, the DHC received 57 contacts by phone or email relating to matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.
51. An explanation of the DHC's mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program's mandate. All new contacts raising matters outside the DHC mandate were referred to other agencies for assistance.
52. While they are labelled "out of mandate", the majority of "out of mandate" contacts (33 of 57, or 58%) related directly to the regulatory mandate of the LSO and to the public's respect for the legal professions and the administration of justice. These "out of mandate" contacts do not directly raise issues of discrimination and harassment under the anti-discrimination/anti-harassment rules of the relevant rules or code of professional conduct, but they do raise serious issues of professionalism and professional conduct by lawyers, paralegals and other actors within the legal system, including court staff and judges. During this reporting period:
 - (a) 22 contacts (39%) raised concerns about conduct of Ontario lawyers and paralegals that reflect breaches of their respective professional conduct rules, potentially criminal conduct and/or abusive employment practices. These contacts were redirected to the Law Society Complaint and Compliance office and/or police as appropriate;
 - (b) 8 contacts (14%) raised concerns about discrimination and harassment by actors in the legal system other than lawyers and paralegal, including

judges, court staff and police. As these actors are beyond the Law Society's and DHC's mandate, the DHC redirects these callers to the appropriate agencies and sources for legal support; and

- (c) 3 contacts (5%) raised concerns about systemic barriers to access to justice.

- 53. As in past reports, the DHC again flags the continuing complaints about toxic and abusive legal work environments including workplaces where verbal abuse, yelling, demeaning comments, abusive emails, bullying, aggressive intimidation and inappropriate intrusion on personal time are routine.

F. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

- 54. While the DHC's ability to engage in proactive actions to raise awareness of the DHC's services and promote licensee compliance with the relevant codes of conduct was restricted due to the COVID-19 pandemic, the DHC counsel were able to engage in some promotional activities including:

- (a) Natasha Persaud did a presentation at the LSO Black History Month event;
- (b) Fay Faraday did a presentation at the OBA's inaugural Access to Justice Summit in June 2020; and
- (c) Lai-King Hum participated in a podcast presentation for the Federation of Asian Canadian Lawyers on April 23, 2020, and a webinar presentation for the South Asian Bar Association, on April 29, 2020, to discuss the role of the DHC in relation to discrimination issues faced by young lawyers in law firms during the COVID-19 pandemic.

- 55. Throughout this reporting period, the DHC Program is promoted in the Law Society's monthly e-Bulletins to licensees. The LSO continues to maintain a bilingual website for the DHC Program.

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For the period from 1 July 2019 to 31 December 2019

Prepared by Fay Faraday
with Lai-King Hum and Natasha Persaud

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1. Under their respective *Rules of Professional Conduct* and *Paralegal Rules of Conduct*, lawyers and paralegals licensed in Ontario have legal and ethical obligations as professionals to deliver their services and engage in and conduct their employment practices in a manner that is free of discrimination and harassment.
2. Rules 6.3 and 6.3.1 of the *Rules of Professional Conduct* set out these professional obligations as follows:

6.3-3 A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1, 6.3.1-2 and 6.3-3.

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5. Rule 2.03 of the *Paralegal Rules of Conduct* holds paralegals to professional standards of human rights compliance as follows:
 - (3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.
 - (4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.
 - (5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.
 - (6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
 - (7) A paralegal shall ensure that his or her employment practices do not offend this rule.
6. The Discrimination and Harassment Counsel (DHC) program was established in 1999 as an independent office funded by, but operating at arm's length from, the Law Society of Ontario. The DHC began operating in the fall of 1999 to provide information to and support individuals who had experienced discrimination or harassment by licensees contrary to their binding rules of professional conduct as

a means to help eradicate discrimination in the legal profession.¹

7. In carrying out its functions, the DHC supports the LSO's core regulatory function of holding licensees accountable for compliance with their *Rules of Professional Conduct* and *Paralegal Code of Conduct*. This is necessary to ensure that public trust in the self-governing legal profession is not eroded by abuses of power through discriminatory or harassing behaviour by professionals.
8. The DHC can be accessed by email at assistance@dhcounsel.on.ca, toll free by phone at 1-877-790-2200, or through direct message on Twitter @DH_Counsel.
9. The DHC serves two important functions:
 - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
 - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that the regulator can better understand the dynamic and nature of concerns about discrimination and harassment that are being raised in the legal professions and address possibly systemic issues of discrimination and harassment in the legal professions. This statistical data is released publicly to support public accountability of a profession that is self-governing.
10. The DHC services are provided without charge to members of the public as well as to licensees.
11. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in

¹ In its current mandate, the DHC does not provide representation or legal advice to individuals, nor does the DHC investigate or decide complaints.

the Ontario *Human Rights Code*, in one or more of the five social areas to which the *Code* applies. This is the discriminatory conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any of the listed prohibited grounds does not fall within the mandate of the DHC Program.

12. The complaints reported to the DHC arise in a variety of contexts, including but not limited to:
 - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
 - (b) participants in litigation – whether they are clients, witnesses, articling students, paralegals or lawyers – who have experienced discrimination and/or harassment by opposing counsel or opposing paralegals and justice system employees (such as court/tribunal staff, law firm staff, process servers, etc.) who have experienced discrimination and/or harassment by licensees in the course of litigation;
 - (c) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced harassment and/or discrimination by licensees in the workplace based on intersecting or distinct grounds of prohibited discrimination;
 - (d) service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing and/or have experienced discrimination and/or harassment by licensees in the context of professional training programs, continuing professional education programs, public or privately hosted legal events; and
 - (e) members of the public, service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing or have experienced discrimination and/or harassment by

licensees in other contexts which implicate the licensees' professional obligations.

13. For complaints that do not fall within the DHC Program's mandate, the DHC will provide information and guidance about other resources that the individual can access.
14. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals who seek service in French.

B. SERVICES PROVIDED BY THE DHC

15. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals with an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who is an expert in discrimination and harassment law and issues, who has skills of mediation and conciliation regarding human rights, and who is committed to promoting compliance with professional ethical standards in the legal professions.
16. The DHC also supports lawyers and paralegals to comply with their professional rules of conduct by participating in continuing professional education events to advance licensees' training on the substantive legal issues and best practices to ensure compliance with their codes of conduct and human rights laws.
17. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and guidance to complainants to assist them in identifying and evaluating their options to resolve their concerns, provides information to licensees to support best practices, and where appropriate, provides focused mediation or

conciliation. The nature of services provided is outlined below.

Counselling, Data Collection and Coaching for Self-Help

18. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
19. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants, this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for change.
20. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
21. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with DHC. This coaching of respondent licensees aims to ensure that they understand their professional obligations regarding human rights compliance in their service delivery and workplaces and that they move toward best practices. This informal coaching may be appropriate in situations where the complainant wishes to remain anonymous but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and educate or remind the respondent of their professional and legal obligations. Even though the DHC cannot make any factual findings, such calls are effective in providing education and guidance to respondent licensees.

Information about Avenues of Recourse

22. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
 - (a) speaking to their union representative (if they are unionized and the complaint relates to their employment);

- (b) filing an internal complaint within their workplace (if the complaint relates to their employment);
 - (c) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
 - (d) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (e) filing a formal complaint of professional misconduct with the Law Society;
 - (f) contacting the police (where criminal conduct is alleged);
 - (g) filing a complaint about an articling principal with the Law Society's Articling Program; and
 - (h) contacting the Human Rights Legal Support Centre for legal advice on Human Rights Tribunal of Ontario matters; and
 - (i) contacting a lawyer regarding possible civil causes of action.
23. Complainants are provided with information about each of these options, including:
- (a) what (if any) costs might be involved in pursuing an option;
 - (b) whether legal representation is required in order to pursue an option;
 - (c) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service, <http://lsrs.lso.ca>, (actual referrals to lawyers or paralegals are not made by the DHC);
 - (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are required, where to locate the requisite forms, etc.);
 - (e) what processes are involved in pursuing any of the available options (e.g.

investigation, conciliation, mediation, adjudication, etc.);

- (f) what general types of remedies might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
- (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

Resolution Services

- 24. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
- 25. 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 settlement of the issues raised in the complaint.
- 26. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice” undertaking by both parties.

27. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant's concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
28. Some complainants are not interested in the DHC's resolution services because they are seeking an adjudicative process to create a formal record of the respondent's misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC's offer of resolution services. On occasion, however, respondents decline to participate.
29. During this reporting period two formal mediation processes were requested by complainants. One mediation was successfully completed during the reporting period. Multiple informal resolutions have been used.

Referrals

30. The DHC refers some complainants to other agencies or organizations where appropriate (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the

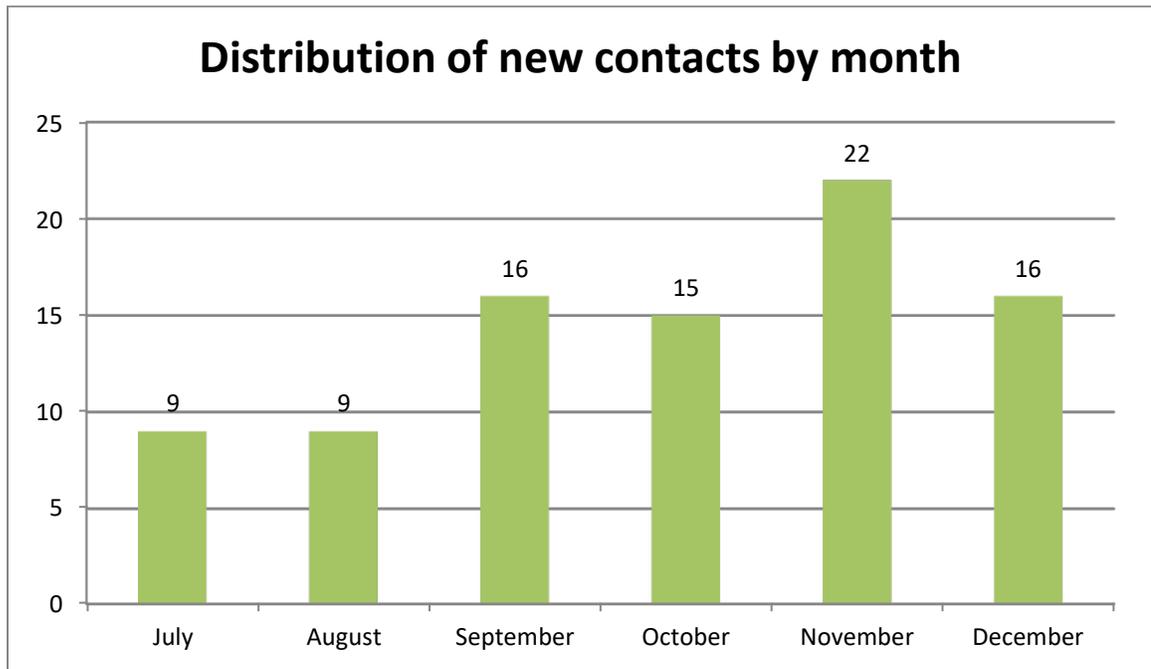
Law Society, the Ontario Human Rights Commission, or other organizations.

31. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

32. During this reporting period, 87 individuals contacted the DHC Program with a new matter.² This represents an average of 14.5 new contacts per month. This is an increase over January to June 2019 and up 32% from July to December 2018. Following a typically slower summer, there were an average of 17.25 new contacts per month from September to December.

33. The volume of new contacts with the Program was distributed monthly as shown in the following chart.



² Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

34. During this reporting period, one new contact requested services in French.

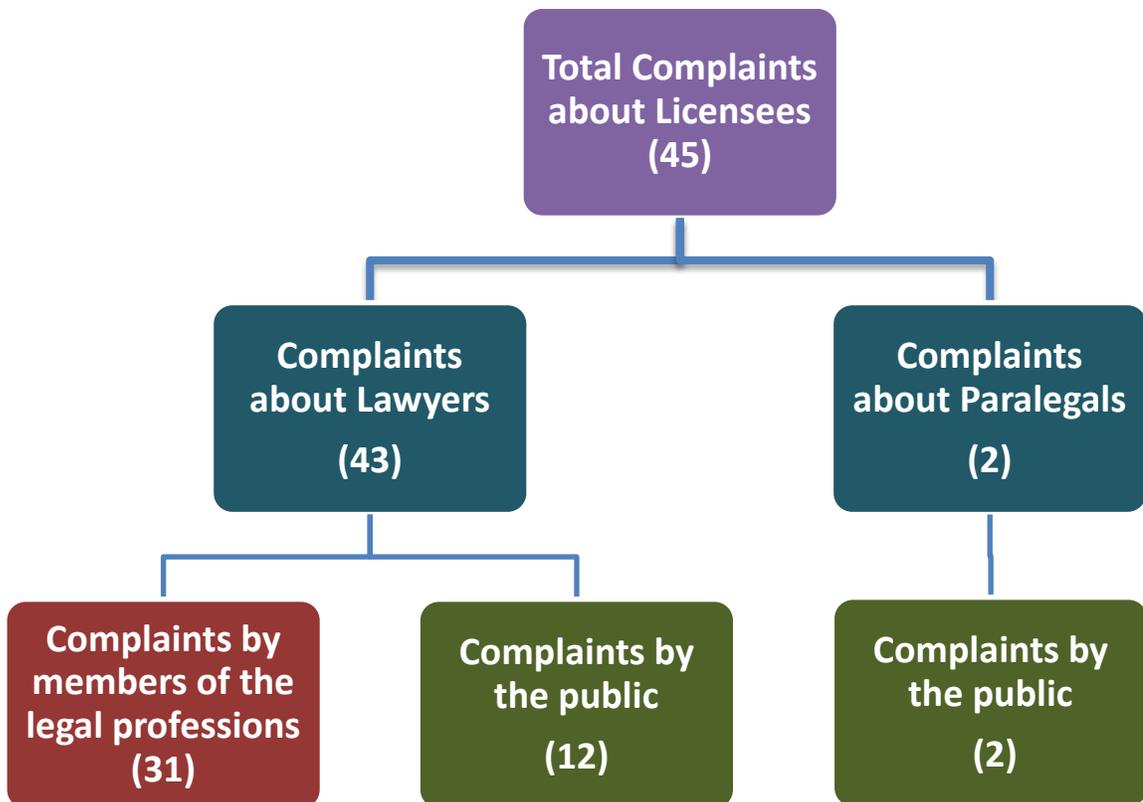
D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

35. Of the 87 new contacts with the Program, 45 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. Two complaints concerned the conduct of a paralegal. The remaining 43 complaints were about lawyers' conduct.

36. Both complaints about paralegals were made by members of the public.

Of the 43 complaints about lawyers, 12 were made by members of the public, and 31 were made by individuals or groups within the legal professions. The breakdown of complaints made about licensees can be represented as follows:

Source of Complaints about Licensees – Chart 1



Complaints about Lawyers by Members of the Legal Profession

37. The 31 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system:

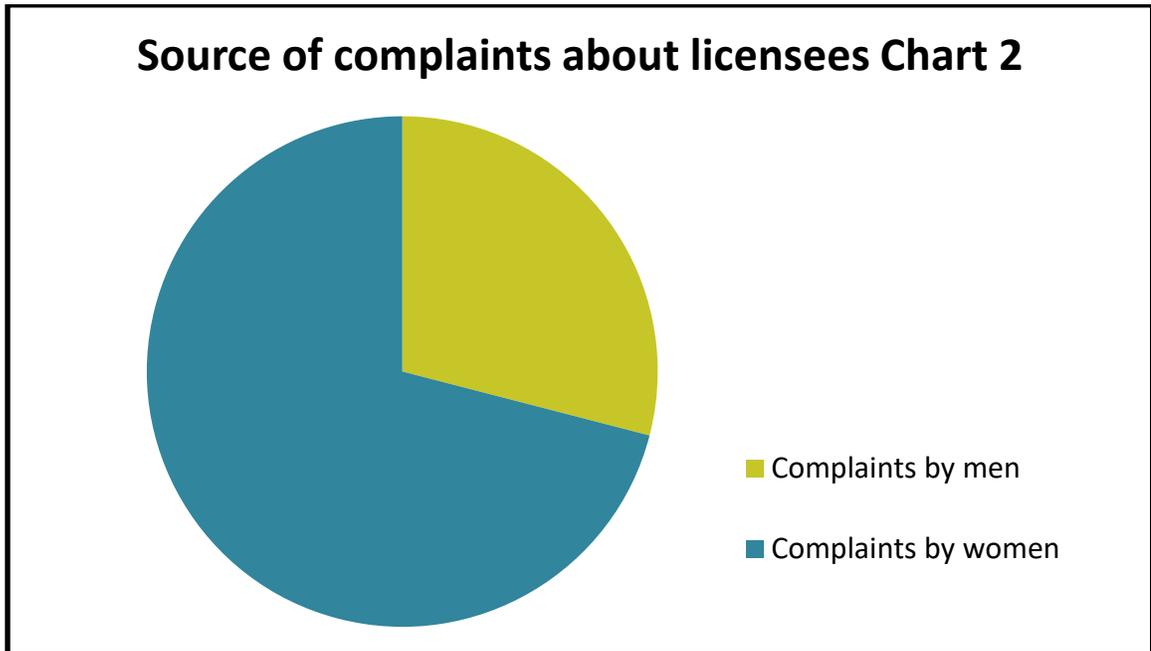
- 14 complaints by lawyers;
- 13 complaints by articling students, LPP students, or law students;
- 2 by non-licensure staff at legal workplaces; and
- 2 by paralegals.

The most significant difference this period was the steep increase in the complaints by students (up from 5 in the previous six-month period).

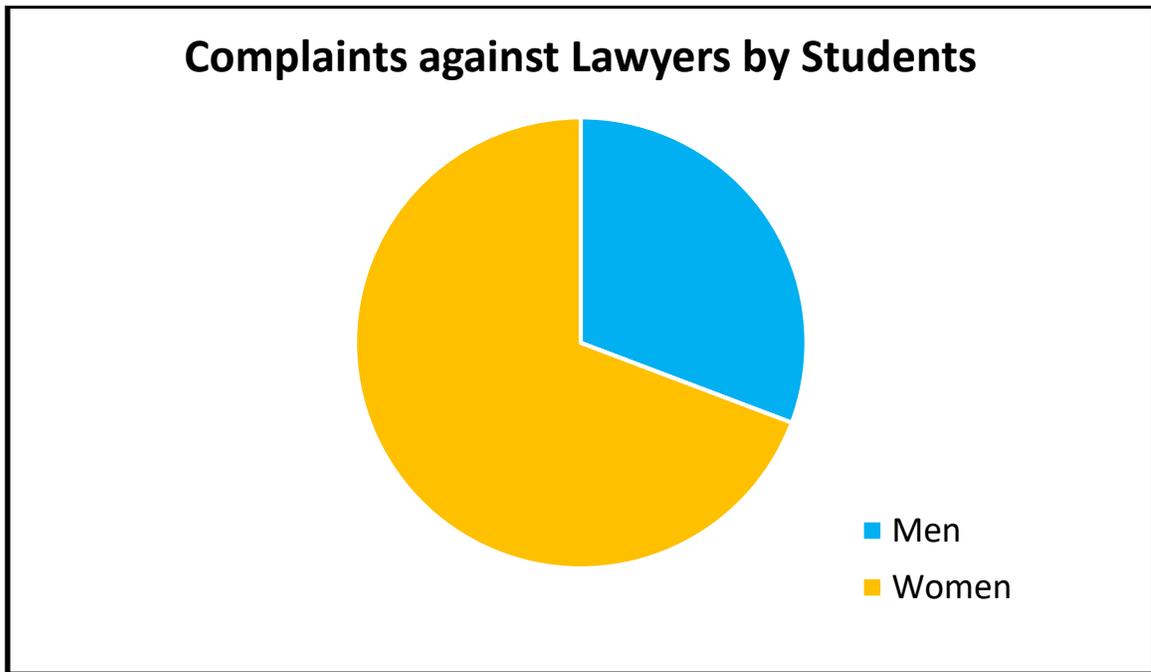
38. Of the 31 complaints against lawyers made by members of the legal profession:

22 (71%) were made by women, 12 of whom (55%) voluntarily self-identified as racialized women and/or women with disabilities;

9 (30%) were made by men, 8 of whom (89%) are racialized or have disabilities.



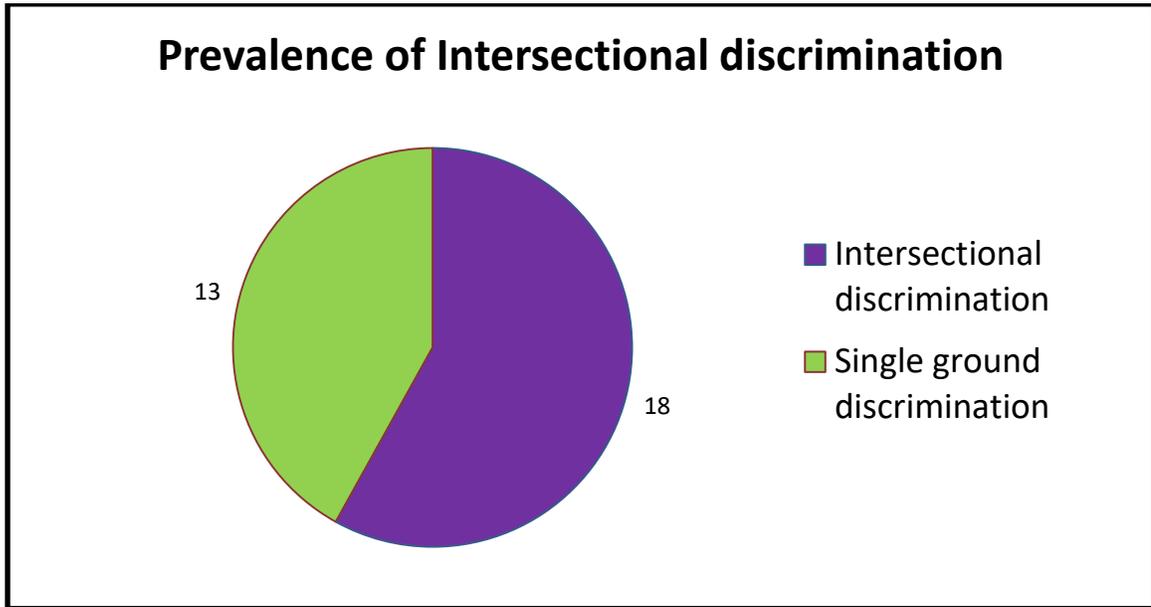
39. When looking specifically at the subset of complaints made by students, the ratio of female to male complainants is consistent with the pattern above. Of the 13 complaints against lawyers that were made by students, 9 were made by women and 4 were made by men. One of the complaints by female students involved multiple female complainants but the complaint has been counted as a single complaint. We note that a significant number of complaints were raised specifically with respect to the Law Practice Program and/or work placements under the LPP.



40. Of the 31 complaints from members of the legal profession, 20 complaints (65%) related to the complainants' employment and 6 complaints (19%) related to training contexts. The remaining 5 complaints (16%) related to interactions with lawyers in other professional contexts.
41. Of the 31 complaints from members of the legal profession:
18 complaints (58%) raised allegations of harassment and discrimination

on intersecting grounds including combinations of sex, race, disability, ethnic origin, age, and family status.

13 complaints (42%) raised only a single ground of discrimination, primarily sexual harassment and disability.

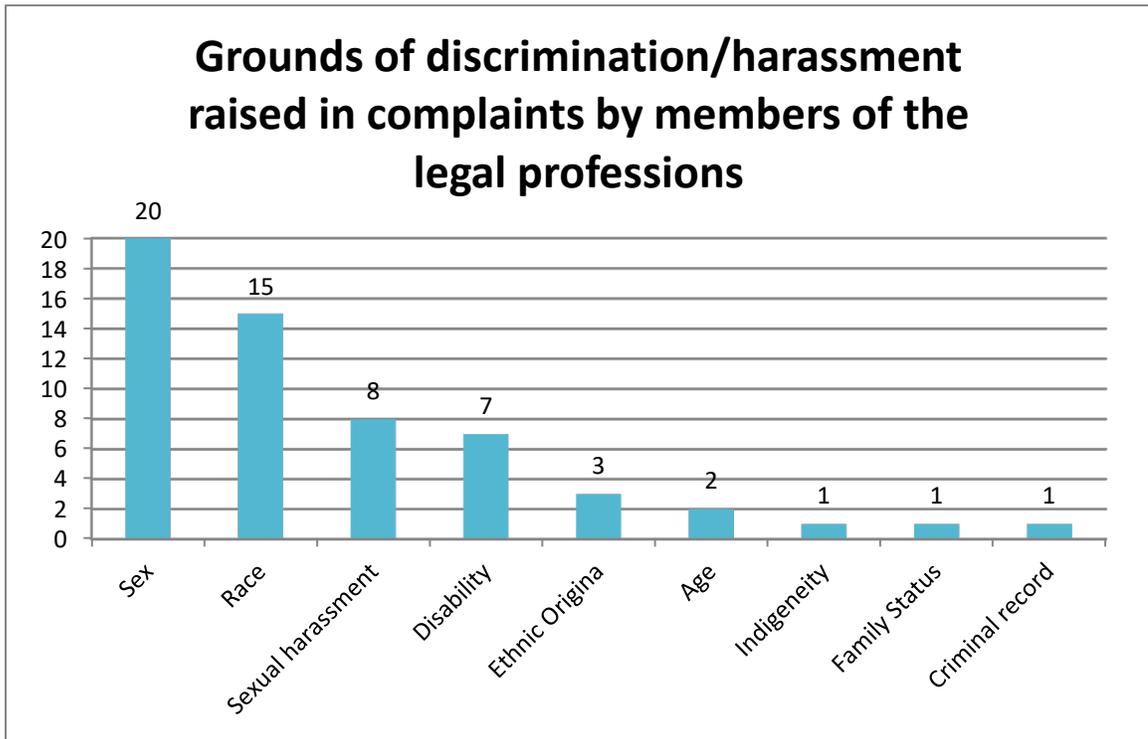


42. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by members of the legal profession about the conduct of lawyers. The total exceeds 31 as most complaints raised more than one ground of discrimination

Sex	20
Race	15
Sexual harassment	8
Disability	7
Ethnic Origin	3
Age	2
Indigeneity	1
Family Status	1
Criminal record	1

The distribution of grounds of discrimination and harassment are depicted in the

table on the following page.



43. The complaints with respect to employment typically involved a power (seniority, security of employment) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:

- (a) Sexual assault;
- (b) Sex discrimination including differential access to work/clients; discrimination due to pregnancy and/or maternity leave; reprisals for taking maternity leave including being terminated while on maternity leave, being harassed to return to work early from maternity leave, and on return from leave being removed from files and/or practice areas, and/or having their pay reduced;

- (c) Sexual harassment, including verbal harassment; sexually explicit harassment and comments; maneuvering to physically isolate female complainants in ways that felt threatening at work and non-work functions; pressuring complainant(s) for sexual relationships; reprisals when complainants rejected pressure for sexual relationships; making repeated comments about complainants' appearance; physical sexual harassment; and the employer's failure to respond appropriately when complaints of harassment were raised;
 - (d) Racial discrimination and harassment, including verbal harassment; degrading comments; belittling complainants in front of co-workers and/or clients; abusive monitoring and discipline; being held to higher standards than non-racialized co-workers; setting unreasonable targets and then undermining the complainants' ability to meet them; reprisals for raising concerns; social isolation in the workplace; and the employer's failure to respond appropriately when complaints of harassment were raised;
 - (e) Discrimination and harassment with respect to disability, including verbal harassment; verbal abuse for seeking accommodation; and most frequently, refusal to accommodate and reprisals;
 - (f) Verbal harassment with respect to Indigeneity and ethnic origin;
 - (g) Harassment and refusal to accommodate with respect to family status and age; and
 - (h) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
44. In the context of training programs, complaints most frequently identified a refusal to provide accommodation for disability;

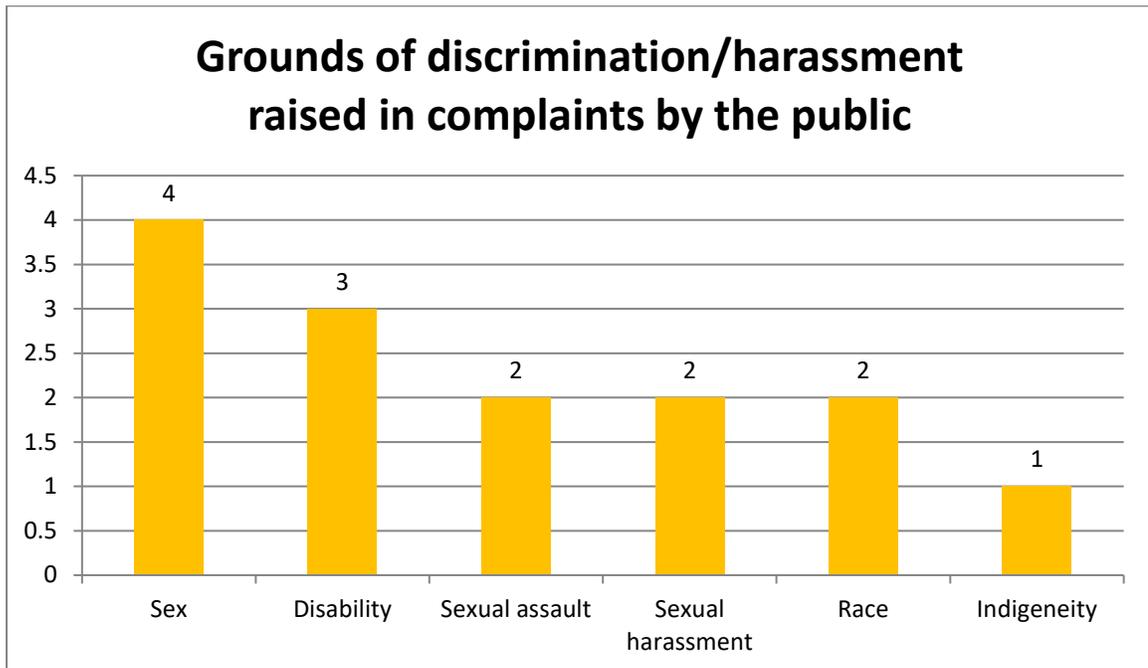
The range of behaviour identified in complaints about lawyers in other professional settings included targeted sexist and racist comments directed at individuals in

public settings; sexual and/or racial harassment; and failure to accommodate disability.

Complaints about Lawyers by Members of the Public

- 45. During this reporting period, 12 complaints were made about lawyers by members of the public: 6 complaints were made by clients who reported discrimination or harassment by their own lawyer; 4 complaints were made about opposing counsel; and 2 complaints were made about a lawyer outside of a lawyer-client relationship.
- 46. The grounds of discrimination and harassment raised by the public were sexual harassment, disability, race, religion, language and place of origin. The grounds exceed 12 because complaints raised intersecting grounds of discrimination and harassment:

Sex	4
Disability	3
Sexual assault	2
Sexual harassment	2
Race	2
Indigeneity	1



47. The behaviour identified in complaints relating to the complainant's own lawyer included:
- (a) Sexual assault in relation to which complaints were made to the police and criminal charges were laid;
 - (b) Demanding sex as payment for legal services;
 - (c) Failure to accommodate a client's disabilities;
 - (d) Sexual harassment, including public verbal abuse and intimidation;
 - (e) Exploitation of Indigenous communities;
 - (f) Harassment based on race, sex and disability.
48. The behaviour complained about regarding opposing counsel primarily involved complaints of discriminatory verbal abuse.

Complaints about Paralegals

49. Two complaints were made about paralegals, one about a client's own paralegal, the other about an opposing paralegal. Both complaints raised issues of failure to accommodate disabilities and harassment based on disabilities.
50. The DHC notes that over the past three years while current Counsel have been in the office, a disproportionate number of complaints about paralegals' behaviour arise in the context of landlord-tenant matters.

E. MATTERS OUTSIDE THE DHC MANDATE

51. During this reporting period, the DHC received 42 contacts by phone or email relating to matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.

52. An explanation of the DHC's mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program's mandate. All new contacts raising matters outside the DHC mandate were referred to other agencies for assistance.
53. While many of these "out of mandate" contacts do not directly raise issues of discrimination and harassment under the anti-discrimination/anti-harassment rules of the relevant rules or code of professional conduct, many identify serious misconduct by licensees that implicates other professional conduct rules and/or legal obligations. In redirecting these contacts to the appropriate agencies, the DHC serves its public interest mandate of supporting public accountability of the legal professions and of (re)building public trust in the legal professions and of supporting public access to justice.
54. A slight majority of these new "outside mandate" contacts inquired about discriminatory and/or harassing behaviour by individuals who are not subject to discipline by the Law Society (for example, judges or justices of the peace), or who are not licensees including employers, landlords, educational programs, service providers, healthcare providers or others. As these actors are beyond the Law Society's and DHC's mandate, the DHC redirects these callers to the appropriate agencies and sources for legal support.
55. The second largest category of new contacts outside the DHC mandate involved complaints about the conduct of Ontario lawyers that reflect breaches of the *Rules of Professional Conduct*, potentially criminal conduct and/or abusive employment practices. These contacts were redirected to the Law Society Complaint and Compliance office and/or police.
56. The DHC notes the disturbing frequency of complaints about toxic and abusive legal work environments. The complainants identify lawyers verbally abusing lawyers, paralegals, staff, students, and court reporters. They also identify work environments in which lawyers fail to address overtly discriminatory behaviour by clients, including sexual harassment, including physical groping, of legal staff and

female articling students and clients' refusal to work with racialized lawyers or staff. They also identify environments in which non-lawyer professionals in multi-disciplinary practices sexual harassment female staff and articling students.

F. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

57. During this reporting period, the DHC undertook a variety of proactive actions to raise awareness of the DHC's services and promote licensee compliance with the relevant codes of conduct, including:
- (a) We promoted the DHC services and engaged in public conversation about the DHC on Twitter (@DH_Counsel);
 - (b) Fay Faraday did a media interview which appeared in the Ontario Bar Association's JUST Magazine on 28 August 2019: "[In Your Corner: Combatting Discrimination and Harassment in the Profession with the DHC](#)";
 - (c) Fay Faraday gave a presentation to the Canadian Bar Association. National Administrative Law, Labour and Employment Law conference in Ottawa about the DHC program during a plenary on "Ethics and Professionalism"; and
 - (d) One of the DHC speaking in an individual capacity on three occasions about diversity and/or unconscious bias as it affects the legal professions also advised attendees about the DHC services.
 - (e)
58. The DHC program counsel consult regularly as a group on best measures to raise awareness, and work with the Law Society staff on doing so. These activities often do not draw on the Program's financial resources.
59. Throughout this reporting period, the DHC Program is promoted in the Law Society's monthly e-Bulletins to licensees. The LSO continues to maintain a

bilingual website for the DHC Program.