



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

**TAB 7**

## **Equity and Indigenous Affairs Committee**

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### **Reports for Information**

April 22, 2021

#### **Committee Members:**

Dianne Corbiere (Chair)  
Atrisha Lewis (Vice-Chair)  
Jorge Pineda (Vice-Chair)  
Rob Burd  
Etienne Esquega  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Megan Shortreed  
Alexander Wilkes

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## **For Information**

- Tab 7.1** Report on the Activities of the Discrimination and Harassment Counsel for July 1, 2020 to December 31, 2020
- Tab 7.2** In Camera Matter
- Tab 7.3** Human Rights Monitoring Group Intervention (Myanmar)



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

TAB 7.1

## **Equity and Indigenous Affairs Committee**

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### **Report on the Activities of the Discrimination and Harassment Counsel**

April 22, 2021

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## Purpose

The Equity and Indigenous Affairs Committee (Committee) submits the following report to Convocation for information:

1. Report of the Activities of the Discrimination and Harassment Counsel (DHC) for the Law Society of Ontario for the period of July 1, 2020 to December 31, 2020 (**TAB 7.1.1**).

## Context

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

The Acting DHC Counsel, Fay Faraday, and the Alternate DHC Counsel, Lai-King Hum and Natasha Persaud, reported on the DHC's activities from July 1, 2020 to December 31, 2020 at the April Committee meeting. The Committee voted unanimously to refer the report to Convocation for information. The reports provide a summary of data, including new contacts, languages in which services were provided, and new complaints.

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

For the period from 1 July 2020 to 31 December 2020

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

Discrimination and Harassment Counsel

16 February 2021

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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.<sup>1</sup>

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 professions 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](mailto: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

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<sup>1</sup> 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**

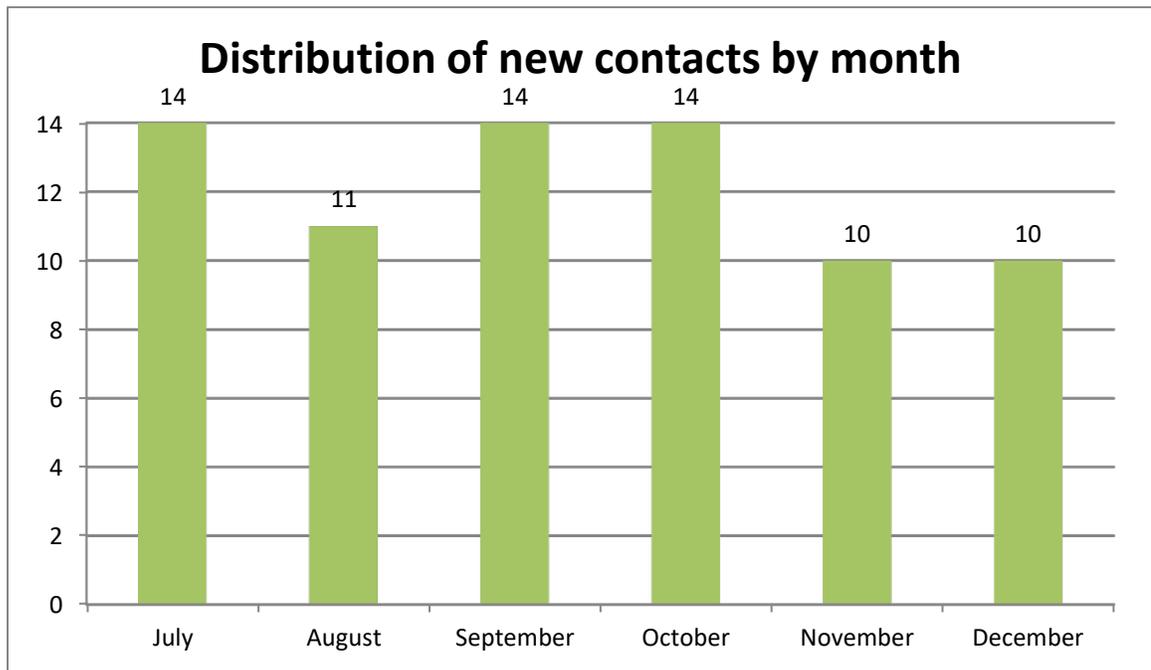
30. The DHC refers some complainants to other agencies or organizations where appropriate (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). 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. The six months covered by this report falls entirely within the period of COVID-19 pandemic. Throughout this period, legal professionals have worked primarily from home in accordance with pandemic physical distancing directives and lockdowns. Nevertheless, from July to December 2020, 73 individuals contacted the DHC with a new matter,<sup>2</sup> for an average of 12.2 new contacts per month. While this is 16% lower than the corresponding period in 2019, it is consistent with the first four months of the pandemic and a higher proportion were in mandate. The frequency of new contacts was fairly consistently distributed throughout the six month period as shown in the following chart.



<sup>2</sup> 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.

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

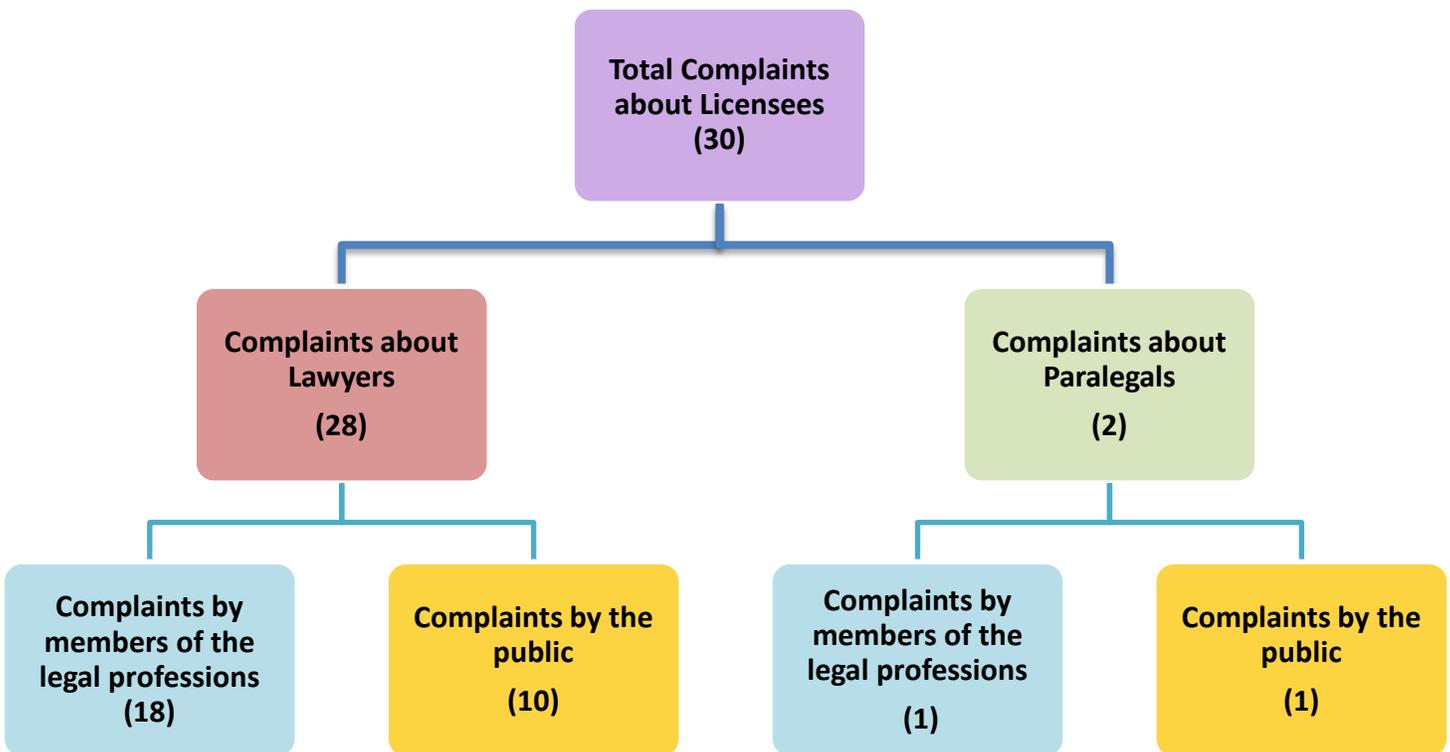
**D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS**

34. Of the 73 new contacts with the Program, 30 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 28 complaints were about lawyers' conduct.

35. One complaint about a paralegal was made by a member of the public, the other was made by a member of the legal professions.

36. Of the 28 complaints about lawyers, 10 were made by members of the public, and 18 were made by individuals or groups within the legal professions. The breakdown of complaints made about licensees is represented on the chart below.

**Source of Complaints Against Licensees – Chart 1**



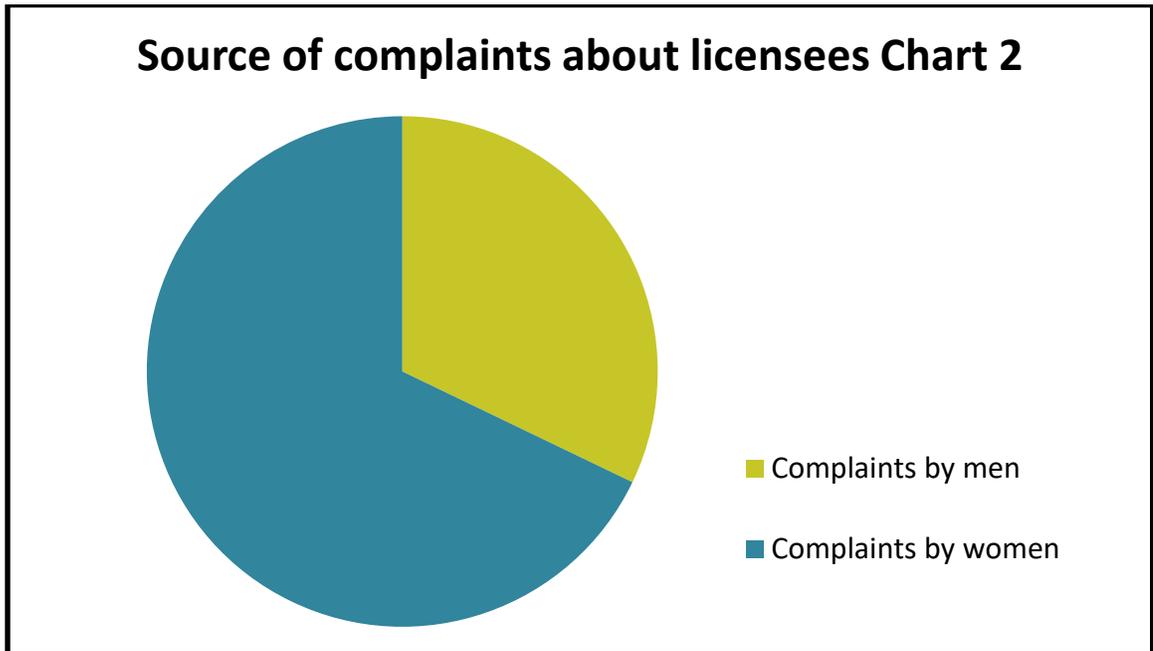
**Complaints about Lawyers by Members of the Legal Profession**

37. The 18 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:

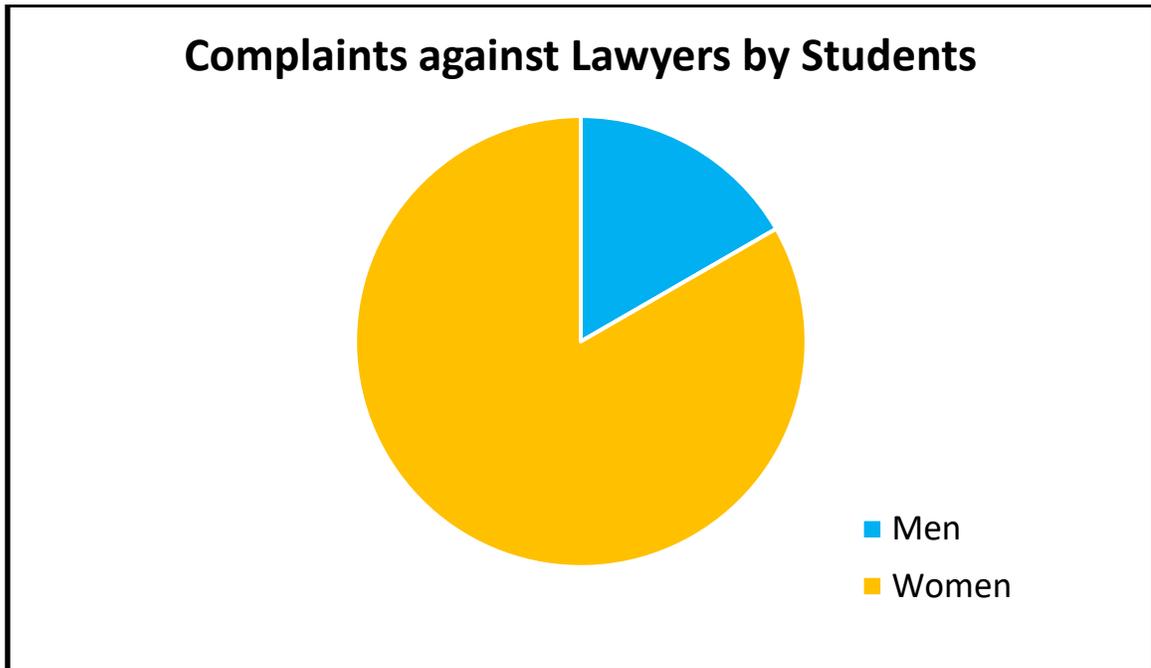
- 11 complaints by lawyers;
- 6 complaints by articling students, LPP students, or law students;
- 1 by paralegals; and
- 0 by non-licensee staff at legal workplaces.

38. Of the 18 complaints against lawyers made by members of the legal profession:

- 14 (78%) were made by women, 10 of whom (71%) voluntarily self-identified as racialized women and/or women with disabilities;
- 4 (22%) were made by men, 3 of whom (75%) are racialized or have disabilities.



39. Five of the six complaints by students were made by women.

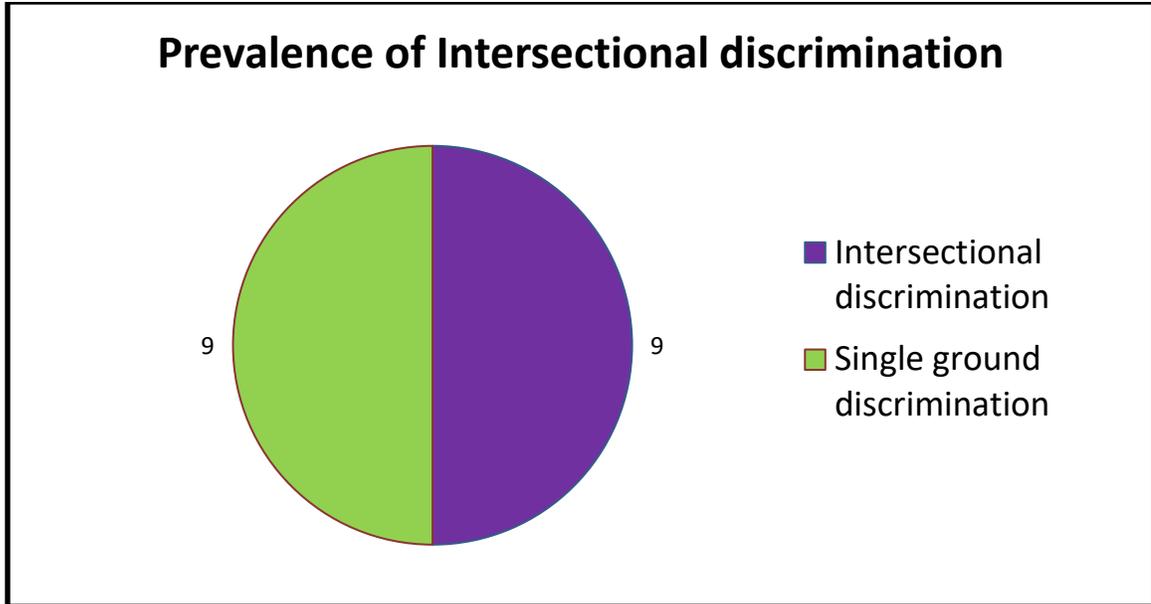


40. Of the 18 complaints from members of the legal profession, 13 complaints (72%) related to the complainants' employment and the remaining 5 complaints (28%) related to interactions with lawyers in other professional contexts.

41. Of the 18 complaints from members of the legal profession:

9 complaints (50%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, ethnic origin, age, and family status.

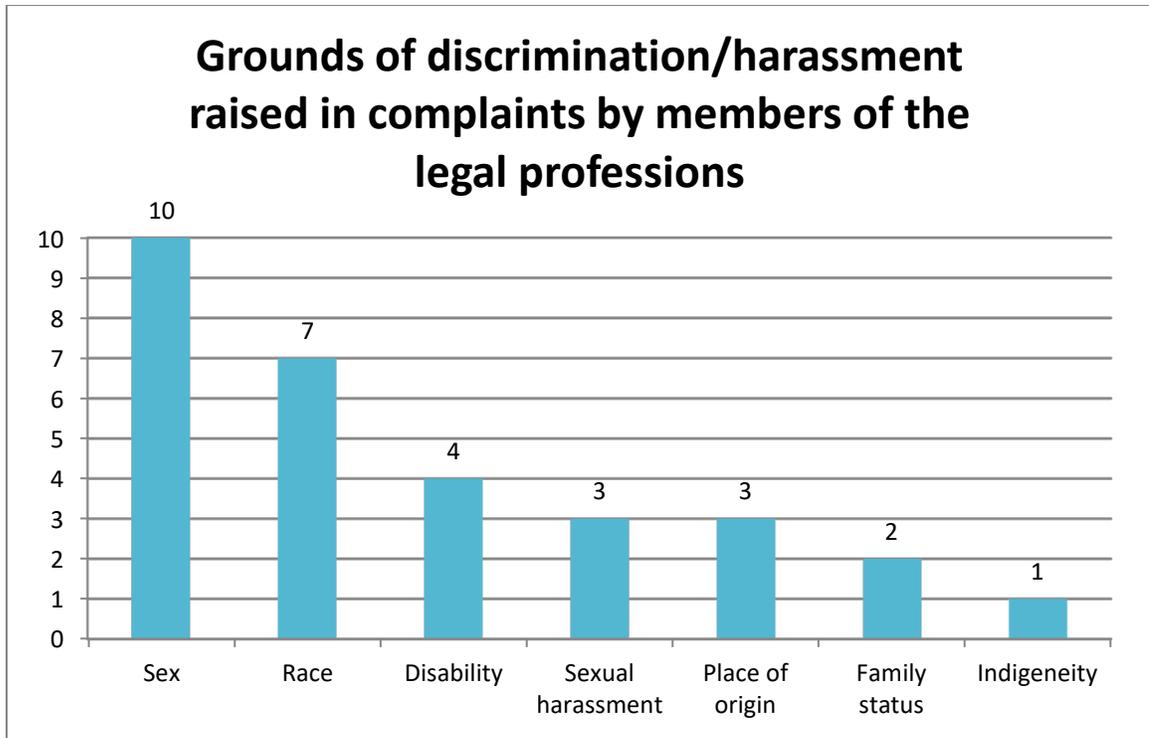
9 complaints (50%) raised a single ground of discrimination, primarily sexual harassment and disability.



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 18 as half of the complaints raised more than one ground of discrimination

|                   |    |
|-------------------|----|
| Sex               | 10 |
| Race              | 7  |
| Disability        | 4  |
| Sexual harassment | 3  |
| Place of origin   | 3  |
| Family status     | 2  |
| Indigeneity       | 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 denial of opportunities and/or support provided to male colleagues; discriminatory recruitment practices; being subjected to explicitly misogynistic comments; actual or perceived threat to employment due to pregnancy and/or family status; being subjected to reprisals, including threats, for complaining about discrimination;
- (b) Sexual harassment, including verbal abuse; sexually explicit harassment and comments; physical harassment and pressure by lawyer in position of authority to enter sexual relationships.
- (c) Racial discrimination and harassment, including verbal harassment; racist comments; refusal to address racialized employees by their names; denial

of opportunities available to non-racialized colleagues; being assigned to menial non-legal tasks; and employers' failure to respond appropriately when complaints of harassment were raised.

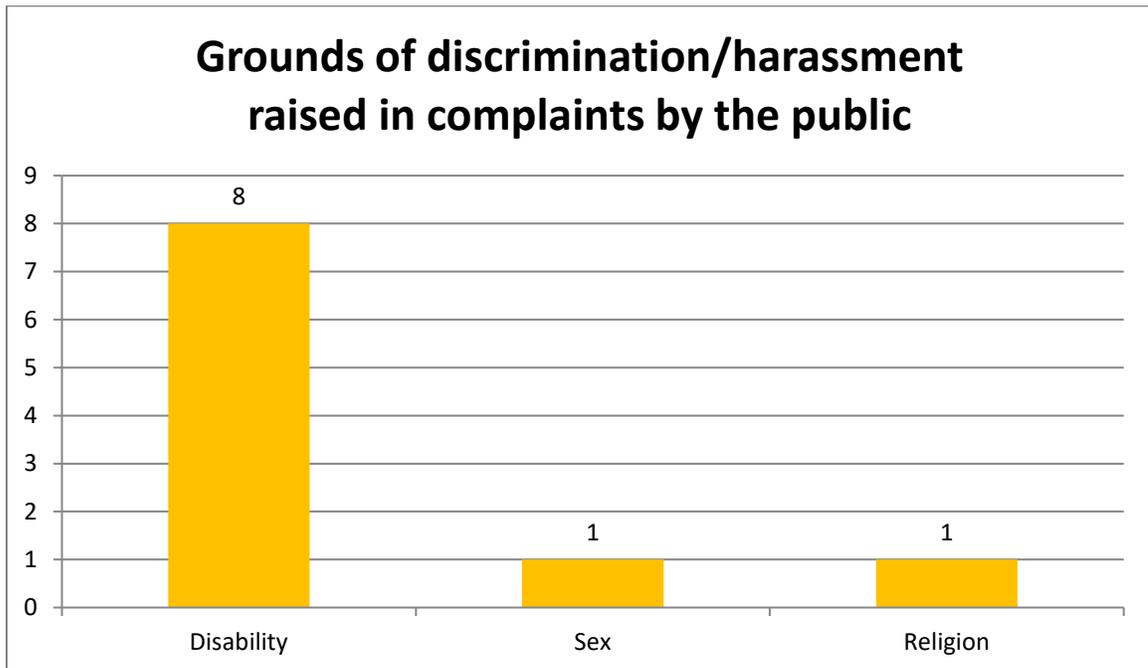
- (d) Discrimination and harassment with respect to disability, refusal to accommodate disabilities, denial of opportunities and denial of career progression due to disabilities;
  - (e) Verbal harassment with respect to place of origin/ethnic origin and denial of opportunities at work; and
  - (f) Reprisals 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 sexist and racist comments directed at individuals in public settings; sexual and/or racial harassment; and harassment on the basis of place of origin.
45. During this period, there has been a notable increase in complaints about lawyers engaging in online racial and sexual harassment in public contexts/on public platforms and in targeted communications, some of which include threats of potential violence directed at the complainants.
46. Since July 2017, the DHC has been compiling statistics that are disaggregated by sex, race, disability and other grounds of discrimination as well as compiling statistics about contacts that raise multiple intersecting grounds of discrimination. This provides a sufficient time frame to identify meaningful patterns in the contacts to the DHC office.
47. It is significant to note that in this report, as has been the case consistently in previous reports since July 2017, contacts to the DHC indicate that the burden of discriminatory and harassing behaviour within the legal profession falls most heavily on women, and particularly racialized women. Moreover, this

discriminatory and harassing behaviour is experienced at all stages of women's careers in law from their time as students through to senior stages in their careers. The DHC reports also show a consistent pattern by which members of the profession of all genders who have disabilities consistently reports the next most frequent incidence of discrimination and harassment. The consistency of these systemic patterns is concerning.

**Complaints about Lawyers by Members of the Public**

- 48. During this reporting period, 10 complaints were made about lawyers by members of the public: 4 complaints were made by clients who reported discrimination or harassment by their own lawyer; 6 complaints were made about opposing counsel.
  
- 49. Eight of the ten complaints involved discrimination and/or harassment on the basis of disability, one involved sex discrimination and one involved discrimination on the basis of religion:

|            |   |
|------------|---|
| Disability | 8 |
| Sex        | 1 |
| Religion   | 1 |



50. The complaints about disability were divided equally those reporting behaviour about a complainant's own lawyer and about opposing counsel. The issues raised were the complainant's own lawyer failing to accommodate disabilities, opposing counsel's refusal to agree to accommodations in the context of legal proceedings, and lawyers about taking advantage of the complainant because of their disability. Again, this pattern of complaints about failure to accommodate disabilities has remained a consistent priority for clients and points to need for focused professional training to ensure that all lawyers know and are able to meet their obligations to accommodate to the point of undue hardship.

### **Complaints about Paralegals**

51. The two complaints made about paralegals were made by women and involved incidents of sexual harassment and sexual assaults.

## **E. MATTERS OUTSIDE THE DHC MANDATE**

52. During this reporting period, the DHC received 43 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.
53. 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.
54. While they are labelled "out of mandate", the majority of "out of mandate" contacts (23 of 43, or 54%) 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 and paralegals. During this

reporting period, of these 23 contacts:

- (a) 21 (91%) raised concerns about conduct by 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; and
  - (b) 2 contacts (9%) raised concerns about systemic barriers to access to justice.
55. 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**

56. 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 the following:
- (a) Lai-King Hum and Natasha Persaud attended a Law Society Equity Network event in November 2020 to discuss the role of the DHC;
  - (b) Lai-King Hum did an interview with the *Globe and Mail* in December about women in the legal profession; and
  - (c) Fay Faraday, Lai-King Hum and Natasha Persaud conducted a CPD event with the Ontario Trial Lawyers Association addressing the role of the DHC.

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



Tab 7.3

## **Human Rights Monitoring Group**

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### **Information Report: Arrest and detention of lawyers and law students in Myanmar**

April 12, 2021

**Committee Members:**

**Julian Falconer (Co-Chair)**

**Tanya Walker (Co-Chair)**

Paul Cooper

Atrisha Lewis

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Isfahan Merali

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## Executive Summary

On March 18, 2021 the Law Society sent a letter of intervention to the military junta controlling Myanmar, demanding that they comply with international human rights laws after reports emerged of numerous incidents of violence against Myanmar citizens, including lawyers and law students. A public statement was also posted on the Law Society of Ontario's (LSO) website, outlining the information gathered in preparing the intervention, as well as the demands made by the LSO.

These documents were prepared using the same standard approach and process that the Human Rights Monitoring Group (the Monitoring Group) has used to prepare interventions in the past. Information was gathered from trusted sources, such as the United Nations and Human Rights Watch, and the intervention was written and approved by the Monitoring Group during a meeting on March 16. During the meeting, the Monitoring Group discussed the rapidly escalating violence in Myanmar and decided to ask that the Treasurer review the materials so that they could be issued as soon as possible. This procedure is written into the Convocation-approved mandate of the Monitoring Group which provides that "where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation."

The Treasurer reviewed the Monitoring Group's materials, and agreed that the intervention should be issued urgently. The intervention letter was signed and sent on March 18, and the public statement was posted at the same time.

As was feared by the Monitoring Group, the situation in Myanmar has dramatically worsened, since the LSO's intervention letter was sent. As of March 18, 70 people had been killed and 1726 citizens were being detained. At least 45 lawyers and 15 law students were among those who were being detained. As of April 13, the number detained citizens has increased to 3054, and the number of citizens killed has risen to 693. Calls from the international community continue to demand an immediate halt to the violence against Myanmar citizens by the military junta.

## Context

### A. Rationale

The request for intervention to the Treasurer fell within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to:

- a. review information that comes to its attention about human rights violations that target members of the professions and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- b. determine if the matter is one that requires a response from the Law Society; and
- c. prepare a response for review and approval

### B. Considerations

The Monitoring Group considered the following factors when making a decision about the case:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letter and public statement regarding the arrest and detention of lawyers and law students in Myanmar falls within the mandate of the Monitoring Group.

The background information used to support the intervention was retrieved from the following sources:

- a. The United Nations<sup>1, 2</sup>
- b. Human Rights Watch<sup>3</sup>

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<sup>1</sup> UN News. “Myanmar: UN condemns escalating violence in deadliest day of protests so far”. February 28, 2021. Online: [Myanmar: UN condemns escalating violence in deadliest day of protests so far | UN News](#)

<sup>2</sup> Andrews, Thomas H. “Report of the Special Rapporteur on the situation of human rights in Myanmar”. United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](#)

<sup>3</sup> Human Rights Watch. “Myanmar: Military Coup Kills Fragile Democracy.” Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](#)

- c. The Law Society of England and Wales<sup>4</sup>
- d. Global News<sup>5</sup>
- e. The Star<sup>6</sup>
- f. Al Jazeera<sup>7</sup>

## C. Human Rights Monitoring Group mandate

The mandate of the Monitoring Group is to:

- i. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- ii. to review information that comes to its attention about human rights violations that target human rights defenders in the same event or circumstances as a member of the legal profession or the judiciary as described above;
- iii. determine if the matter is one that requires a response from the Law Society; and
- iv. prepare a response for review and approval by Convocation.

Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation.

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<sup>4</sup> The Law Society of England and Wales. "Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar" Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>5</sup> Global News. "At least 38 dead as Myanmar forces open fire on anti-coup protesters". March 3, 2021. Online: [\(1\) At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](#)

<sup>6</sup> The Star. "Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions" February 16, 2021. Online: [Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions | The Star](#)

<sup>7</sup> Al Jazeera. "Myanmar military 'murdered' at least 70 since coup: UN". March 11, 2021. Online: [Myanmar military 'murdered' at least 70 since coup: UN | Crimes Against Humanity News | Al Jazeera](#)

## **D. Review and Approval process**

The intervention documents were prepared using the same standard approach and process that the Human Rights Monitoring Group (the Monitoring Group) has used to prepare interventions in the past. The Chairs of the Monitoring Group received a request from a former benchler to investigate reports of possible human rights violations against members of the legal professions in Myanmar. Staff gathered information from trusted sources, such as the United Nations and Human Rights Watch, following the standard procedure used to create each intervention the Monitoring Group has proposed. Once staff was satisfied that there were sufficient reports from trusted, high-quality sources draft intervention documents were written and presented to the Monitoring Group during a meeting on March 16. The Monitoring Group agreed that case merited intervention. The discussion then shifted to the rapidly escalating violence in Myanmar and the Monitoring group decided to ask that the Treasurer review the materials so that they could be issued as soon as possible. This procedure is written into the Convocation-approved mandate of the Monitoring Group, as follows:

Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation.

The Treasurer reviewed the Monitoring Group's materials, and agreed that the intervention should be issued urgently. The intervention letter was signed and sent on March 18, and the public statement was posted at the same time. This information report is intended to inform Convocation of the actions taken the Monitoring Group, as required by the Monitoring Group's mandate..



## Background

On February 1, 2021, the Myanmar military arrested the elected civilian leaders of the national and state governments and announced the start of year-long state of emergency<sup>8</sup>. The state of emergency is intended to be in place until a new round of elections could be held. The military arrested leader Aung San Suu Kyi, President Win Myint, and several dozen other senior officials in early morning raids in the capital, Naypyidaw<sup>9</sup>. The officials were in Naypyidaw for the convention of the lower house of parliament, following the November 2020 national elections, which were won decisively by the National League for Democracy (NLD) party<sup>10</sup>. The military also detained NLD officials and civil society activists in other parts of Myanmar, and cut telecommunications and the internet so that citizens and journalists within the country could not publicly report on the military's actions<sup>11</sup>.

Additionally, the military's commander-in-chief, Senior General Min Aung Hlaing, has been credibly implicated in crimes against humanity on several occasions, most recently for his role in the military's actions against Rohingya Muslims in 2017<sup>12</sup>. Similar reports have also been made regarding several other members of the military-installed government<sup>13</sup>.

According to the International Commission of Jurists, since the February 1 coup the military has made changes to several laws that have eliminated many human rights for citizens<sup>14</sup>. For example, laws against arbitrary detention have been suspended and the

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<sup>8</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>9</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>10</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>11</sup> Human Rights Watch. "Myanmar: End Crackdown on Media, Communications" Press release. February 5, 2021. Online: [Myanmar: End Crackdown on Media, Communications | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/05/myanmar-end-crackdown-on-media-communications)

<sup>12</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>13</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>14</sup> Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: [Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights)

penal code has been amended to make speaking critically of the military a punishable offense<sup>15</sup>.

Since the February 1 coup by the military, Myanmar citizens have been protesting in increasingly large numbers. On February 16, over 40 lawyers were arrested for peacefully protesting the military's coup.<sup>16</sup> On February 28, 18 protestors were killed and 30 others were injured when the police and military used live rounds of ammunition to disperse crowds who were participating in the nationwide protests<sup>17</sup>. On March 3, another 38 protestors were killed<sup>18</sup>. The arrest, detention, and death numbers continue to grow, according to reports by the Assistance Association for Political Prisoners. As of March 5, 1522 people had been arrested, charged or sentenced; 1215 continued to be detained; and 50 people had been killed<sup>19</sup>. As of March 11, 2045 individuals have been arrested, charged or sentenced; 1726 remain in detention or have outstanding warrants; and at least 70 have been killed<sup>20</sup>. There are numerous stories about individuals who are in hiding, or have tried to flee the country out of fear for their lives. Although it is unclear how many detainees are members of the legal profession, several stories have surfaced outlining how members of the legal professions have been targeted by the military. The targeting of lawyers, along with civil servants, doctors, and healthcare workers, has been documented by the UN.<sup>21</sup>

On March 5, the Law Society of England and Wales called for the immediate release of three lawyers, and asked the military to guarantee that all lawyers in Myanmar would be

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<sup>15</sup> Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: [Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights)

<sup>16</sup> The Star. "Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions" February 16, 2021. Online: [Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions | The Star](https://www.thestar.com/news/canada/2021/02/16/myanmar-lawyers-lawsuits.html)

<sup>17</sup> UN News. "Myanmar: UN condemns escalating violence in deadliest day of protests so far". February 28, 2021. Online: [Myanmar: UN condemns escalating violence in deadliest day of protests so far | UN News](https://www.un.org/news/story/2021/02/28/myanmar-un-condemns-escalating-violence-in-deadliest-day-of-protests-so-far)

<sup>18</sup> Global News. "At least 38 dead as Myanmar forces open fire on anti-coup protesters". March 3, 2021. Online: [At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](https://www.globalnews.ca/news/38-dead-as-myanmar-forces-open-fire-on-anti-coup-protesters)

<sup>19</sup> Assistance Association for Political Prisoners. "March 5 2021 daily briefing, detention and fatality lists in relation to military coup". March 5, 2021. Online: [AAPP | Assistance Association for Political Prisoners » Blog Archive » 5 March 2021 Daily Briefing, Detention and Fatality Lists in Relation to Military Coup \(aappb.org\)](https://www.aappb.org/blog/2021/03/05/march-5-2021-daily-briefing-detention-and-fatality-lists-in-relation-to-military-coup)

<sup>20</sup> Assistance Association for Political Prisoners. "March 2021 daily briefing, detention and fatality lists in relation to military coup". March 11, 2021. Online: [At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](https://www.aappb.org/blog/2021/03/11/march-2021-daily-briefing-detention-and-fatality-lists-in-relation-to-military-coup)

<sup>21</sup> Andrews, Thomas H. "Report of the Special Rapporteur on the situation of human rights in Myanmar". United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](https://www.ohchr.org/en/hrbodies/hrc/special-reports/sr-situations/situation-of-human-rights-in-myanmar)

able to carry out their professional duties without intimidation<sup>22</sup>. On March 7, according to reporting by JURIST, 15 law students were arrested and continue to be detained by Myanmar authorities following protests in the city of Mandalay<sup>23</sup>. Lawyer Khin Maung Zaw is representing NLD leader Aung San Suu Kyi in her trial on several trivial charges relating to possessing walkie-talkies and breaching COVID restrictions. He has stated that he has had to stay in a set of rotated lodgings due to threats made against him and his family<sup>24</sup>.

As of April 13, the number detained citizens has increased to 3054, and the number of citizens killed has risen to 693. Calls from the international community continue to demand an immediate halt to the violence against Myanmar citizens by the military junta.

## A. International Response

On February 23, the foreign affairs ministers of all G7 nations and the European Union jointly issued a statement condemning the acts of violence against Myanmar citizens.<sup>25</sup>

On February 28, the Honourable Marc Garneau, Minister of Foreign Affairs issued a statement on behalf of the Canadian government, which demanded that the military stop using violence against its own citizens, urged the restoration of democracy, and called on the international community to unite in condemning the violent acts committed against Myanmar citizens.<sup>26</sup>

On March 2, 2021 the Law Society of England and Wales sent an intervention letter to the chairman of the State Administrative Council and the Myanmar ambassador in the UK. The

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<sup>22</sup> The Law Society of England and Wales. "Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar" Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>23</sup> JURIST. "Myanmar: 15 law students still detained by military junta; another recalls flight from police and soldiers after Mandalay protest". March 9, 2021. Online: [Myanmar: 15 law students still detained by military junta; another recalls flight from police and soldiers after Mandalay protest - JURIST - News - Legal News & Commentary](https://www.jurist.com/news/2021/03/09/myanmar-15-law-students-still-detained-by-military-junta-another-recalls-flight-from-police-and-soldiers-after-mandalay-protest-jurist-news-legal-news-commentary)

<sup>24</sup> France 24. "Suu Kyi's lawyer soldiers on 'in defence of democracy'". February 23, 2021. Online: [Suu Kyi's lawyer soldiers on 'in defence of democracy' - France 24](https://www.france24.com/en/asia/myanmar/20210223-suu-kyi-lawyer-soldiers-on-in-defence-of-democracy)

<sup>25</sup> Global Affairs Canada. « G& Foreign Ministers' Statement on Myanmar ». February 23, 2021. Online: <https://www.canada.ca/en/global-affairs/news/2021/02/g7-foreign-ministers-statement-on-myanmar.html>

<sup>26</sup> Garneau, Marc. "Statement of Minister of Foreign Affairs on Myanmar". Global Affairs Canada. February 28, 2021. Online: <https://www.canada.ca/en/global-affairs/news/2021/02/statement-by-minister-of-foreign-affairs-on-myanmar0.html>

letter outlines five instances of human rights violations against members of the legal community and calls on the relevant authorities to remedy the situations immediately.<sup>27</sup>

The presidents of the Northern Ireland, Ireland, and Scotland law societies have condemned the coup through a joint statement.<sup>28</sup>

The UN special rapporteur for Myanmar, Thomas Andrews told the UN Human Rights Council on March 11 that Myanmar is “being controlled by a murderous, illegal regime”<sup>29</sup>. On March 4 he issued a special report on the coup, calling for international intervention to protect and promote the human rights of Myanmar citizens<sup>30</sup>.

On March 28, the Secretary of State from the United States, as well as defence chiefs from 12 countries condemned Myanmar’s use of lethal force against civilians, calling it “a reign of terror”<sup>31</sup>.

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<sup>27</sup> The Law Society of England and Wales. “Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar” Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>28</sup> Irish Legal News. “Law societies condemn Myanmar military coup”. March 4, 2021. Online: [Law societies condemn Myanmar military coup - Irish Legal News](#)

<sup>29</sup> Al Jazeera. “Myanmar military ‘murdered’ at least 70 since coup: UN”. March 11, 2021. Online: [Myanmar military ‘murdered’ at least 70 since coup: UN | Crimes Against Humanity News | Al Jazeera](#)

<sup>30</sup> Andrews, Thomas H. “Report of the Special Rapporteur on the situation of human rights in Myanmar”. United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](#)

<sup>31</sup> BBC News. “Myanmar coup: Generals celebrated amid global fury over massacre”. March 28, 2021. Online: <https://www.bbc.com/news/world-asia-56547381>