



TAB 8

Equity and Indigenous Affairs Committee

Report on the Activities of the Discrimination and Harassment Counsel

October 1, 2021

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Purpose

The Equity and Indigenous Affairs Committee (the “Committee”) submits the following report to Convocation for information: Report of the Activities of the Discrimination and Harassment Counsel (DHC) for the Law Society of Ontario for the period of January 1, 2021 to June 30, 2021 (**TAB 8.1**).

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 Fay Faraday and the Alternate DHC Natasha Persaud reported on the DHC’s activities from January 1, 2021 to June 30, 2021 at the September 15, 2021 Committee meeting. The majority of the Committee voted to submit the report to Convocation for information.

The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. The DHC is funded by the Law Society but operates independently. As per By-law 11, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.

Tab 8.1

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

For the period from 1 January 2021 to 30 June 2021

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

Discrimination and Harassment Counsel

10 September 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 for lawyers 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 also 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 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, 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. People also contact the DHC with a range of concerns that are related or adjacent to discriminatory and harassing behaviour by licensees. These include complaints about licensees' lack of compliance with other elements of their respective rules of professional conduct; complaints about abusive employment within legal offices; complaints about judicial conduct; complaints about discrimination and harassment involving licensees from other provinces; and discrimination and harassment complaints not involving lawyers or paralegals. People also contact the DHC program seeking information proactively about the nature of services provided by the program. For all of these related or adjacent issues, the DHC provides information and guidance about other resources that the individual can access but does not provide the more extensive coaching, mediation or conciliation services that are outlined in the next section of this report. The number of contacts that are wholly unconnected to the DHC's mandate are very limited.
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.

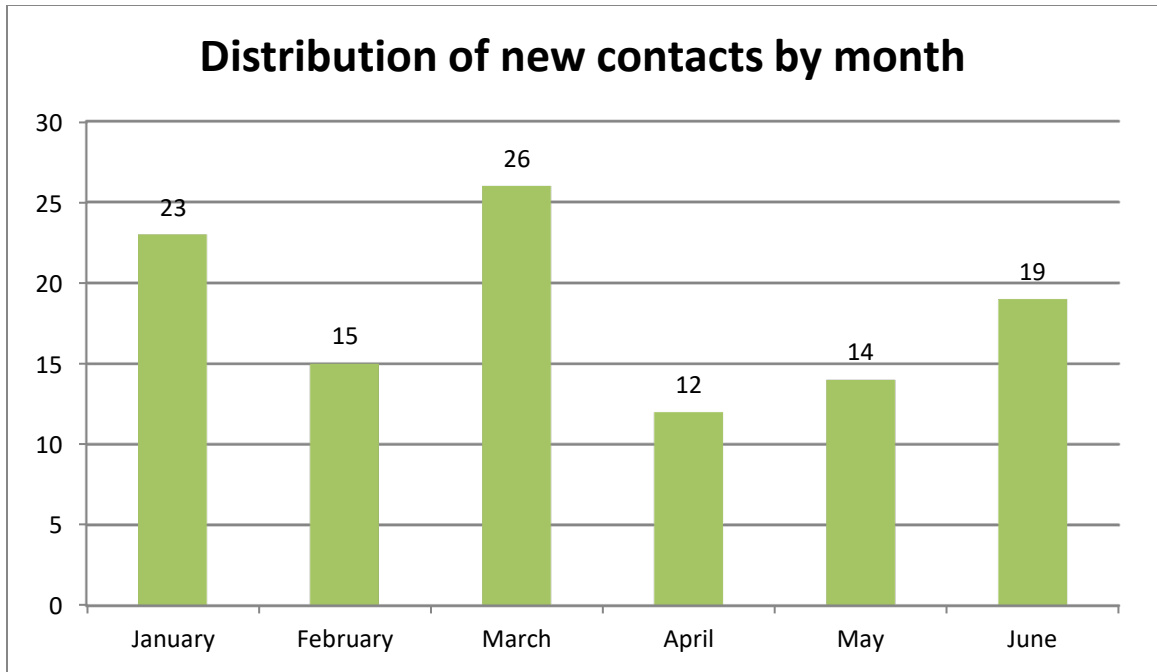
Referrals

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 again fall entirely within the continuing period of the COVID-19 pandemic. During this period, legal work continued to be delivered primarily remotely in accordance with physical distancing directives and lockdowns.
33. Nevertheless, from January to June 2021, 109 individuals contacted the DHC with a new matter,² for an average of 18.2 new contacts per month. This is the highest number of contacts since early 2018 during the height of the #MeToo movement. The frequency of new contacts was distributed across the six-month period as shown in the following chart.

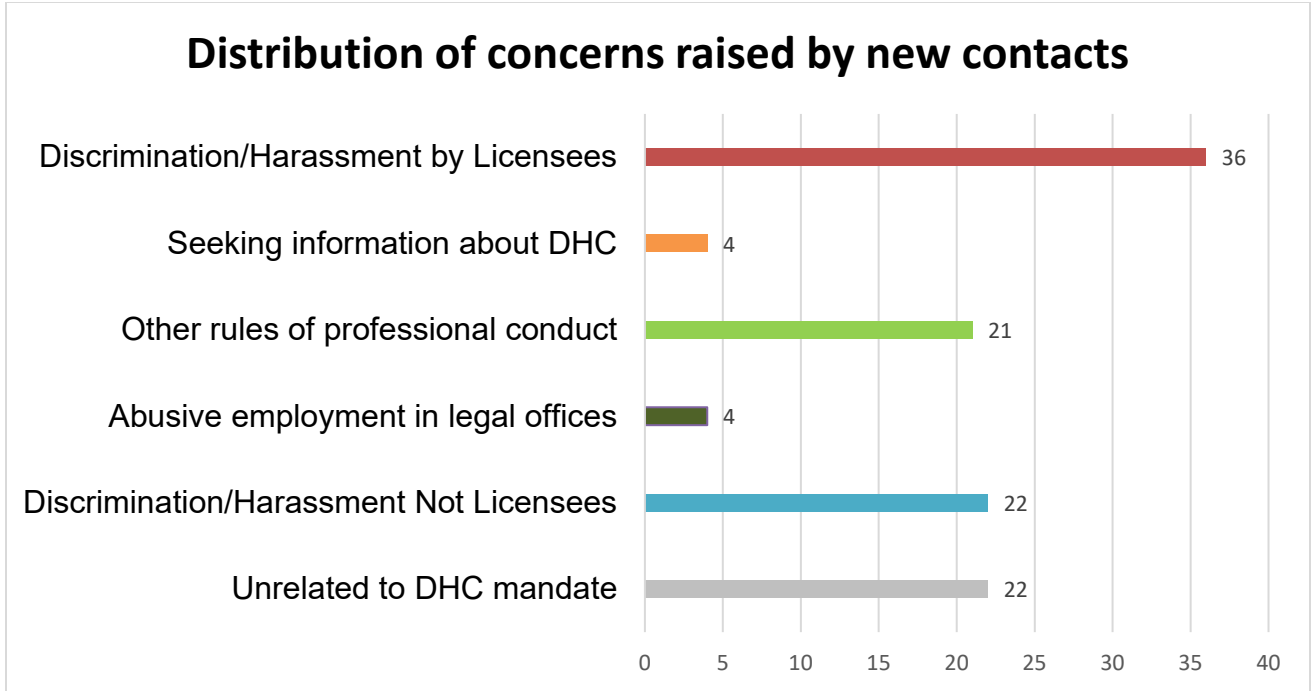
² Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.



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

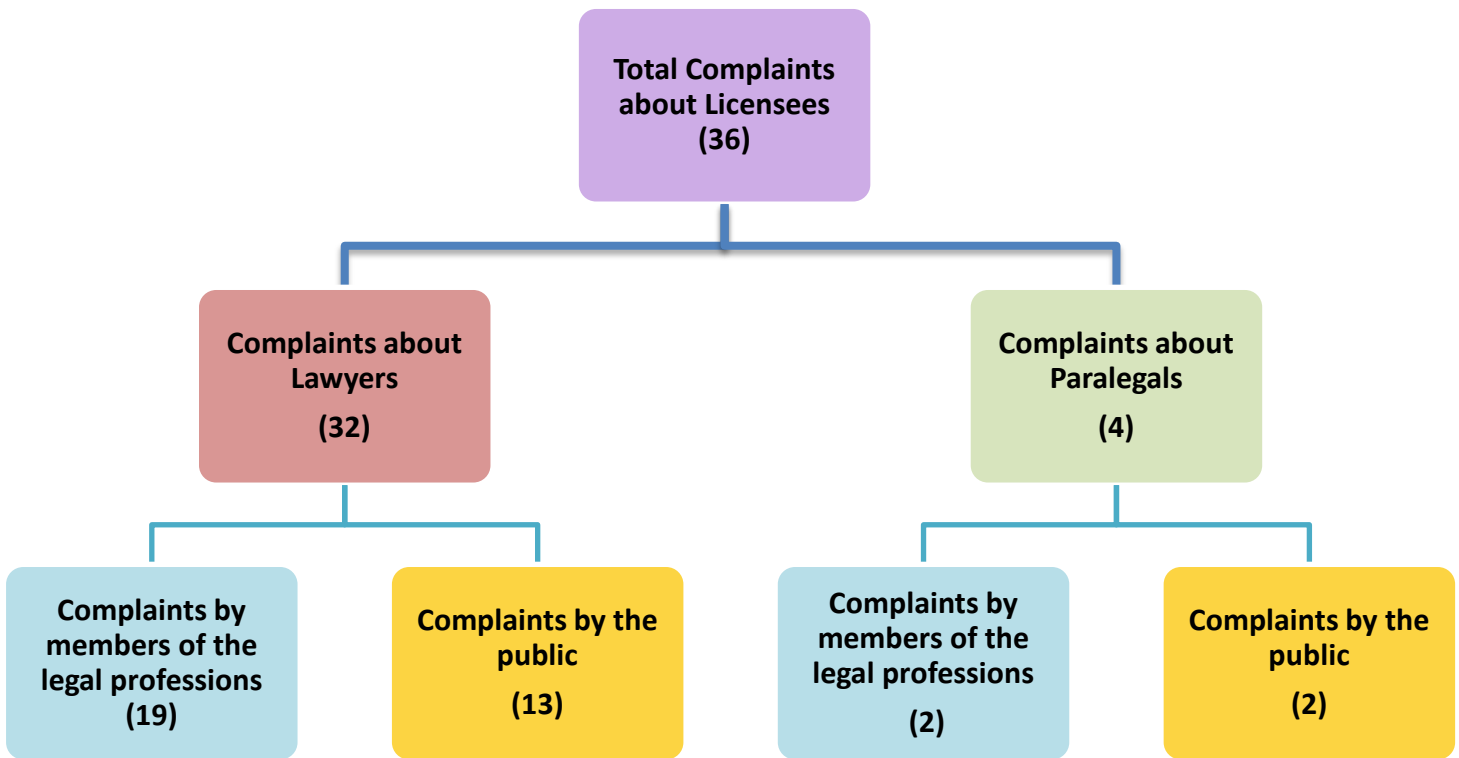
D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

35. Of the 109 new contacts with the Program during this period, 36 raised substantive concerns about discrimination and/or harassment by licensees and 4 proactively sought information about the DHC's services. A further 21 contacts raised substantive concerns about licensees' conduct in relation to other duties of professional responsibility and 4 raised concerns about abusive employment practices in legal offices. There were 22 new contacts raising discrimination and harassment complaints in contexts not involving licensees or involving licensees outside Ontario. Finally, 22 contacts were unconnected with the DHC's mandate. The distribution of concerns is represented in the graph below:



36. Of the 36 contacts raising concerns about discrimination and harassment by licensees, 32 raised concerns about lawyers and 4 about paralegals.
37. Of the 32 complaints about lawyers, 13 were made by members of the public, and 19 were made by individuals or groups within the legal professions. Of the 4 complaints about paralegals, 2 were made by members of the public and 2 were made by individuals within the legal professions. The breakdown of complaints made about licensees is represented on the chart on the next page.

Source of Complaints Against Licensees – Chart 1



Complaints about Lawyers by Members of the Legal Profession

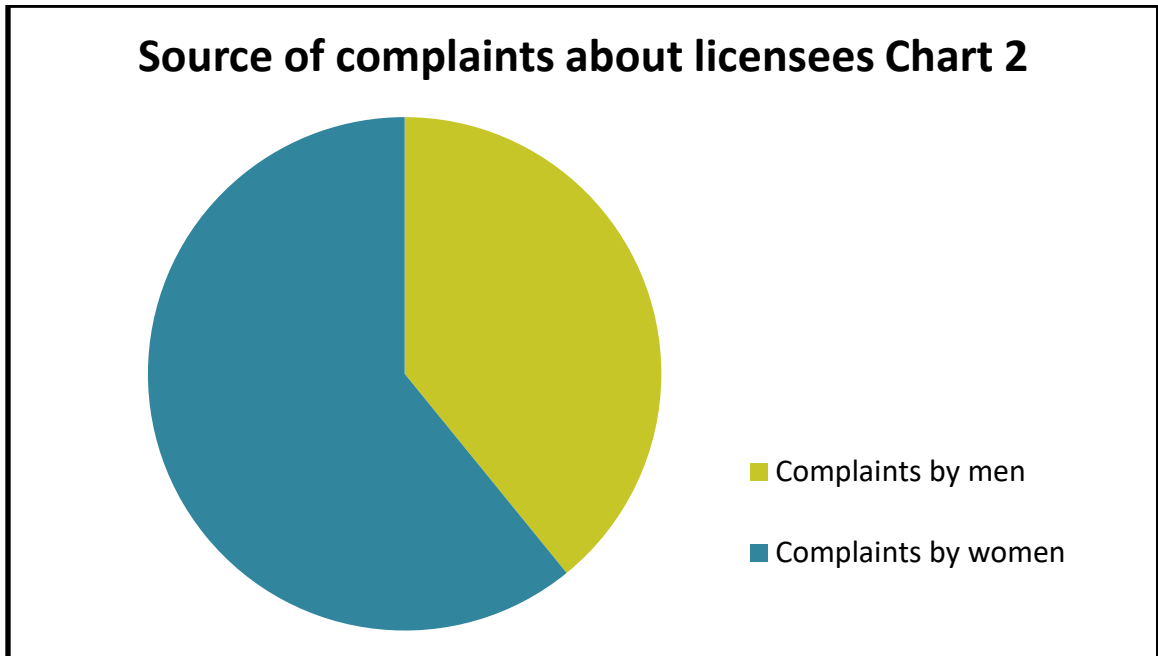
38. The 19 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system as follows:

- 13 complaints by lawyers;
- 1 by a student;
- 1 by a paralegal; and
- 4 by non-licensure staff at legal workplaces.

39. Of the 19 complaints against lawyers made by members of the legal profession:

14 (74%) were made by women, 11 of whom (79%) voluntarily self-identified as racialized women and/or women with disabilities;

5 (26%) were made by men, all of whom are racialized.

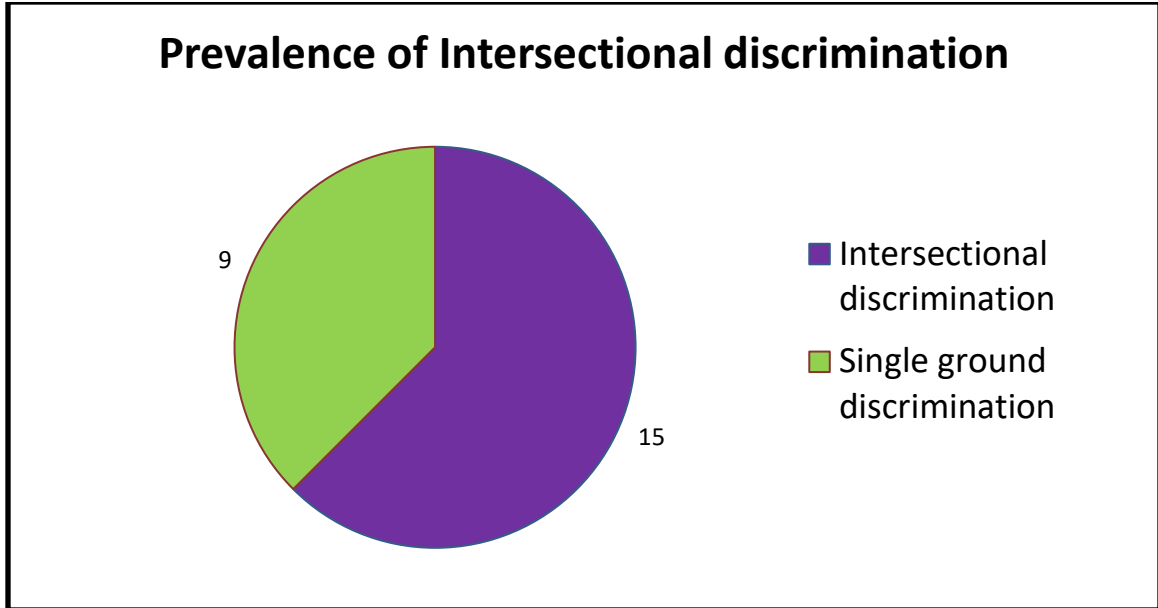


40. Of the 19 complaints from members of the legal profession, 13 complaints (68%) related to the complainants' employment and the remaining 6 complaints (32%) related to interactions with lawyers in other professional contexts.

41. Of the 19 complaints from members of the legal profession:

15 complaints (79%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, ethnic origin, place of origin, and gender identity.

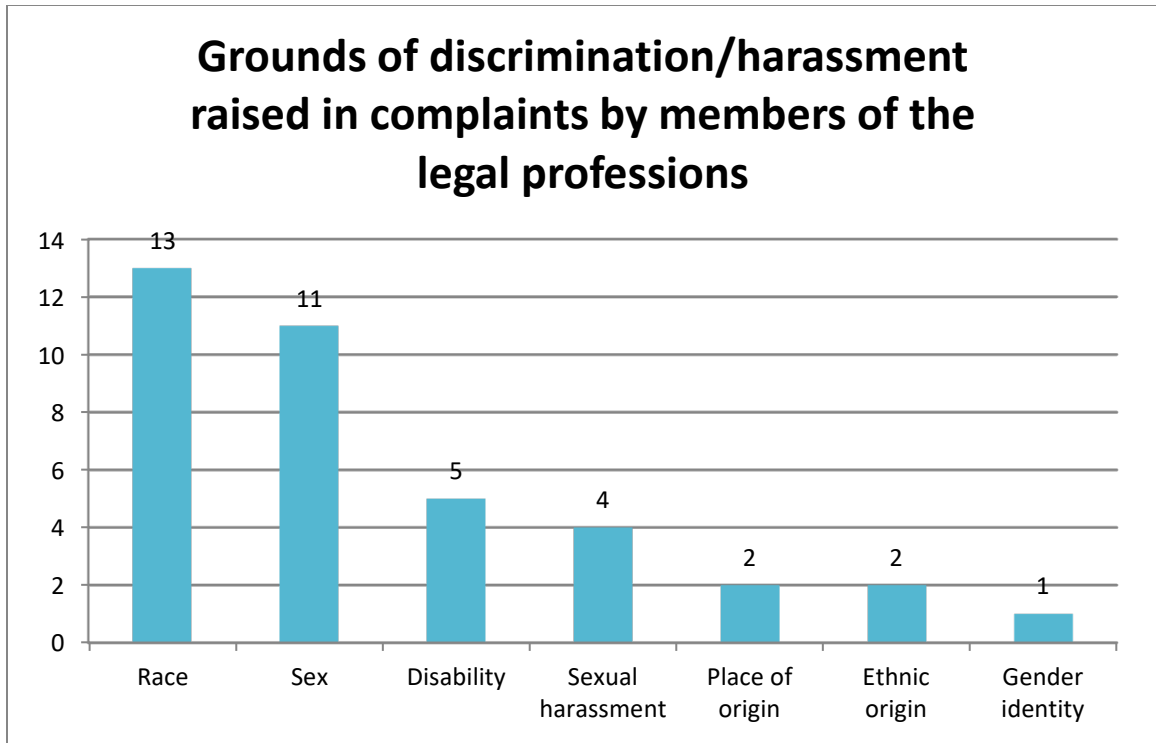
4 complaints (21%) raised a single ground of discrimination, primarily sexual harassment and disability.



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. For the first time, race was the most frequently raised ground of complaint. The total exceeds 19 as the majority of complaints raised more than one ground of discrimination

Race	13
Sex	11
Disability	5
Sexual harassment	4
Place of origin	2
Ethnic origin	2
Gender identity	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, including peer-level harassment by law firm partners. The range of behaviour that was complained about in the context of employment included:
- (a) Race and sex discrimination in the form of denial of work opportunities, delayed career advancement, significantly lower pay than junior non-racialized and/or male colleagues, being subjected to reprisals, including threats, public verbal abuse and termination for complaining about discrimination;
 - (b) Racial harassment in the form of explicitly racist abuse;
 - (c) Sexual harassment, including pressure to engage in sexual relationships in return for access to better work assignments;

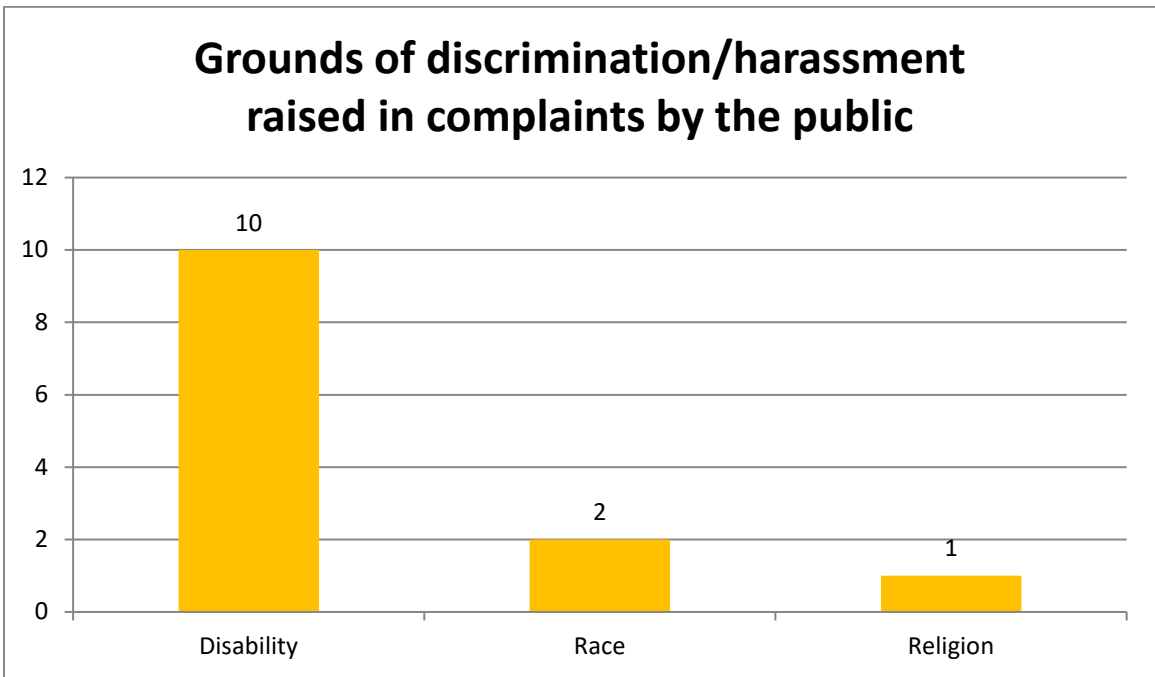
- (d) Discrimination and harassment with respect to disability including refusal to accommodate disabilities, denial of opportunities and denial of career progression due to disabilities;
 - (e) Verbal harassment with respect to place of origin/ethnic origin and denial of opportunities at work; and
 - (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 and explicit comments demeaning people based on disabilities in public settings; sexual and/or racial harassment; and harassment on the basis of place of origin.
45. Continuing the pattern noted in the last semi-annual report, there continues to be a notable increase in complaints about lawyers engaging in explicit racial and sexual harassment in public contexts and public online platforms (including in connection with litigation) as well as in communications directly targeting the complainant.
46. Again, the frequency of contacts raising concerns about intersecting discrimination, 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 consistency of these systemic patterns is concerning. Also concerning is the fact that complaints about racial harassment and discrimination were, for the first time, the most frequently raised ground of complaint.

Complaints about Lawyers by Members of the Public

47. During this reporting period, 13 complaints were made about lawyers by members

of the public: 10 complaints were made by clients who reported discrimination or harassment by their own lawyer; 3 complaints were made about opposing counsel.

48. The majority of complaints (10) involved discrimination and/or harassment on the basis of disability, two involved race discrimination, one involved sex discrimination and one involved discrimination on the basis of religion as reflected in the graph below.



49. The complaints about disability overwhelmingly involved either the complainant's own lawyer and/or opposing counsel failing to accommodate disabilities; opposing counsel's refusal to agree to accommodations in the context of legal proceedings; and clients' own lawyers taking advantage of the complainant because of their disability.
50. Lawyers' failure to accommodate disabilities remains a consistently frequent point of complaint for clients and continues to highlight the 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. Three of the four complaints made about paralegals were made by women and all complaints raised concerns about harassment on the basis of sex and/or disability.

E. PROMOTIONAL AND EDUCATIONAL ACTIVITIES

52. 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 continues to be restricted due to the COVID-19 pandemic. 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.