



TAB 10

Report to Convocation September 27, 2018

Equity and Indigenous Affairs Committee/ Comité sur l'équité et les affaires autochtones

Committee Members

Dianne Corbiere (Chair)
Isfahan Merali (Vice-Chair)
Robert Burd
Gisèle Chrétien
Robert Evans
Julian Falconer
Avvy Go
Marian Lippa
Gina Papageorgiou
Andrew Spurgeon
Sidney Troister
Tanya Walker

Purpose of Report: Information

**Prepared by Equity Initiatives
(Marian MacGregor – 416-947-3464)**

FOR INFORMATION

**REPORT ON THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL
JANUARY 1, 2018 TO JUNE 30, 2018**

1. The *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Ontario* for the period of January 1, 2018 to June 30, 2018 at **TAB 10.1**, which was before the Equity and Indigenous Affairs Committee on September 13, 2018, is presented to Convocation for information.
2. Fay Faraday, Acting Discrimination and Harassment Counsel and Lai-King Hum and Natasha Persaud, Alternated Discrimination and Harassment Counsel, reported on the Discrimination and Harassment Counsel (DHC) activities from January 1, 2018 to June 30, 2018. The report provides a summary of data, including new contacts, languages in which services were provided and new complaints.
3. Subsection 20(1)(b) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Committee directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee no later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.
4. Subsection 20(2) of By-Law 11 provides “The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting”.

TAB 10.1

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

For the period from 1 January 2018 to 30 June 2018

Prepared By Fay Faraday
with Lai-King Hum and Natasha Persaud
Discrimination and Harassment Counsel

Table of Contents

	Page
A. INTRODUCTION	1
B. SERVICES PROVIDED BY THE DHC	2
<u>Resolution Services</u>	5
<u>Referrals</u>	6
C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM.....	6
D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS	9
<u>Complaints about Lawyers by Members of the Legal Profession</u>	9
<u>Complaints about Paralegals</u>	15
E. MATTERS OUTSIDE THE DHC MANDATE	15
F. PROMOTIONAL AND EDUCATIONAL ACTIVITIES.....	16

A. INTRODUCTION

1. The Discrimination and Harassment Counsel (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 it can better address systemic issues of discrimination and harassment in the legal professions.
2. The DHC services are provided without charge to members of the public as well as to licensees.
3. 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 the Ontario *Human Rights Code*, which would also be 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 human rights grounds does not fall within the mandate of the DHC Program.
4. The complaints reported to the DHC arise in a variety of contexts, such as:
 - (c) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
 - (d) participants in litigation – whether they are clients, lawyers or paralegals – who have experienced discrimination or harassment by opposing counsel or opposing paralegals; and
 - (e) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced sexual harassment,

- 2 -

racial harassment, and/or workplace discrimination based on intersecting or distinct grounds of sex, race, ethnic origin, disability.

5. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. Since May 2018, the Counsel on duty has rotated 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. If a contact requests to work with a specific Counsel, that arrangement is facilitated. Ms Hum assists individuals seeking service in French.

B. SERVICES PROVIDED BY THE DHC

6. 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 understands discrimination and harassment issues and who is committed to promoting diversity and equity in the legal profession.
7. The DHC does not provide legal advice or legal representation. The DHC provides general information and support to complainants to assist them in identifying and evaluating their options to resolve their concerns. The nature of services provided is outlined below.

Counselling, Data Collection and Coaching for Self-Help

8. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
9. 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

- 3 -

providing an evidence-based foundation for systemic change.

10. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
11. The DHC has also started to provide informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with DHC. This 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 then have the DHC educate or remind them of their obligations. Even though DHC cannot make any factual findings, such calls are effective to provide education and guidance to respondent licensees.

Information about Avenues of Recourse

12. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
 - (f) speaking to their union representative (if they are unionized and the complaint relates to their employment);
 - (g) filing an internal complaint within their workplace (if the complaint relates to their employment);
 - (h) 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);
 - (i) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
 - (j) filing a formal complaint of professional misconduct with the Law Society;
 - (k) contacting the police (where criminal conduct is alleged);

- 4 -

- (l) applying to the Criminal Injuries Compensation Board;
 - (m) filing a complaint about an articling principal with the Law Society's Articling Program; and
 - (n) contacting a lawyer and/or Human Rights Legal Support Centre for legal advice regarding possible civil causes of action.
13. 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 (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) the processes involved in each option (e.g. investigation, conciliation, mediation, adjudication, etc.);
 - (f) the general types of remedies that 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) the existence of time limits 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

14. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
15. 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.
16. 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.
17. Where informal conciliation services are offered, the complainant is advised that the DHC could 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

- 6 -

sometimes executed to set out the ground-rules for the conciliation process.

18. 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.
19. During this reporting period 3 mediation/conciliation processes have been pursued, and one informal resolution.

Referrals

20. The DHC refers some complainants to other agencies or organizations (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.
21. The DHC does not operate a lawyer referral service.

C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

22. During this reporting period, 125 individuals contacted the DHC Program with a new matter.¹ This represents an average of 21 new contacts per month. This represents a 50% increase over the rate of new contacts during the previous six

¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

- 7 -

month reporting period. A number of dynamics may have contributed to this increased engagement:

- (a) The number of contacts to the DHC office increased noticeably beginning in the fall of 2017 as the #MeToo movement emerged. That higher level of contact has been sustained, with a number of callers citing the #MeToo movement as giving them confidence to come forward to report.
- (b) The Law Society of Ontario's new Equity, Diversity and Inclusion initiatives emerging from the [Challenges Facing Racialized Licensees](#) report and adopted in the [Working Together for Change](#) report put the issues of equity, diversity and inclusion on the radar, particularly as the requirement for all licensees to adopt a [Statement of Principles](#) and for a legal representative of legal workplaces with 10 or more licensees to develop, implement and maintain a [Human Rights and Diversity Policy](#) became effective on 1 January 2018.
- (c) The release of the Law Society's [articling student surveys](#) in January 2018 identified systemic concerns about discrimination and harassment.
- (d) There was heightened media coverage of discrimination in the legal profession, including a piece by [Hadiya Roderique](#) in late 2017 about systemic racism in the legal profession which received significant distribution.

In response to these various dynamics, the Law Society on 9 February 2018 sent an email to all licensees reminding them of the availability of the DHC services with the following message:

Preventing discrimination and harassment in the legal professions

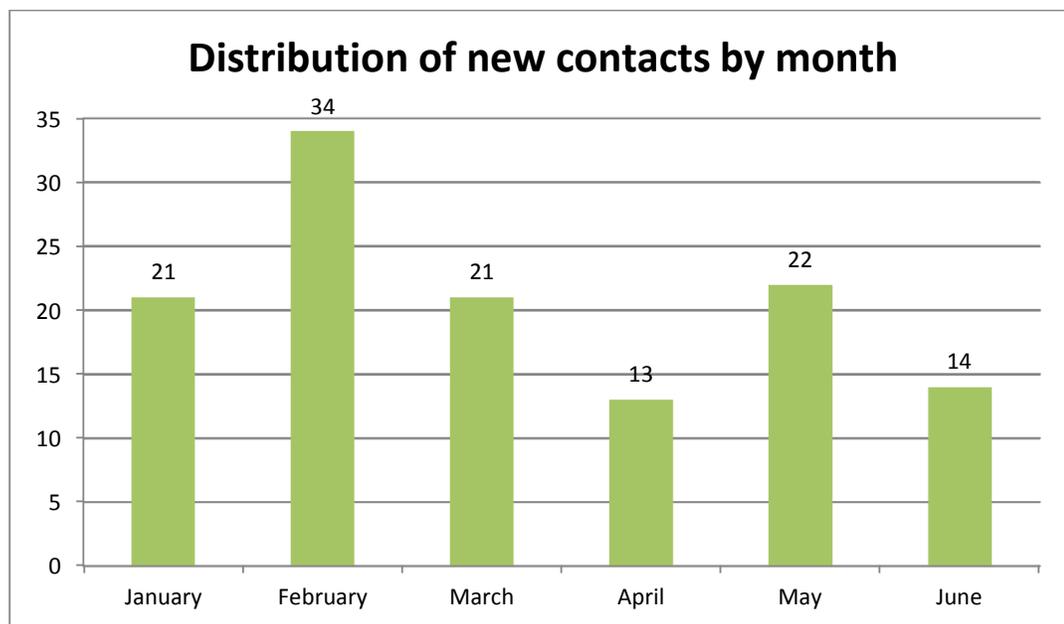
Harassment and discrimination impact every sector and every business. As a result of heightened awareness, the Law Society is redoubling its efforts to ensure that lawyers, paralegals and students are aware of the [Discrimination and Harassment Counsel \(DHC\) Program](#).

Operating for more than 19 years, the Law Society's Discrimination and Harassment Counsel confidentially assists anyone who may have experienced discrimination or harassment by a lawyer or paralegal.

Please [click here](#) to view our flyer with more details about this valuable program, along with contact information.

We encourage you to share this information with your peers and licensing candidates. The DHC can be reached at 1-877-790-2200 or via assistance@dhcounsel.on.ca.

The volume of new contacts with the Program was distributed monthly as shown in the following chart. It is notable that the number of new contacts peaked in February after the Law Society's email to all licensees.



23. During this reporting period, no individuals sought French-language services.

D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

24. Of the 125 new contacts with the Program, 46 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. One complaint concerned the conduct of an articling student. The remaining 45 complaints were about lawyers' conduct. Two of the complaints against lawyers involved complaints against more than one lawyer at the same office (one against 2 lawyers; one against 3 lawyers).
25. Of the 45 complaints about lawyers, 11 were made by members of the public and 34 were made by members of the legal profession. The one complaint made about an articling student was made by a lawyer.

Complaints about Lawyers by Members of the Legal Profession

26. The 34 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:
- 24 complaints by lawyers;
 - 7 complaints by summer students/articling students;
 - 3 complaints by paralegals
27. Of the 34 complaints against lawyers made by members of the legal profession
- 28 (80%) were made by women, more than half of whom (16) voluntarily self-identified as racialized women and/or women with disabilities;
 - 6 (20%) were made by men, all but one of whom voluntarily identified as being racialized and/or of a minority religion, gay or a man with a disability.
28. Of the 7 complaints against lawyers made by summer students and articling students, 100% were made by women. Three of the complaints identified sexual harassment; four identified combinations of sexual and racial harassment and

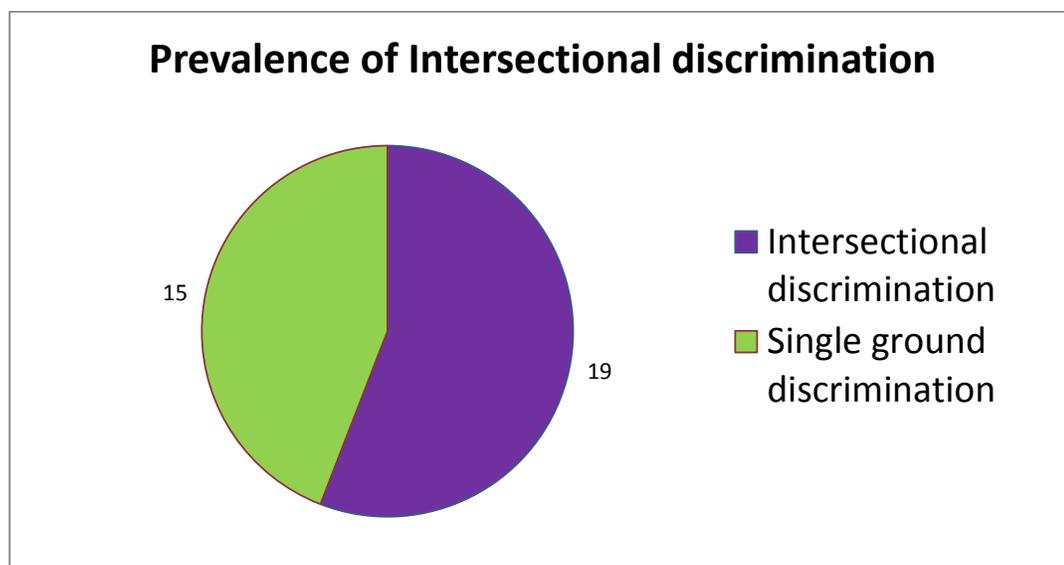
discrimination.

29. Of the 34 complaints from members of the legal profession, 30 complaints (88%) related to the complainants' employment, including all 7 complaints from students. The remaining complaints (4) related to interactions with lawyers in other professional contexts.

30. Of the 34 complaints from members of the legal profession:

19 complaints (56%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, national origin, disability and religion. All but one of the complaints made by men (5) raised intersecting dynamics of discrimination and harassment based on race, religion, national origin and/or disability

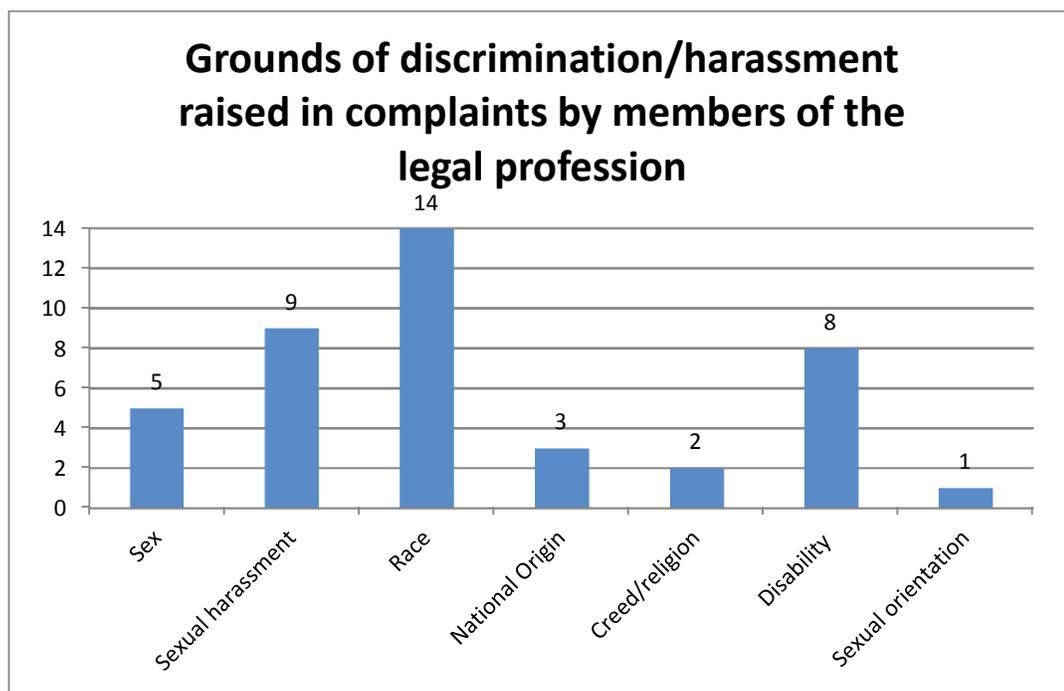
15 complaints raised only a single ground of discrimination. Twelve of these single-ground complaints were made by women regarding sexual harassment (7) and discrimination based on sex/pregnancy (5). The single-ground complaints by men related to sexual orientation or disability.



31. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by lawyers and articling students about the conduct of other lawyers. The total exceeds 34 as most complaints raised more than one ground of discrimination

Sex	5
Sexual harassment	9
Race	14
National origin	3
Creed/Religion	2
Disability	8
Sexual orientation	1

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



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

- 12 -

was complained about in the context of employment included:

- (a) Sexual harassment, including verbal harassment; sexually explicit harassment and comments; persistent sexualized and predatory texting; persistent unwanted contact outside of work, including late night phone calls; sexual advances and persistent pressuring of complainant(s) for sexual relationships; disparaging women in front of colleagues; physical sexual harassment; and employer's failure to respond appropriately when complaints of harassment were raised;
- (b) Discrimination and harassment upon disclosing pregnancy and/or taking maternity leave; pressure to return early from maternity leave and reprisals for having taking maternity leave, including a reduction in pay;
- (c) Racial harassment, including verbal harassment, verbal and physical threats, behaviour that isolated or humiliated the complainant(s) in front of their peers;
- (d) Systemic racism in which racialized lawyers and students were denied opportunities for mentorship, denied access to desirable work, and assigned work that was non-legal work or work below their level;
- (e) Discriminatory advertising for articling positions;
- (f) Discriminatory questions being asking during interviews of lawyers and articling/summer students;
- (g) Harassment with respect to religion, including verbal harassment and refusal to accommodate;
- (h) Harassment with respect to disability, including verbal harassment, verbal abuse, refusal to accommodate and reprisals upon return to work following medical leave;

- 13 -

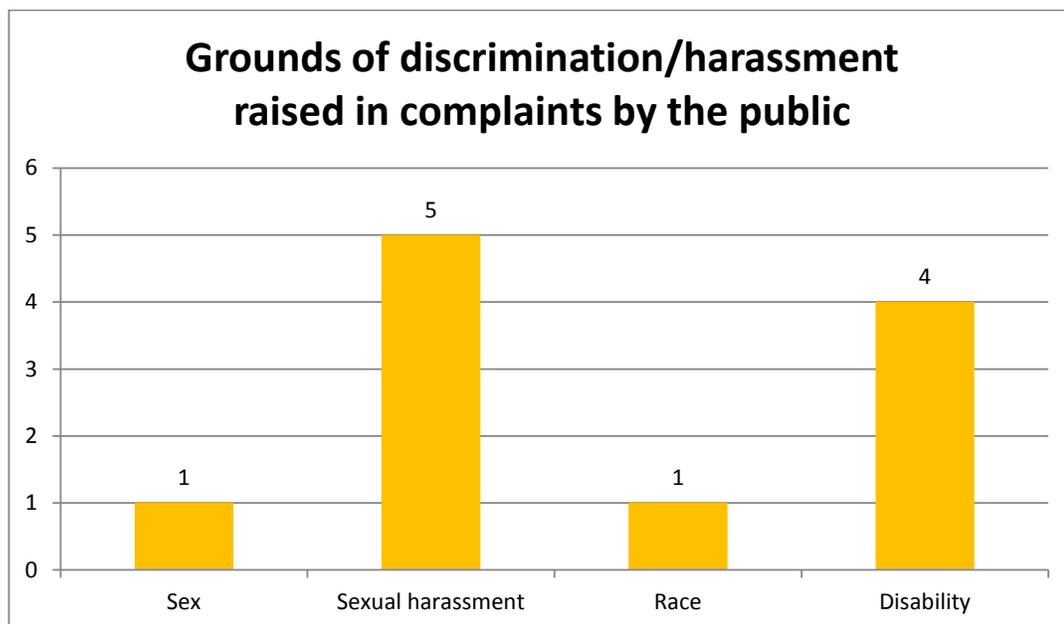
- (i) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of terminations;
 - (j) Verbal harassment with respect to country of origin, including disparaging complainant(s)' training received outside of Canada.
33. The range of behaviour identified in complaints about lawyers in other professional settings included sexual and/or racial harassment; harassment based on sexual orientation; harassing phone calls; and verbal, written and/or physical threats.

Complaints about Lawyers by Members of the Public

34. During this reporting period, 11 complaints were made about lawyers by members of the public: 9 complaints were made by clients who reported discrimination or harassment by their own lawyer; 2 complaints were made by litigants about the conduct of opposing counsel.
35. The grounds of discrimination and harassment raised by the public were sex, sexual harassment, race and disability. The grounds exceed 11 because complaints raised intersecting grounds of discrimination and harassment:

Sex	1 (pregnancy)
Sexual harassment	5
Race	1
Disability	5

- 14 -



36. Both complaints relating to behaviour by opposing counsel involved harassment and intimidation based on disability, including being mocked due to a disability, and a refusal to accommodate disability in proceedings.
37. The behaviour identified in complaints relating to the complainant's own lawyer included:
- (a) Demanding sex in exchange for legal services and/or as a precondition to providing legal services;
 - (b) Sexual harassment;
 - (c) Racial harassment;
 - (d) Failure to accommodate a client's disabilities, particularly with respect to modes and/or pace of communications that accommodate sensory, physical or cognitive disabilities; and
 - (e) Refusal to provide accommodation related to client's pregnancy.

Complaints about Paralegals

38. During this reporting period, no in-mandate complaints were made with respect to paralegals.

E. MATTERS OUTSIDE THE DHC MANDATE

39. During this reporting period, the DHC received 79 calls and/or emails 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.
40. The majority of these new contacts were inquiring about discriminatory and/or harassing behaviour by individuals who are not licensees and so are beyond the Law Society's and DHC's mandate, including employers, landlords, police, and educational institutions. The DHC office redirects these callers to contact other appropriate agencies.
41. The second largest category of new contacts outside the DHC mandate involved complaints about the conduct of Ontario lawyers and paralegals that did not involve discrimination or harassment on *Human Rights Code* grounds but that did involve reports of behaviour that reflects breaches of the *Rules of Professional Conduct* or *Paralegal Rules of Conduct* or potentially criminal conduct (including stalking and/or cyberstalking). These callers were redirected to the Law Society Complaint Services office and/or police.
42. A significant subset of out-of-mandate contacts concerned abusive employment relationships. Some of these contacts involved paralegals and lawyers reporting abusive work relationships; the largest number involved articling students. The behaviours they reported included not being given legal work; being forced to run personal errands for their articling principal and/or their principal's family; being subjected to verbal abuse and threats; not being paid; being paid less than minimum wage; verbally abusing and/or humiliating students in front of other lawyers/clients; and bullying. A disproportionate number of the students reporting

- 16 -

abusive employment relationships are students who received their training outside Canada and who are completing articles under the NCA process, or racialized students. While these matters fall outside the mandate of the DHC, they are significant enough a trend that they warrant being brought to the Law Society's attention.

43. There were a few complaints about the conduct of lawyers licensed in other provinces. The complainants in those matters were referred to the law society in the appropriate province where the licensee is licensed.
44. 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.
45. There were also a number of calls seeking information about the DHC mandate – including calls from legal and non-legal businesses seeking training on discrimination and harassment issues; other industries or jurisdictions seeking information on how to set up a similar program; and members of the profession seeking information about the DHC mandate to be able to communicate it to their respective communities (practice or education settings).

F. **PROMOTIONAL AND EDUCATIONAL ACTIVITIES**

46. During this reporting period, the DHC undertook a variety of proactive activities to raise awareness of the DHC's services, including:
 - (a) Media interviews to raise awareness of the DHC's mandate, including in [Precedent Magazine](#) which is aimed at newer lawyers, and with the [New Zealand Law Society](#), which had just implemented a similar program but restricted to sexual harassment and bullying;
 - (b) As noted above, the Law Society sent a notice in February to all members of the professions reminding licensees of the DHC's services;

- 17 -

- (c) Natasha Persaud participated in the Law Society's Equality, Diversity and Inclusion [video](#);
 - (d) Lai-King Hum participated in an International Women's Day panel discussion about #MeToo and the legal profession;
 - (e) Participating in continuing professional development events; and
 - (f) Participating in the Law Society's Asian and South Asian Heritage Month event.
47. Throughout this reporting period, periodic advertisements continued to be placed (in English and French) in the *Ontario Reports* to promote the DHC Program within the legal profession. The LSUC continues to maintain a bilingual website for the DHC Program.