

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

For the period from November 21, 2002 to June 30, 2003

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Introduction and Explanatory Notes

1. This report covers the activities of the Discrimination and Harassment Counsel (“DHC”) Program from November 21, 2002 to June 30, 2003.
2. This is a longer reporting period than the usual six months. When the former DHC, Mary Teresa Devlin, was appointed to the Ontario Court of Justice, I was appointed to fill the DHC position on a temporary basis while a job competition was conducted to find a permanent replacement. My appointment as DHC was made effective November 21, 2002 for an undefined term that was expected to be short. I initially agreed to produce a report at the end of my short-term appointment. When that appointment extended beyond six months, I agreed to produce this interim report for the period ending June 30, 2003.
3. In preparing this report, I reviewed the biannual reports of the previous DHC with a view to identifying trends in the services provided by the DHC Program. I discovered that the previous DHC had based her reported statistics on the number of calls she received rather than the number of individual callers who contacted the DHC Program for information or assistance. In contrast, all of the data that I have recorded since November 2002 is based on the number of individual contacts with the Program.
4. The difference in the way in which we recorded our data is significant. Consider, for example, a week in which the DHC Program received 4 calls from a female lawyer regarding the same sexual harassment issue and 2 calls from two different male members of the public regarding 2 separate incidents of racial discrimination. These calls would be recorded as follows:

Current Recording Practice	Previous DHC's Recording Practice
1 sexual harassment complaint	4 sexual harassment calls
2 race discrimination complaints	2 race discrimination calls
1 complaint from a woman	4 calls from women
2 complaints from men	2 calls from men
1 complaint from the profession	4 calls from the profession
2 complaints from the public	2 calls from the public

5. Based on this example, if I were to compare my recorded data with the previous DHC's recorded data, incorrect inferences would be drawn, such as: that there had been fewer sexual harassment calls (down to 1 from 4) such that the proportion of sexual harassment complaints had decreased from 66% to 33% of the overall calls; that fewer women were using the DHC's services (down to 1 from 4); that the percentage of calls from the public had increased from 33% to 66% of overall calls, etc. -- when, in fact, the nature of the complaints, the volume and proportion of calls from men and women, and the volume and proportion of calls from the public and the profession remained static.
6. Unfortunately, due to this difference in the way in which our data was recorded, it is impossible to make any meaningful comparison of the data in order to ascertain trends. This report therefore provides a statistical overview of the activities of the DHC Program during the relevant time period, without attempting to make any comparisons with previous reporting periods. Comparisons will be made in future reports, since the method of recording data will be consistent.

Overview of New Contacts with the Program

Frequency of Contacts

7. During this reporting period, 110 individuals made contact with the DHC Program. On average, there were 15 new contacts per month, distributed as follows:

Month	Number of New Contacts
November 2002*	5
December 2002	19
January 2003	20
February 2003	14
March 2003	10
April 2003	12
May 2003	11
June 2003	19

Method of First Contact

8. The following methods of communication were used by individuals to make first contact with the DHC Program:

Number of Contacts	Percentage of Overall Contacts	Method of First Contact
84	76%	Telephone
22	20%	Email
3	3%	Fax
1	1%	Regular Mail

* November 21 to November 30, 2002 only

9. The toll free telephone and fax numbers for the DHC Program were not changed when I was appointed to the position, but the email address was changed (because the previous address was personalized for Mary Teresa Devlin). Promotional materials for the Program were subsequently revised to (among other things) reflect the new email contact information. The updated materials began to be distributed in May 2003, but out-of-date materials are, no doubt, still in circulation. The change in the email address may have temporarily interfered with the ease of electronic access to the Program. There may, therefore, be an increase in email contact with the Program over time. Notwithstanding the possible difficulties that individuals may have encountered due to this transition, email access to the Program still accounted for 1/5th of all first contacts with the Program.

Source of Referral to the DHC Program

10. In February 2003, I started asking individuals who contacted the DHC Program by telephone how they heard about the Program. I did this in order to start gathering information about the success of the Program's various promotional activities.
11. Callers either could not recall how they heard about the Program or they advised me that they had learned of the Program's existence in the following ways:

Number of Callers	Source of Referral
15	Internet website (either LSUC or DHC)
7	Referral by LSUC
6	Promotional pamphlet about the Program
5	Advertisements in the Ontario Reports
2	Bar Admissions Course
2	Referral by a lawyer
1	Promotional poster in a Public Library

Matters Outside the DHC Mandate

12. Of the 110 new contacts, 66 (60%) related to matters within the mandate of the DHC Program and 33 related to matters outside the mandate, as described below.

13. Of the 44 contacts that involved matters outside of the Program mandate, 14 involved discrimination and/or harassment complaints, but did not involve members of the legal profession (eg. individuals were seeking information and advice regarding complaints against the police, a doctor, a landlord, a non-legal employer, etc.). I explained the scope of the DCH Program mandate to these individuals and, wherever possible, referred them to another organization (such as a human rights commission) that could provide them with information and assistance. A number of these callers wanted to retain counsel to represent them and I provided them with information regarding the Law Society's Lawyer Referral Service. Typically, I dealt with these calls and emails very quickly.

14. Of the remaining 30 contacts that were outside the DHC mandate, 20 involved complaints of "personal harassment" against lawyers. All of these complaints were made by members of the public, usually clients complaining about their own lawyer or former lawyer, or litigants complaining about a lawyer representing an opposing party. Although the complainants characterized their situations as "harassment" or sometimes "discrimination," none of their circumstances involved allegations of discrimination or harassment based on human rights grounds. Rather, they involved billing disputes, misappropriation of client funds, lawyers embarrassing individuals by serving them with legal notices at their place of employment, counsel writing assertive demand letters that individuals found to be threatening or intimidating, etc. Although these calls fell outside the mandate of the DHC Program, some of them nevertheless consumed a considerable amount of time in interviewing the individuals to ascertain the precise nature of their complaint and determine whether it involved any human rights issues. Once it was determined that a matter did not fall within the scope or the DHC mandate, this was explained to the individual and, wherever possible,

the individual was referred to another organization that could provide them with information or assistance (such as the Law Society or the LSUC Lawyer Referral Service).

15. The remaining 10 contacts that were outside the mandate of the DHC Program involved complaints against members of the legal profession (either lawyers or judges), but did not involve any issues of discrimination or harassment. For example, I received calls about alleged conflict of interest, misleading advertising, lawyers refusing to release a client file after the termination of a retainer, lawyers disclosing confidential client information, etc. In each case, I explained the mandate of the DHC Program and, wherever possible, referred the individual to another organization for information and assistance, such as the Law Society. Typically, I dealt with these calls very quickly.

General Inquiries within the DHC Mandate

16. Of the 66 new contacts that raised issues within the mandate of the DHC Program, one third (22) involved general inquiries rather than complaints about incidents of discrimination or harassment.
17. The general inquiries included:
 - a. requests for promotional pamphlets and/or posters about the DHC Program;
 - b. questions regarding the scope of the DHC mandate;
 - c. invitations from a law firm and a legal clinic to make presentations about the DHC Program;
 - d. requests by a law firm and a legal clinic for guidance in developing workplace harassment and discrimination policies;
 - e. a request by legal clinic for guidance in developing equitable recruitment and hiring practices; and
 - f. information requests from law faculties about anti-discrimination hiring guidelines for articling student positions.

18. Of the 22 general inquiries, 4 (18%) were from members of the public and 18 (82%) were from members of the profession.

Complaints of Discrimination and Harassment against Lawyers

19. Forty-four (44) individuals contacted the Program because they had a complaint of discrimination or harassment against a lawyer or law firm in Ontario.
20. A little more than half of the complaints (26 or 59%) came from members of the public, with the remaining 41% (18) coming from members of the legal profession.
21. Of the 18 members of the profession who contacted the Program with a complaint of discrimination or harassment, the overwhelming majority (15 or 83%) were female.
22. Complaints from the public were almost evenly divided between men (14 or 54%) and women (12 or 46%).

Context of Complaints

23. Of the 26 complaints by members of the public, 4 involved individuals complaining about their employer and/or co-worker (i.e., 1 law clerk, 2 legal secretaries, 1 court reporter.)
24. The remaining 22 complaints by the public did not involve employment situations; most involved clients complaining about their own counsel (or former counsel) or individuals complaining about a lawyer representing an opposing party in a dispute.
25. Of the 18 complaints made by members of the profession, 3 involved articling students complaining about their principal and/or employer, and 15 involved lawyers, most of whom (13) were also complaining about their employer and/or co-workers. Two lawyers complained about other counsel in non-employment related situations.

Nature of Discrimination and Harassment Complaints

26. One third of the complaints reported to the DHC Program involved sexual harassment (including two complaints of sexual assault). This was the most voluminous category of complaint.
27. The second most voluminous categories of complaint were racial discrimination and discrimination based on disability, which together comprised another third of the total complaints.
28. Five additional grounds of discrimination and harassment were raised in the reported complaints, namely sexual orientation, religion, age, sex (including pregnancy), and family status.
29. Overall, there were 18 harassment complaints and 26 discrimination complaints, which are summarized as follows:

Harassment Complaints	Discrimination Complaints
15 sexual harassment	7 race
1 racial harassment	7 disability
1 racial/sexual harassment	3 religion
1 sexual orientation harassment	3 age
	1 sexual orientation
	1 sexual orientation/race
	1 sex/pregnancy
	1 sex/age
	1 sex/family status
	1 sex/race

30. Since several of the complaints involved multiple intersecting grounds of discrimination or harassment (as outlined above), I have re-organize the data to demonstrate the proportion of complaints in which each of the various prohibited grounds if discrimination was raised:

Prohibited Ground	Number of Complaints in which Ground was Raised	Percentage of Complaints in which Ground was Raised
Sex*	20	45%
Race	10	23%
Disability	7	16%
Age	4	9%
Sexual Orientation	3	7%
Religion	3	7%
Family Status	1	2%

* All sexual harassment complaints are included under the ground of “sex”, since human rights jurisprudence treats sexual harassment as a form of sex discrimination.

Services Provided to Complainants and Outcomes of Complaints

31. Every individual who contacted the DHC Program with a complaint of harassment or discrimination was provided information about the various avenues of redress open to them, including (depending on the circumstances): self help (eg. counseling on how to confront the offending person), an internal human rights complaint or internal workplace grievance, external complaints to either a human rights commission or the Law Society's complaints department, possible other legal actions (eg. wrongful dismissal, *Charter* equality rights claim), and report to the police.
32. Complainants were provided with information regarding each of these options, including what (if any) costs might be involved in pursuing various options, whether legal representation was required, what the process consists of (eg. investigation, hearing, etc.), what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties), and the time limits for each avenue of redress (or, in some instances, complainants were advised to immediately seek legal advice regarding the application of time limits in their case). Complainants were also given information about who to contact in the event that they decided to pursue any of these options.
33. In some cases, I also directed complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources, including internet sources.
34. In many cases, upon request, I provided "coaching" or strategic tips on how to handle a problem without resort to a formal complaint process.
35. In addition to outlining the options mentioned above, I offered complainants the mediation services of the DHC Program. In each case, I explained the nature and purpose of mediation,

that it is a voluntary process, that it does not involve an investigation or fact finding, that I act as a neutral facilitator to attempt to assist the parties to reach a resolution of the complaint, etc.

36. In some cases, I simply provided information to complainants regarding their options and had no further contact with them, so I cannot report on the outcomes of their complaints.
37. In numerous cases, after I outlined the options available to them, complainants indicated to me what action they intended to take (if any). In some cases, I had no further communication with them and therefore cannot confirm whether they followed through on their stated intentions. The data below reflects what complainants told me they were going to do, even in cases where I have no confirmation that they acted in a manner consistent with their statements.
38. In every case, complainants were not only advised of the options available to them, but also that the options were not mutually exclusive. Several complainants indicated that they intended to pursue more than one avenue of redress, which should be noted in reviewing the data below.
39. For the above-noted reasons, the information gathered regarding the outcomes of complaints is incomplete, but it is nevertheless somewhat instructive. The following reflects what complainants told me they intended to do after being advised of their options:

Number of Complaints	Outcomes
16	Report to LSUC
6	Report to a human rights commission
1	Report to police

1	File internal workplace grievance
6	Seek legal advice to commence legal proceedings
5	Take no action
4	Request mediation by DHC

Mediation Service

40. During this reporting period, four individuals requested mediation services from the DHC. In each case, the respondent was contacted (with the complainant's permission), advised of the complaint, and asked whether they were willing to participate in confidential and "without prejudice" mediation through the DHC Program. One respondent has not yet decided whether they are prepared to participate in this voluntary process. In the three other cases, the respondents agreed.
41. I developed a standard mediation contract, which parties were required to sign if they agreed to have the DHC act as a mediator in their dispute. A copy of the contract is attached as Appendix "A" to this report.
42. During this reporting period, two mediation sessions were conducted (the third has not yet been scheduled). A successful resolution was achieved in one session. In the other, the mediation broke down without resolution and the complainant elected not to pursue any other avenue of redress.

Overview of Respondents

43. In most instances, I had no contact with respondents (unless a complainant made a request for mediation).
44. I attempted to gather anonymous occupational data from complainants about respondents (i.e., whether they were judges, sole practitioners, government lawyers, etc.). I was not able to obtain information in every case, either because the complainant was reluctant to disclose any information about the respondent or because they did not know the requested information.
45. I was, however, able to record the following statistics about respondents in 28 of the complaints:

Number of Complaints	Occupational Category of Respondent
9	Government lawyer*
9	Sole practitioner
9	Lawyer employed in law firms
1	In-house legal counsel at a corporation

* Including federal, provincial and municipal governments, as well as Indian Band councils.

Overview of Complainants

46. Individuals with discrimination and harassment complaints who were interviewed over the telephone were asked whether they would be willing to participate in a short demographic survey to enable me to record anonymous statistical data about them. A copy of the survey questions is attached as Appendix “B”.
47. During this reporting period, 40 surveys were conducted, with the following results:

Gender/Sex

25 female
15 male

Sexual Orientation

35 heterosexual
3 lesbian/gay
2 bisexual

Race

4 Aboriginal
2 Arab
5 Black
2 Chinese
1 Korean
1 Latin American
1 Southeast Asian
1 South Asian
23 White/Caucasian

First Language

31 English
3 French
2 Cantonese
1 Greek
1 Korean
1 Malay
1 Hindi

Disability

13 identified as a person with a disability

Age

3 were 18-24 years old

13 were 25-34 years old

19 were 35-49 years old

5 were 50-64 years old

Region of Residence

21 resided in Toronto or the Greater Toronto Area (“GTA”)

4 resided in Central Ontario (excluding the GTA)

2 resided in Ottawa or the National Capital Region (“NCR”)

4 resided in Eastern Ontario (excluding the NCR)

5 resided in Southwestern Ontario

2 resided in Northern Ontario

Transition from Former DHC

48. Seven files were transferred to me from Mary Teresa Devlin, the former DHC. All of these files involved ongoing active matters at the time that they were transferred. None of the inactive files have been transferred.
49. Mary Teresa Devlin provided me with a variety of precedent forms and letters (eg. intake form, standard cover letter to a Respondent, standard memoranda for complainants outlining options available to them and explaining the DHC's mandate and services, etc.) I revised these documents somewhat and translated them to French.
50. I also developed and drafted some additional documents for the DHC program, such as the aforementioned Mediation Contract attached as Appendix "A".
51. At the time of my appointment in November 2002, I set up office facilities in order to ensure easy access to the DHC Program and to enable me to perform the DHC duties with an assurance of confidentiality to all complainants and respondents (eg. dedicated phone and fax lines, confidential email account, confidential filing system, etc.) Since my appointment was temporary and expected to be short term, I did not have new letterhead designed and printed for the Program. Rather, I printed my own temporary bilingual letterhead, to use for correspondence. I did not have business cards printed.

Promotional Activities

52. Since my appointment was on a temporary interim basis, I was not asked to undertake the full range of promotional activities in which the DHC would ordinarily engage (eg. speaking to new members of the Profession during Bar Admission courses; contacting law faculties or colleges that offer Legal Assistant certificates to arrange to speak with their students, etc.)
53. Although I did not initiate promotional activities, I accepted invitations from a law firm and a legal clinic to meet with their staff and discuss the DHC Program, its mandate and services.
54. I also responded to requests for DHC promotional materials from community organizations, a Legal Aid office, and a Library.
55. The regular advertisements for the DHC Program in the Ontario Reports ceased during my interim appointment. These should resume once the new DHC has been appointed, to ensure optimal publicity within the profession.

Networking with Other Provincial Ombuds

56. On May 29-30, 2003, I attended the fourth annual meeting of Law Society provincial ombudspersons in Winnipeg. We shared information about our respective programs and exchanged ideas and insights about various challenges that commonly arise in our work. It was extremely helpful to me to benefit from their collective experiences.
57. There are four other provinces that have a Program similar to Ontario's DHC. British Columbia was the first to establish a program in 1995. Alberta followed suit in 1997. Ontario was the third province (in 1999). Manitoba and Saskatchewan currently have pilot projects underway, since November 2001 and May 2002 respectively.
58. The Ontario and Manitoba Programs respond to inquiries and complaints from members of the public, whereas British Columbia, Alberta and Saskatchewan have mandates limited to assisting members of the legal profession.
59. In every province, the ombuds is a part-time position, typically occupying 1-2 days/week.
60. In addition to attending the annual meeting, I remain in contact with the other provincial ombuds to share resources and information as the need arises.

Budget

61. I perform my duties as DHC out of my law office, which has been modified to ensure confidentiality of all DHC files.
62. The set-up of my DHC office required little expenditure, since I had a computer, printer and fax machine available for use by the DHC Program. The only equipment I was required to purchase was a telephone. I obtained (and maintain) a post office box for receipt of regular mail and arranged for the installment of dedicated phone and fax lines in my office, to ensure confidentiality of all calls and correspondence.
63. During this reporting period, I billed the LSUC a total of \$30,355.40 for fees in connection with the DHC services, \$2,802.38 for disbursements and \$2,313.42 in GST.