
**DISCRIMINATION & HARASSMENT COUNSEL PROGRAM
SEMI-ANNUAL REPORT:
JULY 1 2000 - DECEMBER 31, 2000**

**Submitted to
THE LAW SOCIETY OF UPPER CANADA**

MARY TERESA DEVLIN
Discrimination & Harassment Counsel
Suite 304-201 George Street North
P.O. Box 1568, Peterborough, ON K9J 7H7
1-877-790-2200 (Tel)
1-877-790-1100 (Fax)
mtdevlin@lsuc.on.ca

EXECUTIVE SUMMARY

The DHC Program was established by the Law Society of Upper Canada as a part-time pilot project in June 1999. It was created in response to a report submitted to Convocation by both the Finance and Audit Committee and the Treasurer's Equity Advisory Group based on a proposal developed by the Equity Advisor to implement the recommendations from the *Bicentennial Report on Equity Issues in the Legal Profession*. The recommendations from the Bicentennial Report were based on the *Transitions* and *Barriers and Opportunities* Reports where 70% of the women lawyers who responded to the survey stated that they had been sexually harassed and/or discriminated against by a member of the profession. The purpose of the DHC Program is to help stop discrimination and harassment by lawyers and within law firms.

This report covers the activities of the Discrimination & Harassment Counsel (DHC) Program from July 1, 2000 to December 31, 2000 as follows:

Direct Services

- Overview of Calls
- Complaints
 - Number and Type
 - Resolution
 - Costs
 - Trends

Promotion and Publicity

Confidentiality

Conclusion

From July 1, 2000 to December 31, 2000, I received approximately 40 calls per month for a total of 240 calls. July was the most intense month with 70 calls. Of these calls, 15% or 30 in total (5 calls per month on average) represent repeat calls on the same matter.

Of the 240 calls, 81% were within the mandate of the DHC Program with the caller either requesting information about the Program or wanting to discuss a complaint of discrimination or harassment. This is consistent with my last report where 81% of the calls were also within the mandate. **Since September 1999 when the Program was first advertised, I have received 582 calls, three-quarters of which were within the mandate.**

From January 1, 2000 to December 31, 2000, 38 files were opened regarding complaints, 22 of these files were opened during this reporting period. Of the 38 files, 28 are still active and 10 have been closed.. Based on an analysis of the 10 complaints completed to date, the average cost per complaint is roughly \$700 plus GST for a total of **\$749.00**. This figure refers to the cost of services provided and does not include disbursements.

The percentage of calls outside the mandate has dropped dramatically and remains consistent at 19%. The average time for calls outside the mandate is still 10 minutes per call. This means that approximately 7 hours of intake time was spent on these calls in this reporting period for a total cost of less than \$1,300.00.

Figure A compares the calls received during the three reporting periods and illustrates the dramatic and consistent increase of calls within the mandate.

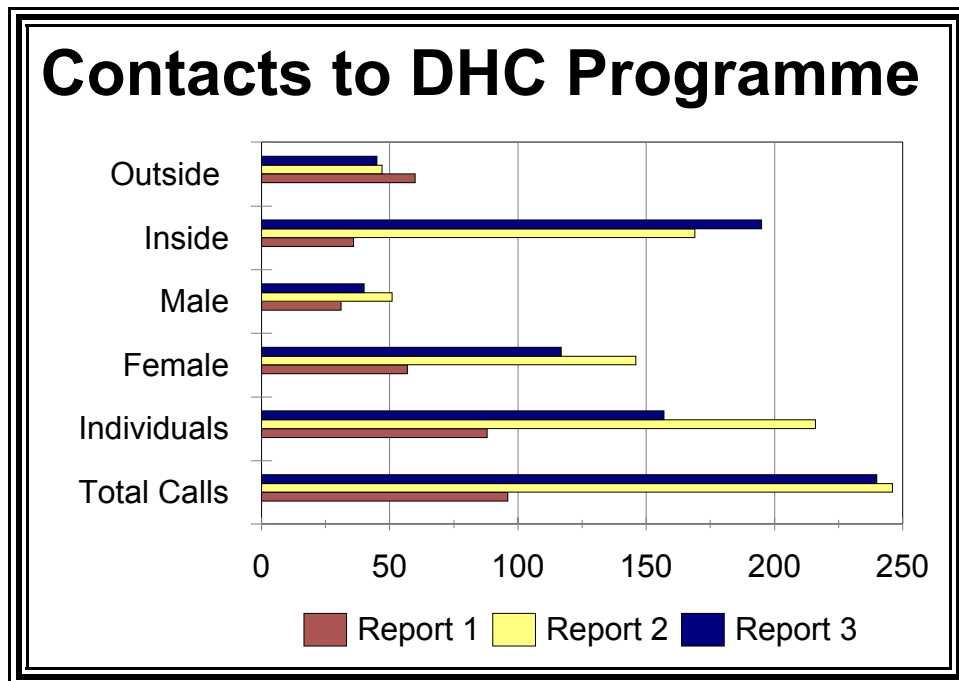


Figure A. Comparison of Calls from all three reporting periods

Report #1: September - December 1999

Report #2: January - June 2000

Report #3: July - December 2000

DIRECT SERVICES

Overview of Calls

From July 1, 2000 to December 31, 2000 I received 240 calls. Of these calls, 195 fall within the mandate of the Program. This figure refers to all calls from people with either a specific complaint requesting direct services, or requests for information about the Program. The monthly breakdown of calls is as follows:

<u>Month</u>	<u>Total Calls</u>	<u>Calls w/i Mandate</u>	<u>Calls o/s Mandate</u>
July	70	52	18
August	20	14	6
September	35	31	4
October	29	28	1
November	53	42	11
December	33	28	5
<u>Totals</u>	240	195	45

It should be noted that these figures refer to the number of calls received, not the number of individuals calling. In some instances, particularly where the caller requires ongoing assistance, one person generated several calls. Also, these figures do not refer to the number of outgoing calls made by the DHC in relation to matters within the DHC mandate. Figure B, below, illustrates the gender breakdown of calls received for all three reporting periods.

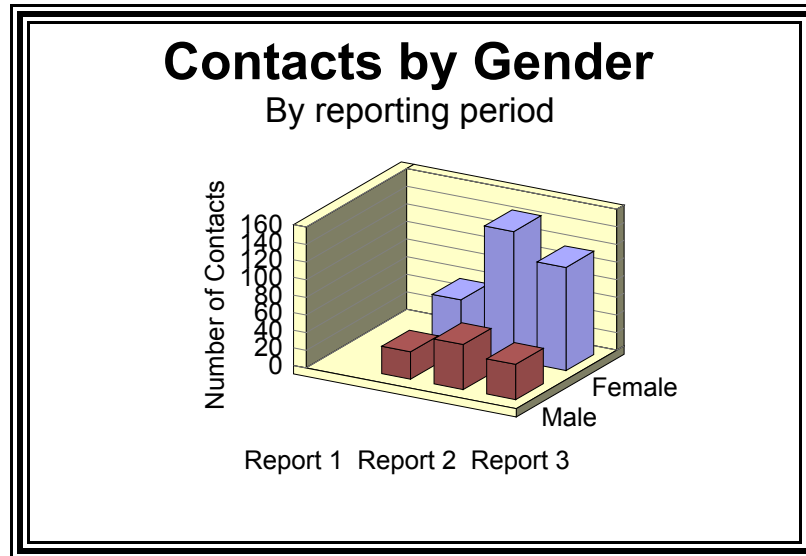


Figure B. Breakdown of Calls by Gender and Reporting Period

Although the telephone remains the most popular method of contacting the Program, there has been an increase in the number of people contacting the Program through e-mail.

Intake continues to be done on Tuesdays and Fridays. The DHC voice-mail is checked daily with call backs scheduled on the next available intake day, usually within 2 days of the original call.

The average time for calls within the mandate is still 45 minutes .

Total number of calls received:	240
Total number of individual callers:	157
Total number of female callers:	117
Total number of male callers:	40

Total number of calls from members from the profession (lawyers, law students): 39

- a. F 25
- b. M 14

Total number of calls from the public: 201

- a. F 147
- b. M 54

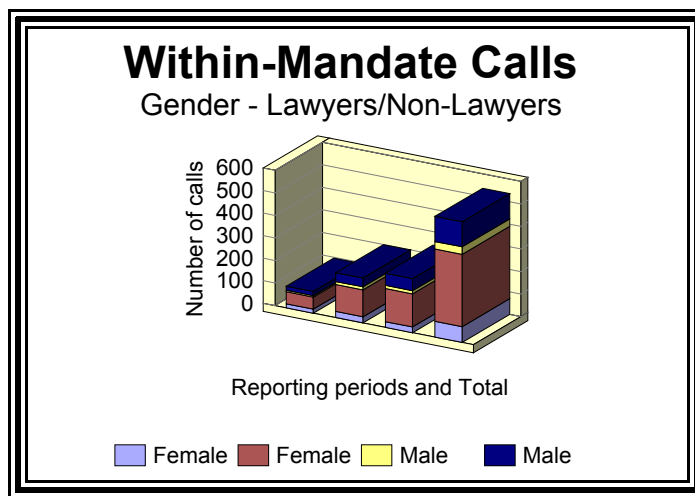


Figure C: Comparison of Lawyer/Non-Lawyers Within the Mandate

Blue: Female Lawyers
Red: Female Non-Lawyers

Yellow: Male Lawyers
Blue: Male Non-Lawyers

Complaints

ii. Number and Type

During this reporting period I have opened 22 files regarding the following types of complaints broken down by gender:

a. sexual harassment

F	16
M	2

b. personal harassment (by lawyer/within law firm)

F	2
M	0

c. discrimination - disability

F	0
M	1

d. systemic discrimination - race

F	0
M	1

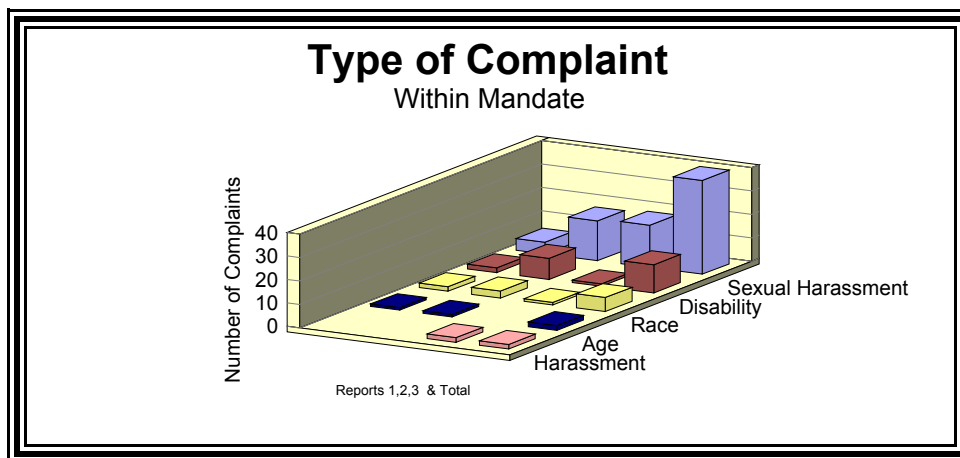


Figure D. Comparison of Complaints between Reporting Periods

ii. Resolution of Complaints

Complainants typically request one or more of the following services:

Information and Advice: including what resources are available resources, copies of LSUC materials, reviewing a firm's existing policies and procedures and recommending changes.

Coaching: including tips on how to handle the problem, who to approach, strategies, and possible responses.

Support: including ongoing contact through an external resolution process (usually a LSUC complaint) and/or attendance at the hearing..

Mediation: including negotiations with both parties to achieve as satisfactory result.

All of the complainants request information and advice on their particular problem. Some are satisfied with this and indicate that they wish to proceed on their own. Others request coaching in the form of tips and strategies on how to deal with the problem. These complainants utilize the DHC as a sounding board.

A significant number of complainants either decide to file a complaint with the Law Society or have already done so. These complainants request support through the process and accompaniment to the actual hearing.

Although requests for mediation continue to be received, only one mediation has taken place to date. Often the respondent retains counsel and the parties either cannot agree on mediation or they choose another mediator.

In this reporting period, mediation was successfully introduced at a small law firm where the lawyer complaining of the sexual harassment had quit her job. Through the mediation the parties agreed that the law firm would establish a Harassment Policy and Complaints Procedure, post information on the DHC Program and schedule mandatory meetings with the DHC to discuss the policy and the complaints procedures. Through these meetings I met with all members of the firm. Subsequent follow up suggests that the problem has been eradicated.

During this reporting period I have closed 10 files. The resolutions in these files were as follows:

Advice and Information:	3
Coaching:	2
Support:	5

Of the coaching requests, both involved lawyers who were able to resolve their complaints on their own.

Of the 5 requests for support, three involved complaints to the Law Society which have now been resolved. One involved a civil law suit which has been settled. One involved a complaint to the Ontario Human Rights Commission. This complainant has now decided to proceed on her own. One involved a complaint about the Law Society's practices. This complaint has since been abandoned by the complainant.

iii. Cost of Complaints

Based on the current available data which represents an extremely small sampling, on average, each complaint costs \$700.00 plus \$49.00 GST for a total of **\$749.00** in fees per complaint. This figure does not include disbursements.

This calculation is based on an analysis of the 10 files closed to date. The time spent on each matter was estimated, totalled, and then divided by the number of files. The final cost figure was arrived at by multiplying the average number of hours per file by the DHC hourly rate.

Of the ten closed files, the time estimates were as follows:

1.5 hours or less:	3 files
5 hours or less:	6 files
10 hours or more:	1 file

iv. Trends

As with the last report, there are some interesting trends in this reporting period. For example, far more women continue to contact the Program than men. Among the profession, the ratio is still almost 2:1. Among the public, the ratio has also stayed consistent at 3:1.

Calls regarding sexual harassment complaints account for the vast majority of calls within the mandate (81%). Calls regarding the combined areas of sexual and personal harassment account for 90 % of the calls within the mandate. In both of these categories, all but two calls were from women.

Lawyers continue to access the Program, albeit in small numbers. During this reporting period two lawyers requested to meet with me in Peterborough to discuss their respective situations. Both felt that the trip to Peterborough would be worthwhile as it would afford them complete confidentiality.

PROMOTION AND PUBLICITY

The promotional activities from July 1, 2000 to December 31, 2000 were focussed on the following areas:

1. external promotion with the profession
2. external promotion with law students

Attached to this Report is a list of the activities undertaken during this reporting period.

1. External Promotion with the Profession

In September, the Law Society distributed the *New Rules of Professional Conduct* to every lawyer in Ontario. The Law Society graciously agreed to include the DHC pamphlets with this mail out. As well, the Treasurer mentioned the DHC Program in his cover letter.

As a result of this distribution, I received a number of e-mail messages from lawyers. Some wanted information about the Program. Some wanted to touch base. Others wished to discuss a specific problem and obtain confidential advice.

In addition, regular is maintained with the Profession through the advertisements in the *Ontario Reports*. These ads are placed in every second edition of the OR's and are run in both English and French.

The DHC Program was included in the November issue of the *Gazette*. However, efforts to have the Program included on a regular basis, similar to the regular articles on the Ontario Bar Assistance Program, have been unsuccessful.

In September I presented the DHC Program to the Women's Wellness Section of the Ontario Bar Assistance Program at a luncheon session. Approximately 30 women attended. In October, I presented the DHC Program at the LPAC 2000 National Workshop, *The Diversity Congress*. My topic was "*Meeting the Challenges of Diversity Through an Ombudsman Program*". Approximately 75 people attended.

2. Eternal Promotion: Law Students

In collaboration with Susan Lieberman of the Articling Services Department, I have visited University of Toronto and Osgoode Hall Law Schools to meet with third year students and present the DHC Program. These sessions have been very well attended with typically 100 or so students participating in each school. Plans have been made to visit Queens, Western, and the University of Ottawa in March.

A description of the DHC Program has been added to the Law Society's Articling Web Page. It can be viewed at: www.lsuc.on.ca.

CONFIDENTIALITY

In order to safeguard the information provided to the DHC and ensure that it is not admitted in evidence in either internal Law Society proceedings or external proceedings, efforts are underway to:

1. formally exempt the DHC from the reporting requirements under the *Rules of Professional Conduct*;
2. amend the *Law Society Act* to extend the duty of confidentiality for the DHC.

It is imperative that these initiatives are completed as soon as possible, especially since confidentiality is one of the cornerstones of the Program. Also, the Program has operated to date on the explicit understanding that all information received by the DHC is strictly confidential and that the DHC is exempt from the reporting requirements under the *Rules of Professional Conduct*.

CONCLUSION

The DHC Program continues to field a large number of calls, the vast majority of which are within the mandate. An overwhelming number of complaints deal with sexual and personal harassment between lawyers and clients and lawyers and their colleagues. This contrasts sharply with the data provided by the Ontario Human Rights Commission which shows a continuing decrease in sexual harassment complaints since 1995 . Data for 1999 and 2000 shows that these complaints account for only 5% of all complaints received by the Commission. In my respectful opinion, eradicating harassment and discrimination from the profession will require a concerted effort to educate lawyers on their obligations and responsibilities pursuant to the *Ontario Human Rights Code* and the *Rules of Professional Conduct*. It will also require that complaints filed with the Law Society are dealt with expeditiously and that appropriate sanctions are imposed in cases where the allegations are proven.

Efforts to reach members of the profession have been very successful thanks to the inclusion of the DHC brochure in the mail-out to all lawyers of the *New Rules of Professional Conduct*. Contact is being maintained through regular advertisements in the *Ontario Reports*.

Efforts to reach students, particularly to ensure that articling students are aware of the Program have also been very successful. These efforts will continue in the form of visits to the Law Schools with the Articling Day team and through efforts to include the DHC Program in the Professional Responsibility section of the Bar Ads courses this fall.

Fewer efforts have been made to reach the public during this reporting period. However, several initiatives are being explored including developing a website, mail-outs to the public libraries across Ontario, and distributing information to clients through Legal Aid.

Unfortunately, the problems with the Law Society's internal list (DHC Program included, but the wrong number; my name omitted from the alphabetical section). As well, efforts to have the Program included in the *Gazette* on a regular basis have been futile. It is hoped that these problems can be resolved internally sooner rather than later.

BUDGET:

The budget for 2000 was \$132,000.00. These funds have been spent as follows.

Administration	\$ 33,232.53
Promotion and Publicity	36,060.68
Travel and Accommodation	6,237.66
Direct Services	<u>47,100.63</u>
TOTAL	\$122,631.50
Balance*	\$9,368.50

***These expenditures do not include the monies set aside to cover the cost of the consultant's fee for reviewing the DHC Program (\$15,000.00). It is therefore anticipated that all funds allocated to the Program have been spent.**

Please note, all entries include fees and disbursements. For example, time spent at meetings is tracked through Administration.

LIST OF ACTIVITIES

July 2000

Meeting with Leota Embelton of the OBAP Program

September 2000

Presentation at the Ontario Bar Assistance *Women's Wellness* Luncheon

October 2000

LPAC Conference

Training at Goodmans

Meeting with CLASP re: possible joint project

Attendance at Osgoode Hall, York University Articling Day

November 2000

Attendance at University of Toronto Articling Day

Gazette Article, "*How to Bullet Proof your Practice Against Claims of Discrimination and Harassment*"

CBAO Article, "*Sexual Harassment of Clients: Family Law Context*"

UPDATE ON REQUIRED ACTION JANUARY - JUNE 2000 REPORT

- **Correct errors in Law Society's Internal Telephone Directory:** This is the Responsibility of the Public Relations Department. The corrections were promised for January 2001. I understand that they will be made shortly. (*Note: as of March 7th, 2001, these changes had still not been made!*)
- **Include articles on the Program in each edition of the Gazette:** To date this has not occurred.
- **Update LSUC staff on the DHC Program through ELF and internal e-mail:** To date, this has not occurred.

Query: could the Committee assist in these last two efforts which both involve the LSUC's Public Relations Department?

- **Notify all members of the profession about the DHC Program:** This was accomplished through the fall mail-out of the new *Rules of Professional Conduct*.