

**REPORT OF ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT
COUNSEL**

JANUARY 1, 2005 TO JUNE 30, 2005

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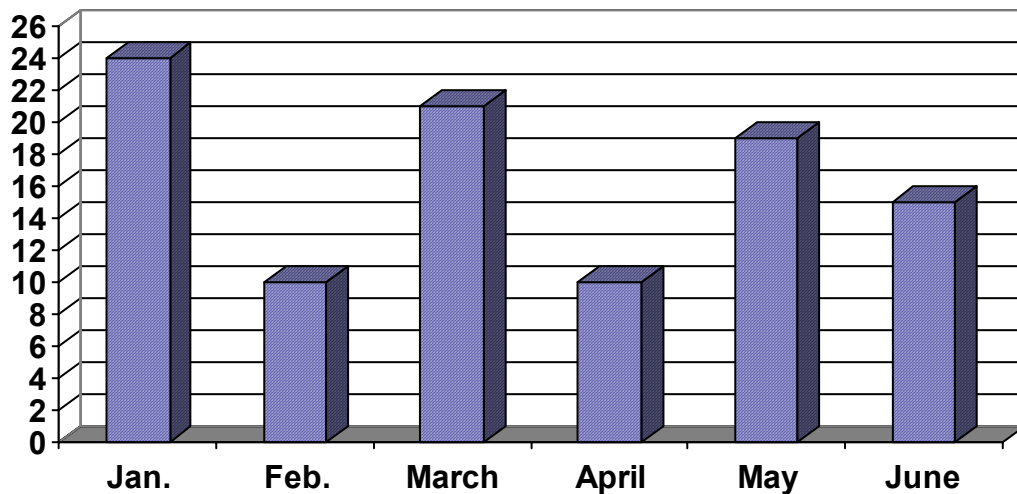
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Overview of New Contacts with the DHC Program

Number of New Contacts

1. During this reporting period (January 1 to June 30, 2005), 99 individuals contacted the DHC Program with a new matter.¹ The new contacts were distributed as follows:



2. On average, there were 16.5 new contacts per month during the first six months of 2005. In 2003, there were on average 15 new contacts per month. In 2004, there were on average 19.5 new contacts per month.

Method of Communication

3. The DHC toll-free telephone line remains the most common way in which individuals initiate contact with the Program, but the use of email has increased over time.
4. In 2003 and the first half of 2004, approximately 80% of new contacts were made by telephone, with the remainder (20%) by email. In the latter half of 2004, email communications increased to 29%, with only 68% of new contacts being made by phone (and 3% by fax). In this reporting period, 30 people (30%) used email to initiate contact with the Program, 68 people (69%) used the telephone and 1 person (1%) used fax.

¹ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to an ongoing matter are not counted in this number.

Language of Communication

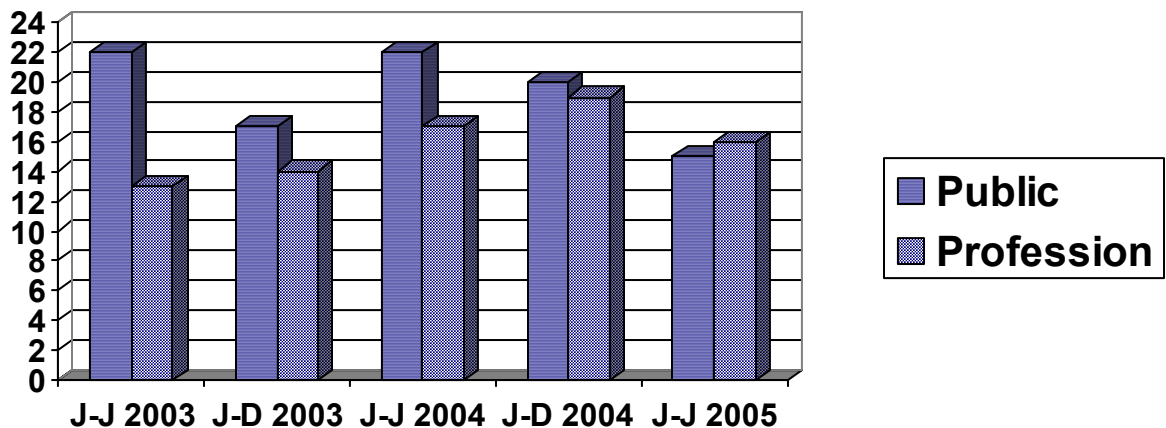
5. The DHC Program offers services in English and French. During this reporting period, 5 individuals (out of 99) communicated with the DHC in French.
6. In 2003, a total of 10 individuals (out of 180) communicated with the Program in French. In 2004, a total of 6 individuals (out of 234) communicated with the Program in French.

Summary of Discrimination and Harassment Complaints

7. During this reporting period, of the 99 new contacts with the Program, 31 individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario.
8. This represents a slight decrease in the number of discrimination and harassment complaints received over the past two years. In 2003, there were a total of 66 complaints and in 2004 there were a total of 78 complaints (averaging 36 complaints per 6 month period).

Public / Profession Ratio

9. Of the 31 new discrimination and harassment complaints received during this reporting period, 15 were from the public and 16 were from members of the legal profession.²
10. In the last reporting period (July to December 2004), the public/profession ratio was similar (20:19). In previous reporting periods, however, there was a marginally higher proportion of public complaints (54%-62%). Thus there has been a slight increase over time in the proportion of complaints from the profession (now constituting approximately 51%):



² One of the complainants was a lawyer, but she was complaining about sexual harassment that she experienced in the past, while she was working as a legal assistant in a law firm. Given the context of the complaint, it is identified as a “public” complaint in the data in this report (since she was not a lawyer when the harassment is alleged to have occurred), notwithstanding that the complainant is now a member of the bar.

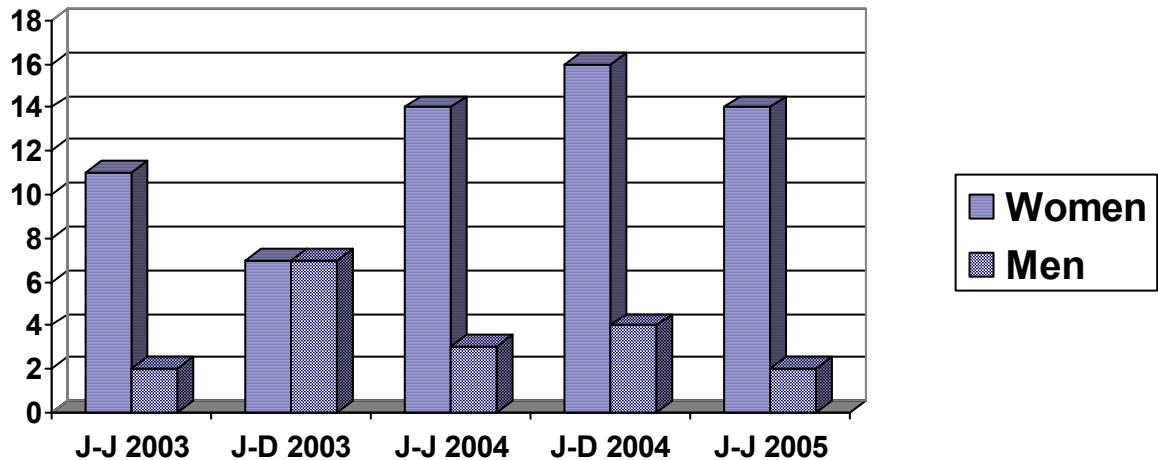
Complaints from Within the Profession

Law Student Complaints

11. Of the 16 complaints from within the legal profession during this reporting period, 4 were made by law students (either summer students or articling students).
12. A total of 6 complaints were made by students in 2004 (out of 37 complaints from within the profession) and a total of 8 complaints were made by students in 2003 (out of 27 complaints from within the profession).

Male / Female Ratio

13. Of the 16 complaints from within the legal profession during this reporting period, the overwhelming majority (14 or 87%) were made by women.
14. In 2004, 30 (81%) of the 37 complaints from within the profession were made by women. In 2003, 18 (67%) of the 27 complaints from within the profession were made by women.
15. Thus, of the 80 lawyers and law students who reported discrimination and harassment complaints to the DHC over the past 2 1/2 years, 62 (77%) were women:



16. Three out of the four students who made complaints during this reporting period were women. In 2004, 5 of the 6 student complainants who contacted the DHC Program were women. In 2003, 5 of the 8 student complainants were women. Thus over the past 2 1/2 years, 72% of discrimination and harassment complaints from law students have been made by women.

Context of Complaints

17. Of the 16 complaints from within the legal profession:
- 10 lawyers and 4 law students complained about their employer or about a colleague in their workplace;
 - 1 lawyer complained about a lawyer who was sharing space with her; and
 - 1 lawyer complained about a lawyer to whom she had made client referrals.
18. Thus 87% of the complaints from within the profession arose in the context of the complainant's employment.
19. In 2004, 76% of complaints from lawyers and law students arose in the context of the complainant's employment. In 2003, 85% of complaints from within the profession arose in the context of the complainant's employment (or in the context of a job interview).

Nature of Complaints

20. The 16 complaints made by members and student members of the bar were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, sexual orientation, family status, age, ancestry and place of origin.
21. A number of the complaints involved multiple (and sometimes intersecting) grounds of discrimination (eg. a complaint of mixed race/sex discrimination by a Black female who raised concerns about barriers to advancement for women and lawyers of colour in her firm). Such complaints are recorded in the DHC data with respect to each of the multiple grounds raised. (As a result, the percentages outlined below do not add up to 100%.)

22. Eleven (11) complaints from within the profession were based (at least in part) on sex as a ground of discrimination. Of these:
- 5 involved complaints of sexual harassment:
 - 3 women lawyers complained about unwelcome sexual advances by male lawyers in their workplace (2 of these women also complained about sexist and/or threatening remarks made by male lawyers in their office);
 - 1 gay male associate complained about unwelcome sexual advances by a female partner in his law firm; and
 - 1 woman lawyer reported that she was being stalked by a male lawyer to whom she had previously referred clients.
 - 3 women lawyers complained about discrimination in their employment arising from the fact that they were pregnant and/or had taken a maternity leave;
 - 1 young female lawyer complained about gender-based (and age-based) threatening and abusive behaviour by a senior male counsel with whom she shared office space;
 - 1 Black female articling student complained about mixed sex/race discrimination in the hire-back process at her firm; and
 - 1 female lawyer complained about sex discrimination in her employer's practices.
23. Two complaints were made by female articling students about discrimination and harassment based on disability.
24. Two complaints were based (at least in part) on race as a ground of discrimination. One was the aforementioned Black female articling student who complained about mixed race/gender discrimination in the hire-back process at her firm. The other was a Black female lawyer who complained about systemic barriers to advancement for lawyers of colour in her workplace.
25. A woman lawyer complained that her employer had no equitable policies regarding flexible work arrangements and was failing to accommodate her child care obligations (i.e., discrimination based on family status).

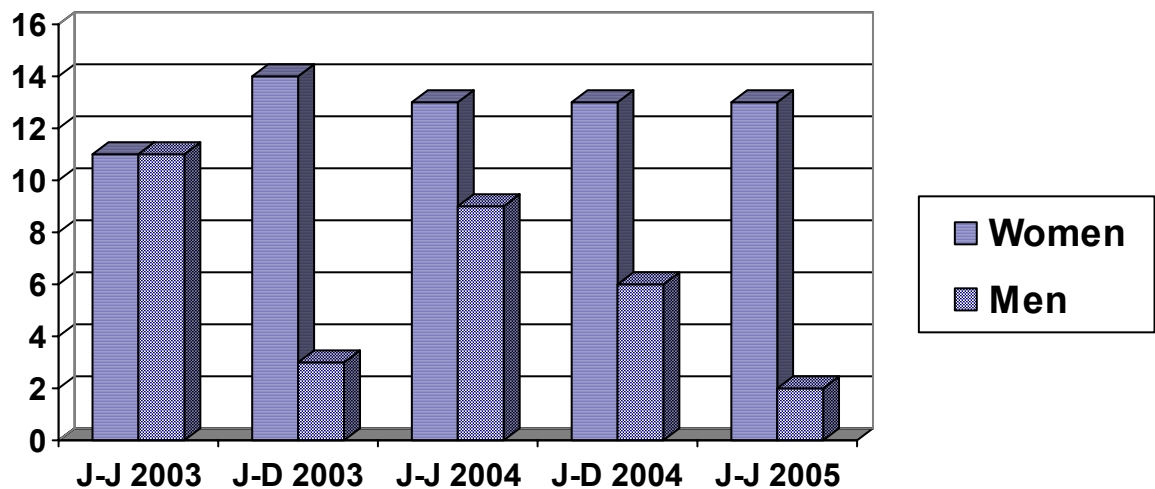
26. Sexual orientation was raised as a ground of discrimination (in conjunction with sex) in one complaint, namely the aforementioned gay male associate who reported unwelcome sexual advances by a female partner in his firm.
27. Age was raised as a ground of discrimination (in conjunction with sex) in one complaint, namely the aforementioned young female lawyer who complained about harassment by a senior male lawyer who shared office space with her.
28. Place of origin / ancestry were raised by a male articling student who complained about discrimination by his employer based on the fact that he was a francophone from Quebec.
29. In summary, the number of complaints³ in which each of the following prohibited grounds of discrimination was raised are as follows:
- sex 11
 - race 2
 - disability 2
 - sexual orientation 1
 - family status 1
 - ancestry 1
 - age 1
 - place of origin 1

³ The sum of the numbers in this paragraph exceeds 16 because some complaints involved multiple grounds of discrimination.

Public Complaints

Male / Female Ratio

30. Of the 15 lay individuals who contacted the DHC Program with a complaint of discrimination or harassment during this reporting period, 13 (87%) were women and 2 were men. (One of the men who contacted the Program was calling on behalf of a female colleague to complain about a male lawyer's sexist behaviour.)
31. In 2003, 25 (64%) of the 39 public complaints were made by women. In 2004, 26 (63%) of the 41 public complaints were made by women.
32. Thus of the 95 members of the public who have made discrimination and harassment complaints to the DHC over the past 2 1/2 years, 64 (67%) were women:



Context of Public Complaints

33. Of the 15 complaints from members of the public:
- 8 were individuals complaining about their employer or about a lawyer with whom they work;
 - 6 were clients complaining about their own lawyer or about a lawyer they had attempted to retain; and

- 1 was an individual who shared office space with the lawyer about whom he was complaining.
34. Thus 53% of public complaints in this reporting period arose in the context of the complainant's employment. This represents a significant increase in the proportion of employee complaints. In 2003, only 15% of public complaints related to the complainant's employment. In 2004, 32% of public complaints related to the complainant's employment.
 35. In this reporting period, 40% of public complaints involved clients or prospective clients of lawyers. This represents a decrease in client complaints. In 2004, 46% of public complaints involved clients and in 2003, 66% of public complaints involved clients.
 36. In 2003, 15% of public complaints involved litigants complaining about opposing counsel (or criminal defendants complaining about Crown counsel). In 2004, 17% of public complaints involved litigants. There were no complaints by litigants in this reporting period.

Nature of Public Complaints

37. The 15 public complaints were based on one or more of the following prohibited grounds of discrimination: sex, disability, religion, race and sexual orientation.
38. Eleven (11) of the public complaints involved discrimination based on sex. Of these,
 - 8 legal secretaries / administrative assistants / law clerks complained about sexual harassment by a male lawyer in their workplace;
 - 1 male police officer complained that a male defence counsel had made sexist remarks about a female police officer and female Crown counsel;
 - 1 female client reported that her lawyer sexually assaulted her; and
 - 1 female client complained that her lawyer treated her in a sexist manner.

Summary of Total Complaints since January 2003

43. There was a total of 174 discrimination and harassment complaints against lawyers between January 1, 2003 and June 30, 2005. Of these,
- sex was raised as a ground of discrimination in 95 complaints (55%);
 - pregnancy was specifically raised in 16 complaints;
 - gender identity was raised in 1 complaint; and
 - sexual harassment was reported in 50 complaints.
 - disability was raised as a ground of discrimination in 34 complaints (19%);
 - race was raised as a ground of discrimination in 34 complaints (19%);
 - sexual orientation was raised as a ground of discrimination in 9 complaints (5%);
 - age was raised as a ground of discrimination in 6 complaints (3%);
 - religion was raised as a ground of discrimination in 5 complaints (3%);
 - family status was raised as a ground of discrimination in 5 complaints (3%);
 - national / ethnic origin was raised as a ground of discrimination in 4 complaints (2%); and
 - ancestry / place of origin was raised as a ground of discrimination in 1 complaint (1%).⁵

⁵ The percentages do not add up to 100% because many of the complaints involved multiple grounds of discrimination.

Examples of Discrimination and Harassment Complaints

44. The following are examples of some of the discrimination and harassment complaints received by the DHC during this reporting period:
- A female law clerk asked her boss (a male lawyer) for an increase in her salary and he responded, “if you want a raise, bend over”. This same male lawyer also threatened to fire her if she did not persuade another female law clerk in their office to have sex with him.
 - A Black lawyer working within government complained about systemic barriers to advancement for lawyers of colour in her department. She was given less responsibility than other (white) lawyers, less trial work, more routine and mundane cases, etc. She was also demeaned by being assigned to work at a secretarial station rather than in a lawyer’s office.
 - A female associate in a large law firm complained that one of the male partners referred to her as “sweetie” and “darling” and called other women in the office “babe”.
 - A woman client with a brain injury reported that her male lawyer arranged for them to meet privately on the pretext of preparing for a discovery, then sexually assaulted her.
 - A law clerk with a speech impediment complained that her boss (a male lawyer) would get drunk and then mock her publicly by imitating her stutter.
 - A Black female articling student complained that, although she received excellent performance appraisals throughout her articling year, she was not hired back to work at her firm. All of the students who were hired back were white males. There were no female associates and no associates of colour in her firm. The only reason provided for the hire-back decision was that she was not a “good fit” with the firm.
 - A female associate hired to work in a small law office with two male partners complained that one of the partners called her “blondie” and frequently made “dumb blond” jokes.
 - A male police officer reported a male defence counsel’s remark that his (male) client’s conviction was based on fabricated allegations and that “that’s what happens when you have a female officer and female prosecutor on the same case.”

- A single mother working as a lawyer in a firm requested reduced work hours to allow her to spend more time with her son, who was hospitalized with a serious illness. The firm refused to accommodate her request and suggested instead that she take an unpaid leave of absence.
- A female associate in a large law firm complained to the partnership about unwelcome sexual advances and unwanted touching by a male partner. The firm cautioned the partner about his inappropriate behaviour, but refused to assign the complainant to a different practice group or separate her from the harasser. The offending partner stopping giving her work, she became ostracized in the office, and eventually took a stress-related sick leave. Soon after she returned to work, she was terminated from her employment for failing to meet the firm's productivity / billing targets.
- A female associate complained that, after an office social function, one of the male associates in her office "joked" about going back to a hotel with other male lawyers to "gangbang" her. When she confronted him about the inappropriate comment the next day, he attributed it to the fact that he was drunk.
- A female articling student with a chronic pain condition became very ill during her articling year and took a month off work. She initially returned to work on reduced hours. She complained that lawyers in her office were hostile toward her after her sick leave. She was advised by a partner that her prospects of hire-back at the firm were adversely affected by the time she took off work. She was also advised to pursue a different career (other than law) because of her chronic illness, which interfered with her ability to work long hours.
- A female associate in a small firm was advised by a male partner that the firm was reluctant to train her because she had recently become engaged (to marry a man) and the firm assumed that she would soon have children and quit the practice of law.
- A senior associate who had met all of her law firm's partnership criteria was told that she would not be made an offer of partnership this year because she was pregnant.
- A Pakistani man complained that he was being verbally abused by a white lawyer whose office was on the same floor in his building. The lawyer was often aggressive and rude, regularly used profane language, and made offensive comments like "you fucking Muslims". The lawyer once referred to the man as a "mother fucking Paki" in front of a client.

- A female law clerk who was in a co-op placement complained that a male lawyer in her office commented on her breasts and asked her to join him in a hotel room.
- A gay male associate in a lawyer firm complained that one of the female partners asked him intrusive questions about his sexual experiences and then tried to kiss him, saying that she would “turn him straight”.
- A female criminal defendant complained that her (male) defence counsel was condescending and patronizing, called her “silly” and “stupid”, and frequently cut her off when she was speaking. In contrast, the lawyer spoke to her male partner in a respectful manner.
- An administrative assistant in a law firm complained that she was transferred and demoted after the termination of a brief consensual affair with her boss (a male partner).
- A female client with a cognitive impairment complained that her lawyer refused to accommodate her (eg. he spoke quickly despite her requests for him to slow down, he became impatient and shouted at her when she asked him to repeat things, he refused to communicate his advice in writing).
- A lesbian woman reported that a female lawyer refused to represent her because of her sexual orientation.
- A legal secretary complained that a male lawyer regularly made sexual advances toward her. Before leaving the office one night he asked, “how about a quick blowjob before you go?” He displayed a violent temper when she rejected his advances. Later he would apologize for his behaviour and say he was “just kidding”.

Demographic Survey of Complainants

45. Individuals who contacted the DHC by telephone with complaints of discrimination or harassment were asked whether they would be willing to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them. During this reporting period, 16 surveys were conducted. Eight (8) public complainants and 8 members of the Law Society (including students members) were surveyed, with the following results:

Gender/Sex	14	female
	2	male
Age	6	were 25-34 years old
	9	were 35-49 years old
	1	was 50-64 years old
Race / Ethnicity	1	Black
	1	Japanese
	1	South Asian
	11	White / Caucasian
	2	Other (one specified Armenian)
Sexual Orientation	1	lesbian / gay
	15	heterosexual
First Language	16	English
Disability	3	identified as disabled
Region of Residence	7	Greater Toronto Area
	5	Southwestern Ontario
	1	Central Ontario
	1	National Capital Region
	1	Northern Ontario
	1	undisclosed

Services Provided to Complainants

46. Complainants who contacted the DHC were advised of the various avenues of redress open to them, including:
- reporting to the police (where criminal conduct is involved);
 - filing an internal complaint or a grievance within the workplace (including, where appropriate, contacting their union or employee association for assistance);
 - filing a complaint with a human rights commission (usually the Ontario Human Rights Commission, but sometimes the Canadian Human Rights Commission);
 - making a complaint to the Law Society; and
 - contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation).
47. Complainants were also provided with information regarding each of these options, including:
- what (if any) costs might be involved in pursuing an option;
 - whether legal representation is required to pursue an option;
 - how to file a complaint or make a report (eg. whether it can be done electronically, by telephone, or in writing; whether particular forms are required, etc.);
 - the process involved in each option (eg. investigation, conciliation, hearing, etc.);
 - what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
 - the time limits for each avenue of redress (or, in some instances, complainants were advised to immediately seek legal advice regarding the applicable statutory time limits in their circumstances).
48. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.

49. Complainants were given information about who to contact in the event that they decided to pursue any of their options.
50. In some cases, upon request, strategic tips were provided on how to handle a situation without resort to a formal complaints process (eg. confronting the offender, speaking to a mentor, writing a letter of complaint to the managing partner of the law firm in question).
51. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.
52. In some cases, complainants were referred to support services, such as OBAP (the Ontario Bar Assistance Program) or LINK (short term professional counselling for lawyers).

Mediation Services

53. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.
54. Where mediation was offered, the nature and purpose of mediation were 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 to reach a mutually satisfactory resolution of the complaint.
55. No formal mediation was conducted during this reporting period. Most complainants who rejected the offer of mediation expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of their complaint. Some also expressed a belief that the respondent would not be willing to participate in mediation, though they did not authorize me to contact the respondent to inquire about their willingness.
56. In two cases, at the request of the complainant, I intervened informally and communicated with the respondent in an attempt to resolve the complaint. In one case, my intervention was successful in resolving the matter. In the other case, my intervention created a temporary resolution, but problems resurfaced later and the complainant eventually decided to pursue more formal avenues of redress.

Summary of General Inquiries

57. Of the 99 new contacts with the DHC during this reporting period, 29 (29%) involved general inquiries relating to equity issues within the Program's mandate.
58. These general inquiries were almost equally divided between calls from members of the public (14) and members of the profession (15). The inquiries included:
 - a call from a transsexual lawyer who had been working in a private law firm as a man and was contemplating gender transition; she was anticipating discrimination and harassment at work and sought advice on how best to deal with her law firm regarding her intended transition;
 - questions from employees in legal workplaces (both lawyers and non-lawyers) regarding their confidentiality rights and disclosure obligations relating to disabilities and pregnancy;
 - calls from lawyers and law students who raised equity issues with respect to the Law Society (eg. the issue of accommodating disabilities in the bar admission course, the issue of access to French language services from LSUC, etc.);
 - calls from lawyers who had suffered discrimination and harassment and who were seeking a referral to support services (eg. addiction counselling, depression counselling, suicide prevention, stress management counselling, etc.);
 - questions about the scope of the DHC Program's mandate;
 - questions about the mediation service offered by the DHC;
 - inquiries about educational workshops and/or promotional materials provided by the DHC;
 - law students and other researchers seeking access to data collected by the DHC; and
 - inquiries about the LSUC Rules of Professional Conduct and equity issues.

Promotional Activities / Expansion

Promotion of the DHC Program

59. During this reporting period, the Alternate DHC made a presentation about the Program to law students at the University of Windsor, and I made presentations to prosecutors within the Department of Justice in Toronto, a law clinic in the Toronto area, and at a public interest careers day for law students across Ontario. I also gave a lecture to the bar admissions class.
60. Throughout this reporting period, regular bi-weekly English and French advertisements for the DHC Program appeared in the Ontario Reports.
61. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.
62. We continue to maintain a website for the DHC Program.

Appointment of New Alternates

63. In 2005, the Alternate Discrimination and Harassment Counsel (Sylvia Davis) resigned from her position. Two new Alternates were appointed by convocation: David Bennett and Lynn Bevin. Both are experienced mediators with considerable human rights experience.
64. During this reporting period, I met with the new Alternates to conduct some orientation training. We have arranged for coordination of our efforts in order to ensure seamless and consistent provision of services to complainants, as well as a uniform method of data collection. We also met with representatives from Investigations and Resolutions within the Law Society to exchange information about our respective roles.

Matters Outside the DHC Mandate

65. Of the 99 new contacts with the DHC during this reporting period, 39 related to matters outside the scope of the Program's mandate.
66. The majority of contacts that related to matters outside the Program's mandate involved either complaints of discrimination or harassment against non-lawyers (eg. landlords, the police, judges) or complaints against lawyers that do not involve any equity or human rights issues (eg. client billing disputes, conflicts of interest). In addition, several individuals called the DHC to seek a referral to a lawyer for a human rights case.
67. Individuals who contacted the DHC with matters outside the scope of the Program's mandate were, whenever possible, referred to another organization for information or assistance, such as the Law Society, a human rights commission, a judicial council, or the Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to these individuals.
68. These "outside mandate" contacts typically do not consume much of the DHC's time, but they nevertheless constitute a drain on Program resources. I have therefore been making ongoing efforts to reduce the volume of these misdirected contacts. The promotional brochures for the Program were revised in 2003 to clarify that the DHC only provides assistance in respect of human rights complaints against lawyers. The DHC website was similarly revised in 2004. During the most recent reporting period, I attempted to ascertain the source of misdirected referrals to the DHC and I called some individuals and organizations who had referred complainants to the Program in error and clarified our mandate with them, in an effort to reduce future misdirected contacts.