



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

# **EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES**

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## **Report to Convocation**

### **Purpose:**

**Decision-Making  
Information**

**Prepared by the Equity Initiatives Department**

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***TERMS OF REFERENCE/COMMITTEE PROCESS***

The Committee met on Thursday, June 7, 2001 from 7 - 9:30 p.m. in the Small Dining Room. In attendance were: Paul Copeland (chair), Judith Potter (vice-chair), George Hunter (vice-chair), Leonard Braithwaite, Heather Ross, Stephen Bindman, Sanda Rogers, Susan Opler (non-bencher), Andrew Pinto (non-bencher), Jeff Hewitt (non-bencher) and Hellene Puccini (guest).

Staff present included: Charles Smith, Bob Bernhardt, Roman Woloszczuk, Rachel Osborne, Julia Bass, Margaret Froh, Geneva Yee.

The meeting was chaired by Paul Copeland and the items listed below have been brought forward for Convocation for decision-making and information.

***For Decision-Making:***

***REVIEW OF THE DISCRIMINATION/HARASSMENT COUNSEL PROGRAM***

***For Information purposes:***

***ISSUES CONCERNING RESIDENTIAL SCHOOL LITIGATION***

***CONNECTING COMMUNITIES WITH COUNSEL***

**FOR CONVOCAATION DECISION-MAKING**

**REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM**

1. In the fall of 1998, as part of the *ADR Systems Review Report*, Convocation approved the establishment of a Discrimination and Harassment Ombudsperson (now called Discrimination/Harassment Counsel)<sup>1</sup>. The purpose of this position was to “...ensure that members of the public and members of the legal profession who experience harassment or discrimination either in their workplace or as a result of contact with lawyers ... have access to the assistance of a knowledgeable resource person who can offer information and advice, and (if all parties are willing) act to resolve the complaint in an informal way. The ombudsperson is not intended to replace, and does not replace, other avenues of resource”<sup>2</sup>.

2. To develop this further, the Equity Advisor was assigned the task of designing a job description and recruiting for this position<sup>3</sup>. As a result of this activity, in June, 1999, Convocation adopted a submission from the Treasurer’s Equity Advisory Group entitled *Report on the Establishment of the Discrimination and Harassment Counsel*. This report set out the parameters for the position and, upon the recommendation of the Finance and Audit Committee, \$60,000.00 was provided to support the position on a fee-for-services basis for the first half-year of its existence. These funds were increased to \$132,000.00 in 2000, the program’s first full year of operation, and reduced to \$100,000.00 for the current year.

3. As approved by Convocation, the Discrimination/Harassment Counsel (DHC) was set-up as a pilot program to carry out the following functions:

- a) publicize and promote the program in partnership with the Law Society’s Equity Initiatives Department and Communications Department;
- b) provide services to individuals who allege that they have been harassed or discriminated against by a lawyer; and

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<sup>1</sup> The establishment of such a position was first cited in the *Bicentennial Report on Equity Issues in the Legal Profession*, at 33, paragraph 102.

<sup>2</sup> See submission to Convocation by the Treasurer’s Equity Advisory Group, *Report on the Establishment of the Law Society of Upper Canada Discrimination/Harassment Ombudsperson*, Appendix 2 ‘A’, p.1, June 1999.

<sup>3</sup> The recruitment was done in the winter, 1999, and resulted in 86 applications for the position. Several reports on this matter were submitted by the Treasurer’s Equity Advisory Group to inform Convocation on the purpose and process of the recruitment activities. A number of benchers also participated in the interviews for the position.

c) coordinate education and training within law firms<sup>4</sup>.

4. To assist individuals who have complaints about being discriminated against or harassed by a lawyer or within a law firm, the DHC's services include:

- < **Intake** - receiving complaints of discrimination and/or harassment by lawyers or within law firms.
- < **Support to complainants** - making referrals to other resources, assisting with the drafting of complaints and, upon request, accompanying complainants throughout a complaints process either with the Law Society, a law firm or the Ontario Human Rights Commission.
- < **Mediation** - in appropriate cases, where both parties agree, offering services to allow for the informal resolution of the complaint.
- < **Training and prevention** - in collaboration with the Law Society, developing and delivering workshops and seminars to educate members of the legal profession on the nature and effect of discrimination and harassment.

5. Operational in the last quarter of 1999, the DHC has since that time:

- < received 582 calls requesting services. This represents calls from 469 individuals with 430 calls within the mandate and 332 of these callers disclosing allegations of discrimination and/or harassment and 66 callers requesting information. In addition, the overwhelming majority of calls are from the public;
- < conducted public education and outreach with the Equity Advisor and staff of the Equity Initiatives Department<sup>5</sup>;
- < participated in seminars and speaking engagements at the request of numerous legal and community organizations<sup>6</sup>;
- < submitted three reports to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones identifying progress, the volume of calls and other matters related to

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<sup>4</sup> Supra note 2 at 4-8.

<sup>5</sup> At the start of the program and throughout 2000, the Equity Advisor and the Discrimination/Harassment Counsel held education sessions on the program in Sudbury, Thunder Bay, Ottawa, London, Windsor and Toronto. Articles appeared in the Ontario Gazette, in local English and French media regarding the program, and the Treasurer included the program's information brochure in a mailing announcing the new *Rules of Professional Conduct* to all members of the profession.

<sup>6</sup> For example, with the Ontario Bar Assistance Program's *Women's Wellness*, with the Law Society of Upper Canada's *Women and Law in the new Millennium: Intersections between Gender, Race and Sexual Orientation*, at the 2000 LPAC Conference, with the Association of Law Clerk's, the Feminist Legal Analysis Committee of the CBA-O and others.

program development and delivery<sup>7</sup>.

6. Further, in response to requests from law firms, the DHC has participated with Equity Initiatives staff in providing education and training for lawyers on the issue of discrimination and harassment<sup>8</sup>.

7. In establishing the DHC, Convocation requested that the program be reviewed after one year of its operation. The purpose of the review was to assist in determining the program's effectiveness and its future implementation. Undertaken by James Management Consulting, the review conveys a strong message on the program's importance and effectiveness, noting that the DHC has been a valuable source of information and support for complainants and law firms in dealing with harassment and discrimination.

8. The information in the program review is available on request. In response to the James Management Consulting review as well as the DHC's year-end report for 2000, the purpose of this report is to identify those issues relevant to the Law Society and to recommend continuation of the DHC program. As such, this report notes the benefits of the DHC program in terms of:

- < its relationship with the Law Society, particularly in referring complainants to the Law Society;
- < the support provided to complainants referred to the program by Law Society staff;
- < the support provided to individuals seeking information, advice and consultation on discrimination and harassment issues;
- < the identification of policy issues to assist the Law Society in promoting equity and diversity in the legal profession; and
- < the provision of education to members of the public and the legal profession.

### **Discussion:**

9. The Law Society has been aware of allegations of harassment and discrimination within the legal profession for over a decade. Major reports and studies have documented and brought these issues forward<sup>9</sup>. In response, the Law Society has adopted numerous policy statements concerning such

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<sup>7</sup> These reports were submitted in January, 2000, covering the first four months of the program's operations and then in July, 2000 covering the first six months of the year 2000.

<sup>8</sup> Such training has been delivered for Goodman's and Tory's and, recently, another law firm has expressed interest in similar training.

<sup>9</sup> Various documents, including the CBA's *Touchstones for Change* and the Law Society of Upper Canada's *Transitions*, *Barriers and Opportunities*, as well as the various bulletins released to educate the profession on the implications of Rules 27 and 28, have clearly established the existence and persistence of harassment and discrimination within Ontario's legal profession. This has also been clearly established in the case of articling students who continue to be asked overtly sexist, racist and homophobic questions in interviews. As well, *Transitions* has

behaviour<sup>10</sup>. The establishment of the DHC constitutes a significant program response to these issues.

10. The DHC's year end report for 2000 indicates the rather significant demand for the DHC's services. Having received 582 calls within 14 months of operation, representing 469 individuals, with the overwhelming number of calls received within mandate and from the public, there are a number of significant issues for the Law Society to address, particularly given its mandate of governing the legal profession in the public interest. These issues relate to identifying and eliminating harassment and discrimination within the legal profession and, through this, increasing confidence within the profession and the public on this matter. To do so will require the continuance of the DHC program, particularly in terms of how this program interfaces with the Law Society's core functions as recently adopted by Convocation in the Law Society Strategic Plan, i.e., complaints and improving diversity within the legal profession.

11. As noted above, the DHC program provides a number of services that enhance the Law Society's core functions. The two areas of the Law Society that the DHC interacts with most frequently are the Regulatory Department and the Equity Initiatives Department. In terms of the regulatory function, the DHC interfaces with the Client Services Department where complaints intake is initiated, with Investigations where complainants are interviewed and their statements taken and prepared, with Resolution and Compliance where resolution of complaints are negotiated between complainants and respondents, and with Discipline Counsel where conduct applications are heard by the Hearing Panel. The DHC interfaces with the Equity Initiatives Department which is responsible for promoting equity and diversity within the legal profession. Managing these relationships is key to improving the effectiveness of the DHC program and, in order to address this, it is critical to consider the relationship between these Law Society services and the DHC program<sup>11</sup>.

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identified that 70% female lawyers reported experiencing sexual harassment in the workplace and that 10% of racial minorities have experienced harassment and discrimination as well.

<sup>10</sup> See *Bicentennial Report on Equity Issues in the Legal Profession*, Section II (D) *Policy Statements Adopted by Convocation*", pp. 14-17.

<sup>11</sup> To discuss this matter, the Equity Advisor met with key staff in the Client Services Department, Investigations, Resolution and Compliance, and with the Secretary. The purpose of these meetings was to discuss the findings of the DHC's year-end report and the consultant's program review with a view to developing and implementing changes in the complaints function that would enhance staff capacity to deliver services to individuals with complaints of being discriminated against and harassed by a lawyer.

***Relationship with Investigations and Resolution and Compliance***

12. The DHC has referred and supported complainants throughout the Law Society's investigative process and before the Hearing Panel. The DHC also has contributed to training provided by the Law Society to staff involved in the complaints process as well as to members of the legal profession in various law firms and in public forums. As such, it is critical that the DHC be familiar with the Law Society's processes for handling complaints, how they are received, sorted and addressed by staff in the Client Services Centre, Investigations Department and Resolution and Compliance. Further, the DHC needs to have up-to-date information as to the procedures of conduct applications on discrimination and harassment are presented by Discipline Counsel and adjudicated by the Hearing Panel. This is essential to the DHC's role of advising potential complainants and informing them on the procedures used in the Law Society's complaints processes.

13. The role of the DHC has been valuable in validating the Law Society's commitment to addressing discrimination and harassment. This is evident in the number of individuals directly referred to the Law Society, in the provision of information about the Law Society to some complainants and in the provision of confidential advice and support to other complainants. Additional effort to harmonize the relationship between the DHC and the Law Society's functions will serve to improve the effectiveness of the DHC in providing support to complainants, improving the Law Society's internal procedures for handling of complaints and making effective referrals to other venues for handling complaints of discrimination and harassment, eg., law firms, the courts or the Ontario Human Rights Commission.

14. Currently, the Investigations Department are investigating 31 files alleging sexual misconduct (26) and/or harassment/discrimination (5) by members of the profession<sup>12</sup>. The DHC indicates that

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<sup>12</sup> Individuals calling the Law Society with complaints of harassment or discrimination are first taken into the system, as walk-in or over the telephone, by Client Service Representatives. These Complainants are referred to the two staff lawyers assigned to the Client Service Centre. The staff lawyers provide general information to Complainants about options, one of which is speaking to the DHC. Where a Complainant wishes to file a complaint about sexual misconduct or sexual harassment by a member, the staff lawyers refer the Complainant to the Investigations Department.

On receipt of a complaint alleging sexual misconduct or sexual harassment, and subsequent to obtaining the Secretary's authorization to investigate under Section 49.3 of *The Law Society Act*, Investigations staff conduct an interview with the complainant(s). This phase of the investigation is concluded on receiving a signed Statement from the complainant and any third party witnesses. Subsequently, the investigators meet with the member, discuss the complaint, provide the member with a copy of the written statement from the complainant(s) and seek the member's representations. The member's statement is prepared and signed. Any third party witnesses who may corroborate the member's position are interviewed and their statements are prepared and signed. On completion of the investigation, an Authorization Memorandum is

eight complainants have been referred to Investigations but there is no way of validly tracking whether or not other complainants have engaged in the Law Society's processes following discussions with the DHC.

15. While it is unclear whether or not some complainants have on their own accord contacted the Law Society, it is also unclear where such individuals would be referred once they have done so. This is because there are procedural changes being developed within the Regulatory function to ensure an appropriate response to complaints of discrimination and harassment, particularly respecting those handled by Investigations and by Resolution and Compliance.

16. In order to play an effective resource for referrals, it is imperative that the DHC be fully aware of the possible places that a complainant may be taken in by the Law Society to address matters of harassment and discrimination. This can only improve the effectiveness of the DHC in providing both timely and accurate information to complainants as well as to those seeking information. As such, this is a matter for the Law Society to clarify and to inform the DHC regarding the number of ways complaints may be dealt with by the Law Society.

17. It is also possible that the DHC may make a referral and the complainant not follow up and engage the Law Society. Such a gap in the referral process may lead to a situation wherein the DHC believes a complainant has been referred but Law Society staff having no record of the complaint. In making such referrals, it may be useful for the DHC to provide some kind of introduction, ideally through correspondence, to Investigations staff to enable the complainant to 'cut' through the system, minimizing the bureaucracy involved and providing a direct link between the DHC and Investigations staff. Such a letter of introduction can also serve to document the interaction and form part of the Investigations record of complaints. The DHC can then follow-up with Investigations to ensure that the complaint has been addressed.

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prepared for review and approval by the Secretary and he forwards it to the Proceedings Authorization Committee, a panel of benchers appointed by Convocation, who determine whether the file should be prosecuted or dealt with in another manner, eg., closed or resolved through ADR.

Recently, Discipline Counsel have commenced providing advice to the Investigations Department during the course of an investigation. It is anticipated that this measure will improve the investigation work product by having Discipline Counsel advise on the sufficiency of evidence and scope of investigation required to support the recommendation made in the Authorization Memorandum. In addition to this development, the Manager of Investigations provides the Secretary with a monthly report on the status of sexual misconduct or sexual harassment investigations cases so that priorities and problem issues can be addressed in a timely fashion. The Secretary shares this report with the Chair of the Professional Regulation Committee, who currently is also the Chair of the Proceedings Authorization Committee.

18. Over the past year Law Society staff have referred approximately 33 complainants to the DHC for various reasons. However, there is no established process for the Law Society to refer matters to the DHC for support and assistance and some Law Society staff are aware of the DHC's services while others are not. Ensuring that all Law Society staff are aware of the DHC's services and the potential to refer complainants to the DHC may be important for complainants who do not wish to follow through with the Law Society's complaints processes, eg., through Investigations or Resolution and Compliance. It may be also important in arranging support services that the DHC can provide to complainants who are proceeding with their complaints through investigation and on to the Hearing Panel.

19. Referrals by the Law Society to the DHC are particularly important now that there are 12 conduct applications concerning sexual misconduct and/or harassment going before the Hearing Panel this year. In the past, individuals appearing before the Hearing Panel have requested the DHC to play a support role when the matter is being heard. This needs to continue as complainants may not be able to withstand the pressure of the full complaints process without having a 'support' person to assist them.

20. On the other hand, it can be very costly if this service is provided only by the DHC. It may also cause delays in the investigations process as a result of scheduling conflicts. It is possible that this function can be done by other centres which generally provide support to victims of sexual harassment, eg., rape crisis and women's centres, and Investigations staff have used such resources and have found them helpful and this is a matter which both the DHC and the Investigations Department should pursue.

### ***Complainants Who Have Not Been Referred to the Law Society***

21. A rather significant issue to address concerns the number of complainants handled by the DHC (332) and the much smaller number referred by the DHC to the Law Society (8). This is an enormous gap which may indicate a number of things, such as complainants having:

- a) reached some kind of resolution on their own;
- b) engaged another process to resolve their complaint, eg., the Ontario Human Rights Commission, the law firm's internal processes or a civil action;
- c) determined that they do not wish to pursue the matter further; or
- d) abandoned the matter altogether.

22. The DHC's year-end report provides no data to support any of the above possibilities. However, a number articles have explored issues of harassment and discrimination in the legal profession, particularly regarding how complainants address their concerns. These articles indicate a great reluctance on the part of complainants to come forward<sup>13</sup>.

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<sup>13</sup> See *The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession*, ***Osgoode Hall Law Journal***, [Vol.35 No.2 1997], Joan Brockman, at 209;

23. While it is distressing that so many complainants do not wish to be referred to the Law Society, it is important to note that they are still being served by the Law Society through the DHC. This is a considerable improvement in the Law Society's services, validating Convocation's commitment to equity and diversity, and serving to enhance the image of the Law Society within the legal profession and the public. It also identifies the types of complaints coming forward and enables the Law Society to address these matters through public education, policy development and in the training and education provided to Law Society staff and within law firms.

24. It would be useful, however, to gain a better sense of the reasons complainants choose not to come forward to the Law Society with their complaints. As such, the DHC should undertake to get a better sense of these matters from complainants and to make recommendations to the Law Society on how best to address these concerns.

### *Education within the Law Society*

25. Relevant to the Law Society, over the years the courts have treated sexual harassment as a form of sex discrimination to which human rights law is applicable<sup>14</sup>. The courts have also addressed the matter of examination of witnesses in proceedings on sexual assault<sup>15</sup>. In addressing such matters, the courts have recognized that many of these cases depend on assessing the credibility of the complainant and the respondent because of the nature of the complaint wherein there may be no witnesses or where the evidence is reliant on witness testimony<sup>16</sup>. In such instances, it is important for the court to ensure that its view of the complainant and respondent is not biased by the way they respond to questioning or by their personal histories, as far they can be divulged. It is also critical that the social context of gender or race relations be understood so that the court proceedings will

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*Leaving the Practice of Law, Alberta Law Review* [Vol.,XXXII, No.1 1994], Joan Brockman, at 139-142; *Black Bay Street Lawyers: Looking Back, Looking Ahead, Law Society Gazette*, [1994] Michael St. Patrick Baxter, at 32 ; *Black Bay Street Lawyers and Other Oxymora, Canadian Business Law Journal*, [Vol. 30 1998], Michael St. Patrick Baxter, at 267; *Flight from Law: A Competing Risks Model of Departures from Law Firms, Law and Society Review* Volume 31, Number 2 [1997], Fiona M. Kay, at.301; *Raising the Bar: The Gender Stratification of Law Firm Capital, American Sociological Review* [1998] at 728.

<sup>14</sup> See *Robichaud and the Canadian Human Rights Commission v. The Queen (Treasury Board)*, [1987] 2 S.C.R.; also *Janzen and Gouverneau v. Platy Enterprises* (1989), 59 D.L.R. (4<sup>th</sup>) 352 (S.C.C.)

<sup>15</sup> See *R. v. O'Conner*, [1996], 44 C.R. (4<sup>th</sup>)1(S.C.C.)

<sup>16</sup> See *Bannister v. General Motors of Canada Ltd*, Ontario Court of Appeal, (August 27, 1998).

be fair to both parties<sup>17</sup>.

26. The case law in this area is rather new, may not be well-known to those who do not practice in this area and may present challenges to Investigations staff in gathering evidence as well as Discipline Counsel in preparing for the Hearing Panel. It may also be a challenge to benchers involved in these processes who may not be familiar with developments in the case law concerning sexual harassment. These developments are known to the DHC who not only would inform complainants of these matters during any aspect of a Law Society proceeding but, equally, give such information in public education activities and in the provision of training to law firms. As such, it is important that the Law Society's systems be contemporary with developments in case law or there may be challenges by complainants which may compel the Law Society to do so.

27. Law Society staff have received education and training to assist them in this area of work<sup>18</sup>. Such education and training, however, should be ongoing for all staff and benchers participating in the process of handling, referring, authorizing or hearing conduct applications on complaints regarding discrimination and harassment. This will ensure that all aspects of the Law Society are working in tandem on contemporary approaches to these matters, thereby, providing confidence to complainants to come forward and participate in proceedings addressing harassment and discrimination.

28. This is particularly important given the number of complaints now proceeding to the Hearing Panel as well as the number being processed through the Investigations Department. Given the overall number of complaints within such a short period of time, the Law Society is faced with challenges in terms of demonstrating its commitments to equity and diversity. Many in the legal profession (particularly women, Aboriginal peoples, Francophones and members of equity-seeking groups) will look to the application of fairness afforded by the Law Society's processes. These members of the profession, as well as the public, will want to be assured that all of the Law Society's

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<sup>17</sup> Reference to social context in judicial reasoning has been used in a number of cases related to gender and race, particularly in *R. v. Lavallee* [1990], 1 S.C.R., *R. v. Parks* (1993), Ontario Court of Appeal, *R. v. Wilson* (1996), Ontario Court of Appeal, and in *R. v. S (R.D.)* [1997], 3. S.C.R.. For an insightful discussion on this matter, see *The Promise of R.D.S.: Integrating the Law of Judicial Notice and Apprehension of Bias*, Professor David M. Paciocco, *Canadian Criminal Law Review*, [3 Can. Crim. L.R.], at 319, 1998. See also *Embodied Diversity and the Challenges to Law*, Professor Jennifer Nedelsky, (1997) 42 *McGill L.J.* 91; and *Redressing the Imbalances: Rethinking the Judicial Role After R.v.R.D.S.*, *Ottawa Law Review/Revue de droit d'Ottawa*, [Vol31:1, 1999-2000], Richard F, Devlin and Dianne Pothier, at 1.

<sup>18</sup> The Investigations Department has established a staff team to lead investigations on this matter. Discipline Counsel has established a lead counsel to take cases directly, conduct research, coordinate education and training on this matter for all counsel and support other counsel taking on sexual harassment cases. It must be noted however, that the Proceedings Authorization Committee has considered these developments as well.

systems are aware of and use contemporary standards and that the notions and practice of fairness are consistent with these standards. The only way to ensure this is to require that the DHC, appropriate Law Society staff and benchers have the knowledge and understanding required to participate in such proceedings.

### ***Relationship with the Equity Initiatives Department***

29. In terms of relationships with the Equity Initiatives Department, there is potential for overlap in the provision of training and education to law firms. There is also potential for conflict of interest if the DHC is advising a client who is from a law firm wherein the DHC is providing training. In such instances, the primary purpose of the DHC, i.e., providing support to complainants, may be obscured because the DHC is unavailable due to training activities in law firms. As such, it is not advisable that the DHC be seen as the lead resource to the profession on education and training as these services can be better handled by the Equity Initiatives Department and its *Equity and Diversity Training Program*.

30. Two other matters relating to the relationship between the DHC and the Equity Initiatives Department include public education and identification of policy issues based on the DHC's work. These matters require no significant adjustment. It is, however, incumbent on the Equity Initiatives Department to probe some of the issues emerging from the DHC reports which have been submitted to date, particularly as they relate to incidences of harassment and discrimination articulated by women and by members of the public.

### ***Program Costs***

31. The budget for the DHC program forms part of the Equity Initiatives Department overall program spending. The annual budget for the program has been: in 1999, \$60,000.00; in 2000, \$132,000.00; and in 2001, \$100,000.00. These funds are primarily to support the direct services provided by the DHC who charges on a fee-for-services basis at \$175.00 per hour. The 2000 budget included costs for program promotion, including development of brochures and public education sessions across the province. The reduced funding in the current year's budget is for direct services only.

32. In the previous years, the program has kept within its allocated budget and, in the current year, the funding is being monitored on a monthly basis to ensure the program's services are available throughout the year.

### **Conclusion and Recommendations:**

33. The discussions with Law Society staff coordinated by the Equity Advisor point to the important role played by the DHC program and the need to continue the program in the future. However, it has also been noted that to increase the effectiveness of the program, it is essential to rationalize the the

program, particularly to clarify that:

- a) the DHC provides services to those who do not wish to approach the Law Society and is, therefore, a 'last resort'; and
- b) the DHC's role is primarily directed to supporting complainants. This does not mean that the DHC cannot work on other functions but, rather, places greater onus on the Law Society to ensure its full-time resources are engaged in the areas of work the DHC is mandated to provide. Again, this reinforces that the DHC program is a 'last resort'.

34. However, before this can be achieved, a number of questions require consideration. These are:

- < should the DHC program continue?
- < if it does not continue, how should it be shut down, including communications to complainants, the profession and public? transfer of files and functions?
- < if the program is to continue, what should the parameters of program include, particularly in relation to the Law Society's regulatory and equity functions (eg, a resource of 'last resort' for complainants and provision of training for members of the profession as well as role in public education?);
- < if the program continues, how should the Law Society address issues of confidentiality provided by the DHC in terms of the provision of services to complainants?
- < what funding should be set aside for the DHC and should the current fee-for-services payment scheme be continued?

35. At its May 8, 2001 meeting, having reviewed the materials and following discussions and questions, the Committee requested additional information from the DHC regarding the following matters:

- < the total number of calls received within the last six months that are within mandate, involve a specific complaint requesting services v. information;
- < a running total and a total within the last six months of the breakdown by nature of complaints by category as well as the complainants that are lawyers (male/female) and non-lawyers (male/females);
- < the number of complaints that result in 'opening a file' including a breakdown as the previous point and an indication of what has happened to the these complainants;
- < the number of complaints dealing with personal harassment and how they fit within the program's mandate;
- < the number of complaints resolved and a breakdown of these complaints by type, gender, lawyer v. non-lawyer, closed v. open files; and
- < the time commitment/cost for ongoing (open) files.

***36. The response to these questions are included in Appendix “A”. Having reviewed the above questions and the additional information provided by the DHC, the Committee recommends that Convocation consider:***

- < establishing the Discrimination/Harassment Counsel program on a permanent basis, with an evaluation to take place following three years of operation; and***
- < continuing the program at current funding levels (\$100,000.00 per year) and on a fee-for-services basis at an hourly rate not to exceed \$175.00.***

**FOR INFORMATION**

**UPDATE ON ABORIGINAL ISSUES**

37. The report on *Application of the Rules of Professional Conduct in Aboriginal Residential School and Childhood Institutional Abuse Cases* has also submitted for consideration by the Professional Regulation Committee and has been prepared by the Aboriginal Issues Coordinator in consultation with staff of the Policy Secretariat. The report identifies several issues concerning the treatment of Aboriginal peoples in residential schools and other institutions, the resulting litigation to address complaints by survivors of abuse within these institutions, the manner of attaining legal consul by these survivors and the implications this has for the legal profession, particularly respecting the conduct of lawyers and what may constitute a violation of the ***Rules of Professional Conduct***.

38. While asserting that the ***Rules of Professional Conduct*** are clear regarding conduct of lawyers in these cases, the report identifies a number of issues regarding how well the ***Rules*** known by Aboriginal peoples, trust factors between Aboriginal peoples and the Law Society, the appropriate handling of complaints alleging lawyer misconduct in these cases, and the training and education of staff and benchers investigating, prosecuting or hearing these cases.

39. The report also identifies anecdotal reports from Aboriginal peoples regarding lawyer misconduct. In addition, there are several recommendations on this matter pertaining to law societies that have been adopted by the Law Commission of Canada, the Assembly of First Nations and the Canadian Bar Association. To date, the Law Society of Upper Canada has not considered these recommendations.

40. Further, Rotiio' ta-ties is conducting consultations with the Aboriginal community over the next several months on this matter. It is anticipated that this group will bring a report to Committee on its findings in the fall or winter of this year.

41. To facilitate addressing the concerns raised in this report, there are several options noted by staff and both Committees have directed staff of the Equity Initiatives Department and Policy Secretariat to begin work over the summer months to:

- < prioritize the recommendations contained in this report;
- < consult with Rotiio' taties on this report to seek their input; and
- < meet with the Committee chairs following their appointment by the incoming Treasurer to prepare a report back in September to a joint meeting of the Committees to address recommendations for Convocation.

***CONNECTING COMMUNITIES WITH COUNSEL***

42. This report provides an update on the development of Connecting Communities with Counsel (CCWC). CCWC is a partnership between the Law Society and various community based organizations seeking to encourage and enable members of the legal profession to take on individual equality rights cases on a pro bono basis. Members of the Steering Committee include representatives from the League for Human Rights, B'nai Brith Canada, the Urban Alliance on Race Relations, the African Canadian Legal Clinic, the Chinese Canadian National Council, the Coalition of Agencies Serving South Asians, the Aboriginal Legal Services of Toronto, Barbara Schlifer Commemorative Clinic, Oasis Centre des Femmes, Bloor Information and Life Skills Centre, the 519 Church Street Community Centre, the Ontario Council of Agencies Serving Immigrants and MIDAYNTA/Association of Somali Service Agencies.

43. CCWC has been successful in attracting community-based agencies to work with it and is now beginning to match lawyers with clients of these agencies. To facilitate this process, the CCWC has drafted an orientation binder with key information for lawyer and client intake. CCWC has also drafted education and learning materials in specific areas of administrative law for lawyers. Further, CCWC has held orientation meetings with community and lawyer groups in Toronto and Ottawa.

44. Currently, the Project Coordinator is conducting outreach to the legal profession to attract more lawyers to undertake pro bono work on behalf of individuals who have equality rights cases, are not eligible for legal aid and cannot afford legal counsel.

45. The Committee also received a copy of a speech by Justice Minister Anne McClellan to students at the University of Windsor Law School in which the Minister positively cites the CCWC program.

46. In bringing this forward, the Committee wish to inform Convocation on the progress in developing CCWC and encourage members of Convocation to become involved either directly or by encouraging their firms to support CCWC. This can be done through contacting the Equity Advisor who will bring the matter forward to the Project Coordinator.

***APPENDICES***

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**M E M O R A N D U M**

TO: Equity and Aboriginal Issues Committee  
DATE: June 1, 2001  
RE: Follow-up to Presentation of the *Discrimination & Harassment Counsel*  
Report, July to December 2000

\*\*\*\*\*

Further to the presentation of my July - December 2000 Report at your May 9<sup>th</sup> Committee Meeting, I am pleased to provide you with the following information which you requested. I trust you will find this information helpful.

The information has been organized into four sections to compare two time periods: the last 6 month reporting period (July to December 2000) and the running totals for the first 14 months of the Program (November 1999 to December 2000). The only exception is in Part C, *Open Files* where all files currently open have been included, even files opened after December 31, 2000.

The sections are as follows:

**Comparative Analysis of the Calls**

November 1999 - December 2000  
July - December 2000

**Overview of Specific Complaints**

November 1999 - December 2000  
July - December 2000

**Overview of Open Files**

November 1999 - December 2000  
July - December 2000

**Services Requested**

November 1999 - December 2000  
July - December 2000

**Overview of Closed Files**

November 1999 - December 2000

## COMPARATIVE ANALYSIS OF THE CALLS

Total # of calls, Nov. 99 - Dec. 00:	582
Total # of calls, July - Dec 00:	240
Total # callers w/in mandate, Nov. 99 - Dec.00:	332
Total # callers w/in mandate, July - Dec 00 <sup>19</sup> :	127
Total # of files opened, Nov. 99 - Dec. 00 <sup>20</sup> :	39
Total # of files opened, July - Dec.00:	22
Total # of new complaints, Nov. 99 - Dec.00 <sup>21</sup> :	70
Total # of information requests, Nov.99 - Dec.00 <sup>22</sup> :	56
Total # of new complaints, July - Dec. 00:	35
Total # of information requests, July - Dec. 00:	16

## OVERVIEW OF SPECIFIC COMPLAINTS

### November 1999 - December 2000

The information provided below is based on the number of new complaints raised from November 1999 to December 2000, as opposed to the number of calls received regarding a particular issue. Calls relating to administrative matters, whether the matter was within the mandate or not, have been excluded.

Overall, in the first 14 months of the Program, 582 calls were received. Of these calls, 430 were within the Program's mandate.

The 582 calls were generated by 469 individuals. Three hundred and thirty-two (332) individuals

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<sup>19</sup> This figure is an estimate based on 81% of the total number of individuals calling the Program, since 81% of all calls were within the mandate. (81% x 157 individual callers = 127)

<sup>20</sup>The decision to open files is a subjective one based on whether there will be ongoing contact with a caller requiring a file to be maintained. As such, this figure is **not** indicative of the number of matters dealt with under the mandate. Instead, reference should be made to the total number of calls within the mandate for the first 14 months of the Program (**582** from November 99 to December 2000) and the total number of calls within the mandate during the six month period of my most recent report (**240** from July to December 2000).

<sup>21</sup>This number refers to the number of individuals calling with a complaint within the mandate.

<sup>22</sup>This figure refers to those calls where the **only** service requested was information, such as providing a copy of the *Rules of Professional Conduct* or a Model Policy.

called with matters related to the Program's mandate. One hundred and thirty nine (139) calls addressed new matters within the mandate. Sixty eight (68) calls were outside the mandate.

Of the 139 calls on new matters, 70 were complaints, 56 were requests for information only, and 13 were requests for seminars and/or training.

**a. Sexual Harassment: 39**

Public Female: 25

Public Male: 2

Female Lawyer: 11

Male Lawyer: 1

**b. Personal Harassment<sup>23</sup>: 13**

Public Female: 10

Public Male: 1

Female Lawyer: 2

Male Lawyer: 0

**c. Discrimination on the basis of disability: 7**

Public Female: 3

Public Male: 0

Female Lawyer: 2

Male Lawyer: 1

Unknown<sup>24</sup>: 1

**d. Discrimination on the basis of Race: 5**

Public Female: 3

Public Male: 0

Female Lawyer: 1

Male Lawyer: 1

**e. Discrimination on the basis of Age: 4**

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<sup>23</sup>Personal Harassment is not defined in the *Ontario Human Rights Code* or the *Canadian Human Rights Code*. However, it is often included in internal policies both in law firms and other organizations. It is included in the Law Society's own internal *Workplace Harassment and Discrimination Prevention Policy and Procedures*. The term is used to identify behaviour that is physically and/or verbally abusive, demeaning, or degrading. The most common type of personal harassment is bullying, either by a supervisor or a co-worker.

<sup>24</sup>This complaint was made by a third party who declined to identify the actual caller in any way.

Public Female: 1  
Public Male: 0  
Female Lawyer: 1  
Male Lawyer: 2

**f. Discrimination on the basis of Sexual Orientation:1**

Public Female: 0  
Public Male: 0  
Female Lawyer: 1  
Male Lawyer: 0

**g. Systemic Discrimination (Racial): 1<sup>25</sup>**

Public Female: 0  
Public Male: 1  
Female Lawyer: 0  
Male Lawyer: 1

**h. Requests for Information Only: 56**

Public Female: 21  
Public Male: 9  
Female Lawyer: 17  
Male Lawyer: 9

**i. Requests for Seminars/Training: 13**

Public Female: 7  
Public Male: 0  
Female Lawyer: 6  
Male Lawyer: 1

**j. Matters Outside the Mandate: 68**

Public Female: 30  
Public Male: 36  
Female Lawyer: 0  
Male Lawyer: 2

**July - December 2000**

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<sup>25</sup>This complaint dealt with the lack of diversity among students accepted for articling positions at the Supreme Court of Canada. Although there seems to be some gender diversity, the vast majority of the students are white and able-bodied.

The information provided below is based on the number of new complaints raised from July 1 to December 31, 2000, as opposed to the number of calls received regarding a particular issue. Calls relating to administrative matters, whether the matter was within the mandate or not, have not been included.

Of the 240 calls received during this period, approximately 195 (81%) were within the mandate, and 60 dealt with new matters within the mandate. Twenty-nine calls were outside the mandate.

Of the 60 calls on new matters within the mandate, 35 were complaints, 16 were for information only, and 9 were requests for seminars and/or training.

**a. Sexual Harassment: 29**

Public Female: 17

Public Male: 1

Female Lawyer<sup>26</sup> 9

Male Lawyer: 2

**b. Personal Harassment: 9**

Public Female: 7

Public Male: 1

Female Lawyer: 1

Male Lawyer: 0

**c. Discrimination on the basis of Disability: 4**

Public Female: 0

Public Male: 0

Female Lawyer: 2

Male Lawyer: 2

**d. Discrimination on the basis of Race: 1**

Public Female: 1

Public Male: 0

Female Lawyer: 0

Male Lawyer: 0

**e. Discrimination on the basis of Age: 2**

Public Female: 0

Public Male: 0

Female Lawyer: 1

Male Lawyer: 1

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<sup>26</sup>Law students and articling students are included in the female lawyer and male lawyer categories.

**f. Requests for Information Only: 16**

Public Female: 7

Public Male: 2

Female Lawyer: 4

Male Lawyer: 3

**g. Requests for Seminars/Training: 9**

Public Female: 4

Public Male: 0

Female Lawyer: 4

Male Lawyer: 1

**h. Matters Outside the Mandate: 29**

Public Female: 13

Public Male: 14

Female Lawyer: 0

Male Lawyer: 2

**OVERVIEW OF OPEN FILES**

**November 1999 - December 2000**

The following is an overview of **all** the files which are currently open. Included in these numbers are all open files, irrespective of when they were opened, even if they were opened **after** December 31, 2000.

Currently there are 34 open files broken down as follows by type of complaint and complainant:

**a. Sexual Harassment: 22**

Public Female: 13

Public Male: 0

Female Lawyer: 8

Male Lawyer: 1

**b. Personal Harassment: 5**

Public Female: 2

Public Male: 0

Female Lawyer: 3

Male Lawyer: 0

**c. Discrimination on the basis of Disability: 3**

Public Female: 0

Public Male: 1

Female Lawyer: 1

Male Lawyer: 1

**d. Discrimination on the Basis of Race: 1**

Public Female: 0  
Public Male: 0  
Female Lawyer: 1  
Male Lawyer: 0

**e. Discrimination on the Basis of Age: 2**

Public Female: 0  
Public Male: 0  
Female Lawyer: 1  
Male Lawyer: 1

**f. Discrimination on the Basis of Sexual Orientation: 1**

Public Female: 0  
Public Male: 0  
Female Lawyer: 1  
Male Lawyer: 0

The following is an estimate of the projected costs of the open files in terms of the amount of time it is anticipated that they will require:

1-5 hours: 20  
6-10 hours: 4  
10 hours or more: 10

Please note, a small number of files exceed 10 hours. For example, I have been providing ongoing support to 4 complainants in the Discipline Hearing for Wayne Buck currently in progress. The time spent at the hearing itself during the month of May was 24 hours. This time does **not** include time spent with the complainants before the hearing or my travel time to and from the hearing.

Obviously this is not an expense that the Program can afford on an ongoing basis. Efforts are therefore underway to work in collaboration with Rape Crisis Centre volunteers and others with appropriate training to provide these support services at no cost to the Law Society.

**July - December 2000**

Calls that resulted in files have been included in the statistics provided under Section B, above, Overview of Specific Complaints. During this period 22 files were opened as follows:

**a. Sexual Harassment: 18**

Public Female: 12  
Public Male: 0  
Female Lawyer: 4

Male Lawyer<sup>27</sup>: 2

**b. Personal Harassment: 2**

Public Female: 1

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**c. Discrimination on the basis of Disability: 1**

Public Female: 0

Public Male: 1

Female Lawyer: 0

Male Lawyer: 0

**h) OVERVIEW OF SERVICES REQUESTED<sup>28</sup>  
November 1999 - December 2000**

**a. Information and Advice: 65**

Public Female: 38

Public Male: 3

Female Lawyer: 17

Male Lawyer: 7

**b. Coaching: 25**

Public Female: 12

Public Male: 0

Female Lawyer: 11

Male Lawyer: 2

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<sup>27</sup>Both male lawyers who reported sexual harassment complaints were raising issues that affected either other women at their firm or women in general. Neither involved a complaint where the lawyer himself had been subjected to sexual harassment. This contrasts with the complaints reported by women (both lawyers and non-lawyers) who were all the victims of the sexually harassing behaviour.

<sup>28</sup>This information has been included instead of the requested information regarding outcomes as it is impossible to know the outcomes. In reviewing the intake forms, many callers asked for information and advice with no further contact. In some instances, efforts to make follow-up contact were unsuccessful due to telephone and address changes.

It may be helpful to know that of the 70 complaints, DHC support through the Law Society's internal complaint process has been requested in 8 matters, one involving multiple callers. Others may have proceeded with Law Society complaints and not requested DHC support. To date, and to the best of my knowledge, none of the complaints have been resolved.

**c. Support: 30**

Public Female: 16

Public Male: 0

Female Lawyer: 11

Male Lawyer: 3

**d. Mediation: 1**

Public Female: 0

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**July - December 2000**

The following services were requested both for file-related matters and non-file matters. Please note, most callers requested more than one service, for example advice and coaching or advice, coaching and ongoing support. All requested services have been tracked and reveal the following results:

**Information and Advice: 39**

Public Female: 22

Public Male: 2

Female Lawyer: 12

Male Lawyer: 3

**b. Coaching: 14**

Public Female: 6

Public Male: 0

Female Lawyer: 12

Male Lawyer: 3

**c. Support: 15**

Public Female: 9

Public Male: 0

Female Lawyer: 6

Male Lawyer: 0

**d. Mediation: 1**

Public Female: 0

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**OVERVIEW OF CLOSED FILES**  
**November 1999 - December 2000**

As set out in my most recent Report, as of December 31, 2000 10 files have been closed. Below is a breakdown of these files by both type of complaint and complainant. One file involved an allegation of both sexual harassment and discrimination on the basis of race. This file has been tracked under both categories.

**a. Sexual Harassment: 5**

Public Female: 3

Public Male: 0

Female Lawyer: 1

Male Lawyer: 1

**b. Personal Harassment: 2**

Public Female: 1

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**c. Discrimination on the basis of Disability: 2**

Public Female: 1

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**d. Discrimination on the basis of Race: 2**

Public Female: 1

Public Male: 0

Female Lawyer: 1

Male Lawyer: 0

**CONCLUSION**

Thank you for your time and attention to this Memorandum. If you have any questions, please do not hesitate to contact me.

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**DISCRIMINATION & HARASSMENT Counsel program  
SEMI-ANNUAL REPORT:  
JULY 1, 2000 - DECEMBER 31, 2000**

---

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

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## 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**

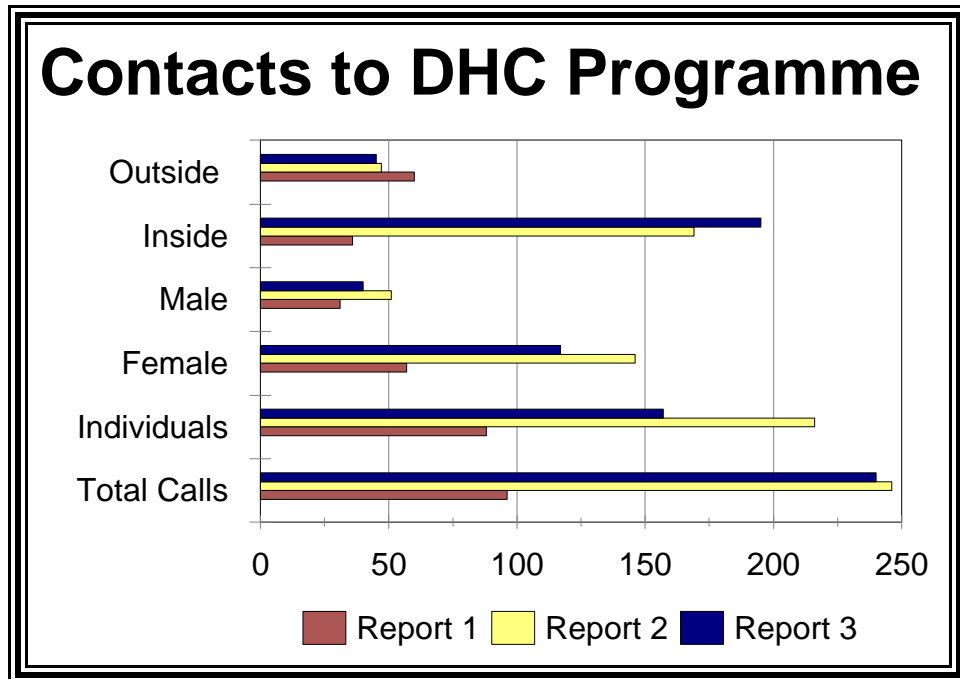
### **Conclusion**

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**

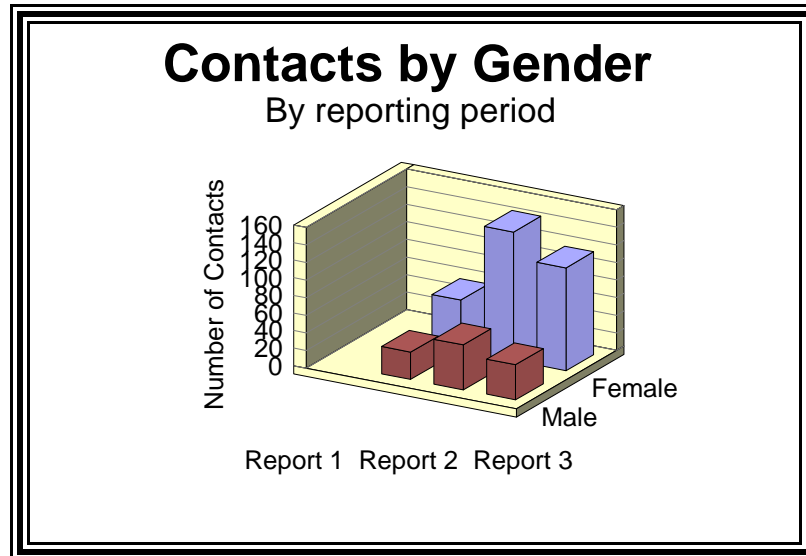
*Overview of Calls*

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:

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

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 .

<b>Total number of calls received:</b>	240
<b>Total number of individual callers:</b>	157
<b>Total number of female callers:</b>	117
<b>Total number of male callers:</b>	40

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

a.	F	25
b.	M	14

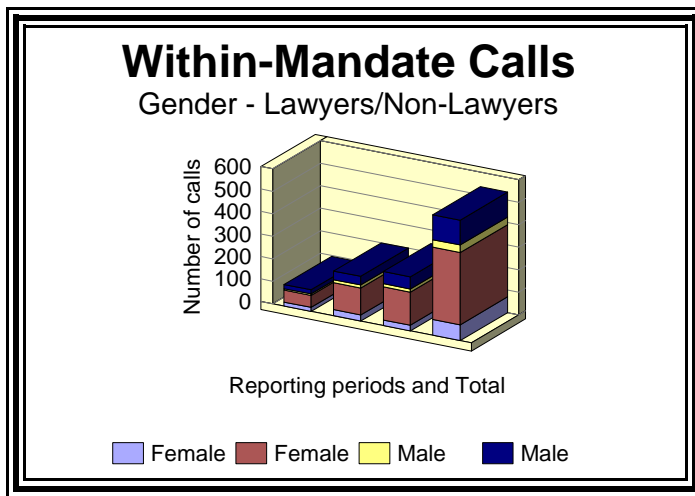
**Total number of calls from the public: 201**

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



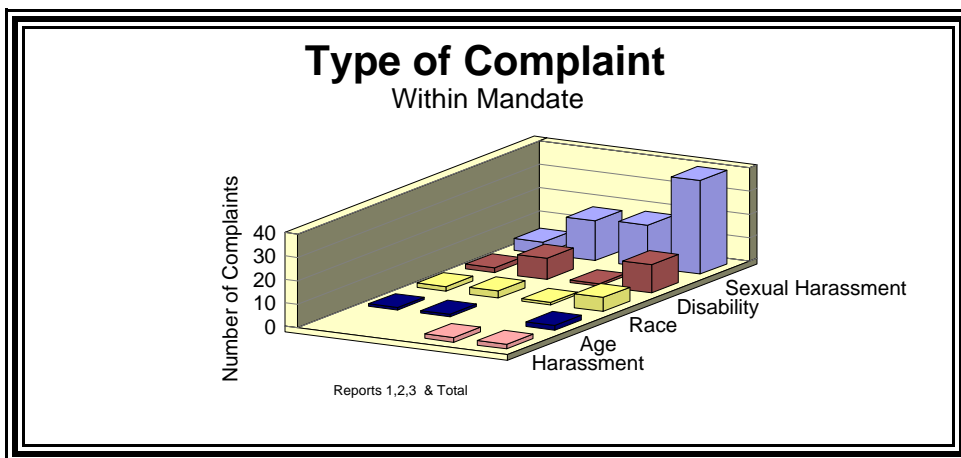
### Complaints

#### i) Number and Type

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

<b>a.</b>	<b>sexual harassment</b>	
	F	16
	M	2
<b>b.</b>	<b>personal harassment (by lawyer/within law firm)</b>	
	F	2
	M	0
<b>&lt;</b>	<b>discrimination - disability</b>	
	F	0
	M	1
<b>j.</b>	<b>systemic discrimination - race</b>	
	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. External 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](http://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	47,100.63
<b>TOTAL</b>	<b>\$122,631.50</b>
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 7<sup>th</sup>, 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*.

## **Issues Arising in the Area of Aboriginal Residential School and Childhood Institutional Abuse Cases**

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### **BACKGROUND**

1. Aboriginal Peoples in Canada were forced by the Federal Government to attend residential schools from the mid 19<sup>th</sup> century through to the latter half of the 20<sup>th</sup> century. These schools were administered by various churches and religious orders and were an important tool of the assimilation policies of the Canadian Government of the time. Those Aboriginal children who attended the schools have reported suffering various forms of abuse at the hands of those involved in running the schools, including physical, sexual, and emotional abuse as well as cultural loss.
2. There are in excess of six thousand law suits estimated to be currently before Canadian Courts filed by survivors of Aboriginal residential schools. It is anticipated this number will continue to grow, as more survivors access legal services and as the litigation and various alternative dispute resolution mechanisms gain further momentum.
3. According to the Co-Chairs of Rotiio' taties, Aboriginal Peoples are generally more likely to be in greater need of legal services than many other Canadians given the need to assert Aboriginal and treaty rights, and the various social and economic issues which Aboriginal Peoples in Canada face. Survivors and their families who suffer the legacy of the residential school experience are particularly impacted by negative socio-economic factors, and their legal needs are far reaching.
4. Survivors of Aboriginal residential schools have raised concerns and filed complaints in other jurisdictions against lawyers representing them. To date, there have been no complaints filed with the Law Society by Aboriginal residential school survivors against Ontario lawyers. There have, however, been unsubstantiated third party reports brought to the attention of the Law Society referencing misconduct on the part of some unidentified Ontario lawyers acting in these types of cases. Indeed there have been complaints filed in other jurisdictions which are now part of the public record alleging similar misconduct of lawyers in those jurisdictions. In the absence of an identification of lawyers who may be in breach of the Rules, the Law Society will require further information or a formal complaint before proceeding with any investigation or subsequent disciplinary action on the concerns raised. There have been complaints filed with the Law Society by survivors of childhood abuse in other institutions.
5. Given that despite the existence of anecdotal evidence of concerns of Aboriginal residential school survivors about the conduct of their lawyers there are no corresponding complaints filed with the Law Society, it appears there are barriers preventing survivors from filing complaints with the Law Society. There is a cultural barrier present since the Law Society's process is both

foreign and formal to Aboriginal Peoples which is exacerbated by a complete lack of information in Aboriginal communities about the Law Society or the role it plays.

6. To date there have been numerous recommendations made by organizations such as the Law Commission of Canada, the Canadian Bar Association and the Assembly of First Nations, which are aimed at law societies and their handling of Aboriginal residential school and childhood institutional abuse issues. These recommendations include a review of rules or codes of conduct, and amendment, where necessary, to ensure that the Rules adequately protect survivors of Aboriginal residential school abuse and childhood institutional abuse against further abuse at the hands of lawyers acting in their cases.
7. In a preliminary consideration of the issues raised, the Working Group, appointed by the PRC to consider possible amendments to the Rules, concluded that the Rules of Professional Conduct do address the concerns which have been raised via the unsubstantiated third party statements. Law Society staff in the Equity Initiatives and Policy Secretariat departments concur with this determination. While the Rules do ultimately address the concerns, nevertheless there remains a need to guide the profession as to how the Rules are appropriately interpreted in these particular cases.
8. In addition to how the Rules are interpreted to address these concerns, the Professional Regulation Committee (PRC) and the Equity & Aboriginal Issues Committee (EAIC) must also consider the unsubstantiated third party statements which, although they do not identify any specific lawyers, refer to inappropriate conduct of lawyers and the disproportionate lack of complaints from survivors. It appears from the information received that the existing structure of the Law Society's complaints and investigation process and the way the complaint system is communicated to the public is not adequate in meeting the needs of these survivors. Survivors are not accessing the complaints mechanism available largely due to a lack of trust of the Law Society, as well as a lack of information in Aboriginal communities about the Law Society, the Rules and the regulatory process. There is a great need to ensure that both the public and the profession are aware of how the Rules apply in these types of cases, and an even greater need to build 'trust' with Aboriginal Peoples and non-Aboriginal survivors of institutional abuse -- including ensuring our regulatory process is accessible to them.
9. Rotiio' taties Co-Chairs, Jeffery Hewitt and Kathleen Lickers have discussed the Law Society, its Rules and its roles in addressing the concerns coming forward from Aboriginal community members about the lawyers who act on their behalf. Copies of their speaking notes are available upon request.
10. Rotiio' taties, in partnership with Aboriginal Legal Services of Toronto, is undertaking a Toronto-based community outreach initiative during the summer 2001 to educate Aboriginal

community members about the Law Society, its mandate and role in ensuring the legal profession delivers services and meets the needs of Aboriginal Peoples in Ontario as they relate to the residential school experience. Rotiio' taties is exploring funding sources to conduct a province wide community outreach / needs assessment in this regard as well. Rotiio' taties intends to make recommendations to the Law Society on residential school issues as well as access to legal services for Aboriginal Peoples in Ontario based on its consultation with the broader Aboriginal community. We anticipate Rotiio' taties will be in a position to provide some preliminary recommendations on these matters in the fall 2001, following this summer Toronto outreach initiative.

11. Rotiio' taties has indicated an interest in working with the Law Society in addressing these issues and has offered its members who are available to meet with Committees and provide assistance in identifying both the issues and potential solutions.

## **ISSUES**

12. The EAIC and PRC should consider the issues raised above and, with the Chairs of EAIC and PRC, work together with the assistance of staff to determine a work plan and integrated response.
13. The EAIC and PRC should confirm the preliminary determination made by the PRC Working Group, that the Rules address the concerns raised. Assuming confirmation of this preliminary determination, the Committees should determine whether additional commentary or guidance regarding interpretation of the Rules is warranted.
14. Regardless of whether or not the Committees finds that the Rules address the concerns, the EAIC and PRC should consider whether the "Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools" (the "CBA Guidelines") issued by the Canadian Bar Association in August 2000, or the revised guidelines as adopted by the Law Society of the Yukon as detailed in paragraph 27 below, should be adopted, in whole or in part, to assist the profession in the interpretation of the Rules in these cases. The Law Society of the Yukon made some important addendums to the CBA Guidelines, noting the unique nature of residential school cases and the unique demands these cases place on lawyers and their staff.
15. There are unsubstantiated third party reports of inappropriate conduct of lawyers in Ontario with respect to Aboriginal residential school cases, yet there are no complaints filed against those lawyers by the public. In the absence of a complaint or an identification of the lawyers referred to, the Law Society does not have the necessary information to proceed with an investigation of these reports. The EAIC and PRC should, however, consider why the regulatory process is not being accessed and determine what is required to remedy this. The EAIC and PRC should

consider what actions are required to ensure that the Rules, their interpretation and their application in these cases, are clearly communicated to the public and to the profession in Ontario.

16. The EAIC and PRC should explore ways to make the complaints and investigation process, as well as the discipline process, accessible to survivors of Aboriginal residential schooling and childhood institutional abuse. Finally, on this point, the EAIC and PRC should consider what is required to build trust in the relationship between Aboriginal survivors, and to a lesser extent non-Aboriginal survivors, and the Law Society to ensure that concerns from the community are forwarded to and addressed by the Law Society.
17. The EAIC, PRC, and the Proceedings Authorization Committee (PAC) should consider what standards ought to be applied in the authorization of a conduct application, should it be warranted, in these types of cases. Specifically, the Committees should consider the application of a similar standard in investigations as applies in complaints alleging sexual impropriety: “if the complainant is believed, are there reasonable and probable grounds to believe that the Solicitor is guilty of professional misconduct.”
18. The PRC should consider making similar proposals for investigation as was made in a report to Convocation in March 1998 regarding sexual impropriety complaints, where it recommended that given the lack of understanding amongst regulatory staff and benchers as reflective of the lack of understanding in the profession and society at large, training must be provided to heighten the level of awareness of the issues involved in those types of complaints. In this case, training would be provided on Aboriginal issues generally as well as training on residential school abuse and childhood institutional abuse issues specifically.

## **REFERENCES TO LAWYERS’ MISCONDUCT**

19. To date, the Law Society has not received any formal complaints against its members from Aboriginal residential school survivors. However, several people from across Ontario have offered unsubstantiated third party statements referencing misconduct of unidentified Ontario lawyers in these types of cases, which the Aboriginal Issues Coordinator and Rotio’ taties have brought to the Committees’ attention. Survivors are generally not aware of the Law Society, the Rules, or the role it plays in governing lawyers in Ontario, and there is a complete lack of trust that the Law Society would listen to or address the concerns of Aboriginal survivors.
20. It was only with the amendments to the *Indian Act* in the 1950's that ‘Indians’ as defined in the *Act* were permitted to retain lawyers. For many Aboriginal peoples, particularly those who have suffered physical, sexual, and/or emotional abuse in their childhood from European or Canadian authority figures, filing a complaint against an authority figure such as a lawyer is inconceivable.

The more foreign and formal the institution and complaints process is to Aboriginal people, the less functional it is.

21. The unsubstantiated third party statements referencing misconduct include reports of the following conduct on the part of some unidentified lawyers in these types of cases:
  - < Lawyers sending unsolicited letters to residential school survivors which often times include very detailed and lengthy questionnaires requesting explicit information about experiences in residential school including accounts of physical and sexual abuse from the survivor. These form letters are sent out to survivors without any offer or referral for support. The questionnaires also typically include questions about the names and contact information for any other survivors which the recipient is aware. This is apparently a typical strategy of some lawyers to locate potential clients.
  - < Lawyers requiring survivors to sign retainer agreements which do not set out a defined fee, but rather indicate that the fees will be determined by an hourly rate, the complexity of the case, the results obtained in the case, with allowances for the delay in payment for the lawyer's fees. While retainer agreements are not stating how much the client will be billed, they are stating that if the client does not receive damages they will not be billed for services, and if they do receive damages they will be billed at approximately 20% to 25% of the damages awarded.
  - < Lawyers coming into communities and setting up in a local community centre, putting up posters that they are there to sign clients up in residential school cases and actively recruiting clients, without any concern whether that survivor is already represented by counsel. This includes reports of lawyers coming into Northern Ontario from Manitoba to sign up Ontario survivors.
  - < Lawyers offering to pay survivors \$50 cash if they agree to just sign a retainer agreement with the lawyer.
  - < Lawyers signing on clients in bulk fashion but not delivering on legal services. Lawyers not doing the work required on the case. Lawyers not being knowledgeable of the work required in residential school claims.
  - < Lawyers not keeping survivor clients informed on the status of their case or the legal process. Lawyers not returning phone calls from clients. Lawyers sending clients detailed opinion letters with complicated instructions requiring clients to opt in or out of certain processes, etc. without making themselves available to the client to discuss and explain the opinion. Lawyers refusing to accept collect phone calls from indigent clients and thereby denying communication with the client altogether.
  - < Lawyers requiring aging survivor clients to amend their wills naming the lawyer as Executor of their estates prior to agreeing to proceed with their cases.
22. It is anticipated that further details will be forthcoming as Rotiio' taties undertakes the community outreach planned in the Toronto area, as well as provincially (providing they obtain funding), to educate Aboriginal Peoples in Toronto and across the province of the existence of

the Law Society, the Rules, the Discrimination & Harassment Counsel, and the complaints process.

## **OPTIONS FOR THE LAW SOCIETY'S CONSIDERATION**

23. As indicated throughout this memorandum, there are a number of matters for the EAIC and PRC to consider, including recommendations made specifically to law societies, recommendations regarding the Rules and their interpretation, communication with the public and the profession, and recommendations regarding internal Law Society matters including education and training and working to build trust with the public.
24. Several organizations have made specific recommendations pertaining to law societies and are summarized below for the Committees' ease of reference. These submissions are also referred to in detail in the information package entitled "Residential Schooling Issues" which is available to Benchers upon request.

### **The Law Commission of Canada**

25. In its report "Restoring Dignity: Responding to Child Abuse in Canadian Institutions" issued in March 2000, the Law Commission of Canada made several recommendations specific to law societies with regard to:

#### The Criminal Justice Process

- < **Those involved in investigating, prosecuting, defending and judging allegations of institutional child abuse should have special training, expertise or experience and should have access to survivor-sensitive protocols that have been developed for this purpose.**

#### Civil Actions

- < **Prospective plaintiffs should have access to basic information about civil actions at no cost.**

**Considerations:** Provincial governments, Law Societies, professional organizations and law faculties should continue to develop public legal information programmes that provide accessible information about legal options available to survivors of institutional child abuse. This information should relate to matters such as how to contact a lawyer, the procedure, costs, possible outcomes, and the length of the process.

- < **Prospective plaintiffs should have access to support services to assist them in coping with the stress of civil litigation.**

**Considerations:** Professional associations should compile a roster of therapists experienced in working with abuse survivors.

- < **Law Societies and Bar Associations should continue to organize professional development programs on how to conduct cases involving allegations of past institutional child abuse.**

**Considerations:** Law Societies may also wish to consider adding civil litigation dealing with child sexual and physical abuse to the list of specialties that maybe certified. Certification should require not only expertise in litigation, but also training in how abuse affects survivors, and the implications for the desirability and conduct of the litigation. Certification lists should be promoted in appropriate communities, including within therapeutic communities.

- < **Law Societies should review their *Codes of Professional Conduct* to ensure appropriate rules are in place to safeguard against the exploitation of survivors of institutional child abuse, especially with respect to recruitment of clients and fee arrangements.**

**Considerations:** The recent revisions to rule 1602.1 of the *Code of Professional Conduct* made by the Law Society of Saskatchewan could serve as a model. The potential for exploitation inherent in contingency fees for class actions involving survivors of institutional child abuse could also be minimized or eliminated through a variety of means:

- < Establishment of a provincially-run class action fund to cover initial disbursements.
- < Mandatory taxation of contingency accounts, or a requirement of prior judicial approval of contingency fee arrangements.
- < Governments or other institutional defendants could refuse to negotiate settlements where contingency fee is inflated.

### **The Canadian Bar Association**

26. The Canadian Bar Association (CBA) has made several recommendations specifically aimed at law societies in its Resolution 00-04-A “Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools”, unanimously passed by the CBA National Council at the August 2000 CBA Annual Conference. The Resolution urged each law society in Canada to adopt the guidelines “for recommended conduct for lawyers acting or seeking to act for survivors of Aboriginal residential schools, that recognizes their vulnerability and need for healing.”

27. The CBA Guidelines are as follows:

- i) Lawyers should not initiate communications with individual survivors of Aboriginal residential schools to solicit them as clients or inquire as to whether they were sexually assaulted;

- ii) Lawyers should not accept retainers until they have met in person with the client, whenever reasonably possible;
- iii) Lawyers should recognize that survivors had control taken from their lives when they were children and therefore, as clients, should be given as much control as possible over the direction of their case;
- iv) Lawyers should recognize that survivors may be seriously damaged from their experience, which may be aggravated by having to relive their childhood abuse, and that healing may be a necessary component of any real settlement for these survivors. Lawyers should therefore be aware of available counselling resources for these clients to ensure that they have opportunities for healing prior to testifying;
- v) Lawyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavour to understand their clients' cultural roots;
- vi) Lawyers should recognize that survivors are often at risk of suicide or violence towards others and should ensure appropriate instruction and training for their own employees, including available referrals in time of crisis.

28. The Nova Scotia Barristers' Society (NSBS) has posted the CBA Guidelines on its website. The NSBS's Legal Ethics Committee instructed that the guidelines be made available "for the information of the membership."

### **The Law Society of the Yukon Guidelines**

29. The Law Society of Yukon recently approved the CBA guidelines with some notable revisions at its May 10, 2001 Annual General Meeting. In addition to the guidelines as set out in paragraph 25 above, the Law Society of Yukon added the following preamble and three new guidelines of importance in guiding the profession. These addendums are as follows:

"WHEREAS some Canadian lawyers have aggressively solicited residential school survivors as clients in an inappropriate manner and have caused serious harm to them, including some suicides;

WHEREAS the National Council of the Canadian Bar Association in August 2000 adopted "Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools" to assist lawyers dealing with these types of cases, and has recommended that these guidelines be adopted by Law Societies;

WHEREAS the CBA-Yukon Aboriginal Law Section has met to consider these guidelines and consulted with the Committee on Abuse in Residential Schools;

THEREFORE, BE IT RESOLVED THAT:

The Law Society of the Yukon adopt the following guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools:

- < Lawyers should recognize the unique nature of residential school cases and appreciate that they have a special responsibility in these cases to facilitate their client's healing process through, where possible:
  - < identifying community resources to assist the client
  - < referring their client to drug and alcohol treatment programs, if appropriate
  - < recognizing the need for the client to develop a personal support network.
  - < Lawyers should recognize that residential school cases place unique demands on the lawyer and other law office staff by virtue of the emotional nature of such cases; the amount of time and resources required for each case; and the lawyer's role in facilitating the client's healing process. These demands place a practical limit on the number of cases which a lawyer can appropriately take on at any one time.
- < Lawyers should not initiate communications with individual survivors..." (continued as per the CBA Guidelines).

### **Assembly of First Nations**

30. In a letter dated October 26, 1998 to Richard Tinsley, Secretary of the Law Society, National Chief Phil Fontaine of the Assembly of First Nations (AFN) raised several concerns regarding Aboriginal residential school litigation issues. In particular, concerns were raised regarding the aggressive solicitation of clients in some jurisdictions, the unique needs of Aboriginal residential school survivors and lack of care exercised by some lawyers in providing legal services to survivors, and the wording in contingency retainer agreements and high contingent fees.
31. The Law Society responded to the AFN National Chief, a letter to the National Chief from Richard Tinsley dated December 9, 1998. There has been no further follow up on this matter.
32. The concerns as stated in paragraph 30 above, were echoed in a speech to the CBA conference in Winnipeg, in April 2000 (see "Residential Schooling Issues" information package). The AFN National again called upon law societies to address concerns of the AFN regarding the use of contingency fees and marketing practices in order to ensure fair, just and equitable results for all.

## **RULES OF PROFESSIONAL CONDUCT**

33. The Rules as amended in 2000 do appear to address many of the concerns raised by members of the Aboriginal community in regards to residential school litigation in other jurisdictions as well as the unsubstantiated third party reports referencing misconduct of unidentified lawyers in Ontario, primarily surrounding recruiting tactics, lack of competence, inappropriate fee arrangements, and high contingent fees. However, the Rules are not as specific as the CBA Guidelines for Lawyers Acting for Survivors of Aboriginal Residential Schools or the amended and improved Law Society of the Yukon guidelines.

34. Given this, the EAIC and PRC may wish to review the following issues which the Rules and Commentaries currently address, either generally or specifically:

Quality of Service and Fees and Disbursements:

- < unclear retainer agreements
- < failing to disclose fee
- < fees which are not fair or reasonable
- < contingent fees

Competence & Quality of Service:

- < failing to deliver legal services required
- < lack of knowledge of issues involved and work required on a claim
- < failing to keep clients informed about their case or the legal process
- < failing to return clients' phone calls
- < sending complicated correspondence without ensuring client comprehension
- < compromising clients' ability to communicate with lawyer
- < inappropriate conditions upon which legal services are offered

Making Legal Services Available & Offering Professional Services:

- < aggressive solicitation of clients
- < aggressive and inappropriate solicitation of vulnerable clients

35. The unsubstantiated third party reports referencing misconduct all offend the spirit of the Rules and the Standards of the Legal Profession (Rule 1). They further offend the requirement dealing with Responsibilities to the Profession and to Lawyers, to act with integrity, in good faith, and in the public interest (Rule 6).

36. Offering legal services which are systemically below standards to a class of clients in a targeted community protected under human rights legislation, such as Aboriginal residential school survivors, offends the Discrimination prohibition (Rule 5).

## ***Connecting Communities With Counsel Program***

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The *Connecting Communities With Counsel (CCWC)* program is a joint project involving the Law Society of Upper Canada, in particularly with numerous community-based agencies (Anti-Racism Action Centre, African Canadian Legal Clinic, Barbara Schlifer Clinic, Ontario Council of Agencies Serving Immigrants, Coalition of Visible Minority Women, 519 Church Street Community Centre, Midyanta Somali Community Services, League for Human Rights of B'nai Brith Canada, Ontario Pro Bono Initiative, Pro Bono Students Canada, Volunteer Lawyers Service). Responsive to community concerns, the *CCWC* was established by the Equity Initiatives Department, LSUC, in partnership with the Anti-Racism Action Centre and the 519 Church Street Victim Assistance Program, in Fall of 1999, in an effort to attract lawyers to do work on a pro bono basis for individuals from Aboriginal, Francophone and equity-seeking groups who require legal counsel to address equality issues before courts, tribunals and in mediation process. The mandate of the project is to understand and take into consideration the needs and concerns raised by the various groups and work with the legal profession to encourage providing pro bono services related to human rights and equity issues.

### **Terms of Reference - CCWC Steering Committee & Sub-Committees**

The objective and mandate of the Steering Committee and its Sub-Committees' shall be to guide and assist the *CCWC* project in the initiation, development, establishment and promotion of the project. The members shall also encourage the provision of pro bono legal services to Aboriginal, Francophone and equity seeking groups, to enable them to make informed decisions about their legal needs. The members shall focus on understanding various human rights and equality issues and concerns and in particular matters raised by victims of hate motivated/violent crimes based on race, sexual orientation, gender, ability, within Ontario and facilitate in resolving these concerns/matters by:

- identifying community needs and developing strategies for addressing issues affecting Aboriginal, Francophone and equity seeking communities, in particular infringement and violation of human rights;
- providing regular input towards the development of the project, especially in planning, development and implementation of policies and procedures;
- providing advice, informing and direction about on-going developments and activities related to the project;
- assisting in forming productive and conducive partnerships with community representatives, clients, other related organisations and members of the legal profession, e.g Pro Bono Students

Canada, Volunteer Lawyer Services); and

- taking up any other matter affecting the project or its activities.

## **Organisation & Structure**

### **Sub-Committees**

- There shall be two sub-committees, namely the Program & Budget Sub-Committee and the Education & Orientation Sub-Committee.

### **Membership**

- The Steering Committee shall have no fewer than 11 members and no more than 17 members, with no fewer than 2 members representing the LSUC.
- The Sub-Committees shall have no fewer than 3 members and no more than 5 members, with no fewer than 1 member representing the LSUC.
- Members shall have direct experience, knowledge and commitment to matters related to accessing equity and justice needs for minority communities.
- The membership shall reflect balance amongst the various equity seeking groups. The Steering Committee shall strive to ensure that they reflect not only the diversity of the community but also take into consideration the geographic aspects of the project.

### **Appointment of Chair and Vice Chairs**

- The Steering Committee shall have a Chair who shall be a LSUC bencher and two Vice Chairs who shall be members of the Steering Committee from community based organisations.

### **Meetings**

- The Steering Committee and Sub-Committees' shall meet once every three months [except in the months of July and August], with the schedules being established by each Committee in their initial meetings.
- Special meetings of the Steering Committee shall be convened by the Chair, on advise of any member of the Steering Committee or upon necessity.

Special meetings of the Sub-committees' shall be convened upon necessity, or on advise by any of the Sub-Committees' member.

- Members shall attend meetings regularly either in person or by electronic means such as teleconference.
- Failure to attend more than three consecutive meetings without explanation shall constitute resignation from the Committees'.

### **Quorum**

- Four members of the Steering Committee shall constitute a quorum for the purposes of the transaction of business.
- Two members of the Sub-Committee shall constitute a quorum for the purposes of the transaction of the business.

### **Term of Membership**

- Committee members shall be part of the Committee for a period of three years.
- Every three years at least four members of the Steering Committee shall be replaced by new members.
- Every three years at least two members of the Sub-Committees' shall be replaced by new members.

### **Staff**

- Research and administrative support shall be provided by the CCWC Project Coordinator and staff of the Equity Initiatives Department.

## **Outcomes of Canadian Heritage funding, Phase I: February 15, 2000 - December 30, 2000**

During phase I the Steering Committee<sup>29</sup> met often to discuss various issues, and in order to undertake activities that would contribute towards the setting up of the project. Some of the matters discussed and outcomes of the initial months work/brainstorming are as follows:

### **Vision Statement and Mandate**

The vision statement and mandate of the organisation finalised/drafted. The Steering Committee also met to discuss and develop agreed upon structures that would ensure long-term objectives of the project are met.

### **Review of Orientation Package**

Material for the orientation binder (finalised later during the year) was collected and reviewed by the Steering Committee. An Education & Orientation Sub Committee was formed with representatives of various community organisations to enable a thorough review of the orientation package. The Sub-Committee comprised of Sudabeh Mashkuri (Barbara Schlifer Clinic), Erica Lawson (African Canadian Legal Clinic), Howard Shulman (the 519 Centre) Josee Bouchard (Equity Initiatives Department of the Law Society of Upper Canada) and Rachel Osborne (Equity Initiatives Department).

### **Development of Orientation Session**

An information gathering and orientation session was held in January 2000, to introduce the Connecting Communities With Counsel initiative, as well as to provide an opportunity to the legal profession and community agencies to explore issues in-depth. Participants included several members of the legal community and representatives from the following community organisations: Community & Race Relations Committee of Petersborough, Folk Arts Council of St. Catherines, Bloor Information & Life Skills Centre, Women's Health in Women's Hands, African Canadian Legal Clinic, the 519 Church Street Victim Assistance Program, and the Barbara Schlifer Clinic. Bencher, Heather Ross chaired the session. Additionally, during phase I, the Steering Committee prepared for the next Orientation Session to be held later on during the year, e.g. identified speakers, reviewed material to be used in the session, as well as reviewed protocols for lawyer/community participation etc.

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<sup>29</sup> Members of the Steering Committee are listed on page 4 of the interim-report dated January 30, 2001, which has already been submitted to Canadian Heritage Department.

### **Promotion and Outreach Activities Discussed and Undertaken**

- Sub-Committees' formed (Education & Training and Budget).
- CCWC advertisement already placed in Ontario Reports. Second ad prepared for the OR's.
- Reviewed sample models of structure mechanism of project.

### **Outreach to Lawyers**

- Lawyer In-take forms designed and distributed.
- Need for lawyers who speak different languages and as well as those who can understand sensitive matters related to human rights and equity issues discussed. Explored info/data on lawyers who would be willing to undertake pro bono legal work on behalf of CCWC.
- Consultations and meetings undertaken with lawyers about structure of the organisation and how services can be best delivered through the province of Ontario.

### **Outreach to Community Agencies**

- Needs Assessment Survey of community agencies undertaken prior to February 2000. Results compiled and discussed.
- Client In-take forms designed and distributed.
- Evaluation forms designed and evaluations undertaken.
- Consultations and meetings undertaken with community agencies about structure of the organisation and how services can be best delivered through the province of Ontario.

### **Staff Recruited**

The Steering Committee initiated process for recruitment of staff, to undertake promotion and outreach activities, as well as to provide support to the Steering Committee.

### **CCWC's Participation in Pro Bono Law Ontario**

The Pro Bono Law Ontario is being developed and established under the auspices of the Chief Justice of Ontario, Ontario Legal Aid, the Law Foundation of Ontario, the Law Society of Upper Canada and the University of Toronto Faculty of Law. Over the past few years a number of organisations, e.g. Pro Bono Students Canada, Volunteer Lawyer Services, the Dickson Circle, and Legal Aid Ontario Mentorship Services, have developed to facilitate the delivery of pro bono legal services in Ontario. CCWC has also been actively participating in the initiative by attending meetings, rendering advice and discussing the delivery of pro bono legal services in Ontario. The objective of the initiative is to ensure that the pro bono initiatives complement each others services and programs and further, to ensure that high quality pro bono legal services are available to those in need.

### **Equity and Diversity Training Program**

A Committee comprising of Erica Lawson, Howard Shulman, Sudabeh Mashkuri, Rachel Osborne and Josee Bouchard was formed to commence work and establish foundations for the Equity and Diversity Training Program by discussing fundamentals of the project in-depth.