

The Law Society of British Columbia



Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2011 to December 31, 2011

For: The Benchers
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Purpose of Report: For Information

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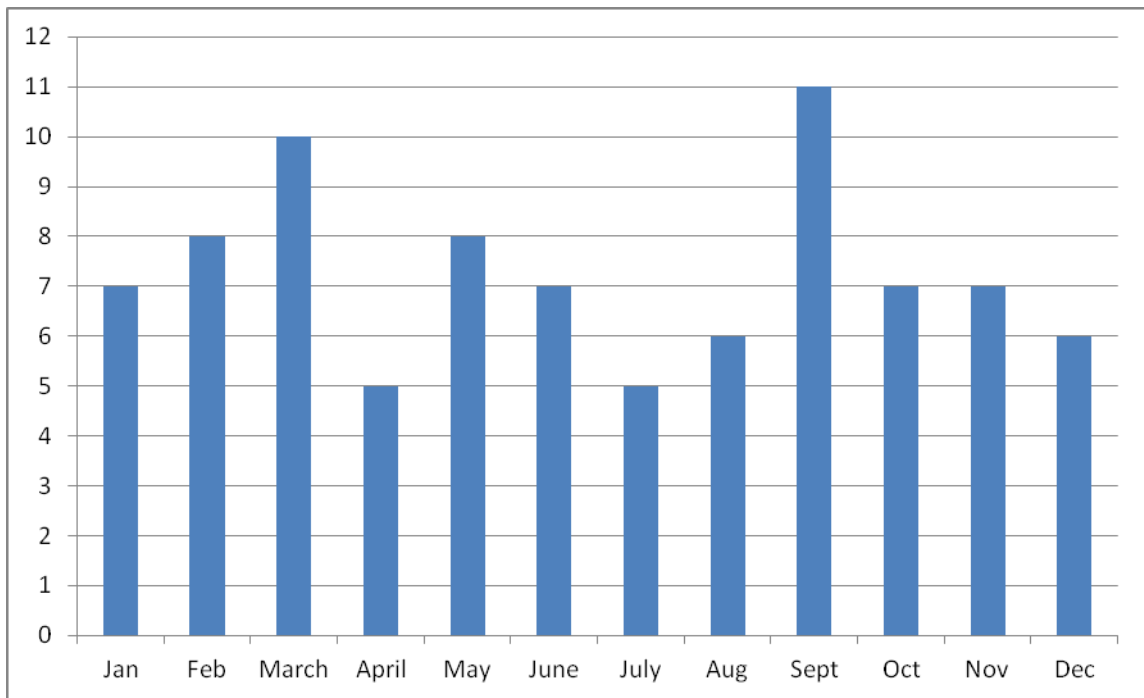
PREFACE

The following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purpose. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity and Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the “Law Society”) Equity Ombudsperson (the “EO”) Program (the “EOP” or “Program”) received 87 calls from individuals during the reporting period (January 1 to December 31, 2011). These were calls from individuals with a new matter. Of the 87 calls, 55 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 256 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)
2. The below Table 1, displays the distribution of the 87 new contacts made with the EOP, during the reporting period:

TABLE: 1



¹ Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The means of initial contact deployed by these callers is distributed as follows: 5 (5 %) made in person, 77 (92%) used the telephone to make their initial contact, 4 (5%) used email and 1 (1 %) used regular mail.
4. Further, of the 87 new contacts with the Program, 76 (87%) were made by women and 11 (13%) were made by men.
5. The following Table 2 notes the contacts made with the EOP since 2007 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2007 – 2011					
GEOGRAPHIC DISTRIBUTION:					
	2007	2008	2009	2010	2011
Total Contacts¹:	297	275	258	260	256
Vancouver (Lower Mainland):	142	133	128	135	140
Victoria:	65	68	64	65	60
Outside (Lower Mainland /Victoria)	34	41	32	32	24
Outside the Mandate ² :	56	33	34	28	32
NOTE:					
¹ Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.					
² Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.					

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2007:

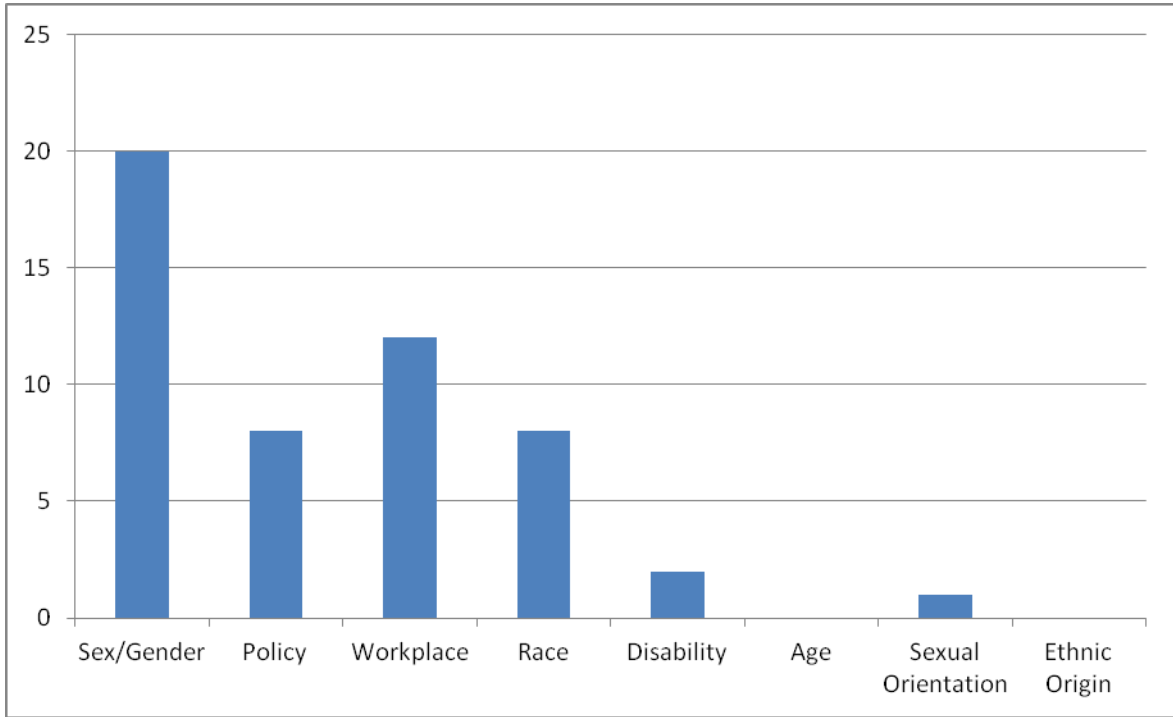
TABLE 3: PROFILE DISTRIBUTION OF CALLS IN MANDATE						
Profile Distribution:		2007	2008	2009	2010	2011
Associates		55	56	53	58	56
Partners		58	43	38	26	21
Students		8	13	11	16	19
Articling Students		49	51	50	58	52
Support Staff		71	79	72	74	76
Females		164	170	178	191	189
Males		77	72	46	41	35
SIZE OF FIRM IN (PERCENT %)						
Small	(1-10)	45%	39%	42%	51%	42%
Medium	(10-50)	29%	35%	32%	20%	28%
Large	(50 +)	26%	23%	24%	29%	30%

7. The writer notes that in 2011, there has been a 9 (%) percent decrease in calls from small firms and a 8 (%) percent increase in calls from medium sized firms. This is similar to the 2009 break down of calls, based on firm size distribution.

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex/gender, disability, race, religion, age, ethnic origin, sexual orientation, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 55 contacts, (89%) 49 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 20 % associates, 5% partners, 25 % articling students 14 % law students and 36 % support staff; and
- Seven (7) of the 49 complaints (14%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.
- The writer notes that firms are continuing to ask inappropriate questions during the interview process and in the workplace.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the nature of complaints received by the EO:

Based on sex/gender:

- Three women complained that when they approached the law firm when dealing with their issue of maternity leave, it was difficult to get the leave. One lawyer

found she had no job to return to, upon completion of her mat-leave. Generally, there was difficulty in securing the leave for the time the formal policy permitted.

- One female lawyer complained that there was personal harassment and abuse, once the firm became aware that she was pregnant.
- Four female articling students were asked inappropriate questions during the articling process (with regards, to marital status, sexual preferences and whether they planned to have a family).

Based on disability:

- One lawyer complained that when she advised the law firm of her disability, there was no accommodation, and there was harassment. The complaint consisted of the firm not providing her with files and criticizing her work, when she completed her work. This was not the case prior to her discussing her disability.
- One student complained that when the law firm learned about her disability, they did not offer her a position.

Based on race:

- A male lawyer complained about various stereo type jokes and comments being made in the workplace.
- One female lawyer associate complained that she was asked inappropriate questions about her race and marital status during a job interview by a law firm.

Based on personal/workplace harassment:

- One female lawyer associate complained that she was verbally abused in front of junior staff and associates as to her skills. On various occasions, the senior lawyer humiliated her and did not give her any constructive feedback. He only spoke about her work in front of other staff and lawyers.

SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	SERVICES PROVIDED:
LAW FIRM	<ul style="list-style-type: none"> • Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	<ul style="list-style-type: none"> • Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. (Please note, the EOP was asked in this 2010 period to provide, on two occasions in-person/informal type of mediations). • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.

GENERAL INQUIRES	Providing the inquirer with information about the: <ul style="list-style-type: none"> • EOP mandate • Services offered by the EOP • a information seminar • on the EOP • Reporting and statistics gathered by the EOP
CALLER (outside Mandate)	<ul style="list-style-type: none"> • All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

C. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION					
Issues addressed	2007	2008	2009	2010	2011
1. Information direction or referral:					
a) General Information:	25	27	24	30	24
b) Office Policy Concerns:	16	13	14	16	15
2. Discussion/Request:					
a) Article, Training or Presentation	37	28	26	14	21
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	20	21	17	24	20
b) Racial	16	13	12	14	14
c) Disability	21	17	16	10	10
d) Sexual Orientation ¹	n/a	n/a	0	0	4
Harassment:					
a) Sexual harassment:	62	64	59	60	55
b) Workplace harassment:	43	40	37	38	37
Specific Policy Concern:					
a) Maternity leave policy:	21	17	18	15	13
b) Other policies:	6	2	1	2	1

Inappropriate questions asked in the interview process ² :	6	9	10
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¹ New Category-2009

² New Category in 2010

MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.
2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.
3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations, which have a high number of paralegal/legal assistants as these groups are in need of the Program and the EOP is continuing to consider options to enhance the awareness of the Program.
4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, WLF/CBA, Interlock, University of Victoria and University of British Columbia (law school).

D. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing support on education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed at events and upon request.
2. The educational engagements at which the Program was discussed and brochures distributed:

- Benchers Bulletin Information Article;
- Brochures distributed at the LEAF Breakfast;
- Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
- Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;
- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and U of VIC; and
- Attended a number of the Benchers Meetings, so as to be available to meet with the Benchers, as requested

OBJECTIVES ACHIEVED DURING 2011

1. The following are the objectives achieved by the Equity Ombudsperson in 2011:
 - To raise awareness of the Equity Ombudsperson Program;
 - To provide general support/ education to the legal profession in British Columbia about respectful workplace issues;
 - To receive and handle individual concerns and complaints about discrimination and harassment;
 - To provide consultation on workplace policies and initiatives, as requested;
 - To continue to disseminate the Equity Ombudsperson informational brochure;
 - To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;
 - To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.
- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.
- To enhance the awareness of the EOP to new and existing Benchers of the LSBC.

E. OUTREACH AND TRAVEL OBJECTIVE:

The EO determined that she would attempt, in each calendar year to ensure that she expanded the physical presence of the Program throughout British Columbia, by travelling to different areas of B.C. During the term of this Report, travel outside the Lower Mainland consisted of only Victoria, Burnaby and Surrey. The EOP reports that the effort and time to attract sufficient attendees in geographic locations, outside of lower mainland have not been successful. The scheduling and availability of lawyers to attend is limited. Accordingly, the EO will be open to travelling to different geographic locations, as they present themselves, and if the budget permits. However, she shall not be actively making efforts to arrange events and opportunities.

Based on the above, the EO determined it was best to use her time and effort to undertake alternative methods of outreach. One initiative taken in 2011 was to focus on Benchers, as means to disseminate information and understanding of the EOP. As the Benchers represent various geographic locations, they could be vital in transmitting information on the EOP to a large group, members of the Bar in all of B.C. and articling students, during student interviews. Preliminary efforts have been made in this regard, and the EO, intends to continue the same in 2012. These outreach initiatives, to date, with the Benchers, in the opinion of the EOP are beneficial. In an informal environment, the EO is able to answer some challenging and uncomfortable questions that Benchers have and also make her more approachable to the Benchers. As the Benchers develop comfort and understanding of the EOP role, they are more able to assist the articling students, who are dealing with issues of discrimination and harassment.

F. COMMENT AND NEW GOAL FOR 2012

I am pleased to report that the EOP was included in the 2012 Bencher Orientation session. It is the EO's opinion that the brief opportunity, which was presented to the EO to speak to the Benchers, will result in greater awareness of the Program among the Benchers, if the same is presented to the EO, on a regular basis. Each Bencher is in contact with numerous lawyers and students, in various geographic locations. It has been the EO's experience, that the EOP has been receiving calls as a result of few of the Benchers, who are well aware of the mandate of the EOP. The EO has been able to assist these Benchers by being a resource to the individual that the Bencher has referred to the EOP. Further, the Bencher has been assisted, in

that he/she has had a resource which they could rely on, in a particular challenging situation. Effectively, the Benchers in question, has been effective in outreach for the EOP, among members of the bar and students, by advising them of the resource.

It is the EOP's objective to further increase this awareness of the EOP in 2012, by the following means: 1) attending various benchers meetings, dinner meetings and other occasions, so as to meet and speak to individual Benchers directly; 2) develop a roster of volunteer lawyers with diverse backgrounds of race, ethnicity, disability and sexual orientation, who would be willing to speak to lawyers, about their experience in constructive ways, to effectively deal with challenges/discrimination based on race/ethnicity /religion, sexual orientation and disability; and 3) work with CLE, to include information on the EOP in their programs and website.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have assisted the EO in the preparation of this Report, specifically, Susanna Tam, Staff Lawyer, Policy and Legal Services, Michael Lucas, Manager, Policy & Legal Services and Adam Whitcombe, Chief Information and Planning Officer.

Presented to the Board on January 2009

G. APPENDIX A

Background

The Law Society of British Columbia (the “Law Society”) launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the “Program”) to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group (“ERG”) was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program “were overwhelmingly satisfied with the way the complaint or request was handled.”

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;
2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;
3. Education: providing information and training to law firms about issues of harassment in the workplace;
4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and
5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

- A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting
- B. A Panel of Independent Mediators would be responsible for: 2. Mediation
- C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;
- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;
- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;
- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;
- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;
- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and
- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.