MOTIONS RESPECTING
LSO STATEMENT OF PRINCIPLES
REQUIREMENT
LAW SOCIETY OF ONTARIO

Notice of Motion made pursuant to section 93 of By-Law 3
[Bencher's, Convocation and Committees]

Notice is hereby given of the following motion
to be made at Convocation on June 13, 2019

That:

Convocation repeal the requirement that it approved on December 2, 2016 that every licensee
adopt and abide by a statement of principles acknowledging their obligation to promote
equality, diversity and inclusion generally and in their behaviour towards colleagues,
employees, clients and the public.

May 23, 2019

Mover

[Signature]
Murray Klippenstein

Seconder

[Signature]
Cheryl Lean
LAW SOCIETY OF ONTARIO

Amended Motion made pursuant to section 93 of By-Law 3
[Bencher, Convocation and Committees]

Notice is hereby given of the following motion to be made at Convocation on June 27, 2019

WHEREAS Convocation approved a series of recommendations outlined in the report to Convocation on December 2, 2016 titled Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions intended to promote and enhance equality, diversity and other anti-discriminatory initiatives by the legal profession in Ontario;

AND WHEREAS a motion dated May 23, 2019 has been brought before Convocation to repeal recommendation 3(1), namely a mandatory requirement that all licensees adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;

AND WHEREAS it is of critical importance to the public interest in Ontario that all licensees acknowledge their special responsibility to respect the requirements of human rights laws in force in Ontario, and, specifically to honour their obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability as set out in Rule 6.3.3-1 of the Rules of Professional Conduct and 2.03 of the Paralegal Rules of Conduct;

IT IS MOVED THAT the motion now before Convocation be amended to read as follows:

Convocation repeal requirement 3(1) that it approved on December 2, 2016, and replace it with a provision that:

(a) all licensees be encouraged to voluntarily adopt their own personal and private Statement of Principles on how to best advance the goals of equality, diversity and inclusion in the legal profession and elsewhere;

(b) the Society provide a section in the lawyer annual report and the paralegal annual report in which any licensee may choose to disclose that they have voluntarily adopted a Statement of Principles; and

(c) the Society shall provide Convocation with an annual tally of the number of licensees who chose to make such disclosure.
June 5, 2019

Mover

Joseph Green

Seconder

__________________________________________
Teresa Donnelly
June 5, 2019

Mover

Joseph Groia

Seconder

Teresa Donnelly
Correspondence Received by the Law Society
June 6, 2019

To All Benchers of the Law Society of Ontario

Dear Sir/Madam,

Re: 2019 Law Society Bencher Election

I am writing to you on behalf of the Executive and Directors of the Toronto Lawyers Association. The TLA has approximately 3,000 active members, and it represents the interests of lawyers from all practice areas across the City of Toronto. The TLA is also a founding member of the Roundtable of Diversity Associations (RODA).

We understand that at the upcoming Convocation on June 27, 2019, there will be two motions debated that address the future of the Statement of Principles – the first being a motion to repeal the SoP requirement, and the second being a motion to amend the first motion and replace the mandatory SoP requirement with a provision encouraging all licensees to adopt their own Statement of Principles on how to best advance the goals of equality, diversity and inclusion in the legal profession and elsewhere, which licensees may disclose in their annual report to the Law Society.

While the Toronto Lawyers Association was in favour of the mandatory SoP initiative from the outset, it endorses the amended motion. We understand that other members of RODA also support the amended motion, and we stand in unity with them. Accordingly, the TLA strongly encourage you to vote in favour of the amended motion.

We appreciate that many licensees are of the view that the Law Society overstepped its regulatory mandate with the imposition of a mandatory obligation to adopt a statement of principles. However, the motivation for the adoption of the SoP requirement was, in our view, well placed.

Just as Ontario’s citizens have become increasingly diverse over the past half century, so too have the newer cohorts of graduates from the country’s law schools and paralegal college programs. Despite the changing make-up of those entering the profession, there can be no doubt that there are very real barriers to racialized and other equity-seeking licensees obtaining admission to, and then participating in the profession to their fullest ability. Many are leaving the legal profession entirely, and we are the poorer for the loss of their talents, insights and diversity of perspectives and world-views.

The Law Society has taken a leadership role in advocating for a cultural shift. It has recognized that there is a systemic problem, and it has brought the issues of racism, workplace harassment, isolation, and other forms of discrimination into the forefront of the profession’s mindset. It has created much-needed education and awareness campaigns to move established members of the profession away from an attitude of complacency. The TLA views the Law Society’s initiatives as
essential programming, which are entirely in accord with its overarching responsibility to ensure that all licensees meet the requisite standards of professionalism. More importantly, taking active measures to establish and maintain a diverse profession is key to facilitating access to justice for all Ontarians, and to protecting the public interest. These duties of the Law Society are best achieved by ensuring that the members of the profession are reflective of the public they serve, and that they can provide accessible legal services to everyone.

As a profession, we need to do better to create a welcoming environment for all licensees. As the legal profession, we need to set the example of enforcing and upholding human rights and equity legislation. As people living in a civil and democratic society, we need to embrace and support everyone in, or who seeks to join, the ranks of the legal community.

Maintaining a voluntary Statement of Principles is the very least we can do to convey to racialized and equity seeking licensees that the door is open, and that they are welcomed as vital and essential members of this esteemed profession.

Yours very truly,

Margaret L. Waddell
President
Toronto Lawyers Association

cc. RODA
June 12, 2019

Convocation
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation:

Re an Open Letter on the History of Equity Initiatives at the LSO and a Call for Consultation on the Statement of Principles

On May 23, 2019, notice was given for a motion at Convocation on June 27, 2019 to repeal the requirement for every licensee to adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity, and inclusion.¹ On June 4, 2019, notice was given to amend this motion in order to repeal and replace this mandatory requirement with voluntary provisions.² The Equity Advisory Group (EAG) writes to Convocation to urge you not to rush a vote without consultation and to remind you of the Law Society’s history.

Lawyers and paralegals have engaged in consultation with the Law Society of Ontario (LSO) for decades in promoting equity and diversity initiatives.³ If the will of Convocation is to better serve the public interest by repealing the statement of principles, we urge Convocation to consult with the professions and ensure that licensees are part of the process throughout this transition. The amendments to the motion are a reasoned attempt to maintain balance and preserve the statement of principles, but we urge you to consider the right course of action: consultation. The history laid out in the following letter deserves more than a rushed vote.

¹ Notice of Motion: https://lawsocietyontario.azureedge.net/media/lsociety/media/about/convocation/2019/motion-klippenstein-may-23-2019.pdf
² Amended Notice of Motion: https://lawsocietyontario.azureedge.net/media/lsociety/media/about/convocation/2019/motion-to-amend-groia-june-4-2019.pdf
³ In this letter the Law Society’s new name is used interchangeably with its old name, the Law Society of Upper Canada, even in the context of historical references.
The Bicentennial Report

In 1997, the LSO celebrated its bicentennial and the 100th anniversary of the admission of its first woman member. In honour of these events, the “Bicentennial Report and Recommendations on Equity Issues in the Legal Profession” (Bicentennial Report) was prepared to review the work done by the LSO over the previous decade and provide recommendations to guide the LSO’s equity mandate for the years ahead.

The Bicentennial Report began with the recognition that like most institutions grappling with equality, the LSO’s first challenge came from a critical mass of women joining the profession in record numbers during the period of 1975-1990. Women began identifying a range of issues and barriers affecting their ability to perform to their maximum potential in the workplace. Through research and consultation, hurdles faced by women were brought to the attention of the profession and the doors were opened for other equality-seeking groups to raise their own experiences of discrimination and harassment.

In 1997, the Bicentennial Report noted:

3. Men and women from all backgrounds and career stages came forward, identifying barriers they faced in entering and remaining in the profession. Aboriginal articling students spoke about the struggle to gain acceptance into mainstream legal fields. Lawyers of colour spoke about blatant examples of mistaken identity where clients, judges, and colleagues assumed they were not lawyers because they “didn’t look the part”. Gay and lesbian lawyers described job interview questions designed to elicit information about their health and sexual practices. Lawyers with disabilities spoke about watching themselves disappear as colleagues chose to exclude them from work because it was easier than accommodating their needs. Women explained their difficult choice to leave the profession because their firms couldn’t provide them with a flexible workplace. Men spoke of the

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4 Bicentennial Report and Recommendations on Equity Issues in the Legal Profession, 1997:
5 Bicentennial Report at para 7.
6 Bicentennial Report at para 1.
7 Bicentennial Report at para 2.
8 Bicentennial Report at para 2.
frustration they felt as they observed the different treatment accorded their colleagues, wives, and daughters.\(^9\)

The Bicentennial Report recognised the voices of lawyers who expressed the shock they felt when confronted with treatment which could only be explained by prejudice and stereotypes harboured by even well-intentioned colleagues.\(^{10}\) Their stories shared a common theme: a desire to be treated with fairness, respect, and dignity:

Many lawyers described the hurt and anger with which they were now scarred – that a profession that stands for truth and justice could perpetuate, through its preservation of the status quo, roadblocks to the full participation of all members.\(^{11}\)

In 1988, the LSO established the Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession, and in 1990, the subcommittee became a standing committee of Convocation.\(^{12}\)

In 1989, Convocation appointed a special committee to study and make recommendations as to whether the Law Society should establish a program to encourage and assist persons from minority groups that were under-represented in the legal profession.\(^{13}\) In 1991 a rule was added to the *Law Society Act* setting out the mandate and creation of the Equity in Legal Education and Practice Committee (“the Equity Committee”).\(^{14}\)

The Equity Committee addressed discrimination on the basis of personal characteristics other than sex and family status. Its membership included benchers, government representatives and members of the bar including Black and Aboriginal student associations, the Law Deans, and other stakeholders with an interest and commitment to equity in the legal profession.\(^{15}\)

In 1996, the committees were restructured and the Women in the Legal Profession Committee and the Equity Committee were merged into and became the Admissions and Equity Committee.\(^{16}\)

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\(^9\) Bicentennial Report at para 3.
\(^{10}\) Bicentennial Report at para 4.
\(^{11}\) Bicentennial Report at para 5.
\(^{12}\) Bicentennial Report at para 8.
\(^{13}\) Bicentennial Report at para 10.
\(^{14}\) Bicentennial Report at para 10.
\(^{15}\) Bicentennial Report at para 11.
\(^{16}\) Bicentennial Report at para 12.
This move was seen by some equality-seeking representatives as a falling away from the LSO’s commitment to seek equity in the legal professions; the merger was thus supported by some benchers on the condition that a full-time staff person would be employed to deal with equity and gender issues. At the same time in 1996, the Treasurer appointed an Equity Advisory Committee to act as an expert resource on equity issues facing the profession.

The Bicentennial Report summarised various reports, studies, surveys, and audits conducted at the Law Society in the period of 1987 to 1997. The Report also noted that on three occasions over the period of 1989 to 1996 the LSO expressed its commitment to advancing equity and diversity within the legal profession.

In 1991, Convocation adopted a Statement of Policy with 14 principles, including:

(i) The Law Society of Upper Canada is responsible for governing the legal profession in the public interest. Matters which relate to the professional careers of lawyers and their personal well-being inevitably affect the public interest; they are matters which have a direct impact upon the quality of legal services in Ontario. The Law Society has a responsibility to undertake research and to provide leadership in these areas.

(v) Where there is evidence of significant dissatisfaction with the practice of law among members of the profession, the Law Society has a responsibility, both to the public and to its members, to study the issue and to propose solutions.

(vi) The Law Society has a responsibility to work towards the amelioration of conditions within the profession which lead to dissatisfaction with the practice of law.

(xi) the Law Society endorses the principles of the Human Rights Code, 1981, and accordingly affirms that every member of the Society has a right to equal treatment with respect to conditions of employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

(xii) The Law Society acknowledges that there are members of the profession, particularly women, who perceive themselves or their colleagues to be subject to discrimination. The findings of the [Transitions Report] lead the Law Society to conclude that discrimination

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17 Bicentennial Report at para 12.
(whether it be individual or systemic, intentional or unintentional) continues to exist within the profession.

(xiii) Lawyers have a responsibility to take a lead in eliminating discrimination. The Law Society will intensify its efforts to eradicate discrimination in the profession. [emphasis added]

In 1995, Convocation adopted the following **Statement of Values**:

The Law Society of Upper Canada declares that the legal profession in Ontario is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status or sexual orientation.

In 1996, Convocation adopted three recommendations from the Equity Committee (with respect to the Report of the Commission on Systemic Discrimination in the Ontario Criminal Justice System). The first recommendation was:

1) To approve in principal the Law Society’s commitment to combatting racism and systemic discrimination.\(^{21}\)

In 1996, the LSO conducted a follow-up study of over 1,500 lawyers over a 6-year period the results of which were reported in a document titled “Barriers and Opportunities Within Law: Women in a Changing Legal Profession” (the Barriers and Opportunities Report).\(^{22}\)

The Bicentennial Report concluded that the Barriers and Opportunities Report “once again confirmed the existence of systemic discrimination and inequality within the legal profession”.\(^{23}\)

Between 1986 and 1991, the Bicentennial Report recognised that the total estimated “visible minority” population in Canada had increased by 58% and that by 2006, visible minorities were expected to make up one-sixth of Canada’s total population.\(^{24}\) The Bicentennial Report noted that despite the LSO’s commitments and changes to policy, “all the information received to date

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\(^{21}\) Bicentennial Report at para 28.
\(^{22}\) Bicentennial Report at paras 30-32.
\(^{23}\) Bicentennial Report at para 58.
\(^{24}\) Bicentennial Report at para 63.
indicates that members of our profession continue regularly to face barriers because of personal characteristic unrelated to competence”.25

After assessing the Law Society’s role and responsibility in the advancement of equity and diversity as the governor of the profession in the public interest, the Bicentennial Report provided 16 Recommendations for the Law Society to adopt, including recommendations to actively promote, fund, and study current and future equity and diversity initiatives.26

In May 1997, the Law Society unanimously adopted all 16 Recommendations in the Bicentennial Report and they have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.27 The adoption of the Bicentennial Report led to a series of systemic changes to promote equality and diversity, including the creation of the Equity and Aboriginal Issues Committee (EIAC) (a standing Committee of Convocation), the LSO’s Equity Initiatives Department with five permanent staff members and one articling student, and the Equity Advisory Group (EAG).28

In 1998, the LSO established the Discrimination and Harassment Counsel (DHC) program to provide services aimed at enabling and supporting individuals who believe they have been discriminated against and/or harassed by a lawyer.29

**The Stratcom Report**

The Bicentennial Report led to a significant legacy of research and policy ad the LSO.

In September 2011, the LSO identified the priority to “consider the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms”.30 As a result, Convocation created the Working Group on Challenges

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25 Bicentennial Report at para 70.
26 Bicentennial Report at paras 70-113.
28 Equity September 2014 Report at paras 2-4.
29 Equity September 2014 Report at para 5.
Faced by Racialized Licensees. Under the direction of this Working Group and managed by the LSO’s Equity Initiatives Department, Stratcom Communications Inc. (Stratcom) was hired to design and conduct research to identify:

- challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;
- factors and practice challenges that could increase the risk of regulatory complaints and discipline; and
- perceptions of best practices for preventive remedial and/or support strategies.

Stratcom’s final report was dated March 11, 2014 and was titled “Challenges Facing Racialized Licensees” (Stratcom Report). For the purposes of their research and throughout their report, Stratcom defined “racialized” as follows:

Racialized expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chines, East-Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g. Iranian, Afghan) persons.

The Stratcom study had a mixed method design, which means it was comprised of both qualitative (interviews/focus groups) as well as quantitative (survey) methods.

Between May 24 and June 24, 2013, the Stratcom research team conducted 20 key informant interview with a total of 27 individuals, three of which self-identified as non-racialized. These anonymous key informants were selected under the direction of the Working Group and the Equity

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31 Stratcom Report at page 1.
32 Stratcom is a consulting firm that specialises in the creation and implementation of campaigns, political polling, engagement and targeting strategies, and large-scale donor based fundraising programs for non-profit sectors. Stratcom identifies its clients to include small grass roots organisations to large international NGOs and charities. See: http://www.stratcom.ca/about-us/
33 Stratcom Report at page 1.
34 Stratcom Report at page 1.
35 Stratcom Report at page 2.
36 Stratcom Report at page 3.
Many of these informants came from LSO stakeholder groups such as the Canadian Association of Black Lawyers (CABL) and the Federation of Asian Canadian Lawyers (FACL). In May 2013, the LSO invited lawyers and paralegals in good standing who self-identified as racialized to participate in focus groups from June 19 to August 15, 2013, in Toronto, Ottawa, and London. An initial group of 503 online volunteers were distilled to approximately 115 qualified individuals. In addition, a pair of focus groups were held with 13 non-racialized licensees recruited from among a subset of online focus group volunteers. These focus groups discussions were guided by a series of thematic questions based on the insights of the key informants in order to test their validity in the experience of lawyers and paralegals.

Through the focus groups, Stratcom sought a deeper analysis of the claims made by the key informants. The focus group participants offered an overarching narrative of the extent to which racial identity was a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals. Stratcom noted that participants recounted a variety of experiences including experiences where racialized status was a positive factor in finding employment. More frequently however, participants described experiences in which the challenges of racialization appeared as barriers to entering practice, finding and maintaining secure employment, career advancements, and a competitive disadvantage in relation to their non-racialized colleagues. The report noted:

Descriptions of the challenges of racialization ranged from being on the receiving end of cultural stereotyping or explicit racial discrimination, to accounts of how systemic barriers operate through law school, articling, recruitment, and advancement. [...] The fact that cause and effect is often ambiguous or hidden does not render the challenges associated with racialization less pervasive or less serious.
As a young paralegal observed, after recounting an extremely damaging experience with overt racism in a job training placements, he had come to see his own racialized status as a factor potentially at play in every situations: “You always wonder about it”.47 [emphasis added]

Stratcom considered “literally hundreds” of examples of discriminatory behaviours, language and assumptions that were common features of everyday professional experiences. 48 They noted that focus group participants frequently described the types of discrimination they encountered as “subtle, “hidden” or “layered”, many also describing overt racism, “in almost every group one or more participant was moved to tears or anger in describing such an experience”.49

Many racialized licensees also described experiencing of being alienated from the dominant culture of firms or companies.50 Participants noted that common features of the dominant (non-racialized) culture, such as social drinking, playing golf, going to the cottage, watching hockey, all represent points of contact, interaction, and social solidarity for their non-racialized colleagues, but reinforce their own feelings of isolation and “otherness”.51

Stratcom noted that the experiences of being out of place in one’s surroundings also extends to the courtroom.52 Racialized lawyers shared experiences of being mistaken as interpreters or as clients when representing non-racialized clients.53

The focus groups results demonstrated to Stratcom that racialization intersects with a wide variety of other factors.54

The intersection of these and other factors – age, sexual orientation, disability, geographic location – yields an incredibly complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization. […] The intersection of race and gender multiplies the challenges for women.55

47 Stratcom Report at page 11.
48 Stratcom Report at page 11.
49 Stratcom Report at page 12.
50 Stratcom Report at page 13.
52 Stratcom Report at page 14.
54 Stratcom Report at page 14.
Stratcom noted that there were numerous degrees of being made to feel excluded. Both racialized and non-racialized licensees reported feeling discriminated against for a variety of factors including gender, age, and membership in an invisible minority (LGBT, Jewish) as “factors that they felt represented challenges to entry and advancement comparable to the challenges that might be associated with racialization”.

The final phase of the research project was an online survey advertised to all members of the LSO in good standing. The survey was comprised of 35 questions, required approximately 25 minutes to complete, and was completed by a total of 3,296 licensees.

Stratcom reported that the research design of their study focused on the experiences of racialized licensees and took into account the perceptions of non-racialized licensees with respect to their entry into practice and career advancement; “Insight into the experiences of the whole population is critical for contextualising, and understanding, the experiences of racialized licensees in particular”.

At the end of an extensive 78 page report, Stratcom concluded:

Findings of the survey research demonstrated the extent to which racialization establishes a measurable constellation of career challenges for racialized licensees that are distinct from those of their non-racialized colleagues: challenges that are rooted in their racialized status as well as many related challenges that are compounded and amplified as a consequence of the racialization process. In comparison with their non-racialized colleagues, racialized licenses and specific sub-groups, encounter qualitatively more severe challenges during and after entry into practice, yielding measurably greater negative impacts throughout their careers.

As noted in this report not all non-racialized licensees acknowledge the significant and unique challenges associated with the process of racialization. However, one important finding, highlighted in the survey phase, was that a strong majority of non-racialized licensees recognise that “racialization exists”, that the challenges faced by racialized licensees have negative consequences for the legal professions and the public, and that pro-active measures are called for to enhance inclusiveness. Results reported in Section 7 demonstrate a substantial overlap across the racial divide, reflected both in shared opinions regarding the value, scope and direction of change, as well as endorsement for specific
measures to address the challenges of racialization and make the legal professions more inclusive.

The methodology and findings of this research will provide the basis for further targeted exploration of the issues associated with the challenges of racialization encountered by specific groups, career stages and practice environments. It is hoped that these results will also lend support to the ongoing effort to design and implement practical measures to reduce the challenges associated with racialization and promote inclusiveness within the legal professions.61 [emphasis added]

The Challenges Report

The Stratcom Report was one of the foundations for the “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions – Challenges Faced by Racialized Licensees Working Group Final Report” (the Challenges Report).62

The Challenges Report included 13 Recommendations which were all adopted by Convocation in December 2016.63 The Statement of Principles was contained in Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices.

The Challenges Report was the final stage of a lengthy consultation process.

In 2012, the LSO created the Challenges Faced by Racialized Licensees Working Group (the Challenges Working Group) to identify challenges faced by racialized licensees and design preventative, remedial, enforcement, regulatory and/or support strategies for consideration by EIAC and other committees to address these challenges.64

In April 2014, EAG provided submissions to the draft Challenges Report and continued to remain engaged with the Challenges Working Group.65

61 Stratcom report at pages 77-78.


64 Challenges Report at page 12.

In 2014, Convocation approved the Challenges Working Group’s Consultation paper (following an engagement process) and between January and March 2015, the Working Group consulted with over 1,000 lawyers, paralegals, law students, articling students, and members of the public. The Challenges Working Group also received written submissions from 45 individuals and organisations.

As a result of its consultations, the Challenges Working Group identified three objectives:

1. Inclusive legal workplaces in Ontario;
2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Challenges Working Group promoted 13 Recommendations in order to meet these objectives.

Recommendation 3 recognised that employers and employees in legal workplaces have obligations under the Human Rights Code but licensees have additional professional obligations with respect to human rights established by the Rules of Professional Conduct and the Paralegal Rules of Conduct. To ensure consistent implementation as well as the changing realities of legal workplaces (such as in-house counsels), Recommendation 3 was flexible enough to minimize unnecessary burdens and recognise that many workplaces have already moved forward proactively with equality measures on their own. Licensees were free to tailor Recommendation 3 to their specific contexts.

At its core, the Statement of Principles stemmed from section 4.1 of the commentary under section 2.1-1 of the Rules of Professional Conduct which reads:

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66 Challenges Report at page 12.
67 Challenges Report at page 12.
70 Challenges Report at page 28.
71 Challenges Report at page 29.
72 Challenges Report at page 29.
A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.  

Similarly, section 2.03 of the Paralegal Rules of Conduct states “the principles of the Ontario Human Rights Code and related case law apply to the interpretation of this rule [the rule on Harassment and Discrimination]”.  

The Statement of Principles “comply or explain” approach was modeled after the practice of organisations such as the Ontario Securities Commission (OSC) which required:

“companies regulated by the OSC to disclose the following gender-related information: the number of women on the board and in executive positions; policies regarding the representation of women on the board; the board or nominating committee’s consideration of the representation of women in the director identification and selection process; and director term limits and other mechanisms of renewal on their board. The OSC requires companies to either report their implementation or consideration of the items listed above, or to explain their reasons for not doing so.”

**Institutional Racism/Discrimination and Rushing the Vote**

The Bicentennial Report was adopted 22 years ago. The statement of principles and the Challenges Report are the product of decades of consultation and reform by the Law Society.

Dr. Kwame McKenzie, psychiatrist, CEO of the Wellesley Institute, and a recent speaker at the LSO, provides a way of rethinking the definition of institutional racism:

One lesson learned from the work in the UK is that the issue of whether disparities are caused by individual racism or institutional racism is difficult to avoid. Even if you say institutional racism is institutional that is not necessarily how it lands. People get upset and that can sidetrack progress. Any definition needs to work out how to deal with the “are you calling me racist” problem.

Another lesson is that the issue of intent is difficult to sidestep. Though the definition may say intent is not required, racism is such a touchy issue that people want to identify

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74 Challenges Report at page 30.
organizations that mean to be discriminatory and to punish them. They want to understand where the racism lies and show who is at fault, and hopefully show that their organization is not.

Last, a definition that requires, or seems to require, an analysis of cause can lead to problems. Measuring the mechanisms, or the causes of a complex issue such as structural racism, can stop progress through introspection and investigation instead of action to decrease disparities. [emphasis added]

Dr. McKenzie and the Wellesley Institute developed a simple definition that is worth embracing:

- Institutional racism is an ecological form of discrimination.
- It refers to inequitable outcomes for different racialized groups.
- There is a lack of effective action by an organization or organizations to eradicate the inequitable outcomes.

This definition aims to move away from the paralysis caused by identifying the causes of racism. It moves away from questions about whether there was intent to discriminate. And it focuses on action to decrease racism in the here and now. Further, it argues that racism in the public services is not about how things were done in the past, it is about what an organization does in the present to deal with racial disparities. **It makes it simple; if you see disparities linked to race and you have no effective plan to decrease them then you have to take responsibility for your inaction. Institutional racism is seeing racial disparities and doing nothing effective about them.** [emphasis added]

Even if you disagree with what is or is not compelled speech, we urge you not to send the message to the professions that all the work done by the Law Society since the 90’s deserves to be abolished through a rushed vote at Convocation without any consultation.

Racial disparities exist and have been demonstrated over and over again. Do something effective about them. Engage with the professions and consult. Do not abolish Recommendation 3 or the statement of principles without a contingency plan. Stand up for the thousands of lawyers who have shared their stories and vulnerabilities with the Law Society.

If you are concerned with constitutional freedoms engaged by the statement of principles, address your concerns through consultation.

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The Equity Advisory Group, its members, and its partner organisations, will participate in the consultation process to repeal, replace, or amend the statement of principles, if that is the will of Convocation.

We look forward to your leadership in this matter.

Yours Truly,

Nima Hojjati

Chair – Equity Advisory Group
June 18, 2019

Diana Miles, CEO
Attn: Treasurer and Benchers
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

RE: CONVOCATION – JUNE 27, 2019
STATEMENT OF PRINCIPLES

The executive summary of this letter is, along with a substantial number of those who voted in the recent Bencher elections, I am opposed to the Statement of Principles (SOP). I have been since initial notice of the SOP set my human rights advocacy senses tingling at the danger inherent in ticking the yes box on the Annual Report.

The SOP is one in a string of actions that cause concern Benchers might have lost touch with being lawyers, as most are, and regulators of the legal profession on behalf of the people and government of the Province of Ontario. Instead, Convocation has in recent years seemed more interested in acting as judges and politicians on behalf of its constituency of 50,000+.

The fifteen members of the Challenges Faced By Racialized Licensees Working Group are commended for their work, along with the effort of the Equity Initiatives Department, and the resulting recommendations in Working Together: Strategies to Address Issues of Systemic Racism in the Legal Profession. The solution to human rights apprehensions for an identifiable community, however, is not the abrogation of the rights of others. It perplexes me that a group of lawyers concerning themselves with human rights of members of the legal profession could arrive at a solution such as the SOP, and more so that a government authorized regulatory body composed mainly of lawyers would be inclined to implement the SOP as a mandatory measure. The SOP is an appropriate recommendation for consideration by members of the profession, perhaps even for exploration in the practise setting. Recommendations are, after all, in the normal course of events, recommendations for broader consideration. But imposition of the SOP is a violation.

When each of us accepted “the honour and privilege, duty and responsibility of practising law” in Ontario, we took an oath to conduct ourselves honestly and with integrity, to “champion the rule of law and safeguard the rights and freedoms of all persons” in addition to observing the ethical standards of our profession. This is a strong commitment, to which the vast majority of lawyers in Ontario adhere, and for which there is a disciplinary process for those who do not.

The compulsory requirement that every member of the law society implement a personal statement of principles acknowledging an “obligation to promote equality, diversity and inclusion generally” or face undefined potential penalty for ticking the no box suggests
Statement of Principles

authoritarian impulse rather than thoughtful professional governance responding to a sensitive situation. We already have an obligation to respect human rights laws, among other laws, and adhere to the Rules of Professional Conduct.

No packaging or redefinition of the word promote could suggest other than an active engagement in advancing concepts undefined and undefinable.

Equality as a concept is elusive and lacks precise definition, according to the Supreme Court of Canada and as acknowledged by the LSO in its guidance on developing an SOP. Diversity and Inclusion carry similar precision to equality in their understanding. Lawyers were left to assess whether to define the undefined in a manner one hoped would comply, if one made the effort at all to draft a SOP, to simply tick the yes box on the promise the SOP would not have to be produced, or to tick the no box with uncertainty as to what the future might hold as a result.

As a profession, we are committed to champion the rule of law and safeguard the rights and freedoms of all persons. It would be only isolated members of the legal profession who would not stand with clients against a mandatory requirement such as the SOP in another public policy or administrative setting. The violation of freedoms of conscience, thought, belief, opinion and expression would be self-evident. The failure to identify consequences for non-compliance would have set alarm bells ringing.

Lawyers are persons. We fit into the category of all persons on whose behalf we committed in taking our oath. We are neither above nor below the law, nor above or below other persons.

This is a situation in which it is best to apply the human rights concept of formal equality, acknowledging freedoms described in the Canadian Charter of Rights and Freedoms, and remove the SOP requirement.

Substantive equality is already required of us by our oath and under provisions of the Ontario Human Rights Code, without the requirement to promote generally the undefined.

Perhaps, it is also time for Convocation to return to the raison d’être set out in the originating legislation for The Law Society of Upper Canada in 1797, “securing to the province and the profession a learned and honorable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution.”

If individual lawyers and law firms are held accountable for the commitments made when each of us was called to the Bar of Ontario, contributions such as Working Together: Strategies to Address Issues of Systemic Racism in the Legal Profession, Respect for Religious and Spiritual Beliefs: A Statement of Principles of the Law Society of Upper Canada, and other reports to the profession will help guide us, without the need for fear-inducing and freedoms violating requirements such as the compulsory SOP. Repeal the Statement of Principles requirement.

Sincerely,

Don Hutchinson
LSO #30700U
The Indigenous Bar Association (IBA) calls upon Convocation to respect and support substantive equality within an ever growing diversified legal profession.

The IBA is a national association comprised of Indigenous lawyers (practicing and non-practicing), legal academics and scholars, articling clerks and law students, including graduate and post-graduate law students and paralegals. We are mandated to promote the advancement of legal and social justice for Indigenous peoples in Canada and the reform of laws and policies affecting Indigenous peoples.

In response to an invitation from the Law Society of Ontario, the IBA fully participated in the initial consultation sessions to address the issue of racialization within the practice of law. In response, the IBA presented a paper to the Law Society outlining our concerns and providing insight on how to best address these issues.

Following these initial discussions our association was further invited to participate in the formation of the Indigenous Advisory Group (IAG) to assist the Law Society of Ontario in its response to the Truth and Reconciliation Commission's Call to Action #27 to require that lawyers receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism. During its June 2016 Convocation, the Law Society acted upon this Call to Action and adopted the Indigenous Framework, developed in partnership with the IAG, to guide this work. We respectfully and thoughtfully participated in this process which was intended to address the reported discrimination and stereotyping currently experienced by Indigenous licensees within the profession.

The findings of the Law Society's study into the challenges faced by racialized licensees speak to the continued negative experiences faced by members of the profession by conduct at the hands of other members of this profession. While Indigenous licensees did not take part in the challenges study, based on a separate study of the Law Society carried out in 2009, it was revealed that 26% of Indigenous lawyers felt that their Indigenous status was a negative factor in their experiences in
the professions and the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.

The findings of the challenges faced by racialized licensees are disturbing and reveal “widespread barriers experienced by racialized licensees within the professions at all stages of their careers”. Examples include discrimination and stereotyping, negotiating concepts of “culture” and “fit”, lack of mentors, lack of networks and lack of role models. Race based barriers are also complicated by additional experiences of discrimination based on gender identity, gender expression, disability, sexual orientation, class and creed. As a profession, we have a responsibility to collectively respond to eradicate the circumstances that contribute to these experiences of Indigenous and racialized licensees.

Moreover, these experiences must be considered within the context of the Rules of Professional Conduct and Paralegal Rules of Conduct that specifically prohibit discrimination and harassment. Specifically, Commentary 4.1 under Section 2.1-1 of the Rules reads as follows:

A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario. (emphasis added).

In order for the justice system to achieve equity, not only must justice be done; it must also be seen to be done by both those who are affected by its decision but also by those who attempt to uphold its principles. As lawyers and paralegals, we have a special responsibility to uphold, with dignity, respect for human rights in Ontario. It was this imperative that gave rise to the Statement of Principles.

To “lead by example” means that we expect Convocation to act in a manner which respects and promotes the Rules of Professional Conduct that bind us all. To this end, we expect the decision of Convocation in 2017 to be respected including upholding the spirit of the 13 recommendations from the Working Together For Change: Strategies to Address Issues of Systemic Racism in the Legal Professions.

It is our understanding that there is a motion before Convocation which will amend the Statement of Principles and no longer make it mandatory for lawyers but rather the Statement will be optional. Unfortunately, Indigenous peoples practicing law in Ontario are not afforded the same luxury of opting out of being racialized.

Amending the existing Statement of Principles is an unwanted compromise. As part of this compromise the IBA calls upon the Law Society of Ontario and the IAG to further discussions on addressing the issue of racialization within the practice of law.
The Law Society of Ontario recently presented a degree of Doctor of Laws, honoris causa (LLD), to Ovide Mercredi, former National Chief of the Assembly of First Nations, at its Call to the Bar ceremony in Ottawa on June 17. During his acceptance speech former National Chief Mercredi provided the following words of wisdom:

“I will share with you my hopes and dreams for a human country that is founded on the values of fairness, inclusion, equality, diversity and the two basic human rights: the right to be different and the right to belong.

....

So as new lawyers, entering an old and established legal institutions of high privilege, can you see any potential for transforming this legal profession and system towards the vision of a country that is kind and just. I hope you do for the alternative, which is to protect the status quo, places all of us in a moral decline.”

The IBA fully endorses the hopes and aspirations of Former Chief Mercredi and calls upon the Law Society to address those principles of fairness, inclusion, equality and diversity which are the cornerstones of basic human rights.

It is unfortunate that the Law Society of Ontario has chosen to stray from the path of equity and inclusion. The IBA is composed of lawyers and paralegals from across Canada who were watching with much interest as Ontario endeavoured to address a systemic issue with proactive policies and concrete measures. Our members are now left wondering what has become of the Law Society of Ontario. We are watching with great interest.

Respectfully Submitted,

Scott Robertson
President, Indigenous Bar Association
srobertson@indigenousbar.ca

Cc/ Dianne Corbiere, Chair, Equity and Indigenous Affairs, Law Society of Ontario
Isfahan Merali, Vice Chair, Equity and Indigenous Affairs, Law Society of Ontario
Chi-Kun Shi, STOP SOP
Elder Henry, Indigenous Advisory Group, Law Society of Ontario
June 20, 2019

Dear Law Society:

I have been a lawyer in good standing in Ontario for 25 years. Since it is now no longer sufficient to identify as a lawyer, but one must also identify as part of separate groups in the oppression matrix, I will also tell you, as irrelevant as these are, that:

- I was born outside of Canada, in a non-English & non-French speaking country
- I am a legal immigrant
- I am non-white
- I am female
- My family includes a transgender person

I view with horror the diversity, inclusion, equity (DIE) agenda that the law society has been pushing the last couple of years, including a requirement that lawyers certify their support for such an agenda and promise to promote it. The requirement is backed up with a veiled threat that our livelihood depends on our agreement with this.

Aside from the fact that the DIE agenda has never been defined, and no one actually knows what they are agreeing with, it is patently obvious to me that loaded terms like “diversity”, “inclusion” and “equity” are never meant to address a problem, but simply constitute a politically expedient measure for people to signal their virtue or to advance radical social change.

The “statement of principles” requirement is breathtakingly dishonest. Just check a box, and you never actually have to write a statement or believe any of it. Thus, by one check mark, the law society can turn the entire legal profession into conforming robots.

I don’t know when I stopped being a lawyer, or a person. The law society views me as a race, a sex, and a victim. The only institutional oppression I have experienced is from the law society. Bencher candidates promoted by the law society sent out election materials that contained not one single word about knowledge, skills and competence, but voluminous paragraphs about “diversity”. The message was clear that people like me would never make it on merit, without the goodwill of virtuous “inclusive” people. You are far too full of yourselves.

Please restore sanity to our profession, and stop dividing us into tribes.

Yours truly,

Grace Pang
Dear Members of Convocation,

Re: How we got here and why repealing the SoP is a betrayal

The Roundtable of Diversity Associations (RODA) is an umbrella organization founded in 2011 that brings together a coalition of 20 equity-seeking Canadian legal associations* with the goal of fostering dialogue and promoting initiatives relating to the advancement of equity, diversity and inclusion in the legal profession, the judiciary, and within the broader legal community. As part of our mandate, we monitor and provide input on policy developments within the profession and legal system.

RODA and its member associations have been bracing for a Convocation vote on the Statement of Principles (SoP) ever since the new slate of Benchers was elected. In fact, two motions have been tabled for the next sitting of Convocation on June 27, 2019, one to repeal the SoP, and the other to make the SoP voluntary. We understand the position taken by some that the SoP is compelled speech and we strongly disagree with that position. The arguments for and against the SoP have already been debated. The decision has been made. If there is further discussion to be had on this topic, it should be why equity-seeking groups see the repeal of the SoP as a betrayal and the reneging by our regulator of its commitment to equity, diversity and inclusion.

By way of background, it is essential to remember that equity-seeking groups and allies have been consistently advocating for equity, diversity and inclusion in the profession for at least the last two decades. The Challenges Faced by Racialized Licensees’ Final Report (Final Report), and its 13 recommendations, passed by unanimous consent in December 2016, was the first time in history that the Law Society of Upper Canada, now the Law Society of Ontario (LSO), took concrete steps towards recognising the existence and addressing the problem of race-based systemic discrimination in our profession. This was subsequently expanded to include all forms of systemic discrimination. The SoP is only a part of one of 13 recommendations contained in the Final Report.

Considerable research, resources and advocacy preceded and culminated in the adoption of this historic report. In September 2011, the LSO first identified the enhancement of diversity within law firms as a priority. Under the leadership of the Challenges Faced by Racialized Licensees Working Group (Working Group), and managed by the Equity Initiatives department at the LSO, the LSO hired an external consultant to:

- identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- identify factors and practice challenges that could increase the risk of regulatory complaints and discipline against racialized licensees; and
- identify perceptions of best practices for preventive, remedial, and supportive strategies.
Following the creation of the Working Group, RODA and representatives of our member associations:

- engaged in the initial community engagement process;
- reviewed the results of the Consultant Engagement Process (contained in the external consultant’s *Stratcom Report* released in March 2014), and provided further input and insight into the challenges faced by racialized licensees. These comments were then integrated into the Consultation Paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, released in October 2014;
- provided comments to the Consultation Paper between January and March 2015 (this consultation process included approximately 12 open-house learning and consultation programs, and meetings with representatives from law firms, legal clinics, banks, government and legal associations, throughout the province);
- reviewed an interim report released in April 23, 2015, *Challenges Faced by Racialized Licensees Working Group – Interim Report to Convocation, April 2015*; and
- demanded in late 2015 that the Working Group account for its delays in framing the recommendations for concrete action items to address the conclusions in the Consultation Paper.

At all stages of the consultation process, the LSO sought input from members of the public. At the end of the consultation process, 13 recommendations were identified in the Final Report in September 2016 - five years after the need was first formally identified by the LSO. These recommendations, of which the SoP was a small but critical part, were the end result of many years of consultations and consensus building amongst Benchers and Bencher working groups with input from the public, equity-seeking groups, the Ontario Bar Association, and other legal associations across Ontario. The recommendations were a consequence of hard-fought compromise and viewed as a "starting point" by RODA and its membership. This was confirmed in a letter RODA penned in November 2016 to the then-Treasurer of the LSO and the chairs of the Working Group.

While the Final Report did not meet all expectations of racialized equity-seeking legal associations, RODA joined other allied associations in advocating that Convocation adopt the recommendations on an omnibus basis. After much debate and discourse, all stakeholders agreed that, to be meaningful, it was essential that all 13 recommendations be voted on as a package. In December 2016, after a long debate, Convocation voted on and passed the 13 recommendations by unanimous consent.

Now, after decades of working towards and achieving a consensus position, this compromise is threatened. RODA is skeptical that our collective voices will be heard. We worry that the consensus position represented in the Final Report will be compromised in its entirety. Benchers must understand the impact of their decision on June 27th and that they risk wiping out two decades of hard work by multiple stakeholders in the profession and throughout broader Ontario society, all of which was crystallized in the Final Report and its 13 recommendations.

Given this background, repealing the SoP is about much more than a debate over “free speech”; it is a reversal of a commitment and the roll-back of progress that raise serious questions about the efficacy of our regulator. The repeal of the SoP would be a betrayal of the consensus-driven recommendations, which were seen by equity-seeking groups as a baseline that, as a package, were deemed essential to begin to address issues of inequity in the profession.
Ultimately, RODA and its membership want to see a renewed and continued commitment from the Benchers to EDI initiatives, the SoP, and the balance of the recommendations. This is not a time for fracturing or regression. We have our work plan laid out in front of us and there is much work to be done.

Sincerely,

Dina Awad, Chair
Adrian Ishak, Vice-Chair
Jayashree Goswami, Immediate Past Chair
Lai-King Hum, Past Chair
Miriam Young, Founding Chair

**Membership of Roundtable of Diversity Associations:**
Arab Canadian Lawyers’ Association
Association of Chinese Canadian Lawyers of Ontario
Canadian Association of Black Lawyers
Canadian Association of Muslim Women in Law
Canadian Association of Somali Lawyers
Canadian Association of South Asian Lawyers
Canadian Hispanic Bar Association
Canadian Italian Advocates Organization
Canadian Muslim Lawyers Association
Federation of Asian Canadian Lawyers
Hellenic Canadian Lawyers Association
Indigenous Bar Association
Iranian Canadian Legal Professionals
Korean Canadian Lawyers Association
Macedonian Canadian Lawyers Association
OBA Sexual Orientation and Gender Identity Law Section
OBA Equality Committee
South Asian Bar Association
Toronto Lawyers Association
Women’s Law Association of Ontario
6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

[Amended - June 2007, January 2014]

Commentary

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

[3] Rule 6.3.1-1 will be interpreted according to the provisions of the Human Rights Code (Ontario) and related case law.

[12] Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Human Rights Code (Ontario) requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

[13] A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.
Dear Mr. Varro,

As I understand that Convocation will be considering repealing of the LSO’s statement of principles, I would like to include my views for the Benchers’ consideration, and for the record.

When I think back to my experiences as a child in Iran, and after having immigrated to Canada, it is these exact discussions which in my mind distinguish Canadian society from so many other places in the world. So I appreciate the passion that the Benchers and our profession are bringing to this debate, and the vote on this issue on June 27th.

However, I think it is important to highlight that some (or perhaps many) who oppose the statement of principles are doing so only a principled stand. And I come to this view both as an immigrant, and as a person who witnessed firsthand what these inherent biases in our profession can look like, during the articling interview process several years ago.

The committees report which preceded the adoption of the statement of principles relies on research methodology which seemed lacking at best and perhaps even finding-oriented. Assuming that the report’s findings are scientifically defensible and statistically correct, the crux of my problem with the statement of principles is that it amounts to forced speech on an ideological viewpoint - forced speech that actually does nothing to materially advance equality in our profession, province or country. Those who hold opposing views could continue to do so simply by having a piece of paper in their desk drawer. But aside from being merely lip service to a problem (assuming that the methodology used by the LSO to consult members in the profession was sound), there are other problems that the statement of principles gives rise to.

Personally I value equality and diversity. I think it makes us stronger, and allows for better, more creative solutions to problems. People come from different life experiences, and these inform their perspective and world view. By all accounts, having a broad set of perspectives is positive for literally every single undertaking. However, I will admit that this is viewpoint may not necessarily be held by every single lawyer in the province. And this being Canada, those viewpoints may not be smothered through quasi-government action, but instead allowed to play out in the marketplace of ideas. I’m sure they will fail, but not but a measure of forced speech tied to the ability of lawyers to earn a livelihood. This is not, in my view, how we bridge these cultural and racial divides. Again, I go back to my experience as an immigrant and the appreciation of how critical freedom of speech and the promotion of the marketplace of ideas is to our free and democratic society.

Now, some in our profession may be concerned whether this marketplace of ideas can be used as cover for racist or discriminatory practices. I would suggest that it can’t for two reasons. Firstly, we have the Ontario Human Rights Code. Secondly, we have our professional conduct obligations. So if conduct is exclusionary or racist on the basis of immutable personal characteristics, then we already have a process to deal with that conduct.

Additionally, by imposing the statement of principles, how could those in our society who might be accused of discriminatory conduct have any faith that they could receive legal representation that would actually represent their best interests? Imposing the statement of principles because we like the ends, undermines the ability of every single member of the public – and that includes the victims – to benefit from the perception that their legal representative would advocate for their beliefs. The corollary would not be true however, if we didn’t have the statement of principles. What I mean by this is that everyone in Ontario could find legal representation that aligns with their world view, even though they may have to shop around a bit. As abhorrent as the views of people likes Ernst Zundel may be, such people must have access to fair legal representation for the sake of maintaining our democracy, and we don’t get that when every lawyer in the province is forced to sign up to the statement of principles – which would actually be breached when a lawyer represents someone like Zundel.

Imposing the statement of principles has laudable ends, but in its path it undermines the rights of certain individuals either with regards to their own free expression (lawyers), or their ability to get fair legal representation (accused persons). If we were to repeal the charter because we didn’t like that all the criminals were getting away without a trial due to the Jordan

1
decision, that is also a laudable end. However, in the process, we would trample on the rights of accused persons in our society, and ultimately our society would be worse off. The imposition of the statement of principles to accomplish certain social goals is as offensive to me as the repealing the charter to accomplish other social goals.

What I will say has been positive about the statement of principles is that it caused a significant discussion in our profession. Although, I was disappointed to see the low voter turnout for the LSO election with such a critical issue being debated among the candidates! But that is the marketplace of ideas for. In light of the low voter turnout, and the proportion of people who opposed this initiative compared to those ostensibly supporting it, I would again highlight that the research methodology used to arrive at a finding that systemic racism exists in our profession was likely flawed.

Lastly, while I oppose the statement of principles, I believe that the education component about these issues is something that could be maintained if we wish to continue these discussions and uncover genuine systemic racism and inherent bias.

I hope that on June 27th, you will consider voting for a resolution that:

1. Immediately repeals the mandatory statement of principles;
2. Maintains the CPD hour requirements for the time being; and
3. Commences an unbiased, research driven analysis of what, if any, the extent of racism in our profession may be.

It is critical that the Benchers approach this matter with calm objectivity, informed by evidence based-research. Otherwise the days of self-regulation for the legal profession in Ontario are likely numbered.

Thanks again for your time and for sharing my submissions with Convocation.

Ehsan T. Monfared
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June 21st, 2019

Attention:
Law Society of Ontario

Re: Convocation June 27th, 2019

Dear Sir:

Please find attached my comments with respect to the upcoming motion to repeal the Statement of Principles. This was in response to the stated question on the Annual Report for 2019, indicating whether I would sign the Statement of Principles. I wish Convocation to consider my written submission at the upcoming motion to repeal said SOP.

Yours truly

Paul de Groot
Barrister and Solicitor
S3 - Q 11 e):
Seminars, discussion groups.

S3 - Q 13):
I find it very troubling that I am asked to declare such a thing. Ironically, having worked in the "trenches" of criminal law the last two decades, I have on a daily basis practiced exactly what this statement of principles is calling for: I have dealt with thousands of accused, covering every conceivable ethnic group, religion, sexual orientation, and disability across all age groups. I have treated each and every one of them exactly the same, devoid of any discrimination whatsoever. I cannot count how many times accused people of every imaginable stripe have come up to thank me profusely for my efforts in representing them, obtaining them bail, etc. I hardly recall any examples of discrimination being mentioned. From my substantial experience in the criminal courts, the main issues are not ones of diversity and inclusion, but rather economic inequality and mental health. It is invariably these two factors which have had the greatest impact on defendants, and are most likely to land them in the justice system in the first place. It is these areas that the Law Society should be focussing on in my opinion.

Similarly, with my colleagues, I routinely interact with lawyers and Judges of all ethnic groups as well as sexual orientation. I have abided by my own internal statement of principles for all of my legal career. As a white South African expatriate I am more sensitive than most to exactly the type of damage racism can cause to a society. It is for these reasons that I am acutely aware of the disproportionate impact that the criminal justice system can have on racialized groups, particularly blacks and Indigenous people. It is for this reason that I advocate vigorously on their behalf. Signing onto a declaration of principles would do nothing to enhance or detract from my stance.

Although it would be very easy just to tick yes to get it over with, (as many if most have not done already) it is for the conscientious reasons noted above that I do not do so. As with many other lawyers who have expressed their dissatisfaction with this compulsion, I register my disagreement with the idea of forcing someone to express agreement with principles they in fact wholeheartedly endorse and implement on a routine basis.
Diana Miles, CEO  
Attn: Treasurer and Benchers  
Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6  
via email: dmiles@lsso.ca, lawsociety@lsso.ca  

June 21, 2019  

Dear Ms. Miles,  
Re: Feedback on the Statement of Principles Requirement  
Thank you for this opportunity to provide feedback on the Statement of Principles ("SOP") requirement.  
I am opposed to the Statement of Principles for a variety of reasons. I voted for a slate of benchers who proposed to end the requirement to sign the Statement of Principles.  

Yours very truly.  

John Lockhart
I'm appalled that the Benchers are even considering maintaining the Statement of Principles (SOP).

*I cannot think of a clearer expression of democracy* than the election of all 22 persons who ran for Bencher on the explicit, one-issue question of repealing the SOP.

Given the result of the election, it would be an absolute travesty for Benchers not to repeal the SOP in the upcoming June 27 vote.

The "Equity Advisory Group" does not represent the profession. It's an appointed group, not accountable to the profession. The profession has spoken.

My view is that the LSO should get back to regulating and discipline, some Practice Advisory and CLE, and that's it. And it should stop trying to tell lawyers what to think. It has been suffering from "mission creep" for decades.

This submission may be released to the public.

David M. Sherman, LLB, LLM
Tax Lawyer & Author
10 Alexandra Wood
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Jim Varro

From: Rob Konduros <robkonduros@outlook.com>
Sent: June 23, 2019 9:58 AM
To: Jim Varro
Subject: The Statement of Principles has got to go

The Benchers and the Treasurer who passed that sorry measure were wrong to do so. Please get rid of it. The LSO is off track and grossly, irresponsibly indebted. Pie in the sky measures like this are an infringement on freedom of thought, are offensive to a society which cherishes free speech, and waste resources.

Stop the silliness. Ditch the SoP.

Rob Konduros

Sent from my BlackBerry 10 smartphone.
Jim Varro

From: Richard Yasny <ryasny@gmail.com>
Sent: June 23, 2019 11:06 AM
To: Jim Varro
Subject: Planned vote to repeal Statement of Principles

Good day, Mr. Varro.

I am writing so that you can communicate my views to Convocation to aid its deliberations on a planned vote to remove the statement of principles and any subsequent vote that may be held to eliminate the new Equality, Diversity, and Inclusion continuing education requirement. I believe both these initiatives should be abandoned and I support the motion to repeal the statement of principles requirement.

The justification for these requirements seems to be the principle under paragraph 2 of section 4.2 of the Law Society Act, requiring the Society to have regard for its "duty to act so as to facilitate access to justice for the people of Ontario."

There is no evidence, that we have been shown, nor any reason to suspect, that Ontario lawyers are turning away paying clients on account of any of the grounds to which these 2 initiatives are directed. Nor is there evidence that qualified candidates are being turned away by law or paralegal firms on the basis of ethnic origin or any other ground targeted by these initiatives. For example, in a 2011 conference on access to justice, involving then Chief Justice of Canada, Beverley McLachlin, and other senior members of the profession, the cost of legal services was the only barrier focused on: Access to justice becoming a privilege of the rich, judge warns.

The problem facing unrepresented litigants in Ontario, as in the rest of Canada and the United States, is cost. These 2 initiatives (the statement of principles and the new EDI requirement) do nothing to address the cost of legal services. They distract lawyers and the Society with a false vencer of remedy. They impose extra burdens on lawyers that, at worst, impair their resources to devote or donate to clients to aid access to justice.

A far more meaningful initiative would be an increase in legal aid. Instead, the Province has cut that. The Society's initiatives do nothing to address that far more powerful impact nor to offer any other practical solution. The initiatives waste the Society's resources and also the profession's.

Yours truly,

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June 21, 2019

Re: The Law Society of Ontario – Preserving the Statement of Principles

We are lawyers, paralegals, and law students in the Province of Ontario and we are committed to equality, diversity, and inclusion in the legal profession.1 We write today regarding the motion to repeal Recommendation 3(1) of the Challenges Faced by Racialized Licensees Working Group’s Final Report, better known as the Statement of Principles (the “SOP”). It is our hope that you will vote to preserve the SOP by voting in favour of the amendment to designate the SOP as a voluntary, as opposed to mandatory, requirement for licensees.

Briefly, the SOP is a requirement for all Law Society of Ontario (the “LSO”) licensees. It is a written, individualized statement acknowledging an obligation to promote equality, diversity, and inclusion generally, and specifically in our behavior towards colleagues, employees, clients, and the public. In 2017, 98% of licensees complied with this requirement.2 The SOP forms part of Accelerating Culture Shift, which is one of five strategies adopted by the LSO to address the barriers faced by racialized licensees.

We are privileged to belong to a self-regulated profession, and the first of its kind in Ontario to include lay-representatives to its governing body. Like other large institutions, organizations, and corporations, the members of the LSO have been, and continue to be, engaged in difficult conversations about equality, diversity and inclusion within our profession. As a profession, we are responsible for ensuring that all of our members have equal access to shaping our values. Accordingly, it is important to recognize that historically there have been voices missing from that discussion. It is in that context that the SOP was unanimously adopted. The SOP recognizes that we cannot transform our profession without our individual members first taking steps towards change. When the SOP was adopted, it was exactly that: the first step towards a better, more inclusive, profession.

In the recent bencher election, 22 candidates ran as a slate opposing the SOP, promising to repeal it (“StopSOP”). StopSOP asked voters to believe that special interest groups had taken a foothold in the LSO to the detriment of others. What many of those same benchers do not seem to recognize is that they themselves are now a special interest group, sharing that they will vote on matters as a collective. This follows their one-issue campaign focused on repealing the SOP and similar equity initiatives. This is further evidenced by an abysmal voter turn-out of just 30% of Ontario licensees. StopSOP is not the majority and in no way does it hold the opinion of the majority.

StopSOP’s predominant criticism of the SOP is that it is unconstitutional, compelled speech. This is a dubious assertion. The Benchers that unanimously voted in 2016 to approve the SOP

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1 https://www.statementofprinciples.ca/
2 https://lso.ca/about-lso/initiatives/edi/frequently-asked-questions
and other recommendations had the benefit of a legal opinion prepared by Pinto Wray James LLP. This opinion supported the constitutionality of the recommendations and the LSO’s jurisdiction to adopt and implement them. Further, the compelled speech argument comes apart if the SOP becomes voluntary. A voluntary SOP cannot be described as compelled, coercive, or inconsistent with the independence of legal professionals. If the concern with the SOP truly is that it is mandatory, you may vote in favour of a voluntary SOP knowing that it wholly addresses StopSOP’s compelled speech concerns.

What is clear from StopSOP’s position is that they have consistently pointed to the SOP as a divisive issue, with no willingness to compromise or collaborate. Indeed, we expect that the StopSOP slate will oppose the amendment to designate the SOP as voluntary. What we are seemingly left with is an opposition rooted in a discomfort with the legal profession’s formal recognition of a commitment to equity and inclusion.

Despite other criticisms, the LSO’s equality and inclusion initiatives are neither a new phenomenon nor a fiscally irresponsible endeavour. The LSO’s Equity Initiatives Department (the “EID”) emerged from the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession unanimously adopted by the Law Society in 1997. This long-standing department has added just two staff members since its inception. The EID budget of $1.5 million accounts for just 1.05% of the LSO’s 2019 annual budget. It cannot in good faith be characterized as a symbol of mission creep or a bloated LSO budget.

The fact of the matter is, the SOP, whether voluntary or mandatory, does more good than harm. Repealing it in its entirety will have the opposite effect. It will be a marked departure from a previous commitment to ensure a truly inclusive and representative profession. Repealing the SOP would be to turn our backs on the widely recognized barriers facing marginalized licensees and aspiring lawyers. Repealing the SOP will invariably indicate that the LSO is firmly and blindly rooted in ignorance.

On June 27, 2019, you will have the opportunity to vote in favour of preserving the SOP. We sincerely hope that you will be among those demonstrating a commitment to a better, more inclusive legal profession.

We would like to extend an invitation to you to meet with members of our collective to discuss the amendment and SOP more broadly. We also welcome any questions that you may have. Please reach out to us at demandinclusion@gmail.com.

Sincerely

Demand Inclusion
Lisa D.S. Bildy
JD, BA

June 21, 2019

Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Benchers:

On November 21, 2017, I wrote to the Law Society of Ontario to express my concerns with the Statement of Principles (SOP) and the study on which it was based. My letter may be found at this link.

Having not received a response, and certainly not a satisfactory resolution of this issue (the LSO insisted upon pressing on with the SOP, despite an outpouring of opposition from individual lawyers and a costly court action), I decided to push back myself. Along with a small group of lawyers who shared my concerns, I began the StopSOP movement. This resulted in 22 of you being elected to Convocation with top votes, on a clear and unequivocal mandate from lawyers right across the Province to eliminate (not modify) the Statement of Principles, and to get the Law Society out of the business of social engineering.

(More details, links, arguments, letters from lawyers, and background may be found at our website.)

Notwithstanding that clear electoral mandate, those wanting to retain the SOP have muddied the waters for the June 27 vote on eliminating the SOP in two ways. First, a small group of activists calling themselves “Demand Inclusion” has taken the position that repealing the Statement of Principles is “unprincipled”. As was the case throughout the entire election campaign, they have been unable to marshal any arguments as to why the SOP should be retained, other than to repeatedly assert that anyone who opposes it must be racist and intolerant (or worse). This has continued since the election with tactics including media ‘hit pieces’ against the StopSOP slate and its Treasurer nominee, and getting the comments section removed on their own pro-SOP media
pieces when they discovered that virtually every comment from the public and lawyers alike was against them. Online mobbing and harassment of some StopSOP benchers on Twitter, with the objective of having them de-platformed from their bencher duties and eventually impeached, is another strategy they, or some of them, are pushing.

There should be no question that the SOP, in its present form, is repugnant to a liberal and free society and must not stand. Having spent 18 months devoted to arguing this point, culminating in a resoundingly successful democratic election win on those arguments, I will devote no further commentary to this aspect.

A second flank has developed to stymie the will of the electorate, and that is what I wish to focus on in these submissions. Bencher Joseph Groia has advanced what he evidently believes to be a compromise motion between the two positions, which would make the SOP “voluntary” but which would nonetheless retain record-keeping of compliance.

In my respectful submission, this result is little better than the status quo, and should likewise be dismissed for the following reasons:

i) It Remains a Political Litmus Test

Mr. Groia’s motion states (in part a):

a) all licensees be encouraged to voluntarily adopt their own personal and private Statement of Principles on how to best advance the goals of equality, diversity and inclusion (EDI) in the legal profession and elsewhere;

An obvious first question is why the LSO should be “encouraging” professionals to espouse certain values at all. The answer of course is that this remains a political litmus test and a symbol of submission to ensure lawyers and paralegals are in conformance with the currently-fashionable ideology of EDI, which has become almost a religion in some circles. The Law Society has no authority in its governing statute or otherwise to dictate its members’ political values, regardless of how laudable or seemingly uncontroversial they might be.

That alone should decide the matter, but if one wishes to examine why any of those terms should give any licensee pause before adopting them as their own principles, bear in mind that the definitions of “equality”, “diversity” and “inclusion” are entirely subject to the whims of the LSO.
The definition of equality on their website is “substantive equality” or equality of outcome. They do not mean equality of opportunity or the kind of equality where the same rules apply to everyone (“equality of application”). They mean the kind of equality where different rules apply to different people based on their race, gender, sexuality, religion and other characteristics. This sort of equality does not co-exist with freedom, as it requires an oppressive amount of state intervention to get everyone to the same outcome (if that were even possible). However, if you happen to believe that equality of application is what society should be encouraging, not equality of outcome, you will fail this political litmus test and, as far as the likes of “Demand Inclusion” are concerned, should be cast out of polite society.

An independent bar cannot countenance this demand for ideological conformity. A healthy society and the rule of law demand that lawyers (and all citizens) be free to express opinions or advance causes that do not adhere to the political dogma of the day.

Note also that the Groia motion requires that the goals of EDI be advanced in the legal profession and elsewhere. This intrudes on members’ lives outside of the professional context and requires them to be foot soldiers for the EDI ideology in all aspects of their lives. Should the regulator of our professional license have this sort of power? Of course not. And it doesn’t.

ii) Consequences for Non-Compliance will be Insidious Instead of Overt

The next obvious question is how the LSO should be “encouraging” professionals to espouse certain values.

Parts (b) and (c) of Mr. Groia’s motion read:

(b) the Society provide a section in the lawyer annual report and the paralegal annual report in which any licensee may choose to disclose that they have voluntarily adopted a Statement of Principles; and

(c) the Society shall provide Convocation with an annual tally of the number of licensees who chose to make such a disclosure.

Perhaps worse than being told straightforwardly that you will face clear consequences for non-compliance, the Groia motion purports to track “voluntary” compliance, leaving lawyers to face a more insidious form of enforcement. (Didn’t get that judicial appointment or board position you were expecting and otherwise qualified for? Didn’t check the box? Wondering if non-compliance
with the “voluntary” SOP had something to do with it?) That threat of consequence, whether overt or implied, means it is not voluntary at all.

To ensure that they do not face such insidious consequences for failing to abide by this “voluntary” requirement, lawyers and paralegals will still be required to check a box to show that they have fallen in line. The whole exercise forces legal professionals who do not wish to promote those values (whether they disagree with them, or disagree with being told to do so) to either lie and say they did, or suffer cognitive dissonance and breach of their consciences by preparing a compliant SOP while not actually agreeing with these politically-loaded principles.

That is essentially what the Groia motion proposes – despite being packaged as some sort of middle ground or compromise, it is scarcely better than the current regime.

A clean repeal of the SOP is the only way to protect the independence of the bar and to begin the process of returning the Law Society to its apolitical statutory mandate.

Good governance of an independent profession demands it.

Sincerely,

Lisa D.S. Bildy
Licensee #36583A
From: Barbara Byers [mailto:bjbyers@teksavvy.com]
Sent: June 23, 2019 10:14 AM
To: Jim Varro <jvarro@lso.ca>
Subject: Stop-SOP!

I firmly support the Stop-SOP Benchers. The purpose of the Law Society is to regulate the profession, not to dictate or foist "principles" on its members. In 36 years of practice, I have witnessed the Law Society denigrate my integrity and move to a misguided focus on esoteric ideas that do nothing to protect the public. Get rid of the Statement of Principles.

Barbara J. Byers
Barrister and Solicitor
Subject: VOTE TO REPEAL STATEMENT OF PRINCIPLES

Dear Mr. Varro,

I am sending this e-mail to you in your capacity as Corporate Secretary to express my views regarding the vote to repeal the statement of principles later this week. I strongly endorse its repeal.

I have been a member in good standing of the Law Society for 38 years. I have experienced the introduction of, among other things, our code of conduct, professional development requirements and comprehensive insurance.

I welcomed those new requirements because I saw them as helping us provide better legal services and as protecting the public better as we practised law. In my view, all of those requirements are rationally connected with, and also perfectly flow from, the Law Society’s authorities set out in the functions and principles sections of the Law Society Act of Ontario.

I did not welcome the statement of principles. I object to being told what and how to think.

Entirely apart from the dubious manner in which the statement of principles was developed and introduced, I consider the Law Society’s promulgation of the statement of principles as an obligation as *ultra vires* the Law Society in the first place. It is not the Law Society’s business.

On a personal level, I look to the *Charter of Rights and Freedoms* and relevant jurisprudence as my guides regarding the issues to which the statement of principles purports to speak, not the statement of principles.

As a member of the Law Society, I also served as a Canadian soldier for 34 years. During that time, I deployed to numerous failed states. Every single one of those failed states suffered from democratic deficits and authoritarian governance systems. People were told what to think, and the real will of the populations was ignored. We should not adopt their dangerous habits in Canada.

Law Society members sent a clear message to repeal the statement of principles during the bencher election earlier this year. I urge benchers to take a principled approach by respecting the will of those Law Society members and to vote to repeal the statement of principles.

Yours truly,

Dominic McAlea
Colonel (Retired)
June 24, 2019

Malcolm M. Mercer
Treasurer
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer:

RE: Deferral of Vote on Motions related to Statement of Principles

As you know, The Advocates’ Society, established in 1963, is a not-for-profit association of more than 6,000 members throughout Canada. More than 5,000 of our members practice in Ontario. The mandate of The Advocates’ Society includes, among other things, making submissions to governments and others on matters that affect access to justice, the administration of justice and the practice of law by advocates. We ask that you provide this letter to the members of Convocation before the meeting of June 27.

The Advocates’ Society values equity, diversity and inclusion. We continuously strive to foster a welcoming environment for our members. These are important values for our own organization, and for the legal profession and the justice system as a whole. We recognize the significance of hearing multiple, diverse perspectives on issues that affect our profession. These perspectives are particularly important where the issues go to the very heart of diversity and inclusion in the profession.

We understand there are divergent views among members of Convocation with respect to the requirement that lawyers abide by a statement of principles acknowledging their obligation to promote equality, diversity, and inclusion. We recognize that there is room for a thoughtful debate on whether, and to what degree, this requirement should form part of a lawyer’s professional obligations.

In our view, any debate to repeal or modify the existing requirement – enacted by Convocation only 18 months ago – should occur only after Benchers have had a meaningful opportunity to hear from affected stakeholder groups. We strongly endorse the LSO Equity Advisory Group’s suggestion in its letter of June 12, 2019 to defer a vote on the motions currently before Convocation until a broader consultation has taken place. That consultation should include stakeholders and the profession at large.

We urge the members of Convocation to table these motions and develop a consultation plan that will permit a well-informed decision-making process, grounded in a diversity of perspectives.

Yours truly,

Scott Maidment
President
INDIGENOUS ADVISORY GROUP

June 24, 2019

Law Society of Ontario
Osgoode Hall
130 Queen St West
Toronto, ON
M5H 2N6

Attention: Members of Convocation

An Open Letter Regarding the Notices of Motion dated May 23, 2019 and June 4, 2019

In response to the Notices of Motion dated May 23, 2019 (Motion #1) and June 4, 2019 (Motion #2) respectively, the Indigenous Advisory Group urges Convocation to vote against Motion #1.

The Law Society has a legislative mandate pursuant to the Law Society Act, R.S.O. 1990 to:

- maintain and advance the cause of justice and the rule of law;
- act so as to facilitate access to justice for the people of Ontario;
- protect the public interest;
- act in a timely, open and efficient manner; and
- regard the standards of learning, professional competence and professional conduct for licensees.

In June 2016, the Indigenous Advisory Group (IAG) was established as an independent body to advise the Law Society of Ontario (Law Society) on the unique issues faced by Indigenous practitioners, paralegals, and Indigenous peoples in Ontario and to promote the development of relationships between Indigenous peoples and Canadian structures and institutions in a manner that respects Indigenous values, beliefs, and legal systems. In December of 2016 the IAG finalized the Law Society’s Indigenous Framework which received approval in June 2017. It was developed in accord with priorities identified in 1) Convocation’s 2015 – 2019 Strategic Plan, 2) Treasurer’s Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016), and 3) Approaches to the Law Society of Upper Canada’s (as it then was) to the Truth and Reconciliation Commission of Canada (TRC) Final Report (September 2, 2016). It is important to restate the foundational elements of the Indigenous Framework for the purposes of sharing our perspective on the Statement of Principles.

1 The term “Indigenous” is inclusive of First Nations, Status, Non-Status, Inuit and Métis peoples.
Achieving and improving access to justice and taking action on reconciliation are two of the key pillars of the work the Law Society and IAG do together. IAG advised then and now that the development of every initiative by the Law Society must be guided through an “Indigenous lens” that is inclusive of the sacred laws and teachings of the First Nations, Métis, and Inuit peoples of Ontario. The principles of love; respect; courage; honesty; humility; wisdom and truth are living responsibilities. Adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the framework, acknowledges and recognizes the treaties and constitutional rights of Indigenous peoples.

The requirement that licensees develop personal Statements of Principles was adopted in response to the Challenges Faced by Racialized Licensees Report which spoke to the negative experiences faced by members of the legal profession as a result of conduct of other members of the profession. We can relate to the challenges identified and support actions taken to address the individual and systemic behaviours that are discriminatory and racist.

The Indigenous Advisory Group has grave concerns with respect to Motion #1 that seeks to eliminate Statement of Principles in its entirety. When choosing to enter this profession, we affirmed our obligation to uphold the laws of Ontario and Canada. We also uphold our own Indigenous legal traditions. As such, we owe a duty to treat each other from a place of respect. For these reasons, IAG affirms its support for the requirement that every licensee abide by a statement of principles acknowledging this truth.

We are deeply concerned about the ability of Indigenous peoples to fully, freely, and safely participate in the legal profession in Ontario should Motion #1 be adopted by Convocation. Chief and Elder Myeengun Henry, co-chair of this Advisory Group, reminds us that:

“The Law Society of Ontario has made great strides in building a compassionate and integral law society in Ontario and has committed to acting on the truth and reconciliation (TRC) calls to action admirably but to not endorse a statement of principles is a deflection of this commitment and Indigenous people’s right to have past legal injustices and any potential racial discrimination excluded in all future legal endeavors. I am saddened to see actions that exclude a commitment that would ensure a better justice system for Indigenous People in Ontario.”

IAG believes it is critical that the Statement of Principles remain intact.

IAG is cognizant of the constitutional questions and the concerns that have been raised in response to the mandatory nature of the Statement of Principles as currently conceptualized. While IAG does not purport to pass judgement on the reasonableness or validity of these important legal questions, IAG does not believe that the concerns are adequate to justify a complete abolition of the Statement of Principles without significant and robust consultation within the legal profession.

To abolish the Statement of Principles without adequate consultation with Committees and Advisory Groups of the Law Society would represent a failure for the legal profession and would
compromise the position of Indigenous licensees within the legal profession and of Indigenous peoples engaged within the justice system in Ontario.

We welcome the opportunity to attend Convocation in person when this matter arises for further discussion and decision.

Respectfully,

The Indigenous Advisory Group

__________________________
Elder Myeengun Henry
Chief and Elder Myeengun Henry
Co-Chair

__________________________
Danielle Lussier
Danielle Lussier, LL.B., LL.L., LL.M.
Co-Chair
WHY THE STATEMENT OF PRINCIPLES TROUBLES ME AS A VISIBLE MINORITY

As of the April 2018 all lawyers and paralegals in Ontario were required to sign an acknowledgement and promise to “promote” equality, diversity and inclusion generally in their behaviour towards colleagues, employees, clients and the public.”

At the same time, the Law Society of Ontario has advertised itself as a systemically racist bar and labeled licensees like me as “racialized.”

Since April 2018, licensees need to take Continuing Professional Development programs (3 hours of Equality Diversity and Inclusion (EDI) Programs) to rehabilitate themselves from their unconscious racist biases and promote the high value of equality, diversity and inclusion.

As a female visible minority licensee, I find this deeply troubling, not only because it is vague and far-reaching, but also because it inevitably leads one to certain conclusions.

The LSO is implying that licensees it admitted prior to 2018 are guilty of racism by origin or by the simple association of signing up into this racist institution and that all future members need to be rehabilitated and cured of racism. The LSO seems to assume that all “racialized” licensees, although guilty of racism by association, are also victims of racism. It also appears that all members are being tasked with racial-justice missionary work in addition to being advocates of justice and officers of the court.

When I read this rule, I could not believe my eyes. For the first time during my life in Canada, I felt uneasy about who I
am, as a female, as a visible minority and as a lawyer.

The announcement made me wonder, if I worked all my adult life to become a member of a racist club. Was I racist to begin with? Or did I become racist by association when I signed up?

I thought I was a successful, privileged individual, who worked hard and managed to become a lawyer in Canada. Am I actually, despite my achievements, a victim of my racial background?

The LSO wants me to take courses and modify my behaviour to cleanse myself of racial bias, but what have I done, which now obligates me to modify my conduct? In order to promote these values and principles, should I be “calling out” colleagues, employees, clients and the public on their improper conduct and actions, assuming the role of enforcer for equality, diversity and inclusion?

If so, how can I simultaneously evaluate my own conduct as well as that of others? What is the benchmark by which this conduct should be judged?

By being an officer of the court in Canada, which has codified equality and human dignity into its highest laws, I am already promoting equality, diversity and inclusion. With greatest respect to my colleagues who are proponents of the Statement of Principles, I believe that this rule sets us up for failure.

If our bar is a systemically racist bar (which I absolutely do not think it is), this rule will not make it less racist. Racism is not a light switch that can be turned off by a tick in the box. The eradication of racism can only be accomplished by
introduction, knowledge and celebration of diversity.

This rule will not engender respect for “racialized” colleagues, employees, clients and the public. It will not eliminate the legitimate questions surrounding any lawyers’ credentials, years of practice and competence. In fact, I think this rule will undermine the “racialized” licensees’ credentials and competence as lawyers and make the status they have earned seem like a hand out.

This rule and the Continuing Professional Development programs that will follow will not rehabilitate racist lawyers (if there are any in Ontario), but will merely teach them to hide their racism.

This rule and our new role as missionaries and enforcers of equality, diversity and inclusion will have unintended consequences. It will decrease open and frank conversations between colleagues. It will impose unjustified infringements on employees and clients’ freedom of expression and conscience. It will increase needless conflicts of interests with clients. Above all, it could potentially discredit the Ontario bar in the eyes of the public.

I am proud of the fact that I am a female visible minority and an immigrant who has dedicated her entire adult life to becoming a lawyer in Canada. But, I am deeply disappointed and troubled that my achievement is now undermined and tainted with racism. I find no justification behind my mandatory rehabilitation, so that I am no longer racist. I do not accept the transformation of my role as a lawyer into a missionary and enforcer. What is more, I am deeply concerned about the future ramifications that the Statement of Principles will have on the legal profession in Ontario.
From: Harry Blaier [mailto:hblaier@rogers.com]
Sent: June 25, 2019 4:15 PM
To: Jim Varro <jvarro@lso.ca>
Subject: Vote on SOP

Dear Jim:

I am a member of LSO in good standing.

Please bring this email to the attention of Convocation on June 27th respecting the vote to repeal the SOP.

At the last bencher vote, 22 members ran on a slate supporting repeal. All 22 were elected. That says something significant and I ask all those benchers who were not part of StopSOP to respect the message inherent in that election. I do not need to recount and re-argue all of the reasons presented by others on numerous occasions respecting SOP. The vote says it all and Convocation should respect this and repeal accordingly.

Regards,
Harry Blaier
Not Tyranny: Reflections on the Law Society of Ontario Statement of Principles

Mary Eberts, OC LSM
Bencher, 1995-1999

Heather J. Ross, LLB
Bencher, 1995-2019

Nadine Otten
Student, Schulich School of Law, Dalhousie University

June 25, 2019

The Rule of Law is inextricably linked to and interdependent with the protection of human rights as guaranteed in international law and there can be no full realization of human rights without the operation of the Rule of Law, just as there can be no fully operational Rule of Law that does not accord with international human rights law and standards.¹

INTRODUCTION

1 On December 2, 2016, the Challenges Faced by Racialized Licensees working group submitted its final report to LSO Convocation.²

2 After debating this report, Convocation adopted the Equity, Diversity and Inclusion initiative by a vote of 47-0 with 3 abstentions. The Equality, Diversity and Inclusion initiative comprises five strategies

* The authors thank The Ross Firm Professional Corporation for its kind assistance in the preparation of this paper.

¹ International Commission of Jurists, Tunis Declaration on Reinforcing the Rule of Law and Human Rights (March 2019) at para 4 [the Declaration].
to address racism and discrimination in the professions, all recommended in the final report.\(^3\) One of those strategies is the Statement of Principles, found at Recommendation 3(1) of the *Report.*

3 Every licensee must adopt and abide by a Statement of Principles acknowledging the obligation to promote equality, diversity and inclusion in the professional conduct of the licensee, with other licensees, with employees, with clients and with members of the public.\(^4\) The Society states that "The requirement calls on licensees to reflect on their professional context and on how they will uphold and observe human rights laws in force in Ontario in their professional relationships and interactions with colleagues, clients, employees and the public."\(^5\) It emphasizes that the Statement sets out standards or criteria developed by the licensee to guide his or her conduct, and "need not include any statement of thought, belief or opinion."\(^6\) The Society states that the required Statement "sets out standards or criteria developed by the licensee to guide his or her professional conduct taking into account applicable legal and professional obligations\(^7\).

4 With respect to the professional obligations the Society is referring to, the *Guide* specifically mentions the special obligations on lawyers in rule 6.3.1 to respect the requirements of human rights law in force in Ontario, and the duty in rule 2.1.2 to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions, set out in the *Rules of Professional Conduct.* It cites Rule 2.03 of the *Paralegal Rules of Conduct* necessitating respect for the requirements of human rights laws in force in Ontario and forbidding discrimination.\(^8\)


\(^6\) *Ibid.*

\(^7\) *Ibid.*

\(^8\) *Ibid* at 2.
Licensees are not required to make their Statements of Principle public, but must confirm annually to the Society that they have considered and implemented the requirement. Licensees are not required to disclose the content of their Statement of Principles to the Society but are only required to confirm its existence. The LSO provided sample templates for licensees to use, but the exact language of the Statement is left up to the licensee. Failure to complete a Statement of Principles leads to the LSO requiring the licensee to explain the omission or failure, but otherwise carries no penalty. In 2017, 98% of licensees indicated on their annual reports that they had prepared a Statement of Principles.

Recommendation 3 also requires that a representative of each legal workplace of at least 10 licensees in Ontario develop, implement and maintain a human rights/diversity policy for that workplace, addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request. Every two years, a licensee representative of each workplace of at least 10 licensees in Ontario must complete an equity, diversity and inclusion self-assessment for that workplace and provide it to the Law Society. This requirement to be proactive in implementing measures to promote diversity and inclusion was not imposed on legal workplaces with fewer than 10 licensees in Ontario. For those workplaces, the only requirement was that of each licensee completing a Statement of Principles.

In the 2019 LSO Bencher election, a slate of 22 candidates (the StopSOP slate – hereafter “STOP”) ran on the sole issue of opposing the Statement of Principles. They argued that the Statement of Principles amounts to compelled speech and is coercive, contending that the Statement of Principles imposes an
obligation on licensees "to express their personal valuing of the concepts of equality, diversity and inclusion, the definitions and interpretations of which will be in the exclusive domain of the LSO."¹⁵

8 STOP maintained that "The SOP is indicative of mission creep and financial mismanagement,"¹⁶ specifically targeting expenditures of the Equity Initiatives Department.

9 STOP also stated that the SOP undermines the independence of lawyers and is against the public interest.¹⁷ STOP argued that lawyers are the last line of defence "for the weak and the oppressed" and fulfilling this duty "requires independence -- of thought, belief and opinion". The Statement, it says, is inconsistent with independence because it "imposes a duty to express our concurrence with values that the regulator wishes to have embraced".¹⁸ Their ultimate critique of the Statement is that it is "a symbol of submission" to the new orthodoxy of human rights protection. It cites the "bullying" experienced at Convocation by those opposed to the Statement, and the "bullying" experienced by members of STOP during the Bencher election campaign.¹⁹ They proclaim: "When citizens...cannot ask questions, cannot bring motions without being bullied, cannot run in a democratic election without being vilified, then perhaps what you are questioning isn't an "initiative" but an "orthodoxy".²⁰

10 The STOP group did not publicly oppose the requirements for a workplace of at least 10 licensees in Ontario to prepare a diversity/inclusion policy and to complete a self-assessment every two years for filing with the Law Society.

¹⁵ *Problem #1, supra note 12.*
¹⁷ "Problem #4: The SOP Undermines the Independence of Lawyers and Is Against the Public Interest" (n.d.), online: StopSOP <stopsop.ca/newsletters/problem-4-the-sop-undermines-the-independence-of-lawyers-and-is-against-the-public-interest/> [Problem #4].
¹⁸ Ibid.
¹⁹ "Problem #5: The SOP is a Symbol of Submission" (n.d.), online: StopSOP <stopsop.ca/newsletters/problem-5-the-sop-is-a-symbol-of-submission/> [Problem #5].
²⁰ Ibid.
11 All 22 STOP candidates were elected. The turnout for the election was very low, with only 29.97% of eligible lawyers voting (approximately 16,000 lawyers), the lowest turnout of the period 1999-2019.

12 On May 23, 2019, notice was given by two members of STOP of a motion to repeal Recommendation 3(1). On June 4, 2019, notice was given to amend this motion in order to repeal and replace this mandatory requirement with voluntary provisions. Both are currently scheduled to be dealt with at Convocation on June 27, 2019.

13 In speaking to his December 2017 motion to allow for conscientious objection to the requirements of Recommendation 3(1), Bencher Joseph Groia stated that those opposing it on principle “fully support the goals of greater equality and diversity, so I hope that no one will suggest that they do not.” The statements of the STOP, however, seem aimed at preserving the right not to “wrap themselves in the flag of equity, diversity, inclusion” and at characterizing this view as a threatened minority opinion deserving of protection from bullying, marginalization and exclusion.

14 The attack and its success in the Bencher election call to mind a warning issued by the International Commission of Jurists, a respected international body of lawyers and judges of which Canada is a member. Established in 1951, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law, secure the realization of civil, cultural, economic, political and social rights, safeguard the separation of powers, and guarantee the independence of the judiciary and legal profession.

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23 Problem #5, supra note 18.

24 Problem #5, supra note 18.
15 In issuing the *Tunis Declaration on Reinforcing the Rule of Law and Human Rights* in March 2019, the ICJ expressed concern that “in recent years there have emerged manifest and widening cracks in the fealty and commitment of States and other powerful actors to the primacy of the Rule of Law and human rights as indispensable to the betterment of the human condition and a dignified life for all people.”

16 We are deeply concerned that this resistance to the values of human rights, including equality, diversity and inclusion, has now taken hold in the Law Society, and believe that it is time for informed reflection and a recommitment to the Law Society’s undertaking to promote these values. We consider that a review of the Law Society’s statutory mandate and its recent interpretation by the Supreme Court of Canada will verify that the Statement of Principles is not at all an instance of “mission creep”. The promotion of equity diversity and inclusion has long been a part of the Society’s work, and is part of the commitment to the Rule of Law which every barrister and solicitor undertakes upon being sworn in. The Barrister and Solicitor oath includes commitments to “seek to ensure access to justice”, “champion the Rule of Law and safeguard the rights and freedoms of all persons”, and “strictly observe and uphold the ethical standards that govern my profession.”

17 We consider below the relevant provisions of the *Law Society Act*, and what the Supreme Court said in the *Trinity Western University* decision about the Law Society’s mandate. The Court’s observations about the role of self-regulation in defining the public interest, taken from the companion case of *Trinity Western University v. Law Society of British Columbia*, are also considered.

18 There follows a brief history of the Law Society’s activities to identify issues facing minority members of the professions and to promote equality, diversity and inclusion. Although the Supreme Court of

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25 The Declaration, supra note 1.
26 Ibid at 1.
27 Law Society of Ontario, by-law 4, Licensing, s 2[21].
29 Trinity Western University v. Law Society of Upper Canada, [2018] 2 SCR 453 [TWU v LSUC].
30 Law Society of British Columbia v. Trinity Western University, [2018] 2 SCR 293 [LSBC v TWU].
Canada notes that the Law Society has been working on the promotion of inclusion throughout its long history, the historical account given here begins in 1974, with the passage of the Society’s first Rule of Professional Conduct forbidding discrimination. We are indebted to the Equity Advisory Committee letter to Convocation of June 12, 2019 for its overview of this history, from which we have drawn quite heavily.

19 We do not survey all of the activities which the STOP group alleges are examples of "mission creep" at the Society. However, we do focus on the mandate of the Human Rights Monitoring Group, established in 2007. The activities of this Group highlight the essential role of the Law Society and lawyers in upholding the Rule of Law, both here and around the world. One cannot consider self-regulation in the public interest, which the Legislature has confided to the Law Society, without an understanding of the essential connection between the public interest and the Rule of Law, which the Supreme Court has described as one of the four foundational principles of the Canadian constitution.

20 Lastly, against the background of these important factors, we address the argument that Recommendation 3(1) amounts to unconstitutional compelled speech. We do not agree with this contention, and explore at least two ways of establishing the constitutionality of the Recommendation.

SCOPE OF THE LAW SOCIETY MANDATE

21 In 2018, the Supreme Court of Canada undertook an extensive review of the scope of the Law Society of Ontario’s mandate in Trinity Western University v. Law Society of Upper Canada. The Court first sets out the relevant provisions of sections 4.1 and 4.2 of the Law Society Act:

15. Function of the Society

31 TWU v LSUC, supra note 29 at para 24.
4.1 It is a function of the Society to ensure that,
a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
1. The Society has a duty to maintain and advance the cause of justice and the Rule of Law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.36

The Court continues:

17. Section 4.1 of the LSA establishes that ensuring standards of professional competence and their application to lawyers and paralegals is a function of the LSUC. However, the very language of that provision indicates this to be "a function", not "the function" or "the only function" of the LSUC. That the LSUC's mandate is not confined to the function set out in s. 4.1 is confirmed by the language of s. 4.2, which refers to the "functions, duties and powers" of the LSUC. The breadth of the LSUC's mandate is further confirmed by the nature of the principles in s. 4.2, which task the LSUC with advancing the cause of justice, the Rule of Law, access to justice, and protection of the public interest.

18. By the clear terms of s. 4.2 of the LSA, the LSUC must have regard to the principles set out in that section – including its duty to protect the public interest – in carrying out all of its "functions, duties and powers" under the LSA. The LSUC, as a regulator of the self-governing legal profession, is owed deference in its determination as to how these principles can best be furthered

36 TWU v LSUC, supra note 29 at para 15.
in the context of a particular discretionary decision (see Law Society of B.C., at paras. 32 and 34-38).\textsuperscript{37}

23 After noting the LSO's concern that the TWU Mandatory Covenant imposes inequitable barriers on entry to the law school, the Court states:

20. In our view, the LSUC was entitled to conclude that equal access to the legal profession, diversity within the bar, and preventing harm to LGBTQ law students were all within the scope of its duty to uphold the public interest in the accreditation context, which necessarily includes upholding a positive public perception of the legal profession.

21. To begin, it is inimical to the integrity of the legal profession to limit access on the basis of personal characteristics. This is especially so in light of the societal trust enjoyed by the legal profession. As a public actor, the LSUC has an overarching interest in protecting the values of equality and human rights in carrying out its functions (see Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613, at para. 47).

22. As well, eliminating inequitable barriers to legal training and the profession generally promotes the competence of the bar as a whole. The LSUC is not limited to enforcing minimum standards with respect to the individual competence of the lawyers it licenses; it is also entitled to consider whether accrediting law schools with inequitable admissions policies promotes the competence of the bar as a whole.

23. The LSUC was also entitled to interpret the public interest as being furthered by promoting a diverse bar. Access to justice is facilitated where clients seeking legal services are able to access a legal profession that is reflective of a diverse population and responsive to its diverse needs. Accordingly, ensuring a diverse legal profession, which is facilitated when there are no inequitable barriers to those seeking to access legal education, furthers access to justice and promotes the public interest.

24. The LSUC’s determination that it was entitled to promote equal access to and diversity within the bar is supported by the fact that it has consistently done so throughout its history. Since its formation in 1797, the LSUC has had exclusive control over who could join the legal profession in Ontario. The Divisional Court considered the LSUC’s long history and was satisfied that, in carrying out its mandate, the LSUC has “acted to remove obstacles based on considerations, other than ones based on merit, such as religious affiliation, race, and gender” (Div. Ct. reasons, at para. 96). That the LSUC has historically sought to uphold principles of diversity and equal access to the legal profession.

\textsuperscript{37} TWU v LSUC, supra note 29 at paras 17-18.
supports the LSUC's pursuit of similar objectives in its decision to deny accreditation to TWU's proposed law school.38

24 In *Law Society of British Columbia v. Trinity Western University*, argued at the same time as the *Trinity Western University v. Law Society of Upper Canada* case, the Supreme Court of Canada undertook a thorough review of the mandate of the LSBC. Finding in favour of the LSBC and its decision not to accredit TWU, the Court provides further observations concerning the discretion afforded the LSBC. The Court says:


35. This Court most recently considered the self-regulation of the legal profession in *Green v. Law Society of Manitoba*, 2017 SCC 20, [2017] 1 S.C.R. 360. There, Wagner J. repeatedly noted the deference owed to law societies' interpretation of "public interest": that they have "broad discretion to regulate the legal profession on the basis of a number of policy considerations related to the public interest" (para. 22); that they must be afforded "considerable latitude in making rules based on [their] interpretation of the 'public interest' in the context of [their] enabling statute" (para. 24); and that they have "particular expertise when it comes to deciding on the policies and procedures that govern the practice of their professions" (para. 25).


37. To that end, where a legislature has delegated aspects of professional regulation to the professional body itself, that body has primary responsibility for the development of structures, processes, and policies for regulation. This delegation recognizes the body's particular expertise and sensitivity to the conditions of practice. This delegation also maintains the independence of the

38 *TWU v LSUC*, *supra* note 29 at paras 20-24.
Therefore, where a statute manifests a legislative intent to leave the governance of the legal profession to lawyers, "unless judicial intervention is clearly warranted, this expression of the legislative will ought to be respected" (Pearlman, at p. 888). As Iacobucci J. later explained in Ryan, we give deference to law society decisions to "giv[e] effect to the legislature's intention to protect the public interest by allowing the legal profession to be self-regulating" (para. 40).

38. In sum, where legislatures delegate regulation of the legal profession to a law society, the law society’s interpretation of the public interest is owed deference. This deference properly reflects legislative intent, acknowledges the law society’s institutional expertise, follows from the breadth of the "public interest", and promotes the independence of the bar.

40. In our view, it was reasonable for the LSBC to conclude that promoting equality by ensuring equal access to the legal profession, supporting diversity within the bar, and preventing harm to LGBTQ law students were valid means by which the LSBC could pursue its overarching statutory duty: upholding and maintaining the public interest in the administration of justice, which necessarily includes upholding a positive public perception of the legal profession. We arrive at this conclusion for the following reasons.

41. Limiting access to membership in the legal profession on the basis of personal characteristics, unrelated to merit, is inherently inimical to the integrity of the legal profession. This is especially so in light of the societal trust placed in the legal profession and the explicit statutory direction that the LSBC should be concerned with "preserving and protecting the rights and freedoms of all persons" as a means to upholding the public interest in the administration of justice (LPA, s. 3(a)). Indeed, the LSBC, as a public actor, has an overarching interest in protecting the values of equality and human rights in carrying out its functions. As Abella J. wrote in Loyola, at para. 47, "shared values -- equality, human rights and democracy -- are values the state always has a legitimate interest in promoting and protecting". ....

42. Eliminating inequitable barriers to legal education, and thereby, to membership in the legal profession, also promotes the competence of the bar and improves the quality of legal services available to the public. The LSBC is statutorily mandated to ensure the competence of lawyers as a means of upholding and protecting the public interest in the administration of justice (LPA, s. 3(b)). The LSBC is not limited to enforcing minimum standards of competence for the individual lawyers it licenses; it is also entitled to consider how to promote the competence of the bar as a whole.

43. As well, the LSBC was entitled to interpret the public interest in the administration of justice as being furthered by promoting diversity in the legal profession -- or, more accurately, by avoiding the imposition of additional
impediments to diversity in the profession in the form of inequitable barriers to entry. A bar that reflects the diversity of the public it serves undeniably promotes the administration of justice and the public’s confidence in the same. A diverse bar is more responsive to the needs of the public it serves. A diverse bar is a more competent bar (see LPA, s. 3(b)).

46. [The Society’s...] consideration of equality values is consistent with law societies historically acting "to remove obstacles ... such as religious affiliation, race and gender, so as to provide previously excluded groups the opportunity to obtain a legal education and thus become members of the legal profession" (Trinity Western University v. Law Society of Upper Canada, 2015 ONSC 4250, 126 O.R. (3d) 1, at para. 96). In any case, it should be beyond dispute that administrative bodies other than human rights tribunals may consider fundamental shared values, such as equality, when making decisions within their sphere of authority -- and may look to instruments such as the Charter or human rights legislation as sources of these values, even when not directly applying these instruments (see e.g. Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31, [2001] 1 S.C.R. 772 (TWU 2001), at paras. 12-14 and 26-28). This is what the LSBC, quite properly, did. 39

25 We have quoted extensively from the Court’s judgments in the Trinity Western cases because they represent the most recent expression of its views on the scope and mandate of professional self-regulation in the legal profession, particularly as it relates to the values of equality, diversity and inclusiveness. The reasoning reflects a view of the legal profession where competence is no longer measured simply on a lawyer-by-lawyer basis, or taking into account the lawyer’s technical skill in particular areas. Rather, competence is seen as something relating to the profession as a whole, reflecting its ability to represent and do well by a diverse population of clients with diverse needs and experiences. Similarly, the concept of integrity of the legal profession is not confined to particular questions of legal ethics as determined by context; rather, the Court states that it is inimical to the integrity of the profession to limit access to it on the basis of personal characteristics. A diverse profession, it says, furthers access to justice and promotes the public interest.

39 LSBC v TWU, supra note 30 at paras 32, 35-46.
Significantly, the Court is not troubled that these expanded notions of competence and integrity somehow detract from the independence of the bar. Rather, it reaffirms that the legislature delegates regulatory responsibility to the profession, and that delegation entails judicial deference to the policy choices made by the regulatory body in the public interest. We observe that this is no less true now than it was twenty years ago, or more, when ideas of professional competence and integrity might have been more narrowly conceived.

Given the Court's attitude of deference toward the Societies' interpretation of the public interest in the two Trinity Western cases, the question arises whether it would be similarly deferential to a Society's decision to roll back the clock, as it were, and embrace a narrow view of the public interest, professional competence and integrity. We suggest that it would not. This is because the Court's thinking on the issue of public interest and self-regulation is informed by Charter values and equality, and the advances in human rights of the past decades. The Court is careful to salute the long record of the Law Society of Ontario in advancing the interests of minority members of the profession. This record presents an important parallel. The Supreme Court identifies respect for minority rights as one of the four fundamental and organizing principles of the constitution and notes the long tradition of respect for minorities which is at least as old as Canada itself. It observes in the Secession Reference that although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes.

By placing the Law Society of Ontario on the same historical trajectory of increasing efforts to respect minority rights as the Court has identified in the country as a whole, the Court is clearly signaling its approval of such efforts on the part of both the country and the Society. It is unlikely, then, that its

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40 LSBC v TWU, supra note 30 at para 82.
41 Ibid at para 81.
deference to the discretion of a law society in interpreting the public interest would extend to a reversal or cessation of this evolving arc of respect.

HISTORY

29 In an open letter to Convocation dated June 12, 2019, the Law Society of Ontario Equity Advisory Group provided important background by way of a history of the equity initiatives at the LSO. This section draws heavily on the helpful history set out in that letter.

30 The first anti-discrimination Rule of Professional Conduct was passed in 1974. It stated:

There shall be no discrimination by the lawyer on the grounds of race, creed, colour, national origin or sex in the employment of other lawyers or articled students or in other relations between him or her and other members of the profession.42

31 In 1988, the LSO established the Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession, and in 1990, the subcommittee became a standing committee of Convocation.43 In 1989, Convocation appointed a special committee to study and make recommendations as to whether the Law Society should establish a program to encourage and assist persons from minority groups that were under-represented in the legal profession.44 In 1991 a rule was added to the Law Society Act setting out the mandate and creation of the Equity in Legal Education and Practice Committee ("the Equity Committee").45

32 The Equity Committee addressed discrimination on the basis of personal characteristics other than sex and family status. Its membership included benchers, government representatives and members of

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44 Ibid at para 10.
45 Ibid.
the bar including Black and Aboriginal student associations, the Law Deans, and other stakeholders with an interest and commitment to equity in the legal profession.\textsuperscript{46}

33 In 1996, the committees were restructured and the Women in the Legal Profession Committee and the Equity Committee were merged into and became the Admissions and Equity Committee.\textsuperscript{47}

34 This move was seen by some equality-seeking representatives as a falling away from the LSO’s commitment to seek equity in the legal professions; the merger was thus supported by some benchers on the condition that a full-time staff person would be employed to deal with equity and gender issues.\textsuperscript{48} At the same time in 1996, the Treasurer appointed an Equity Advisory Group to act as an expert resource on equity issues facing the profession.\textsuperscript{49}

35 On three occasions over the period of 1989 to 1996 the LSO expressed its commitment to advancing equity and diversity within the legal profession.\textsuperscript{50}

36 In 1991, Convocation adopted a \textbf{Statement of Policy} with 14 principles, including:

(i) The Law Society of Upper Canada is responsible for governing the legal profession in the public interest. Matters which relate to the professional careers of lawyers and their personal well-being \textit{inevitably affect the public interest}: they are matters which have a direct impact upon the quality of legal services in Ontario. The Law Society has a responsibility to undertake research and to provide leadership in these areas.

(v) where there is evidence of significant dissatisfaction with the practice of law among members of the profession, the Law Society has a responsibility, both to the public and to its members, to study the issue and to propose solutions.

(vi) The Law Society has a responsibility to work towards the \textit{amelioration of conditions} within the profession which lead to dissatisfaction with the practice of law.

(xi) The Law Society endorse[s] the principles of the \textit{Human Rights Code}, 1981, and accordingly affirms that every member of the Society has a right to equal treatment with respect to conditions of employment without discrimination.

\footnotesize{\textsuperscript{46} Bicentennial Report, supra note 43 at para 11. \textsuperscript{47} Ibid at para 12. \textsuperscript{48} Ibid. \textsuperscript{49} Ibid at para 13. \textsuperscript{50} Ibid at para 25.}
because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

(xii) The Law Society acknowledges that there are members of the profession, particularly women, who perceive themselves or their colleagues to be subject to discrimination. The findings of the [Transitions Report] lead the Law Society to conclude that discrimination

a. (whether it be individual or systemic, intentional or unintentional) continues to exist within the profession.

b. Lawyers have a responsibility to take a lead in eliminating discrimination. The Law Society will intensify its efforts to eradicate discrimination in the profession.51 [emphasis added]

37 In 1995, Convocation adopted the following Statement of Values:

The Law Society of Upper Canada declares that the legal profession in Ontario is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status or sexual orientation.

38 In 1996, Convocation adopted three recommendations from the Equity Group (with respect to the Report of the Commission on Systemic Discrimination in the Ontario Criminal Justice System52). The first recommendation was:

To approve in principal the Law Society’s commitment to combatting racism and systemic discrimination.53

39 In 1996, the LSO conducted a follow-up study of over 1,500 lawyers over a 6-year period the results of which were reported in a document titled Barriers and Opportunities Within Law: Women in a Changing Legal Profession (“the Barriers and Opportunities Report”).54

40 In 1997, the LSO celebrated its bicentennial and the 100th anniversary of the admission of its first woman member.55 In honour of these events, the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (“Bicentennial Report”) was prepared to review the work done by the LSO

54 Ibid at paras 30-32.
55 Ibid at para 7.
over the previous decade and provide recommendations to guide the LSO’s equity mandate for the years ahead.\textsuperscript{56}

\textbf{41} The \textit{Bicentennial Report} began with the recognition that like most institutions grappling with equality, the LSO’s first challenge came from a critical mass of women joining the profession in record numbers during the period of 1975-1990.\textsuperscript{57} Women began identifying a range of issues and barriers affecting their ability to perform to their maximum potential in the workplace.\textsuperscript{58} Through research and consultation, hurdles faced by women were brought to the attention of the profession and the doors were opened for other equality-seeking groups to raise their own experiences of discrimination and harassment.\textsuperscript{59}

\textbf{42} The \textit{Bicentennial Report} noted:

\begin{quote}
Men and women from all backgrounds and career stages came forward, identifying barriers they faced in entering and remaining in the profession. Aboriginal articling students spoke about the struggle to gain acceptance into mainstream legal fields. Lawyers of colour spoke about blatant examples of mistaken identity where clients, judges, and colleagues assumed they were not lawyers because they “didn’t look the part”. Gay and lesbian lawyers described job interview questions designed to elicit information about their health and sexual practices. Lawyers with disabilities spoke about watching themselves disappear as colleagues chose to exclude them from work because it was easier than accommodating their needs. Women explained their difficult choice to leave the profession because their firms couldn’t provide them with a flexible workplace. Men spoke of the frustration they felt as they observed the different treatment accorded their colleagues, wives, and daughters.\textsuperscript{60}
\end{quote}

\textbf{43} The \textit{Bicentennial Report} recognized the voices of lawyers who expressed the shock they felt when confronted with treatment which could only be explained by prejudice and stereotypes harbour ed by

\begin{itemize}
\item \textsuperscript{56} \textit{Bicentennial Report}, supra note 43.
\item \textsuperscript{57} \textit{Ibid} at para 1.
\item \textsuperscript{58} \textit{Ibid} at para 2.
\item \textsuperscript{59} \textit{Ibid}.
\item \textsuperscript{60} \textit{Ibid} at para 3.
\end{itemize}
even well-intentioned colleagues. Their stories shared a common theme: a desire to be treated with fairness, respect, and dignity:

Many lawyers described the hurt and anger with which they were now scarred – that a profession that stands for truth and justice could perpetuate, through its preservation of the status quo, roadblocks to the full participation of all members.

44 After summarizing various reports, studies, surveys, and audits conducted at the Law Society in the period of 1987 to 1997, the Bicentennial Report concluded that the Barriers and Opportunities Report “once again confirmed the existence of systemic discrimination and inequality within the legal profession”. The Bicentennial Report recognized that between 1986 and 1991 the total estimated “visible minority” population in Canada had increased by 58% and that by 2006, visible minorities were expected to make up one-sixth of Canada’s total population. The Bicentennial Report noted that despite the LSO’s commitments and changes to policy, “all the information received to date indicates that members of our profession continue regularly to face barriers because of personal characteristic unrelated to competence”.

45 After assessing the Law Society’s role and responsibility in the advancement of equity and diversity as the governor of the profession in the public interest, the Bicentennial Report provided 16 Recommendations for the Law Society to adopt, including recommendations to actively promote, fund, and study current and future equity and diversity initiatives.

46 In May 1997, the Law Society unanimously adopted all 16 Recommendations in the Bicentennial Report and they have since guided the Law Society as it seeks to advance the goals of equity and diversity

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62 Ibid at para 5.
63 Ibid at para 58.
64 Ibid at para 63.
65 Ibid at para 70.
66 Ibid at paras 70-113.
within the legal profession. The adoption of the Bicentennial Report led to a series of systemic changes to promote equality and diversity, including the creation of the Equity and Aboriginal Issues Committee (EAIC) (a standing Committee of Convocation), the LSO’s Equity Initiatives Department with five permanent staff members and one articling student, and the Equity Advisory Group (EAG).

47 In 1998, the LSO established the Discrimination and Harassment Counsel (DHC) program to provide services aimed at enabling and supporting individuals who believe they have been discriminated against and/or harassed by a lawyer.

48 The Bicentennial Report led to a significant legacy of research and policy at the LSO.

49 In September 2011, the LSO identified the priority to “consider the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms”. As a result, Convocation created the Working Group on Challenges Faced by Racialized Licensees. Under the direction of this Working Group and managed by the LSO’s Equity Initiatives Department, Stratcom Communications Inc. (Stratcom) was hired to design and conduct research to identify:

   i. challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;
   ii. factors and practice challenges that could increase the risk of regulatory complains and discipline; and

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68 Ibid at paras 2-4.
69 Ibid at para 5.
71 Ibid
72 Stratcom is a consulting firm that specialises in the creation and implementation of campaigns, political polling, engagement and targeting strategies, and large-scale donor based fundraising programs for non-profit sectors. Stratcom identifies its clients to include small grass roots organisations to large international NGOs and charities. See: http://www.stratcom.ca/about-us/
iii. perceptions of best practices for preventive remedial and/or support strategies.\textsuperscript{73}

\textbf{50} Stratcom’s final report was dated March 11, 2014 and was titled \textit{Challenges Facing Racialized Licensees.}\textsuperscript{74} For the purposes of their research and throughout their report, Stratcom defined “racialized” as follows:

Racialized expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chines, East-Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g. Iranian, Afghan) persons.\textsuperscript{75}

\textbf{51} Stratcom considered “literally hundreds” of examples of discriminatory behaviours, language and assumptions that were common features of everyday professional experiences.\textsuperscript{76} They noted that focus group participants in their study frequently described the types of discrimination they encountered as “subtle, “hidden” or “layered”, many also describing overt racism, “in almost every group one or more participant was moved to tears or anger in describing such an experience”.\textsuperscript{77}

\textbf{52} Many racialized licensees also described being alienated from the dominant culture of firms or companies.\textsuperscript{78} Participants noted that common features of the dominant (non-racialized) culture, such as social drinking, playing golf, going to the cottage, watching hockey, all represent points of contact, interaction, and social solidarity for their non-racialized colleagues, but reinforce their own feelings of isolation and “otherness”.\textsuperscript{79}

\textsuperscript{73} Stratcom Report, supra note 63 at 1.
\textsuperscript{74} Stratcom Report, supra note 63.
\textsuperscript{75} Ibid at 1.
\textsuperscript{76} Ibid at 11.
\textsuperscript{77} Ibid at 12.
\textsuperscript{78} Ibid at 13.
\textsuperscript{79} Ibid.
Stratcom noted that the experiences of being out of place in one’s surroundings also extends to the courtroom. Racialized lawyers shared experiences of being mistaken as interpreters or as clients when representing non-racialized clients.

The focus group results demonstrated to Stratcom that racialization intersects with a wide variety of other factors.

The intersection of these and other factors – age, sexual orientation, disability, geographic location – yields an incredibly complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization. [...] The intersection of race and gender multiplies the challenges for women.

At the end of an extensive 78-page report, Stratcom concluded:

Findings of the survey research demonstrated the extent to which racialization establishes a measurable constellation of career challenges for racialized licensees that are distinct from those of their non-racialized colleagues: challenges that are rooted in their racialized status as well as many related challenges that are compounded and amplified as a consequence of the racialization process. In comparison with their non-racialized colleagues, racialized licenses and specific sub-groups, encounter qualitatively more severe challenges during and after entry into practice, yielding measurably greater negative impacts throughout their careers.

As noted in this report not all non-racialized licensees acknowledge the significant and unique challenges associated with the process of racialization. However, one important finding, highlighted in the survey phase, was that a strong majority of non-racialized licensees recognise that “racialization exists”, that the challenges faced by racialized licensees have negative consequences for the legal professions and the public, and that proactive measures are called for to enhance inclusiveness. Results reported in Section 7 demonstrate a substantial overlap across the racial divide, reflected both in shared opinions regarding the value, scope and direction of change, as well as endorsement for specific measures to address the challenges of racialization and make the legal professions more inclusive.

The methodology and findings of this research will provide the basis for further targeted exploration of the issues associated with the challenges of racialization encountered by specific groups, career stages and practice environments. It is
hoped that these results will also lend support to the ongoing effort to design and implement practical measures to reduce the challenges associated with racialization and promote inclusiveness within the legal professions.84

56 The Stratcom Report was one of the foundations for the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions – Challenges Faced by Racialized Licensees Working Group Final Report (“the Challenges Report”).85

57 The Challenges Report included 13 Recommendations which were all adopted by Convocation in December 2016.86 It was the final stage of a lengthy consultation process.

58 In 2012, the LSO created the Challenges Faced by Racialized Licensees Working Group (the Challenges Working Group) to identify challenges faced by racialized licensees and design preventative, remedial, enforcement, regulatory and/or support strategies for consideration by EIAC and other committees to address these challenges.87

59 In April 2014, EAG provided submissions to the draft Challenges Report and continued to remain engaged with the Challenges Working Group.88

60 In 2014, Convocation approved the Challenges Working Group’s Consultation paper and between January and March 2015, the Working Group consulted with over 1,000 lawyers, paralegals, law students, articling students, and members of the public.89 The Challenges Working Group also received written submissions from 45 individuals and organisations.90

61 As a result of its consultations, the Challenges Working Group identified three objectives:

1. Inclusive legal workplaces in Ontario;

84 Stratcom Report, supra note 63 at 77-78.
85 Challenges Report, supra note 2.
87 Challenges Report, supra note 2 at 12.
89 Challenges Report, supra note 2 at 12.
90 Ibid.
2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.91

62 The Group’s 13 Recommendations were intended to meet these objectives.92

63 Recommendation 3 recognised that employers and employees in legal workplaces have obligations under the Human Rights Code but licensees have additional professional obligations with respect to human rights established by the Rules of Professional Conduct and the Paralegal Rules of Conduct.93 To ensure consistent implementation as well as the changing realities of legal workplaces (such as in-house counsel), Recommendation 3 was flexible enough to minimize unnecessary burdens and recognise that many workplaces have already moved forward proactively with equality measures on their own.94 Licensees were free to tailor Recommendation 3 to their specific contexts.95

64 The Statement of Principles “comply or explain” approach was modeled after the practice of organisations such as the Ontario Securities Commission (OSC) which required:

“companies regulated by the OSC to disclose the following gender-related information: the number of women on the board and in executive positions; policies regarding the representation of women on the board; the board or nominating committee’s consideration of the representation of women in the director identification and selection process; and director term limits and other mechanisms of renewal on their board. The OSC requires companies to either report their implementation or consideration of the items listed above, or to explain their reasons for not doing so.”96

65 This long and consistent history of the LSO promoting equal access to and diversity within the bar was acknowledged by the Supreme Court of Canada in Trinity Western University v. Law Society of Upper

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91 Challenges Report, supra note 2 at 26.
92 Ibid.
93 Ibid at 28.
94 Ibid at 29.
95 Ibid at 42.
96 Ibid at 30-31.
Canada. The Law Society has “historically sought to uphold principles of diversity and equal access to the legal profession...” 97

66 The Bicentennial Report was adopted 22 years ago. The Statement of Principles and the Challenges Report are the product of decades of consultation and reform by the Law Society.

The Human Rights Monitoring Group

67 The Human Rights Monitoring Group was established in 2007, with a mandate to review and respond to human rights violations against members of the legal profession and the judiciary here and abroad as a result of the discharge of their legitimate professional duties. Based upon information received, usually from groups active in international human rights, the Monitoring Group determines whether a particular instance requires a response by the Law Society, and then prepares a response for review and approval by Convocation. The Monitoring Group works in collaboration with organizations like Lawyers’ Rights Watch Canada, Amnesty International, the Law Society of England and Wales and Human Rights Watch.

68 In its June 2014 report, Facilitating International Access to Justice Through Intervention98, the Monitoring Group provides an overview of its work since its founding. It reports that the types of clients represented by lawyers who have been persecuted by authorities are often advocates for human rights, or vulnerable clients who have no other access to the legal system. The Monitoring Group also reports that most often presiding judges who are persecuted in the course of their duties focus on facilitating access to justice by advocating for an independent judiciary and promoting the Rule of Law.99

97 TWU v LSUC, supra note 29 at para 24.
98 Updated February 2017
From time to time during its history the Monitoring Group and its work have been challenged as not being part of the Law Society's "core mandate". This criticism is being heard again, particularly from the STOP group.

The term "core mandate" does not appear anywhere in the Law Society Act, regulations, by-laws or Rules of Professional Conduct, and there does not appear to be a definition of it readily at hand.

The authority of the Human Rights Monitoring Group derives from the mandate of the Law Society "to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the Rule of Law."100

The STOP argues that the Statement of Principles is inconsistent with the independence of lawyers, particularly their independence of thought, belief and opinion.101 This interference hinders the ability of lawyers to be "the last line of defence for the weak and the oppressed".102

The work of the Human Rights Monitoring Group sheds considerable light on the independence of the bar and the judiciary, within the overall context of the Rule of Law.

The Human Rights Monitoring Group was born out of international human rights instruments, including the Universal Declaration of Human Rights103. The Rule of Law is woven into the structure of the UDHR, starting with the third clause of the Preamble:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.104

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100 Law Society of Upper Canada, “Comments of Law Society of Upper Canada on S7-45-02” (06 December 2002) at 1.
101 Problem #4, supra note 16.
102 Ibid.
The Rule of Law is a foundational principle of the Canadian constitution. It is at the root of our system of government. It is explicitly recognized in the preamble to the *Constitution Act, 1982*, and impliedly recognized in section 1 of the *Charter*, requiring that the rights and freedoms set out in the Charter are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

At its meeting in Tunis on March 23-24, 2019, the International Commission of Jurists affirmed the inextricable link between the Rule of Law and human rights, and their relationship to the independence of the bench and bar, proclaiming:

4. The Rule of Law is inextricably linked to and interdependent with the protection of human rights, as guaranteed in international law and there can be no full realization of human rights without the operation of the Rule of Law, just as there can be no fully operational Rule of Law that does not accord with international human rights law and standards;

9. The principles that comprise the Rule of Law include the protection of human rights and, among other elements, the following:
   e) the independence of judges and lawyers, as well as their accountability,
   f) the principle of equality, equal protection of the law, and non-discrimination on the grounds of race, colour, sexual orientation or gender identity, age, gender, religion, language, political or other opinion, citizenship, nationality or migration status, national, social or ethnic origin, descent, health status, disability, property, socio-economic status, birth or other status.

In its discussion of the Independence of Judges and Lawyers, the International Commission of Jurists declares:

18. To ensure public confidence and promote human rights values, judiciaries, the legal profession, and prosecution services should reflect the diversity of the societies they serve. All forms of discrimination in the composition of judiciaries, legal profession and prosecution services, as well as in the

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107 *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236 at para. 250 and *Christie*, at para. 19

108 *The Declaration, supra* note 1 at paras 4, 9.
administration of justice, must be eliminated. In this respect, particular attention is needed to direct or indirect exclusionary discrimination on the basis of such grounds as sex, gender, national or ethnic origin, religion, caste, language, race or sexual orientation, or against persons from frequently marginalized or disadvantaged groups such as people living in poverty, indigenous peoples, rural populations, refugees and migrants, and persons with disabilities. Continuing legal education for judges, lawyers and prosecutors should be organized by their respective professional associations or similar independent bodies.109

78 The ICJ observes that worldwide, increasing attacks on the Rule of Law have intensified longstanding inequalities and compounded intersecting forms of discrimination against women and girls and persons from marginalized groups.110 It urges judges and lawyers worldwide "to meet their responsibilities to uphold the universal and equal protection of human rights for all, in particular those subject to discrimination in national laws, policies or practices; to work to ensure the full implementation in national legal systems of the rights of those groups threatened by discriminatory laws or policies, and to work to end entrenched discrimination and discriminatory stereotypes and bias.111

79 The work of the Human Rights Monitoring Group reminds us that the Law Society is part of a worldwide network in the legal profession, striving to uphold the values of human rights by securing preservation and application of the Rule of Law. The legal profession and the judiciary are two of the principal bulwarks of the Rule of Law both nationally and internationally; doing this essential work is totally consistent with the key value attached by the Canadian constitution to the Rule of Law itself. It is clearly in the public interest to work to support and uphold the Rule of Law.

80 As described in the letter of the Equity Advisory Group, the Law Society has been deeply involved in promoting human rights within the legal profession for almost fifty years, since 1974. Promoting human rights within the profession makes the profession, in turn, more able to connect with those who need

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109 The Declaration, supra note 1 at para 18.
110 Ibid at para 36.
111 Ibid at para 141.
human rights protection in society, and to serve them ethically and competently with knowledge and commitment.

81 It is useful to remember that under the Rule of Law, law is supreme over private individuals as well as over government. This means, at least, that individual licensees of the Society are bound by the human rights laws in effect in Ontario. They do not have unbridled choice to disobey those laws with impunity. Their actions must be in accord with those laws, even if they have political and moral reservations against them. One might well ask, then, what is the incremental difference between the obligations imposed by the law of Ontario and the requirements of the Statement of Principles? Both address actions and behaviour, rather than thought and belief. Both leave the licensee free to believe whatever he or she wishes about human rights, as long as the licensees’ actions accord with the law.

82 In implementing the Statement of Principles, the Law Society was, once again, seeking to do its part in realizing human rights protections for licensees, and, in turn, the wider population which might seek legal services from those licensees. The goal of promoting equity, diversity and inclusion is one which the LSO shares with jurists and lawyers around the world, specifically through the Human Rights Monitoring Group and more generally through its rights-promoting activities of the past half century.

COMPELLED SPEECH

The Argument that the Recommendation is compelled speech

83 The requirements of Recommendation 3(1) have been opposed as "unjustified compelled speech". In brief, the contention is that Recommendation 3(1) "requires you to state your

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113 Problem #1, supra note 12.
concurrence"\textsuperscript{114} with the "political aims" \textsuperscript{115} of the Society, namely equity, diversity and inclusion. It is said to be "not only coercive, but disturbingly tyrannical".\textsuperscript{116}

84 In support of the argument that Recommendation 3(1) is tyrannical, its opponents rely on the additional reasons of Beetz J (on behalf of himself and four other justices) in the case of \textit{National Bank of Canada v. Retail Workers' International Union}\textsuperscript{117}. The Canada Labour Relations Board heard complaints that the Bank had violated the \textit{Canada Labour Code} by closing one branch which had unionized staff and opening another where the staff was not unionized. It ruled against the Bank, and issued an order that the Bank set up a trust fund to promote the objectives of the \textit{Canada Labour Code}. It also ordered that the Bank distribute to its employees a letter, the text of which was written by the Labour Board, describing the creation of this trust fund and its support for the goals and provisions of the \textit{Canada Labour Code}. The order stated that no changes could be made to the Board's imposed letter, and no additional documents could be sent with it. The letter would thus appear as if it were the creation of the Bank and expressed its own opinions.

85 The central issue in that case was whether the Labour Board had the jurisdiction to issue punitive orders, which is how the Court characterized the requirements to set up the trust and send the letter. The Court's decision was that the Board did not have such jurisdiction and it invalidated the orders. In the additional reasons relied upon by the STOP group, five members of the Court emphasized that no one is obliged to approve of the objectives and provisions of the \textit{Canada Labour Code}; anyone can criticize it and seek to have it repealed, albeit complying with the statute until it is repealed. The letter expressing support for the objectives of the \textit{Canada Labour Code} is thus "misleading or untrue". Beetz J. continues, "This type of penalty is totalitarian and as such alien to the tradition of free nations like

\textsuperscript{114} Problem #2, supra note 13.  
\textsuperscript{115} Problem #4, supra note 16.  
\textsuperscript{116} Problem #2, supra note 13.  
\textsuperscript{117} [1984] 1 SCR 269.
Canada, even for the suppression of the most serious crimes." He was not persuaded that Parliament would have given the Labour Board the power to impose such a penalty, "bearing in mind the Canadian Charter of Rights and Freedoms, which guarantees freedom of thought, belief, opinion and expression." He continues, "These freedoms guarantee to every person the right to express the opinions he may have; *a fortiori* they must prohibit compelling any one to utter opinions that are not his own".

86 The observations about the Charter are *obiter*; there was no actual Charter analysis in the National Bank case.

87 There are no Supreme Court of Canada decisions dealing with compelled speech under section 2(b) of the Charter. Set out below is such an analysis, drawing upon the principles the Court uses to decide cases under section 2(d), and including a justification analysis under section 1 of the Charter.

88 Before turning to that analysis, however, it is useful to consider the differences between the National Bank case and the Law Society's adoption of Recommendation 3(1). Unlike the Labour Board, the Law Society is an institution for self-regulation, not the source of state-imposed controls. Unlike the letter ordered by the Labour Board, the Statement of Principles is not to be distributed to the public or any segment of it. The licensee is allowed to choose his or her own language for the Statement of Principles. The Statement is not supposed to express concurrence with the ideas of equity, diversity and inclusion, but rather the licensees' ideas about how he or she will implement them in his or her professional life. In a regulated profession, it is not unusual for licensees to have to conform their behaviour to ideas with which they may not agree. The Statement requirement is not in the nature of a penalty, but rather a part of the larger project of professional self-regulation. As amply demonstrated by the Bencher election, the Statement of Principles requirement has not interfered in the least with the ability of licensees to express their opinions generally. That there was opposition to those opinions is, with respect, to be expected.
Section 2(b) of the Charter\textsuperscript{118}

89 Section 2(b) of the Charter provides that everyone has “freedom of thought, belief, opinion and expression, including freedom of the press and other media of expression.”

90 The Supreme Court has established a two-part test to determine whether a violation of freedom of expression has occurred. The first step asks whether the activity is within the protected sphere of freedom of expression. If it conveys or attempts to convey a meaning, or has expressive content, it prima facie falls within the guarantee. Once it is established that the activity is protected, the second step asks if the provision under review infringes that protection, either in purpose or effect.\textsuperscript{119}

91 If a violation of section 2(b) is established, the onus shifts to the Law Society to demonstrate that the offending provision is justified under section 1 of the Charter, which provides: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Justice McIntyre observes that in applying section 1, the Court must be guided by the values and principles essential to a free and democratic society, which embody, “to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.”\textsuperscript{120}

92 To succeed in a section 1 justification, it must be established by cogent and persuasive evidence that the objective of the measure is pressing and substantial, and that the means chosen to implement if are reasonable and demonstrably justified, called the “proportionality” requirement. Meeting this proportionality test means establishing that there is a rational connection between the objective and

\textsuperscript{118} \textit{Canadian Charter of Rights and Freedoms}, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), c 11.


\textsuperscript{120} \textit{R. v. Oakes}, [1986] 1 SCR 103 at 136-139.
the means (i.e. that the means are not arbitrary, unfair or based on irrational considerations), that the means impair as little as possible the rights in question ("minimal impairment"), and that there is proportionality between the effects of the measure and its objective. A final overriding concern is in *Dagenais v. Canadian Broadcasting Corporation*\(^{121}\), the Supreme Court adds a further refinement to the proportionality test. It states that even if the objective of the measure is sufficiently important and the first two elements of the proportionality test are met, it is still necessary to prove that there is a proportionality between the deleterious and the salutary effects of the measure.\(^{122}\)

**Analysis**

93 Two approaches to analysis are set out here. One is based on the Society’s regulatory functions, and focusses on the means the Society can use to encourage understanding of members’ obligations and compliance with them. This approach has been explored by Alice Woolley\(^{123}\). The second approach concentrates on the Society’s own goal of promotion of equity, diversity and inclusion, and reviews in light of that goal the measures embodied in the Statement of Principles.

94 Alice Woolley argues that a law society can require licensees to acknowledge and abide by obligations that the law society has lawfully created, even when those obligations involve moral assessments of what is right and good. Compliance-based regulation depends on licensees acknowledging regulatory obligations, creating strategies for accomplishing them and reporting on the success of those strategies.

95 This argument meets the *Charter* test with respect to section 2(b). Although the acknowledgement is speech required by the regulator, the objective of the requirement is pressing and substantial. In the

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\(^{121}\) [1994] 3 SCR 835 at pages 888-889.

\(^{122}\) *Ibid* at 889.

case of the Law Society of Ontario, the objective would be to carry out the statutory function of ensuring that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide. The acknowledgment is rationally connected to the goal, aimed at ensuring that the licensee is aware of the obligations binding him or her. And the means are proportionate to the task, particularly if, as in the case of Recommendation 3(1), the acknowledgment is a matter between the licensee and the regulator and does not involve a requirement of speech to the public or a segment of it. The idea behind the Statement is to require the licensee to think about the implications for his or her own conduct of the special responsibility to obey human rights laws in force in Ontario, a rationale consistent with Woolley’s model of compliance-based regulation.

96 The compliance-based regulation model would, in theory, survive Charter scrutiny even if the licensee were personally opposed to his or her obligations under the Rules, or to the moral rationale for those obligations. Opposed or not, the licensee is bound by the obligations.

97 Woolley argues, however, that in the case of Recommendation 3(1), the Law Society has not created an obligation on its licensees to promote equity, diversity and inclusiveness. Although both lawyers and paralegals are required by the Rules to obey the Ontario Human Rights Code, and other human rights law applicable in Ontario, Woolley maintains that such that obedience does not amount to promotion of equity, diversity and inclusiveness. Nor does she consider that the requirements in Commentary 4.1 to Rule 2 of the Rules of Professional Conduct with respect to integrity, amount to a requirement to “promote” equity, diversity and inclusion. The verbs used in Commentary 4.1 are “recognize” the diversity of the Ontario community, “protect” dignity and “respect” human rights laws.

98 Contrary to this view, we assert that the combined obligations on licenses in the Rules of Professional Conduct, combined with the requirement for continuing professional education in the area of equity diversity and inclusiveness, are sufficient to amount to an obligation which the Society can
enforce by means of an acknowledgement requirement. This is particularly so given the modest requirements of the Statement: a licensee could simply state that he or she would respect the law and the requirements of the Rules of Professional Conduct.

99 The second approach involves a focus on the Society's goal of promoting equity, diversity and inclusion. The Society would argue that its own objective of promoting equity, diversity and inclusion is so pressing and substantial that it justifies the requirement. In this, it would be aided by statements like that of the Supreme Court in TWU v. LSBC 124 that it was reasonable for the Law Society to conclude that promoting equality by ensuring equal access to the legal profession and supporting diversity within the bar were valid means by which it could pursue its overarching statutory duty.

100 The Society would have to establish that the requirement to create and abide by a Statement of Principles is rationally related to the achievement of the Law Society's objective. In this connection, it might argue that requiring licensees to identify behaviour that would further that goal is rationally connected to it; with an emphasis on behaviour, rather than belief in the goal, the Society is, in effect, saying believe what you will, we are interested only in how you behave. The Society's argument with respect to the proportionality of the measure would be similar in this case to that used in the regulatory model. The rational connection could well be established by the Society's reasoning that creating a statement makes the licensee focus on actions he or she can take in furtherance of the objective. The fact that the speech is not prescribed by the Society but developed by the licensee, and that it is not meant to be distributed to the public, serve to distinguish the Statement from the letter at issue in the National Bank case, and support the argument that the Statement effects minimal impairment of the right to freedom of expression. Overall, the Society would also argue that the beneficial effects of the measure, contributing to the promotion of equality and diversity within the profession and thus making it better able to serve the diverse populace of Ontario, outweighs the requirement that licensees

124 Supra, note 29 at para 40.
identify conduct in which they will engage in. This is particularly so as licensees are already obliged by the general law and by the Rules to obey human rights laws.

101 The success of this Charter argument depends almost entirely on whether a Court would decide that the Society’s own objective of promoting equality, diversity and inclusion is of sufficient importance to justify the Statement requirement. There are strong arguments in favour of such a finding, including the Court’s reasoning in the Trinity Western cases, the long history of the Society’s promotion of equality and diversity within the profession, and the fact that respect for minorities is recognized by the Supreme Court as one of the four foundational principles of the Canadian constitution.

102 It is also important to this analysis that although licensees are not required by the Rules to promote equity diversity and inclusiveness, they are required to obey the human rights laws applicable in Ontario. "Conscientious objection" to human rights laws is thus not available to licensees as a basis for arguing that Recommendation 3(1) trenches too deeply on their freedom of expression. The conceptual gap which the Society must bridge in this analytical approach is only the gap between compliance with requirements for equity diversity and inclusion found in human rights laws and promotion of these concepts.

CONCLUSION

103 We have surveyed the objections of the STOP to the Statement of Principles in light of the statutory mandate of the Law Society and its history of commitment to equity, diversity and inclusion. In its respect for human rights, and safeguarding those lawyers and judges who safeguard human rights around the world, the Society is a member of a broad community of jurists and lawyers dedicated to preserving these values. These are not shallow-rooted interests or flash-in-the-pan fads. Any observer of the Society over the past almost half a century would have perceived its commitment and the trajectory of its activities.
104 In requiring all licensees to create a Statement of Principles, the Law Society is not behaving in a tyrannical manner as alleged by STOP. It is building upon licensees' existing obligations, under the law of Ontario and Canada, namely human rights Codes and the Charter. It is building further on Rules of Professional Conduct which require observance of human rights laws in effect in the province. It is invoking the Rule of Professional Conduct about the integrity of lawyers. Whatever speech may be required by licensees, in writing down their thoughts about how their behaviour toward employees, colleagues and the public can contribute to the Society's desire to promote human rights, is, we contend, amply justified by the regulatory role of the Society and by the tremendous importance of this objective. The Statement of Principles is an extremely modest requirement, for speech that is not communicated to the public or any segment of it, and that is written in the licensees’ own words, rather than dictated by the society. This is the only part of Recommendation 3 that is required of all licensees; the more onerous requirements of filing a plan and self-reporting on it are not imposed on work places with fewer than 10 licensees in Ontario.

105 The Law Society of Ontario is a powerful actor and leader in the commitment to the primacy of the Rule of Law and human rights. The degradation of that commitment by others has been “largely driven by a broad questioning of the value of universal human rights.” That questioning has been “cynically exploited by...other powerful actors...” such as STOP to foment a wider backlash in the profession.125

106 “Despite these retrograde tendencies, it is critical...”126 that the Rule of Law and human rights law and standards such as the Statement of Principles be developed and upheld so that the Law Society of Ontario can continue its long history of effectively contributing to addressing the great challenges to the Rule of Law and human rights, in this Province and the world.

125 The Declaration, supra note 1 at 1.
126 Ibid.
Quick Guide to the Statement of Principles

Text

...require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public

What are licensees' obligations?

- Rules of Professional Conduct, Rule 2 and Commentary 4.1 and Rule 6
- Paralegal Rules of Conduct, Rule 2.03
- CPD requirement for EDI credit hours
- obedience to the law of Ontario and Canada, including human rights codes

Law Society statement requirements

- interprets the requirement as calling on licensees to reflect on their professional context and how they will uphold and observe human rights law
- relates to conduct, and does not include thought, belief or opinion
- applies only to professional relationships
- licensees are not required to make the statement public
- licensees are not required to disclose the contents of the statement to the LSO
- licensees may use their own language to compose the statement, though templates are available for assistance
- licensees must advise the LSO on their annual return of the existence of the statement
- failure to prepare a statement carries no penalty, but the licensee is requested to explain the omission
How the STOP SOP group has described the Statement

Compares it to situation where the Labour Board ordered a party to distribute publicly, as its own opinion, a letter composed by the Labour Board, expressing views which the party did not agree with, under threat of penalty

Says that licensees are required to state their concurrence with the political aims of the Society.

Is the requirement an example of "mission creep", as alleged by STOP SOP?

- Law Society Act: 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
  1. The Society has a duty to maintain and advance the cause of justice and the rule of law;
  2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario;
  3. The Society has a duty to protect the public interest.

- Supreme Court of Canada: "as a public actor, the LSUC has an overarching interest in protecting the values of equality and human rights in carrying out its functions"
- Supreme Court of Canada: "The LSUC was also entitled to interpret the public interest as being furthered by promoting a diverse bar"
- Supreme Court of Canada: "The LSUC's determination that it was entitled to promote equal access to and diversity within the bar is supported by the fact that it has consistently done so throughout its history."

Is the Statement an Interference with the Independence of the Bar, as alleged?

- International Commission of Jurists: "The principles that comprise the Rule of Law include the protection of human rights and the independence of judges and lawyers as well as their accountability"
- International Commission of Jurists: "To ensure public confidence and promote human rights values, judiciaries, the legal profession and
prosecution services should reflect the diversity of the societies they serve. All forms of discrimination in the composition of judiciaries, legal profession and prosecution services, as well as in the administration of justice, must be eliminated."

- Supreme Court of Canada: deference to the profession by way of permitting self-regulation promotes the independence of the bar

**Is the requirement of a Statement "unjustified", as alleged?**

- On the basis of the case about the Labour Board, the Stop SOP group alleged that the Statement requirement is tyrannical, but that case did not include any *Charter* analysis. STOP SOP has not presented any *Charter* analysis of its own.

- If there is a violation of freedom of expression rights under section 2(b) of the *Charter*, section 1 of the *Charter* requires that the instrument causing it must be shown to be a reasonable limit imposed by law demonstrably justifiable in a free and democratic society.

- To meet the section 1 test, it must be shown that the objective of the measure is "pressing and substantial".

- One objective is to *fulfil the Society's regulatory mandate*: to ensure that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.

- Supreme Court of Canada: "Eliminating inequitable barriers to legal training and the profession generally promotes the competence of the bar as a whole. The LSUC is not limited to enforcing minimum standards with respect to the individual competence of the lawyers it licenses."

- Supreme Court of Canada: "Limiting access to membership in the legal profession on the basis of personal characteristics, unrelated to merit, is inherently inimical to the integrity of the legal profession."

- Another objective is fulfilling the Society's objective of promoting equity, diversity and inclusiveness, which has been validated by the Supreme Court.
The next stage in determining justification is to inquire whether the means chosen are rationally connected to the objective, and impair as little as possible the rights in question (minimal impairment). The last stage is to determine whether the positive effects of the measure are in proportion to any negative effects it may have.

The requirement is rationally connected to its objective in both cases, since it is intended to encourage licensee reflection on their own conduct in the domain of human rights. The impact on freedom of speech is modest, since no public statement is required and licensees have choice of language and sentiments expressed. The Society does not inspect or judge the Statements, and does not punish omission to file.

There is overall proportionality between the positive and negative effects of the measure. To the extent that licensees may complain that the Statement requires them to adhere to human rights law, they are incorrect: it is the law itself and the Rules of Professional Conduct which do that. Nor is human rights law simply the "political aims" of the Society. It is the law of the state, applicable to them in both their personal and their professional capacity.

Mary Eberts, OC LSM
Bencher, 1995-1999

Heather J. Ross, LLB
Bencher, 1995-2019

June 25, 2019

*The sources of the material quoted in this document can be determined by reference to the essay “Not Tyranny: Reflections on the Law Society of Ontario Statement of Principles”.*
An open letter to LSO lay benchers | Ian Wilkinson

Tuesday, June 25, 2019 @ 1:00 PM | By Ian Wilkinson

Lay benchers hold a special place at the Law Society of Ontario (LSO) Convocation. You are the only benchers who truly represent the people by virtue of your government appointment. All other benchers, as members of the professions that the law society regulates, have a self-interest in the way the law society works. You are there to make sure policies are administered in the public interest.

As you know, on June 27 Convocation will consider whether to repeal the Statement of Principles (SOP). I ran for bench as the sole paralegal member of the StopSOP slate, so you would be right to believe that I think the SOP should be removed. I would like to suggest that of all members of Convocation, lay benchers should be the ones to regard the SOP with the greatest degree of skepticism.

Please allow me to explain.

On a policy level, the SOP undermines the neutrality of the machinery of government in our democracy. Understanding this is important for all those in the profession, but particularly for you, the lay benchers, because the protection of our democratic principles is the raison d’etre for your place at Convocation.

Former treasurer Julian Falconer appeared on an episode of The Agenda wherein he stated: “I think as a society we have difficult issues to grapple with so I think it’s time we take positive steps and to not talk in platitudes, hopes or apologies but to take positive action and that’s what you are seeing.”

The implication is that the LSO ostensibly as a leading institution in our democratic society, has a mandate to push social change in our society. This demonstrates a basic misconception of democratic principles in the west and an ignorance of the historical development of human rights since the Enlightenment.

In a democracy, power flows from the people to the government. That government creates legislation and policy and it is for the bureaucracy to administer that policy within the limits of its delegated power.

Direction comes from the people to political bodies and then to institutions like the LSO — not the other way around. It is not the place of the LSO to support or promulgate social ideologies on either side of the political spectrum, left or right. In fact, the machinery of government, in no small part, is meant to act as to buffer against extreme winds of social change, which are inherently unstable for the ship of state.

The bureaucracy (which is what the LSO is) is meant to be “hermetically sealed” from the pressures of social ideology except by virtue of government policy directives. As the guardian of the public interest in the practice of law in Ontario, the LSO is mandated to regulate the practice of law in Ontario for all Ontarians, not just those of one political bent or another, and especially not on behalf of a group of activist lawyers. This is not a job for revolutionaries. The LSO should not be a battleground in the so-called culture war.

This idea is foundational to democracy and clearly reflected in the limited mandate of the LSO:
Function of the Society
4.1 It is a function of the society to ensure that, (a) all persons ... meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and (b) the standards of learning, professional competence and professional conduct ...

Principles to be applied by the Society
4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles ...

The “principles to be applied in carrying out its functions ...” in s 4.2 can’t be used by the LSO to invent a new function not elicited in s. 4.1. That’s a policy decision not within its mandate. It would be policy making by administration rather than administration of a policy decision. There is a crucial difference.

The SOP has nothing to do with learning, competence or conduct but it is a “recognition,” “acknowledgement” and promise to “promote” a set of values or beliefs. Only cult of personality dictatorships and religious organizations have belief requirements.

The LSO, I hope, is neither of those.

Yet, in an attempt to legitimize the underlying doctrine used to justify the SOP, the LSO has surreptitiously attempted to attach an invalid, unmeasurable concept of “cultural” competence to the valid and measurable mandate of “legal” competence.

Insidious? Why else has the LSO provided a training manual outlining the new “cultural competence” requirement to paralegal licence applicants as part of their LSO examination study materials only weeks before the exam? This is bureaucratic trickery used to claim that the SOP is a measure of a kind of competency related to s. 4.1 in the Law Society Act. But, I repeat, adding an area of competence not approved by the legislature is a policy decision not within the mandate of the LSO.

The power of government to affect our lives has never been greater. The introduction of the SOP, which is really a statement of values, is a first in western democracies. It represents the “thin end of the wedge” in breaching the seal between the machinery of government and the influence of social ideology. How we resolve this issue will affect how free speech is treated in democratic bureaucracies in Canada and around the world. We are the proverbial canary in a coal mine on this issue.

You are the only benchers that truly represent the people by virtue of your government appointment.

The question you might ask is “What goal does the SOP actually achieve in practice, or even could achieve in theory, that justifies overriding the long-established, democratic, political doctrine prohibiting the bureaucracy from initiating policy initiatives?”

Thank you for that consideration.

Ian G. Wilkinson B.A., LL.B. provides litigation paralegal services throughout southwestern Ontario. You can e-mail him at iangwilkinson@legalcentre.ca or visit www.legaleagle.ca.
June 25, 2019

Delivered via e-mail

Convocation
c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation,

Re: Statement of Principles motion, June 27 Convocation

The Canadian Association of Black Lawyers (CABL) is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary.

We are writing to you today in regards to the Notice of Motion brought pursuant to section 93 of By-Law 3 by Murray Klippenstein and Cheryl Lean, dated May 23, 2019, which seeks to repeal Recommendation 3(1) in the *Working for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*, submitted by the Law Society’s The Challenges Faced by Racialized Licensees Working Group, dated September 22, 2016.

This recommendation, one of 13 recommendations adopted by the Law Society, was the culmination of several years of research, study, and discussion. The Working Group consulted over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public throughout the province of Ontario, between January and March 2015. In addition, the Working Group received written submissions from 45 individuals and associations. CABL was one of the many equity-seeking groups and stakeholders involved in the consultation and development of this Report, and the recommendations within it.
The motion scheduled for June 27 fails to reflect this extensive review. Further, it does not propose any alternative approaches to accelerating a culture shift in the legal profession, as described in the Report. To this extent, the June 27 motion reflects a governance failure, and fails to properly “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances” required of Benchers, as expressed in paragraph 32 of the Bencher Code of Conduct, adopted by Convocation on April 25, 2019.

As the Benchers will be aware, after reading the *Stratcom Challenges Facing Racialized Licensees: Final Report*, racialization “generates numerous specific challenges that operate in subtle ways, reflecting their systematic character and that may be amplified by individuals’ lifestyles, socioeconomic status, age, gender, national origin and educational pedigree.”\(^1\) As such, it is our submission that Recommendation 3(1) is not onerous, is not compelled speech, but is a small step in the recognition in the need to address the challenges that occur due to subtle and overt racism, affecting *all* of us.

It is our submission that equity, diversity and inclusion is not controversial to strive for as a profession that serves a diverse public.

We urge Convocation to refrain in supporting this motion, and instead take the appropriate steps to formulate a strategy that addresses the concerns listed in the Report.

Yours truly,

Lori Anne Thomas  
**CANADIAN ASSOCIATION OF BLACK LAWYERS (CABL)**

cc: Roundtable of Diverse Associations (RODA)

Law Society cannot compel enlightenment

It sounds like Europe in the Dark Ages, when Ontario's law society compels lawyers to sign a statement saying they believe and strive for equality, diversity, and inclusion, writes Hamilton lawyer T. David Marshall.

Opinion10:16 AM by T. David Marshall Hamilton Spectator

I am a lawyer and proud to be one. I, like all of my colleagues, have worked hard to get here — and to survive in this competitive profession. Day in and day out, we are "pounding the facts" — as they say — in the service of our clients.

But I am increasingly concerned with our governing Law Society's apparent interest in forcing lawyers to promote certain ideas, and to say and believe certain things. That isn't constitutional, and its contrary to the fundamental philosophical underpinnings of western liberal democracy — and is therefore a threat to all of us.

This month the Law Society's elected and appointed Benchers will vote on a motion regarding the requirement that all Ontario lawyers write and sign a "Statement of Principles" in which each of us is obliged to positively demonstrate, promote and profess allegiance to the Law Society's officially-sanctioned values of equality, diversity, and inclusion. Failing to profess one's commitment — we are told — will lead to discipline, including the potential of losing one's licence to practice law and earn a living.

Amazingly, I should be one of the Law Society's "natural" allies in its struggle for greater equality and inclusivity within the profession. My family is of mixed heritage, faiths and ethnic origins. And I care deeply for these ideals. But I part company — and abruptly so — with those who are prepared (eager?) to use force to compel thought and orthodoxy at the expense of intellectual diversity and essential freedom.

What the Law Society is forcing on us lawyers also seems entirely ineffectual at working to actually achieve these laudable, grander, socio-political goals. For, isn't it the case that one either agrees with the promoted idea(s), or one does not — and of the first it is an unnecessary and redundant imposition to compel that person, and of the second it requires the person to either profess ideas not believed in, or to "believe" in such ideas against one's will (if such a thing is even possible)?

And with respect to these two, the Law Society portends its heavy hand over both — in which the first is thereafter concerned with the sufficiency of the expressed devotion to official orthodoxy (am I pure enough?) — and the second is rendered a hypocrite, a liar, and a betrayer of his or her own conscience.

In either case, the work of the Law Society, in this respect at least, does a disservice to every single Canadian. In western liberal democracies we do not change norms, society, or a profession, by compelling certain ideas to be professed or "promoted" by individuals. We do, as John Stuart Mill suggested in his famous treatise, On Liberty: respect that each is the proper guardian of his or her own health, whether bodily, or mental and spiritual. And thereby come to understand that humankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest. Indeed, to me, that is the very essence of our constitutionally-protected freedoms — which are imperiled when powerful institutions tell individuals what to say, think, and believe.

To be perfectly blunt, then, what the Law Society is doing is precisely the same thing the Church did in the 7th through 15th century. It too was convinced of the unaltering "wisdom" of its officially sanctioned principles. It too was fervently committed to the policing of ideas, language and orthodoxy. It too sought to render the minds of its constituents uniform, and pure.

But that time is, rightly, referred to as the Dark Ages, and I suspect one-day this period too, in its own way, will be looked upon by the Law Society, and its members, with none-too-little regret.

What is most remarkable to me, however, is the fact that in all of the ink spilled over this issue, not one of the defenders of the Law Society's Statement of Principles has sought to fight the issue of the grounds actually proffered by me, and others like me, who value freedom (with all its attendant benefits and perils) over conformity and compelled speech and thought.

Instead, they have simply stereotyped us (despite the evidence) as racists, misogynists, or perhaps, when feeling more charitable, as simply deaf or indifferent to the concerns of minority persons.

Their defence, however, and quickness to personally attack those of us who have grave concerns about using punishments to make people think and say certain things, I think, tells you something about the intellectual poverty and inherent violence which underpins
this ideologically-driven movement. For, there is an old saying in our profession: "when the facts are with you, pound the facts, but when the facts are against you, pound the table."

And from what I see, there is a lot of table pounding going on.

T. David Marshall is a former lecturer in Ethics and Active Citizenship and currently-practicing lawyer in Hamilton, Ontario, focusing on municipal law and civil litigation — including human rights law.

T. David Marshall is a former lecturer in Ethics and Active Citizenship and currently-practicing lawyer in Hamilton, Ontario, focusing on municipal law and civil litigation — including human rights law.

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**Law Society cannot compel enlightenment**

It sounds like Europe in the Dark Ages, when Ontario’s law society compels lawyers to sign a statement saying they believe and strive for equality, diversity, and inclusion, writes Hamilton lawyer T. David Marshall.

Opinion 10:16 AM by T. David Marshall Hamilton Spectator
June 26, 2019

James Varro  
Director  
Office of the CEO and Corporate Secretary  
Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5H 2N6

Dear Benchers,

I am writing on behalf of the Association of the Law Officers of the Crown (ALOC). We are an organization of more than 850 lawyers who work for the government of Ontario.

As Crown counsel we are required to take an Oath of Public Office which acknowledges our duties and obligations to the public we serve. We strongly believe that the public is best served by a diverse and inclusive profession that recognizes its unique role and responsibility to address discrimination wherever it may be found.

As an association representing licensees who are also Crown counsel, we are writing to express our support generally for strategies to address barriers faced by racialized licensees and specifically for the Statement of Principles. In our view, acknowledging a lawyer’s obligation to promote equality, diversity and inclusion generally, in our behaviour to colleagues, employees, and clients, by creating a Statement of Principles is a small yet incremental step to eradicating these barriers. The Statement of Principles is important and necessary because it specifically acknowledges a lawyer’s existing obligation under the Rules of Professional Conduct and the Human Rights Code and highlights a lawyer’s unique and important role and responsibility to promoting change - addressing discrimination generally and within the legal profession.

In the recent bencher election ALOC only endorsed candidates who were in support of the Statement of Principles. With this letter to further its support of the Statement of Principles.
Principles ALOC strongly encourages benchers to make strides in advancing diversity. The first step begins with upholding the Statement of Principles.

Sincerely,

Megan E. Peck
President
Association of Law Officers of the Crown (ALOC)

Cc: Orlando Da Silva, Bencher and Counsel, Crown Law Office - Civil
Isfahan Merali, Bencher and Counsel, Consent and Capacity Board
Teresa Donnelly, Bencher and Crown Attorney, County of Huron
June 26, 2019

Convocation
Law Society of Ontario
Osgoode Hall,
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Law Society Benchers,

On behalf of the Executive Committee and the Board of Directors of the South Asian Bar Association of Toronto (“SABA Toronto”) please accept our sincerest congratulations on your recent election to the Law Society of Ontario’s (“LSO”) Board of Directors. We look forward to working together to strengthen the relationship between the LSO and diversity organizations in Ontario.

SABA Toronto is one of the largest diverse bar association in Canada with a dynamic and growing membership. We are also the largest organization of South Asian lawyers anywhere in North America. We provide professional growth and advancement for our legal members and seek to protect the rights and liberties of South Asian and other diverse communities across Ontario.

SABA Toronto is aware that on June 27, 2019 a motion will be heard by Convocation to repeal the requirement for every licensee to adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity, and inclusion (“Statement of Principles”), and to replace this mandatory requirement with voluntary provisions.

The Statement of Principles was one of thirteen recommendations suggested in the final report of the Challenges Faced by Racialized Licensees Working Group (“Challenges Working Group”) and adopted by Convocation in December 2016. The recommendations were a result of lengthy research and consultation by the Challenges Working Group. Between January and March 2015, the Challenges Working Group consulted with over 1,000 lawyers, paralegals, law students, articling students, and members of the public. The Challenges Working Group also received written submissions from individuals and organisations.

The Challenges Working Group identified three objectives stemming from their consultations:

1. Inclusive legal workplaces in Ontario;

2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Statement of Principles was one recommendation provided by the Challenges Working Group in support of these objectives. This recommendation and the others presented by the Challenges Working Group arose from lengthy and extensive research and an intensive information gathering process. To undermine the consultation and research done by the Challenges Working Group and the recommendations that arose from that consultation and research would be inappropriate. To do so will adversely affect the profession and the lives of racialized licensees in Ontario. Approval of the motion before Convocation on June 27th will send a harmful message to existing and new licensees that the LSO disregards thoughtful research and outreach on issues that affect those licensees.

In order to move forward as a profession we must try to address the barriers that affect racialized licensees instead of overturning the progress that had been made to date. We urge you to reflect on these issues and to resist undoing the progress of the past several years. We respectfully urge you and all benchers not to abolish recommendation three of the Challenges Working Group or to amend this or other recommendations from the Challenges Working Group without further consultation with equality seeking organizations and diversity groups.

SABA Toronto looks forward to continue to work with the LSO on important matters of diversity, equity and inclusion within the legal profession.

Sincerely,

Aaron Bains
President
SOUTH ASIAN BAR ASSOCIATION OF TORONTO

36481607.1
A J H WHITELEY, MA, JD

83 County Road 25
Picton, ON, K0K 2T0

13 June 2019

Law Society of Ontario
Osgoode Hall
130 Queen St West
Toronto, ON M5H 2N6

I was called to the Ontario Bar in 1980 and in my first year of practice I was privileged to serve as a law clerk to the Chief Justice of Ontario. Throughout my ensuing career I was governed by (1) the laws of Ontario and Canada; (2) the interests of my clients; (3) my professional obligations to the bench and my fellow practitioners; and (4) my personal ethical standards. I was proud of my profession and my practice.

But I closed my practice at the end of 2018 because I refused to be governed by the following edict published by the Law Society of Ontario:

All licensees are required to create and abide by an individual Statement of Principles that acknowledges their obligation to promote equality, diversity and inclusion generally, and in their behaviour toward colleagues, employees, clients and the public.

I have graduate degrees in Philosophy and have a personal ethic that I have honed over the years. Requiring that I adhere to someone else’s principles is demeaning and contravenes my right to freedom of speech.
The function of the Law Society is to ensure that all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide. In carrying out its functions the Society must have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. The Society has a duty to act in a timely, open and efficient manner.

The imposition of an obligation to promote equality, diversity and inclusion on licensees is clearly *ultra vires* the Law Society. What is more, it is antithetical to the mandatory principles to which the Law Society must adhere. It is not hard to conceive of a situation in which equality would be against the public interest or one in which diversity would prevent access to justice. More importantly, it is readily apparent that this mandatory obligation could conflict with a lawyer’s primary obligation which is to promote the best interests of a client. Or perhaps only clients who promote equality, diversity and inclusion are worthy of legal representation.

I urge the Law Society to abandon its counterproductive experimentation with social engineering and to concentrate on its core obligation to facilitate access to justice for all and promote the rule of law.

Alan Whiteley, Licensee 20119I
June 26, 2019

From Cassels Brock Inclusion and Diversity Committee

Dear LSO Benchers,

We are writing to you as the Inclusion and Diversity Committee at Cassels Brock. As part of Cassel Brock’s overall commitment to promoting diversity and inclusion, the firm has vested within our Committee a mandate to support and enhance inclusion and diversity at the firm and in the profession. With the impending vote on the repeal of the LSO’s Statement of Principles (“SOP”) we want to express our views of the SOP and the impact of repealing the requirement for it in its entirety.

We urge the LSO Benchers to retain the SOP. We believe the SOP encourages reflection and conversation around the promotion of diversity and inclusion in the profession. The repeal of the SOP sends the message that the governing body of the LSO is not committed to promoting these values.

Over the past week and a half, new lawyers have been called to bar across the province. These new calls are a diverse group of highly qualified and talented lawyers. The repeal of the SOP sends the message that the LSO is not concerned with promoting the ability of all lawyers to serve Ontarians, especially those who have been historically underrepresented in the profession. It also sends a negative message to diverse candidates who may be considering entering the profession in the future.

While free speech has been at the center of the debate surrounding the SOP within the profession, the public at large will have limited exposure to the nuances of this debate. The media headlines surrounding the repeal of the SOP focus on the profession’s step backward on the issue of inclusion and diversity. Given the LSO’s mandate of protecting the public, and the privilege of self-regulation, we believe this is the wrong message for the LSO to send to the public.

While we are in support of maintaining the SOP, we do not believe it is the only mechanism to advance inclusion and diversity in the profession. There may be viable alternatives that could be implemented. However, the repeal of the SOP, without a new strategy or plan, is a step-backwards and sends a very dangerous message.

We implore you to take these concerns into account and vote to maintain the SOP, while continuing to review alternative strategies for promoting inclusion within the legal profession.

Yours truly,
Cassels Brock & Blackwell LLP

Peter Sullivan, Chair – Inclusion and Diversity Committee
PJS/jp
June 26, 2019

Convocation
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation:

I am a member of several of the groups that have written to Convocation in support of the Statement of Principles, as particular organizations or member associations RODA, or both. Specifically, I belong to the Toronto Lawyers Association, the Women's Law Association of Ontario, and the OBA Sexual Orientation and Gender Identity Law Section. I am a past member (2007-2012) of the OBA Equality Committee.

I support the positions in favour of the Statement of Principles expressed by all the organizations that have written to Convocation on this serious matter. I ask and urge you:

- to vote against the motion dated May 23, 2019 to repeal the requirement approved on December 2, 2016;
- to keep in mind the lengthy path and voluminous work that led to the recommendations of which the SOP is but one; and
- to consult with stakeholders before engaging in any process to repeal, replace, or amend the Statement of Principles.

Yours truly,

Maryellen Symons
LSO #30133E