

Tab 8

Equity and Indigenous Affairs Committee

Recommendations of the Equity Partners Working Group on the Role of the Equity Partners within EIAC

June 23, 2021

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1. Purpose

This report will provide Convocation with information and an update on the status of the recommendations of the Equity Partners Working Group (“Working Group”). The Working Group was tasked with bringing forward recommendations to the Equity and Indigenous Affairs Committee (“EIAC” or the “Committee”) regarding the role of the equity partners of the Law Society of Ontario (“Law Society”). Historically, the equity partners have supported the work and mandate of EIAC as set out in the Section 122 of By-law 3.¹

2. Executive Summary

The Equity Partners Working Group was formed in response to a 2020 Bencher motion seeking a study of the participation of non-Benchers at EIAC meetings. The Working Group was composed of EIAC members and examined the role of the equity partners, Indigenous Advisory Group (“IAG”), the Equity Advisory Group (“EAG”) and L’Association des juristes d’expression française de l’Ontario (“AJEFO”). The Working Group brought forward two sets of recommendations for EIAC’s consideration on May 13, 2021. One set of recommendations represented the views of the majority of the Working Group and the other represented the minority’s position. On June 10, 2021, the Committee voted on the recommendations of the Working Group.

The recommendations of the majority of the Working Group were:

- That the equity partners continue to send representatives to participate in discussions at Committee meetings, except for *in camera* matters; and
- That each equity partner be given the option to send up to two representatives to Committee meetings.

The minority of the Working Group recommended expanding EIAC’s regular consultations to groups beyond the IAG, EAG, and AJEFO. The minority also recommended that the IAG, EAG and AJEFO no longer be referred to as equity “partners” and that they no longer have decision-making roles at EIAC.

A majority of Committee voted in favour of the recommendations from the majority of the Working Group to maintain the status quo regarding the equity partner’s participation at EIAC. A minority of the Committee was supportive of the recommendations from the minority of the Working Group.

¹ Law Society of Ontario, By-Law 3 (amendments current to 27 May 2021), online: <<https://lso.ca/about-lso/legislation-rules/by-laws/by-law-3>>.

3. Context

A. Background

On February 27, 2020, Bencher John Fagan filed a motion at Convocation, which was seconded by Bencher Jared Brown, to:

- allow all Benchers to attend and participate in Equity and Indigenous Affairs Committee meetings;²
- appoint a committee of Benchers to study the participation of non-Benchers at Committee meetings and the advisability of creating and maintaining a standing group of unelected advisors at the Law Society;³ and
- exclude non-Benchers from Committee meetings until the study was completed.⁴

Bencher Fagan's motion was tabled by Convocation's approval of a motion to table made by Dianne Corbiere, Chair of EIAC, and seconded by Bencher Rob Burd.

In response to the motion, Chair Dianne Corbiere committed to forming a working group to examine the role of the equity partners within EIAC. The Chair noted the importance of taking a principled and structured approach to understanding the Committee's concerns and coming up with solutions that ensure that the Law Society continues to meet its duty to protect and advance equity and diversity in the legal profession and operate in the public interest.

On September 10, 2020⁵, Chair Corbiere formed the Equity Partners Working Group (the "Working Group"), a Bencher group composed of EIAC members. The Working Group was tasked

² EIAC is hereby directed to recognize the right of all Benchers to attend, to participate and to speak at EIAC committee meetings and other EIAC events, subject only

i. to the exclusive right of the appointed Bencher members of such committee to vote on all matters coming before the committee, and

ii. the right of the chair of such meeting or event to give precedence to the appointed Bencher members of such committee, and to manage the meeting having regard to time constraints and other factors as seem relevant to the chair;

³ Pending the report of the committee of Benchers referred to in paragraph (c) below, EIAC shall conduct its meetings without the regular attendance and participation of non-benchers, except for the purpose of allowing such persons to submit reports requested by the EIAC or make submissions to the EIAC, as permitted by the EIAC.

⁴ A committee of Benchers be appointed by Convocation at its next regular meeting to

i. study the question of the advisability of according to non-benchers the privilege of regular attendance and participation at meetings and other events of the Committees of Convocation.

ii. Study the advisability of creating and maintaining a standing group of unelected advisors such as the EAG.

⁵ April, May and June 2020 EIAC meetings were cancelled due to the COVID-19 pandemic.

with examining the role of the equity partners⁶ within EIAC, including participation at Committee meetings and ways to improve the relationship between EIAC and the equity partners to advance the Committee's mandate. The five members of the Working Group were Benchers Dianne Corbiere, Atrisha Lewis, Jorge Pineda, Rob Burd, and Julian Falconer.

B. Objectives of the Working Group

The objectives of the Working Group, as set out in its terms of reference⁷, were to:

1. Examine the historic and current role of the equity partners in supporting EIAC in the development of policy options for the promotion of equity and diversity in the legal professions.
2. Assess options regarding the equity partners' continued participation in EIAC meetings.
3. Recommend changes to the governance structure of EIAC, if required, to increase information sharing between EIAC and the equity partners and to enhance the decision-making process at EIAC.
4. Consult with the equity partners in developing recommendations to EIAC.
5. Bring recommendations back to EIAC in the spring of 2021 for consideration.

3. History and Background

A. History of the Equity and Indigenous Affairs Committee

In 1997, the Law Society adopted the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the "Bicentennial Report"). The Bicentennial Report reviewed the initiatives the Law Society had undertaken to address the barriers faced by racialized, Indigenous, Francophones, LGBTQ2S+, and people with disabilities. The report made sixteen recommendations that have since guided the Law Society's work in advancing equality, diversity and inclusion within the legal professions.

⁶ The Law Society's three equity partners are the Indigenous Advisory Group, the Equity Advisory Group and the L'Association des juristes d'expression française de l'Ontario. In accordance with its mandate set out in s. 122 of By-law 3, EIAC consults with the equity partners in developing policy options for the promotion of equity and diversity in the legal professions.

⁷ See Appendix "A", attached.

In the mid-1990s, the Law Society created the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee), as a standing committee of Convocation to advance equity and diversity in the legal professions.

Section 122 of By-law 3 sets out the mandate for EIAC:

- (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples; and
- (b) to consult with Indigenous, Francophone and other equality-seeking communities in the development of such policy options.

EIAC's engagement with its equity partners, including participation in Committee meetings, has enabled EIAC to fulfill its mandate to consult with Indigenous, Francophone and equality-seeking communities to develop policy options for the promotion of equity and diversity in the legal professions.

B. Overview of the Law Society's Equity Partners

EIAC and the Law Society have relied on input and open dialogue with its three equity partners, the Indigenous Advisory Group, the Equity Advisory Group and L'Association des juristes d'expression française de l'Ontario, in setting the Committee's strategic priorities and to guide its decision-making. The equity partners are composed of volunteer lawyers, paralegals, licensing candidates, law students, and others with expertise or lived experience related to the areas of equity, diversity, and inclusion.

The equity partners assist EIAC in the development of policy options for the promotion of equity and diversity in the legal profession by:

- Identifying and advising the Committee on issues affecting equity-seeking communities, both within the legal professions and relevant to those seeking access to the professions;
- Providing input to the Committee on the development of policies and practices related to equity, both within the Law Society and the professions; and,
- Commenting to the Committee on Law Society reports and studies related to equity issues within the professions.

Representatives from the IAG, EAG, and AJEFO regularly attend Committee meetings at the invitation of the Chair of EIAC.⁸ Each representative provides updates on the work of their respective group, participates in discussions to keep the Committee informed on issues affecting equity-seeking communities, and provides input on the development of policies related to equity and diversity.

The representatives do not officially vote in EIAC meetings as only members of a standing committee are permitted to vote at committee meetings.⁹ However, the Chair will ask for their views on matters. All deliberations and discussions at standing committee meetings are confidential.¹⁰

i. The Indigenous Advisory Group (IAG)

In November 2004, the then-chair of EIAC, Joanne St. Lewis, established the Aboriginal Working Group (the “AWG”) to act as a resource to EIAC on issues impacting the Indigenous bar and Indigenous peoples in Ontario. Over the years, the AWG has provided feedback to EIAC through an Indigenous lens, including the Aboriginal Bar Consultation Project, the Articling Task Force’s Consultation Report, and the proposal for a certified specialist designation in Indigenous legal issues.

Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission (the “TRC”), the Law Society expressed its desire to formally re-establish and strengthen its relationship with Indigenous peoples on justice issues. In 2016, the Law Society partnered with representatives from First Nations, Inuit and Métis communities to establish the Indigenous Advisory Group consisting of Indigenous legal professionals and Elders.

The members of the IAG serve three-year terms. Members are confirmed for appointment by consensus of the existing membership. The current membership of the IAG is composed of 11 members, including three members of the Elders’ Council.¹¹

The mandate of the IAG is to promote the implementation of the TRC Calls to Action, advise on the unique issues faced by Indigenous licensees and communities in Ontario, and encourage the development of relationships between Indigenous peoples and Canadian legal structures and

⁸ Law Society By-Law 3, s. 115(2) states that persons other than Benchers and Law Society staff can attend a meeting of a standing committee with the permission of the chair of the committee.

⁹ Law Society By-Law 3, s. 116.

¹⁰ Law Society By-Law 3, s. 115.1(2) states that no person shall disclose any information that would reveal the deliberations of a standing committee, except in certain circumstances set out in s. 115.1(3).

¹¹ The current members of the IAG are Audrey Huntley (Co-Chair), Catherine Rhineland (Co-Chair), Elder Myeengun Henry, Elder Larry McDermott, Elder Tauni Sheldon, Caitlin Tolley, Danielle Lussier-Meek, Randall Kahgee, Sheila Warner, Tamara Moore, and Marcel Larouche.

institutions in a manner that respects Indigenous values, beliefs and legal systems.¹²

The IAG has collaborated with EIAC on a wide range of initiatives and has provided the Law Society with advice and guidance with respect to various policy and operational issues. Since late 2016, members of IAG's Elders' Council have attended EIAC meetings to educate the Committee on Indigenous teachings and values. In 2017, EIAC partnered with the IAG to develop an Indigenous Framework to provide perspective and guiding principles to the Law Society in its approach to reconciliation. Convocation approved the Indigenous Framework in June 2017.¹³

In 2018, the IAG worked with the Law Society to revise and update the [15 guidelines](#) for lawyers who represent Indigenous clients, and resources and information about the [Sixties Scoop Settlement](#) for licensees, Indigenous claimants, and the public. The same year, the IAG also partnered with the Law Society, the Advocates' Society and the Indigenous Bar Association to develop the [Guide for Lawyers Working with Indigenous Peoples](#), a resource developed to help licensees learn about Indigenous cultures and understand the interplay between Indigenous legal orders and the Canadian legal system.

In 2019, the Professional Regulation Committee, in collaboration with the IAG, initiated a review of the Law Society's good character process to ensure that it is transparent, provides candidates with certainty, and does not create discriminatory barriers to entry. Most recently, the Law Society consulted with the IAG on the proposed Family Legal Services Provider (FLSP) license. Members of the IAG provided input on the licence from an Indigenous perspective, advised on competencies related to unique Indigenous issues in family law, and provided Indigenous institutional and community contacts for further outreach.

ii. The Equity Advisory Group (EAG)

The Equity Advisory Group represents the diverse interests of lawyers, paralegals and students who identify as members of one or more equity-seeking groups that have historically been under-represented at Convocation. EAG's mandate is to assist EIAC in the development of policy options for the promotion of equity and diversity in the legal profession. The Law Society has consulted with EAG for over 17 years.

¹² The IAG's full mandate can be found in the IAG's [terms of reference](#) (pages 21 to 25).

¹³ Law Society of Ontario, "Equity and Indigenous Affairs Committee, Report to Convocation" (29 June 2017), online (pdf): *Law Society of Ontario* <<https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/c/convocation-june2017-equity-indigenous-affairs-committee-report.pdf>>

EAG is composed of volunteers who serve three-year terms. EAG's membership consists of 12 organizational members¹⁴ and 12 individual members¹⁵ as per its terms of reference. EIAC appointed the current membership following an open invitation by the Law Society in 2018.¹⁶ EAG is currently in the process of recruiting members for the 2021 to 2024 membership term.

Over the years, EAG has provided feedback and written submissions on various Law Society reports and recommendations, including but not limited to:

- the Articling Task Force's Consultation Report,
- the Linguistic and Rural Access to Justice Project,
- the Alternative Business Structures Working Group,
- the Challenges Faced by Racialized Licensees Working Group,
- the Access to Justice Call for Comments,
- the Governance Task Force,
- the Dialogue on Licensing
- the changes to the Law Society Tribunal Rules of Practice

EIAC, under the advice of the EAG, has developed several guidelines and model policies for the legal profession. Most recently, EAG and AJEFO provided guidance on updating the Law Society's French-language materials, including the French Language Rights Guide for Lawyers and Paralegals. The Law Society also consulted with EAG on the proposed Family Legal Services Provider (FLSP) license. Members of EAG provided submissions on the license from an equity perspective.

iii. L'Association des juristes d'expression française de l'Ontario (AJEFO)

AJEFO is a non-profit organization composed of legal professionals who promote access to justice in French in Ontario.¹⁷ AJEFO represents the interests of over 1,300 lawyers, judges, translators, interpreters, civil servants, law professors, law students and members of the public.

¹⁴ The 12 organizational members of EAG are the Arab Canadian Lawyers' Association (ACLA), L'Association des juristes d'expression française de l'Ontario (AJEFO), ARCH Disability Law Centre, Canadian Association of Black Lawyers (CABL), Canadian Association of Somali Lawyers (CASL), Canadian Hispanic Bar Association (CHBA), Canadian Muslim Lawyers Association (CMLA), Federation of Asian Canadian Lawyers (FACL), Law Students' Society of Ontario (LSSO), Ontario Paralegal Association (OPA), Roundtable of Diversity Associations (RODA), and the South Asian Bar Association (SABA).

¹⁵ The 12 individual members of EAG are Nima Hojjati (Chair), Jacqueline Beckles (Vice-Chair), Jonathan Davey (Vice-Chair), Jeffrey Adams, Krishna Badrinarayan, Lisa Borsook, Leonard Kim, Sudevi Mukherjee-Gothi, Beatriz Corona, Shibil Siddiqi, Moya Teklu, and Brenda Young.

¹⁶ More information about EAG and its mandate can be found on Law Society's website:

<https://lso.ca/lawyers/practice-supports-resources/equity-supports-resources/equity-advisory-group>

¹⁷ More information about AJEFO and its mandate can be found on the organization's website:

<https://www.ajefo.ca/>

The Law Society has consulted with AJEFO for over 17 years.

Unlike the IAG and EAG, which were created for the purpose of advising the Law Society, AJEFO is an independent organization with a mandate to promote the use of both official languages within Ontario's legal system. AJEFO achieves its mandate by educating and informing lawyers and the general public about the rights of French-speaking litigants. AJEFO is also engaged in various legal initiatives, including developing French CPD programs, online resources for legal professionals and the public, and promoting diversity and inclusion in the legal professions.

AJEFO's Board of Directors meet on a monthly basis; these meetings are attended by a staff member of the Law Society.¹⁸ Law Society staff also participate in the AJEFO's subcommittees.

Over the years, AJEFO has partnered with the Law Society to promote French-language services and rights in Ontario, including adopting the Law Society's [French Language Services Policy](#) and the French Language Services Regulation in 2015. AJEFO has worked closely with the Law Society to develop French language CPD programming and to make these programs available virtually during the COVID-19 pandemic. Most recently, the Law Society consulted with AJEFO on the proposed Family Legal Services Provider (FLSP) license to receive input from a Francophone perspective.

4. Input from the Equity Partners

In keeping with the Working Group's objective to consult with the equity partners in developing the recommendations, meetings were requested with representatives from the IAG, EAG and AJEFO. The Working Group met with representatives from each equity partner between January and April 2021.

A. Attendance at Committee Meetings

All three equity partners have historically sent and continue to send one or two representatives to attend EIAC meetings. The representatives are bound by the confidentiality clause set out in s. 115.1(2) of By-law 3¹⁹, and only share general information about the topics of discussion at EIAC meetings with their respective groups. Representatives also periodically receive correspondence from the Law Society highlighting their confidentiality obligations. Representatives received such correspondence on November 16, 2021 and acknowledged receipt of the correspondence shortly thereafter.

¹⁸ The current Law Society representative to AJEFO is Jason Pichelli.

¹⁹ 115.1(2) No person shall disclose any information that would reveal the deliberations of a standing committee.

An Elder from the IAG's Elders' Council is also invited to open Committee meetings with an Indigenous prayer or ceremony to educate the Committee on Indigenous teachings and values.

All three equity partners expressed desire for continued engagement with EIAC through consultations and attendance at EIAC meetings. However, they expressed hesitation in participating in Committee discussions, in part due to the level of disagreement among the Benchers on both procedural and substantive issues. EIAC's virtual meeting format, which was implemented in response to the COVID-19 pandemic, also further limited opportunities to engage in informal discussions with Committee members, before or after each meeting, as with in-person Committee meetings.

The equity partners underscored the importance of diverse voices and perspectives from Francophone, Indigenous, racialized and other equity-seeking groups to further EIAC's work in developing policies to promote equity and diversity in the legal professions. In particular, they highlighted the importance of the unique lived experiences of the members of the IAG, EAG and AJEFO and how these experiences spoke directly to the impact of the Law Society's policies and decisions on their personal and professional lives.

B. Recommendations for Engagement with EIAC

In order to facilitate effective consultation with Indigenous, Francophone and other equity-seeking communities, the equity partners made the following recommendations to EIAC for the Working Group's consideration:

- Continue to build and maintain a strong relationship with the IAG, EAG and AJEFO. A strong relationship with the equity partners will allow EIAC and Convocation to cultivate a more inclusive legal profession while effectively serving the needs of an increasingly diverse Ontario public.
- Frequently engage with the equity partners and other equity-seeking groups, both formally and informally, in the development of policy that directly impacts these communities.
- Allow more representatives from the equity partners, in addition to the Chairs or Vice-Chairs, to attend Committee meeting and engage directly with the Benchers. This will also ensure continuity in the work of the equity partners and prevent the loss of institutional knowledge.
- Engage in open and respectful dialogue at Committee meetings, even in the face of disagreements. Equity partners must feel comfortable participating in substantive discussions or raising issues at Committee meetings for effective consultation and engagement on issues related to equity and diversity in the legal professions.

- Provide an opportunity for post-Committee discussions with the equity partners before recommendations are brought forward to Convocation, particularly on issues that directly impact Indigenous, Francophone and racialized licensees and other equity-seeking groups.
- Provide further clarity about the involvement of equity partners in EIAC's work, including their role and expected level of participation at Committee meetings.

Finally, the IAG stressed the importance of continuing efforts to engage all Law Society staff and Benchers in Indigenous cultural awareness and sensitivity training, particularly for those directly engaged with Indigenous peoples and communities or involved in making decisions that may impact Indigenous licensees, peoples and communities. The IAG also encouraged the Law Society to continue the work to further its commitment to implement the TRC Report Call to Actions in all its decision and policy-making processes.

5. Recommendations of the Working Group

The Working Group considered several options regarding the role of equity partners within EIAC, including the following:

Option 1 – Maintain the Status Quo

- Equity partners continue to send representatives to participate in all discussions at Committee meetings, except for *in camera* matters; and,
- Equity partners participate in Committee discussions at their discretion.

Option 2 – Increased Engagement at EIAC Meetings

- Equity partners continue to send representatives to participate in all discussions at Committee meetings, except for *in camera* matters; and
- The Chair allows equity partners an opportunity to share their input at the end of the Committee's discussion on each policy item, but before the Committee makes a final decision or votes on the item.

Option 3 – Written Submissions

- Equity partners send representatives to EIAC meetings, except for *in camera* matters; and,
- Equity partners have the option to provide written submissions on policy items for decision or discussion at the Committee meeting, either before or after the meeting. The written submissions would be provided to the Committee as they are received.

Option 4 – Limited Engagement at EIAC meeting

- Equity partners only send representatives to EIAC meetings, where their specific advice is required.

Outlined below are the majority and minority positions from the Working Group and recommendations to manage the relationship and interactions between EIAC and its equity partners.

A. The Majority Position

The majority of the Working Group took the view that the equity partners have historically played, and continue to play, an integral role in assisting the Committee to fulfill its mandate to Convocation. EIAC's consultation process with the equity partners enables the Committee to incorporate the views and perspectives of those who have been underrepresented at Convocation and the Law Society. The majority recognized the importance of continued engagement with the equity partners in a respectful, productive, and efficient manner while also being mindful of the concerns raised by the equity partners in developing recommendations to EIAC.

The majority supported the continued attendance and participation of the equity partners at EIAC meetings. Although the majority saw benefits with Option 2, because it would enable the equity partners to address specific policy items as they came up for discussion, there was a concern that the equity partners did not currently feel comfortable participating in discussions at that level.

The majority rejected Option 3 due to concerns that additional time to draft and review written submissions from the equity partners could cause further delays to the Committee's decision-making function and create additional work for the equity partners, who are primarily volunteers. The majority rejected Option 4 on the basis it was contrary to EIAC's mandate.

Finally, the majority acknowledged the importance of Indigenous cultural awareness and sensitivity training for Benchers and Law Society staff²⁰. In their discussion with the Working Group, the IAG highlighted the significance of integrating Indigenous perspectives into all EIAC's work and the importance of Indigenous cultural awareness and sensitivity for all those who are engaged in this process. Furthermore, recommendations for increased Indigenous cultural competency within the Law Society and the legal professions have previously been made in the Law Society's Indigenous Framework²¹, the Review Panel on Regulatory and Hearing Processes

²⁰ Cultural competency training which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations.

²¹ Creating and enhancing cultural competency in the Law Society for staff and Benchers and within the legal profession is recognized as one of the Four Core Pillars of the Law Society's Indigenous Framework. Law Society of Ontario, "Indigenous Advisory Group Established at the Law Society" (12 July 2016), online: *Law Society of Ontario* <<https://lso.ca/news-events/latest-news/latest-news-2016/indigenous-advisory-group-established-at-the-law-society>>

Affecting Indigenous peoples²², the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession²³, the TRC Calls to Action²⁴, and the Federation of Law Societies of Canada Report of the Truth and Reconciliation Calls to Action Advisory Committee²⁵. The majority felt that it was important to recognize and support the implementation of the recommendations calling for increased cultural awareness and sensitivity training for staff and Benchers in consultation with the IAG.

RECOMMENDATIONS

The majority of the Working Group makes the following recommendations to the Committee:

- That equity partners continue to send representatives to participate in discussions at Committee meetings, with the exception of *in camera* matters (Option 1).
- That Option 2 be considered at a later date upon the conclusion of the review of the Benchers Code of Conduct. The majority recommends that the Law Society develop rules of engagement and decorum for standing committees to facilitate respectful and productive discussions.
- That the IAG, EAG, and AJEFO have the option to send up to two representatives to Committee meetings to ensure continuity and allow equity partners to maintain institutional knowledge of their work with the Committee. In addition, allowing additional representatives gives the equity partners the ability to have more of its members engage with EIAC and its work.

²² Recommendation 5 and 8 of the Review Panel Report. Law Society of Ontario, "Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples" (24 May 2018), online (pdf): Law Society of Ontario <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation/convocation-l/convocation-law-society-review-panel-report.pdf>

²³ Recommendation 10 of the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession. Law Society of Ontario, "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession" (November 2016), online (pdf): Law Society of Ontario <<http://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>>

²⁴ The Truth and Reconciliation Commission Calls to Action 27 and 28. Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action" (June 2015), online (pdf): Truth and Reconciliation Commission of Canada <http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>

²⁵ Recommendations 4 and 7 of the Federation of Law Societies of Canada's Report of the Truth and Reconciliation Calls to Action Advisory Committee. Federation of Law Societies of Canada, "Report of the Truth and Reconciliation Calls to Action Advisory Committee" (June 2020), online: *Federation of Law Societies of Canada* <<https://flsc.ca/wp-content/uploads/2020/08/Advisory-Committee-Report-2020.pdf>>

B. The Minority Position

A minority of the Working Group took the position that EIAC's consultation processes with its consultants should be reformed to better serve the Committee's mandate.

First, with respect to non-Indigenous and non-Francophone equality-seeking communities, the minority took the position that EIAC should consult more broadly and flexibly in its regular consultations. Currently, EIAC only regularly consulted with EAG with respect to equality-seeking communities other than the Indigenous and Francophone groups. The minority felt that although EAG brought a valuable perspective to EIAC, it was a singular, Toronto-centric advocacy organization with a particular perspective and mission, but which has become entrenched as "the voice" of equality-seeking communities at EIAC. The minority raised concern that EAG presented its own barriers to inclusion for equality-seeking communities and individual representatives. For example, EAG placed arbitrary limitations on the number of its members and it included political and ideological criteria in its membership selection process. EIAC is mandated to consult with equality-seeking communities and should ensure that no voices or perspectives are excluded from its consultations and that new and diverse perspectives are welcomed. The minority felt that EIAC's consultations should be broad, inclusive of multiple and competing perspectives on important issues; they should include groups and communities outside of Toronto and without political or ideological criteria.

Second, clearer expectations should be established for EIAC's consultants. The minority took the view that some opinions and perspectives of EIAC's consultants were more readily received by previous Benchers and this appears to have become a source of dissatisfaction among the long-standing consultants. The minority felt that a clear division between the decision-making role of EIAC on the one hand, and the advisory role of consultants on the other hand, should be considered in order to avoid the confusion and frustration that appears to exist among long-standing consultants. Consultants, particularly representatives from EAG and IAG, expressed negative feelings with respect to recent changes at the Law Society, particularly with respect to the perspectives of new Benchers. Some consultants claimed that since the last election of Benchers, certain consultants no longer felt "safe" at EIAC. In the minority's view, this was a problem that should not be left unaddressed. EIAC should consider adopting best practices with respect to the consultation process, setting clearer and specific expectations of its current and future consultants, and should also ensure a healthy distance between EIAC and consultants. The minority also felt that the term "partner" for example, is not helpful, nor accurate, and should be abandoned. The majority also recommended that EIAC should also consider limiting consultations to meetings for which particular expertise is specifically required, it should abandon the model of having consultants as a permanent fixture at its confidential meetings, and should remove consultants from decision-making roles such as the Committee for the DHC.

Finally, the minority raised that the confidentiality agreements between the Law Society and the advisory groups have not been produced despite the lengthy and involved working group's

process. Any representative of an advisory group present at EIAC should be able to produce a confidentiality agreement prior to attending any meeting.

RECOMMENDATIONS

The minority of the Working Group makes the following recommendations to the Committee:

- That EIAC's regular consultations with equality-seeking communities no longer be limited to EAG, the IAG and AJEFO, and that consultations be broader and more inclusive of other individuals, groups, and perspectives.
- That the term "partner" no longer be used when referring to consultant groups or individuals.
- That EIAC adopt best practices when soliciting advice from consultants (IAG, EAG and AJEFO).
- That consultants (IAG, EAG, and AJEFO) be included in meetings where their specific advice is required and not as a permanent fixture in all EIAC meetings, and
- That consultants (IAG, EAG, and AJEFO) not be placed in decision-making roles at EIAC; and
- That all IAG, EAG, and AJEFO representatives attending confidential meetings execute confidentiality agreements with the Law Society and that such agreements be made available to EIAC members.