

TAB 4
Report to Convocation
June 28, 2022

Equity and Indigenous Affairs Committee

Committee Members:
Dianne Corbiere (Chair)
Etienne Esquega (Vice-Chair)
Atrisha Lewis (Vice-Chair)
Catherine Banning
Robert Burd
John Fagan
Julian Falconer
Murray Klippenstein
Nancy Lockhart
Jorge Pineda
Julia Shin Doi
Megan Shortreed
Alexander Wilkes

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Law Society
of Ontario

Barreau
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TAB 4.1

Equity and Indigenous Affairs Committee

Recommendation regarding the 2019 Inclusion Index

June 28, 2022

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Motion

That Convocation approve recommendations of the Equity and Indigenous Affairs Committee (“EIAC”) to not publicize the Inclusion Index developed in 2019 pursuant to Recommendation 6 of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report* (the “Challenges Report”).

Background

A. Challenges Report

In December 2016, Convocation approved the final report of the Challenges Working Group (“Working Group”) with 13 recommendations, including a number related to measuring inclusion in legal workplaces (“LWPs”).

In adopting the Challenges Report, the Law Society committed to measuring progress in addressing barriers faced by racialized licensees in LWPs. This was to be achieved by analyzing data related to licensees’ experiences of inclusion in the workplace.

The data was collected pursuant to three recommendations of the Challenges Report:

Recommendation 3(3) - The Law Society will...require a licensee representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress by: 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered.

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an Inclusion Index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

To move forward on these commitments, the Law Society collected the following information from licensees in the 2018 Annual Reports:

- *Demographic/Self-Identification Questions*: Voluntary questions regarding Indigenous identity, Francophone identity, race/ethnicity, gender, sexual orientation and disability.
- *Inclusion Questions*: Voluntary questions related to licensees' experiences with respect to inclusion, respect and safety in their workplaces. The inclusion questions include a component where licensees were asked to identify diversity-related policies and programming at their LWPs. A list of the inclusion questions are attached as Appendix A.
- *Self-Assessment Questions*: Mandatory questions related to workplace policies, programs and commitment to equality, diversity and inclusion.¹ These were completed by a licensee representative for LWPs in accordance with Recommendation 3(3).

B. Inclusion Index

In April 2019, the Law Society engaged an external consultant to develop an inclusion index. The data underlying the index comes from the 2018 Annual Report. The index protocol that was designed by the consultant assigns an individual score for each of three metrics.

- **Diversity Score**: The diversity score is based on answers to the demographic questions collected in the 2018 Annual Report filings (reported to the Law Society by all licensees in spring of 2019). The demographic composition of each LWP is compared to the demographics of the region in which it is located as measured by Statistics Canada Census data. LWPs with multiple offices were compared against the demographics of their primary region of operation. Ontario-wide entities were compared to province-wide demographics.

Each demographic trait was assigned equal importance and thus weighted equally. Representation for ethnicity, Indigenous identity, gender, and Francophone background was set based on Statistics Canada Census Economic Regions data, which subdivides Ontario into 9 regions. LGBTQ2+ representation was set at 10% for LWPs within Toronto and 5% for all LWPs outside of Toronto, using the consultant's benchmarking data. Representation of persons with a disability was set at 20% for all LWPs, based on census data.

- **Commitment Score**: The commitment score reflects the LWP's self-reported EDI programming and policies plus licensee acknowledgement of this programming (part of the inclusion questions). LWPs with the most implemented programming received top scores, and LWPs with less programming received lower scores. Fourteen out of 192 LWPs did not complete the self-assessment questions. For these LWPs, a commitment score was generated using licensee responses regarding the presence of programming at their LWP.

¹ Self-Assessment questions measure for the LWP's commitment to EDI (14 commitments); policies about discrimination, harassment and sexual harassment; whether EDI considerations are made in decision making; and the availability of EDI training or education at the LWP.

- **Inclusion Score:** The inclusion score was generated by aligning each of the 22 inclusion questions to one of five sub-metrics: inclusive culture, access to networks, unbiased feedback and reviews, safe work environment, and flexible work options. To produce the inclusion score for each LWP, the consultant compared the average score on each metric for the dominant group (white, heterosexual, Anglophone men without a disability) to the average score for the non-dominant group. The average response of the dominant group was weighted at 30% of the score, and the average response of the non-dominant group was weighted at 70%.

The index also provides the response rate for each LWP (# of licensee responses), the type of LWP (public interest, corporate, law firm), and the regional location for each LWP.

Based on the LWPs scores in each of the three categories, each LWP was assigned a numerical ranking and an archetype (tentatively named superstar, accidental superstar, inclusive, diverse, accidentally inclusive, accidentally diverse, commitment only, and needs improvement).

C. Peer Review Panel

In March 2020, the Law Society shifted its focus to addressing the disruptions caused by the pandemic. Due to the delays in progressing this project caused by the onset of the pandemic leading to concerns about the continuing relevance of the collected data, a confidential peer review of the Inclusion Index was undertaken to assist EIAC and Convocation in determining the appropriate use and application of the inclusion data and the index produced by the previous consultant.

Three independent experts were retained as peer reviewers: Michael Ornstein, Sujitha Ratnasingham and Scot Wortley. Their biographies are attached as Appendix B. They possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to retain experts who could provide neutral and objective commentary.

With respect to the Inclusion Index, the review assessed:

- a. impediments to implementing the inclusion index recommendation (Recommendation 6);
- b. the reliability of the data collection and analysis used in 2019 to support the inclusion index;
- c. the extent to which the inclusion data and analysis is relevant for 2022.

The reviewers presented their findings on the index to EIAC at its committee meeting in May. Relevant findings of the peer reviewers and EIAC's conclusions based on those findings are discussed below.

Discussion

EIAC's analysis is grounded in the overarching goal of the Challenges report, which says in its introduction: "The Law Society is committed to advancing equality, diversity and inclusion in the legal professions — a commitment which includes addressing any barriers faced by lawyers and paralegals to full and active participation in the professions."²

With respect to the Inclusion Index in particular, the Working Group concluded that such an index would further equity and diversity within the professions by tracking how individual workplaces were progressing towards these goals. It said:

The Working Group also believes that accountability and transparency are key to increasing equality and diversity in the professions. Members of the Working Group have considered a number of methods to ensure that these principles are reflected in the recommendations. The Working Group has decided that in addition to gathering qualitative and quantitative data about legal workplaces, the creation and publication of an inclusion index – an index that would include legal workplaces' assessments of their diversity and inclusion-related achievements and that would allow legal workplaces to demonstrate their performance and progress – would advance the goals of equality, diversity and inclusion. The index would be a valuable tool for legal workplaces and the Law Society to determine whether there is progress in the professions. Legal workplaces could also use the index to attract prospective clients and to recruit talent.³

While the goal of the index is to provide transparency and valuable information, the data collection from individual participants was necessarily founded on two critical principles; that the confidentiality of participants' answers would be strictly maintained, and that provision of the data would be completely voluntary. As identified by the peer reviewers, this tension between striving for transparency and respecting confidentiality and choice led to issues with the data and consequently in the index itself.

While the overall response rate was high (78% for demographic questions; 68% for inclusion questions), some LWPs had a very low response rate to the inclusion questions. Some of the highest rated workplaces had response rates of less than 20%. This divergence raises questions about the reliability of the ratings for LWPs.

The risk of violating privacy is a constant, in smaller workplaces (i.e., at or around 25 licensees) and in all workplaces with numerically smaller groups, including licensees who are LGBTQ2+, Indigenous or persons with a disability. The index compensated for this risk by providing global measures of diversity and inclusion, using the methodology described above. To protect privacy, the data is highly aggregated and translated into a score, which can be used to rate the legal workplace. For example, for diversity, the demographic composition of each LWP is compared to the demographics of the region in which it is located as measured by Statistics Canada Census data. For an inclusion score, the answers on the inclusion questions are compared between the dominant group (Anglophone, heterosexual, white men) and the non-dominant group.

² Challenges Report, p.19

³ Ibid, p. 36

However, these global measures have left the LWPs and the Law Society with little indication as to where progress has been achieved and where it has not. For example, assume an LWP had a high diversity score and a low inclusion score. Neither the index nor the dashboard would show if the low inclusion score was workplace wide or concentrated on a specific equity-seeking group of employees. The complexities of education, specialization, recruitment, retention and workplace relationships – all of which impact diversity and inclusion - are difficult to reflect in a single numerical score or archetype.

The peer reviewers noted that aggregated data, such as the global measures used here, has been seen to be less valuable in recent years. For example, the experiences of Black and Indigenous professionals may be significantly different from Asian professionals, although all come from historically disadvantaged groups. For LWPs to improve their performance in equity, diversity and inclusion, data must be more disaggregated, so that specific issues in recruitment, promotion and retention can be identified and addressed.

The reviewers' consensus was that the index was not transparent, in that the methodology and results of the index would not be evident and explicable to LWPs, clients and the professions. However, each reviewer strongly supported the concept of data collection and publication to show progress towards diversity and inclusion in the legal professions. Consequently, the reviewers recommended that the 2019 index not be released. They further recommended that the Law Society refine its data collection process to gather more meaningful data to inform future equity work.

Recommendations and Rationale

EIAC remains strongly committed to the overarching goal of the Challenges Report and to the belief that data collection and publication of diversity and inclusion in employment is a key initiative. In 2016, when the recommendations of the Challenges Report were adopted by Convocation, the Law Society was a pioneer in addressing equality, diversity and inclusion in the legal professions. Today, other law societies and regulators in Canada have embraced the goals of the Challenges Report and developed their own measures to address equity, diversity and inclusion among their respective professions.

As an example, in April 2022, benchers from the Law Society of Alberta adopted the following Acknowledgment of Systemic Discrimination to acknowledge the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession:⁴

Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behaviour, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.

⁴ The full statement can be accessed below: <https://www.lawsociety.ab.ca/about-us/key-initiatives/equity-diversity-and-inclusion-initiatives/acknowledgment-of-systemic-discrimination/>

We recognize that systemic discrimination goes against principles of fairness that the legal profession values and upholds. Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it.

EIAC considers the statement of the Law Society of Alberta to mirror its own position and objectives as set out in the Challenges Report.

EIAC recognizes that the Inclusion Index in its current form is not an effective tool to achieve the Law Society's equity goals. It recognizes that an inclusion tool designed to assist LWPs and the professions advance equity, diversity and inclusion must be transparent in its methodology and of legitimate assistance to its users, i.e., LWPs, licensees and clients. The sheer passage of time means that the index may no longer reflect the demographics or management approaches of particular LWPs. Consequently, EIAC adopts the conclusion of the peer reviewers that the current version of the Inclusion Index not be released.⁵

Next Steps

The Committee will now proceed to consider the development of a new protocol for data collection and publication of data pertaining to equity, diversity and inclusion in legal workplaces.

⁵ There was consensus amongst all members of EIAC that the 2019 Inclusion Index should not be released. Two members of EIAC noted their objection to the development of a new protocol for the collection and publication of equity, diversity and inclusion data from legal workplaces.



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Inclusion Survey

When responding to the survey questions, please consider your own personal experiences at your legal workplace in 2018.

a) At my legal workplace, I feel included.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- I do not wish to answer
- Not applicable

b) At my legal workplace, I feel respected.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable

I do not wish to answer

c) At my legal workplace, I feel free from harassment.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

d) At my legal workplace, I feel free from sexual harassment.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

e) At my legal workplace, I feel free from discrimination.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

f) In my opinion, all members and employees of my legal workplace are treated fairly and respectfully without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of

origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

g) As a member of the diverse Francophone community, I feel supported at my legal workplace and in all aspects of my identity, such as race, that intersect with my Francophone identity.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

h) I can be my authentic self at work.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

i) I have experienced instances of discrimination or harassment at my legal workplace.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

j) I have observed instances of discrimination or harassment at my legal workplace.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

k) In response to incidents I have experienced or observed (as indicated above) (select all that apply)

- I felt comfortable speaking up to address the behaviour with the individual who engaged in this instance of discrimination or harassment.
- I spoke to the person who experienced this instance of discrimination or harassment.
- I took some form of action to report the incident to the appropriate individual within my legal workplace
- I spoke to my colleagues about the incident
- I did not know what to do
- I knew what to do but opted not to take action
- Not applicable
- I do not wish to answer

l) The response to the action(s) I took to address incidents of discrimination or harassment I have experienced or observed (as indicated above) resulted in (select all that apply):

- Positive impact for those that experienced the discrimination or harassment
- No impact for those that experienced the discrimination or harassment
- Negative impact for those that experienced the discrimination or harassment
- Positive impact for those that demonstrated discriminatory or harassing behaviour
- Negative impact for those that demonstrated discriminatory or harassing behaviour
- No impact for those that demonstrated discriminatory or harassing behaviour

- Positive impact for me personally
- No impact for me personally
- Negative impact for me personally
- Not applicable
- I do not wish to answer

m) I am included in informal social gatherings (eg. coffee, lunch etc.) at my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

n) Opportunities for career advancement are based on demonstrated professional ability or achievement in my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

o) In my legal workplace, there are barriers to career advancement due to (select all that apply):

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin

- Place of origin
- Creed
- Family status
- Marital status
- Disability
- Gender identity,
- Gender expression
- Sex
- Sexual orientation
- None of the above
- I do not know
- Not applicable
- I do not wish to answer

p) My legal workplace makes reasonable accommodations.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- Not applicable
- I do not wish to answer

q) It is important to me that in my legal workplace there is a demonstrated commitment to reconciliation between Indigenous Peoples and non-Indigenous Canadians.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

r) My legal workplace provides suitable opportunities or resources for me to learn about reconciliation.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

s) My legal workplace provides opportunities for (select all that apply):

- Training to support equality, diversity, and inclusion.
- Participation in groups that provide support within my legal workplace.
- Participation in groups that provide support and connect licensees or professionals of similar backgrounds or experiences within my community. *(for example Canadian Association of Black Lawyers (CABL), Federation of Asian Canadian Lawyers (FACL), South Asian Bar Association (SABA), Canadian Muslim Lawyers Association (CMLA), Roundtable of Diversity Associations (RODA), Pride at Work, Women's Law Association of Ontario (WLAO), Indigenous Bar Association (IBA), etc)*
- Sharing of feedback and input about equality, diversity, and inclusion.
- I do not know
- I do not wish to answer

t) My legal workplace conducts inclusion surveys to measure and track its progress on equality, diversity and/or inclusion.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

u) My legal workplace effectively communicates with respect to progress, initiatives, and/or actions, and their status, related to equality, diversity, and inclusion within my organization.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

v) In my professional experiences, I am treated fairly and respectfully without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds by the following groups (select all that apply):

Clients and potential clients

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

Other licensees

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

Non legal employees

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

The administrators of justice

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer



Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at ICES. In her role, she focuses on building partnerships with key stakeholders, with a focus on the integration of intersectoral data, leading to innovative research. In addition, she has significant experience working with a variety of stakeholders including policy makers at various levels of government and Indigenous organizations. At ICES, Sujitha co-chairs the Diversity Committee, is a member of the Race and Ethnicity Data Working Group and has been a guest lecturer at the University of Toronto. Prior to her role at ICES, Sujitha has worked at Public Health Ontario, Toronto Public Health and the World Health Organization. Sujitha also has a Master's degree in Epidemiology from the University of Toronto.



Michael Ornstein is Associate Professor of Sociology at York University. He was Director of the University's Institute for Social Research for a decade. The Institute houses the largest academic survey organization in Canada, and provides statistical consulting, data analysis and courses on methods and statistics.

Dr. Ornstein has been active in the development, design and execution of numerous large-scale research projects including the first Canadian study on knowledge, behaviour, and attitudes about AIDS. His recent research addresses the decline of the middle class, precarious employment and the transformation of Toronto's gay village.

*Ornstein's *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, co-authored with H. Michael Stevenson, was the 2001 winner of the Harold Adams Innis Prize for the best SSFC supported book in the Social Sciences and English. He is author of *A Companion to Survey Research*, from Sage and numerous academic articles.*



Dr. Wortley has been a Professor at the Centre of Criminology and Sociolegal Studies, University of Toronto since 1996. His academic career began in 1993 as a researcher with the Commission on Systemic Racism in the Ontario Criminal Justice System. Over the past twenty-five years Professor Wortley has conducted numerous studies on various issues including youth violence and victimization, street gangs, drug trafficking and substance use, crime and violence within the Caribbean, public perceptions of the police and criminal courts, police in schools, police use of force, and racial bias within the Canadian criminal justice system. In 2007, he was appointed by Metropolis to the position of National Priority Leader for research on Immigration, Justice, Policing and Security. Professor Wortley has also served as Research Director for several government commissions including the Ontario Government's Roots of Youth Violence Inquiry. In 2017 Professor Wortley worked with Ontario's Anti-Racism Directorate to develop standards and guidelines for the collection and dissemination of race-based data within the public sector. Professor Wortley is currently leading three major investigations into possible racial bias within policing for the Nova Scotia, Ontario, and British Columbia Human Rights Commissions. He is also leading an inquiry – with Dr. Akwasi Owusu-Bempah – into bias within the Toronto Transit Commissions enforcement unit. Professor Wortley has published in a wide variety of academic journals and edited volumes and has produced numerous report for all levels of government.



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Tab 4.2

Equity and Indigenous Affairs Committee

Update on the Law Society's Indigenous Initiatives

June 28, 2022

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Purpose

This memo provides background on:

- The status of implementation of the recommendations from the *Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples* (“Review Panel”); and,
- Other Law Society of Ontario (“LSO” or the “Law Society”) programs and initiatives dedicated to issues affecting Indigenous peoples.

Background

i. Indigenous Advisory Group

In November 2004, the then-chair of the Equity and Indigenous Affairs Committee (“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. 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 (“IAG”) consisting of Indigenous legal professionals and Elders. The membership of the IAG is composed of 13 members, including three members of the Elders’ Council.¹

Adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as its framework, the IAG advances and encourages the reconciliation of Indigenous peoples and legal systems within the Canadian legal system and promotes the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

The IAG’s mandate is to:

- Promote the implementation of recommendations from reports generated on Indigenous peoples and Canada’s legal system, including the Truth & Reconciliation Commission of Canada’s Final Report and Calls to Action and the First Nations Representation on Ontario Juries Report by Justice Frank Iacobucci.

¹ The current members of the IAG are Catherine Rhinelander (Co-Chair), Danielle Lussier-Meek (Co-Chair), Caitlin Tolley, Randall Kahgee, Sheila Warner, Tamara Moore, Marcel Larouche, Jade Fletcher, Josh Favel, and Amanda McBride. The members of the Elders’ Council are Elder Myeengun Henry, Elder Larry McDermott, and Tauni Sheldon.

- Encourage partnerships and relationships between Indigenous peoples, the Indigenous Bar Association (“IBA”) and the Law Society.
- Interact and partner with the Law Society, EIAC, Benchers committees, working groups, advisory groups, and the Office of the CEO and other staff on all issues affecting Indigenous peoples in relation to the Law Society.
- Identify priorities and make recommendations on the provision of legal services by and for Indigenous peoples in Ontario.
- Initiate, inform, promote and advance reform of policies, procedures, rules and regulations for the benefit of Indigenous peoples.
- Promote public awareness and educate members of the Law Society on issues related to and affecting Indigenous peoples.
- Review, comment and make recommendations on reports affecting Indigenous peoples with respect to the legal profession.
- Assess the progress and effectiveness of initiatives undertaken by the Law Society that address or relate to legal issues affecting Indigenous peoples.

The initiatives described below are carried out in collaboration with the IAG.

ii. Keshen Review Panel

On June 28, 2017, then-Treasurer Paul Schabas announced the creation of a review panel to examine the way in which the Law Society and the Tribunal address regulatory matters involving Indigenous peoples, complaints, and issues. The review was prompted by the Law Society’s experience in the prosecution of a Kenora-based lawyer, Douglas Keshen², which raised questions about the Law Society’s regulatory and hearing processes involving Indigenous peoples.

Between 2014 to 2017, the Law Society investigated allegations of professional misconduct related to Mr. Keshen’s representation of Indigenous clients and the handling of compensation paid under the Indian Residential Schools Settlement Agreement. The investigation culminated in a 25-day conduct hearing in Kenora which ultimately resulted in a significant reduction in the number and nature of the original allegations against Mr. Keshen and the conversion of the conduct hearing into an Invitation to Attend. This prosecution was the first major case³ for the Law Society involving Indigenous complainants.

² *Law Society of Upper Canada v. Keshen*

³ Major cases are cases that may include a complexity of issues, a high volume of complainants, numerous complainants, significant resources, or a risk to public safety.

The Review Panel was tasked with reviewing the Law Society's complaints, investigation, prosecution and adjudication processes in relation to Indigenous peoples. The review shed light on Indigenous histories, cultures and affairs and the impacts of settler/colonial systems on Indigenous peoples. The Law Society became acutely aware of the importance of establishing and maintaining culturally competent regulatory and hearing processes

The work on the Review Panel was carried out alongside an Independent Reviewer, former First Nations National Chief Ovide Mercredi. As part of the review, the panel engaged with First Nations communities in Treaty 3 and Nishnawbe Aski Nation territories, interviewed complainants and LSO staff and consulted with experts from the Indigenous community. Treasurer Schabas and the panel members also attended a community meeting in Sioux Lookout with First Nations in the north, Elders and residential school survivors.

In May 2018, Convocation adopted the report and the nine recommendations of the Review Panel directed at the Law Society, the Professional Regulation and the Law Society Tribunal to improve the regulatory and hearing processes for Indigenous complainants and licensees.

Status of the Recommendations of the Review Panel Report

Below are the key initiatives that have been undertaken since the adoption of the Review Panel report. These are positive steps. However, the Law Society acknowledges that a productive relationship between itself and Indigenous peoples is built on trust. The Law Society is committed to taking sustained and meaningful action as it fulfills its commitment to reconciliation.

i. Improvement to the Law Society's Regulatory Functions

The Law Society has taken the following steps to improve internal regulatory structures for matters involving Indigenous complainants and licensees:

- Retained Shannon McDunnough, Discipline Counsel, Indigenous Matters in 2020 and Graham Hanlon, an investigator specializing in Indigenous legal issues in 2017, for matters involving Indigenous complainants and licensees.
- Retained an Indigenous lawyer, Promise Holmes Skinner in January 2022, to provide policy advice and continue outreach with Indigenous communities.

- Provided cultural awareness training and supports for Law Society staff, with a particular focus on Professional Regulation and the Law Society Tribunal.
- Implemented a new protocol for major cases involving complex issues, a high volume of complainants and potential risk to the public.
- Appointed Indigenous adjudicators and implemented Indigenous training at the Law Society Tribunal.
- Incorporated additional Indigenous legal and cultural competencies as testing material in licensing exams for lawyer and paralegal licensing candidates for the 2022-2023 licensing year.

ii. First Nation, Inuit, and Métis Team

Following internal consultations, the First Nation, Inuit, and Métis (“FNIM”) team was reconstituted with cross-divisional representation under the leadership of Shannon McDunnough to act as a resource for staff and management in all divisions, at to:

- Function as a navigator to assist Indigenous complainants and licensees with the Law Society’s complaints and discipline processes.
- Manage the dedicated toll-free telephone line for Indigenous complainants. The telephone line was formally established around 2015, but an Aboriginal support line has been in place for many years.
- Assist in the development and delivery of internal tools and resources (including educational sessions) for staff.
- Work with management and identify trainers to develop targeted training.
- Participate in engagements with Indigenous leaders.

iii. Organization-wide Commitment to Indigenous Cultural Awareness

The Law Society has made an organization-wide commitment to enhancing Indigenous cultural awareness. Initiatives that have been implemented include:

- Adopted the [Indigenous Framework](#) in 2018 to ensure that an Indigenous lens is applied to all aspects of the Law Society’s work.
- Invested in cultural awareness training for staff and board directors, including cultural awareness training, Indigenous law camps, and Bimickaway training sessions.
- Opening Law Society board meetings and public events, including swearing-in ceremonies, with land acknowledgments.
- Hosting the annual Eagle Feathers Polishing Ceremony at Convocation.

- Incorporating National Aboriginal Veterans Day remembrance into the Law Society’s annual Remembrance Day ceremony to recognize the contributions of First Nations, Inuit and Métis peoples to military service in Canada.
- Observing a moment of silence at the June 2021 Convocation as a symbol of respect for the Indigenous children whose bodies were uncovered in unmarked graves at the Kamloops Indian Residential School. A [public statement](#) about the tragedy was also issued on June 23, 2021.
- Hosting a Sunrise Ceremony led by Elder Myeengun Henry (IAG’s Elder’ Council) in 2021 with the Chief Justices of Ontario courts.
- Collaborating with law societies across Canada and the Federation of Canadian Law Societies to implement the TRC Calls to Action 27 and 28 which identify the duties of law societies and law schools regarding reconciliation.
- Promoting Indigenous voices within the Law Society’s board.
 - Lawyer benchers Dianne Corbiere (Anishinaabe of M’Chigeeng First Nation) and Etienne Esquega, (Biinjitiwaabik Zaaging Anishinaabek of Rocky Bay First Nation) were appointed as the Chair and Vice-Chair of the Law Society’s Equity and Indigenous Affairs Committee. The mandate of the committee is to develop for Convocation’s approval policy options for the promotion of equity and diversity in the legal professions in Ontario in consultation with Indigenous, Francophone and other equity-seeking communities.
 - Catherine Banning (Nishnabe-qwe band member of Fort William First Nation) is the second ever Indigenous Lay Bencher in the 225-year history of the Law Society. She was appointed in 2021.
- Ensuring that Indigenous lawyers and paralegals are among those recommended by the Law Society for appointment to external committees. Recent recommendations made by the Law Society include the following:
 - Maggie Wente (Serpent River First Nation) was appointed to the Federal Judicial Appointments Advisory Committee (Toronto Region).
 - Jessica Belisle (Métis Anishinaabe Kwe from Sault Ste. Marie) was appointed to the Justices of the Peace Appointments Advisory Committee (Northeast).
 - Catherine Banning (Nishnaabe-qwe of Fort William First Nation; bencher appointed by the government) was appointed to the Law Foundation’s board of directors.

- Etienne Esquega was appointed to LAWPRO's board of directors.
- Showcased the work of Indigenous lawyers and paralegals through the Law Society awards and honours.
 - In 2018, the Law Society awarded the honorary doctorates to:
 - The Honourable Senator Murray Sinclair (Peguis First Nation, Manitoba) for his contributions to the legal profession. Senator Sinclair is the first Indigenous judge in Manitoba and the driving force behind the Truth and Reconciliation Commission of Canada.
 - The Honourable Leonard Stephen Mandamin (Anishnawbe member of the Wikwemikong First Nation) in recognition of his work as a highly respected and dedicated leader within the legal profession and the Indigenous community.
 - In 2019, the Law Society bestowed the Law Society Medal on Professor Jeffery Hewitt (mixed-descent Cree) to honour his exemplary role as an academic, advocate and leader, and for his work on Indigenous legal initiatives and justice.
 - In 2019, the Law Society awarded the honorary doctorates to:
 - Delia Opekokew (Canoe Lake Cree Nation, Saskatchewan), the first Indigenous woman to be called in 1979 to the Ontario and Saskatchewan bars, in recognition of her advocacy work in furthering the cause of justice for Indigenous peoples and human rights for all Canadians.
 - The Honourable James Bartleman (Chippewas of Rama First Nation) in recognition of his immense contributions to the province and country throughout his distinguished career. While serving as Lieutenant Governor (2002-07) he worked to help eliminate the stigma of mental illness, to fight racism and discrimination, and to encourage Indigenous youth. Preceding his appointment, Mr. Bartleman served 35 years in Canada's Foreign Service as ambassador to Cuba, Israel, NATO, and the European Union, and as High Commissioner to South Africa and Australia.
 - Former National Chief Ovide Mercredi in recognition of his work as a leading advocate for Indigenous peoples' rights. He was a key strategist for the Assembly of First Nations during the Meech Lake Accord constitutional reform discussions and was elected Regional

Chief of the Assembly of First Nations for Manitoba in 1989. He also played a critical role in resolving the Oka Crisis in 1990.

- In 2021, the Law Society bestowed the [Law Society Medal](#) on lawyer Candace Metallic (Listuguj Mi'gmaq Nation), for devoting her career to law reform and the advancement of legal and social justice for Indigenous peoples. Her leadership and ground-breaking work have been transformative in advancing Indigenous rights in Canada.
- The 2021 [Laura Legge Award](#) was awarded to Dr. Beverly Jacobs (Mohawk Nation of the Haudenosaunee (Iroquois) Confederacy). The award recognizes women lawyers from Ontario who have exemplified leadership within the profession. Dr. Jacobs has tirelessly worked on ending gendered colonial violence against Indigenous people and restoring Indigenous legal orders.
- The 2022 [Laura Legge Award](#) was awarded to Marian Jacko (Wiikwemkoong Unceded Territory) who has made significant contributions to the legal professions by advancing access to justice for children, youth, Indigenous communities, victims of crime, and survivors of human trafficking. Marian Jacko is the first Indigenous person appointed as the Children's Lawyer for Ontario.
- The 2022 Law Society Medal was awarded to Stuart Wuttke (Garden Hill First Nation), General Counsel for the Assembly of First Nations, in recognition of his leadership in Indigenous rights and policy reform.
- At the Call to the Bar on June 16, 2022 in Ottawa, David Nahwegahbow (Anishinaabe from the Whitefish River First Nation) will be presented honorary doctorate for making significant contributions to the cause of Indigenous rights.

iv. Improved Processes for Indigenous Peoples Engaged with the Law Society

The Law Society has taken steps to share information about its complaints and discipline processes in a clear and culturally appropriate manner, including:

- A special protocol for receiving and responding to complaints from Indigenous peoples, including a dedicated telephone line for receiving complaints.
- A plain language information sheet on the complaints and disciplinary processes available to Indigenous complainants.
- Acknowledgment of the special status of First Nations, Inuit, and Métis peoples in correspondence to Indigenous complainants.

- Direct outreach to Indigenous organizations and communities about programs and initiatives offered by the Law Society, such as the Discrimination and Harassment Counsel, LSO's free equity legal education series events, the Members' Assistance Program and the Repayable Allowance Program.

v. *Resources for Licensees*

Below are activities in support of reconciliation that the Law Society has taken outside of the Review Panel recommendations.

- In 2016, the Law Society approved the [Indigenous Legal Issues certified specialist designation](#) for lawyers who have expertise in Indigenous legal issues. The Law Society is consulting with the IAG to determine how the scope of the certified specialist designation can be enhanced.
- Since 2018, the Law Society has launched several resources for licensees including the [Guide for Lawyers Working with Indigenous Peoples](#) which was developed in partnership with the IBA and The Advocates' Society. A supplement to the *Guide* is under development and is expected to be published in the fall of 2022. The Law Society also published the [Guidelines for lawyers who represent Indigenous clients](#), and resources on the [Sixties Scoop Settlement](#).
- The Law Society offers two half-day Continuing Professional Development (CPD) programs on Indigenous legal issues every year. In November 2021, the Law Society launched a new CPD program for all licensees on [Equity, Diversity, and Inclusion for Indigenous peoples](#).
- The Law Society continues to host free annual events to enhance awareness of Indigenous culture and legal systems for staff, licensees and members of the public, including National Indigenous History Month and Indigenous Solidarity Day celebrations. Louis Riel Day celebration, Treaty Recognition Week program (new for 2022), and the National Day for Truth and Reconciliation.
- The annual [Access to Justice Week](#) in October will feature programming on Indigenous cultural awareness and legal issues. A half-day of programming is typically devoted to Indigenous matters at the annual program.

- Reviewed the good character assessment process in 2019 to ensure that it is transparent, provides candidates with certainty, and does not include elements that constitute barriers to entry.⁴

A detailed discussion of the status of each of the nine Review Panel recommendations can be found in the table below.

⁴ In February 2019, Convocation approved enhancements and improvements to the good character assessment process aimed at enhancing transparency and clarity of the process. Recommendations with respect to Indigenous licensing candidates include:

- Inclusion of a policy statement acknowledging the LSO's commitment to working towards reconciliation with FNIM peoples and conducting the good character assessments using the principles identified in the *Gladue* and *Ipeelee* decisions.
- Enhanced communication about the good character process to improve transparency and clarity for applicants, including simplifying letters sent to candidates who are subjects of an investigation.
- Exclusion of certain minor criminal convictions and dispositions from good character investigations in acknowledgement that they are disproportionately represented amongst racialized and Indigenous licensing candidates.

Initiative	Division Lead	Recommendation	Implementation and Status
<p>Recommendation 1: Organizational Commitment to a Culturally Competent Regulatory Process</p>	<p>Senior Management Executives</p>	<ul style="list-style-type: none"> • Make an organizational commitment to establish and maintain a culturally competent regulatory process. • Consider establishing a new office to support the LSO's work that involves Indigenous communities and to create a culturally safe environment. 	<p>The LSO has made an organization-wide commitment to enhance Indigenous cultural awareness. The following initiatives have been implemented:</p> <ul style="list-style-type: none"> • Reconstituted the FNIM team in 2020 with cross-divisional representation to assist Indigenous complainants and licensees with the LSO's complaints and discipline processes. • Appointed two Indigenous adjudicators (Laura Arndt and Kathleen Lickers) and two Indigenous bench adjudicators (Catherine Banning and Etienne Esquega) to the Law Society Tribunal. • Established a staff Diversity and Inclusion Council ("D&I Council") that includes representatives from Professional Regulation. A key focus of the D&I Council is on educating staff on Indigenous peoples and culture. For example, a recent event entitled <i>Gaining Awareness and Knowledge Through Internal and External Resources</i> featured Indigenous speakers and educators. • Recruited Promise Holmes Skinner, Strategic Policy Counsel, Indigenous Initiatives in Policy to ensure dedicated staff support for Indigenous initiatives. • Convened the Indigenous Cultural Awareness Working Group comprised of Indigenous practitioners and scholars to provide advice and guidance on developing cultural training options for LSO staff and benchers. • Invested in cultural awareness training for staff and board directors, including cultural awareness

			<p>training, Indigenous law camps, and Bimickaway training.</p> <ul style="list-style-type: none"> • Provided Indigenous cultural training to intake staff, investigators and litigation services. • Provided dedicated <i>Gladue</i> training provided to litigation services. • Expanded the use of land acknowledgments and opening of meetings with Indigenous teachings from Elders. • Ongoing consultation with Indigenous Advisory Group and the Elders’ Council. • Hosting Indigenous ceremonies, including the Eagle Feathers Polishing Ceremony, at Convocation on an annual basis. • Hosted a number of commemorative events focused on Indigenous peoples and culture. • Promoted Indigenous voices within the LSO Board of Directors. • Recommended Indigenous lawyers and paralegals for appointment to external committees. • Showcased the work of Indigenous lawyers and paralegals through LSO awards and honours.
<p>Recommendation 2: Communication with Indigenous Communities about Regulatory Processes</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> • Communicate information about discipline processes in an understandable and culturally appropriate way • Communication should include discussion of the remedy from the complainant’s perspective, including restoration. 	<ul style="list-style-type: none"> • Implemented a special protocol for receiving and responding to complaints from Indigenous peoples, including a dedicated telephone line for receiving complaints from Indigenous complainants. • Developed plain language information on the complaints and disciplinary processes for Indigenous complainants that is culturally appropriate (updated in 2021).

			<ul style="list-style-type: none"> • Developed plain-language correspondence template with acknowledgement of special status of FNIM peoples and their unique access to justice challenges.
<p>Recommendation 3: Building and Strengthening Relationships with Indigenous Communities</p>	<p>Policy; ERC; Treasurer’s Office</p>	<ul style="list-style-type: none"> • Express the LSO’s commitment to create a trusting relationship, to enable the LSO to meet its regulatory mandate in ways that respect the culture of the community; • Explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions to help the LSO advance its commitment, and build trust in the community; and • Explore ways to increase access to justice, including considering the need to develop a cultural liaison with the public. 	<ul style="list-style-type: none"> • Enhancing support for the work of the Indigenous Advisory Group by increasing staff support (Promise Holmes Skinner, Reshma Budhwani, and Courtney Carrier); arranging for the Elders’ strategy session; engaging IAG proactively in critical issues of the day, such as the rescheduling of licensing exams, the Family Legal Services Provider License (FLSP) and recommendations of the Competence Task Force. • Increasing direct outreach to Indigenous organizations and communities about programs and initiatives offered by the LSO, such as the Discrimination and Harassment Counsel, LSO’s free Equity Legal Education Series events, the Members’ Assistance Program, the Coach and Advisor Network and the Repayable Allowance Program. • Opening Law Society board meetings and public events, including swearing-in ceremonies, with land acknowledgments. • Hosting free annual events to enhance awareness of Indigenous culture and legal systems including the National Indigenous History Month and Indigenous Solidarity Day celebrations. Louis Riel Day celebration, Treaty Recognition Week program, and the National Day for Truth and Reconciliation. • Featuring programming on Indigenous cultural awareness and legal issues at the annual Access to Justice Week in October. A half-day of programming is typically devoted to Indigenous matters at the annual program.

			<ul style="list-style-type: none"> • Advertising LSO events in Chiefs of Ontario, Indspire and Turtle Island News publications. • Sponsoring the IBA’s fall conference on an annual basis. • Implementing an Indigenous focused outreach plan for the Treasurer, including the current visit to northern communities. • Ensuring that Indigenous lawyers and paralegals are among those recommended by the Law Society for appointment to internal external committees. • Ongoing consultation between the Access to Justice Committee and the IAG to ensure that Indigenous voices are heard on issues related to legal aid services, as outlined in the LSO’s 2018 report on legal aid entitled “An Abiding Interest”.
Recommendation 4: Improving Professional Regulation Functions	Professional Regulation Division	<ul style="list-style-type: none"> • The Professional Regulation Division should: <ul style="list-style-type: none"> ○ be appropriately resourced to ensure timely, efficient and effective operation of regulatory functions; ○ build its capacity to develop formal policies and procedures that flow from decisions of the Tribunal that raise important regulatory policy issues; ○ formulate a plan for the investigation of major cases to 	<ul style="list-style-type: none"> • Recruited an investigator specializing in Indigenous legal issues in 2017 and an Indigenous discipline counsel in January 2020. • Assigned staff from the FNIM team for regulatory matters involving Indigenous complainants and licensees. • Ongoing review of Tribunal decisions to identify policy issues affecting Indigenous peoples. For example, in a recent decision, <i>McCullough</i>⁵, the Tribunal considered how its long-standing jurisprudence is impacted by institutional commitments to reconciliation for Indigenous peoples. The Tribunal applied <i>Gladue</i> principles to take into account the licensee’s Indigeneity and

⁵ *Law Society of Ontario v. McCullough*, 2022 ONLSTH 63

		<p>assist in the management of investigations;</p> <ul style="list-style-type: none"> ○ support prosecutors in developing and refining the skills required to manage and prosecute major cases; and, ○ ensure all staff have available the necessary mental and emotional supports when working with complainants who are survivors of trauma. 	<p>other unique systemic and background factors when considering the case.</p> <ul style="list-style-type: none"> ● Developing formal policies flowing from decisions of the Tribunal that raised important regulatory policy issues. ● Developed a new protocol for the investigation of “major cases” involving complex issues, a high volume of complainants and potential risk to the public, including new policies, procedures and templates. ● Providing trauma-informed training for staff who work with Indigenous complainants and licensees. ● Providing additional cultural awareness training and other supports for PR staff provided by the FNIM team.
<p>Recommendation 5: Improving the Regulatory Process for Indigenous Complainants</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> ● Ensure staff investigating complaints involving Indigenous licensees or complainants is culturally competent and has the necessary resources to engage appropriately with members of the Indigenous communities. ● Explore ways to incorporate principles of Indigenous legal systems into dispute resolution processes. 	<ul style="list-style-type: none"> ● Reconstituted the FNIM team to advise and educate intake staff, investigators and prosecutors involved in the LSO’s complaints and discipline process on Indigenous cultural awareness. ● Providing <i>Gladue</i> focused training to LSO Litigation Services. ● Developing a supplement to the <i>Guide for Lawyers working with Indigenous Peoples</i>. The work on the supplement to the <i>Guide</i> will be completed in June 2022 and is expected to launch in the fall.
<p>Recommendation 6: Internal Structures and Supports to Manage Investigations and Prosecutions</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> ● Create permanent internal structures and supports to appropriately manage investigations and prosecutions of licensees who are the subject of complaints from Indigenous peoples and of Indigenous licensees. 	<ul style="list-style-type: none"> ● Tracking and flagging complaints from Indigenous peoples since 2018; making available accommodations known early in the regulatory process to all Indigenous complainants, witnesses and licensees.

			<ul style="list-style-type: none"> Reconstituting the FNIM team in 2020 with cross-divisional representation to act as a resource for management and staff.
<p>Recommendation 7: Integration of Indigenous Law Principles into Regulatory Processes</p>	Law Society Tribunal	<ul style="list-style-type: none"> Explore how the LSO Tribunal and the Tribunal Committee can incorporate Indigenous cultural awareness in its adjudicative and dispute resolution processes. 	<ul style="list-style-type: none"> Appointing Indigenous adjudicators at the Tribunal. Ongoing review of Tribunal decisions to identify policy issues affecting Indigenous peoples. Developing formal policies flowing from decisions of the Tribunal that raised important regulatory policy issues. Ongoing consideration on how to modify regulatory processes to incorporate restorative measures and implement <i>Gladue</i> principles into discipline proceedings and processes.
<p>Recommendation 8: Training for Tribunal Adjudicators</p>	Law Society Tribunal	<ul style="list-style-type: none"> Provide ongoing training for Tribunal adjudicators on the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics. 	<ul style="list-style-type: none"> Providing regular adjudicator Indigenous cultural training sessions. Completed the Guide on National Adjudicator Training in 2018. Supported the work of the Federation of the Law Societies of Canada (“FLSC”) Standing Committee on National Standards in developing a National Adjudicator Training Curriculum. The curriculum includes cultural competency, diversity and awareness of Indigenous culture. Endorsed the New Adjudicator Training/SOAR program which includes training on cultural competency and Indigenous legal issues.
<p>Recommendation 9: Practice Supports for Lawyers and Paralegals</p>	Policy; Professional Development	<ul style="list-style-type: none"> Ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients who have experienced trauma arising from the Indian Residential School experience, 	<ul style="list-style-type: none"> Developing a supplement to the <i>Guide for Lawyers working with Indigenous Peoples</i>. The work on the supplement to the <i>Guide</i> will be completed in June 2022 and is expected to launch in the fall.

<p>who Serve Indigenous Clients</p>	<p>& Competence</p>	<p>the Sixties Scoop or the Day Schools settlement to assist in their competent representation of these individuals.</p>	<ul style="list-style-type: none"> • Convened the Indigenous Cultural Awareness Working Group comprised of Indigenous practitioners and scholars⁶ to provide advice and guidance on developing cultural training options for LSO staff and benchers. • Hosting annual Equity Legal Education Series Events to enhance knowledge of Indigenous culture and legal systems (e.g., National Indigenous Peoples Day, National Day for Truth and Reconciliation, Treaty Recognition Week, Louis Riel Day Celebration, etc.) • Providing two annual half-day Continuing Professional Development (“CPD”) programs with an on-demand replay on Indigenous law; Indigenous law-related topics are also embedded in other CPD programs. • Launched the Equity, Diversity, and Inclusion for Indigenous Peoples CPD program in November 2021. • Published Guidelines for Lawyers Working with Indigenous Peoples launched with the assistance of the IAG in June 2018. • Launched resources on the Sixties Scoop Settlement in May 2018.
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vi. Other Indigenous Initiatives

Outlined below is a summary of additional Indigenous initiatives undertaken by the LSO over the past few years.

⁶ The members of the Indigenous Cultural Awareness Working Group are Bencher Dianne Corbiere (Chair), Bencher Etienne Esquega, Bencher Cathy Banning, Catherine Rhinelanders (IAG) and Danielle Lussier-Meek (IAG)

Other LSO Initiatives		
1. Organization-wide Commitment to Indigenous Cultural Awareness	LSO-wide	<ul style="list-style-type: none"> Adopted the Indigenous Framework to ensure that an Indigenous lens is applied to all aspects of the LSO's work.⁷
2. Assistance for Indigenous Licensing Candidates	Professional Development & Competence	<ul style="list-style-type: none"> Providing supports for licensing candidates, such as tutoring services, licensing examination profile report review, and a licensing process webcast. The LSO continues to consult with the IAG to ensure that the supports are accessible to Indigenous licensing candidates. Developed an information sheet about lawyer licensing examinations and supports for licensing candidates. The information sheet was distributed on Student Day at the IBA Conference on October 31, 2019. Offering financial assistance including a repayable allowance program and tutoring to licensing candidates. Incorporated the following elements into the Call to the Bar ceremony and licensure activities that may be of specific interest to candidates who identify as Indigenous: <ul style="list-style-type: none"> Attendance of an Elder at the Call to the Bar ceremonies. Wearing of Indigenous regalia at the Call to the Bar ceremonies and paralegal receptions. Smudging ceremonies at the Call to the Bar ceremonies.
3. Licensing and Cultural Awareness	Professional Development & Competence	<ul style="list-style-type: none"> Developed additional Indigenous legal competencies⁸ for the barrister, solicitor, and paralegal licensing examinations, in consultation with the IAG (testing will commence during the 2022-2023 licensing year).

⁷ EIAC worked with the IAG to develop the Indigenous Framework. It was approved by Convocation in June 2017.

⁸ The additional Indigenous competencies for the 2022-20123 licensing year are:

1. demonstrates knowledge of (i) the rights, legal interests, and governing systems of Indigenous Peoples; (ii) the unique historical and ongoing challenges facing Indigenous Peoples and communities; (iii) the history of Indigenous–Crown relations; (iv) Treaties and Aboriginal Rights; (v) the United Nations Declaration on the Rights of Indigenous Peoples; and (vi) Indigenous law.

		<ul style="list-style-type: none"> • Added a new chapter on Indigenous and TRC-related matters in paralegal and lawyer licensing examination study materials (being introduced in the 2022-2023 licensing year). • Developed new paralegal education competencies related to Indigenous/TRC matters (to be taught by institutions commencing September 2022). • Reviewed the good character assessment process in 2019 to ensure that it is transparent, provides candidates with certainty, and does not include elements that constitute barriers to entry.⁹
4. Specialist Program in Indigenous Law	Professional Development & Competence	<ul style="list-style-type: none"> • Created a certified specialist designation in Indigenous Law in 2016. The designation is currently under review in consultation with the IAG and EIAC with a view to enhance and improve the program.¹⁰
5. Taking Action on Reconciliation	Policy; Professional Development & Competence	<ul style="list-style-type: none"> • Continued LSO engagement with the FLSC's TRC Calls to Action Advisory Committee. In June 2020, the Advisory Committee released its final report¹¹ that called on law societies to act on the following:

2. demonstrates knowledge of the history and legacy of residential schools and the issues created by specific legislation regarding Indigenous Peoples that the process of reconciliation seeks to address through the Truth and Reconciliation Commission of Canada's Calls to Action.

3. recognizes the importance of a trauma-informed and anti-racist approach to the practice of law in relation to Indigenous clients.

⁹ In February 2019, Convocation approved enhancements and improvements to the good character assessment process aimed at enhancing transparency and clarity of the process. Recommendations with respect to Indigenous licensing candidates include:

- Inclusion of a policy statement acknowledging the LSO's commitment to working towards reconciliation with FNIM peoples and conducting the good character assessments using the principles identified in the *Gladue* and *Ipeelee* decisions.
- Enhanced communication about the good character process to improve transparency and clarity for applicants, including simplifying letters sent to candidates who are subjects of an investigation.
- Exclusion of certain minor criminal convictions and dispositions from good character investigations in acknowledgement that they are disproportionately represented amongst racialized and Indigenous licensing candidates.

¹⁰ In May of 2022, Convocation approved a recommendation from the Competence Task Force to wind up of the Certified Specialist Program, effective September 1, 2022 subject to the following qualifications:

- The Indigenous Legal Issues specialization will be continued subject to any future recommendation made by the Equity and Indigenous Affairs Committee to Convocation regarding the specialization.
- Current Certified Specialists will continue to be able to use the C.S. designation until they retire, cease practicing or surrender their practicing license with the Law Society.

¹¹ Final Report of the of the Truth and Reconciliation Calls to Action Advisory Committee: <https://flsc.ca/wp-content/uploads/2020/08/Advisory-Committee-Report-2020.pdf>

		<ul style="list-style-type: none"> ○ Consider mandatory Indigenous cultural competency training. ○ Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders. ○ Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction. ○ Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations. ● After the Advisory Group’s final report was released, the FLSC’s Standing Committee on the Model Code of Professional Conduct was tasked with implementing the final report recommendation on mandatory cultural competency training. Cara-Marie O’Hagan, Executive Director, Policy, is the Ontario representative on the Standing Committee which is consulting with Indigenous leaders and groups. ● Bencher Dianne Corbiere is a member of the FLSC and Council of Canadian Law Deans’ Joint Working Group on Approaches to TRC Calls to Action. This Working Group’s focus is on Calls to Action 27 and 28. It is mandated to ensure a coordinated response from the academy and the regulators by sharing information and exploring joint initiatives where appropriate.
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Law Society
of Ontario

Barreau
de l'Ontario

Tab 4.3

Equity and Indigenous Affairs Committee

Update on Trip to Northern Indigenous Communities

June 28, 2022

Committee Members:

Dianne Corbiere (Chair)
Etienne Esquega (Vice-Chair)
Atrisha Lewis (Vice-Chair)
Catherine Banning
Robert Burd
John Fagan
Julian Falconer
Murray Klippenstein
Nancy Lockhart
Jorge Pineda
Julia Shin Doi
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Purpose

To provide the Committee with an update on the Treasurer and Benchers' trip to visit the northern First Nations communities from June 7 to 9, 2022.

Discussion

Treasurer Teresa Donnelly and benchers Cathy Banning, Robert Burd, Dianne Corbiere, Etienne Esquega and Julian Falconer visited northern First Nations communities June 7 through 9. Joining the Law Society was The Honourable Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice, Elder Myeengun Henry, Jim Varro, and Ovide Mercredi, who acted as the independent reviewer to the Law Society during the work undertaken by the Review Panel in 2017-2018. The Chief Justice of Ontario, George Strathy, very much wanted to attend the trip but at the last minute was unable to attend.

On June 7, the Treasurer, benchers, Chief Justice Morawetz, Elder Henry, Jim Varro and Mr. Mercredi visited Fort William First Nation near Thunder Bay and were welcomed by Chief Peter Collins. Elder Rita Fenton led the group, which included community members, local lawyers and members of the local judiciary, in an Indigenous teaching. This was followed by a Talking Circle. Here, the Treasurer and benchers had an opportunity to listen to and learn from community leaders and members about justice challenges and to share about the work of the Law Society. The Treasurer confirmed the Law Society's commitment to working with Indigenous peoples on matters where the issues and interests of the Indigenous communities intersect with the work of the Law Society under its regulatory mandate.

On June 8, the Treasurer, benchers, Elder Henry, Jim Varro and Mr. Mercredi travelled to Sioux Lookout and Lac Seul First Nation, returning to the place where former Treasurer Paul Schabas presented the Review Panel Report in June 2018. They were greeted by Chief Clifford Bull and met with him and members of Council and learned more about issues and developments in the community. The Treasurer shared the work of the Law Society on implementing the recommendations of the 2018 Review Panel Report. This was followed by a Justice Forum, attended by Ogichidaa (Grand Chief) Francis Kavanagh, Grand Council Treaty #3 and Deputy Grand Chief Anna Betty Achneepineskum, NAN and other leaders and community members, including those working in the justice sector in Lac Seul. Through a series of presentations by the leaders and justice sector representatives from Grand Council Treaty #3, the Law Society delegation learned about Indigenous specific justice programs and services to address the issues and challenges facing Indigenous peoples when they become involved in the criminal justice system. This is impacted by the history of Indigenous peoples in Canada – a history that resulted in loss of culture and identity, loss of land and livelihood and multi-generational trauma suffered through the Residential Schools experience and other programs that separated families and created a loss of community and a myriad of social problems. They spoke about the

over-representation of Indigenous peoples in the criminal justice system and the over-representation of Indigenous children in the child welfare system. They emphasized that for many Indigenous peoples, justice is about healing and that restorative justice principles can play a major role in achieving this objective. The delegation also learned about local policing and the challenges created by resource issues for this crucial service. Chief Bull emphasized the need for Indigenous laws and governance. He also spoke about his desire to see more resources that can be used to explore new justice models and community resources for justice and healing. The Treasurer and Ms. Corbiere had an opportunity to discuss the progress made on the Review Panel recommendations and reaffirm the commitment the Law Society has made to work with Indigenous communities in keeping with the focus of the recommendations and implementation of the Law Society's Indigenous Framework. Chief Bull was grateful for the Law Society's engagement once again in Lac Seul and noted the significance of the delegation's visit in affirming the relationship with the community. He also extended an invitation to the leadership of the courts in Ontario to engage with Indigenous communities in determining how the courts, in seeing that justice is done, can be responsive to the unique issues facing Indigenous peoples involved in the justice system.

On June 9, the Treasurer, Ms. Banning, Mr. Falconer, Elder Henry and Mr. Mercredi travelled to Sandy Lake First Nation for a meeting with Chief Delores Kakegamic¹ and Council. Other leaders who attended were Grand Chief Derek Fox, Nishnawbe Aski Nation; Deputy Grand Chief Anna Betty Achneepineskum; Harvey Yesno, NAN Legal; Don Rusnak, NAN Legal; and Chief of Police Roland Morrison, Nishnawbe Aski Police Service. Presentations were made on justice in Sandy Lake including the Mameenimwaywin Justice Project. Project Coordinator Cordia Goodman, spoke about the challenges as a result of justice participants from the Court/Personnel party not being in the community since November 2019, resulting in lengthy court dockets and clients waiting years for their trials. She spoke of the challenges of clients speaking to their lawyers. She also noted the lack of proper court facilities and court equipment. Other challenges noted were offenders being released into the community without notice and supports and the difficulties in receiving responses to inquiries. Other presenters noted the need for Indigenous laws and governance, the need for support, importance of relationships and partnerships, and the need for a healing lodge. The Treasurer spoke about the work of the Law Society in improving the regulatory processes for Indigenous peoples, facilitating access to justice, and supports for Indigenous lawyers and paralegals including the Guide for Lawyers Working with Indigenous Peoples.

¹ Chief Kakegamic attended by telephone.