



Law Society
of Ontario

Barreau
de l'Ontario

Tab 2.0

Equity and Indigenous Affairs Committee

For Decision:

Request for Expenditure from the Contingency Fund

May 23, 2024

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Motion

That based on the recommendation of the Equity and Indigenous Affairs Committee (EIAC), Convocation approve the use of approximately \$250,000 from the 2024 budget contingency for research grants to individuals and organizations in the legal community for the purpose of funding research proposals and an equity summit in 2025. It is anticipated that the research results would be presented at an equity summit in 2025 where attendees would discuss and consider appropriate responses to the research presented.

Background

A. Mandate

The Law Society's mandate includes ensuring diversity within the legal professions and facilitating the elimination of inequitable barriers to and within the legal professions.¹ EIAC is responsible for developing policy options for the promotion of equity and diversity having to do with the practice of law and the provision of legal services and presenting those options to Convocation.² Engagement and consultation with equity-seeking groups and Indigenous and French-speaking peoples is fundamental to the development of policy options and is specifically included in EIAC's mandate.³

B. Research

Research is generally the first step in any engagement and consultation process and is either sponsored or managed directly by the lead organization.⁴ The requested expenditure of \$250,000 would fund between five and 10 research projects that could be presented at an equity summit in May or June 2025⁵.

¹ Trinity Western University v. Law Society of Upper Canada 2018 SCC 33

² Law Society By-Law 3, s. 122

³ Ibid., See also, for example: Bicentennial Report and Recommendations on Equity Issues in the Legal Profession, Law Society of Upper Canada, 1997, report outlines surveys conducted or sponsored by the Law Society and meetings and conferences organized by the Law Society, pp 8-9, 13; Indigenous Framework, Law Society of Upper Canada, 2017, informed by the Law Society's 2009 *Final Report of the Indigenous Bar Consultation*, p.7; Final Report of the Challenges Faced by Licensees Working Group, approach of the Working Group involved consultant and community engagement processes.

⁴ See *ibid*, Bicentennial Report and Recommendations on Equity Issues in the Legal Profession; Canadian Bar Association, Law For The Future Fund, <https://www.cba.org/Who-We-Are/Partners/LFFF>

⁵ Research typically takes one of three forms: literature reviews and other assessments of previously completed research; consultation research that includes surveys and focus groups; empirical research which involves measuring outcomes to test theories. According to Nye Thomas, Executive Director of the Law Commission of Ontario, the time and resources required to complete research will depend on the form selected. Desktop research consists primarily of literature reviews and other assessments of previous research. The time required will depend on the individual researcher, but it is not uncommon to

Sponsoring research has the following advantages over the Law Society conducting its own research:

1. External organizations can identify new issues, solutions and perspectives that the Law Society has not identified or considered and can sometimes connect with research subjects more effectively than the Law Society.
2. Sponsoring research is less time-consuming and resource intensive than conducting research. Research must be broad-based and multifaceted requiring the expenditure of considerable time and resources. For example, the final Challenges Report was preceded by almost four years of meetings, town halls, a broad-based survey and calls for comment on a consultation report. Sponsored research does not have the same requirements and can draw on the participation of several organizations all working at the same time. Consequently, the demands on Law Society resources are considerably less and research can be completed in a shorter period.
3. Sponsored research allows the Law Society to explore issues in a manner that is less controversial than conducting its own research. In calling for research proposals, the Law Society would make it clear that it does not endorse any methods or conclusions of the researcher. The Law Society would also specify that it has full authority to determine whether or not any researcher would be invited to present results at any equity summit. This approach gives the Law Society more flexibility to agree or disagree with any conclusions of the researcher.
4. Sponsored research does not raise expectations of the Law Society in the way that Law Society research can do. When the Law Society undertakes research, the legal community sometimes assumes that the research is an inevitable prelude to specific changes in professional conduct rules or programs.

C. Financial context

An expenditure of \$250,000 represents a fraction (.16%) of the Law Society's budgeted expenses of \$153.3 M in 2024.⁶ As noted in the financial statements for the Law

expect this type of research to be completed in three to four months. Resources typically consist only of the fee paid to the researcher and will depend on the stature of the researcher. Consultation research involves standard consultation methods, such as key informant interviews, surveys and focus groups. Consultation research generally requires the proponent to acquire expertise in survey design and facilitation of focus groups. Research grants of \$40,000 can easily cover the cost of consultation research and it is reasonable to expect results within a six-month period. Empirical research, when used in the sense of measuring outcomes to test a theory, typically need at least 12 to 18 months to complete. Other resources to measure outcomes can be varied and more expensive when compared to other kinds of research.

⁶ Budget 2024, Report of the Audit and Finance Committee, October 26, 2023, p.8

Society's year end, the Law Society is currently in a strong financial position⁷ with revenue exceeding expenses by \$9M as of December 31, 2023.⁸ The contingency fund can accommodate an expenditure of \$250,000 and, if the full amount was not awarded in grants, the residual sum would be returned to the fund.

Proposal: A New Equity Agenda

It is time for a new equity agenda. While the recommendations of the Challenges Report have shaped the Law Society's equity agenda since its adoption by Convocation in 2016, those recommendations have either been implemented, repealed or abandoned as unworkable. Moreover, since 2016, our society and professions have been shaped by a more polarized political environment, the COVID pandemic, steady increases in the percentage of internationally trained lawyers in the profession and increased use of technology. In addition, how equity and reconciliation are viewed, understood, and addressed has changed significantly and continues to adapt rapidly. To address these challenges and make the legal professions more equitable and inclusive, the Law Society needs to be proactive and not merely reactive.

A proactive agenda must be founded on the timely identification of issues and the development of long-term solutions respecting equity and reconciliation within the professions, the public and the justice system. Research and outreach are essential to the development of such an agenda. The following sets out a streamlined, efficient and engaging method of conducting research and making connections with Indigenous and equity-seeking communities.

It is proposed that the Law Society allocate \$250,000 to sponsor five to 10 research proposals that would provide the foundation for an equity summit to be held in the spring of 2025. The proponents of the research would present their conclusions at the summit. The Law Society would invite the leaders of the legal professions to attend the summit and receive those conclusions. Chief Justices, law firm leaders, senior members of government, general counsels, law school deans and other justice sector leaders would be invited to the summit. At a minimum, the research and summit would allow the Law Society to facilitate a robust discussion about how to make the professions and justice system more equitable, diverse and inclusive. Beyond that, the conclusions of this summit could contribute to the formation of a new equity agenda.

The research and summit would be based on the theme of equity and reconciliation in a post-pandemic legal system. The following lists a few of the topics that might be explored:

1. Sexual harassment and the retention of women as leaders in the legal professions – Despite decades of measures encouraging women to join, stay

⁷ 2023 Annual Financial Statements, Report of the Audit and Finance Committee, April 26, 2024, p. 12

⁸ Ibid, p. 5

and lead in the legal professions, a disproportionate number of women leave law, discouraged by harassment, discrimination and a toxic culture. Few women report harassment or discrimination to either the Law Society or their employer and anecdotal information suggests that little has changed since large numbers of women joined the legal profession in the 1990s. How widespread is gender-based harassment and discrimination? What can be done to make reporting harassment and discrimination a genuine option? What are the real remedies for discrimination and harassment?

2. Retention and advancement for legal professionals from Indigenous communities and equity-seeking groups –Racialized and Indigenous licensees continue to face barriers in the professions despite significant work aimed at increasing diversity in legal workplaces. Have those initiatives worked? Does diversity in hiring lead to diversity in the senior ranks of legal workplaces and the judiciary? If not, why not? What need to be done?
3. Remote work for legal professionals: benefits and drawbacks - Remote work can offer flexibility for childcare and minimize exposure to microaggressions but can also reduce opportunities for mentoring and networking. What are the pros and cons of remote work? How can the cons be minimized?
4. Linguistic rights in Ontario's justice system – In the recent *Tompouba* decision⁹, the Supreme Court of Canada reaffirmed the fundamental right to a trial in one's official language of choice. Will this decision lead to new opportunities to enhance the exercise of linguistic rights in Ontario?
5. Disability in the legal professions –The pandemic brought a renewed focus to disability within the professions, particularly with respect to mental health challenges. In addition, lawyers and paralegals face challenges from our aging population and corresponding aging of the legal community. What are the common barriers faced by lawyers and paralegals with disabilities? What is required of the Law Society, employers and courts to address those barriers?
6. Diversity and the paralegal profession – The Law Society's Snapshots show that the paralegal community is significantly more diverse than the lawyer community. How does that diversity inform client choice and representation? What lessons are available for the broader legal community?
7. Status of internationally trained lawyers in Ontario – The Law Society of Ontario licenses approximately 1000 internationally trained lawyers every year. Anecdotal evidence suggests that these lawyers face significant barriers to employment and

⁹ *R v. Tayo Tompouba*, 2024 SCC 16

advancement in the professions. What are the barriers? How do those barriers impact access to justice and public protection? What are the solutions?

8. Client representation and access to justice for Indigenous and marginalized communities – What are culturally competent legal services? What is required of the professions, regulators and courts to deliver them?

The request for research proposals would be supported by the following activities:

1. Strike a panel composed of benchers, management, policy counsel and research experts to review research proposals and monitor successful proponents;
2. Conduct a literature review to ground research proposals (e.g., determine whether the research would fill a gap, determine if similar studies have been done recently or done in other jurisdictions or regarding other professions);
3. Confirm themes and refine topics for research;
4. Identify possible proponents;
5. Receive and review proposals;
6. Award grants;
7. Execute letter agreements;
8. Monitor research;
9. Prepare for the summit;
10. Committee reports regularly to EIAC.

Assuming that Convocation approves a \$250,000 expenditure from the contingency fund in May 2024, the Law Society could hold an equity summit in May 2025 by adhering to the following schedule:

May 2024	Announce calls on May 28 at Treasurer’s event, “50 & Forward: Celebrating Progress and Moving Forward”.
June – August 2024	Strike the panel to review research proposals and monitor successful proponents; conduct literature review on the themes and topics to ground the research proposals; confirm research topics; develop RFP; identify possible proponents; advertise research calls.
September – October 2024	Issue RFP; committee receives and reviews proposals.
Mid-November 2024	Award grants; execute letter agreements

November 2024 – May 2025

Proponents conduct research; panel monitors research; prepare for summit (including consideration of Law Society responses to research; logistics; invitations)

May 2025

Hold summit