



For Information: Law Society of Ontario's Statement of Principles & Equality, Diversity and Inclusion Strategies

For more information about the Statement of Principles and the obligations flowing from the Law Society's Equality, Diversity and Inclusion initiatives, please visit: www.lso.ca/edi

What is the Equality, Diversity and Inclusion Initiative?

The Equality, Diversity and Inclusion initiative comprises strategies that the Law Society is implementing to address racism and discrimination in the professions.

What is the goal of this initiative?

The Challenges Faced by Racialized Licensees Working Group found that racialized lawyers and paralegals face barriers at all stages of their careers. The goal of these strategies is to break down these barriers. The main objectives are to:

- Create more inclusive legal workplaces in Ontario
- Reduce barriers created by racism, unconscious bias and discrimination
- Increase representation of racialized licensees in the professions, in proportion to the representation in the Ontario population, in all legal workplaces and at all levels of seniority.

Why do the strategies include regulatory obligations?

The Law Society believes that requiring licensees to make a clear commitment to equality, diversity and inclusion will encourage lawyers and paralegals to consider their individual roles in creating lasting change.

Challenges Faced by Racialized Licensees Working Group's [Final Report](#)

The Law Society understands that racialized lawyers and paralegals face barriers at all stages of their careers. To remove these barriers, the Law Society is putting into action five strategies: **accelerating culture shift**, measuring progress, educating for change, implementing supports and leading by example.

The Statement of Principles – Recommendation 3(1)

All lawyers and paralegals play a vital role in **Accelerating Culture Shift**. As part of this strategy licensees* are required to create and abide by an individual Statement of Principles. The Law Society will ask licensees to report on this in their 2017 Annual Report. According to the 2016 Annual Report (completed in 2017), 97.64% of lawyers and 98.86% of paralegals stated that they had a Statement of Principles.

**A licensee is anyone who is licensed to practice law or provide legal services and includes retired licensees, licensees working outside of Ontario and licensees not currently practicing law or providing legal services.*

Guide to the Application of Recommendation 3(1)

Recommendation 3(1) provides that the Law Society will:

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

The following clarifies what licensees must do to fulfil the requirement set out in Recommendation 3(1) which applies to racialized licensees and equality-seeking groups:

- The requirement reinforces existing obligations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* which establish a lawyer's and paralegal's "special responsibilities" to respect human rights laws and to honour the obligation not to discriminate in their dealings with others.**
- The requirement applies only to the professional conduct of licensees with each other, with employees, with clients and with the public.
- The requirement does not create any obligation to profess any belief or to seek to persuade anyone about anything. It will be satisfied by licensees acknowledging their obligation to take reasonable steps to cease or avoid conduct that creates and/or maintains barriers for racialized licensees or other equality-seeking groups. The obligation to promote equality, diversity and inclusion generally does not prescribe specific actions that licensees will or must take to avoid, reduce or eliminate barriers faced by racialized licensees or other equality-seeking groups.
- The reference to the obligation to promote equality, diversity and inclusion generally refers to existing legal and professional obligations in respect of human rights including preventing direct, adverse effect and systemic discrimination. Equality, diversity and inclusion are promoted (i.e. advanced) by addressing discrimination in all of its forms.
- Licensees are not required to make their Statements of Principles public. They are just required to confirm annually that they have considered and implemented this requirement. The content of the Statement of Principles does not create or derogate from, but rather reflects, professional obligations. Accordingly, Licensees are not required to disclose the content of their Statement of Principles to the Law Society but are only required to confirm its existence.

** A summary of obligations, including and the obligation not to discriminate and the special responsibility to respect requirements of human rights laws in force in Ontario, in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* is provided below:

Rules of Professional Conduct

Section 6.3.1 Discrimination Special Responsibility

Rule 6.3.1-1 provides: “A lawyer has a special responsibility to respect the requirements of human rights law in force in Ontario and, specifically, to honour the obligation not to discriminate...with respect to professional employment of other lawyers, articulated student, or any other person or in professional dealings with other licensees or any other person”.

Commentaries 12 and 13 explain: “Human rights law in Ontario includes as discrimination conduct which, though not intended to discriminate, has an adverse effect on individuals.... A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer’s direction or control”.

Commentary 3 to Rule 6.3.1-3 adds: “An employer should consider the effect of seemingly ‘neutral’ rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees...The maintenance of a rule with a discriminatory effect breaches Rule 6.3.1 unless changing or eliminating the rule would cause undue hardship”.

Section 2.1 Integrity

See also Rule 2.1-2: “A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions”.

Paralegal Rules of Conduct

2.03 Harassment and Discrimination Discrimination

Rule 2.03 (4) provides: “A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person”.

2.01 Integrity and Civility Integrity

See also Rule 2.01(2): “A paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions”.



Equality, Diversity and Inclusion Strategies: Key Definitions

Advancement

Advancement in the workplace refers to career progression to a more senior role. Advancement is the upward trajectory of an individual's career and typically means getting promoted, receiving an increase in compensation, or being assigned more responsibilities by an employer.

Discrimination

Discrimination means any form of unequal treatment based on human rights legislation grounds, whether imposing extra burdens or denying benefits. The *Ontario Human Rights Code* grounds include: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability.^{***}

Discrimination may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging certain groups of people.

Discrimination may take obvious forms, or it may occur in very subtle ways. In any case, even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation of human rights legislation.

**** There are some licensees whose legal workplaces may be subject to the Canadian Human Rights Act, R.S.C., 1985, c. H-6. The prohibited grounds of discrimination set out in section 3(1) are slightly different from Ontario legislation: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.*

Equality

The Supreme Court of Canada has held that equality is an “elusive concept” that “lacks precise definition.”¹ Equality does not mean treating all people the same for all purposes. In Canada, court decisions at all levels make it clear that both the *Charter of Rights and Freedoms*² and human rights legislation aim to achieve “substantive” rather than a “formal” equality.

Whereas “formal equality” involves “equal treatment for those in similar situations and different treatment for those in dissimilar situations” (“treating likes alike”),³ “substantive equality” does not always require treating all people the same.

Substantive equality, rather, is aimed at “recognizing and responding to difference and remedying discrimination and stereotyping.”⁴ It requires “acknowledgment of and response to differences that members of a particular group might experience” in order to be treated equally.⁵ To be clear, it is substantive equality that human rights/diversity policies in legal workplace should be aiming for.

¹ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at p. 164.

² *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.*

³ *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 at para. 78.

⁴ *Vandervelde v. Goodlife Fitness Centres Inc.*, 2012 HRTO 1042 at para. 13.

⁵ Patricia Hughes, "Supreme Court of Canada Equality Jurisprudence and "Everyday Life"." *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 58. (2012) at pp. 246-47. <http://digitalcommons.osgoode.yorku.ca/sclr/vol58/iss1/9>

Honouring the Truth, Reconciling for the Future

The Truth and Reconciliation Commission (TRC) prepared a comprehensive historical record on the policies and operations of the Indian Residential Schools (IRS) and produced a report that includes recommendations (referred to as Calls to Action) to the Government of Canada concerning the IRS system and its legacy. In Call to Action #27, the TRC calls on the Federation of Law Societies of Canada to ensure that licensees receive appropriate cultural competency training.

Inclusion

Inclusion is a state of being valued, respected, and supported. Workplace inclusion means creating an environment that accepts each individual's differences (as set out in Workplace Diversity below) embraces their strengths, and provides opportunities for all people in the workplace to achieve their full potential. Inclusion should be reflected in an organization's culture, practices and relationships that are in place to support a diverse workforce.

Reconciliation

The Truth and Reconciliation Commission (TRC) calls on the Federation of Law Societies of Canada to ensure that lawyers receive training which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Indigenous law.

Recruitment

Recruitment is the process of discovering, attracting and hiring an individual for a job position. The recruitment process includes documenting the requirements of a job, attracting individuals to the job, screening, interviewing, and selecting applicants, and finally making a job offer and hiring the new employee.

Retention

Retention in this application refers to employee retention which is defined simply as the ability of an organization to maintain its number of employees. A number of factors contribute to employee retention including but not limited to corporate culture, compensation, career development, opportunity, satisfaction, rewards, and recognition.

Workplace Diversity

Human diversity means differences among people that can be used to distinguish groups and people from one another. As a concept in the workplace, it means respect for, and appreciation of, differences between people and groups of people, based on:

grounds under the *Ontario Human Rights Code*, such as: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability;

and/or other distinctions between people, such as: education, work experiences, cultural differences, income, geographic location, appearance, communication style, or political ideology.