



The Law Society of
Upper Canada

Barreau
du Haut-Canada

Final Report – Aboriginal Bar Consultation

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FINAL REPORT OF THE ABORIGINAL BAR CONSULTATION PROJECT

BACKGROUND

1. The Aboriginal Bar has dramatically increased in number since the first Aboriginal lawyer was called to the bar almost 50 years ago. Until the early 1980s, the number of Aboriginal lawyers remained very low and difficult to verify. A variety of factors created a sharp increase in the number of Aboriginal people joining the profession.
2. According to Census data for 2001¹, “from 1901 to 2001, the Aboriginal ancestry population increased tenfold, while the total population of Canada rose by a factor of only six. However, the rate of growth was very different in the first half of the 20th Century compared with the second half.” The passing of Bill C-31 in 1985, which amended section 6 of the *Indian Act*, resulted in a large number of Aboriginal people regaining their status for themselves and their children.² These individuals and their children registered with the federal government and, where available, registered with First Nations communities. As a result, they became eligible to access post-secondary education funding available through the Department of Indian and Northern Affairs for Status Indians.³ Additionally, the growth rate for the Aboriginal community has recently outpaced that of the general populace, creating a large cohort under 40 years of age.
3. Further, the Law Society has enabled individuals applying for the Bar Admission Course and now the Licensing program to self-identify as a member of an equality-seeking group since 2000⁴. As a result, the Equity Initiatives

¹ Statistics Canada, Census 2001 Report, *Aboriginal peoples of Canada*,

<http://www12.statcan.ca/english/census01/Products/Analytic/companion/abor/canada.cfm>

² Indian and Northern Affairs Canada, *The Indian Register*, http://www.ainc-inac.gc.ca/pr/info/tir_e.html

³ Indian and Northern Affairs Canada, Audit of Post-Secondary Student Support Program, June 2005, http://www.ainc-inac.gc.ca/pr/pub/ae/au/01-15/01-15_e.pdf

⁴ For the purposes of the Licensing Program, the Law Society defines equality-seeking as those individuals

Department, through the Aboriginal Initiatives Counsel, has been able to establish contact with Aboriginal lawyers called since 2001. On average, for the last 8 years, between 18 and 24 Aboriginal lawyers have been called to the Bar each year. This number accounts for almost 65% of the total estimated number of Aboriginal lawyers in Ontario (as of September 2008, approximately 260).

4. The mandate of the Law Society is to regulate the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law. In the fulfillment of its mandate, the Law Society promotes diversity and equity in the legal profession and works to ensure access to legal services for a diverse population.
5. To address its mandate, the Law Society conducted the Aboriginal Bar Consultation project and interviewed Aboriginal lawyers to create a demographic baseline for the Aboriginal bar, identify the support initiatives in place for Aboriginal lawyers that are working well, and to determine what programs and initiatives could be adapted and/or developed to address gaps in support programs and initiatives for enhancing access to the profession for Aboriginal Licensing candidates and lawyers. The work of the Aboriginal Working Group and the results of the Aboriginal Bar Consultation led to the proposals for action outlined in this report.

INTRODUCTION

6. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* [“Bicentennial Report”].⁵ The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and persons

who self-identify as Aboriginal, a Person with a Disability, Francophone, Gay/Lesbian/Bisexual/Transgendered, Mature, or a member of a Racialized Community. Candidates can self-identify in more than one category.

⁵ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.

7. On July 31, 2003, Convocation established the Bicentennial Report Working Group [Bicentennial Working Group] to review and report on the implementation status of the recommendations contained in the Bicentennial Report. Members of the Working Group were: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W. A. Derry Millar and Beth Symes.
8. On January 22, 2004, the Bicentennial Working Group presented its *Bicentennial Implementation Status Report and Strategy* [“Bicentennial Strategy Report”] to Convocation for information. The Bicentennial Strategy Report detailed the programs, services and policies created by the Law Society as a result of the recommendations of the Bicentennial Report, analyzed the implementation status of each recommendation and proposed strategies to be examined and further implemented.
9. The Bicentennial Strategy Report noted “there is very limited information about Aboriginal law students and lawyers”. The Bicentennial Working Group proposed that, in consultation with the Aboriginal community, research be carried out to enable the Law Society to develop policies to address barriers faced by Aboriginal law students and lawyers.⁶ This proposal is consistent with Recommendation 2 of the Bicentennial Report, which reads “To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact

⁶ *Bicentennial Implementation Status Report and Strategy* (Toronto: Law Society of Upper Canada, January 2004), page 41.

on the profession of barriers experienced by members of our profession for reasons unrelated to competence.”

10. In December 2004, Joanne St. Lewis, then Chair of the Equity and Aboriginal Issues Committee (EAIC), created the Aboriginal Working Group to develop strategies to,
 - a. address barriers faced by Aboriginal law students and lawyers in accessing and being successful in the legal profession;
 - b. provide an advisory role to the Equity and Aboriginal Issues Committee on emerging issues affecting Aboriginal lawyers and the Aboriginal community; and
 - c. ensure that the Law Society takes on a leadership role in providing high quality support services to Aboriginal Licensing candidates and lawyers.

11. The Aboriginal Working Group (AWG) consists of 29 Aboriginal lawyers practising within Ontario and represents a broad cross-section of the Aboriginal bar, including members of the First Nations, Métis and Inuit communities from First Nations, rural and urban centres. The current Chair of the AWG is Bencher Susan Hare.

12. From early 2005 to mid-2006, the AWG identified policy and program initiatives related to enhancing access and retention of Aboriginal lawyers in the profession and enhancing communication between the Law Society and the Aboriginal bar and community. These initiatives were considered and received support by the Equity and Aboriginal Initiatives Committee. Consequently, in June 2006, the “Integrated Aboriginal Communications Strategy for the Aboriginal Community and the Legal profession” was presented to Convocation. Promotion of the Aboriginal Bar Consultation project (originally the “Aboriginal Bar Survey”) was a key initiative for the Communications strategy and the AWG.

13. The AWG became the main advisory group for the purpose of creating the database of Aboriginal lawyers who became the focus group for the Consultation project. The AWG also acted as the advisory group for the development of the survey questions and consultation questions. The focus of the questions was on gathering empirical data about Aboriginal lawyers in Ontario and qualitative information on their common experiences as law students, Bar Admission Course/Licensing candidates and lawyers as well as their perceptions about the current Law Society programs to support access and retention of Aboriginal peoples in the legal profession.
14. The Strategic Counsel was retained to conduct the survey phase of the Consultation project. As of August 8, 2006, 228 surveys were mailed out, 68 respondents mailed in their surveys and 33 respondents agreed to participate in further consultations.
15. On August 27, 2006, The Strategic Counsel submitted a draft report entitled, "Survey Among Aboriginal Members of the Law Society of Upper Canada". A summary of this report was presented to the Committee for its November 9, 2006 meeting.
16. This summary report was used by the Aboriginal Initiatives Counsel to identify the issues to be further explored through the consultation phase. The Aboriginal Initiatives Counsel developed the consultation question form with the Aboriginal Working Group, which approved the final form in June 2007.
17. The consultations took place through face-to-face or telephone interviews and through written correspondence, as requested by the respondents, from August 2007 through until March 2008.
18. As of March 31, 2008, 29 consultations were completed.

19. This report provides an overview of the demographic profile of the Aboriginal bar in Ontario. It also discusses the assessment of services currently provided by the Law Society to support Aboriginal Licensing candidates and lawyers by the consultation respondents. Finally, this report provides the respondents' feedback on three initiatives that were developed by the Aboriginal Working Group under the direction of the Equity and Aboriginal Issues Committee.

20. The report is divided under the following headings:
 - a. Demographic Profile of the Aboriginal Bar in Ontario
 - b. Common Experiences of Aboriginal Lawyers
 - c. Survey Respondents' Assessment of Law Society Support Initiatives for Aboriginal Licensing Candidates and Lawyers
 - d. Analysis of Consultation Results for Proposed Initiatives and Programs for Aboriginal Lawyers
 - e. Analysis of Programs and Initiatives for Aboriginal Lawyers in Other Jurisdictions
 - f. Conclusions and Proposals for Action

DEMOGRAPHIC PROFILE FOR THE ABORIGINAL BAR IN ONTARIO

21. The survey questioned respondents about their general demographic statistics, work history, working lifestyles, incomes and composition of their clientele. The sample size of 68 respondents resulted in statistically reliable data for most questions, particularly for questions relating to respondents' current experiences in the profession. Because of the low sample number (228), questions relating to specific details such as age, year of law school graduation and year of call to the Bar in Ontario could have resulted in the identification of respondents. This factor and the range of dates of call of respondents (approximately 1980 to 2005) limit the statistical reliability of certain questions relating to historical data, such as questions about accumulation of law school student debt and income earned during articling. As a result, these responses cannot be compared to the current situation of law students and Licensing candidates.

22. Of the 68 respondents, 53% identified as female and 46% as male.
23. When asked to self-identify within one of the enumerated Aboriginal categories, the vast majority of respondents self-identified as Status Indians (62%). The respondents provided the following responses:

Aboriginal Group	Percentage of respondents
Status Indian	62
Non-status Indian	9
Métis	22
Inuit	0
Other	6
I do not self-identify as Aboriginal	1

24. When asked if whether they self-identified with another equality-seeking group, most (22%) responded that they also self-identified with another ethnic or cultural group. The respondents provided the following responses:

Equality-Seeking Group Factor	Percentage of respondents
Your Race	16
Your ethnicity or cultural background	22
Your disability	1
Your religion or creed	3
Your language	6
Your sexual orientation	6
Declined to answer	16
No answer provided	47

25. 84% of respondents attended law school in Ontario and the highest proportion of these respondents attended the University of Toronto (26%). Attendance at other law schools was distributed as follows:

Law School	Percentage of respondents
University of Toronto	26

Osgoode Hall Law School	21
University of Ottawa	12
Queen's University	9
University of Windsor	9
University of Western Ontario	7
University of British Columbia	6
University of Saskatchewan	6
University of Manitoba	3
Dalhousie University	1
University of Alberta	1
Other	7

26. When asked to describe the factors that attracted them to the law school they attended, respondents identified that previous contact with the faculty or personnel at the law school, reputation of the law school as progressive in terms of entrance requirements, encouragement of Aboriginal applicants, hiring of Aboriginal faculty, and Aboriginal-oriented curriculum or courses, as well as the size of the school were the predominant reasons behind their choice.

27. The vast majority of respondents (62%) received Band funding to assist them with their law school fees. They identified the following sources of support or assistance:

Source of Funding for Law School	Percentage of respondents
Band funding	62
Summer job income	54
Income from part-time employment during school	43
Student loans	37
Support from parents, family and friends	31
Bursaries through your law school	26
Personal Savings	24
Support from spouse/partner	15
Scholarship	13
Income from full-time employment during school	7
Funding for Métis students	4
Other	3
No answer provided	3

28. Similarly, during the Bar Admission Course or Licensing program, the majority of Aboriginal candidates (51%) indicated that they received funding from their First Nation. Other sources of funding were identified as follows:

Source of Funding for Bar Admission Course/Licensing program	Percentage of respondents
Band funding	51
Articling firm/agency/organization	29
Student loans	22
Summer job income	18
Income from part-time employment during BAC/Licensing	13
Support from parents, family and friends	13
Personal Savings	10
Support from spouse/partner	9
Bursaries through the Law Society or law school	7
Income from full-time employment during BAC/Licensing	1
Funding for Métis students	1
Other	1
No answer provided	4

29. At the time of their graduation from law school, approximately one-third of the sample identified that they had accumulated between \$7,501 and \$25,000 in student debt during law school. Approximately one-quarter of the respondents identified that they had accumulated no student debt during law school. Given the range of the years in which the respondents were called to the Bar in Ontario (from approximately 1980 to 2005), the amount of accumulated student debt cannot be compared to the current situation of law students.

Total Amount of Student Debt Accumulated During Law School	Percentage of respondents
Zero	26
\$1 to \$2,500	7
\$2,501 to \$7,500	9

\$7,501 to \$15,000	16
\$15,001 to \$25,000	13
\$25,001 to \$35,000	7
\$35,001 to \$45,000	4
\$45,001 to \$55,000	3
\$55,001 to \$65,000	1
\$65,001 to \$75,000	3
\$75,001 to \$85,000	3
\$85,001 to \$95,000	-
More than \$95,000	3
No answer provided	2

30. The vast majority of respondents (57%) identified that their articling salary ranged between \$25,001 and \$49,999. Again, given the range of the years in which the respondents were called to the Bar in Ontario (from approximately 1980 to 2005), the amount of income earned during articling cannot be compared to the current situation of Ontario Licensing candidates.

Pre-Tax Income from Articling Position	Percentage of respondents
Zero	3
Less than \$24,999	28
More than \$25,000 but less than \$49,999	57
More than \$50,000 but less than \$74,999	9
More than \$75,000 but less than \$99,999	1
More than \$100,000	-
No answer provided	1

31. When asked to identify their category of membership with the Law Society, the largest proportion or 22% self-identified as sole practitioners, compared with 19% for all members for the 2005 Members Annual Report (MAR). Following closely, 19% self-identified as employed in Government in Ontario, compared with 12% for all lawyers. When asked whether they identified themselves as lawyers, “notwithstanding the MAR membership categories”, 94% of respondents replied yes. The following table provides the complete responses in comparison with the responses with the 2005 Members’ Annual Report:

Category of Membership with the Law Society	Percentage of respondents	2005 Members Annual Report results
Sole Practitioner in Ontario	22	19

Partner in Law Firm in Ontario	7	17
Employee in Law Firm in Ontario	3	3
Associate in Law Firm in Ontario	13	14
Employed in Education in Ontario	3	1
Employed in Government in Ontario	19	12
Otherwise Employed in Ontario	13	16
Not in Ontario	7	8
Not Working	9	9

32. When asked to identify their area of practice in accordance with the categories provided in the MAR, the top three areas of practice identified were Criminal/Quasi-Criminal Law (34%), Employment/Labour Law (27%), and Administrative Law (27%). The vast majority of respondents identified their area of practice as Other (42%). It should be noted that the MAR does not provide Aboriginal Law as an identified area of practice. Overall, the respondents provided the following responses:

Area of Practice as provided by the Members' Annual Report (MAR)	Percentage of respondents
ADR/Mediation Services	15
Administrative Law	27
Bankruptcy & Insolvency Law	-
Civil Litigation – Plaintiff	19
Civil Litigation – Defendant	11
Construction Law	6
Corporate/Commercial Law	21
Criminal/Quasi Criminal Law	34
Employment/Labour Law	27
Environmental Law	6
Family/Matrimonial Law	21
Immigration Law	-
Intellectual Property Law	3
Real Estate Law	8
Securities Law	-
Tax Law	5
Wills, Estates, Trusts Law	18
Workplace Safety & Insurance Law	3
Other	42
Not applicable	13

33. Respondents were asked to describe their clients and identify the proportions of Aboriginal versus non-Aboriginal clients. For those providing service to individual clients, 42% responded that they served Aboriginal clients compared with 53% non-Aboriginal clients. For those who provided service to Organizations, including not-for-profit, 19% served Aboriginal clients and 3% served non-Aboriginal clients. The responses were more closely matched for those lawyers serving Government clients (25% Aboriginal and 26% non-Aboriginal). Overall, the respondents provided the following responses:

Client	Percentage of Aboriginal Client	Percentage of non-Aboriginal Client
Individuals	42	53
Businesses	6	16
Organizations, including not-for-profit	19	3
Governments	25	26
Other	9	2

34. When asked to provide their projected 2006 income, a significant number of respondents (26%) indicated that they anticipated earning more than \$100,000 but less than \$199,999. The majority or 38% anticipated earning between \$50,000 and \$99,999. Overall, respondents provided the following estimates:

Anticipated 2006 Pre-Tax income	Percentage of respondents
Zero	0
Less than \$24,999	9
More than \$25,000 but less than \$49,999	9
More than \$50,000 but less than \$74,999	19
More than \$75,000 but less than \$99,999	19
More than \$100,000 but less than \$199,999	26
More than \$200,000 but less than \$399,999	10
More than \$400,000	0
No answer provided	7

35. When asked how many hours per week they spent working in their current role, 50% of respondents indicated they worked between 41 and 60 hours per week. Thirteen per cent indicated that they worked 36 to 40 hours per week and the same percentage indicated that they worked between 61 and 80 hours per week. Eight per cent responded that they worked more than 80 hours per week.
36. The survey also asked the participants about their employment history within their first three years of Call. Specifically, they were asked to describe the number of positions they held within the first three years of call where membership in the Law Society was required. Of those who indicated that membership was required, 44% of respondents indicated that they had held one position, 28% indicated that they had held two positions, and 10% indicated that they had held three positions. The majority of respondents (68%) indicated that, within their first three years of call, they did not hold a position where membership was a requirement of the job. This result seems to indicate that when an Aboriginal lawyer secured legal work post-Call, he/she maintained this position during the crucial early years of call. However, the vast majority were either unable or chose not to hold a position where membership in the Law Society was a job requirement. This factor may be an area of vulnerability for newly called Aboriginal lawyers.
37. Overall, the Aboriginal bar in Ontario consists of mostly recently called lawyers (according to the Aboriginal lawyer directory developed for this project, approximately 65% of self-identifying Aboriginal lawyers have been called since 2001). There are slightly more female Aboriginal lawyers than male lawyers. Almost 60% attended school at the University of Toronto, Osgoode Hall Law School or the University of Ottawa. The Aboriginal lawyer directory reveals that most Aboriginal lawyers are based in the following centres: Toronto/GTA, Ottawa, Windsor/Sarnia, Thunder Bay and the Sudbury region. Most are Status Indians who work primarily as sole practitioners, for government or as associates in law firms. Of those who practice law, the majority (42%) identified that they

practice in an area of law outside the current categories identified by the Members' Annual Report (MAR). Within the MAR practice categories, Aboriginal lawyers are most likely to practice Criminal/Quasi-Criminal law or Employment/Labour Law. For those in private practice, their individual clients are almost evenly split between Aboriginal and non-Aboriginal clients. For those lawyers who provide services to organizations and governments, most of their clients are Aboriginal non-profit organizations and Aboriginal government agencies. Most work less than 60 hours per week. Three-quarters of Aboriginal lawyers earn between \$50,000 and \$399,999 per year. The group is almost evenly split between those who earn between \$50,000 and less than \$99,999 (38%) and those who earn between \$100,000 and less than \$399,999 (36%).

COMMON EXPERIENCES OF ABORIGINAL LAWYERS

38. The survey focused on collecting statistical data about the experiences of Aboriginal lawyers in law school, during the Bar Admission Course (or Licensing program) and post-Call. The survey also asked open-ended questions, which provided qualitative information about barriers to the profession faced by Aboriginal people. The majority of respondents (54%) indicated that they faced barriers during law school, the Bar Admissions Course/Licensing and post-Call. Specifically, the respondents,
- a. experienced discrimination and lack of awareness of Aboriginal issues and the Aboriginal community among other students, faculty and staff at the law school;
 - b. identified a lack of Aboriginal content and/or misinformation about Aboriginal issues in the curriculum;
 - c. experienced difficulty in accessing summer and/or articling employment; and
 - d. experienced difficulty in reconciling their Aboriginal cultural background with the environment of law school.

39. For those respondents who indicated that their Aboriginal status was a positive influence on their law school experience, the majority stated that they found support and a social connection among their fellow Aboriginal students and with Aboriginal lawyers.
40. During the Bar Admission Course/Licensing program, more respondents (24%) indicated that their status as an Aboriginal person was more of a negative factor on their experience than a positive influence (10% of respondents). The main reason cited was their perception that their Aboriginal status related in some way to their feelings of isolation and exclusion during the program. For those who indicated that their experience was positive, it was due to the connections that they made with other Aboriginal Bar Admission Course/Licensing students. The majority of respondents indicated that their status as an Aboriginal person was a positive influence during articling (29%) as opposed to a negative factor (19%). For the majority, the main reason cited was that they had secured an articling position with an Aboriginal lawyer or lawyers who were sensitive and/or positive to Aboriginal issues and who wanted to develop an Aboriginal practice. For those who felt their Aboriginal status was a negative factor, the main reason cited was their perception that they experienced racism from fellow articling students, lawyers and other members of the justice system during the interview process and during their articles.
41. When asked to describe their post-Call experiences, 34% of respondents indicated that their Aboriginal status was a positive factor and they tied it directly to their feelings of connection to other Aboriginal lawyers and their membership within a small group (Aboriginal lawyers) within the legal community. Of the 26% of respondents who felt that their Aboriginal status was a negative factor in their experiences post-Call, the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.

42. The survey also asked about the level of respondents' reliance on peer support and mentoring post-Call. Specifically, respondents identified lawyers, friends and family as their key sources of mentoring and support. When asked to identify whether their mentors and/or supporters were Aboriginal or non-Aboriginal, of those who identified friends as their mentors or supporters, more respondents indicated that their friends were Aboriginal (60%) than non-Aboriginal (54%). For those who identified lawyers as mentors or supporters, more identified non-Aboriginal lawyers (72%) as opposed to Aboriginal lawyers (57%). Overall, respondents provided the following responses:

Mentor or Peer Support	Percentage Aboriginal	Percentage Non-Aboriginal
Lawyers	57	72
Friends	60	54
Family (including spouse/partner)	49	49

43. The survey asked participants about their membership in organizations for Aboriginal law students, law graduates and/or lawyers. Of the 55 (out of 68 total respondents) who indicated that they had been or were members of such organizations, the top five reasons and the percentage of respondents who ascribed to those reasons included the following:

- a. Opportunity to associate with other Aboriginal lawyers (82%);
- b. Desire to remain up-to-date on legal issues for the Aboriginal community (75%);
- c. Opportunity to advocate on Aboriginal issues within the profession (69%);
- d. Opportunity to perform community service for the Aboriginal community (62%); and
- e. A sense of belonging or to develop a sense of belonging in the profession (60%).

SURVEY RESPONDENTS’ ASSESSMENT OF LAW SOCIETY SUPPORT INITIATIVES FOR ABORIGINAL BAR ADMISSION COURSE/LICENSING CANDIDATES AND LAWYERS

44. Both the survey and consultation asked respondents for their feedback on the support services offered to Aboriginal Bar Admission Course/Licensing candidates and to lawyers. Both instruments asked respondents to provide ideas for enhancing support services to Aboriginal Licensing candidates and lawyers.

Summary of Current Law Society Support Initiatives for Aboriginal Licensing Candidates and Lawyers

45. The following table summarizes the range of support services offered by the Law Society to Bar Admission Course/Licensing candidates since 2000:

Service	Brief Description ⁷
Aboriginal Initiatives Counsel (formerly Aboriginal Issues Coordinator)	The Aboriginal Initiatives Counsel is responsible for Law Society programming and policy relating to Aboriginal law students, Licensing candidates, lawyers and the community.
Elder Program	Provides Aboriginal and non-Aboriginal students in the Licensing Process, and Aboriginal members of the profession with various teachings and culturally-appropriate counseling services.
Equity and Diversity Mentorship Program	Program matches lawyers with high school, university, including law school, and Licensing Process students.
Tutoring	Program provides tutoring to candidates who have been unsuccessful in the Licensing Examinations.
Assistance with resume writing and job interviews	One-on-one and tutorial service available through the Aboriginal Initiatives Counsel and the Registrar’s office.
Assistance finding articling placements	One-on-one and tutorial service available through the Aboriginal Initiatives Counsel and the Registrar’s office.
Financial Aid applications	OSAP applications available through the Registrar’s office for registered candidates.
Repayable Allowance Program (RAP)	Applications available through the Registrar’s office for registered candidates to apply for up to \$5,000 per calendar year.

⁷ More information on the support services is provided through the Law Society website: <http://rc.lsuc.on.ca/jsp/licensingprocesslawyer/index.jsp?language=en> and <http://www.lsuc.on.ca/about/b/equity/aboriginal-elders-program-and-student-supports/>

46. The following table summarizes the resources offered by the Law Society to lawyers that were included in the survey instrument⁸:

Resource	Brief Description ⁹
Great Library in person/on-line	Resource library located at Osgoode Hall and also on-line.
Continuing Legal Education courses	Professional development program available at the Law Society and through webcasting for a fee.
Equity Public Legal Education events	Free professional development program offered through the Equity Initiatives Department.
Aboriginal Initiatives Counsel (formerly Aboriginal Issues Coordinator)	The Aboriginal Initiatives Counsel is responsible for Law Society programming and policy relating to Aboriginal law students, Licensing candidates, lawyers and the community.
Guidelines For Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse	Practice guidelines for lawyers passed by Convocation in October 2003.
Ontario Lawyers Gazette	Published by the Law Society to provide Ontario's lawyers and paralegals with a comprehensive package of news and features that can help them keep in touch with Law Society and professional matters.
Ontario Reports	Weekly publication by the Law Society providing case summaries and information for the profession.
Referred to Bar Admission Course materials	Applications available through the Registrar's office for registered candidates to apply for up to \$5,000 per calendar year.
Equity and Diversity Mentorship program	Program matches lawyers with high school, university, including law school, and Licensing Process students.
Lawyer Referral Service	Telephone service providing referrals to lawyers for a fee.
Member Resource Centre	On-line resource for lawyers available through the Law Society website and by telephone.
Law Society website	On-line resource.
Volunteering for a Law Society or bench advisory group	For example, the Aboriginal Working Group.
Working towards or earned certification in the Certified Specialist Program	Program to assist lawyers in acquiring the requisite skills and knowledge to qualify for certification by the Law Society as a specialist in a given practice area.

Survey Responses

47. The survey asked respondents to identify which specific support services they had accessed as Bar Admission Course/Licensing candidates. The response rate

⁸ Respondents were also asked to indicate what other services they accessed. Seven percent indicated they accessed "Other" services and 3% indicated they did not access any of the resources listed.

⁹ More information on resources is provided through the Law Society website: www.lsuc.on.ca

was too low to be statistically valuable. However, respondents were also asked open-ended questions regarding options for adapting and improving current support services, based on their experiences as Bar Admission Course/Licensing candidates. The top suggestions were for the Law Society to,

- a. encourage contact with Aboriginal lawyers and new calls to act as mentors and resources during the Licensing phase;
- b. undertake more promotion of existing support programs in tutoring, exam practice, mentoring, securing articles and financial aid; and
- c. provide more assistance to students to find articles.

48. When asked to identify the resources or support services of the Law Society that they had accessed post-Call, the respondents identified the following as the resources or services most frequently accessed (% of respondents):

- a. Visited the Law Society website (88%);
- b. Read the Ontario Reports (87%);
- c. Attended Continuing Legal Education courses (75%);
- d. Read the Ontario Lawyers Gazette (72%); and
- e. Referred to Bar Admission Course materials (69%).

49. Forty-four per cent of respondents indicated that they had been in contact with the Aboriginal Issues Coordinator (now the Aboriginal Initiatives Counsel) prior to the survey, placing this service in seventh place overall.

50. Respondents were asked to provide suggestions for services to better serve Aboriginal lawyers. Their top suggestions included the following:

- a. Access Aboriginal members to act as a resource, contact and/or mentor for Aboriginal students and new lawyers and provide more networking opportunities.
- b. Offer continuing legal education programs in Aboriginal law and offer them within and outside the GTA.

- c. Undertake more outreach to Aboriginal communities to promote law as a career and the Law Society as a resource.
- d. Create a Certified Specialist Program in Aboriginal Law.
- e. Provide more assistance to new calls looking for work.

ANALYSIS OF CONSULTATION RESULTS FOR INITIATIVES AND PROGRAMS FOR ABORIGINAL LAWYERS

51. The consultation phase explored the themes that emerged from the survey. Of the 68 survey respondents, 33 initially agreed to participate in the consultation and 29 consultations were completed. The consultation focused on collecting qualitative information, as opposed to statistical data, about the experiences of Aboriginal lawyers. It also focused on asking for lawyers' feedback on the current initiatives of the Law Society to enhance access and retention of Aboriginal lawyers.
52. With feedback from the Aboriginal Working Group, a consultation interview guide was developed to ask respondents questions regarding,
- a. their perspective on the profession and the Law Society;
 - b. the current policies and programs for Aboriginal lawyers; and
 - c. the assignment of priority for policy development to support Aboriginal Licensing candidates and lawyers.

Lawyers' Perspectives on the Profession and the Law Society

53. Overall, the respondents to the consultation indicated that their impression of the profession and the Law Society ranged between neutral and positive. When asked how much impact the Law Society has in their professional lives, most respondents indicated that the Law Society has little impact on their professional lives unless they are contacted for an issue related to their membership or they attend a continuing legal education (CLE) program at the Law Society or through remote access on the internet. Those respondents who volunteered for initiatives or working groups with the Law Society felt a greater connection to it. They

expressed that their experience of volunteering was positive and they felt that they helped the Law Society especially when “the Law Society listened.”

54. When asked whether they felt successful as lawyers at their stage of their career, most respondents answered in the positive. There was a clear connection to their level of satisfaction and whether they were working in their preferred area of practice. Salary was not cited as the leading measure of career satisfaction. The reason most often cited was that respondents were working as lawyers in their field of choice and that they were providing competent and quality legal services for their clients. They also stated that, by and large, their expectations had been met in terms of their professional experiences as lawyers. The respondents identified the following as their most common professional challenges:
- a. Managing and developing their practice as a business, whether they are sole practitioners or lawyers within firms;
 - b. Keeping up with the changing law;
 - c. Developing their legal skills fast enough to provide service to clients; and
 - d. Finding a balance between their professional and personal lives.

Current Programs for Aboriginal Lawyers

55. The majority of respondents indicated that most of their contact with the Law Society was through the emails sent out by the Professional Development and Competence Department and the emails sent out by the Aboriginal Initiatives Counsel. Most agreed that email is the best mode of contact for keeping up-to-date on events and programs available through the Law Society. One respondent suggested that the emails be constructed to automatically link mailing list contacts to the Law Society website for updates and events. Another respondent strongly recommended that the Ontario Reports be offered in an electronic version.
56. A significant number of consultation respondents stated that the culture-based programs (i.e. the Elders Program) for Aboriginal Licensing candidates are

important to Licensing candidates, in particular those Aboriginal candidates who have strong ties to their culture and/or communities.

57. The majority of respondents replied that they participated in the consultation because they had received information about this project from the Aboriginal Initiatives Counsel. They stated that the services provided by the Aboriginal Initiatives Counsel is a valuable program for connecting Aboriginal law students, Licensing candidates and lawyers to the Law Society.

Policy Development for Aboriginal Licensing Candidates and Lawyers

58. With feedback from the Aboriginal Working Group, the consultation primarily focused on the issue of policy development for Aboriginal Licensing candidates and lawyers. Specifically, respondents were asked to provide feedback on three policy initiatives that were identified as priorities by the Aboriginal Working Group and also through the survey process. As they were originally framed, the three future policy initiatives involved the development of:
- a. networking and mentoring opportunities for Aboriginal law students, Licensing candidates and lawyers;
 - b. continuing legal education (CLE) course in Aboriginal law; and
 - c. a Certified Specialist program in Aboriginal law.
59. The majority of respondents supported networking and mentoring opportunities for Aboriginal law students, Licensing candidates and lawyers as a priority, followed closely by the development of CLE course(s) in Aboriginal law. Respondents placed the creation of a Certified Specialist program in Aboriginal law as an important future initiative for the Law Society. Most respondents agreed that CLE course(s) and a Certified Specialist program could not be developed unless there was a well-established and connected group of Aboriginal lawyers, which would result from effective mentoring and networking.

60. Respondents strongly recommended that, before any programs or initiatives could be effective, Aboriginal law must be a recognized area of practice on the Members' Annual Report (MAR). Adding this category to the MAR was perceived as a cost-effective way of demonstrating to Aboriginal and non-Aboriginal lawyers that this area of practice has credibility in the eyes of their regulator and the profession. Respondents expressed frustration at being forced to choose the category of "Other" to identify the lawyer's area of practice year after year.

Networking and Mentoring Opportunities for Aboriginal Law Students, Licensing Candidates and Lawyers

61. Overall, most of the respondents supported mentoring and networking as a top priority for the Law Society to continue and to develop for Aboriginal law students, Licensing candidates and lawyers. They cited that their own experiences in completing law school, the Bar Admission Course/Licensing program and making the transition into working as a lawyer was more difficult because of their feelings of lack of connection to other Aboriginal students, Licensing candidates and lawyers. They identified that what helped them most was contact with their Aboriginal law student peers and, more importantly, contact with experienced Aboriginal lawyers who could explain to them how to find work, how to run a practice as a business, how to deal with difficult situations in practice and other related issues. They stated that effective mentoring and networking fills the gap in professional legal education that is not currently offered by either law school or the Bar Admission Course/Licensing program.
62. When asked to provide specific details about how to create an effective networking program, respondents identified the following factors:
- a. Face-to-face contact is most important in creating a successful networking event.

- b. Frame networking as a social event and feature a compelling or high-profile Aboriginal lawyer, judge or leader to speak as a draw for a networking event.
- c. Focus networking on the geographic location of Aboriginal law students, Licensing candidates and lawyers. Respondents stated that there is a large difference between Aboriginal people from urban and non-urban areas as well as from northern Ontario as opposed to southern Ontario. Even though students may attend law school in urban areas and/or the south, they often plan to return home. It would benefit those students to make contacts with lawyers back home while they are still in law school.
- d. For a networking event or a mentoring program to be successful, it requires commitment on the part of lawyers and more importantly on the part of law students and Licensing candidates. Some respondents expressed that they felt some pressure to participate in Aboriginal events at school or through the Law Society and also felt there was an expectation that they were going to practice Aboriginal law or work in Aboriginal communities. Respondents stated that students could benefit from hearing that practising corporate law, for example, is a good career choice if doing so will enhance their personal satisfaction with the practice of law resulting in their staying in the profession.
- e. A career fair focusing on Aboriginal law practitioners and Aboriginal law students is also an effective networking event.
- f. Distributing a list of Aboriginal lawyers willing to be in contact with Aboriginal law students and Licensing candidates is a cost-effective way of creating a network.
- g. CLE course(s) and the Law Society's equity public legal education events were cited as effective networking tools. In particular the equity public legal education events were lauded because they are free and open to the public, with a focus on including the Aboriginal community for the Aboriginal events. For this reason, some respondents suggested that

“rush” seats for students, Licensing candidates and lawyers with less than 5 years of call be offered at low cost for CLE events.

- h. Create more links between communities for the events to enhance the networking potential of the equity public legal education series. For example, create a linked event between the Aboriginal community and the Lesbian, Gay, Bisexual, Transgendered community to explore issues that affect both groups and thereby connect students and lawyers attending those events. Another respondent suggested that networking events could link with external organizations. For example, the Law Society could work with the Women Lawyers Association of Ontario (WLAO) to create a sub-group of Aboriginal women lawyers or host events for both groups.
 - i. Leverage existing resources within the Aboriginal community and work with the Indigenous Bar Association for all networking and mentoring initiatives.
 - j. Recognize that there are a significant number of Aboriginal lawyers who are working as non-practising lawyers. Networking opportunities for Aboriginal lawyers pursuing non-traditional legal career paths creates opportunities for connecting those lawyers with students and lawyers pursuing traditional legal careers.
63. When asked to provide specific details about the components of an effective mentoring program, respondents offered the following feedback:
- a. Mentoring must start between Aboriginal lawyers and students in law school or even before. For example, the Law Society could contact the University of Saskatchewan Native Law Centre to provide information on mentoring opportunities between Ontario Aboriginal lawyers and Aboriginal students in that program.
 - b. Model a mentoring program after the Big Brothers program where mentors agree to a minimum 6-month commitment with mentees.
 - c. To enable Aboriginal students to get a practical perspective on the practice of law, mentoring should feature job shadowing.

Continuing Legal Education (CLE) Courses in Aboriginal Law

64. Respondents supported the development of a CLE course in which both Aboriginal lawyers and non-Aboriginal lawyers who provide legal services to Aboriginal clients receive training. Respondents expressed concern that there may be non-Aboriginal lawyers who provide legal services to Aboriginal individuals, government bodies, organizations and businesses without having access to resources to appreciate why the needs of Aboriginal clients are unique.
65. In terms of creating CLE course(s) designed for Aboriginal lawyers specifically, most respondents identified that the priority should be on the teaching of practical skills and not academic or theoretical issues. As well, the Indigenous Bar Association¹⁰, Aboriginal lawyers and the community should be given the opportunity to participate in the development of programs and Aboriginal faculty should be hired for these programs wherever possible.
66. The consultation respondents also identified that there are many Aboriginal lawyers in sole and small practices. The rigours of this type of practice prevent individuals from taking time away from their legal work to attend events during the day when most CLE courses are offered. The cost of CLE courses was cited as another barrier for Aboriginal lawyers in small or sole practices. As well, some respondents also expressed that evening events are difficult because of childcare commitments, particularly for single parents. Those respondents suggested that the Law Society or other CLE providers provide on-site daycare for CLE courses and public legal education events held in the evening. Simultaneous webcasting was suggested as a means of dealing with cost and geographic barriers.

¹⁰ The Indigenous Bar Association is a national non-profit professional organization for First Nation, Inuit and Métis persons trained in the field of law. Its membership consists of Indigenous lawyers (practising and non-practising), judges, law professors, legal consultants and law students. The IBA plays an active role in promoting the development of Indigenous law and supporting Indigenous legal practitioners.

67. When asked to provide specific details about a CLE course in Aboriginal law and/or for lawyers providing services to Aboriginal clients, respondents offered the following suggestions for program content:
- a. How-to course on marketing for Aboriginal lawyers and/or to Aboriginal or remote clients;
 - b. How the Indian Act practically affects the day-to-day lives of Status Indians;
 - c. Information program in First Nations governance;
 - d. Professional ethics program for providing services to Aboriginal peoples;
 - e. Annual update on Aboriginal law from a practical perspective (similar to the Six-Minute series format offered in the Law Society's CLE program);
 - f. Land and resource management;
 - g. How-to course in running a general practice in a small town and/or for clients in remote communities;
 - h. Focus course on the intersection of constitutional law with criminal law for Aboriginal accused;
 - i. Perspectives course taught by Aboriginal community members and practitioners on the intersection of Aboriginal traditional law and common law as a way of learning how to provide legal services to Aboriginal clients;
 - j. How to negotiate with governments;
 - k. Perspectives course on options for Aboriginal legal issues post-*Indian Act*, and
 - l. Business and tax law course for transactions involving Aboriginal governments and businesses.

A Certified Specialist Program in Aboriginal Law

68. Most respondents supported a Certified Specialist program in Aboriginal Law, but expressed uncertainty about the focus of such a program. They identified that the practice area of Aboriginal law is too broad to create a single certified specialty in that area. For example, the work of a barrister who provides services

related to Aboriginal law and/or for Aboriginal clients is vastly different from that of a solicitor. Similarly, there is a large difference between the work of private practice and public practice lawyers in providing services to Aboriginal clients.

69. Respondents generally agreed that more consultation and cooperation between the Law Society and the profession, in particular the Indigenous Bar Association and Aboriginal lawyers as well as the community, is required before a certified specialty could be created. In particular, a definition of what this practice specialty would entail is required before the program could be developed.
70. All respondents agreed that the focus of the selection criteria for a certified specialist in this category should be on the protection of Aboriginal clients to recognize their particular vulnerability as well as their overrepresentation in the justice system in Ontario. Consequently, selection criteria and professional development courses should focus on the provision of competent services to Aboriginal clientele. The current selection criteria of 5 to 7 years in practice within the specific area that is common to most of the current Certified Specialist programs was viewed as a barrier by some respondents. They indicated that there is a lack of sustainable jobs available to lawyers trying to develop a practice in Aboriginal law and/or for Aboriginal clients.
71. The current lack of Aboriginal content in CLE course(s) was identified as a barrier to developing a Certified Specialist program in this category. Most respondents identified this initiative as a project with priority in the future.
72. Some respondents suggested that, as a beginning step to develop the Certified Specialty area, there could be an Aboriginal practice component combined with specific established Certified Specialty areas where lawyers would likely be serving Aboriginal clients. For example, criminal law and civil litigation are two areas where there are a significant number of Aboriginal clients. Another

respondent suggested that a Certified Specialist program in Aboriginal governance modeled after the current Certified Specialist program in Municipal Law would be an appropriate starting point.

ANALYSIS OF PROGRAMS AND INITIATIVES FOR ABORIGINAL LAWYERS IN OTHER JURISDICTIONS

73. Research was undertaken to identify other studies and research projects that focused on the issue of access and retention of Aboriginal lawyers both within Canada and in other jurisdictions. Studies and research that have been undertaken on the experiences of Aboriginal law students and lawyers have focused on the proportionate under-representation of Aboriginal peoples in the legal profession and/or other professions; access/recruitment mechanisms into law schools; and the discriminatory barriers that Aboriginal people may face once they enter a profession.
74. The studies and research most relevant to the Aboriginal Bar Consultation are those that have looked at the discriminatory barriers faced by Aboriginal lawyers in the legal profession. The Law Society of British Columbia conducted a study on the discriminatory barriers facing Aboriginal lawyers in 2000.¹¹ It found that 40% of Aboriginal lawyers experienced discrimination during articling and 66% had experienced discrimination as a lawyer. Experiences cited included racist slurs and demeaning remarks by staff, other articling students and lawyers, discrimination in work assignments, and the feeling of being restricted into areas of law that were not of interest or being dissuaded from areas of law that were of interest.¹²
75. Other studies have looked at the barriers faced by women, particularly racialized women. According to the Multicultural Women Attorneys Network of Chicago,

¹¹ G. Ferguson and K. Foo, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver: Law Society of British Columbia, 2000) <online: http://www.lawsociety.bc.ca/publications_forms/report-committees/docs/AboriginalReport.pdf>.

¹² Ferguson and Foo.

being a woman and a “person of colour” can be a double jeopardy in the legal profession¹³ and women of colour often report that they face greater challenges based on race than on gender.¹⁴

76. The research in other jurisdictions has focused on identifying barriers to law school and the profession as opposed to recommending policy initiatives and programs relating to retention of Aboriginal lawyers. The conclusions of the studies support the statistical results of the Aboriginal Bar Consultation but do not present solutions relevant to the experience of Aboriginal lawyers in Ontario.

CONCLUSIONS AND PROPOSALS FOR ACTION

77. The completion of the Aboriginal Bar Consultation culminated a four-year project for the Law Society. The Law Society had never compiled a directory of Aboriginal lawyers nor had it undertaken a focused consultation with members of the Aboriginal bar in Ontario. Developing the Consultation project created an incentive for Aboriginal lawyers to volunteer to participate and to add their names to a directory. As a result, a database of potential Aboriginal lawyer mentors has been created for future Aboriginal law students and Licensing candidates.
78. Many respondents expressed their appreciation for the Law Society in undertaking the consultation with them. They also expressed their appreciation that the survey and consultation questions had been developed with the guidance of the Aboriginal Working Group.
79. Most respondents felt that their experiences in law school and during the Bar Admission Course/Licensing program would have been enhanced with greater contact with other Aboriginal students and Bar Admission Course/Licensing

¹³ Multicultural Women Attorneys Network, *The Burdens of Both, the Privileges of Neither* (Chicago: American Bar Association, 1999) at 9.

¹⁴ Boston Bar Associations Task Force on Professional Fulfillment, *Expectations Reality and Recommendation for Change* (Boston: Boston Bar Association, 1999).

candidates and with Aboriginal lawyers. For those who completed their licensing since the creation of the position of Aboriginal Issues Coordinator/Aboriginal Initiatives Counsel, most identified that this resource constituted their main information source about support services and programs for Aboriginal Bar Admission Course/Licensing candidates and lawyers. Suggested improvements to the support program included more communication about the services and more opportunities for creating face-to-face interaction between Aboriginal students, candidates and lawyers.

80. Based on the feedback of the respondents to the survey and the consultation interviews of the Aboriginal Bar Consultation, it is suggested that the following initiatives be undertaken by the Aboriginal Initiatives Counsel in the context of the position's mandate to create programs to enhance access and retention of Aboriginal lawyers within the profession in Ontario. All proposed initiatives and resource requirements fall within the existing program budget for 2009. Further, given the Law Society's role as regulator for paralegals in Ontario, these initiatives should be expanded to include programs for enhancing access and retention of Aboriginal paralegals in Ontario.

81. **Expanding the Members' Annual Report Practice Categories to include Aboriginal Law:** To determine how many lawyers in Ontario self-identify as practising Aboriginal law, the Members' Annual Report (MAR) should be expanded to include a category for Aboriginal law as a practice area. The inclusion of this category will provide empirical data that could potentially be used to develop,
 - a. a listing of lawyers who could be contacted to be mentors for students and Licensing candidates interested in practising in Aboriginal law;
 - b. an approximate number of individual lawyers who could be interested in CLE courses in Aboriginal law or in the provision of services to Aboriginal clientele; and

- c. data on the number of lawyers who could be potentially interested in applying to be a Certified Specialist in Aboriginal law and/or practice.
82. **Mentoring and Networking Program:** The Law Society's continued support and development of mentoring and networking programs for Aboriginal law students, Licensing candidates and lawyers, beginning in law school and continuing post-call to the Bar is of priority to enhancing access and retention of Aboriginal lawyers. Face-to-face and more interactive participation are key ingredients to the success of the program. The Law Society should continue to work with organizations such as the Indigenous Bar Association and law schools to develop a mentoring and networking program tailored to the needs of Aboriginal students and lawyers. The Aboriginal Initiatives Counsel will work to develop a mentoring and networking program for Aboriginal students, Licensing candidates and lawyers that would feature the following components:
- a. Continuing the annual Aboriginal Law Student Career Symposium (already provided).
 - b. Continuing the implementation of the Integrated Aboriginal Communications Strategy for the Aboriginal Community and the Legal Profession (in development).
 - c. Continuing outreach initiatives to Aboriginal law students, Licensing candidates and lawyers (already provided).
 - d. Developing networking events to promote the Report of the Aboriginal Bar Consultation project.
 - e. Undertaking regular evaluation of the Mentoring and Networking program with Aboriginal Licensing candidates and new Calls.
83. **Continuing Legal Education Course in Aboriginal Law and Issues:** The development of a CLE course in Aboriginal law and issues for lawyers/paralegals who provide legal services to Aboriginal clientele is a priority second to the Mentoring and Networking program. The CLE course must focus on ensuring that participants receive practical training on providing legal services

to meet the unique needs of Aboriginal clients in Ontario. The Aboriginal Initiatives Counsel would work with the Professional Development and Competence Department to develop a CLE course that includes the following:

- a. Program content would be developed in cooperation with the Indigenous Bar Association and Aboriginal lawyers/paralegals in the relevant practice areas.
- b. Faculty for the programs would include Aboriginal lawyers and instructors where possible.
- c. Alternate program delivery methods would be offered to enable lawyers working in remote or rural areas and/or with limited access to internet or technology to access the training.
- d. Given that Aboriginal lawyers, in particular, are more likely to work as sole practitioners or in small practice early in their careers, when professional development with a practical focus is most crucial for the development of lawyering skills, an expanded bursary program or course fee reduction program should be considered for lawyers within 5 years of call and paralegals.

84. **Certified Specialist Program in Aboriginal Law:** The continued support of the Law Society for the development of a Certified Specialist program in Aboriginal Law and/or practice is a priority project for future development. The involvement of an Aboriginal organization for lawyers, such as the Indigenous Bar Association, the Aboriginal Working Group, and the Aboriginal community is essential to the development of such a program. In addition to the experience and CLE requirements for qualification, the selection criteria should provide for the assessment of the knowledge and competence of applicants in serving the unique legal needs of the Aboriginal community.