

TAB 3



Report to Convocation

December 2, 2016

Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones

Committee Members
Dianne Corbiere, Co-Chair
Julian Falconer, Co-Chair
Sandra Nishikawa, Vice-Chair
Gina Papageorgiou, Vice-Chair
Marion Boyd
Suzanne Clément
Robert Evans
Avvy Go
Howard Goldblatt
Marian Lippa
Isfahan Merali
Sidney Troister
Tanya Walker

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Ekua Quansah – 416-947-3425)**

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Equity Legal Education and Rule of Law Calendar 2016

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on November 10, 2016. Committee members, benchers Dianne Corbiere, Co-Chair, Julian Falconer, Co-Chair, Sandra Nishikawa, Vice-Chair, Suzanne Clément, Robert Evans, Marian Lippa, Sidney Troister and Tanya Walker attended. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, were present. Staff members CEO Robert Lapper, Darcy Belisle, Hyacinth Khin, Jennifer Khor, Terry Knott, Marian MacGregor, Karen Manarin and Ekua Quansah also participated.



Tab 3.1

**WORKING TOGETHER FOR CHANGE:
STRATEGIES TO ADDRESS ISSUES OF SYSTEMIC RACISM IN THE LEGAL
PROFESSIONS**

Challenges Faced by Racialized Licensees Working Group

Final Report

Working Group Members

Janet Leiper, Chair

Raj Anand, Chair

Julian Falconer, Vice-Chair

Howard Goldblatt, Vice-Chair

Marion Boyd

Robert Burd

Dianne Corbiere

Avvy Go

William McDowell

Isfahan Merali

Malcolm Mercer

Sandra Nishikawa

Susan Richer

Raj Sharda

Baljit Sikand

**Prepared by the Equity Initiatives Department
(Ekua Quansah – 416-947-3425)**

Please note:

Convocation amended Recommendation 4 as follows:

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

Motion

That Convocation approve the following thirteen recommendations outlined in the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* report:

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 1) 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;
- 2) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;
- 3) 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; and
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

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).

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

Recommendation 8 – Progressive Compliance Measures

The Law Society will consider and enact, as appropriate, progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and
- 3) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

- 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;
- 2) revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;
- 3) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and
- 4) create a specialized and trained team to address complaints of discrimination.

Recommendation 13 – Leading by Example

- 1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:
 - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;
 - b) measuring quantitative progress through a census of the workforce or other method;
 - c) measuring qualitative progress by conducting inclusion surveys;
 - d) conducting regular equality, diversity and inclusion self-assessments; and
 - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;
 - f) publishing relevant findings from b), c), d) and e); and
 - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.
- 2) The Law Society will:
 - a) conduct an internal diversity assessment of the bench composition and publicize the results;
 - b) provide equality and inclusion education programs for Convocation on a regular basis

Overview of Submissions

The Challenges Faced by Racialized Licensees Working Group (“the Working Group”) provided its final report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* on September 22, 2016 for information. The report is to be before Convocation for decision on December 2, 2016.

Members of the legal professions and the public were invited to provide comments on the recommendations outlined in the report until November 14, 2015. The Law Society received 46 submissions – 23 from individuals and 23 from organizations (see [TAB 3.1.1](#)). The Working Group has determined that only submissions from organizations are to be public. Many of the individual submissions speak to personal experiences and the Working Group believes that should those individuals wish to make their views public, they should have the option to do so on their own. What follows is a summary of both individual and organization submissions divided by the five interrelated categories outlined in the report: accelerating culture shift; measuring progress; educating for change; implementing supports; and operations of the Law Society.

The Working Group received positive comments from the professions and the public, with many individuals and organizations commending the Law Society for taking steps to address issues of systemic racism in the legal professions. The Working Group is encouraged by the submissions it received.

Many of the comments spoke to the implementation of the recommendations in the report. These comments are not outlined in this document – however, should the recommendations be approved by Convocation, the comments will be considered during the implementation phase.

General comments

All of the submissions from organizations representing licensees from equality-seeking organizations expressed support for the 13 recommendations put forward by the Working Group, with suggestions provided on how to strengthen the recommendations. Generally, no organizations were opposed to the recommendations.

Specifically, the submissions from the Canadian Association of Black Lawyers, the Roundtable of Diversity Associations, the Metro Toronto Chinese & Southeast Asian Legal Clinic, the South Asian Bar Association, the Equity Advisory Group, the Canadian Hispanic Bar Association, and the Federation of Asian Canadian Lawyers stressed that Convocation should vote on the thirteen recommendations as a package and not individually.

In addition, many of the submissions from organizations suggested that the recommendations outlined in the Working Group’s report should apply to all equality-seeking groups and not solely to racialized licensees. Some submissions also noted that the report and the recommendations should recognize how intersections of gender, race, sexual orientation, disability and other aspects of identity shape the experiences of licensees.

Accelerating culture shift

The Working Group received submissions supporting the need to accelerate cultural change in the legal professions.

The Working Group received a comment about the importance of taking an approach that recognizes the unique barriers faced by Indigenous licensees and the challenges that both racialized and Indigenous licensees face. Additionally, the comment asked that the Working Group make specific mention of the Truth and Reconciliation Commission's final report and the need to address reconciliation between Indigenous and non-Indigenous peoples.

The Working Group is thankful for this comment and has included text that reflects this suggestions in the "Guiding Principles" section of the report.

One comment received by the Working Group advised that the Law Society should require law schools to remove obstacles against racialized licensees. The Working Group notes that the Law Society does not have authority over law schools; however, law schools are encouraged to participate in the Diversity and Inclusion Project outlined in Recommendation 2.

Some submissions suggested that the Law Society, under Recommendation 3, should require all legal workplaces, not just workplaces of at least 10 licensees, to develop, implement and maintain a human rights/diversity policy and complete an equality, diversity and inclusion self-assessment. In determining the size of workplace for this requirement, the Working Group considered balancing burden and benefit. Although the requirement applies to workplaces of at least 10 licensees, workplaces of less than 10 licensees are strongly encouraged to develop policies and complete self-assessments. This encouragement is reflected in the text that accompanies the recommendation.

One submission suggested that legal workplaces' diversity policies should be made publicly available on the workplace website. In considering this suggestion, the Working Group determined that not all legal workplace websites are used as a recruitment tool - some are intended as advocacy tools, for example. The Working Group, however, noted that policies should be available to the public. Consequently, the Working Group has modified Recommendation 3(2) to note that the policies should be available to members of the professions and the public upon request.

An additional submission proposed that an exemption be provided for legal workplaces that have existing human rights/diversity policies provided they satisfy the Law Society's requirements. The text that accompanies Recommendation 3 recognizes that licensees' employers may already have workplace policies that satisfy the requirement under Recommendation 3(2)

Measuring Progress

The Working Group received positive responses to the recommendations regarding data collection.

One submission suggested that the quantitative self-identification data collected by the Law Society should be published in an aggregate manner. The Working Group notes that the Law Society currently provides race-based self-identification data by size of firm in its annual statistical snapshots, which are

available at: https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf (lawyers) and https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.2-%20Paralegal-Snapshot16_apr13.pdf (paralegals).

One comment proposed that equity-seeking legal associations should have access to the data collected by the Law Society and that data should be made public at the law school level. The Working Group is of the view that the data should be disseminated to the public through the annual statistical snapshots and that the inclusion index will provide equity-seeking associations and law schools with insights into diversity and inclusion in various workplaces.

Another submission recommended that legal workplaces should be required to engage in internal collection of data in their workplaces. The Working Group is conscious of the fact that many firms may not have the resources to properly collect data from licensees and that there may be privacy concerns if legal workplaces are collecting data from licensees directly. The Working Group asserts that privacy and confidentiality are essential principles to uphold in collecting quantitative demographic data and qualitative inclusion data from licensees.

One comment suggested that the inclusion index include information for all legal workplaces regardless of their size, not just workplaces of at least 25 licensees. Legal workplaces of less than 25 licensees are encouraged to participate in the inclusion index; however, in balancing benefit with burden, the Working Group has determined that 25 licensees and above is an appropriate number.

In terms of conducting inclusion surveys that are similar to the Stratcom survey, the Working Group received a comment that an interval of four years would not capture the issues the Working Group seeks to identify given the rate at which lawyers leave law firms. The Working Group carefully considered this time interval and notes that four years was seen as an appropriate amount of time for changes to take hold.

The Working Group received questions about the nature of the progressive compliance measures outlined in Recommendation 8. The Working Group notes that the nature of the compliance measures will be carefully considered by the Law Society in due course. The intent of the Working Group is to foster cooperation to the extent possible and engage in reactive measures only when necessary.

Educating for Change

The Working Group is pleased that, from the comments received, the professions and the public are in agreement with the requirement for licensees to complete equality and inclusion Continuing Professional Development hours.

The Working Group received a number of comments that suggested that licensees be required to complete a one hour equality and inclusion program per year instead of three hours once every three years. One submission suggested that the Law Society require licensees to participate in an equality and inclusion program once every year following an initial three hour training program. The Working Group believes that this is an excellent suggestion as the three hour training program will allow for licensees to develop a foundation in equality and inclusion principles. The annual one hour

requirement, following the initial three hour program, will ensure that equality and inclusion principles are top of mind for licensees.

Building Communities of Support

Comments on the final report reiterated the importance of mentoring and networking. Suggestions made included the creation of a mentoring initiative specifically for junior racialized licensees, free mentoring services to all new lawyers of any background and mentoring for law students. One submission also proposed that the Law Society monitor the success of all mentoring and networking initiatives and identify any improvements. The Working Group notes that the Law Society recently launched the [Coach and Advisor Network](#), which will, in addition to providing advisor and coaching services, act “a centralized source of information to the professions on mentorship programs in Ontario.”¹

The Working Group received a submission that noted the importance of employing an approach that addresses the unique experiences of Indigenous licensees and the similar barriers faced by Indigenous and racialized licensees – in addition to a suggestion that mentioned be made of the Truth and Reconciliation Commission’s final report. The Working Group has incorporated this suggestion in the “Guiding Principles” section of the report.

The Working Group notes that in November 2016, Convocation determined that the Law Society will engage in an analysis of the licensing process. The Working Group expects that the principles of equality and inclusion will be considered during this process.

The Law Society received submissions regarding the review of the Discrimination and Harassment Counsel (“DHC”) program outlined in Recommendation 12 – particularly related to the need to maintain the confidentiality and independence of the DHC program. The Working Group notes that the Law Society’s Equity and Aboriginal Issues Committee (“EAIC”) commenced a review of the DHC program in Fall 2016. EAIC is alive to the importance of the DHC’s duty of confidentiality and the arms-length position of the DHC.

Leading by Example

Comments regarding leading by example spoke largely to the bench election process. The Working Group notes that in September 2016, the Law Society established a Governance Task Force to make recommendations in regard to the Law Society’s governance structure.

A suggestion was made that Recommendation 13(1)(a) should include the words “discipline, discharge and revocation”, however, the Working Group points out that the requirement for the Law Society to adopt, implement and maintain a human rights/diversity policy speaks to the need for the policy to address *at the very least* recruitment, retention and advancement. The wording of this recommendation is broad in order to allow for the Law Society to examine various aspects of its operations.

¹ “Coach and Advisor Network: How it Works”, online: The Law Society of Upper Canada <<https://www.lsuc.on.ca/howitworks/>>

Other comments

The Working Group received submissions that outlined the importance of addressing the challenges faced by racialized licensees in law school and upon entry into the profession. The Diversity and Inclusion Project, contemplated in Recommendation 2, is intended to allow for a forum to address these issues. Other submissions suggested that the Working Group should address the pathways to licensing for lawyers. The Working Group notes, again, that Convocation has already approved a review of the licensing process.

One submission noted that the report has been silent on the unique needs of racialized internationally trained lawyers without Canadian education or experience. It is the Working Group's intention that the implementation of the recommendations will consider all racialized licensees and the intersections of their experiences, including the experiences of internationally trained racialized licensees.

Some submissions suggested that the Law Society should consider the economic barriers for racialized licensees and other licensees from equity-seeking groups. The Working Group notes that in the implementation of the recommendations, economic barriers will be considered.

One submission noted that the report had failed to direct the Law Society to develop mental health strategies specific to racialized licensees. The Working Group notes that in April 2016, the Law Society approved a long-term mental health strategy, which "builds on the Law Society's existing mental health initiatives and lays the groundwork to explore additional supports or programs that fall within the organization's mandate."²

One submission suggested that the Report should call upon the Law Society to work with the Roundtable of Diversity Associations (RODA) and other associations serving racialized lawyers across Ontario using a similar approach to [The Action Group on Access to Justice](#). It is contemplated that the Diversity and Inclusion Project under Recommendation 2 will be a forum for the Law Society to work with associations serving racialized licensees.

² "April 2016 Convocation", online: The Law Society of Upper Canada <http://www.lsuc.on.ca/with.aspx?id=2147502412&langtype=1033>

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Executive Summary

"Inclusion is not about bringing people into what already exists; it is making a new space, a better space for everyone."³

This is the unanimous final report of the Challenges Faced by Racialized Licensees Working Group. The fifteen Benchers on the Working Group have reviewed the written submissions and other input of Benchers and many external stakeholders since the initial presentation of the report to Convocation on September 22, 2016. After discussion and some revisions, the Working Group now presents this Report, unanimous in its 13 recommendations and the rationale supporting them, for approval by Convocation on December 2, 2016.

This Report represents the final stage of a lengthy consultative and study exercise which has led to the conclusion that racialized licensees⁴ face widespread barriers within the professions at all stages of their careers. As the title "Working Together for Change" bears out, the Challenges Faced by Racialized Licensees Working Group is confident that there is a unique opportunity for change, based on collaborative, concrete steps to implement solutions. That said, the challenges faced by racialized licensees are both longstanding and significant. In our view, the Law Society must take a leadership role in giving legal workplaces reasonable deadlines to implement steps that are important to bringing about lasting culture change. The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*.

Reform in addressing barriers faced by racialized licensees is an essential component of ensuring a healthy and successful legal profession, and to advancement of the public interest — goals that we all share and must achieve.

Background

1. The Law Society of Upper Canada (The Law Society) has a duty to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario and to protect the public interest. Furthermore, the Law Society is committed to adhering to its obligations under the *Human Rights Code*. In fulfilling its mandate, the Law Society integrates equality and diversity values and principles into all of its policies, practices and programs. The

³ Dei, G.S.N. (2006). Meeting equity fair and square. Keynote address to the Leadership Conference of the Elementary Teachers' Federation of Ontario, held on September 28, 2006, in Mississauga, Ontario, quoted in "Realizing the Promise of Diversity, Ontario's Equity and Inclusive Education Strategy", online: Queen's Printer for Ontario <http://www.edu.gov.on.ca/eng/policyfunding/equity.pdf>

⁴ The Ontario Human Rights Commission notes that using the terminology "racialized person" or "racialized group" is more accurate than "racial minority", "visible minority", "person of colour" or "non-White". Race is the socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. Racialization is the "process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life". See Ontario Human Rights Commission, Racial discrimination, race and racism, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/racial-discrimination-race-andracism>

Law Society works to ensure that the law and the practice of law are reflective of all the people of Ontario, including Indigenous peoples, Francophones and equality-seeking communities. The Law Society also seeks to ensure that its workplace and the legal professions are free of harassment and discrimination.

In 2012, the Law Society created the Challenges Faced by Racialized Licensees Working Group (“the Working Group”) to:

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- b. identify factors and practice-challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
- c. consider best practices for preventative, remedial and/or support strategies;
- d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee (“EAIC”) and other committees, to address these challenges.

The Working Group’s Approach

Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

In order to fulfil its mandate, the Working Group gathered information about the challenges faced by racialized licensees using consultant and community engagement processes.⁵ Further information about this part of the Working Group’s activities can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

The Working Group reviewed all of the information gathered through the engagement process and drafted a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*.⁶

Convocation approved the consultation paper in November 2014, and the Working Group consulted with over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public throughout the province of Ontario between January and March 2015. The Working Group met with organizational stakeholders and members of the Law Firms Diversity and Inclusion Network. The Working Group also received feedback from 45 individuals and organizations in the form of written submissions.⁷

⁵ Referred to as “the engagement process”.

⁶ Available at: <http://www.lsuc.on.ca/racialized-licensees/>.

⁷ Written submissions for which the Law Society received consent to post publicly are available online at <http://www.lsuc.on.ca/racialized-licensees/>.

Engagement Process Results

The qualitative and quantitative data the Working Group obtained from the engagement process identified widespread barriers experienced by racialized licensees within the legal professions at all stages of their careers. Examples of challenges faced in the legal professions include discrimination and stereotyping, negotiating concepts of “culture” and “fit”, and lack of mentors, networks and role models. Participants also noted that race-based barriers are often complicated by additional intersecting experiences of discrimination based on gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants in the engagement process believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions. Generally, participants noted the vulnerability of racialized licensees in the legal professions in the context of professional regulation and discipline.

Consultation Process Results

The information gathered from the consultation process is summarized as follows:

- Consultation participants expressed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces.
- The Working Group heard a broad range of views on the issue of demographic data collection. However, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”.
- The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity.
- The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees. Generally, the Working Group heard that there is no “one size fits all” model for mentoring.
- Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging.
- A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory Continuing Professional Development (CPD) training on cultural competence, unconscious bias, and anti-racism.

- Participants suggested updating the *Rules of Professional Conduct*⁸ and the *Paralegal Rules of Conduct*⁹ to specifically address systemic discrimination and subtle forms of discrimination.

Objectives

The Working Group has distilled the themes in the consultation into the following three objectives:

1. Inclusive legal workplaces in Ontario;¹⁰
2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Working Group makes 13 recommendations in order to meet these objectives. They fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

Recommendations

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 5) 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;**

⁸ *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

⁹ *Paralegal Rules of Conduct* The Law Society of Upper Canada available on-line at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

- 6) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;
- 7) 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; and
- 8) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

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The Law Society will measure progress by:

- 3) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 4) 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

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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).

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf). The first inclusion survey will be conducted within one year of the

adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

Recommendation 8 – Progressive Compliance Measures

The Law Society will consider and enact, as appropriate, progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 4) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 5) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and
- 6) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

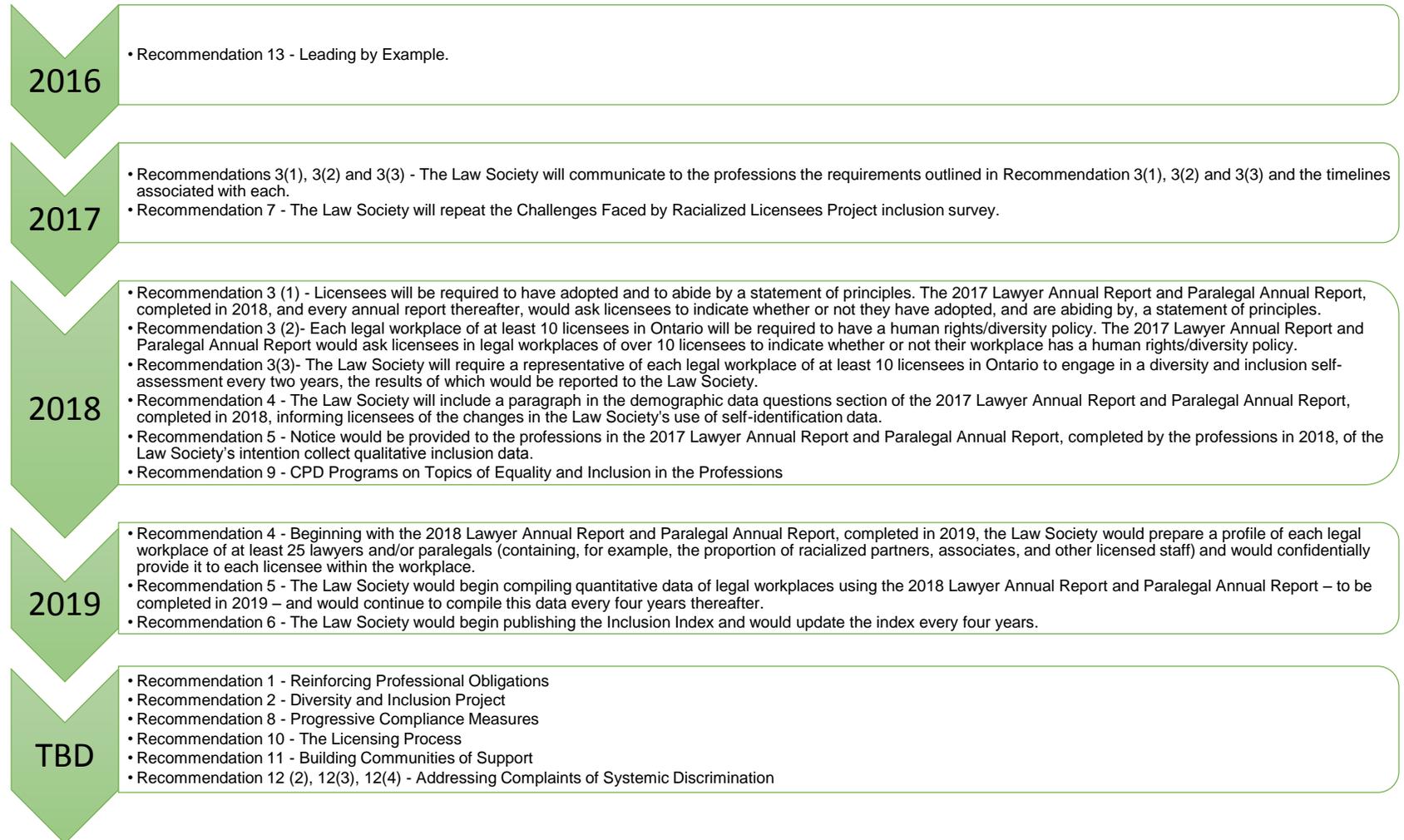
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 6) revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;
- 7) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and
- 8) create a specialized and trained team to address complaints of discrimination.

Recommendation 13 – Leading by Example

- 3) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:
 - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;
 - b) measuring quantitative progress through a census of the workforce or other method;
 - c) measuring qualitative progress by conducting inclusion surveys;
 - d) conducting regular equality, diversity and inclusion self-assessments; and
 - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;
 - f) publishing relevant findings from b), c), d) and e); and
 - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.
- 4) The Law Society will:
 - a) conduct an internal diversity assessment of the bench composition and publicize the results;
 - b) provide equality and inclusion education programs for Convocation on a regular basis.

Timeline for Implementation of Recommendations



Introduction

“What we need to do is learn to respect and embrace our differences until our differences don't make a difference in how we are treated.”

— Yolanda King¹¹

Background

1. The Law Society of Upper Canada (“The Law Society”) is the governing body for more than 50,000 lawyers and 8,000 paralegals in Ontario. 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. The Law Society’s *Rules of Professional Conduct* and *Paralegal Rules of Conduct* specifically prohibit discrimination and harassment and speak to lawyers’ and paralegals’ responsibility to adhere to human rights laws in Ontario.
2. Since 2001, the proportion of racialized¹² lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.¹³ This is compared to 23% of the Ontario population who indicated in the 2006 Canada Census that they are racialized and 26% of the Ontario population who indicated in the 2011 National Household Survey that they are racialized.¹⁴ The Law Society’s Statistical Snapshot of Paralegals from the Paralegal Annual Report 2014 also show a high proportion of racialized paralegals at 34% of the paralegal profession.¹⁵ The Law Society’s Statistical Snapshots of Paralegals also indicate that 34% of licensed paralegals in Ontario are racialized.
3. A review of statistical data, research findings and anecdotal evidence suggested that, notwithstanding their increase in representation, racialized lawyers face challenges in the practice of law. The Law Society also noted a lack of information about the challenges faced, if any, by racialized paralegals.
4. In 2012, the Law Society created the Challenges Faced by Racialized Licensees Working Group (“the Working Group”) to:

¹¹ Daughter of Martin Luther King

¹² The Ontario Human Rights Commission notes that using the terminology “racialized person” or “racialized group” is more accurate than “racial minority”, “visible minority”, “person of colour” or “non-White”. Race is the socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. Racialization is the “process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life”. See Ontario Human Rights Commission, *Racial discrimination, race and racism*, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/racial-discrimination-race-andracism>.

¹³ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: Law Society of Upper Canada, April 2010) [Ornstein Report] and 2014 Statistical Snapshot of Lawyers from the Lawyer Annual Report 2014 at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-lawyers.html>

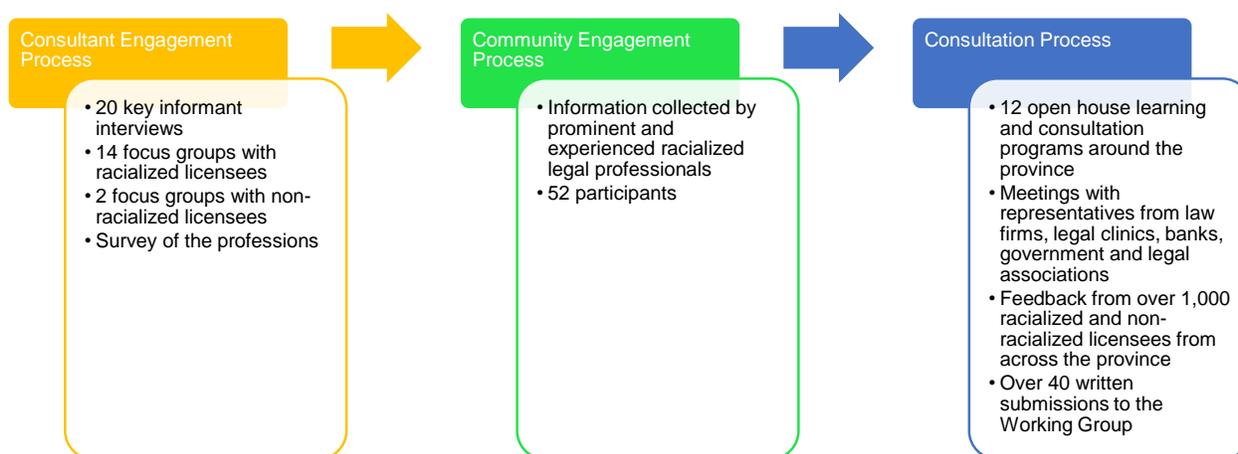
¹⁴ Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

¹⁵ Statistical Snapshot of Paralegals from the Paralegal Annual Report at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-paralegals.html> (paralegals).

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
 - b. identify factors and practice-challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;¹⁶
 - c. consider best practices for preventative, remedial and/or support strategies; and
 - d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee (“EAIC”) and other committees, to address these challenges.
5. Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

The Process: Listening and Learning

6. The members of the Working Group began their work by conducting a review of the data and literature available on the challenges faced by racialized licensees. The Working Group then gathered information about the challenges using an engagement process, followed by an extensive consultation process.¹⁷



7. The qualitative and quantitative data obtained from the engagement processes identified **widespread barriers experienced by racialized licensees within the professions at all stages of their careers.**
8. Through the consultation process, the Working Group received rich feedback on questions organized under the following themes:

¹⁶ The Working Group considered available information regarding the experience of racialized licensees in the regulatory process and determined that there is more work to be done. The preliminary work thus far will be continued.

¹⁷ Further information about this part of the Working Group's work can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

- Enhancing the internal capacity of organizations;
 - Mentoring, advisory services and networking;
 - Enhancing cultural competence in the profession;
 - Discrimination and the role of the complaints process; and
 - The operations of the Law Society of Upper Canada.
9. A detailed overview of the results of the engagement processes and the consultation process can be found at Appendix A.

Recommendations: Framework to Address the Challenges Faced by Racialized Licensees

On Racism and Initiatives for Change

“Effective responses to racial discrimination and racial profiling start with acknowledging that racism exists.”¹⁸

— Ontario Human Rights Commission

10. The Working Group acknowledges that the legal professions operate in a broader social context in which racism continues to negatively impact the lives of racialized people. During the consultation phase, a participant noted that society could currently be at an inflection point – a point at which there is a significant possibility for change in the way in which the professions engage with equality and diversity principles and practices.
11. Recently, the Ontario government announced the establishment of an Anti-Racism Directorate tasked with “increas[ing] public education and awareness of racism to create a more inclusive province” and “apply[ing] an anti-racism lens in developing, implementing and evaluating government policies, programs and services.”¹⁹ Similarly, in November 2015, the Ontario Public Service (OPS) launched an Anti-Racism Action Plan. This plan focuses on “preventing race-based discrimination and harassment; further diversifying the public service at every level, including senior management; and increasing OPS employees’ awareness of racism and its impacts.”²⁰
12. In the academic sphere, in February 2016, University of Toronto committed to collecting race-based data from its students in an effort to “tackle a lack of representation in the lecture hall among some groups and lend hard numbers to the push for equity in the public realm.”²¹ In the area of child welfare, in June 2016, children’s aid societies agreed to collect race-based data to address concerns that there are a high number of black and Indigenous children in care.
13. On the popular culture front, in early 2016, media attention turned to #OscarsSoWhite²² — Hollywood actors and filmmakers who were speaking up against the lack of diversity in the nominations for the Academy Awards. Those who work in Hollywood note that the lack of

¹⁸*Fishing without fear: Report on the inquiry into assaults on Asian Canadian anglers* (Ontario Human Rights Commission, 2008) available at <http://www.ohrc.on.ca/en/fishing-without-fear-report-inquiry-assaults-asian-canadian-anglers/2-naming-racism>

¹⁹ “Ontario Establishing an Anti-Racism Directorate: Government Working to Advance Equality for All Ontarians”, online: Queen’s Printer for Ontario <https://news.ontario.ca/opo/en/2016/02/ontario-establishing-an-anti-racism-directorate.html>

²⁰ *Ibid.*

²¹ “U of T to track race-based data of its students”, online: *Toronto Star* <https://www.thestar.com/news/gta/2016/02/22/u-of-t-to-track-race-based-data-of-its-students.html>

²² The hashtag was created in 2015 by April Reign, a former attorney who was disappointed by the lack of diversity and inclusion among Oscar nominees. For more information, please see: <http://www.latimes.com/entertainment/envelope/la-et-mn-april-reign-oscars-so-white-diversity-20160114-story.html>

diversity and inclusion goes beyond the Academy Awards, with one director noting, “I was meeting with potential investors, and right away everybody’s like, “It’s an Asian-American cast. It’ll never sell.”²³

14. Race and racism are also at the forefront of issues in the justice system — from the overrepresentation of black and Indigenous peoples in federal prisons²⁴ to police violence to calls for judicial diversity and beyond. In spring 2016, Black Lives Matter Toronto, “a coalition of black Torontonians working in solidarity with communities/individuals seeking justice from state-sanctioned violence”²⁵ occupied the space in front of Toronto Police Headquarters for two weeks to protest police violence against the black community. Acknowledging that racialized communities are “over-represented and subject to different treatment in the justice system as a whole”,²⁶ Legal Aid Ontario is currently developing a strategy to “identify the legal needs and to protect the legal rights of racialized communities in the justice system”.
15. Additionally, the Ontario Human Rights Commission is currently working on a new policy on racial profiling that will “provide guidance on combatting racial profiling in a range of institutional and community settings” and “seek to support and enable Ontario organizations, legal decision-makers and affected community members to better identify, address and prevent racial profiling as a prohibited form of discrimination under the Ontario *Human Rights Code*.”²⁷
16. The information outlined is only a snapshot of the efforts in Ontario and beyond to address racial discrimination. The Working Group is encouraged by these initiatives and is hopeful that implementation of the recommendations listed in this report will lead to systemic change.

Guiding Principle

“Nothing about Us, Without Us”²⁸

17. The Working Group’s recommendations stem from an intention to create long lasting systemic change within the professions. The recommendations are put forward in an effort to support the Law Society’s ongoing commitment to ensure that both the law and the practice of law are reflective of all peoples in Ontario and that the professions are free of discrimination and harassment. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* speak to the special responsibility of lawyers and paralegals to adhere to the requirements of human rights laws in Ontario, including the obligation not to discriminate.
18. Although the Working Group’s report does not speak to the experiences of Indigenous licensees, the Working Group recognizes that Indigenous peoples face barriers that are unique to Indigenous licensees and barriers that are shared by both racialized and Indigenous

²³ “What It’s Really Like to Work in Hollywood”, online: *The New York Times*

<http://www.nytimes.com/interactive/2016/02/24/arts/hollywood-diversity-inclusion.html>

²⁴ The Correctional Investigator of Canada, “Annual Report of the office of the Correctional Investigator 2014-2015” available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>

²⁵ Please see https://twitter.com/blm_to

²⁶ “Racialized communities strategy”, online: Legal Aid Ontario http://legalaid.on.ca/en/news/newsarchive/2016-06-13_racialized-communities-strategy.asp

²⁷ “Towards a new OHRC policy on racial profiling”, online: Ontario Human Rights Commission

http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling

²⁸ Saying from the Latin “Nihil de nobis, sine nobis”.

²⁸ Saying from the Latin “Nihil de nobis, sine nobis”.

licensees. The Working Group notes the importance of addressing the ongoing colonial violence experienced by Indigenous communities and of working towards reconciliation between Indigenous and non-Indigenous peoples. As expressed in the Truth and Reconciliation Commission's final report, "Reconciliation is not an Aboriginal problem; it is a Canadian one. Virtually all aspects of Canadian society need to be reconsidered."²⁹ The Law Society is currently working on a framework of reconciliation, with the guidance of the Indigenous Advisory Group, comprised of First Nation, Inuit and Métis community representatives, to address unique issues faced by Indigenous peoples in Ontario. The framework of reconciliation is also intended to promote responses to and implementation of the Calls to Action from the [Truth and Reconciliation Commission of Canada's final report](#) and the [First Nations Representation on Ontario Juries](#) report by The Honourable Frank Iacobucci.

19. In working towards achieving the Working Group's overriding objective, establishing partnerships is important. How we do this is integral to what we do, and 'we' are all lawyers and paralegals, not just the Law Society. The Law Society's consultation was successful in part because the Working Group used a spirit of open inquiry. The consultation was also well attended. There was general acceptance that there is a problem and that it is time to address it.
20. The Working Group heard offers to assist with mentoring, that changes are beginning to happen within firms, that the Law Society should support work that is already being done, and that legal workplaces are willing to share best practices and collaborate to create effective models for progressive change in all parts of the professions. Representatives of the Working Group spoke with firms that provide unconscious bias training to all members, firms that have affinity groups in their workplace and firms that are actively participating in the Law Firm Diversity and Inclusion Network. There were requests that the Law Society not impose mandatory hiring targets and timetables, but accelerate a culture change that has already begun as a result of business imperatives, changing demographics and the interests expressed by clients, students, lawyers, paralegals and indeed the public.
21. At the same time, the Working Group heard concerns that the identified challenges were longstanding, and that change would occur very slowly without strong leadership from the Law Society. The Working Group heard generally that the Challenges Faced by Racialized Licensees Project has raised the profile and understanding of these issues, but the Working Group was also urged to use the Law Society's authority to effect change.
22. To satisfy these goals, the Working Group concluded that the Law Society should use a combination of voluntary and mandatory measures, fulfilling its multiple roles in the public interest as change agent, facilitator, resource and regulator. The Law Society's authority to adopt mandatory measures must be interpreted and understood in light of its rights and obligations under the *Human Rights Code* to protect the public interest balanced with the current explicit authority under the *Law Society Act*³⁰ and *By-Laws*³¹ and recent jurisprudence. Within this overarching goal, partnerships with legal workplaces and associations are essential to the success of the proposed measures and projects detailed below.

²⁹ "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada", online:

http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf

³⁰ R.S.O. 1990, c. L.8 available at <http://www.ontario.ca/laws/statute/90l08>.

³¹ Available at <http://www.lsuc.on.ca/by-laws/>.

Objectives

23. The Working Group has identified the following three objectives:
 1. Inclusive legal workplaces in Ontario;³²
 2. Reduction of barriers created by racism, unconscious bias and discrimination; and
 3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.
24. The Working Group puts forward the following recommendations in order to meet these objectives. It is anticipated that in order to implement a number of the mandatory recommendations, the Law Society will need to consider appropriate by-law amendments. Additionally, the Law Society will need to invest in information technology that will allow it to effectively record and analyze progress across workplaces. The Working Group has contemplated budgetary considerations in developing these recommendations and it is anticipated that a senior staff implementation working group will be involved in implementing the recommendations.
25. The recommendations fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

Recommendations

Accelerating Culture Shift

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

26. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the professional and ethical obligations of lawyers and paralegals. The Working Group recommends that in order to ensure that licensees infuse the principles of equality, diversity and inclusion into their everyday practice, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and/or the Commentaries be reviewed to determine how this objective can be advanced.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

27. The Working Group recommends that the Law Society engage in a collaboration between, for example, legal associations, government legal departments, the Law Firms Diversity and Inclusion Network (“LFDIN”), Legal Leaders for Diversity and Inclusion (“LLD”), sole practitioners, licensees in private practice, and law schools to develop and support diversity and inclusion policies, programs and practices intended to address the challenges faced by racialized licensees. The project would focus on the following areas:
 - Developing resources on competency hiring, unconscious bias training, barriers to inclusion in the workplace, affinity group development, contract compliance and best practices within firms and workplaces;
 - Considering the assignment of work and career development, particularly understanding the impact of cultural homophily on career development;³³ and
 - Working with law schools to create or provide better sources of information on what is needed to apply, interview and succeed in a larger legal workplace. This could include enhancing or using the On Campus Interview (“OCI”) process for the dissemination of information. This would also include outreach to the National Committee on Accreditation (“NCA”) candidates.
28. The proposed project would build upon the Law Society’s experience with its Justicia Project, created in 2008 with the goal of retaining and advancing women in private practice. The project saw more than 55 law firms voluntarily sign agreements with the Law Society to develop practical resources for law firms and women lawyers. The Justicia resources addressed topics such as: leadership, career advancement, business development, flexible work arrangements and parental leave.
29. A number of participants in the engagement and consultation processes supported the creation of a diversity project similar to the Justicia Project.
30. During the consultation process, the Working Group received feedback from a number of legal workplaces that were actively engaging in work related to enhancing diversity and inclusion in their workplaces. The Working Group also heard from legal workplaces that would benefit from support in developing diversity and inclusion policies and practices.
31. The Working Group concluded that a Justicia-type project would benefit the professions by creating a space where legal workplaces can openly discuss challenges in addressing the barriers faced by racialized licensees in the professions and by creating a forum to document and share best practices. Furthermore, legal workplaces could develop, in advance and with the support of the Law Society, policies that they will be required to have in place under Recommendation 3.

³³ The notion of ‘like’ reaching out to ‘like’ or the tendency of individuals to associate and bond with similar others.

32. Currently, a number of large firms are engaged in a collaborative diversity initiative through the LFDIN and in-house counsel through LLD. Unlike the Justicia Project, which was focused on private practice, the proposed project would bring together legal workplaces from various practice environments and practice areas, in addition to associations and law schools to discuss overlapping concerns and to work on collaborative solutions.
33. In 2009, the Law Society of England and Wales (“LSEW”) created the Diversity and Inclusion Charter (the “Charter”). The LSEW describes the Charter as follows:

The purpose of the Charter is to help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients. This is achieved by helping practices to record and measure their procedures against a set of diversity and inclusion standards and by providing them with opportunities to share best practice advice and guidance with colleagues from across the profession. To date over 300 practices have signed up to the Charter, representing more than a third of all solicitors in private practice.

The Diversity and Inclusion Charter is a public commitment by legal practices to promote the values of diversity, equality and inclusion throughout their business. Whether it's through recruitment, retention, career progression or training and development, all our signatories are committed to improving opportunities for people in the legal profession, regardless of their background or circumstances.³⁴

34. Practices that commit to the Charter are required to report biennially and show how well they are meeting their Charter commitments, and where more work needs to be done. Practices complete an online self-assessment report about their progress and performance. The results are published in aggregate by the LSEW and used to identify trends, successes and areas for improvement.
35. The Charter is accompanied by a set of protocols to help practices fulfil their commitments in key areas, such as reporting and monitoring, flexible working and procuring legal services. In addition, checklists, best practice guidance, case studies and toolkits are available.
36. The LSEW has also developed diversity and inclusion standards to help the signatories complete their annual self-assessment form. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards. The Diversity and Inclusion Standards are accompanied by best practice guidance that provide examples of positive diversity and inclusion practices, as well as advice on where to get more help or information.
37. The Barreau du Québec, following a consultation regarding the challenges faced by racialized licensees practising in Québec, developed a three-year action plan, which includes creating Justicia-type project to increase the recruitment, retention and advancement of racialized licensees.³⁵ In June 2016, the Barreau launched *Projet Panorama*, a project aimed at recruiting, retaining and advancing lawyers from ethnocultural groups within law firms and legal

³⁴ “Diversity and Inclusion Charter” online: The Law Society of England and Wales <http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-inclusion-charter/>

³⁵ “For a More Inclusive Profession – The Forum Project” online: Barreau du Québec http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf

departments in Québec.³⁶ Participants have committed to compiling demographic statistics, sharing and implementing best practices, measuring progress in terms of hiring, retention and advancement, implementing measures to enhance diversity and inclusion, and publishing annual reports of work accomplished.³⁷

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 1) 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;**
- 2) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;**
- 3) 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; and**
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.**

38. Some licensees are employed by non-licensees, including, for example, in-house counsel. Both employers and employees in legal workplaces have obligations under the *Human Rights Code*. Licensees have professional obligations with respect to human rights established by the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct*. For licensees employed by non-licensees, the human rights/diversity policy contemplated by this recommendation is a policy in respect of their individual obligations addressing at the very least fair recruitment, retention and advancement, which may of course be addressed by the employer's policy.

39. To ensure the consistent implementation of this recommendation, the Law Society will guide licensees in the development of statements of principles, and legal workplaces in the development of policies and self-assessment tools. In consultation with legal workplaces, it will develop resources, such as templates, guides and model policies.

40. Recognizing that sole practitioners and small legal workplaces may have limited resources, the Working Group has determined that the requirements under Recommendation 3 (2) and Recommendation 3(3) should apply to legal workplaces of at least 10 licensees; however, legal workplaces comprised of less than 10 licensees are strongly encouraged to develop human rights/diversity policies and complete equality, diversity and inclusion self-assessments.

³⁶ "Project Panorama", online: Barreau du Québec <http://www.barreau.qc.ca/fr/avocats/equite/panorama/>

³⁷ *Ibid.*

41. It is anticipated that the nature of the policies and self-assessment tools will vary based on the size and type of legal workplace. As a result, we propose that the Law Society, through the diversity and inclusion project described in Recommendation 2, develop the templates for the statements of principles, policies and self-assessment tools in collaboration with legal workplaces that wish to participate in the project. We believe that this approach would increase the awareness of legal workplaces, begin the cultural shift, create greater buy-in and allow for the development of resources that take into account the realities of legal workplaces.
42. The Working Group believes that the Law Society should minimize unnecessary burdens, and recognize that many licensees and workplaces have already moved forward proactively with equality measures on their own. Licensees and workplaces will be free to adopt templates and model policies where appropriate to their needs, or to create their own statements of principles and policies that include the elements covered by the Law Society's sample documents, but tailor them to their specific contexts.
43. The stages for the implementation of this recommendation would be as follows:
 - Stage 1: In 2017, the Law Society would communicate to the professions the requirements outlined in Stages 1-3.
 - Stage 2: By January 1, 2018, licensees would be required to have adopted and to abide by a statement of principles, and each legal workplace of at least 10 licensees in Ontario would be required to have a human rights/diversity policy as described above.
 - Stage 3: The 2017 Lawyer Annual Report ("LAR") and Paralegal Annual Report ("PAR"), which would be completed by licensees in early 2018, and every annual report thereafter, would ask licensees to indicate whether or not they have adopted, and are abiding by, a statement of principles. The 2017 LAR and PAR would also ask licensees in designated legal workplaces to indicate whether or not their legal workplace has a human rights/diversity policy.
 - Stage 4: By the end of 2018, and every two years thereafter, the Law Society would require a representative of each designated legal workplace of at least 10 licensees in Ontario to engage in a diversity and inclusion self-assessment. Legal workplaces would then report to the Law Society on whether they had completed the self-assessment and, if not, explain their reasons for not having done so.
44. The Working Group believes that requiring licensees to make a clear commitment to equality, diversity and inclusion will encourage licensees to consider their individual roles in creating lasting change.
45. Section 4.1 of the commentary under section 2.1-1 of the *Rules of Professional Conduct* reads as follows:

A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the

diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.³⁸

46. Similarly, section 2.03 of the *Paralegal Rules of Conduct* state “the principles of the *Ontario Human Rights Code* and related case law apply to the interpretation of this rule [the rule on *Harassment and Discrimination*].”³⁹
47. A number of consultation participants supported the Law Society’s role in setting guidelines for equality, diversity and inclusion in the professions and requiring legal workplaces to report on their progress in this area. As one group of consultation participants noted, “This would increase the accountability and transparency of legal workplaces in their treatment of racialized licensees, while encouraging a culture of compliance across the province.”⁴⁰
48. The Working Group considered requesting that legal workplaces voluntarily adopt policies. The research and the consultation process, however, made clear that the challenges faced by racialized licensees are both longstanding and significant. In our view, the Law Society must take a leadership role in giving legal workplaces reasonable, but fixed, deadlines to implement steps that are important to achieve lasting change. Indeed, many of these steps have been taken, or will be taken by legal workplaces voluntarily, because of their acknowledged importance.
49. The Working Group concluded that required minimum standards of equality, diversity and inclusion will reinforce the human rights responsibilities of licensees — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*. Furthermore, as the Ontario Human Rights Commission (“OHRC”) notes:

In addition to addressing obligations under the *Human Rights Code*, the adoption and implementation of an effective anti-racism vision statement and policy has the potential of limiting harm and reducing liability. It also promotes the equality and diversity goals of organizations and institutions and makes good business sense.⁴¹
50. It is the Working Group’s intention that legal workplaces will take this opportunity to implement comprehensive equality, diversity and inclusion policies, and will consider whether progress is being achieved by engaging in periodic self-assessment.
51. Some organizations have adopted a similar approach by creating a “comply or explain” approach. For example, the Ontario Securities Commission (“OSC”) requires companies regulated by the OSC to disclose the following gender-related information: the number of women on the board and in executive positions; policies regarding the representation of women on the board; the board or nominating committee’s consideration of the representation of

³⁸ *Rules of Professional Conduct*, *supra* note 6.

³⁹ *Paralegal Rules of Conduct*, *supra* note 7.

⁴⁰ Participating legal association.

⁴¹ “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination>

women in the director identification and selection process; and director term limits and other mechanisms of renewal on their board.⁴² The OSC requires companies to either report their implementation or consideration of the items listed above, or to explain their reasons for not doing so.

52. The Working Group's recommendation that legal workplaces of at least 10 licensees in Ontario complete a self-assessment about diversity performance, and report the results to the Law Society stems from an intention to have legal workplaces engage in dialogue and reflection on the current state of diversity and inclusion within their workplace, and an intention to encourage legal workplaces to work proactively to advance diversity and inclusion efforts.
53. The Working Group has reviewed the Canadian Bar Association's ("CBA") guide *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide for Law Firms*.⁴³ The document was drafted to "assist lawyers and firms by providing practical guidance on law firm structures, policies and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled".
54. The document contains a detailed self-evaluation tool for firms, the *CBA Ethical Practices Self-Evaluation Tool*, which outlines 10 key areas of ethical infrastructure and provides questions related to firm policies and procedures under each identified area.⁴⁴
55. The self-evaluation tool is modelled on the approach used in New South Wales for regulation of incorporated legal practices. Rather than being required to follow specific rules, the firms are required to self-assess whether their practices and policies are effective in ensuring professional conduct and to establish practices and policies that are effective in their specific context. The result has been a two-third reduction in client complaints for firms regulated in this way.⁴⁵
56. A similar approach has been used for the assessment of diversity performance. The U.S.-based Minority Corporate Counsel Association has developed the *Diversity Self-Assessment Tool for Law Firms*, in an effort to "stimulate thought and open a dialogue within a firm regarding how to advance its diversity efforts."⁴⁶ Firms are asked to assess diversity performance in the following areas: leadership and commitment, professional development, recruitment and retention, representation/demographics, workplace culture and diversity, and external face of the firm.
57. The Law Society of England and Wales ("LSEW") also asks firms that have signed on to its Diversity and Inclusion Charter to complete a self-assessment (discussed previously in Recommendation 2).

⁴² "Increasing Gender Diversity In Corporate Leadership", online: Queen's Printer for Ontario <http://news.ontario.ca/mof/en/2014/12/increasing-gender-diversity-in-corporate-leadership.html>

⁴³ Canadian Bar Association, "Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide" (Ottawa: Canadian Bar Association, 2014)

⁴⁴ Canadian Bar Association, "CBA Ethical Practices Self-Evaluation Tool" (Ottawa: Canadian Bar Association, 2014)

⁴⁵ Tahlia Ruth Gordon, Steve A. Mark, Christine Parker, "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW" (2010) *Journal of Law and Society*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315.

⁴⁶ "A Diversity Self-Assessment Tool for Law Firms, online: Minority Corporate Counsel Association <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&PageID=996>

58. In addition to the information gathered through the self-assessment, legal workplaces would be encouraged to conduct their own comprehensive inclusion surveys to establish benchmarks and identify and address concerns related to workplace culture. The Law Society has developed a number of model policies and guides to assist law firms in their efforts to ensure that their policies and practices are in keeping with equality and diversity principles. Again, the Law Society would develop sample inclusion survey templates, which would be shared with the profession.

Measuring Progress

59. The Working Group proposes, based on the consultation findings and our review of the literature and best practices on measuring systemic change that both the Law Society and legal workplaces should partner in collecting and analyzing qualitative and quantitative information about diversity. The Law Society would collect demographic data through the annual LAR and PAR, and qualitative information through a periodic questionnaire and a quadrennial province wide cultural inclusion survey similar to the one conducted by Stratcom on behalf of the Law Society in 2013. Legal workplaces of a sufficient size would obtain both quantitative and qualitative information about their workplaces in order to analyze the results, and ultimately an inclusion index would be published by the Law Society.
60. The 2012 CBA guide, *Measuring Diversity in Law Firms: A Critical Tool for Achieving Diversity Performance*, identifies two types of data for measuring a law firm's diversity performance — self-identification data and diversity climate data. Self-identification data is collected “to assess the representativeness of [a] firm's workforce”⁴⁷, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”⁴⁸
61. The collection of both self-identification data and diversity climate or inclusion data provides a more complete picture of diversity and inclusion in the professions. In *Data & Diversity in the Canadian Legal Community*, Dean Lorne Sossin and Sabrina Lyon, basing their conclusion on extensive interviews, a review of ongoing policy initiatives and a comprehensive analysis, state “generating rigorous and meaningful data, both quantitative and qualitative, would advance a culture of inclusion and accountability in the Canadian justice community.”⁴⁹

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyer Annual Report and the Paralegal Annual Report so they can compare

⁴⁷ Canadian Bar Association, “Measuring Diversity in Law Firms: A Critical Tool for Achieving Performance” (Ottawa: Canadian Bar Association, 2012)

⁴⁸ *Ibid.*

⁴⁹ Sabrina Lyon and Lorne Sossin, “Data and Diversity in the Canadian Justice Community”, Vol. 10, No. 5 (2014) Osgoode Legal Studies Research Paper No. 12/2014 at 2, [Data and Diversity] available at <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps>.

their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

"...what gets measured can help organizations understand how effective their programs and policies are; where they have issues; and what relevant and reasonable goals they can establish to improve performance."⁵⁰

— Canadian Institute of Diversity and Inclusion

62. Since 2009, the Law Society has collected demographic data based on race, Indigenous identity, gender, Francophone identity, disability, and lesbian, gay, bisexual, transgender and queer ("LGBTQ") identity through the Lawyer Annual Report and the Paralegal Annual Report. Self-identification questions were included in the annual reports to inform the Law Society of the extent to which the professions are reflective of the broader community they serve, to help meet the needs of the public, and to develop programs to enhance the diversity of the professions. These demographic data are analyzed and published in aggregated form under the following categories: age, year of call, type of employment, size of firm (for those in private practice), and region.⁵¹
63. In the consultation paper, the Working Group highlighted the importance of gathering and maintaining demographic data, providing the following reasons for engaging in this practice:
 - a. Firms can demonstrate that they value equality, diversity and inclusion in their firm's culture;
 - b. Maintaining demographic data allows firms to monitor diversity in recruitment and advancement and to adjust policies and practices accordingly;
 - c. Diversity, and data on diversity, assist firms in attracting a strong talent base at all levels. The pool of law students is increasingly diverse, and so is the pool of legal talent. Graduating law students are often interested in the diversity characteristics of the legal workplaces to which they can apply;
 - d. Such data can be a tool to increase a firm's competitiveness. Numerous large clients in the U.S., and now in Canada, issue requests for proposals ("RFPs") to select their legal counsel, requiring firms to produce demographic data of their workforce. For example, the Bank of Montreal's Legal, Corporate & Compliance Group ("LCCG") requires disclosure of a firm's diversity statistics as part of its RFP process for legal suppliers;⁵²
 - e. Demographic data assist firms to enhance their client services and professional reputation, and to become role models by ensuring representation at all levels;
 - f. Demographic data provide background and incentives for firms to develop programs that enhance inclusion; and
 - g. The information may assist in developing initiatives to enhance access to justice.

⁵⁰ "What Gets Measured Gets Done: Measuring the ROI of Diversity and Inclusion", online: Canadian Centre for Diversity and Inclusion <http://ccdi.ca/wp-content/uploads/2016/06/CCDI-Report-What-Gets-Measured-Gets-Done.pdf>

⁵¹ *Supra* note 11 & note 13

⁵² "Diversity metrics will influence what firms BMO's legal department does business with: Fish", online: Canadian Lawyer Magazine <http://www.canadianlawyermag.com/5302/Diversity-metrics-will-influence-what-firms-BMOs-legal-department-does-business-with-Fish.html>

64. Dean Lorne Sossin and Sabrina Lyon, in their article *Data & Diversity in the Canadian Legal Community*, also underline the importance of data collection, noting that while “collecting and publishing data on diversity will not in and of themselves make the justice community more inclusive, it is difficult if not impossible to see how the justice community could become more inclusive without meaningful data.”⁵³
65. The options outlined in the Consultation Paper regarding data collection largely focused on the collection of demographic data, including:
- collecting demographic data of licensees through the LAR and PAR, publicly reporting the demographic data based on firm size and disclosing to firms their own demographic data;
 - working with firms to develop consistent templates for demographic data collection and encouraging firms to collect such data on a regular basis;
 - setting parameters for the voluntary collection of demographic data by firms and requiring firms to report either that they are collecting this information or the rationale for not collecting such data; and
 - setting parameters for mandatory collection of demographic data by firm.
66. Throughout the consultant and community engagements and the consultation process, the Working Group heard concerns from some participants that the information obtained from the Challenges Faced by Racialized Licensees Project would be shelved and the project would not result in meaningful change. By engaging in periodic litmus tests of equality and inclusion in the professions, the Law Society will ensure that its efforts to address the challenges faced by racialized licensees are ongoing and will evolve based on the issues identified by the inclusion surveys. As the OHRC notes, “When data is gathered, tracked and analyzed in a credible way over time, it becomes possible to measure progress and success (or lack of it). Budgets, policies, practices, processes, programming, services and interventions can then be evaluated, modified and improved.”⁵⁴
67. The Legal Services Board (“LSB”), the independent body responsible for overseeing the regulation of lawyers in England and Wales, has taken a proactive approach to gathering demographic data. In 2011, the LSB published statutory guidance outlining its expectation of approved regulators to measure levels of diversity and mobility in the legal workforce. Approved regulators, including the Solicitors Regulation Authority,⁵⁵ now require all practices they regulate to collect, report and publish data annually on the diversity of their workforce. The LSB has cited transparency as the rationale for requiring the publication of diversity data.⁵⁶
68. Information about the demographic composition of legal workplaces would be compiled through the Lawyer Annual Report and Paralegal Annual Report data, which would comprise of the statistical snapshots of the professions as a whole and the data compiled for each firm. This data would be provided to each legal workplace on an annual basis. In considering privacy concerns of individual licensees and the Law Society’s ability to ensure confidentiality, the

⁵³ *Supra* note 47.

⁵⁴ “Count me in! Collecting human rights-based data” at 11, Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2494>.

⁵⁵ “Diversity data collection”, online: Solicitors Regulation Authority <http://www.sra.org.uk/diversitydata/>

Working Group has suggested that this recommendation be applicable only to legal workplaces of at least 25 licensees in Ontario.

69. The Working Group has considered the input received from the engagements and the consultation process and proposes the following stages for the collection of self-identification data by firm:
- Stage 1: The Law Society would continue to measure the representation of racialized licensees using the information in the 2016 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2017, by providing the demographic data in aggregate form to the public as general snapshots of the professions in 2018.
 - Stage 2: The introductory paragraph of the self-identification demographic questions of the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, would be adapted to inform licensees of the change in the Law Society's use of the self-identification data.
 - Stage 3: Beginning with the 2018 LAR and PAR, completed by licensees in 2019, the Law Society would prepare a profile (containing, for example, the proportion of racialized partners, associates and other licensed staff) of each legal workplace of at least 25 lawyers and/or paralegals, and would confidentially provide it to each licensee within the workplace.

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress qualitatively 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.**
70. In implementing this recommendation, the Law Society would take into account issues of privacy and confidentiality. The qualitative information about legal workplaces would be gathered by asking licensees voluntary inclusion questions about their legal workplace using a tool that would allow for the information to be compiled and provided to each legal workplace. This information would be collected by the Law Society with the purpose of tracking trends over time and refining and developing programs and initiatives to address the challenges faced by racialized licensees and other equality-seeking groups.
71. Licensees would be asked about their experiences in their workplaces, including subjects such as career advancement opportunities, feelings of belonging, and experiences of discrimination. The questions would be drafted with the assistance of stakeholders and experts in the diversity and inclusion field. Much like the current demographic questions in the Lawyer Annual Report and the Paralegal Annual Report, answers would be voluntary. The information would be shared in aggregate form, with legal workplaces of at least 25 lawyers and/or paralegals.
72. The Working Group proposes the following stages for the collection of qualitative data:

- Stage 1: Notice would be provided to the professions in the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, of the Law Society's intention collect qualitative inclusion data.
- Stage 2: The Law Society would begin compiling quantitative data of legal workplaces using the 2018 Lawyer Annual Report and Paralegal Annual Report – to be completed in 2019 – and would continue to compile this data every four years thereafter.

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).

73. The Working Group has considered a number of options for data collection and has arrived at the recommendations to measure progress outlined in Recommendations 3(3) (self-assessment), 4 and 5. 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 Law Society would create this index and would determine the categories of information to be included in the index, as well as the weight provided to each category.
74. The Working Group is of the view that a public inclusion index would serve the many objectives cited earlier in relation to the benefits of collecting demographic data. 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.
75. A number of consultation participants as well as courts and commentators⁵⁷ have stated that to truly understand the equality and inclusion climate in a workplace, it is necessary to look at both quantitative and qualitative data. Sossin and Lyon exemplify this perspective, noting that “a blended ‘index’ of quantitative and qualitative factors best responds to the need for outcomes to matter (how many diverse lawyers a legal workplace is able to recruit relative to the available pool of candidates) and the need for inputs to matter (a legal workplace’s policies, participation in proactive recruitment, establishing an inclusive firm culture, etc.).”⁵⁸

⁵⁷ Raj Anand, “Real Change? Reflections on Employment Equity’s Last Thirty Years” in Carl Agócs, *Employment Equity in Canada: The Legacy of the Abella Report* (Toronto: University of Toronto Press, 2014)

⁵⁸ *Supra* note 47.

76. As Sossin and Lyon note, “the process of collecting and disseminating qualitative and quantitative data is not just an end in itself (to promote transparency, accountability, profile, etc.) but a means to developing responsive and effective policies [...] a range of innovations are already in place to build on – from mentorship programs, to career orientation and outreach, to equity and inclusion officers within legal workplaces, to media and public information campaigns.”⁵⁹
77. The LSEW publishes an annual diversity and inclusion report, which includes the results of self-assessments completed by the signatories to the Diversity and Inclusion Charter. According to the LSEW, “all signatories are required to self-assess against a set of standards and report on diversity data across their organisation, with smaller practices responding to a set of questions tailored to the needs of smaller firms”.⁶⁰ Although the data is collected by firm, it is published in aggregate form. In 2015, 341 firms submitted their self-assessment information to the LSEW.
78. For the last 10 years, the Black Solicitors Network (“BSN”), also based in the UK, has published The BSN Diversity League Table, a comprehensive report on diversity and inclusion in the legal profession, on an annual basis. The LSEW is the main sponsor of this initiative. According to the LSEW:
- The Diversity League Table has become an invaluable resource for the legal profession. Each year, the performance of participating law firms and chambers is measured across a range of demographic profiles. This provides an opportunity for firms to compare their performance against peers across key areas. The Diversity League Table also offers an opportunity to monitor the sector as a whole, facilitating a more diverse and transparent profession.⁶¹
79. The LSEW further notes that the LSEW Diversity and Inclusion Charter and the BSN Diversity League Table are complementary initiatives, as they both “provide comprehensive data sets [and] promote collaboration in equality and diversity matters and best practice across a range of key business areas”.⁶²
80. The Diversity League Table includes aggregate demographic data based on gender, ethnicity, LGBTQ and disability status, published by firm. Firms also provide information about policies & practices, specifically addressing the following categories: Monitoring; Leadership and Policy; External Face; Staff Development and Support; and Recruitment, Promotion and Retention. Firms are then given a score and a rank, based on the quantitative and qualitative data obtained. In 2015, 56 firms and chambers participated in the Diversity League Table.⁶³
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.⁶⁴

⁵⁹ *Ibid.*

⁶⁰ “Diversity and Inclusion Charter annual report 2015”, at p.9 online: Law Society of England and Wales.

⁶¹ “Diversity League Table 2015”, online: Black Solicitors Network <http://satsuma.eu/publications/DLT2015/>

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ For example see:

Stonewall Top 100 Employers

<http://www.stonewall.org.uk/get-involved/workplace/workplace-equality-index;>

The Canadian Centre for Diversity and Inclusion is currently piloting an Employer Inclusivity Index with employers in Alberta

82. The Law Society believes that stakeholder participation in the development of the inclusion index is important, such as the participation of the LFDIN, LLD and associations with mandates to represent racialized licensees.
83. The Working Group suggests that the Law Society create a similar inclusion index to those described above, which would reflect the demographic information about the composition of each legal workplace and would include scores and rankings based on the presence or lack thereof of equality-related policies and practices. The Law Society would report this information by legal workplace for all legal workplaces with over 25 licensees. The Law Society would begin publishing the inclusion index in 2019 and would update the index every four years.

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>) The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

84. The Stratcom survey was sent to all licensees, both racialized and non-racialized, in 2013. The anonymous 35-question survey included questions on topics such as: career opportunities and professional growth; disrespect and disadvantage; career setbacks; barriers to entry and advancement; and stereotyping.
85. In order to evaluate the success of the proposed initiatives and to identify any potential areas where barriers to inclusion may remain, the Working Group proposes repeating the Challenges Faced by Racialized Licensees Project inclusion questions within the abovementioned timeline. The proposed timeline is based on the Working Group's understanding and acknowledgement that systemic change will take time to occur. Four years was seen as an appropriate timespan for changes to take hold.

Recommendation 8 — Progressive Compliance Measures

The Law Society will consider and enact, as appropriate, progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

86. The Working Group, having outlined some mandatory initiatives in the aforementioned recommendations, recognizes that there must be mechanisms in place to deal with non-

<http://ccdi.ca/products/workplace-solutions/diversity-data-analytics/>;
Pride at Work Canada's LGBT Inclusion Index
<http://prideatwork.ca/get-involved/index/>

compliance. The Working Group recommends that the Law Society take a progressive compliance approach with legal workplaces that do not meet the requirements outlined in the recommendations. The Working Group envisions a gradation of responses, beginning with remedial approaches, such as meeting with representatives of legal workplaces to discuss concerns with their policies and/or practices, to disciplinary approaches if there is deliberate non-compliance with requirements, despite multiple warnings, or no efforts are made to address systemic barriers.

Educating for Change

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 1) **launch a three hour accredited program focused on advancing equality and inclusion in the professions;**
 - 2) **develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and**
 - 3) **require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.**
87. The Working Group recommends that the Law Society launch an innovative accredited program focused on topics such as equality and inclusion in the professions to assist licensees with promoting these principles. The Law Society would also support legal workplaces in developing their own programs that could be accredited by the Law Society. This would allow legal workplaces and legal associations to build their capacity in this area while addressing the needs of their membership base. The Law Society would work with associations to develop criteria for accreditation and to assist legal workplaces and legal associations in developing their own accredited courses. Programs could be delivered in any format already approved under the eligible education activities criteria available on the Law Society website.
88. In order to create awareness and engagement of the professions, the Law Society would require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter. . These programs count towards professionalism CPD requirements for the year in which the hours were taken. The monitoring of these activities to confirm completion of hours would be the same as any monitoring conducted to confirm completion of professionalism hours. No additional oversight would be required.
89. Training sessions could cover topics such as unconscious bias, the impact of daily verbal, behavioural and environmental indignities, the value of diversity and inclusion, understanding power and privilege and addressing discrimination and harassment.

90. The Working Group also suggests that the Law Society, as part of its commitment to providing accessible education, offer an online program on topics related to equality and inclusion in the professions. Such program could contain a video presentation with best practices and links to resources, for licensees who wish to complete their professionalism requirements in an online environment. If delivered online, the program could consist of integrated learning modules with integrated polling or test questions, as already done in various contexts including the *Accessibility for Ontarians with Disabilities Act* training and existing Law Society CPD programs.
91. The Working Group considered the option that the Law Society provide voluntary accredited CPD programs on topics such as equality and inclusion in the professions. However, the Working Group has determined that participation in equality and inclusion-related education is essential to address the challenges faced by racialized licensees. The OHRC notes, in its *Policy and Guidelines on Racism and Racial Discrimination*, that “mandatory education, training and development initiatives” may be required for an anti-racism policy and program to be effective.⁶⁵
92. The Working Group initially considered training that would focus on “cultural competence”. Ritu Bhasin, a lawyer consultant in this area, defines cultural competence as “how we connect with people who are different than us” or “The ability to relate to others comfortably, respectfully and productively.”⁶⁶ A significant number of consultation participants agreed that mandatory CPD would assist in addressing the challenges faced by racialized licensees. A number of consultation participants emphasized the need for training to be delivered through an anti-discrimination or anti-oppression lens. The same participants noted discomfort with the term “cultural competence” due to the focus on understanding difference or “the other” as opposed to encouraging reflection on power and privilege. Consequently, the Working Group has chosen to focus the training on the principles of equality and inclusion, incorporating concepts of unconscious bias and cultural homophily.
93. The *Rules of Professional Conduct* speak to the responsibility of lawyers to recognize the diversity of the Ontario community. Both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* require that licensees protect the dignity of individuals and respect human rights laws in force in Ontario. Equality and inclusion training will assist licensees in understanding their obligations under the rules.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

94. The Working Group wishes to integrate the topics of cultural competency, equality and inclusion into the Licensing Process, as appropriate, including within the reference materials for licensing, and in any program or course work that is completed during the Licensing Process.

⁶⁵ Policy and Guidelines on Racism, *supra* note 39 at 50.

⁶⁶ Ritu Bhasin is quoted in “Cultural Competence: An Essential Skill in an Increasingly Diverse World”, (Toronto: LawPRO Magazine, 2014, Volume 13, Issue 2), available at http://www.practicepro.ca/LawproMag/Cultural_Compentence_Bhasin.pdf

95. A number of consultation participants emphasized the importance of incorporating teachings of equality and inclusion into the Licensing Process. For example, one participant noted that integrating cultural competence training in the Licensing Process would be “well-suited to ensuring that a strong foundation of diversity awareness and cultural consciousness is in place from the beginning of an individual’s legal career.”⁶⁷
96. The Entry-Level Solicitor Competencies and the Entry-Level Barrister Competencies both include the following section under Ethical and Professional Responsibilities:
 19. respects human rights (e.g. does not engage in sexual harassment, discrimination or other human rights violations) (Rules 6.3-0 and 6.3.1. (Part of 24)
97. Additionally, under Client Communications, both sets of competencies include the following:
 192. recognizes and is sensitive to clients’ circumstances, special needs and intellectual capacity (e.g. diversity, language, literacy, socioeconomic status, disability, health).
98. Similarly, the Paralegal Competencies, under Ethical and Professional Responsibilities, read:
 3. Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g. does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).
99. Under section 27(2) of the *Law Society Act* and section 8(1) of By-Law 4, *Licensing*, a recipient of a lawyer or paralegal licence is also required to be of good character. The Law Society has indicated that adherence to human rights and equality principles should be considered in a determination of good character. The November 2013 Submission on The Federation of Law Societies of Canada’s National Suitability to Practise Standard Consultation Report⁶⁸ identifies that “specific reference to respect for and adherence to human rights and equality principles sends an important message to those entering the professions.”
100. The Working Group believes that the integration of equality and inclusion information, presented through an anti-discrimination or anti-oppression lens, will assist in preparing candidates to be competent members of the professions.

Implementing Supports

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

101. In considering this recommendation, the Working Group noted that in November 2013, the Law Society created a Mentoring and Advisory Services Proposal Task Force to consider mentoring

⁶⁷ Law firm representative.

⁶⁸ “Federation of Law Societies of Canada – Suitability to Practise Standard” – Report to Convocation, November 21, 2014 – Professional Regulation Committee, online: The Law Society of Upper Canada http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convn ov2013_PRC.pdf

and advisory services models. The Working Group provided input to the Task Force on the development of models to best address the needs and facilitate the success of racialized licensees. The Task Force provided its final report to Convocation in January 2016. Convocation approved the creation of a law practice and advisory services initiative, which, at the outset of its implementation, "...will focus on providing supports for already identified communities of need, namely, sole practice and small firm licensees, new licensees, racialized licensees, those seeking succession planning supports and those within certain defined practice areas."⁶⁹

102. Data gathered through the LAR and PAR show that 24% of racialized lawyers are in sole practice and 33% of racialized lawyers practice in legal workplaces of two to five. Similarly, 25% of racialized paralegals are in sole practice. Engagement and consultation process participants highlighted the vulnerability of racialized sole practitioners in the professions — emphasizing the need for sole practitioners and licensees in small firms to have strong mentors and networks. The Working Group also recognizes that it is essential to be responsive to the needs and challenges of racialized licensees in a broad range of practice/work settings and practice areas, which will require approaches that are not "one size fits all".
103. The Law Society currently offers mentorship initiatives that will be enhanced by the new Law Practice Coach and Advisor Initiative.⁷⁰ Additionally, the Law Society, in partnership with legal associations and community groups, offers educational programs to promote discussion among members of the professions and the public on the challenges and opportunities for Francophone, Indigenous and equality-seeking communities in the legal professions. These Equity Legal Education events are often followed by networking receptions for members of the professions.
104. The Working Group heard that there is a need for increased, and in some cases, revamped, mentoring and networking initiatives to combat the isolation faced by racialized sole practitioners and racialized licensees practising in small firms. In considering potential mentoring and networking initiatives to support racialized licensees, the Working Group has identified the following objectives:
 1. Encourage the development of communities of support in the professions, including facilitating the search for multiple points for direction and assistance (e.g. peers, subject-matter experts, ethics sounding boards);
 2. Increase the capacity of legal associations to reach more licensees for trusted, nonjudgmental advice; and
 3. Foster connections for licensees who feel isolated, recognizing that feeling professionally isolated is not limited to those in small firms and sole practitioners or those in certain practice areas.

⁶⁹"Law Practice Coach and Advisor Initiative" – Final Report to Convocation, January 28, 2016 – Mentoring and Advisory Services Proposal Task Force https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf at para 25.

⁷⁰ *Ibid.*

105. The Working Group highlighted the importance of working with legal associations in meeting the abovementioned objectives. The Working Group is also mindful of different types of mentoring, including both advisory services and coaching.⁷¹

106. As a first step, the Working Group proposes the following:

- Enhanced use of technology to facilitate the development of communities of trust;
- Enhanced networking opportunities.

Enhanced Use of Technology to Facilitate the Development of Communities of Trust

107. The Working Group believes that any successful mentorship initiative should reach racialized licensees across the province. This proposal would involve the robust use of technology to increase the ability of racialized licensees to access information and support, with the goal of enhancing learning, competence and success. For example, the Law Society could work with associations of racialized licensees, where appropriate, to create an online resource centre for racialized lawyers and paralegals. This resource centre could act as a hub to bring together the various mentorship initiatives available around the province. The resource centre could include materials geared toward the needs, concerns and unique situations of licensees in sole practice, associations of sole practitioners and small partnerships. Resources could cover topics such as finding a mentor, action plans for mentor-mentee relationships, networking, and the benefits of joining associations. The resource centre could also include a forum for racialized licensees to discuss topics relevant to their practice environments and a podcast series on a range of topics related to race and racism in the professions and supports for racialized licensees.

108. The Working Group has also considered an initiative that would involve working with stakeholders, existing mentoring groups and others to develop the technology that would allow any licensee (racialized or otherwise) to have access to a diverse group of mentors. It may be helpful to ask licensees to indicate whether they are interested in participating in such a program when they fill out their LAR or PAR or through other methods, such as the Law Society Portal. Alternatively, mentors and mentees could be matched using a mobile application (app) with programmed algorithms to increase the potential of having successful relationships. Similar mobile apps have been created to assist with the search for a mentor or mentee in other industries.⁷² For example, Menteeer, a free, open source online platform,⁷³ works to match job seekers and mentors. Potential mentors and mentees are asked to answer a series of questions about their skills, interests and backgrounds to assist with finding suitable matches to meet their needs. Mentees are provided with a number of mentor profiles, which the algorithm has

⁷¹ Advisory services are shorter and more focused in scope, whereas coaching services address longer term career goals.

⁷² See Menteeer, Glassceiling
<https://www.menteeer.ca/>
<https://www.glassbreakers.co/>

⁷³ Any organization can use the code from this online platform, free of charge. The platform can be customized to meet the specific needs of the organization.

determined would be a good fit. Mentors wait for mentees to communicate with them to ask if they would like to establish a mentor-mentee relationship.⁷⁴

Enhanced Networking Opportunities

109. This project involves reviewing current practices around Law Society events and events co-hosted with equality-seeking legal associations to ensure that networking events are affordable, inclusive and relevant to licensees.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

- 1) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;**
- 2) revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;**
- 3) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and**
- 4) create a specialized and trained team to address complaints of discrimination.**

Discrimination and Harassment Counsel Program (DHC)

110. The Working Group recommends that the Discrimination and Harassment Counsel Program (DHC) undergo a review of its function, processes and structure. Although the DHC Program does not maintain self-identification information about complainants, it is noteworthy that for the 10-year-period of 2003 to 2012, only 16% of complaints of discrimination were based on race, 3% on ethnic origin, a nominal number on ancestry and place of origin, while 26% and 50% of complaints were based on the grounds of disability and sex, respectively. This is in contrast with the applications received at the Human Rights Tribunal where 22% of applications are based on race, 16% on colour, 17% on ethnic origin, 15% on place of origin and 13% on ancestry with 54% of applications based on disability and 25% based on sex, pregnancy and gender identity.⁷⁵ The lower proportion of race-based complaints to the DHC Program warrants a review of the DHC Program to identify possible barriers to accessing that program, more particularly by members of the racialized, Indigenous and disability communities.
111. In Fall 2016, the Law Society's Equity and Aboriginal Issues Committee commenced a review of the DHC Program. The objective of this review is to identify how this role can be better used to

⁷⁴ "App service Menteer wants to help you find a mentor", online: CBC Radio <http://www.cbc.ca/radio/spark/277-digital-vellum-reclaiming-ephemera-room-escape-games-and-more-1.2975606/app-service-menteer-wants-to-help-you-find-a-mentor-1.2975660>

⁷⁵ "Social Justice Tribunals Ontario: 2013-2014 Annual Report, online: Social Justice Tribunals Ontario <http://www.sjto.gov.on.ca/documents/sjto/2013-14%20Annual%20Report.html>

Please note that in both the DHC report and the Human Rights Tribunal Report, many applications and complaints claim discrimination based on more than one ground and as a result there may be double counting.

address discrimination and harassment in the professions, including systemic discrimination, while keeping in mind the independent arms-length position of the DHC and the duty of the DHC to maintain the confidentiality of any individuals who use the Program.

Rules of Professional Conduct and Paralegal Rules of Conduct

112. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the responsibility of licensees to respect human rights laws — more specifically, not to engage in discrimination or harassment. The Law Society may investigate complaints of systemic discrimination; however, this is not widely known. The Working Group recommends explicitly stating in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* that systemic discrimination is considered a violation of the rules. The Working Group also recommends that the rules make clear that reprisal for complaints of discrimination and harassment is prohibited.

Specialized Professional Regulation Team

113. The Working Group recognizes that racism is complex and can manifest itself in subtle ways. The Working Group recommends that the Law Society create a specialized team of Professional Regulation staff members to address complaints of racial discrimination. The members of this team would undergo extensive training on issues of race and racism in order to prepare them to effectively handle these types of complaints.

Review Professional Regulation Processes to Effectively Address Systemic Discrimination

114. Along with the creation of a specialized team of Professional Regulation staff members to address complaints of discrimination, including racial discrimination, it is suggested that the Law Society review its complaints process to consider ways to collect data from different sources and identify instances of systemic discrimination. It is recommended that the Law Society consider specific processes to effectively address systemic discrimination.
115. Racialized consultation participants described discriminatory experiences that had serious impacts on their careers, including career opportunities and earnings. Some described experiences of overt discrimination, such as situations of being on the receiving end of racist jokes, comments or assumptions.
116. In addition to the barriers identified through the Challenges Faced by Racialized Licensees Project, in its 2009 *Aboriginal Bar Consultation*⁷⁶, the Law Society found that 26% of Indigenous lawyers felt that their Indigenous status was a negative factor in their experiences in the professions and the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.
117. It is clear from the Working Group's engagement and consultation processes that discrimination based on race is a daily reality for many racialized licensees; however, many participants stated that they would not file a discrimination complaint with the Law Society for various reasons, including fear of losing their job, fear of being labeled as a troublemaker, and other reprisal-related concerns. Participants also noted that although racism can be experienced on an

⁷⁶ "Final Report: Aboriginal Bar Consultation", online: The Law Society of Upper Canada <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118>

individual basis, racial discrimination can also be institutional or systemic in nature. Participants did not believe that an effective process was available at the Law Society to address systemic complaints. The Working Group heard from a number of participants who stated that a system of anonymous complaints would assist in alleviating some of the concerns about reporting cases of racial discrimination.

118. The Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry, which was mandated to inquire into a significant number of sexist, misogynist, and homophobic remarks and images posted on Facebook by fourth year male dentistry students at Dalhousie University, noted the pressing need for anonymous reporting mechanisms so that victims can protest such conduct without putting themselves at risk. This proposal was raised as a result of many who spoke to the Task Force about the need to be able to make anonymous complaints, especially in cases of sexual harassment and sexual assault. The Task Force notes "The biggest concern about anonymous complaints is that there is no way to effectively assess the merits of a particular complaint. However, a group of anonymous complaints all reflecting the same concern provides a signal that there may be a problem that requires some attention. Soliciting anonymous complaints for this purpose could be very useful."⁷⁷
119. Princeton University allows for anonymous complaints of discrimination, harassment and other violations of policies and regulations through an independent provider of hotline services. Complainants can submit a report online or by calling a free hotline to speak with a trained specialist.⁷⁸ Similarly, the City of Copenhagen in Denmark has developed an anonymous app for people to report incidents of discrimination. The purpose of the app is "to understand how widespread discrimination is and where and which groups are most likely to be targeted."⁷⁹
120. In 2010, the Nova Scotia Barristers' Society ("NSBS") launched a successful postcard campaign. The purpose of this campaign was "to raise awareness and generate feedback about gender harassment and discrimination in the legal profession." Licensees were encouraged to share their experiences of gender harassment and discrimination by submitting accounts of their experiences via anonymous postcards.⁸⁰ In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.⁸¹
121. The Working Group envisions a system through which anonymous discrimination complaints can be made to the DHC. If a certain threshold of complaints about a legal workplace is reached, the DHC can speak with the management of the legal workplace regarding the culture of the workplace and systemic issues. The purpose of these discussions would be remedial,

⁷⁷ Constance Backhouse, Donald McRae and Nitya Iyer, "Report of the Task force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry", June 26, 2015 at 76 available at <http://www.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf>

⁷⁸ Please see <https://secure.ethicspoint.com/domain/media/en/gui/27291/index.html>

⁷⁹ "Fight against discrimination: Copenhagen is for everybody", online: The City of Copenhagen

<https://international.kk.dk/artikel/fight-against-discrimination>

⁸⁰ "It will be our little secret", online: Nova Scotia Barristers' Society <http://nsbs.org/sites/default/files/cms/menu-pdf/gecpostcardbooklet.pdf>

⁸¹ *Ibid.*

rather than punitive. Proposed solutions could include implementing or adjusting policies and procedures or delivery of educational programs.

122. A review of the functions, process and structure of the DHC should take into consideration the concerns raised through the engagement and consultation processes and the anonymous complaint models outlined above.
123. In addition to feedback about the DHC Program, the Working Group heard concerns from consultation participants that systemic discrimination and reprisal for filing complaints are not explicitly cited as conduct violations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*. Although the Law Society may investigate complaints of systemic discrimination and reprisal, the Working Group believes that it is important to state this plainly in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* so that all licensees and members of the public are aware.
124. The Working Group has also heard that a certain level of expertise is essential in dealing with complaints to the Law Society of racial discrimination, particularly systemic discrimination. A trained team of Professional Regulation staff, equipped to deal with racial discrimination complaints, would assist in understanding and addressing the subtleties that often exist in racial discrimination cases.
125. In addition, racial discrimination often has systemic roots. It is suggested that the Law Society review its processes and consider ways to make them more effective in addressing systemic discrimination.
126. The Working Group believes that in order to create a safe space in which licensees can feel comfortable in making complaints of racial discrimination, including complaints related to systemic discrimination, the Law Society should engage in the abovementioned initiatives.

The operations of the Law Society of Upper Canada

Recommendation 13 – Leading by Example

- 1) **The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:**
 - a) **as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;**
 - b) **measuring quantitative progress through a census of the workforce or other method;**
 - c) **measuring qualitative progress by conducting inclusion surveys;**
 - d) **conducting regular equality, diversity and inclusion self-assessments;**
 - e) **based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;**

- f) **publishing relevant findings from b), c), d) and e); and**
- g) **providing equality and inclusion education programs for staff at the Law Society on a regular basis.**

2) **The Law Society will:**

- a) **conduct an internal diversity assessment of the bench composition and publicize the results;**
- b) **provide equality and inclusion education programs for Convocation on a regular basis.**

127. The rationale for the adoption of human rights/diversity policies to address fair recruitment, retention and advancement; for measuring quantitatively and qualitatively progress; and for conducting self-assessments is well articulated in this report. The strength of having diversity at the board level is also well documented. The Maytree Foundation, for example, notes that,

Governance is the top tier of leadership, where ultimate oversight, strategic direction and policy are determined. But equally important is the representational role that boards uphold. A lack of diversity at this level has sweeping implications for how underrepresented groups see themselves, their relevance and their place at the decision-making table.⁸²

128. During the engagement and consultation processes, participants indicated support for an internal equality audit of the Law Society workforce and the development of a more diverse public face/image for the Law Society, including at the governance level. The Working Group is of the view that the Law Society must take a leadership role and model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

129. The Law Society has committed to a number of initiatives to increase diversity and inclusion in the organization:

- **Operational Equity Audit:** In 2015, with the assistance of Canadian Centre for Diversity and Inclusion (CCDI), the Law Society undertook an Operational Equity and Diversity Audit to assess the services provided to licensees and the public and to determine whether there are barriers that are contributing to inequality or perceived inequality in the provision of those services – in particular, involving members of racialized and Aboriginal communities. The Law Society is currently working through the results of this audit to determine where improvements can be made in its operations.
- **Employee Diversity Census and Inclusion Survey:** Earlier this year, the Law Society, also with the assistance of CCDI, launched an employee diversity census and inclusion survey. The purpose was to collect data to help the Law Society better understand the make-up of its organization and how to best serve Law Society staff's needs. There was a 72% response rate, which was excellent, and the results will assist with the Law Society's efforts to promote a diverse and inclusive culture that is supportive to all employees.
- **Employee Engagement and Enablement Survey:** This year the Law Society has also conducted an Employee Engagement and Enablement Survey, assisted by the Hay Group,

⁸² Please see DiverseCity on Board at <http://diversecityonboard.ca/about/>

in order to improve the effectiveness of its organization and enhance communications between management and employees at all levels.

- **Bencher Diversity Survey:** Convocation has identified conducting a diversity survey of the bencher composition as a priority for this term. We are currently working on finalizing this survey.

130. As mentioned above, both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* provide that licensees have special responsibility to uphold human rights principles, protect the dignity of individuals and recognize diversity and inclusion. The Law Society is committed to identifying barriers and gaps in its workforce and governance and implementing comprehensive equality, diversity and inclusion initiatives to improve equality, diversity and inclusion.

Appendix A

Results

Summary of Community and Consultant Engagement Process Results

“You work harder to prove yourself. You cannot necessarily do things that your white colleagues can do as there is a different connotation. Generally I have always been told that I have to work harder than my white counterparts. Which in some respects is sadly still true at this day and age.”

— Community Liaison Meeting

The qualitative and quantitative data obtained from the engagement processes identified widespread barriers experienced by racialized licensees within the professions at all stages of their careers.

Key informants, focus group participants and survey respondents identified racialization as a significant factor that shapes the experiences and career outcomes of racialized licensees. The consultant engagement results indicated that racialized licensees have a lower success rate in securing job placements, finding first jobs and securing suitable practice environments. Moreover, racialized licensees felt that they were disadvantaged in law school and that they had not advanced in their careers at the same rate as their non-racialized colleagues.

Racial and ethnic barriers were ranked highly among the barriers to entry and advancement. Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry to practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees frequently identified physical appearance, socioeconomic status, place of birth and upbringing, age, manner of speaking English/French and gender identity as barriers — more so than non-racialized licensees. Racialized licensees were also more likely to have struggled to find an articling position or training placement.

Similarly, 43% of racialized licensees identified ethnic/racial identity as a barrier/challenge to advancement, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees were more likely than non-racialized licensees to believe they had not advanced as rapidly as colleagues with similar qualifications.

Racialized participants identified a number of specific challenges faced in the professions. Community liaison process participants, key informants and focus group participants provided numerous examples of discrimination and stereotyping faced in the everyday professional experiences of racialized licensees. Some experiences were overt, while others were more subtle. Participants spoke of assumptions by members of the professions and clients that racialized lawyers are unskilled employees, interpreters, social workers, students or clients. Participants also identified situations where racialized licensees were excluded from files and client meetings based on personal characteristics. Some participants stated that in some cases, licensees from certain parts of the world were associated with terrorism. The Working Group heard a number of participants say, “you can’t just be good, you have to be better.”

Racialized participants spoke about challenges linked to cultural differences and fit. Many racialized licensees stated that they felt alienated from the dominant culture of firms. They provided examples of

firm-related social events, which involved playing hockey, playing golf and drinking alcohol. Some racialized licensees indicated that they did not participate in these activities and therefore they did not “fit”, noting that “fit” was important for entry and advancement. Some participants also stated that they were not offered career opportunities because of their “foreign sounding” names.

Participants spoke in detail about the lack of access for racialized licensees to mentors, networks and role models. Racialized participants indicated that they were not aware of programs or resources available to them. They also noted that they did not have the same professional connections and networks as their non-racialized colleagues and lacked role models in their field within their ethnic communities.

Participants noted that race-based barriers are often complicated by the additional experiences of discrimination based on sex, gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions.

Generally, participants noted that the challenges faced by racialized licensees impact the reputation of the legal system in Ontario, affect access to justice for Ontarians and affect the quality of legal services for the public.

Summary of Consultation Process

The Working Group received thoughtful oral and written submissions from the professions regarding strategies to address the challenges faced by racialized licensees.

A. Enhancing the internal capacity of organizations

The Working Group posed the following questions related to this theme in the consultation paper:

- How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?
- What is the preferred model for the collection of firm demographic data and why?
- How could the Law Society work with in-house legal departments to develop model contract compliance programs for in-house legal departments that retain firms?

Diversity Programs

“We need to encourage firms to be champions of diversity.”
— Participant

Consultation participants showed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces. Participants reminded the Working Group that a “one size fits all” approach should be avoided — firm size, industry and geographical location should be considered if the Law Society is to develop diversity programs.

A number of participants supported the idea of creating a diversity project modelled on the Law Society of Upper Canada's *Justicia Project*. Such a project would include the development and adoption of

resources for the fair recruitment, retention and advancement of racialized licensees.⁸³ Participants were divided, however, on whether diversity programs should be mandatory or voluntary. Some participants noted that voluntary programs create buy-in and a willingness to create change. A number of participants stated that it is important to have “diversity champions” who will lead change from the top-down. Participants outside of the Greater Toronto Area (GTA) that work in small firms saw the value of voluntary programs as small firms may lack the resources to implement mandatory programs. Some participants noted that mandatory programs could create backlash.

Participants in favour of mandatory programs argued that mandatory programs create stronger awareness of equality and diversity issues. One participant, who had experience with employment equality programs, said that it is necessary to have an enforcement mechanism in place. Other participants believed that, at the very least, the Law Society should require legal workplaces to have equality and diversity policies in place. Some participants suggested that the Law Society ask licensees to answer questions related to their firm’s policies in the annual report in order to prompt change. Although it was suggested by some that requirements could include mandatory targets for the number of racialized licensees that must be interviewed or hired by legal workplaces; the majority of participants were strongly opposed to the creation of mandatory hiring targets and timelines.

Some participants supported the proposal that firms complete a self-assessment about their diversity performance, which would include more than an analysis of demographic data. One participant stated:

Beyond numbers, look at the ways in which interactions are made, the ways in which people are hired, anti-nepotism policies, mentoring programs. All of these things are bigger pieces of the diversity pie.

The majority of participants interested in this idea indicated that the self-assessment should be voluntary; however, the Law Society could provide incentives for firms to engage in this process. There were some participants who were in support of mandatory self-assessments that would be conducted by employees instead of firm management to garner more valuable results. Additionally, participants stated that the Law Society should provide legal workplaces with self-assessment templates and tools.

Collecting Demographic Data

“Data collection is a humble but important first step.”
— Participant

The Working Group heard a broad range of views on the issue of demographic data collection; however, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”. Some participants believed that mandatory data collection is crucial to advancing diversity and inclusion, while others believed that mandatory collection could halt the progress that is already being made by legal workplaces in the area of equality and diversity.

Participants on the side of mandatory collection had a number of suggestions related to the methods of collection and reporting. The majority of participants, including those in small firms and outside of

⁸³ The Justicia Project was launched in 2008 to create a collaboration between medium and large sized firms and the Law Society. The participants signed agreements and committed to develop policies, resources, practices and programs that would address barriers women face in the legal profession in relation to retention and career advancement. The Justicia Project prompted law firms to review policies and practices and to participate in the creation of resources on subjects such as leadership, business development, career advancement, parental leave and flexible work engagements, in order to increase the retention and advancement of women lawyers.

Toronto, were in favour of the Law Society collecting demographic data. Some participants suggested that the Law Society could use the data collected in the annual report to provide legal workplaces with their individual legal workplace demographic data and aggregate demographic data of legal workplaces of similar size and location to provide a benchmark. Participants also noted that it would be useful to capture information about inclusion and advancement in addition to numbers. Some participants in favour of mandatory reporting stated that, in order to encourage change, the demographic information for each firm should be publicly available.

Participants in favour of voluntary data collection noted that a number of large firms are already engaging in demographic data collection and inclusion surveys, and are committed to this work. Should the Law Society mandate data collection, it could have a negative effect on the work already being done. Participants from small firms indicated that they are unsure how mandatory data collection would be enforced. Some participants believed that demographic data should be reported, but on a voluntary basis. A number of participants suggested setting data collection as a criterion of a voluntary diversity program. The Law Society could then incentivize data collection by providing ratings or awards for meeting certain levels of diversity and inclusion.

Contract Compliance

“The case for diversity and inclusion has a business foundation”

— Participant

The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity. A number of participants highlighted the Bank of Montreal's contract compliance program and the work of the Legal Leaders for Diversity (“LLD”) as best practices in this area. Some participants suggested that the Law Society work with LLD, other in-house counsel associations and firms to develop model diversity-related procurement and contract compliance policies.

Some participants noted that they would discourage mandatory contract compliance as often people respond better to incentives rather than punitive consequences. Some participants from small firms pointed out that strict mandatory contract compliance related to diversity could be difficult for small firms and lead to them being unable to compete for work.

B. Mentoring, advisory services and networking

The Working Group posed the following questions related to this theme in the consultation paper:

- What are the preferred mentoring and/or advisory services models for racialized licensees?
- What are the preferred networking models for racialized licensees?

Mentoring and Advisory Services

“Mentoring is not one size fits all.”

— Participant

The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees; however, no group of participants noted that, some cases, mentoring “...serves to reproduce institutional inequality and assist white licensees in securing inclusion within social institutions and the professions”.

In November 2013, Convocation created the Mentoring and Advisory Services Proposal Task Force (“Mentoring Task Force”) to consider mentoring, advisor and other support services for lawyers and paralegals. The Working Group worked with the Task Force and shared with the Task Force members the information obtained on mentoring and advisory services from the consultation process. In January 2016, Convocation approved a new law practice coaching and advisory initiative, which “...will assist in the development of competent legal professionals by supporting the growing need in the professions for short-term advisor supports addressing file-specific and substantive/procedural matters, and longer term coaching supports to foster best practices.”⁸⁴

Types of Mentoring and Advisory Services

Generally, the Working Group heard that there is no “one-size-fits-all” model for mentoring. Different types of mentoring may be required at different stages of a person’s career for different purposes. For example, mentoring could be offered to provide assistance on specific cases or it could be related to how to navigate the professions as a racialized licensee.

A number of participants highlighted the importance of providing mentoring for sole practitioners and internationally trained lawyers. Paralegal participants told the Working Group that there is a shortage of mentoring programs in the paralegal community and thus a significant need. Other participants noted that racialized licensees in large firms do not have role models within their firms so would benefit from some assistance to find mentors from outside their firms.

A significant number of participants emphasized that sponsorship⁸⁵ is also essential to the career advancement of racialized licensees, noting that it would be helpful to have sponsors or champions advocating for individual licensees at decision-making tables.

Structure of Mentoring and Advisory Services

Some participants stated that it would be useful to have a panel of mentors who could address different facets of a licensee’s career, including providing advice on navigating barriers, substantive legal issues or career advancement. Participants also noted that mentoring should be provided to students before law school, to address pipeline issues, and in law school.

A number of legal workplaces described their mentoring programs and expressed interest in working collaboratively with the Law Society to help licensees in need of mentoring. One way in which this could take place is using enhanced website services and creating a highly functional and welcoming online mentoring community with links to partner legal workplaces. As many legal workplaces have their own websites, the Law Society could function as a connector to these kinds of services. Participants also suggested that the Law Society develop, in collaboration with legal workplaces, best practices toolkits and/or guidelines on mentoring.

⁸⁴For further information, please see <https://www.lsuc.on.ca/with.aspx?id=2147502150>

⁸⁵ Sponsorship is distinct from mentoring. While a mentor can offer advice and insights to help the protégé achieve her career goals, a sponsor uses his or her clout to give the protégé access to opportunities for advancement. See *Justicia Guide to Women Leadership in Law Firms* (Toronto: The Law Society of Upper Canada, 2013) at 25.

Participants proposed various mentoring models including one-on-one mentoring with various mentors for different purposes, study groups with licensees who have similar challenges and group mentoring to assist with practice management and career advancement. Some participants suggested that junior licensees could also mentor other junior licensees from the same racialized community. In a similar vein, some participants stated that junior racialized licensees could act as effective mentors to senior non-racialized licensees.

Participants noted that it is often difficult to find willing and experienced mentors. One participant for example noted difficulties finding racialized mentors because, “we are not grooming racialized lawyers to become leaders.” Some participants suggested that the Law Society could ask licensees to indicate in the annual report or using another methodology such as the Law Society Portal, their willingness to act as mentors. The Law Society could then create a mentor roster. Similarly, other participants suggested having a web-based registry for mentors, which could include the mentors’ area of law and their time availability. Incentives for mentors could include the receipt of professionalism hours for mentoring services or discounted CPD programming. Some participants believed that the Law Society should compensate mentors, while others believed this would negatively impact the mentor-mentee relationship. Participants suggested that mentors should be culturally competent.

Participants outside of the GTA highlighted specific issues related to mentoring in their regions. A number of participants noted that the majority of professional associations that represent equality-seeking groups do not operate outside of the GTA, which limits access to association-based mentoring programs. One participant stated that if mentoring was to be offered in-person, it should be geographically accessible for licensees in areas across the province.

Networking

“Have more inclusive events.”
— Participant

Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging. Some participants suggested that it would be useful for the Law Society to facilitate collaboration between the various associations and/or to promote already-existing networking opportunities provided by the associations.

Some participants told the Working Group that legal associations are often too costly to join. One group of participants suggested that the Law Society provide subsidies to racialized licensees to assist them to join associations.

Some of the associations also described concern with the cost of holding events for their sectors of the bar at the Law Society and expressed interest in having “in-kind” support and partnership from the Law Society to make those events accessible to diverse communities of lawyers.

Some participants proposed that the Law Society hold regional networking events for licensees. Others noted that CPD programs can be good networking opportunities. However, some participants stated that the cost of CPD programs can be prohibitive and suggested that the Law Society provide low-cost or sliding scale CPD programs. One participant suggested that the Law Society “host planned and structured networking events that are, in location and content, culturally relevant to different groups of racialized licensees.” Some participants noted that hosting alcohol-free events would increase inclusivity.

Participants highlighted the fact that internationally trained lawyers and sole practitioners feel particularly isolated, so networking opportunities should also be targeted to these groups.

C. Enhancing cultural competence in the professions

The Working Group posed the following question related to this theme in the consultation paper:

- How could the Law Society enhance the professions' cultural competence through its CPD programs?

CPD Programs

"We need to be educated about diversity."

— Participant

A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory CPD training on cultural competency, unconscious bias, and anti-racism. Some participants suggested that refresher sessions should be mandated "at intervals over the course of licensees' careers."

Others suggested that this CPD training be provided on a voluntary basis. There was concern expressed that requiring this form of training to be taken by all could be counter-productive. In either case however, participants agreed that professionalism credits should be provided CPD training on these topics.

In terms of content, participants suggested that cultural competency training should go "beyond learning about cultural practices of 'other' cultures and towards an examination of bias, inequality and discrimination". Similarly, one participant noted that the Law Society should "utilize an anti-discrimination, anti-racism and anti-oppression framework focused on deconstructing power structures and privilege — not on cultural competency." Participants also suggested that the Law Society work with associations of racialized licensees and/or with knowledgeable experts to develop content for the training sessions.

Some participants highlighted the importance of requiring licensees involved in recruitment, hiring and promotion decisions to participate in CPDs related to cultural competency and unconscious bias, specifically addressing topics such as bias-free interviews. One participant stated, "If attitudes don't change, the numbers are not going to change." Participants suggested that this CPD programming could be offered via webcast during summer student and articling interview periods. It was also proposed that the Law Society deliver these programs and other cultural competence and anti-discrimination and harassment programs at firms.

A number of participants noted the need to ensure that education on cultural competency, unconscious bias, anti-racism and anti-oppression start at law school and in the Licensing Process. A participant suggested that the Law Society use its seat on the Federation of Law Societies to encourage the inclusion of cultural competency and diversity awareness as part of the core law school curriculum. One group of participants suggested adding a cultural competency course to the college curriculum for paralegal programs. Some participants proposed including cultural competency, diversity and inclusion in the Professional Responsibility and Practice Course that articling students must complete.

It was proposed that all benchers attend cultural competency training in order to enhance awareness at the governance level and ensure that equality, diversity and inclusion are taken into account throughout the policy development process.

Generally, participants stated that CPD programs should be widely available via webcast and recorded. Additionally, some participants suggested that the cost of CPD be reduced, perhaps by working with regional associations.

D. Discrimination and the role of the complaints process

The Working Group posed the following question related to this theme in the consultation paper:

- How should the Law Society best ensure that complaints of discrimination are brought to its attention and effectively addressed?

Complaints of Discrimination

“People have to feel comfortable in accessing policies.”
— Participant

The Working Group heard a range of suggestions on encouraging licensees to bring forward complaints of discrimination.

Participants suggested updating the *Rules of Professional Conduct*⁸⁶ and the *Paralegal Rules of Conduct*⁸⁷ to specifically address systemic discrimination and subtle forms of discrimination. Some participants recommended advertising that complaints of discrimination can be made through the complaints process and devoting more resources to promoting the Discrimination and Harassment Counsel Program.

Participants noted that licensees will often refrain from reporting experiences of discrimination because they fear the negative impact a complaint might have on their careers and reputations. One participant stated, “We don’t want to rock the boat or be considered a troublemaker”.

Some participants were in favour of the Law Society creating an anonymous system of receiving complaints. However, licensees in small firms said this would not be helpful for them as their firms are too small for them to remain anonymous. Some participants that supported an anonymous complaints process recommended that the Law Society investigate firms that have been the subject of a number of anonymous complaints. Participants also suggested amending the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to include a provision that states that reprisals for complaints of discrimination and harassment are prohibited.

Participants believed that bringing a complaint through an association may not alleviate the issues raised. Some participants suggested that the Law Society ask licensees, using the annual report, whether they have ever experienced discrimination. This information could then be compiled by legal

⁸⁶ *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

⁸⁷ *Paralegal Rules of Conduct* The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

workplace and provided to legal workplace management. Other participants proposed that the Law Society audit firms to ensure that they have policies related to equality, diversity, discrimination and harassment.

Regardless of the method taken to receive complaints, participants noted that it is important for the Law Society to advise complainants of what action was taken.

Some participants noted it would be helpful to have a group of diverse expert Professional Regulation staff who are trained in cultural competency and have an understanding of racial discrimination.

E. The operations of the Law Society of Upper Canada

“The best thing the Law Society can do is start to mirror the behaviour they want to see.”

— Participant

The Law Society received support from participants for its proposals to enhance its current equality compliance program, conduct an internal equality audit, collect further data on the regulatory process and develop a more diverse public face/image for the Law Society. A number of participants have emphasized that the Law Society must model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

On a few occasions, participants at the meetings and open houses noted the lack of diversity of Working Group presenters. Working Group members attended and presented at open houses and meetings when their schedules permitted, and at some meetings, the group of presenters did not reflect the diversity of racialized licensees at those meetings. That became a point of discussion with participants expressing concern about the overall diversity of Convocation, but also expressing satisfaction that there are non-racialized benchers who are interested in being part of change and in hearing from licensees on these subjects. It is important to note that a bencher election was conducted during the consultation process and the composition of Convocation appears to be more racially diverse than ever and representative of the professions.

White Privilege

Consultation participants spoke of “white privilege”⁸⁸, and expressed the need for all to acknowledge its existence in order to address the challenges faced by racialized licensees. A number of participants noted that it is important for licensees to understand how power operates to produce advantages for some and deny advantages to others.

Daily Verbal, Behavioural and Environmental Indignities

Consultation participants provided descriptions of their experiences of commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate

⁸⁸ The Ontario Human Rights Commission defines “privilege” generally as ‘unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. It can also refer to the relative privilege of one group compared to another. “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2475>

hostile, derogatory or negative racial slights.⁸⁹ Examples ranged from assumptions that they are not licensees but in fact interpreters or accused, to inappropriate questions regarding their perceived “otherness.” Participants noted that it is important for licensees to understand the impact of such behaviour and for the Law Society to find ways to address these subtle forms of discrimination.

Indigenous Licensees and Racialized Licensees: Historical and Geographical Differences

Open house learning and consultation programs in Northern Ontario yielded interesting information about the similarities and differences between the experiences of Indigenous licensees and licensees that self-identify as racialized. Participants in Thunder Bay noted that, in terms of race and racism, the population in northern areas of the province is often divided into Indigenous and non-Indigenous peoples. Participants identified several examples where they had witnessed racism directed at Indigenous people and where they had observed that racialized people were treated differently from non-racialized people. It was noted that because of the distinctive histories of Indigenous peoples, strategies to respond to racism faced by Indigenous peoples and to racism faced by racialized peoples may need to differ. The Law Society’s policy work reflects this uniqueness, including the work of the EAIC and other initiatives that are outside the scope of this project. The Law Society is also currently developing a framework of reconciliation in consultation with the Indigenous Advisory Group, established in 2016 with the Law Society to guide the Law Society and the legal community towards a better understanding of how to address unique issues faced by Indigenous peoples in Ontario and promote responses to and implementation of the Calls to Action from the [Truth and Reconciliation Commission of Canada’s final report](#) and the [First Nations Representation on Ontario Juries](#) report by The Honourable Frank Iacobucci.

⁸⁹ Such behaviour is sometimes referred to as microaggression. Sue et al. define microaggressions as “the brief and commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory or negative racial, gender, sexual orientation and religious slights to the target person or group.” Sue et al. note that “Perpetrators of microaggressions are often unaware that they engage in such communications when they interact with racial/ethnic minorities.” Please see http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf



Tab 3.1.1

**WORKING TOGETHER FOR CHANGE:
STRATEGIES TO ADDRESS ISSUES OF SYSTEMIC RACISM IN THE LEGAL
PROFESSIONS**

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November 14th, 2016

Submissions to the Law Society of Upper Canada on the Experiences of Racialized Licensees

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It has been providing legal representation, counselling, and interpretation in over 100 languages to women who have experienced all forms of violence, since 1985. The Clinic was established in the memory of Barbra Schlifer, an idealistic young lawyer whose life was cut short by violence on the night of her call to the bar of Ontario on April 11, 1980. The Clinic is not part of the LAO suite of community and specialized clinics. Rather, it is a separately incorporated not-for-profit that supplements the lack of legal services for survivors of violence.

We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals, and clinical education for law students. We work on law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact women survivors of violence. The Clinic serves women from ethno-racially and socio-economically diverse backgrounds, frequently from highly marginalized communities. Our clients often experience multiple social inequalities, including poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability.

On the basis of the experiences of our staff, (among whom are a high number of racialized licensees) we recommend that the Law Society of Upper Canada ("LSUC") allocate resources and provide a platform for racialized licensees to combat systemic racism and ensure a lasting culture of change in the legal profession. In this way, LSUC could move its commitment toward systematically supporting the implementation of concrete initiatives. Racialized licensees in the profession should lead the discussion and planning that will create lasting change. This change is imperative to the ongoing

success of the profession, which numerous reports have called for in response to barriers and an ossified professional culture.¹

Professional Obligations and Practices

Relevant Recommendations: 1, 2, 3, 9, 10

The LSUC must ensure its commitment to reinforcing the professional obligations of its members to recognize and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation. This includes, specifically and annually, addressing the lack of focus on diversity and systemic racism in law school curricula. Continuing professional development (“CPD”) for lawyers and legal practitioners must also emphasize this priority. To operationalize diversity and

¹ Trevor C. W. Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall L.J. 51 at pp. 51 - 55, 63 - 68, 71 - 78 , online: SSRN < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151799 >

Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism ’ : Historical Perspectives,” pp . 2 - 1 to 2 - 13, 2 - 21 to 2 - 26 (“Barriers to Entry: Something Less than a Warm Welcome?”) , paper presented at the Chief Justice of Ontario ’ s Advisory

Michael Ornstein, Racialization and Gender of Lawyers in Ontario , a Report for the LSUC (Toronto: LSUC, April 2010), pp . i - ii (“Executive Summary”) and 34 - 36 (“Conclusions”) , online: LSUC < www.lsuc.on.ca/media/convapril10_ornstein.pdf > • Sabrina Lyon &

Lorne Sossin, “Data and Diversity in the Canadian Justice System” (2014) Journal of Law & Equality , pp . 3 - 12, 15 - 16 , online, Osgoode Digital Commons: < <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps> >

Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), fact sheet, online: LSUC https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf

David Lepofsky , “Making Courts and Mediations Accessible for People with Disabilities” (2014) video, online: < https://www.youtube.com/watch?v=p3d73L_GpGXY&feature=share&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=7 >

Law Society of Upper Canada, Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), pp. 10 - 21, online: LSUC < www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical%2812%29.pdf >

Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) < https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf >

equality training, the LSUC should develop clear guidelines for delivering relevant, timely, and meaningful educational and CPD programs which address the historic inequalities in Canada for racialized communities and the lack of diversity and plurality that is a persistent problem in the legal profession. These programs should also focus on the experiences of licensees who may experience multiple and intersecting forms of marginalization, including racialized women, religious minorities, sexual and gender expression minorities, or licensees from low-income backgrounds.

Building Communities of Support and Addressing Systemic Discrimination

Relevant Recommendations: 11, 12

The LSUC must actively seek to build sustainable communities of support to recognize the unique experiences of racialized licensees. There is a profound lack of meaningful and ongoing mentorship for racialized licensees in the profession, and very little systematic fostering of natural connections and capacity building between senior and junior counsel. Building communities of support requires recognition of the social location of licensees and their lived experiences as minorities in a very hierarchical profession. Often, the narrative of “firsts” replaces the hard work of substantive and sustainable change, and creates an impression of “progress.”²

The LSUC and employers should also examine practices which reinforce so-called “token diversity,” which can result in the hiring of a few racialized licensees to meet the mandate of diversity and equality, without addressing ongoing oppressive workplace culture and the historical disadvantage faced by minority licensees. Ultimately, the concept of the plurality is useful here, as a commitment to diversity is empty without providing racialized and minority licensees access to meaningful positions of power within the legal profession.

Racialized licensees also experience gaps in employment equity, particularly if they are women. “Men are more likely to be in sole practice and law firm partners, while there is a higher proportion of women in all the other stations, especially in house, in clinics, in

² Laura Beeston, “Canada appoints its first transgender judge” The Globe and Mail (December 18, 2015) <http://www.theglobeandmail.com/news/national/canadas-first-transgender-judge-named/article27876501/>

government and education.”³ As with gender wage gaps in other fields, women lawyers are at a definite economic disadvantage vis-à-vis their male colleagues.⁴

Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women, exemplifying and maintaining women’s subordinate positions in such a material way, contributes to an overall vulnerability to violence and disrespect, including the daily experiences of racialized licensees who are women. The LSUC should commit to employment equity for all its licensees and create meaningful mechanisms to allow licensees to excel in their legal careers while living balanced lives. This commitment includes both an eradication of the gender and racial wage gap, as well as a commitment to providing equitable parental leave for families having children, and not penalizing women for taking time away from their legal practice.

Sexual violence and its impacts in the employment context highlight yet another dimension of the unique experiences of racialized licensees, particularly in a hierarchical profession such as law. In situations that exacerbate unequal power dynamics, such as employment contexts, women, particularly visible minorities, continue to be deterred from reporting sexual assault and adequate state protection mechanisms are often not available, especially when negative repercussions on one’s reputation or employment are at stake.⁵

³ Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) <
https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf >

⁴ Statistics Canada. 2011. “Average female and male earnings.” Online:
<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>
United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FCAN%2FCO%2F6&Lang=en

OECD. 2014. “Gender Wage Gap.” Online: <http://www.oecd.org/gender/data/genderwagegap.htm>

See for example, Sheila Block and Grace-Edward Galabuzi. 2011. Canada’s Colour Coded Labour Market: The gap for racialized workers. Online: http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf; Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:
http://ywccanada.ca/data/research_docs/00000140.pdf

Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:
http://ywccanada.ca/data/research_docs/00000140.pdf

⁵ Alice Woolley, <http://www.slw.ca/2014/06/10/yesallwomennotalldmen-sexual-harassment-in-the-legal-profession/>

The power dynamics inherent in the practice of law also exacerbate daily microaggressions experienced by racialized licensees in the workplace, such as when interacting with court staff, or with the judiciary. Our students report ongoing struggles with sexualized work environments throughout the profession. These power dynamics are also inherent in the employment opportunities, and the experiences of racialized licensees during interview processes, both at the entry-level during the law school On-Campus Interview (“OCI”) processes, as well as during individual interviews at law firms, clinics, and the government. Comments about a candidate’s ethnic background or chosen hairstyle may seem minimal, yet they underscore their minority status in a profession still mostly populated by white, male, Anglo-Saxon legal practitioners, particularly in positions of power such as partners, CEOs, or judges.

If the goal of the LSUC is to foster an inclusive profession responsive to the increasing diversity of the Canadian population, there must be a sustained commitment to address the root causes of discrimination and racism still inherent in the legal profession. This commitment must include law school initiatives as well as CPD initiatives for all members of the profession, including students, in a climate of careful monitoring and compliance within the profession to professional obligations of equity. It must also include profession-wide community building and meaningful solutions to the ongoing systemic inequality of racialized licensees, such as combating pay inequity, sexual violence in the workplace, and the inherent power imbalances. These goals are especially pertinent in a profession committed to providing justice and protecting the public interest.

Barbra Schlifer Commemorative Clinic

Per:



Amanda Dale, Executive Director
Deepa Mattoo, Legal Director
Petra Molnar, Articling Student



**BLACK LAW STUDENTS
ASSOCIATION OF CANADA**
**L'ASSOCIATION DES ETUDIANTS NOIRS
EN DROIT DU CANADA**

Monday, November 14, 2016

Via Email: racialized.licensees@lsuc.on.ca

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Quansah,

Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions

The Black Law Students' Association of Canada ("BLSA Canada") is a national organization that represents Black law students across Canada in both official languages. Our purpose is to promote increased representation of Black students in law schools and to support and enhance academic and professional opportunities for Black law students. BLSA Canada and its chapters at law schools nationwide are concerned with the challenges faced by racialized licensees in the legal profession and the barriers these challenges represent with regard to entering the profession.

In its September 22, 2016 Report to Convocation, the Equity and Aboriginal Issues Committee of the Law Society of Upper Canada ("LSUC") released the final report of the Challenges Faced by Racialized Licensees Working Group ("The report"), containing 13 recommendations in 5 broad categories for addressing barriers faced by racialized licensees in the legal profession. In furtherance of our organizational purpose, BLSA Canada offers the following comments on the recommendations outlined in the report.

In providing these comments, it is not BLSA Canada's aim to critique each of the proposed recommendations set out in the report. Instead, BLSA Canada's comments are structured more broadly to point out overarching areas of concern and to highlight ways in which some of LSUC's recommendations might be better supplemented. In providing these comments, BLSA Canada believes it can offer some insight on the perspectives of racialized students who are not yet licensees but soon will be.

The need for the LSUC's leadership

BLSA Canada would first like to applaud the law society for undertaking this initiative and for creating space in which the concerns of racialized licensees can be heard. Racial inequality and discrimination have long been concerns for racialized licensees and any proposed solutions must address the systemic roots of the challenges which racialized licensees face. In taking this long overdue and much needed step, the LSUC is showing leadership in taking measures to eliminate the barriers which contribute to the underrepresentation, marginalization and isolation of racialized licensees in the legal profession. As the regulator of the legal profession, any success that is to be had in addressing these barriers requires that the LSUC shows strong leadership.



There must be a focus from the LSUC on challenges that arise before entry into practice

Challenges faced by racialized licensees do not all of a sudden arise at the point of entry into the profession. Racialized law students and licensing candidates experience many of the challenges that are identified in the report (i.e. discrimination and stereotyping, lack of mentors and role models) long before they are seeking articling placements, completing the licensing process or being called to the Bar.

It is our opinion, that if the LSUC is committed to addressing the systemic challenges faced by racialized licensees, it should look for ways to work with law schools to address these hurdles long before their entry into the legal profession. We believe that collecting this data would allow for the assessment and identification of existing issues from the moment future licensees enter law school.

Another way in which the LSUC could work more closely with law schools is during the LSUC-regulated recruitment processes (i.e. the summer recruitment of 1L and 2L students as well as articling recruitment). As the report considers developing guidelines and collecting information on hiring practices, recruitment and retention, this presents an opportunity for the LSUC to facilitate better assessment of hiring practices in the profession. As the LSUC already puts rules in place that firms are to abide by during the structured recruitment processes, it would require very little of the LSUC to have some sort of follow-up measures to ensure that these recruitment processes are sensitive to issues of discrimination and stereotyping.

In the report, Recommendation 2 contemplates enhancing the On-Campus Interview (“OCI”) process for the dissemination of information. We suggest that it would also be beneficial to consider how OCIs and other such recruitment processes could be enhanced to better collect information.

Exit surveys as a follow-up to recruitment processes

It has become a common practice at a number of law schools to conduct anonymous surveys once the OCI process is completed as a means for law faculties to provide useful information to their respective student populations about how the process unfolds (i.e. this has been done in recent years by way of student newspapers like *Ultra Vires* at the University of Toronto Faculty of Law and *Obiter Dicta* at Osgoode Hall Law School). Such anonymous surveys provide opportunities to collect qualitative and quantitative data about the OCI process. The information that is compiled has often been relied upon by other students as a source of candid information about a process that is largely driven by the pursuit of the elusively-defined and extremely subjective quality of firm culture “fit”.

In working with the law schools to gather information in this manner, the LSUC could potentially obtain much more relevant and reliable information than that which can be obtained through self-assessed and self-reported data about firm hiring practices. We suggest that such information be included as a helpful supplement to the proposed inclusion index recommended in the report.



Concerns about what information is shared publicly and what is only released to firms

The collection of quantitative self-identification data is beneficial and will in fact assist in measuring progress. However, information is only as valuable as it is accessible. Many legal employers already have diversity policies in place and even more state their commitment to fostering diverse workplaces, yet the manifestations of these policies and commitments are seldom disclosed. As a result, we are concerned that the data made available to the public will be insufficient.

Racialized candidates have an interest in knowing about the diversity and inclusion efforts and results of their prospective employers and not just those who are the top ranked diversity employers. Indeed, the accessibility of this information would be of great benefit in assisting students to make informed decisions about where they seek employment. And while we recognize that some are weary of adopting a “name and shame” approach to compliance, this legitimate concern of racialized students should be considered when determining what sort of information should be made publicly available.

While BLSA Canada recognizes that naming and shaming may not be the most useful approach, the accepted alternative should not be to deprive licensees of this valuable data. We encourage the law society to explore means to make the information publically available while mitigating the repercussions associated with so-called “name and shame” approaches.

Recognizing how the LPP oversight affects racialized licensees

By the LSUC’s own account, racialized candidates are overrepresented in the Law Practice Program (“LPP”). The overrepresentation of racialized candidates in this program is of concern to BLSA Canada. Further though, we also have concerns as to how participation in the LPP impacts their legal careers. Given the overrepresentation of racialized candidates in the LPP, we strongly advocate that these concerns must be considered by the LSUC if it is to successfully address the issue of systemic racism in the legal profession.

By virtue of the fact that the consultation process for the report began prior to the creation of the LPP, the implications the program has for racialized candidates seeking entry into the legal profession has thus been overlooked. It is our opinion that the LSUC must assess how the LPP impacts racialized licensees.

Though we are glad that the LSUC has backtracked on its recent proposal to discontinue the LPP, it is extremely concerning that this proposal was put forth in light of the LSUC’s knowledge that racialized candidates disproportionately rely on this program to satisfy their licensing requirements. Such a proposal to discontinue a program that is still very much needed at this time (especially by racialized candidates), without proposing any alternative to replace it contradicts the LSUC’s stated commitments to ensuring that the practice of law is reflective of all peoples in Ontario.

On a related note, the LSUC must recognize the impact its recent increase in licensing fees has on racialized licensees who have only recently entered or are trying to enter the profession. The increased cost places an extra burden on the shoulders of racialized licensees. While the LSUC endeavours to eliminate the systemic barriers that have long kept certain communities out of the profession, it should not introduce new ones.



**BLACK LAW STUDENTS
ASSOCIATION OF CANADA**
L'ASSOCIATION DES ETUDIANTS NOIRS
EN DROIT DU CANADA

Mentorship for new entry racialized licensees needs to be a priority

The working group's final report aptly recognizes that racialized licensees require access to professional mentors and networking avenues. However, the LSUC must recognize that while mentoring is critical at all stages of a lawyer's career, it is perhaps most critical at the outset of their career. The demands and stresses placed on new entries are becoming increasingly burdensome and increasingly harder to overcome.

The continuous decrease in new articling positions and a lessened demand for first-year hires means that many new licensees are increasingly incapable of coping with their high debt burdens. The relative precariousness of their situation (as compared with those who have been called to the Bar for several years and have secured employment) coupled with the systemic challenges they face justifies the formation of an LSUC supported mentoring initiative specifically for new entry racialized licensees. While professional mentoring is undoubtedly significant, racialized new entries would benefit from additional support from their mentors that goes beyond simply developing their practice. This sort of mentoring—mentoring that extends beyond life in the office—is often difficult to find.

Final Remarks

BLSA Canada welcomes the final report of the Challenges Faced by Racialized Licensees Working Group as a first step taken by the LSUC towards reducing systemic racism and discrimination in the legal profession. The LSUC has identified many of the barriers impeding the development and progression of racialized lawyers. BLSA Canada applauds many of the working group's proposed recommendations. However, we believe that to reduce the systemic barriers that racialized licensees face requires that the LSUC considers the unique perspectives and experience of racialized students who ultimately represent the future of the legal profession.

The cyclical nature of the systemic challenges faced by racialized law students and licensing candidates needs to be properly addressed. Hence, if the Law Society of Upper Canada is committed to eliminating the longstanding barriers faced by racialized licensees and to ensuring that the practice of law is better reflective of Ontario's diverse peoples and communities, it must take an approach that considers the barriers that racialized licensees face before they even enter the profession.

Ultimately, the LSUC needs to have a holistic understanding and approach to the challenges faced by racialized law students, licensing candidates and racialized licensees.

Yours truly,

BLACK LAW STUDENTS' ASSOCIATION OF CANADA

K. Hayward

Kojo Hayward
Vice President, External Affairs

Kyle Elliott
National Articling Representative

c. Stéphanie Déborah Jules, National President, BLSACanada



Black Law Students Association, Windsor Chapter
401 Sunset, Windsor ON N9B 3P4
blsawin@gmail.com

Equity and Diversity Committee
University of Windsor
Faculty of Law

November 2, 2016

RE: BLSA Feedback – LSUC Report on Challenges Faced by Racialized Licensees

To Whom It May Concern,

The Black Law Students' Association – Windsor Chapter is pleased to provide feedback regarding the Law Society of Upper Canada's report *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. We have given careful thought to the report and its proposed recommendations and hope that our input will be strongly considered.

We would like to emphasize that the concerns raised by racialized licensees in Ontario are multi-faceted and occur at various stages in the lawyer's career. In providing feedback, we have focused our attention on racialized law school applicants, law students and those undertaking the licensing process. We believe that the Law Society cannot effectively address barriers experienced by racialized licensees without first actively working to eliminate the challenges that arise at these foundational stages.

Recommendations

Gather information: Law schools, the Ontario Universities' Application Centre, and the Law Society should keep track of the number of racialized (1) law school applicants, (2) admitted students, (3) participants in the OCI process, (4) participants who successfully attained positions through OCIs, and (5) licensing candidates who attained traditional articling positions (national, mid-size and small firms) and those entering the Law Practice Program. It would also be worthy to gather statistics regarding the number of racialized individuals that remain at a law firm after completing articles and the average length of time that these individuals remain at the firm.

The experiences will vary, but collecting and publishing statistics on these areas will assist the Law Society in determining how to help the upcoming generations of racialized licensees. In addition, this information may help to assess systemic factors that result in racialized individuals remaining overly represented in some categories and significantly underrepresented in others.

Understand the barriers that exist: Racialized licensees often come from cultural and socioeconomic backgrounds which place a strong emphasis on values that may be overlooked or minimized within the legal profession. Racialized law school applicants, in many cases, have had less exposure to mentors in the legal profession and face barriers through lack of resources, information or financial means. These factors create obstacles for racialized individuals with regards to developing effective law school applications and achieving academic success while in law school.

The Law Society must work to mitigate these early barriers faced by racialized applicants and law students as these initial challenges often lay the groundwork for further obstacles to be faced once these individuals become licensees. The Law Society should collaborate with law schools to reduce barriers that exist in the application and law school admissions processes and should consider developing guidelines to inform the admissions process, with a view to eliminating such obstacles.

1/2



Black Law Students Association, Windsor Chapter
401 Sunset, Windsor ON N9B 3P4
blsawin@gmail.com

Start early: The Law Society must invest in initiatives that focus on providing racialized law school applicants and law students with resources, support, mentorship and information. These tools are necessary to developing effective applications and succeeding academically. We recommend that the Law Society work collaboratively with law schools, dedicate funding and resources, and develop mentorship initiatives with an express focus on these early and crucial development stages for future licensees.

While we welcome recommendation 11 in the report which speaks to “building communities of support” through “mentoring and networking initiatives”, we again would like to emphasize that these measures should be extended to include racialized law school applicants and law students. Recommendation 2 aims to work with law schools, “to create or provide better sources of information on what is needed to apply, interview and succeed in a larger legal workplace.” The Law Society must be conscious of limited resources available within law schools and is strongly urged to dedicate adequate financial support to aid law schools in achieving this goal.

The Law Society should also examine initiatives that can cultivate safe spaces where racialized licensees and law students can express their concerns and receive practical advice on how to address the particular challenges they face. For instance, the Law Society provides a resource for licensees to obtain advice on matters concerning professional conduct. A similar resource made available to assist racialized licensees, and a separate initiative dedicated to law students, could be developed to ensure guidance is readily available. This resource is an important tool as the challenges faced by racialized licensees and law students can involve issues that are highly sensitive or controversial, and confidentiality may be a strong concern for individuals seeking advice.

Think critically about hiring and lack of opportunity in the profession: A significant number of law firms hire based on the ‘fit’. It must be acknowledged that many racialized candidates, by virtue of their diverse cultural and socioeconomic backgrounds, are disadvantaged by ‘fit-based hiring’. The Law Society must do more to encourage law firms to adopt hiring practices that strive to eliminate bias. In order for racialized licensees to move beyond sole practitioner and small firm practice, and gain access to a greater number of opportunities, inherently biased hiring practices must be critically examined and more strongly discouraged by the Law Society.

Meeting service needs: The report recommends developing a resource centre with materials for “licensees in sole practice, associations of sole practitioners and small partnerships” to help overcome the fact that “24% of racialized lawyers are in sole practice and 33% ...in legal workplaces of two to five.” Such resources should be extended to law schools to better prepare racialized students for the range of options available within the legal profession.

Sharing the responsibility for change: Recommendations 9 and 10 consider initiatives that seek to promote cultural competency, equity and inclusion within the profession. In order to be effective, these initiatives must assist in uncovering unconscious prejudices. Furthermore, it must be made clear that the responsibility of ensuring inclusion does not fall solely on the hands of racialized licensees. Eliminating the challenges faced by racialized licensees must be a shared responsibility that is also carried by non-racialized licensees and the Law Society must work to encourage this notion within the profession.

Thank you for the opportunity to provide feedback. We look forward to continuing this discussion with you should you require further information.

Best Regards,
Black Law Students’ Association – Windsor Chapter

Feedback on LSUC's report *Working Together for Change:
Strategies to Address Issues of Systemic Racism in the Legal Professions* –
Proposal to Implement Recommendations 1, 2, 3, 4, 5, 6, 8, & 9:
Proposed Amendment to the Rules of Professional Conduct

R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule

November 3, 2016

Proposed Amendment to the Rules of Professional Conduct

R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule

Prepared by Students at Windsor Law

Prepared for Professor Tanovich's Legal Profession class Winter 2016

R6.3.1-4 – Transparency and Cultural Competence in the Hiring Process

Employers shall ensure transparency and abide by principles of cultural competence in their hiring processes. Employers have an obligation to disclose clear and definitive job descriptions, as well as all phases of any recruitment process, to all applicants.

Commentary

Preamble

[1] Although the legal profession is committed to diversifying its workforce, discriminatory hiring practices continue. This is demonstrated by reports of:

- a. Racialized applicants “whitening” their resumes and downplaying their ethnic experiences and / or feeling like they must to be more attractive to firms to secure employment
- b. Racialized licensees are severely underrepresented in big firms¹
- c. Large numbers of women leaving firms as a result of lack of accommodation for maternity and parenting accommodations and for lack of promotion to partner²
- d. LGBTQ++ licensees are significantly underrepresented in big firms
- e. Licensees with disabilities are discriminated against in hiring processes as stereotypes and common misperceptions are relied on and a lack of accommodations are provided

[2] Ranking candidates based on how well they fit a firm’s image is a problem. This practice is ambiguous and could be coded language for discriminatory hiring practices. It presents barriers for persons who appear to be different than the workplace norm, and particularly for peoples protected under the Ontario *Human Rights Code*. Increased transparency and integrating cultural competence into the hiring processes will strengthen equity and diversity initiatives with the aim of reducing these barriers.

Cultural competency in hiring processes

[3] Principles of cultural competence can be useful outside of the lawyer-client relationship. Fundamentally, cultural competence training is an exercise in training lawyers to understand 1; that they are cultural beings and 2; that we cannot escape the influence culture has on our

¹ The Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees: Consultation Paper* (Toronto: LSUC, 2014) online:<
[https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical\(12\).pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical(12).pdf)>

² Fiona M Kay et al, *Leaving Law and Barriers to Re-entry: A Study of Departures from and Re-entries to Private Practice: A Report to the Law Society of Upper Canada* (23 April, 2013) online: <
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147494539>>.

decisions. Susan Bryant, Associate Professor at CUNY School of Law, had this to say about culture's "invisible lens";

We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.

[4] Cultural competence training seeks to cultivate a legal profession wherein lawyers are capable of rendering their own personal "invisible cultural lenses" visible. Culturally competent lawyers acknowledge "racism, power, privilege, and stereotyped thinking as influencing [their] interactions [...] and [work] to lessen the effect of these pernicious influences." Infusing principles of cultural competence into the hiring process will serve to stifle conscious and unconscious bias and reliance on stereotypes.

Transparency/Disclosure

[5] Applicants must be given clear and consistent information about job requirements. A written job description should be available. A clear and definitive job description will include an outline of the actual work performed, necessary skills, and qualities expected of successful applications. Job requirements should be rationally connected to performing the job, adopted in good faith, and reasonably necessary to accomplish the work-related purpose.

[6] Information about the recruitment process, including the hiring committee membership and the use of any secondary interviews or receptions, must be disclosed to all applicants. Recruitment processes must be rationally connected to the job requirements and adopted in good faith.

[7] These principles are also applicable to student recruitment practices.

Reporting

[8] All law firms must disclose to the Law Society biennially their hiring criteria, processes, and demographics for further review. The report must be submitted to the Law Society Equity Director for inclusion in the Law Society's Model Policies, Publications and Reports. The records must include detailed information including gender and age of those hired by the firm, as well as information regarding Aboriginal and minority demographics.

[9] Law firms must keep up to date records of all employment practices, as the Law Society Equity Director may, at any time, conduct a random check of policies in order to ensure transparency. These records must include information on all lawyers, students and paralegals hired within the two-year period.

[10] Those firms that do not disclose their hiring practices or do not keep current records may be subject to fines and other disciplinary action that the Board deems fit.

Examples of contravening behavior

[11] Ambiguous terms such as 'Cultural Fit' must not be used as hiring criteria. All criteria must be clearly defined and in compliance with the Ontario *Human Rights Code*.

[12] Ambiguous language and terms used during the hiring process can have an adverse and discriminatory effect. These unintended consequences depart from the standards of employment prescribed in Rule 6.3.1-1.

[13] "Cultural Fit" is demonstrative of a term used in hiring practices that appears neutral, but has adverse effects. For example, "Cultural Fit" may present barriers for persons who are, or appear to be, different than the dominant group in a workplace. These barriers can manifest at all stages of the hiring process. When such ambiguous terms are offered as an explanation for unsuccessful applicants seeking feedback, they have the potential to conceal discriminatory practice, hamper diversity and equity initiatives and entrench the status quo.

Hiring Process Best Practices

[14] Legal recruitment practices should acknowledge that discrimination occurs in hiring processes and take steps to avoid perpetuating it. Employers should aim for fair processes that focus on each candidate's ability to perform essential job duties. For example, best practices within the legal profession can include;

- a. Having a multi-person panel conduct formal interviews;
- b. Establishing objective assessment criteria and marking schemes determined before answers are graded
- c. Ensuring consistency in interview questions, based on the job's essential duties and bona fide requirements.
- d. Documentation of any judgments based on appearances or other subjective features in order to eliminate unconscious bias.

[15] While not directly regulated by the Law Society, it is recommended that law schools engage in career preparation programming that does not perpetuate discriminatory practices. For example, guest speakers focusing on professional attire for women should not go into detail about length of skirts, cut of blouses, or colour of lipstick.

[16] In addition to ensuring substantial transparency within the hiring processes, rule 6.3.1, requires transparency in the retention process. As an example, although there has been a large number of women entering private practice, they have also been leaving in large numbers. This is a symptom of the fact that women retained by firms are not being promoted to partnership and other decision-making positions. To increase transparency, there must be ongoing research regarding the retention of individuals within gendered, racialized, lgbtq++, and disability communities in firms, government and private practice. The profession must recognize the challenges that these individuals face and make substantial efforts to accommodate their needs and reduce these barriers.

Racialized Licensee Response

November 4, 2016

To: Dean Chris Waters

From: Faculty of Law Equity and Diversity Committee

Re: Recommendations for a Windsor Law / Canadian Council of Law Deans Response to the 2016 LSUC Report on Challenges faced by Racialized Licensees

You requested feedback from the EDC regarding this report. The EDC has consulted with the students via an email request for feedback, and has otherwise reviewed the report. We would make the following recommendations:

1. The Committee strongly supports Recommendation 1 “Reinforcing Professional Obligations.” This recommendation is important for ensuring that individual members of the Law Society are held accountable by the LSUC for their conduct. It also opens up new channels for those who interact with LSUC members to utilize the existing complaints mechanisms to resolve matters pertaining to equality, diversity and equity.
2. The Committee supports Recommendation 2 and notes that Law Schools could benefit from, and contribute to, the development and implementation of model policies and resources.
3. The Committee supports Recommendations 3, 4, 5 and 6 and notes the following:
 - a) Law Schools could adopt item 1) with respect to their own student populations. “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”;
 - b) Are Law Schools considered “legal workplaces of at least 10 (or 25) licensees in Ontario” who would be subject to the data collection requirements?

We recommend that the LSUC define the term "legal workplaces". Law schools should be consulted when both the quantitative and qualitative surveys are being prepared. Law school student and applicant surveys could closely mirror the survey used by the LSUC so that the data can be used for comparative purposes.

- c) Qualitative data taken from inclusion surveys may also be useful to receive from law students, so as to ensure that the full picture of the challenges faced by racialized licensees can be demonstrated. This will ensure that broad context is provided in the Inclusion Index;

- d) The data collection requirements of law schools and other legal workplaces should be clearly stated from the outset when implementing this report, as it is an important aspect of the Inclusion Index. The Inclusion Index should not be built without taking this data into consideration. The power of statistical reporting is in being able to compare against historical data. If the Inclusion Index is not built properly from the outset, amending the formulas within it will be difficult later on, and will compromise the integrity of the data over time.

If the Law Society does not consider it to be within the scope of this report to require law schools to provide data about student populations, then we would recommend the Law Society raise the matter at the Federation of Law Societies of Canada.

4. Understanding the complex nature of systemic barriers to diversity and inclusion, the Committee strongly supports Recommendation 8 “Progressive Compliance Measures”, as another important measure for ensuring organizational accountability.
5. The Committee supports Recommendation 10 “The Licensing Process” but requests clarification from the LSUC about whether it is envisioned that law schools should also adopt cultural competency as a core competency. Again, if the LSUC does not envision that law schools should be included under this recommendation, then this recommendation should be forwarded to the Federation for implementation with respect to law schools.

The committee notes that “racialized licensee” is not defined in the report. The report would benefit from clarifying this point. For example, reference could be made to Statistics Canada “Visible Minority and Population Group Reference Guide, National Household Survey, 2011” Cat No 99-010-XWE2011009, online: <https://www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.cfm> to ensure a standard approach.

6. The Committee strongly supports Recommendation 12 as an important tool in ensuring that Recommendation 8 has effective enforcement measures. It will also ensure that the LSUC is appropriately prepared to deal with such complaints in the future. Without having these foundations in place, the LSUC itself will perpetuate discrimination by having inadequate processes in place, and inadequately trained personnel, to handle these complex and sensitive complaints. In particular, protecting persons from reprisal for making complaints is significant.
7. The committee strongly supports Recommendation 13 “Leading by Example”, as being tremendously important for creating strong foundations for the entire profession.

The Committee should be encouraged to share an anonymized version of the comments that were made by licensees during the consultation process. If these could be categorized so that, for example, law schools and other workplaces could have access to relevant feedback, this may be helpful.

Generally, we would commend the Equity and Aboriginal Issues Committee on the broad consultations that were undertaken to prepare this report, and for their responsiveness to the feedback that they received.

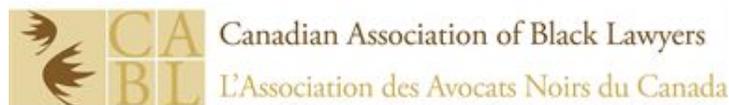
Please note that we have also received a written submission from the Black Law Students' Association, Windsor Chapter. That report is attached.

Respectfully submitted,

On behalf of the Faculty of Law Equity and Diversity Committee:

Annette Demers and Naina Singh (co-Chairs)
Jasminka Kalajdzic, Associate Dean
Francine Herlehy, Assistant Dean, Student Services
Mary Mitchell (staff representative)
Yasmeen Peer, Student Member
Amneet Bali, Student Member
Mahnaz Shariati, Student Member
Ethan Chang, Student Member

Att.



November 14, 2016

Mr. Paul B. Schabas
Law Society Treasurer
Law Society of Upper Canada
c/o Ekua Quansah- Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Janet Leiper and Raj Anand
Co-chairs Challenges Faced by Racialized Licensees Working Group
c/o Ekua Quansah – Policy Counsel
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Email: racialized.licensees@lsuc.on.ca

Dear Treasurer Schabas, Co-Chairs Leiper and Anand:

Re: Final Report of the Challenges Faced by Racialized Licensees (CFRL) Working Group

The Canadian Association of Black Lawyers (CABL) would like to comment on the final report submitted by the CFRL Working Group. We make these comments in light of our letter submitted to the Law Society of Upper Canada (LSUC) on May 14, 2015. In this letter we recommended a number of measures to the Working Group¹.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession. From the advent of the creation of the CFRL Working Group in 2012, CABL has been involved in supporting, informing and contributing to the process specifically in regards to research, analysis and discussions of the report.

CABL is a member of the Equity Advisory Group (EAG) of the LSUC and had a representative sitting on the EAG working group for the CFRL report. Our members participated in focus groups, town hall meetings, surveys and direct meetings with the CFRL Working Group.

CABL notes that the process of recalling, reliving and publicly discussing systemic and sometimes overt racism is gruelling and uncomfortable. Our members shared intimate details of their experiences in order to draw attention to the challenges faced by black and other minority

¹ Please see Attached letter dated May 14, 2015 – addressed to Joséé Bouchard.

lawyers in Ontario. We hope that our efforts will eventually lead to more than an initial step to change.

CABL acknowledges that the final report released by the CFRL Working Group highlights some of the challenges faced by racialized licensees and is an initial step towards addressing these challenges. The summary and expressions of hope set the tone for the 13 recommendations the report is making to Convocation.

CABL is fully in support of the LSUC addressing the challenges our members and other minority groups face in the practice of law. The members of the Bar have failed in their obligation not to “discriminate on the grounds of race, ancestry, pledge 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 professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person (as defined in the *Ontario Human Rights Code*)”² It is for this very reason that we believe the report places too much faith in the ability of the Bar to self-monitor and correct the systemic issues recognized in the report. There must be direct regulation from the LSUC. We believe that the recommendations should be strengthened to reflect LSUC regulation rather than suggestion.

In the short time available for submissions and commentary, CABL would like to highlight a few things that we suggested in May 2015 that we believe should have been adopted in the final report.

Data Collection:

We note that there is no mandatory internal collection of demographic data by legal organizations as we suggested. The LSUC will, through its licensee annual reporting mechanism, collect the data and present this to legal organizations. CABL notes that mandatory internal collection of data on an annual basis forces legal organization to “look at themselves in the mirror” and recognise the trends that so far they have not addressed. How will the LSUC ensure that legal organizations will review the numbers provided by the LSUC on a yearly basis? Our letter of May 14, 2015, noted that just as trust accounts and other features of legal organizations are regulated, data collection by legal organizations can be enforced and regulated.

Self-Assessment:

CABL is sceptical of the LSUC recommending to “encourage” legal workplaces to conduct inclusion surveys by providing them with sample templates. Despite the tenor of the report, the Working Group had concerns about unnecessary burdens placed on many groups that have already moved forward proactively with equality measures of their own. Legal Organizations that are ahead of the curve will not be burdened by less. On the other hand, the many that have

² See *The Rules of Professional Conduct* section 6.3.1-1

nothing in place will have a standard to live up to. CABL would like the adoption of equality, diversity and inclusion principles to be more than voluntary and subject to periodic review for compliance. CABL notes that unconscious bias can be made conscious through self-assessment. However, we accept that the CFRL Working Group were weighing competing interests in deciding to adopt a less onerous approach. We hope that the global effect of the recommendations will lead to a future that includes compliance review.

Progressive Compliance Measures

CABL believes the LSUC must now commit to, not merely consider, developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion. The recommendations are not onerous. In light of the Working Group's findings, they reflect a basic standard required of any legal workplaces serious about diversity and inclusions.

In general the report falls short of adequately identifying enforcement mechanisms. What happens if legal organizations are not encouraged and/or do not adopt policies? Or even worse create policies and ignore them? The report does not address this.

CPD Training:

CPD programs limited to once in three years places the issue of systemic racism on the shelf only to be uncomfortably addressed after long periods. The issue can be addressed and kept alive by requiring an annual one hour program. The report is also vague on the implementation of the training. Who are the experts the LSUC will approach to help with developing this curriculum? CABL hopes that our organization will be consulted before the curriculum and process are discussed and implemented.

Complaints of Systemic Discrimination:

The Discrimination and Harassment Counsel Program was created under a different principle and ideology. CABL would prefer to "create a specialized and trained team to address complaints of discrimination"³ that reports to the LSUC disciplinary committee.

Conclusion:

Moving forward, CABL expects the LSUC to continue to involve us as well as the Roundtable of Diversity Associations (RODA), EAG and other equity seeking legal organizations in the implementation of the recommendations and the planning of new policies.

CABL's submission is a comment on some aspects of the report that we believe could be strengthened. However, there is no policy in place at this time and, as noted earlier, the adopting

³ CFRL Working Group Report Recommendation 12 subset 4

of this report would be a positive first step towards change. CABL fully supports Convocation adopting the CFRL Working Group Final Report in its entirety.

CABL does not support a vote of the CFRL Working Group Final Report on a recommendation by recommendation basis. We reiterate that our hope is that the global influence of the recommendations will effect change. A vote on recommendation by recommendation will most likely change the overall influence of the report.

CABL is aware that Convocation will also be considering a motion that the recommendations from the CFRL Working Group Report form the benchmark for approaching issues with other equity seeking groups. CABL supports this motion.

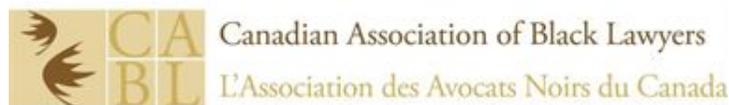
CABL will rely on the hope that the recommendations will become the root of a living tree that will grow, flourish and become stronger by the day. First let's plant the tree.

Yours truly,

CANADIAN ASSOCIATION OF BLACK LAWYERS



Gordon Cudjoe
Member - CABL Advocacy Committee
c/o Legal Aid Ontario
40 Dundas Street , Suite 200
Toronto, ON M5G 2H1
Email: gordon@cudjoe.ca
Cell: 416-731-3448
Enclosure



May 14, 2015

Via Email

Ms. Joséé Bouchard
Director, Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Bouchard:

Re: Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper

The Canadian Association of Black Lawyers (“CABL”) takes this opportunity to offer the following submissions in respect to the above-noted Consultation Paper authored by The Challenges Faced by Racialized Licensees Working Group (the “Working Group”). We note that CABL Board members and other CABL members have participated in the in-person consultation process following the publication of the Consultation Paper. These submissions are not meant to modify or abrogate from those individual submissions in any respect.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary. CABL is both a member of The Law Society of Upper Canada (the “Law Society”)’s Treasurer’s Liaison Group and a member of the Law Society’s Equity Advisory Group (“EAG”). CABL is also a member of the Ontario Bar Association (“OBA”)’s Diversity Program and a member of the Toronto Lawyers Association (“TLA”)’s Roundtable of Diversity Associations (“RODA”). CABL has participated in numerous consultations with the Law Society, the Canadian Bar Association (“CBA”) and the OBA on issues of access, diversity and equity affecting the legal profession and the legal system within Canada and Ontario.

We wish to commend the Law Society and the Working Group on the comprehensive and detailed scope of the Consultation Paper. As you are aware, CABL has long been advocating for a comprehensive investigation by the Law Society into the experiences of Racialized Lawyers, and in particular Black Lawyers, based upon concerns raised by CABL members and others relating to their experiences within the profession; from the articling stage and subsequent. We note that a summary of those experiences have been materially captured throughout the Consultation Paper. In that regard, these submissions shall focus more particularly on responding to the Questions for the Profession section of the Consultation Paper and our additional submissions in relation thereto.

I. ENHANCING THE INTERNAL CAPACITY OF ORGANIZATIONS

The mandate, and reasons for the mandate of the Law Society in this area, is readily apparent: as a regulator, the Law Society's interest should be to ensure that members of the profession are being treated with fairness and dignity by other Licensees and in a manner which enhances the diversity of the profession and provides equal opportunities to all members thereof.

The Law Society has a crucial role to play to establish "best practices" by way of policies, standards and resources devoted to the recruitment, retention and career progression of Racialized Licensees within law firms and other legal organizations, such as legal clinics, in house legal departments, etc. (collectively "Legal Organizations").

Similar to the Justicia Project in respect to addressing gender imbalance and discrimination within the profession, the Law Society should be addressing the lack of opportunities for Racialized Licensees within the legal profession. While as a minimum, the Law Society should be expanding the scope of the Justicia Project to include Racialized Licensees, CABL maintains that more significant strategies are necessary to address the issues raised in the Consultation Paper.

A. Establishing Diversity Programs Within Firms

While the Law Society has identified three proposed models in this area, CABL does not see them as mutually exclusive. Rather, they are interrelated and complementary to each other.

As the Consultation Paper notes, the Law Society already has a template for approaching these issues by way of the Justicia Project materials distributed to law firms. However, CABL advocates that unlike the Justicia Project, the Law Society should be requiring Legal Organizations to commit, by way of a written agreement, to adopt diversity "best practices" within their respective Legal Organizations as per the Law Society guidelines and as more particularly discussed below.

B. Self-Assessment

There is little point to Legal Organizations developing and adopting "best practices" without a form of self-assessment tool to measure their progress in respect to both implementation and results. The self-assessment aspect is **critical**.

C. Requiring Standards

CABL recognizes that this could be a controversial issue. However, we query what concrete steps will be taken by Legal Organizations if there is no element of requirement, as there is with other forms of human rights related policies, so as to promote equality and protect the vulnerable from discriminatory practices. Granted, there are a number of firms who will "opt in" voluntarily, as with the Justicia Project. However, we can see that of the Firms of more than 25 lawyers within the province, only approximately 55 Firms have signed commitment agreements with the Law Society in respect to the current Justicia Project.

The issues identified in the Consultation Paper are also systemic in nature and arguably more difficult than gender discrimination for Legal Organizations to grapple with and address in any effective and systemic way.

Requiring Legal Organizations to adopt recruitment, retention and career advancement standards and resources to provide opportunities for Racialized Licensees would:

- (i) make the efforts of the Law Society in this area more far reaching by ensuring that every legal environment has considered these important issues and has put in place the necessary “best practices” to encourage racial diversity;
- (ii) remove the choice of “opting out” as a clear signal from the Law Society that equity is not a choice but a directive; and
- (iii) allow the Law Society to act as a vehicle for change; by requiring an infrastructure for inclusiveness and accountability within all Legal Organizations.

To be clear, while CABL believes that the Law Society should provide Legal Organizations with proposed best practices template standard policies for recruitment, retention and career advancement of Racialized Licensees, and **require** that every Legal Organization have such policies in place, the actual content of these policies, as long as they contain the essential elements of the best practices standards templates, would be for each Legal Organization to design for itself keeping in mind the nature of the particular Organization.

D. Collecting Demographic Data

CABL wholly endorses the **mandatory** internal collection of demographic data by Legal Organizations in respect of their Racialized Licensees. The internal mandatory collection of data is the only way in which Legal Organizations can monitor, in a transparent fashion, and be accountable for their progress in respect to the policy implementation and their corresponding recruitment, retention and advancement strategies, as well as the resources devoted to such strategies, so as to adjust and modify the strategies for efficacy.

In respect to what use should be made of the internal data collection, the Legal Organizations should be required to report, **on a mandatory basis**, certain aggregate demographic data to the Law Society. Such mandatory data would be in the nature of:

- (i) the size and geographic location of the firm;
- (ii) the racial demographics of the summer/articling/LPP students, associates, partners and paralegals within the Legal Organization;
- (iii) the number of racialized summer/articling students/LLP students who were hired and the number hired back to the Legal Organization and their areas of practice;

- (iv) the number of racialized associates who are employed, the length of employment and their areas of practice;
- (v) the number of racialized partners who are employed, their tenure, their areas of practice, how many were advanced to the partnership from associate status and after how many years;
- (vi) the number of racialized paralegals and their length of employment; and
- (vii) similar information in respect to the Legal Organization's non-racialized licensees for comparison purposes.

The Law Society must provide Legal Organizations with a standard data collection template with the required demographic data to be collected such that there is consistency and reliability among data collection and reporting in order to allow for meaningful analysis of trends and progress.

It has been suggested by some groups, such as the Federation of Asian Canadian Lawyers ("FACL"), that other types of equity demographic data (such as sexual orientation, abilities, socio-economic disadvantage) should also be collected so as to take an intersectionality approach to the analysis. CABL does not have the expertise to assess the proportionate value of such information for the purpose of addressing the issues raised in the Consultation Paper other than to acknowledge the well documented sociological evidence of the intersectionality of race and other factors, such as gender. Accordingly, it may be worthwhile for the Law Society to consult with equity experts as to what indicators would be worthwhile to track.

The mandatory data collected by the Legal Organizations and submitted to the Law Society should be summarized, on an aggregate basis, and reported by the Law Society to the profession annually. This information, together with the Law Society's collection of demographic data through the Licensees Members' Annual Reports (which reporting should also be made **mandatory** on the part of individual Licensees), will provide a clearer understanding of the existing profile of the legal profession within Ontario and can be used to track demographic trends on a short term and long term basis.

The above submissions are in no way meant to be a suggestion or recommendation for the implementation of diversity targets or "quotas". CABL does not believe that diversity targets or quotas are necessary if **mandatory** strategies are put in place, as endorsed above, to encourage and promote systemic organizational change.

CABL is of the view that a requirement of **mandatory** data reporting in respect to certain aggregate information does not require a regulation of Legal Organizations or firms in the same way that such regulation is not required for the Law Society to impose mandatory reporting requirements in respect to the handling of trust funds and other professional requirements. Also, many of the large firms are already required, through the process of diversity and contract compliance procedures, to report similar demographic information as is being proposed above.

Further, the Law Society must engage in a wide spread proactive strategy of education within the profession as to the purpose and goal of mandatory data collection and reporting and emphasize that the purpose is not punitive, but to obtain useful information in order to assist the profession as a whole with useful strategies to promote racial diversity and opportunities within Legal Organizations.

E. Diversity and Contract Compliance

The Law Society's role with in-house legal departments should be similar to that advocated above. In that regard, our recommendations in respect of the Law Society providing templates for mandatory "best practices" policies, standards, mandatory internal data collection and mandatory reporting of certain aggregate data to the Law Society would apply.

With respect to the data collection and reporting of data in relation to the **procurement** of legal services, CABL recommends that the Law Society works directly with the Legal Leaders for Diversity ("LLD"), Law Firm Diversity and Inclusion Network ("LFDIN"), Call to Action and other organizations, to discuss purchasing practices and to **voluntarily** develop model procurement and contract compliance policies as they relate to diversity in order to promote and/or expand the opportunities for Racialized Licensees on significant/important files. CABL also fully endorses that the Law Society encourage such organizations, **on a voluntary basis**, to provide demographic statistics during the RFP and in respect to the file progress.

II. MENTORING, ADVISORY SERVICES AND NETWORKING

A. Mentoring and Advisory Services

CABL is of the view that mentoring, both within the Racialized bar and outside the Racialized bar, is a necessary and crucial part of providing professional opportunities for Racialized Licensees. To that end, CABL approves of and endorses the following mentoring and advisory services:

- (i) that the Law Society develop technology based performance oriented and career and personal advice oriented mentoring and advisory services, based upon best practices, and widely promote their availability; with an emphasis on establishing short and long term mentoring relationships for Racialized Licensees;
- (ii) that the Law Society audit the formal (performance based) and informal (career and personal advice based) mentoring and advisory services available within Legal Organizations, with an emphasis on investigating what specific mentoring and advisory services have been established to address the concerns of Racialized Licensees;
- (iii) that the Law Society make available to Racialized Licensees advisors/coaches who have received diversity training and are available to provide one on one professional career counselling to Racialized

Licensees, from a pool of compensated coaches/advisors, at a cost fully borne by the Law Society;

- (iv) that the Law Society make available to Racialized Licensees performance mentors to provide practice based assistance to Racialized Licensees who do not have access to other practice based information/assistance, from a pool of compensated mentors, at a cost fully borne by the Law Society;
- (v) that the Law Society, in conjunction with Racialized legal and other associations, organize, promote and endorse informal mentorship events (i.e. CABL's Annual Speed Mentoring event). As the Racialized legal associations are not for profit organizations with limited funds, the Law Society should provide financial assistance at least by way of subsidizing the full cost of facilities, security and refreshments etc. to encourage such events; and
- (vi) that Racialized legal associations provide one on one volunteer professional career mentoring and advisory services to their members through a mentoring program organized and implemented by the associations.

B. Networking

As with mentoring, networking is a crucial tool for the creation of opportunities for Racialized Licensees, who, as noted in the Consultation Paper, are often more isolated and lacking support networks. Many of these Racialized Lawyers are in sole practice or small firms of one or two lawyers.

CABL believes that it is crucial to involve Racialized Licensees in both Racialized and non-Racialized network opportunities. Racialized networks are essential for validation, comradery and shared experiences. However, networking opportunities must also extend to the legal "mainstream" in order to create broader professional opportunities.

Resources are a significant impediment to formal networking structures, such as professional development. Racialized legal associations are therefore an excellent source of networking opportunities. To the extent that resources are an impediment for Racialized Licensees to become members of such associations, the Law Society could offer subsidies to assist Racialized Licensees to join such organizations for a fixed period of time (i.e. one or two year membership years). This would allow the Racialized Licensees to avail themselves of the networking (and mentorship) benefits of such associations at a reduced cost for a period of time and thereafter they would be persuaded to continue membership at regular cost on the basis of the beneficial networking and mentorship experiences/services such associations provide.

More difficult is how to achieve networking opportunities among the mainstream Legal Organizations. One way is for the Law Society to encourage mainstream Legal Organizations to

offer regular “networking invitations” to Racialized Legal Associations to promote dialogue and interaction.

We note that the Internationally Trained Lawyers have the same access to Racialized Legal Associations as do other Racialized lawyers.

III. ENHANCING CULTURAL COMPETENCE IN THE PROFESSION

CABL believes that all of the three proposals contained in the Consultation Paper are advisable. There should certainly be more availability of accredited CPD Programs on cultural competence and equity principles of diversity inclusion and systemic bias. Further, the Professional Responsibility and Practice (“PRP”) Course should include cultural competency, diversity and inclusion as **mandatory** topics for accreditation.

In the same vein, accredited lawyers should be required to evidence their continued cultural competence by engaging in at least **one hour** of CPD annually, as part of the current 3 hours of mandatory professionalism hours, on cultural competence, equity and diversity as these issues impact upon the practice of law and the experiences of Racialized Licensees and their career development opportunities. Both the widespread availability of such programs and the one hour requirement go hand in hand. These CPD programs should be taught by individuals with equity and diversity expertise and they themselves should be demographically diverse.

IV. DISCRIMINATION AND THE ROLE OF THE COMPLAINTS PROCESS

The Law Society has a critical role to play in ensuring that Racialized Licensees’ legal right to be free from discrimination is enforced. While updating the Rules of Professional Conduct and the Paralegal Rules of Conduct is a first step, much more needs to be done to address what is essentially a systemic problem within the profession. Specific CPD programs and mandatory one hour CPD on cultural sensitivity/systemic bias has been mentioned above. Communication to the profession is another important element as are the recommended strategies outlined above in respect of establishing diversity programs within firms.

The Law Society should also take steps to publicize the Discrimination and Harassment Counsel to ensure that Racialized Licensees are fully aware of their right to make a complaint of incidents of harassment and discrimination engaged in by other Licensees to an independent “ombudsman”.

The Law Society should also be allocating resources to the training of specialized Professional Regulation staff to accept and process complaints of racial discrimination and bias as a breach of the Rules of Professional Conduct and Paralegal Rules of Conduct and to have available proper supports to assist complainants with the process. The Law Society should also provide coaches/advisors to discuss and address with complainants the personal and professional issues arising from discriminatory conduct.

The Law Society must be mindful that the confidential reporting of incidents of racial discrimination is extremely difficult for Racialized Licensees. By virtue of the paucity of

Racialized Licensees within Legal Organizations, the fact of a complaint being made to the Law Society about a particular Legal Organization will, by its nature, most likely reveal the identity of the complainant.

Therefore, the Law Society must derive an effective investigation and enforcement mechanism which does not place the Racialized Licensee in harm or subject them to reprisals. Part of the investigation process might involve a general audit of the “respondent” Legal Organization for compliance in respect of the creation and implementation of the “best practices” policies/procedures and a general audit of all Racialized Licensees within the “respondent” as to their experiences so as to not single out the complainant. Again, the primary focus should be to protect the complainant, who is in an extremely vulnerable situation, from reprisal and to remediate the situation rather than to penalize. However, it should be made clear in the Rules of Professional Conduct and the Paralegal Rules of Conduct that reprisals, as well as the discriminatory conduct itself, is a breach subject to prosecution and penalties.

The Law Society should be engaging in direct dialogue with Racialized legal associations as well as the OBA/CBA and county and district law associations, to discuss specific suggestions in order to derive an effective, yet protective, investigation/enforcement process, and as to the mentoring/advisory capabilities of such organizations to assist the Law Society in supporting members engaged in initiating a complaint.

The tracking of such complaints is also necessary so as to create/modify existing strategies and policies based upon efficacy.

CABL is of the view that no regulatory changes would be required to implement the proposals outlined in the Consultation Paper or detailed above. The Law Society has, as part of its current mandate, the regulation of each Licensee and their conduct in respect to the practice of law. The implementation and enforcement of the proposals hereinbefore described are an integral part of such mandate, whether implemented on an individual Licensee or aggregate Firm basis.

V. THE OPERATIONS OF THE LAW SOCIETY OF UPPER CANADA

CABL is in favour of the Law Society’s adoption of Initiatives 1 through 4 of the Consultation Paper. It is important that the Law Society itself engage in, and be seen to be engaging in, the same initiatives as are being proposed for the profession as a whole; including, without limitation, the implementation of “best practices” policies and standards; mandatory internal data collection; mandatory reporting of certain aggregate data and the other proposals discussed herein.

An equity audit of the services provided by the Equity Initiatives Department and publication of such services to the profession would also enhance the importance of the work of the Department and the supports offered.

The “face” of the Law Society needs to undergo significant change. It is not reflective, from Benchers to staff, of the demographics of our profession or the population at large. The Law Society needs to “look at its own house” in respect to its recruitment and hiring practices as well

as retention and career advancement of Racialized individuals (as well as individuals from the other equity seeking groups) to achieve a greater representation of equity seeking individuals in all areas of its operations.

As well, as a priority mandate, the Law Society should embark on equity sensitivity training for Benchers and staff. It is crucial that an equity “lens” be brought to all operations of the Law Society, including Finance and other operations, rather than to approach equity as a “silo” to be addressed only by the Equity and Aboriginal Issues Committee and Equity Initiatives Department. Only by taking such a holistic approach will the Law Society truly achieve equity infused governance, for itself and for the profession as a whole.

We hope that the above submissions are of assistance to the Working Group. CABL remains committed to the work of the Law Society and the Working Group and is fully prepared to participate in the consultation process going forward with a view to finalizing and implementing the proposals under consideration in a fulsome and expeditious manner.

Yours truly,

A handwritten signature in black ink, appearing to read 'Arleen Huggins', with a long horizontal flourish extending to the right.

Arleen Huggins

Immediate Past President and Chair of the Racialized Licensees Subcommittee of the Canadian Association of Black Lawyers

c. Ekua Quansah

CALL
CANADIAN ASSOCIATION
OF LABOUR LAWYERS

ACAMS
ASSOCIATION CANADIENNE DES AVOCATS
DU MOUVEMENT SYNDICAL

President:
Peter Barnacle
c/o Canadian Association of
University Teachers
2705 Queensview Drive
Ottawa, ON, K2B 8K2

Telephone: (613)726-5192
e-mail: barnacle@caut.ca

**OFFICERS
DIRIGEANTS**

Peter Barnacle
President

Colin Gusikoski
Treasurer

Anne Gregory
Recording Secretary

Leanne Chahley
Past President

**VICE-PRESIDENTS
VICE-PRÉSIDENTS**

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Manitoba

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Ontario

Pierre-Alexandre Clermont
Sophia Rossi-Lanthier
Quebec

David Mombourquette
Leigh Sprague
New Brunswick

Susan Coen
Nova Scotia

Sheila H. Greene, Q.C.
Paula Schumph
Newfoundland

Austin F. Marshall
Northwest Territories

By Email: racialized.licensees@lsuc.on.ca

November 25, 2016

The Law Society of Upper Canada
c/o Ekuu Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Quansah,

Re: Final Report of the Challenges Faced by Racialized Licensees
Working Group, "*Working Together for Change: Strategies to Address
Issues in Systemic Racism in the Legal Professions*"

I write on behalf of the Canadian Association of Labour
Lawyers/Association Canadienne des Avocats du Mouvement Syndical
(CALL - ACAMS). CALL - ACAMS is a national association of labour
lawyers who represent unions and workers in Canada.

As advocates for both labour rights and human rights, I am writing to
express CALL/ACAMS' s support for the work of the Challenges Faced by
Racialized Licensees Working Group and its final report, "*Working
Together for Change: Strategies to Address Issues in Systemic Racism in
the Legal Professions*".

We welcome the Law Society of Upper Canada's leadership on these
important issues.

Yours truly,

CANADIAN ASSOCIATION | ASSOCIATION CANADIENNE DES
OF LABOUR LAWYERS | AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle
CALL/ACAMS President/ Présidente de l'ACAMS/CALL

CALL
CANADIAN ASSOCIATION
OF LABOUR LAWYERS

ACAMS
ASSOCIATION CANADIENNE DES AVOCATS
DU MOUVEMENT SYNDICAL

President:
Peter Barnacle
c/o Canadian Association of
University Teachers
2705 Queensview Drive
Ottawa, ON, K2B 8K2

Telephone: (613)726-5192
e-mail: barnacle@caut.ca

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Saskatchewan

Kristine Barr
Shannon Carson
Manitoba

Wassim Garzouzi
Simran Prihar
Ontario

Pierre-Alexandre Clermont
Sophia Rossi-Lanthier
Quebec

David Mombourquette
Leigh Sprague
New Brunswick

Susan Coen
Nova Scotia

Sheila H. Greene, Q.C.
Paula Schumph
Newfoundland

Austin F. Marshall
Northwest Territories

Par courriel: racialized.licensees@lsuc.on.ca

November 25, 2016

Barreau du Haut-Canada
A/s Ekua Quansah, conseillère aux politiques
Osgoode Hall, 130 Queen Street West
Toronto ON M5H 2N6

Objet : Rapport final du groupe de travail sur les difficultés auxquelles les titulaires de permis racialisés font face, intitulé *Collaborer au changement : stratégies de lutte contre le racisme systémique dans les professions juridiques*

Chère Madame,

Je vous écris au nom de l'Association canadienne des avocats du mouvement syndical/Canadian Association of Labour Lawyers (ACAMS-CALL), laquelle représente les syndicats et les travailleurs dans l'ensemble du Canada.

Les membres de notre association, en tant qu'avocats de droit du travail et de la personne, souhaitent exprimer leur appui pour le travail accompli par votre groupe sur les difficultés auxquelles les titulaires de permis racialisés font face et pour votre rapport final intitulé *Collaborer au changement : stratégies de lutte contre le racisme systémique dans les professions juridiques*.

Nous apprécions le leadership du Barreau du Haut-Canada sur ces enjeux importants.

Veillez recevoir, chère Madame, nos salutations le plus distinguées.

CANADIAN ASSOCIATION OF LABOUR LAWYERS | ASSOCIATION CANADIENNE DES AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle
CALL/ACAMS President/ Présidente de l'ACAMS/CALL



Canadian Centre for Diversity and Inclusion Centre canadien pour la diversité et l'inclusion

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6
racialized.licensees@lsuc.on.ca

November 13, 2016

I write today in response to the Law Society of Upper Canada's ("The Law Society") public consultation related to challenges faced by racialized licensees and the 13 recommendations contained in the Racialized Licensees Working Group's (the "Working Group") final report, titled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*.

We applaud the Working Group for their outstanding effort and the thoughtful and detailed presentation of their findings. From the outset, allow me to make it clear that we agree with the assertion that "racialized licensees face widespread barriers within the (legal) profession at all stages of their careers." Through our own research on the legal profession, we have come to a similar conclusion, however it is important to note that there are mitigating factors that have a significant impact on those barriers.

The Canadian Centre for Diversity and Inclusion ("CCDI") has a mission to generate the awareness, dialogue and action for Canadians to recognize diversity as an asset and not an obstacle. Through the research, reports and toolkits we develop and our workshops, events and workplace consultations, we're helping Canadian employers understand their diversity, plan for it and create inclusion.

CCDI's leadership has a proven model that's cultivated trust as an impartial third party. Our expertise is focused on the topics of inclusion that are relevant in Canada now and the regional differences that shape diversity.

A charitable organization that thinks like a business, we have created a niche with our innovative research technology and data analysis that brings a deeper understanding of Canadian diversity demographics and mindsets at any given moment.

In 2014 we developed and launched a project entitled *Diversity by the Numbers: The Legal Profession* ("DBTN"). This project is an exciting initiative that seeks to better understand the demographic makeup of the Legal Profession in Canada. To date, over thirty law firms across Canada have participated and over 8000 respondents have completed the census.

www.ccdi.ca

Toronto

2 Carlton Street, Suite 820 | 2, rue Carlton, bureau 820
Toronto, Ontario M5B 1J3
+1 (416) 968-6520

Calgary

500 4th Avenue SW, 18th Floor | 500, Avenue 4ème SW, 18e étage
Calgary, Alberta T2P 2V6
+1 (403) 879-1183



It is our experience with DBTN that brings us to prepare this response. And it is the mitigating factors indicated earlier that are the basis of, and reason for our response.

Overall Commentary

What should be measured?

Benchmarks, goals, and accountabilities.

A primary mandate of The Working Group report is to better understand systemic barriers within the legal profession through collecting Diversity and Inclusion data. In an article that critically assesses the implications of the report^[1], Joanne St. Lewis argues that the methods of addressing these barriers proposed in the report are ineffective because they are applied through codes of professional conduct rather than through “entity regulation.” That is to say, they do not measure and make accountable the workplaces in which these barriers play out.

We agree that effective movement on Diversity and Inclusion issues necessitates accountabilities specific to each firm. However, the question then becomes, what should be measured to expose the barriers firms will be accountable for? The report provides a clear objective to enhance representation of racialized licensees “in proportion to representation of the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.” Irrespective of where accountabilities are placed, The Working Group's approach of analysis at each of these levels will help isolate instances of systemic discrimination. This is because each of these comparisons makes data accountable to the group they are being benchmarked against. However, efforts to counter systemic discrimination become regulated, these levels of data comparison will allow the setting of representation goals.

Focusing on ways to put Diversity and Inclusion into practice in law firms, the report proposes that a fairer culture will be fostered in firms if they are required to have a diversity policy. St. Lewis suggests that, to propel action, their needs to be outside scrutiny. To achieve this, she proposes that all law firms have a diversity strategy that is available to the public. Building on these points, we would further suggest processes surrounding how a diversity policy and strategy are actualized within firms. Initial questions that should be ask to enhance the effectiveness of any diversity strategy include:

- » Has the strategy been linked to a formal business case?
- » Are senior leaders being held accountable, and if so, how?
- » Does the strategy consider diversity in senior leadership appointments?
- » Is the strategy communicated, to and understood by all firm members?

These questions and the actions they stimulate will cast diversity as a genuine priority within an organization's culture rather than a well-intentioned, inactive edict.

¹ Joanne St. Lewis, “If Not Us, Who? if Not Now, When?": Reflections on the Law Society's Challenges Faced by Racialized Licensees Working Group Report,” *Slaw*, last modified October 31, 2016.



Linking demographic and inclusion data.

The Working Group recognizes that analysis of diversity must be complemented by analysis of inclusion, stating that a law firm's diversity performance will be measured through “self-identification data” and “climate data.” Throughout the report, specifically in relation to a proposed Inclusion Index, there are references to the measurement of both. However, the report does not specifically state that inclusion survey results will be presented and analyzed through demographic categories, which is vital to isolating specific groups that are feeling excluded.

What is the difference between demographic and inclusion data that is linked and unlinked? To explain the impact linking has on data insights, consider the demographic gender and the inclusion question “everybody at the firm has equal opportunity to advance.” Unlinked data can only show the percentage of female, male, and trans-identified respondents and the overall percentage of respondents that agree, are neutral, or disagree with the statement. Linked data will allow you to isolate and compare the rates of agreement or disagreement between females, males, and trans-identified respondents. Understanding the insights you want to draw from the data is necessary before implementing a survey. Any gaps in data collection will limit the potential of the information that is gathered.

Reasons for a focus on Diversity and Inclusion.

The report proposes that Diversity and Inclusion will attract an ever-diversifying talent pool and give firms a competitive advantage in securing clients that request information on their demographic makeup. These statements are true, but do not comment on individual experiences in the workplace and the link these experiences have to business outcomes.

To the report's arguments for why Diversity and Inclusion should be fostered we would add findings from the growing research in this field. The research shows that nurturing diversity as well as inclusion (rather than one or the other) is necessary, and it can substantially increase the engagement of employees.

Research by Deloitte Australia found that strong focus on both can double employee engagement and increase the chances that “an employee is likely to stay with their employer, advocate for their employer and go the extra mile” at work^[2]. An organization that does not prioritize Diversity and Inclusion is missing out on a truly talented and dedicated workforce. For the more bottom-line-minded audience, the research also shows that a focus on Diversity and Inclusion can increase organizational performance through increased sales, greater market share, and larger relative profits^[3].

2 Deloitte Australia, “Waiter, is that inclusion in my soup?: A new recipe to improve business performance”, last modified April 16, 2015, <http://www.globaldiversityexchange.ca/waiter-is-that-inclusion-in-my-soup/>.

3 Cedric Herring, “Does Diversity Pay?: Race, Gender, and the Business Case for diversity”, *American Sociological Review* 74 (2009): 208.



How should Diversity and Inclusion data be analyzed?

Measuring the association between demographics.

When analyzing categorical demographic data, a methodology we use and recommend is cross-tabulations. Cross-tabulation is the measurement of the association between two variables, and it investigates how much the distribution of one variable differs according to the various levels of another variable. Further, when the goal is uncovering racialized barriers to things like advancement, you can construct cross-tabulations in a way that shows the representation of racialized and non-racialized respondents at different levels of an organization's hierarchy.

Using an example relevant to the legal profession, we can construct a cross-tabulation that measures racial representation by the roles in the Partner track hierarchy (**Error! Reference source not found.**). A comparison of these role-specific representations to the overall representation of race within a firm provides the contextual evidence needed to uncover barriers to advancement. This benchmarking technique exposes concentrations or omissions of racialized groups along the hierarchy, which can then guide hiring or advancement goals that can be measured over time.

	Racialized	Non-Racialized
OVERALL	127 33.87%	248 66.13%
Equity Partner	12 12.24%	86 87.76%
Income Partner	15 26.32%	42 73.68%
Associate	85 43.15%	112 56.85%
Articling or Summer Student	15 65.22%	8 34.78%

Table 1: Representation of Race by Role in Partner Track.

Are the differences significant or is it a product of chance?

To ensure that you are properly assessing an over- or under-representation, statistical techniques like the chi square test of association can be applied. Explained plainly, this test uses cross-tabulated data to see if any concentrations or omissions of groups are outside of the realm of mere chance. These tests of association can answer Diversity and Inclusion questions such as, “do non-racialized respondents have a statistically significant larger representation in Equity Partner roles?” or “do racialized respondents disagree at a statistically significant higher rate with an inclusion question asking if they feel there is equal opportunity to advance?”

Measuring outcomes based on overlapping demographic characteristics.

Up to now we have only suggested ways to analyze representation of one demographic at a time, which is a necessary start to measuring trends in any data set. However, to look only at single demographics is a disservice to the reality that experiences and outcomes vary based on



overlapping demographic characteristics. This gap in The Working Group's recommendations was noted by St. Lewis, and she encouraged collecting data on all equality-seeking groups.

We support her in this recommendation - data needs to be collected and analyzed using an intersectional lens. We add to her recommendation methodologies that support an investigation of how multiple identities create unique experiences of discrimination.

Introduce a third demographic to analysis.

We previously mentioned a two-way cross-tabulation and tests of association between variables. If you are taking an intersectional approach, another demographic can be added to the data table to further segment the results to a more diverse subgroup: when race is added as the third variable, a data comparison of female versus male becomes a comparison of racialized female versus non-racialized female and racialized male versus non-racialized male. This analysis can be applied to representation as well as opinion data, as it can be performed on both demographic and inclusion results.

		Senior Level	
		Yes	No
Female	Racialized	2 8.70%	21 91.30%
	Non-Racialized	23 40.35%	34 59.65%
Male	Racialized	65 66.33%	33 33.67%
	Non-Racialized	92 66.19%	47 33.81%

Table 2: Representation of Senior Level Status by Race and Gender.

A possible application with representation data would be an analysis of the interaction of race and gender on the likelihood of being at the senior level of a firm (**Error! Reference source not found.**). To do this, we test the association between race and seniority for females, and then males. A potential result would be that there is an association for females but not for males, meaning that the impact of race on career advancement is evident only for females.

The same process can be applied to perception-based data by substituting the senior level variable with agreement versus disagreement to an inclusion survey question. As an example, we will again use the inclusion survey question about equal opportunity to advance in the firm. If you found an association between race and agreement in equal opportunity to advance, you can add the third variable gender to see if the association holds for males and females. The results could show that racialized males showed significantly lower agreement than non-racialized males, suggesting a unique racialized experience for males in their perception of discrimination.



Compare odds of a specific outcome between subgroups.

Odds can be used to understand whether or not there is an association between two personal demographics (race and gender, Indigenous and disability status, sexual orientation and gender) and the likelihood of an outcome. Another method of exploring intersectionality would be comparing the odds

	Senior Level		Odds of being Senior Level
	Yes	No	
Non-Racialized Male	92 66.19%	47 33.81%	2:1
Racialized Male	65 66.33%	33 33.67%	2:1
Non-Racialized Female	23 40.35%	34 59.65%	2:3
Racialized Female	2 8.70%	21 91.30%	1:9

Table 3: Odds of being Senior Level by Race/Gender Subgroups.

of a specific firm-based outcome like being senior level between groups. Once you filter the data to subgroups you could then calculate each of their odds of being senior level versus non-senior level and compare across these subgroups. The potential with this would be ranking the odds from highest to lowest to see a how these demographic combinations are positioned within the hierarchy of the firm.

We appreciate the opportunity to respond to this consultation and hope that this information is valuable. Should you have any questions regarding our submission, please do not hesitate to contact us.

Sincerely,

Michael Bach, CCDP/AP
CEO
Canadian Centre for Diversity and Inclusion

TO: The Law Society of Upper Canada Convocation

FROM: The Canadian Hispanic Bar Association

DATE: November 14, 2016

RE: Submissions on the **Challenges Faced by Racialized Licensees Final Report**

BACKGROUND

1. The Canadian Hispanic Bar Association (the "CHBA") is a national, non-profit organization representing Hispanic/Latin American lawyers, law students, Articling/LPP students and NCA students.
2. The CHBA was founded in 2005 and was formerly known as the Hispanic Ontario Lawyers Association (HOLA). The CHBA has member representatives in the Roundtable of Diversity Associations (RODA), the Equity Advisory Group (EAG), JusticeNet Ontario and the US National Hispanic Bar Association.
3. The CHBA works to promote diversity within the profession, to increase the number of Hispanic lawyers across Canada and to provide support to its members.
4. In March of 2015, the CHBA responded to the Working Group on the Challenges Faced by Racialized Licensees interim report by providing submissions to this group as well as participating in the submissions of the Equity Advisory Group.
5. Presently, the CHBA has also participated in EAG's Working Group on the Challenges Faced by Racialized Licensees in addition to providing its own submissions.

The Law Society Should Vote on the Recommendations as an Omnibus Motion

6. The CHBA submits that all thirteen (13) recommendations contained in the final report should be adopted in their entirety. The CHBA believes that the efficacy of the recommendations will increase if they are implemented together. As such, we do not support the motion to vote on the recommendations on an individual basis. We strongly urge Convocation to accept the recommendations as an omnibus package.
6. The CHBA submits that the recommendations contained in the final report are minimum requirements to create a regulatory framework and culture that is responsive to the varied and systemic needs of racialized licensees.
6. The CHBA also submits that the recommendations represent proposals that are fundamental and basic in nature, and that if needed, can be further expanded or refined in the future, after their implementation has been approved.

Comments on the Recommendations

9. The CHBA adopts and endorses the submissions of the EAG regarding the recommendations contained in the final report.
9. The CHBA agrees that anti-discrimination matters should be aligned with each licensee's professional obligations. It also agrees with the various manners outlined to measure progress, and believes that the collection of data will be a key driver to addressing issues of systemic discrimination while promoting inclusion.
9. For clarity, the CHBA is supportive of the recommended CPD requirement of three (3) hours every two (2) or three (3) years. The CHBA believes that such a requirement is not onerous, and will have a net benefit on the profession.

9. The CHBA strongly supports the further development of the Discrimination and Harassment Counsel Program, as well as the development of alternative streams in which to address complaints.

9. The CHBA recognizes the Law Society as a strong driver in the organizational behaviour and culture of licensees and prospective licensees. As such, it agrees with the proposed changes to the Law Society's own processes and appreciates the Law Society's leadership in this respect.

Implementation Considerations

14. The CHBA strongly supports the motion brought forth by Bencher Joanne St. Lewis and Barbara Murchie to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups. In this respect, we further submit that the Law Society should consider all motions from an equity-sensitive perspective as applicable.

15. The CHBA also submits that the Law Society should consult and work with various stakeholders, including the CHBA and other equity seeking legal associations on the implementation of the recommendations.

16. We thank the Working Group for the opportunity to make these submissions and we look forward to working with the Law Society to address the issues raised within the report.

Sincerely,

The CHBA Challenges Faced by Racialized Licensees Working Group:

Sandra Lozano
Jennifer Quito



November 8, 2016

Via Email: racialized.licensees@lsuc.on.ca

Equity and Aboriginal Issues Committee
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West,
Toronto ON M5H 2N6

Attention: Ekua Quansah, Policy Secretariat

Dear Ms. Quansah,

Re: CCLA comments on the proposed LSUC Motion to approve Challenges Faced by Racialized Licensees Working Group – Final Report

On behalf of the County of Carleton Law Association (CCLA), the CCLA Diversity Committee thanks you for this opportunity to contribute to the discussion on the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“the Report”).

The CCLA is Ottawa and Eastern Ontario’s leading association for the professional legal community. It has over 1,598 licensed members from all range of legal practice areas, including paralegals. Close to half of our members practice in firms of 9 licensees or less. While we acknowledge that our legal population is less racialized than the GTA, the racialized licensees in our region often face the same identified challenges but in a more isolated context.¹

The CCLA Diversity Committee was created to assist the Membership Committee in identifying and determining the overall approach / philosophy that the CCLA should adopt to ensure it is inclusive of the entire legal community that the CCLA serves. Its purpose is to foster a culture of diversity and inclusion in the CCLA by enabling the values and principles of equality and equity in its organizational structure, policies, programs, and services.

¹ *Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (2014)*, https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf at p.7.

We commend the Working Group on the work that has been completed to date. The Report makes thirteen recommendations that, in general, we support. However, the Report is noticeably silent on three key issues and two particular recommendations require a different approach. Before this is brought before Convocation for approval, these topics must be addressed.

We provide comments on the following five areas:

1. Racialized sole practitioners and small firms;
2. Economic vulnerability of racialized licensees;
3. Education and training;
4. Using the DHC as a way to address systemic racism; and
5. Monitoring and accountability.

Several of our suggestions should be accommodated at this time and could be undertaken with reasonable effort; other suggestions are intended to guide the LSUC on its next steps in taking action on the issues of systemic racism and bias within the profession.

COMMENTARY

1. Silence surrounding racialized sole practitioners and small firms

In short, the Report does not comment on this group. Many racialized licensees find themselves practicing in small firms or as sole practitioners; this is largely as a result of their lack of ties within the legal community and systemic racism. The Report addresses remedies for firms with over 25 licensees, but fails to address the sole practitioner and small firms who are already a marginalized group.

According to the LSUC's *Statistical Snapshot of Lawyers in Ontario* from the *Lawyer Annual Report (2014)*²:

- 24% of racialized lawyers practice as sole practitioners;
- 14% of racialized lawyers are in house counsel; and
- 14% of racialized lawyers are in government.

²*ibid* at p. 5

We further note that 33% of racialized lawyers work in firms of fewer than 5 people; 16% of racialized lawyers are in firms of 5-9 people.³ Given that 49% of racialized lawyers work in practices of less than 9 people, this group has to be acknowledged in the Challenges Faced by Racialized Licensees. The Law Society of Upper Canada has this data readily available, therefore, it should be relied upon for the purposes of this Report. The Report fails to address the racism this particular group encounters and ways in which to eliminate the challenges faced by this racialized group.

If the report is approved as it is, we will be essentially failing to address almost half of the racialized lawyers who are encountering various forms of racism within their immediate work environments, the professional organizations they may or may not be a part of, and, within the legal community at large.

2. Economic vulnerability of racialized licensees

The Report does not address the issue of economic barriers for racialized licensees and licensees representing other equity-seeking groups. These begin as economic barriers to the profession and continue on through the licensee's career.

Racialized, first-generation law students, with little or no connections to the profession, often have limited familial financial support to help pay for their legal education. They may already be carrying significant student debt coming into law school. These students rely on government student loans and professional student lines of credit to finance their professional degree. This means that economically-disadvantaged students are graduating with extraordinary debt loads.

This economic stratification is amplified in the licensing process and an ultra-competitive articling system, in which law students vie for a limited number of well-paying articling positions. In order to become licenced, economically-disadvantaged law students may have to choose a low-paying or unpaid articling position with a sole practitioner or small firm or to enroll in the LPP. These low-paid / unpaid articling students and LPP students continue to accumulate debt during the licensing process. Further, licensing fees are the same for all licensing candidates, regardless of articling employer and articling remuneration, or unpaid experiential training through the LPP. These fees become disproportionately onerous when low-paid / unpaid articling students have to pay their licensing fees themselves, while large firms pay for their articling students' licensing fees as standard practice.

³*ibid* at p. 6

These economic barriers continue on after licensing. Whereas articling students at large firms have the opportunity to be hired back, those who articulated with sole practitioners or came through the LPP are more likely to become sole practitioners themselves or stay on at the small firm where they articulated.⁴ These new practitioners may continue to rely on bank loans and lines of credit to finance the significant costs of opening a sole practice or contributing to the small practice. As sole practitioners, they must bear alone the regular costs of the profession, including law society fees and insurance premiums, law association membership fees, CPD courses and conference fees, etc.

These licensees juggle: the financial burdens of a sole practice, while attempting to build a client base and business; finding a way to support themselves, while paying off their student debt within a reasonable time; and making the pronounced effort to network and seek out mentorship in order to ameliorate the isolation of sole practice. These factors impede their progression in the profession, and hinder their ability to obtain leadership roles within the legal community or to devote time to volunteer positions or appointments on committees.

The Report must recognize that economic barriers disproportionately affect racialized licensees and that this may represent one of the most significant challenges facing racialized licensees.

3. Education and training

We believe that mandatory education and training are foundational to address the challenges faced by racialized licensees. However, the Report is not clear about what CPD programs would meet the criteria for accreditation and does not explain why three hours every three years is an appropriate benchmark. Developing an understanding of diversity does not flow from an intense one-off kind of event; it comes from an internalization of the issues and challenges by way of regular, ongoing and progressive dialogue that is relevant to our day-to-day ways of thinking and acting. The Report needs to require annual CPD/training as well as other means to demonstrate competence and currency in this area. Perhaps this could be part of a no charge professionalism credit.

⁴This is reflected in the 2014 Lawyer Annual Report that showed that 24 percent of racialized respondents were sole practitioners, whereas 19 percent of non-racialized respondents were sole practitioners.

4. Problematic use of the DHC as a way to address systemic racism

While a review of the Discrimination and Harassment Counsel Program (“DHCP”) is laudable, the LSUC should avoid tampering with the complete confidentiality and privacy that complainants currently enjoy. The small numbers of racialized licensees in particular locations make it difficult to remain anonymous should a complaint be acted upon or become public. If the sharing of a discriminatory experience automatically led to a formal investigation or complaint (and how would a particular licensee know they would be hitting a “threshold”), then this would undermine the confidence and trust that has been the key to the DHCP’s current ability to support racialized licensees.

5. Monitoring and Accountability

The Report should address monitoring and accountability. As we have seen from the limited progress made on similar past recommendations on this topic⁵, if there is no ongoing monitoring and reporting on progress, then action is simply not taken. With the evidence before us, we know that the identified challenges are longstanding, ongoing and increasing. There needs to be accountability processes built into the Recommendations right from the start.

One way that this could be done is through having the LSUC produce an annual report card on what progress has been made on each of the Recommendations. This report card should be reviewed by a committee of benchers but also include other stakeholders.

INTERSECTIONAL ISSUES

Amongst other issues that require further attention, we note that at page 4 of the Report, the Engagement Process Results identified the issue of additional intersecting experiences of discrimination, however the Report does not address this topic. The next phase should encompass an in-depth analysis and clear recommendations on intersectional issues.

⁵*Racial Equality in the Canadian Legal Profession*, Working Group on Racial Equality in the Legal Profession, Canadian Bar Association, February 1999.
<https://www.cba.org/getattachment/Sections/Equality-Committee/Resources/Resources/2013/Racial-Equality-in-the-Canadian-Legal-Profession/racialEquality.pdf>

CONCLUSION

Although this Report has been long anticipated and many in the profession are ready to act, it behooves us to step forward with the best foot we can. We are not advocating a complete rewrite of the Report, but believe that the Report should and could be modified within a reasonable timeframe.

On behalf of the CCLA, we urge you to consider expanding the scope, making some modifications and, ultimately, capitalizing on the impact of the Recommendations.

We thank you for your time and consideration of this submission.

Yours very truly,

Asfrah Syed-Emond, Chair, CCLA Diversity Committee
Juliet Knapton, Vice Chair, CCLA Diversity Committee
David Ang, Vice Chair, CCLA Diversity Committee



November 14, 2016

Email: racialized.licensees@lsuc.on.ca

Challenges Faced by Racialized Licensees Working Group
The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto ON M5H 2N6

Dear Members of the Challenges Faced by Racialized Licensees Working Group:

Re: Submission by the Federation of Asian Canadian Lawyers on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

The Federation of Asian Canadian Lawyers (“FACL”) is pleased to comment on the recommendations outlined in the Law Society of Upper Canada’s (“Law Society”) Challenges Faced by Racialized Licensees’ (“CFRL”) Working Group Final Report – *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“Final Report”).

As you are aware, FACL is a diverse coalition of Asian Canadian legal professionals working to promote equity, justice, and opportunity for Asian Canadian legal professionals and the wider community, and to foster advocacy, community involvement, legal scholarship, and professional development. FACL is a key stakeholder in this initiative and has long supported and contributed to the crucial work of this group. FACL applauds the efforts of the CFRL Working Group, the Final Report, and its recommendations.

FACL is of the view that the recommendations represent a critical step in the right direction towards addressing the challenges faced by racialized licensees. As such,

FACL urges the immediate adoption of these recommendations as an omnibus package by Convocation on December 2, 2016. The time to act is now.

FACL supports the Final Report's recommendations individually and categorically. A change in culture and attitudes in our profession is overdue and the recommended educational, policy, and regulatory measures will assist in accelerating this culture shift. FACL looks forward to working with the Law Society and other stakeholders in developing appropriate policies, practices, and resources aimed at addressing the many gaps and barriers encountered by racialized licensees.

FACL especially supports the regulated collection, analysis, and publication of demographic data as a means of measuring progress. This will enhance transparency and accountability in the legal profession's efforts to improve access to and public confidence in Ontario's legal profession, which is a necessary part of ensuring that all licensees have an equal chance of success in this profession.

FACL is encouraged by the consideration of progressive compliance measures but standards are only meaningful if they are enforceable and only effective if they are enforced. There must be real consequences for non-compliance and FACL looks forward to seeing the form and substance of such compliance measures as they evolve from this process.

FACL is pleased that the Law Society is taking a leadership role by internally promoting diversity, inclusion, and equality. FACL also strongly supports the recommendation to strengthen and better equip the Law Society's Discrimination and Harassment Counsel Program to address complaints of systemic discrimination.

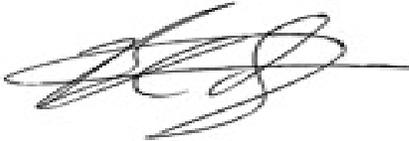
As FACL has previously commented, the challenges faced by women, Indigenous, LGBTQ, and disabled licensees intersect with those faced by racialized lawyers and paralegals. These issues should not be compartmentalized or separated. Thus, FACL is hopeful that the implementation process of the recommendations will situate race in an appropriate context and not in isolation from the intersecting challenges faced by all equity-seeking groups.

Accordingly, FACL supports the motion by Bencher Murchie to ensure that the recommendations herein are appropriately extended to all equality-seeking group and urges Convocation to pass this motion.

Historically, the voices of racialized communities in Ontario have been appropriated by having others speak for us. To maintain legitimacy, racialized licensees need a voice in the implementation of these recommendations. FACL believes that the dialogue initiated by this process must be continued by having all stakeholders meaningfully and regularly engaged throughout the process of implementing the recommendations.

Thank you for considering our comments. Should you have any questions about this matter, we would be happy to discuss this with you further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brendan Wong', with a horizontal line extending to the right.

Brendan Wong
President, Federation of Asian Canadian Lawyers (Ontario)



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Response by FOLA to the Report of the Challenges Faced by Racialized Licensees Working Group: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

Submitted to:

The Law Society of Upper Canada

c/o Ekuia Quansah, Policy Counsel

Osgoode Hall, 130 Queen Street West

Toronto, ON M5H 2N6

racialized.licensees@lsuc.on.ca

Submitted November 14, 2016

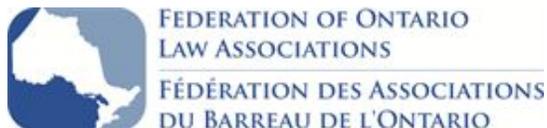
Corporate Mailing Address:

731 9th Street West, Owen Sound, ON N4K 3P5

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“The Voice of the Practising Lawyer in Ontario”

Dear Working Group Members,

The Federation of Ontario Law Associations (“FOLA”) commends the Law Society of Upper Canada in attempting to develop a concrete framework to recognize and address the challenges that are faced by racialized licensees throughout Ontario. The pragmatic approach and timeline suggested within the report illustrate an understanding by the Working Group of the time necessary to effect meaningful change moving forward.

FOLA notes, however, that while the Working Group’s mandate (established in 2012) focused only on racialized licensees, this restricted mandate, in and of itself, creates unnecessary barriers and limitations. Since 2012, a greater societal understanding of other disadvantaged groups including gender identity, gender expression, disability, sexual orientation, class and creed creates a need to ensure that these other groups are not left behind as we move forward with the Working Group’s recommendations. This proposed expansion would acknowledge the broad range of human rights issues which exist while not precluding the possibility of variations or focussed initiatives for certain groups where appropriate. It would also take into account the intersectionality issues associated with discrimination. FOLA therefore would propose that, as any recommendations move forward through development and implementation, the mandate of the Working Group expand beyond racialized licensees to include all areas of potential discrimination.

The expansion of mandate set out above would only require a slight adjustment to the three objectives stated by the Working Group. The objectives would become:

- a) Inclusive legal workplaces in Ontario
- b) Reduction of barriers created by unconscious bias and discrimination; and
- c) Better representation of all minority groups in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority..

The public needs to trust the legal profession. A profession that does not reflect the diversity of the public creates both real and perceived barriers and there is no reason to break down these barriers one group at a time.

FOLA is also very mindful of the parallel mandates of the Law Society to promote access to justice and to protect the public interest. In that context, FOLA is very aware of the economic costs to the practice of law in Ontario and of the struggle that some practising lawyers – particularly those in marginalized communities – engage in every day to remain economically viable. Whether they are marginalized by geography or the economic situation of the clients they choose to represent, there are many lawyers in Ontario for whom it is a daily struggle to maintain an economically viable legal business.

Since FOLA’s mandate is primarily as an advocate for the interests of the practising lawyer – the majority of whom are in sole and small practice in Ontario – a good deal of our commentary is

Corporate Mailing Address:

731 9th Street West, Owen Sound, ON N4K 3P5

Phone: (519) 270-4283

www.fola.ca

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coming from this perspective. These comments are not, however, only concerned with the “cost” of implementing these recommendations. They are also mindful of the fact that many of the racialized or otherwise marginalized licensees entering the practice are working in solo or small practice and, in turn, serve minority populations that can often be economically disadvantaged in communities across Ontario. These economic pressures are, in our view, some of the greatest barriers to full equity. A key component to realizing the goal of equity in our profession is to make the practice of law and access to law more affordable to more people.

With that in mind, we contend that one of the most important ways the Law Society of Upper Canada can promote equity and access is to be ever mindful of the costs it imposes or has an influence on. Every regulatory mandate and licensing procedure has a cost and this cost should be kept as low as possible. CPD programming must be kept affordable and the operations of the Law Society, in general, must be constantly evaluated with a view to keeping costs down. Likewise, the Law Society should join others in the profession to maintain or increase pressure on law schools across the country to make law school more affordable and access to financial assistance less burdensome on practitioners in their early years of practice..

FOLA’s position on the Recommendations made by the Working Group

FOLA agrees with Recommendations 1, 3, 8, 10, 12 and 13 without the need for further comment.

Recommendation 2 and 11

FOLA would appreciate the opportunity to work with the Law Society to develop policies to address the challenges licensees face through bias and discrimination. Our Executive Board has taken note that within the leadership of our member law associations, there is an apparent underrepresentation of lawyers who come from minority populations. While we cannot dictate the complement of our members’ leadership structure, FOLA is committed to assisting the Law Society in effecting change at the ground level with the hope that this will create future change in the leadership of the profession. To that end, our Executive Board is more mindful of the need to recruit from minority populations to stand for Executive Board positions and we have implemented the practice of having at least one speaker from an equity-seeking bar association join our bi-annual Plenary meetings. These are small steps to be sure, but we think they are important and we are encouraging more of our members to do the same.

We also view the local associations and their Practice Resource Centres as a terrific conduit for the development of policies, the dissemination of information and the promotion of equity. A very large, but often overlooked, part of the mandate of our local associations is the promotion of collegiality and mentorship among the profession. This collegiality and relationship building cannot be underestimated in its ability to break down barriers and promote cross-cultural understanding. The primary user of the courthouse library is often a sole or small firm practitioner – the most likely current firm structure of minority licensees. Law Associations and the Practice Resource Centre staff are in the unique position of knowing these licensees, knowing potential mentors and providing a forum for mentorship, networking and collaboration. Further, the Law Association lounges in county courthouses across Ontario are places where all licensees



should feel welcome and should find a colleague who is willing to help, consult or simply "shoot the breeze" fostering ongoing relationships. Likewise, it is critical that our local associations reach out to racialized and other minority populations for candid internal conversations to implement policies that removes all possible barriers. As such, in considering resources available to address the challenges faced by these licensees, FOLA considers our courthouse Practice Resource Centres (known in the past as libraries) to be a key component to this effort. In fact, we would argue that further investments in Practice Resource Centres will further assist racialized and other minority licensees to build sustainable legal practices.

Recommendation 4, 5, 6, and 7

It is FOLA's belief that in providing these recommendations, the Working Group has acknowledged the need for evidence based decision making. We believe this is a key precondition to any analysis by the Law Society when considering imposing further regulation on the profession.

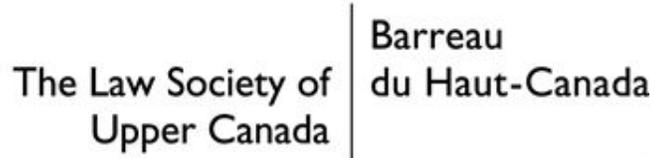
Recommendation 9

FOLA does not disagree with the suggestion that there is value in CPD programs on equality and inclusion. We would however caution that any requirement for specific CPD courses recognize limitations for practitioners in the North or other parts of rural Ontario who cannot always access streamed CPD. In this regard, and to reiterate the point made above, the Practice Resource Centre network across Ontario can be an important, and inexpensive, conduit for the dissemination of this information and training. We suggest that these materials be made available through the Practice Resource Centres, and that the program be available for distribution in other formats for those practicing in remote locations.

Thank you for the opportunity to provide these submissions. We look forward to further dialogue and to standing with the Law Society and all of our colleagues across the legal profession in moving toward a goal of equity and inclusion.

Eldon Horner
Chair

Jaye Hooper
1st Vice Chair



EQUITY INITIATIVES DEPARTMENT

TO: Members of the Challenges Faced by Racialized Licensees Working Group

FROM: Members of the Indigenous Advisory Group

DATE: November 17, 2016

RE: Submission by the Indigenous Advisory Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

The Indigenous Advisory Group was provided with a copy of the *Final Report of the Challenges Faced by Racialized Licensees Working Group* delivered to the Equity and Aboriginal Issues Committee. While Indigenous lawyers and paralegals were not included in the consultant or community engagement processes, we understand the findings of widespread barriers experienced by racialized licensees within the profession at all stages of their careers. The report provided, in summary form, some examples of the experiences faced in the legal profession including discrimination, negotiating concepts of "culture" and "fit", lack of mentors, networks and role models; we believe many of these same experiences are shared by Indigenous lawyers and paralegals.

As the report so aptly states, "the Law Society of Upper Canada has a duty to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario and to protect the public interest. The Law Society is committed to adhering to its obligations under the *Human Rights Code*".

All licensees should be committed to eliminating harassment and discrimination in the profession; however, the current experiences relayed by respondents during this consultation may run at odds to the very standard we are held to protect.

The Indigenous Advisory Group supports the implementation of the Report's recommendations by the Law Society staff as overseen by the Equity and Aboriginal Issues Committee and is prepared to assist wherever necessary. To this end, we will be working with EAIC to articulate how the 7 Sacred Teachings of wisdom; love; respect; bravery; honesty; humility and truth must be practiced together to restore balance.

In our view, these teachings provide a framework through which all actions of the Law Society must be viewed and applied.

Respectfully,

Kathleen Lickers on behalf of
The Indigenous Advisory Group



November 14, 2016

Ekua Quansah
The Law Society of Upper Canada Osgoode Hall
130 Queen Street West Toronto, Ontario

Dear Ms. Quansah:

BY EMAIL: racialized.licensees@lsuc.on.ca

Re: Response to the Working Group Final Report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

The Indigenous Bar Associations (IBA) would like to take this opportunity to thank the Law Society of Upper Canada's Equity and Aboriginal Issues Committee for their initiative and dedication in completing this essential Final Report. The IBA appreciates the time expended by the Committee in addition to their comments and suggestions to continue to address the challenges faced by racialized licensees. In support of the Working Group Final Report the IBA provides the following comments.

Recommendation 1 – Reinforcing Professional Obligations

The IBA supports the recommendation of the Law Society to amend the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

Due to the history and intergenerational impacts of colonialism, legislated assimilationist policies and Indian Residential Schools, Indigenous licensees face many complicated challenges due to the historic disadvantages that tend to be perpetuated by the status quo inherent in the legal system. In addressing these challenges LSUC is encouraged to employ an approach that addresses both the unique and collective challenges as well as the individual challenges facing Indigenous licensees. The IBA requests that the Law Society make specific mention of the *Truth and Reconciliation Commission's Final Report* and the

requirement to address “reconciliation” between Indigenous and non-Indigenous Peoples.

Recommendations 4 to 7 (Collection of Data and Qualitative, Quantitative Analysis)

The collection of demographic data to identify racialized licensees is essential to addressing the issue of systemic discrimination. It is difficult to address the issue without the data to support the numbers and analytical trends. The IBA requests that this essential data be posted as it becomes available.

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The IBA recommends that in developing continuing professional development programs on Equality and Inclusion special consideration be given to the unique challenges faced by Indigenous licensees, including remote access, and financial considerations for mandatory fees and materials.

Recommendation 10 – The Licensing Process

Please see the above noted comments with respect to *Recommendation 1 – Reinforcing Professional Obligations* in considering to include the topics of cultural competency, equality and inclusion in the profession as competencies as part of the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society recommendation to provide support to racialized licensees through mentoring and networking initiatives was highlighted by the IBA as a key priority in its consultation submissions. It is important for the success of Indigenous licensees to connect and associate with other Indigenous law students and licensees. To the extent that its resources permit the IBA encourages the Law Society to seek its assistance in providing opportunities for Indigenous licensees to network with Indigenous law students, licensees, academics and judges and other members of the IBA.

The IBA also requests the Law Society undertake efforts towards monitoring the success of all mentoring and networking initiatives for racialized licensees and identify any improvements.

3

Thank you for your consideration of these submissions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Scott Robertson', written over a horizontal line.

Scott Robertson
Vice-President Indigenous Bar Association
srobertson@indigenousbar.ca

cc Koren Lightening-Earle, President, Indigenous Bar Association

The Law Society of
Upper Canada

Barreau
du Haut-Canada

EQUITY INITIATIVES DEPARTMENT

TO: Members of the Challenges Faced by Racialized Licensees Working Group

FROM: Members of the Equity Advisory Group Working Group

DATE: November 14, 2016

RE: Submission by the Equity Advisory Group Working Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

Members of the Equity Advisory Group (“EAG”) Working Group have carefully considered the thirteen recommendations presented in the Challenges Faced by Racialized Licensees Working Group Final Report (“final report”), *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The following document offers general comments on the final report as well as comments specific to some recommendations.

Background

1. EAG represents the diverse interests of lawyers and paralegals who identify as a member of one or more equity-seeking groups. EAG, through its organizational and individual members, is actively involved in the advancement of equity and inclusion within the legal professions with respect to gender, sexual orientation, gender identity, language, ability, religion, and most relevant to these submissions, race.

2. EAG's mandate includes commenting on Law Society reports and studies relating to equity issues and access to justice within the profession. EAG is of the view that the Report dated September 22 ought to be considered from an equity and diversity lens, access to justice, and the Law Society's mandate to protect the public interest.

3. EAG supports an approach that advances access to justice and protection of the public interest for equity seeking clients, while ensuring the regulatory balance struck does not disproportionately impact licensees from equity seeking groups, where it is unnecessary to protect the public interest.

4. The commitment of the EAG Working Group to the *Challenged Faced by Racialized Licensees* report has spanned two terms of Law Society Benchers as well as EAG members. The Working Group is currently comprised of the following individual and organizational members:
 - a. Tahlee Afzal, individual member;
 - b. Ranjan Agarwal, on behalf of the South Asian Bar Association;
 - c. Sharan Basran, individual member;
 - d. Maureen Bennett Henry, on behalf of the Canadian Association of Black Lawyers;
 - e. Gerald Chan, on behalf of the Federation of Asian Canadian Lawyers;
 - f. Gordon Cudjoe, on behalf of the Canadian Association of Black Lawyers;
 - g. Imtenan El-Razik, on behalf of the Canadian Association of Muslim Women in Law;
 - h. Lai-King Hum, on behalf of the Roundtable of Diversity Associations;
 - i. Leonard Kim, individual member;

- j. Ayesha Laldin, on behalf of the Women's Law Association of Ontario;
 - k. Sandra Lozano, on behalf of the Canadian Hispanic Bar Association;
 - l. Jennifer Quito, on behalf of the Canadian Hispanic Bar Association;
 - m. Paul Saguil, individual member;
 - n. Jason Tam, individual member; and
 - o. Joyce Tam, on behalf of the Federation of Asian Canadian Lawyers.
5. The EAG Working Group agreed to provide written submissions to the CFRL Working Group in response to the final report. The EAG Working Group provides submissions that focus on what the Law Society of Upper Canada proposes to do to remove barriers faced by racialized licensees in the legal profession.
6. The EAG Working Group submits its written feedback to the CFRL Working Group for its consideration, in preparation for the decision before Convocation on December 2, 2016.

Unequivocal Consensus among all EAG Working Group Members

7. There is unequivocal consensus among all EAG Working Group members that the thirteen recommendations should be approved in their entirety. The EAG Working Group urges the Law Society to vote on and approve the thirteen recommendations in the final report as an omnibus package at Convocation. The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis. The challenges faced by racialized licensees must be addressed in a multi-faceted way

that will be best achieved through the approval of all thirteen recommendations as an omnibus package.

8. The EAG Working Group is unanimous in its recommendation that the Executive Summary in the final report should include a reference to section 15(1) of the *Canadian Charter of Rights and Freedoms*.¹ An example of the included reference is below:

“The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations **constitutionally enshrined in the *Charter of Canadian Rights and Freedoms***, and already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*.”

...

“In fulfilling its mandate, the Law Society integrates equality and diversity values and principles into all of its policies, practices and programs **while upholding the spirit and letter of the law of equality rights outlined in the *Charter***.”

Approving all Recommendations is a Necessary First Step

9. There is consensus among all EAG Working Group members that the approval of all recommendations is a basic, minimum first step that is required to begin to address and improve accessibility to and advancement within the legal professions for racialized licensees.
10. These thirteen recommendations work together to address the systemic issues faced by racialized licensees. Their interplay and resultant effects lay the foundation for initiatives that can begin to ameliorate systemic issues of race within the profession. Voting on each recommendation, one by one, will diminish their full impact and restrict how they can and must work together to create practical change.

¹ *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

11. The approval of all thirteen recommendations is urgent. This is not only fundamental to creating a more inclusive profession, but it is an action that is long overdue.
12. Considering the range of stakeholders that are represented by and actively involved in EAG, the EAG Working Group's inclusion in the future implementation of these recommendations is important and necessary, if the final report is approved at Convocation on December 2, 2016. The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the application in a manner that is responsive to the specific needs of a particular community.

Recommendation-Specific Comments by Theme

Accelerating Culture Shift: Recommendations 1 to 3

13. Although these recommendations are basic requirements, the EAG Working Group believes there is a need to identify these issues to address equality and anti-discrimination in alignment with each licensee's duty to fulfill their professional obligations. Aligning these principles with one's professional responsibilities requires each licensee to develop a sensitivity and an awareness of these issues. Each licensee will then have the capacity and responsibility to act according to these basic principles.
14. These are a minimum requirement that are important and necessary to deal with issues in a proactive manner.

Measuring Progress: Recommendations 4 to 8

15. EAG Working Group members suggest that the active gathering of this data will highlight to the profession that issues of diversity and inclusion remain a top priority for the Law Society.
16. EAG Working Group members identify the need for statistical information regarding the demographic composition of legal workplaces. EAG Working Group members agree that the Law Society mandate demographic data reporting and agree that this information should be publicly available.
17. The members of the EAG Working Group note that the Law Society already collects demographic information from licensees through the Lawyer Annual Report and the Paralegal Annual Report. The Law Society also has information regarding where licensees are employed. The Law Society could produce this information if legal workplaces are not willing to do so.
18. EAG Working Group members believe that legal workplaces should also track the progression of students and licensees within their workplaces, from the articling student level to the partner/managerial level. Demographic data should also include information that would indicate the number of members of different equity-seeking groups in various positions in legal workplaces – i.e. students, associates, and partners. This may help legal workplaces identify any issues that may exist with retention and may provide some insight as to why there may be a lack of representation of racialized groups. In the same vein, it is suggested that when licensees change their status with the Law Society, the form they are required to fill out should include a question as to why the licensee changed their status. This would assist in tracking retention and progression.

19. The EAG Working Group suggests that the Law Society continue to collect demographic data from licensees through the Lawyers Annual Report (LAR) and the Paralegal Annual Report (PAR). The Law Society should provide a clear explanation as to why licensees are being asked to provide demographic data and how the collected data will be used.
20. The Law Society could publicly report aggregate demographic data based on legal workplace size and region. The Law Society could then provide legal workplaces with their own demographic data and the Law Society could require legal workplaces to comment on their diversity statistics in light of the standards and resources they have adopted.

Educating for Change: Recommendations 9 to 10

21. The EAG Working Group agrees that cultural competency, equality and inclusion as competencies are basic job traits in today's legal profession. These are required qualities and measurement of professionalism for new lawyers that hope to effectively serve a diverse population in Ontario.
22. The EAG Working Group supports the CPD requirement of three hours every 2-3 years. This recommendation amounts to a net amount of 1 hour of CPD programs per year.

Implementing Supports: Recommendations 11 to 12

23. The EAG Working Group suggests that, despite much success, there is much work to do to develop the complaints process. The re-assessment of the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC) would be prudent considering the dynamic nature of this ongoing challenge in the legal profession. Furthermore, amending where necessary, the Rules of Professional Conduct and Paralegal Rules of Conduct is an important part of the

review process in order to enable the Law Society to have the necessary tools to follow through.

24. Creative ways to address complaints and the formation of specialized teams to address complaints of discrimination (and systemic discrimination) may promote a mature and measured response to situations of discrimination or harassment that have the potential to be effectively addressed.

The Operations of the Law Society of Upper Canada: Recommendation 13

25. The EAG Working Group suggests that, by following through with this recommendation, the Law Society will add credibility to the process and to the profession. The Law Society will be in a position to gain a firsthand understanding of the advantages and limitations in fulfilling the full recommendations.

Conclusion

26. The EAG Working Group is united and absolute in its support for the approval of all thirteen recommendations in the report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The approval of these recommendations lay the foundation to initiate vital and long overdue policies and programs that advance the profession in the direction of equity, diversity and inclusion.
27. The EAG Working Group views the approval of these recommendations as a moment that could have a positive and profound impact on other equity-seeking groups. If these thirteen recommendations are approved at Convocation, the EAG Working Group urges the Law Society to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the

application in a manner that appropriately addresses the specific needs of a particular community.

28. To summarize, EAG's unanimous position is outlined in the three following points:
- (i) The thirteen recommendations outlined in the final report should be voted on and approved as an omnibus package at Convocation on December 2, 2016;
 - (ii) The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis; and,
 - (iii) The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, provided that the Law Society must consider whether further consultation is required to make these extensions in a manner that is responsive to the specific needs of equity-seeking communities on a case-by-case basis.



40 Dundas Street West, Suite 200, Toronto ON M5G 2H1
40, rue Dundas Ouest, bureau 200, Toronto ON M5G 2H1

Toll free / Sans frais : 1-800-668-8258
Phone / Téléphone : 416-204-7142
Fax / Télécopieur : 416-979-2948
Email / Courriel : FieldD@lao.on.ca
www.legalaid.on.ca

November 18, 2016

VIA EMAIL: racialized.licensees@lsuc.on.ca

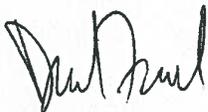
The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions

Legal Aid Ontario congratulates the Law Society and the Equity and Aboriginal Issues Committee on its report "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions". We support the goals of the report and the general framework established to support greater diversity and inclusion of racialized licensees within the legal profession. We would welcome an opportunity to meet with the Equity and Aboriginal Issues Committee and staff of the Law Society to discuss the report. As one of the largest employer of licensees, many of whom we are proud to say are from racialized communities, we would also like to extend an offer to work with the Law Society and the Committee to consider how Legal Aid Ontario can effectively implement the actions recommended in the report.

We wish you success on the consideration of the report by Convocation on December 2nd and look forward to hearing from you.

Yours truly,



David Field
President & CEO
Legal Aid Ontario



November 14, 2016

Legal Leaders for Diversity and Inclusion (LLD) is an organization of General Counsel from across Canada which supports a more inclusive legal profession in Canada. In just over 5 years, our organization has grown to over 100 General Counsel from across Canada and across many business sectors. Thank you for providing us with the opportunity to respond to the Challenges Faced by Racialized Licensees Working Group Final Report titled “*Working together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*” (“Final Report”).

We want to express our support for measures which create a more inclusive legal profession. Though it is difficult to comment on the right approach to be taken for law firms, we thought it might be helpful to the Law Society of Upper Canada to have the benefit of our insights on what LLD members are doing with respect to this issue in order to remove barriers faced by racialized lawyers in Ontario.

We believe that true and effective change within the legal profession will only come about through collaboration and cooperation. The LLD has created and supported a number of inclusive initiatives. Many of these are aligned with the recommendations found in the Final Report. These initiatives include:

- ***Building a relationship with LFDIN:*** One of LLD’s early successes was a collective ask to our external counsel community that they consider how the external bar could promote and support diversity and inclusiveness initiatives. The law firms answered with the Law Firm Diversity and Inclusiveness Network (“LFDIN”), which currently has 35 law firm members that have agreed to work together to promote diversity and encourage a culture of inclusion within their firms and within the broader legal profession.
- ***Mentorship Programs:*** LLD and the LFDIN established a formal Mentoring Program to match LFDIN member firm associate lawyers, who self-identify as being from groups that have been traditionally under-represented in the legal profession, with lawyers from LLD member organizations who have 10 or more years’ experience. At its core, is our belief that mentoring can help create an ‘equal playing field’ for lawyers who are from diverse backgrounds.
- ***Legal Programs:*** LLD members are also involved in programs such as Law in Action within Schools (LAWS) (sponsored by the University of Toronto Law School), the Internationally Trained Lawyers Program (ITLP) for foreign qualified lawyers, and other diversity focused organizations. All of these organizations provide access, exposure and opportunity for students and lawyers of diverse backgrounds. LLD members participate.



- **Scholarship Support:** LLD (supported by the LFDIN) established the Legal Leaders for Diversity Trust Fund to annually provide scholarships for law students with disabilities who are studying at Canadian law schools. In addition to this, an LLD scholarship was established for an in house lawyer with disabilities to attend the Canadian Corporate Counsel Association/Rotmans In House Counsel certification program.
- **Indigenous Peoples, Laws, Reconciliation & Practice introductory CLE program:** LLD is the driving force behind the First Nations Initiative which will be a CLE accredited program that will be used not only by General Counsel, but by many others as a core educational tool on Indigenous law.
- **Affinity Relationships:** The success of LLD also lies in the group's spirit of cooperation and sharing, and the power of collaborating with other organizations and speaking and participating on diversity related issues. By working together in this manner, we can best support each other and grow and learn together.

LLD supports initiatives which develop and advance our common objective of achieving a diverse and inclusive legal profession. The profession is being challenged within Canada and globally and law schools and law societies must take steps to make our profession globally competitive and reflective of the population in our communities. We believe that creating a more diverse legal profession in Canada will play a role in creating that competitive advantage.

We applaud the focus of the Law Society of Upper Canada on this important issue.

Executive
Legal Leaders for Diversity



Legal Leaders for Diversity

A Statement of Support for Diversity and Inclusion by General Counsel in Canada



We commit to promoting a diverse and inclusive workplace. We value the range of perspectives, ideas and experiences that diversity provides, whether grounded in gender, race, the spectrum of sexual orientation and gender identity, disability, cultural background, religion, economic position or age.

We believe diversity and inclusion create a broader, richer environment that enhances creative thinking, innovation and problem solving. Inclusive organizations attract and retain top talent.

We will therefore encourage greater diversity and inclusion in our own law departments, businesses and co-operate to foster these same values throughout the legal profession and the larger Canadian business community.

We undertake to practice and advance diversity and inclusion by:

- Promoting diversity within our own departments;
- Considering diversity in our hiring and purchasing practices;
- Working with Canadian law firms, law schools and others to advance these values;
- Promoting diversity initiatives at all levels in the legal and business community;
- Measuring the effectiveness of our efforts.

We, as advocates for diversity and inclusion, will demonstrate our commitment through specific actions including one or more of the "Be an Advocate" initiatives.



Comments on the Working Together for Change Report: Strategies to Address Issues of Systemic Racism in the Legal Profession

**Submitted by
Metro Toronto Chinese & Southeast Asian Legal Clinic**

INTRODUCTION

The **Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC)** is a community based legal clinic which provides free legal services to low income Chinese, Vietnamese, Cambodian, and Laotian communities in the Greater Toronto Area. Established in 1987, MTCSALC has served thousands of immigrants and racialized members of the aforementioned communities.

The following are our comments and recommendations on the Law Society of Upper Canada's Working Together for Change Report ("Report").

COMMENTS AND RECOMMENDATIONS

Addressing Systemic Racism Through a Holistic Approach

We fully endorse all 13 recommendations proposed by the Equity and Aboriginal Issues Committee ("Committee") to achieve the stated objectives of inclusive legal workplaces, reduction of barriers created by racism, and better representation of racialized licensees in all legal workplaces and at all levels of seniority.

We stress the importance of adopting a holistic approach in achieving these overarching objectives. Systemic racism is a complex and multifaceted issue which takes on many forms. There is no singular manifestation of systemic racism in legal workplaces and consequently no single solution. The varied nature of systemic racism necessitates a holistic response. As such, we submit that all 13 recommendations should be adopted together as they complement and reinforce the overall scheme to reduce racial barriers and achieve equity in legal workplaces. From our perspective, the 13 recommendations collectively tackle the issue of systemic racism from different fronts:

- Recommendations 1 (reinforcing professional obligations), 9 (continuing professional development), and 10 (licensing process) engrain and reinforce the principles of equality and inclusion for current and future licensees.
- Recommendations 2 (diversity and inclusion project), 3 (adoption of diversity and inclusion practices), and 11 (building communities of support) create and maintain practices for eliminating barriers to racialized licensees.
- Recommendations 4 and 5 (measuring progress through quantitative and qualitative analysis), 6 (inclusion index), and 7 (racialized licensees project inclusion survey) create a process for gathering data to measure the effectiveness of the recommended substantive practices and publicizing the results.

- Recommendations 8 (progressive compliance measures) and 12 (addressing complaints of systemic discrimination) create and strengthen compliance measures to address non-conformity with the recommendations.
- Recommendation 13 reaffirms the leading role and responsibility that the Law Society of Upper Canada has in implementing the aforementioned recommendations.

We submit that each set of recommendations complement each other and form an intertwined web of diversity and inclusion strategies. The removal of any strand from the web through partial or non-adoption of any of the 13 recommendations would seriously undermine the effectiveness of all recommendations and the viability of the overarching objectives.

Publication of Inclusion Index, Progressive Compliance, and Complaints of Systematic Discrimination

As noted by the Committee, the publication of an inclusion index would allow legal workplaces to demonstrate their performance and progress by providing a transparent measure to prospective clients and licensees. We believe that this transparency is crucial in achieving the goals of the Report and to further encourage and reinforce diversity and inclusion practices within larger legal workplaces.

Compliance measures and investigation of complaints is a core responsibility of regulatory bodies and an integral part of ensuring adherence to prescribed rules and practices. We are supportive of progressive compliance measures and submit that immediate consultation should commence on the structure of specific measures once the Committee's recommendations are adopted.

Furthermore, we are in favor of an individual complaint process through a specialized professional regulation team as it would provide nuanced redress on an individual level from staff members of the Law Society of Upper Canada with expertise in discrimination complaints in the legal workplace context.

CONCLUSION

We ask the Law Society's Board of Directors to fully adopt all 13 recommendations in the Report as a cohesive whole and consider and incorporate these perspectives in the Convocation Decision.

**Ministry of the
Attorney General**

Office of the
Deputy Attorney General

McMurtry-Scott Building
720 Bay Street
11th Floor
Toronto ON M7A 2S9

Tel: 416-326-2640

**Ministère du
Procureur général**

Cabinet du
Sous-procureur général

Édifice McMurtry-Scott
720, rue Bay
11^e étage
Toronto ON M7A 2S9

Tél.: 416-326-2640



November 14, 2016

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Ekua Quansah,

The Ministry of the Attorney General (MAG) is pleased with the opportunity to provide comments on the Law Society of Upper Canada (LSUC)'s final report on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The Working Group's final report reflects a comprehensive approach, broad consultation and thoughtful analysis on the experiences of Racialized licensees and on how to identify and remove barriers to their inclusion and equal participation at all career stages. I commend the licensees and organizations who have shared their experiences and the LSUC's Working Group for this important report.

As you may know, the ministry made oral remarks to the Working Group in May 2015, and a written submission in November 2015. We highlighted diversity and inclusion initiatives of the ministry and the Ontario Public Service (OPS) including the policies and procedures in place, the compilation of an Inclusion Index through the OPS' Employee Engagement Survey, and the release of the OPS Anti-Racism Action Plan. In addition, as noted on page 13 of your final report, the OPS has created the Anti-Racism Directorate which will provide guidance to the OPS on addressing racism.

Since that time, the OPS has continued to implement further measures including:

- A review of both the OPS policy and program on workplace discrimination and harassment resulting in a new updated policy, the Respectful Workplace Policy that was effective September 1, 2016
- Collection of diversity data on senior executives through the Leadership Profile Data Collection pilot project
- Collection of data on interns through the Ontario Internship Program Applicant Survey.

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In addition to the corporate initiatives identified above, the ministry is continuing to explore a variety of new initiatives including:

- A pilot of a roster of managers and subject matter experts to support diverse hiring panels
- A community outreach event to familiarize legal professionals from under-represented groups with the types of legal positions available in the Ontario Public Service
- A review of barriers in ministry hiring processes and practices.

As a ministry, we continue to focus our efforts on identifying and removing barriers in our workplace and on promoting greater diversity and cultivating an even more inclusive organization.

We recognize that the OPS is only one of a very diverse range of organizations that employ licensees, each of which are at various points on the inclusion continuum. Many of the recommendations in the final report will ensure the LSUC provides essential support to both licensees and organizations through CPD programs, clarifying professional obligations, collecting aggregate demographic data on the profession, and supporting mentoring and networking programs.

As part of our comments, we note the following points for consideration by the LSUC:

- Some recommendations, as drafted, appear to include requirements that may impact on governments and private organizations as employers of licensees (this potential impact is noted in footnote 7 of the report). At present it is difficult to determine whether the LSUC would have jurisdiction to regulate government and in-house legal departments as "legal workplaces" because the specific requirements of the Report's proposed mandatory human rights policy/diversity policy have not yet been determined. In any event, given the fact that MAG shares the same goals as the LSUC on this matter, we do not find it necessary to express a view on this aspect of the Report.
- There may also be a need to consider the complexity of implementation of specific requirements. For example, all employees of an organization, including licensees, are usually subject to the same employer policies and initiatives.
- Some organizations may already have similar obligations as those proposed in the final report under the Federal Employment Equity Act and the Legislated Employment Equity Program, or under the Federal Contractors Program; programs which promote equitable representation for women, Aboriginal peoples, persons with disabilities and members of visible minorities. Other organizations, as noted in the final report, have voluntarily implemented policies, training, and initiatives on diversity, inclusion or anti-racism that would potentially be duplicated by the proposed LSUC requirements.
- Given the diversity of organizations that employ licensees, there may not be a "one size fits all" approach but rather a need for a flexible approach that focuses on progress for each organization.

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The Ontario Public Service and the Ministry of the Attorney General are committed to continuing efforts to identify, remove and prevent barriers to Racialized licensees in the Ontario Public Service. As a ministry, we look forward to working with the LSUC and other organizations where licensees work, to identify how we can each do our part to address the lived experience of Racialized licensees in the context of our own workplaces; for the benefit of the legal profession and society at large.

Thank you again for your strong effort and focus on this issue and for the opportunity for our ministry to provide comments.

Yours truly,

A handwritten signature in cursive script that reads "Patrick Monahan".

Patrick Monahan
Deputy Attorney General

The Voice of the Legal Profession

Law Society of Upper Canada Challenges Faced by Racialized Licensees Working Group Final Report

Date: November 14, 2016

Submitted to: Law Society of Upper Canada

Submitted by: The Ontario Bar Association



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on issues raised in the Law Society of Upper Canada (“Law Society”) Challenges Faced by Racialized Licensees Working Group (“Working Group”) Final Report “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions” (the “Final Report”).

The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents 16,000 lawyers, judges, law professors and law students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA is pleased to assist government, the Law Society, and other decision-makers with dozens of policy initiatives each year – in the interests of the public, the profession, and the administration of justice.

In preparing this submission, the OBA has sought input from our governing council of members representing a critical cross-section of the bar, including senior and junior lawyers from managing partners to new calls, who practice across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province. The submission has also sought input from members of the OBA’s Equality Committee, Young Lawyers Divisions, Women Lawyers Forum, the Sole, Small Firm and General Practice section, the Canadian Corporate Counsel Association – Ontario Chapter, and our new Student Section.

Response to the Final Report

General Comments

The Working Group was formed in 2012 to identify the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages. The Working Group conducted a process to collect information on those challenges, and subsequently released a consultation paper in 2014 to collect feedback from the profession and public on questions intended to engage the profession in a consideration of strategies to address the challenges faced by racialized licensees.¹

¹ Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October, 2014 (<https://www.lsuc.on.ca/racialized-licensees/>) [the “Consultation Paper”]



Building on that work, the Final Report concludes that the challenges faced by racialized licensees are both longstanding and significant, that the Law Society must take a leadership role in bringing about a lasting culture change, and that prescribing minimum standards of equality, diversity and inclusion are consistent with human rights responsibilities of the profession that are already in place. The Final Report makes thirteen recommendations under five categories: accelerating culture shift, measuring progress, educating for change, implementing supports, and Law Society operations.

As we stated in our response to the Consultation Paper, the OBA is committed to enhancing and promoting equality and diversity within our association and the legal profession, including assisting the efforts of law firms to promote equity and diversity.² As set out in a recent CBA resolution, “ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice.”³ We therefore support the Working Group’s “intention to create long lasting systemic change within the professions,” and its recommendation that the Law Society use a combination of voluntary and mandatory measures.⁴ The Working Group recognizes that lawyers are already bound by the Rules of Professional Conduct, and all recommendations proposed in the report should be interpreted consistently with those requirements.

Further, we agree that close collaboration between the Law Society, legal workplaces and associations will be “essential to the success of the proposed measures and projects” proposed by the Working Group.⁵ As we set out in the OBA Initial Report, the OBA has a history of providing programming, mentoring and diversity initiatives for members, in addition to the tools and resources developed by the Canadian Bar Association (the “CBA”) to support diversity initiatives.⁶ We believe that the Law Society should promote and support legal workplaces and associations to develop new, and deliver existing programming, initiatives and materials to support the Working Group’s recommendations.

² See the Ontario Bar Association, Addressing Challenges Faced by Racialized Licensees, March 15, 2015. (<http://www.oba.org/submissions>) [“OBA Initial Report” at p. 2]

³ CBA Resolution 14-04-M, “Non-Discrimination in Legal Education”, February 22-23, 2014. (<https://www.cba.org/Our-Work/Resolutions>)

⁴ Final Report, p. 14-15.

⁵ Final Report, p. 15.

⁶ OBA Initial Report at p. 3-8. The CBA is the OBA’s national organization, which presently represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practising lawyers in Canada belong to the CBA. See also the “[The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations](#)” and the “[Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance](#)”



Before moving on to provide specific comments relating to the five areas covered by the Final Report, we would like to provide some general comments on the recommendations contained in the Final Report.

First, we note that the Working Group has not provided recommended timelines for several of its recommendations.⁷ The OBA supports the prompt implementation of the Final Report's recommendations. We request that the Law Society and/or the Working Group continue work with stakeholders to develop appropriate timelines for their implementation, along with appropriate plans to measure and report on their effectiveness, in order to allow for adjustment and renewal as necessary, and to ensure the approach adopted meets the intended goals.

Second, we recognize that the challenges faced by racialized licensees occur at all stages throughout their careers, starting with the Licensing Process. We note that the Law Society Professional Development and Competence Committee's recently released Final Report to Convocation dealing with the Pathways Pilot Project, which includes the Law Practice Program and other lawyer licensing elements, reported "interest from a range of perspectives for a broader analysis to be undertaken of the licensing process."⁸ As part of this initiative, we support the recommendation that the Law Society consider the impact that the licensing process has on racialized licensees, including but not limited to systemic bias and economic barriers.

We also recognize that the challenges faced by racialized licensees occur whether they are members of large or small firms. Lawyers have a range of reasons to practice in solo and small firms and they comprise an important segment of the bar, however, we note that a disproportionate number of racialized licensees are counted in this group. We recommend that the Law Society continue to explore opportunities to ensure that the profession is inclusive of those individuals, regardless of firm size.

Finally, if approved, we recommend that the Law Society consider how the proposals might be extended to benefit other equity-seeking groups through a process of consultation and information sharing with the profession and legal associations.

Accelerating Culture Shift

As part of this category, the Working Group recommends several steps including amendments to the Rules of Professional Conduct to ensure licensees infuse the principles of equality, diversity and inclusion into their everyday practice; developing model policies and resources to address the challenges faced by racialized licensees using the Justicia Project as a model; and, requiring the adoption of equality, diversity and inclusion principles and practices by every licensee, with

⁷ See Final Report, p. 10, "Timeline for Implementation of Recommendations."

⁸ Professional Development and Competence Committee Final Report to November 9, 2016 Convocation, October 27, 2016 (<https://www.lsuc.on.ca/Pathways/>)



particular requirements for workplaces with 10 or more licensees. All licensees will be required to adopt a “statement of principles”, while workplaces with 10 or more licensees must implement a diversity policy, and complete diversity self-assessments.

The OBA has adopted a series of measures intended to support diversity in our association. Through a consultation led by the OBA’s Equality Committee, the OBA has adopted an organization-wide diversity statement, committed to maintain and report on self-identification membership data, and committed to maintain and report on diversity leadership targets.⁹ In this context, several measures recommended by the Working Group are similar in their objective to measures already in place at the OBA. Accordingly, as stated in our Initial Report the OBA strongly supports assisting law firms to establish diversity programs that set out a firm’s commitment and plan for meeting its goals and collecting demographic data and assessing the diversity climate to analyze the successes and areas for improvement.¹⁰

Measuring Progress

As part of this category, the Working Group recommends for workplaces with more than 25 licensees a) quantitative self-identification data collected annually and provided in aggregate to the legal workplace, b) qualitative self-identification data collected every four years and provided to the legal workplace in summary form, and c) a workplace “Inclusion Index” developed and published every four years; repeating the Challenges Faced by Racialized Licensees Inclusion Survey; and, developing and implementing progressive compliance measures for workplaces that do not comply with the required adoption of equality, diversity and inclusion principles and practices.

As noted above, the OBA has committed to measure diversity and inclusion data within its own organization. As noted in the Initial Report, in 2012 the Equality Committee of the CBA issued “Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance” (the “Measuring Diversity Guide”). The OBA Initial Report discussed the Measuring Diversity Guide in detail, providing recommendations with respect to the appropriate development, assessment, and continuous improvement of measurement tools for law firms.¹¹ We continue to encourage the Law Society to work with the profession to ensure that the proposed tools deliver meaningful and actionable results for the profession, while respecting the need to maintain the privacy and confidentiality of respondents.

While we support the Working Group’s recommendations to initiate the quantitative and qualitative data collection with larger firms, our members have also suggested that the Law Society allow for voluntary provision of diversity data from smaller firms that would not otherwise be

⁹ [Letter to Members](#) from OBA President David Sterns, October 2015.

¹⁰ See OBA Initial Report, p. 2.

¹¹ OBA Initial Report, p. 3-6.



subject to that requirement. That would allow for participation from the broadest possible segment of the profession.

In addition, the Law Society should commit to continually monitor and assess the effectiveness of any measures implemented and to share that information with the profession on an ongoing basis.

Educating for Change

The Final Report recommends requiring licensees to complete mandatory continuing professional development programs on topics of equality and inclusion, and including these topics as competencies to be acquired within the Licensing Process.

While we support the principle that training in equality and inclusion will benefit the profession, engendering understanding of diversity in the profession will require an ongoing commitment from the profession, of which training programs can form but one part. As part of our recommendation that the Law Society continually evaluate the effectiveness of the measures implemented, we note the need to assess whether the requirement adopted is proving effective. We look forward to further engagement with the Law Society to develop appropriate criteria for accreditation, and appropriate guides for these programs to ensure that the training received is both relevant and actionable.

As stated above, the OBA has a history of providing programming to support diversity initiatives. The Law Society Scan of Best Practices notes that legal associations are uniquely positioned to impact diversity within the legal profession.¹² In this regard, although the text of Recommendation #9 does not explicitly recognize the role of legal associations in delivering diversity programming, it is clear from the analysis that the Working Group provided in the Final Report that legal associations can continue to demonstrate leadership in the design and delivery of accredited programming focused on advancing equality and inclusion.¹³

We have also noted that the means by which topics of cultural competency, equality and inclusion will be included in the Licensing Process have not been particularized. Recent licensing candidates have noted that effectively implementing this recommendation will require careful consideration, in order to ensure that the Licensing Process achieves the desired learning outcomes. We would be pleased to provide input on developing appropriate materials if the Law Society implements this recommendation.

¹² Law Society of Upper Canada, "Law Society Studies and Scan of Best Practices," October, 2014, (<https://www.lsuc.on.ca/racialized-licensees/>) p. 27.

¹³ See Final Report, Recommendation 9.



Implementing Supports

The Final Report provides several recommendations related to addressing complaints of systemic discrimination, and recommends providing support to racialized licensees through mentoring and networking initiatives. With respect to addressing complaints of systemic discrimination, the OBA supports the recommendations presented in the Final Report to review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHCP), and the other related recommendations. We note that confidentiality is an important factor for the success of the current DHCP, and that appropriate confidentiality must be maintained if the program is to be modified to address complaints of systemic discrimination.

As stated in our Initial Report, an effective review of this area will require issues of human resources management within the Law Society structure. It is important for all individuals involved in the complaints process at the Law Society to be sensitive to unique issues that may arise with complaints of discrimination. This helps ensure that complaints are effectively addressed and instills confidence in the process for those wishing to bring a complaint.¹⁴

With respect to providing support to racialized licensees through mentoring and networking initiatives, the OBA provides a host of unique opportunities for racialized lawyers to network with colleagues through our governing bodies, 40 practice sections, Women Lawyers Forum ("WLF"), Sexual Orientation and Gender Identity Conference ("SOGIC") and the Equality Committee.¹⁵ The OBA also offers high quality professional development programs, developed by our volunteer members and program planning lawyers that respond to current issues of diversity and inclusion.

The Law Society could play a helpful role by promoting awareness and encouraging participation in the mentoring, professional development, and networking opportunities already offered by legal associations. Increasing participation in core legal association offerings with a track record for success helps overcome the barriers of exclusion and isolation identified by racialized lawyers and promotes a more inclusive profession.¹⁶

Law Society Operations

We agree that the Law Society should lead efforts to promote diversity and inclusion by example. As we stated in our Initial Report, the Law Society should also continue and enhance its recruitment and hiring efforts to ensure diversity within and throughout the organization. This includes encouraging racialized lawyers to participate in the election of Convocation. The Law Society could

¹⁴ See OBA Initial Report, p. 8-9.

¹⁵ The Equality Committee was established in September 1992 and is, in part, responsible for identifying and recommending methods of eliminating the incidence of inequality of opportunity in the legal profession in Ontario based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

¹⁶ See OBA Initial Report, p. 7-8.



examine making available and communicating more information about the election process and the importance of the work of benchers.¹⁷

Conclusion

The OBA appreciates the opportunity to comment on the important initiatives presented in the Working Group's Final Report.

The Working Group has been considering challenges faced by racialized licensees since 2012. The Final Report concludes that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations already required by the Rules of Professional Conduct, the Paralegal Rules of Conduct and, more generally, the Human Rights Code.

The OBA has long recognized the importance of diversity and inclusion to the profession. While the Working Group could no doubt deliberate further on the best approaches to undertake, our members broadly support the recommendations articulated in the Final Report as a reasonable way of moving forward to address the concerns identified.

That said, while moving forward is important, the Law Society should do so with the commitment to continually monitor and assess the effectiveness of measures implemented and to share that information with the profession. Such an ongoing collaborative process would assist the Law Society in understanding the complexities of the issues and developing options that enjoy the confidence of racialized licensees and the profession as a whole. The OBA looks forward to the opportunity to participate in that process as it goes forward.

¹⁷ See OBA Initial Report, p. 8-9.



November 14th, 2016

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Quansah,

Re: Request for Comments on Final Report of the Challenges Faced by Racialized Licensees Working Group

The Ontario Crown Attorneys' Association (OCCA) welcomes the opportunity to provide comments about the recommendations contained in the final report of the Challenges Faced by Racialized Licensees Working Group entitled: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*. We also wish to commend the members of the Working Group for the significant time and effort dedicated to the development of a comprehensive report that examines systemic racism in the legal profession and which provides strategies that encourage all stakeholders to work together in an effort to eliminate the systemic barriers that adversely impact fellow licensees in the profession.

The OCAA represents over 850 Assistant Crown Attorneys and Crown Counsel employed by the Ministry of the Attorney General (MAG). We are a labour organization that represents licensees employed within MAG's Criminal Law Division, and are distinct from the Association of Law Officers of the Crown (ALOC), whose members are employed in non-criminal legal service branches across government. Our members play an integral role in the administration of criminal justice in Ontario and are responsible for the administration of hundreds of thousands of criminal cases that flow through the courts every year in all regions across the province. As an association, the OCAA actively promotes the professional interests of its members, and frequently acts in a supportive role by providing continuing education and training in collaboration with MAG.

The OCAA supports the recommendations set out in the Working Group's final report. The recommendations provide important and concrete steps designed to reduce the disproportionate and adverse impact that systemic barriers have on racialized licensees in the profession. The recommendations promote increased awareness and inclusive practices that can help achieve better representation of racialized licensees

SUITE 1905 | BOX #30 | 180 DUNDAS STREET WEST | TORONTO | ONTARIO | M5G 1Z8

PHONE 416.977.4517 | FAX 416.977.1460



in all practice settings in Ontario, including government legal departments and Crown Attorney offices. Implementation of the report's recommendations is good for the legal profession and for public confidence in the legal profession and the administration of the justice system as a whole. It is important that the demographics of our legal profession reflect the diversity of the public we serve.

With respect to the differing opinions on the definition of "legal workplace" at footnote 7 (and repeated at footnote 27) of the final report, we note that our members serve the public and are not subject to client decisions. We agree that, at a minimum, government and in-house legal departments should be encouraged to engage in the mandatory activities outlined in the report. We believe that the legal profession should constantly strive to develop, monitor and maintain better inclusive practices from student outreach and articling recruitment, through to hiring, promotion and retention. We also believe in the importance of leading by example.

As a strong leader in the development and dissemination of continuing legal education for our members, the OCAA welcomes opportunities to work with the Law Society in developing programs that are focused on enhancing inclusion and diversity in the profession.

We look forward to continuing our engagement with the Law Society and further opportunities to provide our input on the important work involved in addressing systemic racism in the legal profession.

Sincerely,

Kate Matthews
President
Ontario Crown Attorneys' Association



Email to racialized.licensees@lsuc.on.ca

November 11, 2016

Paul Schabas, Treasurer
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
[email: lawsociety@lsuc.on.ca]

Raj Anand, Chair
Janet Leiper, Chair
Challenges Faced by Racialized Licensees Working Group
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6
[email: ranand@weirfoulds.com and
janet.leiper@15bedford.com]

Dear Treasurer Schabas and Co-Chairs Anand and Leiper:

**Re: Final Report of the Challenges Faced by Racialized Licensees Working Group,
*Working Together for Change: Strategies to Address Issues of
Systemic Racism in the Legal Professions***

As Chair of the Roundtable of Diversity Associations (RODA)¹, I convey RODA's written comments on the thirteen recommendations ("Recommendations") made in the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Final Report").

¹ On November 29, 2016, RODA celebrates its 5th Diversity Soiree and its 2nd Diversity Conference. RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

RODA brings together a diverse group of legal associations with the goal of fostering dialogue and creating initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and within the community.

Of particular importance to RODA and its member associations is the issue of diversity in the legal profession, and the desire to hold law firms accountable to increasing diversity and breaking the privilege that non-racialized licensees have held, disproportionate to an increasingly diverse population.

A. BACKGROUND

RODA believes it is important not to be short-sighted and to remember the backdrop against which the Final Report is released. Many of our member associations have made significant contributions along the long path leading to the Final Report. Association representatives have changed over the years, but our member associations have been consistent in advocating for equity, diversity and inclusion over at least the last two decades, without seeing any concrete results. We should not lose sight of the battles that were previously fought.

The backdrop of decades laid the groundwork for the Final Report, which is the culmination of recent focused effort. In September 2011, Convocation of the Law Society of Upper Canada ("LSUC") first identified the enhancement of diversity within law firms as a priority. Under the aegis of the Challenges Faced by Racialized Licensees Working Group ("CFRL Working Group"), and managed by the equity initiatives department at the LSUC, the LSUC hired an external consultant to:

- Identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- Identify factors and practice challenges that could increase the risk of regulatory complaints and discipline against racialized licensees; and
- Identify perceptions of best practises for preventive, remedial, and support strategies.

Following the creation of the CFRL Working Group, RODA and representatives of our member associations:

- Engaged in the initial community engagement process;
- Reviewed the results of the Consultant Engagement Process (contained in the external consultant's *Stratcom Report* released in March 2014), and provided further input and insight into the challenges faced by racialized licensees;
- These comments were then integrated into the Consultation Paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, released in October 2014;
- Between January and March 2015, provided comments to the Consultation Paper (this consultation process is said to include twelve (12) open house learning and consultation programs, and meetings with representatives from law firms, legal clinics, banks, government and legal associations, throughout the province);
- Reviewed an interim report released in April 23, 2015, *Challenges Faced by Racialized Licensees Working Group – Interim Report to Convocation*, April 2015. This interim report stated that participants spoke of "white privilege" and the need for all of us to

acknowledge its existence in order to address the challenges faced by racialized licensees, and the importance for licensees to understand how power operates to produce advantages for some and deny advantages to others. It is noted that the Ontario Human Rights Commission defines “privilege” generally as ‘unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. It can also refer to the relative privilege of one group compared to another.

- By late 2015, demanded that the CFRL Working Group account for its delays in framing the recommendation for concrete action items to address the conclusions in the Consultation Paper.
- Finally in September 2016, **five years** after the need was first formally identified by the LSUC, the Final Report was released with its thirteen recommendations.

Based on my observations, the initial reaction of equity seeking legal associations was understandingly sceptical. RODA and its members have met to discuss the Final Report. We have also had discussions and consultations with our colleagues, allies and other stakeholders. We have listened to members of the CFRL Working Group speak to the underlying rationale for the 13 recommendations.

B. RODA RECOMMENDATION

After a period of studying the Final Report, consultation and reflection, RODA is of the view that the Recommendations are an encouraging initial step that should be adopted, on an omnibus basis, by Convocation.

RODA also recommends that the LSUC be required to hold regular quarterly consultation meetings with RODA, the LSUC’s Equity Advisory Group, and other racialized equity seeking legal associations, to monitor and ensure accountability over the implementation of the Recommendations. The results of these consultations should be put to Benchers at Convocation.

The Recommendations fall into 5 broad categories of action: measuring progress, accelerating culture shift, educating for change, implementing supports, and operations of the Law Society. These 5 categories are inter-related, and support each other. They provide basic specific action items that serve to address the various challenges faced by racialized licensees, and includes both mandatory and voluntary steps that law firms, licensees and the LSUC will take to tackle the long-standing issues of unconscious bias and systemic racism that have plagued racialized licensees.

RODA recognizes that the Final Report is the result of consensus amongst the Benchers in the CFRL Working Group. As will happen when consensus building is involved, the Final Report has not met all expectations of racialized equity seeking legal associations. However, RODA is encouraged, and its member associations have voted in favour of recommending that Convocation adopt the Recommendations on an omnibus basis.

We are aware that there is a Notice of Motion brought by Benchers, Sidney Troister and Jeffrey W. Lem. RODA is discouraged by this Motion that requests that each of the Recommendations be discussed and voted on separately. RODA fears that if passed, it could end up breaking down the cohesive nature of the Recommendations and lead to an impasse that will kibosh two decades of hard work that finally began to crystallize with the CFRL Working Group and its resulting Final Report and Recommendations. ***RODA strongly opposes this motion, and asks that Convocation vote against it.***

However, if this motion is passed, RODA strongly recommends that Convocation pass each and every one of the Recommendations.

C. INTERSECTION WITH RULES OF PROFESSIONAL CONDUCT

RODA understands that some have questioned the LSUC's jurisdiction to implement at least some of the Recommendations.

RODA submits that the *Law Society Act*, the Rules of Professional Conduct (see Schedule "A": Excerpt from the Rules of Professional Conduct), and Ontario's *Human Rights Code* provide a sufficient basis for the LSUC to implement all of the Recommendations. This position would be supplemented if the LSUC is able to adopt Compliance-Based Entity Regulation.

D. INTERSECTION WITH ENTITY REGULATION

RODA also encourages the CFRL Working Group to coordinate the implementation of action items arising from the Recommendations with the anticipated recommendations of the Task Force on Compliance-Based Entity Regulation ("Task Force"), should the Task Force's anticipated recommendations also be passed by Convocation. Given that the LSUC is self-funded by its licensees, coordination of the work of the CFRL Working Group and the Task Force is a more efficient use of limited resources. Actual implementation of the Recommendations is expected to start in 2018, after the year 2017 is devoted to educating the Ontario bar. This timeline aligns with the expected delivery in 2017 of the recommendations of the Task Force on Compliance-Based Entity, which recommendations could presumably be implemented in 2018².

² RODA notes that on November 9, 2016, Convocation voted on and passed the LSUC's Professional Development and Competence Committee's recommendation to extend the LPP for an additional two years to enable the gathering of more data on the LPP and articling, and the larger analysis of licensing. Its work would also align with the work of the CFRL Working Group and the Task Force. All three initiatives have significant links to challenges faced by racialized licensees, and their work should be coordinated. For example, just as Compliance-Based Entity Regulation will require diversity and inclusion as a practice management principle, so the Final Report includes a recommendation to add cultural competency, diversity and inclusion, and education components into the licensing process.

RODA has expressed its support for compliance-based entity regulation, and in particular noted:

According to the Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and

2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.³

RODA submits that the LSUC has sufficient authority to implement all the Recommendations without adopting Compliance-Based Entity Regulation. The adoption of Compliance Based-Entity Regulation will provide stronger enforcement mechanisms and make the implementation of the Recommendations more effective. As such, RODA recommends that the CFRL Working Group coordinate its efforts with the Task Force.

E. EXTENSION OF RECOMMENDATIONS TO ALL EQUALITY-SEEKING GROUPS

RODA is aware of a motion that will be brought by Benchers, Barbara Murchie and Joanne St. Lewis, to Convocation on December 2, 2016. The Notice of Motion asks that:

As it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

³ RODA’s letter dated March 31, 2016 is attached.

Consistent with its mandate to promote the advancement of diversity, equality and inclusion in the legal profession and within the community, RODA supports this motion, and asks that Convocation vote in its favour.

CONCLUSION

RODA has not provided comments on a recommendation by recommendation basis. Rather, RODA takes the position that the Final Report, and its Recommendations, are a cohesive whole and should be voted on an omnibus basis. The Recommendations are an encouraging starting point to address unconscious bias, systemic racism and the long-standing challenges faced by racialized licensees. The Final Report may not be a clarion call, but RODA believes that it and its member associations, and allies and stakeholders, can work with the Final Report's basic call to action.

RODA will continue to be engaged during the implementation process and provide input to flesh out the implementation and eventual enforcement mechanisms.

The Final Report will be before Convocation for decision on December 2, 2016. In light of the above, RODA strongly encourages all Benchers to vote in favour of adopting all the Recommendations.

Sincerely,



Lai-King Hum
Chair, Roundtable of Diversity Associations

Encl. RODA letter dated March 31, 2016 on Compliance-Based Entity Regulation

- C. Benchers of the Law Society of Upper Canada
- Members of the LSUC Equity Advisory Group

Schedule "A"

Excerpt from the Rules of Professional Conduct

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to 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 (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

[Amended - June 2007, January 2014]

Commentary

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

[3] Rule 6.3.1-1 will be interpreted according to the provisions of the Human Rights Code (Ontario) and related case law.

....

[12] Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Human Rights Code (Ontario) requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

[13] 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.



Via email: mdrent@lsuc.on.ca

March 31, 2016

To the Members of Task Force on Compliance-Based Entity Regulation:

Ross Earnshaw (Chair), Gavin MacKenzie (Vice-Chair), Raj Anand, Robert Burd, Teresa Donnelly, Howard Goldblatt, Joseph Groia, Carol Hartman, Malcolm Mercer and Peter Wardle

c/o Call for Input on Compliance-Based Entity Regulation
Policy Secretariat
Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

To the Task Force on Compliance-Based Entity Regulation:

Re: Entity Regulation - Submission

On behalf of the Roundtable of Diversity Associations (RODA), I write to provide input on the *Consultation Paper: Promoting better legal practices* (the "Consultation Paper"), prepared by the Law Society's Task Force on Compliance-Based Entity Regulation.

*RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

The Task Force was established by Convocation in June 2015 to study and make recommendations on options for professional regulation that focus on objectives for the entities, or organizations, through which lawyers and paralegals provide legal services.

RODA brings together a diverse group of legal associations with the goal of fostering a dialogue and initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and the judiciary. RODA has a seat at the Equity Advisory Group at the Law Society of Upper Canada ("LSUC"). It is from this perspective that our input is provided.

In light of RODA's mandate, we are providing the Task Force with input on one of the key components, or principles, for compliance and entity regulation proposed in the Consultation Paper.

Specifically, the Task Force proposed that the following, described as principle 6 in the Consultation Paper, might be included as one of the key principles for compliance and entity regulation.

Equity, Diversity and Inclusion, which refers to the entity's policies regarding matters such as

- a respectful workplace environment that appropriately accommodates equity, diversity, inclusion, and disabilities;
- equality of opportunity and respect for diversity and inclusion in recruitment and hiring;
- equality of opportunity and respect for diversity and inclusion in decision-making regarding advancement; and
- cultural competency in the delivery of legal services.*

*The Challenges Faced By Racialized Licensees Working Group has been considering equity, diversity and inclusion issues for Racialized Licensees in the legal professions. It is expected that the Working Group will report to Convocation in 2016. In the event that Convocation adopts recommendations in these areas, there may be additional guidance respecting the implementation of this proposed framework.

The Consultation Paper was distributed to RODA member associations, and comments solicited. RODA wholeheartedly supports entity regulation in Ontario addressing equity and diversity considerations in an explicit and expansive manner, and supports its inclusion as a practice management principle.

According to the *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and
2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.

We thank the Task Force for its work and we are encouraged by its proposed addition of equity, diversity and inclusion as a principle of Practice Management. for the opportunity to make submissions. We look forward to receiving its report.

Yours very truly,



Lai-King Hum
Chair,
Roundtable of Diversity Associations

cc: Member Associations

South Asian Bar Association of Toronto
300-20 Toronto Street
Toronto, ON M5C 2B8
sabatoronto@gmail.com
sabatoronto.com
@SABAToronto



Via Email (racialized.licensees@lsuc.on.ca)

November 14, 2016

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms. Quansah:

Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions

The South Asian Bar Association of Toronto (**SABA Toronto**) makes these written comments on the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions report (the **Report**).

SABA Toronto is a voluntary bar organization and the local Toronto chapter of SABA North America. SABA Toronto provides professional growth and advancement for South Asian lawyers in the Greater Toronto Area and seeks to protect the rights and liberties of the South Asian community across Ontario.

SABA Toronto's position is Convocation should pass these recommendations as they are and as an omnibus motion. To the extent the Law Society is directed to apply these recommendations, where applicable, to other equality-seeking groups, SABA Toronto supports such a motion.

The Report is a long-time coming. For almost four years, racialized lawyers have waited for the Law Society to acknowledge what they have known all along: the profession, despite its facial commitment to inclusion, presents unique, profound and, in some cases, troubling challenges to racialized licensees. A quick perusal of the websites of Toronto's largest 30 firms, as an example, will quickly disclose that the profession remains largely white, especially at the equity partner and management level. Where, for example, South Asians are represented, it is rare to see, for example, an orthodox Sikh or Muslim, suggesting to us that where South Asians have overcome challenges, such success is still localized to certain members of our bar that look and act like their majoritarian colleagues.

This is not a "law firm" problem. This is not even a "lawyers" problem. This is an access to justice problem. If Ontarians do not believe that the justice system is fair because it is not representative, we do violence to the administration of that system. As officers of the court, we should be the first to demand that the public's confidence in the justice system is not

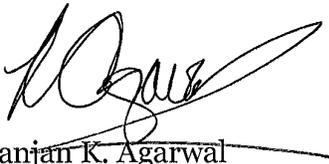
undermined because our courtrooms look nothing like our communities, workplaces and public spaces.

Regarding the specific recommendations, our view is that they are a minimum baseline for any organization in Ontario, never mind a legal workplace that should have a commitment to diversity and inclusion. In our view, the most important recommendations are those around qualitative and quantitative analysis: SABA Toronto has long advocated for the profession to keep better statistics about racialized (and other equality-seeking) licensees. The profession should not fear the publication of an inclusion index. It is hard for us to believe that any legal workplace in Ontario would not be striving to be more inclusive and diverse, and therefore, more representative by 2020.

After four long years, the Challenges Faced by Racialized Licensees Working Group has reached a consensus. They have sent their best work to Convocation. ***Pass it.***

Sincerely,

SOUTH ASIAN BAR ASSOCIATION OF TORONTO

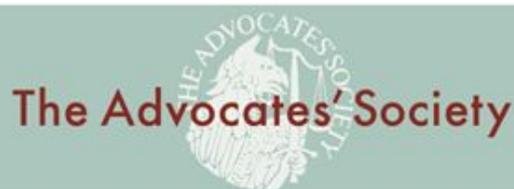


Ranjan K. Agarwal

President

Email: agarwalr@bennettjones.com

Telephone: +1 (416) 777-6503



November 14, 2016

VIA EMAIL: racialized.licensees@lsuc.on.ca

Ekua Quansah
Policy Counsel
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Ms Quansah:

RE: Response to the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

The Advocates' Society, founded in 1963, is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of The Advocates' Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

The Advocates' Society has reviewed with interest the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Law Society Report"), presented to Convocation on September 22, 2016. As stated in our letter of February 27, 2015 to Josée Bouchard, past Director, Equity Initiatives Department, The Advocates' Society is committed to the principles of substantive equality and access to justice, and supports redressing the challenges faced by racialized licensees. The Advocates' Society makes the following comments on the Recommendations as outlined in the Report, speaking to the perspective of lawyers (based on the membership of The Advocates' Society) and not paralegals.

General Comment

In respect of many of these recommendations, The Advocates' Society believes that it is important that the Law Society deal with diversity as a whole (including disability, gender and sexual orientation) rather than focusing only on measuring progress and inclusion with respect to racialized licensees. Many of The Advocates' Society's members' firms have diversity committees and diversity policies which address the whole spectrum of diversity issues. Our view is that the Law Society ought to be addressing the entire spectrum of issues here; if the administrative infrastructure is being put into place to implement these recommendations with respect to racialized licensees, it would be most efficient to address all diversity issues, both in self-reporting and the proposed inclusion questions, subject to any additional privacy issues that this might raise.

Accelerating Culture Shift (Recommendations 1-3)

Recommendation 1: Reinforcing Professional Obligations

Summary of the Working Group's Recommendation:

- The Law Society would amend the *Rules of Professional Conduct* to recognize, acknowledge and promote principles of equality, diversity and inclusion.

Comments:

- The Advocates' Society agrees with Recommendation 1 and would welcome the opportunity to provide input into proposed changes to the *Rules of Professional Conduct* and their Commentaries.

Recommendation 2: Diversity and Inclusion Project

Summary of the Working Group's Recommendation:

- The Law Society would develop model policies and resources to encourage best practices in legal workplaces.

Comments:

- The Advocates' Society agrees with Recommendation 2 and recognizes the central importance of diversity to the profession. It would welcome the opportunity to comment on model policies and resources to address the challenges faced by racialized licensees.
- The Advocates' Society would bring the perspective and experience of lawyers who practise as advocates to issues such as competency hiring, assignment of work and career development. The Advocates' Society also has expertise in the mentoring of young advocates and could offer its experience in the development of mentoring programs.

Recommendation 3: The Adoption of Equality, Diversity and Inclusion Principles and Practices

Summary of the Working Group's Recommendation:

- The Law Society would require every licensee to adopt and abide by a statement of principles to promote equality, diversity and inclusion.
- The Law Society would require every legal workplace of at least 10 licensees to develop a diversity policy to cover recruitment, retention and advancement, and to file a compliance self-assessment every two years with the Law Society.

Comments:

- The Advocates' Society agrees with Recommendation 3 and supports the nuanced approach to implementation proposed by the Law Society which recognizes that the nature of policies and self-assessment tools will vary based on the size and type of legal workplace.
- The Advocates' Society supports the Law Society's proposal that templates for the statements of principles, policies and self-assessment tools be developed collaboratively with legal workplaces and organizations that wish to participate. The development of resources that take into account the realities of legal workplaces is important to the success of the initiative.

Measuring Progress (Recommendations 4-8)

Recommendation 4: Measuring Progress through Quantitative Analysis

Summary of the Working Group's Recommendation:

- The Law Society would collect the self-identification data from licensees in the Lawyer Annual Report and provide reports to legal workplaces of at least 25 licensees, to compare to provincial statistics (and to use in requests for proposal, student recruitment, etc.).

Comments:

- The Advocates' Society believes that the proposal to analyze the self-identification data provided by licensees in their Annual Reports and to pass that information along to firms may provide useful information about their progress relative to the profession as a whole.
- However, The Advocates' Society believes that limiting this initiative to "legal workplaces of at least 25 licensees" would overlook a large group of lawyers in solo and smaller workplaces, practising in a wide range of practice areas and geographical areas.¹ Data from smaller workplaces could be aggregated and reported on an anonymous basis, by size of workplace and geographic region, for example.
- The Advocates' Society would also appreciate clarification from the Law Society as to whether it suggests that the diversity makeup in all legal workplaces should *mirror* the aggregate data, which may be an unreasonable expectation for certain workplaces.
- The Advocates' Society would also appreciate clarity as to whether organizations like banks or insurance companies that have more than 25 licensees qualify as "legal workplaces".

¹ See p. 32 of the Law Society Report: "Data gathered through the LAR and PAR show that 24% of racialized lawyers are in sole practice and 33% of racialized lawyers practice in legal workplaces of two to five.

Recommendation 5: Measuring Progress through Qualitative Analysis

Summary of the Working Group's Recommendation:

- The Law Society would ask licensees, every four years, for their assessment of inclusion at their workplace, and then provide reports to the legal workplaces of at least 25 licensees.

Comments:

- The Advocates' Society believes that this recommendation raises privacy concerns; even workplaces with 25 or more licensees may have a small (and thus identifiable) number of racialized lawyers.
- The Advocates' Society is concerned that providing law firms, particularly smaller law firms closer to the 25-member end of the spectrum, with the results of inclusion questions and a summary of the information gathered will be problematic because the respondents will know that the data will be reported back to their place of employment, even if the information is in "summarized" or "compiled" form. The prospect of this disclosure may discourage candid responses.
- The Law Society should give consideration to collecting responses on an anonymous basis and advising individuals who provide responses that their views will be kept confidential by the Law Society and not provided to their places of employment. An anonymous and confidential elicitation of comments is more likely to capture representative information. The Law Society could then use this anonymous data for its own analysis and reporting on an aggregate basis to the profession.
- Consideration might also be given to advising or reminding all licensees of the existing avenues available to them (or perhaps new avenues) to make an anonymous whistleblower comment or complaint with the Law Society if the individual wishes the Law Society to do something about a particular incident or workplace.
- To the extent the Law Society decides to collect this information for its own purposes, but not report or publish the information, with attributions, to law firms or the public, it should consider whether to collect this information from smaller law firms as well (given that privacy would no longer be an issue). Proceeding with anonymous or confidential comments would allow the Law Society to canvass a broader cross-section of licensees than simply licensees at workplaces with 25 or more licensees. A large part of the practice would be excluded numerically, geographically and by practice area in focusing on licensees in these larger workplace environments – thereby not providing a truly accurate measurement of progress, insight or accountability across the profession.

Recommendation 6: Inclusion Index

Summary of the Working Group's Recommendation:

- The Law Society will publish the data about workplaces of at least 25 licensees – meaning the self-assessment; the quantitative data; and the qualitative data – as a means of transparency and accountability.

Comments:

- The Advocates' Society is concerned about the publication of the qualitative information recorded in the proposed "inclusion index" on an individual firm basis without any consideration of the merits or context of the comments.
- Further, there are more robust means of reviewing a workplace's commitment to racialized persons and diversity than simply looking at quantitative numbers, which may under-represent the initiatives of employers. For example, a more comprehensive matrix of indices of commitment to diversity can be developed (e.g. TSX board matrix) that not only looks at the number of racialized licensees, but also elements such as programs and training implemented, outreach program participation, articling positions offered to racialized licensees (whether or not accepted), and participation in workplace leadership positions.

Recommendation 7: Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

Summary of the Working Group's Recommendation:

- In 2013, the Law Society had all licensees complete an anonymous survey as to career barriers, stereotypes, and disadvantages. A similar survey would be conducted every four years to evaluate systemic change.

Comments:

- The Advocates' Society believes that an interval of four years for measuring and reporting data on diversity and inclusion will not capture the full story, given the rate at which lawyers, particularly young lawyers and lawyers from diverse backgrounds, leave law firms. The administrative burden posed by a shorter interval must be balanced with the quality and impact of the data collection.

Recommendation 8: Progressive Compliance Measures

Summary of the Working Group's Recommendation:

- The Law Society would use graduated responses to address non-compliance by legal workplaces, from meetings and warnings, to discipline.

Comments:

- The Advocates' Society believes the profession would benefit from further detail on progressive compliance. It is unclear how the Law Society proposes to deal with compliance on an entity-based level and it is unclear how enforcement will define or address issues of systemic discrimination.

Educating for Change (Recommendations 9-10)

Recommendation 9: Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

Summary of the Working Group's Recommendation:

- The Law Society will offer a three-hour accredited program for equality and inclusion, and will assist workplaces to offer their own programs.
- Licensees will be required to complete a three hour CPD program every three years.

Comments:

- The Advocates' Society supports the recommendation of a three-hour accredited program. Program developers should consult not only legal resources, but also equity-seeking groups and leading thinkers in the areas of psychology, neuroscience and organizational behavior, with materials tailored to the legal context. Other groups (e.g. Human Resources Professionals Association) may be well ahead in the development of appropriate programming, and, in any event, can offer a diverse perspective.
- The Advocates' Society recommends that the Law Society actively work with groups in other jurisdictions experienced in the development of diversity and inclusion practices to ensure that we are meeting or exceeding the international standards in development.
- Given the importance of early and frequent exposure to effect change, the Law Society should consult with law faculties to express the Law Society's commitment to issues of diversity, equality and inclusion, to allow it to benefit from programs deployed in law schools, and to coordinate the development of programs to ensure educational continuity.
- The Advocates' Society also supports the recommendation of having licensees complete accredited programming focused on equality and inclusion, but would suggest one hour every year, rather than three hours every three years, as a minimum requirement, following an initial, three-hour training program.

Recommendation 10: The Licensing Process

Summary of the Working Group's Recommendation:

- The Law Society would include equality and inclusion principles in licensing materials.

Comments:

- The Advocates' Society supports this recommendation, subject to its comments above.

Supporting Racialized Licensees (Recommendations 11-12)

Recommendation 11: Building Communities of Support

Summary of the Working Group's Recommendation:

- The Law Society would increase mentoring and advisory services to address in particular the isolation of racialized lawyers in sole or small firms.
- The Law Society would assist legal associations and support networking events.

Comments:

- The Advocates' Society commends the Law Society for its commitment to improving access to mentoring and networking opportunities for racialized licensees. Improving access to mentoring improves access to the profession, and improves the opportunities for racialized licensees to excel in the profession. The Advocates' Society supports the specific proposals put forward by the Law Society, and thanks the Law Society for having considered and adopted many of the recommendations put forward by The Advocates' Society in our letter of February 25, 2015.
- The Advocates' Society would be pleased to share information with the Law Society about the mentoring and programming initiatives which are offered by The Advocates' Society.
- As noted in our letter for February 25, 2015, The Advocates' Society offers a variety of mentoring programs and initiatives that our young advocate members (advocates who have been called to the bar for 10 years or less) have found to be beneficial in their professional development. For example, The Advocates' Society offers a variety of Group Mentoring programs. While Group Mentoring events have their own limitations and are not meant to be a substitute for one-on-one mentoring relationships that should ideally be developed within a licensee's own practice setting, Group Mentoring has several benefits. Group Mentoring events offer mentees the opportunity to pose questions to mentors in a safe environment outside the mentees' own firm settings, where they may be reluctant to ask certain questions or otherwise do not have good (or any) internal mentoring networks. Mentees also benefit from hearing the questions posed by their peers, which lets them know they are not alone in their questions or concerns. The social setting demonstrates that a variety of approaches and styles can be used to address challenges and achieve success in the profession.
- The Advocates' Society would welcome the development by the Law Society of cultural/diversity content that organizations such as The Advocates' Society can incorporate into their mentoring, education and other programs.
- In addition to the networking opportunities available at our mentoring programs, The Advocates' Society also offers a variety of affordable networking opportunities, including: family-friendly programs; Brown Bag and Court House continuing legal education series; Young Advocates' Pub Nights; and Practice Group programs and events.
- For all of our mentoring and networking programs, The Advocates' Society will continue to advertise these events in the normal course, but they could also be promoted through the Law Society and through groups representing racialized licensees to increase diversity of attendance and communication/collaboration among associations.

Recommendation 12: Addressing Complaints of Systemic Discrimination

Summary of the Working Group's Recommendation:

- The Law Society is concerned that incidents of systemic discrimination are not being reported. It plans to review its own processes, and the *Rules of Professional Conduct*, and re-train its disciplinary staff, including creating a specialized team, all to raise awareness and effectiveness in responding.
- The Law Society is considering soliciting anonymous complaints, in order to approach identified workplaces for remedial, not punitive, discussions.

Comments:

- The Advocates' Society commends the Law Society for its commitment to addressing issues of systemic discrimination in the legal profession.
- The Report proposes, among other things, to amend the *Rules of Professional Conduct* (the "Rules") so that systemic discrimination is clearly identified as a breach of professional conduct. Given that the Rules presently focus on *individual* accountability, whereas systemic discrimination operates on a systems-wide and institutional level, this endeavour will undoubtedly involve challenging practical and legal questions. We look forward to working with the Law Society and other stakeholders in exploring these questions further.
- Recognizing the limits of enforcement in combating the root causes of systemic discrimination, The Advocates' Society emphasizes the importance of education, training and remediation in identifying and eliminating systemic discrimination. Where possible, professional regulation should focus on securing voluntary compliance with best practices rather than enforcement through the disciplinary process.

Thank you for providing The Advocates' Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours very truly,



Bradley E. Berg
President

Task Force Members:

Dana M. Peebles, Chair, *McCarthy Tétrault LLP*, Toronto
Sarah J. Armstrong, *Fasken Martineau LLP*, Toronto
Colin S. Baxter, *Conway Baxter Wilson LLP*, Ottawa
P. A. Neena Gupta, *Gowling WLG*, Kitchener
Nader R. Hasan, *Stockwoods LLP*, Toronto
Dominique T. Hussey, *Bennett Jones LLP*, Toronto
Peter W. Kryworuk, *Lerners LLP*, London
J. Scott Maidment, *McMillan LLP*, Toronto
Malik Martin, *Rueters LLP*, Toronto

David C. Nahwegahbow, LSM, *Nahwegahbow, Corbiere Genoodmagejig*, Rama
Yashoda Ranganathan, *Ministry of the Attorney General, Constitutional Law Branch*, Toronto
Chloe Snider, *Dentons Canada LLP*, Toronto
Steve Tenai, *Norton Rose Fulbright Canada LLP*, Toronto
Dave Mollica, Director of Policy and Practice



November 14, 2016

The Law Society of Upper Canada
c/o Ekua Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

racialized.licensees@lsuc.on.ca

Dear Mesdames/Sirs,

RE: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions dated September 22, 2016

The Toronto Lawyers' Association (**TLA**) is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide its comments to the Law Society of Upper Canada (**LSUC**) on the final report dated September 22, 2016 of the Challenges Faced by Racialized Licensees Working Group (the **Working Group**) entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the **Report**).

It is indeed unfortunate that despite the progress that has been made by many lawyers and law firms in the elimination of racism and other discrimination within their firms, racism still exists in our profession to the extent that the LSUC is required to mandate policies for lawyers and firms. As a lawyer, I have had the privilege of being a student, associate and now partner at a firm without such barriers. Upon reading the Report, I realize that I may have taken my good fortune for granted, as I believed that my experience was the norm for many firms and lawyers. It is the only firm at which I have worked since articling in 1999. Before and since, my firm has hired students and lawyers with the primary consideration being merit. In the process, without intention or design, we have created a firm of female and male lawyers, students and staff of different backgrounds, races, cultures, religions and sexual orientation, which reflects the wonderful mosaic found in Canada, and specifically Toronto.

As President of the TLA, I can attest to the TLA's dedication to eliminating racism and ensuring that our profession is more inclusive. The TLA, which itself has a diverse board of directors, is also a member of the Roundtable of Diversity Associations (**RODA**).

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Apparently, given the Report and the recommendations contained therein, our profession is not moving forward quickly enough on its own and requires a helping hand from the LSUC. However, I am indeed optimistic that with our generation of lawyers, and each successive one that follows, systemic racism and the barriers for racialized lawyers will continue to erode until they no longer exist. The LSUC report contains a similarly optimistic quote from Yolanda King, daughter of Martin Luther King, Jr.:

What we need to do is learn to respect and embrace our differences until our differences don't make a difference in how we are treated.

— Yolanda King

The TLA commends the Working Group for its efforts and, subject to our comments below, recommends that the Report be adopted by Convocation. The TLA recognizes and supports the importance of this initiative and the need to dismantle barriers within the legal profession faced by racialized licensees.

Timeline for Implementation of Recommendations

Page 10 of the Report contains a timeline for implementation of the recommendations in the Report. We note that the implementation dates for recommendations 1, 2, 8, 10, 11, 12(2), 12(3) and 12(4) have yet to be determined. To enhance accountability and ensure that these important recommendations are implemented in a timely way, we encourage the LSUC to adopt at the outset clear dates for the implementation of all of these recommendations.

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 1) *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 behavior towards colleagues, employees, clients and the public;*
- 2) *require a representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement;*
- 3) *require a 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; and*
- 4) *encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.*

We are concerned that item 1) of Recommendation 3 is overly broad and has the potential to conflict with certain practice areas. For example, could a professional who advocates on behalf of a client find himself or herself offside this item because the client's interests do not "promote equality, diversity and inclusion"? Moreover, we question whether the requirement to adopt and to abide by such a statement of principles is necessary in light of Recommendation 1.

We also have concerns that the requirement in item 2) that each legal workplace of at least 10 licensees in Ontario develop a human rights/diversity policy for their legal workplace by January 1, 2018 could be burdensome to smaller legal workplaces and may result in a lack of uniformity in

.../3

-3-

such policies. We acknowledge the LSUC's stated intention to guide legal workplaces in the development of policies and to "develop resources, such as templates, guides and model policies." It is the TLA's view that the templates, guides and model policies need to be developed well in advance of the effective date of the requirement.

Similarly, we recommend that the LSUC create a template for the "equality, diversity and inclusion self-assessment" referred to in item 3) of Recommendation 3 to encourage consistency of assessments and avoid placing undue burden on legal workplaces.

Recommendation 8 – Progressive Compliance Measures

The Law Society will consider developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

Recommendation 8 does not provide us sufficient information to provide constructive feedback. We request the opportunity to comment on the development of compliance measures by the LSUC in connection with this recommendation.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

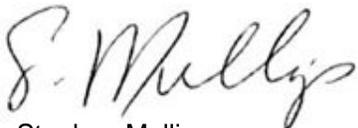
- 1) *review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address complaints of systemic discrimination;*
- 2) *revise the Rules of Professional Conduct and the Paralegal Rules of Conduct, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;*
- 3) *create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and*
- 4) *create a specialized and trained team to address complaints of discrimination.*

Items 3) and 4) of Recommendation 12 also do not provide us sufficient information to provide constructive feedback. We request an opportunity to comment on the development of effective ways to address complaints of systemic discrimination and on the creation of a specialized team to address complaints of discrimination.

Furthermore, the TLA supports the motion to be made at Convocation to extend the implementation of recommendations for racialized licensees to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

The TLA appreciates the opportunity to comment on the Report and looks forward to a continuing dialogue with the LSUC as it continues to address systemic racism in the legal professions.

Yours very truly,



Stephen Mullings
President
Toronto Lawyers Association

TAB 3.2

FOR DECISION

**HUMAN RIGHTS MONITORING GROUP
REQUEST FOR INTERVENTION**

2. **That Convocation approve the letter and public statement in the case of Xia Lin–China – letters of intervention and public statement presented at [TAB 3.2.1](#).**

Rationale

3. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
 - a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
 - b. determine if the matter is one that requires a response from the Law Society; and,
 - c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

4. The Monitoring Group considered the following factors when making a decision about the imprisonment of lawyer Xia Lin in China:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the imprisonment of lawyer Xia Lin falls within the mandate of the Monitoring Group; and
 - c. the Law Society has intervened a number of times in cases of a lawyers in China – most recently in June 2016.

KEY BACKGROUND

CHINA – IMPRISONMENT OF LAWYER XIA LIN

Sources of Information

5. The background information for this report was taken from the following sources:
 - a. Al Jazeera;
 - b. BBC;
 - c. CBC;

- d. CNN;
- e. The Globe and Mail;
- f. The Guardian;
- g. The Law Society of England and Wales; and
- h. The New York Times.

Background

6. Xia Lin is a prominent human rights lawyer whose clients include Chinese artist Ai Weiwei, fellow human rights lawyer Pu Zhiqiang¹, and human rights defender Guo Yushan. According to reports, “Mr. Xia, 46, frequently represented clients who were at odds with the authorities.”²
7. In November 2014, Xia Lin was detained by Beijing police after agreeing to defend Guo Yushan.³ Reports indicate that Xia Lin was charged with fraudulently obtaining 10 million yuan – later reduced to 4.8 million yuan.⁴
8. Xia Lin’s trial commenced in June 2016. Xia Lin, his wife and his supporters “strongly rejected the prosecutor’s claim that he had defrauded people, and said the case was part of the government’s campaign to silence Chinese rights lawyers who have challenged arbitrary state power.⁵ Since July 2015, approximately 250 Chinese human rights lawyers and activists have been questioned, detained or charged.⁶
9. On September 22, Xia Lin was sentenced to 12 years imprisonment on fraud charges. According to the Law Society of England and Wales:

It is alleged that [Xia Lin] had coerced associates into lending him money to pay off gambling debts...Mr Xia Lin pleaded not guilty to these charges and...none of the persons he was accused of have [sic] borrowed money from filed a criminal or civil suit against him. His wife reported that Mr Xia Lin was not allowed to speak during his own trial.⁷

¹ The Law Society intervened in Pu Zhiqiang's case in September 2014 and February 2016.

² “Chinese Court Sentences Ai Weiwei’s Lawyer to 12 Years for Fraud,” online: New York Times <<http://www.nytimes.com/2016/09/22/world/asia/chinese-court-sentences-ai-weiveis-lawyer-to-12-years-for-fraud.html>>

³ *Ibid.*

⁴ “China rights lawyer Xia Lin jailed for 12 years,” online: BBC <<http://www.bbc.com/news/world-asia-china-37437812>>

⁵ “Chinese Court Sentences Ai Weiwei’s Lawyer to 12 Years for Fraud,” online: New York Times <<http://www.nytimes.com/2016/09/22/world/asia/chinese-court-sentences-ai-weiveis-lawyer-to-12-years-for-fraud.html>>

⁶ “China’s Crackdown on Human Rights Lawyers,” online: Amnesty International <<https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/>>

⁷ “Xia Lin – Lawyer at Risk,” online: The Law Society of England and Wales <<http://communities.lawsociety.org.uk/human-rights/interventions/2016/detention-of-the-human-rights-lawyer-xia-lin-in-china/5058524.article>>

10. Maya Wang, China Researcher for Human Rights Watch, has been quoted in reports as noting, “ ‘The harsh sentence against Xia Lin sends the sternest warning yet to the community of human rights lawyers that they must toe the party line.’ ”⁸

⁸ “China sentences activist lawyer to 12 years on fraud charges,” online: CBC
<<http://www.cbc.ca/news/world/china-sentences-activist-lawyer-to-prison-1.3773983>>

TAB 3.2.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

XIA LIN

His Excellency Mr. Xi Jinping, The President of the People's Republic of China
The State Council General Office
2 Fuyoujie
Xichengqu
Beijingshi 100017
People's Republic of China

Your Excellency:

Re: Imprisonment of lawyer Xia Lin

I write on behalf of the Law Society of Upper Canada to voice our grave concern over the sentencing of lawyer Xia Lin. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Xia Lin is a prominent human rights lawyer whose clients include Chinese artist Ai Weiwei, human rights lawyer Pu Zhiqiang, and human rights defender Guo Yushan. On September 22, 2016, Xia Lin was sentenced to 12 years in prison.

In November 2014, Xia Lin was detained by Beijing police. He was charged with fraudulently obtaining 10 million yuan — later reduced to 4.8 million yuan. Xia Lin's trial commenced in June 2016. It is our understanding that the charges against Xia Lin were based on allegations that he had coerced individuals to lend him money to pay off gambling debts. Xia Lin pleaded not guilty to the charges and the individuals he is alleged to have borrowed money from have not filed criminal or civil suits against him.

The Law Society is deeply concerned about Xia Lin's case. Reports indicate that since July 2015, approximately 250 Chinese human rights lawyers and activists have been questioned, detained or charged. We believe strongly that lawyers should be able to exercise their legitimate duties without fear for their lives, for their liberty and for their security.

The Law Society of Upper Canada urges Your Excellency to comply with China's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or

be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The Law Society urges the government of the People's Republic of China to:

- a. release Xia Lin immediately;
- b. guarantee all the procedural rights that should be accorded to Xia Lin and other human rights lawyers and defenders in the People's Republic of China;
- c. put an end to all acts of harassment against Xia Lin as well as other human rights lawyers and defenders in the People's Republic of China;
- d. guarantee in all circumstances the physical and psychological integrity of Xia Lin;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Paul Schabas
Treasurer

**The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 7,800 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern 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.

cc:

His Excellency Mr. Guo Shengkun
Minister of Public Security
No.14, Donchang'anjie,
Dongchengqu, Beijing 100741
People's Republic of China
Email: gabzfwz@mps.gov.cn

Ambassador Luo Zhaohui
Embassy of the People's Republic of China in Canada
515 St. Patrick St.
Ottawa, ON
Canada K1N 5H3

The Honourable Stéphane Dion
Minister of Foreign Affairs
Global Affairs Canada
125 Sussex Drive
Ottawa, ON K1A 0G2
stephane.dion@parl.gc.ca

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Wang Junfeng, All China Lawyers Association

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Charlotte Ford, Head of International Policy and Engagement, The Law Society of England and Wales

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: Imprisonment of lawyer Xia Lin

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to His Excellency Mr. Xi Jinping, The President of the People's Republic of China, expressing our deep concern over reports of the sentencing of lawyer Xia Lin.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to equansah@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 7,800 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders

- Emma Achili, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Wang Junfeng, All China Lawyers Association
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- Charlotte Ford, Head of International Policy and Engagement, The Law Society of England and Wales

PROPOSED PUBLIC STATEMENT

The Law Society of Upper Canada expresses grave concern about the sentencing of human rights lawyer Xia Lin in China

Xia Lin is a prominent human rights lawyer whose clients include Chinese artist Ai Weiwei, fellow human rights lawyer Pu Zhiqiang, and human rights defender Guo Yushan. On September 22, 2016, Xia Lin was sentenced to 12 years in prison.

In November 2014, Xia Lin was detained by Beijing police. He was charged with fraudulently obtaining 10 million yuan — later reduced to 4.8 million yuan. Xia Lin's trial commenced in June 2016. It is our understanding that the charges against Xia Lin were based on allegations that he had coerced individuals to lend him money to pay off gambling debts. Xia Lin pleaded not guilty to the charges and the individuals he is alleged to have borrowed money from have not filed criminal or civil suits against him.

The Law Society is deeply concerned about Xia Lin's case. Reports indicate that since July 2015, approximately 250 Chinese human rights lawyers and activists have been questioned, detained or charged. We believe strongly that lawyers should be able to exercise their legitimate duties without fear for their lives, for their liberty and for their security.

The Law Society of Upper Canada urges the government of the People's Republic of China to comply with China's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The Law Society urges the government of the People's Republic of China to:

- a. release Xia Lin immediately;
- b. guarantee all the procedural rights that should be accorded to Xia Lin and other human rights lawyers and defenders in the People's Republic of China;
- c. put an end to all acts of harassment against Xia Lin as well as other human rights lawyers and defenders in the People's Republic of China;
- d. guarantee in all circumstances the physical and psychological integrity of Xia Lin;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 3.3

FOR INFORMATION

**EQUITY LEGAL EDUCATION AND RULE OF LAW
SERIES CALENDAR**

WINTER 2017

There will be no Equity Legal Education Series events in January 2017. Additional information about Winter 2017 events will be available in mid-December 2016.

TAB 3.2

FOR DECISION

**HUMAN RIGHTS MONITORING GROUP
REQUEST FOR INTERVENTION**

2. **That Convocation approve the letter and public statement in the case of Xia Lin–China – letters of intervention and public statement presented at [TAB 3.2.1](#).**

Rationale

3. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
 - a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
 - b. determine if the matter is one that requires a response from the Law Society; and,
 - c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

4. The Monitoring Group considered the following factors when making a decision about the imprisonment of lawyer Xia Lin in China:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the imprisonment of lawyer Xia Lin falls within the mandate of the Monitoring Group; and
 - c. the Law Society has intervened a number of times in cases of a lawyers in China – most recently in June 2016.

KEY BACKGROUND

CHINA – IMPRISONMENT OF LAWYER XIA LIN

Sources of Information

5. The background information for this report was taken from the following sources:
 - a. Al Jazeera;
 - b. BBC;
 - c. CBC;

- d. CNN;
- e. The Globe and Mail;
- f. The Guardian;
- g. The Law Society of England and Wales; and
- h. The New York Times.

Background

6. Xia Lin is a prominent human rights lawyer whose clients include Chinese artist Ai Weiwei, fellow human rights lawyer Pu Zhiqiang¹, and human rights defender Guo Yushan. According to reports, "Mr. Xia, 46, frequently represented clients who were at odds with the authorities."²
7. In November 2014, Xia Lin was detained by Beijing police after agreeing to defend Guo Yushan.³ Reports indicate that Xia Lin was charged with fraudulently obtaining 10 million yuan – later reduced to 4.8 million yuan.⁴
8. Xia Lin's trial commenced in June 2016. Xia Lin, his wife and his supporters "strongly rejected the prosecutor's claim that he had defrauded people, and said the case was part of the government's campaign to silence Chinese rights lawyers who have challenged arbitrary state power."⁵ Since July 2015, approximately 250 Chinese human rights lawyers and activists have been questioned, detained or charged.⁶
9. On September 22, Xia Lin was sentenced to 12 years imprisonment on fraud charges. According to the Law Society of England and Wales:

It is alleged that [Xia Lin] had coerced associates into lending him money to pay off gambling debts...Mr Xia Lin pleaded not guilty to these charges and...none of the persons he was accused of have [sic] borrowed money from filed a criminal or civil suit against him. His wife reported that Mr Xia Lin was not allowed to speak during his own trial.⁷

¹ The Law Society intervened in Pu Zhiqiang's case in September 2014 and February 2016.

² "Chinese Court Sentences Ai Weiwei's Lawyer to 12 Years for Fraud," online: New York Times <<http://www.nytimes.com/2016/09/22/world/asia/chinese-court-sentences-ai-weiveis-lawyer-to-12-years-for-fraud.html>>

³ *Ibid.*

⁴ "China rights lawyer Xia Lin jailed for 12 years," online: BBC <<http://www.bbc.com/news/world-asia-china-37437812>>

⁵ "Chinese Court Sentences Ai Weiwei's Lawyer to 12 Years for Fraud," online: New York Times <<http://www.nytimes.com/2016/09/22/world/asia/chinese-court-sentences-ai-weiveis-lawyer-to-12-years-for-fraud.html>>

⁶ "China's Crackdown on Human Rights Lawyers," online: Amnesty International <<https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/>>

⁷ "Xia Lin – Lawyer at Risk," online: The Law Society of England and Wales <<http://communities.lawsociety.org.uk/human-rights/interventions/2016/detention-of-the-human-rights-lawyer-xia-lin-in-china/5058524.article>>

10. Maya Wang, China Researcher for Human Rights Watch, has been quoted in reports as noting, “ ‘The harsh sentence against Xia Lin sends the sternest warning yet to the community of human rights lawyers that they must toe the party line.’ ”⁸

⁸ “China sentences activist lawyer to 12 years on fraud charges,” online: CBC
<<http://www.cbc.ca/news/world/china-sentences-activist-lawyer-to-prison-1.3773983>>

TAB 3.2.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

XIA LIN

His Excellency Mr. Xi Jinping, The President of the People's Republic of China
The State Council General Office
2 Fuyoujie
Xichengqu
Beijingshi 100017
People's Republic of China

Your Excellency:

Re: Imprisonment of lawyer Xia Lin

I write on behalf of the Law Society of Upper Canada to voice our grave concern over the sentencing of lawyer Xia Lin. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Xia Lin is a prominent human rights lawyer whose clients include Chinese artist Ai Weiwei, human rights lawyer Pu Zhiqiang, and human rights defender Guo Yushan. On September 22, 2016, Xia Lin was sentenced to 12 years in prison.

In November 2014, Xia Lin was detained by Beijing police. He was charged with fraudulently obtaining 10 million yuan — later reduced to 4.8 million yuan. Xia Lin's trial commenced in June 2016. It is our understanding that the charges against Xia Lin were based on allegations that he had coerced individuals to lend him money to pay off gambling debts. Xia Lin pleaded not guilty to the charges and the individuals he is alleged to have borrowed money from have not filed criminal or civil suits against him.

The Law Society is deeply concerned about Xia Lin's case. Reports indicate that since July 2015, approximately 250 Chinese human rights lawyers and activists have been questioned, detained or charged. We believe strongly that lawyers should be able to exercise their legitimate duties without fear for their lives, for their liberty and for their security.

The Law Society of Upper Canada urges Your Excellency to comply with China's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or

be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

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The Law Society urges the government of the People's Republic of China to:

- a. release Xia Lin immediately;
- b. guarantee all the procedural rights that should be accorded to Xia Lin and other human rights lawyers and defenders in the People's Republic of China;
- c. put an end to all acts of harassment against Xia Lin as well as other human rights lawyers and defenders in the People's Republic of China;
- d. guarantee in all circumstances the physical and psychological integrity of Xia Lin;
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Paul Schabas
Treasurer

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No.14, Donchang'anjie,
Dongchengqu, Beijing 100741
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Email: gabzfwz@mps.gov.cn

Ambassador Luo Zhaohui
Embassy of the People's Republic of China in Canada
515 St. Patrick St.
Ottawa, ON
Canada K1N 5H3

The Honourable Stéphane Dion
Minister of Foreign Affairs
Global Affairs Canada
125 Sussex Drive
Ottawa, ON K1A 0G2
stephane.dion@parl.gc.ca

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