

TAB 13



Report to Convocation

December 1, 2017

Equity and Indigenous Affairs 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
Ross Earnshaw
Robert Evans
Avvy Go
Marian Lippa
Isfahan Merali
Andrew Spurgeon
Sidney Troister
Tanya Walker**

Purpose of Report: Information

**Prepared by Equity Initiatives
(Marian MacGregor – 416-947-3464)**

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COMMITTEE PROCESSES

1. The Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones ("EIAC" or the "Committee") met on November 9, 2017. EIAC Executive Members Julian Falconer, Co-Chair, and Sandra Nishikawa, Vice-Chair attended in person. EIAC Executive Members Dianne Corbiere, Co-Chair, and Gina Papageorgiou, Vice-Chair, attended by telephone. EIAC Committee Members, Suzanne Clément, Ross F. Earnshaw, Avvy Go, Isfahan Merali, Andrew Spurgeon, Sidney Troister and Tanya Walker attended in person. EIAC Committee Members Robert Evans and Marian Lippa attended by telephone.
2. Treasurer Paul Schabas also attended the meeting in person.
3. Additional Benchers who attended in person were Raj Anand, Teresa Donnelly, Howard Goldblatt, Jacqueline Horvat and Anne Vespry. Bencher Robert Burd also attended by telephone.
4. Kathleen Lickers, representative of the Indigenous Affairs Group, also attended. As well, Paul Saguil, representative of the Equity Advisory Group participated by telephone.
5. Staff members Darcy Belisle, Elspeth Graham, Alastair Harris-Cartwright, Marian MacGregor, Diana Miles, Elliot Spears, Jim Varro and Sheena Weir were present.

TAB 13.1

FOR INFORMATION

GUIDE TO THE APPLICATION OF RECOMMENDATION 3(1)

6. Recommendation 3(1) of the [*Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*](#) report requires every licensee to adopt and 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.
7. The implementation of Recommendation 3(1) has involved a number of initiatives and activities, including resources on the [Equality, Diversity and Inclusion webpage](#), revisions to the Lawyer and Paralegal Annual Reports (LAR/PAR), dedicated communications on the requirements and an informational webcast designed to enhance understanding of the Statement of Principles.
8. To create greater understanding about the Statement of Principles requirement, a Guide was developed to clarify the requirement and explain what licensees need to do to fulfill it.
9. On November 21, 2017 an email was sent to the legal professions along with a link to the Guide.
10. The [Guide to the Application of Recommendation 3\(1\)](#) is at **TAB 13.1.1** for the information of Convocation.

Guide to the Application of Recommendation 3(1)

The Law Society issues this Guide to clarify Recommendation 3(1) in the report *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*.

Recommendation 3(1) provides as follows:

The Law Society will:

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

The required Statement of Principles sets out standards or criteria developed by the licensee to guide his or her professional conduct taking into account applicable legal and professional obligations. The Statement of Principles need not include any statement of thought, belief or opinion.

This guide explains what licensees need to do to fulfil the requirement set out in Recommendation 3(1) of the Final Report which applies to racialized licensees and equality-seeking groups:

- 1) The requirement reinforces existing obligations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* which establish a lawyer's and paralegal's "special responsibilities" to respect human rights laws and to honour the obligation not to discriminate in their dealings with others.¹
- 2) The requirement applies only to the professional conduct of licensees with each other, with employees, with clients and with the public.
- 3) The requirement calls on licensees to reflect on their professional context and on how they will uphold and observe human rights laws in force in Ontario in their professional relationships and interactions with colleagues, clients, employees and the public.
- 4) The requirement does not create any obligation to profess any belief or to seek to persuade anyone about anything. The requirement will be satisfied by licensees acknowledging their obligation to take reasonable steps to cease or avoid conduct that creates and/or maintains barriers for racialized licensees or other equality-seeking groups. The obligation to promote equality, diversity and inclusion generally does not prescribe specific actions that licensees will or must take to avoid, reduce or eliminate barriers faced by racialized licensees or other equality-seeking groups.
- 5) The reference to the obligation to promote equality, diversity and inclusion generally refers to existing legal and professional obligations in respect of human rights including preventing direct, adverse effect and systemic discrimination. Equality, diversity and inclusion are promoted (in other words, advanced) by addressing discrimination in all of its forms.
- 6) To assist the professions, the Law Society has provided two sample templates setting out Statements of Principles that meet the requirement. Licensees are not limited to

these templates and are not required to adopt either of them. The sample templates are intended to assist licensees as they consider an appropriate statement for their professional circumstances in accordance with the requirement.

- 7) Additional resources are available on the Law Society's Equality, Diversity and Inclusion webpage to assist licensees in further understanding this obligation.
- 8) Licensees are not required to make their Statements of Principles public. They are just required to confirm annually that they have considered and implemented this requirement. The content of the Statement of Principles does not create or derogate from, but rather reflects, professional obligations. Accordingly, Licensees are not required to disclose the content of their Statement of Principles to the Law Society but are only required to confirm its existence.

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

Rules of Professional Conduct

Section 6.3.1 Discrimination Special Responsibility

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

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

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

Section 2.1 Integrity

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

Paralegal Rules of Conduct

2.03 Harassment and Discrimination Discrimination

Rule 2.03 (4) provides: "A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual

orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person”.

2.01 Integrity and Civility Integrity

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

TAB 13.2

FOR INFORMATION

**LETTERS RECEIVED FROM ORGANIZATIONS REGARDING
RECOMMENDATION 3(1), STATEMENT OF PRINCIPLES**

11. In response to the implementation of Recommendation 3(1) of the [*Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*](#), a number of organizations have provided comment to the Law Society on this requirement.
12. Their letters to the Law Society are provided for the information of Convocation at [**TAB 13.2.1**](#).

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October 23, 2017

Law Society of Upper Canada Benchers
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Law Society Benchers:

RE: Opposition to the Motion Requesting that the Law Society of Upper Canada Exempt Conscientious Objectors from Adopting and Abiding by the Statement of Principles to Promote Equality, Diversity and Inclusion

On behalf of the Canadian Hispanic Bar Association ("CHBA"), we are writing to express our disagreement with the proposed motion to be tabled by Bencher Joseph Groia on December 1, 2017 that seeks to exempt licensees from adopting and abiding by a statement of principles (the "statement") to promote equality, diversity and inclusion if they declare themselves to be conscientious objectors.

The CHBA has been involved with the Challenges Facing Racialized Licensees ("Challenges") process from the inception of the Law Society of Upper Canada's ("Law Society") working group in 2012, through the consultation process in 2015, and the final report in 2016. We supported the adoption of the final report and its recommendations by Convocation in December of 2016 and our members were very pleased when it was passed.

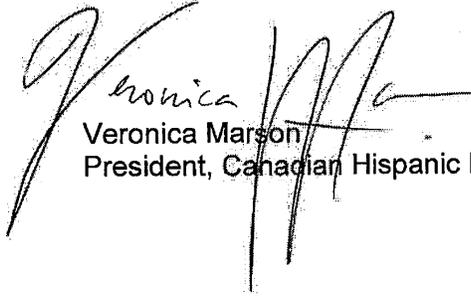
Through the above process, the CHBA met with benchers and made written submissions outlining the systemic barriers faced by our members. There is no doubt that this phenomenon is real, which is why we view requiring licensees to "acknowledge" their pre-existing human rights obligations through the statement as a baseline step in addressing systemic discrimination in the profession.

In our view, this requirement concerns action and conduct, and not thoughts and belief. As such, there are no grounds for this motion. Moreover, we object to the invocation of Charter protection to evade human rights mechanisms that will promote equity, diversity, and inclusion for our members.

In our view, the recommendations contained in the Challenges reports are well-reasoned, well-thought out, and enjoy wide support from equity-seeking groups in the profession. It would be a step backwards for the current motion to pass.

We thus ask you, as our elected representatives, to vote against this motion, and to continue to implement the recommendations contained in the Challenges report in our continued pursuit of equity, diversity and inclusion in the profession.

Yours very truly,

A handwritten signature in black ink, appearing to read "Veronica Marson". The signature is stylized and written over the printed name and title.

Veronica Marson
President, Canadian Hispanic Bar Association



Advocacy Committee
Canadian Association of Black Lawyers (CABL)
20 Toronto Street
Toronto ON M5C 2B8

November 3, 2017

VIA EMAIL

Treasurer Paul Schabas and
Benchers of the Law Society

Re: CABL's Submission on the Status of the Statement of Principles

Dear Treasurer Schabas and Benchers of the Law Society,

The Canadian Association of Black Lawyers (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 the judiciary.

Over the course of 4 years, CABL participated in the consultations of the Racialized Licensees Working Group (the "Working Group") and provided input into the process that gave rise to the Challenges Faced by Racialized Licensees Working Group's report. The Working Group published recommendations (the "Recommendations") to address the challenges communicated by racialized lawyers and paralegals from across the province. At the time, CABL noted that the Recommendations did not go far enough towards effecting change within the legal profession. However, in the spirit of compromise CABL supported the Recommendations as an important step forward. CABL's participation in this process was central to addressing the issue of systemic discrimination in the legal profession, as black lawyers face a

disproportionately high degree of exclusion from law firms and the legal community, as well as a disproportionately high rate of discipline by the Law Society.

Systemic problems are not easy to address. However, the Law Society, as a self-regulating organization, is supposed to govern and regulate licensees in the public interest. Issues of systemic discrimination and unconscious bias can only be challenged if the regulator has the inner fortitude to address systemic problems head on, whether the remedy is popular or not among licensees generally.

The Recommendations were borne out of **extensive** consultations and analysis, not only with CABL, but with other representative organizations, individuals, consultants, and experts in the field of diversity. The Law Society will fail in its mandate to regulate the profession if it dilutes or withdraws from the Recommendations in the face of the first sign of dissent. CABL noted in its past submissions that the Recommendations will not institute immediate change but are only a first step towards change. A few Benchers, citing dissent from the bar or a lack of faith in the Recommendations, seek to re-open the process and dilute the Recommendations by advocating for the right to conscientiously abstain from the new regulatory requirement that every licensee adopt and abide by a Statement of Principles acknowledging their "obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public". The reference to freedom of consciousness and freedom of expression/free speech are a means to change the discourse and divert the ship from its ultimate destination.

CABL has very serious concerns as to why the issue is being reopened at this time notwithstanding a very fulsome discussion on this very issue, which took place on December 2, 2016. The motion was defeated on December 2, 2016, by a majority of the Benchers. To permit the same motion to be raised again seems to CABL to be an abuse of the Convocation process.

While the Working Group's Recommendations, including the Statement of Principles are not going to be popular amongst all licensees, they are essential as the bar must come to grips with the reality that a lack of equality, diversity and inclusion in our profession has been, and continues to be, a widespread problem. The Law Society is obligated to initiate change in light of systemic exclusions, and to promote the public interest. The current practices have failed in the past and it is time for new ways of thinking about this problem.

CABL firmly supports the Recommendation made by the Working Group requiring all licensees to adopt a Statement of Principles. CABL is concerned that there is a growing misapprehension with respect to what a Statement of Principles requires of licensees. Unfortunately, some licensees, many of whom were not inclined to participate in the extensive 4-year comprehensive review of the issues facing Racialized Licensees, have chosen to cloud the issue of the Statement of Principles by shrouding it in the cloak of *Charter* rights and conscientious objection. Specifically, there are some licensees who perceive a Statement of Principles to be an affront to their right to freedom of expression/free speech. CABL fully supports freedom of expression and free speech. However, what is being asked of licensees does not engage issues of freedom of expression or free speech.

The effect of a Statement of Principles on the concepts of freedom of speech and expression was contemplated and discussed when convocation voted on the Recommendations in December 2016. The Law Society was provided an opinion on November 16, 2016 on this very issue.¹ In short the conclusion was:

Recommendation 3(1) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter*. The Law Society has an obligation to promote human rights in the legal profession and licensees are already bound by human rights equality, diversity and inclusion principles under their respective professional rules of conduct and the *Code*.

¹ Attached please find a copy of the legal opinion provided by the law firm of Pinto Wray James dated November 16, 2016.

What is being asked of licensees in a Statement of Principles is to "**acknowledge**" their **existing** legal and professional obligation to promote equality, inclusiveness and diversity in their interactions with members of the profession, their clients, employees and the public.

The obligation to create and adopt a Statement of Principles is rooted in the *Rules of Professional Conduct* (the "*Rules*") to which all licensees are bound. The Working Group's Recommendations remind us of our obligations as set out in Commentary 4.1 under Section 2.1-1 of the *Rules* 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.

An individual licensee's personal beliefs are immaterial to what is being asked of them in respect to a Statement of Principles. The requirement is a professional not personal obligation. This is about licensees acknowledging that they will not **act** in a certain way i.e. in a manner that undermines equality, inclusiveness and diversity. Conversely, it is about licensees acknowledging that they will **act** in a manner which promotes the Rule of Law, respects the requirements of human rights law in this province and adheres to the "special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario" as provided for in the Commentaries under Section 6.3.1 of the *Rules*, which read as follows:

[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.

It is troubling and ironic that the acknowledgment of a Statement of Principles which promotes and respects the dignity of individuals and the provisions of the *Ontario Human Rights Code* (the "*Code*"), is being met by arguments that it is an attack on *Charter* rights. It is also ironic and troubling that to CABL's knowledge, no substantive freedom of expression/free speech objections have been raised by the Benchers bringing the motion, or by any other licensees, to their existing legal obligations under the *Code* or the *Rules* on the basis that they violate their freedom of expression or free speech. To be clear, the effect of granting this motion would be to perversely grant licensees the right to contentiously object to combating discrimination and to promoting diversity, equity and inclusion.

In conclusion, we urge all Benchers, members of the broader legal community and the public, to object to the motion being brought in first instance and further, to support the defeat of the motion and to embrace and promote the Recommendations as a whole, the new Equality, Diversity, and Inclusion initiatives arising therefrom, and in particular, to strongly and vocally support the continued inclusion of a Statement of Principles. The Recommendations and the initiatives arising therefrom have been well thought out and carefully researched, and all members of the bar will be better served by the implementation of these steps as a reasonable, necessary means of working towards a more inclusive profession and better serving our increasing diverse population.

Yours truly,

ADVOCACY COMMITTEE
CANADIAN ASSOCIATION OF BLACK LAWYERS (CABL)



National Association of Women and the Law / L'association Nationale Femmes et Droit

www.nawl.ca / www.anfd.ca

rue 251 Bank Street, Office 208
Ottawa, ON K2P 1X3

VIA E-MAIL

November 7, 2017

Treasurer Paul Schabas and Benchers of the Law Society of Upper Canada
c/o The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer Schabas and Law Society Benchers:

Re: Motion to Exempt Certain Licensees from the Statement of Principles Requirement

I am writing on behalf of the National Association of Women and the Law/Association nationale Femmes et Droit to express NAWL's serious concerns over efforts to undermine Recommendation 3(1) of *Final Report of the Working Group on the Challenges Faced by Racialized Licensees (Challenges Report)*. In particular, NAWL is opposed to the motion proposed by Bencher Joseph Groia for consideration by Convocation on December 1, 2017, seeking to exempt licensees from the requirement to adopt and abide by a "Statement of Principles" to promote equality, diversity and inclusion on grounds of "conscientious objection."

As you are no doubt aware from the LSUC's previous work in this area, women lawyers and paralegals, women seeking entry to the profession, women employees of lawyers and paralegals, and women accessing legal services, regularly experience discrimination at an individual and systemic level. This is especially true for racialized women, women with disabilities, Indigenous women and women living in poverty, who face intersecting and compounding barriers within the profession and legal workplaces and when seeking access to justice.

In this context, NAWL is grateful to the members of the LSUC's Working Group for the time and effort they devoted to documenting and exposing the longstanding problems facing racialized licensees in Ontario, and to identifying concrete strategies to address issues of systemic racism. NAWL welcomed the *Challenges Report* and strongly supports its recommendations. We share Bencher and Working Group Co-Chair Raj Anand's view that: "Lawyers and paralegals have a special responsibility to promote human rights in their own workplaces and in their relationships with the justice system and the public. We all have a role to play in ensuring that the professions are diverse and inclusive."



National Association of Women and the Law / L'association Nationale Femmes et Droit

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rue 251 Bank Street, Office 208
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At a minimum LSUC licensees must, like the LSUC itself, respect the equality and anti-discrimination guarantees set out in the Ontario *Human Rights Code*. The proposed Statement of Principles acknowledges this statutory obligation and reminds licensees that compliance with these fundamental human rights norms is an integral dimension of our professional responsibility as members of a self-governing profession, mandated to regulate its members in the public interest and to facilitate access to justice. For obvious reasons, the Ontario *Human Rights Code* does not allow for “conscientious objection” to its equality and anti-discrimination principles. In fact, it is difficult for NAWL to imagine upon what grounds a licensee might conscientiously object to a professional requirement to disavow racist or other forms of discrimination or harassment and to promote equality, diversity and inclusion.

In NAWL’s view, the recommendations contained in the *Challenges Report* represent the most basic obligations of lawyers and paralegals under the Ontario *Human Rights Code*. The requirement to adopt an individual Statement of Principles is a positive step towards making our profession more inclusive and equal for women, and particularly for racialized women, women with disabilities, Indigenous women and women living in poverty. NAWL calls upon all members of Convocation to reject Bencher Groia’s motion and to continue the LSUC’s efforts towards fully implementing the Working Group’s recommendations to combat systemic racism within our profession.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Martha Jackman'.

Professor Martha Jackman, LSM

Co-chair, National Steering Committee, National Association of Women and the Law

From: Paul Jonathan Saquil <paul.jonathan.saquil@gmail.com>
Date: November 8, 2017 at 10:27:11 PM EST
To: Sandra Nishikawa <nishikawasandra@gmail.com>, Julian Falconer <julianf@falconers.ca>, Dianne Corbiere <dgcorbiere@nncfirm.ca>, treasurer@lsuc.on.ca
Cc: jen.quito@gmail.com, dina.awad1@gmail.com, Jayashree Goswami <jayashree.goswami@intact.net>, "Emily Lam <emily@greenwoodlam.com> (<emily@greenwoodlam.com>)" <emily@greenwoodlam.com>, Gerald Chan <GeraldC@stockwoods.ca>, Michael Doi <michael.doi@fsc.gov.on.ca>, Shawn Richard <shawn.richard@mac.com>, rahat.godil@blakes.com, Ranjan Agarwal <agarwalr@bennettjones.com>, Hafeez.Amarshi@ppsc-sppc.gc.ca, sharanb@ona.org, Jonathan Davey <jwd222@cornell.edu>
Subject: Motion for December 1st Convocation

To the Treasurer and EIAC Leadership:

Certain members of the Equity Advisory Group have had the benefit of reviewing the exchange below as well as the text of the motion proposed by Bencher Joe Groia. We are also aware of another motion apparently being proposed for discussion at the meeting of Convocation on December 1. While we have not had the opportunity to discuss these developments with the entire Equity Advisory Group, there is a strong early consensus among us that re-opening the debate about the Report on Challenges Faced by Racialized Licensees, or any of the 13 recommendations approved by Convocation last year, is unproductive, unhelpful, and not in the public interest. As EAG stated in its submissions last year:

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. [...]

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 [*emphasis added*]. [...]

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. [...]

Although these recommendations [*specifically, Recommendations 1 to 3*] 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. These are a minimum requirement that are important and necessary to deal with issues in a proactive manner.

We recognized then, as we do now, that the report and final recommendations were the product of compromise and balancing of perspectives -- they represented the basic, minimum first step for the Law Society. We have all worked too hard and too long on these issues to see the recommendations and the final report being undone or watered down within barely a year of their approval by Convocation. With great respect to Bencher Groia and other legal professionals and commentators who have expressed similar views as his regarding the Statement of Principles, the time for debate was in 2016 -- when the CFRL Working Group's report was tabled before Convocation after years of studies and consultations, in which many of us participated as individuals and organizational representatives. To propose at this late stage to carve out exemptions or create other such compromises appears to us to be an abuse of Convocation's process and a breaking of faith with the equity-seeking communities (as well as those members of the public that they serve) who are impacted by the report and whose challenges yet remain to be addressed today by the Law Society. We urge you and your colleagues to reject Bencher Groia's motion, and I expect that our collective position will be the same regarding any other motion that would undermine the intent and spirit of the CFRL Working Group's report and recommendations.

I look forward to discussing these issues with you at the next EIAC meeting on Nov. 9, and would invite my colleagues here to express their own views if it will be of assistance.

Sincerely,

Paul Jonathan Saguil
Chair of the Law Society Equity Advisory Group



INDIGENOUS BAR ASSOCIATION

November 9, 2017

VIA EMAIL: treasurer@lsuc.on.ca

Treasurer Paul Schabas and Benchers of the Law Society
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Treasurer Paul Schabas and Benchers of the Law Society:

The Indigenous Bar Association (IBA) is a national association comprised of Indigenous lawyers (both practicing and non-practicing), legal academics and scholars, articling clerks and law students, including graduate and post-graduate law students. The IBA is mandated to promote the advancement of legal and social justice for Indigenous peoples in Canada, as well as the reform of laws and policies affecting Indigenous peoples.

The IBA has been actively monitoring the Racialized Licensees Working Group and the report entitled "Challenges Faced by Racialized Licensees" including the published recommendations which are intended to address the challenges faced by racialized lawyers including Indigenous lawyers.

The issue of promoting equality, diversity and inclusion in the legal profession is well within the IBA's mandate and one which requires making difficult and sometimes unpopular decisions. The Statement of Principles proposed by the Law Society are necessary in order address the systemic historical disadvantages suffered by Indigenous peoples at the hands of the legal profession. As a result of the history and impacts of colonialism, legislated assimilationist policies and Indian Residential Schools, Indigenous people and licensees face much bigger and more complicated challenges because of the historic disadvantages that tend to be perpetuated by the status quo inherent in the legal system. The discrimination is systemic.

The IBA is concerned that a motion is being put forward which will attempt to reopen the discussion of the Law Society's Statement of Principles. Principles which will require an "obligation licensees to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public."

Specifically, the Working Group recommends that in order to ensure that licensees infuse the principle of diversity and inclusion into their everyday practice the Rules of Professional Conduct...be reviewed to determine how this objective can be achieved." In addition. "The Working Group believes that requiring licensees to make a clear commitment to... diversity and inclusion will encourage licensees to consider their individual roles in creating lasting change." The IBA fully supports the requirements with respect to reconciliation and acknowledging Indigenous peoples.

To understand the importance of The Working Group's recommendation one must look no further than the most recent statistics regarding Judicial Applicants and Appointees for the period of October 21, 2016 to October 27, 2017. Of the 997 applications received, only 36 were from identified Indigenous candidates; and of 74 candidates appointed only 3 were Indigenous. In a legal system which deals with a disproportionate number of Indigenous peoples, especially in the criminal justice courts, the lack of representation of Indigenous peoples as Judicial appointees is shocking.

As the saying goes, law students become lawyers, lawyers become judges. Any program or initiative which addresses this lack of representation should be fully supported, implemented and endorsed. The IBA fully supports the efforts of the Law Society of Ontario's Working Group. There is concern amongst some members of the bar who point to a lack of precedent to support this recommendation, the IBA submits there is a breadth of support to addressing the historical disadvantages of Indigenous peoples which include but are not limited to the following:

1. Truth and Reconciliation Commission Calls to Action, Number 27 – "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism."
2. United Nations Declaration for the Rights of Indigenous Peoples, Article 15 (2) States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.
3. Canadian Charter of Rights and Freedoms s.15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Supreme Court of Canada has consistently stated that the purpose of the equality guarantee in s. 15(1) is to remedy historical disadvantage, that identical treatment can perpetuate disadvantage and that equality may sometimes require different treatment. Section 15(2) enhances this concept of equality by recognizing that achieving equality may require positive action by government to improve the conditions of historically and socially disadvantaged individuals and groups in Canadian society.

A society is judged on the basis of how it treats its most vulnerable members. Immediate action is required in order to redress the historical disadvantages of Indigenous peoples and advance the process of reconciliation for the most vulnerable members of our society, Indigenous peoples. The Law Society of Ontario plays a pivotal role in setting a new course for reconciliation and will require alternative means in which to do so.

The recommendations and the accompanying templates, as put forward by the Working Group, are a small step in this journey and the IBA fully supports the Law Society's Statement of Principles.

Sincerely,

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

Scott Robertson, LLB, BEd, Specialization: Indigenous Law
President, Indigenous Bar Association

November 12, 2017

Law Society of Ontario
Osgoode Hall
130 Queen St West
Toronto, ON
M5H 2N6

Attn: Equity and Indigenous Issues Committee

Re: Challenges Faced by Racialized Licensees
Recommendation 3(1) and the Statement of Principles

The Law Society of Ontario (Law Society) has a legislative mandate pursuant to the *Law Society Act*, R.S.O. 1990 to:

- maintain and advance the cause of justice and the rule of law;
- act so as to facilitate access to justice for the people of Ontario;
- protect the public interest;
- act in a timely, open and efficient manner; and
- regard the standards of learning, professional competence and professional conduct for licensees.

In 2016, the Law Society, working through the Equity and Indigenous Issues Committee, re-established its working relationship with Indigenous licensees and community by creating the Indigenous Advisory Group (IAG). In December of 2016 the IAG finalized the Law Society's Indigenous Framework. We feel it necessary to restate the foundational elements of this Framework for the purposes of sharing our perspective on the Statement of Principles.

Achieving and improving access to justice and taking action on reconciliation are two key pillars of our work together. We advised then and now that the development of every initiative by the Law Society must be guided through an "Indigenous lens" that is inclusive of the sacred laws and teachings of the Indigenous peoples of Ontario. The principles of love; respect; courage; honesty; humility; wisdom and truth are living responsibilities.

The recommendations being advanced by the Law Society following its examination of the Challenges Faced by Racialized Licensees speak to the negative experiences faced by members of the legal profession by the conduct of other members of the profession. Indigenous Licensees did not take part in this study on the advice of the Indigenous licensees at the time however, we can identify with the challenges identified and support every action taken to address the individual and systemic behaviours that are discriminatory and racist. Going forward we also propose the Law Society consider explaining Recommendations 3(1)(2) and(3) in the Rules of

Professional Conduct having particular regard to Chapter 2 (Integrity) and Chapters 5, 6 and 7 (Relationships) and the commentaries therein should further clarification be required.

We have chosen to enter this profession. When we made that choice, we affirmed our obligation to uphold the laws of Ontario and Canada. For us, we also uphold our own Indigenous legal traditions. As such, we owe an duty to treat each other from a place of respect. For these reasons we support the requirement for every licensee to abide by a statement of principles acknowledging this truth.

We also welcome the opportunity to attend Convocation in person if and when this matter arises for further discussion and decision.

Respectfully,

The Indigenous Advisory Group



Urban Alliance On Race Relations

2 Carlton Street, Suite 1001, Toronto, Ontario M5B 1J3
Tel: (416) 703-6607 Fax: (416) 703-4415 e-mail: info@urbanalliance.ca
Charitable Registration 11928-0022-RR0001

November 13th, 2017

Treasurer Paul Schabas and
Benchers of the Law Society of Ontario

Re: Urban Alliance on Race Relations supports the Final Report of Challenges Faced by Racialized Licensees Working Group

The Urban Alliance on Race Relations (UARR) is a non-profit charitable organization established in 1975. For over 40 years, UARR has been fighting racism through research and education, organizing workshops and conferences, working to build bridges between racialized communities and institutions, including school boards and police services. In fact, one important public forum we held targeted the very issue of barriers faced by racialized lawyers.

Based on our long experience challenging systemic racism in multiple sites and situations, we think it is about time the Law Society of Ontario joined public institutions like school boards and police services to seriously address systemic racism in the legal profession, often perceived by the public as powerful and impenetrable.

We were very encouraged when we heard the Law Society approved the final report of Challenges Faced by Racialized Licensees Working Group with thirteen recommendations in five action areas to address systemic racism faced by lawyers. This came about after the Working Group was created in 2012, itself a huge step in the long history of the Society, with a mandate to investigate the challenges faced by racialized licensees and consider strategies for enhanced inclusion at all career stages. A consultation paper was presented on Oct 30, 2014, followed by consultations throughout 2015 and the final report was released on Sept 22nd 2016. All the recommendations were adopted at Convocation in December 2016.

We think that this is a historic moment for the legal profession in Ontario, and that the report is a groundbreaking document which can guide the implementation going forward. We applaud the commitment and hard work of the Working Group, the leadership of the Law Society, and the democratic process undertaken to ensure ample opportunities for the expression of various opinions on these proposed changes.

As long time community activists in the fight against racism, we always look to legal experts for advice to help us navigate the minefield of the legal system to advance the goal of social justice for all. We expect the law profession to conduct their practice in an inclusive manner and to model their be-

haviour to reflect the Canadian values of equality and diversity. After such a long period of back and forth, we believe that now is the time for ACTION.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Barriffe', written in a cursive style.

Nigel Barriffe
President, Urban Alliance on Race Relations
416 427 1192
www.urbanalliance.com



Via Email

November 16, 2017

Benchers, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H2N6

Dear Treasurer Schabas and Benchers:

Re: Motion to Revise Recommendation re Statement of Principles

The Roundtable of Diversity Associations (“RODA”) strongly and unequivocally opposes any and all motions to revise, reconsider, attenuate or defeat Recommendation 3(1) of the *Challenges Faced by Racialized Licensees Working Group: Final Report* (“Racialized Licensees Report”). It is deeply disappointing that the first anniversary of the approval of the Racialized Licensees Report will be marked by highly publicized dissension within the Law Society of Ontario (“Law Society”) concerning an important recommendation contained in this very report. RODA urges benchers to focus their current efforts on coordinating effective implementation of Recommendation 3(1) rather than revisiting the recommendation itself.

We understand that two motions are currently scheduled to proceed on December 1, 2017 before Convocation:

- (1) A motion by Bencher Joseph Groia to exempt conscientious objectors in the profession from the requirement to create and abide by a statement of principles acknowledging their obligation to promote equity, inclusion and diversity generally and in their behaviour with colleagues, employees, clients and the public (“Statement of Principles”) and
- (2) A motion by Bencher Barbara Murchie to amend the language of Recommendation 3(1) to remove reference to any obligation to “promote” equity, inclusion and diversity.

RODA is of the view that neither of these motions should proceed. The legitimacy, propriety and severability of all thirteen recommendations contained in the Racialized Licensees Report, including Recommendation 3(1), have been considered, debated and

decided by the Law Society. Any effort to revisit Recommendation 3(1) constitutes an abuse of process and is unbecoming of the governors of a profession that serves a diverse, multi-cultural and multi-ethnic population in Ontario.

Convocation last December featured lengthy debate on whether the recommendations contained in the Racialized Licensees Report should be considered and voted on individually rather than *en masse*. Many of us were present at Convocation and recall witnessing similar arguments as ones being advanced today to oppose the Statement of Principles, namely that some of the recommendations when implemented would amount to thought-policing, forced speech and impose unconstitutional and undemocratic obligations on lawyers. A majority of benchers rejected these views and unanimously approved the Racialized Licensees Report and all thirteen of its recommendations as a unit. In doing so, the Law Society recognized the following: (1) that systemic discrimination in our profession is a matter of fact not opinion; (2) that the duty to promote equity, inclusion and diversity is a current legal obligation of lawyers (indeed, society as a whole) and not a question of one's choice, values or politics; and (3) the recommendations constitute a compendium which when unravelled, lose their intended effect, namely of serving as a humble first step towards addressing systemic discrimination in the profession. It is trite to say that the rejection of such ideals within society at large is generally viewed as discriminatory and bigoted.

In arriving at their decision, the Law Society had a wealth of expertise in constitutional, administrative and human rights law among sitting benchers. In addition, benchers had the benefit of a legal opinion prepared by Pinto Wray James LLP supporting the constitutionality of the recommendations and the Law Society's jurisdiction to adopt and implement these. Under these circumstances, the resurrection of constitutional and jurisdictional questions a year later, particularly under the guise of upholding the rights of a hypothetical conscientious objector, amounts to gross misuse of time and resources. Moreover, it is unfortunate that lawyers from racialized and historically marginalised groups are being called upon, yet again, to advocate for their right to equal treatment and equal access to the profession.

RODA cautions benchers to be mindful of the inflammatory and dangerous rhetoric that has spawned in social and mainstream media as a result of the controversy over the Statement of Principles. The Law Society's treatment of these motions will either embolden critics of equality and diversity, turning back the clock on progress or will set a strong tone from the top announcing the Law Society's unwavering commitment to addressing systemic racism.

The Statement of Principles has been described by detractors as an "Orwellian dictate", "the hallmark of a totalitarian state", "a well-meaning but bone-headed dictate", "a politically correct statement of principles that may override core Christian beliefs", a "thought requirement" being imposed by the proverbial "Big Brother". Diversity and inclusion have been described as

“faddish and jargonistic concepts ... never been considered obligatory to the beliefs of reasonable people.” These are distressing responses to lawyers being asked to transcribe their commitment to equity, diversity and inclusion. If anything, such verbiage highlights an urgent need to adopt a zero-tolerance policy towards racism within the profession *and* raise awareness about the existence and effects of systemic discrimination.

Some of the views referenced above are based on incorrect assumptions, misinformation and to some extent, propaganda. Information seminars and bulletins organised by the Law Society will help correct the record. For instance, likening the obligation to draft a Statement of Principles with suspension of democracy due to forced speech is not just an exaggeration but fallacious. Obligatory speech in several instances is routine and non-objectionable. Employers customarily require employees to declare their allegiance to various company policies on issues such as privacy, communications, equity and diversity as a condition of their employment. The Law Society itself compels all real estate lawyers to acknowledge each year in their Lawyer Annual Report their obligation “to not act or do anything or omit to do anything to assist a client, a person associated with a client or any other person to facilitate dishonesty, fraud, crime, or illegal conduct”. In the latter instance, one’s opinions, views, beliefs and politics concerning what constitutes “dishonesty, fraud, crime or illegal conduct” are of no consequence.

RODA urges benchers to work together to implement Recommendation 3(1) in a manner that clarifies popular misconception about its intent, effect, requirements and enforcement. To this end, it would be helpful to provide additional templates on Law Society’s website to demonstrate the flexibility available to lawyers in designing their own Statement of Principles while still meeting requirements of Recommendation 3(1).

Efforts to dilute or revise Recommendation 3(1) will not only dilute the value and reach of the Racialized Licensees Report, but will demoralize racialized licensees and result in a wasted opportunity for the Law Society to take a first step towards addressing systemic discrimination rampant in this profession.

Sincerely,

Jayashree Geswami

On behalf of the Roundtable of Diversity Associations

November 20, 2017

Treasurer Paul Schabas and Benchers of the Law Society of Upper Canada
c/o The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer Schabas and Law Society Benchers:

Re: Motion to Exempt Certain Licensees from the Statement of Principles Requirement

We, the undersigned, are members of the Faculty of Law at the University of Ottawa who strongly disagree with the recent challenges to Recommendation 3(1) of the *Final Report* of the Working Group on the Challenges Faced by Racialized Licensees (Working Group). In particular, we firmly oppose the motion advanced by Bencher Joseph Groia seeking to exempt licensees from the requirement to adopt and comply with a "Statement of Principles" to promote equality, diversity and inclusion on grounds of "conscientious objection."

Studies conducted by the Law Society of Upper Canada and the Canadian Bar Association have repeatedly demonstrated that racism, sexism, and other forms of discrimination persist in the legal profession. It is clear from the extensive investigation undertaken by the Working Group that little progress has been made in creating an environment in which lawyers from Indigenous and other racialized communities can benefit from equitable hiring practices, a workplace free of discrimination and harassment and, ultimately, a fair opportunity to thrive and succeed in their careers without the burdens and constraints of racial bias and systemic racism.

We applaud the Working Group's recognition of our individual and collective obligation to promote equality, diversity and inclusion, and we support its recommendations for moving forward towards this important goal. The promotion of these outcomes is critical to ensuring the full and equitable participation in the legal profession of racialized and members of other subordinated communities. It is also vital to meeting our professional duties to the clients that we serve, as well as to the general public for whose benefit the profession must be regulated. Licensees of the Law Society of Upper Canada have been granted an enviable monopoly on the provision of legal

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services in Ontario. This carries with it a heightened responsibility to respect human rights laws (Rule 6.3.1-1, *Rules of Professional Conduct*; Ontario *Human Rights Code*) and to advance equality, diversity and inclusion as part of our duty to act “honourably and with integrity” (Rule 2.1-1, *Rules of Professional Conduct*).

Indigenous and other racialized communities have repeatedly expressed distrust and frustration with a legal system in which they fail to see themselves or their interests represented. The majority of racialized people who engage with the legal system in Ontario will encounter few if any racialized lawyers, jurors, or judges. Moreover, they face the very real risk of interacting with licensees who lack cultural or racial competence, and who may engage in discriminatory conduct. As former LSUC Discrimination and Harassment Counsel and now Ontario Superior Court Justice Cynthia Petersen reported in 2013, of the 583 discrimination and harassment complaints brought against lawyers in Ontario between 2002-2012, 318 came from the public.

The LSUC’s requirement that licensees adopt a Statement of Principles promotes what should be core values of our profession. The backlash to this initiative, guised in the language of “conscientious objection”, confirms why this measure is so critical. The debate sparked by the Law Society’s adoption of the Working Group’s Statement of Principles recommendation is not a new one, and other equity measures challenging the *status quo* have met with similar resistance in the past. However, history also reveals that we are a stronger, more competent and more vibrant legal profession and society when we embrace and promote values of equality, diversity and inclusion.

The harms and burdens of racism and other forms of discrimination are not borne equally, but we all bear responsibility for eradicating inequality and exclusion. The Statement of Principles is a modest, but imperative, starting point in our collective journey to dismantle systems of oppression in the legal profession in Ontario. We therefore urge all members of Convocation to reject Bencher Groia’s motion on December 1, 2017, and to continue the important work of implementing the Working Group’s recommendations for the benefit of the legal profession and our province as a whole.

Yours sincerely,



Professor Rakhi Ruparelia, on behalf of,

Professor François Larocque, Interim Dean

Professor Adam Dodek, LSM

Professor Elizabeth Sheehy, LL.D. (*Honoris Causa*, LSUC)

Professor Constance Backhouse, LSM, LL.D. (*Honoris Causa*, LSUC)

Professor Teresa Scassa

Professor Louise Bélanger-Hardy

Professor Daphne Gilbert

Professor Graham Mayeda

Professor Natasha Bakht

Professor Jamie Liew

Professor Martha Jackman, LSM

Professor Penelope Simons

Professor Amy Salyzyn

Professor Suzanne Bouclin

Professor Errol Mendes, LSM

Professor Angela Cameron

Professor Ravi Malhotra

Professor Kyle Kirkup

Professor Jane Bailey

Professor Marina Pavlovic

Professor Vanessa MacDonnell

Professor Rosemary Cairns Way

Professor Yves Le Bouthillier

Professor Florian Martin-Bariteau

Professor Vanessa Gruben

Le 20 novembre 2017

Le trésorier Paul Schabas et les conseillers du Barreau du Haut-Canada a/s
du Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6

Monsieur le trésorier, messieurs les conseillers et mesdames les conseillères
du Barreau,

**Objet : Motion visant à exempter certains titulaires de permis de
l'obligation d'adopter une déclaration de principes**

Nous, les soussignés, sommes des membres de la Faculté de droit de l'Université d'Ottawa qui désapprouvons fortement les récentes contestations de la Recommandation 3(1) du *Rapport final* du Groupe de travail sur les défis des titulaires de permis racialisés (Groupe de travail). Nous nous opposons fermement à la motion proposée par le conseiller Joseph Groia qui vise à exempter des titulaires de permis de l'obligation d'adopter une déclaration de principes reconnaissant leur obligation de promouvoir l'égalité, la diversité et l'inclusion en invoquant une « objection de conscience ».

Les études menées par le Barreau du Haut-Canada et l'Association du Barreau canadien ont, à maintes reprises, démontré que le racisme, le sexisme et d'autres formes de discrimination persistent au sein de la profession juridique. Il ressort clairement de la vaste enquête entreprise par le Groupe de travail que peu de progrès ont été réalisés en vue de créer un milieu au sein duquel les juristes issus de communautés autochtones et racialisées peuvent bénéficier de pratiques d'embauche équitables, d'un milieu de travail dépourvu de toute forme de discrimination et de harcèlement et, en définitive, d'une juste possibilité de prospérer et de réussir dans leur carrière sans subir le poids et les contraintes des préjugés raciaux et du racisme systémique.

Nous nous réjouissons que le Groupe de travail reconnaisse notre obligation à la fois individuelle et collective de promouvoir l'égalité, la diversité et l'inclusion, et nous appuyons ses recommandations visant à atteindre cet objectif crucial. La promotion de ces résultats est primordiale si l'on veut assurer la pleine et équitable participation des membres de communautés racialisées et d'autres communautés victimes de discrimination au sein de la profession juridique. Il est en outre impératif de remplir nos obligations

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professionnelles envers les clients que nous servons, ainsi qu'envers le grand public au bénéfice duquel notre profession doit être réglementée. Les titulaires de permis du Barreau du Haut-Canada se sont vus accorder le fort enviable monopole de la prestation des services juridiques en Ontario. Un tel privilège s'accompagne d'une responsabilité accrue quant au respect des lois portant sur les droits de la personne (Article 6.3.1-1, *Code de déontologie; Code des droits de la personne de l'Ontario*) et à la promotion de l'égalité, de la diversité et de l'inclusion dans le cadre de notre devoir d'exercer le droit « avec honneur et intégrité » (Article 2.1-1, *Code de déontologie*).

Les communautés autochtones et racialisées ont maintes fois exprimé leur défiance et leur frustration vis-à-vis d'un système juridique où elles peinent à se reconnaître et à constater la représentation de leurs intérêts. La majorité des personnes racialisées ayant à faire avec le système juridique en Ontario n'y rencontreront que rarement, sinon jamais, un avocat, juré ou juge racialisé. Elles sont en outre confrontées au risque très réel d'interagir avec des titulaires de permis dépourvus de compétence culturelle et/ou raciale, et susceptibles de faire preuve de comportements discriminatoires. Cynthia Petersen, en sa qualité d'ancienne conseillère juridique en matière de discrimination et de harcèlement au BHC et à présent juge à la Cour supérieure de l'Ontario, rapportait en 2013 que, sur 583 plaintes de discrimination et de harcèlement déposées contre des avocats en Ontario entre 2002 et 2012, 318 provenaient du public.

L'obligation imposée par le BHC aux titulaires de permis d'adopter une déclaration de principes met de l'avant ce que doivent être les valeurs fondamentales de notre profession. Certaines réactions en contrecoup à cette initiative, empruntant pour ce faire l'expression « objection de conscience », viennent confirmer la raison d'être et l'importance de cette mesure. Le débat que suscite l'adoption, par le Barreau, de la recommandation du Groupe de travail de l'obligation d'adopter une déclaration de principes n'est pas nouveau, et d'autres mesures d'équité remettant en question le *statu quo* ont déjà rencontré pareille résistance dans le passé. L'histoire nous apprend toutefois que notre profession juridique et notre société sont plus fortes, plus compétentes et plus dynamiques lorsque nous entérinons et prôtons les valeurs d'égalité, de diversité et d'inclusion.

Les effets néfastes et les contraintes du racisme et d'autres formes de discrimination ne sont pas assumés à part égale, nous portons cependant toutes et tous la responsabilité d'éradiquer l'inégalité et l'exclusion. À cet égard, la Déclaration de principes est un point de départ, certes modeste, mais impératif, dans notre cheminement collectif vers le démantèlement des systèmes d'oppression au sein de la profession juridique en Ontario. Nous exhortons par conséquent tous les membres du Conseil à rejeter, le 1^{er} décembre 2017, la motion présentée par le conseiller Groia et à poursuivre leur important travail de mise en œuvre des recommandations du Groupe de

travail au bénéfice de la profession juridique et de notre province dans leur ensemble.

Nous vous prions d'agréer, Monsieur le trésorier, messieurs les conseillers et mesdames les conseillères du Barreau, l'expression de nos sentiments respectueux,



Professeure Rakhi Ruparelia, au nom de,

Professeur François Larocque, Doyen par intérim

Professeur Adam Dodek, LSM

Professeure Elizabeth Sheehy, LL.D. (*Honoris Causa*, LSUC)

Professeure Constance Backhouse, LSM, LL.D. (*Honoris Causa*, LSUC)

Professeure Teresa Scassa

Professeure Louise Bélanger-Hardy

Professeure Daphne Gilbert

Professeur Graham Mayeda

Professeure Natasha Bakht

Professeure Jamie Liew

Professeure Martha Jackman, LSM

Professeure Penelope Simons

Professeure Amy Salyzyn

Professeure Suzanne Bouclin

Professeur Errol Mendes, LSM

Professeure Angela Cameron

Professeur Ravi Malhotra

Professeur Kyle Kirkup

Professeure Jane Bailey

Professeure Marina Pavlovic

Professeure Vanessa MacDonnell

Professeure Rosemary Cairns Way

Professeur Yves Le Bouthillier

Professeur Florian Martin-Bariteau

Professeure Vanessa Gruben

November 22, 2017

Paul Schabas, Treasurer, and all Benchers
Law Society of Ontario
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Treasurer Schabas and Benchers of the Law Society:

Re: Strategies to Address Issues of Systemic Racism in the Legal Professions

As you know, Ontario's community legal clinics are instrumental in providing access to justice for low-income and disadvantaged persons throughout Ontario. Clinics enable people to meet basic and fundamental needs: a source of income, housing and shelter, equality and human rights, access to health care, education, workers' rights and more. Clinic lawyers, licensed paralegals and community legal workers provide an array of services including casework and representation, legal advice and referrals, community development, public legal education and law reform for systemic solutions. A defining feature and strength of the clinic model is that clinics are responsive and accountable to the communities they serve.

Clinics are funded pursuant to the *Legal Aid Services Act*, which names them as the foundation of clinic law and receive most of their funding from Legal Aid Ontario.

There are 74 clinics across the province that together employ hundreds of lawyers, licensed paralegals and community legal workers.

The Association of Community Legal Clinics of Ontario, or the ACLCO, has served as the representative body of community legal clinics in Ontario since 1997. Since that date, the Association has developed expertise in the delivery of poverty law services through the community legal clinic model; continues to act in a leadership role to advocate for sustainable legal aid services in Ontario; and, is recognized as a champion of community based legal aid services.

Clinics and the ACLCO welcomed the decision of the Law Society to approve the *Challenges Faced by Racialized Licensees Working Group's Final Report*, and the 13 recommendations that address issues of systemic racism in the legal professions.

The study and consultations undertaken by the Working Group demonstrated that racialized lawyers and paralegals face longstanding and significant challenges at all stages of their legal careers, including serious systemic and far-reaching barriers to equality in their professions. Racialized lawyers and paralegals working in community legal clinics are not immune to these barriers and challenges.

The ACLCO sponsored two continuing professional development sessions to ensure that clinic practitioners and Board members are familiar with the findings of the Working Group and the Law Society's recommendations. We learned from these sessions of the thorough study and consultations that were undertaken by the Working Group and the extensive debate engaged in by the Benchers in December 2016, the culmination of which produced the 13 Recommendations.

The work of clinic lawyers and paralegals is central to accessing justice for low-income and disadvantaged people in Ontario. From this work, clinics are in a position to fully endorse the conclusion that the challenges faced by racialized licensees affect access to justice for Ontarians and affect the quality of legal services for the public. ([Challenges Faced by Racialized Licensees Working Group's Final Report](#) at page 51)

We know also that achieving equal access to justice for all Ontarians requires equality among all members of the legal professions. Since the principle of equality is fundamental to both the rule of law and access to justice, the ACLCO supports the requirement that all licensees adopt and 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. Engaging in the positive obligation to promote equality is intrinsic to championing these principles.

The ACLCO urges the Law Society not to re-open the debate regarding the Recommendations. The Working Group's Recommendations are a critical initial step to address the lack of equality, diversity and inclusion in our professions.

The Law Society is obligated to promote the public interest. The public interest is well served by the acknowledgement by lawyers and paralegals that they will act in a manner which promotes the rule of law, respects the requirements of human rights law and adheres to the *Rules of Professional Conduct*. The *Rules* clearly outline that "lawyers have 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."

The Recommendations and the requirements that arise from them have been carefully researched, thoroughly debated and voted on by Convocation. All clinic practitioners and members of the legal professions, along with the communities we serve, will be better served by the implementation of these reasonable, necessary steps towards a more inclusive profession serving Ontario's increasingly diverse population.

Yours truly,

Trudy McCormick
Co-Chair
mccormit@lao.on.ca

Fran Cherry
Co-Chair
Fran_Cherry@carleton.ca



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president@criminallawyers.ca

From the office of the President

November 23, 2017

BY EMAIL ONLY

Mr. Paul Schabas,
Treasurer
Law Society of Upper Canada
(Law Society of Ontario)
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

treasurer@lsuc.on.ca

Dear Treasurer Schabas and Benchers:

Re: CLA Position on Motion to Revise Recommendation Regarding Statement of Principles

The Criminal Lawyers' Association ("CLA") is a group that represents the collective interests of approximately 1200 lawyers that practice across the Province of Ontario. The organization has a proud history of advancing the interests of lawyers who practice primarily in the area of criminal law and in advocating, as an organization, in support of issues that are important to criminal lawyers generally and also the clients we represent. This includes intervening in litigation where issues that are relevant to the practice of criminal law are being considered. For example, we intervened in the litigation involving Joseph Groia and the Law Society and also the litigation involving Trinity Western University and the Law Society. Our Association is comprised of an eclectic membership from varying social, economic and racial backgrounds.

Criminal lawyers have a longstanding and proud tradition of fighting for equality and human rights. We zealously advocate both in court and otherwise for the clients we represent. Often that advocacy is not in respect of popular or "politically correct" causes. Among the people we represent are the most disenfranchised and marginalized of society, many of whom are racialized.

We understand Convocation will be considering amendments to current Recommendation 3(1) of the *Challenges Faced by Racialized Licensees Working Group: Final Report* (the "Working Group

Report"). Given the size of our membership and the importance of this issue, we wanted to correspond with you with a view to providing our collective perspective to share with Convocation.

I became the President of our Association in late October of this year. When the LSUC released the Recommendation and initiative it received a mixed reaction from our membership. Many questioned whether it was "compelled" speech. Others questioned the purported Orwellian nature of what was being proposed. The issue gave the Governing Board of the CLA significant pause for consideration. To that end, we convened a special meeting of the Board to consider the Statement of Principles and also the proposed amendments. We invited submissions from our membership. We also invited input from various groups that some of our members are also members of including: the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association (SABA, and the Federation of Asian Canadian Lawyers (FACL).

One recurring concern for our membership was the potential impact of the requirement to have a Statement of Principles on our role as advocates for the criminally accused and the duty of loyalty to our clients. Another concern had to do with the definition of "promoting" in the Statement. The CLA Board recognizes that reasonable people who are neither racist nor sexist, including members of our association, oppose the initiative for principled reasons. Notwithstanding the lack of complete consensus among our membership, the elected members of our Board (31 members of the 36 were in attendance at our teleconference) unanimously decided as follows:

1. That we support, without reservation, the requirement that each regulated legal professional in Ontario comply with the recommendation and adopt a Statement of Principles; and
2. That we do not support any amendment to the requirement that would allow an exemption for conscientious reasons or that would exempt licensees from the requirement to "promote" diversity and inclusion.

We support the Law Society initiative on the basis that it is an attempt to clarify existing legal and professional obligations regarding human rights and the prevention of systemic racism and discrimination consistent with the Rule of Law and oath that all lawyers take when they become members of the regulated legal profession in Ontario. However, we wish to make it clear that the CLA feels more can be done and should be done to attempt to eradicate systemic racism in our profession. The requirement of a Statement of Principles is, in our view, insufficient to affect real change. Actions speak louder than words particularly in this context.

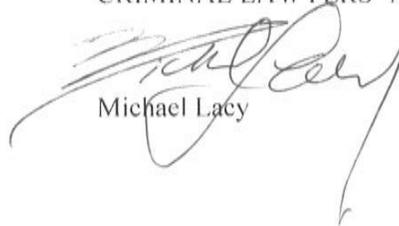
The CLA supports Recommendation 3(1) as a first step towards addressing systemic and implicit racism in our profession. We encourage the Law Society to remain steadfast in the face of opposition to the implementation of Recommendation 3(1).

We wish to note that our support for this initiative does not, from our perspective, detract in any way from our obligation to zealously defend the interests of our clients particularly when they come into conflict with the state, including representing persons who have political, theological, racial or other viewpoints that are either expressly or implicitly inconsistent with the Statement of Principles.

Finally, we have advised our membership of the Board's decision and the intention to write to you to express the same. We have also encouraged individual members who take a different personal view from the collective position to communicate with you and other Benchers directly to share their views.

We look forward to working with the Law Society on creating a more equitable terrain for lawyers throughout this Province.

Sincerely,
CRIMINAL LAWYERS' ASSOCIATION



Michael Lacy

Arab Canadian Lawyers Association

November 24, 2017

Benchers, Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

Dear Treasurer Schabas and Benchers:

Re: Motion to Revise Recommendation re Statement of Principles

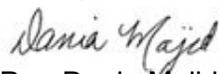
The Arab Canadian Lawyers Association (ACLA) unequivocally opposes any and all motions to amend or defeat Recommendation 3(1) of the Challenges Faced by Racialized Licensees Working Group: Final Report ("Report").

We respectfully request that Benchers vote against these motions, and implement, without further delay, all the recommendations from the Report. The recommendations have already been considered, debated and approved by the Law Society. The principles in the Statement of Principles are codified in human rights law, and reflected in the Rules of Professional Conduct. It is now time to implement the recommendations to ensure our profession is free of the barriers created by racism and prejudice.

While on the Equity Advisory Group, ACLA participated on the Report working group and the consultation process and provided written submissions. Arab licensees, especially Palestinians, shared with us their experiences of overt discrimination in the hiring process and in the workplace. Many Arab job-seekers contemplate "whitening" their identities and experiences on their resumes to improve their chance to secure a job instead of highlighting the valuable skills gained working with the Arab community. Further, discrimination is never reported in fear of reprisal or harm to their reputation.

The Statement of Principles is only one tool among many that can raise awareness and address systemic discrimination experienced by racialized licensees, as well as non-legal staff and clients. This includes anti-oppression education for the legal community, and inclusivity in Law Society programming. The time is now for the Law Society to demonstrate it is serious about addressing the longstanding concerns of racialized licensees, and that the profession has zero tolerance for all forms of discrimination.

Yours truly,
Arab Canadian Lawyers Association



Per: Dania Majid, Founder and President

Montreal, 24 November 2017

Treasurer Paul Schabas and Benchers of the Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer Schabas and Benchers of the Law Society of Ontario,

With this letter, we wish to express our strong support for Recommendation 3(1) of the Final Report of the Working Group on the Challenges Faced by Racialized Licensees (Working Group), entitled *Working Together For Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*, requiring that licensees adopt a Statement of Principles to promote equity, diversity and inclusion.

As members in good standing of the Law Society of Ontario who are also members of the Faculty of Law at McGill University, we applaud the Law Society's Working Group for consulting widely and documenting through quantitative and qualitative data the widespread barriers faced by Indigenous and racialized licensees within the legal professions at all stages of their careers. The Working Group's Final Report acknowledges what past studies, including those conducted by the Law Society, have also established: systemic racism regrettably remains a reality in the legal professions.

The Working Group's Final Report is action-oriented. It seeks outcomes consistent with the significance of the regulatory objectives sought: fostering respect for human rights law in order to address the unique barriers faced by Indigenous licensees and the challenges confronting both racialized and Indigenous licensees. The Recommendations as a whole offer comprehensive, proportionate measures spanning professional obligations, education, implementation and measurement, with Law Society leadership by example. They are carefully researched and crafted to encourage realization of the pressing objective of equity, diversity and inclusion by those privileged to be licensees.

As licensees who teach law and assume positions of leadership in our community, we are acutely aware of the persisting barriers faced by historically marginalized communities when seeking to gain access to a legal education and to practice law. We have had to examine the ways in which unconscious biases affect career trajectories in the practice of law and in legal academia. We also know that systemic racism structurally disadvantages members of Indigenous and racialized communities, leaving them and members of other equality-seeking groups to bear the disproportionate brunt of discrimination, racial profiling, and harassment in their quest for access to justice.

Yet we also know that our law faculties and profession are at their best when they work to remove discriminatory barriers, make access to justice meaningful for historically marginalized communities, and include the diversity that human rights legislation supports. Excellence and equity are complementary. Our professional excellence is rooted in our respect for equity, diversity, and inclusion.

The Law Society's Statement of Principles is a minimalist measure affecting professional conduct, as licensees already have a special responsibility to respect human rights law and "honour the obligation not to discriminate" (*Rules of Professional Conduct*, Rule 6.3.1). The Statement of Principles is consistent with the Law Society's statutory duties under Section 4.2 of the *Law Society Act*, R.S.O. 1990, Chapter L.8, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, to protect the public interest, and to act in a timely, open and efficient manner. The Statement of Principles makes concrete licensees' 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 (*Rules of Professional Conduct*, Commentary 4.1).

The Statement of Principles is so much a mere reflection of existing professional ethical responsibility and human rights law that the motion advanced, at the eleventh hour, by Bencher Groia to enable a licensee to seek an exemption for "conscientious objection" is baffling, even dismaying. As members of equality-seeking groups, we are alive to backlash, including the risk that it may hold back timely, open, and efficient action to protect the public interest, thereby perpetuating an inequitable *status quo*. We strongly oppose Bencher Groia's motion.

In conclusion, we salute the Law Society Working Group for its Recommendations that were carefully researched and adopted following an open, consultative process. We encourage the Law Society to continue to advance the cause of justice by implementing its Statement of Principles. We acknowledge our professional privilege, considering it high time to assure the public that, consistent with human rights law, we take seriously our special responsibilities to promote equity, diversity, and inclusion.

Sincerely,



Adelle Blackett
Professor of Law & Canada Research Chair in Transnational Labour Law and Development



Angela Campbell
Professor of Law



Robert Leckey
Samuel Gale Professor of Law



Colleen Sheppard
Professor of Law



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

November 24, 2017

BY E-MAIL

Mr. Paul B. Schabas
Treasurer
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer:

Re: Law Society Statement of Principles

As OBA President, I am proud that our association has a strong commitment to actively promoting equality, diversity and inclusion within our organization and throughout the legal profession. It is in that regard that I write to you with respect to the Law Society's ongoing equality, diversity, and inclusion initiatives, and in particular, the requirement for a Statement of Principles.

The reason for this letter is two-fold: first, to reiterate the OBA's unequivocal support for the Challenges Faced by Racialized Licensees Report and the recommendations therein that were adopted by Convocation in December 2016; and second, to identify failures to date in the implementation of the requirement for a Statement of Principles in the hope that going forward, the Law Society takes the necessary steps to ensure that the Statement and the remaining recommendations are successfully implemented.

The Challenges Faced by Racialized Licensees Report ("the Report")

The Challenges Faced by Racialized Licensees Report took 4 years to complete. It involved multiple stages of consultations including feedback from over 1,000 licensees and over 40 written submissions, including two from the OBA. The Report outlined in detail and with clarity that racism is alive and well in the profession and that it isn't going away without mandated action.

The Report contained 13 recommendations in five categories: accelerating culture shift, measuring progress, educating for change, implementing supports, and Law Society operations. The Statement of Principles is one of two requirements from the Report that licensees must meet by the end of 2017.

In December 2016, after significant debate, Convocation adopted the recommendations in the Report by a vote of 33-0.

The Statement of Principles

The Statement of Principles is the language of change. It is a reminder of our duty to each other and the public we serve. It is a step in recognizing that as a profession we have historically excluded racialized lawyers from full participation. The Statement provides an opportunity to do things differently in the future for the benefit of us all – not in a way that hypothesizes outlandish possibilities but that builds on the best traditions of our profession in working together to advance collegiality, fairness and the pursuit of just outcomes.

Moreover, the positive obligation to promote equality, diversity and inclusion reflects our profession's independent and unique role in safeguarding the public interest. As lawyers, this is our most important and valuable role in society, which is fundamental to self-regulation and to be protected at all cost.

The requirement for a Statement should serve as a minimum standard from which to grow, not a threshold to be met. If in due course it doesn't strengthen equality, diversity and inclusion – we must modify or replace it with alternatives that do.

The Communication Gap

The requirement for a Statement of Principles was communicated by the Law Society to all licensees by e-Bulletin in September 2017. Since then, it has been questioned by some as compelled speech or compelled belief. Equality, diversity and inclusion have been dismissed as political ideology, and a Superior Court Application has been launched attacking the requirement as *ultra vires*, disproportionate, inoperable, and unconstitutional.

This should have been anticipated and avoided. Lawyers have a right to understand their professional obligations as much as they have a professional responsibility to uphold them. Licensee uncertainty about the scope and focus of obligations in their practice and in their communities was predictable. The Law Society did not initially address many of the publicly stated questions and criticisms, which were permitted to compound in the ensuing lacuna. Increasingly the entire *raison d'être* of the recommendation has been obscured in the race to 'test the merits' of the Statement.

The Law Society's guide released this week has addressed many of the questions raised by licensees, but not before significant damage to the spirit and intent of the Statement was done – and not before racialized licensees were exposed to yet another indication from the profession that the issue of systemic racism isn't as important as other things. This failure does violence to the hard work and intention underpinning the Report.

The Need to Move Forward

The Law Society's adoption of the Report's recommendations in December 2016 showed commendable leadership in respect of a complex issue that continues to plague racialized licensees and jeopardize the relevance and credibility of the profession.

As implementation continues, the Law Society must take the necessary steps to advance constructively each of the recommendations adopted by Convocation, and it must be prepared to do so before misinterpretation and misinformation undermine the confidence of the profession.

The OBA is pleased to offer its continued support and assistance in this critical endeavour.

Yours truly,



Quinn M. Ross, President
Ontario Bar Association

- cc. Raj Anand, Co-Chair, Challenges Faced by Racialized Licensees Working Group
Janet Leiper, Co-Chair, Challenges Faced by Racialized Licensees Working Group
Dianne Corbiere, Co-Chair, Equity and Aboriginal Issues Committee
Julian Falconer, Co-Chair, Equity and Aboriginal Issues Committee



**BLACK LAW STUDENTS
ASSOCIATION OF CANADA**

**L'ASSOCIATION DES ETUDIANTS NOIRS
EN DROIT DU CANADA**

Black Law Students' Association of Canada
40 King Street West
Suite 5800
Toronto, ON
M5H 3S1

November 26, 2017

VIA EMAIL: treasurer@lsuc.on.ca

Treasurer Paul Schabas and
Benchers of the Law Society of Upper Canada

Re: BLSA Canada's Position on the Status of the Statement of Principles

Dear Treasurer Schabas and Benchers of the Law Society of Upper Canada (LSUC),

The Black Law Students' Association of Canada (BLSA Canada) is a registered non-profit organization, run with vision by a committed, hard-working community of student leaders from law schools across the country. This vibrant association has been devoted to pursuing increased access to law school and the legal profession for black students, and the removal of systemic barriers in the legal profession, for the past 27 years.

As Black law students, we are all too familiar with the lack of diversity in the legal profession. Unfortunately, many of us have felt the effects of the lack of diversity throughout our entire educational careers. When the LSUC adopted the Challenges Faced by Racialized Licensees Working Group's (the Working Group) recommendations, it

appeared to us that, on the cusp of entering a profession that has long struggled with issues of diversity, we would be among the first group of young lawyers to experience a positive difference in the legal landscape—one that was committed to encouraging every licensee to be an active participant in the diversification of the profession. The current motion, if passed, would rescind the requirement for licensees to complete a Statement of Principles, suggesting that racialized students may not be able to rely on the LSUC to remain committed to its own initiatives meant to promote a more diverse profession.

We are taught everyday that it is the role of a lawyer to zealously advocate for those they represent. We are trained to defend against opposition with preparedness, fervour and commitment. We believe that the LSUC must adopt this same stance in the face of opposition to the advancement of diversity in the legal profession. By allowing licencees to abstain from the recommendation requiring the adoption of a Statement of Principles, the LSUC will fail at a fundamental principle we spend three years learning in law schools across this nation: you must not abandon the position for which you advocate simply because an opposing view is presented.

As Black law students, we struggle to see ourselves represented in legal education and the legal profession. When we began law school, we struggled to find people that look like us among our peers in first year orientation. We do not see ourselves reflected widely in the faculty and staff that run our law schools. It is a hard task to find ourselves reflected among the interviewees, let alone recruiters, during the on-campus interview and in-firm hiring processes. We are hard-pressed to find ourselves in the province's largest, most prestigious firms. Nevertheless, the Working Group's recommendations signalled to Black students that we do belong in the law, even if we do not see ourselves

there today as commonly as would be reflective of the communities Ontario's lawyers serve.

It is extremely disheartening that the LSUC is considering absolving licensees of the responsibility to examine their role in the long overdue confrontation of an age-old problem. By allowing licensees to abstain from adopting a Statement of Principles, the LSUC is demonstrating that it is not committed to this crucial measure that holds true promise for bringing about increased diversity in the legal profession. It is the role of the LSUC to actively encourage licensees to act in ways that foster diversity, equity and inclusion in the profession. It is the role of the LSUC to ensure that its members are able to work, perform, and be assessed on equal footing. It is the role of the LSUC to ensure that we, the future members, are welcomed into a profession that follows through on its commitments and counts its diversity as a trait worthy of improvement and protection.

In conclusion, we urge the LSUC and the legal community as a whole to reject the present motion, and to support all of the recommendations of the Challenges Faced by Racialized Licensees Working Group. BLSA Canada's members are a subsection of the diverse candidates that are poised to soon enter the legal profession. It is our sincere hope that we can trust the LSUC to consider the promotion of diversity among its licensees as a cornerstone in the effective advocacy for Ontario's diverse population.

Yours truly,

The Black Law Students' Association of Canada 2017-2018 National Executive

Nashara Peart
National President
University of Windsor
University of Detroit Mercy

Danielle Rawlinson
National Conference Chair
University of Ottawa

Stella Gore
National Chair
Queen's University

Josh Lokko
National VP Mentorship
University of Toronto

Claire Browne
National Secretary
University of New Brunswick

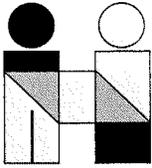
Kathy Conteh
National Diversity Moot Director
University of Windsor

Onyinye Ubah
National VP Finance
University of Windsor
University of Detroit Mercy

Enje Daniels
National Chapter Representative
University of Western Ontario

Cemeka Douglas
National VP Communications
Thompson Rivers University

Marie-Livia Beaugé
National Francophone Representative
l'Université du Québec à Montréal



Hamilton Community Legal Clinic
Clinique juridique communautaire de Hamilton

100 Main Street East, Suite 203
Hamilton ON L8N 3W4
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November 27, 2017

Paul Schabas, Treasurer, and all Benchers
Law Society of Ontario
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Treasurer Schabas and Benchers of the Law Society:

Re: Opposition to the Motion Requesting Approval of a Conscientious Objector Exemption to the Adoption of the Statement of Principles

I am writing on behalf of the Board of Directors of Hamilton Community Legal Clinic, an independent community legal clinic that serves the low income community of the City of Hamilton. The Board includes licensees of the Law Society of Ontario and the Clinic employs 14 licensees. We are writing to express our complete opposition to the Motion filed by Benchers Joseph Groia on October 19, 2017.

We were very encouraged by the decision of the Law Society to approve the *Challenges Faced by Racialized Licensees Working Group's Final Report* and the thirteen recommendations that address issues of systemic racism in the legal professions. We know from the experience of our own staff members that racialized lawyers and paralegals face longstanding and significant challenges at all stages of their legal careers, including serious systemic and far-reaching barriers to equality in their professions.

We support the decision taken by Convocation to take a principled, definitive stand against systemic racism. Since the principle of equality is fundamental to both the rule of law and access to justice, HCLC supports the requirement that all licensees adopt and 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.

Our Clinic takes this issue very seriously. It is perhaps best captured in our *Integrated Anti-Oppression Statement* that states:

The Hamilton Community Legal Clinic/Clinique juridique communautaire de Hamilton (the Clinic) recognizes that individual and systemic barriers based on such identities as, but not limited to age, race, ancestry, place of origin, colour, ethnic origin, citizenship, place of origin, creed, religion/spirituality, sex (including pregnancy and breastfeeding), sexual orientation, gender, gender identity, gender expression, age,

*A Community Legal Clinic Funded by Legal Aid Ontario
Une clinique juridique communautaire financée par Aide juridique Ontario*

record of offences, record of pardoned criminal offences, record of provincial offences, marital status (including single status), family status, or disability, have historically marginalized and oppressed many people.

The Clinic recognizes that society operates within a complex socially constructed hierarchy of power imbalances and differences amongst individuals. We are committed to policies and service provision that flow from an integrated anti-oppression lens that benefit all communities. Integrated anti-oppression recognizes how each person experiences marginalization and disenfranchisement based on how different parts of one's identity intersect. Some people are privileged; others are marginalized and devalued. We are committed to listening to the voices of the people we represent and including their perspectives into how we work.

The Clinic aspires to be a leader in the provision of equitable and inclusive services that recognize the dignity, independence, and worth of all people while encouraging equality of opportunities and full participation in society. In support of our Mission, Vision and Values, we remain dedicated to defending, advancing, and promoting full social justice, equality rights, and anti-oppression for all.

This is not a freedom of speech issue, nor should Benchers be permitted to take an end-run at decisions of Convocation. The recommendations have been carefully researched, thoroughly debated and voted on by Convocation. As an organization, the Law Society has the right to determine the terms of membership. The Statement of Principles incorporates statutes and existing Rules that licensees must already adhere to. More importantly, it makes a proactive commitment to the standards of a just and equal society. We urge the Law Society to stick to its principled decision and not to re-open the debate on this issue that is central to addressing the lack of equality, diversity and inclusion in our professions.

Sincerely,



Hina Saeed, J.D.
Chair, Board of Directors



INCOME SECURITY ADVOCACY CENTRE
Centre d'action pour la sécurité du revenu

1500 – 55 University
Toronto, ON M5J 2H7
Tel: 416-597-5820, ext. 5153
Fax: 416-597-5821
Toll-free: 1-866-245-4072

BY EMAIL

November 27, 2017

Paul Schabas, Treasurer, and all Benchers
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer Schabas and Benchers of the Law Society:

RE: Support for the Statement of Principles

The Income Security Advocacy Centre is writing to express its strong support for the Law Society's efforts to address systemic racism in the legal profession and for the Statement of Principles in particular.

The Income Security Advocacy Centre is a legal clinic funded by Legal Aid Ontario. Our clinic specializes in organizing, advocacy and litigation aimed at improving the income security of vulnerable Ontarians through benefit programs and employment. A commitment to substantive equality is the foundation of all of our work.

We see the harmful impacts of racial discrimination both upon our colleagues and in the communities that we work with. The Statement of Principles is a modest first step towards raising awareness of this reality within the legal profession, as well as the role that we as licensees must play in ensuring that our legal practices comply with our obligations under the *Ontario Human Rights Code*.

We are aware of and concerned by the backlash to this very modest requirement. The recommendation that licensees adopt Statements of Principles was one of 13 recommendations made by the working group. These recommendations are supported by the working group's research and were fully debated by Convocation. There is no reason to re-open them now, particularly for so ill-considered a proposal as a "conscientious objection" process.

Our obligations under the *Rules of Professional Conduct* and the laws of Ontario require us to promote inclusivity in law firms and clinics, reduce barriers created by racism and prejudice, protect the dignity of all individuals, and respect human rights law. Permitting "conscientious objections" would be a licence to

discriminate and would represent a serious step backwards in the Law Society's efforts to combat racism in the profession.

There is no basis for the argument that the requirement to adopt a Statement of Principles violates free speech. All that is required by licensees is that we each draft our own statement, in our own words, acknowledging our obligations to promote equality, diversity and inclusion. The fact that such a simple requirement has drawn so much controversy underlines the urgency with which we must move to address systemic racism within the legal profession.

The licensees at the Income Security Advocacy Centre are proud to comply with the requirement to adopt a Statement of Principle regarding equality, diversity and inclusion. It is but one step of many that we are united in taking together to fight systemic racism both in our profession and elsewhere.

We urge the Law Society's Benchers to vote against the motion to re-open the debate regarding the recommendations and to move forward with all 13 of the working group's recommendations to address systemic racism in the legal professions.

Yours truly,

INCOME SECURITY ADVOCACY CENTRE



Mary E. Marrone
Director of Advocacy & Legal Services

On behalf of the ISAC Board of Directors



Women's Law
Association of Ontario

November 27, 2017

Delivered by email to: treasurer@lsuc.on.ca and zpereira@lsuc.on.ca

Treasurer Paul B. Schabas and Benchers
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

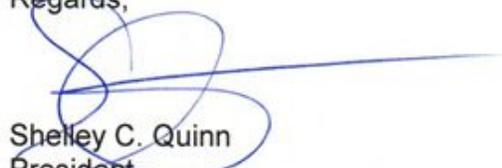
Dear Treasurer Schabas and Law Society Benchers:

The Women's Law Association of Ontario ("WLAO") supports the *Challenges Faced by Racialized Licensees Working Group: Final Report* ("Racialized Licensees Report"). The WLAO opposes any motions to reconsider or otherwise revise the recommendation, which requires every licensee to adopt and abide by a statement of principles to acknowledge their obligation to promote equality, diversity, and inclusion.

The Racialized Licensees Report was approved by Convocation after an extensive debate and consultation with stakeholders. The WLAO was involved throughout the process. Rather than revisiting the merits of recommendation 3(1) at this stage, the WLAO urges Convocation to focus on addressing the troubling findings in the Racialized Licensees Report.

The WLAO acknowledges that recommendation 3(1) would not in itself be sufficient to respond to problems faced by racialized licensees. Nonetheless, it is an important step towards advancing the goals of promoting diversity and inclusion in the profession, a matter that affects not only the provincial bar, but also the wider public interest.

Regards,



Shelley C. Quinn
President

Women's Law Association of Ontario



Women's Law Association of Ontario
PO Box 1055 • TDC Postal Station • Toronto, ON • M5K 1P2
Toll Free: 1-888 723-8883 • Toronto Line: 416-410-7267 • Email: wlaao@cogeco.ca



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www.archdisabilitylaw.ca

(416) 482-8255 (Main) 1 (866) 482-ARCH (2724) (Toll Free)
(416) 482-1254 (TTY) 1 (866) 482-ARCT (2728) (Toll Free)
(416) 482-2981 (FAX) 1 (866) 881-ARCF (2723) (Toll Free)

November 22, 2017

Benchers of the Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

Dear Benchers:

RE: Opposition to the Motion Requesting Approval of a Conscientious Objector Exemption to the Adoption of the Statement of Principles

ARCH Disability Law Centre (ARCH) writes to express its opposition to Bencher Joseph Groia's Motion filed October 19, 2017 requesting that "...Convocation approve that no licensee who has a conscientious objection to the adoption of a statement of principles shall be required to comply with Recommendation 3(1) and they shall be exempted from the requirements of Recommendation 3(1) to adopt and abide by a statement of principles."

ARCH is a specialty legal clinic dedicated to defending and advancing the equality rights, entitlements, fundamental freedoms and inclusion of persons with disabilities in Ontario. ARCH advocates for and conducts its practice in accordance with the principles espoused by Ontario's *Human Rights Code* and the *Canadian Human Rights Act* including recognizing the dignity and worth of every person and providing for equal rights and opportunities without discrimination 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.

ARCH supports the Statement of Principles as a step towards raising awareness and addressing systemic discrimination experienced by licensees from equity-seeking groups, including licensees with disabilities. In particular, ARCH finds the motion for a "conscientious objector exemption" disconcerting when the principles being objected to include the promotion of inclusivity in law firms and clinics, the reduction of barriers created by racism and prejudice, the protection of the dignity of all individuals, respecting provincial human rights law and a commitment to advance reconciliation, among others.

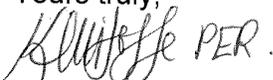
The principles promoted by the Statement of Principles are codified in provincial human rights law and should already be adopted and promoted by lawyers in their everyday practice. However, as detailed in the *Challenges Faced by Racialized Licensees Working Group Report*, systemic discrimination is real and continues to be experienced by many members of the legal profession. A commitment to promote equality, diversity and

inclusion is important and necessary; an objection to the Statement of Principles is an objection to the very principles it advances.

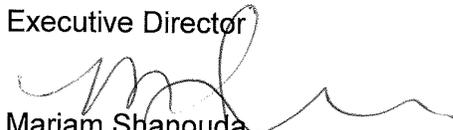
The Statement of Principles requires lawyers to adopt principles which are explicitly stipulated in the *Rules of Professional Conduct* as requirements by which lawyers are expected to abide. For example, Rule 6.3.1-1 details the special responsibility bestowed upon lawyers to respect the requirements of provincial human rights law and not to discriminate against persons based on any of the grounds enumerated in Ontario's *Human Rights Code*. ARCH acknowledges that licensees have the prerogative to craft their own Statement of Principles that reflects their own beliefs and is suitable to their values and practice. For these reasons arguments that the Statement of Principles breaches section 2(b) of the *Charter* are unsubstantiated.

ARCH respectfully requests that Benchers vote against this motion. The implementation of the Recommendations, including Recommendation 3(1) is important to our profession. It is an opportunity for lawyers to lead by example by promoting human rights principles in the pursuit of a more inclusive profession.

Yours truly,



Robert Lattanzio
Executive Director



Mariam Shanouda
Staff Lawyer, ARCH representative on the Law Society of Upper Canada's Equity
Advisory Group (EAG)



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Toronto, Ontario M5J 2H7
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(416) 482-8255 (Main) 1 (866) 482-ARCH (2724) (Toll Free)
(416) 482-1254 (TTY) 1 (866) 482-ARCT (2728) (Toll Free)
(416) 482-2981 (FAX) 1 (866) 881-ARCF (2723) (Toll Free)

The following lawyers, law clinics, and organizations have signed onto ARCH Disability Law Centre's letter addressed to the Benchers of the Law Society of Upper Canada.

Centre for Equality Rights in Accommodation (CERA)

164 - 215 Spadina Ave
Toronto, Ontario
M5T 2C7

Community Legal Services of Ottawa / Services juridiques communautaires d'Ottawa

1355 Bank St
Suite 406
Ottawa, Ontario
K1H 8K7

Downtown Legal Services

Faculty of Law
University of Toronto
Fasken Martineau Building
655 Spadina Avenue
Toronto, Ontario
M5S 2H9

HIV & AIDS Legal Clinic Ontario (HALCO)

1400-55 University Avenue
Toronto, Ontario
M5J 2H7

Hamilton Community Legal Clinic

Landmark Place
100 Main St E
Suite 203
Hamilton, Ontario
L8N 3W4

The Human Rights Legal Support Centre

180 Dundas St W
8th Floor
Toronto, Ontario
M7A 0A

IAVGO Community Legal Clinic

1500-55 University Avenue
Toronto, Ontario
M5J 2H7

Injured Workers' Consultants (Community Legal Clinic)

815 Danforth Avenue
Suite 411
Toronto, Ontario
M4J 1L2

Jane Finch Community Legal Services

1315 Finch Avenue West
Suite 409,
Toronto, Ontario
M3J 2G6

Lake County Community Legal Clinic

8-B Ontario St.
Bracebridge, Ontario
P1L 2A7

Renfrew County Legal Clinic

236 Stewart Street
Suite 101
Renfrew, Ontario
K7V 1X7

**South Asian Legal Clinic of Ontario
(SALCO)**

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Toronto, Ontario
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West Toronto Community Legal Services

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Toronto, Ontario
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November 29, 2017

Dear Bencher of Benchers of the Law Society of Upper Canada:

RE: Opposition to the Motion Requesting Approval of a Conscientious Objector Exemption to the Adoption of the Statement of Principles

The South Asian Legal Clinic of Ontario (SALCO) writes this email to express its opposition to Bencher Joseph Groia's Motion filed October 19, 2017 requesting that "...Convocation approve that no licensee who has a conscientious objection to the adoption of a statement of principles shall be required to comply with Recommendation 3(1) and they shall be exempted from the requirements of Recommendation 3(1) to adopt and abide by a statement of principles."

SALCO is an ethno-specific legal aid clinic that works with low-income South Asian communities across Ontario. 100% of our staff are racialized and 75% of that staff are licensees of the Law Society of Upper Canada. SALCO's mandate is dedicated to the advancement of equality rights for racialized Ontarians. Our grassroots experience with clients and racialized licensees continues to reveal the deep and embedded systemic racism that we face in employment, access to services, and within the justice system. It remains true that our justice system, including those in the legal profession and the judiciary, does not reflect the racialized communities that it serves. Access to justice for these communities is limited as those serving them are often not attuned to the barriers that they face.

The principles promoted by the Statement of Principles are codified in provincial and federal human rights law and should already be adopted and promoted by lawyers in their everyday practice. However, we know from personal experience that this is not always the case. Starting from On Campus Interviews (OCIs) all the way to articling, licensing and practice, my colleagues and I can attest to the challenges that we have faced around hiring, promotion, compensation, and retention -- statements around "not being the right fit", barriers for those of us who are NCA lawyers about not having enough "Canadian experience", lower compensation, and comments that have been overtly racist. We continue to live out those challenges outlined in the LSUC report.

It is deeply disconcerting that there is opposition to the adoption of a Statement of Principles that simply mirrors what has already been stipulated in law and in our own *Rules of Professional Conduct*. Over a four year period, the LSUC's working group conducted various forms of engagement and consultations. It found that challenges faced by racialized licensees were long-standing and significant and that "discrimination based

on race is a daily reality for many racialized licensees.” Those opposed to the Statement of Principles overlook the impact that this issue has on our justice system as a whole as well as its impact on their peers. The Statement of Principles reflects the strong need to address these systemic issues within our own culture. Moreover, licensees have been provided with the flexibility to craft their own statements, which renders arguments that this requirement breaches the Charter unsubstantiated.

We participated in the LSUC’s review of issues for racialized licensees and wholeheartedly support the recommendations outlined in the *Challenges Faced By Racialized Licensees Working Group Report*, including the adoption of a Statement of Principles. We believe that the recommendations in this report are a **very basic starting point** in the ongoing process of addressing systemic racism within our profession. If we cannot get past this basic start the message is clear – We are not serious about addressing the challenges faced by racialized licensees. In fact, we are being complicit in the racism that exists in our profession.

SALCO respectfully requests that Benchers vote against this motion. The implementation of the Recommendations, including Recommendation 3(1), is important to our profession. It is an opportunity for lawyers to lead by example by promoting human rights principles in the pursuit of a more inclusive profession.

Yours truly,

SOUTH ASIAN LEGAL CLINIC OF ONTARIO

Shalini Konanur	Executive Director / Lawyer
Khadeeja Ahsan	Lawyer
Sukhpreet Sangha	Lawyer
Seema Nadarajah	Community Legal Worker
Silmy Abdullah	Lawyer
Aruna Boodram	Paralegal
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November 29, 2017

Treasurer Paul Schabas and Benchers of the Law Society of Upper Canada
c/o The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Treasurer Schabas and Law Society Benchers:

Re: Statement of Principles Requirement

The Women's Legal Education and Action Fund (LEAF), a national, equality law organization, writes to express its support for the conclusions and recommendations found in the *Final Report of the Working Group on the Challenges Faced by Racialized Licensees (Challenges Report)*. Further, LEAF supports the Law Society's adoption of Recommendation 3(1), the Statement of Principles requirement, which obliges licensees of the Law Society to acknowledge their obligation to promote equality, diversity and inclusion generally. LEAF therefore urges Convocation to oppose Bencher Joseph Groia's motion that seeks to exempt licensees from the requirement.

LEAF Supports the Law Society's Equity Initiatives

Lawyers in Ontario are obliged to uphold the Ontario *Human Rights Code* and the *Charter of Rights and Freedoms* and should not be entitled to opt out of doing so. The Law Society Rules of Professional Conduct (the "Rules") create a special obligation for lawyers to recognize and honour the principles contained in the *Code* and the *Charter*, creating a particular expectation that lawyers will uphold the principles of equality contained therein. Under the Rules, which bind all members of the Law Society, lawyers have a "special obligation to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario" (Rule 2.1-1 Commentary). Rule 6.3-1 also creates 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." The Rules contain other obligations consistent with Recommendation 3(1), including lawyers' obligation to "encourage public respect for and try to improve the administration of justice" (Rule 5.6-1). Equality is fundamental to improving the administration of justice. Requiring lawyers to promote equality and diversity is consistent with the pre-existing obligations imposed on lawyers under the Rules.

It is well-documented that women, Indigenous people, racialized groups, sexual minorities and people with disabilities are underrepresented in the legal profession, particularly in the most senior legal positions. This inequality of representation does not occur in a vacuum. It is the product of systemic factors interfering with access to legal training and employment and of individual decision-making on the part of legal employers.

Concrete Steps are Necessary to Address Discrimination

The problem of under-representation of equality-seeking groups, particularly racialized groups, will not be solved without members of the legal profession taking concrete steps to do so. LEAF concurs with the Canadian Association of Black Lawyers' statement in its November 3, 2017 letter to the Law Society on this matter that: "Issues of systemic discrimination and unconscious bias can only be challenged if the regulator has the inner fortitude to address systemic problems head on, whether the remedy is popular or not among licensees generally." LEAF is pleased that the Law Society is taking concrete steps to address these systemic and individual factors and to require legal employers to engage diversity and equality as a fundamental component of their employment practices. As argued in our joint factum in a recent Supreme Court appeal, *Attorney General of Québec v. Alliance du personnel professionnel et technique de la santé et des services sociaux, et al.*, "it takes active intervention to maintain equality in the face of systemic discrimination."

To the extent that critics of Recommendation 3(1) say that it interferes with freedom of speech or conscience, that right must be balanced against the *Charter* right to equality, which includes the right to be free from systemic discrimination. LEAF asserts that the *Charter* right to equality must inform the interpretation of other *Charter* rights and values. The problem of under-representation of equality-seeking groups in the legal profession has a tangible impact on equality of access to employment opportunities, equality of access to informed and culturally appropriate legal services, and on the Court's access to legal arguments informed by the experiences of all Canadians. These tangible problems, their impact on systemic inequality, and their need for a substantive solution must inform any analysis of Mr. Groia's resolution.

LEAF applauds the Law Society's Working Group for the time and effort they devoted to documenting and exposing the longstanding problems facing racialized licensees in Ontario, and to identifying concrete strategies to address issues of systemic racism. LEAF notes that the multi-year consultation process that produced the Report resulted in a fulsome discussion at the December 2016 Convocation. After lengthy consultation and considerable debate, the Law Society adopted the Report Recommendations. LEAF is heartened by the Law Society's recent reiteration of the need for the measures recommended by the Working Group and approved at Convocation last year. The objections now raised by Mr. Groia and others are an unfortunate attempt to walk back the decisions made in 2016. LEAF calls on all members of Convocation to demonstrate their commitment to overcoming systemic discrimination in the legal profession and to reject Mr. Groia's motion.

All of which is respectfully submitted,

Women's Legal Education and Action Fund

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November 30, 2017

VIA E-MAIL

Law Society of Upper Canada Treasurer and Benchers
Osgoode Hall
130 Queen Street West
Toronto, ON
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Stand up for the Statement of Principles

Dear Treasurer and Benchers:

The South Asian Bar Association of Toronto is the largest organization of diverse lawyers in Canada and a long-standing supporter of the recommendations arising from The Challenges Faced by Racialized Licensees Report (the "Report").

The Report, which is a culmination of four years of work including widespread consultations across the province, contains conclusions supported by substantial data and vigorous analysis and represents an important positive step for our profession in combating systemic racism and promoting equality, diversity and inclusion.

Last year – you as Benchers, our elected representatives in the profession, unanimously adopted the Report's recommendations after nearly seven hours of debate. At SABA, we welcomed the long-due acknowledgment of the challenges and systemic barriers faced by racialized licensees in our province. We now urge you to stand firm and move forward on those recommendations.

As the next Convocation meeting nears, have no doubt that the *Groia* motion is a significant step back from the progress that you recently made. The argument that the Statement of Principles undermines free speech is a dubious one, it creates a false tension where one does not exist. You can support the Statement of Principles and stand for free speech. One does not cancel the other. As Benchers be vigilant against the debate being framed in those stark and unfortunate terms.

The Statement of Principles requirement does not mandate licensees to assert particular beliefs or compel them to take specific actions. Rather, it constitutes an acknowledgment of the existing barriers and inequality in our profession and represents the first step towards addressing those barriers.

The recent guidelines released by the Law Society to the profession on the Statement of Principles assist in refuting this narrative. However, as the Ontario Bar Association, quite rightly noted, this delay in effective messaging has undermined the hard work and some of the initial groundswell of support for the Report's recommendations.

For those Benchers that are conflicted, we urge you to stay the course on the recommendations. Our collective goal - the promotion of equality, diversity and inclusion in our profession is a worthy one. This may be just the first debate, but it will frame future debates and discourse within the profession on the recommendations still to come.

We hope the debate on December 1 is conducted with civility and courtesy, but have little doubt that we at SABA support your efforts at the Law Society to foster meaningful change.

Keep your promise to racialized licensees. Reject the motion.

Sincerely,

SOUTH ASIAN BAR ASSOCIATION OF TORONTO

Hafeez S. Amarshi
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Chair of Advocacy Committee
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November 30 2017

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Treasurer Paul Schabas and Benchers of the Law Society of Ontario
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Via email to treasurer@lsuc.on.ca

To the Treasurer and Benchers of the Law Society,

We, a group of Professors at Osgoode Hall Law School, write to support the implementation of Recommendation 3(1) of the Final Report of the Working Group on 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 Recommendation, approved at Convocation in December 2016, requires that all lawyer licensees develop and adopt a Statement of Principles to promote equity, diversity, and inclusion.

As we approach the date of Convocation and a debate over a motion that suggests that the implementation of Recommendation 3(1) must have a space for conscientious objection, we do so as a profession struggling to understand ourselves and our role in contemporary Canadian society. The reaction to the Recommendation, from the near unanimous acceptance of it at Convocation in December 2016, to the dramatically framed debates playing out in the media and on listservs around the province, reveal some significant divides in the profession around not only the specifics of what our legal and professional obligations are and should be, but also around our vision of what the legal profession could be in the future.

Some of us may have doubts about the efficacy of such a provision in terms of producing actual change in this profession. But all of us agree that the reaction has served as a litmus test of our profession's commitment to non-

discrimination. The resistance to this relatively minor move to require that lawyers reflect on and acknowledge their professional obligations with respect to non-discrimination is disheartening - particularly in light of the Rules of Professional Conduct that already apply to lawyer licences. Rule 6.3.1 specifically highlights the special responsibility of lawyers to “respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate...” in their professional dealings. We heard claims that the regulation was totalitarian, the insistence that the Statement of Principles was an attempt to regulate lawyers “in their private affairs”, and a facile acontextual insistence that “inclusion demands tolerance not merely of cultural differences, but also of differing ideas” without attention to the specific context of racism in our profession, the context in which the Recommendation was made and implemented. These arguments seem to both miss the point of the Recommendation, and to make a different, darker point about why the Recommendation was needed. The Final Report offered evidence and made a claim - the debate over the Recommendation underscored the need: the special obligation of lawyers not to discriminate is resisted and/or misunderstood within the profession.

For us, the point is now this: how are we planning to address inequality, exclusion and racism in our profession? How are we planning to ensure that our profession can “seek to ensure access to justice and access to legal services”, “seek to improve the administration of justice” and “strictly observe and uphold the ethical standards that govern” the profession? We don’t believe this can be done if we do not collectively commit to - at a bare minimum - reflection and engagement. We firmly believe in the importance of confronting the structural and direct racism we see in our profession and in the justice system. We believe in the connected and unfinished project of forcing this profession to be open to women. We see these struggles as fundamental. Without an ongoing history of struggle on these points, many of us would not be in a position to write this letter as Professors of law. Recommendation 3(1) is one small move in the ongoing struggle to secure access to the profession and access to justice.

Ultimately the time and energy spent on the Statement of Principles, this minor and largely symbolic intervention in the story of the Ontario legal profession, has illustrated some of the well known fault lines around both principles and, perhaps more importantly, priorities for the profession. This is not surprising but it does mean that organizations and individuals have had

to choose where they want to stand. And these choices communicate things about our profession to those on the outside - those seeking justice, including racial justice, and those dreaming of a future for themselves in this profession. We are speaking to all of them.

As scholars, lawyers, licences and teachers, we support the recommendation wholeheartedly. We are grateful to our colleagues at Ottawa and McGill who have done the same. We applaud the approaches of the OBA, the CLA, RODA and others who have stepped forward in this debate to support and defend the Statement of Principles and articulate, again, the reasons behind the Final Report and Recommendations. Like these groups, we support a profession that eschews its exclusionary history, actively works to confront discrimination, and displays integrity in accepting the responsibilities that come with power and privilege. As part of this commitment, we support ongoing serious substantive discussions about how we can move forward from our scuffle over this modest requirement of reflection and engagement. We are committed to the hard work of ensuring real improvements in access, inclusion and anti-discrimination in our profession.

Sincerely

Amar Bhatia, Assistant Professor
Benjamin L Berger, Professor
Bruce Ryder, Professor
Carys Craig, Associate Professor
Dayna Nadine Scott, Associate Professor
Estair Van Wagner, Assistant Professor
Janet Mosher, Associate Professor
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Members of the Full Time Faculty at Osgoode Hall Law School