



The Law Society  
of Upper Canada

Barreau du  
Haut-Canada

## LAW SOCIETY STUDIES AND SCAN OF BEST PRACTICES

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EQUITY



ÉQUITÉ

### Working Group Members

Janet Leiper, Chair | Julian Falconer, Vice-Chair | Howard Goldblatt, Vice-Chair  
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell  
Malcolm Mercer | Susan Richer | Baljit Sikand

Report prepared by the Equity Initiatives Department –  
Josée Bouchard, Director of Equity and Ekua Quansah, Associate Counsel

LAW SOCIETY STUDIES.....	4
Discrimination and Bias.....	4
Earnings.....	4
Law Firms’ and Legal Organizations’ Interviewing and Hiring Processes .....	5
Sole Practitioners and Lawyers in Small Firms .....	5
Areas of Law .....	6
Advancement in Large and Medium Firms.....	6
EXAMPLES OF LAW SOCIETY INITIATIVES .....	8
Committees .....	8
Access to Justice Committee.....	8
Equity and Aboriginal Issues Committee (the “Equity Committee”) .....	8
Working, Advisory and Monitoring Groups .....	8
Equity Advisory Group (EAG).....	8
Mentoring Programs .....	8
Other Programs and Services .....	9
Discrimination and Harassment Counsel.....	9
Equity Public Education Series.....	9
Custom-designed Professional Development.....	9
Model policies, reports and publications.....	9
General Programming for Lawyers/Paralegals .....	9
Member Assistance Program (MAP) .....	9
Practice Review (Lawyers) .....	9
Practice Audits (Paralegals) .....	10
Spot Audit (Lawyers) .....	10
Practice Management Helpline.....	10
Continuing Professional Development.....	10
Access to duty counsel in regulatory proceedings.....	10
BEST PRACTICES.....	11
Best Practices Prior to Law School and in Law School .....	11
Pipeline programs.....	11
Law schools.....	12
Best Practices for Recruitment and Hiring .....	13
Targeted, focused external recruitment.....	13
Internal Recruiting Efforts .....	14
Ensuring bias-free interviews.....	14
Best Practices for Leadership .....	15
Creating a Diversity Committee .....	15
Dedication of resources to diversity.....	15
Ensuring leadership accountability .....	16
Active communication from leadership.....	17
Visible participation and engagement by leadership.....	17
Ensuring diverse attorneys are represented in leadership positions.....	18
Leadership diversity training.....	18
Best Practices for Retention, Firm Culture and Inclusion .....	18
Affinity groups.....	18
Addressing work life balance.....	19

Meaningful channels for communication .....	19
Inclusive social events.....	20
Identification and development of core competencies .....	20
Unbiased and equitable distribution of work .....	20
Mentoring and Sponsorship.....	20
Best Practices for Professional Development .....	22
Business development training for underrepresented groups .....	22
Constructive evaluation and feedback process .....	22
Revisiting valuation models .....	23
Examining and assessing the institutional path to partnership .....	23
Formalized succession plans for diverse lawyers.....	23
Leadership development programs .....	24
General Best Practices .....	24
Critical, ongoing re-evaluation of existing programs and structures .....	24
Best practices for individual lawyers .....	24
Strategies for clients in ensuring diversity .....	25
Best Practices – Regulatory Bodies and Law Associations .....	25
Regulatory bodies – U.K.....	25
Role of bar associations .....	27
Firms influencing diversity externally .....	28
Best Practices – Diversity Initiatives.....	28

This review was conducted in the context of the Challenges Faced by Racialized Licensees Project and provides an overview of The Law Society of Upper Canada (the “Law Society”) studies and initiatives and best practices in other jurisdictions.

## LAW SOCIETY STUDIES

This section provides an analysis of relevant studies conducted or commissioned by the Law Society.

### Discrimination and Bias

Studies conducted over the past decade have found that racialized lawyers are more likely than non-racialized lawyers to report having experienced discrimination and bias while seeking employment, and in the practice of law. In a 2004 report to the Law Society<sup>1</sup> (the “Kay Report”), Professor Fiona Kay found that racialized lawyers are more likely than non-racialized lawyers to report experiencing disrespectful remarks by judges or other lawyers. Twenty-six per cent (26%) of racialized lawyers reported experiencing disrespectful remarks by judges and other lawyers occasionally, routinely or frequently, compared to 21% of non-racialized lawyers.

### Earnings

Studies have found that racialized lawyers earn less, on average, than non-racialized lawyers. Even controlling for the fact that racialized lawyers tend to be younger, there is still a gap between the earnings of racialized and non-racialized lawyers. The Kay Report found that racialized lawyers were more likely to report income in the lower income brackets of \$90,000 or less. When asked to report their earnings for the 2002 tax year, racialized lawyers were more highly represented in the very lowest income levels of under \$35,000 as well as in each of the \$5,000 intervals between \$40,000 and \$90,000. Non-racialized lawyers were more highly represented among the higher income levels of \$150,000 through \$500,000.<sup>2</sup>

Professor Ornstein’s analysis of the 2006 Census data also suggests that racialized lawyers have lower earnings than non-racialized lawyers of the same age. This is true for both mean and median measures of income.<sup>3</sup> For lawyers between the ages of 24 and 29, the difference in median 2005 income was \$4,000. For lawyers between the ages 40 to 44 the difference was more than \$40,000.<sup>4</sup> A Ryerson University study found that across all industries, the earnings gap between racialized and non-racialized workers increased from 9.7% in 1986 to 13.1% in 2001.<sup>5</sup>

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<sup>1</sup> F M Kay et al, *Diversity and Change: The Contemporary Legal Profession in Ontario: A Report to the Law Society of Upper Canada* (Toronto: The Law Society of Upper Canada, September 2004), online: <<http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf>> at 30 [Kay].

<sup>2</sup> *Ibid* at 38.

<sup>3</sup> Michael Ornstein, *Racialization and Gender of Lawyers in Ontario: A Report to the Law Society of Upper Canada* (Toronto: The Law Society of Upper Canada, April 2010), online: <[http://www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf)> at 35 [Ornstein].

<sup>4</sup> *Ibid*.

<sup>5</sup> Ryerson University Diversity Institute in Management and Technology, *Visible Minorities in Canada* (Toronto: Ryerson University Diversity Institute, year unknown) at 3.

## Law Firms' and Legal Organizations' Interviewing and Hiring Processes

The 2007 Strategic Counsel Articling Consultation report found that there were no reported incidents of overt racism or inappropriate racially-based questions asked during interviews.<sup>6</sup> However, the Articling Consultation report revealed that several racialized respondents expressed general concerns that they simply did not fit in at law firms.<sup>7</sup> In addition, the *Career Choices Study* indicates that “those who self-identify with an equality-seeking community are significantly less likely than those who do not to say that having articulated at the firm or organization and being hired back was a factor that influenced the choice of first positions.”<sup>8</sup>

Legal employers have not necessarily adapted to cultural or religious differences when recruiting law students or lawyers. One survey respondent noted that wine and cheese events were a challenge because he did not drink for religious reasons. Another respondent noted that some women from certain ethnic groups do not shake hands with men and vice versa, which can also present a challenge.<sup>9</sup>

Studies indicate that members of equality-seeking communities, including racialized persons, are less likely to article for a large private law firm in Toronto than are those who are not members of an equality-seeking community. They are more likely than non-equality-seeking persons to article in a sole practice.<sup>10</sup> In general, students who article at small firms are less likely to be hired back, not because of their performance, but because the firm is less likely to be able to take on another lawyer.

Research indicates that National Committee on Accreditation (NCA) candidates are more likely to identify as racialized than the profession as a whole. In a 2007 survey of licensing candidates and new licensees, 38% of NCA candidates identified as members of a racialized community.<sup>11</sup> The 2007 Articling Consultation report found that NCA candidates face additional difficulties in securing legal positions. NCA candidates felt that a lack of understanding about the NCA on the part of employers prevents NCA students from getting interviews. Despite the fact that an NCA qualification is equivalent to a Canadian law degree, some NCA students believe that employers see NCA students as inferior to Canadian-trained candidates.<sup>12</sup>

## Sole Practitioners and Lawyers in Small Firms

The 2010 Law Society's *Statistical Snapshot of Lawyers* and 2010 *Statistical Snapshot of Paralegals* both show a slight overrepresentation of racialized lawyers and paralegals in sole practice (20% of racialized lawyers compared to 18% of all lawyers; 26% of racialized paralegals compared to 25% of all paralegals).<sup>13</sup> Furthermore, the Law Society's *Career*

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<sup>6</sup> The Strategic Counsel, *Articling Consultation: A Report to the Law Society of Upper Canada* (Toronto: The Law Society of Upper Canada, February 2007), online: <<http://rc.lsuc.on.ca/pdf/equity/articlingConsultation.pdf>> at 18 [*Articling Consultation*].

<sup>7</sup> *Ibid* at 18.

<sup>8</sup> The Strategic Counsel, *A Report to the Law Society of Upper Canada: Career Choices Study* (Toronto: The Law Society of Upper Canada, January 2008), online: <[http://www.lsuc.on.ca/media/jul0208\\_career\\_choices\\_report.pdf](http://www.lsuc.on.ca/media/jul0208_career_choices_report.pdf)> at 62 [*Career Choices*].

<sup>9</sup> *Articling Consultation*, *supra* note 6 at 18.

<sup>10</sup> *Career Choices*, *supra* note 8 at 50.

<sup>11</sup> *Ibid* at 13.

<sup>12</sup> *Articling Consultation*, *supra* note 6 at 19-21.

<sup>13</sup> The Law Society of Upper Canada, *Statistical Snapshot of Lawyers in Ontario* (Toronto: The Law Society of Upper Canada, June 2012), online:

*Choices Study* found that racialized lawyers are less likely to work in a large private law firm, and they are more likely to be practising in government or a public agency than those who are not members of an equality-seeking community.<sup>14</sup>

### **Areas of Law**

The Kay Report found that there are differences in practice areas between racialized and non-racialized lawyers. Racialized lawyers are more likely than non-racialized lawyers to report that they practise criminal law, immigration law, and poverty law.<sup>15</sup> Racialized lawyers are less likely than non-racialized lawyers to report that they practise real estate, insurance, and family law.<sup>16</sup> Racialized and non-racialized lawyers are equally likely to report practising civil litigation and corporate/commercial law.<sup>17</sup> In addition, racialized lawyers report spending more time working on Legal Aid files than non-racialized lawyers (233 hours compared to 109 hours).<sup>18</sup>

The Law Society's *Career Choices Study* found that 23% of respondents indicated that human rights/social justice law is among the top three practice areas in which they wanted to work; however, only 11% of respondents indicated they were actually practising in that area. This gap has implications for members of equality-seeking communities, who are significantly more likely than those who are not members of such communities to list human rights/social justice law among their preferred practice areas (26% and 20% respectively).<sup>19</sup>

Racialized sole practitioners and small firm lawyers report experiencing bias; however, they also report that their membership in a racialized community has some advantages in the practise of law. A report published by the Law Society in 2004 found that a focus group of sole practitioners and small firm lawyers reported experiencing bias in their careers.<sup>20</sup> Focus group participants noted that there are certain benefits of membership in a racialized community, notably preferred access to one's own community. Participants referenced their community as a reason for choosing law, and as a motivator in their daily practice.<sup>21</sup>

### **Advancement in Large and Medium Firms**

The Law Society's *Career Choices Study* found that racialized lawyers are less likely than those who are not members of an equality-seeking community to work in large private law firms, and they are more likely to be practising in government or a public agency.<sup>22</sup> The 2010 *Statistical Snapshot of Lawyers* indicates that 12% of all lawyers and 9% of racialized lawyers practise in a

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<<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488150>> at 3 [*Snapshot of Lawyers*] and The Law Society of Upper Canada, *Statistical Snapshot of Paralegals in Ontario* (Toronto: The Law Society of Upper Canada, June 2012), online:

<<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488152>> at 3 [*Snapshot of Paralegals*].

<sup>14</sup> *Career Choices*, *supra* note 8 at 56.

<sup>15</sup> Kay, *supra* note 1 at 34.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid* at 43.

<sup>19</sup> *Career choices*, *supra* note 8 at 69.

<sup>20</sup> Strategic Communications Inc., *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment: Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms* (Toronto: The Law Society of Upper Canada, October 6, 2004) at 7.

<sup>21</sup> *Ibid* at 9, 38.

<sup>22</sup> *Career Choices*, *supra* note 8 at 56.

firm of 100 lawyers or more. Thirteen percent of all lawyers and 16% of racialized lawyers practise in government.<sup>23</sup>

The Kay Report found that racialized lawyers are underrepresented in more senior positions, such as partnerships.<sup>24</sup> When the year of call is taken into account, lawyers from racialized communities continue to be at a disadvantage. In addition, the 2010 *Statistical Snapshot of Lawyers* shows that 16% of all lawyers who answered the self-identification question are partners, while only 6% of racialized lawyers are partners.<sup>25</sup>

Racialized lawyers may not be given the same opportunities to work on interesting and challenging files as non-racialized lawyers. The Kay Report found that racialized lawyers were slightly more likely than non-racialized lawyers to report that they had been assigned tasks that were beneath their skill level.<sup>26</sup> It also demonstrates that racialized lawyers are more likely to report being denied work because of clients' objections: 10% of racialized lawyers reported that they had been denied an opportunity for a case or file, frequently or a few times, because clients had objected, compared to 4% of non-racialized lawyers.<sup>27</sup>

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<sup>23</sup> *Snapshot of Lawyers*, *supra* note 13 at 3

<sup>24</sup> Kay, *supra* note 1 at 38.

<sup>25</sup> *Snapshot of Lawyers*, *supra* note 13 at 3.

<sup>26</sup> Kay, *supra* note 1 at 66.

<sup>27</sup> *Ibid* at 60.

## EXAMPLES OF LAW SOCIETY INITIATIVES

This section outlines initiatives undertaken by the Law Society that are relevant to the Challenges Faced by Racialized Licensees project.

### Committees

#### Access to Justice Committee

The Access to Justice Committee is a standing committee of Convocation mandated to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario.

#### Equity and Aboriginal Issues Committee (the "Equity Committee")

The Equity Committee is a standing committee of Convocation mandated to develop policy options for the promotion of equality and diversity in the practice of law or provision of legal services in Ontario, as well as for all matters related to Aboriginal peoples and the Francophone community.<sup>28</sup>

### Working, Advisory and Monitoring Groups

#### Equity Advisory Group (EAG)

EAG is comprised of lawyers, paralegal and legal organizations with expertise in the area of equality and diversity. It is mandated to assist the Equity Committee in the development of policy options for the promotion of equity and diversity in the legal profession.<sup>29</sup>

#### Mentoring Programs

##### *Equity and Diversity Mentorship Program*

The Program is designed for new lawyers, paralegals, students in law schools and accredited paralegal education programs, as well as licensing candidates from Aboriginal, Francophone and equality-seeking communities (mentees) who are looking for advice and guidance on practice, professional and career matters.<sup>30</sup>

##### *Practice Mentoring Initiative*

This initiative connects lawyers with experienced practitioners in relevant areas of law to help them deal with a complex substantive legal issue or a specific procedural issue outside of the Law Society's Practice Management Helpline mandate.<sup>31</sup>

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<sup>28</sup> The Law Society of Upper Canada, "Committees and Working Groups", online: <<http://www.lsuc.on.ca/with.aspx?id=2147487007>>.

<sup>29</sup> The Law Society of Upper Canada, "Equity Advisory Group", online: <<http://www.lsuc.on.ca/with.aspx?id=2147487010>>.

<sup>30</sup> The Law Society of Upper Canada, "Lawyer Mentorship Programs", online: <<http://www.lsuc.on.ca/For-Lawyers/Improve-Your-Practice/Lawyer-Mentorship-Programs/>>.

<sup>31</sup> *Ibid.*



## **Other Programs and Services**

### Discrimination and Harassment Counsel

The Law Society provides a Discrimination and Harassment Counsel service free of charge to the Ontario public, lawyers and paralegals. The Discrimination and Harassment Counsel confidentially assists anyone who may have experienced discrimination or harassment by a lawyer or paralegal. Although the Program is funded by the Law Society, it operates separately and independently from the Law Society. The Discrimination and Harassment Counsel does not share any information with the Law Society, except for anonymous statistical data on the number and nature of new contacts with the program every six months.<sup>32</sup>

### Equity Public Education Series

This series promotes, in partnership with legal associations and community groups, education and discussion among members of the public and the profession on the challenges and opportunities for Francophone, Aboriginal and equity-seeking communities in the legal profession.<sup>33</sup>

### Custom-designed Professional Development

The Equity Initiatives Department develops seminars, workshops and meetings on topics such as:

- creating an inclusive and positive workplace environment;
- accommodation of creed and religious observances, gender, family status, and for persons with disabilities;
- equity and diversity in hiring and recruiting; and
- addressing harassment and discrimination.<sup>34</sup>

### Model policies, reports and publications

The Law Society has developed numerous model policies and information guides to guide law firms in their efforts to promote equity and diversity in their day-to-day practices. The Law Society has also conducted a number of research studies into matters related to equity and diversity in the profession.<sup>35</sup>

## **General Programming for Lawyers/Paralegals**

### Member Assistance Program (MAP)

MAP is a confidential service sponsored by the Law Society of Upper Canada, supporting its commitment to help all members in achieving their health and wellness goals.<sup>36</sup>

### Practice Review (Lawyers)

The Practice Review program provides focused practice reviews, practice management reviews and re-entry reviews. The process for each type of review is the same. The only difference lies

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<sup>32</sup> The Law Society of Upper Canada, "Discrimination and Harassment Counsel", online: <<http://www.lsuc.on.ca/with.aspx?id=2147487009>>.

<sup>33</sup> The Law Society of Upper Canada, "Equity Public Education Series", online: <<http://www.lsuc.on.ca/with.aspx?id=2147487015>>.

<sup>34</sup> The Law Society of Upper Canada, "Programs and Services", online: <<http://www.lsuc.on.ca/with.aspx?id=2147487018>>.

<sup>35</sup> *Ibid.*

<sup>36</sup> The Law Society of Upper Canada, "Member Assistance Program", online: <<http://www.lsuc.on.ca/map/>>.

in the method of selection. The reviews are remedial and consultative, as they involve the member, the reviewer, and Practice Review staff at every step of the way.<sup>37</sup>

#### Practice Audits (Paralegals)

All practice management reviews, including practice audits, are proactive and preventative — designed to support the goals of Law Society licensees to be efficient, effective and competent — and reflect the Society's emphasis on quality assurance in service of the public interest. The reviews are remedial and consultative, as they involve the licensee, the reviewer and Practice Review staff at every step of the way.<sup>38</sup>

#### Spot Audit (Lawyers)

Spot Audit supports and promotes high quality law firm record keeping by answering questions and providing guidance regarding private mortgages, trust and general record keeping requirements, and By-Law 9 and providing onsite support and ensuring compliance with LSUC requirements by conducting audits.<sup>39</sup>

#### Practice Management Helpline

This strictly confidential telephone service provides you with assistance in interpreting your obligations under the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct*. The Practice Management Helpline is available to give you valuable insight into Law Society regulations, as well as your most pressing ethical and practice management issues.<sup>40</sup>

#### Continuing Professional Development

The Law Society provides a variety of CPD programs, with some topics related to human rights and equity issues.<sup>41</sup>

#### Access to duty counsel in regulatory proceedings

Free duty counsel is provided by the Advocate's Society to unrepresented lawyers and paralegals undergoing disciplinary proceedings.<sup>42</sup>

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<sup>37</sup> The Law Society of Upper Canada, "Practice Management Review", online: <<http://www.lsuc.on.ca/lawyer-practice-management-review/>>.

<sup>38</sup> The Law Society of Upper Canada, "Paralegal Practice Audits", online: <<http://www.lsuc.on.ca/paralegal-practice-audit/>>.

<sup>39</sup> The Law Society of Upper Canada, "Spot Audit", online: <<http://www.lsuc.on.ca/with.aspx?id=2147490015>>.

<sup>40</sup> The Law Society of Upper Canada, "Practice Management HelpLine", online: <<http://www.lsuc.on.ca/with.aspx?id=2147491484>>.

<sup>41</sup> The Law Society of Upper Canada, "Continuing Professional Development", online: <<http://www.lsuc.on.ca/with.aspx?id=2147491484>>.

<sup>42</sup> The Law Society of Upper Canada, "If You Are the Subject of a Complaint", online: <<http://www.lsuc.on.ca/subject-of-a-complaint/>>.

## BEST PRACTICES

The following section provides an overview of several strategies for increasing the presence of racialized licensees in the legal profession, collected from across Canada, the United States and the U.K. While some studies focused on race particularly, most considered strategies for improving overall equity and diversity, including gender identity, sexual orientation, disability and religion. However, race figured prominently in all the literature as essential to having genuinely representative diversity.

### Best Practices Prior to Law School and in Law School

#### Pipeline programs

Pipeline programs, programs designed to increase students' knowledge and interest in the law and legal career, have long been recognized as important not only for preparing young people for legal careers, but also for helping them build confidence, self-worth, and become more responsible citizens. It has been well documented in U.S. jurisdictions particularly that racialized applicants have much lower acceptance rates in law schools and colleges than their non-racialized counterparts, which in turn contributes directly to a lack of representation in the legal profession.<sup>43</sup> Some reasons for low acceptance and high attrition rates in law school are that racialized students may not have the same access to information about law school and legal careers, and may face other barriers such as isolation as minorities in the law school environment.<sup>44</sup> Pipeline programs can serve as an important tool in exposing racialized students to the legal system and potential careers, and helping them develop the skills necessary to succeed in this field.

Pipeline programs may begin in university or high school, but may also begin as early as elementary school, and may go beyond the school environment. Examples of pipeline programs implemented in Michigan high schools include day long immersions with mock trials, mock negotiations, bringing legal professionals into the classrooms, and scholarships and internships for racialized students in the legal field.<sup>45</sup>

In the US, Street Law, a non-profit organization, has created a number of classroom and community programs to teach people about law, democracy and human rights.<sup>46</sup> Street Law coordinates both a Law Firm Diversity Pipeline Program and a Corporate Legal Diversity Pipeline Program. Through these initiatives, law firms and corporate legal departments partner with diverse high schools to increase students' knowledge and interests in the law and legal

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<sup>43</sup> Kathlene J. Lynn et al., "Diversity in Colorado's Legal Profession" (2007), online: Colorado Pledge to Diversity Legal Group <[http://www.centerforlegalinclusiveness.org/clientuploads/pdfs/CSI\\_Diversity\\_Report\\_August\\_2007.pdf](http://www.centerforlegalinclusiveness.org/clientuploads/pdfs/CSI_Diversity_Report_August_2007.pdf)> at 21 [*Diversity in Colorado*].

<sup>44</sup> Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms" (2008), online: American Bar Association <<http://www.americanbar.org/content/dam/aba/migrated/women/woc/VisiblySuccessful.authcheckdam.pdf>> at 8 [*Visible Invisibility*].

<sup>45</sup> E. Christopher Johnson, "Pipeline Programs: Increasing Diversity and Creating Responsible Citizens and Leaders" (2012), online: Michigan Bar Journal <<http://www.michbar.org/journal/pdf/pdf4article1973.pdf>>.

<sup>46</sup> Street Law, "About Us", online: <[http://www.streetlaw.org/en/about/who\\_we\\_are](http://www.streetlaw.org/en/about/who_we_are)>.

careers. Activities include classroom visits and field trips to law firms or corporate headquarters.<sup>47</sup>

In Canada, the Ontario Justice Education Network (OJEN) has implemented several concrete programs to expose racialized and Aboriginal youth to ideas and careers related to the justice system. OJEN programs aim to address identified barriers faced by youth in engaging with the law or legal profession: perception of self, perception of the field, attitudes of racism and a knowledge gap about the law generally.

To alter negative self-perceptions and attitudes about the system, OJEN provides 4-8 week sessions where participants conduct an entire mock trial in front of a judge in a courtroom. Through these sessions, youth work closely with a volunteer lawyer with whom they build a personal relationship, which sometimes develops into an ongoing mentoring relationship. OJEN programming also exposes youth to practitioners who took an unconventional or unusual path to law, as well as the real practical incentives and disincentives to entering the legal field. OJEN has specific programming in Northern Ontario and in urban settings for Aboriginal Youth, which addresses the particular issues faced by youth in these communities.

Additionally, OJEN has built strong connections with various community organizations across Ontario, for targeted outreach and catered programming.<sup>48</sup> In 2011, OJEN partnered with the Black Female Lawyers Network to create “Sistahs-in Law: Paving the Way”, where Black, Brown and Aboriginal female high school students are matched with a Black female legal professional for the day.<sup>49</sup>

### Law schools

Law schools across Ontario and Canada are taking several steps to increase diversity in the student population, and to create inclusive, open environments for racialized and minority students. Law schools have created, among other programs, equity committees, diversity awards, bursaries and equity positions or offices to assist students.

The American Bar Association (ABA) has also pointed to the need to create a commitment to diversity within law schools that goes beyond a mere diversity statement. Deans and faculty must be visibly involved in diversity efforts, and law schools must be held accountable for diversity results. Some recommendations for law schools highlighted in a 2010 ABA report include the following:

- educate about unconscious bias and the importance of diversity and inclusion as a core component of student education;
- design and create comprehensive diversity strategies for law schools with benchmarks;
- educate law school applicants about planning for financial aspects of a legal education;
- encourage law school career service professionals to inform diverse students about career opportunities;
- take a more holistic approach to reviewing law school applications;

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<sup>47</sup> Street Law, “Corporate Legal Diversity Pipeline Program”, online: <[http://www.streetlaw.org/en/programs/corporate\\_legal\\_diversity\\_pipeline\\_program](http://www.streetlaw.org/en/programs/corporate_legal_diversity_pipeline_program)> and Street Law, “Law Firm Diversity Pipeline Program”, online: <[http://www.streetlaw.org/en/programs/law\\_firm\\_diversity\\_pipeline\\_program](http://www.streetlaw.org/en/programs/law_firm_diversity_pipeline_program)>.

<sup>48</sup> Interview of S. McCoubrey, Former Executive Director of Ontario Justice Education Network (7 March 2013).

<sup>49</sup> *Ibid.*

- conduct regular and detailed review of the effectiveness of pre-law school pipeline programs;
- promote active hiring and retention of diverse faculty members;
- create strong connections between affinity bar associations and law schools; and
- assist students with law school debt and expenses<sup>50</sup>

## Best Practices for Recruitment and Hiring

It is a reality that today's young racialized (and non-racialized) lawyers have much higher expectations when it comes to diversity and inclusion in a work environment, including more comprehensive diversity policies and programs for mentoring, retention and professional development.<sup>51</sup> It is important for law firms and legal organizations to recognize this, and actively integrate this reality into their recruiting strategies.

### Targeted, focused external recruitment

The Nova Scotia Barristers' Society's *Hiring Practices for Equity in Employment: Interviewing Guide* stresses that firms must be proactive and strategic when recruiting diverse candidates. To do so, firms and organizations should request referrals from other networks of members of historically marginalized groups, ensure that employment equity programs are communicated to interviewers and recruiters, and take advantage of specific recruitment campaigns to reach a wide pool of applicants.<sup>52</sup>

Further to this, it is suggested that recruiters must move beyond the more mainstream channels through which outreach is usually done. The Nova Scotia Barrister's Society, for example, suggests that firms should advertise in ethno-cultural, community and alternative media.<sup>53</sup> Firms should also participate in job fairs and build strong relationships with minority student and law organizations. In the Canadian context, this could include associations such as the Canadian Association of Black Lawyers, the Indigenous Bar Association or the South Asian Bar Association.<sup>54</sup>

One targeted strategy employed by a large US firm was to have managers proactively identify external women and minority "stars" whose names are then entered into a database for future positions that may open up.<sup>55</sup> Firms may also want to consider participating in local mentorship

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<sup>50</sup> American Bar Association Presidential Diversity Initiative, "Diversity in the Legal Profession: The Next Steps" (2010), online: American Bar Association <[http://www.americanbar.org/content/dam/aba/administrative/diversity/next\\_steps\\_2011.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf)> at 18-21 [*ABA Presidential Diversity Initiative*].

<sup>51</sup> *Visible Invisibility*, *supra* note 44 at 12.

<sup>52</sup> Nova Scotia Barristers' Society, "Hiring Practices for Equity in Employment: Interview Guide" (2006), online: <[http://nsbs.org/sites/default/files/ftp/EQ120407\\_HiringIntrvwGuide.pdf](http://nsbs.org/sites/default/files/ftp/EQ120407_HiringIntrvwGuide.pdf)> at 6 [*NSBS Articling Interview Guide*].

<sup>53</sup> Canadian Bar Association, "The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations" (2007), online: Canadian Bar Association <[http://www.cba.org/cba/equity/pdf/equity\\_and\\_diversity\\_guide\\_eng.pdf](http://www.cba.org/cba/equity/pdf/equity_and_diversity_guide_eng.pdf)> at 16 [*CBA Equity and Diversity Guide*].

<sup>54</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 19.

<sup>55</sup> Minority Corporate Counsel Association, "A Study of Law Department Best Practices" (2006), online: Minority Corporate Counsel Association <[http://www.mcca.com/data/n\\_0001/resources/live/Pathways\\_Green\\_2005\\_book.pdf](http://www.mcca.com/data/n_0001/resources/live/Pathways_Green_2005_book.pdf)> at 22 and 23 [*Minority Corporate Counsel Association*].

programs for law students from diverse and under-represented communities; if no such program exists, firms may even consider establishing one.<sup>56</sup>

Lawyers from diverse communities should also be visibly involved in the recruitment process, so that potential applicants are able to see themselves reflected in the firm's composition.<sup>57</sup> However, the responsibility of diverse recruitment efforts should be shared with all staff members, and not left to diverse lawyers only.<sup>58</sup> Throughout the recruitment and hiring process, legal organizations should also take steps to clearly and consistently communicate their commitment to equity and diversity, particularly to diverse recruits.<sup>59</sup>

### Internal Recruiting Efforts

A best practice identified by the Minority Corporate Counsel in the US is that of posting all jobs internally, and continually looking for opportunities to promote diverse staff from within the organization.<sup>60</sup> Related to this practice, the National Association for Law Placement (NALP) identified the need to support affinity groups within the firm, and to ask for their input and ideas, along with that of the Diversity Committee, in recruitment efforts and follow up communications with minority recruits. Other best practices for internal recruiting highlighted by NALP include:

- hiring minority law students to work part time during the year;
- hosting a minority law student job fair;
- utilizing executive search firms that specialize in the placement of minority lawyers for lateral hiring; and
- maintaining contact with exceptional minority applicants who choose other employment.<sup>61</sup>

### Ensuring bias-free interviews

The Nova Scotia Barristers' Society's *Hiring Practices for Equity in Employment: Interviewing Guide* notes the importance of having an unbiased recruitment and selection system that involves a "valid job related assessment of the candidate's skills and qualifications" that is applied consistently for all candidates. The Guide offers practical and comprehensive tips for eliminating bias in the interview process, and for understanding cultural differences which may otherwise negatively influence the interviewer's opinion of the candidate. The Guide also provides strong guidelines for lawful and equitable interviews, and helps interviewers understand how best to accommodate differences during the hiring process.<sup>62</sup>

The Canadian Bar Association (CBA) identified several best practices for conducting bias free interviews in the hiring process. Highlights include the following:

- having clearly identified job descriptions, interview questions and selection criteria;
- communicating expectations, requirements and the decision making process to candidates;
- training on bias-free interviewing for the interview committee;

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<sup>56</sup> CBA *Equity and Diversity Guide*, *supra* note 53 at 19.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 22.

<sup>59</sup> CBA *Equity and Diversity Guide*, *supra* note 53 at 19.

<sup>60</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 19.

<sup>61</sup> National Association for Law Placement (NALP), "2009 Diversity Best Practices Guide" (2009), online: The Association for Legal Career Professionals <<http://www.nalp.org/uploads/DiversityBPGuide09.pdf>> at 20 [NALP Best Practices].

<sup>62</sup> NSBS *Articling Interview Guide*, *supra* note 52 at 15.

- involving diverse lawyers in the interview process;
- ensuring individual interviewers come to decisions independently before discussing results with each other; and
- using an interview format that examines a candidate's behavioural and cognitive capacities to broaden the range of assessment criteria.<sup>63</sup>

A report on hiring practices in Colorado further emphasizes the importance of effectively training interviewers to understand concepts of implicit bias and other diversity issues, in particular to prevent any potential cultural disconnects between interviewers and interviewees.<sup>64</sup>

## **Best Practices for Leadership**

### Creating a Diversity Committee

A central component of any comprehensive diversity strategy involves the creation of a diversity committee within the organization. The committee would be primarily responsible for overseeing the implementation of the diversity plan, and ensuring accountability every step of the way.

The Canadian Bar Association (CBA) identifies that a diversity committee should have representatives from diverse backgrounds from all parts of the organization, which includes non-diverse employees as well. The committee should also have a direct link to senior management; it is crucial that firm leaders are visibly present and active on the diversity committee.<sup>65</sup>

A diversity committee may also want to structure itself to have subcommittees to address and track specific areas of the diversity strategy, such as recruitment and hiring, workplace culture and retention, education and training, and external firm diversity initiatives.<sup>66</sup>

It should be emphasized that inclusion and diversity efforts are the shared responsibility of all employees. Without a deep commitment throughout the organization, a Diversity Committee is unlikely to produce any tangible results. In particular, racialized employees must not end up bearing the brunt of diversity efforts, and it should be recognized that all organization or firm members have a stake in the outcome of these initiatives.<sup>67</sup>

### Dedication of resources to diversity

Another core component of an effective diversity strategy involves the dedication of operational, human and financial resources to diversity efforts. In doing this, firms and legal organizations not only affirm and demonstrate their commitment to diversity, but they also reduce costs in the long run by increasing retention rates and minimizing costly attrition.

At the outset, organizations may want to retain a diversity consultant to assess firm culture and assist in the development of a plan to enhance inclusiveness.<sup>68</sup> A workplace analysis should involve identifying any equity problems in the workplace and should include an assessment and review of the following:

- the number of diverse people who are employed at various levels of the organization;

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<sup>63</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 21.

<sup>64</sup> *Diversity in Colorado*, *supra* note 43 at 33.

<sup>65</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 11.

<sup>66</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 23.

<sup>67</sup> *Visible invisibility*, *supra* note 44 at 11.

<sup>68</sup> *NALP Best Practices*, *supra* note 61 at 5.

- job performance evaluation methods;
- how career development opportunities are provided to underrepresented lawyers and paralegals;
- existing internal and external policies as they relate to equity and diversity principles; and
- how equity and diversity plans are communicated and whether they have specific goals, timeframes and deliverables.<sup>69</sup>

Firms may also wish to hire a full-time diversity professional to serve on the diversity committee and oversee the effective implementation of diversity resources. A professional trained in diversity can also serve as an important resource for diverse employees and may be better situated to accurately assess the effectiveness of firm efforts.<sup>70</sup>

#### Ensuring leadership accountability

A study on diversity in Colorado's legal profession revealed that even in firms and organizations that had implemented diversity best practices, attorneys still felt that firms were not doing enough to address issues of inclusiveness. This finding points to the need to continually monitor and evaluate the success of various programs and their effectiveness in achieving stated goals.<sup>71</sup>

A successful diversity strategy should include a system that monitors progress in achieving identified diversity goals, and that creates rewards and penalties for success and failure to achieve inclusion objectives.<sup>72</sup> Organizations should have an active, periodic review and evaluation of all diversity initiatives. This involves utilizing metrics and tracking systems, receiving feedback from employees and diversity committees, tracking statistics on attrition rates of diverse candidates, and including and tracking diversity related contributions as part of firm commitment hours.<sup>73</sup> Firms may additionally want to implement diversity checklists and scorecards to help leadership and partners remain accountable to objectives.<sup>74</sup>

One best practice highlighted in several studies is the tying of compensation to diversity efforts. Attaching economic significance to diversity achievements not only incentivizes this work, but also demonstrates an organizational commitment to and understanding of diversity as instrumental to success for the entire firm.<sup>75</sup>

In a US firm that outperformed in the California Large Firm Retention Benchmark, leaders in talent development and diversity are publicly recognized and honoured at the firm's annual Partner Meeting with titles such as "Mentor of the Year" or "Diversity Champion of the Year".

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<sup>69</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 9.

<sup>70</sup> *NALP Best Practices*, *supra* note 61 at 5.

<sup>71</sup> *Diversity in Colorado*, *supra* note 43 at 50.

<sup>72</sup> New York City Bar, "Best Practices Standards for the Recruitment, Retention, Development and Advancement of Racial/Ethnic Minority Attorneys" (year unknown), online: New York City Bar <<http://www.nycbar.org/images/stories/diversity/bpguide.pdf>> at 1 [*New York City Bar*].

<sup>73</sup> *NALP Best Practices*, *supra* note 61 at 7.

<sup>74</sup> Women's Bar Association of the District of Columbia, "Creating Pathways to Success for All: Advancing and Retaining Women of Color in Today's Law Firms" (2008), online: Women's Bar Association of the District of Columbia <[http://www.wbadc.org/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating\\_Pathways\\_to\\_Success\\_for\\_All-March\\_2008.pdf](http://www.wbadc.org/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating_Pathways_to_Success_for_All-March_2008.pdf)> at 17 [*Pathways to Success*].

<sup>75</sup> *NALP Best Practices*, *supra* note 61 at 18.



These contributions also become a factor in determining a partner's compensation.<sup>76</sup> Another innovative practice in a US firm involves the institution of a "Partner Accountability" system, in which partners undergo a self-evaluation process to determine what they are actively doing to diversify their departments. The process is then reviewed by the Management Committee and results impact partner compensation.<sup>77</sup>

Accountability can also be fostered through the creation of an external advisory board composed of community leaders, academics and other stakeholders, to whom the organization and Diversity Committee must report periodically. Such a strategy can both demonstrate an organization's commitment to concrete action and generate innovative ideas and new sources of support for organizational efforts.<sup>78</sup>

#### Active communication from leadership

Leaders may consider actively communicating their commitment to diversity through formalizing a diversity plan and incorporating it into the organization's business model, communicating the progress and importance of these goals both internally and externally, through firm-wide emails and posting on the firm website, and in recruitment materials.<sup>79</sup>

Once a diversity strategy has been assessed and reviewed, progress results can be communicated to all employees. As a component of this, accomplishments of diverse lawyers can be celebrated and promoted throughout the workplace.<sup>80</sup>

In a more general sense, firms and organizations might seek to improve dialogue and communication about diversity both between associates and leadership as well as amongst associates as well. Encouraging the establishment of affinity groups is a component of this, as well as creating confidential or anonymous channels for communication of concerns.<sup>81</sup>

#### Visible participation and engagement by leadership

Participation and demonstrated commitment by senior management to diversity goals has been identified as a best practice across both Canadian and US jurisdictions.<sup>82</sup> Senior associates and partners must lead by example and get involved in all aspects of diversity efforts on a day-to-day basis. This includes membership on the diversity committee, in-person meetings with diverse lawyers to address inclusion concerns or successes, engagement in minority lawyer business development programs, and participation in diverse bar association and community organizational activities.<sup>83</sup>

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<sup>76</sup> Talent Advisory Board, "California Law Firm Diversity Retention Best Practices: Research Study Report" (2011), online: Talent Advisory Board <[http://www.talentadvisoryboard.com/Diversity\\_Retention\\_Best\\_Practices\\_Research\\_Study\\_Report\\_FIN\\_AL.pdf](http://www.talentadvisoryboard.com/Diversity_Retention_Best_Practices_Research_Study_Report_FIN_AL.pdf)> at 10 [*California Law Firm Diversity Retention Best Practices*].

<sup>77</sup> *NALP Best Practices*, *supra* note 61 at 7.

<sup>78</sup> *Visible invisibility*, *supra* note 44 at 14.

<sup>79</sup> *NALP Best Practices*, *supra* note 61 at 5.

<sup>80</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 15.

<sup>81</sup> The Law Society of Upper Canada, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* (Toronto: Law Society of Upper Canada, 2012) at 15 [*Pathways to the Profession*].

<sup>82</sup> *New York City Bar*, *supra* note 72 at 2.

<sup>83</sup> *NALP Best Practices*, *supra* note 61 at 5.

### Ensuring diverse attorneys are represented in leadership positions

Integrating racialized and under-represented employees into leadership positions can greatly improve an organization's diversity landscape<sup>84</sup> and can serve to create role models for other diverse members of the organization.<sup>85</sup>

To facilitate the representation of diverse lawyers in leadership, one US law firm ensures that the diversity and inclusion committee regularly meets with practice group leaders to discuss hiring and retention trends and internal diversity pipelines. Implementing this practice serves several distinct purposes: it facilitates the early identification of any issues or problems, prevents the problem from escalating, and allows appropriate interventions. However during such meetings, committee members and group leaders also actively work to identify opportunities to bring diverse lawyers into leadership positions, and do so accordingly.<sup>86</sup>

### Leadership diversity training

Organization leaders charged with implementing diversity initiatives are often not adequately or fully trained on the range of issues that may arise during the course of creating a more inclusive work environment. Legal employers may want to consider improving the competencies of individual leaders by,

- providing diversity training to strengthen awareness and communication skills;
- offering executive coaching services on mentoring, effective management and supervision skills;
- encouraging participation at national and local diversity conferences in legal and multi-industry contexts.<sup>87</sup>

Trainers and educators should be highly qualified with a solid understanding of applicable human rights legislation, the complex impact of discrimination in various communities, histories of indigenous peoples and migration, as well as racism, sexism, homophobia and ableism. They should additionally have strong working relationships with lawyers from underrepresented communities.<sup>88</sup>

## **Best Practices for Retention, Firm Culture and Inclusion**

Legal organizations and firms should consider taking several concrete measures to ensure that diverse lawyers feel included in the workplace culture. Such steps will help curb financial resources in the future by reducing expensive losses caused by high attrition rates from diverse lawyers and paralegals. As noted in a study on the retention of women of colour in US law firms, workplaces must actively tackle micro-inequalities that contribute to exclusion. Rather than having a “melting pot” strategy whereby individual perspectives and characteristics are assimilated and lost, firms should adopt a “colourful quilt” model which embraces all backgrounds and experiences as unique and valuable for the firm as a whole.<sup>89</sup>

### Affinity groups

Encouraging and promoting affinity groups within firms can serve to cultivate important support networks for diverse lawyers and paralegals. Affinity groups can provide a safe space where

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<sup>84</sup> *Ibid.*

<sup>85</sup> *New York City Bar, supra* note 72 at 1.

<sup>86</sup> *California Law Firm Diversity Retention Best Practices, supra* note 76 at 10.

<sup>87</sup> *NALP Best Practices, supra* note 61 at 6.

<sup>88</sup> *CBA Equity and Diversity Guide, supra* note 53 at 32.

<sup>89</sup> *Pathways to Success, supra* note 74 at 12.

diverse employees can speak candidly without fear of penalty or criticism, and can build connections and share strategies with others like them both inside and outside the firm. Internal affinity groups should also be encouraged to make official connections with similar affinity groups within client organizations.<sup>90</sup>

#### Addressing work life balance

Creating alternative work arrangements can be instrumental in increasing diversity within the legal profession. The Project for Attorney Retention (PAR) created the “Diversity and Flexibility Connection”, which consists of a group of law firms that have committed to implementing a flexible work program. While extensive research has shown the link between flexibility and the retention of women, less research exists to demonstrate the link between flexibility and racialized licensees. However, the report notes that programs which address work-life balance are important for the retention of attorneys of colour, particularly given that a disproportionate number of these are women who are clearly having difficulty meeting their billable hour requirements.<sup>91</sup>

PAR outlines a comprehensive strategy for creating meaningful work-life balance and highlights a few main best practices. At the outset, flexible work must be non-stigmatized in order to be effective, so that attorneys feel comfortable choosing this option. This involves the creation of a detailed balanced-hours policy, which provides for, among other things, proportional pay and benefits, tracking and accountability mechanisms and consistent communication to the firm about flexible options.<sup>92</sup>

Clients themselves must also signal their support for flexible work arrangements by referring work to balanced hours attorneys, and through written communications and day to day interactions. Firms should further ensure that cost controls do not compromise flexibility, and take steps to train leadership and employees about implementation of flexible hours programs. Finally, PAR recommends that firms work to improve business communications to set up clear expectations and guidelines for attorneys on balanced-hour options.<sup>93</sup>

#### Meaningful channels for communication

Diverse employees who are experiencing difficulties in the work environment may be hesitant to express their concerns, for fear of reprisal by management. This can be mitigated through the establishment of anonymous pipelines through which concerns can be communicated to firm management in a non-threatening way. One such way to achieve this is through the appointment of “ambassadors” through whom issues can be confidentially expressed. Firms should also develop lines of communication that can address concerns before diverse lawyers decide to leave the firm. Attorneys should have an opportunity to candidly discuss problems before making the final decision to leave, giving the firm a chance to deal with those issues. As an essential component of these measures, management should reiterate their willingness to consider innovative ideas to address problems on an ongoing basis, which includes confronting and addressing inappropriate or outmoded behaviour at all levels of the firm.<sup>94</sup>

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<sup>90</sup> *Pathways to Success*, *supra* note 74 at 14-15.

<sup>91</sup> Project for Attorney Retention, “Diversity and Flexibility Connection: Best Practices” (2009), online: Project for Attorney Retention <[http://www.attorneyretention.org/Publications/DiverFlexConn\\_BestPractices.pdf](http://www.attorneyretention.org/Publications/DiverFlexConn_BestPractices.pdf)> at 2 [*Diversity and Flexibility Connection*].

<sup>92</sup> *Ibid* at 4.

<sup>93</sup> *Ibid* at 5-8.

<sup>94</sup> *Pathways to Success*, *supra* note 74 at 15.

### Inclusive social events

A firm or legal organization should take the time to closely examine workplace norms and assumptions to ensure maximum inclusivity. For example, organizations should ask themselves which days of cultural significance are celebrated and how, and make sure that a range of holidays and events are represented.<sup>95</sup> Firms should also consider hosting retreats or events that are specific to attorneys from underrepresented groups, to create alliances and networks of support amongst affinity groups.<sup>96</sup>

Women of colour attorneys have often reported feeling excluded from informal social networks, creating a lack of access to the resulting exchange of camaraderie and professional experience.<sup>97</sup> Firms and legal organizations should create frequent opportunities for inclusive informal and formal networking, to foster greater dialogue between all backgrounds, ethnicities and races. Whether it is through group lunches or outings, dialogue that cuts across traditional divides will break down discomfort and perceived differences between firm colleagues.<sup>98</sup>

### Identification and development of core competencies

During a summit for women of colour in US law firms, participants called for the need to increase transparency within the firm environment, particularly when it comes to core competencies that are needed at each level of their careers. Diverse employees often feel the disproportionate impact of lack of transparency, as they may not have access to the same internal channels and networking opportunities as non-diverse lawyers. By clearly identifying and communicating a list of core competencies for advancement, all employees can be similarly poised for success. In tandem with this measure, firms should ensure that this core criteria is used to manage workloads and equitably distribute assignments, so that attorneys have the opportunity to develop all necessary skills.<sup>99</sup>

Firms may also want to integrate into this strategy more informal opportunities such as panel discussion or small group lunches, whereby associates can interact with senior partners and get a sense of firm expectations, how promotional decisions are made and how partnership is elected.<sup>100</sup>

### Unbiased and equitable distribution of work

The quantity and quality of work received can be determinative of a legal professional's decision to stay or leave a particular organization. Firms should create clear measurement tools to track the distribution of work, and such metrics should facilitate the comparison of workloads between diverse and non-diverse lawyers.<sup>101</sup>

### Mentoring and Sponsorship

For new lawyers particularly, mentoring can be crucial in creating a welcoming, inclusive work environment, thereby reducing future attrition rates. As noted by the Law Society of British

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<sup>95</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 11.

<sup>96</sup> *ABA Presidential Diversity Initiative*, *supra* note 50 at 27-28.

<sup>97</sup> *Pathways to Success*, *supra* note 74 at 11.

<sup>98</sup> Catalyst, "Women of Color in U.S. Law Firms: Women of Color in Professional Services Series" (2009), online: Catalyst <<http://www.catalyst.org/knowledge/women-color-us-law-firms%E2%80%9494women-color-professional-services-series>> at 48 [*Catalyst, Women of Color in U.S. Law Firms*].

<sup>99</sup> *Pathways to Success*, *supra* note 74 at 18.

<sup>100</sup> *Visible Invisibility*, *supra* note 44 at 13.

<sup>101</sup> *Ibid.*

Colombia, for visible minority and Aboriginal lawyers particularly, “mentors can be an invaluable resource for sharing experiences and for seeking advice related to navigating the racism and unconscious bias that they may encounter in their firms and in the profession.”<sup>102</sup>

An example of entry level mentoring comes from the legal department of one US company, which created an “Executive Shadowing Program”. In this program, recently hired women and minority attorneys shadow higher level executives to observe first hand a senior officer’s business responsibilities. Because it comes at such an early stage in the career, the program forms an important part of a young lawyer’s grooming for professional development.<sup>103</sup>

Undoubtedly, mentoring is a crucial element in all stages of a diversity strategy. In the context of retention and inclusion efforts, effective mentoring relationships can serve an integral role in preventing attrition by diverse licensees by providing support, creating meaningful modes of communication and addressing problems as they arise.

The New York City Bar Association has pointed to the need to foster a mentoring culture throughout the firm, which includes the development and implementation of a tailored internal mentoring program, training on how to establish and maintain informal mentoring relationship, as well as the promotion of external mentoring opportunities.<sup>104</sup>

Mentoring, however, is a complex concept that varies greatly depending on the context, and therefore must be personalized to each individual lawyer. In one US study that included interviews with women of colour across several law firms, interviewees agreed that, for them, mentoring needed to be “hands-on, assertive and aggressive” and that “mentors should be positioned to provide advice, access to good clients and assignments, and situated in the sphere of influence within the firm.”<sup>105</sup>

One strategy recommended in various studies is the creation of reverse mentoring relationships, whereby senior partners are paired with junior diverse associates. The idea behind this is to open channels of communication and provide opportunities to educate senior lawyers about challenges faced by racialized or underrepresented associates.<sup>106</sup> Such relationships also provide diverse associates with the chance to meaningfully share their experiences, priorities and expectations.<sup>107</sup>

In addition to mentorship, sponsorship is viewed by many as essential for lawyer advancement. Catalyst defines the difference between mentorship and sponsorship in the following manner: “Sponsors are advocates in positions of authority who use their influence intentionally to help others advance, while mentors provide advice, feedback, and coaching. Both are important to advancement as employees navigate the workplace and earn opportunities for growth.”<sup>108</sup> As the Law Society of British Columbia notes, “Mentors may not be enough; while mentors can provide

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<sup>102</sup> The Law Society of British Columbia, “Towards a More Representative Legal Profession: Better practices, better workplaces, better results” (2012), online: The Law Society of British Columbia <[http://www.lawsociety.bc.ca/docs/publications/reports/Diversity\\_2012.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf)> at 6 [LSBC *Best Practices, better workplaces*].

<sup>103</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 24.

<sup>104</sup> *New York City Bar*, *supra* note 72 at 2.

<sup>105</sup> *Visible Invisibility*, *supra* note 44 at 11.

<sup>106</sup> *NALP Best Practices*, *supra* note 61 at 9.

<sup>107</sup> *Pathways to Success*, *supra* note 74 at 15.

<sup>108</sup> Catalyst, “Sponsoring/Mentoring”, online: Catalyst <<http://www.catalyst.org/knowledge/topics/sponsorshipmentoring>>

access to networks and information, sponsors can be powerful and influential voices at leadership and decision-making tables.”<sup>109</sup>

## **Best Practices for Professional Development**

### Business development training for underrepresented groups

Developing one’s own practice within a law firm is key to success in the firm environment. Lawyers and partners who are self-reliant are more likely to remain within an organization and to find the work rewarding.<sup>110</sup> However lawyers from underrepresented groups may face more barriers in developing a solid client base, and firms must be proactive in creating opportunities for advancement for diverse lawyers.

Strategies to promote business development among diverse lawyers include the following:

- ensuring that there are diverse attorneys in important client relationships;
- ensuring that there are diverse employees who can be groomed take over client relationship and management roles; and
- recognizing and supporting unique opportunities for business development including the participation in external organizations and communities, even if these activities fall outside the mainstream.<sup>111</sup>

It is also important that business development and work allocation systems move away from older models of acquiring power and prestige. Law firm partners traditionally rely on informal networks for work assignments which may often be influenced by unconscious bias, and therefore ends up excluding diverse attorneys. Firms and organizations must ensure that business development programs provide opportunities for diverse lawyers to build relationships with key rainmakers, both in an informal and formal context.<sup>112</sup>

Firms should actively involve younger lawyers on pitch teams and client communications, which can be accompanied by specific client development training workshops for senior lawyers to further hone these skills in preparation for partnership. Firms may also want to invest in business development coaches to work extensively with individuals to more deeply and effectively cultivate these business generation skills.<sup>113</sup>

### Constructive evaluation and feedback process

Substantial, reliable feedback enables all attorneys to assess their performance in a firm and identify areas for growth. Diverse attorneys have often reported receiving “soft” evaluations in which supervisors do not provide substantive and critical performance evaluations and gloss over feedback. This may be due to a fear of being perceived as discriminatory, general discomfort, or poor communication skills.<sup>114</sup>

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<sup>109</sup> The Law Society of British Columbia, “Towards a More Representative Legal Profession: Better practices, better workplaces, better results” (2012), online: The Law Society of British Columbia <[http://www.lawsociety.bc.ca/docs/publications/reports/Diversity\\_2012.pdf](http://www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf)> at 6.

<sup>110</sup> *Pathways to Success*, *supra* note 74 at 19

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid* at 11-12.

<sup>113</sup> *Visible Invisibility*, *supra* note 44 at 13.

<sup>114</sup> *Pathways to Success*, *supra* note 74 at 22.

One US study recommends building systems of self-advocacy into the attorney evaluation process, so that associates can communicate their own perspectives and actions taken to achieve annual objectives. This will serve to give lawyers a meaningful voice in their evaluation process, and for younger associates in particular.<sup>115</sup>

The development of core competencies can also assist in providing meaningful feedback, through the creation of objective promotion and advancement criteria. Partners and associates can have candid discussions about skills development, and firms can develop systems to effectively track each attorney's progress. Once core competencies are identified and communicated, firms should make sure to actively cultivate these skills at every stage in a lawyer's career, and structure feedback around this.<sup>116</sup>

#### Revisiting valuation models

Firms and legal organizations may consider recognizing alternatives to traditional ideas about what is valuable to an organization. Moving beyond business development, organizations could expand criteria for success to include skills such as case management, teamwork and interpersonal skills. Recognizing contributions in areas of mentoring and recruiting will also serve to strengthen the diverse fabric of the organization.<sup>117</sup> The Minnesota State Bar Association recommends expanding bases for compensation to include business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring inside and outside attorneys, pro bono, community or charity work, participation in bar association activities and teaching.<sup>118</sup>

#### Examining and assessing the institutional path to partnership

In law firm environments, there is a critical power differential between equity and non-equity partners. When collecting data on the number of diverse partners, studies should distinguish between these two categories, or risk misrepresenting the true situation. As one study noted, women of colour are often "parked" in non-equity partnership roles, and are not actually given a meaningful voice at the partnership table.<sup>119</sup>

In line with the overall diversity strategy, lawyers from underrepresented groups should be integrated into equity partnership ranks through effective mentoring, inclusion on client service teams, professional development and clear communication regarding expectations.<sup>120</sup> In addition, developing business generation skills is key to acquiring equity partnership.<sup>121</sup>

#### Formalized succession plans for diverse lawyers

Training and promoting from within the firm or legal organization is integral to retaining talented staff.<sup>122</sup> Diverse junior associates should have a clear idea of what is required to become

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<sup>115</sup> *Visible Invisibility*, *supra* note 44 at 13.

<sup>116</sup> *Pathways to Success*, *supra* note 74 at 18.

<sup>117</sup> *Ibid* at 20.

<sup>118</sup> Diversity Implementation Task Force of the Minnesota State Bar Association, "Diversity and Gender Equity in the Legal Profession: Best Practices" (2008), online: Minnesota State Bar Association <<http://www.mnbar.org/committees/DiversityImplementation/DiversityBestPracticesGuideFinal.pdf>> at 21 [Minnesota State Bar Association].

<sup>119</sup> *Pathways to Success*, *supra* note 74 at 18.

<sup>120</sup> *Ibid*.

<sup>121</sup> *Ibid* at 19.

<sup>122</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 25.

partner, and should also feel actively valued by firm leadership. Formalizing a succession plan will accomplish these goals and ensure that underrepresented lawyers occupy positions of leadership in the future. Strategies that have been identified to implement this in the US context involve the inclusion of diverse senior associates and junior partners in key firm committees and the identification of necessary leadership and management skill sets and the development of workshops for younger lawyers to introduce these skills to them at a younger age.<sup>123</sup>

#### Leadership development programs

Grooming and positioning diverse lawyers to leadership positions will not only increase retention and job satisfaction, but can ensure that diversity continues to develop within the firm. This includes making racialized lawyers leaders of practice groups, placing them on hiring and compensation committees, and on partner nominating committees. By ensuring leadership inclusion, diverse lawyers will develop important leadership skills that reflect new perspectives and also build confidence moving forward.

Firms may experience some resistance in appointing representational leadership due to traditional means of valuation, such as good books of business rather than strong leadership skills. Strategies for success in overcoming these challenges include:

- Actively giving junior partners and representatives from diverse groups opportunities to transition into leadership roles; and
- The appointment of co-leaders or co-chairs as interim solutions.

In doing so, firms must proactively ensure that diverse co-leaders are not relegated to secondary status in this relationship.<sup>124</sup>

### **General Best Practices**

#### Critical, ongoing re-evaluation of existing programs and structures

Though many programs are implemented with the best of intentions, they often require significant adjustments and reassessment. As noted in one study, diversity strategies must incorporate “frank, periodic assessments of the effectiveness” of any initiatives or programs.<sup>125</sup>

Firms and organizations must create measurable metrics and tracking systems in order to determine progress in relation to clear, definable goals in all levels of the diversity strategy. One important component of this is conducting surveys and exit surveys in particular, to determine the reasons why diverse attorneys are leaving the organization and working to prevent that in the future.<sup>126</sup> Employers should also continually consult with Diversity Committee members to get feedback and input on the effectiveness of diversity initiatives.

#### Best practices for individual lawyers

The Women’s Bar Association of the District of Columbia noted that women lawyers of colour also must take ownership and create change for themselves on the path to diversity. In doing so, the study identified three key areas in which diverse women lawyers can do this.

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<sup>123</sup> *Visible Invisibility*, *supra* note 44 at 14.

<sup>124</sup> *Pathways to Success*, *supra* note 74 at 16.

<sup>125</sup> *Ibid* at 20.

<sup>126</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 25. *Pathways to Success*, *supra* note 74 at 15.



First, diverse lawyers must actively manage their careers by identifying their own strengths and taking steps to learn about the inner workings of their environment. Second, attorneys of colour must network with a broad range of people both socially and professionally, through internal and external networks. Finally, though it might sometimes be difficult or uncomfortable, diverse lawyers must persistently push for critical, meaningful feedback from senior lawyers, as this is crucial to moving upwards in the work environment.<sup>127</sup>

Other strategies identified by racialized female lawyers include actively seeking out mentors even when they are not provided, concentrating on building a book of business, consistently pursuing excellence in work, and speaking up, taking up space, and being consistently present within the firm or organization.<sup>128</sup>

### Strategies for clients in ensuring diversity

In a study of diversity in Colorado law firms, surveys revealed that diverse lawyers often feel discrimination and bias from clients themselves. Respondents described that ignorance, lack of exposure to diverse attorneys and racism led some clients to think that diverse attorneys required more supervision, or were less competent generally. This points to the need not only for education of clients, but also for firms and organizations to push back in the face of discrimination, and increase the presence and visibility of racialized lawyers in client relationships.<sup>129</sup>

Clients however also have the potential to significantly influence minority representation within the profession, as they truly are the drivers of the imperative to diversity. Steps that clients can take include:

- Developing and communicating diversity goals and benchmarks that they want to see achieved;
- Working with firms to identify diverse teams and ensure allocation of fees and credits to everyone with responsibility on the team;
- Creating mentoring/partnering relationships with in-house lawyers and diverse firm attorneys;
- Insisting on accountability in the implementation of diversity goals by asking that firms measure and communicate diversity metrics to everyone; and
- Implementing lines of communication between clients and firms for good reciprocal feedback and input from diverse lawyers and other team members.<sup>130</sup>

## **Best Practices – Regulatory Bodies and Law Associations**

### Regulatory bodies – U.K.

In England, the *Equality Act 2010* enhanced the role of the Law Society of England and Wales' Solicitors Regulation Authority (SRA)<sup>131</sup> in promoting diversity in the legal profession. The

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<sup>127</sup> *Pathways to Success*, *supra* note 74 at 24-25.

<sup>128</sup> *Visible Invisibility*, *supra* note 55 at 14-16.

<sup>129</sup> *Diversity in Colorado*, *supra* note 43 at 53.

<sup>130</sup> *Pathways to Success*, *supra* note 74 at 22-23.

<sup>131</sup> The SRA regulates more than 120,000 solicitors in England and Wales. Its purpose is to protect the public by ensuring that solicitors meet high standards, and by acting when risks are identified. The solicitors' profession includes single-solicitor practices and huge firms with a global presence and thousands of lawyers. Solicitors also work in the justice system, in government and within companies. All solicitors follow the same professional principles and code of conduct. The SRA provides advice to help them do so. Established in January 2007, the SRA was previously called the Law Society Regulation

*Equality Act* created duties on all members of the profession as service providers and employers. The SRA Code includes a principle that members “must run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity.”<sup>132</sup>

In 2011, the Legal Services Board (LSB), the independent body responsible for overseeing the regulation of lawyers in England and Wales, published statutory guidance setting out its expectations of approved regulators in measuring levels of diversity and social mobility in the legal workforce. As a result, practices regulated by the SRA – including sole practitioners, recognized bodies and alternative business structures – are now required to annually collect, report and publish data on the diversity of their workforce. These requirements do not apply to regulated individuals working for in-house practices or other bodies currently not regulated by the SRA.

The SRA has published guidance and Q&As. The aim of this practice note is to briefly set out the rationale for these requirements, and highlight the key points for practices and individuals

In collecting this data, firms are required to give every individual in their workforce an opportunity to self-classify against a range of diversity characteristics. The aggregated workforce data must be reported to the SRA, broken down by the specified role categories and a summary of that data published by the firm.

The reporting is conducted by each firm by using guidance provided by the SRA. Firms will be required to report their aggregated data to the SRA and publish a summary of their workforce diversity data, for example on their website.

In addition to mandating data collection, in 2009, the Law Society of England and Wales (the “LSEW”) established the Diversity and Inclusion Charter (the “Charter”). The LSEW’s website describes the Charter as follows:

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

The Diversity and Inclusion Charter is a public commitment by legal practices to promote the values of diversity, equality and inclusion throughout their business. Whether it's through recruitment, retention, career progression or training and development, all our signatories are committed to improving opportunities for people in the legal profession, regardless of their background or circumstances.<sup>133</sup>

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Board. It changed its name to emphasize its independence. The SRA is the independent regulatory body of the Law Society of England and Wales.

<sup>132</sup> Solicitor Regulatory Authority, *SRA Principles 2011*, Birmingham: SRA, 2011, Principle 9.

<sup>133</sup> The Law Society of England and Wales, “Diversity and Inclusion Charter” (2009), online: The Law Society of England and Wales <<http://www.lawsociety.org.uk/advice/diversity-inclusion/diversity-inclusion-charter/>>.

Practices that sign up to the Charter are required to report annually and show how well they are meeting their Charter commitments, and where more work needs to be done. Practices complete an online, easy to use self-assessment report about their progress and performance. The results are published in aggregate by the LSEW and used to identify trends, successes and areas for improvement for the year ahead.

The Charter is accompanied by a set of protocols to help practices fulfil their commitments in key areas, such as reporting and monitoring, flexible working and procuring legal services. In addition, checklists, best practice guidance, case studies and toolkits are available.

The LSEW has also developed diversity and inclusion standards to help the signatories complete their annual self-assessment form. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards. The Diversity and Inclusion Standards are accompanied by best practice guidance that provide examples of positive diversity and inclusion practices, as well as advice on where to get more help or information.

#### Role of bar associations

Bar associations are uniquely positioned to impact diversity within the legal profession, in particular by setting an example which can be followed by firms, organizations and individuals. Bar associations should develop programming, initiatives and research that explore intersections of diversity, while also encouraging and supporting collaborations between mainstream and affinity bar associations.<sup>134</sup> Bar associations can work to build bridges with different stakeholders, especially through access to mentoring opportunities, collection of statistics, information on best practices and leadership training.<sup>135</sup>

Associations can also work to create networking opportunities specific to people from diverse backgrounds. The CBA has identified several opportunities that it offers, including a Women Lawyer's Forum, Sexual Orientation Gender Identity Conference and various other conferences which focus on common areas of interest to practitioners. The CBA has also created a Standing Committee on Equity to promote awareness of equity issues in the legal profession and seeks to eliminate discrimination.<sup>136</sup>

Bar associations must be proactive in pushing the diversity agenda. They can institute continuing legal education on bias elimination, adopt formal diversity statements and implement diversity plans, and ensure that bar leadership has visible representation of racialized and diverse people. Associations can also support licensees through every stage of their career; examples can be seen in the US of regional bar associations that have established clerkship summer programs and scholarships particularly for minority students,<sup>137</sup> and which continually partner with schools and invest in pipeline and mentorship programs.<sup>138</sup>

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<sup>134</sup> *ABA Presidential Diversity Initiative*, *supra* note 50 at 35-36.

<sup>135</sup> *Pathways to Success*, *supra* note 74 at 25-26.

<sup>136</sup> *Ibid* at 30.

<sup>137</sup> *CBA Equity and Diversity Guide*, *supra* note 53 at 18.

<sup>138</sup> *ABA Presidential Diversity Initiative*, *supra* note 50 at 37-38.

Overall, bar associations must work to push a general cultural shift within the legal profession, with a focus on maximum inclusivity and accessibility.<sup>139</sup>

#### Firms influencing diversity externally

Law firms and departments can also work to shift overall legal culture by setting a high standard for diversity initiatives and pushing other firms to do so as well. By visibly implementing diversity strategies, firms can create a competitive advantage, thereby incentivizing a larger movement towards increased inclusivity.

One concrete step that internal law departments can take is to develop preferred partner relationships with outside counsel and firms based in part on their achievement of diversity goals. By building relationships with diverse suppliers (both legal and otherwise), organizations can demonstrate their true commitment to diversity in all areas of business, while also pushing these objectives in other industries.<sup>140</sup>

Law firms and legal organizations can demonstrate their firm commitment to equity and diversity through awards and community recognition. By acknowledging and honouring individuals and associations that have contributed to diversity in the profession and community, a firm can begin to create a culture that places emphasis and respect on such accomplishments.

#### **Best Practices – Diversity Initiatives**

A number of initiatives have arisen in Canada and the US to address the barriers faced by licensees from equity-seeking groups in entering and advancing in the profession. In Canada, these initiatives include Legal Leaders for Diversity and Inclusion (LLD), the Law Firm Diversity and Inclusion Network (LFDIN) and A Call to Action Canada (ACTAC).

LLD is comprised of a group of Canadian General Counsel who have committed to “creating a more inclusive legal profession as well as supporting diversity initiatives within their organizations.”<sup>141</sup> LLD’s initiatives include a trial mentoring program for students from equity-seeking groups at Osgoode Hall Law School and hosting various events that focus on diversity in the legal profession.

The LFDIN is a group of sixteen large law firms that have signed a Statement of Principles and have agreed to work together to promote diversity and encourage a culture of inclusion within their firms and within the broader legal profession. Signatories to the LFDIN Statement of Principles agree to engage in the following activities:

- Sharing ideas for the promotion of diversity and inclusion in connection with recruitment, retention and advancement within law firms
- Working with Legal Leaders for Diversity and other general counsel, law departments, business leaders and professional associations in their efforts to advance diversity and inclusion
- Supporting outreach programs in law schools and the broader Community

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<sup>139</sup> For further, concrete recommendations for Bar Associations, see *ABA Presidential Diversity Guide*, *ibid.* at 35-40.

<sup>140</sup> *Minority Corporate Counsel Association*, *supra* note 55 at 18-20.

<sup>141</sup> Legal Leaders for Diversity and Inclusion, “Legal Leaders for Diversity”, online: Legal Leaders for Diversity and Inclusion <<http://legalleadersfordiversity.com/>>.

- Promoting thought leadership and constructive dialogue on issues of diversity and inclusion
- Evaluating our efforts.<sup>142</sup>

ACTAC was inspired by a similar initiative in the US. ACTAC supports and encourages in-house counsel to promote diversity and inclusiveness in the legal profession. Signatories to ACTAC are asked to insist that law firms that they have retained “demonstrate a true commitment to, and real progress in, the full participation and advancement of women and minority lawyers within law firms.”<sup>143</sup> Furthermore, ACTAC asks that signatories limit or terminate relationships with outside law firms that have demonstrated a lack of interest or commitment to being diverse and inclusive.<sup>144</sup> ACTAC currently has twelve signatories and the US initiative has over 100 signatories.

In addition to A Call to Action, US initiatives include the Boston Lawyers Group (BLG) and the Lawyers Collaborative for Diversity (LCD). The BLG is comprised of over 45 law firms, corporate legal departments and government agencies in Boston that are committed to identifying, recruiting, advancing and retaining attorneys of colour. The BLG acts as a resource to members by hosting forums, roundtable discussions, educational programs and job fairs, in an effort to promote diversity in Boston’s legal community. The BLG also develops initiatives within law schools, student affinity organizations, city and state governments, bar associations and other professional and business organizations. Members are ultimately responsible for meeting their own diversity and inclusion goals.<sup>145</sup>

The LCD operates in a similar manner to the BLG. The LCD is comprised of law firms, corporate law offices, government agencies and state bar/law associations in Connecticut. The current challenge of the LCD is to “increase the recruitment, retention and advancement of lawyers of color, not only as good social policy, but also as exemplary business practice.”<sup>146</sup>

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<sup>142</sup> Law Firm Diversity and Inclusion Network, “Law Firm Diversity and Inclusion Network: Statement of Principles”, online: WeirFoulds LLP

<[http://www.weirfoulds.com/webfiles/Law\\_Firm\\_Diversity\\_Oct\\_2013.pdf](http://www.weirfoulds.com/webfiles/Law_Firm_Diversity_Oct_2013.pdf)>.

<sup>143</sup> A Call to Action Canada, “A Call to Action Canada”, online: A Call to Action Canada <<http://www.acalltoactioncanada.com/>>.

<sup>144</sup> *Ibid.*

<sup>145</sup> The Boston Lawyers Group, “About the BLG – Who We Are”, online: The Boston Lawyers Group <<http://www.thebostonlawyersgroup.com/about/who.htm>>.

<sup>146</sup> Lawyers Collaborative for Diversity, “Who We Are”, online: Lawyers Collaborative for Diversity <<http://www.lcdiversity.com/about/who.htm>>.