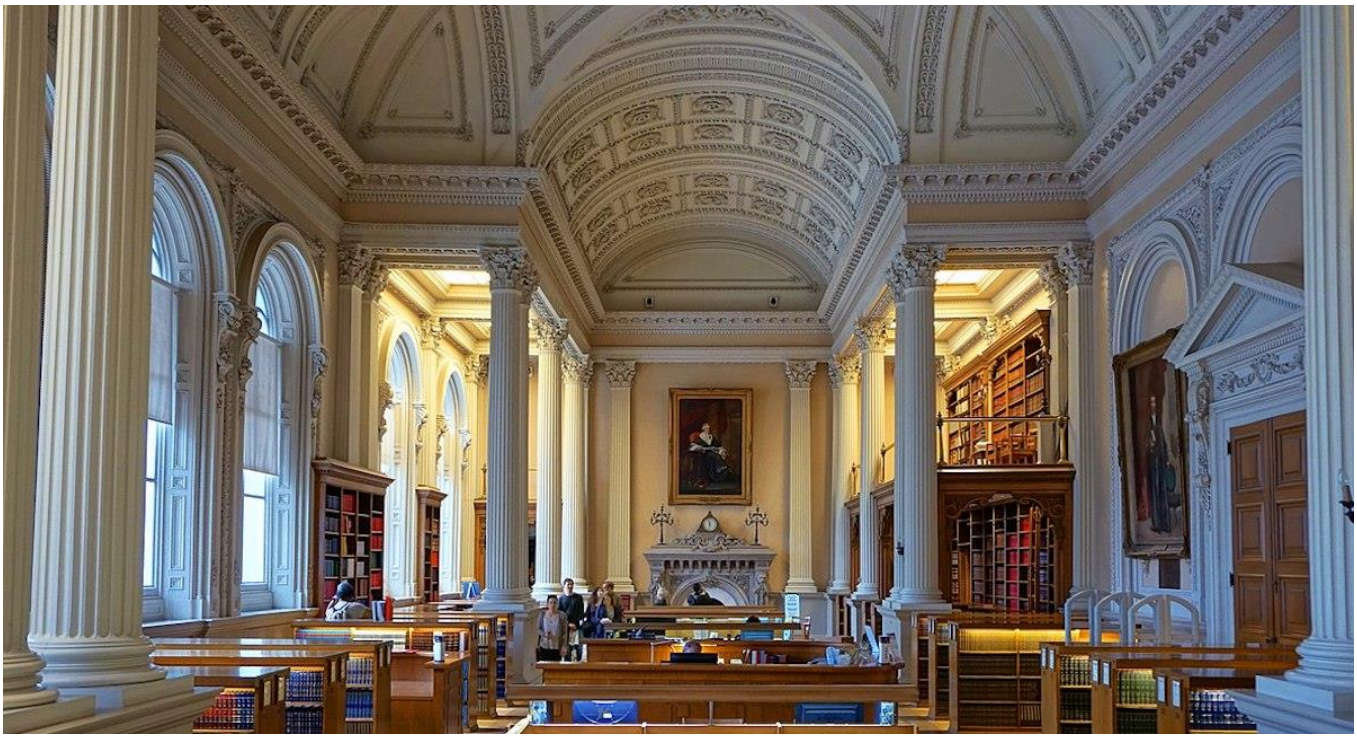

The main library in Osgoode Hall, Toronto, photographed in 2017 by David Arthur.

How Social Justice Ideologues Hijacked a Legal Regulator

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I have been a Toronto-based litigation lawyer for 30 years. My politics are progressive and strongly egalitarian. About two decades ago, I started my own law firm, specifically so that I could serve disadvantaged individuals and communities. I have sued governments and large corporations, often on a pro bono basis. I have acted for Indigenous clients—including the family of Dudley George, an Ojibway man who was shot and killed by police in 1995 at Ipperwash Provincial Park in Ontario. I have represented a regional Cree First Nations tribal council on the James Bay coast for more than 25 years, and for eight years a group of indigenous Mayan women in an ongoing claim against a Canadian international mining company for alleged rape and

murder at its facility in Guatemala. I act in a class-action for almost a thousand people who claim to have been wrongfully mass-arrested by Toronto Police at the 2010 G20 Summit. I am a recipient of the Diane Martin Medal For Social Justice Through Law, the Human Rights Award from the Ontario Federation of Labour, and the Champion of Justice Award from Aboriginal Legal Services of Toronto. In 2014, and again in 2015, *Canadian Lawyer Magazine* put me on its national Top-25-Most-Influential list because of my advocacy on behalf of those seeking access to justice.

I recite all this not to blow my own horn, but rather in the hope that my progressive credentials may convince otherwise skeptical readers to take seriously the arguments that follow. For all of my adult life, I have worked to advance social justice. Now I am horrified by what my own professional regulator is doing in the name of that same cause.

In Canada, the legal profession is regulated provincially. Seven years ago, the Law Society of Ontario (which then was still called the Law Society of Upper Canada) created a working group to address "challenges faced by racialized licensees" in Ontario's legal profession. The working group reported in 2016 that it had discovered "systemic racism" in the profession. While no one will dispute that elements of racism can be found in parts of Canadian society, the collected survey data did not support the conclusion that racism in my profession is widespread and serious. Nevertheless, in December, 2016, Convocation (the legislative body that governs the Law Society) adopted a set of 13 recommendations on the topic. Times being what they are, no one felt comfortable putting the brakes on this process, despite misgivings. The idea that racism was rampant, and that heavy-handed measures were required to address it, took on a life of its own.

One of the listed recommendations was that the Law Society should "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." When the Law Society announced this new requirement the following September, its advisory also stated that we Ontario lawyers should "demonstrate a personal valuing" of these principles.

Despite the fact that I always have been a strong advocate for "equality," this development left me flabbergasted: Our regulator was demanding that lawyers and paralegals draft and then obey a set of specific political ideas—both in their personal and professional lives—as a condition of their license.

Failure to prepare a personal statement of principles in keeping with the Law Society's directive would likely result (after a short reprieve for re-education) in sanctions, such as an administrative suspension. (The Law Society has not formally announced what the penalty will be, except to say that "progressive measures" would be applied.) Lawyers who are suspended are not permitted to practice law. Their refusal to embrace these values would put their livelihood in peril. The Law Society was prescribing, effectively with the force of law, what to say and what to think. I never imagined that I would ever see such a thing in Canada.

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I was raised a devout Mennonite. Most of my ancestors settled on the Canadian prairies in the 1870s, having fled religious persecution in Russia. Some chose to stay in that country, but that did not end well. During the Russian Revolution, and in the civil war that followed, Mennonite villages were attacked in waves by the Red Army, the White Army, and hordes of peasant anarchist brigands bent on pillage and rape. Those who survived eventually were subjected to the anti-religious scourges of Stalin, with many Mennonites ending up imprisoned or executed. Most of the villages eventually were destroyed.

My grandmother left Russia in the early 1920s as a war refugee, coming to Canada when she was 14. I spent my summers with her on the farm and sometimes asked about her time in Russia. She always refused to discuss it. I think she saw some terrible things.

My family members were not the ultra-conservative Mennonites of the type you see dressed in black and traveling by horse and buggy. But we were very conservative in our lifestyle. My parents, wonderful and loving people, were devout, conservative Christians. We spent countless hours in church, and my father gathered the family every day for a period of Bible reading and prayer together at home. In those prayers, my parents frequently would express thanks to God that "we live in a free country."

As a boy, I developed a voracious appetite for reading. I did not have much access to books, but I read whatever I could get my hands on. At some point, my parents bought an encyclopedia set to use with our school work. I loved those 24 volumes, which I would open to random pages and read whatever entry I found there. Eventually, I had difficulty finding an article I hadn't yet read.

I did not know anyone who had gone to university, except for the teachers at my small rural high school, who had gone to teachers' college. After high school, I attended a conservative Bible school in Manitoba. There, I sometimes felt that there were parts of my belief system that didn't make sense to me. I couldn't talk to anyone about these thoughts since I didn't know a single person in my life who was not at least formally a Christian or who had seemed to even consider any other way of life or thought. My curiosity eventually led me to university, where I reveled in a landscape of debate and truth-seeking. Over time, I became non-religious, although that is not something I make a point of proclaiming.

In short, I would not be the person I am without freedom of thought and expression. I will not be told what to say or what to value—especially by the regulator of what is

supposed to be a body of independent lawyers. And so I have decided that I must contribute, in my little corner, in my limited way, to the defence of those freedoms. I did this knowing that taking a stand on this issue might destroy the career and law firm I had built. And it has, although it has been a disaster I have been able to manage.

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Compelling speech is unconscionable regardless of the principles a person is made to parrot. Today, we are being told to promote "equality, diversity and inclusion." But once this line has been crossed, the content doesn't matter. And tomorrow, we might be asked to pledge allegiance to some other ideological doctrine.

I believe in treating people as equals. I have always tried to be colour-blind. That does not mean ignoring a person's background or disrespecting it. It can mean trying to help to offset any disadvantage they may have faced. But that is not what the Law Society means by "equality." According to the new lexicon, treating people as humans of equal worth is considered *unequal*. Instead, they must be treated as numbers in a ledger, contributors to a quota.

To many *Quillette* readers, this perversion of language may not come as a surprise. I have been late to this party, and perhaps I have been naïve about how ideology has corrupted the ideal of social justice and the words we use to describe it. The Law Society's working group declared that one of its objectives was to ensure "better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority." Note the specificity of this objective. Every lawyer and paralegal is now expected to adopt and promote racial representation according to proportion in the general population "in all legal workplaces" and "at all levels of seniority"—an enforced mosaic or grid of de facto quotas in vertical and lateral compartments based, essentially, on skin colour.

But if the proportion of some skin colours and ethnicities is too low, then the proportion of others must be too *high*. And while the authors of these rules no doubt would be quick to deny this plain corollary, the arithmetic truth is plain as a matter of simple logic. Without having the nerve to say so directly, the Law Society is telling us that there are, in effect, too many white Jewish lawyers—for there is no single group that has had more success, on a per capita basis, in gaining representation in the Ontario legal market. (The Law Society also has determined that the same rule shall apply to "all equality-seeking groups," but shrewdly avoided the awkward step of explaining what these are. And it may be assumed that the list of such groups will expand continually according to ideological fashion.)

As an egalitarian and progressive, I always have been favourably inclined toward "diversity and inclusion." But I thought those ideas meant a spirit of open-mindedness and respect toward others regardless of their personal characteristics. In fact, that is the opposite of what the Law Society means and intends. In this context, "diversity and inclusion" is code for identity politics—by which we are all slotted into factions defined by appearance, ethnicity and gender (usually through "self-identification"), supposed antagonists in an altogether imaginary and endless zero-sum game of dominance and oppression.

That is a world I do not recognize. I know well that Canadian society includes many people who are disadvantaged and require help. In some cases, these disadvantages do indeed have some connection to group identity. I have dedicated my career to such causes. That does not mean that we are *defined* by our ethnicities or that we are locked in a group-on-group struggle for power.

When it became clear that the diversity faction had captured my profession's regulators, I felt I had no choice. My first step was to tell the Law Society to, in effect, go to hell. I did so in a long letter, to which I have not yet received a reply. The second step was to refuse to comply with the new requirement. (The Law Society

announced that there would be penalties for such failure, though not during the first year—so, thus far, I still have my license.) The third was to wind down my law firm, because I no longer feel that my legal practice is viable in this climate. The fourth was to join in a court challenge to the compulsory Statement of Principles, which is ongoing. Finally, I have joined a group of other lawyers and paralegals who oppose the Statement of Principles and who are organizing a campaign in the upcoming Law Society elections in April. In a surprising development, I will be running for "Bencher" (the somewhat quaint term used to describe the Law Society's directors), with the goal of changing the Law Society from the inside.

I realized that all of these steps would have reputational consequences for my firm. My opposition to the new rules would create serious internal conflict with my younger associates, who might either agree with the new policy or seek to avoid the notoriety associated with opposing it. My conflict with the Law Society also would become known to my clients, my professional contacts, potential recruits who are still in law school, and my wider circle of progressive friends and supporters. I feared that the principled nature of my stance would be lost on many of these people, who would simply see my efforts as being aimed at undermining the goals of "equality, diversity and inclusion." Given all this, I believed that I had no choice but to wind down the firm.

Had I tried to keep the firm going, I would face years of increasingly bewildering and dubious claims based on race, sex and other forms of "identity," all of which could be based on nothing more than "self-identification," and all of which would now have the official imprimatur of the Law Society. As noted, the required Statement of Principles is just one of 13 measures adopted by the Law Society designed to force identity politics on law firms. Instead of being encouraged to promote an ethos of high professional competence, hard work and teamwork, I would be called on to play the role of full-time equity officer, conscripted to implement an ideology and a system I

considered to be intellectually and morally wrong, not to mention, in some ways, simply ridiculous.

I have now largely completed the wind-down of my firm. My associates have formally transferred to other firms, and my firm now consists only of me. I have had a good run, and I can, with sacrifice and deep regret, say goodbye to both the business I built and the vision I had for the remainder of my career. Unlike me, unfortunately, most younger lawyers and paralegals have no realistic option for resisting the Law Society's authoritarianism. As the new rules make plain, they will increasingly be judged more on the basis of ideology, skin colour and sex chromosomes than by their competence, skills, effort and professional contributions. That is not a career that I would wish upon anyone—including those individuals who are nominally considered as potential beneficiaries of these new rules.

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My constitutional challenge to the Law Society's rules—which I have undertaken with law professor Ryan Alford of Lakehead University, and with the support of the Canadian Constitution Foundation—argues that the Statement of Principles abridges freedom of speech, thought and conscience, as such freedoms are guaranteed in the Charter of Rights and Freedoms (which is part of our Constitution).

The case may sound like an easy case to win, but unfortunately it isn't. The Canadian approach to judicial review is messy and unpredictable. Our resilient team of lawyers, headed by lead counsel Asher Honickman, has difficult work ahead. But we have found a number of supporters, and we invite more to join our cause.

In the coming Bencher elections, I will campaign with a diverse group of lawyers and paralegals, organized collectively as StopSOP, and led by London, Ont.-based lawyer Lisa Bildy. We hope to elect enough like-minded candidates to reverse the

policy inside Convocation, or at least begin to turn the ship around. We seek to return the Law Society to its proper role as a regulator of professional competence rather than an activist body dictating political values and championing fashionable ideological causes.

It's an uphill battle. Social justice mantras, in their newly mutated form, are everywhere. "Diversity and Inclusion" has taken on the character of an unquestionable orthodoxy within governments, regulators, universities, corporations, schools, unions, political parties, advocacy groups and the media—not only in Ontario but across North America, Europe and beyond. Yet despite their co-option by clannish ideologues, these institutions are supposed to serve the broad citizenry. They belong to the people. Though they have been infiltrated by social justice mobs, there is no reason why we cannot reverse the process.

The directors of the Law Society are democratically elected—which offers us some hope and opportunity. This pushback has to start somewhere. If lawyers, of all people, cannot defend themselves against tyranny, then what use are we to anyone?