

Court File No.: CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MURRAY KLIPPENSTEIN

Plaintiff/Moving Party

- and -

LAW SOCIETY OF ONTARIO

Defendant/Respondent

---

**MOTION RECORD OF THE PLAINTIFF/MOVING PARTY  
(Motion for Summary Judgment)  
Returnable June 20, 2024  
Volume One**

---

March 30, 2023

**KENNY LAW**

Bell Tower, Suite 2603  
10104 103 Ave NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113

Email: [wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114

Email: [jsavaryn@wjkenneylaw.com](mailto:jsavaryn@wjkenneylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

TO

**STOCKWOODS LLP**

Barristers  
TD North Tower  
Suite 4130  
77 King Street West  
Toronto ON M5K 1H1

**Paul Le Vay**

Tel: 416.593.2493  
Email: [paulv@stockwoods.ca](mailto:paulv@stockwoods.ca)

**Yadesha Satheaswaran**

Tel: 416.593.7200  
Email: [yadeshaS@stockwoods.ca](mailto:yadeshaS@stockwoods.ca)

Lawyers for the Defendant,  
Law Society of Ontario

## TABLE OF CONTENTS

<b><u>TAB</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGE</u></b>
	<b>VOLUME ONE</b>	
<b>1.</b>	<b>NOTICE OF MOTION, DATED MARCH 29, 2023</b>	MR006
<b>2.</b>	<b>AFFIDAVIT OF MURRAY JOHN KLIPPENSTEIN, SWORN ON MARCH 16, 2023</b>	MR011
A.	Exhibit "1": Profile Report of the LSO (August 8, 2022)	MR073
B.	Exhibit "2": Article of Resolution, Law Society of Ontario (September 29, 2022)	MR077
C.	Exhibit "3": Working Group Terms of Reference (October 25, 2012)	MR079
D.	Exhibit "4": Challenges Facing Racialized Licensees: Best Practices (circa March 27, 2013)	MR086
E.	Exhibit "5": Stratcom Report (March 11, 2014)	MR108
	<b>VOLUME TWO</b>	
F.	Exhibit "6": Consultation Paper (circa October 30, 2014)	MR264
G.	Exhibit "7": Working Group Agenda & Materials, including Consultation Plan, Communication Plan, Treasurer's Letter Regarding Consultation Plan and Bencher Speaking Notes (November 12, 2014)	MR321
H.	Exhibit "8": Working Together Report (circa December 2, 2016)	MR370
I.	Exhibit "9": Critical Review (January 8, 2020)	MR431
J.	Exhibit "10": Expert Panel Reports (circa March, April, and June 2022)	MR447
K.	Exhibit "11": Prior Stratcom Survey, circa 2004	MR542
	<b>VOLUME THREE</b>	

L.	Exhibit "12":	Prior Stratcom Survey, circa 2014	MR559
M.	Exhibit "13":	Working Group Agenda and Materials (May 30, 2013)	MR568
N.	Exhibit "14":	Measuring Diversity in Law Firms Report by Dr. Lorraine Dyke (circa August 2012)	MR578
O.	Exhibit "15":	Email to EIA Committee (September 9, 2020)	MR630
P.	Exhibit "16":	Email to EIA Committee (September 15, 2020)	MR634
Q.	Exhibit "17":	Memo re: LSO Follow-up Questions on the Inclusion Index Methodology (April 22, 2020)	MR638
R.	Exhibit "18":	LSO Press Release (June 23, 2022)	MR652
S.	Exhibit "19":	M. Klippenstein's Correspondence (November 22, 2021)	MR655
T.	Exhibit "20":	M. Klippenstein's Correspondence (November 29, 2021)	MR660
U.	Exhibit "21":	M. Klippenstein's Correspondence (December 17, 2021)	MR663
V.	Exhibit "22":	Correspondence from Plaintiff's Counsel to the LSO (April 26, 2022)	MR667
W.	Exhibit "23":	Correspondence from Plaintiff's Counsel to the LSO (May 20, 2022)	MR673



X.	Exhibit "24":	Correspondence from the Treasurer (May 27, 2022)	MR6677
3.	<b>AFFIDAVIT OF RYAN PATRICK ALFORD, SWORN ON MARCH 18, 2023</b>		MR683
4.	<b>AFFIDAVIT OF CHI-KUN SHI, SWORN ON MARCH 20, 2023</b>		MR687
5.	<b>AFFIDAVIT OF GARY GRAHAM, SWORN ON MARCH 21, 2023</b>		MR691
6.	<b>STATEMENT OF CLAIM, DATED JUNE 17, 2022</b>		MR695
A.	Schedule "A":	Information and Records Sought by the Plaintiff, Murray Klippenstein (June 17, 2022)	MR704
7.	<b>STATEMENT OF DEFENCE, DATED AUGUST 5, 2022</b>		<b>MR707</b>
8.	<b>PLAINTIFF'S REQUEST TO ADMIT, DATED AUGUST 9, 2022</b>		<b>MR714</b>
9.	<b>REPLY TO STATEMENT OF DEFENCE, DATED AUGUST 15, 2022</b>		<b>MR717</b>
10.	<b>RESPONSE TO REQUEST TO ADMIT, DATED AUGUST 17, 2022</b>		<b>MR722</b>
11.	<b>ENDORSEMENT OF JUSTICE CHALMERS, GRANTED ON MARCH 29, 2023 ORDERING TIMETABLE AND THE MOTION FOR A FULL DAY HEARING ON JUNE 20, 2024</b>		<b>MR725</b>

**Court File No. CV-22-00682844-0000**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MURRAY KLIPPENSTEIN**

Plaintiff

and

**LAW SOCIETY OF ONTARIO**

Defendant

**NOTICE OF MOTION**

The Plaintiff, Murray Klippenstein, will make a motion to a Judge on Thursday, **June 20, 2024**, scheduled for a full day, as ordered by Justice Chalmers on March 29, 2023 in Civil Practice Court.

**PROPOSED METHOD OF HEARING:** The motion is to be heard in person,  
at the following location:

Superior Court of Justice  
330 University Avenue  
Toronto ON M5G 1R8

**THE MOTION IS FOR:**

1. Summary judgment on the Plaintiff's claim for:
  - a. an order compelling the Defendant, the Law Society of Ontario ("LSO") to provide him with the Information (as defined in the Statement of Claim);
  - b. costs of this motion and action on a full indemnity basis.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Plaintiff, Murray Klippenstein, is a current bencher and director of the LSO, having been duly elected on or about April 30, 2019
2. As a director of the LSO, the Plaintiff has an individual right, recognized by statute and common law, to have access to and obtain any and all documents, records, and information of the corporation that are considered by him to be necessary or useful in fulfilling his duties to govern the LSO and manage the affairs of the corporation.
3. The Plaintiff has made repeated requests of the LSO to furnish him with the Information, to which he is entitled, in order that he may discharge his duties as bencher and director.
4. The LSO has failed and refused to provide him with the Information.
5. There is no genuine issue requiring a trial. In the alternative, the only genuine issue is a question of law, which the court may determine and grant judgment accordingly.

6. The Plaintiff relies upon the following statutory provisions and rules:

- a. *Law Society Act*, RSO, 1990 c L8, ss 4.1, 4.2, 10;
- b. *Corporations Act*, RSO 1990, c C.38, ss 302, 304; and
- c. Rules 20.01(1) and 20.04 of the *Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. Affidavit of Murray Klippenstein, affirmed March 16 2023, together with attached Exhibits;
2. Supporting Affidavits of Chi-Kun Shi, Gary Graham, and Ryan Alford;
3. The Pleadings in this action; and
4. Such further and other evidence as may be advised and permitted.

March 29, 2023

**KENNY LAW**

Bell Tower, Suite 2603  
10104 103 Ave NW  
Edmonton AB T5J 0H8

**W.J. Kenny, Q.C.**

Direct: 780.752.1113  
Email: [wkenny@wjennylaw.com](mailto:wkenny@wjennylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: [jsavaryn@wjennylaw.com](mailto:jsavaryn@wjennylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

TO

**STOCKWOODS LLP**

Barristers  
TD North Tower  
Suite 4130  
77 King Street West  
Toronto ON M5K 1H1

**Paul Le Vay**

Tel: 416.593.2493

Email: [paulv@stockwoods.ca](mailto:paulv@stockwoods.ca)

**Yadesha Satheaswaran**

Tel: 416.593.7200

Email: [yadeshaS@stockwoods.ca](mailto:yadeshaS@stockwoods.ca)

Lawyers for the Defendant,  
Law Society of Ontario

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF MOTION****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: wkenny@wjkennylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkennylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein

**Court File No. CV-22-00682844-0000**

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MURRAY KLIPPENSTEIN**

Plaintiff

(Moving Party)

and

**LAW SOCIETY OF ONTARIO**

Defendant

(Responding Party)

**AFFIDAVIT OF MURRAY JOHN KLIPPENSTEIN**

I, MURRAY JOHN KLIPPENSTEIN, of the City of Toronto, in the  
Province of Ontario, MAKE OATH AND SAY:

1. I am the Plaintiff in this action and the Moving Party for this motion for summary judgment, and as such have knowledge of the matters to which I depose herein.
2. I have personal knowledge of all facts stated in this Affidavit, including through personal review of Law Society of Ontario ("**LSO**") records, except where I have been informed of such facts, in which case I have stated the source of such facts and hereby state that I believe such facts to be true.
3. I will make use of terms as defined in the Statement of Claim, except as otherwise noted.

### **BACKGROUND**

4. I have practiced law in Toronto since being called to the bar in 1987, primarily as a litigator.
5. On April 30, 2019, I was elected a bencher of the LSO, for the electoral region of the City of Toronto, and was designated as Toronto Regional Bencher for having received the most votes of any Toronto candidate.



6. I regard this claim for Information to be unfortunate but necessary to fulfill the duties of my office. I have previously requested the Information from the LSO to allow me to be informed and to inform my fellow benchers about a number of issues underlying various policies developed by the benchers of the LSO for application to members of the Professions. The LSO's failure to furnish me with the requested Information has and continues to restrict and impede my ability to carry out my duties as a bencher and director of the LSO corporation. Without that Information I am unable to adequately analyze and consider the reliability and validity, or lack thereof, of the Stratcom Report and the related Working Together Report, or to appropriately address these and other issues arising from the foregoing with my fellow benchers, while the LSO continues to rely upon those Reports in the development, implementation, and enforcement of important LSO policies.

**THE PLAINTIFF IS A DIRECTOR OF THE LSO CORPORATION**

7. In its pleadings and various responses, the LSO has appeared to deny that I as a bencher am also a director of the LSO corporation. As a bencher, I am in fact a director of the LSO, and have been since my election as a bencher on April 30, 2019.

8. On its official website, the LSO publishes information under the heading “About the LSO,” with sub-headings on “Governance” and “Benchers.” Under each of these two sub-headings, the following statement is published: “The Law Society of Ontario is governed by a board of directors, who are known as benchers” (<https://lso.ca/about-lso/governance/benchers>; not attached as an exhibit).
9. I am aware that the Ontario *Corporations Information Act* requires a variety of corporations to periodically submit information returns identifying their corporate directors, so after the LSO’s various responses on this issue I filed a request for that public information regarding the LSO with the Ministry of Government and Consumer Services (“**Ministry**”). Thereafter I received from the Ministry a copy of the Profile Report of the LSO, generated on August 8, 2022 (“**Profile Report**”), identifying myself and my fellow benchers as directors of the LSO corporation. The Profile Report states that it “sets out the most recent information filed...in respect of corporations” (MK66). That is, the Ministry generated the Profile Report on the basis of the LSO’s own filing.

Profile Report of the LSO, as of August 8, 2022, attached as Exhibit “1” (MK63)

10. At the LSO's regular Convocation meeting on September 29, 2022, one of the agenda items was passage of a detailed eight page "Banking Resolution," updating various banking items of information for the LSO's regular bank, including various signing officers, cheque signing limits, and so forth. The resolution, which was routine and passed without discussion, included a page that began, "The undersigned being all directors of the LAW SOCIETY OF ONTARIO (the "Corporation") hereby sign the following resolution: BE IT RESOLVED that the following individuals are Directors and Officers of the LAW SOCIETY OF ONTARIO ..." after which followed a list of benchers' names, including my own (MK68). In this routine matter of banking formalities, the LSO recognized myself and other benchers as directors of the LSO corporation.

Article of Resolution, Law Society of Ontario, September 29, 2022, p 7 of 8, attached as Exhibit "2" (MK67)

### **THE STRATCOM REPORT, THE CONSULTATION PAPER, AND THE WORKING TOGETHER REPORT**

11. By way of background, in 2012, Convocation created the Challenges Faced by Racialized Licensees Working Group ("**Working Group**") with a mandate to "identify challenges faced by racialized candidates and licensees" and to "identify best practices for preventative, remedial and/or support strategies" ("**Mandate**") (MK73).

Working Group Terms of Reference, attached as Exhibit "3" (MK69)

12. In March of 2013, the Working Group commissioned Stratcom Communications Inc. (“**Stratcom**”), a consulting firm, to carry out an extensive study of the overall population of Ontario lawyers and paralegals (collectively, the “**Professions**”), in pursuit of the Working Group’s Mandate.
13. Contemporaneously, LSO staff provided to Stratcom an undated and unattributed internal LSO report, entitled *Challenges Facing Racialized Licensees: Best Practices*. This report appears to set out in detail the end result expected from Stratcom’s study by the LSO, undermining Stratcom’s ability to conduct an impartial study.

*Challenges Facing Racialized Licensees: Best Practices*, attached as Exhibit “4” (MK76)

14. In the fall of 2013, Stratcom prepared a survey questionnaire informed by the Mandate to assess the experiences and views of the members of the Professions at large, in particular those in the Professions it referred to as “racialized.” According to Stratcom, a survey invitation was sent to each member of the Professions.
15. The results and conclusions from this survey were central components of the *Challenges Facing Racialized Licensees: Final Report* (“**Stratcom Report**”), which the Working Group and LSO staff received from Stratcom in March of 2014.

*Stratcom Report*, attached as Exhibit “5” (MK98)

16. Thereafter, members of the Working Group and LSO staff prepared a public Consultation Paper, entitled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* (“**Consultation Paper**”), based on the Stratcom Report for distribution to the Professions as a whole. The Consultation Paper relied heavily on the Stratcom Report in general and on the Stratcom survey in particular, containing 37 specific footnoted references to the Stratcom Report survey. The Stratcom Report survey is put forward as a main justification for the positions taken in the Consultation Paper.

*Consultation Paper*, attached as Exhibit “6” (MK249)

17. The Stratcom survey is portrayed throughout as a valid and accurate representation of the experiences and views of the Professions as a whole. At no point does the Consultation Paper disclose or hint that there might be any, and possibly serious, limitations, reservations, or qualifications with respect to the Stratcom survey, such as the very low survey response rate or the non-randomized and self-selected survey sample, which I will discuss below.

18. Members of the Working Group and LSO staff also prepared a detailed Communication Plan proposing extensive distribution of the Consultation Paper throughout the Professions.

19. On October 30, 2014, the benchers in Convocation approved the Consultation Paper and the Communication Plan, and the Communication Plan was subsequently implemented.

**November 12, 2014 Working Group Agenda & Materials, including the Consultation Plan, Communication Plan, Treasurer's Letter Regarding the Consultation Plan (p 25), and Bencher Speaking Notes (p 66-68), attached as Exhibit "7" (MK306)**

20. The Communication Plan included an extensive programme of direct communication from the Treasurer of the LSO to a large number of significant individuals and organizations in the Professions (centred on the Consultation Paper). The initiation of the consultation process included a set of individualized emails and letters from the Treasurer to some 46 legal associations in Ontario and Canada, to the Chief Justices of Ontario, to the Deans of the Law Faculties in Ontario, to the presidents of 10 local County Law Associations, to federal and provincial Attorney General and Justice representatives, and to an unknown number of "managing partners" at law firms, *inter alia*. This Treasurer correspondence specifically advised these stakeholders of the consultation process, included a link to the Consultation Paper in the email, and included a hard copy of the Consultation Paper in a follow up letter, with an invitation to respond.

21. This far-reaching dissemination is significant because of the limitations and defects in the Stratcom report and survey, discussed below. These defects were carried forward into the Consultation Paper and widely distributed in the Professions without so much as a cautionary word, in a way that was misrepresentative to the large body of recipients of the Consultation Paper and to the LSO's benchers. As a bencher and director, I believe that it is my duty to shed light on this widely distributed misinformation and to bring these issues to the attention of Convocation and of stakeholders, given the heavy past and present reliance placed on this material by the LSO. The Information I seek will further enable me to do so.

22. After having received extensive responses to the questions set out in the Consultation Paper from members of the Professions and organizations of legal professionals, the Working Group and LSO staff drafted the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group Final Report* ("**Working Together Report**"). This major LSO policy paper relied heavily upon the Stratcom Report, also adopting input from the consultations.

*Working Together Report*, attached as Exhibit "8" (MK355)

23. The Working Together Report set out 13 far-reaching recommendations for Convocation to adopt (including various sub-recommendations), and on December 2, 2016 the benchers in Convocation voted, in one omnibus motion, to adopt all 13 of those recommendations (and sub recommendations).

24. Contrary to past and current practice at the LSO in the case of major policy-making studies, the LSO did not at any point distribute or provide copies of the critically important Stratcom Report to all benchers or to Convocation for their consideration in the entire period of nearly three years from the time of receipt of the Stratcom Report by the LSO to the adoption of the Working Together Report recommendations, including at critical meetings where it was considered, other than casual mentions that the Report was available online.

**THE INFORMATION HAS CURRENT RELEVANCE TO THE LSO'S  
ONGOING ADHERENCE TO AND IMPLEMENTATION OF VARIOUS MAJOR  
POLICIES**

25. The far-reaching 13 recommendations set out in the Working Together Report, which were adopted by Convocation, either have been to some extent implemented or are in the process of being implemented. The one exception is the Statement of Principles, which Convocation repealed on September 11, 2019.



26. While the Stratcom Report was first received by the LSO in March of 2014 and the Working Together Report was adopted in December of 2016, those Reports continue to be foundational to the LSO's present and ongoing implementation of various major policies. If the Stratcom Report's major defects and misrepresentations, as discussed below, had been properly considered and dealt with earlier, the Information requested herein would have perhaps decreased in relevance. But that has not happened.

27. Instead, the LSO continues to proceed on the basis that the Stratcom Report and the Working Together Report were and are an adequate basis for these continuing far-reaching policies. It appears that benchers and the Professions at large have been and continue to be misled by the LSO's reliance on those Reports. For this reason, all of the Information is necessary or would be useful to me as a bencher and director, to further examine and report on the merits, reliability, and veracity (or lack thereof) of the Stratcom Report, of subsequent reports, and of consequential policy. I believe that I have a continuing duty to inform myself, and to bring to the attention of my fellow benchers and members of the Professions, my concerns regarding the validity of the Stratcom Report, the Working Together Report, and the resulting projects such as the Inclusion Index.

28. The 13 recommendations from the Working Together Report that Convocation adopted in 2016 speak for themselves in terms of their sweeping implications. They are summarized in the Statement of Claim, and reproduced in full in Exhibit “8” to this Affidavit. All of these recommendations are predicated upon the purported findings of the Stratcom Report. I am, however, unable to fully analyze and assess the Stratcom Report, and to raise these matters as appropriate with other benchers, and with stakeholders who have been led to accept these Reports as valid, without access to the Information, including in particular the full Stratcom survey dataset, which is in the LSO’s possession (see Stratcom Report, Exhibit “5,” p 33, note 8; MK147).
29. One of the LSO’s own consultants has indirectly validated my perceived need for the actual Stratcom survey dataset, which is item ‘1.’ of the Information I seek. Professor Wortley, a consultant whom the LSO retained in November of 2021 to conduct a review of the Stratcom Report, as discussed below, also saw many shortcomings with the Stratcom Report and survey, but noted that he had not been provided with the Stratcom survey dataset for his review. Professor Wortley stated in his report, “As a reviewer, at times *I wished I had access to the raw survey data and been given the opportunity to conduct further analysis.* Additional analyses of the existing data could have addressed many of the questions that emerged after my reading the Stratcom Report”: p 16 of Exhibit “10,” *infra*; MK448 [*emphasis added*].

**CONCERNS REGARDING THE VALIDITY OF THE STRATCOM REPORT  
AND SURVEY**

30. My impetus as a bencher and director for seeking the Information is in part owing to the concerns that I have about the validity and accuracy of the Stratcom Report, including in particular the survey of the Professions, which is a central part of the Report. Based on my general background and common knowledge of opinion surveys, I early on noted what appeared to be Stratcom's failure to follow standard statistical methods in gathering data and information, and in the presentation of such information in the Stratcom Report. I have also become aware of apparent irregularities in the process by which the LSO dealt with the Stratcom Report and in how the policies that were derived from it were arrived at and brought to Convocation (as discussed later below).

31. The survey of the entire Professions in Ontario which had been conducted on behalf of the LSO by Stratcom was a key component of the Stratcom Report. According to the Report, the survey research was "intended to generate insights applicable to all licensees as a community" (p iv; MK107). However, on reading the parts of the Stratcom Report dealing with the survey, I noticed several concerning features regarding whether the survey was or could in fact be an accurate representation of the overall legal professional community, as was asserted. These concerns included the following:

- a. Stratcom stated that survey invitations had been sent to all licensees, that is, to all Ontario lawyers and paralegals. That meant that the group that actually responded to the survey, that is, the individuals who had completed the questionnaire, was not a “random sample” of the study population. This was not a group of individuals who had been selected by the survey researcher from the overall population at random, as a smaller subset of the overall group, to complete the survey. Instead, the sample group was entirely “self-selected,” being the relatively small number from the survey population who had individually decided to complete the survey, as compared to the large majority of the study population who, despite being individually invited to complete the survey, had decided not to do so. To me this seemed quite significant, because I knew in a general way that the basic idea of most surveys was that a smaller subgroup of the population would be selected at random from the overall population to serve as a sample. It is this random selection process which, based on the mathematical principles of probability, justifies the “extrapolation” of the results of the small sample group to the overall population by the researcher, with some claim to accuracy in representation of the whole population. If the sample is not random, then the central idea of population surveying is missing;

- b. I noticed that the Stratcom Report did not provide the “response rate” for the survey, that is, the percentage of survey invitees who had actually completed the survey. The failure to report that number struck me as an unusual omission, one that was contrary to what I had seen in other survey reports. The reporting of the survey response rate for a survey helps the reader to assess how representative or accurate the survey might, or might not, be;
- c. While the survey response rate was not provided in the report, the number of those who had actually responded to the survey invitation was provided, and that number seemed to me to be a minute proportion of the total number of those who had been invited to fill out the survey (that is, all licensees). I therefore endeavored to calculate the actual survey response rate myself. To do so, I took the number of respondents as stated in the report (3,296) and compared that to the total number of licensees as published in the LSO’s annual report for the applicable year, all of whom had apparently been invited to complete the survey (which number was 51,996). This simple math indicated a response rate of 6.3%. This response rate struck me as exceedingly low because in all the many various public opinion surveys I had reviewed over the years, out of general interest, I had never seen a survey with such a low response rate;

- d. Given that there was only a relatively small number of self-selected respondents to the survey, it seemed to me obvious that it would have been incumbent upon Stratcom to make an assessment of the significance of the high level of survey non-response, including the possibility that the large majority of licensees who chose not to respond to the survey had views and experiences that differed substantially from the comparatively small number of those who did respond. There was no such assessment at any point, and the issue was never even mentioned. This concerned me as a director because I knew that survey non-response was considered a serious issue by survey researchers, especially when the non-response rate reached high levels, as discussed below in paras 53-55;
- e. Notwithstanding the low response rate and the absence of a randomized sample, the Stratcom Report made strong, unqualified assertions about the accuracy and significance of the survey results, stating that the sample was in fact accurately representative of the views of the overall licensee population. Specifically, the Stratcom Report stated that the survey “yielded a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees” (Exhibit “5,” pp V and 23; MK108, MK137), and that “we ensured that the views of all licensees are accurately portrayed in the data and final report

(representativeness)” (*ibid*, p IV; MK107). These were forceful statements about the meaning of the survey results, specifically that they were accurately representative of the Professions as a whole, when in fact the views that had been obtained were those of only a small and self-selected minority of the Professions. I did not understand how Stratcom could make such statements given the above and my general knowledge about how surveys work; and

- f. The Stratcom Report failed in its analysis to separate out the survey responses of lawyers and paralegals, or even to indicate how many of the respondents were from each group. This created major issues about how to interpret the results, given that the composition and context of these two Professions were and remain quite different. Records of the LSO document that paralegals have a proportionately higher visible minority membership than lawyers, and if they were overrepresented in the sample, that would skew the results for the picture given of the overall Professions.

32. The above issues, about possibly invalid and inaccurate extrapolation of results from survey responses, gave me concerns about the many assertions made in the Stratcom Report about the views and experiences of the members of the Professions as a whole, especially given the wide dissemination of those assertions by the LSO. One important example (of many) was the statement in the Stratcom Report that “fully 40% of racialized licensees identified their ethnic/racial identity as a barrier or challenge to entry into the practice of law or provision of legal services”: p 38; MK152. That statement is clearly an assertion about the situation in the Professions as a whole, and it is an important one.

33. In making that assertion, Stratcom is referring to survey answers given by racialized licensees. Specifically, Stratcom is referring to the answers given by 40% of the racialized licensees who answered the survey. However, Stratcom does not tell us the actual number of how many racialized licensees answered the survey, only that the total of all licensees who responded was 3,296. That is, we are not told what number the 40% applies to, or is based on. Stratcom failed to report this important underlying data, but then nevertheless proceeded to extrapolate that result to the Professions as a whole.



34. Although Stratcom does not actually provide the simple and important number of how many survey respondents reported themselves as racialized, it is possible to make some reasonable inferences to arrive at that number, using several simple steps of logic and calculation, and the results reveal some significant perspectives.
35. Although Stratcom does not say how many respondents were racialized (that is, the actual number), Stratcom does state that 33% of lawyer respondents to the survey identified as racialized, and that 41% of paralegal respondents identified as racialized: Exhibit “5,” p 23, column 2 and p 24, column 2; MK137. However, Stratcom does not state how many survey respondents were lawyers and how many were paralegals, so one cannot simply use those percentages to calculate how many respondents of each group were racialized.
36. Nevertheless, if one uses the reasonable assumption, for present purposes, that the lawyer/paralegal division of survey respondents was proportionate to the division in the Professions as a whole, then 2,919 of the respondents would have been lawyers and 377 of the respondents would have been paralegals. This in turn would mean, using the above inputs, that a total of 1,118 of the survey respondents identified as racialized (33% of lawyers  $\times$  2,919 = 963 lawyers, and 41% of paralegals at 377 = 154 paralegals, for a total of 1,118 racialized survey respondents).

37. Therefore, when Stratcom asserted that 40% of licensees stated that their ethnicity was a barrier, Stratcom was referring to the 40% of racialized survey respondents who gave that answer, and that number would be 40% of 1,118, or 447 (including both lawyers and paralegals). In other words, Stratcom's assertion regarding the views of licensees in the Professions as a whole on this issue was based on the answers of 447 survey respondents.

38. Another important number, for perspective, is the estimated total number of racialized licensees in the Professions at the time. Again, Stratcom does not provide an actual number. However, Stratcom reports percentages, asserting that "25% of paralegals say they are racialized, while 22% of lawyers indicated this": Exhibit "5," p 25; MK139. If one assumes, as it appears, that that is Stratcom's breakdown applicable to the Professions as a whole (rather than a breakdown of actual survey responses), and if one applies those percentages to the number of lawyers and paralegals at the time as reported in the Law Society's Annual Report, one arrives at a total number of "racialized licensees" of 11,617 (22% of lawyers x 46,054 = 10,132 lawyers, and 25% of paralegals x 5,942 = 1,486 paralegals, for a total of 11,617 racialized licensees).

39. When those two numbers are compared, that is, the 447 racialized survey respondents who said that their race was a barrier out of a total of 11,617 racialized licensees who were invited to answer the survey, one arrives at an important perspective regarding Stratcom's assertion that "fully 40% of licensees" said that their ethnicity was a professional barrier (MK152). The 447 are a portion of the total number of 11,617 racialized licensees at the time (all of whom were invited to respond to the survey), which works out to a percentage of 4%.
40. The result is that, in fact, only 4% of racialized licensees said that they saw their ethnicity as a barrier, not "fully 40%," as Stratcom reported.
41. The difference arises because Stratcom simply extrapolated the small survey sample numbers to the population as a whole, and given the issues described above, it seems to me that such extrapolation is extremely problematic.
42. The issues are that Stratcom was not transparent about some basic numbers, and even more importantly, that the results stated by Stratcom seem to be invalid and seriously misleading.

43. The above assertion regarding the 40% number was very widely disseminated in the Professions by the LSO. For example, that specific assertion (about the 40%) was included in the later Consultation Paper, was included in 'Bencher Speaking Notes' that were prepared as part of the Communication Plan to assist benchers in speaking publicly on the matter (see Exhibit "7"), was included in an educational video prepared by the LSO that essentially all licensees were required to view as part of compulsory Continuing Legal Education, and was cited by a bencher on a popular television news and analysis programme.
44. Further, the same issues or concerns regarding the extrapolation of survey response numbers (as in the 40% example) apply to much of the content of the Stratcom Report, and to many other assertions in the Report, in addition to the one specific 40% example.
45. It is important to note that Stratcom could easily have provided the actual basic numbers discussed above, for clarity and transparency, but chose (or perhaps was directed) not to do so.
46. In that regard, Stratcom states in its Report that "we received clear direction from the LSUC and Working Group throughout the research process": Exhibit "5," p 21; MK135. I have concerns, and I have to question, whether some of the lack of transparency in the Stratcom Report regarding disclosure or non-disclosure of data, and some of their methodology regarding extrapolation of survey responses, may have been inappropriately influenced by some LSO benchers or staff.

47. It is also noteworthy that while the above concerns have been repeatedly expressed and disseminated by me for several years, no response has ever been forthcoming from Stratcom regarding these critiques of its work.

48. My review of the above issues with the Stratcom Report caused me to seriously question the quality of research and policy work being carried out by the LSO, and further caused me to think that the Professions, and the public, were and are being misled by the LSO.

49. The issues with the Stratcom Report also caused me concerns about the major consultation process that the LSO carried out based on the Stratcom Report. The many responses that the LSO received from legal organizations and others in response to the LSO's Consultation Paper were largely based on the information in the Consultation Paper, which was based on the Stratcom Report. To the extent that those responses were based on erroneous or misleading information from the Stratcom Report, those responses themselves are called into question.

50. After I was elected a benchers of the LSO in 2019, I attempted to raise my concerns about the Stratcom Report at the first meeting of the Equity and Indigenous Affairs Committee (“**EIA Committee**”), of which I was a member, but my comments in the meeting were interrupted and cut short. I was told to put my concerns in writing, which I did in the form of a detailed *Critical Review of the Law Society’s Challenges Report: Representations to the Law Society EIA Committee and Benchers* (“**Critical Review**”). Given what I viewed as the seriousness of my concerns, I distributed the Critical Review to all Benchers and to senior LSO staff by email on January 8, 2020.

*Critical Review, January 8, 2020, attached as Exhibit “9” (MK416)*

### ***The LSO Peer Review Panel’s Assessment of the Stratcom Report***

51. After about two years of my concerns about issues with the survey and other parts of the Stratcom Report being repeatedly raised but seemingly ignored by the majority of benchers and by senior LSO staff, and almost two years after the distribution of my Critical Review, the CEO of the LSO unexpectedly announced in an EIA Committee meeting on November 25, 2021 that the LSO had retained three consultants to review several of the LSO’s data projects, including the Stratcom Report, which she labelled a “**Peer Review Panel.**”

52. The three consultants on the Peer Review Panel presented oral reports to the EIA Committee at a meeting of the Committee on May 3, 2022, at which I was present. The three Panelists eventually each filed a written report, after much delay (which is discussed further below). In their reviews, the three Panelists echoed many of the concerns I had raised earlier.

*Expert Panel Reports, attached as Exhibit "10" (MK432)*

53. The Peer Review Panelists all raised concerns about the issue of the very low response rate to the Stratcom survey (references are to Exhibit "5"):

- a. Professor Wortley states at p 9 (MK441) of his report: "the response rate for the Stratcom survey is only 7.49 per cent. ...It should be noted that, by any standard, these are very low response rates";
- b. Ms. Ratnasingham states in her report at p 75 (MK507) that "the response rate for this survey is very low";
- c. Professor Ornstein states that the "low response rate is a ... serious threat to the survey goal of representing 'the whole population of licensees'": p 49; MK481.

54. The Peer Review Panel similarly agreed that a consequence of the low response rate was that the survey results could not be validly extrapolated and generalized to the overall Professions:

- a. Professor Wortley states at p 23 (MK455) that “[s]ampling issues, and a low response rate, prevent the generalization of findings to the broader legal community ...” He also notes that he does “not think that any [data] weighting strategy can overcome the fact that those who responded to the survey may be significantly different than the 90 per cent of licensees who apparently did not participate in the survey”: p 11; MK443;
- b. Ms. Ratnasingham states at p 79 (MK511) that the “very low response rate impacts the ability to generalize the findings to all licensees in Ontario ...” and “... [data] weighting ... does not compensate for any differences in views by those that chose not to participate (i.e. nonresponse bias).” She goes on to say at p 80 (MK512) that “[i]n general, [the low response rate] would also lead one to question the credibility of the survey method”;
- c. Professor Ornstein opines that “no statistical magic can measure and account for the bias resulting from a very low response rate”: p 51; MK483. He states further that “we must assume the survey respondents were more concerned about racism, reported more experiences of unfair treatment, were more interested in the issues” than those who did not respond to the survey: p 50; MK482.



55. The Peer Review Panelists thus were of the view that the very low survey response rate had a major impact on a key issue, namely, the degree to which the small number of survey responses could actually be held up as representing the views of the overall Professions, including the more than 90% of the Professions who did not respond to the survey invitation.

56. The Peer Review Panelists also commented negatively on the fact that the low survey response rate was not disclosed by Stratcom in its report:

- a. Professor Wortley states that he was “surprised, and somewhat disappointed, that the Stratcom report does not provide a transparent discussion of the survey response rate. This gives the impression that the authors wanted to avoid this sensitive topic and perhaps prevent criticism of their report”: p 9; MK441;
- b. Professor Ornstein writes: “Surprisingly, Stratcom does not report the overall survey response rate or the response rates for racialized and non-racialized licensees ...”: p 49; MK481.

57. After I had earlier raised my various concerns about the survey, including the non-disclosure in the Stratcom Report of the survey response rate, I became aware that such non-disclosure of the survey response rate in the LSO’s 2014 Stratcom Report was a departure from Stratcom’s own previous practice. In a previous survey report prepared by Stratcom for the LSO on a different topic and reviewed by the EIA Committee in May of 2012, Stratcom included a detailed description of the survey methodology, outlining that the members of the Professions that were

interviewed were chosen at random, setting out specifically how many individuals were interviewed, breaking out the respondents into relevant categories by number, and setting out the “margin of error” for a survey of this structure. In another report prepared earlier for the LSO by Stratcom on a different topic, Stratcom gave the number of respondents, identified the survey response rate, and described the margin of error for that level of participation. Both of these previous cases are in stark contrast to the Stratcom Report at issue here, raising the question as to why Stratcom changed from the reporting of this type of information to non-reporting, for this one particular report.

58. It is clear that the issue of the low survey response rate would have become apparent to Stratcom at an early stage in their work for the LSO, well before the delivery of their first draft Report. The low survey response rate would have been obvious within a day or two of the deadline for the return of the survey responses. I do not understand how such a fundamental and obvious issue was simply, to my knowledge, never openly mentioned, not then, and never thereafter.

**Prior Stratcom survey, circa 2004, attached as Exhibit “11” (MK527)**

**Prior Stratcom survey, circa 2014, attached as Exhibit “12” (MK539)**

### ***Concerns about the Working Group process***

59. A review of the LSO records shows that there was an anomalous lack of in-person involvement of Stratcom personnel from an early point in Stratcom's work, or what could be described as a disengagement by Stratcom personnel.

60. The records of the Working Group show that at an early stage in Stratcom's work there was some disagreement among members of the Working Group about the appropriateness of Stratcom's work and methodology. This disagreement was communicated to Stratcom during the Working Group meeting of May 8, 2013.

**May 30, 2013 Working Group Agenda and Materials, p 12, attached as Exhibit "13" (MK548)**

61. The records relating to Working Group meetings after that May 8, 2013 meeting then do not show any further appearance by any Stratcom representative at any actual meeting, including at no meeting of the Working Group, or of the EIA Committee, or of benchers.

62. That is, during a lengthy period after May 8, 2013, which period included the receipt of the survey results, the preparation of the draft Stratcom Report, the delivery of the draft report to LSO staff, the delivery of the final report to staff, the preparation of the subsequent major Consultation Paper, and the presentation of the Consultation Paper to Convocation, a period of one and a half years, at no point did any Stratcom representative ever appear at any meeting to explain the methodology or the results or to answer questions. I find this extraordinary, not only from

{KL.00012343.8 }

a common-sense governance perspective, but in comparison to usual practice at the LSO, in which the authors of major studies or reports are usually made available for such explanation and inquiries.

63. Of equal concern is the complete absence of records of Working Group meetings during an important lengthy period. The extensive records of the LSO regarding past meetings, to which I have access as a bencher, and which usually carefully record and document such proceedings, contain no materials for any Working Group meeting between June 27, 2013 and October 15, 2014, a period of well over a year. This documentary gap is of concern because during that period a great deal of important activity occurred. During that time the LSO received a draft of the Stratcom Report for review, and then the final Stratcom Report, and then the substantial and important Consultation Paper and Communication Plan were prepared and were presented to Convocation on October 30, 2014 for approval. It is puzzling to me that throughout that long period of important work, there are no records of Working Group meetings, or if it met, of what transpired. This raises serious issues of governance, transparency, and accountability.

## **THE INCLUSION INDEX**

64. One of the 13 recommendations approved by Convocation in its adoption of the Working Together Report was for the LSO to create and publish every four years an Inclusion Index, conceived as a firm-by-firm public ranking of all law firms in Ontario with more than 25 licensees (or, more specifically, of all such “legal workplaces”, a broader term than law firm). In my original review of the 13 recommendations, I had noticed that the Inclusion Index raised some obvious common sense statistical issues.
65. The Inclusion Index was to be based on a set of questions that were included in the LSO’s annual filing requirement for 2018, which essentially all licensees were required to answer. These questions asked the licensees about various aspects of their demographics, and also contained “inclusion” questions, which asked them about their experiences in their workplace.
66. For purposes of the Inclusion Index project, the LSO planned to take the answers from all the individual licensees in a particular law firm (or other legal workplace) with 25 or more licensees, analyze the results for that specific firm or workplace, and then compare the results from different law firms and workplaces against each other. These results from approximately 200 of Ontario’s largest law firms and legal workplaces would then be compiled into a list which ranked all of them individually on a descending scale. That firm ranking list would then be published by the LSO.

67. I became concerned that the Inclusion Index idea was the product of deficient statistical analysis at the LSO, and that the LSO was about to publish a major report which, while founded on poor analysis, would have a damaging effect on the reputation of a large number of law firms and legal workplaces in Ontario, based on their public ranking in the Inclusion Index list.

68. My initial concern was heightened by the fact that the LSO's Working Together Report itself, at p 32, cited an expert report on the topic of "Measuring Diversity in Law Firms: A Critical Tool for Achieving Performance" and, ironically, this expert report (cited by the Working Group itself) specifically warned against doing precisely what the LSO had resolved to do. Specifically, that report warned that an index approach is "not appropriate for smaller workplaces where the number of respondents in different comparison groups is likely to be smaller than 25 employees. Generally, *firms of fewer than about 150 employees will not have sufficient numbers of respondents* from many diversity groups to facilitate a valid examination of group differences through general employee satisfaction or engagement surveys": p 38; MK602 [*em.added*].

*Measuring Diversity in Law Firms* report by Dr. Lorraine Dyke, attached as Exhibit "14" (MK558)

69. The LSO eventually hired a consultant, Diversio, to implement the Inclusion Index project. Diversio's project proposal caused me to consider the Inclusion Index project in more detail, including the following issues:

- a. What would be the effect of survey respondent self-selection in each law firm or workplace? That is, would the views of those who chose to answer the survey possibly be different from the views of those who chose not to answer? If so, the survey results of the law firm would be biased and not accurately represent the actual or real situation in that firm;
- b. For many firms or workplaces, the sample size would be very small, by surveying methodology standards. Small samples inherently create the possibility of substantial inaccuracy in the results due merely to the operation of simple random variation (with no relation to the underlying realities), a problem that was identified in the above-mentioned Measuring Diversity in Law Firms report itself (as cited in the Working Together Report);
- c. The survey dealt with personal issues, on which some individual licensees might not want to answer survey questions, due to fear of their answers becoming attributable to them in the firm. This incentive to not answer questions would distort the survey results, especially given the small size of many of the firms;

- d. If two particular firms had small statistical differences in results between them that were due merely to simple random variations (which might have no relation to the reality inside a firm), those small purely random-based results could nevertheless have large consequences, in that they would result in quite large differences in the numerical ranking of two particular firms. That is, a small difference between two firms' internal survey results, due purely to random variation, could make a big difference in the ranking of the two firms in the public list;
- e. The consequences to many firms of this public ranking could be enormous, in terms of reputation, and in terms of lawyer and articling student recruitment. A firm's reputation could be severely harmed due purely to random statistical variation, with no linkage to the underlying reality in the firm; and
- f. Public ranking of firms would inevitably self-perpetuate the ascribed ranking of any given firm. A firm's low score would deter potentially desired candidates, who would improve the firm's profile, from joining the firm. On the other hand, a high-ranking firm would attract new recruits of the similar type. The Index therefore could "backfire," by perpetuating or accentuating each law firm's ascribed rank and pigeon-holing firms in a damaging manner.



70. Because of these concerns, I sent a detailed email dated September 9, 2020 to the chair and members of the EIA Committee outlining some of my concerns. However, at the EIA Committee meeting the next day, my concerns were disregarded. Given that the EIA Committee majority was brushing aside my concerns, I sent a similar email to all benchers on September 15, 2020. Again, I received no substantive response to my concerns.

September 9, 2020 Email to EIA Committee, attached as Exhibit "15" (MK610)

September 15, 2020 Email to EIA Committee, attached as Exhibit "16" (MK614)

### ***The LSO Peer Review Panel's Assessment of the Inclusion Index***

71. As mentioned above, in November of 2021 the CEO of the LSO unexpectedly, and without prior consultation with the Committee, announced in an EIA Committee meeting that the LSO had retained three consultants to review several of the LSO's data projects. In addition to reviewing the Stratcom Report, as described above, the Peer Review Panelists were to review a draft of the Inclusion Index and its methodology in detail, and eventually delivered a series of harsh criticisms of the draft Inclusion Index (echoing many of my earlier expressions of concern), and recommended that it not be published. The full opinions of the Panelists regarding the Inclusion Index can be found in the written reports, attached as Exhibit "10" (MK433). However, I highlight a few of the major criticisms:

- a. Professor Ornstein opined that “[f]or the many workplaces with low response rates and/or small absolute numbers of respondents, the resulting Inclusion Score is unreliable and potentially biased”:  
p 58; MK490;
- b. A core feature of Diversio’s methodology was the creation of three separate concepts to measure each of Commitment, Diversity, and Inclusion, and then to combine them into one single “Index” number for each firm. This aggregated Index number for each firm would be used for public ranking of the firms. However, the Peer Reviewers stated that there was no basis or justification for combining those three concepts into one number, which was a key part of Diversio’s Inclusion Index methodology. Professor Ornstein states that an “index based on the combination of *essentially unrelated* Commitment, Diversity and Inclusion scores does not provide a meaningful measure of the overall extent of the progress of equity in workplaces”: pp 58-59; MK491-2 [*emphasis in original*];
- c. Diversio’s methodology begins by dividing all licensees into two groups, “Dominant” and “Non-dominant.” The Dominant group consisted of “white, heterosexual, Anglophone men without a disability”: p 57; MK489. The Non-Dominant group included everyone else. By creating these two broad categories, Diversio “lumped together” into the Non-dominant group all licensees who were women, persons of colour, Francophones, LGBTQ2+

individuals, and persons with disability. Professor Ornstein explains why this is problematic when he states that in “averaging the survey responses of all non-dominant licensees, women, who account for about 45 per cent of all licensees, have much more effect on the Inclusion Score than racialized licensees, who account for around 25 per cent of licensees. Francophones, LGBT2Q+ licensees, licensees with a disability, each around 5 per cent of the population, have even less impact; and Indigenous licensees, around 2 per cent, almost none”: *ibid*; MK489;

- d. The Peer Review Panelists expressed concerns that Diversio’s methodology would allow some individual licensees in firms to be actually identified on some deeply personal characteristics, with potentially harmful effects to those individuals: see pp 33 / MK465, 55 / MK487; and
- e. All Peer Review Panelists expressed concern that Diversio’s methodology lacked transparency: see pp 24 / MK456, 53 / MK485, 56 / MK488, 91 / MK523, and 92 / MK524.

***The Inclusion Index has the Effect of Imposing Race and Gender Quotas on Law Firms***

72. In reviewing the information regarding the draft 2019 Inclusion Index, I became aware that the detailed mathematical formulas in Diversio's methodology raised an important policy issue that was hidden beneath the surface. This issue was not addressed by the Peer Review Panelists, and has never been brought to the attention of the benchers by LSO staff.
73. This issue arises out of Diversio's formulas for arriving at an Inclusion Index number for each law firm or legal workplace, to be then used for a public ranking of those firms by the LSO. The problem is that Diversio's formulas were designed to basically consist of a demographic comparison of the race and gender makeup of each firm with the race and gender make-up of the general population in the region of its location. The closer the match to the demographic numbers, the higher the firm's ranking.
74. This part of the methodology effectively amounted to a ranking of law firms based on race and gender quotas. Firms would be publicly ranked not by the competence of their members, but by how closely their race and gender composition matched the numerical composition of race and gender in the general population in their geographical area. In short, if a firm hired individuals based purely on their race and gender, to meet the *de facto* quotas determined by the LSO through the Inclusion Index formula, they would be ranked higher by the LSO in its published ratings.

75. To quote the explanation by Diversio of its methodology:

... Diversio compared the representation of each LWP [Legal Workplace] to the demographics of the region in which they were located. ... LWPs were awarded points for each of the identified demographic traits ... . Full points were given if an LWP's demographics were at or above the regional population benchmark. ... If LWPs had lower representation than their regional population, points were deducted ... (p 5; MK623).

*Memo re: LSO Follow-up Questions on the Inclusion Index methodology, April 22, 2020, attached as Exhibit "17" (MK618)*

76. I note that the memo that Diversio provided to LSO staff explaining its methodology was dated April 22, 2020 but was not disclosed to the EIA Committee by staff until just prior to the May 3, 2022 EIAC meeting – a lag period of two years.

77. This issue of a race and gender quota built into the Inclusion Index methodology, which amounts to a momentous policy decision with major implications throughout the Professions, has never been properly brought to the attention of benchers. I attempted to raise this concern in an email to the EIA Committee and benchers in September of 2020, but I did not at the time have the detailed methodological information set out in Diversio's above memo, due to late disclosure by LSO staff. In any case, my concerns were ignored by the majority of benchers and by LSO staff.

78. The Information I have requested in this action includes the dataset for the 2019 Inclusion Index that is in the LSO's possession, which would allow me to work out how this hidden part of the mathematical formula of the Inclusion Index would have specific effects. I require that information to enable me to bring this issue properly to the attention of my fellow benchers, and to discharge my obligations as a bencher.

### **THE LSO'S CLANDESTINE ENGAGEMENT OF THE PEER REVIEW PANELISTS**

79. Although most of the methodological critiques that I had been raising for several years about the Stratcom Report survey and the Inclusion Index, all the time being ignored by LSO staff and the majority of benchers, were eventually validated and echoed by the Peer Review Panelists, I remain concerned about the process by which the Peer Review Panel was and continues to be engaged, from a governance point of view. That ongoing concern is the basis for some of my Information requests.

80. In November of 2021, a few days before the EIA Committee meeting of November 25 mentioned above, members of the Committee received a memo advising them that the LSO had retained three purported expert consultants to form a "Peer Review Panel" which would spend some six months reviewing the Stratcom Report, the Inclusion Index project, and several other LSO data projects, to report to the EIA Committee in May or June of 2022. In this memo there was no mention of the concerns I had been repeatedly raising about those projects.

81. The EIA Committee had not had any prior notice that such a major review was planned. The Committee had not had any input into the selection of the panelists, had not had any role in the creation of the actual mandate or terms of reference of the Panel, and had not had any opportunity for input into any of the process.

82. On receiving the pre-meeting memo, I became concerned about the lack of transparency of the process. I therefore wrote a detailed email to the Chair and members of the EIA Committee, and copied the email to all benchers on November 22, 2021: Exhibit "19," *infra*; MK636. I received no substantive response to my email from staff, or from the majority of benchers. In my email, I requested some specific information about the process by which the Panelists had been retained and instructed. I received no substantive response to that request, which now forms part of the Information requested in this action.

83. At the November 25, 2021 EIA Committee meeting the LSO CEO was present, which was unusual. The CEO announced that she, along with other senior staff and with some involvement of the Treasurer, had chosen three experts and instructed them on the project. At the meeting, the CEO orally and for the first time provided the names of the three already retained and instructed Panelists, which I had specifically requested in my pre-meeting email. During that EIA Committee meeting I expressed my objections to the process, to no avail.

***Late Disclosure of the Peer Review Panelists' Written Reports***

84. After a lengthy period of silence about the work of the Panelists, in late March of 2022 EIA Committee members were advised that an EIA meeting would be scheduled for the end of April or the beginning of May, at which meeting the three Peer Review Panelists would present their reports. Given the importance and complexity of the topic, I emailed LSO staff asking about receiving written materials from the Panelists in advance of the meeting to enable proper review before the meeting. An LSO staff member replied immediately by email, advising: "I can confirm that the Committee will be provided with a copy of the peer reviewers' report in advance of the May 3rd EIAC meeting."

85. However, no such written reports were provided to EIA Committee members before the May 3, 2022 meeting. Instead, the three expert Peer Review Panelists attended that Committee meeting by Zoom, and made oral presentations to the Committee about their review. EIA Committee members had not received any background or written materials beforehand from the Panelists.



86. Before the Panelists spoke at the meeting, an LSO staff member stated that Committee members would receive the written reports of the Panelists “in a few weeks”. In fact, Committee members received no written reports from the Panelists for about four months after the meeting. Those reports quietly appeared in September in materials posted for a September EIA Committee meeting, buried in a lengthy set of materials, without any notification that they were there.

87. When I was finally able to review the written reports in late September of 2022, I noticed that one Panelist’s report was dated March 24, 2022, another was dated April, 2022, and a third was dated June 2022. That is, at least two of the reports were dated before the important May 3 Committee meeting, and before other meetings that dealt with the topic in important ways in May and June of 2022.

88. The failure to provide the written reports of the Panelists in a timely manner considerably affected my ability to perform my duties on those topics. The subject matter of those reports was complex, technical, and detailed, and the written reports included many important details which were not dealt with in the Panelists’ oral presentations on May 3, 2022. The fact that I did not have those written reports hampered my ability to carry out my oversight functions not only at the May 3 meeting, but at Committee meetings on May 12 and June 17, and at Convocation on June 28, where this topic was dealt with in a major way.

***Public Misuse of the Peer Review Panel Results in the Cancellation of the Inclusion Index***

89. Some of the important aspects of the oral presentation of the three Peer Review Panelists at the May 3, 2022 EIA Committee meeting pertained to the Inclusion Index.

90. Many of the comments of the Peer Review Panelists focused on an actual draft Inclusion Index that the consultant for that project (Diversio) had delivered to the LSO in the fall of 2019. The fact that the LSO had long had a draft of the Inclusion Index was first revealed to Committee members just before the November 25, 2021 Committee meeting.

91. The disclosure in November of 2021 that the LSO had in fact been in possession of a draft of the important Inclusion Index since 2019 surprised me. The Inclusion Index had been a major undertaking by the LSO, yet in my two years as a member of the Committee there had been no mention or briefing to the Committee that that important work had actually been delivered. It seemed unusual that this important component project of the Working Together Report had actually been completed in draft form and delivered to the LSO but had not been mentioned to the EIA Committee at all over a period of two years.

92. In their oral presentations at the May 3, 2022 Committee meeting, all three Panelists delivered major critiques of the methodology of the 2019 draft Inclusion Index (some of which are set out above), and all Panelists recommended that the Inclusion Index as received not in fact be published by the LSO, as had been planned. The result would be that that major effort, with a draft report already completed at great expense, was going to be abandoned in its present form, at least for the first iteration of the project.

93. The cancellation of the 2019 version of the Inclusion Index required a decision of Convocation, since publication of such a report had been part of Convocation's earlier adoption of the Working Together Report. That issue was therefore placed on the agenda for the June 28, 2022 Convocation (by what process, I do not know).

94. In an unusual step, the LSO issued a press release a few days before the June 28, 2022 Convocation, advising the Professions at large that the EIA Committee was recommending that the long-expected Inclusion Index would not be published. I do not know who wrote and who authorized that press release.

95. However, the press release made no mention of any of the critiques of the draft Inclusion Index which had been made by the Panelists and others, or of any of its fatal defects. Instead, the press release stated only that the report had been “delayed by the onset of the pandemic” and that “given the passage of time” since 2019 the Committee was recommending that the Inclusion Index report not be published (MK633).

LSO Press Release, dated June 23, 2022, attached as Exhibit “18” (MK632)

96. Similarly, the staff briefing memo provided to benchers prior to the June 28 Convocation meeting, which included a recommendation for the non-publication of the existing draft Inclusion Index, gave no hint of the gravity of the methodological problems with the Inclusion Index.

97. As a director of the LSO corporation, I am concerned that the benchers and our stakeholders were misled by receiving no hint that there had been serious and expensive mistakes made by the LSO on this important project.

***Continuing Secretive Work of the Peer Review Panelists to Paper Over Past Blunders***

98. In their oral presentations to the Committee on May 3, 2022, all the Panelists, after heavily criticizing the Stratcom Report and the Inclusion Index, nevertheless concluded by recommending that the projects set out in the Working Together Report should continue.

99. In the case of the Stratcom Report, Panelist Professor Ornstein, after describing a litany of problems with the Report, stated at the meeting that the Stratcom Report was simply “water under the bridge.” In his written report (only made available to Committee members four months later), Professor Ornstein wrote that “[i]n any event, the findings of the 2014 Stratcom report are baked into the trajectory of LSO engagement and its considerable virtues and significant defects are moot” [*emphasis added*] (MK483).

100. Regarding the Stratcom Report, Professor Wortley and Ms. Ratnasingham, after setting out a number of fundamental methodological critiques of the Stratcom report survey, then stated in their written reports that whatever the defects of the survey as an attempt to accurately describe the Professions as a whole, the mere fact that 3,296 licensees had responded was a major achievement and should be built upon. It was not clear to me, from the point of view of survey methodology, that they had any basis for making such statements, nor did they explain any such rationale.

101. At the first post-summer meeting of the EIA Committee in 2022, the Committee was advised by LSO staff that the three Panelists had simply been rehired for new and extended contracts to continue data collection work with the LSO, a decision that, like the decision to hire them for the initial review, had been made without any prior consultation with, or approval by, the Committee.

102. The result is that the three Peer Review Panelists, who had found numerous defects in major and expensive previous LSO statistical projects, but then simply dismissed those issues as “moot”, or tried to salvage something from the projects, however weak, were then secretly hired to proceed with new future data and statistical projects, without input or approval of the relevant Committee.

103. As a bencher and director of the LSO corporation, I am concerned that the entire process involving the three Peer Review Panelists has been characterized by secrecy, disregard of the governance role of the Committee, unilateral actions by LSO staff without informing or obtaining approval from the Committee, the withholding of important information from the Committee (and Convocation), dubious and inexplicable pronouncements by the Panelists, and the dissemination of misleading information to benchers, to the Professions, and to the public. I am concerned that I, and other benchers, have been unable to properly fulfil my and our oversight role and responsibilities due to the withholding and misrepresentation of information. In that context, I require the requested Information to properly carry out my due diligence oversight role.

**PLAINTIFF'S NEED FOR THE INFORMATION TO CARRY OUT HIS  
DIRECTOR'S DUTIES**

104. Although there have been many developments since I first raised concerns about the Stratcom Report in the fall of 2019, I believe that the grounds for my various specific Information requests, as set out in Schedule A of the Statement of Claim, remain valid and that the Information is necessary for me to adequately carry out my oversight duties as a benchner and director.

105. After several years of having my concerns ignored by LSO staff and the majority of benchers, most of my concerns about the possible methodological invalidity of the critically important and foundational Stratcom Report survey have been echoed by the Peer Review Panel hired by the LSO. Further, my concerns about the possible invalidity of the far-reaching and potentially harmful Inclusion Index were also echoed by the Peer Review Panel, with the result that the publication of the existing draft of the Inclusion Index was cancelled.

106. Nevertheless, the now apparent defects in the substance and process of these reports have not properly been acknowledged or dealt with by either the LSO staff or the majority of benchers, and I believe that they continue to constitute transparency and governance issues at the LSO.

107. Similar concerns apply to the work of the Peer Review Panel itself. Those Panelists, who had been selected, hired, and instructed in secret by LSO staff, without any involvement or oversight by the EIA Committee, ended by recommending that the policies founded on the Stratcom Report be continued, despite the numerous defects in the Stratcom Report, which they themselves had pointed out.
108. The benchers overall have been kept in the dark about the seriousness of the defects underlying the Working Together Report, in the form of the prior Stratcom Report and the subsequent Inclusion Index which it recommended. The written reports of the Peer Review Panelists were never provided to benchers generally, nor were any accurate briefing materials regarding the contents of the Peer Review Panelists reports provided to benchers generally by staff.
109. The members of the Professions at large have received no information from the LSO acknowledging any problems with the Stratcom Report, the Working Together Report, or the Inclusion Index. Instead, the Professions at large were advised by an LSO press release in June of 2022 that the planned publication of the already existing draft Inclusion Index was being cancelled due to the passage of time, not because it was completely defective.



110. The result is that all of the Information requested in this action is still required by myself to fulfill my role and duties as a benchner and director, including in order to continue analyzing in detail the various issues and problems associated with these reports, so as to be able to set them out in more detail, and to provide better information to the benchers as a whole and to other stakeholders.

***The Stratcom Survey Dataset (SOC, Schedule A, para 1)***

111. The Peer Review Panel was retained to conduct a review of the Stratcom Report and survey, but, remarkably, the Panelists were not given a copy of Stratcom's actual survey dataset (that is, the detailed data results) to examine. As a director of the LSO, I require the detailed dataset because I believe that there are further issues with the Stratcom survey which a review of the dataset would disclose and clarify, and of which benchers should be made aware.

112. To illustrate, there is an important conflict between, on the one hand, some basic Stratcom survey numbers as described by Stratcom and referenced by the Peer Review Panelists and, on the other hand, the numbers otherwise published by the LSO. According to the Stratcom Report, the survey invitation was emailed to "all licensees" (MK104). Professor Wortley states that that number was 44,021 at the time. However, the LSO's official published Annual Report for the relevant period states that the total number of licensees at the time was 51,996.

That is a difference of 7,975 licensees. It is unclear whether those

{KL.00012343.8 }

approximately 8,000 licensees were included in the survey invitations or not. If Professor Wortley's description and the official LSO numbers are both to be given meaning, then about 8,000 licensees were not included in the survey invitations, contrary to what the Stratcom Report states.

Aside from this potentially significant factual misstatement by Stratcom, that would raise the question of what effect those omitted 8,000 licensees would have had on the survey response profile.

113. The Stratcom Report states that 11% of survey respondents did not identify whether they were racialized or non-racialized. Since the racialized/non-racialized distinction was the central analytical point of the whole survey, and since 11% is a significant segment of the survey sample, which as a "potential swing vote" would have a substantial effect on many of the key survey findings, it is important to know how that 11% was handled. The dataset would shed light on this point, which Stratcom does not explain. If the 11% was included or counted in the total number of survey respondents as given by Stratcom (3,296), then the "real" survey response rate is significantly lower than what was reported, since those 11% of responses do not address the key issue, and therefore the total response number should be clarified and corrected (by being reduced). Questions would also arise as to how that 11% of responses were used; for which questions, and for which conclusions.

114. Stratcom says it “weighted” the sample, that is, it took the raw data numbers from the survey responses and somehow processed them mathematically to adjust the sample numbers to compensate for overrepresentation of some types of respondents. This is important because two of the Peer Review Panelists made it clear that no such “weighting” could overcome the inherent bias problem arising from such a low survey response rate when the respondents are self-selected: *supra*. Since Stratcom says that its “weighting” procedures did in fact produce a truly representative sample, which contradicts the opinions of the Peer Review Panel, the details of that “weighting” process should be made transparent for examination, through provision of the dataset.

115. Professor Ornstein states in his report that the results of the Stratcom survey “are baked into the trajectory of LSO engagement and its considerable virtues and significant defects are moot.” If the Stratcom survey results are in fact “baked into” the LSO’s set of programmes and policies, and if the survey is subject not only to the errors already identified but potentially to even more errors, that is all the more grounds for a full review of the actual Stratcom dataset. The survey is far from “moot”, since it is still being used as the basis for many policies, including the 13 recommendations from the Working Together Report. Such review is needed to see the full degree to which many far-reaching and current LSO policies may in fact be based on information and data errors.

***The Inclusion Index Dataset (SOC, Schedule A, para 14(a))***

116. Despite the numerous problems with the concept of the Inclusion Index, pointed out by the Peer Review Panelists (and earlier by myself), and despite the decision not to publish the 2019 Inclusion Index, the LSO remains formally committed (through its past adoption of the Working Together Report) to continuing with a quadrennial Inclusion Index. Therefore, the issues with the Inclusion Index idea remain very much alive.

117. The problems with the Inclusion Index began early on. As described above, the Working Group ignored a strong and blunt warning about firm-by-firm data collection in an expert report which was actually cited in the Working Together report itself, namely that data collected from firms smaller than 150 licensees would be unreliable for such a comparison: Exhibit “14,” *supra*; MK559. That point remains valid to this day, and conflicts with the existing and continuing formal mandate for future versions of the Inclusion Index.

118. In his report as a Peer Review Panelist, Professor Ornstein warned that the low sample numbers and the low response rates from many firms, and the high variability in response rates between firms, made the 2019 Inclusion Index unfit for publication by the LSO. Those problems are likely inherent in the basic idea of the Inclusion Index, and thus are likely to affect the future versions of the Inclusion Index to which the LSO is committed, but they have not been fully explained or considered. A more detailed review of the Inclusion Index dataset would allow those issues to be more clearly identified and considered.

119. There appear to be discrepancies with how the response rates for various firms were handled by Diversio, in a way that hides deficiencies with the data that the Peer Review Panel did not touch on. Diversio in its data counted as a survey response any returned survey which answered even *one* of the important Inclusion questions. That means that even if a respondent did not answer most of the questions, that respondent would still be counted for purposes of the survey response rate. This is a potentially significant distortion of the key response rate numbers, which a review of the dataset would clarify.

120. Since the LSO is formally committed to further iterations of the Inclusion Index process, which is now proceeding seemingly in secret and without oversight by the EIA Committee, and given the gravity of the identified deficiencies with the Inclusion Index methodology used so far, and the potential for more deficiencies, and the potentially harmful consequences of the publication of an Index, it is critical that the dataset already used be carefully examined.

***LSO's Engagement of the Peer Review Panelists (SOC, Schedule A, paras 19-23)***

121. I have expressed concern above about the fact that the Peer Review Panelists were selected, retained, and instructed in a clandestine process by LSO staff without any foreknowledge of, information to, or oversight by, the EIA Committee. The result has been a Panel that, on the one hand, leveled significant criticism against the Stratcom Report survey and Inclusion Index, and then on the other hand, proceeded to recommend further work based on the Stratcom Report (suggesting its deficiencies are “moot”), and which recommended extensive further data collection work for what appears to be another iteration of the Inclusion Index. In my present assessment, as a benchner and director, the whole process is tainted, and it remains important to receive the requested Information regarding the origins and instruction of the Panelists to assess what happened.

***Lengthy gap in Working Group records (SOC, Schedule A, para 9)***

122. I remain concerned from a governance perspective about the highly unusual absence of any records of Working Group meetings or proceedings during a gap of over a year from June 2013 to October of 2014, as described above (*supra*, paras 59-63). During this period a great deal of important work was being done, including the receipt of the draft and final Stratcom Reports and the preparation of the detailed Consultation Paper, which was widely disseminated in the Professions. Not only is that gap a concern in itself, but in my assessment these steps resulted in the wide distribution of important misinformation, and I am concerned in terms of governance as to how that happened.

***Financial cost of the Stratcom Report and Inclusion Index (SOC, Schedule A, paras 7 and 13)***

123. Both the abandoned 2019 Inclusion Index and the Stratcom Report with all of its defects that I have discussed, were expensive. They cost the Professions, who finance these projects through their LSO licensing dues, a great deal of money. In response to my specific and repeated requests, the Treasurer advised that the LSO had paid Stratcom \$120,000 for its work and Diversio \$300,000 for its defective and now abandoned 2019 Inclusion Index. However, I am uncertain as to how accurate that information is and I require the actual financial records to confirm those expenses.

124. I believe that this money was entirely wasted, given the defective quality of the work, and that there has been no acknowledgement of the seriousness of such wastage. Indeed, there has been a resumption of similar work from which I fear the same result.

125. When benchers raised these financial concerns at the June 28, 2022 Convocation, Bencher Julian Falconer, who had been heavily involved in these projects, stated on the public record that: “[w]e will continue to make mistakes and spend money and have to be honest with members about it. That's how people with dignity operate. I don't have an issue with that. But I agree with Bencher Shi, there should be transparency about all of that.”

***Internal LSO Responses to Klippenstein's Critical Review of January, 2020 (SOC, Schedule A, para 11)***

126. Most of the concerns regarding the Stratcom Report survey as set out in my January 2020 Critical Review have now been echoed by the Peer Review Panel, after having seemingly been ignored by LSO staff for several years. These problems should have been dealt with earlier. It is important to find out why they were not, so that the LSO can take corrective governance measures.



***Cultural Competency bar admission course training materials (SOC, Schedule A, para 18)***

127. I am concerned that bar admission course materials on the topic of Cultural Competency will likely contain misinformation based on the Stratcom Report and the Working Together Report, due to methodological errors and misleading and mistaken statistics. These training materials will be and have been taken at face value by thousands of new entrants to the Professions, and I am concerned that they are being misinformed. As a benchers and director of the LSO, I require a copy of these materials to review these concerns.

**REPEATED REQUESTS FOR THE INFORMATION**

128. I have repeatedly raised my concerns about the Stratcom Report, the Working Together Report, and the Inclusion Index since October of 2019, through detailed emails distributed to all benchers and senior LSO staff, and at various meetings. There has been no significant response from the LSO, and my concerns have been largely ignored.

129. I have also repeatedly requested the Information to enable me to further consider and analyse the issues, and to further communicate with fellow benchers, including on the questions of whether the Stratcom Report and the Working Together Report should continue to be used in the development, implementation, and enforcement of policy by the LSO.

130. I requested a large portion of the Information by correspondence to the LSO on November 22, 2021 and November 29, 2021. On December 17, 2021, I wrote a subsequent email noting that I had received no response to my request for information.

**M. Klippenstein's Correspondence, attached as Exhibits "19," "20," and "21" (MK635 / MK640 / MK643)**

131. Not having received any reply to my requests whatsoever from the LSO, I was left with no alternative but to retain counsel, who formally demanded the Information on April 26, 2022 and May 20, 2022. The LSO made no reply to my counsel, and has failed to furnish me with the Information.

**Correspondence from Plaintiff's Counsel to the LSO, attached as Exhibits "22" and "23" (MK647 / MK653)**

132. Finally, after receiving a second formal demand from my counsel, the Treasurer sent to me directly an unsatisfactory reply on May 27, 2022, failing to provide the Information or to even recognize my individual right to information as a director and bencher of the LSO.

**Correspondence from the Treasurer, attached as Exhibit "24" (MK657)**

**PROPORTIONALITY OF THE REQUEST FOR INFORMATION**

133. I have carefully considered all of the items and categories identified as the Information to which I claim a right as a benchler and director of the LSO. I regard the Information as proportional to the gravity of the policies in question. There were numerous other records that I considered requesting. However, after thorough deliberation I have settled upon the Information, all of which I regard as necessary and useful to me in performing the duties of my office as benchler and in governing the LSO.

**PROPER PURPOSE**

134. I am seeking the Information for the purpose of discharging the obligations of my office as a benchler and director of the LSO. Gaining access to the Information will enable me to be sufficiently informed so that I may participate in the governance of the LSO in accordance with the standards required of me as a director. I believe that all of the Information is necessary or would be useful to me for this purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
16<sup>th</sup> day of March, 2023.

\_\_\_\_\_  
Commissioner for Taking Affidavits

*Jorge Pineda*  
# 65305B

\_\_\_\_\_  
*Murray John Klippenstein*  
MURRAY JOHN KLIPPENSTEIN

# EXHIBITS - TABLE OF CONTENTS

## Affidavit of Murray John Klippenstein, sworn March 16, 2023

EXHIBIT 1 – Profile Report of the LSO (August 8, 2022) .....	Page MK 63
EXHIBIT 2 – Article of Resolution, Law Society of Ontario (September 29, 2022) .....	Page MK 67
EXHIBIT 3 – Working Group Terms of Reference .....	Page MK 69
EXHIBIT 4 – <i>Challenges Facing Racialized Licensees: Best Practices</i> .....	Page MK 76
EXHIBIT 5 – <i>Stratcom Report</i> .....	Page MK 98
EXHIBIT 6 – <i>Consultation Paper</i> .....	Page MK249
EXHIBIT 7 – Working Group Agenda & Materials, including Consultation Plan, Communication Plan, Treasurer's Letter Regarding Consultation Plan and Benchers Speaking Notes (November 12, 2014) .....	Page MK306
EXHIBIT 8 – <i>Working Together Report</i> .....	Page MK355
EXHIBIT 9 – <i>Critical Review</i> (January 8, 2020) .....	Page MK416
EXHIBIT 10 – <i>Expert Panel Reports</i> .....	Page MK432
EXHIBIT 11 – Prior Stratcom Survey, circa 2004 .....	Page MK527
EXHIBIT 12 – Prior Stratcom Survey, circa 2014 .....	Page MK539
EXHIBIT 13 – Working Group Agenda and Materials (May 30, 2013) .....	Page MK548
EXHIBIT 14 – <i>Measuring Diversity in Law Firms</i> Report by Dr. Lorraine Dyke .....	Page MK558
EXHIBIT 15 – Email to EIA Committee (September 9, 2020) .....	Page MK610
EXHIBIT 16 – Email to EIA Committee (September 15, 2020) .....	Page MK614
EXHIBIT 17 – Memo re: LSO Follow-up Questions on the Inclusion Index Methodology (April 22, 2020) .....	Page MK618
EXHIBIT 18 – LSO Press Release (June 23, 2022) .....	Page MK632
EXHIBIT 19 – M. Klippenstein's Correspondence (November 22, 2021) .....	Page MK635
EXHIBIT 20 – M. Klippenstein's Correspondence (November 29, 2021) .....	Page MK640
EXHIBIT 21 – M. Klippenstein's Correspondence (December 17, 2021) .....	Page MK643
EXHIBIT 22 – Correspondence from Plaintiff's Counsel to the LSO (April 26, 2022) .....	Page MK647
EXHIBIT 23 – Correspondence from Plaintiff's Counsel to the LSO (May 20, 2022) .....	Page MK653
EXHIBIT 24 – Correspondence from the Treasurer (May 27, 2022) .....	Page MK657

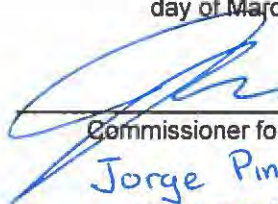
# EXHIBIT 1

Profile Report of the LSO (August 8, 2022)

This is Exhibit "1" referred to in the Affidavit of

**MURRAY KLIPPENSTEIN**

Sworn before me this 16th  
day of March A.D., 2023.

A handwritten signature in blue ink, appearing to read "Jorge Pineda", is written over a horizontal line.

Commissioner for Taking Affidavits

Jorge Pineda  
#65305B

Transaction Number: APP-A10012167341  
Report Generated on August 08, 2022, 12:25



Ministry of Government and  
Consumer Services

## Profile Report

LAW SOCIETY OF ONTARIO BARREAU DE L'ONTARIO as of August 08, 2022

Type	Not-for-Profit Corporation
Name	LAW SOCIETY OF ONTARIO BARREAU DE L'ONTARIO
Ontario Corporation Number (OCN)	203813
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation/Amalgamation	January 17, 1822
Registered or Head Office Address	130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6

Certified a true copy of the record of the Ministry of Government and Consumer Services.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.", written over a horizontal line.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-A10012167341  
Report Generated on August 08, 2022, 12:25

Active Director(s)  
Minimum Number of Directors  
Maximum Number of Directors

[Not Provided]

[Not Provided]

Name  
Address for Service

Robert P. ADOURIAN  
95 Barber Greene Road, Devry Smith Frank Llp 100,  
Toronto, Ontario, Canada, M3C 3E9  
May 23, 2019

Date Began

Name  
Address for Service

Ryan ALFORD  
955 Oliver Road, Lakehead University, Thunder Bay,  
Ontario, Canada, P7B 5E1  
May 23, 2019

Date Began

Name  
Address for Service  
Date Began

Robert P. ARMSTRONG  
130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
June 22, 2001

Name  
Address for Service  
Date Began

John D. ARNUP  
88 Stratford Crescent, Toronto, Ontario, Canada, M4N 1C6  
May 24, 1991

Name  
Address for Service  
Date Began

M. Catherine (cathy) BANNING  
130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
February 18, 2021

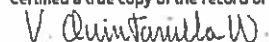
Name  
Address for Service  
Date Began

Thomas G. BASTEDO  
60 Bernard Avenue, Toronto, Ontario, Canada, M5R 1R5  
May 24, 1991

Name  
Address for Service  
Date Began

Denise E. BELLAMY  
299 1/2 Sumach Street, Toronto, Ontario, Canada, M5A 3K4  
May 24, 1991

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-A10012167341  
 Report Generated on August 08, 2022, 12:25

**Name** George D. HUNTER  
**Address for Service** 130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
**Date Began** January 16, 2006

**Name** Murray KLIPPENSTEIN  
**Address for Service** 160 John St, Klippensteins Barristers & Solicitors 300,  
 Toronto, Ontario, Canada, M5V 2E5  
**Date Began** May 23, 2019

**Name** Vern KRISHNA  
**Address for Service** 130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
**Date Began** June 26, 2003

**Name** Shelina LALJI  
**Address for Service** 130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
**Date Began** May 23, 2019

**Name** Paul S.A. LAMEK  
**Address for Service** 62 Wellesley St. W., Toronto, Ontario, Canada, M5S 2X3  
**Date Began** May 24, 1991

**Name** Benson LAU  
**Address for Service** 130 Queen Street West, Toronto, Ontario, Canada, M5H 2N6  
**Date Began** June 26, 2019

**Name** Cheryl R. LEAN  
**Address for Service** 712 Weese Road, Rr1, Carrying Place, Ontario, Canada, K0K  
 1L0  
**Date Began** May 23, 2019

**Name** Michael B. LESAGE  
**Address for Service** 3 Loretta Drive, Box 864, Virgil, Ontario, Canada, L0S 1T0  
**Date Began** June 26, 2020

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.



## EXHIBIT 2

Article of Resolution, Law Society of Ontario  
(September 29, 2022)

This is Exhibit "2" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.



---

Commissioner for Taking Affidavits

Jorge Pineda  
#65305B

## ARTICLE OF RESOLUTION LAW SOCIETY OF ONTARIO

The undersigned being all directors of the LAW SOCIETY OF ONTARIO (the "Corporation") hereby sign the following resolution:

**BE IT RESOLVED** that the following individuals are Directors and Officers of the LAW SOCIETY OF ONTARIO with an effective date of September 29, 2022.

### DIRECTORS

Robert Adourian  
 Prof. Ryan Alford  
 M. Catherine Banning  
 Jack A. Braithwaite  
 D. Jared Brown  
 Robert J. Burd  
 Gerard Paul Charette  
 Joseph Chiumminto  
 Dianne G. Corbiere  
 Cathy Corsetti  
 Jean-Jacques Desgranges  
 Seymour Epstein  
 Etienne Esquega  
 John F. Fagan  
 Julian N. Falconer  
 Lee K. Ferrier  
 Sam Goldstein  
 Gary Graham  
 Joseph Groia  
 Philip H. Horgan  
 Murray Klippenstein  
 Vern Krishna  
 Shelina Lalji  
 Dr. Benson Lau  
 Cheryl R. Lean  
 Michael B. Lesage  
 Atrisha Lewis  
 Marian Lippa

Michelle M. Lomazzo  
 Cecil James Lyon  
 C. Scott Marshall  
 Isfahan Merali  
 Barbara Murchie  
 Geneviève Painchaud  
 Trevor R. Parry  
 Jorge Pineda  
 Lubomir Poliacik  
 Geoffrey Pollock  
 Brian L. Prill  
 Jonathan M. Rosenthal  
 Quinn M. Ross  
 Clare Sellers  
 Gerald Sheff  
 Chi-Kun Shi  
 Julia S. Shin Doi  
 Megan Shortreed  
 Cheryl Siran  
 Andrew J. Spurgeon  
 Harvey T. Strosberg  
 Sidney H. Troister  
 Tanya Walker  
 Doug Wellman  
 Alexander David Wilkes  
 Claire Wilkinson  
 Nicholas dePencier Wright


# EXHIBIT 3

## Working Group Terms of Reference

This is Exhibit "3" referred to in the Affidavit of

**MURRAY KLIPPENSTEIN**

Sworn before me this 16th  
day of March A.D., 2023.



---

Commissioner for Taking Affidavits  
Jorge Pineda  
#65305B



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**October 25, 2012**  
**8:30 a.m.**

---

# CONVOCAION MATERIAL

<b>Dial-in numbers:</b>	<b>416 883 0133 or 1 877 385 4099</b>
<b>Participant access code:</b>	<b>8781353#</b>

*For Bencher Use Only*

**PLEASE SEE THE AGENDA FOR MORE DETAILS****ISSUES FOR DECISION ON CONVOCATION'S AGENDA****October, 2012****FOR BENCHER USE ONLY****FOR INFORMATION REPORTS, PLEASE SEE THE CONVOCATION AGENDA****Report of the Director of Professional Development and Competence for Deemed Call Candidates**

Convocation is requested to approve the call to the bar of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with By-Law 4 (Licensing).

**Inter-Jurisdictional Mobility Committee Report**

Convocation is requested to approve an amendment to By-Law 4 to clarify language relating to the mobility issue of occasional practice of law without prior permission.

**Articling Task Force - Final Report**

Convocation is requested to approve a pilot project respecting the transitional training component of the Law Society's licensing process.

**Paralegal Standing Committee Report**

Convocation is requested to approve amendments to the *Paralegal Rules of Conduct* respecting communication with a represented party, and approve a proposed project for revision of the paralegal licensing examination process.

**Professional Regulation Committee Report**

Convocation is requested to approve amendments to the commentary to rule 2.02(5) of the *Rules of Professional Conduct* respecting the requirement that lawyers not be used to facilitate dishonesty, fraud, crime or illegal conduct, and in particular, to include 'red flags' for real estate practitioners.

**Audit and Finance Committee Report**

Convocation is requested to approve an amendment to the decision at September Convocation on the default period related to fees for late payment of the annual fee and late filing of the annual report, and amendments to By-Laws 5 and 8 to implement late fees and revisions to the default period.

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

Convocation is requested to approve a rate increase for the Discrimination and Harassment Counsel and to approve Human Rights Monitoring Group interventions.

## CONVOCATION AGENDA October 25, 2012

---

**Convocation Room – 8:30 a.m.**

**Committee of the Whole (M. Sandler)**

**Treasurer's Remarks**

**Draft Minutes of Convocation – September 27, 2012 [Tab 1]**

**Motions**

- Appointments [Tab 2]
- By-Law Amendments [Tab 11] (motions to come)

**Report of the Director of Professional Development and Competence (J. Minor) [Tab 3]**

- Deemed Call Candidates

**Inter-Jurisdictional Mobility Committee Report (J. Minor) [Tab 4]**

- Amendment to By-Law 4

**Articling Task Force - Final Report (R. Anand) (separate cover on Diligent Boardbooks)**

**Lunch – Benchers' Dining Room**

**Paralegal Standing Committee Report (C. Corsetti) [Tab 5]**

- Amendments to the *Paralegal Rules of Conduct* Respecting Communication with a Represented Party
- Proposed Project for Revision of the Paralegal Licensing Examination Process

*For information*

- Update on Law Society Referral Service (LSRS)
- Professional Regulation Division Quarterly Report

**Professional Regulation Committee Report (W. McDowell) [Tab 6]**

- Amendment to Rule 2.02 (5) of the *Rules of Professional Conduct*

*For information*

- Information for Lawyers Representing Police Officers in Special Investigations Unit Cases
- Professional Regulation Division Quarterly Report

**Audit & Finance Committee Report (C. Bredt/C. Hartman) [Tab 7]**

- Fees for Late Payment of the Annual Fee and Late Filing of the Annual Report
- Amendments to By-Laws 5 and 8 Respecting Late Fees and Filings

*For information*

- Investment Performance Report
- Pension Fund Governance
- Other Committee Work

**Equity and Aboriginal Issues Committee Report/Comité sur l'équité et les affaires autochtones (H. Goldblatt) [Tab 8]**

- Rate Increase for the Discrimination and Harassment Counsel
- Human Rights Monitoring Group Interventions

*For information*

- Appointments to the Equity Advisory Group
- Report on the Activities of Discrimination and Harassment Counsel, January 1 to June 30, 2012
- Terms of Reference of the Working Group on Challenges Faced by Racialized Licensees

## TAB 8.3

## FOR INFORMATION

## CHALLENGES FACED BY RACIALIZED LICENSEES PROJECT

67. In August 2012, Convocation created the Challenges Faced by Racialized Licensees Working Group. The following benchers are members of the Working Group: Raj Anand, Chair, Marion Boyd, Robert Burd, Julian Falconer, Howard Goldblatt, Susan Hare, Janet Leiper, William McDowell, Malcolm Mercer, Janet Minor, Susan Richer and Baljit Sikand. The Working Group met on October 10, 2012. This report provides information about the discussion of the Working Group. The Working Group intends on providing regular updates for information and discussion, as appropriate, to the Access to Justice Committee, the Equity and Aboriginal Committee/Comité sur l'équité et les affaires autochtones, the Paralegal Standing Committee, Professional Development and Competence Committee and the Professional Regulation Committee.
68. The Working Group reviewed background information that led to the creation of the Challenges Faced by Racialized Licensees Working Group, approved its Terms of Reference and began to develop a work plan. The following Terms of Reference were approved and are presented to Convocation for information:
- a. The Working Group on Challenges Faced by Racialized Licensees is mandated to,
    - i. identify challenges faced by racialized candidates and licensees in different practice environments, including entry into practice and advancement;
    - ii. identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
    - iii. identify best practices for preventive, remedial and/or support strategies;
    - iv. design and develop appropriate preventive, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees as appropriate, to address the

challenges described above.

69. The Working Group considered key research findings and agreed that the information gathered to date is helpful but is not sufficient to allow the Working Group to develop recommendations in accordance with its Terms of Reference. More particularly, there is very little research about the following:
  - a. racialized licensees in sole practice or small firms – the factors that influence racialized licensees in going into sole practice or small firms, their client base and viability of practices, environmental, attitudinal and cultural factors that impact on their careers, availability of resources and supports.
  - b. racialized licensees in medium and large firms – the impact of recruitment and hiring practices, environmental, attitudinal and systemic factors that impact their career advancement, trends in career advancement, barriers to partnership admission, best-practices in place to assist lawyers.
  - c. challenges faced by racialized paralegals - but for the 2009 and 2010 Statistical Snapshot of Paralegals, there is no research about this topic.
70. As a result, the Working Group will undertake a consultation to further inform itself of the challenges faced by racialized candidates and licensees and to gather information about how best to address these challenges. In addition to the consultation, it is anticipated that the Working Group will consider findings from available research, data and best-practices from other organizations. The Working Group will also consider the history of careers of licensees in the regulatory process to identify trends, if any, and address any issues that may arise from that study.
71. The methodology for the consultation has not been finalized. However, it is anticipated that a request for proposals will be conducted and a consultant retained to undertake quantitative and qualitative research with the profession.



72. In addition to retaining a consultant, the Working Group hopes to work with advisory groups and external stakeholders to identify best-practices. Groups such as the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG), the Criminal Lawyers Association, the Ministry of the Attorney General (MAG), the Department of Justice and the equality committees of the Canadian Bar Association and the Ontario Bar Association may be consulted.
73. The Working Group hopes to conduct a request for proposals in the fall 2012 and retain a consultant to conduct the qualitative and quantitative research in 2013. The Working Group will also consider other research findings and work with stakeholders throughout 2013 to bring preliminary recommendations to Consultation at the beginning of 2014.

# EXHIBIT 4

## Challenges Facing Racialized Licensees: Best Practices

This is Exhibit "4" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.



Commissioner for Taking Affidavits

Jorge Pineda  
#65305B



**Agenda and Materials**  
**March 27, 2013**  
**Benchers' Dining Room**  
**5:30 to 7:30 p.m.**

<p><b>Conference number:</b>  <b>Toronto 416-883-0133</b>  <b>Ottawa 613-212-4220</b>  <b>Toll free number: 1-877-385-4099</b>  <b>Participant Code: 3842751#</b></p>
---

**Challenges Faced by Racialized Licensees Working Group**

**Working Group Members**

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

**Purposes of Report: Information and Discussion**

**Prepared by the Equity Initiatives Department**  
**(Josée Bouchard – 416-947-3984)**

**Also participating: Zeynep Onen, Director, Professional Regulation, Ekua Quansah,**  
**Associate Counsel, Equity and Swathi Sekhar, Articling Student**

## **CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP**

### **AGENDA**

---

Review of minutes of February 28, 2013 meeting (Anand: 5 minutes).....	<b>TAB 1</b>
Review of findings to date, steps taken and introduction of project team (Anand: 5 minutes).....	<b>TAB 2</b>
Information and agenda for discussion with Stratcom (Stratcom: 110 minutes).....	<b>TAB 3</b>
Literature review of best-practices.....	<b>TAB 4</b>
Official Workplan .....	<b>TAB 5</b>

## TAB 4

## FOR INFORMATION

## Challenges Facing Racialized Licensees: Best Practices

## Introduction

**1. Best Practices Prior to Hiring and in Law School**

- i) *Pipeline programs*
- ii) *Law schools*

**2. Best Practices for Recruitment and Hiring**

- i) *Targeted, focused external recruitment*
- ii) *Internal recruiting efforts*
- iii) *Ensuring bias-free interviews*
- iv) *Mentoring*

**3. Best Practices for Leadership**

- i) *Creating a Diversity Committee*
- ii) *Dedication of resources to diversity*
- iii) *Ensuring leadership accountability*
- iv) *Active communication from leadership*
- v) *Visible participation and engagement by leadership*
- vi) *Ensuring diverse attorneys are represented in leadership positions*
- vii) *Leadership diversity training*

**4. Best Practices for Retention and Firm Culture**

- i) *Affinity groups*
- ii) *Addressing work-life balance*
- iii) *Meaningful channels for communication*
- iv) *Inclusive social events*
- v) *Identification and development of core competencies*
- vi) *Unbiased and equitable distribution of work*
- vii) *Mentoring*

**5. Best Practices for Professional Development**

- i) *Business development training for underrepresented groups*
- ii) *Mentoring*
- iii) *Constructive evaluation and feedback process*
- iv) *Revisiting valuation models*
- v) *Examining and assessing the institutional path to partnership*
- vi) *Formalized succession plans for diverse lawyers*
- vii) *Leadership development programs*

**6. General Best Practices**

- i) *Critical, ongoing re-evaluation of existing programs and structures*
- ii) *Best practices for individual lawyers*
- iii) *Strategies for clients in ensuring diversity*
- iv) *Role of bar associations*

v) *Firms influencing diversity externally***Conclusion****Challenges Facing Racialized Licensees: Best Practices****Introduction**

What follows is an overview of several strategies for increasing the presence of racialized licensees in the legal profession, collected from across Canada and the United States. 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.

The creation and implementation of a comprehensive diversity plan and strategy was identified consistently across various studies and surveys as a necessary best practice to ensure inclusivity in the workplace. Diversity efforts must be integrated into all aspects of the organizational structure, from recruiting and marketing to professional development and performance management.<sup>1</sup>

This report is divided into six main areas:

1. Best Practices Prior to Hiring and in Law School
2. Best Practices for Recruitment and Hiring
3. Best Practices for Leadership
4. Best Practices for Retention and Firm Culture
5. Best Practices for Professional Development
6. General Best Practices

The best practices outlined in the above sections are all components of the overall diversity strategy. The categories are not discrete, but rather intimately connected, overlapping, and mutually supportive. A diversity strategy will only be truly effective if all the components are implemented in tandem, to create and sustain a solid infrastructure for ongoing diversity in the years to come.

**1. Best Practices Prior to Hiring and in Law School***i) Pipeline programs*

Pipeline programs have long been recognized as essential 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>2</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

<sup>1</sup> New York City Bar Association Committee on Minorities in the Profession, "Best Practices Standards for the Recruitment, Retention, Development and Advancement of Racial/Ethnic Minority Attorneys" (2006), online: New York City Bar Association [http://www.nycbar.org/images/stories/pdfs/Minorities\\_Professions.pdf](http://www.nycbar.org/images/stories/pdfs/Minorities_Professions.pdf) (*New York City Bar*) at 1.

<sup>2</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) (*Diversity in Colorado*) at 21

in the law school environment.<sup>3</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>4</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>5</sup> In 2011 OJEN partnered with the Black Female Law 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, who introduced them to other “sistahs in law” while answering questions and providing support throughout the program.<sup>6</sup>

## *ii) 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. Queen’s University has implemented several creative initiatives to achieve these goals. The institution created “sober socializing” events for students who may not drink for religious reasons or cultural preferences. Queens has created an Equity Committee to address various equity related concerns at the school, and also has an Education Equity program to provide advocacy, information and support to racialized and all law students. The school has additionally created a Dean Council Diversity Award given to three students

<sup>3</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> (*Visible Invisibility*) at 8.

<sup>4</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>5</sup> Interview with S. McCoubrey, Executive Director of Ontario Justice Education Network: March 7, 2013.

<sup>6</sup> *Ibid.*

annual on the basis of “substantial contribution to diversity related issues in the law school and prior to attending law school.”<sup>7</sup>

Osgoode Hall Law School in Toronto offers an Anti-Discrimination Intensive course which offers students to develop specialized knowledge of anti discrimination law and gain practical experience in the field. The school also recently implemented an Equity Officer role on Student Caucus of Faculty Council and the Legal and Literary Society. The purpose of this position is to focus on equity and equality concerns and Osgoode, promoting diversity within the law school and giving a voice to students from a range of diverse backgrounds. Osgoode additionally offers several bursaries for lower income students with a particular consideration of racialized students with financial need.<sup>8</sup> Importantly, Osgoode Hall also conducts a mandatory annual student survey to gather data about demographics in the student population. The data collected is then used to track progress and move towards a more holistic model for admissions.<sup>9</sup>

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 recent ABA report include:

- Education and training about unconscious bias and the importance of diversity and inclusion as a core component of student education;
- Design and creation of 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 applicants beyond LSAT scores and GPAs;
- Conducting regular and detailed review of the effectiveness of pre-law school pipeline programs;
- Active hiring and retention of diverse faculty members;
- Creating strong connections between affinity bar associations and law schools; and
- Assistance with law school debt and expenses<sup>10</sup>

## 2. 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>11</sup> It is important for law firms and legal organizations to recognize this, and actively integrate this reality their recruiting strategies.

<sup>7</sup> Challenges Faced By Racialized Licensees Working Group: Comments from Queen’s University students and Dean William Flanagan, Faculty of Law, Queen’s University: February 28, 2013 at 2-3.

<sup>8</sup> Challenges Faced By Racialized Licensees Working Group: Comments from Queen’s Osgoode Hall Law School students and Dean Lorne Sossin, Faculty of Law, Osgoode Hall: February 28, 2013.

<sup>9</sup> *Ibid.*

<sup>10</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) (ABA Presidential Diversity Initiative) at 18-21

<sup>11</sup> *Visible Invisibility*, note 3 at 12.



i) *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>12</sup>

Further to this, 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>13</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 LEAF, Canadian Association of Black Lawyers, Indigenous Bar Association or the South Asian Lawyers Network, to name a few.<sup>14</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 database for future positions which may open up.<sup>15</sup> Firms may also want to consider participating in local mentorship programs for law students from diverse and under-represented communities; if no such program exists, firms may even consider establishing one.<sup>16</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>17</sup> However, the responsibility of diverse recruitment efforts should be shared with all staff members, and not left to diverse lawyers only.<sup>18</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>19</sup>

ii) *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>20</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:

<sup>12</sup> Nova Scotia Barristers' Society, "Hiring Practices for Equity in Employment: Interview Guide" (2006), online: [http://nsbs.org/sites/default/files/fip/EQ120407\\_HiringIntvwGuide.pdf](http://nsbs.org/sites/default/files/fip/EQ120407_HiringIntvwGuide.pdf) (*NSBS Articling Interview Guide*) at 6.

<sup>13</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) (*CBA Equity and Diversity Guide*) at 16.

<sup>14</sup> *Ibid* at 19.

<sup>15</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) (*Minority Corporate Counsel Association*) at 22 and 23.

<sup>16</sup> *CBA Equity and Diversity Guide*, note 13 at 19.

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

<sup>18</sup> *Minority Corporate Counsel Association*, note 15 at 22.

<sup>19</sup> *CBA Equity and Diversity Guide*, note 13 at 19.

<sup>20</sup> *Minority Corporate Counsel Association*, note 15 at 19.

- 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>21</sup>

### *iii) 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>22</sup>

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

- 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 to the interview committee;
- Involving diverse lawyers in the interview process;
- Ensure 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>23</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>24</sup>

### *iv) Mentoring*

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 Columbia, for visible minority and Aboriginal lawyers particularly, "mentoring can be an invaluable resource for

<sup>21</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> (NALP Best Practices) at 20.

<sup>22</sup> NSBS *Articling Interview Guide*, note 12 at 15.

<sup>23</sup> CBA *Equity and Diversity Guide*, note 13 at 21.

<sup>24</sup> *Diversity in Colorado*, note 2 at 33.

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>25</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>26</sup>

### 3. Best Practices for Leadership

#### i) *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>27</sup>

A Diversity Committee may also want to structure itself to have subcommittees which 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>28</sup>

Though the Diversity Committee is an essential part of a diversity strategy, 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>29</sup>

#### ii) *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.

<sup>25</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) (LSBC Best Practices, better workplaces) at 6.

<sup>26</sup> *Minority Corporate Counsel Association*, note 15 at 24.

<sup>27</sup> *CBA Equity and Diversity Guide*, note 13 at 11.

<sup>28</sup> *Minority Corporate Counsel Association*, note 5 at 23.

<sup>29</sup> *Visible invisibility*, note 3 at 11.

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>30</sup> A workplace analysis should involve identifying any equity problems in the workplace and should include an assessment and review of:

- The number of diverse people who are employed at various levels of the organization;
- Job performance evaluation methods;
- How career development opportunities are provided to under-represented 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>31</sup>

Firms should also 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>32</sup>

### *iii) 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>33</sup>

A successful diversity strategy must include a system that monitors progress in achieving identified diversity goals, and which creates rewards and penalties for success and failure to achieve inclusion objectives.<sup>34</sup> Organizations must 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>35</sup> Firms may additionally want to implement diversity checklists and scorecards to help leadership and partners remain accountable to objectives.<sup>36</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>37</sup>

In a US firm with 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". These contributions also

<sup>30</sup> *NALP Best Practices*, note 21 at 5.

<sup>31</sup> *CBA Equity and Diversity Guide*, note 13 at 9.

<sup>32</sup> *NALP Best Practices*, note 21 at 5.

<sup>33</sup> *Diversity in Colorado*, note 2 at 50.

<sup>34</sup> *New York City Bar*, note 1 at 1.

<sup>35</sup> *NALP Best Practices*, note 21 at 7.

<sup>36</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.wbade.org/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating\\_Pathways\\_to\\_Success\\_for\\_All-March\\_2008.pdf](http://www.wbade.org/files/Advocacy%20&%20Endorsements%20Files/Initiative%20Reports/Creating_Pathways_to_Success_for_All-March_2008.pdf) (*Pathways to Success*) at 17.

<sup>37</sup> *NALP Best Practices*, note 21 at 18.

become a factor in determining partner compensation.<sup>38</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>39</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 to 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>40</sup>

*iv) Active communication from leadership*

Leaders should actively communicate 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 recruitment materials.<sup>41</sup>

Once the diversity strategy has been assessed and reviewed, progress results should be communicated to all employees. As a component of this, accomplishments of diverse lawyers should be celebrated and promoted throughout the workplace.<sup>42</sup>

In a more general sense, firms and organizations should 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 group is a component of this, as well as creating confidential or anonymous channels for communication of concerns.<sup>43</sup>

*v) 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>44</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>45</sup>

*vi) Ensuring diverse attorneys are represented in leadership positions*

<sup>38</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\\_FINAL.pdf](http://www.talentadvisoryboard.com/Diversity_Retention_Best_Practices_Research_Study_Report_FINAL.pdf) (California Law Firm Diversity Retention Best Practices) at 10.

<sup>39</sup> NALP Best Practices, note 21 at 7.

<sup>40</sup> Visible invisibility, note 3 at 14.

<sup>41</sup> NALP Best Practices, note 21 at 5.

<sup>42</sup> CBA Equity and Diversity Guide, note 13 at 15.

<sup>43</sup> Pathways to Success, note 36 at 15.

<sup>44</sup> New York City Bar, note 1 at 2.

<sup>45</sup> NALP Best Practices, note 21 at 5.

Integrating racialized and under-represented employees into leadership positions can greatly improve an organization's diversity landscape<sup>46</sup> and can serve to create role models for other diverse members of the organization.<sup>47</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>48</sup>

#### *vii) Leadership diversity training*

Oftentimes, organization leaders charged with implementing diversity initiatives may not be 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>49</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>50</sup>

### **4. Best practices for retention, firm culture and inclusion**

Legal organizations and firms must take 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>51</sup>

#### *i) 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 diverse employees can speak candidly without fear of penalty or criticism, and can build connections share

<sup>46</sup> *Ibid.*

<sup>47</sup> *New York City Bar*, note 1 at 1.

<sup>48</sup> *California Law Firm Diversity Retention Best Practices*, note 38 at 10.

<sup>49</sup> *NALP Best Practices*, note 21 at 6.

<sup>50</sup> *CBA Equity and Diversity Guide*, note 13 at 32.

<sup>51</sup> *Pathways to Success*, note 36 at 12.

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>52</sup>

### *ii) 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>53</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>54</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 the flexible hour 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>55</sup>

Flexibility should also extend beyond hours worked to practically accommodate family responsibilities. An example can be seen in the New South Wales Bar Association, which has piloted an initiative that provides in-home childcare support to all barristers with family responsibilities.<sup>56</sup> The Law Society of Alberta has also issued guidelines on maternity and paternity leave policies, as well as bereavement, compassionate and family responsibility leaves.<sup>57</sup>

### *iii) 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

<sup>52</sup> *Ibid* at 14-15.

<sup>53</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) (*Diversity and Flexibility Connection*) at 2.

<sup>54</sup> *Ibid* at 4.

<sup>55</sup> *Ibid* at 5-8.

<sup>56</sup> *CBA Equity and Diversity Guide*, note 13 at 24.

<sup>57</sup> *Ibid* at 26.

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>58</sup>

*iv) 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>59</sup> Firms should also consider hosting retreats or events that are specific to attorneys from under-represented groups, to create alliances and networks of support amongst affinity groups.<sup>60</sup>

Women of colour attorneys have often reported feeling excluded informal social networks, creating a lack of access to the resulting exchange of camaraderie and professional experience.<sup>61</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>62</sup>

*v) 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 the career. 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>63</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>64</sup>

*vi) 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>65</sup>

<sup>58</sup> *Pathways to Success*, note 36 at 15.

<sup>59</sup> *CBA Equity and Diversity Guide*, note 13 at 11.

<sup>60</sup> *ABA Presidential Diversity Initiative*, note 10 at 27-28.

<sup>61</sup> *Pathways to Success*, note 36 at 11.

<sup>62</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%20%80%94women-color-professional-services-series> (*Catalyst Women of Color in U.S. Law Firms*) at 48.

<sup>63</sup> *Pathways to Success*, note 36 at 18.

<sup>64</sup> *Visible Invisibility*, note 3 at 13.

<sup>65</sup> *Ibid.*



### *vii) Mentoring*

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>66</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 interviewing 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>67</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>68</sup> Such relationships also provide diverse associates with the chance to meaningfully share their experiences, priorities and expectations.<sup>69</sup>

## **5. Best Practices for Professional Development**

### *i) 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>70</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:

- Including diverse attorneys in important client relationships;
- Identifying diverse employees who can be groomed take over client relationship and management roles; and
- Recognizing and supporting unique opportunities to business development including the participation in external organizations and communities, even if these activities fall outside the mainstream.<sup>71</sup>

<sup>66</sup> *New York City Bar*, note 1 at 2.

<sup>67</sup> *Ibid* at 11.

<sup>68</sup> *NALP Best Practices*, note 21 at 9.

<sup>69</sup> *Pathways to Success*, note 36 at 15.

<sup>70</sup> *Ibid* at 19.

<sup>71</sup> *Ibid*.

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>72</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>73</sup>

## ii) Mentoring

Effective mentoring in the context of professional development is an essential part of ensuring that diverse attorneys are supported in identifying and developing the necessary skills to succeed. Diverse mentees who are paired with senior associates can learn the unwritten rules of practice and how to navigate complicated firm politics.

Creating mentorship relationships along racial lines serves an important role for provide support to diverse lawyers and creating a safe space in which experiences and advice can be shared. However some lawyers have commented that it is more important to ensure a good fit between mentor and mentee, and pairings should not be made solely on the basis of race. Studies reported for example, that it was more important for career development to have a mentor with power or influence in a firm, rather than being of the same race or experience.<sup>74</sup>

As diverse associates are often excluded from informal networks, it is crucial to implement an effective formal mentoring program composed of committed mentors and mentees. The success of a mentoring relationship is also highly dependent on the success and power of the mentor, and the chemistry between the pair. The Women's Bar Association of the District of Columbia provides the following recommendations to create an effective mentoring relationship:

- Ensure opportunities for choice in pairing;
- Integrate mechanisms for mentee feedback and mentor accountability in the process;
- Train both mentors and mentees on increasing the effectiveness of formal programs, including expectations, communication and how best to benefit from the relationship; and
- Move beyond traditional partner/associate pairing models, such as linear pairings of attorneys at the same levels to encourage peer coaching and knowledge sharing.<sup>75</sup>

Studies have also shown that a good mentoring relationship becomes instrumental in the development of a solid client base, which greatly contributes to the successful upward mobility of a lawyer. Mentees gain access into key networks both internally in the firm and externally in industry circles.<sup>76</sup>

---

<sup>72</sup> *Ibid* at 11-12.

<sup>73</sup> *Visible Invisibility*, note 3 at 13.

<sup>74</sup> *Ibid* at 11.

<sup>75</sup> *Pathways to Success*, note 36 at 21.

<sup>76</sup> *Visible Invisibility*, note 3 at 11.

*iii) 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>77</sup>

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>78</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>79</sup>

*iv) Revisiting valuation models*

Firms and legal organizations should seek to shift traditional ideas about what is valuable to an organization. Moving beyond business development, organizations should 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>80</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>81</sup>

*v) Examining and assessing the institutional path to partnership*

In law firm environments, there is a critical power differential between equity and non-equity partnerships. When collecting data on the number of diverse employees in partnership ranks, studies must 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>82</sup>

In line with the overall diversity strategy, lawyers from underrepresented groups must be integrated into equity partnership ranks through effective mentoring, inclusion on client service teams, professional

<sup>77</sup> *Pathways to Success*, note 36 at 22.

<sup>78</sup> *Visible Invisibility*, note 3 at 13.

<sup>79</sup> *Pathways to Success*, note 36 at 18.

<sup>80</sup> *Ibid* at 20.

<sup>81</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> (Minnesota State Bar Association) at 21.

<sup>82</sup> *Pathways to Success*, note 36 at 18.

development and clear communication regarding expectations.<sup>83</sup> In addition, developing business generation skills is key to acquiring equity partnership.<sup>84</sup>

*vi) Formalized succession plans for diverse lawyers*

Training and promoting from within the company is integral to retaining talented staff.<sup>85</sup> Diverse junior associates must have a clear idea of what is required to become partner, and must 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>86</sup>

*vii) Leadership development programs*

Grooming and positioning diverse lawyers 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, on hiring and compensation committees, and on partner nominating committee. Firms must also take care not to relegate diverse employees solely to more cumulative leadership responsibilities, such as recruiting, diversity and mentoring, but rather provide them with meaningful opportunities to contribute. 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>87</sup>

## **6. General Best Practices**

*i) Critical, ongoing re-evaluation of existing programs and structures*

Though many programs are implemented with the best of intentions, oftentimes they 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>88</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

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid* at 19.

<sup>85</sup> *Minority Corporate Counsel Association*, note 15 at 25.

<sup>86</sup> *Visible Invisibility*, note 3 at 14.

<sup>87</sup> *Pathways to Success*, note 36 at 16.

<sup>88</sup> *Ibid* at 20.

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>89</sup> Employers should also continually consult with Diversity Committee members to get feedback and input on the effectiveness of diversity initiatives.

*ii) 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.

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. Secondly, attorneys of colour must network with a broad range of people both socially and professional, 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>90</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 giving excellence in work, and speaking up, taking up space, and being consistently present within the firm or organization.<sup>91</sup>

*iii) 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>92</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>93</sup>

<sup>89</sup> *CBA Equity and Diversity Guide*, note 13 at 25. *Pathways to Success*, note 36 at 15.

<sup>90</sup> *Pathways to Success*, note 36 at 24-25.

<sup>91</sup> *Visible Invisibility*, note 3 at 14-16.

<sup>92</sup> *Diversity in Colorado*, note 2 at 53.

<sup>93</sup> *Pathways to Success*, note 36 at 22-23.

*iv) 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 explores intersections of diversity, while also encouraging and supporting collaborations between mainstream and affinity bar associations.<sup>94</sup> Bar associations can work to build bridges with different stakeholders, especially through access mentoring opportunities, collection of statistics, information on best practices and leadership training.<sup>95</sup>

Associations can also work to create networking opportunities specific to people from diverse background. 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>96</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>97</sup> and which continually partner with schools and invest in pipeline and mentorship programs.<sup>98</sup>

Overall, bar associations must work to push a general cultural shift within the legal profession, with a focus on maximum inclusivity and accessibility.<sup>99</sup>

*v) 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 in doing so, 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>100</sup>

Law firms and legal organizations can demonstrate their firm commitment to equity and diversity through awards and community recognition. By acknowledge and honouring individuals and associations what

<sup>94</sup> *ABA Presidential Diversity Initiative*, note 10 at 35-36.

<sup>95</sup> *Pathways to Success*, note 36 at 25-26.

<sup>96</sup> *Ibid* at 30.

<sup>97</sup> *CBA Equity and Diversity Guide*, note 13 at 18.

<sup>98</sup> *ABA Presidential Diversity Initiative*, note 10 at 37-38.

<sup>99</sup> For further, concrete recommendations for Bar Associations, see *ABA Presidential Diversity Guide*, note 10 at 35-40.

<sup>100</sup> *Minority Corporate Counsel Association*, note 15 at 18-20.

have contributed to diversity in the profession and community, we can begin to create a culture which places and respect on such accomplishments.<sup>101</sup>

### *Conclusion*

As aptly noted in several studies, best practices can only go so far in fostering diversity within the legal profession. There must be a massive cultural shift within legal environments that involves shaking long held beliefs and adapting deeply ingrained business practices to reflect our changing societies. Though insufficient on their own, the best practices identified in this document can go a long way in increasing the representation of racialized licensees within the profession, particularly if they are implemented with an ongoing, meaningful commitment to creating a more inclusive and accessible environment for everyone.

---


<sup>101</sup> *CBA Equity and Diversity Guide*, note 13 at 28.

# EXHIBIT 5

Stratcom Report (March 11, 2014)

This is Exhibit "5" referred to in the Affidavit of  
MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.



---

Commissioner for Taking Affidavits  
Jorge Pineda  
#653058





# Innovation Strategy Results

## Challenges Facing Racialized Licensees: Final Report

Law Society of Upper Canada

**March 11, 2014**

Submitted by: David Kraft, John Willis, and  
Michael F. Charles

## Table of Contents

<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. METHODS.....</b>	<b>2</b>
2.1 The Research Planning Process.....	2
2.2 Research Methods.....	2
2.2.1 Key Informant Interviews.....	3
2.2.2 Focus Groups.....	4
2.2.3 Survey of Licensees.....	6
<b>3. KEY INFORMANTS AND FOCUS GROUPS.....</b>	<b>7</b>
3.1 What's the issue?.....	7
3.1.2 Insights from Key Informants.....	8
3.2 Focus Group Findings.....	10
<b>4. PROFILE OF SURVEY RESPONDENTS.....</b>	<b>21</b>
4.1 What's the Issue?.....	21
4.2 'Racialization', Race, and Ethnicity.....	21
4.3 Representativeness in the Survey Population.....	22
4.4 Racialization.....	24
4.5 Comparing Sub-groups (demographics).....	26
<b>5. EXPERIENCE OF LICENSEES.....</b>	<b>31</b>
5.1 What's the issue?.....	31
5.2 Personal Experience.....	31
5.2.1 Career Opportunities.....	32
5.2.2 Disrespect/Disadvantage.....	34
5.2.3 Career Setbacks.....	35
5.3 Barriers to Entry and Advancement.....	36

5.3.1 Identifying Barriers to Entry.....	37
5.3.2 Barriers to Advancement .....	40
<b>6. IMPACTS OF RACIALIZATION .....</b>	<b>44</b>
6.1 What's the Issue?.....	44
6.2 Impacts: Have you been disadvantaged?.....	44
6.2.1 National Origin.....	44
6.2.2 Outgroup .....	47
6.2.3 Stereotyping.....	50
<b>7. SOLUTIONS (REMEDIES AND BEST PRACTICES) .....</b>	<b>52</b>
7.1 What's the Issue?.....	52
7.2 Perspectives on Racialization .....	52
7.2.1 Does racialization exist?.....	52
7.2.2 The Challenges of Racialization: What Have You Seen?.....	54
7.2.3 Challenges Facing Racialized Licensees and the Justice System.....	55
7.3 Exploring the Diversity of Opinion .....	59
7.4 Measures to Promote Inclusiveness in the Profession.....	63
7.4.1 Who should play a role?.....	70
<b>8. COMPLAINTS AND DISCIPLINE .....</b>	<b>72</b>
8.1 What's the issue? .....	72
8.2 Identifying Risk of Complaints .....	72
8.3 Racialized Licensees and the Regulatory Process.....	74
<b>9. CONCLUSIONS .....</b>	<b>77</b>

## List of Appendices

---

Appendix A: Issue matrix

Appendix B: Organizations represented during the key informant phase

Appendix C: Key Informant Guide

Appendix D: Moderator Guide

Appendix E: Moderator's Guide Non-racialized licensees

Appendix F: Online survey

## List of Charts & Tables

---

<b>Titles</b>	<b>Page</b>
Table 1 – Research Design	3
Table 2 – Focus Group Composition	5
Table 3 – Weighting the Lawyer Subsample	23
Table 4 – Weighting the Paralegal Subsample	24
Chart 1 – Composition of Racialized licensees	25
Chart 2 – Racialization by Ethnicity	26
Table 5 – Comparing Sub-Groups by Demographics	27
Table 6a – Comparing Sub-Groups by Practice Environment	28
Table 6b – Practice Areas (Lawyers)	29
Table 6c – Practice Areas (Paralegals)	30
Chart 3 – Career Opportunities/Professional Growth	32
Chart 4 – Disrespect/Disadvantage	34
Chart 5 – Career Setbacks	35
Table 7 – Barriers During Entry to Practice	37
Table 8 – Barriers After Entry into Practice	41
Chart 6 – Disadvantages due to national origin	45
Chart 7 – Disadvantages due to ‘Outgroup’	47
Chart 8 – Stereotyping	50
Chart 9 – Do Racialized Licensees Face Unique Challenges	53
Chart 10 – Experiencing/Witnessing Challenges	54
Chart 11 – Impact on the Justice System	56
Chart 12 – Impact of Racialized Licensees on the Public	57
Table 9 – Racialization of Licensees: Effects on the Ontario Public	58
Chart 13 – System Status Quo	59
Chart 14 – Fair/Equal Opportunity	61
Chart 15 – Racial/Ethnic Advantage	63
Chart 16 – Solutions: Part 1	65
Chart 17 – Solutions: Less Support	67
Chart 18 – Who should play a role?	70
Chart 19 – Risks of Complaints Against Racialized Licensees	73
Chart 20 – Should Racialization be Reflected in the Regulatory Process?	75

# Executive Summary

## 1. Introduction

---

In September 2011 the governing body of the Law Society of Upper Canada identified the following as a priority: “considering the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms.” As a result, Convocation created the *Working Group on Challenges Faced by Racialized Licensees*<sup>1</sup>.

Under the direction of the Working Group and managed by the Equity Initiatives Department of the Law Society, Strategic Communications Inc. (Stratcom), was contracted to design and conduct research to identify:

- ▶ Challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;
- ▶ Factors and practice challenges that could increase the risk of regulatory complaints and discipline, and;
- ▶ Identify perceptions of best practices for preventive remedial and/or support strategies.

Components of this research project included a planning phase, key informant interviews, focus groups and an online survey advertised to all licensees in good standing. This report integrates the results of the qualitative research (interviews and focus groups) with in-depth analysis of the quantitative findings (online survey). Presentation of the results combines charts and tables with written interpretation.

---

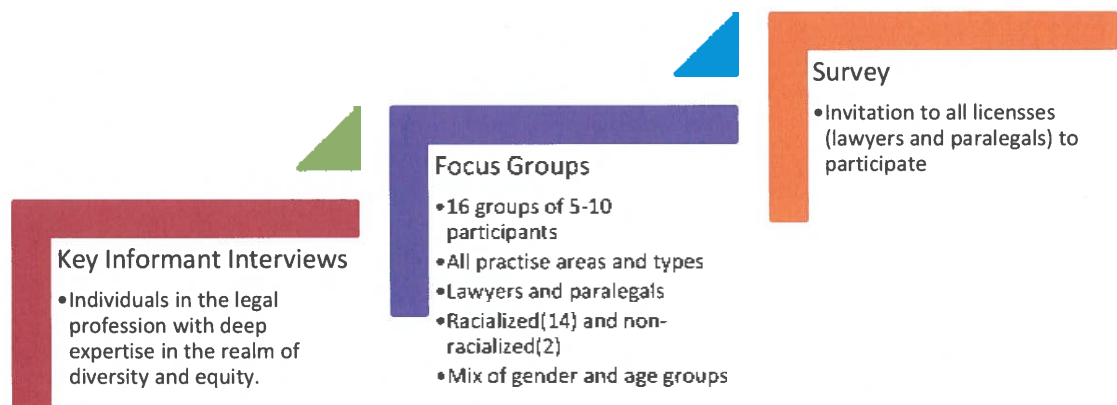
<sup>1</sup> For the purposes of this research project and throughout this report the term ‘racialized’ is defined as follows: “Racialized expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Indo-Canadian, Indian Subcontinent) South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g., Iranian, Afghan) persons.”

## 2. Methods

Following a planning phase (March 15 to May 31, 2013) the research team developed the final research design and finalized the analytical framework ('issues matrix,') to identify research priorities and gaps in knowledge which provided the basis for the final research design (**Appendix A**).

This study has a mixed method design, by which we mean that it is comprised of qualitative (interviews/focus groups) as well as quantitative (survey) methods. The purpose of this approach is to generate a rich and detailed account of experiences from licensees' perspectives, and then measure or validate those findings across the whole population of licensees. Using the issue matrix as our starting point, each phase of the research process built on the previous phase, taking into account results from the previous phase, as shown in **Figure 1** below.

Figure 1 – Research Design



### Survey of Licensees

The final phase of the research project entailed drafting and fielding an online survey advertised to all members of the Law Society in good standing. Following a process of review and refinement, an online survey comprised of 35 questions, including six question 'banks' and seven open-ended questions and taking approximately 25 minutes to complete, was posted from October 25 to November 18, 2013 . The online survey was

advertised in advance through Law Society communications channels including email to all licensees' work address and website promotions.

A total of 5,454 licensees accessed the survey and 3,296 completed the survey, 3,237 in English (98%) and 59 in French (2%). Further details about this study population, and the post-interview treatment of the data, are discussed in the section 'Profile of Survey Study Respondents', below.

## 3. Key Informant Interviews and Focus Groups

---

### Key Informants

Key informants depicted to us a landscape in which racialization is a constant and persistent factor affecting students, young licensees during their entry into practice, and opportunities for career advancement. This is true (in distinctive ways) in all types of practice environment, they told us. Racialization generates numerous specific challenges that operate in subtle ways, reflecting their systemic character, and that may be amplified by individuals' lifestyles, socio-economic status, age, gender, national origin, and educational pedigree.

Analysis and conclusions arising from the Key Informant process is presented in six sub-sections:

- Discrimination
- Networks and Support
- Cultural Differences
- Internationally-trained
- Solutions/Best Practices
- Complaints

### Focus Groups

Through the focus groups we sought a deeper analysis of the claims made by the key informants. Focus group participants offered an extensive and detailed account of the challenges confronting racialized licensees. An overarching narrative emerged of the extent to which racial identity is a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals.



Focus groups findings are discussed in detail in in seven sub-sections:

- Discrimination & Stereotyping
- 'Fit' and Cultural Difference
- Gender, Age and Pedigree
- Converging Experience of the 'Outgroup'
- Best Practices to Address Barriers and Challenges of Racialization
- Complaints & Discipline
- Reaction to this Research

## 4. Survey Research: Profile of Participants

### Research Issues

Whereas interviews and focus groups are not expected to represent the whole population, but rather to provide qualitative insight into the concepts, narratives, ideas and experiences of the study population, the quantitative survey intended to generate insights applicable to all licensees as a community and as a collection of subgroups.

The focus of this research is innovative and studying it raises concerns for some members of Ontario's legal community as we learned in the planning process from benchers, staff and the literature, and from some licensees during the survey process. For these reasons it is important to understand how we addressed them in the design of the survey – namely how we *qualified individuals as 'racialized'* (screening), and how we **ensured that the views of all licensees are accurately portrayed in the data and final report (representativeness).**

### Racialization, Race, Ethnicity

As it is defined in the introduction to this report, 'racialization' is not directly equivalent to the related social markers of race, ethnic origin, or identity as a 'visible minority'. Because racialization is explicitly defined for purposes of this study as *either or both* an imposed or chosen self-identity, respondents to the survey are the only source of knowledge about their own status as racialized or non-racialized, in contrast to 'race' and 'visible minority' that purport to be objective markers regardless of an individual's experience.

In this study therefore, racialization is taken at face value – respondents who answered ‘yes I am racialized’ are considered to be members of the population of racialized licensees, regardless of any other racial or ethnic markers of their identity.

As the data in this Section 4 illustrates, the degree of concordance between racialization and more traditional notions of race and ethnicity (Black, East Asian, Caucasian, etc.) differs by subgroup of the population (**Chart 2**). We reflect further on these meanings in the body of the report.

### Representativeness of the Survey Populations

The research design required responses from both racialized and non-racialized licensees, but due to the subject matter of the study – which was widely known to LSUC members and stated clearly in the survey invitation – there was a large response from licensees who self-identify as racialized, compared to the proportion of the total population they actually comprise.

This is not unusual in quantitative studies, and can be corrected for, provided the source and scale of the numeric over- or under-representation of particular subgroups are understood. A typical remedy is to ‘weight’ the survey data so that the results align with the known (or precisely estimated) proportions from a census or other prior reliable quantitative study.

We undertook a two-step method to achieve an overall representative sample. First, we used a weight raking (sample balancing) algorithm to adjust the samples of lawyers and paralegals separately, using the 2010 Law Society snapshot documents as estimates of the true proportions of different subgroups of licensees. Second, the lawyer and paralegal subsamples were then combined and weighted to their correct proportions vis-a-vis one another. The overall population proportions of lawyers and paralegals were deduced from the total number of 2010 snapshot responses and the snapshot response rates for lawyers and paralegals, respectively. The weighting process yielded a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees.

Sections 4.3 and 4.4 describes the weighting process in greater detail, compare the raw results of the online survey with the final study population of lawyers (**Table 2**) and paralegals (**Table 3**), and provide other demographic and practice environment comparisons (**Tables 4 and 5**)

### Composition of Racialized licensees

In the final weighted study population, just over one-in-five (22%) licensees self-identify as racialized and a further 11% say they are unsure. Two-thirds (67%) self-identify as non-racialized.

## 5. Experience of Licensees

---

Two banks of questions (Q16 and Q17) asked racialized and non-racialized survey participants about their experience in the transition from school to articling, during entry into practice, and career advancement.

What emerged from the survey results is an overview of the landscape of career challenges faced by both groups which illustrates the breadth and depth of divergent experiences of racialized and non-racialized licensees, as well as those points where there is a convergence of experience between the two main groups of respondents or sub-groups within them.

Key findings from this section include:

- ▶ Racialized licensees reported lower success rates across a range of key measures related to articling/training placement, finding a suitable first job, and finding employment in a suitable practice environment (Chart 3)
- ▶ Racialized licensees were twice as likely as their non-racialized counterparts to report less rapid career advancement than their colleagues with similar qualifications (52% compared to 25%) (Chart 3)
- ▶ Racialized licensees were twice as likely as non-racialized to report having felt disadvantaged in law school (38% compared to 17%) (Chart 4)
- ▶ From a list of 17 factors identified as potential barriers during entry into practice and after entry, two fifths of racialized licensees (40% during, 43% after entry) ranked their ethnic /racial identity as the most serious barrier, compared to 3% and 4% of non-racialized licensees respectively. (Tables 6 & 7)

- ▶ With one exception, a larger percentage of racialized licensees than non-racialized licensees identified each of the 17 factors listed more frequently (Tables 6 & 7).
- ▶ A cluster of issues associated with gender illustrated some convergence in the experience of women in both groups of survey respondents, while also highlighting the extent to which racialization amplifies barriers associated with gender (Table 6 & 7).

## 6. Impacts of Racialization

---

This section explored the extent to which identified challenges or barriers are perceived by racialized licensees to have disadvantaged them at any stage of their career (Q21). Results reported in this section are based on questions addressed to racialized licensees only.

Key findings from this section include:

- ▶ Sources of career disadvantage related to national origins included: different accent than your colleagues (21%), not raised in Canada (18%), do not speak English/French as well as peers (16%), and received training outside Canada (12%). On this group of overlapping issues up to two-fifths of those whose first language is neither French nor English or are born outside Canada flagged these issues as sources of career disadvantage (Chart 6).
- ▶ Two thirds (68%) identified not having grown up with a network of professional contacts, 65% identified not having the same cultural background as their colleagues, and 50% named prejudice based on race as the top three factors (from a list of 17) that had disadvantaged them at any stage in their career (Chart 7).
- ▶ Women, sole practitioners, first language neither French nor English, and those born outside Canada were among those groups most likely to cite all three of the factors listed above (no professional network, cultural background, racial prejudice) as sources of career disadvantage. (Chart 7, discussion)

- ▶ Ethno-racial groups most likely to cite the same factors as a source of career disadvantage included: Black, South Asian, Chinese, and Arab. (Chart 7, discussion)
- ▶ Two-fifths (42%) of all racialized licensees identified expectations to perform to a higher standard than others based on racial stereotypes as being a source of disadvantage in hiring, advancement or pursuit of an area of practice (Chart 8).

## 7. Solutions (Remedies and Best Practices)

This section explored the opinions of racialized and non-racialized licensees regarding the implications of the challenges faced by racialized licensees, and the remedies or best practices that should be followed to address those challenges.

Key findings include:

- ▶ More than four-fifths of racialized (83%) and three-fifths of non-racialized licensees (62%) agreed that racialized licensees face (much more/somewhat more) challenges to their entry into practice and advancement compared to their non-racialized colleagues. (Chart 9)
- ▶ At least half of respondents in both groups agreed that the challenges faced by racialized licensees: impact the reputation of the legal system in Ontario (78% racialized, 62% non-racialized), affect access to justice for Ontarians (75% racialized, 54% non-racialized) and affect the quality of legal services for the public (69% racialized, 50% non-racialized) (Chart 11).
- ▶ Asked if the increased number of racialized lawyers and paralegals would have a positive or negative impact on the public of Ontario, 82% of racialized respondents indicated it would have a very positive (58%) or somewhat positive (24%) impact. This compared to 76% of non-racialized respondents (40% very positive, 36% somewhat positive) (Chart 12)

- ▶ A majority of racialized licensees endorsed 18 of a list of twenty measures on the subject of making the legal profession more inclusive. A majority of non-racialized licensees endorsed six of the measures listed. (Chart 16)
- ▶ The top three measures to promote inclusivity endorsed by both groups were: more mentorship programs to deliver professional guidance and access to networks for racialized licensees (82% racialized, 78% non-racialized), greater and timely transparency of hiring criteria (80% racialized, 75% non-racialized), and develop a more diverse public face/image for the Law Society (71% racialized, 60% non-racialized) (Chart 16)

## 8. Complaints and Discipline

---

Based on themes and issues that had surfaced in the Focus Group phase of research, a final series of questions explored the views of licensees regarding the possible risks of complaints and discipline associated with the challenges faced by racialized licensees.

Key findings include:

- ▶ A majority of racialized respondents agreed that nine of the 10 factors listed would be likely to increase the risk of complaints against racialized licensees. A majority of non-racialized licensees agreed that three of the 10 factors listed were likely to increase the risk of complaints (Chart 20).
- ▶ Risk factors flagged by a majority in both groups included: lack of mentors and professional networks to deal with practice challenges (78% racialized, 63% non-racialized), racial stereotyping by clients (71% racialized, 57% non-racialized), and lower quality articling positions and inadequate training (70% racialized, 51% non-racialized) (Chart 20).
- ▶ Asked if a differentiation should be made in the regulatory processes with respect to racialized licensees in certain circumstances, 17% of racialized and 9% of non-racialized answered yes (Chart 21).

## 9. Conclusion

---

The goal of this research project, to identify challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement, proved to be ambitious, complex and at different points methodologically challenging. Nevertheless, the scope and methods of the research yielded a nuanced account of the experience of racialized licensees.

Key Informants depicted a landscape in which racialization is a “consistent and persistent factor” affecting racialized licensees across the arc of their careers as students, during and after entry into practice. From the focus group phase of research there emerged an “overarching narrative of the extent to which racial identity is a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals.”

Findings of the survey research demonstrated the extent to which racialization establishes a measurable constellation of career challenges for racialized licensees that are distinct from those of their non-racialized colleagues: challenges that are rooted in their racialized status as well as many related challenges that are compounded and amplified as a consequence of the racialization process. In comparison with their non-racialized colleagues, racialized licensees and specific sub-groups encounter quantitatively more severe challenges during and after entry into practice, yielding measurably greater negative impacts throughout their careers.

As noted in this report not all non-racialized licensees acknowledged the significance and unique challenges associated with the process of racialization. However, one important finding, highlighted in the survey phase, was that a strong majority of non-racialized licensees recognize that ‘racialization exists,’ that the challenges faced by racialized licensees have negative consequences for the legal professions and the public, and that pro-active measures are called for to enhance inclusiveness. Results reported in Section 7 demonstrate a substantial overlap across the racial divide, reflected both in shared opinions regarding the value, scope and direction of change, as well as endorsement for specific measures to address the challenges of racialization and make the legal professions more inclusive.

The methodology and findings of this research will provide the basis for further targeted exploration of the issues associated with the challenges of racialization encountered by specific groups, career stages and practice environments. It is hoped that these results will also lend support to the ongoing effort to design and implement practical measures to reduce the challenges associated with racialization and promote inclusiveness within the legal professions.



# 1. Introduction

---

In September 2011 the governing body of the Law Society of Upper Canada, identified the following as a priority: “considering the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms.” As a result, Convocation created the *Working Group on Challenges Faced by Racialized Licensees*<sup>2</sup>.

Under the direction of the Working Group and managed by the Equity Initiatives Department of the Law Society, Strategic Communications Inc. (Stratcom), was contracted to design and conduct research to identify:

- ▶ Challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;
- ▶ Factors and practice challenges that could increase the risk of regulatory complaints and discipline, and;
- ▶ Identify perceptions of best practices for preventive remedial and/or support strategies.

Components of this research project included a planning phase, key informant interviews, focus groups and an online survey advertised to all licensees in good standing. This report integrates the results of the qualitative research (interviews and focus groups) with in-depth analysis of the quantitative findings (online survey). Presentation of the results combines charts and tables with written interpretation.

---

<sup>2</sup> For the purposes of this research project and throughout this report the term ‘racialized’ is defined as follows: “Racialized expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Indo-Canadian, Indian Subcontinent) South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g., Iranian, Afghan) persons.

## 2. Methods

---

### 2.1 The Research Planning Process

Following completion of the research agreement (March 15, 2013) a kick-off meeting was convened to confirm the project goals and objectives, and present the research methodology outlined in the project proposal. Subsequently, the consulting team prepared an issues matrix to identify gaps in the existing research, set research priorities and ensure that this project is integrated with what has been done in the past. Between March 15 and May 31 seven conferences/meetings were convened with Working Group members and with staff to review various aspects of the project, existing knowledge and hypotheses, and research methods.

From this planning phase, the research team developed the final research design and an analytical framework (aka 'issues matrix') to identify research priorities and gaps in knowledge (**Appendix A**).<sup>3</sup>

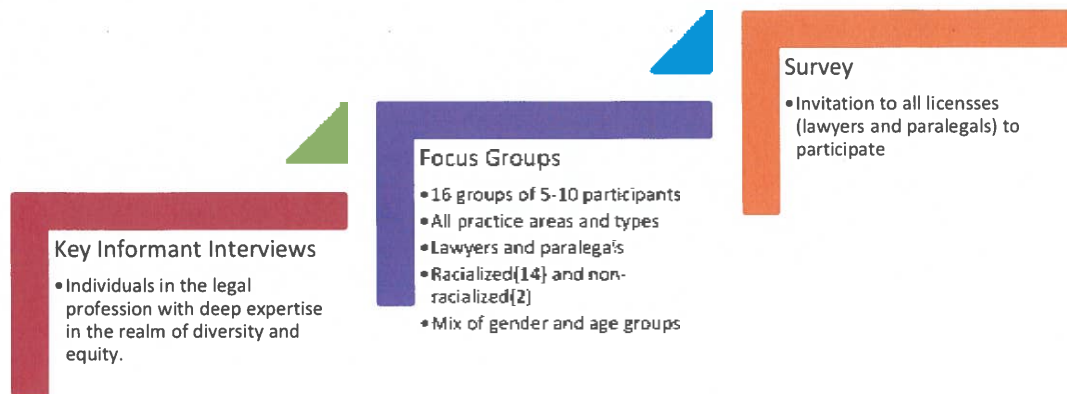
### 2.2 Research Methods

This study has a mixed method design, by which we mean that it is comprised of both qualitative (interviews/focus groups) as well as quantitative (survey) methods. The purpose of this approach is to generate a rich and detailed account of experiences from licensees' perspectives, and then measure or validate those findings across the whole population of licensees. Using the issue matrix as our starting point, each phase of the research process built on the previous phase, taking into account unexpected as well as expected results in the previous phase, as shown in **Figure 1** below.

---

<sup>3</sup> Meetings and conferences conducted between March 15 and May 31 included the Working Group on Challenges Facing Racialized Licensees, the Chair of the Working Group, Equity Advisor, Equity Initiatives Department Staff, the Treasurer, CEO, and Director of Professional Regulation and Discrimination.

Table 1 – Research Design



## 2.2.1 Key Informant Interviews

Between May 24 and June 24 2013, the research team conducted 20 key informant interviews, with a total of 27 individuals. Two of the interviews included two key informants, and one interview was an in-person consultation, with three members of the research team interviewing six individuals. Three of the 27 key informants self-identified as non-racialized.

Key informants were selected under the direction of the Working Group and the Equity Advisor, although three of the nominated participants could not be reached or declined to participate. In two cases the representatives of organizations with an interest in the issues nominated additional individuals to participate in the interview process.

Individual key informants were guaranteed anonymity as a condition of being interviewed. However, with their permission **Appendix B** lists the associations of licensees, and in one case a training program, that were represented in the interview process.

The key informant protocol covered individuals' backgrounds, organizational focus and priorities, perceptions of racialization, the role and impact of racialization as a factor affecting entry into the profession, career advancement in different practice environments, representation and retention, complaints and discipline, and access to justice for Ontarians. Interview questions also explored the intersection with issues not directly associated with racialization, recommendations of specific measures to deal with the challenges faced by racialized licensees and the role of the Law Society in addressing issues associated with racialization (**Appendix C**).

## **2.2.2 Focus Groups**

In May 2013 the Law Society invited lawyers and paralegals in good standing and who self-identified as racialized, to participate in focus groups scheduled from June 19 to August 15, to be convened in Toronto, Ottawa and London. The invitation was communicated to members by email and promoted on the Law Society website. Racialized licensees were provided a link where they could register online by completing a short survey which included questions about years in practice, practice environment, Canadian or foreign training, race/ethnicity, gender and age.

Individuals who registered online and identified themselves as racialized, were contacted by telephone and screened for their availability to participate in specific groups and on specific dates. From an initial group of 503 online volunteers, approximately 115 individuals who were qualified and invited to participate, and 103 racialized licensees eventually participated in 14 groups. In addition a pair of focus groups was held with non-racialized licensees. The 13 participants in these two groups (seven women and six men) were recruited from among a subset of online focus group volunteers who self-identified as non-racialized.

Table 2 – Focus Group Composition

Professions	Selection Criteria	Gender	City	Number of Groups
<b>Racialized</b>				
Lawyers	Sole Practitioners/Small Firms	Women Men	Toronto Toronto	2
Lawyers	Medium/Large Firms	Women Men	Toronto Toronto	2
Lawyers	Government/Corporations	Mixed Gender Mixed Gender	Toronto Ottawa	2
Lawyers	In Practice	Mixed Gender Mixed Gender	Toronto London	2
Lawyers	Foreign Trained	Women Men	Toronto Toronto	2
Lawyers	Other Practice Environments	Mixed Gender	Toronto	1
Paralegals	N/A	Women Men Mixed Gender	Toronto Toronto Toronto	3
<b>Non-Racialized</b>				
Lawyers Paralegals	N/A	Mixed Gender Mixed Gender	Toronto Toronto	2

Focus group discussions were guided by a series of thematic questions, based on the insights of key informants but testing their validity in the experience of lawyers and paralegals (**Appendix D**). Themes included reflections on the profession, perceptions and impressions regarding the challenges faced by racialized licensees, impacts of racialization, the risk of complaints and discipline associated with racialization, and recommendations regarding best practices and remedies. A modified Moderator's Guide was prepared for the two groups of non-racialized participants (**Appendix E**).

The findings from the focus group research, which are incorporated in this report, have also been submitted in a separate report, *Focus Group Findings: Preliminary Overview* (September, 2013).

### 2.2.3 Survey of Licensees

The final phase of the research project entailed the drafting and fielding of an online survey advertised to all members of the Law Society in good standing.

Following a process of review and refinement an online survey, comprised of 35 questions, including six question 'banks' and seven open-ended questions and taking approximately 25 minutes to complete, was posted from October 25 to November 18, 2013 (**Appendix F**). The online survey was advertised in advance through Law Society communications channels, including email to all licensees work addresses, and website promotions. Members were notified by email and invited to participate immediately prior to the posting of the survey and reminded by email twice during the period that the survey was accessible online.

A total of 5,454 licensees accessed the survey and 3,296 completed the survey, 3,237 in English (98%) and 59 in French (2%). Further details about this study population, and the post-interview treatment of the data, are discussed in the section 'Profile of Survey Study Respondents', below.



## 3. Key Informants and Focus Groups

---

### 3.1 What's the issue?

Practising law or providing legal services in Ontario poses many challenges – and opportunities – for those who pursue it as a career. The research design of this study focused on the experiences of racialized licensees, but also took into account the perceptions of non-racialized licensees with respect to their entry into practice and career advancement. Insight into the experiences of the whole population is critical for contextualizing, and understanding, the experiences of racialized licensees in particular.

The analytical framework, developed after a literature review, grouped issues in two categories:

**Tier 1 issues** comprise the major areas of licensees' experience – Recruitment and Hiring, Career Paths (general), Advancement in Mid-sized and Large Firms, Risk of Complaints and Discipline – in which racialization may, based on previous research, be playing a significant role in terms of observed outcomes. These research areas potentially involve systemic, cultural, intercultural and interactive dynamics among and between licensees, clients, regulators, and the wider legal environment including the public of Ontario.

**Tier 2 issues** are equally important, but identify dynamics or drivers that are, from a research perspective, less complex to observe – such as Direct and Overt Discrimination and Bias – or appear to involve less interaction dynamics with other drivers such as the tendency of racialized lawyers to be over-represented in immigration, poverty, and criminal law and under-represented in real estate and insurance (broadly, Areas of Law), and why there is over-representation of racialized individuals among Ontario university graduates, and in medicine and engineering but not in the legal profession (Incidents of Representation).<sup>4</sup>

Each of the seven categories identified and grouped in the two-tier issues matrix/analytical framework was accompanied by a short description of the scope of the issue and a discussion of the key research gaps/questions. The analytical framework and the gaps identified guided the subsequent design of the main research instruments, especially the key informant guide.

---

<sup>4</sup> Although 'Incidents of Representation' is included in the analytical framework, it falls outside the scope of this study.

### 3.1.2 Insights from Key Informants

Although the key informants differed on specific observations and concerns, those who are themselves racialized depicted to us a landscape in which racialization is a constant and persistent factor affecting students, young licensees during their entry into practice, and opportunities for career advancement. This is true (in distinctive ways) in all types of practice environment, they told us. Racialization generates numerous specific challenges that operate in subtle ways, reflecting their systemic character, and that may be amplified by individuals' lifestyles, socio-economic status, age, gender, national origin, and educational pedigree.

Despite the complex and subtle racialization process, these informants also told us that overt discrimination and bias still exist in the Ontario legal community, operating through social dynamics as well as professional/business mechanisms. These do not, by themselves, exhaust the drivers that make up the racialization process, but are significant contributors to impacts that affect everything from career opportunities and earnings for individual licensees to the profession as a whole, and ultimately, access to justice in Ontario.

Through the key informants we got a strong indication that:

Discrimination: Overt discrimination and bias – often unconscious – is a feature of daily life for many, or most, racialized licensees. Informants reported numerous incidents in which licensees were subjected to negative stereotypes, and made to work harder or suffer greater consequences for errors than non-racialized colleagues. These stereotypes are reinforced by the under-representation of racialized members among the judiciary and managing partners of the mid- and large firms. Some overt racism is at play in some quarters, we were told.

Networks & Support: Racialized students and licensees are seen as more isolated from professional support networks and find it harder to gain a mentor than non-racialized licensees, on average. Racialized law licensees often come from immigrant families or are starting out without family networks that include lawyers or other professionals, so are thought not to have the same opportunities in law school or their entry into practice as non-racialized licensees. Some key informants noted that this lack of social connections can remain a barrier throughout a career if, for example, a licensee begins practice by building their client base within their own ethnic community where such networks are still sparse.



Cultural differences: The ‘fit’ between individual licensees and their employers, colleagues, the courts, or clients are a systemic barrier to entry and career advancement for many racialized licensees. This domain of ‘intercultural’ competence operates in all directions, contributing to self-selection out of further challenges (by individual licensees) as well as reinforcing unconscious biases of colleagues and employers that seem to justify discriminatory behaviour. This factor manifests strongly in the continued use of social events and lifestyle pursuits as channels for career opportunities and professional advancement, and results in individuals feeling isolated, overlooked, marginalized, and under-valued. This is thought to be especially important as a ‘glass ceiling’ that reduces the representation of racialized licensees in partnerships and other leadership roles in the profession which, in turn, reinforces stereotypes about racialized licensees’ fitness as legal professionals.

“ The recruitment process is riddled with unconscious bias. What doesn’t fit is excluded, mainly through socialization”.

*Female Lawyer,  
key informant*

Internationally-trained: Being born and/or educated outside Canada is a particular source of barriers for racialized licensees (beyond the need to be re-certified in Ontario) because it means a licensee may have a combination of important disadvantages – small (or no) professional network; language challenges in a profession that values this skill above all; lifestyle or culture that is different than their colleagues; a ‘foreign-sounding’ name or educational pedigree that attracts negative stereotyping. Particularly acute barriers, according to our key informants, are presented by the fact that foreign-trained licensees do not participate in the critical transition from law school to a first professional position in Ontario and so are generally seeking to practise without the network of contacts, mentors, and opportunities that Ontario-trained licensees take for granted. Gaining these ‘standard’ advantages can be more difficult for racialized, as opposed to non-racialized, licensees.

Solutions/Best Practices: There is wide acknowledgement that strong mentoring is a critical edge that differentiates many successful legal professionals from their peers. More systematic and effective mentoring – championed by the Law Society – is thought to be a critical response to the challenges facing racialized licensees. Numerous key informants also support the collection and circulation of more detailed statistics on racialization within firms, similar to approaches taken in the United States where transparency about the makeup of firms’ staff supports greater representation by racialized lawyers. This approach dovetails with greater use of procurement rules by government and the corporate sector, where good intentions about hiring diversity-oriented law firms is seen as lacking effective action. There is also a suggestion that a systematic review of recruitment, articling, and hiring practices is needed, possibly led by the Law Society, to develop specific strategies for the removal of systemic barriers

facing racialized licensees. These steps should include unifying the articling system to avoid a two-tier system that enables discrimination against racialized licensees; encouraging standardized interviewing procedures that reduce the impact of 'fit' as a screening method; and including business management in the core curriculum for lawyers and paralegals.

**Complaints:** Because of their higher likelihood to become sole practitioners, and/or to come from backgrounds where professional life is the exception rather than the rule, racialized licensees are thought to be more exposed to the negative aspects of the free market – often starting with fewer connections to a large or affluent client base, and without sufficient education in the 'business' of a legal practice. There is also anecdotal evidence that many take the pragmatic approach when starting their career, appealing to their own local ethnic/cultural community for business, which may (in some instances) expose them to unreasonable expectations about the scope and efficacy of their practice and, ultimately, complaints from clients. Key informants also referred to discrimination by employers, regulators and the judiciary – citing specific examples of situations in which racialized lawyers and paralegals appeared to receive greater scrutiny for infractions than is typically the case when committed by non-racialized lawyers.

### 3.2 Focus Group Findings

Through the focus groups we sought a deeper analysis of the claims made by the key informants.

Focus group participants offered an extensive and detailed account of the challenges confronting racialized licensees. An overarching narrative emerged of the extent to which racial identity is a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals.

Some participants recounted experiences where their racialized status was a positive factor in finding employment or contributing to the benefits they were able to offer their employer. Others viewed the challenges associated with racialization as secondary to their overall career trajectory – but many of this latter group of individuals went on to interpret their own experience as 'the exception that proves the rule', one saying that since he is already successful in his career, his experience is not the norm.

More frequently, participants described experiences in which the challenges of racialization appeared as barriers to entering practice, finding and maintaining secure employment and career advancement, and in many instances imposing a competitive disadvantage in relation to their non-racialized colleagues.

Descriptions of the challenges of racialization ranged from being on the receiving end of cultural stereotyping or explicit racial discrimination, to accounts of how systemic barriers operate through law school, articling, recruitment, and advancement. The many and varied challenges described by focus group participants generated the overall impression that racialization is, as one focus group participant described, a “wall-to-wall” factor that is at play for racialized licensees at every stage of their career. The weight and meaning of racialization must be calibrated and negotiated in each specific professional environment and social context. The fact that cause and effect is often ambiguous or hidden does not render the challenges associated with racialization less pervasive or less serious. As a young paralegal observed, after recounting an extremely damaging experience with overt racism in a job training placement, he had come to see his own racialized status as a factor potentially at play in every situation: “You always wonder about it.”

Racialized participants’ accounts of the challenges they face, and comparisons with the accounts of non-racialized licensees, suggest that racialization is the driver of wide differences of professional experience for licensees.

### Discrimination & Stereotyping

Focus group participants offered literally hundreds of examples of discriminatory behaviours, interactions, language and assumptions that were common features of their everyday professional experience. These experiences amount to barriers that occur across the entire arc of individual legal careers, from education, training and entry into the profession to advancement and career path, and in some case the decision to leave the profession.

Many described the experience of being stereotyped by culturally ignorant non-racialized colleagues and clients.

An Asian woman, a senior lawyer at a large firm, described how her manner and gestures were often misinterpreted, obliging her to work harder than her peers to overcome the challenges imposed on her by cross-cultural miscommunication. An experienced black sole practitioner reported that when she had worked for government earlier in her career she was asked on an almost daily basis for directions to the

“When I was mooting one time, a judge, that was a lawyer, asked me a question. I looked up, and I thought about it...and he said ‘I shouldn’t be so disrespectful as to roll my eyes and slam down my pen’... Meanwhile I had a partner who was Korean/Asian and very small and had different attributes attributed to her and she was ‘feisty’ and they just loved it. They [would say] I liked how you were really able to articulate that well and your passion was just shining through. It was two different stereotypes.”

*A black female lawyer*

mailroom, reflecting the questioners' assumptions that she was an unskilled employee. Betraying stereotypical assumptions about black people, colleagues who got to know her professionally would say, "Oh, you're actually very smart." One Asian lawyer who articulated in a Bay Street firm spoke about her experience with colleagues who assumed that she spoke "all Asian languages."

Unspoken assumptions that racialized licensees are less competent or effective often forces them to compete with non-racialized colleagues – a situation in which "you can't be just as good, you have to be better," as one focus group respondent said.

**“** I landed a job and was doing shadowing, and the senior lawyer made a comment that he thought I was with IT.”

*A young male South Asian lawyer*

Reinforcing a theme that emerged from Key Informant interviews, focus group participants reported experiences on both sides of this dilemma. Some reported having to work harder than their non-racialized colleagues for the same job benefits and opportunities, and others wondered if race was a factor in the more rapid advancement of non-racialized colleagues of comparable or less merit. Still others reported suffering the consequences of lowered expectations in seeing opportunities for larger files and more challenging work diverted to non-racialized colleagues who were otherwise no more qualified or deserving. For example, a black female lawyer became tearful as she recounted the indignity of being provided with less administrative support than any of the other associates at her mid-sized firm.

Although focus group participants frequently described the types of discrimination they encountered as "subtle," "hidden" or "layered," many also described harsher experiences of overt racism. In almost every group one or more participants was moved to tears or anger in describing such an experience.

**“** Law school was the most oppressive and racist environment I ever encountered.”

*A male South Asian lawyer*

Three licensees (two women lawyers and a male paralegal) described an explicitly racist encounter that derailed their articling or job placements, with long lasting negative consequences for their careers. An Ottawa lawyer recounted a job interview in which the non-racialized senior lawyer's "face fell" when he first saw her and she was forced to endure the humiliation of a meaningless interview for which she had assiduously prepared for.

Several participants described aggressive and hostile behaviour from judges and prosecutors that crossed the line from bad manners to outright racism. A foreign-trained Ottawa lawyer described an experience in an Ottawa courtroom in which he was ordered to memorize a judge's instruction. The judge instructed the lawyer, "Don't you dare take your pen out, I want you to remember this by heart!" and then grilled him on where he had done his schooling. The participants' conclusion from this experience was that it would not have occurred if he were white and had he taken his law degree at Queen's University.

**“** I was actually called out in the courthouse as they didn't know who I was. I was the only person of colour in a suit and tie and was called the N word.”

*A racialized paralegal*

Finally, a few participants referenced serious past or current race related conflict that were either of too personal a nature or too complex to recount in the focus group context.

### **'Fit' and Cultural Difference**

Many racialized licensees in the focus groups described experiences of being alienated from the dominant culture of firms or companies where they worked. Social events, frequently centered on alcohol consumption, often leave non-drinkers feeling outside the group, looking for inconspicuous ways to fit in: "You have to get used to the flow of alcohol." One participant referred to a colleague who carried a half-full wine glass at social events in order to avoid drawing attention to the fact that she did not drink. Another described the disparaging remarks of a senior lawyer regarding the "rules" that a racialized colleague lived by, an observation extrapolated from the fact that the racialized colleague was a non-drinker.

For many racialized licensees common features of the dominant (non-racialized) culture, such as social drinking, playing golf, 'going to the cottage', watching hockey – all represent points of contact, interaction and social solidarity for their non-racialized colleagues, but reinforce their own feelings of isolation and "otherness." Many also reported a parallel or overlapping experience in the culture of the work place. One lawyer conceded that notwithstanding his deliberate efforts to neutralize the racial/cultural gap, the senior partners at his firm interact differently with him than they do with his non-racialized colleagues: "There is a spark that is there with others. I am treated very formally by the senior partners."

**“** As a new lawyer, 'fit' is: 'Do you play golf?' It goes to the business model, you're excluded if 'you're not like us.'”

*Recent-call, black lawyer*



The experience of being out of place in one's surroundings also extends to the courtroom for many racialized lawyers and paralegals. A lawyer from a community outside of Toronto commented: "Sometimes when you enter an all-white courtroom and you're making your arguments and building your case, you sometimes start to wonder, 'Do I belong here?'" Feeling out of place in the courtroom is often reinforced by the actions of others. The individual quoted above described an experience common to many racialized licensees: "A gentleman came up to me and thought I was an interpreter and they tried to pair me with another Asian person in the courtroom. It is rather humorous." Along the same lines a paralegal reported being mistaken for the client of the taller and blond woman she was representing. Stereotypical assumptions about who looks like what creates professional obstacles. A recently called lawyer observed that women and racialized lawyers are sometimes assumed to be paralegals and forced to wait for the attention of the court.

### Gender, Age and Pedigree

The focus group results show that racialization intersects with a wide variety of other factors including language or accent, differences of professional status between lawyers and paralegals and whether licensees were trained in or outside of Canada. In each of these divisions there are factors that may mitigate or intensify the challenges associated with racialization. The intersection of these and other factors – age, sexual orientation, disability, geographic location – yields an incredibly complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization.

In other words, racialization's meanings can vary depending on circumstances. One senior lawyer observed that, "your client base and the profile of your firm will dictate what challenges you face." In his own case, where his largest clients are major banks, he observed that if clients are "non-racialized and you are, and they are older and you aren't, you may face challenges." In this context racialization has less significance in dealings with clients who are younger/closer to one's own age. "There typically isn't a challenge between racialized and non-racialized people of the same age." Illustrating the same point a group of male lawyers employed by medium-sized and large firms referenced their own professional experience and expressed doubts that racialization constituted a barrier to entry into the legal profession but all agreed that it might be a barrier when it comes to advancing to partnership.

The intersection of race and gender multiplies the challenges for women. One female lawyer pointed out the obvious but compelling fact that the power centre of the legal profession is not only white but male and many racialized women in

“I guess people stereotype for a reason, which in this case is a Caucasian male. If you are not that you are the Other.”

*Female, racialized lawyer*

the focus groups perceived themselves disadvantaged in accessing employment in some practice environments, notably medium and large sized Bay Street law firms.

In a 'boys club' where extracurricular social activities are often also avenues to new work opportunities and advancement, racialized women perceive themselves as doubly disadvantaged. One lawyer observed that it is difficult for her to work on Bay St, where she is not interested in participating in the extracurricular activities that the "higher ups" also participate in, and that are often where new work opportunities and interesting files come from.

One young lawyer recounted a devastating experience that had caused her to leave the profession for several years:

“My disillusionment specifically came from lawyers themselves. I worked with a sole proprietor in criminal law. Time and time again, one of the things I was told was that being identifiably Muslim and being a female, I'm going to have a hard time in this profession. So it was one of those things. Just reliving that makes me upset... [The message was] to abandon my principles. My principal - throughout my articles, we'd have conversations on end about why it is that I practice my faith, why it is that I wear the hijab and stuff like that...”

In this particular instance the specific 'challenge' to entry into the profession appears as a combination of racialization, gender, religious practice and youth. Below, the survey findings show that racialized licensees consistently identify a wide range of social and demographic factors as barriers to entry and advancement, more frequently than their non-racialized counterparts.

While many racialized women voiced the opinion that there was no place for them working for a Bay Street law firm one participant offered a more positive perspective that nevertheless confirmed the general view that the barriers are real. Describing the medium-sized firm where she worked as “special” for its equal treatment of her and her peers, she described herself as the only visible minority woman at the firm. On the other hand, she also reported that her boss would send other lawyers to accompany her in court with the excuse that her presence alone will “look bad to the old boy's club.” This participant explained this treatment as a combination of factors: her being a woman, racialized and a more recent call.

### **Converging Experience of the 'Outgroup'**

There are numerous degrees of being made to feel excluded. Both racialized and non-racialized licensees with whom we spoke in focus groups felt that they were discriminated against for a variety of factors not directly associated with racialization. Some non-racialized respondents identified experiences of discrimination associated

with their gender (women), age (too young or too old), and membership in an invisible minority (LGBT, Jewish) as factors that they felt represented challenges to entry and advancement comparable to the challenges that might be associated with racialization.

This means that there is often ‘convergence’ of the experience of non-racialized licensees with that of their racialized colleagues when it comes to being part of an ‘outgroup’ – women sharing experience with women, men with men, and so on. These experiences illustrate the extent to which challenges to entry and advancement are shared by specific sub-groups across the racial division.

For many racialized licensees a great deal of discrimination revolves around their name. Names are regularly misspelled or mispronounced. Foreign sounding names are often the trigger for patronizing and inappropriate questions about individuals’ backgrounds, years in Canada or the merits of their spoken English or French. Canadian-born and long-time residents are regularly treated as immigrants. For example, a Canadian-trained sole practitioner reported that despite having been in Canada for 16 years every time he sees senior counsel he is asked if he went to school in Canada or Iran.

Names are also perceived by many licensees as a genuine barrier to advancement. Difficulties that recruiters have reading or pronouncing an individual’s name, may be a factor in limiting the opportunity to move to the next stage of the hiring process. The problem is serious enough that many focus group participants shared that they had or had considered ‘anglicizing’ their name to improve their chances of clearing at least the initial recruitment hurdles. One lawyer expressed concern that if she became a partner at her firm the addition of a foreign sounding name might have a negative impact on how her firm was viewed. Acknowledging the seriousness of the issue, a sole practitioner opted for a different approach, adding an ‘a’ to her name in order to more explicitly show her ethnicity.

### **Best Practices to Address Barriers and Challenges of Racialization**

Focus group participants recommended a wide range of best practices and solutions to address the challenges faced by racialized licensees, endorsing many of the ideas introduced to start the discussion. Among the most frequent mentions were a variety of recommendations for stronger mentorship and support, a much more pro-active role for the Law Society in promoting diversity in the profession, and a concerted and genuine effort by law firms to promote greater diversity.

Mentoring: Racialized lawyers and paralegals spoke frequently of the need for stronger mentorship, support and resources, adapted to the needs of racialized licensees. As an experienced sole practitioner put it: “If the Law Society were to take anything away from this focus group it’s that they need to combat isolation.” For many, the solution lies in stronger mentorship from racialized and non-racialized senior members of the



profession. Having “senior white lawyers” mentoring and developing “relationships with minorities” is viewed by many as the key to more fully opening up the profession, and large firms in particular, to racialized lawyers.

Financial Measures: Accompanying suggestions for stronger, targeted mentorship programs many participants recommended a variety of financial measures, including discounting continuing education fees, and financial support for professional associations representing racialized licensees. Along the lines of the existing French language program, the Law Society should consider sponsoring English language training (“lawyer language”) for immigrants whose first language is not English. Many focus group participants also recommended a general lowering of fees for sole practitioners and paralegals, in recognition of the financial challenges that so many of them are facing.

Law Society: There is enthusiasm for a more pro-active role for the Law Society in developing its “voice” on diversity issues. Specific suggestions included more deliberately adapting the Continuing Professional Development Program (CPD) to the needs of racialized licensees, fostering greater diversity within the governing bodies of the Law Society and among those delivering the CPD program, and putting forward a more diverse public face. One lawyer recommended pro-active outreach within the whole profession.

“It’s wonderful that there are focus groups of racial people, but it is equally important for the Law Society to reach out to Caucasian lawyers and partners, and ask if they think there are issues with racialized lawyers. If they don’t feel it’s a relevant issue, there won’t be any change.”

Foreign-trained licensees identified the need for an alternative to the On Campus Interview (OCI) process, which would require a “lot of help from the Law Society” to close the existing gap between foreign-trained professionals and the job market, and create a “pool of immigrant lawyers” for firms and corporations to hire from. Along the same lines as their counterparts in other groups, foreign-trained licensees underlined the need for more networking events and opportunities with employers.

Licensees also see a role for the Law Society in promoting best practices within the legal profession and the corporate community, including encouraging corporate procurement policies and collection and reporting of diversity and gender composition of law firms. On the latter issue some participants registered concerns that promoting diversity reporting by law firms might in some ways distort the hiring process, with firms making hiring decisions based on diversity targets.

Opinion was divided on the issue of collecting data on racialization status in cases of complaints and discipline. While they allowed for the possibility that racialized licensees might be more vulnerable, some participants expressed concerns that release

of such data might reinforce the existing biases of prospective clients against racialized lawyers and paralegals.

Law Firms: Opinion varied on the issue of how change would occur within law firms and the extent to which the trend toward increasing diversity was already underway. For some, the profession is in the process of becoming more diverse. Time and the business case for a more

diverse legal team that can work in different communities, languages and countries will yield an appropriate level of diversity within the legal community. A larger proportion of participants were doubtful about both the direction and the momentum of change, recommending a variety of proactive measures to increase diversity within the legal community.

*“If you don’t see partners who look like you, it is more difficult to have someone to follow... It’s much more difficult for someone to pay their dues and to keep sacrificing and compromising, when they don’t know there is something at the end to justify it.”*

Many comments were related to changes in the hiring process. Hiring needs to be much more transparent, relying less on the concept of ‘fit’ or eliminating it altogether from the selection criteria. Law firms need to be pro-active in broadening the selection criteria they apply to the hiring process, crediting a wider range of life experiences among candidates rather than privileging experience and skills that favour ‘white males.’ “Just because you didn’t play lacrosse at school doesn’t mean you didn’t learn about time management and responsibility from looking after your sibling in a single parent family.”

The existence of diversity committees within law firms was acknowledged as a “great step” but many were critical of the tokenism and opportunism of some firms in developing a formulaic approach to diversity committees, and using racialized colleagues to promote the appearance of diversity and “give the impression that we care about it.” Diversity committees as they currently exist are the result of an externally driven process that lacks genuine commitment. One self-confessed “poster child” for her own firm’s diversity, declared the existing structure of the diversity committee is not acceptable and she would not recommend it.

Participants also endorsed cultural competence or sensitivity training for law firms, though one female lawyer was critical of superficial trainings she had experienced, and recommended a more sophisticated approach to address the more subtle forms of racism that are prevalent, and educate those who “might not even know they are racist.”

**Judges and Prosecutors:** Some participants noted the need for greater diversity among judges. One lawyer tied the issue of representation to a recent legal case where the chasing and beating of Asian anglers was not ruled a hate crime. He observed that the reaction of the Asian community was, “we are not part of the system.” Another lawyer was less convinced under representation was a reflection of racism or that proactive measures were necessary to increase the diversity of the bench, suggesting instead that the presence of “minorities” would inevitably increase over time.

As noted elsewhere in this report some racialized licensees, notably paralegals, reported harsh and discriminatory treatment by prosecutors. Referencing his own experience, one paralegal suggested that prosecutors should be held more strictly to the Rules of Conduct.

### Complaints & Discipline

Focus group participants agreed that there may be factors contributing to making racialized licensees more vulnerable to complaints, most frequently citing a comparative lack of resources and training, and problems associated with poor communication and cultural misunderstanding. A handful also referred to the problem of bad faith clients from within the same community as the licensee. A smaller group of participants, represented in many of the 14 focus groups with racialized licensees, reported not having seen any evidence of factors contributing to increased complaints and discipline for racialized licensees.

In part due to their disproportionately high representation in sole practice, racialized licensees are more likely to face the elevated risks associated with that practice environment. For racialized sole practitioners the risks of complaint and discipline are likely to be higher because they are less likely to have stronger networks and supports within the profession, focus group participants said.

“Minorities practising on their own don’t have the same resources as others do.” In contrast to poorly connected racialized licensees, “those who are better connected are more likely to be forgiven.”

Compounding the problem of limited resources, many racialized licensees have had limited access to mentorship and training, which increases the risk of reprimand. Reinforcing her case that high quality mentorship and articling positions are more difficult to come by for racialized licensees, a London lawyer commented: “My articling mentor was out for a year or two, and was shocked that she could be my principal.” Two other participants in the same group asserted that racialized sole practitioners are audited more frequently. One declared: “I’ve been audited over and over.”

Echoing a theme that surfaced in the Key Informant interviews, others identified language or accent as a factor increasing the risk of complaints. One senior paralegal with experience supervising racialized and non-racialized licensees noted that although the professional behaviour of the two groups was similar, racialized licensees were more likely to draw complaints from clients. She has concluded that there is a correlation between paralegals with accents and more frequent complaints. She noted that the most common phrase she heard from complaining clients was: "I just want to be served by someone who speaks English as their first language." Other paralegals and foreign-trained lawyers also made the point that licensees who are not fluent in English (or speak it with an unfamiliar accent) are more likely to experience miscommunication precipitating complaints.

On a related point some suggested that cultural differences or misinterpreted behaviour might trigger complaints. A paralegal reported that clients had complained about the "aggressive behaviour" of the black lawyers at her firm, while demonstrating a much higher tolerance for white lawyers who "scream" at their clients. Another paralegal reported encountering problems with colleagues or clients who interpreted her "look" as menacing.

Some felt that in some instances racialized licensees may be more vulnerable than their non-racialized counterparts to unfounded threats and complaints from bad faith clients within their own ethnic community. Illustrating the point, a sole practitioner reported that he was receiving threats of reporting issues to the Law Society that he judged would not happen with other non-racialized practitioners. Two paralegals in the same group described deliberate attempts to provoke (and record) professional misconduct, which both believed were, at least in part, racially motivated.

### **Reaction to this Research**

A strong majority endorsed the research project into challenges faced by racialized licensees and the focus group process in particular. They welcomed the opportunity to share their experiences with other racialized licensees. On the other hand, participants in almost every group expressed some doubts about the process and a lack of confidence in the capacity of Law Society to effect meaningful change. As one senior London lawyer put: "The road to hell is paved with good intentions." Still others expressed the view that the evidence of racism and its consequences for racialized licensees was already clear and documented. They wondered aloud about the extent to which this research project is simply another justification to delay meaningful action. One lawyer from southwestern Ontario expressed her deep demoralization and disillusionment with both the Law Society and the practice of law: "As far as I'm concerned nobody cares if I close my practice tomorrow. No one cares if there is representation of minorities in the law. Nobody is hiring us."

## 4. Profile of Survey Respondents

---

### 4.1 What's the Issue?

Whereas interviews and focus groups are not expected to represent the whole population, but rather to provide qualitative insight into the concepts, narratives, ideas and experiences of the study population, the quantitative survey intended to generate insights applicable to all licensees as a community and as a collection of subgroups (racialized, non-racialized, paralegals, lawyers, etc.).

The focus of this research is innovative, and studying it raises concerns for some members of Ontario's legal community, as we learned in the planning process from benchers, staff and the literature. It is innovative in the sense that the key focus of the study – racialization – has not often been treated as a distinct phenomenon for study. Even the term 'racialization' is relatively new and some in the community (including among visible minorities) do not accept it as standard terminology. And although we received clear direction from the LSUC and Working Group throughout the research process, the study raises concerns for some community members who feel that the very act of studying racialization as a distinct phenomenon may produce stronger perceptions of its importance than are warranted in reality.

For these reasons, it is important to understand how we addressed them in the design of the survey – namely how we *qualified individuals as 'racialized'* (screening) and how we ensured that the views of all licensees are accurately portrayed in the data and final report (representativeness).

### 4.2 'Racialization', Race, and Ethnicity

As it is defined in the introduction to this report (see also Chart 1: Composition of Racialized Licensees), 'racialization' is not directly equivalent to the related social markers of race, ethnic origin, or identity as a 'visible minority'. Because racialization is explicitly defined for purposes of this study as *either or both* an imposed or chosen self-identity, respondents to the survey are the only source of knowledge about their own status as racialized or non-racialized, in contrast to 'race' and 'visible minority' that purport to be objective markers regardless of an individual's experience.

In this study therefore, racialization is taken at face value – respondents who answered 'yes I am racialized' are considered to be members of the population of racialized licensees, regardless of any other racial or ethnic markers of their identity.



As the data in this section illustrates, the degree of concordance between racialization and more traditional notions of race and ethnicity (Black, East Asian, Caucasian, etc.) differs by subgroup of the population. We reflect further on these meanings of identity below.

### 4.3 Representativeness in the Survey Population

We invited all licensees to participate in the survey. The research design required responses from both racialized and non-racialized licensees, but due to the subject matter of the study – which was widely known to LSUC members and stated clearly in the survey invitation – there was a large response from licensees who self-identify as racialized, compared to the proportion of the total population they actually comprise.

This is not unusual in quantitative studies, and can be corrected for provided the source and scale of the numeric over- or under-representation of particular subgroups are understood. A typical remedy is to ‘weight’ the survey data so that the results align with the known (or precisely estimated) proportions from a census or other prior reliable quantitative study.

In this study, however, we confronted a unique problem which is that this is the first time racialization has been used to define a sub-group of the legal profession in Ontario. To what should the proportion in our study be weighted? How do we know the ‘true’ proportion of racialized licensees to which we must weight our raw study population?

We undertook a two-step method to achieve an overall representative sample. First, we used a weight raking (sample balancing) algorithm to adjust the samples of lawyers and paralegals separately, using the 2010 Law Society snapshot documents as estimates of the true proportions of different subgroups of licensees. The survey data were weighted to align with the distributions for gender, age groups, racial and ethnic groups, type of practice and time since call to bar (lawyers only). It is important to highlight that the weighting process employed self-reported racial or ethnic groups and not the survey self-report question on racialization for weighting purposes. Using such a weight rating process is standard practice in survey methodology when adjusting for multiple weighting factors.

Second, the lawyer and paralegal subsamples were then combined and weighted to their correct proportions vis-a-vis one another. The overall population proportions of lawyers and paralegals were deduced from the total number of 2010 snapshot responses and the snapshot response rates for lawyers and paralegals, respectively.

This process results in a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees. The final study population of lawyers (**Table 2**) and paralegals (**Table 3**) are shown below, compared to the raw results of the online survey and the 2010 snapshot that was used to derive weights.

Table 3 – Weighting the Lawyer Subsample

Demographic characteristic	Raw 2013 Survey Sample	2010 Snapshot	Weighted 2013 Survey Sample
<b>Gender</b>			
Female	52%	40%	40%
Male	48%	60%	60%
<b>Age</b>			
< 30	10%	5%	5%
30-39	29%	27%	27%
40-49	23%	27%	27%
50-65	30%	33%	34%
> 65	8%	8%	7%
<b>Size of Firm</b>			
Sole	19%	18%	18%
Firm	47%	31%	31%
Education/Gov't	15%	14%	14%
Other	19%	37%	37%
<b>Years in Practice</b>			
< 2 years	15%	7%	7%
2-5 years	14%	14%	14%
6-10 years	15%	15%	15%
> 15 years	56%	64%	64%
<b>Racialized</b>			
	33%	17%	19%

Table 4 – Weighting the Paralegal Subsample

Demographic characteristic	Raw 2013 Survey Sample	2010 Snapshot	Weighted 2013 Survey Sample
<b>Gender</b>			
Female	59%	53%	54%
Male	41%	47%	46%
<b>Age</b>			
< 30	18%	22%	22%
30-39	16%	21%	20%
40-49	27%	25%	25%
50-65	33%	28%	29%
> 65	5%	4%	3%
<b>Size of Firm</b>			
Sole Practitioner	39%	25%	26%
Education/Gov't	6%	5%	5%
Other	55%	70%	69%
<b>Racialized</b>	<b>41%</b>	<b>28%</b>	<b>32%</b>

## 4.4 Racialization

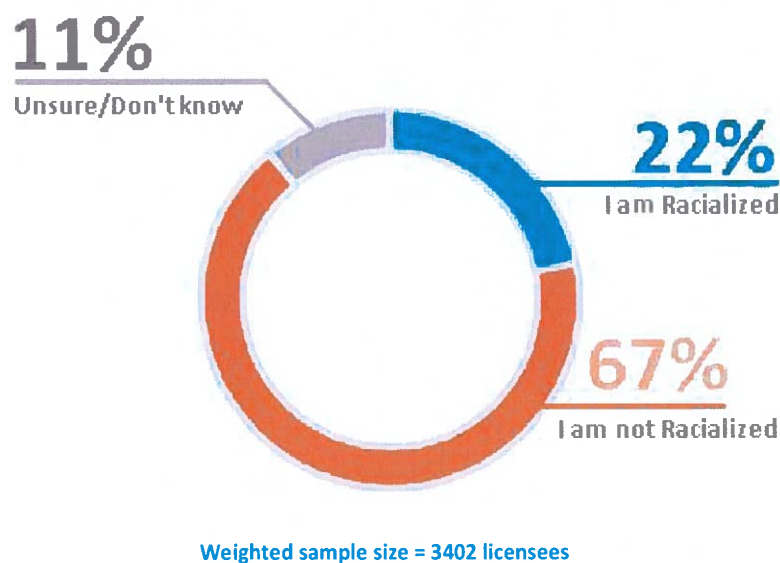
In the final weighted study population, just over one-in-five (22%) licensees self-identify as racialized, and a further 11% say they are unsure. Two-thirds (67%) self-identify as non-racialized.



## Chart 1 – Composition of Racialized licensees

In this survey we are seeking the opinions of both racialized and non-racialized licensed paralegals and lawyers. The term racialized refers to the process by which groups are socially constructed in terms of race, as well as to modes of self-identification related to race.

*(Q9) Do you self-identify as racialized or non-racialized?*

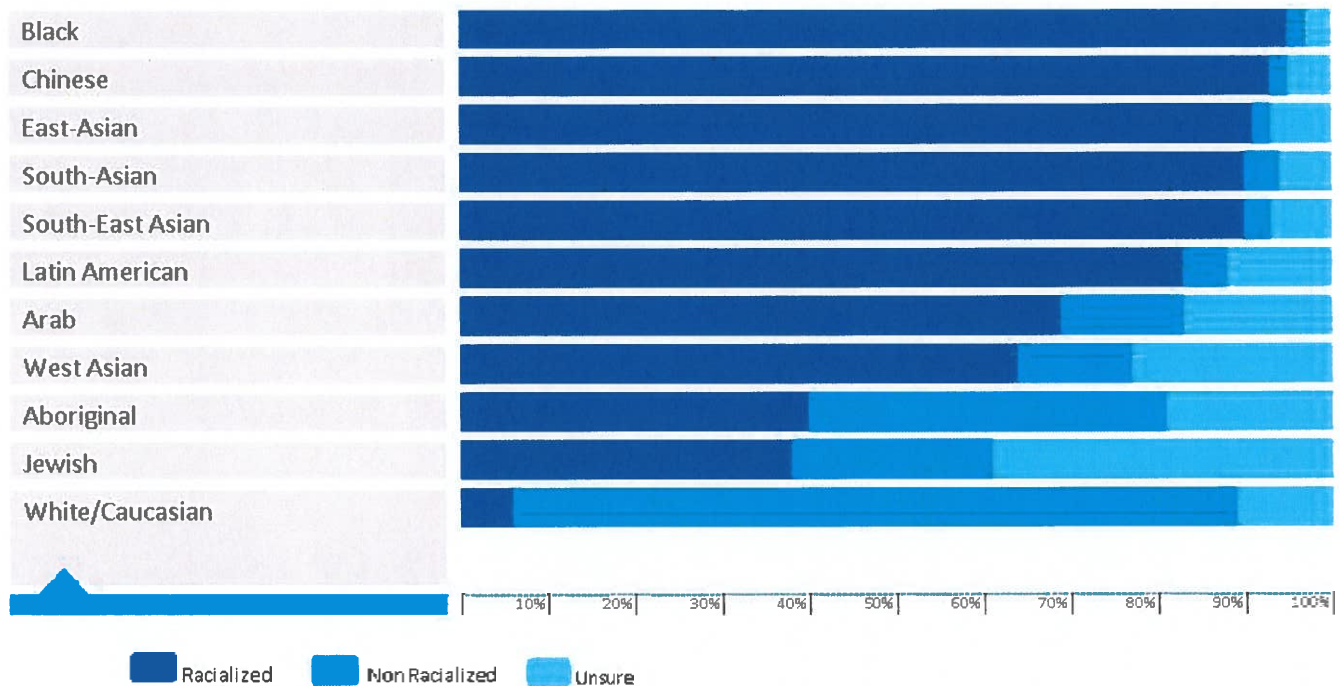


The breakdown for professional category is that 25% of paralegals say they are racialized, while 22% of lawyers indicated this.

Interestingly, cross tabulation of racialization to the typical ethno-racial identities as used by Statistics Canada reveals that there are different degrees of concordance for different subgroups. While the vast majority of black (95%) and Chinese (93%) see themselves as racialized, those of Arab (69%) and west Asian (64%) origins (for example) are much more likely to say they are either not racialized, or simply unsure.<sup>5</sup>

<sup>5</sup> In this question – which followed the question about racialization – respondents were presented with pre-coded ethno-racial identifiers such as 'black', 'East Asian', 'Chinese' each with example ethnicities that commonly fit under that term. There was also an 'other' open-ended box, which accounts for the additional references to 'Jewish' which was not included as a separate code, but which was represented frequently among 'other' mentions, justifying the addition to the list of ethno-racial identifiers.

Chart 2 – Racialization by Ethnicity



For Aboriginal and Jewish licensees, racialization is a self-identity for less than half, further illustrating the multiplicity of identity and experience within groups that are often depicted as racially/ethnically uniform. The fact that 6% of licensees of Caucasian origin also identify as racialized demonstrates the overlap of racial markers between groups, or the fact that ‘racialization’ is still a very new concept to many people, or both.

## 4.5 Comparing Sub-groups (demographics)

As Table 4 illustrates, the population of racialized licensees are more likely to be young than their non-racialized colleagues. Fully 46% are under 40, compared to 29% for non-racialized licensees. And (not shown in the table below) the survey also revealed (Q 2) that whereas more than a third (37%) of racialized licensees were called within the past 5 years, that is true for only 22% of non-racialized licensees.

Racialized licensees are also more than three times as likely to be born outside Canada (44%) compared to non-racialized licensees (12%), and to have neither English nor French as their mother tongue (28% among racialized compared 6% among non-racialized). Sixteen percent (16%) received their law degree outside Canada, whereas among non-racialized licensees this figure is 6%.

Table 5 – Comparing Sub-Groups by Demographics

	Total Sample	Racialized	Non Racialized	Lawyer	Paralegal
<b>Gender</b>					
Female	41%	44%	42%	40%	54%
Male	59%	55%	58%	60%	46%
<b>Total</b>	100%	100%	100%	100%	100%
<b>&lt; 30</b>	6%	8%	6%	5%	22%
<b>30-39</b>	26%	38%	23%	27%	20%
<b>40-49</b>	27%	31%	25%	27%	25%
<b>50-65</b>	34%	20%	38%	34%	29%
<b>&gt; 65</b>	7%	3%	8%	7%	3%
<b>Total</b>	100%	100%	100%	100%	100%
<b>Born in Canada</b>	80%	56%	88%	81%	65%
<b>Born outside Canada</b>	20%	44%	12%	19%	35%
<b>Total</b>	100%	100%	100%	100%	100%
<b>English</b>	81%	66%	87%	82%	72%
<b>French</b>	6%	5%	7%	7%	3%
<b>Another Language</b>	12%	28%	6%	11%	25%
<b>Total</b>	100%	100%	100%	100%	100%
<b>Have a law degree from a law school in Canada?</b>	89%	82%	92%	96%	4%
<b>Have a law degree from outside of Canada?</b>	9%	16%	6%	9%	6%
<b>Not have a law degree?</b>	7%	8%	6%	0%	90%
<b>Total'</b>	104%	106%	104%	104%	100%

\*Totals do not equal 100% as respondents could have degrees from both Canada and outside Canada



Table 5 shows the data for racialized and non-racialized licenses, and lawyers and paralegals, by practice environment. Notable features of this table are that although the broad pattern of distribution across the practice environments is similar for both groups, the likelihood of being a sole practitioner or working in a small firm is 31% for racialized licensees, compared to 27% for non-racialized. In addition there is a greater chance of being unemployed if a licensee is racialized (7% vs. 4%).

Table 6a – Comparing Sub-Groups by Practice Environment

	Total Sample	Racialized	Non Racialized	Lawyer	Paralegal
Sole practitioner	19%	21%	18%	18%	27%
Small firm (fewer than 6 licensees)	10%	10%	9%	8%	28%
Medium firm (6 to 50 licensees)	12%	11%	12%	11%	15%
Large firm (more than 50 licensees)	11%	11%	12%	12%	3%
Education	3%	3%	3%	3%	3%
Government	16%	16%	16%	17%	11%
Corporation	24%	26%	23%	24%	22%
Non-Profit	8%	7%	8%	8%	7%
Retired	5%	1%	6%	5%	1%
Reside outside Ontario	6%	6%	6%	7%	2%
Unemployed at this time	5%	7%	4%	4%	16%
Other	0%	0%	0%	0%	1%
<b>Total*</b>	<b>119%</b>	<b>120%</b>	<b>118%</b>	<b>117%</b>	<b>134%</b>

\*Totals do not equal 100% as respondents could select multiple options

In terms of practice areas, data in the tables below indicate some differences between racialized and non-racialized lawyers:

- ▶ As indicated to us in key informant interviews, racialized lawyers are more likely than their non-racialized counterparts to practice immigration (9% vs. 3%), and/or criminal/quasi-criminal (15% vs. 12%), but they are also more likely to be providing services in intellectual property law (12% vs. 8%). (Q7)

- ▶ Among paralegals, 82% of licensees practice in provincial offenses/summary offenses, compared to 56% among non-racialized. They are also more likely to practice in SABS and small claims, landlord/tenant, and human rights, but less likely to practice in property tax and workers' compensation. (Q8)

Table 6b Practice Areas (Lawyers)

	Total Sample	Racialized	Non Racialized
Aboriginal law	4%	4%	4%
Administrative law	22%	23%	22%
ADR/Mediation Services	3%	3%	3%
Bankruptcy & Insolvency Law	3%	3%	3%
Civil litigation - Plaintiff	19%	18%	19%
Civil litigation - Defendant	23%	22%	23%
Construction law	5%	4%	6%
Corporate/Commercial law	35%	36%	35%
Criminal/Quasi Criminal law	14%	16%	13%
Employment/Labour law	18%	17%	19%
Environmental law	3%	3%	4%
Family/Matrimonial law	13%	15%	12%
Franchise law	2%	3%	2%
Immigration law	5%	9%	8%
Intellectual Property law	9%	12%	3%
Real Estate law	17%	19%	17%
Securities law	8%	8%	8%
Tax law	4%	5%	3%
Wills, Estates, Trusts law	13%	14%	14%
Workplace Safety & Insurance law	4%	6%	4%
Other	15%	15%	14%
<b>Total<sup>†</sup></b>	<b>238%</b>	<b>253%</b>	<b>118%</b>

\*Totals do not equal 100% as respondents could select multiple options

Table 6c Practice Areas (Paralegals)

	Total Sample	Racialized	Non Racialized
Ontario Court of Justice Provincial Offences Act matters+	46%	51%	43%
Ontario Court of Justice - Summary conviction offences	17%	30%	11%
Worker's Compensation	26%	21%	29%
Small Claims Court matters	58%	67%	55%
Property Tax Assessment	6%	1%	6%
Statutory Accident Benefits Schedule matters (SABS)	17%	28%	13%
Human Rights Tribunal	18%	23%	17%
Landlord and Tenant	36%	44%	33%
Other Tribunals	20%	32%	15%
<b>Total<sup>1</sup></b>	<b>243%</b>	<b>296%</b>	<b>223%</b>

\*Totals do not equal 100% as respondents could select multiple options

## 5. Experience of Licensees

---

### 5.1 What's the issue?

Building on the results of focus group research the survey phase sought to establish the context for understanding the experience of racialized licensees, and further define and measure the issues by asking racialized and non-racialized survey participants about their experience in the transition from school to articling, during entry into practice, and career advancement.

The issues explored were identified through the key informant and focus group process, which gave priority to the experiences, perceptions and concerns identified by racialized licensees. However, the key banks of questions were deliberately framed in neutral terms, and made no assumptions about differences of experience between the racialized and non-racialized licensees to whom they were addressed.

What emerges from this section of the report is an overview of the landscape of career challenges faced by both groups which illustrates the breadth and depth of divergent experiences of racialized and non-racialized licensees, as well as those points where there is a convergence of experience between the two main groups of respondents or sub-groups within them.

### 5.2 Personal Experience

Racialized and non-racialized respondents were offered a list of 16 statements related to their experience of entry into practice and career advancement, and asked to indicate if they agreed or disagreed with each. For purposes of analysis and interpretation responses have been grouped thematically in three separate charts.<sup>6</sup>

---

<sup>6</sup> Broad concepts or themes in the survey data were identified using exploratory factor analysis (EFA), a statistical technique designed to identify an underlying structure in the data based on correlations between survey items. For example in Chart 3 below respondents who agreed with any of the nine statements listed were also more likely to agree with one or more of the other eight, suggesting that there is an underlining theme (or factor) uniting this group of statements. These factor analytic models were estimated using specialized statistical software (Mplus) that allows for survey weights, and that also correctly accounts for the categorical nature of the survey data (e.g. dichotomous, or three, four or five point survey response scales).

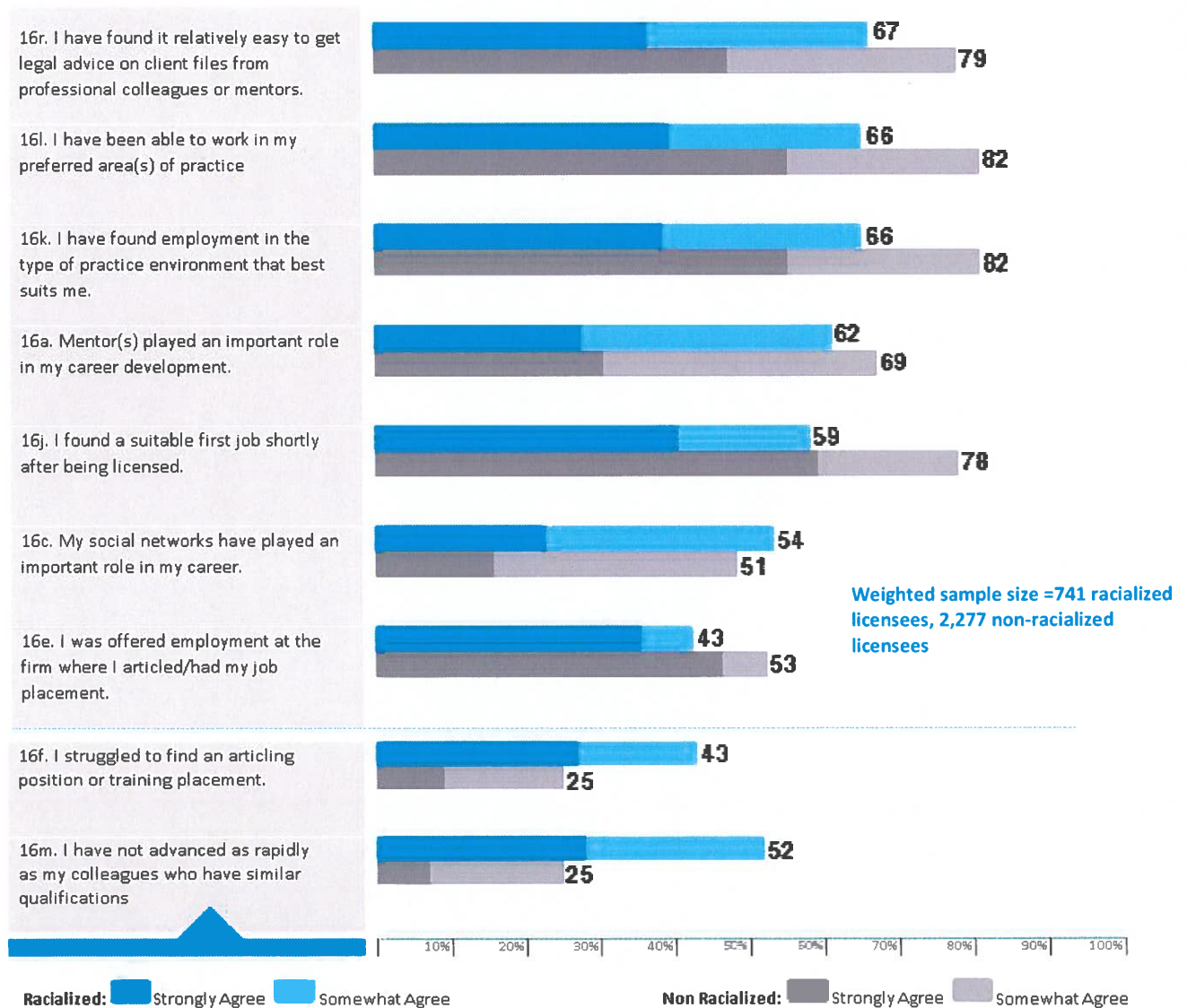


### 5.2.1 Career Opportunities

**Chart 3** shows results of nine statements under the theme Career Opportunities/ Professional Growth, combining strongly/somewhat agree responses from both groups of respondents. For the seven statements at the top of this chart numbers indicate percentage of overall agreement with a *positive* experience. For the two at the bottom of the chart the numbers indicate the percentage of agreement with a *negative* experience.

Chart 3 – Career Opportunities/Professional Growth

*(Q16-1) Do you agree or disagree with each of the following statements about your entry into practice/career advancement?*





Racialized licensees registered higher negative responses on eight of the nine statements shown in Chart 3, including six that referred to finding an articling position or training placement, finding suitable or preferred employment, and career advancement. For each of these six statements racialized respondents indicated lower levels of success.

Fifty-nine percent of racialized respondents agreed that they had found a suitable first job after being licensed, compared to 78% non-racialized (Q 16j)<sup>7</sup>. On a related issue 43% of racialized compared to 53% of non-racialized respondents reported having been offered employment at the firm where they had articulated or had a training placement (Q16e). On two other employment issues, 66% of racialized licensees agreed they had found employment in a suitable practice environment, and 66% also agreed they had been able to work in their preferred area of practice. This compared to 82% of non-racialized respondents who agreed with each of these statements (Q 16k, l).

Response to the two statements at the bottom of Chart 3 suggest wide differences of experience at entry into the profession, and in overall career trajectory. Among racialized respondents 43% agreed they had struggled to find an articling position or training placement, compared to 25% of non-racialized (Q16f). A majority (52%) agreed they had not advanced as rapidly as colleagues with similar qualifications, compared to 25% of non-racialized (Q16m). Among racialized licensees more than one quarter strongly agreed with each of these statements (27% and 28% respectively)<sup>8</sup>.

Among racialized respondents 67% agree that it was relative easy to get legal advice on client files from professional colleagues and mentors, compared to 79% of non-racialized respondents (Q16r). Differences between the two groups were somewhat narrower on other statements than about mentors and social networks. Sixty-two percent of racialized respondents agreed that mentors had played an important role in their career development, compared to 69% of non-racialized respondents (Q16a). A slightly higher percentage of racialized than non-racialized respondents indicated that social networks had played an important role in their career – 54% racialized compared to 51% non-racialized (Q16c).

Results shown in Chart 3 suggest there are wide differences of experience between racialized and non-racialized licensees across a number of key employment measures. Racialized licensees report substantially lower rates of success in finding articling

<sup>7</sup> Numbers and letters in parenthesis in the text of the report refer to corresponding number and lettered statements listed in the left hand column of each chart.

<sup>8</sup> Percentages in Chart 3 and in some subsequent charts are for total *strongly/somewhat agree* only. Detailed percentages for all responses are available in the full survey data set accompanying this report.

positions and training placements, being re-hired following such placements, finding employment in the practice environment of their choice, and advancing as rapidly as colleagues with similar qualifications.

### Further Comparisons: Paralegals

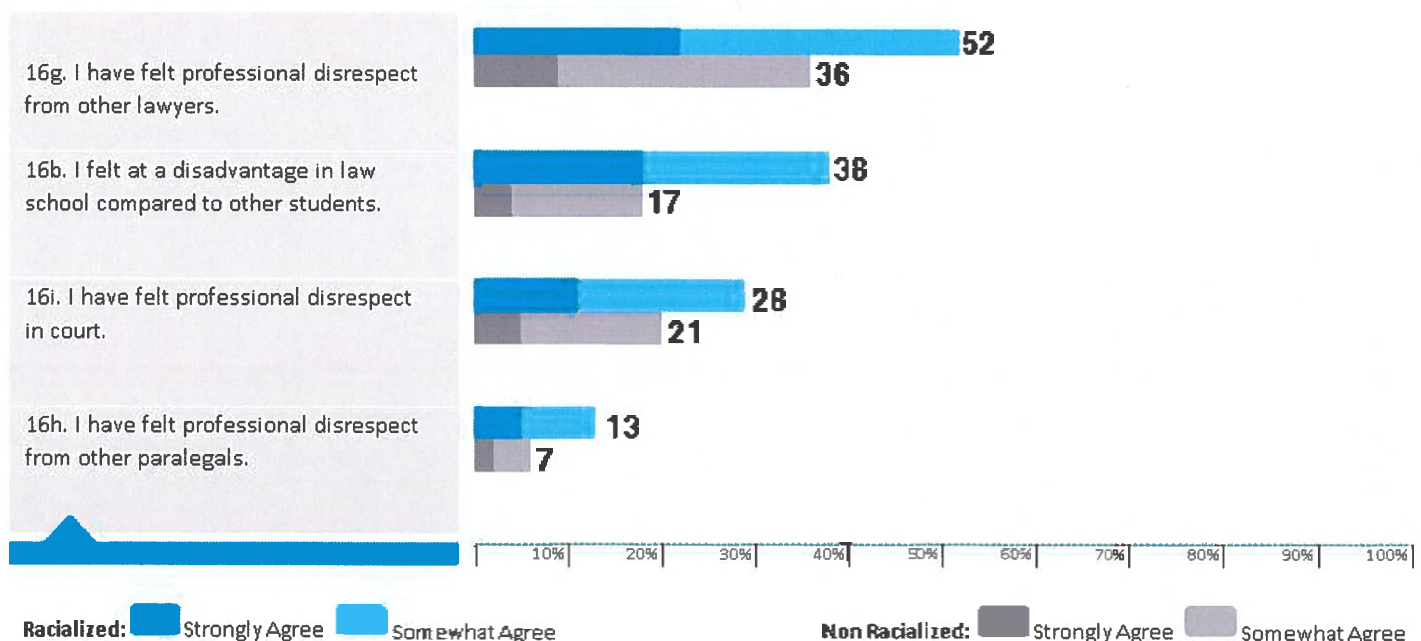
The focus group report noted that racialized paralegals, particularly the high proportion of recent licensees, might face greater challenges in the job market than racialized lawyers. Data not shown here reinforces this hypotheses, illustrating that whereas paralegals as a group report lower success rates in finding suitable employment than do lawyers, racialized paralegals are particularly disadvantaged in this respect.

On the key measure of finding a suitable first job just 26% of racialized paralegals agreed, compared to 36% of non-racialized paralegals (Q16j). On finding employment in their preferred practice environment 37% of racialized paralegals agreed, compared to 57% of their non-racialized counterparts (Q16k). Similarly, 41% agree they had found employment in their preferred area of practice as compared to 67% of non-racialized paralegals (Q16l).

## 5.2.2 Disrespect/Disadvantage

Chart 4 – Disrespect/Disadvantage

(Q16-2) Do you agree or disagree with each of the following statements about your entry into practice/career advancement?



Weighted sample size = 741 racialized licensees, 2277 non-racialized licensees

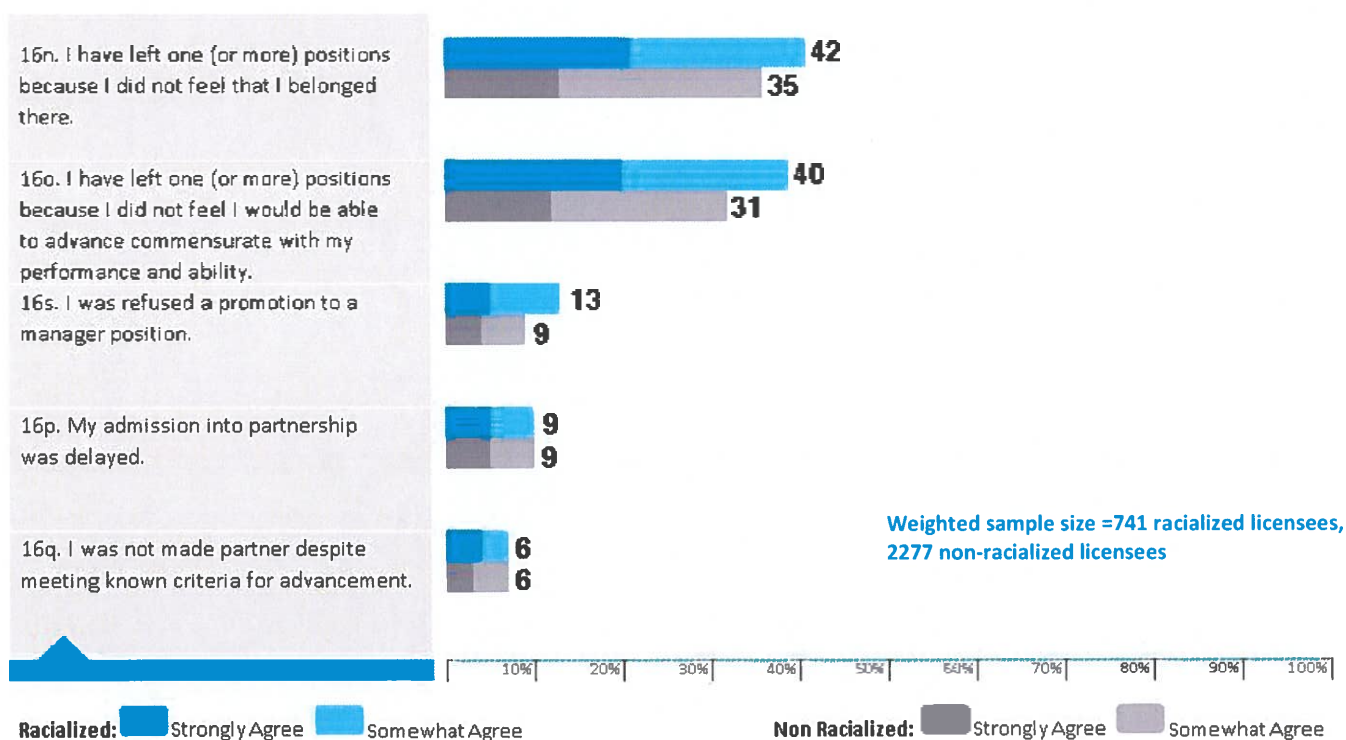
**Chart 4** groups four statements associated with issues of respect and perceptions of disadvantage. Among racialized licensees 52% agreed they had experienced disrespect from other lawyers, compared to 36% of non-racialized licensees (Q16g). Asked about disrespect from other paralegals, 13% of racialized licensees agreed, including 37% of racialized paralegals (Q16h), compared to 7% of all non-racialized licensees and 20% of non-racialized paralegals (Q16h). Twenty-eight percent of racialized respondents and 21% of non-racialized respondents agreed that they had felt disrespect in court (Q16i).

Regarding experiences at law school, 38% of racialized licensees agreed that they had felt disadvantaged at law school compared to other students. This included 18% of racialized respondents who strongly agreed, exceeding the total of 17% of all non-racialized respondents who strongly/somewhat agreed with the same statement (Q16b).

### 5.2.3 Career Setbacks

#### Chart 5 – Career Setbacks

*(Q16-3) Do you agree or disagree with each of the following statements about your entry into practice/career advancement?*



**Chart 5** groups five statements around the theme of career setbacks. In comparison with results illustrated in Charts 3 and 4, responses presented here show narrower differences between racialized and non-racialized respondents.

Starting at the top of Chart 5, 42% of racialized licensees and 35% of non-racialized agreed they had left one or more positions because they felt they did not belong there (Q16n), including 22% and 13% respectively who strongly agreed. On a closely related issue, 40% of racialized and 31% of non-racialized respondents reported having left one or more positions because they did not feel they would advance commensurate with their performance and ability (Q16o).

Thirteen percent of racialized and 9% of non-racialized licensees agreed that they had been refused promotion to a management position (Q16s). Additional data not shown here indicates that those racialized respondents most likely to agree with this statement were: first language French (30%), employed by a Corporation (22%), Education (19%), Government (19%), and those 40-49 years of age (18%), 50-59 (18%), and over 65 (20%). Non-racialized licensees more likely to agree included: employed by Corporation (12%), Education (12%), and Government (12%).

Equal percentages of racialized and non-racialized licensees reported that their admission to partnership had been delayed (9%), and that they were not made partner despite meeting known criteria for advancement (6%) (Q 16 p, q).<sup>9</sup>

### 5.3 Barriers to Entry and Advancement

Racialized and non-racialized survey participants were presented a list of factors and asked to indicate in each case if they had experienced that factor as a barrier or challenge 'at any time during your entry into practices, at any time after your entry into practice (i.e. career advancement), or neither.' **Table 7** reports the percentage of yes responses to each question *during entry into practice*. Responses to seventeen questions have been thematically grouped under four headings. **Table 8** which follows, reports percentage of yes responses to each question *after entry into practice*. In this table, responses to the same seventeen questions have been thematically grouped under five headings.

<sup>9</sup> The low percentage responses for three of the statements presented in Chart 5 can be accounted for in part by the fact that between three fifths and three quarters of all respondents indicated the question 'does not apply to me.' Does not apply/not applicable was offered as a response throughout the online survey.



### 5.3.1 Identifying Barriers to Entry

Table 7 – Barriers During Entry to Practice

(Q17) For each factor, please indicate if you have experienced it as a barrier or challenge at any time during your entry into practice.

Race, Ethnicity, Culture		Racialized	Non-Racialized
Your ethnic/racial identity		40%	3%
Your (family's) socio-economic status		19%	8%
Where you were born/raised		17%	4%
The way you speak English/French		12%	3%
Sex, Gender, Age			
Your physique/appearance		24%	8%
Your age (too young)		15%	8%
Your gender identity		11%	6%
Your religion or religious practices		9%	2%
Your need/desire to take time away from work to care for children or other family members		7%	5%
A cognitive or learning disability		2%	1%
A physical disability		2%	1%
Academic Pedigree (Background/history)			
Which schools(s) you graduated from		18%	9%
Where you were trained/educated		16%	7%
Lifestyle, Personal Beliefs			
The types of social activities you prefer		18%	5%
Your social or political views		12%	5%
Your age (too old)		9%	6%
Your sexual orientation		4%	3%

Weighted sample size = 741 racialized licensees, 2277 non-racialized licensees

## Race, Ethnicity, Culture

As Table 7 shows, fully 40% of racialized licensees identified their ethnic/racial identity as a barrier or challenge to entry into the practice of law or provision of legal services, contrasting sharply with the 3% of non-racialized licensees who perceived ethnic/racial identity as a barrier. Data not shown here indicates that racialized licensees who were most likely to cite race/ethnicity as a barrier to entry included: South East Asian (54%), Black (52%), Arab (50%), South Asian (46%), first language neither French/English (46%), female (45%) and born outside Canada (44%).

Whereas ethnic/racial identity was selected by a substantially higher percentage of racialized respondents than any of the other challenges or barriers tested, it ranked among the least important challenges identified by non-racialized respondents. This comparison underlines and reinforces the conclusion that racial status is a defining factor in shaping the experience that licensees have entering law practice or the provision of legal services, and in distinguishing their experience from that of their non-racialized colleagues.

Within the same group of statements your (family's) socio-economic status was identified as a challenge by 19% of racialized licensees and 8% of non-racialized. Where you were born/ raised was seen as a barrier by 17% of racialized licensees and 4% of non-racialized, and the way you speak English/ French by 12% of racialized compared to just 3% of non-racialized respondents.

## Sex, Gender, Age

Seven potential barriers are grouped under this heading. Physique/physical appearance was identified as a barrier to entry into the legal professions by 24% of racialized and 8% of non-racialized licensees. Age (too young) was cited by 15% and gender identity by 11% of racialized licensees, compared to 8% and 6% respectively among non-racialized licensees.

On the top three issues listed in this section of the table – physical appearance, age (too young), and gender – women in both groups were more likely than their male counterparts to identify these factors as barriers to their entry into the profession. Among women 29% racialized and 12% non-racialized identified physique/appearance, compared to 19% racialized and 4% non-racialized men. On gender, 17% of racialized and 12% of non-racialized women identified it as a barrier to entry, compared to 5% of racialized men and just 1% of non-racialized men. Finally, on the issue of age (too young) 23% of racialized women and 11% of non-racialized women identified a barrier to entry, compared to 9% of racialized men and 5% of racialized men.

These comparisons suggest some convergence in the experience of the women (and men) in both groups around gender-related issues. However, the survey results also indicate that *both* racialized respondents as a whole *and* racialized women (data not shown) identified all seven issues within this group as barriers to entry more frequently than their non-racialized counterparts. Although some of the differences in the aggregate figures might be accounted for in part by the fact that a higher proportion of non-racialized respondents are women, the results reinforce the focus group findings that for many racialized women the experience of gender bias is compounded as a consequence of their racial status. Racialization and gender intersect to amplify barriers associated with each factor.

### Academic Pedigree

Eighteen percent of racialized licensees identified the school or schools they had graduated from as a barrier to entry, compared to 9% of non-racialized. Along similar lines 16% of racialized compared to 7% of non-racialized licensees identified where they had been trained/educated as a barrier.

Data not shown indicates that among racialized respondents the percentage of those who identified where they had been trained/educated as a barrier to entry was highest for: unemployed (34%), paralegals (24%), and those born outside Canada (21%) as well as West Asian (23%), Jewish (22%), and Chinese (21%). On the issue of identifying which school they had graduated from as a barrier to entry, comparisons across demographic, ethno-racial categories and practice environments revealed less variation. Exceptions who were more likely to identify their alma mater(s) as a barrier to entry included: currently unemployed (30%), working for a small firm (23%) or under 30 years of age (23%).

### Lifestyle, Personal Beliefs

Just under one fifth (18%) of racialized licensees acknowledged that their preferences in social activities constituted a barrier or challenge to entry, compared to just 5% of their non-racialized colleagues. On a related issue, 12% of racialized licensees identified their social or political views as a barrier to entry compared to 5% of their non-racialized counterparts. The percentage of those who identified their social preferences as barrier to entry included: West Asian (27%), South Asian (23%), South East Asian (23%), Chinese (23%), women (21%) and those whose mother tongue is neither French nor English (21%).

The relative frequency with which racialized respondents identified their social activity preferences and social/political views as barriers to entry, is consistent with focus group findings, which underlined the seriousness of challenges associated with participating

in or easily adapting to the dominant social practices and culture, in and beyond the work place.

### 5.3.2 Barriers to Advancement

Both groups of respondents were also asked to identify which factors, from the same list, represented barriers at any time *after* entry into practice. **Table 8** groups these issues under five thematic headings, establishing a fifth heading under the title of Disability. The important issue of physique/appearance has moved from the *Sex, Gender, Age* heading in Table 7 to the *Race, Ethnicity and Culture* group of issues with which it is slightly more closely correlated *after* entry into practice.

Both groups of respondents tended to identify the same factors as barriers *after* entry into the legal profession as they had *during entry*, with some notable differences which are discussed further below.

As was the case with the results presented in Table 7, results shown in Table 8 illustrate wide differences in the experiences of racialized and non-racialized licensees. With the single exception of sexual orientation, racialized licensees identified every factor listed as a barrier to advancement *after* entry more frequently than their non-racialized counterparts. In the case of many of the factors grouped under the headings *Race, Ethnicity, Culture and Lifestyle, Personal Beliefs* the differences between the two groups are substantial.



Table 8 – Barriers After Entry into Practice

<b>Race, Ethnicity, Culture,</b>	<b>Racialized</b>	<b>Non-Racialized</b>
Your ethnic/racial identity	<b>43%</b>	<b>3%</b>
Your physique/appearance	<b>24%</b>	<b>8%</b>
Your (family's) socio-economic status	<b>17%</b>	<b>7%</b>
Where you were born/raised	<b>15%</b>	<b>2%</b>
The way you speak English/French	<b>15%</b>	<b>5%</b>
<b>Sex, Gender, Age</b>		
Your need/desire to take time away from work to care for children or other family members	<b>25%</b>	<b>23%</b>
Your age (too young)	<b>20%</b>	<b>12%</b>
Your gender identity	<b>14%</b>	<b>10%</b>
<b>Academic Pedigree (Background/history)</b>		
Which schools(s) you graduated from	<b>9%</b>	<b>4%</b>
Where you were trained/educated	<b>12%</b>	<b>4%</b>
<b>Lifestyle, Personal Beliefs</b>		
The types of social activities you prefer	<b>26%</b>	<b>12%</b>
Your social or political views	<b>16%</b>	<b>9%</b>
Your religion or religious practices	<b>11%</b>	<b>3%</b>
Your sexual orientation	<b>3%</b>	<b>3%</b>
<b>Disability</b>		
Your age (too old)	<b>12%</b>	<b>11%</b>
A physical disability	<b>4%</b>	<b>3%</b>
A cognitive or learning disability	<b>3%</b>	<b>2%</b>

Weighted sample size =741 racialized licensees, 2277 non-racialized licensees

## Race, Ethnicity, Culture

As noted, the greatest difference between the two groups lies in the importance of ethnic/racial identity which is perceived as a barrier/challenge to advancement by 43% of racialized licensees, compared to 3% of the non-racialized licensees.

Intersecting with this dominant issue are the other four issues in the same group of issues – physique/appearance, family socio-economic status, where you were born/raised and how you speak English/ French – all which have been identified as barriers after entry by at least 15% of racialized licensees. By contrast, for non-racialized licensees this group of issues represent barriers after entry to practice that are comparable or possibly of lesser importance than those associated with *Sex, Gender, Age and Lifestyle, Personal Beliefs*.

## Sex, Gender, Age

Time away from work to care for children and other family members is identified with much greater frequency as a barrier after entry than it is during entry, rising from 7% to 25% for racialized and 5% to 23% for non-racialized licensees, comparing Tables 7 and 8.

Data not shown in Table 8 indicates that among racialized respondents those who most frequently flagged this issue as a barrier after entry included: female (33%), 40-49 years of age (31%), sole practitioners (28%), 30-39 years (27%), as well as West Asian (35%) and East Asian (32%). Among non-racialized respondents those who most frequently named this barrier included: women (36%), 40-49 years of age (32%) and 30-39 years (26%).

Consistent with the conclusion from the earlier comparisons, identification of barriers after entry suggest a convergence of the experience of racialized and non-racialized women (33% and 36% respectively) who identified the need for time away to care for children and family as a barrier to advancement .

## Lifestyle, Personal Beliefs

Two issues emerged as more important barriers to advancement after than during entry. The types of social activities you prefer was identified as a barrier by 26% of racialized and 12% of non-racialized licensees, rising from 18% and 5% respectively (Table 7). Interestingly, racialized respondents ranked this issue second after ethnic/racial identity on the list of 17 potential barriers to advancement. Among non-

racialized respondents it was tied for second with age (too young), with 12% of respondents naming each issue.

Data not shown indicates that racialized respondents who most frequently identified preferences for social activities as a barrier to advancement included: employed by a Corporation (33%), Chinese (36%), Arab (33%), South Asian (31%), and South East Asian (31%). Among non-racialized licensees the highest frequency of response included: age 30-39 (16%), Education (15%), Medium sized firm (14%), and employed in Government (14%).

On a closely related issue, 16% of racialized and 9% of non-racialized respondents identified their social and political views as a barrier during practice, compared to 12% and 5% respectively who identified this issue as a barrier to entry. Data not shown in Table 8 indicates that racialized respondents who most frequently identified this factor included: employed in Education (33%), Government (25%), French first language (22%), female (20%), Sole practitioners (19%) as well as Arab (33%), Aboriginal (29%), and South East Asian (25%).

Here, again survey results confirm the findings of focus groups where many participants stressed the importance of shared interest as a factor in career advancement. As one racialized young female lawyer explained in a larger discussion about the impact of 'fit':

“More work was delegated to those that fit in. For example, if you talked football with your colleagues then you had a better chance for business... As the years go on you can see the numbers of visible minorities decreasing as seniority increases.

## 6. Impacts of Racialization

---

### 6.1 What's the Issue?

The previous section reported results of survey questions which explored similarities and differences in the experience of racialized and non-racialized licensees in relation to the landscape of career challenges they face. It sought to identify, measure and compare which factors were perceived as barriers to entry and advancement within the legal professions.

This section of the report explores impacts: the extent to which identified challenges or barriers are perceived by racialized licensees to have disadvantaged them at any stage of their career. Results reported in this section are based on questions addressed to racialized licensees only.

### 6.2 Impacts: Have you been disadvantaged?

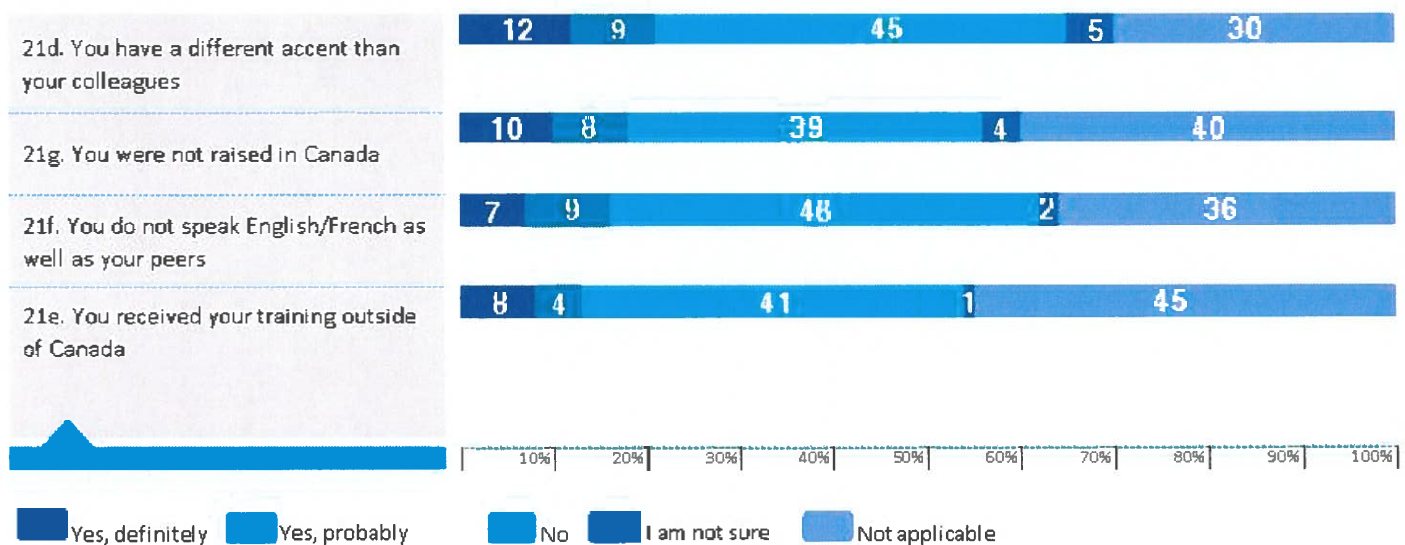
Racialized respondents only were asked if they had been disadvantaged in hiring, advancement, or pursuit of an area of practice, 'as a consequence of the factors listed below.' Response to 24 factors tested have been grouped in **Charts 6, 7, and 8**.

#### 6.2.1 National Origin

**Chart 6** shows results of four statements grouped under the heading National Origin.

Chart 6 – Disadvantages due to national origin

*(Q21-1) Have you been disadvantaged in hiring, advancement, or pursuit of an area of practice as a consequence of any of the factors listed below?*



Weighted sample size =741 racialized licensees

Twenty-one percent of respondents indicated that they had definitely (12%) or probably (9%) been disadvantaged as a consequence of having a different accent than their colleagues (Q21d), 18% as a result of not being raised in Canada (Q21g), 16% because they do not speak English/French as well as their peers (Q21f), and 12% because they had received their training outside Canada (Q21e).

The high proportion of No or Not Applicable responses in Chart 6 is accounted for, at least in part, by the fact that 55% of racialized licensees were born in Canada, 71% report first language either French nor English, and 88% of lawyers (91% of the total sample of racialized licensees) have a law degree from a law school in Canada.

Respondents whose first language is neither French nor English or who were born outside Canada were much more likely to answer the four statements in Chart 6 in the affirmative. Data not shown reveals that 36% of those reporting another first language



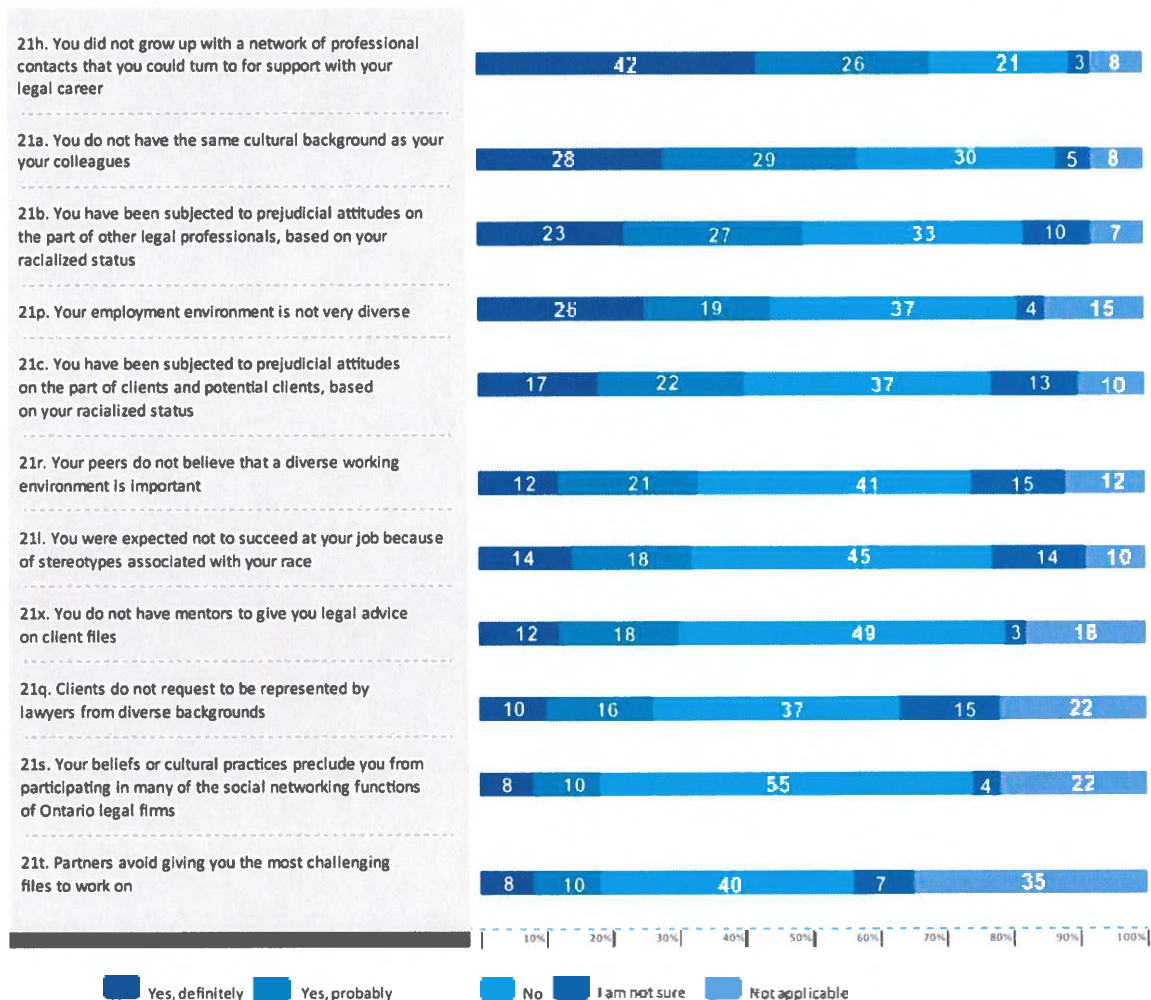
and 35% of those born outside of Canada reported being disadvantaged due to their accent. Twenty-four percent of those reporting another first language, and 38% born outside Canada, reported being disadvantaged as a consequence of not being raised in Canada. Twenty-four percent of those who speak another first language, and 19% born outside Canada identified not speaking English/French as well as their peers as a source of career disadvantage. Finally, 22% of those who speak another first language, and 22% who were born outside Canada identified being trained outside Canada as a disadvantage.

In short, for up to *two fifths* of the subset of racialized licensees whose first language is neither French nor English and/or were born outside Canada the group of issues listed in Chart 6 are perceived as having been a source of disadvantage in hiring and/or career advancement.

## 6.2.2 Outgroup

### Chart 7 – Disadvantages due to ‘Outgroup’

*(Q21-2) Have you been disadvantaged in hiring, advancement, or pursuit of an area of practice as a consequence of any of the factors listed below?*



Weighted sample size = 741 racialized licensees

**Chart 7** reports results of 11 statements, thematically grouped under the heading Outgroup.

Two statements drew the highest proportion of affirmative responses from the bank of 24 questions reported in Charts 6, 7 and 8. For the statement at the top of Chart 7, which refers to the disadvantage of growing up without a network of professional contacts, 68% (42% definitely) identified this factor as contributing to a career disadvantage (Q21h). For the second statement, which referred to not having had the same cultural background as one's colleagues, 57% (28% definitely) identified this factor as having disadvantaged their career (Q21a).

As noted elsewhere in this report (Section 3), issues of professional, social and cultural marginalization are closely associated with discrimination and isolation arising from racialization. Fully 50% of racialized licensees (23% definitely) identified prejudicial attitudes on the part of other legal professionals (Q21b), and 45% (26% definitely) identified lack of diversity in their work place environment (Q21p).

In the bottom half of Chart 7, six factors related to work place practices and attitudes drew affirmative responses from between one fifth and one third of racialized respondents. These included: your peers do not believe in a diverse working environment (33%) (Q21r), you were expected not to succeed because of stereotypes associated with your race (32%) (Q21l), you do not have mentors to give you advice on client files (30%) (Q21x), clients do not request lawyers from diverse backgrounds (26%) (Q21q), your social/cultural practices preclude participating in social networking functions (18%) (Q21s), and partners avoid giving you the most challenging work (18%) (Q21t).

### **Cross Tabulation: Some Comparisons**

This section presents data not shown.

For the three statements listed at the top of Chart 7 – absence of professional networks, divergent cultural background, and prejudicial attitudes – women were more likely and men less likely to name these factors as contributing to career disadvantage. Sole practitioners were more likely and those in large firms less likely to identify each of these factors as contributing to career disadvantage. For all three statements respondents who are 30-39 years of age and those who are 40-49 were more likely, whereas younger (under 30) and older (50-65, and over 65) respondents were less likely to identify these factors as a source of career disadvantages.

Racialized respondents whose first language is neither English nor French, and those born outside Canada, were more likely than average to identify the three factors listed at the top of Chart 7 as sources of career disadvantage. Conversely, racialized licensees born in Canada were less likely than average to identify any of these factors as contributing to career disadvantage. For example, on the issue of having been subjected to prejudicial attitudes from other legal professionals (Q21b), 58% of those whose first



language is neither French nor English, and 61% of those born outside Canada, reported being disadvantaged, compared to 41% of those born in Canada. The distribution of opinion between these two groups was similar for the two statements at the top of Chart 7 (21h, 21a).

Among ethno-racial groups, Black, South Asian, Chinese, East Asian and Arab respondents were more likely than average to identify all three factors as contributing to career disadvantage. To take one example, those most likely to flag prejudicial attitudes on the part of other legal professionals included: Black (67%), South Asian (59%) and East Asian (55%) (Q21b).

Whereas the absence of professional networks, divergent cultural background and prejudice based on race are identified as the most important sources of career disadvantage for a majority of *all* racialized respondents, comparisons illustrate some differences between different groups of racialized licensees. Among those more likely than average to name these factors as probable or definite sources of career disadvantage are:

- Women
- Soles practitioners
- First language other than French/English and
- Born outside Canada

Ethno-racial groups more likely than average to name all three factors as probable or definite sources of career disadvantage are:

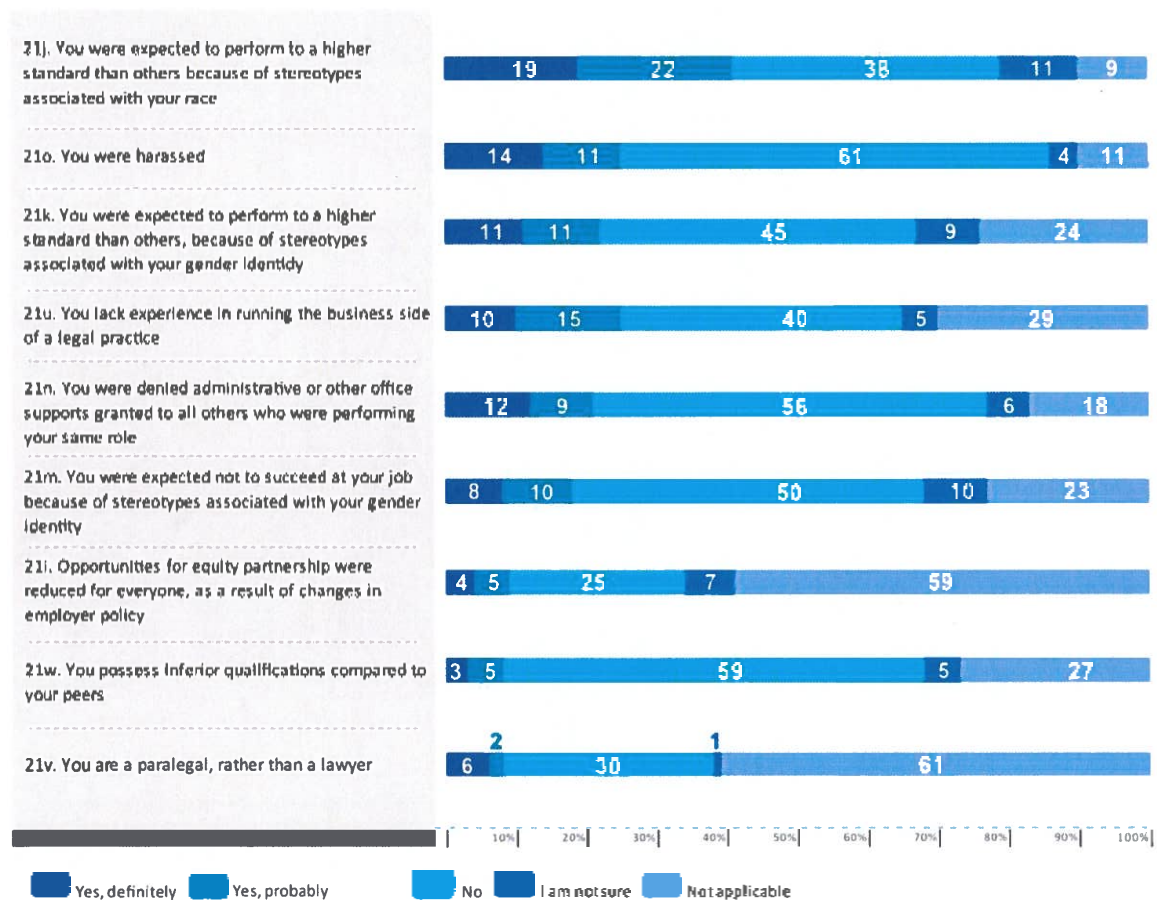
- Black
- South Asian
- Chinese
- Arab

### 6.2.3 Stereotyping

**Chart 8** shows results of nine statements thematically grouped under the heading Stereotyping. Horizontal bars record responses of racialized licensees to each statement.

#### Chart 8 – Stereotyping

(Q21-3) *Have you been disadvantaged in hiring, advancement, or pursuit of an area of practice as a consequence of any of the factors listed below?*



Weighted sample size = 741 racialized licensees

Forty-one percent of racialized licensees reported having been expected to perform to a higher standard than others due to stereotypes associated with race (Q21j). Data not shown indicates that those who most frequently identified this factor as a source of career disadvantage include: Sole practitioners (49%), Born outside Canada (47%), (female) 46%, 40-49 years of age (47%), 30-39 years (44%), first language neither French nor English (43%). Ethno-racial groups that named this factor more frequently than average included: Black (54%), Chinese (52%), South East Asian (46%), Arab (46%), and South Asian (45%).

The demographic characteristics, and to some extent the ethno-racial composition of those who were more likely to name race-based stereotyping as source of career disadvantage, is similar to the composition of those groups who identified the key factors of professional network, cultural divergence and racial prejudice of colleagues (see section 6.2.2).

Three statements in Chart 8 referred to harassment (Q21o), higher expectations due to gender stereotypes (Q21k), and lower expectations due to stereotypes (Q21m). On the issue of harassment 31% of women and 19% of men identified it as a factor contributing to career disadvantage, 38% of women and 11% of men who identified higher expectations associated with gender stereotyping, and 24% and 4% respectively who named lower expectations based on gender stereotypes. Although these numbers show that racialized male licensees are not free from harassment or from gender-based stereotyping, the difference are nevertheless clear, defined by the fact that a much higher proportion of racialized women – between one quarter and two fifths – view gender stereotypes as a factor contributing to their having been disadvantaged in hiring, advancement or pursuit of an area of practice.

## 7. Solutions (Remedies and Best Practices)

---

### 7.1 What's the Issue?

This section explores the opinions of racialized and non-racialized licensees regarding the implications of the challenges faced by racialized licensees and remedies or best practices that should be followed to address those challenges.

The first part of this section (7.2) explores the extent to which both groups of survey respondents believe racialization exists as a process which imposes unique challenges on racialized licensees, exploring as well the implications of challenges associated with racialization of licensees for the justice system. The second part (7.3) canvasses opinion on diverse points of view about racialization. The third part (7.4) reports on the opinions of licensees regarding possible solutions and best practices, and who should lead or participate in the process of developing solutions to address the challenges facing racialized licensees.

### 7.2 Perspectives on Racialization

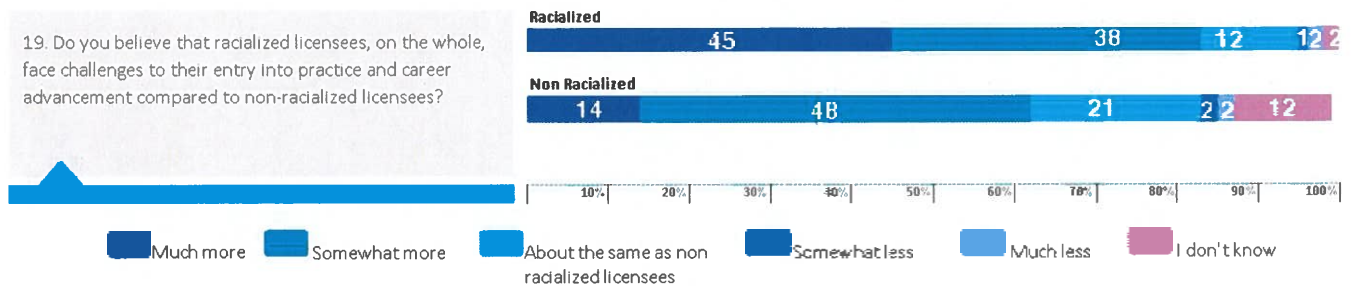
#### 7.2.1 Does racialization exist?

Key informant interviews and focus groups for this study brought to light a powerful account of the extent to which race is a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals. Clearly, for many racialized licensees, 'racialization' is a very real phenomenon that has a material impact on their lives and careers in a variety of specific ways. Some participants in the non-racialized focus groups also reported experiences of discrimination or unequal treatment, which had had a significant impact on their career. However, their views on the challenges of racialization were mixed, and some were reluctant to accept the idea that racialization was a distinct unifying lens, or that the challenges faced by racialized licensees were qualitatively different than those they themselves had experienced.

The online survey explored the question further, measuring the extent to which the two groups of respondents agreed that racialization exists. **Chart 9** reports results of a survey

question that asked all respondents if racialized licensees faced challenges to their entry in practice and advancement compared to their non-racialized colleagues.

**Chart 9 – Do Racialized Licensees Face Unique Challenges**



Weighted sample size =741 racialized licensees

Among racialized respondents 83% agreed that they face more challenges than their non-racialized colleagues, including 45% who characterized those challenges as much more than non-racialized licensees. Other data not shown here identified the following groups of racialized licensees who were more likely than average to agree: Female (93%), those under 30 years of age (89%), 30-39 (89%), 40-49 (89%) as well as Black (97%), South East Asian (93%), Chinese (92%), South Asian (91%) and East Asian (91%).

In comparison, 62% of non-racialized respondents agreed that racialized licensees face more challenges, including 14% who said much more. Other data not shown indicates that non-racialized licensees who were more likely than average to agree included: Female (67%), 40-49 years of age (67%), working in Medium-sized firm (66%), Large firms (64%).

At the other end of the spectrum of opinion on this question, just 3% of racialized respondents characterized the challenges they face as less in comparison with non-racialized licensees. Whereas a larger percentage of non-racialized respondents identified the challenges facing the two groups as about the same (21%) or didn't know (12%), an almost equally small percentage (4%) characterized the challenges facing racialized licensees as less than those facing their non-racialized counterparts.

Across the whole survey population of racialized and non-racialized licensees (data not shown) a strong majority (65%) agree that racialized licensees face challenges compared to non-racialized licensees, and only 4% are in outright disagreement with this view. And although support is not as strong among non-racialized licensees, the unique challenges facing racialized licensees were nevertheless acknowledged by a majority of

non-racialized respondents across almost every demographic and professional sub-group. The only exceptions in this respect were: first language neither French nor English, and paralegals of whom 45% and 37% respectively agreed that racialized licensees face challenges compared to their non-racialized colleagues.

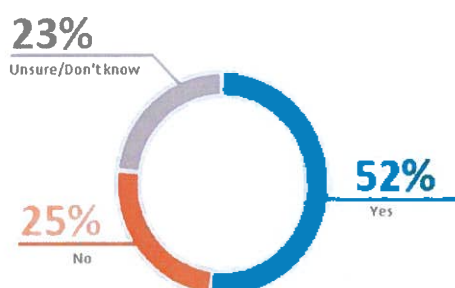
## 7.2.2 The Challenges of Racialization: What Have You Seen?

Although a strong majority of all respondents acknowledged the existence of racialization and career challenges associated with racialization, differences between the two groups were greater when asked about what they had witnessed. Of racialized respondents 52% acknowledged having witnessed an instance in which challenges faced by a racialized licensee or candidate had a material impact on that individual's entry into practice and/or career advancement. In comparison just 17% of non-racialized respondents reported having witnessed such a situation (**Chart 10**).

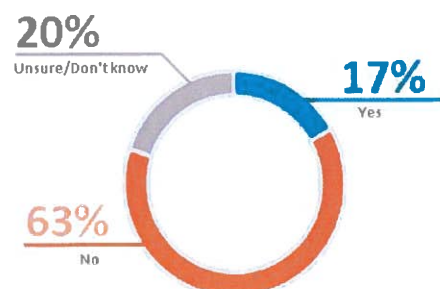
Chart 10 – Experiencing/Witnessing Challenges

*(Q20) Have you experienced or have you witnessed a situation in which challenges faced by a racialized candidate or licensee had a material impact – either positive or negative – on that individuals' entry into practice and/or their career advancement?*

### ► Racialized:



### ► Non-racialized:



Weighted sample size=741 racialized licensees, 2277 Non racialized licensees

A follow-up question asked those who answered yes to describe the situation they had witnessed. A total of 820 responses were coded in 42 categories (Q20).

Racialized respondents (n=383) most frequently cited witnessing: Differential treatment based on skin colour/race/religion/appearance (23%), Difficulty for racialized licensees in OCIs and finding articles (22%), Discrimination because of accent/language barriers (8%), Derogatory comments or bullying in school/office/courts (7%), and Inappropriate/irrelevant/racist comments or questions during interviews (7%).

Non-racialized respondents (n=375) most frequently cited favouritism toward 'non-whites' in schools or hiring, and the effects of diversity policy/reverse racism/affirmative action (19%).<sup>10</sup>

Other observations of non-racialized licensees were more closely aligned with those of racialized licensees: Greater difficulty in OCI's/finding articles (15%), Differential treatment based on skin colour/race/religion/appearance (15%), Discrimination because of accent/language barrier (14%), Blacks face discrimination/harder time securing jobs/obtaining mentors (7%).

### 7.2.3 Challenges Facing Racialized Licensees and the Justice System

Having probed opinion regarding the existence, comparative challenges and evidence of racialization, a subsequent bank of three questions explored opinions regarding the impact of racialization on the profession, the justice system, and the public in positive or negative ways. **Chart 11** shows responses to these questions.

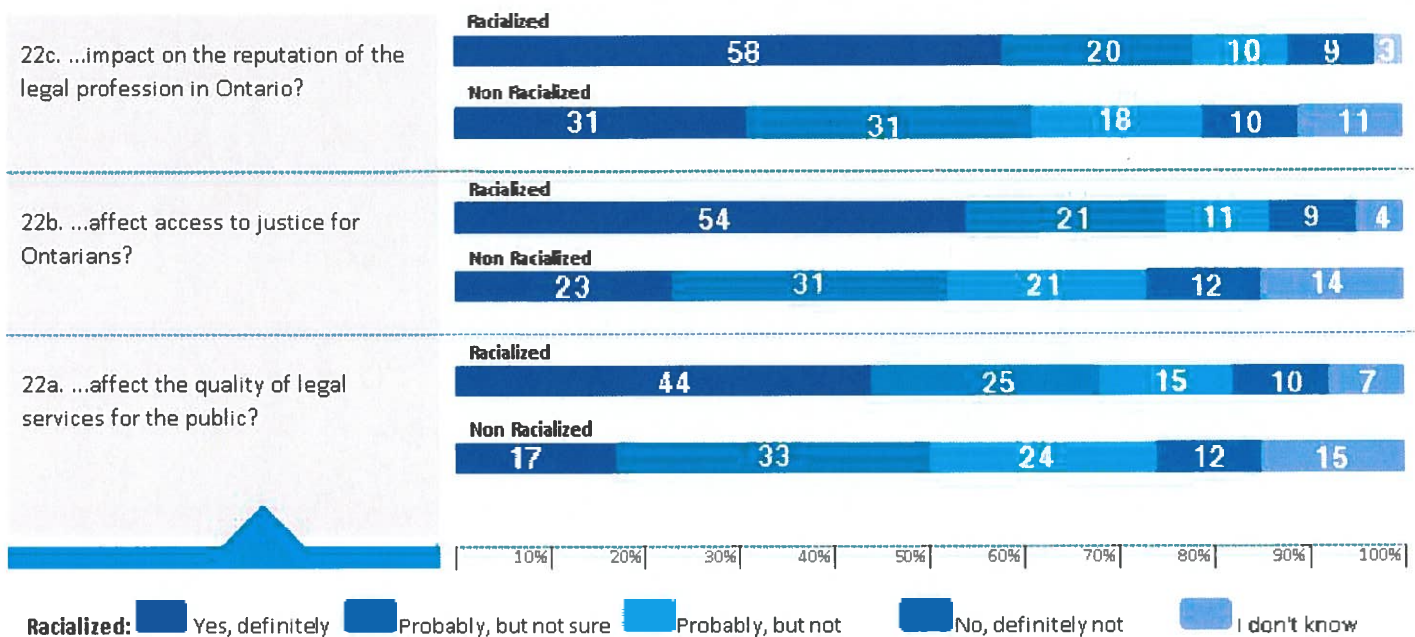
---

<sup>10</sup> This compared to 5% mentions from racialized licensees on the same issue.



## Chart 11 – Impact on the Justice System

(Q22) In your view, do the challenges facing racialized candidates/licensees...



Weighted sample size=741 racialized licensees, 2277 Non racialized licensees

Close to four-fifths (78%) of racialized respondents agreed (58% definitely, 20% probably) that the challenges facing racialized licensees have an impact on the reputation of the legal profession in Ontario, compared to three-fifths (62%) of non-racialized licensees (31% definitely, 31% probably) (Q22c). Similarly, 75% of racialized licensees (75%) agreed (54% definitely, 21% probably) that challenges facing racialized licensees affect access to justice for Ontarians. This compared to 54% of non-racialized respondents (23% definitely, 31% probably) (Q22b). Finally, 69% of racialized respondents agree (44% definitely, 25% probably) that the challenges facing racialized licensees affect the quality of legal services for the public, compared to 50% of non-racialized licensees (17% definitely, 33% probably) (Q22a).

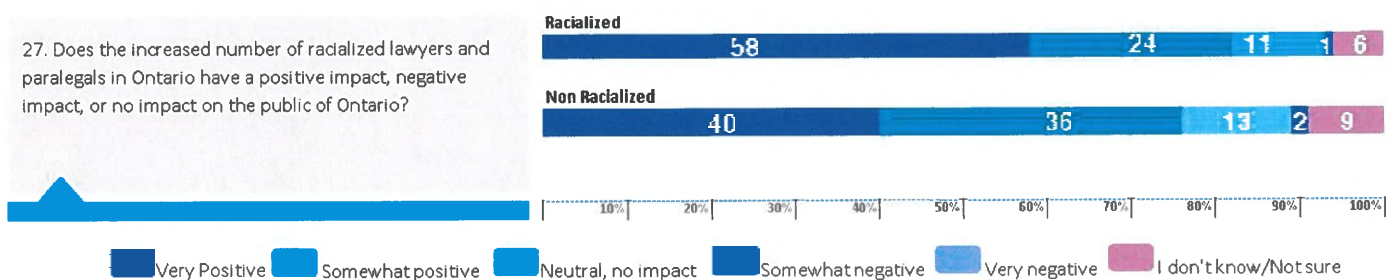
In both groups of respondents, those who see definite or probable impacts on the justice system arising from the challenges faced by racialized licensees substantially outnumber those who probably or definitely see no such impacts. Although there are



differences in the overall balance and intensity of opinion, a very strong majority of racialized licensees, and a majority of non-racialized licensees support the view that the challenges facing racialized licensees are having an impact on the reputation of the legal professions, access to justice and the quality of services provided.

**Chart 12** shows results of a question about the impact of increased numbers of racialized lawyers and paralegals on the public.

**Chart 12 – Impact of Racialized Licensees on the Public**



**Weighted sample size=741 racialized licensees, 2277 Non racialized licensees**

Among racialized licensees, 82% endorsed the view that the increased number of racialized lawyers and paralegals have a positive impact on the public of Ontario (58% very positive, 24% positive). Other data not shown here indicates that this includes 83% of lawyers and 71% of paralegals. This compares to 76% of non-racialized licensees (40% very positive, 36% positive), which included 79% of lawyers and 63% of paralegals.

As a follow-up to the question posed in Chart 12, survey participants were asked how the increased number of racialized licensees would impact on the public of Ontario. A total of 2,537 responses were coded into 23 substantive categories (Q28). **Table 9** below lists the top six responses from both racialized and non-racialized respondents were:

Table 9 – Racialization of Licensees: Effects on the Ontario Public

*(Q28) In what way does the increased number of racialized licensees in Ontario impact on the public of Ontario?*

	Racialized (n=588)	Non-Racialized (n=1705)
Allows public to find/deal with professionals with whom they can relate/are more comfortable/someone from their own culture/speaks the same language/are from their own community/better understands their needs/challenges	28%	21%
Reflects/represents diversity of our society/demographics of Ontario/Canada/public sees themselves represented/can identify with the profession	26%	30%
Access to justice/makes legal system/services seem more accessible to racialized clients/to everyone	16%	14%
Better service/range of services/representation provided/better service to racialized communities/everyone is represented	10%	8%
Provides role models/allows people/young people to envision themselves in a law/professional career/encourages pursuit of law career	9%	8%
Increased trust/confidence in/respect for/better perception of the profession/justice system/people believe they will be treated fairly	8%	8%

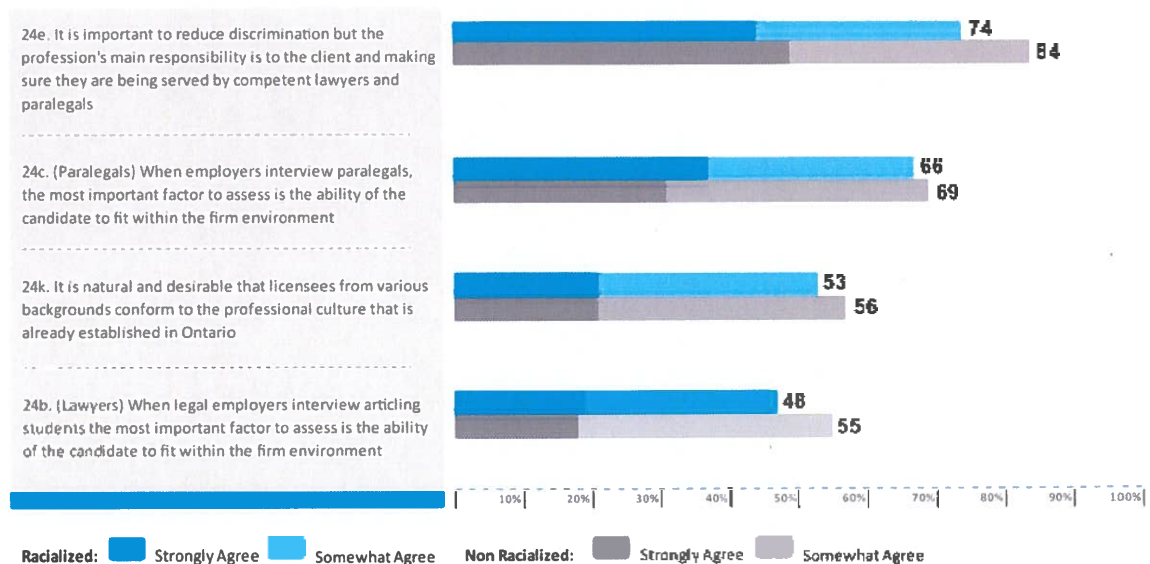
## 7.3 Exploring the Diversity of Opinion

A bank of 12 questions explored agreement/disagreement with statements representing diverse opinions within the legal profession. Response to these 12 statements have been thematically grouped in three separate charts.

**Chart 13** shows results of four statements grouped under the heading System Status Quo and ranked according to overall agreement of racialized licensees.

Chart 13 – System Status Quo

*(Q24-1) In this question we pose statements from a variety of standpoints reflecting diverse opinions within the legal profession. For each statement please indicate if you agree or disagree or if you have no opinion either way.*



Weighted sample size =741 racialized licensees, 2277 non-racialized licensees

A review of Chart 13 suggests relatively narrow differences between racialized and non-racialized respondents in terms of support for this group of four conservative or 'status quo' statements. Of racialized respondents 74% agreed (44% strongly) that reducing discrimination is important but that it should not impinge on the profession's main responsibility to serve clients with competent lawyers and paralegals (Q24e). This compares with 84% of non-racialized respondents who agreed (49% strongly).

A strong majority of paralegals in both groups (66% racialized, 69% non-racialized), endorsed the view that the candidates ability to fit into the firm's environment was the most important factor in hiring paralegals (Q24c). In a similar question addressed to lawyers, 48% of racialized licensees and 55% of non-racialized licensees endorsed the view that fit is the most important factor in the process of selecting articling students (Q24b). Finally, a majority of both groups (53% racialized, 56% non-racialized) agreed that it is natural and desirable for licensees from various backgrounds to conform to the existing professional culture in Ontario (Q24b).

These results suggest an interesting convergence of opinion between racialized and non-racialized licensees around a core group of conservative principles, which assert the limits of steps to reduce discrimination, the traditional use and benefit of fit as the key factor in the hiring process, and respect for the established culture of the legal profession.

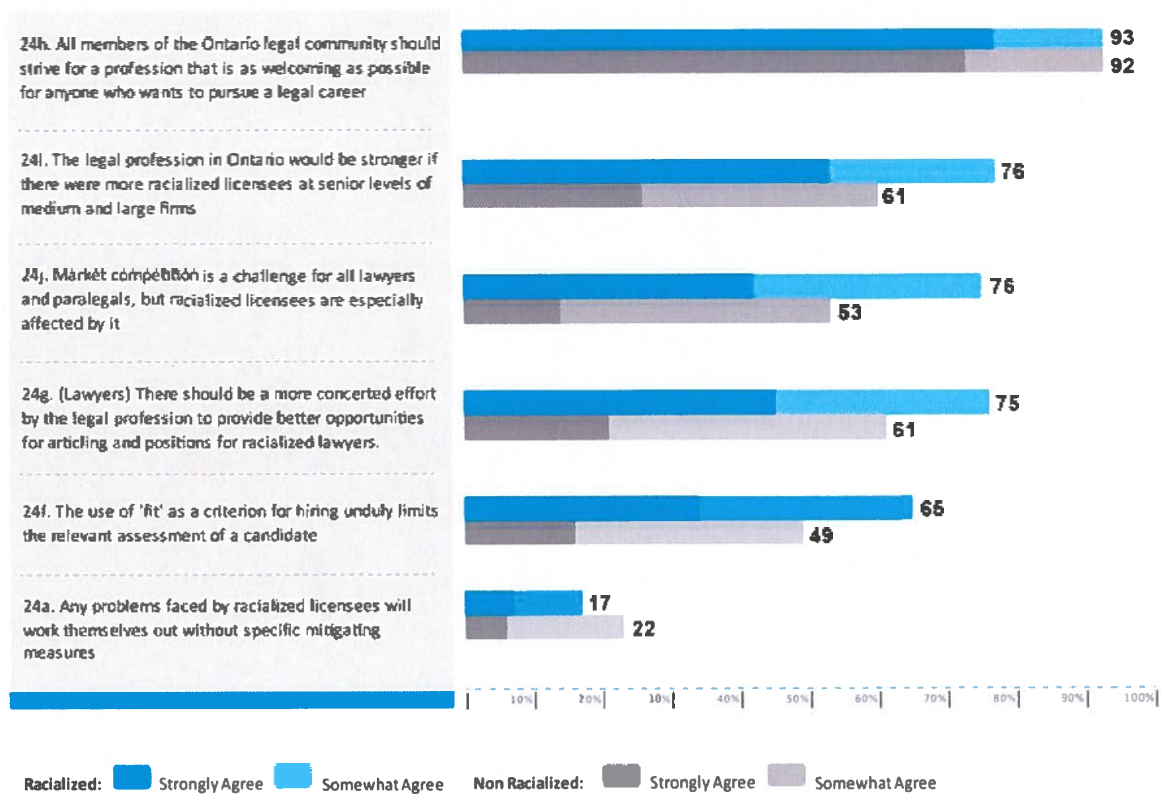
From one angle these results suggest substantial, and perhaps contradictory, support by racialized licensees for values and practices in the legal profession which, in other contexts of this research project, have been identified as discriminatory. On the other hand the results in Chart 13 may reflect a measure of ambivalence toward these values from both groups of licensees. On the issue of fit as the key tool for hiring articling students, 46% of racialized lawyers and 39% of non-racialized lawyers disagreed. And on the issue of adapting to the established professional culture, 41% of racialized licensees and 37% of non-racialized licensees disagreed. From this perspective, the response of racialized licensees might be interpreted as continued if reluctant loyalty to values and practices that serve them poorly, whereas the response of non-racialized licensees might be interpreted as growing awareness of the limitations and inequities associated with established practice and culture.

The convergence of opinion represented in Chart 13 suggests there may be an important point of consensus across the racial divide, which may contribute to defining both the scope and the limits of change when it comes to prioritizing measures to reduce the professional challenges faced by racialized licensees.

**Chart 14** shows seven statements from the same bank grouped under the heading Fair/Equal Opportunity

### Chart 14 – Fair/Equal Opportunity

*(Q24-2) In this question we pose statements from a variety of standpoints reflecting diverse opinions within the legal profession. For each statement please indicate if you agree or disagree or if you have no opinion either way*



Weighted sample size = 741 racialized licensees, 2277 non-racialized licensees

The statement at the top of Chart 14, endorsing the view that the legal profession should be as welcoming as possible, drew overwhelming support from racialized and



non-racialized respondents, with 93% and 92% agreement respectively, including 76% and 73% respectively who strongly agreed (24h).

A moderate to strong majority of lawyers in both groups registered overall agreement with the view that there should be a more concerted effort to provide better opportunities for articling and positions for racialized lawyers ( 75% racialized and 61% non-racialized), although a substantially higher percentage of racialized compared to non-racialized lawyers strongly agreed (45% and 21% respectively) ( Q24g).

Similar majorities of both groups agree that the legal profession would be stronger if there were more racialized licensees at the senior levels of medium and large firms (66% racialized, 61% non-racialized), though here again strong agreement was much higher among racialized respondents (53% compared to 26% of non-racialized respondents) (24i). Among racialized licensees those employed in medium and large firms were more likely than average to agree with this statement (72% and 74% respectively). Among racialized licensees, 58% of those employed in medium and 63% of those employed in large firms agreed the profession would benefit from more racialized licensees as at senior levels. These percentages correspond roughly to the overall level of agreement among non-racialized licensees.

On the issue of market competition and the view that it presents greater challenges to racialized licensees there was a comparatively wider divergence of opinion, with 75% of racialized respondents agreeing, including 42% who strongly agreed compared to a bare majority of 53% of non-racialized respondents, just 14% of whom strongly agreed (Q24j).

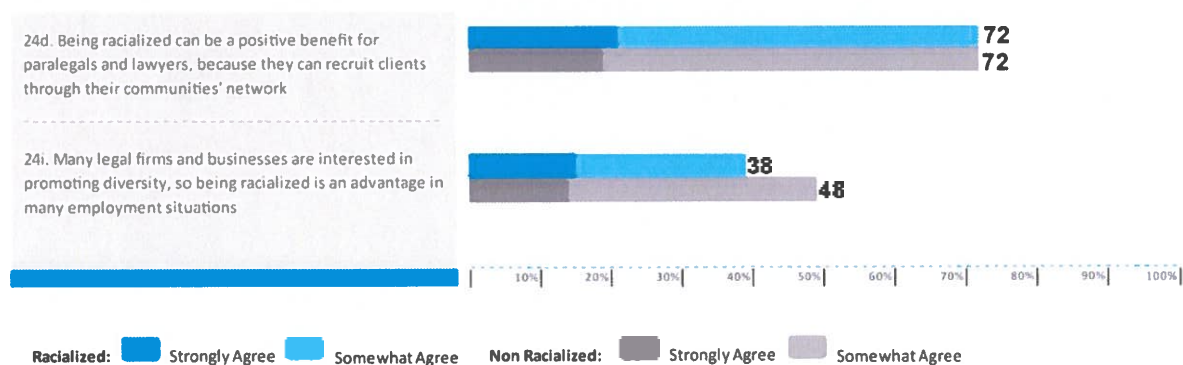
On the subject of fit, 65% of racialized respondents and 49% of non-racialized respondents agreed that as a criterion for hiring it unduly limits the relevant assessment of a candidate (Q24f). This modest reversal of opinion in comparison to the results shown in Chart 13 reinforces the view that both groups are ambivalent on the issue of fit: acknowledging its benefit as a tool in the hiring and advancement process, while recognizing its constraints and potential for bias when it comes to addressing the challenges faced by racialized licensees.

There was very low overall agreement from both groups with the proposition that the challenges facing racialized licensees will be resolved without specific mitigating measures (17% racialized, 22%) (Q24a). These results support the conclusion that not only does a strong majority of all licensees believe racialization imposes specific challenges on racialized licensees, but that majority also recognizes the need for concerted action to address those challenges.

Two remaining statements (**Chart 15**) were grouped under the thematic heading of racial/ethnic advantage.

## Chart 15 – Racial/Ethnic Advantage

*(Q24-3) In this question we pose statements from a variety of standpoints reflecting diverse opinions within the legal profession. For each statement please indicate if you agree or disagree or if you have no opinion either way.*



Weighted sample size =741 racialized licensees, 2277 non-racialized licensees

A strong majority of both groups (72% racialized, 72% non-racialized), agreed that racialized lawyers and paralegals could benefit from being able to recruit clients from their community networks (24d). This balance of opinion concurs with the views expressed by many focus group participants, although focus group participants also explained that racialized status does not necessarily confer access to a corresponding community network. Lower percentages of both groups agreed that because many law firms and businesses are interested in promoting diversity, being racialized is an advantage in many employment situations (38% racialized, 48% non-racialized) (Q24i).

## 7.4 Measures to Promote Inclusiveness in the Profession

Survey participants were asked, 'Have you seen what you consider to be good practices that you would want to recommend be studied or scaled up to address the challenges faced by racialized licensees?' A total of 3,361 open-ended responses were coded in 30 substantive categories (Q25).

Over half (55%) of all respondents indicated that they had not seen any good practices or successful strategies. Among racialized licensees the most frequent mentions were:

Merit/competency should be the basis of hiring people irrespective of an individual's 'label' (5%), Increased mentorship from successful lawyers (6%), and Establishing diversity as a positive goal to enable building stronger teams to serve a multi-cultural society (5%). Among non-racialized respondents most frequent mentions included: Merit/competency should be the basis of hiring people irrespective of an individual's 'label' (5%), Public sector/Canadian government/large corporations and law firms have good diversity practices (3%), and Establishing diversity as a positive goal enables building stronger teams to serve a multi-cultural society (3%).

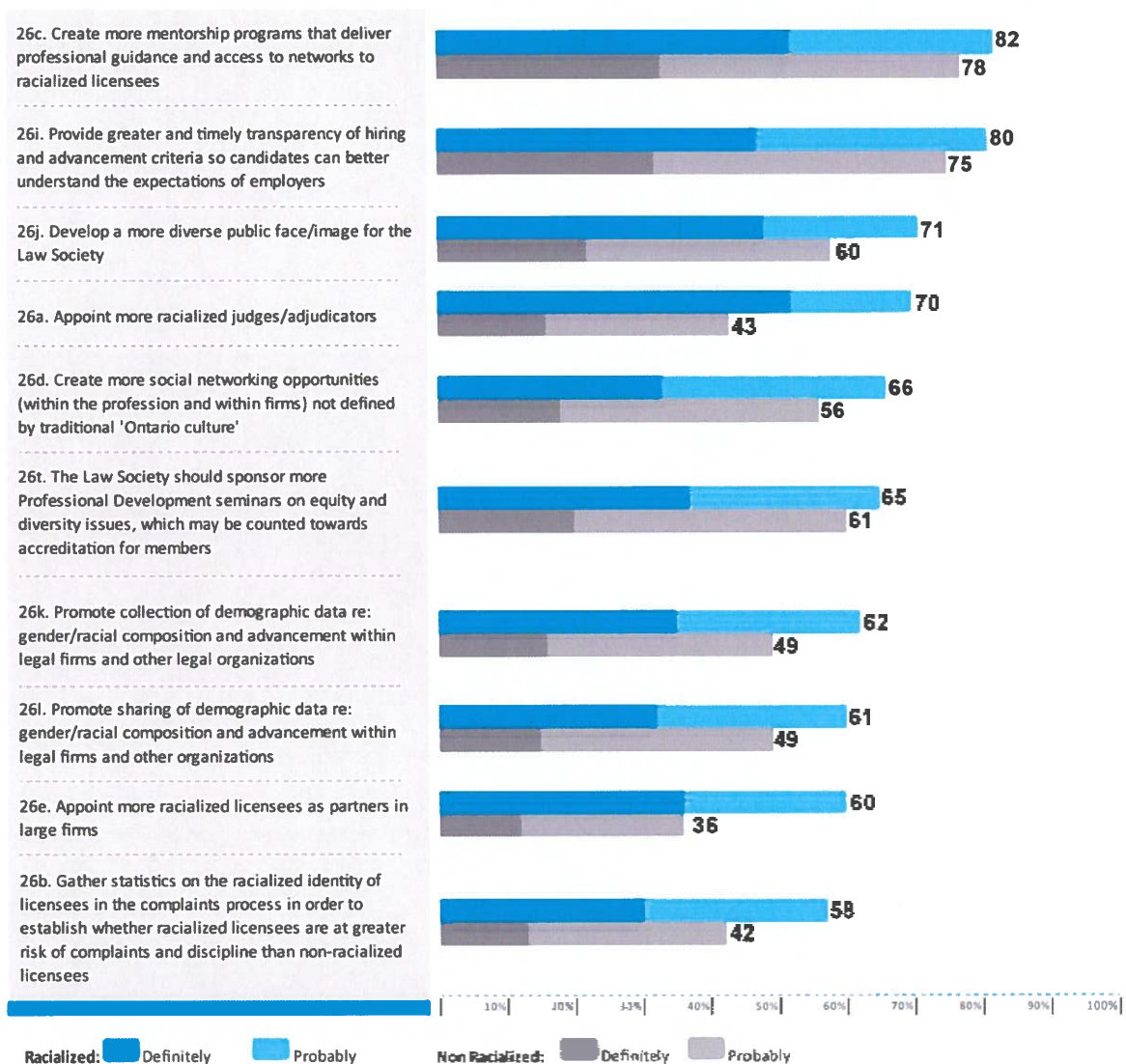
A bank of twenty statements explored opinions of both groups regarding a variety of measures intended to make the legal profession more inclusive. In **Charts 16 and 17** these statements are ranked by highest overall agreement of racialized licensees.

As the two charts show, a majority of racialized licensees endorsed almost the entire list of measures suggested for making the legal profession more inclusive for racialized licensees. The six measures listed at the top of Chart 16 were endorsed by two thirds or more of the racialized respondents and, of the remaining measures listed, all but two reported at the bottom Chart 17 drew majority endorsement from racialized licensees. By contrast, a majority of non-racialized respondents endorsed seven of the twenty measures as definitely or probably the right approach to making the profession more inclusive.



## Chart 16 – Solutions: Part 1

*(Q26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive. For each, please tell us if you think it would be the right approach, wrong approach or if you would need more information before making up your mind.*



Weighted sample size =736 racialized licensees, 2270 non-racialized licensees

Two measures listed at the top of Chart 16 drew strong endorsements from both groups of licensees. Reinforcing a message that was prominent throughout the focus group research, 82% of racialized licensees (52% definitely) identified more mentorship programs that deliver professional guidance and access to networks for racialized licensees (Q26c). This compared to 78% of non-racialized licensees (33% definitely). Both groups also registered comparable levels of support for providing greater and timely transparency of hiring and advancement criteria (80% racialized, 75% non-racialized) (Q26i).

A strong majority of both groups endorsed developing a more diverse public face/image for the Law Society (71% racialized, 60% non-racialized), although 48% of racialized respondents identified this measure as definitely the right approach, compared to just 22% of non-racialized licensees (Q26j). Other data not shown here indicates that among racialized licensees, those most likely support a more diverse public image for the Law Society include: Paralegals (87%), Female (81%), Born outside Canada (77%), as well as South East Asian (90%), Black (84%), and East Asian (82%).

Two other measures attracted comparable levels of support from both groups. Creating more networking opportunities not defined by traditional 'Ontario culture' (66% of racialized and 56% non-racialized licensees) (Q26d), and Law Society sponsored Professional Development seminars on equity and diversity, which may be counted toward accreditation by member (65% racialized, 61% non-racialized) (Q26t).

Two other measures listed in Chart 16 reflect a comparatively wider divergence of opinion between racialized and non-racialized licensees. On the issue of appointing more racialized judges/adjudicators, 70% of racialized licensees endorsed this measure, including 52% who viewed it as definitely the right approach. In comparison, just 43% of non-racialized respondents endorsed this measure, with 16% describing it as definitely the right approach (Q26a). A similar divergence of opinion was evident on the issue of appointing more racialized licensees as partners in large firms, endorsed as the right approach by 60% of racialized licensees including 36% definitely, compared to 36% of non-racialized respondents, and just 12% definitely (Q26e).

### Chart 17 – Solutions: Less Support

(Q26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive. For each, please tell us if you think it would be the right approach, wrong approach or if you would need more information before making up your mind.



Weighted sample size=736 racialized licensees, 2270 Non racialized licensees

Chart 17 lists the 10 measures that had less overall support from racialized licensees. Two of these attracted similar support from both groups of respondents. Requiring and promoting cultural competence training was endorsed by 59% of racialized and 52% of non-racialized licensees (Q26o). Providing interview preparation seminars for racialized licensee was endorsed as probably or definitely the right approach by 58% of respondents from both groups (Q26q).

Of the remaining list of proposed measures there was a moderate divergence of opinion between the two groups. The widest differences were related to requiring *sharing* of demographic data related to the racial/gender composition of legal firms and other organizations (53% racialized, 29% non-racialized) (Q26n), and requiring *collection* of demographic data related to racial/gender composition of legal firms and other organizations (58% racialized, 32% non-racialized) (Q26m).

Although a majority of racialized licensees favoured these measures related to collecting and sharing data, the comparatively lower levels of majority support echo some of the reservations expressed by focus group participants who were concerned that such measures might be construed as setting diversity targets and thereby bypassing traditional principles of hiring and advancement based on merit.

### Charts 16 and 17: Summary

Charts 16 and 17 illustrate both the scope and relative intensity of support for a wide range of issues, highlighting a group of measures to promote inclusiveness that have substantial support from both racialized and non-racialized licensees. Measures that were endorsed by a moderate or large majority of racialized and non-racialized respondents, and might be viewed as representing the convergence of opinion across the two groups, included:

- ▶ More mentorship programs that deliver professional guidance and access to networks for racialized licensees (Q26c)
- ▶ Greater and timely transparency of hiring and advancement criteria (Q26i)
- ▶ Developing a more diverse public face/image for the Law Society (Q26j)
- ▶ More networking opportunities not defined by traditional 'Ontario culture' (Q26d)
- ▶ Law Society sponsored Professional Development seminars on equity and diversity, which may be counted toward accreditation by members (Q26t)
- ▶ Requiring and promoting 'cultural competence training' (Q26o)
- ▶ Providing interview preparation seminars for racialized licensees (Q26q)

Differences were wider, and support from non-racialized respondents was substantially lower, for measures that might be described as harder-edged or more directive. Measures where there is both lower overall agreement and much less concurrence

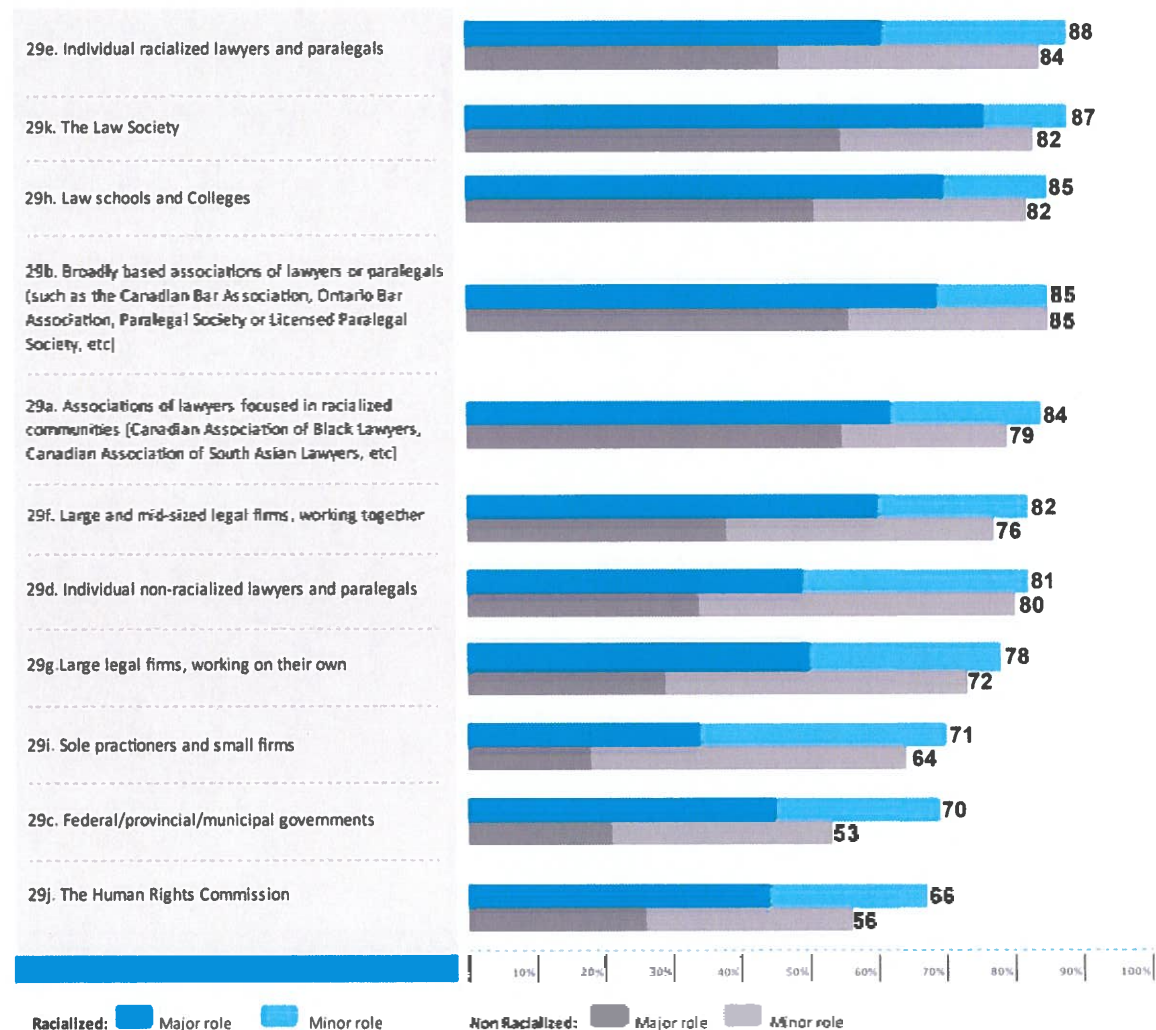
between the two groups included: appointing more racialized judges and adjudicators, appointing more racialized licensees as partners in large firms, promoting and requiring collection and sharing of demographic information, and modifying/formalizing the interview process to reduce the use of fit as a hiring tool and other factors that may disadvantage racialized candidates.



## 7.4.1 Who should play a role?

Chart 18 – Who should play a role?

(Q29) In your view what role should each of the following take to address the challenges facing racialized licensees?



Weighted sample size =713 racialized licensees, 2206 non-racialized licensees

Survey participants were offered a list of 12 stakeholder groups and constituencies and asked what role (Major, Minor or None) each should play in addressing the unique challenges facing racialized licensees. Results are shown in **Chart 18**.

A majority of all respondents endorsed a major or minor role for all 12 of the stakeholder constituencies listed in Chart 18. Differences in the two groups' overall responses are narrow, with the exceptions of the role of all three levels of government (Q29c) and the role Human Rights Commission (Q29j) where there is a moderate divergence of opinion between racialized and non-racialized licensees.

Wider differences appear in the comparisons of which stakeholders are assigned a major role in addressing the challenges faced by racialized licensees, which may reflect underlying differences between the two groups in their perception of the seriousness and urgency of the issue. Based on the percentages of 'Major Role,' racialized licensees assigned a priority role to the following organizations and groups: Law Society (75%) (Q29k), Law Schools and Colleges (70%) (Q29h), broadly-based associations of lawyers and paralegals (69%) (Q29b), associations of lawyers focused on racialized communities (62%) (Q29a), and individual racialized lawyers and paralegals (61%) (Q29e).

Identification of a major role for the Law Society is consistent with what we heard in the focus groups. Although many racialized licensees expressed some degree of pessimism regarding the (political) will and capacity of the Law Society to pursue effective strategies of inclusiveness, a majority nevertheless endorsed a lead role for the Law Society.

## 8. Complaints and Discipline

---

### 8.1 What's the issue?

Following objectives set out at the beginning of the research project and based on themes and issues that surfaced in the Focus Group phase, a final series of questions explored the views of licensees regarding the possible risks of complaints and discipline associated with the challenges faced by racialized licensees.

### 8.2 Identifying Risk of Complaints

Both groups of licensees were asked if, in their view, the Law Society could undertake to more proactively address the issue of the influence of race in the complaints and discipline process. A total of 2,222 responses were coded in 34 substantive categories (Q30).

Thirty-six percent of racialized licensees and 52% of non-racialized licensees who responded to this open-ended question indicated there are no additional steps required or that the Law Society is sufficiently proactive. The relatively large numbers of racialized licensees who identified no issues, and another group who indicated no familiarity with race as a factor in the complaints process (reported below), accords with an observation from the focus groups that a minority of participants, represented in many of the 14 focus groups, "reported not having seen any evidence of factors contributing to increased complaints and discipline for racialized licensees."

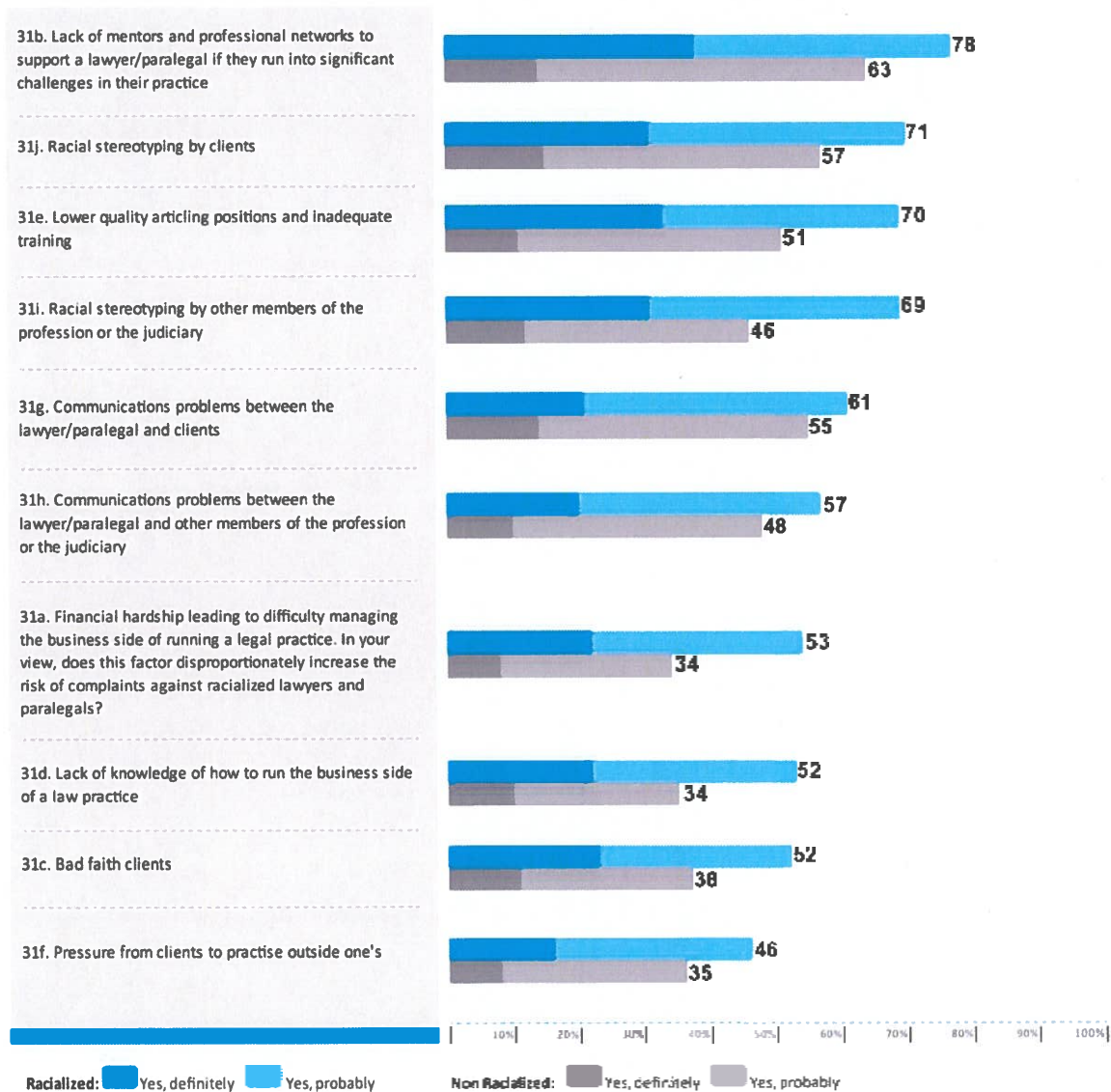
Other frequent responses from both groups of licensees included: Not familiar with race as a main factor in the complaint process (14% racialized, 11% non-racialized), Complaints and discipline should be analyzed/treated fairly regardless of race/sex (7% racialized, 6% non-racialized), Educate and train Law Society/firms/individuals on diversity and race issues (6% racialized, 4% non-racialized), and Have proportionate ethnic/race representation on discipline/investigation boards (5% racialized, 2% non-racialized).

A final bank of 10 questions explored opinions regarding the extent to which specific factors might contribute to increased risk of complaints against racialized licensees.



## Chart 19 – Risks of Complaints Against Racialized Licensees

(Q31) The following is a list of factors ... In each case, please indicate if you think that factor is more likely to increase the risk of complaints against racialized lawyers and paralegals.



Weighted sample size =707 racialized licensees, 2195 non-racialized licensees

A majority of racialized licensees agreed that nine of the ten factors listed in **Chart 19** are definitely or probably likely to increase the risk of complaints against racialized licensees, whereas only four of the ten factors were viewed by the majority of non-racialized respondents as contributing to a higher risk of complaints against racialized licensees.

At the top of the list of risk factors for both groups is the lack of mentors and professional networks (78% racialized, 63% non-racialized) (Q31b), and racial stereotyping by clients (71% racialized, 57% non-racialized) (Q31j). Both factors were identified as potential sources of elevated risk by focus groups participants.

A majority of racialized and almost half of non-racialized respondents (57% and 48% respectively) indicated that miscommunication was definitely or probably a factor increasing the risk of complaints, dovetailing with the findings of the focus groups, which identified factors of cultural miscommunication often overlapping with miscommunications based in language differences, as factors contributing to the risk of increased complaints.

Racialized and non-racialized licensees diverged somewhat on the issues of lower quality articling positions and inadequate training (70% racialized, 51% non-racialized) (31e), and racial stereotyping by other members of the profession or the judiciary (69% racialized, 46% non-racialized) (31i). Here again survey results validate focus group findings, in which racialized participants named both factors as sources of risk.

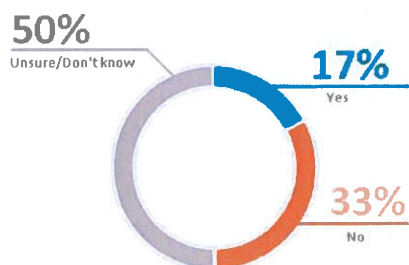
### 8.3 Racialized Licensees and the Regulatory Process

Survey participants were asked if differentiation should be made in the regulatory processes for racialized licensees in certain circumstances. **Chart 20** shows responses for racialized and non-racialized licensees as well as the whole survey population.

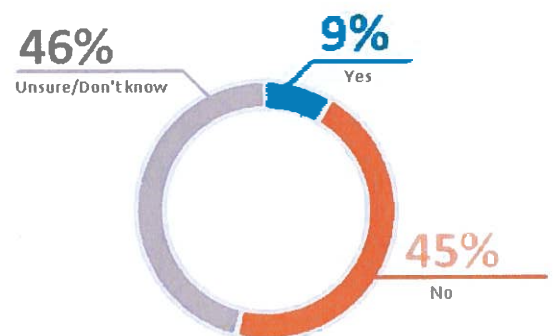
### Chart 20 – Should Racialization be Reflected in the Regulatory Process?

(Q32) In the administration of Justice there are circumstances in which legal processes treat those in the system differently depending on whether they are a member of a group viewed to suffer a disadvantage. Do you believe that such a differentiation should be made in the regulatory processes with respect to racialized licensees in certain circumstances?

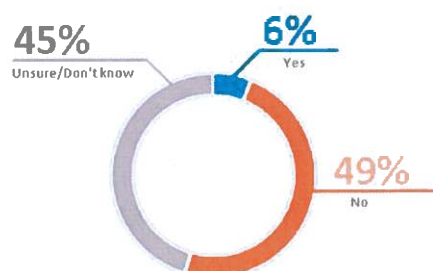
#### ► Racialized



#### ► Total Sample



#### ► Non Racialized



Weighted sample size = 3260 licensees (704 racialized/2185 non-racialized)

Seventeen percent of racialized and 6% of non-racialized respondents agreed that differentiation in the regulatory process be made for racialized licensees. Half or almost

half of all respondents indicated they were unsure or required more information (50% racialized, 45% non-racialized).

A final open-ended question asked those who answered yes to the previous question to describe the circumstances where this should occur. A total of 264 responses were coded in 31 substantive categories (Q 32).

Among racialized respondents the five most frequently mentioned instances where racialized licensees should be treated differently were: When applying to Law School (6%), When in need of networking or training programs (6%), In the case of a First Nations person (6%), and When there is evidence of racial discrimination or bias (5%).

Non-racialized respondents most frequent mentions were: Misunderstanding of cultural background/conflict of culture (9%), Language barriers (9%), Mentorship and support services (8%), Where there is evidence of racial discrimination or bias (8%), and When in need of networking/training programs (5%).

## 9. Conclusions

---

The goal of this research project, to identify challenges faced by racialized lawyers and paralegals in different practice environment, including entry into practice and advancement proved to be ambitious, complex and at different points, methodologically challenging. Nevertheless, the scope of the research, combined with the mixed method design has yielded a nuanced account of the experience of racialized licensees, validating much of that experience through detailed measurement across the whole population of licensees. Indeed, one of the striking features of the research results was the close agreement of the analysis and insights of key informants and the narrative account emerging from the focus groups, with the quantitative measures generated in the survey phase.

Key Informants depicted a landscape in which racialization is a “consistent and persistent factor” affecting racialized licensee across the arc of their careers as students, during and after entry into practise. From the focus group phase of research their emerged an “overarching narrative of the extent to which racial identity is a pervasive factor in shaping the experiences, choices and career outcomes of racialized lawyers and paralegals.”

Findings of the survey research demonstrated the extent to which racialization establishes a measurable constellation of career challenges for racialized licensees that are distinct from those of their non-racialized colleagues: challenges that are rooted in their racialized status as well as many related challenges that are compounded and amplified as a consequence of the racialization process. In comparison with their non-racialized colleagues, racialized licenses and specific sub-groups, encounter qualitatively more severe challenges during and after entry into practise, yielding measurably greater negative impacts throughout their careers.

As noted in this report not all non-racialized licensees acknowledged the significance and unique challenges associated with the process of racialization. However, one important finding, highlighted in the survey phase, was that a strong majority of non-racialized licensees recognize that ‘racialization exists,’ that the challenges faced by racialized licensees have negative consequences for the legal professions and the public, and that pro-active measures are called for to enhance inclusiveness. Results reported in Section 7 demonstrate a substantial overlap across the racial divide, reflected both in shared opinions regarding the value, scope and direction of change, as well as endorsement for specific measures to address the challenges of racialization and make the legal professions more inclusive.

The methodology and findings of this research will provide the basis for further targeted exploration of the issues associated with the challenges of racialization encountered by specific groups, career stages and practice environments. It is hoped that these results will also lend support to the ongoing effort to design and implement practical measures to reduce the challenges associated with racialization and promote inclusiveness within the legal professions.

## Appendix A

### Issue Matrix Tier I Research Priorities (Lawyers and Paralegals)

	Recruitment and Hiring	Career Paths	Advancement in Mid – Large Firms	Risk of Complaints and Discipline
<b>Why</b>	Key issue as it is both complex and cuts across a number of themes including career paths, advancement in mid and large size firms, and sole and small practices. Issues may involve systemic, cultural, intercultural, and interactive dynamics. Little understanding of this area also warrants Tier I attention.	Career trajectories in the legal profession are often set at early stages through self-selection and / or intercultural selection processes operating in the labour market. There is an underrepresentation of racialized lawyers in large firms and a slight overrepresentation of racialized lawyers in sole practices and small firms. Implications for earnings and opportunity are evident. Reasons for these patterns need to be investigated.	This is another key area of research. There is a consensus in diversity research that an essential element in catalyzing change is leadership. It follows that where there is an absence of critical mass and little representation in leadership, cultural and systemic change is more difficult. This is especially true in the legal profession where, for example, consideration for the judiciary is eased by partnership status. Partners have a strong influence on organizational culture.	Available information regarding risk is anecdotal but raises concerns. Data on representation throughout the regulatory process is quite limited. Opportunity to investigate risks is complicated by fact that licensee participants in research will only be those in good standing.
<b>Key Gaps</b>	<p>The 2007 Articling Consultation report revealed that several racialized respondents expressed general concerns that they simply did not fit in at law firms. 2013 informal consultations also found a persistence of this issue.</p> <p>Gap Summary: How do employers and employees experience 'fit'? How is it weighted? What is its role in the interview process? Are criteria around 'fit' made transparent to the candidate?</p>	<p>Gap Summary: What is the experience of racialized lawyers in large firms at all levels – articling interviews, articling, associate level and partnership? What are the possible explanations for underrepresentation in mid and large firms? What are the possible explanations for the slight overrepresentations in sole practices and small firms? Why are racialized licensees overrepresented in government? What are the factors determining career paths?</p>	<p>The Kay Report found that racialized lawyers are underrepresented in more senior positions, such as partnerships. In 2010, 16% of all lawyers who answered the self-identification question are partners while only 6% of racialized lawyers are partners.</p> <p>Gap Summary: Why are racialized lawyers not ascending to partnership levels? What are the criteria and procedures that firms use to advance associates to partnerships? What factors determine how associates get opportunities to work on important files? How has partnership track structure changed over time?</p>	<p>Gap Summary: What are the perceptions of racialized lawyers and non-racialized lawyers respecting risk factors? Are there meaningful differences that may inform future research, policy, program design, outreach and communications?</p>

## Appendix A

### Tier 2 Research (Lawyers and Paralegals)

	Direct and Overt Discrimination and Bias	Areas of Law	Incidents of Representation
<b>Why</b>	This is an important area of study. Overt or direct discrimination, constructive discrimination and bias are incompatible with equality of opportunity and access. Investigation of this theme is fundamental to the study at issue. However, this area may also be more easily observed than Tier 1 systemic issues. Remedies may also be more accessible in that they already exist or may be readily actioned.	The Kay Report found non-racialized lawyers equally likely to practice civil litigation and corporate / commercial law as racialized lawyers. But there is divergence in other practice areas. Racialized lawyers are more likely to practise criminal, immigration, and poverty law whereas non-racialized lawyers are more likely to practice real estate and insurance law. Apart from the impacts of recruitment / hiring practices and Career Paths, this theme may offer distinct areas of inquiry. Broad patterns of diverging experience justify inclusion as a Tier 2 research focus.	The Society has found that among most recent licensees the profession is diverse upon entry for both lawyers and paralegals based on 2006 Statistics Canada baseline representation of visible minorities. However, racialized persons are substantially overrepresented in other professions including medicine and engineering, as well as in the proportion of population with post-secondary education. This is a Tier 2 consideration as the issue and related sub-issues rely on demographic data and data which may involve less interactive dynamics.
<b>Key Gaps</b>	Some specific concerns were raised about communications with judges and lawyers. In a 2004 report to the Law Society (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. A focus group in a different study found members experienced bias throughout their careers. 2013 informal consultations found that improper questions were asked during interviews. Cynthia Peterson, DHS counsel indicated that most of her cases by licensees	Gap 1: What are the factors that determine the areas in which racialized and non-racialized licensees practice?	<p><b>Representation Generally</b></p> <p>Gap Summary: Current Statistics Canada information (2011) about visible minority representation in the Ontario population would provide more useful comparative data. Overrepresentation of visible minorities among university graduates, medicine, and engineers is not reflected in the legal profession. Why / Why not?</p> <p><b>Retention</b></p> <p>Gap Summary: Change of Status research by Strategic Counsel and Statistical Snapshots indicate concerns around attrition of racialized lawyers. If it is occurring, why? Are non-racialized licensees more or less likely to have access to informal supports such as mentoring, networks, information resources than racialized licensees?</p>



## Appendix A

### Direct and Overt Discrimination and Bias

against other licensees are complaints arising from employment about sex discrimination / harassment. Caveat: racialized status of complainants is generally not captured during telephone interviews. Of cases involving race, 1/2 of all complainants are Black and most of those are women. DHS is concerned about significant underreporting of complaints.

Gap Summary: A 5% differential may be significant and this work needs updating. Further, forms and impacts of bias need to be investigated with larger qualitative and quantitative sampling. To what extent are incidents of discrimination going unreported? What are the factors militating against reporting? Investigation of the allegation of improper questions is required.

### Areas of Law

### Incidents of Representation

#### Talent Pipelines

Gap Summary: What is the reason for overrepresentation of women among younger racialized members? What is the role of networks / mentoring for student candidates?

## Appendix B

### Organizations represented during Key Informant phase

Organization
Arab Canadian Lawyers Association
Canadian Association of Black Lawyers
Canadian Association of South Asian Lawyers
Federation of Asian Canadian Lawyers
Federation of Asian Canadian Lawyers
Legal Leaders for Diversity
Licensed Paralegal Association
Paralegal Society of Ontario
University of Toronto Internationally Trained Lawyers Program

## Appendix C



### **Challenges Facing Racialized Licensees Project Key Informant Interview Guide (FINAL) May 16, 2013**

---

#### **Introduction**

As part of its mandate to ensure access to justice, “the Law Society builds equity and diversity values and principles into its policies, programs and procedures,” which includes seeking to “ensure that both law and the practice of law are reflective of all the peoples of Ontario, including Aboriginal Peoples, Francophones and equity-seeking communities.” (LSUC website).

In September 2011 Benchers identified the following as a priority: “considering the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms”. As a result, Convocation created the Working Group on Challenges Faced by Racialized Licensees.

This research project is led by the Working Group and managed by the Equity Initiatives Department. Strategic Communications Inc. (Stratcom) has been contracted by the Law Society to conduct research to identify:

- Challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;

## Appendix C

- Factors and practice challenges that could increase the risk of regulatory complaints and discipline, and;
- Identify perceptions of best practices for preventive remedial and/or support strategies.

This interview is part of the first step of the research process. Following a round of individual interviews, Stratcom will convene a series of focus groups in June, and conduct a comprehensive survey of the profession toward the end of the summer. A full written report will incorporate the qualitative and quantitative research findings.

Before we begin, you should know that all interviews are on a not-for-attribution basis. We may use quotes from our interview notes but individuals will not be identified. Original interview notes will be kept in the hands of Stratcom researchers.

This interview will take about 45 minutes [*offer to shorten as necessary*]. May I proceed?

### BACKGROUND

First, could you tell me a little about yourself: how you came to be involved with [*firm or organization*] and your role there.

#### Organizations

1. What are the key priorities for [*name of organization*] at this time?
2. Can you give me a brief description of your membership: numbers, demographic composition (age, gender), and the types of practice environments represented by your membership?

## Appendix C

3. What would you say are the benefits of belonging to [*name of organization*] from the point of view of individual members?
4. Thinking about different practice environments which you've mentioned, how would you describe the major challenges and successes your members face during their respective careers?

*[Probe for differences based on practice environment]*

*[As necessary, probe for challenges and successes specifically shaped/influenced by racialization]*

### Firms/Government/ In-House

5. Thinking about all your colleagues, as a group, how would you describe the major career challenges and successes that lawyers/paralegals face in your firm/practice environment ?
6. And if I asked you about racialized lawyers/paralegals [*offer definition*] in your firm/practice environment [*or based on your wider career experience*] how would you describe the major career challenges and successes facing this group?

*[Probe for similarities and differences with non-racialized licensees]*

*[Probe for differences based on practice environment. ]*

*[As necessary, probe for challenges and successes specifically shaped/influenced by racialization]*

### RACIALIZATION

7. [*You have mentioned/Do you see*] racialization [*offer definition*]<sup>1</sup> as a barrier to advancement for some of your members/colleagues - how does that manifest itself in the day-to-day experience of lawyers?

---

<sup>1</sup> 'Racialized' expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Japanese, Korean), Latin American and Hispanic, South Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino), and West Asian (e.g. Iranian, Afghan) persons.

## Appendix C

8. How does racialization play a part in the following circumstances:

- Entry into the profession after articles?
- Career paths?
- Representation, retention, change of status of racialized members within the profession?
- Access to justice for Ontarians?

*[Probe for subgroups of 'hardest hit', with details, case examples, specific examples]*

9. When you think about the barriers facing your members/racialized colleagues arising from their racialized status, what would you say are the most difficult to remedy?

Are there other barriers that you would identify as significant, but perhaps not as difficult to change as the ones you just described?

*[Probe for ranking of issues/barriers, most difficult → less difficult, applying the Tier 1 and Tier 2 framework]*

*[Probe for IMPACTS: How does each factor affect entry, career paths, representation, and access to justice?]*

10. Earlier you mentioned challenges not directly related to racialized status facing your members/colleagues, such as *[from Q's 4-5 above]*. Do these other challenges have as great an impact, just as much impact, or less impact overall than racialization on the careers and practices of your members/ colleagues, in your view?

*[Probe for relative weighting of factors, different impacts for subgroups, comparisons and exceptions, case examples]*

11. Part of our study is to inquire about risk factors facing all Society members<sup>2</sup>. What are the factors that could increase the risk of complaints / discipline generally? Are there any factors of greater concern to your members/colleagues?

---

<sup>2</sup> These issues will be explored with all licensees, including Non-Racialized Lawyers/Paralegals, during the online survey phase.

## Appendix C

12. Let's turn to solutions. Thinking about the barriers you mentioned earlier are there specific measures you would recommend to deal with the challenges faced by racialized licensees? *[Probe for best practices]*

13. What do you feel should be the Law Society's role in addressing the barriers you've outlined? Compared to the role of other bodies/agencies?

14. Do you have any final comments you would like to add before we finish up?

***[Provide contact information]***

**Thank you**

## Appendix D



## **LSUC Focus Group Guide Challenges Facing Racialized Licensees June/July 2013**

**TOR, JUNE 19, SOLES & SMALLS (WOMEN 6PM/MEN 8PM)**

**TOR, JUNE 20, MEDIUM & LARGE (WOMEN 6PM/MEN 8PM)**

**TOR, JUNE 25, PARALEGALS (WOMEN 6PM/MEN 8PM)**

**TOR, JUNE 27, FOREIGN TRAINED (WOMEN 6PM/MEN 8PM)**

**TOR, AUG 1, GOVERNMENT & CORPORATIONS (6PM) / PARALEGALS (8PM)**

**TOR, AUG 14, OTHERS (6PM)**

**OTT, JULY 17, IN PRACTICE (6PM) / GOVERNMENT & CORPORATIONS (8PM)**

**LDN, JULY 31, IN PRACTICE (6PM)**

### **CRITERIA:**

- **10 RECRUITS (6-8 PARTICIPANTS)**
- **APPROXIMATE AGE BALANCE**
- **APPROXIMATE GENDER BALANCE WHERE APPROPRIATE**
- **TORONTO : MIX OF 416/905**

**115 MINUTES**



# Appendix D

*Racialized Licensees  
Moderator's Guide*

## Introduction (5 minutes)

### Introduction / Purpose of the Research

GOOD EVENING. WELCOME AND THANK YOU FOR TAKING THE TIME TO PARTICIPATE IN THIS FOCUS GROUP DISCUSSION. MY NAME IS DAVID KRAFT AND THIS IS MY COLLEAGUE ANGELA LEE.

IN SEPTEMBER 2011 BENCHERS IDENTIFIED THE FOLLOWING AS A PRIORITY: "CONSIDERING THE DEVELOPMENT OF PROGRAMS TO ENCOURAGE LAW FIRMS TO ENHANCE DIVERSITY WITHIN FIRMS, BASED ON IDENTIFIED NEEDS, AND CREATE REPORTING MECHANISMS." AS A RESULT, CONVOCATION CREATED THE WORKING GROUP ON CHALLENGES FACED BY RACIALIZED LICENSEES.

THIS RESEARCH PROJECT IS LED BY THE WORKING GROUP AND MANAGED BY THE EQUITY INITIATIVES DEPARTMENT OF THE LAW SOCIETY. STRATEGIC COMMUNICATIONS INC. (STRATCOM) HAS BEEN CONTRACTED BY THE LAW SOCIETY TO CONDUCT RESEARCH TO IDENTIFY:

- CHALLENGES FACED BY RACIALIZED LAWYERS AND PARALEGALS IN DIFFERENT PRACTICE ENVIRONMENTS, INCLUDING ENTRY INTO PRACTICE AND ADVANCEMENT; [POST DEFINITION OF RACIALIZATION]
- FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE, AND;
- IDENTIFY PERCEPTIONS OF BEST PRACTICES FOR PREVENTIVE REMEDIAL AND/OR SUPPORT STRATEGIES.

THIS FOCUS GROUP IS PART OF THE QUALITATIVE PHASE OF THE RESEARCH PROJECT. FOLLOWING THE COMPLETION OF THE FOCUS GROUP RESEARCH IN JULY WE WILL CONDUCT A COMPREHENSIVE ONLINE SURVEY OF THE PROFESSION, ALL MEMBERS OF THE LAW SOCIETY WHO ARE IN GOOD STANDING, INCLUDING YOU AND THE OTHER FOCUS GROUP PARTICIPANTS.

## Appendix D

### *Racialized Licensees Moderator's Guide*

A FULL WRITTEN REPORT WILL INCORPORATE THE QUALITATIVE AND QUANTITATIVE RESEARCH FINDINGS.

IN THIS DISCUSSION I'M INTERESTED IN EXPLORING YOUR EXPERIENCE, PERCEPTIONS AND IMPRESSIONS REGARDING THE CHALLENGES FACING RACIALIZED LAWYERS AND PARALEGALS.

I AM NOT A LAWYER OR PARALEGAL AND I AM NOT RACIALIZED. MY ROLE HERE IS AS A RESEARCHER AND FACILITATOR, RELYING ON EACH OF YOU TO SHARE YOUR EXPERIENCES, PERCEPTIONS AND IMPRESSIONS. THE QUESTIONS THAT I WILL BE ASKING ARE COMPLETELY OPEN-ENDED. YOU ARE FREE TO INTERPRET THEM IN THE WAY THAT YOU BELIEVE IS MOST APPROPRIATE. I AM EQUALLY INTERESTED IN EVERYONE'S INTERPRETATIONS AND RESPONSES TO MY QUESTIONS.

### How it works

THIS DISCUSSION IS ORGANIZED AS A FOCUS GROUP - AN ORGANIZED CONVERSATION IN WHICH WE WILL TOUCH ON A NUMBER OF DIFFERENT TOPICS.

### Confidentiality

WE ARE TAKING NOTES/RECORDING AND VIEWING THIS CONVERSATION. WE USE THESE NOTES AND RECORDINGS TO PREPARE A REPORT. HOWEVER, YOUR NAME WILL NOT BE MENTIONED ANYWHERE IN THE FINAL REPORT, AND IT WILL NOT BE POSSIBLE FOR ANYONE TO IDENTIFY YOU PERSONALLY. THERE ARE STAFF MEMBERS FROM THE LAW SOCIETY OBSERVING THIS DISCUSSION AND THEY ARE PLEDGED TO KEEP ANYTHING THAT THEY HEAR IN THIS DISCUSSION STRICTLY CONFIDENTIAL. THAT MEANS NO COMMUNICATION OF ANY KIND THAT WOULD ASSOCIATE YOU WITH ANY OPINION OR REMARK ARISING FROM THIS DISCUSSION.

I WOULD ASK YOU ALSO TO RESPECT THE CONFIDENTIALITY OF THE OTHER PARTICIPANTS. YOU MAY WANT TO TALK ABOUT THIS DISCUSSION WITH FRIENDS, FAMILY OR COLLEAGUES AND FEEL FREE TO DO SO, BUT PLEASE DON'T ATTRIBUTE ANY COMMENTS OR SPECIFIC IDEAS TO ANY OF THE INDIVIDUALS WHO PARTICIPATED IN THIS DISCUSSION, IN ANY WAY THAT COULD LEAD TO THEIR BEING ASSOCIATED WITH A SPECIFIC IDEA OR REMARK. OKAY? DOES EVERYONE AGREE? [GET RESPONSE]

## Appendix D

*Racialized Licensees  
Moderator's Guide*

### **My role, your role**

**MY ROLE HERE IS TO ASK QUESTIONS AND LISTEN. I WILL ENCOURAGE ALL OF YOU TO PARTICIPATE. AS THE DISCUSSION GETS GOING PLEASE FEEL FREE TO JUMP IN, EXPRESS YOUR THOUGHTS AND FEELINGS, AND ALSO MAKE ROOM FOR OTHERS TO PARTICIPATE. THERE ARE NO WRONG ANSWERS IN THIS DISCUSSION AND I'M NOT SEEKING AGREEMENT WITH ANY PARTICULAR OPINION. SO PLEASE FEEL FREE TO SPEAK YOUR MIND.**

**OUR TIME IS LIMITED AND I HAVE A LIST OF QUESTIONS THAT I WANT TO DISCUSS. CONSEQUENTLY, FROM TIME TO TIME I MAY INTERRUPT THE DISCUSSION, EITHER TO HEAR FROM SOMEONE ELSE OR TO MOVE ON TO ANOTHER QUESTION. I APOLOGIZE IN ADVANCE FOR THOSE INTERRUPTIONS.**

**OKAY? [MODERATOR PAUSES FOR QUESTIONS/FEEDBACK]**

**IF YOU HAVE A CELL PHONE, PLEASE TURN IT OFF, OR SET IT TO SILENT [IF YOU CAN].**

**[REMINDEE PARTICIPANTS OF THE LENGTH OF THE DISCUSSION AND THE END TIME. PROVIDE DIRECTIONS TO WASHROOMS]**

# Appendix D

*Racialized Licensees  
Moderator's Guide*

## 1. Go 'ROUND: YOUR JOB / PROFESSION (10 MIN)

LET'S START WITH INTRODUCTIONS. AS WE GO AROUND THE TABLE, PLEASE INTRODUCE YOURSELF, BRIEFLY DESCRIBE YOUR PRACTICE CONTEXT OR YOUR EMPLOYMENT STATUS IF YOU ARE NOT PRACTISING AT THIS TIME, AND YOUR EXPERIENCE.

## 2. REFLECTING ON THE PROFESSION (35 MIN)

TELL ME A LITTLE BIT ABOUT WHAT IS HAPPENING IN YOUR PROFESSION? WHAT ARE THE IMPORTANT EVENTS, DEVELOPMENTS OR TRENDS THAT AFFECT HOW YOU ARE ABLE TO DO YOUR JOB AND PURSUE YOUR CAREER?

***[PROBE FOR IMPORTANT CHALLENGES TO EMPLOYMENT/ESTABLISHING A PRACTICE, CAREER ADVANCEMENT, CHOICES WITH RESPECT TO AREAS OF PRACTICE, QUALITY OF SERVICES AND ACCESS TO JUSTICE]***

AS YOU KNOW, WE'RE HERE TO IDENTIFY AND DISCUSS CHALLENGES FACED BY RACIALIZED LAWYERS AND PARALEGALS. WHAT DOES THAT MEAN TO YOU? WHAT COMES TO MIND WHEN I SAY WE'RE TALKING ABOUT 'CHALLENGES FACED BY RACIALIZED LAWYERS/ PARALEGALS'?

***[OPEN ENDED, DON'T PROMPT AT FIRST...LET THIS CONVERSATION GO FOR A FEW MINUTES]***

HOW SIGNIFICANT IS RACE TO YOU IN YOUR LIFE AS A LAWYER? IN WHAT WAYS DOES RACE MAKE A DIFFERENCE (POSITIVE OR NEGATIVE) FOR YOU?

***[GO AROUND. ALL DISCUSS]***

WE'VE HEARD MENTION OF ***[NOTE ISSUES ARISING FROM THE PRECEDING DISCUSSION]***. DO THESE OUTCOMES DIFFER IN DIFFERENT PRACTICE ENVIRONMENTS?

***[PROBE ON SPECIFIC PRACTICE AREAS ACCORDING TO WHO'S IN THE ROOM.]***

# Appendix D

*Racialized Licensees  
Moderator's Guide*

**DOES RACE MAKE A DIFFERENCE AT DIFFERENT CAREER STAGES OR IN DIFFERENT CIRCUMSTANCES? FOR EXAMPLE:**

**ENTRY INTO PRACTICE?**

**[PROBE FOR SPECIFIC EXAMPLES OF RECRUITMENT EXPERIENCES, TYPE AND FORM OF INTERVIEWS, HOW INDIVIDUAL PARTICIPANTS FIND OUT ABOUT POSITIONS, ETC.]**

**ADVANCEMENT WITHIN A SPECIFIC FIRM?**

**[PROBE FOR SPECIFIC EXPERIENCE AROUND CRITERIA / FACTORS / STRUCTURES / PROCESSES USED TO DETERMINE HIRE-BACKS AND ADVANCEMENT]**

**CAREER PATH?**

**[PROBE HIGHER PROPORTION OF SOLES ARE RACIALIZED (19% TO 17%), LOWER PROPORTION ARE PARTNERS (6% OF RACIALIZED VS. 16% OF RESPONDENTS ARE)]**

**AREAS OF LAW?**

**REPRESENTATION, RETENTION, CHANGE OF STATUS OF RACIALIZED MEMBERS WITHIN THE PROFESSION?**

**OTHER? [DECISIONS TO LEAVE THE PROFESSION?]**

## 3. DIFFERENCES AND SIMILARITIES (15 MIN)

**YOU HAVE ALREADY TOLD ME THAT THE OUTCOMES OF RACIALIZATION VARY DEPENDING ON DIFFERENT PRACTICE ENVIRONMENTS AND CAREER CIRCUMSTANCES [REFERENCE PRECEDING DISCUSSION]. DOES RACE IMPACT DIFFERENT GROUPS OF LAWYERS DIFFERENTLY?**

**TALK ABOUT YOUR EXPERIENCES ACCORDING TO THE RACIALIZED GROUP WITH WHICH YOU ARE ASSOCIATED.**

**[EXPLORE PERCEPTIONS OF OUTCOMES FOR:]**

**LICENSEES WHO ARE FEMALE AND RACIALIZED? [ASK FOR EXAMPLES]**

**YOUNGER AND RACIALIZED LAWYERS/PARALEGALS? [ASK FOR EXAMPLES]**

**OTHER GROUPS?**

**COMMUNITIES/ REGIONS?**

# Appendix D

*Racialized Licensees  
Moderator's Guide*

## 4. IMPACTS (25 MINUTES)

WE HAVE TALKED ABOUT [BRIEF SUMMARY OF MAIN TOPICS]

- MARKET COMPETITION MAKING LIFE HARDER FOR ALL LAWYERS BUT RACIALIZED LAWYERS IN PARTICULAR
- OVERT DISCRIMINATION/RACISM
- STRUCTURAL AND BEHAVIOURAL BARRIERS THAT HAVE THE EFFECT OF DISCRIMINATING THOUGH NOT DESIGNED TO DISCRIMINATE? [GIVE EXAMPLES FROM DISCUSSION]
- LOW EXPECTATIONS (BY CLIENTS/COLLEAGUES/JUDGES/OFFICERS OF THE COURT)
- STANDARDS OF PERFECTION APPLIED TO RACIALIZED LAWYERS – INCREASING COMPLAINTS?
- THE RELATIONSHIP BETWEEN 'FIT' AND RACIALIZATION IN HIRING/ADVANCEMENT/WORKFLOW.
- UNDER-REPRESENTATION AT SENIOR LEVELS OF MEDIUM AND LARGE FIRMS
- OVER-REPRESENTATION IN SOLES / SMALLS
- LACK OF ARTICLING OPPORTUNITIES

ARE THERE OTHER IMPACTS OF RACIALIZATION THAT HAVE NOT BEEN MENTIONED THAT YOU WOULD LIKE TO ADD TO THIS LIST? [NOTE ADDITIONS]

I'D LIKE TO LEARN MORE ABOUT THE IMPACT THAT THESE FACTORS HAVE.

## Appendix D

### *Racialized Licensees Moderator's Guide*

HOW MANY OF YOU **[HANDS UP]** FEEL THAT ONE OR MORE OF THESE FACTORS HAS NEGATIVELY AFFECTED YOUR CAREER PATH? **[COUNT]** WHAT WAS THE IMPACT, CAN YOU DESCRIBE IT FOR ME IN A NUTSHELL?

DO THESE IMPACTS AFFECT THE QUALITY OF SERVICES YOU CAN PROVIDE TO YOUR CLIENTS AND THE COMMUNITY? **[REMINDER OF CONFIDENTIALITY. THEY MAY NOT BE COMFORTABLE ANSWERING IN FRONT OF COLLEAGUES].**

DO THESE IMPACTS OR CHALLENGES THAT YOU HAVE DESCRIBED INFLUENCE ACCESS TO JUSTICE FOR THE PUBLIC IN ONTARIO?

**[PROBE ADEQUACY/'FIT' OF LEGAL REPRESENTATION FOR RACIALIZED COMMUNITIES]**

**[PROBE REPRESENTATION OF RACIALIZED GROUPS IN PUBLIC INSTITUTIONS – CROWN PROSECUTORS? THE JUDICIARY?]**

IN MY INTRODUCTION TO THIS DISCUSSION I MENTIONED THAT ONE OF THE OBJECTIVES OF THIS PROJECT SPECIFIED BY THE LAW SOCIETY WAS TO IDENTIFY “FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE” FOR RACIALIZED LICENSEES. DO ANY OF THE IMPACTS OF RACIALIZATION THAT WE HAVE BEEN DISCUSSING INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE?

**[PROBE FOR EXAMPLES]**

**[TEST FOR CONSENSUS: ARE RACIALIZED LICENSEES MORE VULNERABLE/AT HIGHER RISK OF COMPLAINTS AND DISCIPLINE?]**

ARE THERE ANY POSITIVES ABOUT RACIALIZATION?

### 5. REMEDIES (20 MIN)

MANY LAWYERS AND FIRMS ARE CONCERNED ABOUT DIVERSITY AND EQUITY. HAVE YOU SEEN WHAT YOU CONSIDER TO BE GOOD PRACTICES THAT YOU WOULD WANT TO RECOMMEND BE STUDIED OR SCALED UP TO ADDRESS THE CHALLENGES WE HAVE BEEN DISCUSSING?

## Appendix D

### *Racialized Licensees Moderator's Guide*

- BY INDIVIDUALS AND VOLUNTARY ASSOCIATIONS?
- BY HR DEPTS IN FIRMS? BY MANAGING PARTNERS IN FIRMS?
- BY GOVERNMENTS/PUBLIC INSTITUTIONS BUYING LEGAL SERVICES?
- BY THE ATTORNEY-GENERAL? CROWN PROSECUTORS?
- BY THE LAW SOCIETY?

ARE THESE GOOD APPROACHES (AND IF SO, WHY?)

**[LIST SPECIFIC MEASURES THAT HAVE BEEN IMPLEMENTED OR PROPOSED, E.G.]**

- APPOINT MORE RACIALIZED JUDGES/ADJUDICATORS
- GATHER STATISTICS ON RACIALIZED IDENTITY OF LICENSEES IN COMPLAINTS PROCESS
- ENFORCE PROCUREMENT RULES BY GOVERNMENT
- MENTORSHIP PROGRAMS
- MORE SOCIAL OPPORTUNITIES NOT LINKED TO TRADITIONAL 'WHITE' CULTURE
- RESTRICT INTAKE OF NEW LICENSEES
- HR/RECRUITMENT PRACTICES
  - 'BLIND' HR POLICIES (NO NAMES OR PERSONAL ID IN EARLY PHASES OF HIRING)
  - **[Add]** OTHER SPECIFIC HR AND RECRUITMENT PRACTICES
- DEVELOP A MORE DIVERSE PUBLIC FACE/IMAGE FOR THE LAW SOCIETY
- SANCTION/PROMOTE COLLECTION AND SHARING OF DEMOGRAPHIC DATA RE: GENDER/RACIAL COMPOSITION OF LAW FIRMS
- PROMOTE 'CULTURAL COMPETENCE TRAINING'



## Appendix D

*Racialized Licensees  
Moderator's Guide*

- ENCOURAGE DIVERSITY CRITERIA IN CORPORATE PROCUREMENT OF LEGAL SERVICES [AS EVIDENT TO SOME DEGREE AMONGST LEGAL LEADERS FOR DIVERSITY]

### 6. CLOSING REMARKS (5 MIN)

THAT BRINGS US TO THE END OF THE DISCUSSION.

**[TIME PERMITTING MODERATOR MAY ALLOW ONE OR TWO FINAL COMMENTS]**

AS I HAVE EXPLAINED, THE RESULTS OF THIS AND OTHER FOCUS GROUP DISCUSSIONS - AS WELL AS THE RESULTS OF AN ONLINE SURVEY THAT YOU WILL BE INVITED TO PARTICIPATE IN – WILL BE INCORPORATED INTO A RESEARCH REPORT SUBMITTED TO LAW SOCIETY. TO REPEAT MY EARLIER PROMISE, ALL OF THIS WILL BE REPORTED IN A STRICTLY CONFIDENTIAL WAY AND YOU WILL NOT IDENTIFIED ANYWHERE IN THE REPORTING PROCESS.

THANK YOU FOR TAKING THE TIME TO PARTICIPATE THIS DISCUSSION.

## Appendix E



### **LSUC Focus Group Guide** **Challenges Facing Racialized Licensees** **June/August 2013** **(Non-Racialized Lawyers and Paralegals)**

TOR, JUNE 19, SOLES & SMALLS (WOMEN 6PM/MEN 8PM)  
 TOR, JUNE 20, MEDIUM & LARGE (WOMEN 6PM/MEN 8PM)  
 TOR, JUNE 25, PARALEGALS (WOMEN 6PM/MEN 8PM)  
 TOR, JUNE 27, FOREIGN TRAINED (WOMEN 6PM/MEN 8PM)  
 OTT, JULY 17, IN PRACTICE (6PM) / GOVERNMENT & CORPORATIONS (8PM)  
 LDN, JULY 31, IN PRACTICE (6PM)  
 TOR, AUG 1, GOV & CORP (6 PM)/ PARALEGALS (8PM)  
 TOR, AUG 14, OTHERS (6PM)  
***TOR AUG 15, NON-RACIALIZED LICENSEES (x2)***

#### CRITERIA:

- 10 RECRUITS (6-8 PARTICIPANTS) WHO SELF-IDENTIFY AS 'NON-RACIALIZED'
- APPROXIMATE AGE BALANCE
- APPROXIMATE GENDER BALANCE WHERE APPROPRIATE
- TORONTO : MIX OF 416/905

115 MINUTES

## Introduction (5 minutes)

### Introduction / Purpose of the Research

GOOD EVENING. WELCOME AND THANK YOU FOR TAKING THE TIME TO PARTICIPATE IN THIS FOCUS GROUP DISCUSSION. MY NAME IS DAVID KRAFT AND THIS IS MY COLLEAGUE ANGELA LEE.

IN SEPTEMBER 2011 BENCHERS IDENTIFIED THE FOLLOWING AS A PRIORITY: "CONSIDERING THE DEVELOPMENT OF PROGRAMS TO ENCOURAGE LAW FIRMS TO ENHANCE DIVERSITY WITHIN FIRMS, BASED ON IDENTIFIED NEEDS, AND CREATE REPORTING MECHANISMS." AS A RESULT, CONVOCATION CREATED THE WORKING GROUP ON CHALLENGES FACED BY RACIALIZED LICENSEES.

THIS RESEARCH PROJECT IS LED BY THE WORKING GROUP AND MANAGED BY THE EQUITY INITIATIVES DEPARTMENT OF THE LAW SOCIETY. STRATEGIC COMMUNICATIONS INC. (STRATCOM) HAS BEEN CONTRACTED BY THE LAW SOCIETY TO CONDUCT RESEARCH TO IDENTIFY:

- CHALLENGES FACED BY RACIALIZED LAWYERS AND PARALEGALS IN DIFFERENT PRACTICE ENVIRONMENTS, INCLUDING ENTRY INTO PRACTICE AND ADVANCEMENT; [POST DEFINITION OF RACIALIZATION]
- FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE, AND;
- IDENTIFY PERCEPTIONS OF BEST PRACTICES FOR PREVENTIVE REMEDIAL AND/OR SUPPORT STRATEGIES.

THIS FOCUS GROUP IS PART OF THE QUALITATIVE PHASE OF THE RESEARCH PROJECT. FOLLOWING THE COMPLETION OF THE FOCUS GROUP RESEARCH IN JULY WE WILL CONDUCT A COMPREHENSIVE ONLINE SURVEY OF THE PROFESSION, ALL MEMBERS OF THE LAW SOCIETY WHO ARE IN GOOD STANDING, INCLUDING YOU AND THE OTHER FOCUS GROUP PARTICIPANTS.

A FULL WRITTEN REPORT WILL INCORPORATE THE QUALITATIVE AND QUANTITATIVE RESEARCH FINDINGS.

IN THIS DISCUSSION I'M INTERESTED IN EXPLORING YOUR EXPERIENCE, PERCEPTIONS AND IMPRESSIONS REGARDING THE CHALLENGES FACING RACIALIZED LAWYERS AND PARALEGALS. ALTHOUGH YOU YOURSELVES ARE NOT RACIALIZED LAWYERS OR PARALEGALS, I'M INTERESTED IN YOUR EXPERIENCES AND YOUR PERCEPTION OF THE ISSUES. I'M INTERESTED IN YOUR VIEWS REGARDING THE EXPERIENCES OF RACIALIZED LAWYERS AND PARALEGALS IN DIFFERENT PRACTICE ENVIRONMENTS.

I AM HERE AS A RESEARCHER AND FACILITATOR, RELYING ON EACH OF YOU TO SHARE YOUR EXPERIENCES, PERCEPTIONS AND IMPRESSIONS. THE QUESTIONS THAT I WILL BE ASKING ARE COMPLETELY OPEN-ENDED. YOU ARE FREE TO INTERPRET THEM IN THE WAY THAT YOU BELIEVE IS MOST APPROPRIATE. THERE NO RIGHT OR WRONG ANSWERS A FOCUS GROUP. I AM EQUALLY INTERESTED IN EVERYONE'S INTERPRETATIONS AND RESPONSES TO MY QUESTIONS.

## How it works

THIS DISCUSSION IS ORGANIZED AS A FOCUS GROUP - AN ORGANIZED CONVERSATION IN WHICH WE WILL TOUCH ON A NUMBER OF DIFFERENT TOPICS.

## Confidentiality

WE ARE TAKING NOTES/RECORDING AND VIEWING THIS CONVERSATION. WE USE THESE NOTES AND RECORDINGS TO PREPARE A REPORT. HOWEVER, YOUR NAME WILL NOT BE MENTIONED ANYWHERE IN THE FINAL REPORT, AND IT WILL NOT BE POSSIBLE FOR ANYONE TO IDENTIFY YOU PERSONALLY. THERE ARE STAFF MEMBERS FROM THE LAW SOCIETY OBSERVING THIS DISCUSSION AND THEY ARE PLEDGED TO KEEP ANYTHING THAT THEY HEAR IN THIS DISCUSSION STRICTLY CONFIDENTIAL. THAT MEANS NO COMMUNICATION OF ANY KIND THAT WOULD ASSOCIATE YOU WITH ANY OPINION OR REMARK ARISING FROM THIS DISCUSSION.

I WOULD ASK YOU ALSO TO RESPECT THE CONFIDENTIALITY OF THE OTHER PARTICIPANTS. YOU MAY WANT TO TALK ABOUT THIS DISCUSSION WITH FRIENDS, FAMILY OR COLLEAGUES AND FEEL FREE TO DO SO, BUT PLEASE DON'T ATTRIBUTE ANY COMMENTS OR SPECIFIC IDEAS

TO ANY OF THE INDIVIDUALS WHO PARTICIPATED IN THIS DISCUSSION, IN ANY WAY THAT COULD LEAD TO THEIR BEING ASSOCIATED WITH A SPECIFIC IDEA OR REMARK. OKAY? DOES EVERYONE AGREE? **[GET RESPONSE]**

### **My role, your role**

MY ROLE HERE IS TO ASK QUESTIONS AND LISTEN. I WILL ENCOURAGE ALL OF YOU TO PARTICIPATE. AS THE DISCUSSION GETS GOING PLEASE FEEL FREE TO JUMP IN, EXPRESS YOUR THOUGHTS AND FEELINGS, AND ALSO MAKE ROOM FOR OTHERS TO PARTICIPATE. THERE ARE NO WRONG ANSWERS IN THIS DISCUSSION AND I'M NOT SEEKING AGREEMENT WITH ANY PARTICULAR OPINION. SO PLEASE FEEL FREE TO SPEAK YOUR MIND.

OUR TIME IS LIMITED AND I HAVE A LIST OF QUESTIONS THAT I WANT TO DISCUSS. CONSEQUENTLY, FROM TIME TO TIME I MAY INTERRUPT THE DISCUSSION, EITHER TO HEAR FROM SOMEONE ELSE OR TO MOVE ON TO ANOTHER QUESTION. I APOLOGIZE IN ADVANCE FOR THOSE INTERRUPTIONS.

OKAY? **[MODERATOR PAUSES FOR QUESTIONS/FEEDBACK]**

IF YOU HAVE A CELL PHONE, PLEASE TURN IT OFF, OR SET IT TO SILENT **[IF YOU CAN]**.  
**[REMIND PARTICIPANTS OF THE LENGTH OF THE DISCUSSION AND THE END TIME. PROVIDE DIRECTIONS TO WASHROOMS]**

**1. Go 'Round: Your Job / Profession (10 min)**

LET'S START WITH INTRODUCTIONS. AS WE GO AROUND THE TABLE, PLEASE INTRODUCE YOURSELF, BRIEFLY DESCRIBE YOUR PRACTICE CONTEXT OR YOUR EMPLOYMENT STATUS IF YOU ARE NOT PRACTISING AT THIS TIME, AND YOUR EXPERIENCE.

ALSO, PLEASE TELL ME WHY YOU WERE INTERESTED IN PARTICIPATING IN THIS DISCUSSION.

**2. REFLECTING ON THE PROFESSION (35 min)**

TELL ME A LITTLE BIT ABOUT WHAT IS HAPPENING IN YOUR PROFESSION? WHAT ARE THE IMPORTANT EVENTS, DEVELOPMENTS OR TRENDS THAT AFFECT HOW YOU ARE ABLE TO DO YOUR JOB AND PURSUE YOUR CAREER?

**[PROBE FOR IMPORTANT CHALLENGES TO EMPLOYMENT/ESTABLISHING A PRACTICE, CAREER ADVANCEMENT, CHOICES WITH RESPECT TO AREAS OF PRACTICE, QUALITY OF SERVICES AND ACCESS TO JUSTICE]**

**[OPEN ENDED, DON'T PROMPT AT FIRST...LET THIS CONVERSATION GO FOR A FEW MINUTES]**  
THINKING ABOUT YOUR OWN EXPERIENCE **[AS AN NRL]** WHAT ARE THE MAJOR CHALLENGES FACING LAWYERS/PARALEGALS?

**[PROBE SPECIFIC AREAS DEPENDING ON WHO'S IN THE ROOM.]**

**ENTRY INTO PRACTICE**

**[PROBE]**

**TYPE AND FORM OF INTERVIEWS,**

**HOW INDIVIDUALS FIND OUT ABOUT POSITIONS IF NOT THROUGH THE 'MATCHING PROCESS'?**

**WHAT ROLE, IF ANY, DID THE CONCEPT OF 'FIT' PLAY IN THE RECRUITMENT PROCESS?**

WHAT USE, IF ANY, WAS MADE OF LEGAL OR OTHER PROFESSIONAL NETWORKS TO SECURE ENTRY INTO THE PROFESSION?

WHAT, IF ANY, DIFFICULTIES WERE ENCOUNTERED OBTAINING ARTICLES?

**[NOTE: RESISTING THE TEMPTATION TO TELEGRAPH THE PERCEPTION OF MANY RLs AROUND THE ISSUE OF 'FIT' WILL BE KEY HERE AS WE DO NOT WISH TO UNDULY COMPROMISE THE SPONTANEITY OF INFORMATION PROFERRED. ]**

## ADVANCEMENT

**[ASK RESPONDENT TO FIRST REMIND US OF THEIR PRACTICE ENVIRONMENT) PROBE FOR SPECIFIC EXPERIENCE AROUND CRITERIA / FACTORS / STRUCTURES / PROCESSES USED TO DETERMINE HIRE-BACKS AND ADVANCEMENT]:**

- **OPPORTUNITIES TO WORK ON COMPLEX / IMPORTANT FILES**
- **MENTORING**
- **PERFORMANCE REVIEWS**
- **HOW WAS PROCESS OF ADVANCEMENT COMMUNICATED / OR HOW DID RESPONDENT BECOME AWARE OF THE PROCESS?**

WHAT ARE THE CHALLENGES ADVANCING IN DIFFERENT PRACTICE ENVIRONMENTS, FOR EXAMPLE IN MEDIUM SIZED AND LARGER FIRMS?

## CAREER PATH?

WHAT FACTORS DETERMINED YOUR CAREER PATH IN SOLE PRACTICE, MID – LARGE SIZE FIRMS, GOVERNMENT, JUDICIARY...

## AREAS OF LAW

**WHAT FACTORS DETERMINED YOUR AREA OF PRACTICE? - ARTICLING EXPERIENCE,  
FIRST HIRE AFTER CALL, NETWORKS INCLUDING CLIENTS WITH WHOM YOU WORKED  
IN YOUR PRACTICE?...**

#### **OTHER**

**[REPRESENTATION, RETENTION, CHANGE OF STATUS WITHIN THE PROFESSION?  
DECISION TO LEAVE THE PROFESSION?]**

### **3. DIFFERENCES AND SIMILARITIES (15 MIN)**

#### **ENTRY INTO PRACTICE**

**IN OUR STUDY AND IN PAST RESEARCH WITH RACIALIZED LAWYERS, THERE HAVE  
BEEN REPORTS OF :**

- **IMPROPER QUESTIONS ASKED IN INTERVIEWS (QUESTIONS ABOUT FAMILY  
ORIGIN, RELIGION, POLITICAL PARTY AFFILIATIONS ETC.**
- **DISPARATE OUTCOMES IN FINDING ARTICLES AND POST-CALL FIRST  
POSITIONS INCLUDING HIRE-BACK**

**ARE YOU FAMILIAR WITH THESE CONCERNS?**

**ANY THOUGHTS AS TO WHY OR WHY NOT THESE PATTERNS MAY EXIST?**

**HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT YOUR EXPERIENCES ENTERING  
THE PRACTICE, ARE THERE ANY PROCESSES THAT MAY CREATE CHALLENGES  
(INTENDED OR UNINTENDED)?**

#### **ADVANCEMENT**



PAST QUANTITATIVE RESEARCH CONDUCTED BY THE SOCIETY HAS SHOWN THAT RLS ASCEND TO PARTNERSHIPS IN FIRMS AT LOWER RATES. (6% OF RACIALIZED VS. 16% OF TOTAL RESPONDENTS).

ANY THOUGHTS AS TO WHY THESE PATTERNS PERSIST?

HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT YOUR ADVANCEMENT EXPERIENCES, DO ELEMENTS OF THAT PROCESS POSE ANY CHALLENGES FOR RLS? (INTENDED OR UNINTENDED)

ANY DIFFERENCES FOR GOVERNMENT OR CORPORATE ENVIRONMENTS?

#### CAREER PATH?

PAST QUANTITATIVE RESEARCH BY THE SOCIETY SHOWS RLS OCCUPY A HIGHER PROPORTION OF POSITIONS IN SOLE AND SMALL FIRMS THAN NRLs ( RACIALIZED V. TOTAL RESPONDENTS (21% TO 19%), AND ARE OVERREPRESENTED IN GOVERNMENT AS WELL.

ANY THOUGHTS AS TO FACTORS THAT MAY CONTRIBUTE TO OVERREPRESENTATION OF RLS IN SOLES / SMALLS / GOVERNMENT?

HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT HOW YOUR CAREER WAS CONSTRUCTED, DO YOU HAVE ANY INSIGHTS INTO THE PATTERNS?

#### AREAS OF LAW

PAST RESEARCH BY THE SOCIETY (PROFESSOR MCKAY p113) SHOWS NON-RACIALIZED LAWYERS EQUALLY LIKELY TO PRACTICE CIVIL LITIGATION AND CORPORATE / COMMERCIAL LAW AS RACIALIZED LAWYERS. BUT THERE IS DIVERGENCE IN OTHER PRACTICE AREAS. RACIALIZED LAWYERS ARE MORE LIKELY TO PRACTICE CRIMINAL, IMMIGRATION, AND POVERTY LAW WHEREAS NON-RACIALIZED LAWYERS ARE MORE LIKELY TO PRACTICE REAL ESTATE, INSURANCE LAW AND FAMILY.

**ANY THOUGHTS AS TO FACTORS THAT MAY CONTRIBUTE TO THE PERSISTENCE OF THESE PATTERNS?**

**ANY INTENDED OR UNINTENDED BARRIERS TO RLS PRACTICING REAL ESTATE, INSURANCE, OR FAMILY LAW?**

**HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT FACTORS THAT LED YOU TO YOUR PRACTICE AREA, DO YOU HAVE ANY INSIGHTS THAT MAY INDICATE REASONS FOR THE PATTERNS?**

OTHER

**[REPRESENTATION, RETENTION, CHANGE OF STATUS OF RACIALIZED MEMBERS WITHIN THE PROFESSION?  
DECISION TO LEAVE THE PROFESSION?]**

**MANY OF YOU HAVE SUGGESTED THAT THE OUTCOMES OF RACIALIZATION VARY DEPENDING ON DIFFERENT PRACTICE ENVIRONMENTS AND CAREER CIRCUMSTANCES [REFERENCE PRECEDING DISCUSSION].**

**DOES RACE IMPACT DIFFERENT GROUPS OF LAWYERS DIFFERENTLY?  
TALK ABOUT YOUR KNOWLEDGE OR IMPRESSIONS OF THE EXPERIENCES OF DIFFERENT RACIALIZED GROUPS WITH WHICH YOU HAVE BEEN ASSOCIATED.**

**[EXPLORE PERCEPTIONS OF OUTCOMES FOR:]**

**NEW LICENSEES AND RACIALIZED LICENSEES COMPARED TO NEW LICENSEES AND NON -RACIALIZED**

**FEMALE AND RACIALIZED COMPARED TO MALE LICENSEES AND RACIALIZED? [ASK FOR EXAMPLES]**

**OTHER GROUPS?**

**COMMUNITIES/ REGIONS?**

**4. IMPACTS (25 MINUTES)**

WE HAVE TALKED ABOUT [BRIEF SUMMARY OF MAIN TOPICS]

- MARKET COMPETITION MAKING LIFE HARDER FOR ALL LAWYERS BUT RACIALIZED LAWYERS IN PARTICULAR
- OVERT DISCRIMINATION/RACISM
- STRUCTURAL AND BEHAVIOURAL BARRIERS THAT HAVE THE EFFECT OF DISCRIMINATING THOUGH NOT DESIGNED TO DISCRIMINATE? [GIVE EXAMPLES FROM DISCUSSION]
- UNDER-REPRESENTATION AT SENIOR LEVELS OF MEDIUM AND LARGE FIRMS
- OVER-REPRESENTATION IN SOLES / SMALLS
- LACK OF ARTICLING OPPORTUNITIES

ARE THERE OTHER IMPACTS OF RACIALIZATION THAT HAVE NOT BEEN MENTIONED THAT YOU WOULD LIKE TO ADD TO THIS LIST? [NOTE ADDITIONS]

DO THESE IMPACTS AFFECT THE QUALITY OF SERVICES THAT LAWYERS AND PARALEGALS CAN PROVIDE TO CLIENTS AND THE COMMUNITY? [REMINDER OF CONFIDENTIALITY. THEY MAY NOT BE COMFORTABLE ANSWERING IN FRONT OF COLLEAGUES].

DO THE IMPACTS/ CHALLENGES FACING RACIALIZED LICENSEES, INFLUENCE ACCESS TO JUSTICE FOR THE PUBLIC IN ONTARIO?

[PROBE ADEQUACY/'FIT' OF LEGAL REPRESENTATION FOR RACIALIZED COMMUNITIES]

[PROBE REPRESENTATION OF RACIALIZED GROUPS IN PUBLIC INSTITUTIONS – CROWN PROSECUTORS? THE JUDICIARY?]

IN MY INTRODUCTION TO THIS DISCUSSION I MENTIONED THAT ONE OF THE OBJECTIVES OF THIS PROJECT SPECIFIED BY THE LAW SOCIETY WAS TO IDENTIFY “FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE.” ARE THERE FACTORS OR PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE FOR ALL LICENSEES?

DO ANY OF THE IMPACTS OF RACIALIZATION THAT WE HAVE BEEN DISCUSSING INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE? FROM YOUR EXPERIENCE AND OBSERVATIONS, ARE RACIALIZED LICENSEES AT MORE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE THAN NON-RACIALIZED LICENSEES?

**[PROBE FOR EXAMPLES]**

**[TEST FOR CONSENSUS: ARE RACIALIZED LICENSEES MORE VULNERABLE/AT HIGHER RISK OF COMPLAINTS AND DISCIPLINE?]**

BASED ON YOUR OWN EXPERIENCE AND OBSERVATIONS, ARE THERE ANY POSITIVES ABOUT RACIALIZATION?

## 5. REMEDIES (20 MIN)

MANY LAWYERS AND FIRMS ARE CONCERNED ABOUT DIVERSITY AND EQUITY. HAVE YOU SEEN WHAT YOU CONSIDER TO BE GOOD PRACTICES THAT YOU WOULD WANT TO RECOMMEND BE STUDIED OR SCALED UP TO ADDRESS THE CHALLENGES WE HAVE BEEN DISCUSSING?

- BY INDIVIDUALS AND VOLUNTARY ASSOCIATIONS?
- BY HR DEPTS IN FIRMS? BY MANAGING PARTNERS IN FIRMS?
- BY GOVERNMENTS/PUBLIC INSTITUTIONS BUYING LEGAL SERVICES?
- BY THE ATTORNEY-GENERAL? CROWN PROSECUTORS?
- BY THE LAW SOCIETY?

ARE THESE GOOD APPROACHES (AND IF SO, WHY?)

**[LIST SPECIFIC MEASURES THAT HAVE BEEN IMPLEMENTED OR PROPOSED, E.G.]**

- APPOINT MORE RACIALIZED JUDGES/ADJUDICATORS

- GATHER STATISTICS ON RACIALIZED IDENTITY OF LICENSEES IN COMPLAINTS PROCESS
- ENFORCE PROCUREMENT RULES BY GOVERNMENT
- MENTORSHIP PROGRAMS
- MORE SOCIAL OPPORTUNITIES NOT LINKED TO TRADITIONAL 'WHITE' CULTURE
- RESTRICT INTAKE OF NEW LICENSEES
- HR/RECRUITMENT PRACTICES
  - 'BLIND' HR POLICIES (NO NAMES OR PERSONAL ID IN EARLY PHASES OF HIRING)
  - [ADD] OTHER SPECIFIC HR AND RECRUITMENT PRACTICES
- DEVELOP A MORE DIVERSE PUBLIC FACE/IMAGE FOR THE LAW SOCIETY
- SANCTION/PROMOTE COLLECTION AND SHARING OF DEMOGRAPHIC DATA RE: GENDER/RACIAL COMPOSITION OF LAW FIRMS
- PROMOTE 'CULTURAL COMPETENCE TRAINING'
- ENCOURAGE DIVERSITY CRITERIA IN CORPORATE PROCUREMENT OF LEGAL SERVICES [AS EVIDENT TO SOME DEGREE AMONGST LEGAL LEADERS FOR DIVERSITY]

WHAT DOES SUCCESS LOOK LIKE TO YOU WITH RESPECT TO THE ISSUES WE'VE TALKED ABOUT TONIGHT?

IS IT APPROPRIATE FOR THE LAW SOCIETY TO CONDUCT THIS TYPE OF RESEARCH? IS THIS PROJECT A GOOD IDEA?

**6. CLOSING REMARKS (5 MIN)**

THAT BRINGS US TO THE END OF THE DISCUSSION.

**[TIME PERMITTING MODERATOR MAY ALLOW ONE OR TWO FINAL COMMENTS]**

AS I HAVE EXPLAINED, THE RESULTS OF THIS AND OTHER FOCUS GROUP DISCUSSIONS - AS WELL AS THE RESULTS OF AN ONLINE SURVEY THAT YOU WILL BE INVITED TO PARTICIPATE IN – WILL BE INCORPORATED INTO A RESEARCH REPORT SUBMITTED TO LAW SOCIETY. TO REPEAT MY EARLIER PROMISE, ALL OF THIS WILL BE REPORTED IN A STRICTLY CONFIDENTIAL WAY AND YOU WILL NOT IDENTIFIED ANYWHERE IN THE REPORTING PROCESS.

THANK YOU FOR TAKING THE TIME TO PARTICIPATE THIS DISCUSSION.

## Appendix F



# Innovation Strategy Results

**Draft Survey  
Instrument – Barriers  
Facing Racialized  
Licensees**

**For  
Law Society of Upper  
Canada**

**October 16, 2013**

[www.stratcom.ca](http://www.stratcom.ca)

Toronto  
Tel 416 537 6100

Vancouver  
Tel 604 681 3030

Ottawa  
Tel 613 916 6215

London, U.K.  
Tel 020 3318 0558

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

## Table of Contents

<b>1.0 DRAFT QUESTIONNAIRE .....</b>	<b>1</b>
<b>A. INTRODUCTION AND DEMOGRAPHICS .....</b>	<b>1</b>
<b>B. PERSONAL EXPERIENCE .....</b>	<b>7</b>
<b>C. PERCEPTIONS OF BARRIERS TO ENTRY &amp; ADVANCEMENT .....</b>	<b>8</b>
<b>D. BEST PRACTICES AND ROLE OF THE LAW SOCIETY AND OTHER ACTORS.....</b>	<b>13</b>
<b>E. COMPLAINTS &amp; DISCIPLINE .....</b>	<b>20</b>



## 1.0 Draft Questionnaire

### STRUCTURE OF QUESTIONNAIRE

- A. Introduction and Demographics
- B. Personal Experience
- C. Barriers to Entry and Advancement
- D. Best Practices and Role of the Law Society and Other Actors
- E. Complaints and Discipline

### A. Introduction and Demographics

Welcome.

The Law Society of Upper Canada is committed to advancing equity and diversity in the legal profession. As the general population of Ontario grows increasingly diverse, the legal profession is evolving with it. To ensure the public's access to justice and to promote excellence in the profession, the Law Society considers equity and diversity in all aspects of its mandate.

As one step in this effort, Convocation created the *Challenges Faced by Racialized Licensees Working Group* in 2012, with a mandate to identify those challenges and consider strategies for enhanced inclusion at all career stages. The term 'Racialized' expresses race as the process by which groups are socially constructed, as well as to modes of self-identification, related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Japanese, Korean), Latin American and Hispanic, South Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino), and West Asian (e.g. Iranian, Afghan) persons.

Because the Law Society has already completed a thorough consultation with the Aboriginal bar, this consultation does not focus on barriers faced by that community. The Aboriginal Bar Consultation Report is available on the Law Society website.

This survey is an initiative of the Law Society of Upper Canada's Working Group but it is being conducted by Strategic Communications Inc. (Stratcom), an independent Canadian research

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

firm. The survey is the third part of a larger study that included one-on-one interviews with experts (May/June 2013) and focus groups (July /August 2013). In addition the Working Group has arranged informal consultations with members of the legal profession.

The questions in this survey are designed to fulfill the mandate of the Working Group by enquiring into:

- challenges faced by racialized and non-racialized lawyers and paralegals in different practice environments, including entry into practice and advancement; factors and practice challenges that could increase the risk of regulatory complaints and discipline, and
- best practices for preventive, remedial and/or support strategies.

Note on terminology: For brevity we often use the term 'licensees' rather than 'lawyers and paralegals'.

This survey will take about [FINAL TEST TIMING, max 20 min] to complete.

All of the responses are confidential and anonymous. The collected data will not be attributed to any individual respondent.

**YOUR PARTICIPATION IS VALUED AND APPRECIATED. WHETHER YOU CONSIDER YOURSELF A RACIALIZED LICENSEE OR NOT, YOUR INPUT IS EXTREMELY IMPORTANT. THANK YOU FOR PARTICIPATING.**

If you have questions or concerns about the survey, please email [armand.cousineau@stratcom.ca](mailto:armand.cousineau@stratcom.ca)

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

1) Are you currently licensed as a lawyer or a paralegal in Ontario?

Practising -- LAWYER

Not practising at this time – LAWYER

PARALEGAL providing legal services

PARALEGAL currently not providing legal services

2) How long have you been licensed to practise or to provide legal services in Ontario?

<2 years

2-5 years

6-10 years

11-15 years

>15 years

2a) [for Paralegals] Were you licensed under the ‘grandparenting’ provisions that were introduced when the Law Society became the regulator of the paralegal profession in 2007?

Yes

No

3) Which of the following best describes your practice environment?

Sole practitioner

Small firm (fewer than 6 licensees)

Medium firm (6 to 50 licensees)

Large firm (more than 50 licensees)

Otherwise Employed:

Education

Government

Corporation

Non-profit

Not Employed in Ontario:

Retired

Reside outside Ontario

Unemployed at this time

Other

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

Please specify other \_\_\_\_\_

- 4) [All respondents] Do you:
- Have a law degree from a law school in Canada?
  - Have a law degree from outside of Canada?
  - Not have a law degree?
- 5) [Yes, Law degree from outside of Canada] Where did you earn your law degree? [OPEN  
END]
- 6) How long did you practise outside of Canada?
- Less than 2 years
  - More than 2 - <5 years
  - >5 - <10 years
  - 10+ years
  - Did not practise outside of Canada
- 7) [FOR PRACTISING LAWYERS] What are your main areas of practice?  
[MARK ALL THAT APPLY]
- Aboriginal law
  - Administrative law
  - ADR/Mediation Services
  - Bankruptcy & Insolvency Law
  - Civil litigation – Plaintiff
  - Civil litigation – Defendant
  - Construction law
  - Corporate/Commercial law
  - Criminal/Quasi Criminal law
  - Employment/Labour law
  - Environmental law
  - Family/Matrimonial law
  - Franchise law

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

Immigration law  
Intellectual Property law  
Real Estate law  
Securities law  
Tax law  
Wills, Estates, Trusts law  
Workplace Safety & Insurance law  
Other

Please specify other area(s) of practice \_\_\_\_\_

- 8) [FOR PARALEGALS PROVIDING LEGAL SERVICES] What are the main areas where you provide legal services? [MARK ALL THAT APPLY]

Ontario Court of Justice *Provincial Offences Act* matters  
Ontario Court of Justice - Summary conviction offences  
Worker's Compensation  
Small Claims Court matters  
Property Tax Assessment  
Statutory Accident Benefits Schedule matters (SABS)  
Human Rights Tribunal  
Landlord and Tenant  
Other Tribunals

Please specify other Tribunals \_\_\_\_\_

- 9) In this survey we are seeking the opinions of both racialized and non-racialized licensed paralegals and lawyers. The term racialized refers to the process by which groups are socially constructed *in terms of race*, as well as to modes of self-identification related to race. Do you self-identify as racialized or non-racialized?

I am racialized  
I am not racialized  
I am unsure/ I don't know

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

10) Are you: *[check all that apply]*

Arab

Black (e.g. African-Canadian, African-American, Caribbean, African)

Chinese

East-Asian (e.g. Japanese, Korean)

Latin American, Hispanic, Latino

South Asian (e.g. Indo-Canadian, Indian, Pakistani, Bangladeshi, Sri Lankan)

South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino,

Malaysian, Indonesian)

West Asian (e.g. Iranian, Syrian, Afghan)

White/Caucasian

Other

Please specify other: \_\_\_\_\_

11) Are you:

A woman

A man

Transgender

12) Is your mother tongue...

English

French

Another language

13) Please tell us the year in which you were born:

[YYYY]

14) Please tell us your residential postal code so that we can group your responses with those of other licensees:

L# L# L#

15) Were you...

born in Canada

born outside Canada

## B. Personal Experience

The next few questions are about your own personal experiences as a licensee. Please answer as candidly as possible, keeping in mind that all responses are strictly confidential and anonymous.

- 16) Please indicate if you agree or disagree with each of the following statements about your entry into practice/career advancement?

[RANDOMIZE]

- a) Mentor(s) played an important role in my career development.

Strongly Agree  
Somewhat Agree  
Somewhat Disagree  
Strongly Disagree  
I don't know  
Does not apply to me

- b) I felt at a disadvantage in law school compared to other students.  
c) My social networks have played an important role in my career development.  
d) My experience with On-Campus Interviews (OCI) was positive.  
e) I was offered employment at the firm where I articulated/had my job placement.  
f) I struggled to find an articling position or training placement.  
g) I have felt professional disrespect from other lawyers.  
h) I have felt professional disrespect from other paralegals.  
i) I have felt professional disrespect in court.  
j) I found a suitable first job shortly after being licensed.  
k) I have found employment in the type of practice environment that best suits me.  
l) I have been able to work in my preferred area(s) of practice.

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

- m) I have not advanced as rapidly as my colleagues who have similar qualifications and experience.
- n) I have left one (or more) positions because I did not feel that I belonged there.
- o) I have left one (or more) positions because I did not feel I would be able to advance commensurate with my performance and ability.
- p) My admission into partnership was delayed.
- q) I was not made partner despite meeting known criteria for advancement.
- r) I have found it relatively easy to get legal advice on client files from professional colleagues or mentors.
- s) I was refused a promotion to a manager position.

## **C. Barriers to Entry & Advancement**

- 17) Below is a list of factors that may present challenges to individual lawyers and paralegals. For each factor, please indicate if you have experienced it as a barrier or challenge at any time **DURING your entry into practice, at any time AFTER your entry into practice, (i.e. career advancement) or neither: [RANDOMIZE RESPONSES]**

[TABLE FORMAT WITH ENTRY, AND CAREER ADVANCMENT CHECK BOXES TO THE RIGHT]

- a) your gender identity

Yes during entry into practice  
Yes after entry into practice  
Neither

- b) your sexual orientation
- c) your ethnic/racial identity
- d) your age (too young)
- e) your age (too old)
- f) your religion or religious practices
- g) where you were trained/educated
- h) where you were born/raised
- i) the way you speak English/French



**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

- j) your (family's) socio-economic status
- k) your physique/appearance
- l) a physical disability
- m) a cognitive or learning disability
- n) which school(s) you graduated from
- o) your need/desire to take time away from work to care for children or other family members
- p) the types of social activities you prefer
- q) your social or political views

18) [IF RESPONDENT MARKS AT LEAST ONE RESPONSE FROM THE LIST OF FACTORS IN THE PREVIOUS QUESTION] This question asks you to indicate if any of the challenges or barriers you identified in the previous question has contributed in a significant way to:

- a) Your choice of practice environment (size of firm, government, in-house counsel, etc)?

Yes

No

Unsure/Maybe

Don't Know

- b) Your geographic area of employment?
- c) Your choice of main practice areas of law or provision of legal services?
- d) The fact that you are currently unemployed or retired or have left practice?

[TABLE REPRODUCES THE LIST OF CHALLENGES/BARRIERS THAT WERE SELECTED BY THE RESPONDENT IN THE PREVIOUS QUESTION WITH CHECK BOX COLUMNS TO THE RIGHT]

19) Do you believe that racialized licensees, on the whole, face challenges to their entry into practice and career advancement compared to non-racialized licensees?

Much more

Somewhat more

About the same as non-racialized licensees

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

Somewhat less

Much less

Don't know

- 20) Have you experienced or have you witnessed, a situation in which challenges facing a racialized candidate or licensee had a material impact – either positive or negative – on that individuals' entry into practice and/or their career advancement? This could apply to yourself or another Ontario licensee.

Yes [PLEASE BRIEFLY DESCRIBE THAT SITUATION]

---



---

No

Not sure

- 21) **[RACIALIZED RESPONDENTS ONLY]** Have you been disadvantaged in hiring, advancement, or pursuit of an area of practice as a consequence of any of the factors listed below ?

- a) You do not have the same cultural background as your colleagues

Yes, definitely

Yes, probably

No

I am not sure

Not applicable

*Repeat questions with response categories for the following:*

- b) You have been subjected to prejudicial attitudes on the part of other legal professionals, based on your racialized status
- c) You have been subjected to prejudicial attitudes on the part of clients and potential clients, based on your racialized status
- d) You have a different accent than your colleagues

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

- e) You received your training outside of Canada
- f) You do not speak English/French as well as your peers
- g) You were not raised in Canada
- h) You did not grow up with a network of professional contacts that you could turn to for support with your legal career
- i) Opportunities for equity partnership were reduced for everyone, as a result of changes in employer policy
- j) You were expected to perform to a higher standard than others because of stereotypes associated with your race
- k) You were expected to perform to a higher standard than others, because of stereotypes associated with your gender identity
- l) You were expected not to succeed at your job because of stereotypes associated with your race
- m) You were expected not to succeed at your job because of stereotypes associated with your gender identity
- n) You were denied administrative or other office supports granted to all others who were performing your same role
- o) You were harassed
- p) Your employment environment is not very diverse
- q) Clients do not request to be represented by lawyers from diverse backgrounds
- r) Your peers do not believe that a diverse working environment is important
- s) Your beliefs or cultural practices preclude you from participating in many of the social networking functions of Ontario legal firms
- t) Partners avoid giving you the most challenging files to work on
- u) You lack experience in running the business side of a legal practice
- v) You are a paralegal, rather than a lawyer
- w) You possess inferior qualifications compared to your peers
- x) You do not have mentors to give you legal advice on client files

22) In your view, do the challenges facing racialized candidates/licensees...

- a) ... affect the quality of legal services for the public?
  - Yes, definitely
  - Probably, but not sure

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

Probably not  
No, definitely not  
I don't know

*Repeat questions with response categories for the following:*

- b) ... affect access to justice for Ontarians?
- c) ... impact on the reputation of the legal profession in Ontario?

23) Are there any other issues relating to these topics that you believe are important?  
Please be as specific as possible. [OPEN ENDED]

---

24) In this question, we pose statements from a variety of standpoints reflecting diverse opinions within the legal profession. For each statement please indicate if you agree or disagree, or have no opinion either way:

[RANDOMIZE STATEMENTS]

- a) [LAWYERS] When legal employers interview articling students the most important factor to assess is the ability of the candidate to fit within the firm environment.

Strongly agree  
Somewhat agree  
Somewhat disagree  
Strongly disagree  
I don't know

*Repeat questions with response categories for the following:*

- b) [PARALEGALS] When employers interview paralegals, the most important factor to assess is the ability of the candidate to fit within the firm environment.
- c) Any problems faced by racialized licensees will work themselves out without specific mitigating measures.
- d) Being racialized can be a positive benefit for paralegals and lawyers, because they can recruit clients through their communities' networks.

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

- e) It is important to reduce discrimination but the profession's main responsibility is to the client and making sure they are being served by competent lawyers and paralegals.
- f) The use of 'fit' as a criterion for hiring unduly limits the relevant assessment of a candidate.
- g) [LAWYERS] There should be a more concerted effort by the legal profession to provide better opportunities for articling and positions for racialized lawyers.
- h) All members of the Ontario legal community should strive for a profession that is as welcoming as possible for anyone who wants to pursue a legal career.
- i) Many legal firms and businesses are interested in promoting diversity, so being racialized is an advantage in many employment situations.
- j) Market competition is a challenge for all lawyers and paralegals, but racialized licensees are especially affected by it.
- k) It is natural and desirable that licensees from various backgrounds conform to the professional culture that is already established in Ontario.
- l) The legal profession in Ontario would be stronger if there were more racialized licensees at senior levels of medium and large firms
- m) The challenges faced by racialized licensees have more to do with challenges associated with language than race.

## **D. Best Practices and Role of the Law Society and Other Actors**

- 25) Many lawyers, paralegals, and firms are concerned about diversity and equity. Have you seen what you consider to be good practices that you would want to recommend be studied or scaled up to address the challenges facing racialized licensees? [OPEN ENDED]

- 
- 26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. For each, please tell us if you think it would be the right approach, wrong approach, or if you would need more information before making up your mind.

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

- a) Appoint more racialized judges/adjudicators.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

Right approach, DEFINITELY

Right approach, PROBABLY

NEUTRAL, no opinion

Wrong approach, PROBABLY

Wrong approach, DEFINITELY

Not sure, I NEED MORE INFORMATION BEFORE DECIDING

Repeat questions with response categories for the following:

- b) Gather statistics on the racialized identity of licensees in the complaints process in order to establish whether racialized licensees are at greater risk of complaints and discipline than non-racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- c) Create more mentorship programs that deliver professional guidance and access to networks to racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- d) Create more social networking opportunities (within the profession and within firms) not defined by traditional 'Ontario culture'.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

e) Appoint more racialized licensees as partners in large firms.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

f) Restrict intake of new licensees in order to improve the employment prospects for all recently licensed lawyers and paralegals, and racialized lawyers and paralegals in particular.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

g) Ensure there are no names or personal identifiers in the early stages of hiring, to equalize opportunity between like candidates.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

h) Provide more structured/formal interviewing processes to ensure that ethnic or cultural 'fit' is not a strong factor in who gets hired.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

i) Provide greater and timely transparency of hiring and advancement criteria so candidates can better understand the expectations of employers.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*



Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

j) Develop a more diverse public face/image for the Law Society.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

k) Promote collection of demographic data re: gender/racial composition and advancement within legal firms and other legal organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

l) Promote sharing of demographic data re: gender/racial composition and advancement within legal firms and other organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

m) Require collection of demographic data re: gender/racial composition and advancement within legal firms and other legal organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

n) Require sharing of demographic data re: gender/racial composition and advancement within legal firms and other organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*



Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

- o) Require and promote ‘cultural competence training’ [**CULTURAL COMPETENCE** refers to an ability to interact effectively with people of different cultures and socio-economic backgrounds.]

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- p) Encourage disclosure of diversity data and criteria in corporate procurement of legal services.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- q) Provide interviewing preparation seminars for racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- r) Provide a parallel On Campus Interview (OCI) process for those who were licensed through the National Committee on Accreditation process (NCAs).

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- s) Encourage participation in diversity and inclusion initiatives as a criterion for hire-back and partnership.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

- t) The Law Society should sponsor more Professional Development seminars on equity and diversity issues, which may be counted towards accreditation for members.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- u) Are there any other measures that you think could be effective in making the legal profession more inclusive of racialized licensees? [OPEN END]

Ontario has become a more diverse society in the past few decades, with more women, racialized individuals and communities, persons with disabilities and different sexual orientations taking up new roles in business, the arts, professions, including the legal profession, and other spheres of life.

- 27) Does the increased number of racialized lawyers and paralegals in Ontario have a positive impact, negative impact, or no impact on the public of Ontario?

Very Positive

Somewhat positive

Neutral, no impact

Somewhat negative

Very negative

I don't know/Not sure

- 28) [IF POS or NEG on PREVIOUS Q] In what way does the increased number of racialized licensees in Ontario impact on the public of Ontario? [OPEN ENDED]

---

- 29) In your view, what role should each of the following take to address the unique challenges facing racialized licensees?

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

[IN ALPHABETICAL ORDER]	MAJOR role	MINOR role	LITTLE OR NO role	I don't know
Large legal firms, working on their own				
Large and mid-sized legal firms, working together				
Individual racialized lawyers and paralegals				
Individual non-racialized lawyers and paralegals				
The Law Society				
The Human Rights Commission				
Federal/provincial/municipal governments				
Sole practitioners and small firms				
Law schools and Colleges				
Broadly based associations of lawyers or paralegals (such as the Canadian Bar Association, Ontario Bar Association, Paralegal Society or Licensed Paralegal Society, etc)				
Associations of lawyers focused in racialized communities (Canadian Association of Black Lawyers, Canadian Association of South Asian Lawyers, etc)				

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

Q29b. Who else should take a role in addressing the unique challenges facing racialized licensees? [OPEN END]

## E. Complaints & Discipline

30) The issue of the influence of race in the complaints and discipline process arises from time to time. The Law Society seeks to continually improve its processes. In your view, are there additional steps the Law Society could undertake to address these issues proactively?

[OPEN ENDED]

---

31) Some concerns have been raised in the profession that racialized licensees may be more vulnerable to complaints (from other lawyers/paralegals, or from clients) compared to non-racialized licensees.

The following is a list of factors that some have suggested may contribute to increasing the risk of complaints against racialized licensees. In each case, please indicate if you think that factor is more likely or not more likely to increase the risk of complaints against racialized -- as compared to non-racialized -- lawyers and paralegals.

### RANDOMIZE

a) Financial hardship leading to difficulty managing the business side of running a legal practice. In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?

Yes, definitely

Yes, probably

No, probably not

No, definitely not

I don't know

Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013

- b) Lack of mentors and professional networks to support a lawyer/paralegal if they run into significant challenges in their practice. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- c) Bad faith clients. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- d) Lack of knowledge of how to run the business side of a law practice. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- e) Lower quality articling positions and inadequate training. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- f) Pressure from clients to practise outside one's legitimate practice area. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- g) Communications problems between the lawyer/paralegal and clients. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- h) Communications problems between the lawyer/paralegal and other members of the profession or the judiciary. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- i) Racial stereotyping by other members of the profession or the judiciary. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- j) Racial stereotyping by clients. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]

**Draft Survey Instrument – Barriers Facing Racialized Licensees  
For Law Society of Upper Canada  
October 16, 2013**

32) In the administration of justice there are circumstances in which legal processes treat those in the system differently depending on whether they are a member of a group viewed to suffer a disadvantage. Do you believe that such a differentiation should be made in the regulatory processes with respect to racialized licensees in certain circumstances.

Yes

No

I am not sure, I would need more information

31) [IF YES TO PREV Q] Please describe the circumstances where this should occur. [OPEN]

**THANK YOU FOR RESPONDING TO THIS IMPORTANT SURVEY.**