

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 Two**

March 30, 2023

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Consultation Paper

This is Exhibit "6" 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
63305B



The Law Society of
Upper Canada | Barreau
du Haut-Canada

October 30, 2014
9:00 a.m.

CONVOCAATION MATERIAL

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

For Bencher Use Only

PLEASE SEE THE AGENDA FOR MORE DETAILS**ISSUES FOR DECISION ON CONVOCAATION'S AGENDA****October 30, 2014****FOR BENCHER USE ONLY****FOR INFORMATION REPORTS, PLEASE SEE THE CONVOCAATION AGENDA****Consent Agenda Motion**

Convocation is requested, in a consent agenda, to approve the following:

- Confirmation of Draft Minutes of Convocation – June 26 and August 13, 2014
- Report of the Director of Professional Development and Competence - Deemed Call Candidates
- Audit and Finance Committee Report – J. Shirley Denison Fund Application (in camera)

Audit and Finance Committee Report

Convocation is requested to approve:

- the LibraryCo Inc. budget for 2015
- the Law Society's 2015 budget as set out in the Report
- the new Treasurer Expense Reimbursement Policy

Professional Regulation Committee Report

Convocation is requested to amend the policy on Law Society Investigations of Benchers, Employees, and Licensee Adjudicators.

Priority Planning Committee Report

Convocation is requested to instruct the Treasurer to sign the LAWPRO's shareholder's resolution to approve By-Law #21, which will have the effect of making the Law Society the sole shareholder of LAWPRO.

Tribunal Committee Report

Convocation is requested to approve:

- proposed new English and French Rule 17 and Form 17A of the Appeal Division Rules of Practice and Procedure
- the amendment to English subrule 29.07(1) of the Hearing Division Rules of Practice and Procedure

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

Convocation is requested to approve the consultation proposed by the Challenges Faced by Racialized Licensees Working Group as outlined in the report. With respect to the Human Rights Monitoring Group, Convocation is requested to approve the letters and public statements in two cases as set out in the report.

In Camera Matter:**Professional Regulation Committee Report**

As set out in the Report.

CONVOCATION AGENDA

October 30, 2014

Convocation Room – 9:00 a.m.

Treasurer's Remarks

Consent Agenda - Motion [Tab 1]

- **Confirmation of Draft Minutes of Convocation – September 24, 2014**
- **Report of the Director of Professional Development and Competence - Deemed Call Candidates**
- **Audit and Finance Committee Report – J. Shirley Denison Fund Application (in camera)**

Audit and Finance Committee Report (C. Bredt, P. Wardle) [Tab 2]

- 2015 LibraryCo Inc. Budget
- 2015 Law Society Budget
- Treasurer Expense Policy

Professional Regulation Committee Report (M. Mercer) [Tab 3]

- Amendment to Policy on Law Society Investigations of Benchers, Employees and Adjudicators
- In Camera Item

For Information

- Reporting to Law Enforcement and other Regulators
- Licensee Survey

Priority Planning Committee Report (S. McGrath) [Tab 4]

- Approval of LAWPRO By-Law # 21

Tribunal Committee Report (R. Anand) [Tab 5]

- Proposed Appeal Rule 17 (Summary Orders) – Law Society Tribunal Appeal Division Rules
- Amendment to Rule 29.07 (1) of the Law Society Tribunal Hearing Division Rules

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report (J. Leiper/P. Schabas) [Tab 6]

- Challenges Faced by Racialized Licensees – Request to Consult
- Human Rights Monitoring Group Interventions

For Information

- Public Education Equality and Rule of Law Series Calendar 2014 - 2015

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Joint Report of the Access to Justice Committee and Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (S. Hare) [Tab 7]

- Proposed Vision for the Law Society's Renewal of its Aboriginal Initiatives Strategy

The Evolution of Legal Information and Library Services in Ontario [Tab 8]

Lunch – Benchers' Dining Room



Tab 6

Report to Convocation October 30, 2014

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

Committee Members

Julian Falconer, Chair

Janet Leiper, Chair

Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee

Beth Symes, Vice-Chair

Constance Backhouse

Peter Festeryga

Avvy Go

Howard Goldblatt

Jeffrey Lem

Marian Lippa

Dow Marmur

Barbara Murchie

Judith Potter

Susan Richer

Purposes of Report: Decision and Information

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

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Public Education Equality and Rule of Law Series Calendar 2014 - 2015

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on October 15, 2014. Committee members Julian Falconer, Chair, Janet Leiper, Chair, Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee, Beth Symes, Vice-Chair, Constance Backhouse, Avvy Go, Howard Goldblatt, Jeffrey Lem, Marian Lippa, Dow Marmur, Barbara Murchie and Susan Richer attended. Sandra Yuko Nishikawa, Chair of the Equity Advisory Group, and Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, also participated. Staff members Josée Bouchard, Ross Gower, Ekua Quansah, Susan Tonkin and Grant Wedge also attended.

TAB 6.1

FOR DECISION

CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP CONSULTATION RECOMMENDATION

MOTION

2. That Convocation approve the consultation proposed by the Challenges Faced by Racialized Licensees Working Group outlined in this report.

Rationale

3. From October 2012 to date, the Law Society conducted a formal and informal engagement process and a survey with the profession to identify the challenges faced by racialized licensees. The Challenges Faced by Racialized Licensees Working Group ("RWG") considered the results of the engagement process and developed a Consultation Paper, based on the identified challenges and barriers faced by racialized licensees. The Consultation Paper includes questions to the profession about how best to address the barriers. The Consultation Paper appears at TABS 6.1.1 and 6.1.2 in English and French.
4. On October 1, 2014, the Chair and Vice-Chairs of the RWG met with members of the Equity Advisory Group, community liaisons involved in this project and the boards of the Canadian Association of Black Lawyers ("CABL"), the Canadian Association of South Asian Lawyers ("CASAL"), the Federation of Asian Canadian Lawyers ("FACL") and the South Asian Bar Association ("SABA"). They received very helpful and important feedback on the Consultation Paper and consultation methodology.
5. It is recommended that the Law Society consult broadly with the profession, including legal clinics, and members of the judiciary, the academy and the public to identify practical initiatives and solutions to address the challenges outlined in the Consultation Paper. Convocation is asked to approve the proposed consultation.

Key Issues and Considerations

6. This project is of considerable importance to the legal profession. Key equity partners have been consulted in the development of the Consultation Paper. It will be important to fully engage the profession, the judiciary, academics, legal clinics and the public in the consideration of solutions to the barriers faced by racialized licensees. As a result, the proposed consultation methodology aims at ensuring that there are multiple ways to participate in the consultation process. Also, webcasting the Toronto open house sessions will allow those who are unable to attend the meetings in person, to participate online. The

RWG will also invite the participation of regional benchers, as leaders in their communities, when conducting focus groups and meetings.

Budgetary Considerations

7. It is anticipated that the consultation will be completed without the requirement for additional funds. The budget for this consultation will be covered by the Equity Initiatives Department and bencher expense budgets.

Stakeholder Management

8. As mentioned above, equity partners have been instrumental in the development of the Consultation Paper, and the Law Society surveyed the profession as a whole about the barriers faced by racialized licensees and potential solutions.
9. To ensure that the policy recommendations effectively address the challenges faced by racialized licensees, it will be important to engage the profession in the policy development process. It is anticipated that the Law Society will receive thoughtful submissions related to this project.

Key Background Information

10. In August 2012, Convocation created the RWG with a mandate to,
 - a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
 - b. identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
 - c. consider best practices for preventive, remedial and/or support strategies;
 - d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees as appropriate, to address the challenges described above.
11. From October 2012 on, the RWG met informally with a number of individuals and organizations to obtain viewpoints on challenges and best practices for racialized licensees and reviewed the literature available on this topic.
12. In early 2013, the RWG retained the services of Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign© to formally engage the profession on this matter. This formal engagement process included key informant interviews, focus groups and a survey. Stratcom and Change DeZign© provided their final report to the Law Society in March 2014.

13. The RWG also engaged in a parallel process, the Community Liaison Process, to garner information from racialized licensees who may not have come forward during the formal engagement process.

The Consultation Paper and the Consultation Methodology

14. Based on the findings of the informal and formal engagement process, the RWG drafted a Consultation Paper for the profession's feedback. In October 2014, the RWG also consulted with members of the Equity Advisory Group, the Community Liaisons, CABL, CASAL, FACL and SABA and received very helpful and important feedback on the Consultation Paper and consultation methodology.
15. Based on the advice received, the RWG proposes to consult lawyers, paralegals, academics, members of the judiciary and the public by using the following methodology:
 - a. Posting the Consultation Paper online and inviting written submissions from the profession, the judiciary, academia and the public;
 - b. Holding meetings where there is a strong representation of racialized licensees. It is anticipated that the meetings would be held in Toronto and surrounding areas such as Hamilton, Brampton, Mississauga, Scarborough, Markham and Oshawa. Some RWG members would also travel to Ottawa, Windsor, London and to Northern regions such as Thunder Bay and Sudbury.
 - c. Holding open house meetings in Toronto. Such meetings would be held at the Law Society and webcast. It is anticipated that two open house meetings will be held.
 - d. Meeting with associations such as the County and District Law Presidents' Association, the Ontario Bar Association, CABL, SABA, CASAL, FACL and the Arab Canadian Lawyers Association. Members of the judiciary and academia would also be included along with associations representing members of the public.
16. The Consultation Paper will be posted in French and English online on October 30, 2014 with a deadline for written submissions of March 1, 2015. Meetings with the profession will be scheduled from November to the end of February 2015.
17. The Equity and Aboriginal Issues Committee approved the consultation methodology and Consultation Paper by consensus.
18. The Committee recommends that Convocation approve the proposed consultation as outlined in this report.
19. A power point presentation prepared by the RWG is also presented at **TAB 6.1.3**.

Developing Strategies for Change:
**Addressing Challenges Faced
by Racialized Licensees**

CONSULTATION PAPER



The Law Society
of Upper Canada | Barreau du
Haut-Canada



Working Group Members

Jane Cooper-Chen | Julian Faugstad, Vice-Chair | Howard Goldblatt, Vice-Chair
 Raj Arora | Marion Boyd | Robert Bond | Susan Hare | William McDowell
 Malcolm Mercer | Susan Richer | Bob Silard

Report prepared by the Equity Initiatives Department –

Joëlle Gauthier, Director of Equity and Tina Quinlan, Associate Counsel



REQUEST FOR INPUT FROM THE PROFESSION

CHALLENGES FACED BY RACIALIZED LICENSEES CONSULTATION PAPER

As part of its commitment to promoting equity and diversity in the profession, the Law Society created in 2012 the Challenges Faced by Racialized Licensees Working Group.

The Working Group has studied the challenges faced by racialized licensees (lawyers and paralegals) in Ontario and is consulting on strategies for enhanced inclusion at all career stages.

All interested parties are encouraged to review this consultation paper and to comment on the paper as a whole and on any question raised. **We invite suggestions and practical solutions to the issues. We welcome proposals for solutions not identified in this paper.**

Please submit written submissions before March 1, 2015 to:

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 Director, Equity
 The Law Society of Upper Canada
 Osgoode Hall
 130 Queen Street West
 Toronto, Ontario
 M5H 2N6

Tel: 416-947-3984
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EXECUTIVE SUMMARY

"We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their color."

Maya Angelou

The Law Society is committed to promoting a profession that is reflective of all peoples of Ontario and that is inclusive and free from discrimination and harassment. The Law Society is also dedicated to facilitating access to justice, as evidenced by the Law Society's recent adoption of a new comprehensive access to justice framework.¹

This consultation paper is designed to engage the profession in the consideration of strategies to address the challenges faced by racialized licensees.² The profession, legal organizations, firms, law schools and any others interested in the issues discussed in this consultation paper are encouraged to provide written comments. The Working Group will consider all of the submissions and prepare a final report with recommendations for Convocation's consideration. The final report will be accompanied by a detailed implementation plan.

Background

Ontario's legal profession has witnessed a steady increase in the number of racialized lawyers over the last 20 years. Despite this increase, evidence based on statistical data, research results and anecdotal evidence suggests that racialized lawyers continue to face challenges in the practice of law. Very little is known about the challenges faced by racialized paralegals. The public benefits from a strong and diverse bar; this study

¹ For more information, see: Treasurer's Advisory Group on Access to Justice Working Group, *Report to Convocation - Report of the Treasurer's Advisory Group on Access to Justice Working Group*, (Toronto: Law Society of Upper Canada, February 27, 2014) online at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf.

² The Ontario Human Rights Commission notes that using the terminology "racialized person" or "racialized group" is more accurate than "racial minority", "visible minority", "person of colour" or "non-White". Race is the socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. Racialization is the "process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life". See Ontario Human Rights Commission, *Racial discrimination, race and racism*, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/racial-discrimination-race-and-racism>.

suggests there are some continued barriers to realizing the fullest capacity for excellence among our bar.

To explore and address this issue, Convocation created The Challenges Faced by Racialized Licensees Working Group (the Working Group) in August 2012, with a mandate to,

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

Beginning in October 2012, the Working Group undertook a broad-based study which included reviewing available data and literature, meeting with individuals and organizations, and co-ordinating focus groups led by prominent legal professionals.

In 2013, the group launched a formal engagement process which included key informant interviews, focus groups and a survey of the profession as a whole.

Information obtained to date suggests that racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. Racialization intersects with a wide variety of other factors, including language or accent, differences of professional status between lawyers and paralegals and whether licensees are internationally trained.

The intersection of these and other factors such as gender, gender identity, gender expression age, sexual orientation, disability and geographic location, provide a complex pattern of experiences and impacts associated with the challenges of racialization.

Summary of Engagement Results

The Working Group used several methodologies to gather information and found that common themes related to participants' experiences emerged. The engagement process revealed that overt discrimination and bias are a feature of daily life for many racialized licensees.

Participants offered examples of discriminatory behaviours, interactions, language and assumptions that are common features of their everyday professional experiences.

Some participants felt that racialized licensees are often not offered the same opportunities for advancement. They also described feeling alienated from the dominant culture of the legal profession.

Some also noted that racialized licensees have much to gain from mentoring but are often unaware of available programs or do not have access to them. They also said that many racialized licensees lack a strong network of legal professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace.

A number of participants also said they felt they had been forced to enter sole practice because of barriers they faced in advancing in other practice environments — and some felt ill-equipped and unprepared for the realities of sole practice.

In addition to the aforementioned barriers, participants stated that internationally trained lawyers often face a combination of disadvantages, such as few professional network opportunities; language challenges; a different culture from that of their colleagues; lack of critical transition from law school to a first professional position in Ontario; and lack of mentors and contacts.

According to participants, racialized paralegals also face additional challenges, particularly in the job market. As a group, paralegals reported lower success rates in finding suitable employment, compared to racialized lawyers.

Questions for the Profession

The Working Group has considered the results and has identified a number of detailed questions for the profession to consider. These questions focus on the following issues:

- Enhancing the internal capacity of organizations – establishing diversity within firms, collecting demographic data, and developing model contract compliance programs
- Mentoring and Networking – identifying preferred models and best practices
- Enhancing cultural competence of the profession – providing accredited CPD programs
- Discrimination and the role of the complaints process – effectively addressing complaints of discrimination
- The operations of the Law Society of Upper Canada – enhancing the equity compliance program, conducting an internal equity audit and developing a more diverse public face/image for the Law Society

For the complete set of questions, see Appendix 2.

THE CONSULTATION PAPER

BACKGROUND

In the last two decades, the Ontario legal profession has seen a steady increase of racialized lawyers³, representing 9.2% of the legal profession in 2001 and 11.5% in 2006.⁴ The Law Society's Statistical Snapshots of Lawyers and Paralegals showed that by 2010, 17% of lawyers and 28% of paralegals were racialized.⁵ This compares to 23% of the Ontario population who indicated in the 2006 Canada Census that they are racialized and the 25.9% of the Ontario population who indicated in the 2011 National Household Survey that they are racialized.⁶

Research results and anecdotal evidence gathered prior to the creation of the Challenges Faced by Racialized Working Group suggested that despite this increase, racialized lawyers still face challenges in the practice of law. Also, very little was known about the challenges faced, if any, by racialized paralegals in the profession.

As a result, in August 2012, Convocation created the Challenges Faced by Racialized Licensees Working Group (the Working Group) to,

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

³ This study does not include Aboriginal students, lawyers or paralegals. The Law Society conducted a separate study to identify and address the challenges faced by Aboriginal students, lawyers and paralegals. See *Final Report – Aboriginal Bar Consultation* (Toronto: Law Society of Upper Canada, January 29, 2009), online:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118>.

⁴ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: Law Society of Upper Canada, April 2010), online: http://www.lsuc.on.ca/media/convapril10_ornstein.pdf.

⁵ Law Society of Upper Canada, *Statistical Snapshot of Paralegals in Ontario: From 2010 Paralegal Annual Report*, online:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488152>, and Law Society of Upper Canada, *Statistical Snapshot of Lawyers in Ontario: From 2010 Lawyer Annual Report*, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488150>.

⁶ Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, online: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>.

From October 2012 on, the Working Group undertook the following activities and developed the following reports available [online](#):

- a. Conducted a review of the data and literature available on this topic – report entitled *Law Society Scan and Best-Practices*.
- b. Met informally with a number of individuals and organizations to obtain viewpoints on challenges and best-practices for racialized licensees – report entitled *Results from Informal Engagement* ("Informal Engagement Report").
- c. Received valuable input from a working group of the Law Society's Equity Advisory Group (EAG Working Group).⁷ The EAG Working Group identified challenges faced by racialized licensees and suggested options to address these challenges – report entitled *Submissions of the Equity Advisory Group*.
- d. Retained the services of Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign® to formally engage with the profession. This engagement included 20 key informant interviews, 14 focus groups with racialized licensees, two focus groups with non-racialized licensees and a 35-question survey conducted with the profession (lawyers and paralegals) as a whole. The consultants provided their report to the Law Society in March 2014 – report entitled *Challenges Facing Racialized Licensees Final Report* (The "Stratcom report").
- e. Created a parallel engagement process — the community liaison process — to gather information from racialized licensees who may not have come forward during the formal Stratcom engagement process. Prominent and experienced legal professionals from various racialized communities acted as liaisons and held focus groups with the community – report entitled *Community Liaison Report to the Challenges Faced by Racialized Working Group* ("Community Liaison Report").
- f. Compiled self-identification data based on firm size and other characteristics, presented at Appendix 1.
- g. Began an analysis of available Law Society data related to the regulatory process. Included in that analysis will be consideration of whether additional or better data or information should be obtained.

Information obtained to date suggests that racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. A majority of participants in the Stratcom engagement process — both racialized and non-racialized — agreed that the challenges faced by racialized licensees have an impact on the reputation of the legal professions, access to justice, and the quality of services provided.⁸

⁷ EAG is comprised of individual and organizational members that are committed to equality and diversity principles and that have experience working with (but not limited to) issues affecting Aboriginal, Francophone and racialized communities, persons with disabilities, gay, lesbian, bisexual, and transgender persons, and women.

⁸ Strategic Communications, *Challenges Facing Racialized Licensees Report* (Toronto: Stratcom, 2014) [Stratcom Report] at 57.

This consultation paper is designed to engage the profession and the public in the consideration of options to address the challenges faced by racialized licensees. The profession, legal organizations, firms, law schools and any others interested in the issues discussed in this paper are encouraged to provide written comments. The Working Group will consider all of the submissions and prepare a final report with recommendations that will be brought to Convocation.

Please note that the term "firms" in this report includes lawyer firms and paralegal firms.

THE ENGAGEMENT PROCESS RESULTS

Although the Working Group used multiple methodologies to gather information about the challenges faced by racialized licensees, the experiences of participants in the informal engagement with licensees and legal associations ("the informal engagement") and of participants in the community liaison process echoed the experiences of participants in Stratcom's formal engagement.

Numerous participants depicted a landscape in which racialization is a "consistent and persistent factor" affecting racialized licensees across their careers.⁹

The following challenges emerged:

- a. Discrimination and stereotypes;
- b. Cultural differences and fit;
- c. Lack of mentoring, sponsors, role models and networking opportunities;
- d. Intersecting factors and increased vulnerability;
- e. Race as a factor in entering sole practice;
- f. Barriers to entry into the profession;
- g. Barriers faced in advancing in the profession;
- h. Risk factors in entering the regulatory process;
- i. Additional barriers faced by internationally trained lawyers; and
- j. Additional barriers faced by paralegals.

Discrimination and Stereotypes

You work harder to prove yourself. You cannot necessarily do things that your White colleagues can do as there is a different connotation. Generally I have always been told that I have to work harder than my White counterparts, which in some respects is sadly still true in this day and age. I feel that certain lawyers do not give me certain files because of a preconceived notion about my skill set due to the colour of my skin.

Community Liaison Meeting

The engagement process allowed participants to share their experiences and a number of participants described discriminatory experiences that had serious impacts on their careers, including career opportunities and earnings. Some described experiences of overt discrimination, such as situations of being on the receiving end of racist jokes or racist comments and assumptions.¹⁰

⁹ *Ibid.* at x. See also the Community Liaison Report and the Informal Engagement Report.

¹⁰ *Ibid* at 8.

A number of participants spoke of having to work against assumptions by legal professionals, clients, opposing counsel and members of the bench that racialized licensees are less competent, skilled and effective. They recounted incidents in which they were subjected to negative stereotypes, and made to work harder or suffer greater consequences for errors than their non-racialized colleagues.

Some also felt that they were not offered the same opportunities for advancement. For example, they spoke of not being brought in on certain files, not being asked to attend client meetings, not being invited to social gatherings with colleagues where files and assignments are discussed, and receiving lower quality of work. Some wondered if race was a factor in the more rapid advancement of non-racialized colleagues of comparable or less merit.¹¹

Participants often felt they had to prove themselves to a greater extent than their non-racialized colleagues. They noted that they were often not perceived as credible and felt a lack of respect. A number of participants reported being mistaken for a student, an assistant, a social worker, or a client, instead of a lawyer or paralegal.

Almost half of racialized respondents¹² to the survey reported they had been expected to perform to a higher standard than others, due to racial stereotyping. Ethno-racial groups that named this factor more frequently than average included Black, Chinese, South East Asian, Arab, and South Asian respondents.¹³

Socioeconomic Cultural Differences and Fit

Firm culture is a huge factor on who gets interviewed and hired; both during on campus interviews and as first year associates. The analogy I always use is that you can't fit a square peg in a round hole. Bay Street is a particular culture and if you don't know how to pour your wine, it will be picked up, and as a result, the weaning process serves to exclude a disproportionate number of minority candidates.

Community Liaison Meeting

The concept of "fit" was also mentioned as a barrier for racialized licensees in hiring processes and within their practice. Participants were of the view that the concept of "fit" translated to being "non-racialized" and, consequently, racialized licensees were more likely to face challenges in finding positions and in career advancement.

¹¹ *Ibid.* at 12.

¹² 41% of racialized respondents.

¹³ Black (54%), Chinese (52%), South East Asian (46%), Arab (46%), and South Asian (45%) respondents.

Many participants described feeling alienated from the dominant culture. For example, some noted that social events centered on alcohol consumption made non-drinkers feel excluded. Other events such as playing golf, going to the cottage, and watching hockey were also identified as points of contact, interaction and social solidarity for non-racialized colleagues, while reinforcing feelings of isolation and "otherness" for racialized licensees.¹⁴

The Stratcom survey also addressed this issue by asking about the impact of lifestyle and personal beliefs on entry and advancement in the profession. A higher proportion of racialized licensees, compared to non-racialized licensees, considered that their preferences in social activities¹⁵ and their social or political views were barriers to entry into the profession¹⁶ — and even more importantly, barriers to advancement.¹⁷

Survey respondents who most frequently identified the types of social activities that they prefer as a barrier to advancement were from the following communities: Chinese, Arab, South Asian and South East Asian.¹⁸

Lack of Mentoring, Sponsors, Role Models and Networking Opportunities

If we can't get good articles and the mentorship and guidance that goes with it, this impacts the quality of service we can provide as well as opportunities – not giving people the chance to be the best they can impacts our whole society.

Community Liaison Meeting

Many participants noted that racialized licensees have much to gain from mentoring but all too often are unaware of available programs or do not have access to them. They were also of the view that many racialized licensees lack a strong network of legal professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace.

¹⁴ Stratcom Report, *supra* note 8 at 13 – 14.

¹⁵ 18% of racialized respondents compared to just 5% of their non-racialized colleagues.

¹⁶ 12% of racialized respondents compared to 5% of their non-racialized colleagues.

¹⁷ 26% of racialized respondents ranked "social activities" as a barrier compared to 12% of non-racialized respondents and 16% of racialized respondents ranked their "social and political views" as a barrier compared to 9% of non-racialized respondents.

¹⁸ At 36%, 33%, 31% and 31% of each community respondent respectively.

Some key informants noted that this lack of social connections can remain a barrier throughout a career if, for example, licensees begin their practice by building their client base within their own ethnic community where such networks are still sparse.¹⁹

The Stratcom survey results showed that a majority of racialized respondents believe that not having access to a network of professional contacts contributes to a career disadvantage.²⁰ A majority of racialized respondents said that not having the same cultural background as one's colleagues had disadvantaged their careers.²¹

The survey results also showed that a higher proportion of non-racialized²² respondents, compared to racialized respondents²³, find it relatively easy to get legal advice on client files from professional colleagues and mentors. Differences between the two groups were not as high on other statements. For example, a slightly higher percentage of non-racialized respondents agreed that mentors had played an important role in their career development.²⁴ A slightly higher percentage of racialized respondents indicated that social networks had played an important role in their career.²⁵

The absence of professional networks, divergent cultural backgrounds and prejudice based on race were identified as the most important sources of career disadvantage for a majority of racialized survey respondents.

Among licensees more likely than average to name these factors as probable or definite sources of career disadvantage are women, sole practitioners, licensees whose first language is not French/English and those who are born outside Canada. Racialized groups more likely than average to name all three factors as probable or definite sources of career disadvantage are Black, South Asian, Chinese and Arab respondents.

Intersecting Factors and Increased Vulnerability

When you have an accent, you signal that you are not in this place. You won't understand the culture as everyone else. Those who succeed are very good at adapting to other clients. So that's where an accent automatically sets you apart as not from this place.

Community Liaison Meeting

¹⁹ Stratcom Report, *supra* note 8 at 8.

²⁰ 68% of racialized respondents.

²¹ 57% of racialized respondents.

²² 79% of non-racialized respondents.

²³ 67% of racialized respondents.

²⁴ 69% of non-racialized respondents compared to 62% of racialized.

²⁵ 54% racialized respondents compared to 51% non-racialized

Many participants noted 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 are internationally-trained.²⁶ The intersection of these and other factors such as gender, gender identity, gender expression, age, sexual orientation, disability, and geographic location yields a complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization.

Race and Gender

Being female and racialized can be complicated. Women are already struggling in this profession with issues of work/life balance, family commitments, maternity leave, etc. Women are still working to be taken seriously in this profession and being a racialized woman means that you often have even more to prove. It can cause stress, anxiety and may make racialized women work harder, push more and delay some of their personal goals for their work.

Community Liaison Process

The intersection of race and gender was particularly seen as multiplying the challenges for women. In an environment, described by some participants as a "boys' club", where extracurricular social activities are often also avenues to new work opportunities and advancement, many racialized women perceived themselves as doubly disadvantaged.²⁷

The Stratcom survey addressed harassment and expectations due to gender stereotypes as factors contributing to career disadvantage. Although survey results indicated that racialized male licensees are not free from harassment or from gender-based stereotyping, a larger proportion of racialized women²⁸ viewed gender stereotyping as a factor contributing to their having been disadvantaged in hiring, advancement or pursuit of an area of practice.

Further gender differences were noted in the Stratcom survey as barriers to entry. For example, racialized and non-racialized women were both more likely than men to identify the following factors as barriers to their entry into the profession: physical appearance, age (too young) and gender.²⁹

²⁶ Stratcom Report, *supra* note 8 at 14.

²⁷ *Ibid.* at 14.

²⁸ Between one quarter and two fifths.

²⁹ On the issue of physique/appearance, 29% racialized and 12% non-racialized women respondents identified it as a barrier to entry, compared to 19 % racialized and 4% non-racialized men. On gender, 17% of racialized women respondents 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 respondents and 11% of

The results reinforce the focus group conclusion 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.

Race as a Factor in Entering Sole Practice

Most of us are sole practitioners because we could not get into large firms because of racial barriers; the ones I know who got into firms ended up leaving because of feelings of discrimination, and ostracizing and alienation – [i.e.] not being invited to firm dinners and outings. Some Black lawyers feel suicidal because of repeatedly running into racial barriers (not academic performance) trying to enter large firms; there are firms that believe if they hire Black lawyers they will lose their clients.

Community Liaison Meeting

A number of participants stated that they felt they had been forced to enter sole practice because of barriers they had faced in obtaining employment or advancing in other practice environments. Some participants also believed that a number of racialized lawyers become sole practitioners by default and are ill-equipped and unprepared for the realities of sole practice.

Several participants believed that racialized lawyers are more likely to be in sole practice and they highlighted the vulnerability of sole practitioners in the legal profession in the context of professional regulation and discipline.

Entry into the Profession

The barriers noted above have an impact on racialized licensees' experiences in entering the legal profession. The Stratcom survey results also shed some light on other barriers that impact upon entry into the profession. Racialized and non-racialized survey participants were presented with a list of factors and asked to indicate in each case if they had experienced any of the factors as a barrier or challenge at any time during or after their entry into practice.³⁰

Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry into practice, while only 3% of non-racialized licensees identified

non-racialized women identified it as a barrier to entry, compared to 9% of racialized men and 5% of racialized men.

³⁰ Stratcom Report, *supra* note 8 at 36 to 39.

ethnic/racial identity as a barrier. Racialized licensees who were most likely to cite race/ethnicity as a barrier to entry included South East Asian, Black, Arab and South Asian respondents, those having a first language other than French/English, women, and those born outside Canada.³¹

Whereas ethnic/racial identity was selected as a barrier to entry by a substantially higher proportion of racialized respondents than any of the other barriers tested, it ranked among the least important challenge for non-racialized respondents.

The following barriers were also identified by racialized lawyers and to a much lesser extent by non-racialized lawyers:

- a. physical appearance;³²
- b. socio-economic status;³³
- c. place of birth and where one is raised;³⁴
- d. age (too young);³⁵
- e. the way one speaks English/ French;³⁶
- f. gender identity.³⁷

The survey revealed that a significantly smaller percentage of racialized respondents, compared to non-racialized respondents,

- a. found a suitable first job after being licensed;³⁸
- b. reported having been offered employment at the firm where they had articulated or had a training placement;³⁹
- c. found employment in a suitable practice environment;⁴⁰ and
- d. were able to work in their preferred area of practice.⁴¹

There were wide differences of experience at entry into the profession, and in overall career trajectory. Almost half of racialized licensees "strongly or somewhat agreed" that they had struggled to find an articling position or training placement⁴² and a majority

³¹ South East Asian (54%), Black (52%), Arab (50%), South Asian (46%), first language neither French/English (46%), female (45%) and born outside Canada (44%).

³² 24% of racialized respondents and 8% of non-racialized respondents.

³³ 19% of racialized respondents and 8% of non-racialized respondents.

³⁴ 17% of racialized respondents and 4% of non-racialized respondents.

³⁵ 15% of racialized respondents and 8% of non-racialized respondents.

³⁶ 12% of racialized respondents compared to just 3% of non-racialized respondents.

³⁷ 11% of racialized respondents compared to 6% of non-racialized respondents.

³⁸ 59% of racialized respondents compared to 78% of non-racialized respondents

³⁹ 43% of racialized respondents compared to 53% of non-racialized respondents

⁴⁰ 66% of racialized respondents compared to 82% of non-racialized respondents

⁴¹ 66% of racialized respondents compared to 82% of non-racialized respondents

⁴² 43% of racialized respondents compared to 25% of non-racialized respondents

"strongly or somewhat agreed" that they had not advanced as rapidly as colleagues with similar qualifications.⁴³

Advancement

I was well liked in my Bay Street firm and was a golden boy. Race [was] not a factor getting in the door as a lawyer but was a factor in partnership. I was never offered partnership though I was at the firm longer than those who were offered partnership. It was common knowledge that I was a favourite at the firm.

Community Liaison Meeting

The Stratcom survey results also identified barriers to advancement in the profession. Both racialized and non-racialized respondents were asked to identify which factors represented barriers at any time *after* entry into practice.

The greatest difference between the two groups is 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 ethnic/racial identity are physical appearance, family socio-economic status, where you were born/raised and how you speak English/French — all of which have been identified as barriers after entry by at least 15% of racialized licensees.

By contrast, for non-racialized licensees, these issues represent barriers after entry to practice that are comparable or possibly of lesser importance than those associated with sexual orientation, gender, age, lifestyle, and personal beliefs.

Racialized and non-racialized respondents identified time away from work to care for children and other family members as a barrier to advancement after entry.⁴⁴ However, the barrier was more significant for racialized and non-racialized women than for men.⁴⁵

The survey found narrower gaps between racialized and non-racialized respondents in the area of career setbacks, as shown below:

- a. agreed they had left one or more positions because they felt they did not belong there — 42% of racialized and 35% of non-racialized respondents;

⁴³ 52% of racialized respondents compared to 25% of non-racialized respondents

⁴⁴ 25% of racialized respondents and 23% for non-racialized respondents.

⁴⁵ 33% of racialized women and 36% of non-racialized women.

- b. reported having left one or more positions because they did not feel they would advance commensurate with their performance and ability – 40% of racialized and 31% of non-racialized respondents;
- c. they had been refused a promotion to a management position – 13% of racialized and 9% of non-racialized respondents;
- d. their admission to partnership had been delayed – 9% of both racialized and non-racialized respondents; and
- e. they were not made partner, despite meeting known criteria for advancement – 6% of both racialized and non-racialized respondents.

Regulatory Process

Participants were asked to comment on their perception of the regulatory process. For some, there were concerns about the lack of racial diversity at Convocation and on discipline panels. Others were of the view that, 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 often practise with fewer connections to a large or affluent client base and without sufficient education in the business of a legal practice.

Key informants provided anecdotal evidence that many racialized licensees take a community-specific 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.

Participants noted factors that could contribute to making racialized licensees more vulnerable to complaints, most frequently citing a comparative lack of resources, training and mentoring opportunities. Both racialized and non-racialized survey respondents placed lack of mentors and professional networks⁴⁶ and racial stereotyping by clients⁴⁷ at the top of the list of factors that may increase the risk of complaints against racialized licensees.

A majority of racialized and almost half of non-racialized respondents⁴⁸ indicated in the survey that miscommunication was "definitely or probably" a factor increasing the risk of complaints. This dovetails with the results 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.

⁴⁶ 78% of racialized and 63% of non-racialized respondents.

⁴⁷ 71% of racialized and 57% of non-racialized respondents.

⁴⁸ 57% of racialized and 48% of non-racialized respondents.

Racialized and non-racialized licensees had different views on whether issues such as lower quality articling positions and inadequate training⁴⁹ and racial stereotyping by other members of the profession or the judiciary⁵⁰ increase the risk of complaints and discipline for racialized licensees.

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

The Working Group also suggests remedial measures, considered below, that are not specifically tied to particular racial groups, but can assist licensees more generally — such as mentoring and networking.

Additional Barriers Faced by Internationally Trained Lawyers

Some participants stated that internationally trained lawyers often face additional challenges because of language barriers, socialization, job readiness and work experience. They believed that the advantages that internationally trained lawyers bring to the profession as a result of the experience of practising in another country, are often discounted or not understood.

Participants identified being born and/or educated outside Canada as potential obstacles for racialized licensees. It was believed that internationally trained lawyers could face a combination of disadvantages, such as few professional network opportunities, language challenges, a different culture than their colleagues, the lack of critical transition from law school to a first professional position in Ontario, and the lack of mentors and contacts.⁵¹

Additional Barriers Faced by Paralegals

In addition to the barriers identified above that apply to all racialized licensees, some focus group participants noted that racialized paralegals seem to face greater challenges in the job market than racialized lawyers.

Data from the survey reinforced this hypothesis. Overall, paralegals as a group reported lower success rates in finding suitable employment than lawyers.

On the key measure of finding a suitable first job, just 26% of racialized paralegals had found such job, compared to 36% of non-racialized paralegals. On finding employment

⁴⁹ 70% of racialized and 51% of non-racialized respondents.

⁵⁰ 69% of racialized and 46% of non-racialized respondents.

⁵¹ Stratcom Report, *supra* note 8 at 9.

in their preferred practice environment, 37% of racialized paralegal respondents had found such employment, compared to 57% of their non-racialized counterparts. Similarly, 41% of racialized paralegal respondents said they found employment in their preferred area of practice, compared to 67% of non-racialized paralegals.

QUESTIONS FOR THE PROFESSION

Introduction

Based on the results described above⁵², the Working Group identified questions for the profession's consideration and invites input on the questions posed below. The questions are organized under the following themes:

- A. Enhancing the internal capacity of organizations;
- B. Mentoring, advisory services and networking;
- C. Enhancing cultural competence in the profession;
- D. Discrimination and the role of the complaints process;
- E. The operations of the Law Society of Upper Canada.

The Working Group also welcomes additional ideas, initiatives or practices that may assist in addressing the challenges faced by racialized licensees.

⁵² The literature can be found in *Law Society Studies and Scan of Best-Practices*.

A. Enhancing the Internal Capacity of Organizations

The engagement with the profession indicates that some of the barriers faced by racialized licensees exist in recruitment processes and in advancement in their careers. The Working Group proposes that organizations, including firms, enhance their internal capacity to address such barriers by considering approaches under the following three categories:

- a. Establishing diversity programs within firms;
- b. Collecting demographic data;
- c. Establishing contract compliance programs.

Establishing Diversity Programs within Firms

Question 1: How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why? Proposed models are presented below, and other proposed models are welcome.

- **Diversity project**: A project in which firms and organizations with in-house counsel services commit to working with the Law Society to develop and adopt standards and resources for the recruitment, retention and career progression of racialized licensees.
- **Self-assessment**: A project in which firms and organizations with in-house counsel services complete a self-assessment about their diversity performance and use the results to identify and adopt practices and policies to be more equitable and inclusive.
- **Requiring standards**: A project in which firms and organizations with in-house counsel services would be required by the Law Society to adopt standards and resources for the recruitment, retention and career advancement of racialized licensees.

Diversity Project

The first approach described above is based on the Law Society's Justicia project model adopted in 2008. The Justicia project is a gender diversity project in which more than 55 firms signed commitment agreements with the Law Society to work together to develop resources that would assist in retaining and advancing women in private practice.

Participating firms, in partnership with the Law Society, developed templates to track gender demographics and to identify and adopt principles and best practices regarding flexible work arrangements, networking and business development, mentoring programs

and leadership skills development for women. The Justicia resources are now available online to the profession as a whole at: www.lsuc.on.ca/justicia_project/.

Other examples of similar initiatives are the Law Firm Diversity and Inclusion Network (LFDIN) and the Legal Leaders for Diversity (LLD). These are firm and legal organization-based initiatives that try to address challenges related to the retention and advancement of equity-seeking groups by working together and promoting the adoption of best-practices.⁵³

The Law Society could, just as it did in the Justicia Project, act as a catalyst and work with firms and organizations to develop resources to create the infrastructure for inclusiveness and standards to measure progress. Recently, following a consultation with racialized licensees, the Barreau du Québec developed a three-year action plan that includes using the Justicia model to address issues related to the recruitment, retention and advancement of racialized licensees.⁵⁴

Self-Assessment

The second approach, asking or requiring firms to complete a self-assessment about diversity performance, is based on the Canadian Bar Association's guide *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide*. The document was drafted to "assist lawyers and firms by providing practical guidance on law firm structures, policies

⁵³ Similar initiatives have been successful in the U.S. such as the Boston Lawyers Group and the Lawyers Collaborative for Diversity (LCD).

The Boston Lawyers Group is comprised of prominent firms, corporate legal departments and government agencies in Boston that are committed to identifying, recruiting, advancing and retaining attorneys of colour. The group has grown from 13 members at its creation to over 45 members. The Boston Lawyers Group acts as a resource to members by hosting forums, roundtable discussions, educational programs and job fairs, in an effort to promote diversity in Boston's legal community. The Boston Lawyers Group also develops initiatives within law schools, student affinity organizations, city and state governments, bar associations and other professional and business organizations. Members are ultimately responsible for meeting their own diversity and inclusion goals. See The Boston Lawyers Group, *About the BLG*, online: <http://www.thebostonlawyersgroup.com/about/who.htm>.

The LCD operates in a similar manner to the Boston Lawyers Group. The LCD is comprised of firms, corporate law offices, government agencies and state bar/law associations in Connecticut. The current challenge of the LCD is "to increase the recruitment, retention and advancement of lawyers of color, not only as good social policy, but also as exemplary business practice." See Lawyers Collaborative for Diversity, *Who We Are*, online: <http://www.lcdiversity.com/about/who.htm>

⁵⁴ Barreau du Québec, *For a More Inclusive Profession – The Forum Project* (Montreal: Barreau du Québec, May 2014), online: http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf.

and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled."⁵⁵

The document contains a self-evaluation tool for firms, the *CBA Ethical Practices Self-Evaluation Tool*, which outlines 10 key areas of ethical infrastructure and provides questions related to firm policies and procedures under each identified area.⁵⁶

The self-evaluation tool is modelled on the approach used in New South Wales for regulation of incorporated legal practices. Rather than being required to follow specific rules, the firms are required to self-assess whether their practices and policies are effective in ensuring professional conduct and to establish practices and policies that are thought effective in their specific context. The result has been a two-third reduction in client complaints for firms regulated in this way.⁵⁷ This approach could be adopted for diversity practices on a voluntary or mandatory basis.

The Law Society of England and Wales has adopted a similar, successful voluntary approach to diversity practices. In 2009, it adopted the *Diversity and Inclusion Charter* to, "help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients."⁵⁸

To date, over 300 practices have signed the Charter, representing more than a third of all solicitors in private practice. Practices that sign the *Diversity and Inclusion Charter* are required to report annually to show how well they are meeting their commitments and where more work needs to be done. The Charter is accompanied by a set of resources to help practices fulfil their commitments in key areas. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards.

⁵⁵ Canadian Bar Association Ethics and Professional Responsibility Committee, *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide* (Ottawa: The Canadian Bar Association, 2013), online: <http://www.cba.org/CBA/activities/pdf/ethicalinfrastructureguide-e.pdf>.

⁵⁶ See Canadian Bar Association Ethics and Professional Responsibility Committee, *CBA Ethical Practices Self-Evaluation Tool* (Ottawa: The Canadian Bar Association, 2013), online: <http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-e.pdf>.

⁵⁷ Tahlia Gordon, Steve A. Mark, and Christine Parker, "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW", J.L. & Soc. (2010), Legal Studies Research Paper No. 453; Susan Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation", Hofstra University School of Law Legal Studies Research Paper No. 13-02 (2013).

⁵⁸ The Law Society of England and Wales, *Diversity and Inclusion Charter*, online: <http://www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter/>.

Requiring Standards

The third approach would require firms and organizations with legal counsel to adopt standards and resources for the recruitment, retention and career advancement of racialized licensees. The Law Society would develop such standards.

Collecting Demographic Data

In addition to implementing diversity programs, the Working Group proposes that firms collect demographic data of their lawyers and paralegals.

There are a number of advantages to collecting demographics, as listed below. It is suggested that such data would be particularly helpful in identifying the types of diversity programming that would best meet the needs of each firm.

Question 2: What is the preferred model for the collection of firm demographic data and why? Other proposed models are welcome.

- **Using Law Society data:** The Law Society collects demographic data of licensees through the Lawyer and Paralegal Annual Reports, publicly reports the demographic data based on firm size and discloses to firms their own demographic data.
- **Providing templates:** The Law Society works with firms to develop consistent templates for demographic data collection and encourages firms to collect such data on a regular basis.⁵⁹
- **Requiring firms to report:** The Law Society sets parameters for the voluntary collection of demographic data by firms and requires firms to report either that they are collecting this information or the rationale for not collecting such data.
- **Mandatory collection:** The Law Society sets parameters for the mandatory collection of demographic data by firms.

Background Discussion

Some participants in the engagement process and studies have noted the value of organizational collection of demographic data. For example, some Stratcom key

⁵⁹ In this document, the term "small firms" refers to firms with 5-25 licensees, the term "medium firm" refers to firms with 25-100 licensees, and the term "large firms" refers to firms with 100 or more licensees.

informants indicated that more detailed statistics on racialization within firms would be valuable, similar to approaches in the United States where transparency about firm representation assists in increasing representation within firms.⁶⁰ The Stratcom survey results indicated that a majority of racialized licensees favoured measures related to collecting and sharing data. However, some concerns were expressed about measures that might be construed as setting diversity targets.⁶¹

The Advantages of Data Collection

The Working Group believes that gathering and maintaining demographic data is a best practice. There are numerous reasons to gather demographic information, including the following:

- a. Such data can be a tool to increase a firm's competitiveness. Numerous large clients in the U.S., and now in Canada, issue requests for proposals (RFPs) to select their legal counsel, requiring firms to produce demographic data of their workforce. For example, the Bank of Montreal's Legal, Corporate & Compliance Group (LCCG) requires disclosure of a firm's diversity statistics as part of its RFP process for legal suppliers.⁶²
- b. Diversity, and data on diversity, assists firms to attract a strong talent base. As the pool of law school students is increasingly diverse, so is the pool of legal talent.
- c. Maintaining demographic data allows firms to monitor diversity in recruitment and advancement and to adjust policies and practices accordingly.
- d. Demographic data assist firms to enhance their client services and professional reputation, and to become role models by ensuring representation at all levels.
- e. Demographic data provide background for firms to develop programs that enhance inclusiveness.
- f. The information may assist in developing initiatives to enhance access to justice.

Dean Lorne Sossin and Sabrina Lyon, in their article *Data & Diversity in the Canadian Legal Community*, also underline the importance of data collection, noting that while "collecting and publishing data on diversity will not in and of themselves make the justice community more inclusive, it is difficult if not impossible to see how the justice community could become more inclusive without meaningful and reliable data."⁶³

Despite the importance of quantitative demographic data, many employers assess their progress in diversity and inclusion by considering more qualitative measures. Sossin and

⁶⁰ Stratcom Report, *supra* note 8 at 9.

⁶¹ *Ibid.* at 86.

⁶² BMO LCCG, *Diversity at BMO: Driving Change from the Inside Out*.

⁶³ Sabrina Lyon and Lorne Sossin, "Data and Diversity in the Canadian Justice Community" Osgoode Legal Studies Research Paper No. 12/2014 2014, online: <http://ssrn.com/abstract=2389410> [*Data and Diversity*].

Lyon believe that "when an organization is comprised of very few diverse members, a firm-wide survey on inclusion will likely lead to misleading results. Qualified and supplemented by quantitative data, the picture becomes much clearer."⁶⁴ Most individuals consulted in the Sossin and Lyon project indicated that, as regulator of the profession, the Law Society is the most appropriate body to lead the effort in calling for the collection and dissemination of demographic data.

Data Collection Practices

The American Experience

Data collection has been an ongoing practice in the U.S. with organizations such as the National Association of Legal Career Professionals (NALP)⁶⁵ and Vault⁶⁶ collecting and reporting both qualitative and quantitative diversity and inclusion information about U.S. firms or legal organizations. Although not mandatory, the publication of data is an effective recruitment tool for firms and legal organizations, and hundreds participate in the NALP and Vault initiatives. Currently, NALP's Canadian branch publishes only gender demographic data for firms.

Despite the willingness of many U.S. firms to collect demographic data, there is some dispute as to whether data collection has been effective in increasing the numbers of racialized licensees in U.S. firms⁶⁷. Veronica Root, in her article *Retaining Color*, notes the following:

The available data demonstrates that (i) large numbers of persons of color are attending the top twenty-five law schools, (ii) a much smaller percentage join large firms, and (iii) an even smaller percentage are made partner. This is despite the fact that the American Bar Association and the National Association for Law Placement began questioning and tracking demographic

⁶⁴ *Ibid.* at 9.

⁶⁵ NALP is a North American non-profit educational association of over 2,500 legal career professionals that was established to meet the needs of participants in the legal employment process. NALP collects and publishes legal employment data.

⁶⁶ Vault provides company rankings, ratings and reviews that are sourced from employees and students. In partnership with the Minority Corporate Counsel Association, Vault conducts an annual diversity survey of firms, and publishes a Law Firm Diversity Profile for each firm, which includes a demographic breakdown of a law firm's lawyers by level, race, gender, sexual orientation, gender identity and disability status. The profiles also include an overview of a firm's diversity programs, initiatives and strategic plans. In addition, all survey responses are published in the Law Firm Diversity Database, which includes five years of diversity data on over 250 firms.

⁶⁷ The racial issues in Canada and the United States are different both in terms of their magnitude and history, which may limit the assessment and applicability of U.S. measures in the Canadian context.

diversity within firms in 1993. Twenty years later, only small gains have been made in efforts to increase large law firm demographic diversity.⁶⁸

Obviously, the lack of demographic diversity is the product of practices and systems other than the collection of data. However, as noted above, the Working Group has identified significant advantages to data collection.

The Experience in the U.K.

The Law Society of England and Wales' Solicitors Regulation Authority (SRA) has taken a proactive approach to gathering demographic data. Practices regulated by the SRA are now required to collect, report and publish data annually on the diversity of their workforce. The SRA produces aggregate data annually. The SRA will develop a benchmark to allow firms to assess their progress.⁶⁹

The Canadian Experience

In Canada, at least three large firms in Ontario collect, but do not report publicly, self-identification data based on race and ethnicity of their employees and members.⁷⁰ A number of other firms are working on developing processes to collect demographic data and numerous Justicia firms already collect gender-based data of their members.⁷¹

The requirement for members to report on diversity-related matters has also been considered by other regulatory bodies in Ontario. Recently, the Ontario Securities Commission (OSC) began the final implementation of rule amendments that will, amongst other things, require companies regulated by the OSC to disclose the following gender related information on an annual basis: policies regarding the representation of

⁶⁸ Veronica Root, "Retaining Color", 47 University of Michigan Journal of Law Reform 575-643, Notre Dame Legal Studies Paper No 1441 2013, online: <http://ssrn.com/abstract=2310027>.

⁶⁹ Also noteworthy of mention is the initiative of the United Kingdom's Judicial Appointments Commission (JAC), an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales and for some tribunals that also have jurisdiction in Scotland or Northern Ireland, engages in diversity monitoring. As part of its diversity strategy, the JAC records information about gender, ethnicity, professional background, disability and age at three stages of the judicial appointments process: application, shortlisting and recommendation for appointment. This information is gathered through the JAC's voluntary Application Monitoring Form. The JAC publishes an Official Statistics bulletin, which includes demographic information, twice a year: *Judicial Selection and Recommendations for Appointment Statistics, October 2012 to March 2013 – Judicial Appointments Commission Statistics Bulletin* (London: Judicial Appointments Commission, 2013).

⁷⁰ Also, large banks and the federal government are mandated by law to collect workforce self-identification data, and the Ontario government collects and publishes the OPS Inclusion Strategic Plan that includes self-identification data.

⁷¹ For example, the Canadian Institute of Diversity and Inclusion (CIDI), a national non-profit organization that advises workplaces on diversity, inclusion, equity and human rights, is working with a group of large- and medium-sized firms to develop a process to assist them in collecting demographic data.

women on the board; the board's consideration of the representation of women in the director identification and selection process; consideration of the representation of women in executive officer positions when making such appointments; targets and number of women on the board and in executive officer positions.⁷²

The OSC will implement a "comply or explain" approach, which requires companies to either report on their implementation or consideration of items listed above, or explain their reasons for not doing so.⁷³

In 2012, the Canadian Bar Association produced a guide to assist firms in refining their approach to diversity and inclusion and to measure their diversity performance.⁷⁴ In 2009, the Ontario Human Rights Commission also produced *Count me In! Collecting human rights-based data*, a guide to assist organizations in collecting demographic data.⁷⁵

Voluntary vs. Mandatory Data Collection

There are advantages and disadvantages to voluntary and mandatory demographic data collection. Although mandatory reporting would potentially provide more reliable data, currently the Law Society does not directly regulate firms or legal organizations. In addition, Sossin and Lyon note the "resistance and backlash to mandatory reporting requirements" and indicate that voluntary and/or incentivized disclosure of demographic statistics is an important avenue to consider.

Voluntary data collection would allow the Law Society to work with firms and legal organizations in collecting the data, hence increasing the buy-in of the firms to conduct such an exercise. The Justicia project⁷⁶ mentioned above is an example of an initiative in which participating firms agreed to maintain gender-based data and worked with the Law

⁷² Proposed OSC Amendments to Form 58-1-1F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Government Practices*; Proposed Disclosure Requirements Regarding the Representation of Women on Boards and in Senior Management – Supplement to the OSC Bulletin (2014), 37 OSCB.

⁷³ Following the OSC proposal, the securities regulatory bodies in Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut published proposed amendments for comment from the public that mirror those put forward by the OSC. These regulatory bodies have also begun final implementation of the rule amendments.

⁷⁴ Lorraine Dyke, *Measuring Diversity in Firms – A Critical Tool for Achieving High Performance* (Ottawa: Canadian Bar Association, 2012), online:

http://www.cba.org/cba/equity/pdf/Measuring_Diversity_Guide.pdf.

⁷⁵ *Count me In! Collecting human rights-based data* (Toronto: Ontario Human Rights Commission, 2009) at 1, online:

http://www.ohrc.on.ca/sites/default/files/attachments/Count_me_in%21_Collecting_human_rights_based_data.pdf.

⁷⁶ See Law Society of Upper Canada, *The Justicia Project*, online: Law Society of Upper Canada http://www.lsuc.on.ca/justicia_project/

Society in developing a guide and template to gather such data. Since the inception of Justicia, a number of medium and large firms are now collecting gender demographic data.

Using Law Society Data

As the Law Society already collects demographic data based on race and data on, for example, size of firms, status in a firm, environment, practice area and year of call, it may be advisable for the Law Society to enhance the quality of its data collection and to be the common source of demographic data. This would have the advantage of providing comparable demographic data and likely more efficient data collection. On the other hand, there may be some advantage in firms being involved in collecting and reporting on their own information.

Diversity and Contract Compliance

Question 3: How could the Law Society work with in-house legal departments to develop model contract compliance programs for in-house legal departments that retain firms?

Background Discussion

As noted above, a number of U.S. and Canadian businesses, governments and other institutions now require the disclosure of workforce demographic data for consideration during RFP evaluation processes. Some members of the Legal Leaders for Diversity (LLD), which comprises over 70 signatories across Canada, are considering diversity in their hiring and purchasing practices by requiring potential legal suppliers to disclose demographic data. Others require that at least one member of a diverse community is working on their file.⁷⁷

Some participants in the engagement process saw a role for the Law Society in encouraging corporate procurement policies. To promote diversity in the profession and ensure that racialized licensees have the opportunity to work on important files, the Law Society could work with organizations such as members of LLD to develop model contract compliance programs that would require potential suppliers to provide diversity statistics during the RFP process.

⁷⁷ See Legal Leaders for Diversity, *About Us*, online: <http://legalleadersfordiversity.com/about-us/>.

B. Mentoring, Advisory Services and Networking

Throughout the engagement process, mentoring and networking were identified as crucial elements in promoting inclusivity in the profession. The profession is asked to comment on mentoring, advisory services and networking models.

Mentoring and Advisory Services

Question 4: What are the preferred mentoring and/or advisory services models for racialized licensees? Other models than those listed below are welcome.

In November 2013, Convocation approved the creation of the Mentoring and Advisory Services Proposal Task Force (the Mentoring Task Force). The terms of reference of the Mentoring Task Force are as follows:

- a. inform itself about the mandatory and optional mentoring and advisory services that are provided to lawyers and other professions by their regulatory bodies and trade or professional associations in Canada and abroad;
- b. develop a set of criteria to assess the effectiveness of these services in addressing the practice needs of the legal profession in Ontario;
- c. determine the range of mentoring and advisory service models, including technology-assisted, virtual advisory and mentoring services, partnering with other organizations, centralizing or establishing mentoring and other resources that could be explored and considered;
- d. consult with external stakeholders on the objectives and best practices for such services;
- e. examine and determine, to the extent possible, the immediate and long-term financial implications to the Law Society.

Mentoring refers to a formal or informal program or relationship in which the mentor provides career and personal advice to the mentee. In a mentoring relationship, there are no specific performance objectives. Alternatively, advisory services are job-focused and performance oriented. The advisor/coach provides advice and assesses and monitors progress. Advisors/coaches assist the advisee with developing specific skills for a defined task or challenge.

The Working Group encourages feedback on what mentoring and advisory services models would be most helpful for racialized licensees. Such feedback may be considered by the Working Group and the Mentoring Task Force. Some proposed models are listed below, but the list is not exhaustive and other proposed models are also welcome.

Volunteer Mentor or Advisory Services

- a. **One-on-one mentoring or advisory services:** One mentor and one mentee would meet regularly. The mentoring relationship would be individualized and personal. Mentors would not be compensated.
- b. **Group mentoring:** One mentor would form a mentoring relationship with a small group of licensees. The mentor and mentees would meet regularly as a group. Mentors would not be compensated.
- c. **Distance mentoring:** Mentoring would be provided by one mentor to one mentee primarily via email and other forms of electronic communication. E-communication could be supplemented by occasional telephone calls and in-person meetings. Mentors would not be compensated.
- d. **Team mentoring:** Several mentors would work with a group of several mentees. The mentors and the mentees would meet together regularly as a team. Mentors would not be compensated.
- e. **Peer mentoring:** Colleagues who are at a similar stage in their careers would be paired to provide advice and guidance to each other.
- f. **Limited-scope advisor services:** An advisor with expertise in a specific area would provide an advisee with guidance on a substantive or procedural legal issue. This relationship would likely be short-term. Advisors would not be compensated.

Remunerated Mentor or Advisor Services

- a. **Professional one-on-one mentoring:** This model would operate similarly to voluntary one-on-one mentoring, however mentees would be able to access a mentor drawn from a pool of compensated mentors.
- b. **Panel of advisors:** A diverse group of trained lawyer and paralegal advisors would be paid to provide specific, targeted support services to those at increased risk of failing to fulfil their professional obligations.

It is important to note that associations such as the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association (SABA) and the Federation of Asian Canadian Lawyers (FACL) provide valuable networking opportunities, mentoring and continuing professional development programs. The Law Society could consider whether there are additional support programs that could be implemented through associations such as those to assist lawyers and paralegals who are in small firms, who are sole practitioners and/or are internationally trained. Proposals to that effect are welcome.

Networking

Question 5: What are the preferred networking models for racialized licensees? Other models than those listed below are welcome.

The engagement process indicated that racialized licensees are often more isolated from professional support networks. The majority of both racialized and non-racialized

licensees in the Stratcom survey identified the need for racialized licenses to have more access to professional networks.

The Law Society could work with legal organizations and affinity associations to develop more planned and structured networking opportunities, for example, through continuing professional development. These networking opportunities would provide racialized licensees with a forum to interact with racialized and non-racialized licensees from other firms and legal organizations.

It is important to note that some participants have mentioned that associations do not exist for their community. For example, paralegals have noted that they do not have access to an association of racialized paralegals. There is also no association of internationally trained lawyers, notwithstanding the comments that internationally trained lawyers are often isolated and lack the networks that are so important to small firms and sole practitioners.

The University of Toronto's Internationally Trained Lawyers Program has been a valuable program to prepare internationally-trained lawyers to enter the legal profession; however, continuous networks while in practice would be valuable.

C. Enhancing Cultural Competence in the Profession

The Stratcom survey results support the importance of Law Society sponsored professional development seminars on equity, diversity and cultural competence that would be counted toward accreditation.

There are many definitions of cultural competence but Robert Wright⁷⁸ has developed the following: "an ability to interact effectively with people of different cultures. Cultural competence comprises four essential capacities:

- a. We must understand our own cultural positions and how they differ from and are similar to others (critical cultural self-analysis).
- b. We must understand the social and cultural reality in which we live and work and in which our clients live and work.
- c. We must cultivate appropriate attitudes towards cultural difference
- d. We must be able to generate and interpret a wide variety of verbal and non-verbal responses (client centred interviewing)."⁷⁹

Question 6: How could the Law Society enhance the profession's cultural competence through its CPD Programs? Other proposed models are welcome.

- Include the topics of cultural competence, diversity and inclusion in the Professional Responsibility and Practice (PRP) Course.
- Provide annual voluntary accredited CPD Programs on cultural competence.
- Require that licensees complete annually, or less frequently, one hour of cultural competence CPD that would count as part of the three required hours of professionalism.

The suggested options above are proposed to ensure that licensees are introduced to the concept of cultural competence early in their careers, through the PRP course, and throughout their careers.

The PRP Course is designed to, "expand the candidates' knowledge of lawyers' duties, tasks, and challenges and to provide a suggested approach for analyzing common

⁷⁸ Robert S. Wright is an African Nova Scotia social worker and sociologist. He designs and delivers workshops on cultural competence and has developed an expertise in that area.

⁷⁹ Robert S. Wright, *Cultural Competence: Presented to Staff of Legal Aid Nova Scotia AGM*, October 17, 2012, online: <http://www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf>

ethical and practice dilemmas."⁸⁰ Successful completion of the PRP Course is required for admission to the Bar.

It is suggested that professional development programs on cultural competence would be beneficial to the profession as a whole. Rules 2.1-1 and 6.3.1-1 of the *Rules of Professional Conduct*⁸¹ speak to the responsibility of lawyers to recognize the diversity of the Ontario community. Both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*⁸² require that lawyers and paralegals protect the dignity of individuals and respect human rights laws in force in Ontario. Cultural competence training could be useful to assist lawyers and paralegals to understand and comply with this rule.⁸³

As such, it is proposed that annual CPD programs be made available to the profession and/or that the profession be required to complete one hour of accredited CPD professionalism hours annually or on a less frequent basis.

⁸⁰ <http://www.lsuc.on.ca/articling/#PRP>

⁸¹ See *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, with amendments effective as of 1 October 2014), at Rule 2.1-1 Commentary [4.1] and Rule 6.3.1-1 Commentary [1] and [2], online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>.

⁸² *Paralegal Rules of Conduct* (Toronto: Law Society of Upper Canada, with amendments effective as of 1 October 2014) at Rule 2.03, online: <http://www.lsuc.on.ca/uploadedFiles/NEW-PARALEGAL-RULES-INCLUDING-INDEX-EFFECTIVE-OCT2014.pdf>.

⁸³ The Nova Scotia Barristers' Society (NSBS) recognizes the value of professional development programs on cultural competence and identifies cultural competence as a facet of the overall professional competence of a lawyer. The NSBS offers monthly half day workshops on building cultural competence.

D. Discrimination and the Role of the Complaints Process

Question 7: How should the Law Society best ensure that complaints of discrimination are brought to its attention and effectively addressed? Additional proposals are welcome.

- By updating the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to specifically define and address systemic discrimination and by developing a communication plan for the profession.
- By working with associations of racialized licensees to enhance their ability to bring forward complaints.
- By assigning an expert group of professional regulation staff members to handle complaints of racial discrimination.
- By working with associations of racialized licensees to enhance their capacity to offer duty counsel type support to their members who have been the subject of complaints.

Understanding Discrimination

The Ontario Human Rights Commission defines systemic discrimination based on race as "patterns of behaviour, policies or practices that are part of the structures of an organization, and which create or perpetuate disadvantage for racialized persons."⁸⁴ The engagement process revealed that those who are impacted by racial discrimination often do not believe that they have an avenue to complain because the discrimination is systemic, or they do not wish to complain for fear that the complaint will impact on their careers.

The *Rules of Professional Conduct* and *Paralegal Rules of Conduct* speak to the special responsibility of lawyers and paralegals to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate. The mandate of the Law Society to investigate complaints of systemic discrimination is not widely known and it is suggested that the Rules be clarified and a communication plan

⁸⁴ Ontario Human Rights Commission, *Racism and Racial Discrimination: Systemic Discrimination (fact sheet)*, online: <http://www.ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet>.

be developed to inform licensees that complaints of systemic discrimination can be made to the Law Society.

Providing Resources for the Profession

In addition to receiving complaints related to systemic discrimination, the Law Society could develop proactive institutional methods to address systemic discrimination, such as providing firms and legal organizations with best-practices, guides and model policies.

The Law Society could also require that firms have policies and procedures in place to address discrimination and harassment and could hold firms accountable for failure to establish and adhere to such policies and procedures.

The Law Society does not now directly regulate firms or legal organizations. In February 2014, however, Convocation approved the development of a proposed framework for the regulation of firms (also known as "entity regulation") for Convocation's consideration. This framework could be designed similar to the self-evaluation based approach that has proven successful in New South Wales. This potential change to the Law Society's regulatory approach could allow the Law Society to require firms to create and adhere to discrimination and harassment policies and procedures.

Addressing the Fear of Filing a Complaint

The fear of filing a complaint has been raised in the engagement process and currently, the right to complain to the Law Society through professional associations is not widely known. The Law Society may wish to work with affinity associations to enhance their capacity to file complaints of racial and/or ethnic discrimination. The ability to file a complaint through an association may reduce the risk of the complaint having a negative impact on a complainant's career. The Working Group would welcome additional suggestions on how to enhance policies and practices so that individuals may feel more comfortable coming to the Law Society with complaints of racial discrimination.

Because cases of racial and/or ethnic discrimination are often quite complex, it is suggested that a group of expert Professional Regulation staff members be appointed to handle such cases. This group of experts would attend extensive training programs on cultural competence and racial discrimination to make them sensitive to the nature of these cases and of the parties involved.

Providing Support through the Process

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. Those factors, such as the lack of resources, would likely be relevant once a licensee is in the regulatory process. As a result, the Working Group suggests that the Law Society could work with legal associations to strengthen their capacity to offer duty counsel type support to those who are the subject of complaints.

E. The Operations of the Law Society of Upper Canada

The Working Group discussed initiatives that could be implemented internally to address the engagement process results. The Working Group is considering recommending to Convocation the adoption of the following programs. The Working Group would welcome comments about these programs and other internal initiatives that could be considered by the Working Group.

Initiative 1: Enhance the Equity Compliance Program

The Law Society would enhance its Equity Compliance Program to include a request for demographic data when retaining vendors, firms or legal counsel to provide services.

Initiative 2: Conduct an Internal Equity Audit

The Law Society would strengthen its policies and programs by conducting an operational equity audit of its services offered to the profession.

Initiative 3: Internal Collection of Data

The Law Society would consider the internal collection of further data on issues relating to racialization in the regulatory process

Initiative 4: Develop a More Diverse Public Face/Image for the Law Society of Upper Canada

The Law Society would consider strategies to develop a more diverse and inclusive public image/face of the Law Society.

Background Discussion

Currently, as part of its RFP process, the Law Society requires vendors with more than 50 employees and firms with more than 50 lawyers to indicate that they comply with the *Human Rights Code*, the *Occupational Health and Safety Act (OHSA)*, as applicable, and the Law Society of Upper Canada's Harassment and Discrimination Prevention Policy.

The Law Society could strengthen the Equity Compliance Program requirements to include a request for demographic data to be considered during the selection process.

The Law Society of Upper Canada is also committed to ensuring that its policies, programs and practices are inclusive and accessible. In order to make certain that this is

the case, the Law Society could arrange for an outside party to conduct an operational equity audit of the services it provides to the profession. This audit would focus on the Law Society's direct services to the profession or the public. An equity audit would identify any challenges with, or progress in, integrating equity principles and practices into the Law Society's operations.

The Law Society could also examine whether additional or better data or other information should be collected internally relating to regulatory matters, including complaints and investigations, in terms of the incidence and impact of racialization.

A significant number of both racialized and non-racialized participants in the engagement process endorsed the suggestion that the Law Society develop a more diverse and inclusive public image/face. The Law Society could consider initiatives that would make its public image/face more diverse and inclusive. Input could be sought from the Equity Advisory Group, which is comprised of partner associations and individual members with expertise in matters related to equity and diversity. The Governance Issues Working Group could receive staff support and additional input from the Law Society's Equity Initiatives Department, Public Affairs Department and Communications Department.

CONCLUSION

The Law Society is committed to promoting a profession that is reflective of all peoples of Ontario and that is inclusive and free from discrimination and harassment. The engagement process identified a number of barriers that affect racialized licensees, across their careers.

The Working Group considered those barriers and the challenges faced as a result of discrimination, overt racism, cultural differences, lack of mentoring, sponsors, role models and networking opportunities and other systemic factors. As a result, it has identified a number of potential initiatives that could address some of those challenges.

The proposed initiatives are presented to the profession and your input is invited and most welcome.

We invite input on the paper as a whole and on any question raised. We also welcome proposals for solutions not identified in this paper.

Please submit written submissions before March 1, 2015 to:

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Appendix 1 - Racialization and Firm Size Based on Law Society Lawyer and Paralegal Data as of April 2014

Chart 1 - Sole Practitioners – In percentages

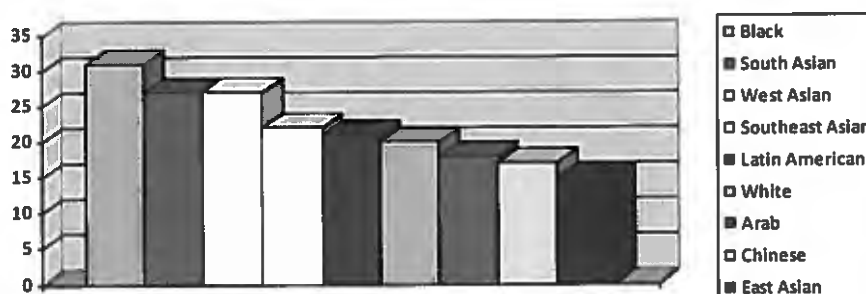


Chart 2 - By Firm Size – In percentages

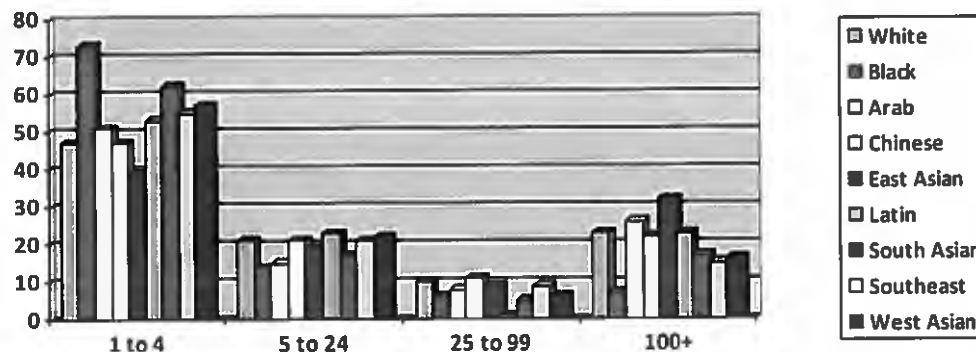


Chart 1 shows that Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice.

Chart 2 shows that Black and South Asian lawyers are proportionately more likely to be in small and sole practices while they are proportionately much less likely to be in medium and large firms.

Chart 2 is difficult to interpret because a number of different groups are compared. In order to assist, Chart 3 below shows the size of firms in which Black, White and South Asian lawyers practice.

Chart 3 - By Firm Size – In percentages

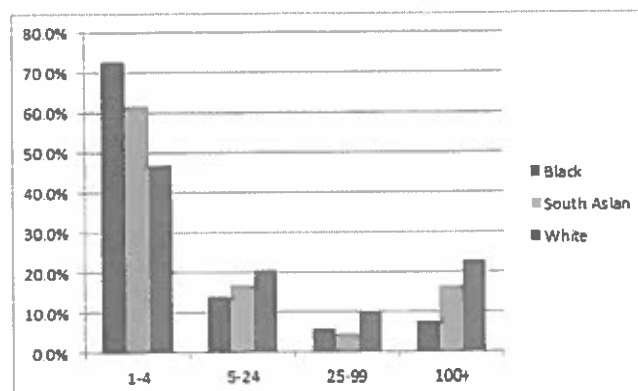


Chart 3 shows more clearly the differential practice patterns of Black, South Asia and White lawyers. Black lawyers, and to a lesser extent South Asian lawyers, disproportionately practise in the smallest firms. Relatively few Black lawyers practice in the largest firms, while the proportions of South Asian and White lawyers in the largest firms are not so different.

Appendix 2 – Questions for the Profession

Establishing Diversity Programs within Firms

Question 1: How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?

Question 2: What is the preferred model for the collection of firm demographic data and why?

Question 3: How could the Law Society work with in-house legal departments to develop model contract compliance programs for in-house legal departments that retain firms?

Mentoring and Advisory Services

Question 4: What are the preferred mentoring and/or advisory services models for racialized licensees?

Networking

Question 5: What are the preferred networking models for racialized licensees? Other models than those listed below are welcome.

Enhancing Cultural Competence in the Profession

Question 6: How could the Law Society enhance the profession's cultural competence through its CPD Programs?

Discrimination and the Role of the Complaints Process

Question 7: How should the Law Society best ensure that complaints of discrimination are brought to its attention and effectively addressed?

Appendix 3 – Challenges Faced by Racialized Licensees Working Group Engagement Chronology

DATE	ACTIVITY
August 2012	Convocation creates the Challenges Faced by Racialized Licensees Working Group
October 2012	Working Group approves Terms of Reference
October 2012 – January 2014	Working Group meets informally with organizations and individuals to obtain information on challenges and best practices
Early 2013	Working Group retains Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign to conduct a formal engagement with the profession, including key informant interviews, focus groups and a survey of the whole profession
Early 2013	The Equity Advisory Group creates a working group to provide feedback at various stages of the Challenges Faced by Racialized Licensees Working Group process
July 2013 – September 2013	Community Liaison process takes place
March 2014	Stratcom and Michael Charles provide the final formal engagement report to the Working Group
March 2014 – October 2014	The Working Group reviews the findings of the formal and informal engagement processes and consults with stakeholder organizations



The Law Society
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Haut-Canada


EXHIBIT 7

**Working Group Agenda & Materials, including
Consultation Plan, Communication Plan,
Treasurer's Letter Regarding Consultation Plan
and Bencher Speaking Notes
(November 12, 2014)**

This is Exhibit "7" 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
#G5305B



**Agenda and Materials
November 12, 2014
Benchers' Dining Room
3:30 to 5:30 p.m.**

**Conference number: Toronto 416-883-0133 or toll free: 1-877-385-4099
Participant Code: 3842751#**

Challenges Faced by Racialized Licensees Working Group

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

Purpose of Report: Discussion

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

**CHALLENGES FACED BY RACIALIZED LICENSEES WORKING
GROUP**

AGENDA

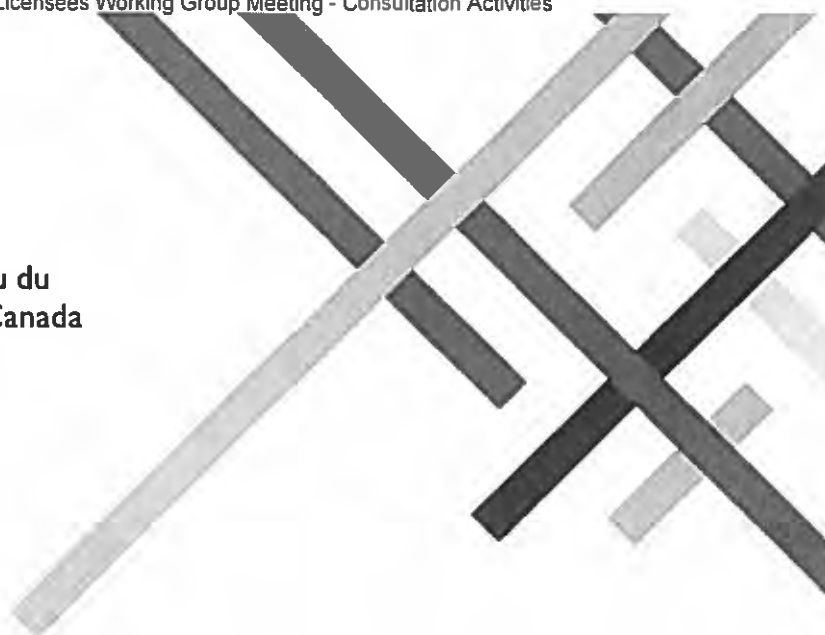
FOR DISCUSSION

Consultation Plan (for internal use only)	TAB 1
Consultation Activities	TAB 2
Communication Plan	TAB 3
Pro-active messaging to counter negative reaction to Consultation Paper	Verbal
Equity Audit (Lapper/Bouchard)	Verbal



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**Challenges Faced by Racialized Licensees Working Group
Consultation Activities**

For Internal Use Only

Updated November 3, 2014

CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP CONSULTATION

The Consultation Paper and the Consultation Methodology

1. Based on the findings of the informal and formal engagement process, the Challenges Faced by Racialized Licensees Working Group (RWG) drafted a Consultation Paper for the profession's feedback. In October 2014, the RWG also consulted with members of the Equity Advisory Group, the Community Liaisons, the Canadian Association of Black Lawyers (CABL), the Canadian Association of South Asian Lawyers (CASAL), the Federation of Asian Canadian Lawyers (FACL) and the South Asian Bar Association (SABA) and received very helpful and important feedback on the Consultation Paper and consultation methodology.
2. Based on the advice received, the RWG decided to consult lawyers, paralegals, academics, members of the judiciary and the public by using the following methodology:
 - a. Posting the Consultation Paper online and inviting written submissions from the profession, the judiciary, academia and the public;
 - b. Holding meetings where there is a strong representation of racialized licensees. It is anticipated that the meetings would be held in Toronto and surrounding areas such as Hamilton, Brampton, Mississauga, Scarborough, Markham and Oshawa. Some RWG members would also travel to Ottawa, Windsor, London and to Northern regions such as Thunder Bay and Sudbury.
 - c. Holding open house meetings in Toronto. Such meetings would be held at the Law Society and webcast. The proposed dates for the open houses are Thursday, January 15, 2014, 4:30 – 7:00 p.m. and Wednesday, February 25, 2014, 4:00- 6:00 p.m.
 - d. Meeting with associations such as the County and District Law Presidents' Association, the Ontario Bar Association, CABL, SABA, CASAL, FACL and the Arab Canadian Lawyers Association. Members of the judiciary and academia would also be included along with associations representing members of the public.
3. On October 27, 2014, the Consultation Paper was posted online in French and English at <http://www.lsuc.on.ca/racialized-licensees/>. The deadline for written submissions is March 1, 2015. Other relevant reports were also posted online: the Stratcom report, the scan and best-practices report, the Equity Advisory Group Submission, the Community Liaison report and the Informal Engagement report.

Promotional activities

4. On the week of November 3, 2014, the following email was sent from the Treasurer's office. The email will be followed by a hard copy of the Consultation Paper sent with a letter from the Treasurer.

Dear colleague,

Re: Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper - Invitation for Written Submissions

As part of its ongoing efforts to promote equity, diversity and inclusiveness in Ontario's legal profession, The Law Society of Upper Canada created the Challenges Faced by Racialized Licensees Working Group in 2012 to investigate the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages. The Working Group has gathered information through both informal and formal engagements with the profession by using a number of different methods, including a review of available data and a literature review, meetings with a number of individuals and organizations, community liaison meetings, input from the Law Society's Equity Advisory Group, key informant interviews, focus groups and a survey.

On October 30, 2014, the Working Group presented its Consultation Paper to Convocation. The Consultation Paper includes a series of questions for lawyers, paralegals, academics, members of the judiciary and the public to consider and comment upon. Additional ideas are also welcome.

The Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper is available online at www.lsuc.on.ca/racialized-licensees/. A hard copy of the Consultation Paper will also be sent to you by regular mail. We encourage you to review and provide written comments on the Consultation Paper and its questions. Consultation meetings will also be held in key cities during the fall 2014 and winter 2015.

We also encourage you to distribute the Paper to your colleagues, asking them to provide written comments. Written comments should be sent to the attention of Josée Bouchard, Director, Equity, and must be received no later than **March 1, 2015**:

Josée Bouchard, Director
Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6
jbouchar@lsuc.on.ca
Tel: 416-947-3984 or 1-800-668-7380 ext. 3984
Fax: 416-947-3983

Yours truly,

Janet E. Minor
Treasurer

Objet : Document de consultation Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face — Invitation à présenter des mémoires

Cher collègue,

Dans le cadre de son engagement continu à promouvoir l'équité, la diversité et l'inclusivité dans la profession juridique en Ontario, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012 pour étudier les défis auxquels font face les avocates, les avocats et les parajuristes racialisés, et envisager des stratégies pour améliorer l'inclusion à toutes les étapes de leur carrière. Le Groupe de travail a entrepris différentes activités, y compris un examen des données et de la documentation disponible à ce sujet, des rencontres informelles avec des particuliers et organismes, des échanges avec le groupe consultatif en matière d'équité du Barreau du Haut-Canada, des entrevues avec des informateurs clés, des groupes de discussion formés de titulaires de permis racialisés et non racialisés et un sondage mené auprès de la profession globale (avocats et parajuristes).

Le 30 octobre 2014, le groupe de travail a présenté son document de consultation au Conseil. Le document pose des questions auxquelles les avocats, les parajuristes, les universitaires, les membres de la magistrature et du public devraient réfléchir et sur lesquelles ils sont appelés à commenter. Les idées additionnelles sont les bienvenues.

Vous trouverez ci-joint une copie du document de consultation Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face. Vous recevrez également une copie imprimée de ce document par la poste. Nous vous encourageons à le lire et à nous envoyer des commentaires par écrit sur celui-ci et sur les questions qu'il soulève. De plus, le document se trouve en ligne à www.lsuc.on.ca/titulaires-racialises. Des rencontres de consultation seront tenues dans des villes clés au cours de l'automne 2014 et de l'hiver 2015.

Nous vous encourageons en outre à faire circuler le rapport auprès de vos collègues, et à leur demander d'envoyer leurs commentaires par écrit à l'attention de Josée Bouchard, directrice de l'équité. Tous les commentaires doivent être reçus au plus tard le 1^{er} mars 2015 :

*Josée Bouchard, directrice de l'équité
Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6
jbouchar@lsuc.on.ca
Tél. : 416 947-3984 ou 1 800 668-7380, poste 3984
Télécopieur : 416 947-3983*

Je vous prie d'agréer l'expression de mes sentiments respectueux.

La trésorière,

Janet E. Minor

5. The email was sent to:

Invités

African Canadian Legal Clinic

Arab Canadian Lawyers Association

ARCH Disability Law Clinic

Association of Chinese Canadian Lawyers of Ontario

Association of Corporate Counsel, Ontario Chapter

Association des juristes d'expression française

Association of the Law Officers of the Crown

Black Female Lawyers Network

Canadian Association of Black Lawyers

Canadian Association of South Asian Lawyers

Canadian Corporate Counsel Association

Canadian Italian Advocates Association

Centre for Spanish-Speaking Peoples

Canadian Bar Association

- **Access to Justice Committee**

Invitees

- Equality Committee

Chief Justices

- The Honourable George R. Strathy, Chief Justice of Ontario
- The Honourable Heather Forster Smith, Chief Justice of the Superior Court of Justice
- The Honourable Annemarie E. Bonkalo, Chief Justice of the Ontario Court of Justice
- Human Rights Tribunal???

County & District Law Presidents' Association

Criminal Lawyers' Association

Department of Justice representative

Family Lawyers' Association

Federation of Asian Canadian Lawyers

Hellenic Canadian Lawyers Association

Hispanic Ontario Lawyers Association

Indigenous Bar Association

International Trained Lawyers Program – University of Toronto

Iranian Canadian Lawyers Association

Iranian Legal Professionals of Ontario

Justicia Project firm representatives

Korean Canadian Lawyers Association

Invitees
Law Firm Diversity and Inclusion Network
Law School Deans
<ul style="list-style-type: none"> • Dean Lee Stuesser, Lakehead University • Dean Nathalie DesRosiers, Common Law, University of Ottawa • Doyenne Céline Lévesque, Droit Civil, Université d'Ottawa • Dean William Flanagan, Queen's University • Interim Dean Jutta Brunnee, University of Toronto • Dean Iain Scott, University of Western Ontario • Dean Camille Cameron, University of Windsor • Dean Lorne Sossin, Osgoode Hall Law School
Law Students Society of Ontario
Legal Leaders for Diversity and Inclusion
Macedonian Canadian Lawyers Association
Managing Partners
Metro Toronto Chinese and Southeast Asian Legal Clinic
Ministry of the Attorney General representative
NALP Canada
Ontario Bar Association <ul style="list-style-type: none"> • President and Executive Director • Access to Justice Committee • Equality Committee • Sexual Orientation and Gender Identity Committee
Ontario Crown Attorneys' Association
Ontario Human Rights Commission
Ontario Paralegal Association

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Invitees
Ontario Paralegal Network
Pro Bono Law Ontario
Public Prosecution Service of Canada
Toronto Lawyers Association Round Table of Diversity Associations (RODA)
South Asian Bar Association
South Asian Legal Clinic of Ontario
South West Region Women's Law Association
The Advocates' Society
Toronto Lawyers' Association
Urban Alliance on Race Relations
Women's Law Association of Ontario
Women's Paralegal Association of Ontario
Young Women in Law

6. The following email was sent to presidents of regional associations. A hard copy of the Consultation Paper and covering letter from the Treasurer will follow.

Dear colleague,

Re: Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Process - Meeting

As part of its ongoing efforts to promote equity, diversity and inclusiveness in Ontario's legal profession, The Law Society of Upper Canada created the Challenges Faced by Racialized Licensees Working Group in 2012 to investigate the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages. The Working Group has gathered information through both informal and formal engagements with the profession by using a number of different methods, including a review of available data and a literature review, meetings with a number of individuals and organizations, community liaison meetings, input from the Law Society's Equity Advisory Group, key informant interviews, focus groups and a survey.

On October 30, 2014, the Working Group presented its Consultation Paper to Convocation. The consultation paper includes a series of questions for lawyers, paralegals, academics, members of the judiciary and the public to consider and comment upon. As part of the consultation process, the Working Group would like to schedule meetings across the province with members of the profession from November 2014 to the end of February 2015. The Working Group would like to schedule an open house in your region and would appreciate your association's assistance with organizing the meeting. At your earliest convenience, please contact Josée Bouchard, Director, Equity, at jbouchar@lsuc.on.ca, 416-947-3984 or 1-800-668-7380 ext. 3984 to advise her as to who to contact to begin planning the open house meeting.

*The Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper is available online at www.lsuc.on.ca/racialized-licensees/. A hard copy of the Consultation Paper will also be sent to you by regular mail. We encourage you to distribute the Paper to your colleagues. Written comments are welcome and should be sent to the attention of Josée Bouchard, Director of Equity, and must be received no later than **March 1, 2015**.*

*Josée Bouchard, Director
Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6
jbouchar@lsuc.on.ca
Tel: 416-947-3984 or 1-800-668-7380 ext. 3984*

Fax: 416-947-3983

Yours truly,

Janet E. Minor
Treasurer

Objet : Document de consultation Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face — rencontre

Cher collègue,

Dans le cadre de son engagement continu à promouvoir l'équité, la diversité et l'inclusivité dans la profession juridique en Ontario, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012 pour étudier les défis auxquels font face les avocates, les avocats et les parajuristes racialisés, et envisager des stratégies pour améliorer l'inclusion à toutes les étapes de leur carrière. Le Groupe de travail a entrepris différentes activités, y compris un examen des données et de la documentation disponible à ce sujet, des rencontres informelles avec des particuliers et organismes, des échanges avec le groupe consultatif en matière d'équité du Barreau du Haut-Canada, des entrevues avec des informateurs clés, des groupes de discussion formés de titulaires de permis racialisés et non racialisés et un sondage mené auprès de la profession globale (avocats et parajuristes).

Le Barreau a mené une mobilisation officielle et informelle auprès de la profession juridique pour reconnaître les difficultés et les pratiques exemplaires dans la profession juridique.

Le 30 octobre 2014, le groupe de travail a présenté son document de consultation au Conseil. Le document pose des questions auxquelles les avocats, les parajuristes, les universitaires, les membres de la magistrature et du public devraient réfléchir et sur lesquelles ils sont appelés à commenter. Le groupe de travail aimerait organiser une rencontre dans votre région pour connaître les idées de vos collègues sur les questions soulevées dans le rapport et pour discuter d'autres stratégies possibles de changement. Un employé du Barreau vous contactera sous peu pour planifier une rencontre. Si vous avez des questions, veuillez communiquer avec Josée Bouchard, directrice de l'équité, à jbouchar@lsuc.on.ca, au 416 947-3984 ou au 1 800 668-7380, poste 3984.

Vous trouverez ci-joint une copie du document de consultation Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face. Nous vous encourageons en outre à faire circuler le rapport auprès de vos collègues. Le document se

trouve également en ligne à www.lsuc.on.ca/titulaires-racialises. Les idées additionnelles sont les bienvenues et devraient parvenir à Josée Bouchard, directrice de l'équité, au plus tard le 1^{er} mars 2015 :

Josée Bouchard, directrice de l'équité
 Barreau du Haut-Canada
 Osgoode Hall
 130, rue Queen Ouest
 Toronto (Ontario)
 M5H 2N6
jbouchar@lsuc.on.ca
 Tél. : 416 947-3984 ou 1 800 668-7380, poste 3984
 Télécopieur : 416 947-3983

Je vous prie d'agréer l'expression de mes sentiments respectueux.

La présidente,

Janet Leiper

Groupe de travail sur les défis des titulaires de permis racialisés

7. The following will be contacted to assist with coordinating regional open houses:

List of Local Law Presidents

Location	Law Association	Contact	Law Librarians	Regional Benchers	Date
Brampton	Peel Law Association	RAE WHITE, President 133 –425 Britannia Road East MISSISSAUGA, ON, L4Z 3E7 Phone: 905-507-1078 Fax: 905-507- 3349 Email: rae@raewhitelaw.com	Ms. Melissa Firth Peel County Law Grenville & William Davis Courthouse 7755 Hurontario Street Suite 160 Brampton Ontario L6W 4T1	Robert Burd	TBD
Hamilton	Hamilton Law Association	JOHN O. KRAWCHENKO, President 175 Hunter Street East,	Ms. Mary Jane Kearns-Padgett Reference Librarian	James Scarfone Joseph	TBD

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

		Suite 111 HAMILTON, ON, L8N 4E7 Phone: 905-546-0525 Fax : 905-546-0596 Email : jok@krawchenkowlaw.com	Hamilton County Law Library 45 Main Street East, suite 500 Hamilton Ontario L8N 2B7	Sullivan Michelle Haig (Burlington) James Scarfone (Ancaster) Gerald Swaye Roger Yachetti Michael Lerner	
London	Middlesex Law Association	LIANNE ARMSTRONG, President 85 Dufferin Avenue LONDON, ON, N6A 1K3 Phone: 519-640-6320 Fax: 519-932-3320 Email : larmstrong@lerner.ca	Ms. Gail Brown Law Librarian Middlesex Law library Court House 80 Dundas St Gound Floor, Unit N London Ontario N6A 6A1	Judith Potter Jan Richardson	TBD
Markham	York Law Association	VALERIE BROWN, President 21 – 1228 Gorham Street NEWMARKET, ON, L3Y 8Z1 Phone: 905-853-2529 Fax : 905-853-3529 Email : brown@brownlawfirm.ca	Ms. Betty Dykstra Library Technician York District Law Library Newmarket Courthouse 50 Eagle Street West, 3rd Floor Newmarket Ontario L3Y 6B1	Alan Silverstein (Thornhill)	TBD
Mississa uga	Peel Law Association	RAE WHITE, President 133 –425 Britannia Road East MISSISSAUGA, ON, L4Z 3E7 Phone: 905-507-1078 Fax: 905-507- 3349 Email: rae@raewhitelaw.com	Ms. Melissa Firth Librarian/Administrator Peel County Law Library Grenville & William Davis Courthouse 7755 Hurontario Street Suite 160 Brampton Ontario L6W 4T1	Cathy Corsetti Jennifer Halajian (Newmarket) Brian Lawrie Marian Lippa (Newmarket) Baljit Sikand	TBD
Oshawa	Durham Law	DEBORAH HASTINGS, President	Ms. Monica Schjott Library Assistant Durham Region Law		TBD

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

	Association	Unit 3512, Oshawa Centre, 419 King Street West OSHAWA, ON, L1J 2K1 Phone: 905-728-7321 Fax: 905-668-4752 Email : HastinD@lao.on.ca	Library Law Library, Court House 150 Bond Street East Oshawa Ontario L1G 0A2		
Ottawa	County of Carleton Law Association	JENNIFER BIRRELL, President 707 Bank Street OTTAWA, ON, K1S 3V1 Phone: 613-563-7660 x. 261 Fax : 613-563-8001 Email : jbirrell@ehlaw.ca	Ms. Jennifer Walker Head Librarian Carleton County Law Library Ottawa Courthouse, Law Library 161 Elgin Street, Room 2004 Ottawa Ontario K2P 2K1	Professor Backhouse Adriana Doyle Susan Richer Professor Krishna Thomas Conway Abraham Feinstein Brad Wright	TBD
Scarborough	Toronto Lawyers' Association	JOSEPH NEUBERGER, President 1392 Eglinton Avenue West TORONTO, ON, M6C 2E4 Phone: 416-364-3111 Fax: 416-364-3271 Email : joseph@nrlawyers.com	TBD		TBD
Sudbury	Sudbury Law Association	ALEX KURKE, President Crown Attorney's Office, 155 Elm Street SUDBURY, ON, P3C 1T9 Phone: 705-564-7698 Fax : 705-564-7690 Email : alexander.kurke@ontario.ca	Ms. Nina Nasedkin Library Technician Sudbury District Law Library 155 Elm Street West Sudbury Ontario P3T 1T9	Jack Braithwaite Carol Hartman	TBD

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Thunder Bay	Thunder Bay Law Association	GORDON FILLMORE, President 125 Brodie St. North THUNDER BAY, ON P7C 0A3 Phone: 807-626-7155 x. 6047 Fax: 807-626-7199 Email : gordon.fillmore@ontario.ca	TBD	Larry Eustace Nicholas Pustina Ross Murray	TBD
Windsor	Essex Law Association	JEFFREY NANSON, President 251 Goyeau Street, Suite 500 WINDSOR, ON, N9A 6V2 Phone: 519-258-0615 Fax: 519-258-6833 Email jnanson@mousseaulaw.com	Mr. Douglas Hewit Law Librarian Essex County Law District 245 Windsow Avenue Windsor, Ontario N9A 1J2	Jacqueline Horvat Catherine Strosberg Harvey Strosberg	TBD

8. The attached OR advertisement was submitted in French and English for publication in mid-November. A second OR advertisement will be published at the end of November. Other OR advertisements will continue to be published, including a list of additional open house and meeting dates.

Meetings held to date

9. On October 29, 2014, Bencher Raj Anand made a presentation about the Consultation Paper to approximately 100 students and 10 professors at the University of Ottawa, English Common Law Section.
10. On October 31, 2014, Bencher Julian Falconer and Bencher Howard Goldblatt presented the Consultation Paper at the Canadian Association of Black Lawyers annual conference. There were approximately 70 participants.
11. On November 3, 2014, the Consultation Paper was presented at the Treasurer Liaison Group meeting. The following organizations were in attendance:

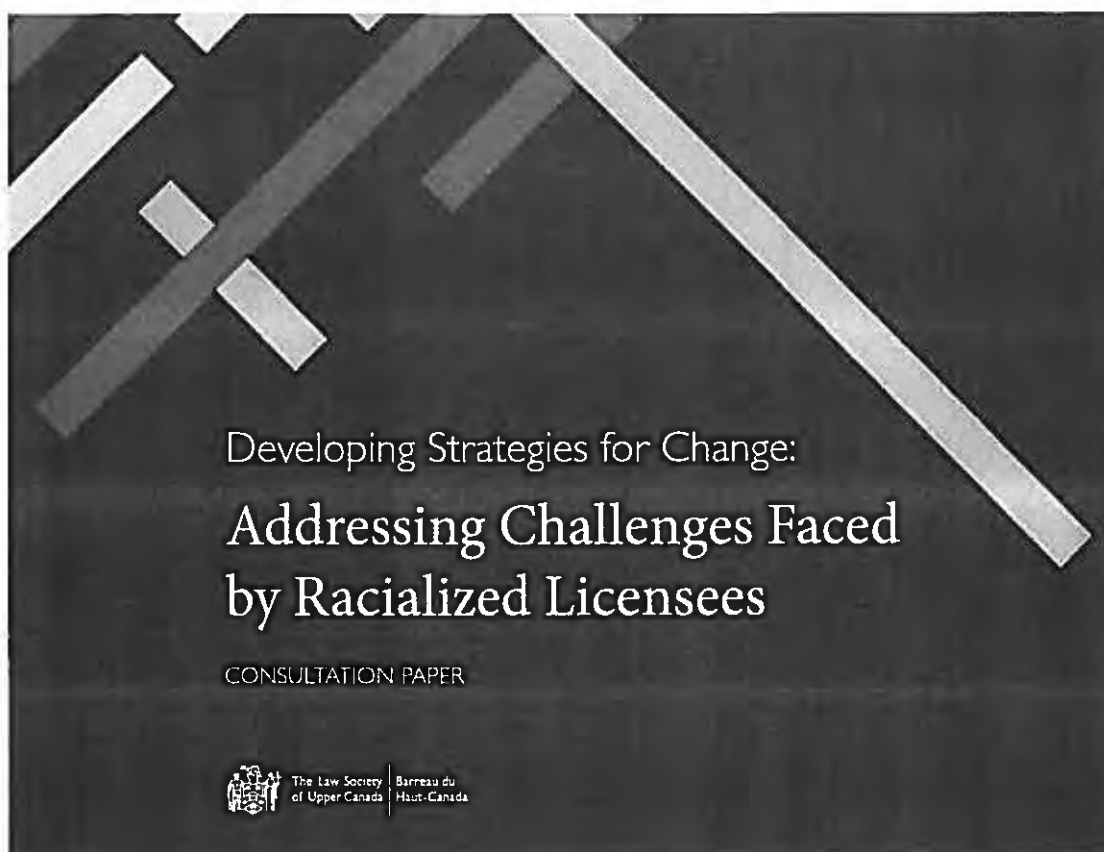
Association of Corporate Counsel, President Ontario Chapter
 Association of the Law Officers of the Crown
 Canadian Association of Black Lawyers
 Canadian Corporate Counsel Association
 County and District Law Presidents' Association
 Criminal Lawyers' Association
 Federation of Asian Canadian Lawyers
 Law Students Society of Ontario
 Ontario Bar Association
 Ontario Paralegal Association
 The Advocates' Society
 Toronto Lawyers' Association
 Women's Law Association of Ontario

12. It is anticipated that the Consultation Paper will be presented on November 13, 2014, at the CDLPA plenary.
13. It is also anticipated that the Consultation Paper will be introduced on November 19, 2014, during the New Paralegal Reception.
14. On December 3, 2014, Josée Bouchard, Director, Equity, is expected to make a presentation in French to the French Common Law Program of the University of Ottawa about the Consultation Paper and other diversity matters.

Developed resources

15. The attached power point presentation along with attached Fact Sheet were developed for the open houses and meetings in this project.

Challenges Faced by Racialized Licensees Working Group Meeting – Consultation Activities



Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

"We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their color."

-Maya Angelou



Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Overview

- Terminology
- Terms of Reference
- Engagement Process
- Questions for the Profession
- Consultation Process



3

Terminology

- For the purpose of this project, the term racialized is used
- Racialized means race as the process by which groups are socially constructed
- They relate to self-identification related to race that includes Arab, Black, Chinese, East-Asian, South-East Asian, West-Asians

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Terms of Reference

Challenges Faced by Racialized Licensees Working Group is mandated to,

- identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement
- identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline

Continued next slide



5

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Terms of Reference (Cont.)

Challenges Faced by Racialized Licensees Working Group is mandated to,

- consider best practices for preventive, remedial and/or support strategies
- if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees as appropriate



6

Engagement Process

Informal engagement	Formal engagement – Strategic Communications and Michael Charles	Ongoing research
Community Liaison Process	Key informant interviews	Consider available information about regulatory process (Ongoing research)
Informal meetings with individual and organizational partners	Focus groups	
Input from Equity Advisory Group	Survey	

Outcome

- The engagement process revealed a number of challenges faced by racialized lawyers and paralegals
- The process also identified best-practices
- As a result, Convocation approved a broad consultation
- The Law Society released a Consultation Paper, available online, which includes questions on a number of topics



Questions for the Profession

- Enhancing the internal capacity of organizations
 - Diversity programs within firms
 - Collecting demographic data
 - Contract compliance
- Mentoring, advisory services and networking
- Enhancing cultural competence in the profession through CPD
- Effectively addressing complaints of discrimination
 - Resources for the profession
 - Addressing fear of filing a complaint
 - Providing support through the process



Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Law Society Operations

- Enhancing the equity compliance program
- Conducting an internal equity audit
- Internal collection of data
- Developing a more diverse public face/image



10

Consultation Process

- Consultation Paper posted online - October 30, 2014
- Written submissions – deadline March 1, 2015
- Meetings with profession and public between November 1, 2014 and end of February 2015

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities

Consultation Process

- Meetings held in areas such as,

- Toronto
- Hamilton
- Brampton
- Mississauga
- Scarborough
- Markham
- Oshawa
- Ottawa
- Windsor
- London
- Thunder Bay
- Sudbury



12

Consultation Process

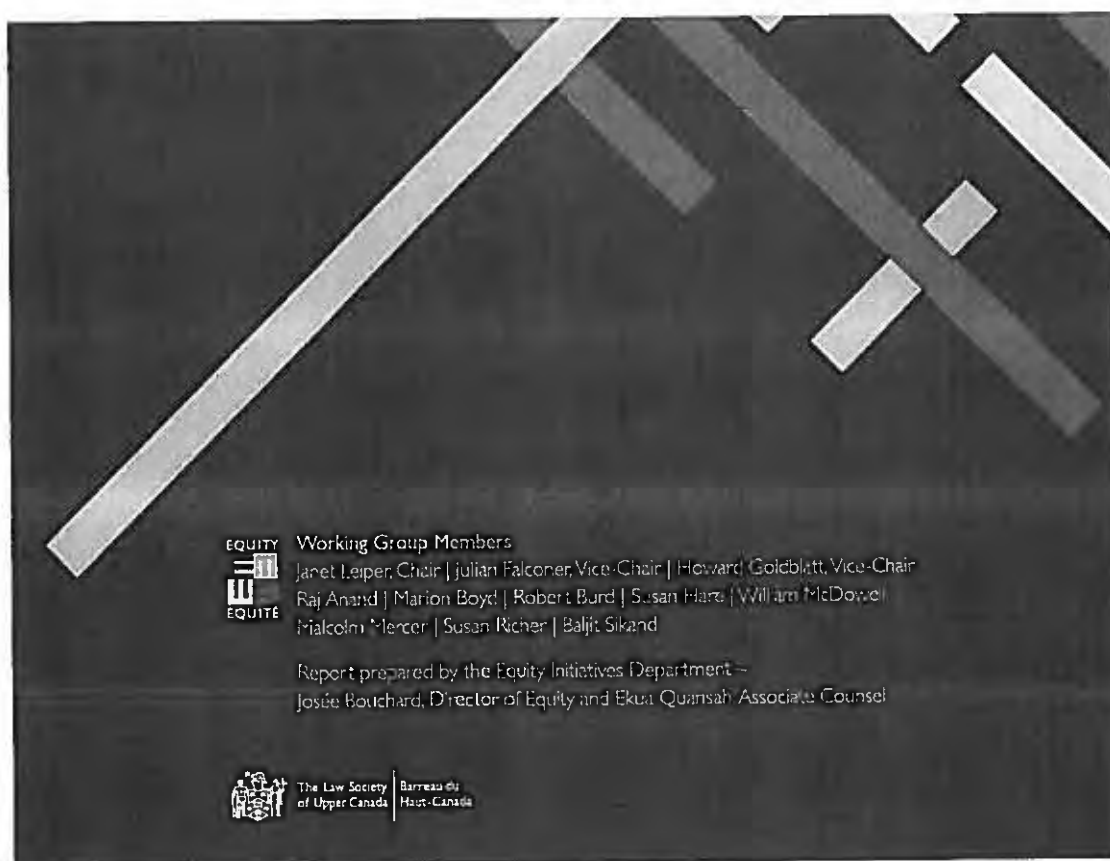
- Open house meetings in Toronto with webcast
- Meet with associations such as,
 - CDLPA
 - Ontario Paralegal Association
 - Ontario Paralegal Network
 - OBA
 - CABL
 - SABA
 - CASAL
 - FACL
 - Arab Canadian Lawyers Association



Consultation Process

- Also included in meetings,
 - Judiciary
 - Academia
 - Legal clinics
 - Members of the public
- Encourage participation of regional benchers

Challenges Faced by Racialized Licensees Working Group Meeting - Consultation Activities



15

Développer des stratégies de changement : Éliminer les difficultés auxquelles les titulaires de permis racialisés font face

Dans le cadre de son engagement continu à promouvoir l'équité, la diversité et l'inclusivité dans la profession juridique en Ontario, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012 pour étudier les défis auxquels font face les avocats et les parajuristes racialisés, et discuter de stratégies d'inclusion dans leur carrière.

Après avoir mené des processus de mobilisation officiels et informels, le groupe de travail a préparé le document de consultation, *Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face*, approuvé par le Conseil le 30 octobre 2014 pour distribution et pour consultation.

Le document pose des questions que les membres des professions devraient commenter. Les idées additionnelles sont les bienvenues. Les mémoires devraient être présentés au Barreau au plus tard le 1^{er} mars 2015, à :

Josée Bouchard, directrice de l'équité
Barreau du Haut-Canada
Osgoode Hall, 130, rue Queen Ouest
Toronto ON M5H 2N6
jbouchar@lsuc.on.ca
Tél. : 416 947-3984
1 800 668-7380, poste 3984

Des consultations auront lieu dans certaines villes à l'automne 2014 et à l'hiver 2015.

Les commentaires reçus pendant le processus aideront les groupes de travail à déterminer les mesures à prendre, et à proposer des recommandations au Conseil.

Voici quelques points clés du document de consultation :

- Bien que la profession juridique de l'Ontario connaisse une augmentation régulière du nombre de titulaires de permis racialisés depuis 20 ans, ces membres continuent d'avoir de nombreuses difficultés distinctes de celles de leurs pairs non racialisés.
- La discrimination est une réalité quotidienne pour de nombreux titulaires de permis racialisés.
- La racialisation est un facteur constant et persistant qui touche les titulaires de permis à leur début dans la profession et lors des possibilités d'avancement professionnel, et qui influence leurs choix et leurs carrières.

- Quarante pour cent des titulaires racialisés ont déclaré que leur appartenance ethnique/identité raciale était un obstacle à l'exercice de leur profession, contre seulement 3 % des titulaires non racialisés. Les titulaires racialisés les plus susceptibles de mentionner la race ou l'ethnicité comme obstacle à l'entrée dans la profession étaient les Asiatiques du Sud-Est, les Noirs, les Arabes, les Sud-Asiatiques, les personnes dont la langue maternelle n'est pas le français ou l'anglais, les femmes et les personnes nées à l'extérieur du Canada.
- Pour de nombreuses femmes racialisées, l'expérience des préjugés sexistes est aggravée par leur statut racial.
- De nombreux titulaires de permis racialisés ont besoin d'un solide réseau de professionnels juridiques, de mentors ou de parraineurs qui puissent leur fournir des conseils et un soutien dans leur lieu de travail, et ce manque peut poser un obstacle durant leur carrière.
- Près de la moitié des répondants racialisés au sondage ont déclaré que l'on avait des attentes plus grandes à leur endroit en raison de stéréotypes raciaux. Les groupes qui ont mentionné ce facteur plus souvent que la moyenne comprenaient les répondants noirs, chinois, asiatiques du Sud-Est, arabes et sud asiatiques.
- Les répondants racialisés et non racialisés au sondage ont classé le manque de mentors et de réseaux professionnels ainsi que les stéréotypes raciaux des clients au sommet de la liste des facteurs qui peuvent augmenter les risques de plaintes envers les titulaires racialisés.
- Les avocats formés à l'étranger peuvent faire face à une combinaison d'inconvénients, comme de faibles possibilités de réseautage professionnel, des difficultés linguistiques, une culture différente de celle de leurs collègues, un manque de possibilités lors de la transition entre l'école de droit et un premier poste professionnel en Ontario, et un manque de mentors et de relations.
- Les parajuristes racialisés semblent avoir plus de difficultés sur le marché du travail que les avocats racialisés.

Pour plus de renseignements, consultez la page
www.lsuc.on.ca/titulaires-racialises



The Law Society
of Upper Canada

Barreau du
Haut-Canada



Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees

As part of its ongoing efforts to promote equity, diversity and inclusiveness in Ontario's legal profession, The Law Society of Upper Canada created the Challenges Faced by Racialized Licensees Working Group in 2012 to investigate the challenges faced by racialized lawyers and paralegals and to consider strategies for enhanced inclusion at all career stages.

After completing informal and formal engagement processes, the Working Group prepared the consultation paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, which Convocation approved on October 30, 2014 for dissemination to the professions and the public — and for further consultation.

The consultation paper includes a series of questions for the professions to consider and comment upon. Additional ideas are also welcome. Written submissions should be submitted to the Law Society by **March 1, 2015** to:

Josée Bouchard, Director, Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall, 130 Queen St. West
Toronto, ON M5H 2N6
jbouchar@lsuc.on.ca
Tel. 416-947-3984
1-800-668-7380, ext. 3984

Consultation meetings will also be held in key cities during fall 2014 and winter 2015.

Input received during the consultation process will help the Working Group determine its next steps, as well as its final recommendations to Convocation.

Following are some key issues and findings from the consultation paper:

- Although Ontario's legal profession has seen a steady increase in the number of racialized licensees in the last 20 years, these members continue to face challenges — many of which are distinct from the challenges faced by their non-racialized peers.
- Discrimination is a feature of daily life for many racialized licensees.
- Racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. It is also a significant factor in shaping choices and career outcomes of racialized licensees.
- Forty percent of racialized licensees identified their ethnic/racial identity as a barrier to entry into practice, while only three per cent of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees who are most likely to cite race/ethnicity as a barrier to entry included: South East Asian, Black, Arab, and South Asian; those having a first language other than French/English; women; and those born outside Canada.
- For many racialized women, the experience of gender bias is compounded as a consequence of their racial status.
- Many racialized licensees lack a strong network of legal professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace, and this can remain a barrier throughout their careers.
- Almost half of the survey participants said they had been expected to perform to a higher standard than others, due to racial stereotyping. Ethno-racial groups that named this factor more frequently than average included: Black, Chinese, South East Asian, Arab, and South Asian respondents.
- Racialized and non-racialized survey participants placed lack of mentors and professional networks and racial stereotyping by clients at the top of the list of factors that may increase the risk of complaints against racialized licensees.
- Internationally trained lawyers often face a combination of disadvantages, such as few professional network opportunities; language challenges; a different culture than their colleagues; lack of critical transition from law school to a first professional position in Ontario; and lack of mentors and contacts.
- Racialized paralegals appear to face greater challenges in the job market than racialized lawyers.

More information is available at www.lsuc.on.ca/racialized-licensees



The Law Society
of Upper Canada

Barreau du
Haut-Canada



Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees

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jbouchar@lsuc.on.ca
Tel. 416-947-3984
1-800-668-7380, ext. 3984

Consultation meetings will also be held in key cities during fall 2014 and winter 2015.

Date	Location	Time
January 15	Donald Lamont Learning Centre Osgoode Hall, Toronto (also available via simultaneous webcast)	4:30 – 6:30 p.m.

Additional dates will be posted online at
www.lsuc.on.ca/racialized-licensees

Input received during the consultation process will help the Working Group determine its next steps, as well as its final recommendations to Convocation.

Développer des stratégies de changement : Éliminer les difficultés auxquelles les titulaires de permis racialisés font face

Dans le cadre de son engagement continu à promouvoir l'équité, la diversité et l'inclusivité dans les professions juridiques en Ontario, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012 pour étudier les défis auxquels font face les avocats et les parajuristes racialisés, et envisager des stratégies d'inclusion dans leur carrière.

Après avoir mené des processus de mobilisation officiels et informels, le groupe de travail a préparé le document de consultation, *Développer des stratégies de changement : éliminer les difficultés auxquelles les titulaires de permis racialisés font face*, approuvé par le Conseil le 30 octobre 2014 pour distribution et pour consultation.

Le document pose des questions que les membres des professions devraient commenter. Les idées additionnelles sont les bienvenues. Les mémoires devraient être présentés au Barreau au plus tard le **1^{er} mars 2015**, à :

Josée Bouchard, directrice de l'équité
Barreau du Haut-Canada
Osgoode Hall, 130, rue Queen Ouest
Toronto ON M5H 2N6
jbouchar@lsuc.on.ca
Tél. : 416 947-3984
1 800 668-7380, poste 3984

Des consultations auront lieu dans certaines villes durant l'automne 2014 et l'hiver 2015.

Date	Lieu	Heure
15 janvier	Centre Donald Lamont Osgoode Hall, Toronto (également disponible par webémission simultanée)	16 h 30 – 18 h 30

D'autres dates seront affichées en ligne à
www.lsuc.on.ca/titulaires-racialises

Les commentaires reçus pendant le processus de consultation aideront le groupe de travail à déterminer les prochaines étapes à suivre, ainsi que les recommandations finales qu'il soumettra au Conseil.

Communications Plan

Racialized Licensees – Updated September 30, 2014

Issue

As part of its ongoing efforts to promote equity, diversity and inclusiveness in Ontario's legal profession, the Law Society created the Challenges Faced by Racialized Licensees Working Group in 2012. The Working Group has investigated the challenges faced by racialized lawyers and paralegals and is considering strategies for enhanced inclusion at all career stages.

In October, the Working Group is presenting its Consultation Paper to Convocation.

Beginning in October 2012, the Working Group undertook a broad-based study which included reviewing available data and literature, meeting with individuals and organizations, and co-ordinating focus groups led by prominent legal professionals.

In 2013, the group launched a formal engagement process which included key informant interviews, focus groups and a survey of the profession as a whole.

The consultation paper contains a summary of its findings and a series of detailed questions for consideration, discussion and input.

Following Convocation's approval on October 30, the paper will be posted online and the profession and public will be invited to make written submissions. The Working Group will also hold a series of public consultation meetings during the fall and winter. The goal is to consult both the profession and the public in considering these questions.

Input received during the consultation will help the Working Group determine its next steps, as well as its final recommendations to Convocation.

Communications Goals

- Make the legal profession and stakeholders aware of the findings of the consultation paper and encourage open dialogue and input via written submissions and attendance at scheduled consultation sessions this fall and winter.
 - Control the conversation by providing key information from the paper in a way that will not be subject to misinterpretation.
-

- Reinforce the Law Society's commitment to promoting equity, diversity and inclusiveness in Ontario's legal profession to ensure that it is reflective of the people it serves – and position the paper and consultation as part of that ongoing commitment.
- Educate the profession about the need for ongoing research and data collection regarding racialized licensees and the need to focus on improving opportunities for racialized licensees.

Key Messages - All Audiences

- Although Ontario's legal profession has seen a steady increase in the number of racialized licensees in the last 20 years, these members continue to face challenges and many of these challenges are distinct from those faced by their non-racialized peers.
- By studying and addressing the realities faced by racialized licensees, the Law Society is leading the way for systemic change that will help the legal profession better reflect the diverse public it serves.
- The Law Society welcomes the comprehensive data to substantiate the statistical data, research results and anecdotal evidence we've received over the years. We are taking the findings very seriously and that is why we have developed several questions for further discussion and input.
- Report findings can be best addressed through programs focused on improving opportunities available to racialized licensees.
- Racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. It is also a significant factor in shaping choices and career outcomes of racialized licensees.
- Racialized and non-racialized survey participants placed a lack of mentors and professional networks and racial stereotyping by clients at the top of the list of factors that may increase the risk of complaints against racialized licensees.
- As part of its efforts to enable equity and diversity in the workplace and the profession and to help stop discrimination and harassment, the Law Society provides a Discrimination and Harassment Counsel (DHC) service free-of-charge to the Ontario public, lawyers and paralegals. The Law Society's Equity Initiatives Department also provides CPD programs, public education events, as well as various services, model policies, reports and publications to assist Ontario's legal professions.
- Report findings show that racialized paralegals appear to face greater challenges in the job market than racialized lawyers.

- The Law Society is conducting an internal operational audit of its equity initiatives in 2015, to focus on its own services to the profession and the public.

General Communications Tactics

- Media Q & A / Talking Points – Designated Law Society spokespeople for media interviews: Treasurer Janet Minor, Chair Janet Leiper, Howard Goldblatt and Julian Falconer.
- New website page and navigation in the Initiatives and Consultations sections to house the report, supporting materials, news releases and submissions
- News release(s) – following Convocation
- Ads in ORs, paralegal and lawyer bulletins and legal trade publications – announcing invitation for submissions & advertising engagement sessions in key cities (ebcasts also to advise on consultation schedule)
- Social media – Twitter and Facebook / LinkedIn posts – also discuss possibility of 'live chats' to counter any misinformation.
- Respond to media inquiries - consider brief news conference following final report.
- Identify and confirm key external partners from racialized communities to work with and assume a public, collaborative role in the rollout of the consultation (via news releases, public events, etc.) EAG, FACL, CABL, SABA or CASAL reps.

Schedule for Activities & Strategies

2014 & 2015 Dates	Activities
October	<ul style="list-style-type: none"> • Fine tune report as per input from committees • Share high-level overview summary with key stakeholders
October 1	<ul style="list-style-type: none"> • Meet with EAG, CABL, SABA, FACL and CASAL reps to discuss
Mid-October	<ul style="list-style-type: none"> • Report and messaging finalized at Racialized Working Group Meeting
Oct. 30	<ul style="list-style-type: none"> • Working Group Report to Convocation <p>Following Convocation's approval:</p> <ul style="list-style-type: none"> • Send out News release • Web page to go live with consultation paper • Item in Convocation News & Paralegal Update • Post via social media

Challenges Faced by Racialized Licensees Working Group Meeting - Communication Plan

Oct - Dec	<ul style="list-style-type: none"> • Series of ongoing OR and other ads/eblasts announcing consultation report, inviting written submissions & posting consultation schedule (public meetings) in Toronto (2 - webcast), Hamilton, Brampton, Mississauga, Oshawa, Ottawa, Windsor and London (Dates all TBD) • Field and arrange media interviews as required
Winter	<ul style="list-style-type: none"> • Consultation via public meetings continue – promoted via OR ads, eblasts and web postings – Dates TBD • Field media inquiries, arrange media interviews as required
Spring or September 2015 (TBD)	<ul style="list-style-type: none"> • Report on consultation to Convocation – Date to be confirmed • News release • Web page post • Arrange news conference & media interviews • Item in Convocation News • Field ongoing media inquiries

Background

Ontario's legal profession has seen a steady increase of racialized lawyers in the last two decades. The Law Society's statistics show that by 2010, 17 per cent of the lawyer population (9.2 per cent in 2001) was racialized and 28 per cent of the paralegal population was racialized.

Despite this increase, racialized lawyers still face challenges in the practice of law and very little is known about the challenges faced by racialized paralegals.

The Law Society provides a Discrimination and Harassment Counsel (DHC) service as part of its efforts to enable equity and diversity in the workplace and the profession and to help stop discrimination and harassment. The Law Society's Equity Initiatives Department also provides CPD programs, public education events, as well as various services, model policies, reports and publications to assist Ontario's legal professions.

The Equity Committee decided in 2010 that the challenges faced by racialized licensees should be studied in more detail.

The Challenges Faced by Racialized Licensees Working Group was created by Convocation in August 2012 and is mandated to:

- identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement
- identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline
- consider best practices for preventive, remedial and/or support strategies
- if appropriate, design and develop preventive, remedial, enforcement and/or support strategies for consideration by the Equity and other committees.

The Working Group held informal engagements with various stakeholder groups and researched literature on best practices for creating an inclusive profession. Valuable input was also provided by the Equity Advisory Group.

A formal engagement process began in early 2013. An independent consulting firm was retained to lead a series of interviews with a cross section of external stakeholders.

These one-on-one interviews were followed by 16 focus groups with racialized lawyers and paralegals. Sessions were held last spring and summer in Toronto, Ottawa and London from July through August 2013.

Information gathered from this first part of the consultation was used to develop an online survey, which was available on the Law Society's website from late October to late November 2013. Both racialized and non-racialized licensees in good standing were invited to participate in the survey.

As a result of this first phase of research and consultation, the Working Group has identified options that may address key challenges faced by racialized licensees — for the profession and the public to consider:

Questions

The Working Group identified several detailed questions for the profession's consideration and invites input. The questions are organized under the following themes:

- A. Enhancing the internal capacity of organizations;
- B. Mentoring, advisory services and networking;
- C. Enhancing cultural competence in the profession;
- D. Discrimination and the role of the complaints process;
- E. The operations of the Law Society of Upper Canada.

A. Enhancing the internal capacity of organizations

Question 1:

How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why? Proposed models are presented below, and other proposed models are welcome.

- **Diversity project**: A project in which firms and organizations with in-house counsel services commit to working with the Law Society to develop and adopt standards and resources for the recruitment, retention and career progression of racialized licensees.
- **Self-assessment**: A project in which firms and organizations with in-house counsel services complete a self-assessment about their diversity performance and use the results to identify and adopt practices and policies to be more equitable and inclusive.
- **Requiring standards**: A project in which firms and organizations with in-house counsel services would be required by the Law Society to adopt standards and resources for the recruitment, retention and career advancement of racialized licensees.

Question 2:

What is the preferred model for the collection of firm demographic data and why? Other proposed models are welcome.

- **Using Law Society data**: The Law Society collects demographic data of licensees through the Lawyer and Paralegal Annual Reports, publicly reports the demographic data based on firm size and discloses to firms their own demographic data.
- **Providing templates**: The Law Society works with firms to develop consistent templates for demographic data collection and encourages firms to collect such data on a regular basis.¹
- **Requiring firms to report**: The Law Society sets parameters for the voluntary collection of demographic data by firms and requires firms to report either that they are collecting this information or the rationale for not collecting such data.
- **Mandatory collection**: The Law Society could set parameters for the mandatory collection of demographic data by firms.

Question 3:

How could the Law Society work with in-house legal departments to develop model contract compliance programs for in-house legal departments that retain firms?

B – Mentoring, advisory services & networking

Question 4:

What are the preferred mentoring and/or advisory services models for racialized licensees? Other models than those listed below are welcome.

Volunteer Mentor or Advisory Services

- a. **One-on-one mentoring or advisory services:** One mentor and one mentee would meet regularly. The mentoring relationship would be individualized and personal. Mentors would not be compensated.
- b. **Group mentoring:** One mentor would form a mentoring relationship with a small group of licensees. The mentor and mentees would meet regularly as a group. Mentors would not be compensated.
- c. **Distance mentoring:** Mentoring would be provided by one mentor to one mentee primarily via email and other forms of electronic communication. E-communication could be supplemented by occasional telephone calls and in-person meetings. Mentors would not be compensated.
- d. **Team mentoring:** Several mentors would work with a group of several mentees. The mentors and the mentees would meet together regularly as a team. Mentors would not be compensated.
- e. **Peer mentoring:** Colleagues who are at a similar stage in their careers would be paired to provide advice and guidance to each other. ²
- f. **Limited-scope advisor services:** An advisor with expertise in a specific area would provide an advisee with guidance on a substantive or procedural legal issue. This relationship would likely be short-term. Advisors would not be compensated.

Remunerated Mentor or Advisor Services

- a. **Professional one-on-one mentoring:** This model would operate similarly to voluntary one-on-one mentoring, however mentees would be able to access a mentor drawn from a pool of compensated mentors.
- b. **Panel of advisors:** A diverse group of trained lawyer and paralegal advisors would be paid to provide specific, targeted support services to those at increased risk of failing to fulfil their professional obligations.

Question 5:

What are the preferred networking models for racialized licensees?

C – Enhancing cultural competence in the profession

Question 6:

How could the Law Society enhance the profession's cultural competence through its CPD Programs? Other proposed models are welcome.

- Include the topics of cultural competence, diversity and inclusion in the Professional Responsibility and Practice (PRP) Course.
- Provide annual voluntary accredited CPD Programs on cultural competence.
- Require that licensees complete annually, or less frequently, one hour of cultural competence CPD that would count as part of the three required hours of professionalism.

*D – Discrimination and the role of the complaints process**Question 7*

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

- By updating the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to specifically define and address systemic discrimination and by developing a communication plan for the profession.
- By working with associations of racialized licensees to enhance their ability to bring forward complaints.
- By assigning an expert group of professional regulation staff members to handle complaints of racial discrimination.
- By working with associations of racialized licensees to enhance their capacity to offer duty counsel type support to their members who have been the subject of complaints.

E - Operations of the Law Society

The Working Group also discussed initiatives that could be implemented internally to address the engagement process results. The Working Group is considering recommending to Convocation the adoption of the following programs. The Working Group would welcome comments about these programs and other internal initiatives that could be considered by the Working Group.

Initiative 1: Enhance the Equity Compliance Program

The Law Society would enhance its Equity Compliance Program to include a request for demographic data when retaining vendors, firms or legal counsel to provide services.

Initiative 2: Conduct an Internal Equity Audit

The Law Society would strengthen its policies and programs by conducting an operational equity audit of its services offered to the profession.

Initiative 3: Internal Collection of Data

The Law Society could consider the internal collection of further data on issues relating to racialization in the regulatory process

Initiative 4: Develop a More Diverse Public Face/Image for the Law Society of Upper Canada

The Law Society consider strategies to develop a more diverse and inclusive public image/face of the Law Society.

Further details on the questions are contained in the consultation paper.

The Working Group also welcomes additional ideas, initiatives or practices that may assist in addressing the challenges faced by racialized licensees.

Going Forward

Pending Convocation's approval, the Working Group will encourage the public and the profession to provide additional options for discussion and consideration.

The consultation will take place this fall and winter and a report with findings and recommendations will be made to Convocation next year.

Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees

Benchers Speaking Notes

- By studying and addressing the realities faced by racialized licensees, the Law Society is leading the way for systemic change that will help the legal profession better reflect the diverse public it serves.
- The Consultation Paper provides comprehensive data and describes the statistical data, research results and anecdotal evidence we've received over the years. We are taking the findings very seriously and that is why we have developed several detailed questions for further discussion and input.

The Consultation Paper is designed to engage the profession and the public in considering options to address challenges faced by racialized licensees. Lawyer and paralegal professions, legal organizations, firms, law schools and any others interested in issues discussed in the paper are encouraged to provide written comments.

Consultation meetings will also be held in key cities during the **fall of 2014** and the **winter of 2015**. Details will be available soon and can be accessed on the website at: www.lsuc.on.ca/racialized-licensees/.

- The Working Group will consider all of the submissions and prepare a final report with recommendations to Convocation.

Findings

- Ontario's legal profession has seen a steady increase in the number of racialized licensees in the last 20 years. For lawyers, this has increased from **9.2 per cent in 2001** to **17 per cent in 2010**. Racialized paralegals also account for **28 per cent** of their profession (as of 2010).

Despite this increase, these members continue to face challenges — many of which are distinct from the challenges faced by their non-racialized peers. In fact, discrimination and bias are features of daily life for many racialized licensees.

- Racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. It is also a significant factor in shaping choices and career outcomes of racialized licensees.

- Report findings show that racialized paralegals appear to face greater challenges in the job market than racialized lawyers.
- Many racialized licensees lack a strong network of professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace and this can remain a barrier throughout their careers.

Some 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.

Intersection with Other Factors

- Many participants noted 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 are internationally trained. These also intersect with other factors such as age, sexual orientation, disability and geographic location.

The intersection of race and gender is seen as multiplying the challenges for women. In an environment described by some participants as a “boys’ club,” many racialized women perceive themselves as doubly disadvantaged.

Entry & Advancement

- Several participants said they entered sole practice because of barriers they had faced in obtaining employment or advancing in other practice environments. Some also believe that a number of racialized lawyers become sole practitioners by default.
- Forty per cent of racialized licensees identified their ethnic/racial identity as a barrier to entry into practice, while only three per cent of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees who are most likely to cite race/ethnicity as a barrier to entry included: South East Asian, Black, Arab and South Asian; those having a first language other than French/English; women; and those born outside Canada.
- In terms of advancement, 43% of racialized licensees in the Stratcom survey cited the importance of ethnic/racial identity as a barrier/challenge, compared to 3% of non-racialized licensees.
- Both racialized and non-racialized respondents identified time away from work to care for children and other family members as a barrier to advancement **after entry** — but that barrier was more significant for racialized and non-racialized women — than for men.
- The responses to the Stratcom survey showed **narrower gaps** between racialized and non-racialized respondents in the area of **career setbacks**, as follows:
 - 42% of racialized and 35% of non-racialized licensees agreed they had left one or more positions because they felt they did not belong

- 40% of racialized and 31% of non-racialized licensees reported leaving one or more positions because they did not feel they would advance commensurate with their performance and ability
 - 13% of racialized and 9% of non-racialized respondents said they had been refused promotion to a management position
 - 9% of both racialized and non-racialized respondents said their admission to partnership had been delayed.
 - 6% of both racialized and non-racialized respondents said they were not made partner, despite meeting known criteria for advancement.
- Many racialized licensees take a community-specific approach when starting their careers, 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.
 - Some participants feel that internationally trained lawyers often face additional challenges because of language barriers, socialization, job readiness and work experience. They believe the advantages that internationally trained lawyers bring to the profession as a result of their experience are often discounted or not understood.
 - Just 26% of racialized paralegals said they found a suitable first job — compared to 36% of non-racialized paralegals and 37% of racialized paralegals said they found a suitable first job in their preferred practice environment compared to 57% of their non-racialized counterparts.

Similarly, 41% said they found employment in their preferred area of practice — compared to 67% of non-racialized paralegals.

Question Topics

- The questions contained in the Consultation Paper are organized under the following themes:
 - Enhancing the internal capacity of organizations
 - Mentoring, advisory services and networking
 - Enhancing cultural competence in the profession
 - Discrimination and the role of the complaints process
 - The operations of the Law Society of Upper Canada


EXHIBIT 8

Working Together Report

This is Exhibit "8" 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

Tab 3.1

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

Challenges Faced by Racialized Licensees Working Group

Final Report

Working Group Members

Janet Leiper, Chair
Raj Anand, Chair
Julian Falconer, Vice-Chair
Howard Goldblatt, Vice-Chair
Marion Boyd
Robert Burd
Dianne Corbiere
Avvy Go
William McDowell
Isfahan Merali
Malcolm Mercer
Sandra Nishikawa
Susan Richer
Raj Sharda
Baljit Sikand

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

Motion

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

Recommendation 1 – Reinforcing Professional Obligations

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

Recommendation 2 – Diversity and Inclusion Project

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

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

The Law Society will:

- 1) ~~require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;~~ *See note at page 4a*
- 2) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;
- 3) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

Recommendation 4 – Measuring Progress through Quantitative Analysis

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

Note: Convocation amended Recommendation 4 by adding the above, underlined content. References to Recommendation 4 have been updated throughout the report.

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress by:

- 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

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

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

Recommendation 8 – Progressive Compliance Measures

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

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

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and
- 3) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these

recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.

Recommendation 10 – The Licensing Process

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

Recommendation 11 – Building Communities of Support

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

Recommendation 12 – Addressing Complaints of Systemic Discrimination

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

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

Recommendation 13 – Leading by Example

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

Note:

Recommendation 3.1 of this report regarding the Statement of Principles was repealed by Convocation on September 11, 2019. At that time, Law Society benchers approved a motion to require licensees to acknowledge in their annual reports, in accordance with the professional conduct rules, their special responsibility as a lawyer or paralegal to respect the requirements of human rights laws in Ontario and to honour the obligation not to discriminate.

Overview of Submissions

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

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

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

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

General comments

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

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

In addition, many of the submissions from organizations suggested that the recommendations outlined in the Working Group’s report should apply to all equality-seeking groups and not solely to racialized licensees. Some submissions also noted that the report and the recommendations should recognize

how intersections of gender, race, sexual orientation, disability and other aspects of identity shape the experiences of licensees.

Accelerating culture shift

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

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

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

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

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

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

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

Measuring Progress

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

One submission suggested that the quantitative self-identification data collected by the Law Society should be published in an aggregate manner. The Working Group notes that the Law Society currently provides race-based self-identification data by size of firm in its annual statistical snapshots, which are available at: https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf (lawyers) and https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.2-%20Paralegal-Snapshot16_apr13.pdf (paralegals).

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

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

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

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

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

Educating for Change

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

The Working Group received a number of comments that suggested that licensees be required to complete a one hour equality and inclusion program per year instead of three hours once every three years. One submission suggested that the Law Society require licensees to participate in an equality and inclusion program once every year following an initial three hour training program. The Working

Group believes that this is an excellent suggestion as the three hour training program will allow for licensees to develop a foundation in equality and inclusion principles. The annual one hour requirement, following the initial three hour program, will ensure that equality and inclusion principles are top of mind for licensees.

Building Communities of Support

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

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

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

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

Leading by Example

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

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

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

Other comments

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

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

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

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

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

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

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Executive Summary

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

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

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

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

Background

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

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

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

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

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

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

The Working Group’s Approach

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

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

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

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

⁵ Referred to as “the engagement process”.

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

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

Engagement Process Results

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

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

Consultation Process Results

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

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

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

Objectives

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

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

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

Recommendations

Recommendation 1 – Reinforcing Professional Obligations

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

Recommendation 2 – Diversity and Inclusion Project

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

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

The Law Society will:

- 5) ~~require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;~~ *See note at page 4a*

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

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

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

Recommendation 4 – Measuring Progress through Quantitative Analysis

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

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress by:

- 3) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 4) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

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

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

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

Recommendation 8 – Progressive Compliance Measures

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

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

The Law Society will:

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

Recommendation 10 – The Licensing Process

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

Recommendation 11 – Building Communities of Support

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

Recommendation 12 – Addressing Complaints of Systemic Discrimination

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

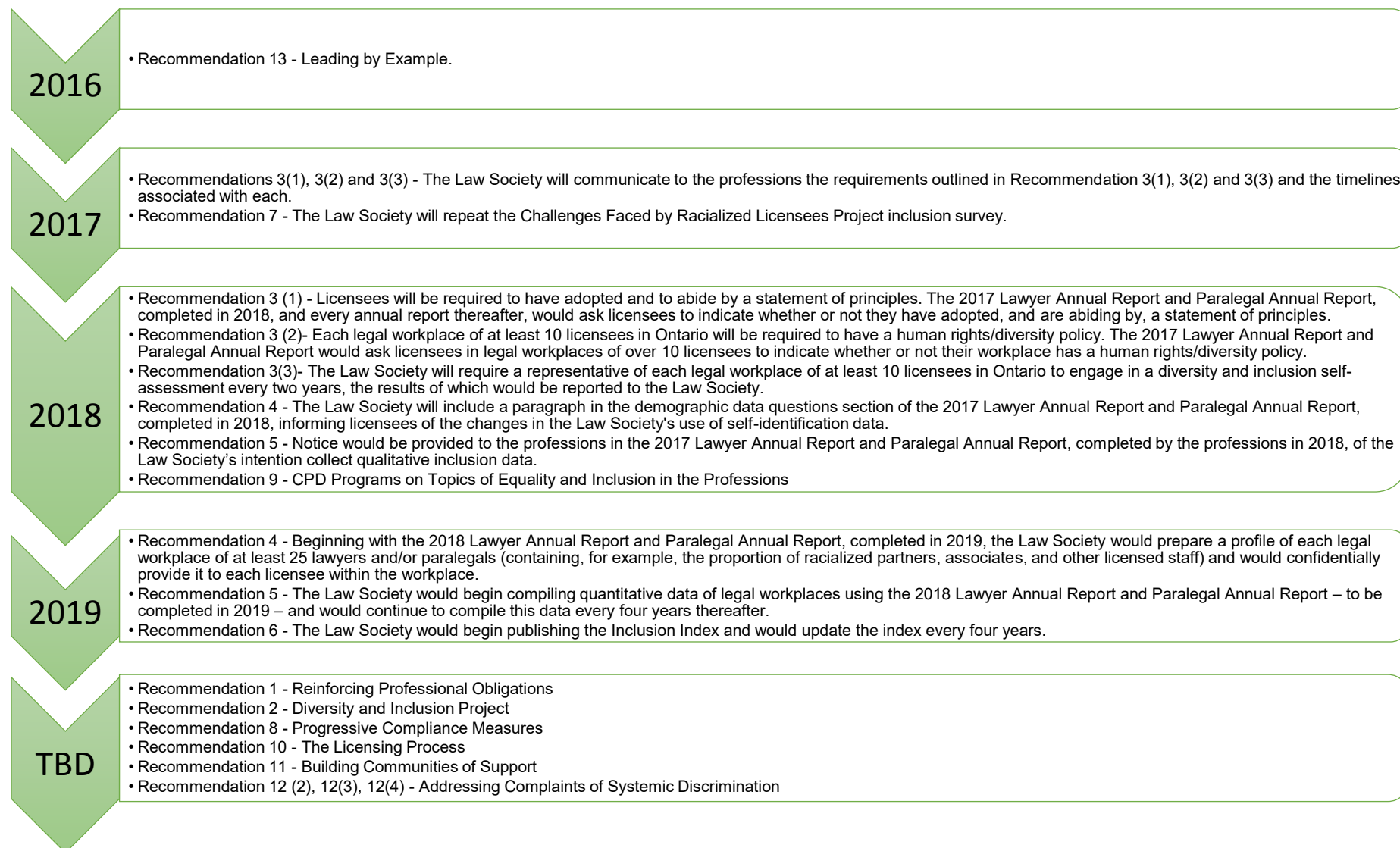
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

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

Recommendation 13 – Leading by Example

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

Timeline for Implementation of Recommendations



Introduction

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

— Yolanda King¹¹

Background

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

¹¹ Daughter of Martin Luther King

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

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

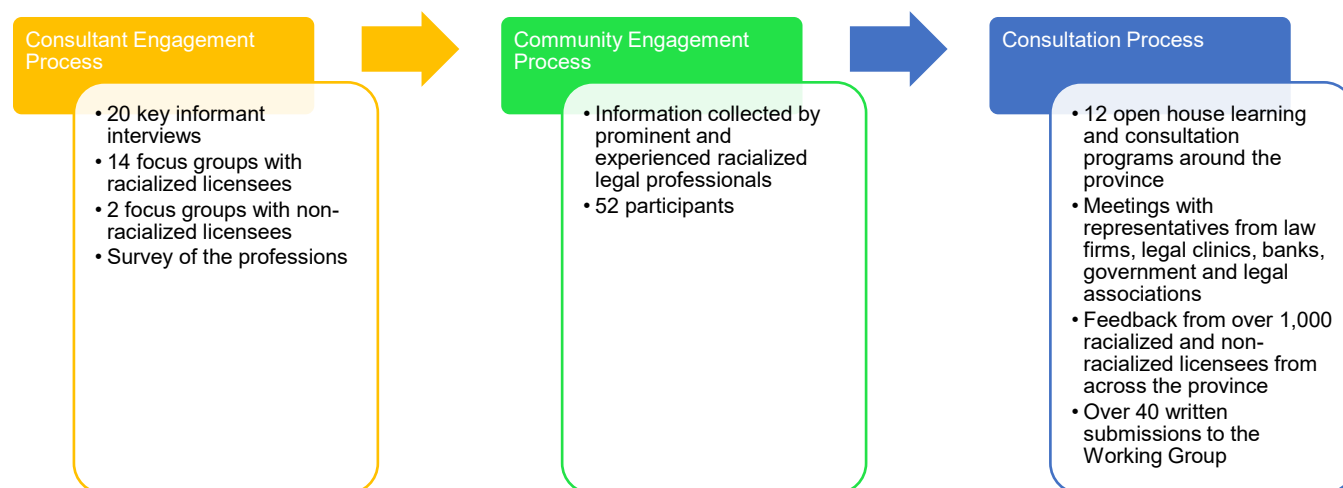
¹⁴ Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

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

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

The Process: Listening and Learning

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



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

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

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

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

Recommendations: Framework to Address the Challenges Faced by Racialized Licensees

On Racism and Initiatives for Change

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

— Ontario Human Rights Commission

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

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

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

²⁰ *Ibid.*

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

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

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

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

Guiding Principle

“Nothing about Us, Without Us”²⁸

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

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

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

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

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

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

²⁷ “Towards a new OHRC policy on racial profiling”, online: Ontario Human Rights Commission http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling

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

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

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

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

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

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

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

Objectives

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

Recommendations

Accelerating Culture Shift

Recommendation 1 – Reinforcing Professional Obligations

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

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

Recommendation 2 – Diversity and Inclusion Project

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

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

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

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

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

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

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

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

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

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

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

The Law Society will:

- 1) ~~require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public; see note at page 4 a~~
- 2) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;
- 3) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and
- 4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.

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

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

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

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

³⁷ *Ibid.*

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

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

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

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

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

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

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

⁴⁰ Participating legal association.

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

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

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

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

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

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

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

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

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

Measuring Progress

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

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may

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

⁴⁸ *Ibid.*

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

flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

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

— Canadian Institute of Diversity and Inclusion

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

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

⁵¹ *Supra* note 11 & note 13

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

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

⁵³ *Supra* note 47.

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

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

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

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

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress qualitatively by:

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

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

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

73. The Working Group has considered a number of options for data collection and has arrived at the recommendations to measure progress outlined in Recommendations 3(3) (self-assessment), 4 and 5. The Working Group also believes that accountability and transparency are key to increasing equality and diversity in the professions. Members of the Working Group have considered a number of methods to ensure that these principles are reflected in the recommendations. The Working Group has decided that in addition to gathering qualitative and quantitative data about legal workplaces, the creation and publication of an inclusion index – an index that would include legal workplaces' assessments of their diversity and inclusion-related achievements and that would allow legal workplaces to demonstrate their performance and progress – would advance the goals of equality, diversity and inclusion. The Law Society would create this index and would determine the categories of information to be included in the index, as well as the weight provided to each category.
74. The Working Group is of the view that a public inclusion index would serve the many objectives cited earlier in relation to the benefits of collecting demographic data. The index would be a valuable tool for legal workplaces and the Law Society to determine whether there is progress in the professions. Legal workplaces could also use the index to attract prospective clients and to recruit talent.
75. A number of consultation participants as well as courts and commentators⁵⁷ have stated that to truly understand the equality and inclusion climate in a workplace, it is necessary to look at both quantitative and qualitative data. Sossin and Lyon exemplify this perspective, noting that “a blended ‘index’ of quantitative and qualitative factors best responds to the need for outcomes to matter (how many diverse lawyers a legal workplace is able to recruit relative to the available pool of candidates) and the need for inputs to matter (a legal workplace's policies, participation in proactive recruitment, establishing an inclusive firm culture, etc.).”⁵⁸

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

⁵⁸ *Supra* note 47.

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

⁵⁹ *Ibid.*

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

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

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ For example see:

Stonewall Top 100 Employers

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

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

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

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

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

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

Recommendation 8 — Progressive Compliance Measures

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

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

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

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

Educating for Change

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

The Law Society will:

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

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

Recommendation 10 – The Licensing Process

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

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

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

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

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

Implementing Supports

Recommendation 11 – Building Communities of Support

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

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

⁶⁷ Law firm representative.

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

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

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

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

⁷⁰ *Ibid.*

105. The Working Group highlighted the importance of working with legal associations in meeting the abovementioned objectives. The Working Group is also mindful of different types of mentoring, including both advisory services and coaching.⁷¹
106. As a first step, the Working Group proposes the following:
- Enhanced use of technology to facilitate the development of communities of trust;
 - Enhanced networking opportunities.

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

107. The Working Group believes that any successful mentorship initiative should reach racialized licensees across the province. This proposal would involve the robust use of technology to increase the ability of racialized licensees to access information and support, with the goal of enhancing learning, competence and success. For example, the Law Society could work with associations of racialized licensees, where appropriate, to create an online resource centre for racialized lawyers and paralegals. This resource centre could act as a hub to bring together the various mentorship initiatives available around the province. The resource centre could include materials geared toward the needs, concerns and unique situations of licensees in sole practice, associations of sole practitioners and small partnerships. Resources could cover topics such as finding a mentor, action plans for mentor-mentee relationships, networking, and the benefits of joining associations. The resource centre could also include a forum for racialized licensees to discuss topics relevant to their practice environments and a podcast series on a range of topics related to race and racism in the professions and supports for racialized licensees.
108. The Working Group has also considered an initiative that would involve working with stakeholders, existing mentoring groups and others to develop the technology that would allow any licensee (racialized or otherwise) to have access to a diverse group of mentors. It may be helpful to ask licensees to indicate whether they are interested in participating in such a program when they fill out their LAR or PAR or through other methods, such as the Law Society Portal. Alternatively, mentors and mentees could be matched using a mobile application (app) with programmed algorithms to increase the potential of having successful relationships. Similar mobile apps have been created to assist with the search for a mentor or mentee in other industries.⁷² For example, Menteer, a free, open source online platform,⁷³ works to match job seekers and mentors. Potential mentors and mentees are asked to answer a series of questions about their skills, interests and backgrounds to assist with finding suitable matches to meet their needs. Mentees are provided with a number of mentor profiles, which the algorithm has

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

⁷² See Menteer, Glassceiling
<https://www.menteer.ca/>
<https://www.glassbreakers.co/>

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

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

Enhanced Networking Opportunities

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

Recommendation 12 – Addressing Complaints of Systemic Discrimination

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

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

Discrimination and Harassment Counsel Program (DHC)

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

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

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

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

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

Rules of Professional Conduct and Paralegal Rules of Conduct

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

Specialized Professional Regulation Team

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

Review Professional Regulation Processes to Effectively Address Systemic Discrimination

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

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

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

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

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

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

⁷⁹ “Fight against discrimination: Copenhagen is for everybody”, online: The City of Copenhagen <https://international.kk.dk/artikel/fight-against-discrimination>

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

⁸¹ *Ibid.*

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

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

The operations of the Law Society of Upper Canada

Recommendation 13 – Leading by Example

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

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

2) The Law Society will:

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

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

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

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

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

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

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

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

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

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

Appendix A

Results

Summary of Community and Consultant Engagement Process Results

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

— Community Liaison Meeting

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

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

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

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

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

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

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

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

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

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

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

Summary of Consultation Process

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

A. Enhancing the internal capacity of organizations

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

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

Diversity Programs

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

— Participant

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

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

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

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

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

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

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

Collecting Demographic Data

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

— Participant

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

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

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

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

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

Contract Compliance

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

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

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

B. Mentoring, advisory services and networking

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

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

Mentoring and Advisory Services

“Mentoring is not one size fits all.”
— Participant

The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees; however, ne group of participants noted that, some cases, mentoring “...serves to reproduce institutional inequality and assist white licensees in securing inclusion within social institutions and the professions”.

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

Types of Mentoring and Advisory Services

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

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

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

Structure of Mentoring and Advisory Services

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

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

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

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

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

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

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

Networking

“Have more inclusive events.”

— Participant

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

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

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

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

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

C. Enhancing cultural competence in the professions

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

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

CPD Programs

"We need to be educated about diversity."

— Participant

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

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

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

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

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

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

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

D. Discrimination and the role of the complaints process

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

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

Complaints of Discrimination

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

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

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

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

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

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

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

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

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

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

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

E. The operations of the Law Society of Upper Canada

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

— Participant

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

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

White Privilege

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

Daily Verbal, Behavioural and Environmental Indignities

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

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

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

Indigenous Licensees and Racialized Licensees: Historical and Geographical Differences

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

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


EXHIBIT 9

Critical Review (January 8, 2020)

This is Exhibit "9" 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

A Critical Review of the Law Society's *Challenges* Report: Representations to the Law Society EIA Committee and Benchers

Murray Klippenstein
January 8, 2020

Introduction

On October 30, 2014, a meeting of the Benchers of the Law Society was presented with a summary of a major research report on *Challenges Facing Racialized Licensees* (herein the *Challenges* Report, or simply the "Report"). The *Challenges* Report, completed in March 2014, had been prepared by an outside consulting firm on behalf of a special Working Group of Benchers and some Law Society staff. That Working Group had been mandated to study, and discuss solutions for, challenges faced by racialized lawyers and paralegals. The summary presented on October 30 was contained in a *Consultation Paper* provided to the Benchers on that date which also included a detailed going-forward proposal for an extensive consultation process with lawyers and paralegals generally in Ontario, and with various legal professional organizations.

The *Challenges* Report (summarized in the *Consultation Paper* of October 30, 2014) described a broad information gathering process conducted largely in 2013 that had consisted, chronologically, of interviews with "key informants", followed by consultations with focus groups, and finally an extensive opinion survey of the entire membership of the lawyer and paralegal professions in Ontario.

The Benchers on October 30, 2014 were urged to distribute the *Consultation Paper* widely in the legal professions to gather input on next steps. Various Benchers who spoke at the meeting lauded the *Consultation Paper*, and Convocation approved the proposed plan for distribution of the *Consultation Paper*.

After those extensive consultations, the Working Group prepared a major report entitled *Working Together for Change*, which recommended sweeping, complex and far-reaching policy initiatives at the Law Society, with major effects throughout the legal professions in the province. The Working Group's recommendations were adopted by Convocation on December 2, 2016, again to much acclaim.¹ Those policy initiatives are presently in the process of being implemented.

This writer believes that it is fair to say, and important to underscore, that all of the reports, consultations, and policy-initiatives on this topic on and after October 30, 2014 were fundamentally based on and purportedly justified by the findings and information in the *Challenges* Report of March 2014.

This writer, as a decades-long practicing lawyer, had always more or less trusted the Law

¹ The *Working Together for Change* Report, as presented to the Benchers on December 2, 2016, is found at <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>

Society to carry out its role based on credible evidence and careful analysis. However, when this writer eventually read the *Challenges* Report, he began to feel considerable disquiet. After extensive study, and much agonizing, this writer has concluded that the *Challenges* Report is methodologically invalid, seriously misleading, driven by a particular political ideology, and an unacceptable basis for serious policy-making by the Law Society, in particular the policy initiatives which are currently being implemented.

Among other issues, the province-wide survey of all legal professionals described in the Report, which was a key part of the study, and which was held up as justifying many of its findings, in fact tended to show that the rest of the *Challenges* Report was not well-founded. The *Challenges* Report was and is a misleading and deficient foundation for the extensive consultations and for the *Working Together for Change* report that followed and were based on the Report.

Summary

The reasons for these conclusions are summarized as follows, with more detailed explanations set out below (all references to “the Report” refer to the *Challenges* Report).²

1. A province-wide survey of all legal professionals was a key part of the *Challenges* Report. However, importantly, the response rate to the survey was very, very low. This raises serious issues, which were not disclosed to the reader of the Report.
2. In particular, the survey response rate amongst *racialized* lawyers and paralegals, who were the focus of the entire study, was also very low. Again, this fact, and the serious issues that it raises, were not disclosed to the reader.
3. The Report entirely avoided the important issue of *why* the survey response rates were so low.
4. The Report’s survey, and many of the Report’s conclusions, were based on a non-random sample, which raises fundamental questions about what, if any, conclusions can be drawn from the survey responses.
5. The Report’s survey was marred by many leading questions.
6. A previous survey of lawyers in Ontario had found little evidence of racial prejudice, an important finding which was not referred to or discussed in the Report.
7. The survey sample was skewed due to self-selection, and the Report’s “adjustments” to the survey sample did not fix the self-selection bias in the sample.
8. The significance of the answers to many survey questions was misrepresented in the Report.
9. The views of the ‘key informants’ were largely not validated, and were often contradicted, by the public survey.
10. The Report was very one-sided and seemingly driven by a particular political ideology.
11. The subsequent extensive consultation process in the legal professions was thoroughly undermined by the invalid and misleading “findings” in the preceding Report, on which the entire consultation process was premised.
12. The Report’s various “input” groups likely had considerable overlap and duplication,

² The *Challenges* Report does not appear to be on the Law Society’s website, but can be found at https://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf. This writer encourages the reader to download or print the Report for ease of reference and to read it closely, taking into account the points raised in this *Review*.

meaning that the input received was actually from only a very small segment of the professions, creating a misleading picture.

1. The response rate of lawyers and paralegals to the *Challenges* Report survey was very, very low.

The *Challenges* Report says that a survey questionnaire was sent to all lawyers and paralegals in Ontario, but it does not say how large that population was; that is, the Report does not state how many survey questionnaires were actually sent out. All it says is that 3,296 questionnaires were returned. That sounds like a reasonable number until one realizes that the total polled population was 51,996 lawyers and paralegals (according to Law Society numbers for 2013), which means that the response rate was only 6.3% (another number that is not mentioned in the Report).

It is customary and good professional practice to include such numbers in a serious study. The omission of these key statistics from the *Challenges* Report is odd and obscures some very serious issues. The missing statistics would be a “red flag”, a “caution sign”, about what the survey results mean (if anything), and how they should be used (or not).

Essentially, the problem raised by the extremely low return rate is that the views of the proportionately very small group of legal professionals who responded to the survey have a rather low probability of being representative of the views of the entire population of lawyers and paralegals in the province. A very low response rate in a study typically means that great caution must be exercised in extrapolating the study findings to the overall population. One would have thought that the researchers who conducted and reported on the *Challenges* survey understood the limitations associated with interpreting the data from such a small and unrepresentative group of respondents. But no such caution was mentioned in the Report. On the contrary, the Report unqualifiedly and repeatedly declared its findings as accurately representing the professions as a whole.

2. Even the response rate of *racialized* lawyers was very low.

The information on how many (and what proportion of) *racialized* lawyers and paralegals completed the survey is similarly important for assessing the Report’s claims. However, again, and disturbingly, the Report gave us no numbers on these critically important points.

Although in this writer’s opinion these statistics are fundamental to assessing the validity of the Report’s findings and therefore should have been provided in the Report (and should be provided now), it is possible to reconstruct the numbers from various disconnected parts of the Report and from Law Society records. Based on these sources³, the number of racialized lawyers and paralegals in Ontario in 2013 (the time the survey was conducted) was 11,617 (or close to that), and the number of racialized legal professionals who responded to the survey was 1,118 (or close to that). This represents about 9.6% - *only* 9.6% - of that important group of lawyers and paralegals.⁴

³ On pages 23, 24, and 25 of the Report, and the Law Society’s numbers on its website.

⁴ It must be emphasized that although this writer believes that these reconstructed numbers are likely quite accurate,

Hence, once again, the very low response rate of *racialized* lawyers and paralegals—who were the focus of the study—should strongly caution both researchers and readers against making broad and definitive generalizations about the views and experiences of the population of racialized legal professionals in the province as a whole. This is especially true given the significance of the issue being examined – racial barriers and racial prejudice.

In fact, the possibility that the realities of racial barriers and racial prejudice in the legal professions have been misrepresented based on unwarranted interpretations of the *Challenges* survey data is an extremely serious concern because of the Report's key role as the basis for far-reaching new Law Society policies which will have extensive repercussions on the ways lawyers and paralegals practice and on the ways the public is served by lawyers, paralegals and legal firms.

3. Why the very low response rate from lawyers and paralegals in general and from racialized lawyers and paralegals in particular? The *Challenges* Report avoided answering this important question.

The *Challenges* study obtained very low return rates from the population of lawyers and paralegals in the province and specifically from the population of racialized licensees despite extensive efforts to obtain responses from those licensees and despite a format for the survey which was extremely favourable towards obtaining responses from licensees (including guaranteed confidentiality, multiple reminders being sent out, and an extended period of time given to licensees to complete the survey, at times convenient for licensees). According to the research company, “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 [they were] reminded by email twice during the period that the survey was accessible online” (p. 6). The research company also states that “the subject matter of the study was widely known to the LSUC [Law Society of Upper Canada] members...” (p. 22).

Therefore it seems unlikely that licensees were unaware of the survey.

So, what was the reason for the extremely low response rates from the survey population as a whole and from the *racialized* lawyers and paralegals in particular? We don't know because the non-responders did not say why they did not respond, and the survey company seemingly did not attempt to find out. And the *Challenges* Report avoids any discussion of this fundamental and glaringly important question. To this writer, this omission, in and of itself, seriously undermines the credibility of the Report.

It is possible to hypothesize as to why lawyers and paralegals would not respond to a survey such as this one. One plausible reason is that lawyers and paralegals were just too busy. Nevertheless, the Report questionnaire says “This survey will take about ... max 20 min to complete”, which is not an imposing amount of time, especially since licensees were given several weeks to complete the survey, at their convenience. It seems that the time required was not a problem.

the real issue is that these numbers should have been provided in the original Report, and should be provided now.

At any rate, the *Challenges* Report simply ignores the critical issue of the very low response rates.

This writer believes that this issue puts a clear spotlight on “the elephant in the room.” It may be that the reason for the extremely low survey response rates from both the overall population of licensees and specifically from racialized lawyers and paralegals is that the great majority of lawyers and paralegals in the province are not all that concerned about “racism” in the professions, *perhaps because we have progressed to the point where the legal professions are characterized more by openness and equality and opportunity than by “systemic racism.”*

Surely, if a substantial proportion of lawyers and paralegals in the professions, especially those who self-identify as “racialized,” felt that “systemic racism” was a serious issue, more than 9.6% of the racialized licensees would have responded to the survey (and it must be remembered that a large portion of those 9.6% who responded did not in fact express such concerns, as will be discussed below).

The Law Society’s comprehensive Working Group Report *Working Together for Change* which was published after the *Challenges* Report, and which was based on the *Challenges* Report, forcefully stated (in the second paragraph of its Executive Summary), its conclusion that “racialized licensees face widespread barriers within the professions at all stages of their careers.”

Frankly, it appears to this writer that the more than 90% of the racialized Law Society licensees who chose not to respond to the survey (and many of the 10% who did) either don’t agree with that conclusion, don’t think the issue is all that serious, or prefer to have a more positive outlook.⁵

Of course, this is not to say that there is no ethnic and racial prejudice and discrimination in the legal professions in Ontario. A certain amount of prejudice and discrimination undoubtedly exists—it probably exists everywhere that humans interact—but the extremely low survey response rate from racialized legal professionals gives good reason to believe that the nature and extent of such prejudice and discrimination is nothing like the picture portrayed in most of the *Challenges* Report or in the Working Group Report.

4. The *Challenges* study used a non-random sample.

The very low survey response rates would not have been as much of a concern in the *Challenges* study if the legal professionals who responded were an unbiased sample of lawyers and paralegals in the province. The best way to obtain an unbiased sample is to ensure that respondents are randomly sampled. If a sample is random, readers can be confident that the experiences, views, and characteristics of that sample fairly represent those of the overall population, within easily computed (and disclosed) limits (which is called a standard error of the

⁵ To this writer, the Working Group’s forceful and important conclusion seems to be very “artfully” worded. For example, *how many* racialized licensees are they suggesting face such barriers? All of them? Including the 90% who chose not to respond to the survey? And the large portion of the 9.6% who did respond, but who did not express concerns about such barriers? And “widespread”? And “at all stages of their careers”?

measurement).

However, the respondents to the *Challenges* survey were *not* a random sample of the population. In fact, the respondents were a special group created through self-selection; that is, they chose to participate in the survey while the non-responders chose *not* to participate. There is no reason to think that that self-selected sample was representative, and good reason to think the opposite.⁶ Therefore the results of the survey were almost certainly a biased set of responses which did not accurately represent the views and experiences of the overall population of lawyers and paralegals in the province.

According to the author of a contemporary Canadian textbook on public opinion surveying:

Social science researchers conceptually divide sampling strategies into non-probability sampling and probability sampling.... *Data collected from non-probability samples can be summarized using descriptive statistics but cannot be used to make generalizations about a larger population.* In contrast, probability sampling relies on the principle of random selection.... *When researchers use probability samples, they rely on the laws of probability to make generalizations about the larger population.* [emphasis added]⁷

Or, to quote the blunt “bottom line” of the textbook author: “Non-probability samples cannot be used to generate population estimates.” (p. 542)

The failure of the *Challenges* survey to obtain a random sample therefore has serious implications for how the results of the survey can and should be interpreted, presented, discussed and acted upon. When the *Challenges* Report says that 40% of racialized *respondents* answered “yes” to a question, *there are no grounds to say that 40% of all racialized licensees felt that way.* One can say that 447 racialized licensees felt that way (being 40% of racialized *respondents*). But one can, and should, also note that 447 licensees *out of 11,617* racialized licensees felt that way. And one can, and should, also note that *out of 11,617 racialized licensees who were asked the question, 11,170 either chose not to answer or did not answer yes.*

Failure to be frank about the importance of obtaining a random sample, and about the serious limitations of a sample that is not randomized, is an abuse of survey methodology, and seriously misleading, in a study of the scope and seriousness of the *Challenges* Report.⁸ Unfortunately, the *Challenges* Report does not even acknowledge the gravity of this problem.

5. The *Challenges* survey included many leading questions.

The *Challenges* survey contains yet another problem: a great many of its questions were framed with a highly emotional undertone or in a suggestive way. For example, the responders were

⁶ One obvious reason is that given how the survey was characterized, those racialized licensees with concerns about racial prejudice and racial disadvantage in the professions would have had a much higher motivation to respond than those racialized licensees who, for various reasons, did not see them as big issues.

⁷ *Social Statistics in Action: A Canadian Introduction*, by Andrea M. Noack, Oxford University Press, 2018, p. 137.

⁸ This writer does not know the extent of the resources spent by the Law Society on the *Challenges* Report, but suspects that the direct costs and indirect costs (such as considerable staff time) amount to hundreds of thousands of dollars, perhaps many hundreds of thousands of dollars.

asked to indicate their agreement (or disagreement) with a number of statements like: “You have been subjected to prejudicial attitudes on the part of other legal professionals, based on your racialized status,” “Your employment environment is not very diverse,” and “Your beliefs or cultural practices preclude you from participating in many of the social networking functions of Ontario legal firms.”

Clearly, these statements steer respondents towards identifying or interpreting experiences in a way that would align with the conclusion that there are considerable racial barriers or racial prejudice in the legal professions. In the social sciences, such statements are called “loaded,” or “leading,” questions, because they lead respondents to respond in particular ways.⁹

Thus, the biased question format is another reason why the information obtained from the lawyers and paralegals responding to the survey cannot be considered to fairly represent the way the respondents, and by extension, the population of lawyers and paralegals in the province, truly feel or think. Framing survey items in this biased way is widely recognized as a very poor practice, and consequently the information obtained from such questions cannot be treated as valid.¹⁰ The leading questions in the survey instrument are yet another source of intrinsic bias in the *Challenges* study.

6. A previous survey of Ontario lawyers found little evidence of racism in the profession.

The likelihood that the information in the *Challenges* study was not a fair reflection of the views and experiences of the overall membership of the legal professions is supported by the results of another previous survey study. The results of that study, the Kay Report of 2004,¹¹ revealed little evidence of racial prejudice or discrimination experienced by lawyers who identified themselves as racialized.

Specifically, the researchers of the Kay study asked both racialized and non-racialized lawyers nine questions aimed at illuminating whether or not there was “exclusion and discrimination according to racial/cultural group identity” in the legal profession. The evidence showed that, while there were a few small differences between racialized and non-racialized lawyers in their answers, “*none of the differences are large in magnitude or statistically significant*” (p. 65, emphasis added). In fact, the Kay Report stated:

Lawyers from racialized communities are slightly more likely to report they had been assigned tasks beneath their skill level routinely or frequently (14%, compared with 11% among non-racialized lawyers). Lawyers from racialized communities are slightly more likely to report exclusion, routinely or frequently, from social gatherings (4%); rude or inappropriate remarks by clients (4%); and a lack of support from staff at the firm (5%).

⁹ It seems possible and in fact likely to this writer that the “loaded” nature of the questions would in fact have “turned off” some of those who were initially interested in the survey, resulting in many non-completions.

¹⁰ See, for example, L. Gideon, “The Art of Question Phrasing,” in *Handbook of Survey Methodology for the Social Sciences*, ed. L. Gideon (New York: Springer, 2012).

¹¹ Kay, Fiona M., Cristi Masuch, and Paula Curry. 2004. *Contemporary Lawyers: Diversity and Change in Ontario’s Legal Profession*. Report submitted to the Law Society of Upper Canada (Toronto: The Law Society of Upper Canada) (157 pages). See:

https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/p/professor_fiona_kay_-_diversity_and_change_-_the_contemporary_legal_profession_in_ontario_2004.pdf

Yet, their slight differences remain statistically insignificant. (p. 66, emphasis added)¹²

These results are noteworthy because they do not support the claim of “systemic racism” made in or based on the *Challenges* Report, and would tend to call that claim into question. The fact that the authors of the *Challenges* study did not compare their results with the results of the Kay Report, and discuss the contrasting findings, is not in keeping with the recognized practice in scientific research in which newly obtained findings are put into the context of the existing evidence. By failing to contextualize its findings, the *Challenges* Report undermines its credibility, especially since its findings are in clear contradiction with the findings of a previous well-conducted study.¹³

7. The *Challenges* Report’s “adjustments” did not fix the self-selection bias.

The *Challenges* Report’s authors acknowledge that the racialized lawyers and paralegals who completed the survey questionnaires were over-represented in the survey results.¹⁴ In response to this over-representation, the Report states that the researchers had made adjustments to the sample to eliminate this biasing effect. The survey company said that this procedure would ensure that the responses accurately represented the members of the professions and that such biases could be corrected for if:

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 survey (p. 22).

The survey company then described its “weighting” procedure used “to achieve a representative sample” (p. 22):

We used a weight-ranking (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 of different subgroups for racial and ethnic groups....

In essence, the “weighting” amounts to a reduction in the number of racialized survey responses in the Report’s calculations so that instead of including all the 1,118 survey responses from racialized licensees,¹⁵ only 741 of the questionnaires completed by these lawyers and paralegals

¹² Of the nine questions, responses to one question (referencing disrespectful remarks by judges or other lawyers), showed a small difference which passed the “statistically significant” threshold, but which the Report describes as not large.

¹³ Readers of the *Challenges* Report would not even become aware of the issues raised by the Report’s conflict with a previous major study.

¹⁴ The only comment in the Report about the possible reason(s) for this over-representation is that it is “due to the subject matter of the study” (p. 22). This ambiguous wording avoids the likely reality that those with certain particular views on racial matters were much more likely to complete the survey, resulting in a skewed sample.

¹⁵ Again, that 1,118 is this writer’s (approximately accurate) calculated number. Again, this writer believes that the actual number of racialized respondents should have been originally disclosed, and should be disclosed now.

were included in the analyses.

Put simply, the logic appeared to be that because 1,118 represents a disproportionately high number of racialized lawyers and paralegals in comparison with the proportion of racialized licensees in the overall population, the number of racialized questionnaires used would be reduced to 741 to bring the sample of racialized licensee respondents in line with the proportion of racialized lawyers and paralegals in the professions.

Following this, the *Challenges* Report authors say: “This process results in a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees” (p. 23, and also at p. v).¹⁶

There is no apparent basis for this statement, and it is very likely false. The Report gives no grounds for believing that the 1,118 self-selected racialized survey-responders (9.6% of all racialized licensees in the province) were representative of the views and experiences of the overall population of racialized licensees.¹⁷ Given that, simply adjusting downward the number of racialized lawyers and paralegal responses used for the analyses does not create a representative sample of the racialized population of licensees in the province.

In fact, because the sample was self-selected, there is no practical way to “weight” the sample to ensure that the sample fairly represents all lawyers and paralegals in the province.¹⁸

8. The answers to many (or most) survey questions were misrepresented in the Report. For example, according to the *Challenges* Report, 40% of racialized licensees reported that their ethnic/racial identity was a barrier or challenge to entry into practice. That claim is not true.

The *Challenges* Report states that “fully 40% of racialized licensees identified their ethnic/racial identity as a barrier or challenge to entry into the practice of law or provisions of legal services” (p. 38).¹⁹

¹⁶ The Report repeatedly claims the fundamental point that its survey results, after this “weighting” procedure, accurately reflect the views of licensees *as a whole*. The Executive Summary of the Report states that the purpose of using selective interviews and focus groups at the beginning of the study was to generate a detailed account of experiences from those licensees “perspective,” and then “measure or validate those findings across the whole population of licensees.” (p. ii), and that “it is important to understand... how we ensured that the views of all licensees are accurately portrayed in the data and final report (representativeness)” (p. iv) [emphasis added]. In the Conclusions of the *Challenges* Report the authors state that its methodology has “yielded a nuanced account of the experiences of racialized licensees, validating much of that experience through detailed measurement across the whole population” (p. 77) [emphasis added].

¹⁷ That is, there is no basis for asserting that the mix of views and experiences in the self-selected group of 1,118 was the same as, or “mirrored,” the views and experiences in the group of 10,499 racialized licensees who chose not to respond (11,617-1118=10,499).

¹⁸ There are some recently developed, highly sophisticated and complex survey methods which some companies are experimenting with to try to adjust for self-selection bias. There is no indication in the Report that the authors have any knowledge of such techniques, or even of the complexity and seriousness of the issue.

¹⁹ This specific example is chosen, from amongst many survey questions in the Report, because this statistic has been cited repeatedly in public discussions, in staff summaries of the Report, in the consultation process, in the Law Society’s Continuing Professional Development videos, and in at least one law journal article.

Actually, that isn't true. All we know is that 447 racialized licensees said that (40% of 1,118), out of a total of 11,617 racialized lawyers and paralegals. **That's 4%, not 40%, of the survey population.**²⁰

The problem is the Report's extrapolation from the small sample (the actual 447 respondents who said yes on that point) to the overall study population. Since this small sample is non-random and skewed, the answers cannot and should not be simply generalized to the overall population.

Furthermore, as discussed earlier, the fact that 96% of racialized lawyers and paralegals chose either to not answer the question, or answered but did not agree ($11,617 - 447 = 11,170$; $11,170/11,617 = 96\%$), legitimately raises the suggestion that 96%, or at least a very large majority, of racialized lawyers and paralegals in Ontario do not perceive ethnic/racial barriers as being a major issue for entry into the legal professions.²¹

At no point does the *Challenges* Report even discuss this possibility, which is clearly raised and tentatively supported by the survey results.²² Instead, in this writer's opinion, the data has been presented in a seriously misleading way in the Report, and in many subsequent presentations and discussions.

Further, this same concern applies to many other "findings" in the Report. The Report constantly states, on a variety of issues, that a certain percentage of "licensees" agreed with a specific proposition when it can, truthfully, only be claimed that the results refer to the far smaller number of actual "respondents" who agreed. Because of the Report's methodological deficiencies, we only know what *those respondents* said, and to make statements about what *licensees* said or believe (suggesting licensees as a whole), which the Report does repeatedly, is seriously misleading.

9. The views of the 'key informants' were largely not validated by the public survey.

The *Challenges* Report adopted as one of the first steps in its methodology the recruitment of 27 "key informants", whom it describes as "individuals in the legal profession with deep expertise in the realm of diversity and equity" (p. 3). Somewhat ambiguously, the Report states that three of the 27 self-identified as non-racialized, seeming to suggest that 24 of the "key informants" self-identified as racialized, although that is left unclear. However, despite their key role, the Report does not tell us their identity or anything about their backgrounds, so the reader, and the legal professions, have no way of assessing whether they in fact have what should be considered as expertise in anything. Nevertheless, their views appeared to have driven the structure of much

²⁰ These are the numbers before the Report's "adjustments". The "adjustments" would not affect the point.

²¹ This particular question dealt with "entry into" the legal professions. A similar related question in the Report dealt with "advancement" in the professions (subsequent to "entry"), for which the equivalent percentage was stated as 43%. The comments above would apply equally to that question (and to many or most others in the Report).

²² Again, this writer is by no means suggesting that the views of those 447 respondents are not important. And there were probably others who did not respond to the survey who agree with the 447. On the other hand, based on the very low response rate, there were probably a very large number of racialized licensees who had something quite different to say on this issue, whose views were not appropriately discussed in the Report.

of the Report.

The Report does not state why the identity or background of the “key informants” was kept confidential. Presumably it was to encourage frankness from individuals who considered themselves vulnerable in their careers in the professions. This writer considers that understandable. However, given that we consequently know nothing about these individuals, how much “weight” should be given to their “expertise” is a serious question (for example, it is important but unclear as to how much of their asserted “expertise” is really in the form of a political perspective on which others might seriously differ).²³

The problem raised by the complete anonymity of these “experts” is highlighted because the survey results of the entire legal professions, including in particular the results from *racialized* licensees, do not actually back up or validate many of the opinions which derive from their “expertise”, and often contradict them, as described above.

To pick one example, according to the Report: “Through the key informants we got a *strong* indication that ... *overt* discrimination and bias – often unconscious – is a feature of *daily life* for many, or *most*, racialized licensees” (p. 8, emphases added). This is a shocking assertion. However, this writer has to also consider the fact that the 90% of racialized lawyers and paralegals in the province who chose not to answer the survey at all, and approximately half of the 10% who did answer the survey, apparently did not see things that way.

Frankly, to this writer, many of the problems with the Report (such as the failure to discuss, or even to disclose, the very low survey response rates) appear to arise from the authors of the Report attempting to deal with the fact that the survey of the professions in many ways did not support, and in many ways contradicted, what the “key informants” described as the situation in the professions. The key informants’ “expertise” did not seem to fit the facts.

10. The *Challenges* Report was very one-sided and seemingly driven by a particular political ideology.

One of the first questions in the survey as sent to all members of the legal professions was: “Do you self-identify as racialized or non-racialized?”. That idea, of “racialization”, is the central and key concept of the entire survey aspect of the Report (and, seemingly, of the entire Report). Most of the survey responses were analyzed based on whether or not the respondents self-identified as “racialized”.

However, the term “racialized” is a highly theoretical, politicized and ideological term.²⁴ The

²³ It is quite ironic that the governing body of lawyers and paralegals in Ontario has been accepting, unquestioned, the views of “experts” in a way that no court would come anywhere close to tolerating. Not only are these experts anonymous, but their asserted expertise is not even described, and their actual views are not quoted either, but are instead collectively “summarized” by an unknown person, often with broad and what this writer considers significantly politically slanted language.

²⁴ The suffix “ized”, when added to a word, denotes some “action” in the past, and it therefore builds right into the word itself the idea that “somebody or something has done something to somebody”. In other words, simply changing the word from “racial” to “racialized” automatically imports a political and ideological conclusion. Central to the idea of “racialization” is the political theory of “social constructionism”, specifically that “race is

Report's authors acknowledge that the term "racialized" is "relatively new", and that its use in the study is "innovative" and controversial (p. 21). They hint that the use of that term in the survey was based on "clear direction" from the LSUC and the Working Group (p. 21). To this writer, that appears to be politically motivated interference in the work of the opinion survey technicians.

In fact, by the explicit terms of the survey questionnaire, survey respondents were being asked not whether they were a member of an ethnic or visible minority, but whether their racial identity was socially constructed. To this writer, that is simply a bizarre survey question, in this context.

In this writer's view, the use of the esoteric and political term "racialized" in itself was probably an important factor affecting and skewing the response rates to the survey. It seems likely to this writer that many members of the professions were puzzled or downright annoyed by the use of the term, and simply declined to complete the survey for that reason. The use of that term also likely skewed the composition of the sample by "filtering out" licensees who did not agree with the political conclusions they sensed were already "built into" the term itself.

Further, and unsurprisingly to this writer, 11% of survey respondents answered that they were "Unsure" or "Don't know" whether they were "racialized" or not (p. 25). The Report's authors do not explain how they dealt with that "Don't know" category, which seems important, since for many of the "findings" of the Report, that 11% potential "swing vote" would make a critical difference in the results.²⁵

The use of the term "racialized" also appears to have produced some very strange and problematic specific results. The Report states that the *majority* of Aboriginal/Indigenous and Jewish survey respondents did *not* report themselves as "racialized" (p. 26). Further, *6% of Caucasians identified themselves as "racialized"* (p. 26).²⁶ To this writer, these results veer into the absurd. They also raise the important practical question of how these seeming miscategorizations affected the actual statistical findings. For example, would all the survey answers of the majority of Aboriginal/Indigenous respondents have been tallied as "non-

socially constructed". U.S. professors of ethnic studies and sociology Omi and Winant, the leading theorists of the term, in their classic text *Racial Formation in the United States* (Routledge, originally published in 1986, third edition, 2015) emphasize ("stress" is their word) that "race is a social construction" (p. 12) and define racialization as "the extension of racial meaning to a previously racially unclassified relationship, social practice, or group." (p. 111). Further, this socially created "racial meaning" is not neutral. Omi and Winant say that: "We regard race as a *master category* of oppression and resistance in the United States. ... The establishment and reproduction of race has established supposedly fundamental distinctions among human beings ("othering"), ranking and hierarchizing them for purposes of domination and exploitation". (p. 245, emphasis in original). This is not the place to debate the validity, usefulness, limitations, excesses or harms of "social constructionist" theory in general and regarding "race" in particular. The point is that the term "racialized" brings with it a lot of baggage, including if used in a survey. Suffice to say that this writer is not "all in" on that "social constructionist" approach, and does not believe that the Law Society should be either.

²⁵ This writer's two young adult sons are genetically 50% Caucasian and 50% Taiwanese. This writer considered testing the survey question by asking his sons whether they "self-identified" as "racialized", but concluded that asking them that was patently ridiculous, and that we had better things to talk about.

²⁶ The Report makes it clear that the respondents' self-identification on the "are you racialized" question was considered definitive. This hints at the further intrusion of "identity" politics or ideology into the survey and Report – anyone's "mode of self-identification" must be respected and is not open to discussion or questioning.

racialized”? The Report does not discuss this issue.²⁷

Overall, to this writer, the central use of the politically and ideologically loaded term “racialized” as a key component of the survey has alone completely distorted the Report’s survey results, rendering them essentially useless for purposes of serious policy-making by the Law Society.²⁸

In addition to the very serious problems arising from the use of the term “racialized”, the Report systematically sidelines and disparages any parts of the survey results that do not match, or that contradict, its overriding political theme of systemic racism. For example, survey respondents, *including “racialized” respondents*, overwhelmingly agreed that “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” (p. 59, the figure for racialized respondents is 74%). This validation of the emphasis on “competence” does not fit well with the thrust of the Report. Further, the majority of survey respondents, *including a majority of “racialized” respondents*, agreed that “It is natural and desirable that licensees from various backgrounds conform to the professional culture that is already established in Ontario” (p. 59, the figure for racialized respondents is 53%).²⁹

Rather than taking these kinds of responses seriously, the report dismisses them as “conservative or status quo statements” (p. 60). That categorization appears to be disparagingly and misleadingly labelling anyone who does not embrace the particular political ideology espoused by the Report (and those seem to include the majority of the members of the legal professions, and include this writer). It is also demeaning of respondents, including “racialized” respondents, who may have complex views about the present state of affairs in the professions, and about the appropriate path of progress going forward.

Finally, the Report makes no allowance for the variety of important causal factors, other than “systemic racism,” that could, and likely do, contribute to the ethnic/racial statistics that are evident in the legal professions. These causal factors include “demographic lag” (the fact that the increasing racial diversity in the Ontario population simply takes time to work its way into the legal professions), the highly complex, difficult and skills-based nature of legal work (which

²⁷ This writer has spent large portions of his decades-long legal career advocating for the rights and interests of Aboriginal/Indigenous peoples, and in this writer’s view, if there is one group in Canada that has indisputably suffered from “systemic racism”, it is Aboriginal/Indigenous peoples. In fact, in this writer’s opinion, the history and situation of Aboriginal/Indigenous peoples in Canada is so different from all other groups that to “lump them together” with others is fundamentally mistaken. That may have been in the minds of Aboriginal/Indigenous respondents who declined to self-identify as “racialized”. They may also have been offended by the suggestion that their identity is “merely” “socially constructed”, as opposed to being real in a more fundamental sense.

²⁸ Even Professors Omi and Winant, the doyens of “racialization” theory, have recently “added back in” to their theory (in the most recent edition of their classic text) the idea of visible bodily differences as an essential element of “racialization” (what they refer to as “ocularity”, see *Racial Formation*, 2015, pp. viii, 13, 145, 245 and 246). It looks like the term “visible minority” isn’t such an “outdated” term after all. In this writer’s view, the *Challenges Report’s* survey of the professions would have been far more useful if the survey had used the term “visible minority”, or something similar. That wasn’t apparently ideologically correct enough for the managers of the study, but it is ironic that at least some leaders in the “ideology” itself have since “moved on”.

²⁹ It is worth repeating that since the survey responses were very likely skewed, the strong affirmation of these sentiments in the survey responses is particularly surprising. The likely skew of the sample also means that these numbers in fact probably understate the actual frequency of these views in the professions overall.

means that it takes time, often many years, for entrants to become, or to feel, genuinely successful, or to reach senior positions in firms or government), and “sub-culture effects” (the fact that not all sub-cultures in the Ontario population equally value the legal professions as a career).³⁰

The existence or potential significance of these causal factors, which in this writer’s opinion are very important considerations for any thoughtful understanding of the issues, are ignored by the Report (and by the follow up Working Group Report).

11. The *Challenges* Report was a seriously misleading basis for the subsequent extensive consultation process.

The *Challenges* Report was presented to Law Society Convocation by the Working Group on October 30, 2014, with a recommendation to the Benchers that an extensive “consultation” process be implemented within the legal professions generally, and with a large number of “equity” or “diversity” organizations, including by inviting written representations, all based on the Report.

Unfortunately, in this writer’s assessment, the entire consultation process used as its starting point, and was premised on, a Report that was methodologically invalid and seriously misleading, but which was presented as accurately representing an overall picture of the professions (that is, the views of a small and skewed sample or subgroup of the professions were put forward as accurately representing the views and experiences of the professions as a whole, while the omission of key information – such as the extremely low survey response rates – effectively hid serious issues from the readers).

There would have been few, if any, members of the professions who were invited to comment on the Report who would have been able to identify these issues, given the way the Report was written.

This writer has read all of the consultation responses which the Law Society has made public. It is effectively impossible, in this writer’s opinion, to know what to make of them, given that they were all premised on the mistaken and misleading information and conclusions of the *Challenges* Report. In effect, members of the legal professions, and the consulted organizations, were asked to respond to something that wasn’t true, without them realizing that it wasn’t true.

12. The various “input” groups likely had considerable overlap and duplication, suggesting that the Report overall, and the consultations that followed, represent the views of only a very small number in the legal professions.

It appears to this writer that throughout the whole process, from the Report’s “key informants”, to the focus group members, to the respondents to the survey, and then to the consultation input

³⁰ This writer’s sub-culture of origin had no use for lawyers and offered no encouragement towards becoming one, and this writer had never spoken to or met a lawyer until he was in law school. In several other sub-cultures with which this writer has considerable familiarity, parents would much rather have their children become doctors, engineers or business entrepreneurs than lawyers.

from various organizations, there is the likelihood of considerable overlap, or duplication, of the individuals involved. That is, it is likely that many individuals participated in more than one of these processes. It is likely, therefore, that the Law Society is hearing the views of a small group of several hundred licensees, repeated and duplicated through different channels. That does not mean that those views are not important – they are – but it does mean, in this writer’s opinion, that there is another reason for caution in extrapolating the results to the legal professions as a whole. In fact, it appears that the vast majority of the professions, and the vast majority of racialized licensees, have not spoken on these issues.

Conclusion

The Law Society has spent a very large amount of time and effort, and apparently a very large amount of funds, on an attempt to address challenges faced by lawyers and paralegals from visible or ethnic minorities. In this writer’s opinion, the Law Society could have ended up with a thoughtful and constructive result, but did not.

This writer has concluded that the *Challenges* Report, which is the foundation and justification for all of the subsequent reports, consultations, and policy plans, is methodologically invalid, seriously misleading, and driven by a particular political ideology, and was and is an unacceptable basis for serious policy-making by the Law Society, in particular the policy initiatives which are currently being implemented.³¹

³¹ This writer welcomes comments on this *Review*, which may be sent to murray.klippenstein@klippensteins.ca.


EXHIBIT 10

Expert Panel Reports

This is Exhibit "10" 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

Expert Panel Reports: Inclusion Index

August 2022

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A REVIEW OF THE LAW SOCIETY OF ONTARIO'S RESEARCH AGENDA ON RACIAL EQUITY AND THE CHALLENGES FACED BY RACIALIZED LICENSEES

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June 2022

INTRODUCTION

This document provides a review of major data collection and analysis strategies, and research findings, that stem from the Law Society of Ontario's efforts to improve racial equity and reduce the challenges faced by racialized licensees. Part A of the report reviews research presented as part of the 2014 Stratcom report. Part B reviews the development and implementation of Diversio's Inclusion Index. Part C provides a review of data collection strategies recommended by the *Challenges* report. Finally, Part D provides recommendations for improving the quality of the LSO's future research efforts.

PART A: Review of the Stratcom Report

In 2013, under the direction of the Law Society and the Working Group on Challenges Faced by Racialized Licensees, Strategic Communications Inc. (Stratcom) was contracted to design and conduct research on three important issues: 1) The challenges faced by racialized licensees in Ontario at various career stages and practicing different types of law; 2) Factors that could increase the risk of complaints and discipline for racialized licensees; and 3) Best practices with respect to reducing racial bias within the legal profession and eliminating the challenges faced by racialized licensees.

Stratcom's research and analysis was conducted in 2013 and 2014 and their final report was tabled in March 2014. Below I review the research methods employed by Stratcom during their investigation and the overall strength of their findings and conclusions.

Key Informant Interviews

Between May and June 2013, Stratcom conducted interviews with 27 individuals with specialized knowledge about the experiences and challenges faced by racialized lawyers. Nine out of 10 of these key informants (88.9 per cent) self-identified as racialized. A purposeful sampling strategy was employed

that involved the recruitment of participants from several organizations that explicitly serve the needs of lawyers from specific ethno-racial groups. These organizations included: 1) The Arab Canadian Lawyers Association; 2) The Canadian Association of Black Lawyers; 3) The Canadian Association of South Asian Lawyers; 4) The Federation of Asian Canadian Lawyers; 5) Legal Leaders for Diversity; and 6) The University of Toronto's Internationally Trained Lawyers Program.

In my opinion, the key informant interviews conducted by Stratcom were methodologically sound and consistent with standard exploratory research practices. The purpose was to examine the topic in a qualitative fashion and identify major issues and themes. The authors note that the results of the key informant interviews were used to develop questions for subsequent focus groups and their survey of licensees (discussed below). This, in my opinion, represents a strong methodological strategy.

Major findings stemming from the key informant interviews include details about how racism and discrimination, both conscious and unconscious, impact racialized licensees at both the recruitment and promotion stages of their career. The findings also highlight the networking and mentorship challenges faced by racialized lawyers and paralegals and how cultural differences can negatively impact workplace integration and subsequent opportunities for promotion. The findings also discuss the challenges faced by internationally trained lawyers and why racialized licensees may be more vulnerable to complaints and professional discipline. Articulated strategies for addressing systemic bias in the legal profession range from the development of targeted mentoring programs to the collection and analysis of race-based data.

With respect to the key informant interviews, I do think the Stratcom report lacks clarity with respect to its analytic strategy. How were the qualitative data from the interviews compiled? Were the interviews transcribed and subsequently entered into a qualitative software program for analysis? Or did the analysis

rely entirely on interviewer field notes? The presentation of data is also quite thin. It is restricted to a few pages of text and includes only one direct quote from a participant. The potential strength of key informant interviews is the richness of the data relating to professional experiences and perceptions. As it stands, the report does not provide such richness of detail.

Finally, the key informant findings do not adequately discuss differences across respondents. As discussed above, the interviews included people from various racial backgrounds and various organizations serving different ethno-racial populations. Were opinions and experiences constant across these different types of respondents? Do Black licensees, for example, experience the same types of challenges as Asian, South Asian, or Arab licensees. I would have liked to have seen more of a discussion of whether differences exist across disaggregated racial groups. This is a weakness of the report.

Focus Groups

The second stage of the Stratcom research strategy involved a series of focus groups with both racialized and non-racialized lawyers and paralegals. These focus groups were held in the summer of 2013 and involved licensees from a variety of practice environments, including sole practitioners, small firms, medium and large firms, and government bodies. The participant recruitment strategy — which involved emails to Law Society members and a posting on the Law Society website — appears solid and consistent with standard social science practices. Importantly, it appears that the focus groups attracted considerable interest. The Stratcom research team eventually selected 103 racialized participants and 13 non-racialized participants from a pool of over 500 volunteers. Details regarding how participants were selected from the pool of volunteers are not provided. Was there a random selection process or was a stratified or quota selection process employed to ensure the representation of lawyers from different

racial groups and practice environments? The report would benefit from a better description of the participant selection strategy. It would also benefit from an improved description of the focus group sample, including a breakdown of participants by disaggregated racial group, gender, years of experience, and type of practice.

Sixteen focus groups were eventually completed by August 2013: fourteen focus groups were conducted with racialized licensees and two were conducted with non-racialized lawyers and paralegals. According to the Stratcom report, focus groups were organized by type of practice. Separate sessions were held for sole practitioners and licensees employed by small firms, licensees employed by medium-sized and large firms, and licensees employed by the government. Three separate focus groups were held for racialized paralegals. The two sessions targeting non-racialized licensees included both lawyers and paralegals. All focus group sessions involved participants of mixed gender identity. Questions and probes asked during the focus group sessions were informed by the key informant interviews. Consistent with principles of research transparency, these questions are provided in Appendix D.

The focus group findings, as reported in the Stratcom report, are largely consistent with the results of the key informant interviews. To begin with, many participants describe experiences with racial stereotyping and discrimination and how these experiences shaped their relationship to their work and career opportunities. Others discussed how cultural barriers further serve to limit mentorship and promotional trajectories. Several participants mentioned how their lack of involvement in traditionally white, heterosexual male activities — including alcohol consumption, golf, hockey and visiting the cottage — served to isolate them from both peers and supervisors. As with the key informant interviews, focus group participants recommended a variety of remedies, including targeted mentorship programming for

racialized licensees, race-based data collection, financial assistance with respect to professional training, and greater involvement of the LSO in anti-racism policy development.

As with the key informant interviews, the Stratcom report, in my opinion, did not adequately explain how the focus group data was prepared for analysis. Once again, were the focus groups transcribed and entered into a qualitative software program for analysis — or was the analysis largely based on field notes and the subjective impressions of the research team? More detail with respect to how the data was coded and how major themes were identified would have significantly improved the report. As with the key informant interviews, I also felt that the report could have done more to highlight significant differences between focus group participants. For example, were the experiences of Black licensees different than the experiences of Asian, South Asian and Middle Eastern licensees? Were the challenges faced by racialized licensees different than the challenges faced by white licensees? Were the challenges faced by participants from small firms different than the challenges faced by participants from large firms or those employed by the government? Did the experiences of paralegals differ from the experiences of lawyers? These are questions that I think could have been better addressed in the findings section of the Stratcom report. I do note, however, that the authors allude to another report that is based on the 2013 Stratcom focus groups. This report was apparently submitted in September 2013 and was entitled, *Focus Group Findings: Preliminary Overview*. The reviewers were not provided with this report. Thus, we cannot determine if this second report provides a more thorough description of the focus group sample and a more detailed analysis of the data.

The Survey of Licensees

The third research strategy described in the Stratcom report involved a survey of Ontario licensees. According to the authors, an online survey invitation and link was emailed to the workplace email

addresses of all Ontario licensees — including lawyers and paralegals — in October 2013. The survey was accessible to respondents for a three-week period between October 25 and November 18, 2013. Potential respondents were apparently emailed two reminders to fill out the survey during this period.

Sampling Issues

According to Stratcom, the survey was eventually “accessed” by 5,454 licensees, but only completed by 3,296 respondents. The authors, unfortunately, do not discuss why 40 per cent of the licensees who accessed the survey decided not to complete it. Did these individuals feel that, due to survey length, they did not have the time to complete the survey? Did some licensees feel that the topic of the survey — the challenges faced by racialized licensees — did not apply to their situation? Perhaps some licensees felt uncomfortable because the survey was sent to their workplace email and they thus worried that their individual responses could be monitored by their employer or the research team. Whatever the reason, the Stratcom report does not, in my opinion, adequately discuss why so many people who reviewed the survey decided not to answer the questions.

I was also 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. However, according to the *2013 Snapshot Report*, the survey should have been distributed to 44,021 Ontario licensees (38,593 lawyers and 5,428 paralegals). Therefore, based on 3,296 completed surveys, the response rate for the Stratcom survey is only 7.49 per cent. However, according to Ornstein’s analysis, the response rate for racialized licensees (approximately 11.0 per cent) is twice as high as the response rate for white licensees (5.5 per cent). It should be noted that, by any standard, these are very low response rates. For example, industry experts typically note that “external” online surveys (i.e., surveys distributed to the general public) should reach a

response rate of at least 10 –15 per cent. By contrast, “internal” online surveys (i.e., online surveys targeting employees) should achieve a response rate of 40 per cent or more. I would consider the Stratcom survey an internal survey because it was sponsored by the LSO and targeted a specific population (Ontario licensees).

While the Stratcom report does not transparently discuss the exact response rate figures, it does acknowledge the low response rate on pages 22 and 23 of its report: “This [low response rate] 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.” They further maintain that their own weighting procedure “results in a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees” (pp. 22-23).

Table 3 of the Stratcom report highlights the results of the weighting procedure conducted by the authors. The results indicate that the weighted sample is now largely consistent with licensee population estimates, drawn from the 2010 *Snapshot* census, with respect to age, gender, size of firm, and racialization.¹ However, I seriously doubt whether the weighting procedure employed by Stratcom can compensate entirely for the low response rate discussed above. The weighting procedure employed seems to assume that the sample was randomly selected and not subject to systemic sampling biases that could have resulted from the nature of the study itself. In other words, the weights only account for the measured differences between the sample and the licensee population. The weights do not account for unmeasured differences, including experiences or concerns with racism and unfair treatment or

¹ I am unsure why the authors used 2010 rather than 2013 Snapshot data in their weighting procedure.

perceptions of the broader legal system. I do not think that any 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 study.

Despite the low response rate, I do think the 2013 survey data has considerable value. After all, over 3,000 lawyers and paralegals, from various backgrounds, took the time to complete a very extensive survey. To my knowledge, this may be one of the largest surveys of the legal profession ever conducted in Canada. I should also note that, although the response rate is low, the survey actually covers a high proportion of the targeted population. For example, general population surveys are often conducted by pollsters to capture the political opinions of Canadians. These surveys usually involve a random sample of 1,000 to 2,000 Canadians and produce estimates that are thought to be accurate plus or minus 5 per cent, 99 times out of 100. In other words, pollsters frequently use samples of 2,000 respondents to represent the views of approximately 37 million Canadians. A sample of 2,000 respondents, however, represents only .00005 per cent of the Canadian population. By contrast, the Stratcom survey has documented the views of 3,296 out of 44,021 Ontario lawyers and paralegals — or over 7.49 per cent of the entire licensee population. In sum, compared to other surveys, the Stratcom survey covers a much higher proportion of the total population under study.

Data Analysis Issues

Consistent with Starcom's analysis of the data from the key informant interviews and focus groups, the analysis of the survey data focuses on gross comparisons between "racialized" and "non-racialized" respondents. The following question (Q10: Appendix F) was used to identify racialization: "*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 modes of self-identification related to race. Do you self-identify as racialized or non-racialized?" Response options to this question included: a) I am racialized; b) I am not racialized; and c) I am unsure/I don't know. According to the results, 67 per cent of respondents indicated that they were non-racialized, 22 per cent identified as racialized, and 11 per cent indicated that they did not know if they were racialized or not.

The survey then asked respondents if they self-identified with nine specific ethno-racial groups, including Arab, Black, Chinese, East-Asian, South-Asian, South-East Asian, West Asian, Hispanic/Latin American, and white. Respondents could self-identify with more than one ethno-racial category and a space was provided for respondents to write-in an identity that was not listed. Interestingly, in my review of the material, I could find no specific response category that would capture Indigenous identity. I thus assume respondents who identified as Indigenous would have to write in their response (see Question 10, Appendix F).

Unfortunately, it appears that the authors of the Stratcom report decided not to report the exact number of respondents, from specific ethno-racial groups, that participated in the survey. Thus, the reader cannot identify the proportion of the sample that self-identified as Black, Chinese, South Asian, white, etc. I feel that this is a major oversight that reduced the quality of the report and the insights that can be drawn from the findings. I discuss this issue further below.

Although Stratcom does not actually report the number of respondents from different ethno-racial groups in the sample, it does state that approximately 95 per cent of Black, Chinese, East Asian, South Asian, and South-East Asian licensees self-identified as "racialized." This figure drops significantly to 80 per cent among Hispanic Latin-American licensees, 70 per cent among Arab licensees, and 65 per cent

among West Asian licensees. Somewhat surprisingly, the authors indicate that only 40 per cent of Indigenous respondents self-identified as racialized.² Finally, the results also indicate that almost 40 per cent of Jewish respondents and 6 per cent of white respondents identified as racialized. I feel that this array of responses demonstrates the confusion or uncertainty that often accompanies the terms “racialized” and “racialization.” Nonetheless, in the balance of the report, the authors still use the simplistic racialized/non-racialized dichotomy to discuss most of their findings.

I worry that the use of the racialized/non-racialized variable had a major impact on the reported findings and potentially masked major racial differences in experiences with and perceptions of the legal system. For example, as noted by Ornstein, since they account for almost 75 per cent of all licensees, the few white respondents who identified as racialized may have had the same impact on the findings for racialized respondents as those who identified as Black. Similarly, the high proportion of Jewish lawyers who identified as “racialized” might also have impacted the overall findings. At the very least, the authors should have compared the responses of white and Jewish respondents — who identified as racialized — with the responses of white and Jewish respondents who identified as non-racialized. Furthermore, the responses of white/Jewish racialized respondents should have been compared to the responses of respondents from other racial minority groups. Similarly, it would be interesting to compare the responses of Indigenous and other racial minority respondents, who identified as racialized, with the responses of those who identified as non-racialized. The question of why people identify as racialized or not clearly deserves further study.

² I was left to wonder why over half of the Indigenous respondents did not identify as racialized. Is this because Indigenous licensees want to be identified as a unique category and not collapsed into a general “non-white” grouping? Conversely, do some Indigenous respondents feel that they are “white passing” and thus have not experienced racialization? Unfortunately, these important issues are not discussed in the report.

In my opinion, the survey analysis *should not* have focused on the differences between respondents who self-identified as racialized and those that identified as non-racialized. Rather, the analysis should have focused on disaggregated ethno-racial groups. In my experience, the collapsing of different racial groups into simplistic “white” vs. “non-white/visible minority” categories serves to obscure racial disparity. For example, in my own work, when you compare “visible minorities” to “white people,” there are no significant racial differences with respect to police street checks, use of force, or arrest rates. However, when you disaggregate the data, we find that Indigenous and Black people are much more likely to be involved in police stops, use of force incidents, and arrests than white people. Furthermore, white people have higher rates of police contact than people from other racial minority groups (Asians, South-Asians, etc.). In other words, because Black and Indigenous people have higher rates of police contact, and other racial minorities have lower rates of police contact, when you combine them into a single “racial minority” category it gives the illusion of no racial disparity.

I worry that the same problems may exist with respect to the Stratcom report. Can we really assume that the experiences of Black and Indigenous licensees would be the same as to the experiences of Asian, South Asian, or Arab/West Asian licensees? Can we assume that white or Jewish respondents who feel “racialized” have the same experiences as other minority respondents who self-identify as racialized? Previous research suggests, for example, that anti-Black racism has a greater impact on Canada’s Black community than the racial stereotypes faced by “model minorities” (i.e., Asian and South Asian Canadians).

Findings presented in the Stratcom report underscore the need for disaggregation. For example, while the data suggest that racialized respondents (40 per cent) are more likely than non-racialized respondents (3 per cent) to feel that race was a barrier to entry into the legal profession, this perception was even more

common among South-East Asian (54 per cent), Black (52 per cent) and Arab (50 per cent) respondents (see Stratcom report, pg. 38). Unfortunately, the presentation of disaggregated racial data is absent, inconsistent, or incomplete throughout the Stratcom report.

In addition to the problem of simplistically focusing on racialized vs. non-racialized respondents, the Stratcom report has other significant limitations. For example:

- One tenth of the sample (11 per cent) indicated that they did not know if they were racialized or not? How did this rather large group of respondents answer the various questions posed by the survey? According to my reading, this group is completely left out of the analysis and findings sections of the report.
- Although the Stratcom report discusses differences between racialized and non-racialized licensees, it does not provide any quantitative measures of association or determine whether observed racial differences are statistically significant or not.
- The report does not include any form of multivariate analysis. In my opinion, a series of multivariate analyses are required to determine if licensee racial background predicts outcomes, experiences, and perceptions after controlling for other theoretically relevant factors (i.e., gender, age, educational background, years of experience, type of practice, size of firm, etc.).
- The Stratcom report is rather misleading when it comes to describing survey length and its potential impacts on both the response rate and data integrity. The report states that the survey consists of thirty-five questions, including six question banks, and seven open-ended questions. The report further states it would take approximately 25 minutes to complete. However, my review of the questionnaire (Appendix F) reveals a total of 139 unique questions. This, in my opinion, would take the average respondent far longer than 25 minutes to complete. The sheer volume of questions could explain why some individuals who “accessed” the survey decided not

to complete it. Furthermore, the length of the survey could produce problems with respect to respondent fatigue that would impact the quality of the data collected. These issues are not discussed by the authors of the report.

It must be stressed that many of the problems identified above have to do with how the Stratcom survey data were analysed rather than the data itself. For example, the data could provide a disaggregated race-based analysis. The data could test for statistical significance. The data could be used to develop a series of multivariate statistical models. Unfortunately, the data were not used in this manner. As a reviewer, at times I wished I had access to the raw survey data and been given the opportunity to conduct further analyses. Additional analyses of the existing data could have addressed many of the questions that emerged after my reading the Stratcom report.

A Note on the Klippenstein Critique

As part of my review, I had the opportunity to review a critical analysis of the Law Society's *Challenges* report written by Murray Klippenstein. While I share some of the concerns expressed by Mr. Klippenstein (see discussion above), I was disturbed by the nature of some of his comments.

I was particularly concerned with the author's explanation for the low response rate. After quickly dismissing that some respondents may have been "too busy" to complete the survey, Klippenstein argues that the response rate must reflect the fact that most licensees are unconcerned about racial bias in the legal profession and were thus unmotivated to participate in the survey. He writes:

This writer believes that this issue puts a clear spotlight on "the elephant in the room." It may be that the reason for the extremely low survey response rates from both the overall population of licensees and specifically from racialized lawyers and paralegals is that the

great majority of lawyers and paralegals in the province are not all that concerned about “racism” in the professions, perhaps because we have progressed to the point where the legal professions are characterized more by openness and equality and opportunity than by “systemic racism.”...The Law Society’s comprehensive Working Group Report Working Together for Change which was published after the Challenges Report, and which was based on the Challenges Report, forcefully stated (in the second paragraph of its Executive Summary), its conclusion that “racialized licensees face widespread barriers within the professions at all stages of their careers.” Frankly, it appears to this writer that the more than 90 per cent of the racialized Law Society licensees who chose not to respond to the survey (and many of the 10 per cent who did) either don’t agree with that conclusion, don’t think the issue is all that serious, or prefer to have a more positive outlook.

I feel that Klippenstein’s comments with respect to this matter amount to ridiculous speculation. Speculation that is disrespectful and insulting to the racialized and non-racialized respondents who participated in the Stratcom survey and related their experiences and opinions on a very difficult topic. Below I describe additional factors that, in combination, may help explain the low response rate to the Stratcom survey:

- Despite Klippenstein’s argument, many licensees in the sample pool may have been too busy to complete the survey during the study period.
- Research on online surveys suggests that many individuals who receive messages from outside sources simply ignore or delete these emails as “junk mail” or solicitations that they do not have time to respond. Thus, it is possible that many in the sample pool did not even read the Stratcom/LSO correspondence about the research and were thus not aware of the survey or the topic that it explored.

- Many people, with busy schedules, who are sent online surveys decide that they will return to the email link later — after they have dealt with more immediate work-related or personal concerns. While they may initially intend to complete the survey, they often forget about the research — or become engaged in new demands — and ultimately do not find the time to answer questions before the survey link is terminated. The further a survey link falls down one’s inbox, the less likely it is to be completed.³
- Some sensitive workplace email filters may have sent the Stratcom survey to “junk mail,” further reducing the number of respondents who received the invitation to participate in the research.
- Based on my recent experience, some white respondents feel that surveys about race and diversity issues do not apply to them. Rather than claiming that racism or racial bias are not social problems, these individuals often state that they are not qualified to discuss racial bias because they are not the member of a racial minority group. In other words, they do not take part in the research because they feel they have little insight to contribute.
- Some white respondents may have overtly racist attitudes and thus be unwilling to participate in research projects that would document the experiences of racial minorities and contribute to equity policy.
- Other white respondents may be apprehensive about racial equity research and feel that it may contribute to policies or practices that will limit or impede their own career ambitions. For example, some may fear that equity research will justify affirmative action policies that may hurt their own career prospects or chances of promotion. It is possible that these individuals may have refrained from participating in the Stratcom survey because it would not serve their best interests.

³ I wonder if the LSO has done research on how often its newsletters and announcements are actually opened and read by licensees. In other words, what proportion of licensees read, in a regular basis, LSO correspondence?

- Some white and racial minority respondents may have been uncomfortable that the survey was sent to their workplace email address. Research suggests that, despite assurances of confidentiality, many people feel that their individual responses to surveys can be monitored or disclosed to superiors. These respondents often refrain from research participation because they are not certain their responses will be kept anonymous and fear the social consequences for complaining about racism or other forms of bias.
- Finally, research suggests that many racial minorities are fatigued by the number of studies that have tried to document racism and discrimination. These respondents have often participated in many research forms and have become cynical about the impact of such studies. In other words, some racialized licensees may have refrained from participation in the Stratcom study because they felt that the survey would not do any good or because they did not want to be re-traumatized by the disclosure of their experiences with racism and discrimination within the legal profession.

In my opinion, the proposed reasons for the low response rate, listed above, are just as valid as the “no racism” explanation provided by Klippenstein. Nonetheless, I also acknowledge that the potential explanations I provide can also be dismissed as speculation. However, unlike Klippenstein, I feel that a full investigation into the low response rate needs to be conducted before concluding that most Ontario licensees believe that racial bias in the legal profession is a non-issue. I have no doubt that some licensees feel that racism does not exist or that the racial bias issue within the legal profession has been exaggerated. However, I wonder why Klippenstein automatically assumes that such licensees would be disinterested in participating in the Stratcom survey or other equity research? Why would such individuals not use such surveys as an opportunity to express their opinion that there is no racism?⁴

⁴ Indeed, Klippenstein cites another study (Kay et al. 2004) as evidence that racism is not a problem within the Canadian legal profession. Is he stating that licensees who do not see racism as a problem were willing to participate in that survey, but were unwilling to participate in Stratcom’s research? Unfortunately, the review team did not get the opportunity to

I also want to briefly discuss Klippenstein's assertion that the Stratcom survey contained "many leading questions." As he states:

The Challenges survey contains yet another problem: a great many of its questions were framed with a highly emotional undertone or in a suggestive way. For example, the responders were asked to indicate their agreement (or disagreement) with a number of statements like: "You have been subjected to prejudicial attitudes on the part of other legal professionals, based on your racialized status," "Your employment environment is not very diverse," and "Your beliefs or cultural practices preclude you from participating in many of the social networking functions of Ontario legal firms." Clearly, these statements steer respondents towards identifying or interpreting experiences in a way that would align with the conclusion that there are considerable racial barriers or racial prejudice in the legal profession. In the social sciences, such statements are called "loaded," or "leading," questions, because they lead respondents to respond in particular ways.

I disagree with this argument. It is standard social science practice to explore controversial issues by providing statements and then asking respondents whether they agree or disagree with those statements. As long as respondents have the opportunity to express either agreement or disagreement with these statements, I see nothing wrong with the approach used by Stratcom. Furthermore, it appears that the questions marked as problematic by Klippenstein appear to be directly linked to the experiences and opinions of racialized licensees that were identified through the key informant interviews and focus

review and critique the methodology and findings reported by this alternative study — an alternative study that is now 20 years old.

groups. Finally, the statements highlighted by Klippenstein should not be examined in isolation. While some of the statements provided in the questionnaire have a negative focus (i.e., Your employment environment is not very diverse), other statements are positive in nature (i.e., Being racialized can be a positive benefit for paralegals and lawyers because they can recruit new clients through their community's networks). Are those positive questions "leading" because they suggest that racialized licensees can have a positive impact on the work environment? I found that the Stratcom survey has a balance of positive and negative statements and that respondents are free to express their opinion about each statement. The use of different types of statements can keep respondents on their toes and prevent response bias.

Overall, I found the Klippenstein critique to be unnecessarily harsh and overblown. Near the end of his critique, he argues that the *Challenges* report seems to be driven by a particular "political ideology." In my opinion, the same could be said about his own critique. It appears to be "driven" by a political ideology that wants to dismiss evidence of racism and discrimination and the challenges faced by racialized licensees. Furthermore, rather than provide constructive criticism and suggestions for improving the study of the racism issue, Klippenstein seems determined to prevent further investigation of racial bias. After all, while most academic experts concede that racial bias is a problem within all sectors of society, Klippenstein seems to have concluded that racism is no longer a problem within the legal profession and no longer deserves research and policy attention.

In conclusion, I agree that the research described in the Stratcom report has several important limitations. That does not mean, however, that the findings are unimportant or worthy of complete dismissal. In my opinion, the Stratcom findings also point to the need for more, not less research on racism within the legal profession. This argument is further outlined in the next sections of this report.

Stratcom Survey Findings

Despite the sampling and analysis concerns discussed above, the 2013 Stratcom survey has considerable merit. The survey involves a large sample of over 3,200 lawyers and paralegals — a typically a hard-to-reach study population. Importantly the sample includes a large number of both racialized and non-racialized licensees representing a wide variety of ethno-racial and practice backgrounds. A small sample of noteworthy findings include:

- 78 per cent of non-racialized respondents found a suitable job shortly after being licenced, compared to 59 per cent of racialized respondents.
- 52 per cent of racialized respondents felt that they did not advance as rapidly in their careers as colleagues with similar qualifications, compared to 25 per cent of non-racialized respondents.
- 40 per cent of racialized respondents felt that their ethnic or racial identity was a barrier to entry into practice, compared to only 3 per cent of non-racialized respondents.
- 43 per cent of racialized respondents felt that their ethnic or racial identity was a barrier to career advancement, compared to only 3 per cent of non-racialized respondents.
- Black and South Asian respondent are more likely to report racial barriers or challenges than white respondents or respondents from other racial minority groups.
- The absence of professional networks, cultural differences, and prejudicial attitudes within the legal profession were the most common challenges identified by racialized respondents.
- The majority of both racialized (82 per cent) and non-racialized respondents (62 per cent) believe that, compared to non-racialized lawyers and licensees, racialized licensees face additional challenges with respect to practice entry and career advancement.
- Racialized and non-racialized respondents are often in agreement with respect to possible remedies or policies designed to reduce racial bias in the legal profession. For example, 82 per

cent of racialized and 78 per cent of non-racialized respondents believe that mentorship programs should be developed to meet the specific needs of racialized licensees.

- Similarly, 87 per cent of racialized and 82 per cent of non-racialized respondents believe that the LSO should play a role in addressing the challenges faced by racialized licensees.

Overall, the Stratcom survey documents that racial bias exists within the legal profession in Ontario and identifies the types of challenges faced by racialized licensees. Sampling issues, and a low response rate, prevent the generalization of findings to the broader legal community and an accurate estimate of the proportion of racialized licensees that have faced overt, implicit, and systemic bias. However, despite these methodological limitations, the survey does document that, in 2013, perceptions of bias and experiences with racism were widespread among racialized licensees in Ontario. These findings, in my opinion, deserve policy attention and additional research and monitoring.

Conclusion

As with all social science research, the Stratcom study has its strengths and weaknesses. The primary strength of the Stratcom report is its multi-method approach that includes both qualitative (key informant interviews, focus groups) and quantitative (the licensee survey) research strategies. It should be stressed that findings are highly consistent across different methodologies. In other words, the findings from the key informant interviews are consistent with the findings from the focus groups which are consistent with the findings from the survey. It should also be stressed that the findings from the Stratcom report are also highly consistent with the results of independent consultations, conducted by the Working Group, with over 1,000 racialized and non-racialized licensees (see the *Challenges* report). The fact that results are remarkably consistent across methodologies — a process known as triangularization — increases confidence that the research, in its entirety, has documented the “reality” of many racialized licensees.

As discussed above, the limitations of the Stratcom report include a low response rate, a limited analytic framework, a lack of testing for statistical significance, and an absence of multivariate analyses. The study is also more than ten years old. This may raise questions about whether 2013 findings can be applied to the situation in 2022. The age of the study highlights the need for future research — research that can address many of the methodological limitations associated with earlier studies. Future research will be addressed in the final section of this report. The next section provides a review of the Inclusion Index.

PART B: A Review of the Diversio Inclusion Index

Overall, I found the review of the Diversio Inclusion Index to be quite challenging. My analysis seemed to raise as many questions as it did answers. Part of the problem relates to transparency. I found, at times, the methodological details provided by Diversio to be vague and/or uncertain — at least by academic standards. I was left wondering if Diversio might have a strong proprietary interest in their methodology and were thus reluctant to share methodological details out of concern that it would reveal “trade secrets.”

According to a memo dated April 22, 2020, Diversio’s Inclusion Index has three major components: a *Commitment Score* that measures legal workplace (LWP) policies and programming that promote equality and diversity in the workplace; 2) a *Diversity Score* that documents the representation, within LWPs, of six historically disadvantaged groups: women, disabled people, sexual minorities (i.e., members of the LGBTQ+ community), Indigenous people, ethno-racial minorities, and Francophones; and 3) an *Inclusion Score* that measures licensees’ perceptions of equity and feelings of inclusion within the workplace.

An aggregate Inclusion Index — or *Diversio Score* — is calculated by combining the scores from each of the three subscales. The *Diversity Score* and *Commitment Score* are weighted so that each account for twenty-five per cent of the final index rating. By contrast, the *Inclusion Score* is weighted so that it accounts for fifty per cent of the final *Diversio Score*. The statistical logic behind the 25 per cent (Diversity Score), 25 per cent (Commitment Score), 50 per cent (Inclusion Score) weighting scheme is not, in my opinion, adequately described. Diversio’s explanation is provided in the following quote:

The stated intention of the “Inclusion Index” is to reflect the inclusivity of LWPs, and the presence or absence of bias, systemic barriers, and exclusion. The Index is additional to demographic snapshots and self-identification data which is published separately. In addition, this weighting hedges against the possibility of assigning a high ranking to an LWP in a scenario where an LWP is highly diverse but employees from underrepresented backgrounds are subject to racism, bias or harassment. Focusing on inclusion provides a clear incentive for companies to strive for real systemic change rather than “tokenism”.

I remained unconvinced after reading this passage. I still don’t understand why a strategy in which each subscale is weighted equally might be preferable. I am also concerned about how Diversio’s current weighting process could skew results. For example, it appears to me that a non-diverse LWP, with one or two “contented” licensees from one of the six targeted groups, could score significantly higher on the *Inclusion Score* and the final *Diversio Index* than a LWP that has a very diverse work environment, but less satisfied licensees. Furthermore, could a LWP with only white employees still score high on the *Inclusion Score* if these white licensees feel that the work environment is fair and inclusive?

I am also concerned that Diversio does not adequately disclose how well the items that make up the three subscales combine to form single, composite measures. Furthermore, there is no discussion about how

well the three subscales combine into the final composite score. For example, it is standard social science practice to provide measures of scalability or reliability to determine whether unique, individual measures can be combined into larger indexes (see for example the use of the Cronbach Alpha statistic). I can see no evidence that Diversio employed this type of methodology.

The Diversity Score

The Diversity Score measures the combined representation of six groups within individual LWPs.

General population benchmarking is used to determine the representation of specific groups.

- The representation of racial (ethnic) minorities, Indigenous peoples, women and Francophones is determined by comparing workplace representation with Canadian Census estimates for the region within which the LWP is established.
- Since sexual orientation estimates had yet to be documented by the Canadian Census, LGBTQ2+ representation was determined by comparing LWP representation with “a combination of 1) U.S. government data on LGBTQ2+ representation in major U.S. metropolitan areas most comparable to Toronto, and 2) proprietary Diversio data collected on LGBTQ2+ representation across Ontario”; and
- The representation of licensees with a disability compared LWP representation with a 20 per cent disability rate based on “Statistics Canada Census.”⁵

I do have some concerns with the use of Census benchmarking to establish the diversity of individual LWPs. First of all, this method assumes that licensees actually live in the same region as their employer. This is not necessarily true. Thus, a LWP with a diverse, non-local workforce may score higher on the *Diversity Index* than warranted. I also worry that LWPs located in predominately white regions of the

⁵ Although the Diversio report refers to “ethnicity,” they actually appear to use the racial identity question and categories from the Canadian Census. Some might question the use of American data to establish the size of Ontario’s LGBTQ+ community.

province may disproportionately benefit from the hiring of a few “diverse” licensees. By contrast, firms in diverse regions of the province, that hire numerous licensees from targeted groups, may still score low on the *Diversity Index* if their workplace profile does not match or exceed local Census estimates.

It also appears that LWPs do not benefit at all for being more diverse than their Census benchmark.

According to Diversio, the final *Diversity Index Score* was calculated using the following methodology:

“LWPs were awarded points for each of the identified demographic traits (gender, ethnicity, Indigenous identity, disability, LGBTQ2+, Francophone background). Full points were given if an LWP’s demographics were at or above the regional population benchmark (no additional points were awarded for being more representative). If LWPs had lower representation than their regional population, points were deducted proportionately to the LWP’s deviation from the standard. ...Each demographic trait was assigned equal importance and thus weighted equally.”

In other words, LWPs that are particularly diverse will score no higher on the *Diversity Index* than LWPs that hire at the Census benchmark level for their region. This, in my opinion, is unfortunate. The Diversio methodology does not reward LWPs that may be working particularly hard at creating diverse workplace environments.

I am also concerned that the Diversio methodology — contrary to the *Challenges* report and its emphasis on racialized licensees — places equal emphasis on the representation of women, disabled people, Francophones, and sexual minorities. In other words, a LWP that has few or no racialized lawyers, can still score high on the *Diversity Index* — as long as they hire from one or more of the other five “disadvantaged” groups. I am not arguing that the other target groups are unimportant. However, in my opinion, to truly capture racial diversity, a distinct *Racial Diversity Score* is required.

I also worry about how racial minority representation is determined. Is the benchmark based on specific racial minority groups (i.e., Black, South Asian, Asian, etc.) or a composite variable that simply documents the presence of “racial minorities” vs. white licensees? If the *Diversity* measure simply measures racial minority or “racialized status”, and not the presence of specific racial groups, the *Diversity Score* could mask significant racial bias. For example, imagine a LWP that explicitly discriminates against Black licensees (i.e., it will not hire or promote Black lawyers). According to my analysis, this firm could still score high on the *Diversity Index* if they hire and promote lawyers from other racial minority backgrounds or other disadvantaged groups.

Another legitimate critique of Census benchmarking, especially with respect to racialized licensees, is that it does not accurately capture the population of lawyers and paralegals that are available for hire and promotion. Due to systemic biases and barriers in secondary, post-secondary, and law school education, the proportion of racialized licensees available for hire and promotion may be far lower than their presence in the general population. For example, recent Census projections suggest that approximately 50 per cent of the population of the Greater Toronto Population are “racialized”. However, it is likely that the proportion of recent law school graduates, who can be classified as racialized, falls far below that 50 per cent threshold. In other words, law school graduation benchmarking may provide a much more accurate strategy for documenting the over or under-representation of racial groups in the legal profession. Unfortunately, law school graduation benchmarks may be unavailable — leaving general population benchmarking as the only viable option.

A final potential concern with Diversio's *Diversity Index* is that it does not measure "diversity" with respect to positions of power within LWPs. For example, it does not measure the proportion of racialized and female licensees classified as associates vs. partners. In other words, according to the current methodology, a LWP could be classified as "diverse" even if racialized licensees and other disadvantaged groups do not hold supervisory positions.

The Commitment Score

According to Diversio, the *Commitment Index Score* is made up of two different components: 1) Self-reported programming and policies designed to produce equality and eliminate bias. These self-reports are to be provided by a designated, knowledgeable informant from each workplace; and 2) Licensee perceptions of diversity-related programming and policies within their LWP as derived from surveys of all licensees within a particular workplace.

According to Diversio, these two components are "scaled to generate a meaningful, proportionate Index." Unfortunately, information on exactly how the final commitment score is created is not provided. Furthermore, it appears that in 14 of 192 workplaces (7.3 per cent of the sample), the designated informant did not answer the required commitment questions. In these cases, the Commitment Score was based entirely on the licensee survey. It is unclear how this missing data issue was reconciled or any impact it had on the commitment scores for specific workplaces.

It is important to highlight that Diversio does not report measures of scale quality, including measures of scale reliability. Diversio also does not provide information on how specific variables contribute to the overall "commitment" measure. It is thus impossible to accurately assess the validity and reliability of the

final Commitment Score. Diversio also does not seem to consider how response rate variability, across LWPs, may impact the quality of the information received.

I was somewhat struck by the rather subjective nature of the *Commitment Score*. It appears that Diversio did not actually request equity and anti-racism policies from LWPs and subsequently review these policies with respect to quality, thoroughness, or enforcement. Rather, it asks key informants, from each LWP, to evaluate whether these policies exist and whether they think the policies are effective. I am concerned that such subjective, and potentially self-serving, evaluations are given the same 25 per cent weight as more objective measures of actual diversity.

I also worry that many equity policies are performative rather than change producing. Some LWPs may talk a good game — but not actually deliver when it comes to actual equity, diversity, and inclusion. Perhaps I am jaded by my experiences with other aspects of the Canadian criminal justice system. For example, I know of many Canadian police services that have very strong policies and mission statements in support of equity principles. However, these same police services still demonstrate racial bias with respect to both internal and external operations. Actions speak louder than words — and I am thus disappointed that the Diversio *Inclusion Index* puts so much emphasis on informant perceptions of policy integrity rather than an actual analysis of policies or more concrete measures of equity. To further illustrate my concerns, I want the reader to imagine a LWP that is entirely white. Zero racial diversity. According to my reading of the Diversio methodology, this LWP could still score high on the *Commitment Index*, as long as its white licensees ‘feel’ that they have strong equity policies.

The Inclusion Score

According to Diversio, the Inclusion Index Score is based on LSO Inclusion Questions administered during the 2018 Annual Report process. As stated by Diversio:

LSO Inclusion Questions were bucketed into five sub-metrics that are typically used by Diversio to assess experience in the workplace: Inclusive Culture, Unbiased Feedback, Access to Networks, Flexible Work Options, and Safe Work Environment. These metrics were developed through extensive research and consultation with subject matter experts and are consistent with assessments Diversio has carried out in other sectors.

Respondents were then categorized into either the “dominant” or “non-dominant” group according to their self-identified demographic profile. The dominant group within the LSO sample set was identified as white, heterosexual, Anglophone men without a disability. Respondents who identified as not sharing any of these traits were categorized into the non-dominant group....Sub-metric scores were generated for each LWP based on the combined answers of all respondents...The formulas used to create these scores implemented the 70/30 weighting of nondominant/dominant groups described above. Once the ranking of each LWP was established, all Inclusion Scores were scaled to generate a meaningful, proportionate Index.

No other information is provided about the calculation of the Inclusion Score — making a full assessment of the measure impossible. It is important to note that, unlike standard social science practices, Diversio provides no evidence or measure of the validity and reliability of the five subscales, or evidence that the five sub-scales reflect a single underlying dimension of “inclusion.” Diversio also does not provide a detailed explanation for how the five Inclusion Subscale Scores were combined to create what they refer to as “a meaningful, proportionate Index.”

I am also concerned that Diversio’s simplistic division of licensees into “Dominant” and “non-Dominant” categories will obscure or mask the experiences of racialized lawyers and paralegals. For example, imagine a LWP with 100 employees: 50 employees from the dominant group (white, heterosexual males), 40 white, heterosexual women, and ten racialized licensees. According to the Diversio methodology, the experiences of white women (80 per cent of the non-dominant sample) would far outweigh the experiences of racialized licensees in the calculation of the final *Inclusion Score*. Therefore, at the very least, I believe that separate Inclusion Scores need to be calculated for each of the six “non-dominant” groups targeted by the Diversio strategy. Clearly, if the concerns raised by the *Challenges* report are to be addressed, a separate Inclusion Score needs to be calculated for racialized licensees.⁶

I am also concerned that the validity of the Inclusion Score is clearly dependent on both the honesty of respondents and the response rates for each LWP. The Inclusion Scores for LWPs with high response rates should be considered more accurate than the Inclusion Scores for LWPs with low response rates. My review of the Diversio materials indicates that response rates with respect to the inclusion questions vary dramatically among LWPs: from a low of 9 per cent to a high of 100 per cent (mean inclusion response rate=68 per cent).

It further appears that the number of dominant and non-dominant respondents from specific LWPs can, at times, be extremely low. For example, according to the data provided, the Inclusion Score for Diversio’s highest rated LWP (Privy Council Office) was based on responses from one dominant and two non-dominant licensees. Similarly, the Inclusion Score for the second ranked LWP (the University of

⁶ Ideally, separate Inclusions Scores should be calculated for specific racial groups (i.e., Black licensees, Indigenous licensees, South Asian licensees, Asian licensees, etc.).

Toronto) was based on responses from 2 dominant and 13 non-dominant licensees. Such low numbers, in my opinion, bring the stability and integrity of the Inclusion Scores into question. Unfortunately, Diversio does not provide a detailed explanation of how it addressed the issue of low respondent numbers and radically divergent response rates across LWPs. How did it compensate for these problems? Did these issues impact the validity of the Inclusion Scores that comprised 50 per cent of the final Diversio *Inclusion Index*?

In my opinion, the above-stated problems with the Inclusion Score bring into question Diversio's decision to give it twice the weight as the *Diversity* and *Commitment* scores when calculating the final, overall Diversio *Index Score*.

From a research ethics perspective, I am also somewhat concerned about how the administration of the inclusion questions could impact racialized and other “non-dominant” licensees — especially those employed in small, non-diverse LWPs. I assume that most LWPs do not want to score poorly on the Inclusion Index. Will that put an implicit pressure on racialized licensees to make their employer “look good.” Furthermore, if a LWP does score poorly on the inclusion items, will there be social consequences for racialized respondents? Will it, for example, be assumed that the firm's low score on the Inclusion Index is the result of responses given by racialized and other non-dominant respondents. Clearly, some thought needs to be given to the privacy and confidentiality concerns for those working in certain types of LWP.

Finally, I was struck by how similar some of the LSO/Diversio inclusion questions are to the questions employed in the Stratcom report. It made me wonder if an analysis of the LSO inclusion data could be compared to the Stratcom data to further examine the barriers faced by racialized licensees.

The Final Inclusion Index or Diversio Score

According to the Diversio materials, for each LWP, scores on the *Diversity*, *Commitment* and *Inclusion* Indexes can be combined to produce an overall *Diversio Score*. This score apparently ranges from 0 to 100. Theoretically, the higher the score on the index the more “inclusive” the LWP. Diversio uses this methodology to rank 192 LWPs from “best” to “worse.” Diversio also uses combined scores on the three sub-indexes to label LWPs according to eight different “archetypes.” These archetypes range from “Superstars” (LWPs that score high on diversity, inclusion, and commitment) to “needs improvement” (LWPs that score low on diversity, inclusion, and commitment). I can understand the attraction of this ranking the system. It is intuitive, easy to comprehend, and seemingly provides an elegant strategy for rating LWPs with respect to diversity and equality.

Unfortunately, Diversio provides little detail with respect to how the three subscales are combined to produce the final *Diversio Score*. Are the scores on the three subscales somehow standardized, then weighted, and then combined? Further details are required. Furthermore, the validity or accuracy of the final *Diversio Score* assumes that the commitment, diversity, and inclusion subscales represent a single index that can be used to effectively categorize LWPs. However, Diversio provides no empirical evidence or statistical tests to document that the subscales “stick together” and form a unified measure. Indeed, a re-analysis of the data, provided by Ornstein, suggests that the diversity, commitment, and inclusion subscales are, in fact, unrelated. For example, the correlation between the Commitment Score and the Inclusion Score is small and statistically insignificant ($-.016$). This indicates that there is no relationship between equity-seeking policies and whether licensees feel part of an inclusive workplace. Similarly, the correlation between inclusion and diversity is negative in direction and quite weak ($-.156$). In other words, diverse workplaces appear to be less inclusive, with respect to workplace culture, than

less diverse workplaces. Finally, the correlation between commitment and diversity (.201) is also quite small. In other words, LWPs with strong equity-seeking policies are not necessarily diverse. This is consistent with the argument that policies can be performative, rather than producing change and increasing actual diversity in the workplace. As stated by Ornstein, a final score or index based on weakly related commitment, diversity and inclusion sub-scores should not be used to determine whether a LWP has made progress towards equity. At the very least, such subscales need to be examined in isolation.

Finally, I want to express concerns about publishing, every four years, a ranking of LWPs using the *Diversio* methodology. As discussed above, there are serious concerns about the how the *Diversio Index* is derived. Until those methodological limitations are addressed, it may be unwise to publish unreliable rankings that could hurt the reputation of individual LWPs. I do understand and appreciate the desire for an equity-related ranking system. Such a system could “name and shame” under-performing LWPs and provide them with both the motivation to change and the metrics required to document progress. However, I wonder whether such a ranking practice might impede some diversity-related efforts. For example, will racialized licensees want to work for LWPs that are ranked low with respect to diversity and inclusion? There is a possibility, therefore, that highly ranked LWPs will continue to attract racialized applicants, while lower-ranked LWPs will face further recruitment challenges. Thus, even if a methodologically sound Inclusion Index can be developed, the LSO might consider only sharing results with specific LWPs — as a means of monitoring their own equity status — rather than publishing a list of clear winners and losers.

PART C: A Review of the *Challenges* report Data Recommendations

In this section of the report, I provide general comments on the research and data collection recommendations highlighted by the LSO in the *Challenges* report. In general, I find the recommendations to be strong and supported by the research conducted by the Challenges Faced by Racialized Licensees Working Group, Stratcom, the LSO (with respect to annual reports), and Diversio. These recommendations are consistent with the argument that ongoing data collection is more than just a research exercise. Data collection and analysis is a form of accountability that ensures transparency, documents important patterns and trends, and assists with the evaluation of policy. While endorsing Recommendations Four through Seven, I believe the LSO should seriously consider critiques of their current research strategies, as provided above, and continuously improve related methodologies.

Recommendation 4 — *Measuring Progress through Quantitative Analysis*: Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyer Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

Comments: This recommendation is straight forward and relatively low cost and a strong process for meeting this recommendation has been established. The LSO might want to randomly evaluate the quality of self-reported data through its own audits or observations. The LSO should consider methods for increasing coverage (i.e., LWP response rates) to ensure data is complete. While the reporting of data

at the aggregate level will ensure the anonymity of individual licensees, the LSO must further consider how privacy might be further protected when race-based data and other demographic information is collected and reported at the LWP level.

Recommendation 5 — *Measuring Progress through Qualitative Analysis*: The Law Society will measure progress by: 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

Comments: A strong recommendation that will enable the analysis of both equity-related trends and patterns. The recommendation recognizes that inclusion issues require more than a snapshot analysis. Continuous monitoring is required. The LSO should review its processes to ensure the privacy of racialized licensees working within small LWPs and that licensees do not experience pressure from employers to respond in a particular fashion. The questions posed during these exercises also require periodic review and updating. I feel that it may be appropriate to conduct this research every five years (rather than four years). This would ensure enough time for LWPs to implement new policy and document changes.

Recommendation 6 — *Inclusion Index*: Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

Comments: The LSO should consider a re-development of the Inclusion Index as it stands (see comments above). The LSO may have to develop separate indexes for measuring diversity, inclusion, and commitment as these three concepts appear to document different dimensions of equity. The LSO should also consider developing race-specific indexes rather than rely on scales that document the experiences of “non-dominant” groups in general. In other words, the LSO should examine the experiences of women, Indigenous peoples, racialized licensees, sexual minorities, disabled licensees, and Francophones as separate variables or as distinct equity measures. I do think the timeframe for collecting data for the Inclusion Index could be extended to five years (twice per decade) to enable the documentation of meaningful change.

Recommendation 7 — Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey:

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom *Challenges Facing Racialized Licensees: Final Report* (March 11, 2014). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

Comments: I do believe that a special study, explicitly documenting the experiences of racialized and non-racialized licensees, should be conducted on a periodic basis. I do think that the timeframe for conducting this survey should be extended from four to five years (i.e., twice per decade). A five-year interval, in my opinion, will capture important changes and may reduce overall research costs. I also think the LSO must develop strategies for significantly increasing the survey response rate. Questions

should also be reviewed, and survey length reduced. Analysis should focus on specific racial groups rather than a simplistic comparison between racialized and non-racialized licensees.

PART D: Recommendations for Future Research

The following section of the report briefly describes a series of recommendations for improving and/or expanding the equity-related research strategies employed by the LSO. A focus is placed on both data collection and data analysis practices.

- The LSO currently conducts research — as part of the annual reports process — on the demographics of LWPs. The current research process relies on self-reports. The LSO should periodically conduct observational benchmarking research to ensure the accuracy and reliability of the self-reports received.
- The current LSO strategy for measuring demographic variables is quite strong and consistent with Canadian Census standards and categories. Variables like race, sexual orientation, and Indigeneity, are appropriately operationalized. The collection of demographic data, however, could be expanded to include measures of childhood and adult socio-economic status, ethnicity, religion and religiosity, and years residing in Canada.
- An attempt should be made with respect to measuring whether individuals are first-generation licensees or if they come from a long line of lawyers or paralegals. First generation licensees may experience different barriers to practice entry and advancement than licensees with multi-generational connections. The nature of first-generation challenges may help explain the barriers experienced by racialized lawyers and paralegals.
- The LSO should work with law schools to develop law school graduation benchmarks that can supplement population benchmarks derived from the Canadian Census. Graduation benchmarks may better capture the population available for entry and advancement within the legal

profession. Graduate benchmarks could also help document the barriers racialized students face with respect to law school admission and completion.

- The periodic survey of racialized licensees (replications of the survey described in the Stratcom report) should review and pre-test all questions. The volume of questions should be cut to reduce the time it takes to complete the survey.
- Both annual and periodic surveys should employ all necessary strategies to increase response rates. Strategies could include better advertisement of the research and its objectives, more frequent reminders of survey importance, a longer time period to complete the survey, and incentives for survey completion.
- For periodic surveys, the LSO should consider an approach based on random sampling techniques rather than online surveys distributed to the entire licensee population. Stratified sampling techniques could also be used to ensure the representation of lawyers and paralegals from different racial backgrounds. Random sampling techniques could reduce the size of the sampling frame from 50,000 licensees to between 5,000 and 10,000 licensees. This smaller sampling pool could be recruited more aggressively, and possibly offered incentives, that could raise the response rate and reduce study criticisms.
- For annual and periodic surveys, a minimum response rate of 50 – 60 per cent should be achieved.

- The Inclusion Index should be redeveloped and validated. Subscales measuring diversion, inclusion, and commitment may have to be examined in isolation rather than combined into a single measure.
- Subscales must be developed to measure the experiences and outcomes of different groups. Indexes measuring the experiences and outcomes of racialized licensees should not be combined with measures designed to measure the experiences and outcomes of other equity-seeking groups, including women, members of the LGBTQ+ community, or persons with disabilities. Variables that capture different types of disadvantage should be examined independently.
- The LSO should reconsider ranking and publishing the equity scores of individual LWP's. Such practices could put licensees from equity-seeking groups at risk and compromise data quality. A compromise might be to rank LWP's by sector or type of legal practice.
- Factorial analyses and other reliability statistics should be generated to ensure that variables should be combined into broader scales or indexes or analysed separately.
- Data analysis should include standard measures of association and tests of statistical significance.
- Multivariate analyses of major outcome variables are required to determine whether racial background and other demographic characteristics have significant effects once other theoretically relevant factors have been taken into statistical account. For example, does race impact promotional opportunities once other demographic variables (age, gender, sexual

orientation, etc.) and career-related factors (educational background, years of experience, type of legal practice, etc.) have been accounted for in multivariate statistical models.

- At all times, LSO research practices must consider the privacy concerns related to study participation. To ensure ethical research practices and minimize the risks to research participants, the LSO should consider submitting research plans for review by a university-based research ethics board.

Stratcom's Report, Diversio's Indexes, Recommendations 3–7 & Future Equity Research

Michael Ornstein

24 March 2022

Stratcom's Report

The *Challenges Report* describes three phases of research: interviews with “key informants” and the focus groups, designed to “generate a rich and detailed account of experiences from licensees’ perspectives”; and the subsequent survey, designed to “measure or validate those findings across the whole population of licensees.” (p.2)

Key Informant Interviews and Focus Groups

Selected by the LSO Working Group and the Equity Advisor, 24 of the 27 “key informants” were racialized and all appear to have been affiliated with an organization, including five advocacy groups for racialized lawyers, two paralegal organizations, a training program and *Legal Leaders for Diversity* (p.3 and Appendix B).

Their forceful message is that,

“... racialization is a constant and persistent factor affecting students, young licensees during their entry into practice and opportunities for career advancement. ... true ... in all types of practice environment. ... 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.

“Overt discrimination and bias — often unconscious — is a feature of daily life for many, or most, racialized licensees.”

Thus, racialization is seen as a unitary phenomenon dividing “dominant” white men from all other licensees, its impact “amplified” but not fundamentally different for women and men, individual racialized groups, and lawyers and paralegals.

For the focus groups, “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.” (sic, p.4). The criteria used to select the 115 volunteers are not stated.

The focus groups provide eloquent testimony to the pervasive impact of racialization on many aspects of licensees’ experience. And racism is connected to “the experiences of discrimination” of women, younger, older, LGBT and Jewish licensees — exemplified in one subtitle, “Converging Experience of the ‘Outgroup’.”

The first two phases of Stratcom’s research successfully identify the concerns of racialized licensees, partly to help guide the design of the survey of licensees. The binary approach to racialization, however, does not address the different situations of lawyers and paralegals and of individual racialized groups, the unique situations of Black and Indigenous licensees or the intersection of gender and racialization. The methodological criteria of validity and reliability cannot be applied to the key informant interviews and focus groups. Only a detailed re-analysis of interview notes and any transcripts and recordings would tell whether there could be a different reading of this material. The selection of the key informants and focus group participants, of course, is not designed as a basis for making claims about the representativeness of these findings.

The Stratcom Survey of Licensees

Reflecting analysis of the key informant interviews and focus groups, the licensee survey focused on the different experiences and views of self-identified “racialized” and “non-racialized” licensees, measured by the question:

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

Stratcom finds that,

- approximately 95 per cent of Black, Chinese, East Asian, South Asian and South-East Asian licensees self-identified as racialized in the Stratcom survey, as did
- around 80 per cent of Latin-American licensees,
- 70 per cent of Arab and 65 per cent of West Asian licensees,
- 40 per cent of Indigenous licensees,
- 37 per cent of Jewish licensees, and
- about 6 per cent of white licensees (p.26).

Because they account for 75 per cent of all licensees, the small percentage of white licensees who identified as racialized have about the same influence on the reported views of racialized licensees as Black licensees. The report does not indicate what was done with the responses of the 11 per cent of survey respondents reporting they were “unsure” or “don’t know” if they are racialized (p.25).

The complexity and tone of the self-identification question increase measurement error, but a more serious problem is that it is inconsistent with the broad body of research on racialized inequality in Canada, including the *Snapshots*, based on the “visible minority” question introduced in the 1996 Census. Note that Statistics Canada does not treat Indigenous persons or Jews as visible minority groups.

The core of the survey consists of several long, multi-part questions:

- question 16 involves rating 19 statements about licensees’ careers from strongly agree to strongly disagree;
- question 17 asks about 17 factors affecting licensees’ careers;
- question 21 asks about 24 experiences of disadvantage in “hiring, advancement or pursuit of an area of practice”;
- question 24 provides 13 statements about the impact of racialization to be rated from strongly agree to strongly disagree;
- question 26 asks for ratings of 20 policies in five categories from “definitely the right approach” to “definitely the wrong approach”;
- question 29 asks about the role of 11 groups in addressing the “unique challenges facing racialized licensees”; and
- question 31 asks about 10 factors that “may contribute to increasing the risk of complaints against racialized licensees”, rated from “yes, definitely” to “no, definitely not.”

Survey methodologists have shown that long series of questions and greater complexity increase measurement error, due to fatigue and carelessness. This takes the form of increased “don’t know” responses, more non-response and respondents giving the same response repeatedly. The quality of response degrades significantly after about the fifth question in a series and after around 50 questions overall.

Since Stratcom did not report the survey length⁷, we rely on the rule of thumb that respondents answer three to five questions per minute. Few respondents would have completed the approximately 140-question survey in less than half an hour. This certainly reduced the response rate and may account for some of the difference between the 5,454 respondents who “accessed” the survey and the 3,296 who completed it (p.iii).

The length of the survey, the complexity of many items and the long series of questions somewhat reduce the quality of the data, but probably not to the degree that the overall results or the differences between “racialized” and “non-racialized” licensees are seriously in error.

The low response rate is a much more serious threat to the survey goal of representing “the whole population of licensees.” Surprisingly, Stratcom does not report the overall survey response rate or the response rates for racialized and non-racialized licensees, beyond saying that “there was a large response from licensees who self-identify as racialized, compared to the proportion of the total population they actually comprise.” (p.22) Comparing the 3,296 survey respondents to the 2013 *Snapshots* count of 38,593 lawyers and 5,428 paralegals, the response rate was 7.49 per cent. Based on Table 3 showing that racialized respondents are about twice as likely to answer the survey, the response rates are about 11 per cent for Indigenous and racialized licensees and 5.5 per cent for white licensees⁸.

The report argues that,

“This [low response rate] 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

⁷ Appendix F refers to the “Draft Survey Instrument,” suggesting some changes were made subsequently. The survey introduction says that “This survey will take about [FINAL TEST TIMING, max 20 min] to complete.” (p.2)

⁸ The report does not provide the information needed to compute the exact response rates.

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.

... [and the weighting procedure] ... results in a sample that produces representative, unbiased estimates of the views and opinions of Law Society licensees.” (pp.22-3)

Table 3 (p.23) shows that the weights computed by Stratcom successfully align the sample with some characteristics of the 2010⁹ licensee population also measured in the annual report, including gender, five age groups, sector of practice (labelled “size of firm”), four categories of years since call (only for lawyers) and a binary measure of racialization. For example, in order to compensate for the unrepresentatively high proportion of racialized survey respondents — they account for 33 per cent of that total, their influence on the population estimates derived from the survey is reduced by roughly half, in order to reflect the overall figure of 17 per cent racialized licensees in 2013.

Weights, however, only account for *measured* differences between a sample and the population. The problem is that *after* accounting for age, gender, etc., compared to the entire population of licensees, we must assume the survey respondents were more concerned about racism, reported more experiences of unfair treatment, were more interested in the issues and backed stronger LSO action¹⁰.

Every survey has some non-response and the problem has become worse in recent years. Even the expensive, meticulous surveys conducted by national statistical agencies are not immune — see the *Journal of Official Statistics* for many articles on the topic. But there is a dramatic difference between the

⁹ Because of growth in the numbers of racialized and women licensees this results in a small underestimate of their influence on the overall survey results.

¹⁰ Technically this is known as “unmeasured variable bias” and it is *unaffected* by the size of a sample.

risk of bias in a *Statistics Canada* survey with a 70 per cent response rate, high quality academic attitude surveys with 30–40 per cent response rates and Stratcom’s 7.49 per cent response rate.

Cost constraints may have dictated Stratcom’s survey methodology and they are correct in saying their very low response rate is not unusual for online surveys using only email invitations. Higher quality — but much more expensive and slower — surveys require much greater efforts to contact respondents, often including repeated “personalized” emails, letter mail and telephone requests.

Conclusion

Some of these concerns could be addressed with re-analysis of Stratcom’s survey data, but no statistical magic can measure and account for the bias resulting from a very low response rate. It is also difficult to see the value of re-analyzing nearly decade-old data. Since 2013 when the survey was conducted, the representation of racialized lawyers has increased substantially and the proportion of new calls who are women has stabilized at over 50 per cent. There is now a realization that the situations of Indigenous and Black licensees cannot be understood in general terms describing all “racialized” lawyers. In any event, findings of the 2014 Stratcom report are baked into the trajectory of LSO engagement and its considerable virtues and significant defects are moot.

Diversio's Indexes

Diversio's explanatory memorandum of April 2020¹¹ differentiates:

- programming and policies promoting diversity in the workplace, measured by the *Commitment Score*;
- the representation of six historically disadvantaged groups, measured by the *Diversity Score*; and
- licensees' attitudes about equity and diversity in the workplace, measured by the *Inclusion Score*.

The "Inclusion *Index*", also called the "Diversio Score," is a weighted sum of the three components, with the Diversity Score and Inclusion Score each counting for 25 per cent of the index and the commitment score counting for 50 per cent of the index. Presumably to avoid confusion with the overall index, Diversio's "dashboard" refers to the Diversity *Score* as "experience".

The Commitment Score

The Commitment Score is made up of two components:

- "self-reported EDI programming and policies," based on the report of a designated knowledgeable informant in each workplace; and
- a measure of "licensees indicating that diversity-related programming is in place at their firm, as reported in the Inclusion Questions" from the survey of all licensees in a workplace (p.2).

The two components were "scaled to generate a meaningful, proportionate Index," although exactly how is not explained. In 14 out of 192 rated workplaces where the designated informant did not answer, the Commitment Score was based entirely on the licensee survey (p.2).

¹¹ All page references are to this Memorandum.

Because Diversio does not report measures of scale quality, including the scale reliability, evidence that the individual measures contribute to a single dimension of “commitment” or the level of item non-response, it is not possible to assess the validity and reliability of the commitment score. In some workplaces the survey-based component of this measure is based on a small and very likely biased sample of licensees — see the discussion of the commitment score below.

The Diversity Score

The Diversity Score measures the combined representation of six groups defined by:

- “ethnicity¹², Indigenous identification, gender [and] Francophone background”, compared to the Canadian Census average for its location, based on Statistics Canada’s eleven “Economic Regions” of Ontario;
- LGBTQ2+ representation, compared to “a combination of 1) U.S. government data on LGBTQ2+ representation in major U.S. metropolitan areas most comparable to Toronto and 2) proprietary Diversio data collected on LGBTQ2+ representation across Ontario”; and
- licensees with a disability, compared to a rate of 20 per cent disability, “based on Statistics Canada Census.”

¹² Diversio does not use the term “racialized”. Presumably “ethnicity” refers to the Census visible minority question.

Then, to compute the composite “Diversity Score”,

“LWPs were awarded points for each of the identified demographic traits (gender, ethnicity, Indigenous identity, disability, LGBTQ2+, Francophone background). Full points were given if an LWP’s demographics were at or above the regional population benchmark (no additional points were awarded for being more representative). If LWPs had lower representation than their regional population, points were deducted proportionately to the LWP’s deviation from the standard.

[then] “Each demographic trait was assigned equal importance and thus weighted equally.” (p.5)

The validity of the Diversity Score rests on the assumption that legal workplaces are characterized by a single dimension of “diversity”, so that the employment of Indigenous *and* racialized *and* female *and* LGBTQ2+ *and* Francophone licensees *and* persons with disability reflects a workplace’s commitment to all six historically disadvantaged groups. It also assumes that a workplace’s employment of Black, Chinese and South Asian licensees — the largest groups of non-white licensees, as well as the very underrepresented Hispanic, Southeast Asian and Filipino licensees, reflects a general commitment to racialized licensees. These assumptions could have been tested with the same data used to compute the Diversity Score.

For law firms, a simple “head count” of diversity does not account for the distinctions between associates, equity and non-equity partners, and employees. This is especially important in relation to gender, since there are much higher proportions of women associates than partners, but it could also apply to the other dimensions of equity.

The overall level of disability reported in the *Snapshots*, around 5 per cent, is remarkably lower than the Census “benchmark” of 20 per cent used by Diversio. This arises from the difference between the annual report’s one question about self-identified disability and the multiple Canadian Census measures of “activity limitation” (see Question 18 in the 2021 Canadian Census on “Activities of daily living”). It is also problematic to compare active licensees to “working-age Canadians (25–64 years old)” (p.10) in the Census, since the latter includes individuals whose disability prevents them from working who are therefore not sensibly compared to *working* licensees.

There is also a particular problem for small workplaces, close to the lower limit of 25 licensees. The *Snapshots* show that, on average, these workplaces include less than one Indigenous licensee and about one licensee who is Black, has a disability and is LGBT2Q+. Random variation would result in small workplaces typically having zero or one or two licensees from each group and their scores would have a large element of essentially random variation. Also, Diversio does not indicate how it dealt with the considerable non-response in the diversity measures in the annual report, shown in the *Snapshots*.

The Diversity Score reported on Diversio’s “dashboard”, which ranges from 0 to 100, is *not* a direct measure of the number of “non-dominant” employees. A separate panel of the dashboard, however, gives *the exact percentage* of “self-identified demographic responses from legal professionals at your workplace” for gender, sexual orientation, “race and ethnicity” and “persons with a disability.” This allows anyone to compute the actual number of licensees in a workplace in those four groups. In a smaller workplace, where the typical numbers would be zero, one or two, this raises serious privacy concerns. The publication of these percentages risks increasing non-response to the equity questions in the annual report. Statistics Canada employs “random rounding” to safeguard the confidentiality of small groups, reporting only totals of 0, 5, 10, etc.; and another possibility is to not report anything where the

count for a group is below some minimum, say 5. Neither strategy, however, is practical for reporting on the representation of small groups in smaller legal workplaces.

Recommendation 4 raises this concern, when it specifies that,

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyer Annual Report and the Paralegal Annual Report *in a manner consistent with the best practices established to protect licensees vulnerable to harm that may flow from this disclosure ...* [emphasis added]

Inclusion Score (“Experience” on Diversio’s “dashboard”)

The measurement of inclusion is mandated by:

Recommendation 7 — Repeat Challenges Faced by Racialized Licensees Project

Inclusion Survey The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom *Challenges Facing Racialized Licensees: Final Report* (March 11, 2014).

Diversio explains that the “LSO Inclusion Questions were bucketed into five sub-metrics that are typically used by Diversio to assess experience in the workplace: Inclusive Culture, Unbiased Feedback, Access to Networks, Flexible Work Options, and Safe Work Environment.” (p.5) There are no measures of the validity and reliability of the five subscales, evidence that the five sub-scales reflect a single underlying dimension of inclusion or a description of how the five “Inclusion Scores were scaled to generate a meaningful, proportionate Index” (p.6).

Each workplace's Inclusion Score is based on 30 per cent of the response of licensees in the "dominant" group and 70 per cent on "non-dominant" licensees, where the

"dominant group within the LSO sample set was identified as white, heterosexual, Anglophone men without a disability. Respondents who identified as not sharing any of these traits were categorized into the non-dominant group" (p. 6).

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. Similar to the Diversity Score, the Inclusion Score assumes that licensees from the different historically disadvantaged groups have similar opinions. The survey data could have been used to test this proposition.

In many workplaces, the Inclusion Score was based on a small *number* of survey responses and/or a small *percentage* of licensees. The "Diversio LWP [Legal Workplace] Individual Response Rates" indicate that:

- the Inclusion Score of the highest scoring legal workplace in the entire province is based on just three survey respondents — one in the "dominant" group and two in the "non-dominant" group — out of a total of 27 licensees in the workplace; 16 licensees did not complete the questionnaire, and presumably the responses of the 8 licensees classified as neither "dominant" nor "non-dominant" were not used;
- in the second-ranked workplace the Inclusion Score is based on the responses of 15 out of 65 licensees;

- in the fifth-ranked workplace there are 17 responses from 88 licensees;
- in the sixth-ranked workplace, 20 out of 38 licensees responded.

On the other hand, all 34 licensees for the law firm ranked seventh completed the survey, although the responses of the 12 licensees did not identify as dominant or non-dominant presumably were not counted.

Some workplaces, especially large law firms, have large numbers of respondents and high response rates, but many do not. The response rates are much lower in “corporate” and “public interest” workplaces (combining universities, courts, government ministries and departments, cities, tribunals and unions). For the many workplaces with low response rates and/or small absolute numbers of respondents, the resulting Inclusion Score is unreliable and potentially biased (in the same direction as the Stratcom survey).

The Inclusion *Index*, also called the “*Diversio Score*”

The mandate for computing an Inclusion Index for each workplace is:

Recommendation 6 — Inclusion Index — Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace’s self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

The validity of the Inclusion Index rests on the assumption that the Commitment, Diversity and Inclusion scores represent a single dimension differentiating legal workplaces. But analysis of the scores for the 192 workplaces provided by Diversio shows that:

- the correlation between commitment and inclusion is $-.016$, meaning there is no relationship between progressive policies and whether licensees have positive views of equity in their workplace;
- the correlation between inclusion and diversity is $-.156$, meaning there is a very weak tendency for workplaces with greater diversity in employment to be characterized by *more negative* workplace culture; and
- the correlation between commitment and diversity is $.201$, which is very low¹³.

An index based on the combination of the *essentially unrelated* Commitment, Diversity and Inclusion scores does not provide a meaningful measure of the overall extent of the progress of equity in workplaces. Also, computing the overall Inclusion Index, there is no statistical justification for Diversio's decision to give the "Commitment" score twice as much weight as the Diversity Score that measures the actual representation of licensees from historically disadvantaged groups or the Inclusion Score that measures licensees' perception of their workplaces.¹⁴

¹³ The magnitude of a correlation is best measured by its square, so with a correlation of $.201$, the Commitment and Diversity scores have only 4 per cent (0.2×0.2) shared variance.

¹⁴ Because the three indexes have different variation — measured by their standard deviation — their impact on the total score is not actually in the ratio of 2:1:1 as Diversio indicates. Instead, the Inclusion Score has 71 per cent of the effect of the Commitment Score, and Diversity has 62 per cent of the effect of the Commitment Score.

Conclusion

While the *individual measures* used to compute the Commitment, Diversity and Inclusion scores are reasonable measures of those concepts, the way they are combined to produce the three scores and the combination of the three scores in an overall Diversity Index are highly questionable. There is no systematic evidence that the scores are *valid* — meaning that they measure what’s implied by their labels, or *reliable* — meaning that they *do not* have large components of measurement and sampling error. Sampling error is especially problematic in workplaces with small numbers of survey respondents and/or low response rates. Unless these concerns can be addressed, the overall index and its components should not be reported to workplaces or made public.

It is common for academic researchers to report on data that are several years old because there is evidence that change is relatively slow or because the historical results are of interest. It is likely that the workplace programs measured by the Commitment Score, and the representation of historically disadvantaged groups measured by the Diversity Score change quite slowly and would not be remarkably different in 2022. The measures of licensee attitudes in the Inclusion Score, however, are likely more volatile and four years may have seen substantial change.

Recommendations 3–7

It is helpful to first set out the Recommendations, summarized and with a few explanatory additions:

Recommendation 3 — Equality, Diversity and Inclusion Principles and Practices

Workplaces of size 10 licensees or more are to:

- 2) develop, implement and maintain a human rights/diversity policy ... *available to the public*;
- 3) every two years, complete an equality, diversity and inclusion self-assessment, *provided to the LSO*;
- and
- 4) encourage legal workplaces to conduct [their own] inclusion surveys.

Recommendation 4 — Measuring Progress through Quantitative Analysis

Annually, workplaces of size 25 licensees or more are to measure diversity from the Lawyer and Paralegal Annual Report [and disseminate the results in a manner] consistent with the best practices established to protect licensees vulnerable to harm ... so [licensees in a workplace] can compare [their] data with the aggregate results.

Recommendation 5 — Measuring Progress through Qualitative Analysis

Every four years, in workplaces size 25 licensees or more, the LSO is to:

- 1) conduct a voluntary inclusion survey;
- 2) compile the results for each workplace and *provide the legal workplace* with a summary.

Recommendation 6 — Inclusion Index

Every four years in workplaces of size 25 licensees or more, the LSO is to *develop and publish* [and so make public] an inclusion index [for each workplace] combining:

- a workplace’s self-assessment information (Recommendation 3);
- demographic data obtained from the Lawyer and Paralegal Annual Report (Recommendation 4);
- and
- information from the inclusion survey conducted by the LSO (Recommendation 5)

Recommendation 7 — Inclusion Survey

Every four years, the LSO will conduct an inclusion survey.

Reporting on workplace policies, point 2 of Recommendation 3, is a low cost way to direct attention to equity in each workplace. Perhaps there should be a regular report on the results, highlighting the individual policies. Less clear is the additional value of point 3, that requires workplaces with at least 10 licensees to complete an “equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society” and so apparently *not* public. Point 4, encouraging workplaces to conduct their own inclusion surveys is also problematic. It is hard to see the feasibility and value of a formal survey in a small workplace, which would raise the same concerns about confidentiality as Recommendation 5 — see below — with the additional risk that licensees might be wary that firm managers would know who did and did not respond.

Recommendations 4, 5 and 6 involve statistics for individual workplaces, with results provided to the “legal workplace,” implicitly to all its licensees and effectively public. Only Recommendation 4 mentions privacy, in the context of protecting “vulnerable” licensees.

Based on the annual report, measurement of diversity in each workplace mandated by Recommendation 4 is straightforward. Not every licensee answers all the equity survey questions, but everyone must complete the Report and the level of non-response is acceptable. Recommendation 5 requires a voluntary survey that Diversio's experience suggests would *not* have an adequate response rate to provide demonstrably representative information in many workplaces, especially smaller law firms and smaller and larger workplaces in other sectors.

For all smaller workplaces and many larger ones, publicly reporting the percentage of licensees identifying as Indigenous, LGBTQ2+, or with a disability, based on the annual report, would undermine the implicit confidentiality of the equity survey component of the annual report and therefore threaten to increase the already significant non-response. The same argument applies to figures for individual racialized groups. Divulging the total number of racialized licensees in a larger workplace poses no confidentiality problem, but the utility of a single global figure is questionable, as argued in the review of Diversio's measure, above. Disclosing survey and demographic information to workplace managers rather than to all licensees, would lower the risk of disclosure, but lessen its policy impact, while inviting queries about freedom of information.

Mandated by Recommendation 6, an inclusion index, in a single number combining results from a workplace survey, a global measure of diversity from the annual report and a measure of "commitment" from workplace policies, poses no threat to confidentiality. However, I showed that Diversio's version of this index is questionable, and remedying its technical weaknesses would not overcome the fundamental problem that the three components of "commitment, diversity and inclusion," appear unrelated. In my view, while the indicators *are* useful on their own, they cannot be combined in a single, valid measure of equity.

With no mention of results for individual workplaces, the “inclusion survey” mandated in Recommendation 7 raises no issues of confidentiality. As the Stratcom survey illustrates, however, it is a challenge to obtain a response rate that would yield useful and credible survey results. Rather than surveying every licensee, a large sample survey — say 5,000 to 10,000 licensees — might get a higher response. It is then possible to make the appealing and honest argument that the selected licensees play the role of representing their colleagues. Rather than a mass emailing, invitations to respond should be “personalized” for each respondent and should come with the explicit endorsements, perhaps from the LSO and its Treasurer, groups representing historically disadvantaged groups and major legal workplaces. Repeated, but polite, messages to non-respondents will be needed.

The survey should be confidential, but *not* anonymous, meaning that respondents are assured their answers will never be made public or linked to any other LSO record, but the respondent’s identity *is* known to the survey organization. This allows directed “reminders” to complete a survey to non-respondents only. Knowing the identity of respondents also allows analysis of individual change using data from two or more “waves” of the survey. Using the annual report records as the “sampling frame”, the survey sample could purposely over-represent licensees at stages in their careers when key transitions are most likely or members of historically disadvantaged groups, asking questions tailored to their experience or group.

Rather than the four-year interval specified in Recommendation 7, a bi-annual survey could address policy issues on a more agile basis. Every year is too short a timeframe for a repeated survey, but with a four-year interval, a survey team would lose focus and be tempted to cram everything into a long survey. A more frequent survey could also be shorter, in order to encourage a higher response rate and better

quality answers. To test the feasibility of this strategy, in the first year it would make sense to conduct a smaller “pre-test” survey, to refine the questionnaire and field methods, then conduct the first bi-annual survey the next year.

In addition to comparing segments of employment, large and small firms, and sole practitioners, with a large sample, “mixed models” could be used to measure the extent of differences between individual workplaces *without* computing individual figures for each workplace.

Future Equity Research

I first review the current equity survey in the lawyer and paralegal annual reports, suggesting some incremental improvements, then I consider the mandate of Recommendation 7, “to conduct inclusion surveys with questions similar to those asked in” the *Challenges* report. In both cases, there should be a high bar to additional data collection in light of the considerable burden of licensees’ annual reports.

Indigeneity, Francophones and Practicing in French, and Gender

The measure of Indigenous self-identification in the annual report appears to work well. Likewise, the measures of Francophone identity and the ability to consult and represent in French are not problematic. But, since the status of a language should also reflect its actual use in legal practice, it would be worth adding a question asking approximately how much of a licensee’s practice is in the French language. The *Snapshots* employ the conventional, binary measure of gender from LSO administrative records. Allowing licensees to indicate their own gender is not likely to change much.

Racialization

The Census “visible minority” question in the annual report provides exact comparisons to the Canadian population. Due to their small number, some of the ten response categories¹⁵ combine quite diverse groups. For example, the “South Asian” category includes licensees whose families are from India, Pakistan, Bangladesh and Sri Lanka; Black licensees include more recent African immigrants and their descendants, the historical Black populations of the U.S. and Canada and people from the Caribbean; and Latin American licensees include Spanish and Portuguese speakers from all of South America, Central America and Mexico.

These distinctions could be made by adding a second Census question that asks, “What were the ethnic or cultural origins of this person’s ancestors?” There might be 30–50 distinct groups with a fair number of licensees. Perhaps, say, Hungarian or Jamaican or Nigerian licensees would be interested in the results, and they would be fascinating to sociologically minded licensees, but the value of these more detailed figures to the LSO and policy-making is not clear. Perhaps it is worth testing the question in one year to see what light it sheds on equity.

A great deal of research shows that racialization and place of birth have related but distinct effects on income, wealth and other aspects of inequality in Canada. For some groups, the adverse effect of racialization disappears or even turns into an advantage by their second generation in Canada, while for other groups the adverse effect of racialization persists over generations. This is a strong argument for

¹⁵ Respondents can select two or more answers and/or “write in” one or more categories not listed. Fair numbers of licensees select one or more visible minority answer *and* white and combinations of Black, South Asian, Chinese and Caribbean are common. Most of the “write in” answers are specific nationalities, such as Caribbean, Italian and Sikh, which can be re-assigned to one of the listed categories.

asking licensees their place of birth and also asking immigrants when they came to Canada (another consistent finding is that more recent immigrants are disproportionately disadvantaged).

Measuring racialization, it would be possible to lessen the burden on licensees and decrease non-response by putting the racialization question to licensees only if they have not answered it previously (so, including every new licensee). The downside is that self-identification can change and this would make those changes invisible. An alternative would be to prompt respondents with their previous answer to the question, then ask if they wished to change it.

Foreign Training

Participants in the Stratcom focus groups directed attention to the difficulties of licensees educated outside of Canada, a problem extending across licensed professions, including many health occupations, trades and engineers. If this information is accessible in LSO records, it would make sense to link it to the annual report; if not, it would be worth including a question in the annual report, which need only be asked once.

Sexual orientation

Over time, the current single question in the annual report has added responses that reflect a combination of sexual identity and sexual orientation. There are also increased numbers of “write in” responses, suggesting that the categories are inadequate. In consultation with LGBT2Q+ licensees, it is worth considering a reformulation, perhaps with two questions to separate gender identity from sexual orientation.

Disability

The annual report includes just one question that asks: “Are you a person with a disability?” This does not tell us much. It does not account for types or the severity of disability, distinguish age-related health conditions from disabilities, or account for the effect of a disability on a licensee’s practice. Nor does it separate disabilities and persistent health conditions that developed later in a licensee’s career from those that were potentially a barrier to finding articles and a first job. It does not ask if a workplace provides the accommodation required by law. Also, we should assume that the current single question underestimates disability.

Disability should be approached from the modern “activity limitation” perspective. Rather than a general question, ask licensees whether they have a disability or persistent health condition *that affects their legal practice*. Then, to make sense of this initial query, persons indicating a disability should be asked questions addressing the concerns above. Survey researchers have developed and validated questions on many aspects of disability.

Licensees may be concerned that forthright answers to questions about disability would be seen as reflecting on their competence. Addressing this problem might require a survey separate from the annual report, with guaranteed anonymity and data collection by a third party. Another possibility would be to include strong assurances of confidentiality for follow-up questions in the Annual Report — perhaps by saying the responses will be held separately from the annual reports and will never be accessible to any disciplinary proceeding.

Social Class

The role of social class in the profession was raised in the focus groups. It must be that the social class of

a person's family of origin plays a major role in their access to and experience in law school and very likely their later professional success. Class could be measured with a small number of questions, beginning with parents' education and their economic status. The questions are how these data will be used and whether collecting them would be acceptable to licensees.

Two Additional Outcome Measures

Earnings are a critical aspect of inequality in the legal profession, as in other occupations and generally. A recent *Globe and Mail* article describes the sizeable gender gap in earnings at one large law firm in Toronto. Systematic measurement of lawyers' and paralegals' earnings would provide new and important measures of inequality within legal workplaces, between workplaces in the same sector and between sectors — including measures of the gender gap and the effects of Indigeneity and racialization. Successfully gathering this information is a challenge. Ideally, this would be done with a question in the annual report, but the risk is high non-response.

An alternative would be to conduct research on lawyer's and paralegals' earnings with the Canadian Census — the 2021 Census should be available for analysis later this year. Those data make it possible to estimate earnings differences between women and men, between Indigenous, racialized and white lawyers and paralegals and between lawyers employed in different industries (a lawyer employed by a bank is in "finance and insurance", for example, not in the "legal services" industry), taking account of age, location, language, immigration, etc. Since there are separate totals for wages and self-employment income, it is possible to separate law firm associates and partners. There is even a measure of weekly hours of work. The Census response rate is more than 95 per cent, income data are taken directly from tax returns and the sample includes one-quarter of the entire population. Of course, it would be possible to compare LSO licensees to lawyers and paralegals in the different provinces.

Census research has its drawbacks, however. First, not everyone who gives the occupation of lawyer or paralegal in the Census is a licensee, and vice versa. Obviously, the Census classifies licensees with “other employment” in that other occupation and it does not record any occupation of individuals who were not employed at the time of the Census or in the previous calendar year. Also, the Census category of “paralegals and related occupations” may include individuals not reasonably regarded as paralegals. Second, because the Census does not identify individual employers, it cannot be used to measure differences between employers or earnings differences within a workplace. In terms of policy, the question is whether Census-based analysis of earnings — with the drawback of not identifying individual workplaces — would still bring pressure on workplaces to measure and rectify unfairness. Of course, it is not a substitute for earnings analysis within a workplace.

The Equity Climate and Experience and Broader Measures of the Quality of Work Life

My response to *Recommendation 7*, above, is motivated by the recognition that the objective measures of diversity reported in the *Snapshots* do not directly address licensees’ experiences, which are also key to assessing equity and developing effective policy. This necessitates a stand-alone survey of licensees, on a regular basis and with a sufficient response rate to credibly represent the attitudes and experiences of licensees.

I note that many of the concerns of racialized licensees voiced in the Stratcom report are problematic for all licensees, if not in exactly the same way or to the same degree. Pitched as a broad effort to understand the experience of licensees, a survey concerned with equity can address the culture of workplaces, overwork and burnout, transitions between workplaces, promotion, disability, retirement, and the periods of withdrawal from practice and employment in other work, and so on. The survey could also include

questions about class background, mentioned above.

Peer Review of “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession”

April 2022

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ASSESSMENT OF KEY THEMES

The Law Society is the governing body for lawyers and paralegals in Ontario. They have identified the need to address equity, diversity, and inclusion in the legal profession. Further, they have developed a plan with three equity goals: to promote more inclusive legal workplaces in Ontario; to reduce barriers created by racism, unconscious bias, and discrimination; and to achieve better representation of racialized licensees in all legal workplaces, specifically at partner level. This is similar to the equity, diversity, and inclusion goals in other sectors, including health and finance.

A quantitative survey, focus groups, and key informant interviews were utilized to gather information about the challenges faced by racialized lawyers and paralegals in Ontario.

There have been some concerns about the data collection tools. In particular, the low response rate of the quantitative survey has led to concerns about the credibility of the survey findings. As outlined in my report, the response rate for this survey is very low. That said, this is not a typical survey of a sample of the population, but a census of the population of interest. The number of individuals that completed the survey is greater than 3,000. This represents a larger number of respondents than if we obtained a typical random sample. Although we may not know how well the results from the survey apply to the rest of the survey population that did not respond, they do represent the lived experiences of 3,296 lawyers and paralegals in Ontario. The racialized respondents have shared their negative and harmful experiences. The Law Society is in a unique position to not only support them, but also try to mitigate the risk of other racialized lawyers and paralegals facing the same challenges.

The thirteen recommendations fall into four broad categories: adoption of principles and policies; education for lawyers and paralegals; support for racialized lawyers and paralegals; and evaluation of progress.

Recommendations 1, 3, 8, and 13 fall under the category “adoption of principles and policies.” Except for recommendation 8, the other recommendations are well supported by the results from the survey and the focus groups. They also align well with all three of the equity goals of the Law Society (to promote more inclusive legal workplaces in Ontario; to reduce barriers created by racism, unconscious bias, and discrimination; and to achieve better representation of racialized licensees in all legal workplaces, specifically at partner level).

Recommendations 2, 9, and 10 fall under the category “education.” These recommendations are key to supporting the implementation of the other recommendations. Without building an understanding of the challenges faced by racialized legal professionals in all lawyers and paralegals, it would be challenging to get support for the implementation of the other recommendations. These recommendations are supported by the survey and align with two of the equity goals of the Law Society (to promote more inclusive legal workplaces in Ontario; to reduce barriers created by racism, unconscious bias, and discrimination).

Recommendations 11 and 12 fall under the category “support for racialized lawyers and paralegals.” These recommendations are key to supporting those that are facing the challenges outlined in the survey and focus groups. Recommendation 11 would likely have greater ease of implementation than recommendation 12. Further, recommendation 11 is more clearly supported by the data. These recommendations align with all three of the equity goals of the Law Society (to promote more inclusive legal workplaces in Ontario; to reduce barriers created by racism, unconscious bias, and discrimination; and to achieve better representation of racialized licensees in all legal workplaces, specifically at partner level).

Recommendations 4, 5, 6, and 7 fall under the category “evaluation of progress.” These recommendations are key to assessing the progress made in the Equity, Diversity and Inclusion (EDI) space. Without the

implementation of at least some of these recommendations, it would be difficult to determine if the other recommendations are having an impact. Although these recommendations don't directly support the equity goals of the Law Society, they are necessary to determine if the goals are being met.

Recommendation 7 relates to the use of the Inclusion Index. Although this has some value in enabling comparisons at a high level across organizations, there are many unknowns about the methods used to develop the index. This may be a recommendation that should be deferred or paused.

In my opinion, the approach to the EDI work undertaken by the Law Society, the Equity Advisory, and the Working Group on Challenges Faced by Racialized Licensees are aligned with the best practices in approaching EDI work in organizations. There were challenges with some of the data collection tools, but this does not warrant dismissal of the findings or abandoning the recommendations.

EVALUATION QUESTIONS

1. With respect to the *Challenges* report

a. Was the data collection process valid?

There were three main forms of data collection that informed the *Challenges* report. The validity of the data collection processes is outlined below.

First, the key informant interviews were conducted to provide guidance in the development of the qualitative and quantitative data collection, including the key areas of focus. Key informant interviews are qualitative, in-depth interviews with people knowledgeable about the issue at hand. These informants can provide insights on the nature of the problems and give recommendations about solutions. The participants in this phase of the project were experts in the field and their responses were kept anonymous. The 27 participants were selected by the Working Group on Challenges Faced by Racialized Licensees and the Equity Advisor. Although some have criticized the anonymity of the key informants, this is an important aspect of the process of gathering information from key informants.¹⁶ The only potential issue with this process was the selection of the key informants. The best practice is to obtain representatives with diverse backgrounds from different groups and sectors. It does not appear like the perspectives sought were sufficiently broad. There is also a lack of clarity around the methods used for data gathered through these interviews. Overall, I would consider this phase of data collection valid.

The second data collection tool utilized was focus groups of lawyers and paralegals who are in good standing that identify as 'racialized'. The main limitation was that they were conducted in major cities. This may result in a limited number of perspectives. Those living in rural areas may have very different experiences compared to those in metropolitan cities. In addition, the analytic

¹⁶ [UCLA Center for Health Policy Research](#)

methods used were not described in detail, so it is difficult to comment on the appropriateness.

The third data collection tool utilized was a quantitative, online survey. The survey was sent to all lawyers and paralegals in good standing.¹⁷ The survey was completed by 3,296 individuals. The survey response rate based on these numbers is less than 5 per cent. The very low response rate impacts the ability to generalize the findings to all licensees in Ontario.

The response rate will be discussed in a question below. It is positive that the survey was available in English and French. It may have been beneficial to provide the survey in additional languages to promote inclusivity and comfort to those for whom English/French may not be their primary language. The survey also attempted to adjust for the limited number of non-racialized individuals that participated in the survey utilizing weighting by various attributes, including being racialized. Although weighting is helpful, it does not compensate for any differences in views by those that chose not to participate (i.e., nonresponse bias). Overall, there is an underrepresentation of those that do not identify as racialized. The survey is also quite long, which may have impacted the completion rate (60.4 per cent).

In terms of the analysis, it is surprising that they do not use any measures of statistical significance, which is unusual for a quantitative survey. This makes it challenging to ascertain if differences were statistically significant. That said, this is not a random sample of the population of lawyers and paralegals in Ontario, but a population census. Further, some of the differences in perspectives and experiences between the racialized and non-racialized respondents were quite large and are still noteworthy.

Although there were issues with the survey tools, outlined above, there are no egregious issues that

¹⁷ [Frequently Asked Questions | Law Society of Ontario \(lso.ca\)](https://www.lso.ca/frequently-asked-questions)

would warrant disregarding the findings.

b. Were response rates sufficient?

The survey was sent out to all lawyers and paralegals in good standing.¹⁸ The link to the online survey was sent to all these individuals and 3,296 completed the survey. The survey response rate based on these numbers is less than 5 per cent. The low response rate impacts the ability to generalize the findings to all licensees in Ontario. In general, it would also lead one to question the credibility of the survey methods. The topic of this survey was very sensitive and there may be reasons why some did not feel comfortable completing it. This would include negative experiences related to inclusivity or an individual may not feel strongly about equity, diversity, and inclusion and thus may choose not to participate.

It is not clear the amount of follow-up that was undertaken by the company conducting the survey. The low response rate could be a result of this. In addition, the Law Society has indicated that another large, mandatory survey was conducted close to the timing of this survey, which may have impacted the response rate. One additional tool that would have been helpful is the inclusion of an analysis to compare the demographic characteristics between the study sample and study population to highlight any groups that were missed or underrepresented in the respondents. This does not appear to have been done in the analysis. The survey also attempted to adjust for the limited number of non-racialized individuals that participated in the survey by utilizing weighting by various attributes, including being racialized. Although weighting is helpful, it does not compensate for any differences in views by those that chose not to participate (i.e., nonresponse bias).

¹⁸ [Frequently Asked Questions | Law Society of Ontario \(lso.ca\)](#)

Although the response rates are low and may have resulted in bias by selective nonresponse and limits the generalizability of the findings, the findings should not be dismissed. First, this is a census of the lawyers and paralegals in Ontario and not a random sample. So, the findings represent the lived experience of over 3,000 individuals in the legal profession. It would be difficult to rationalize inaction when racialized legal professionals have shared their negative experiences. In addition, the mixed models approach lends itself to increasing the credibility of the survey.

c. Were the questions posed as part of the membership survey appropriate?

The questions overall were appropriate. It is important that they asked the same questions of racialized and non-racialized respondents and that the questions were framed in a neutral manner. That said, there are always opportunities to improve upon the data collection tool.

One of the key questions was whether the respondent self-identified as ‘racialized’. It is positive that identifying as ‘racialized’ is self-reported, which is considered the gold standard.¹⁹ ‘Racialized’ is the preferred term by the Ontario Human Rights Commission,²⁰ who note that race is a social construct and have adopted the term instead of outdated terms such as “racial minority.” That said, there may be some confusion by the respondents to the survey about what the term entails. The fact that 11 per cent of respondents said they were unsure about whether they were racialized supports this. Further, there was some discordance when racialization in this survey was compared to ethno-racial identifiers. Most of those that identify as Arab or West Asian either identified as ‘not racialized’ or ‘unsure’. In addition, it would be helpful to break down the

¹⁹ Executive Office of the President Office of Management and Budget, Office of Information and Regulatory Affairs. *Revisions to the standards for the classification of federal data on race and ethnicity*. Washington, DC: Federal Register; 1997:58782–90.

²⁰ [Racial discrimination \(brochure\) | Ontario Human Rights Commission \(ohrc.on.ca\)](https://www.ohrc.on.ca/en/racial-discrimination-brochure)

“racialized” group into Black, Indigenous, Persons of Color (BIPOC)²¹ as the challenges faced by these distinct groups may be different.

It is positive that the gender/sex question does allow for a respondent to select ‘transgender’ as an option. That said, for future data collection, it would be beneficial to separate out the question of gender identity and sex at birth to better align with Statistics Canada’s questions.²²

In addition, it would have been helpful to include broader questions about equity-seeking groups. This is especially important as systems of inequality based on gender, race, ethnicity, sexual orientation, etc. intersect to create unique effects and impacts.

Finally, the questions related to challenges faced by racialized legal professionals and opportunities to address them are quite diverse and detailed. This is positive in that respondents have an opportunity to reflect on the issues using various lenses.

d. Is the process of using key informants effective/reliable?

Key informant interviews are qualitative in-depth consultations with people knowledgeable about the issue at hand. These informants can provide insights on the nature of the problems and provide recommendations about solutions. There are several advantages to key informant interviews. They provide detailed, rich data in a relatively easy, inexpensive way, provide an opportunity for the interviewer to clarify questions, provide the opportunity to build/strengthen relationships with important stakeholders, and raise awareness about the study at hand.

There are also some disadvantages when using key informant interviews. The possibility of

²¹ Toward a socially just diversity science: Using intersectional mixed methods research to center multiply marginalized Black, Indigenous, and People of Color (BIPOC). - PsycNET (apa.org)

²² Statistics Canada: Definitions Gender-Sex Variables

selecting the “wrong” informants and that depending on the diversity of perspectives of the key informants the results may not be generalizable. In this study, the main issue is that the key informants were not diverse enough. One of the key attributes of key informant interviews are to obtain representatives with diverse backgrounds and perspectives from different groups and sectors.

There has been some criticism of the lack of transparency about who the key informants were. Anonymity of the informants is important to ensure that informants feel comfortable in sharing honest and complete input. This study aligned with this best practice.²³

In addition, the mixed model approach of complementing quantitative data collection and analysis with qualitative analysis is a robust approach to research and enables a deeper understanding of contributory factors. Findings from quantitative research are recognized as being more generalizable as there are often measures put into place to ensure the subjects are representative of the relevant population and can be used to assign causality. That said, the ability to understand contributing factors to outcomes with greater depth is limited. Qualitative methods, including key informant interviews, can help identify the factors that may be contributing to the issues. For these reasons, key informant interviews, when combined with survey data, are an effective and reliable tool.

²³ ⁸ [UCLA Center for Health Policy Research](#)

2. With respect to the *Challenges* report recommendations

Recommendation	Impact of the Recommendation That Has Been Fully Implemented	Impediments to Implementing Outstanding Recommendations	Does Data and Analysis Support the Recommendation
1) Reinforcing professional obligations	<ul style="list-style-type: none"> This will help raise awareness about the importance of EDI to the Law Society. 	<ul style="list-style-type: none"> There may be resistance to changing the status quo by some. Racialized lawyers and paralegals may see this as tokenism unless the other recommendations are also implemented. 	<ul style="list-style-type: none"> More racialized respondents (compared to non-racialized respondents) left positions due to not feeling like they belong or felt there were limited opportunities for advancement. The survey found that racialized respondents faced greater challenges related to mentorship, finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. Both racialized and non-racialized respondents felt mentorship was important.

2) Diversity and Inclusion project	<ul style="list-style-type: none"> • The development of an EDI resources webpage is a great way to highlight the project's importance to the Law Society and provide resources. • The supports provided to women in law will be meaningful and support their growth. • By hosting an annual equity legal series in partnership with equity stakeholders, the Law Society will build partnerships with important stakeholders. • This also helps to both provide opportunities for education to racialized and non-racialized lawyers and paralegals, but also provide spaces for equity-seeking groups to connect. • This helps create system-level changes as it involves legal workplaces, law schools, and paralegal colleges. 	<ul style="list-style-type: none"> • Education about the importance and benefit of promoting diversity and inclusion will need to coincide with the development of policies. If not, adoption and support for the policies may be limited. 	<ul style="list-style-type: none"> • The survey found that racialized respondents faced greater challenges related to mentorship, finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. • Both racialized and non-racialized respondents felt mentorship was important. • Gender was noted as a barrier/challenge more often by racialized respondents compared to non-racialized respondents, which speaks to intersectionality of gender and racialization. • Both the focus groups and survey respondents were supportive of more mentorship programs for racialized licensees.
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3) The adoption of equality, diversity and inclusion principles and practices	<ul style="list-style-type: none"> • Important piece of the system-level challenge to address challenges faced by racialized licensees. • A human rights/diversity policy addressing recruitment, retention, and advancement at a minimum is a positive start to address the issues that have been highlighted by the various data collection tools and support the goal identified by the Benchers in 2011 to encourage law firms to “enhance diversity within firms.” • By encouraging legal workplaces to conduct inclusion surveys, the Law Society is supporting workplaces who want to better understand their staff. It is positive that it isn’t mandatory as their will likely be greater buy-in (i.e., the firms that are interested in doing this work will have support to do so). 	<ul style="list-style-type: none"> • The self-assessment of the legal workplace by a representative of the workplace may be challenging. There would be significant pressure on this individual to respond favorably. Further, it is unclear if one individual would be able to adequately assess all the necessary aspects. 	<ul style="list-style-type: none"> • The survey found that racialized respondents faced greater challenges related to finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. This supports the need for diversity policies surrounding recruitment, retention, and advancement. • The survey found that ethnic/racial identity, socio-economic status, age, gender, appearance, religion, where you were born, and the way you speak English were noted as barriers/challenges by racialized respondents compared to non-racialized respondents both during and after entry into the profession. • Most racialized and non-racialized respondents felt that the challenges facing racialized candidates/licensees would negatively impact the reputation of the legal profession in Ontario and affect access to justice for Ontarians. • The statement in the survey that the legal profession should be as welcoming as possible drew significant support from all respondents.
4) Measuring progress through quantitative analysis	<ul style="list-style-type: none"> • It is helpful for legal workplaces to have aggregate demographic data about their workplaces provided to them in a standard format. This would support their reflecting on how they compare with others. 	<ul style="list-style-type: none"> • There are many unknowns with respect to the Diversio methodology (outlined below). Due to this, there may be limited buy-in in using their tools. 	<ul style="list-style-type: none"> • This may not be inferred from the survey findings, but it would be standard practice as a way to assess whether the recommendations implemented have been effective.

5) Measuring progress through qualitative analysis	<ul style="list-style-type: none"> • A standard method for legal workplaces to compare their diversity with other legal workplaces. 	<ul style="list-style-type: none"> • There are many unknowns with respect to the Diversio methodology (outlined below). Due to this, there may be limited buy-in in using their tools. There may be more value in providing the aggregate data itself and a comparator group of all legal workplaces. 	<ul style="list-style-type: none"> • This may not be inferred from the survey findings, but it would be standard practice as a way to assess whether the recommendations implemented have been effective.
6) Inclusion Index	<ul style="list-style-type: none"> • A standard method for legal workplaces to compare their diversity with other legal workplaces and other workplaces. 	<ul style="list-style-type: none"> • There are many unknowns with respect to the Diversio dashboard and scores (outlined below). Due to this, there may be limited buy-in in using the dashboard. There may be more value in providing the aggregate data itself and a comparator group of all legal workplaces. 	<ul style="list-style-type: none"> • The survey found that racialized respondents faced greater challenges related to mentorship, finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. • The survey found that ethnic/racial identity, socio-economic status, your age, gender, appearance, religion, where you were born, and the way you speak English were all noted as barriers/challenges by racialized respondents compared to non-racialized respondents.
7) Repeat challenges faced by racialized licensees project inclusion survey	<ul style="list-style-type: none"> • This is a unique opportunity to address some of the issues with the current survey, including utilizing methods to improve the response rate, considering sampling the study population instead of a census. 	<ul style="list-style-type: none"> • Unless the respondents feel that their input provided on the previous survey was heard and addressed in some meaningful way, there may be challenges in building trust when rolling out a second round of the survey. 	<ul style="list-style-type: none"> • Repeating the survey would be an important step to address the shortcomings of the previous survey. In addition, it would provide an opportunity to assess if any of the implemented recommendations had an impact.

8) Progressive compliance measures	<ul style="list-style-type: none"> • Ensure that there is compliance with the implementation of a human rights/diversity policy related to recruitment, retention, and advancement. 	<ul style="list-style-type: none"> • Although there is a place for progressive compliance measures, it is not in the early stages of implementing EDI initiatives. The Law Society is trying to educate and build an understanding of the issues faced by equity-seeking groups in the profession. Moving forward with a punitive approach prior to education would not support the goals of the Law Society's equity goals. 	<ul style="list-style-type: none"> • Unsure whether there is a clear support for this.
9) Continuing professional development programs on topics of equality and inclusion in the profession	<ul style="list-style-type: none"> • This is a critical piece of how EDI initiatives are moved forward. It will support the implementation of more significant changes. 	<ul style="list-style-type: none"> • Some may feel it is not the best use of funds. 	<ul style="list-style-type: none"> • The survey found that racialized respondents faced greater challenges related to mentorship, finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. • The survey found that ethnic/racial identity, socio-economic status, age, gender, appearance, religion, where you were born, and the way you speak English were all noted as barriers/challenges by racialized respondents compared to non-racialized respondents. • The majority of racialized respondents (68 per cent) felt that they did not grow up with a network of professional contacts that they could turn to for support with their legal career.

10) The licensing process	<ul style="list-style-type: none"> The inclusion of EDI competencies in the licensing examination study materials and the examination itself will support a new generation of paralegals and lawyers that have some base understanding of the importance and benefits of EDI and reconciliation with Indigenous Peoples. 	<ul style="list-style-type: none"> There may be some resistance by those that do not support EDI initiatives. 	<ul style="list-style-type: none"> The majority of respondents supported the idea of Law Society sponsored professional development seminars on equity and diversity that could count toward accreditation by members.
11) Building communities of support	<ul style="list-style-type: none"> This recommendation will help the Law Society in building equity and inclusiveness through the multi-faceted support the network will provide to racialized lawyers and paralegals. 	<ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> The survey found that racialized respondents faced greater challenges related to mentorship, finding employment that best suits them, obtaining a job offer where they articulated, finding training opportunities and advancement. The majority of racialized respondents (68 per cent) felt that they did not grow up with a network of professional contacts that they could turn to for support with their legal career.
12) Addressing complaints of systemic discrimination	<ul style="list-style-type: none"> This would be an important step in supporting racialized licensees that face discrimination. This is fundamental to EDI work. Further, it supports the goal identified by the Benchers in 2011 to encourage law firms to “enhance diversity within firms.” 	<ul style="list-style-type: none"> There may be resistance to change by those that feel discrimination is no longer an issue. 	<ul style="list-style-type: none"> This was highlighted in the focus groups as an area that needed work.

13) Leading by example	<ul style="list-style-type: none">• By leading by example, the Law Society is fulfilling its role to “ensure that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct.”	<ul style="list-style-type: none">• None.	<ul style="list-style-type: none">• The majority of all respondents endorsed the idea of the Law Society developing a more diverse public face/image.
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3. With respect to the Inclusion Index

a. Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?

The demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports seem relevant, but without understanding how they mapped to the domains used by Diversio, it is challenging to comment. The questions could be fine-tuned to include additional equity-seeking groups (for example those with visible and invisible disabilities).

Diversio utilized validated questions from the National Household survey and census, which is positive.

b. Was the scope appropriate?

Yes, the scope of the index was appropriate. It covered the protected classes under the *Canadian Charter of Rights and Freedoms* (race, national or ethnic origin, colour, sex, mental or physical health)²⁴ and some of the groups under the *Ontario Human Rights Code*.²⁵ The scope could be expanded to include religion and class. In addition, Indigeneity should be separated using a distinction-based approach where the perspectives and experiences of First Nations, Métis, Inuit, and urban Indigenous are separately considered.

c. Would the Index, as produced, achieve the desired result vis-à-vis legal workplaces?

²⁴ [The Canadian Charter of Rights and Freedoms \(justice.gc.ca\)](https://www.justice.gc.ca)

²⁵ [The Ontario Human Rights Code | Ontario Human Rights Commission \(ohrc.on.ca\)](https://www.ohrc.on.ca)

The Inclusion Index allows benchmarking against other organizations in terms of inclusivity and examines changes over time. In addition, it will allow the comparison of legal workplaces with other sectors.

There are some challenges with the *Diversio Index*. In particular, there is a lack of transparency about the methods underlying the development of the Index. It would be more useful to compare an individual organization over time than to compare with other organizations, where there may be other factors that contribute to differences.

d. Is the data still reliable?

This is dependent on how much the various measures of diversity have changed in the workplaces since the data were collected.

The weighting of different variables using different sources is unusual. Race/ethnicity and gender were weighted based on regional averages (using Statistics Canada Census economic regions), sexual orientation was weighted using Diversio's proprietary benchmarking data, and disability was weighted using national averages. Specifically, weighting using "proprietary benchmarking data" is concerning as there is no way to validate it.

The use of area-level analytic comparisons of legal workplaces against municipality for proportion of underrepresented equity-seeking groups is appropriate.

e. Should any changes be included in future versions?

It is difficult to comment as there is limited information provided about their methods. For example, it is unclear why they weight demographics at 25 per cent, inclusivity at 50

per cent, and commitment at 25 per cent.

4. With respect to future equity work at the Law Society

a. Is there a more effective way to collect equity data than the Law Society's current approach?

The use of mixed methods to understand challenges faced by racialized lawyers and paralegals is important and should be continued. As stated above, this will support understanding the factors that contribute to the issue and can be attributed to the issue.

It would be helpful to expand the scope of work to consider challenges faced by other equity-seeking groups. Further, it would be important to consider various factors that may intersect creating additional challenges.

In terms of future surveys, a sampling strategy could be considered to limit the costs of the quantitative data collection. It would be important to ensure any sampling strategy supports the generalizability of the results. This could involve a very short survey for the entire study population and a detailed survey for a much smaller group. In addition, strategies to improve the response and completion rates should be employed. This would include pre-notifying participants, publicizing the survey, careful survey design, managing the length, monitoring survey responses. In addition, any bias in the survey methodology or results should be reported in a transparent fashion. There should also be an attempt to understand nonresponse.

The focus groups complement the survey well and support the understanding of contributory factors.

b. Is the format of the collected data appropriate? (for example, are the Law Society's demographic categories generally accepted?)

Yes, but could be updated to align with current Statistics Canada categories. This would support weighting and standardization using census data. In addition, breaking down 'racialized' into BIPOC would support the understanding of the different experiences and perspectives in each population.

c. Are there other probative questions that can assist in the equity agenda? (i.e., income related to demographics)

In addition to the previous questions, the scope could be expanded to include religion, invisible disabilities, and class (e.g., income). Instead of the term racialized, the BIPOC categories would support the identification of the unique challenges and barriers face by Black legal professionals, Indigenous legal professionals, and legal professionals who are also Persons of Colour. In addition, intersectionality should be considered.


EXHIBIT 11

Prior Stratcom Survey, circa 2004

This is Exhibit "11" 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

Committee Agenda and Materials February 8, 2012

**Convocation Room
1:00 to 3:30 p.m.**

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

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

Committee Members

Janet Minor, Chair
Raj Anand, Vice-Chair
Susan Hare, Vice Chair
Constance Backhouse
Paul Copeland
Cathy Corsetti
Mary Louise Dickson
Adriana Doyle
Seymour Epstein
Julian Falconer

Howard Goldblatt
Janet Leiper
Dow Marmur
Wendy Matheson
Judith Potter
Susan Richer
Paul Schabas
Baljit Sikand
Beth Symes

Purposes of Report: Decision and Information

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

Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms

Sole Practitioners and Lawyers in Small Firms:

Distinctive Characteristics, Satisfaction and
Financial Viability, Perceptions of Shortages of
Legal Services

April 7, 2004

Strategic Communications, Inc.

David Kraft, Stephen Arsenault, Olga Ialanskaia

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Committee Agenda and Materials - Sole & Small Firms Practitioners Working Group

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Executive Summary

Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in November 2003, to conduct quantitative and qualitative research to explore:

- Comparisons between lawyers in sole practices and small firms, and lawyers in larger firms;
- Perceived shortages of legal services in smaller communities and elsewhere in Ontario;
- The financial viability of sole practices and small firms;
- The population of lawyers from equality-seeking communities who are sole practitioners or with small firms.

This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research findings.

Methodology

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;
- Follow-up long interviews with sole practitioners and lawyers in small firms.

Quantitative Research: The Survey Questionnaire

The survey questionnaire (**Appendix 1**) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;

- Access to Legal Services;
- Members of Equality-Seeking Communities;
- Demographics.

The scope of the survey instrument and the extensive use of open-ended questions reflected the broad, exploratory nature of the research project.

The survey was administered to 734 lawyers in private practice in Ontario (Table 1), including:

- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as "at risk" of losing access to legal services, because there were two or fewer lawyers in the area and they were over the age of 55.

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003.

The margin of error for the target group sample is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

Qualitative Research: Long Interviews

All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

Subsequent long interviews explored two areas:

- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individuals' practice.

1.0 Introduction

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This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research.

2.0 Methodology

2.1 Research Design

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;
- Follow-up long interviews with sole practitioners and lawyers in small firms.

2.1.1 Key informant interviews and research

Under the direction of Law Society staff and the Consultant to the Task Force, ten key informants were interviewed between November 11 and November 21, 2003. This group included seven lawyers in private practice, the Director of Policy and Legal Affairs, the Consultant to the Task Force and the Equity Advisor.

All interviews explored some common themes including the sustainability of sole practitioners and small firms, the challenges and rewards of practising in specific practice environments, access to legal services and in some cases, equity issues. The interviews were structured as informal conversations and evolved with the parallel process of drafting the questionnaire. The interviews gave context to the research process, provided insights into how to structure the survey questionnaire, identified specific issues that should be addressed and appropriate terminology to incorporate into the survey questions.

2.2.2 Quantitative Research: The Survey Questionnaire

The survey questionnaire (**Appendix 1**) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;
- Access to Legal Services;
- Members of Equality-Seeking Communities;
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- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as “at risk” of losing access to legal services, because there were two or fewer lawyers in the areas and they were over the age of 55.¹

¹This report presents and interprets the results of the target and non-target survey sub-samples. It does not report on the “at risk” sub-sample which is too small to permit reliable generalisation. This sub-sample could not be incorporated into the target group sub-sample because it was not randomly generated.

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003.

The margin of error for the target group sample is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

2.2.3 Qualitative Research: Long Interviews

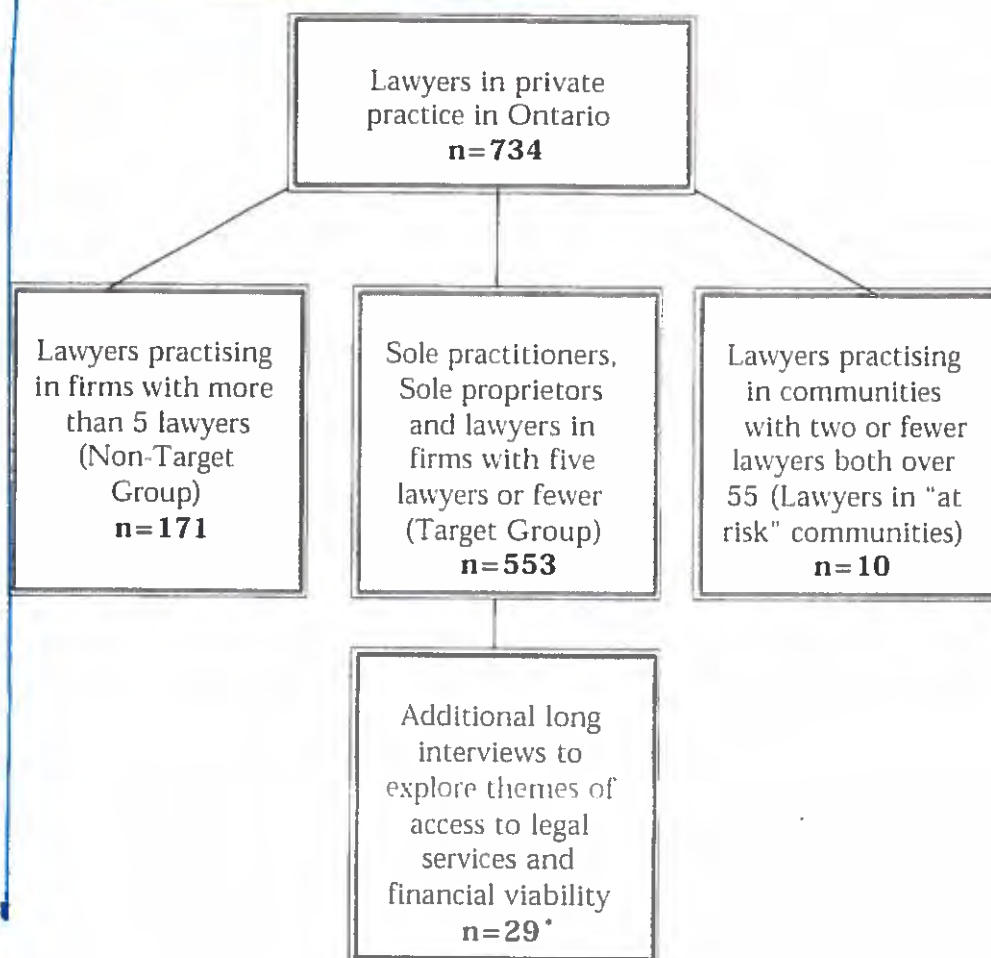
All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

Subsequent long interviews explored two areas:

- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individual's practice.

An interview guide (**Appendix 2**), exploring these themes and comprised of 20 questions, provided the basis for a semi-structured, open-ended conversation with 29 lawyers from the target group. Sixteen lawyers were selected to explore access to legal services, while thirteen were selected to explore financial viability and satisfaction with their practice. Interviews were conducted between January 21, 2004 and February 16, 2004. They ranged in length from 17 minutes to 96 minutes, averaging of 47 minutes.

The long interviews permitted a smaller group of survey respondents to frame the issues and describe the problems in their own words. The stories of individuals provided context and meaning to quantitative results. Their in-depth comments added qualitative 'flesh' to the quantitative 'bones' of the survey data that had already been collected. This combination of data sources has been particularly valuable to our interpretation of how multiple factors may intersect to affect the issues of financial viability and access to legal services.

TABLE 1 - SURVEY RESPONDENTS AND LONG INTERVIEWS

* Two individuals who completed long interviews were not part of original survey sample of 553. These interviews were conducted to broaden geographical representation

2.2.4 Regional Comparisons

Throughout this report - most importantly in Section 6, Shortages of Legal Services - we have used four regional categories for comparative purposes: Toronto, Rest of GTA, Other Urban Areas and Non-Urban Areas. These regional designations were present in the initial data set received from the Law Society.

Following discussion with Law Society staff, one change was made to improve the validity of the regional designations. Municipalities in Southern

Ontario with a population of over 50,000 – including for example, Windsor and St. Catharines – were moved from the Non-Urban Area category to the Other Urban Area category. This change was consistent with the original intent of the regional designations: to compare the profile and experience of lawyers practising law in distinct urban and non-urban milieu. In this case moving some mid-sized cities in Southern Ontario from the Non-Urban Areas designation to the Other Urban Area designation, increased the accuracy of both categories. This change resulted in a somewhat narrower definition of the Non-Urban Area and a somewhat wider definition of the Other Urban Area, while having no effect on the definition of the Toronto and the Rest of GTA regions. These changes should be kept in mind when making comparisons between regional findings presented in this report and existing regional information, since the four regional categories being used in each case may not be strictly comparable.

2.2.5 Target and Non-target Groups: Definitions

Throughout this report we have used the terms target and non-target groups. Survey respondents for both of these groups were randomly selected from an up-to-date list of lawyers in private practice in Ontario. The non-target group refers to those lawyers who reported being a partner or employee/associate in a firm with six or more lawyers. The target group refers to lawyers who work in firms with five or fewer lawyers.

The report also discusses similarities and differences between five sub-groups within the target group. These are:

- Sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Sole proprietors;
- Partners in firms with five or fewer lawyers;
- Employees/associates in firms with five or fewer lawyers.