

Bencher suing LSO for equity, diversity, and inclusion policy documents moves for summary judgment

Dispute arose largely from a 2013 survey which informed regulator's EDI policies



Law Society of Ontario Bencher Murray Klippenstein will soon file a motion for summary judgment in his lawsuit over the release of internal documents related to the regulator's equity, diversity, and inclusion (EDI) initiatives.

Klippenstein and his lawyer, William Kenny, filed their motion record last week. The LSO has until Aug. 31 to file responding materials, and the court has set the hearing for June 20, 2024.

Some of the documents that Klippenstein seeks are related to a survey executed in 2013 by Stratcom Communications, which informed a working group studying the challenges faced by racialized licensees and led to a report and recommendations the LSO later voted to adopt.

"The studies that I'm quite concerned about were the basis for one of the biggest packages of law society policies in the last decade," says Klippenstein. "A lot of them pertained to equity, diversity, and inclusion and systemic discrimination and proposed a variety of fairly intrusive measures applicable to all lawyers and to hundreds of law firms on a variety of topics. The impact of these studies that concern me is large."

After the [Stratcom Report](#) and a round of consultations, the LSO developed a policy paper called [Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group Final Report](#). The report included 13 recommendations, including that the LSO require every licensee to "adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public." Klippenstein was part of the StopSOP slate, which ran on a platform promising to eliminate the statement of principles, which Convocation repealed in 2019.

The recommendations also included a requirement that legal workplaces have a diversity policy, complete an EDI self-assessment every two years, and for the LSO to publish a public inclusion index based on workplace surveys every four years.

"The large scale of these studies and these policies caught my eye years ago," says Klippenstein. "When I looked at the studies that purportedly justified them, some red flags went

up about some of the statistics.”

[Klippenstein's lawsuit](#) alleges statistical deficiencies in the Stratcom survey, including a six-percent response rate; a failure to note the number of people surveyed; a self-selected, rather than random, sample; a failure to differentiate between lawyers and paralegals; and a failure to mention or assess the significance of non-response.

“The more I pulled at those threads, the more things really did not make sense and seemed to contradict some basic ideas about statistics,” he says. “When I was elected as a bencher, I began asking questions about these and got no answers.”

“As a bencher, and director of the corporation, I have ultimate governance duties, both as a group and individually as a director.”

When Klippenstein requested the information, the LSO's treasurer said she lacked authority to fulfill the request and referred it to the strategic planning and advisory committee (SPAC) which would consider it and make a recommendation to Convocation. In its [statement of defence](#), the LSO said it is up to Convocation to decide whether the requested information is reasonably required by Klippenstein to fulfill his role and obligations as bencher.

“The law society at first denied that I was a director,” says Klippenstein. “Then the law society said that it's up to the benchers as a group to decide by majority vote what information an individual director should get.

“That doesn't seem to be the law as I understand it,” he says. “Secondly, that has the obvious result that a bencher majority can simply deny a subset of directors fundamentally important information, which doesn't seem to make sense, and which I doubt is good for the organization. Sometimes, individual directors will have some insights that have not yet occurred to the majority, and which may benefit the organization.”

LSO spokesperson Jennifer Wing declined *Law Times'* request for comment, saying that the LSO cannot provide any information with respect to ongoing proceedings.

In Klippenstein's [most recent filings with the court](#), he notes that after two years raising issues about the Stratcom survey and report, the LSO hired three consultants to review the law society's data projects. When, in an Equity and Indigenous

Affairs committee, the consultants delivered their reports, they echoed many of his concerns, including the low response rate, the Stratcom report's failure to mention it, and how the low response rate made it impossible to validly extrapolate and generalize the findings, said Klippenstein.

Klippenstein later became aware that Stratcom's non-disclosure of the low response rate was a departure from previous practice, which was to include a "detailed description of the survey methodology."

"The low survey response rate would have been obvious within a day or two of the deadline for the return of the survey responses," said Klippenstein in his affidavit. "I do not understand how such a fundamental and obvious issue was simply, to my knowledge, never openly mentioned."

