

Bencher sues LSO over ‘very concerning’ issues with statistics, procedures in EDI policy

By **Amanda Jerome**

Law360 Canada (July 5, 2022, 1:06 PM EDT) -- The Law Society of Ontario (LSO) is facing a Statement of Claim brought by one of its own benchers, Murray Klippenstein. The claim requests an order compelling the regulator to provide Klippenstein with reports and data that were used to establish the LSO’s equity, diversity and inclusion (EDI) initiatives.

In an interview with *The Lawyer’s Daily*, Klippenstein said he “noticed a number of very concerning issues about the use of statistics and the procedures related to major law society EDI policies.”

“When I started asking questions, and I persisted, I didn’t get answers. So, as a last resort, I began a legal action in my capacity as a bencher and director of the law society corporation to get some basic underlying information,” he explained.



Bencher Murray Klippenstein

“I think as a bencher and as a director I have duties to care about the way things are run and the issues I saw with statistics and procedures made me very uncomfortable and I felt I had to pursue them,” he added.

Klippenstein’s claim noted that in March 2013 an LSO working group created to study “challenges faced by racialized licensees’ commissioned consulting firm Stratcom Communications Inc. (Stratcom)” to study the legal professions in Ontario on this issue.

The claim, which was issued June 17, also noted that LSO staff “provided to Stratcom a memorandum entitled *Challenges Facing Racialized Licensees: Best Practices*, which appeared to set out the LSO staff’s expectations or desired outcome of Stratcom’s study.”

Stratcom conducted its survey of the professions in the fall of 2013 and this “survey dataset and analysis were then used to generate a report entitled *Challenges Facing Racialized Licensees: Final Report*.” Stratcom’s report was provided to the LSO’s staff and the working group in March 2014.

According to Klippenstein’s claim, the working group and LSO staff then prepared a “major report on the issue, in the form of a 45-page consultation paper (Consultation Paper) to be distributed to the membership of the legal and paralegal professions at large.” This paper, the claim noted, was “largely based” on the Stratcom report.

Convocation approved the Consultation Paper and its consultation plan in October 2014.

However, the claim explained, the Consultation Paper “did not include a link to a posting of the Stratcom Report itself ...”

The LSO received “extensive responses from members and organizations” in reply to the Consultation Paper. After receiving feedback, the working group and LSO staff created a “major policy paper entitled, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (Working Together Report).” The report, the claim added, also “relied heavily on the Stratcom Report.”

The Working Together Report included 13 recommendations for Convocation to consider, which “it recommended be adopted together in one omnibus motion, as a single package.” In December 2016 Convocation voted to adopt all the recommendations.

Some of these recommendations, including the Statement of Principles, became contentious issues in the legal profession and a group of lawyers ran as a slate (StopSOP) in the following bench election to overturn them.

Klippenstein’s claim alleges that he was concerned about “irregularities” in the Stratcom Report, including “the failure by Stratcom to follow established, accepted, and standard statistical and other methods in gathering data, information, and background and in the presentation of such information in the Stratcom Report.”

Klippenstein’s claim makes specific mention of the Inclusion Index, which Convocation recently decided not to publicize after a panel of three experts determined the index in its current form “is not an effective means to achieve the law society’s equity goals.”

The claim alleged that the index was “to be a firm-by-firm public ranking of all law firms in Ontario with more than 25 licensees, officially published by the law society.”

“The Inclusion Index would publicly rate all such firms based on survey answers from licensees obtained through questions in the law society’s annual filing required of all lawyers,” the claim explained, noting that the filing questions asked licensees about “demographics, and about very personal characteristics, including sexual orientation.”

The claim noted that Klippenstein has raised concerns with the regulator about the Stratcom Report, the Working Together Report and the Inclusion Index since January 2020, but “has received no significant response and his concerns have been ignored.”

“The Plaintiff,” the claim added, “has repeatedly requested the information to enable him to further consider and analyse these issues, and to further communicate with fellow benchers, including on the questions of whether, and to what extent, the Stratcom Report, and the Working Together Report, should continue to be used in the development, implementation, and enforcement of policy by the LSO.”

The claim concluded by noting that Klippenstein, “as a bencher and director of the LSO, is entitled to all of the information in order to discharge his duties as a bencher and director of the LSO.”

The Law Society of Ontario declined to comment on the claim at this time.
