

LSO bencher Murray Klippenstein suing the regulator for alleged irregularities in equity initiatives

Klippenstein is demanding access to the inclusion index, challenges report and STRATCOM dataset



Murray Klippenstein is a bencher at the Law Society of Ontario

Law Society of Ontario bencher Murray Klippenstein is suing the regulator for its equity initiatives, alleging irregularities in the report processes and the work derived from it.

Klippenstein is demanding access to documents including the inclusion index report, the challenges report and the strategic communications (STRATCOM) survey dataset that identified issues faced by racialized lawyers and paralegals, challenges that increased the risk of regulatory complaints and preventative measures.

“The plaintiff has repeatedly raised his concerns about the STRATCOM report, the working together report and the inclusion index for several years, beginning in January 2020, through detailed emailed distributed to all benchers to senior LSO staff and at various meetings, but has received no significant response and his concerns have been ignored,” Klippenstein’s [claim](#) states.

Klippenstein alleges that the STRATCOM report contains irregularities, particularly the survey. His statement of claim argues that STRATCOM failed to follow “established, accepted and standard” statistical data in gathering data and presenting its report.

Law Times reached out to the LSO for comments, and Wynna Brown, external relations and communications director, said the LSO could not presently speak on the matter, given the ongoing legal proceeding.

In March 2013, the LSO created a bencher Working Group to study challenges faced by racialized employees and commissioned consulting firm, Strategic Communications Inc, to study Ontario lawyers and paralegals, including a survey. The LSO set out its expectations of the study in the Challenges Facing Racialized Licensees: Best Practices memorandum.

The memorandum stated that creating and implementing comprehensive diversity plans and strategies in legal workplaces is necessary to ensure inclusivity, that law firms must integrate diversity efforts in their structure, including marketing, professional development and performance management, and that there must be a massive cultural shift within legal environments that involved shaking long-held beliefs.

In 2013 fall, STRATCOM sent a questionnaire to all licensees and used the data and analysis to generate the [Challenges Facing Racialized Licensees: Final Report](#) in March 2014. Following the final report, the LSO working group and staff presented a 45-page consultation paper, including a proposal and plan for its distribution at the October 2014 Convocation, which was approved.

“Although the consultation paper was built on the STRATCOM Report and included more than 40 specific footnoted references to the STRATCOM report, the paper did not include a link to the actual STRATCOM report, but rather only asked for opinions on possible policies going forward,” the claim states.

The LSO received extensive feedback from legal professionals in response to the questions posed in the consultation paper and prepared the 2016 [Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group final report](#), which the claim states relied heavily on the STRATCOM report.

The report included 13 recommendations, including licensees adopting and abiding by a statement of principles acknowledging their obligation to promote equity, diversity, and inclusion. *Law Times* [reported](#) previously that the LSO repealed the statement of principles in 2019.

The report recommended that the LSO require all legal workplaces of at least 10 licensees to develop, implement and maintain a diversity policy and complete an EDI self-assessment every two years and that the LSO measure progress by requesting all licensees to answer questions on workplace inclusion every four years.

The report proposed that the regulator compile the inclusion question results for workplaces with at least 25 employees and publish an inclusion index every four years that reflects and publicizes the demographic data and gathered information. In addition, it suggested that the LSO enact compliance measures for workplaces that failed to implement diversity policies, report their inclusion assessment or are identified as having systemic barriers to diversity and inclusion.

Other recommendations included requiring licensees to complete three hours of an accredited program focused on equity and inclusion, including cultural competency, equity and inclusion in the licensing process, and revising the LSO

and Paralegal rules of professional conduct to identify systemic discrimination as a breach of professional conduct requirements and that the regulator create a specialized and trained team to address discrimination complaints.

“The LSO embarked on an extensive process to implement the various recommendations throughout the legal professions, which continues to the present. All the 13 recommendations were premised on the purported findings of the Stratcom report.”

In Klippenstein’s claim, he alleges that the deficiencies in the STRATCOM report include a six percent low response rate.

“The STRATCOM report nowhere indicated or reported the actual number of persons surveyed or the survey response rate...This important omission deprived benchers and other readers of the report of a basic tool for assessing the validity or significance, or the lack of validity or significance of the survey results.”

The claim states that the survey respondents were self-selected and that the report failed to break out the survey responses of lawyers and paralegals. “Despite the extreme low response rate, the STRATCOM report stated the survey results were accurately representative of the views of the entire population of lawyers and paralegals.”

The claim states that the STRATCOM report failed to reference the significance that most invitees did not respond to the survey and might have had different views from the respondents. “The critically important STRATCOM report was never distributed, provided or presented to all benchers or Convocation, in the entire almost three-year period from the receipt of the report to the adoption of the recommendations, thus depriving benchers of an opportunity for a basic due diligence review of the foundational report.”

Klippenstein further argues that the inclusion index would significantly harm the reputation of many law firms.