

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MURRAY KLIPPENSTEIN

Plaintiff  
(Moving Party)

and

LAW SOCIETY OF ONTARIO

Defendant  
(Responding Party)

**MOTION RECORD OF THE RESPONDING PARTY**

September 1, 2023

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**ONTARIO**  
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**AFFIDAVIT OF JACQUELINE HORVAT**  
(Sworn, September 1, 2023)

I, Jacqueline Horvat, of the City of Windsor, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Treasurer of the Law Society of Ontario (the “**LSO**”) and have held this position since June 28, 2022. As such, I have knowledge of the matters set out below. Where my knowledge is based on information and belief, I indicate the source of that information and I believe it to be true.
2. This affidavit is made in response to Mr. Murray Klippenstein’s motion for summary judgment for an order compelling the LSO to provide him with the 23 items that are listed in Schedule A of the Statement of Claim. These items relate to policies that the LSO developed to bring awareness to the challenges faced by racialized licensees in the legal profession, in Ontario.
3. This affidavit is divided into the following sections:
  - (a) The background of the LSO;

- (b) The governance structure of the LSO;
- (c) The history of the LSO's initiative on the challenges faced by racialized licensees;
- (d) The process that the LSO is developing to respond to requests for information from benchers; and
- (e) The recent legislative amendments to the *Law Society Act* with respect to the non-applicability of the *Not-For-Profit Corporations Act* and the *Corporations Act*.

## A. BACKGROUND

4. The LSO is a corporation without share capital established under the *Law Society Act*, RSO 1990, c. L.8 ( the "*Act*"). It was originally established in 1797.

5. The LSO governs Ontario's lawyers and paralegals in the public interest by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct.

6. The LSO has a statutory duty to protect the public interest, 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 act in a timely, open and efficient manner.

7. The LSO regulates, licenses, and disciplines over 57,000 lawyers and over 10,000 licensed paralegals pursuant to the *Act* and the LSO's regulations, by-laws, rules, policies, and guidelines.

## B. GOVERNANCE

8. The Law Society Act sets out the LSO broad powers to self-govern and regulate the legal profession.

### (i) Convocation

9. The LSO is overseen by a governing body known as "Convocation", which is defined in s. 1 of the *Act* as "a regular or special meeting of the benchers convened for the purpose of transacting

business of the Society”. The individual members of Convocation are referred to as “benchers”. Section 10 of the *Act* provides that “benchers shall govern the affairs of the Society.”

10. Convocation is comprised of a total of 53 voting benchers: (i) eight “lay benchers”, who are neither lawyers nor paralegals and who are appointed by the Lieutenant Governor-in-Council; (ii) forty elected lawyer benchers who are elected by lawyer licensees; and (iii) five elected paralegal benchers who are elected by paralegal licensees. There are also a number of non-voting *ex officio* and honorary benchers, including former Treasurers.

11. The LSO’s Governance Practices and Policies (“**Practices and Policies**”) set out the specific responsibilities of Convocation and of the individual benchers that make up Convocation. The Practices and Policies were adopted by Convocation in 2019. (A copy of the Law Society’s Governance Practices and Policies (2019) is attached as **Exhibit A**.)

12. Paragraph 9 of the Practices and Policies states that “Convocation is to govern the affairs of the Society effectively and efficiently, guided by a Strategic Plan it adopts for each bencher term.”

13. Paragraph 10 of the Practices and Policies says that “Convocation is responsible for establishing policies for the governance of the legal professions in Ontario, including standards of learning, conduct and professional competence.”

14. Paragraph 11 of the Practices and Policies states that:

Convocation may establish and appoint the members of committees it requires to fulfill its governance role, but must not establish more committees than it needs for that purpose. All committees must have a mandate. Committees are to assist Convocation in setting policy on ongoing matters which further the core mandate and responsibilities of the Law Society.

15. Paragraph 12 of the Practices and Policies states that “[i]n addition to committees, Convocation may establish task forces it requires to fulfill its governance role for time-limited specific policy initiatives.”

16. The benchers are responsible for governing the affairs of the LSO. Paragraph 34 of the Practices and Policies states that “[b]enchers are to exercise their responsibilities as governors of the Law Society through stewardship, policy-making and adjudicative/regulatory functions”.

17. Paragraph 35 of the Practices and Policies states that benchers contribute to the LSO governance by, amongst other things, being appointed by Convocation as chairs and vice-chairs of committees and task forces, and as members of committees and task forces.

18. Further, paragraph 37 states that “[b]enchers must clearly distinguish between their governance role and the role of Law Society management, who are responsible under the leadership of the Chief Executive Officer for operational implementation of Convocation policy.”

19. Finally, Benchers acting in good faith do not face liability for any act done in the performance of their duties. Section 9 of the *Act* states:

No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a bylaw or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

**(ii) The Treasurer**

20. Section 7 of the *Act* states that the Treasurer is the president and head of the LSO. In that capacity, the Treasurer is the chair of Convocation.

21. Paragraph 24 of the Practices and Policies states that the Treasurer “is responsible for the strategic leadership of the Law Society and overseeing the development for Convocation’s approval of the strategic priorities for the Law Society in consultation with benchers and senior management.”

22. Paragraph 26 of the Practices and Policies says that the Treasurer is responsible for coordinating the work and responsibility of committees and task forces to ensure that policy issues are assigned to appropriate committees.

**(iii) The Chief Executive Officer**

23. The staff and day-to-day operations of the LSO are overseen by its Chief Executive Officer (“CEO”), who is assisted by a senior management team.

24. Section 8(1) of the *Act* provides that “the Chief Executive Officer shall, under the direction of Convocation, manage the affairs and functions of the Society.” Paragraph 58 of the Practices and Policies states that:

In accordance with the *Act* and By-Law 2, under the direction of Convocation, the CEO is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Law Society activities.

25. Section 62(1) of the *Act* provides that Convocation can make bylaws “prescribing the duties of the Chief Executive Officer...”. Convocation exercised this authority by enacting Bylaw 2 and provisions in Bylaw 2 that apply to the CEO. Specifically, s. 45(1) states that the “Chief Executive Officer shall be responsible for the management and coordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.” (A copy of Bylaw 2 is attached as **Exhibit B**.)

26. Paragraph 61 of the Practices and Policies states that “[t]he CEO reports to Convocation. Convocation instructs the CEO through the Treasurer.” Paragraph 62 states that “[t]he CEO is the public representative of the Law Society and the spokesperson for the Law Society for management and operations.”

27. The specific role of the CEO is outlined in paragraphs 63 to 66, which state that the CEO:

(a) Provides leadership to the LSO’s programs and operations and ensures their effective contribution to ensure that the programs and services offered by the LSO contribute to its mission and reflect the Strategic Plan, and ensures that Convocation has opportunities to consider the continuing relevance of the Strategic Plan;

(b) Manages the resources of the LSO by: developing and presenting annual budgets to the Audit and Finance Committee and ensures that actual revenues and expenses are in line with the budget approved by Convocation, and ensuring the provision of administrative and policy support for Convocation and all committees;

(c) Supports the work of Convocation and its committees and ensures effective implementation of policy decisions; and

(d) Develops and maintains positive external relationships to advance the organization's interests at home and abroad, by building and nurturing collaborative relationships with stakeholders, partners and others.

(iv) **Standing Committees, Task Forces, and Working Groups**

28. The sections of the Practices and Policies that sets out the role of Convocation and benchers with respect to committees flow from s. 62(1) of the *Act*, which provides that Convocation may enact bylaws to establish standing and other committees. On May 1, 2007, Convocation used this authority to enact Bylaw 3, which governs "Benchers, Convocation and Committees". (A copy of Bylaw 3 is attached as **Exhibit C.**)

29. The following standing committees were created by s. 103 of Bylaw 3:

1. Audit and Finance Committee.
2. Access to Justice Committee.
3. Equity and Indigenous Affairs Committee.
4. Professional Development and Competence Committee.
5. Professional Regulation Committee.
6. Strategic Planning and Advisory Committee.
7. Tribunal Committee.

30. Each standing committee consists of at least six people appointed by Convocation, five of which must be benchers.

31. The standing committees are responsible for examining issues within their mandates and bringing recommendations forward to Convocation.

32. This motion raises issues that are relevant to three of the LSO's standing committees: the Equity and Indigenous Affairs ("**EIA**") Committee; the Strategic Planning and Advisory Committee ("**SPAC**"); and the Audit and Finance Committee ("**AFC**").

33. The mandate of the Audit and Finance Committee includes:

- (a) to receive and review the interim and annual financial statements of the LSO;
- (b) to recommend to Convocation the approval of the annual financial statements of the LSO;
- (c) to review the integrity and effectiveness of the financial operations, systems of internal control, reporting mechanisms and internal risk management of the LSO;
- (d) to review with the public accountant and management of the LSO the annual audit plan and results of the annual audit, including the audit scope to recommend a public accountant for appointment by Convocation as required under section 49 of By-Law 2;
- (e) to review the annual budgets of the LSO and of Library Co., or any special or extraordinary budgets required for the purpose of the LSO, to provide advice to Convocation thereon and to recommend approval of the annual budgets or any special or extraordinary budget item;
- (f) to review proposals for any significant budget amendments arising during a financial year and to provide advice to Convocation thereon, including advice on the financial implications of the budget amendments;
- (g) to provide to Convocation policy guidance on the allocation of resources within the LSO in keeping with the priorities set by Convocation;
- (h) to develop for Convocation's approval policy options on financial matters, including the LSO's investment policy;
- (i) to ensure that the LSO's programs have clearly articulated objectives and identifiable performance standards to assist in assessing their efficiency and effectiveness;
- (j) to review periodically the LSO's programs, selected for review in consultation with the CEO, to determine compliance with program objectives and whether there is cost-effective use of funds;
- (k) to receive reports on the remuneration and expenses of the Treasurer and benchers;
- (l) to monitor compliance with policies adopted by Convocation, including any investment policy; and
- (m) to recommend to Convocation the execution of banking resolutions and other similar financial agreements.

34. The mandate of the EIA Committee is:

- (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples; and

(b) to consult with Indigenous, Francophone and other equality-seeking communities in the developments of such policy options.

35. The mandate of the SPAC includes:

(a) developing for Convocation's approval, periodically reviewing and recommending changes to and reporting annually to Convocation on the status of Convocation's priorities for policy objectives;

(b) receiving from the CEO notification of significant legal proceedings in which the Society is involved that are managed out of the Office of General Counsel, providing required assistance and advice in the conduct of such legal proceedings and reporting to Convocation on such legal proceedings as necessary;

(c) developing and maintaining working relationships with the Governments of Ontario and Canada, including their elected officials and public service, on initiatives affecting the public interest that are within the LSO's jurisdiction;

(d) presenting the LSO's legislative agenda to the Governments of Ontario and Canada; and

(e) developing for Convocation's approval a long range and comprehensive public affairs mandate and strategy.

36. Pursuant to paragraph 49 of the Practices and Procedures, committees can establish working groups for discrete, time limited issues that will benefit from the focus of a smaller group of committee members. The Chair with the committee's agreement is to establish the membership of the working group and the timeline for its report to the committee. Paragraph 50 says that the provisions in the Practices and Policies that apply to committees, also apply with necessary modifications to the working groups of committees.

37. As noted, in addition to committees and working groups, Convocation can create task forces to fulfill its governance role for time-limited specific policy initiatives, pursuant to paragraph 12 of the Practices and Policies.

### **C. CHALLENGES FACED BY RACIALIZED LICENSEES**

38. In 2007 and again in 2011, Convocation approved a Strategic Plan put forward by Convocation's Priority Planning Committee that was focused (amongst other things) on equity and diversity within the profession. (A copy of the Priority Planning Committee's Report to

Convocation dated November 22, 2007, is attached as **Exhibit D**. A copy of the Priority Planning Committee's Report to Convocation dated December 9, 2011, is attached as **Exhibit E**.)

39. In August 2012, Convocation created the Challenges Faced by Racialized Licensees Working Group ("**Working Group**") to identify challenges faced by racialized licensees in different practice environments, and to identify factors and practice challenges faced by racialized licensees. The Working Group was specifically tasked with examining things that could increase the risk of regulatory complaints and discipline, and if appropriate, develop preventative, remedial, enforcement, regulatory, and/or support strategies to address the challenges, for consideration by the EIA Committee and other committees. (A copy of the Meeting Minutes of Convocation dated August 21, 2012, is attached as **Exhibit F**. A copy of the Report from the EIA Committee to Convocation, dated October 30, 2014, is attached as **Exhibit G**.)

40. The Working Group began engaging with community liaison and stakeholders to gather information about barriers faced by racialized licensees. (See **Exhibit G**.)

41. In early 2013, the Working Group retained the services of the firm Strategic Communications Inc. ("**Stratcom**") to manage the data gathering process of the Working Group. In March 2014, Stratcom provided a report detailing its findings ("**Stratcom Report**"). (A copy of the Stratcom Report is attached as **Exhibit H**.)

42. The Working Group's engagement process revealed a number of challenges faced by racialized licensees. Accordingly, the Working Group developed a report entitled "Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, Consultation Paper" ("**Consultation Paper**"). The Consultation Paper contained a series of questions for members of the profession, firms and organizations, to consider and comment upon. The Working Group's goal was to gather input on topics like enhancing cultural competence, addressing discrimination, and enhancing diversity within firms. (See **Exhibit G**.)

43. On October 30, 2014, the EIA Committee brought a motion to Convocation asking them to approve the Consultation Paper. The EIA Committee's report on the motion included information about budgetary considerations, stakeholder management, and methodology. It also included the draft Consultation Paper itself. The motion carried and the Consultation Paper was

made available online. (A copy of the Minutes of Convocation, dated October 30, 2014, is attached as **Exhibit I**. See also **Exhibit G**.)

44. From January to March 2015, the Working Group sought input from the profession broadly speaking, including organizational stakeholders, law firms, legal clinics, members of the judiciary, the academy and the public, to identify practice initiatives and solutions to the challenges outlined in the Consultation Paper. The LSO also engaged in a public consultation process by holding public meetings. (A copy of the Working Group's Interim Report to Convocation, dated April 2015 is attached as **Exhibit J**.)

45. In 2016, the Working Group developed a final report with 13 recommendations for Convocation's consideration, entitled the "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report" (the "**Challenges Report**"). (A copy of the Challenges Report is attached as **Exhibit K**.)

46. On December 2, 2016, a motion was brought before Convocation to approve the 13 recommendations in the Challenges Report. The motion passed. (A copy of the Meeting Minutes of Convocation, dated December 2, 2016, is attached as **Exhibit L**.)

47. The work of implementing the recommendations in the Challenges Report started in January 2017. Convocation was updated periodically about the Working Group's progress. (See for example, the Report to Convocation from the EIA Committee, dated June 29, 2017, which is attached as **Exhibit M**.)

48. One of the recommendations in the Challenges Report was for the LSO to develop and publish an Inclusion Index every four years, that would reflect 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). (See **Exhibit K**.)

49. The LSO engaged the firm Diversio to develop the Inclusion Index for 2018-2019. Diversio delivered a draft of the Index in the fall of 2019. By the time Diversio delivered the draft Index, the Law Society staff who were originally involved in the development of the Index had left the

organization. New staff engaged with Diversio to further develop the Index and understand the methodology underlying the results before planning its release. (A copy of the Memorandum to EIA Committee dated November 17, 2021, is attached as **Exhibit N.**)

50. Mr. Klippenstein was elected as a bencher in 2019. He, and other benchers, were appointed to the EIA Committee by Convocation. The first meeting of the new EIA Committee was on October 8, 2019. The status of the Challenges Report was discussed at that meeting, and the Committee members were provided with a copy of the Challenges Report. (A copy of the Agenda and Materials from the Meeting of the EIA Committee dated October 8, 2019, is attached as **Exhibit O.**)

51. It is apparent that Mr. Klippenstein took the time to familiarize himself with this report because on January 8, 2020, Mr. Klippenstein submitted a document to the EIA Committee entitled “A Critical Review of the Law Society’s *Challenges* Report: Representations to the Law Society EIA Committee and Benchers” (“**Klippenstein Critical Review Document**”). In this document, Mr. Klippenstein detailed all of his concerns about the Challenges Report and the Stratcom Report.

52. Mr. Klippenstein never officially presented the Klippenstein Critical Review Document to Convocation.

53. In March 2020, the work of the EIA Committee was interrupted by the COVID-19 pandemic. The EIA Committee resumed its regular work in late 2020. (See **Exhibit L.**)

54. On September 9, 2020, Mr. Klippenstein wrote an email to the EIA Committee Chair and members, detailing his concerns about the draft Inclusion Index prepared in 2019. On September 15, 2020, Mr. Klippenstein forwarded this email to all benchers. (A copy of Mr. Klippenstein’s email dated September 15, 2020, is attached as **Exhibit P.**)

55. On April 22, 2021, a motion was brought to Convocation to approve the audited annual financial statements of the LSO for the financial year that ended on December 31, 2020, including \$156,000 from the Special Projects Fund to the General Fund to fund, amongst other things, the work related to the implementation of approved recommendations in the Challenges Report for the Working Group. The motion carried. (A copy of the Meeting Minutes of Convocation dated April 22, 2021, is attached as **Exhibit Q.**)

56. On November 22, 2021, Mr. Klippenstein wrote an email to the EIA Committee Chair and members, and all benchers, detailing concerns he had about the materials that had been circulated to EIA Committee members in advance of the Committee's November 25 meeting. Specifically, he raised concerns about a memorandum dated November 17, 2021, that explained that the LSO had retained independent experts to undertake a peer review of the draft Inclusion Index, and that he was making a request for: the names of the experts who had been retained, a copy of any requests for proposals delivered to the three experts, a copy of the contracts with the experts, and the amounts paid to the experts. (A copy of the email from Mr. Klippenstein dated November 22, 2021, is attached as **Exhibit R.**)

57. The November 17, 2021, memorandum did in fact include details about the experts that had been retained including their names, qualifications, and why they had been selected. The memorandum discussed issues with the Inclusion Index, and recommended that before the EIA Committee move forward with the information collected by Diversio for the Inclusion Index, it should consider various questions, including:

1. Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
2. Given the three-year period between the collection of the data and the current date, is it scientifically sound to release the data?
3. The data on which the Index is based is now three years old. Is the Inclusion Index based on that data relevant today?
4. In anticipation of the release of the Inclusion Index, some workplaces proactively adopted strategies to promote equity, diversity and inclusion within their workplaces. The progress of these workplaces is not reflected in the current Index. Would the release of the Index at this point support the Law Society's goal of reducing barriers faced by racialized and Indigenous licensees?
5. If the answer to any of the above questions is "no", would the Law Society's reputation be negatively impacted by the release of the Index?

(See **Exhibit N.**)

58. The memorandum indicated that the peer review panel was charged with answering various questions in relation to the Challenges Report, including whether the data collection process was valid; whether the response rates were sufficient; whether the questions posed as part of the membership survey were appropriate; and whether the process of using key informants was effective and reliable. (See **Exhibit N.**)

59. The peer review panel was also charged with answering various questions in relation to the Inclusion Index, including whether the scope of it was appropriate; whether the Inclusion Index as produced achieved the desired result; and whether the data underlying the Inclusion Index was still reliable. (See **Exhibit N.**)

60. The content of the November 17, 2021, memorandum, including the mandate of the peer review panel, was discussed at the November 25, 2021, EIA Committee meeting. Mr. Klippenstein was present. (A copy of the Agenda and Materials for the EIA Committee meeting dated November 25, 2021, is attached as **Exhibit S.**)

61. On November 29, 2021, Mr. Klippenstein wrote an email repeating the request he made in his email dated November 22, 2021. (A copy of the November 29, 2021, email of Mr. Klippenstein is attached as **Exhibit T.**)

62. Mr. Klippenstein's counsel, whom he retained in relation to this motion, wrote two further letters to the then-Treasurer, Teresa Donnelly, on April 26 and May 20, 2022, requesting 23 items. (A copy of two letters from Mr. Klippenstein's Counsel to the Former Treasurer attached as **Exhibit U.**)

63. The peer review panel conducted their review from December 2021 to April 2022. They were provided with various materials to support their evaluation of the Challenges Report, including the Challenges Report itself, the Consultation Paper, the Stratcom Report, and the Klippenstein Critical Review Document. (A copy of the Memorandum provided to the EIA Committee dated April 29, 2022, is attached as **Exhibit V.**)

64. On May 3, 2022, the peer review panel presented their findings to the EIA Committee. 161 pages of materials were provided to the EIA Committee. For various reasons which it explained, the peer review panel opined that the Inclusion Index would not further the LSO's equity goals and recommended that it should not be released in its current iteration. (A copy of the Agenda and Materials for the EIA Committee meeting dated May 3, 2022, is attached as **Exhibit W.**)

65. The findings of the peer review panel were discussed at the EIA Committee meeting on May 12, 2022. Mr. Klippenstein attended that meeting. (A copy of the Agenda and Materials for the EIA Committee meeting dated May 12, 2022, is attached as **Exhibit X.**)

66. Former Treasurer Donnelly responded to Mr. Klippenstein's counsel's letters on May 27, 2022, clarifying that prior to receiving Mr. Klippenstein's counsel's May 20, 2022, letter, she did not understand that he was continuing his request for information, given all the materials that had been provided at the EIA Committee meetings on May 3, 2022. Former Treasurer Donnelly indicated that under the current legislative framework governing the LSO, the Treasurer has no unilateral authority to decide on a request for information and that Convocation must be engaged in the decision. She further stated that information that is not confidential to the LSO can be requested from the CEO, but that if the work of responding to the request would exceed the normal duties of staff, the CEO ordinarily seeks directions from Convocation. Former Treasurer Donnelly indicated that she would pass on the request to SPAC and ask SPAC to consider the request and to bring it to Convocation. (A copy of the Former Treasurer's letter dated May 27, 2022, is attached **Exhibit Y.**)

67. On June 17, 2022, the EIA Committee had a meeting. At that meeting, the Committee was asked to approve a draft report to Convocation that set out recommendations to Convocation with respect to the Inclusion Index, namely, the recommendations that the Inclusion Index not be publicized due to the issues raised by the peer review panel, and that the recommendations in the Challenges Report regarding the Inclusion Index be amended to reflect a better approach. (A copy of the Agenda and Materials for the EIA Committee meeting dated June 17, 2022, is attached as **Exhibit Z.**)

68. The motion was brought before Convocation at its June 28, 2022, meeting. Specifically, Bencher Dianne Corbiere moved that Convocation approve the recommendations of the EIA

Committee not to publicize the Inclusion Index developed in 2019. The motion carried. Mr. Klippenstein abstained from voting. (A copy of the Meeting Minutes of Convocation, dated June 28, 2022, is attached as **Exhibit AA.**)

#### **D. ACCESS TO INFORMATION**

69. Benchers routinely receive or have access to committee and other materials in order to be able to fulfill their mandate, including but not limited to policy development reports, research, the results of surveys or consultation, detailed budgetary information, financial reports and related documents, updates on strategic initiatives, operational division or program reports and updates from stakeholders. There are select categories of confidential documents from specific committees that benchers do not have access to, such as documents from the Compensation Committee, the Proceedings Authorization Committee, and the Treasurer's Appointment Advisory Group.

70. Committee materials, and materials from working groups and task forces, can be accessed by benchers in the "current books" section on "Diligent Boards", which is the internal system that benchers use. Such documents remain available for up to five years. After five years, they are archived, and benchers can request access to the archives by making a specific request.

71. Benchers also have regular access to:

- (a) Convocation materials (reports for decision and information, both public and *in camera*) including reports from management, typically through the CEO (both in public and *in camera*);
- (b) Convocation minutes and transcripts (both public and *in camera*);
- (c) Additional supporting and educational resources posted in the bencher resource centre; and
- (d) Information about major policy or other initiatives through oral or written briefings including at scheduled bencher information sessions.

(i) **The SPAC Advisory Group**

72. Though benchers routinely have access to the above referenced information, I, along with SPAC members, became aware of a gap in the LSO's Practices and Policies with respect to the procedure for bringing and responding to requests by benchers for administrative information.

73. In my capacity as Chair of SPAC, I responded to this information gap by appointing a working group of SPAC committee members to develop a policy for responding to bencher requests for information that is not readily available through the Committee and Convocation process and discussions. This working group was appointed pursuant to paragraph 49 of the Practices and Policies (referenced above). (A copy of the draft policy is attached as **Exhibit BB**.) All benchers were advised of the appointment of this working group on September 2, 2022. (A copy of the email dated September 2, 2022 is attached as **Exhibit CC**.)

74. The members of this working group were Robert Adourian, Seymour Epstein, Andrew Spurgeon, Diana Miles, and Elliot Spears. Cathy Corsetti, who completed her bencher term in May 2023, also served on the Advisory Group.

75. The Advisory Group has prepared a policy that defines a process and provides direction to the Law Society for managing requests for information. The Advisory Group will be presenting the policy to SPAC on September 7, 2023, and recommending that SPAC put it to Convocation for approval.

76. In framing the policy, the Advisory Group considered:

- (a) The LSO's obligations with respect to providing information to benchers;
- (b) The scope of LSO information that benchers require to do their work and perform their functions;
- (c) The person(s) who should be responsible for dealing with requests and the exercise of discretion under the policy;
- (d) Resource implications related to applying the policy in fulfilling requests;
- (e) Circumstances where there is disagreement with how the policy is applied and a process to deal with that;
- (f) Positioning the policy once approved within the LSO's Practices and Policies.

77. The Advisory Group also referred to one example of a process to address information requests, from the municipal council context, found in the Toronto Municipal Code, Chapter 27, Council Procedures, Article 7 - § 27-7.11:

**§ 27-7.11. Administrative inquiries and answers.**

**A. How a Member makes an administrative inquiry.<sup>1</sup>**

(1) A member who wants information about the affairs of the City must:

- (a) make an administrative inquiry in writing; and
- (b) deliver it to the Clerk at least seven business days before the Council meeting.

(2) The relevant City official answers the administrative inquiry in writing and delivers the answer to the Clerk at least one hour before the Council meeting.

(3) The Clerk distributes the answer to members before the start of the Council meeting or reads the answer to Council.

(4) Despite Subsection A(2), a City official may decide that the answer to an administrative inquiry requires work that exceeds the normal duties of their staff.

(5) If Subsection A(4) applies, the City official informs Council of that decision in a written letter to the Clerk at least one hour before the meeting and the Clerk distributes the letter to members before the Council meeting starts.

**B. How Council responds to an administrative inquiry.**

(1) If, in response to an administrative inquiry, a City official has told Council that the work of answering the inquiry exceeds normal duties, Council, without debate, may vote on whether the City official should answer the administrative inquiry.

(2) Council receives, or refers to the appropriate Council Committee, all administrative inquiries and answers, without debate.

78. The draft contemplates that the policy would be engaged where a bencher does not receive information, including operational information, requested through the committee or Convocation

<sup>1</sup> Administrative Inquiry - A Member's inquiry seeking information relating to City business.

process, or through or outside of the committee process where information is unrelated to the mandate of a committee.

79. The following are the proposed components of a policy and process for dealing with requests for information:

- (a) Information that is requested by a bencher must be directly related to a bencher's appropriate duty as a governor of the Law Society and reasonably required to fulfill their oversight or policy making responsibilities and be used for such purposes.
- (b) The request for information is to be made on a form provided by the Law Society and submitted to the Treasurer's office. The request is to include particulars of the information and how the information aligns with the requirements of paragraph 1.
- (c) The Treasurer will consult with the CEO about the request and make a determination on the request.
- (d) If responding to the request would exceed the normal duties of employees assigned for this purpose, the Treasurer is to request from the CEO the scope of the work and associated costs reasonably necessary to fulfill the request and Convocation is to decide whether the request should be fulfilled.
- (e) If the Treasurer denies a request on the basis that it does not meet the requirements of paragraph 1, the bencher may refer the matter to Convocation (*in camera*) and Convocation is to decide whether the request should be fulfilled.
- (f) Information provided in response to a bencher's request for information will be provided to all benchers.
- (g) Information provided in response to a bencher's request for information remains confidential to the Law Society subject to Convocation's authority to make it public.

80. If adopted by Convocation, the policy will form part of the Practices and Policies.

#### **E. LEGISLATIVE AMENDMENTS TO THE *LAW SOCIETY ACT***

81. I am advised by Elliot Spears, General Counsel for the LSO, that in 2010, the LSO was made aware of significant legislative changes that the Ontario legislature was contemplating. Specifically, the LSO was advised of the Ontario legislature's Bill 65, *An Act to revise the law in respect of not-for-profit corporations*, which would enact the new *Not-for-Profit Corporations*

*Act, 2010*. This new Act would govern corporations without share capital, removing them from the governance of the *Corporations Act*. As a corporation without share capital, the LSO was one of the entities that would be removed from the governance of the *Corporations Act* and placed under the governance of the *Not-for-Profit Corporations Act*.

82. I am further advised that the LSO was asked to provide submissions on these changes. Former Chief Executive Officer Malcolm Heins made submissions to the legislature on August 23, 2010. He submitted that the new *Not-for-Profit Corporations Act* would fit poorly with the LSO's structure and regulatory mandate, and could in some instances, negatively affect the ability of the LSO to fulfill its public interest mandate. The LSO requested that it be exempt from the application of *Not-for-Profit Corporations Act*, and that s. 6 of the *Law Society Act* be amended to reflect this. He further noted that the LSO has the authority, pursuant to the *Law Society Act*, to make bylaws in the public interest with respect to many matters typically covered by legislation. (A copy of the written submission on Bill 65 dated August 23, 2010, is attached as **Exhibit DD**.)

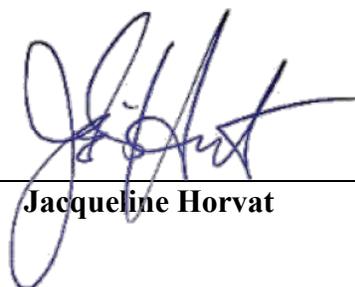
83. The new *Not-for-Profit Corporations Act* came into force on October 19, 2021. The same day, s. 6 of the *Law Society Act* was amended to remove the LSO from the governance of the *Corporations Act* and to exempt the LSO from the applicability of the *Not-for-Profit Corporations Act*.

**SWORN REMOTELY** by Jacqueline Horvat of the City of Windsor, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.




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Alexandra Heine  
(LSO #83514R)




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Jacqueline Horvat

This is **Exhibit A** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

# **GOVERNANCE PRACTICES AND POLICIES**

**ADOPTED BY CONVOCATION AND EFFECTIVE  
ON FEBRUARY 28, 2019**

**Amended:  
April 25, 2019  
October 2, 2019 (editorial changes)  
July 16, 2021 (editorial changes)**

# LAW SOCIETY OF ONTARIO

## GOVERNANCE PRACTICES AND POLICIES

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## **PART 1: GOVERNANCE FRAMEWORK OF THE LAW SOCIETY**

### **Section 1: The Role of the Law Society**

1. The Law Society of Ontario, established by the *Law Society Act* (“the Act”), regulates the practice of law and the provision of legal services in Ontario. According to the Act, a function of the Law Society is to ensure that:
  - a. all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
  - b. the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.
2. The Law Society is a corporation without share capital, governed by a decision-making body (Convocation) which is composed of elected, appointed and *ex officio* benchers. The Chair of Convocation is the Treasurer, who is the president and head of the Law Society. The Chief Executive Officer, under the direction of Convocation, manages the affairs and functions of the Society.
3. The Law Society is required to carry out its functions, duties and powers with regard to the following principles (from section 4.2 of the Act):
  - a. The Society has a duty to maintain and advance the cause of justice and the rule of law.
  - b. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
  - c. The Society has a duty to protect the public interest.
  - d. The Society has a duty to act in a timely, open and efficient manner.
  - e. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

4. In keeping with the statutory principles above, Convocation is committed to governing the practice of law and the provision of legal services in a manner that will
  - a. achieve a reduction of barriers created by racism, unconscious bias and discrimination;
  - b. achieve better representation of Indigenous licensees, racialized licensees and licensees from all equality seeking groups in the legal professions; and
  - c. advance reconciliation, acknowledging a collective responsibility to support improved relationships between Indigenous and non-Indigenous peoples in Ontario and Canada.
5. The Law Society's authority to regulate is a delegated authority from the government of Ontario through the Act. In fulfilling its self-regulatory mandate, the Law Society regulates the practice of law and the provision of legal services, including those licensed to do so, in the public interest.

## **Section 2: Principles of Law Society Governance**

6. These principles are the foundation for governance of the Law Society:
  - a. Convocation must govern in the public interest;
  - b. The structure for governance must enable varied perspectives, abilities and backgrounds to be represented at Convocation;
  - c. Decisions made by Convocation are to be the product of careful, thoughtful analysis and review;
  - d. Convocation is to make decisions that are free from conflict of interest, bias or improper influence;
  - e. Convocation is to apply best practices for its governance;
  - f. Convocation decision-making processes are to be consistent, transparent and informed by input from relevant committees, working groups and/or task forces as established by Convocation, and as required, through a process of engagement with stakeholders;

- g. Convocation will govern so as to maintain the confidence of the public and the professions;
- h. Convocation decision-making will be guided by a Strategic Plan developed with input from Convocation, management of the Law Society and those affected by the Plan, and that will be renewed on a regular basis;
- i. Convocation acknowledges that the appointment of lay benchers to Convocation by the Lieutenant Governor in Council on recommendation of the Attorney General for Ontario ensures that additional competencies and perspectives from the public are represented at Convocation.

### **Section 3: Responsibilities of Convocation**

- 7. The benchers in Convocation are the board of directors of the Law Society and govern the affairs of the Law Society.
- 8. Convocation is responsible for ensuring that the Law Society's mandate is fulfilled and that the Law Society carries out its legal obligations.
- 9. Convocation is to govern the affairs of the Society effectively and efficiently, guided by a Strategic Plan it adopts for each bencher term.
- 10. Convocation is responsible for establishing policies for the governance of the legal professions in Ontario, including standards of learning, conduct and professional competence.
- 11. Convocation may establish and appoint the members of committees it requires to fulfill its governance role, but must not establish more committees than it needs for that purpose. All committees must have a mandate. Committees are to assist Convocation in setting policy on ongoing matters which further the core mandate and responsibilities of the Law Society.
- 12. In addition to committees, Convocation may establish task forces it requires to fulfill its governance role for time-limited specific policy initiatives.
- 13. Convocation is to ensure the integrity and effectiveness of the Law Society's adjudicative function through the Law Society Tribunal.

14. Convocation must be proactive while preserving the capacity to react appropriately to unforeseen challenges and issues.

## **PART 2: GOVERNANCE PROCESS AND DECISION-MAKING**

### **Section 1: Convocation Process**

15. Convocation, which is the meeting of benchers, is to exercise its responsibilities in accordance with the principles by which it is required to perform its functions, as set out in the Act.
16. Convocation is committed to transparency of its process, including a live webcast of the public portion of the meeting and the availability of a transcript and minutes of the public portion of the meeting.
17. Convocation is to be governed by the rules of procedure for Convocation as set out in Part V of [By-Law 3](#).
18. The Treasurer is the president of the Law Society and is responsible for setting and managing the agenda for Convocation.
19. To the extent possible, the Treasurer is to utilize a consent agenda for matters required for decision by Convocation.
20. The Treasurer may impose such time limits for presentation of reports and discussion at Convocation as he or she sees fit, including time allotments for speakers, and benchers are required to observe them.
21. The Treasurer and benchers are to maintain the confidentiality of matters discussed at Convocation when Convocation meets in the absence of the public (*in camera*). Where Convocation determines that matters discussed in the absence of the public may be disclosed publicly, benchers may refer to them publicly.
22. Subject to the Treasurer's advice, reports to Convocation for information are to be taken as read and will not be presented.

### **Section 2: The Treasurer**

23. As set out in the Act, the Treasurer is the president and the head of the Law Society.

24. The Treasurer is responsible for the strategic leadership of the Law Society and overseeing the development for Convocation's approval of the strategic priorities for the Law Society in consultation with benchers and senior management.
25. The Treasurer is responsible for chairing Convocation.
26. In consultation with committee chairs and Law Society management, the Treasurer is to coordinate the work and responsibility of committees and task forces to ensure policy issues are assigned to appropriate committees.
27. The Treasurer is the public representative of the Law Society and the spokesperson for the Law Society on matters of policy.
28. The Treasurer is to recommend to Convocation for appointment all individuals as members of committees, task forces and external boards or other organizations, and is to ensure that recommended appointees reflect an appropriate level of diversity on each committee, task force and in external appointments.
29. The Treasurer is responsible for receiving the report of the CEO on Law Society operations and as chair of the Compensation Committee, fulfilling the obligation of that Committee to evaluate the performance of the CEO on an annual basis. The Treasurer is to work with the CEO to ensure the alignment of operations with the Strategic Plan as approved by Convocation and oversee the annual performance plan for the CEO.
30. The Treasurer should have the following attributes and competencies:
  - a. strong facilitation skills;
  - b. demonstrated ability to encourage thoughtful decision-making, nurture collaborative relationships and foster confidence and trust;
  - c. the ability to chair meetings effectively, to ensure all points of view are heard and to lead discussion to a clear and timely conclusion;
  - d. strong communication skills;
  - e. excellent judgment;

- f. deep understanding of the major issues facing the regulation of the legal profession in Canada;
- g. ability to see both the short term and the longer term implications of any policy or operational issue;
- h. a commitment to openness, inclusion and transparency;
- i. understanding of the requirements of effective governance; and
- j. a willingness to commit the time required to the role during his or her term.

### **Section 3: Benchers**

- 31. As directors, the benchers are responsible for governing the affairs of the Law Society.
- 32. In their capacity as directors of the Law Society and in exercising their powers and discharging their duties to the Law Society, benchers are required to
  - a. act honestly and in good faith with a view to the best interests of the Law Society, and
  - b. exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- 33. In all matters relating to their role as members of Convocation and its committees and task forces, benchers are to act solely in the public interest and to have regard to the principles mentioned in paragraph 3 above.
- 34. Benchers are to exercise their responsibilities as governors of the Law Society through stewardship, policy-making and adjudicative/regulatory functions:
  - a. In their stewardship role, benchers are to fulfill their responsibility through direction to the CEO that recognizes the CEO's responsibility to manage the affairs and functions of the Society and the responsibility of the benchers to govern the affairs of the Society;
  - b. As policy-makers, benchers are required to set standards, make rules and By-Laws and adopt policies to meet the objects described in the Act;
  - c. If and as members of the Law Society Tribunal, benchers are to exercise adjudicative functions pursuant to the Act, regulations under the Act, and in accordance with the Law Society's Tribunal Rules of Practice and Procedure,

- the Adjudicator Code of Conduct and other instruments governing the role of the adjudicator;
- d. If appointed to fulfill certain other statutory decision-making offices, for example, as members of the Proceedings Authorization Committee or as summary disposition benchers, benchers are required to exercise sound judgment and discretion.
35. Benchers may contribute to Law Society governance in numerous ways including as follows:
- a. Benchers are appointed by Convocation as chairs and vice-chairs of committees and task forces;
  - b. Benchers are appointed by Convocation as members of committees and task forces;
  - c. Benchers are appointed by Convocation as members of the Law Society Tribunal;
  - d. Benchers are appointed by Convocation to fulfil certain statutory functions and to serve on various external boards and organizations that include representatives of the Law Society.
36. Benchers are to hold themselves to the highest standards of integrity and trust in carrying out their responsibilities in the public interest, and must abide by the Bencher Code of Conduct.
37. Benchers must clearly distinguish between their governance role and the role of Law Society management, who are responsible under the leadership of the Chief Executive Officer for operational implementation of Convocation policy.
38. Benchers are to:
- a. be familiar with Law Society structure, mandate and governance policies and relevant legislation and jurisprudence;
  - b. attend orientation on taking office as a bencher;
  - c. attend continuing bencher development sessions as provided during their

term of office; and

- d. ensure that they have sufficient time to commit to the role of benchers, including taking into account necessary travel time as required.

#### **Section 4: Committee and Task Force Process**

##### Committees and Task Forces

39. The following committees are established under the Act:
  - a. Compensation Fund Subcommittee
  - b. Paralegal Standing Committee
  - c. Proceedings Authorization Committee
40. The following standing committees of Convocation are established under By-Law 3, which includes their mandates:
  - a. Audit and Finance Committee
  - b. Access to Justice Committee
  - c. Equity and Indigenous Affairs Committee
  - d. Professional Development and Competence Committee
  - e. Professional Regulation Committee
  - f. Strategic Planning and Advisory Committee
  - g. Tribunal Committee
41. In addition to standing committees, other committees are established to support the work of Convocation, including the Compensation Committee.
42. Task forces will be established by Convocation from time to time for specific policy projects and other time limited tasks.

##### General

43. Committees and task forces are to adhere to their mandates as established by Convocation and may vary same only with the approval of Convocation.
44. Committees and task forces are to identify all reasonable policy options and implications to inform Convocation's decisions. Committees and task forces do not establish policy but assist Convocation in doing so.
45. All task forces must have clearly articulated terms of reference and a sunset

clause.

46. Committees and task forces must not perform operational/administrative work.
47. In cases where their mandate affects the work or responsibilities of committees or other task forces, task forces should consult with those committees or task forces before submitting their final report to Convocation.
48. Committees and task forces meet in the absence of the public (*in camera*).
49. Committees may establish working groups for discrete, time limited issues that will benefit from the focus of a smaller group of committee members. The Chair with the committee's agreement is to establish the membership of the working group and the timeline for its report to the committee.
50. The provisions in this section of the Policy applicable to committees apply with necessary modifications to working groups of committees.

#### Role of the Chair

51. The Chair of a committee or task force is responsible for setting and managing the agenda for the meeting.
52. The Vice-Chair(s) of a committee or task force support the Chair and assume the role of the Chair in the Chair's absence.
53. The Chair is required to manage the work of the committee or task force within the scope of its mandate.
54. The Chair is to ensure that the matters on the agenda for a particular meeting are appropriate for the time available for the meeting and should strive to ensure that the time limitation established for the meeting is observed.
55. The Chair is to ensure that planning for the meeting's agenda takes into account the time needed by Law Society management to adequately and appropriately prepare materials for the meeting.
56. A plan and timetable for the work of their committee should be established on an annual basis in consultation with committee members, management and the Treasurer.

57. The Chair is responsible for ensuring that
  - a. materials for committee deliberations are appropriate for their purpose and include an appropriate level of detail to permit informed discussion;
  - b. reports to Convocation are provided at regular intervals;
  - c. matters for Convocation's decision include a motion that is clear in its meaning and purpose;
  - d. reports include an appropriate level of detail to permit informed decision-making; and
  - e. reports include, where appropriate, a range of options for each matter recommended for approval together with the implications thereof.
  
58. The results of committee and task force meetings reported to Convocation are public unless the committee or task force determines otherwise in accordance with Convocation's policy on confidentiality.

### **PART 3: CONVOCATION'S RELATIONSHIP WITH MANAGEMENT**

#### **Section 1: Chief Executive Officer (CEO) of the Law Society**

59. In accordance with the Act and By-Law 2, under the direction of Convocation, the CEO is responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of all Law Society activities.
  
60. All authority and accountability of Law Society management to Convocation is through the authority and accountability of the CEO.
  
61. The CEO reports to Convocation. Convocation instructs the CEO through the Treasurer.
  
62. The CEO is the public representative of the Law Society and the spokesperson for the Law Society for management and operations.

#### **Section 2: Role of the CEO**

63. The CEO provides leadership to the Law Society's programs and operations and ensures their effective contribution to meeting the objectives set out in the Strategic Plan. In particular, the CEO:

- a. ensures that the programs and services offered by the Law Society contribute to its mission and reflect the Strategic Plan; and
  - b. ensures that Convocation has opportunities to consider the continuing relevance of the Strategic Plan in light of trends and other developments.
64. The CEO manages the resources of the Law Society. In particular, the CEO:
- a. Develops and presents the annual budget to the Audit and Finance Committee and ensures that actual revenues and expenses are in line with the budget approved by Convocation;
  - b. Ensures the provision of administrative and policy support for Convocation and all committees;
  - c. Determines overall staffing requirements of the Law Society and selects, appoints and oversees the performance of senior management. The CEO determines their remuneration, nurtures their development and ensures appropriate succession planning for senior positions;
  - d. Sets the tone of the Law Society, fostering a positive results-oriented organizational culture and promoting a philosophy of teamwork;
  - e. Establishes a healthy and safe work environment and a sound human resources management regime;
  - f. Implements a performance management process for all employees;
  - g. Ensures that all employees are appropriately trained to carry out the responsibilities of their positions;
  - h. Terminates the employment of individuals when necessary using appropriate and legally defensible procedures;
  - i. Ensures the soundness of accounting practices and financial systems; and
  - j. Ensures that the Law Society complies with all legal obligations and legislation covering taxation and related financial matters.
65. The CEO supports the work of Convocation and its committees and ensures

effective implementation of policy decisions. In particular, the CEO:

- a. Collaborates with the Treasurer in the development of agendas for meetings of Convocation;
  - b. Works closely with Convocation in the periodic review of the Law Society's vision for the future and in the development and periodic updating of the Strategic Plan;
  - c. Ensures the development and timely distribution of materials for Convocation decision-making, including policy proposals on important issues;
  - d. Provides regular financial reports on operations, revenues, expenditures and cash position of the Law Society;
  - e. Ensures that an orientation program is provided for new members of Convocation and that ongoing bench development through continuing education about their roles is provided; and
  - f. Identifies and evaluates risks to the organization (people, property, finances, reputation and image) and implements measures to mitigate risks.
66. The CEO develops and maintains positive external relationships to advance the organization's interests at home and abroad. In particular, the CEO:
- a. Builds a broad base of understanding for the work of the organization amongst the profession, government officials, key stakeholders, the media and the public;
  - b. Builds and nurtures collaborative relationships with stakeholders, partners and others; and
  - c. Takes part in events as appropriate to promote the reputation of the Law Society and improve awareness of its mission and programs.

### **Section 3: CEO Performance Expectations and Review**

67. As directed by Convocation, and in accordance with an annual performance plan

agreed to between Convocation, through the Treasurer, and the CEO, the CEO is expected to achieve specified results as articulated in the Strategic Plan, monitor progress on results and report regularly on operational implementation of the Strategic Plan.

68. The Compensation Committee, in consultation with Convocation, is to carry out a CEO performance review based on the performance plan on an annual basis, and such review will include a self-assessment by the CEO.
69. The results of the performance review are to be reported to the CEO and Convocation for discussion in the absence of the public.

#### **PART 4: STRATEGIC PLANNING CYCLE**

70. The Law Society is to engage in a strategic planning exercise following the election of benchers and approve a Strategic Plan by the end of the election year.
71. The Strategic Plan is to assist Convocation in determining the initiatives and projects to be undertaken in the bencher term and in identifying the policy agenda for the work of standing or other committees, task forces and working groups.

##### **Section 1: Role of the Strategic Planning and Advisory Committee**

72. The Strategic Planning and Advisory Committee is responsible for management of the strategic planning exercise which includes a strategic planning meeting of benchers following each bencher election to prepare for Convocation's consideration and approval a Strategic Plan for the bencher term.
73. Through the Strategic Planning and Advisory Committee, Convocation approves its priorities and is to receive periodic reports on the progress on the priorities.
74. Two years into the bencher term, the benchers are to reconvene in a meeting to review the Strategic Plan. This will include an assessment of its progress and determination of any changes or adjustments that are required to the Plan as a result of developments or events that may reasonably affect the integrity of the Plan for the remaining two years of the bencher term.
75. The Treasurer is to provide oversight in the management of the Strategic Plan and may consult with the CEO to obtain information from operations for this purpose.

## **Section 2: Role of the CEO and Management**

76. The CEO, together with the Law Society's Senior Management Team, is responsible for informing benchers on the operational (including financial) implications of the strategic planning during its formation and two years into the bencher term.
77. The CEO will monitor the progress of the implementation of the Strategic Plan and report regularly to the Treasurer and Convocation on its progress.

## **PART 5: BENCHER ORIENTATION AND PROFESSIONAL DEVELOPMENT**

### **Section 1: Orientation Program**

78. Immediately following each bencher election, all benchers are required to attend an orientation program which will include, but is not limited to, information about:
- a. the Law Society's governance and organization structure
  - b. The roles and responsibilities of benchers
  - c. The roles and responsibilities of management
  - d. The Law Society budget
  - e. Convocation, committees and task forces
  - f. The Law Society Tribunal
  - g. Bencher professional development
  - h. Strategic planning
  - i. The Law Society's commitment to equality, diversity and inclusion
  - j. The Law Society's commitment to Indigenous cultural competence.

### **Section 2: Bencher Professional Development Program**

79. Benchers are required to attend various professional development sessions throughout the bencher year that are designed to orient, educate and equip benchers for their governance responsibilities.
80. Bencher attendance is monitored and is to be reported to the Treasurer, who will take appropriate steps to ensure bencher attendance at the sessions.

## **PART 6: CONVOCATION AND BENCHER EVALUATION**

81. Convocation is committed to periodically reviewing and considering its

effectiveness in carrying out its responsibilities.

82. As part of this commitment to ongoing assessment and improvement, benchers are to complete an annual evaluation in a form provided by the Law Society on the effectiveness of Convocation, the results of which will be compiled and reported to Convocation in the aggregate, without attribution.
83. The Treasurer will determine the action, if any, to be taken in response to the annual evaluation respecting the effectiveness of Convocation in carrying out its responsibilities.
84. Benchers are committed to self-reflection on board process and effectiveness.
85. As part of this commitment, each bencher is required to complete an annual self-reflection survey in a form provided the Law Society on their effectiveness as a bencher, the results of which will be provided to the Treasurer for review and, as required, discussion between the Treasurer and the bencher.

## **PART 7: COMPLIANCE**

### **Section 1: Agreement**

86. The Treasurer and benchers agree to comply with the Governance Practices and Policies, which incorporates the Bencher Code of Conduct at [Appendix A](#), and commit to exercising diligence in fulfilling their roles and duties and meeting the standards for governance in the Governance Practices and Policies.
87. The Treasurer and each bencher are required complete the Declaration of Adherence in the form provided in [Appendix B](#) to the Governance Practices and Policies upon election or appointment as a bencher.
88. Benchers are encouraged to seek to address matters of compliance with the Governance Practices and Policies among themselves, where appropriate, as respectful and timely dialogue is encouraged as a way to deal with these matters. Benchers may also seek the assistance of the Treasurer or an appropriate neutral bencher colleague to discuss and deal with an issue.

## APPENDIX A: Benchers Code of Conduct



### BENCHER CODE OF CONDUCT

#### **PART 1 INTRODUCTION**

- I. Purpose and Application
- II. Definitions
- III. Principles

#### **PART 2 BENCHER CONDUCT**

- I. Professionalism
- II. Confidentiality
- III. Whistleblowing
- IV. Avoiding Improper Use of Influence
- V. Public Statements
- VI. Relationship with Management
- VII. Use of Law Society Resources
- VIII. Political Activity
- IX. Benchers in the Law Society's Regulatory Process

#### **PART 3 CONFLICTS OF INTEREST**

- I. Introduction
- II. Benchers Serving on Committees and at Convocation
- III. Benchers and Regulatory Functions
- IV. Outside Activities
- V. Acceptance of Gifts and Benefits
- VI. Post-Term Responsibilities

**PART 4                    COMPLIANCE**

- I.      Referral of Issue
- II.     Role of Treasurer
- III.    Treasurer's Report to Convocation
- IV.    Investigator's Report
- V.     Referral for Determination and Role of Convocation

## PART 1 INTRODUCTION

### I Purpose and Application

1. The Law Society of Ontario Benchers Code of Conduct (the “Code”) sets out the ethical responsibilities of the Law Society’s benchers. As a regulator of the conduct of professionals, the Law Society recognizes a corresponding obligation on the part of the benchers to conduct themselves with the highest degree of ethical behaviour and integrity.
2. Benchers conduct should support the fulfillment of the Law Society’s mandate and maintain public confidence in the Law Society. Benchers adherence to the Code helps to foster a culture of honesty, integrity and accountability at the Law Society.
3. The Code applies to all Law Society benchers, including the Treasurer. The Code applies to the following areas of benchers responsibility: as members of Convocation, committees, task forces, working groups and related boards. Benchers who are Law Society Tribunal members are also subject to the [Adjudicator Code of Conduct](#).

### II Definitions

4. In the Code,

**Benchers** means elected, appointed, ex officio, emeritus benchers and includes ex officio and emeritus Treasurers;

**Ethics Lead** means the Treasurer of the Law Society;

**Harassment** means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

**Law Society** means the Law Society of Ontario;

**Treasurer** means the currently elected Treasurer/President of the Law Society;

**Tribunal** means the Hearing Panel and the Appeal Panel of the Law Society Tribunal;

**Sexual Harassment** means an incident or series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct;
- b. when submission to such conduct is made implicitly or explicitly a condition for a professional services;
- c. when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee); or
- d. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

**Management** means an individual or individuals employed by the Law Society of Ontario;

**CEO** means the Chief Executive Officer of the Law Society of Ontario, appointed by Convocation.

### III Principles

5. As stewards and governors of the Law Society, benchers are held to high standards of ethical conduct. In carrying out their responsibilities, benchers are to observe the following principles:
  - a. Benchers must not act for personal or third-party gain;
  - b. Benchers commit to carrying out their duties with diligence and in good faith;
  - c. Benchers must adhere to the spirit and letter of the laws of Canada, Ontario and the policies and procedures of the Law Society, including the Code;
  - d. Benchers must arrange their professional and personal affairs in a manner that will bear close public scrutiny to prevent conflicts of interest from arising;
  - e. Benchers must act and be seen to act in accordance with the values and principles within the Code;
  - f. Benchers are to seek advice, as appropriate, on their responsibilities for adherence to the Code.

## **PART 2                   BENCHER CONDUCT**

### **I           Professionalism**

6. Benchers are to carry out all bencher-related duties in the public interest, must act professionally and ethically and are to hold themselves to the highest standards of integrity and trust in carrying out their responsibilities.
7. Benchers should cultivate flexibility, open-mindedness and an understanding that with good faith and integrity, benchers can come to different conclusions on the Law Society matters that they deal with.
8. Benchers are to conduct themselves in a way that contributes to a respectful, inclusive and safe work environment that is free from violence, discrimination and harassment. Interactions with management, fellow benchers and the public are to be courteous and respectful.
9. Benchers must not engage in conduct that constitutes discrimination, harassment or sexual harassment towards bencher colleagues, management or any other person connected with a bencher's duties.
10. As holders of a public office, benchers should be aware that that their conduct outside of their bencher duties may have a negative impact on the reputation of the Law Society. As such, benchers must not engage in harmful or criminal conduct in their other activities.
11. Benchers must clearly distinguish between their governance role and the role of Law Society management, who are responsible under the leadership of the Chief Executive Officer for operational implementation of Convocation policy.
12. Benchers are to:
  - a. prepare appropriately for and regularly attend Convocation, meetings of committees, task forces and working groups of which they are members;
  - b. attend meetings of external bodies to which they are assigned or appointed;  
and
  - c. observe the rules of procedures for Convocation found in By-Law 3.

## **II Confidentiality**

13. Committee and task force meetings are held in the absence of the public and are confidential. Some portions of Convocation are also held in the absence of the public and are confidential. Benchers are required to maintain the confidentiality of materials for and the deliberations of meetings or portions of meetings that are held in the absence of the public and to not comment publicly on matters that have been considered in the absence of the public.
14. With respect to committees and task forces, this obligation applies to the extent that such materials or deliberations are not included in the committee's or task force's public report to Convocation. Further, the chair of a committee or task force when presenting a public report to Convocation or a bencher who attended the committee or task force meeting who speaks to the report at Convocation may provide required context or clarification about the committee's or task force's work or process that occurred during a meeting that results in the report. Benchers should be mindful of their obligations respecting confidentiality if they comment publicly about a particular issue that is before a committee or task force.
15. Benchers are often provided with confidential documents or information, electronically or in other formats. Benchers must not share, copy (other than for personal use), transmit or disclose any materials or information that they receive in their capacity as a bencher that is confidential, sensitive or proprietary to the Law Society.
16. Where formerly confidential information is released to the public by Convocation, benchers may refer to this information subsequent to any such release by Convocation.
17. Benchers must not use confidential information for personal gain or any improper purpose.
18. Benchers must not seek out confidential information from management that is not required for their bencher work.

## **III Whistleblowing**

19. Benchers should encourage disclosure of wrongdoing at the Law Society to ensure that the Law Society abides by its Business Conduct Policy.

#### **IV Avoiding Improper Use of Influence**

20. Benchers must not use their positions in an improper way to further their private interests or those of associates, friends or relatives. Benchers must not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing management with the intent of interfering with management's duties or another person's interests, including the duty to disclose improper activity.
21. Benchers must refrain from influencing or interfering in the award of external contracts or offers of employment at the Law Society to their partners, firms, associates or family members. It is the role and responsibility of Law Society management to follow fair, transparent and defensible processes for the award of Law Society contracts and the recruitment of employees.

#### **V Public Statements**

22. The spokesperson for the Law Society is the Treasurer for policy issues and the CEO for operational issues, or their designates. Where benchers are not so designated, they should make it clear in any public statement that they are not speaking for the Law Society but in their own capacity.

#### **VI Relationship with Management**

23. Under the direction of the CEO of the Law Society, who is accountable to Convocation, management supports the operations of the Law Society. In their relationship with members of Law Society management, benchers must be respectful of management's role and their professional responsibilities.
24. No bencher shall attempt to induce a member of the Law Society management to engage in partisan political activities or subject such member to threats or discrimination for refusing to engage in such activities.

#### **VII Use of Law Society Resources**

25. Benchers must not use, or permit the use of, Law Society facilities, equipment, supplies, services, management or other resources for activities other than the business of the Law Society. Nor must any bencher obtain personal financial gain from the use or sale of Law Society-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical

innovations, or other items capable of being patented, since all such property remains exclusively that of the Law Society.

### **VIII Political Activity**

26. Benchers must observe a boundary between their role as governors and political activity. Benchers must not use property of the Law Society (including materials, management's time, technology, proprietary material and confidential information) for political or partisan purposes including when running for office as an elected bencher.

### **IX Benchers in the Law Society's Regulatory Process**

27. Benchers who are licensees who are the subject of a conduct, capacity or competence application before the Law Society Tribunal shall withdraw from all activities giving rise to a conflict of interest as a bencher as a result of the application until those proceedings are formally concluded, including any appeals.
28. A bencher who is a licensee whose license is suspended following a finding of professional misconduct or conduct unbecoming is not permitted to act as a bencher as of the date of the order suspending the license or as of the date of the final appeal order with respect to the suspension and for the duration of the suspension.
29. A bencher who is a licensee whose license is suspended as a result of an interlocutory suspension order is not permitted to act as a bencher as of the date of the order and for the duration of the suspension.
30. A bencher who is a licensee whose license is suspended as a result of a summary order under sections 46 to 49 inclusive of the *Law Society Act* is not permitted to act as a bencher as of the date of the order. If the bencher fails within three months of the date the suspension begins to take the action that will end the suspension, he or she is not permitted to act as a bencher for the duration of the suspension.

## **PART 3                      CONFLICTS OF INTEREST**

### **I            Introduction**

31. As directors, benchers can be expected to have conflicts between their roles and other interests from time to time. Managing conflicts fairly, effectively and transparently serves the public interest. Avoiding conflicts of interest contributes to confidence by the public and the profession that both policy and adjudicative decision-making is being made free from external or improper interest, favour or bias.

### **II          Benchers Serving on Committees and in Convocation**

32. Benchers are to identify material conflicts between their personal and/or professional responsibilities or interests and matters for deliberation in committee and/or in Convocation. In considering whether there is a conflict, benchers should ask themselves whether or not a well-informed, reasonable member of the public would conclude that their decision-making could be influenced by duties owed to others or to personal interests. In doing so, the focus should be on actions, not on motives. Conflicts of interest should be considered not just from the bencher's own perspective but also from the perspective of licensees, stakeholders and the public whose confidence in the Law Society must be maintained.
33. Benchers should not participate in discussion of or decision on a matter where the bencher or the bencher's firm acts for a client whose interests will be significantly affected by Convocation's decision, or where the bencher or the bencher's firm is, through the professional relationship with the client, in possession of confidential information related to the issue under consideration which may tend to influence the bencher's decision on the matter.
34. Where a bencher is an employee, the bencher should not participate in the discussion of or decision on a matter where the bencher's employer has a significant interest, which is distinct from the interests of the professions at large, in a matter before Convocation, or where the bencher, because of the employment relationship, is in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.

35. Upon recognizing a conflict, the bencher is to declare the conflict and remove themselves from the consideration or discussion of the matter related to the conflict.
36. A bencher who is a member of the Professional Regulation Committee or the Proceedings Authorization Committee shall not also be a member of the Tribunal Committee.
37. Benchers are encouraged to discuss potential conflicts with the Ethics Lead or with experienced and neutral colleagues whenever there is a question in the mind of the bencher as to whether they ought to withdraw from a discussion, a vote, or both.

### **III Benchers and Regulatory Functions**

38. Benchers must not:
  - a. act for licensees before the Law Society Tribunal;
  - b. act for the Law Society or a licensee as counsel in the matter of a Law Society complaint, audit or investigation;
  - c. provide written or oral evidence as a character witness in support of a party before the Law Society Tribunal unless the party demonstrates that the inability to put such evidence before the Panel would unfairly prejudice the party, in accordance with s. 63 of the Adjudicator Code of Conduct;
  - d. provide written or oral expert evidence for a party before the Law Society Tribunal unless the party demonstrates that the inability to put such evidence before the Panel would unfairly prejudice the party; or
  - e. act as a supervisor or mentor of a licensee who is in the Law Society's regulatory process.
39. It is not a breach of the Code for members of a bencher firm to act for a licensee with respect to a Law Society complaint, audit or investigation or to appear as counsel before the Law Society Tribunal, provided there is no actual conflict of interest.

40. It is not a breach of the Code for members of a bencher firm to represent the Law Society on a matter or before the Law Society Tribunal provided there is no actual conflict of interest and they are chosen through a process for the selection of outside counsel that includes appropriate and specific selection criteria.
41. Benchers who are members of the Proceedings Authorization Committee shall recuse themselves from consideration of a matter before the Committee in circumstances where their decision-making on a matter before the Committee could be influenced by duties owed to others or to personal interests.
42. A bencher or a bencher firm may act for the Lawyers' Professional Indemnity Company ("LawPRO") on a matter provided there is no conflict of interest and they are chosen through an independent process for the selection of outside counsel.

#### **IV Outside Activities**

43. Benchers are to arrange their outside affairs, external appointments and other responsibilities to provide sufficient time to carry out their Law Society duties and attend meetings as required under By-Law 3.
44. Where a particular outside activity places a bencher in a conflict between his or her duties as a bencher and that outside activity on an ongoing basis, the bencher should consider resigning as a bencher or withdrawing from the outside activity to resolve the conflict.

#### **V Acceptance of Gifts and Benefits**

45. Benchers may not accept gifts, benefits or hospitality connected to their work as benchers with the exception of the following:
  - a. attendance at meetings, dinners, receptions or continuing professional development sessions hosted by legal organizations, associations or other Law Societies, where the bencher is attending as part of his or her role as a bencher, as an invited speaker, or to represent the Treasurer; and
  - b. nominal gifts which are received as an incident of protocol.

## **VI Post-Term Responsibilities**

46. Upon a person ceasing to be a bencher or becoming an emeritus Treasurer or an emeritus bencher who has no engagement with the Law Society, for a period of one year, the person is not permitted to engage in any of the following:
- a. Appearing as counsel for a licensee before the Law Society Tribunal;
  - b. Acting as counsel for a licensee in Law Society regulatory matters;
  - c. Appearing as a character witness or an expert witness before the Law Society Tribunal as described in paragraph 36; and
  - d. Acting as a supervisor or a mentor for a licensee who is in the regulatory process.

## **PART 4 COMPLIANCE**

47. The Treasurer is the Ethics Lead for Convocation and may be consulted for advice by benchers concerning compliance with the Code.
48. It is the responsibility of each bencher to hold herself or himself accountable for complying with the Code.
49. Benchers also have a responsibility to hold each other accountable for complying with the Code.

### **I Referral of Issue**

50. A person who has information suggesting that a bencher has not complied or is not complying with the Code may refer the information in writing to the Treasurer.
51. The Treasurer shall notify the bencher who is the subject of the issue disclosed in the information (“the subject bencher”) and provide them with the information.
52. The subject bencher shall be given an opportunity to provide a written response to the issue to the Treasurer.

### **II Role of the Treasurer**

53. Upon receipt of the response from the subject bencher or if no response is provided, the Treasurer shall determine the appropriate action and may:
- a. Conclude his or her review of the issue and
    - i. take no action;

- ii. caution the subject bencher about the issue;
  - iii. require an apology from the subject bencher to those affected by conduct related to the issue;
  - iv. require an undertaking from the subject bencher with respect to conduct related to the issue;
  - v. advise the subject bencher on any other steps to be taken to remedy or resolve the issue; or
- b. Where he or she reasonably believes that it is in the interests of fairness and the integrity of the Law Society's governance process to do so, refer the issue to an independent third party investigator for review and investigation with appropriate terms of engagement for the investigation.

### **III Treasurer's Report to Convocation**

54. Where the Treasurer concludes his or her review with any of the steps set out in paragraph 53 a. ii. through v., he or she shall report the matter to Convocation.
55. The Treasurer's report to Convocation shall form part of the public record of Convocation.

### **IV Investigator's Report**

56. Where the Treasurer refers the issue to an investigator, the investigator shall provide a written report to the Treasurer upon completing the investigation.
57. Based on the investigator's report, the Treasurer may:
- a. Conclude the review of the issue and provide a report to Convocation as described in paragraph 54; or
  - b. Determine that the issue should be referred to Convocation for the purpose of determining compliance with the Code.

### **V Referral for Determination and Role of Convocation**

58. The Treasurer may refer an issue to Convocation for a determination of whether the Code has not been complied with.
59. The referral shall be in writing and the issue shall be considered and determined by at least a quorum of Convocation in the absence of the public.

60. The Law Society's rules of practice and procedure apply, with necessary modifications, to the consideration of the issue by Convocation. Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration of the issue by Convocation.
61. After considering the issue, Convocation shall determine whether or not the Code has been complied with and shall provide written reasons for its decision.
62. Following the preparation of its decision and reasons, Convocation shall provide the decision and reasons to the subject bencher.
63. Where Convocation determines that the Code has not been complied with by the subject bencher, Convocation may
  - a. reprimand the subject bencher, or
  - b. suspend for a period of time certain rights and privileges of the subject bencher.
64. The decision of Convocation under this part is final.
65. Convocation shall report publicly on the issue once it has been concluded pursuant to paragraph 63.

## APPENDIX B: Declaration of Adherence



### LAW SOCIETY OF ONTARIO BENCHER DECLARATION OF ADHERENCE

I acknowledge that as a member of Convocation:

1. I am aware of my obligations as a bencher of the Law Society of Ontario under the *Law Society Act* and agree to abide by the Act, the By-laws, the rules of conduct (if a licensee) and the policies applicable to members of Convocation.
2. In my capacity as a director of the Law Society, I am to act honestly and in good faith and exercise the requisite standard of care, diligence and skill.
3. I have read and am familiar with the Law Society's Governance Practices and Policies, including the Bencher Code of Conduct, and agree to abide by the Policies including the Code.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

This is **Exhibit B** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

# By-Law 2

Made: May 1, 2007

Amended: June 28, 2007

September 20, 2007

September 27, 2012

May 22, 2014

February 25, 2021

February 25, 2021 (editorial changes)

## CORPORATE PROVISIONS

### PART I

## GENERAL

### SEAL

1. The seal of the Society in use immediately before the day this By-Law comes into force shall continue to be the seal of the Society, that is, a shield in the centre whereof stands a Doric column, surmounted by a beaver, on the dexter side of the shield the figure of Hercules, and on the sinister the figure of Justice, with scales in her right hand and the sword in the left, and the words “Magna Charta Angliae” inscribed on a ribbon floating round the column, together with the words “Law Society of Upper Canada” upon the exterior circle.

## COAT OF ARMS

2. The coat of arms of the Society in use immediately before the day this By-Law comes into force shall continue to be the coat of arms of the Society, that is, a sable on a chevron between two stags trippant in chief and a rose in base argent barbed and seeded an open book proper bound azure edged and clasped or between two maple leaves gules and for the crest on a wreath of the colours upon a rocky mount proper a mantle ermine lined murrey thereon a beaver proper in the mouth a sprig of two maple leaves or, together with the following supporters: on the dexter side a figure representing Hercules holding with the exterior hand a club and on the sinister side a figure representing Justice holding in the exterior hand a sword erect proper pommel and hilt or and with a balance suspended from the blade.

## PART II

# MEMBERS

## HONORARY MEMBERS

### **Authority to make persons honorary members**

3. (1) Convocation may make any person an honorary member of the Society.

### **Rights and privileges**

(2) An honorary member has only the rights and privileges prescribed by this Part.

### **Transition**

4. Every person who is an honorary member of the Society immediately before May 1, 2007 is an honorary member of the Society.

## MEETINGS OF MEMBERS

### ANNUAL GENERAL MEETING

#### **Meeting of members to be held annually**

5. A meeting of members shall be held annually at a time and place determined by Convocation.

#### **Notice of meeting**

6. Notice of the annual general meeting, stating the date, time and place of the meeting, shall be given by publication in an issue of the Ontario Reports dated at least sixty days before the day fixed for the meeting.

#### **Agenda for meeting**

7. The annual general meeting shall consider the following matters:

1. Minutes of the previous annual general meeting.
2. Reports on the work of the Society and of the committees of Convocation.
3. Financial statements.
4. Matters of professional interest that are related to the work of the Society.

## RULES OF PROCEDURE

### GENERAL

#### **Interpretation: “meeting”**

8. (1) In this section and in sections 8.1 to 42, “meeting” means any meeting of members.

#### **Same: “Treasurer”**

(2) In this Part, except in section 10, “Treasurer” includes a bencher who presides at a meeting in accordance with section 10.

#### **Manner of holding meetings**

8.1 (1) A meeting of members may be held in person, by electronic means, or both in person and by electronic means.

## **Member deemed present**

(2) In this Part, a member is deemed to be present at a meeting held by electronic means or both in person and by electronic means if the member is connected to the meeting through means through which members are permitted to participate in the meeting.

## **Reference text**

9. Where a matter of order or procedure is not settled by this Part, it shall be settled in accordance with the rules of order set out in the most recent edition of Bourinot's Rules of Order.

## **Presiding bencher**

10. The Treasurer shall preside at each meeting, but if the Treasurer for any reason is unable to preside at a meeting, one of the following benchers shall preside, in the following order of precedence:

1. The chair of the Audit and Finance Committee.
2. The chair of the Professional Development and Competence Committee.
3. The chair of the Professional Regulation Committee.

## **Secretary to prepare agenda for meeting**

11. For each meeting, the secretary shall prepare an agenda showing the order of business.

## QUORUM

### **Quorum at a meeting**

12. Fifty members, none of whose licence is suspended, constitute a quorum at a meeting.

### **Quorum not present**

13. If within one hour after the time appointed for a meeting a quorum is not present, the Treasurer shall adjourn the meeting.

### **Quorum lost during meeting**

14. (1) If a quorum is lost during a meeting, the Treasurer shall, subject to subsection (2), adjourn the meeting.

### **Same**

(2) If a quorum is lost during a meeting, the Treasurer may permit the members remaining to continue to debate a motion, an amendment to a motion or an appeal of a

ruling already put to the meeting but not yet disposed of if no member remaining objects.

### **No voting when quorum not present**

(3) Even though debate on a motion, an amendment or an appeal may continue if a quorum is lost during a meeting, no motion, amendment or appeal shall be voted on when a quorum is not present.

### **Quorum regained**

(4) If a quorum, having been lost during a meeting, is regained before the meeting is adjourned, the meeting shall continue as if the quorum had not been lost.

## MOTIONS

### **Subject matter**

15. All motions made at a meeting shall relate to the work of the Society.

### **Procedure for making motions**

16. (1) Subject to subsection (2), a motion to be made at a meeting shall be,

(a) in writing and signed by exactly ten members, none of whose licence is suspended at the time of signature; and

(b) delivered to the secretary at least forty days prior to the day fixed for the meeting.

### **Same**

(2) A motion may be made at any time during a meeting, even though the requirements set out in subsection (1) have not been complied with, if the motion relates to a matter then being debated.

### **Publication of motions**

17. The secretary shall arrange for publication of the text of all motions delivered to him or her under section 16.

### **Introduction at meeting**

18. (1) At a meeting, a motion described in subsection 16 (1) may be made by it being,

(a) proposed by one of the ten members who signed the motion; and

(b) seconded by any other member whose licence is not suspended.

## Same

- (2) At a meeting, a motion described in subsection 16 (2) may be made by it being,
- (a) proposed by one member whose licence is not suspended; and
  - (b) seconded by another member whose licence is not suspended.

## Permitted amendments

19. (1) A motion made at a meeting may be amended by,
- (a) adding or deleting words;
  - (b) varying minor details; or
  - (c) rephrasing sentences.

## Amendment not to alter substance of motion

- (2) An amendment to a motion shall not alter the substance of the motion.

## Introduction of amendments

20. An amendment to a motion shall be,
- (a) proposed by one member whose licence is not suspended; and
  - (b) seconded by another member whose licence is not suspended.

## Limit on number of amendments

21. No more than two amendments to a motion shall be before the meeting for debate at the same time.

## Withdrawal

22. A motion or an amendment to a motion made at a meeting may be withdrawn if,
- (a) the member who proposed the motion or amendment consents to the withdrawal;
  - (b) the member who seconded the motion or amendment consents to the withdrawal;
- and
- (c) no member present at the meeting objects to the withdrawal.

## DEBATE

### **Debate on motions and amendments**

23. (1) Subject to subsection (2), a motion and an amendment to a motion may be debated by the members present at the meeting.

### **Debate prohibited**

(2) The following motions shall not be debated:

1. A motion to adjourn a debate.
2. A motion to proceed to the next business.
3. A motion to table.

### **Time limits**

24. (0.1) The Treasurer may set time limits for a debate or any part thereof and for any speech to a matter.

### **Procedures for debate**

(0.2) At a meeting in which members participate by electronic means, the Treasurer may establish procedures for debate if such procedures are not settled by this Part or by the most recent edition of Bourinot's Rules of Order.

### **Order of speaking**

(1) In a debate, members are entitled to speak to a motion or an amendment to a motion in the following order:

1. The member who proposed the motion or amendment.
2. The member who seconded the motion or amendment.
3. Any other member present at the meeting when recognized by the Treasurer.

### **Reserving right to speak**

(2) The member who seconds a motion or an amendment to a motion may reserve the right to speak until a later time in the debate.

### **Limits on speaking**

25. (1) Subject to subsection (2), a member is entitled to speak to a motion or an amendment to a motion only once.

## Exception

- (2) A member may speak to a motion or an amendment a second time if,
- (a) all members present at the meeting have exercised, or declined to exercise, their right to speak to the motion or amendment; and
  - (b) the member does not repeat anything already said by any other member.

## RULING OF TREASURER

### Treasurer may make rulings

26. The Treasurer may make rulings as to the conduct of the meeting and, without limiting the generality of the foregoing, the Treasurer may rule upon the propriety, acceptability, form and substance of any motion or amendment to a motion proposed at a meeting.

### Appeal of ruling of Treasurer

27. (1) Subject to subsection (2), a ruling of the Treasurer may be appealed by any member present at the meeting.

### Appeal prohibited

(2) No member is entitled to appeal a ruling of the Treasurer that a matter may not be made the subject of debate or motion by the meeting because,

- (a) it is a matter in respect of which a hearing may be conducted under the Act, regulations, by-laws or rules of practice and procedure; or
- (b) it is a matter that is pending before an adjudicative body for determination.

### Time for making appeal

28. Where a member wishes to appeal a ruling of the Treasurer, the appeal shall be made immediately after the ruling.

### Debate permitted

29. (1) Subject to subsection (2), an appeal of a ruling of the Treasurer may be debated by the members present at the meeting.

### Debate prohibited

(2) An appeal of a ruling of the Treasurer relating to inappropriate language or behaviour shall not be debated.

## **Application of ss. 24 and 25**

30. Sections 24 and 25 apply, with necessary modifications, to a debate of an appeal of a ruling of the Treasurer.

### **Treasurer's reasons for ruling**

31. (1) After an appeal of a ruling of the Treasurer has been made, and before commencement of debate of the appeal, if permitted, the Treasurer is entitled to give the reasons, including any authority, for the ruling.

### **Same**

(2) After debate of an appeal of a ruling of the Treasurer concludes, the Treasurer is entitled,

- (a) to answer any points raised during the debate; and
- (b) to give, or to repeat, the reasons, including any authority, for the ruling.

### **Disposition by vote**

32. (1) An appeal of a ruling of the Treasurer shall be disposed of by a vote on the question: "Should the ruling of the Treasurer be upheld?"

### **Call for vote on appeal where debate on appeal prohibited**

(2) Where debate on an appeal of a ruling of the Treasurer is prohibited, the Treasurer shall call for a vote on the appeal after exercising, or declining to exercise, the rights given to the Treasurer in subsection 31 (1).

### **Call for vote on appeal where debate on appeal permitted**

(3) Where debate on an appeal of a ruling of the Treasurer is permitted, the Treasurer shall call for a vote on the appeal after debate has concluded and the Treasurer has exercised, or declined to exercise, the rights given to the Treasurer in subsection 31 (2).

## VOTING

### **No appeal from call for vote**

33. No member is entitled to appeal a call by the Treasurer for a vote on a motion, an amendment to a motion or an appeal of a ruling.

### **Order of voting on motions and amendments to motions**

34. (1) All amendments to a motion shall be put to a vote before the motion is put to a vote.

## Order of voting on amendments to motions

(2) Amendments to a motion shall be put to a vote in the following order:

1. The second amendment proposed.
2. The first amendment proposed.

### Entitlement to vote

35. Every member present at a meeting, whose licence is not suspended, is entitled to one vote on each question put to the meeting.

### Treasurer may not vote

36. Subject to section 40, the Treasurer shall not vote on any motion, amendment to a motion or appeal of a ruling.

### Proxy voting prohibited

37. Votes may not be cast by proxy.

### Manner of voting

38. Voting shall be by a show of hands or, for members participating in the meeting through electronic means, by electronic means.

39. [Revoked.]

### Resolution of question

40. (1) Subject to subsection (3), each question put to the meeting shall be determined by the majority of the votes cast.

### Treasurer may exercise casting vote

(2) In the case of a tied vote, except on a vote of an appeal of a ruling of the Treasurer, the Treasurer shall have a casting vote.

### Resolution of question: appeal of ruling of Treasurer

(3) A ruling of the Treasurer shall be upheld on appeal when,

- (a) the majority of votes cast are in favour of upholding the ruling of the Treasurer; or
- (b) the vote on the appeal results in a tie.

## **Entry in minutes**

41. Whenever voting has been by or includes a show of hands, an entry in the minutes of the meeting to the effect that the Treasurer declared a motion carried, an amendment to a motion approved or a ruling upheld after accounting for the show of hands is conclusive evidence of the fact without proof of the number or proportion of the votes made by show of hands recorded in favour of or against the motion, amendment or ruling.

## **Communication of resolutions to Convocation**

42. (1) All motions carried at a meeting of members shall be,

(a) communicated to Convocation at its first regular meeting after the meeting of members; and

(b) considered by Convocation within six months of the meeting of members.

## **Convocation not bound by resolutions of meeting**

(2) A motion carried at a meeting of members is not binding on Convocation.

# **PART III**

# **OFFICERS**

## CHIEF EXECUTIVE OFFICER

### APPOINTMENT

#### **Appointment of C.E.O.**

43. Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.

### REPORTING

#### **Reporting**

44. The Chief Executive Officer shall be responsible to Convocation.

## DUTIES

### **Duties of C.E.O.**

45. (1) The Chief Executive Officer shall be responsible for the management and coordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

#### **Same**

(2) In addition to the duties set out in subsection (1), the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,

(a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;

(b) counselling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society; and

(c) advising and assisting in the engaging of officers and employees of the Society and directing such personnel in the on-going administration of approved policies and programmes.

#### **Same**

(3) In addition to the duties and functions set out in subsections (1) and (2), the Chief Executive Officer shall perform such functions and duties as may be assigned to him or her by Convocation.

## SECRETARY

## APPOINTMENT

### **Appointment of secretary**

46. Convocation shall, on such terms as it considers appropriate, appoint a person as secretary of the Society.

## DUTIES

### **Secretary's duties**

47. The secretary shall perform the duties ordinarily associated with the office of the secretary, including having custody of the seal and coat of arms, the duties imposed upon the secretary by the by-laws and the duties that may be assigned to the secretary by the Chief Executive Officer.

## PART IV

# FINANCIAL PROVISIONS

## FINANCIAL YEAR

### **Financial year**

48. The financial year of the Society shall be from January 1 to December 31.

## AUDIT

### **Appointment of public accountant**

49. (1) Convocation shall appoint a public accountant annually and not later than at its regular meeting in May.

### **Same**

(2) If Convocation fails to appoint a public accountant in any year, the public accountant most recently appointed by Convocation shall be deemed to be appointed by Convocation for the year.

### **Assurance engagement by public accountant**

(3) The public accountant shall perform an assurance engagement and provide an opinion on the annual financial statements of the Society.

## BUDGET ESTIMATES

### **Presentation of annual budget to Convocation**

50. (1) The annual budget shall be presented to Convocation for final approval not later than November 30 each year.

### **Budget to be consistent with planned activities**

(2) The budget shall be consistent with the activities planned by Convocation for the next financial year.

### **Projection of expenses and revenues**

(3) The budget shall include a reasonable projection of all expenses and revenues.

### **Use of reserve funds**

(4) The use of reserve funds to supplement estimated revenues requires the express approval of Convocation.

### **Cancellation of program, etc. included in budget approved by Convocation**

(5) Where Convocation has approved a budget that provides for the continuation of a program, activity or service, any significant reduction or cancellation of that program, activity or service during the financial year requires the express approval of Convocation.

## PART V

# FRENCH LANGUAGE SERVICES

### **Right to services in English and French**

51. (1) Subject to subsections (2), (3) and (4), a person has the right to communicate in English or French with, and to receive in English or French available services from, the Society in the following areas:

1. The licensing of persons to practise law in Ontario as barristers and solicitors or to provide legal services in Ontario.
2. The regulation of licensees.

3. The administration of freezing and trusteeship orders.
4. The administration of the Compensation Fund.
5. The administration of unclaimed trust funds.

### **Limitation of Society's obligations**

(2) A person's right, as set out in subsection (1), in any particular situation, is subject to limits that are reasonable and necessary in the circumstances of that particular situation.

### **Proceedings before the Law Society Tribunal**

(3) Where a person is a party to a proceeding before the Law Society Tribunal, the person's right to communicate in English or French with, and to receive in English or French available services from, the Society or the Law Society Tribunal is governed, not by subsection (1), but by sections 49.24 and 49.37 of the Act and the applicable rules of practice and procedure.

### **Exemptions**

(4) Subsection (1) does not apply with respect to the following:

1. Continuing professional development programs delivered by the Society.
2. Public education programs delivered by the Society.

This is **Exhibit C** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



# By-Law 3

Made: May 1, 2007

Amended: June 28, 2007

September 20, 2007

November 22, 2007

June 26, 2008

April 30, 2009

September 24, 2009

September 24, 2009 (editorial changes)

February 25, 2010

May 27, 2010

June 8, 2010 (editorial changes)

October 28, 2010

November 9, 2010 (editorial changes)

November 25, 2010

January 27, 2011

November 24, 2011

April 26, 2012

September 27, 2012

September 25, 2013

February 27, 2014

March 4, 2014

September 24, 2014

April 23, 2015

February 23, 2017

April 26, 2018

September 27, 2018

September 27, 2018 (editorial changes)

April 25, 2019

May 6, 2019 (editorial changes)

June 19, 2019 (editorial changes)

May 12, 2020

May 28, 2020

August 6, 2020

September 24, 2020

May 27, 2021

June 15, 2021 (editorial changes)

June 23, 2021

October 1, 2021

November 17, 2021 (editorial changes)

November 26, 2021

May 26, 2022

September 29, 2022

# **BENCHERS, CONVOCATION AND COMMITTEES**

## **PART I**

### **BENCHERS**

ELECTION OF BENCHERS LICENSED TO PRACTISE LAW

GENERAL

#### **Definitions**

1. In this Part,

“bencher” means a bencher licensed to practise law in Ontario as a barrister and solicitor;

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this Part and Part I.1;

“election of benchers” means an election of benchers licensed to practise law in Ontario as barristers and solicitors;

“elector” means a person who is entitled under this Part to vote in an election of benchers;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) Good Friday;
- (c) Easter Monday; and
- (d) Victoria Day;

“licensee” means a person licensed to practise law in Ontario as a barrister and solicitor.

### **Interpretation: reference to a day**

2. (1) In this Part, a reference to a day or time shall be a reference to a day or time in an election year.

### **Same: commencement, etc. of event**

(2) In this Part, except where a contrary intention appears, if the day on which an event is to take place, commence or end falls on a holiday, the event shall take place, commence or end on the next day that is not a holiday.

### **Same: residing in electoral region**

(3) For the purposes of this Part, an elector resides in an electoral region if his or her business address, or, where an elector does not have a business address, home address, as indicated on the records of the Society on the second Wednesday in April, is within the electoral region.

## ELECTION DAY

### **Election day**

3. There shall be an election of benchers in 2007 and in every fourth year thereafter on the last day in April that is not a holiday.

## ELECTIONS OFFICERS

### **Treasurer to preside over election**

4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.

### **Interpretation**

(1.1) In this section, “non-candidate licensee” means a person licensed to practise law in Ontario as a barrister and solicitor who is not a candidate in an election of benchers under this Part or a person licensed to provide legal services in Ontario who is not a candidate in an election of benchers under Part I.1.

### **Appointment of assistant**

(2) The Treasurer may appoint a non-candidate licensee to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this Part.

### **Appointment of licensee to act in absence of Treasurer**

(3) The Treasurer shall appoint a non-candidate licensee to exercise the powers and perform the duties of the Treasurer under this Part whenever the Treasurer is unable to act.

### **Where Treasurer is candidate in election**

(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer’s nomination as a candidate is accepted, appoint a non-candidate licensee to preside over the election and to exercise the powers and perform the duties of the Treasurer under this Part.

### **Elections Officer to conduct election**

5. (1) An election of benchers shall be conducted by the Elections Officer.

### **Elections Officer to establish procedures, etc.**

(2) The Elections Officer shall,

(a) by December 31 of the year immediately preceding an election year,

(i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and

(ii) establish the procedures by which electors may vote; and

(b) by January 31 of an election year, publish all procedures, requirements and specifications established in respect of the election.

## ELECTORAL REGIONS

### **Electoral regions**

6. (1) The following electoral regions are established:

1. The Province of Ontario “A” Electoral Region, composed of the City of Toronto.
2. The Province of Ontario “B” Electoral Region, composed of the area in Ontario outside the City of Toronto.

### **Same**

(2) Within the Province of Ontario “B” Electoral Region, the following additional electoral regions are established:

1. The Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay.
2. The Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
3. The East Electoral Region, composed of,
  - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
  - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and
  - iii. the City of Ottawa.
4. The Central East Electoral Region, composed of,

- i. the District Municipality of Muskoka,
- ii. the counties of Haliburton, Northumberland, Peterborough and Simcoe,
- iii. the regional municipalities of Durham and York, and
- iv. the City of Kawartha Lakes.

5. The Central West Electoral Region, composed of,

- i. the counties of Bruce, Dufferin, Grey and Wellington, and
- ii. the regional municipalities of Halton and Peel.

6. The Central South Electoral Region, composed of,

- i. the counties of Brant, Haldimand and Norfolk,
- ii. the regional municipalities of Niagara and Waterloo, and
- iii. the City of Hamilton.

7. The Southwest Electoral Region, composed of,

- i. the counties of Elgin, Essex, Huron, Lambton, Middlesex, Oxford and Perth, and
- ii. the Municipality of Chatham-Kent.

### **Province of Ontario “A” Electoral Region**

(3) Twenty benchers shall be elected for the Province of Ontario “A” Electoral Region as follows:

1. One bencher shall be elected on the basis of the votes cast by electors residing in the electoral region.
2. Nineteen benchers shall be elected on the basis of the votes cast by all electors.

### **Province of Ontario “B” Electoral Region**

(4) Twenty benchers shall be elected for the Province of Ontario “B” Electoral Region as follows:

1. One bencher shall be elected for each electoral region described in paragraphs 1 to 7 of subsection (2) on the basis of the votes cast by electors residing in the electoral region.
2. Thirteen benchers shall be elected on the basis of the votes cast by all electors.

## CANDIDATES

### **Who may be candidate**

7. (1) Every licensee may be a candidate in an election of benchers if,

(a) on June 1 of the year of the election, the licensee would not have held the office of elected bencher for 12 or more years;

(a.1) the licensee is nominated as a candidate in accordance with section 8;

(b) at the time of signing a nomination form containing the licensee's nomination as a candidate,

(i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended; and

(c) prior to the close of nominations, the licensee, if they have not previously been an elected bencher, has completed the Society's candidate orientation and education course in the format specified by the Elections Officer.

### **Deemed to have held office for the specified number of years**

(2) For the purpose of subsection (1), a licensee shall be deemed to have held the office of elected bencher for the number of years specified in the subsection if,

(a) the licensee was elected as a bencher in or at any time after the election of benchers immediately preceding the election of benchers for which he or she seeks to qualify as a candidate;

(b) the licensee would have held the office of elected bencher for the number of years specified in the subsection if the licensee had remained in office until the benchers elected in the next election of benchers took office; and

(c) the licensee resigned from the office of elected bencher prior to the benchers in the next election of benchers taking office.

### **Application of subsection (2)**

(3) Subsection (2) applies to a licensee even if the licensee resigned from the office of elected bencher before the subsection came into effect.

## **Nomination and consent**

8. (1) Every candidate in an election of benchers must,

(a) be nominated by at least five licensees whose licences are not suspended at the time of signing the nomination form; and

(b) consent to the nomination.

## **Nomination form**

(2) The nomination of a person as a candidate in an election of benchers and the person's consent to the nomination shall be contained in a nomination form provided by the Society.

## **Signatures**

(3) The nomination form must be signed by the person being nominated as a candidate and the five licensees who are nominating the person as a candidate.

## **Due date**

(4) The nomination form must be submitted to the Society by means that meet the specifications established by the Elections Officer before the close of nominations at 5 p.m. on the last Friday in February.

## **Examination of nomination forms**

9. (1) After a nomination form has been submitted, the Elections Officer shall cause the form to be examined and,

(a) if the requirements specified in sections 7 and 8 have been complied with, the nomination shall be accepted; or

(b) if the requirements specified in sections 7 and 8 have not been complied with, the nomination shall be rejected.

## **Results of examination of nomination form**

(2) The Elections Officer shall communicate the results of the examination of a nomination form to the candidate whose nomination is contained therein.

## **Nomination form: optional accompanying material**

10. (1) A person being nominated as a candidate in an election of benchers may submit the following materials along with the nomination form:

1. A photograph of the candidate that meets all specifications established by the Elections Officer.
2. A statement that is of not more than 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate and that meets all other specifications established by the Elections Officer.
3. An election statement that is of not more than 350 words, including headings, titles and other similar parts of the statement, and that meets all other specifications established by the Elections Officer.

### **Statement containing biographical information: required content**

(1.1) If a candidate opts to submit the statement containing biographical information mentioned in paragraph 2 of subsection (1), the candidate shall include in the statement an email address that voters may use to communicate with the candidate.

### **Deadline for receipt of accompanying material**

(2) Subject to subclause 20 (3) (b) (iii), the material referred to in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the time for the close of nominations mentioned in subsection 8 (4).

### **Withdrawal of candidates**

11. A candidate may withdraw from an election of benchers by giving the Elections Officer written notice of his or her withdrawal within seven days after the time for the close of nominations mentioned in subsection 8 (4).

## ELIGIBILITY FOR ELECTION

### **Who may not be elected**

12. (1) No candidate shall be elected as bencher if, at the time of his or her election,
  - (a) the candidate is no longer licensed to practise law in Ontario as a barrister and solicitor or the candidate's licence is suspended;
  - (b) the candidate is not eighteen or more years of age;
  - (c) the candidate is an undischarged bankrupt; or
  - (d) the candidate does not consent to the candidate's election.

## **Who may be elected for electoral region**

(2) A candidate is eligible to be elected as benchers for an electoral region if, at the time of his or her election, the candidate's business address, or, where the candidate has no business address, home address, as indicated on the records of the Society, is within the electoral region.

## ACCLAMATION

### **Election by acclamation**

13. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as benchers for an electoral region is the same as or fewer than the number of benchers to be elected for that electoral region, the Elections Officer shall declare the candidates to have been elected as benchers for that electoral region.

## POLL

### **Poll**

14. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as benchers for an electoral region is greater than the number of benchers to be elected for that electoral region, a poll shall be conducted to elect the required number of benchers for that electoral region.

### **Anonymity of elector and secrecy of votes**

15. The procedures for conducting a poll shall be such that the anonymity of an elector and secrecy of the elector's votes are preserved.

## QUALIFICATION OF ELECTORS

### **Qualification of electors**

16. A licensee whose licence is not suspended on the second Wednesday in April is entitled to vote in an election of benchers.

### **Eligibility to elect benchers for electoral regions**

17. (1) An elector is eligible to elect the benchers for the Province of Ontario "A" Electoral Region who is to be elected on the basis of the votes cast by electors residing in the electoral region if the elector resides in the electoral region.

## Same

(2) An elector is eligible to elect a benchner for an electoral region mentioned in paragraphs 1 to 7 of subsection 6 (2) if the elector resides in the electoral region.

## LIST OF ELECTORS

### Electors list

18. On or shortly after the third Wednesday in April, the Elections Officer shall prepare a list of all persons entitled to vote in an election of benchers.

## ELECTION MATERIALS

### Election materials: preparation

19. (1) For the purposes of and prior to conducting the poll mentioned in section 14, the Elections Officer shall,

(a) prepare an election ballot, showing the names of all candidates who may be eligible to be elected as benchner for each electoral region; and

(b) publish in electronic medium information about the candidates in the election of benchers, including the names of all candidates and, if available, the photograph, biography and, subject to subsection (3), election statement of each candidate.

### Same

(2) In causing the election ballot to be prepared, the Elections Officer shall ensure that it is prepared in a manner that preserves the anonymity of the voters and the secrecy of their votes.

### No publication of certain election statements unless approved

(3) The Elections Officer shall not publish any election statement that in the Election Officer's opinion may be libelous or may be in breach of the Rules of Professional Conduct unless the election statement has been approved by a committee of benchers in accordance with section 20.

### Appointment of committee to approve election statements

20. (1) If necessary, the Treasurer shall appoint two or more lay benchers to approve election statements.

## Referral of election statements

(2) The Elections Officer shall refer to the lay benchers appointed under subsection (1) all election statements that in the Election Officer's opinion may be libelous or may be in breach of the Rules of Professional Conduct.

### Same

(3) The lay benchers appointed under subsection (1) shall consider all election statements that are referred to them and, in respect of each election statement, shall,

(a) approve the election statement; or

(b) if they are of the opinion that the election statement may be libelous or may be in breach of the Rules of Professional Conduct,

(i) return the election statement to the candidate who submitted it,

(ii) provide the candidate a written explanation of the objections to the election statement, and

(iii) specify the time by which the candidate may submit to the committee a redrafted election statement.

## Consideration of redrafted election statements

(4) The lay benchers appointed under subsection (1) shall consider all redrafted election statements that are submitted to them in accordance with subsection (3), and, in respect of each redrafted election statement, shall,

(a) approve the redrafted election statement; or

(b) if they are of the opinion that the redrafted election statement may be libelous or may be in breach of the Rules of Professional Conduct,

(i) return the redrafted election statement to the candidate who submitted it,

(ii) provide the candidate a written explanation of the objections to the redrafted election statement, and

(iii) advise the candidate that no election statement shall be published under the candidate's name.

## Decision final

(5) A decision made under subsection (4) is final.

## **Election materials: publication**

21. As soon as practicable after the Elections Officer has prepared the electors list and the election materials required under section 19, the Elections Officer shall,

(a) cause to be published in the Ontario Reports and on the Society's website a notice with respect to the election of benchers that includes details on when and how an elector may access available information about the candidates in the election of benchers and when and how an elector may vote in the election of benchers; and

(b) email the notice mentioned in clause (a) to every elector, at the elector's business email address or, where the elector has no business email address, home email address, as indicated on the records of the Society.

## VOTING

### **Voting for candidates**

22. An elector may vote for,

(a) not more than 20 candidates who may be eligible to be elected as bencher for the Province of Ontario "A" Electoral Region; and

(b) not more than 20 candidates who may be eligible to be elected as bencher for the Province of Ontario "B" Electoral Region.

### **Voting procedures**

23. Electors shall cast their votes in accordance with the procedures established by the Elections Officer.

## COUNTING THE VOTES

### **Elections Officer to cause counting of votes**

24. Beginning immediately after the deadline for casting votes on election day, the Elections Officer shall cause the votes for each candidate to be counted in accordance with sections 25 to 29.

### **Valid votes**

25. (1) Subject to subsections (2) and (3), only votes cast by electors for candidates eligible to be elected as bencher shall be counted.

## **Disqualified votes**

(2) If an elector votes for more than 20 candidates who were shown on the election ballot to have been eligible to be elected as benchers for the Province of Ontario “A” Electoral Region, none of the elector’s votes for those candidates shall be counted.

### **Same**

(3) If an elector votes for more than 20 candidates who were shown on the election ballot to have been eligible to be elected as benchers for the Province of Ontario “B” Electoral Region, none of the elector’s votes for those candidates shall be counted.

## **Same number of votes**

26. (1) For the purposes of the count of votes under section 27, the declaration of results under subparagraph i of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 2 of subsection 29 (2), if two or more candidates have the same number of votes and that number is the largest, the Elections Officer shall, in the presence of the Treasurer, randomly select one candidate to be the candidate who has the largest number of votes.

### **Same**

(2) For the purposes of the count of votes under section 28, the declaration of results under subparagraph ii of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 3 of subsection (2), if two or more candidates have the same number of votes, but the number of benchers remaining to be elected is fewer than the number of candidates having the same number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select the necessary number of candidates to be elected as benchers.

## **Counting votes: benchers elected on basis of votes cast by electors residing in electoral region**

27. (1) For the Province of Ontario “A” Electoral Region, the votes cast by electors residing in the electoral region for each candidate eligible to be elected as benchers from the electoral region shall be counted.

### **Same**

(2) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the votes cast by electors residing in the electoral region for each candidate eligible to be elected as benchers for the electoral region shall be counted.

## **Removal of candidate from pool of candidates**

(3) For the Province of Ontario “A” Electoral Region, the candidate eligible to be elected as bencher for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (1), shall be removed from the pool of candidates eligible to be elected as bencher for the purposes of the count of votes under subsection 28 (1).

### **Same**

(4) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as bencher for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (2), shall be removed from the pool of candidates eligible to be elected as bencher for the purposes of the count of votes under subsection 28 (2).

## **Counting votes: Province of Ontario “A” Electoral Region**

28. (1) For the Province of Ontario “A” Electoral Region, the votes cast by all electors for each candidate eligible to be elected as bencher for the electoral region shall be counted.

### **Same: Province of Ontario “B” Electoral Region**

(2) For the Province of Ontario “B” Electoral Region, the votes cast by all electors for each candidate eligible to be elected as bencher for the electoral region shall be counted.

## **Report of result to Convocation**

29. (1) Immediately after the count of votes under sections 27 and 28 has been completed, the Elections Officer shall report the results to Convocation.

## **Declaration of results**

(2) Immediately after reporting the results to Convocation, the Elections Officer shall declare the following candidates to have been elected as benchers:

1. For the Province of Ontario “A” Electoral Region,
  - i. the candidate eligible to be elected as bencher for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (1), and
  - ii. the nineteen candidates eligible to be elected as bencher for the electoral region who have the largest number of votes from all electors, as determined by the count of votes

under subsection 28 (1).

2. For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as benchner for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (2).

3. For the Province of Ontario “B” Electoral Region, the thirteen candidates eligible to be elected as benchner for the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 28 (2).

### **Publication of Results**

(3) The Elections Officer shall publish the election results on the Society’s website, and those results shall include the names of the candidates and the number of votes cast for each candidate.

### **Taking office**

30. (1) The benchners who are elected in an election of benchners shall take office on the later of the following dates:

1. The day on which Convocation has its regular meeting in May.
2. The day on which Convocation has its first regular meeting of Convocation following the declaration of results under section 29.

### **Term of office**

(2) Subject to any by-law that provides for the removal of benchners from office, the benchners who take office under subsection (1) shall remain in office until their successors take office.

### **Failure to elect**

31. (1) If in an election of benchners no candidate is elected as benchner for the Province of Ontario “A” Electoral Region on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a benchner for the electoral region,

(a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of

the election by Convocation, are within the electoral region, one of the candidates who was not elected as bencher; or

(b) if no candidate is available for election under clause (a), a licensee whose business address, or, where a licensee does not have a business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

### **Same**

(2) If in an election of benchers no candidate is elected as bencher for an electoral region described in paragraphs 1 to 7 of subsection 6 (2) on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a bencher for the electoral region,

(a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, are within the electoral region, one of the candidates who was not elected as bencher; or

(b) if no candidate is available for election under clause (a), a licensee whose business address, or, where a licensee does not have a business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

### **Same**

(3) If in an election of benchers fewer than the required number of benchers are elected for the Province of Ontario “A” Electoral Region or the Province of Ontario “B” Electoral Region on the basis of the votes cast by all electors, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as benchers for the electoral region,

(a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation are within the electoral region, the required number of candidates who were not elected as bencher;

(b) if there are no candidates available for election under clause (a), or if all candidates

have already been elected under clause (a), the required number of licensees whose business addresses, or, where licensees have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

### **Who may not be elected**

32. No person shall be elected as benchers under section 31 if the person does not meet the requirements under section 12.

### **Taking office and term of office**

33. The benchers who are elected under section 31 shall take office immediately after their election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until their successors take office.

## PETITIONS

### **Right to petition**

34. Any elector may petition Convocation against the election of a benchers under section 29.

### **Time for making petition**

35. No petition shall be made after fifteen days after the declaration of results under section 29.

### **Filing a petition**

36. (1) A petitioner shall, within fifteen days after the declaration of results under section 29, file in the office of the Elections Officer at Osgoode Hall a written petition setting out the grounds upon which the election of a benchers is disputed

### **Service of petition**

(2) A petitioner shall serve on the benchers whose election the petitioner disputes a copy of the written petition filed in the office of the Elections Officer at Osgoode Hall.

### **Time for service**

(3) Service under subsection (2) shall be effected not later than the twentieth day after the declaration of results under section 29.

### **Benchers' status during consideration of petition**

37. A benchers whose election is disputed shall continue in office until Convocation determines that he or she was not eligible to be elected as benchers or was not duly

elected.

## **Appointment of committee to consider petition**

38. (1) Where a petition is filed under subsection 36 (1), Convocation shall appoint a committee of two or more benchers to consider the petition.

### **Procedure**

(2) Subject to subsection (3), the procedure applicable to the consideration of a petition by a committee of benchers shall be determined by the committee and, without limiting the generality of the foregoing, the committee may determine who may make submissions to it, when and in what manner.

### **Right to make submissions**

(3) A petitioner and the bencher whose election the petitioner disputes are entitled to make submissions about the petition to the committee of benchers appointed to consider the petition.

### **Notice of appointment of committee, etc.**

(4) The Elections Officer shall give notice to a petitioner and the bencher whose election the petitioner disputes of the appointment of a committee of benchers to consider the petition and of the procedure applicable to the consideration of the petition, including the manner in which the petitioner and the bencher will be permitted to make submissions to the committee.

## **Report to Convocation**

39. (1) A committee of benchers appointed to consider a petition shall report to Convocation on its consideration of the petition.

### **Decision of Convocation**

(2) Convocation shall consider the report of a committee of benchers on a petition and shall decide whether a bencher whose election is disputed was eligible to be elected as bencher and was duly elected.

### **Notice of decision**

(3) Convocation shall give notice of its decision on a petition, including the reasons for the decision, to the petitioner and the bencher whose election the petitioner disputed.

## **Payment of expenses**

40. (1) When Convocation decides that a bencher whose election is disputed was eligible to be elected as bencher and was duly elected, Convocation may require the petitioner

who disputed the bencher's election to pay to the bencher all or part of the expenses incurred by the bencher in responding to the petition.

### **Same**

(2) When Convocation decides that a bencher whose election is disputed was not eligible to be elected as bencher or was not duly elected, Convocation may require the bencher to pay to the petitioner who disputed the bencher's election all or part of the expenses incurred by the petitioner in making the petition.

## RETENTION OF ELECTION RESULTS

### **How long to be retained**

41. The Elections Officer shall retain the results from an election of benchers until the next election of benchers.

## VACANCIES DURING TERM OF OFFICE

### **Interpretation: "candidate"**

42. (1) For the purposes of this section, "candidate" includes a candidate elected as bencher.

### **Vacancy in electoral region: election on basis of votes cast by electors residing in electoral region**

(2) If a bencher who was elected for an electoral region on the basis of the votes cast by electors residing in the electoral region resigns, is removed from office or for any reason is unable to continue in office, Convocation shall, as soon as practicable, elect as bencher for the electoral region a candidate in the most recent election of benchers,

(a) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and

(b) who, among all similar candidates, had the largest number of votes from electors residing in the electoral region.

### **No candidate available for election under ss. (2)**

(3) If no candidate is available for election under subsection (2), Convocation shall elect a licensee whose business address, or, where a licensee has no business address, whose

home address, as indicated on the records of the Society on the day the election by Convocation, is within the electoral region.

### **Vacancy in electoral region: election on basis of votes cast by all electors**

43. (1) If a bencher, who was elected for the Province of Ontario “A” Electoral Region or the Province of Ontario “B” Electoral Region on the basis of the votes cast by all electors, resigns, is removed from office, is elected as bencher under section 42 or for any reason is unable to continue in office, Convocation shall, as soon as practicable, elect as bencher for the electoral region a candidate in the most recent election of benchers,

(a) who was not elected as bencher;

(b) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and

(c) who, among all similar candidates, had the largest number of votes from all electors.

### **No candidate available for election under subsection (1)**

(2) If no candidate is available for election under subsection (1), Convocation shall elect a licensee whose business address, or, where a licensee has no business address, whose home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

### **Application of s. 42**

44. (1) Section 42 applies, with necessary modifications, to,

(a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by electors residing in the region;

(b) a bencher elected under subsection 31 (1);

(c) a bencher elected under subsection 31 (2); and

(d) a bencher elected under section 42.

### **Application of s. 43**

(2) Section 43 applies, with necessary modifications, to,

(a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by all electors;

(b) a bencher elected under subsection 31 (3); and

(c) a bencher elected under section 43.

### **Who may not be elected to fill vacancy**

45. No person shall be elected as bencher under section 42 or 43 if the person is not eligible to be elected as bencher under section 12.

### **Term of office**

46. A bencher who is elected under section 42 or 43 shall take office immediately after his or her election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until his or her successor takes office.

## **PART I.1**

# **ELECTION OF BENCHERS LICENSED TO PROVIDE LEGAL SERVICES**

### **GENERAL**

#### **Definitions**

46.1. (1) In this Part,

“Committee” means the Paralegal Standing Committee;

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this Part and Part I;

“election of benchers” means an election of benchers licensed to provide legal services in Ontario;

“elector” means a person who is entitled under this Part to vote in an election of benchers;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) Good Friday;
- (c) Easter Monday; and
- (d) Victoria Day;

“licensee” means a person licensed to provide legal services in Ontario.

### **Interpretation: “bencher”**

(2) In this Part, except where a contrary intention appears, “bencher” means a bencher licensed to provide legal services in Ontario.

### **Application of Part I**

(3) Subsections 2 (1) and 2 (2), sections 4, 5, 8, 9, 10, 11, 20, 21, 30, and sections 34 up to and including 41 of Part I apply to this Part, except that,

- (a) a reference in those subsections and sections to “bencher”, “election of benchers”, “elector” and “licensee” shall be read as a reference to those words and terms as they are defined in this Part;
- (b) a reference to “this Part” in section 4, other than in subsection 4 (1.1), shall be read as a reference to “Part I.1”;
- (c) a reference to section 7 in section 9 shall be read as a reference to section 46.2.1;
- (d) a reference to the “Rules of Professional Conduct” in section 20 shall be read as a reference to the rules of professional conduct applicable to paralegals;
- (e) a reference to section 19 in section 21 shall be read as a reference to section 46.4.3; and
- (f) a reference to section 29 in sections 30, 34, 35 and 36 shall be read as a reference to section 46.7.

## ELECTION DAY

### **Election day**

46.2. There shall be an election of benchers in 2019 and every fourth year thereafter on the last day in April that is not a holiday.

## CANDIDATES

### Who may be a candidate

46.2.1. (1) Every licensee may be a candidate in an election of benchers if,

(a) on June 1 of the year of the election of benchers, the licensee would not have held office as an elected bencher for 12 or more years;

(b) the licensee is nominated as a candidate in accordance with section 8 of Part I as that section applies to this Part; and

(c) at the time of signing a nomination form containing their nomination as a candidate,

(i) the licensee's business address, or, where the person has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended.

(d) prior to the close of nominations, the licensee, if they have not previously been an elected bencher, has completed the Society's candidate orientation and education course in the format specified by the Elections Officer.

### Interpretation

(2) For the purpose of subsection (1), the number of years specified in the subsection shall be deemed to include the time a licensee was appointed as a bencher or appointed or elected as a member of the Committee.

## ELIGIBILITY FOR ELECTION

### Who may not be elected

46.3. No candidate shall be elected as bencher if, at the time of their election,

(a) the candidate's business address, or, where the candidate has no business address, home address, as indicated on the records of the Society, is outside Ontario;

(b) the candidate is no longer licensed to provide legal services in Ontario or the candidate's licence is suspended;

(c) the candidate is not eighteen or more years of age;

- (d) the candidate is an undischarged bankrupt; or
- (e) the candidate does not consent to the candidate's election.

## ACCLAMATION

### **Election by acclamation**

46.3.1. If, after the acceptance of all valid nominations under section 9 of Part I, as that section applies to this Part, the number of candidates eligible to be elected as benchers is not more than five, the Elections Officer shall declare each of the candidates to have been elected as benchers.

## POLL

### **Poll**

46.4. (1) If, after the acceptance of all valid nominations under section 9 of Part I, as that section applies to this Part, the number of candidates eligible to be elected as benchers is more than five, a poll shall be conducted to elect five benchers.

### **Anonymity of elector and secrecy of votes**

(2) The procedures for conducting a poll shall be such that the anonymity of an elector and secrecy of the elector's votes are preserved.

## QUALIFICATION OF ELECTORS

### **Qualification of electors**

46.4.1. A licensee whose licence is not suspended on the second Wednesday in April is entitled to vote in an election of benchers.

## LIST OF ELECTORS

### **Electors list**

46.4.2. On or shortly after the third Wednesday in April, the Elections Officer shall prepare a list of all persons who are entitled to vote in an election of benchers.

## ELECTION MATERIALS

### **Election materials: preparation**

46.4.3. (1) For the purposes of and prior to conducting the poll mentioned in section 46.4, the Elections Officer shall,

(a) prepare an election ballot showing the names of all candidates who may be eligible to be elected as benchers; and

(b) publish in electronic medium information about the candidates in the election of benchers, including the names of the candidates and, if available, the photograph, biography and, subject to subsection (3), election statement of each candidate.

### **Same**

(2) In causing the election ballot to be prepared, the Elections Officer shall ensure that it is prepared in a manner that preserves the anonymity of the voters and the secrecy of their votes.

### **No publication of certain election statements unless approved**

(3) The Elections Officer shall not publish any election statement that in the Election Officer's opinion may be libelous or may be in breach of the rules of professional conduct applicable to paralegals unless the election statement has been approved by a committee of benchers in accordance with section 20 of Part I, as that section applies for the purposes of this Part.

## VOTING

### **Voting for candidate**

46.5. In a poll conducted in an election of benchers, electors,

(a) may vote for up to five candidates; and

(b) shall cast their votes in accordance with the procedures established by the Elections Officer.

## COUNTING THE VOTES

### **Elections Officer to cause counting of votes**

46.6. (1) Beginning immediately after the deadline for casting votes on election day, the Elections Officer shall cause the votes for each candidate to be counted in accordance with this section.

#### **Valid votes**

(2) Subject to subsections (3) and (4), only votes cast by electors for candidates eligible to be elected as benchers shall be counted.

#### **Disqualified votes**

(3) If an elector votes for more than five candidates, none of the elector's votes for those candidates shall be counted.

#### **Same number of votes**

(4) If two or more candidates have the same number of votes, but the number of persons remaining to be elected as benchers is fewer than the number of candidates having the same number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select, from the candidates having the same numbers of votes, the necessary number of candidates to be elected as benchers.

### **Report of results to Convocation**

46.7. (1) Immediately after the count of votes has been completed under section 46.6, the Elections Officer shall report the results to Convocation.

#### **Declaration of results**

(2) Immediately after reporting the results to Convocation, the Elections Officer shall declare to have been elected as benchers the five candidates eligible to be elected as benchers who have the five largest number of votes.

#### **Report and publication of results**

(3) The Elections Officer shall publish the election results on the Society's website, and those results shall include the names of the candidates and the number of votes cast for each candidate.

#### **Failure to elect**

46.8. (1) If in an election of benchers fewer than the required number of benchers are elected, Convocation shall, at its regular meeting in May or at its first regular meeting

following the declaration of results under subsection 46.7 (2), whichever takes place later, elect as benchers,

(a) if there are candidates whose business addresses, or where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation are within Ontario, the required number of candidates who were not elected as bencher;

(b) if there are no candidates available for election under clause (a), or if all candidates have already been elected under clause (a), the required number of licensees whose business addresses, or, where the licensee has no business address, home addresses, as indicated records on the Society on the day of the election by Convocation, is within Ontario.

### **Who may not be elected**

(2) No person shall be elected as bencher under subsection (1) if the person is not eligible to be elected as bencher under section 46.3.

### **Taking office and term of office**

46.9. The benchers who are elected under section 46.8 shall take office immediately after their election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until their successors take office.

## VACANCIES DURING TERM OF OFFICE

### **Filling vacancy: election of candidate from previous election of benchers**

46.10. (1) If a bencher resigns from office, is removed from office or for any other reason is unable to continue in office, Convocation shall, as soon as is practicable, elect as bencher a candidate in the most recent election of benchers,

(a) who was not elected as bencher;

(b) whose business address, or, where the person has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within Ontario; and

(c) who, among the candidates not elected in the most recent election of benchers, had the largest number of votes.

**No candidate available for election under subsection (1)**

(2) If no candidate is available for election under subsection (1), Convocation shall elect a licensee whose business address, or, where a licensee has no business address, whose home address, as indicated on the records of the Society on the day of the election by Convocation, is within Ontario.

**Application of section 46.10**

46.11. (1) Section 46.10 applies, with necessary modifications, to,

- (a) a bencher elected under section 46.3.1; and
- (b) a bencher elected under section 46.8.

**Who may not be elected to fill vacancy**

(2) No person shall be elected as bencher under section 46.10 if the person is not eligible to be elected as bencher under section 46.3.

**Taking office and term of office**

(3) A candidate who is elected under section 46.10 shall take office immediately thereafter and, subject to any by-law that provides for the removal of benchers, shall remain in office until her or his successor takes office.

## PART II

# HONORARY BENCHERS

**Convocation may make honorary benchers**

47. Convocation may make any person an honorary bencher.

**Transition**

48. Every person who is an honorary bencher of the Society immediately before May 1, 2007 is an honorary bencher of the Society.

**Emeritus benchers**

48.1. (1) There shall be a class of honorary benchers known as emeritus benchers.

## **Former Treasurers**

(2) Every person who has held the office of Treasurer, if and while they are a licensee, is an emeritus bencher.

## **Benchers by virtue of office not emeritus benchers**

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

## **Licence in abeyance**

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

## **Right to participate in debate at Convocation**

(5) An emeritus bencher may take part in a debate in Convocation.

## **Removal of right**

(6) Despite subsection (5), an emeritus bencher who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation until after they attend three of any five consecutive times Convocation is held under section 77 after they lose the right to take part in a debate at Convocation.

## **Excused from attending Convocation**

(7) On their application, where there is good and sufficient reason to do so, the Treasurer may excuse an emeritus bencher from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the emeritus bencher is excused from the requirement to attend Convocation, subsection (6) does not apply to the emeritus bencher.

# **PART II.1**

## **BENCHERS BY VIRTUE OF OFFICE**

### **Former Treasurers: right to participate in debate at Convocation**

48.2. (1) A bencher by virtue of office under section 14 of the Act may take part in a debate at Convocation.

## **Removal of right to participate in debate at Convocation**

(2) Despite subsection (1), a bencher by virtue of office under section 14 of the Act who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation until after they attend three of any five consecutive times Convocation is held under section 77 after they lose the right to take part in a debate at Convocation.

## **Excused from attending Convocation**

(3) On their application, where there is good and sufficient reason to do so, the Treasurer may excuse a bencher by virtue of office under section 14 of the Act from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the bencher by virtue of office under section 14 of the Act is excused from the requirement to attend Convocation, subsection (2) does not apply to them.

# **PART III**

## **BENCHERS: ADMINISTRATION**

### REMUNERATION

#### **Interpretation**

49. (1) In this section and in sections 50 and 51,

“election of benchers” means an election of benchers under Part I or an election of benchers under Part I.1;

“full day” means a total of more than 3 hours in a period of 24 hours; “half day” means a total of not more than 3 hours in a period of 24 hours;

“payee” means a person who is entitled to receive remuneration from the Society under section 50;

“remuneration year” means,

(a) the period beginning on the day, in one calendar year, on which Convocation has its first regular meeting after an election of benchers and ending, in the following calendar year, on May 31,

(b) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and

(c) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which Convocation has its first regular meeting after an election of benchers;

“work” means any of the following activities and includes reasonable time traveling to or from the activity:

1. Attending a Convocation, provided the payee has the right to take part in a debate at Convocation,
2. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
3. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
4. Attending an information session organized by the Society exclusively for all or any group of payees,
5. Attending a program of education or training required by the Society for payees as such,
6. Hearing a hearing before the Hearing Division or Appeal Division,
7. Preparing reasons for a decision or order of the Hearing Division or Appeal Division,
8. Conducting a pre-hearing conference in a proceeding before the Hearing Division,
9. Performing activities, as vice-chair of the Hearing Division or Appeal Division, that are integral to the office of vice-chair of the Hearing Division or Appeal Division,
10. Performing activities, as a member of the Hearing Division or Appeal Division, that

relate to the management of a proceeding before the Hearing Division or Appeal Division,

11. Performing activities, as a person appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of that person under sections 46, 47, 47.1, 48 and 49 of the Act,

12. Attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation,

13. Performing activities as a director of an organization, to which position the payee was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

### **Interpretation of “work” during temporary suspension period**

(1.1) Beginning on April 9, 2020 and ending on the earlier of June 30, 2020 and the day before the first day after April 9, 2020 on which a meeting of Convocation or a standing or other committee may be attended in person, the definition of “work” contained in subsection (1) is temporarily suspended and the following definition of “work” is in effect during the temporary suspension period only:

“work” means any of the following activities and includes reasonable time traveling to or from the activity:

1. Attending a meeting of the Proceedings Authorization Committee or any subcommittee of the Proceedings Authorization Committee as a member thereof,
2. Attending a meeting of the Proceedings Authorization Committee or any subcommittee of the Proceedings Authorization Committee as a non-member at the request of the chair of the Committee,
3. Hearing a hearing before the Hearing Division or Appeal Division,
4. Preparing reasons for a decision or order of the Hearing Division or Appeal Division,
5. Conducting a pre-hearing conference in a proceeding before the Hearing Division,
6. Performing activities, as vice-chair of the Hearing Division or Appeal Division, that are integral to the office of vice-chair of the Hearing Division or Appeal Division,
7. Performing activities, as a member of the Hearing Division or Appeal Division, that relate to the management of a proceeding before the Hearing Division or Appeal Division.

## **Suspension of application of subsection (1.1) on compassionate grounds**

(1.2) On application by a person mentioned in subsection 50 (1), (1.1) or (3), the Treasurer may on compassionate grounds suspend the application of subsection (1.1) in respect of the person.

### **Entitlement**

50. (1) Subject to subsection (2), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act and every bencher who holds office under section 14 of the Act is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, after the first 26 half or full days of work performed for the Society in that remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, after the first 26 half or full days of work performed for the Society in that remuneration year, in an amount determined by Convocation from time to time.

### **Entitlement**

(1.1) Subject to subsection (2), every emeritus bencher is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time.

## **Limits on remuneration: performing activities as director of another organization**

(2) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

### **Entitlement**

(3) Subject to subsections (4) and (5), every lay bencher is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time.

### **Limits on remuneration: lay benchers**

(4) A lay bencher is not entitled to receive from the Society remuneration for performing an activity mentioned in paragraphs 1 to 5 and 11 to 13 of the definition of “work” contained in subsection 49 (1) unless it is,

(a) the reasonable time traveling to or from the activity; or

(b) in the case of the activity mentioned in paragraph 5 of the definition of “work” contained in subsection 49 (1), a program of education or training required by the Society for the lay bencher as a member of the Hearing Division or Appeal Division.

### **Limits on remuneration: lay bencher remunerated by the Government of Ontario**

(5) If, under subsections (3) and (4), a lay bencher is entitled to receive from the Society remuneration for performing an activity, if the lay bencher is also entitled to receive from the Government of Ontario remuneration for performing the same activity, the lay bencher is only entitled to receive from the Society remuneration for performing the activity in an amount that equals the amount, if any, by which the amount that the Society would ordinarily pay the lay bencher exceeds the amount that the Government of Ontario would pay the lay bencher.

### **Claiming remuneration**

51. (1) Subject to subsection (2), a payee may claim remuneration by submitting to the Society a claim for remuneration in a form provided by the Society.

### **Same**

(2) A payee shall,

(a) claim remuneration for work performed for the Society within a reasonable period of time after the payee has performed the work; and

(b) claim all remuneration in respect of a remuneration year by not later than six months after the end of the remuneration year.

## **Payment of remuneration to payee**

- (3) Remuneration to which a payee is entitled shall be paid by the Society,
- (a) within a reasonable period of time after the payee submits a claim for remuneration;  
and
- (b) within the calendar year in which the payee submits a claim for remuneration.

## **Same**

(4) Remuneration shall be paid to the individual payee claiming the remuneration or, at the direction of the individual payee, to a business entity of which the payee is a partner, sole proprietor, shareholder or other owner or of which the payee is an employee.

## DISBURSEMENTS

### **Disbursements**

52. Every bencher and every emeritus bencher is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties for or on behalf of the Society.

## INDEMNIFICATION

### **Indemnification of benchers, etc.**

53. (1) Subject to subsection (4), the Society shall indemnify every bencher, officer of the Society, former bencher, former officer of the Society and other individual who, not being a bencher or officer of the Society, acts or acted as a bencher or officer of the Society at the request of the Society against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal, administrative, investigative or other proceeding in which the person is involved because of the person's association with the Society.

### **Advance of costs**

(2) The Society may advance moneys to a person referred to in subsection (1) for the costs, charges and expenses of a proceeding referred to in subsection (1).

### **Repayment of moneys**

(3) If a person referred to in subsection (1) does not fulfil the conditions of subsection (4), the person shall repay moneys advanced to him or her under subsection (2).

## Limitation

(4) The Society shall not indemnify a person referred to in subsection (1) unless the person,

- (a) acted honestly and in good faith with a view to the best interests of the Society;
- (b) in the case of a criminal or administrative proceeding resulting in a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful; and
- (c) in the case of a proceeding under the *Lobbying Act* (Canada), including an investigative proceeding, communicated on behalf of the Society with a public office holder, as defined in the *Lobbying Act* (Canada), only with the prior written authorization of the Treasurer or the Chief Executive Officer.

## Insurance

(5) The Society may purchase and maintain insurance for the benefit of every person referred to in subsection (1) against any liability incurred by the person in the person's capacity as a bencher or officer.

# PART IV

# TREASURER

## ELECTION OF TREASURER

### Time of election

54. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the third Wednesday in June.

### Same

(2) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the third Wednesday in June and the day that is ten

business days after the day of the close of nominations of candidates under subsection 55 (5).

## **Nomination of candidates**

55. (1) A candidate for election as Treasurer shall be nominated by not more than two benchers who are entitled to vote in Convocation.

### **Nomination in writing**

(2) The nomination of a candidate shall be in writing, signed by the candidate to indicate his or her consent to the nomination, signed by the two benchers nominating the candidate, and submitted to the secretary prior to the close of nominations of candidates.

### **Time for close of nominations**

(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

### **Exception**

(4) In a year in which there is an election of benchers, the close of nominations of candidates shall be 5 p.m. on the Friday immediately after the day on which Convocation has its regular meeting in May.

### **Nominations reopened**

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates,

(a) the period for nominations of candidates shall be reopened; and

(b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the secretary sends the notice under section 57.

### **Invalid nomination**

(6) A nomination that is made by more than two benchers who are entitled to vote in Convocation, that is not made in writing, that is not signed by the candidate, that is not signed by the two benchers nominating the candidate or that is not submitted to the secretary prior to the close of nominations of candidates is invalid and the candidate who is the subject of the nomination shall not be a candidate in the election of Treasurer.

## **Withdrawal of candidates**

56. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the secretary written notice of their withdrawal.

## **Reduction in number of candidates: notice**

57. If, after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the poll shall be discarded;
- (e) the time for the beginning of the new poll; and
- (f) the day on which there shall be an election of Treasurer.

## **Notice of candidates to benchers**

58. After the close of nominations of candidates, the secretary shall, as soon as practicable, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

## **Election by acclamation**

59. (1) If after the close of nominations of candidates, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

## **Same**

(2) Despite any provision to the contrary in this Part, if, after the close of nominations of candidates under subsection 55 (5), there are two or more candidates, but on the day on which there shall be an election of Treasurer, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

## **Poll**

60. (1) If after the close of nominations of candidates, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

## **Anonymity of voting bencher and secrecy of vote**

(2) The procedures for conducting a poll shall be such that the anonymity of a voting bencher and the secrecy of the bencher's vote are preserved.

## **Electronic procedures**

60.1. If a poll is required to elect a Treasurer, the secretary shall,

(a) as soon as practicable after the close of nominations, establish the electronic procedures by which benchers entitled to vote in the election of Treasurer may vote; and

(b) prior to the opening of the poll, publish for benchers entitled to vote in the election of Treasurer the electronic procedures established in respect of the election of Treasurer.

## **Treasurer is candidate in election**

61. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this Part.

## **Right to vote**

62. (1) Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

## **List of voters**

(2) If a poll is required to elect a Treasurer, after the close of nominations of candidates, the secretary shall prepare a list of benchers entitled to vote in an election of Treasurer.

## **List to show who has voted**

(3) Beginning at the opening of the poll and ending at the closing of the poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer, and the secretary shall make this list available for inspection to candidates in the election of Treasurer and benchers entitled to vote in the election of Treasurer.

## **Conducting poll**

63. (1) A poll shall be conducted,

(a) beginning at 9 a.m. on the second Wednesday in June and ending at 5 p.m. on election

day; or

(b) if after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 55 (5) and ending at 5 p.m. on election day under subsection 54 (2).

### **Method of voting**

(2) A bencher shall cast their vote at the poll in accordance with the electronic procedures established by the secretary.

### **Marking a ballot**

(3) A bencher voting at the poll shall mark the ballot in accordance with subsection (4) or (5).

### **Two candidates**

(4) If there are not more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of their choice by placing a mark beside the name of the candidate.

### **More than two candidates**

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

### **Ballots to be discarded**

(6) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, the secretary shall cause to be discarded the ballots received at the poll conducted after the close of nominations under subsection 55 (3) or (4).

64. [Revoked].

65. [Revoked].

## Counting votes

66. (1) Beginning immediately after the closing of the poll on election day, the secretary shall cause the votes cast for each candidate to be counted.

### Same

(2) If at the poll votes were cast for candidates by rank of preference, the secretary shall cause the votes cast for each candidate to be counted with the assumption that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

### Report of results: two candidates

67. (1) If on any ballot there are not more than two candidates, immediately after counting the votes cast for each candidate, the secretary shall report the results to each bencher entitled to vote in the election and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

### Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report the results to each bencher entitled to vote in the election and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

### Counting votes when three or more candidates and no majority

67.1. (1) If on any ballot there are three or more candidates and, after causing the votes to be counted, no candidate receives more than 50 percent of all votes cast for all candidates, the secretary shall cause the votes to be counted as follows:

1. The candidate receiving the fewest number of first-choice votes shall be removed as a candidate in the election.
2. For each ballot on which the candidate removed as a candidate in the election is the first choice, the candidate who is the second-choice candidate and who has not been removed as a candidate in the election shall be counted as the first-choice candidate for that ballot, the third-choice candidate who has not been removed as a candidate in the election shall be counted as the second-choice candidate for that ballot, and so on until all candidates ranked on the ballot have been counted.

3. If a candidate receives more than 50 per cent of the votes cast for all candidates, the secretary shall report the results to each bencher entitled to vote in the election and shall declare that candidate to be elected as Treasurer.

4. If two or more candidates receive an equal number of votes and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall select one of the candidates in accordance with subsection 68 (1).

5. If neither paragraph 3 nor 4 applies, the secretary shall cause the counting of votes to continue in accordance with paragraphs 1 and 2, subject to subsections (2), (3) and (4), until a candidate is elected as Treasurer under one of those paragraphs.

### **Resolution of a tie**

(2) If two or more candidates each receive the fewest and the same number of first-choice votes, the secretary shall cause all second-choice votes cast for those candidates on all ballots to be counted and the candidate with the fewest number of second-choice votes shall be removed as a candidate in the election.

### **Same**

(3) If no candidate can be removed as a candidate in the election under subsection (2), the secretary shall cause the process for counting under that subsection to continue based on the next-choice votes cast on all ballots, in order of preference, until one candidate is determined to have received the fewest number of such next-choice votes being counted, at which time that candidate shall be removed as a candidate in the election.

### **Same**

(4) If no candidate can be removed as a candidate in the election under subsection (2) or (3) and,

1. the fewest number of first-choice votes for a candidate in subsection (2) does not include votes counted for that candidate under paragraph 67.1 (1) 2, the secretary shall cause a random selection of one of the candidates and the candidate selected shall be removed as a candidate from the election; or

2. the fewest number of first-choice votes for a candidate in subsection (2) includes votes counted for that candidate under paragraph 67.1 (1) 2, the candidate with the fewest number of first-choice votes before such inclusion shall be removed as a candidate in the election.

## **Casting tie-breaking vote**

68. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall randomly select one of the candidates and cast an additional vote for that candidate.

## **Declaration by secretary**

69. A declaration by the secretary under this Part shall be communicated to licensees as soon as practicable after it is made.

## TERM OF OFFICE

### **Taking office**

70. (1) In an election of Treasurer under section 54,

(a) a bencher elected as Treasurer by acclamation shall take office on the day on which Convocation has its regular meeting in June following the election; and

(b) a bencher elected as Treasurer by poll shall take office on the day on which Convocation has its first regular meeting following the election.

### **Term of office**

(2) Subject to any provision in any by-law providing for the removal of a Treasurer from office, the Treasurer shall remain in office until their successor takes office.

## HONORARIUM

### **Treasurer's entitlement to honorarium**

71. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

## VACANCY IN OFFICE

### **Vacancy**

72. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 54.

## ACTING TREASURER

### Acting Treasurer

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Audit and Finance Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 72 or 54.

## PART V

# CONVOCATION

## INTERPRETATION

### Definitions

74. (1) In this Part,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“motion to amend” means a motion to amend another motion, without altering in any way the substance of that motion, by adding or deleting words, varying minor details or rephrasing sentences;

“question of privilege” means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this Part or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of the benchers present at Convocation concerning a matter of import to the Society.

### **Substantive motion: no recitals or preambles**

(1.1) No substantive motion shall be prefaced by recitals or preambles.

### **Interpretation: tabling a motion**

(2) In this Part, “to table a motion” means to defer indefinitely debating the motion or putting the motion to a vote and “a motion which was tabled” has a corresponding meaning.

## MEETINGS

### **Convocation conducted in accordance with Part**

75. (1) Subject to subsection (2), Convocation shall be conducted in accordance with this Part.

### **Waiving compliance, etc.**

(2) The Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this Part in respect of Convocation.

### **Matters of procedure not provided for**

(3) Any matter of procedure not provided for in this Part shall be determined by the Treasurer.

### **Place of Convocation**

76. (1) Subject to subsections (2) and (3), Convocation shall be held in Osgoode Hall.

### **Same**

(2) The Treasurer may convene Convocation at any place.

### **Convocation by telephone conference call, etc.**

(3) Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in Convocation to communicate with each other simultaneously and instantaneously.

**Convocation: when held**

77. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

**Convocation: special meetings**

78. (1) The Treasurer may convene Convocation at any time by giving at least twenty- four hours notice, or by directing the secretary to give such notice, to each bencher.

**Same**

(2) Upon the written request of ten benchers who are entitled to vote in Convocation, the secretary shall convene Convocation by giving at least twenty-four hours notice to each bencher.

**Convocation open to public**

79. (1) Subject to subsection (2), Convocation shall be open to the public.

**Public excluded**

(2) Convocation shall be held in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society's personnel.
2. Litigation in which the Society is involved.
3. Negotiations with a government.
4. Intimate financial or personal matters or other matters in respect of which, in the opinion of the benchers present at Convocation, the need for privacy outweighs the public interest in disclosure.
5. Any matter at the instance of the Treasurer.

**Confidentiality**

(3) No person shall disclose any information in relation to Convocation held in the absence of the public.

**Confidentiality: exceptions**

- (4) Subsection (3) does not prohibit,
- (a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure of information that is a matter of public record;

- (c) disclosure by a person to his or her counsel;
- (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure; or
- (e) disclosure of information that Convocation determines may be disclosed.

### **Order of business**

80. Unless otherwise provided, the business and the order of business at Convocation shall be determined by the Treasurer.

### **Order of business: special meeting**

81. At Convocation convened under subsection 78 (2), the business of Convocation shall include the matters for which Convocation was convened.

### **Minutes**

82. (1) Except when Convocation is resolved into a meeting of the benchers as a committee of the whole, minutes shall be kept for Convocation.

### **Confirmation of minutes**

(2) At each Convocation, the minutes of the last Convocation shall be confirmed by the benchers present at Convocation and shall be signed by the Treasurer or the bencher who presided at the meeting of the Convocation to which the minutes relate.

### **Publication of minutes**

(3) Except in the case of the minutes of Convocation held in the absence of the public, the minutes of Convocation shall be made available for public inspection.

### **Transcript**

83. (1) Convocation shall be recorded by a qualified verbatim reporter to permit the production of a transcript of Convocation.

### **Publication**

(2) The transcript of Convocation open to the public shall be made available for public inspection.

### **Adjournment for lack of quorum**

84. (1) If at any time after Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is present and, upon determining that a quorum is not present, the Treasurer shall adjourn Convocation without motion.

## **Same**

(2) The matter before Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next Convocation to be held under section 77.

## **Removal of benchers from office for non-attendance**

85. (1) The benchers present at Convocation may remove from office an elected bencher who fails to attend Convocation held under section 77 six consecutive times.

## **Failure to attend three meetings**

(2) When an elected bencher fails to attend Convocation held under section 77 three consecutive times, the secretary shall immediately send to the elected bencher a notice of the failure and of the benchers' authority under subsection (1) to remove him or her from office.

## **Failure to attend six meetings: report**

(3) When an elected bencher fails to attend Convocation held under section 77 six consecutive times, the secretary shall report the failure at the first Convocation held thereafter under section 77.

TREASURER

## **Treasurer to preside**

86. The Treasurer shall preside over Convocation.

## **Appeal of Treasurer's rulings and decisions**

87. (1) Two or more benchers who are entitled to vote in Convocation may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.

## **Exception to appeal**

(2) Despite subsection (1), the following rulings and decisions of the Treasurer made in Convocation are not subject to an appeal:

1. A decision on a question of privilege or procedure.
2. A ruling that a bencher's remarks are out of order for the reason set out in clause 99 (3) (e).

3. A ruling that a motion is out of order because it is a motion mentioned in subsection 91 (2).
4. A decision under subsection 100 (1) to put a motion to a vote.
5. A decision about a recorded vote.

### **Time for making appeal**

(3) An appeal from a ruling or decision of the Treasurer shall be made immediately after the ruling or decision.

### **Debate**

(4) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 97 to 99 apply, with necessary modifications, to the debate.

### **Same**

(5) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

### **Disposition**

(6) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

### **Same**

(7) Sections 100 to 104 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

### **Same**

(8) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

### **Resolution: appeal of Treasurer's ruling**

(9) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

## ORDER AND DECORUM

### **Treasurer to preserve order, decorum, etc.**

88. At Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

## **Benchers not to interrupt Treasurer**

89. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

## **Bencher not to interrupt other bencher**

(2) Unless otherwise provided in this Part, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

## **Questions of privilege and procedure**

90. (1) A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

## **Discussion**

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

## **Decision**

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

## **Taken up immediately**

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

# MOTIONS

## **Motions to be made in accordance with Part**

91. (1) Motions made in Convocation shall be made in accordance with this Part.

## **Prohibited motions**

(2) No motion shall be made concerning a matter,

- (a) in respect of which a hearing may be conducted under the Act or by-laws; or
- (b) that is pending before an adjudicative body for determination.

## **Who may make motion**

92. (1) A motion may be made in Convocation by a bencher who is entitled to vote in Convocation.

## **Certain benchers to move certain motions**

(2) A substantive motion of which notice has been given shall be made by the bencher who gave notice of the motion.

### **Notice required**

93. (1) Notice is required for the following motions:

1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.

2. A motion to resume debating and to put to a vote a substantive motion which was tabled.

### **Method of giving notice**

(2) Notice of a motion shall be given in writing by the bencher intending to make the motion by delivering a copy of the text of the motion, signed by the bencher intending to make the motion and the bencher intending to second the motion, to the secretary at least twenty days before the day fixed for Convocation at which the bencher intends to make the motion.

### **Sending notice to all benchers**

(3) The secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchers.

### **Substantive motion without notice**

(4) Despite subsection (1), a bencher may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at Convocation if the motion relates to a matter then being debated at Convocation.

### **Secunder required**

94. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

### **Seconders**

(2) Only benchers who are entitled to vote in Convocation may second a motion.

### **Same**

(3) A substantive motion of which notice has been given shall be seconded by the bencher who signed the text of the motion as the bencher intending to second the motion.

## **Introduction of substantive motion**

95. (1) Subject to section 80, a substantive motion may be moved at any time at Convocation provided that no other substantive motion is before Convocation at the time.

### **Same**

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to table a substantive motion or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded, but before it has been voted on, at Convocation.

### **Same**

(3) A motion to amend may be made at any time after a main motion is moved and seconded, but before it has been voted on, at Convocation, provided that no other motion to amend is before Convocation at the time.

### **Same**

(4) A motion to adjourn Convocation may be made at any time.

## **Withdrawal**

96. (1) A bencher who has given notice of a motion may withdraw the same at any time.

### **Same**

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

## DEBATE

## **Debate on motions**

97. A motion before Convocation may be debated except in the following cases:

1. A motion to table a motion.
2. A motion to adjourn Convocation.

## **Who may participate in debate**

98. The following persons may take part in a debate at Convocation:

1. An elected bencher.
2. A lay bencher.

3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.
4. A bencher by virtue of office under section 14 of the Act who has not lost the right to take part in a debate at Convocation.
5. An emeritus bencher who has not lost the right to take part in a debate at Convocation.
6. The Chief Executive Officer.
7. Any other person with the prior permission of the Treasurer.

### **Time limits**

99. (0.1) The Treasurer may set time limits for a debate or any part thereof including the presentation of a report of a standing or other committee that contains the motion to be debated and any speech to a matter.

### **Order of speaking**

(1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The bencher who moved the motion.
2. The bencher who seconded the motion.
3. Any other bencher or person, in accordance with section 98, when recognized by the Treasurer.

### **Reserving right to speak**

(2) The bencher who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

### **Matters out of order in debate**

- (3) In a debate, a bencher shall be called to order by the Treasurer if he or she,
- (a) subject to subsections (4), (5), (6) and (7) speaks to a motion more than once;
  - (b) directs his or her speech to matters other than the motion being debated;
  - (c) persists in needless repetition or raises matters that have already been decided at Convocation;
    - (c.1) exceeds a time limit set by the Treasurer;
  - (d) anticipates a matter already on the agenda of Convocation for consideration;
  - (e) refers to a matter,

- (i) in respect of which a hearing may be conducted under the Act or by-laws; or
  - (ii) that is pending before an adjudicative body for determination;
- 
- (f) makes allegations against another bencher;
  - (g) imputes false, improper or ulterior motives to another bencher;
  - (h) charges another bencher with uttering a deliberate falsehood; or
  - (i) uses abusive or insulting language of a nature likely to create disorder.

### **Speaking twice**

(4) A bencher may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the bencher shall not introduce any new points.

### **Same**

(5) A bencher who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

### **Questions on speeches and replies**

(6) At any time during the debate on a motion, a bencher may ask a brief question about another bencher's speech and that bencher may, with the Treasurer's permission, reply briefly.

### **Treasurer's permission to speak second time**

(7) A bencher may speak to a motion a second time, in circumstances not mentioned in subsections (4), (5) and (6), with the Treasurer's permission.

### **Special rules of debate: motions to amend**

(8) Immediately a motion to amend is made during the debate on a main motion, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

### **Resumption of interrupted debate**

(9) A debate that has been interrupted under subsection (8) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

## VOTING

### **Putting debatable motion to vote**

100. (1) Subject to subsection (2), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been reasonably completed.

### **Motion to amend accepted**

(2) A motion to amend shall not be put to a vote if the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend.

### **Putting non-debatable motion to vote**

(3) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

### **Treasurer may not vote**

101. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer may cast a tie-breaking vote.

### **Proxy voting prohibited**

102. Votes may not be cast by proxy.

### **Manner of voting**

103. Voting shall be by a show of hands, or if Convocation is conducted by means of telephone, electronic or other communication facilities under subsection 76 (3), by oral response, unless a recorded vote is required by the Treasurer, or requested by a bencher entitled to vote in Convocation and permitted by the Treasurer, in accordance with section 104.

### **Recorded vote**

104. (1) A recorded vote may be required by the Treasurer or requested by a bencher entitled to vote in Convocation before a motion is put to a vote.

### **Recorded vote requested by bencher**

(2) When a recorded vote has been requested by a bencher, the Treasurer may, but is not required to, conduct a recorded vote.

## **Manner of conducting recorded vote**

(3) When a recorded vote is being conducted, the Treasurer shall put the subject motion to the benchers present in Convocation and the secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

## **Resolution**

105. A motion shall carry if a majority of the votes cast are in favour of the motion.

## COMMITTEE OF THE WHOLE

### **Committee of the Whole**

106. (1) At any time, the Treasurer may require Convocation to resolve itself into a meeting of the benchers as a committee of the whole to consider any matter before Convocation at the time.

### **Appointment of chair**

(2) Immediately after announcing his or her decision to require Convocation to resolve itself into a meeting of the benchers as a committee of the whole, the Treasurer may appoint a bencher as chair of the committee of the whole and, if the Treasurer does so appoint a bencher, the Treasurer shall then leave the chair.

### **Appointed bencher takes chair**

(3) When the Treasurer leaves the chair in accordance with subsection (2), the bencher appointed as chair of the committee of the whole shall take the chair whereupon Convocation resolves itself into a meeting of the benchers as a committee of the whole.

### **Rules of procedure**

(4) Section 24 of the Act and subsection 84 (1) and sections 86 to 105 of this By-Law apply with necessary modifications to proceedings of a committee of the whole.

### **Treasurer resumes chair**

(5) When a committee of the whole has completed its proceedings,

(a) if the Treasurer had appointed a bencher as chair of the committee, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair; and

(b) Convocation shall resume as such.

## Report to meeting

(6) When Convocation resumes after the benchers present at Convocation have met as a committee of the whole, the Treasurer or the chair of the committee may report to Convocation on the proceedings of the committee.

# PART VI

# COMMITTEES

## GENERAL

### Duties, powers of committees

107. (1) Unless expressly authorized to perform a duty or exercise a power, the performance of a duty or the exercise of a power by a standing committee is subject to the approval of Convocation.

### Duties, powers of Convocation

(2) Convocation may perform a duty or exercise a power that it has delegated to a standing committee notwithstanding the delegation.

### Same

(3) Convocation may delegate to any other committee the performance of a duty or the exercise of a power notwithstanding that it has delegated the performance of the duty or the exercise of the power to a standing committee under this Part.

## STANDING COMMITTEES

### Standing committees

108. There shall be the following standing committees:

1. Audit and Finance Committee.
2. Access to Justice Committee.
3. Equity and Indigenous Affairs Committee.
4. Professional Development and Competence Committee.

5. Professional Regulation Committee.
6. Strategic Planning and Advisory Committee.
7. Tribunal Committee.

## **Composition**

109. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

## **Benchers**

- (2) Each standing committee shall include at least five benchers.

## **Appointment of persons to standing committees**

- (3) Convocation may appoint persons to a standing committee at any time.

## **Treasurer's recommendations for appointment**

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

## **Certain persons disqualified from certain appointments**

(5) Convocation shall not appoint any person to the Tribunal Committee who is appointed to the Professional Regulation Committee or the Proceedings Authorization Committee.

## **Treasurer**

110. (1) The Treasurer is a member of every standing committee by virtue of their office.

## **Tribunal Committee: members by virtue of office**

(2) The chair of the Law Society Tribunal and the vice-chairs of the Hearing and Appeal Divisions of the Law Society Tribunal are members of the Tribunal Committee by virtue of their office.

## **Chief Executive Officer**

(3) The Chief Executive Officer of the Society is a non-voting member of the Strategic Planning and Advisory Committee by virtue of their office.

## **Term of office**

111. Subject to section 112, a person appointed to a standing committee under section 109 shall hold office until his or her successor is appointed.

## **Removal from standing committee by Convocation**

112. Convocation may remove from a standing committee any person appointed thereto under section 109 if the person fails to attend three consecutive meetings of the committee.

## **Appointment of chairs and vice-chairs**

113. (1) Convocation shall appoint,

(a) for each standing committee other than the Strategic Planning and Advisory Committee, one bencher, who is a member of the standing committee, as chair of the standing committee; and

(b) for each standing committee, one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

## **Chair of Strategic Planning and Advisory Committee**

(1.1) The Treasurer is the chair of the Strategic Planning and Advisory Committee.

## **Term of office**

(2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

## **Appointment at pleasure**

(3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

## **Vacancy**

(4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

## **Appointment under subs. (4) subject to ratification**

(5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

## **Quorum**

114. (1) Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

## **Meetings by telephone conference call, etc.**

(2) Any meeting of a standing committee may be conducted by means of such telephone, electronic or other communication facilities as permit all person participating in the meeting to communicate with each other instantaneously and simultaneously.

## **Right to attend meeting**

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

## **Same**

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation.
2. An officer or employee of the Society.
3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

## **Meetings held in absence of public**

115.1. (1) Subject to section 115, meetings of a standing committee shall be held in the absence of the public.

## **Confidentiality**

(2) No person shall disclose any information that would reveal the deliberations of a standing committee.

## **Confidentiality: exceptions**

- (3) Subsection (2) does not prohibit,
- (a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure of the subjects or matters that a standing committee is deliberating;
  - (c) disclosure of information that is a matter of public record;
  - (d) disclosure by a person to his or her counsel;
  - (e) disclosure with the written consent of all persons whose interests might reasonably be

affected by the disclosure; or

(f) disclosure of information that Convocation determines may be disclosed.

## **Voting rights**

116. Only members of a standing committee may vote at meetings of the committee.

## **TASK FORCES**

### **Establishment**

116.1. (1) Convocation may at any time establish a committee, to be known as a task force, for the purposes of performing a specific task or performing a task for a specific period of time.

### **Mandate and term**

(2) No task force shall be established without a prescribed mandate and term.

### **Duties and powers**

(3) Section 107, with necessary modifications, applies to and in relation to a task force.

### **Composition: application of provisions**

116.2. (1) Sections 109 and 110, with necessary modifications, apply to and in relation to a task force.

### **Term of office**

(2) A person appointed to a task force shall hold office until the earlier of the following:

1. When the person's successor is appointed.
2. When the task force is wound up or ceases to exist.

### **Removal from office**

(3) Despite subsection (2), Convocation may at any time remove from a task force any member thereof.

### **Chairs and vice-chairs: application of provisions**

116.3. (1) Subsection 113 (1), with necessary modifications, applies to and in relation to a task force.

### **Term of office**

(2) The chair and vice-chairs of a task force hold office until the earlier of the following:

1. When their successor is appointed.
2. When the task force is wound up or ceases to exist.

### **Removal from office**

(3) Despite subsection (2), Convocation may at any time remove from office the chair or a vice-chair of the task force.

### **Vacancy**

(4) If the chair or a vice-chair of a task force for any reason is unable to act, subject to ratification by Convocation at its earliest opportunity, the Treasurer may appoint another member of the task force as the chair or a vice-chair.

### **Operation**

116.4. Sections 114 to 116, with necessary modifications, apply to and in relation to a task force.

## AUDIT AND FINANCE COMMITTEE

### **Mandate**

117. The mandate of the Audit and Finance Committee is,

- (a) to receive and review the interim and annual financial statements of the Society;
- (b) to recommend to Convocation the approval of the annual financial statements of the Society;
- (c) to receive the annual financial statements of the Lawyers' Professional Indemnity Company, LibraryCo Inc. and any other subsidiary of the Society;
- (d) to review the integrity and effectiveness of the financial operations, systems of internal control, reporting mechanisms and internal risk management of the Society;
- (e) to review with the public accountant and management of the Society the annual audit plan and results of the annual audit, including the audit scope;
- (f) to recommend a public accountant for appointment by Convocation as required under section 49 of By-Law 2 [Corporate Provisions];
- (g) to review the annual budgets of the Society and of Library Co., or any special or extraordinary budgets required for the purpose of the Society, to provide advice to Convocation thereon and to recommend approval of the annual budgets or any special or extraordinary budget item;
- (h) to review proposals for any significant budget amendments arising during a financial

year and to provide advice to Convocation thereon, including advice on the financial implications of the budget amendments;

- (i) to provide to Convocation policy guidance on the allocation of resources within the Society in keeping with the priorities set by Convocation;
- (j) to develop for Convocation's approval policy options on financial matters, including the Society's investment policy;
- (k) to ensure that the Society's programs have clearly articulated objectives and identifiable performance standards to assist in assessing their efficiency and effectiveness;
- (l) to review periodically the Society's programs, selected for review in consultation with the Chief Executive Officer, to determine compliance with program objectives and whether there is cost-effective use of funds;
- (m) to receive reports on the remuneration and expenses of the Treasurer and benchers;
- (n) to monitor compliance with policies adopted by Convocation, including any investment policy; and
- (o) to recommend to Convocation the execution of banking resolutions and other similar financial agreements.

### **Administrator of pension plan**

118. (1) The Audit and Finance Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

### **Oversight of group retirement savings plan**

(1.1) The Audit and Finance Committee shall oversee the retirement savings plan for the employees of the Society, also known as the group retirement savings plan, and shall perform any related administrative or governance responsibilities of the Society.

### **Powers**

(2) The performance of any duty, or the exercise of any power, by the Audit and Finance Committee under any Act relevant to its roles described in subsections (1) and (1.1) is not subject to the approval of Convocation.

## PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

### **Mandate**

119. The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval,

(a) policy options on the following matters:

(i) the classes of licence for the practise of law in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence,

(ii) the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing,

(iii) the professional competence of persons licensed to practise law in Ontario as barristers and solicitors including,

(A) the requirements to be met by such persons with respect to continuing legal education, and

(B) the review of the professional business of such persons,

(iv) the inter-jurisdictional mobility of licensees; and

(b) guidelines for professional competence applicable to persons licensed to practise law in Ontario as barristers and solicitors.

## PROFESSIONAL REGULATION COMMITTEE

### **Mandate**

120. The mandate of the Professional Regulation Committee is to develop for Convocation's approval policy options on all matters relating to,

(a) the regulation of licensees in respect of their conduct and capacity;

(b) policies and guidelines relating to sections 26.1 to 26.3 of the Act; and

(c) rules of professional conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors.

121. [Revoked.]

## EQUITY AND INDIGENOUS AFFAIRS COMMITTEE

### **Mandate**

122. The mandate of the Equity and Indigenous Affairs Committee is,

(a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples; and

(b) to consult with Indigenous, Francophone and other equality-seeking communities in the development of such policy options.

## STRATEGIC PLANNING AND ADVISORY COMMITTEE

### **Mandate**

123. The mandate of the Strategic Planning and Advisory Committee includes the following:

1. Developing for Convocation's approval, periodically reviewing and recommending changes to and reporting annually to Convocation on the status of Convocation's priorities for policy objectives.
2. Receiving from the Chief Executive Officer notification of significant legal proceedings in which the Society is involved that are managed out of the Office of General Counsel, providing required assistance and advice in the conduct of such legal proceedings and reporting to Convocation on such legal proceedings as necessary.
3. Considering requests made for the Society or the Federation of Law Societies of Canada to intervene in legal proceedings and recommending to Convocation, or in urgent circumstances deciding, whether the Society should intervene or support the Federation intervening in a legal proceeding.
4. Developing and maintaining working relationships with the Governments of Ontario and Canada, including their elected officials and public service, on initiatives affecting the public interest that are within the Society's jurisdiction.
5. Presenting the Society's legislative agenda to the Governments of Ontario and Canada.
6. Developing for Convocation's approval a long range and comprehensive public affairs

mandate and strategy.

124. [Revoked.]

## ACCESS TO JUSTICE COMMITTEE

### **Mandate**

125. The mandate of the Access to Justice Committee is to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario.

126. [Revoked.]

## TRIBUNAL COMMITTEE

### **Mandate**

127. (1) The mandate of the Tribunal Committee is to develop, in conjunction with the Chair of the Law Society Tribunal, for Convocation's approval policy options on all matters relating to the Law Society Tribunal, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

(2) Subject to the approval of Convocation, in conjunction with the Chair of the Law Society Tribunal, the Tribunal Committee may prepare rules of practice and procedure.

# PART VII

# PARALEGAL STANDING COMMITTEE

## INTERPRETATION

### **Interpretation: "Committee"**

128. In this Part, "Committee" means the Paralegal Standing Committee.

## ESTABLISHMENT OF COMMITTEE

### **Establishment of Committee**

129. There is hereby established a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French.

## JURISDICTION OF COMMITTEE

### **Jurisdiction of Committee**

130. The Committee is responsible for developing, for Convocation's approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.

2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.

3. The regulation of persons licensed to provide legal services in Ontario in respect of,

i. the handling of money and other property, and

ii. the keeping of financial records.

4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.

5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.

6. The professional competence of persons licensed to provide legal services in Ontario, including,

i. the requirements to be met by such persons with respect to continuing legal education, and

ii. the review of the professional business of such persons.

7. Guidelines for professional competence applicable to persons licensed to provide legal

services in Ontario.

8. The provision of legal services through professional corporations.

9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.

10. The election of five persons who are licensed to provide legal services in Ontario as benchers.

11. The appointment of the chair of the Committee.

## CHAIR

### **Definitions**

130.1. In sections 130.2 to 130.12,

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of those sections;

“member” means member of the Committee.

### **Appointment of chair**

130.2. Immediately after it elects a chair in accordance with sections 130.3 to 130.12, the Committee shall appoint the member elected as its chair.

### **Day of the election of chair**

130.3. (1) There shall be an election of chair by the Committee,

(a) on the day of the first regular meeting of the Committee in September after an election of benchers licensed to provide legal services under Part I.1 of this By-Law; and

(b) on every anniversary of the day mentioned in clause (a), until the next election of benchers licensed to provide legal services under Part I.1 of this By-Law.

### **Election as first matter of business**

(2) The election of chair shall be the first matter of business for the Committee on the day of the election of chair.

### **Elections Officer**

130.4. The election of chair shall be conducted by the Elections Officer.

## Who may be candidate

130.5. (1) A person may be a candidate in the election of chair if the person meets all of the following requirements:

1. The person was elected as bencher licensed to provide legal services in Ontario under Part I.1 of this By-Law and took office as a member pursuant to this Part.
2. The person is nominated by at least one member in accordance with subsection (2).
3. The person consents to the nomination.

## Nomination requirements

(2) The nomination of a person as a candidate in the election of chair must,

- (a) be in writing;
- (b) be signed by the person being nominated, to indicate their consent to the nomination;
- (c) be signed by the member or members of the Committee nominating the person as a candidate; and
- (d) be submitted to the Elections Officer by the time specified by the Elections Officer.

## Election by acclamation

130.6. If after the time specified by the Elections Officer for the submission of nominations there is only one candidate in the election of chair, that candidate shall be elected as chair.

## Poll: election of chair

130.7. If after the time specified by the Elections Officer for the submission of nominations there are two or more candidates in the election of chair, a poll shall be conducted to elect the chair.

## Elections Officer to establish procedures

130.8. For a poll required under sections 130.7 and 130.12, the Elections Officer shall establish the procedures by which a member may vote that shall be,

- (a) such that the anonymity of a member and the secrecy of the member's votes are preserved; and
- (b) published for members prior to the opening of the poll.

## **Right to vote**

130.9. (1) Every person who is a member on the day of the election of chair is entitled to vote on any ballot in a poll required under section 130.7 or subsection 130.12 (1) if the member is in attendance at the meeting of the Committee at the time of the ballot.

## **Casting vote**

(2) A member of the Committee shall cast their vote in a poll required under section 130.7 or subsection 130.12 (1) in accordance with the procedures established by the Elections Officer under section 130.8.

## **Vote for one candidate only**

130.10. (1) Each member voting on a ballot in a poll required under section 130.7 shall vote for one candidate only.

## **Counting votes**

(2) After all members entitled to vote on any ballot in a poll required under section 130.7 have voted or declined to vote, the Elections Officer shall cause the votes cast for each candidate to be counted.

## **Chair elected by majority**

(3) The chair shall be elected by a majority of votes cast.

## **No majority**

(4) If no candidate receives a majority of votes cast on the first ballot in a poll required under section 130.7, subject to section 130.11, a second ballot shall be conducted to elect the chair.

## **Second ballot required**

(5) If a second ballot is required under subsection (4), the candidate on the previous ballot who received the least number of votes shall be removed as a candidate in the election of chair.

## **Application of subs. (4) and (5) to second and further ballots**

(6) Subsections (4) and (5) apply to the second ballot and, with necessary modifications, any further ballots in the election of chair.

## **Casting tie-breaking vote**

130.11. If at any time an equal number of votes is cast for two candidates when there are not more than two candidates on the ballot and an additional vote would entitle one of the candidates to be elected as chair, the vice-chair of the Committee shall, in full view of the Elections Officer, randomly select one of the candidates and cast an additional vote for that candidate.

## **Poll to select candidate or candidates to remain in election**

130.12. (1) If an equal number of votes is cast for two or more candidates on any ballot in a poll required under section 130.7 and an additional vote for one or more but not all of them would entitle one or more of them to remain in the election of chair, a poll shall be conducted to select the candidate or candidates to remain in the election.

## **Vote for candidate or candidates to remain in election**

(2) A member voting on a ballot in a poll required under subsection (1) shall vote for the candidate or candidates, but not for all the candidates, whom the member wishes to remain in the election of chair.

## **Counting votes**

(3) After all members voting on a ballot in a poll required under subsection (1) have voted or declined to vote on a ballot, the Elections Officer shall cause the votes cast for each candidate to be counted.

## **Removal of candidate**

(4) The candidate who receives the least number of votes in a poll required under subsection (1) shall be removed as a candidate in the election of chair.

## **Further polls**

(5) If two or more candidates in a poll required under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted with the names of those candidates listed on the ballot until only one candidate from all the candidates included in the initial poll conducted under this section is removed as a candidate in the election of chair.

## **Application of subs. (2), (3) and (4)**

(6) Subsections (2), (3) and (4) apply, with necessary modifications, to a further poll required under subsection (5).

## **Taking office**

130.13. (1) A person appointed as chair shall take office immediately after their appointment and shall remain in office until their successor takes office.

## **Ceasing to be chair**

(2) Despite subsection (1), a person ceases to be the chair of the Committee if the person ceases to be an elected benchers licensed to provide legal services in Ontario.

## **Vacancy in office**

(3) If the chair resigns, is removed from office or for any reason is unable to act during their term in office, or if there is for any other reason a vacancy in the office of chair of the Committee other than in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the Committee shall appoint a new chair whom it elects as soon as is practicable.

## **Application of provisions**

(4) Sections 130.1, 130.2 and sections 130.4 to 130.12 apply to the appointment and election of chair under subsection (3), except that in the application of section 130.2, the reference to “sections 130.3 to 130.12” shall be read as a reference to “sections 130.4 to 130.12”.

## **Acting chair**

(5) If the chair of the Committee for any reason is temporarily unable to perform the duties or exercise the powers of the chair during their term in office, or if there is a vacancy in the office of the chair of the Committee other than in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the vice-chair shall perform the duties and exercise the powers of the chair until,

- (a) the chair is able to perform the duties or exercise the powers of the chair; or
- (b) a new chair is appointed under subsection (3).

## **Acting chair: election year**

(6) If there is a vacancy in the office of chair of the Committee in the period between the completion of an election of benchers under Part I.1 of this By-Law and the first regular meeting of Convocation in September, the vice-chair shall perform the duties and exercise the powers of the chair until a new chair is appointed under section 130.2.

## VICE-CHAIR

### **Appointment by Convocation**

130.14. (1) Convocation shall appoint as vice-chair of the Committee a member of the Committee who is,

(a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or

(b) a lay bencher.

### **Term of office**

(2) A person appointed as vice-chair of the Committee shall take office immediately after his or her appointment and shall remain in office until his or her successor takes office.

### **Appointment at pleasure**

(3) Despite subsection (2), the vice-chair of the Committee holds office at the pleasure of Convocation.

### **Vacancy**

(4) If there is a vacancy in the office of vice-chair or the vice-chair of the Committee for any reason is unable to act, the Treasurer may appoint as vice-chair of the Committee another member who is,

(a) an elected bencher who is licensed to practise law in Ontario as a barrister and solicitor; or

(b) a lay bencher.

### **Appointment by Treasurer subject to ratification**

(5) The appointment of a member of the Committee as vice-chair of the Committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

## OPERATION OF COMMITTEE

### **Term of office of Committee members appointed by Convocation**

131. (1) Subject to subsection (2), a person who is appointed as a member of the Committee by Convocation shall continue to be a member of the Committee until his or

her successor is appointed.

### **Removal from Committee**

(2) Convocation may remove from the Committee any person that it has appointed as a member of the Committee if the person fails to attend three consecutive meetings of the Committee.

### **Term of office of Committee members who are paralegal benchers**

(3) The five benchers elected in an election of benchers under Part I.1 of this By-law shall take office as members of the Committee at the first regular meeting of the Committee following the election and, subject to any by-law that provides for the removal of benchers from Convocation, shall remain in office until their successors take office.

### **Quorum**

132. Four members of the Committee constitute a quorum for the transaction of business.

### **Meetings by telephone conference call, etc.**

133. The Committee may meet to transact business by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

### **Right to attend meeting**

134. (1) Subject to subsection (2), no person other than a member of the Committee may attend a meeting of the Committee.

### **Same**

(2) The following persons who are not members of the Committee may attend a meeting of the Committee:

1. A bencher.
2. An officer or employee of the Society.
3. A person not mentioned in paragraph 1 or 2 with the permission of the Committee.

### **Voting rights**

135. Only members of the Committee may vote at meetings of the Committee.

## GENERAL

### **Non-application of Part VI**

136. The provisions of Part VI do not apply with respect to the Committee.

## **PART VIII**

# **COMMENCEMENT**

### **Commencement of Part VI**

137. Part VI comes into force on May 25, 2007.

This is **Exhibit D** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Report to Convocation  
November 22, 2007**

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**Priority Planning Committee**

**Committee Members**  
**Gavin MacKenzie (Chair)**  
**Tom Heintzman (Vice-chair)**  
**Carole Curtis**  
**Derry Millar**  
**Heather Ross**

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Katherine Corrick 416.947.5210)**

**COMMITTEE PROCESS**

1. Following the Planning Session held in Huntsville from September 23 – 25, 2007, the Committee met on October 23, 2007. Committee members Gavin MacKenzie (chair), Tom Heintzman (vice-chair), and Derry Millar attended. Malcolm Heins and Katherine Corrick also attended.

**FOR DECISION**

**CONVOCATION'S PRIORITY PLANNING – NEXT STEPS**

**MOTION**

**2. That Convocation approve the following nine priorities as Convocation's priorities for the next four years:**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• <b>Discipline</b></li> <li>• <b>Access to justice</b></li> <li>• <b>Regulation of paralegals</b></li> <li>• <b>Small firms and sole practitioners</b></li> <li>• <b>Governance structure</b></li> </ul> | <ul style="list-style-type: none"> <li>• <b>Strategic communications</b></li> <li>• <b>Maintenance of high standards and ensuring effective competence</b></li> <li>• <b>Diversity within the profession</b></li> <li>• <b>Licensing and accreditation</b></li> </ul> |
|--|---|

**3. That Convocation approve the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:**

- a. the Committee will review the priorities as determined by Convocation;**
- b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve;**
- c. the Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration; and**
- d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.**

## Introduction and Background

4. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:
  - a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
  - b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,
    - i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
    - ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
    - iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
    - iv. The mandate of the Committee is to
      - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
      - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
      - C. report annually to Convocation on the status of Convocation's priorities.
  
5. The Priority Planning Committee met over the summer to organize the Planning Session that was held in Huntsville on September 23 – 25, 2007. In advance of the Planning Session, a survey was sent to all (73) benchers – elected, appointed, paralegal and *ex officio*. The survey sought the views of benchers on the mandate of the Law Society, and the priorities the Law Society should focus on. Fifteen benchers responded – 13 elected benchers, one life bencher and one response was sent anonymously.
  
6. At the Planning Session, benchers identified nine priority areas that the Law Society should focus on for the next four years. The nine priority areas identified are as follows:
  - Discipline
  - Access to justice

- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation

### **Priority Setting**

7. At its meeting on October 23, 2007, the Committee reviewed the nine priority areas and discussed a process for moving forward.
8. The Bencher Planning Session was an excellent opportunity for benchers to discuss the important issues facing the Law Society, and to articulate what the most important issues are that the Law Society should focus on for the next four years. Priority setting, however, is the responsibility of Convocation. For this reason, the Committee is of the view that Convocation must determine whether the priorities identified at the Planning Session are Convocation's priorities.

### **Next Steps**

9. Once Convocation determines the priorities, the Committee proposes the following process to move the priorities forward within the 2007 – 2011 bencher term:
  - a. the Committee will review the priorities as determined by Convocation;
  - b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve;
  - c. the Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration; and
  - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.

10. The Committee does not expect that every priority will require significant study or change. Convocation already has initiatives underway with respect to some of the priorities it sets.
11. Similarly, the Committee recognizes that benchers may identify areas or issues as priorities for a variety of reasons. The identification of a priority does not necessarily signal that the area requires improvement. It may be an acknowledgement that the area is a core function of the Law Society and must remain an important focus of the organization for the next four years.
12. The Committee will report its findings and recommendations to Convocation during the first half of 2008.

This is **Exhibit E** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



## **Report to Convocation December 9, 2011**

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### **Priority Planning Committee**

#### **Committee Members**

**Laurie H. Pawlitza (Chair)**

**Marion Boyd**

**Christopher Bredt**

**Thomas Conway**

**Michelle Haigh**

**Carol Hartman**

**Janet Minor**

**Julian Porter**

**Paul Schabas**

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Jim Varro 416-947-3434)**

## COMMITTEE PROCESS

1. Following the Bencher Planning Session held in Hockley Valley from September 25 – 27, 2011, the Committee met on October 26 and November 23, 2011. In attendance on October 26 were Laurie Pawlitza (Treasurer and Chair), Marion Boyd, Christopher Bredt, Thomas Conway, Michelle Haigh, Carol Hartman, Janet Minor (by telephone) and Julian Porter. In attendance on November 23 were Laurie Pawlitza (Treasurer and Chair), Marion Boyd (by telephone), Christopher Bredt, Thomas Conway, Janet Minor, Julian Porter and Paul Schabas. Malcolm Heins, Jim Varro and Sheena Weir also attended both meetings.

**FOR DECISION****CONVOCATION'S PRIORITY PLANNING – NEXT STEPS****MOTION**

- 2. That Convocation:**
  - a. approve the six priorities set out at paragraph 15 of this Report as Convocation's priorities for the next four years; and**
  - b. affirm that effective communication and outreach and Convocation governance effectiveness are ongoing objectives that must be diligently pursued to enhance the Law Society's effectiveness as a regulator.**
  
- 3. That Convocation affirm the following process for the Priority Planning Committee to use to move forward on the priorities Convocation sets:**
  - a. the Committee will review the priorities as determined by Convocation;**
  - b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers and elected paralegals who deal with the priority areas in the committees on which they serve;**
  - c. the Committee will establish workplans in consultation with the Chief Executive Officer and senior managers and identify goals to be achieved within each of the priority areas for Convocation's consideration; and**
  - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2012.**

**INTRODUCTION AND BACKGROUND**

4. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:

- a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
  - b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,
    - i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
    - ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
    - iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
    - iv. The mandate of the Committee is to
      - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
      - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
      - C. report annually to Convocation on the status of Convocation's priorities.
5. This past spring and summer, the Priority Planning Committee ("the Committee"), in consultation with the Chief Executive Officer (CEO) and the Director, Policy and Tribunals, organized the Bencher Planning Session ("the Session") that was held in Hockley Valley on September 25 – 27, 2011.
  6. In advance of the Session, a survey was sent to all benchers – elected, appointed, paralegal and *ex officio* – and to the three paralegal members of the Paralegal Standing Committee. The survey sought views on the mandate of the Law Society and the priorities on which the Law Society should focus. Thirty-six people responded – 26 elected benchers, one appointed bencher, four paralegal benchers/paralegals and five *ex officio* benchers.
  7. At one of its summer meetings, the Committee also received information through the CEO about an issue that was the subject of review at the operational level. The issue

related to business structures for the delivery of legal services. The Committee acknowledged that this issue should be included in the priority planning process.

8. At the Session, attendees identified five priority areas and focused on two other priority areas linked to the effectiveness with which the Law Society carries out its mandate.

These seven areas are:

- Access to Justice
- Competency and professional standards
- Equity, diversity and retention
- Support and mentoring for members
- Effective communication and outreach
- Convocation governance effectiveness
- Tribunals issues

### **PRIORITY SETTING**

9. The Session gave benchers and elected paralegals an excellent opportunity to discuss the important issues facing the Law Society, including the environmental context in which they exist, and to articulate what the most important issues are that the Law Society should focus on for the next four years.
10. At its meetings on October 26 and November 23, 2011, the Committee reviewed and discussed the seven priority areas. It also considered the process to be applied in defining the scope of the priorities, determining the work that must be done and moving forward to implementation.
11. The Committee recognizes that priority setting is Convocation's responsibility and for this reason, the Committee believes that Convocation must determine whether the priorities identified are Convocation's priorities. In this respect, the Committee's responsibilities include presenting the information on priorities in a rational, understandable way for Convocation's decision.

12. In preparing the information in this report, the Committee understands that every priority or every aspect of a priority may not require significant study or change. Convocation already has initiatives underway with respect to some of the priorities it has previously set that relate to those identified during the Session.
13. Similarly, the Committee recognizes that benchers may identify areas or issues as priorities for a variety of reasons. The identification of a priority does not necessarily signal that the area requires improvement. It may be an acknowledgement that the area is a core function of the Law Society and must remain an important focus of the organization for the next four years.

#### **DEFINING THE PRIORITIES**

14. In considering the list of priority areas resulting from the Session and information provided to the Committee this past summer, the Committee took the following approach:
  - a. The nature and scope of the priority areas were examined to determine if the list could be rationalized to minimize overlap and create cohesion, and whether other priorities logically flowing from the identified issues should be highlighted for priority planning;
  - b. The priority areas relating to processes, such as communications and Convocation governance effectiveness, were examined to determine if they could be accepted as ongoing objectives that transcend identification as specific priorities for the bencher term; and
  - c. The process for monitoring the progress on a priority was discussed in terms of the need for measurable accountabilities and thresholds.
15. Based on this approach as applied to the issues identified at the Session, the Committee determined that the following, which as between them are not prioritized, represent the priorities that Convocation should consider for approval.

## **Priorities Resulting from the Session**

### **1. ACCESS TO JUSTICE**

The Law Society in regulating the legal profession is mandated by the governing legislation to act so as to facilitate access to justice for the people of Ontario. Access to justice generally and access as it relates to family law issues are two aspects of this priority. Addressing this priority will include review and consideration of:

- a. The Law Society's role, including resources, information/communications and leadership;
- b. Facilitating access to legal and administrative services, including publicly-accessible information, legal referral services, legal aid, alternative dispute resolution, legal expense insurance and *pro bono* services, including limited scope retainers;
- c. Licensing options as a means to increase access to justice; and
- d. Court and procedural reforms.

### **2. COMPETENCE AND PROFESSIONAL STANDARDS**

Competence and professional standards are the foundations of the Law Society's regulatory authority. Ongoing review of competency and standards is necessary for the Law Society to fulfill its regulatory responsibilities in a changing legal landscape. As a core objective of the Law Society, the focus on competence extends to various forms of support to licensees with the end goal of ensuring and maintaining competence within the professions. This effort is both prophylactic and remedial. Addressing this priority will include review and consideration of:

- a. Entry level competencies;
- b. Competence in the early years of practice;
- c. Competencies by areas of practice;
- d. Licensing options as a means to promote competence;
- e. Measurable and enforceable practice standards;
- f. Mentoring and support for licensees, including mentoring programs, advisory

- services and practice supports;
- g. Technological applications for learning, assessment and assistance; and
- h. National standards.

### **3. EQUITY, DIVERSITY AND RETENTION**

The Law Society promotes equity and diversity and seeks to integrate these values and principles in the professions. Through Equity Initiatives, it creates model policies, services, programs and procedures and thus is a resource for members of the public and the professions. The Law Society is a leader in the profession in this respect and is committed to continuing this important work. Addressing this priority will include review and consideration of:

- a. Processes and initiatives to ensure that equity principles are observed and promoted;
- b. The development of programs for other equity-seeking groups, using the Justicia model as a means to facilitate these initiatives; and
- c. Communications strategies for promoting equity and diversity.

### **4. TRIBUNAL ISSUES**

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, steps need to be taken to enhance the way in which the Law Society delivers its regulatory mandate at the tribunal level. Addressing this priority will include review and consideration of:

- a. Adjudicator training;
- b. Quality of adjudication;
- c. Use of technology in the hearing process;
- d. Enhancements to procedures and processes to improve effectiveness and efficiency; and
- e. The appropriate model for the hearing process.

As reported to Convocation in October 2011, the Tribunals Committee has created working groups that are developing policy options for consideration by the Committee, and through the Committee for Convocation's consideration, on issues related to the hearings process. The issues identified above will logically flow into these initiatives.

## **Other Identified Priorities**

### **5. BUSINESS STRUCTURES / LAW FIRM FINANCING**

Since the mid-1990s, the Law Society has studied developments in the structures available to lawyers for delivering legal services. It has implemented regulatory schemes for professional corporations, MDPs and LLPs. These are in addition to the "traditional" partnership and sole practice vehicles for legal services. The Law Society also reviewed the feasibility of other structures, such as publicly-traded law firms, in 2005. The thinking globally on alternative legal services structures has been anything but static, and changes have occurred in other jurisdictions that may impact the Canadian legal marketplace. As a regulator, the Law Society needs to consider the implications, and should prioritize its review. As noted earlier, an initial review at the staff level has begun. The issues include:

- a. How to structure a regulatory scheme that may involve new methods of oversight to permit a more flexible delivery regime and alternate business structures;
- b. How licensees maintain independence and other core principles within new business structures;
- c. Ensuring competence, quality of work and value to the client;
- d. Transparency and the client's understanding of who is providing the legal services and addressing possible conflicts of interest in alternate delivery models;
- e. Balancing more accessible legal services potentially at a lower cost with accountabilities that maintain robust and meaningful regulation; and
- f. Financing of law firms and alternate business structures.

## **6. PROFESSIONAL REGULATION**

Two of the priority areas noted above are related to the professional regulation process for investigation of complaints and discipline. Competence and professional standards intersects with the scope of regulation. The tribunals process is impacted by what occurs earlier in the regulatory process that leads to disciplinary action. These overlapping issues should be considered collectively rather than in isolation, and compel a holistic approach to priority review and planning. Issues relevant to professional regulation in this context include:

- a. Discipline diversion;
- b. Exploration of initiatives aimed at reducing the number of complaints arising from certain areas of legal practice;
- c. Expanding matters for which a single adjudicator hearing can be utilized;
- d. Exploring “paper” or document-based hearings (i.e. written hearings);
- e. Enhancing case management, including time limits, disclosure obligations and issue identification as it relates to the hearing process;
- f. Area-specific regulation, flowing from defining, establishing and enforcing practice standards in specific areas of law.

### **Ongoing Obligations – Convocation Governance Effectiveness and Effective Communications**

16. The Committee proposes that the issues relating to Convocation governance effectiveness and effective communications and outreach be considered ongoing objectives that the Law Society must diligently pursue as a matter of course. The Committee believes that the Law Society’s effectiveness as a regulator is directly linked to the efficacy of its processes and procedures, to its ability to evaluate the outcomes of its programs and to the scope and integrity of its communications.

### **Next Steps**

17. Once Convocation determines the priorities, the Committee plans to follow the process below to move the priorities forward within the 2011 – 2015 bench term:

- a. the Committee will review the priorities as determined by Convocation;
  - b. the Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers and elected paralegals, as the case may be, who deal with the priority areas in the committees on which they serve;
  - c. the Committee will establish work plans in consultation with the CEO and senior managers and identify goals to be achieved within each of the priority areas for Convocation's consideration; and
  - d. the Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2012.
18. The process outlined in paragraph 17.b. has already begun. At its October 26 meeting, the Committee received from the CEO an outline of an initial assessment of the priorities based on information from senior management in the Law Society's operations.
19. The Committee will report its findings and recommendations to Convocation during the first half of 2012.

This is **Exhibit F** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

MINUTES OF CONVOCATION

Tuesday, 21<sup>st</sup> August, 2012  
9:00 a.m.  
Via teleconference

PRESENT:

The Treasurer (Thomas G. Conway, in person), Backhouse, Boyd, Callaghan, Campion, Chilcott, Daud, Doyle, Earnshaw (in person), Epstein, Evans, Falconer, Furlong, Goldblatt, Gottlieb, Hare (in person), Hartman, Horvat, Krishna, Leiper, Lerner, Manes, Marmur, McDowell, McGrath, Matheson, Mercer, Minor, Murchie, Murphy, Porter, Potter, Pustina, Rabinovitch, Richardson, Richer, Rothstein, Sandler, Scarfone, Schabas, Silverstein, C. Strosberg, H. Strosberg, Sullivan, Swaye, Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

.....

The Treasurer welcomed everyone to Convocation.

TREASURER'S REPORT TO CONVOCATION

Re: Composition of the Compensation Committee

The Treasurer presented the report.

MOTION – COMMITTEE AND OTHER APPOINTMENTS

It was moved by Ms Doyle, seconded by Ms Murchie, that:

- the attached list of appointments under Schedule A be approved;
- Gavin MacKenzie be removed from the Hearing Panel at his own request;
- Convocation recommend that Alan Silverstein be nominated to the LAWPRO Board of Directors;
- James Scarfone be appointed to the committee of benchers established under section 37 of By-Law 7 [Business Entities].

**THE LAW SOCIETY OF UPPER CANADA**MOTION TO BE MOVED AT THE MEETING OF SPECIAL CONVOCATION ON AUGUST 21, 2012

MOVED BY:           Adriana Doyle

SECONDED BY:       Barbara Murchie

THAT the attached list of appointments under **Schedule A** be approved.

THAT Gavin MacKenzie be removed from the Hearing Panel at his own request.

THAT Convocation recommend that Alan Silverstein be nominated to the LAWPRO Board of Directors.

THAT James Scarfone be appointed to the committee of benchers established under section 37 of By-Law 7 [Business Entities].\*

\*By-Law 7 authorizes Convocation to appoint a committee of benchers to consider applications for review and appeals made under the By-Law in circumstances where certain Law Society approvals are required and the Law Society's approval is not granted.

**SCHEDULE A**  
**COMMITTEE, WORKING GROUP AND EXTERNAL/OTHER**  
**APPOINTMENTS**  
**August 21, 2012**

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**COMMITTEES**

**Access to Justice**

**Marion Boyd (Co-Chair)**  
**Michelle Haigh (Co-Chair)**  
**Michael Lerner (Vice-Chair)**  
Aslam Daud  
Mary Louise Dickson  
Robert Evans  
Susan Hare  
George Hunter  
Virginia MacLean  
Susan McGrath  
Janet Minor  
Jack Rabinovitch  
Susan Richer  
Baljit Sikand

**Appeal Panel**

**Mark Sandler (Chair)**  
**Christopher Bredt (Vice-Chair)**  
Marion Boyd  
Cathy Corsetti  
Paul Dray  
Seymour Epstein  
Lee Ferrier  
Howard Goldblatt  
Janet Leiper  
Susan McGrath  
Malcolm Mercer  
Derry Millar  
Janet Minor  
Judith Potter  
Linda Rothstein  
Clayton Ruby  
Paul Schabas  
Roger Yachetti

**Articling Task Force**

**Thomas Conway (Chair)**

Raj Anand  
Adriana Doyle  
Jacqueline Horvat  
Vern Krishna  
Dow Marmur  
Wendy Matheson  
Malcolm Mercer  
Barbara Murchie  
Laurie Pawlitza  
Paul Schabas  
Joseph Sullivan  
Peter Wardle

**Audit & Finance**

**Christopher Bredt (Co-Chair)**

**Carol Hartman (Co-Chair)**

**John Callaghan (Vice-Chair)**

Cathy Corsetti  
Adriana Doyle  
Susan Elliott  
Seymour Epstein  
Lawrence Eustace  
Vern Krishna  
Janet Leiper  
Judith Potter  
James Scarfone  
Alan Silverstein  
Catherine Strosberg  
Robert Wadden  
Peter Wardle

**Compensation**

**Thomas Conway (Chair)**

Christopher Bredt  
John Callaghan  
Carol Hartman  
Catherine Strosberg

**Compensation Fund**

**Peter Wardle (Chair)**

Seymour Epstein  
Michelle Haigh  
Jack Rabinovitch  
Heather Ross

**Equity and Aboriginal Issues**

**Howard Goldblatt (Chair)**  
**Julian Falconer (Vice-Chair)**  
**Susan Hare (Vice-Chair)**  
Raj Anand  
Constance Backhouse  
Mary Louise Dickson  
Michelle Haigh  
Janet Minor  
Judith Potter  
Susan Richer  
Paul Schabas  
Baljit Sikand  
Beth Symes

**Government Relations**

**William McDowell (Co-Chair)**  
**Julian Porter (Co-Chair)**  
Marion Boyd  
John Callaghan  
Susan Elliott  
Michelle Haigh  
Carol Hartman  
Jacqueline Horvat  
Susan McGrath  
Barbara Murchie  
Linda Rothstein  
James Scarfone  
Joseph Sullivan

**Heritage**

**Constance Backhouse (Chair)**  
Bob Aaron  
Patrick Furlong  
Gary L. Gottlieb  
Virginia MacLean  
Nicholas Pustina  
Sydney Robins

**Inter-Jurisdictional Mobility**

**Janet Minor (Chair)**  
Jacqueline Horvat  
Wendy Matheson  
William McDowell  
Malcolm Mercer  
Joseph Sullivan

**Law Society Awards**

**Thomas Conway (Chair)**

Adriana Doyle  
Carol Hartman  
William McDowell  
Catherine Strosberg  
Joseph Sullivan

**Law Society LL.D. Advisory**

**Thomas Conway (Chair)**

Adriana Doyle  
Carol Hartman  
William McDowell  
Catherine Strosberg  
Joseph Sullivan

**Litigation**

**John Campion (Chair)**

Jack Braithwaite  
John Callaghan  
Jennifer Halajian  
Michael Lerner  
Wendy Matheson  
William McDowell  
Julian Porter  
Linda Rothstein  
Paul Schabas  
Harvey Strosberg  
Beth Symes

**Paralegal Standing**

**Cathy Corsetti (Chair)<sup>1</sup>**

**Susan McGrath (Vice-Chair)**

Marion Boyd  
Robert Burd  
Paul Dray  
Ross Earnshaw  
Robert Evans  
Michelle Haigh  
Jacqueline Horvat  
Dow Marmor  
Malcolm Mercer  
Kenneth Mitchell  
Jan Richardson

---

<sup>1</sup> Cathy Corsetti was elected chair of the Paralegal Standing Committee pursuant to By-Law 3 on April 12, 2012.

**Priority Planning**

**Thomas Conway (Chair)**

Raj Anand  
Marion Boyd  
Chris Bredt  
Cathy Corsetti  
Howard Goldblatt  
Michelle Haigh  
Carol Hartman  
William McDowell  
Susan McGrath  
Malcolm Mercer  
Janet Minor  
Julian Porter

**Proceedings Authorization**

**Paul Schabas (Chair)**

Michelle Haigh  
Linda Rothstein  
Alan Silverstein  
Peter Wardle

**Professional Development and Competence**

**Janet Minor (Chair)**

**Wendy Matheson (Vice-Chair)**

**Barbara Murchie (Vice-Chair)**

**Alan Silverstein (Vice-Chair)**

Raj Anand  
Jack Braithwaite  
Robert Burd  
Mary Louise Dickson  
Adriana Doyle  
Ross Earnshaw  
Larry Eustace  
Jacqueline Horvat  
Vern Krishna  
Michael Lerner  
Dow Marmor  
Judith Potter  
Nicholas Pustina  
Jack Rabinovitch  
Joseph Sullivan  
Gerry Swaye  
Bradley Wright

**Professional Regulation**

**William McDowell (Chair)**  
**Malcolm Mercer (Vice-Chair)**  
**Susan Richer (Vice-Chair)**  
**Paul Schabas (Vice-Chair)**

John Champion  
Robert Evans  
Alan Gold  
Janet Leiper  
Kenneth Mitchell  
Ross Murray  
Jan Richardson  
Linda Rothstein  
Peter Wardle  
Roger Yachetti

**Tribunals**

**Raj Anand (Chair)**  
**Adriana Doyle (Vice-Chair)**

Larry Banack  
Christopher Bredt  
Aslam Daud  
Paul Dray  
Ross Earnshaw  
Lee Ferrier  
Alan Gold  
Howard Goldblatt  
Jennifer Halajian  
Virginia MacLean  
Dow Marmor  
Wendy Matheson  
Linda Rothstein  
Mark Sandler  
James Scarfone  
Robert Wadden

**WORKING GROUPS****Alternative Business Structures**

**Susan McGrath (Co-Chair)**  
**Malcolm Mercer (Co-Chair)**

Susan Elliott  
Kenneth Mitchell  
James Scarfone  
Baljit Sikand  
Alan Silverstein  
Harvey Strosberg  
Peter Wardle

**Challenges Faced By Racialized Licensees**

**Raj Anand (Chair)**

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

**Retention of Women**

**Thomas Conway (Co-Chair)**

**Laurie Pawlitza (Co-Chair)**

Kirby Chown  
Wendy Matheson  
Barbara Murchie  
Megan Shortread  
Bradley Smith

**EXTERNAL/OTHER APPOINTMENTS**

**Federation of Law Societies of Canada**

Laurie Pawlitza

**Law Society Foundation (nominations to the Board of Trustees)**

Marion Boyd  
Ian Hull  
Michael Lerner  
Derry Millar  
Catherine Strosberg

Carried

CONVOCATION ROSE AT 9:19 A.M.

Confirmed in Convocation this 27<sup>th</sup> day of September, 2012.

Treasurer

This is **Exhibit G** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



Tab 6

## Report to Convocation October 30, 2014

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### 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**

Janet Leiper, 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

Report prepared by the Equity Initiatives Department –  
Josée Bouchard, Director of Equity and Ekua Quansah, 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:**

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

Tel: 416-947-3984  
or 1-800-668-7380 ext. 3984  
Fax: 416-947-3983  
Email: [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca)

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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.<sup>1</sup>

This consultation paper is designed to engage the profession in the consideration of strategies to address the challenges faced by racialized licensees.<sup>2</sup> 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

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<sup>1</sup> 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](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf).

<sup>2</sup> 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>.

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 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 lawyers<sup>3</sup>, representing 9.2% of the legal profession in 2001 and 11.5% in 2006.<sup>4</sup> The Law Society's Statistical Snapshots of Lawyers and Paralegals showed that by 2010, 17% of lawyers and 28% of paralegals were racialized.<sup>5</sup> 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.<sup>6</sup>

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;

---

<sup>3</sup> 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>.

<sup>4</sup> 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](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf).

<sup>5</sup> 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>.

<sup>6</sup> 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>.

- 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.

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).<sup>7</sup> 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

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<sup>7</sup> 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.

have an impact on the reputation of the legal professions, access to justice, and the quality of services provided.<sup>8</sup>

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.

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

## 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.<sup>9</sup>

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.<sup>10</sup>

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<sup>9</sup> *Ibid.* at x. See also the Community Liaison Report and the Informal Engagement Report.

<sup>10</sup> *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.<sup>11</sup>

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 respondents<sup>12</sup> 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.<sup>13</sup>

#### 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.

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

<sup>12</sup> 41% of racialized respondents.

<sup>13</sup> 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.<sup>14</sup>

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 activities<sup>15</sup> and their social or political views were barriers to entry into the profession<sup>16</sup> — and even more importantly, barriers to advancement.<sup>17</sup>

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.<sup>18</sup>

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.

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<sup>14</sup> Stratcom Report, *supra* note 8 at 13 – 14.

<sup>15</sup> 18% of racialized respondents compared to just 5% of their non-racialized colleagues.

<sup>16</sup> 12% of racialized respondents compared to 5% of their non-racialized colleagues.

<sup>17</sup> 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.

<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> A majority of racialized respondents said that not having the same cultural background as one's colleagues had disadvantaged their careers.<sup>21</sup>

The survey results also showed that a higher proportion of non-racialized<sup>22</sup> respondents, compared to racialized respondents<sup>23</sup>, 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.<sup>24</sup> A slightly higher percentage of racialized respondents indicated that social networks had played an important role in their career.<sup>25</sup>

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

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<sup>19</sup> Stratcom Report, *supra* note 8 at 8.

<sup>20</sup> 68% of racialized respondents.

<sup>21</sup> 57% of racialized respondents.

<sup>22</sup> 79% of non-racialized respondents.

<sup>23</sup> 67% of racialized respondents.

<sup>24</sup> 69% of non-racialized respondents compared to 62% of racialized.

<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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 women<sup>28</sup> 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.<sup>29</sup>

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<sup>26</sup> Stratcom Report, *supra* note 8 at 14.

<sup>27</sup> *Ibid.* at 14.

<sup>28</sup> Between one quarter and two fifths.

<sup>29</sup> 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.<sup>30</sup>

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

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

<sup>30</sup> 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.<sup>31</sup>

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

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

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 placement<sup>42</sup> and a majority

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

<sup>32</sup> 24% of racialized respondents and 8% of non-racialized respondents.

<sup>33</sup> 19% of racialized respondents and 8% of non-racialized respondents.

<sup>34</sup> 17% of racialized respondents and 4% of non-racialized respondents.

<sup>35</sup> 15% of racialized respondents and 8% of non-racialized respondents.

<sup>36</sup> 12% of racialized respondents compared to just 3% of non-racialized respondents.

<sup>37</sup> 11% of racialized respondents compared to 6% of non-racialized respondents.

<sup>38</sup> 59% of racialized respondents compared to 78% of non-racialized respondents

<sup>39</sup> 43% of racialized respondents compared to 53% of non-racialized respondents

<sup>40</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>41</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>42</sup> 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.<sup>43</sup>

#### 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.<sup>44</sup> However, the barrier was more significant for racialized and non-racialized women than for men.<sup>45</sup>

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;

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<sup>43</sup> 52% of racialized respondents compared to 25% of non-racialized respondents

<sup>44</sup> 25% of racialized respondents and 23% for non-racialized respondents.

<sup>45</sup> 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 networks<sup>46</sup> and racial stereotyping by clients<sup>47</sup> 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 respondents<sup>48</sup> 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.

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<sup>46</sup> 78% of racialized and 63% of non-racialized respondents.

<sup>47</sup> 71% of racialized and 57% of non-racialized respondents.

<sup>48</sup> 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 training<sup>49</sup> and racial stereotyping by other members of the profession or the judiciary<sup>50</sup> 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.<sup>51</sup>

#### 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

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<sup>49</sup> 70% of racialized and 51% of non-racialized respondents.

<sup>50</sup> 69% of racialized and 46% of non-racialized respondents.

<sup>51</sup> 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 above<sup>52</sup>, 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.

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<sup>52</sup> 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/](http://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.<sup>53</sup>

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.<sup>54</sup>

### **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

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<sup>53</sup> 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>

<sup>54</sup> 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](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.”<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup> 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.”<sup>58</sup>

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.

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<sup>55</sup> 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>.

<sup>56</sup> 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>.

<sup>57</sup> 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).

<sup>58</sup> 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.<sup>59</sup>
- **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

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<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

### ***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.<sup>62</sup>
- 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."<sup>63</sup>

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

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<sup>60</sup> Stratcom Report, *supra* note 8 at 9.

<sup>61</sup> *Ibid.* at 86.

<sup>62</sup> BMO LCCG, *Diversity at BMO: Driving Change from the Inside Out*.

<sup>63</sup> 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.”<sup>64</sup> 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)<sup>65</sup> and Vault<sup>66</sup> 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. firms<sup>67</sup>. 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

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<sup>64</sup> *Ibid.* at 9.

<sup>65</sup> 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.

<sup>66</sup> 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.

<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup>

#### 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.<sup>70</sup> 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.<sup>71</sup>

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

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<sup>68</sup> 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>.

<sup>69</sup> 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).

<sup>70</sup> 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.

<sup>71</sup> 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.<sup>72</sup>

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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

#### 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 project<sup>76</sup> mentioned above is an example of an initiative in which participating firms agreed to maintain gender-based data and worked with the Law

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<sup>72</sup> 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.

<sup>73</sup> 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.

<sup>74</sup> 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](http://www.cba.org/cba/equity/pdf/Measuring_Diversity_Guide.pdf).

<sup>75</sup> *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](http://www.ohrc.on.ca/sites/default/files/attachments/Count_me_in%21_Collecting_human_rights_based_data.pdf).

<sup>76</sup> See Law Society of Upper Canada, *The Justicia Project*, online: Law Society of Upper Canada [http://www.lsuc.on.ca/justicia\\_project/](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.<sup>77</sup>

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.

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<sup>77</sup> 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 licensees 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 Wright<sup>78</sup> 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).<sup>79</sup>

**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

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<sup>78</sup> 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.

<sup>79</sup> 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.”<sup>80</sup> 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*<sup>81</sup> 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*<sup>82</sup> 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.<sup>83</sup>

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.

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

<sup>81</sup> 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>.

<sup>82</sup> *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>.

<sup>83</sup> 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.”<sup>84</sup> 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

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<sup>84</sup> 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

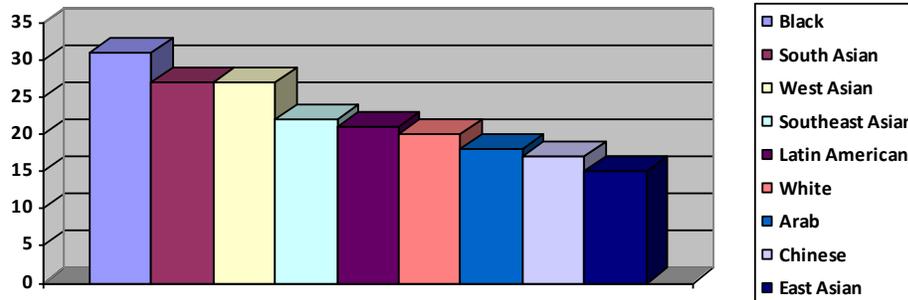


Chart 2 - By Firm Size – In percentages

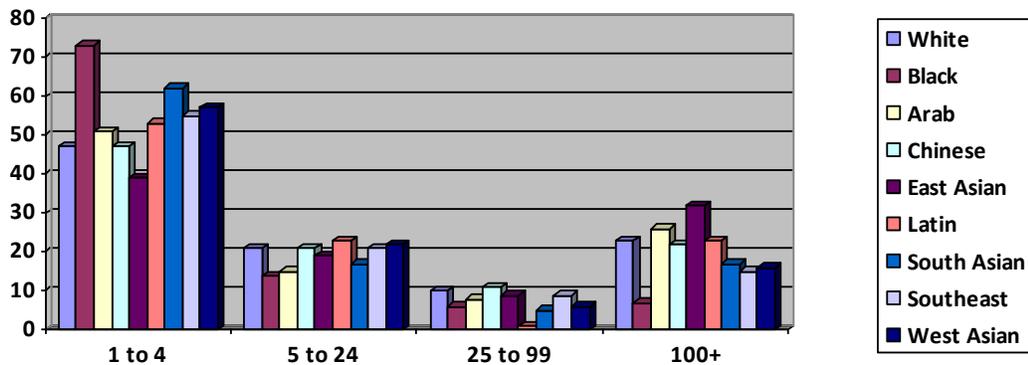


Chart 1 shows that Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice.

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

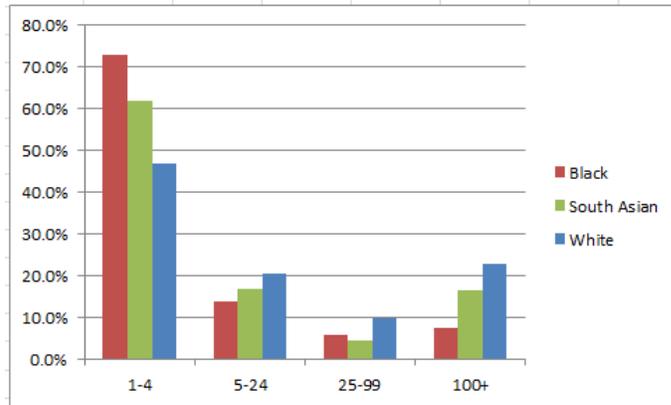


Chart 3 shows more clearly the differential practice patterns of Black, South Asia and White lawyers. Black lawyers, and to a lesser extent South Asian lawyers, disproportionately practise in the smallest firms. Relatively few Black lawyers practice in the largest firms, while the proportions of South 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  
of Upper Canada | Barreau du  
Haut-Canada

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

DOCUMENT DE CONSULTATION



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



**Membres du Groupe de travail**

Janet Leiper, présidente | Julian Falconer, vice-président | Howard Goldblatt, vice-président  
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell | Malcolm Mercer  
Susan Richer | Baljit Sikand

Préparé par le Service de l'équité –  
Josée Bouchard, directrice de l'équité et Ekua Quansah, avocate



## APPEL À COMMENTAIRES DE LA PROFESSION

### DOCUMENT DE CONSULTATION SUR LES DÉFIS DES TITULAIRES DE PERMIS RACIALISÉS

Dans le cadre de son engagement à promouvoir l'équité et la diversité dans la profession, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012.

Le Groupe de travail a étudié les défis auxquels font face les avocates et avocats et parajuristes (titulaires de permis) racialisés en Ontario et mène présentement une consultation sur les stratégies visant l'amélioration de l'inclusion à toutes les étapes de leur carrière.

Nous encourageons toutes les parties intéressées à examiner ce document de consultation et à commenter le document global ou toute question qu'il soulève. **Nous vous invitons à présenter des suggestions et des solutions pratiques aux problèmes. Toute proposition de solutions non présentées dans ce document serait appréciée.**

**Veillez envoyer vos observations écrites d'ici le 1<sup>er</sup> mars 2015, à :**

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## SOMMAIRE

*[Traduction] « Nous devrions toutes et tous savoir que la diversité contribue à la richesse du tissu social et nous devons comprendre que tous les fils de ce tissu sont de valeur égale, peu importe leur couleur ».*

Maya Angelou

Le Barreau s'est engagé à maintenir une profession qui tienne compte de toute la population de l'Ontario de manière inclusive et libre de discrimination et de harcèlement. Le Barreau est également déterminé à faciliter l'accès à la justice, tel que démontré dans la récente adoption par le Barreau d'un nouveau cadre d'accès à la justice exhaustif<sup>1</sup>.

Le document de consultation a été conçu pour mobiliser les membres de la profession et les amener à envisager des stratégies pour relever les défis auxquels les titulaires de permis racialisés<sup>2</sup> font face. Nous invitons les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document de consultation à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil. Le rapport final sera accompagné d'un plan de mise en œuvre détaillé.

## Contexte

Nous avons observé une augmentation constante du nombre des avocates et avocats racialisés dans la profession juridique en Ontario au cours des 20 dernières années. Malgré cette augmentation, les preuves fondées sur les données statistiques, les résultats des recherches et les preuves anecdotiques suggèrent que les avocates et avocats racialisés continuent à faire face à des défis dans la pratique du droit. Nous en savons très peu sur les défis auxquels les parajuristes racialisés font face.

Pour explorer cette question et répondre aux préoccupations, le Conseil a créé en août 2012 le Groupe de travail sur les défis des titulaires de permis racialisés (le Groupe de travail), avec le mandat suivant :

- a) reconnaître les défis des titulaires de permis racialisés dans différents milieux de pratique, y compris l'entrée dans la pratique et l'avancement,

<sup>1</sup> Pour plus de renseignements, voir : Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice, *Rapport au Conseil – Rapport du Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice* (Toronto : 27 février 2014) en ligne à [www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2014/convfeb2014\\_TAG\\_fullreport.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf).

<sup>2</sup> La Commission ontarienne des droits de la personne indique que les termes « personnes racialisées » ou « groupes racialisés » sont plus précis que « minorités raciales », « minorités visibles », « personnes de couleur » ou « non-Blancs ». La race est un construit social à partir duquel on établit des différences entre les gens d'après l'accent ou la façon de parler, le nom, les vêtements et l'apparence, le régime alimentaire, les croyances et pratiques, les préférences en matière de loisirs, le lieu d'origine, etc. La racialisation est le « processus par lequel les sociétés assoient la notion que les races sont bien réelles, différentes et inégales, de façons qui importent pour la vie sociale, économique et politique. ». Voir *Discrimination raciale, race et racisme*, en ligne à [www.ohrc.on.ca/fr/discrimination-raciale-race-et-racisme-fiche](http://www.ohrc.on.ca/fr/discrimination-raciale-race-et-racisme-fiche).

- b) reconnaître les facteurs et les difficultés de la pratique des titulaires de permis racialisés qui pourraient augmenter le risque de plaintes liées à la réglementation et les mesures disciplinaires;
- c) tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d) au besoin, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui, aux fins d'étude pas le comité d'équité et d'autres comités, pour traiter les défis décrits ci-dessus.

En octobre 2012, le Groupe de travail a entrepris une étude globale qui comprenait l'examen des données et documents disponibles, des rencontres avec des particuliers et des organismes ainsi que la coordination de groupes de discussion menés par des professionnels juridiques reconnus.

En 2013, le groupe a lancé un processus officiel de mobilisation qui comprenait des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.

Les renseignements obtenus à ce jour suggèrent que 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. La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger.

Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, un handicap et la région géographique, donne lieu à un profil complexe d'expériences et d'impacts associés aux défis de la racialisation.

## Sommaire des résultats de la mobilisation

Le Groupe de travail a utilisé plusieurs méthodologies pour recueillir des renseignements et a établi l'apparition de thèmes communs dans les expériences des participants. Le processus de mobilisation a révélé que la discrimination et les préjugés manifestes font partie de la vie quotidienne de nombreux titulaires de permis racialisés.

Les participants ont fourni des exemples de comportements, d'interactions, de langages et de suppositions discriminatoires qui sont des caractéristiques courantes de leurs expériences professionnelles de tous les jours.

Certains participants estiment que, souvent, on n'offre pas aux titulaires de permis racialisés les mêmes possibilités d'avancement. Ils ont aussi indiqué qu'ils se sentent exclus de la culture dominante de la profession juridique.

Certains ont aussi indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi indiqué que 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.

Un certain nombre de participants ont aussi indiqué qu'ils ont été obligés de choisir d'exercer seuls en raison des obstacles aux possibilités d'avancement auxquels ils ont fait face dans les autres milieux de la profession. Par ailleurs, certains estiment qu'ils étaient mal équipés ou préparés pour les réalités de l'exercice de leur profession à titre individuel.

En plus des obstacles mentionnés ci-dessus, les participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à une combinaison d'inconvénients, comme le manque de possibilités de réseautage professionnel, les difficultés linguistiques, les différences culturelles par rapport à leurs collègues, un manque de possibilités lors de la transition entre l'école de droit et un premier emploi professionnel en Ontario ainsi que le manque de mentors et de personnes-ressources.

Selon les participants, les parajuristes racialisés font aussi face à d'autres défis, surtout sur le marché du travail. En tant que groupe, les parajuristes ont déclaré obtenir des taux de succès inférieurs lorsqu'il s'agit de trouver un emploi convenable, par rapport aux avocats racialisés.

### Questions pour la profession

Le Groupe de travail a examiné les résultats et a cerné pour les professionnels un certain nombre de questions détaillées à étudier. Ces questions portent sur les sujets suivants :

- Améliorer les capacités internes des organismes – intégrer la diversité dans les cabinets, recueillir des données démographiques sur la diversité et élaborer des programmes de conformité des contrats types
- Mentorat et réseautage – déterminer les meilleures pratiques et modèles privilégiés
- Améliorer le savoir-faire culturel dans la profession – fournir des programmes de formation professionnelle continue (FPC) agréés
- La discrimination et le rôle du processus des plaintes – traiter efficacement les plaintes de discrimination
- Les activités du Barreau du Haut-Canada – améliorer le programme de conformité en matière d'équité, mener une vérification interne en matière d'équité et développer une image publique plus diversifiée du Barreau.

Pour obtenir la série complète des questions, veuillez consulter l'annexe 2.

## DOCUMENT DE CONSULTATION

## CONTEXTE

Au cours des deux dernières décennies, il y a eu en Ontario une augmentation constante du pourcentage des avocates et avocats racialisés<sup>3</sup> dans la profession juridique, qui est passé de 9,2 % en 2001 à 11,5 % en 2006<sup>4</sup>. Les aperçus statistiques du Barreau sur les avocats et les parajuristes démontrent qu'en 2010, 17 % des avocats et 28 % des parajuristes étaient racialisés<sup>5</sup>. Ces données se comparent au pourcentage de 23 % de la population de l'Ontario qui s'est identifiée dans le Recensement du Canada comme étant racialisée, ainsi qu'au pourcentage de 25,9 % de la population de l'Ontario qui s'est identifiée dans l'Enquête nationale auprès des ménages comme étant racialisée<sup>6</sup>.

Les résultats des recherches et les preuves anecdotiques recueillis avant la création du Groupe de travail sur les défis des titulaires de permis racialisés suggéraient que malgré l'augmentation du nombre des avocats racialisés, ces derniers faisaient toujours face à des défis dans la pratique du droit. De plus, les défis auxquels les parajuristes racialisés faisaient face dans la profession, le cas échéant, étaient très peu connus.

Par conséquent, en août 2012, les membres du conseil ont créé le Groupe de travail sur les défis des titulaires de permis racialisés (Groupe de travail) afin de :

- a. reconnaître les défis auxquels font face les titulaires racialisés dans différents milieux de la pratique, notamment à leur début dans la profession et lors des possibilités d'avancement;
- b. reconnaître les facteurs et les difficultés de la pratique auxquels les titulaires de permis racialisés sont exposés qui pourraient augmenter le risque de plaintes liées à la réglementation et de mesures disciplinaires;
- c. tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d. s'il y a lieu, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui à l'intention du Comité sur l'équité et d'autres comités au besoin, afin de relever les défis décrits ci-dessus.

<sup>3</sup> Cette étude n'inclut pas les étudiant(e)s, avocat(e)s et parajuristes autochtones. Le Barreau du Haut-Canada a mené une étude distincte visant à cerner et relever les défis auxquels font face les étudiants, avocats et parajuristes autochtones. Voir le rapport de consultation en ligne à [www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118](http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118).

<sup>4</sup> Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, Toronto, Barreau du Haut-Canada, avril 2010 [rapport Ornstein] en ligne à [www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf) ou sommaire du rapport en français en ligne à [www.lsuc.on.ca/fr/media/june0210\\_ornsteinreport\\_frch\\_exec\\_summary.pdf](http://www.lsuc.on.ca/fr/media/june0210_ornsteinreport_frch_exec_summary.pdf).

<sup>5</sup> Barreau du Haut-Canada, Aperçu des professions en 2010, en ligne à <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488153&langtype=1033> (parajuristes) et <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488151&langtype=1033> (avocats).

<sup>6</sup> Ministère des Finances de l'Ontario, *Faits saillants de l'Enquête nationale auprès des ménages de 2011* : Fiche d'information 2 en ligne à [www.fin.gov.on.ca/fr/economy/demographics/census/nhshi11-2.html](http://www.fin.gov.on.ca/fr/economy/demographics/census/nhshi11-2.html)

Depuis octobre 2012, le Groupe de travail a entrepris les activités suivantes et préparé les rapports suivants qui sont disponibles [en ligne](#):

- a. Il a mené un examen des données et de la documentation disponible à ce sujet – Rapport intitulé *Law Society Scan and Best-Practices*.
- b. Il a rencontré de façon informelle un certain nombre de particuliers et d'organismes pour obtenir des commentaires sur les défis et les pratiques exemplaires pour les titulaires de permis racialisés – Rapport intitulé *Results from Informal Engagement* (Informal Engagement Report).
- c. Il a obtenu de précieux commentaires d'un groupe de travail du groupe consultatif en matière d'équité du Barreau du Haut-Canada<sup>7</sup>. Le groupe consultatif en matière d'équité a cerné les défis auxquels les titulaires de permis racialisés font face et a suggéré des options pour répondre aux préoccupations — Rapport intitulé *Submissions of the Equity Advisory Group*.
- d. Il a retenu les services de Strategic Communications Inc. (Stratcom) et de Michael Charles de Change DeZign© pour qu'ils s'engagent officiellement auprès de la profession. Cet engagement comprenait des entrevues avec 20 informateurs clés, 14 groupes de discussion formés de titulaires de permis racialisés, 2 groupes de discussion formés de titulaires de permis non racialisés et un sondage de 35 questions mené auprès de la profession globale (avocats et parajuristes). Les consultants ont fourni leur rapport au Barreau du Haut-Canada en mars 2014 – Rapport intitulé *Rapport final sur les barrières des titulaires de permis racialisés* (le rapport Stratcom).
- e. Il a créé un processus de mobilisation parallèle, le processus de liaison communautaire, pour recueillir des renseignements de titulaires de permis racialisés qui n'auraient pas participé au processus de mobilisation officiel de Stratcom. Des professionnels juridiques reconnus et expérimentés de diverses collectivités racialisées ont agi à titre d'agents de liaison et ont mené des groupes de discussion dans la collectivité – Rapport intitulé *Community Liaison Report to the Challenges Faced by Racialized Licensees Working Group* (Community Liaison Report).
- f. Il a également rassemblé des données d'auto-identification concernant la taille des cabinets et d'autres caractéristiques, présentées à l'annexe 1.
- g. Il a entrepris une analyse des données disponibles du Barreau concernant le processus de réglementation. Au cours de cette analyse, on déterminera s'il convient d'obtenir d'autres données ou de meilleures données.

Les renseignements obtenus jusqu'à maintenant suggèrent que la racialisation est un facteur constant et omniprésent affectant les titulaires de permis au moment de leur entrée en pratique et de leurs chances d'avancement professionnel. La majorité des participants au processus de mobilisation de Stratcom et les deux groupes racialisés et non racialisés ont convenu que les défis à relever par les titulaires racialisés ont un impact sur la réputation des professions juridiques, l'accès à la justice et la qualité des services fournis<sup>8</sup>.

L'objectif de ce document de consultation est de mobiliser les membres de la profession et du public et de les inciter à envisager des options pour relever les défis auxquels les titulaires de permis

<sup>7</sup> Le groupe consultatif en matière d'équité est formé de personnes et de membres d'organismes qui se sont engagés à promouvoir les principes d'égalité et de diversité et qui ont une certaine expérience dans les difficultés auxquelles font face (sans s'y limiter) les collectivités autochtones, francophones ou racialisées, les personnes invalides, gaies, lesbiennes, bisexuelles, les personnes transgenres et les femmes.

<sup>8</sup> Communications stratégiques, *Rapport sur les barrières des titulaires de permis racialisés*, Toronto, Stratcom, 2014 à la p 57 [le rapport Stratcom].

racialisés font face. Les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document sont encouragés à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil.

Veillez noter que le terme « cabinets » dans le présent rapport désigne les cabinets d'avocats et les cabinets de parajuristes.

## LES RÉSULTATS DU PROCESSUS DE MOBILISATION

Même si le Groupe de travail a utilisé plusieurs méthodes pour recueillir les renseignements sur les défis auxquels font face les titulaires racialisés, l'expérience des participants au cours de leurs interactions informelles avec des titulaires et associations juridiques (participation informelle) et celle des participants au processus de liaison communautaire faisaient écho aux expériences des participants du processus de mobilisation officiel de Stratcom.

De nombreux participants ont décrit une situation dans laquelle la racialisation est un « facteur constant et persistant » qui touche les titulaires racialisés tout au long de leur carrière<sup>9</sup>.

Les défis suivants sont apparus :

- a. discrimination et stéréotypes;
- b. différences culturelles et aptitude à s'adapter;
- c. manque de mentors, de parraineurs, de modèles et d'occasions de réseautage;
- d. croisement de facteurs et vulnérabilité accrue;
- e. la race en tant que facteur contribuant au choix d'exercer seul;
- f. obstacles à l'entrée dans la profession;
- g. obstacles aux possibilités d'avancement dans la profession;
- h. facteurs de risque liés à l'entrée dans le processus de réglementation;
- i. obstacles supplémentaires pour les avocates et avocats formés à l'étranger; et
- j. obstacles supplémentaires pour les parajuristes.

### Discrimination et stéréotypes

*[Traduction] Vous travaillez plus fort pour faire vos preuves. Vous ne pouvez pas nécessairement faire les choses que vos collègues blancs peuvent faire à cause de la différence de connotation. En général, on m'a toujours dit que je devais travailler plus fort que mes homologues blancs, ce qui à certains égards est encore tristement vrai à notre époque. J'ai l'impression que certains avocats ne me donnent pas certains dossiers en se basant sur une notion préconçue concernant mes compétences à cause de la couleur de ma peau.*

Community Liaison Meeting

<sup>9</sup> Ibid. à la p x. Voir également le *Community Liaison Report* et le *Informal Engagement Report*.

Le processus de mobilisation a permis aux participants de partager leurs expériences. Un certain nombre de participants ont décrit des expériences de discrimination qui ont eu de graves répercussions sur leur carrière, notamment sur leurs possibilités de carrière et leur rémunération. Certains ont décrit des expériences manifestes de discrimination, comme des situations où ils ont été la cible de blagues, de propos ou de suppositions racistes<sup>10</sup>.

Un certain nombre de participants ont indiqué qu'ils ont dû se défendre contre des suppositions présentées par des professionnels juridiques, des clients, des avocats de la partie adverse et des membres de la magistrature selon lesquelles les titulaires racialisés sont moins compétents, qualifiés et efficaces. Ils ont évoqué des incidents au cours desquels ils ont été la cible de préjugés négatifs et où ils ont dû travailler plus dur ou subir des conséquences plus graves à la suite d'erreurs, que leurs collègues non racialisés.

Certains ont aussi indiqué qu'on ne leur a pas offert les mêmes possibilités d'avancement. Par exemple, ils ont indiqué qu'on les a laissés à l'écart dans certains dossiers, qu'ils n'ont pas été invités à participer aux réunions avec des clients, ni à des rencontres à caractère social avec des collègues où l'on discutait des dossiers et des affectations, et qu'on leur confiait des travaux de moindre importance. Certains se sont demandé si la race a joué un rôle dans l'avancement plus rapide de collègues non racialisés de niveau comparable ou inférieur<sup>11</sup>.

Les participants ont souvent ressenti qu'ils devaient faire leurs preuves dans une plus grande mesure que leurs collègues non racialisés. Ils ont indiqué qu'ils ont souvent été perçus comme non crédibles et ont ressenti un manque de respect. Un certain nombre de participants ont déclaré qu'on les a pris pour un étudiant, un travailleur social ou un client, au lieu d'un avocat ou un parajuriste.

Près de la moitié des répondants racialisés<sup>12</sup> au sondage ont déclaré que l'on avait des attentes plus grandes à leur endroit en raison de stéréotypes raciaux. Les groupes ethnoraciaux qui ont mentionné ce facteur plus souvent que la moyenne comprenaient les répondants Noirs, Chinois, Asiatiques du Sud-Est, Arabes et Sud Asiatiques<sup>13</sup>.

Différences culturelles socioéconomiques et aptitude à s'adapter

*[Traduction] La culture du cabinet est un énorme facteur pour déterminer qui obtient une entrevue et qui est embauché; tant durant les entrevues sur campus que comme avocat débutant. L'analogie que j'utilise toujours est que vous ne pouvez essayer de résoudre la quadrature du cercle. Bay Street est une culture particulière et si vous ne savez pas comment verser votre vin, cela se remarquera et, en fin de compte, le processus de sevrage sert à exclure un nombre disproportionné de candidats issus des minorités.*

Community Liaison Meeting

<sup>10</sup> *Ibid.* à la p 8.

<sup>11</sup> *Ibid.* à la p 12.

<sup>12</sup> 41 % des répondants racialisés.

<sup>13</sup> Répondants Noirs (54 %), Chinois (52 %), Asiatiques du Sud-Est (46 %), Arabes (46 %), et Sud Asiatiques (45 %).

La notion de « l'aptitude à s'adapter » a aussi été mentionnée comme étant un obstacle pour les titulaires racialisés en processus d'embauche et dans le cadre de leurs fonctions. Les participants étaient d'avis que la notion « d'aptitude à s'adapter » se traduit par « non racialisé » et que, par conséquent, les titulaires racialisés sont plus susceptibles de faire face à des défis lorsqu'ils sont à la recherche d'un emploi ou de possibilités d'avancement.

De nombreux participants ont indiqué qu'ils se sentent exclus de la culture dominante. Par exemple, certains ont mentionné que lors des activités sociales centrées sur la consommation d'alcool, les personnes qui n'en boivent pas se sentent exclues. D'autres activités, comme jouer golf, aller au chalet et regarder le hockey étaient considérées comme des occasions de rencontre, d'interactions et de solidarité sociale pour les collègues non racialisés, et renforçaient les sentiments d'isolation et d'aliénation chez les titulaires de permis racialisés<sup>14</sup>.

Le sondage de Stratcom a également abordé ce sujet en posant des questions sur l'impact du mode de vie et des croyances personnelles sur l'entrée dans la profession et les possibilités d'avancement. Une plus forte proportion de titulaires racialisés, par rapport aux titulaires non racialisés, considéraient que leurs préférences en matière d'activités sociales<sup>15</sup> et que leurs opinions politiques ou sociales étaient des obstacles à l'entrée dans la profession<sup>16</sup> et, davantage encore, à leurs possibilités d'avancement<sup>17</sup>.

Les répondants au sondage qui ont le plus souvent mentionné leurs préférences en matière d'activités sociales comme étant un obstacle à leurs possibilités d'avancement provenaient des collectivités suivantes : les Chinois, les Arabes, les Sud-Asiatiques et les Asiatiques du Sud-Est<sup>18</sup>.

Manque de mentors, de parraineurs, de modèles et d'occasions de réseautage

*[Traduction] Si nous ne pouvons pas trouver de bons stages et le mentorat ainsi que l'encadrement connexe, la qualité des services que nous pouvons offrir est affectée, tout comme les possibilités – ne pas donner aux gens la chance de réaliser leur potentiel affecte toute notre société.*

#### Community Liaison Meeting

De nombreux participants ont indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi mentionné que de nombreux titulaires de permis racialisés ont besoin d'un solide réseau de professionnels juridiques, de mentors ou de parraineurs qui peuvent leur fournir des conseils et un soutien dans leur lieu de travail.

<sup>14</sup> Le rapport Stratcom, *supra* note 8 aux pp 13 – 14.

<sup>15</sup> 18 % des répondants racialisés, comparativement à seulement 5 % de leurs collègues non racialisés.

<sup>16</sup> 12 % des répondants racialisés, comparativement à 5 % de leurs collègues non racialisés.

<sup>17</sup> 26 % des répondants racialisés considéraient les « activités sociales » comme un obstacle, comparativement à 12 % des répondants non racialisés, et 16 % des répondants racialisés considéraient leurs « opinions politiques et sociales » comme un obstacle, par rapport à 9 % des répondants non racialisés.

<sup>18</sup> 36 %, 33 %, 31 % et 31 % respectivement pour chaque collectivité.

Certains informateurs clés ont indiqué que ce manque de relations peut représenter un obstacle tout au long d'une carrière si, par exemple, le titulaire de permis commence à établir sa clientèle au sein de sa propre communauté ethnique, où de tels réseaux sont encore faibles<sup>19</sup>.

Les résultats du sondage de Stratcom ont révélé que la majorité des répondants racialisés croient que le fait de ne pas avoir accès à un réseau de relations professionnelles nuit à la carrière<sup>20</sup>. La majorité des répondants racialisés ont indiqué que le fait de ne pas avoir les mêmes antécédents culturels que leurs collègues avait nui à leur carrière<sup>21</sup>.

Les résultats du sondage démontrent également qu'une plus grande proportion de répondants non racialisés<sup>22</sup>, comparativement aux répondants racialisés<sup>23</sup>, trouvent relativement facile d'obtenir de collègues professionnels et de mentors des conseils juridiques concernant des dossiers de clients. Les différences entre les deux groupes n'étaient pas aussi importantes concernant d'autres déclarations. Par exemple, un pourcentage légèrement plus élevé de répondants non racialisés ont convenu que les mentors ont joué un rôle important dans l'avancement de leur carrière<sup>24</sup>. Un pourcentage légèrement plus élevé de répondants racialisés ont indiqué que les réseaux sociaux ont joué un rôle important dans leur carrière<sup>25</sup>.

Selon la majorité des répondants racialisés du sondage, les plus importantes sources d'inconvénients pour la carrière sont l'absence de réseaux professionnels, la divergence entre les antécédents culturels et les préjugés fondés sur la race.

Parmi les titulaires de permis qui sont plus susceptibles que la moyenne de mentionner ces facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière se trouvent les femmes, les praticiens exerçant seuls, les titulaires de permis qui ont une langue maternelle autre que le français ou l'anglais ou ceux et celles qui sont nés à l'extérieur du Canada. Les groupes racialisés plus susceptibles que la moyenne de mentionner ces trois facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière sont : les répondants noirs, sud-asiatiques, chinois et arabes.

Croisement de facteurs et vulnérabilité accrue

*[Traduction] Quand vous avez un accent, vous signalez que n'êtes pas d'ici. Vous ne comprendrez pas la culture comme tous les autres. Ceux qui réussissent savent très bien s'adapter aux autres clients. Et c'est là qu'un accent vous catégorise automatiquement comme étranger.*

Community Liaison Meeting

<sup>19</sup> Le rapport Stratcom, *supra* note 8 à la p. 8.

<sup>20</sup> 68 % des répondants racialisés.

<sup>21</sup> 57 % des répondants racialisés.

<sup>22</sup> 79 % des répondants non racialisés.

<sup>23</sup> 67 % des répondants racialisés.

<sup>24</sup> 69 % des répondants non racialisés comparativement à 62 % des racialisés.

<sup>25</sup> 54 % des répondants racialisés comparativement à 51 % des non racialisés.

La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger<sup>26</sup>. Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, une invalidité et la région géographique, donne lieu à un profil d'expériences complexe et très individuel et à des impacts associés aux défis de la racialisation.

#### *La race et le sexe*

*[Traduction] Être femme et racialisée peut être compliqué. Les femmes se débattent déjà dans cette profession avec des questions d'équilibre entre la vie professionnelle et la vie personnelle, les responsabilités familiales, les congés de maternité, etc. Les femmes travaillent encore pour se faire prendre au sérieux dans cette profession et être une femme racialisée signifie que vous devez faire vos preuves plus souvent. Cela peut causer du stress, de l'angoisse et peut faire travailler les femmes racialisées plus fort, les pousser davantage et reporter certains de leurs objectifs personnels à cause de leur travail.*

#### Community Liaison Process

Le croisement de la race et du sexe, en particulier, était considéré comme un facteur de multiplication des défis pour les femmes. Dans un milieu, décrit par certains participants comme un « boys club », où les activités paraprofessionnelles sociales sont souvent des avenues vers de nouvelles possibilités de travail et d'avancement, de nombreuses femmes racialisées se considèrent comme doublement désavantagées<sup>27</sup>.

Le sondage de Stratcom a tenu compte du harcèlement et des attentes liées aux stéréotypes sexuels à titre de facteurs aggravant les inconvénients pour la carrière. Bien que les résultats du sondage aient indiqué que les hommes titulaires racialisés ne sont pas exempts de harcèlement ni de stéréotypes sexistes, une plus grande proportion de femmes racialisées<sup>28</sup> considèrent les stéréotypes sexistes comme un facteur contribuant à leurs désavantages en matière d'embauche, d'avancement ou de poursuite d'un domaine de pratique.

Le sondage de Stratcom fait état d'autres différences entre les sexes en ce qui concerne les obstacles à l'entrée dans la profession. Par exemple, les femmes racialisées et non racialisées étaient plus susceptibles que les hommes à souligner les facteurs suivants comme étant des obstacles à leur entrée dans la profession : l'apparence physique, l'âge (trop jeune), et le sexe<sup>29</sup>.

<sup>26</sup> Le rapport Stratcom, *supra* note 8 à la p 14.

<sup>27</sup> *Ibid.* à la p 14.

<sup>28</sup> Entre un quart et deux cinquièmes.

<sup>29</sup> Chez les répondantes, 29 % des racialisées et 12 % des non racialisées ont souligné l'apparence physique, comparativement à 19 % de racialisés et 4 % de non racialisés chez les répondants. En ce qui concerne le sexe, 17 % des répondantes racialisées et 12 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 5 % chez les répondants racialisés et à seulement 1 % chez les répondants non racialisés. Enfin, en ce qui concerne l'âge (trop jeune), 23 % des répondantes racialisées et 11 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 9 % chez les répondants racialisés et à 5 % chez les répondants non racialisés.

Les résultats renforcent la conclusion du groupe de discussion selon laquelle, pour de nombreuses femmes racialisées, l'expérience des préjugés sexistes est aggravée par leur statut racial. Le croisement de la racialisation et du sexe amplifie les obstacles associés à chacun des facteurs.

La race en tant que facteur contribuant au choix d'exercer seul

*[Traduction] La plupart d'entre nous exercent seuls parce que nous ne pouvions pas entrer dans un grand cabinet à cause de notre race; les seuls que je connais qui ont pu travailler dans un cabinet ont fini par partir parce qu'ils ressentaient de la discrimination, de l'ostracisme et de l'aliénation – comme de ne pas être invités aux diners et aux sorties du cabinet. Certains avocats noirs ont eu des idées suicidaires à force de rencontrer des obstacles raciaux (et non en raison du rendement scolaire) pour essayer d'entrer dans un grand cabinet; certains cabinets croient que s'ils embauchent des avocats noirs, ils perdront des clients.*

#### Community Liaison Meeting

Un certain nombre de participants ont déclaré qu'ils estimaient avoir été obligés de choisir d'exercer seuls en raison des obstacles qu'ils avaient rencontrés dans la recherche d'emplois ou dans les possibilités d'avancement dans d'autres milieux de la pratique. Certains participants estiment également qu'un certain nombre d'avocates et avocats racialisés exercent seuls par défaut et sont mal équipés et mal préparés aux réalités de la pratique à titre individuel.

Plusieurs participants estiment que les avocats racialisés sont plus susceptibles d'exercer seuls et ont mis en évidence la vulnérabilité des personnes qui exercent en cabinet privé dans la profession juridique dans le contexte des plaintes liées à la réglementation professionnelle et les mesures disciplinaires.

Entrée dans la profession

Les obstacles mentionnés ci-dessus ont un impact sur les expériences des titulaires racialisés qui entrent dans la profession juridique. Les résultats du sondage de Stratcom ont également mis en évidence d'autres obstacles qui ont des répercussions sur l'entrée dans la profession. Dans le cadre du sondage, une liste de facteurs a été présentée aux participants racialisés et non racialisés, et on leur a demandé d'indiquer si chacun des facteurs avait constitué un obstacle ou un défi à tout moment avant ou après avoir commencé à exercer<sup>30</sup>.

Quarante pour cent (40 %) des titulaires racialisés ont déclaré que leur appartenance ethnique/identité raciale était un obstacle à l'exercice de leur profession, alors que seulement 3 % des titulaires non racialisés ont mentionné que leur appartenance ethnique/identité raciale représentait un obstacle. Les titulaires de permis racialisés les plus susceptibles de mentionner la race ou l'ethnicité comme obstacle à l'entrée dans la profession étaient les suivants : les Asiatiques du Sud-Est, les Noirs, les Arabes, les Sud-Asiatiques, les personnes ayant une langue maternelle autre que le français ou l'anglais, les femmes et les personnes nées à l'extérieur du Canada<sup>31</sup>.

<sup>30</sup> Le rapport Stratcom, *supra* note 8 aux pp 36 à 39.

<sup>31</sup> Asiatiques du Sud-Est (54 %), Noirs (52 %), Arabes (50 %), Asiatiques du Sud (46 %), langue maternelle autre que le français ou l'anglais (46 %), femmes (45 %), et personnes nées à l'extérieur du Canada (44 %).

Alors que les répondants racialisés ont sélectionné l'appartenance ethnique/identité raciale à titre d'obstacle à l'entrée dans la profession dans une proportion nettement plus élevée que tous les autres obstacles évalués, ce facteur a été classé parmi les défis les moins importants chez les répondants non racialisés.

Les obstacles suivants ont également été mentionnés par les avocats racialisés et, dans une bien moindre mesure, par les avocats non racialisés :

- a. apparence physique<sup>32</sup>;
- b. situation socio-économique<sup>33</sup>;
- c. lieu de naissance et lieu où l'on a grandi<sup>34</sup>;
- d. âge (trop jeune)<sup>35</sup>;
- e. la façon de parler anglais ou français<sup>36</sup>;
- f. identité sexuelle<sup>37</sup>.

Le sondage a révélé qu'un pourcentage bien inférieur des répondants racialisés, comparativement aux répondants non racialisés :

- a. ont trouvé un emploi approprié après avoir obtenu leur permis<sup>38</sup>;
- b. ont déclaré qu'on leur a offert un emploi au cabinet où ils ont fait un stage ou un stage de formation professionnelle<sup>39</sup>;
- c. ont trouvé un emploi dans un cabinet approprié<sup>40</sup>; et
- d. été en mesure de travailler dans leur domaine de pratique préféré<sup>41</sup>.

Il y a de grandes différences entre les expériences vécues lors de l'entrée dans la profession et dans l'évolution globale de la carrière. Près de la moitié des titulaires racialisés ont été « fortement ou plutôt d'accord » pour dire qu'ils ont eu de la difficulté à trouver un stage ou un stage de formation professionnelle<sup>42</sup>, et la majorité ont été « fortement ou plutôt d'accord » pour dire qu'ils n'avaient pas avancé aussi rapidement que leurs collègues ayant des qualifications semblables<sup>43</sup>.

#### Avancement

*[Traduction] On m'aimait bien dans mon cabinet de la rue Bay et j'étais l'étoile montante. Par contre, même si la race n'avait pas été un facteur pour entrer là comme avocat, elle a été un facteur pour y être associé. On ne m'a jamais offert de devenir associé même si j'avais été au cabinet plus*

<sup>32</sup> 24 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>33</sup> 19 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>34</sup> 17 % des répondants racialisés, comparativement à 4 % des répondants non racialisés

<sup>35</sup> 15 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>36</sup> 12 % des répondants racialisés, comparativement à seulement 3 % des répondants non racialisés

<sup>37</sup> 11 % des répondants racialisés, comparativement à 6 % des répondants non racialisés

<sup>38</sup> 59 % des répondants racialisés, comparativement à 78 % des répondants non racialisés

<sup>39</sup> 43 % des répondants racialisés, comparativement à 53 % des répondants non racialisés

<sup>40</sup> 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

<sup>41</sup> 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

<sup>42</sup> 43 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

<sup>43</sup> 52 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

*longtemps que d'autres qui le sont devenus. Tout le monde savait que j'étais un des favoris au cabinet.*

#### Community Liaison Meeting

Les résultats du sondage de Stratcom ont aussi permis de cerner des obstacles à l'avancement dans la profession. On a demandé aux répondants racialisés et non racialisés d'identifier quels facteurs ont représenté des obstacles à tout moment *après* avoir commencé à exercer.

La plus grande différence entre les deux groupes était l'importance de l'appartenance ethnique/identité raciale, qui est perçue comme un obstacle ou un défi pour l'avancement chez 43 % des titulaires racialisés, comparativement à 3 % chez les titulaires non racialisés.

Les facteurs de croisement avec l'appartenance ethnique/identité raciale sont l'apparence physique, la situation socio-économique de la famille, le lieu de naissance ou celui où l'on a grandi, et dans quelle mesure on parle bien l'anglais ou le français. Ces facteurs ont tous été identifiés comme des obstacles après l'entrée dans la profession par au moins 15 % des licenciés racialisés.

En revanche, chez les titulaires non racialisés, ces facteurs représentent des obstacles après l'entrée dans la profession qui sont comparables ou éventuellement de moindre importance que ceux qui sont associés à l'orientation sexuelle, le sexe, l'âge, le mode de vie et les croyances personnelles.

Les répondants racialisés et non racialisés ont indiqué que les absences du travail pour s'occuper des enfants et d'autres membres de la famille représentaient un obstacle à l'avancement après l'entrée dans la profession<sup>44</sup>. Cet obstacle était toutefois plus important pour les femmes racialisées et non racialisées que pour les hommes<sup>45</sup>.

Le sondage a révélé des différences moindres entre les répondants racialisés et non racialisés en ce qui concerne les difficultés de carrière, comme le démontrent les renseignements ci-dessous :

- a. ils ont convenu qu'ils avaient quitté un ou plusieurs postes parce qu'ils ne se sentaient pas à leur place (42 % des répondants racialisés, et 35 % des répondants non racialisés);
- b. ils ont déclaré avoir quitté un ou plusieurs postes parce qu'ils estimaient que leurs possibilités d'avancement n'étaient pas proportionnelles à leurs compétences et à leurs capacités (40 % des répondants racialisés, et 31 % des répondants non racialisés);
- c. ils se sont vu refuser une promotion à un poste de gestion (13 % des répondants racialisés, et 9 % des répondants non racialisés);
- d. leur admission à un partenariat a été retardée (9 % des répondants racialisés et non racialisés);  
et
- e. ils n'ont pas été acceptés comme partenaires, même s'ils remplissaient les critères de promotion (6 % des répondants racialisés et non racialisés).

#### Processus de réglementation

<sup>44</sup> 25 % des répondants racialisés, comparativement à 23 % des répondants non racialisés.

<sup>45</sup> 33 % des répondantes racialisées et 36 % des répondantes non-racialisées.

Les participants ont été priés de faire des commentaires sur leur perception du processus de réglementation. Certains se sont dits préoccupés par l'absence de diversité raciale chez les membres du conseil et des comités de discipline. D'autres étaient d'avis que, en raison de leur plus grande probabilité d'exercer seuls, ou de provenir de milieux où une carrière professionnelle est l'exception plutôt que la règle, les titulaires racialisés ont souvent moins de relations parmi les clientèles riches et fortunées et n'ont pas une formation suffisante en affaires pour gérer un cabinet.

Des informateurs clés ont fourni des preuves anecdotiques selon lesquelles de nombreux titulaires racialisés adoptent une démarche communautaire lorsqu'ils démarrent leur carrière, faisant appel à leur propre collectivité ethnique ou culturelle locale, ce qui peut (dans certains cas) les exposer à des attentes exagérées concernant la portée et l'efficacité de leur pratique et, enfin, à des plaintes de leurs clients.

Les participants ont indiqué que des facteurs peuvent contribuer à rendre les titulaires racialisés plus vulnérables aux plaintes, la plupart citant fréquemment un manque de ressources, de formation et de possibilités de mentorat. Les répondants racialisés et non racialisés au sondage ont classé le manque de mentors et de réseaux professionnels<sup>46</sup> ainsi que les stéréotypes raciaux des clients au<sup>47</sup> sommet de la liste des facteurs qui peuvent augmenter les risques de plaintes envers les titulaires racialisés.

La majorité des répondants racialisés et près de la moitié des répondants non racialisés ont indiqué dans<sup>48</sup> le sondage que les problèmes de communication étaient « certainement ou probablement » un facteur d'accroissement des risques de plaintes, ce qui correspond avec les résultats des groupes de discussion, qui ont souligné que les problèmes de communication culturels chevauchent souvent les problèmes de communication causés par les obstacles linguistiques, et que ces facteurs contribuent à l'augmentation des risques de plaintes.

Les titulaires racialisés et non racialisés avaient des opinions différentes à l'effet que les postes de stagiaire de mauvaise qualité et la formation insuffisante<sup>49</sup> ainsi que les stéréotypes raciaux par d'autres membres de la profession ou de la magistrature<sup>50</sup> augmentent les risques de plaintes et de mesures disciplinaires pour les titulaires de permis racialisés.

À cet égard, le Groupe de travail a examiné les renseignements disponibles concernant les expériences des titulaires racialisés dans le processus de réglementation et a déterminé qu'il y a encore du travail à faire. Les travaux préliminaires effectués jusqu'à présent seront poursuivis.

Le Groupe de travail a aussi suggéré les mesures correctives mentionnées ci-dessous, qui ne sont pas liées à certains groupes raciaux, mais qui peuvent aider les titulaires en général, comme le mentorat et le réseautage.

Obstacles supplémentaires pour les avocats formés à l'étranger

<sup>46</sup> 78 % des répondants racialisés, comparativement à 63 % des répondants non racialisés.

<sup>47</sup> 71 % des répondants racialisés, comparativement à 57 % des répondants non racialisés.

<sup>48</sup> 57 % et 48 % respectivement.

<sup>49</sup> 70 % des répondants racialisés, comparativement à 51 % des répondants non racialisés.

<sup>50</sup> 69 % des répondants racialisés, comparativement à 46 % des répondants non racialisés.

Certains participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à des difficultés supplémentaires en raison des obstacles linguistiques, de la socialisation, de la préparation à l'emploi et de l'expérience de travail. Ils estiment que les avantages que les avocats formés à l'étranger amènent dans la profession, grâce à l'expérience de la pratique dans un autre pays, sont souvent sous-estimés ou mal compris.

Les participants ont indiqué que le fait d'être né ou d'avoir fait ses études hors du Canada présente des obstacles potentiels pour les titulaires de permis racialisés. Ils estiment que 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 emploi professionnel en Ontario, et le manque de mentors et de relations<sup>51</sup>.

#### Obstacles supplémentaires pour les parajuristes

En plus des obstacles mentionnés ci-dessus qui s'appliquent à tous les titulaires de permis racialisés, certains participants aux groupes de discussion ont indiqué que les parajuristes racialisés semblent faire face à plus de difficultés sur le marché du travail que les avocats racialisés.

Les données du sondage renforcent cette hypothèse. Globalement, les parajuristes en tant que groupe ont obtenu des taux de réussite inférieurs que les avocats pour trouver un emploi approprié.

En ce qui concerne l'indicateur-clé que constitue l'obtention d'un premier emploi approprié, seulement 26 % des parajuristes racialisés ont trouvé un tel emploi, comparativement à 36 % des parajuristes non racialisés. En ce qui concerne l'obtention d'un emploi dans leur milieu de pratique préféré, 37 % des parajuristes racialisés ont trouvé un tel emploi, par rapport à 57 % de leurs homologues non racialisés. De la même façon, 41 % ont déclaré avoir trouvé un emploi dans leur domaine de pratique préféré, par rapport à 67 % des parajuristes non racialisés.

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<sup>51</sup> Le rapport Stratcom, *supra* note 8 à la p 9.

## QUESTIONS POUR LES MEMBRES DE LA PROFESSION

### Introduction

À partir des résultats ci-dessus<sup>52</sup>, le Groupe de travail a établi des questions en vue de les soumettre à l'examen des membres de la profession et d'obtenir leurs commentaires. Les questions ci-dessous sont présentées selon les thèmes suivants :

- A. L'amélioration des capacités internes des entreprises
- B. Le mentorat, les services consultatifs et le réseautage
- C. L'amélioration des compétences culturelles dans la profession
- D. La discrimination et le rôle du processus des plaintes
- E. Les activités du Barreau du Haut-Canada

Le Groupe de travail désire obtenir des idées, initiatives ou pratiques supplémentaires qui peuvent contribuer à éliminer les difficultés auxquelles les titulaires de permis racialisés font face.

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<sup>52</sup> La documentation est disponible dans le document *Law Society Studies and Scan of Best-Practices*.

## A. L'amélioration des capacités internes des entreprises

Selon l'examen de l'embauche dans la profession, certains des obstacles auxquels font face les titulaires de permis racialisés existent dans les processus de recrutement et dans les possibilités d'avancement dans leur carrière. Le Groupe de travail propose que les organismes, y compris les cabinets, améliorent leurs capacités internes d'éliminer les obstacles en envisageant d'adopter les méthodes présentées dans les trois catégories suivantes :

- a. établir des programmes de diversité au sein des cabinets;
- b. recueillir des données démographiques;
- c. établir des programmes de conformité des contrats.

### **Établir des programmes de diversité au sein des cabinets**

**Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire? Des modèles proposés sont présentés ci-dessous, et la proposition d'autres modèles serait appréciée.**

- **Projet de diversité : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes s'engagent à collaborer avec le Barreau pour élaborer et adopter des normes et des ressources pour le recrutement, le maintien en fonction et la progression professionnelle des titulaires de permis racialisés.**
- **Auto-évaluation : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes effectuent une auto-évaluation de leurs résultats en matière de diversité et utilisent ces résultats pour identifier et adopter des pratiques et politiques afin de devenir plus équitables et inclusifs.**
- **Normes sur les exigences : Un projet dans le cadre duquel le Barreau exige des cabinets et organismes qui offrent des services de conseils internes qu'ils adoptent des normes et des ressources pour le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés.**

### ***Projet de diversité***

La première approche décrite ci-dessus est fondée sur le modèle de projet du Barreau Justicia adopté en 2008. Le projet Justicia est un projet de mixité des sexes dans le cadre duquel plus de 55 cabinets ont signé une entente d'engagement de collaboration avec le Barreau visant à élaborer des ressources pour maintenir les femmes dans la pratique privée et favoriser leur avancement.

Les cabinets participants, en partenariat avec le Barreau, ont mis au point des modèles pour suivre les données démographiques selon le sexe et pour identifier et adopter des principes et des pratiques exemplaires concernant les horaires de travail souples, le réseautage et le développement des activités professionnelles ainsi que le mentorat et le développement des compétences en leadership

pour les femmes. Les ressources de Justicia sont désormais disponibles en ligne pour les membres de la profession dans l'ensemble à [www.lsuc.on.ca/projet\\_Justicia](http://www.lsuc.on.ca/projet_Justicia).

Il y a d'autres exemples d'initiatives semblables : le Réseau des cabinets d'avocats pour la diversité et l'inclusion ainsi que les Leaders juridiques pour la diversité. Il s'agit d'initiatives de cabinets et d'organismes juridiques qui tentent d'éliminer les difficultés associées au maintien en fonction et à l'avancement chez les groupes qui font la promotion de l'équité en collaborant et en favorisant l'adoption de pratiques exemplaires<sup>53</sup>.

Le Barreau pourrait, de la même façon qu'il l'a fait dans le projet Justicia, agir en tant que catalyseur et collaborer avec les entreprises et organismes à développer des ressources pour créer l'infrastructure nécessaire à l'inclusion et élaborer des normes pour mesurer les progrès. Récemment, à la suite d'une consultation auprès des titulaires de permis racialisés, le Barreau du Québec a mis au point un plan d'action de trois ans qui inclut l'utilisation du modèle de Justicia pour remédier aux problèmes liés au recrutement, au maintien en fonction et à l'avancement des titulaires de permis racialisés<sup>54</sup>.

### **Auto-évaluation**

La seconde approche, qui consiste à demander aux entreprises d'effectuer une auto-évaluation de leurs résultats en matière de diversité, ou à les y obliger, est fondée sur le guide de l'Association du Barreau canadien, intitulé *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*. Ce document a été conçu pour « aider les avocats et les cabinets d'avocats en fournissant des conseils pratiques sur la structure, les politiques et les méthodes des cabinets d'avocats de sorte qu'ils remplissent leurs obligations envers leurs clients, les tiers et le public »<sup>55</sup>.

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<sup>53</sup> Des initiatives semblables ont été réussies aux États-Unis, au Boston Lawyers Group et au Lawyers Collaborative for Diversity (LCD).

Le *Boston Lawyers Group* est composé de grands cabinets, de services juridiques d'entreprises et d'organismes gouvernementaux de Boston qui se sont engagés à trouver et recruter des avocat(e)s de couleur et à favoriser leur maintien en fonction et leur avancement. Ce groupe est passé de 13 membres à sa création à plus de 45 membres. Le *Boston Lawyers Group* offre des sources d'information aux membres en organisant des forums, des discussions en table ronde, des programmes éducatifs et des salons d'emploi dans le but de promouvoir la diversité dans la communauté juridique de Boston. Le *Boston Lawyers Group* conçoit également des initiatives pour les écoles de droit, les organismes desservant les étudiants, la Ville et les gouvernements des États, les associations d'avocats et d'autres organismes professionnels et commerciaux. Les membres ont la responsabilité ultime de répondre à leurs propres objectifs de diversité et d'inclusion. Voir *The Boston Lawyers Group, About the BLG*, en ligne : [www.thebostonlawyersgroup.com/about/who.htm](http://www.thebostonlawyersgroup.com/about/who.htm)

Le *Lawyers Collaborative for Diversity* fonctionne de la même façon que le *Boston Lawyers Group*. Le *Lawyers Collaborative for Diversity* est composé d'entreprises, de cabinets d'avocats, d'organismes gouvernementaux et d'associations juridiques ou d'avocats au Connecticut. Le défi actuel de *Lawyers Collaborative for Diversity* consiste à augmenter le recrutement, le maintien en fonction et l'avancement des juristes de couleur, non seulement à titre de bonne politique sociale, mais également de pratique commerciale exemplaire. *Lawyers Collaborative for Diversity, « Who We Are »* <http://www.lcdiversity.com/about/who.htm>.

<sup>54</sup> Barreau du Québec, « Pour une profession plus inclusive » – Le projet Forum, Montréal, Barreau du Québec, mai 2014, en ligne à [www.barreau.qc.ca/pdf/publications/Rapport\\_Profession\\_Inclusive\\_4pages.pdf](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages.pdf)

<sup>55</sup> Comité de déontologie et de responsabilité professionnelle de l'Association du Barreau canadien, *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*, Ottawa, Association du Barreau canadien, 2013, en ligne à [www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf](http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf)

Le document contient un outil d'autoévaluation pour les entreprises, l'*Outil de l'ABC d'autoévaluation des pratiques déontologiques*, qui décrit les dix principaux domaines d'infrastructure déontologique et fournit des questions liées aux politiques et procédures des cabinets pour chacun des domaines en question<sup>56</sup>.

L'outil d'auto-évaluation est calqué sur l'approche utilisée en Nouvelle-Galles-du-Sud pour la réglementation des cabinets d'avocats constitués en personne morale. Plutôt que d'être tenus de suivre des règles précises, les cabinets sont tenus de s'autoévaluer pour déterminer si leurs pratiques et politiques permettent efficacement d'assurer une bonne conduite professionnelle et d'établir des pratiques et des politiques considérées comme efficaces dans leur contexte précis. Les cabinets qui ont adopté cette réglementation ont obtenu une réduction des deux tiers des plaintes de leur clientèle<sup>57</sup>. Cette approche pourrait être appliquée aux pratiques en matière de diversité, sur une base volontaire ou obligatoire.

Le *Law Society of England and Wales* a appliqué aux pratiques en matière de diversité une approche volontaire semblable, avec succès. En 2009, il a adopté la Charte de diversité et d'inclusion afin d'aider les cabinets à orienter leur engagement envers la diversité et l'inclusion vers des gestes concrets et positifs pour leurs entreprises, leur personnel et leurs clients<sup>58</sup>.

À ce jour, plus de 300 cabinets ont signé la Charte, ce qui représente plus d'un tiers de tous les avocats de pratique privée. Les cabinets qui signent la Charte de diversité et d'inclusion sont tenus de présenter chaque année un rapport pour montrer dans quelle mesure ils respectent leurs engagements ainsi que les améliorations nécessaires. La Charte est accompagnée d'un ensemble de ressources visant à aider les cabinets à respecter leurs engagements dans les principaux domaines. Les normes permettent de démontrer dans quelle mesure un cabinet d'avocats se conforme aux lois et règlements en matière d'égalité et aux normes en matière de diversité et d'égalité.

### **Normes sur les exigences**

La troisième approche porte sur l'exigence que les organismes de conseillers juridiques et les cabinets adoptent des normes et des ressources sur le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés. Le Barreau élaborerait de telles normes.

<sup>56</sup> Voir *L'Outil de l'ABC d'autoévaluation des pratiques déontologiques* de l'Association du Barreau canadien, Ottawa, Association du Barreau canadien, 2013, en ligne à [www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf](http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf)

<sup>57</sup> Tahlia Gordon, Steve A. Mark et 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 et 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).

<sup>58</sup> The Law Society of England and Wales, *Diversity and Inclusion Charter*, en ligne : The Law Society of England and Wales [www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter](http://www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter)

**Recueillir des données démographiques**

En plus de la mise en œuvre de programmes de diversité, le Groupe de travail propose que les cabinets recueillent des données démographiques sur leurs avocat(e)s et parajuristes.

Il y a un certain nombre d'avantages à recueillir des données démographiques, telles que répertoriées ci-dessous, par rapport à la question 2. On estime que de telles données seraient particulièrement utiles pour établir les types de programmes de diversité qui répondraient le mieux aux besoins de chaque cabinet.

**Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi? La proposition d'autres modèles serait appréciée.**

- **À l'aide des données du Barreau : Le Barreau recueille les données démographiques des titulaires en utilisant les rapports annuels des avocats et des parajuristes, déclare publiquement les données démographiques sur la taille des cabinets et divulgue aux cabinets ses propres données démographiques.**
- **Fournir des modèles : Le Barreau collabore avec les cabinets pour élaborer des modèles uniformes de cueillette de données démographiques et encourage les cabinets à recueillir régulièrement de telles données<sup>59</sup>.**
- **Exiger des rapports des cabinets : Le Barreau définit les paramètres pour la cueillette volontaire de données démographiques des cabinets et exige que les cabinets déclarent soit qu'ils recueillent ces renseignements, soit la raison pour laquelle ils ne le font pas.**
- **Cueillette de données obligatoire : Le Barreau pourrait établir des paramètres pour la cueillette obligatoire des données démographiques par les cabinets.**

***Analyse de base***

Certains participants au processus d'études et de mobilisation ont souligné la valeur de la cueillette organisationnelle des données démographiques. Par exemple, certains informateurs clés de Stratcom ont indiqué que des statistiques plus détaillées sur la racialisation au sein des cabinets seraient précieuses, compte tenu d'approches adoptées aux États-Unis, où la transparence de la représentation des cabinets contribue à accroître la représentation au sein des cabinets<sup>60</sup>. Les résultats du sondage de Stratcom indiquent que, bien que la majorité des titulaires de permis racialisés sont en faveur des mesures de cueillette et de partage des données, certains ont exprimé des préoccupations voulant que les mesures puissent servir à établir des cibles en matière de diversité<sup>61</sup>.

<sup>59</sup> Dans le présent document, le terme « petits cabinets » fait référence à des cabinets de 5 à 25 titulaires, le terme « moyens cabinets » fait référence à des cabinets de 25 à 100 titulaires, et le terme « grands cabinets » fait référence à des cabinets de 100 titulaires ou plus.

<sup>60</sup> Le rapport Stratcom, *supra* note 8 à la p 9.

<sup>61</sup> *Ibid.* à la p 86.

### **Les avantages de la cueillette de données**

Le Groupe de travail croit que la cueillette et le maintien des données démographiques sont des pratiques exemplaires. Il y a de nombreuses raisons de recueillir des renseignements démographiques, entre autres les suivantes :

- a. De telles données peuvent être un outil pour accroître les capacités concurrentielles d'un cabinet. De nombreux clients importants aux États-Unis, et maintenant au Canada, présentent des demandes de propositions pour sélectionner leurs conseillers juridiques en exigeant que les cabinets présentent les données démographiques de leur main-d'œuvre. Par exemple, le Groupe sur les services juridiques, affaires générales et conformité de la Banque de Montréal exige la divulgation des statistiques du cabinet sur la diversité dans le cadre de son processus de demande de propositions à l'intention des fournisseurs de services juridiques<sup>62</sup>.
- b. La diversité et les données sur la diversité aident les cabinets à attirer des employés talentueux. Comme les groupes d'étudiants en droit sont de plus en plus diversifiés, il en est de même pour leurs talents.
- c. Le fait de maintenir des données démographiques permet aux cabinets de surveiller la diversité du recrutement et des promotions et d'ajuster leurs pratiques et politiques en conséquence.
- d. Les données démographiques aident les cabinets à améliorer leurs services à la clientèle et leur réputation professionnelle, et à devenir des modèles en s'assurant une représentation sur tous les plans.
- e. Les données démographiques fournissent aux cabinets un contexte à partir duquel élaborer des programmes pour améliorer l'inclusivité.
- f. Les renseignements contribuent à l'élaboration d'initiatives visant à améliorer l'accès à la justice.

Le doyen Lorne Sossin et Sabrina Lyon, dans leur article *Data & Diversity in the Canadian Legal Community*, soulignent aussi l'importance de la cueillette de données en indiquant que même si le seul fait de recueillir et publier des données sur la diversité ne permettra pas de rendre la justice communautaire plus inclusive, il est difficile, sinon impossible, de voir comment la justice communautaire pourrait devenir plus inclusive sans données fiables et significatives<sup>63</sup>.

Malgré l'importance des données démographiques quantitatives, de nombreux employeurs évaluent leurs progrès en matière de diversité et d'inclusion en tenant compte de mesures plus qualitatives. Sossin et Lyon pensent que lorsqu'un organisme est composé de membres très peu diversifiés, un sondage sur l'inclusion mené dans tout le cabinet mènera probablement à des résultats trompeurs. Lorsque les données sont complétées par des données quantitatives et qualifiées, le résultat devient beaucoup plus clair<sup>64</sup>. La plupart des personnes consultées au cours du projet de Sossin et Lyon ont indiqué que, en tant qu'organisme de réglementation de la profession, le Barreau du Haut-Canada est l'organisme le plus approprié pour diriger les efforts et demander la cueillette et la diffusion des données démographiques.

<sup>62</sup> Groupe sur les services juridiques, affaires générales et conformité, BMO, *Diversity at BMO: Driving Change from the Inside Out*.

<sup>63</sup> Lyon, Sabrina et Sossin, Lorne, *Data and Diversity in the Canadian Justice Community*. Osgoode Legal Studies Research Paper No. 12/2014, en ligne à <http://ssrn.com/abstract=2389410>

<sup>64</sup> *Data and Diversity supra* note 63 à la p 9.

### **Pratiques relatives à la cueillette de données**

#### L'expérience des États-Unis

La cueillette de données est de pratique courante aux États-Unis chez des organismes comme la *National Association of Legal Career Professionals* (NALP)<sup>65</sup> et Vault<sup>66</sup>, où l'on fait la cueillette de renseignements et la production de rapports qualitatifs et quantitatifs sur la diversité et l'inclusion concernant les cabinets ou les organismes juridiques des États-Unis. Bien que la publication des données ne soit pas obligatoire, elle s'avère un outil de recrutement efficace pour les cabinets et organismes juridiques, qui participent aux initiatives de NALP et Vault par centaines. Actuellement, la filiale canadienne de NALP ne publie que des données démographiques sur le sexe du personnel des cabinets.

Malgré la volonté de nombreux cabinets américains de recueillir des données démographiques, il y a eu certains différends quant à savoir si la cueillette des données a permis d'augmenter efficacement le nombre de titulaires racialisés dans les cabinets américains<sup>67</sup>. Veronica Root, dans son article *Retaining Color*, indique ce qui suit :

Les données disponibles démontrent que i) un grand nombre de personnes de couleur fréquentent les 25 écoles de droit les plus importantes, ii) un pourcentage bien inférieur d'entre elles sont engagées par de grands cabinets, et iii) un pourcentage encore plus inférieur deviennent des partenaires. Ces données persistent malgré le fait que l'American Bar Association (ABA) et le National Association for Law Placement (NALP) ont commencé à examiner et suivre la diversité démographique au sein des cabinets en 1993. Vingt ans plus tard, seuls de petits gains ont été réalisés dans les efforts visant à accroître la diversité démographique dans les grands cabinets d'avocats<sup>68</sup>.

Il est évident que le manque de diversité démographique est le produit de pratiques et de systèmes autres que la cueillette de données. Toutefois, comme on l'a noté ci-dessus, le Groupe de travail a identifié d'importants avantages à la cueillette de données.

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<sup>65</sup> Le NALP est une association nord-américaine éducative à but non lucratif composée de plus de 2 500 professionnels juridiques et a été créée pour répondre aux besoins des participants au processus d'emploi dans le domaine juridique. Le NALP recueille des données sur l'emploi dans le domaine juridique et les publie.

<sup>66</sup> Vault fournit des classements, évaluations et examens des entreprises, qui proviennent des employés et d'étudiants. En partenariat avec la *Minority Corporate Counsel Association*, Vault mène chaque année un sondage sur la diversité des cabinets et publie un profil de diversité pour chacun des cabinets d'avocats, qui comprend une ventilation démographique des avocat(e)s du cabinet par niveau, race, sexe, orientation sexuelle, identité sexuelle et handicap. Ces profils comprennent également un aperçu des programmes, des initiatives et des plans stratégiques des cabinets en matière de diversité. De plus, toutes les réponses au sondage sont publiées dans la base de données sur la diversité dans les cabinets, qui comprend des données sur la diversité étalées sur cinq ans relatives à plus de 250 cabinets.

<sup>67</sup> Les problèmes raciaux au Canada et aux États-Unis sont différents, autant du point de vue de leur ampleur que de leur histoire, ce qui peut limiter l'applicabilité et l'évaluation des mesures américaines dans le contexte canadien.

<sup>68</sup> Root, Veronica, *Retaining Color*, 47 *University of Michigan Journal of Law Reform* 575-643; *Notre Dame Legal Studies Paper No. 1441*, en ligne à <http://ssrn.com/abstract=2310027>

### L'expérience du Royaume-Uni

Le *Solicitors Regulation Authority* (SRA) de la *Law Society of England and Wales* a adopté une démarche proactive en matière de cueillette de données démographiques. Les cabinets réglementés par la SRA sont maintenant tenus de recueillir des données sur la diversité de leurs effectifs, de rédiger un rapport et de le publier chaque année. La SRA publie des données globales chaque année. Elle élaborera un point de référence afin de permettre aux cabinets d'évaluer leurs progrès<sup>69</sup>.

### L'expérience canadienne

Au Canada, au moins trois grands cabinets de l'Ontario recueillent des données d'auto-identification sur la race et l'origine ethnique de leurs employés et membres, sans toutefois publier un rapport public<sup>70</sup>. Un certain nombre d'autres cabinets travaillent à l'élaboration de processus de cueillette de données démographiques, et de nombreux cabinets membres de Justicia recueillent déjà des données sur le sexe de leurs membres<sup>71</sup>.

D'autres organismes de réglementation de l'Ontario ont aussi envisagé d'imposer à leurs membres l'obligation de présenter des rapports sur des questions liées à la diversité. Récemment, la Commission des valeurs mobilières de l'Ontario (CVMO) a entrepris la mise en œuvre finale des modifications à la règle qui obligera, entre autres, les sociétés qu'elle réglemente à divulguer les renseignements suivants relatifs aux femmes chaque année : les politiques concernant la représentation des femmes au conseil d'administration; l'examen par le conseil de la représentation des femmes dans le processus de sélection des membres du conseil; l'examen de la représentation des femmes aux postes de dirigeants lors de telles nominations; détermination de nombres cibles de femmes au conseil et aux postes de direction<sup>72</sup>.

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<sup>69</sup> Il convient également de mentionner l'initiative de la *Judicial Appointments Commission* (JAC) du Royaume-Uni, une commission indépendante qui sélectionne les candidats aux fonctions judiciaires dans les tribunaux d'Angleterre et du Pays de Galles et qui, dans certains tribunaux qui relèvent aussi de sa compétence en Écosse et en Irlande du Nord, s'engage dans la surveillance en matière de diversité. Dans le cadre de sa stratégie en matière de diversité, la JAC enregistre des renseignements sur le sexe, l'ethnicité, les antécédents professionnels, les invalidités et l'âge à trois étapes du processus de nomination des juges : à la mise en candidature, à la présélection et à la recommandation de nomination. Ces renseignements sont recueillis grâce au formulaire volontaire de surveillance des candidatures de la JAC. Le JAC publie deux fois par an un bulletin statistique officiel qui contient des renseignements démographiques. *Judicial Selection and Recommendations for Appointment Statistics, October 2012 to March 2013 – Judicial Appointments Commission Statistics Bulletin*, London, Judicial Appointments Commission, 2013.

<sup>70</sup> De plus, de grandes banques et le gouvernement fédéral sont tenus aux termes de la loi de recueillir des données d'auto-identification concernant leurs effectifs. Le gouvernement de l'Ontario recueille aussi des données d'auto-identification et les publie dans son Plan stratégique d'inclusion dans la FPO.

<sup>71</sup> Par exemple, l'Institut canadien de la diversité et de l'inclusion, un organisme national à but non lucratif qui fournit aux lieux de travail des conseils sur la diversité, l'inclusion, l'équité et les droits de la personne, collabore avec un groupe de grandes et moyennes entreprises à l'élaboration d'un processus visant à les aider à recueillir des données démographiques.

<sup>72</sup> Amendements proposés par la CVMO au formulaire 58-1 -1F1 Divulgence sur la gouvernance d'entreprise du Règlement proposé 58-101 sur la Divulgence des pratiques du gouvernement; Exigences proposées en matière de divulgation concernant la représentation des femmes aux conseils et à la haute direction — Supplément au Bulletin (2014) de la CVMO, 37 OSCB.

La CVMO mettra en œuvre une approche « se conformer ou s'expliquer », qui oblige les entreprises à soit présenter un rapport sur la mise en œuvre ou l'examen des questions indiquées ci-dessus, soit expliquer les raisons pour lesquelles elles ne l'ont pas fait<sup>73</sup>.

En 2012, l'Association du Barreau canadien a produit un guide pour aider les entreprises à affiner leur approche concernant la diversité et l'inclusion et pour mesurer leurs résultats en matière de diversité<sup>74</sup>. En 2009, la Commission ontarienne des droits de la personne a également produit *Comptez-moi! Cueillette de données relatives aux droits de la personne*, un guide publié pour aider les organismes à recueillir des données démographiques<sup>75</sup>.

### Cueillette de données volontaire ou obligatoire

Il y a des avantages et des inconvénients dans la cueillette volontaire et obligatoire de données démographiques. Même si la déclaration obligatoire peut potentiellement fournir davantage de données fiables, le Barreau du Haut-Canada ne régit pas directement les cabinets et organismes juridiques en ce moment. De plus, Sossin et Lyon ont perçu une résistance et une forte opposition à l'exigence de déclarations obligatoires et ont indiqué que la divulgation volontaire de statistiques démographiques ou assortie de mesures d'incitation est une approche importante à envisager.

La cueillette volontaire de données permettrait au Barreau du Haut-Canada de collaborer avec les cabinets et organismes juridiques à la cueillette de données, ce qui augmenterait la participation des cabinets à un tel exercice. Le projet Justicia mentionné<sup>76</sup> ci-dessus est un exemple d'initiative dans le cadre de laquelle les entreprises participantes ont convenu de maintenir des données sur le sexe et de collaborer avec le Barreau à l'élaboration d'un guide et d'un modèle de cueillette de ces données. Depuis la création de Justicia, un certain nombre de cabinets grands et moyens recueillent maintenant des données démographiques sur le sexe.

### **Utilisation des données du Barreau**

Comme le Barreau recueille déjà des données démographiques sur la race et d'autres données sur, par exemple, la taille des cabinets, le statut des employés dans le cabinet, leur milieu, leur domaine de pratique, l'année de leur admission au Barreau, il pourrait être souhaitable que le Barreau améliore la qualité de ses activités de cueillette de données et devienne la source commune des données démographiques. Cela aurait l'avantage de fournir des données démographiques comparables et,

<sup>73</sup> Après la proposition de la CVMO, les organismes de réglementation des valeurs mobilières de la Saskatchewan, du Manitoba, du Québec, du Nouveau-Brunswick, de la Nouvelle-Écosse, de Terre-Neuve et Labrador, des Territoires du Nord-Ouest et du Nunavut ont publié des modifications proposées afin d'obtenir des commentaires du public semblables à celles mises de l'avant par la CVMO. Ces organes de réglementation ont également entrepris la mise en œuvre finale des modifications de la règle.

<sup>74</sup> Lorraine Dyke, *Mesurer la diversité dans les cabinets d'avocats — Un outil essentiel à un rendement supérieur*, Ottawa, Association du Barreau canadien, 2012, en ligne à [www.cba.org/ABC/equity/PDF/measuring-diversity-f.pdf](http://www.cba.org/ABC/equity/PDF/measuring-diversity-f.pdf).

<sup>75</sup> *Comptez-moi! Cueillette de données relatives aux droits de la personne*, Toronto, Commission des droits de la personne de l'Ontario, 2009, à la p 1 en ligne à [www.ohrc.on.ca/fr/comptez-moi-collecte-de-donn%C3%A9es-relatives-aux-droits-de-la-personne](http://www.ohrc.on.ca/fr/comptez-moi-collecte-de-donn%C3%A9es-relatives-aux-droits-de-la-personne)

<sup>76</sup> Voir Barreau du Haut-Canada, Le projet Justicia, en ligne à <http://www.lsuc.on.ca/with.aspx?id=635&langtype=1036>

probablement, de rendre la cueillette de données plus efficace. D'autre part, il y a peut-être des avantages à la participation des cabinets à la cueillette de données et à la déclaration de leurs propres renseignements.

### **Conformité en matière de diversité et de contrats**

**Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?**

#### ***Analyse de base***

Comme nous l'avons mentionné ci-dessus, un certain nombre d'entreprises, de gouvernements et d'établissements américains et canadiens exigent maintenant la divulgation des données démographiques sur la main-d'œuvre aux fins d'examen pendant le processus d'évaluation des demandes de propositions. Certains membres de Leaders juridiques pour la diversité, association qui comprend plus de 70 signataires partout au Canada, tiennent compte de la diversité à l'embauche d'employés et dans le cadre de leurs pratiques d'approvisionnement en exigeant des fournisseurs juridiques potentiels de divulguer leurs données démographiques. D'autres exigent qu'au moins un membre des communautés diverses travaille sur leur dossier<sup>77</sup>.

Certains participants au processus de mobilisation ont indiqué que le Barreau était tout désigné pour le rôle consistant à favoriser les politiques d'approvisionnement des entreprises. Afin de promouvoir la diversité dans la profession et de veiller à ce que les titulaires racialisés aient la possibilité de travailler sur des dossiers importants, le Barreau du Haut-Canada pourrait collaborer avec des organismes comme les Leaders juridiques pour la diversité à l'élaboration de programmes de conformité des contrats types qui exigeraient que les fournisseurs potentiels présentent des statistiques sur la diversité pendant le processus de demande de propositions.

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<sup>77</sup> Voir Legal Leaders for Diversity, *About Us*, en ligne à <http://legalleadersfordiversity.com/about-us>

## B. Le mentorat, les services de consultation et le réseautage

Au cours du processus de mobilisation, on a déterminé que le mentorat et le réseautage sont des éléments cruciaux de la promotion de l'inclusivité dans la profession. Nous avons demandé aux professionnels de fournir leurs commentaires sur les modèles de mentorat, de services de consultation et de réseautage.

### **Services de consultation et de mentorat**

**Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.**

En novembre 2013, les membres du conseil ont approuvé la création du groupe de travail sur les services consultatifs et le mentorat (groupe de travail sur le mentorat). Le mandat du groupe de travail sur le mentorat est le suivant :

- a. se renseigner sur les services obligatoires et facultatifs de mentorat et de services de consultation fournis aux avocat(e)s et autres professionnels par leurs organismes de réglementation ou leurs associations professionnelles ou commerciales au Canada et à l'étranger;
- b. élaborer un ensemble de critères pour évaluer l'efficacité de ces services à répondre aux besoins en matière de pratique des membres de la profession juridique en Ontario;
- c. déterminer la gamme des modèles de services de mentorat et de services de consultation, y compris ceux qui sont assistés par la technologie, virtuels, en partenariat avec d'autres organismes ainsi que la centralisation ou la mise en œuvre de mentorats et d'autres ressources qui pourraient être explorées et envisagées;
- d. consulter des intervenants externes sur les objectifs et les pratiques exemplaires pour de tels services;
- e. examiner et déterminer l'étendue possible des répercussions financières immédiates et à long terme pour le Barreau du Haut-Canada;

Le mentorat consiste en un programme officiel ou informel ou en une relation dans laquelle le mentor fournit au stagiaire des conseils personnels et sur la carrière. Dans une relation de mentorat, il n'y a aucun objectif précis établi. Toutefois, les services de consultation sont centrés sur le travail et orientés vers les résultats. Le conseiller/aidant fournit des conseils et évalue et surveille les progrès réalisés. Le conseiller/aidant aide l'employé à développer des compétences particulières pour une tâche ou une difficulté définie.

Le Groupe de travail vous invite à fournir des commentaires sur les modèles de mentorat et de services consultatifs qui seraient les plus utiles aux titulaires de permis racialisés. Vos commentaires peuvent être examinés par le Groupe de travail et par le groupe de travail sur le mentorat. Certains modèles proposés sont présentés ci-dessous, mais la liste n'est pas complète, et la proposition d'autres modèles serait appréciée.

### **Mentor bénévole ou services de consultation**

- a. **Mentorat individuel ou services de consultation** : Le mentor et son stagiaire se réuniraient régulièrement. La relation de mentorat serait individualisée et personnelle. Les mentors ne seraient pas rémunérés.
- b. **Mentorat de groupe** : Un mentor formerait une relation de mentorat avec un petit groupe de titulaires. Le mentor et les stagiaires se réuniraient régulièrement en groupe. Les mentors ne seraient pas rémunérés.
- c. **Mentorat à distance** : Le mentorat serait fourni par un mentor à un stagiaire, principalement par courrier électronique et d'autres formes de communication électronique. La communication électronique pourrait être complétée par quelques appels téléphoniques et des réunions en personne. Les mentors ne seraient pas rémunérés.
- d. **Mentorat par équipe** : Plusieurs mentors travailleraient auprès d'un groupe de plusieurs stagiaires. Les mentors et les stagiaires se réuniraient régulièrement en équipe. Les mentors ne seraient pas rémunérés.
- e. **Mentorat par pairs** : Des collègues qui sont à un stade semblable de leur carrière seraient jumelés afin d'échanger des conseils.
- f. **Portée limitée des services de consultation** : Un conseiller possédant une expertise dans un domaine précis fournirait à un stagiaire des conseils sur une question de fond ou de procédure juridique. Cette relation serait vraisemblablement à court terme. Les conseillers ne seraient pas rémunérés.

### **Mentor rémunéré ou services de consultation**

- a. **Mentorat individuel avec un professionnel** : Ce modèle fonctionnerait de la même façon que le mentorat individuel bénévole, mais les stagiaires pourraient accéder à un mentor qu'ils choisiraient dans une liste de mentors rémunérés.
- b. **Comité de conseillers** : Un groupe diversifié d'avocat(e)s et de conseillers parajuristes formés serait payé pour fournir des services de soutien précis à l'intention des personnes qui sont exposées à un risque accru de manquer à leurs obligations professionnelles.

Il est important de souligner que les associations comme l'Association des Avocats Noirs du Canada, la *South Asian Bar Association* (SABA) et la *Federation of Asian Canadian Lawyers* (FACL) offrent de précieuses possibilités de réseautage, de mentorat et des programmes d'éducation continue.

Le Barreau du Haut-Canada pourrait déterminer si d'autres programmes de soutien pourraient être mis en œuvre par l'intermédiaire d'associations comme celles qui aident les avocates et avocats et les parajuristes qui font partie de petits cabinets, qui exercent seuls ou qui ont été formés à l'étranger. Des propositions à ce sujet seraient appréciées.

### **Réseautage**

**Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.**

Le processus de mobilisation a permis d'indiquer que les titulaires racialisés sont souvent plus isolés des réseaux de soutien professionnels. La majorité des titulaires racialisés et non racialisés qui ont participé au sondage de Stratcom ont souligné la nécessité des titulaires racialisés d'avoir un meilleur accès aux réseaux professionnels.

Le Barreau du Haut-Canada pourrait collaborer avec des organismes juridiques et associations d'affinité pour élaborer des possibilités de réseautage plus structurées et planifiées, par exemple, dans le cadre de la formation professionnelle continue. Ces possibilités de réseautage fourniraient aux titulaires racialisés un forum leur permettant d'interagir avec des titulaires de permis racialisés et non racialisés d'autres cabinets et organismes juridiques.

Il est important de souligner que certains participants ont mentionné que les associations n'existent pas pour leur communauté. Par exemple, des parajuristes ont indiqué qu'ils n'ont pas accès à une association de parajuristes racialisés. Il n'y a également aucune association d'avocats formés à l'étranger, malgré les commentaires selon lesquels les avocat(e)s formés à l'étranger sont souvent isolés et n'ont pas accès aux réseaux qui sont si importants pour les petits cabinets et les praticiens qui exercent seuls.

Le programme de l'Université de Toronto à l'intention des avocats formés à l'étranger s'est avéré très efficace pour préparer ces derniers à entrer dans la profession juridique. Toutefois, des réseaux continus en cours d'exercice seraient précieux.

### C. L'amélioration des compétences culturelles dans la profession

Les résultats du sondage de Stratcom soulignent l'importance de séminaires de formation professionnelle sur l'équité, la diversité et les compétences culturelles parrainés par le Barreau qui pourraient faire partie du processus d'agrément.

Il y a de nombreuses définitions du terme « compétence culturelle », mais Robert Wright<sup>78</sup> a élaboré la définition suivante : « La capacité d'interagir efficacement avec des gens de différentes cultures. La compétence culturelle comprend quatre capacités essentielles :

- a. Nous devons connaître nos propres points de vue culturels et comprendre en quoi ils diffèrent ou ressemblent à d'autres (auto-analyse critique culturelle).
- b. Nous devons comprendre la réalité sociale et culturelle dans laquelle nous vivons et travaillons ainsi que celle dans laquelle nos clients vivent et travaillent.
- c. Nous devons cultiver des attitudes envers les différences culturelles.
- d. Nous devons être capables de générer et d'interpréter une grande variété de réponses verbales et non verbales (entrevues centrées sur le client) »<sup>79</sup>.

**Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue? La proposition d'autres modèles serait appréciée.**

- **Inclure dans le cours de responsabilité professionnelle et de pratique (RPP) les thèmes de compétence culturelle, diversité et inclusion.**
- **Fournir des programmes de formation professionnelle continue agréés annuels et volontaires sur les compétences culturelles.**
- **Exiger que les titulaires effectuent chaque année, ou, moins fréquemment, une heure de formation professionnelle continue en compétence culturelle qui serait intégrée aux trois heures requises de professionnalisme.**

Les options suggérées ci-dessus sont proposées afin de s'assurer que les titulaires se familiarisent avec la notion de compétence culturelle au début de leur carrière, dans le cadre du cours de responsabilité professionnelle et de pratique (RPP), et tout au long de leur carrière.

Le cours de RPP a été conçu pour « augmenter les connaissances des candidats concernant les devoirs et défis d'un avocat, et pour suggérer une méthode d'analyse des dilemmes éthiques et pratiques »<sup>80</sup>. Il faut réussir le cours de RPP pour être admis(e) au barreau.

<sup>78</sup> Robert S. Wright est un Néo-Écossais d'origine africaine qui est travailleur social et sociologue. Il conçoit et offre des ateliers de compétence culturelle et a développé une expertise dans ce domaine.

<sup>79</sup> Robert S. Wright, *Cultural Competence: Presented to Staff of Legal Aid Nova Scotia AGM* le 17 octobre 2012. Disponible en ligne à [www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf](http://www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf)

<sup>80</sup> En ligne à [www.lsuc.on.ca/articling\\_fr](http://www.lsuc.on.ca/articling_fr)

On estime que les programmes d'éducation sur la compétence culturelle seraient bénéfiques pour l'ensemble de la profession. Les règles 2.1-1 et 6.3.1-1 du *Code de déontologie* soulignent que les avocat(e)s et les parajuristes ont la responsabilité de reconnaître la diversité de la collectivité de l'Ontario<sup>81</sup>. Le *Code de déontologie* et le *Code de déontologie des parajuristes* imposent l'obligation de protéger la dignité des personnes et de respecter les lois relatives aux droits de la personne en vigueur en Ontario<sup>82</sup>. La formation en compétence culturelle pourrait être utile pour aider les avocat(e)s et les parajuristes à comprendre cette règle et à s'y conformer<sup>83</sup>.

Il est donc proposé que les programmes de FPC soient offerts à la profession et/ou que l'on exige des professionnels qu'ils suivent une heure de FPC dans le cadre des heures de professionnalisme agréé chaque année ou moins fréquemment.

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<sup>81</sup> *Code de déontologie*, Toronto, Barreau du Haut-Canada, 1<sup>er</sup> octobre 2014, règle 2.1-1, commentaire [4.1] et règle 6.3.1-1, commentaires [1] et [2], en ligne à [www.lsuc.on.ca/code-avocats](http://www.lsuc.on.ca/code-avocats).

<sup>82</sup> *Code de déontologie des parajuristes* à la règle 2.03, en ligne à <http://www.lsuc.on.ca/code-parajuristes/>

<sup>83</sup> La Nova Scotia Barristers' Society (article NSBS) reconnaît la valeur des programmes d'éducation sur la compétence culturelle et considère la compétence culturelle comme l'une des facettes de la compétence professionnelle globale d'un avocat. La NSBS offre des ateliers d'une demi-journée chaque mois sur l'accroissement des compétences culturelles.

## D. La discrimination et le rôle du processus des plaintes

**Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement? D'autres propositions seraient appréciées.**

- **En mettant à jour le *Code de déontologie* et le *Code de déontologie des parajuristes* afin de définir précisément la discrimination systémique et en la combattant, et en élaborant un plan de communication pour la profession.**
- **En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités de présenter des plaintes.**
- **En affectant un groupe de spécialistes de la réglementation professionnelle des membres du personnel au traitement des plaintes de discrimination raciale.**
- **En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités d'offrir à leurs membres qui ont fait l'objet de plaintes un soutien de type avocat de service.**

### ***Comprendre la discrimination***

Selon la Commission ontarienne des droits de la personne, la discrimination raciale systémique « découle de politiques, pratiques et comportements qui font partie des structures sociales et administratives de l'organisation et dont l'ensemble crée ou perpétue une situation désavantageuse pour les personnes racialisées »<sup>84</sup>. Le processus de mobilisation a révélé que, souvent, les personnes touchées par la discrimination raciale ne croient pas qu'elles ont la possibilité de se plaindre, car la discrimination est systémique ou elles ne veulent pas se plaindre de peur que la plainte ait des répercussions sur leur carrière.

Les règles du *Code de déontologie* et du *Code de déontologie des parajuristes* portent sur la responsabilité particulière des avocats et parajuristes de respecter les exigences des lois relatives aux droits de la personne en vigueur en Ontario et, plus précisément, d'honorer l'obligation de non-discrimination. Le mandat du Barreau d'enquêter sur les plaintes de discrimination systémique n'est pas largement connu. Nous proposons que les règles soient clarifiées et qu'un plan de communication soit élaboré afin d'informer les titulaires que des plaintes de discrimination systémique peuvent être présentées au Barreau du Haut-Canada.

### ***Fournir des ressources à la profession***

En plus de recevoir des plaintes relatives à la discrimination systémique, le Barreau pourrait développer des méthodes institutionnelles proactives pour s'attaquer à la discrimination systémique,

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<sup>84</sup> Commission des droits de la personne de l'Ontario. *Racisme et la Discrimination Raciale — Discrimination systémique (fiche)* en ligne à [www.ohrc.on.ca/fr/racisme-et-la-discrimination-raciale-discrimination-systémique-fiche](http://www.ohrc.on.ca/fr/racisme-et-la-discrimination-raciale-discrimination-systémique-fiche)

comme offrir aux cabinets et aux organismes juridiques des guides de pratiques exemplaires et des modèles de politiques.

Le Barreau pourrait également exiger que les cabinets adoptent des politiques et procédures pour lutter contre la discrimination et le harcèlement, et pourrait tenir les cabinets comme responsables de l'échec d'établir et de respecter ces politiques et procédures.

Présentement, le Barreau ne réglemente pas directement les cabinets ni les organismes juridiques. En février 2014, toutefois, les membres du conseil ont approuvé l'élaboration d'un cadre de travail relativement à la réglementation des cabinets (aussi connue sous le terme « réglementation des entités (entity regulation) » aux fins d'examen par les membres du conseil. Ce cadre de travail pourrait être conçu de façon semblable à la méthode d'auto-évaluation qui s'est révélée fructueuse en Nouvelle-Galles-du-Sud. Ce possible changement à l'approche réglementaire du Barreau pourrait lui permettre d'exiger des cabinets de créer des politiques et procédures en matière de discrimination et de harcèlement et de les respecter.

### ***Remédier à la peur de représailles lors du dépôt d'une plainte***

La crainte de déposer une plainte a été mentionnée au cours du processus de mobilisation et, présentement, le droit de se plaindre auprès du Barreau par l'intermédiaire des associations professionnelles n'est pas largement connu.

Le Barreau pourrait souhaiter collaborer avec des associations d'affinité en vue d'accroître leurs capacités de porter plainte pour discrimination raciale et/ou ethnique. La possibilité de déposer une plainte par l'intermédiaire d'une association peut réduire le risque que la plainte ait un impact négatif sur la carrière du plaignant. Le Groupe de travail souhaiterait obtenir d'autres suggestions sur la façon d'améliorer les politiques et les pratiques de sorte que les personnes puissent se sentir plus à l'aise de s'adresser au Barreau pour se plaindre de discrimination raciale.

Étant donné que les cas de discrimination raciale et/ou ethnique sont souvent très complexes, nous suggérons qu'un groupe de spécialistes de la réglementation professionnelle des membres du personnel soit nommé pour s'occuper de tels cas. Ce groupe de spécialistes participerait à des programmes de formation approfondie sur la compétence culturelle et la discrimination raciale afin de les rendre sensibles à la nature de ces cas et des parties concernées.

### ***Apporter un soutien par le biais du processus***

Les participants à un groupe de discussion ont convenu qu'il peut y avoir des facteurs contribuant à rendre les titulaires racialisés plus vulnérables à des plaintes, la plupart citant fréquemment un manque de ressources et de formation ainsi que des problèmes associés à une mauvaise communication et à des malentendus culturels. Ces facteurs, comme le manque de ressources, seraient vraisemblablement pertinents une fois que le titulaire fait partie du processus de réglementation. Par conséquent, le Groupe de travail suggère que le Barreau puisse collaborer avec les associations juridiques pour renforcer leurs capacités d'offrir un soutien de type avocat de service aux personnes qui font l'objet de plaintes.

## E. Les activités du Barreau du Haut-Canada

Le Groupe de travail a discuté des initiatives qui pourraient être mises en œuvre à l'interne pour traiter les résultats du processus de mobilisation. Il envisage de recommander aux membres du conseil l'adoption des programmes suivants. Le Groupe de travail souhaiterait obtenir des commentaires concernant ces programmes ainsi que d'autres initiatives internes qui pourraient être examinées par le Groupe de travail.

### **Initiative 1 : Améliorer le programme de conformité en matière d'équité**

**Le Barreau améliorerait son programme de conformité en matière d'équité afin d'inclure une demande de données démographiques lorsque l'on retient les services de fournisseurs, de cabinets ou d'avocat(e)s.**

### **Initiative 2 : Mener une vérification interne de l'équité**

**Le Barreau renforcerait ses politiques et ses programmes en procédant à une vérification opérationnelle de l'équité des services qu'il offre à la profession.**

### **Initiative 3 : Cueillette de données internes**

**Le Barreau envisagerait la cueillette de données internes complémentaires sur les questions relatives à la racialisation dans le processus de réglementation.**

### **Initiative 4 : Développer une image publique plus diversifiée du Barreau du Haut-Canada**

**Le Barreau envisagerait des stratégies pour développer une image publique plus diversifiée et inclusive.**

### **Analyse de base**

Actuellement, dans le cadre de son processus d'appel d'offres, le Barreau exige que les fournisseurs ayant plus de 50 employés et les cabinets comprenant plus de 50 avocats se conforment au *Code des droits de la personne*, à la *Loi sur la santé et la sécurité au travail* (LSST), s'il y a lieu, et à la *Politique de prévention contre le harcèlement et la discrimination du Barreau du Haut-Canada*.

Le Barreau pourrait renforcer les exigences du programme de conformité en matière d'équité en incluant une demande d'examen des données démographiques au cours du processus de sélection.

Le Barreau du Haut-Canada s'est également engagé à faire en sorte que ses politiques, ses programmes et ses pratiques soient inclusifs et accessibles. Afin de s'en assurer, le Barreau pourrait demander à une tierce partie externe de mener une vérification opérationnelle de l'équité des services qu'elle offre à la profession. Cette vérification se concentrerait sur les employés du Barreau qui offrent des services directement à la profession. Une vérification de l'équité permettrait d'identifier les difficultés et progrès reliés à l'intégration des principes et pratiques d'équité dans les activités du Barreau.

Le Barreau pourrait aussi déterminer si des données supplémentaires, de meilleures données ou d'autres renseignements devraient être recueillis à l'interne concernant les questions de réglementation, y compris les plaintes et les enquêtes, relativement à l'incidence et à l'impact de la racialisation.

Un nombre important de participants racialisés et non racialisés au processus de mobilisation approuvent la suggestion que le Barreau développe une image publique plus diversifiée et inclusive. Le Barreau pourrait envisager des initiatives qui rendraient son image publique plus diversifiée et inclusive. On pourrait obtenir des commentaires du Groupe consultatif en matière d'équité, qui est composé d'associations partenaires et de membres individuels qui possèdent une expertise dans les questions liées à l'équité et à la diversité. Le Groupe de travail sur la gouvernance pourrait obtenir le soutien du personnel et des commentaires supplémentaires du Service de l'équité, du Service des affaires publiques et du Service des communications du Barreau.

## CONCLUSION

Le Barreau s'est engagé à promouvoir une profession qui est représentative de tous les peuples de l'Ontario et qui est inclusive et exempte de discrimination et de harcèlement. Le processus de mobilisation a cerné un certain nombre d'obstacles qui touchent les titulaires racialisés tout au long de leur carrière.

Le Groupe de travail a examiné ces obstacles et les défis à relever en raison de la discrimination, du racisme flagrant, des différences culturelles, du manque de mentors, de parraineurs, de modèles et de possibilités de réseautage et en raison d'autres facteurs systémiques. Par conséquent, il a cerné un certain nombre d'initiatives possibles qui pourraient relever certains de ces défis.

Les initiatives proposées sont présentées à la profession, et nous vous invitons à nous faire part de vos commentaires.

**Nous vous invitons à nous faire part de vos commentaires sur l'ensemble du présent document et sur toute question abordée. De plus, nous souhaitons obtenir des propositions de solutions non présentées dans ce document.**

**Veillez nous faire parvenir vos observations écrites d'ici le 1<sup>er</sup> mars 2015, à :**

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## Annexe 1 — Racialisation et taille des cabinets selon les données du Barreau sur les avocats et les parajuristes d'avril 2014

Tableau 1 — Professionnels exerçant seuls — en pourcentages

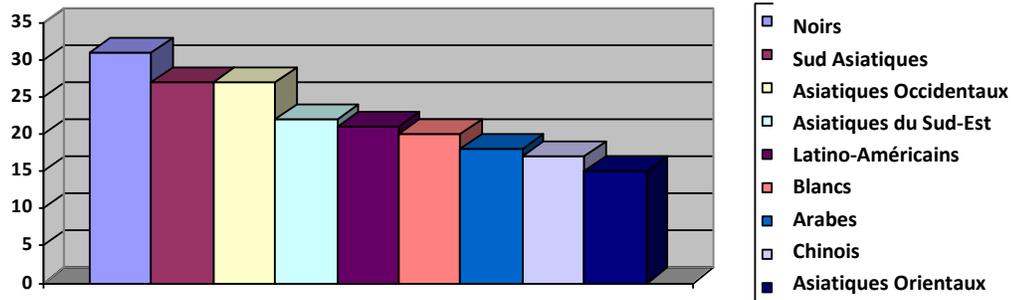
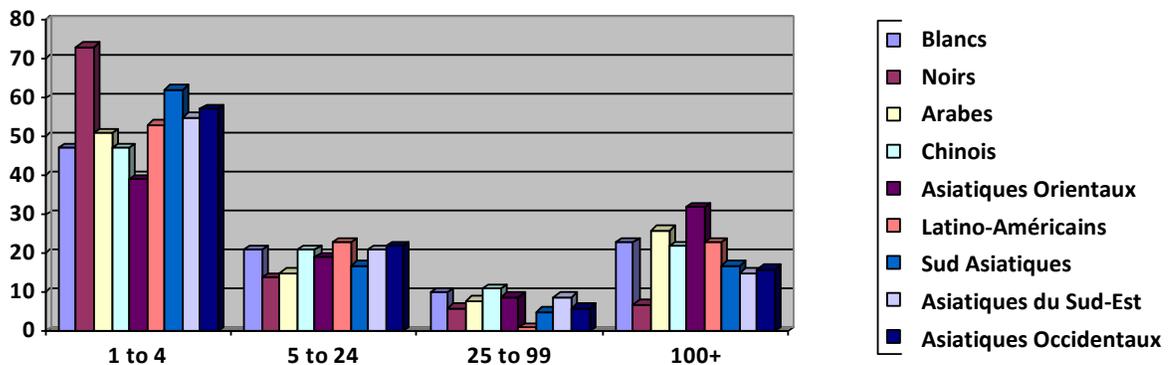


Tableau 2 — Par taille du cabinet — en pourcentages

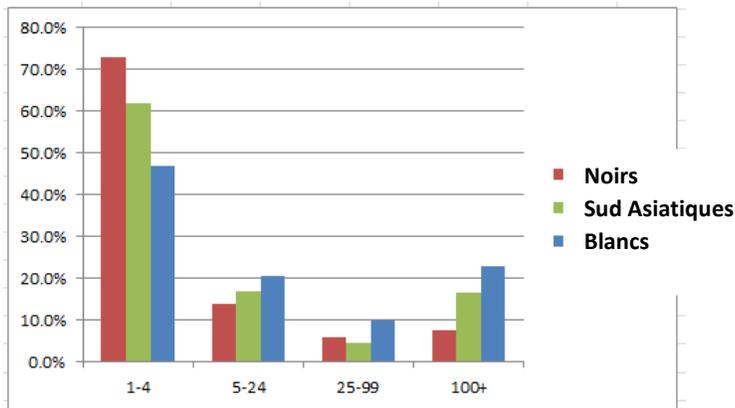


Le tableau 1 montre que les avocates et avocats Noirs, Sud-Asiatiques et Asiatiques Occidentaux sont proportionnellement plus susceptibles d'exercer seuls.

Le tableau 2 montre que les avocates et avocats Noirs et Sud-Asiatiques sont proportionnellement plus susceptibles d'exercer seuls ou dans de petits cabinets et proportionnellement beaucoup moins susceptibles d'exercer dans de grands ou moyens cabinets.

Le tableau 2 est difficile à interpréter, car il comporte une comparaison entre plusieurs groupes. Pour faciliter sa compréhension, le tableau 3 ci-dessous montre la taille des cabinets dans lesquels exercent les avocats Noirs, Blancs et Sud-Asiatiques.

Tableau 3 — Par taille du cabinet — en pourcentages



Le tableau 3 montre plus clairement les différentes tendances des cabinets où exercent les avocats Noirs, Sud-Asiatiques et Blancs. Les avocates et avocats Noirs et, dans une moindre mesure, les Sud-Asiatiques, exercent de façon disproportionnée dans les plus petits cabinets. Il y a relativement peu d'avocats Noirs qui exercent dans les cabinets les plus grands, alors que les proportions d'avocats Sud-Asiatiques et des Avocats Blancs dans les plus grands cabinets ne sont pas si différents.

**Annexe 2 – Questions à la profession*****Établir des programmes de diversité au sein des cabinets***

Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire ?

Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi?

Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?

***Services de consultation et de mentorat***

Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés ?

***Réseautage***

Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.

***L'amélioration des compétences culturelles dans la profession***

Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue ?

***La discrimination et le rôle du processus des plaintes***

Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement?

**Annexe 3 – Chronologie de la mobilisation du Groupe de travail sur les défis des titulaires de permis racialisés**

DATE	ACTIVITÉ
Août 2012	Le Conseil crée le Groupe de travail sur les défis des titulaires de permis racialisés
Octobre 2012	Le Groupe de travail approuve l'énoncé de mandat
Octobre 2012 – janvier 2014	Le Groupe de travail rencontre officieusement des organisations et des particuliers pour obtenir des renseignements sur les défis et les pratiques exemplaires
Début 2013	Le Groupe de travail retient les services de Strategic Communications Inc. (Stratcom) et Michael Charles de Change DeZign pour mener une mobilisation officielle, qui comprend des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.
Début 2013	Le Groupe consultatif en matière d'équité crée un groupe de travail qui donne une rétroaction à diverses étapes du processus de l'étude sur les défis des titulaires de permis racialisés.
Juillet 2013 – septembre 2013	Le processus de liaison communautaire prend place.
Mars 2014	Stratcom et Michael Charles fournissent le rapport officiel final sur la mobilisation au groupe de travail.
Mars 2014 – octobre 2014	Le Groupe de travail passe en revue les processus de mobilisation formel et informel et consulte les organisations concernées.



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



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

CONSULTATION PAPER



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

*"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**

# Questions for the Profession

- Enhancing the internal capacity of organizations
  - Diversity programs within firms
  - Collecting demographic data
  - Contract compliance
- Mentoring, advisory services and networking

# Questions for the Profession

- 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

# Law Society Operations

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

# 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

# Consultation Process

Meetings held in areas such as,

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

# Consultation Process

- Open house meetings in Toronto with webcast
- Meet with associations such as,
  - CDLPA
  - 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



### Working Group Members

Janet Leiper, 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

Report prepared by the Equity Initiatives Department –  
Josée Bouchard, Director of Equity and Ekuia Quansah, Associate Counsel



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

This is **Exhibit H** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Alexandra Heine  
(LSO #83514R)

**Innovation  
Strategy  
Results**

**Challenges Facing Racialized  
Licensees: Final Report**

**Law Society of Upper Canada**

**March 11, 2014**

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

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# Executive Summary

## 1. Introduction

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

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

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

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

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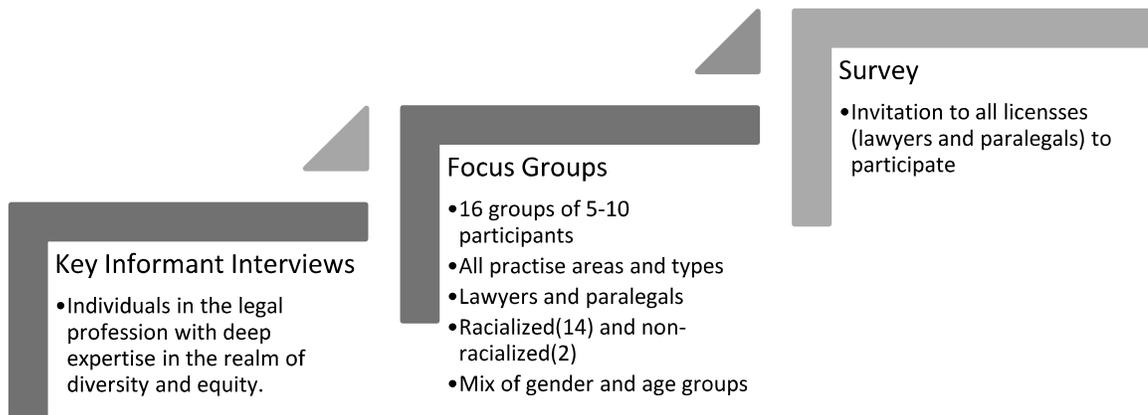
<sup>1</sup> For the purposes of this research project and throughout this report the term ‘racialized’ is defined as follows: “Racialized expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g.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

## 2. Methods

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

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

Figure 1 – Research Design



### Survey of Licensees

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

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

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

## 3. Key Informant Interviews and Focus Groups

---

### Key Informants

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

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

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

### Focus Groups

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

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

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

## 4. Survey Research: Profile of Participants

---

### Research Issues

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

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

### Racialization, Race, Ethnicity

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

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

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

#### Representativeness of the Survey Populations

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

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

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

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

### Composition of Racialized licensees

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

## 5. Experience of Licensees

---

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

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

Key findings from this section include:

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

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

## 6. Impacts of Racialization

---

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

Key findings from this section include:

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

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

## 7. Solutions (Remedies and Best Practices)

---

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

Key findings include:

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

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

## 8. Complaints and Discipline

---

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

Key findings include:

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

## 9. Conclusion

---

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

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

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

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

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

# 1. Introduction

---

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

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

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## 2. Methods

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### 2.1 The Research Planning Process

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

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

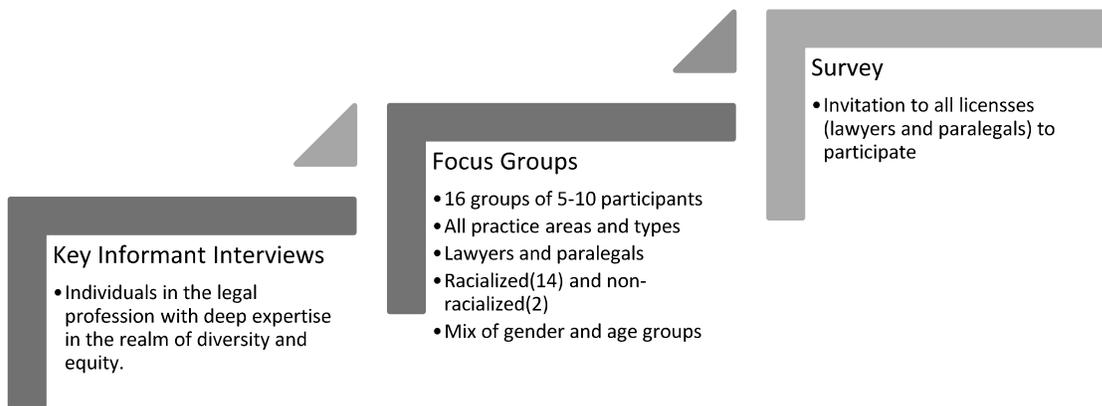
### 2.2 Research Methods

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

---

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

Table 1 – Research Design



### 2.2.1 Key Informant Interviews

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

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

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

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

### 2.2.2 Focus Groups

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

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

Table 2 – Focus Group Composition

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

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

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

### 2.2.3 Survey of Licensees

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

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

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

## 3. Key Informants and Focus Groups

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### 3.1 What's the issue?

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

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

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

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

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

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

### 3.1.2 Insights from Key Informants

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

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

Through the key informants we got a strong indication that:

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

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

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

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

*Female Lawyer,  
key informant*

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

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

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

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

## 3.2 Focus Group Findings

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

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

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

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

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

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

### Discrimination & Stereotyping

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

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

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

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

*A black female lawyer*

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

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

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

*A young male South Asian lawyer*

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

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

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

*A male South Asian lawyer*

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

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

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

*A racialized paralegal*

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

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

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

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

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

*Recent-call, black lawyer*

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

### **Gender, Age and Pedigree**

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

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

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

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

*Female, racialized lawyer*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Complaints & Discipline

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

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

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

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

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

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

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

### **Reaction to this Research**

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

## 4. Profile of Survey Respondents

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### 4.1 What's the Issue?

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

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

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

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

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

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

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

### 4.3 Representativeness in the Survey Population

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

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

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

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

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

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

Table 3 – Weighting the Lawyer Subsample

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

Table 4 – Weighting the Paralegal Subsample

<b>Demographic characteristic</b>	<b>Raw2013 Survey Sample</b>	<b>2010 Snapshot</b>	<b>Weighted 2013 Survey Sample</b>
<b>Gender</b>			
Female	59%	53%	54%
Male	41%	47%	46%
<b>Age</b>			
< 30	18%	22%	22%
30-39	16%	21%	20%
40-49	27%	25%	25%
50-65	33%	28%	29%
> 65	5%	4%	3%
<b>Size of Firm</b>			
Sole Practitioner	39%	25%	26%
Education/Gov't	6%	5%	5%
Other	55%	70%	69%
<b>Racialized</b>			
	41%	28%	32%

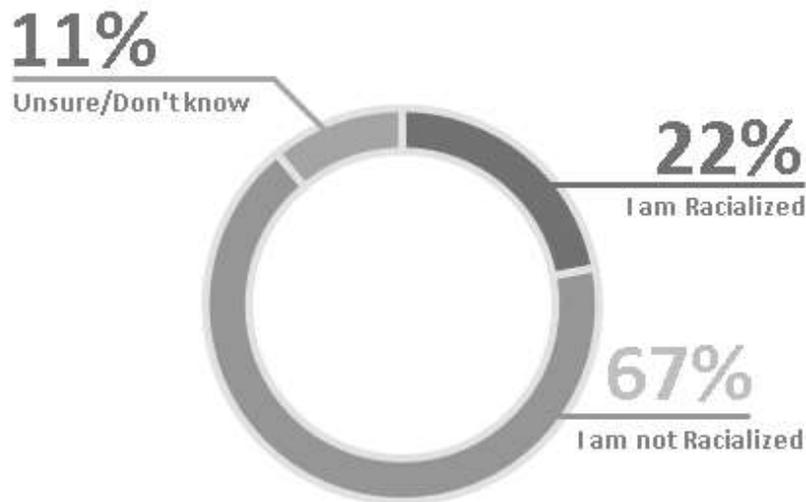
## 4.4 Racialization

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

Chart 1 – Composition of Racialized licensees

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

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



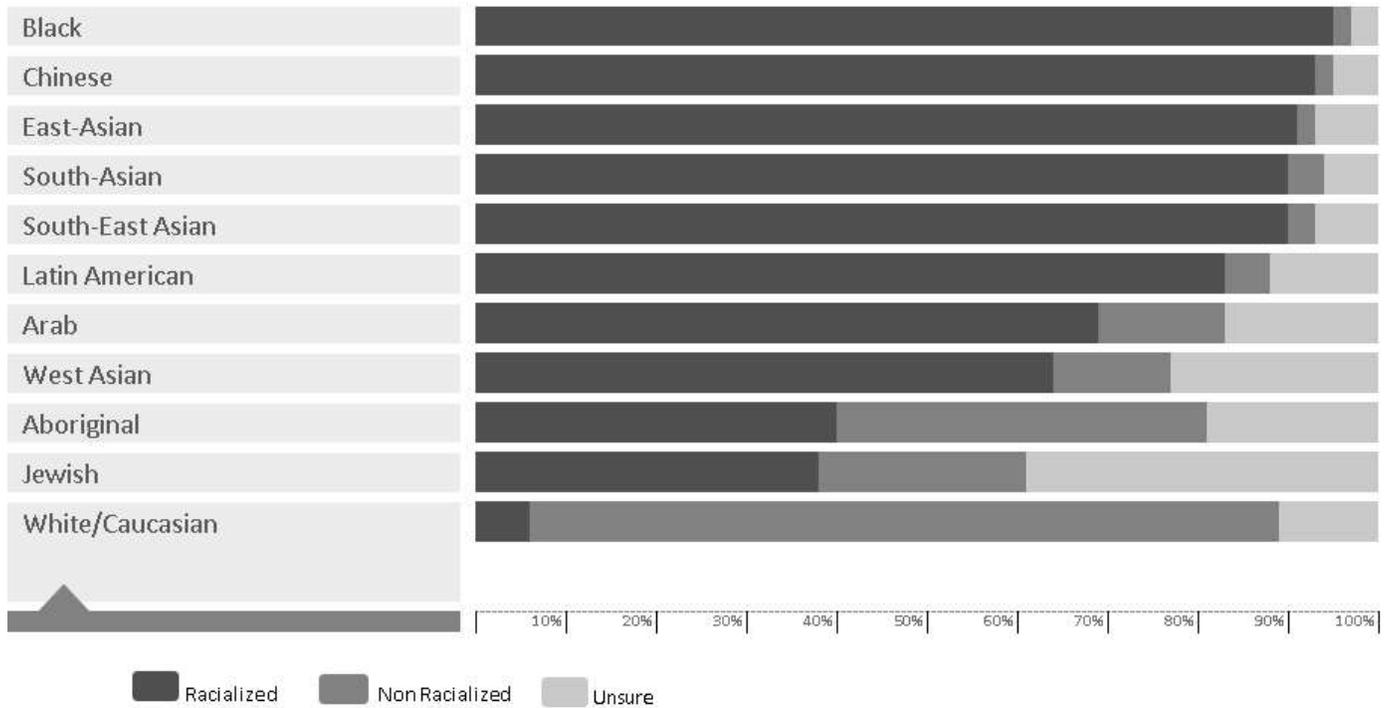
Weighted sample size = 3402 licensees

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

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

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

Chart 2 – Racialization by Ethnicity



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

#### 4.5 Comparing Sub-groups (demographics)

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

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

Table 5 – Comparing Sub-Groups by Demographics

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

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

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

Table 6a – Comparing Sub-Groups by Practice Environment

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

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

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

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

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

Table 6b Practice Areas (Lawyers)

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

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

Table 6c Practice Areas (Paralegals)

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

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

## 5. Experience of Licensees

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### 5.1 What's the issue?

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

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

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

### 5.2 Personal Experience

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

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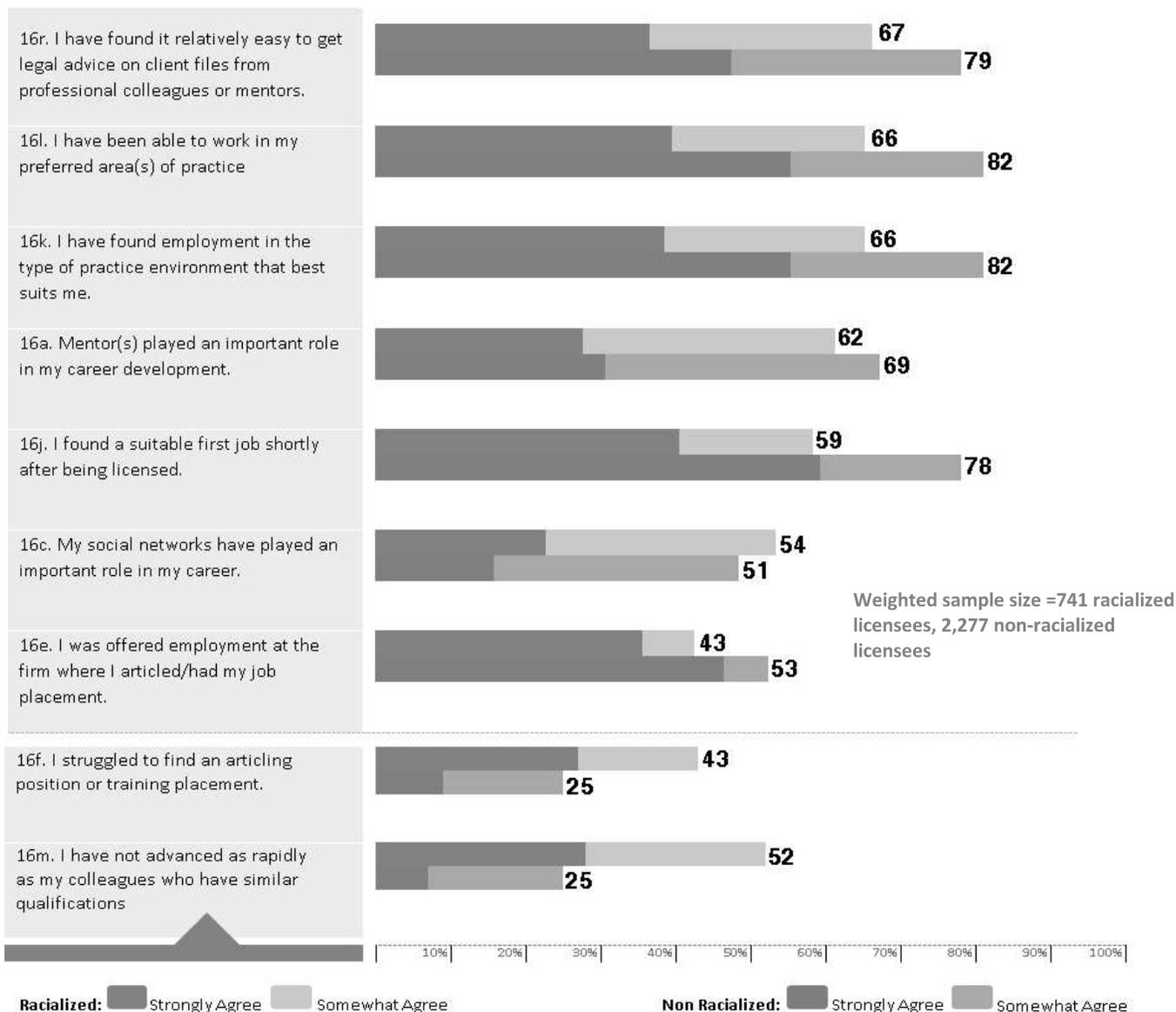
<sup>6</sup> Broad concepts or themes in the survey data were identified using exploratory factor analysis (EFA), a statistical technique designed to identify an underlying structure in the data based on correlations between survey items. For example in Chart 3 below respondents who agreed with any of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

### 5.2.1 Career Opportunities

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

Chart 3 – Career Opportunities/Professional Growth

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



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

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

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

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

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

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

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

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

**Further Comparisons: Paralegals**

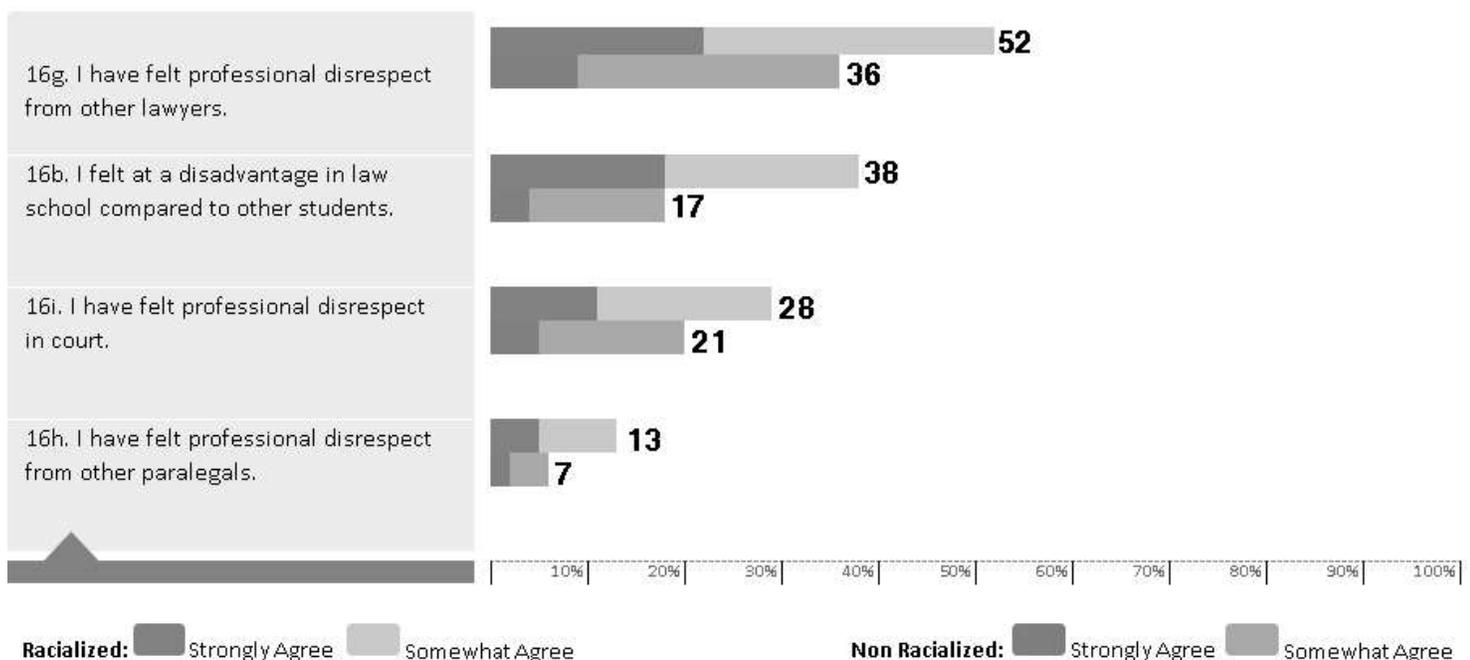
The focus group report noted that racialized paralegals, particularly the high proportion of recent licensees, might face greater challenges in the job market than racialized lawyers. Data not shown here reinforces this hypotheses, illustrating that whereas paralegals as a group report lower success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

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

**5.2.2 Disrespect/Disadvantage**

Chart 4 – Disrespect/Disadvantage

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



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

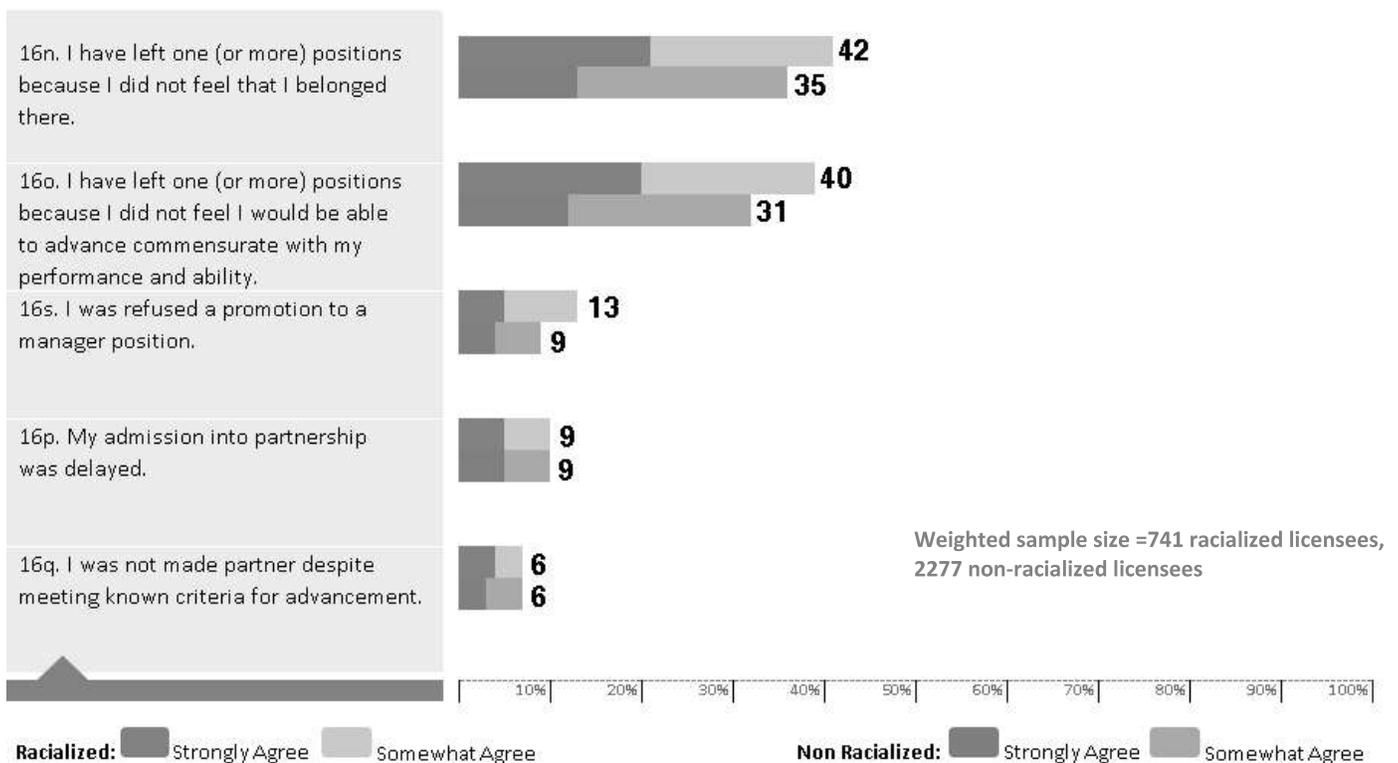
**Chart 4** groups four statements associated with issues of respect and perceptions of disadvantage. Among racialized licensees 52% agreed they had experienced disrespect from other lawyers, compared to 36% of non-racialized licensees (Q16g). Asked about disrespect from other paralegals, 13% of racialized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

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

### 5.2.3 Career Setbacks

Chart 5 – Career Setbacks

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



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

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

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

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

### 5.3 Barriers to Entry and Advancement

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

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

### 5.3.1 Identifying Barriers to Entry

Table 7 – Barriers During Entry to Practice

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

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

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

## Race, Ethnicity, Culture

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

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

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

## Sex, Gender, Age

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

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

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

### Academic Pedigree

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

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

### Lifestyle, Personal Beliefs

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

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

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

### 5.3.2 Barriers to Advancement

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

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

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

Table 8 – Barriers After Entry into Practice

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

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

## Race, Ethnicity, Culture

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

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

## Sex, Gender, Age

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

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

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

## Lifestyle, Personal Beliefs

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

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

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

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

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

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

## 6. Impacts of Racialization

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### 6.1 What's the Issue?

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

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

### 6.2 Impacts: Have you been disadvantaged?

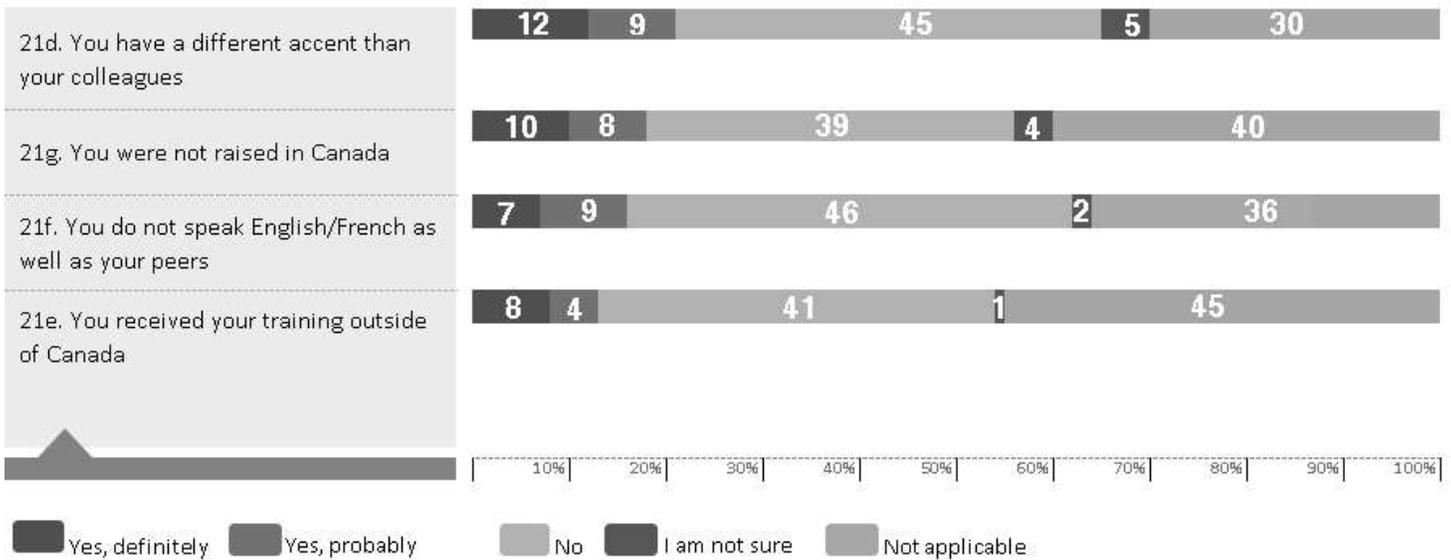
Racialized respondents only were asked if they had been disadvantaged in hiring, advancement, or pursuit of an area of practice, 'as a consequence of the factors listed below.' Response to 24 factors tested have been grouped in **Charts 6, 7, and 8**.

#### 6.2.1 National Origin

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

Chart 6 – Disadvantages due to national origin

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



Weighted sample size =741 racialized licensees

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

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

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

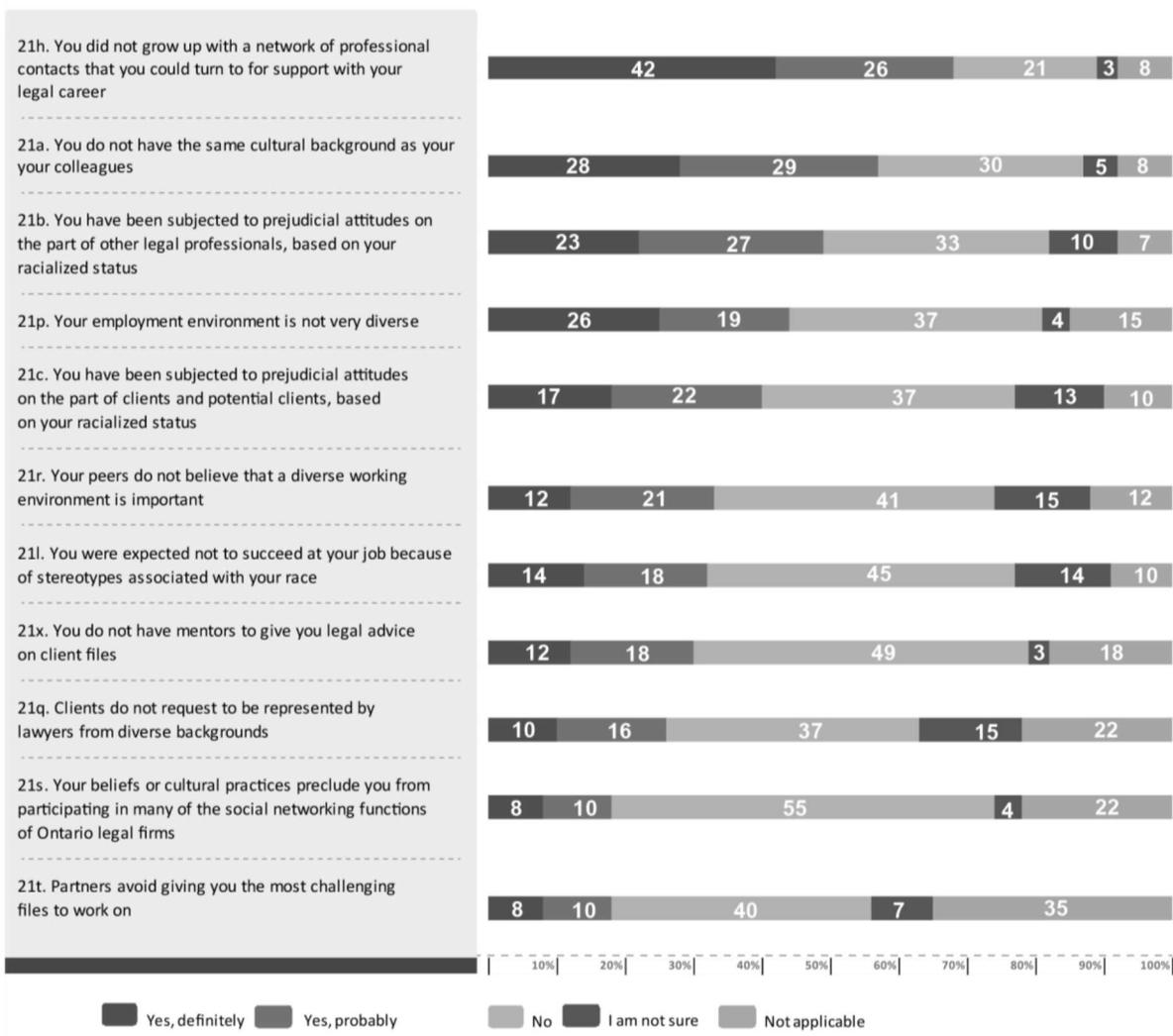
and 35% of those born outside of Canada reported being disadvantaged due to their accent. Twenty-four percent of those reporting another first language, and 38% born outside Canada, reported being disadvantaged as a consequence of not being raised in Canada. Twenty-four percent of those who speak another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

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

## 6.2.2 Outgroup

Chart 7 – Disadvantages due to ‘Outgroup’

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



Weighted sample size =741 racialized licensees

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

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

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

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

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

This section presents data not shown.

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

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

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

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

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

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

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

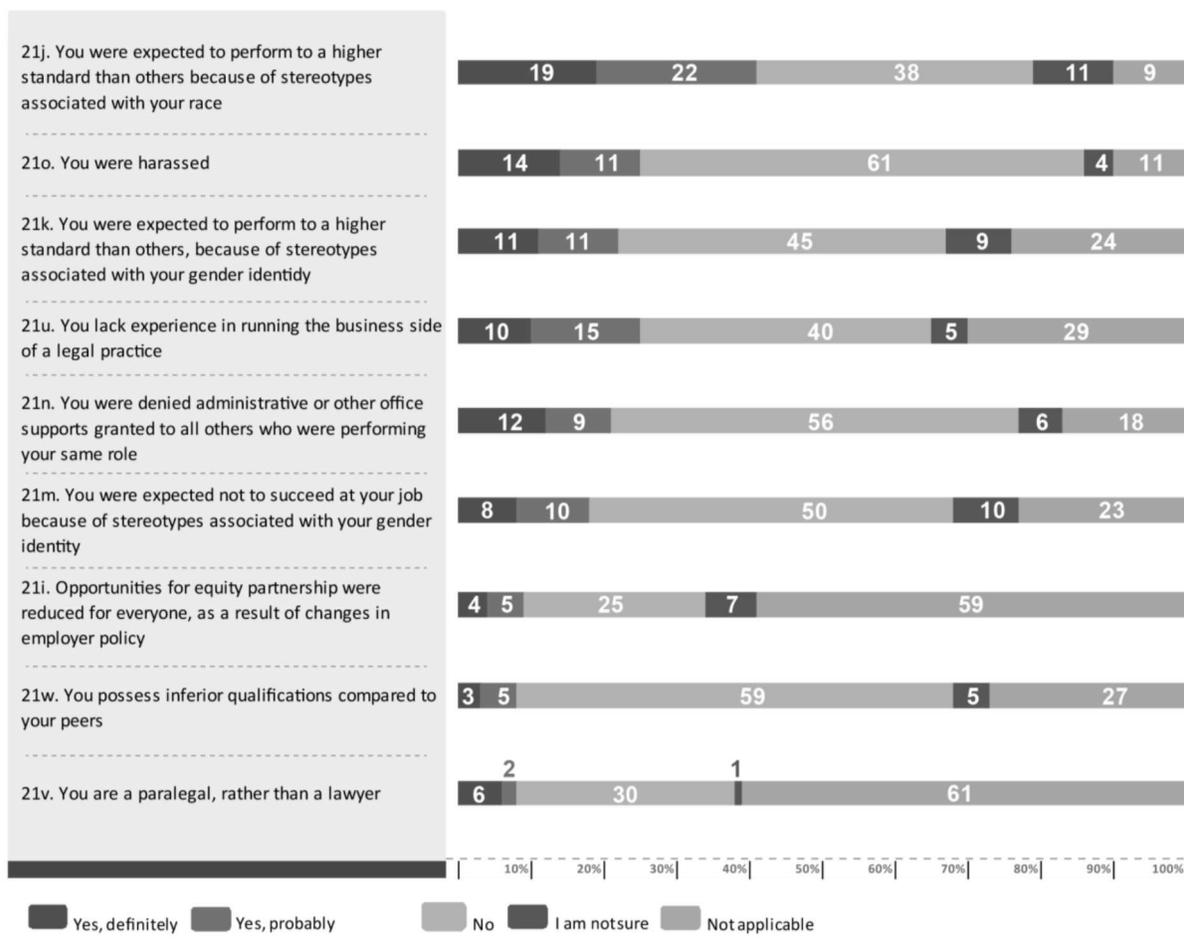
- Black
- South Asian
- Chinese
- Arab

### 6.2.3 Stereotyping

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

Chart 8 – Stereotyping

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



Weighted sample size =741 racialized licensees

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

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

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

## 7. Solutions (Remedies and Best Practices)

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### 7.1 What's the Issue?

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

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

### 7.2 Perspectives on Racialization

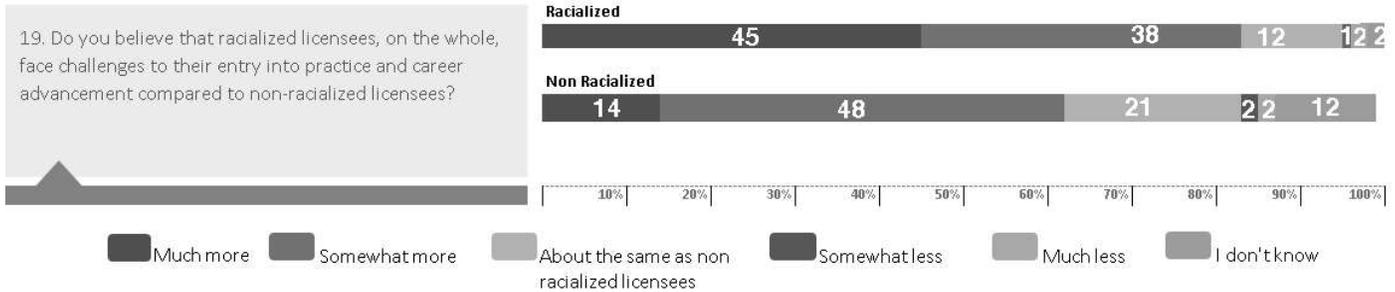
#### 7.2.1 Does racialization exist?

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

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

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

Chart 9 – Do Racialized Licensees Face Unique Challenges



Weighted sample size =741 racialized licensees

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

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

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

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

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

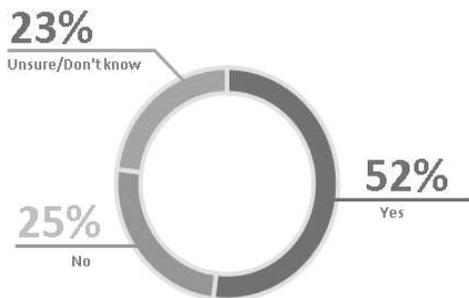
### 7.2.2 The Challenges of Racialization: What Have You Seen?

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

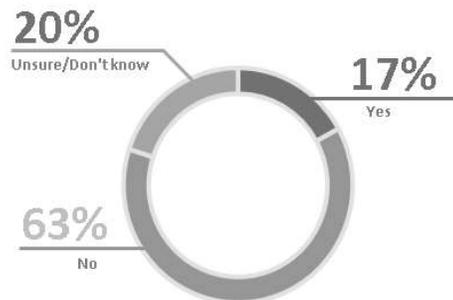
Chart 10 – Experiencing/Witnessing Challenges

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

➤ **Racialized:**



➤ **Non-racialized:**



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

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

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

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

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

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

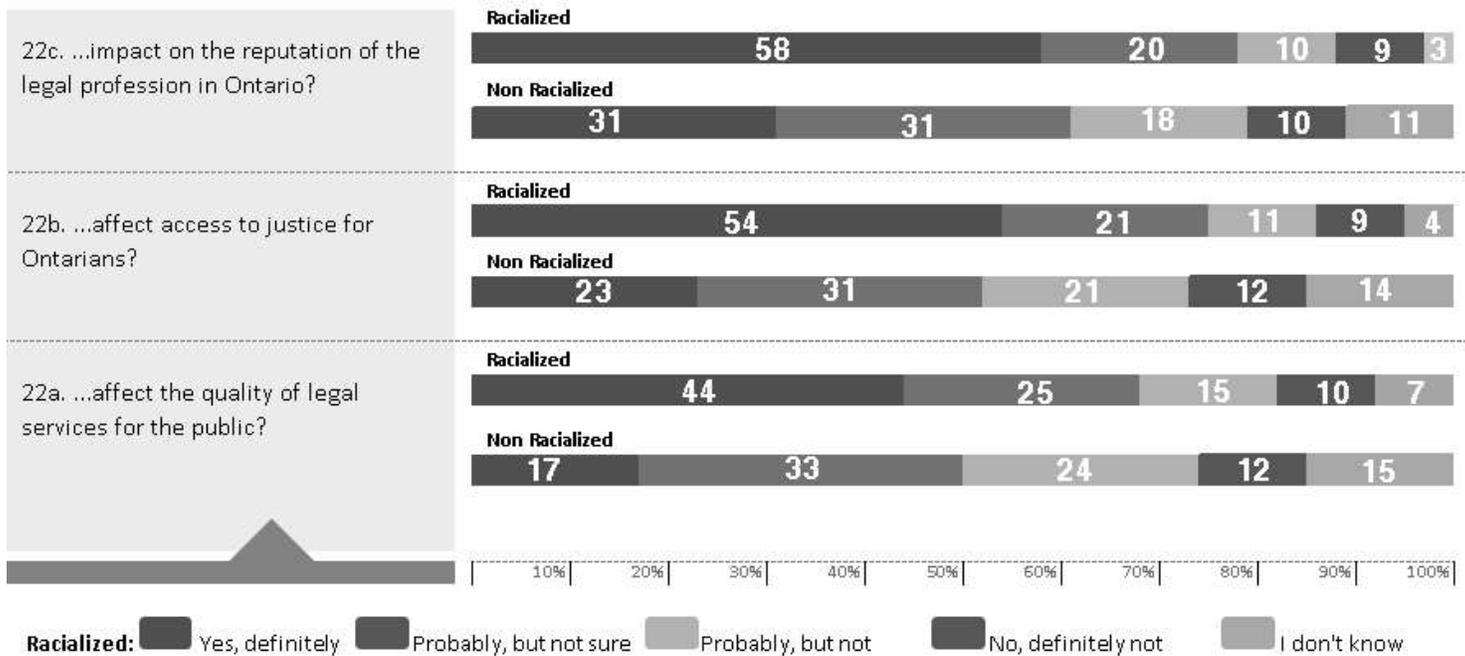
Having probed opinion regarding the existence, comparative challenges and evidence of racialization, a subsequent bank of three questions explored opinions regarding the impact of racialization on the profession, the justice system, and the public in positive or negative ways. **Chart 11** shows responses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

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

Chart 11 – Impact on the Justice System

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



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

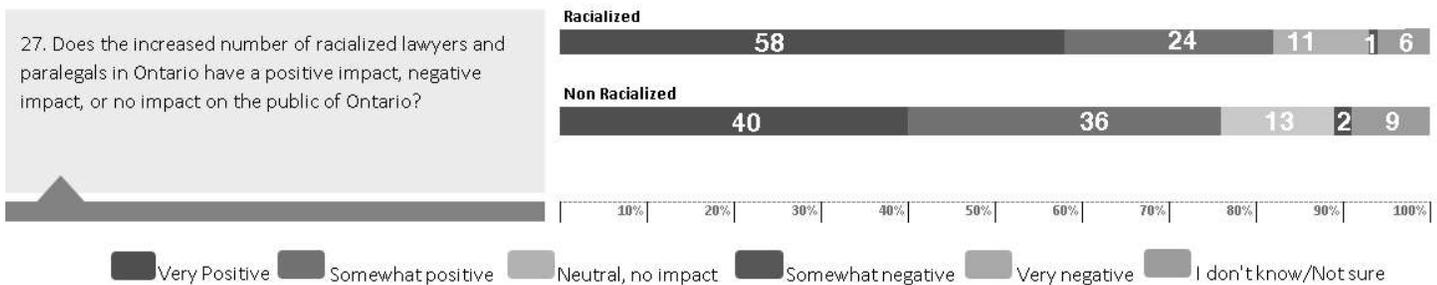
Close to four-fifths (78%) of racialized respondents agreed (58% definitely, 20% probably) that the challenges facing racialized licensees have an impact on the reputation of the legal profession in Ontario, compared to three-fifths (62%) of non-racialized licensees (31% definitely, 31% probably) (Q22c).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

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

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

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

Chart 12 – Impact of Racialized Licensees on the Public



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

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

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

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

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

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

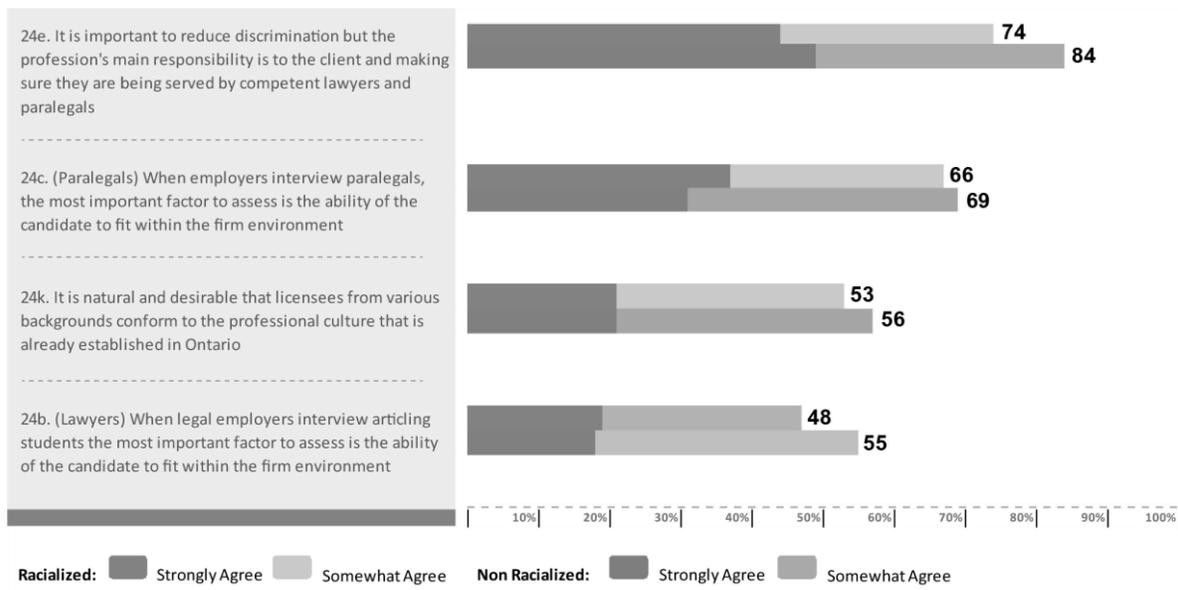
### 7.3 Exploring the Diversity of Opinion

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

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

Chart 13 – System Status Quo

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



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

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

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

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

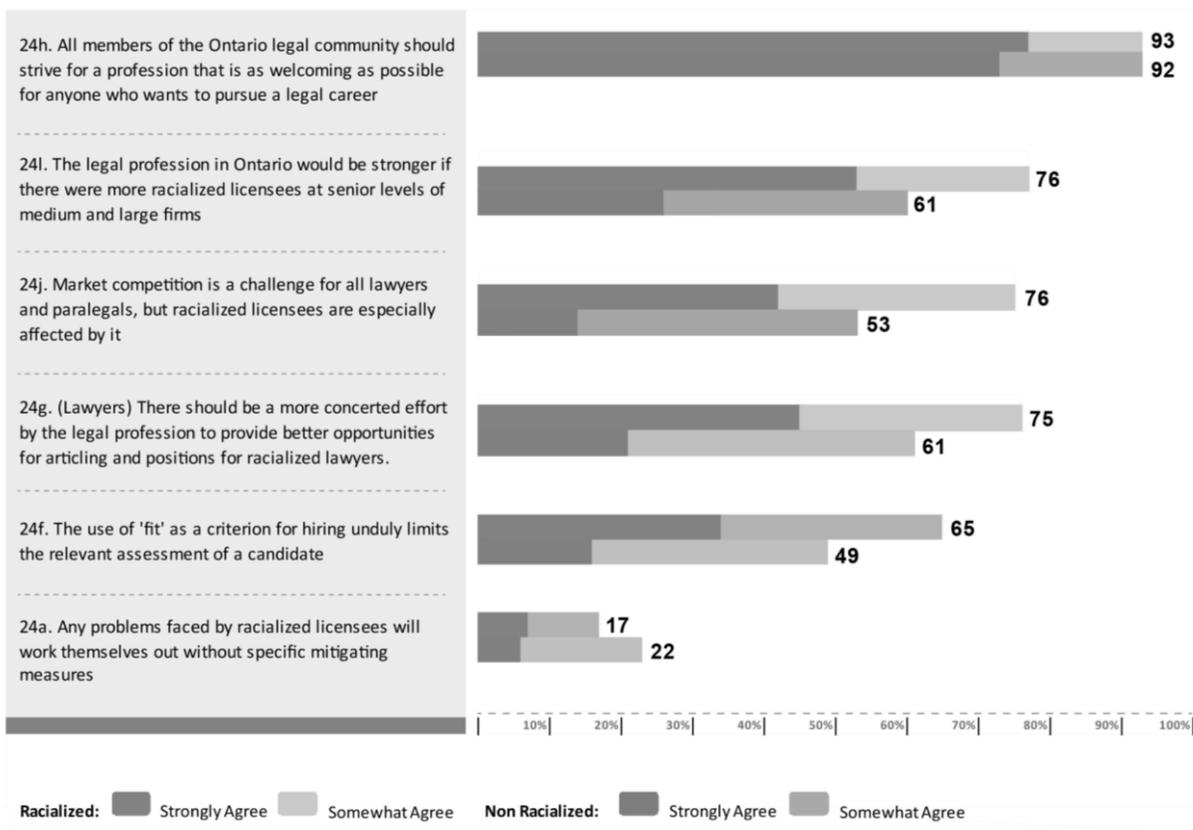
From one angle these results suggest substantial, and perhaps contradictory, support by racialized licensees for values and practices in the legal profession which, in other contexts of this research project, have been identified as discriminatory. On the other hand the results in Chart 13 may reflect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

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

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

Chart 14 – Fair/Equal Opportunity

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



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

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

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

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

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

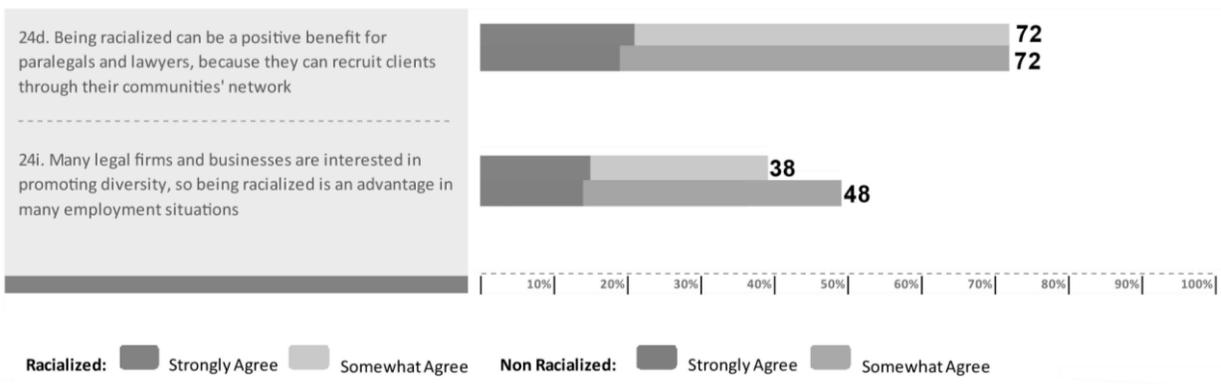
On the subject of fit, 65% of racialized respondents and 49% of non-racialized respondents agreed that as a criterion for hiring it unduly limits the relevant assessment of a candidate (Q24f). This modest reversal of opinion in comparison to the results shown in Chart 13 reinforces the view that both groups are ambivalent on the issue of fit: acknowledging its benefit as a tool in the hiring and advancement process, while recognizing its constraints and potential for bias when it comes to addressing the challenges faced by racialized licensees.

There was very low overall agreement from both groups with the proposition that the challenges facing racialized licensees will be resolved without specific mitigating measures (17% racialized, 22%) (Q24a). These results support the conclusion that not only does a strong majority of all licensees believe racialization imposes specific challenges on racialized licensees, but that majority also recognizes the need for concerted action to address those challenges.

Two remaining statements (**Chart 15**) were grouped under the thematic heading of racial/ethnic advantage.

Chart 15 – Racial/Ethnic Advantage

*(Q24-3) In this question we pose statements from a variety of standpoints reflecting diverse opinions within the legal profession. For each statement please indicate if you agree or disagree or if you have no opinion either way.*



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

A strong majority of both groups (72% racialized, 72% non-racialized), agreed that racialized lawyers and paralegals could benefit from being able to recruit clients from their community networks (24d). This balance of opinion concurs with the views expressed by many focus group participants, although focus group participants also explained that racialized status does not necessarily confer access to a corresponding community network. Lower percentages of both groups agreed that because many law firms and businesses are interested in promoting diversity, being racialized is an advantage in many employment situations (38% racialized, 48% non-racialized) (Q24i).

## 7.4 Measures to Promote Inclusiveness in the Profession

Survey participants were asked, ‘Have you seen what you consider to be good practices that you would want to recommend be studied or scaled up to address the challenges faced by racialized licensees?’ A total of 3,361 open-ended responses were coded in 30 substantive categories (Q25).

Over half (55%) of all respondents indicated that they had not seen any good practices or successful strategies. Among racialized licensees the most frequent mentions were:

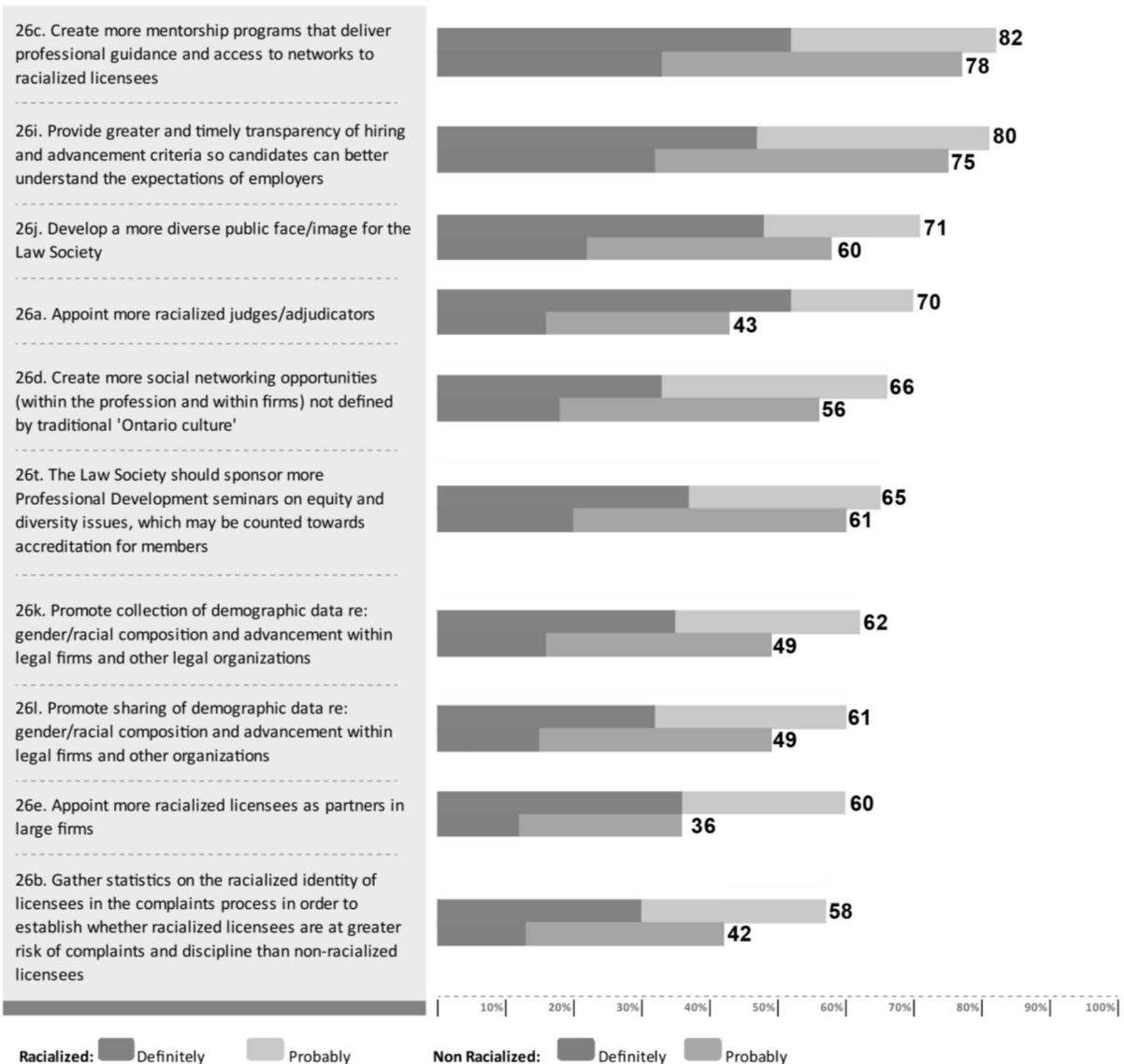
Merit/competency should be the basis of hiring people irrespective of an individual's 'label' (5%), Increased mentorship from successful lawyers (6%), and Establishing diversity as a positive goal to enable building stronger teams to serve a multi-cultural society (5%). Among non-racialized respondents most frequent mentions included: Merit/competency should be the basis of hiring people irrespective of an individual's 'label' (5%), Public sector/Canadian government/large corporations and law firms have good diversity practices (3%), and Establishing diversity as a positive goal enables building stronger teams to serve a multi-cultural society (3%).

A bank of twenty statements explored opinions of both groups regarding a variety of measures intended to make the legal profession more inclusive. In **Charts 16 and 17** these statements are ranked by highest overall agreement of racialized licensees.

As the two charts show, a majority of racialized licensees endorsed almost the entire list of measures suggested for making the legal profession more inclusive for racialized licensees. The six measures listed at the top of Chart 16 were endorsed by two thirds or more of the racialized respondents and, of the remaining measures listed, all but two reported at the bottom Chart 17 drew majority endorsement from racialized licensees. By contrast, a majority of non-racialized respondents endorsed seven of the twenty measures as definitely or probably the right approach to making the profession more inclusive.

Chart 16 – Solutions: Part 1

*(Q26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive. For each, please tell us if you think it would be the right approach, wrong approach or if you would need more information before making up your mind.*



Weighted sample size =736 racialized licensees, 2270 non-racialized licensees

Two measures listed at the top of Chart 16 drew strong endorsements from both groups of licensees. Reinforcing a message that was prominent throughout the focus group research, 82% of racialized licensees (52% definitely) identified more mentorship programs that deliver professional guidance and access to networks for racialized licensees (Q26c). This compared to 78% of non-racialized licensees (33% definitely). Both groups also registered comparable levels of support for providing greater and timely transparency of hiring and advancement criteria (80% racialized, 75% non-racialized) (Q26i).

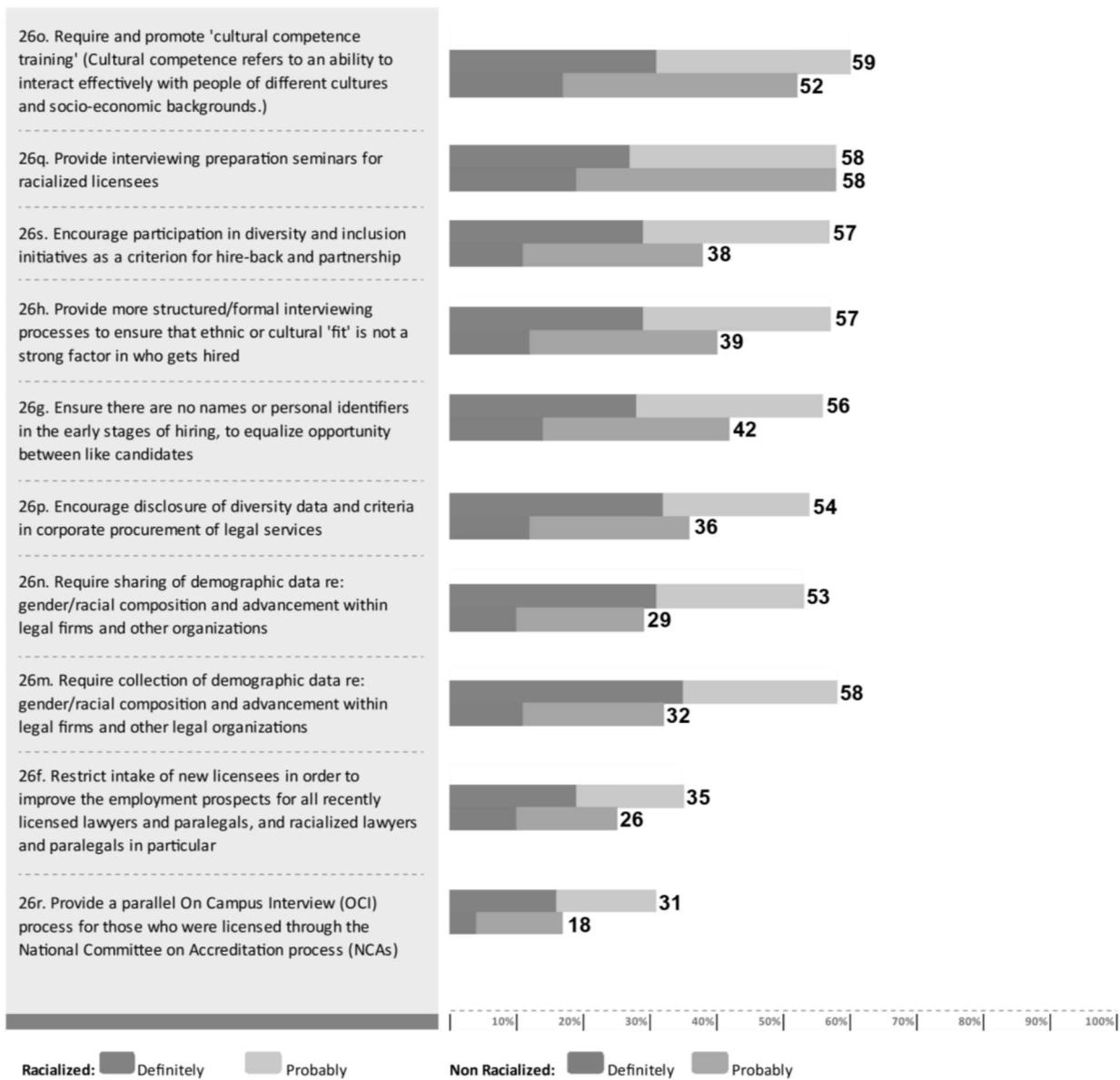
A strong majority of both groups endorsed developing a more diverse public face/image for the Law Society (71% racialized, 60% non-racialized), although 48% of racialized respondents identified this measure as definitely the right approach, compared to just 22% of non-racialized licensees (Q26j). Other data not shown here indicates that among racialized licensees, those most likely support a more diverse public image for the Law Society include: Paralegals (87%), Female (81%), Born outside Canada (77%), as well as South East Asian (90%), Black (84%), and East Asian (82%).

Two other measures attracted comparable levels of support from both groups. Creating more networking opportunities not defined by traditional 'Ontario culture' (66% of racialized and 56% non-racialized licensees) (Q26d), and Law Society sponsored Professional Development seminars on equity and diversity, which may be counted toward accreditation by member (65% racialized, 61% non-racialized) (Q26t).

Two other measures listed in Chart 16 reflect a comparatively wider divergence of opinion between racialized and non-racialized licensees. On the issue of appointing more racialized judges/adjudicators, 70% of racialized licensees endorsed this measure, including 52% who viewed it as definitely the right approach. In comparison, just 43% of non-racialized respondents endorsed this measure, with 16% describing it as definitely the right approach (Q26a). A similar divergence of opinion was evident on the issue of appointing more racialized licensees as partners in large firms, endorsed as the right approach by 60% of racialized licensees including 36% definitely, compared to 36% of non-racialized respondents, and just 12% definitely (Q26e).

Chart 17 – Solutions: Less Support

*(Q26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive. For each, please tell us if you think it would be the right approach, wrong approach or if you would need more information before making up your mind.*



Weighted sample size=736 racialized licensees, 2270 Non racialized licensees

Chart 17 lists the 10 measures that had less overall support from racialized licensees. Two of these attracted similar support from both groups of respondents. Requiring and promoting cultural competence training was endorsed by 59% of racialized and 52% of non-racialized licensees (Q26o). Providing interview preparation seminars for racialized licensee was endorsed as probably or definitely the right approach by 58% of respondents from both groups (Q26q).

Of the remaining list of proposed measures there was a moderate divergence of opinion between the two groups. The widest differences were related to requiring *sharing* of demographic data related to the racial/gender composition of legal firms and other organizations (53% racialized, 29% non-racialized) (Q26n), and requiring *collection* of demographic data related to racial/gender composition of legal firms and other organizations (58% racialized, 32% non-racialized) (Q26m).

Although a majority of racialized licensees favoured these measures related to collecting and sharing data, the comparatively lower levels of majority support echo some of the reservations expressed by focus group participants who were concerned that such measures might be construed as setting diversity targets and thereby bypassing traditional principles of hiring and advancement based on merit.

### Charts 16 and 17: Summary

Charts 16 and 17 illustrate both the scope and relative intensity of support for a wide range of issues, highlighting a group of measures to promote inclusiveness that have substantial support from both racialized and non-racialized licensees. Measures that were endorsed by a moderate or large majority of racialized and non-racialized respondents, and might be viewed as representing the convergence of opinion across the two groups, included:

- More mentorship programs that deliver professional guidance and access to networks for racialized licensees (Q26c)
- Greater and timely transparency of hiring and advancement criteria (Q26i)
- Developing a more diverse public face/image for the Law Society (Q26j)
- More networking opportunities not defined by traditional 'Ontario culture' (Q26d)
- Law Society sponsored Professional Development seminars on equity and diversity, which may be counted toward accreditation by members (Q26t)
- Requiring and promoting 'cultural competence training' (Q26o)
- Providing interview preparation seminars for racialized licensees (Q26q)

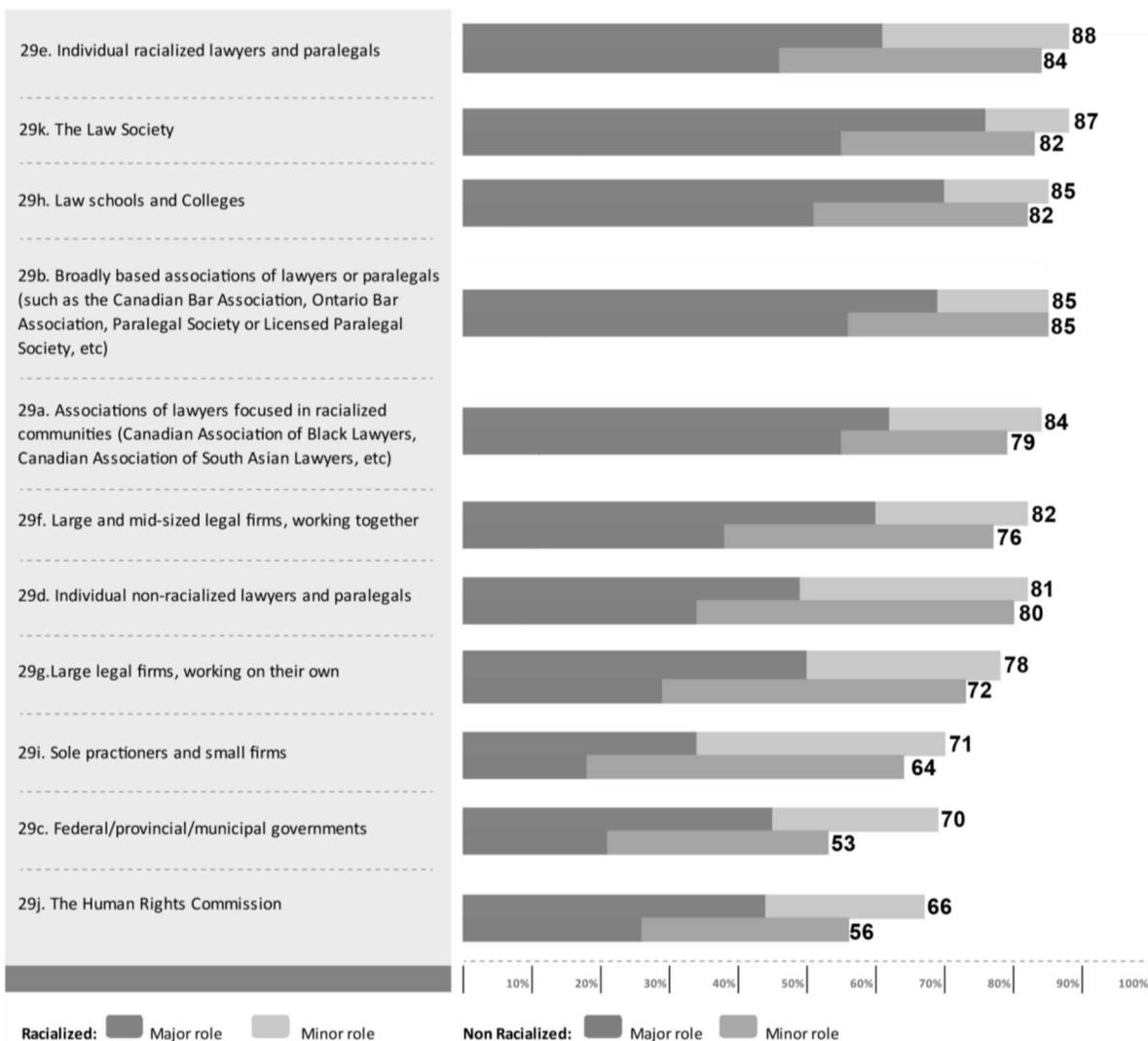
Differences were wider, and support from non-racialized respondents was substantially lower, for measures that might be described as harder-edged or more directive. Measures where there is both lower overall agreement and much less concurrence

between the two groups included: appointing more racialized judges and adjudicators, appointing more racialized licensees as partners in large firms, promoting and requiring collection and sharing of demographic information, and modifying/formalizing the interview process to reduce the use of fit as a hiring tool and other factors that may disadvantage racialized candidates.

## 7.4.1 Who should play a role?

Chart 18 – Who should play a role?

(Q29) In your view what role should each of the following take to address the challenges facing racialized licensees?



Weighted sample size =713 racialized licensees, 2206 non-racialized licensees

Survey participants were offered a list of 12 stakeholder groups and constituencies and asked what role (Major, Minor or None) each should play in addressing the unique challenges facing racialized licensees. Results are shown in **Chart 18**.

A majority of all respondents endorsed a major or minor role for all 12 of the stakeholder constituencies listed in Chart 18. Differences in the two groups' overall responses are narrow, with the exceptions of the role of all three levels of government (Q29c) and the role Human Rights Commission (Q29j) where there is a moderate divergence of opinion between racialized and non-racialized licensees.

Wider differences appear in the comparisons of which stakeholders are assigned a major role in addressing the challenges faced by racialized licensees, which may reflect underlying differences between the two groups in their perception of the seriousness and urgency of the issue. Based on the percentages of 'Major Role,' racialized licensees assigned a priority role to the following organizations and groups: Law Society (75%) (Q29k), Law Schools and Colleges (70%) (Q29h), broadly-based associations of lawyers and paralegals (69%) (Q29b), associations of lawyers focused on racialized communities (62%) (Q29a), and individual racialized lawyers and paralegals (61%) (Q29e).

Identification of a major role for the Law Society is consistent with what we heard in the focus groups. Although many racialized licensees expressed some degree of pessimism regarding the (political) will and capacity of the Law Society to pursue effective strategies of inclusiveness, a majority nevertheless endorsed a lead role for the Law Society.

## 8. Complaints and Discipline

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### 8.1 What's the issue?

Following objectives set out at the beginning of the research project and based on themes and issues that surfaced in the Focus Group phase, a final series of questions explored the views of licensees regarding the possible risks of complaints and discipline associated with the challenges faced by racialized licensees.

### 8.2 Identifying Risk of Complaints

Both groups of licensees were asked if, in their view, the Law Society could undertake to more proactively address the issue of the influence of race in the complaints and discipline process. A total of 2,222 responses were coded in 34 substantive categories (Q30).

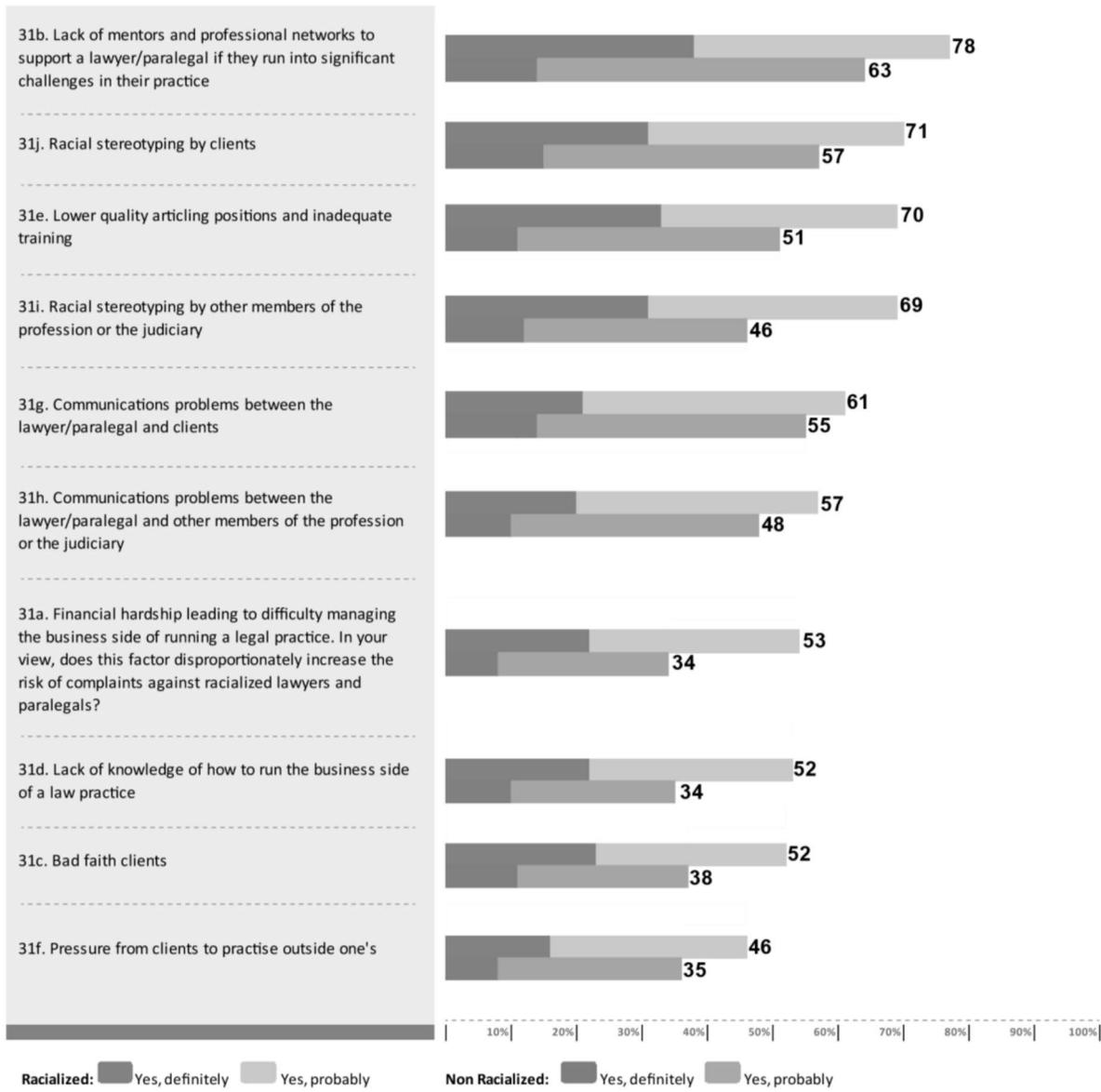
Thirty-six percent of racialized licensees and 52% of non-racialized licensees who responded to this open-ended question indicated there are no additional steps required or that the Law Society is sufficiently proactive. The relatively large numbers of racialized licensees who identified no issues, and another group who indicated no familiarity with race as a factor in the complaints process (reported below), accords with an observation from the focus groups that a minority of participants, represented in many of the 14 focus groups, “reported not having seen any evidence of factors contributing to increased complaints and discipline for racialized licensees.”

Other frequent responses from both groups of licensees included: Not familiar with race as a main factor in the complaint process (14% racialized, 11% non-racialized), Complaints and discipline should be analyzed/treated fairly regardless of race/sex (7% racialized, 6% non-racialized), Educate and train Law Society/firms/individuals on diversity and race issues (6% racialized, 4% non-racialized), and Have proportionate ethnic/race representation on discipline/investigation boards (5% racialized, 2% non-racialized).

A final bank of 10 questions explored opinions regarding the extent to which specific factors might contribute to increased risk of complaints against racialized licensees.

Chart 19 – Risks of Complaints Against Racialized Licensees

(Q31) The following is a list of factors ... In each case, please indicate if you think that factor is more likely to increase the risk of complaints against racialized lawyers and paralegals.



Weighted sample size =707 racialized licensees, 2195 non-racialized licensees

A majority of racialized licensees agreed that nine of the ten factors listed in **Chart 19** are definitely or probably likely to increase the risk of complaints against racialized licensees, whereas only four of the ten factors were viewed by the majority of non-racialized respondents as contributing to a higher risk of complaints against racialized licensees.

At the top of the list of risk factors for both groups is the lack of mentors and professional networks (78% racialized, 63% non-racialized) (Q31b), and racial stereotyping by clients (71% racialized, 57% non-racialized) (Q31j). Both factors were identified as potential sources of elevated risk by focus groups participants.

A majority of racialized and almost half of non-racialized respondents (57% and 48% respectively) indicated that miscommunication was definitely or probably a factor increasing the risk of complaints, dovetailing with the findings of the focus groups, which identified factors of cultural miscommunication often overlapping with miscommunications based in language differences, as factors contributing to the risk of increased complaints.

Racialized and non-racialized licensees diverged somewhat on the issues of lower quality articling positions and inadequate training (70% racialized, 51% non-racialized) (31e), and racial stereotyping by other members of the profession or the judiciary (69% racialized, 46% non-racialized) (31i). Here again survey results validate focus group findings, in which racialized participants named both factors as sources of risk.

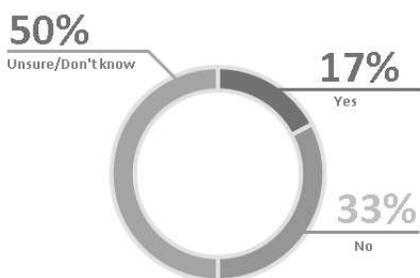
### 8.3 Racialized Licensees and the Regulatory Process

Survey participants were asked if differentiation should be made in the regulatory processes for racialized licensees in certain circumstances. **Chart 20** shows responses for racialized and non-racialized licensees as well as the whole survey population.

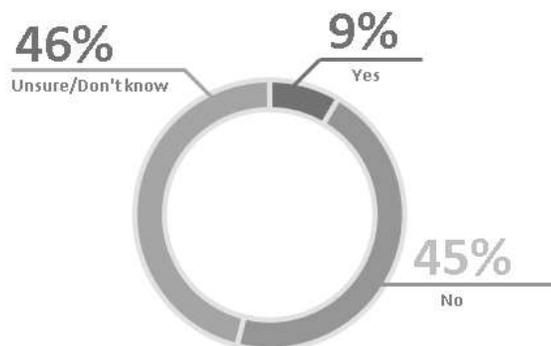
Chart 20 – Should Racialization be Reflected in the Regulatory Process?

(Q32) In the administration of Justice there are circumstances in which legal processes treat those in the system differently depending on whether they are a member of a group viewed to suffer a disadvantage. Do you believe that such a differentiation should be made in the regulatory processes with respect to racialized licensees in certain circumstances?

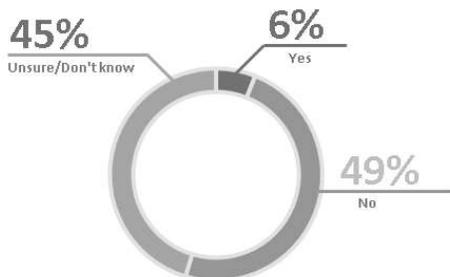
► **Racialized**



► **Total Sample**



► **Non Racialized**



Weighted sample size =3260 licensees (704 racialized/2185 non-racialized)

Seventeen percent of racialized and 6% of non-racialized respondents agreed that differentiation in the regulatory process be made for racialized licensees. Half or almost

half of all respondents indicated they were unsure or required more information (50% racialized, 45% non-racialized).

A final open-ended question asked those who answered yes to the previous question to describe the circumstances where this should occur. A total of 264 responses were coded in 31 substantive categories (Q 32).

Among racialized respondents the five most frequently mentioned instances where racialized licensees should be treated differently were: When applying to Law School (6%), When in need of networking or training programs (6%), In the case of a First Nations person (6%), and When there is evidence of racial discrimination or bias (5%).

Non-racialized respondents most frequent mentions were: Misunderstanding of cultural background/conflict of culture (9%), Language barriers (9%), Mentorship and support services (8%), Where there is evidence of racial discrimination or bias (8%), and When in need of networking/training programs (5%).

## 9. Conclusions

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The goal of this research project, to identify challenges faced by racialized lawyers and paralegals in different practice environment, including entry into practice and advancement proved to be ambitious, complex and at different points, methodologically challenging. Nevertheless, the scope of the research, combined with the mixed method design has yielded a nuanced account of the experience of racialized licensees, validating much of that experience through detailed measurement across the whole population of licensees. Indeed, one of the striking features of the research results was the close agreement of the analysis and insights of key informants and the narrative account emerging from the focus groups, with the quantitative measures generated in the survey phase.

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

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

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

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

## Issue Matrix Tier 1 Research Priorities (Lawyers and Paralegals)

	<b>Recruitment and Hiring</b>	<b>Career Paths</b>	<b>Advancement in Mid – Large Firms</b>	<b>Risk of Complaints and Discipline</b>
<b>Why</b>	Key issue as it is both complex and cuts across a number of themes including career paths, advancement in mid and large size firms, and sole and small practices. Issues may involve systemic, cultural, intercultural, and interactive dynamics. Little understanding of this area also warrants Tier 1 attention.	Career trajectories in the legal profession are often set at early stages through self-selection and / or intercultural selection processes operating in the labour market. There is an underrepresentation of racialized lawyers in large firms and a slight overrepresentation of racialized lawyers in sole practices and small firms. Implications for earnings and opportunity are evident. Reasons for these patterns need to be investigated.	This is another key area of research. There is a consensus in diversity research that an essential element in catalyzing change is leadership. It follows that where there is an absence of critical mass and little representation in leadership, cultural and systemic change is more difficult. This is especially true in the legal profession where, for example, consideration for the judiciary is eased by partnership status. Partners have a strong influence on organizational culture.	Available information regarding risk is anecdotal but raises concerns. Data on representation throughout the regulatory process is quite limited. Opportunity to investigate risks is complicated by fact that licensee participants in research will only be those in good standing.
<b>Key Gaps</b>	The 2007 Articling Consultation report revealed that several racialized respondents expressed general concerns that they simply did not fit in at law firms. 2013 informal consultations also found a persistence of this issue.  Gap Summary: How do employers and employees experience ‘fit’? How is it weighted? What is its role in the interview process? Are criteria around ‘fit’ made transparent to the candidate?	Gap Summary: What is the experience of racialized lawyers in large firms at all levels – articling interviews, articling, associate level and partnership? What are the possible explanations for underrepresentation in mid and large firms? What are the possible explanations for the slight overrepresentations in sole practices and small firms? Why are racialized licensees overrepresented in government? What are the factors determining career paths?	The Kay Report found that racialized lawyers are underrepresented in more senior positions, such as partnerships. In 2010, 16% of all lawyers who answered the self-identification question are partners while only 6% of racialized lawyers are partners.  Gap Summary: Why are racialized lawyers not ascending to partnership levels? What are the criteria and procedures that firms use to advance associates to partnerships? What factors determine how associates get opportunities to work on important files? How has partnership track structure changed over time?	Gap Summary: What are the perceptions of racialized lawyers and non-racialized lawyers respecting risk factors? Are there meaningful differences that may inform future research, policy, program design, outreach and communications?

## Tier 2 Research (Lawyers and Paralegals)

### Direct and Overt Discrimination and Bias

**Why** This is an important area of study. Overt or direct discrimination, constructive discrimination and bias are incompatible with equality of opportunity and access. Investigation of this theme is fundamental to the study at issue. However, this area may also be more easily observed than Tier 1 systemic issues. Remedies may also be more accessible in that they already exist or may be readily actioned.

**Key Gaps** Some specific concerns were raised about communications with judges and lawyers. In a 2004 report to the Law Society (the “Kay Report”), Professor Fiona Kay found that racialized lawyers are more likely than non-racialized lawyers to report experiencing disrespectful remarks by judges or other lawyers. Twenty-six per cent (26%) of racialized lawyers reported experiencing disrespectful remarks by judges and other lawyers occasionally, routinely or frequently, compared to 21% of non-racialized lawyers. A focus group in a different study found members experienced bias throughout their careers. 2013 informal consultations found that improper questions were asked during interviews. Cynthia Peterson, DHS counsel indicated that most of her cases by licensees

### Areas of Law

The Kay Report found non-racialized lawyers equally likely to practice civil litigation and corporate / commercial law as racialized lawyers. But there is divergence in other practice areas. Racialized lawyers are more likely to practise criminal, immigration, and poverty law whereas non-racialized lawyers are more likely to practice real estate and insurance law. Apart from the impacts of recruitment / hiring practices and Career Paths, this theme may offer distinct areas of inquiry. Broad patterns of diverging experience justify inclusion as a Tier 2 research focus.

**Gap 1:** What are the factors that determine the areas in which racialized and non-racialized licensees practice?

### Incidents of Representation

The Society has found that among most recent licensees the profession is diverse upon entry for both lawyers and paralegals based on 2006 Statistics Canada baseline representation of visible minorities. However, racialized persons are substantially overrepresented in other professions including medicine and engineering, as well as in the proportion of population with post-secondary education. This is a Tier 2 consideration as the issue and related sub-issues rely on demographic data and data which may involve less interactive dynamics.

### Representation Generally

**Gap Summary:** Current Statistics Canada information (2011) about visible minority representation in the Ontario population would provide more useful comparative data. Overrepresentation of visible minorities among university graduates, medicine, and engineers is not reflected in the legal profession. Why / Why not?

### Retention

**Gap Summary:** Change of Status research by Strategic Counsel and Statistical Snapshots indicate concerns around attrition of racialized lawyers. If it is occurring, why? Are non-racialized licensees more or less likely to have access to informal supports such as mentoring, networks, information resources than racialized licensees?

## Direct and Overt Discrimination and Bias

against other licensees are complaints arising from employment about sex discrimination / harassment. Caveat: racialized status of complainants is generally not captured during telephone interviews. Of cases involving race, 1/2 of all complainants are Black and most of those are women. DHS is concerned about significant underreporting of complaints.

Gap Summary: A 5% differential may be significant and this work needs updating. Further, forms and impacts of bias need to be investigated with larger qualitative and quantitative sampling. To what extent are incidents of discrimination going unreported? What are the factors militating against reporting? Investigation of the allegation of improper questions is required.

## Areas of Law

## Incidents of Representation

### Talent Pipelines

Gap Summary: What is the reason for overrepresentation of women among younger racialized members? What is the role of networks / mentoring for student candidates?

## Appendix B

### Organizations represented during Key Informant phase

Organization
Arab Canadian Lawyers Association
Canadian Association of Black Lawyers
Canadian Association of South Asian Lawyers
Federation of Asian Canadian Lawyers
Federation of Asian Canadian Lawyers
Legal Leaders for Diversity
Licensed Paralegal Association
Paralegal Society of Ontario
University of Toronto Internationally Trained Lawyers Program

## **Challenges Facing Racialized Licensees Project Key Informant Interview Guide (FINAL) May 16, 2013**

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### **Introduction**

As part of its mandate to ensure access to justice, “the Law Society builds equity and diversity values and principles into its policies, programs and procedures,” which includes seeking to “ensure that both law and the practice of law are reflective of all the peoples of Ontario, including Aboriginal Peoples, Francophones and equity-seeking communities.” (LSUC website).

In September 2011 Benchers identified the following as a priority: “considering the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms”. As a result, Convocation created the Working Group on Challenges Faced by Racialized Licensees.

This research project is led by the Working Group and managed by the Equity Initiatives Department. Strategic Communications Inc. (Stratcom) has been contracted by the Law Society to conduct research to identify:

- Challenges faced by racialized lawyers and paralegals in different practice environments, including entry into practice and advancement;

- Factors and practice challenges that could increase the risk of regulatory complaints and discipline, and;
- Identify perceptions of best practices for preventive remedial and/or support strategies.

This interview is part of the first step of the research process. Following a round of individual interviews, Stratcom will convene a series of focus groups in June, and conduct a comprehensive survey of the profession toward the end of the summer. A full written report will incorporate the qualitative and quantitative research findings.

Before we begin, you should know that all interviews are on a not-for-attribution basis. We may use quotes from our interview notes but individuals will not be identified. Original interview notes will be kept in the hands of Stratcom researchers.

This interview will take about 45 minutes [*offer to shorten as necessary*]. May I proceed?

## BACKGROUND

First, could you tell me a little about yourself: how you came to be involved with [*firm or organization*] and your role there.

### Organizations

1. What are the key priorities for [*name of organization*] at this time?
2. Can you give me a brief description of your membership: numbers, demographic composition (age, gender), and the types of practice environments represented by your membership?

3. What would you say are the benefits of belonging to [*name of organization*] from the point of view of individual members?
4. Thinking about different practice environments which you've mentioned, how would you describe the major challenges and successes your members face during their respective careers?

*[Probe for differences based on practice environment]  
[As necessary, probe for challenges and successes specifically shaped/influenced by racialization]*

### **Firms/Government/ In-House**

5. Thinking about all your colleagues, as a group, how would you describe the major career challenges and successes that lawyers/paralegals face in your firm/practice environment ?

6. And if I asked you about racialized lawyers/paralegals [*offer definition*] in your firm/practice environment [*or based on your wider career experience*] how would you describe the major career challenges and successes facing this group?

*[Probe for similarities and differences with non-racialized licensees]  
[Probe for differences based on practice environment. ]  
[As necessary, probe for challenges and successes specifically shaped/influenced by racialization]*

### **RACIALIZATION**

7. [*You have mentioned/Do you see*] racialization [*offer definition*]  
as a barrier to advancement for some of your members/colleagues - how does that manifest itself in the day-to-day experience of lawyers?

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<sup>1</sup> 'Racialized' expresses race as the process by which groups are socially constructed, as well as to modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Japanese, Korean), Latin American and Hispanic, South Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino), and West Asian (e.g. Iranian, Afghan) persons.

8. How does racialization play a part in the following circumstances:

- Entry into the profession after articles?
- Career paths?
- Representation, retention, change of status of racialized members within the profession?
- Access to justice for Ontarians?

*[Probe for subgroups of 'hardest hit', with details, case examples, specific examples]*

9. When you think about the barriers facing your members/racialized colleagues arising from their racialized status, what would you say are the most difficult to remedy?

Are there other barriers that you would identify as significant, but perhaps not as difficult to change as the ones you just described?

*[Probe for ranking of issues/barriers, most difficult → less difficult, applying the Tier 1 and Tier 2 framework]*

*[Probe for IMPACTS: How does each factor affect entry, career paths, representation, and access to justice?]*

10. Earlier you mentioned challenges not directly related to racialized status facing your members/colleagues, such as *[from Q's 4-5 above]*. Do these other challenges have as great an impact, just as much impact, or less impact overall than racialization on the careers and practices of your members/ colleagues, in your view?

*[Probe for relative weighting of factors, different impacts for subgroups, comparisons and exceptions, case examples]*

11. Part of our study is to inquire about risk factors facing all Society members<sup>2</sup>. What are the factors that could increase the risk of complaints / discipline generally? Are there any factors of greater concern to your members/colleagues?

---

<sup>2</sup> These issues will be explored with all licensees, including Non-Racialized Lawyers/Paralegals, during the online survey phase.

12. Let's turn to solutions. Thinking about the barriers you mentioned earlier are there specific measures you would recommend to deal with the challenges faced by racialized licensees? *[Probe for best practices]*

13. What do you feel should be the Law Society's role in addressing the barriers you've outlined? Compared to the role of other bodies/agencies?

14. Do you have any final comments you would like to add before we finish up?

***[Provide contact information]***

**Thank you**

## **LSUC Focus Group Guide Challenges Facing Racialized Licensees June/July 2013**

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TOR, JUNE 20, MEDIUM & LARGE (WOMEN 6PM/MEN 8PM)

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TOR, AUG 1, GOVERNMENT & CORPORATIONS (6PM) / PARALEGALS (8PM)

TOR, AUG 14, OTHERS (6PM)

OTT, JULY 17, IN PRACTICE (6PM) / GOVERNMENT & CORPORATIONS (8PM)

LDN, JULY 31, IN PRACTICE (6PM)

### **CRITERIA:**

- 10 RECRUITS (6-8 PARTICIPANTS)
- APPROXIMATE AGE BALANCE
- APPROXIMATE GENDER BALANCE WHERE APPROPRIATE
- TORONTO : MIX OF 416/905

115 MINUTES

## Introduction (5 minutes)

### Introduction / Purpose of the Research

GOOD EVENING. WELCOME AND THANK YOU FOR TAKING THE TIME TO PARTICIPATE IN THIS FOCUS GROUP DISCUSSION. MY NAME IS DAVID KRAFT AND THIS IS MY COLLEAGUE ANGELA LEE.

IN SEPTEMBER 2011 BENCHERS IDENTIFIED THE FOLLOWING AS A PRIORITY: "CONSIDERING THE DEVELOPMENT OF PROGRAMS TO ENCOURAGE LAW FIRMS TO ENHANCE DIVERSITY WITHIN FIRMS, BASED ON IDENTIFIED NEEDS, AND CREATE REPORTING MECHANISMS." AS A RESULT, CONVOCATION CREATED THE WORKING GROUP ON CHALLENGES FACED BY RACIALIZED LICENSEES.

THIS RESEARCH PROJECT IS LED BY THE WORKING GROUP AND MANAGED BY THE EQUITY INITIATIVES DEPARTMENT OF THE LAW SOCIETY. STRATEGIC COMMUNICATIONS INC. (STRATCOM) HAS BEEN CONTRACTED BY THE LAW SOCIETY TO CONDUCT RESEARCH TO IDENTIFY:

- CHALLENGES FACED BY RACIALIZED LAWYERS AND PARALEGALS IN DIFFERENT PRACTICE ENVIRONMENTS, INCLUDING ENTRY INTO PRACTICE AND ADVANCEMENT; [*POST DEFINITION OF RACIALIZATION*]
- FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE, AND;
- IDENTIFY PERCEPTIONS OF BEST PRACTICES FOR PREVENTIVE REMEDIAL AND/OR SUPPORT STRATEGIES.

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A FULL WRITTEN REPORT WILL INCORPORATE THE QUALITATIVE AND QUANTITATIVE RESEARCH FINDINGS.

IN THIS DISCUSSION I'M INTERESTED IN EXPLORING YOUR EXPERIENCE, PERCEPTIONS AND IMPRESSIONS REGARDING THE CHALLENGES FACING RACIALIZED LAWYERS AND PARALEGALS.

I AM NOT A LAWYER OR PARALEGAL AND I AM NOT RACIALIZED. MY ROLE HERE IS AS A RESEARCHER AND FACILITATOR, RELYING ON EACH OF YOU TO SHARE YOUR EXPERIENCES, PERCEPTIONS AND IMPRESSIONS. THE QUESTIONS THAT I WILL BE ASKING ARE COMPLETELY OPEN-ENDED. YOU ARE FREE TO INTERPRET THEM IN THE WAY THAT YOU BELIEVE IS MOST APPROPRIATE. I AM EQUALLY INTERESTED IN EVERYONE'S INTERPRETATIONS AND RESPONSES TO MY QUESTIONS.

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### **My role, your role**

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**OUR TIME IS LIMITED AND I HAVE A LIST OF QUESTIONS THAT I WANT TO DISCUSS. CONSEQUENTLY, FROM TIME TO TIME I MAY INTERRUPT THE DISCUSSION, EITHER TO HEAR FROM SOMEONE ELSE OR TO MOVE ON TO ANOTHER QUESTION. I APOLOGIZE IN ADVANCE FOR THOSE INTERRUPTIONS.**

**OKAY? *[MODERATOR PAUSES FOR QUESTIONS/FEEDBACK]***

**IF YOU HAVE A CELL PHONE, PLEASE TURN IT OFF, OR SET IT TO SILENT *[IF YOU CAN]*.**

***[REMINDEE PARTICIPANTS OF THE LENGTH OF THE DISCUSSION AND THE END TIME. PROVIDE DIRECTIONS TO WASHROOMS]***

**1. Go 'ROUND: YOUR JOB / PROFESSION (10 MIN)**

LET'S START WITH INTRODUCTIONS. AS WE GO AROUND THE TABLE, PLEASE INTRODUCE YOURSELF, BRIEFLY DESCRIBE YOUR PRACTICE CONTEXT OR YOUR EMPLOYMENT STATUS IF YOU ARE NOT PRACTISING AT THIS TIME, AND YOUR EXPERIENCE.

**2. REFLECTING ON THE PROFESSION (35 MIN)**

TELL ME A LITTLE BIT ABOUT WHAT IS HAPPENING IN YOUR PROFESSION? WHAT ARE THE IMPORTANT EVENTS, DEVELOPMENTS OR TRENDS THAT AFFECT HOW YOU ARE ABLE TO DO YOUR JOB AND PURSUE YOUR CAREER?

***[PROBE FOR IMPORTANT CHALLENGES TO EMPLOYMENT/ESTABLISHING A PRACTICE, CAREER ADVANCEMENT, CHOICES WITH RESPECT TO AREAS OF PRACTICE, QUALITY OF SERVICES AND ACCESS TO JUSTICE]***

AS YOU KNOW, WE'RE HERE TO IDENTIFY AND DISCUSS CHALLENGES FACED BY RACIALIZED LAWYERS AND PARALEGALS. WHAT DOES THAT MEAN TO YOU? WHAT COMES TO MIND WHEN I SAY WE'RE TALKING ABOUT 'CHALLENGES FACED BY RACIALIZED LAWYERS/ PARALEGALS'?

***[OPEN ENDED, DON'T PROMPT AT FIRST...LET THIS CONVERSATION GO FOR A FEW MINUTES]***

HOW SIGNIFICANT IS RACE TO YOU IN YOUR LIFE AS A LAWYER? IN WHAT WAYS DOES RACE MAKE A DIFFERENCE (POSITIVE OR NEGATIVE) FOR YOU?

***[GO AROUND. ALL DISCUSS]***

WE'VE HEARD MENTION OF ***[NOTE ISSUES ARISING FROM THE PRECEDING DISCUSSION]***. DO THESE OUTCOMES DIFFER IN DIFFERENT PRACTICE ENVIRONMENTS?

***[PROBE ON SPECIFIC PRACTICE AREAS ACCORDING TO WHO'S IN THE ROOM.]***

DOES RACE MAKE A DIFFERENCE AT DIFFERENT CAREER STAGES OR IN DIFFERENT CIRCUMSTANCES? FOR EXAMPLE:

ENTRY INTO PRACTICE?

*[PROBE FOR SPECIFIC EXAMPLES OF RECRUITMENT EXPERIENCES, TYPE AND FORM OF INTERVIEWS, HOW INDIVIDUAL PARTICIPANTS FIND OUT ABOUT POSITIONS, ETC.]*

ADVANCEMENT WITHIN A SPECIFIC FIRM?

*[PROBE FOR SPECIFIC EXPERIENCE AROUND CRITERIA / FACTORS / STRUCTURES / PROCESSES USED TO DETERMINE HIRE-BACKS AND ADVANCEMENT]*

CAREER PATH?

*[PROBE HIGHER PROPORTION OF SOLES ARE RACIALIZED (19% TO 17%), LOWER PROPORTION ARE PARTNERS (6% OF RACIALIZED VS. 16% OF RESPONDENTS ARE)]*

AREAS OF LAW?

REPRESENTATION, RETENTION, CHANGE OF STATUS OF RACIALIZED MEMBERS WITHIN THE PROFESSION?

OTHER? *[DECISIONS TO LEAVE THE PROFESSION?]*

### 3. DIFFERENCES AND SIMILARITIES (15 MIN)

YOU HAVE ALREADY TOLD ME THAT THE OUTCOMES OF RACIALIZATION VARY DEPENDING ON DIFFERENT PRACTICE ENVIRONMENTS AND CAREER CIRCUMSTANCES *[REFERENCE PRECEDING DISCUSSION]*. DOES RACE IMPACT DIFFERENT GROUPS OF LAWYERS DIFFERENTLY?

TALK ABOUT YOUR EXPERIENCES ACCORDING TO THE RACIALIZED GROUP WITH WHICH YOU ARE ASSOCIATED.

*[EXPLORE PERCEPTIONS OF OUTCOMES FOR:]*

LICENSEES WHO ARE FEMALE AND RACIALIZED? *[ASK FOR EXAMPLES]*

YOUNGER AND RACIALIZED LAWYERS/PARALEGALS? *[ASK FOR EXAMPLES]*

OTHER GROUPS?

COMMUNITIES/ REGIONS?

**4. IMPACTS (25 MINUTES)**

WE HAVE TALKED ABOUT [*BRIEF SUMMARY OF MAIN TOPICS*]

- MARKET COMPETITION MAKING LIFE HARDER FOR ALL LAWYERS BUT RACIALIZED LAWYERS IN PARTICULAR
- OVERT DISCRIMINATION/RACISM
- STRUCTURAL AND BEHAVIOURAL BARRIERS THAT HAVE THE EFFECT OF DISCRIMINATING THOUGH NOT DESIGNED TO DISCRIMINATE? [GIVE EXAMPLES FROM DISCUSSION]
- LOW EXPECTATIONS (BY CLIENTS/COLLEAGUES/JUDGES/OFFICERS OF THE COURT)
- STANDARDS OF PERFECTION APPLIED TO RACIALIZED LAWYERS – INCREASING COMPLAINTS?
- THE RELATIONSHIP BETWEEN 'FIT' AND RACIALIZATION IN HIRING/ADVANCEMENT/WORKFLOW.
- UNDER-REPRESENTATION AT SENIOR LEVELS OF MEDIUM AND LARGE FIRMS
- OVER-REPRESENTATION IN SOLES / SMALLS
- LACK OF ARTICLING OPPORTUNITIES

ARE THERE OTHER IMPACTS OF RACIALIZATION THAT HAVE NOT BEEN MENTIONED THAT YOU WOULD LIKE TO ADD TO THIS LIST? [*NOTE ADDITIONS*]

I'D LIKE TO LEARN MORE ABOUT THE IMPACT THAT THESE FACTORS HAVE.

HOW MANY OF YOU [**HANDS UP**] FEEL THAT ONE OR MORE OF THESE FACTORS HAS NEGATIVELY AFFECTED YOUR CAREER PATH? [**COUNT**] WHAT WAS THE IMPACT, CAN YOU DESCRIBE IT FOR ME IN A NUTSHELL?

DO THESE IMPACTS AFFECT THE QUALITY OF SERVICES YOU CAN PROVIDE TO YOUR CLIENTS AND THE COMMUNITY? [**REMINDER OF CONFIDENTIALITY. THEY MAY NOT BE COMFORTABLE ANSWERING IN FRONT OF COLLEAGUES**].

DO THESE IMPACTS OR CHALLENGES THAT YOU HAVE DESCRIBED INFLUENCE ACCESS TO JUSTICE FOR THE PUBLIC IN ONTARIO?

**[PROBE ADEQUACY/'FIT' OF LEGAL REPRESENTATION FOR RACIALIZED COMMUNITIES]**

**[PROBE REPRESENTATION OF RACIALIZED GROUPS IN PUBLIC INSTITUTIONS – CROWN PROSECUTORS? THE JUDICIARY?]**

IN MY INTRODUCTION TO THIS DISCUSSION I MENTIONED THAT ONE OF THE OBJECTIVES OF THIS PROJECT SPECIFIED BY THE LAW SOCIETY WAS TO IDENTIFY “FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE” FOR RACIALIZED LICENSEES. DO ANY OF THE IMPACTS OF RACIALIZATION THAT WE HAVE BEEN DISCUSSING INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE?

**[PROBE FOR EXAMPLES]**

**[TEST FOR CONSENSUS: ARE RACIALIZED LICENSEES MORE VULNERABLE/AT HIGHER RISK OF COMPLAINTS AND DISCIPLINE?]**

ARE THERE ANY POSITIVES ABOUT RACIALIZATION?

## 5. REMEDIES (20 MIN)

MANY LAWYERS AND FIRMS ARE CONCERNED ABOUT DIVERSITY AND EQUITY. HAVE YOU SEEN WHAT YOU CONSIDER TO BE GOOD PRACTICES THAT YOU WOULD WANT TO RECOMMEND BE STUDIED OR SCALED UP TO ADDRESS THE CHALLENGES WE HAVE BEEN DISCUSSING?

- BY INDIVIDUALS AND VOLUNTARY ASSOCIATIONS?
- BY HR DEPTS IN FIRMS? BY MANAGING PARTNERS IN FIRMS?
- BY GOVERNMENTS/PUBLIC INSTITUTIONS BUYING LEGAL SERVICES?
- BY THE ATTORNEY-GENERAL? CROWN PROSECUTORS?
- BY THE LAW SOCIETY?

ARE THESE GOOD APPROACHES (AND IF SO, WHY?)

**[LIST SPECIFIC MEASURES THAT HAVE BEEN IMPLEMENTED OR PROPOSED, E.G.]**

- APPOINT MORE RACIALIZED JUDGES/ADJUDICATORS
- GATHER STATISTICS ON RACIALIZED IDENTITY OF LICENSEES IN COMPLAINTS PROCESS
- ENFORCE PROCUREMENT RULES BY GOVERNMENT
- MENTORSHIP PROGRAMS
- MORE SOCIAL OPPORTUNITIES NOT LINKED TO TRADITIONAL 'WHITE' CULTURE
- RESTRICT INTAKE OF NEW LICENSEES
- HR/RECRUITMENT PRACTICES
  - 'BLIND' HR POLICIES (NO NAMES OR PERSONAL ID IN EARLY PHASES OF HIRING)
  - **[ADD]** OTHER SPECIFIC HR AND RECRUITMENT PRACTICES
- DEVELOP A MORE DIVERSE PUBLIC FACE/IMAGE FOR THE LAW SOCIETY
- SANCTION/PROMOTE COLLECTION AND SHARING OF DEMOGRAPHIC DATA RE: GENDER/RACIAL COMPOSITION OF LAW FIRMS
- PROMOTE 'CULTURAL COMPETENCE TRAINING'

- ENCOURAGE DIVERSITY CRITERIA IN CORPORATE PROCUREMENT OF LEGAL SERVICES [AS EVIDENT TO SOME DEGREE AMONGST LEGAL LEADERS FOR DIVERSITY]

## 6. CLOSING REMARKS (5 MIN)

THAT BRINGS US TO THE END OF THE DISCUSSION.

*[TIME PERMITTING MODERATOR MAY ALLOW ONE OR TWO FINAL COMMENTS]*

AS I HAVE EXPLAINED, THE RESULTS OF THIS AND OTHER FOCUS GROUP DISCUSSIONS - AS WELL AS THE RESULTS OF AN ONLINE SURVEY THAT YOU WILL BE INVITED TO PARTICIPATE IN - WILL BE INCORPORATED INTO A RESEARCH REPORT SUBMITTED TO LAW SOCIETY. TO REPEAT MY EARLIER PROMISE, ALL OF THIS WILL BE REPORTED IN A STRICTLY CONFIDENTIAL WAY AND YOU WILL NOT IDENTIFIED ANYWHERE IN THE REPORTING PROCESS.

THANK YOU FOR TAKING THE TIME TO PARTICIPATE THIS DISCUSSION.



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Challenges Facing Racialized Licensees  
June/August 2013  
(Non-Racialized Lawyers and Paralegals)**

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*TOR AUG 15, NON-RACIALIZED LICENSEES (X2)*

CRITERIA:

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115 MINUTES

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IN THIS DISCUSSION I'M INTERESTED IN EXPLORING YOUR EXPERIENCE, PERCEPTIONS AND IMPRESSIONS REGARDING THE CHALLENGES FACING RACIALIZED LAWYERS AND PARALEGALS. ALTHOUGH YOU YOURSELVES ARE NOT RACIALIZED LAWYERS OR PARALEGALS, I'M INTERESTED IN YOUR EXPERIENCES AND YOUR PERCEPTION OF THE ISSUES. I'M INTERESTED IN YOUR VIEWS REGARDING THE EXPERIENCES OF RACIALIZED LAWYERS AND PARALEGALS IN DIFFERENT PRACTICE ENVIRONMENTS.

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IF YOU HAVE A CELL PHONE, PLEASE TURN IT OFF, OR SET IT TO SILENT [IF YOU CAN].

**[REMINDEE PARTICIPANTS OF THE LENGTH OF THE DISCUSSION AND THE END TIME. PROVIDE DIRECTIONS TO WASHROOMS]**

## 1. GO 'ROUND: YOUR JOB / PROFESSION (10 MIN)

LET'S START WITH INTRODUCTIONS. AS WE GO AROUND THE TABLE, PLEASE INTRODUCE YOURSELF, BRIEFLY DESCRIBE YOUR PRACTICE CONTEXT OR YOUR EMPLOYMENT STATUS IF YOU ARE NOT PRACTISING AT THIS TIME, AND YOUR EXPERIENCE.

ALSO, PLEASE TELL ME WHY YOU WERE INTERESTED IN PARTICIPATING IN THIS DISCUSSION.

## 2. REFLECTING ON THE PROFESSION (35 MIN)

TELL ME A LITTLE BIT ABOUT WHAT IS HAPPENING IN YOUR PROFESSION? WHAT ARE THE IMPORTANT EVENTS, DEVELOPMENTS OR TRENDS THAT AFFECT HOW YOU ARE ABLE TO DO YOUR JOB AND PURSUE YOUR CAREER?

***[PROBE FOR IMPORTANT CHALLENGES TO EMPLOYMENT/ESTABLISHING A PRACTICE, CAREER ADVANCEMENT, CHOICES WITH RESPECT TO AREAS OF PRACTICE, QUALITY OF SERVICES AND ACCESS TO JUSTICE]***

***[OPEN ENDED, DON'T PROMPT AT FIRST...LET THIS CONVERSATION GO FOR A FEW MINUTES]***  
THINKING ABOUT YOUR OWN EXPERIENCE ***[AS AN NRL]*** WHAT ARE THE MAJOR CHALLENGES FACING LAWYERS/PARALEGALS?

***[PROBE SPECIFIC AREAS DEPENDING ON WHO'S IN THE ROOM.]***

### ENTRY INTO PRACTICE

***[PROBE]***  
***TYPE AND FORM OF INTERVIEWS,***  
***HOW INDIVIDUALS FIND OUT ABOUT POSITIONS IF NOT THROUGH THE 'MATCHING PROCESS'?***  
***WHAT ROLE, IF ANY, DID THE CONCEPT OF 'FIT' PLAY IN THE RECRUITMENT PROCESS?***

WHAT USE, IF ANY, WAS MADE OF LEGAL OR OTHER PROFESSIONAL NETWORKS TO SECURE ENTRY INTO THE PROFESSION?

WHAT, IF ANY, DIFFICULTIES WERE ENCOUNTERED OBTAINING ARTICLES?

**[NOTE: RESISTING THE TEMPTATION TO TELEGRAPH THE PERCEPTION OF MANY RLS AROUND THE ISSUE OF 'FIT' WILL BE KEY HERE AS WE DO NOT WISH TO UNDULY COMPROMISE THE SPONTANEITY OF INFORMATION PROFERRED. ]**

#### ADVANCEMENT

**[ASK RESPONDENT TO FIRST REMIND US OF THEIR PRACTICE ENVIRONMENT) PROBE FOR SPECIFIC EXPERIENCE AROUND CRITERIA / FACTORS / STRUCTURES / PROCESSES USED TO DETERMINE HIRE-BACKS AND ADVANCEMENT]:**

- **OPPORTUNITIES TO WORK ON COMPLEX / IMPORTANT FILES**
- **MENTORING**
- **PERFORMANCE REVIEWS**
- **HOW WAS PROCESS OF ADVANCEMENT COMMUNICATED / OR HOW DID RESPONDENT BECOME AWARE OF THE PROCESS?**

WHAT ARE THE CHALLENGES ADVANCING IN DIFFERENT PRACTICE ENVIRONMENTS, FOR EXAMPLE IN MEDIUM SIZED AND LARGER FIRMS?

#### CAREER PATH?

WHAT FACTORS DETERMINED YOUR CAREER PATH IN SOLE PRACTICE, MID – LARGE SIZE FIRMS, GOVERNMENT, JUDICIARY...

#### AREAS OF LAW

**WHAT FACTORS DETERMINED YOUR AREA OF PRACTICE? - ARTICLING EXPERIENCE,  
FIRST HIRE AFTER CALL, NETWORKS INCLUDING CLIENTS WITH WHOM YOU WORKED  
IN YOUR PRACTICE?...**

**OTHER**

**[REPRESENTATION, RETENTION, CHANGE OF STATUS WITHIN THE PROFESSION?  
DECISION TO LEAVE THE PROFESSION?]**

### **3. DIFFERENCES AND SIMILARITIES (15 MIN)**

**ENTRY INTO PRACTICE**

**IN OUR STUDY AND IN PAST RESEARCH WITH RACIALIZED LAWYERS, THERE HAVE  
BEEN REPORTS OF :**

- **IMPROPER QUESTIONS ASKED IN INTERVIEWS (QUESTIONS ABOUT FAMILY  
ORIGIN, RELIGION, POLITICAL PARTY AFFILIATIONS ETC.**
- **DISPARATE OUTCOMES IN FINDING ARTICLES AND POST-CALL FIRST  
POSITIONS INCLUDING HIRE-BACK**

**ARE YOU FAMILIAR WITH THESE CONCERNS?**

**ANY THOUGHTS AS TO WHY OR WHY NOT THESE PATTERNS MAY EXIST?**

**HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT YOUR EXPERIENCES ENTERING  
THE PRACTICE, ARE THERE ANY PROCESSES THAT MAY CREATE CHALLENGES  
(INTENDED OR UNINTENDED)?**

**ADVANCEMENT**

PAST QUANTITATIVE RESEARCH CONDUCTED BY THE SOCIETY HAS SHOWN THAT RLS ASCEND TO PARTNERSHIPS IN FIRMS AT LOWER RATES. (6% OF RACIALIZED VS. 16% OF TOTAL RESPONDENTS).

ANY THOUGHTS AS TO WHY THESE PATTERNS PERSIST?

HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT YOUR ADVANCEMENT EXPERIENCES, DO ELEMENTS OF THAT PROCESS POSE ANY CHALLENGES FOR RLS? (INTENDED OR UNINTENDED)

ANY DIFFERENCES FOR GOVERNMENT OR CORPORATE ENVIRONEMENTS?

#### CAREER PATH?

PAST QUANTITATIVE RESEARCH BY THE SOCIETY SHOWS RLS OCCUPY A HIGHER PROPORTION OF POSITIONS IN SOLE AND SMALL FIRMS THAN NRLS ( RACIALIZED V. TOTAL RESPONDENTS (21% TO 19%), AND ARE OVERREPRESENTED IN GOVERNMENT AS WELL.

ANY THOUGHTS AS TO FACTORS THAT MAY CONTRIBUTE TO OVERREPRESENTATION OF RLS IN SOLES / SMALLS / GOVERNMENT?

HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT HOW YOUR CAREER WAS CONSTRUCTED, DO YOU HAVE ANY INSIGHTS INTO THE PATTERNS?

#### AREAS OF LAW

PAST RESEARCH BY THE SOCIETY (PROFESSOR MCKAY P113) SHOWS NON-RACIALIZED LAWYERS EQUALLY LIKELY TO PRACTICE CIVIL LITIGATION AND CORPORATE / COMMERCIAL LAW AS RACIALIZED LAWYERS. BUT THERE IS DIVERGENCE IN OTHER PRACTICE AREAS. RACIALIZED LAWYERS ARE MORE LIKELY TO PRACTICE CRIMINAL, IMMIGRATION, AND POVERTY LAW WHEREAS NON-RACIALIZED LAWYERS ARE MORE LIKELY TO PRACTICE REAL ESTATE, INSURANCE LAW AND FAMILY.

**ANY THOUGHTS AS TO FACTORS THAT MAY CONTRIBUTE TO THE PERSISTENCE OF THESE PATTERNS?**

**ANY INTENDED OR UNINTENDED BARRIERS TO RLS PRACTICING REAL ESTATE, INSURANCE, OR FAMILY LAW?**

**HAVING REGARD TO OUR EARLIER DISCUSSION ABOUT FACTORS THAT LED YOU TO YOUR PRACTICE AREA, DO YOU HAVE ANY INSIGHTS THAT MAY INDICATE REASONS FOR THE PATTERNS?**

OTHER

**[REPRESENTATION, RETENTION, CHANGE OF STATUS OF RACIALIZED MEMBERS WITHIN THE PROFESSION?  
DECISION TO LEAVE THE PROFESSION?]**

**MANY OF YOU HAVE SUGGESTED THAT THE OUTCOMES OF RACIALIZATION VARY DEPENDING ON DIFFERENT PRACTICE ENVIRONMENTS AND CAREER CIRCUMSTANCES [REFERENCE PRECEDING DISCUSSION].**

**DOES RACE IMPACT DIFFERENT GROUPS OF LAWYERS DIFFERENTLY?**

**TALK ABOUT YOUR KNOWLEDGE OR IMPRESSIONS OF THE EXPERIENCES OF DIFFERENT RACIALIZED GROUPS WITH WHICH YOU HAVE BEEN ASSOCIATED.**

**[EXPLORE PERCEPTIONS OF OUTCOMES FOR:]**

**NEW LICENSEES AND RACIALIZED LICENSEES COMPARED TO NEW LICENSEES AND NON -RACIALIZED**

**FEMALE AND RACIALIZED COMPARED TO MALE LICENSEES AND RACIALIZED? [ASK FOR EXAMPLES]**

**OTHER GROUPS?**

**COMMUNITIES/ REGIONS?**

#### 4. IMPACTS (25 MINUTES)

WE HAVE TALKED ABOUT [*BRIEF SUMMARY OF MAIN TOPICS*]

- MARKET COMPETITION MAKING LIFE HARDER FOR ALL LAWYERS BUT RACIALIZED LAWYERS IN PARTICULAR
- OVERT DISCRIMINATION/RACISM
- STRUCTURAL AND BEHAVIOURAL BARRIERS THAT HAVE THE EFFECT OF DISCRIMINATING THOUGH NOT DESIGNED TO DISCRIMINATE? [GIVE EXAMPLES FROM DISCUSSION]
- UNDER-REPRESENTATION AT SENIOR LEVELS OF MEDIUM AND LARGE FIRMS
- OVER-REPRESENTATION IN SOLES / SMALLS
- LACK OF ARTICLING OPPORTUNITIES

ARE THERE OTHER IMPACTS OF RACIALIZATION THAT HAVE NOT BEEN MENTIONED THAT YOU WOULD LIKE TO ADD TO THIS LIST? [*NOTE ADDITIONS*]

DO THESE IMPACTS AFFECT THE QUALITY OF SERVICES THAT LAWYERS AND PARALEGALS CAN PROVIDE TO CLIENTS AND THE COMMUNITY? [*REMINDER OF CONFIDENTIALITY. THEY MAY NOT BE COMFORTABLE ANSWERING IN FRONT OF COLLEAGUES*].

DO THE IMPACTS/ CHALLENGES FACING RACIALIZED LICENSEES, INFLUENCE ACCESS TO JUSTICE FOR THE PUBLIC IN ONTARIO?

*[PROBE ADEQUACY/'FIT' OF LEGAL REPRESENTATION FOR RACIALIZED COMMUNITIES]*

*[PROBE REPRESENTATION OF RACIALIZED GROUPS IN PUBLIC INSTITUTIONS – CROWN PROSECUTORS? THE JUDICIARY?]*

IN MY INTRODUCTION TO THIS DISCUSSION I MENTIONED THAT ONE OF THE OBJECTIVES OF THIS PROJECT SPECIFIED BY THE LAW SOCIETY WAS TO IDENTIFY “FACTORS AND PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE.” ARE THERE FACTORS OR PRACTICE CHALLENGES THAT COULD INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE FOR ALL LICENSEES?

DO ANY OF THE IMPACTS OF RACIALIZATION THAT WE HAVE BEEN DISCUSSING INCREASE THE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE? FROM YOUR EXPERIENCE AND OBSERVATIONS, ARE RACIALIZED LICENSEES AT MORE RISK OF REGULATORY COMPLAINTS AND DISCIPLINE THAN NON-RACIALIZED LICENSEES?

**[PROBE FOR EXAMPLES]**

**[TEST FOR CONSENSUS: ARE RACIALIZED LICENSEES MORE VULNERABLE/AT HIGHER RISK OF COMPLAINTS AND DISCIPLINE?]**

BASED ON YOUR OWN EXPERIENCE AND OBSERVATIONS, ARE THERE ANY POSITIVES ABOUT RACIALIZATION?

## 5. REMEDIES (20 MIN)

MANY LAWYERS AND FIRMS ARE CONCERNED ABOUT DIVERSITY AND EQUITY. HAVE YOU SEEN WHAT YOU CONSIDER TO BE GOOD PRACTICES THAT YOU WOULD WANT TO RECOMMEND BE STUDIED OR SCALED UP TO ADDRESS THE CHALLENGES WE HAVE BEEN DISCUSSING?

- BY INDIVIDUALS AND VOLUNTARY ASSOCIATIONS?
- BY HR DEPTS IN FIRMS? BY MANAGING PARTNERS IN FIRMS?
- BY GOVERNMENTS/PUBLIC INSTITUTIONS BUYING LEGAL SERVICES?
- BY THE ATTORNEY-GENERAL? CROWN PROSECUTORS?
- BY THE LAW SOCIETY?

ARE THESE GOOD APPROACHES (AND IF SO, WHY?)

**[LIST SPECIFIC MEASURES THAT HAVE BEEN IMPLEMENTED OR PROPOSED, E.G.]**

- APPOINT MORE RACIALIZED JUDGES/ADJUDICATORS

- GATHER STATISTICS ON RACIALIZED IDENTITY OF LICENSEES IN COMPLAINTS PROCESS
- ENFORCE PROCUREMENT RULES BY GOVERNMENT
- MENTORSHIP PROGRAMS
- MORE SOCIAL OPPORTUNITIES NOT LINKED TO TRADITIONAL 'WHITE' CULTURE
- RESTRICT INTAKE OF NEW LICENSEES
- HR/RECRUITMENT PRACTICES
  - 'BLIND' HR POLICIES (NO NAMES OR PERSONAL ID IN EARLY PHASES OF HIRING)
  - *[ADD]* OTHER SPECIFIC HR AND RECRUITMENT PRACTICES
- DEVELOP A MORE DIVERSE PUBLIC FACE/IMAGE FOR THE LAW SOCIETY
- SANCTION/PROMOTE COLLECTION AND SHARING OF DEMOGRAPHIC DATA RE: GENDER/RACIAL COMPOSITION OF LAW FIRMS
- PROMOTE 'CULTURAL COMPETENCE TRAINING'
- ENCOURAGE DIVERSITY CRITERIA IN CORPORATE PROCUREMENT OF LEGAL SERVICES [AS EVIDENT TO SOME DEGREE AMONGST LEGAL LEADERS FOR DIVERSITY]

WHAT DOES SUCCESS LOOK LIKE TO YOU WITH RESPECT TO THE ISSUES WE'VE TALKED ABOUT TONIGHT?

IS IT APPROPRIATE FOR THE LAW SOCIETY TO CONDUCT THIS TYPE OF RESEARCH? IS THIS PROJECT A GOOD IDEA?

## 6. CLOSING REMARKS (5 MIN)

THAT BRINGS US TO THE END OF THE DISCUSSION.

*[TIME PERMITTING MODERATOR MAY ALLOW ONE OR TWO FINAL COMMENTS]*

AS I HAVE EXPLAINED, THE RESULTS OF THIS AND OTHER FOCUS GROUP DISCUSSIONS - AS WELL AS THE RESULTS OF AN ONLINE SURVEY THAT YOU WILL BE INVITED TO PARTICIPATE IN – WILL BE INCORPORATED INTO A RESEARCH REPORT SUBMITTED TO LAW SOCIETY. TO REPEAT MY EARLIER PROMISE, ALL OF THIS WILL BE REPORTED IN A STRICTLY CONFIDENTIAL WAY AND YOU WILL NOT IDENTIFIED ANYWHERE IN THE REPORTING PROCESS.

THANK YOU FOR TAKING THE TIME TO PARTICIPATE THIS DISCUSSION.

# Innovation Strategy Results

**Draft Survey  
Instrument – Barriers  
Facing Racialized  
Licensees**

**For  
Law Society of Upper  
Canada**

**October 16, 2013**

[www.stratcom.ca](http://www.stratcom.ca)

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## 1.0 Draft Questionnaire

### STRUCTURE OF QUESTIONNAIRE

- A. Introduction and Demographics
- B. Personal Experience
- C. Barriers to Entry and Advancement
- D. Best Practices and Role of the Law Society and Other Actors
- E. Complaints and Discipline

### A. Introduction and Demographics

Welcome.

The Law Society of Upper Canada is committed to advancing equity and diversity in the legal profession. As the general population of Ontario grows increasingly diverse, the legal profession is evolving with it. To ensure the public's access to justice and to promote excellence in the profession, the Law Society considers equity and diversity in all aspects of its mandate.

As one step in this effort, Convocation created the *Challenges Faced by Racialized Licensees Working Group* in 2012, with a mandate to identify those challenges and consider strategies for enhanced inclusion at all career stages. The term 'Racialized' expresses race as the process by which groups are socially constructed, as well as to modes of self-identification, related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), Chinese, East-Asian (e.g. Japanese, Korean), Latin American and Hispanic, South Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino), and West Asian (e.g. Iranian, Afghan) persons.

Because the Law Society has already completed a thorough consultation with the Aboriginal bar, this consultation does not focus on barriers faced by that community. The Aboriginal Bar Consultation Report is available on the Law Society website.

This survey is an initiative of the Law Society of Upper Canada's Working Group but it is being conducted by Strategic Communications Inc. (Stratcom), an independent Canadian research

firm. The survey is the third part of a larger study that included one-on-one interviews with experts (May/June 2013) and focus groups (July /August 2013). In addition the Working Group has arranged informal consultations with members of the legal profession.

The questions in this survey are designed to fulfill the mandate of the Working Group by enquiring into:

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

Note on terminology: For brevity we often use the term ‘licensees’ rather than ‘lawyers and paralegals’.

This survey will take about [FINAL TEST TIMING, max 20 min] to complete.

All of the responses are confidential and anonymous. The collected data will not be attributed to any individual respondent.

**YOUR PARTICIPATION IS VALUED AND APPRECIATED. WHETHER YOU CONSIDER YOURSELF A RACIALIZED LICENSEE OR NOT, YOUR INPUT IS EXTREMELY IMPORTANT. THANK YOU FOR PARTICIPATING.**

If you have questions or concerns about the survey, please email [armand.cousineau@stratcom.ca](mailto:armand.cousineau@stratcom.ca)

1) Are you currently licensed as a lawyer or a paralegal in Ontario?

Practising -- LAWYER

Not practising at this time – LAWYER

PARALEGAL providing legal services

PARALEGAL currently not providing legal services

2) How long have you been licensed to practise or to provide legal services in Ontario?

<2 years

2-5 years

6-10 years

11-15 years

>15 years

2a) [for Paralegals] Were you licensed under the ‘grandparenting’ provisions that were introduced when the Law Society became the regulator of the paralegal profession in 2007?

Yes

No

3) Which of the following best describes your practice environment?

Sole practitioner

Small firm (fewer than 6 licensees)

Medium firm (6 to 50 licensees)

Large firm (more than 50 licensees)

Otherwise Employed:

Education

Government

Corporation

Non-profit

Not Employed in Ontario:

Retired

Reside outside Ontario

Unemployed at this time

Other

Please specify other \_\_\_\_\_

- 4) [All respondents] Do you:  
Have a law degree from a law school in Canada?  
Have a law degree from outside of Canada?  
Not have a law degree?
- 5) [Yes, Law degree from outside of Canada] Where did you earn your law degree? [OPEN  
END]
- 6) How long did you practise outside of Canada?  
Less than 2 years  
More than 2 - <5 years  
>5 - <10 years  
10+ years  
Did not practise outside of Canada
- 7) [FOR PRACTISING LAWYERS]What are your main areas of practice?  
[MARK ALL THAT APPLY]  
Aboriginal law  
Administrative law  
ADR/Mediation Services  
Bankruptcy & Insolvency Law  
Civil litigation – Plaintiff  
Civil litigation – Defendant  
Construction law  
Corporate/Commercial law  
Criminal/Quasi Criminal law  
Employment/Labour law  
Environmental law  
Family/Matrimonial law  
Franchise law

Immigration law  
 Intellectual Property law  
 Real Estate law  
 Securities law  
 Tax law  
 Wills, Estates, Trusts law  
 Workplace Safety & Insurance law  
 Other

Please specify other area(s) of practice \_\_\_\_\_

- 8) [FOR PARALEGALS PROVIDING LEGAL SERVICES] What are the main areas where you provide legal services? [MARK ALL THAT APPLY]

Ontario Court of Justice *Provincial Offences Act* matters  
 Ontario Court of Justice - Summary conviction offences  
 Worker's Compensation  
 Small Claims Court matters  
 Property Tax Assessment  
 Statutory Accident Benefits Schedule matters (SABS)  
 Human Rights Tribunal  
 Landlord and Tenant  
 Other Tribunals

Please specify other Tribunals \_\_\_\_\_

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

I am racialized  
 I am not racialized  
 I am unsure/ I don't know

- 10) Are you: *[check all that apply]*
- Arab
  - Black (e.g. African-Canadian, African-American, Caribbean, African)
  - Chinese
  - East-Asian (e.g. Japanese, Korean)
  - Latin American, Hispanic, Latino
  - South Asian (e.g. Indo-Canadian, Indian, Pakistani, Bangladeshi, Sri Lankan)
  - South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino, Malaysian, Indonesian)
  - West Asian (e.g. Iranian, Syrian, Afghan)
  - White/Caucasian
  - Other
- Please specify other: \_\_\_\_\_
- 11) Are you:
- A woman
  - A man
  - Transgender
- 12) Is your mother tongue...
- English
  - French
  - Another language
- 13) Please tell us the year in which you were born:
- [YYYY]
- 14) Please tell us your residential postal code so that we can group your responses with those of other licensees:
- L# L# L#
- 15) Were you...
- born in Canada
  - born outside Canada

## B. Personal Experience

The next few questions are about your own personal experiences as a licensee. Please answer as candidly as possible, keeping in mind that all responses are strictly confidential and anonymous.

16) Please indicate if you agree or disagree with each of the following statements about your entry into practice/career advancement?

[RANDOMIZE]

a) Mentor(s) played an important role in my career development.

Strongly Agree  
Somewhat Agree  
Somewhat Disagree  
Strongly Disagree  
I don't know  
Does not apply to me

- b) I felt at a disadvantage in law school compared to other students.
- c) My social networks have played an important role in my career development.
- d) My experience with On-Campus Interviews (OCI) was positive.
- e) I was offered employment at the firm where I articulated/had my job placement.
- f) I struggled to find an articling position or training placement.
- g) I have felt professional disrespect from other lawyers.
- h) I have felt professional disrespect from other paralegals.
- i) I have felt professional disrespect in court.
- j) I found a suitable first job shortly after being licensed.
- k) I have found employment in the type of practice environment that best suits me.
- l) I have been able to work in my preferred area(s) of practice.

- m) I have not advanced as rapidly as my colleagues who have similar qualifications and experience.
- n) I have left one (or more) positions because I did not feel that I belonged there.
- o) I have left one (or more) positions because I did not feel I would be able to advance commensurate with my performance and ability.
- p) My admission into partnership was delayed.
- q) I was not made partner despite meeting known criteria for advancement.
- r) I have found it relatively easy to get legal advice on client files from professional colleagues or mentors.
- s) I was refused a promotion to a manager position.

## C. Barriers to Entry & Advancement

- 17) Below is a list of factors that may present challenges to individual lawyers and paralegals. For each factor, please indicate if you have experienced it as a barrier or challenge at any time **DURING** your entry into practice, at any time **AFTER** your entry into practice, (i.e. career advancement) or neither: [RANDOMIZE RESPONSES]

[TABLE FORMAT WITH ENTRY, AND CAREER ADVANCMENT CHECK BOXES TO THE RIGHT]

- a) your gender identity

Yes during entry into practice

Yes after entry into practice

Neither

- b) your sexual orientation
- c) your ethnic/racial identity
- d) your age (too young)
- e) your age (too old)
- f) your religion or religious practices
- g) where you were trained/educated
- h) where you were born/raised
- i) the way you speak English/French

- j) your (family's) socio-economic status
- k) your physique/appearance
- l) a physical disability
- m) a cognitive or learning disability
- n) which school(s) you graduated from
- o) your need/desire to take time away from work to care for children or other family members
- p) the types of social activities you prefer
- q) your social or political views

18) [IF RESPONDENT MARKS AT LEAST ONE RESPONSE FROM THE LIST OF FACTORS IN THE PREVIOUS QUESTION] This question asks you to indicate if any of the challenges or barriers you identified in the previous question has contributed in a significant way to:

- a) Your choice of practice environment (size of firm, government, in-house counsel, etc)?

Yes

No

Unsure/Maybe

Don't Know

- b) Your geographic area of employment?
- c) Your choice of main practice areas of law or provision of legal services?
- d) The fact that you are currently unemployed or retired or have left practice?

[TABLE REPRODUCES THE LIST OF CHALLENGES/BARRIERS THAT WERE SELECTED BY THE RESPONDENT IN THE PREVIOUS QUESTION WITH CHECK BOX COLUMNS TO THE RIGHT]

19) Do you believe that racialized licensees, on the whole, face challenges to their entry into practice and career advancement compared to non-racialized licensees?

Much more

Somewhat more

About the same as non-racialized licensees

Somewhat less  
 Much less  
 Don't know

- 20) Have you experienced or have you witnessed, a situation in which challenges facing a racialized candidate or licensee had a material impact – either positive or negative – on that individuals' entry into practice and/or their career advancement? This could apply to yourself or another Ontario licensee.

Yes [PLEASE BRIEFLY DESCRIBE THAT SITUATION]

---



---

No  
 Not sure

- 21) **[RACIALIZED RESPONDENTS ONLY]** Have you been disadvantaged in hiring, advancement, or pursuit of an area of practice as a consequence of any of the factors listed below ?

- a) You do not have the same cultural background as your colleagues

Yes, definitely  
 Yes, probably  
 No  
 I am not sure  
 Not applicable

*Repeat questions with response categories for the following:*

- b) You have been subjected to prejudicial attitudes on the part of other legal professionals, based on your racialized status  
 c) You have been subjected to prejudicial attitudes on the part of clients and potential clients, based on your racialized status  
 d) You have a different accent than your colleagues

- e) You received your training outside of Canada
- f) You do not speak English/French as well as your peers
- g) You were not raised in Canada
- h) You did not grow up with a network of professional contacts that you could turn to for support with your legal career
- i) Opportunities for equity partnership were reduced for everyone, as a result of changes in employer policy
- j) You were expected to perform to a higher standard than others because of stereotypes associated with your race
- k) You were expected to perform to a higher standard than others, because of stereotypes associated with your gender identity
- l) You were expected not to succeed at your job because of stereotypes associated with your race
- m) You were expected not to succeed at your job because of stereotypes associated with your gender identity
- n) You were denied administrative or other office supports granted to all others who were performing your same role
- o) You were harassed
- p) Your employment environment is not very diverse
- q) Clients do not request to be represented by lawyers from diverse backgrounds
- r) Your peers do not believe that a diverse working environment is important
- s) Your beliefs or cultural practices preclude you from participating in many of the social networking functions of Ontario legal firms
- t) Partners avoid giving you the most challenging files to work on
- u) You lack experience in running the business side of a legal practice
- v) You are a paralegal, rather than a lawyer
- w) You possess inferior qualifications compared to your peers
- x) You do not have mentors to give you legal advice on client files

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

- a) ... affect the quality of legal services for the public?

Yes, definitely

Probably, but not sure

Probably not  
 No, definitely not  
 I don't know

*Repeat questions with response categories for the following:*

- b) ... affect access to justice for Ontarians?
- c) ... impact on the reputation of the legal profession in Ontario?

23) Are there any other issues relating to these topics that you believe are important?  
 Please be as specific as possible. [OPEN ENDED]

---

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

[RANDOMIZE STATEMENTS]

- a) [LAWYERS] When legal employers interview articling students the most important factor to assess is the ability of the candidate to fit within the firm environment.

Strongly agree  
 Somewhat agree  
 Somewhat disagree  
 Strongly disagree  
 I don't know

*Repeat questions with response categories for the following:*

- b) [PARALEGALS] When employers interview paralegals, the most important factor to assess is the ability of the candidate to fit within the firm environment.
- c) Any problems faced by racialized licensees will work themselves out without specific mitigating measures.
- d) Being racialized can be a positive benefit for paralegals and lawyers, because they can recruit clients through their communities' networks.

- e) It is important to reduce discrimination but the profession's main responsibility is to the client and making sure they are being served by competent lawyers and paralegals.
- f) The use of 'fit' as a criterion for hiring unduly limits the relevant assessment of a candidate.
- g) [LAWYERS] There should be a more concerted effort by the legal profession to provide better opportunities for articling and positions for racialized lawyers.
- h) All members of the Ontario legal community should strive for a profession that is as welcoming as possible for anyone who wants to pursue a legal career.
- i) Many legal firms and businesses are interested in promoting diversity, so being racialized is an advantage in many employment situations.
- j) Market competition is a challenge for all lawyers and paralegals, but racialized licensees are especially affected by it.
- k) It is natural and desirable that licensees from various backgrounds conform to the professional culture that is already established in Ontario.
- l) The legal profession in Ontario would be stronger if there were more racialized licensees at senior levels of medium and large firms
- m) The challenges faced by racialized licensees have more to do with challenges associated with language than race.

## D. Best Practices and Role of the Law Society and Other Actors

- 25) Many lawyers, paralegals, and firms are concerned about diversity and equity. Have you seen what you consider to be good practices that you would want to recommend be studied or scaled up to address the challenges facing racialized licensees? [OPEN ENDED]
- 

- 26) The following is a list of measures that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. For each, please tell us if you think it would be the right approach, wrong approach, or if you would need more information before making up your mind.

- a) Appoint more racialized judges/adjudicators.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

Right approach, DEFINITELY

Right approach, PROBABLY

NEUTRAL, no opinion

Wrong approach, PROBABLY

Wrong approach, DEFINITELY

Not sure, I NEED MORE INFORMATION BEFORE DECIDING

*Repeat questions with response categories for the following:*

- b) Gather statistics on the racialized identity of licensees in the complaints process in order to establish whether racialized licensees are at greater risk of complaints and discipline than non-racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- c) Create more mentorship programs that deliver professional guidance and access to networks to racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- d) Create more social networking opportunities (within the profession and within firms) not defined by traditional 'Ontario culture'.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

e) Appoint more racialized licensees as partners in large firms.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

f) Restrict intake of new licensees in order to improve the employment prospects for all recently licensed lawyers and paralegals, and racialized lawyers and paralegals in particular.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

g) Ensure there are no names or personal identifiers in the early stages of hiring, to equalize opportunity between like candidates.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

h) Provide more structured/formal interviewing processes to ensure that ethnic or cultural 'fit' is not a strong factor in who gets hired.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

i) Provide greater and timely transparency of hiring and advancement criteria so candidates can better understand the expectations of employers.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

j) Develop a more diverse public face/image for the Law Society.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

k) Promote collection of demographic data re: gender/racial composition and advancement within legal firms and other legal organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

l) Promote sharing of demographic data re: gender/racial composition and advancement within legal firms and other organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

m) Require collection of demographic data re: gender/racial composition and advancement within legal firms and other legal organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

n) Require sharing of demographic data re: gender/racial composition and advancement within legal firms and other organizations.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- o) Require and promote ‘cultural competence training’ [**CULTURAL COMPETENCE** refers to an ability to interact effectively with people of different cultures and socio-economic backgrounds.]

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- p) Encourage disclosure of diversity data and criteria in corporate procurement of legal services.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- q) Provide interviewing preparation seminars for racialized licensees.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- r) Provide a parallel On Campus Interview (OCI) process for those who were licensed through the National Committee on Accreditation process (NCAs).

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

- s) Encourage participation in diversity and inclusion initiatives as a criterion for hire-back and partnership.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

t) The Law Society should sponsor more Professional Development seminars on equity and diversity issues, which may be counted towards accreditation for members.

*[This is a measure that some licensees have suggested could be effective in making the legal profession more inclusive of racialized licensees. Do you think this would be the right approach, wrong approach, or if you would need more information before making up your mind?]*

u) Are there any other measures that you think could be effective in making the legal profession more inclusive of racialized licensees? [OPEN END]

Ontario has become a more diverse society in the past few decades, with more women, racialized individuals and communities, persons with disabilities and different sexual orientations taking up new roles in business, the arts, professions, including the legal profession, and other spheres of life.

27) Does the increased number of racialized lawyers and paralegals in Ontario have a positive impact, negative impact, or no impact on the public of Ontario?

Very Positive

Somewhat positive

Neutral, no impact

Somewhat negative

Very negative

I don't know/Not sure

28) [IF POS or NEG on PREVIOUS Q] In what way does the increased number of racialized licensees in Ontario impact on the public of Ontario? [OPEN ENDED]

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29) In your view, what role should each of the following take to address the unique challenges facing racialized licensees?

[IN ALPHABETICAL ORDER]	MAJOR role	MINOR role	LITTLE OR NO role	I don't know
Large legal firms, working on their own				
Large and mid-sized legal firms, working together				
Individual racialized lawyers and paralegals				
Individual non-racialized lawyers and paralegals				
The Law Society				
The Human Rights Commission				
Federal/provincial/municipal governments				
Sole practitioners and small firms				
Law schools and Colleges				
Broadly based associations of lawyers or paralegals (such as the Canadian Bar Association, Ontario Bar Association, Paralegal Society or Licensed Paralegal Society, etc)				
Associations of lawyers focused in racialized communities (Canadian Association of Black Lawyers, Canadian Association of South Asian Lawyers, etc)				

Q29b. Who else should take a role in addressing the unique challenges facing racialized licensees? [OPEN END]

## E. Complaints & Discipline

30) The issue of the influence of race in the complaints and discipline process arises from time to time. The Law Society seeks to continually improve its processes. In your view, are there additional steps the Law Society could undertake to address these issues proactively?

[OPEN ENDED]

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31) Some concerns have been raised in the profession that racialized licensees may be more vulnerable to complaints (from other lawyers/paralegals, or from clients) compared to non-racialized licensees.

The following is a list of factors that some have suggested may contribute to increasing the risk of complaints against racialized licensees. In each case, please indicate if you think that factor is more likely or not more likely to increase the risk of complaints against racialized -- as compared to non-racialized -- lawyers and paralegals.

RANDOMIZE

a) Financial hardship leading to difficulty managing the business side of running a legal practice. In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?

Yes, definitely

Yes, probably

No, probably not

No, definitely not

I don't know

- b) Lack of mentors and professional networks to support a lawyer/paralegal if they run into significant challenges in their practice. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- c) Bad faith clients. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- d) Lack of knowledge of how to run the business side of a law practice. [ In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- e) Lower quality articling positions and inadequate training. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- f) Pressure from clients to practise outside one’s legitimate practice area. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- g) Communications problems between the lawyer/paralegal and clients. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- h) Communications problems between the lawyer/paralegal and other members of the profession or the judiciary. [In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- i) Racial stereotyping by other members of the profession or the judiciary. [ In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]
- j) Racial stereotyping by clients. [ In your view, does this factor disproportionately increase the risk of complaints against racialized lawyers and paralegals?]

32) In the administration of justice there are circumstances in which legal processes treat those in the system differently depending on whether they are a member of a group viewed to suffer a disadvantage. Do you believe that such a differentiation should be made in the regulatory processes with respect to racialized licensees in certain circumstances.

Yes

No

I am not sure, I would need more information

31) [IF YES TO PREV Q] Please describe the circumstances where this should occur. [OPEN]

**THANK YOU FOR RESPONDING TO THIS IMPORTANT SURVEY.**

This is **Exhibit I** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

MINUTES OF CONVOCATION

Thursday, 30<sup>th</sup> October, 2014  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong (by telephone), Backhouse, Banack, Boyd, Braithwaite, Bredt, Burd (by telephone), Callaghan, Campion (by telephone), Corsetti, Dickson, Doyle, Earnshaw, Elliott, Epstein, Eustace (by telephone), Evans, Falconer, Festeryga (by telephone), Ferrier, Finkelstein (by telephone), Furlong, Go, Gold (by telephone), Goldblatt, Gottlieb, Haigh, Hare, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacKenzie (by telephone), MacLean, Manes (by telephone), Marmur, McGrath, Mercer, Murchie, Murray, Potter (by telephone), Pustina, Rabinovitch, Richardson (by telephone), Richer, Ross, Rothstein, Ruby (by telephone), Scarfone, Schabas, Silverstein, C. Strosberg, H. Strosberg, Sullivan, Swaye, Symes, Wardle and Wright (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer congratulated bencher Alan D. Gold on being honoured as a past president of the Criminal Lawyers' Association at a gala dinner last evening.

The Treasurer congratulated bencher Malcolm Mercer who was recognized as one of the Top 25 Most Influential Lawyers in 2014 by Canadian Lawyer Magazine for his leadership and work on Alternative Business Structures.

The Treasurer congratulated bencher Paul Schabas on receiving a Zenith Award for his work in defamation and media.

The Treasurer congratulated bencher Robert Burd on receiving the first ever Ontario Paralegal Association Lifetime Achievement Award, acknowledging his contribution to the paralegal profession.

The Treasurer updated Convocation on her activities and outreach initiatives during the past month.

The Treasurer updated Convocation on the TAG initiative, including an upcoming event of the Ministry of the Attorney General on November 18, 2014.

The Treasurer reminded benchers of the special Remembrance Day service on November 10, 2014 which will include a call to the bar of students who died in military service in World War I and who were never called.

The Treasurer announced the launch of the 2015 Bencher Election this past week.

The Treasurer announced the opening of nominations for the Law Society Awards in the upcoming week.

The Treasurer informed Convocation that the following would be luncheon guests today:

- Michelle H. Hollins, Q.C., newly elected President of the Canadian Bar Association
- Orlando Da Silva, President of the Ontario Bar Association
- Betsy Hall, Director of Policy and Public Affairs for the Ontario Bar Association.

#### MOTION – CONSENT AGENDA

It was moved by Ms. Leiper, seconded by Mr. Bredt, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of September 24, 2014 were confirmed.

DRAFT

MINUTES OF CONVOCATION

Wednesday, 24<sup>th</sup> September, 2014  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong, Backhouse, Banack, Boyd, Braithwaite, Bredt, Burd, Callaghan (by telephone), Campion, Copeland (by telephone), Corsetti, Dickson, Doyle, Earnshaw, Elliott, Epstein, Eustace (by telephone), Evans, Falconer, Ferrier, Furlong, Go, Goldblatt, Haigh, Hare, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacLean, Manes (by telephone), Marmur, McDowell, McGrath, Mercer, Murchie (by telephone), Murray, Pawlitzka, Porter, Potter, Pustina (by telephone), Rabinovitch, Richardson (by telephone), Richer, Ruby (by telephone), Sandler (by telephone), Scarfone, Schabas, Sheff, Sikand, Silverstein (by telephone), C. Strosberg, H. Strosberg (by telephone), Sullivan, Swaye, Symes, Wardle and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER’S REMARKS

The Treasurer thanked elder Waasaanese, Alex Jacobs, and his assistant, Natasha Naveau, who performed a smudging ceremony and pipe ceremony with benchers prior to Convocation.

The Treasurer recounted to Convocation the sunrise ceremony which took place at 6:30 a.m. today.

The Treasurer acknowledged the importance of the eagle feathers which are placed on the Convocation table, and invited bencher Susan Hare to address Convocation on the ceremonies and teaching on the eagle feathers.

Susan Hare addressed Convocation.

The Treasurer advised Convocation of a number of her activities since June 2014.

The Treasurer expressed condolences to the family of former bencher The Honourable John T. Clement, Q.C. who passed away June 24, 2014.

The Treasurer expressed condolences to the family of Purdy Crawford, a lawyer and leading member of the business community, who passed away on August 12, 2014.

The Treasurer expressed condolences to the family, friends and colleagues of Errol Sue, a paralegal member of the Law Society Tribunal, who passed away on September 23, 2014.

The Treasurer congratulated former Chief Justice William Parker on his 100<sup>th</sup> birthday on August 25, 2014 and his 75<sup>th</sup> year as a member of the Law Society.

The Treasurer congratulated Kim Pate on receiving an honorary LL.D. at the call to the bar ceremony on September 19, 2014.

The Treasurer updated Convocation on the work of the Real Estate Liaison Group.

The Treasurer announced the appointment of five lay adjudicators to the Law Society Tribunal for a two year term:

Eva Krangle, Toronto  
Sabita Maraj, Mississauga  
John Spekkens, Toronto  
Marilyn Thain, London  
Eric Whist, Toronto

The Treasurer updated Convocation on the activities of The Action Group (TAG) on Access to Justice.

With respect to the structure of TAG and Convocation, the Treasurer advised that Howard Goldblatt will be attending the TAG meetings as the Treasurer's designate.

The Treasurer acknowledged Susan Hare's leadership in the work related to updating the Law Society's 2009 Aboriginal Strategy.

The Treasurer was pleased to announce that CEO Robert Lapper was requested to participate in the Aboriginal Justice Advisory Group announced by the Attorney General.

The Treasurer reported on her attendance at the Osgoode Society dinner September 23, 2014 and encouraged benchers to join the Society.

The Treasurer advised that the Attorney General of Ontario, The Honourable Madeleine Meilleur, MPP will be a lunch guest today.

MOTION – CONSENT AGENDA

It was moved by Mr. Earnshaw, seconded by Ms. Strosberg, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of June 26, 2014 and August 13, 2014 were confirmed.

MOTION – APPOINTMENTS – Tab 1.2

THAT Convocation approve the appointments listed in the motion at Tab 1.2.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE – Tab 1.3

THAT the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

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IN CAMERA

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AUDIT AND FINANCE COMMITTEE REPORT – Tab 1.4

Re: J. Shirley Denison Fund

That Convocation approve a grant of \$1000 to Applicant 2014-19 already paid under the administrative provisions of the Fund.

Carried

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 IN PUBLIC  
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#### LAWPRO REPORT

Ms. McGrath presented the Report.

It was moved by Ms. McGrath, seconded by Mr. Evans, that Convocation approve the program of insurance offered by LAWPRO for 2015 as set out in the Report at Tab 2.

Carried

#### TRIBUNAL COMMITTEE REPORT

Mr. Anand and Mr. David Wright presented the Report.

##### Re: Amendment to Rule 22 of the Rules of Practice and Procedure

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the amendment to Rule 22 of the Hearing Division Rules of Practice and Procedure as set out in the motion at Tab 3.1.1 of the Report.

Carried

##### Re: Adjudicator Performance Development Process

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the Tribunal Chair's proposal for the adjudicator performance development process, as set out at Tab 3.2.1 of the Report.

Carried

#### *For Information*

- Tribunal Quarterly Statistics – First and Second Quarters 2014
- Publication of Notices on the Tribunal Website

#### EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Schabas presented the Report.

##### Re: Human Rights Monitoring Group Request for Interventions

It was moved by Mr. Schabas, seconded by Mr. Falconer, that Convocation approve the letters and public statements in the following cases:

- a. lawyer Intigam Aliyev – Azerbaijan Republic – letter of intervention and public statement presented at Tab 4.1.1 of the Report; and

- b. lawyer Waleed Abu al-Khair – Saudi Arabia - letter of intervention and public statement presented at Tab 4.1.2 of the Report.

Carried

Mr. Lerner abstained.

Mr. Falconer spoke to the public education equality and rule of law series calendar at Tab 4.2.4 of the Report for information.

*For Information*

- Discrimination and Harassment Counsel Semi-Annual Report
- Equity Director's Report
- Human Rights Monitoring Group – Information about Interventions
- Public Education Equality and Rule of Law Series Calendar 2014 - 2015

BENCHER ELECTION WORKING GROUP REPORT

Ms. Leiper presented the Report.

Re: Amendments to By-Law 3 Respecting the Bencher Election Process

It was moved by Ms. Leiper, seconded by Mr. Scarfone, that Convocation make the amendments to By-Law 3 [Benchers, Convocation and Committees] as set out in the motion at Tab 5.1 of the Report to implement its decision on June 26, 2014 respecting voting procedures for the lawyer bencher election and to make related clarifying amendments.

Carried

Ms. Leiper invited benchers to advise the Elections Officer for the 2015 bencher election if they wish to join a roster that potential candidates may access as an informal resource for information about running for bencher.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Deferral of Application of National Requirement to Joint and Dual Degrees

Mr. Goldblatt introduced the Report.

Ms. Pawlitza presented the Report.

It was moved by Mr. Goldblatt, seconded by Mr. Burd, that Convocation approve deferral of the application of the Federation of Law Societies of Canada National Requirement to joint and dual degree programs until January 2017.

Carried

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

Ms. Pawlitzka provided Convocation with an update on the Federation of Law Societies of Canada's activities.

PRIORITY PLANNING COMMITTEE REPORT

The Treasurer presented the Report.

Re: Priority Planning Committee's Strategic Planning Steering Group

The Treasurer presented the Report for information, noting the membership of the Strategic Planning Steering Group.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Entity and Compliance-Based Regulation

Mr. Mercer presented the Report for information.

Re: Alternative Business Structures Working Group

Mr. Mercer spoke to the Working Group's Discussion Paper for information and its proposed publication and distribution for discussion.

AUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: Law Society Financial Statements for the Six Months ended June 30, 2014

Mr. Bredt spoke to the financial statements for information.

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IN CAMERA

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LIBRARYCO INC. ISSUE

The Treasurer addressed the matter of the county libraries and LibraryCo Inc. and changes that will be made shortly to its administrative structure.

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IN PUBLIC  
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*REPORTS FOR INFORMATION*

PROFESSIONAL REGULATION COMMITTEE REPORT

- Alternative Business Structures Working Group Discussion Paper
- Entity and Compliance-Based Regulation
- 2014 Lawyer Annual Report
- Professional Regulation Division Quarterly Report

PRIORITY PLANNING COMMITTEE REPORT

- Strategic Planning Steering Group

AUDIT AND FINANCE COMMITTEE REPORT

- LAWPRO Financial Statements for the Six Months ended June 30, 2014
- Law Society of Upper Canada Financial Statements for the Six Months ended June 30, 2014
- LibraryCo Inc. Financial Statements for the Six Months ended June 30, 2014

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

PARALEGAL STANDING COMMITTEE REPORT

- 2014 Paralegal Annual Report

HERITAGE COMMITTEE REPORT

- Heritage Committee Project Proposal 2015
- Report on the History of the Ontario Legal Profession - Expanding the Scope of Law Society Information Project

CONVOCATION ROSE AT 12:10 P.M.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE –  
Tab 1.2

THAT the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

**Tab 1.2**

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, October 30<sup>th</sup>, 2014

ALL OF WHICH is respectfully submitted

DATED this 30<sup>th</sup> day of October, 2014

**CANDIDATES FOR CALL TO THE BAR**  
**October 30<sup>th</sup>, 2014**

**Transfer from another province (Mobility)**

Artem Barsukov  
David Robert Kenneth Carstairs-Weir  
Brynn Marie Enros  
James Bernard Kehoe  
Robert Hector MacKay-Dunn  
Shannon Rose Elizabeth Paine

**Transfer (Quebec)**

Olivier Marquais

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IN CAMERA  
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AUDIT AND FINANCE COMMITTEE REPORT – Tab 1.3

Re: J. Shirley Denison Fund

That Convocation approve:

- a) a grant of \$2,500 to Applicant 2014-24 with \$1,000 already paid under the administrative provisions of the Fund;
- b) a grant of \$3,000 to Applicant 2014-25 with \$1,000 already paid under the administrative provisions of the Fund.

Carried

**TAB 1.3**

**Report to Convocation  
October 30, 2014**

**Audit & Finance Committee**

- Committee Members**  
**Christopher Bredt (Co-Chair)**  
**Peter Wardle (Co-Chair)**  
**Adriana Doyle (Vice-Chair)**  
 John Callaghan  
 Susan Elliott  
 Seymour Epstein  
 Michelle Haigh  
 Vern Krishna  
 Judith Potter  
 James Scarfone  
 Alan Silverstein  
 Catherine Strosberg

**Purpose of Report: Decision**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

### COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on October 14, 2014. Committee members in attendance were Chris Bredt (co-chair), Peter Wardle (co-chair), Adriana Doyle (vice-chair), Seymour Epstein, Michelle Haigh, Judith Potter (phone), James Scarfone, Alan Silverstein and Catherine Strosberg (phone). Bob Evans also attended.
2. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

TAB 1.3

**FOR DECISION****J.S. DENISON FUND*****IN CAMERA*****Motion**

3. **That Convocation approve:**
  - a) **a grant of \$2,500 to Applicant 2014-24 with \$1,000 already paid under the administrative provisions of the Fund.**
  - b) **a grant of \$3,000 to Applicant 2014-25 with \$1,000 already paid under the administrative provisions of the Fund.**

**Rationale**Applicant 2014-24

4. Applicant 2014-24 was called to the bar in January 2013 but did not immediately start her professional career due to some mental and physical issues, only changing her status to sole practitioner last month. She is also looking for other work and is working part-time. Part of her networking is volunteering for the Lawyers Feed the Hungry program. She is unmarried with no dependents and lives with her father but he cannot provide total financial support.
5. Her 2013 income totaled just under \$18,000 with \$15,000 of this sourced from employment insurance benefits. Her only income in 2014 is currently \$5,000 from sporadic contract work and \$500 a month from her part time work. Her total expenses are difficult to quantify as she is living with her father but she estimates incremental amounts for payments such transport, communication, LAWPRO and Law Society fees at \$780 per month. She has no assets and student loans of \$27,000.
6. The applicant is struggling at the start of her career with limited financial resources and for the purposes of applying the terms of Mr. Denison's will can be described as indigent. Her recent mental and physical problems separate her from the usual financial difficulties experienced by people at the start of their careers. However she does have the underlying support of her father. A grant of \$2,500 is recommended based on the payment of fees and premiums to enable her to practice and also funding some modest living expenses.

Applicant 2014-25

7. Applicant 2014-25 was called to the bar in June 2014 after serving abridged, unpaid articles. He is living in another province but this does not disqualify him from a grant. As an NCA student he has found integration difficult and this has been aggravated by marital and family problems leading to mental health issues. He is divorced with two young children so he needs to provide financial and parenting support.
8. He is not practicing and is currently unemployed, looking for any kind of work after losing a part-time job. His 2013 taxable income was \$23,000 and he estimates his 2014 income at \$17,000 including \$4,000 in employment insurance. He received \$500 from the Law Society's Repayable Allowance Program this year. He has received some financial support from friends but has probably depleted this resource. The low income cut-off for one person (ignoring child support) in the applicant's area is \$26,000.
9. His core living expenses are estimated at \$17,000 per year, relatively low as he is staying in a room with low rent. He has no assets and liabilities totaling \$48,000 in loans and credit card debt.
10. The applicant is projecting a low income level in 2014 after a number of years of low income and for the purposes of applying the terms of Mr. Denison's will can be described as indigent. This is created and aggravated by being a recent immigrant and stress issues. A grant of \$3,000 is recommended with \$1,000 paid immediately under the administrative provisions of the fund. This is based on the projected difference between his income and expenses, the average amount of grant for the circumstances and the balance remaining in the Fund.

**Key Issues and Considerations**

11. The balance of the fund at the beginning of 2014 was \$46,000 with payments of \$36,000 paid during the current year leaving a balance of \$10,000 (\$4,500 if the current applications are approved).

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IN PUBLIC  
.....

AUDIT & FINANCE COMMITTEE REPORT

Mr. Wardle and Mr. Bredt presented the Report.

Re: 2015 LibraryCo Inc. Budget

It was moved by Mr. Wardle, seconded by Ms. Doyle, that Convocation approve the LibraryCo Inc. budget for 2015 incorporating Law Society funding of \$7.7 million or \$202 per lawyer.

Carried

**TAB 2**

**Report to Convocation  
October 30, 2014**

**Audit & Finance Committee**

- Committee Members**
- Christopher Bredt (Co-Chair)**
- Peter Wardle (Co-Chair)**
- Adriana Doyle (Vice-Chair)**
- John Callaghan
- Susan Elliott
- Seymour Epstein
- Michelle Haigh
- Vern Krishna
- Judith Potter
- James Scarfone
- Alan Silverstein
- Catherine Strosberg

**Purpose of Report: Decision**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

### COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on October 14, 2014. Committee members in attendance were Chris Bredt (co-chair), Peter Wardle (co-chair), Adriana Doyle (vice-chair), Seymour Epstein, Michelle Haigh, Judith Potter (phone), James Scarfone, Alan Silverstein and Catherine Strosberg (phone). Bob Evans also attended.
2. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

TAB 2.1

**FOR DECISION**  
**2015 LIBRARYCO INC. BUDGET**

**Motion:**

3. That Convocation approve the LibraryCo Inc. budget for 2015 incorporating Law Society funding of \$7.7 million or \$202 per lawyer.

**Rationale**

4. The draft 2015 LibraryCo budget is being presented to Convocation under the terms of the Unanimous Shareholders Agreement.
5. The Law Society levies and collects funds for county and district law library purposes and transfers these funds to LibraryCo. Convocation internally restricts these funds for use by county and district law libraries to carry out their annual operations and any special projects approved by Convocation.
6. LibraryCo's draft budget for 2015 is attached.

**Key Issues and Considerations**

7. At the September Law Society Audit & Finance Committee, the Committee requested that LibraryCo submit a budget maintaining the library levy at \$202, the same as 2014. This increases total funding to \$7.7 million in 2015 from the \$7.5 million in 2014 because of the budgeted increase in the number of lawyers. The LibraryCo budget currently submitted complies with this request. The Law Society's own draft budget for 2015, included for decision in this Report to Convocation, includes the library levy of \$202 per lawyer.
8. With the per-member levy agreed at \$202 providing total revenues of \$7.7 million, the LibraryCo Board has approved \$278,000 allocated to "Electronic Products and Implementation of Business Plan" as a contingency until a future corporate direction is concluded.
9. LibraryCo, a wholly-owned, not-for-profit subsidiary of the Law Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Law Society. The Law Society holds all of the 100 common shares. Of the 100 special shares, 25 are held by the Toronto Lawyers Association ("TLA") and 75 are held by the County and District Law Presidents' Association ("CDLPA"). The Law Society

may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

## **Budgetary Issues**

### Electronic Products

10. LibraryCo is facing an operational challenge regarding the provision of the electronic toolkit provided under contract. In years past, the Law Foundation of Ontario (LFO) provided grant funding for the provision of the toolkit. For 2015, the LFO has withdrawn its funding (\$542,000) for the toolkit.
11. The Law Society's Audit & Finance Committee did not agree to LibraryCo's request to make up this shortfall in funding and pay the full cost of the toolkit in 2015 of \$762,000 and notice of cancellation of the contract has been provided.

### LibraryCo Staffing

12. LibraryCo's shareholders, the County & District Law Presidents' Association, the Toronto Lawyers Association and the Law Society, have made the decision to discontinue the positions of LibraryCo Board Manager and Assistant and associated costs will be funded from the LibraryCo Reserve Fund in 2014. The 2015 budgeted expenses associated with these two positions have been retained in the LibraryCo budget until a future direction is concluded.

### County Library Funding

13. The LibraryCo budget incorporates a 1% increase in funding for county law libraries. The current inflation rate is 2.6% and collection costs are increasing well above the rate of inflation.

### Administrative Expenses

14. Expenses for administration and centralized services are decreasing by \$123,000 largely as a result of a reduced Administrative Services fee paid by LibraryCo to the Law Society.

### General Fund and Reserve Fund

15. The General Fund accounts for the delivery, management and administration of library services. After the budgeted use of the general fund in 2015 amounting to \$100,000, the General Fund will have a negligible balance. The Reserve Fund is projected to have a balance at the end of 2014 of \$410,000 comprising a general component of \$200,000, a

capital and special needs component of \$150,000, and a staffing and severance component of \$60,000.

### **Stakeholder Management**

16. Stakeholder responses are assessed as part of the ongoing budget and financial reporting cycle.
  
17. The Treasurer has provided an overview report to benchers, completed in consultation with the shareholders of LibraryCo through the Library Information and Support Services (LISS) Working Group which sets out the principles that the shareholders agree should frame the process for moving forward.



**From: Frankie Woods, Chair of LibraryCo Inc on behalf of the Board of LibraryCo Inc.**

**Date: October 7, 2014**

**LibraryCo Inc. 2015 Budget**

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In response to the request from the Law Society's Audit and Finance Committee, LibraryCo is hereby submitting its revised budget for 2015. The only significant change is that resulting from the cancellation of the LexisNexis subscription for 2015 as described below. Over the coming months, LibraryCo will be engaging with shareholders and stakeholders to consider the best allocation of the funds attributed to the Electronic Product / Implementation of Business Plan expense.

The budget includes an expense of \$278,041 for Electronic Product / Implementation of Business Plan. The provision of electronic products was previously significantly financed by a grant from the Law Foundation of Ontario ("LFO"). The LFO is not renewing its grant funding for electronic products in 2015. The contract with the service provider allows the contract to be cancelled in the event of inadequate funding from the LFO at a cost of \$6,888 in liquidated damages and notice of cancellation has been provided. The \$278,041 has therefore been allocated as a contingency amount as LibraryCo transitions to its new business plan, possibly different electronic products and any changes initiated by the Legal Information and Support Services Working Group.



### LIBRARYCO INC. 2015 BUDGET

	2014 Approved Budget \$	2015 Draft Budget \$	Change \$
<b>Expenses</b>			
1 Library System (Attachment A)	6,280,930	<b>6,343,739</b>	62,809
2 Special Needs Grants	45,000	<b>44,400</b>	(600)
3 Electronic Products & Implementation of Business Plan	740,000	<b>278,041</b>	(461,959)
	7,065,930	<b>6,666,180</b>	(399,750)
Delivery of Administrative and Centralized			
4 Services (Attachment B)	1,253,200	<b>1,129,820</b>	(123,380)
5 <b>Total Expenses</b>	8,319,130	<b>7,796,000</b>	(523,130)
<b>Revenue</b>			
6 Law Society Fee Levies	7,498,700	<b>7,696,000</b>	197,300
7 Law Foundation - Electronic Products	542,000	-	(542,000)
8 Use of General Fund	278,430	<b>100,000</b>	(178,430)
9 <b>Total Revenue</b>	8,319,130	<b>7,796,000</b>	(523,130)
10 <b>Surplus / (Deficit)</b>	0	<b>0</b>	<b>(0)</b>

LIBRARYCO INC.	ATTACHMENT A		
GRANTS TO COUNTY LIBRARIES			
	Draft	Approved	
	2015	2014	
Association	LibraryCo Grant (\$)	LibraryCo Grant (\$)	% Change
Algoma District Law Association	134,266	132,937	1%
Brant Law Association	99,742	98,754	1%
Bruce Law Association	55,630	55,079	1%
County of Carleton Law Association	614,682	608,596	1%
Cochrane Law Association	48,326	47,848	1%
Dufferin Law Association	46,349	45,890	1%
Durham County Law Association	129,443	128,161	1%
Elgin Law Association	75,996	75,244	1%
Essex Law Association	279,630	276,862	1%
Frontenac Law Association	130,556	129,263	1%
Grey Law Association	65,872	65,220	1%
Haldimand Law Association	29,739	29,445	1%
Halton Law Association	138,774	137,400	1%
Hamilton Law Association	446,740	442,317	1%
Hastings Law Association	84,375	83,540	1%
Huron Law Association	75,492	74,745	1%
Kenora Law Association	86,811	85,951	1%
Kent Law Association	70,096	69,402	1%
Lambton County Law Association	74,536	73,798	1%
County of Lanark Law Association	39,069	38,683	1%
Leeds & Greenville Law Association	71,441	70,734	1%
Lennox & Addington Law Association	26,458	26,196	1%
Lincoln Law Association	177,535	175,778	1%
Manitoulin Law Association	2,525	2,500	1%
Middlesex Law Association	360,548	356,979	1%
Muskoka Law Association	64,197	63,561	1%
Nipissing Law Association	85,767	84,918	1%
Norfolk Law Association	70,118	69,424	1%
Northumberland County Law Assoc.	76,504	75,747	1%
Oxford Law Association	70,772	70,071	1%
Parry Sound Law Association	39,179	38,791	1%
Peel Law Association	295,780	292,852	1%
County of Perth Law Association	54,506	53,966	1%
Peterborough Law Association	131,936	130,629	1%
Prescott & Russell Law Association	13,835	13,698	1%
Rainy River Law Association	26,832	26,566	1%
Renfrew County Law Association	123,546	122,323	1%
County of Simcoe Law Association	139,687	138,304	1%
Stormont,D.& G. Law Assoc.	77,168	76,404	1%
Sudbury District Law Association	186,380	184,535	1%
Temiskaming Law Association	42,989	42,563	1%
Thunder Bay Law Association	169,454	167,776	1%
Toronto Lawyers Association	585,114	579,321	1%
Victoria Haliburton Law Association	87,163	86,300	1%
Waterloo Law Association	238,456	236,095	1%
Welland Law Association	93,371	92,447	1%
Wellington Law Association	75,347	74,601	1%
York Region Law Association	231,003	228,716	1%
	6,343,739	6,280,930	1%
<i>2014 Manitoulin Grant approved after budget approved (previous total \$6,278,500)</i>			

ATTACHMENT B**DELIVERY OF ADMINISTRATIVE AND CENTRALIZED SERVICES**

	<b>2014 Approved Budget \$</b>	<b>2015 Draft Budget \$</b>	<b>Percentage Increase / Decrease Over 2014 Budget %</b>	
<b>Salaries and Benefits</b>				
1	Salaries and Benefits	155,000	155,000	0.0%
2	County Library Benefit Plan	255,000	250,000	-2.0%
3	<b>Total Salaries and Benefits (A)</b>	<b>410,000</b>	<b>405,000</b>	<b>-1.2%</b>
<b>Head Office</b>				
4	Professional Development & Memberships	9,000	9,000	0.0%
5	Insurance	4,500	4,725	5.0%
6	Publications	9,000	7,500	-16.7%
7	Professional & Consulting Fees	18,000	18,000	0.0%
8	Administrative Services	527,700	430,000	-18.5%
9	Web Initiatives	3,000	3,000	0.0%
10	Board of Directors	12,000	12,000	0.0%
11	Courier and Postage	23,000	20,650	-10.2%
12	Staff & Travel	7,000	7,000	0.0%
13	Printing and Stationery	3,000	3,000	0.0%
14	Miscellaneous	6,000	6,000	0.0%
15	<b>Total Head Office Expenses (B)</b>	<b>622,200</b>	<b>520,875</b>	<b>-16.3%</b>
<b>Law Libraries Centralized Purchasing</b>				
16	COLAL Education and Meetings	60,000	35,600	-40.7%
17	Publications County Libraries	62,000	62,000	0.0%
18	Insurance - Counties	78,000	87,345	12.0%
19	CDLPA Meeting Expense	9,000	9,000	0.0%
20	1-800 Phone Lines	12,000	10,000	-16.7%
21	<b>Total Centralized Expenses (C)</b>	<b>221,000</b>	<b>203,945</b>	<b>-7.7%</b>
22	<b>Total Expenses (Total of A, B and C)</b>	<b>1,253,200</b>	<b>1,129,820</b>	<b>-9.8%</b>

Re: 2015 Law Society Budget

It was moved by Mr. Wardle, seconded by Ms. Doyle, that Convocation approve the Law Society's 2015 Budget including the following annual fee amounts:

For lawyers:

General Fee	\$1,370
Compensation Fund	\$225
LibraryCo	\$202
Capital	\$69
<hr/> Total	<hr/> \$1,866

For paralegals:

General Fee	\$804
Compensation Fund	\$123
Capital	\$69
<hr/> Total	<hr/> \$996

Carried

**TAB 2.2**

**FOR DECISION  
LAW SOCIETY BUDGET**

**Motion:**

3. That Convocation approve the Law Society's 2015 Budget including the following annual fee amounts.

For lawyers:

<b>General Fee</b>	<b>\$1,370</b>
<b>Compensation Fund</b>	<b>\$225</b>
<b>LibraryCo</b>	<b>\$202</b>
<b>Capital</b>	<b>\$69</b>
<hr/> <b>Total</b>	<hr/> <b>\$1,866</b>

**For paralegals:**

<b>General Fee</b>	<b>\$804</b>
<b>Compensation Fund</b>	<b>\$123</b>
<b>Capital</b>	<b>\$69</b>
<b>Total</b>	<b>\$996</b>

**Budget Material**

4. A full discussion can be found in the Society's draft 2015 budget materials presented as:
  - 2015 Draft Budget Summary
  - 2015 Draft Budget Detail (in camera)
5. The Law Society's draft 2015 budget was presented to benchers for input at a budget information session on September 23, 2014 and previously to the Audit & Finance Committee in September.

**Key Issues and Considerations**

6. Under S.50 of By-Law 2:
  - i. The annual budget shall be presented to Convocation for final approval not later than November 30 each year.
  - ii. The budget shall be consistent with the activities planned by Convocation for the next financial year.
  - iii. The budget shall include a reasonable projection of all expenses and revenues.
  - iv. The use of reserve funds to supplement estimated revenues requires the express approval of Convocation.
  - v. Where Convocation has approved a budget that provides for the continuation of a program, activity or service, any significant reduction or cancellation of that program, activity or service during the financial year requires the express approval of Convocation.
7. The budget is intended to address the established priorities for the 2011 – 2015 bencher term.

# Law Society of Upper Canada 2015 Draft Budget Summary



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

**October 30, 2014**  
**CONVOCATION**

FOR BENCHER USE ONLY

**Law Society of Upper Canada  
2015 Draft Budget Summary  
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*This material has two parts – a medium term financial plan comprising budget scenarios for 2015, 2016 and 2017 (pages 3 – 9) and the 2015 Draft Budget Overview (pages 11 – 28).*

### **2015-2017 BUDGET PLANNING SCENARIOS**

#### **BUDGET GOALS MET**

- Maintain fees for lawyers and paralegals at the 2014 amount for the years 2015-2017
- Comply with the fund balance policies when using fund balances to mitigate annual fees

#### **FINANCIAL OUTCOMES**

- i. The financial plan incorporates the use of fund balances to mitigate annual fees for lawyers and paralegals while complying with the fund balance policies. The balance of the lawyer General Fund at the end of 2015 is projected to be \$16.9 million. The balance of the paralegal General Fund at the end of 2015 is projected to be \$1.5 million. The approved fund balance policy requires that a minimum of two months and a maximum of three months operating expenses be maintained in the lawyer General Fund balance.
- ii. The LibraryCo per lawyer levy is maintained at \$202 for a total transfer of \$7.7 million in 2015, \$7.8 million in 2016 and \$8.0 million in 2017. The Law Society remains committed to a viable library system and is exploring potential efficiencies and options to achieve this goal.
- iii. Compensation fund balances remain in a strong position to absorb an extraordinary defalcation and current high profile potential claims are being monitored.
- iv. The capital levy is increased to \$69 from \$50 in 2014 to provide funding for facilities related capital expenditures.

## **BUDGET SCENARIO SENSITIVITIES**

These scenarios, like all budget exercises, include a number of assumptions and variables. Each of these variables and assumptions has the possibility to vary the projected outcome to a lesser or greater degree depending on their individual nature. The major sensitivities in these scenarios are discussed below.

### *Membership growth*

Perhaps the factor with the greatest sensitivity in the scenarios is the projected annual growth in the number of lawyers and paralegals. The current assumption for 2015 is an increase of 900 full fee paying equivalent lawyers and 350 full fee paying equivalent paralegals. For 2016 and 2017 the projection is 700 lawyers and 350 paralegals. For every 100 member variance, the annual fee for lawyers would go up or down by \$5 and for paralegals by \$21.

### *Salaries and benefit expenses*

The single largest category of expenditure in the Society's budget is spending on salaries and benefits. As set out on page 6, salaries and benefits constitute approximately 53% of annual expenditures. The scenarios assume salary and benefit expenditures increase at a rate of 2% annually over the three year period. This assumption incorporates both changes in staffing, increases to benefit costs and merit increases for existing staff. Every 1% change in the cost of salaries and benefits adds or subtracts approximately \$570,000, or \$13 per member to the Society's budget. The increase of 2% is less than the published survey sources which are projected to be between 2.7% and 3.0%.

### *Other expenses*

All other expenses assumed to increase at 1% per year.

### *Investment returns*

The Society's operations are currently supported by the combined investment income of the General Fund and the Compensation Fund. In total, the 2015 budget includes investment income of \$1.9 million. Over the past five years interest rates have been at historic lows and are expected to increase in the coming years. If, as expected, interest rates rise in outlying years, this could have a positive impact on the annual fee requirements for both lawyers and paralegals.

### *CPD revenue*

The 2015 budget reflects a decline in CPD revenues of \$800,000 to reflect trends in 2014 and the revenue is projected to be relatively static for the two years thereafter.

*Regulatory Issues*

Professional regulation has maintained its provision for outside counsel and expert witness fees at 2014 levels. If a major regulatory issue emerged, like mortgage fraud did in the mid 2000's, the need to engage external counsel and expert witnesses could once again spike and drive costs higher. There are currently some potentially material cost award claims against the Law Society which are too uncertain to include in the financial projections.

**BUDGETARY AND FISCAL RISKS****Inflation**

The North American economy has experienced a sustained period of low inflation. Since 2009, central banks have been adding liquidity to the world's financial system in an effort to stimulate economic growth. Historically, money supply expansion has been followed by periods of rising inflation. If inflation begins to rise significantly over the period of these scenarios, the pressure to adjust salaries to offset the decline in purchasing power will increase as will the cost of all materials and supplies purchased for operations.

**Compensation Fund Claims**

The Society has experienced a ten year period of relatively low compensation fund claims. Although the fund is strong, several simultaneous large scale defalcations could strain the fund balance and eventually force the annual levy of \$225 for lawyers higher to meet claim demands and maintain the policy approved fund balance.

**New Convocation Initiatives**

Convocation could initiate new programming that would require significant new resources to achieve the program objectives. Major new programs generally require additional staff. Some programs such as CPD, also generate revenue that offset the increased costs, however, most programs like the Parental Leave Assistance Plan, do not and directly impact the members' annual fee.

**Law Society of Upper Canada  
2015-2017 Budget Scenario  
Lawyers and Paralegals**

	<b>Approved 2014 Budget</b>	<b>Draft 2015 Budget</b>	<b>Projected 2016 Budget</b>	<b>Projected 2017 Budget</b>
1 Annual fee revenue	73,731,300	75,766,315	77,442,900	79,099,200
2 Licensing process	11,398,300	11,618,300	11,534,500	11,563,000
3 CPD and other revenue	18,137,000	18,164,000	17,983,800	18,081,700
4 <b>Total Funding</b>	<b>103,266,600</b>	<b>105,548,615</b>	<b>106,961,200</b>	<b>108,743,900</b>
5 Salaries and benefits	56,830,100	57,454,465	58,673,600	59,846,400
6 Operating and Program	37,220,000	38,252,150	37,466,700	37,798,600
7 <b>General fund</b>	<b>94,050,100</b>	<b>95,706,615</b>	<b>96,140,300</b>	<b>97,645,000</b>
8 <b>Capital fund</b>	<b>2,077,500</b>	<b>2,953,200</b>	<b>1,824,900</b>	<b>3,816,500</b>
9 <b>LibraryCo</b>	<b>7,498,000</b>	<b>7,696,000</b>	<b>7,837,600</b>	<b>7,979,000</b>
10 <b>Compensation Fund Claims</b>	<b>2,647,400</b>	<b>2,658,400</b>	<b>2,658,400</b>	<b>2,658,400</b>
11 <b>Total Expenditures</b>	<b>106,273,000</b>	<b>109,014,215</b>	<b>108,461,200</b>	<b>112,098,900</b>
12 <b>Deficit</b>	<b>(3,006,400)</b>	<b>(3,465,600)</b>	<b>(1,500,000)</b>	<b>(3,355,000)</b>
13 E&O surplus investment income	1,500,000	1,500,000	1,500,000	1,500,000
14 General and Comp Fund Fund Balances	1,506,400	1,965,600	-	1,855,000
15 <b>Total Use of Fund Balances</b>	<b>3,006,400</b>	<b>3,465,600</b>	<b>1,500,000</b>	<b>3,355,000</b>

**Law Society of Upper Canada  
2015-2017 Budget Scenario  
Lawyers**

	<b>Approved 2014 Budget</b>	<b>Draft 2015 Budget</b>	<b>Projected 2016 Budget</b>	<b>Projected 2017 Budget</b>
1 Annual fee revenue	69,400,100	71,084,640	72,413,100	73,720,800
2 Licensing process	10,091,200	9,766,700	9,864,400	9,963,000
3 CPD	8,567,300	7,743,700	7,500,000	7,500,000
4 Other revenue	8,342,100	8,958,360	9,047,900	9,138,400
5 <b>Total Funding</b>	<b>96,400,700</b>	<b>97,553,400</b>	<b>98,825,400</b>	<b>100,322,200</b>
6 Salaries and benefits	52,416,800	52,429,300	53,478,300	54,547,200
7 Operating	3,544,000	3,555,700	3,591,500	3,627,500
8 Program	31,198,700	31,554,600	31,252,000	31,521,600
9 <b>General fund</b>	<b>87,159,500</b>	<b>87,539,600</b>	<b>88,321,800</b>	<b>89,696,300</b>
10 <b>Capital fund</b>	<b>1,860,000</b>	<b>2,628,900</b>	<b>1,629,600</b>	<b>3,357,500</b>
11 <b>LibraryCo</b>	<b>7,498,000</b>	<b>7,696,000</b>	<b>7,837,600</b>	<b>7,979,000</b>
12 <b>Compensation Fund Claims</b>	<b>2,536,400</b>	<b>2,536,400</b>	<b>2,536,400</b>	<b>2,536,400</b>
13 <b>Total Expenditures</b>	<b>99,053,900</b>	<b>100,400,900</b>	<b>100,325,400</b>	<b>103,569,200</b>
14 <b>Deficit</b>	<b>(2,653,200)</b>	<b>(2,847,500)</b>	<b>(1,500,000)</b>	<b>(3,247,000)</b>
15 E&O surplus investment income	1,500,000	1,500,000	1,500,000	1,500,000
16 General and Comp Fund Fund Balances	1,153,200	1,347,500	-	1,747,000
17 <b>Total Use of Fund Balances</b>	<b>2,653,200</b>	<b>2,847,500</b>	<b>1,500,000</b>	<b>3,247,000</b>
18 <b>General fund</b>	<b>1,376</b>	<b>1,370</b>	<b>1,401</b>	<b>1,362</b>
19 <b>Capital fund</b>	<b>50</b>	<b>69</b>	<b>42</b>	<b>85</b>
20 <b>LibraryCo</b>	<b>202</b>	<b>202</b>	<b>202</b>	<b>202</b>
21 <b>Compensation Fund</b>	<b>238</b>	<b>225</b>	<b>221</b>	<b>217</b>
22 <b>Annual Fee</b>	<b>1,866</b>	<b>1,866</b>	<b>1,866</b>	<b>1,866</b>
23 <b>Full Fee Paying Equivalent Lawyers</b>	<b>37,200</b>	<b>38,100</b>	<b>38,800</b>	<b>39,500</b>

**Law Society of Upper Canada  
2015-2017 Budget Scenario  
Paralegals**

	<b>Approved 2014 Budget</b>	<b>Draft 2015 Budget</b>	<b>Projected 2016 Budget</b>	<b>Projected 2017 Budget</b>
1 Annual fee revenue	4,331,200	4,681,675	5,029,800	5,378,400
2 Licensing process	1,307,100	1,851,600	1,670,100	1,600,000
3 CPD	709,700	733,300	700,000	700,000
4 Other revenue	517,900	728,640	735,900	743,300
5 <b>Total Funding</b>	<b>6,865,900</b>	<b>7,995,215</b>	<b>8,135,800</b>	<b>8,421,700</b>
6 Salaries and benefits	4,413,300	5,025,165	5,195,300	5,299,200
7 Operating	303,200	343,450	346,800	350,300
8 Program	2,174,100	2,798,400	2,276,400	2,299,200
9 <b>General fund</b>	<b>6,890,600</b>	<b>8,167,015</b>	<b>7,818,500</b>	<b>7,948,700</b>
10 <b>Capital fund</b>	<b>217,500</b>	<b>324,300</b>	<b>195,300</b>	<b>459,000</b>
11 <b>Compensation Fund Claims</b>	<b>111,000</b>	<b>122,000</b>	<b>122,000</b>	<b>122,000</b>
12 <b>Total Expenditures</b>	<b>7,219,100</b>	<b>8,613,315</b>	<b>8,135,800</b>	<b>8,529,700</b>
13 <b>Deficit</b>	<b>(353,200)</b>	<b>(618,100)</b>	<b>-</b>	<b>(108,000)</b>
14 <b>Total Use of Fund Balances</b>	<b>353,200</b>	<b>618,100</b>	<b>-</b>	<b>108,000</b>
15 <b>General fund</b>	<b>796</b>	<b>804</b>	<b>840</b>	<b>804</b>
16 <b>Capital fund</b>	<b>50</b>	<b>69</b>	<b>42</b>	<b>85</b>
17 <b>Compensation Fund</b>	<b>150</b>	<b>123</b>	<b>114</b>	<b>107</b>
18 <b>Annual fee</b>	<b>996</b>	<b>996</b>	<b>996</b>	<b>996</b>
19 <b>Full Fee Paying Equivalent Paralegals</b>	<b>4,350</b>	<b>4,700</b>	<b>5,050</b>	<b>5,400</b>

THE LAW SOCIETY OF UPPER CANADA  
Fund Balance Projections  
For years 2015-2017  
(\$000's)

	General Fund		Compensation Fund		Total		E&O Investment Income
	Lawyer	Paralegal	Lawyer	Paralegal	Lawyer	Paralegal	
1 <b>Projected December 31, 2014</b>	<b>17,500</b>	<b>2,000</b>	<b>24,000</b>	<b>525</b>	<b>41,500</b>	<b>2,525</b>	<b>3,700</b>
Policy Range - minimum	14,500						
- maximum	21,800						
2 Investment Income 2015							1,200
3 Proposed 2015 fee mitigation	(641)	(541)	(707)	(77)	(1,348)	(618)	(1,500)
4 <b>Projected December 31, 2015</b>	<b>16,859</b>	<b>1,459</b>	<b>23,293</b>	<b>448</b>	<b>40,152</b>	<b>1,907</b>	<b>3,400</b>
Policy Range - minimum	14,800						
- maximum	22,200						
5 Investment Income 2016							1,200
6 Proposed 2016 fee mitigation	-	-	-	-	-	-	(1,500)
7 <b>Projected December 31, 2016</b>	<b>16,859</b>	<b>1,459</b>	<b>23,293</b>	<b>448</b>	<b>40,152</b>	<b>1,907</b>	<b>3,100</b>
Policy Range - minimum	15,000						
- maximum	22,500						
8 Investment Income 2017							1,200
9 Proposed 2017 fee mitigation	(1,040)	(108)	(707)	-	(1,747)	(108)	(1,500)
10 <b>Projected December 31, 2017</b>	<b>15,819</b>	<b>1,351</b>	<b>22,586</b>	<b>448</b>	<b>38,405</b>	<b>1,799</b>	<b>2,800</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Budget History**  
**2006-2015**

	2015 Draft Budget	2014 Budgeted Expenditures	2013 Budgeted Expenditures	2012 Budgeted Expenditures	2011 Budgeted Expenditures	2010 Budgeted Expenditures	2009* Budgeted Expenditures	2008 Budgeted Expenditures	2007 Budgeted Expenditures	2006 Budgeted Expenditures
1 Total Expenditures ( 000's)	\$ 109,014	\$ 106,273	\$ 103,444	\$ 99,482	\$ 92,514	\$ 86,615	\$ 81,918	\$ 77,122	\$ 71,593	\$ 66,486
2 Full Time Equivalent Employees	545.9	552.2	558.6	552.2	523.7	493.1	466.0	434.3	419.0	392.0
3 Annual Change	(6.3)	(6.4)	6.4	28.5	30.6	27.1	31.7	15.3	27.0	
4 Accumulated Change	153.9	160.2	166.6	160.2	131.7	101.1	74.0	42.3	27.0	
5 FFE Lawyers	38,100	37,200	36,600	36,000	35,000	34,000	33,600	32,800	32,000	31,000
6 FFE Paralegals	4,700	4,350	4,050	3,400	3,200	2,800	2,400	-	-	-
7 Total FFE Licencees	<b>42,800</b>	<b>41,550</b>	<b>40,650</b>	<b>39,400</b>	<b>38,200</b>	<b>36,800</b>	<b>36,000</b>	<b>32,800</b>	<b>32,000</b>	<b>31,000</b>
8 General Lawyer Fee	\$ 1,370	\$ 1,376	\$ 1,340	\$ 1,326	\$ 1,292	\$ 1,211	\$ 1,212	\$ 1,143	\$ 1,102	\$ 1,015
9 LibraryCo Fee	202	202	205	203	196	203	220	235	224	219
10 Compensation Fund	225	238	221	222	222	257	226	200	200	200
11 Capital Allocation Fund	69	50	85	75	75	65	45	75	75	75
12 Total Other Fees	\$ 496	\$ 490	\$ 511	\$ 500	\$ 493	\$ 525	\$ 491	\$ 510	\$ 499	\$ 494
13 Total Lawyer Fee	<b>\$ 1,866</b>	<b>\$ 1,866</b>	<b>\$ 1,851</b>	<b>\$ 1,826</b>	<b>\$ 1,785</b>	<b>\$ 1,736</b>	<b>\$ 1,703</b>	<b>\$ 1,653</b>	<b>\$ 1,601</b>	<b>\$ 1,509</b>
14 General Paralegal Fee	\$ 804	\$ 796	\$ 758	\$ 693	\$ 711	\$ 685	\$ 710			
15 Compensation Fund	123	150	153	214	171	183	145			
16 Capital Allocation Fund	69	50	85	75	75	65	45			
17 Total Other Fees	\$ 192	\$ 200	\$ 238	\$ 289	\$ 246	\$ 248	\$ 190			
18 Total Paralegal Fee	<b>\$ 996</b>	<b>\$ 996</b>	<b>\$ 996</b>	<b>\$ 982</b>	<b>\$ 957</b>	<b>\$ 933</b>	<b>\$ 900</b>			

## 2015 Draft Budget Summary

**The Law Society of Upper Canada  
2015 Draft Budget  
Assumptions**

- Increase in Full Fee Paying Equivalent members, 900 for lawyers to 38,100 and 350 for paralegals to 4,700
- 2% provision for salary and benefits
- Allocation of \$1.5 million from the accumulated surplus investment income in the E&O Fund to mitigate fee increase for lawyers (2014: \$1.5 million)
- \$641,000 allocated from the General Fund accumulated surplus to mitigate fee increase for lawyers (2014: \$446,000)
- \$541,000 allocated from the General Fund accumulated surplus to mitigate fee increase for paralegals (2014: \$313,000)
- Allocation of \$707,000 (2014: \$707,000) from accumulated surplus in the lawyer Compensation Fund and \$77,000 (2014:\$40,000) from the paralegal Compensation Fund to mitigate fee increases
- Capital levy increased from \$50 to \$69
- LibraryCo funding increased from \$7.5 million to \$7.7 million
- Contingency set at \$1 million (2014: \$1 million)
- The lawyer Licensing Process fee for the 2015-2016 licensing term remains at \$4,710 per candidate for all fees associated with licensing. The paralegal licensing fee is also unchanged at \$1,400. In addition to the \$1 million lawyer subsidy, financial assistance is available to lawyer candidates in the form of repayable allowances. \$100,000 has been provided in 2015 (2014: \$100,000). The projected repayable allowance fund balance at the beginning of 2015 is \$400,000
- A \$400,000 grant from the Law Foundation of Ontario for Access to Justice replaces the 2014 grants for the licensing processes which were \$365,000 for lawyers and \$36,000 for paralegals
- Projected Lawyer General Fund balance and Compensation Fund balance to comply with Convocation's fund balance management policy

### 2015 Draft Budget Overview

The draft 2015 budget is based on the 2015 – 2017 budget scenario and maintains the fee at the 2014 level for lawyers and paralegals, broken down as follows:

	2014		2015	
	Lawyers	Paralegals	Lawyers	Paralegals
<b>General Fee</b>	\$ 1,376	\$ 796	\$ 1,370	\$ 804
<b>Compensation Fund</b>	238	150	225	123
<b>Capital</b>	50	50	69	69
<b>LibraryCo Inc.</b>	202	0	202	0
<b>Total</b>	\$ 1,866	\$ 996	\$ 1,866	\$ 996

#### *2015 Budget Highlights*

While demonstrating fiscal restraint, the draft budget focuses on the organization’s core responsibilities of professional regulation, professional development and competence and policy development and facilitating access to justice, while addressing the established priorities for the 2011-2015 bench term.

Growth in the number of lawyers will increase budgeted full fee paying equivalent lawyers by 900 to 38,100. Growth in the number of paralegals will increase the budgeted full fee paying equivalent paralegals by 350 to 4,700. While the “full fee equivalent” is used as a measure for budget purposes, the Law Society will regulate over 50,000 fee paying lawyers and paralegals in 2015.

The primary factors that have played a role in drafting the 2015 budget are:

- focussing on the priorities for the 2011-2015 bench term
- considering the three-year pilot project that will allow lawyer licensing candidates to either article or complete a Law Practice Program, which started in the 2014-15 licensing year
- incorporating sustainable CPD revenues based on a longer history of the mandatory program
- using fund balances to mitigate annual fee increases and complying with the Convocation approved fund balance management policies

- maintaining the LibraryCo levy at the 2014 level of \$202. As the number of lawyers is increasing, LibraryCo funding is increasing by \$198,000
- incorporating a grant of \$400,000 from the Law Foundation of Ontario for access to justice initiatives which replaces Licensing Process grants for a similar amount
- decreasing the number of full-time equivalent employees by seven
- considering potential increases in outside counsel expenses and cost awards
- providing for a 2% increase in salary and benefit costs.

### ***Revenue Summary***

As set out on page 19 (row 10), annual fee revenue totals \$75.8 million in 2015 (2014: \$73.7 million).

The budget utilizes a combined total of \$2.0 million (2014: \$1.5 million) from accumulated fund balances to mitigate fee increases comprising \$1.4 million from the lawyer fund balances and \$618,000 from the paralegal fund balances. If these funds were not utilized, lawyers' annual fees would increase by \$35 and paralegals' by \$132. In addition, \$1.5 million (unchanged from 2014) in surplus investment income is being transferred from the Errors & Omissions Insurance Fund to mitigate the annual fee for lawyers. Utilizing accumulated fund balances is a normal practice to fund operations in the short term but is not a sustainable practice in the long term.

It is anticipated that the 21 percent decrease in registrations for full-fee Continuing Professional Development programs experienced in the first half of 2014 compared to the same period in 2013 will continue to the end of the year. It also anticipated that revenue from professionalism programs, for which a nominal fee was introduced in 2014, will continue to be lower than anticipated. As electronic materials are included with the price of the program and members increasingly prefer this format over hard copy materials, expected revenue from publications has been reduced. As a result, the 2015 revenue projection for CPD is \$800,000 lower than in 2014.

The lawyer Licensing Process has undergone major change. The lawyer candidate fee for the 2015-2016 licensing term is proposed to remain at \$4,710 per candidate for all fees associated with licensing, including the costs of the Law Practice Program and the enhanced Articling Program, which have been equalized across all candidates in the process. As the Law Foundation of Ontario grant funding will no longer be available, it is expected that revenues for the Lawyer Licensing Process will decrease by approximately 3.5%. The fee for the paralegal licensing process candidates remains the same at \$1,400 with candidate numbers continuing to increase.

Budgeted investment income has been increased by \$300,000 in total for the General and Compensation funds.

Under an Administrative Services Agreement between LibraryCo Inc. and the Law Society, the Law Society performs the administrative functions for LibraryCo. The fee for these services has been renegotiated to \$430,000 in 2015 (2014 budget: \$520,000), funding the operating expenses of the Law Society necessary to provide these services.

Although the total annual fee for lawyers and paralegals is unchanged for 2015, the Compensation Fund component is budgeted to decrease from a levy of \$238 to \$225 for lawyers and from \$150 to \$123 for paralegals. The Compensation Fund levies have been reviewed by the Compensation Fund Committee and were set after an actuarial assessment of claims and fund balances based on expected requirements to meet future potential claims in excess of routine annual requirements. No change in the provisions for claims is budgeted. Both Funds, lawyer and paralegal, are financially and actuarially sound.

For both lawyers and paralegals, the Capital Allocation levy increases from \$50 to \$69 as part of the financing plan for the acquisition and maintenance of capital assets proposed as part of the 2015 budget. In particular, the Audit & Finance Committee has reviewed the allocation of \$1.3 million in leasehold improvements related to the Ontario Justice Education Network leaving Law Society premises, and the consequent relocation of the Tribunal Office, Equity department and parts of the Information Systems department which will improve processes and efficiencies.

The budget maintains the LibraryCo levy at \$202 per lawyer (2014: \$202 per lawyer), which increases Law Society funding of LibraryCo by \$198,000 to \$7.7 million because of the increase in the number of lawyers. LibraryCo's total revenues are reduced as the Law Foundation of Ontario is no longer providing funding for expenses related to electronic products.

### ***Expense Summary***

As set out on page 19, total direct expenses are increasing from \$106.3 million in 2014 to \$109.0 million in 2015.

The draft 2015 budget contains a provision of 2.0% for salaries and benefits for merit increases and any changes to staff levels.

The draft 2015 budget contains a net decrease of 7 full-time-equivalent employees.

The budget request for Professional Regulation, Tribunal and Compliance is at \$28.7 million (page 20). Most areas of the division are projecting increased file volumes of around 2%, in line with long term trends. At 205 full time equivalents, the number of employees

is relatively static with staffing for the new Disclosure and Risk Management Unit being accomplished by internal transfers. The external counsel expense budget remains the same as in 2014 at \$1.6 million.

The budget for Professional Development and Competence is at \$26.7 million (page 21).

- The total expenditures for the lawyer licensing process, which is a cost recovery process that covers its expenses through the payment of fees by licensing candidates, is mitigated by a \$1 million contribution by the profession approved by Convocation for 2014 and continuing. In the paralegal licensing process there is a one-time expense of \$500,000 to develop the new and extended paralegal licensing examination.
- Projected CPD program-related expenses in 2015 have been decreased by \$48,000 to reflect the decrease in costs associated with producing, marketing, and distributing publications and participation in fewer joint programs. The CPD unit will be maintaining the same level of staffing.
- In Legal Information and Library Services, the Great Library's print collection continues to face constraints as small budget increases are outstripped by certain print format costs increasing by over 10%. The staff count is decreasing by 2.
- Pursuant to the business case approved by Convocation in 2013, expenses for the Spot Audit Department will see a further reduction of \$200,000 in 2015 for a total budget reduction of \$500,000 from 2013 to 2015 including 4 fewer FTEs.

The budget request for Convocation, Policy and Outreach is at \$10.7 million (page 24). The major change is the new office of Executive Director, Policy, Equity and Public Affairs which was implemented in 2014. Also included is a provision for an increase of \$5 in the per lawyer levy for the Federation of Law Societies and an increase of 3% in the CANLII levy. Remuneration for benchers in 2014 is well below trends of the past two years with the expanded use of adjudicators and the Tribunal Chair. Bencher remuneration has been reduced by \$250,000 from \$1.1 million to \$850,000. The provision for bencher remuneration is inclusive of an adjustment for anticipated change in CPI of 3%. A provision of \$250,000 has been included to support the planned post-election bencher strategic planning retreat in 2015.

The budget for Services to Members and the Public is at \$16.2 million (page 25). The Parental Leave Assistance Plan fund is expected to end 2014 with a balance in excess of \$350,000. In 2014, the levy raised \$400,000 to top up the fund balance to support the payment of benefits to lawyers on parental leave. Likely attributable to the implementation of the means test in January 2014, payments for 2014 are significantly below previous years, \$101,000 compared to \$243,000 at this time last year. The budget for 2015 will only require a \$300,000 top up to restore the amount available for benefit payments to a total \$650,000 in 2015.

The financial projection includes a rent subsidy of \$75,000 to the Ontario Justice Education Network which declines over 5 years. OJEN previously obtained free accommodation on Law Society premises but as part of their corporate development will be moving to separate premises in 2015.

The budget for Corporate Services & Administration is at \$23.8 million (page 26). Expenses in the office of the general counsel are budgeted to increase by \$250,000 for outside counsel primarily to provide for the anticipated cost of litigation involving TWU.

The Society's contingency allowance to provide funding for unanticipated events or activities that occur throughout the year is maintained at \$1.0 million. For the past two years the Society has maintained a contingency budget of \$1,000,000 primarily to provide for the anticipated costs related to organizational restructuring. The contingency has been maintained at \$1,000,000 in 2015 in anticipation of additional initiatives emerging after the bench election and declines to \$250,000 in subsequent years.

### **General Fund Balance**

In May 2013, Convocation approved policies to manage the size and use of the Law Society's Lawyer General and Compensation Fund balances maintaining the sum of the Lawyer General Fund balance at no less than two, and no more than three months of General Fund budgeted expenses. The projected balance of the lawyer General Fund at the end of 2015 is \$16.9 million, a little below the midpoint of the approved range.

The balance in the Paralegal General Fund balance is projected at \$1,459,000 at the end of 2015. This is viewed as appropriate although no formal fund balance management policies have been adopted due to the size of the balance and limited operational history.

### **Compensation Fund**

The budget for 2014 sets the allowance for claims at \$2.5 million (2014 budget: \$2.5 million) for lawyers and \$122,000 (2014 budget: \$111,000) for paralegals. The Fund's actuary indicates this level of claims experience is consistent with routine, recurring claims levels for lawyers over the past ten years and a reasonable estimate for paralegals given the six years of historical data.

**LibraryCo Inc.**

LibraryCo will continue to be funded at \$202 per lawyer, for a total of \$7.7 million in 2015. The 2015 Budget, approved by the LibraryCo board and recommended to the Audit & Finance Committee, requests funding of \$7.7 million or \$202 per lawyer compared to the 2014 approved funding of \$7.5 million or \$202 per lawyer. 2015 will be a year of transition for LibraryCo as it deals with the loss of LFO funding for electronic products.

**Access to Justice**

The Society has applied for and received approval from the Law Foundation of Ontario for a grant related to the development and delivery of Access to Justice initiatives. The grant is for \$400,000 with the associated expenses included in the Policy, Equity and Public Affairs Budget. Hired in 2014, the Policy, Equity and Public Affairs Executive Director has primary responsibility for supporting the Treasurer's Access to Justice Group initiative, and the formation of a stakeholder Reference Group to steer the Access to Justice initiative.

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Budget Summary

	Professional Regulation/ Tribunal and Compliance		Professional Development & Competence		Convocation Policy and Outreach		Services to Members and Public		Corporate Services & Administration		Capital Allocation Fund	2015 Draft Budget		2014 Approved Budget		
	211.0	205.5	145.0	136.5	31.0	30.6	38.0	28.0	148.0	145.3		573.0	545.9	577.0	552.2	
1 Total Employees/FTE																
2 Operating Revenues	1,188,500		20,553,300		445,000		3,595,000		4,000,500		-	29,782,300		29,535,300		
3 Fund Balance Utilized	-		-		-		784,400		2,681,200		-	3,465,600		3,006,400		
Total Operating Revenue and Fund 4 Balance Utilized	1,188,500		20,553,300		445,000		4,379,400		6,681,700			33,247,900		32,541,700		
5 Salaries & Benefits	23,097,000		13,841,495		4,028,800		2,273,800		14,213,370		-	57,454,465		56,754,500		
6 Dept. Operating Expenses	1,748,100		1,001,000		250,900		119,550		779,600		-	3,899,150		3,855,800		
7 Total Sal., Ben. & Oper. Exp.	24,845,100		14,842,495		4,279,700		2,393,350		14,992,970		-	61,353,615		60,107,900		
8 Program Expenses	3,788,300		11,884,400		6,446,400		13,780,100		8,808,200		2,953,200	47,660,600		46,165,100		
9 Total Direct Expenses	28,633,400		26,726,895		10,726,100		16,173,450		23,801,170		2,953,200	109,014,215		106,273,000		
10 Direct Operating Result	(27,444,900)		(6,173,595)		(10,281,100)		(11,794,050)		(17,119,470)		(2,953,200)	(75,766,315)		(73,731,300)		

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Professional Regulation, Tribunal and Compliance

	Executive Director of Professional Regulation		Disclosure Unit		Case Management		Investigations		Complaints Resolution		Complaints Resolution Commissioner		Intake		Monitoring and Enforcement		Trustee Services		Discipline		Complaints Services		Admin Compliance		By-Law Administration		Tribunal		2015 Total	
	6.0	6.0	3.0	3.0	5.0	5.0	57.0	56.6	24.0	23.8	4.0	3.8	10.0	10.0	5.0	4.4	12.0	12.0	36.0	34.8	14.0	13.2	11.0	10.2	10.0	9.2	14.0	13.5	211.0	205.5
1 Total Employees/FTE	6.0	6.0	3.0	3.0	5.0	5.0	57.0	56.6	24.0	23.8	4.0	3.8	10.0	10.0	5.0	4.4	12.0	12.0	36.0	34.8	14.0	13.2	11.0	10.2	10.0	9.2	14.0	13.5	211.0	205.5
2 Revenues	-	-	-	-	-	-	-	-	-	-	-	-	-	-	400,000	200,600	-	-	-	-	-	-	522,700	65,200	-	-	-	-	-	1,188,500
3 Salaries & Benefits	1,064,400	322,700	574,000	6,256,200	2,608,300	430,700	1,086,200	509,600	1,104,100	4,908,800	1,222,500	823,300	724,700	1,461,500	23,097,000															
4 Dept. Operating Expenses	178,500	234,700	25,800	354,100	162,800	23,800	41,500	21,700	56,600	314,200	79,700	70,300	82,200	102,200	1,748,100															
5 Total Sal., Ben. & Oper. Exp.	1,242,900	557,400	599,800	6,610,300	2,771,100	454,500	1,127,700	531,300	1,160,700	5,223,000	1,302,200	893,600	806,900	1,563,700	24,845,100															
6 Program Expenses	2,030,300	-	102,000	256,000	39,400	173,900	2,500	44,400	140,400	218,700	6,200	13,200	12,900	748,400	3,788,300															
7 Total Direct Expenses	3,273,200	557,400	701,800	6,866,300	2,810,500	628,400	1,130,200	575,700	1,301,100	5,441,700	1,308,400	906,800	819,800	2,312,100	28,633,400															
8 Direct Operating Result	(3,273,200)	(557,400)	(701,800)	(6,866,300)	(2,810,500)	(628,400)	(1,130,200)	(175,700)	(1,100,500)	(5,441,700)	(1,308,400)	(384,100)	(754,600)	(2,312,100)	(27,444,900)															

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Professional Development & Competence

	<b>Licensing Process</b>		<b>Quality Assurance</b>		<b>Competence</b>		<b>2015 Total</b>	
<b>1 Total Employees/FTE</b>	31.0	31.0	50.0	48.8	64.0	56.7	145.0	136.5
<b>2 Revenues</b>	11,618,300		-		8,935,000		<b>20,553,300</b>	
<b>3 Salaries &amp; Benefits</b>	2,763,300		5,562,795		5,515,400		<b>13,841,495</b>	
<b>4 Dept. Operating Expenses</b>	161,800		563,900		275,300		<b>1,001,000</b>	
<b>5 Total Sal., Ben. &amp; Oper. Exp.</b>	2,925,100		6,126,695		5,790,700		<b>14,842,495</b>	
<b>6 Program Expenses</b>	7,928,200		127,900		3,828,300		<b>11,884,400</b>	
<b>7 Total Direct Expenses</b>	10,853,300		6,254,595		9,619,000		<b>26,726,895</b>	
<b>8 Direct Operating Result</b>	765,000		(6,254,595)		(684,000)		<b>(6,173,595)</b>	

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Quality Assurance

	Practice Review		Spot Audit		2015 Total	
<b>1 Total Employees/FTE</b>	16.0	16.0	34.0	32.8	50.0	48.8
<b>2 Revenues</b>		-		-		-
<b>3 Salaries &amp; Benefits</b>		1,752,400		3,810,395		5,562,795
<b>4 Dept. Operating Expenses</b>		151,400		412,500		563,900
<b>5 Total Sal., Ben. &amp; Oper. Exp.</b>		1,903,800		4,222,895		6,126,695
<b>6 Program Expenses</b>		78,400		49,500		127,900
<b>7 Total Direct Expenses</b>		1,982,200		4,272,395		6,254,595
<b>8 Direct Operating Result</b>		(1,982,200)		(4,272,395)		(6,254,595)

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Competence

	<b>Practice Management</b>		<b>Certified Specialist</b>		<b>Continuing Professional Development</b>		<b>Archives</b>		<b>Great Library</b>		<b>2015 Total</b>	
<b>1 Total Employees/FTE</b>	11.0	9.0	1.0	1.0	30.0	27.0	5.0	3.5	17.0	16.2	64.0	56.7
<b>2 Revenues</b>	-		270,000		8,477,000		-		188,000		<b>8,935,000</b>	
<b>3 Salaries &amp; Benefits</b>	1,309,400		66,300		2,438,500		291,700		1,409,500		<b>5,515,400</b>	
<b>4 Dept. Operating Expenses</b>	75,700		7,100		117,400		14,000		61,100		<b>275,300</b>	
<b>5 Total Sal., Ben. &amp; Oper. Exp.</b>	1,385,100		73,400		2,555,900		305,700		1,470,600		<b>5,790,700</b>	
<b>6 Program Expenses</b>	89,700		51,300		2,132,400		39,800		1,515,100		<b>3,828,300</b>	
<b>7 Total Direct Expenses</b>	1,474,800		124,700		4,688,300		345,500		2,985,700		<b>9,619,000</b>	
<b>8 Direct Operating Result</b>	(1,474,800)		145,300		3,788,700		(345,500)		(2,797,700)		<b>(684,000)</b>	

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Convocation, Policy and Outreach

	Executive Director PEPA		Policy		Treasurer/ Bencher		Communications		Public Affairs		Federation of Law Societies	Equity		Contingencies	2015 Total	
	3.0	3.0	7.0	7.0	1.0	1.0	11.0	11.0	3.0	3.0		6.0	5.6		31.0	30.6
<b>1 Total Employees/FTE</b>																
<b>2 Revenues</b>	400,000		20,000		-		-		-			25,000				<b>445,000</b>
<b>3 Salaries &amp; Benefits</b>	530,600		1,045,500		102,600		1,234,500		385,800			729,800				<b>4,028,800</b>
<b>4 Dept. Operating Expenses</b>	45,000		49,900		20,000		51,400		35,500			49,100				<b>250,900</b>
<b>5 Total Sal., Ben. &amp; Oper. Exp.</b>	575,600		1,095,400		122,600		1,285,900		421,300			778,900				<b>4,279,700</b>
<b>6 Program Expenses</b>	73,500		92,300		2,997,700		395,900		324,000	1,180,000		383,000	1,000,000			<b>6,446,400</b>
<b>7 Total Direct Expenses</b>	649,100		1,187,700		3,120,300		1,681,800		745,300	1,180,000		1,161,900	1,000,000			<b>10,726,100</b>
<b>8 Direct Operating Result</b>	(249,100)		(1,167,700)		(3,120,300)		(1,681,800)		(745,300)	(1,180,000)		(1,136,900)	(1,000,000)			<b>(10,281,100)</b>

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Services to Members and Public

	Catering		LSRS		Compensation Fund		OJEN, ProBono & LCO	Cty. & Dist. Law Presidents Assoc.	CANLII	County Libraries	MAP	PLAP	2015 Total		
	29.0	19.0	5.0	5.0	4.0	4.0				0.0	0.0			38.0	28.0
1 Total Employees/FTE															
2 Operating Revenues	1,735,000		325,000		1,350,000				-		185,000	-		3,595,000	
3 Fund Balance Utilized	-		-		784,400				-		-	-		784,400	
4 Total Operating Revenue and Fund Balance Utilized	1,735,000		325,000		2,134,400				-		185,000	-		4,379,400	
5 Salaries & Benefits	1,290,500		467,000		516,300				-		-	-		2,273,800	
6 Dept. Operating Expenses	41,300		57,650		20,600				-		-	-		119,550	
7 Total Sal., Ben. & Oper. Exp.	1,331,800		524,650		536,900				-		-	-		2,393,350	
8 Program Expenses	766,100		23,800		2,658,400	338,000	252,800	1,345,000	7,696,000	400,000		300,000		13,780,100	
9 Total Variable Expenses	2,097,900		548,450		3,195,300	338,000	252,800	1,345,000	7,696,000	400,000		300,000		16,173,450	
10 Direct Operating Result	(362,900)		(223,450)		(1,060,900)	(338,000)	(252,800)	(1,345,000)	(7,696,000)	(215,000)		(300,000)		(11,794,050)	

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Corporate Services and Administration

	CEO/ Finance		Facilities		Client Service Centre		I.S., PMO & Web Content		Human Resources		Corporate Resource Centre		General Counsel		Corporate	2015 Total	
	30.0	29.2	25.0	24.1	36.0	35.2	38.0	38.0	8.0	7.8	5.0	5.0	6.0	6.0		148.0	145.3
1 Total Employees/FTE																	
2 Operating Revenues	381,000		-		37,500		12,000		-		-		-		3,570,000	4,000,500	
3 Fund Balance Utilized	-		-		-		-		-		-		-		2,681,200	2,681,200	
<b>Total Operating Revenue and Fund 4 Balance Utilized</b>	381,000		-		37,500		12,000		-		-		-		6,251,200	6,681,700	
5 Salaries & Benefits	3,512,600		1,791,300		2,825,470		3,888,000		836,600		530,900		828,500		-	14,213,370	
6 Dept. Operating Expenses	242,900		67,200		177,100		110,900		77,000		26,200		78,300		-	779,600	
7 Total Sal., Ben. & Oper. Exp.	3,755,500		1,858,500		3,002,570		3,998,900		913,600		557,100		906,800		-	14,992,970	
8 Program Expenses	418,800		3,457,400		35,900		1,517,500		902,800		17,900		383,900		2,074,000	8,808,200	
9 Total Direct Expenses	4,174,300		5,315,900		3,038,470		5,516,400		1,816,400		575,000		1,290,700		2,074,000	23,801,170	
10 Direct Operating Result	(3,793,300)		(5,315,900)		(3,000,970)		(5,504,400)		(1,816,400)		(575,000)		(1,290,700)		4,177,200	(17,119,470)	

THE LAW SOCIETY OF UPPER CANADA  
 Draft Budget Lawyers and Paralegals  
 For the year ending December 31, 2015  
 Client Service Centre

	Administration		Corporate Services		Call Centre		Client & Member Services		2015 Total	
	2.0	2.0	3.0	3.0	12.0	12.0	19.0	18.2	36.0	35.2
1 Total Employees/FTE	2.0	2.0	3.0	3.0	12.0	12.0	19.0	18.2	36.0	35.2
2 Revenues	-	-	-	-	-	-	37,500		37,500	
3 Salaries & Benefits	290,600		539,370		847,600		1,147,900		2,825,470	
4 Dept. Operating Expenses	27,700		65,900		22,400		61,100		177,100	
5 Total Sal., Ben. & Oper. Exp.	318,300		605,270		870,000		1,209,000		3,002,570	
6 Program Expenses	-		1,200		18,700		16,000		35,900	
7 Total Direct Expenses	318,300		606,470		888,700		1,225,000		3,038,470	
8 Direct Operating Result	(318,300)		(606,470)		(888,700)		(1,187,500)		(3,000,970)	

**The Law Society of Upper Canada  
Facilities Capital Fund Proposed Projects  
For the year ending December 31, 2015**

Item	Project Description	Budget
1	Carpet replacement - Portrait & Museum Rooms	100,000
2	Window replacement	200,000
3	Heat pump upgrade in North Wing	700,000
4	Lighting retrofit	50,000
5	Museum room ceiling tile replacement	60,000
6	Roof De-icing - East Entrance	35,000
7	Hydraulic lift - loading dock	30,000
8	Accessible lift - Honours Room	30,000
9	Washroom upgrades - various	100,000
10	Historic fence restoration	100,000
11	Historic gate restoration	100,000
12	Improvement to air conditioning unit in Trustee Services	12,000
13	Relocate Tribunal Office / hearing rooms	1,285,000
14	Contingency	150,000
15	<b>TOTAL 2015 CAPITAL REQUEST</b>	<b>2,952,000</b>

**R'ECO GTC**

# **Law Society of Upper Canada**



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

## **2015 BUDGET DETAIL**

**Presented to Convocation  
October 30, 2014**

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL  
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**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**PROFESSIONAL REGULATION AND COMPLIANCE  
PROFESSIONAL REGULATION**

**1. DIVISIONAL OVERVIEW**

As part of its mandate to protect the public interest, the Law Society addresses issues of capacity, conduct and competence of lawyers and licensed paralegals. For Professional Regulation this includes response to complaints, investigations, discipline prosecutions, trusteeships' management of the Compensation Fund and related activities.

Almost 5,000 complaints each year are referred to the Professional Regulation division. The Intake, Complaints Resolution, Investigations, and Discipline departments address complaints at various stages of the process. The Disclosure Unit, Monitoring and Enforcement, and Trustee Services and Compensation Fund departments provide related services. The Case Management department supports the entire operation and facilitates effective and efficient management of issues and cases.

The mandate of the Division is to identify and manage risk, to respond to complaints based on good standards, to ensure a fair, accessible, transparent and effective process, to identify and bring forward issues concerning regulation, and to manage relationships with the communities and individuals related to the regulatory work of the Law Society.

*1. Complaints*

*(a) Rate of New Complaints*

Between 2008 and 2011, the number of complaints increased by approximately 2% each year (which coincides with the increase in the number of licensees). However, in the following three years (2012, 2013 and 2014), the number of new cases received has fluctuated, leaving no discernable trend. Consequently, it has been very difficult to predict future input:

- 2012 shows a decrease in the number of complaints compared with 2011 (2% decrease).
- 2013 recovered the loss from 2012 and showed an increase of 3.6 % compared with 2011.
- 2014 looks like there will be a lower number of complaints – about the same as in 2012.

Predictions for 2015 are based on the assumption that the increase in cases will follow the yearly trend (excepting 2012 and 2013), which would be a 2% per year increase.

The charts below set out the predicted increases for 2014 and 2015.

INPUT	2011	2012	2013	2014	2015
Intake	4,867	4,782	5,040	4,750	4,850
Complaints Resolution	1,803	1,868	1,889	1,400	1,730
Investigations	1,412	1,226	1,348	1,300	1,330
Discipline (individual licensee, not case)	137	136	152	135	145

*(b) Case Complexity and Seriousness*

The complexity and seriousness of cases handled by professional regulation staff has been increasing over time. This is affecting the allocation of resources required to complete cases within targets. The increase in the complexity of cases is evidenced in a number of ways:

- The number of allegations in each case has increased. In 2014 each case has 20% more allegations than each case in 2008. This means that in 2014 there were 800 more allegations than in 2008. An increase in the number of allegations can reflect both the complexity of the case and impacts the time required to investigate and prosecute it.
- The number of interlocutory suspension motions held and completed has increased in 2014. As at August 31, 7 interlocutory suspension matters have been heard and completed, an increase from 3 in 2013 and 5 in 2012. Interlocutory suspensions require the immediate deployment of resources and they require significant preparation both for Investigations and Discipline.
- The rate of new mortgage fraud investigations has increased. As at August 31, 2014, over 5 (5.4) new reports were received each month identifying new lawyers against whom allegations of mortgage fraud were made.

*2. Trustee Services & Compensation Fund*

In 2014, Trustee Services was challenged by two very large trusteeships, and an increasing number of both court-order and voluntary trusteeships. These have put additional pressure on staff resources, delaying completion of some trusteeships.

Based on the pattern of the last several years (around 150 claims a year) it is expected that the Compensation Fund will see an increase in new claims in 2014 and 2015 (around 180 per year). To June 30, 2014, the Fund had already received 86 claims in respect of lawyer dishonesty and 15 claims in respect of paralegal dishonesty. This compares to a three-year average of 120 claims related to lawyers and 26 claims related to paralegals, for the entire year.

*3. Staffing*

The 2015 Professional Regulation budget request includes one new position that was transferred to Trustee Services from Administrative Compliance in the Corporate Services Division (the corresponding reduction in the Corporate Services Division is reflected under the Corporate Services budget). In addition, three Professional

Regulation staff positions were redeployed for the new Disclosure Unit. These changes are described below.

#### *4. Outside counsel and legal opinions*

The need for outside counsel and expert witnesses was reduced in 2014, in part due to the anticipated completion of hearings in two major cases. In addition, the costs for outside counsel had stabilized as a result of greater reliance on specific firms with expertise in mortgage fraud and unauthorized practice, which are able to provide services at a reduced rate. No changes to the outside counsel budget are recommended for 2015. Outside counsel expenses are expected to exceed budget in 2014 due to unanticipated developments in three cases.

#### *5. Update on 2014 initiatives*

With the influx of an unexpectedly large number of new cases in 2013, the Professional Regulation Division developed strategies for completing cases within the current budget allocation for resources. As a result, there were limitations imposed on responses to certain types of complaints including those that were judged to be repetitious, stale or otherwise not focused directly on risk to the public. The Division provided less extensive responses to some types of complaints as a result, including certain advertising complaints and unauthorized practice complaints. Cases were completed at an earlier stage with less process including little or no investigation. Reducing resources allocated to such cases allowed staff to focus on cases which had priority including those that were a risk to clients, the administration of justice, the professions and the public in general.

The change in focus was communicated to the Professional Regulation Committee and the Paralegal Standing Committee and the Law Society's templates and external communications, including the Complaint Form and website, were amended to reflect this approach.

#### *6. Mortgage Fraud Investigations*

In 2013, there was a reduction in the number of new reports of mortgage fraud complaints with three new lawyer investigations per month. Unfortunately that trend reversed in 2014. So far in 2014, that average increased to over five new lawyer investigations per month. As a result, the inventory of mortgage fraud investigations has increased from 79 lawyers at the beginning of 2014 to 93 lawyers.

#### *7. Disclosure Unit / Risk Management Strategies*

##### *(a) Disclosure Unit*

In June 2014, the Disclosure Unit was established as a permanent Unit and as part of the Case Conference/PAC processes overseen by the Executive Director, Professional Regulation. The Unit started operations in 2013 as a pilot project. This formed part of the implementation of recommendations made by Brian Gover in his 2011 review of discipline processes. That report recommended that the Law Society adopt more standardized, better recorded disclosure, which could be used as a precursor to implementation of electronic disclosure. It suggested that improvements in disclosure

practice will likely reduce the time cases take in discipline overall, which is a key objective for Professional Regulation.

The Disclosure Unit plan is to increase the types of cases accepted into the process during 2014. By the end of 2014, all cases except Summary Hearing matters and cases referred from Monitoring and Enforcement will be processed in the Unit. The standardized and indexed disclosure process will provide permit greater efficiency in the implementation of the Electronic Content Management (ECM) system once implemented in the Division.

*(b) Risk Management Strategies*

Risk assessment and management is at the heart of all regulatory response activity, and as such forms part of the daily operations of Professional Regulation. In 2014, the Executive Director increased the focus on risk management by appointing a senior staff to be responsible for risk management, including the development of greater formality in the identification, assessment and mitigation of risk. Anne-Marie Kearney assumed the dual management role as the Manager of the Disclosure Unit and Risk Strategy Manager. Anne-Marie Kearney, an experienced forensic auditor, manager and investigator is responsible for developing new procedures, guidelines and templates for staff for the analysis of risk, as well as managing current risks particularly where they involve more than one department.

*(c) Budget and Staffing*

In order to implement these new initiatives, existing positions were redeployed from the Investigations and Trustee Services departments. The Disclosure Unit has three full-time staff (two law clerks and one Manager, who is also the Manager of Risk Management Strategies).

The two law clerk positions were transferred from the Investigations department. To fund the manager position, the management of the Trustee Services and Compensation Fund departments was combined, with one manager for the two departments. The vacant Trustee Services Manager position was used to fund the Disclosure Unit/Risk Management Strategies Manager position.

The budget for the Disclosure Unit has been largely transferred from the Investigations department on the basis that the work of the Unit primarily concerns Investigations files which would otherwise have required additional preparation for disclosure. Two-thirds of the photocopy budget (\$223,000) has been transferred from Investigations as it is estimated that this percentage of the Investigations budget was used for disclosure. This proportion will be assessed in 2015.

*(d) Law Clerk – Closed Trusteeships – Transfer of Position from Corporate Services*

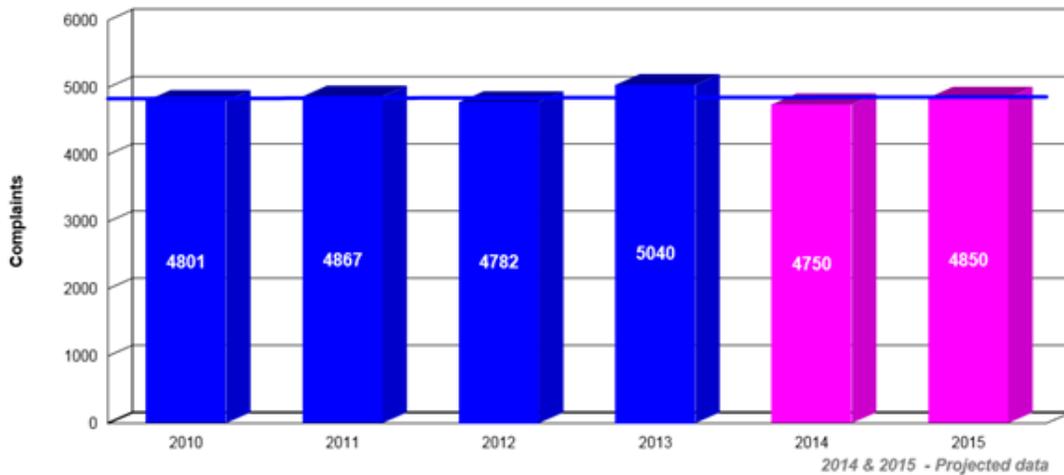
One of two FTEs designated as Closed Trustee positions has been transferred to Trustee Services in the Professional Regulation Division from Administrative Compliance in the Corporate Services Division. Now designated as a Law Clerk, the position will be focused on handling inquiries related to defunct practices, in particular those resulting

from closed trusteeships. Previously, Administrative Compliance addressed calls from people looking for information relating to a licensee's practice. This transition was based on an analysis that this work was more closely aligned with the work of Trustee Services and that it is more efficient to locate it in that department.

**II. Details of the Division’s 2014 Experience and Assumptions for 2015**

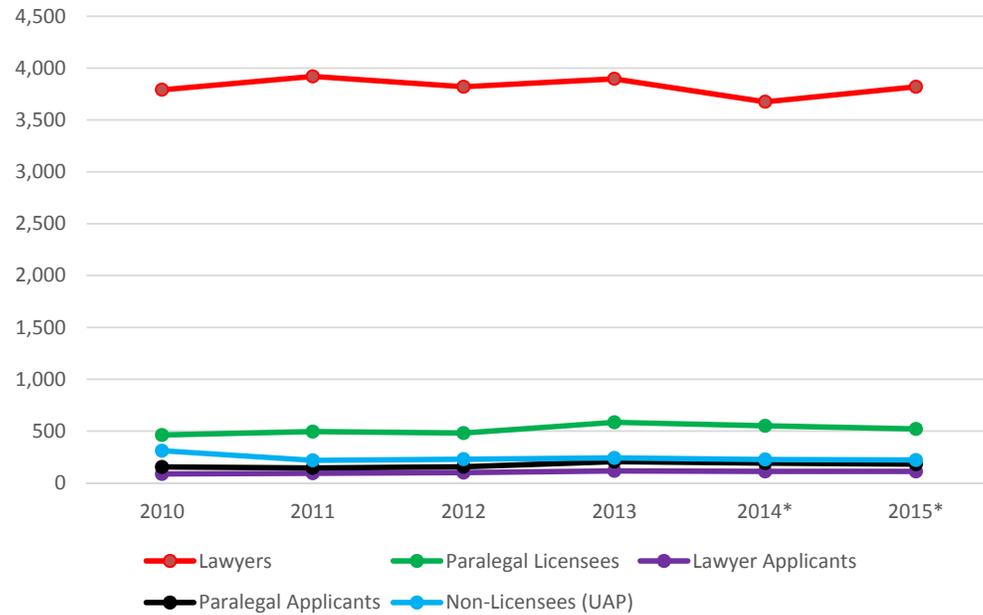
As noted earlier, between 2008 and 2011, the number of regulatory complaints received in Professional Regulation increased by approximately 2% each year. During 2012, 2013 and 2014, the experience has been uneven and less predictable. In 2013, the number of new cases increased significantly, followed by a year with reduced intake in 2014. Overall, despite the fluctuations during each of these three years, the long trend indicating a 2% annual increase is likely the most reliable predictor. On that basis, it is expected that Professional Regulation will likely receive 4,850 new complaints in 2015.

**Total Number of Complaints Received in Professional Regulation – 2010 to 2015**



The following graph demonstrates the trends in complaints about lawyers, paralegals, lawyer applicants, paralegal applicants and unauthorized practitioners. There has been a decrease in complaints about lawyers and paralegal licensees from 2013 to 2014. The other complaints have remained relatively stable.

**Complaints Received in PRD by Year and Type**



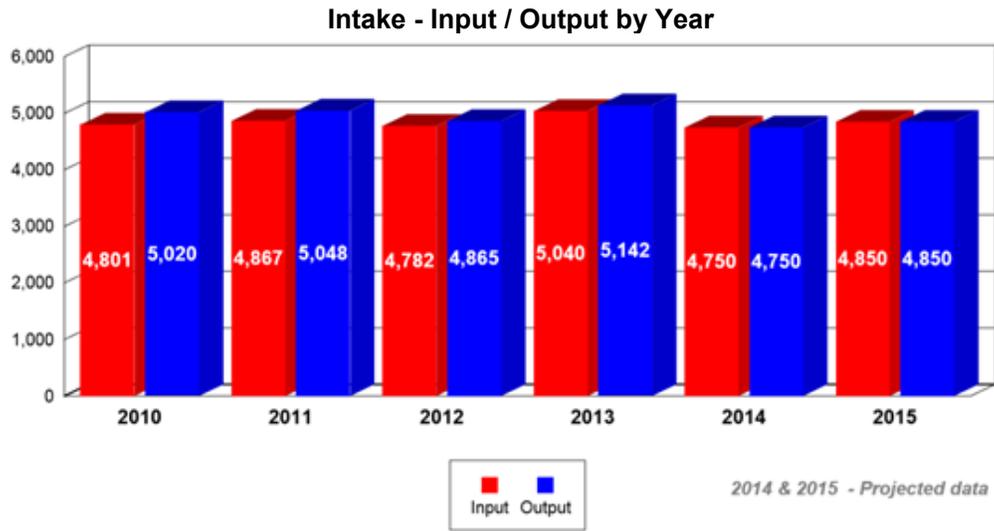
**Professional Regulation Case Flow Analysis**

<b>Department/Action</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Cases transferred into Intake	4,735	4,801	4,867	4,782	5,040	<b>4,750</b>	<b>4,850</b>
Cases closed in Intake	1,645	1,795	1,836	1,799	1,958	<b>2,100</b>	<b>1,820</b>
Cases transferred from Intake	3,183	3,225	3,250	3,066	3,184	<b>2,650</b>	<b>3,030</b>
Cases transferred into Complaints Resolution	2,053	1,811	1,800	1,839	1,852	<b>1,400</b>	<b>1,720</b>
Cases transferred into Investigations	1,092	1,377	1,373	1,201	1,309	<b>1,240</b>	<b>1,280</b>
Cases transferred into Discipline	384	381	373	292	301	<b>245</b>	<b>300</b>
Originating Notices of Hearing	142	139	134	115	158	<b>135</b>	<b>130</b>
Hearings Completed	108	141	122	124	126	<b>140</b>	<b>125</b>

**(a) Intake Department**

Intake is the regulatory gatekeeper. It receives all new complaints referred to Professional Regulation.<sup>1</sup> Its functions are to provide early and expert complaint assessment by reviewing and substantiating complaints where necessary, to resolve complaints where possible, to identify regulatory and risk issues, to triage where required and to stream complaints appropriately where required. The objective of the department is to ensure that complaints are addressed and resolved as early as possible and complaints that represent a public or other risk are identified quickly. Intake also has an important case management function, determining and facilitating the regulatory approach that will best serve the requirements of the case and ensuring that different investigations concerning the same licensee are appropriately linked.

It is expected that in 2014 Intake will receive 4,750 complaints and the department will close a similar number of cases in the year.



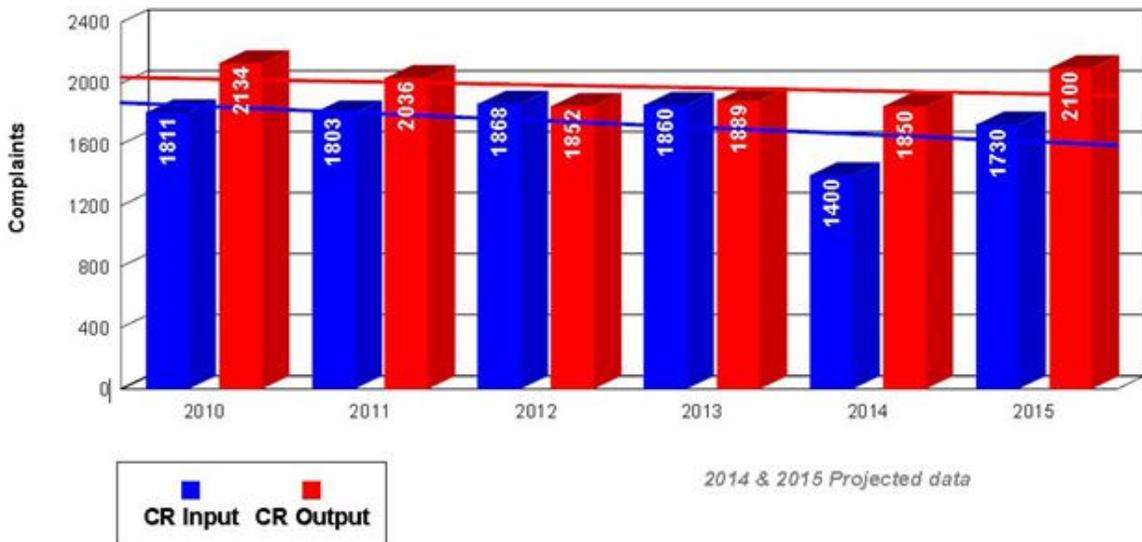
<sup>1</sup> All complaints to the Law Society receive initial processing in Complaints Services, Client Service Centre. It is the responsibility of this group of staff to sort these complaints to identify those which may raise regulatory issues, and to forward them to Professional Regulation.

**(b) Complaints Resolution Department**

The role of Complaints Resolution is to investigate and resolve complaints where the allegations indicate breaches of the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* or the By-Laws where even if the evidence supports the allegations, the outcome is unlikely to be discipline. The majority of complaints are resolved through investigation and negotiation, or closed on the basis of an informal regulatory response. Where a significant breach of the rules is shown on investigation, or where the lawyer fails to cooperate in the regulatory process, a prosecution or other response may be sought from the Proceedings Authorization Committee.

The input of new cases into the Complaints Resolution department in the first half of 2014 has been lower than was predicted in part due to the reduced rate of incoming new cases, as well as the diversions that were developed in 2013 to cope with a higher than expected incoming caseload. As the intake of new cases in 2014 is reduced, the Division can now reallocate the cases that were diverted from Complaints Resolution to ensure that they are provided with appropriate response, particularly where the diversion was less than successful and led to the conclusion the case required full review and investigation.

**Complaints Resolution - Input / Output By Year**

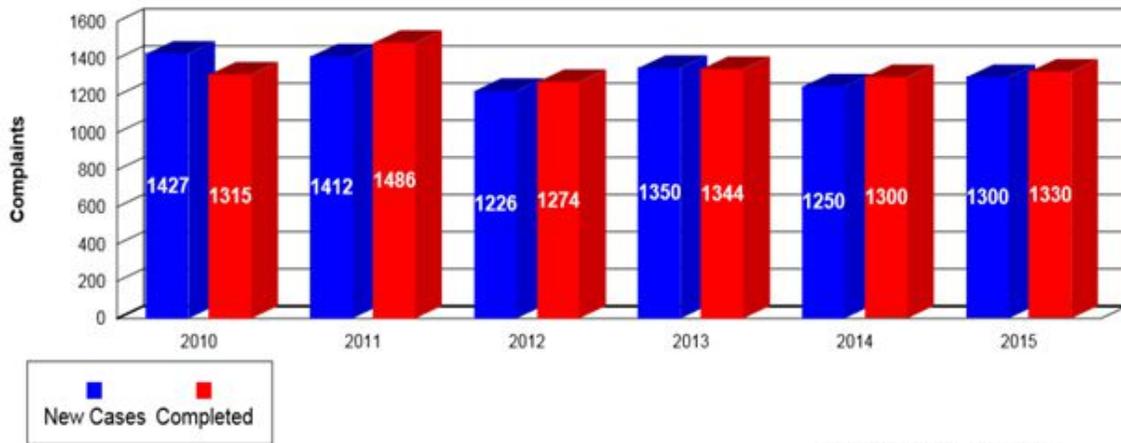


**(c) Investigations Department**

This department investigates complaints in which breaches of the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* or the By-Laws are alleged, which, if supported by the evidence, are likely to lead to discipline or other proceedings. Investigations staff includes lawyers, investigators and auditors. On completion of the investigation, a complaint is referred to the PAC for consideration, closed or resolved. On reviewing any complaint referred to it, the PAC may authorize a prosecution, order further investigation or authorize an alternative resolution such as an Invitation to Attend. The Investigations Department has a specialized team that investigates allegations of real estate and mortgage fraud and is responsible for the investigation of unauthorized practice cases and good character cases in admission matters.

It is expected that in 2014, the department will receive 1,250 new complaints and the number of new cases coming into Investigations in 2015 is anticipated to be around 1,300 with 1,330 completions. The department is continuing to receive more than expected complaints of mortgage fraud.

**Investigations - Input / Output By Years**



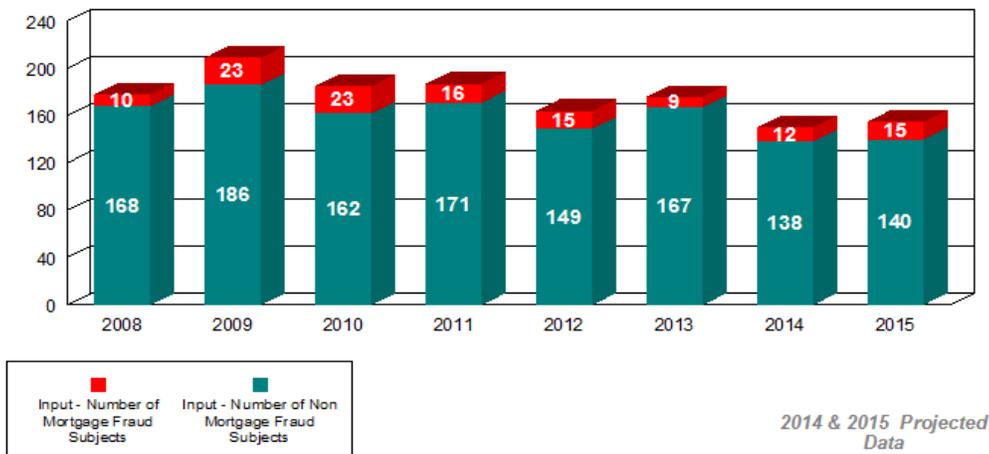
2014 & 2015 Projected Data

**(d) Discipline Department**

Discipline counsel represent the Law Society before Hearing and Appeal Panels and in the courts when appeals are taken from the decisions of these panels. The department is responsible for the prosecution of a variety of matters including those concerning licensee conduct, capacity and competency as well as applications of various types for a license.

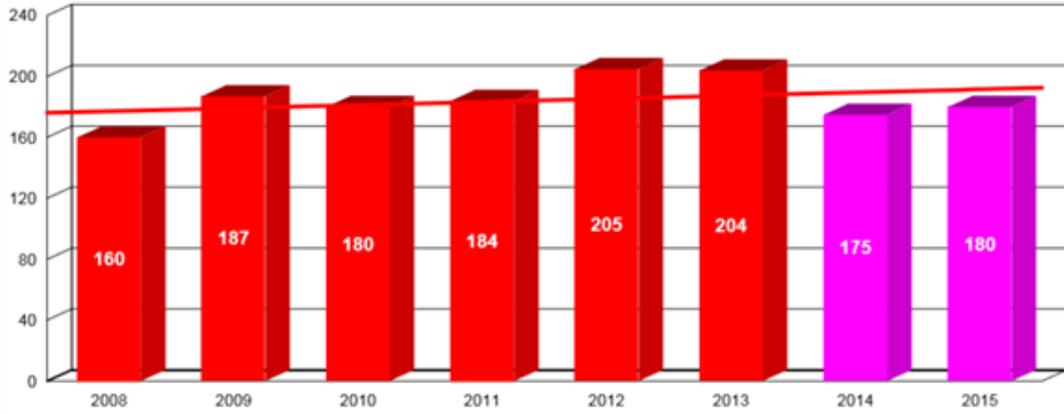
The input of cases into the department in 2013 was higher than expected for non-mortgage cases but lower for mortgage fraud (expected cases against 12 licensees/applicants but received only 9). Given the input to date and the cases Investigations has projected to transfer to Discipline in the remainder of 2014, it is expected that there will be 12 new mortgage fraud matters and 123 non-mortgage fraud matters transferred into Discipline in 2014. The projected numbers for 2015 are based, in part, on the increase in cases into Investigations in 2013.

**Discipline Input by Subjects<sup>2</sup> - Mortgage Fraud vs. Non Mortgage Fraud subjects**



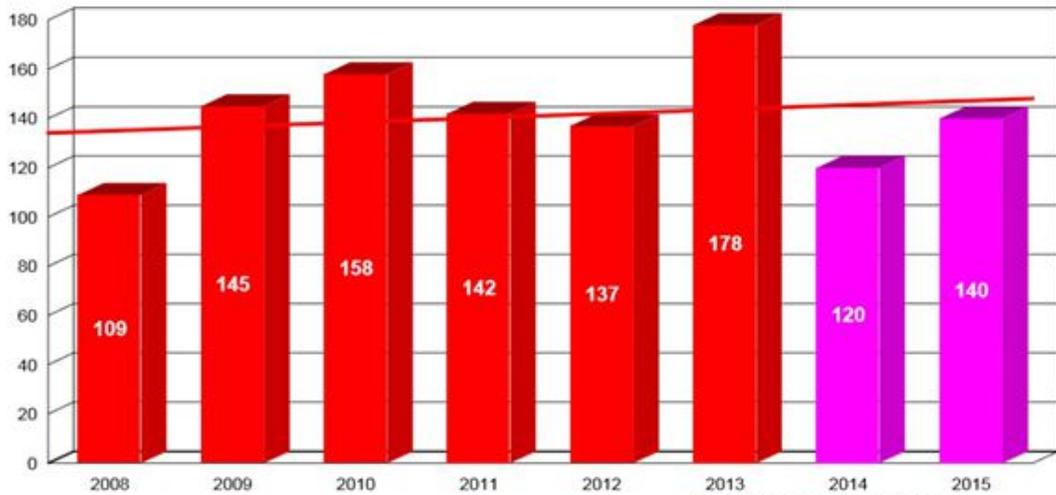
<sup>2</sup> Note that subjects referred to Discipline at different times are considered different subjects.

**Discipline: Inventory (by Licensees/Applicants) by Year**  
(Graph includes outside counsel assigned cases)



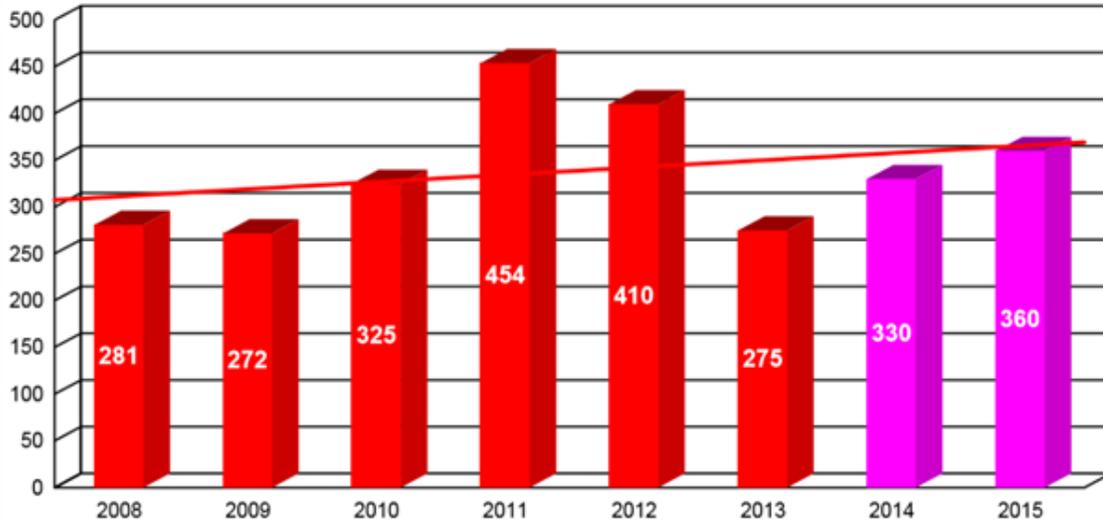
2014 & 2015 projected

**Discipline: Authorized Applications to Commence a Proceeding**



2014 & 2015 Projected Data

**Total Hearing Days Before Hearing and Appeal Panels\***  
by calendar year – includes outside counsel cases



*2014 & 2015 - Projected Data*

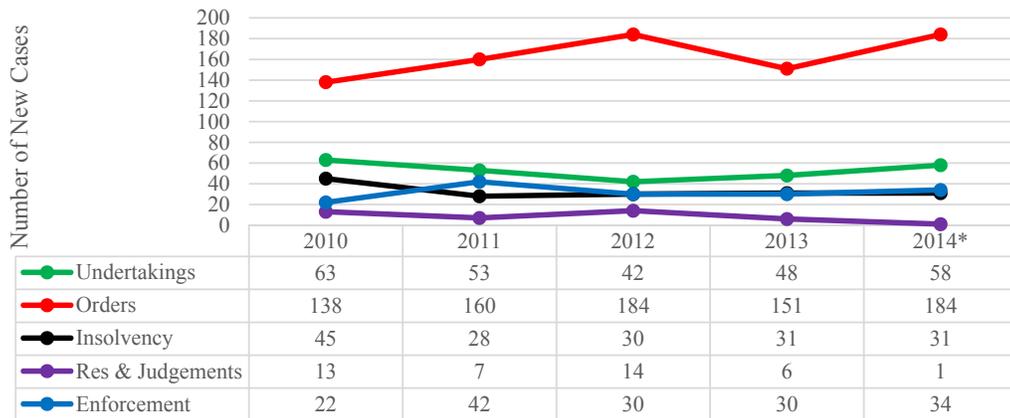
\* Note that this graph understates actual counsel time committed to hearings as it does not include hearings of motions before the hearing panel, arguments with respect to adjournments, and PMC/AMC attendances. Therefore in addition to the hearing days noted, counsel attend PMC which is held every two weeks (26 per year) and typically does not complete until noon. Additional PMC dates have been scheduled on a regular basis to accommodate growing hearing activity.

**(e) Monitoring & Enforcement Department**

This department is responsible for the enforcement of Hearing Panel orders including collecting costs orders, monitoring compliance by licensees of undertakings. The department also monitors reported bankruptcies and enforces judgments or security obtained by or assigned to the Compensation Fund and responds to all public regulatory inquiry calls requesting information concerning a licensee’s current practice restrictions and current and past discipline history. The department is responsible to report on regulatory information to the Federal and Provincial Judicial Appointments Committee.

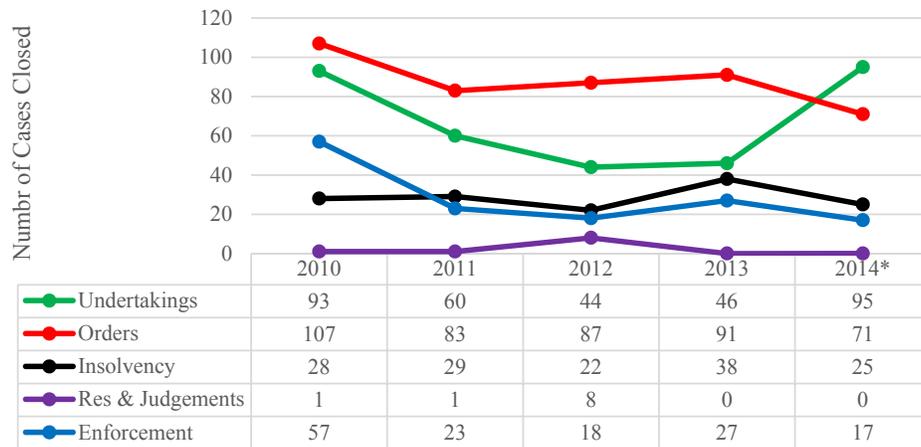
The inventory in 2014 is anticipated to increase from 2013. The department has noticed an increase (approximately 17%) in the number of public inquiries received in the first half of 2014 compared with 2013. In the first half of 2013, the department received 2,233 inquiries (about 2,616 licensees) whereas in the first half of 2014, received 2,602 inquiries (about 3,138 licensees).

**Input of Cases in M&E, by Years**



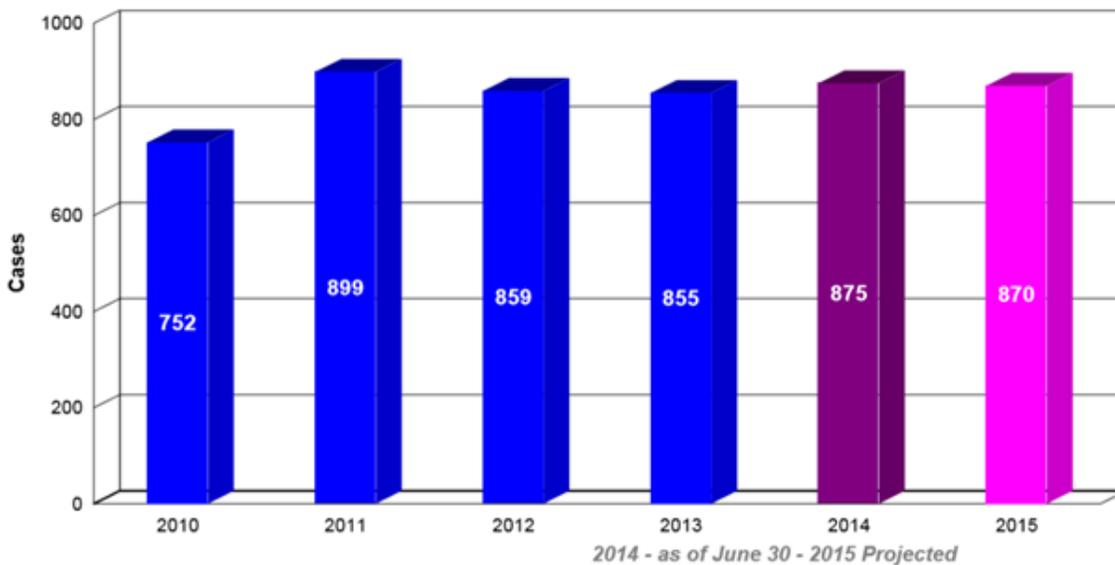
\*projected to December 31

**Output of Cases in M&E, by Years**



\*projected to December 31

Inventory in M&E, by Year



In addition to its active inventory, M&E monitors undertakings and orders which are in abeyance. While these undertakings and orders are not restrictive and do not require active monitoring, they continue to bind the licensees affected.

**(f) Office of the Executive Director**

The responsibility of the Executive Director is to oversee all departments within the Division including budget, staffing, technology, issue management and case process including an effective and timely complaints process, and appropriate risk management. This includes coordination and liaison with other divisions of the Law Society and external parties, communications both within the outside the division, development of policy and rule amendment proposals, oversight of case process including the management of significant investigations and prosecutions, and resource management. The Executive Director reports to the Professional Regulation Committee and supports work of Convocation as necessary on strategic initiatives in licensee regulation. Staff in the Office of the Executive Director have responsibility for business process management, policy matters, budget management and communications.

As of 2014, the Office of the Executive Director includes the Disclosure Unit as part of the process of approvals in preparation for the Proceedings Authorization Committee.

**(g) Case Management**

This department's main responsibility is the oversight of Professional Regulation's case management, its templates and processes, and the tracking of caseloads. The Integrated Regulatory Information System ("IRIS"), is the key tool for the department in carrying out its case management work.

More specifically, the department is responsible for: the development of qualitative analysis and recommendations regarding file handling, issue management, work process and procedural improvements. The department develops reports for all production areas and evaluates casework results to determine whether targets are met as required, and that quality standards are met. Case Management is also responsible for various divisional projects, including the Discipline History Project and the Reasons Analysis Project.

**(h) Trustee Services**

Trustee Services responds in situations where a lawyer has abandoned his/her practice or is unable to practise due to serious health problems, or where there are regulatory issues such as a suspension or revocation of licence. Trustee Services may provide informal support, may negotiate an informal, voluntary trusteeship, or may apply for a formal trusteeship of the practice under the *Law Society Act*. The department also provides information and assistance to lawyers and their personal representatives who are closing their practices. Trustee Services is also responsible for the administration of the Unclaimed Trust Fund Program. This program enables lawyers to submit unclaimed trust funds that they have held for at least two years to the Law Society and allows members of the public to make claims for these funds.

Trustee Services has seen growth in the volume of trusteeships as well as in other activities and in the complexity of the work performed. At least some of this is attributable to an aging profession, in which some licensees have not made adequate provision for succession planning.

The following statistics show a greater number of active formal trusteeships, as well as a higher volume of voluntary trusteeships.

<b>TS Active Files, as at August 31<sup>st</sup></b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Formal Trusteeship	28	33	42
Voluntary Trusteeship	14	9	13
Information Services	17	8	17
TS Assessment	14	9	13

<b>TS Files Opened in a 1-year period (Sept 1 to Aug 31)</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Formal Trusteeship	19	24	27
Voluntary Trusteeship	7	6	12
Information Services	37	17	29
TS Assessment	35	27	22

<b>Additional TS Stats (1-year period, Sept 1 to Aug 31)</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Boxes Received	1,302	2,696	2,128
Client Requests Closed	1,659	1,763	1,593

#### **(i) Compensation Fund**

This fund receives and processes claims from clients who have lost money because of a lawyer's or paralegal's dishonesty. The Fund depends entirely on the lawyer and paralegal fee levies. Staff receive claims and assess their merits based on a set of Guidelines approved by Convocation. The maximum compensation payable under the Guidelines is \$150,000 to any one claimant for claims involving lawyers and \$10,000 per claimant for claims involving paralegals. The per claimant limit is currently under review.

As noted above, the overall workload for the Compensation Fund has increased, with the number of claims currently on pace to exceed the recent average of 150 per year by as much as 25-30%.

#### **(j) The Office of the Complaints Resolution Commissioner**

Where a complaint is closed by Law Society staff as unfounded following an investigation of its merits, the complainant may ask for a review of that decision by the Complaints Resolution Commissioner. The Office of the Complaints Resolution Commissioner was created by the *Law Society Act* and By-Law 11. The Commissioner receives all cases where a complainant requests a review and holds meetings with the complainants. At the end of the process, the Commissioner may confirm the Law Society decision or recommend further investigation. The Commissioner may also make informal recommendations for improved process. The current Complaints Resolution Commissioner is Bernard Morrow.

### **OUTSIDE COUNSEL**

The two budget lines for outside counsel retainers will continue to be required to support the need for external counsel to take on and complete complex or extended discipline matters as well as those matters assigned to outside counsel on fixed retainer. The

budget for discipline prosecutions was reduced for 2014 due to the apparent completion of several major matters in 2013. However, with the resurrection of major cases in 2014, there was in fact an increased need for outside counsel budget and this need will continue into 2015. The full breakdown is as set out below.

<b>Category</b>	<b>2014 budget</b>	<b>2015 request</b>	<b>Explanation</b>
UAP	150,000	150,000	Expenditures in this category are expected to remain stable in 2015.
Mortgage fraud experts opinions and testimony	200,000	200,000	Expenditures in this category are expected to remain stable in 2015.
Expert opinions and testimony other than mortgage fraud	150,000	150,000	Expenditures in this category are expected to remain stable in 2015.
Discipline prosecutions	850,000	850,000	This category is utilized for the completion of large or complex matters, appeals and for reduced rate retainers in mortgage fraud cases which cost approximately \$50,000 each. Expenditures in this category are expected to remain stable in 2015.
Bencher complaints	100,000	100,000	Amounts expended fluctuate from year to year and are unpredictable however it is prudent to maintain funding in this line as there have been bencher issues that required significant retainers.
Investigations and other retainers	200,000	200,000	Expenditures in this category are expected to remain stable in 2015.
<b>TOTALS</b>	<b>1,650,000</b>	<b>1,650,000</b>	

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Office of the Executive Director**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	6.0	6.0
2	<b>Total Employee Count</b>	<b>6.0</b>	<b>6.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
3	005-011-0001-0001-30000-000010 SALARIES PERMANENT	930,900	944,800
4	005-011-0001-0001-30010-000030 SALARIES TEMPORARY	3,000	3,000
5	005-011-0001-0001-30030-000000 EMPLOYEE BENEFITS	115,600	116,600
6	<b>Total Salaries and Benefits</b>	<b>1,049,500</b>	<b>1,064,400</b>
<b>Department Operating Expenses</b>			
7	005-011-0001-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	9,000	9,000
8	005-011-0001-0001-31010-000000 COURSES AND CONFERENCES	55,000	70,000
9	005-011-0001-0001-31020-000000 PUBLICATIONS	500	500
10	005-011-0001-0001-31030-000000 OFFICE EXPENSE	13,000	13,000
11	005-011-0001-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
12	005-011-0001-0001-31050-000000 COURIER SERVICE/POSTAGE	3,000	3,000
13	005-011-0001-0001-31060-000000 PHOTOCOPY EXPENSE	17,500	17,500
14	005-011-0001-0001-31070-000000 STAFF AND TRAVEL	35,000	40,000
15	005-011-0001-0001-31080-000000 PRINTING AND STATIONERY	12,000	12,000
16	005-011-0001-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
17	005-011-0001-0001-31090-000010 WIRELESS DEVICES	5,000	5,000
18	005-011-0001-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,800	1,800
19	005-011-0001-0001-31130-000000 MISCELLANEOUS	4,600	5,200
20	<b>Total Department Operating Expenses</b>	<b>157,900</b>	<b>178,500</b>
21	<b>Total Salaries and Operating Expenses</b>	<b>1,207,400</b>	<b>1,242,900</b>
<b>Program Expenses</b>			
22	005-011-0001-0001-33015-000000 ONTARIO LAND REGISTRY	100,000	100,000
23	005-011-0001-0001-33180-000000 CONSULTING FEES REG	100,000	125,000
24	005-011-0001-0001-33210-000000 COUNSEL FEES	1,200,000	1,200,000
25	005-011-0001-0001-33210-000100 EXPERT OPINIONS AND WITNESSES	450,000	450,000
26	005-011-0001-0001-33210-000110 SETTLEMENTS AND LEGAL COSTS	150,000	150,000
27	005-011-0001-0001-34210-000000 PROTECTION/SECURITY SERVICES	29,000	5,300
28	<b>Total Program Expenses</b>	<b>2,029,000</b>	<b>2,030,300</b>
29	<b>Total Variable Expenses</b>	<b>3,236,400</b>	<b>3,273,200</b>
30	<b>Net Expenses</b>	<b>3,236,400</b>	<b>3,273,200</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Disclosure Unit & Risk Strategy**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1	Permanent	3.0
2	Permanent Part-Time	-
<b>3</b>	<b>Total Employee Count</b>	<b>3.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4	005-011-0006-0001-30000-000010 SALARIES PERMANENT	282,600
5	005-011-0006-0001-30030-000000 EMPLOYEE BENEFITS	40,100
<b>6</b>	<b>Total Salaries and Benefits</b>	<b>322,700</b>
<b>Department Operating Expenses</b>		
7	005-011-0006-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	1,500
8	005-011-0006-0001-31010-000000 COURSES AND CONFERENCES	2,000
9	005-011-0006-0001-31020-000000 PUBLICATIONS	2,000
10	005-011-0006-0001-31030-000000 OFFICE EXPENSE	200
11	005-011-0006-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	700
12	005-011-0006-0001-31050-000000 COURIER SERVICE/POSTAGE	-
13	005-011-0006-0001-31060-000000 PHOTOCOPY EXPENSE	223,300
14	005-011-0006-0001-31070-000000 STAFF AND TRAVEL	1,000
15	005-011-0006-0001-31080-000000 PRINTING AND STATIONERY	2,000
16	005-011-0006-0001-31090-000000 TELEPHONE SERVICES	200
17	005-011-0006-0001-31090-000010 WIRELESS DEVICES	700
18	005-011-0006-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,000
19	005-011-0006-0001-31130-000000 MISCELLANEOUS	100
<b>20</b>	<b>Total Department Operating Expenses</b>	<b>234,700</b>
<b>21</b>	<b>Total Salaries and Operating Expenses</b>	<b>557,400</b>
<b>22</b>	<b>Total Variable Expenses</b>	<b>557,400</b>
<b>23</b>	<b>Net Expenses</b>	<b>557,400</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Case Management**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	5.0	5.0
2 <b>Total Employee Count</b>	<b>5.0</b>	<b>5.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-011-0001-0002-30000-000010 SALARIES PERMANENT	493,900	500,700
4 005-011-0001-0002-30030-000000 EMPLOYEE BENEFITS	75,000	73,300
5 <b>Total Salaries and Benefits</b>	<b>568,900</b>	<b>574,000</b>
<b>Department Operating Expenses</b>		
6 005-011-0001-0002-31000-000000 PROFESSIONAL MEMBERSHIPS	3,000	3,000
7 005-011-0001-0002-31010-000000 COURSES AND CONFERENCES	12,000	12,000
8 005-011-0001-0002-31020-000000 PUBLICATIONS	300	300
9 005-011-0001-0002-31030-000000 OFFICE EXPENSE	1,000	1,000
10 005-011-0001-0002-31040-000000 FRENCH LANGUAGE TRANSLATION	300	300
11 005-011-0001-0002-31050-000000 COURIER SERVICE/POSTAGE	100	100
12 005-011-0001-0002-31060-000000 PHOTOCOPY EXPENSE	1,000	1,000
13 005-011-0001-0002-31070-000000 STAFF AND TRAVEL	1,000	1,000
14 005-011-0001-0002-31080-000000 PRINTING AND STATIONERY	500	500
15 005-011-0001-0002-31090-000000 TELEPHONE SERVICES	300	300
16 005-011-0001-0002-31090-000010 WIRELESS DEVICES	4,000	4,000
17 005-011-0001-0002-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,500	1,500
18 005-011-0001-0002-31130-000000 MISCELLANEOUS	500	800
19 <b>Total Department Operating Expenses</b>	<b>25,500</b>	<b>25,800</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>594,400</b>	<b>599,800</b>
<b>Program Expenses</b>		
21 005-011-0001-0002-32010-000010 DOCUMENT MANAGEMENT PROJECT	101,000	102,000
22 <b>Total Program Expenses</b>	<b>101,000</b>	<b>102,000</b>
23 <b>Total Variable Expenses</b>	<b>695,400</b>	<b>701,800</b>
24 <b>Net Expenses</b>	<b>695,400</b>	<b>701,800</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Investigations**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	55.0	54.0
2 Permanent Part-Time	3.0	3.0
3 Contract	1.0	-
<b>4 Total Employee Count</b>	<b>59.0</b>	<b>57.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5 005-011-0002-0001-30000-000010 SALARIES PERMANENT	5,239,600	5,280,700
6 005-011-0002-0001-30010-000010 SALARIES PART TIME	146,600	148,500
7 005-011-0002-0001-30010-000020 SALARIES CONTRACT	58,500	-
8 005-011-0002-0001-30030-000000 EMPLOYEE BENEFITS	824,600	827,000
<b>9 Total Salaries and Benefits</b>	<b>6,269,300</b>	<b>6,256,200</b>
<b>Department Operating Expenses</b>		
10 005-011-0002-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	45,000	45,000
11 005-011-0002-0001-31010-000000 COURSES AND CONFERENCES	30,000	30,000
12 005-011-0002-0001-31020-000000 PUBLICATIONS	4,000	4,000
13 005-011-0002-0001-31030-000000 OFFICE EXPENSE	50,000	45,000
14 005-011-0002-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	4,000	4,000
15 005-011-0002-0001-31050-000000 COURIER SERVICE/POSTAGE	20,000	20,000
16 005-011-0002-0001-31060-000000 PHOTOCOPY EXPENSE	335,000	111,700
17 005-011-0002-0001-31070-000000 STAFF AND TRAVEL	12,000	12,000
18 005-011-0002-0001-31080-000000 PRINTING AND STATIONERY	15,000	15,000
19 005-011-0002-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
20 005-011-0002-0001-31090-000010 WIRELESS DEVICES	44,000	44,000
21 005-011-0002-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	17,100	16,100
22 005-011-0002-0001-31130-000000 MISCELLANEOUS	500	6,300
<b>23 Total Department Operating Expenses</b>	<b>577,600</b>	<b>354,100</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>6,846,900</b>	<b>6,610,300</b>
<b>Program Expenses</b>		
25 005-011-0002-0001-33505-000000 MEDICAL REPORTS/EXAMS	20,000	20,000
26 005-011-0002-0001-33510-000000 OTHER EXPENSE REPORTS	7,500	7,500
27 005-011-0002-0001-33685-000010 STORAGE/RECORDS-INVESTIGATIONS	30,000	30,000
28 005-011-0002-0001-33735-000000 APPLICATION & DOCUMENT FEES	2,000	2,000
29 005-011-0002-0001-33820-000000 TITLE DOCUMENTS	45,000	45,000
30 005-011-0002-0001-33825-000000 TRANSCRIPTS	50,000	50,000
31 005-011-0002-0001-33880-000000 TRAVEL-INVESTIGATIONS ACTIVITY	85,000	85,000
32 005-011-0002-0001-33785-000000 TELECOMMUTING	14,000	16,500
<b>33 Total Program Expenses</b>	<b>253,500</b>	<b>256,000</b>
<b>34 Total Variable Expenses</b>	<b>7,100,400</b>	<b>6,866,300</b>
<b>35 Net Expenses</b>	<b>7,100,400</b>	<b>6,866,300</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Complaints Resolution**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	23.0	23.0
2 Permanent Part-Time	1.0	1.0
<b>3 Total Employee Count</b>	<b>24.0</b>	<b>24.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4 005-011-0003-0001-30000-000010 SALARIES PERMANENT	2,167,200	2,199,600
5 005-011-0003-0001-30010-000010 SALARIES PART TIME	81,300	82,600
6 005-011-0003-0001-30030-000000 EMPLOYEE BENEFITS	326,600	326,100
<b>7 Total Salaries and Benefits</b>	<b>2,575,100</b>	<b>2,608,300</b>
<b>Department Operating Expenses</b>		
8 005-011-0003-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	33,000	31,000
9 005-011-0003-0001-31010-000000 COURSES AND CONFERENCES	14,000	14,000
10 005-011-0003-0001-31020-000000 PUBLICATIONS	500	500
11 005-011-0003-0001-31030-000000 OFFICE EXPENSE	7,000	7,000
12 005-011-0003-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	5,000	2,000
13 005-011-0003-0001-31050-000000 COURIER SERVICE/POSTAGE	25,000	25,000
14 005-011-0003-0001-31060-000000 PHOTOCOPY EXPENSE	55,000	55,000
15 005-011-0003-0001-31070-000000 STAFF AND TRAVEL	6,000	6,000
16 005-011-0003-0001-31080-000000 PRINTING AND STATIONERY	10,500	10,500
17 005-011-0003-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
18 005-011-0003-0001-31090-000010 WIRELESS DEVICES	1,000	1,000
19 005-011-0003-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	7,600	7,600
20 005-011-0003-0001-31130-000000 MISCELLANEOUS	500	2,200
<b>21 Total Department Operating Expenses</b>	<b>166,100</b>	<b>162,800</b>
<b>22 Total Salaries and Operating Expenses</b>	<b>2,741,200</b>	<b>2,771,100</b>
<b>Program Expenses</b>		
23 005-011-0003-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	18,000	18,000
24 005-011-0003-0001-33825-000000 TRANSCRIPTS	7,000	10,000
25 005-011-0003-0001-33785-000000 TELECOMMUTING	2,400	2,400
26 005-011-0003-0001-33505-000000 MEDICAL REPORTS/EXAMS	5,000	5,000
27 005-011-0003-0001-33880-000000 TRAVEL - INVESTIGATIONS ACTIVITY	2,000	4,000
<b>28 Total Program Expenses</b>	<b>34,400</b>	<b>39,400</b>
<b>29 Total Variable Expenses</b>	<b>2,775,600</b>	<b>2,810,500</b>
<b>30 Net Expenses</b>	<b>2,775,600</b>	<b>2,810,500</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Complaints Resolution Commissioner**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	3.0	3.0
2 Permanent Part-Time	1.0	1.0
<b>3 Total Employee Count</b>	<b>4.0</b>	<b>4.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4 005-011-0003-0003-30000-000010 SALARIES PERMANENT	237,600	242,700
5 005-011-0003-0003-30010-000010 SALARIES PART TIME	124,600	126,500
6 005-011-0003-0003-30030-000000 EMPLOYEE BENEFITS	60,700	61,500
<b>7 Total Salaries and Benefits</b>	<b>422,900</b>	<b>430,700</b>
<b>Department Operating Expenses</b>		
8 005-011-0003-0003-31000-000000 PROFESSIONAL MEMBERSHIPS	4,300	4,300
9 005-011-0003-0003-31010-000000 COURSES AND CONFERENCES	1,500	1,500
10 005-011-0003-0003-31020-000000 PUBLICATIONS	500	500
11 005-011-0003-0003-31030-000000 OFFICE EXPENSE	2,000	1,500
12 005-011-0003-0003-31040-000000 FRENCH LANGUAGE TRANSLATION	2,500	2,500
13 005-011-0003-0003-31050-000000 COURIER SERVICE/POSTAGE	3,000	3,000
14 005-011-0003-0003-31060-000000 PHOTOCOPY EXPENSE	1,000	1,000
15 005-011-0003-0003-31070-000000 STAFF AND TRAVEL	2,300	2,300
16 005-011-0003-0003-31080-000000 PRINTING AND STATIONERY	2,000	3,000
17 005-011-0003-0003-31090-000000 TELEPHONE SERVICES	500	500
18 005-011-0003-0003-31090-000010 WIRELESS DEVICES	2,000	2,000
19 005-011-0003-0003-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,200	1,200
20 005-011-0003-0003-31130-000000 MISCELLANEOUS	300	500
<b>21 Total Department Operating Expenses</b>	<b>23,100</b>	<b>23,800</b>
<b>22 Total Salaries and Operating Expenses</b>	<b>446,000</b>	<b>454,500</b>
<b>Program Expenses</b>		
23 005-011-0003-0003-33400-000000 HEARING COSTS	5,000	5,000
24 005-011-0003-0003-33400-000060 BILINGUAL HEARING COUNSEL	15,000	15,000
25 005-011-0003-0003-34070-000000 COMMISSIONER EXPENSES	152,200	153,900
<b>26 Total Program Expenses</b>	<b>172,200</b>	<b>173,900</b>
<b>27 Total Variable Expenses</b>	<b>618,200</b>	<b>628,400</b>
<b>28 Net Expenses</b>	<b>618,200</b>	<b>628,400</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Trustee Services**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	12.0	12.0
2 <b>Total Employee Count</b>	<b>12.0</b>	<b>12.0</b>
<b>REVENUES:</b>		
3 005-011-0003-0002-42050-000010 COST RECOVERY	200,000	200,000
4 005-011-0003-0002-42190-000000 FILE RETRIEVAL FEES	600	600
5 <b>Total Revenues</b>	<b>200,600</b>	<b>200,600</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
6 005-011-0003-0002-30000-000010 SALARIES PERMANENT	1,058,900	956,000
7 005-011-0003-0002-30030-000000 EMPLOYEE BENEFITS	169,600	148,100
8 <b>Total Salaries and Benefits</b>	<b>1,228,500</b>	<b>1,104,100</b>
<b>Department Operating Expenses</b>		
9 005-011-0003-0002-31000-000000 PROFESSIONAL MEMBERSHIPS	7,000	6,000
10 005-011-0003-0002-31010-000000 COURSES AND CONFERENCES	7,000	6,000
11 005-011-0003-0002-31020-000000 PUBLICATIONS	500	500
12 005-011-0003-0002-31030-000000 OFFICE EXPENSE	16,000	16,000
13 005-011-0003-0002-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
14 005-011-0003-0002-31050-000000 COURIER SERVICE/POSTAGE	6,000	6,000
15 005-011-0003-0002-31060-000000 PHOTOCOPY EXPENSE	8,500	8,500
16 005-011-0003-0002-31070-000000 STAFF AND TRAVEL	2,000	2,000
17 005-011-0003-0002-31080-000000 PRINTING AND STATIONERY	3,500	3,500
18 005-011-0003-0002-31090-000000 TELEPHONE SERVICES	500	500
19 005-011-0003-0002-31090-000010 WIRELESS DEVICES	3,000	2,300
20 005-011-0003-0002-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,700	3,700
21 005-011-0003-0002-31130-000000 MISCELLANEOUS	500	1,100
22 <b>Total Department Operating Expenses</b>	<b>58,700</b>	<b>56,600</b>
23 <b>Total Salaries and Operating Expenses</b>	<b>1,287,200</b>	<b>1,160,700</b>
<b>Program Expenses</b>		
24 005-011-0003-0002-33560-000000 OUTSIDE TRUSTEE COSTS	25,000	25,000
25 005-011-0003-0002-33685-000020 STORAGE/RECORDS MANAGEMENT	55,000	55,000
26 005-011-0003-0002-33735-000000 APPLICATION & DOCUMENT FEES	5,000	5,000
27 005-011-0003-0002-33880-000010 TRAVEL - TRUSTEESHIPS	10,000	9,000
28 005-011-0003-0002-33735-000010 SEARCHES	3,000	3,000
29 005-011-0003-0002-33335-000000 SCANNING & REINDEXING	12,000	12,000
30 005-011-0003-0002-33180-000000 CONSULTING	30,000	31,400
31 <b>Total Program Expenses</b>	<b>140,000</b>	<b>140,400</b>
32 <b>Total Variable Expenses</b>	<b>1,427,200</b>	<b>1,301,100</b>
33 <b>Net Expenses</b>	<b>1,226,600</b>	<b>1,100,500</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Discipline**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	32.0	32.0
2 Permanent Part-Time	3.0	3.0
3 Contract	1.0	1.0
<b>4 Total Employee Count</b>	<b>36.0</b>	<b>36.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5 005-011-0004-0001-30000-000010 SALARIES PERMANENT	4,066,600	4,137,900
6 005-011-0004-0001-30010-000010 SALARIES PART TIME	112,400	107,400
7 005-011-0004-0001-30010-000020 SALARIES CONTRACT	66,100	66,100
8 005-011-0004-0001-30030-000000 EMPLOYEE BENEFITS	584,100	596,500
<b>9 Total Salaries and Benefits</b>	<b>4,829,200</b>	<b>4,907,900</b>
<b>Department Operating Expenses</b>		
10 005-011-0004-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	55,000	52,000
11 005-011-0004-0001-31010-000000 COURSES AND CONFERENCES	40,000	40,000
12 005-011-0004-0001-31020-000000 PUBLICATIONS	20,000	20,000
13 005-011-0004-0001-31030-000000 OFFICE EXPENSE	25,000	25,000
14 005-011-0004-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	1,000	1,000
15 005-011-0004-0001-31050-000000 COURIER SERVICE/POSTAGE	22,000	22,000
16 005-011-0004-0001-31060-000000 PHOTOCOPY EXPENSE	70,000	70,000
17 005-011-0004-0001-31070-000000 STAFF AND TRAVEL	12,000	12,000
18 005-011-0004-0001-31080-000000 PRINTING AND STATIONERY	47,500	47,500
19 005-011-0004-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
20 005-011-0004-0001-31090-000010 WIRELESS DEVICES	10,000	10,000
21 005-011-0004-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	10,100	10,100
22 005-011-0004-0001-31130-000000 MISCELLANEOUS	500	3,600
<b>23 Total Department Operating Expenses</b>	<b>314,100</b>	<b>314,200</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>5,143,300</b>	<b>5,222,100</b>
<b>Program Expenses</b>		
25 005-011-0004-0001-33055-000000 ATTENDANCE MONIES/TRAVEL	30,000	30,000
26 005-011-0004-0001-33505-000000 MEDICAL REPORTS/EXAMS	50,000	40,000
27 005-011-0004-0001-33615-000000 PROCESS SERVERS	10,000	10,000
28 005-011-0004-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	15,000	15,000
29 005-011-0004-0001-33735-000000 SEARCHES AND DOCUMENTS	12,000	12,000
30 005-011-0004-0001-33825-000000 TRANSCRIPTS	85,000	95,000
31 005-011-0004-0001-33830-000000 TRAVEL DISCIPLINE	15,000	13,000
32 005-011-0004-0001-33785-000000 TELECOMMUTING	1,500	3,700
<b>33 Total Program Expenses</b>	<b>218,500</b>	<b>218,700</b>
<b>34 Total Variable Expenses</b>	<b>5,361,800</b>	<b>5,440,800</b>
<b>35 Net Expenses</b>	<b>5,361,800</b>	<b>5,440,800</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Intake**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	10.0	10.0
2 <b>Total Employee Count</b>	<b>10.0</b>	<b>10.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-011-0007-0001-30000-000010 SALARIES PERMANENT	929,700	944,100
4 005-011-0007-0001-30030-000000 EMPLOYEE BENEFITS	130,400	142,100
5 <b>Total Salaries and Benefits</b>	<b>1,060,100</b>	<b>1,086,200</b>
<b>Department Operating Expenses</b>		
6 005-011-0007-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	11,500	11,500
7 005-011-0007-0001-31010-000000 COURSES AND CONFERENCES	3,000	3,000
8 005-011-0007-0001-31020-000000 PUBLICATIONS	500	500
9 005-011-0007-0001-31030-000000 OFFICE EXPENSE	7,500	7,500
10 005-011-0007-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
11 005-011-0007-0001-31050-000000 COURIER SERVICE/POSTAGE	2,500	2,500
12 005-011-0007-0001-31060-000000 PHOTOCOPY EXPENSE	2,000	2,000
13 005-011-0007-0001-31070-000000 STAFF AND TRAVEL	2,000	2,000
14 005-011-0007-0001-31080-000000 PRINTING AND STATIONERY	6,000	6,000
15 005-011-0007-0001-31090-000000 TELEPHONE SERVICES	500	500
16 005-011-0007-0001-31090-000010 WIRELESS BUDGET	1,200	1,200
17 005-011-0007-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,000	3,000
18 005-011-0007-0001-31130-000000 MISCELLANEOUS	900	1,300
19 <b>Total Department Operating Expenses</b>	<b>41,100</b>	<b>41,500</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>1,101,200</b>	<b>1,127,700</b>
<b>Program Expenses</b>		
21 005-011-0007-0001-33685-000000 STORAGE/RECORDS	2,500	2,500
22 <b>Total Program Expenses</b>	<b>2,500</b>	<b>2,500</b>
23 <b>Total Variable Expenses</b>	<b>1,103,700</b>	<b>1,130,200</b>
24 <b>Net Expenses</b>	<b>1,103,700</b>	<b>1,130,200</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Monitoring & Enforcement**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	4.0	4.0
2 Permanent Part-Time	1.0	1.0
<b>3 Total Employee Count</b>	<b>5.0</b>	<b>5.0</b>
<b>REVENUES:</b>		
4 005-011-0006-0001-42190-000000 OTHER COSTS RECOVERED	200,000	400,000
<b>5 Total Revenues</b>	<b>200,000</b>	<b>400,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
6 005-011-0006-0001-30000-000010 SALARIES PERMANENT	399,200	406,200
7 005-011-0006-0001-30010-000010 SALARIES PART TIME	40,000	40,600
8 005-011-0006-0001-30030-000000 EMPLOYEE BENEFITS	61,800	62,800
<b>9 Total Salaries and Benefits</b>	<b>501,000</b>	<b>509,600</b>
<b>Department Operating Expenses</b>		
10 005-011-0006-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	5,000	5,000
11 005-011-0006-0001-31010-000000 COURSES AND CONFERENCES	2,000	2,000
12 005-011-0006-0001-31020-000000 PUBLICATIONS	500	500
13 005-011-0006-0001-31030-000000 OFFICE EXPENSE	2,000	2,000
14 005-011-0006-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
15 005-011-0006-0001-31050-000000 COURIER SERVICE/POSTAGE	1,500	1,500
16 005-011-0006-0001-31060-000000 PHOTOCOPY EXPENSE	1,500	1,500
17 005-011-0006-0001-31070-000000 STAFF AND TRAVEL	1,000	1,000
18 005-011-0006-0001-31080-000000 PRINTING AND STATIONERY	2,000	2,000
19 005-011-0006-0001-31090-000000 TELEPHONE SERVICES	500	500
20 005-011-0006-0001-31090-000010 WIRELESS DEVICES	2,500	2,500
21 005-011-0006-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,800	1,800
22 005-011-0006-0001-31130-000000 MISCELLANEOUS	700	900
<b>23 Total Department Operating Expenses</b>	<b>21,500</b>	<b>21,700</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>522,500</b>	<b>531,300</b>
<b>Program Expenses</b>		
25 005-011-0006-0001-33685-000000 STORAGE/RECORDS	500	500
26 005-011-0006-0001-33735-000000 APPLICATION & DOCUMENT FEES	25,000	25,000
27 005-011-0006-0001-33825-000000 TRANSCRIPTS	500	500
28 005-011-0006-0001-33830-000000 TRAVEL	3,000	5,000
29 005-011-0006-0001-33505-000000 MEDICAL ASSESSMENTS	15,000	13,400
<b>30 Total Program Expenses</b>	<b>44,000</b>	<b>44,400</b>
<b>31 Total Variable Expenses</b>	<b>566,500</b>	<b>575,700</b>
<b>32 Net Expenses</b>	<b>366,500</b>	<b>175,700</b>

## LAW SOCIETY OF UPPER CANADA 2015 BUDGET DETAIL

### TRIBUNAL OFFICE 2015 BUDGET SUMMARY

#### Purpose

The Law Society Tribunal is an independent adjudicative tribunal within the Law Society of Upper Canada, consisting of staff and appointed adjudicators. It processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest.

#### Staff

There are 14 employees within the Tribunal of which 13 are full-time and one is part-time. Two are on contract. They are: Chair; Registrar & Sr. Counsel; Executive Assistant to the Chair; Sr. Counsel, Tribunal Chair (part-time, contract); Counsel; Publications Counsel (2); Administrator; Hearings Coordinator; Clerk to Tribunal (3); and Bilingual Clerk to Tribunal (2, with one being on contract). In addition, the assistance of an off-site contract for services Legal Editor is retained as needed.

The Tribunal is led by an independent non-bencher Chair. The Chair is responsible for the overall strategic direction, innovation, education and performance of the Tribunal in accordance with governing legislation, Convocation policy and current administrative law principles. Examples of recent work led by the Chair, together with assistance and input from Tribunal staff, Vice-Chairs and members, the Tribunal Implementation Working Group, Tribunal Committee and external stakeholders include:

- establishment of a Law Society Tribunal identity, mission statement and core values
- development of a new scheduling methodology for hearings and appeals
- implementation of a colleague draft review process for written reasons
- creation of a Tribunal member position description and evaluation proposal
- recruitment of skilled and diverse lay appointee adjudicators
- offering adjudicator education and training sessions and orientation sessions for newly appointed Tribunal members
- founding of the Chair's Practice Roundtable
- instituting standing meetings of proceeding management and pre-hearing conference adjudicators
- creation of a separate Law Society Tribunal website

In 2014, the Chair continued to mediate files, adjudicate numerous hearings and appeals and write the accompanying jurisprudence. He also represented the Law Society Tribunal and raised its profile to the administrative justice community through speaking engagements at several events and conferences.

The Registrar and Sr. Counsel is responsible for managing and evaluating the staff and performance of the Tribunal Office, deciding procedural matters and works extensively with the Chair to administer and enhance the Tribunal's work. The Chair, Registrar and

other counsel within the Tribunal provide legal and editorial advice to inform the work of the Tribunal and its jurisprudence, identify and examine issues requiring the attention of the Tribunal Implementation Working Group and Tribunal Committee, develop Rule amendments, practice directions, policy and Tribunal processes. In addition, Tribunal counsel create and implement Law Society Tribunal website content (Regulatory Notices, Current Hearings and Tribunal Orders and Dispositions), order summaries for publication in the *Ontario Reports*, media releases, case management logic and design and quarterly statistics.

The Administrator, Hearings Coordinator, Clerks and Executive Assistant to the Chair administer hearing and operational requirements of the Tribunal. Examples include:

- receipt, cataloguing and safekeeping of all public and non-public Tribunal file materials
- scheduling conferences, hearings, appeals and adjudicators
- securing hearing logistics – court reporter, interpreter, venue, videoconference service, catering and security
- clerking hearings
- preparation and delivery of tribunal orders
- release and publication of tribunal jurisprudence in the Canadian Legal Information Institute (CanLII) and QuickLaw databases
- facilitating communication between the parties and panels
- responding to requests for file materials or status from the parties, public and media
- maintenance of the electronic case management system and Tribunal process documents
- liaison to Tribunal members regarding Tribunal processes, events and communications from the Chair

### **Trends**

The Tribunal continues to manage a demanding caseload. At the end of the second quarter in 2014, the Tribunal had opened 71 files, 20% fewer files than the 89 files opened in the same time period of 2013. However, the Tribunal also closed 96 files, 39% more than the 69 files closed in the same time period of 2013.

As of the end of the second quarter of 2014, 217 hearings were scheduled compared to 189 for the same time period in 2013, an increase of 15%. This increase may be due to more motions and continuation dates being required for lengthy proceedings.

Although the same number of appeal files were opened in the first two quarters of 2014 and 2013, being 10, only 24 appeal hearings were scheduled to be heard during the second quarter of 2014 compared to 30 in the same time period of 2013, a 20% decrease. This decrease may be attributed to narrower issues being pursued on appeal that in turn require less hearing time.

A new scheduling process was created and launched in 2014. This innovative approach to scheduling hearings allows the Chair to assign panel chairs and panelists to ensure diversity of experience, topical knowledge and availability. The new scheduling process maximizes hearing date offerings and eliminates last minute adjudicator conflicts. At the second quarter of 2014, hearings were scheduled on 122 of the 125 days available or

98%, often with multiple hearings proceeding on the same calendar day with different panels. These statistics are similar to the 114 hearings scheduled on the 125 days available or 91% in the same time period of 2013.

Overall, the first two quarters of 2014 realized a decrease in activity before the proceeding management conference (PMC). The PMC dealt with 89 files resulting in 196 considerations, a decrease from the 102 files resulting in 253 considerations during the same time period in 2013. This decrease may be due to efforts to triage files through enhanced case management and dispute resolution at pre-hearing conferences (PHC). However, the Hearing Division experienced a 19% increase in file activity compared to the first two quarters of 2013. The Hearing Division dealt with 114 files by the end of the second quarter of 2014 resulting in 199 considerations by a hearing panel. During the same time period in 2013, 96 files were dealt with by the Hearing Panel resulting in 165 considerations. This increase may be related to the increased number of closed files dealt with by the Hearing Division in the first two quarters of 2014.

In first two quarters of 2014, the Law Society Tribunal produced more jurisprudence than in the same time period of 2013. In 2014, 94 written reasons and 49 oral reasons were produced compared to 72 written reasons and 40 oral reasons in 2013, an increase of 31% and 23%, respectively.

### **Operating and Program Expenses**

In 2014, the budgets of the Tribunal Chair and Tribunal Office were merged to represent the Tribunal's global budget. The Tribunal is not seeking any increase or decrease to its overall budget for 2015, with exception of the 1% inflationary provision. However, the Tribunal proposes to reallocate funds to better meet the needs of the Tribunal's operating and program expenses.

Reallocations are proposed to better reconcile the 2015 proposed budget with 2014 actual projected costs. Significant reallocations include increasing the operating expense of professional memberships and the program expenses of hearing reporters, miscellaneous hearing costs and adjudicator remuneration. Offsetting these increases are decreases to the proposed program expenses of transcripts and adjudicator education. The net result is no change in the overall budget requested for 2015.

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Tribunal**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	13.0	12.0
2 Contract	1.0	2.0
<b>3 Total Employee Count</b>	<b>14.0</b>	<b>14.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4 005-013-0063-0002-30000-000010 SALARIES PERMANENT	1,184,600	1,147,900
5 005-013-0063-0002-30010-000020 SALARIES CONTRACT	58,500	120,600
6 005-013-0063-0002-30030-000000 EMPLOYEE BENEFITS	187,800	193,000
<b>7 Total Salaries and Benefits</b>	<b>1,430,900</b>	<b>1,461,500</b>
<b>Department Operating Expenses</b>		
8 005-013-0063-0002-31000-000000 PROFESSIONAL MEMBERSHIPS	6,000	13,800
9 005-013-0063-0002-31010-000000 COURSES AND CONFERENCES	8,000	16,000
10 005-013-0063-0002-31020-000000 PUBLICATIONS	3,000	1,100
11 005-013-0063-0002-31030-000000 OFFICE EXPENSE	7,100	14,000
12 005-013-0063-0002-31050-000000 COURIER SERVICE/POSTAGE	15,000	17,000
13 005-013-0063-0002-31060-000000 PHOTOCOPY EXPENSE	3,900	1,500
14 005-013-0063-0002-31070-000000 STAFF AND TRAVEL	2,200	8,000
15 005-013-0063-0002-31080-000000 PRINTING AND STATIONERY	5,900	11,000
16 005-013-0063-0002-31090-000000 TELEPHONE SERVICES	200	200
17 005-013-0063-0002-31090-000010 WIRELESS DEVICES	900	3,000
18 005-013-0063-0002-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,400	5,000
19 005-013-0063-0002-31130-000000 MISCELLANEOUS	31,000	11,600
<b>20 Total Department Operating Expenses</b>	<b>86,600</b>	<b>102,200</b>
<b>21 Total Salaries and Operating Expenses</b>	<b>1,517,500</b>	<b>1,563,700</b>
<b>Program Expenses</b>		
22 005-013-0063-0002-33400-000000 HEARINGS REPORTERS	100,000	120,000
23 005-013-0063-0002-33400-000010 HEARING PRINTING COSTS	2,000	2,500
24 005-013-0063-0002-33400-000020 HEARING CONFERENCE CALLS	700	2,000
25 005-013-0063-0002-33400-000030 MISCELLANEOUS HEARING COSTS	2,000	12,900
26 005-013-0063-0002-33400-000040 HEARING/REASON TRANSLATIONS	5,300	8,000
27 005-013-0063-0002-33685-000000 FILE STORAGE CHARGES	8,000	8,000
28 005-013-0063-0002-33825-000000 TRANSCRIPTS	90,000	59,000
29 005-013-0063-0002-33990-000000 OUT OF TOWN HEARING COSTS	6,000	6,000
30 005-013-0063-0002-34150-000000 HEARING PANEL TRAINING	100,000	50,000
31 005-013-0063-0002-33080-000000 ADJUDICATOR DISBURSEMENTS	125,000	125,000
32 005-013-0063-0002-34145-000000 ADJUDICATOR REMUNERATION	275,000	325,000
33 IMPLEMENTATION	50,000	25,000
34 OUTREACH	-	5,000
<b>35 Total Program Expenses</b>	<b>764,000</b>	<b>748,400</b>
<b>36 Total Variable Expenses</b>	<b>2,281,500</b>	<b>2,312,100</b>
<b>37 Net Expenses</b>	<b>2,281,500</b>	<b>2,312,100</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**PROFESSIONAL REGULATION AND COMPLIANCE  
COMPLIANCE**

**Administrative Compliance (CSC)**

This area administers many of the Law Society's by-law driven processes including Foreign Legal Consultant permits, Professional Corporation authorizations, Multi-Discipline Partnerships, Affiliations, licence surrender and licensing following surrender.

Some of the duties formerly performed in this area are being transferred to Trustee Services, resulting in the transfer of one Administrative Compliance position to that area. There should be no overall financial impact associated with this change, since it is a reallocation of existing resources.

**By-Law Administration Services (CSC)**

This department is responsible for the administration of the Lawyer Annual Report and Paralegal Annual Report, as well as ancillary processes such as defaults and administrative suspensions. In addition, BAS records paralegal insurance information, responds to written queries regarding licensee status as well as a number of other status-related requests.

The budget request for 2015 remains essentially unchanged in this area.

**Complaints Services (CSC)**

The primary role of Complaints Services begins with a review of all complaints about licensees to determine whether they are new, or related to an existing file. For new complaints an electronic file is created and an acknowledgement letter prepared, followed by a review to determine whether the allegations may be within the Law Society's jurisdiction – if so, the complaint is transferred to the Intake department of the Professional Regulation Division. In limited circumstances, staff will also attempt to resolve the complaint.

No changes are requested in this area for 2015.

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Complaints Services**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	13.0	13.0
2 Contract	1.0	1.0
<b>3 Total Employee Count</b>	<b>14.0</b>	<b>14.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4 005-014-0096-0001-30000-000010 SALARIES PERMANENT	992,300	1,022,200
5 005-014-0096-0001-30010-000020 SALARIES CONTRACT	8,800	8,800
6 005-014-0096-0001-30010-000030 SALARIES TEMPORARY	7,900	7,900
7 005-014-0096-0001-30020-000000 SALARIES OVERTIME	13,000	13,000
8 005-014-0096-0001-30030-000000 EMPLOYEE BENEFITS	169,900	170,600
<b>9 Total Salaries and Benefits</b>	<b>1,191,900</b>	<b>1,222,500</b>
<b>Department Operating Expenses</b>		
10 005-014-0096-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	12,000	12,000
11 005-014-0096-0001-31010-000000 COURSES AND CONFERENCES	12,000	12,000
12 005-014-0096-0001-31020-000000 PUBLICATIONS	1,000	1,000
13 005-014-0096-0001-31030-000000 OFFICE EXPENSE	8,000	8,000
14 005-014-0096-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	4,000	4,000
15 005-014-0096-0001-31050-000000 COURIER SERVICE/POSTAGE	5,000	5,000
16 005-014-0096-0001-31060-000000 PHOTOCOPY EXPENSE	5,000	5,000
17 005-014-0096-0001-31070-000000 STAFF AND TRAVEL	5,500	5,500
18 005-014-0096-0001-31080-000000 PRINTING AND STATIONERY	12,000	12,000
19 005-014-0096-0001-31090-000000 TELEPHONE SERVICES	900	900
20 005-014-0096-0001-31090-000010 WIRELESS DEVICES	2,400	2,400
21 005-014-0096-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	5,000	5,000
22 005-014-0096-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	4,300	4,300
23 005-014-0096-0001-31130-000000 MISCELLANEOUS	1,800	2,600
<b>24 Total Department Operating Expenses</b>	<b>78,900</b>	<b>79,700</b>
<b>25 Total Salaries and Operating Expenses</b>	<b>1,270,800</b>	<b>1,302,200</b>
<b>Program Expenses</b>		
26 005-014-0096-0001-33785-000000 TELECOMMUTING	6,100	6,200
<b>27 Total Program Expenses</b>	<b>6,100</b>	<b>6,200</b>
<b>28 Total Variable Expenses</b>	<b>1,276,900</b>	<b>1,308,400</b>
<b>29 Net Expenses</b>	<b>1,276,900</b>	<b>1,308,400</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**Administrative Compliance**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

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	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	11.0	9.0
2 Contract	1.0	2.0
<b>3 Total Employee Count</b>	<b>12.0</b>	<b>11.0</b>
<b>REVENUES:</b>		
4 005-014-0092-0001-42200-000000 PROFESSIONAL CORPORATION FEE	342,800	342,800
5 005-014-0092-0001-42210-000000 M.D.P. FEE	600	600
6 005-014-0092-0001-42220-000000 RE-LICENSING APPLICATION FEE	5,000	5,000
7 005-014-0092-0001-42225-000000 FOREIGN LEGAL CONSULTANT FEES	68,000	68,000
8 005-014-0092-0001-42230-000000 RULE 6.07 FEES	300	300
9 005-014-0092-0001-42235-000000 MOBILITY APP & MATERIALS FEES	100,000	100,000
10 005-014-0092-0001-42550-000000 OCCASIONAL PRACTICE PERMIT	5,000	5,000
11 005-014-0092-0001-42280-000020 QUEBEC NOTARY CLA	1,000	1,000
<b>12 Total Revenues</b>	<b>522,700</b>	<b>522,700</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
13 005-014-0092-0001-30000-000010 SALARIES PERMANENT	727,800	623,400
14 005-014-0092-0001-30010-000020 SALARIES CONTRACT	16,800	73,400
15 005-014-0092-0001-30010-000030 SALARIES TEMPORARY	1,500	1,500
16 005-014-0092-0001-30020-000000 SALARIES OVERTIME	6,000	7,500
17 005-014-0092-0001-30030-000000 EMPLOYEE BENEFITS	124,300	117,500
<b>18 Total Salaries and Benefits</b>	<b>876,400</b>	<b>823,300</b>
<b>Department Operating Expenses</b>		
19 005-014-0092-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	1,800	1,800
20 005-014-0092-0001-31010-000000 COURSES AND CONFERENCES	5,900	5,900
21 005-014-0092-0001-31020-000000 PUBLICATIONS	800	800
22 005-014-0092-0001-31030-000000 OFFICE EXPENSE	7,900	7,900
23 005-014-0092-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	1,000	1,000
24 005-014-0092-0001-31050-000000 COURIER SERVICE/POSTAGE	21,400	21,400
25 005-014-0092-0001-31060-000000 PHOTOCOPY EXPENSE	6,000	4,000
26 005-014-0092-0001-31070-000000 STAFF AND TRAVEL	3,200	3,200
27 005-014-0092-0001-31080-000000 PRINTING AND STATIONERY	15,000	15,000
28 005-014-0092-0001-31090-000000 TELEPHONE SERVICES	200	500
29 005-014-0092-0001-31090-000010 WIRELESS DEVICES	800	1,000
30 005-014-0092-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	5,000	5,000
31 005-014-0092-0001-31130-000000 MISCELLANEOUS	2,100	2,800
<b>32 Total Department Operating Expenses</b>	<b>71,100</b>	<b>70,300</b>
<b>33 Total Salaries and Operating Expenses</b>	<b>947,500</b>	<b>893,600</b>
<b>Program Expenses</b>		
34 005-014-0092-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	2,000	2,000
35 005-014-0092-0001-33820-000000 TITLE DOCUMENTS	2,000	2,000
36 005-014-0092-0001-33785-000000 TELECOMMUTING	9,100	9,200
<b>37 Total Program Expenses</b>	<b>13,100</b>	<b>13,200</b>
<b>38 Total Variable Expenses</b>	<b>960,600</b>	<b>906,800</b>
<b>39 Net Expenses</b>	<b>437,900</b>	<b>384,100</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Regulation, Tribunal and Compliance**  
**By-Law Administration**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	9.0	9.0
2	Contract	1.0	1.0
3	<b>Total Employee Count</b>	<b>10.0</b>	<b>10.0</b>
<b>REVENUES:</b>			
4	005-014-0098-0001-41030-000000	CERTIFICATES OF STANDING	60,600
5	005-014-0098-0001-41030-000010	STATUS LETTERS	4,600
6	<b>Total Revenues</b>	<b>65,200</b>	<b>65,200</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
7	005-014-0098-0001-30000-000010	SALARIES PERMANENT	583,800
8	005-014-0098-0001-30010-000020	SALARIES CONTRACT	8,700
9	005-014-0098-0001-30010-000030	SALARIES TEMPORARY	1,500
10	005-014-0098-0001-30020-000000	SALARIES OVERTIME	5,000
11	005-014-0098-0001-30030-000000	EMPLOYEE BENEFITS	95,400
12	<b>Total Salaries and Benefits</b>	<b>694,400</b>	<b>724,700</b>
<b>Department Operating Expenses</b>			
13	005-014-0098-0001-31000-000000	PROFESSIONAL MEMBERSHIPS	3,800
14	005-014-0098-0001-31010-000000	COURSES AND CONFERENCES	7,500
15	005-014-0098-0001-31020-000000	PUBLICATIONS	800
16	005-014-0098-0001-31030-000000	OFFICE EXPENSE	5,000
17	005-014-0098-0001-31040-000000	FRENCH LANGUAGE TRANSLATION	1,500
18	005-014-0098-0001-31050-000000	COURIER SERVICE/POSTAGE	36,900
19	005-014-0098-0001-31060-000000	PHOTOCOPY EXPENSE	4,000
20	005-014-0098-0001-31070-000000	STAFF AND TRAVEL	4,500
21	005-014-0098-0001-31080-000000	PRINTING AND STATIONERY	10,000
22	005-014-0098-0001-31090-000000	TELEPHONE SERVICES	800
23	005-014-0098-0001-31090-000010	WIRELESS DEVICES	1,200
24	005-014-0098-0001-31100-000000	MAIL & PRINT CENTRE ADMINISTRATION	3,100
25	005-014-0098-0001-31130-000000	MISCELLANEOUS	2,300
26	<b>Total Department Operating Expenses</b>	<b>81,400</b>	<b>82,200</b>
27	<b>Total Salaries and Operating Expenses</b>	<b>775,800</b>	<b>806,900</b>
<b>Program Expenses</b>			
28	005-014-0098-0001-33685-000000	STORAGE/RECORDS MANAGEMENT	5,000
29	005-014-0098-0001-33785-000000	TELECOMMUTING	7,900
30	<b>Total Program Expenses</b>	<b>12,800</b>	<b>12,900</b>
31	<b>Total Variable Expenses</b>	<b>788,600</b>	<b>819,800</b>
32	<b>Net Expenses</b>	<b>723,400</b>	<b>754,600</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**PROFESSIONAL DEVELOPMENT AND COMPETENCE**

**Mandate**

The Professional Development and Competence (PD&C) Division is responsible for all activities relating to licensing, continuing professional development, practice management support and quality assurance for lawyers and paralegals.

The operating functions related to lawyers include:

- a) Licensing
  - Licensing Examinations
  - Professional Responsibility and Practice Course
  - Professional Conduct and Practice in Ontario Course
  - Articling and Placement Services
  - Support Services (accommodation, special needs, tutoring)
  - Calls to the Bar and Paper Calls (Licensing of L1, L2 and L3 applicants, including Mobility and Transfer Candidates)
    - 1. Oversight, monitoring and evaluation of the Law Practice Program
    - 2. Management of articling program enhancements including monitoring and evaluation of exposure and assessment of competencies
  
- b) Competence
  - Practice Management Resources and Helpline
  - Certified Specialist Program
  - Continuing Professional Development CPD Program Production
  - CPD Program Accreditation
  - Legal Information and Library Services
  - LibraryCo Administrative Services Agreement support
  - Corporate Records and Archives
  - Web Content Development
  
- c) Quality Assurance
  - Spot Audit
  - Practice Review (Focused Reviews, Practice Management Reviews, Re-entry Reviews)
  - CPD Audit

The operating functions related to paralegals include:

- a) Licensing
  - Licensing Examination
  - Professional Conduct and Advocacy Course for exempted group integration (2011 to 2014)
  - Support Services (accommodation, special needs, tutoring)
  - Paralegal College Program Accreditation
  - Licensing of P1 applicants
  - Beginning in 2015 (with development from 2012 – 2015), provision of enhanced licensing examination including substantive law assessment
  
- b) Competence
  - Practice Management Resources and Helpline
  - CPD Program Production and Accreditation
  - Legal Information and Library Services
  
- c) Quality Assurance
  - Practice Audits
  - Paralegal College Program Audit
  - CPD Audit

### Budget Summary

The 2015 and 2014 budget before transfers for the PD&C Division is summarized below.

	Lawyers		Paralegals		Total	
	2015	2014	2015	2014	2015	2014
<b>Direct Revenues</b>	17,968,000	19,121,000	2,585,000	2,017,000	20,553,000	21,138,000
<b>Direct Expenditures</b>	24,231,000	24,973,000	2,496,000	2,011,000	26,727,000	26,984,000
<b>Net Expenditure</b>	6,263,000	5,852,000P	(89,000)	(6,000)	6,174,000	5,846,000

Staff complement in the PD&C Division is proposed at 137.5 full-time equivalent employees in the 2015 budget. This includes the reduction of 2 FTE's from 2014.

### *Lawyer Supports*

#### **Licensing Process**

The Licensing Process fee for the 2015-2016 licensing term is proposed to remain at \$4710 per candidate for all fees associated with licensing (not including

HST), including the costs of the Law Practice Program and the enhanced Articling Program, which have been equalized across all candidates in the process. This increased fee was approved last year. As the Law Foundation of Ontario grant funding will no longer be available, it is expected that revenues for the Lawyer Licensing Process will decrease by approximately 3.5%.

The total expenditures for the lawyer licensing process, which is a cost recovery process that covers its expenses through the payment of fees by licensing candidates, is mitigated by a contribution by the profession approved by Convocation for 2014 and continuing. The issue of licensing fees and work placement payments will be before Committee and Convocation in the Fall of 2014 as part of the monitoring process for the experiential learning components of licensing.

### **Competence**

#### **a) Practice Management Resources and Helpline**

Practice Management has been focused on an extensive analysis of all practice management supports and tools to ensure alignment with the Model Code of Conduct. There was a tremendous effort which included redirecting staff to review and revise almost every resource and product that has been produced in the PD&C Division to support member competence in the past 12 or more years. The Practice Management Helpline continues to respond to over 7,000 calls from practitioners annually and to provide substantial supports and resources to sole practitioners and small firm lawyers, and licensing and accreditation initiatives.

#### **b) Certified Specialist Program**

The Certified Specialist Program continues to maintain itself as a cost-recovery initiative at this time. The staff allocated to the program will remain at one full-time equivalent for 2015. With the assistance of Lawyer Counsel from the Licensing and Accreditation department, the Certified Specialist program began the process of developing a new specialty for Aboriginal Law, which will continue in 2015. Costs of development and validation of the competencies requirements for this specialty will be covered by the revenues generated annually by the program.

#### **c) CPD Program Production and Accreditation**

The CPD Department anticipates that the 21 percent decrease in registrations for full-fee (substantive law) programs experienced in the first half of 2014 compared to the same period in 2013 will continue to the end of the year. It also anticipates that revenue from professionalism programs, for which a nominal fee was introduced in 2014, will continue to be lower than anticipated. As electronic materials are included with the price of the program and members increasingly prefer this format over hard copy materials, expected revenue from publications

has been reduced. As a result, the 2015 revenue projection for CPD is \$800,000 lower than in 2014.

The 2015 budget has been adjusted to reflect an anticipated increase of \$150,000 in revenue from sales of on demand webcasts and video replays, as the popularity of these post-program products continues to grow. In November 2014, CPD will introduce a new series of self-paced, online courses on professionalism for lawyers and paralegals in the major practice areas. These e-courses will provide an easily accessible way for members to obtain CPD Hours for learning on their own and are expected to be a popular addition to CPD programming in 2015.

Projected program-related expenses in 2015 have been decreased by \$60,000 to reflect the decrease in costs associated with producing, marketing, and distributing publications. As CPD will be participating in fewer joint programs in 2015, the anticipated cost of joint program disbursements has been reduced by \$60,000 in 2015.

The CPD unit will be maintaining the same level of staffing.

#### **d) Legal Information and Library Services**

The Great Library's print collection has been substantially reduced as book costs have outstripped its budget. Law reports have been discontinued and staff will be assessing e-book options in the slow moving, highly consolidated Canadian legal publishing market. Program expenses will be maintained at the same levels as 2014, despite certain print format costs increasing by 10-15 percent. The Legal Information Department's entire non-salary budget increase for 2015 will be applied to a single print format, which will also require taking resources from other library operational lines. The team will drop to 18 FTE staff (as compared to 26 FTEs in 2006, and 32 in 2002) following a staff retirement. The team will be leveraging updates to the library catalogue, building on the roll out of its reference blog, and extending services directly to members across Ontario.

#### **e) Corporate Records and Archives**

The Corporate Records team continues to support document retention, retrieval and archival functions for the entire organization. The Archives team will continue to build out its social media activity – past CLE video sessions on Youtube, photos on Flickr, and Facebook – to make their materials more accessible. They will continue to be involved in enterprise content management initiatives in 2015 and in supporting the Heritage Committee initiatives.

**f) Web Content Team**

The Web content management team continues to provide the entire organization with support in the use of the web site for our communications and resources provision activities for members and the public, as well as the ELF intranet which they redesigned in 2014. They have a high degree of self-reliance, upgrading the CMS and making the Law Society's Web site mobile device-friendly using available team resources. The budget for this group will see no changes. This team is accounted for in the information systems budget.

**Quality Assurance****a) Spot Audit**

Pursuant to the business case approved by the PD&C Committee and Convocation, the Spot Audit Department was to decrease the number of annual audits from 1,800 in 2013 down to approximately 1,400 by 2015. This reduction was based on new risk-based criteria for selecting law firms for an audit. The plan was to be phased in over two years, with 1,570 audits in 2014 and 1,400 in 2015. This would result in a reduction in the staff complement for the Spot Audit Department by 3 FTEs in 2014, and an additional 1 FTE and reduction of the use of external accounting firms in 2015. As a result, expenses for the spot program decreased by approximately \$300,000 in 2014 and will see a further reduction of \$200,000 in 2015 for a total budget reduction of \$500,000 from 2013 to 2015, offset by standard annual merit increases.

The Spot Audit department is on track to meet the reduction targets in the number of audits, expenses and FTEs. The 2015 budget reflects a total budgetary decrease of over \$500,000 since 2013, including 4 fewer FTE staff.

**b) Practice Review**

The Practice Review unit conducts approximately 500 reviews per year, comprised of a combination of random, focused and re-entry reviews. There will be no change to the staff complement or general expenses for the Practice Review team.

**c) CPD Audits**

The Practice Audits department will continue to support the CPD audits established to fulfill Convocation's approval of a formal process for monitoring the completion of mandatory CPD. The CPD Audit group randomly selects 525 licensees (500 lawyers and 25 paralegals, in proportion to the member base) and conducts desk audits (written requests) that will assess and monitor compliance with the new CPD requirements, complementing the onsite CPD audits which will occur during formal practice reviews at members' offices. There will be no changes in staff or general expenses for 2015.

## **Paralegal Supports**

### **Licensing**

The Paralegal Licensing Process fee for 2014 is proposed at \$1400 per candidate for all fees associated with licensing for regular candidates (not including HST).

The Law Foundation of Ontario grant funding will no longer be available, however, the Paralegal Licensing Process revenues are anticipated to increase by approximately 40% overall as result of new fees associated with the college accreditation process to be introduced in the fall of 2015, as well as budgeted increases to reflect historical trends. An increase in expenditures for 2015 relates to increased costs of development and administration of the new substantive licensing examinations which will begin in August 2015. There will be no change to the staff complement for the Paralegal licensing team.

### **Practice Audits**

Practice Audits are combined financial audit and practice management reviews conducted on paralegal practices. The Paralegal Audit group will complete approximately 175 audits in 2015 as per Convocation's approved requirements for completion of paralegal audits. There will be no change to the staff complement for the Practice Audit team.

### **Practice Management Supports**

The Practice Management, Legal Information and CPD groups continue to provide support to paralegal practices by integrating paralegal resources into all programs and activities. This includes the provision of assistance through the Practice Management Helpline and Practice Mentoring Initiative, practice management resources designed specifically for paralegal practices, development of CPD programs for paralegals. There will be no change in staffing or expenditures for 2015.

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Practice Management**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	9.0	9.0
2 Contract	0.0	2.0
<b>2 Total Employee Count</b>	<b>9.0</b>	<b>11.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-012-0040-0009-30000-000010 SALARIES PERMANENT	1,100,800	1,117,200
005-012-0040-0009-30010-000020 SALARIES CONTRACT	-	40,000
4 005-012-0040-0009-30030-000000 EMPLOYEE BENEFITS	157,300	152,200
<b>5 Total Salaries and Benefits</b>	<b>1,258,100</b>	<b>1,309,400</b>
<b>Department Operating Expenses</b>		
6 005-012-0040-0009-31000-000000 PROFESSIONAL MEMBERSHIPS	15,000	15,000
7 005-012-0040-0009-31010-000000 COURSES AND CONFERENCES	16,800	17,300
8 005-012-0040-0009-31020-000000 PUBLICATIONS	3,500	3,500
9 005-012-0040-0009-31030-000000 OFFICE EXPENSE	4,000	4,000
10 005-012-0040-0009-31040-000000 FRENCH LANGUAGE TRANSLATION	2,000	1,800
11 005-012-0040-0009-31050-000000 COURIER SERVICE/POSTAGE	2,500	1,500
12 005-012-0040-0009-31060-000000 PHOTOCOPY EXPENSE	1,500	1,000
13 005-012-0040-0009-31070-000000 STAFF AND TRAVEL	19,000	19,000
14 005-012-0040-0009-31080-000000 PRINTING AND STATIONERY	5,500	3,500
15 005-012-0040-0009-31090-000000 TELEPHONE SERVICES	1,000	1,000
16 005-012-0040-0001-31090-000090 WIRELESS DEVICES	3,000	3,000
17 005-012-0040-0009-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,600	3,600
18 005-012-0040-0009-31130-000000 MISCELLANEOUS	1,500	1,500
<b>19 Total Department Operating Expenses</b>	<b>78,900</b>	<b>75,700</b>
<b>20 Total Salaries and Operating Expenses</b>	<b>1,337,000</b>	<b>1,385,100</b>
<b>Program Expenses</b>		
21 005-012-0040-0009-33215-000000 PROGRAM/COURSE DEVELOPMENT	35,000	35,000
22 005-012-0040-0001-33035-000000 COMPETENCY INITIATIVES	50,000	50,000
23 005-012-0040-0001-33140-000000 COMMITTEE EXPENSES	2,000	2,500
24 005-012-0040-0009-33785-000000 TELECOMMUTING	3,800	2,200
<b>25 Total Program Expenses</b>	<b>90,800</b>	<b>89,700</b>
<b>26 Total Variable Expenses</b>	<b>1,427,800</b>	<b>1,474,800</b>
<b>27 Net Expenses</b>	<b>1,427,800</b>	<b>1,474,800</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Certified Specialist**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	1.0	1.0
2 <b>Total Employee Count</b>	<b>1.0</b>	<b>1.0</b>
<b>REVENUES:</b>		
3 005-012-0040-0002-42025-000000 CERTIFICATION REVENUE	270,000	270,000
4 <b>Total Revenues</b>	<b>270,000</b>	<b>270,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5 005-012-0040-0002-30000-000010 SALARIES PERMANENT	57,000	57,700
6 005-012-0040-0002-30030-000000 EMPLOYEE BENEFITS	8,500	8,600
7 <b>Total Salaries and Benefits</b>	<b>65,500</b>	<b>66,300</b>
<b>Department Operating Expenses</b>		
8 005-012-0040-0002-31010-000000 COURSES AND CONFERENCES	1,500	1,500
9 005-012-0040-0002-31030-000000 OFFICE EXPENSE	400	400
10 005-012-0040-0002-31050-000000 COURIER SERVICE/POSTAGE	1,500	1,500
11 005-012-0040-0002-31070-000000 STAFF AND TRAVEL	1,000	1,000
12 005-012-0040-0002-31080-000000 PRINTING AND STATIONERY	1,300	1,300
13 005-012-0040-0002-31090-000000 TELEPHONE SERVICES	500	500
14 005-012-0040-0002-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	500	500
15 005-012-0040-0002-31130-000000 MISCELLANEOUS	300	400
16 <b>Total Department Operating Expenses</b>	<b>7,000</b>	<b>7,100</b>
17 <b>Total Salaries and Operating Expenses</b>	<b>72,500</b>	<b>73,400</b>
<b>Program Expenses</b>		
18 005-012-0040-0002-33140-000000 COMMITTEE COSTS	5,000	5,000
19 005-012-0040-0002-33630-000010 PROGRAM DEVELOPMENT	45,000	45,000
20 005-012-0040-0002-33785-000000 TELECOMMUTING	800	1,300
21 <b>Total Program Expenses</b>	<b>50,800</b>	<b>51,300</b>
22 <b>Total Variable Expenses</b>	<b>123,300</b>	<b>124,700</b>
23 <b>Net Revenue</b>	<b>(146,700)</b>	<b>(145,300)</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Corporate Records and Archives**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	3.0	3.0
2 Permanent Part-Time	1.0	1.0
3 Contract	-	1.0
<b>4 Total Employee Count</b>	<b>4.0</b>	<b>5.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5 005-012-0040-0005-30000-000010 SALARIES PERMANENT	208,100	210,600
6 005-012-0040-0005-30010-000010 SALARIES PART TIME	28,700	29,000
7 005-012-0040-0005-30010-000020 SALARIES CONTRACT	-	10,000
8 005-012-0040-0005-30030-000000 EMPLOYEE BENEFITS	41,600	42,100
<b>9 Total Salaries and Benefits</b>	<b>278,400</b>	<b>291,700</b>
<b>Department Operating Expenses</b>		
10 005-012-0040-0005-31000-000000 PROFESSIONAL MEMBERSHIPS	1,500	1,500
11 005-012-0040-0005-31010-000000 COURSES AND CONFERENCES	3,000	3,000
12 005-012-0040-0005-31020-000000 PUBLICATIONS	500	500
13 005-012-0040-0005-31030-000000 OFFICE EXPENSE	500	600
14 005-012-0040-0005-31050-000000 COURIER SERVICE/POSTAGE	300	300
15 005-012-0040-0005-31060-000000 PHOTOCOPY EXPENSE	500	500
16 005-012-0040-0005-31070-000000 STAFF AND TRAVEL	5,000	5,000
17 005-012-0040-0005-31080-000000 PRINTING AND STATIONERY	1,000	1,000
18 005-012-0040-0005-31090-000000 TELEPHONE SERVICES	200	200
19 005-012-0040-0005-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,000	1,000
20 005-012-0040-0005-31130-000000 MISCELLANEOUS	400	400
<b>21 Total Department Operating Expenses</b>	<b>13,900</b>	<b>14,000</b>
<b>22 Total Salaries and Operating Expenses</b>	<b>292,300</b>	<b>305,700</b>
<b>Program Expenses</b>		
23 005-012-0040-0005-33010-000000 ACQUISITION	1,000	1,000
24 005-012-0040-0005-33050-000000 ARCHIVAL SUPPLIES	4,000	4,000
25 005-012-0040-0005-33385-000000 MINISYS SOFTWARE SUPPORT	13,000	13,000
26 005-012-0040-0005-33535-000000 OFF-SITE STORAGE	16,400	16,400
27 005-012-0040-0005-33740-000000 SECURITY MINUTES MICROFILMING	5,000	5,400
<b>28 Total Program Expenses</b>	<b>39,400</b>	<b>39,800</b>
<b>29 Total Variable Expenses</b>	<b>331,700</b>	<b>345,500</b>
<b>30 Net Expenses</b>	<b>331,700</b>	<b>345,500</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Great Library**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	17.0	15.0
2	Permanent Part-Time	2.0	2.0
3	<b>Total Employee Count</b>	<b>19.0</b>	<b>17.0</b>
<b>REVENUES:</b>			
4	005-012-0040-0006-42020-000000 CATALOGUE SALES/SERVICES	1,000	1,000
5	005-012-0040-0006-42110-000010 CARD REVENUE	24,000	19,000
6	005-012-0040-0006-42110-000020 COIN REVENUE	4,000	4,000
7	005-012-0040-0006-42110-000030 INVOICE REVENUE	25,000	25,000
8	005-012-0040-0006-42120-000000 PRINT REVENUE	3,000	3,000
9	005-012-0040-0006-41040-000010 LEXISNEXIS CANADA ONTARIO REPORTS CREDIT	136,000	136,000
10	<b>Total Revenues</b>	<b>193,000</b>	<b>188,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
11	005-012-0040-0006-30000-000010 SALARIES PERMANENT	1,234,300	1,101,600
12	005-012-0040-0006-30010-000010 SALARIES PART TIME	70,500	71,200
13	005-012-0040-0006-30010-000030 SALARIES TEMPORARY	15,300	15,300
14	005-012-0040-0006-30030-000000 EMPLOYEE BENEFITS	235,500	221,400
15	<b>Total Salaries and Benefits</b>	<b>1,555,600</b>	<b>1,409,500</b>
<b>Department Operating Expenses</b>			
16	005-012-0040-0006-31000-000000 PROFESSIONAL MEMBERSHIPS	6,000	3,000
17	005-012-0040-0006-31010-000000 COURSES AND CONFERENCES	10,000	5,000
18	005-012-0040-0006-31020-000000 PUBLICATIONS	8,000	8,000
19	005-012-0040-0006-31030-000000 OFFICE EXPENSE	3,000	1,000
20	005-012-0040-0006-31040-000000 FRENCH LANGUAGE MATERIALS	3,000	3,000
21	005-012-0040-0006-31050-000000 COURIER SERVICE/POSTAGE	1,500	1,500
22	005-012-0040-0006-31060-000000 PHOTOCOPY EXPENSE	15,000	15,000
23	005-012-0040-0006-31070-000000 STAFF AND TRAVEL	15,000	10,000
24	005-012-0040-0006-31080-000000 PRINTING AND STATIONERY	3,500	5,500
25	005-012-0040-0006-31090-000000 TELEPHONE SERVICES	1,500	1,000
26	005-012-0040-0006-31090-000010 WIRELESS DEVICES	1,000	1,000
27	005-012-0040-0006-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	5,600	5,600
28	005-012-0040-0006-31130-000000 MISCELLANEOUS	2,500	1,500
29	<b>Total Department Operating Expenses</b>	<b>75,600</b>	<b>61,100</b>
30	<b>Total Salaries and Operating Expenses</b>	<b>1,631,200</b>	<b>1,470,600</b>
<b>Program Expenses</b>			
31	005-012-0040-0006-33095-000000 BOOK SECURITY SYSTEM	1,000	1,000
32	005-012-0040-0006-33100-000000 BOOK PURCHASES BINDING	12,500	12,500
33	005-012-0040-0006-33100-000010 BOOK PURCH GOVERNMENT DOCUMENT	50,000	55,000
34	005-012-0040-0006-33100-000020 BOOK PURCHASES MONOGRAPHS	55,000	50,000
35	005-012-0040-0006-33100-000030 BOOK PURCHASES REBINDING	2,500	2,500
36	005-012-0040-0006-33100-000040 BOOK PURCH REPLACEMENT COPIES	5,000	5,000
37	005-012-0040-0006-33100-000050 BOOK PURCH SERIALS ANNUAL VOLS	27,500	27,500
38	005-012-0040-0006-33100-000060 BOOK PURCHASES SUPPLEMENTS	90,800	70,800
39	005-012-0040-0006-33100-000070 BOOK PURCHASES SERIALS LAW RPT	180,000	140,000
40	005-012-0040-0006-33100-000080 BOOK PURCH SERIALS LOOSE LEAF	544,500	636,800
41	005-012-0040-0006-33100-000090 BOOK PURCH SERIALS PERIODICALS	45,000	45,000
42	005-012-0040-0006-33115-000000 CATALOGUING AND CLASSIFICATION	5,000	5,000
43	005-012-0040-0006-33275-000000 ELECTRONIC PURCHASES	355,000	355,000
44	005-012-0040-0006-33290-000000 EQUIPMENT LEASES/MAINTENANCE	85,000	85,000
45	005-012-0040-0006-33605-000000 PRESERVATION	10,000	10,000
46	005-012-0040-0006-31070-000010 STAFF & TRAVEL-ROVING LIBRAR'N	12,000	-
47	005-012-0040-0006-31090-000015 TELEPHONES - ROVING LIBRARIAN	700	-
48	005-012-0040-0006-33290-000010 PHOTOCOPY LEASE	14,000	14,000
49	<b>Total Program Expenses</b>	<b>1,495,500</b>	<b>1,515,100</b>
50	<b>Total Variable Expenses</b>	<b>3,126,700</b>	<b>2,985,700</b>
51	<b>Net Expenses</b>	<b>2,933,700</b>	<b>2,797,700</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Lawyer Licensing Process**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	26.0	26.0
2 Contract	1.0	1.0
<b>3 Total Employee Count</b>	<b>27.0</b>	<b>27.0</b>
<b>REVENUES:</b>		
4 005-000-0000-0000-42000-000000 APPLICATION FEES	324,000	364,000
5 005-000-0000-0000-42080-000000 LATE FEES/FINES/INTEREST CHGS	40,000	50,000
6 005-000-0000-0000-42085-000000 LAW FOUNDATION OF ONT-FUNDING	364,500	-
7 005-000-0000-0000-42105-000000 CALL TO THE BAR FEE	437,500	437,500
8 005-000-0000-0000-42150-000000 TRANSCRIPTS/MISCELLANEOUS	3,000	3,000
9 005-000-0000-0000-42155-000000 TRANSFER EXAMINATION FEES	2,500	2,500
10 005-000-0000-0000-42160-000000 LICENSING FEES	8,830,800	8,830,800
11 005-012-0041-0001-42270-000000 NCA RECOVERIES	88,900	78,900
<b>12 Total Revenues</b>	<b>10,091,200</b>	<b>9,766,700</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
13 005-012-0041-0001-30000-000010 SALARIES PERMANENT	1,964,100	1,991,200
14 005-012-0041-0001-30010-000020 SALARIES CONTRACT	10,200	3,200
15 005-012-0041-0001-30020-000000 SALARIES OVERTIME	40,000	40,000
16 005-012-0041-0001-30030-000000 EMPLOYEE BENEFITS	322,000	306,900
<b>17 Total Salaries and Benefits</b>	<b>2,336,300</b>	<b>2,341,300</b>
<b>Department Operating Expenses</b>		
18 005-012-0041-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	5,000	5,000
19 005-012-0041-0001-31010-000000 COURSES AND CONFERENCES	6,000	11,000
20 005-012-0041-0001-31020-000000 PUBLICATIONS	2,500	2,500
21 005-012-0041-0001-31030-000000 OFFICE EXPENSE	20,000	20,000
22 005-012-0041-0001-31050-000000 COURIER SERVICE/POSTAGE	10,000	12,000
23 005-012-0041-0001-31060-000000 PHOTOCOPY EXPENSE	7,000	7,000
24 005-012-0041-0001-31070-000000 STAFF AND TRAVEL	35,000	35,000
25 005-012-0041-0001-31080-000000 PRINTING AND STATIONERY	13,000	13,000
26 005-012-0041-0001-31090-000000 TELEPHONE SERVICES	4,500	4,500
24 005-012-0041-0001-31090-000010 WIRELESS DEVICES	13,000	13,000
28 005-012-0041-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	8,700	8,700
29 005-012-0041-0001-31130-000000 MISCELLANEOUS	4,000	4,000
<b>30 Total Department Operating Expenses</b>	<b>128,700</b>	<b>135,700</b>
<b>31 Total Salaries and Operating Expenses</b>	<b>2,465,000</b>	<b>2,477,000</b>
<b>Program Expenses</b>		
32 005-012-0041-0001-33120-000000 CATERING COSTS	30,000	30,000
33 005-012-0041-0001-33280-000000 EQUIPMENT LEASES/MAINTENANCE	15,000	15,000
34 005-012-0041-0001-33290-000000 DATABASE SUPPORT/MAINTENANCE	135,000	135,000
35 005-012-0041-0001-34190-000000 ITEM WRITING LICENSING EXAMS	40,000	40,000
36 005-012-0041-0001-34140-000000 FAC RENT SER FEE LIC EXAM TOR	450,000	450,000
37 005-012-0041-0001-33315-000000 LICENSING EXAM ADMINISTRATION	425,000	425,000
38 005-012-0041-0001-33316-000000 LICENSING EXAM INVIGILATION	200,000	250,000
39 005-012-0041-0001-33375-000000 FURNITURE AND EQUIPMENT	8,000	8,000
40 005-000-0000-0000-32140-000000 CALL TO THE BAR	160,000	160,000
41 005-012-0041-0001-34185-000000 FRENCH TRANSLATION	45,000	45,000
42 005-012-0041-0001-33495-000000 MATERIALS PRODUCTION	130,000	130,000
43 005-012-0041-0001-33780-000000 REPAYABLE ALLOWANCE	100,000	100,000
44 005-012-0041-0001-33860-000000 EDUCATION SUPPORT SERVICES	300,000	300,000
45 005-012-0041-0001-33495-000010 MATERIALS WRITING / PATHWAYS DEVELOPMENT	635,000	135,000
46 005-012-0041-0001-34170-000000 ADVISORY GROUPS	140,000	140,000
47 005-012-0041-0001-34140-000010 FACIL RENT LIC EXAM OTHER	155,000	155,000
48 005-012-0041-0001-33980-000000 PRP PRODUCTION/DEVELOPMENT	15,000	15,000
49 005-012-0041-0001-34180-000000 ARTICLING PROGRAM ENHANCEMENTS	63,000	63,000
50 005-012-0041-0001-33317-000000 NCA EXAM EXPENSES	85,300	85,300
51 005-012-0041-0001-33785-000000 TELECOMMUTING	3,000	3,000
52 005-012-0041-0001-34245-000000 LPP- RYERSON	3,600,000	3,600,000
53 005-012-0041-0001-34245-000010 LPP- OTTAWA U	700,000	700,000
<b>54 Total Program Expenses</b>	<b>7,434,300</b>	<b>6,984,300</b>
<b>55 Total Variable Expenses</b>	<b>9,899,300</b>	<b>9,461,300</b>
<b>56 Net Revenue</b>	<b>(191,900)</b>	<b>(305,400)</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Paralegal Licensing Process**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	5.0	5.0
2	<b>Total Employee Count</b>	<b>5.0</b>	<b>5.0</b>
<b>REVENUES:</b>			
3	017-000-0000-0000-42000-000000 LICENSING PROCESS APPLICATION FEES	152,000	252,000
4	017-000-0000-0000-42080-000000 LATE FEES/FINES/INTEREST CHGS	25,000	25,000
5	017-000-0000-0000-42085-000000 LAW FOUNDATION OF ONT-FUNDING	35,500	-
6	017-000-0000-0000-42105-000000 P1 LICENCE FEES	128,000	208,000
7	017-000-0000-0000-42150-000000 TRANSCRIPTS/MISCELLANEOUS	100	100
8	017-000-0000-0000-42160-000000 LICENSING PROCESS EXAMINATION FEES	966,500	1,366,500
9	<b>Total Revenues</b>	<b>1,307,100</b>	<b>1,851,600</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
10	017-012-0041-0001-30000-000010 SALARIES PERMANENT	345,700	356,500
11	017-012-0041-0001-30020-000000 SALARIES OVERTIME	4,000	4,000
12	017-012-0041-0001-30030-000000 EMPLOYEE BENEFITS	60,800	61,500
13	<b>Total Salaries and Benefits</b>	<b>410,500</b>	<b>422,000</b>
<b>Department Operating Expenses</b>			
14	017-012-0041-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	2,000	2,000
15	017-012-0041-0001-31010-000000 COURSES AND CONFERENCES	5,000	5,000
16	017-012-0041-0001-31020-000000 PUBLICATIONS	1,500	1,000
17	017-012-0041-0001-31030-000000 OFFICE EXPENSE	4,000	4,000
18	017-012-0041-0001-31050-000000 COURIER SERVICE/POSTAGE	3,000	3,000
19	017-012-0041-0001-31060-000000 PHOTOCOPY EXPENSE	1,500	1,500
20	017-012-0041-0001-31070-000000 STAFF AND TRAVEL	3,000	5,000
21	017-012-0041-0001-31080-000000 PRINTING AND STATIONERY	2,500	1,000
22	017-012-0041-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,500	1,500
23	017-012-0041-0001-31130-000000 MISCELLANEOUS	1,800	2,100
24	<b>Total Department Operating Expenses</b>	<b>25,800</b>	<b>26,100</b>
25	<b>Total Salaries and Operating Expenses</b>	<b>436,300</b>	<b>448,100</b>
<b>Program Expenses</b>			
26	017-012-0041-0001-33120-000000 CATERING COSTS	3,000	8,000
27	017-012-0041-0001-33290-000000 DATABASE SUPPORT/MAINTENANCE	8,000	50,000
28	017-012-0041-0001-34190-000000 ITEM WRITING LICENSING EXAMS	8,000	38,000
29	017-012-0041-0001-34140-000000 FACILITY RENT	85,900	245,900
30	017-012-0041-0001-33315-000000 LICENSING EXAM ADMINISTRATION	145,000	145,000
31	017-012-0041-0001-33316-000000 LICENSING EXAM INVIGILATION	30,000	60,000
32	017-012-0041-0001-34185-000000 FRENCH TRANSLATION	6,000	16,000
33	017-012-0041-0001-34120-000010 PROGRAM & RESOURCE DEVELOPMENT	200,000	200,000
34	017-012-0041-0001-33495-000000 MATERIALS PRODUCTION	12,000	57,000
35	017-012-0041-0001-33860-000000 EDUCATION SUPPORT SERVICES	35,000	55,000
36	017-012-0041-0001-33495-000010 MATERIALS WRITING	10,000	10,000
37	017-012-0041-0001-34170-000000 ADVISORY GROUPS	5,000	5,000
38	017-000-0000-0000-32140-000000 PARALEGAL RECEPTION	30,000	30,000
39	017-012-0041-0001-33785-000000 TELECOMMUTING	2,000	2,000
40	017-012-0041-0001-32120-000000 PARALEGAL ACCREDITATION AUDITS	16,000	22,000
41	<b>Total Program Expenses</b>	<b>595,900</b>	<b>943,900</b>
42	<b>Total Variable Expenses</b>	<b>1,032,200</b>	<b>1,392,000</b>
43	<b>Net Revenue</b>	<b>(274,900)</b>	<b>(459,600)</b>

THE LAW SOCIETY OF UPPER CANADA  
Professional Development and Competence  
CPD  
Draft Budget  
For the Year Ending December 31, 2015

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	23.0	24.0
2 Permanent Part-Time	2.0	2.0
3 Contract	5.0	4.0
<b>4 Total Employee Count</b>	<b>30.0</b>	<b>30.0</b>
<b>REVENUES:</b>		
5 005-012-0040-0003-42005-000000 AUDIOTAPE REVENUE	3,000	3,000
6 005-012-0040-0003-42055-000000 COURSE MATERIALS	700,000	220,000
7 005-012-0040-0003-42060-000000 REGISTRATIONS	7,903,000	7,453,000
8 005-012-0040-0003-42075-000000 JOINT PROGRAMS OBA/CCLA	13,000	13,000
9 005-012-0040-0003-42135-000000 ROYALTIES	3,000	3,000
10 005-012-0040-0003-42145-000000 SPONSORSHIP REVENUE	25,000	5,000
11 005-012-0040-0003-42165-000000 VIDEO REPLAY REVENUE	30,000	130,000
12 005-000-0000-0000-42285-000030 ON DEMAND REVENUE	600,000	650,000
<b>12 Total Revenues</b>	<b>9,277,000</b>	<b>8,477,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
13 005-012-0040-0003-30000-000010 SALARIES PERMANENT	1,747,200	1,825,000
14 005-012-0040-0003-30010-000010 SALARIES PART TIME	100,800	102,300
15 005-012-0040-0003-30010-000020 SALARIES CONTRACT	108,100	82,000
16 005-012-0040-0003-30010-000030 SALARIES TEMPORARY	40,000	40,000
17 005-012-0040-0003-30020-000000 SALARIES OVERTIME	50,000	50,000
18 005-012-0040-0003-30030-000000 EMPLOYEE BENEFITS	321,000	339,200
<b>19 Total Salaries and Benefits</b>	<b>2,367,100</b>	<b>2,438,500</b>
<b>Department Operating Expenses</b>		
20 005-012-0040-0003-31000-000000 PROFESSIONAL MEMBERSHIPS	7,000	7,000
21 005-012-0040-0003-31010-000000 COURSES AND CONFERENCES	10,600	10,600
22 005-012-0040-0003-31020-000000 PUBLICATIONS	500	500
23 005-012-0040-0003-31030-000000 OFFICE EXPENSE	9,600	9,600
24 005-012-0040-0003-31050-000000 COURIER SERVICE/POSTAGE	2,500	2,500
25 005-012-0040-0003-31060-000000 PHOTOCOPY EXPENSE	6,500	6,500
26 005-012-0040-0003-31070-000000 STAFF AND TRAVEL	14,000	14,000
27 005-012-0040-0003-31080-000000 PRINTING AND STATIONERY	9,000	9,000
28 005-012-0040-0003-31090-000000 TELEPHONE SERVICES	1,100	1,100
29 005-012-0040-0003-31090-000010 WIRELESS DEVICES	4,000	4,000
30 005-012-0040-0003-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	48,600	48,600
31 005-012-0040-0003-31130-000000 MISCELLANEOUS	2,800	4,000
<b>32 Total Department Operating Expenses</b>	<b>116,200</b>	<b>117,400</b>
<b>33 Total Salaries and Operating Expenses</b>	<b>2,483,300</b>	<b>2,555,900</b>
<b>Program Expenses</b>		
34 005-012-0040-0003-33025-000000 ADVERTISING AND PROMOTION	175,000	140,000
35 005-012-0040-0003-33060-000000 AUDIO VISUAL COSTS	200,000	200,000
36 005-012-0040-0003-33120-000000 CATERING COSTS	245,000	245,000
37 005-012-0040-0003-33215-000000 PROGRAM DEVELOPMENT	130,000	165,000
38 005-012-0040-0003-33220-000000 COURSE MATERIALS	170,000	225,000
39 005-012-0040-0003-33245-000000 DELIVERY/POSTAGE COSTS	100,000	75,000
40 005-012-0040-0003-33435-000000 JOINT PROGRAM DISBURSEMENTS	100,000	40,000
41 005-012-0040-0003-33480-000000 LOCATION COSTS	20,000	20,000
42 005-012-0040-0003-33655-000000 PUBLICATIONS PROMOTION	60,000	30,000
43 005-012-0040-0003-33660-000000 MATERIALS REPRINTS	175,000	175,000
44 005-012-0040-0003-34035-000000 SPEAKER FEES	25,500	25,500
45 005-012-0040-0003-34040-000000 SPEAKER GIFTS	30,000	30,000
46 005-012-0040-0003-34045-000000 SPEAKER RECOGNITION EVENTS	10,000	10,000
47 005-012-0040-0003-34050-000000 SPEAKER TRAVEL & ACCOMMODATION	60,000	60,000
48 005-012-0040-0003-34095-000000 ELECTRONIC MEDIA PRODUCTION	450,000	440,000
49 005-012-0040-0003-34140-000000 VENUE RENTAL	125,000	125,000
50 005-012-0040-0003-33765-000000 LEARNING CENTRE UPGRADES	100,000	100,000
51 005-012-0040-0003-33785-000000 TELECOMMUTING	5,100	26,900
<b>52 Total Program Expenses</b>	<b>2,180,600</b>	<b>2,132,400</b>
<b>53 Total Variable Expenses</b>	<b>4,663,900</b>	<b>4,688,300</b>
<b>54 Net Revenue</b>	<b>(4,613,100)</b>	<b>(3,788,700)</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Practice Review**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	16.0	16.0
2 <b>Total Employee Count</b>	<b>16.0</b>	<b>16.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-012-0040-0004-30000-000010 SALARIES PERMANENT	1,507,500	1,534,000
4 005-012-0040-0004-30030-000000 EMPLOYEE BENEFITS	229,800	218,400
5 <b>Total Salaries and Benefits</b>	<b>1,737,300</b>	<b>1,752,400</b>
<b>Department Operating Expenses</b>		
6 005-012-0040-0004-31000-000000 PROFESSIONAL MEMBERSHIPS	13,000	13,000
7 005-012-0040-0004-31010-000000 COURSES AND CONFERENCES	6,500	6,500
8 005-012-0040-0004-31020-000000 PUBLICATIONS	300	300
9 005-012-0040-0004-31030-000000 OFFICE EXPENSE	14,300	14,300
10 005-012-0040-0004-31040-000000 FRENCH LANGUAGE TRANSLATION	200	3,700
11 005-012-0040-0004-31050-000000 COURIER SERVICE/POSTAGE	4,400	4,400
12 005-012-0040-0004-31060-000000 PHOTOCOPY EXPENSE	5,700	5,700
13 005-012-0040-0004-31070-000000 STAFF AND TRAVEL	83,500	83,500
14 005-012-0040-0004-31080-000000 PRINTING AND STATIONERY	5,600	5,600
15 005-012-0040-0004-31090-000000 LONG DISTANCE TELEPHONE	100	100
16 005-012-0040-0004-31090-000010 WIRELESS DEVICES	7,400	7,900
17 005-012-0040-0004-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	4,900	4,900
18 005-012-0040-0004-31130-000000 MISCELLANEOUS	1,000	1,500
19 <b>Total Department Operating Expenses</b>	<b>146,900</b>	<b>151,400</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>1,884,200</b>	<b>1,903,800</b>
<b>Program Expenses</b>		
21 005-012-0040-0004-33720-000000 REVIEWER ACCOUNTS	71,100	71,100
22 005-012-0040-0004-33785-000000 TELECOMMUTING	6,500	7,300
23 <b>Total Program Expenses</b>	<b>77,600</b>	<b>78,400</b>
24 <b>Total Variable Expenses</b>	<b>1,961,800</b>	<b>1,982,200</b>
25 <b>Net Expenses</b>	<b>1,961,800</b>	<b>1,982,200</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Professional Development and Competence**  
**Spot Audit**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	33.0	32.0
2 Permanent Part-Time	1.0	1.0
3 Contract	1.0	1.0
<b>4 Total Employee Count</b>	<b>35.0</b>	<b>34.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5 005-012-0042-0001-30000-000010 SALARIES PERMANENT	3,317,500	3,235,300
6 005-012-0042-0001-30010-000010 SALARIES PART TIME	64,600	40,800
7 005-012-0042-0001-30010-000020 SALARIES CONTRACT	10,200	10,000
8 005-012-0042-0001-30030-000000 EMPLOYEE BENEFITS	525,900	524,295
<b>9 Total Salaries and Benefits</b>	<b>3,918,200</b>	<b>3,810,395</b>
<b>Department Operating Expenses</b>		
10 005-012-0042-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	28,900	28,900
11 005-012-0042-0001-31010-000000 COURSES AND CONFERENCES	21,400	21,400
12 005-012-0042-0001-31020-000000 PUBLICATIONS	1,500	1,500
13 005-012-0042-0001-31030-000000 OFFICE EXPENSE	24,000	24,000
14 005-012-0042-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
15 005-012-0042-0001-31050-000000 COURIER SERVICE/POSTAGE	9,800	9,800
16 005-012-0042-0001-31060-000000 PHOTOCOPY EXPENSE	7,000	7,000
17 005-012-0042-0001-31070-000000 STAFF AND TRAVEL	222,100	268,100
18 005-012-0042-0001-31080-000000 PRINTING AND STATIONERY	17,900	17,900
19 005-012-0042-0001-31090-000000 TELEPHONE SERVICES	1,100	1,100
20 005-012-0042-0001-31090-000010 WIRELESS DEVICES	7,300	11,800
21 005-012-0042-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	11,100	11,100
22 005-012-0042-0001-31130-000000 MISCELLANEOUS	5,800	9,400
<b>23 Total Department Operating Expenses</b>	<b>358,400</b>	<b>412,500</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>4,276,600</b>	<b>4,222,895</b>
<b>Program Expenses</b>		
25 005-012-0042-0001-33170-000000 COMPUTER PROGRAMMING	500	500
26 005-012-0042-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	7,100	7,100
27 005-012-0042-0001-33900-000000 EXTERNAL AUDITORS	92,300	-
28 005-012-0042-0001-33785-000000 TELECOMMUTING	20,500	21,700
29 005-012-0042-0001-33720-000000 REVIEWER ACCOUNTS	20,000	20,200
<b>30 Total Program Expenses</b>	<b>140,400</b>	<b>49,500</b>
<b>31 Total Variable Expenses</b>	<b>4,417,000</b>	<b>4,272,395</b>
<b>32 Net Expenses</b>	<b>4,417,000</b>	<b>4,272,395</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
POLICY, EQUITY AND PUBLIC AFFAIRS  
EXECUTIVE DIRECTOR'S OFFICE**

In February 2014, the new Policy, Equity and Public Affairs Division was created, and the Executive Director was hired.

The Division brings together the work of Communications, Equity, Policy and Public Affairs.

Over the initial months efforts have been focused at bringing coherence to the Division, and ensuring that good advice and work products are being provided to the Treasurer, Benchers, the CEO and the Senior Management Executive.

The role of the Executive Director is to provide strategic leadership to the PEPA team and on the SME/SMT, and regarding key stakeholders. The PEPA Executive Director is focused on ensuring strong collegiality and achieving operational efficiencies to provide effective service.

The PEPA Executive Director has had primary responsibility as well for supporting the TAG initiative, with the public launch on June 3, and the formation of a stakeholder Reference Group to steer the Access to Justice initiative.

The PEPA Executive Director has also had key involvement with respect to Aboriginal issues, including the hosting on April 22 of a reception for the Iacobucci Implementation Committee at the Law Society, and the holding on June 19 of a Roundtable with Aboriginal licensees about updating the Law Society's Aboriginal Strategy.

**THE LAW SOCIETY OF UPPER CANADA  
Convocation, Policy and Outreach  
Policy, Equity and Public Affairs Executive Director  
Draft Budget  
For the Year Ending December 31, 2015**

		<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1	Permanent	3.0
2	Total Employee Count	3.0
<b>REVENUES:</b>		
3	005-022-300-0001-43200-000010 LFO GRANT	400,000
4	<b>Total Revenues</b>	<b>400,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
5	005-022-300-0001-30000-000010 SALARIES PERMANENT	477,400
6	005-022-300-0001-30030-000000 EMPLOYEE BENEFITS	53,200
7	<b>Total Salaries and Benefits</b>	<b>530,600</b>
<b>Department Operating Expenses</b>		
8	005-022-300-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	2,000
9	005-022-300-0001-31010-000000 COURSES AND CONFERENCES	15,000
10	005-022-300-0001-31020-000000 PUBLICATIONS	1,000
11	005-022-300-0001-31030-000000 OFFICE EXPENSE	3,000
12	005-022-300-0001-31070-000000 STAFF AND TRAVEL	20,000
13	005-022-300-0001-31090-000010 WIRELESS DEVICES	1,000
14	005-022-300-0001-31130-000000 MISCELLANEOUS	3,000
15	<b>Total Department Operating Expenses</b>	<b>45,000</b>
16	<b>Total Salaries and Operating Expenses</b>	<b>575,600</b>
<b>Program Expenses</b>		
17	005-022-300-0001-33790-000030 TAG PROJECT	73,500
18	<b>Total Program Expenses</b>	<b>73,500</b>
19	<b>Total Variable Expenses</b>	<b>649,100</b>
20	<b>Net Expenses</b>	<b>249,100</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)  
POLICY**

**Mandate**

The Director, Policy is responsible for Convocation support, corporate secretarial functions and policy development.

Staffing in the Policy Secretariat remains at seven employees – a Director, an Administrator, three Policy Counsel, an Administrator to Convocation, and a Counsel to the Director, Policy.

The responsibilities of the Policy Secretariat fall into four main categories:

**1. Governance**

These activities include the conduct of Benchers, paralegal, Paralegal Standing Committee chair and Treasurer elections, the conduct of the Annual General Meeting, Benchers orientation, preparation of minutes of Convocation, agenda planning with the Treasurer, Chief Executive Officer and others, supporting the work of the Priority Planning Committee and other general Corporate Secretary functions.

Activities in 2014 included:

- On March 31, 2014, the second paralegal election, which for the first time elected five licensed paralegals as benchers in Convocation and as members of the Paralegal Standing Committee;
- On April 9, 2014, the election of the chair of Paralegal Standing Committee;
- On June 26, 2014, the election of the Treasurer, which included three candidates.

**2. Policy Development**

Staff in the Policy Secretariat support the policy work of benchers. In their role as secretaries to committees, working groups and task forces, Policy Counsel develop ideas into policy for consideration at the relevant meetings and Convocation.

Depending on the nature of the policy under development, Policy Counsel may

- research the history of the policy and related policies at the Law Society
- determine how other law societies and professional regulators deal with the issue
- research how the legal profession and its regulators in other countries deal with the issue
- consult with stakeholders, including lawyers and paralegals and other legal organizations
- consult with the operational staff who will be implementing the policy
- consult and retain experts, legal or otherwise, on the issues
- write agendas for the committee, working group or task force
- write the report to Convocation outlining the deliberations and recommendations of the committee, working group or task force.

### 3. Legislative Review

Draft legislation is reviewed in the Policy Secretariat and, if relevant, responded to. The Law Society is vigilant in commenting on issues that affect the governance of lawyers and paralegals. This has become increasingly necessary as external attempts to regulate aspects of the legal profession have increased. Policy Counsel regularly draft submissions to government and other bodies in response to proposals that may undermine an independent legal profession with negative implications for the public interest.

Legislation reviewed or currently being monitored by staff in the Policy Secretariat includes:

- *Bill 157, Financial Advisors Act, 2014*
- *Bill 161, Ontario Immigration Act, 2014*
- *Bill 170, Employment Standards Amendment Act (Greater Protection for Interns and Vulnerable Workers), 2014*
- *Bill 172, Learning Through Workplace Experience Act, 2014*
- *Bill 176, Better Business Climate Act, 2014*
- *Bill 189, Roadside Assistance Protection Act, 2014*
- *Bill 194, Building Opportunity and Securing Our Future Act (Budget Measures), 2014*
- *Bill 14, Building Opportunity and Securing Our Future Act (Budget Measures), 2014 (post election)*

### 4. Federation of Law Societies of Canada

The Policy Secretariat contributes considerable time and expertise to the work of the Federation of Law Societies of Canada.

In 2014, staff in the Policy Secretariat participated in the following work of the Federation:

- Assisting with the implementation of the National Mobility Agreement with respect to Quebec
- Participating on the Federation's Standing Committee on the Model Code of Professional Conduct
- Participating in the National Standards Project
- Providing support to the organization of the Federation's Semi-Annual Conference, April 2014

With respect to the secondments noted above, Counsel to the Director completed a half-time eight-month secondment with the Federation in June 2014 providing counsel support to the Federation during the maternity leave of a Federation staff counsel. One Policy Counsel began a quarter-time secondment in April 2014 for at least the balance of 2014 assisting primarily in the work of the Common Law Program Approval Committee.

### Other Policy Secretariat Work

Throughout 2014, the resources of the Policy Secretariat have been focused on many issues and projects, including the following:

- Continuing work arising from the recommendations of the independent reviewer appointed by the Attorney General (the Morris Report) respecting the five year

review of paralegal regulation (e.g. scope of paralegal practice and review of exemptions)

- Implementation of the Federation of Law Societies' Model Code of Conduct with amendments to the Law Society's lawyer and paralegal rules of conduct
- Work on other rules issues arising from the consultation on the amendments described above
- Work on the next phase of the possible rule changes related to limited scope retainers
- Supporting the work of the Alternative Business Structures working group
- Work on the national suitability to practice standards and national discipline standards (Federation of Law Societies of Canada)
- Continuing implementation of the Pathways pilot project
- Supporting the work of the Mentoring and Advisory Services Proposal Task Force
- Continuing implementation of the National Mobility Agreement 2013
- Continuing implementation of tribunal reforms, including revisions and updating of the Adjudicator Code of Conduct, amendments to the by-laws and *Rules of Practice and Procedure* and recruitment of new non-bencher adjudicators
- Ongoing work on projects respecting history of the legal profession and documenting historical discipline data
- Amendments to the bencher election process through the work of the Bencher Election Working Group
- Continuing the work of the governance working group of the Priority Planning Committee
- Organizing and managing the special Convocations for the Trinity Western University deliberations, including the call for submissions
- Implementing the internal aspect of the framework approved by Convocation for access to justice through the TAG initiative
- Continuing the implementation of the enhanced policy development process as directed by the CEO
- Preparing materials, including memoranda, briefing notes and presentations, for the Treasurer, benchers, Executive Director - Policy, Equity and Public Affairs and the CEO on various Law Society or related issues

### **2015 Budget**

The budget for 2015 includes a reduction in operating expenses from the 2013 level but, because of increased program expense, a net increase of less than 1% against the target for 2015. Budget for all Convocation functions, including reporting and transcript services, is increased based on an increase in rates by the provider and experience in 2014 with a trend to an increased number of and longer Convocations. A small increase in the budget for other program expenditures anticipates funds required for consultations related to the work of the Alternative Business Structures Working Group.

Revenue relates to the recovery of salary expenses from the Federation of Law Societies for a quarter-time Policy counsel secondment.

**THE LAW SOCIETY OF UPPER CANADA**  
**Convocation, Policy and Outreach**  
**Policy**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		<u>Approved Budget 2014</u>	<u>Draft Budget 2015</u>
<b>EMPLOYEE COUNT:</b>			
1	Permanent	7.0	7.0
2	<b>Total Employee Count</b>	<u>7.0</u>	<u>7.0</u>
<b>REVENUES:</b>			
3	005-022-0062-0001-4 FLS RECOVERY	20,000	20,000
4	<b>Total Revenues</b>	<u>20,000</u>	<u>20,000</u>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
5	005-022-0062-0001-30000-000010 SALARIES PERMANENT	896,400	909,700
6	005-022-0062-0001-30030-000000 EMPLOYEE BENEFITS	139,600	135,800
7	<b>Total Salaries and Benefits</b>	<u>1,036,000</u>	<u>1,045,500</u>
<b>Department Operating Expenses</b>			
8	005-022-0062-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	11,500	11,500
9	005-022-0062-0001-31010-000000 COURSES AND CONFERENCES	7,000	7,000
10	005-022-0062-0001-31020-000000 PUBLICATIONS	500	500
11	005-022-0062-0001-31030-000000 OFFICE EXPENSE	2,400	2,000
12	005-022-0062-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	-	-
13	005-022-0062-0001-31050-000000 COURIER SERVICE/POSTAGE	1,000	1,000
14	005-022-0062-0001-31060-000000 PHOTOCOPY EXPENSE	1,500	1,000
15	005-022-0062-0001-31070-000000 STAFF AND TRAVEL	15,000	15,000
16	005-022-0062-0001-31080-000000 PRINTING AND STATIONERY	4,000	4,000
17	005-022-0062-0001-31090-000000 TELEPHONE SERVICES	5,000	3,000
18	005-022-0062-0001-31090-000010 WIRELESS DEVICES	1,200	1,200
19	005-022-0062-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	2,200	2,200
20	005-022-0062-0001-31130-000000 MISCELLANEOUS	1,000	1,500
21	<b>Total Department Operating Expenses</b>	<u>52,300</u>	<u>49,900</u>
22	<b>Total Salaries and Operating Expenses</b>	<u>1,088,300</u>	<u>1,095,400</u>
<b>Program Expenses</b>			
23	005-022-0062-0001-33190-000000 CONVOCATION REPORTER	3,000	6,000
24	005-022-0062-0001-33190-000010 CONVOCATION TRANSCRIPTS	11,000	15,000
25	005-022-0062-0001-33190-000020 CONVOCATION MATERIAL-PRINTING	1,500	2,500
26	005-022-0062-0001-33190-000030 CONVOCATION EXPENSES	2,500	3,500
27	005-022-0062-0001-33550-000000 OTHER PROGRAM EXPENDITURES	50,000	55,000
28	005-022-0062-0001-33040-000000 ANNUAL MEETING	11,000	10,300
29	<b>Total Program Expenses</b>	<u>79,000</u>	<u>92,300</u>
30	<b>Total Variable Expenses</b>	<u>1,167,300</u>	<u>1,187,700</u>
31	<b>Net Expenses</b>	<u>1,147,300</u>	<u>1,167,700</u>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)**

**EQUITY**

Consistent with the Law Society's mandate to govern the profession in the public interest, the Equity Initiatives Department undertakes activities to enhance,

- the accessibility of the Law Society's services, programs and decision-making to diverse communities;
- equality and diversity within the legal profession in Ontario and at the governance level;
- access to justice for the public.

The Department's total budget for 2015 has decreased to \$1,136,900 from \$ 1,218,300 in 2014. This decrease is as a result of the completion of resource development activities in the Justicia Project (\$25,000). A decrease was also applied to the Discrimination and Harassment Counsel Program and the Career Coaching Program budgets to reflect end of year actuals since the inception of the programs (\$40,000 and \$35,000 respectively).

The total employee count remains at 6. There are 5 full-time permanent employees and 1 contractual employee in the Department. The salaries and benefits are decreased by \$16,900, from \$746,700 in 2014 to \$729,800 in 2015, to account for a change in one position classification.

The Department's activities are divided into the following main areas: Public Education and Outreach; Research, Policy Development and Initiatives; Implementation of the Retention of Women in Private Practice Project; and Access to Justice. The Department also supports the functions of the Discrimination and Harassment Counsel.

**Public Education and Outreach**

The Department coordinates public education events as a way of promoting equality and diversity and of improving relations between the Law Society and members of Aboriginal, Francophone and equality-seeking communities within the profession and the broader community. All events are planned in partnership with legal associations and with the participation of lawyers. Relevant educational and promotional materials are prepared for events.

Such events include: Access Awareness, Asian and South Asian Heritage Month, Black History Month, International Women's Day, la Journée des Franco-Ontariens, la Journée internationale de la Francophonie, Law Week, Louis Riel Day, National Aboriginal History Month, National Holocaust Memorial Day and Pride. In 2009, the department launched the Rule of Law Series with the coordination of two to three international human rights events each year. It is anticipated that the Equity Initiatives Department will organize, and partner with organizations to deliver at least eleven equity and rule of law related public legal education events in 2015 and at least one staff event.

These events are coordinated in partnership with various organizations and groups including the following: the Aboriginal Services Toronto, Amnesty International Canada, the Association des juristes d'expression française de l'Ontario (AJEFO), ARCH Disability Law Centre, the Barbra Schlifer Commemorative Clinic, B'nai Brith Canada, the Canadian Association of Black Lawyers, the City of Toronto, Canadian Lawyers Abroad, the Federation of Asian Canadian Lawyers, the Women Lawyers Forum of the Ontario Bar Association (OBA), Human Rights Watch, Lawyers' Rights Watch Canada, the Métis National Council, the Ontario Justice Education Network, the Sexual Orientation and Gender Identity Committee of the OBA, the South Asian Bar Association, the Women's Law Association of Ontario, the Women's Legal and Education Action Fund, and many others. It is anticipated that over 2,500 individuals will participate in events coordinated by the Equity Initiatives Department in 2015.

Budget: Budgeted expenses for this activity are increased by \$5,000 from \$55,000 in 2014 to \$60,000 in 2015 to reflect increases in cost of events.

### **Research, Policy Development and Initiatives**

#### *Policy Development*

Activities in this area support the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, the Access to Justice Committee, the Equity Advisory Group/Groupe consultatif en matière d'équité and other working groups and task forces that fall within the mandate of the department. This requires developing policy and program options on a variety of matters including the following: developing resources to retain women in private practice; developing resources to promote a barrier free profession for members of equality-seeking communities; developing policies related to the Aboriginal community; monitoring human rights violations against lawyers and judges; analyzing trends in movement of lawyers in Ontario; identifying factors that affect career choices; and promoting French language rights.

Policy development will enable the Law Society to research, prepare and disseminate resources on access to justice for the public and on equality and diversity for the profession and the Law Society. Examples of initiatives will include the following:

- dissemination of best-practices for the advancement of women and racialized licensees in practice;
- development of guides and model policies for the legal profession;
- analysis of trends related to changes of status within the profession.

#### *Research in Demographic Analysis*

Research in Demographic Analysis is undertaken each year to provide insights into the demographic profile of the profession and help formulate the rationale for various policy initiatives. Throughout 2014, the Equity Initiatives Department undertook and monitored research activities approved by the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones. Since 2012, the change of status survey is being conducted with both the profession of lawyers and paralegals. It will continue to be conducted in 2015 and will build on the findings from 2010 to 2014, which provide a wealth of information about the profession. The Career Choice Survey will again be conducted in 2015 with recently called lawyers to build on the findings of the first two

Career Choice surveys. Further research will be undertaken in 2015 to identify programs and initiatives that the Law Society could develop to assist Francophone, Aboriginal and equality-seeking licensees in entering and remaining in the legal profession.

#### *Professional Development Initiatives*

Professional development opportunities for lawyers will be provided through specific education and training programs aimed at imparting knowledge and skills on law related to equality and diversity as well as best practices of integrating equality and diversity into day-to-day business. In 2015, it is anticipated that at least ten training programs and presentations will be delivered to lawyers and students in legal organizations, including law firms and law faculties.

#### *Equity and Diversity at the Law Society*

Professional development activities are also delivered within the Law Society. In 2015, at least five sessions will be delivered to staff of the Law Society. These activities will enable the Law Society to develop a workforce that reflects and benefits from diversity. Specific activities to achieve this goal include working with the Human Resources Department to initiate awareness programs for the workforce and enhancing its current strategies to ensure the organization both reflects and benefits from diversity.

#### *Mentoring Program*

The Law Society will also continue the Law Society Mentoring Program – Equity and Diversity Initiative. In 2015, it is anticipated that the Equity Initiatives Department will continue to collaborate with associations that already have mentoring programs. It is also anticipated that the Equity Initiatives Department will coordinate between 15 and 40 mentor–mentee relationships.

#### *National Collaboration*

The Director, Equity, and Discrimination and Harassment Counsel attend national annual meetings of equity advisors and ombudspersons. The meetings provide a forum for continued dialogue and exchanges of ideas about equity and diversity initiatives. It is anticipated that such meetings will continue in 2015.

Budget: Budgeted expenses for policies and initiatives are maintained at \$40,000 (2014 and 2015). Budgeted expenses for research initiatives are maintained at \$40,000 (2014 and 2015). Budgeted expenses to support bench committees, working groups and advisory groups are maintained at \$13,000 (2014 and 2015).

### **Implementation of Retention of Women in Private Practice Project**

In 2009, Convocation approved recommendations to enhance the retention of women in private practice. The Equity Initiatives Department is responsible for implementing the bulk of the recommendations, including working with law firms to implement the Justicia Project, managing the Contract Lawyers' Registry and conducting a change of status survey. A budget of \$50,000 for 2014 was dedicated to complete the Justicia resource development and launch the resources for the profession. This stage was completed in 2014 and the Justicia Project will now continue with the promotion of resources and the development of Continuing Professional Development programs. The required budget is reduced from \$50,000 in 2014 to \$25,000 in 2015.

In April 2012, the Law Society launched the Career Coaching Program, a five-year pilot for women lawyers to assist those who are in sole practice or firms of 5 lawyers or fewer to maintain their practice while taking a maternity, parental or compassionate care leave. The program is structured to allow for two hours of coaching prior to the leave, two hours during the leave and two hours following the leave, to assist with ramping down the practice, maintaining the practice and reintegrating into the practice. The 2014 budget of \$50,000 is reduced by \$35,000 to \$19,500 in 2015 to reflect the demand.

Budget: Budgeted expenses to implement the Retention of Women in Private Practice Project are reduced from \$50,000 in 2014 to \$25,000 in 2015. Budgeted expenses to implement the Career Coaching Program are reduced from \$50,000 in 2014 to \$19,500 in 2015.

### **Access to Justice**

In 2010, the Law Society of Upper Canada, Legal Aid Ontario and Pro Bono Law Ontario released the report of the Ontario Civil Legal Needs Project. As a result, a fund for access to justice events and initiatives was created to the amount of \$15,000. With the establishment of the Treasurer's Action Group, the budget for access to justice activities is increased to \$45,000 in 2015 to cover the implementation of an access to justice Aboriginal strategy.

Budget: The 2014 budget of \$15,000 to organize access to justice events and initiatives is increased to \$45,000 in 2015 to allow for the implementation of an access to justice Aboriginal strategy.

### **Aboriginal Initiatives**

This program provides direct support to Aboriginal candidates in the Licensing Process (e.g., networking opportunities and advice) and assists Aboriginal lawyers within the profession. The program also provides a direct link to Aboriginal lawyers concerned about issues regarding governance of the profession and its relationship with Aboriginal peoples. To do this, the Department provides support to the Aboriginal Working Group, maintains ongoing dialogue with Aboriginal legal educators and practitioners, organizes province-wide symposia for Aboriginal students and lawyers, delivers education programs, attends career fairs and meets regularly with Aboriginal peoples enrolled in law schools and the Licensing Process. The Department also convenes educational forums and seminars that promote Aboriginal perspectives on law and discuss Canadian law and its impact on Aboriginal peoples. In 2015, the Department, with the Equity Committee, will be updating its Aboriginal strategy. This will involve outreach and engagement with the Aboriginal and non-Aboriginal community.

Budget: Budgeted expenses are maintained at \$20,000 (2014 and 2015).

### **Discrimination and Harassment Counsel (DHC)**

Convocation approved this program in June 2001 as a permanent program. Its purpose is to provide lawyers and the public with access to someone they can speak with in confidence regarding allegations of discrimination or harassment by lawyers and paralegals. The DHC operates at arm's length from the Law Society. The services

include assisting individuals in clarifying their issues/concerns and enabling individuals to identify options to take action on their concerns.

In 2008, Convocation approved an increase in the hourly fee of the DHC from \$175 to \$250 and in 2012, an increase to \$315. In 2008, Convocation also approved an increase in the annual budget for the program from \$100,000 to \$150,000. The DHC program consistently operates under budget and as a result, the budget for the program in 2015 is reduced by \$40,000 to reflect demand.

Budget: Budgeted expenses are reduced by \$40,000 from \$150,000 in 2014 to \$110,000 in 2015.

### **Staffing**

The Equity Initiatives Department consists of six staff:

- Director, Equity
- Associate Counsel, Equity Initiatives
- Aboriginal Initiatives and Policy Counsel
- Outreach and Program Coordinator
- Program Administrator
- Articling Student (contract)

**THE LAW SOCIETY OF UPPER CANADA**  
**Convocation, Policy and Outreach**  
**Equity**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	5.0	5.0
2	Contract	1.0	1.0
3	<b>Total Employee Count</b>	<b>6.0</b>	<b>6.0</b>
<b>REVENUES:</b>			
4	005-017-0180-0001-42060-000020 EQUITY TRAINING REVENUE	25,000	25,000
5	<b>Total Revenues</b>	<b>25,000</b>	<b>25,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
6	005-017-0180-0001-30000-000010 SALARIES PERMANENT	595,700	583,800
7	005-017-0180-0001-30010-000020 SALARIES CONTRACT	64,800	64,800
8	005-017-0180-0001-30020-000000 SALARIES OVERTIME	3,000	3,000
9	005-017-0180-0001-30030-000000 EMPLOYEE BENEFITS	83,200	78,200
10	<b>Total Salaries and Benefits</b>	<b>746,700</b>	<b>729,800</b>
<b>Department Operating Expenses</b>			
11	005-017-0180-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	12,000	12,000
12	005-017-0180-0001-31010-000000 COURSES AND CONFERENCES	5,000	5,000
13	005-017-0180-0001-31020-000000 PUBLICATIONS	2,000	2,000
14	005-017-0180-0001-31030-000000 OFFICE EXPENSE	3,000	3,000
15	005-017-0180-0001-31050-000000 COURIER SERVICE/POSTAGE	1,000	1,000
16	005-017-0180-0001-31060-000000 PHOTOCOPY EXPENSE	2,500	2,500
17	005-017-0180-0001-31070-000000 STAFF AND TRAVEL	8,000	8,000
18	005-017-0180-0001-31080-000000 PRINTING AND STATIONERY	3,000	3,000
19	005-017-0180-0001-31090-000000 TELEPHONE SERVICES	2,500	2,500
20	005-017-0180-0001-31090-000010 WIRELESS DEVICES	4,000	4,000
21	005-017-0180-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	2,100	2,100
22	005-017-0180-0001-31130-000000 MISCELLANEOUS	3,500	4,000
23	<b>Total Department Operating Expenses</b>	<b>48,600</b>	<b>49,100</b>
24	<b>Total Salaries and Operating Expenses</b>	<b>795,300</b>	<b>778,900</b>
<b>Program Expenses</b>			
25	005-017-0180-0001-33005-000000 ABORIGINAL ISSUES	20,000	20,000
26	005-017-0180-0001-33140-000000 EQUITY & ABORIGINAL ISSUES COMMITTEE	10,000	10,000
27	005-017-0180-0001-33140-000010 EQUITY & ADVISORY GROUP	3,000	3,000
28	005-017-0180-0001-33250-000000 DEMOGRAPHIC ANALYSIS	40,000	40,000
29	005-017-0180-0001-33520-000000 POLICIES AND INITIATIVES	40,000	40,000
30	005-017-0180-0001-33640-000000 PUBLIC EDUCATION	55,000	60,000
31	005-017-0180-0001-33725-000000 DISCRIMINATION & HARASSMENT COUNSEL	150,000	110,000
32	005-017-0180-0001-34080-000000 EQUITY TRAINING EXPENSE	15,000	15,000
33	005-017-0180-0001-33600-000000 WOMEN IN PRIVATE PRACTICE	50,000	25,000
34	005-017-0180-0001-33550-001100 ACCESS TO JUSTICE CIVIL NEEDS	15,000	45,000
36	005-017-0180-0001-33710-000000 COACHING PROGRAM FOR LAWYERS	50,000	15,000
38	<b>Total Program Expenses</b>	<b>448,000</b>	<b>383,000</b>
39	<b>Total Variable Expenses</b>	<b>1,243,300</b>	<b>1,161,900</b>
40	<b>Net Expenses</b>	<b>1,218,300</b>	<b>1,136,900</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)**

**PUBLIC AFFAIRS**

**Mandate**

The Public Affairs department develops and maintains government and stakeholder relationships that assist the Law Society in identifying and achieving its priorities and objectives. By cultivating these relationships, the department is able to facilitate effective government and stakeholder engagement in the Law Society's policy development processes and ensure timely and appropriate responses to emerging issues.

The primary activities of the department include developing and managing stakeholder and government relationships, critical and emerging issues management, supporting policy development and strategic planning, and developing and supporting outreach activities. These activities inform, and are informed by, the work of every department of the Law Society.

**Issues Management**

The Law Society is able to respond to and manage critical and emerging issues effectively and appropriately as a result of the leadership provided by the Public Affairs Department and the relationships it has cultivated with key stakeholders and government.

Working closely with the Office of the Treasurer, the CEO, PEPA and other Law Society departments, Public Affairs researches and provides strategic advice and support to ensure Law Society positions are clear, consistent and representative of the interests of the whole organization.

The department is also engaged in the Law Society's policy development processes generally, ensuring stakeholder and government interests and feedback are considered, as appropriate.

Over the next year, the department will continue to support these activities and bring greater focus to issues tracking and information sharing and coordination, and the development of a corporate approach to stakeholder consultation. This will enable the Law Society to take a deliberate and consistent approach to consultations that aid in policy development and decision-making.

The department will also continue to take on special projects as requested by the Treasurer and CEO, such as the leadership provided on Access to Justice throughout 2014.

**Cultivating External Relationships**

Strong relationships, built and maintained with stakeholders and government, enhance the Law Society's ability to identify and meet its priorities and objectives. Strong stakeholder relations are founded on transparency and information sharing, central tenets of the work of the Public Affairs department. This work enhances the reach and

relevance of the Law Society and contributes to a strong reputation and brand. The department's work will continue to focus on:

- Maintaining and enhancing relationships with government, legal and paralegal organizations, law firms, judiciary, self-regulatory bodies, public forums and the Federation of Law Societies of Canada
- Ensuring Benchers and staff have the information they need to understand the public policy implications of relevant legislation and provides strategic advice and support to the Treasurer, Benchers, CEO and Law Society employees  
Coordinating outreach programs to increase the visibility and profile of the Law Society
- Establishing a stronger presence in public policy development and decision-making
- Enhancing relationships with other regulatory bodies, domestically and internationally
- Aligning corporate outreach messages for stakeholder consumption
- The department maintains a strong focus in cultivating the Law Society's government relations, anticipating, monitoring and addressing government initiatives that may affect any part of the Law Society's mandate. The department will continue to: Act as a primary point of contact and liaison with all governments
- Maintain and enhance general relationships with all levels of government
- Make representations to government on issues relating to the effective regulation of the provinces lawyers and paralegals in the public interest
- Monitor the legislative agenda of all levels of government to ensure that the Law Society is aware of government initiatives that affect its mandate
- Manage the process for the Law Society's recommended appointments of individuals to various external organizations.

### **2015 Budget**

- The 2015 budget totals \$745,300 (2014: \$803,900). The evolving mandate is expected to be met with existing resources. In 2014 the Liaison Counsel position was transferred to the PEPA Executive Director's office, and then the position was eliminated when the incumbent left. The Government and Stakeholder Relations position, shared with Equity in 2013-14, is being transferred to Equity to support the new Outreach and Program Coordinator.

**THE LAW SOCIETY OF UPPER CANADA**  
**Convocation, Policy and Outreach**  
**Public Affairs**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	4.0	3.0
2	<b>Total Employee Count</b>	<b>4.0</b>	<b>3.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
3	005-013-0064-0001-30000-000010 SALARIES PERMANENT	432,100	318,200
4	005-013-0064-0001-30030-000000 EMPLOYEE BENEFITS	77,800	67,600
5	<b>Total Salaries and Benefits</b>	<b>509,900</b>	<b>385,800</b>
<b>Department Operating Expenses</b>			
6	005-013-0064-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	10,000	10,000
7	005-013-0064-0001-31010-000000 COURSES AND CONFERENCES	8,000	8,000
8	005-013-0064-0001-31020-000000 PUBLICATIONS	3,500	3,500
9	005-013-0064-0001-31030-000000 OFFICE EXPENSE	1,500	1,500
10	005-013-0064-0001-31050-000000 COURIER SERVICE/POSTAGE	700	700
11	005-013-0064-0001-31060-000000 PHOTOCOPY EXPENSE	500	500
12	005-013-0064-0001-31070-000000 STAFF AND TRAVEL	4,500	4,500
13	005-013-0064-0001-31080-000000 PRINTING AND STATIONERY	500	500
14	005-013-0064-0001-31090-000000 TELEPHONE SERVICES	500	500
15	005-013-0064-0001-31090-000010 WIRELESS DEVICES	4,000	4,000
16	005-013-0064-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	600	600
17	005-013-0064-0001-31130-000000 MISCELLANEOUS	800	1,200
18	<b>Total Department Operating Expenses</b>	<b>35,100</b>	<b>35,500</b>
19	<b>Total Salaries and Operating Expenses</b>	<b>545,000</b>	<b>421,300</b>
<b>Program Expenses</b>			
20	005-013-0064-0001-33180-000000 CONSULTING SERVICES	65,000	65,000
21	005-013-0064-0001-33415-000000 HOSPITALITY	10,000	10,000
22	005-013-0064-0001-33620-000000 MATERIALS	4,000	4,000
23	005-013-0064-0001-33715-000000 RESEARCH SERVICES	5,000	5,000
24	005-013-0064-0001-33760-000000 EVENTS/MEETINGS	25,500	25,500
26	005-013-0064-0001-33775-000000 STAKEHOLDER RELATIONS	60,000	60,000
27	005-013-0064-0001-33830-000020 PUBLIC AFFAIRS TRAVEL	15,000	15,000
28	005-013-0064-0001-34215-000000 POLITICAL ACTIVITIES AND EVENTS	60,000	60,000
29	005-013-0064-0001-33790-000020 MEMBERSHIPS & SPONSORSHIPS	14,400	17,000
30	005-013-0064-0001-33790-000030 TAG - CONSULTING	-	32,500
31	005-013-0064-0001-33790-000040 TAG - STAKEHOLDER RELATIONS	-	30,000
32	<b>Total Program Expenses</b>	<b>258,900</b>	<b>324,000</b>
33	<b>Total Variable Expenses</b>	<b>803,900</b>	<b>745,300</b>
34	<b>Net Expenses</b>	<b>803,900</b>	<b>745,300</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)**

**COMMUNICATIONS**

**Mandate**

The Communications department provides a range of professional support and services to the organization and all its divisions, designed to promote and raise awareness of the many initiatives, programs, and services of the Law Society, as well as to enhance corporate reputation among members and the public. These services include the provision of strategic communications and marketing planning, the production of content for print and digital media, graphic design and layout, French language translation, and media monitoring. The professional support includes media training, media relations, and corporate research among members and the public.

**Objectives of the department:**

- Foster greater awareness among members of the priority initiatives and goals of the organization and of the services the Law Society provides to its members and the public.
- Qualitative and quantitative research will be undertaken periodically to track levels of awareness.
- Pursue positive or neutral media coverage of Law Society policies, events, and initiatives, and to reduce negative coverage of difficult issues. Continue to report media coverage to SMT quarterly, using the Media Rating Program (MRP).
- Provide leadership to the organization in the use of social media, including the development and publishing of content and the tracking of Law Society mention and presence on Twitter, LinkedIn, Facebook, YouTube, and other channels.
- Deliver a regular report to senior management on social media usage related to the Law Society.
- Support an integrated website that serves the public and members with a consistent look and feel, improved navigation, and an effective content management strategy.
- Support the continuing compliance of the Law Society website with AODA regulations.
- Maintain common graphic standards for digital and printed publications and promotional and marketing purposes. Graphic standards will be published on our intranet and made available as required to outside designers, printers, and to other departments in the organization.

- Maintain high-quality production standards in all the services provided by the department. Periodic consultation with senior management members to assess their communications and marketing needs and our effectiveness in meeting those needs.
- Provide strategic communications advice and support to Convocation, senior management and other senior staff as required. Participate in SME/SMT discussions and decision making, contribute to the policy development and issue management processes of the organization.
- Support the TAG initiative as new activities are undertaken in 2015.

### **Products and services provided by the department**

#### **Corporate messaging:**

The creation of key messages around corporate issues and initiatives, speech-writing, the production of the Annual Report and the Gazette in digital format, the creation and production of content for the website and for social media.

#### **French language services:**

The translation from English to French and French to English of material for both print and digital formats, as well as support to the Treasurer and senior management in the use of both languages, assistance with recruiting, measuring language ability, and other language services as required.

**Graphic design and layout in print and digital formats:** The provision of graphic design and layout services to all departments.

**Graphic standards, Stylebook:** The creation and publication of graphic standards for both print and digital, and the creation and maintenance of a corporate stylebook.

**Communications and marketing services:** Support the marketing of a corporate brand, as well as advertising, promotion, and other marketing activities to assist with initiatives, products and services from other departments, and the creation and implementation of communications plans for specific initiatives.

**Web content creation:** the creation and publication of content for the corporate website, as well as training and support to all departments in the managing of content.

**Media relations:** the managing of media inquiries on behalf of all departments, the maintenance of a media contact list and the provision to the media of subscription services with discipline information, and the maintenance of a media contact and response database to improve the consistency and efficiency of responding to media inquiries.

**Media monitoring:** tracking the tone and frequency of Law Society coverage in traditional and social media, and the provision of regular reports to senior management.

**Media training:** customized sessions for designated spokespersons.

**Social media services:** the creation and posting of content on corporate social media channels, the provision of strategic advice to all departments on the use and tracking of social media, and the tracking of corporate mention as well as member engagement on social media. The Communications department created a Treasurer's blog in 2013 and produced more than 100 posts in English and French for the previous Treasurer (Thomas Conway). These were written by Communications staff in many instances, and also by subject matter experts or staff from other departments. All were translated and edited by Communications, and we distributed a writer's guide and editorial schedule.

Corporate accounts on Twitter, Facebook and YouTube are also being used more frequently. PD&C are making increasing use of socialmedia as well, in support of CPD programming and other practice management activities. Given the large number of new members joining the Law Society each year, and their ready reliance on and usage of social media and other web-based applications, this is a growth area for the Law Society.

Communications is a good place to center the development of social media strategies, monitor the various channels, and coordinate with other departments. As an example, the Treasurer published a post on his blog highlighting a CPD program that drew more than 3600 participants on the issues associated with self-represented litigants <http://www.lawsocietygazette.ca/blog/self-represented/> The blog post tied together the success of a Law Society CPD program with the Treasurer's stated priority around access to justice. PD&C staff originally alerted Communications staff to the success of the program, and we in turn worked with them to produce the blog post, which we subsequently translated, posted on the blog, and tweeted about through the Treasurer's Twitter account and the corporate Twitter account. We also highlighted the blog post on the main website.

The blog and our various social media accounts offer many new opportunities to build and reinforce the Law Society's brand and to engage members on an ongoing basis. The two Convocation webcasts of the articling debate and the one on TWU are further examples of new opportunities in the digital world. The debates each drew more than a thousand comments online, and the Law Society ranked number one on Twitter in Ontario for more than an hour during the first debate.

### **2015 Budget**

Staffing in the 2015 budget remains unchanged from 2014.

The 2015 budget contains an increase in Program Expenses of \$134,000, funded by the Law Foundation of Ontario, and provided specifically to support TAG. These additional funds will be spent on an idea-sharing site, web hosting, speakers, webcasting, AODA compliance, and support services including translation, printing and mailing. A separate account line in our budget will capture the use of these funds and allow us to track and report them separately.

**THE LAW SOCIETY OF UPPER CANADA**  
**Convocation, Policy and Outreach**  
**Communications**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>			
1	Permanent	11.0	11.0
2	<b>Total Employee Count</b>	<b>11.0</b>	<b>11.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
3	005-019-0240-0001-30000-000010 SALARIES PERMANENT	1,051,900	1,067,000
4	005-019-0240-0001-30030-000000 EMPLOYEE BENEFITS	169,200	167,500
5	<b>Total Salaries and Benefits</b>	<b>1,221,100</b>	<b>1,234,500</b>
<b>Department Operating Expenses</b>			
6	005-019-0240-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	5,000	5,000
7	005-019-0240-0001-31010-000000 COURSES AND CONFERENCES	9,000	9,000
8	005-019-0240-0001-31020-000000 PUBLICATIONS	3,500	3,500
9	005-019-0240-0001-31030-000000 OFFICE EXPENSE	5,000	5,000
10	005-019-0240-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	3,000	3,000
11	005-019-0240-0001-31050-000000 COURIER SERVICE/POSTAGE	3,000	3,000
12	005-019-0240-0001-31060-000000 PHOTOCOPY EXPENSE	4,000	4,000
13	005-019-0240-0001-31070-000000 STAFF AND TRAVEL	7,000	7,000
14	005-019-0240-0001-31080-000000 PRINTING AND STATIONERY	3,000	3,000
15	005-019-0240-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
16	005-019-0240-0001-31090-000010 WIRELESS DEVICES	3,000	3,000
17	005-019-0240-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,400	3,400
18	005-019-0240-0001-31130-000000 MISCELLANEOUS	1,000	1,500
19	<b>Total Department Operating Expenses</b>	<b>50,900</b>	<b>51,400</b>
20	<b>Total Salaries and Operating Expenses</b>	<b>1,272,000</b>	<b>1,285,900</b>
<b>Program Expenses</b>			
21	005-019-0240-0001-33025-000000 ADVERTISING	10,000	10,000
22	005-019-0240-0001-33045-000000 ANNUAL REPORT	30,000	-
23	005-019-0240-0001-33150-000000 MEMBER OUTREACH	5,000	5,000
24	005-019-0240-0001-33180-000000 CONSULTING SERVICES	20,000	78,900
25	005-019-0240-0001-33180-000010 CREATIVE & DESIGN SERVICES	2,500	-
26	005-019-0240-0001-33280-000000 EMPLOYEE COMMUNICATIONS	2,500	-
27	005-019-0240-0001-33380-000000 GAZETTE	50,000	-
28	005-019-0240-0001-33500-000000 MEDIA RELATIONS	115,000	90,000
29	005-019-0240-0001-33665-000000 PUBLICATION&COLLATERAL MATER'L	5,000	-
30	005-019-0240-0001-33880-000000 WEB INITIATIVES	40,000	63,000
31	005-019-0240-0001-34110-000000 PHOTOGRAPHY	10,000	15,000
32	005-019-0240-0001-34115-000000 SPONSORSHIPS	8,900	-
33	005-019-0240-0001-34120-000000 TAG	-	134,000
34	<b>Total Program Expenses</b>	<b>298,900</b>	<b>395,900</b>
35	<b>Total Variable Expenses</b>	<b>1,570,900</b>	<b>1,681,800</b>
36	<b>Net Expenses</b>	<b>1,570,900</b>	<b>1,681,800</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH**

**CONVOCATION**

The total budget for Convocation's expenses has remained relatively flat at \$3.1 million for 2015. A reduction in projected total bencher remuneration of \$200,000 along with a reduction of \$100,000 in Treasurer expenses due to the election of a Toronto based Treasurer are offset by a \$250,000 provision for the anticipated bencher planning session intended for after the upcoming bencher election in May of 2015.

In line with Convocation's policy, an inflationary increase is being applied to the Treasurer's Honorarium which moves from \$182,000 to \$185,000. The budget also provides for a 3% increase in the rates for bencher remuneration. This increase is in line with the anticipated increase in the CPI. Rates have not been increased since 2013.

**THE LAW SOCIETY OF UPPER CANADA**  
**Convocation, Policy and Outreach**  
**Bencher / Treasurer Expenses**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	1.0	1.0
2 <b>Total Employee Count</b>	<b>1.0</b>	<b>1.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-000-0000-0005-30000-000010 SALARIES PERMANENT	85,100	86,700
4 005-000-0000-0005-30030-000000 EMPLOYEE BENEFITS	15,700	15,900
5 <b>Total Salaries and Benefits</b>	<b>100,800</b>	<b>102,600</b>
<b>Department Operating Expenses</b>		
6 005-000-0000-0005-31000-000000 PROFESSIONAL MEMBERSHIPS	200	200
7 005-000-0000-0005-31010-000000 COURSES AND CONFERENCES	3,400	3,400
8 005-000-0000-0005-31020-000000 PUBLICATIONS	1,400	1,400
9 005-000-0000-0005-31030-000000 OFFICE EXPENSE	2,000	2,000
10 005-000-0000-0005-31050-000000 COURIER SERVICE/POSTAGE	3,400	3,400
11 005-000-0000-0005-31060-000000 PHOTOCOPY EXPENSE	1,000	1,000
12 005-000-0000-0005-31070-000000 STAFF AND TRAVEL	2,100	2,100
13 005-000-0000-0005-31080-000000 PRINTING AND STATIONERY	1,200	1,200
14 005-000-0000-0005-31090-000010 WIRELESS DEVICES	1,300	1,300
15 005-000-0000-0005-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	600	600
16 005-000-0000-0005-31130-000000 MISCELLANEOUS	3,200	3,400
17 <b>Total Department Operating Expenses</b>	<b>19,800</b>	<b>20,000</b>
18 <b>Total Salaries and Operating Expenses</b>	<b>120,600</b>	<b>122,600</b>
<b>Program Expenses</b>		
19 005-000-0000-0004-33080-000000 BENCHER DISBURSEMENTS	700,000	700,000
20 005-000-0000-0004-33120-000000 BENCHER FUNCTIONS	425,000	725,000
21 005-000-0000-0004-33265-000000 DIVINE SERVICE	10,000	10,000
22 005-000-0000-0004-33635-000000 PROVISION RE BENCHER ELECTIONS	35,000	35,000
23 005-000-0000-0004-34145-000000 BENCHER REMUNERATION	1,100,000	850,000
24 005-000-0000-0004-34145-000100 LAY BENCHER REMUNERATION	100,000	150,000
25 005-000-0000-0004-33180-000000 CONSULTING FEES	50,000	50,000
26 005-000-0000-0005-33595-000000 PORTRAITS	60,000	60,000
27 005-000-0000-0005-33845-000000 TREASURER'S EXPENSES & MISC	305,000	205,000
28 005-000-0000-0005-33850-000000 TREASURER'S HONORARIUM	182,000	192,500
29 005-000-0000-0005-33810-000000 CJO ADVISORY COMMITTEE EXPENSES	3,000	3,000
30 005-000-0000-0005-33845-000060 TREASURER'S INITIATIVES	11,600	17,200
31 <b>Total Program Expenses</b>	<b>2,981,600</b>	<b>2,997,700</b>
32 <b>Total Variable Expenses</b>	<b>3,102,200</b>	<b>3,120,300</b>
33 <b>Net Expenses</b>	<b>3,102,200</b>	<b>3,120,300</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CONVOCATION, POLICY AND OUTREACH  
FEDERATION OF LAW SOCIETIES**

The Federation of Law Societies of Canada is the national coordinating body for Canada's 14 provincial and territorial law societies. The Law Society of Upper Canada is a member of the Federation and makes annual payments to support the operations and initiatives of the Federation. The total budget, primarily based on membership numbers, is \$1,180,000 (2014: \$980,000).

**THE LAW SOCIETY OF UPPER CANADA  
Convocation, Policy and Outreach  
Federation of Law Societies  
Draft Budget  
For the Year Ending December 31, 2015**

		<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
		<u>          </u>	<u>          </u>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Program Expenses</b>			
1	005-000-0000-0000-32220-000000 F.L.S. MEMBERSHIP	900,000	1,100,000
2	005-000-0000-0000-33210-000000 LITIGATION	80,000	80,000
		<u>          </u>	<u>          </u>
3	<b>Total Program Expenses</b>	<b>980,000</b>	<b>1,180,000</b>
		<u>          </u>	<u>          </u>
4	<b>Total Variable Expenses</b>	<b>980,000</b>	<b>1,180,000</b>
		<u>          </u>	<u>          </u>
5	<b>Net Expenses</b>	<b>980,000</b>	<b>1,180,000</b>
		<u>          </u>	<u>          </u>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
CATERING**

The primary function of the Catering department is to provide food services for Benchers needs and Law Society meetings and events. Activities include the operation of the Osgoode Hall Restaurant (a lunch hour restaurant service), and a cafeteria that provides snacks and meals to staff and visitors. For 2015 the catering operation will add a position of host to assist with dining room operations. This department also caters a wide variety of internal functions including CPD programs, as well as events for outside organizations that contract to use Osgoode Hall facilities.

In addition, Catering provides the venue for the Toronto Lawyers Feed the Hungry program, and contributes to its operation in a number of significant ways.

At this point of 2014, revenues are \$947,000 increasing by 6% over the same period in 2013. The catering operation is budgeted at a net cost of \$331,500 in 2015, compared to \$302,000 in 2014.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Catering**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	22.0	23.0
2 Permanent Part-Time	6.0	6.0
<b>3 Total Employee Count</b>	<b>28.0</b>	<b>29.0</b>
<b>REVENUES:</b>		
4 005-016-0155-0006-42015-000000 BAR INCOME	195,000	195,000
5 005-016-0155-0006-42140-000000 CATERING REVENUE	1,540,000	1,540,000
<b>6 Total Revenues</b>	<b>1,735,000</b>	<b>1,735,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
7 005-016-0155-0006-30000-000010 SALARIES PERMANENT	888,600	914,900
8 005-016-0155-0006-30010-000010 SALARIES PART TIME	107,600	120,600
9 005-016-0155-0006-30020-000000 SALARIES OVERTIME	10,000	10,000
10 005-016-0155-0006-30030-000000 EMPLOYEE BENEFITS	231,700	244,700
<b>11 Total Salaries and Benefits</b>	<b>1,237,900</b>	<b>1,290,500</b>
<b>Department Operating Expenses</b>		
12 005-016-0155-0006-31000-000000 PROFESSIONAL MEMBERSHIPS	500	500
13 005-016-0155-0006-31010-000000 COURSES AND CONFERENCES	5,000	2,500
14 005-016-0155-0006-31020-000000 PUBLICATIONS	2,000	1,000
15 005-016-0155-0006-31030-000000 OFFICE EXPENSE	5,500	4,500
16 005-016-0155-0006-31050-000000 COURIER SERVICE/POSTAGE	500	500
17 005-016-0155-0006-31060-000000 PHOTOCOPY EXPENSE	1,000	1,000
18 005-016-0155-0006-31070-000000 STAFF AND TRAVEL	8,000	10,500
19 005-016-0155-0006-31080-000000 PRINTING AND STATIONERY	2,500	2,500
20 005-016-0155-0006-31090-000000 TELEPHONE SERVICES	3,000	3,000
21 005-016-0155-0006-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	5,500	6,500
22 005-016-0155-0006-31130-000000 MISCELLANEOUS	7,400	8,800
<b>23 Total Department Operating Expenses</b>	<b>40,900</b>	<b>41,300</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>1,278,800</b>	<b>1,331,800</b>
<b>Program Expenses</b>		
25 005-016-0155-0006-33025-000000 ADVERTISING	5,000	5,000
26 005-016-0155-0006-33130-000000 CLEANING SUPPLIES	45,000	45,000
27 005-016-0155-0006-33440-000000 KITCHEN SUPPLIES	30,000	30,000
28 005-016-0155-0006-33675-000000 PURCHASES	550,000	562,000
29 005-016-0155-0006-33700-000000 RENTAL TABLES	2,000	2,000
30 005-016-0155-0006-33705-000000 REPAIRS AND ALTERATIONS	7,000	5,000
31 005-016-0155-0006-33885-000000 WINE BEER ALCOHOL PURCHASES	100,000	102,000
32 005-016-0155-0006-33890-000000 WORKERS COMPENSATION	19,500	15,100
<b>33 Total Program Expenses</b>	<b>758,500</b>	<b>766,100</b>
<b>34 Total Variable Expenses</b>	<b>2,037,300</b>	<b>2,097,900</b>
<b>35 Net Expenses</b>	<b>302,300</b>	<b>362,900</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
LAW SOCIETY REFERRAL SERVICE (“LSRS”)**

The Law Society Referral Service began operating in 2012. The LSRS was created to expand the former Lawyer Referral Service to include paralegals and to offer on-line referrals. The service was also enhanced to guide members of the public to additional resources that might assist them with their legal issues.

As part of the Law Society’s operational review undertaken in 2014, the LSRS was identified as a service that could be maintained and offered to the public in a format significantly transformed from its traditional telephone based referral model.

Throughout 2014 a web based search and referral service has been in development and will roll out in January of 2015. Members of the public will have access to a searchable data base using the web browser on a personal computing device. The service will retain its 1-800 service for members of the public without access to a computer. As a result the service will see a reduction in staff to 5 from the current 10. In total the estimated savings are projected at \$400,000 annually with no reduction in the public’s ability to access a referral through the system.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Law Society Referral Services**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	10.0	5.0
2 <b>Total Employee Count</b>	<b>10.0</b>	<b>5.0</b>
<b>REVENUES:</b>		
3 005-014-0099-0001-42095-000000 LRS MEMBERSHIP FEES	275,000	275,000
4 005-014-0099-0001-42095-000010 PARALEGAL MEMBERSHIP FEES	50,000	50,000
5 <b>Total Revenues</b>	<b>325,000</b>	<b>325,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
6 005-014-0099-0001-30000-000010 SALARIES PERMANENT	744,600	410,000
7 005-014-0099-0001-30020-000000 SALARIES OVERTIME	5,000	10,000
8 005-014-0099-0001-30030-000000 EMPLOYEE BENEFITS	103,900	62,500
9 <b>Total Salaries and Benefits</b>	<b>853,500</b>	<b>482,500</b>
<b>Department Operating Expenses</b>		
10 005-014-0099-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	19,100	12,600
11 005-014-0099-0001-31010-000000 COURSES AND CONFERENCES	21,400	10,700
12 005-014-0099-0001-31020-000000 PUBLICATIONS	500	250
13 005-014-0099-0001-31030-000000 OFFICE EXPENSE	2,800	1,400
14 005-014-0099-0001-31050-000000 COURIER SERVICE/POSTAGE	9,000	14,000
15 005-014-0099-0001-31060-000000 PHOTOCOPY EXPENSE	500	500
16 005-014-0099-0001-31070-000000 STAFF AND TRAVEL	4,800	3,600
17 005-014-0099-0001-31080-000000 PRINTING AND STATIONERY	13,500	7,500
18 005-014-0099-0001-31090-000000 TELEPHONE SERVICES	700	700
19 005-014-0099-0001-31090-000010 WIRELESS DEVICES	2,400	1,200
20 005-014-0099-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,000	3,000
21 005-014-0099-0001-31130-000000 MISCELLANEOUS	1,400	2,200
22 <b>Total Department Operating Expenses</b>	<b>79,100</b>	<b>57,650</b>
23 <b>Total Salaries and Operating Expenses</b>	<b>932,600</b>	<b>540,150</b>
<b>Program Expenses</b>		
24 005-014-0099-0001-33450-000000 LAWYER REFERRAL AWARENESS PROG	39,500	24,000
25 005-014-0099-0001-33530-000000 BLOCKAGE STUDY	500	500
26 005-014-0099-0001-33985-000000 1-800 LINE CHARGES	16,000	9,000
27 <b>Total Program Expenses</b>	<b>33,500</b>	<b>33,500</b>
28 <b>Total Variable Expenses</b>	<b>966,100</b>	<b>573,650</b>
29 <b>Net Expenses</b>	<b>641,100</b>	<b>248,650</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
COMPENSATION FUND**

**Mandate**

This department processes claims for compensation where it is alleged that the claimant experienced a loss due to a lawyer or paralegal's dishonesty.

**Staffing and Structure**

The department has three staff and a manager now shared with Trustee Services. In 2015, the department's total expenses for lawyers and paralegals are budgeted at \$3.2 million, substantially unchanged from 2014. Total expenses include \$2,450,000 in allowances for grants claimed for lawyers and \$111,000 for paralegals, also unchanged from 2014.

Investment income is projected at \$1,050,000, in line with market conditions and increased from \$900,000 in 2014.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Compensation Fund**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>HEAD COUNT:</b>		
1 Permanent	4.0	4.0
2 <b>Total Employee Count</b>	<b>4.0</b>	<b>4.0</b>
<b>REVENUES:</b>		
3 006-000-0000-0001-41020-000000 SHORT TERM INVESTMENT INCOME	50,000	200,000
4 006-000-0000-0001-41020-000010 LONG TERM INVESTMENT INCOME	850,000	850,000
5 006-000-0000-0001-42050-000040 COMPENSATION FUND RECOVERY	50,000	50,000
6 006-000-0000-0001-42050-000060 TRUSTEE SERVICES RECOVERY	250,000	250,000
7 <b>Total Revenues</b>	<b>1,200,000</b>	<b>1,350,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
8 006-000-0000-0001-30000-000010 SALARIES PERMANENT	439,900	462,300
9 006-000-0000-0001-30030-000000 EMPLOYEE BENEFITS	47,700	54,000
10 <b>Total Salaries and Benefits</b>	<b>487,600</b>	<b>516,300</b>
<b>Department Operating Expenses</b>		
11 006-000-0000-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	7,200	7,200
12 006-000-0000-0001-31010-000000 COURSES AND CONFERENCES	2,000	2,000
13 006-000-0000-0001-31020-000000 PUBLICATIONS	300	300
14 006-000-0000-0001-31030-000000 OFFICE EXPENSE	3,200	3,200
15 006-000-0000-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	500	500
16 006-000-0000-0001-31050-000000 COURIER SERVICE/POSTAGE	1,500	1,500
17 006-000-0000-0001-31060-000000 PHOTOCOPY EXPENSE	1,500	1,500
18 006-000-0000-0001-31070-000000 STAFF AND TRAVEL	1,000	1,000
19 006-000-0000-0001-31080-000000 PRINTING AND STATIONERY	500	500
20 006-000-0000-0001-31090-000000 TELEPHONE SERVICES	500	500
21 006-000-0000-0001-31090-000010 WIRELESS DEVICES	1,000	1,000
22 006-000-0000-0001-31130-000000 MISCELLANEOUS	1,000	1,400
23 <b>Total Department Operating Expenses</b>	<b>20,200</b>	<b>20,600</b>
24 <b>Total Salaries and Operating Expenses</b>	<b>507,800</b>	<b>536,900</b>
<b>Program Expenses</b>		
25 006-000-0000-0001-33070-000010 INVESTMENT MANAGEMENT FEES	41,000	41,000
26 006-000-0000-0001-33140-000000 COMMITTEE EXPENSES	500	-
27 006-000-0000-0001-33210-000030 COUNSEL FEES - CLAIMANTS	20,000	5,000
28 006-000-0000-0001-33910-000000 REFEREE FEES	3,000	3,000
29 006-000-0000-0001-33915-000000 REPORTER FEES	1,000	1,900
30 006-000-0000-0001-34000-000010 PROVISION FOR UNPAID GRANTS	2,561,000	2,561,000
31 006-000-0000-0001-34225-000000 ACTUARIAL EXPENSE	20,000	46,500
32 <b>Total Program Expenses</b>	<b>2,646,500</b>	<b>2,658,400</b>
33 <b>Total Variable Expenses</b>	<b>3,154,300</b>	<b>3,195,300</b>
34 <b>Net Expenses</b>	<b>1,954,300</b>	<b>1,845,300</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
SUPPORT OF EXTERNAL ORGANIZATIONS**

**ONTARIO JUSTICE EDUCATION NETWORK (“OJEN”)**

OJEN’s objectives are to foster public understanding of the justice system, support the values of the justice system, encourage dialogue between justice system participants and deliver public legal education information.

The Law Society does not have a permanent place on OJEN’s board but Benchers are often on the board - Constance Backhouse is a current director. The OJEN Network is a collaborative forum serving as a communications and facilitation link for justice system participants, educators, community representatives and others with an interest in public legal educational activity. The Network shares information about public education programs and activities, and has an advisory role to OJEN’s Board and Executive Director. Participants include the Treasurer and sometimes other Benchers.

Historically, the Law Society has not provided OJEN with direct funding support but there is a currently a request for financial support (\$75,000 for 2015 declining to nil over five years) from the Law Society as OJEN transitions to a new location, with a closer working relationship with Community Legal Education Ontario (“CLEO”).

Current other supports provided to OJEN by the Law Society includes:

- Office accommodation including furniture and equipment for the OJEN staff members for no fee. The space is at 393 University Avenue. This in-kind support is being replaced with the direct funding noted above.
- The provision of Human Resource, Information System, printing, courier services etc when required. Direct costs are recovered but overhead costs are not

**THE OSGOODE SOCIETY FOR CANADIAN LEGAL HISTORY**

The Osgoode Society’s purpose is to study and promote public interest in the history of the law, the legal profession and the judiciary in Ontario and elsewhere in Canada and to stimulate research and publication on these subjects.

There are Benchers on the board of the Osgoode Society. The Law Society does not provide the Osgoode Society with direct funding support. Current other support provided to the Osgoode Society by the Law Society includes:

- Inclusion in most of our insurance policies
- Office accommodation including furniture and equipment for no fee. The space is in the basement of Osgoode Hall
- The provision of Human Resource, Information System, printing, courier services etc when required. Direct costs are recovered but overhead costs are not
- Hosting Osgoode Society functions without charging rental fees
- Payroll administration

- Provision of investment services for the R. Roy McMurtry Fellowship in Legal History

#### **THE LAW SOCIETY FOUNDATION (“LSF”)**

The Law Society Foundation is a registered charity that primarily raises funds in support of the Lawyers Feed the Hungry Program, which operates in Toronto, London, Ottawa and Windsor. In addition, through a number of endowments and restricted funds, the LSF provides bursary grants in support of law students, fosters high standards and equity in legal education in Ontario and preserves objects of historic significance to Canada’s legal heritage.

There are currently four Benchers on the Board of Trustees, which consists of five Trustees, and the Law Society’s Chief Financial Officer is the LSF’s Secretary-Treasurer.

Current support provided by the Law Society to the LSF, in general, includes:

- Administrative services such as maintenance of the accounting records, financial reporting, government filings and charitable donation tax receipt issuance
- Inclusion in most of our insurance policies
- Guidance with respect to Canada Revenue Agency charity related policies, etc.
- Governance and Board support services

In addition to the support provided generally to the LSF, the Law Society predominantly administers the Lawyers Feed the Hungry Programs. The Programs operating outside Toronto are coordinated by lead volunteers in each city, but the Law Society supports them by facilitating fundraising administration and providing guidance with respect to Canada Revenue Agency charity requirements.

The Toronto Program operates in the cafeteria at Osgoode Hall and is staffed primarily with volunteers, a paid co-ordinator and three kitchen helpers. On average, the Program serves approximately 50,000 guests a year. The site and its facilities are provided to the program free of charge.

The direct costs of fundraising and operating the Toronto Program are funded by the LSF (approximately \$375,000 a year), but the Law Society provides a number of in-kind services in support of fundraising efforts and the day to day operation of the Program.

These services include:

- Coordination of program operational activities, which consist of liaising with various volunteer coordinators, menu planning, food ordering and receiving, meal preparation and overall monitoring of the program
- Organization and coordination of fundraising events
- Communication services to highlight the Program, solicit donations and promote events
- Provision of facilities to serve meals including maintenance of equipment, clean up after meals and general repairs/updates to facilities

**PRO BONO (“PBLO”)**

PBLO is a charitable foundation which promotes opportunities for lawyers to provide pro bono legal services to persons of limited means.

Ongoing support provided to PBLO by the Law Society includes:

- Inclusion in our insurance policies
- Payroll administration for no fee
- PBLO was previously housed at the Law Society but is now off-site and the Law Society provides \$50,000 to finance their rent
- \$75,000 to fund operating expenses

**LAW COMMISSION OF ONTARIO (“LCO”)**

The LCO is an independent organization that researches issues and recommends law reform measures to make the law accessible to all Ontario communities.

Our other partners in the LCO are the Ministry of the Attorney General, Osgoode Hall Law School, the Law Deans of Ontario and the Law Foundation of Ontario. The Law Society has a seat on the LCO board.

As in 2014, \$138,000 has been provided for the Law Commission of Ontario representing the fourth year of a five year commitment for their second mandate running from 2012 to 2017.

In 2010, Convocation reaffirmed the Law Society’s support in principle for the mandate of the LCO for the second mandate of five years.

**COUNTY AND DISTRICT LAW PRESIDENTS’ ASSOCIATION (“CDLPA”)**

CDLPA is the coordinating body for 47 county and district law associations to promote the interests of its member associations throughout the province (the Toronto Lawyers Association is not a member of CDLPA but has a close working relationship). The members of the corporation are the current Presidents of the County or District Law Associations. There are two primary sources of funding - dues from member associations and grants from the Law Society.

Under the Law Society Act, the Treasurer must meet with the presidents on an annual basis and this has developed into semi-annual plenary sessions. Under an arrangement with CDLPA, the Law Society provides an annual amount to reimburse presidents for expenses and the cost of the plenary sessions. The Law Society also hosts executive committee meetings of CDLPA, typically coinciding with Committee day, and pay the associated travel expenses. The 2015 budget to support CDLPA is \$252,800, (2014: \$248,000). The budget is largely related to the cost of the association presidents’ transportation and accommodation for meetings and bi-annual plenary sessions at the Law Society.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Pro Bono, Law Commission of Ontario**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

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		<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>	
<b>DIRECT VARIABLE EXPENSES:</b>				
<b>Program Expenses</b>				
1	005-000-0000-0000-32155-000000	PRO BONO PROGRAM	125,000	125,000
2	005-000-0000-0000-34220-000000	LAW COMMISSION	138,000	138,000
3	005-000-0000-0000-34230-000000	OJEN	-	75,000
<b>4 Total Program Expenses</b>		<b>263,000</b>	<b>338,000</b>	
<b>5 Total Variable Expenses</b>		<b>263,000</b>	<b>338,000</b>	
<b>6 Net Expenses</b>		<b>263,000</b>	<b>338,000</b>	

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**County and District Law Presidents Association**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

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	<u>Approved Budget 2014</u>	<u>Draft Budget 2015</u>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Department Operating Expenses</b>		
1 005-000-0000-0001-31070-000000 STAFF AND TRAVEL	60,000	61,200
2 <b>Total Department Operating Expenses</b>	<u>60,000</u>	<u>61,200</u>
3 <b>Total Salaries and Operating Expenses</b>	<u>60,000</u>	<u>61,200</u>
<b>Program Expenses</b>		
4 005-000-0000-0001-33585-000000 CDLPA PLENARY SESSIONS	120,000	122,500
5 005-000-0000-0001-33880-000000 WEB INITIATIVES	15,200	15,500
6 005-000-0000-0001-33995-000000 ADMINISTRATIVE EXPENSES	52,500	53,600
7 <b>Total Program Expenses</b>	<u>187,700</u>	<u>191,600</u>
8 <b>Total Variable Expenses</b>	<u>247,700</u>	<u>252,800</u>
9 <b>Net Expenses</b>	<u>247,700</u>	<u>252,800</u>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
CANLII**

The Canadian Legal Information Institute (“CanLII”) is a non-profit organization managed by the Federation of Law Societies of Canada. CanLII's goal is to make Canadian law accessible for free on the Internet. The website provides access to court judgments, tribunal decisions, statutes and regulations from all Canadian jurisdictions.

Similar to the funding of the Federation, funding of CanLII is membership based and the 2015 budget allocates \$1,345,000 (2014: \$1,290,000 million) for the operation of CanLII.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**CAN LII**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>Program Expenses</b>		
1 005-000-0000-0000-32190-000000      VIRTUAL LAW LIBRARY	1,290,000	1,345,000
2 <b>Total Program Expenses</b>	<b>1,290,000</b>	<b>1,345,000</b>
3 <b>Total Variable Expenses</b>	<b>1,290,000</b>	<b>1,345,000</b>
4 <b>Net Expenses</b>	<b>1,290,000</b>	<b>1,345,000</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
MEMBER ASSISTANCE PLAN**

This confidential assistance program, funded by the Law Society and LAWPRO, provides support to lawyers and paralegals in Ontario who are experiencing a professional or personal crisis. The program provides peer-to-peer counseling and other support services.

2015 will be the third year of the program in its current form so usage patterns are still being established. The budgeted net cost of the program remains at \$215,000 (2014 – \$215,000).

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Member Assistance Plan**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>REVENUES:</b>		
1 005-000-0000-0000-42280-000000 MAP LAWPRO CONTRIBUTION	185,000	185,000
2 <b>Total Revenues</b>	<b>185,000</b>	<b>185,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Program Expenses</b>		
3 005-014-0091-0001-33475-000000 MEMBER ASSISTANCE PLAN	400,000	400,000
4 <b>Total Program Expenses</b>	<b>400,000</b>	<b>400,000</b>
5 <b>Total Variable Expenses</b>	<b>400,000</b>	<b>400,000</b>
6 <b>Net Expenses</b>	<b>215,000</b>	<b>215,000</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**SERVICES TO MEMBERS AND THE PUBLIC  
PARENTAL LEAVE ASSISTANCE PROGRAM (“PLAP”)**

The Law Society introduced PLAP as a pilot project in March 2009. The purpose is to reduce the financial hardship of lawyers in small firms and sole practices by defraying some of the costs of overhead during a leave from practice. Through this program the Law Society assists lawyers, women and men, to remain in small firms and sole practices.

On January 1, 2014, PLAP was changed to place a \$50,000 cap on eligibility based on net income from practice.

The Equity Committee presented an Information Report to Convocation in February 2014 that included statistical information about PLAP, a proposed assessment methodology of the means test model and timeline and options considered by the Retention of Women Working Group and the Equity Committee. In June 2014, further statistical information was provided to Convocation to assist in assessing how successful the program has been in getting people back into the profession after parental leave.

In the 2015 budget is \$300,000 (2014: \$400,000) to fund the program.

**THE LAW SOCIETY OF UPPER CANADA**  
**Services to Members and Public**  
**Parental Leave Assistance Program**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Program Expenses</b>		
1 019-000-0000-0000-33780-000000 PARENTAL LEAVE	400,000	300,000
2 <b>Total Program Expenses</b>	<b>400,000</b>	<b>300,000</b>
3 <b>Total Variable Expenses</b>	<b>400,000</b>	<b>300,000</b>
4 <b>Net Expenses</b>	<b>400,000</b>	<b>300,000</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
CHIEF EXECUTIVE OFFICER AND FINANCE**

**Mandate**

The four main activities that come under the Chief Executive Officer (“CEO”) and Finance are the operation of the office of the CEO, the administrative, accounting and finance services for the Law Society, the provision of administrative and accounting services in support of LibraryCo Inc. (“LibraryCo”) and the provision of administrative and accounting services in support of the Law Society Foundation.

**CEO’s Office**

The CEO’s office oversees the implementation of policy decisions made by Convocation and leads the operations of the Law Society. In addition, the CEO represents the Law Society at the Federation of Law Societies of Canada and globally. The CEO is also a member of the Board of Directors of LAWPRO.

**Finance Services**

The Finance department provides services for the Law Society in the areas of financial reporting, general accounting, purchasing, cash and investment management, payroll, financial policy development, insurance, government filings/returns, central purchasing and the billing of all member and student related fees. The department is responsible for ensuring the adequacy of internal financial controls intended to safeguard the financial assets of the Law Society and for ensuring the Law Society’s books and records are in compliance with generally accepted accounting principles. The administration of the printing and mail services contract is carried out by the Finance department. From a corporate budget perspective, staff manage the Law Society’s annual process for the lawyer, paralegal and capital budgets, develop budget policy options, track expenditures to budget throughout the year and provide assistance to departments in managing their individual budgets. In support of the Audit and Finance Committee, staff research developments related to financial policy and planning, presenting information and policy options for consideration by the Committee as well as research and prepare material for review by the Committee, at their request.

Under a Management Services Agreement signed between the Law Society of Upper Canada and LAWPRO in 2009, LAWPRO provides services with respect to the management of the Law Society’s Errors and Omissions Insurance Fund. From a financial perspective, the services provided include the billing of members for premiums, cash and investment management, general accounting services, completion of some government filings/returns and the provision of information to support the Law Society’s financial reporting. The Finance department works closely with LAWPRO’s management team on financial reporting and audit matters.

### **LibraryCo Administration**

Under the Administrative Services Agreement (ASA) signed in 2007 between the Law Society of Upper Canada and LibraryCo Inc., the Finance department provides administrative services to LibraryCo. In coordinating the annual budget process for LibraryCo, staff also liaise with the 48 county libraries in determining their budgetary needs as they relate to the funding provided by LibraryCo. In addition to salary costs, expenses are also incurred in the areas of professional membership fees, travel, office supplies, etc. These budgeted expenses are offset by revenue from LibraryCo, billed under the ASA, with the revenue recognized corporately.

### **Law Society Foundation Administration**

The Finance department provides administrative and accounting services to the Law Society Foundation ('Foundation'). Specifically, various staff are involved in supporting the Foundation through the provision of the following services: financial reporting, Board support, general accounting, accounts payable processing, cash and investment management, financial policy development, sourcing and ensuring adequate insurance coverage, completion of government filings and the issuance of income tax receipts in compliance with Canada Revenue Agency regulations. In addition, staff in Finance play an integral role in supporting the fund raising efforts of the Toronto Lawyers Feed the Hungry Program, a fund of the Foundation. Outside of the Toronto program, staff liaise with volunteer program coordinators on financial and fund raising matters, ensuring compliance with Canada Revenue Agency requirements for charities.

### **Other**

Other Finance department responsibilities include:

- Bencher expense reimbursement and Bencher remuneration administration
- Secretariat support to the Law Society's Audit and Finance Committee, LibraryCo's Audit and Finance Committee and the Law Society Foundation's Board of Trustees
- Financial analysis for policy decisions of Convocation and the Boards of LibraryCo and the Law Society Foundation
- Administration of the Parental Leave Assistance Program
- Coordinating the annual external audit and preparing annual audited financial statements for the Law Society, the Law Society Pension Fund, LibraryCo and the Law Society Foundation as well as quarterly financial reports for presentation to the relevant Committees and/or Boards
- Payroll, pension and/or investment management support to such organizations such as the Osgoode Society and Pro Bono Law Ontario

### **Finance Department Initiatives**

With development of the Member Portal and related systems that facilitate on-line self-service for lawyers and paralegals, Finance will continue to work with other stakeholder departments in its continued implementation. It is anticipated that Finance staff will be involved in the Member Portal initiative in 2015, as development related to the distribution of the annual fee billing and notices through the Portal is expected this year.

Finance is working with the Human Resources team in implementing a self-service time and attendance system. It is anticipated that the time and attendance solution will automate the current manual processes related to absence management for employees and remuneration activity submissions for Benchers and adjudicators.

In recent years, the department has been working on initiatives that will bring efficiencies to current processes and improve service to members, licensing candidates and employees. Efforts on these initiatives will continue with the Finance department working closely with other Law Society departments to review current processes and controls. Particularly, in 2015, the department will:

- investigate automated distribution of pay stubs and T-slips
- investigate, and implement where appropriate, opportunities to automate cash receipt processing through increased use of PC banking, internet banking and electronic funds transfer.

The Finance department continues to assess any changes to Generally Accepted Accounting Principles for Not-for-Profit organizations. Finance managers will continue to work closely with the external auditors for the Law Society, LibraryCo and the Foundation in implementing the necessary changes to financial reporting. Similarly, the Finance department, in conjunction with the Office of General Counsel, will monitor developments with the new Ontario Not-for-Profit Corporations Act and any possible impact on the Law Society, LibraryCo or the Foundation.

#### **BUDGET REQUIREMENT**

The employee count is 30 reduced by one financial analyst from 2014. To continue to provide service to our stakeholders (Convocation, LibraryCo and Foundation Boards, Committees, departments, members, employees, the public, donors, etc.) and work on enhancing operations by improving customer service, financial reporting, internal controls and streamlining processes, the Finance department proposes a net budget, primarily of staffing costs of \$3.8 million (2014 - \$3.9 million).

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**CEO and Finance**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

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	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	30.0	29.0
2 Contract	1.0	1.0
<b>3 Total Employee Count</b>	<b>31.0</b>	<b>30.0</b>
<b>REVENUES:</b>		
4 005-016-0151-0001-42115-000000 PAP ADMINISTRATION FEE	340,000	370,000
5 005-016-0151-0001-42115-000010 TUITION FEE PAYMENT OPTION FEE	5,000	5,000
6 005-016-0151-0001-42130-000000 RETURNED CHEQUE CHARGES	6,000	6,000
<b>7 Total Revenues</b>	<b>351,000</b>	<b>381,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
8 005-016-0151-0001-30000-000010 SALARIES PERMANENT	3,037,200	3,023,900
9 005-016-0151-0001-30010-000020 SALARIES CONTRACT	15,000	20,000
10 005-016-0151-0001-30020-000000 SALARIES OVERTIME	10,000	10,000
11 005-016-0151-0001-30030-000000 EMPLOYEE BENEFITS	467,900	458,700
<b>12 Total Salaries and Benefits</b>	<b>3,530,100</b>	<b>3,512,600</b>
<b>Department Operating Expenses</b>		
13 005-016-0151-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	16,500	16,500
14 005-016-0151-0001-31010-000000 COURSES AND CONFERENCES	37,000	34,000
15 005-016-0151-0001-31020-000000 PUBLICATIONS	3,000	3,000
16 005-016-0151-0001-31030-000000 OFFICE EXPENSE	17,500	17,500
17 005-016-0151-0001-31050-000000 COURIER SERVICE/POSTAGE	81,500	26,500
18 005-016-0151-0001-31060-000000 PHOTOCOPY EXPENSE	7,500	7,500
19 005-016-0151-0001-31070-000000 STAFF AND TRAVEL	52,000	49,000
20 005-016-0151-0002-31070-000010 MEETINGS	6,000	6,000
21 005-016-0151-0001-31080-000000 PRINTING AND STATIONERY	80,500	61,500
22 005-016-0151-0001-31090-000000 TELEPHONE SERVICES	1,000	1,000
23 005-016-0151-0001-31090-000010 WIRELESS DEVICES	6,800	6,800
24 005-016-0151-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	9,900	9,900
25 005-016-0151-0001-31130-000000 MISCELLANEOUS	5,700	3,700
<b>26 Total Department Operating Expenses</b>	<b>324,900</b>	<b>242,900</b>
<b>27 Total Salaries and Operating Expenses</b>	<b>3,855,000</b>	<b>3,755,500</b>
<b>Program Expenses</b>		
28 005-016-0151-0001-33070-000000 BANK CHARGES	47,500	47,500
29 005-016-0151-0001-33070-000020 LOCKBOX BANK CHARGES	23,000	23,000
30 005-016-0151-0001-33070-000030 PAP ADMIN BANK CHARGES	7,000	7,000
31 005-016-0151-0001-33070-000040 EFT BANK CHARGES	2,000	2,000
32 005-016-0151-0001-33070-000050 CREDIT CARD DISCOUNT CHARGES	15,000	15,000
33 005-016-0151-0001-33070-000010 PAYROLL SERVICE CHARGES	31,000	31,000
34 005-016-0151-0001-33140-000000 FINANCE & AUDIT COMMITTEE EXP	13,000	10,000
35 005-016-0151-0001-33180-000000 CONSULTING FEES	255,000	255,000
36 005-016-0151-0001-33685-000000 STORAGE/RECORDS MANAGEMENT	11,700	10,000
37 005-016-0151-0002-32230-000000 SPECIAL EVENTS/FUNCTIONS	16,900	18,300
<b>38 Total Program Expenses</b>	<b>422,100</b>	<b>418,800</b>
<b>39 Total Variable Expenses</b>	<b>4,277,100</b>	<b>4,174,300</b>
<b>40 Net Expenses</b>	<b>3,926,100</b>	<b>3,793,300</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION**

**CORPORATE SERVICES**

The mandate of our Corporate Services Division is to consolidate and align all of the Law Society's shared services, resulting in better coordination and increased efficiencies. The Division is led by Executive Director Terry Knott and consists of 12 departments, six of which make up the Client Service Centre.

For 2015, a primary area of focus in this Division is to continue building an organizational infrastructure that will take full advantage of the efficiencies available through current and emerging technologies. Enterprise Content Management is a multi-year, phased initiative and is a key component of this plan. The Project Management Office (PMO) is coordinating the ECM project, with the close cooperation and support of I.S. Shared Services and Support and the Corporate Resource and Training Centre.

**CORPORATE SERVICES AND ADMINISTRATION  
FACILITIES SERVICES**

While the Law Society's fence and gates are integral components of our heritage property, they also require constant upkeep. There is an urgent need to accelerate our maintenance schedule in order to address general deterioration, sagging and rusting. For that reason, we are requesting \$200,000 next year (\$100,000 each for the fence and gate) that would normally have been included in our 2016 budget. We note that the impact of this request will be partially offset by deferring repairs to the sewage pump (\$50,000) that were originally scheduled for 2015.

The other major project in this area involves the relocation of the Tribunals office and hearing rooms from Osgoode Hall to existing Law Society space on three floors at 393 University Avenue. Law Society staff who currently occupy this space (Equity Initiatives and our I.S. programmers) would return to Osgoode Hall. We estimate that the total cost for the refit and move will be approximately \$1,300,000. This project will be funded by an increase in annual Capital Levy.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Facilities**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>			
1	Permanent	24.0	24.0
2	Contract	1.0	1.0
3	<b>Total Employee Count</b>	<b>25.0</b>	<b>25.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
4	SALARIES PERMANENT	1,368,700	1,377,100
5	SALARIES CONTRACT	4,500	4,500
6	SALARIES OVERTIME	116,500	116,500
7	EMPLOYEE BENEFITS	277,200	293,200
8	<b>Total Salaries and Benefits</b>	<b>1,766,900</b>	<b>1,791,300</b>
<b>Department Operating Expenses</b>			
9	PROFESSIONAL MEMBERSHIPS	700	700
10	COURSES AND CONFERENCES	19,700	19,700
11	PUBLICATIONS	1,200	1,100
12	OFFICE EXPENSE	7,400	7,900
13	COURIER SERVICE/POSTAGE	1,100	1,100
14	PHOTOCOPY EXPENSE	2,700	2,700
15	STAFF AND TRAVEL	14,500	13,200
16	PRINTING AND STATIONERY	3,500	3,500
17	TELEPHONE SERVICES	600	600
18	CELL PHONE CHARGES	1,300	1,200
19	MAIL & PRINT CENTRE ADMINISTRATION	8,000	8,000
20	MISCELLANEOUS	6,900	7,500
21	<b>Total Department Operating Expenses</b>	<b>67,600</b>	<b>67,200</b>
22	<b>Total Salaries and Operating Expenses</b>	<b>1,834,500</b>	<b>1,858,500</b>
<b>Program Expenses</b>			
23	SERVICE CONTRACTS	270,000	270,000
24	SERVICE CONTRACTS - CLEANING	503,900	516,500
25	UNIFORMS	16,900	17,000
26	SECURITY SYSTEM SUPPLIES	4,000	4,400
	FIRST AID SUPPLIES	-	1,000
27	EXHIBITIONS	10,000	10,000
28	COLLECTIONS	16,000	16,000
29	PUBLIC TOURS	7,500	7,500
30	SOFTWARE	3,200	3,600
31	GROUNDS MAINTENANCE	50,500	51,000
32	BUILDING MAINTENANCE	294,200	294,200
33	REPAIRS AND ALTERATIONS	236,200	236,200
34	BUILDING INSURANCE	88,700	88,700
35	ARCHITECT/CONSULTING FEES	30,000	30,000
36	LEASE	850,000	884,000
37	UTILITIES	660,000	759,000
38	TWO-WAY COMMUNICATION EQUIP	15,000	8,500
39	PHYSICAL TRAINING & TESTING	6,000	6,000
40	FURNITURE & EQUIPMENT	225,000	253,800
41	<b>Total Program Expenses</b>	<b>3,287,100</b>	<b>3,457,400</b>
42	<b>Total Variable Expenses</b>	<b>5,121,600</b>	<b>5,315,900</b>
43	<b>Net Expenses</b>	<b>5,121,600</b>	<b>5,315,900</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
CLIENT SERVICE CENTRE (CSC)**

**Call Centre (CSC)**

The Call Centre maintains three separate lines for incoming Law Society calls: a Resource Centre line, which handles general licensee-related calls; a Reception line that routes calls to the appropriate department/individual at the Law Society; and a Complaints Reception line.

No budget-related changes are contemplated for this area next year.

**Membership Services (CSC)**

Key roles in this area include the administration and maintenance of the Law Society's licensee database and member files, and assistance to licensees with annual fee payments, adjustments, refunds and member ID cards. Membership Services also provides support for CPD and Portal inquiries.

Budgetary requirements for this area should remain stable in 2015.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**CSC Administration**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	2.0	2.0
2 <b>Total Employee Count</b>	<b>2.0</b>	<b>2.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-014-0091-0001-30000-000010 SALARIES PERMANENT	251,400	263,700
4 005-014-0091-0001-30020-000000 SALARIES OVERTIME	1,000	1,000
5 005-014-0091-0001-30030-000000 EMPLOYEE BENEFITS	26,300	25,900
6 <b>Total Salaries and Benefits</b>	<b>278,700</b>	<b>290,600</b>
<b>Department Operating Expenses</b>		
7 005-014-0091-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	4,000	4,000
8 005-014-0091-0001-31010-000000 COURSES AND CONFERENCES	4,500	4,500
9 005-014-0091-0001-31020-000000 PUBLICATIONS	500	500
10 005-014-0091-0001-31030-000000 OFFICE EXPENSE	1,500	1,500
11 005-014-0091-0001-31050-000000 COURIER SERVICE/POSTAGE	100	100
12 005-014-0091-0001-31060-000000 PHOTOCOPY EXPENSE	300	300
13 005-014-0091-0001-31070-000000 STAFF AND TRAVEL	10,000	10,000
14 005-014-0091-0001-31080-000000 PRINTING AND STATIONERY	1,000	1,000
15 005-014-0091-0001-31090-000000 TELEPHONE SERVICES	500	500
16 005-014-0091-0001-31090-000010 WIRELESS DEVICES	1,000	1,000
17 005-014-0091-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	2,500	2,500
18 005-014-0091-0001-31130-000000 MISCELLANEOUS	1,500	1,800
19 <b>Total Department Operating Expenses</b>	<b>27,400</b>	<b>27,700</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>306,100</b>	<b>318,300</b>
21 <b>Total Variable Expenses</b>	<b>306,100</b>	<b>318,300</b>
22 <b>Net Expenses</b>	<b>306,100</b>	<b>318,300</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Corporate Services**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	3.0	3.0
2 <b>Total Employee Count</b>	<b>3.0</b>	<b>3.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-014-0091-0001-30000-000010 SALARIES PERMANENT	457,300	460,170
4 005-014-0091-0001-30010-000030 SALARIES TEMPORARY	6,000	6,000
5 005-014-0091-0001-30020-000000 SALARIES OVERTIME	2,000	2,000
6 005-014-0091-0001-30030-000000 EMPLOYEE BENEFITS	64,400	71,200
7 <b>Total Salaries and Benefits</b>	<b>529,700</b>	<b>539,370</b>
<b>Department Operating Expenses</b>		
8 005-014-0091-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	3,000	3,000
9 005-014-0091-0001-31010-000000 COURSES AND CONFERENCES	24,500	24,500
10 005-014-0091-0001-31020-000000 PUBLICATIONS	500	500
11 005-014-0091-0001-31030-000000 OFFICE EXPENSE	2,000	2,000
12 005-014-0091-0001-31050-000000 COURIER SERVICE/POSTAGE	100	100
13 005-014-0091-0001-31060-000000 PHOTOCOPY EXPENSE	300	300
14 005-014-0091-0001-31070-000000 STAFF AND TRAVEL	18,000	18,000
15 005-014-0091-0001-31080-000000 PRINTING AND STATIONERY	2,600	2,600
16 005-014-0091-0001-31090-000000 TELEPHONE SERVICES	500	500
17 005-014-0091-0001-31090-000010 WIRELESS DEVICES	5,500	5,500
18 005-014-0091-0001-31130-000000 MISCELLANEOUS	3,000	8,900
19 <b>Total Department Operating Expenses</b>	<b>60,000</b>	<b>65,900</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>589,700</b>	<b>605,270</b>
<b>Program Expenses</b>		
21 005-014-0091-0001-33785-000000 TELECOMMUTING	1,200	1,200
22 <b>Total Program Expenses</b>	<b>1,200</b>	<b>1,200</b>
23 <b>Total Variable Expenses</b>	<b>590,900</b>	<b>606,470</b>
24 <b>Net Expenses</b>	<b>590,900</b>	<b>606,470</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Call Centre**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	12.0	12.0
2 <b>Total Employee Count</b>	<b>12.0</b>	<b>12.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-014-0093-0001-30000-000010 SALARIES PERMANENT	695,700	707,300
4 005-014-0093-0001-30010-000030 SALARIES TEMPORARY	3,500	3,500
5 005-014-0093-0001-30020-000000 SALARIES OVERTIME	3,000	3,000
6 005-014-0093-0001-30030-000000 EMPLOYEE BENEFITS	131,900	133,800
7 <b>Total Salaries and Benefits</b>	<b>834,100</b>	<b>847,600</b>
<b>Department Operating Expenses</b>		
8 005-014-0093-0001-31010-000000 COURSES AND CONFERENCES	6,700	6,700
9 005-014-0093-0001-31020-000000 PUBLICATIONS	100	100
10 005-014-0093-0001-31030-000000 OFFICE EXPENSE	3,300	3,300
11 005-014-0093-0001-31050-000000 COURIER SERVICE/POSTAGE	1,000	1,000
12 005-014-0093-0001-31060-000000 PHOTOCOPY EXPENSE	500	500
13 005-014-0093-0001-31070-000000 STAFF AND TRAVEL	2,800	2,800
14 005-014-0093-0001-31080-000000 PRINTING AND STATIONERY	1,000	1,000
15 005-014-0093-0001-31090-000000 TELEPHONE SERVICES	900	900
16 005-014-0093-0001-31090-000010 WIRELESS DEVICES	1,200	1,200
17 005-014-0093-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	3,700	3,700
18 005-014-0093-0001-31130-000000 MISCELLANEOUS	1,000	1,200
19 <b>Total Department Operating Expenses</b>	<b>22,200</b>	<b>22,400</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>856,300</b>	<b>870,000</b>
<b>Program Expenses</b>		
21 005-014-0093-0001-33530-000000 BLOCKAGE STUDY	500	500
22 005-014-0093-0001-33985-000000 1-800 LINE CHARGES	18,000	18,200
23 <b>Total Program Expenses</b>	<b>18,500</b>	<b>18,700</b>
24 <b>Total Variable Expenses</b>	<b>874,800</b>	<b>888,700</b>
25 <b>Net Expenses</b>	<b>874,800</b>	<b>888,700</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Client Service Centre**  
**Membership Services**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	18.0	18.0
2 Contract	1.0	1.0
<b>3 Total Employee Count</b>	<b>19.0</b>	<b>19.0</b>
<b>REVENUES:</b>		
4 005-014-0094-0001-41000-000000 MEMBERSHIP IDENTIFICATION CARD	37,500	37,500
<b>5 Total Revenues</b>	<b>37,500</b>	<b>37,500</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
6 005-014-0094-0001-30000-000010 SALARIES PERMANENT	968,600	954,500
7 005-014-0094-0001-30010-000020 SALARIES CONTRACT	14,400	12,800
8 005-014-0094-0001-30010-000030 SALARIES TEMPORARY	1,800	1,800
9 005-014-0094-0001-30020-000000 SALARIES OVERTIME	5,000	5,000
10 005-014-0094-0001-30030-000000 EMPLOYEE BENEFITS	186,900	173,800
<b>11 Total Salaries and Benefits</b>	<b>1,176,700</b>	<b>1,147,900</b>
<b>Department Operating Expenses</b>		
12 005-014-0094-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	3,000	3,000
13 005-014-0094-0001-31010-000000 COURSES AND CONFERENCES	7,500	7,500
14 005-014-0094-0001-31030-000000 OFFICE EXPENSE	9,500	9,500
15 005-014-0094-0001-31050-000000 COURIER SERVICE/POSTAGE	15,000	15,000
16 005-014-0094-0001-31060-000000 PHOTOCOPY EXPENSE	2,000	2,000
17 005-014-0094-0001-31070-000000 STAFF AND TRAVEL	5,800	5,800
18 005-014-0094-0001-31080-000000 PRINTING AND STATIONERY	10,000	10,000
19 005-014-0094-0001-31090-000000 TELEPHONE SERVICES	600	600
20 005-014-0094-0001-31090-000010 WIRELESS DEVICES	900	900
21 005-014-0094-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	4,600	4,600
22 005-014-0094-0001-31130-000000 MISCELLANEOUS	1,600	2,200
<b>23 Total Department Operating Expenses</b>	<b>60,500</b>	<b>61,100</b>
<b>24 Total Salaries and Operating Expenses</b>	<b>1,237,200</b>	<b>1,209,000</b>
<b>Program Expenses</b>		
25 005-014-0094-0001-33575-000000 MEMBER PHOTO ID CARD	6,000	6,000
26 005-014-0094-0001-33785-000000 TELECOMMUTING	9,800	10,000
<b>27 Total Program Expenses</b>	<b>15,800</b>	<b>16,000</b>
<b>28 Total Variable Expenses</b>	<b>1,253,000</b>	<b>1,225,000</b>
<b>29 Net Expenses</b>	<b>1,215,500</b>	<b>1,187,500</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
INFORMATION SYSTEMS (“IS”)**

This area provides technical services to the Society and its staff in the areas of computer operations, data storage/backup/retrieval, and design/development of business applications and problem resolution. Specific accountabilities include the Law Society’s corporate databases, business support applications, electronic files and document access, numerous web sites, telecommuting and remote support, all aspects of telephony and telecommunications services, maintenance of security measures and disaster recovery/business continuity plans.

For its 2015 operating budget, I.S. Shared Services and Support is requesting the following changes: an increase of \$45,000 in Consulting Fees (from \$279,100 to \$324,100) for professional services support for SharePoint; \$18,000 in data communications (from \$90,900 to \$108,900) to cover an anticipated increase in maintenance costs; \$54,000 in equipment maintenance (\$55,700 to \$109,700) to provide continued support for equipment no longer covered under existing maintenance contracts; \$171,000 in software licenses (\$418,100 to \$589,100) for additional IBM and Microsoft Exchange licenses; and \$4,000 for telecom services (\$173,700 to \$177,700) for anticipated maintenance cost increases.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Information Systems, Web Content & Project Management Office**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>			
1	Permanent	37.0	37.0
2	Contract	1.0	1.0
3	<b>Total Employee Count</b>	<b>38.0</b>	<b>38.0</b>
<b>REVENUES:</b>			
4	005-016-0154-0004-42090-000000 LPIC FUNDING	12,000	12,000
5	<b>Total Revenues</b>	<b>12,000</b>	<b>12,000</b>
<b>DIRECT VARIABLE EXPENSES:</b>			
<b>Salaries and Benefits</b>			
6	005-016-0154-0004-30000-000010 SALARIES PERMANENT	3,191,600	3,260,700
7	005-016-0154-0004-30010-000020 SALARIES CONTRACT	80,000	86,700
8	005-016-0154-0004-30010-000030 SALARIES TEMPORARY	-	-
9	005-016-0154-0004-30020-000000 SALARIES OVERTIME	15,000	17,000
10	005-016-0154-0004-30030-000000 EMPLOYEE BENEFITS	511,200	523,600
11	<b>Total Salaries and Benefits</b>	<b>3,797,800</b>	<b>3,888,000</b>
<b>Department Operating Expenses</b>			
12	005-016-0154-0004-31000-000000 PROFESSIONAL MEMBERSHIPS	11,500	12,000
13	005-016-0154-0004-31010-000000 COURSES AND CONFERENCES	30,500	31,400
14	005-016-0154-0004-31020-000000 PUBLICATIONS	1,000	1,000
15	005-016-0154-0004-31030-000000 OFFICE EXPENSE	4,800	5,800
16	005-016-0154-0004-31050-000000 COURIER SERVICE/POSTAGE	400	400
17	005-016-0154-0004-31060-000000 PHOTOCOPY EXPENSE	1,000	1,000
18	005-016-0154-0004-31070-000000 STAFF AND TRAVEL	13,000	22,000
19	005-016-0154-0004-31080-000000 PRINTING AND STATIONERY	4,600	3,600
20	005-016-0154-0004-31090-000000 TELEPHONE SERVICES	1,300	1,000
21	005-016-0154-0004-31090-000010 WIRELESS DEVICES	19,500	16,000
22	005-016-0154-0004-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	11,300	10,700
23	005-016-0154-0004-31130-000000 MISCELLANEOUS	4,000	6,000
24	<b>Total Department Operating Expenses</b>	<b>102,900</b>	<b>110,900</b>
25	<b>Total Salaries and Operating Expenses</b>	<b>3,900,700</b>	<b>3,998,900</b>
<b>Program Expenses</b>			
26	005-016-0154-0004-33180-000000 CONSULTING FEES	279,100	324,100
27	005-016-0154-0004-33235-000000 DATA COMMUNICATIONS	90,900	108,900
28	005-016-0154-0004-33260-000000 EXTERNAL SERV-DISASTER RECOVER	124,700	124,700
29	005-016-0154-0004-33290-000010 EQUIPMENT MAINTENANCE	81,100	135,500
30	005-016-0154-0004-33395-000000 HARDWARE SUPPLIES	15,000	15,000
31	005-016-0154-0004-33535-000000 OFF-SITE STORAGE	11,000	11,000
32	005-016-0154-0004-33755-000000 SOFTWARE LICENCES	433,100	604,100
33	005-016-0154-0004-33815-000000 TELECOM SERVICES	173,700	177,700
34	005-016-0154-0004-33785-000000 TELECOMMUTING	5,800	16,500
35	<b>Total Program Expenses</b>	<b>1,214,400</b>	<b>1,517,500</b>
36	<b>Total Variable Expenses</b>	<b>5,115,100</b>	<b>5,516,400</b>
37	<b>Net Expenses</b>	<b>5,103,100</b>	<b>5,504,400</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
HUMAN RESOURCES (“HR”)**

The Human Resources department provides employee-related services including support, employee relations, and performance improvement as well as recruitment and selection, performance management, compensation and recognition, employee well-being, retention and termination.

Again, no further budget allocations are requested for Human Resources.

THE LAW SOCIETY OF UPPER CANADA  
Corporate Services and Administration  
Human Resources  
Draft Budget  
For the Year Ending December 31, 2015

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	Approved Budget 2014	Draft Budget 2015
<b>EMPLOYEE COUNT:</b>		
1 Permanent	7.0	7.0
2 Permanent Part-Time	1.0	1.0
<b>3 Total Employee Count</b>	<b>8.0</b>	<b>8.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
4 005-018-0210-0001-30000-000010 SALARIES PERMANENT	651,200	656,700
5 005-018-0210-0001-30010-000010 SALARIES PART TIME	53,000	53,600
6 005-018-0210-0001-30010-000020 SALARIES CONTRACT	-	-
7 005-018-0210-0001-30010-000030 SALARIES TEMPORARY	12,600	12,600
8 005-018-0210-0001-30030-000000 EMPLOYEE BENEFITS	111,700	113,700
<b>9 Total Salaries and Benefits</b>	<b>828,500</b>	<b>836,600</b>
<b>Department Operating Expenses</b>		
10 005-018-0210-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	9,300	9,300
11 005-018-0210-0001-31010-000000 COURSES AND CONFERENCES	18,900	18,900
12 005-018-0210-0001-31020-000000 PUBLICATIONS	1,100	1,100
13 005-018-0210-0001-31030-000000 OFFICE EXPENSE	9,000	9,000
14 005-018-0210-0001-31050-000000 COURIER SERVICE/POSTAGE	2,400	2,400
15 005-018-0210-0001-31060-000000 PHOTOCOPY EXPENSE	2,000	2,000
16 005-018-0210-0001-31070-000000 STAFF AND TRAVEL	5,000	5,000
17 005-018-0210-0001-31080-000000 PRINTING AND STATIONERY	14,000	14,000
18 005-018-0210-0001-31090-000010 WIRELESS DEVICES	4,000	4,000
19 005-018-0210-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	2,700	2,700
20 005-018-0210-0001-31130-000000 MISCELLANEOUS	7,800	8,600
<b>21 Total Department Operating Expenses</b>	<b>76,200</b>	<b>77,000</b>
<b>22 Total Salaries and Operating Expenses</b>	<b>904,700</b>	<b>913,600</b>
<b>Program Expenses</b>		
23 005-018-0210-0001-33025-000010 ADVERTISING	20,000	20,000
24 005-018-0210-0001-33030-000000 AGENCY FEES	200,000	200,000
25 005-018-0210-0001-33085-000000 BENEFITS AND PENSION	53,100	53,100
26 005-018-0210-0001-33155-000000 COMPENSATION	82,000	82,000
27 005-018-0210-0001-33270-000000 EAP	22,000	22,000
28 005-018-0210-0001-33295-000000 EQUITY	2,000	2,000
29 005-018-0210-0001-33420-000000 HRIS	39,800	39,800
30 005-018-0210-0001-33485-000000 TRAINING	5,000	5,000
31 005-018-0210-0001-33485-000010 LSUC TRAINING	236,100	236,100
32 005-018-0210-0001-33565-000000 PERFORMANCE MANAGEMENT	90,400	90,400
33 005-018-0210-0001-33690-000000 RECRUITING	38,100	38,100
34 005-018-0210-0001-33730-000000 SALARY SURVEYS	17,600	17,600
35 005-018-0210-0001-33960-000000 L.T.D. AND OTHER BENEFITS	61,000	61,000
36 005-018-0210-0001-33140-000000 COMPENSATION COMMITTEE EXPENSE	3,000	3,000
37 005-018-0210-0001-33490-000000 ERGONOMIC ASSESSMENT	23,800	32,700
<b>38 Total Program Expenses</b>	<b>893,900</b>	<b>902,800</b>
<b>39 Total Variable Expenses</b>	<b>1,798,600</b>	<b>1,816,400</b>
<b>40 Net Expenses</b>	<b>1,798,600</b>	<b>1,816,400</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
CORPORATE RESOURCE AND TRAINING CENTRE (“CR&TC”)**

This group acts as an internal resource and consulting group at the Law Society in the areas of continuous improvement, process analysis and development, documentation, and corporate/technical training. Much of the Centre’s resources over the coming year will be devoted to training and developing documentation related to the ECM project and other technical initiatives.

No budget adjustments are requested for 2015.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Corporate Resource and Training Centre**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	5.0	5.0
2 <b>Total Employee Count</b>	<b>5.0</b>	<b>5.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-014-0097-0001-30000-000010 SALARIES PERMANENT	452,600	458,700
4 005-014-0097-0001-30030-000000 EMPLOYEE BENEFITS	71,200	72,200
5 <b>Total Salaries and Benefits</b>	<b>523,800</b>	<b>530,900</b>
<b>Department Operating Expenses</b>		
6 005-014-0097-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	1,500	1,800
7 005-014-0097-0001-31010-000000 COURSES AND CONFERENCES	10,000	10,000
8 005-014-0097-0001-31020-000000 PUBLICATIONS	1,500	1,500
9 005-014-0097-0001-31030-000000 OFFICE EXPENSE	2,000	2,000
10 005-014-0097-0001-31050-000000 COURIER SERVICE/POSTAGE	500	500
11 005-014-0097-0001-31060-000000 PHOTOCOPY EXPENSE	1,500	1,500
12 005-014-0097-0001-31070-000000 STAFF AND TRAVEL	2,000	2,000
13 005-014-0097-0001-31080-000000 PRINTING AND STATIONERY	1,000	1,000
14 005-014-0097-0001-31090-000000 TELEPHONE SERVICES	200	200
15 005-014-0097-0001-31090-000010 WIRELESS DEVICES	2,400	2,400
16 005-014-0097-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,500	1,500
17 005-014-0097-0001-31130-000000 MISCELLANEOUS	1,800	1,800
18 <b>Total Department Operating Expenses</b>	<b>25,900</b>	<b>26,200</b>
19 <b>Total Salaries and Operating Expenses</b>	<b>549,700</b>	<b>557,100</b>
<b>Program Expenses</b>		
20 005-014-0097-0001-33485-000010 CORPORATE TRAINING INITIATIVES	17,700	17,900
21 <b>Total Program Expenses</b>	<b>17,700</b>	<b>17,900</b>
22 <b>Total Variable Expenses</b>	<b>567,400</b>	<b>575,000</b>
23 <b>Net Expenses</b>	<b>567,400</b>	<b>575,000</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
OFFICE OF THE GENERAL COUNSEL**

**Mandate**

The Office of the General Counsel provides in house counsel services to the Law Society. Currently, the department reviews and/or drafts legal agreements to be entered into by the Law Society, provides legal advice and opinions to other departments of the Law Society, committees of Benchers and Convocation, retains and instructs (on behalf of the CEO, other senior managers, the Litigation Committee or Convocation) outside counsel in various matters (including non-regulatory litigation matters) involving the Law Society, monitors the progress of litigation involving the Law Society that is instructed by the Lawyers' Professional Indemnity Company, provides legislative drafting services to committees of Benchers and Convocation (i.e., drafts by-laws, regulations, rules of practice and procedure) and responds to general requests from licensees for access to information about them in the possession of the Law Society. The senior counsel is the Law Society's designated privacy officer.

**Budget**

The 2015 budget for the Office of the General Counsel proposes expenses totaling \$1,293,000 (2014: \$993,000) with the budget for external counsel fees increasing by \$250,000 to \$384,000.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**General Counsel**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

	<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>
<b>EMPLOYEE COUNT:</b>		
1 Permanent	6.0	6.0
2 <b>Total Employee Count</b>	<b>6.0</b>	<b>6.0</b>
<b>DIRECT VARIABLE EXPENSES:</b>		
<b>Salaries and Benefits</b>		
3 005-020-0270-0001-30000-000010 SALARIES PERMANENT	695,100	737,000
4 005-020-0270-0001-30030-000000 EMPLOYEE BENEFITS	87,900	91,500
5 <b>Total Salaries and Benefits</b>	<b>783,000</b>	<b>828,500</b>
<b>Department Operating Expenses</b>		
6 005-020-0270-0001-31000-000000 PROFESSIONAL MEMBERSHIPS	11,700	11,700
7 005-020-0270-0001-31010-000000 COURSES AND CONFERENCES	12,000	12,000
8 005-020-0270-0001-31020-000000 PUBLICATIONS	20,000	20,000
9 005-020-0270-0001-31030-000000 OFFICE EXPENSE	6,000	6,000
10 005-020-0270-0001-31040-000000 FRENCH LANGUAGE TRANSLATION	5,000	5,000
11 005-020-0270-0001-31050-000000 COURIER SERVICE/POSTAGE	1,700	1,700
12 005-020-0270-0001-31060-000000 PHOTOCOPY EXPENSE	2,400	2,400
13 005-020-0270-0001-31070-000000 STAFF AND TRAVEL	4,000	4,000
14 005-020-0270-0001-31080-000000 PRINTING AND STATIONERY	5,000	5,000
15 005-020-0270-0001-31090-000000 TELEPHONE SERVICES	1,500	1,500
16 005-020-0270-0001-31090-000010 WIRELESS DEVICES	1,200	1,200
17 005-020-0270-0001-31100-000000 MAIL & PRINT CENTRE ADMINISTRATION	1,200	1,200
18 005-020-0270-0001-31130-000000 MISCELLANEOUS	5,800	6,600
19 <b>Total Department Operating Expenses</b>	<b>77,500</b>	<b>78,300</b>
20 <b>Total Salaries and Operating Expenses</b>	<b>860,500</b>	<b>906,800</b>
<b>Program Expenses</b>		
21 005-020-0270-0001-33210-000000 COUNSEL FEES (PA)	132,600	383,900
22 <b>Total Program Expenses</b>	<b>132,600</b>	<b>383,900</b>
23 <b>Total Variable Expenses</b>	<b>993,100</b>	<b>1,290,700</b>
24 <b>Net Expenses</b>	<b>993,100</b>	<b>1,290,700</b>

**LAW SOCIETY OF UPPER CANADA  
2015 BUDGET DETAIL**

**CORPORATE SERVICES AND ADMINISTRATION  
CONTINGENCY AND CORPORATE**

**ERRORS & OMISSIONS INSURANCE FUND INVESTMENT INCOME**

This budget is based on the Law Society receiving a transfer of \$1.5 million (2014 - \$1.5 million) of income surplus to the requirements of the Errors and Omissions Insurance Fund administered by LAWPRO.

**INVESTMENT INCOME**

The 2015 budget includes investment income of \$850,000 (2014 - \$700,000) from the investment of funds surplus to the Law Society's immediate operational needs, reflecting financial market conditions and capital balances.

**LEXIS NEXIS ROYALTIES**

2015 budgeted income from the Ontario Reports is at \$1.5 million (2014 - \$1.5 million), based on the agreement being updated with Lexis Nexis and current royalty rate estimates.

**LIBRARYCO SERVICE FEE**

The Law Society will receive \$430,000 in 2015 for services provided under the renegotiated administrative services agreement with LibraryCo (2014 - \$ 528,000).

**CORPORATE EXPENSE**

Total corporate expense levels at \$3.1 million (2014 - \$3 million) include:

- A contingency of \$1.0 million (2014 - \$1 million)
- Insurance and annual audit fees totaling \$350,000, (2014 = \$350,000)
- Credit card fees \$929,000.
- A provision of \$40,000 in consulting for an examination of operational procedures, policies and/or practices of the Society to ascertain whether any of these involve actual or perceptible systemic discrimination against members of racialized communities.

**THE LAW SOCIETY OF UPPER CANADA**  
**Corporate Services and Administration**  
**Contingency and Corporate**  
**Draft Budget**  
**For the Year Ending December 31, 2015**

		<b>Approved Budget 2014</b>	<b>Draft Budget 2015</b>	
<b>REVENUES:</b>				
1	005-000-0000-0000-41020-000000	INVESTMENT/INTEREST INCOME	700,000	850,000
2	005-000-0000-0000-41040-000000	LEXIS NEXIS ROYALTIES	1,500,000	1,500,000
3	005-000-0000-0004-42195-000000	LAWPRO DIRECTOR FEES	190,000	190,000
4	005-000-0000-0000-41050-000040	LIBRARYCO ADMIN FEE	528,000	430,000
5	005-000-0000-0000-41050-000000	MISCELLANEOUS REVENUE	600,000	600,000
<b>6</b>	<b>Total Revenues</b>	<b>3,518,000</b>	<b>3,570,000</b>	
<b>DIRECT VARIABLE EXPENSES:</b>				
<b>Program Expenses</b>				
7	005-000-0000-0000-00010-000020	CONTINGENCY	1,000,000	1,000,000
8	005-000-0000-0000-32070-000000	SEVERANCE	250,000	250,000
9	005-000-0000-0000-33180-000000	CONSULTING	50,000	90,000
10	005-000-0000-0000-32160-000000	HEALTH AND SAFETY COMMITTEE	5,000	5,000
11	005-000-0000-0000-32170-000000	SPIRIT EXPENSES	75,000	75,000
12	005-000-0000-0000-32110-000000	PROVISION FOR DOUBTFUL ACCOUNTS	175,000	175,000
13	005-000-0000-0000-32120-000000	EXTERNAL AUDIT	135,000	135,000
14	005-000-0000-0000-32130-000000	INSURANCE	215,000	215,000
15	005-000-0000-0000-32010-000000	LICENSES	200,000	200,000
16	005-000-0000-0000-42275-000000	CREDIT CARD FEES ANNUAL FEES	929,000	929,000
<b>17</b>	<b>Total Program Expenses</b>	<b>3,034,000</b>	<b>3,074,000</b>	
<b>18</b>	<b>Total Variable Expenses</b>	<b>3,034,000</b>	<b>3,074,000</b>	
<b>19</b>	<b>Net Expenses</b>	<b>(484,000)</b>	<b>(496,000)</b>	

Re: Treasurer Expense Reimbursement Policy

It was moved by Mr. Bredt, seconded by Mr. Wardle, that Convocation approve the new Treasurer Expense Reimbursement Policy as set out in the Report.

Carried

**TAB 2.3**

**FOR DECISION**  
**TREASURER EXPENSE REIMBURSEMENT POLICY**

**Motion:**

3. That Convocation approve the new Treasurer Expense Reimbursement Policy.

**Rationale**

4. An approved, transparent expense reimbursement policy is a critical internal control tool and assists in administering the reimbursement process. Currently, Treasurers are reimbursed for business related expenses under the existing Bencher Expense Reimbursement Policy. In recognition of the unique circumstances of the office of Treasurer, a policy for the reimbursement of expenses incurred by Treasurers in the course of their Law Society business is being proposed.
5. This is a new policy, based on the Bencher Expense Reimbursement Policy. It will come into effect when it is approved by Convocation.

**Key Issues and Considerations**

6. The policy requires the Treasurer to consult with the Chair, Audit & Finance Committee or the Chief Executive Officer for guidance if the Treasurer has any doubt as to the appropriateness of a specific expense.
7. The policy continues the Audit & Finance Committee's role in overseeing Treasurer expenses by requiring timely, accurate and complete reporting to the Committee.
8. The policy is based on the Bencher Expense Reimbursement Policy and addresses issues often unique to Treasurers such as long term accommodation and the use of business class air travel for flights over four hours.

**Financial Impact**

9. Expenses reimbursed to, or paid on behalf of, the Treasurer should be within the detailed budget set for Treasurer business expense purposes. In 2014 this budget totals \$305,000.

## TREASURER EXPENSE REIMBURSEMENT POLICY

<b>Approved By:</b>	<b>Convocation</b>	<b>Review Date:</b>	<b>October, 2015</b>
<b>Contact:</b>	<b>Chief Financial Officer</b>		

### 1 POLICY

Under By-Law 3, the Treasurer is entitled to be reimbursed for reasonable expenses incurred in performing his or her duties on behalf of the Law Society. Expenses reimbursed to, or paid on behalf of, the Treasurer should be within the detailed budget set for Treasurer business expense purposes.

The Treasurer should consult with the Chair, Audit & Finance Committee or the Chief Executive Officer (CEO) for guidance related to any expenses which may be considered extraordinary, not within the set budget, and/or if the Treasurer has any doubt as to the appropriateness of a specific expense.

### 2 PURPOSE

The purpose of this Policy is to:

- set the guidelines for the Treasurer with respect to reimbursable expenses in conducting Law Society business,
- reflect the obligation of the Law Society to be accountable for the expenditure of all funds, and
- assist the Audit & Finance Committee in their role of overseeing Treasurer expenses by providing timely, accurate and complete reporting to the Committee on a regular basis.

### 3 SCOPE

The Treasurer Expense Reimbursement policy applies to the Treasurer while conducting Law Society business during his/her term.

### 4 RESPONSIBILITY

4.01 The Treasurer on Law Society business is responsible for:

- Following the guidelines for expenses, or satisfying the Chair, Audit & Finance Committee or CEO, prior to incurring an expense, that an exception is appropriate,
- Ensuring expenses incurred are within the budget approved by Convocation and in keeping with the detailed budget set for Treasurer business expense purposes,
- Retaining and submitting all original receipts along with a completed Law Society Expense Report form.

4.02 The Chair, Audit & Finance Committee is responsible for:

- Approving exceptions to the Treasurer expense reimbursement policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating decisions to the CEO and Chief Financial Officer (CFO).

4.03 The Chief Executive Officer is responsible for:

- Approving all expenses, subsequent to the CFO's review,
- In conjunction with the Chair, Audit & Finance Committee, approving exceptions to the Treasurer expense reimbursement policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating decisions to the CFO,
- Monitoring for compliance with the set policy and raising issues, where appropriate, with the Audit & Finance Committee.

4.04 The Chief Financial Officer is responsible for:

- Providing guidance to the Chair, Audit & Finance Committee and CEO regarding appropriate types and levels of expenses
- Reviewing all expense reports and conference requests submitted by the Treasurer for completeness, accuracy and budget availability
- Providing reporting on Treasurer's expenses to the Audit & Finance Committee.

## 5 ALLOWABLE BUSINESS EXPENSES

### 5.01 Travel

The Law Society recognizes the following as reimbursable travel expenses:

- Economy class airfares on commercial flights with business class airfares permitted for flights exceeding four hours
- Train or bus tickets
- Airport fees
- Public transportation costs
- Parking
- Taxi fares or limousine, including gratuity, to and from destinations within a city
- A rental car, including insurance and gasoline costs, in the destination city.
- Use of a Treasurer's personal vehicle for business travel will be reimbursed on a per kilometre basis. The Law Society will update and publish the rate per kilometre for reimbursement purposes periodically.

### 5.02 Accommodation

In general, the Law Society recognizes the following as reimbursable accommodation expenses:

- Within Toronto and Ottawa, reimbursement will be limited to accommodation expenses equivalent to those at the Law Society's pre-approved hotels at the negotiated rates. The list of pre-approved hotels and rates is to be updated and published by the Law Society periodically.
- When long-term accommodation arrangements are needed in Toronto as a Treasurer's primary residence is outside the Greater Toronto Area, reimbursement will be limited to accommodation expenses comparable to the cost that would be incurred by staying at the Law Society's pre-approved hotels in Toronto.
- Outside of Toronto and Ottawa, reimbursement will be limited to the comparable class of pre-approved hotels in Toronto and Ottawa.

### 5.03 Meals

The Law Society reimburses reasonable meal expenses incurred while travelling or conducting Law Society business. When travelling or dining independently, the Treasurer should use the Reimbursement Guidelines set for benchers in the Bencher Expense Reimbursement Policy as a guide for reasonable meal and beverage expense per day.

### 5.04 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- Gratuities/tips
- Communication costs such as fax, long distance charges, teleconferences and cell phone usage
- Childcare and related expenses
- While traveling, internet connection expenses and telephone calls.

### 5.05 Non-reimbursable Expenses

The Law Society will not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where the Treasurer is hosted by family or friends or stay in their own secondary residence instead of a hotel.

### 5.06 Conferences

Attendance at a seminar, conference or similar event at Law Society expense must be approved by the CEO in advance of any commitment or reservations being booked.

On occasion, the Treasurer may attend an event which includes a guest invitation. With the prior approval of the CEO, the Law Society will reimburse reasonable travel, accommodation and meal expenses incurred for a guest to attend with the Treasurer.

### 5.07 Other Costs

The Law Society occasionally hosts functions to which guests are invited. Additional expenses

incurred for a guest to travel to a designated event will be reimbursed in accordance with this Policy.

## **6 SUBMISSION OF EXPENSE CLAIMS**

### **6.01 Submission of Expense Claims**

- Original receipts and boarding passes should be retained and submitted with a completed Law Society Expense Report Form to the attention of the CFO.
- The Expense Report Form should include the purpose for incurring the expense(s) such as attending Federation of Law Societies meeting, business meeting with Committee Chairs to address a given matter, etc.
- Receipts should include the name of the service provider (e.g. restaurant, taxi company, etc.), the date the service was received and the amount paid.
- Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance.
- It is preferred that, at a minimum, claims for reimbursement be submitted on a monthly basis by the 15th business day in the month following the month in which the expense was incurred. Claims submitted more than six months after the date of the expense being incurred may be declined for reimbursement.

## **7 REPORTING**

### **7.01 Reporting**

In accordance with the Law Society's internal control and governance processes, regular reporting on Treasurer's expenses will be submitted to the Audit & Finance Committee along with exceptions to the policy.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Amendment to the Policy on Law Society Investigations of Benchers, Employees and Adjudicators

It was moved by Mr. Mercer, seconded by Ms. Richer, that Convocation amend the policy on Law Society Investigations of Benchers, Employees, and Licensee Adjudicators, as set out at Tab 3.1.1 of the Report.

Carried

**TAB 3****Report to Convocation  
October 30, 2014****Professional Regulation Committee****Committee Members**

Malcolm Mercer (Chair)  
 Paul Schabas (Vice-Chair)  
 Susan Richer (Vice-Chair)  
 Robert Armstrong  
 John Callaghan  
 John Campion  
 Cathy Corsetti  
 Seymour Epstein  
 Robert F. Evans  
 Julian Falconer  
 Patrick Furlong  
 Carol Hartman  
 Jacqueline Horvat  
 Brian Lawrie  
 Jeffrey Lem  
 William C. McDowell  
 Ross Murray  
 Jan Richardson  
 Heather J. Ross

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
 Margaret Drent (416-947-7613)**

**COMMITTEE PROCESS**

1. The Professional Regulation Committee (“the Committee”) met on October 16, 2014. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), John Campion, Cathy Corsetti, Seymour Epstein, Robert F. Evans, Patrick Furlong, Carol Hartman (by telephone), Jacqueline Horvat, Brian Lawrie, Jeffrey Lem, William C. McDowell, Ross Murray, and Jan Richardson (by telephone).
  
2. Staff members attending were Zeynep Onen, Grant Wedge, Jim Varro, Naomi Bussin, and Margaret Drent.

## TAB 3.1

## FOR DECISION

**AMENDMENT TO THE POLICY ON LAW SOCIETY INVESTIGATIONS OF BENCHERS, EMPLOYEES, AND ADJUDICATORS****MOTION**

3. **That Convocation amend the policy on Law Society Investigations of Benchers, Employees, and Licensee Adjudicators, as set out at [Tab 3.1.1](#).**

**Issue for Consideration**

4. Convocation is asked to approve an amendment to the 2009 Policy on Law Society Investigations of Licensee Benchers and Staff to provide for the handling of complaints against licensees who are non-bencher adjudicators.
5. Convocation approved a new policy for these investigations in January, 2009. The policy was amended in February 2009 to provide for investigations of the Treasurer, Chief Executive Officer and Director, Professional Regulation.<sup>1</sup>
6. The current policy does not explicitly apply to non-Bencher Tribunal adjudicators. It is recommended that the policy be amended to specifically refer to all licensee adjudicators.
7. Since the Law Society's regulatory authority is limited to lawyers and paralegals, the policy would only apply to adjudicators who are licensees.
8. Changes also incorporate the new title of the Executive Director, Professional Regulation, and the fact that all licensed paralegal members of the Paralegal Standing Committee are now benchers.
9. The Professional Regulation and Paralegal Standing Committees approved these changes at their October 2014 meetings. The Tribunal Committee was advised of the proposed changes on October 15, 2014.

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<sup>1</sup> The January 2009 report may be accessed online at [http://www.lsuc.on.ca/media/convjan09\\_prc.pdf](http://www.lsuc.on.ca/media/convjan09_prc.pdf). The February 2009 report may be accessed at [http://www.lsuc.on.ca/media/convfeb09\\_prc.pdf](http://www.lsuc.on.ca/media/convfeb09_prc.pdf).

**POLICY FOR THE INVESTIGATION OF COMPLAINTS AGAINST LAWYER AND PARALEGAL BENCHERS, AND EMPLOYEES, AND PARALEGAL MEMBERS OF THE PARALEGAL STANDING COMMITTEE AND LICENSEE ADJUDICATORS**

1. All complaints against benchers, ~~and~~ employees of the Law Society, ~~and~~ licensee adjudicators appointed to the ~~Hearing Division Law Society Tribunal~~ are transferred to Professional Regulation Intake for assessment.
2. Where the complaint is not serious and is unlikely to result in formal or informal sanction, with the Executive Director's investigation instruction, the complaint should be transferred to Complaints Resolution for processing in the normal course.
3. Where in the course of resolution a less serious matter changes in character and may result in a "found"<sup>1</sup> complaint, the Executive Director is to be consulted to determine whether outside counsel should be retained. The Executive Director may decide to retain outside counsel to continue the investigation in consultation with the Treasurer.
4. Where it is determined that the complaint raises more serious allegations which, if supported by the evidence would lead to a "found"<sup>2</sup> complaint requiring formal proceedings, or a referral to the Proceedings Authorization Committee, the Executive Director will retain an outside investigator in consultation with the Treasurer.
5. On completion of his or her investigation, the outside investigator is required to provide a report to the Treasurer and the Executive Director of Professional Regulation. If the recommendation is that the matter should close without referral to the Proceedings Authorization Committee, and the Treasurer and the Executive Director both agree, the case will be closed. Where any one of the investigator, the Treasurer or the Executive Director are of the view that the case should be reported to the Proceedings Authorization Committee, the investigator is required to prepare and present a report to the PAC.
6. The Executive Director will provide the Treasurer with a regular report on all ongoing bencher, staff, ~~and Tribunal member~~ investigations and their resolution.
7. In the appropriate case, the Executive Director may also refer a complaint to the Complaints Resolution Commissioner for resolution where the matter concerns a complaint of a less serious nature.

<sup>1</sup> "Found" complaints are complaints in which a breach was found as a result of an investigation, and the file was closed by a disposition such as an undertaking or a caution letter.

<sup>2</sup> See above.

8. All persons involved in application of this policy must be mindful of conflicts of interest and shall not act in the event of a conflict.
9. If a complaint is received about the Executive Director, Professional Regulation, the Chief Executive Officer will assume the role of the Executive Director, Professional Regulation for the purpose of instructing the investigation under By-Law 11.
10. If a complaint is received about the Chief Executive Officer, the Treasurer will refer the complaint to an outside investigator for review, assessment, and or investigation as required, and provide direction to the Executive Director.
11. If a complaint is received about the Treasurer, the Chair of the Audit and Finance Committee will act as Treasurer, in accordance with the provisions of By-Law 3, for the purpose of this policy, and provide direction to the Executive Director.
12. Notwithstanding the provisions of this policy, if a complaint is received about any of the Executive Director, Professional Regulation, the Chief Executive Officer or the Treasurer, the complaint shall not be investigated by Law Society staff and shall be referred to an outside investigator for review, assessment and /or investigation as required.

Re: Reporting Criminal or Illegal Activity to Law Enforcement and Other Regulators

Mr. Mercer presented the report on Reporting Criminal or Illegal Activity to Law Enforcement and other Regulators, for information.

*For Information*

- Reporting to Law Enforcement and other Regulators
- Licensee Survey

**TAB 3.3**

**FOR INFORMATION**

**REPORTING CRIMINAL OR ILLEGAL ACTIVITY TO LAW  
ENFORCEMENT AND OTHER REGULATORS**

30. The Committee has reviewed and approved a document that describes current practice at the Law Society for reporting to law enforcement and other regulators, set out at **Tab 3.3.1**.

**Background**

31. As a regulator acting in the public interest, the Law Society reports criminal or other wrongful activity to the appropriate authority. There are constraints on such reports based on confidentiality provisions in the *Law Society Act* and the solicitor client privileged nature of some of the information obtained during investigations.
32. The Law Society occasionally obtains information about possible criminal and other illegal activity during the course of its investigations. While the Law Society will work with law enforcement and other regulatory bodies with the consent of the complainants, this information is strictly confidential unless and until discipline proceedings are commenced.
33. The Paralegal Standing Committee reviewed this statement at its October 2014 meeting.
34. Information sharing is included in the Federation of Law Societies' National Discipline Standards, which were approved by Convocation in February 2014 as aspirational principles. The relevant standards for all Canadian law societies are as follows:
- a. There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.
  - b. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

## Information Disclosure

35. The Law Society is restricted by common law as well as the *Law Society Act* in what can be disclosed about an investigation. The relevant portions of the *Law Society Act* (sections 49.3 – 49.13) may be accessed at the referenced link.<sup>1</sup>
36. The legislation is structured so as to protect the privilege of clients while at the same time permitting the Society to obtain information necessary to permit regulation in the public interest.

### *Disclosure prior to the initiation of public proceedings*

37. Section 49.12 (1) of the *Act* imposes a strict confidentiality requirement on any information obtained as a result of a Law Society audit, investigation, review, search, seizure or discipline proceeding. The confidentiality provisions are intended to balance the Law Society's broad authority under its investigative powers to obtain information from lawyers and paralegals, including solicitor-client privileged information.
38. Privileged information obtained in the course of an investigation is protected under section 49.8 which provides that privilege is not waived or negated by disclosure to the Law Society and is protected during discipline proceedings.
39. Section 49.12(2) provides exceptions to the general confidentiality requirement.
40. Disclosure of information about investigations can only take place under the exceptions set out in section 49.12(2) or by order of the court under section 49.13.

### *Disclosure of information after the initiation of public proceedings*

41. Disclosure of information required for a discipline proceeding is permitted under section 49.12(2)(b).

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<sup>1</sup> The *Law Society Act*, R.S.O. 1990, c. L.8, online at [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90l08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm).

**Tab 3.3.1****REPORTING CRIMINAL OR ILLEGAL ACTIVITY  
TO LAW ENFORCEMENT AND OTHER REGULATORS**

As part of our mandate to protect the public interest, the Law Society reports to law enforcement about criminal or illegal activity. This document describes the Law Society's process for reporting to law enforcement.

In this document, "law enforcement" refers to police and other regulatory bodies, including another Canadian law society.

1. The Law Society will report to law enforcement where there are reasonable grounds to believe that a licensee or any other person has been involved in criminal or illegal activity.
2. In addition to reports by the Law Society, the Law Society encourages complainants and witnesses to report directly to law enforcement and supports their efforts in doing so.
3. A report is not required if law enforcement is already aware of the alleged illegal activity.
4. The report cannot include information that is subject to the confidentiality provisions of section 49.12 of the *Law Society Act*. As a general rule the report will include a summary of the relevant allegations based on information received with the initial complaint. Consent of the complainant and/or client will ordinarily be obtained before the report is made.
5. The Law Society will disclose additional information under section 49.12(2)(f) of the *Act* if there are reasonable grounds to believe that there is a significant risk of harm and that making the disclosure or report will reduce the risk.
6. The harm to be prevented by disclosure under section 49.12(2)(f) of the *Act* may include physical, psychological or economic harm to a person.
7. On release of decisions of the Law Society Tribunal, any matter that raises issues of criminal or illegal activity will be reported to law enforcement.

## TAB 3.4

## FOR INFORMATION

**SURVEY OF LICENSEES IN THE COMPLAINTS PROCESS**

42. The Professional Regulation Division of the Law Society of Upper Canada launched a survey of licensees regarding the complaints process on October 10, 2014. A copy of the survey is provided for Convocation's information at [Tab 3.4.1](#).
43. The purpose of the survey is to obtain capturing qualitative information regarding the professional regulation process.
44. Randomly-selected licensees will receive by email the link to the survey in Survey Monkey. This email and the survey will be available in both official languages.
45. The survey will run for nine months. The Professional Regulation Division intends to send out 800 surveys during this time.

**Complaints Process Survey for Licensees<br> Sondage sur le processus**

**The Law Society of Upper Canada is always looking for ways to improve the complaint process. We care about your experience and your views. This survey should take only 5 minutes to complete. Please answer the questions and share your thoughts with us so that we are able to make improvements and changes where appropriate. Your responses are confidential and will remain anonymous. Concerns raised in your response will be reviewed but we will not be responding directly to you about them.**

**In what language would you prefer to answer the survey?**

**Le Barreau du Haut-Canada cherche constamment à améliorer son processus de plaintes. Votre expérience et vos opinions comptent pour nous. Le présent sondage ne devrait prendre que 5 minutes. Veuillez répondre aux questions et nous faire connaître vos pensées afin de nous aider à faire les changements nécessaires pour améliorer notre processus. Vos réponses sont confidentielles et demeureront anonymes. Nous examinerons les préoccupations soulevées dans vos réponses, mais nous ne vous répondrons pas directement.**

**Dans quelle langue préférez-vous répondre à ce sondage?**

- English/Anglais
- French/Français

## Complaints Process Survey for Licensees <br> Sondage sur le processus

### How did we do?

	Strongly Agree	Agree	Neither Disagree Nor Agree	Disagree	Strongly Disagree
We took the time to listen to your concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We answered your questions in a timely manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We kept you informed of the progress of your complaint	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We gave you enough information to help you understand our complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We gave you enough time to respond to what was asked of you throughout the complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We met timelines that we set for ourselves throughout the complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### How did we treat you?

	Strongly Agree	Agree	Neither Disagree Nor Agree	Disagree	Strongly Disagree
With dignity and respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Politely and professionally	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### Please rate your understanding of the following:

	Very Clear	Clear	Neutral	Unclear	Very Unclear
The allegations you were facing	<input type="radio"/>				
What was required of you during the investigation	<input type="radio"/>				
At the end of the investigation, our explanation of the decision and how it was reached	<input type="radio"/>				

### Please rate your satisfaction with the following in terms of clarity and understandability.

	Very satisfied	Satisfied	Neither Satisfied Nor Dissatisfied	Dissatisfied	Very Dissatisfied	N/A
<b>Written</b> communication we sent you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Telephone</b> communication with us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>In-person</b> contact with us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Complaints Process Survey for Licensees <br> Sondage sur le processus

**The Law Society of Upper Canada is committed to promoting equity and diversity in the legal profession and to understand if commonalities and differences in experience exist within and among the legal profession.**

**If you wish, please check any of the following characteristics with which you self identify. Please select all that apply:**

- Aboriginal (e.g. First Nation, Status Indian, Non-Status Indian, Métis, Inuk or Inuit)
- Francophone
- Person With Disabilities
- Racialized/Person of Colour (Visible Minority)
- White
- I do not identify with any of the aforementioned personal characteristics

Other (please specify)

**Please indicate your gender (Voluntary)**

- Male
- Female
- Transsexual/Transgender

**In what year were you born? (Voluntary)**

**Do you have any thoughts or suggestions that you want to share with us?**

**Is there anything specifically that you would like us to know? Did someone at the Law Society go out of his or her way to help you? Do you have any comments on how we could improve the way we dealt with you and how we handled the complaint about you? (Please use point form)**

## Complaints Process Survey for Licensees <br> Sondage sur le processus

### Que pensez-vous de nous?

	Tout à fait d'accord	D'accord	Ni d'accord ni en désaccord	Pas d'accord	Pas d'accord du tout
Nous avons pris le temps de vous écouter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous avons répondu à vos questions rapidement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons tenu informé des progrès de la plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons donné assez d'information pour vous aider à comprendre notre processus de plaintes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons donné assez de temps pour répondre à ce qui vous était demandé au cours du processus de plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous avons satisfait aux dates limites que nous nous sommes fixées au cours du processus de plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### Comment vous avons-nous traité ?

	Tout à fait d'accord	D'accord	Ni d'accord ni en désaccord	Pas d'accord	Pas d'accord du tout
Avec dignité et respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Poliment et professionnellement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### Veillez évaluer votre compréhension de ce qui suit:

	Très claire	Claire	Neutre	Ambigüe	Très ambiguë
Les allégations contre vous	<input type="radio"/>				
Ce qui était exigé de vous pendant l'enquête	<input type="radio"/>				
À la fin de notre enquête, notre explication de la décision et la logique suivie	<input type="radio"/>				

## Complaints Process Survey for Licensees <br> Sondage sur le processus

**Veillez évaluer votre satisfaction de ce qui suit en fonction de la clarté et de la compréhensibilité:**

	Très satisfait	Satisfait	Ni satisfait ni insatisfait	Insatisfait	Très insatisfait	Sans objet
Nos communications <b>écrites</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nos communications <b>par téléphone</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Le contact <b>en personne</b> avec nous	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Le Barreau du Haut-Canada s'est engagé à promouvoir l'égalité et la diversité dans la profession juridique et à comprendre les points communs et les différences d'expériences qui peuvent exister dans la profession juridique.**

**Si vous le désirez, cochez la ou les caractéristiques suivantes auxquelles vous vous identifiez.**

**Choisissez tout ce qui s'applique:**

- Autochtone (Première Nation, Indien inscrit, Indien non inscrit, Métis, Inuk (Inuit))
- Francophone
- Personne handicapée
- Personne racialisée ou de couleur (minorité visible)
- Blanc(he)
- Je ne m'identifie à aucune des caractéristiques mentionnées ci-dessus

Autre (précisez)

**Veillez indiquer votre sexe – facultatif**

- Homme
- Femme
- Transsexuel/Transgenre

**Année de naissance – facultatif**

**En quelle année êtes-vous né(e)**

**Complaints Process Survey for Licensees<br> Sondage sur le processus**

**Désirez-vous nous faire part de vos pensées ou nous donner des suggestions ?**

**Y a-t-il quelque chose en particulier dont vous aimeriez nous faire part ? Y a-t-il quelqu'un au Barreau qui s'est démené pour vous aider ? Avez-vous des commentaires particuliers ou des suggestions à faire pour que nous améliorions notre façon de communiquer avec les personnes qui font l'objet de plaintes et de traiter les plaintes ? (Veuillez faire une énumération)**

Thank you for taking the time to complete this survey and for sharing your experience with us!

Merci d'avoir pris le temps de remplir ce sondage et de partager votre expérience avec nous !

LEGAL AID ONTARIO FUNDING ANNOUNCEMENT

Ms. McGrath briefed Convocation on the announcement made by the Attorney General of Ontario this morning on details of Legal Aid Ontario funding approved in the last provincial budget.

PRIORITY PLANNING COMMITTEE REPORT

Ms. McGrath presented the Report.

Re: Approval of Amendment to LAWPRO By-Laws

It was moved by Ms. McGrath, seconded by Mr. Silverstein, that Convocation authorize the Treasurer to sign LAWPRO's shareholder's resolution to approve By-Law #21, reproduced at Tab 4.2 of the report, which will have the effect of making the Law Society the sole shareholder of LAWPRO.

Carried

**Tab 4**

## Report to Convocation October 30, 2014

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### Priority Planning Committee

**Committee Members:**

**Janet Minor (Chair)**  
**Raj Anand**  
**Marion Boyd**  
**Christopher Bredt**  
**John Callaghan**  
**Cathy Corsetti**  
**Julian Falconer**  
**Howard Goldblatt**  
**Michelle Haigh**  
**Carol Hartman**  
**Jacqueline Horvat**  
**Janet Leiper**  
**William McDowell**  
**Susan McGrath****Malcolm Mercer**  
**Julian Porter**  
**Linda Rothstein**  
**Paul Schabas**  
**Peter Wardle**

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Jim Varro 416-947-3434)**

## FOR DECISION

## APPROVAL OF AMENDMENT TO LAWPRO BY-LAWS

## Motion

1. That Convocation instruct the Treasurer to sign the LawPRO's shareholder's resolution to approve By-Law# 21, reproduced at Tab 4.2, which will have the effect of making the Law Society the sole shareholder of LawPRO.

## Key Issues, Research, Analysis and Implementation Issues

2. Based on research undertaken by LawPRO management, the LawPRO Board approved By-Law #21 which implements revisions to By-Law #1 to remove all references to directors owning shares. Under By-Law #1, the qualification of a director included holding at the time of his or her election or appointment, and throughout his or her term of office, shares of the capital stock of the company.<sup>1</sup>
3. The LawPRO Board agreed that it is no longer necessary for directors to hold shares in the company. Managing these shareholdings created unnecessary work as shares were constantly being transferred on each change of board member.
4. This matter was referred to the Committee's Governance Issues Working Group, which recommended that the Law Society approve the change to LawPRO's By-Laws. The Committee agreed.
5. Attached as **Tab 4.1** is the text of By-law #21 as approved by the LAWPRO Board at its meeting on September 3, 2014, implementing the necessary revisions to By-law #1.
6. Implementing this change requires Convocation instructing the Treasurer to sign the resolution attached at **Tab 4.2**, approving By-law #21. Once all current shareholders, including the Law Society, sign the approval document, LawPRO will implement the transfer of all director shares back to Treasury effective January 1, 2015, at which time the Law Society will be the sole shareholder of LawPRO.

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<sup>1</sup> The relevant sections of By-law #1 used to state as follows:

5. **Qualification.** The qualification of a director shall be the holding at the time of his or her election or appointment, and throughout his or her term of office, in his or her own name and for his or her own use and absolutely in his or her own right shares of the capital stock of the Company upon which at least \$500 has been paid in and upon which all calls and instalments due have been paid in cash, and no person is eligible to become or shall be elected or appointed a director unless all liabilities incurred by him or her to the Company are paid in full in cash. Each director shall be at least 18 or more years of age.

8. **Vacation of office.** The office of any director shall ipso facto be vacated (a) if he or she becomes bankrupt or suspends payment or compounds with his or her creditors or makes an authorized assignment or is declared insolvent; (b) if he or she is found to be a mentally incompetent person or becomes of unsound mind; (c) if he or she ceases to hold the number of shares necessary to qualify him or her for his or her office of director; or (d) if by notice in writing to the Company he or she resigns his or her office of director.

## TAB 4.1

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY**

(883121)

**BY-LAW No. 21**

1. Section 5 of By-Law No. 1 of the Company is hereby deleted in its entirety and replaced with the following:
  5. **Qualification.** Each director shall be at least 18 or more years of age.
2. Section 8 of By-Law No. 1 of the Company is hereby deleted in its entirety and replaced with the following:
  8. **Vacation of office.** The office of any director shall ipso facto be vacated (a) if he or she becomes bankrupt or suspends payment or compounds with his or her creditors or makes an authorized assignment or is declared insolvent; (b) if he or she is found to be a mentally incompetent person or becomes of unsound mind; or (c) if by notice in writing to the Company he or she resigns his or her office of director.

## TAB 4.2

**Lawyers' Professional Indemnity Company****SHAREHOLDERS' RESOLUTION**

**WHEREAS** pursuant to subsection 68(1)(c) of the Ontario *Corporations Act*, R.S.O., 1990, c.C.38 ("*Corporations Act*"), the directors of Lawyers' Professional Indemnity Company (the "Company") may pass by-laws that regulate the qualifications of the directors of the Company;

**AND WHEREAS** pursuant to subsection 68(2) of the *Corporations Act* a by-law passed under subsection 68(1) of the *Corporations Act* is effective only until the next annual meeting of the shareholders, when it may be confirmed, unless in the meantime it has been confirmed at a general meeting of the shareholders duly called for the purpose;

**AND WHEREAS** pursuant to subsection 298(2) of the *Corporations Act* any resolution signed by all the shareholders of the Company is valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose;

**AND WHEREAS** the directors of the Company passed By-Law No. 21 (attached hereto as **Exhibit "A"**) respecting the qualification of directors owning shares of the Company with effect on January 1, 2015, which By-Law all of the shareholders of the Company wish to confirm;

**NOW THEREFORE BE IT RESOLVED THAT:**

The shareholders of Lawyers' Professional Indemnity Company hereby approve, sanction and confirm By-Law No. 21, a copy of which is attached hereto as **Exhibit "A"** effective January 1, 2015.

The undersigned, being all the shareholders of the Company, hereby sign the foregoing resolution. This resolution may be signed in counterpart.

The Law Society of Upper Canada

Per:

\_\_\_\_\_  
Janet Minor, Treasurer

\_\_\_\_\_  
Susan T. McGrath (Chair)

\_\_\_\_\_  
Ian D. Croft (Vice-Chair)

---

George D. Anderson (Director)

---

Clare A. Brunetta (Director)

---

Douglas F. Cutbush (Director)

---

Robert F. Evans, Q.C. (Director)

---

Frederick W. Gorbet (Director)

---

Malcolm L. Heins (Director)

---

Rita Hoff (Director)

---

Robert G.W. Lapper, Q.C. (Director)

---

Barbara J. Murchie (Director)

---

Alan G. Silverstein (Director)

---

Andrew N. Smith (Director)

---

John C. Thompson (Director)

---

Kathleen A. Waters (Director)

TRIBUNAL COMMITTEE REPORT

Mr. Anand presented the Report.

Re: Proposed Appeal Rule 17 (Summary Orders)

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve proposed new Rule 17 and Form 17A of the Law Society Tribunal Appeal Division Rules of Practice and Procedure as set out in the motion at Tab 5.1.1 of the Report.

Carried

**TAB 5**

**Report to Convocation  
October 30, 2014**

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**Tribunal Committee****Committee Members**

Raj Anand (Chair)  
Janet Leiper (Vice-Chair)  
Larry Banack  
Jack Braithwaite  
Christopher Bredt  
Robert Burd  
Adriana Doyle  
Lee Ferrier  
Alan Gold  
Dow Marmur  
Barbara Murchie  
Linda Rothstein  
Mark Sandler  
Baljit Sikand  
Peter Wardle

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)**

### **COMMITTEE PROCESS**

1. The Committee met on October 15, 2014. Committee members Raj Anand (Chair), Janet Leiper (Vice-Chair), Jack Braithwaite, Robert Burd, Adriana Doyle, Dow Marmur, Barbara Murchie, Mark Sandler, Baljit Sikand and Peter Wardle attended. Tribunal Chair David Wright and staff members David Draper, Grace Knakowski, Lisa Mallia and Sophia Sperdakos also attended.

TAB 5.1

## FOR DECISION

**PROPOSED APPEAL RULE 17 (SUMMARY ORDERS)****MOTION**

2. That Convocation approve proposed new English and French Rule 17 and Form 17A of the Appeal Division Rules of Practice and Procedure as set out in the Motion at [TAB 5.1.1: Motion Respecting Appeal Rule 17 and Form 17A](#).

**SUMMARY****Issue for Consideration**

3. An Appeal Rule and Form is proposed that would govern appeals from summary orders made pursuant to sections 46 (suspension for failure to pay a fee or levy), 47 (failure to complete or file required documents, reports or certificates with the Society or with an insurer), 47.1 (failure to comply with requirements of by-laws respecting indemnity for professional liability), 48 (revocation of license if orders under 46, 47(1)(a) or 47.1 are still in effect more than 12 months after made) and 49 (suspension for failure to comply with CPD requirements) of the *Law Society Act*.

**Rationale**

4. In the pre-2009 Rules of Practice and Procedure that governed both the Hearing and Appeal Panels there was a Rule governing appeals from summary orders. The provisions respecting summary order appeals were inadvertently omitted from both the 2012 and the recently approved 2014 Appeal Rules.
5. The reason for proposing Rule 17 is both to correct the inadvertent omission and to develop a process that is manageable and effective.
6. Summary orders are made by a summary disposition benchler. The process for appeal from these orders is different from the usual appeals, given that the original decision is made on the basis of documentation rather than after an oral hearing and there are no reasons for decision. The appeal is heard by three panelists. Typically the issues are evidentiary ones about how and when notice was given, the communications with the Law Society, etc.
7. The proposed Rule establishes a unique appeal procedure. The matter proceeds by way of affidavit material. The respondent (the Law Society) files its material first, with

the appellant (the licensee) responding. The process is designed to allow for an oral hearing with evidence, but avoid unnecessary complexity and be cost effective. Given that the Law Society is in the best position to set out the basis for the original determination and provide the documentation, the proposed process under the Rule with the Law Society filling first, is sensible.

8. Approving this Appeal Rule and Forms will enhance the Tribunal process and address a gap in the current rules.

#### **KEY ISSUES AND CONSIDERATIONS**

9. The proposal is in keeping with Convocation's approval of an enhanced adjudicative model that fosters effective, fair and transparent adjudication.
10. There are no legislative implications in approving a new Rule, which would be approved in French and English.
11. Implementation will likely have an overall positive effect on the Tribunal's operation, particularly if use of the Rule succeeds in narrowing issues or enhancing processes.
12. Law Society Divisions that would be involved with the implementation of the Rule are aware of and in agreement with it.

TAB 5.1.1

## THE LAW SOCIETY OF UPPER CANADA

LAW SOCIETY TRIBUNAL  
RULES OF PRACTICE AND PROCEDUREMOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 30, 2014

MOVED BY

SECONDED BY

THAT the Rules of Practice and Procedure (“the Rules”) applicable to proceedings before the Appeal Division, made by Convocation on March 12, 2014 be amended as follows:

1. The English version of the Rules be amended and the following added:

**RULE 17****SUMMARY ORDER APPEALS****Summary order appeals**

**17.1** (1) Rule 17 applies to appeals from orders under sections 46, 47, 47.1, 48, or 49 of the Act (“summary order appeals”).

(2) Rules 1, 10, 12, 13 and 15 apply with necessary modifications to summary order appeals. Rules 2, 3, 4, 5, 6, 7, 8, 9, 11, 14 and 16 do not apply to summary order appeals.

**Commencement of summary order appeal**

**17.2** (1) An appellant shall commence a summary order appeal by serving on the Society and filing with the Tribunal a notice of summary order appeal (Form 17A).

(2) The notice of summary order appeal shall be served on the Society by personal service or an alternative to personal service.

**Time for commencement of summary order appeal**

(3) The notice of summary order appeal shall be served on the Society and filed with the Tribunal within 30 days of the date the summary order is deemed to have been received by the appellant.

**Extension of time for commencing summary order appeal**

(4) A summary order appeal may be commenced beyond this time limit with consent of the Society or leave of the Tribunal. Leave may be sought by filing a motion in accordance with these Rules.

**Summary order appeals on consent**

**17.3** Where a summary order appeal is on consent, the appeal may be heard in writing. The written consent of the parties and a draft order shall be filed with the Tribunal at the time the notice of summary order appeal is filed or as soon thereafter as possible. Despite rule 17.4, where a summary order appeal is on consent no other material need be filed by the parties.

**Filing of Affidavits and Hearing**

**17.4** (1) The Society shall file an affidavit or affidavits that set out the factual basis for making the summary order no later than 30 days after the filing of the Notice of Summary Order Appeal.

(2) The appellant shall file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Summary Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will be heard orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

**Pre-hearing conference**

**17.5** The Tribunal Office shall schedule a pre-hearing conference in every summary order appeal after filing of the affidavits. Rule 22 of the hearing panel rules applies to the pre-hearing conference, with necessary modifications.

**FORM 17A - NOTICE OF SUMMARY ORDER APPEAL**

*(Law Society Tribunal file no.)*

**LAW SOCIETY TRIBUNAL  
APPEAL DIVISION**

**BETWEEN:**

**(name)**

Appellant

and

**The Law Society of Upper Canada**

Respondent in appeal

APPEAL UNDER subsection 49.32(3) of the *Law Society Act*

**NOTICE OF SUMMARY ORDER APPEAL**

THE APPELLANT APPEALS to the Appeal Division from the summary order of the summary disposition bencher dated (*date of order*).

THE APPELLANT ASKS that the order be set aside and an order be granted as follows: (*Set out briefly the relief sought.*)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)  
(*Date*)

*(Name, address, telephone number, fax number  
and e-mail address of appellant  
or appellant's representative)*

TO: By-Law Administration Services  
Client Service Centre  
The Law Society of Upper Canada  
130 Queen St. W.  
Toronto, ON M5H 2N6

2. The French version of the Rules be amended and the following added:

## **RÈGLE 17**

### **APPELS DES ORDONNANCES SOMMAIRES**

#### **Appels des ordonnances sommaires**

**17.1** (1) La Règle 17 s'applique aux appels des ordonnances en vertu des articles 46, 47, 47.1, 48 ou 49 de la Loi (« appels des ordonnances sommaires »).

(2) Les règles 1, 10, 12, 13 et 15 s'appliquent avec les adaptations nécessaires aux appels des ordonnances sommaires. Les règles 2, 3, 4, 5, 6, 7, 8, 9, 11, 14 et 16 ne s'appliquent pas aux appels des ordonnances sommaires.

#### **Introduction d'un appel d'ordonnance sommaire**

**17.2** (1) L'appelant introduit un appel d'ordonnance sommaire en signifiant au Barreau et en déposant auprès du Tribunal un avis d'appel d'ordonnance sommaire (formulaire 17A).

(2) L'avis d'appel d'ordonnance sommaire est signifié au Barreau à personne ou par un autre mode de signification directe.

#### **Délai d'introduction d'un appel d'ordonnance sommaire**

(3) L'avis d'appel d'ordonnance sommaire est signifié au Barreau et déposé auprès du Tribunal dans les 30 jours suivant la date à laquelle l'ordonnance sommaire est réputée avoir été reçue par l'appelant.

#### **Prorogation du délai d'introduction d'un appel d'ordonnance sommaire**

(4) Un appel d'ordonnance sommaire peut être introduit après ce délai avec le consentement du Barreau ou l'autorisation du Tribunal. L'autorisation peut être demandée en déposant une motion conformément aux présentes règles.

#### **Appels d'ordonnances sommaires sur consentement**

**17.3** L'appel d'ordonnance sommaire qui est sur consentement peut être entendu sur pièce. Le consentement écrit des parties et un projet d'ordonnance sont déposés auprès du Tribunal au moment du dépôt de l'avis d'appel d'ordonnance sommaire ou le plus tôt possible par la suite. Malgré la Règle 17.4, si un appel d'ordonnance sommaire est sur consentement, les parties ne doivent déposer aucun autre document.

#### **Dépôt d'affidavits et audience**

**17.4** (1) Le Barreau dépose un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'ordonnance sommaire au plus tard 30 jours après le dépôt de l'avis de l'appel d'ordonnance sommaire.

(2) L'appelant dépose un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'appel au plus tard 45 jours après le dépôt de l'avis d'appel d'ordonnance sommaire.

(3) Les contre-interrogatoires des déposants des affidavits et toute contre-preuve seront entendus oralement lors de l'audience de l'appel, à moins d'une ordonnance à l'effet contraire.

(4) Aucun mémoire ne doit être déposé avant l'audience, à moins d'une ordonnance à l'effet contraire.

#### **Conférence préparatoire à l'audience**

**17.5** Le bureau du Tribunal fixe une conférence préparatoire à l'audience pour chaque appel d'ordonnance sommaire après le dépôt des affidavits. La Règle 22 des règles de la Section de première instance s'applique à la conférence préparatoire à l'audience, avec les adaptations nécessaires.

## FORMULAIRE 17A – AVIS D'APPEL D'ORDONNANCE SOMMAIRE

(N<sup>o</sup> de dossier du Tribunal du Barreau)

### TRIBUNAL DU BARREAU SECTION D'APPEL

ENTRE :

(*nom*)

Appelant

et

**Barreau du Haut-Canada**

Intimé en appel

APPEL EN VERTU du paragraphe 49.32 (3) de la *Loi sur le Barreau*

### AVIS D'APPEL D'ORDONNANCE SOMMAIRE

L'APPELANT INTERJETTE APPEL à la Section d'appel à l'encontre de l'ordonnance sommaire du (de la) conseiller(ère) aux mesures sommaires datée du (*date de l'ordonnance*).

L'APPELANT DEMANDE que l'ordonnance soit annulée et qu'une ordonnance soit rendue comme suit : (*Énoncer brièvement la réparation recherchée.*)

LES MOTIFS DE L'APPEL sont les suivants : (*Énoncer brièvement les motifs de l'appel.*)  
(*Date*)

(*Nom, adresse, numéro de téléphone, numéro de télécopieur et adresse de courriel de l'appelant ou de son représentant*)

DEST. : Service de la conformité  
aux règlements administratifs  
Centre de service à la clientèle  
Barreau du Haut-Canada  
130, rue Queen Ouest  
Toronto ON M5H 2N6

Re: Amendment to Subrule 29.07(1) of the Hearing Division Rules of Practice and Procedure

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the amendment to English subrule 29.07(1) of the Law Society Tribunal Hearing Division Rules of Practice and Procedure set out at Tab 5.2.1 of the Report.

Carried

**TAB 5.2**

**FOR DECISION**

**AMENDMENT TO SUBRULE 29.07(1) OF THE HEARING DIVISION  
RULES OF PRACTICE AND PROCEDURE**

**MOTION**

13. **That Convocation approve the amendment to English subrule 29.07(1) of the Hearing Division Rules of Practice and Procedure set out at TAB 5.2.1: Motion Amending Subrule 29.07(1) HD Rules.**

**SUMMARY**

**Issue for Consideration**

14. Due to an oversight, a word was omitted from the English version of subrule 29.07(1) of the Hearing Division Rules, approved in March 2014.

**Rationale**

15. The amendment must be made to correct an inadvertent error in the English Rule that affects its meaning.

**KEY ISSUES AND CONSIDERATIONS**

16. New Hearing Division Rules were approved by Convocation in March 2014. New subrule 29.07(1) (English) should have read as follows:

29.07 (1) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding or the settlement of the decision to be **[made]** and a range of orders that may be made in the conduct proceeding the Society shall...

17. Instead the word [made] in bolded square brackets was omitted. The proposed amendment corrects the inadvertent omission.

TAB 5.2.1

## THE LAW SOCIETY OF UPPER CANADA

### LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 30, 2014

MOVED BY

SECONDED BY

THAT the rules of practice and procedure (“the Rules”) applicable to proceedings before the Hearing Division, made by Convocation on March 12, 2014, and amended by Convocation on May 22, 2014 and September 24, 2014 be further amended as follows:

1. Subrule 29.07(1) of the English version of the Rules be revoked and the following substituted:

**29.07** (1) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding or the settlement of the decision to be made and a range of orders that may be made in the conduct proceeding the Society shall,

- (a) commence the conduct proceeding; and
- (b) notify the Tribunal in writing of the fact and general nature of the settlement at the consent resolution conference not later than the day on which the conduct proceeding is commenced.

LAW SOCIETY HUMAN RIGHTS AWARD RECIPIENT

The Treasurer announced that The Honourable Irwin Cotler will be the recipient of the inaugural Law Society Human Rights Award, to be presented at a ceremony at the Law Society on February 12, 2015.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Requests for Interventions

It was moved by Mr. Schabas, seconded by Ms. Symes, that Convocation approve the letters and public statements in the following cases:

- a) Lawyer Yara Sallam – Egypt – set out at Tab 6.2.1.
- b) Lawyer N. Surendran – Malaysia – set out at Tab 6.2.2.
- c) Lawyer Gustaf Kawer – Indonesia – set out at Tab 6.2.3.

Carried

Mr. Lerner abstained.

*For Information*

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

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)**

**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 6.2

## FOR DECISION

## HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

**Motion**

20. That Convocation approve the letters and public statements in the following cases:
- a. Lawyer Yara Sallam – Egypt – letters of intervention and public statement presented at [TAB 6.2.1](#).
  - b. Lawyer N. Surendran – Malaysia – letters of intervention and public statement presented at [TAB 6.2.2](#).
  - c. Lawyer Gustaf Kawer – Indonesia – letters of intervention and public statement presented at [TAB 6.2.3](#).

**Rationale**

21. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
- a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. determine if the matter is one that requires a response from the Law Society; and,
  - c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

22. The Monitoring Group considered the following factors when making a decision about the case of the arrest and detention of human rights lawyer Yara Sallam:
- a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society of Upper Canada recently condemned the detention and sentencing of lawyer Mahienour El-Massry in Egypt, who has now been provisionally released pending appeal;
  - c. in 2008, the Law Society condemned a prohibition of travel imposed on both Hisham Bastawissi, vice-president of the Egyptian Court of Cassation, and Ashraf El-Baroudi, judge at the Alexandria Court of Appeal;
  - d. the arrest and continued detention of Yara Sallam falls within the mandate of the Monitoring Group.
23. The Monitoring Group considered the following factors when making a decision about the case of the arrest, and sedition charges against human rights lawyer N. Surendran:
- a. there are no concerns about the quality of sources used for this report;

- b. in 2010, the Law Society of Upper Canada called on the Malaysian government to protect lawyers and judges, reacting to reports of intimidation and harassment of the Malaysian judiciary due to a High Court decision overturning a government ban on the use of the word 'Allah';
  - c. the arrest and charges against N. Surendran fall within the mandate of the Monitoring Group.
24. The Monitoring Group considered the following factors when making a decision about the case of the investigation and intimidation of human rights lawyer Gustaf Kaver:
- a. there are no concerns about the quality of sources used for this report;
  - b. the Law Society of Upper Canada has not intervened in respect of human rights issues in Indonesia in the past;
  - c. the unlawful investigation and intimidation of Gustaf Kaver fall within the mandate of the Monitoring Group.

## KEY BACKGROUND

### EGYPT – THE ARREST AND DETENTION OF HUMAN RIGHTS LAWYER YARA SALLAM

#### Sources of Information

25. The background information for this report was taken from the following sources:
- a. Amnesty International;<sup>1</sup>
  - b. International Federation for Human Rights (FIDH);<sup>2</sup>
  - c. The Huffington Post;<sup>3</sup> and,
  - d. The Washington Post.<sup>4</sup>

---

1 Amnesty International is a non-governmental organization focused on human rights with over 3 million members and supporters around the world. It seeks to uncover the truths about human rights abuses, and mobilizes individuals to take action so that human rights abuses are stopped, individuals and communities are protected, and perpetrators of human rights violations are brought to justice. It is an independent and democratically-run organization. The movement's mission and policies, and its long-term directions, are all set by Amnesty members. Amnesty International's work is always being assessed by its members and staff in the light of changing world circumstances. When major changes in policy and approach are needed, Amnesty members make the final decision.

2 FIDH is an international non-partisan, non-religious, and apolitical non-profit organization based in France, where it has public interest status. It is composed of 178 member organizations from across the globe. FIDH defends the civil, political, economic, social and cultural rights guaranteed by the United Nations' *Universal Declaration of Human Rights*. It acts in both legal and political fields encouraging and advocating for the creation and reinforcement of international instruments for the protection of human rights and for their implementation.

3 The Huffington Post is an international online news publication, founded in 2005. In 2012, The Huffington Post became the first commercially run U.S. digital media organization to be awarded a Pulitzer Prize.

4 The Washington Post, founded in 1877, is an internationally respected news source based in Washington D.C. The Washington Post has won 47 Pulitzer Prizes, including six separate Pulitzer Prizes in 2008 alone.

## Background

26. The following information has been reported about Yara Sallam.
27. Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support.<sup>5</sup> In 2013, Yara Sallam received the North African Shield human rights defender award for her work in Egypt with another leading NGO.<sup>6</sup>
28. Reports indicate that on 21 June 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the “Anti-Protest Law”).<sup>7</sup> Although Yara Sallam was reportedly not participating in the protest, she was in the vicinity, and was arrested along with over twenty activists.<sup>8</sup>
29. Several days after Yara Sallam’s arrest, she appeared in court, during which time the judge adjourned the misdemeanor trial until September 13, 2014.<sup>9</sup> Legal experts expected that Yara Sallam and the other detainees would be released on bail; the judge, however, did not grant their release.<sup>10</sup>
30. The charges consist of “taking part in an unauthorised demonstration that endangered public order and security; vandalising property; making a show of force in order to terrify and threaten the lives of passers-by; and participating in a gathering of over five people in order to disturb the public order and commit crimes.”<sup>11</sup>
31. Yara Sallam was eventually moved to Qanater Prison, which has been criticized by human rights groups for violence and abuse towards female prisoners.<sup>12</sup> There is concern for her physical and psychological wellbeing.

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5 Brian Dooley, “The Exceptional Egyptian Human Rights Defender Yara Sallam”, *The Huffington Post* (14 August 2014), online: <[http://www.huffingtonpost.com/brian-dooley/the-exceptional-egyptian\\_b\\_5679301.html](http://www.huffingtonpost.com/brian-dooley/the-exceptional-egyptian_b_5679301.html)> [Dooley].

6 *Ibid.*

7 “Egypt: Continued arbitrary detention and judicial harassment of Ms. Yara Sallam, Ms. Sana Seif and 23 protesters”, *International Federation of Human Rights* (18 September 2014), online: <<http://www.fidh.org/en/north-africa-middle-east/egypt/eu-egypt/16050-egypt-continued-arbitrary-detention-and-judicial-harassment-of-ms-yara>> [FIDH].

8 *Ibid.*

9 Dalia Abd El-Hameed, “Egypt’s Transitional Injustice”, *The Huffington Post* (2 September 2014), online: <[http://www.huffingtonpost.com/dalia-abd-elhameed/egypts-transitional-injus\\_b\\_5755444.html](http://www.huffingtonpost.com/dalia-abd-elhameed/egypts-transitional-injus_b_5755444.html)> [El-Hameed].

10 *Ibid.*

11 “Yara Sallam: From activist’s passion to Egypt’s prisons”, *Urgent Action Network – Amnesty International UK* (19 September 2014), online: <<http://www.amnesty.org.uk/blogs/urgent-action-network/yara-sallam-activists-passion-egypts-prisons>> [Amnesty].

12 Nancy Okail, “My own Egyptian trial was nothing compared with what these women will face tomorrow”, *The Washington Post* (12 September 2014), online: <<http://www.washingtonpost.com/posteverything/wp/2014/09/12/my-own-egyptian-trial-was-nothing-compared-to-what-these-women-will-face-tomorrow/>>.

32. On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers.<sup>13</sup> Yara Sallam and the other defendants were not permitted to attend,<sup>14</sup> despite requests for their release. Yara Sallam's case has been adjourned again to October 26, 2014 and Yara Sallam remains in custody.<sup>15</sup>
33. The Monitoring Group is concerned about reports that indicate a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam.<sup>16</sup> There is also concern that judicial authorities have been mishandling the case by drawing out the unwarranted detention of those involved, and conducting private hearings, infringing upon their right to a fair trial.<sup>17</sup>
34. The Monitoring Group is also concerned about the *Anti-Protest Law* under which Yara Sallam and the others have been charged. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention.<sup>18</sup> Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association have condemned the law.<sup>19</sup>
35. The *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10.<sup>20</sup>
36. In addition, Articles 1, 5 and 6 of the *Declaration on human rights defenders*<sup>21</sup> grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.
37. Yara Sallam's ongoing arbitrary detention also contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*.<sup>22</sup> Yara Sallam's unlawful detention prohibits her from meaningful human rights work, in violation of Principle 16:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both

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13 *FIDH supra* note 7.

14 *Ibid.*

15 "Ettehadia detainees to remain in prison, trial adjourned to Oct 16", Mada Masr (11 October 2014), online: <<http://www.madamasr.com/news/ettehadia-detainees-remain-prison-trial-adjourned-oct-16>>.

16 *FIDH supra* note 7.

17 *Ibid.*

18 *El-Hameed supra* note 9.

19 *Dooley supra* note 5.

20 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), at Articles 9 and 10, online: <<http://www.un.org/en/documents/udhr/#atop>> [*UDHR*].

21 UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, online: <<http://www2.ohchr.org/english/issues/defenders/docs/declaration/declaration.pdf>> [*Declaration on HR Defenders*].

22 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, online: <<http://www.refworld.org/docid/3ddb9f034.html>> [*UN Basic Principles*].

within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

38. FIDH and Amnesty International believe that Egyptian authorities continue to detain Yara Sallam and the other human rights defenders to prevent them from carrying out their peaceful human rights activities. These groups are calling for the immediate release of Yara Sallam and her co-defendants.<sup>23</sup>

## **MALAYSIA – THE ARREST AND CHARGES AGAINST HUMAN RIGHTS LAWYER N. SURENDRAN**

### **Sources of Information**

39. The background information for this report was taken from the following sources:
- a. ABC Radio Australia;<sup>24</sup>
  - b. Lawyers for Liberty (“LFL”);<sup>25</sup>
  - c. Lawyers’ Rights Watch Canada (“LRWC”);<sup>26</sup>

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<sup>23</sup> *Amnesty supra* note 11 and *FIDH supra* note 7.

<sup>24</sup> ABC Radio Australia is a respected international radio and online service of the Australian Broadcasting Corporation (ABC), with a rich history as a producer of educational and informative news content. ABC Radio Australia’s news and current affairs content is provided by the ABC Asia Pacific News Centre, which is the biggest newsroom dedicated to Asia Pacific news in Australia. ABC Radio Australia features reports from ABC’s foreign correspondents around the world.

<sup>25</sup> LFL is a Malaysian human rights and law reform initiative that challenges unconstitutional, arbitrary and unreasonable decisions and acts perpetrated by its government, its agencies and other public authorities. The NGO monitors, documents, advocates and embarks on strategic, sustained and coordinated legal and non-legal challenges. LFL attempts to influence public policies, laws and human rights standards through the courts, in Malaysian Parliament and in the wider civil society community including youth and community groups and NGOs.

<sup>26</sup> LRWC was incorporated as a non-profit organization on 8 June 2000. It is a committee of Canadian lawyers that promotes human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. Their work includes: campaigning for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy; producing legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and, working in cooperation with other human rights organizations.

- d. The Malaysian Insider;<sup>27</sup> and
- e. The New York Times.<sup>28</sup>

## Background

40. The following information has been reported about N. Surendran. N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is a member of the three-party opposition in the Malaysian Parliament.<sup>29</sup> He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.<sup>30</sup>
41. N. Surendran is currently defending Mr. Ibrahim against charges of sodomy.<sup>31</sup> Even if consensual, sodomy is a crime in Malaysia and a conviction is punishable by up to twenty years in prison.<sup>32</sup> Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and politically motivated.<sup>33</sup>
42. Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison.<sup>34</sup>
43. The March 2014 conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial on October 28, 2014.<sup>35</sup> However, that conviction prohibited Mr. Ibrahim from running in his local election.<sup>36</sup>
44. As a result of these events, N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy.<sup>37</sup> N. Surendran asserted that "the

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27 The Malaysian Insider began on 25 February 2008 as a news source covering issues of the day, politics, business, lifestyle, sports and entertainment. The news portal is dedicated to offering objective reporting on events and personalities in Malaysia.

28 The New York Times was established in 1851 and is considered one of the world's great newspapers. By 2011, the Times had won 106 Pulitzer Prizes, more than any other news organization.

29 "Malaysia: Wrongful Prosecution of Lawyer N. Surendran – Letter", *Lawyers' Rights Watch Canada* (8 September 2014), online: <<http://www.lrwc.org/malaysia-wrongful-prosecution-of-lawyer-n-surendran-letter/>> [LRWC].

30 *Ibid.*

31 *Ibid.*

32 "Lawyer for Malaysian opposition leader Anwar Ibrahim charged with sedition", *ABC Radio Australia* (20 August 2014), online: <<http://www.radioaustralia.net.au/international/2014-08-19/lawyer-for-malaysian-opposition-leader-anwar-ibrahim-charged-with-sedition/1358628>> [ABC].

33 Joe Cochrane, "Lawyer for Malaysian Opposition Leader Is Charged With Sedition", *The New York Times* (19 August 2014), online: <[http://www.nytimes.com/2014/08/20/world/asia/attorney-for-malaysian-opposition-leader-is-charged-with-sedition.html?\\_r=1](http://www.nytimes.com/2014/08/20/world/asia/attorney-for-malaysian-opposition-leader-is-charged-with-sedition.html?_r=1)> [NYT].

34 LRWC *supra* note 29.

35 *Ibid.* Also see V. Anbalagan, "Anwar's Sodomy II appeal starts on October 28", *The Malaysian Insider* (14 August 2014), online: <<http://www.themalaysianinsider.com/malaysia/article/anwars-sodomy-ii-appeal-starts-on-october-28>>.

36 LRWC *supra* note 29.

37 Lee Shi-lan, "Surendran probed for sedition second time this month", *The Malaysian Insider* (27 August 2014), online: <<http://www.themalaysianinsider.com/malaysia/article/surendran-facing-sedition-probe-for-second-time-this-month>>.

appellate court had given insufficient consideration to defense claims that the sodomy charges stemmed from a plot by Prime Minister Najib Razak's governing coalition to sideline Mr. Anwar [politically]" .<sup>38</sup>

45. In response N. Surendran's statements, authorities charged him with multiple counts of sedition under Malaysia's Sedition Act.<sup>39</sup> The Sedition Act criminalizes acts or statements that bring hatred or contempt upon, or "excite disaffection against the administration of justice in Malaysia."<sup>40</sup> If N. Surendran is found guilty, he faces a fine and/or imprisonment up to three years for a first offence.<sup>41</sup>
46. According to reports, Barisan Nasional, the ruling party in the Malaysian government since 1957, has a history of using the sedition law regularly against its critics.<sup>42</sup>
47. Reports indicate that the allegedly seditious comments made by N. Surendran were in fact the crux of Mr. Ibrahim's legal defence at the court of appeal.<sup>43</sup>
48. The Monitoring Group is concerned that the sedition charges against N. Surendran, as Mr. Ibrahim's lawyer, will compromise Mr. Ibrahim's right to a fair appeal<sup>44</sup> violating his Article 10 right under the *Universal Declaration of Human Rights*.<sup>45</sup>
49. Moreover, it is likely that the charges against N. Surendran contravene Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*, reproduced above.<sup>46</sup>
50. N. Surendran has the right to express freely his thoughts and concerns as a lawyer, and as a member of the political opposition, without fear of unlawful prosecution. Lawyers for Lawyers and Lawyers Rights Watch Canada are calling upon the Malaysian Attorney-General to urgently review, and drop the charges against N. Surendran.

## INDONESIA – THE INVESTIGATION AND INTIMIDATION OF HUMAN RIGHTS LAWYER GUSTAF KAWER

### Sources of Information

51. The background information for this report was taken from the following sources:
  - a. Council of Bars and Law Societies of Europe ("CCBE");<sup>47</sup>

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38 *NYT supra* note 33.

39 *Ibid.*

40 *Ibid.*

41 *LRWC supra* note 29.

42 *ABC supra* note 32.

43 "LFL: N. Surendran's Sedition Charges Jeopardises Anwar's Final Appeal" Lawyers For Liberty (12 September 2014), online: <<http://www.lawyersforliberty.org/2014/09/lfl-n-surendrans-sedition-charges-jeopardises-anwars-final-appeal/>> [*LFL*].

44 *Ibid.*

45 *UDHR supra* note 20 at Article 10.

46 *UN Basic Principles supra* note 22.

- b. Front Line Defenders;<sup>48</sup>
- c. Lawyers for Lawyers (“L4L”);<sup>49</sup> and
- d. TAPOL.<sup>50</sup>

## Background

- 52. The following information has been reported about Gustaf Kawer.
- 53. Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He began working for the Papuan Legal Aid Foundation in 2000, and has worked on many cases dealing with workers’ rights, land ownership and socio-political rights.<sup>51</sup>
- 54. In 2013, he defended five accused individuals in a high-profile treason trial involving the issue of freedom to express political opinion, during which he was threatened with prosecution.<sup>52</sup>
- 55. It should be noted that Gustaf Kawer and his colleague were third on the Jury’s shortlist for the Lawyers for Lawyers Award in 2013.<sup>53</sup>
- 56. Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for June 12,

47 The CCBE, founded in 1960, represents the bars and law societies of 32 European member States and 13 additional associate and observer countries. It acts as the liaison between the European Union and Europe’s national bars, and law societies, representing more than 1 million European lawyers. The CCBE has been at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based.

48 Front Line Defenders is an international charitable organization, founded in Dublin in 2001, with the aim of protecting human rights defenders. The group promotes respect for the UN *Declaration on human rights defenders* and maintains a special consultative status with the Economic and Social Council of the United Nations. Front Line Defenders also maintains partnership status with the Council of Europe and observer status with the African Commission on Human and Peoples’ Rights.

49 L4L is an independent and non-political Dutch foundation seeking to promote the proper functioning of the rule of law. L4L provides financial, moral and/or legal support to oppressed lawyers and lawyers’ organizations. The organization maintains contact and co-operates with the United Nations, the European Union, governments, embassies, universities, human rights organizations, as well as individual lawyers worldwide. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013.

50 TAPOL was established in 1973 in the UK by Carmel Budiardjo, a former political prisoner in Indonesia. Ms Budiardjo founded TAPOL (which means ‘political prisoner’ in Indonesian) to campaign for release of the tens of thousands of political prisoners that remained in Indonesia following the massacres of 1965. TAPOL continues to advocate for the victims of one of the twentieth century’s worst massacres, but its campaign has broadened. TAPOL also promotes democracy in Indonesia by monitoring major national elections and supporting local campaigns for the right to free expression and the release of political prisoners. The group also supports local peace-building initiatives through diplomacy at the international level.

51 “Indonesia Human rights lawyer Gustaf Kawer at risk of arrest”, *Lawyers for Lawyers* (18 September 2014), online: <<http://www.advocatenvooradvocaten.nl/9565/indonesia-human-rights-lawyer-gustaf-kawer-at-risk-of-arrest/>> [L4L].

52 “Urgent Appeal: Stop criminal proceedings against Papuan human rights lawyer”, *TAPOL* (4 September 2014), online: <<http://www.tapol.org/briefings/urgent-appeal-stop-criminal-proceedings-against-papuan-human-rights-lawyer/>> [TAPOL].

53 *Ibid.*

- 2014.<sup>54</sup> The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government.<sup>55</sup> The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did.<sup>56</sup> The court reportedly proceeded in the absence of Gustaf Kawer and his client.<sup>57</sup>
57. On August 22, 2014 Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the *Indonesian Penal Code*; the summons contained no information about the suspect.<sup>58</sup>
58. Gustaf Kawer learned several days later that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as second summons, sent to the Indonesian Bar Association (PERADI), dated August 25, 2014.<sup>59</sup> The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on September 1, 2014.<sup>60</sup>
59. On August 27, 2014, the Chairperson of PERADI communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case.<sup>61</sup> A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.<sup>62</sup>
60. On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.<sup>63</sup> The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time.<sup>64</sup>
61. Gustaf Kawer reportedly left his home for an undetermined period of time due to the fear of possible arrest.<sup>65</sup> If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.<sup>66</sup>

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54 "Re: Concerns regarding an investigation open against Mr. Gustaf Kawer, a human rights lawyer", *President of the CCBE* (18 September 2014), online:

<[http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/HR\\_Letter\\_Indonesia\\_1\\_1411113956.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/HR_Letter_Indonesia_1_1411113956.pdf)> [CCBE].

55 *Ibid.*

56 *CCBE supra* note 54.

57 *Ibid.*

58 *TAPOL supra* note 52.

59 *Ibid.*

60 "Update: Indonesia – Papuan human rights lawyer Mr. Gustaf Kawer at risk of arrest", *Front Line Defenders* (19 September 2014), online: <<http://www.frontlinedefenders.org/node/27281>> [FLD].

61 *CCBE supra* note 54.

62 *Ibid.*

63 *Ibid.*

64 *FLD supra* note 60.

65 *Ibid.*

66 *Ibid.*

62. The Monitoring Group is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of advocates, and that the charges under which Gustaf Kawer is being investigated are unsubstantiated.
63. TAPOL indicates that “Indonesian Law on Advocates No. 18 / 2003 establishes that a legal advocate shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court.”<sup>67</sup> TAPOL adds that “[t]his provision was recently reaffirmed by the Constitutional Court in its judgement No. 26/PUU-XI/2013.”<sup>68</sup>
64. TAPOL also highlights Article 12(2) of the UN *Declaration on human rights defenders* which calls for states to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.<sup>69</sup>
65. The CCBE notes that the conduct of Indonesian authorities violates Principles 16 (reproduced above), 20 and 28 of the UN *Basic Principles on the Role of Lawyers*.<sup>70</sup>
66. Principle 20 states:
- Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
- Principle 28 states:
- Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
67. TAPOL, Front Line Defenders, Lawyers for Lawyers, as well as the CCBE are calling on Indonesian authorities to cease immediately the police investigations into Gustaf Kawer's conduct, and to take the necessary measures to ensure his physical and psychological well-being.

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<sup>67</sup> TAPOL *supra* note 52.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.* See also *Declaration on HR Defenders supra* note 21 at Article 12(2).

<sup>70</sup> UN *Basic Principles supra* note 22.

## FOR INFORMATION

### UPDATE ON COMMUNICATIONS FROM INTERESTED ORGANIZATIONS REGARDING PAST CASES

#### Update – Case of Pu Zhiqiang, China

68. The Monitoring Group received a letter from Andrew Caplen, President of The Law Society of England and Wales, dated September 24, 2014. Mr. Caplen's letter confirmed his receipt of the Law Society's letter of September 11, regarding Pu Zhiqiang's detention in China. Mr. Caplen indicates that their organization was unaware of new information or developments in respect of the Pu Zhiqiang case and welcomed the communication of relevant information received by the Law Society.
69. Mr. Caplen also expressed enthusiasm for future exchange of information with the Law Society of Upper Canada concerning lawyers at risk.
70. The Law Society also received a letter dated October 6, 2014 from Front Line Defenders indicating that they intervened in the cases of Chinese human rights lawyers Mr. Pu Zhiqiang and Tang Jingling. Front Line Defenders issued an Urgent Appeal related to the case of Pu Zhiqiang and other human rights defenders on May 6, 2014 following their detention in connection with their participation in a commemoration of the crackdown on the Tiananmen Square protests in 1989. On June 16, 2014 Front Line Defenders published an update following the arrest and formal pressing of charges against Pu Zhiqiang. Both documents can be found online at <http://www.frontlinedefenders.org/node/25850> (Urgent Appeal) and <http://www.frontlinedefenders.org/node/26215> (Update).
71. Front Line Defenders also intervened in the case of Tang Jingling, by issuing an Urgent Appeal on May 16, 2014 following his detention and an update on June 23, 2014 after he was formally arrested on charges of "inciting subversion of state power". The interventions are available online at: <http://www.frontlinedefenders.org/node/25961> (Urgent Appeal) and <http://www.frontlinedefenders.org/node/26331> (Update).
72. Front Line Defenders commends the actions that the Law Society has taken, or may take, in the cases of lawyers in China.

#### Update – Case of Mahienour El-Massry, Egypt

73. Reports indicate that on September 21, 2014, the Egyptian Court of Appeal in Alexandria accepted prominent human rights lawyer Mahienour El-Massry's appeal of her prison sentence, and immediately released her from detention.<sup>71</sup>

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<sup>71</sup> "Egypt: Provisional release of Ms. Mahienour El-Massry", *fidh* (23 September 2014), online: <http://www.fidh.org/en/north-africa-middle-east/egypt/16079-egypt-provisional-release-of-ms-mahienour-el-massry>; "Egypt: Lawyer Mahienour El-Masry released", *Lawyers for Lawyers* (23 September 2014), online: <http://www.advocatenvooradvocaten.nl/9587/egypt-human-rights-lawyer-mahienour-el-masry-released/>.

74. The Law Society had intervened in this matter in June 2014. Mahienour El-Massry and seven others were originally charged after organizing a protest on December 2, 2013. On May 20, 2014, the Misdemeanour Court in Alexandria rejected the objection filed by Ms. El-Massry, regarding the sentence issued against her *in absentia* on January 2, 2014. The court convicted her to two years' imprisonment and a fine of EGP 50,000. She was sentenced for "protest without a permit" and "assaulting security forces". Afterwards, Mahienour El-Massry was immediately detained.
75. The Law Society had released a public statement<sup>72</sup>, and sent a letter to the President of the Arab Republic of Egypt Abdel Fattah El-Sisi<sup>73</sup>, expressing its grave concern over the detention and sentencing of Ms. El-Massry. The statement and letter urged the Egyptian government to:
- a. guarantee all the procedural rights that should be accorded to Mahienour El-Massry and other human rights defenders in Egypt;
  - b. guarantee in all circumstances the physical and psychological integrity of Mahienour El-Massry;
  - c. put an end to all acts of harassment against Mahienour El-Massry and other human rights defenders in Egypt;
  - d. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations; and
  - e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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72 Law Society of Upper Canada, *Public Statements: Egypt (June 2014)*, online: Law Society of Upper Canada <[http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/News/News\\_Archive/2014/PublicStatement-El-Massry-EGYPTJune30.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/News_Archive/2014/PublicStatement-El-Massry-EGYPTJune30.pdf)>.

73 Law Society of Upper Canada, *Egypt: El-Massry (June 2014)*, online: <[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Human\\_Rights\\_Monitoring\\_Group/El-Massy\\_Egypt\\_June.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/El-Massy_Egypt_June.pdf)>.

TAB 6.2.1

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****YARA SALLAM**

His Excellency Abdel Fattah el-Sisi  
President of the Arab Republic of Egypt  
Abedine Palace  
Cairo, Egypt

Your Excellency:

**Re: arrest and continued detention of human rights lawyer Yara Sallam**

I write on behalf of The Law Society of Upper Canada\* to voice our grave concern over the case of Yara Sallam. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support. In 2013, Yara Sallam received the North African Shield Human Rights Defender Award for her work in Egypt.

Reports indicate that on June 21, 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the "Anti-Protest Law"). It is reported that, although Yara Sallam was not participating in the protest, she was in the vicinity, and was arrested along with over 20 activists.

Several days after Yara Sallam's arrest, she appeared in court. Reports indicate that, at that time, the judge adjourned the misdemeanor trial until September 13, 2014. Legal experts expected that Yara Sallam and the other detainees would be released on bail. The judge, however, did not grant their release, and Yara Sallam was moved to Qanater Prison. The Law Society is concerned for her physical and psychological well-being, since human rights groups have brought attention to problems of violence and abuse towards female prisoners in that detention facility.

On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers. Yara Sallam and the other defendants were not permitted to attend the hearing, despite requests for their release. The Egyptian misdemeanor court has again adjourned the case to October 26, 2014. Yara Sallam remains in custody.

The Law Society of Upper Canada is alarmed about reports indicating a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam. There is also concern that judicial authorities have been mishandling the case by drawing out the

unwarranted detention of Yara Sallam, and conducting private hearings, infringing upon her right to a fair trial.

The Law Society also expresses deep concerns over the *Anti-Protest Law*. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention. Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, have condemned the law.

The Law Society of Upper Canada urges your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

Moreover, the *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10. The Law Society would also like to highlight Articles 1, 5 and 6 of the *Declaration on human rights defenders*. These provisions grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.

The Law Society urges the government of the Arab Republic of Egypt to:

- a. release Yara Sallam immediately, as she is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Yara Sallam;
- c. provide Yara Sallam with regular access to her lawyer and family;
- d. guarantee all the procedural rights that should be accorded to Yara Sallam;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Yara Sallam and in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;

- f. guarantee that adequate reparation be provided to Yara Sallam if she is found to be a victim of abuses;
- g. put an end to all acts of harassment against Yara Sallam;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

Mr. Ibrahim Mehleb  
Prime Minister of the Arab Republic of Egypt  
Magles El Shaab Street, Kasr El Aini Street  
Cairo, Egypt

Mr. Mahmoud Saber  
Minister of Justice of the Arab Republic of Egypt  
Ministry of Justice  
Magles El Saeb Street, Wezaret Al Adl  
Cairo, Egypt

Wael Aboul-Magd  
Ambassador of the Arab Republic of Egypt  
454 Laurier Avenue East  
Ottawa, ON, K1N 6R3

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers` Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

### Proposed Public Statement

#### **The Law Society of Upper Canada expresses grave concerns about the arrest and ongoing detention of Yara Sallam in Egypt**

The Law Society of Upper Canada is gravely concerned about the arrest and ongoing detention of lawyer Yara Sallam in Egypt.

Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support. In 2013, Yara Sallam received the North African Shield Human Rights Defender Award for her work in Egypt.

Reports indicate that on June 21, 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the “*Anti-Protest Law*”). Although Yara Sallam was reportedly not participating in the protest, she was in the vicinity, and was arrested along with over 20 activists.

Several days after Yara Sallam’s arrest, she appeared in court, during which time the judge reportedly adjourned the misdemeanor trial until September 13, 2014. Legal experts expected that Yara Sallam and the other detainees would be released on bail. The judge, however, did not grant their release, and Yara Sallam was moved to Qanater Prison. The Law Society is concerned for her physical and psychological wellbeing, since human rights groups have brought attention to problems of violence and abuse towards female prisoners in that detention facility.

On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers. Yara Sallam and the other defendants were not permitted to attend the hearing, despite requests for their release. The Egyptian misdemeanor court adjourned the case to October 26, 2014. Yara Sallam remains in custody.

The Law Society of Upper Canada is alarmed about reports indicating a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam. There is also concern that judicial authorities have been mishandling the case by drawing out the unwarranted detention of Yara Sallam, and conducting private hearings, infringing upon her right to a fair trial.

The Law Society also expresses deep concerns over the *Anti-Protest Law*. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention. Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association have condemned the law.

The Law Society of Upper Canada urges your Excellency to consider Articles 16 and 23 of the United Nations’ *Basic Principles on the Role of Lawyers*.

Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

Moreover, the *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10. The Law Society would also like to highlight Articles 1, 5 and 6 of the *Declaration on human rights defenders*. These provisions grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.

The Law Society urges the government of the Arab Republic of Egypt to:

- a. release Yara Sallam immediately, as she is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Yara Sallam;
- c. provide Yara Sallam with regular access to her lawyer and family;
- d. guarantee all the procedural rights that should be accorded to Yara Sallam;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Yara Sallam in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Yara Sallam if she is found to be a victim of abuses;
- g. put an end to all acts of harassment against Yara Sallam;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

**Proposed Letter to Lawyers' Associations**

Dear [Name],

**Re: arrest and continued detention of human rights lawyer Yara Sallam**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, The Law Society of Upper Canada sent the attached letter to His Excellency Abdel Fattah el-Sisi, President of the Arab Republic of Egypt, expressing our deep concerns over reports of the arrest and continued detention of human rights lawyer Yara Sallam.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

TAB 6.2.2

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****N. SURENDRAN**

The Honourable Dato' Sri Mohammad Najib Tun Razak, Prime Minister  
Prime Minister's Office Malaysia  
Main Block, Perdana Putra Building  
Federal Government Administrative Centre  
62502 Putrajaya Selangor  
Malaysia

Your Excellency,

**Re: Arrest and charges against human rights lawyer N. Surendran**

I write on behalf of The Law Society of Upper Canada\* to voice our grave concern over the case of N. Surendran. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is a member of the three-party opposition in the Malaysian Parliament. He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.

N. Surendran is currently defending Mr. Ibrahim against charges of sodomy. Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and were politically motivated.

Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison. This conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial in October. The conviction prohibited Mr. Ibrahim from running in his local election.

We understand that N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy. N. Surendran asserted that the appellate court had given insufficient consideration to defense claims that the charges stemmed from a political plot to sideline Mr. Ibrahim politically.

The reports indicated that the local authorities reacted to N. Surendran's statements by charging him with multiple counts of sedition under Malaysia's *Sedition Act*. According to credible sources, the Malaysian government has used the sedition law regularly against its critics. We understand that if N. Surendran is found guilty, he may face a fine and/or imprisonment for up to three years.

The Law Society expresses concern that the sedition charges against N. Surendran are unjustified because the charges stemmed from arguments presented in N. Surendran's legal defence of Mr. Ibrahim. Moreover, the Law Society anticipates that the prosecution of N. Surendran, as Mr. Ibrahim's lawyer, may compromise Mr. Ibrahim's right to a fair appeal, violating his Article 10 right under the *Universal Declaration of Human Rights*.

The Law Society asks your Excellency to consider Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

N. Surendran has the right to express freely his thoughts and concerns acting as a lawyer, and as a member of the political opposition in Malaysia, without fear of unlawful prosecution.

The Law Society urges the government of Malaysia to:

- a. drop the charges of sedition against N. Surendran immediately;
- b. guarantee in all circumstances the physical and psychological integrity of N. Surendran;
- c. guarantee all the procedural rights that should be accorded to N. Surendran, and other human rights defenders in Malaysia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct or ill-treatment in the arrest and charging of N. Surendran, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to N. Surendran if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against N. Surendran, as well as other human rights defenders in Malaysia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

The Honourable Mr. Ahmad Zahid Hamidi,  
Minister of Home Affairs,  
Blok D1 & D2, Kompleks D,  
Pusat Pentadbiran Kerajaan Persekutuan,  
62546 Putrajaya, Malaysia

The Honourable Mr. Dato' Sri Anifah Hj. Aman  
Minister of Foreign Affairs of Malaysia  
Wisma Putra, No 1, Jalan Wisma Putra  
Precinct 2, 62602, Putrajaya, Malaysia

High Commissioner Dato' Hayati Ismail  
High Commissioner of Malaysia to Canada  
60 Boteler Street, Ottawa  
Ontario, K1N 8Y7

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Tan Sri Hasmy Agam, Chairman of the Human Rights Commission of Malaysia

Christopher Leong, President, Malaysian Bar

### Proposed Public Statement

#### **The Law Society of Upper Canada expresses grave concern about the arrest and charges against N. Surendran in Malaysia**

The Law Society of Upper Canada is gravely concerned about the arrest and charges against lawyer N. Surendran in Malaysia.

N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is member of the three-party opposition in the Malaysian Parliament. He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.

Mr. Surendran is currently defending Mr. Ibrahim against charges of sodomy. Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and were politically motivated.

Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison. This conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial in October. The conviction prohibited Mr. Ibrahim from running in his local election.

We understand that N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy. N. Surendran asserted that the appellate court had given insufficient consideration to defense claims that the charges stemmed from a political plot to sideline Mr. Ibrahim politically.

The reports indicated that the local authorities reacted to N. Surendran's statements by charging him with multiple counts of sedition under Malaysia's *Sedition Act*. According to credible sources, the Malaysian government has used the sedition law regularly against its critics. We understand that if N. Surendran is found guilty, he may face a fine and/or imprisonment for up to three years.

The Law Society expresses concern that the sedition charges against N. Surendran are unjustified because the charges stemmed from arguments presented in N. Surendran's legal defence of Mr. Ibrahim. Moreover, the Law Society anticipates that the prosecution of N. Surendran, as Mr. Ibrahim's lawyer, may compromise Mr. Ibrahim's right to a fair appeal, violating his Article 10 right under the *Universal Declaration of Human Rights*.

The Law Society asks your Excellency to consider Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are

able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

N. Surendran has the right to express freely his thoughts and concerns acting as a lawyer, and as a member of the political opposition in Malaysia, without fear of unlawful prosecution.

The Law Society urges the government of Malaysia to:

- a. drop the charges of sedition against N. Surendran immediately;
- b. guarantee in all circumstances the physical and psychological integrity of N. Surendran;
- c. guarantee all the procedural rights that should be accorded to N. Surendran, and other human rights defenders in Malaysia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct or ill-treatment in the arrest and charging of N. Surendran, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to N. Surendran if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against N. Surendran, as well as other human rights defenders in Malaysia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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**Proposed Letter to Associations**

Dear [Name],

**Re: The arrest and charges against human rights lawyer N. Surendran**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, The Law Society of Upper Canada sent the attached letter to The Honourable Dato' Sri Mohammad Najib Tun Razak, Prime Minister of Malaysia, expressing our deep concern about N. Surendran's arrest, and the charges laid against him.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

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Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Sarah Smith, International Development and Human Rights, The Law Society of England and Wales
- Tan Sri Hasmy Agam, Chairman of the Human Rights Commission of Malaysia
- Christopher Leong, President, Malaysian Bar

## TAB 6.2.3

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****GUSTAF KAWER**

Dr. H. Susilo Bambang Yudhoyono  
 President of the Republic of Indonesia  
 Jl. Alternatif Cibubur Puri Cikeas Indah No. 2  
 Desa Nagrag Kec. Gunung Putri  
 Bogor – 16967, Indonesia

Dear President Yudhoyono,

**Re: investigation and intimidation of human rights lawyer Gustaf Kawer**

I write on behalf of The Law Society of Upper Canada\* to voice our grave concern over the case of Gustaf Kawer. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He has worked on many cases dealing with workers' rights, land ownership, and socio-political rights. For example, in 2013, he defended five persons facing treason charges in a case involving the issue of freedom to express political opinion, during which he was threatened with prosecution.

It should be noted that Gustaf Kawer and his colleague were third on the Jury's shortlist for the international Lawyers for Lawyers Award in 2013.

Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for 12 June 2014. The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government. The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did. The court reportedly proceeded in the absence of Gustaf Kawer and his client.

It is reported that on August 22, 2014, Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the Indonesian *Penal Code*. The summons contained no information about the suspect. Several days later, Gustaf Kawer learned that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as a second summons, dated 25 August 2014, sent to the Indonesian Bar Association (PERADI). The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on 1 Sept 2014.

On August 27, 2014, the chairperson of PERADI reportedly communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case. A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.

On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.

The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time. Reports indicate that he stayed away from home for an undetermined period of time due to the fear of possible arrest. If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.

The Law Society is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of lawyers, and that the charges under which Gustaf Kawer is being investigated are unsubstantiated.

The Indonesian Law on Advocates No. 18/2003 establishes that a lawyer shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. The Law Society understands that this provision was recently reaffirmed by the Constitutional Court of Indonesia in its Judgement No. 26/PUU-XI/2013.

In addition, Article 12(2) of the UN *Declaration on human rights defenders* calls upon states to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”

The Law Society asks that you also consider Principles 16, 20 and 28 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

The Law Society urges the government of Indonesia to:

- a. cease the unlawful investigation of Gustaf Kawer immediately;
- b. guarantee in all circumstances the physical and psychological integrity of Gustaf Kawer;
- c. guarantee all the procedural rights that should be accorded to Gustaf Kawer, and other human rights defenders in Indonesia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the investigation of Gustaf Kawer, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Gustaf Kawer if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against Gustaf Kawer, as well as other human rights defenders in Indonesia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

Mr. Amir Syamsuddin  
Minister of Law and Human Rights of the Republic of Indonesia  
Jl. H.R. Rasuna Said Kav. 6-7 Kuningan  
Jakarta 12940, Indonesia

Dr. Marty Natalegawa  
Minister of Foreign Affairs of the Republic of Indonesia  
Jl. Taman Pejambon No. 6  
Jakarta Pusat 10110

Dr. Dienne Hardianti Moehario  
Ambassador Extraordinary and Plenipotentiary of the Republic of Indonesia  
55 Parkdale Avenue, Ottawa  
Ontario, K1Y 1E5  
Canada

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Mr. Hafid Abbas, Commissioner, Indonesian National Commission on Human Rights

Dr. Otto Hasibuan, SH., MM, Chair of the Indonesian Bar Association (PERADI)

Budi Setyanto, S.H., Chair of the Jayapura branch of the Indonesian Bar Association (PERADI)

### Proposed Public Statement

#### **The Law Society of Upper Canada expresses grave concern about the investigation and intimidation of Gustaf Kawer in Indonesia**

The Law Society of Upper Canada is gravely concerned about the investigation and intimidation of lawyer Gustaf Kawer in Indonesia.

Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He has worked on many cases dealing with workers' rights, land ownership, and socio-political rights. For example, in 2013, he defended five persons facing treason charges in a case involving the issue of freedom to express political opinion, during which he was threatened with prosecution.

It should be noted that Gustaf Kawer and his colleague were third on the Jury's shortlist for the international Lawyers for Lawyers Award in 2013.

Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for 12 June 2014. The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government. The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did. The court reportedly proceeded in the absence of Gustaf Kawer and his client.

It is reported that on August 22, 2014, Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the Indonesian *Penal Code*. The summons contained no information about the suspect. Several days later, Gustaf Kawer learned that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as a second summons, dated August 25, 2014, sent to the Indonesian Bar Association (PERADI). The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on September 1, 2014.

On August 27, 2014, the Chairperson of PERADI reportedly communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case. A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.

On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.

The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time. Reports indicate that he stayed away from home for an undetermined period of time due to the fear of possible arrest. If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.

The Law Society is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of lawyers, and that the charges under which Gustaf Kawer is being investigated are unsubstantiated.

The Indonesian Law on Advocates No. 18 / 2003 establishes that a lawyer shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. The Law Society understands that this provision was recently reaffirmed by the Constitutional Court of Indonesia in its Judgement No. 26/PUU-XI/2013.

In addition, Article 12(2) of the UN *Declaration on human rights defenders* calls upon states to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

The Law Society asks that you also consider Principles 16, 20 and 28 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

The Law Society urges the government of Indonesia to:

- a. cease the unlawful investigation of Gustaf Kawer immediately;

- b. guarantee in all circumstances the physical and psychological integrity of Gustaf Kawer;
- c. guarantee all the procedural rights that should be accorded to Gustaf Kawer, and other human rights defenders in Indonesia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the investigation of Gustaf Kawer, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Gustaf Kawer if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against Gustaf Kawer, as well as other human rights defenders in Indonesia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

**Proposed Letter to Associations**

Dear [Name],

**Re: Investigation and intimidation of human rights lawyer Gustaf Kawer**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to Dr. H. Susilo Bambang Yudhoyono, President of the Republic of Indonesia, expressing our deep concerns about the unlawful investigation and intimidation of Gustaf Kawer.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders

- Vincent Forest, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Mr. Hafid Abbas, Commissioner, Indonesian National Commission on Human Rights
- Dr. Otto Hasibuan, SH., MM, Chair of the Indonesian Bar Association (PERADI)
- Budi Setyanto, S.H., Chair of the Jayapura branch of the Indonesian Bar Association (PERADI)

## TAB 6.3

**PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR  
2014 - 2015**

**CANADIAN ASSOCIATION OF BLACK LAWYERS (CABL) 4<sup>TH</sup> ANNUAL FALL  
CONFERENCE**

Date: October 31, 2014

Location: Donald Lamont Learning Centre

Time: 8:00 a.m.

This is an event organized by CABL. The Law Society is a partner.

**LOUIS RIEL DAY - WHAT'S LEFT IN SECTION 91(24)?**

Date: November 14

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

Time: 4:00 to 6:00 p.m. – Panel discussion  
6:00 to 7:30 p.m. – Reception

In partnership with the Métis Nation of Ontario

With the appeal of *Daniels v. Canada*, additional insight on section 91(24)'s purpose and relevance may soon be before the Supreme Court of Canada. Join us for a panel discussion considering the implications of recent high court decisions on Métis and Aboriginal peoples.

Opening comments from Métis Nation of Ontario President Gary Lipinski and a colleague.

Panelists:

- Jean Teillet, Pape Salter Teillet LLP
- Jason Madden, Partner, Pape Salter Teillet LLP
- Andrew Lokan, Partner, Paliare Roland LLP

**RULE OF LAW EVENT – CELEBRATING 40 YEARS OF HUMAN RIGHTS UNDER THE  
RULES OF PROFESSIONAL CONDUCT**

Date: December 10, 2014

Location: Convocation Hall

Time: 4:30 to 7:00 p.m.

Details: Roundtable Discussion followed by networking reception

- Moderator: Cynthia Petersen, Discrimination and Harassment Counsel and Partner at Sack Goldblatt Mitchell LLP
- The Honourable Justice Jurisanzs, Court of Appeal for Ontario
- Treasurer Janet Minor E. Minor, Law Society of Upper Canada
- Professor Harry Arthurs, Osgoode Hall Law School, former Dean of Osgoode Hall Law School and President of York University
- Ron Manes, Torkin Manes

**BLACK HISTORY MONTH**

Date: February 17, 2015  
 Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
 Time: 4:00 p.m. – 6:00 p.m.

**HUMAN RIGHTS AWARD PRESENTATION & RECEPTION**

Date: February 12, 2015  
 Location: Donald Lamont Learning Centre and Upper and Barristers' Lounge  
 Time: 4:30 p.m.

**INTERNATIONAL WOMEN'S DAY**

Date : March 5, 2015  
 Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
 Time: 4:00 p.m. – 7:00 p.m.

**LA JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE**

Date : March 19, 2015  
 Location: Law Society of Upper Canada  
 Time: 6:00 p.m. – 8:00 p.m.

**HOLOCAUST REMEMBRANCE DAY**

Date: April 14, 15 & 16, 2015 (TBC)  
 Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
 Time: 4:00 p.m. – 8:00 p.m.

**DIVERSE CAREERS FOR WOMEN IN LAW**

Date: May 7, 2015  
 Location: Convocation Hall  
 Time: TBC

**ASIAN AND SOUTH ASIAN HERITAGE MONTH**

Date: May 12, 14 or 19, 2015 – TBC  
 Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
 Time: 4:00 p.m. – 8:00 p.m.

**ACCESS AWARENESS FORUM**

Date: June 4, 2015  
 Location: Donald Lamont Learning Centre  
 Time: 4:00 p.m. – 8:00 p.m.

**NATIONAL ABORIGINAL HISTORY MONTH**

Date: June 19, 2015

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation  
Hall for reception.

Time: 4:00 p.m. – 8:00 p.m.

**PRIDE WEEK**

Date: June 23, 2015

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation  
Hall for reception.

Time: 4:00 p.m. – 6:00 p.m.

JOINT REPORT OF THE ACCESS TO JUSTICE AND EQUITY AND ABORIGINAL ISSUES COMMITTEES

Ms. Hare presented the Report.

Re: Setting the Platform: A Vision for the Renewal of the Aboriginal Initiatives Strategy

Ms. Hare presented the report for information.

**TAB 7**

**Report to Convocation  
October 30, 2014**

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

**Equity and Aboriginal Issues Committee**

Julian Falconer, Co-Chair  
Janet Leiper, Co-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

**Access to Justice Committee**

Cathy Corsetti, Co-Chair  
Paul Schabas, Co-Chair  
Susan Hare, Vice-Chair and  
Special Liaison with the Equity and  
Aboriginal Issues Committee  
Beth Symes, Vice-Chair  
Raj Anand  
Marion Boyd  
Mary Louise Dickson  
Robert Evans  
Avvy Go  
George Hunter  
Brian Lawrie  
Michael Lerner  
Virginia MacLean  
Malcolm Mercer  
Susan Richer  
Baljit Sikand  
Bradley Wright

**Purposes of Report: Information**

**Prepared by the Equity Initiatives Department  
(Marisha Roman – 416-947-3989)**

**COMMITTEE PROCESS**

1. The Access to Justice Committee and the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committees") met jointly on October 14, 2014. Committee members Cathy Corsetti, co-Chair, Julian Falconer, co-Chair (by telephone), Janet Leiper, co-Chair, Paul Schabas, co-Chair, Susan Hare, Vice-Chair and Special Liaison with the Committees, Beth Symes, Vice-Chair, Raj Anand (telephone), Marion Boyd, Robert Evans, Avvy Go, Brian Lawrie, Michael Lerner, Marian Lippa, Virginia MacLean, Dow Marmur, Susan Richer and Bradley Wright (telephone) attended. Lawrence Eustace also attended. Staff members Julia Bass, Josée Bouchard, Ross Gower, Denise McCourtie (telephone), Zeynep Onen, Marisha Roman and Grant Wedge also attended.

# Setting the Platform: A Vision for the Renewal of the Aboriginal Initiatives Strategy

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SUSAN HARE

PRESENTATION TO CONVOCATION

OCTOBER 30, 2014

# Agenda

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1. Vision for the Guiding Principles for the Renewal Process
2. Model for Understanding these Principles from the Aboriginal Perspective – The Medicine Wheel
3. Applying the Medicine Wheel to the Vision for the Renewal Process for the Law Society's Aboriginal Initiatives Strategy
4. Next steps
5. Conclusion

# The Vision

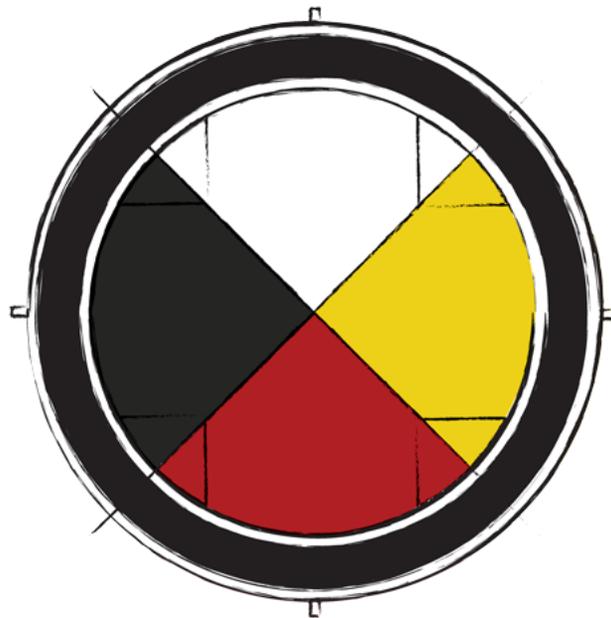
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In its relationship with the Aboriginal legal profession, leadership and community, the Law Society should strive to be:

1. Transparent
2. Respectful
3. Proactive
4. Competent

# The Medicine Wheel

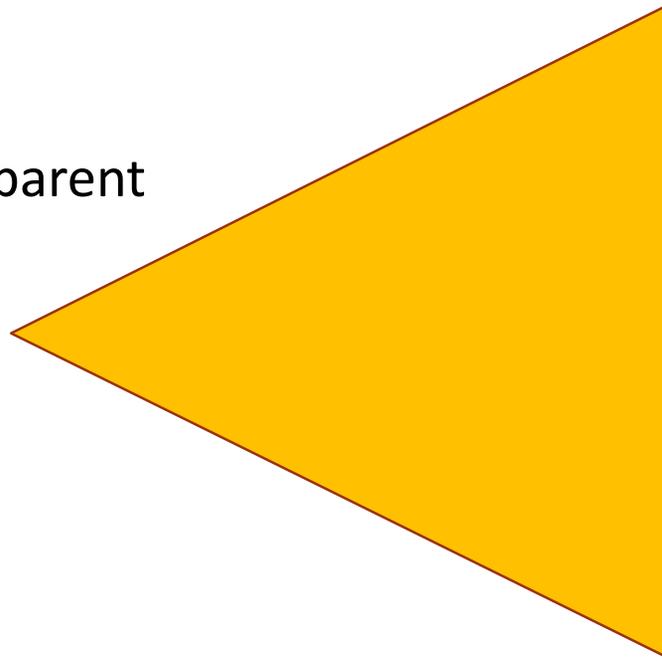
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# The Medicine Wheel - East

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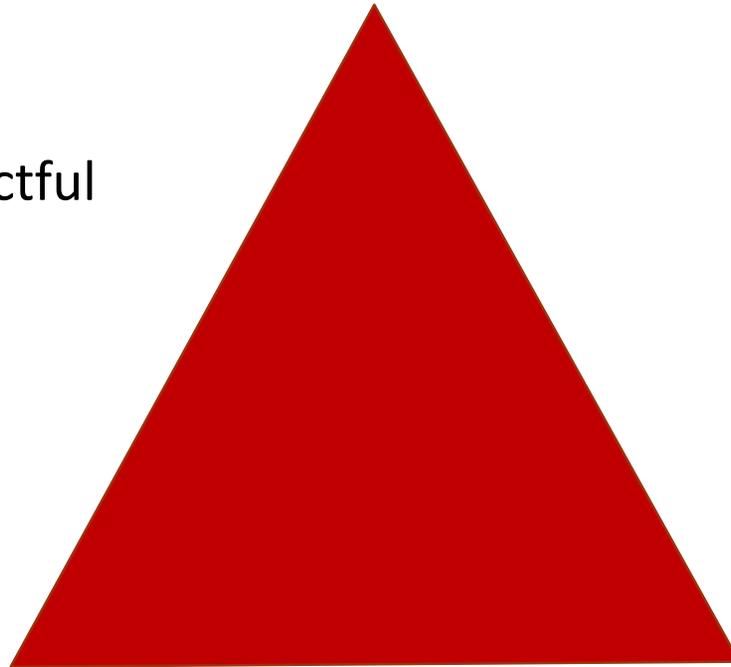
Strive to be Transparent



# The Medicine Wheel - South

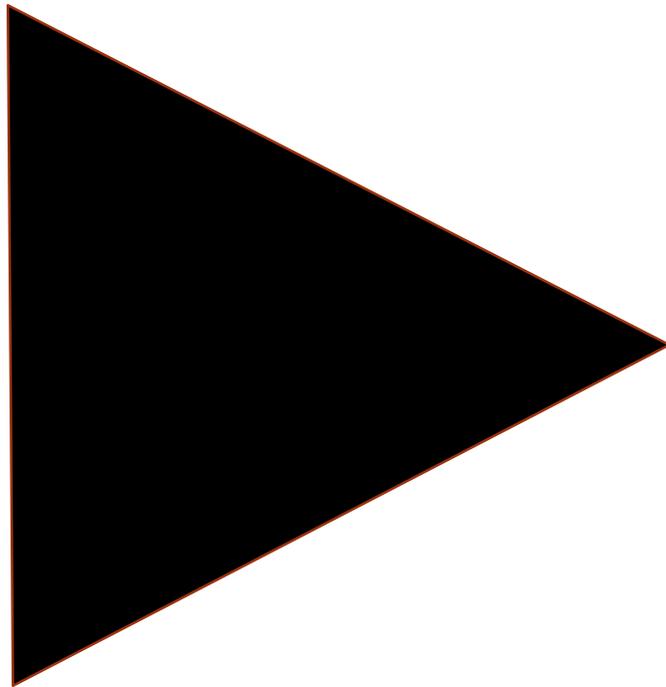
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Strive to be Respectful



# The Medicine Wheel - West

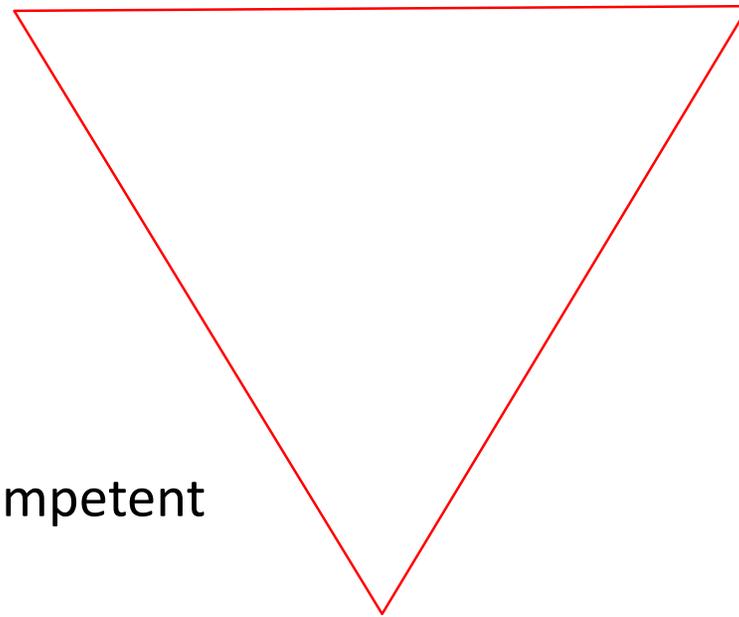
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Strive to be Proactive

# The Medicine Wheel - North

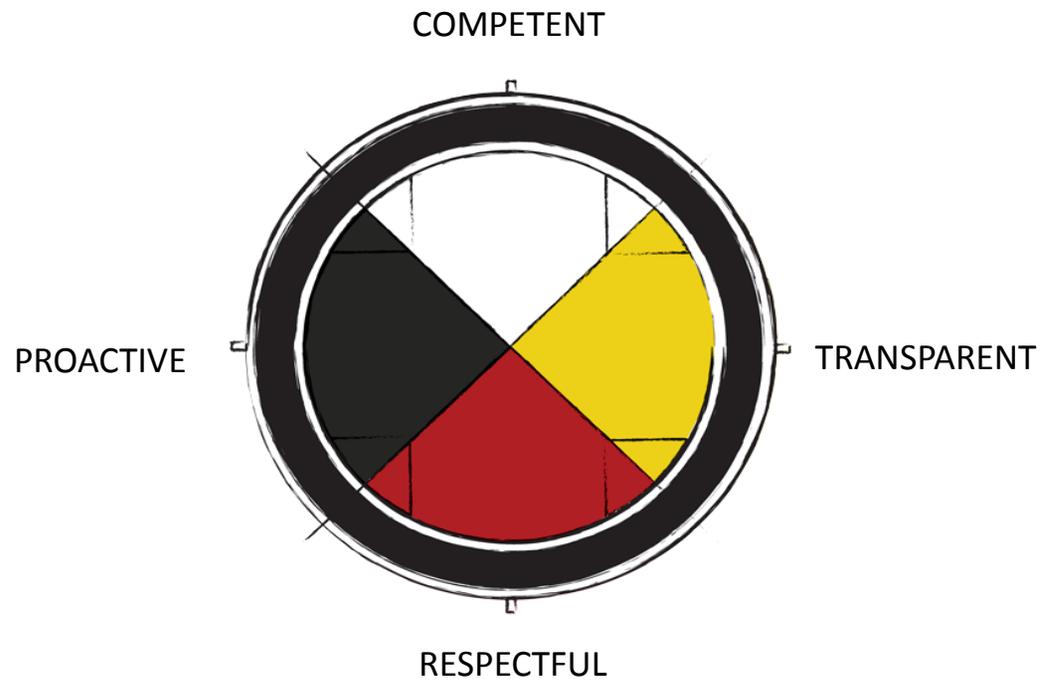
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Strive to be competent

# Guiding Principles

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# Conclusion

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“In my experience dealing with Aboriginal issues as a lawyer ... and a judge, too often I have seen evidence or examples of mistrust and disrespect between Aboriginal and non-Aboriginal Canadians, whether the latter are government or private institutions or individuals. Although the evils of racism and discrimination have diminished over time, much more is needed to foster a relationship of harmony and enlightened co-existence between Aboriginals and non-Aboriginals... [R]espect and trust has to be earned not proclaimed.”

Former Justice Frank Iacobucci

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES  
AUTOCHTONES REPORT

Ms. Leiper and Mr. Anand presented the Report.

Re: Challenges Faced by Racialized Licensees Request to Consult

It was moved by Ms. Leiper, seconded by Mr. Anand, that Convocation approve the consultation proposed by the Challenges Faced by Racialized Licensees Working Group set out in the Report.

Carried

**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**

Janet Leiper, 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

Report prepared by the Equity Initiatives Department –  
Josée Bouchard, Director of Equity and Ekua Quansah, 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:**

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

Tel: 416-947-3984  
or 1-800-668-7380 ext. 3984  
Fax: 416-947-3983  
Email: [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca)

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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.<sup>1</sup>

This consultation paper is designed to engage the profession in the consideration of strategies to address the challenges faced by racialized licensees.<sup>2</sup> 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

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<sup>1</sup> 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](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf).

<sup>2</sup> 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>.

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 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 lawyers<sup>3</sup>, representing 9.2% of the legal profession in 2001 and 11.5% in 2006.<sup>4</sup> The Law Society's Statistical Snapshots of Lawyers and Paralegals showed that by 2010, 17% of lawyers and 28% of paralegals were racialized.<sup>5</sup> 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.<sup>6</sup>

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;

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<sup>3</sup> 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>.

<sup>4</sup> 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](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf).

<sup>5</sup> 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>.

<sup>6</sup> 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>.

- 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.

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).<sup>7</sup> 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

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<sup>7</sup> 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.

have an impact on the reputation of the legal professions, access to justice, and the quality of services provided.<sup>8</sup>

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.

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

## 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.<sup>9</sup>

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.<sup>10</sup>

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<sup>9</sup> *Ibid.* at x. See also the Community Liaison Report and the Informal Engagement Report.

<sup>10</sup> *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.<sup>11</sup>

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 respondents<sup>12</sup> 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.<sup>13</sup>

#### 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.

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

<sup>12</sup> 41% of racialized respondents.

<sup>13</sup> 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.<sup>14</sup>

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 activities<sup>15</sup> and their social or political views were barriers to entry into the profession<sup>16</sup> — and even more importantly, barriers to advancement.<sup>17</sup>

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.<sup>18</sup>

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.

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<sup>14</sup> Stratcom Report, *supra* note 8 at 13 – 14.

<sup>15</sup> 18% of racialized respondents compared to just 5% of their non-racialized colleagues.

<sup>16</sup> 12% of racialized respondents compared to 5% of their non-racialized colleagues.

<sup>17</sup> 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.

<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> A majority of racialized respondents said that not having the same cultural background as one's colleagues had disadvantaged their careers.<sup>21</sup>

The survey results also showed that a higher proportion of non-racialized<sup>22</sup> respondents, compared to racialized respondents<sup>23</sup>, 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.<sup>24</sup> A slightly higher percentage of racialized respondents indicated that social networks had played an important role in their career.<sup>25</sup>

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

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<sup>19</sup> Stratcom Report, *supra* note 8 at 8.

<sup>20</sup> 68% of racialized respondents.

<sup>21</sup> 57% of racialized respondents.

<sup>22</sup> 79% of non-racialized respondents.

<sup>23</sup> 67% of racialized respondents.

<sup>24</sup> 69% of non-racialized respondents compared to 62% of racialized.

<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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 women<sup>28</sup> 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.<sup>29</sup>

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<sup>26</sup> Stratcom Report, *supra* note 8 at 14.

<sup>27</sup> *Ibid.* at 14.

<sup>28</sup> Between one quarter and two fifths.

<sup>29</sup> 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.<sup>30</sup>

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

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

<sup>30</sup> 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.<sup>31</sup>

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

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

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 placement<sup>42</sup> and a majority

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

<sup>32</sup> 24% of racialized respondents and 8% of non-racialized respondents.

<sup>33</sup> 19% of racialized respondents and 8% of non-racialized respondents.

<sup>34</sup> 17% of racialized respondents and 4% of non-racialized respondents.

<sup>35</sup> 15% of racialized respondents and 8% of non-racialized respondents.

<sup>36</sup> 12% of racialized respondents compared to just 3% of non-racialized respondents.

<sup>37</sup> 11% of racialized respondents compared to 6% of non-racialized respondents.

<sup>38</sup> 59% of racialized respondents compared to 78% of non-racialized respondents

<sup>39</sup> 43% of racialized respondents compared to 53% of non-racialized respondents

<sup>40</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>41</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> However, the barrier was more significant for racialized and non-racialized women than for men.<sup>45</sup>

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;

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<sup>43</sup> 52% of racialized respondents compared to 25% of non-racialized respondents

<sup>44</sup> 25% of racialized respondents and 23% for non-racialized respondents.

<sup>45</sup> 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 networks<sup>46</sup> and racial stereotyping by clients<sup>47</sup> 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 respondents<sup>48</sup> 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.

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<sup>46</sup> 78% of racialized and 63% of non-racialized respondents.

<sup>47</sup> 71% of racialized and 57% of non-racialized respondents.

<sup>48</sup> 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 training<sup>49</sup> and racial stereotyping by other members of the profession or the judiciary<sup>50</sup> 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.<sup>51</sup>

#### 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

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<sup>49</sup> 70% of racialized and 51% of non-racialized respondents.

<sup>50</sup> 69% of racialized and 46% of non-racialized respondents.

<sup>51</sup> 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 above<sup>52</sup>, 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.

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<sup>52</sup> 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/](http://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.<sup>53</sup>

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.<sup>54</sup>

### **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

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<sup>53</sup> 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>

<sup>54</sup> 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](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.”<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup> 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.”<sup>58</sup>

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.

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<sup>55</sup> 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>.

<sup>56</sup> 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>.

<sup>57</sup> 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).

<sup>58</sup> 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.<sup>59</sup>
- **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

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<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

### ***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.<sup>62</sup>
- 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."<sup>63</sup>

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

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<sup>60</sup> Stratcom Report, *supra* note 8 at 9.

<sup>61</sup> *Ibid.* at 86.

<sup>62</sup> BMO LCCG, *Diversity at BMO: Driving Change from the Inside Out*.

<sup>63</sup> 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.”<sup>64</sup> 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)<sup>65</sup> and Vault<sup>66</sup> 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. firms<sup>67</sup>. 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

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<sup>64</sup> *Ibid.* at 9.

<sup>65</sup> 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.

<sup>66</sup> 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.

<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup>

#### 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.<sup>70</sup> 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.<sup>71</sup>

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

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<sup>68</sup> 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>.

<sup>69</sup> 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).

<sup>70</sup> 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.

<sup>71</sup> 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.<sup>72</sup>

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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

#### 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 project<sup>76</sup> mentioned above is an example of an initiative in which participating firms agreed to maintain gender-based data and worked with the Law

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<sup>72</sup> 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.

<sup>73</sup> 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.

<sup>74</sup> 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](http://www.cba.org/cba/equity/pdf/Measuring_Diversity_Guide.pdf).

<sup>75</sup> *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](http://www.ohrc.on.ca/sites/default/files/attachments/Count_me_in%21_Collecting_human_rights_based_data.pdf).

<sup>76</sup> See Law Society of Upper Canada, *The Justicia Project*, online: Law Society of Upper Canada [http://www.lsuc.on.ca/justicia\\_project/](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.<sup>77</sup>

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.

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<sup>77</sup> 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 licensees 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 Wright<sup>78</sup> 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).<sup>79</sup>

**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

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<sup>78</sup> 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.

<sup>79</sup> 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.”<sup>80</sup> 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*<sup>81</sup> 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*<sup>82</sup> 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.<sup>83</sup>

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.

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

<sup>81</sup> 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>.

<sup>82</sup> *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>.

<sup>83</sup> 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.”<sup>84</sup> 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

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<sup>84</sup> 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

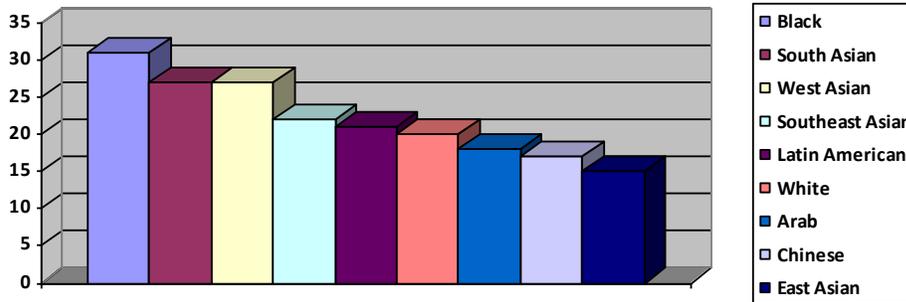


Chart 2 - By Firm Size – In percentages

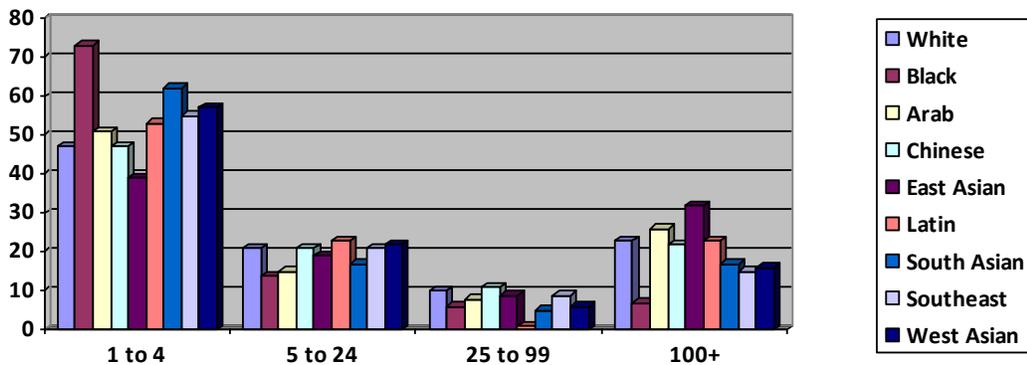


Chart 1 shows that Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice.

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

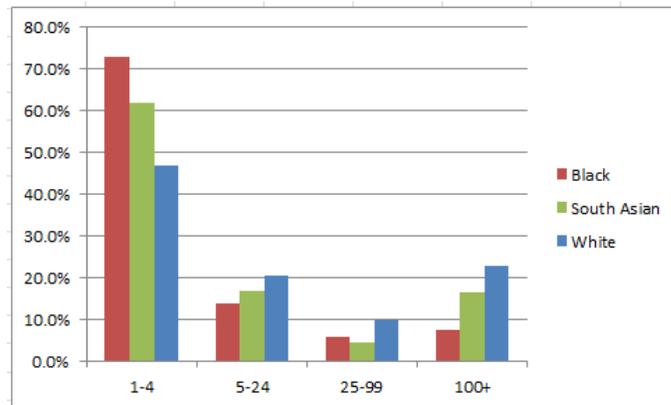


Chart 3 shows more clearly the differential practice patterns of Black, South Asia and White lawyers. Black lawyers, and to a lesser extent South Asian lawyers, disproportionately practise in the smallest firms. Relatively few Black lawyers practice in the largest firms, while the proportions of South 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  
of Upper Canada

Barreau du  
Haut-Canada

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

DOCUMENT DE CONSULTATION



The Law Society  
of Upper Canada

Barreau du  
Haut-Canada



**Membres du Groupe de travail**

Janet Leiper, présidente | Julian Falconer, vice-président | Howard Goldblatt, vice-président  
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell | Malcolm Mercer  
Susan Richer | Baljit Sikand

Préparé par le Service de l'équité –  
Josée Bouchard, directrice de l'équité et Ekua Quansah, avocate



## APPEL À COMMENTAIRES DE LA PROFESSION

### DOCUMENT DE CONSULTATION SUR LES DÉFIS DES TITULAIRES DE PERMIS RACIALISÉS

Dans le cadre de son engagement à promouvoir l'équité et la diversité dans la profession, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012.

Le Groupe de travail a étudié les défis auxquels font face les avocates et avocats et parajuristes (titulaires de permis) racialisés en Ontario et mène présentement une consultation sur les stratégies visant l'amélioration de l'inclusion à toutes les étapes de leur carrière.

Nous encourageons toutes les parties intéressées à examiner ce document de consultation et à commenter le document global ou toute question qu'il soulève. **Nous vous invitons à présenter des suggestions et des solutions pratiques aux problèmes. Toute proposition de solutions non présentées dans ce document serait appréciée.**

**Veillez envoyer vos observations écrites d'ici le 1<sup>er</sup> mars 2015, à :**

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## SOMMAIRE

*[Traduction] « Nous devrions toutes et tous savoir que la diversité contribue à la richesse du tissu social et nous devons comprendre que tous les fils de ce tissu sont de valeur égale, peu importe leur couleur ».*

Maya Angelou

Le Barreau s'est engagé à maintenir une profession qui tienne compte de toute la population de l'Ontario de manière inclusive et libre de discrimination et de harcèlement. Le Barreau est également déterminé à faciliter l'accès à la justice, tel que démontré dans la récente adoption par le Barreau d'un nouveau cadre d'accès à la justice exhaustif<sup>1</sup>.

Le document de consultation a été conçu pour mobiliser les membres de la profession et les amener à envisager des stratégies pour relever les défis auxquels les titulaires de permis racialisés<sup>2</sup> font face. Nous invitons les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document de consultation à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil. Le rapport final sera accompagné d'un plan de mise en œuvre détaillé.

### Contexte

Nous avons observé une augmentation constante du nombre des avocates et avocats racialisés dans la profession juridique en Ontario au cours des 20 dernières années. Malgré cette augmentation, les preuves fondées sur les données statistiques, les résultats des recherches et les preuves anecdotiques suggèrent que les avocates et avocats racialisés continuent à faire face à des défis dans la pratique du droit. Nous en savons très peu sur les défis auxquels les parajuristes racialisés font face.

Pour explorer cette question et répondre aux préoccupations, le Conseil a créé en août 2012 le Groupe de travail sur les défis des titulaires de permis racialisés (le Groupe de travail), avec le mandat suivant :

- a) reconnaître les défis des titulaires de permis racialisés dans différents milieux de pratique, y compris l'entrée dans la pratique et l'avancement,

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<sup>1</sup> Pour plus de renseignements, voir : Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice, *Rapport au Conseil – Rapport du Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice* (Toronto : 27 février 2014) en ligne à [www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2014/convfeb2014\\_TAG\\_fullreport.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf).

<sup>2</sup> La Commission ontarienne des droits de la personne indique que les termes « personnes racialisées » ou « groupes racialisés » sont plus précis que « minorités raciales », « minorités visibles », « personnes de couleur » ou « non-Blancs ». La race est un construit social à partir duquel on établit des différences entre les gens d'après l'accent ou la façon de parler, le nom, les vêtements et l'apparence, le régime alimentaire, les croyances et pratiques, les préférences en matière de loisirs, le lieu d'origine, etc. La racialisation est le « processus par lequel les sociétés assoient la notion que les races sont bien réelles, différentes et inégales, de façons qui importent pour la vie sociale, économique et politique. ». Voir *Discrimination raciale, race et racisme*, en ligne à [www.ohrc.on.ca/fr/discrimination-raciale-race-et-racisme-fiche](http://www.ohrc.on.ca/fr/discrimination-raciale-race-et-racisme-fiche).

- b) reconnaître les facteurs et les difficultés de la pratique des titulaires de permis racialisés qui pourraient augmenter le risque de plaintes liées à la réglementation et les mesures disciplinaires;
- c) tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d) au besoin, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui, aux fins d'étude pas le comité d'équité et d'autres comités, pour traiter les défis décrits ci-dessus.

En octobre 2012, le Groupe de travail a entrepris une étude globale qui comprenait l'examen des données et documents disponibles, des rencontres avec des particuliers et des organismes ainsi que la coordination de groupes de discussion menés par des professionnels juridiques reconnus.

En 2013, le groupe a lancé un processus officiel de mobilisation qui comprenait des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.

Les renseignements obtenus à ce jour suggèrent que 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. La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger.

Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, un handicap et la région géographique, donne lieu à un profil complexe d'expériences et d'impacts associés aux défis de la racialisation.

### Sommaire des résultats de la mobilisation

Le Groupe de travail a utilisé plusieurs méthodologies pour recueillir des renseignements et a établi l'apparition de thèmes communs dans les expériences des participants. Le processus de mobilisation a révélé que la discrimination et les préjugés manifestes font partie de la vie quotidienne de nombreux titulaires de permis racialisés.

Les participants ont fourni des exemples de comportements, d'interactions, de langages et de suppositions discriminatoires qui sont des caractéristiques courantes de leurs expériences professionnelles de tous les jours.

Certains participants estiment que, souvent, on n'offre pas aux titulaires de permis racialisés les mêmes possibilités d'avancement. Ils ont aussi indiqué qu'ils se sentent exclus de la culture dominante de la profession juridique.

Certains ont aussi indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi indiqué que 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.

Un certain nombre de participants ont aussi indiqué qu'ils ont été obligés de choisir d'exercer seuls en raison des obstacles aux possibilités d'avancement auxquels ils ont fait face dans les autres milieux de la profession. Par ailleurs, certains estiment qu'ils étaient mal équipés ou préparés pour les réalités de l'exercice de leur profession à titre individuel.

En plus des obstacles mentionnés ci-dessus, les participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à une combinaison d'inconvénients, comme le manque de possibilités de réseautage professionnel, les difficultés linguistiques, les différences culturelles par rapport à leurs collègues, un manque de possibilités lors de la transition entre l'école de droit et un premier emploi professionnel en Ontario ainsi que le manque de mentors et de personnes-ressources.

Selon les participants, les parajuristes racialisés font aussi face à d'autres défis, surtout sur le marché du travail. En tant que groupe, les parajuristes ont déclaré obtenir des taux de succès inférieurs lorsqu'il s'agit de trouver un emploi convenable, par rapport aux avocats racialisés.

### Questions pour la profession

Le Groupe de travail a examiné les résultats et a cerné pour les professionnels un certain nombre de questions détaillées à étudier. Ces questions portent sur les sujets suivants :

- Améliorer les capacités internes des organismes – intégrer la diversité dans les cabinets, recueillir des données démographiques sur la diversité et élaborer des programmes de conformité des contrats types
- Mentorat et réseautage – déterminer les meilleures pratiques et modèles privilégiés
- Améliorer le savoir-faire culturel dans la profession – fournir des programmes de formation professionnelle continue (FPC) agréés
- La discrimination et le rôle du processus des plaintes – traiter efficacement les plaintes de discrimination
- Les activités du Barreau du Haut-Canada – améliorer le programme de conformité en matière d'équité, mener une vérification interne en matière d'équité et développer une image publique plus diversifiée du Barreau.

Pour obtenir la série complète des questions, veuillez consulter l'annexe 2.

## DOCUMENT DE CONSULTATION

## CONTEXTE

Au cours des deux dernières décennies, il y a eu en Ontario une augmentation constante du pourcentage des avocates et avocats racialisés<sup>3</sup> dans la profession juridique, qui est passé de 9,2 % en 2001 à 11,5 % en 2006<sup>4</sup>. Les aperçus statistiques du Barreau sur les avocats et les parajuristes démontrent qu'en 2010, 17 % des avocats et 28 % des parajuristes étaient racialisés<sup>5</sup>. Ces données se comparent au pourcentage de 23 % de la population de l'Ontario qui s'est identifiée dans le Recensement du Canada comme étant racialisée, ainsi qu'au pourcentage de 25,9 % de la population de l'Ontario qui s'est identifiée dans l'Enquête nationale auprès des ménages comme étant racialisée<sup>6</sup>.

Les résultats des recherches et les preuves anecdotiques recueillis avant la création du Groupe de travail sur les défis des titulaires de permis racialisés suggéraient que malgré l'augmentation du nombre des avocats racialisés, ces derniers faisaient toujours face à des défis dans la pratique du droit. De plus, les défis auxquels les parajuristes racialisés faisaient face dans la profession, le cas échéant, étaient très peu connus.

Par conséquent, en août 2012, les membres du conseil ont créé le Groupe de travail sur les défis des titulaires de permis racialisés (Groupe de travail) afin de :

- a. reconnaître les défis auxquels font face les titulaires racialisés dans différents milieux de la pratique, notamment à leur début dans la profession et lors des possibilités d'avancement;
- b. reconnaître les facteurs et les difficultés de la pratique auxquels les titulaires de permis racialisés sont exposés qui pourraient augmenter le risque de plaintes liées à la réglementation et de mesures disciplinaires;
- c. tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d. s'il y a lieu, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui à l'intention du Comité sur l'équité et d'autres comités au besoin, afin de relever les défis décrits ci-dessus.

<sup>3</sup> Cette étude n'inclut pas les étudiant(e)s, avocat(e)s et parajuristes autochtones. Le Barreau du Haut-Canada a mené une étude distincte visant à cerner et relever les défis auxquels font face les étudiants, avocats et parajuristes autochtones. Voir le rapport de consultation en ligne à [www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118](http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118).

<sup>4</sup> Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, Toronto, Barreau du Haut-Canada, avril 2010 [rapport Ornstein] en ligne à [www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf) ou sommaire du rapport en français en ligne à [www.lsuc.on.ca/fr/media/june0210\\_ornsteinreport\\_frch\\_exec\\_summary.pdf](http://www.lsuc.on.ca/fr/media/june0210_ornsteinreport_frch_exec_summary.pdf).

<sup>5</sup> Barreau du Haut-Canada, Aperçu des professions en 2010, en ligne à <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488153&langtype=1033> (parajuristes) et <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488151&langtype=1033> (avocats).

<sup>6</sup> Ministère des Finances de l'Ontario, *Faits saillants de l'Enquête nationale auprès des ménages de 2011* : Fiche d'information 2 en ligne à [www.fin.gov.on.ca/fr/economy/demographics/census/nhshi11-2.html](http://www.fin.gov.on.ca/fr/economy/demographics/census/nhshi11-2.html)

Depuis octobre 2012, le Groupe de travail a entrepris les activités suivantes et préparé les rapports suivants qui sont disponibles [en ligne](#):

- a. Il a mené un examen des données et de la documentation disponible à ce sujet – Rapport intitulé *Law Society Scan and Best-Practices*.
- b. Il a rencontré de façon informelle un certain nombre de particuliers et d'organismes pour obtenir des commentaires sur les défis et les pratiques exemplaires pour les titulaires de permis racialisés – Rapport intitulé *Results from Informal Engagement* (Informal Engagement Report).
- c. Il a obtenu de précieux commentaires d'un groupe de travail du groupe consultatif en matière d'équité du Barreau du Haut-Canada<sup>7</sup>. Le groupe consultatif en matière d'équité a cerné les défis auxquels les titulaires de permis racialisés font face et a suggéré des options pour répondre aux préoccupations — Rapport intitulé *Submissions of the Equity Advisory Group*.
- d. Il a retenu les services de Strategic Communications Inc. (Stratcom) et de Michael Charles de Change DeZign© pour qu'ils s'engagent officiellement auprès de la profession. Cet engagement comprenait des entrevues avec 20 informateurs clés, 14 groupes de discussion formés de titulaires de permis racialisés, 2 groupes de discussion formés de titulaires de permis non racialisés et un sondage de 35 questions mené auprès de la profession globale (avocats et parajuristes). Les consultants ont fourni leur rapport au Barreau du Haut-Canada en mars 2014 – Rapport intitulé *Rapport final sur les barrières des titulaires de permis racialisés* (le rapport Stratcom).
- e. Il a créé un processus de mobilisation parallèle, le processus de liaison communautaire, pour recueillir des renseignements de titulaires de permis racialisés qui n'auraient pas participé au processus de mobilisation officiel de Stratcom. Des professionnels juridiques reconnus et expérimentés de diverses collectivités racialisées ont agi à titre d'agents de liaison et ont mené des groupes de discussion dans la collectivité – Rapport intitulé *Community Liaison Report to the Challenges Faced by Racialized Licensees Working Group* (Community Liaison Report).
- f. Il a également rassemblé des données d'auto-identification concernant la taille des cabinets et d'autres caractéristiques, présentées à l'annexe 1.
- g. Il a entrepris une analyse des données disponibles du Barreau concernant le processus de réglementation. Au cours de cette analyse, on déterminera s'il convient d'obtenir d'autres données ou de meilleures données.

Les renseignements obtenus jusqu'à maintenant suggèrent que la racialisation est un facteur constant et omniprésent affectant les titulaires de permis au moment de leur entrée en pratique et de leurs chances d'avancement professionnel. La majorité des participants au processus de mobilisation de Stratcom et les deux groupes racialisés et non racialisés ont convenu que les défis à relever par les titulaires racialisés ont un impact sur la réputation des professions juridiques, l'accès à la justice et la qualité des services fournis<sup>8</sup>.

L'objectif de ce document de consultation est de mobiliser les membres de la profession et du public et de les inciter à envisager des options pour relever les défis auxquels les titulaires de permis

<sup>7</sup> Le groupe consultatif en matière d'équité est formé de personnes et de membres d'organismes qui se sont engagés à promouvoir les principes d'égalité et de diversité et qui ont une certaine expérience dans les difficultés auxquelles font face (sans s'y limiter) les collectivités autochtones, francophones ou racialisées, les personnes invalides, gaies, lesbiennes, bisexuelles, les personnes transgenres et les femmes.

<sup>8</sup> Communications stratégiques, *Rapport sur les barrières des titulaires de permis racialisés*, Toronto, Stratcom, 2014 à la p 57 [le rapport Stratcom].

racialisés font face. Les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document sont encouragés à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil.

Veillez noter que le terme « cabinets » dans le présent rapport désigne les cabinets d'avocats et les cabinets de parajuristes.

## LES RÉSULTATS DU PROCESSUS DE MOBILISATION

Même si le Groupe de travail a utilisé plusieurs méthodes pour recueillir les renseignements sur les défis auxquels font face les titulaires racialisés, l'expérience des participants au cours de leurs interactions informelles avec des titulaires et associations juridiques (participation informelle) et celle des participants au processus de liaison communautaire faisaient écho aux expériences des participants du processus de mobilisation officiel de Stratcom.

De nombreux participants ont décrit une situation dans laquelle la racialisation est un « facteur constant et persistant » qui touche les titulaires racialisés tout au long de leur carrière<sup>9</sup>.

Les défis suivants sont apparus :

- a. discrimination et stéréotypes;
- b. différences culturelles et aptitude à s'adapter;
- c. manque de mentors, de parraineurs, de modèles et d'occasions de réseautage;
- d. croisement de facteurs et vulnérabilité accrue;
- e. la race en tant que facteur contribuant au choix d'exercer seul;
- f. obstacles à l'entrée dans la profession;
- g. obstacles aux possibilités d'avancement dans la profession;
- h. facteurs de risque liés à l'entrée dans le processus de réglementation;
- i. obstacles supplémentaires pour les avocates et avocats formés à l'étranger; et
- j. obstacles supplémentaires pour les parajuristes.

Discrimination et stéréotypes

*[Traduction] Vous travaillez plus fort pour faire vos preuves. Vous ne pouvez pas nécessairement faire les choses que vos collègues blancs peuvent faire à cause de la différence de connotation. En général, on m'a toujours dit que je devais travailler plus fort que mes homologues blancs, ce qui à certains égards est encore tristement vrai à notre époque. J'ai l'impression que certains avocats ne me donnent pas certains dossiers en se basant sur une notion préconçue concernant mes compétences à cause de la couleur de ma peau.*

Community Liaison Meeting

<sup>9</sup> Ibid. à la p x. Voir également le *Community Liaison Report* et le *Informal Engagement Report*.

Le processus de mobilisation a permis aux participants de partager leurs expériences. Un certain nombre de participants ont décrit des expériences de discrimination qui ont eu de graves répercussions sur leur carrière, notamment sur leurs possibilités de carrière et leur rémunération. Certains ont décrit des expériences manifestes de discrimination, comme des situations où ils ont été la cible de blagues, de propos ou de suppositions racistes<sup>10</sup>.

Un certain nombre de participants ont indiqué qu'ils ont dû se défendre contre des suppositions présentées par des professionnels juridiques, des clients, des avocats de la partie adverse et des membres de la magistrature selon lesquelles les titulaires racialisés sont moins compétents, qualifiés et efficaces. Ils ont évoqué des incidents au cours desquels ils ont été la cible de préjugés négatifs et où ils ont dû travailler plus dur ou subir des conséquences plus graves à la suite d'erreurs, que leurs collègues non racialisés.

Certains ont aussi indiqué qu'on ne leur a pas offert les mêmes possibilités d'avancement. Par exemple, ils ont indiqué qu'on les a laissés à l'écart dans certains dossiers, qu'ils n'ont pas été invités à participer aux réunions avec des clients, ni à des rencontres à caractère social avec des collègues où l'on discutait des dossiers et des affectations, et qu'on leur confiait des travaux de moindre importance. Certains se sont demandé si la race a joué un rôle dans l'avancement plus rapide de collègues non racialisés de niveau comparable ou inférieur<sup>11</sup>.

Les participants ont souvent ressenti qu'ils devaient faire leurs preuves dans une plus grande mesure que leurs collègues non racialisés. Ils ont indiqué qu'ils ont souvent été perçus comme non crédibles et ont ressenti un manque de respect. Un certain nombre de participants ont déclaré qu'on les a pris pour un étudiant, un travailleur social ou un client, au lieu d'un avocat ou un parajuriste.

Près de la moitié des répondants racialisés<sup>12</sup> au sondage ont déclaré que l'on avait des attentes plus grandes à leur endroit en raison de stéréotypes raciaux. Les groupes ethnoraciaux qui ont mentionné ce facteur plus souvent que la moyenne comprenaient les répondants Noirs, Chinois, Asiatiques du Sud-Est, Arabes et Sud Asiatiques<sup>13</sup>.

Différences culturelles socioéconomiques et aptitude à s'adapter

*[Traduction] La culture du cabinet est un énorme facteur pour déterminer qui obtient une entrevue et qui est embauché; tant durant les entrevues sur campus que comme avocat débutant. L'analogie que j'utilise toujours est que vous ne pouvez essayer de résoudre la quadrature du cercle. Bay Street est une culture particulière et si vous ne savez pas comment verser votre vin, cela se remarquera et, en fin de compte, le processus de sevrage sert à exclure un nombre disproportionné de candidats issus des minorités.*

Community Liaison Meeting

<sup>10</sup> *Ibid.* à la p 8.

<sup>11</sup> *Ibid.* à la p 12.

<sup>12</sup> 41 % des répondants racialisés.

<sup>13</sup> Répondants Noirs (54 %), Chinois (52 %), Asiatiques du Sud-Est (46 %), Arabes (46 %), et Sud Asiatiques (45 %).

La notion de « l'aptitude à s'adapter » a aussi été mentionnée comme étant un obstacle pour les titulaires racialisés en processus d'embauche et dans le cadre de leurs fonctions. Les participants étaient d'avis que la notion « d'aptitude à s'adapter » se traduit par « non racialisé » et que, par conséquent, les titulaires racialisés sont plus susceptibles de faire face à des défis lorsqu'ils sont à la recherche d'un emploi ou de possibilités d'avancement.

De nombreux participants ont indiqué qu'ils se sentent exclus de la culture dominante. Par exemple, certains ont mentionné que lors des activités sociales centrées sur la consommation d'alcool, les personnes qui n'en boivent pas se sentent exclues. D'autres activités, comme jouer golf, aller au chalet et regarder le hockey étaient considérées comme des occasions de rencontre, d'interactions et de solidarité sociale pour les collègues non racialisés, et renforçaient les sentiments d'isolation et d'aliénation chez les titulaires de permis racialisés<sup>14</sup>.

Le sondage de Stratcom a également abordé ce sujet en posant des questions sur l'impact du mode de vie et des croyances personnelles sur l'entrée dans la profession et les possibilités d'avancement. Une plus forte proportion de titulaires racialisés, par rapport aux titulaires non racialisés, considéraient que leurs préférences en matière d'activités sociales<sup>15</sup> et que leurs opinions politiques ou sociales étaient des obstacles à l'entrée dans la profession<sup>16</sup> et, davantage encore, à leurs possibilités d'avancement<sup>17</sup>.

Les répondants au sondage qui ont le plus souvent mentionné leurs préférences en matière d'activités sociales comme étant un obstacle à leurs possibilités d'avancement provenaient des collectivités suivantes : les Chinois, les Arabes, les Sud-Asiatiques et les Asiatiques du Sud-Est<sup>18</sup>.

Manque de mentors, de parraineurs, de modèles et d'occasions de réseautage

*[Traduction] Si nous ne pouvons pas trouver de bons stages et le mentorat ainsi que l'encadrement connexe, la qualité des services que nous pouvons offrir est affectée, tout comme les possibilités – ne pas donner aux gens la chance de réaliser leur potentiel affecte toute notre société.*

#### Community Liaison Meeting

De nombreux participants ont indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi mentionné que de nombreux titulaires de permis racialisés ont besoin d'un solide réseau de professionnels juridiques, de mentors ou de parraineurs qui peuvent leur fournir des conseils et un soutien dans leur lieu de travail.

<sup>14</sup> Le rapport Stratcom, *supra* note 8 aux pp 13 – 14.

<sup>15</sup> 18 % des répondants racialisés, comparativement à seulement 5 % de leurs collègues non racialisés.

<sup>16</sup> 12 % des répondants racialisés, comparativement à 5 % de leurs collègues non racialisés.

<sup>17</sup> 26 % des répondants racialisés considéraient les « activités sociales » comme un obstacle, comparativement à 12 % des répondants non racialisés, et 16 % des répondants racialisés considéraient leurs « opinions politiques et sociales » comme un obstacle, par rapport à 9 % des répondants non racialisés.

<sup>18</sup> 36 %, 33 %, 31 % et 31 % respectivement pour chaque collectivité.

Certains informateurs clés ont indiqué que ce manque de relations peut représenter un obstacle tout au long d'une carrière si, par exemple, le titulaire de permis commence à établir sa clientèle au sein de sa propre communauté ethnique, où de tels réseaux sont encore faibles<sup>19</sup>.

Les résultats du sondage de Stratcom ont révélé que la majorité des répondants racialisés croient que le fait de ne pas avoir accès à un réseau de relations professionnelles nuit à la carrière<sup>20</sup>. La majorité des répondants racialisés ont indiqué que le fait de ne pas avoir les mêmes antécédents culturels que leurs collègues avait nui à leur carrière<sup>21</sup>.

Les résultats du sondage démontrent également qu'une plus grande proportion de répondants non racialisés<sup>22</sup>, comparativement aux répondants racialisés<sup>23</sup>, trouvent relativement facile d'obtenir de collègues professionnels et de mentors des conseils juridiques concernant des dossiers de clients. Les différences entre les deux groupes n'étaient pas aussi importantes concernant d'autres déclarations. Par exemple, un pourcentage légèrement plus élevé de répondants non racialisés ont convenu que les mentors ont joué un rôle important dans l'avancement de leur carrière<sup>24</sup>. Un pourcentage légèrement plus élevé de répondants racialisés ont indiqué que les réseaux sociaux ont joué un rôle important dans leur carrière<sup>25</sup>.

Selon la majorité des répondants racialisés du sondage, les plus importantes sources d'inconvénients pour la carrière sont l'absence de réseaux professionnels, la divergence entre les antécédents culturels et les préjugés fondés sur la race.

Parmi les titulaires de permis qui sont plus susceptibles que la moyenne de mentionner ces facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière se trouvent les femmes, les praticiens exerçant seuls, les titulaires de permis qui ont une langue maternelle autre que le français ou l'anglais ou ceux et celles qui sont nés à l'extérieur du Canada. Les groupes racialisés plus susceptibles que la moyenne de mentionner ces trois facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière sont : les répondants noirs, sud-asiatiques, chinois et arabes.

Croisement de facteurs et vulnérabilité accrue

*[Traduction] Quand vous avez un accent, vous signalez que n'êtes pas d'ici. Vous ne comprendrez pas la culture comme tous les autres. Ceux qui réussissent savent très bien s'adapter aux autres clients. Et c'est là qu'un accent vous catégorise automatiquement comme étranger.*

Community Liaison Meeting

<sup>19</sup> Le rapport Stratcom, *supra* note 8 à la p. 8.

<sup>20</sup> 68 % des répondants racialisés.

<sup>21</sup> 57 % des répondants racialisés.

<sup>22</sup> 79 % des répondants non racialisés.

<sup>23</sup> 67 % des répondants racialisés.

<sup>24</sup> 69 % des répondants non racialisés comparativement à 62 % des racialisés.

<sup>25</sup> 54 % des répondants racialisés comparativement à 51 % des non racialisés.

La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger<sup>26</sup>. Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, une invalidité et la région géographique, donne lieu à un profil d'expériences complexe et très individuel et à des impacts associés aux défis de la racialisation.

#### *La race et le sexe*

*[Traduction] Être femme et racialisée peut être compliqué. Les femmes se débattent déjà dans cette profession avec des questions d'équilibre entre la vie professionnelle et la vie personnelle, les responsabilités familiales, les congés de maternité, etc. Les femmes travaillent encore pour se faire prendre au sérieux dans cette profession et être une femme racialisée signifie que vous devez faire vos preuves plus souvent. Cela peut causer du stress, de l'angoisse et peut faire travailler les femmes racialisées plus fort, les pousser davantage et reporter certains de leurs objectifs personnels à cause de leur travail.*

#### Community Liaison Process

Le croisement de la race et du sexe, en particulier, était considéré comme un facteur de multiplication des défis pour les femmes. Dans un milieu, décrit par certains participants comme un « boys club », où les activités paraprofessionnelles sociales sont souvent des avenues vers de nouvelles possibilités de travail et d'avancement, de nombreuses femmes racialisées se considèrent comme doublement désavantagées<sup>27</sup>.

Le sondage de Stratcom a tenu compte du harcèlement et des attentes liées aux stéréotypes sexuels à titre de facteurs aggravant les inconvénients pour la carrière. Bien que les résultats du sondage aient indiqué que les hommes titulaires racialisés ne sont pas exempts de harcèlement ni de stéréotypes sexistes, une plus grande proportion de femmes racialisées<sup>28</sup> considèrent les stéréotypes sexistes comme un facteur contribuant à leurs désavantages en matière d'embauche, d'avancement ou de poursuite d'un domaine de pratique.

Le sondage de Stratcom fait état d'autres différences entre les sexes en ce qui concerne les obstacles à l'entrée dans la profession. Par exemple, les femmes racialisées et non racialisées étaient plus susceptibles que les hommes à souligner les facteurs suivants comme étant des obstacles à leur entrée dans la profession : l'apparence physique, l'âge (trop jeune), et le sexe<sup>29</sup>.

<sup>26</sup> Le rapport Stratcom, *supra* note 8 à la p 14.

<sup>27</sup> *Ibid.* à la p 14.

<sup>28</sup> Entre un quart et deux cinquièmes.

<sup>29</sup> Chez les répondantes, 29 % des racialisées et 12 % des non racialisées ont souligné l'apparence physique, comparativement à 19 % de racialisés et 4 % de non racialisés chez les répondants. En ce qui concerne le sexe, 17 % des répondantes racialisées et 12 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 5 % chez les répondants racialisés et à seulement 1 % chez les répondants non racialisés. Enfin, en ce qui concerne l'âge (trop jeune), 23 % des répondantes racialisées et 11 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 9 % chez les répondants racialisés et à 5 % chez les répondants non racialisés.

Les résultats renforcent la conclusion du groupe de discussion selon laquelle, pour de nombreuses femmes racialisées, l'expérience des préjugés sexistes est aggravée par leur statut racial. Le croisement de la racialisation et du sexe amplifie les obstacles associés à chacun des facteurs.

La race en tant que facteur contribuant au choix d'exercer seul

*[Traduction] La plupart d'entre nous exercent seuls parce que nous ne pouvions pas entrer dans un grand cabinet à cause de notre race; les seuls que je connais qui ont pu travailler dans un cabinet ont fini par partir parce qu'ils ressentaient de la discrimination, de l'ostracisme et de l'aliénation – comme de ne pas être invités aux diners et aux sorties du cabinet. Certains avocats noirs ont eu des idées suicidaires à force de rencontrer des obstacles raciaux (et non en raison du rendement scolaire) pour essayer d'entrer dans un grand cabinet; certains cabinets croient que s'ils embauchent des avocats noirs, ils perdront des clients.*

#### Community Liaison Meeting

Un certain nombre de participants ont déclaré qu'ils estimaient avoir été obligés de choisir d'exercer seuls en raison des obstacles qu'ils avaient rencontrés dans la recherche d'emplois ou dans les possibilités d'avancement dans d'autres milieux de la pratique. Certains participants estiment également qu'un certain nombre d'avocates et avocats racialisés exercent seuls par défaut et sont mal équipés et mal préparés aux réalités de la pratique à titre individuel.

Plusieurs participants estiment que les avocats racialisés sont plus susceptibles d'exercer seuls et ont mis en évidence la vulnérabilité des personnes qui exercent en cabinet privé dans la profession juridique dans le contexte des plaintes liées à la réglementation professionnelle et les mesures disciplinaires.

Entrée dans la profession

Les obstacles mentionnés ci-dessus ont un impact sur les expériences des titulaires racialisés qui entrent dans la profession juridique. Les résultats du sondage de Stratcom ont également mis en évidence d'autres obstacles qui ont des répercussions sur l'entrée dans la profession. Dans le cadre du sondage, une liste de facteurs a été présentée aux participants racialisés et non racialisés, et on leur a demandé d'indiquer si chacun des facteurs avait constitué un obstacle ou un défi à tout moment avant ou après avoir commencé à exercer<sup>30</sup>.

Quarante pour cent (40 %) des titulaires racialisés ont déclaré que leur appartenance ethnique/identité raciale était un obstacle à l'exercice de leur profession, alors que seulement 3 % des titulaires non racialisés ont mentionné que leur appartenance ethnique/identité raciale représentait un obstacle. Les titulaires de permis racialisés les plus susceptibles de mentionner la race ou l'ethnicité comme obstacle à l'entrée dans la profession étaient les suivants : les Asiatiques du Sud-Est, les Noirs, les Arabes, les Sud-Asiatiques, les personnes ayant une langue maternelle autre que le français ou l'anglais, les femmes et les personnes nées à l'extérieur du Canada<sup>31</sup>.

<sup>30</sup> Le rapport Stratcom, *supra* note 8 aux pp 36 à 39.

<sup>31</sup> Asiatiques du Sud-Est (54 %), Noirs (52 %), Arabes (50 %), Asiatiques du Sud (46 %), langue maternelle autre que le français ou l'anglais (46 %), femmes (45 %), et personnes nées à l'extérieur du Canada (44 %).

Alors que les répondants racialisés ont sélectionné l'appartenance ethnique/identité raciale à titre d'obstacle à l'entrée dans la profession dans une proportion nettement plus élevée que tous les autres obstacles évalués, ce facteur a été classé parmi les défis les moins importants chez les répondants non racialisés.

Les obstacles suivants ont également été mentionnés par les avocats racialisés et, dans une bien moindre mesure, par les avocats non racialisés :

- a. apparence physique<sup>32</sup>;
- b. situation socio-économique<sup>33</sup>;
- c. lieu de naissance et lieu où l'on a grandi<sup>34</sup>;
- d. âge (trop jeune)<sup>35</sup>;
- e. la façon de parler anglais ou français<sup>36</sup>;
- f. identité sexuelle<sup>37</sup>.

Le sondage a révélé qu'un pourcentage bien inférieur des répondants racialisés, comparativement aux répondants non racialisés :

- a. ont trouvé un emploi approprié après avoir obtenu leur permis<sup>38</sup>;
- b. ont déclaré qu'on leur a offert un emploi au cabinet où ils ont fait un stage ou un stage de formation professionnelle<sup>39</sup>;
- c. ont trouvé un emploi dans un cabinet approprié<sup>40</sup>; et
- d. été en mesure de travailler dans leur domaine de pratique préféré<sup>41</sup>.

Il y a de grandes différences entre les expériences vécues lors de l'entrée dans la profession et dans l'évolution globale de la carrière. Près de la moitié des titulaires racialisés ont été « fortement ou plutôt d'accord » pour dire qu'ils ont eu de la difficulté à trouver un stage ou un stage de formation professionnelle<sup>42</sup>, et la majorité ont été « fortement ou plutôt d'accord » pour dire qu'ils n'avaient pas avancé aussi rapidement que leurs collègues ayant des qualifications semblables<sup>43</sup>.

Avancement

*[Traduction] On m'aimait bien dans mon cabinet de la rue Bay et j'étais l'étoile montante. Par contre, même si la race n'avait pas été un facteur pour entrer là comme avocat, elle a été un facteur pour y être associé. On ne m'a jamais offert de devenir associé même si j'avais été au cabinet plus*

<sup>32</sup> 24 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>33</sup> 19 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>34</sup> 17 % des répondants racialisés, comparativement à 4 % des répondants non racialisés

<sup>35</sup> 15 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

<sup>36</sup> 12 % des répondants racialisés, comparativement à seulement 3 % des répondants non racialisés

<sup>37</sup> 11 % des répondants racialisés, comparativement à 6 % des répondants non racialisés

<sup>38</sup> 59 % des répondants racialisés, comparativement à 78 % des répondants non racialisés

<sup>39</sup> 43 % des répondants racialisés, comparativement à 53 % des répondants non racialisés

<sup>40</sup> 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

<sup>41</sup> 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

<sup>42</sup> 43 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

<sup>43</sup> 52 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

*longtemps que d'autres qui le sont devenus. Tout le monde savait que j'étais un des favoris au cabinet.*

#### Community Liaison Meeting

Les résultats du sondage de Stratcom ont aussi permis de cerner des obstacles à l'avancement dans la profession. On a demandé aux répondants racialisés et non racialisés d'identifier quels facteurs ont représenté des obstacles à tout moment *après* avoir commencé à exercer.

La plus grande différence entre les deux groupes était l'importance de l'appartenance ethnique/identité raciale, qui est perçue comme un obstacle ou un défi pour l'avancement chez 43 % des titulaires racialisés, comparativement à 3 % chez les titulaires non racialisés.

Les facteurs de croisement avec l'appartenance ethnique/identité raciale sont l'apparence physique, la situation socio-économique de la famille, le lieu de naissance ou celui où l'on a grandi, et dans quelle mesure on parle bien l'anglais ou le français. Ces facteurs ont tous été identifiés comme des obstacles après l'entrée dans la profession par au moins 15 % des licenciés racialisés.

En revanche, chez les titulaires non racialisés, ces facteurs représentent des obstacles après l'entrée dans la profession qui sont comparables ou éventuellement de moindre importance que ceux qui sont associés à l'orientation sexuelle, le sexe, l'âge, le mode de vie et les croyances personnelles.

Les répondants racialisés et non racialisés ont indiqué que les absences du travail pour s'occuper des enfants et d'autres membres de la famille représentaient un obstacle à l'avancement après l'entrée dans la profession<sup>44</sup>. Cet obstacle était toutefois plus important pour les femmes racialisées et non racialisées que pour les hommes<sup>45</sup>.

Le sondage a révélé des différences moindres entre les répondants racialisés et non racialisés en ce qui concerne les difficultés de carrière, comme le démontrent les renseignements ci-dessous :

- a. ils ont convenu qu'ils avaient quitté un ou plusieurs postes parce qu'ils ne se sentaient pas à leur place (42 % des répondants racialisés, et 35 % des répondants non racialisés);
- b. ils ont déclaré avoir quitté un ou plusieurs postes parce qu'ils estimaient que leurs possibilités d'avancement n'étaient pas proportionnelles à leurs compétences et à leurs capacités (40 % des répondants racialisés, et 31 % des répondants non racialisés);
- c. ils se sont vu refuser une promotion à un poste de gestion (13 % des répondants racialisés, et 9 % des répondants non racialisés);
- d. leur admission à un partenariat a été retardée (9 % des répondants racialisés et non racialisés); et
- e. ils n'ont pas été acceptés comme partenaires, même s'ils remplissaient les critères de promotion (6 % des répondants racialisés et non racialisés).

#### Processus de réglementation

<sup>44</sup> 25 % des répondants racialisés, comparativement à 23 % des répondants non racialisés.

<sup>45</sup> 33 % des répondantes racialisées et 36 % des répondantes non-racialisées.

Les participants ont été priés de faire des commentaires sur leur perception du processus de réglementation. Certains se sont dits préoccupés par l'absence de diversité raciale chez les membres du conseil et des comités de discipline. D'autres étaient d'avis que, en raison de leur plus grande probabilité d'exercer seuls, ou de provenir de milieux où une carrière professionnelle est l'exception plutôt que la règle, les titulaires racialisés ont souvent moins de relations parmi les clientèles riches et fortunées et n'ont pas une formation suffisante en affaires pour gérer un cabinet.

Des informateurs clés ont fourni des preuves anecdotiques selon lesquelles de nombreux titulaires racialisés adoptent une démarche communautaire lorsqu'ils démarrent leur carrière, faisant appel à leur propre collectivité ethnique ou culturelle locale, ce qui peut (dans certains cas) les exposer à des attentes exagérées concernant la portée et l'efficacité de leur pratique et, enfin, à des plaintes de leurs clients.

Les participants ont indiqué que des facteurs peuvent contribuer à rendre les titulaires racialisés plus vulnérables aux plaintes, la plupart citant fréquemment un manque de ressources, de formation et de possibilités de mentorat. Les répondants racialisés et non racialisés au sondage ont classé le manque de mentors et de réseaux professionnels<sup>46</sup> ainsi que les stéréotypes raciaux des clients au<sup>47</sup> sommet de la liste des facteurs qui peuvent augmenter les risques de plaintes envers les titulaires racialisés.

La majorité des répondants racialisés et près de la moitié des répondants non racialisés ont indiqué dans<sup>48</sup> le sondage que les problèmes de communication étaient « certainement ou probablement » un facteur d'accroissement des risques de plaintes, ce qui correspond avec les résultats des groupes de discussion, qui ont souligné que les problèmes de communication culturels chevauchent souvent les problèmes de communication causés par les obstacles linguistiques, et que ces facteurs contribuent à l'augmentation des risques de plaintes.

Les titulaires racialisés et non racialisés avaient des opinions différentes à l'effet que les postes de stagiaire de mauvaise qualité et la formation insuffisante<sup>49</sup> ainsi que les stéréotypes raciaux par d'autres membres de la profession ou de la magistrature<sup>50</sup> augmentent les risques de plaintes et de mesures disciplinaires pour les titulaires de permis racialisés.

À cet égard, le Groupe de travail a examiné les renseignements disponibles concernant les expériences des titulaires racialisés dans le processus de réglementation et a déterminé qu'il y a encore du travail à faire. Les travaux préliminaires effectués jusqu'à présent seront poursuivis.

Le Groupe de travail a aussi suggéré les mesures correctives mentionnées ci-dessous, qui ne sont pas liées à certains groupes raciaux, mais qui peuvent aider les titulaires en général, comme le mentorat et le réseautage.

Obstacles supplémentaires pour les avocats formés à l'étranger

<sup>46</sup> 78 % des répondants racialisés, comparativement à 63 % des répondants non racialisés.

<sup>47</sup> 71 % des répondants racialisés, comparativement à 57 % des répondants non racialisés.

<sup>48</sup> 57 % et 48 % respectivement.

<sup>49</sup> 70 % des répondants racialisés, comparativement à 51 % des répondants non racialisés.

<sup>50</sup> 69 % des répondants racialisés, comparativement à 46 % des répondants non racialisés.

Certains participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à des difficultés supplémentaires en raison des obstacles linguistiques, de la socialisation, de la préparation à l'emploi et de l'expérience de travail. Ils estiment que les avantages que les avocats formés à l'étranger amènent dans la profession, grâce à l'expérience de la pratique dans un autre pays, sont souvent sous-estimés ou mal compris.

Les participants ont indiqué que le fait d'être né ou d'avoir fait ses études hors du Canada présente des obstacles potentiels pour les titulaires de permis racialisés. Ils estiment que 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 emploi professionnel en Ontario, et le manque de mentors et de relations<sup>51</sup>.

#### Obstacles supplémentaires pour les parajuristes

En plus des obstacles mentionnés ci-dessus qui s'appliquent à tous les titulaires de permis racialisés, certains participants aux groupes de discussion ont indiqué que les parajuristes racialisés semblent faire face à plus de difficultés sur le marché du travail que les avocats racialisés.

Les données du sondage renforcent cette hypothèse. Globalement, les parajuristes en tant que groupe ont obtenu des taux de réussite inférieurs que les avocats pour trouver un emploi approprié.

En ce qui concerne l'indicateur-clé que constitue l'obtention d'un premier emploi approprié, seulement 26 % des parajuristes racialisés ont trouvé un tel emploi, comparativement à 36 % des parajuristes non racialisés. En ce qui concerne l'obtention d'un emploi dans leur milieu de pratique préféré, 37 % des parajuristes racialisés ont trouvé un tel emploi, par rapport à 57 % de leurs homologues non racialisés. De la même façon, 41 % ont déclaré avoir trouvé un emploi dans leur domaine de pratique préféré, par rapport à 67 % des parajuristes non racialisés.

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<sup>51</sup> Le rapport Stratcom, *supra* note 8 à la p 9.

## QUESTIONS POUR LES MEMBRES DE LA PROFESSION

### Introduction

À partir des résultats ci-dessus<sup>52</sup>, le Groupe de travail a établi des questions en vue de les soumettre à l'examen des membres de la profession et d'obtenir leurs commentaires. Les questions ci-dessous sont présentées selon les thèmes suivants :

- A. L'amélioration des capacités internes des entreprises
- B. Le mentorat, les services consultatifs et le réseautage
- C. L'amélioration des compétences culturelles dans la profession
- D. La discrimination et le rôle du processus des plaintes
- E. Les activités du Barreau du Haut-Canada

Le Groupe de travail désire obtenir des idées, initiatives ou pratiques supplémentaires qui peuvent contribuer à éliminer les difficultés auxquelles les titulaires de permis racialisés font face.

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<sup>52</sup> La documentation est disponible dans le document *Law Society Studies and Scan of Best-Practices*.

## A. L'amélioration des capacités internes des entreprises

Selon l'examen de l'embauche dans la profession, certains des obstacles auxquels font face les titulaires de permis racialisés existent dans les processus de recrutement et dans les possibilités d'avancement dans leur carrière. Le Groupe de travail propose que les organismes, y compris les cabinets, améliorent leurs capacités internes d'éliminer les obstacles en envisageant d'adopter les méthodes présentées dans les trois catégories suivantes :

- a. établir des programmes de diversité au sein des cabinets;
- b. recueillir des données démographiques;
- c. établir des programmes de conformité des contrats.

### **Établir des programmes de diversité au sein des cabinets**

**Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire? Des modèles proposés sont présentés ci-dessous, et la proposition d'autres modèles serait appréciée.**

- **Projet de diversité : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes s'engagent à collaborer avec le Barreau pour élaborer et adopter des normes et des ressources pour le recrutement, le maintien en fonction et la progression professionnelle des titulaires de permis racialisés.**
- **Auto-évaluation : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes effectuent une auto-évaluation de leurs résultats en matière de diversité et utilisent ces résultats pour identifier et adopter des pratiques et politiques afin de devenir plus équitables et inclusifs.**
- **Normes sur les exigences : Un projet dans le cadre duquel le Barreau exige des cabinets et organismes qui offrent des services de conseils internes qu'ils adoptent des normes et des ressources pour le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés.**

### ***Projet de diversité***

La première approche décrite ci-dessus est fondée sur le modèle de projet du Barreau Justicia adopté en 2008. Le projet Justicia est un projet de mixité des sexes dans le cadre duquel plus de 55 cabinets ont signé une entente d'engagement de collaboration avec le Barreau visant à élaborer des ressources pour maintenir les femmes dans la pratique privée et favoriser leur avancement.

Les cabinets participants, en partenariat avec le Barreau, ont mis au point des modèles pour suivre les données démographiques selon le sexe et pour identifier et adopter des principes et des pratiques exemplaires concernant les horaires de travail souples, le réseautage et le développement des activités professionnelles ainsi que le mentorat et le développement des compétences en leadership

pour les femmes. Les ressources de Justicia sont désormais disponibles en ligne pour les membres de la profession dans l'ensemble à [www.lsuc.on.ca/projet\\_Justicia](http://www.lsuc.on.ca/projet_Justicia).

Il y a d'autres exemples d'initiatives semblables : le Réseau des cabinets d'avocats pour la diversité et l'inclusion ainsi que les Leaders juridiques pour la diversité. Il s'agit d'initiatives de cabinets et d'organismes juridiques qui tentent d'éliminer les difficultés associées au maintien en fonction et à l'avancement chez les groupes qui font la promotion de l'équité en collaborant et en favorisant l'adoption de pratiques exemplaires<sup>53</sup>.

Le Barreau pourrait, de la même façon qu'il l'a fait dans le projet Justicia, agir en tant que catalyseur et collaborer avec les entreprises et organismes à développer des ressources pour créer l'infrastructure nécessaire à l'inclusion et élaborer des normes pour mesurer les progrès. Récemment, à la suite d'une consultation auprès des titulaires de permis racialisés, le Barreau du Québec a mis au point un plan d'action de trois ans qui inclut l'utilisation du modèle de Justicia pour remédier aux problèmes liés au recrutement, au maintien en fonction et à l'avancement des titulaires de permis racialisés<sup>54</sup>.

### **Auto-évaluation**

La seconde approche, qui consiste à demander aux entreprises d'effectuer une auto-évaluation de leurs résultats en matière de diversité, ou à les y obliger, est fondée sur le guide de l'Association du Barreau canadien, intitulé *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*. Ce document a été conçu pour « aider les avocats et les cabinets d'avocats en fournissant des conseils pratiques sur la structure, les politiques et les méthodes des cabinets d'avocats de sorte qu'ils remplissent leurs obligations envers leurs clients, les tiers et le public »<sup>55</sup>.

<sup>53</sup> Des initiatives semblables ont été réussies aux États-Unis, au Boston Lawyers Group et au Lawyers Collaborative for Diversity (LCD).

Le *Boston Lawyers Group* est composé de grands cabinets, de services juridiques d'entreprises et d'organismes gouvernementaux de Boston qui se sont engagés à trouver et recruter des avocat(e)s de couleur et à favoriser leur maintien en fonction et leur avancement. Ce groupe est passé de 13 membres à sa création à plus de 45 membres. Le *Boston Lawyers Group* offre des sources d'information aux membres en organisant des forums, des discussions en table ronde, des programmes éducatifs et des salons d'emploi dans le but de promouvoir la diversité dans la communauté juridique de Boston. Le *Boston Lawyers Group* conçoit également des initiatives pour les écoles de droit, les organismes desservant les étudiants, la Ville et les gouvernements des États, les associations d'avocats et d'autres organismes professionnels et commerciaux. Les membres ont la responsabilité ultime de répondre à leurs propres objectifs de diversité et d'inclusion. Voir *The Boston Lawyers Group, About the BLG*, en ligne : [www.thebostonlawyersgroup.com/about/who.htm](http://www.thebostonlawyersgroup.com/about/who.htm)

Le *Lawyers Collaborative for Diversity* fonctionne de la même façon que le *Boston Lawyers Group*. Le *Lawyers Collaborative for Diversity* est composé d'entreprises, de cabinets d'avocats, d'organismes gouvernementaux et d'associations juridiques ou d'avocats au Connecticut. Le défi actuel de *Lawyers Collaborative for Diversity* consiste à augmenter le recrutement, le maintien en fonction et l'avancement des juristes de couleur, non seulement à titre de bonne politique sociale, mais également de pratique commerciale exemplaire. *Lawyers Collaborative for Diversity, « Who We Are »* <http://www.lcdiversity.com/about/who.htm>.

<sup>54</sup> Barreau du Québec, « Pour une profession plus inclusive » – Le projet Forum, Montréal, Barreau du Québec, mai 2014, en ligne à [www.barreau.qc.ca/pdf/publications/Rapport\\_Profession\\_Inclusive\\_4pages.pdf](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages.pdf)

<sup>55</sup> Comité de déontologie et de responsabilité professionnelle de l'Association du Barreau canadien, *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*, Ottawa, Association du Barreau canadien, 2013, en ligne à [www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf](http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf)

Le document contient un outil d'autoévaluation pour les entreprises, l'*Outil de l'ABC d'autoévaluation des pratiques déontologiques*, qui décrit les dix principaux domaines d'infrastructure déontologique et fournit des questions liées aux politiques et procédures des cabinets pour chacun des domaines en question<sup>56</sup>.

L'outil d'auto-évaluation est calqué sur l'approche utilisée en Nouvelle-Galles-du-Sud pour la réglementation des cabinets d'avocats constitués en personne morale. Plutôt que d'être tenus de suivre des règles précises, les cabinets sont tenus de s'autoévaluer pour déterminer si leurs pratiques et politiques permettent efficacement d'assurer une bonne conduite professionnelle et d'établir des pratiques et des politiques considérées comme efficaces dans leur contexte précis. Les cabinets qui ont adopté cette réglementation ont obtenu une réduction des deux tiers des plaintes de leur clientèle<sup>57</sup>. Cette approche pourrait être appliquée aux pratiques en matière de diversité, sur une base volontaire ou obligatoire.

Le *Law Society of England and Wales* a appliqué aux pratiques en matière de diversité une approche volontaire semblable, avec succès. En 2009, il a adopté la Charte de diversité et d'inclusion afin d'aider les cabinets à orienter leur engagement envers la diversité et l'inclusion vers des gestes concrets et positifs pour leurs entreprises, leur personnel et leurs clients<sup>58</sup>.

À ce jour, plus de 300 cabinets ont signé la Charte, ce qui représente plus d'un tiers de tous les avocats de pratique privée. Les cabinets qui signent la Charte de diversité et d'inclusion sont tenus de présenter chaque année un rapport pour montrer dans quelle mesure ils respectent leurs engagements ainsi que les améliorations nécessaires. La Charte est accompagnée d'un ensemble de ressources visant à aider les cabinets à respecter leurs engagements dans les principaux domaines. Les normes permettent de démontrer dans quelle mesure un cabinet d'avocats se conforme aux lois et règlements en matière d'égalité et aux normes en matière de diversité et d'égalité.

### ***Normes sur les exigences***

La troisième approche porte sur l'exigence que les organismes de conseillers juridiques et les cabinets adoptent des normes et des ressources sur le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés. Le Barreau élaborerait de telles normes.

### **Recueillir des données démographiques**

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<sup>56</sup> Voir *L'Outil de l'ABC d'autoévaluation des pratiques déontologiques* de l'Association du Barreau canadien, Ottawa, Association du Barreau canadien, 2013, en ligne à [www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf](http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf)

<sup>57</sup> Tahlia Gordon, Steve A. Mark et 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 et 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).

<sup>58</sup> The Law Society of England and Wales, *Diversity and Inclusion Charter*, en ligne : The Law Society of England and Wales [www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter](http://www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter)

En plus de la mise en œuvre de programmes de diversité, le Groupe de travail propose que les cabinets recueillent des données démographiques sur leurs avocat(e)s et parajuristes.

Il y a un certain nombre d'avantages à recueillir des données démographiques, telles que répertoriées ci-dessous, par rapport à la question 2. On estime que de telles données seraient particulièrement utiles pour établir les types de programmes de diversité qui répondraient le mieux aux besoins de chaque cabinet.

**Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi? La proposition d'autres modèles serait appréciée.**

- **À l'aide des données du Barreau : Le Barreau recueille les données démographiques des titulaires en utilisant les rapports annuels des avocats et des parajuristes, déclare publiquement les données démographiques sur la taille des cabinets et divulgue aux cabinets ses propres données démographiques.**
- **Fournir des modèles : Le Barreau collabore avec les cabinets pour élaborer des modèles uniformes de cueillette de données démographiques et encourage les cabinets à recueillir régulièrement de telles données<sup>59</sup>.**
- **Exiger des rapports des cabinets : Le Barreau définit les paramètres pour la cueillette volontaire de données démographiques des cabinets et exige que les cabinets déclarent soit qu'ils recueillent ces renseignements, soit la raison pour laquelle ils ne le font pas.**
- **Cueillette de données obligatoire : Le Barreau pourrait établir des paramètres pour la cueillette obligatoire des données démographiques par les cabinets.**

***Analyse de base***

Certains participants au processus d'études et de mobilisation ont souligné la valeur de la cueillette organisationnelle des données démographiques. Par exemple, certains informateurs clés de Stratcom ont indiqué que des statistiques plus détaillées sur la racialisation au sein des cabinets seraient précieuses, compte tenu d'approches adoptées aux États-Unis, où la transparence de la représentation des cabinets contribue à accroître la représentation au sein des cabinets<sup>60</sup>. Les résultats du sondage de Stratcom indiquent que, bien que la majorité des titulaires de permis racialisés sont en faveur des mesures de cueillette et de partage des données, certains ont exprimé des préoccupations voulant que les mesures puissent servir à établir des cibles en matière de diversité<sup>61</sup>.

***Les avantages de la cueillette de données***

<sup>59</sup> Dans le présent document, le terme « petits cabinets » fait référence à des cabinets de 5 à 25 titulaires, le terme « moyens cabinets » fait référence à des cabinets de 25 à 100 titulaires, et le terme « grands cabinets » fait référence à des cabinets de 100 titulaires ou plus.

<sup>60</sup> Le rapport Stratcom, *supra* note 8 à la p 9.

<sup>61</sup> *Ibid.* à la p 86.

Le Groupe de travail croit que la cueillette et le maintien des données démographiques sont des pratiques exemplaires. Il y a de nombreuses raisons de recueillir des renseignements démographiques, entre autres les suivantes :

- a. De telles données peuvent être un outil pour accroître les capacités concurrentielles d'un cabinet. De nombreux clients importants aux États-Unis, et maintenant au Canada, présentent des demandes de propositions pour sélectionner leurs conseillers juridiques en exigeant que les cabinets présentent les données démographiques de leur main-d'œuvre. Par exemple, le Groupe sur les services juridiques, affaires générales et conformité de la Banque de Montréal exige la divulgation des statistiques du cabinet sur la diversité dans le cadre de son processus de demande de propositions à l'intention des fournisseurs de services juridiques<sup>62</sup>.
- b. La diversité et les données sur la diversité aident les cabinets à attirer des employés talentueux. Comme les groupes d'étudiants en droit sont de plus en plus diversifiés, il en est de même pour leurs talents.
- c. Le fait de maintenir des données démographiques permet aux cabinets de surveiller la diversité du recrutement et des promotions et d'ajuster leurs pratiques et politiques en conséquence.
- d. Les données démographiques aident les cabinets à améliorer leurs services à la clientèle et leur réputation professionnelle, et à devenir des modèles en s'assurant une représentation sur tous les plans.
- e. Les données démographiques fournissent aux cabinets un contexte à partir duquel élaborer des programmes pour améliorer l'inclusivité.
- f. Les renseignements contribuent à l'élaboration d'initiatives visant à améliorer l'accès à la justice.

Le doyen Lorne Sossin et Sabrina Lyon, dans leur article *Data & Diversity in the Canadian Legal Community*, soulignent aussi l'importance de la cueillette de données en indiquant que même si le seul fait de recueillir et publier des données sur la diversité ne permettra pas de rendre la justice communautaire plus inclusive, il est difficile, sinon impossible, de voir comment la justice communautaire pourrait devenir plus inclusive sans données fiables et significatives<sup>63</sup>.

Malgré l'importance des données démographiques quantitatives, de nombreux employeurs évaluent leurs progrès en matière de diversité et d'inclusion en tenant compte de mesures plus qualitatives. Sossin et Lyon pensent que lorsqu'un organisme est composé de membres très peu diversifiés, un sondage sur l'inclusion mené dans tout le cabinet mènera probablement à des résultats trompeurs. Lorsque les données sont complétées par des données quantitatives et qualifiées, le résultat devient beaucoup plus clair<sup>64</sup>. La plupart des personnes consultées au cours du projet de Sossin et Lyon ont indiqué que, en tant qu'organisme de réglementation de la profession, le Barreau du Haut-Canada est l'organisme le plus approprié pour diriger les efforts et demander la cueillette et la diffusion des données démographiques.

### **Pratiques relatives à la cueillette de données**

<sup>62</sup> Groupe sur les services juridiques, affaires générales et conformité, BMO, *Diversity at BMO: Driving Change from the Inside Out*.

<sup>63</sup> Lyon, Sabrina et Sossin, Lorne, *Data and Diversity in the Canadian Justice Community*. Osgoode Legal Studies Research Paper No. 12/2014, en ligne à <http://ssrn.com/abstract=2389410>

<sup>64</sup> *Data and Diversity supra* note 63 à la p 9.

### L'expérience des États-Unis

La cueillette de données est de pratique courante aux États-Unis chez des organismes comme la *National Association of Legal Career Professionals* (NALP)<sup>65</sup> et Vault<sup>66</sup>, où l'on fait la cueillette de renseignements et la production de rapports qualitatifs et quantitatifs sur la diversité et l'inclusion concernant les cabinets ou les organismes juridiques des États-Unis. Bien que la publication des données ne soit pas obligatoire, elle s'avère un outil de recrutement efficace pour les cabinets et organismes juridiques, qui participent aux initiatives de NALP et Vault par centaines. Actuellement, la filiale canadienne de NALP ne publie que des données démographiques sur le sexe du personnel des cabinets.

Malgré la volonté de nombreux cabinets américains de recueillir des données démographiques, il y a eu certains différends quant à savoir si la cueillette des données a permis d'augmenter efficacement le nombre de titulaires racialisés dans les cabinets américains<sup>67</sup>. Veronica Root, dans son article *Retaining Color*, indique ce qui suit :

Les données disponibles démontrent que i) un grand nombre de personnes de couleur fréquentent les 25 écoles de droit les plus importantes, ii) un pourcentage bien inférieur d'entre elles sont engagées par de grands cabinets, et iii) un pourcentage encore plus inférieur deviennent des partenaires. Ces données persistent malgré le fait que l'American Bar Association (ABA) et le National Association for Law Placement (NALP) ont commencé à examiner et suivre la diversité démographique au sein des cabinets en 1993. Vingt ans plus tard, seuls de petits gains ont été réalisés dans les efforts visant à accroître la diversité démographique dans les grands cabinets d'avocats<sup>68</sup>.

Il est évident que le manque de diversité démographique est le produit de pratiques et de systèmes autres que la cueillette de données. Toutefois, comme on l'a noté ci-dessus, le Groupe de travail a identifié d'importants avantages à la cueillette de données.

### L'expérience du Royaume-Uni

<sup>65</sup> Le NALP est une association nord-américaine éducative à but non lucratif composée de plus de 2 500 professionnels juridiques et a été créée pour répondre aux besoins des participants au processus d'emploi dans le domaine juridique. Le NALP recueille des données sur l'emploi dans le domaine juridique et les publie.

<sup>66</sup> Vault fournit des classements, évaluations et examens des entreprises, qui proviennent des employés et d'étudiants. En partenariat avec la *Minority Corporate Counsel Association*, Vault mène chaque année un sondage sur la diversité des cabinets et publie un profil de diversité pour chacun des cabinets d'avocats, qui comprend une ventilation démographique des avocat(e)s du cabinet par niveau, race, sexe, orientation sexuelle, identité sexuelle et handicap. Ces profils comprennent également un aperçu des programmes, des initiatives et des plans stratégiques des cabinets en matière de diversité. De plus, toutes les réponses au sondage sont publiées dans la base de données sur la diversité dans les cabinets, qui comprend des données sur la diversité étalées sur cinq ans relatives à plus de 250 cabinets.

<sup>67</sup> Les problèmes raciaux au Canada et aux États-Unis sont différents, autant du point de vue de leur ampleur que de leur histoire, ce qui peut limiter l'applicabilité et l'évaluation des mesures américaines dans le contexte canadien.

<sup>68</sup> Root, Veronica, *Retaining Color*, 47 *University of Michigan Journal of Law Reform* 575-643; Notre Dame Legal Studies Paper No. 1441, en ligne à <http://ssrn.com/abstract=2310027>

Le *Solicitors Regulation Authority* (SRA) de la *Law Society of England and Wales* a adopté une démarche proactive en matière de cueillette de données démographiques. Les cabinets réglementés par la SRA sont maintenant tenus de recueillir des données sur la diversité de leurs effectifs, de rédiger un rapport et de le publier chaque année. La SRA publie des données globales chaque année. Elle élaborera un point de référence afin de permettre aux cabinets d'évaluer leurs progrès<sup>69</sup>.

### L'expérience canadienne

Au Canada, au moins trois grands cabinets de l'Ontario recueillent des données d'auto-identification sur la race et l'origine ethnique de leurs employés et membres, sans toutefois publier un rapport public<sup>70</sup>. Un certain nombre d'autres cabinets travaillent à l'élaboration de processus de cueillette de données démographiques, et de nombreux cabinets membres de *Justicia* recueillent déjà des données sur le sexe de leurs membres<sup>71</sup>.

D'autres organismes de réglementation de l'Ontario ont aussi envisagé d'imposer à leurs membres l'obligation de présenter des rapports sur des questions liées à la diversité. Récemment, la Commission des valeurs mobilières de l'Ontario (CVMO) a entrepris la mise en œuvre finale des modifications à la règle qui obligera, entre autres, les sociétés qu'elle réglemente à divulguer les renseignements suivants relatifs aux femmes chaque année : les politiques concernant la représentation des femmes au conseil d'administration; l'examen par le conseil de la représentation des femmes dans le processus de sélection des membres du conseil; l'examen de la représentation des femmes aux postes de dirigeants lors de telles nominations; détermination de nombres cibles de femmes au conseil et aux postes de direction<sup>72</sup>.

<sup>69</sup> Il convient également de mentionner l'initiative de la *Judicial Appointments Commission* (JAC) du Royaume-Uni, une commission indépendante qui sélectionne les candidats aux fonctions judiciaires dans les tribunaux d'Angleterre et du Pays de Galles et qui, dans certains tribunaux qui relèvent aussi de sa compétence en Écosse et en Irlande du Nord, s'engage dans la surveillance en matière de diversité. Dans le cadre de sa stratégie en matière de diversité, la JAC enregistre des renseignements sur le sexe, l'ethnicité, les antécédents professionnels, les invalidités et l'âge à trois étapes du processus de nomination des juges : à la mise en candidature, à la présélection et à la recommandation de nomination. Ces renseignements sont recueillis grâce au formulaire volontaire de surveillance des candidatures de la JAC. Le JAC publie deux fois par an un bulletin statistique officiel qui contient des renseignements démographiques. *Judicial Selection and Recommendations for Appointment Statistics, October 2012 to March 2013 – Judicial Appointments Commission Statistics Bulletin*, London, Judicial Appointments Commission, 2013.

<sup>70</sup> De plus, de grandes banques et le gouvernement fédéral sont tenus aux termes de la loi de recueillir des données d'auto-identification concernant leurs effectifs. Le gouvernement de l'Ontario recueille aussi des données d'auto-identification et les publie dans son Plan stratégique d'inclusion dans la FPO.

<sup>71</sup> Par exemple, l'Institut canadien de la diversité et de l'inclusion, un organisme national à but non lucratif qui fournit aux lieux de travail des conseils sur la diversité, l'inclusion, l'équité et les droits de la personne, collabore avec un groupe de grandes et moyennes entreprises à l'élaboration d'un processus visant à les aider à recueillir des données démographiques.

<sup>72</sup> Amendements proposés par la CVMO au formulaire 58-1 -1F1 Divulgence sur la gouvernance d'entreprise du Règlement proposé 58-101 sur la Divulgence des pratiques du gouvernement; Exigences proposées en matière de divulgation concernant la représentation des femmes aux conseils et à la haute direction — Supplément au Bulletin (2014) de la CVMO, 37 OSCB.

La CVMO mettra en œuvre une approche « se conformer ou s'expliquer », qui oblige les entreprises à soit présenter un rapport sur la mise en œuvre ou l'examen des questions indiquées ci-dessus, soit expliquer les raisons pour lesquelles elles ne l'ont pas fait<sup>73</sup>.

En 2012, l'Association du Barreau canadien a produit un guide pour aider les entreprises à affiner leur approche concernant la diversité et l'inclusion et pour mesurer leurs résultats en matière de diversité<sup>74</sup>. En 2009, la Commission ontarienne des droits de la personne a également produit *Comptez-moi! Cueillette de données relatives aux droits de la personne*, un guide publié pour aider les organismes à recueillir des données démographiques<sup>75</sup>.

#### Cueillette de données volontaire ou obligatoire

Il y a des avantages et des inconvénients dans la cueillette volontaire et obligatoire de données démographiques. Même si la déclaration obligatoire peut potentiellement fournir davantage de données fiables, le Barreau du Haut-Canada ne régit pas directement les cabinets et organismes juridiques en ce moment. De plus, Sossin et Lyon ont perçu une résistance et une forte opposition à l'exigence de déclarations obligatoires et ont indiqué que la divulgation volontaire de statistiques démographiques ou assortie de mesures d'incitation est une approche importante à envisager.

La cueillette volontaire de données permettrait au Barreau du Haut-Canada de collaborer avec les cabinets et organismes juridiques à la cueillette de données, ce qui augmenterait la participation des cabinets à un tel exercice. Le projet Justicia mentionné<sup>76</sup> ci-dessus est un exemple d'initiative dans le cadre de laquelle les entreprises participantes ont convenu de maintenir des données sur le sexe et de collaborer avec le Barreau à l'élaboration d'un guide et d'un modèle de cueillette de ces données. Depuis la création de Justicia, un certain nombre de cabinets grands et moyens recueillent maintenant des données démographiques sur le sexe.

#### **Utilisation des données du Barreau**

Comme le Barreau recueille déjà des données démographiques sur la race et d'autres données sur, par exemple, la taille des cabinets, le statut des employés dans le cabinet, leur milieu, leur domaine de pratique, l'année de leur admission au Barreau, il pourrait être souhaitable que le Barreau améliore la qualité de ses activités de cueillette de données et devienne la source commune des données démographiques. Cela aurait l'avantage de fournir des données démographiques comparables et,

<sup>73</sup> Après la proposition de la CVMO, les organismes de réglementation des valeurs mobilières de la Saskatchewan, du Manitoba, du Québec, du Nouveau-Brunswick, de la Nouvelle-Écosse, de Terre-Neuve et Labrador, des Territoires du Nord-Ouest et du Nunavut ont publié des modifications proposées afin d'obtenir des commentaires du public semblables à celles mises de l'avant par la CVMO. Ces organes de réglementation ont également entrepris la mise en œuvre finale des modifications de la règle.

<sup>74</sup> Lorraine Dyke, *Mesurer la diversité dans les cabinets d'avocats — Un outil essentiel à un rendement supérieur*, Ottawa, Association du Barreau canadien, 2012, en ligne à [www.cba.org/ABC/equity/PDF/measuring-diversity-f.pdf](http://www.cba.org/ABC/equity/PDF/measuring-diversity-f.pdf).

<sup>75</sup> *Comptez-moi! Cueillette de données relatives aux droits de la personne*, Toronto, Commission des droits de la personne de l'Ontario, 2009, à la p 1 en ligne à [www.ohrc.on.ca/fr/comptez-moi-collecte-de-donn%C3%A9es-relatives-aux-droits-de-la-personne](http://www.ohrc.on.ca/fr/comptez-moi-collecte-de-donn%C3%A9es-relatives-aux-droits-de-la-personne)

<sup>76</sup> Voir Barreau du Haut-Canada, Le projet Justicia, en ligne à <http://www.lsuc.on.ca/with.aspx?id=635&langtype=1036>

probablement, de rendre la cueillette de données plus efficace. D'autre part, il y a peut-être des avantages à la participation des cabinets à la cueillette de données et à la déclaration de leurs propres renseignements.

### **Conformité en matière de diversité et de contrats**

**Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?**

#### ***Analyse de base***

Comme nous l'avons mentionné ci-dessus, un certain nombre d'entreprises, de gouvernements et d'établissements américains et canadiens exigent maintenant la divulgation des données démographiques sur la main-d'œuvre aux fins d'examen pendant le processus d'évaluation des demandes de propositions. Certains membres de Leaders juridiques pour la diversité, association qui comprend plus de 70 signataires partout au Canada, tiennent compte de la diversité à l'embauche d'employés et dans le cadre de leurs pratiques d'approvisionnement en exigeant des fournisseurs juridiques potentiels de divulguer leurs données démographiques. D'autres exigent qu'au moins un membre des communautés diverses travaille sur leur dossier<sup>77</sup>.

Certains participants au processus de mobilisation ont indiqué que le Barreau était tout désigné pour le rôle consistant à favoriser les politiques d'approvisionnement des entreprises. Afin de promouvoir la diversité dans la profession et de veiller à ce que les titulaires racialisés aient la possibilité de travailler sur des dossiers importants, le Barreau du Haut-Canada pourrait collaborer avec des organismes comme les Leaders juridiques pour la diversité à l'élaboration de programmes de conformité des contrats types qui exigeraient que les fournisseurs potentiels présentent des statistiques sur la diversité pendant le processus de demande de propositions.

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<sup>77</sup> Voir Legal Leaders for Diversity, *About Us*, en ligne à <http://legalleadersfordiversity.com/about-us>

## B. Le mentorat, les services de consultation et le réseautage

Au cours du processus de mobilisation, on a déterminé que le mentorat et le réseautage sont des éléments cruciaux de la promotion de l'inclusivité dans la profession. Nous avons demandé aux professionnels de fournir leurs commentaires sur les modèles de mentorat, de services de consultation et de réseautage.

### **Services de consultation et de mentorat**

**Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.**

En novembre 2013, les membres du conseil ont approuvé la création du groupe de travail sur les services consultatifs et le mentorat (groupe de travail sur le mentorat). Le mandat du groupe de travail sur le mentorat est le suivant :

- a. se renseigner sur les services obligatoires et facultatifs de mentorat et de services de consultation fournis aux avocat(e)s et autres professionnels par leurs organismes de réglementation ou leurs associations professionnelles ou commerciales au Canada et à l'étranger;
- b. élaborer un ensemble de critères pour évaluer l'efficacité de ces services à répondre aux besoins en matière de pratique des membres de la profession juridique en Ontario;
- c. déterminer la gamme des modèles de services de mentorat et de services de consultation, y compris ceux qui sont assistés par la technologie, virtuels, en partenariat avec d'autres organismes ainsi que la centralisation ou la mise en œuvre de mentorats et d'autres ressources qui pourraient être explorées et envisagées;
- d. consulter des intervenants externes sur les objectifs et les pratiques exemplaires pour de tels services;
- e. examiner et déterminer l'étendue possible des répercussions financières immédiates et à long terme pour le Barreau du Haut-Canada;

Le mentorat consiste en un programme officiel ou informel ou en une relation dans laquelle le mentor fournit au stagiaire des conseils personnels et sur la carrière. Dans une relation de mentorat, il n'y a aucun objectif précis établi. Toutefois, les services de consultation sont centrés sur le travail et orientés vers les résultats. Le conseiller/aidant fournit des conseils et évalue et surveille les progrès réalisés. Le conseiller/aidant aide l'employé à développer des compétences particulières pour une tâche ou une difficulté définie.

Le Groupe de travail vous invite à fournir des commentaires sur les modèles de mentorat et de services consultatifs qui seraient les plus utiles aux titulaires de permis racialisés. Vos commentaires peuvent être examinés par le Groupe de travail et par le groupe de travail sur le mentorat. Certains modèles proposés sont présentés ci-dessous, mais la liste n'est pas complète, et la proposition d'autres modèles serait appréciée.

### **Mentor bénévole ou services de consultation**

- a. **Mentorat individuel ou services de consultation** : Le mentor et son stagiaire se réuniraient régulièrement. La relation de mentorat serait individualisée et personnelle. Les mentors ne seraient pas rémunérés.
- b. **Mentorat de groupe** : Un mentor formerait une relation de mentorat avec un petit groupe de titulaires. Le mentor et les stagiaires se réuniraient régulièrement en groupe. Les mentors ne seraient pas rémunérés.
- c. **Mentorat à distance** : Le mentorat serait fourni par un mentor à un stagiaire, principalement par courrier électronique et d'autres formes de communication électronique. La communication électronique pourrait être complétée par quelques appels téléphoniques et des réunions en personne. Les mentors ne seraient pas rémunérés.
- d. **Mentorat par équipe** : Plusieurs mentors travailleraient auprès d'un groupe de plusieurs stagiaires. Les mentors et les stagiaires se réuniraient régulièrement en équipe. Les mentors ne seraient pas rémunérés.
- e. **Mentorat par pairs** : Des collègues qui sont à un stade semblable de leur carrière seraient jumelés afin d'échanger des conseils.
- f. **Portée limitée des services de consultation** : Un conseiller possédant une expertise dans un domaine précis fournirait à un stagiaire des conseils sur une question de fond ou de procédure juridique. Cette relation serait vraisemblablement à court terme. Les conseillers ne seraient pas rémunérés.

### **Mentor rémunéré ou services de consultation**

- a. **Mentorat individuel avec un professionnel** : Ce modèle fonctionnerait de la même façon que le mentorat individuel bénévole, mais les stagiaires pourraient accéder à un mentor qu'ils choisiraient dans une liste de mentors rémunérés.
- b. **Comité de conseillers** : Un groupe diversifié d'avocat(e)s et de conseillers parajuristes formés serait payé pour fournir des services de soutien précis à l'intention des personnes qui sont exposées à un risque accru de manquer à leurs obligations professionnelles.

Il est important de souligner que les associations comme l'Association des Avocats Noirs du Canada, la *South Asian Bar Association* (SABA) et la *Federation of Asian Canadian Lawyers* (FACL) offrent de précieuses possibilités de réseautage, de mentorat et des programmes d'éducation continue.

Le Barreau du Haut-Canada pourrait déterminer si d'autres programmes de soutien pourraient être mis en œuvre par l'intermédiaire d'associations comme celles qui aident les avocates et avocats et les parajuristes qui font partie de petits cabinets, qui exercent seuls ou qui ont été formés à l'étranger. Des propositions à ce sujet seraient appréciées.

**Réseautage**

**Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.**

Le processus de mobilisation a permis d'indiquer que les titulaires racialisés sont souvent plus isolés des réseaux de soutien professionnels. La majorité des titulaires racialisés et non racialisés qui ont participé au sondage de Stratcom ont souligné la nécessité des titulaires racialisés d'avoir un meilleur accès aux réseaux professionnels.

Le Barreau du Haut-Canada pourrait collaborer avec des organismes juridiques et associations d'affinité pour élaborer des possibilités de réseautage plus structurées et planifiées, par exemple, dans le cadre de la formation professionnelle continue. Ces possibilités de réseautage fourniraient aux titulaires racialisés un forum leur permettant d'interagir avec des titulaires de permis racialisés et non racialisés d'autres cabinets et organismes juridiques.

Il est important de souligner que certains participants ont mentionné que les associations n'existent pas pour leur communauté. Par exemple, des parajuristes ont indiqué qu'ils n'ont pas accès à une association de parajuristes racialisés. Il n'y a également aucune association d'avocats formés à l'étranger, malgré les commentaires selon lesquels les avocat(e)s formés à l'étranger sont souvent isolés et n'ont pas accès aux réseaux qui sont si importants pour les petits cabinets et les praticiens qui exercent seuls.

Le programme de l'Université de Toronto à l'intention des avocats formés à l'étranger s'est avéré très efficace pour préparer ces derniers à entrer dans la profession juridique. Toutefois, des réseaux continus en cours d'exercice seraient précieux.

### C. L'amélioration des compétences culturelles dans la profession

Les résultats du sondage de Stratcom soulignent l'importance de séminaires de formation professionnelle sur l'équité, la diversité et les compétences culturelles parrainés par le Barreau qui pourraient faire partie du processus d'agrément.

Il y a de nombreuses définitions du terme « compétence culturelle », mais Robert Wright<sup>78</sup> a élaboré la définition suivante : « La capacité d'interagir efficacement avec des gens de différentes cultures. La compétence culturelle comprend quatre capacités essentielles :

- a. Nous devons connaître nos propres points de vue culturels et comprendre en quoi ils diffèrent ou ressemblent à d'autres (auto-analyse critique culturelle).
- b. Nous devons comprendre la réalité sociale et culturelle dans laquelle nous vivons et travaillons ainsi que celle dans laquelle nos clients vivent et travaillent.
- c. Nous devons cultiver des attitudes envers les différences culturelles.
- d. Nous devons être capables de générer et d'interpréter une grande variété de réponses verbales et non verbales (entrevues centrées sur le client) »<sup>79</sup>.

**Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue? La proposition d'autres modèles serait appréciée.**

- **Inclure dans le cours de responsabilité professionnelle et de pratique (RPP) les thèmes de compétence culturelle, diversité et inclusion.**
- **Fournir des programmes de formation professionnelle continue agréés annuels et volontaires sur les compétences culturelles.**
- **Exiger que les titulaires effectuent chaque année, ou, moins fréquemment, une heure de formation professionnelle continue en compétence culturelle qui serait intégrée aux trois heures requises de professionnalisme.**

Les options suggérées ci-dessus sont proposées afin de s'assurer que les titulaires se familiarisent avec la notion de compétence culturelle au début de leur carrière, dans le cadre du cours de responsabilité professionnelle et de pratique (RPP), et tout au long de leur carrière.

Le cours de RPP a été conçu pour « augmenter les connaissances des candidats concernant les devoirs et défis d'un avocat, et pour suggérer une méthode d'analyse des dilemmes éthiques et pratiques »<sup>80</sup>. Il faut réussir le cours de RPP pour être admis(e) au barreau.

<sup>78</sup> Robert S. Wright est un Néo-Écossais d'origine africaine qui est travailleur social et sociologue. Il conçoit et offre des ateliers de compétence culturelle et a développé une expertise dans ce domaine.

<sup>79</sup> Robert S. Wright, *Cultural Competence: Presented to Staff of Legal Aid Nova Scotia AGM* le 17 octobre 2012. Disponible en ligne à [www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf](http://www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf)

<sup>80</sup> En ligne à [www.lsuc.on.ca/articling\\_fr](http://www.lsuc.on.ca/articling_fr)

On estime que les programmes d'éducation sur la compétence culturelle seraient bénéfiques pour l'ensemble de la profession. Les règles 2.1-1 et 6.3.1-1 du *Code de déontologie* soulignent que les avocat(e)s et les parajuristes ont la responsabilité de reconnaître la diversité de la collectivité de l'Ontario<sup>81</sup>. Le *Code de déontologie* et le *Code de déontologie des parajuristes* imposent l'obligation de protéger la dignité des personnes et de respecter les lois relatives aux droits de la personne en vigueur en Ontario<sup>82</sup>. La formation en compétence culturelle pourrait être utile pour aider les avocat(e)s et les parajuristes à comprendre cette règle et à s'y conformer<sup>83</sup>.

Il est donc proposé que les programmes de FPC soient offerts à la profession et/ou que l'on exige des professionnels qu'ils suivent une heure de FPC dans le cadre des heures de professionnalisme agréé chaque année ou moins fréquemment.

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<sup>81</sup> *Code de déontologie*, Toronto, Barreau du Haut-Canada, 1<sup>er</sup> octobre 2014, règle 2.1-1, commentaire [4.1] et règle 6.3.1-1, commentaires [1] et [2], en ligne à [www.lsuc.on.ca/code-avocats](http://www.lsuc.on.ca/code-avocats).

<sup>82</sup> *Code de déontologie des parajuristes* à la règle 2.03, en ligne à <http://www.lsuc.on.ca/code-parajuristes/>

<sup>83</sup> La Nova Scotia Barristers' Society (article NSBS) reconnaît la valeur des programmes d'éducation sur la compétence culturelle et considère la compétence culturelle comme l'une des facettes de la compétence professionnelle globale d'un avocat. La NSBS offre des ateliers d'une demi-journée chaque mois sur l'accroissement des compétences culturelles.

#### D. La discrimination et le rôle du processus des plaintes

**Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement? D'autres propositions seraient appréciées.**

- **En mettant à jour le *Code de déontologie* et le *Code de déontologie des parajuristes* afin de définir précisément la discrimination systémique et en la combattant, et en élaborant un plan de communication pour la profession.**
- **En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités de présenter des plaintes.**
- **En affectant un groupe de spécialistes de la réglementation professionnelle des membres du personnel au traitement des plaintes de discrimination raciale.**
- **En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités d'offrir à leurs membres qui ont fait l'objet de plaintes un soutien de type avocat de service.**

#### ***Comprendre la discrimination***

Selon la Commission ontarienne des droits de la personne, la discrimination raciale systémique « découle de politiques, pratiques et comportements qui font partie des structures sociales et administratives de l'organisation et dont l'ensemble crée ou perpétue une situation désavantageuse pour les personnes racialisées »<sup>84</sup>. Le processus de mobilisation a révélé que, souvent, les personnes touchées par la discrimination raciale ne croient pas qu'elles ont la possibilité de se plaindre, car la discrimination est systémique ou elles ne veulent pas se plaindre de peur que la plainte ait des répercussions sur leur carrière.

Les règles du *Code de déontologie* et du *Code de déontologie des parajuristes* portent sur la responsabilité particulière des avocats et parajuristes de respecter les exigences des lois relatives aux droits de la personne en vigueur en Ontario et, plus précisément, d'honorer l'obligation de non-discrimination. Le mandat du Barreau d'enquêter sur les plaintes de discrimination systémique n'est pas largement connu. Nous proposons que les règles soient clarifiées et qu'un plan de communication soit élaboré afin d'informer les titulaires que des plaintes de discrimination systémique peuvent être présentées au Barreau du Haut-Canada.

#### ***Fournir des ressources à la profession***

En plus de recevoir des plaintes relatives à la discrimination systémique, le Barreau pourrait développer des méthodes institutionnelles proactives pour s'attaquer à la discrimination systémique,

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<sup>84</sup> Commission des droits de la personne de l'Ontario. *Racisme et la Discrimination Raciale — Discrimination systémique (fiche)* en ligne à [www.ohrc.on.ca/fr/racisme-et-la-discrimination-raciale-discrimination-systémique-fiche](http://www.ohrc.on.ca/fr/racisme-et-la-discrimination-raciale-discrimination-systémique-fiche)

comme offrir aux cabinets et aux organismes juridiques des guides de pratiques exemplaires et des modèles de politiques.

Le Barreau pourrait également exiger que les cabinets adoptent des politiques et procédures pour lutter contre la discrimination et le harcèlement, et pourrait tenir les cabinets comme responsables de l'échec d'établir et de respecter ces politiques et procédures.

Présentement, le Barreau ne réglemente pas directement les cabinets ni les organismes juridiques. En février 2014, toutefois, les membres du conseil ont approuvé l'élaboration d'un cadre de travail relativement à la réglementation des cabinets (aussi connue sous le terme « réglementation des entités (entity regulation) » aux fins d'examen par les membres du conseil. Ce cadre de travail pourrait être conçu de façon semblable à la méthode d'auto-évaluation qui s'est révélée fructueuse en Nouvelle-Galles-du-Sud. Ce possible changement à l'approche réglementaire du Barreau pourrait lui permettre d'exiger des cabinets de créer des politiques et procédures en matière de discrimination et de harcèlement et de les respecter.

### ***Remédier à la peur de représailles lors du dépôt d'une plainte***

La crainte de déposer une plainte a été mentionnée au cours du processus de mobilisation et, présentement, le droit de se plaindre auprès du Barreau par l'intermédiaire des associations professionnelles n'est pas largement connu.

Le Barreau pourrait souhaiter collaborer avec des associations d'affinité en vue d'accroître leurs capacités de porter plainte pour discrimination raciale et/ou ethnique. La possibilité de déposer une plainte par l'intermédiaire d'une association peut réduire le risque que la plainte ait un impact négatif sur la carrière du plaignant. Le Groupe de travail souhaiterait obtenir d'autres suggestions sur la façon d'améliorer les politiques et les pratiques de sorte que les personnes puissent se sentir plus à l'aise de s'adresser au Barreau pour se plaindre de discrimination raciale.

Étant donné que les cas de discrimination raciale et/ou ethnique sont souvent très complexes, nous suggérons qu'un groupe de spécialistes de la réglementation professionnelle des membres du personnel soit nommé pour s'occuper de tels cas. Ce groupe de spécialistes participerait à des programmes de formation approfondie sur la compétence culturelle et la discrimination raciale afin de les rendre sensibles à la nature de ces cas et des parties concernées.

### ***Apporter un soutien par le biais du processus***

Les participants à un groupe de discussion ont convenu qu'il peut y avoir des facteurs contribuant à rendre les titulaires racialisés plus vulnérables à des plaintes, la plupart citant fréquemment un manque de ressources et de formation ainsi que des problèmes associés à une mauvaise communication et à des malentendus culturels. Ces facteurs, comme le manque de ressources, seraient vraisemblablement pertinents une fois que le titulaire fait partie du processus de réglementation. Par conséquent, le Groupe de travail suggère que le Barreau puisse collaborer avec les associations juridiques pour renforcer leurs capacités d'offrir un soutien de type avocat de service aux personnes qui font l'objet de plaintes.

## E. Les activités du Barreau du Haut-Canada

Le Groupe de travail a discuté des initiatives qui pourraient être mises en œuvre à l'interne pour traiter les résultats du processus de mobilisation. Il envisage de recommander aux membres du conseil l'adoption des programmes suivants. Le Groupe de travail souhaiterait obtenir des commentaires concernant ces programmes ainsi que d'autres initiatives internes qui pourraient être examinées par le Groupe de travail.

### **Initiative 1 : Améliorer le programme de conformité en matière d'équité**

**Le Barreau améliorerait son programme de conformité en matière d'équité afin d'inclure une demande de données démographiques lorsque l'on retient les services de fournisseurs, de cabinets ou d'avocat(e)s.**

### **Initiative 2 : Mener une vérification interne de l'équité**

**Le Barreau renforcerait ses politiques et ses programmes en procédant à une vérification opérationnelle de l'équité des services qu'il offre à la profession.**

### **Initiative 3 : Cueillette de données internes**

**Le Barreau envisagerait la cueillette de données internes complémentaires sur les questions relatives à la racialisation dans le processus de réglementation.**

### **Initiative 4 : Développer une image publique plus diversifiée du Barreau du Haut-Canada**

**Le Barreau envisagerait des stratégies pour développer une image publique plus diversifiée et inclusive.**

### **Analyse de base**

Actuellement, dans le cadre de son processus d'appel d'offres, le Barreau exige que les fournisseurs ayant plus de 50 employés et les cabinets comprenant plus de 50 avocats se conforment au *Code des droits de la personne*, à la *Loi sur la santé et la sécurité au travail (LSST)*, s'il y a lieu, et à la *Politique de prévention contre le harcèlement et la discrimination du Barreau du Haut-Canada*.

Le Barreau pourrait renforcer les exigences du programme de conformité en matière d'équité en incluant une demande d'examen des données démographiques au cours du processus de sélection.

Le Barreau du Haut-Canada s'est également engagé à faire en sorte que ses politiques, ses programmes et ses pratiques soient inclusifs et accessibles. Afin de s'en assurer, le Barreau pourrait demander à une tierce partie externe de mener une vérification opérationnelle de l'équité des services qu'elle offre à la profession. Cette vérification se concentrerait sur les employés du Barreau qui offrent des services directement à la profession. Une vérification de l'équité permettrait d'identifier les difficultés et progrès reliés à l'intégration des principes et pratiques d'équité dans les activités du Barreau.

Le Barreau pourrait aussi déterminer si des données supplémentaires, de meilleures données ou d'autres renseignements devraient être recueillis à l'interne concernant les questions de réglementation, y compris les plaintes et les enquêtes, relativement à l'incidence et à l'impact de la racialisation.

Un nombre important de participants racialisés et non racialisés au processus de mobilisation approuvent la suggestion que le Barreau développe une image publique plus diversifiée et inclusive. Le Barreau pourrait envisager des initiatives qui rendraient son image publique plus diversifiée et inclusive. On pourrait obtenir des commentaires du Groupe consultatif en matière d'équité, qui est composé d'associations partenaires et de membres individuels qui possèdent une expertise dans les questions liées à l'équité et à la diversité. Le Groupe de travail sur la gouvernance pourrait obtenir le soutien du personnel et des commentaires supplémentaires du Service de l'équité, du Service des affaires publiques et du Service des communications du Barreau.

## CONCLUSION

Le Barreau s'est engagé à promouvoir une profession qui est représentative de tous les peuples de l'Ontario et qui est inclusive et exempte de discrimination et de harcèlement. Le processus de mobilisation a cerné un certain nombre d'obstacles qui touchent les titulaires racialisés tout au long de leur carrière.

Le Groupe de travail a examiné ces obstacles et les défis à relever en raison de la discrimination, du racisme flagrant, des différences culturelles, du manque de mentors, de parraineurs, de modèles et de possibilités de réseautage et en raison d'autres facteurs systémiques. Par conséquent, il a cerné un certain nombre d'initiatives possibles qui pourraient relever certains de ces défis.

Les initiatives proposées sont présentées à la profession, et nous vous invitons à nous faire part de vos commentaires.

**Nous vous invitons à nous faire part de vos commentaires sur l'ensemble du présent document et sur toute question abordée. De plus, nous souhaitons obtenir des propositions de solutions non présentées dans ce document.**

**Veillez nous faire parvenir vos observations écrites d'ici le 1<sup>er</sup> mars 2015, à :**

Josée Bouchard  
Directrice, Équité  
Barreau du Haut-Canada  
Osgoode Hall  
130, rue Queen Ouest  
Toronto (Ontario)  
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**Annexe 1 — Racialisation et taille des cabinets selon les données du Barreau sur les avocats et les parajuristes d'avril 2014**

Tableau 1 — Professionnels exerçant seuls — en pourcentages

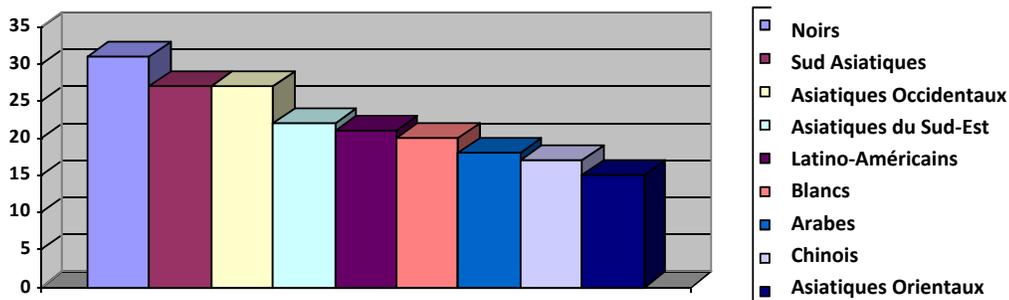
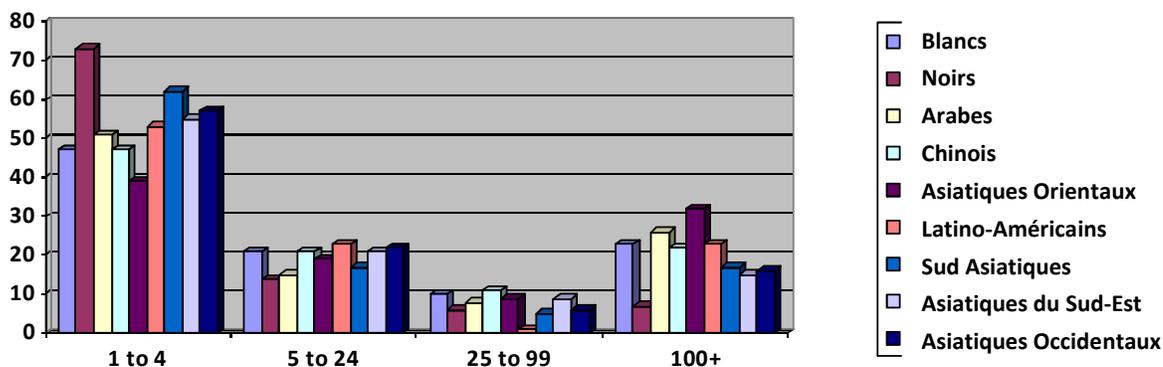


Tableau 2 — Par taille du cabinet — en pourcentages

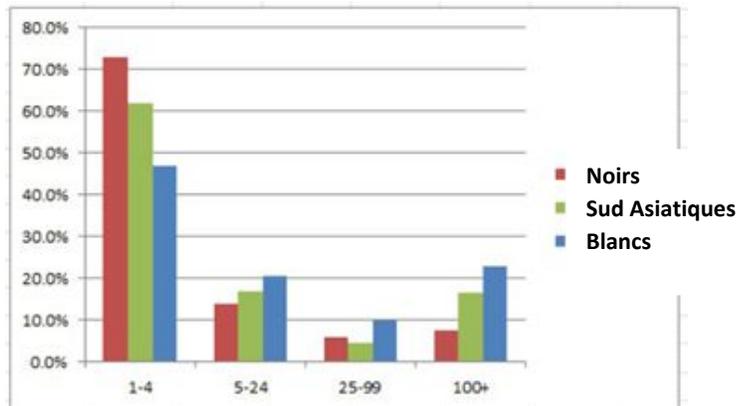


Le tableau 1 montre que les avocates et avocats Noirs, Sud-Asiatiques et Asiatiques Occidentaux sont proportionnellement plus susceptibles d'exercer seuls.

Le tableau 2 montre que les avocates et avocats Noirs et Sud-Asiatiques sont proportionnellement plus susceptibles d'exercer seuls ou dans de petits cabinets et proportionnellement beaucoup moins susceptibles d'exercer dans de grands ou moyens cabinets.

Le tableau 2 est difficile à interpréter, car il comporte une comparaison entre plusieurs groupes. Pour faciliter sa compréhension, le tableau 3 ci-dessous montre la taille des cabinets dans lesquels exercent les avocats Noirs, Blancs et Sud-Asiatiques.

Tableau 3 — Par taille du cabinet — en pourcentages



Le tableau 3 montre plus clairement les différentes tendances des cabinets où exercent les avocats Noirs, Sud-Asiatiques et Blancs. Les avocates et avocats Noirs et, dans une moindre mesure, les Sud-Asiatiques, exercent de façon disproportionnée dans les plus petits cabinets. Il y a relativement peu d'avocats Noirs qui exercent dans les cabinets les plus grands, alors que les proportions d'avocats Sud-Asiatiques et des Avocats Blancs dans les plus grands cabinets ne sont pas si différents.

**Annexe 2 – Questions à la profession*****Établir des programmes de diversité au sein des cabinets***

Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire ?

Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi?

Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?

***Services de consultation et de mentorat***

Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés ?

***Réseautage***

Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.

***L'amélioration des compétences culturelles dans la profession***

Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue ?

***La discrimination et le rôle du processus des plaintes***

Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement?

**Annexe 3 – Chronologie de la mobilisation du Groupe de travail sur les défis des titulaires de permis racialisés**

DATE	ACTIVITÉ
Août 2012	Le Conseil crée le Groupe de travail sur les défis des titulaires de permis racialisés
Octobre 2012	Le Groupe de travail approuve l'énoncé de mandat
Octobre 2012 – janvier 2014	Le Groupe de travail rencontre officieusement des organisations et des particuliers pour obtenir des renseignements sur les défis et les pratiques exemplaires
Début 2013	Le Groupe de travail retient les services de Strategic Communications Inc. (Stratcom) et Michael Charles de Change DeZign pour mener une mobilisation officielle, qui comprend des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.
Début 2013	Le Groupe consultatif en matière d'équité crée un groupe de travail qui donne une rétroaction à diverses étapes du processus de l'étude sur les défis des titulaires de permis racialisés.
Juillet 2013 – septembre 2013	Le processus de liaison communautaire prend place.
Mars 2014	Stratcom et Michael Charles fournissent le rapport officiel final sur la mobilisation au groupe de travail.
Mars 2014 – octobre 2014	Le Groupe de travail passe en revue les processus de mobilisation formel et informel et consulte les organisations concernées.



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



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

CONSULTATION PAPER



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

*"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**

# Questions for the Profession

- Enhancing the internal capacity of organizations
  - Diversity programs within firms
  - Collecting demographic data
  - Contract compliance
- Mentoring, advisory services and networking

# Questions for the Profession

- 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

# Law Society Operations

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

# Consultation Process

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

# Consultation Process

Meetings held in areas such as,

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

# 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



### Working Group Members

Janet Leiper, 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

Report prepared by the Equity Initiatives Department –  
Josée Bouchard, Director of Equity and Ekuia Quansah, Associate Counsel



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

THE EVOLUTION OF LEGAL INFORMATION AND LIBRARY SERVICES IN ONTARIO

The Treasurer spoke to the report for information, outlined the next steps in the transition to a new structure and thanked the members of the Legal Information and Support Services Working Group for their work on this initiative.

MOTION

It was moved by Mr. Strosberg, seconded by Ms. Backhouse, that Convocation direct the Law Society administration not to make any decision about moving discipline hearings to a location outside of Osgoode Hall until Convocation has had an opportunity to debate the matter.

Not Put

The Treasurer ruled Mr. Strosberg's motion out of order.

Following an appeal of the Treasurer's ruling, a debate on the appeal was conducted.

Convocation voted to uphold the Treasurer's ruling.

**Tab 8****THE EVOLUTION OF LEGAL INFORMATION AND LIBRARY SERVICES  
IN ONTARIO**

(October 15, 2014)

The efficient, effective and forward-looking delivery of legal information services is a critical component of a modern and competent legal profession. Almost 15 years ago the delivery of library services was critically examined and significant changes undertaken. No system-wide examination has taken place since then. While those improvements moved the delivery of legal information services forward, rapid changes in the legal landscape, the profession and the public's interaction with the legal system since then, as well as increasing recognition that some of the goals of that earlier reform have not been realized, make it essential to consider the issue further at this time.

Although some aspects of the library system and the delivery of legal information and support services have not changed since the last examination, many others and, in particular the landscape in which library services exist, have. The explosion of technology, changes in the legal publishing field and the development of CanLII, access to justice issues, and library funding changes are all relevant to any consideration of libraries in the 21<sup>st</sup> century.

The preliminary fact-gathering, issue identification and analysis and advice that the Library Information and Support Services Working Group (the LISS Working Group) has provided to the Treasurer, and with which the shareholders agree, make clear that now is the time to move forward with the examination of the County Courthouse Library System (the Library System).

The work of the LISS Working Group, first and foremost, concluded and affirmed that there is a significant and important role for courthouse libraries in Ontario both in the provision of legal information and for the development and maintenance of professional competence.

The LISS working group also concluded that there was significant room to improve service, find efficiencies and reform the overall system. It finally concluded that any efficiencies or reform should be based on the following principles, which are essential to any successful systemic change:

1. Relationships built on trust, collaboration, cooperation and accountability among the various stakeholders, who include the county courthouse libraries, law associations, the Great Library, the Law Society and its licensees must be at the heart of the process of implementing changes and efficiencies within the Library System.
2. To ensure a library system that works well, there must be a rational process for decision-making, a meaningful and efficient administrative structure and a system-wide examination looking for efficiencies.
3. There is an urgency to moving forward, particularly in view of funding pressures caused by the rising cost of legal information that is outpacing rates of inflation, and a rapidly changing legal landscape that is having an impact on every aspect of the law, including delivery of legal information services.
4. Legal information services play an essential role in the development, maintenance and enhancement of licensee competence and research literacy, which should be more directly and systemically fostered within the Library System.
5. Positive evolution will be achieved by working with a variety of participants and should include the input of experts in the legal information, library and competence fields. Skills-based participation in visioning and planning will add significant value to the evolution effort.
6. There is also an opportunity to better integrate the use of physical library space and library staff into the administration of justice and goals for increased access to justice.
7. Attention should be paid to enhancing the provision of French-language resources within the Library System.
8. Any discussion about library services must include an examination of potential new sources for funding or money, as well as better use of or redeployment of current funding.
9. There are many successes within the Library System where examples of excellent service to lawyers and the public can be emulated and built upon. Ways should be found to share best-practices and to standardize certain components so that there is a consistent level of service across the province.

The LISS Working Group's fact-gathering process and the preliminary advice on next steps to support the goals for a 21<sup>st</sup> century approach to the Library System have focused on four main areas: governance, physical space, licensee competence and research literacy, and monetary funding and financial efficiencies.

## **GOVERNANCE**

Effective governance of the Library System must include processes that foster trust among the various stakeholders, including the County Courthouse Libraries, the local Law Associations, the Great Library, the Law Society and its licensees. It must balance their often competing interests.

To make the best use of resources and ensure a system that works, there must be systemic efficiencies, rational processes for decision-making, administrative structures that can be justified in operation rather than in theory and certainty for those both working in and using the system. Governance-related discussions must address current administrative structure and operation of LibraryCo, allocation of funding, regional libraries' role in the system and staffing. Building trust among the various players involved in the Library System will need time and a coherent communication and action plan. It will be important to address issues of accountability of all participants within the Library System.

In parallel to an examination of governance and accountability, an examination must be taken into the funding models for libraries. Currently, the funding model is not based on a rational or consistently applied formula. This leads to inefficiency and uncertainty and is itself a barrier to reform. With a "fresh start" on governance and appropriate reassurances regarding the importance of the Library System, trust can be re-built among the stakeholders and opportunities can be pursued to revitalize libraries, provide other benefits to the local bar and contribute to access to justice.

Courthouse Libraries and Great Library staff are invaluable resources within the Library System and provide an important service to the legal profession. Supporting staff professional development and better coordinating the differing roles of regional, area and local libraries would improve their ability to provide assistance to library users.

### **Next Steps**

In the area of governance, the Treasurer and shareholders received the advice provided to,

- continue the dialogue respecting improving governance of the system, rationalizing its cost, updating and confirming financial information, determining what component parts of the current LibraryCo, if any, should be retained and exploring various ways of improving the Library System's integrated components of governance, management and operations;
- engage in a more open dialogue about overall spending on library & legal information services throughout the Library System (with the Great Library);
- consider whether and how regional libraries may play an expanded and enhanced role in improving the delivery of services throughout the Library System, including through better and more creative interaction between the regional libraries and the Great Library; and
- consider systemic professional development and more coherent consideration of differing roles for staff across the system.

### **PHYSICAL SPACE**

The local County Courthouse Libraries occupy physical space in courthouses. For many years, law associations have utilized the space for multiple purposes building on library services with complementary services. At the same time, the space has potential to be an important community resource both for the legal community and the public for the delivery of a broad range of legal services, including researching the law and facilitating access to justice. Going

forward, by expanding the way the space is viewed the space could become an important or useful part of any strategy to improve access to justice. At the same time, considerations of security, client confidentiality and the need for private-bar lawyers to “have their own space” inside the courthouse must be weighed and balanced. While it is true that the transition from relatively passive, closed spaces to more vibrant and active space will require extensive consultation, flexibility and planning, if this can occur, the potential results will be important not only to the members of the public who are accessing legal services but also to the local communities in which the libraries are located.

### **Next Steps**

In the area of physical space, the Treasurer and shareholders received the advice provided to,

- undertake a business case analysis of the potential for increased use of the libraries to provide community legal education, resources for self-represented litigants and access to legal information without disrupting the access by licensees who provide core funding for the resources.

### **LICENSEE COMPETENCE AND RESEARCH LITERACY**

The Library System is an integral component of the Law Society's mandate to ensure licensee competence. Its services and their delivery should, therefore, be focused on best practices, particularly as it relates to the development of legal research literacy and skills and lawyer and paralegal competence. The current system has not been designed to advance this systemic approach or to provide education and training to encourage lawyers and paralegals to accomplish these competence goals. Proper research is the foundation of competence and best practices and libraries and library staff are an invaluable aid to that objective. Library staff is well positioned to assist with legal research literacy for both lawyers and paralegals and expand and enhance that role. There is room for such education to become part of licensees' continuing professional development (CPD) landscape.

Any consideration of this area must address, among other issues, research literacy and the role of library staff in fostering it, access to French language resources, the uses for both electronic and paper resources, the libraries' role in fostering networking, collegiality and mentoring as part of competence, marketing and orientation sessions for licensees.

French language resources are important to the overall competent delivery of legal services in Ontario. Such resources should include precedents, legislation, case law and reference materials. Whereas some resources are currently available, others are insufficient. Concerted efforts to enhance the availability and delivery of French language materials should be the subject of specific discussion and analysis.

There is room for greater interaction within the Library System of licensees and the bench, other stakeholder groups and associations operating within the courthouses or local communities. Law associations and libraries provide opportunities for licensees to get to know and support one another. This is an important component of the Library System and it is especially important for recent and internationally-trained Law Society members who might otherwise become isolated.

Discussion should also take place about increasing paralegal access to the county law libraries so that paralegals benefit from and contribute to the Library System and enhanced use of the spaces. Increasing paralegal access, which is inconsistent across different libraries in Ontario, will enhance their opportunities for networking, collegiality and mentorship.

Law Society members are not always aware of the resources for which they pay or to which they have access, and therefore may not appreciate the value they receive for their fees. There are ways to address this gap and to enhance the use of services.

### **Next Steps**

In the area of licensee competence and research literacy, the Treasurer and shareholders received the advice provided to,

- consider the means by which the Law Society could increase materials available in both official languages to licensees and the public, at reasonable cost, such as through Jurisource, CanLII and County Courthouse Libraries;
- ensure that any improvements to the Library System focus on the central role libraries should play in enhancing licensee competence and research literacy; and
- consider the investigation of a CPD requirement, whether for new calls or all licensees, addressing legal research competency.

### **Monetary Funding / Financial Efficiencies**

Effective use of resources is essential to the success of the Library System, never more so than in an environment of scarce resources, such as money. Possibilities for new sources of funding and ways of better utilizing and redeploying existing funding should be explored.

CanLII is an extraordinary success story that is good news for the legal information system of which the County Courthouse Libraries are an integral component. The importance of CanLII and its continued potential for spectacular growth and improvement at relatively little cost compared to the current model using private publishers is a vital consideration for the Library System's future. Further, such improvement could leverage the investment made to date by the Law Society and secure CanLII's position as a viable and acceptable alternative to existing commercial services.

In the face of cuts and other challenges to funding, as well as in the interest of rigorous analysis of the usefulness of services and delivery mechanisms it is important to consider redeploying existing funding, including eliminating approaches that do not produce necessary results. Revitalizing library spaces to provide better public access, *pro bono* programs to assist self-represented litigants and seminars to provide both general education to the public about the law and their rights and obligations as well as tools to search the law could all contribute to access to justice. They could also provide possible new funding from a variety of sources, such as the Law Foundation and other granting bodies interested in improving access to justice.

### **Next Steps**

In the area of monetary funding and financial efficiencies, the Treasurer and shareholders received the advice provided to,

- consider establishing a mechanism by which CanLII is bolstered financially to further enable it to develop into a robust, affordable competitor to the private sector publishers; and
- conduct a comprehensive review of alternate sources of funding and opportunities for better use of existing funds within the Library System.

## CONCLUSION

The Library System needs to be revitalized in keeping with the contemporary realities of a world in which clients are increasingly taking a more active role in areas of law such as small claims court, family law and less complex cases. Lawyers and paralegals also require constantly updated resources to provide high quality services.

Physical library space is critical to the local law associations who make good use of it. There is also room to enlarge the activities taking place in the libraries. More education to the public and assistance to self-represented litigants can only serve to increase the benefit of having a library in the courthouse and of lawyers and paralegals assisting with information seminars on the law and documentation to explain court processes. Increased access for the public can be achieved while maintaining appropriate after-hours access and reserving portions of the space for lawyers and paralegals.

This Report outlines the significant issues it considers relevant to any continued consideration of Library System improvements. There is a degree of urgency in addressing efficiencies within the Library System. Next steps must be coordinated and coherent and should embrace a willingness of all stakeholders to be flexible in the interests of a vibrant Library System. Collaboration and partnership can hopefully become part of the overall Library System management by the shareholders, partners and stakeholders. Including the input of experts in legal information, library systems and competence will result in recommendations that will provide a well-defined pathway for the future.

The Treasurer and shareholders received the advice provided to,

- consider extending the mandate and scope of the LISS Working Group to flesh out the most immediately promising areas and develop a plan to prioritize the other areas or, continue such work through other avenues with the benefit of expert participation and advice on the future direction of legal information and library services and best practices.

.....  
 IN CAMERA  
 .....

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Request to Amend Section 49.12 of the *Law Society Act*

It was moved by Mr. Mercer, seconded by Mr. Sullivan, that Convocation approve amendments to section 49.12 of the *Law Society Act* to:

- a. exclude information obtained as a result of a trusteeship or freezing order from 49.12; and
- b. clarify that the Law Society may release information under subsection 49.12(2)(f) to prevent harm that is personal, financial, or in the administration of justice, in addition to physical, and that “person” can include an individual or a business entity.

Carried

**TAB 3.2**

*In Camera*

**FOR DECISION**

**REQUEST TO AMEND SECTION 49.12 OF THE LAW SOCIETY ACT**

**MOTION**

10. That Convocation approve amendments to section 49.12 of the *Law Society Act* to:
  - c. exclude information obtained as a result of a trusteeship or freezing order from 49.12; and
  - d. clarify that the Law Society may release information under subsection 49.12(2)(f) to prevent harm that is personal, financial, or in the administration of justice, in addition to physical, and that “person” can include an individual or a business entity.

**Issue for Consideration**

11. The Executive Director, Professional Regulation, Director, Public Affairs and General Counsel have been working with representatives of the Ministry of the Attorney General to discuss issues around reporting to law enforcement.

12. Ministry staff have been interested in the Law Society's confidentiality and disclosure requirements and have been receptive to the idea of a legislative amendment.
13. The Treasurer has written to the Attorney General of Ontario to confirm these discussions. A copy of the letter to the Honourable Madeline Meilleur, dated September 10, 2014, is attached as **Tab 3.2.1**.
14. The proposed amendments will provide greater certainty for Law Society staff and benchers and stakeholders including law enforcement, government, the media, licensees and the general public about the protections provided in section 49.12. Sections 49.3-49.13 of the Law Society Act are attached as **Tab 3.2.2**.<sup>1</sup>

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<sup>1</sup> The *Law Society Act*, R.S.O. 1990, c. L.8, may be accessed online at [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90l08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm).

## DISCUSSION

### Background and Context

#### Express Exclusion of Trusteeships from Section 49.12

15. Section 49.12 does not specifically refer to information obtained as a result of a trusteeship. Subsection 49.12(1) states that information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Law Society as a result of an audit, investigation, review, search, seizure or other proceeding under this Part may not be disclosed. Subsection 49.12(2) provides exceptions.
16. The Law Society's authority to apply to the Superior Court of Justice for a freezing order and/or trusteeship order is set out in sections 49.44 – 49.54 of the *Law Society Act*, reproduced at **Tab 3.2.3**.
17. The Law Society's authority for trusteeships and freezing orders is distinct from its authority for audits, investigations, reviews, searches, seizures or other proceedings as referred to in section 49.12. The purpose of the proceedings listed in section 49.12 is to determine whether there is evidence of misconduct, incapacity or incompetence on the part of a licensee, whereas an application for a trusteeship or freezing is largely driven by the need to protect property, files and monies belonging to a licensee's clients.
18. The Law Society's Trustee Services department will seek a trusteeship from the Court when such an order is required to permit the Law Society to take over all or part of a licensee's practice, to protect the clients of the licensee. Freezing orders are specifically focused on the licensee's trust account. Only the Superior Court of Justice has the power to grant either a trusteeship or a freezing order.
19. An application for a freezing or trusteeship order, including the affidavit evidence and any other materials used in support of the application, is filed with the Court and must be considered publicly available, subject to the Rules of the Court. Since the application is made to Court and is public, it would be impossible to comply with the confidentiality requirements of section 49.12, if such information was caught by the prohibition.
20. The information relied on in order to obtain a trusteeship or freezing order is intended to be used in a public court process rather than a confidential investigation. If, however, such information must be kept confidential this can be brought before the Court to address as required.
21. When the Law Society obtains a trusteeship, the Law Society becomes trustee of the licensee's practice. This ensures that solicitor-client privilege continues to be protected. The primary difference with 49.12 is that the licensee's consent would not be required under the trusteeship and in fact requiring his/her consent would be inconsistent with the concept of trusteeship.

22. However, information collected for the purpose of a trusteeship does not acquire greater protection when it comes into the Law Society's possession than it would have in the licensee's possession. In order to obtain this information through a production order the police still require client waivers. The court cannot order access to solicitor/client privileged information unless the facts fit within one of the exceptions. The information may be subject to a production order by the police with client waivers, for example. To interpret this otherwise would permit a dishonest licensee to abandon his or her practice and shield it from law enforcement when the Law Society steps in as trustee.
23. As noted above, while the Law Society currently interprets section 49.12 to exclude both information used to obtain a trusteeship or freezing order and information subsequently obtained pursuant to such orders, it would be helpful if this were more clearly expressed in the Act. The information used to obtain the order is typically public already. Furthermore, in most instances, the information obtained as a result of a trusteeship belongs to clients of the licensee and is most likely to be shared with the clients or their new representatives.

#### **Exemption for Risk of Harm**

24. Paragraph 49.12(2)(f) permits disclosure of confidential information if there are reasonable grounds for believing that if the disclosure is not made, there is significant risk of harm to the person who was the subject of the audit, investigation, review, search, seizure or proceeding or to another person, and making the disclosure is likely to reduce the risk.
25. The Law Society has broadly interpreted this exception so that:
  - a. "harm" includes physical, psychological or financial harm;
  - b. "person" can include an individual, business entity or the administration of justice.
26. To interpret otherwise would hamper the Law Society's ability to disclose information about a licensee who has misappropriated trust funds, or engaged in mortgage fraud. These circumstances may not disclose a risk of physical harm, but may constitute reasonable grounds to believe that there is a significant risk of financial harm to current and future clients, and disclosure would likely reduce the risk.
27. This interpretation would assist the Law Society in reporting criminal or illegal activity to law enforcement and other regulators such as the Ontario Securities Commission, or the Financial Services Commission of Ontario. The Law Society would only disclose sufficient information required to make the report and would not disclose client information without obtaining client consent.
28. While the current legislation does not prohibit the Law Society from interpreting the subsection in this manner, it would be of assistance if the exception were clarified to make this explicit.

29. The Professional Regulation and Paralegal Standing Committees discussed these proposed amendments at their October 2014 meetings, and are in agreement that this initiative should proceed.



September 10, 2014

**PRIVATE AND CONFIDENTIAL**

The Honourable Madeleine Meilleur  
Attorney General  
McMurtry - Scott Building  
11th Floor, 720 Bay Street  
Toronto, ON M7A 2S9

Dear Minister:

***Re: Law Society of Upper Canada Professional Regulation investigations and prosecutions and reports of wrongdoing to other authorities***

From time to time The Law Society has information about criminal or other wrongful activity on the part of lawyers and paralegals as a result of its regulatory work. As you are aware, this was the subject of media interest, focusing on the Law Society's obligation to report to law enforcement authorities. Even absent media interest, this is an issue of concern for the Law Society. In keeping with standard instructions, staff regularly assess cases to determine whether any such report should be made. In 2013, the Law Society began a review of its reporting procedures as a result of the adoption of a national law society standard (National Discipline Standards) through the Federation of Law Societies. This standard, which was adopted by Convocation, requires that all law societies have the ability to report information to police.

In reviewing our existing processes in order to comply with the National Discipline Standards, we noted that amendments could be made to the *Law Society Act* that would clarify our authority to report. Our interest in amendments is focused on section 49.12. This section provides confidentiality protection primarily to clients and others whose confidential and privileged information the Law Society is able to compel under the legislation. More specifically, the Law Society is considering the merits of an amendment of sub-section 49.12(2)(f) to expressly state that the Law Society can disclose information where that would prevent a risk of harm that is physical, otherwise personal or financial to any person.

Office of the Treasurer

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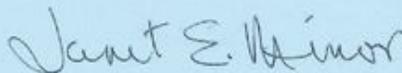
Secondly section 49.12 could be amended to clarify that the information protected under that section does not include information obtained in the course of a trusteeship under the Act. Information held in a trusteeship is not obtained through the Law Society's investigation authority and therefore does not require the same level of protection. Such information can be obtained in the normal course by police with client waivers and production orders.

Law Society staff have been consulting with your Ministry staff on these possible amendments and I am encouraged by the positive nature of these discussions.

In addition to our review of the legislation, the Law Society is also developing a formal written statement to capture its current processes to notify police and other authorities of criminal acts or other wrongdoing. A policy setting out the process for the public is under consideration and will likely be before Convocation shortly. This will improve our ability to explain to media and others how we address this responsibility on a timely basis. In addition, in September 2014 we will be implementing a process to actively alert authorities when a released decision of the Law Society Tribunal discloses evidence of criminal activity.

I look forward to further discussions on this subject as required, and would be happy to meet with you

Yours truly,



Janet E. Minor  
Treasurer

*Copies: Patrick Monahan  
Deputy Attorney General of Ontario*

*Irwin Glasberg  
Assistant Deputy Attorney General*

**Law Society Act****R.S.O. 1990, CHAPTER L.8****SECTIONS 49.3 – 49.13**

Last amendment: 2013, c. 17, ss. 1-26.

**Investigations****Conduct**

49.3 (1) The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee. 2006, c. 21, Sched. C, s. 43.

**Powers**

(2) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,

- (a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work with the licensee to provide information that relates to the matters under investigation. 2006, c. 21, Sched. C, s. 43.

**Capacity**

(3) The Society may conduct an investigation into a licensee's capacity if the Society receives information suggesting that the licensee may be, or may have been, incapacitated. 2006, c. 21, Sched. C, s. 43.

**Powers**

(4) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section is satisfied that there are reasonable grounds for believing that a licensee being investigated under subsection (3) may be, or may have been, incapacitated, the person conducting the investigation may,

- (a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work with the licensee to provide information that relates to the matters under investigation. 2006, c. 21, Sched. C, s. 43.

49.4-49.7 REPEALED: 2006, c. 21, Sched. C, s. 43.

**Privilege****Disclosure despite privilege**

49.8 (1) A person who is required under section 42, 49.2, 49.3 or 49.15 to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (1).

**Disclosure by other person, body**

(1.1) The Society or the Complaints Resolution Commissioner, as the case may be, may receive from any person or body information or documents in relation to a review under section 42, an audit under section 49.2, or an investigation under section 49.3 or 49.15, even if the information or documents are privileged or confidential. 2013, c. 17, s. 14 (1).

**Admissibility despite privilege**

(2) Despite clause 15 (2) (a) and section 32 of the *Statutory Powers Procedure Act*, information provided and documents produced under section 42, 49.2, 49.3 or 49.15 and information or documents described in subsection (1.1) are admissible in a proceeding under this Act even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (2); 2013, c. 17, s. 14 (2).

(2.1) REPEALED: 2013, c. 17, s. 14 (3).

**Privilege preserved for other purposes**

(3) Subsections (1), (1.1) and (2) do not negate or constitute a waiver of any privilege and, even though information or documents that are privileged must be disclosed under subsection (1) or may be received under subsection (1.1), and are admissible in a proceeding under subsection (2), the privilege continues for all other purposes. 2013, c. 17, s. 14 (4).

**Removal for copying**

49.9 (1) A person entitled to examine documents under section 42, 49.2, 49.3 or 49.15 may, on giving a receipt,

- (a) remove the documents for the purpose of copying them; and
  - (b) in the case of information recorded or stored by computer or by means of any other device, remove the computer or other device for the purpose of copying the information.
- 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (2).

**Return**

(2) The person shall copy the documents or information with reasonable dispatch and shall return the documents, computer or other device promptly to the person from whom they were removed. 1998, c. 21, s. 21.

**Order for search and seizure**

49.10 (1) On application by the Society, the Superior Court of Justice may make an order under subsection (2) if the court is satisfied that there are reasonable grounds for believing,

- (a) that one of the following circumstances exists:
  - (i) a review of a licensee's professional business under section 42 is authorized,
  - (ii) an investigation into a licensee's conduct under subsection 49.3 (1) is authorized, or
  - (iii) a licensee whose capacity is being investigated under subsection 49.3 (3) may be, or may have been, incapacitated;

- (b) that there are documents or other things that relate to the matters under review or investigation in a building, dwelling or other premises specified in the application or in a vehicle or other place specified in the application, whether the building, dwelling, premises, vehicle or place is under the control of the licensee or another person; and
- (c) that an order under subsection (2) is necessary,
  - (i) because of urgency,
  - (ii) because use of the authority in subsection 42 (2) or 49.3 (2) or (4) is not possible, is not likely to be effective or has been ineffective, or
  - (iii) because subsection 42 (2) or 49.3 (2) or (4) does not authorize entry into the building, dwelling or other premises specified in the application or the vehicle or other place specified in the application. 2006, c. 21, Sched. C, s. 46 (1).

#### **Contents of order**

(2) The order referred to in subsection (1) may authorize the person conducting the investigation or review, or any police officer or other person acting on the direction of the person conducting the investigation or review,

- (a) to enter, by force if necessary, any building, dwelling or other premises specified in the order or any vehicle or other place specified in the order, whether the building, dwelling, premises, vehicle or place is under the control of the licensee or another person;
- (b) to search the building, dwelling, premises, vehicle or place;
- (c) to open, by force if necessary, any safety deposit box or other receptacle; and
- (d) to seize and remove any documents or other things that relate to the matters under investigation or review. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 46 (2).

#### **Terms and conditions**

(3) An order under subsection (2) may include such terms and conditions as the court considers appropriate. 1998, c. 21, s. 21.

#### **Assistance of police**

(4) An order under subsection (2) may require a police officer to accompany the person conducting the investigation or review in the execution of the order. 1998, c. 21, s. 21.

#### **Application without notice**

(5) An application for an order under subsection (2) may be made without notice. 1998, c. 21, s. 21.

#### **Removal of seized things**

- (6) A person who removes any thing pursuant to an order under this section shall,
  - (a) at the time of removal, give a receipt to the person from whom the thing is seized; and
  - (b) as soon as practicable, bring the thing before or report the removal to a judge of the Superior Court of Justice. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

#### **Order for retention**

(7) If the judge referred to in clause (6) (b) is satisfied that retention of the thing is necessary for the purpose of the investigation or review or for the purpose of a proceeding under this Part, he or she may order that the thing be retained until,

- (a) such date as he or she may specify; or

- (b) if a proceeding under this Part has been commenced, until the proceeding, including any appeals, has been completed. 1998, c. 21, s. 21.

#### **Extension of time**

(8) A judge of the Superior Court of Justice may, before the time for retaining a thing expires, extend the time until,

- (a) such later date as he or she may specify; or
- (b) if a proceeding under this Part has been commenced, until the proceeding, including any appeals, has been completed. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

#### **Return**

(9) If retention of a thing is not authorized under subsection (7) or the time for retaining the thing expires, it shall be returned to the person from whom it was seized. 1998, c. 21, s. 21.

#### **Seizure despite privilege**

(10) An order under this section may authorize the seizure of a thing even if the thing is privileged or confidential. 1998, c. 21, s. 21.

#### **Admissibility despite privilege**

(11) Despite clause 15 (2) (a) and section 32 of the *Statutory Powers Procedure Act*, a thing seized under this section is admissible in a proceeding under this Act even if the thing is privileged or confidential. 1998, c. 21, s. 21.

#### **Privilege preserved for other purposes**

(12) Subsections (10) and (11) do not negate or constitute a waiver of any privilege and, even though a thing that is privileged may be seized under subsection (10) and is admissible in a proceeding under subsection (11), the privilege continues for all other purposes. 1998, c. 21, s. 21.

#### **Identification**

49.11 On request, a person conducting an audit, investigation, review, search or seizure under this Part shall produce identification and proof of his or her authority. 1998, c. 21, s. 21.

#### **Confidentiality**

49.12 (1) A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part. 1998, c. 21, s. 21.

#### **Exceptions**

- (2) Subsection (1) does not prohibit,
  - (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure required in connection with a proceeding under this Act;
  - (c) disclosure of information that is a matter of public record;
  - (d) disclosure by a person to his or her counsel;
  - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure; or
  - (f) disclosure, if there are reasonable grounds for believing that,

- (i) if the disclosure is not made, there is a significant risk of harm to the person who was the subject of the audit, investigation, review, search, seizure or proceeding or to another person, and
- (ii) making the disclosure is likely to reduce the risk. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 47.

### **Testimony**

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

### **Disclosure to public authorities**

49.13 (1) The Society may apply to the Superior Court of Justice for an order authorizing the disclosure to a public authority of any information that a bencher, officer, employee, agent or representative of the Society would otherwise be prohibited from disclosing under section 49.12. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

### **Restrictions**

- (2) The court shall not make an order under this section if the information sought to be disclosed came to the knowledge of the Society as a result of,
  - (a) the making of an oral or written statement by a person in the course of the audit, investigation, review, search, seizure or proceeding that may tend to criminate the person or establish the person's liability to civil proceedings;
  - (b) the making of an oral or written statement disclosing matters that the court determines to be subject to solicitor-client privilege; or
  - (c) the examination of a document that the court determines to be subject to solicitor-client privilege. 1998, c. 21, s. 21.

### **Documents and other things**

(3) An order under this section that authorizes the disclosure of information may also authorize the delivery of documents or other things that are in the Society's possession and that relate to the information. 1998, c. 21, s. 21.

### **No appeal**

(4) An order of the court on an application under this section is not subject to appeal. 1998, c. 21, s. 21.

**Law Society Act****R.S.O. 1990, CHAPTER L.8****SECTIONS 49.44 – 49.52**

Last amendment: 2013, c. 17, ss. 1-26.

**FREEZING ORDERS AND TRUSTEESHIP ORDERS****Application**

49.44 (1) Sections 49.45 to 49.52 apply to property that is or should be in the possession or control of a licensee in connection with,

- (a) the professional business of the licensee;
- (b) the business or affairs of a client or former client of the licensee;
- (c) an estate for which the licensee is or was executor, administrator or administrator with the will annexed;
- (d) a trust of which the licensee is or was a trustee;
- (e) a power of attorney under which the licensee is or was the attorney; or
- (f) a guardianship under which the licensee is or was the guardian. 2006, c. 21, Sched. C, s. 63 (1).

**Same**

(2) Sections 49.45 to 49.52 apply to property wherever it may be located. 1998, c. 21, s. 21.

**Same**

(3) An order under section 49.46 or 49.47 applies to property that is or should be in the possession or control of the licensee before or after the order is made. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 63 (2).

**Grounds for order**

49.45 An order may be made under section 49.46 or 49.47 with respect to property that is or should be in the possession or control of a licensee only if,

- (a) the licensee's licence has been revoked;
- (b) the licensee's licence is under suspension or the manner in which the licensee may practise law or provide legal services has been restricted;
- (c) the licensee has died or has disappeared;
- (d) the licensee has neglected or abandoned his or her professional business without making adequate provision for the protection of clients' interests;
- (e) there are reasonable grounds for believing that the licensee has or may have dealt improperly with property that may be subject to an order under section 49.46 or 49.47 or with any other property; or
- (f) there are reasonable grounds for believing that other circumstances exist in respect of the licensee or the licensee's professional business that make an order under section 49.46 or 49.47 necessary for the protection of the public. 2006, c. 21, Sched. C, s. 64.

**Freezing order**

49.46 On the application of the Society, the Superior Court of Justice may order that all or part of the property that is or should be in the possession or control of a licensee shall not be paid out or dealt with by any person without leave of the court. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 65.

**Trusteeship order**

49.47 (1) On the application of the Society, the Superior Court of Justice may order that all or part of the property that is or should be in the possession or control of a licensee be held in trust by the Society or another person appointed by the court. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 66 (1).

**Purpose of order**

(2) An order may be made under subsection (1) only for one or more of the following purposes, as specified in the order:

1. Preserving the property.
2. Distributing the property.
3. Preserving or carrying on the licensee's professional business.
4. Winding up the licensee's professional business. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (2).

**Property subject to freezing order**

(3) An order under subsection (1) may supersede an order under section 49.46. 1998, c. 21, s. 21.

**Use of agent**

(4) If the Society is appointed as trustee, it may appoint an agent to assist it or act on its behalf. 1998, c. 21, s. 21.

**Search and seizure**

(5) An order under subsection (1) may authorize the trustee or the sheriff, or any police officer or other person acting on the direction of the trustee or sheriff,

- (a) to enter, by force if necessary, any building, dwelling or other premises, or any vehicle or other place, where there are reasonable grounds for believing that property that is or should be in the possession or control of the licensee may be found;
- (b) to search the building, dwelling, premises, vehicle or place;
- (c) to open, by force if necessary, any safety deposit box or other receptacle; and
- (d) to seize, remove and deliver to the trustee any property that is or should be in the possession or control of the licensee. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (3, 4).

**Assistance of police**

(6) An order under this section may require a police officer to accompany the trustee or sheriff in the execution of the order. 1998, c. 21, s. 21.

**Compensation**

(7) In an order under subsection (1) or on a subsequent application, the court may make such order as it considers appropriate for the compensation of the trustee and the reimbursement of

the trustee's expenses out of the trust property, by the licensee or otherwise as the court may specify. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 66 (5); 2010, c. 1, Sched. 12, s. 5.

#### **Application for directions**

49.48 The Society, at the time of making an application for an order under section 49.46 or 49.47, or the trustee appointed under subsection 49.47 (1), may apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question affecting the property. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2).

#### **Application without notice**

49.49 An application for an order under section 49.46 or 49.47 may be made without notice. 1998, c. 21, s. 21.

#### **Requirement to account**

49.50 An order under section 49.46 or 49.47 may require the licensee to account to the Society and to any other person named in the order for such property as the court may specify. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 67.

#### **Variation or discharge**

49.51 (1) The Society, the licensee or any person affected by an order under section 49.46 or 49.47 may apply to the Superior Court of Justice to vary or discharge the order. 1998, c. 21, s. 21; 2002, c. 18, Sched. A, s. 12 (2); 2006, c. 21, Sched. C, s. 68.

#### **Notice**

(2) In addition to any person specified by the rules of court, notice of an application under this section shall be given to,

- (a) the Society, if the Society is not the applicant; and
- (b) the trustee, if an order has been made under section 49.47 and the applicant is not the trustee. 1998, c. 21, s. 21.

#### **Former licensees or members**

49.52 (1) Sections 49.44 to 49.51 also apply, with necessary modifications, in respect of,

- (a) a person who was and has ceased to be a licensee; and
- (b) a person who was and has ceased to be a member and has never become a licensee. 2006, c. 21, Sched. C, s. 69.

#### **Same**

(2) Sections 49.44 to 49.51 apply to property that is or should be in the possession or control of,

- (a) a person described in clause (1) (a), before or after the person ceases to practise law or provide legal services; or
- (b) a person described in clause (1) (b), before or after the person ceases to practise law. 2006, c. 21, Sched. C, s. 69.

#### **Same**

(3) In applying sections 49.44, 49.45 and 49.47 to a person described in clause (1) (b),

- (a) a reference to a professional business shall be deemed to be a reference to a law practice;

- (b) a reference to a licence having been revoked shall be deemed to be a reference to a membership having been revoked; and
- (c) a reference to a licence being under suspension shall be deemed to be a reference to rights and privileges as a member being under suspension. 2006, c. 21, Sched. C, s. 69.

**Definitions**

(4) In this section,

“amendment day” means the day subsection 2 (6) of Schedule C to the *Access to Justice Act, 2006* came into force; (“jour de la modification”)

“member” means a member as defined in section 1, as it read immediately before the amendment day. (“membre”) 2006, c. 21, Sched. C, s. 69.

.....  
IN PUBLIC  
.....

*REPORTS FOR INFORMATION ONLY*

JOINT REPORT OF THE ACCESS TO JUSTICE COMMITTEE AND EQUITY AND  
ABORIGINAL ISSUES COMMITTEE

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

THE EVOLUTION OF LEGAL INFORMATION AND LIBRARY SERVICES IN ONTARIO

CONVOCATION ROSE AT 12:40 P.M.

Confirmed in Convocation this 28<sup>th</sup> day of November, 2014.

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Janet E. Minor,  
Treasurer

This is **Exhibit J** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Alexandra Heine  
(LSO #83514R)



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

**April 23, 2015**  
**9:00 a.m.**

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# CONVOCATION MATERIAL

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**CONVOCATION AGENDA**  
**April 23, 2015**

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**Convocation Room – 9:00 a.m.**

**Treasurer's Remarks**

**Election of Bencher** [Tab 1]

**Consent Agenda - Motion** [Tab 2]

- **Confirmation of Draft Minutes of Convocation** – February 26, March 30 and April 8, 2015
- **Motion** – [Appointments](#)  
– [In Camera Item](#)
- **Report of the Director of Professional Development and Competence - Deemed Call Candidates**
- **Treasurer's Reports** – LAWPRO Annual Shareholder's Resolutions and LibraryCo Inc. Proxy

**Secretary's Report** [Tab 3]

- Amendment to By-Law 3

**Address by Michele H. Hollins Q.C., President of the Canadian Bar Association**

**Address by Orlando Da Silva, President of the Ontario Bar Association**

**Audit & Finance Committee Report** (*C. Bredt, P. Wardle*) [Tab 4]

- Law Society Audited Financial Statements for the Year Ended December 31, 2014
- Investment Policy
- Investment Manager and Custodian
- Cheque Signing Authority

*For Information*

- In Camera Item
- LAWPRO Annual Financial Statements for the Year Ended December 31, 2014
- LibraryCo Inc. Annual Financial Statements for the Year Ended December 31, 2014
- Investment Compliance Reporting for the Year Ended December 31, 2014
- LAWPRO Report (*S. McGrath*)

**Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report** (*P. Schabas*) [Tab 5]

- Human Rights Monitoring Group Interventions

*For Information*

- Human Rights Monitoring Group Past Intervention
- Renewal Process for the Aboriginal Initiatives Strategy (*S. Hare*)
- Challenges Faced by Racialized Licensees Working Group Status Report (*J. Leiper*)
- Snapshots of the Profession (*J. Falconer*)
- Discrimination and Harassment Counsel Semi-Annual Report for the Period July 1 to December 31, 2014 (*J. Leiper*)
- Equity Legal Education and Rule of Law Series Calendar 2015

**Heritage Committee Report** (*C. Backhouse*) [Tab 6]

- Proposal for Establishment of the J. Shirley Denison Award

**Professional Development and Competence Committee Report** (*H. Goldblatt*) [Tab 7]

- Elimination of CPD Compliance Desk Audits

**Tribunal Committee Report** (*R. Anand, D. Wright*) [Tab 8]

- Housekeeping Amendments to the Hearing Division Forms  
*For Information*
- Tribunal Annual Report (*D. Wright*)

**Access to Justice Committee Report** (*C. Corsetti, P. Schabas*) [Tab 9]

- In Camera Item  
*For Information*
- Proposal for Establishment of the J. Shirley Denison Award

**Paralegal Standing Committee Report** (*M. Haigh*) [Tab 10]

- In Camera Item  
*For Information*
- Election of the Chair of the Paralegal Standing Committee

*REPORTS FOR INFORMATION ONLY***Federation of Law Societies of Canada Update** [Tab 11]**Mentoring and Advisory Services Proposal Task Force** (*L. Rothstein, P. Wardle*) [Tab 12]

- Interim Report

**Professional Regulation Committee Report** (*M. Mercer*) [Tab 13]

- In Camera Item
- Entity and Compliance-Based Regulation Review Status Report

**Report from The Action Group on Access to Justice (TAG)** [Tab 14]**Law Society Submission to the Standing Committee on Justice Policy on Bill 49, Ontario Immigration Act, 2015** [Tab 15]

Lunch – Benchers' Dining Room

Tab 1

**THE LAW SOCIETY OF UPPER CANADA**MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 23, 2015

WHEREAS Adriana Doyle, who was elected from the East Electoral Region on the basis of votes cast by electors residing in that electoral region, has been appointed a judge of the Superior Court of Justice of Ontario, Family Court; and

WHEREAS upon being appointed a judge of the Superior Court of Justice of Ontario, Family Court, Adriana Doyle became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the East Electoral Region on the basis of votes cast by electors residing in that electoral region;

MOVED BY:

SECONDED BY:

THAT under the authority contained in By-Law 3, Constance Backhouse, having satisfied the requirements contained in subsections 42 (2) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of bencher elected from the East Electoral Region on the basis of votes cast by electors residing in that electoral region.

WHEREAS Constance Backhouse, who was elected from the Province of Ontario "B" Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has been elected by Convocation to fill a vacancy in the office of bencher elected from the East Electoral Region on the basis of votes cast by electors residing in that electoral region; and

WHEREAS Constance Backhouse's election to fill a vacancy in the office of benchers elected from the East Electoral Region on the basis of votes cast by electors residing in that electoral region has created a vacancy in the number of benchers elected from the Province of Ontario "B" Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors;

MOVED BY:

SECONDED BY:

THAT under the authority contained in By-Law 3, Carl E. Fleck, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario "B" Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors.

Tab 2

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 23, 2015

MOVED BY:

SECONDED BY:

THAT Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Tab 2.1

**DRAFT MINUTES OF CONVOCATION**

Tab 2.1.1

DRAFT

MINUTES OF CONVOCATION

Thursday, 26<sup>th</sup> February, 2015  
9:30 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong, Backhouse, Boyd (by telephone), Braithwaite, Bredt, Burd, Callaghan, Campion, Copeland (by telephone), Corsetti, Doyle, Earnshaw, Elliott, Epstein, Evans (by telephone), Falconer, Ferrier, Finkelstein (by telephone), Furlong, Go, Gold (by telephone), Gottlieb, Haigh, Halajian, Hartman, Horvat, Krishna, Lawrie, Leiper, Lerner, Lippa, MacKenzie, McDowell, McGrath, Mercer, Murchie, Murray, Pawlitz, Potter, Pustina, Rabinovitch, Richardson (by telephone), Richer, Ross, Rothstein, Sandler, Scarfone (by telephone), Schabas, Sheff, Sikand, Silverstein, C. Strosberg, H. Strosberg (by telephone), Sullivan, Swaye, Wardle, and Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed those viewing Convocation by webcast today.

The Treasurer congratulated bencher Jeffrey Lem who will be receiving the 2015 Honsberger Award from the Toronto Lawyers Association at a ceremony this evening.

The Treasurer congratulated Martin Teplitsky, Q.C., LSM on receiving an honorary LL.D. at a private ceremony on February 4, 2015.

The Treasurer advised that the Law Society's first Human Rights Award was bestowed on The Honourable Irwin Cotler, PC, MP at an event on February 12, 2015. The Treasurer thanked members of the Human Rights Monitoring Group and Equity staff who made the event a great success.

The Treasurer noted a very successful Black History Month event held on February 17, 2015, and her attendance at the Black Law Students conference in Montreal last weekend.

The Treasurer informed Convocation of the following upcoming events:

- a) The Law Society's International Women's Day event, March 5, 2015
- b) Francophone event, March 19, 2015
- c) Holocaust Remembrance Day, April 2015

The Treasurer referred to The Action Group (TAG) report in the Convocation Materials updating Convocation on the activities of TAG.

The Treasurer updated Convocation on the ongoing developments at LibraryCo. Inc.

The Treasurer advised Convocation that planning is well underway for strategic planning later this year following the bench election.

The Treasurer advised that luncheon guests are members of the Federation of Law Societies of Canada Governance Review Committee.

#### MOTION – CONSENT AGENDA

It was moved by Mr. Bredt, seconded by Ms. Hartman, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of January 29, 2015 were confirmed.

#### MOTION – Appointment – Tab 1.2

THAT Avvy Go be appointed to the Challenges Faced by Racialized Licensees Working Group.

Carried

#### REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE – Tab 1.3

THAT the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Requests for Intervention

It was moved by Mr. Schabas, seconded by Ms. Potter, that Convocation approve the letters and public statements in the following cases:

- a. Lawyer Waleed Abu al-Khair – Saudi Arabia – letters of intervention presented at Tab 2.1.1.
- b. Lawyer Sukhrat Kudratov– Tajikistan – letters of intervention and public statement presented at Tab 2.1.2.

Carried

Ms. Leiper updated Convocation on the Flip Your Wig for Justice event and the consultations of the Working Group on Challenges Faced by Racialized Licensees.

*For Information*

- Public Education Equality and Rule of Law Series Calendar 2015

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: 2014 Annual Report of the Complaints Resolution Commissioner

Mr. Mercer spoke to the Report for information.

Re: Alternative Business Structures Working Group Report

Mr. Mercer presented the Report for information.

Re: Executive Director's Report Regarding Judicial Complaints

Mr. Mercer spoke to the Report for information.

Re: Professional Regulation Division Quarterly Report

Mr. Mercer spoke to the Report for information.

HERITAGE COMMITTEE REPORT

Ms. Backhouse presented the Report.

Re: Historic Discipline Data Project Report

Ms. Backhouse presented the Report for information, and commented on other projects of the Committee in past years.

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IN PUBLIC

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*REPORTS FOR INFORMATION ONLY*

TRIBUNAL COMMITTEE REPORT

- Tribunal Office Quarterly Statistics

PROFESSIONAL REGULATION COMMITTEE REPORT

- 2014 Annual Report of the Complaints Resolution Commissioner
- Alternative Business Structures Working Group Report
- Professional Regulation Division Quarterly Report
- Judicial Complaints Report

HERITAGE COMMITTEE REPORT

- Report on the Work of the Committee

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

CONVOCATION ROSE AT 12:35 P.M.

DRAFT

MINUTES OF CONVOCATION

Monday, 30<sup>th</sup> March, 2015  
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Banack (by telephone), Boyd, Braithwaite (by telephone), Bredt (by telephone), Campion (by telephone), Corsetti (by telephone), Earnshaw, Epstein (by telephone), Lawrie (by telephone), Leiper (by telephone), Lerner, Lippa (by telephone), MacLean (by telephone), Mercer (by telephone), Richardson (by telephone), Richer (by telephone), Ross, Sheff (by telephone), Silverstein (by telephone) and Yachetti (by telephone).

.....

Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

MOTION – APPOINTMENT TO THE PARALEGAL STANDING COMMITTEE

It was moved by Mr. Silverstein, seconded by Mr. Bredt, that:

Barbara Murchie be appointed to the Paralegal Standing Committee.

Carried

CONVOCATION ROSE AT 9:05 A.M.

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Tab 2.2

**MOTIONS**

Tab 2.2.1

## **THE LAW SOCIETY OF UPPER CANADA**

### MOTION TO BE MOVED AT CONVOCATION ON APRIL 23, 2015

That Raj Anand be appointed a Co-Chair of the Challenges Faced by Racialized Licensees Working Group.

That E. Susan Elliott be appointed Vice-Chair of the Audit and Finance Committee.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

**Tab 2.3**

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, April 23<sup>rd</sup>, 2015

ALL OF WHICH is respectfully submitted

DATED this 23<sup>rd</sup> day of April, 2015

**CANDIDATES FOR CALL TO THE BAR**  
**April 23<sup>rd</sup>, 2015**

**Transfer from another province (Mobility)**

Lee Keith Axford  
Kétia Calix  
Mandeep KaurCheema  
Alison Suzanne Desipio  
Russell David Dufault  
Jessica Marie Line Gauthier-Trowsse  
Christine Marie Jamila Hakim  
Yichwin Alexander David Hu  
Catherine Alexandra Kishfy  
Ann Harriet Pollak  
April Deborah Shulze  
Ellen Marie Vandergrift

**L3**

Marie-Hélène Claire Sylvie Giroux  
Christopher Mark McEwan

**Licensing Process**

Laura Justine Coward



Tab 2.4

## **Treasurer's Report to Convocation April 23, 2015**

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### **LAWPRO Annual Shareholder Resolutions LibraryCo Inc. Annual Meeting**

**Purpose of Report: Decision**

**Prepared by James Varro  
Director, Policy**

## FOR DECISION

## LAWPRO ANNUAL SHAREHOLDER RESOLUTIONS

**Motion**

1. That Convocation authorize the Treasurer to sign the shareholder resolutions for the Lawyers' Professional Indemnity Company (LawPRO) set out at [Tab 2.4.1](#).

**Background**

2. As a result of amendments to LAWPRO's By-law No. 1, which the Law Society and all shareholders approved in 2014, the Law Society became the sole shareholder of LAWPRO effective January 1, 2015.
3. Accordingly, LAWPRO has implemented a change in governance process related to annual decisions required to be made by the shareholder of the company. Rather than seeking Convocation's approval for the Treasurer to sign the proxy to be used at LAWPRO's Annual General Meeting, Convocation's approval is sought to direct the Treasurer to sign the annual Resolutions of the Shareholder. The proposed shareholder resolutions appear at [Tab 2.4.1](#).
4. Also included for the information of Convocation is biographical information on the members of the LawPRO Board at [Tab 2.4.2](#) and LawPRO's 2014 Financial Statements at [Tab 2.4.3](#).

## FOR DECISION

## LIBRARYCO INC. ANNUAL MEETING

**Motion**

5. That Convocation authorize the Treasurer to sign the proxy in favour of the proposed shareholder resolutions set out at [Tab 2.4.4](#).

**Background**

6. The Annual and General Meeting of Shareholders of LibraryCo Inc. will be held on May 12, 2015. The notice of the meeting is attached at [Tab 2.4.5](#).
7. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at [Tab 2.4.6](#).
8. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions. The proxy is set out at [Tab 2.4.4](#).
9. The Treasurer seeks Convocation's authorization to sign the proxy on behalf of the Law Society of Upper Canada.

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY  
(the "Corporation")**

**RESOLUTIONS OF THE SHAREHOLDER**

Dated as of the  
24<sup>th</sup> day of April, 2015

**ACCEPTANCE OF MINUTES**

**RESOLVED** that the minutes of the April 30, 2014 Shareholders Meeting are accepted.

**FINANCIAL STATEMENTS**

WHEREAS the Board of Directors has approved the financial statements of the Corporation for the year ending December 31, 2014;

AND WHEREAS the shareholder has received a report of the auditor which includes statements regarding management's responsibility and the auditor's responsibility and an opinion from the auditor;

**RESOLVED** that the financial statements of the Corporation for the year ended December 31, 2014 are approved.

**ELECTION OF DIRECTORS**

**RESOLVED** that the following individuals are elected directors of the Corporation to hold office until the next annual meeting of shareholders or until their successors are elected or appointed:

George D. Anderson  
Clare A. Brunetta  
Ian D. Croft (Vice-Chair)  
Douglas F. Cutbush  
Robert F. Evans  
Frederick W. Gorbet  
Malcolm L. Heins  
Rita Hoff  
Robert G.W. Lapper, Q.C.  
Susan T. McGrath (Chair)  
Barbara J. Murchie  
Alan G. Silverstein  
Andrew N. Smith  
John C. Thompson  
Kathleen A. Waters

**APPOINTMENT OF AUDITOR**

**RESOLVED** that PricewaterhouseCoopers LLP is appointed as auditor of the Corporation to hold office until the next annual meeting of shareholders at such remuneration as may be fixed by the directors and the directors are authorized to fix such remuneration.

**CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS**

**RESOLVED** that all acts, contracts, by-laws, proceedings, appointments, elections and payments enacted, made, done and taken by the directors and officers of the Corporation to the date hereof, as the same are set out or referred to in the resolutions of the board of directors, the minutes of the meetings of the board of directors or in the financial statements of the Corporation are approved, sanctioned and confirmed.

Consented to in writing by the sole shareholder of the Corporation.

THE LAW SOCIETY OF UPPER CANADA

Per: \_\_\_\_\_  
JANET E. MINOR  
Treasurer,  
The Law Society of Upper Canada

**LAWPRO Board of Director Candidates as at January 20, 2015**

Director photo	Director biography
 <p><b>Susan T. McGrath</b> Chair, LAWPRO Board of Directors Principal, Susan T. McGrath</p>	<p>A sole practitioner from the northeastern Ontario community of Iroquois Falls, Law Society Bencher, Susan McGrath is well-known for being a dedicated advocate for sole practitioners, small firms, and lawyers working in remote areas, and for their access to quality continuing legal education and peer support.</p> <p>She was elected as chair of the LAWPRO Board in May, 2012, and acts as an <i>ex-officio</i> member of all committees.</p> <p>Since graduating from Osgoode Hall, McGrath has been an active member of her local legal community as well as contributing at the national level. She has served on her local legal aid area committee, including a stint as deputy area director, has acted as a deputy judge for the Temiskaming Small Claims Court, and has served on the Personal Rights Panel of the Office of the Children’s Lawyer.</p> <p>She has served as president of the Cochrane Law Association (1983-1984), the Ontario Bar Association (1999-2000), and the Canadian Bar Association (2004-2005). As well, she has served in many capacities on committees of these and other legal associations.</p> <p>As a bencher of the Law Society, Ms. McGrath serves on the Hearing Panel, the Appeal Panel, the government relations committee and the priority planning committee. She also serves as co-chair of the Alternative Business Structures Working Group and the vice-chair of the paralegal standing committee.</p>
 <p><b>Ian D. Croft</b> Vice-Chair, LAWPRO Board of Directors, Chartered Professional Accountant</p>	<p>A member of the board since 1995 and currently its vice-chair, Ian Croft has extensive experience in the financial management of insurance companies. Now retired, he was for many years the senior vice-president and treasurer and a director of The Woodbridge Company Limited, the principal holding company of the Thomson family.</p> <p>Mr. Croft is a Chartered Professional Accountant and has been a director of a wide variety of companies, including regulated, private and public companies in several jurisdictions, and of a college within the University of Toronto.</p> <p>He chairs LAWPRO’s executive committee, and acts as an <i>ex-officio</i> member of all committees.</p> <p>Mr. Croft is a member of the Institute of Corporate Directors, a 2005 graduate of the Institute’s Director Education Program and a 2010 graduate of their Excellence in the Boardroom program which are presented jointly with the Rotman School of Business at the University of Toronto.</p>

Director photo	Director biography
 <p><b>George D. Anderson, C.M.</b> President and Chief Executive Officer, Insurance Bureau of Canada (Retired)</p>	<p>Appointed to the LAWPRO Board of Directors in 2004, George D. Anderson is a mortgage and insurance services professional with more than 45 years' experience with award-winning companies in this sector.</p> <p>Mr. Anderson currently chairs the governance committee of the LAWPRO Board and is a member of the board's executive, governance, investment and risk committees.</p> <p>He is chair of the Board of Directors of RSA Canada and also sits on the boards of several financial organizations and non-profit charities.</p> <p>Mr. Anderson is a recipient of the Queen Elizabeth Gold and Diamond Jubilee Medals and a member of the Order of Canada. He has been awarded honorary Doctor of Laws degrees from both Carleton University and St. Francis Xavier University, and also received a Lifetime Achievement Award from the University of Regina.</p>
 <p><b>Clare A. Brunetta</b> Principal, Clare A. Brunetta</p>	<p>Clare A. Brunetta is a general practitioner located in Fort Frances; primarily serving the District of Rainy River in northwestern Ontario. A former president of the Rainy River Law Library Association and a Charter Member of the Canadian Italian Advocates Society, Clare is a past member of the Law Society of Upper Canada Joint Working Group on Real Estate; past chair of the real estate committee of the County and District Law Presidents Association (CDLPA); and past co-chair of the Working Group on Lawyers and Real Estate. A deputy judge of the small claims court since 1991, he also currently serves as a financial trustee of the Rainy River First Nations Trust.</p> <p>Summers are enjoyed at the family cabin on beautiful Rainy Lake.</p> <p>Mr. Brunetta is a member of LAWPRO's governance committee.</p>

Director photo	Director biography
 <p data-bbox="142 690 435 789"><b>Douglas F. Cutbush</b> Insurance Consultant, Arbitrator &amp; Mediator</p>	<p data-bbox="495 224 1438 323">Douglas F. Cutbush is an insurance consultant, arbitrator, mediator and insurance appraisal umpire with more than 50 years' experience in the insurance industry.</p> <p data-bbox="495 359 1463 558">Before he retired from insurance company ranks, he worked for two companies within The Gerling Global Insurance Group, holding the positions of senior vice-president and claims manager for Canada. In 1993, he established his own firm to provide insurance-related consulting, arbitration and mediation services. He is also a Panelist with the Yorkstreet Dispute Resolution Group.</p> <p data-bbox="495 590 1468 722">Mr. Cutbush is a Fellow Chartered Insurance Professional, a Fellow of the Insurance Institute of Canada, a Fellow of the Chartered Institute of Arbitrators of Great Britain, and a Chartered Arbitrator of the ADR Institute of Canada.</p> <p data-bbox="495 753 1425 821">A member of the board since 1995, Mr. Cutbush serves on LAWPRO's executive, audit and conduct review committees.</p>
 <p data-bbox="142 1320 448 1419"><b>Robert F. Evans, Q.C.</b> Principal, Evans &amp; Evans</p>	<p data-bbox="495 854 1455 1054">A principal with Evans &amp; Evans in Bradford, Robert F. Evans is a Law Society bencher and former president of the York Region Law Association. He is also an active member of his community, being a former school board trustee for nine years, past president of the Bradford Rotary Club and currently chair of the Bradford West Gwillimbury and District Community Foundation.</p> <p data-bbox="495 1085 1295 1119">Mr. Evans is a member of LAWPRO's investment committee.</p>

Director photo	Director biography
 <p data-bbox="142 695 440 758"><b>Frederick W. Gorbet, O.C.</b></p>	<p data-bbox="495 222 1455 495">Fred Gorbet has extensive experience in public policy advice and formulation, particularly with regard to financial institutions and energy policy. Following a 25 year career in the Canadian public service, where he served as Associate Secretary to the Cabinet and as Deputy Minister of Finance for Canada, Mr. Gorbet has held several senior executive positions in the life insurance industry and in academe, serving for many years as the CIT Chair in Financial Services and Director of the Financial Services Program at the Schulich School of Business (York University).</p> <p data-bbox="495 527 1455 625">A member of the LAWPRO Board since 2004, Mr. Gorbet currently chairs the audit and conduct review committees and is a member of the governance and risk committees.</p> <p data-bbox="495 657 1468 961">Since leaving government service, he has continued his involvement with public policy by serving as the executive director of the MacKay Task Force on the future of the financial services sector of Canada, the executive director of the Saucier Task Force on Corporate Governance, the senior policy advisor to the Credit Union Central of Canada on the National Initiative, and the founding chair of the Market Surveillance Panel for administered electricity markets in Ontario. His most recent assignment was as chair of the Task Force on Auto Insurance Fraud in Ontario.</p> <p data-bbox="495 993 1430 1092">Mr. Gorbet has also served as a corporate director of many firms in the private and public sectors. He currently chairs the Board of Trustees of the North American Reliability Corporation.</p> <p data-bbox="495 1123 1451 1222">Mr. Gorbet has a B.A. from York University and a Ph.D. in Economics from Duke University. He was appointed to the Order of Canada in 2000 and was promoted to Officer of the Order of Canada in 2014.</p>

Director photo	Director biography
 <p data-bbox="142 695 435 758"><b>Malcolm Heins, LSM</b> Lawyer &amp; Director</p>	<p data-bbox="495 222 1448 359">A lawyer and former insurance industry executive, Malcolm Heins was appointed chief executive officer of The Law Society of Upper Canada in 2001, retiring in early 2012. He then joined the Counsel Public Affairs team in June 2012.</p> <p data-bbox="495 390 1463 522">Mr. Heins also served as the chief executive officer of the Federation of Law Societies of Canada from November 2005 to June 2006, and from 1994 to 2001, he served as LAWPRO’s first president and chief executive officer.</p> <p data-bbox="495 554 1451 722">Prior to that, Mr. Heins was the president and chief operating officer of Gan Canada, formerly Simcoe Erie Group, then one of the largest underwriters of professional liability insurance in Canada. Before joining Gan Canada in 1981, he practised insurance and commercial litigation in Toronto.</p> <p data-bbox="495 753 1463 856">He is a graduate of Dalhousie Law School. Mr. Heins chairs LAWPRO’s risk committee and is a member of LAWPRO’s executive, conduct review, audit, governance, and investment committees.</p> <p data-bbox="495 888 1471 1121">Mr. Heins is a member of the Canadian Bar Association and in addition to LAWPRO, serves as a director of Pro Bono Law Ontario, and the Canadian College of Naturopathic Medicine and Cancer Care Ontario. He received the Law Society Medal in June 1999, the 2002 Award of Distinction from the Metropolitan Toronto Lawyers Association and, in March 2005, Communicator of the Year by the International Association of Broadcasters (Toronto).</p>
 <p data-bbox="142 1644 448 1745"><b>Rita Hoff</b> President, R. Hoff Financial Management Ltd.</p>	<p data-bbox="495 1155 1459 1257">Rita Hoff joined the board in 1996, bringing with her extensive experience in the investment industry. She was most recently vice-president and director, Debt Capital Markets, at Canaccord Capital Corporation.</p> <p data-bbox="495 1289 1455 1352">Prior to that she served as president and CEO of First Canada Securities Corporation, a firm she co-founded.</p> <p data-bbox="495 1383 1422 1451">Ms. Hoff chairs the LAWPRO investment committee and serves on the governance and risk committees.</p> <p data-bbox="495 1482 1430 1614">Hoff is currently involved with The Next 36, a program for young entrepreneurs. She has previously served as a director of CAA Central Ontario, Investment Dealers Association of Canada and as chair of Ontario District Council of the IDA.</p> <p data-bbox="495 1646 1411 1713">Ms. Hoff has a Bachelor of Commerce from the University of Bombay, India.</p> <p data-bbox="495 1745 1378 1812">She is currently pursuing studies in Spanish language and Mexican culture at the University of Guadalajara.</p>

Director photo	Director biography
 <p data-bbox="142 688 472 821"><b>Robert G.W. Lapper, Q.C.</b> Chief Executive Officer, The Law Society of Upper Canada</p>	<p data-bbox="495 224 1472 323">Robert G.W. Lapper, Q.C., is the chief executive officer of the Law Society of Upper Canada, and joined the LAWPRO Board in May 2012. He is a member of LAWPRO's audit committee.</p> <p data-bbox="495 359 1472 625">Before moving to the Law Society, Mr. Lapper had served in a number of senior positions with the British Columbia government, most recently as Deputy Minister of Labour for the province. During his tenure as Assistant Deputy Attorney General, Legal Services Branch (2001 to 2007), he oversaw a complete organizational and service transformation in the Legal Service Branch; from 2007 to 2009, he served as Deputy Cabinet Secretary and Associate Deputy Minister, Cabinet Operations and Intergovernmental Relations, in the Office of the Premier.</p> <p data-bbox="495 661 1472 892">Mr. Lapper is well-known in B.C. for his work on aboriginal law issues. His work included acting as one of the counsel to the Nisga'a Treaty negotiations, which concluded the first "modern" treaty in British Columbia. In 1998, he was appointed to head the Aboriginal Law Practice Group in the Legal Services Branch. He was recently appointed by the Attorney General of Ontario to the Aboriginal Justice Advisory Committee for the Province of Ontario.</p> <p data-bbox="495 928 1472 1060">Mr. Lapper has a passion for legal and justice issues and wide-ranging experience in legal policy and operations, and is a frequent speaker, lecturer and writer on public law, aboriginal law, commercial law and related issues.</p>

Director photo	Director biography
 <p data-bbox="142 688 451 787"><b>Barbara J. Murchie</b> Partner, Bennett Jones LLP</p>	<p data-bbox="495 222 1463 390">Ms. Murchie practices intellectual property litigation at Bennett Jones LLP in Toronto and is a bencher of the Law Society of Upper Canada. As a member of the Law Society Tribunal, she regularly sits on discipline panels as an adjudicator. She is a member of LAWPRO’s governance committee.</p> <p data-bbox="495 426 1455 726">Since 1986, when she was called to the bar, she has appeared at all levels of the Ontario and Federal courts on litigation matters that include intellectual property, professional negligence, construction law, municipal liability and general civil litigation. Over the course of her career at small and large firms, she has acted for a broad range of individual, corporate and institutional clients. Since becoming a bencher, she has become engaged in administrative law, chairing hearing panels and writing decisions on cases involving lawyers who are alleged to have breached their professional obligations.</p> <p data-bbox="495 762 1468 1062">During her 30 year legal career, Ms. Murchie has held leadership roles with a number of legal organizations including, most recently, the Law Society of Upper Canada and between 2002-2005, the Advocates Society where she was a director. She participates in numerous professional development programs as a teacher and is regional co-chair of the long-running, province-wide, Courthouse program for the Advocates Society. She is a member of a wide array of legal associations including the Intellectual Property Institute of Canada, the OBA, CBA, Toronto Lawyers Association and Women's Law Association of Ontario.</p> <p data-bbox="495 1098 1435 1161">Ms. Murchie's community service includes roles as director and chair of Ovarian Cancer Canada and Casey House Foundation.</p>

Director photo	Director biography
 <p data-bbox="142 684 427 814"><b>Alan G. Silverstein</b> Barrister &amp; Solicitor, Law Office of Alan G. Silverstein</p>	<p data-bbox="495 222 1445 352">A sole practitioner in Thornhill, Alan G. Silverstein has been at the forefront of real estate and mortgage issues for over three decades as a writer, lecturer, commentator and media personality. He is a member of LAWPRO's investment committee.</p> <p data-bbox="495 390 1474 590">Between 1997 and 2003, Alan was a director of the Real Estate Council of Ontario, the regulator of real estate agents and brokers in Ontario, where he remains a member of the insurance committee. While chair of the insurance committee at RECO, he designed and implemented the RECO insurance program that offers unprecedented coverage for consumers and members of the real estate industry.</p> <p data-bbox="495 625 1450 961">Since his 2003 election as a Bencher of the Law Society of Upper Canada, Mr. Silverstein has served on many committees, including audit and finance; government relations; sole practitioner and small firm task force; proceedings authorization; professional development and competence; alternative business structures; and real estate working group. Mr. Silverstein is a past chair of LibraryCo (which manages the Ontario courthouse library system), and a past chair of the provincial Motor Vehicles Dealers Compensation Fund (which compensates consumers who suffer a financial loss arising from a transaction with a registered motor vehicle dealer).</p> <p data-bbox="495 997 1414 1127">He returned to private practice in 2011, focusing on real estate transactions and mortgage financing, after playing an integral role between 2006 and 2010 in the launch and adoption of TELUS' Assyst Real Estate initiative.</p> <p data-bbox="495 1163 1458 1461">Certified as a specialist in real estate law by the Law Society of Upper Canada, Mr. Silverstein has written five books on real estate and mortgage financing, including <i>The Perfect Mortgage</i> and <i>Home Buying Strategies for Resale Homes</i>, along with hundreds of newspaper and magazine columns dealing with real estate and mortgage issues. He is a regular speaker at continuing professional development programs sponsored by organizations including the Law Society of Upper Canada, the Ontario Bar Association, the Institute of Law Clerks of Ontario, and local law associations.</p>

Director photo	Director biography
 <p data-bbox="142 688 456 758"><b>Andrew N. Smith</b> President, Natnook Inc.</p>	<p data-bbox="495 218 1463 495">Andrew N. Smith is a chartered financial analyst (CFA) and certified director (ICD.D) with over 45 years of experience in the financial services industry. He is involved with numerous boards, including Pro-Demnity Insurance Company, asrTrust, Associated Medical Services (AMS), GE Canada pension investment committee, University of Ottawa pension investment committee and Sun Life Global Investments. Mr. Smith was a senior executive with National Trust and in 1985 became a senior partner at James P. Marshall, Inc., an investment consulting firm.</p> <p data-bbox="495 527 1321 594">In 2004, he established a personal consulting practice to assist organizations in achieving their financial and investment goals.</p> <p data-bbox="495 625 1422 690">A member of the LAWPRO Board since 2009, Mr. Smith serves on the audit, conduct review, investment and risk committees.</p>
 <p data-bbox="142 1255 456 1392"><b>John C. Thompson,</b> FCPA FCA Chartered Accountant, Retired KPMG Partner</p>	<p data-bbox="495 785 1446 924">John C. Thompson has had a distinguished career with KPMG and its predecessor firms, serving as managing partner of the Hamilton, Ottawa and London offices, as well as serving as the partner-in-charge of audit services for southwestern Ontario.</p> <p data-bbox="495 955 1390 1020">He also served on the firm’s Partnership Board and its management committee.</p> <p data-bbox="495 1052 1458 1253">While on the Partnership Board, he chaired the partners’ compensation committee. Working with some of KPMG’s largest clients, Mr. Thompson has developed skills in financial reporting, management systems, and business and strategic planning. He has experience in business acquisitions, reorganizations, and private and public financing activities both in Canada and the United States.</p> <p data-bbox="495 1285 1373 1352">He obtained his chartered accountant designation in 1971 and was awarded an FCA in 1991.</p> <p data-bbox="495 1383 1398 1451">Mr. Thompson joined the LAWPRO Board in 2010 and serves on the audit, conduct review and risk committees.</p>

Director photo	Director biography
 <p data-bbox="142 716 402 810"><b>Kathleen Waters</b> President and CEO LAWPRO</p>	<p data-bbox="495 224 1472 359">Kathleen A. Waters was appointed president and chief executive officer of LAWPRO in 2008. Previously she had overseen the strategic planning, operations, marketing, sales and administration for the TitlePLUS program. She sits on the executive committee of the LAWPRO Board.</p> <p data-bbox="495 392 1463 489">Formerly a partner with Torkin, Manes, Cohen &amp; Arbus, Ms. Waters is the author of numerous papers and frequently speaks on real estate law, lawyers' professional liability insurance and title insurance.</p> <p data-bbox="495 522 1463 588">She holds an LL.B. from the University of Toronto and obtained her LL.M. from Osgoode Hall Law School in 2001.</p> <p data-bbox="495 621 946 651">She was called to the Bar in 1987.</p> <p data-bbox="495 684 1468 749">Ms. Waters also serves as a Director on the Advisory Board of the Alberta Lawyers Insurance Exchange (ALIEX).</p>

# Independent Auditor's Report



Deloitte LLP  
Brookfield Place  
181 Bay Street, Suite 1400  
Toronto, Ontario M5J 2V1  
Canada

Tel: 416-601-6150  
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To the Shareholder of Lawyers' Professional Indemnity Company

We have audited the accompanying financial statements of Lawyers' Professional Indemnity Company, which comprise the statement of financial position as at December 31, 2014, and the statements of profit or loss, comprehensive income, changes in equity and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

## Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of Lawyers' Professional Indemnity Company as at December 31, 2014, and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.

Chartered Professional Accountants, Chartered Accountants  
Licensed Public Accountants  
February 25, 2015

# Appointed Actuary's Report

## **Eckler**

I have valued the policy liabilities including reinsurance recoverables of Lawyers' Professional Indemnity Company for its statement of financial position as at December 31, 2014, and their changes in its statement of profit or loss for the year then ended, in accordance with accepted actuarial practice in Canada, including selection of appropriate assumptions and methods.

In my opinion, the amount of the policy liabilities makes appropriate provision for all policy obligations, and the financial statements fairly present the results of the valuation.

Toronto, Ontario  
February 25, 2015

A handwritten signature in black ink, appearing to read "B. Pelly", with a stylized flourish extending from the end.

Brian G. Pelly  
Fellow, Canadian Institute of Actuaries  
Eckler Ltd.  
110 Sheppard Avenue East, Suite 900  
Toronto, Ontario M2N 7A3

# Statement of Financial Position

Stated in thousands of Canadian dollars

As at	December 31, 2014	December 31, 2013
<b>Assets</b>		
Cash and cash equivalents	\$ 17,328	14,525
Investments (note 5)	597,280	575,039
Investment income due and accrued	2,012	2,136
Due from reinsurers	726	309
Due from insureds	1,909	2,027
Due from the Law Society of Upper Canada (note 12)	6,623	-
Reinsurers' share of provision for unpaid claims and adjustment expenses (note 9)	44,900	40,487
Other receivables	1,404	1,419
Other assets	1,984	2,758
Property and equipment (note 7)	1,658	2,193
Intangible asset (note 8)	1,028	-
Deferred income tax asset (note 14)	5,057	4,543
<b>Total assets</b>	<b>\$ 681,909</b>	<b>645,436</b>
<b>Liabilities</b>		
Provision for unpaid claims and adjustment expenses (note 9)	\$ 468,493	447,912
Unearned premiums (note 10)	769	749
Due to reinsurers	612	591
Due to insureds	265	66
Due to Law Society of Upper Canada (note 12)	-	3
Expenses due and accrued	1,635	1,526
Income taxes due and accrued	1,054	4,312
Other taxes due and accrued	456	402
	<b>\$ 473,284</b>	<b>455,561</b>
<b>Equity</b>		
Capital stock (note 17)	\$ 5,000	5,000
Contributed surplus (note 17)	30,645	30,645
Retained earnings	145,566	129,076
Accumulated other comprehensive income	27,414	25,154
	<b>208,625</b>	<b>189,875</b>
<b>Total liabilities and equity</b>	<b>\$ 681,909</b>	<b>645,436</b>

Accompanying notes are an integral part of the financial statements.

On behalf of the Board

*K. Waters*

Kathleen A. Waters  
Director

*Susan T. McGrath*

Susan T. McGrath  
Director

# Statement of Profit or Loss

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Revenue</b>		
Gross written premiums	\$ 122,149	113,561
Premiums ceded to reinsurers (note 11)	(7,229)	(7,051)
Net written premiums	114,920	106,510
(Increase) decrease in unearned premiums (note 10)	(20)	(26)
Net premiums earned	<b>114,900</b>	<b>106,484</b>
Net investment income (note 5)	26,472	16,255
Ceded commissions	1,679	1,535
	<b>\$ 143,051</b>	<b>124,274</b>
<b>Expenses</b>		
Gross claims and adjustment expenses (note 9)	\$ 104,847	99,178
Reinsurers' share of claims and adjustment expenses	(5,262)	(2,475)
Net claims and adjustment expenses	99,585	96,703
Operating expenses (note 15)	16,830	16,330
Premium taxes	3,665	3,408
	<b>120,080</b>	<b>116,441</b>
<b>Profit (loss) before income taxes</b>	<b>\$ 22,971</b>	<b>7,833</b>
Income tax expense (recovery) (note 14)		
Current	\$ 6,220	2,126
Deferred	(309)	(226)
	<b>5,911</b>	<b>1,900</b>
<b>Profit (loss)</b>	<b>\$ 17,060</b>	<b>5,933</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Comprehensive Income

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Profit (loss)</b>	<b>\$ 17,060</b>	<b>5,933</b>
Other comprehensive income (loss), net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit obligation, net of income tax expense (recovery) of (\$206) [2013: (\$174)]	(570)	480
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<u>Available-for-sale assets</u>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of \$2,517 (2013: \$5,780)	6,979	16,034
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$1,929) [2013: (\$1,618)]	(5,349)	(4,486)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$227 (2013: \$226) (note 5)	630	625
<b>Other comprehensive income (loss)</b>	<b>1,690</b>	<b>12,653</b>
<b>Comprehensive income</b>	<b>\$ 18,750</b>	<b>18,586</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Changes In Equity

Stated in thousands of Canadian dollars

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2012</b>	<b>\$ 5,000</b>	<b>30,645</b>	<b>122,663</b>	<b>12,981</b>	<b>171,289</b>
Total comprehensive income for the year	-	-	5,933	12,653	18,586
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	480	(480)	-
<b>Balance at December 31, 2013</b>	<b>5,000</b>	<b>30,645</b>	<b>129,076</b>	<b>25,154</b>	<b>189,875</b>
Total comprehensive income for the year	-	-	17,060	1,690	18,750
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	(570)	570	-
<b>Balance at December 31, 2014</b>	<b>\$ 5,000</b>	<b>30,645</b>	<b>145,566</b>	<b>27,414</b>	<b>208,625</b>

The aggregate of retained earnings and accumulated other comprehensive income as at December 31, 2014 is \$172,980 (December 31, 2013: \$154,230).

Accompanying notes are an integral part of the financial statements.

# Statement of Cash Flows

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Operating Activities</b>		
Profit (loss)	\$ 17,060	5,933
Items not affecting cash:		
Deferred income taxes	(309)	(226)
Amortization of property and equipment	728	815
Realized (gains) losses on disposition or impairment	(6,588)	(4,712)
Amortization of premiums and discounts on bonds	(2,159)	(2,503)
Changes in unrealized (gains) losses	(2,333)	6,003
	6,399	5,310
Changes in non-cash working capital balances:		
Investment income due and accrued	124	(234)
Due from reinsurers	(396)	2,564
Due from insureds	317	(428)
Due from the Law Society of Upper Canada	(6,626)	(2,562)
Reinsurers' share of provision for unpaid claims and adjustment expenses	(4,413)	(551)
Other receivables	15	(374)
Other assets	(2)	(398)
Income taxes due and accrued (recoverable)	(4,073)	2,595
Provision for unpaid claims and adjustment expenses	20,581	14,583
Unearned premiums	20	26
Expenses due and accrued	109	(108)
Other taxes due and accrued	54	(10)
<b>Net cash inflow from operating activities</b>	<b>\$ 12,109</b>	<b>20,413</b>
<b>Investing Activities</b>		
Purchases of property and equipment	\$ (193)	(173)
Purchases of intangible asset	(1,028)	-
Purchases of investments	(226,092)	(254,038)
Proceeds from sales and maturities of investments	218,007	229,946
<b>Net cash outflow from investing activities</b>	<b>\$ (9,306)</b>	<b>(24,265)</b>
Net change in cash and cash equivalents during the year	2,803	(3,852)
Cash and cash equivalents, beginning of year	14,525	18,377
<b>Cash and cash equivalents, end of year</b>	<b>\$ 17,328</b>	<b>14,525</b>
<b>Cash and cash equivalents at end of year consists of:</b>		
Cash	9,353	10,325
Cash equivalents	7,975	4,200
	<b>\$ 17,328</b>	<b>14,525</b>
<b>Supplemental disclosure of cash flow information:</b>		
Income taxes paid	\$ 10,293	2,206
Interest received	\$ 13,614	13,119
Dividends received	\$ 2,825	2,602

Accompanying notes are an integral part of the financial statements.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 1. Nature of Operations

Lawyers' Professional Indemnity Company (the "Company") is an insurance company, incorporated on March 14, 1990 under the *Corporations Act* (Ontario) and licensed to provide lawyers professional liability insurance in Ontario and title insurance in all provinces and territories in Canada. The Company is a wholly-owned subsidiary of the Law Society of Upper Canada (the "Law Society"), which is the governing body for lawyers in Ontario. The Company's registered office is located at 250 Yonge Street, Toronto, Ontario, Canada.

## 2. Basis of Preparation and Significant Accounting Policies

These financial statements have been prepared under the *Insurance Act* (Ontario) and related regulations which require that, except as otherwise specified by the Company's primary insurance regulator, the Financial Services Commission of Ontario ("FSCO"), the financial statements of the Company are to be prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

These financial statements have been prepared in accordance with accounting standards issued and effective on or before December 31, 2014. None of the accounting requirements of FSCO represent exceptions to IFRS. These financial statements were authorized for issuance by the Company's Board of Directors on February 25, 2015.

The significant accounting policies used in the preparation of these financial statements are summarized below. These accounting policies conform, in all material respects, to IFRS.

### Basis of measurement

The financial statements have been prepared under the historical cost basis, except for certain financial instruments that are measured at the end of each reporting period, as explained in the accounting policies below. Historical cost is generally based on the fair value of the consideration given for goods and services.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, regardless of whether that price is directly observable or estimated using another valuation technique. In estimating the fair value of an asset or liability, the Company takes into account the characteristics of the asset or liability that market participants would likely take into account when pricing the asset or liability at the measurement date. A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. Fair value for measurement and/or disclosure purposes in these financial statements is determined on such a basis, except for example, lease transactions that are within the scope of IAS 17 "*Leases*", and measurements that have some similarities to fair value but are not fair value, such as value in use in IAS 36 "*Impairment of Assets*".

The valuation process includes utilizing market driven fair value measurements from active markets where available, considering other observable and unobservable inputs and employing valuation techniques which make use of current market data. Considerable judgement may be required in interpreting market data used to develop the estimates of fair value. Accordingly, the estimates presented in these financial statements are not necessarily indicative of the amounts that would be realized in a current market exchange.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The Company utilizes a fair value hierarchy to categorize the inputs used in valuation techniques to measure fair value, which prioritizes these inputs into three broad levels. The level in the fair value hierarchy within which the fair value measurement is categorized in its entirety is determined on the basis of the lowest level input that is significant to the fair value measurement in its entirety. For this purpose, the significance of an input is assessed against the fair value measurement in its entirety. The three levels of the fair value hierarchy are:

## **Level 1 – Quoted market prices in active markets**

Inputs to Level 1, the highest level of the hierarchy, reflect fair values that are quoted prices (unadjusted) in active markets for identical assets and liabilities. An active market is considered to be one in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. Level 1 assets and liabilities include debt and equity securities, quoted unit trusts and derivative contracts that are traded in an active exchange market, as well as certain government and agency mortgage-backed debt securities that are highly liquid and are actively traded in over-the-counter markets.

## **Level 2 – Modelled with significant observable market inputs**

Inputs to Level 2 fair values are inputs, other than quoted prices within Level 1 prices, that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Level 2 inputs include: quoted prices for similar (i.e. not identical) assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active, the prices are not current, or price quotations vary substantially either over time or among market makers, or in which little information is released publicly; inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment spreads, loss severities, credit risks, and default rates); and inputs that are derived principally from, or corroborated by, observable market data by correlation or other means (market corroborated inputs). Valuations incorporate credit risk by adjusting the spread above the yield curve for government treasury securities for the appropriate amount of credit risk for each issuer, based on observed market transactions. To the extent observed market spreads are either not used in valuing a security, or do not fully reflect liquidity risk, the valuation methodology reflects a liquidity premium. Examples of these are securities measured using discounted cash flow models based on market observable swap yields, and listed debt or equity securities in a market that is inactive. This category generally includes government and agency mortgage-backed debt securities and corporate debt securities.

## **Level 3 – Modelled with significant unobservable market inputs**

Inputs to Level 3 are unobservable, supported by little or no market activity, and are significant to the fair value of the assets or liabilities. Unobservable inputs may have been used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date (or market information for the inputs to any valuation models). As such, unobservable inputs reflect the assumptions the business unit considers that market participants would use in pricing the asset or liability. Where estimates are used, these are based on a combination of independent third-party evidence and internally developed models, calibrated to market observable data where possible. Level 3 assets and liabilities generally include certain private equity investments, certain asset-backed securities, highly structured, complex or long-dated derivative contracts, and certain collateralized debt obligations where independent pricing information was not able to be obtained for a significant portion of the underlying assets.

## **Use of estimates and judgments made by management**

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates and changes in estimates are recorded in the reporting period in which they are determined. Key estimates are discussed in the following accounting policies and applicable notes.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Key areas where management has made difficult, complex or subjective judgments in the process of applying the Company's accounting policies, often as a result of matters that are inherently uncertain, include:

Impairment	Note 5c
Fair value measurements	Note 6
Property and equipment	Note 7
Unpaid claims and adjustment expenses	Note 9
Employee future benefits	Note 13
Income taxes	Note 14

## Financial instruments – recognition and measurement

Financial assets are classified as fair value through profit or loss (“FVTPL”), available-for-sale, held to maturity or loans and receivables. Financial liabilities are classified as FVTPL or as other financial liabilities. These classifications are determined based on the characteristics of the financial assets and liabilities, the company's choice and/or the company's intent and ability. As permitted under the IFRS standards, a company has the ability to designate any financial instrument irrevocably, on initial recognition or adoption of the standards, as FVTPL provided certain criteria are met.

The Company's financial assets and liabilities are measured on the statement of financial position at fair value on initial recognition and are subsequently measured at fair value or amortized cost depending on their classification as indicated below.

Transaction costs for FVTPL investments are expensed in the current period, and for all other categories of investments are capitalized and, when applicable, amortized over the expected life of the investment. The Company accounts for the purchase and sale of securities using trade date accounting. Realized gains or losses on disposition are determined on an average cost basis.

The effective interest method is used to calculate amortization/accretion of premiums or discounts on fixed income securities over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts (including all fees and points paid or received that form an integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the fixed income security, or, where appropriate, a shorter period, to the net carrying amount on initial recognition.

## Financial assets at fair value through profit or loss

Financial assets at FVTPL are measured at fair value in the statement of financial position with realized gains and losses and net changes in unrealized gains and losses recorded in net investment income along with dividends and interest earned.

The Company maintains an investment portfolio, referred to as the cash-flow matched portfolio, which is designated as FVTPL. This portfolio is invested with the primary objective of matching the cash inflows from fixed income investment securities with the expected timing and magnitude of future payments of claims and adjustment expenses. The cash-flow matched portfolio represents a significant component of the Company's risk management strategy for meeting its claims obligations. The designation of the financial assets in the cash-flow matched investment portfolio as FVTPL is intended to significantly reduce the measurement or recognition inconsistency that would otherwise arise from measuring assets, liabilities, and gains and losses under different accounting methods. Interest rate movements cause changes in the values of the investment portfolio and of discounted estimated future claims liabilities. As the changes in values of the matched portfolio and of the discounted estimated future claims liabilities flow through profit or loss, the result is an offset of a significant portion of these changes.

Cash and cash equivalents are also classified as FVTPL. Cash and cash equivalents consist of cash on deposit and short-term investments that mature in three months or less from the date of acquisition. The net gain or loss recognized incorporates any interest earned on the financial asset.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Available-for-sale financial assets

Financial assets classified as available-for-sale are measured at fair value in the statement of financial position. Net interest income, including amortization of premiums and the accretion of discounts, are recorded in investment income in profit or loss. Dividend income on common and preferred shares is included in investment income on the ex-dividend date. Changes in fair value of available-for-sale fixed income securities resulting from changes to foreign exchange rates are recognized in net investment income as incurred. Changes in the fair value of available-for-sale fixed income securities related to the underlying investment in its issued currency, as well as all elements of fair value changes of available-for-sale equity securities, are recorded to unrealized gains and losses in accumulated other comprehensive income ("AOCI") until disposition or impairment is recognized, at which time the cumulative gain or loss is reclassified to net investment income in profit or loss. When a reliable estimate of fair value cannot be determined for equity securities that do not have quoted market prices in an active market, the security is valued at cost.

Financial assets in the Company's surplus portfolio (consisting of all investments outside the cash-flow matched portfolio), including fixed income securities and equities, are designated as available-for-sale.

## Other financial assets and liabilities

The Company has not designated any financial assets as held to maturity. Loans and receivables and other financial liabilities are carried at amortized cost using the effective interest rate method. Given the short term nature of other financial assets and other financial liabilities, amortized cost approximates fair value.

## Property and equipment

Property and equipment are recorded in the statement of financial position at cost less accumulated amortization. Amortization is charged to operating expense on a straight-line basis over the estimated useful lives of the assets as follows:

Furniture and fixtures	5 years
Computer equipment	3 years
Computer software	1 to 3 years
Leasehold improvements	Term of lease

An item of property and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising from the disposal or retirement of an item of property and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized immediately in profit or loss.

## Intangible Assets

Intangible assets with finite useful lives that are acquired separately are carried at cost, less any applicable accumulated amortization and accumulated impairment losses. Once an acquired intangible asset is available for use, amortization is recognized on a straight-line basis over its estimated useful life. The estimated useful life and amortization method are reviewed at the end of each reporting period, with the effect of any changes in estimate being accounted for on a prospective basis.

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from its use or disposal. Gains and losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying cost of the asset, are recognized in profit and loss when the asset is derecognized.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Impairment

### Financial Assets

Available-for-sale financial assets are tested for impairment on a quarterly basis. Objective evidence of impairment for fixed income securities includes financial difficulty of the issuer, bankruptcy or defaults and delinquency in payments of interest or principal. Objective evidence of impairment for equities includes a significant or prolonged decline in fair value of the equity below cost or changes with adverse effects that have taken place in the technological, market, economic or legal environment in which the issuer operates that indicates the cost of the security may not be recovered. In general, an equity security is considered impaired if the decline in fair value relative to cost has been either at least 25% for a continuous nine-month period or more than 40% at the end of the reporting period, or been in an unrealised loss position for a continuous period of 18 months.

Where there is objective evidence that an available-for-sale asset is impaired, the loss accumulated in AOCI is reclassified to net investment income. Once an impairment loss is recorded to profit or loss, the loss can only be reversed into income for fixed income securities to the extent a subsequent increase in fair value can be objectively correlated to an event occurring after the loss was recognized. Following impairment loss recognition, further decreases in fair value are recorded as an impairment loss to profit or loss, while a subsequent recovery in fair value for equity securities, and fixed income securities that do not qualify for loss reversal treatment, are recorded to other comprehensive income ("OCI"). Interest continues to be accrued, but at the effective rate of interest based on the fair value at impairment, and dividends of equity securities are recognized in income when the Company's right to receive payment has been established.

### Non-Financial Assets

At the end of each reporting period, the Company reviews the carrying amount of its property and equipment, intangible assets and other non-financial assets to determine whether there is any indication that those assets have suffered an impairment loss. If any indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment loss, if any. When it is not possible to estimate the recoverable amount of an individual asset, the Company estimates the recoverable amount of the cash-generating unit to which the asset belongs. Intangible assets not yet available for use are tested for impairment at least annually, and whenever there is an indication that the asset may be impaired.

Recoverable amount is the higher of fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset for which the estimates of future cash flows have not been adjusted. If the recoverable amount of an asset (or cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (or cash-generating unit) is reduced to its recoverable amount. An impairment loss is recognized immediately in profit or loss. If an impairment loss subsequently reverses, the carrying amount of the asset (or cash-generating unit) is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognized for the asset (or cash-generating unit) in prior years. A reversal of impairment loss is recognized immediately in profit or loss.

## Foreign currency translation

The Canadian dollar is the functional and presentation currency of the Company. Transactions in foreign currencies are translated into Canadian dollars at rates of exchange at the time of such transactions. Monetary assets and liabilities are translated at current rates of exchange, with all translation differences recognized in investment income in the current period. Non-monetary assets and liabilities are translated at the date the fair value is determined, with the translation differences recognized in AOCI until disposition or impairment of the underlying asset or liability.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Premium-related balances

The Company issues two types of professional liability policies: a primary lawyer's errors and omissions policy and an excess policy increasing the insurance coverage limit to a maximum of \$9 million per claim/\$9 million in the aggregate above the \$1 million per claim/\$2 million aggregate levels provided by the primary policy; and a title insurance policy. Insurance policies written under the professional liability insurance program are effective on a calendar year basis. Professional liability insurance premium income is earned on a *pro rata* basis over the term of coverage of the underlying insurance policies, which is generally one year, except for policies for retired lawyers, which have terms of up to five years. Title insurance premiums are earned at the inception date of the policies.

Unearned premiums reported on the statement of financial position represent the portion of premiums written that relate to the unexpired risk portion of the policy at the end of the reporting period.

Premiums receivable are recorded in the statement of financial position as amounts due from insureds, net of any required provision for doubtful amounts. Premiums received from insureds in advance of the effective date of the insurance policy are recorded as amounts due to insureds in the statement of financial position.

The Company defers policy acquisition expenses, primarily premium taxes on its written professional liability insurance premiums, to the extent these costs are considered recoverable. These costs are expensed on the same basis that the related premiums are earned. The method to determine recoverability of deferred policy acquisition expenses takes into consideration future claims and adjustment expenses to be incurred as premiums are earned and anticipated net investment income. Deferred policy acquisition expenses are not material at year-end, and therefore the Company's policy is to not recognize an asset on the statement of financial position.

## Unpaid claims and adjustment expenses

The provision for unpaid claims and adjustment expenses includes an estimate of the cost of projected final settlements of insurance claims incurred on or before the date of the statement of financial position, consisting of case estimates prepared by claims adjusters and a provision for incurred but not reported claims ("IBNR") calculated based on accepted actuarial practice in Canada as required by the Canadian Institute of Actuaries ("CIA"). These estimates include the full amount of all expected expenses, including related investigation, settlement and adjustment expenses, net of any anticipated salvage and subrogation recoveries. The professional liability insurance policy requires insureds to pay deductibles to the maximum extent of \$25,000 on each individual claim, subject to an additional \$10,000 for certain claims involving an administrative dismissal. Expected deductible recoveries on paid and unpaid claims are recognized net of any required provision for uncollectible accounts at the same time as the related claims liability.

The provision takes into consideration the time value of money using discount rates based on the estimated market value based yield to maturity of the underlying assets backing these liabilities, with reductions for estimated investment-related expense and credit risk. A provision for adverse deviations ("PfAD") is then added to the discounted liabilities, to allow for possible deterioration of experience in claims development, recoverability of reinsurance balances and investment risk, in order to generate the actuarial present value.

These estimates of future claims payments and adjustment expenses are subject to uncertainty and are selected from a wide range of possible outcomes. All provisions are periodically reviewed and evaluated in light of emerging claims experience and changing circumstances. The resulting changes in estimates of the ultimate liability are reported as net claims and adjustment expenses in the reporting period in which they are determined.

## Reinsurance

In the normal course of business, the Company enters into per claim and excess of loss reinsurance contracts with other insurers in order to limit its net exposure to significant losses. Amounts relating to reinsurance in respect of the premiums and claims-related balances in the statements of financial position and profit or loss are recorded separately.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Premiums ceded to reinsurers are presented before deduction of broker commission and any premium-based taxes or duty. Amounts recoverable from reinsurers are estimated and recognized in a manner consistent with the Company's method of determining the underlying provision for unpaid claims and adjustment expenses covered by the reinsurance contract. Amounts recoverable from reinsurers are assessed for indicators of impairment at the end of each reporting period. An impairment loss is recognized and the amount recoverable from reinsurers is reduced by the amount by which the carrying value exceeds the expected recoverable amount under the impairment analysis.

Ceding commissions, which relate to amounts received from the Company's reinsurers on the placement of its reinsurance contracts, is earned into income on a *pro rata* basis over the contract period.

## Income taxes

Income tax expense is recognized in profit or loss and the statement of profit or loss and other comprehensive income. Current tax is based on taxable income which differs from profit or loss as reported in the statement of profit or loss and statement of profit or loss and other comprehensive income because of items of income or expense that are taxable or deductible in other years and items that are never taxable or deductible. Current tax includes any adjustments in respect of prior years.

Deferred tax assets are generally recognized for all deductible temporary income tax differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilized. Deferred tax liabilities are generally recognized for all taxable temporary differences. Deferred tax assets and liabilities are determined based on the enacted or substantively enacted tax laws and rates that are anticipated to apply in the period of realization. The measurement of deferred tax assets and liabilities utilizes the liability method, reflecting the tax consequences that would follow from the manner in which the Company expects to recover or settle the carrying amount of the related assets and liabilities. The carrying amount of the deferred tax asset is reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Income tax assets and liabilities are offset when the income taxes are levied by the same taxation authority and there is a legally enforceable right to offset current tax assets with current tax liabilities.

## Employee benefits

The Company maintains a defined contribution pension plan for its employees as well as a supplemental defined benefit pension plan for certain designated employees, which provides benefits in excess of the benefits provided by the Company's defined contribution pension plan. For the supplemental defined benefit pension plan, the benefit obligation is determined using the projected unit credit method. Actuarial valuations are carried out at the end of each annual reporting period using management's assumptions on items such as discount rates, expected asset performance, salary growth and retirement ages of employees. The discount rate is determined based on the market yields of high quality, mid-duration corporate fixed income securities.

Defined contribution plan expenses are recognized in the reporting period in which services are rendered. Regarding the supplemental defined benefit pension plan, remeasurements comprising actuarial gains and losses, the effect of the changes to the asset ceiling (if applicable) and the return on plan assets (excluding net interest cost), is reflected immediately in the statement of profit or loss and other comprehensive income with a charge or credit recognized in OCI in the period in which they occur. Remeasurements recognized in OCI are transferred immediately to retained earnings and will not be reclassified to profit or loss. Past service cost is recognized in profit or loss in the period of a plan amendment. Net interest is calculated by applying the discount rate at the beginning of the period to the net defined benefit liability or asset. Defined benefit costs are categorized as follows: service cost (including current service, past service cost, as well as gains or losses on curtailments and settlements), net interest expense or income, and remeasurements. The Company presents the first two components of defined benefit cost as part of operating expenses in the statement of profit or loss.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The retirement benefit obligation recognized in the statement of financial position represents the actual deficit or surplus in the Company's defined benefit pension plan. Any surplus resulting from this calculation is limited to the present value of any economic benefits available in the form of refunds from the plan or reductions in future contributions to the plan.

## 3. Application of New and Revised IFRSs Relevant to the Company

In the current year, the Company has applied a number of new and revised IFRSs issued by the IASB that are mandatorily effective for an accounting period that begins on or after January 1, 2014.

### a) Amendments to IAS 32 "*Offsetting Financial Assets and Financial Liabilities*"

The Company has applied the amendments to IAS 32 for the first time in the current year, and they have been applied retrospectively. The amendments clarify the requirements relating to the offset of financial assets and financial liabilities. Specifically, the amendments clarify the meaning of "currently has a legal enforceable right of offset" and "simultaneous realisation and settlement". The application of the amendments to IAS 32 has not had any material impact on the amounts recognized or disclosed in the financial statements.

### b) IFRIC 21 "*Levies*"

The Company has applied IFRIC 21 for the first time in the current year, and it has been applied retrospectively. IFRIC 21 "*Levies*" was issued to introduce an interpretation of IAS 37 "*Provisions, Contingent Liabilities and Contingent Assets*" on the accounting for levies (except income taxes) imposed by governments, government agencies and similar bodies. IFRIC 21 defines a levy, and clarifies that the obligating event that gives rise to a liability to pay a levy is the activity described in the relevant legislation that triggers the payment of the levy. The interpretation provides guidance on how many different levy arrangements should be accounted for, in particular, it clarifies that neither economic compulsion nor the going concern basis of financial statement preparation implies that an entity has a present obligation to pay a levy that will be triggered by operating in a future period. The liability to pay a levy is recognized progressively if the obligating event occurs over a period of time. The application of IFRIC 21 has not had any material impact on the amounts recognized or disclosed in the financial statements.

## 4. New and Revised IFRSs Issued but not yet Effective

The Company has not applied the following new and revised IFRSs that have been issued but are not yet effective:

### a) IFRS 9 "*Financial Instruments*"

IFRS 9, issued in November 2009 as part of a three-phase project to replace IAS 39 "*Financial Instruments: Recognition and Measurement*", introduced new requirements for the classification and measurement of financial assets. IFRS 9 was subsequently amended in October 2010 to include requirements for the classification and measurement of financial liabilities and for derecognition, and in November 2013 to include the new requirements for general hedge accounting. Another revised version of IFRS 9 was issued in July 2014 mainly to include impairment requirements for financial assets as well as limited amendments to the classification and measurements by introducing fair value through other comprehensive income ("FVOCI") measurement category for certain simple debt instruments.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Pursuant to IFRS 9, all recognized financial assets that are within the scope of IAS 39 are required to be subsequently measured at amortized cost or fair value. Specifically, debt instruments that are held within a business model whose objective is to collect the contractual cash flows, and that have contractual cash flows that are solely payments of principal and interest on the principal outstanding are generally measured at amortized cost. Debt instruments that are held within a business model whose objective is achieved both by collecting contractual cash flows and selling financial assets, and that have contractual terms that give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding, are measured at FVOCI. All other debt securities, as well as equity securities, are measured at FVTPL. Entities may make an irrevocable election to present subsequent changes in the fair value of an equity security in OCI, with only dividend income generally recognized in profit or loss. In addition, under the fair value option, entities may elect for amortized cost or FVOCI debt securities to be designated as FVTPL.

With regard to the measurement of financial liabilities designated as FVTPL, IFRS 9 requires that the amount of change in the fair value of the financial liability that is attributable to changes in the credit risk of that liability is to be recognized in OCI, unless the recognition of the effects of changes in the liability's credit risk in OCI would create or enlarge an accounting mismatch in profit or loss. Under IAS 39, the entire amount of the change in the fair value of the financial liability designated as FVTPL is recognized in profit or loss.

With regards to debt securities measured at amortized cost or FVOCI, IFRS 9 requires an expected credit loss model for determining impairment, as opposed to an incurred credit loss model under IAS 39. The expected credit loss model requires an entity to account for expected credit losses and changes in those expected credit losses at each reporting date to reflect changes in credit risk since initial recognition. In other words, it is no longer necessary for a credit event to have occurred before impairment losses are recognized. Under IFRS 9, impairment is not considered for equity securities.

IFRS 9 as revised (2014) is effective for annual periods beginning on or after January 1, 2018. The Company anticipates that the application of IFRS 9 in the future may have a material impact on amounts reported in respect of the Company's financial assets. However, it is not practicable to provide a reasonable estimate of the effect of IFRS 9 until the Company undertakes a detailed review.

## **b) Amendments to IAS 19 “*Defined Benefit Plans: Employee Contributions*”**

The amendments to IAS 19 clarify how an entity should account for contributions made by employees or third parties to defined benefit plans, based on whether those contributions are dependent of the number of years of service provided by the employee. For contributions that are independent of the number of years of service, the entity may either recognize the contributions as a reduction in the service cost in the period in which the related service is rendered, or attribute them to the employees' periods of service using the projected unit credit method; whereas for contributions that are dependent on the number of years of service, the entity is required to attribute them to the employees' periods of service. These amendments are effective for accounting periods beginning on or after July 1, 2014. The Company does not anticipate a significant impact from the implementation of these amendments.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 5. Investments

### a) Summary

The tables below provide details of the amortized cost and fair value of the Company's investments, classified by accounting category and investment type:

December 31, 2014				
	Cost or amortized cost	Gross unrealized gains	Gross unrealized losses and impairments	Fair value
Available-for-sale				
Fixed income securities	\$ 138,248	4,662	(28)	142,882
Common equities	66,840	30,828	(2,999)	94,669
	205,088	35,490	(3,027)	237,551
Designated as FVTPL				
Fixed income securities	\$ 348,878	11,186	(851)	359,213
Preferred equities	615	-	(99)	516
	349,493	11,186	(950)	359,729
<b>Total</b>	<b>\$ 554,581</b>	<b>46,676</b>	<b>(3,977)</b>	<b>597,280</b>
Reconciled in aggregate to asset classes as follows:				
Fixed income securities	\$ 487,126	15,848	(879)	502,095
Equities	67,455	30,828	(3,098)	95,185
<b>Total</b>	<b>\$ 554,581</b>	<b>46,676</b>	<b>(3,977)</b>	<b>597,280</b>

December 31, 2013				
	Cost or amortized cost	Gross unrealized gains	Gross unrealized losses and impairments	Fair value
Available-for-sale				
Fixed income securities	\$ 115,700	2,956	(227)	118,429
Common equities	63,801	29,433	(2,779)	90,455
	179,501	32,389	(3,006)	208,884
Designated as FVTPL				
Fixed income securities	\$ 357,638	9,365	(1,347)	365,656
Preferred equities	615	-	(116)	499
	358,253	9,365	(1,463)	366,155
<b>Total</b>	<b>\$ 537,754</b>	<b>41,754</b>	<b>(4,469)</b>	<b>575,039</b>
Reconciled in aggregate to asset classes as follows:				
Fixed income securities	\$ 473,338	12,321	(1,574)	484,085
Equities	64,416	29,433	(2,895)	90,954
<b>Total</b>	<b>\$ 537,754</b>	<b>41,754</b>	<b>(4,469)</b>	<b>575,039</b>

In the above tables, the gross unrealized figures for common equities securities includes recognized impairments. As at December 31, 2014, of the total cumulative impairments of \$5,339,916 (December 31, 2013: \$5,335,662) an amount of \$3,975,633 is included in gross unrealized losses (December 31, 2013: \$3,248,254) and an amount of \$1,364,283 is included in gross unrealized gains (December 31, 2013: \$2,087,408). For additional details, see note 5c.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## b) Maturity profile of fixed income securities

The maturity profile of fixed income securities and its analysis by type of issuer is as follows:

	December 31, 2014			Total
	Within 1 year	1 to 5 years	Over 5 years	
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ -	23,482	309	23,791
Canadian provincial and municipal governments	1,741	76,846	14,838	93,425
Mortgage backed securities	206	1,534	-	1,740
Corporate debt	903	14,880	8,143	23,926
	<u>2,850</u>	<u>116,742</u>	<u>23,290</u>	<u>142,882</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 29,186	17,906	-	47,092
Canadian provincial and municipal governments	6,304	30,574	43,611	80,489
Mortgage backed securities	6,008	14,639	-	20,647
Corporate debt	39,388	72,596	99,001	210,985
	<u>80,886</u>	<u>135,715</u>	<u>142,612</u>	<u>359,213</u>
Fixed income securities	<b>\$ 83,736</b>	<b>252,457</b>	<b>165,902</b>	<b>502,095</b>
Percent of total	17%	50%	33%	100%

	December 31, 2013			Total
	Within 1 year	1 to 5 years	Over 5 years	
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 50	16,420	323	16,793
Canadian provincial and municipal governments	-	57,895	22,867	80,762
Mortgage backed securities	83	1,869	-	1,952
Corporate debt	502	9,190	9,230	18,922
	<u>635</u>	<u>85,374</u>	<u>32,420</u>	<u>118,429</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 28,228	21,830	-	50,058
Canadian provincial and municipal governments	22,753	34,905	44,439	102,097
Mortgage backed securities	361	10,352	-	10,713
Corporate debt	27,642	83,286	91,860	202,788
	<u>78,984</u>	<u>150,373</u>	<u>136,299</u>	<u>365,656</u>
Fixed income securities	<b>\$ 79,619</b>	<b>235,747</b>	<b>168,719</b>	<b>484,085</b>
Percent of total	16%	49%	35%	100%

The weighted average duration of fixed income securities as at December 31, 2014 is 2.77 years (December 31, 2013: 3.10 years). The effective yield on fixed income securities as at December 31, 2014 is 2.67% (December 31, 2013: 2.79%).

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## c) Impairment Analysis

Management performs a quarterly analysis of the Company's available-for-sale investments to determine whether there is objective evidence that the estimated cash flows of the investments have been affected. The analysis includes the following procedures as deemed appropriate by management:

- identifying all security holdings in unrealized loss positions that have existed for a length of time that management believes may impact the recoverability of the investment;
- identifying all security holdings in unrealized loss positions that have an unrealized loss magnitude that management believes may impact the recoverability of the investment;
- reviewing the trading range of certain investments over the preceding calendar period;
- assessing whether any credit losses are expected for those investments. This assessment includes consideration of, among other things, all available information and factors having a bearing upon collectability such as changes to credit rating by rating agencies, financial condition of the issuer, expected cash flows and value of any underlying collateral;
- assessing whether declines in fair value for any fixed income securities represent objective evidence of impairment based on their investment grade credit ratings from third party security rating agencies;
- assessing whether declines in fair value for any fixed income securities with non-investment grade credit rating represent objective evidence of impairment based on the history of its debt service record; and
- obtaining a valuation analysis from third party investment managers regarding the intrinsic value of these holdings based on their knowledge, experience and other market based valuation techniques.

As a result of the impairment analysis performed by management, \$857,061 in write-downs to various equity securities were required for the year ended December 31, 2014 (2013: \$850,680).

The movements in cumulative impairment write-downs on available-for-sale investments for the years ended December 31 were as follows:

		2014	2013
Balance, as at January 1	\$	5,336	5,174
Increase for the year charged to the income statement		857	851
Release upon disposition		(853)	(689)
<b>Balance, as at December 31</b>	<b>\$</b>	<b>5,340</b>	<b>5,336</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Net investment income

Net investment income arising from investments designated as FVTPL and classified as available-for-sale recorded in profit or loss for the year ended December 31 is as follows:

	2014			2013		
	Designated as FVTPL	Available-for-sale	Total	Designated as FVTPL	Available-for-sale	Total
Interest	\$ 12,166	3,480	15,646	12,777	3,042	15,819
Dividends	21	2,817	2,838	21	2,613	2,634
Net realized gains (losses)	307	7,278	7,585	(475)	6,104	5,629
Change in net unrealized gains (losses)	2,333	97	2,430	(6,003)	67	(5,936)
Impairments	-	(857)	(857)	-	(851)	(851)
	14,827	12,815	27,642	6,320	10,975	17,295
Less: Investment expenses	(781)	(389)	(1,170)	(388)	(652)	(1,040)
Net investment income	<b>\$ 14,046</b>	<b>12,426</b>	<b>26,472</b>	<b>5,932</b>	<b>10,323</b>	<b>16,255</b>

## e) Realized and change in unrealized gains and losses

The realized gains (losses) and increase (decrease) in the unrealized gains and losses of the Company's available-for-sale investments recorded in OCI for the year ended December 31 are as follows:

	2014					
	Net realized gains (losses)			Increase (decrease) in unrealized gains and losses		
	Gross	Tax	Net	Gross	Tax	Net
Fixed income securities	\$ 415	(110)	305	1,905	(505)	1,400
Equities	6,863	(1,819)	5,044	1,170	(310)	860
Total	<b>\$ 7,278</b>	<b>(1,929)</b>	<b>5,349</b>	<b>3,075</b>	<b>(815)</b>	<b>2,260</b>

	2013					
	Net realized gains (losses)			Increase (decrease) in unrealized gains and losses		
	Gross	Tax	Net	Gross	Tax	Net
Fixed income securities	\$ 911	(241)	670	(2,235)	592	(1,643)
Equities	5,193	(1,377)	3,816	18,797	(4,981)	13,816
Total	<b>\$ 6,104</b>	<b>(1,618)</b>	<b>4,486</b>	<b>16,562</b>	<b>(4,389)</b>	<b>12,173</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
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## 6. Fair Value Measurements of Financial Assets and Liabilities

The following tables present the fair value of the Company's financial assets and liabilities categorized by either recurring or non-recurring. The items presented below include related accrued interest or dividends, as appropriate.

As at December 31, 2014	Carrying amount				Fair value				
	Designated at fair value	Loans and receivables	Available-for-sale	Other financial liabilities	Total	Level 1	Level 2	Level 3	Total
<b>Financial assets measured at fair value (recurring basis)</b>									
Cash and cash equivalents	\$ 17,333	-	-	-	17,333	17,333	-	-	17,333
Fixed income securities	360,398	-	143,409	-	503,807	238,857	264,950	-	503,807
Common equities	-	-	94,958	-	94,958	94,958	-	-	94,958
Preferred equities	522	-	-	-	522	-	522	-	522
	378,253	-	238,367	-	616,620	351,148	265,472	-	616,620
<b>Financial assets measured at fair value (non-recurring basis)</b>									
Due from reinsurers	-	726	-	-	726	-	726	-	726
Due from insureds	-	1,909	-	-	1,909	-	1,909	-	1,909
Due from the Law Society of Upper Canada	-	6,623	-	-	6,623	-	6,623	-	6,623
Other receivables	-	1,404	-	-	1,404	-	1,404	-	1,404
Other assets	-	294	-	-	294	-	294	-	294
	-	10,956	-	-	10,956	-	10,956	-	10,956
<b>Financial liabilities measured at fair value (non-recurring basis)</b>									
Due to reinsurers	-	-	-	612	612	-	612	-	612
Due to insureds	-	-	-	265	265	-	265	-	265
Expenses due and accrued	-	-	-	1,635	1,635	-	1,635	-	1,635
Other taxes due and accrued	-	-	-	456	456	-	456	-	456
	-	-	-	2,968	2,968	-	2,968	-	2,968
<b>Total</b>	<b>\$ 378,253</b>	<b>10,956</b>	<b>238,367</b>	<b>(2,968)</b>	<b>624,608</b>	<b>351,148</b>	<b>273,460</b>	<b>-</b>	<b>624,608</b>

As at December 31, 2013	Carrying amount				Fair value				
	Designated at fair value	Loans and receivables	Available-for-sale	Other financial liabilities	Total	Level 1	Level 2	Level 3	Total
<b>Financial assets measured at fair value (recurring basis)</b>									
Cash and cash equivalents	\$ 14,525	-	-	-	14,525	14,525	-	-	14,525
Fixed income securities	367,033	-	118,897	-	485,930	244,017	241,913	-	485,930
Common equities	-	-	90,740	-	90,740	90,740	-	-	90,740
Preferred equities	505	-	-	-	505	-	505	-	505
	382,063	-	209,637	-	591,700	349,282	242,418	-	591,700
<b>Financial assets measured at fair value (non-recurring basis)</b>									
Due from reinsurers	-	309	-	-	309	-	309	-	309
Due from insureds	-	2,027	-	-	2,027	-	2,027	-	2,027
Other receivables	-	1,419	-	-	1,419	-	1,419	-	1,419
Other assets	-	280	-	-	280	-	280	-	280
	-	4,035	-	-	4,035	-	4,035	-	4,035
<b>Financial liabilities measured at fair value (non-recurring basis)</b>									
Due to reinsurers	-	-	-	591	591	-	591	-	591
Due to insureds	-	-	-	66	66	-	66	-	66
Due from the Law Society of Upper Canada	-	-	-	3	3	-	3	-	3
Expenses due and accrued	-	-	-	1,526	1,526	-	1,526	-	1,526
Other taxes due and accrued	-	-	-	402	402	-	402	-	402
	-	-	-	2,588	2,588	-	2,588	-	2,588
<b>Total</b>	<b>\$ 382,063</b>	<b>4,035</b>	<b>209,637</b>	<b>(2,588)</b>	<b>593,147</b>	<b>349,282</b>	<b>243,865</b>	<b>-</b>	<b>593,147</b>

There were no transfers between any levels during the year ended December 31, 2014 (2013: none).

Note that for financial instruments such as short term trade receivables and payables, the Company believes that their carrying amounts are reasonable approximations of fair value.

## Notes to Financial Statements

For the year ended December 31, 2014  
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### 7. Property and Equipment

During the years ending December 31, details of the movement in the carrying values by class of property and equipment are as follows:

	Furniture and fixtures	Computer equipment	Computer software	Leasehold improvements	Total
January 1, 2013	\$ 57	562	204	2,012	2,835
Additions	7	90	62	14	173
Amortization	(31)	(292)	(119)	(373)	(815)
December 31, 2013	33	360	147	1,653	2,193
Additions	36	25	98	34	193
Amortization	(15)	(216)	(116)	(381)	(728)
December 31, 2014	\$ 54	169	129	1,306	1,658

Details of the cost and accumulated amortization of property and equipment are as follows:

	December 31, 2014			December 31, 2013		
	Cost	Accumulated amortization	Carrying value	Cost	Accumulated amortization	Carrying value
Furniture and fixtures	\$ 1,407	(1,353)	54	1,372	(1,339)	33
Computer equipment	2,065	(1,896)	169	2,040	(1,680)	360
Computer software	732	(603)	129	633	(486)	147
Leasehold improvements	3,441	(2,135)	1,306	3,407	(1,754)	1,653
<b>Total</b>	<b>\$ 7,645</b>	<b>(5,987)</b>	<b>1,658</b>	<b>7,452</b>	<b>(5,259)</b>	<b>2,193</b>

### 8. Intangible Asset

The Company's recognized intangible asset consists of a license. During the years ending December 31, details of the movement in the carrying values are as follows:

	2014	2013
<b>Cost</b>	-	-
Balance, beginning of year	\$ -	-
Additions from separate acquisitions	1,028	-
Additions from internal developments	-	-
Disposals or classified as held for sale	-	-
Balance, end of year	1,028	-
<b>Accumulated amortization and impairment</b>	-	-
Balance, beginning of year	-	-
Amortization expense	-	-
Disposals or classified as held for sale	-	-
Impairment losses	-	-
Balance, end of year	-	-
<b>Carrying amount</b>	<b>\$ 1,028</b>	<b>-</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
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## 9. Provision for Unpaid Claims and Adjustment Expenses

### a) Nature of unpaid claims and adjustment expenses

The determination of the provision for unpaid claims and adjustment expenses is a complex process based on known facts, interpretations and judgment and is influenced by a variety of factors. These factors include the Company's own experience with similar cases and historical trends involving claim payment patterns, loss payments, pending levels of unpaid claims and adjustment expenses, product mix and concentration, claims severity and claim frequency patterns.

Other factors include the continually evolving and changing regulatory and legal environment, actuarial studies, professional experience and expertise of the Company's claim departments' personnel and independent adjusters retained to handle individual claims, the quality of the data used for projection purposes, existing claims management practices including claims handling and settlement practices, the effect of inflationary trends on future claims settlement costs, investment rates of return, court decisions and economic conditions. In addition, time can be a critical part of the provision determination, since the longer the span between the incidence of a loss and the settlement of the claim, the more potential for variation in the ultimate settlement amount. Accordingly, short-tailed claims, such as property claims, tend to be more reasonably predictable than long-tailed claims, such as professional liability and title claims.

The process of establishing the provision relies on the judgment and opinions of a large number of individuals, on historical precedents and trends, on prevailing legal, economic, social and regulatory trends and on expectations as to future developments. The provision reflects expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, together with a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors.

Consequently, the measurement of the ultimate settlement costs of claims to date that underlies the provision for unpaid claims and adjustment expenses, and any related recoveries for reinsurance and deductibles, involves estimates and measurement uncertainty. The amounts are based on estimates of future trends in claim severity and other factors which could vary as claims are settled. Variability can be caused by several factors including the emergence of additional information on claims, changes in judicial interpretation, significant changes in severity or frequency of claims from historical trends, and inclusion of exposures not contemplated at the time of policy inception. Ultimate costs incurred could vary from current estimates. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the methods of estimation that have been used will produce reasonable results given the current information.

### b) Methodologies and assumptions

The best estimates of future claims payments and adjustment expenses are determined based on one or more of the following actuarial methods: the Adler-Kline method, the chain ladder method, the frequency and severity method and the expected loss ratio method. Considerations in the choice of methods to estimate ultimate claims include, among other factors, the line of business, the number of years of experience and the relative maturity of the experience, and as such, reflect methods for lines of business with long settlement patterns and which are subject to the occurrence of large claims.

Each method involves tracking claims data by "policy year", which is the year in which such claims are made for the Company's professional liability policies, and the year in which such policies were written for its title policies. Claims paid and reported, gross and net of reinsurance recoveries and net of salvage and subrogation, are tracked by lines of business, policy years and development periods in a format known as claims development triangles.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

A description of each of these methods is as follows:

## i. Adler-Kline method

This is a form of frequency and severity method which involves estimation of the closing pattern for current open and estimated unreported claims, which is combined with estimates of the average severity across successive intervals of percentage claims closed, based on consideration of historical claim settlement patterns and average amounts paid on closed claims.

## ii. Chain ladder method

The distinguishing characteristic of this form of development method is that ultimate claims for each policy year are projected from recorded values assuming the future claim development is similar to the prior years' development.

## iii. Frequency and severity method

This method assumes that, for each identified homogenous claims type group, claims count reported to date will develop to ultimate in a similar manner to historical patterns, and settle at predictable average severity amounts. This method involves applying the developed estimated ultimate claims count to selected estimated ultimate average claim severities.

## iv. Expected loss ratio method

Using the expected loss ratio method, ultimate claims projections are based upon *a priori* measures of the anticipated claims. An expected loss ratio is applied to the measure of exposure to determine estimated ultimate claims for each year. This method is commonly used in lines of business with a limited experience history.

Claims data includes external claims adjustment expenses, and for a portion of the portfolio includes internal claims adjustment expenses ("IAE"). A provision for IAE has been determined based on the Mango-Allen claim staffing technique, a transaction-based method which utilizes expected future claims handler workload per claim per handler, claims closure rates and ultimate claims count. The IAE provision is included in the IBNR balances.

The provision for unpaid claims and adjustment expenses is discounted using an interest rate based on the estimated market value based yield to maturity, inherent credit risk and related investment expense of the Company's fixed income securities supporting the provision for unpaid claims and adjustment expense as at December 31, 2014, which was 1.95% (December 31, 2013: 2.69%). Reinsurance recoverable estimates and claims recoverable from other insurers are discounted in a manner consistent with the method used to establish the related liability. Based on published guidance from the CIA, as at December 31, 2014 the PfAD was calculated at 15% (December 31, 2013: 15%) of the net discounted claim liabilities, 1.5% (December 31, 2013: 1.5%) of the ceded discounted claim liabilities, and a 0.50% reduction to the discount rate (December 31, 2013: 0.50%).

As the provision for unpaid claims and adjustment expenses is recorded on a discounted basis and reflects the time value of money, its carrying value is expected to provide a reasonable basis for the determination of fair value. However, determination of fair value also requires the practical context of a buyer and seller, both of whom are willing and able to enter into an arm's length transaction. In the absence of such a practical context, the fair value is not readily determinable.

The following table shows unpaid claims and adjustment expenses on an undiscounted basis and a discounted basis:

	December 31, 2014		December 31, 2013	
	Undiscounted	Discounted	Undiscounted	Discounted
Unpaid claims and adjustment expenses	\$ 426,622	468,493	417,231	447,912
Recoverable from reinsurers	(41,349)	(44,900)	(38,063)	(40,487)
Net	<u>\$ 385,273</u>	<u>423,593</u>	<u>379,168</u>	<u>407,425</u>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Details of the provision for unpaid claims and adjustment expenses, by line of business, are summarized as follows:

	December 31, 2014			December 31, 2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Professional liability	\$ 453,626	(44,814)	408,812	430,823	(40,348)	390,475
Title	14,867	(86)	14,781	17,089	(139)	16,950
<b>Total</b>	<b>\$ 468,493</b>	<b>(44,900)</b>	<b>423,593</b>	<b>447,912</b>	<b>(40,487)</b>	<b>407,425</b>

The provision for unpaid claims and adjustment expenses by case reserves and IBNR are as follows:

	December 31, 2014			December 31, 2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Case reserves	\$ 287,235	(3,056)	284,179	269,525	(3,473)	266,052
IBNR	181,258	(41,844)	139,414	178,387	(37,014)	141,373
<b>Total</b>	<b>\$ 468,493</b>	<b>(44,900)</b>	<b>423,593</b>	<b>447,912</b>	<b>(40,487)</b>	<b>407,425</b>

An evaluation of the adequacy of claims liabilities is completed at the end of each financial quarter. This evaluation includes a re-estimation of the liability for unpaid claims and adjustment expenses compared to the liability that was originally established. As adjustments to estimated claims liabilities become necessary, they are reflected in current operations.

## c) Changes in methodologies or basis of selection of assumptions

Based on the Company's actuarial valuation process, at each valuation the Company's claims data is analyzed to determine whether the current methodologies and basis of selection of actuarial assumptions continue to be appropriate for the determination of the IBNR provision. As a result, the Company revised the basis of selection of some key assumptions used in its actuarial valuation methods as at December 31, 2014 and December 31, 2013.

In 2014, the Company updated the methodologies and basis of selection of key assumptions used in determining its provision for unpaid claims and adjustment expenses to ensure they appropriately reflect emerging experience and changes in risk profile, which resulted in a change to projected net cash outflows and, therefore, to the provision. In addition, as at December 31, 2014, an amount of \$2,303,584 was added explicitly to the IBNR provision to account for a group of related claims. The net impact of these changes was a \$4,979,000 decrease in the provision, before reinsurance, as at December 31, 2014, which included a net decrease of \$5,378,629 relating to severity assumptions and an increase of \$399,629 relating to claim frequency assumptions. This total impact has been allocated by policy year as a \$2,607,000 decrease related to the current year and a \$2,372,000 decrease related to the prior years, and by line of business as a \$4,135,119 net decrease to professional liability and an \$843,881 net decrease to title.

In 2013, the Company performed a detailed re-evaluation of the methodologies and basis of selection of key assumptions used in determining its provision for unpaid claims and adjustment expenses to ensure they appropriately reflect emerging experience and changes in risk profile. Changes to the actuarial methods and assumptions resulted in a change to projected net cash outflows and, therefore, to the provision. The net impact of the changes in the basis of selection of assumptions and model enhancements was an \$11,417,969 decrease in the provision, before reinsurance, as at December 31, 2013, which included a net decrease of \$11,609,994 relating to severity assumptions, and an increase of \$192,025 relating to claim frequency assumptions. This total impact has been allocated by policy year as a \$4,925,517 decrease related to the current year and a \$6,492,452 decrease related to the prior years and by line of business as a \$12,136,482 net decrease to professional liability and a \$718,513 increase to title.

# Notes to Financial Statements

For the year ended December 31, 2014  
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Details of the claims and adjustment expenses for the year ended December 31 are as follows:

	2014			2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Claims & external adjustment expenses paid	\$ 76,408	849	75,559	77,248	1,924	75,324
Change in case reserves	10,501	(500)	11,001	1,930	(3,106)	5,036
Change in IBNR	(2,176)	3,786	(5,962)	(4,446)	2,300	(6,746)
Discount expense	11,190	1,127	10,063	14,763	1,357	13,406
IAE paid	7,858	-	7,858	7,347	-	7,347
Change in provision for IAE	1,066	-	1,066	2,336	-	2,336
	<b>\$ 104,847</b>	<b>5,262</b>	<b>99,585</b>	<b>99,178</b>	<b>2,475</b>	<b>96,703</b>

Changes in the provision for unpaid claims and adjustment expenses, including IAE, recorded in the statement of financial position during the year is comprised of the following:

	2014	2013
Provision for unpaid claims and adjustment expenses – January 1 – net	\$ 407,425	393,393
Change in net provision for claims and adjustment expenses due to:		
Prior years' incurred claims	(19,658)	(24,366)
Current year's incurred claims	109,180	107,663
Net claims and adjustment expenses paid in relation to:		
Prior years	(74,147)	(74,920)
Current year	(9,270)	(7,751)
Impact of discounting	<b>10,063</b>	<b>13,406</b>
Provision for unpaid claims and adjustment expenses – December 31 – net	423,593	407,425
Reinsurers' share of provisions for unpaid claims and adjustment expenses	44,900	40,487
Provision for unpaid claims and adjustment expenses – December 31 – gross	<b>\$ 468,493</b>	<b>447,912</b>

## d) Loss development tables

The tables on the following pages show the development of claims, excluding IAE, by policy year over a period of time. The first table reflects development for gross claims, which excludes any reductions for reinsurance recoverables. The second table reflects development for net claims, which is gross claims less reinsurance recoverables. The top triangle in each table shows how the estimates of total claims for each policy year develop over time as more information becomes known regarding individual claims and overall claims frequency and severity. Claims are presented on an undiscounted basis in the top triangle. The bottom triangle in each table presents the cumulative amounts paid for claims and external loss adjustment expenses for each policy year at the end of each successive year. At the bottom of each table, the provision for IAE as well as the effect of discounting and the PfAD, as at December 31, 2014, is presented based on the net amounts of the two triangles.

# Notes to Financial Statements

For the year ended December 31, 2014

Amounts stated in Canadian dollars (amounts in tables in thousands)

Before the effect of reinsurance, the loss development table is as follows:

	All Prior Years	Policy Year										Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
<b>Estimate of Ultimate Claims</b>												
At end of Policy year	\$	76,338	82,043	88,720	91,567	94,936	90,778	98,870	110,380	102,937	103,962	
One Year Later		77,704	81,820	90,139	99,776	95,781	90,585	100,573	93,630	95,423		
Two Years Later		78,736	82,040	95,375	94,086	97,708	89,394	97,841	90,749			
Three Years Later		72,246	78,097	93,715	93,942	96,541	87,128	96,265				
Four Years Later		74,959	72,438	93,424	92,322	94,258	87,341					
Five Years Later		71,851	70,399	90,823	89,566	91,157						
Six Years Later		68,675	71,942	91,450	88,292							
Seven Years Later		66,854	71,364	90,168								
Eight Years Later		64,347	70,799									
Nine Years Later		63,693										
<b>Cumulative Claims Paid</b>												
At end of Policy year		(3,792)	(4,811)	(4,100)	(5,593)	(6,726)	(4,628)	(6,868)	(4,744)	(4,167)	(5,516)	
One Year Later		(14,771)	(15,829)	(21,723)	(19,886)	(21,366)	(16,553)	(17,678)	(15,743)	(18,406)		
Two Years Later		(26,437)	(25,463)	(37,033)	(32,641)	(35,997)	(30,239)	(30,885)	(26,124)			
Three Years Later		(35,268)	(35,114)	(51,509)	(47,582)	(48,477)	(42,488)	(44,452)				
Four Years Later		(43,306)	(44,050)	(59,136)	(55,086)	(59,669)	(54,208)					
Five Years Later		(50,379)	(49,252)	(65,553)	(63,348)	(67,445)						
Six Years Later		(53,878)	(56,997)	(71,553)	(66,017)							
Seven Years Later		(56,628)	(60,476)	(75,582)								
Eight Years Later		(58,992)	(61,965)									
Nine Years Later		(60,194)										
Estimate of Ultimate Claims		63,693	70,799	90,168	88,292	91,157	87,341	96,265	90,749	95,423	103,962	
Cumulative Claims Paid		(60,194)	(61,965)	(75,582)	(66,017)	(67,445)	(54,208)	(44,452)	(26,124)	(18,406)	(5,516)	
Undiscounted Claims Liabilities	13,422	3,499	8,834	14,586	22,275	23,712	33,133	51,813	64,625	77,017	98,446	<b>411,362</b>
Provision for IAE	147	81	136	264	421	540	711	1,364	2,354	3,395	5,847	<b>15,260</b>
Discounting (including PfAD)	1,398	378	905	1,562	2,427	2,487	3,468	5,398	6,778	7,712	9,358	<b>41,871</b>
Present Value recognized in the Statement of Financial Position	\$ 14,967	3,958	9,875	16,412	25,123	26,739	37,312	58,575	73,757	88,124	113,651	<b>468,493</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
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After the effect of reinsurance, the loss development table is as follows:

	All Prior Years	Policy Year										Total	
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014		
<b>Estimate of Ultimate Claims</b>													
At end of Policy year	\$	72,615	78,076	84,240	86,762	89,886	86,458	94,874	106,381	98,696	99,579		
One Year Later		73,981	77,873	85,659	94,971	91,732	86,265	96,577	89,631	91,183			
Two Years Later		75,013	78,093	90,895	90,242	93,660	85,075	93,845	86,750				
Three Years Later		68,523	74,150	90,130	90,098	92,492	82,808	92,269					
Four Years Later		71,236	69,280	89,840	88,478	90,209	83,022						
Five Years Later		68,873	67,241	87,238	85,722	87,108							
Six Years Later		65,696	68,785	87,866	84,448								
Seven Years Later		63,875	68,207	86,584									
Eight Years Later		64,347	67,641										
Nine Years Later		63,693											
<b>Cumulative Claims Paid</b>													
At end of Policy year		(3,792)	(4,811)	(4,100)	(5,593)	(6,726)	(4,628)	(6,868)	(4,744)	(4,167)	(5,516)		
One Year Later		(14,771)	(15,829)	(21,723)	(19,886)	(21,366)	(16,553)	(17,678)	(15,741)	(18,406)			
Two Years Later		(26,437)	(25,463)	(37,033)	(32,641)	(35,997)	(30,239)	(29,976)	(26,122)				
Three Years Later		(35,268)	(35,114)	(51,509)	(47,582)	(48,477)	(42,466)	(43,542)					
Four Years Later		(43,306)	(44,050)	(59,136)	(55,086)	(59,669)	(54,111)						
Five Years Later		(50,379)	(49,252)	(65,553)	(63,348)	(67,409)							
Six Years Later		(53,878)	(56,997)	(71,553)	(66,017)								
Seven Years Later		(56,628)	(60,476)	(75,582)									
Eight Years Later		(58,992)	(61,965)										
Nine Years Later		(60,194)											
Estimate of Ultimate Claims		63,693	67,641	86,584	84,448	87,108	83,022	92,269	86,750	91,183	99,579		
Cumulative Claims Paid		(60,194)	(61,965)	(75,582)	(66,017)	(67,409)	(54,111)	(43,542)	(26,122)	(18,406)	(5,516)		
Undiscounted Claims Liabilities	6,600	3,499	5,676	11,002	18,431	19,699	28,911	48,727	60,628	72,777	94,063	<b>370,013</b>	
Provision for IAE	147	81	136	264	421	540	711	1,364	2,354	3,395	5,847	<b>15,260</b>	
Discounting (including PfAD)	816	378	637	1,237	2,070	2,133	3,094	5,129	6,430	7,367	9,029	<b>38,320</b>	
Present Value recognized in the													
Statement of Financial Position	\$	7,563	3,958	6,449	12,503	20,922	22,372	32,716	55,220	69,412	83,539	108,939	<b>423,593</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
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## 10. Unearned Premiums

The following changes have occurred in the provision for unearned premiums during the years ended December 31:

	2014	2013
Balance, as at January 1	\$ 749	723
Net premiums written during the year	114,920	106,510
Less: Net premiums earned during the year	(114,900)	(106,484)
Increase (decrease) in unearned premiums	20	26
Balance, as at December 31	<b>\$ 769</b>	<b>749</b>

The estimates for unearned premium liabilities have been actuarially tested to ensure that they are sufficient to pay for future claims and expenses in servicing the unexpired policies as of the valuation dates.

## 11. Reinsurance

The Company's reinsurance program consists of a 90% quota share cession on its excess professional liability policies (2013: 90%), and a \$10 million in excess of \$5 million per occurrence clash reinsurance arrangement which provides protection for single events that bring about multiple professional liability and/or title claims with an additional \$20 million in excess of \$15 million per occurrence relating to class action proceedings (2013: \$20 million in excess of \$15 million). Reinsurance does not relieve the Company of its primary liability as the originating insurer. In the event that a reinsurer is unable to meet obligations assumed under reinsurance agreements, the Company is liable for such amounts. Reinsurance treaties typically renew annually and the terms and conditions are reviewed by senior management and reported to the Company's Board of Directors. Reinsurance agreements are negotiated with reinsurance companies that have an independent credit rating of "A-" or better and that the Company considers creditworthy. Based on current information on the financial health of the reinsurers, no provision for doubtful debts has been made in the financial statements in respect of reinsurers.

## 12. Related Party Transactions

Pursuant to a service agreement effective January 1, 1995, and as amended effective September 30, 2009, the Company administers the Errors and Omissions Insurance Fund (the "Fund") of the Law Society and provides all services directly related to the operations and general administration of the Fund in consideration for the Law Society insuring its mandatory professional liability insurance program with the Company.

The insurance policy under the mandatory professional liability insurance program of the Law Society is written by the Company and is effective on a calendar year basis. The insurance policy is renewed effective January 1 each year subject to the Law Society's acceptance of the terms of renewal submitted by the Company. The annual policy limits for each of the years effective January 1, 1995 to December 31, 2014 are \$1 million per claim and \$2 million in aggregate per member. Under the insurance policy that was in force between July 1, 1990 and December 31, 1994, the Company was responsible for claims in excess of the Law Society and member deductibles. The provision for unpaid claims and adjustment expenses is net of amounts relating to policies for years prior to 1995 that are payable by the Law Society.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

For the year ended December 31, 2014, \$110,871,667 of the gross premiums written related to mandatory insurance coverage provided to the Law Society and its members (2013: \$102,093,412). As at December 31, 2014, the Company had a balance due from the Law Society of \$6,622,607 (December 31, 2013: \$2,896 due to Law Society).

For the year ended December 31, 2014, the Company contributed to the Law Society \$231,194 in regards to a wellness program to be made available to the insureds of the Company's primary liability policy (2013: \$210,230). This expenditure is included in operating expenses (see note 15).

The total compensation to Company personnel classified as key management, being those having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including directors of the Company, is as follows:

	2014	2013
Short-term compensation and benefits	\$ 3,372	3,163
Post employment benefits	246	251
	<b>\$ 3,618</b>	<b>3,414</b>

## 13. Employee Benefits

The Company has a defined contribution pension plan which is available to all its employees upon meeting the eligibility requirements. Each employee is required to contribute 4.5% of yearly maximum pensionable earnings, and 6% in excess thereof, of an employee's annual base earnings. Under the plan, the Company matches all employee contributions. In 2014, the Company made payments of \$641,012 (2013: \$603,836) and recorded pension expense of \$675,910 (2013: \$630,402).

The Company also has a supplemental defined benefit pension plan, which provides pension benefits on a final salary or fixed schedule basis, depending on certain criteria. Measurements and funding requirements of this plan are based on valuations prepared by an external actuary. For reporting purposes the plan is measured using the projected unit credit method, which involves calculating the actuarial present value of the past service liability to members including an allowance for their projected future earnings. Funding requirements for the plan are determined using the solvency method, which utilizes the estimated cost of securing each member's benefits with an insurance company or alternative buy-out provider as at the valuation date. The valuation methods are based on a number of assumptions, which vary according to economic conditions, including prevailing market interest rates, and changes in these assumptions can significantly affect the measurement of the pension obligations.

Funding for the supplemental plan commenced in 2005, with no payments made in 2014 (2013: \$248,402) and recorded pension expenses of \$11,865 in 2014 (2013: \$59,671). Funding requirements are reviewed annually with an actuarial valuation for funding purposes effective as at December 31. As the Company's defined benefit pension plan qualifies as a "retirement compensation arrangement" pursuant to the *Income Tax Act*, half of any required annual contribution to the plan is remitted to the Canada Revenue Agency, held in a refundable tax account and refunded in prescribed amounts as actual benefit payments are made to the participants. The most recent actuarial valuation for funding purposes was performed effective December 31, 2013. Management's preliminary estimate is that no contribution is required to the plan during the year ending December 31, 2015.

The assets of both pension plans are held separately from those of the Company in funds under the control of trustees.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The defined benefit pension plan exposes the Company to risks such as: investment risk, interest rate risk, longevity risk and salary risk.

<b>Investment risk</b>	The present value of the defined benefit plan liability is calculated using a discount rate determined by reference to high quality mid-duration corporate bond yields; if the return on plan assets is below this rate, it will create a plan deficit. Currently the plan has a relatively balanced investment in equity and fixed income securities. Due to the long-term nature of the plan liabilities, the Company considers it appropriate that a reasonable portion of the plan assets should be invested in equity securities to leverage the return generated by the fund.
<b>Interest rate risk</b>	A decrease in the market interest rate will increase the plan obligation; however, this will be partially offset by an increase in the return of the plan's fixed income securities.
<b>Longevity risk</b>	The present value of the defined benefit plan obligation is calculated by reference to the best estimate of the mortality of plan participants both during and after their employment. An increase in the life expectancy of the plan participants will increase the plan's obligation.
<b>Salary risk</b>	The present value of the defined benefit plan liability is calculated by reference to the future salaries of plan participants. As such, an increase in the salary of the plan participants will increase the plan's obligation.

The following represents the assets and liabilities associated with pension benefits measured using values as at December 31:

## Defined benefit plan obligation

	2014	2013
<b>Accrued benefit obligation</b>		
Balance, as at January 1	\$ 6,253	6,343
Current service cost	120	126
Interest cost	287	249
Remeasurement (gains) losses:		
Actuarial (gains) losses – demographic assumptions	72	285
Actuarial (gains) losses – financial assumptions	704	(545)
Actuarial (gains) losses – experience adjustments	(5)	-
Benefits paid	(273)	(205)
Balance, as at December 31	<b>\$ 7,158</b>	<b>6,253</b>

## Defined benefit plan assets

	2014	2013
<b>Plan assets</b>		
Fair value, as at January 1	\$ 8,731	7,978
Interest income on plan assets	395	316
Remeasurement gains (losses):		
Return on plan assets greater (less) than discount rate	(5)	394
Benefits paid	(273)	(205)
Employer contribution	-	248
Fair value, as at December 31	<b>\$ 8,848</b>	<b>8,731</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The defined benefit plan assets arise primarily from employer contributions that are originally allocated equally between deposits with the Government of Canada and investments in the units of a balanced pooled fund. The fair values of the above equity and fixed income securities are derived based on quoted market prices in active markets. The plan assets contain the following financial instrument allocation:

	December 31, 2014	December 31, 2013
Equity securities	33.21%	36.42%
Fixed income securities	17.32%	16.48%
Cash and cash equivalents	4.55%	1.31%
Refundable-tax account	44.92%	45.79%
	<b>100%</b>	<b>100%</b>

Reconciliation of funded status surplus of the benefit plans to the amounts recorded in the financial statements is as follows:

	December 31, 2014	December 31, 2013
Fair value of plan assets	\$ 8,848	8,731
Accrued benefit obligation	(7,158)	(6,253)
Funded status surplus	1,690	2,478
Irrecoverable surplus (effect of asset ceiling)	-	-
Accrued benefit asset	\$ <b>1,690</b>	<b>2,478</b>

The accrued benefit asset is included in other assets in the statement of financial position.

Amounts recognized in comprehensive income in respect of the defined benefit plan in the year ended December 31:

	2014	2013
Service cost:		
Current service cost	\$ 120	126
Past service cost and (gain) loss from settlements	-	-
Net interest (income) expense	(108)	(67)
Components of defined benefit costs recognized in profit or loss	<b>12</b>	<b>59</b>
Remeasurement on the net defined benefit liability		
Actuarial (gain) loss due to liability experience	(5)	-
Actuarial (gain) loss due to liability assumption changes	776	(260)
Actuarial (gain) loss arising during year	771	(260)
Return on plan assets (greater) less than discount rate	5	(394)
Change in irrecoverable surplus (effect of asset ceiling)	-	-
Components of defined benefit costs recognized in OCI	<b>776</b>	<b>(654)</b>
<b>Total</b>	<b>\$ 788</b>	<b>(595)</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The significant assumptions used by the Company for year-end measurement purposes are as follows:

	2014	2013
Discount rate	3.80%	4.60%
Rate of compensation increase	3.50%	3.50%
Mortality	CPM 2014Priv mortality table with generational mortality improvements following Scale CPM-B; pension size adjustment factors of 0.83 for males and 0.88 for females	CPM-RPP2014Priv mortality table with generational mortality improvements following Scale CPM-A; pension size adjustment factors of 0.84 for males and 0.96 for females

The sensitivity of the key assumption, namely discount rate, assuming all other assumptions remain constant, is as follows: as at December 31, 2014, if the discount rate was 1% higher/(lower) the defined benefit obligation would decrease by \$863,800 (increase by \$1,061,400). Note that the sensitivity analysis may not be representative of the actual change in the defined benefit obligation as it is unlikely that the change in assumption would occur in isolation of one or other changes as some of the assumptions may be correlated.

The expected maturity profile of the defined benefit obligation as at December 31, 2014 is as follows:

	2015	2016	2017	2018	2019	Thereafter
Expected benefit payments	273	282	281	280	401	1,983

The defined benefit obligation as at December 31, 2014 by participant category is as follows:

Active participants	2,412
Pensioners	4,746

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 14. Income Taxes

### a) Income tax expense recognized in profit or loss

The total income tax expense recognized in profit or loss is comprised as follows:

	2014	2013
<b>Current income tax</b>		
(Recovered) expensed during the year	\$ 6,220	2,129
Prior year adjustments	-	(3)
<b>Total current income tax expense (recovery)</b>	<b>6,220</b>	<b>2,126</b>
<b>Deferred income tax</b>		
Origination and reversal of temporary differences	(309)	(226)
Changes in statutory tax rates	-	-
<b>Total deferred income tax expense (recovery)</b>	<b>(309)</b>	<b>(226)</b>
<b>Total income tax expense (recovery)</b>	<b>\$ 5,911</b>	<b>1,900</b>

Deferred income tax expense recognized in profit or loss represents movements on the following items:

	2014	2013
Unpaid claims and adjustment expenses	\$ (214)	(186)
Investments	(40)	(42)
Pensions	(12)	43
Property and equipment	(43)	(41)
	<b>\$ (309)</b>	<b>(226)</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## b) Income tax expense recognized in the statement of profit or loss and other comprehensive income

The total income tax expense recognized in OCI is comprised as follows:

	2014	2013
<b>Current income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	\$ 815	4,388
Pensions	-	-
<b>Total current income tax expense</b>	<b>815</b>	<b>4,388</b>
<b>Deferred income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	-	-
Pensions	(206)	174
<b>Total deferred income tax expense</b>	<b>(206)</b>	<b>174</b>
<b>Total income tax expense in OCI</b>	<b>\$ 609</b>	<b>4,562</b>

## c) Income tax reconciliation

The following is a reconciliation of income taxes, calculated at the statutory income tax rate, to the income tax provision included in profit or loss.

	2014	2013
Profit or loss before income taxes	\$ 22,971	7,833
Statutory income tax rate	26.50%	26.50%
Provision for (recovery of) income taxes at statutory rates	6,087	2,076
Increase (decrease) resulting from:		
Investments	(198)	(193)
Non-deductible meals and entertainment	13	12
Other non-deductible items	9	5
Provision for (recovery of) income taxes	<b>\$ 5,911</b>	<b>1,900</b>

The statutory rate applicable to the Company at December 31, 2014 is same as at December 31, 2013.

During the year, the Company made income tax payments of \$10,293,132 (2013: \$2,205,734) and received no income tax refunds (2013: \$2,674,499) from the various taxing authorities.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Net deferred income tax asset

The Company's net deferred income tax asset is the result of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The sources of these temporary differences and the tax effects are as follows:

	December 31, 2014	December 31, 2013
<b>Deferred tax assets</b>		
Net provision for unpaid claims and adjustment expenses	\$ 5,613	5,398
Property and equipment	292	249
	5,905	5,647
<b>Deferred tax liabilities</b>		
Investments	(433)	(471)
Pension	(415)	(633)
	(848)	(1,104)
<b>Total net deferred tax assets</b>	<b>\$ 5,057</b>	<b>4,543</b>

The Company believes that, based on available information, it is probable that the deferred income tax assets will be realized through a combination of future reversals of temporary differences and taxable income.

## 15. Operating Expenses

The following table summarizes the Company's operating expenses by nature:

	2014	2013
Salaries and benefits	\$ 9,755	9,373
Administrative expenses	2,631	2,203
Professional fees	1,746	1,682
Occupancy lease	1,047	1,100
Communication	463	582
Information systems	746	875
Amortization of property and equipment	442	515
<b>Total</b>	<b>\$ 16,830</b>	<b>16,330</b>

Included in salaries and benefits are amounts for future employee benefits under a defined contribution plan of \$641,012 (2013: \$603,836) and a supplementary defined benefit plan of \$11,865 (2013: \$59,671).

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 16. Operating Lease Commitments

The Company entered into a lease agreement for premises at 250 Yonge Street, with an effective date of February 1, 2008 and an expiry date of May 31, 2018. The Company has an option to extend the lease period for five additional years under the current general terms and conditions.

At December 31, 2014, lease obligations on office premises were as follows:

2015	1,220
2016	1,220
2017	1,220
2018	508

## 17. Capital Stock and Contributed Surplus

Capital stock of the Company represents:

30,000 Common Shares of par value of \$100 each – authorized, issued and paid.

20,000 6% non-cumulative, redeemable, non-voting Preferred Shares of par value of \$100 each – authorized, issued and paid.

The Preferred Shares meet the definition of equity in accordance with the criteria outlined in IAS 32 “*Financial Instruments: Presentation*”.

Contributed surplus represents additional capitalization funding provided by the Law Society.

## 18. Statutory Insurance Information

The Company is the beneficiary of trust accounts in the amount of \$1,238,354 as at December 31, 2014 (December 31, 2013: \$1,247,970) which are held as security for reinsurance ceded to unregistered reinsurers. This trust balance is not reflected in these financial statements but is considered in determining statutory capital requirements.

In accordance with licensing requirements, the Company no longer requires deposited securities with the regulatory authorities (December 31, 2013: market value of \$50,416).

## 19. Capital Management

Capital is comprised of the Company’s equity. As at December 31, 2014 the Company’s equity was \$208,625,233 (December 31, 2013: \$189,875,442). The Company’s objectives when managing capital are to maintain financial strength and protect its claims paying abilities, to maintain creditworthiness and to provide a reasonable return to the shareholder over the long term. In conjunction with the Company’s Board of Directors and its Audit Committee, senior management develops the capital strategy and oversees the capital management processes of the Company. Capital is managed using both regulatory capital measures and internal metrics.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

FSCO, the Company's primary insurance regulator, along with other provincial insurance regulators, regulate the capital required in the Company using two key measures, i.e., Minimum Capital Test ("MCT") and the Dynamic Capital Adequacy Test ("DCAT"). FSCO has established an MCT guideline which sets out 100% as the minimum and 150% as the supervisory target for P&C insurance companies. To ensure that it attains its objectives, the Company has established an internal target of 180% (2013: 180%) in excess of which, under normal circumstances, the Company will maintain its capital. During the year ended December 31, 2014, the Company complied with the various provincial regulators' guidelines and as at December 31, 2014, the Company has a MCT ratio of 251% (December 31, 2013: 233%). Annually, the Company's Appointed Actuary prepares a DCAT on the MCT to ensure that the Company has adequate capital to withstand significant adverse event scenarios. These scenarios are reviewed each year to ensure appropriate risks are included in the testing process. The Appointed Actuary must present both an annual report and the DCAT report to management and the Audit Committee. The DCAT report prepared during the year indicated that the Company's capital position is satisfactory. In addition, the target, actual and forecasted capital position of the Company is subject to ongoing monitoring by management using stress and scenario analysis to ensure its adequacy.

The Company may use reinsurance to manage its capital position.

## 20. Risk Management

By virtue of the nature of the insurance company business, financial instruments comprise the majority of the Company's statement of financial position as at both December 31, 2014 and 2013. The most significant identified risks to the Company which arise from holding financial instruments and insurance contract liabilities include insurance risk, credit risk, liquidity risk and market risk. The market risk exposure of the Company is primarily related to changes in interest rates and adverse movement in equity prices.

The Company employs an enterprise-wide risk management framework which establishes practices for risk management and includes policies and processes to identify, assess, manage and monitor risks and risk tolerance limits. It provides governance and supervision of risk management activities across the Company's business units, promoting the discipline and consistency applied to the practice of risk management.

The Company's risk framework is designed to minimize risks that could materially adversely affect the value or stature of the Company, to contribute to stable and sustainable returns, to identify risks that the Company can manage in order to increase earnings, and to provide transparency of the Company's risks through internal and external reporting. The Company's risk philosophy involves undertaking risks for appropriate return and accepting those risks that meet its objectives. The Company's risk management program is aligned with its long term vision and its culture supports an effective risk management program. The key components of the risk culture include acting with fairness, appreciating the impact of risk on all major stakeholders, embedding risk management into day to day business activities, fostering full and transparent communications, cooperation, and aligning of objectives and incentives. The Company's risk management activities are monitored by its Risk Committee and Board of Directors.

The risk exposure measures expressed below primarily include the sensitivity of the Company's profit or loss, and OCI as applicable, to the movement of various economic factors. These risk exposures include the sensitivity due to specific changes in market prices and interest rate levels projected using internal models as at a specific date, and are measured relative to a starting level reflecting the Company's assets and liabilities at that date and the actuarial factors, investment returns and investment activity the Company assumes in the future. The risk exposures measure the impact of changing one factor at a time and assume that all other factors remain unchanged. Actual results can differ materially from these estimates for a variety of reasons including the interaction among these factors when more than one changes, changes in actuarial and investment return and future investment activity assumptions, actual experience differing from the assumptions, changes in business mix, effective tax rates, and other market factors and general limitations of the Company's internal models.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## a) Insurance risk

Insurance risk is the risk of loss due to actual experience differing from the experience assumed when a product was designed and priced with respect to claims, policyholder behaviour and expenses. The Company has identified pricing risk, concentration of risk and reserving risk as its most significant sources of insurance risks. The Company's underwriting objective is to develop business within its target market on a prudent and diversified basis and to achieve profitable operating results.

### Pricing risk

Pricing risk arises when actual claims experience differs from the assumptions included in pricing calculations. Historically, the underwriting results of the property and casualty industry have fluctuated significantly due to the cyclical nature of the insurance market. The market cycle is affected by the frequency and severity of claims, levels of capacity and demand, general economic conditions and price competition.

The Company focuses on profitable underwriting using a combination of experienced underwriting staff, pricing models and price adequacy monitoring tools. The Company prices its products taking into account numerous factors including claims frequency and severity trends, product line expense ratios, special risk factors associated with the product line, and the investment income earned on premiums held until the payment of claims and expenses. The Company's pricing is designed to ensure an appropriate return while also providing long-term rate stability. These factors are reviewed and adjusted periodically to ensure they reflect the current environment.

### Concentration of risk

A concentration of risk represents the exposure to increased losses associated with an inadequately diversified portfolio of policy coverage. The Company has a reinsurance program to limit its exposure to catastrophic losses from any one event or set of events. The Company has approximately 99% of its business in Ontario (2013: 99%) and 96% in professional liability (2013: 95%), and consequently is exposed to trends, inflation, judicial changes and regulatory changes affecting these segments. The geographical diversity by location of the underlying insurance risk for the year ended December 31 is summarized below:

Gross written premium	2014			2013		
	Ontario	All other provinces	Total	Ontario	All other provinces	Total
Professional liability	\$ 116,979	-	116,979	108,009	-	108,009
Title	4,966	204	5,170	5,257	295	5,552
<b>Total</b>	<b>\$ 121,945</b>	<b>204</b>	<b>122,149</b>	<b>113,266</b>	<b>295</b>	<b>113,561</b>

### Reserving risk

Reserving risk arises because actual claims experience can differ adversely from the assumptions included in setting reserves, in large part due to the length of time between the occurrence of a loss, the reporting of the loss to the insurer and the ultimate resolution of the claim. Claims provisions reflect expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors. Reserve changes associated with claims of prior periods are recognized in the current period, which could have a significant impact on current year profit or loss. In order to mitigate this risk the Company utilizes information systems in order to maintain claims data integrity, and the claims provision valuations are prepared by an internal actuary on a quarterly basis, and are reviewed separately by, and must be acceptable to, management of the Company every quarter and the external Appointed Actuary at mid-year and year-end.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Sensitivity analyses

Risks associated with property and casualty insurance contracts are complex and subject to a number of variables which complicate quantitative sensitivity analysis. The Company considers that the provision for its unpaid claims and adjustment expenses recognized in the statement of financial position is adequate. However, actual experience will differ from the expected outcome. Among the Company's lines of business, the professional liability line of business has the largest provision for unpaid claims and adjustment expenses. Given this line of business and the actuarial methods utilized to estimate the related provision for unpaid claims and adjustment expenses, the reported claims count development factors and average claim severity selections are the most critical of the assumptions used. The following table provides the estimated increase (decrease) of the net provision for unpaid claims and adjustment expense and the after-tax net effect on equity if the reported claims count development factors were increased such that the estimate of unreported claims was 20% higher or the average claim severity selections were 1% higher. Other changes in assumptions are considered to be less material.

	December 31, 2014		December 31, 2013	
	Net provision for unpaid claims and adjustment expenses	Equity	Net provision for unpaid claims and adjustment expenses	Equity
Unreported claims +20%	5,283	(3,883)	4,904	(3,605)
Average claim severities +1%	5,299	(3,895)	4,843	(3,560)

## b) Credit risk

Credit risk is the risk of loss due to the inability or unwillingness of a borrower or counterparty to fulfill its payment obligation to the Company. Credit risks arise from investments in fixed income securities and preferred shares, and balances due from insureds and reinsurers.

Management monitors credit risk and any mitigating controls. The Company has established a credit review process where the credit quality of all exposures is continually monitored so that appropriate prompt action can be taken when there is a change which may have material impact.

Governance processes around investments include oversight by the Board of Directors' Investment Committee. The oversight includes reviews of the Company's third party investment managers, investment performance and adherence to the Company's investment policy. The Company's investment policy statement is reviewed at least on an annual basis and addresses various matters including investment objectives, risks and management. Guidelines and limits have been established in respect of asset classes, issuers of securities and the nature of securities to address matters such as quality and concentration of risks.

With respect to credit risk arising from balances due from reinsurers, the Company's exposure is measured to reflect both current exposure and potential future exposure to ceded liabilities. Reinsurance and insurance counterparties must also meet minimum risk rating criteria. The Company's Board of Directors has approved a reinsurance policy, which is monitored by the Company's Audit Committee.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The following table provides a credit risk profile of the Company's applicable investment assets and amounts recoverable from reinsurers.

	December 31, 2014						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 3,580	-	-	-	-	13,748	17,328
Fixed income securities	93,346	92,900	224,115	66,619	-	25,115	502,095
Investment income due and accrued	182	286	891	470	1	182	2,012
Due from reinsurers	-	-	651	-	7	68	726
Due from insureds	-	-	-	-	-	1,909	1,909
Due from the Law Society of Upper Canada	-	-	-	-	-	6,623	6,623
Reinsurers' share of provisions for unpaid claims and adjustment expenses	-	-	44,595	-	53	252	44,900
Other receivables	-	-	-	-	-	1,404	1,404
Other assets	\$ -	-	-	-	-	1,984	1,984

	December 31, 2013						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 550	-	-	-	-	13,975	14,525
Fixed income securities	107,128	109,025	193,069	69,077	-	5,786	484,085
Investment income due and accrued	216	294	832	678	-	116	2,136
Due from reinsurers	-	-	276	-	7	26	309
Due from insureds	-	-	-	-	-	2,027	2,027
Reinsurers' share of provisions for unpaid claims and adjustment expenses	-	-	40,049	-	-	438	40,487
Other receivables	-	-	-	-	-	1,419	1,419
Other assets	\$ -	-	-	-	-	2,758	2,758

Fixed income securities are rated using a composite of Moody's, Standard & Poor and Dominion Bond Rating Service ratings, and reinsurers are rated using A.M. Best. The balances in the above tables do not contain any amounts that are past due.

## c) Liquidity risk

Liquidity risk is the risk that the Company will not have enough funds available to meet all expected and unexpected cash outflow commitments as they fall due. Under stressed conditions, unexpected cash demands could arise primarily from a significant increase in the level of claim payment demands.

To manage its cash flow requirements, the Company has arranged diversified funding sources and maintains a significant portion of its invested assets in highly liquid securities such as cash and cash equivalents and government bonds (see note 5b). In addition, the Company has established counterparty exposure limits that aim to ensure that exposures are not so large that they may impact the ability to liquidate investments at their market value.

Claims liabilities account for the majority of the Company's liquidity risk. A significant portion of the investment portfolio is invested with the primary objective of matching the investment asset cash flows with the expected future payments on these claims liabilities. This portion, referred to as the cash-flow matched investment portfolio, consists of fixed income and preferred equity securities that are intended to address the liquidity and cash flow needs of the Company as claims are settled. The remainder of the Company's overall investment portfolio, the available-for-sale portfolio, backs equity and is invested in fixed income securities and equities with the objective of preserving capital and achieving an appropriate return consistent with the objectives of the Company.

# Notes to Financial Statements

For the year ended December 31, 2014  
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The following tables summarize the carrying amounts of financial instruments and insurance assets and liabilities by contractual maturity or expected cash flow dates (the actual repricing dates may differ from contractual maturity because certain securities and debentures have the right to call or prepay obligations with or without call or prepayment penalties) as at:

December 31, 2014					
	Within one year	One to five years	More than five years	No fixed maturity	Total
<b>Assets</b>					
Cash and cash equivalents	\$ 17,328	-	-	-	17,328
Investments – designated as FVTPL	80,885	135,715	142,612	516	359,728
Investments – available-for-sale	2,850	116,742	23,291	94,669	237,552
Investment income due and accrued	2,012	-	-	-	2,012
Due from reinsurers	726	-	-	-	726
Due from insureds	1,909	-	-	-	1,909
Reinsurers' share of unpaid claims	10,691	25,157	7,496	1,556	44,900
Due from Law Society	6,623	-	-	-	6,623
Other receivable	1,404	-	-	-	1,404
Other assets	1,984	-	-	-	1,984
<b>Total</b>	<b>126,412</b>	<b>277,614</b>	<b>173,399</b>	<b>96,741</b>	<b>674,166</b>
<b>Liabilities</b>					
Provision for unpaid claims	111,554	262,493	78,213	16,233	468,493
Due to reinsurers	612	-	-	-	612
Due to insureds	265	-	-	-	265
Expenses due and accrued	1,635	-	-	-	1,635
<b>Total</b>	<b>\$ 114,066</b>	<b>262,493</b>	<b>78,213</b>	<b>16,233</b>	<b>471,005</b>

December 31, 2013					
	Within one year	One to five years	More than five years	No fixed maturity	Total
<b>Assets</b>					
Cash and cash equivalents	\$ 14,525	-	-	-	14,525
Investments – designated as FVTPL	78,984	150,373	136,299	499	366,155
Investments – available-for-sale	635	85,374	32,420	90,455	208,884
Investment income due and accrued	2,136	-	-	-	2,136
Due from reinsurers	309	-	-	-	309
Due from insureds	2,027	-	-	-	2,027
Reinsurers' share of unpaid claims	10,347	18,989	5,952	5,199	40,487
Other receivable	1,419	-	-	-	1,419
Other assets	2,758	-	-	-	2,758
<b>Total</b>	<b>113,140</b>	<b>254,736</b>	<b>174,671</b>	<b>96,153</b>	<b>638,700</b>
<b>Liabilities</b>					
Provision for unpaid claims	98,586	215,468	70,553	63,305	447,912
Due to reinsurers	591	-	-	-	591
Due to insureds	66	-	-	-	66
Due to Law Society	3	-	-	-	3
Expenses due and accrued	1,526	-	-	-	1,526
<b>Total</b>	<b>\$ 100,772</b>	<b>215,468</b>	<b>70,553</b>	<b>63,305</b>	<b>450,098</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Market and interest rate risk

Market risk is the risk that the fair value or future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rate, foreign exchange rates, and equity prices. Due to the nature of the Company's business, invested assets and insurance liabilities as well as revenues and expenses are impacted by movements in capital markets, interest rates, and to a lesser extent, foreign currency exchange rates. Accordingly, the Company considers these risks together in managing its asset and liability positions and ensuring that risks are properly addressed. These risks are referred to collectively as market price and interest rate risk - the risk of loss resulting from movements in market price, interest rate, credit spreads and foreign currency rates.

Interest rate risk is the potential for financial loss arising from changes in interest rates. The Company is exposed to interest rate price risk on monetary financial assets and liabilities that have a fixed interest rate and is exposed to interest rate cash flow risk on monetary financial assets and liabilities with floating interest rates that are reset as market rates change.

For FVTPL assets and other financial assets supporting actuarial liabilities, the Company is exposed to interest rate risk when the cash flows from assets and the policy obligations they support are significantly mismatched, as this may result in the need to either sell assets to meet policy payments and expenses or reinvest excess asset cash flows under unfavourable interest environments. Bonds designated as available-for-sale generally do not support actuarial liabilities. Changes in fair value, other than foreign exchange rate gains and losses, of available-for-sale fixed income securities are recorded to OCI.

The following chart provides the estimated increase (decrease) on the Company's net investment income, net provision for unpaid claims and adjustment expenses, and after-tax OCI, after an immediate parallel increase or decrease of 1% in interest rates as at December 31 across the yield curve in all markets.

		December 31, 2014			December 31, 2013		
		Net investment income	Net provision for unpaid claims and adjustment expenses	After-tax OCI	Net investment income	Net provision for unpaid claims and adjustment expenses	After-tax OCI
Interest rates	+1%	(9,224)	(12,741)	(2,951)	(10,780)	(11,686)	(3,003)
	-1%	9,664	13,428	3,092	11,332	9,717	3,161

Market price and interest rate risk is managed through established policies and standards of practice that limit market price and interest rate risk exposure. Company-wide market price and interest rate risk limits are established and actual positions are monitored against limits. Target asset mixes, term profiles, and risk limits are updated regularly and communicated to portfolio managers. Actual asset positions are periodically rebalanced to within established limits.

Equity price risk is the risk that the fair values of equities decrease as the result of changes in the levels of equity indices and the value of individual equity securities. The Company's equities are designated as available-for-sale and generally do not support actuarial liabilities. The following chart provides the estimated increase (decrease) on the Company's after-tax OCI, assuming all other variables held constant, after an immediate 10% increase or decrease in equity prices as at December 31.

		2014 After-tax OCI	2013 After-tax OCI
Equity prices	+10%	6,958	6,648
	-10%	(6,958)	(6,648)

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates, in particular when an asset and liability mismatch exists in a different currency than the currency in which they are measured. As the Company does not hold significant liabilities in foreign currencies, the resulting currency risk is borne by the Company and forms part of its overall investment income. The table below details the effect of a 10% movement of the currency rate against the Canadian dollar as at December 31, with all other variables held constant.

Currency	2014		2013	
	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)
US Dollar	356	3,081	344	2,600
Euro	-	1,142	1	1,204
Other	-	830	-	847
	<b>356</b>	<b>5,053</b>	<b>345</b>	<b>4,651</b>

The Company also manages possible excessive concentration of risk. Excessive concentrations arise when a number of counterparties are engaged in similar business activities, or activities in the same geographic region, or have similar economic features that would cause their ability to meet contractual obligations to be similarly affected by changes in economic, political and other conditions. Concentrations indicate the relative sensitivity of the Company's performance to developments affecting a particular industry or geographic location. In order to avoid excessive concentrations of risk, the Company applies specific policies on maintaining a diversified portfolio. Identified risk concentrations are managed accordingly.

The following tables summarize the carrying amounts of financial instruments by geographical location of the issuer, as at:

	December 31, 2014					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 13,770	486,983	25,358	1,772	527,883	85.6%
USA	3,558	-	39,083	61	42,702	6.9%
France	-	-	9,573	-	9,573	1.6%
Netherlands	-	-	5,216	-	5,216	0.8%
Others	-	15,112	15,955	179	31,246	5.1%
Total	<b>\$ 17,328</b>	<b>502,095</b>	<b>95,185</b>	<b>2,012</b>	<b>616,620</b>	<b>100.0%</b>

	December 31, 2013					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 11,068	465,013	26,786	1,911	504,778	85.3%
USA	3,443	-	29,961	50	33,454	5.7%
France	-	-	9,155	-	9,155	1.6%
Australia	-	4,197	1,387	30	5,614	0.9%
Others	14	14,875	23,665	145	38,699	6.5%
Total	<b>\$ 14,525</b>	<b>484,085</b>	<b>90,954</b>	<b>2,136</b>	<b>591,700</b>	<b>100.0%</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 21. Contingent Liability

During 2012, three insurance companies providing a separate coverage to the insured in excess of the Company's primary professional liability policy commenced independent but related legal actions against the Company, claiming total damages of \$28,000,000 for alleged breaches of duty in the Company's handling of a claim. The Company believes that the actions lack merit and will vigorously defend its position. Accordingly, the Company has not recorded any related provision in its statement of financial position. Subsequent to the claims being brought forward, two claimants have agreed to drop their actions against the Company without costs. The amount of damages claimed by the remaining claimant is \$14,000,000.

## 22. Contingent Asset

In 2013, the *Income Tax Act* was amended to extend tax exempt status given to certain subsidiaries of Canadian municipalities to also include certain subsidiaries of public bodies performing a function of government in Canada. Transitional rules were also included to allow applicable taxpayers to refile on this tax exempt basis for their taxation years beginning after May 8, 2000. After completing a detailed and careful evaluation of the applicability of the new provisions to the Company, the Company believes that it is probable that a refund claim would be successful. Accordingly, during the current year the Company has filed as a tax exempt organization for income tax purposes, and has requested full retrospective exemption back to its 2001 taxation year. The income tax payments relating to taxation years 2001 onwards total as much as \$65,810,261. The exemption would also give rise to significant ongoing future income tax savings, but the Company's deferred income tax asset would be of nil value.

## LIBRARYCO INC.

## PROXY

The undersigned, a shareholder of LibraryCo Inc. (the "Corporation"), hereby appoints E. Susan Elliott as proxyholder for the undersigned to attend, act and vote for and on behalf of the undersigned at the Annual Meeting of Shareholders of the Corporation to be held on Tuesday, May 12, 2015 at Osgoode Hall, Toronto, at 9:00 a.m, and any adjournment or adjournments thereof, and to vote and otherwise act before the meeting, in the same manner as the undersigned could do if personally present there at, the undersigned hereby ratifying and confirming and agreeing to ratify and confirm all that such proxyholder may lawfully do by virtue hereof.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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The Law Society of Upper Canada  
By: Janet E. Minor, Treasurer

**LIBRARYCO INC.****NOTICE  
OF THE ANNUAL MEETING OF SHAREHOLDERS**

**NOTICE IS HEREBY GIVEN** that the annual meeting of the shareholders (the “Shareholders”) of LibraryCo Inc. (the “Corporation”) will be held at Osgoode Hall, Toronto, Ontario on Tuesday, May 12, 2015 at 9:00 a.m. for the following purposes:

1. To approve the minutes of the May 9, 2014 Annual Meeting;
2. To receive and consider LibraryCo Inc.'s 2014 Annual Report and the financial statements for the Corporation for the fiscal year ended 2014 together with the auditor's report thereon;
3. To confirm proceedings since the last Annual Meeting of Shareholders; and
4. To transact such further or other business as may properly come before the meeting or any adjournment or adjournments thereof.

**DATED** at Toronto, Ontario this 14th day of April, 2015.

On behalf of the Board of Directors,

Wendy Tysall, Secretary



**LIBRARYCO INC.**

**ANNUAL MEETING OF SHAREHOLDERS  
TUESDAY, MAY 12, 2015**

**PROPOSED SHAREHOLDER RESOLUTIONS**

1. APPROVAL OF MINUTES OF PREVIOUS MEETING\*

**RESOLVED THAT** the minutes of the previous meeting of the shareholders of the Corporation held on May 9, 2014, are accepted.

2. CONFIRMATION OF PROCEEDINGS

**RESOLVED** that all by-laws, resolutions, contracts, acts and proceedings of the board of directors, shareholders and officers of the Corporation enacted, passed, made, done or taken since the date of the last annual meeting of shareholders are hereby approved, ratified, sanctioned and confirmed.

\* Attached are draft minutes of the May 9, 2014 Shareholders Meeting.



**DRAFT – FOR APPROVAL AT 2015 ANNUAL MEETING**

**MINUTES** of the annual meeting of the shareholders of LibraryCo Inc. (the “Corporation”) held at the offices of the Corporation, Osgoode Hall, Toronto, Ontario on the 9th day of May, 2014 at the hour of 1:30 o’clock.

**PRESENT:**

Alan Silverstein (who acted as proxy for the Treasurer of the Law Society of Upper Canada)  
 Michael Drake  
 Ross Earnshaw  
 Brett Harrison ((who acted as proxy for the President of the Toronto Lawyers’ Association)  
 Clarke Melville  
 Frances Wood  
 Miriam Young, representing the County and District Law Presidents’ Association

being all of the shareholders of the Corporation.

**OTHERS PRESENT:**

Martha Foote, Board General Manager  
 Wendy Tysall, Chief Financial Officer

**REGRETS:**

Jacqueline Horvat  
 James Scarfone

Alan Silverstein, a member of the Corporation, acted as Chair of the meeting.

The Chair stated that a quorum of the shareholders of the Corporation being personally present and that notice of the meeting had been given to all the shareholders in accordance with the by-laws of the Corporation, the Chair declared the meeting to be regularly constituted for the transaction of business.

The Chair introduced and thanked the shareholder representatives for attending the meeting.

**Minutes of Previous Meeting**

Upon motion duly made, seconded and carried unanimously, **IT WAS RESOLVED THAT** the reading of the minutes of the previous meeting of the shareholders of the Corporation held on May 3, 2013, as the same appear in the minute book of the Corporation, was dispensed with and the same be taken as read and confirmed.

Moved by: R. Earnshaw

Seconded: F. Wood

Carried.

### Report of the Chair

The Chair laid before the meeting a report of the activities of the Corporation in the preceding year and a full statement of accounts of the Corporation showing all receipts and expenditures for the current year as received by the Board of Directors.

### Financial Statements

The Chair presented to the meeting the financial statements of the Corporation for the financial year ended 2013, together with the auditor's report thereon, as approved by the directors.

### Confirmation of Proceedings

Upon motion duly made, seconded and carried unanimously, **IT WAS RESOLVED** that all by-laws, resolutions, contracts, acts and proceedings of the Board of Directors of the Corporation enacted, passed, made, done or taken since the date of the last annual meeting of shareholders are approved, ratified, sanctioned and confirmed.

Moved by: M. Drake

Seconded: M. Young

Carried.

### Appointment of Directors

The Chair advised the meeting that it was in order to proceed with the appointment of directors for the ensuing year, and the following persons were appointed:

Michael Drake, County and District Law Presidents' Association  
 Ross Earnshaw, Law Society of Upper Canada  
 Jacqueline Horvat, Law Society of Upper Canada  
 Brett Harrison, Toronto Lawyers' Association  
 Clarke Melville, County & District Law Presidents' Association  
 James Scarfone, Law Society of Upper Canada  
 Alan Silverstein, Law Society of Upper Canada  
 Frances Wood, County & District Law Presidents' Association

Upon motion duly made, seconded and carried unanimously, **IT WAS RESOLVED** that these persons are appointed directors of the Corporation to hold office until the next annual meeting of members or until their respective successors are elected or appointed.

Moved by: M. Young

Seconded: B. Harrison

Carried.

### Termination

There being no further business before the meeting, the meeting then terminated.

Moved by: R. Earnshaw

Carried.

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Chair of the Meeting

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Secretary of the Meeting



**Tab 3**

**Secretary's Report to Convocation  
April 23, 2015**

---

**Amendment to By-Law 3 Respecting Nominations for the  
Treasurer's Election**

**Purpose of Report:      Decision**

**Prepared by the Policy Secretariat  
Jim Varro (416-947-3434)**

**FOR DECISION****AMENDMENT TO BY-LAW 3****Motion**

1. That Convocation make the amendment to By-Law 3 [Benchers, Convocation and Committees] set out in the motion at [Tab 3.1](#) respecting the date for the close of nominations for the election of the Treasurer in a year for the election of lawyer benchers.

**Issue for Consideration**

2. In a year in which a bencher election for lawyer benchers is held, By-Law 3 (Benchers, Convocation and Committees) provides that the close of nominations for the Treasurer's election is the fourth Friday in May.
3. The *Law Society Act* requires that an elected bencher be elected as Treasurer.
4. If Convocation in May is scheduled to be after the fourth Friday in May in an election year, those benchers who may wish to be candidates for the election of the Treasurer will not have taken office as benchers, as By-Law 3 provides that they take office as an elected bencher at the May Convocation in an election year. As such, benchers who are elected at the end of April but who have not taken office before the close of nominations for the election of the Treasurer are not eligible candidates in the Treasurer's election.
5. An amendment to the By-Law is required to modify the date for the close of nominations in an election year to ensure that candidates are eligible for election.
6. The proposed amendment to By-Law 3 in this report provides that the close of nominations is on the Friday immediately after the day on which the regular meeting of Convocation is held in May.

Tab 3.1

THE LAW SOCIETY OF UPPER CANADA  
**BY-LAWS MADE UNDER SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT**  
**BY-LAW 3**  
**[BENCHERS, CONVOCATION AND COMMITTEES]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 23, 2015

MOVED BY

SECONDED BY

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, September 20, 2007, November 22, 2007, June 26, 2008, April 30, 2009, September 24, 2009, February 25, 2010, May 27, 2010, October 28, 2010, November 25, 2010, January 27, 2011, November 24, 2011, April 26, 2012, September 27, 2012, September 25, 2013, February 27, 2014, March 4, 2014 and September 24, 2014, be further amended as follows:

**1. Subsection 55 (4) of the English version of the By-Law is amended by deleting “the fourth Friday in May” and substituting “the Friday immediately after the day on which the regular meeting of Convocation is held in May”.**

**2. Subsection 55 (4) of the French version of the By-Law is amended by deleting “autorisés à pratiquer le droit en Ontario en qualité d’avocat et avocate, la date de clôture des mises en candidature tombe le quatrième vendredi de mai à 17 heures” and substituting “autorisés à exercer le droit en Ontario en qualité d’avocats, la date de clôture des mises en candidature tombe à 17 heures le vendredi qui suit immédiatement le jour de la réunion ordinaire du Conseil de mai”.**



**TAB 4**

**Report to Convocation  
April 23, 2015**

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## **Audit & Finance Committee**

### **Committee Members**

**Christopher Bredt (Co-Chair)**

**Peter Wardle (Co-Chair)**

John Callaghan

Susan Elliott

Seymour Epstein

Michelle Haigh

Vern Krishna

Judith Potter

James Scarfone

Alan Silverstein

Catherine Strosberg

**Purpose of Report: Decision and Information**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

**TABLE OF CONTENTS****For Decision**

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Investment Policy .....	<a href="#">TAB 4.2</a>
Investment Manager and Custodian .....	<a href="#">TAB 4.3</a>
Cheque Signing Authority .....	<a href="#">TAB 4.4</a>

**For Information .....** [TAB 4.5](#)

In Camera Item .....	<a href="#">TAB 4.5.1</a>
LAWPRO Annual Financial Statements for the year ended December 31, 2014 .....	<a href="#">TAB 4.5.2</a>
LibraryCo Inc. Annual Financial Statements for the year ended December 31, 2014 ..	<a href="#">TAB 4.5.3</a>
Investment Compliance Reporting for the year ended December 31, 2014 .....	<a href="#">TAB 4.5.4</a>

### COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on April 8, 2015. Committee members in attendance were Chris Bredt (co-chair), Peter Wardle (co-chair), John Callaghan, Susan Elliott (phone), Seymour Epstein, Michelle Haigh, Vern Krishna, Judith Potter, Alan Silverstein and Catherine Strosberg (phone).
2. Bob Evans also attended.
3. Also in attendance were:
  - Paula Jesty, Steve Stewart and Pina Colavecchia – Deloitte LLP
  - Stephen Copeland and Ryan Domsey – Foyston, Gordon & Payne
  - Brian White – AON Hewitt
  - Kathleen Waters and Steve Jorgensen – LAWPRO
4. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

TAB 4.1

## FOR DECISION

**LAW SOCIETY OF UPPER CANADA, DRAFT AUDITED FINANCIAL STATEMENTS  
FOR THE YEAR ENDED DECEMBER 31, 2014****Motion:**

5. **That Convocation approve the draft audited Annual Financial Statements for the Law Society for the financial year ended December 31, 2014 including the transfers to and from the restricted funds which are listed in Note 14 of the Notes to the Annual Financial Statements.**

Actual-to-Budget Analysis

6. An unaudited actual-to-budget analysis for the Lawyer and Paralegal General Funds is also provided for supplementary information.
7. The Law Society's lawyer and paralegal General Funds, which account for the Law Society's program delivery and administrative activities, are reporting a combined operating surplus of \$2.6 million compared to a budgeted deficit of \$2.5 million. The 2014 budget for these two Funds included the use of accumulated balances in the Funds of \$759,000 supplemented by the use of surplus investment income in the E&O Fund of \$1.5 million, so operating results are better than budgeted. Annual fees, professional development revenues, investment income and other revenues are above budget. Virtually all of the expense categories in the General Funds are less than budget, although there are some noteworthy negative variances in individual accounts.
8. Overall, professional regulation expenses tracked close to budget with the exception of spending on outside counsel and expert witnesses.
9. Professional development and competence expenses were under budget primarily because of development expenses for the Pathways Pilot Project.
10. Corporate Services expenses primarily comprising the Client Service Centre, Information Systems, Facilities, Finance and Human Resources were over budget because of severance costs related to the operational review and increased expenditures on counsel fees.

11. Convocation, policy and outreach expenses primarily comprising Policy, Equity & Public Affairs and bencher expenses were all under budget with the largest component being less bencher remuneration and expense reimbursement than budgeted.

**THE LAW SOCIETY OF UPPER CANADA  
2014 ANNUAL REPORT**

## **Financial Statements**

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Management Discussion and Analysis	1
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Financial Statements and Notes	9

## THE LAW SOCIETY OF UPPER CANADA ANNUAL FINANCIAL STATEMENTS

### MANAGEMENT DISCUSSION AND ANALYSIS

#### Summary of Financial Performance

The Law Society of Upper Canada's ("The Society") lawyer and paralegal General Funds, which account for the Society's program delivery and administrative activities, are reporting a combined operating surplus of \$2.6 million, approximately the same as in 2013. The 2014 budget for these two Funds projected a combined deficit of \$759,000 with the use of accumulated balances in the Funds so operating results are better than budgeted. Annual fees, professional development revenues, investment income and other revenues are above budget. Virtually all of the expense categories in the General Funds are less than budget, although there are some noteworthy negative variances in individual accounts, discussed later in this document.

The Society's restricted funds are reporting a combined deficit of \$18.5 million in 2014 (2013 - \$1.3 million surplus). There are three primary reasons for the restricted funds deficit in 2014. The Lawyer Compensation Fund experienced an adverse claims experience, primarily from two large scale alleged defalcations, resulting in a deficit of \$10.2 million compared to a surplus of \$498,000 in 2013. Premium transfers to LAWPRO, anticipated in the insurance contract, resulted in a deficit in the Errors & Omissions Insurance Fund of \$5.2 million. Amortization in the Invested in Capital Assets Fund of \$3.6 million was the third significant contributor to the restricted funds deficit in the current year.

The approved 2014 budget included the transfer of \$6.0 million from the General Fund balance to the Capital Allocation Fund dedicated to the revitalization of the Society's information systems. This is included in the interfund transfers set out in the Schedule of Restricted Funds.

#### Statement of Revenues and Expenses and Change in Fund Balances

##### Revenues

###### *Annual Fees*

Total annual fee revenues have increased to \$73.2 million from \$70.8 million in 2013 primarily due to an increase in the number of lawyers and paralegals billed. Also, there were fluctuations in the individual fee components but the annual fee per lawyer increased by \$15 from 2013. The annual fee per paralegal was the same as 2013.

###### *Insurance Premiums and Levies*

The Errors & Omissions Insurance Fund ("the E&O Fund") accounts for insurance related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers and remits these amounts to LAWPRO. Insurance premiums and levies increased to \$104.4 million in 2014 from \$102.4 million in 2013 as the number of insured lawyers was slightly higher than 2013. The base premium for professional liability insurance coverage for Ontario lawyers was \$3,350 per lawyer, the same premium charged in 2013. The professional liability insurance program was essentially the same, year on year.

*Professional Development & Competence (“PD&C”)*

Total PD&C revenues have increased from \$17.4 million in 2013 to \$22 million in 2014.

- Licensing Process revenues from lawyer and paralegal candidates have increased from \$9.4 million to \$13.5 million due to increased fees and a higher number of candidates as compared in the table below:

Candidate Registrants	2014	2013
Lawyer	2,333	2,211
Paralegal	1,558	1,600

1,984 lawyer candidates were licensed in 2014 compared to 1,995 in 2013. 1,156 paralegal candidates were licensed in 2014 compared to 1,344 in 2013.

The Society is undertaking a pilot that allows lawyer licensing candidates to either article or complete a Law Practice Program (LPP). The first LPP commenced in the fall of 2014. The total Licensing Process fee for 2014-2015, including the fees for the initial application, the Barrister and Solicitor Licensing Examinations and the Call to the Bar is \$4,710 compared to \$2,810 per candidate in 2013 for all fees associated with licensing.

The Law Foundation of Ontario approved grants totaling \$385,000 for the 2014 lawyer and paralegal Licensing Processes, 30% lower than 2013.

With more candidates, paralegal licensing process revenues increased from \$2.3 million in 2013 to \$2.5 million.

- Continuing Professional Development (“CPD”) revenues have increased from \$8 million in 2013 to \$8.6 million. In 2014, the Society began charging a small fee for professionalism-only courses which were previously free which was the main factor in the decline in total registrations as analysed below. However the number of registrations for paid programs continues to increase.

Registration (all formats)	2014	2013
Paid programs	46,828	37,449
Free / nominal fee programs	16,635	51,244
Total number of registrants	63,463	88,693

One result of a review of the CPD requirement is the Accredited Provider framework commenced in 2014. So far, 58 other education providers have received approval to deliver professionalism content without the requirement for individual program accreditation as the number of service providers other than the Society continues to increase.

*Investment Income*

Total investment income has decreased from \$4.7 million to \$3.7 million. An increase in interest, dividends and realized gains was more than offset by unrealized gains / losses.

## Expenses

### *Professional Regulation, Tribunals and Compliance*

Total regulatory expenses of \$27.9 million have increased by \$1.7 million compared to last year. There were two primary components to the increase. 2014 was the first full year in the establishment of the Tribunal office and spending on outside counsel and expert witnesses within professional regulation totalled \$2 million compared to \$1.1 million in 2013.

The processing of files through the Intake, Complaints, Investigations and Discipline departments comprise a significant part of regulatory resources. Complaint trends have fluctuated in a fairly narrow band in recent years with 2014 showing a slight decline. Expenses and staff numbers in these areas were relatively static year-on-year.

Cost awards arising from the disciplinary process are occasionally awarded against the Society. At the current time, there are three matters which may lead to significant cost awards against the Society, although, in compliance with generally accepted accounting principles, there is insufficient certainty for these cost awards to be accrued at this time.

### *Professional Development & Competence*

In 2014, total PD&C expenses of \$24.8 million exceeded the 2013 comparative by \$3.7 million.

The Licensing Process has been heavily engaged in the implementation of the Pathways Pilot Project which included the creation of a Law Practice Program as a path to licensing which consists of a four month training course at Ryerson University or the University of Ottawa followed by a four month work placement. 243 candidates are enrolled in the program. The development of Pathways was significantly under budget as the confirmation of the retainers for external assistance and scope of activities were finalized after the budget was approved and the Society was able to leverage existing content and services to support the new program.

In 2014, PD&C produced 143 continuing professional development programs including 85 live programs, 51 replays and 7 e-courses. This was 6 fewer programs than 2013 reflecting the decline in registrations.

The other relatively significant 2014 occurrence in PD&C was the streamlining of the Spot Audit program and the subsequent reduction in staffing by three employees.

### *Corporate Services*

Corporate Services expenses, primarily comprising the Client Service Centre, Information Systems, Facilities, Finance and Human Resources, increased from \$21.9 million in 2013, to \$23.1 million in 2014. Severance costs arising from an operational review have exceeded the severance and contingency budget, somewhat offset by savings in other areas.

Office of General Counsel expenditures on counsel fees total \$588,000, exceeding budget and 2013 levels. In the current year, the Trinity Western University matter involved significant expenditures. Trinity Western University's application to the Ontario Divisional Court regarding the Society's decision not to accredit its law school is scheduled to be heard in June 2015.

*Convocation, Policy and Outreach*

Convocation, policy and outreach expenses primarily comprises Policy, Equity & Public Affairs and benchers expenses and total \$8.6 million compared to \$8 million in 2013. The new office of Executive Director, Policy, Equity and Public Affairs was implemented during the year. Included in Convocation, policy and outreach expenses are payments to benchers during the year. In respect of remuneration, these payments totalled \$972,000 (2013 – \$836,000) and in respect of expense reimbursements these payments, totalled \$545,000 (2013 – \$557,000).

*Services to Members and Public*

These expenses, which mainly comprise the Law Society's Referral Service, payments to CANLII and the Members Assistance Plan, were relatively static at \$4.2 million compared to \$4.3 in 2013.

The Law Society Referral Service has transitioned away from being primarily a phone service. While a dedicated phone service remains in place for callers in crisis and others with special needs, most referrals will now be processed through a web-based service.

**Balance Sheet***Current Assets and Liabilities*

The most significant change in working capital is the increase in amounts due to LAWPRO of \$6.6 million, with premiums written exceeding payments from the E&O Fund. Deferred revenue decreased from \$13.2 million to \$11.4 million relating primarily to less future year membership fees received in 2014 as compared to 2013. The timing of these payments does not follow a pattern and is dependent on when members actually pay their fees.

*Investment in Subsidiaries*

Investment in subsidiaries comprises the Society's investments in LibraryCo and LAWPRO recorded at cost. The Society owns all the common shares of LibraryCo at a cost of \$100. The LAWPRO investment is made up of two parts: the cost of the acquired share capital of \$4,997,000 plus contributed capital of \$30,645,000.

*Portfolio Investments*

Portfolio investments are shown at fair value of \$78.4 million compared to \$77.1 million in 2013. In 2014, an amount of \$1.5 million has been transferred from the E&O Fund portfolio as part of the transfer of surplus investment income to fund General Fund operations. Investments are held in the following funds:

(\$000's)	2014	2013
E&O Fund	29,067	29,576
Compensation Fund	34,243	33,000
General Fund	15,090	14,573
<b>Total</b>	<b>78,400</b>	77,149

Investments comprise Canadian equities (21%) and Canadian fixed income investments (79%). The portfolio is managed in compliance with the Society's investment policy. Fixed income investments are in a pooled fund of government, provincial and corporate bonds with an investment rating of BBB or better. Equity investments are in a pooled fund of diversified securities listed on the Toronto Stock Exchange.

*Capital Assets*

The decrease in capital assets to \$12.5 million from \$13.7 million reflects amortization for the period, offset by \$2.5 million in additions for projects such as the replacement of building infrastructure and the enterprise content management initiative. Capital assets are recorded at cost and are amortized over their useful lives according to the Society's capital asset policy. Capital asset additions are typically financed from the Society's Capital Allocation Fund.

*Provision for Unpaid Grants*

The provision for unpaid grants in the Compensation Fund represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The Compensation Fund provision for unpaid grants (that is, the amount reserved) has risen to \$21.4 million from \$10 million in 2013. This increase is attributable to some large alleged defalcations on the part of certain licensees. The Compensation Fund describes a major defalcation as being over 35 claims arising from the conduct of one licensee and the Fund currently has two of these major defalcations. Most of these claims are still being evaluated and in some instances related investigations are still ongoing. Based on the advice of the actuary, however, the Fund balance remains sufficient to absorb the additional potential exposure. The paralegal Compensation Fund provision for unpaid grants comprises \$225,000 (2013 – \$98,000) of the total Compensation Fund provision for unpaid grants.

*Unclaimed Trust Funds*

Unclaimed trust funds continue to increase, now totalling \$3.7 million compared to \$3.2 million at the end of 2013. These are trust monies turned over to the Society by lawyers who are unable to locate or identify the clients to whom the monies are owed. To date, monies returned to clients from the fund have been nominal. By statute, the Society administers the unclaimed trust funds, in perpetuity, and is entitled to reimbursement for administrative expenses to a limit of the annual income earned on funds held. Net income, if any, is available for transfer to the Law Foundation of Ontario ("LFO"). To date, administrative expenses have exceeded income and no transfers to the LFO have been made.

*Other Trust Funds*

Included in the notes to the financial statements, but not the Balance Sheet, is a reference to other trust funds held by the Society. The Society administers client funds for lawyers under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet as they are held temporarily and with a restricted administrative mandate. Money paid to the Society is held in trust until it is repaid to the appropriate payee or transferred to the Unclaimed Trust Funds. At the end of 2014, total funds held in trust amounted to \$2.4 million (2013 – \$2.8 million). The volume and value of balances depend on trusteeships at the time.

**Schedule of Restricted Funds***Compensation Fund*

Total Compensation Fund expenses have increased from \$10.1 million in 2013 to \$21.7 million because of an increase in the provision for lawyer unpaid grants. The 2013 amount was exceptionally low and, as noted above, the 2014 number is above the normal range.

*Errors & Omissions Insurance Fund*

Expenses in the E&O Fund have increased from \$102 million to \$111 million. The fund is reporting a deficit of \$5.2 million due to the use of \$5 million of the fund balance to mitigate the 2014 base insurance levy for lawyers.

*County Libraries Fund*

Funding of county libraries totalled \$7.5 million the same as 2013.

The Legal Information and Support Services Working Group reported to Convocation in October 2014 on the potential next steps in the evolution of legal information and library services. The information affirms the important role of courthouse libraries in the provision of legal information and library services and the maintenance of member competence. New appointments have been made to the Board of LibraryCo and a committee of board members is assessing transition requirements.

*Other Restricted Funds*

The other restricted funds balance is made up of the Repayable Allowance Fund, the Special Projects Fund and the Parental Leave Assistance Plan Fund ("PLAP").

The last grant from the J.S. Denison Fund, which assisted impoverished lawyers, candidates and their families, was approved by Convocation in November 2014. All money in the fund has now been distributed. The fund was established under the terms of the will of former Treasurer John Shirley Denison, KC. Born in 1870, Mr. Denison was called to the Bar in 1892, and practised in Toronto. He was Treasurer of the Society from 1944-47 and died in 1951.

PLAP provides financial assistance to lawyers in firms of five lawyers or fewer and do not have access to any other parental leave financial benefits. For the first time in 2014, a means test was implemented limiting eligibility to lawyers who have a net annual practice income of less than \$50,000. Under the program terms, the Society provided a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave. Benefit payments totaled \$280,000 to 32 successful applicants (2013 - \$418,000 to 54 successful applicants).

*Changes in Fund Balances*

The 2014 budget planned to reduce the lawyer General Fund balance by \$446,000 but an operating surplus of \$1.5 million was achieved. Based on these actual results and after the budgeted transfer of \$1.5 million from the accumulated surplus investment income in the E&O Fund and \$6 million to the Capital Allocation Fund, the lawyer General Fund has decreased by \$2.9 million. The lawyer General Fund balance is now \$18.5 million. In 2015, \$641,000 of this accumulated balance has again been earmarked for the reduction of annual fees. The accumulated fund balance complies with Convocation's policy which, in brief, requires a minimum of two months and a maximum of three months operating expenses be maintained in the General Fund balance.

The 2014 budget planned to use \$313,000 from the paralegal General Fund balance, although based on actual results, the paralegal General Fund has increased by \$1.1 million. The paralegal General Fund balance is now \$3 million. In 2015, \$541,000 of this accumulated balance has again been earmarked for the reduction of annual fees.

The Compensation Fund balance of \$15.6 million for lawyers has decreased by \$10.2 million. The 2014 budget planned to reduce the lawyer Compensation Fund balance by \$707,000. In 2015, \$707,000 has again been earmarked for the reduction of Compensation Fund levies for lawyers. The accumulated fund balance complies with Convocation's policy which, in brief, requires an amount sufficient to provide for a minimum of three successive one-in-one-hundred-year events and a maximum of four such events to be maintained in the Fund balance.

The Compensation Fund balance of \$426,000 for paralegals has increased by \$7,000. The 2014 budget planned to reduce the paralegal Compensation Fund balance by \$40,000. In 2015, \$77,000 has been earmarked for the reduction of Compensation Fund levies for paralegals.

As noted above, the E&O Fund balance has decreased from \$65 million in 2013 to \$58 million in 2014. Surplus investment income of \$1.5 million accumulated in this fund had been earmarked for the reduction of lawyers' annual fees and was transferred in 2014. In 2015, another \$1.5 million has been earmarked for the reduction of lawyers' annual fees. \$2.5 million is expected to be drawn from the available surplus in the E&O Fund and applied to the 2015 insurance premium (2014 - \$5 million).

The Capital Allocation Fund has increased from \$4 million in 2013 to \$8.1 million in 2014. The three-year budget scenario approved by Convocation with the 2014 budget, included a provision of \$8.0 million, comprising \$6.0 million transferred from the General Fund balance to the Capital Fund and \$2.0 million from the existing Capital Fund balance, dedicated to the revitalization of the Society's information systems over the next three years. In 2014, the Society embarked on this plan to modernize its technology infrastructure, improving both its internal systems and its external-facing presence. The largest project, implementation of Enterprise Content Management, revolves around the concept of a single secure location to develop, collaborate, distribute and archive information internally using Microsoft SharePoint. Another relevant project is the Finance portlet, which allows licensees to view and pay their annual fees and initiate fee adjustments using the LSUC Portal. This was launched in December 2014.

### **Conclusion**

A plan of action for setting strategic priorities has been approved by the Priority Planning Committee and includes the appointment of a Strategic Planning Steering Group of benchers and senior management. This Group will work with a consultant to develop the process and supporting materials for the Bencher Planning Session that will follow the next lawyer Bencher election.

The Society remains financially sound and is well placed for the future. The Society's accumulated fund balances total \$118 million of which \$12.5 million represents the book value of the Society's capital assets and \$36 million the value, at cost, of its investments in LAWPRO.

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## Independent Auditor's Report

To the Members of  
The Law Society of Upper Canada

We have audited the accompanying financial statements of The Law Society of Upper Canada, which comprise the balance sheet as at December 31, 2014, and the statements of revenue and expenses and change in fund balances and of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of The Law Society of Upper Canada as at December 31, 2014, and the results of its operations and its cash flows for the year then ended, in accordance with Canadian accounting standards for not-for-profit organizations.

Chartered Professional Accountants, Chartered Accountants  
Licensed Public Accountants  
April 23, 2015

## THE LAW SOCIETY OF UPPER CANADA

## Balance Sheet

Stated in thousands of dollars

As at December 31

	2014	2013
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	19,441	19,424
2 Short-term investments	20,280	19,687
3 Cash and short-term investments	39,721	39,111
4 Accounts receivable (note 8)	3,768	2,494
5 Prepaid expenses	2,141	1,621
6 Due from LAWPRO (note 4)	-	3
7 <b>Total current assets</b>	<b>45,630</b>	<b>43,229</b>
8 <b>Investment in subsidiaries (note 4)</b>	<b>35,642</b>	<b>35,642</b>
9 <b>Portfolio investments (note 6)</b>	<b>78,400</b>	<b>77,149</b>
10 <b>Capital assets (note 7)</b>	<b>12,549</b>	<b>13,653</b>
11 <b>Total Assets</b>	<b>172,221</b>	<b>169,673</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
12 Accounts payable and accrued liabilities (note 8)	11,412	9,686
13 Deferred revenue	11,428	13,234
14 Due to LAWPRO (note 4)	6,634	-
<b>Total current liabilities</b>	<b>29,474</b>	<b>22,920</b>
15 Provision for unpaid grants	21,433	10,003
16 Unclaimed trust funds (note 9)	3,712	3,195
17 <b>Total Liabilities</b>	<b>54,619</b>	<b>36,118</b>
<b>Fund Balances</b>		
<b>General funds</b>		
18 Lawyers	18,507	21,410
19 Paralegals	2,974	1,882
<b>Restricted funds</b>		
20 Compensation - lawyers	15,618	25,829
21 Compensation - paralegals	426	419
22 Errors and omissions insurance	58,305	65,042
23 Capital allocation	8,096	3,953
24 Invested in capital assets	12,549	13,653
25 Other	1,127	1,367
26 <b>Total Fund Balances</b>	<b>117,602</b>	<b>133,555</b>
27 <b>Total Liabilities and Fund Balances</b>	<b>172,221</b>	<b>169,673</b>

See accompanying notes

On behalf of Convocation  
Treasurer

Co-Chairs, Audit &amp; Finance Committee

## THE LAW SOCIETY OF UPPER CANADA

## Statement of Revenues and Expenses and Change in Fund Balances

Stated in thousands of dollars

For the year ended December 31

	2014	2013	2014	2013	2014	2013	2014	2013	
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total		
<b>Revenues</b>									
1	Annual fees	50,189	47,879	3,554	3,035	19,492	19,866	73,235	70,780
2	Insurance premiums and levies	-	-	-	-	104,415	102,428	104,415	102,428
3	Professional development and competence	18,774	14,458	3,273	2,939	-	-	22,047	17,397
4	Investment income (note 12)	925	1,074	77	85	2,733	3,520	3,735	4,679
5	Other (note 11)	5,917	5,599	557	466	597	236	7,071	6,301
6	<b>Total revenues</b>	<b>75,805</b>	<b>69,010</b>	<b>7,461</b>	<b>6,525</b>	<b>127,237</b>	<b>126,050</b>	<b>210,503</b>	<b>201,585</b>
<b>Expenses</b>									
7	Professional regulation, tribunals and compliance	25,817	24,263	2,094	1,924	-	-	27,911	26,187
8	Professional development and competence	22,794	19,252	2,055	1,813	-	-	24,849	21,065
9	Corporate services	21,143	20,254	1,931	1,640	-	-	23,074	21,894
10	Convocation, policy and outreach	7,958	7,524	595	500	-	-	8,553	8,024
11	Services to members and public	3,972	4,068	218	206	-	-	4,190	4,274
12	Allocated to Compensation Fund	(7,365)	(7,753)	(507)	(600)	-	-	(7,872)	(8,353)
13	Restricted (schedule of restricted funds)	-	-	-	-	145,751	124,704	145,751	124,704
14	<b>Total expenses</b>	<b>74,319</b>	<b>67,608</b>	<b>6,386</b>	<b>5,483</b>	<b>145,751</b>	<b>124,704</b>	<b>226,456</b>	<b>197,795</b>
15	<b>Surplus (Deficit)</b>	<b>1,486</b>	<b>1,402</b>	<b>1,075</b>	<b>1,042</b>	<b>(18,514)</b>	<b>1,346</b>	<b>(15,953)</b>	<b>3,790</b>
16	<b>Fund balances, beginning of year</b>	<b>21,410</b>	<b>6,710</b>	<b>1,882</b>	<b>847</b>	<b>110,263</b>	<b>122,208</b>	<b>133,555</b>	<b>129,765</b>
17	<b>Interfund transfers (notes 2 and 14)</b>	<b>(4,389)</b>	<b>13,298</b>	<b>17</b>	<b>(7)</b>	<b>4,372</b>	<b>(13,291)</b>	<b>-</b>	<b>-</b>
18	<b>Fund balances, end of year</b>	<b>18,507</b>	<b>21,410</b>	<b>2,974</b>	<b>1,882</b>	<b>96,121</b>	<b>110,263</b>	<b>117,602</b>	<b>133,555</b>

See accompanying notes

## THE LAW SOCIETY OF UPPER CANADA

## Statement of Cash Flows

Stated in thousands of dollars

For the year ended December 31

	2014	2013
<b>Net inflow of cash related to the following activities</b>		
<b>Operating</b>		
1 (Deficit) surplus	(15,953)	3,790
Items not affecting cash:		
2 Increase (decrease) in provision for unpaid grants	11,430	(672)
3 Amortization of capital assets	3,576	3,484
4 Loss on disposal of capital assets	-	37
	(947)	6,639
Net change in non-cash operating items:		
5 Accounts receivable	(1,274)	(345)
6 Prepaid expenses	(520)	(69)
7 Accounts payable and accrued liabilities	1,726	580
8 Due from LAWPRO	6,637	2,562
9 Deferred revenue	(1,806)	1,979
10 Fund contribution - unclaimed trusts	517	448
11 <b>Cash from operating activities</b>	<b>4,333</b>	<b>11,794</b>
<b>Investing</b>		
12 Portfolio investments (net)	(1,251)	(6,285)
13 Short-term investments (net)	(593)	(3,129)
14 Capital asset additions	(2,472)	(2,430)
15 <b>Cash used by investing activities</b>	<b>(4,316)</b>	<b>(11,844)</b>
16 <b>Net inflow (outflow) of cash, during the year</b>	<b>17</b>	<b>(50)</b>
17 Cash, beginning of year	19,424	19,474
18 <b>Cash, end of year</b>	<b>19,441</b>	<b>19,424</b>

See accompanying notes

**THE LAW SOCIETY OF UPPER CANADA****Notes to Financial Statements, December 31, 2014**

Stated in whole dollars except where indicated

**1. Background**

The Law Society of Upper Canada (the “Society”) was founded in 1797 and incorporated in 1822 with the enactment of the Law Society Act.

The Law Society Act, section 4.1, states that it is a function of the Society to ensure that:

- All persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- The standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

In carrying out its functions, duties and powers, the Society, pursuant to section 4.2 of the Law Society Act, shall have regard to the following principles:

- The Society has a duty to maintain and advance the cause of justice and the rule of law;
- The Society has a duty to act so as to facilitate access to justice for the people of Ontario;
- The Society has a duty to protect the public interest;
- The Society has a duty to act in a timely, open and efficient manner;
- Standards of learning, professional competence and professional conduct for members and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The governing body of the Society, which is known as Convocation, carries out this mandate. Convocation comprises benchers and the Treasurer who presides over Convocation.

In 2014, the Modernizing Regulation of the Legal Profession Act, 2013, which amended the Law Society Act, increased the number of paralegal benchers from two to five and established the Law Society Tribunal, including the provision for the appointment of an independent Tribunal Chair and two bencher vice-chairs.

At December 31, 2014, the total number of lawyers and paralegals entitled to provide legal services in Ontario were 47,400 and 6,700 respectively. The primary sources of revenues are member annual fees and insurance premiums and levies, set by Convocation, based on the financial requirements of the Society.

The Society is not subject to federal or provincial income taxes.

## 2. Nature of Financial Statements

These financial statements present the financial position and operations of the Society and include the General Fund and a number of special purpose funds restricted by the Law Society Act or Convocation.

### *Subsidiaries and Related Corporation*

The Society has two wholly-owned subsidiaries: Lawyers' Professional Indemnity Company ("LAWPRO"), and LibraryCo Inc. ("LibraryCo") and a related corporation, the Law Society Foundation. These entities have not been consolidated or included in the Society's financial statements apart from the information in Notes 4 and 5. The audited annual financial statements for these three entities are available separately.

### *General Fund*

The General Fund accounts for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. This fund reports unrestricted resources. At December 31, 2014, the lawyer fund balance was \$18,507,000 (2013 – \$21,410,000). The paralegal fund balance was \$2,974,000 (2013 – \$1,882,000).

The Society's policy is to maintain the General Fund balance at no less than two and no more than three months of General Fund budgeted expenses.

If the General Fund balance exceeds three months of budgeted General Fund expenses, Convocation shall utilize the excess for one or more of the following:

- Mitigate the General Fund levy for the next fiscal year;
- Transfer the excess to another Law Society fund if the fund balance is below its stated policy benchmark.

If the General Fund balance is less than two months of budgeted General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the General Fund balance is more than two months of budgeted General Fund expenses and less than three months of budgeted General Fund expenses, Convocation may appropriate funds from the General Fund Balance for one or more of the following:

- Mitigate the General Fund levy for the next fiscal year;
- Transfer the excess to another Law Society fund if the fund balance is below its stated policy benchmark.

### *Restricted Funds*

#### *Compensation Fund*

The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member, in connection with the member's professional business or in connection with any trust of which the member was a trustee. The Compensation Fund is restricted in use by the Law Society Act.

Pursuant to the Law Society Act, the Compensation Fund is supported by members' annual fees, investment income and recoveries. The Compensation Fund accounts for program delivery, administration and payment of grants and has separate fund balances for lawyer members and paralegal members.

During 2014, Convocation approved new Guidelines for the determination of grants from the Compensation Fund replacing the existing Guidelines for lawyers and for paralegals. Their purpose is to structure the exercise of the Society's discretion and promote consistency in determining grants from the Compensation Fund. The new Guidelines were written to be clearer and more accessible but the underlying principles used to determine grants did not change.

The Society's policy is to maintain the Lawyer Compensation Fund balance at an amount sufficient to provide for a minimum of three successive 99th percentile aggregate claim scenarios (one-in-one-hundred-year event) and a maximum of four such events. The estimated amount of aggregate claims in the 99th percentile is to be actuarially reviewed at least every three years.

If the Lawyer Compensation Fund balance exceeds four one-in-one-hundred year events, Convocation shall utilize some or all of the excess for the following:

- Mitigation of the Lawyer Compensation Fund levy for the next fiscal year;
- Annual mitigation of the Lawyer Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the Lawyer Compensation Fund balance is less than three one-in-one-hundred-year events, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer Compensation Fund balance is more than three one-in-one-hundred-year events and less than four one-in-one-hundred-year events Convocation may:

- Mitigate the Lawyer Compensation Fund levy for the next fiscal year;
- Budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
- Leave the fund balance at its current balance for the upcoming fiscal year.

The General Fund allocates certain administrative expenses, spot audit expenses and a portion of the costs of operating the investigation and discipline functions of the Society to the Compensation Fund. In 2014, these amounted to \$7,872,000 (2013 – \$8,353,000). At December 31, 2014, the lawyer share of the fund balance was \$15,618,000 (2013 – \$25,829,000) and the paralegal share of the fund balance was \$426,000 (2013 – \$419,000).

***Errors and Omissions Insurance Fund***

The Errors and Omissions Insurance Fund (“E&O Fund”) accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers, reported as revenues, and remits these amounts to LAWPRO, reported as expenses.

Pursuant to section 61 of the Law Society Act, the Society arranges mandatory professional liability insurance for practising lawyers with LAWPRO, and through the E&O Fund, levies the insured lawyers. Each year, the premium for the insurance program is established through a process whereby LAWPRO provides an offer for review and acceptance by Convocation. The offer provides details on the components of the insurance program, including anticipated base premiums, claims history levies, transaction-based levies and amounts to be drawn from the E&O Fund balance.

Under the offer for 2014, \$5 million was drawn from the available surplus in the E&O Fund built up in prior years and applied to the 2014 insurance premium (2013 - \$nil).

To the extent that transaction-based levies exceed anticipated amounts, the excess remains in the E&O Fund and is applied as premiums in future years. In the event of a shortfall, the shortfall is met by additional funds from the E&O fund balance. The net 2014 contribution to the insurance program was \$1,458,000. The net 2013 contribution to the E&O Fund balance was \$334,000.

There is also a retrospective premium provision under the insurance policy between the Society and LAWPRO. To the extent underwriting results vary from the approved program, additional premiums are charged. Under these provisions, LAWPRO made no retrospective premium assessment in 2014 and 2013.

At December 31, 2014, the E&O Fund balance was \$58,305,000 (2013 – \$65,042,000) of which \$35,642,000 (2013 – \$35,642,000) comprises the Society’s investment in LAWPRO.

***Capital Allocation Fund***

The Capital Allocation Fund is maintained to provide a source of funds for the acquisition and maintenance of the Society’s capital assets. These include buildings and major equipment including computers. Amounts of assets capitalized, according to the Society’s capital asset policy, are transferred to the Invested in Capital Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund. During 2014, \$6,000,000 was transferred to the Capital Allocation Fund from the lawyer General Fund to finance information systems upgrades over the next three years. At December 31, 2014, the balance was \$8,096,000 (2013 – \$3,953,000).

***Invested in Capital Assets Fund***

The Invested in Capital Assets Fund records transactions related to the Society’s capital assets, specifically acquisitions, amortization and disposals. At December 31, 2014, the balance was \$12,549,000 (2013 – \$13,653,000), representing the net book value of the Society’s capital assets.

**County Libraries Fund**

The County Libraries Fund records transactions related to the Society's support of county law libraries. As approved by Convocation, the fund accumulates funds for county library purposes which are remitted to LibraryCo. The fund balance at December 31, 2014 and 2013 was \$nil.

**Other Restricted Funds**

The Repayable Allowance Fund provides loans for tuition and living expenses to candidates in the lawyer licensing process. At December 31, 2014, the balance was \$300,000 (2013 – \$316,000).

The J. Shirley Denison Fund, an endowment fund, provided relief and assistance to lawyers, candidates in the lawyer licensing process and former lawyers who found themselves in difficult financial circumstances. Contributions for endowments were recognized as revenues. At December 31, 2014, the balance was \$nil (2013 – \$46,000) and the Fund is closed.

The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects approved by Convocation. The balance at December 31, 2014 was \$460,000 (2013 – \$758,000).

The Parental Leave Assistance Fund accounts for the delivery of the Parental Leave Assistance Program (“PLAP”) and is funded by lawyers’ fees. The PLAP provides financial assistance to lawyers in firms of five lawyers or fewer who have a net annual practice income of less than \$50,000 and who do not have access to any other parental leave financial benefits. Under the program, the Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave. At December 31, 2014, the Fund balance was \$367,000 (2013 – \$247,000).

**3. Significant Accounting Policies****Basis of presentation**

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations set out in the CPA Canada Handbook – Accounting.

**Financial instruments**

The Society's financial assets and financial liabilities are classified and measured as follows:

<b>Asset / Liability</b>	<b>Measurement</b>
Cash and short-term investments	Fair value
Accounts receivable	Amortized cost
Portfolio investments	Fair value
Accounts payable and accrued liabilities	Amortized cost
Unclaimed trust funds	Amortized cost

Other amounts noted on the Balance Sheet such as prepaid expenses, capital assets, investment in subsidiaries, deferred revenue, and the provisions for unpaid grants/claims, are not financial instruments. Investments in subsidiaries are reported at cost.

The fair value of portfolio investments is determined by reference to transactional net asset values for the fixed income and Canadian equity pooled funds. Transaction costs are expensed as incurred. The fair value of cash and short-term investments, accounts receivable, accounts payable and accrued liabilities and unclaimed trust funds approximate their carrying values due to their nature or capacity for prompt liquidation.

There has been no change in risk exposures from the previous period.

***Interest rate risk***

The risk that the fair value of financial instruments will fluctuate due to changes in market interest rates is managed through compliance with the Society's investment policy. The normal duration range for the bond portfolio administered under the policy is between 1 and 5 years. The Society has no interest-bearing liabilities.

Fluctuations in interest rates do not have a significant effect on cash and short-term investments of the Society.

***Market risk***

The risk that the fair value of financial instruments will fluctuate due to changes in market prices is managed through compliance with the Society's investment policy which requires a diversified portfolio of government bonds, corporate bonds and Canadian equities meeting specified quality requirements.

***Credit risk***

Credit risk is the possibility that other parties may default on their financial obligations. At year end, the maximum exposure of the Society to credit risk in cash and short and long-term fixed income investments was \$101,642,000 (2013 – \$101,776,000). In compliance with the Society's investment policy, fixed income investments are in the financial obligations of governments, major financial institutions and commercial paper with investment grade ratings.

At year end, the maximum exposure of the Society to credit risk in accounts receivable was \$3,768,000 (2013 – \$2,494,000). This credit risk is minimized by the credit quality and a diverse debtor base. The Society maintains an allowance for potential credit losses.

***Liquidity risk***

Liquidity risk is the risk that the Society will not be able to fund its obligations as they come due, including being unable to liquidate assets in a timely manner at a reasonable price. The Society monitors forecasts of cash flows from operations and investments and holds investments that can readily be converted into cash. Investment income is not a primary source of revenue for the Society and all underlying long-term securities are publicly listed.

The Society has not entered into any derivative transactions. In addition, the Society's contractual arrangements do not have any embedded features.

***Cash and short-term investments***

Cash (bank balances) and short-term investments (less than one year) are amounts on deposit and invested in short-term investment vehicles according to the Society's investment policy.

***Portfolio investments***

Portfolio investments are recorded at fair value. The Society manages financial risk associated with portfolio investments in accordance with its investment policy. The primary objective of the investment policy is to preserve and enhance the real capital base. The secondary objective is to generate investment returns to assist the Society in funding its programs. Convocation monitors compliance with the investment policy and regularly reviews the policy.

***Capital assets***

Capital assets are presented at cost net of accumulated amortization. For purposes of calculating the first year's amortization, all capital assets are deemed to be acquired, put into service, or completed on July 1. Amortization is charged to expenses on a straight-line basis over the estimated useful lives of the assets as follows:

Buildings	30 years
Building improvements	10 years
Furniture, equipment and computer hardware and software	3 to 5 years

***Revenue recognition***

Annual member fees, premiums and levies are set annually by Convocation and are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year. Premium revenues are recognized on a pro rata basis over the term of the respective insurance policies. Premiums related to the unexpired term of coverage at the balance sheet date are reported as deferred revenue. Transaction-based levies are recorded as revenues in the year received.

Professional development & competence, and other revenues and realized investment income/losses are recognized when receivable if the amount can be reasonably estimated. Unrealized investment gains/losses are recognized with changes in the fair value of financial instruments.

Fees and premiums receivable are recorded as accounts receivable on the balance sheet, net of any required provision for doubtful amounts.

***Grant - related balances***

Pursuant to section 51(5) of the Law Society Act, the payment of grants from the Compensation Fund is at the discretion of Convocation. Grants paid from the lawyer pool of the Compensation Fund are subject to a \$150,000 limit per applicant. Grants paid from the paralegal pool of the Compensation Fund are subject to a \$10,000 limit per applicant. The Compensation Fund expense represents a provision for unpaid grants, administrative expenses and expenses allocated from the General Fund.

Provisions for unpaid grants are recorded as liabilities on the balance sheet. The measurement of the ultimate settlement costs of claims made to date that underlies the provision for unpaid grants involves estimates and measurement uncertainty. Ultimate costs incurred could vary from current estimates. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the methods of estimation that have been used will produce reasonable results given the current information. These provisions represent an estimate of the present value of grants to be paid for claims and the associated administrative costs net of recoveries. Grant liabilities are carried on a discounted basis using the yield of the underlying assets backing the grant liabilities with a provision for adverse deviation. The discount rate is 0.86% (2013 – 1.28%).

### ***Collections***

The Society owns a collection of legal research and reference material as well as a collection of portraits and sculptures. The cost of additions to the collections is expensed as incurred. No value is recorded in these financial statements for donated items. There have not been any significant changes to the collections in the current year.

### ***Volunteer services***

Convocation, consisting of the Treasurer and benchers, governs the Society. Benchers may be elected by lawyers, paralegals, appointed by the provincial government, have ex-officio status by virtue of their office or past service as elected benchers or Treasurers, or qualify as emeritus benchers. In addition, the Paralegal Standing Committee is responsible for developing policy related to paralegal regulation for Convocation's approval. With effect from when they took office in April 2014, licensed paralegals elect five paralegals as benchers and members of the Paralegal Standing Committee.

Elected and ex-officio benchers are only eligible for remuneration after contributing 26 days of voluntary time. The work of the Society is also dependent on other voluntary services by lawyers and paralegals. No value has been included in these financial statements for volunteer services.

### ***Measurement uncertainty***

The preparation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingencies at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The valuation of liabilities, unpaid grants and unpaid claims anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimation and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates.

#### 4. Investment in Subsidiaries

Investment in the Society's subsidiaries is recorded at cost:

	2014	2013
LAWPRO	35,642,000	35,642,000
LibraryCo	100	100
Total investment in subsidiaries	<b>35,642,100</b>	35,642,100

##### *LAWPRO*

The Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly-owned subsidiary of the Society.

The professional liability insurance program generally requires practising lawyers to pay premiums and levies to the E&O Fund that contribute toward the premium paid by the Society to fund the anticipated costs of professional liability claims made in each annual policy period.

Paralegals obtain this form of coverage through independent insurance companies. In addition to providing mandatory lawyers professional liability insurance, LAWPRO also sells optional excess lawyers professional liability and title insurance.

The \$5 million in capital stock of LAWPRO comprises 30,000 common shares of par value of \$100 each and 20,000 6% non-cumulative, redeemable, non-voting preferred shares. In the period from 1995 to 1997, the Society transferred a net amount of \$30.6 million in capitalization funding as contributed surplus to LAWPRO.

As required by Canadian generally accepted accounting principles, LAWPRO, a publicly accountable entity, uses International Financial Reporting Standards ("IFRS").

There are therefore significant differences in the accounting policies of LAWPRO and the Society, but because the two organizations are so different and LAWPRO is not consolidated, variances arising from the different financial reporting framework adopted by the two organizations have not been reconciled.

Summarized balance sheet of LAWPRO:

(\$000's)	2014	2013
Total assets	<b>681,909</b>	645,436
Total liabilities	<b>473,284</b>	455,561
Total shareholder's equity	<b>208,625</b>	189,875
Total liabilities and shareholder's equity	<b>681,909</b>	645,436

Summarized statement of income of LAWPRO for the year ended December 31:

(\$000's)	2014	2013
Revenue	143,051	124,274
Expenses	120,080	116,441
Income before taxes	22,971	7,833
Income tax expense	5,911	1,900
Net income	17,060	5,933
Other comprehensive income net of tax	1,690	12,653
Comprehensive income	18,750	18,586

Summarized statement of cash flows of LAWPRO for the year ended December 31:

(\$000's)	2014	2013
Net cash inflow from operating activities	12,109	20,413
Net cash outflow from investing activities	(9,306)	(24,265)
Cash and cash equivalents, beginning of year	14,525	18,377
Cash and cash equivalents, end of year	17,328	14,525

LAWPRO administers the operations of the E&O Fund at no charge, under an administrative services agreement. LAWPRO billed the Society \$110,872,000 (2013 – \$102,093,000) for premiums during the year. LAWPRO contributed \$231,000 to a wellness program provided by the Society to its members (2013 – \$210,000). Included in the Society's financial statements are amounts due to LAWPRO of \$6,634,000 (2013 – due from of \$3,000).

### **LibraryCo**

LibraryCo, a wholly-owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Society. LibraryCo was incorporated under the Business Corporations Act (Ontario) in 2001. The Society holds all of the 100 common shares. Of the 100 special shares, 25 are held by the Toronto Lawyers Association (“TLA”) and 75 are held by the County and District Law Presidents’ Association (“CDLPA”). The Society may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director. The investment is recorded at cost on the Society's Balance Sheet.

The Society levies and collects funds for county and district law library purposes and transfers these funds to LibraryCo. Convocation internally restricts these funds for use by county and district law libraries to carry out their annual operations and any special projects approved by Convocation.

Summarized balance sheet of LibraryCo:

(\$000's)	2014	2013
Total assets	740	909
Total liabilities	98	26
Total share capital and fund balances	642	883
Total liabilities, share capital and fund balances	740	909

Summarized statement of income of LibraryCo for the year ended December 31:

(\$000's)	2014	2013
Total revenue	8,049	8,230
Total expenses	8,290	8,318
Deficit	241	88

Summarized statement of cash flows of LibraryCo for the year ended December 31:

(\$000's)	2014	2013
Net cash outflow from operating activities	201	(98)
Cash and short-term investments, beginning of year	864	962
Cash and short-term investments, end of year	663	864

The Society administers the operations of LibraryCo under an administrative services agreement. The total amount billed by the Society was \$589,000 (2013 – \$591,000) for administrative services and certain other services and publications. Included in the Society's accounts receivable are amounts due from LibraryCo of \$1,000 (2013 – \$8,000).

## 5. Related Corporation

The Law Society Foundation ("LSF") is regarded as a related corporation, although the Society does not have an equity interest in the LSF.

The LSF, a registered charity, was incorporated by Letters Patent in 1962. The objectives of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to licensing process candidates in Ontario, restore and preserve land and buildings of historical significance to Canada's legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada's legal heritage, maintain a collection of gifts of books and other written material for use by educational institutions in Canada, receive donations and maintain funds for the relief of poverty by providing meals to persons in need.

The Society provides facilities, administration, accounting, security and certain other services at no cost to the LSF. Trustees of the LSF are elected by the members of the LSF. Included in the Society's accounts receivable are amounts due from the LSF of \$99,000 (2013 – \$30,000).

## 6. Portfolio Investments

(\$000's)	2014	2013
Debt securities	61,924	62,665
Canadian equities	16,476	14,484
Total portfolio investments	78,400	77,149

At December 31, 2013 the Society's debt securities were invested in individual securities. In June 2014 these were transferred to a pooled fund. The debt securities have effective interest rates and maturity dates as follows:

	2014	2013
Effective interest rates (%)	1.1 – 2.8	1.4 – 3.1
Maturity dates (years)	1 - 5	1 - 5

## 7. Capital Assets

(\$000's)	2014		
	Cost	Accumulated Amortization	Net
Land and buildings	25,395	21,622	3,773
Building improvements	23,368	16,591	6,777
Furniture, equipment and computer hardware and software	9,183	7,184	1,999
Total capital assets	57,946	45,397	12,549

(\$000's)	2013		
	Cost	Accumulated Amortization	Net
Land and buildings	25,395	21,071	4,324
Building improvements	22,994	15,160	7,834
Furniture, equipment and computer hardware and software	7,901	6,406	1,495
Total capital assets	56,290	42,637	13,653

## 8. Accounts Payable and Accrued Liabilities and Accounts Receivable

Included in accounts payable is \$258,000 in government remittances, primarily sales taxes (2013 – \$934,000).

The accounts receivable balance comprises:

(\$000's)	2014	2013
Accounts receivable	19,186	15,352
Allowance for doubtful accounts	15,418	12,858
Accounts receivable – net	3,768	2,494

The allowance for doubtful accounts mainly relates to monitoring and enforcement receivables and annual fees receivable.

## 9. Unclaimed Trust Funds

Section 59.6 of the Law Society Act permits a member who has held money in trust for, or on account of, a person for a period of at least two years, to apply in accordance with the by-laws for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. Subject to certain provisions in the Act enabling the Society to recover its expenses associated with maintaining these funds, net income from the money held in trust shall be paid to the Law Foundation of Ontario. Unclaimed money held in trust amounts to \$3,712,000 (2013 – \$3,195,000).

## 10. Other Trust Funds

The Society administers client funds for members under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. At December 31, 2014, total funds held in trust amount to \$2,449,000 (2013 – \$2,760,000).

## 11. Other Revenues

Included in other revenues are late fees, catering, monitoring & enforcement revenues, *Ontario Reports*, the LibraryCo administration fee and other miscellaneous revenue.

## 12. Investment Income

Investment income is summarized below:

(\$000's)	2014	2013
Dividends and interest	2,749	2,555
Realized gains	1,542	608
Unrealized (losses) gains	(556)	1,516
<b>Total</b>	<b>3,735</b>	<b>4,679</b>

## 13. Other Expenses

Included in Convocation, policy and outreach expenses are payments for the total remuneration of elected and ex-officio benchers, lay benchers and Paralegal Standing Committee members during the year of \$972,000 (2013 – \$836,000). The total expense reimbursements of the elected and ex-officio benchers, lay benchers and Paralegal Standing Committee members during the year was \$544,000 (2013 – \$557,000). The Treasurer's honorarium for the year was \$185,000 (2013 – \$176,000).

## 14. Interfund Transfers

During the year the following interfund transfers took place:

- \$2,472,000 transferred from the Capital Allocation Fund to the Invested in Capital Assets Fund representing assets capitalized during the year in compliance with the Society's accounting policies;
- \$12,000 transferred from the County Libraries Fund to the lawyer General Fund;
- \$17,000 transferred from the lawyer General Fund to the paralegal General Fund;
- Transfer of \$100,000 from the lawyer General Fund to the Repayable Allowance Fund, as provided in the 2014 budget to fund the Repayable Allowance Program in the Licensing Process;
- Transfer of \$298,000 from the Special Projects Fund to the lawyer General Fund;
- Transfer of \$1,500,000 from the E&O Fund to the lawyer General Fund as provided in the 2014 budget representing surplus investment income;
- Transfer of \$6,082,000 from the lawyer General Fund to the Capital Allocation Fund as provided in the 2014 budget to fund information technology projects.

## 15. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. Each member of the plan, other than designated employees, elect to contribute matching employee and employer contributions from 1% to 6% of annual earnings up to the maximum deduction allowed by the Canada Revenue Agency. Designated employees, who hold executive positions, have contributions made to the plan by the Society equivalent to 12% of annual earnings up to the maximum deduction allowed by the Canada Revenue Agency. The Society's pension expense in 2014 amounted to \$2,526,000 (2013 – \$2,495,000).

## 16. Commitments

The Society is committed to monthly lease payments for property under leases having various terms up to April 2020. Aggregate minimum annual payments to the expiry of the leases are as follows:

2015	\$955,000
2016	\$922,000
2017	\$923,000
2018	\$926,000
2019	\$928,000
Thereafter	\$309,000

In 2011, the Society renewed a five-year commitment in the annual amount of \$138,000 to the Law Commission of Ontario to support its operations.

## 17. Contingent Liabilities

A number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims. Except as set out in the next paragraph, management is of the opinion, based on the information presently available, that it is unlikely any liability, to the extent not covered by insurance or inclusion in the financial statements, would be material to the Society's financial position.

Members failing to meet their professional and ethical obligations are subject to the Society's regulatory process. Regulatory proceedings may result in cost awards against the Society. At the end of 2014, in management's judgement, there is at least a reasonable possibility that a contingent liability relating to one or more cost awards may exist but the amount of any losses cannot be reliably estimated. From its regulatory proceedings, the Society has determined that the ultimate settlement for costs awards could range from nil to approximately \$5 million. No amount has been recorded in the financial statements.

## THE LAW SOCIETY OF UPPER CANADA

## Schedule of Restricted Funds

Stated in thousands of dollars

For the year ended December 31

		2014							2013	
		Compensation Fund		Errors and omissions insurance	Capital allocation	Invested in capital assets	County libraries	Other restricted	Total Restricted funds	Total
		Lawyer	Paralegal							
1	<b>Fund balances, beginning of year</b>	25,829	419	65,042	3,953	13,653	-	1,367	110,263	122,208
<b>Revenues</b>										
2	Annual fees	8,850	654	-	2,077	-	7,511	400	19,492	19,866
3	Insurance premiums and levies	-	-	104,415	-	-	-	-	104,415	102,428
4	Investment income	1,517	-	1,216	-	-	-	-	2,733	3,520
5	Other	483	4	-	110	-	-	-	597	236
6	<b>Total revenues</b>	<b>10,850</b>	<b>658</b>	<b>105,631</b>	<b>2,187</b>	<b>-</b>	<b>7,511</b>	<b>400</b>	<b>127,237</b>	<b>126,050</b>
<b>Expenses</b>										
7	Allocated expenses	7,365	507	-	-	-	-	-	7,872	8,353
8	Provision for grants	13,091	144	-	-	-	-	-	13,235	1,147
9	Direct expenses	605	-	110,868	1,654	3,576	7,499	442	124,644	115,204
10	<b>Total expenses</b>	<b>21,061</b>	<b>651</b>	<b>110,868</b>	<b>1,654</b>	<b>3,576</b>	<b>7,499</b>	<b>442</b>	<b>145,751</b>	<b>124,704</b>
11	<b>(Deficit) Surplus</b>	(10,211)	7	(5,237)	533	(3,576)	12	(42)	(18,514)	1,346
12	<b>Interfund transfers</b>	-	-	(1,500)	3,610	2,472	(12)	(198)	4,372	(13,291)
13	<b>Fund balances, end of year</b>	<b>15,618</b>	<b>426</b>	<b>58,305</b>	<b>8,096</b>	<b>12,549</b>	<b>-</b>	<b>1,127</b>	<b>96,121</b>	<b>110,263</b>

**THE LAW SOCIETY OF UPPER  
CANADA Lawyers and Paralegals  
General Fund Schedule of Revenues and  
Expenses**

*Stated in thousands of dollars  
For the year ended December 31, 2014*

<i>Unaudited</i>	<b>Actual</b>	<b>Annual Budget</b>	<b>Variance</b>
<b>REVENUES</b>			
1 Annual fees	53,743	53,687	56
2 Professional development and competence	22,047	20,324	1,723
3 Investment income	1,002	701	301
4 Ontario reports revenue	1,641	1,636	5
5 Other	4,833	4,617	216
6 <b>Total revenues</b>	<b>83,266</b>	<b>80,965</b>	<b>2,301</b>
<b>EXPENSES</b>			
7 Professional regulation, tribunals and compliance	27,911	28,193	282
8 Professional development and competence	24,849	26,984	2,135
9 Corporate services	23,074	22,407	(667)
10 Convocation, policy and outreach	8,553	9,454	901
11 Services to members and public	4,190	4,456	266
12 Allocated to Compensation Fund	(7,872)	(8,056)	(184)
13 <b>Total expenses</b>	<b>80,705</b>	<b>83,438</b>	<b>2,733</b>
14 <b>Surplus (Deficit)</b>	<b>2,561</b>	<b>(2,473)</b>	<b>5,034</b>

TAB 4.2

## FOR DECISION

## INVESTMENT POLICY

**Motion:**

12. **That Convocation approve the updated Investment Policy.**
13. A copy of the draft Investment Policy follows.
14. In the “Accountabilities and Responsibilities” section of the Investment Policy it states that “Convocation shall.... review the administration of the Portfolios in the context of this policy. This shall be done on at least an annual basis.” This was last completed in May 2014.
15. The Investment Policy governs the investment portfolios of the General, Compensation and Errors & Omissions Insurance (“E&O”) Funds. At December 31, 2014, excluding cash and short-term investments, these investments had a total market value of \$78 million comprising \$62 million in fixed income investments and \$16 million in equity investments.
16. The General Fund is the Law Society’s operating fund, accounting for the Law Society’s program delivery and administrative activities related to the regulation and licensing of members. The Law Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member. The E&O Fund accounts for insurance-related transactions between LAWPRO, the Law Society and insured lawyers.

**Revisions**

17. Many of the edits can be characterized as housekeeping such as updating balances at December 31, 2014.
18. However the revised draft policy also recommends a change in the mix of the fixed income portfolio which comprises 85% of the total portfolio with Canadian equities

making up the remaining 15%. The fixed income portfolio uses the FTSE TMX Short Term Bond Index as the benchmark for its performance and therefore its asset mix. The possible change to the policy's fixed income asset mix has been initiated because of the considerable change in the composition of the FTSE TMX Short Term Bond Index over the last five years as a result of relative shifts between the amounts of net issuance of bonds in each sector. Since 2010, the following are the major changes to weightings within the FTSE TMX Short Term Bond Index:

	<b>Change in benchmark over last five years</b>
Government of Canada or Government of Canada guaranteed bonds	59% to 46%
Corporate bonds	26% to 36%
Corporate BBB bonds	4% to 8%

19. The Law Society's current fixed income asset mix no longer accurately reflects the benchmark TMX Short Term Bond index and the proposed changes are primarily intended to more properly align the Law Society's fixed income portfolio with its benchmark index. The proposal is to change the fixed income asset mix from:

<b>Bond Holdings</b>	<b>Maximum</b>
Government of Canada or Government of Canada guaranteed bonds	100%
Provincial government and provincial government guaranteed bonds	60%
Municipal bonds	10%
Corporate bonds	50%
Corporate BBB bonds	10%

to:

<b>Bond Holdings</b>	<b>Asset Mix</b>		
	<b>Maximum</b>	<b>Target</b>	<b>Minimum</b>
Government of Canada or Government of Canada guaranteed bonds	100%	46%	26%
Provincial government and provincial government guaranteed bonds and municipal bonds	38%	18%	0%
Corporate bonds*	56%	36%	0%

\*The Target for BBB bonds within corporate bonds is 8% of the fixed income portfolio with a maximum of 18%.

20. In the future, the Law Society's investment manager expects that corporate bonds and BBB corporate bonds will continue to increase their relative weightings within the FTSE TMX Short Term Bond Index and the current restrictions may make it more difficult to tactically overweight/underweight sectors such as federal bonds or corporate BBB's.
21. The Law Society's investment advisor, AON Hewitt, considers the suggested changes to be reasonable in the context of an active mandate. The 2 biggest risks of the fixed income portfolio are interest rate and credit risk with interest rate risk typically having the larger weighting, but this can partially be offset if the manager buys corporate bonds. AON still considers the weighting for BBBs at 8.5% +/- 10% fairly small and the portfolio has a more balanced profile.
22. The draft change to the fixed income asset mix increases risk, but the overall asset mix of the portfolio, with its concentration in short-term, fixed income securities is still very conservative.

#### **Other Information**

23. The Law Society's investment policy, with its significant bias towards short-term fixed income securities is conservative and relatively defensive. Investment returns in 2014 exceeded budget although the Law Society does not rely on investment returns as core funding for programs. The Committee deferred discussing increasing exposure to equities due to the wide variety of options. The recommended policy is intended to guide the Law Society's investment activities for the next year after which time the annual policy review will again be presented for consideration.
24. The Law Society has tax-exempt status under paragraph 149(1)(l) of the Income Tax Act. An organization that claims a tax exemption under paragraph 149(1)(l) of the Act is described as a club, society, or association that is organized and operated exclusively for social welfare, civic improvement, pleasure or recreation, or any other purpose except profit. In noting evidence of a profit purpose which would contravene paragraph 149(1)(l), the CRA has identified the holding of speculative or non-passive investments as a risk area. Aggressive investment policies may be regarded as a profit purpose and the primary objective of an investment policy should be to preserve capital, not maximize

returns. Investments that do not match the purpose of the underlying reserves and cash flow needs may be regarded as an issue by CRA.

25. Brian White from consultants AON Hewitt and Steven Copeland and Ryan Domsey from investment manager Foyston Gordon & Payne, assisted the Committee in assessing the Investment Policy.
26. Some issues typically considered in assessing the Investment Policy are:
  - a) Risk - The Law Society has an *ability* to adopt a higher level of risk, however the Law Society's *willingness* to adopt a higher level of risk is very low. The current Investment Policy is generally in line with the Law Society's nature, goals and purpose.
  - b) Active versus Passive Management - The Law Society could consider passive investment management. Passive management aims to replicate the performance of a specified stock market index. This consideration is based on the difficulty active managers have experienced in adding value to Canadian bond returns, where we have the most exposure. However it is important for an investment manager to strive to exceed the relevant benchmark and to make tactical decisions on asset allocation when appropriate. As analyzed in the attached report on the returns achieved by the Investment Manager, their performance supports this decision.
  - c) Global Equities - Investing in global equities may increase expected returns without increasing expected risk, because of improved diversification. However the relatively small scale of the Law Society's investments means managing the currency risk can be expensive, reducing net investment returns. The general principle of reduced risk with geographic diversification appears muted in practice and the current economic climate lends itself to a defensive investment strategy. The current policy has demonstrated its effectiveness under volatile market conditions.
  - d) Asset Mix – the allocation between fixed income securities and equities is currently considered to be appropriate in the context of the paragraph on the Law Society's tax-exempt status above.
  - e) Investment Manager - Moving to a passive investment structure as in b) above may require a change in investment manager. AON Hewitt has noted that such a change could be disruptive and costly.

### **Recommendation**

27. The draft policy is based on the Law Society's tax-exempt status and focuses on capital preservation rather than the pursuit of aggressive investment returns. The Law Society's fixed income portfolio currently has a relatively high yield compared to current rates

available. Within this context, and after the proposed changes to the bond portfolio asset mix, the recommendation is to approve the revised Investment Policy.

28. This has the following advantages:
- a. Maintains the Law Society's orientation to fixed income investments reducing exposure to volatile equity markets.
  - b. Denominates the Law Society's investments in Canadian dollars eliminating exposure to foreign currency fluctuations.
  - c. Offers relatively low investment management fees for an actively management fixed income portfolio.
  - d. Does not force a liquidation of fixed income investments that currently have a relatively high yield and the reinvestment in lower yielding fixed income instruments.

## LAW SOCIETY OF UPPER CANADA

## INVESTMENT POLICY

To be Revised by Convocation  
April 2015

## Purpose

1. The Law Society, has adopted the following Investment Policy governing the management of the General Fund Long-Term Funds, the Compensation Fund Long-Term Funds and the Errors & Omissions Insurance Fund Long-Term Funds ("the Portfolios") and short-term investments. The Portfolios comprise the funds not required to finance the short-term obligations of the Law Society's operations. Descriptions of these Funds can be found in the Law Society's Annual Financial Statements.

## Accountabilities and Responsibilities

2. Convocation

Convocation shall:

- review and approve the Investment Policy
- approve investment performance objectives
- approve the appointment and continuing retention of the Investment Manager and Custodian
- review the Portfolios' investment returns, and the administration of the Portfolios in the context of this policy. This shall be done on at least an annual basis

3. **Audit & Finance Committee**

The Audit & Finance Committee shall:

- review and recommend approval of the Investment Policy to Convocation
- review the Portfolios and monitor their performance
- review and recommend the appointment and continuing retention of the Investment Manager and Custodian
- review and recommend investment performance objectives
- periodically report to Convocation on the investment returns of the Portfolios, and the administration of the Portfolios. This shall be done on at least an annual basis.

4. **Law Society Management**

Law Society management, supplemented by professional assistance when required, has overall responsibility for:

- preparing and recommending changes to the Policy
- recommending the selection of the Investment Manager and Custodian
- recommending investment performance objectives
- monitoring the Portfolios to ensure compliance with legislative requirements and this policy
- periodically evaluating the Investment Manager and Custodian

- accounting for transactions in the Portfolios
- reviewing the Portfolios' investment returns and the administration of the Portfolios in the context of this policy. This shall be done on at least a quarterly basis.
- periodically report to Audit & Finance Committee on the investment returns of the Portfolios, and the administration of the Portfolios. This shall be done on at least an annual basis

#### 5. **Investment Manager**

The Investment Manager directs the business of the Portfolios' purchases and sales, has full investment discretion subject to the Investment Policy, and has responsibility for:

- Managing the Portfolios in terms of this Investment Policy, and in the best interests of the Law Society
- Providing written notification to management of the Law Society of any violations of this Investment Policy
- Adhering to the best standards of industry practice
- Required communications as described in Section 35

#### 6. **Custodian**

The Custodian shall:

- store and protect all ownership documentation for the Portfolios
- execute all transactions for the Portfolios as directed by the Investment Manager
- collect all income of the Portfolios
- provide monthly statements to the Law Society
- make all required filings to government, regulatory, taxation or other authorities

and shall be one of the following:

- A bank listed in Schedule I or II of the Bank Act (Canada)
- A trust company that is incorporated under the laws of Canada, and that has shareholders' equity of not less than \$10,000,000
- A company that is incorporated under the laws of Canada and that is an affiliate of a bank or trust company referred to above and has shareholders' equity, of not less than \$10,000,000

### Philosophy

#### 7. The Law Society is of the belief that:

- superior rates of return over longer time periods will be achieved through active management of a broadly diversified portfolio of high quality securities
- high-risk securities, which could lead to excessive volatility and the possibility of a reduction in the capital value of the Portfolios in a depressed market, are to be avoided
- extreme positions in either individual securities or in an asset class are to be avoided

### Business Characteristics

8. In order to establish an appropriate Investment Policy for the Portfolios, the following characteristics of the Law Society, relevant to the Portfolios, are noted.
- The Law Society is the governing body of Ontario's legal profession
  - Governance of the Law Society is regulated by *The Law Society Act*
  - The Law Society is a not-for-profit corporation and is not subject to income or capital taxes
  - The primary revenue source for both the General Fund and the Compensation Fund is member fees, mainly received between December and April of each year
  - The primary revenue source for the E&O Fund is premiums and levies from members received in the period November to January and then in quarterly increments
  - Total revenue for the Law Society for the year ended December 31, 2014 was \$211 million
  - The General Fund finances the day-to-day operation of the Law Society.
  - The Compensation Fund is maintained to mitigate losses sustained by clients because of the dishonesty of a member. It is a discretionary fund, and claim payments have a maximum of \$150,000
  - The Errors & Omissions Insurance Fund accounts for insurance related transactions between Lawyers' Professional Insurance Company, the Law Society and insured lawyers
  - Balances for investments at 31 December 2014 were:

CATEGORY	2014 (\$mill)
Total Cash and Short-Term Investments	39.7
Errors & Omissions Insurance Fund - Long-Term Investments	29.1
General Fund – Long-Term Investments	15.1
Compensation Fund – Long-Term Investments	34.2
<b>TOTAL</b>	<b>118.1</b>

- Withdrawals from the Portfolios will depend on operating conditions and capital requirements and therefore the Portfolios should be sensitive to short-term volatility.

### Objectives

9. The primary objective is to preserve and enhance the real capital base of the Portfolios.
10. The secondary objective is to generate investment returns to assist the Law Society in funding its programs.

11. Even with the guidelines outlined in this Policy, the investment returns from the Portfolios will vary from year to year, reflecting market and economic conditions, levels of inflation, government policies and many other factors which are beyond the control of the Investment Manager. These outside factors should not deter the Investment Manager from exercising due diligence and using its best efforts to achieve the long-term primary investment objective for the Portfolios as set out above, and the following benchmarks:
- By asset class
    - to outperform the appropriate market index return
  - By benchmark portfolio
    - To outperform the benchmark asset mix noted below (i.e., a portfolio consisting of 85% of the FTSE TMX Short-Term Bond Index total return, and 15% of the total return of the S&P/TSX Composite Index, over a four year moving average or complete market cycle)

### Investment Manager

12. To achieve these objectives the Law Society will retain the services of a firm registered as Investment Counsel and Portfolio Manager with the Ontario Securities Commission to manage the investment Portfolios on a discretionary basis within the constraints outlined in this document. The Investment Manager is to be guided by the following:

### Asset Mix

13. The following asset mix guidelines, based on market values, constitute the acceptable range of exposure for the various asset classes, which comprise each Portfolio:

	% of Total Fund		
	Minimum	Benchmark Asset Mix	Maximum
Cash and Short-Term	0%	0%	15%
Bonds	60%	85%	95%
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>
<b>Canadian Equity</b>	<b>5%</b>	<b>15%</b>	<b>25%</b>

### Diversification

14. The investment risk of the Portfolios shall be reduced by maintaining a diversified selection of industries and companies which places primary emphasis on value, long-term growth, and safety of capital. All percentages are based on market values, except where indicated.

**Short-Term Investments**

15. Short-term investments with a maximum term to maturity at purchase of 364 days may be held in the Portfolios when appropriate as an alternative to bond and equity investments. Appropriate short-term investments are:
- (a) Treasury bills issued by the Government of Canada and provincial governments and their agencies
  - (b) Obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances
  - (c) Commercial paper issued by Canadian corporations with a rating of "R1" or better as established by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.
16. No more than 8% of each of the portfolios may be invested in the securities of any one single issuer permitted in 15(b) and (c) above.
17. Where the Investment Manager operates a pooled money market fund, which meets the requirements set out in 15(a), (b) and (c), this pooled money market fund may be used as an alternative in order to achieve better rates and liquidity.

**Bonds**

18. Investment instruments allowed include:
- bonds, debentures, notes, non-convertible preferred stock, term deposits and guaranteed investment certificates
  - bonds of foreign issuers denominated in Canadian dollars
  - NHA-insured mortgage-backed securities or collateralized mortgage-backed securities
  - Marketable private placements of bonds.
19. Each bond portfolio may be invested within the following parameters:

<b>Bond Holdings</b>	<b>Asset Mix</b>		
	<b>Maximum</b>	<b>Target</b>	<b>Minimum</b>
Federal and Federally Guaranteed Bonds	100%	46%	26%
Provincials, Provincially Guarantees and Municipals	38%	18%	0%
Total Corporate Issues	56%	36%	0%
Total BBB Issues with Corporate issues	18%	8%	0%
Cash or Money Market	5%	0%	0%

20. Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of Government of Canada and provincial government bonds and their guarantees.

21. In line with the benchmark portfolio of the FTSE TMX Short Term Bond Index, the normal Duration range for the bond portfolio administered under this policy should be between 1 and 5 years. The Duration of a portfolio is a measure of the portfolio's sensitivity to changes in the general level of interest rates (Duration multiplied by change in interest rates gives change in value of bond portfolio).
22. The emphasis within the bond portfolio will be on quality, with a minimum rating "BBB" for bonds and debentures or "P2" for preferred shares by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.
23. In the event of a downgrade below "BBB" for bonds and debentures, "P2" for preferred shares or "R-1" for short-term investments, the Investment Manager will advise of an appropriate course of action.
24. In cases where the recognized bond rating agencies do not agree on the credit rating, the bond will be classified according to the methodology used by FTSE TMX, which states:
  - If two agencies rate a security, use the lower of the two ratings
  - If three agencies rate a security, use the most common; and
  - If all three agencies disagree, use the middle rating.
25. In the event that an individual bond, debenture, short-term investment or preferred share is no longer rated by a recognized bond rating agency, that security will no longer be considered to be investment grade and the Investment Manager will place the asset on a watch list subject to monthly review by the Investment Manager with the Law Society until such time as the security matures, is sold or until it is upgraded to a level consistent with the purchase quality standards as expressed in the guidelines listed above. The Manager may not infer a rating for an individual unrated security from ratings of other securities issued by the same issuer.

### **Equities**

26. The intent is to provide a diversified selection of Canadian common stocks, also allowing any of the following, provided that they are listed on a recognized stock exchange:
  - Convertible preferred stock and convertible debentures
  - Real estate investment trusts ("REITs").
27. The market value of any one issuer cannot represent more than 10% of the market value of the total Portfolios, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.

### **Other Investments**

28. Investments in open or closed-ended pooled or mutual funds are permitted provided that the assets of such funds are permissible investments under this Policy.

29. Deposit accounts of the custodian or Schedule 1 banks can be used to invest surplus cash holdings.
30. With the exception of rights, warrants and special warrants or instruments used for exposure purposes, no derivative investments will be permitted without the prior written approval of the Audit & Finance Committee.
31. No venture capital financing or non-conventional investments will be permitted without the prior written approval of the Audit & Finance Committee.
32. In the event any investment has no active market, the Investment Manager will advise of an appropriate course of action for the valuation of that investment.

### **Discretion**

33. The Investment Manager is to have full discretion in the management of the assets of the Portfolios, selecting the appropriate asset mix, and the individual securities, within the guidelines set out herein.

### **Delegation of Voting Rights**

34. The Investment Manager has been delegated the responsibility of exercising all voting rights acquired through the Portfolios' investments. The Investment Manager will exercise acquired voting rights with the intent of fulfilling the investment policies and objectives of the Fund. The Investment Manager is expected to act in good faith and to exercise the voting rights in a prudent manner that will maximize returns for the Portfolios, and to act against any proposal which will increase the risk level or reduce the investment value of the relevant security.

### **Communications**

35. The Communications process between the Investment Manager and Law Society Management is flexible, but at a minimum will include the following:
  - monthly transaction statements
  - a quarterly written summary listing of all portfolio transactions from the Investment Manager
  - a complete quarterly portfolio listing
  - a quarterly written assessment of the North American economies and the financial markets, and impact on the Portfolios
  - annual investment meetings with the Investment Manager. The agenda at these meetings would include an overview of the economy and the outlook for the financial markets, the current investment strategy, and a review of the performance results
  - an annual review of the Investment Policy and the Portfolios' quality and diversification guidelines.

- immediate notification of change with respect to the organization, investment professionals or investment process.

36. Any time that the Investment Manager is not in compliance with this policy, they are required to advise the Chief Financial Officer of the Law Society immediately, detailing the breach and recommending a course of action to remedy the situation.

### **Standard of Professional Conduct**

37. All investment activities of the Investment Manager and their employees shall be conducted in accordance with the Code of Ethics and Standards of Professional Conduct of the CFA Institute.

The Investment Manager will manage the Portfolios with the care, diligence and skill that an investment manager of ordinary prudence would use in dealing with institutional assets. The Investment Manager will also use all relevant knowledge and skill that it possesses or ought to possess as a prudent expert in investment management.

### **Securities Lending**

38. No lending of securities is permitted.

### **Borrowing**

39. The Portfolios shall not borrow money.

### **Conflicts of Interest – Investment Policy**

40. Conflict of interest standards apply to all members of Convocation, Law Society management and the Investment Manager, as well as to all Agents employed by the Law Society, in the execution of their fiduciary responsibilities.

41. An 'Agent' is defined to mean a company, organization, association or individual, as well as its employees, retained by the Law Society to provide specific services with respect to the administration and management of the Law Society's investment assets.

42. In carrying out their fiduciary responsibilities, these parties must act at all times in the best interests, and for the benefit, of the Law Society. All parties must act in the manner that a "prudent person" would in matters related to the investment strategy and portfolio management.

43. No affected person shall accept a gift or gratuity or other personal favour, other than one of nominal value, from an individual with whom the person deals in the course of performance of his or her duties and responsibilities.

44. In the execution of their duties, all of the parties listed in Section 40 above shall disclose any material conflict of interest relating to them, or any material ownership of securities, which could impair their ability to render unbiased decisions, as it relates to the administration of the investment assets.
45. Further, it is expected that none of the parties listed in Section 40 above shall make any personal financial gain (direct or indirect) because of their fiduciary position. However, normal and reasonable fees and expenses incurred in the discharge of their responsibilities are permitted if documented and approved by the Law Society.
46. It is incumbent on any party affected by this Policy who believes that he/she may have a material conflict of interest, or who is aware of any conflict of interest, to notify the CEO or the CFO of the Law Society. Disclosure should be made promptly after the affected person becomes aware of the conflict. The CEO or CFO, in turn, will decide what action is appropriate under the circumstances but, at a minimum, will table the matter at the next regular meeting of the Audit & Finance Committee.
47. No affected person who has or is required to make a disclosure as contemplated in this Policy shall participate in any discussion, decision or vote relating to any proposed investment or transaction in respect of which he or she has made or is required to make disclosure.

#### **Changes to Policy**

48. This Investment Policy may only be changed by Convocation on the specific recommendation of the Audit & Finance Committee.

TAB 4.3

## FOR DECISION

**INVESTMENT MANAGER AND CUSTODIAN****Motion:**

29. **That Convocation approve the continued retention of the Investment Manager, Foyston Gordon & Payne and the Custodian, CIBC Mellon Global Securities Services Company.**

**Investment Manager**

30. Foyston Gordon & Payne ("FGP") has been the Law Society's investment manager since 2003.
31. The Investment Monitoring Report as at December 31, 2014 from AON Hewitt, assessing the investing performance of FGP forms part of this material. The Report indicates that the gross return of the portfolio over the most recent four year period outperformed the benchmark by 1.1% and does not disclose any issues. AON Hewitt has also noted that FGP is well qualified to apply the provisions of the Law Society's investment policy with its emphasis on fixed income investments.
32. The Law Society currently enjoys a favourable management fee on the portfolio under management at FGP. In addition, FGP currently provides investment management services for the Law Society Foundation at no cost.

**Custodian**

33. Core custody services include safekeeping of securities, transaction settlements, and administering corporate actions. CIBC Mellon Global Securities Services Company has been the Law Society's investment custodian since 2001. Other options were last assessed in the custodial services marketplace five years ago but there is little incentive to redo this as the marketplace for investment custodians is limited and RBC Investor Services is the only viable competition.

34. Custodial fees are under \$2,000 per month so there is currently little prospect of significant savings. We are satisfied with the custodial services and there is no difference in the financial and other security risk of the two institutions, leading to a conclusion to remain with CIBC Mellon.

**Aon Hewitt**  
Investment Consulting

# Detailed Performance Review and Investment Manager Evaluation

*Law Society of Upper Canada:  
Errors & Omissions Insurance Fund, Compensation Fund and General Fund*

*Semi-Annual Period Ending 31 December 2014*

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# Executive Summary

## Executive Summary

<b>Commentary and Recommendations</b>
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<b>As of 31 December 2014</b>
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Comments	Recommendations
<b>E&amp;O Insurance Fund Performance</b> <ul style="list-style-type: none"> <li>▪ The overall gross return over the 4-year period ending 31 December 2014 was 4.40%, resulting in an outperformance of 1.13% relative to the benchmark.</li> <li>▪ Over the most recent 6-month period, the Fund underperformed its benchmark by 0.78%.</li> <li>▪ Negative asset class performance within Canadian equities, an overweight to Canadian equities and an underweight to Canadian fixed income detracted value from the overall portfolio.</li> <li>▪ FGP Canadian equities underperformed the Index due to negative stock picks in Energy, Industrials, Consumer Discretionary and Telecommunications. An underweight to Health Care and Industrials, as well as an overweight to Energy also detracted value from the Fund. Strong stock picks in Materials along with an overweight to Consumer Discretionary and an underweight to Materials provided a partial offset to the Fund's overall negative performance.</li> <li>▪ Fixed income underperformance was mainly due to its underweight in the provincials and a slightly lower than Index duration, as yields continued to fall during the period.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No action is required.</li> </ul>
<b>Compensation Fund Performance</b> <ul style="list-style-type: none"> <li>▪ The overall gross return over the 4-year period ending 31 December 2014 was 4.41%, resulting in an outperformance of 1.14% relative to the benchmark.</li> <li>▪ Over the most recent 6-month period, the Fund underperformed its benchmark by 0.78%.</li> <li>▪ Performance attribution comments for this Fund are the same as the E&amp;O Insurance Fund comments above.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No action is required.</li> </ul>
<b>General Fund Performance</b> <ul style="list-style-type: none"> <li>▪ The overall gross return over the 4-year period ending 31 December 2014 was 4.41%, resulting in an outperformance of 1.14% relative to the benchmark.</li> <li>▪ Over the most recent 6-month period, the Fund underperformed its benchmark by 0.79%.</li> <li>▪ Performance attribution comments for this Fund are the same as the E&amp;O Insurance Fund comments above.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No action is required.</li> </ul>
<b>Portfolio Rebalancing</b> <ul style="list-style-type: none"> <li>▪ All asset classes were within their allowable ranges as at 31 December 2014.</li> </ul>	<ul style="list-style-type: none"> <li>▪ No action is required.</li> </ul>

## Executive Summary

<b>Commentary and Recommendations</b>
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As of 31 December 2014

	Comments	Recommendations
<b>Statement of Investment Policies and Procedures (SIPP)</b>	<ul style="list-style-type: none"> <li>▪ The SIPP was last updated in May 2014.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The SIPP should be reviewed and updated annually and any changes to the Plan's investment policies should be reflected accordingly.</li> </ul>
<b>Foyston, Gordon &amp; Payne (FGP)</b>	<ul style="list-style-type: none"> <li>▪ Michel Rheaume, Vice President and Portfolio Manager, Institutional Client Services, left the firm in November 2014.</li> <li>▪ Jim Houston, President, resigned from FGP in December. He was replaced by Bryan Pilsworth, who has been with FGP since 2007. In addition to managing the Canadian Small Cap equity strategies, Bryan will also lead the firm's strategic direction.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Continue to monitor.</li> </ul>

## Executive Summary

**E&O Insurance Fund Asset Allocation and Annualized Performance**

As of 31 December 2014

	Market Value (\$000)	%	Performance (%)							
			6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	Since Inception	Inception Date
<b>E&amp;O Insurance Fund (Gross)</b>	<b>30,715</b>	<b>100.0</b>	<b>0.02</b>	<b>4.26</b>	<b>4.96</b>	<b>4.69</b>	<b>4.40</b>	<b>4.98</b>	<b>4.36</b>	<b>1/04/2006</b>
E&O Insurance Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.75	3.60	
Value Added			-0.78	0.07	1.17	1.22	1.13	1.23	0.76	
<b>E&amp;O Insurance Fund (Net)</b>	<b>30,715</b>	<b>100.0</b>	<b>-0.04</b>	<b>4.12</b>	<b>4.83</b>	<b>4.56</b>	<b>4.27</b>	<b>4.85</b>	<b>4.20</b>	<b>1/04/2006</b>
E&O Insurance Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.75	3.60	
Value Added			-0.84	-0.07	1.04	1.09	1.00	1.10	0.60	
<b>E&amp;O Canadian Equities</b>	<b>6,041</b>	<b>19.7</b>	<b>-4.40 (86)</b>	<b>7.69 (85)</b>	<b>15.23 (51)</b>	<b>14.39 (38)</b>	<b>8.96 (25)</b>	<b>10.46 (23)</b>	<b>6.58 (41)</b>	<b>1/04/2006</b>
S&P/TSX Capped Composite			-2.05 (69)	10.55 (59)	11.77 (86)	10.22 (91)	5.15 (82)	7.53 (80)	5.15 (72)	
Value Added			-2.35	-2.86	3.46	4.17	3.81	2.93	1.43	
<b>E&amp;O Canadian Fixed Income</b>	<b>23,026</b>	<b>75.0</b>	<b>1.18</b>	<b>3.43</b>	<b>2.99</b>	<b>2.93</b>	<b>3.37</b>	<b>3.81</b>	<b>4.53</b>	<b>1/04/2006</b>
FTSE TMX Short Term Bond			1.29	3.06	2.40	2.27	2.86	3.00	4.06	
Value Added			-0.11	0.37	0.59	0.66	0.51	0.81	0.47	
<b>E&amp;O Short-Term</b>	<b>1,648</b>	<b>5.4</b>	<b>0.55 (64)</b>	<b>1.07 (71)</b>	<b>1.08 (71)</b>	<b>1.08 (71)</b>	<b>1.06 (80)</b>	<b>0.97 (76)</b>	<b>0.94 (76)</b>	<b>1/10/2009</b>
FTSE TMX 91-Day T-Bill			0.47 (97)	0.91 (97)	0.96 (94)	0.98 (88)	0.98 (87)	0.89 (89)	0.87 (89)	
Value Added			0.08	0.16	0.12	0.10	0.08	0.08	0.07	

The total fund performance prior to 30 June 2009 includes a U.S. equities component.  
 Parentheses contain percentile rankings.  
 Returns for periods greater than one year are annualized.

## Executive Summary

**E&O Insurance Fund Annual Performance**

As of 31 December

	Performance (%)										
	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
<b>E&amp;O Insurance Fund (Gross)</b>	<b>4.26</b>	<b>5.67</b>	<b>4.14</b>	<b>3.54</b>	<b>7.34</b>	<b>11.22</b>	<b>-5.26</b>	<b>1.91</b>	-	-	-
E&O Insurance Fund Benchmark	4.19	3.39	2.83	2.65	5.69	8.15	-3.15	2.70	-	-	-
Value Added	0.07	2.28	1.31	0.89	1.65	3.07	-2.11	-0.79	-	-	-
<b>E&amp;O Insurance Fund (Net)</b>	<b>4.12</b>	<b>5.55</b>	<b>4.00</b>	<b>3.42</b>	<b>7.22</b>	<b>11.02</b>	<b>-5.43</b>	<b>1.74</b>	-	-	-
E&O Insurance Fund Benchmark	4.19	3.39	2.83	2.65	5.69	8.15	-3.15	2.70	-	-	-
Value Added	-0.07	2.16	1.17	0.77	1.53	2.87	-2.28	-0.96	-	-	-
<b>E&amp;O Canadian Equities</b>	<b>7.69 (85)</b>	<b>23.30 (25)</b>	<b>12.71 (21)</b>	<b>-5.82 (22)</b>	<b>16.65 (47)</b>	<b>37.96 (27)</b>	<b>-31.09 (37)</b>	<b>4.06 (82)</b>	-	-	-
S&P/TSX Capped Composite	10.55 (59)	12.99 (97)	7.19 (77)	-8.71 (41)	17.61 (29)	35.06 (46)	-33.00 (59)	9.83 (38)	17.26 (52)	24.13 (50)	14.48 (62)
Value Added	-2.86	10.31	5.52	2.89	-0.96	2.90	1.91	-5.77	-	-	-
<b>E&amp;O Canadian Fixed Income</b>	<b>3.43</b>	<b>2.55</b>	<b>2.82</b>	<b>4.71</b>	<b>5.58</b>	<b>7.02</b>	<b>4.82</b>	<b>3.97</b>	-	-	-
FTSE TMX Short Term Bond	3.06	1.74	2.01	4.65	3.56	4.54	8.55	4.09	4.00	2.37	5.08
Value Added	0.37	0.81	0.81	0.06	2.02	2.48	-3.73	-0.12	-	-	-
<b>E&amp;O Short-Term</b>	<b>1.07 (71)</b>	<b>1.09 (66)</b>	<b>1.08 (66)</b>	<b>1.00 (80)</b>	<b>0.62 (61)</b>	-	-	-	-	-	-
FTSE TMX 91-Day T-Bill	0.91 (97)	1.01 (86)	1.01 (78)	1.00 (80)	0.54 (80)	0.62 (89)	3.33 (72)	4.43 (71)	3.98 (57)	2.58 (85)	2.30 (73)
Value Added	0.16	0.08	0.07	0.00	0.08	-	-	-	-	-	-

The total fund performance prior to 30 June 2009 includes a U.S. equities component. Parentheses contain percentile rankings.

## Executive Summary

### Compensation Fund Asset Allocation and Annualized Performance

As of 31 December 2014

	Market Value (\$000)	%	Performance (%)							
			6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	Since Inception	Inception Date
<b>Compensation Fund (Gross)</b>	<b>36,080</b>	<b>100.0</b>	<b>0.02</b>	<b>4.28</b>	<b>4.98</b>	<b>4.71</b>	<b>4.41</b>	<b>5.01</b>	<b>5.42</b>	<b>1/06/2003</b>
Compensation Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.88	4.87	
Value Added			-0.78	0.09	1.19	1.24	1.14	1.13	0.55	
<b>Compensation Fund (Net)</b>	<b>36,080</b>	<b>100.0</b>	<b>-0.04</b>	<b>4.14</b>	<b>4.84</b>	<b>4.58</b>	<b>4.29</b>	<b>4.91</b>	<b>5.32</b>	<b>1/06/2003</b>
Compensation Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.88	4.87	
Value Added			-0.84	-0.05	1.05	1.11	1.02	1.03	0.45	
<b>Compensation Canadian Equities</b>	<b>7,254</b>	<b>20.1</b>	<b>-4.34 (85)</b>	<b>7.83 (84)</b>	<b>15.31 (50)</b>	<b>14.43 (37)</b>	<b>9.00 (23)</b>	<b>10.48 (22)</b>	<b>11.10 (31)</b>	<b>1/06/2003</b>
S&P/TSX Capped Composite			-2.05 (69)	10.55 (59)	11.77 (86)	10.22 (91)	5.15 (82)	7.53 (80)	9.58 (67)	
Value Added			-2.29	-2.72	3.54	4.21	3.85	2.95	1.52	
<b>Compensation Canadian Fixed Income</b>	<b>26,989</b>	<b>74.8</b>	<b>1.18</b>	<b>3.43</b>	<b>3.00</b>	<b>2.94</b>	<b>3.38</b>	<b>3.86</b>	<b>4.96</b>	<b>1/06/2003</b>
Compensation Fixed Income Benchmark			1.29	3.06	2.40	2.27	2.86	3.16	4.47	
Value Added			-0.11	0.37	0.60	0.67	0.52	0.70	0.49	
<b>Compensation Short-Term</b>	<b>1,837</b>	<b>5.1</b>	<b>0.55 (65)</b>	<b>1.08 (70)</b>	<b>1.08 (70)</b>	<b>1.08 (71)</b>	<b>1.06 (79)</b>	<b>0.98 (75)</b>	<b>1.81 (96)</b>	<b>1/06/2003</b>
FTSE TMX 91-Day T-Bill			0.47 (97)	0.91 (97)	0.96 (94)	0.98 (88)	0.98 (87)	0.89 (89)	2.02 (88)	
Value Added			0.08	0.17	0.12	0.10	0.08	0.09	-0.21	

The total fund performance prior to 30 June 2009 includes a U.S. equities component.  
 Parentheses contain percentile rankings.  
 Returns for periods greater than one year are annualized.

## Executive Summary

### Compensation Fund Annual Performance

As of 31 December

	Performance (%)										
	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
<b>Compensation Fund (Gross)</b>	<b>4.28</b>	<b>5.68</b>	<b>4.18</b>	<b>3.52</b>	<b>7.43</b>	<b>9.74</b>	<b>0.92</b>	<b>2.16</b>	<b>6.23</b>	<b>7.22</b>	<b>6.65</b>
Compensation Fund Benchmark	4.19	3.39	2.83	2.65	6.37	7.82	0.82	3.06	5.88	7.45	7.41
Value Added	0.09	2.29	1.35	0.87	1.06	1.92	0.10	-0.90	0.35	-0.23	-0.76
<b>Compensation Fund (Net)</b>	<b>4.14</b>	<b>5.54</b>	<b>4.06</b>	<b>3.44</b>	<b>7.43</b>	<b>9.70</b>	<b>0.82</b>	<b>2.03</b>	<b>6.10</b>	<b>7.08</b>	<b>6.52</b>
Compensation Fund Benchmark	4.19	3.39	2.83	2.65	6.37	7.82	0.82	3.06	5.88	7.45	7.41
Value Added	-0.05	2.15	1.23	0.79	1.06	1.88	0.00	-1.03	0.22	-0.37	-0.89
<b>Compensation Canadian Equities</b>	<b>7.83 (84)</b>	<b>23.30 (25)</b>	<b>12.71 (21)</b>	<b>-5.82 (22)</b>	<b>16.65 (47)</b>	<b>37.96 (27)</b>	<b>31.09 (37)</b>	<b>4.06 (82)</b>	<b>14.53 (80)</b>	<b>27.52 (19)</b>	<b>16.57 (31)</b>
S&P/TSX Capped Composite	10.55 (59)	12.99 (97)	7.19 (77)	-8.71 (41)	17.61 (29)	35.06 (46)	33.00 (59)	9.83 (38)	17.26 (52)	24.13 (50)	14.48 (62)
Value Added	-2.72	10.31	5.52	2.89	-0.96	2.90	1.91	-5.77	-2.73	3.39	2.09
<b>Compensation Canadian Fixed Income</b>	<b>3.43</b>	<b>2.57</b>	<b>2.82</b>	<b>4.71</b>	<b>5.81</b>	<b>7.34</b>	<b>4.82</b>	<b>3.93</b>	<b>4.37</b>	<b>7.93</b>	<b>7.15</b>
Compensation Fixed Income Benchmark	3.06	1.74	2.01	4.65	4.40	5.41	6.41	3.68	4.06	6.46	7.15
Value Added	0.37	0.83	0.81	0.06	1.41	1.93	-1.59	0.25	0.31	1.47	0.00
<b>Compensation Short-Term</b>	<b>1.08 (70)</b>	<b>1.09 (66)</b>	<b>1.08 (66)</b>	<b>1.00 (80)</b>	<b>0.64 (58)</b>	<b>-4.60 (100)</b>	<b>9.37 (1)</b>	<b>1.73 (100)</b>	<b>3.82 (87)</b>	<b>2.05 (99)</b>	<b>2.49 (5)</b>
FTSE TMX 91-Day T-Bill	0.91 (97)	1.01 (86)	1.01 (78)	1.00 (80)	0.54 (80)	0.62 (89)	3.33 (72)	4.43 (71)	3.98 (57)	2.58 (85)	2.30 (73)
Value Added	0.17	0.08	0.07	0.00	0.10	-5.22	6.04	-2.70	-0.16	-0.53	0.19

The total fund performance prior to 30 June 2009 includes a U.S. equities component. Parentheses contain percentile rankings.

## Executive Summary

## General Fund Asset Allocation and Annualized Performance

As of 31 December 2014

	Market Value (\$000)	%	Performance (%)							Inception Date
			6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	Since Inception	
<b>General Fund (Gross)</b>	<b>15,918</b>	<b>100.0</b>	<b>0.01</b>	<b>4.26</b>	<b>4.96</b>	<b>4.70</b>	<b>4.41</b>	<b>4.57</b>	<b>4.44</b>	<b>1/04/2004</b>
General Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.73	4.10	
Value Added			-0.79	0.07	1.17	1.23	1.14	0.84	0.34	
<b>General Fund (Net)</b>	<b>15,918</b>	<b>100.0</b>	<b>-0.05</b>	<b>4.12</b>	<b>4.83</b>	<b>4.57</b>	<b>4.29</b>	<b>4.47</b>	<b>4.35</b>	<b>1/04/2004</b>
General Fund Benchmark			0.80	4.19	3.79	3.47	3.27	3.73	4.10	
Value Added			-0.85	-0.07	1.04	1.10	1.02	0.74	0.25	
<b>General Canadian Equities</b>	<b>3,181</b>	<b>20.0</b>	<b>-4.37 (86)</b>	<b>7.80 (84)</b>	<b>15.29 (50)</b>	<b>14.42 (37)</b>	<b>8.99 (23)</b>	<b>10.48 (22)</b>	<b>9.48 (33)</b>	<b>1/04/2004</b>
S&P/TSX Capped Composite			-2.05 (69)	10.55 (59)	11.77 (86)	10.22 (91)	5.15 (82)	7.53 (80)	7.92 (76)	
Value Added			-2.32	-2.75	3.52	4.20	3.84	2.95	1.56	
<b>General Canadian Fixed Income</b>	<b>11,909</b>	<b>74.8</b>	<b>1.18</b>	<b>3.43</b>	<b>3.00</b>	<b>2.95</b>	<b>3.38</b>	<b>3.32</b>	<b>3.92</b>	<b>1/04/2004</b>
FTSE TMX Short Term Bond			1.29	3.06	2.40	2.27	2.86	3.00	3.79	
Value Added			-0.11	0.37	0.60	0.68	0.52	0.32	0.13	
<b>General Short-Term</b>	<b>827</b>	<b>5.2</b>	<b>0.55 (65)</b>	<b>1.07 (71)</b>	<b>1.06 (73)</b>	<b>1.05 (80)</b>	<b>1.02 (83)</b>	<b>1.28 (8)</b>	<b>2.26 (15)</b>	<b>1/04/2004</b>
FTSE TMX 91-Day T-Bill			0.47 (97)	0.91 (97)	0.96 (94)	0.98 (88)	0.98 (87)	0.89 (89)	1.94 (89)	
Value Added			0.08	0.16	0.10	0.07	0.04	0.39	0.32	

The total fund performance prior to 30 June 2009 includes a U.S. equities component.  
 Parentheses contain percentile rankings.  
 Returns for periods greater than one year are annualized.

## Executive Summary

## General Fund Annual Performance

As of 31 December

	Performance (%)										
	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
<b>General Fund (Gross)</b>	<b>4.26</b>	<b>5.67</b>	<b>4.18</b>	<b>3.52</b>	<b>5.22</b>	<b>8.33</b>	<b>2.88</b>	<b>2.22</b>	<b>6.47</b>	<b>2.97</b>	-
General Fund Benchmark	4.19	3.39	2.83	2.65	5.62	7.06	2.58	3.40	5.83	3.94	-
Value Added	0.07	2.28	1.35	0.87	-0.40	1.27	0.30	-1.18	0.64	-0.97	-
<b>General Fund (Net)</b>	<b>4.12</b>	<b>5.54</b>	<b>4.06</b>	<b>3.44</b>	<b>5.22</b>	<b>8.32</b>	<b>2.78</b>	<b>2.08</b>	<b>6.37</b>	<b>2.85</b>	-
General Fund Benchmark	4.19	3.39	2.83	2.65	5.62	7.06	2.58	3.40	5.83	3.94	-
Value Added	-0.07	2.15	1.23	0.79	-0.40	1.26	0.20	-1.32	0.54	-1.09	-
<b>General Canadian Equities</b>	<b>7.80 (84)</b>	<b>23.30 (25)</b>	<b>12.71 (21)</b>	<b>-5.82 (22)</b>	<b>16.65 (47)</b>	<b>37.96 (27)</b>	<b>-31.09 (37)</b>	<b>4.06 (82)</b>	<b>14.53 (80)</b>	<b>27.52 (19)</b>	-
S&P/TSX Capped Composite	10.55 (59)	12.99 (97)	7.19 (77)	-8.71 (41)	17.61 (29)	35.06 (46)	-33.00 (59)	9.83 (38)	17.26 (52)	24.13 (50)	14.48 (62)
Value Added	-2.75	10.31	5.52	2.89	-0.96	2.90	1.91	-5.77	-2.73	3.39	-
<b>General Canadian Fixed Income</b>	<b>3.43</b>	<b>2.58</b>	<b>2.83</b>	<b>4.71</b>	<b>3.07</b>	<b>5.54</b>	<b>7.31</b>	<b>4.00</b>	<b>4.32</b>	<b>2.13</b>	-
FTSE TMX Short Term Bond	3.06	1.74	2.01	4.65	3.56	4.54	8.55	4.09	4.00	2.37	5.08
Value Added	0.37	0.84	0.82	0.06	-0.49	1.00	-1.24	-0.09	0.32	-0.24	-
<b>General Short-Term</b>	<b>1.07 (71)</b>	<b>1.04 (79)</b>	<b>1.02 (77)</b>	<b>0.95 (92)</b>	<b>2.29 (1)</b>	<b>-1.60 (100)</b>	<b>11.50 (1)</b>	<b>1.29 (100)</b>	<b>3.99 (55)</b>	<b>1.81 (99)</b>	-
FTSE TMX 91-Day T-Bill	0.91 (97)	1.01 (86)	1.01 (78)	1.00 (80)	0.54 (80)	0.62 (89)	3.33 (72)	4.43 (71)	3.98 (57)	2.58 (85)	2.30 (73)
Value Added	0.16	0.03	0.01	-0.05	1.75	-2.22	8.17	-3.14	0.01	-0.77	-

The total fund performance prior to 30 June 2009 includes a U.S. equities component.  
 Parentheses contain percentile rankings.

## Capital Market Performance

## Capital Market Performance

## Major Capital Markets' Returns

As of 31 December 2014

	6 Months	Year To Date	1 Year	2 Years	3 Years	4 Years	5 Years	10 Years
<b>Canadian Equity</b>								
S&P/TSX Composite	-2.0	10.6	10.6	11.8	10.2	5.1	7.5	7.6
<b>Foreign Equity</b>								
S&P 500 (CAD)	15.4	23.9	23.9	32.3	25.7	20.1	17.8	7.3
S&P 500 (USD)	6.1	13.7	13.7	22.7	20.4	15.6	15.5	7.7
MSCI EAFE (Net) (CAD)	-1.3	3.7	3.7	16.5	15.9	8.8	7.5	4.1
MSCI World (Net) (CAD)	7.5	14.4	14.4	24.4	20.5	14.1	12.4	5.7
<b>Real Estate</b>								
REALpac / IPD Canada Property Index	2.9	5.9	5.9	8.4	10.3	11.6	11.5	11.2
<b>Fixed Income</b>								
FTSE TMX Universe Bond	3.8	8.8	8.8	3.7	3.7	5.1	5.4	5.3
FTSE TMX Long Term Bond	7.7	17.5	17.5	5.0	5.1	8.2	9.0	7.4
FTSE TMX 91-Day T-Bill	0.5	0.9	0.9	1.0	1.0	1.0	0.9	1.9
<b>Consumer Price Index</b>								
Canadian CPI, unadjusted	-1.1	1.5	1.5	1.4	1.2	1.5	1.6	1.7

**Canadian Equities**

The S&P/TSX Composite Index lost 2.0% during the last 6 months, due to the underperformance of the sectors of Energy (-21.4%) Materials (-16.5%) which represent more than 34% of the composition of the index. Top performers included Consumer Staples (35.2%), Health Care (23.9%) and Information Technology (20.1%). For the past twelve months the Index gained 10.6%, led by Consumer Staples (49.1%), Information technology (35.1%) and Health Care (30.3%). Energy (-4.8%) and Materials (-2.6%) were the only sectors posting losses for the year.

**U.S. Equities**

The S&P 500 (USD) posted a return of 6.1% for the past 6 months. The three top performing sectors were Health Care (13.3%), Information Technology (10.3%), and Consumer Staples (10.3%), while the bottom sectors included Energy (-18.4%), Materials (-1.6%), and Telecommunication Services (-1.2%). For the past twelve months the Index returned 13.7%. The top performing sectors were Utilities (29.0%), Health Care (25.3%), and Information Technology (20.1%), while the three worst performing sectors were Energy (-7.8%), Telecommunication Services (3.0%), and Materials (6.9%).

**Non-North American Equities**

MSCI EAFE lost 1.3% over the last six months (CAD). Top performing sectors included Information Technology (7.3 %) and Health Care (3.4 %), while the bottom three were Energy (-21.6%), Materials (-6.7%), and Industrials (-2.4%). For the past twelve months the Index returned 3.7%, led by Health Care (15.7%), Utilities (12.9%), and Information Technology (8.2%). The three trailing sectors were Energy (-11.0%), Materials (-2.7%), and Industrials (-0.3%).

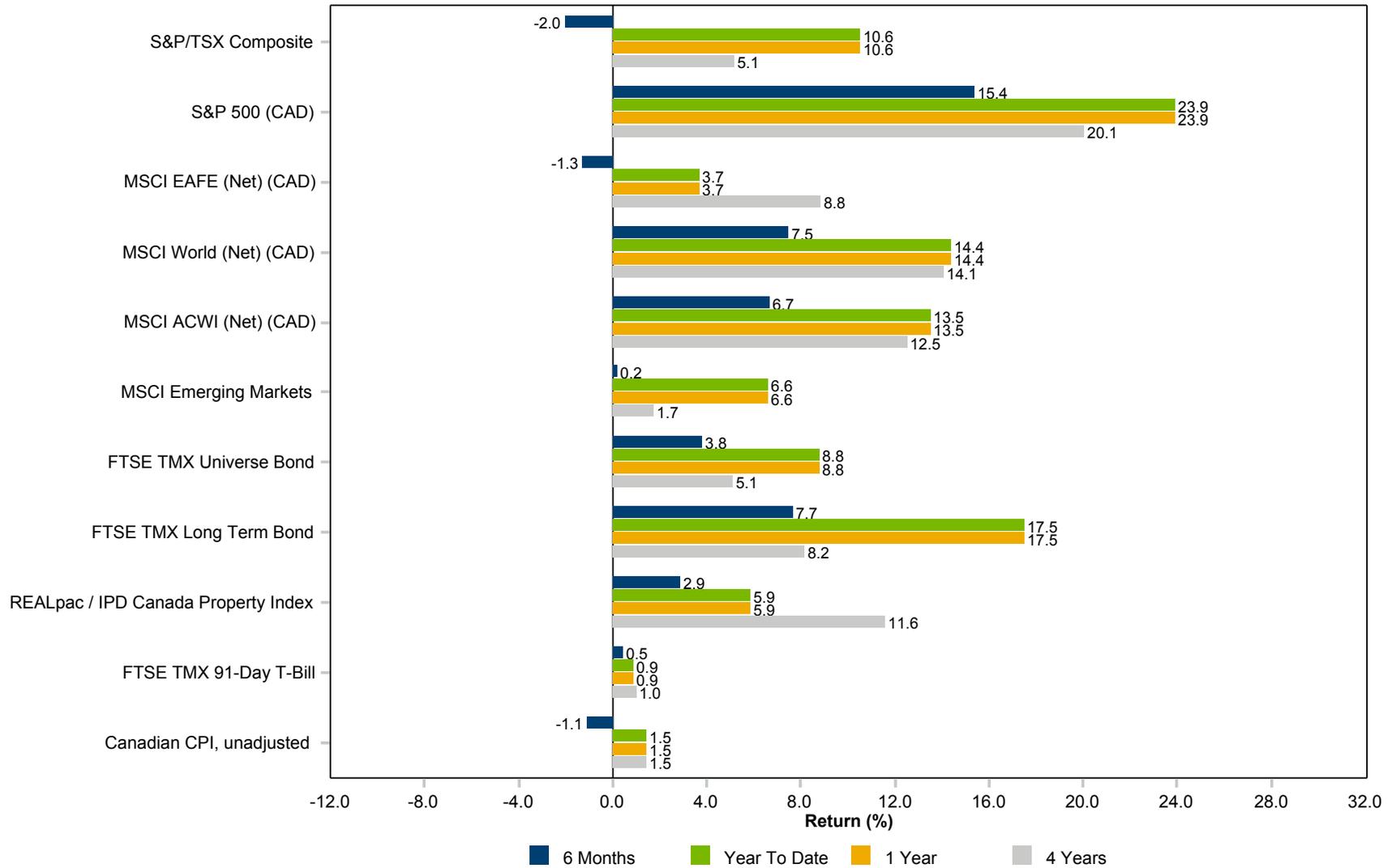
**Fixed Income**

The Canadian bond market as measured by the FTSE TMX Universe Bond Index gained 3.8% for the last six months, and 8.8% over the last 12 months. During the last six months, bond market returns were positive across sectors, and the best returns were earned in provincial bonds (5.5%), followed by municipal bonds (5.1%), and Federal bonds (3.3%). Money market (FTSE TMX 91-Day T-Bill) continued its pattern of low returns as the Bank of Canada left the Bank Rate unchanged.

Capital Market Performance

**Comparative Performance**

As of 31 December 2014



## E&O Insurance Fund Analysis

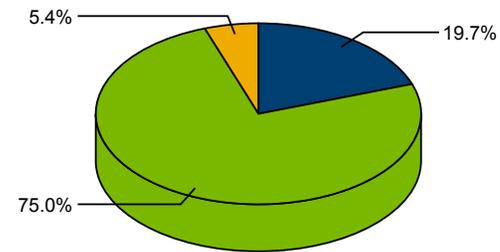
E&O Insurance Fund

**Asset Allocation by Segment**

**E&O Insurance Fund**

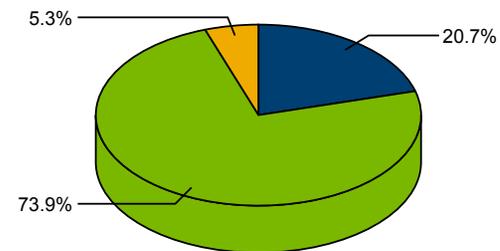
Segments	Market Value (\$)	Allocation (%)
Canadian Equity	6,041,061	19.7
Canadian Fixed Income	23,026,143	75.0
Short-Term	1,648,164	5.4

**31 December 2014 : \$30,715,368**



Segments	Market Value (\$)	Allocation (%)
Canadian Equity	6,362,392	20.7
Canadian Fixed Income	22,706,481	73.9
Short-Term	1,639,180	5.3

■ Canadian Equity    
 ■ Canadian Fixed Income    
 ■ Short-Term  
**30 June 2014 : \$30,708,053**



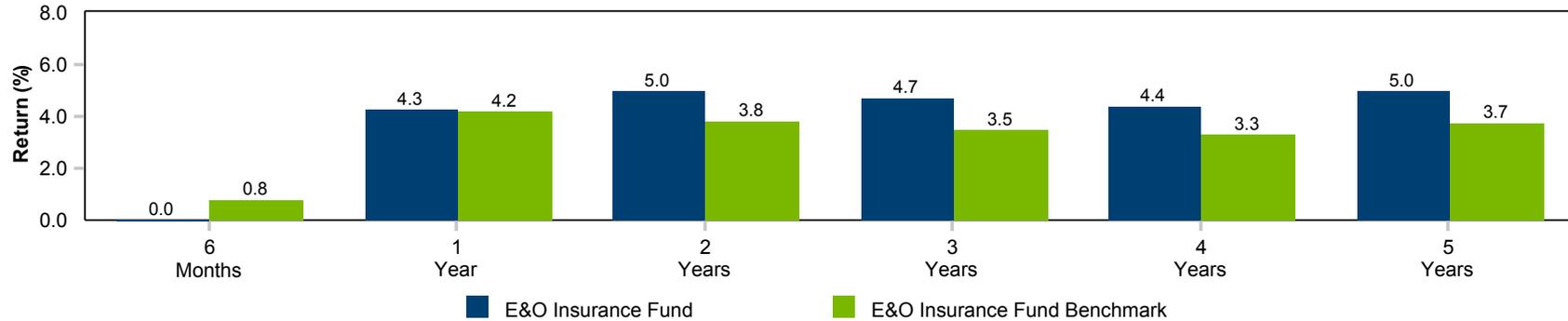
■ Canadian Equity    
 ■ Canadian Fixed Income    
 ■ Short-Term

E&O Insurance Fund

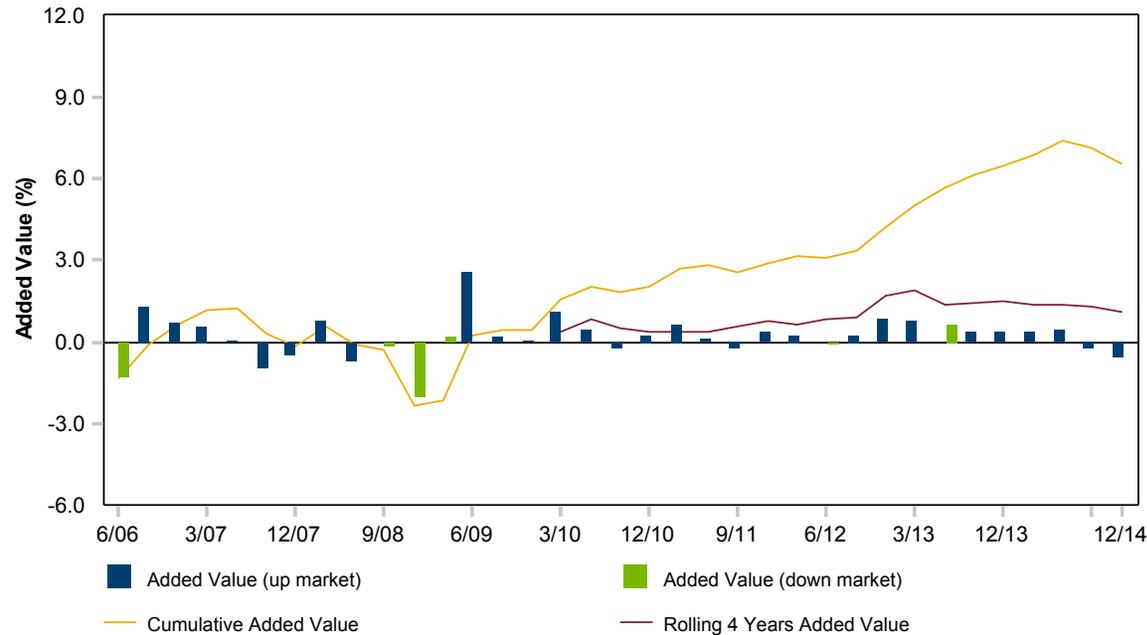
E&O Insurance Fund Performance Summary

As of 31 December 2014

Return Summary



Added Value History (%)



Performance Statistics

	Quarters	%
<b>Market Capture</b>		
Up Markets	29	124.3
Down Markets	6	135.5
<b>Batting Average</b>		
Up Markets	29	75.9
Down Markets	6	33.3
Overall	35	68.6

Negative asset class performance within Canadian equities, an overweight to Canadian equities and an underweight to Canadian fixed income detracted value from the overall portfolio over the six month period.

FGP Canadian equities underperformed the Index due to negative stock picks in Energy, Industrials, Consumer Discretionary and Telecommunications. An underweight to Health Care and Industrials, as well as an overweight to Energy also detracted value from the Fund. Strong stock picks in Materials along with an overweight to Consumer Discretionary and an underweight to Materials provided a partial offset to the Fund's overall negative performance.

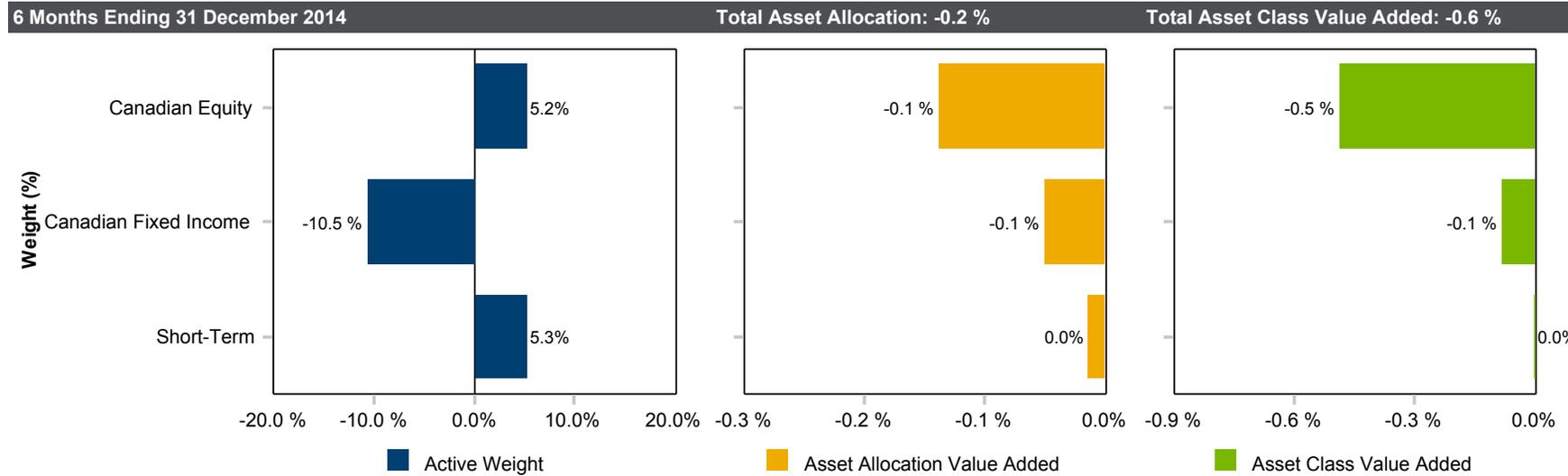
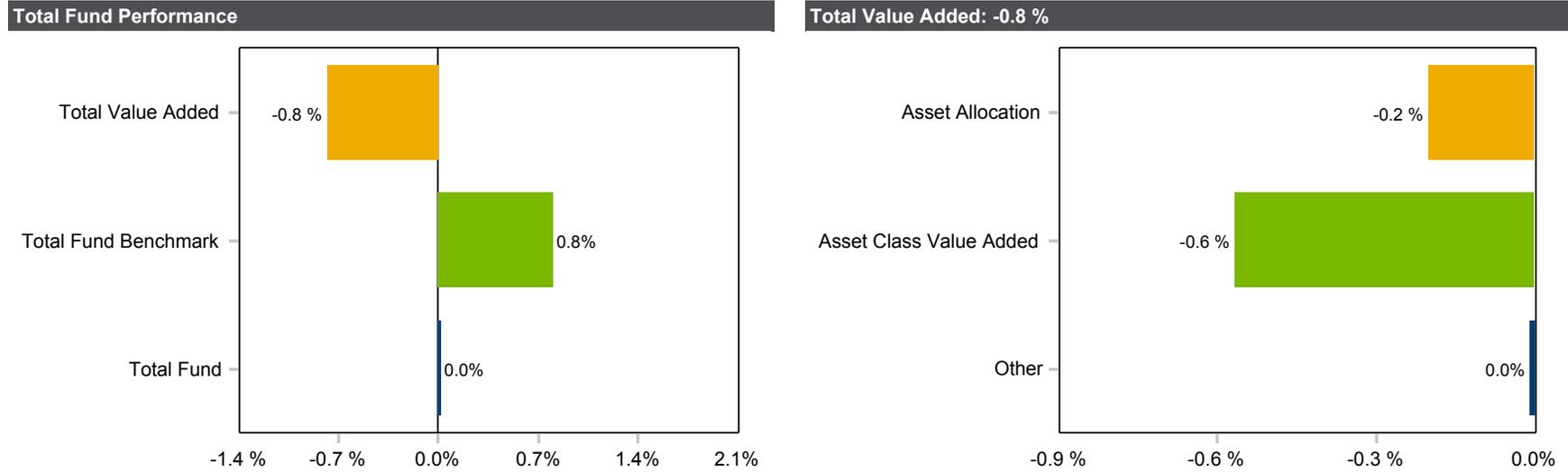
Fixed income underperformance was mainly due to its underweight in the provincials and a slightly lower than Index duration, as yields continued to fall during the period.

E&O Insurance Fund

E&O Insurance Fund Performance Attribution

6 Months Ending 31 December 2014

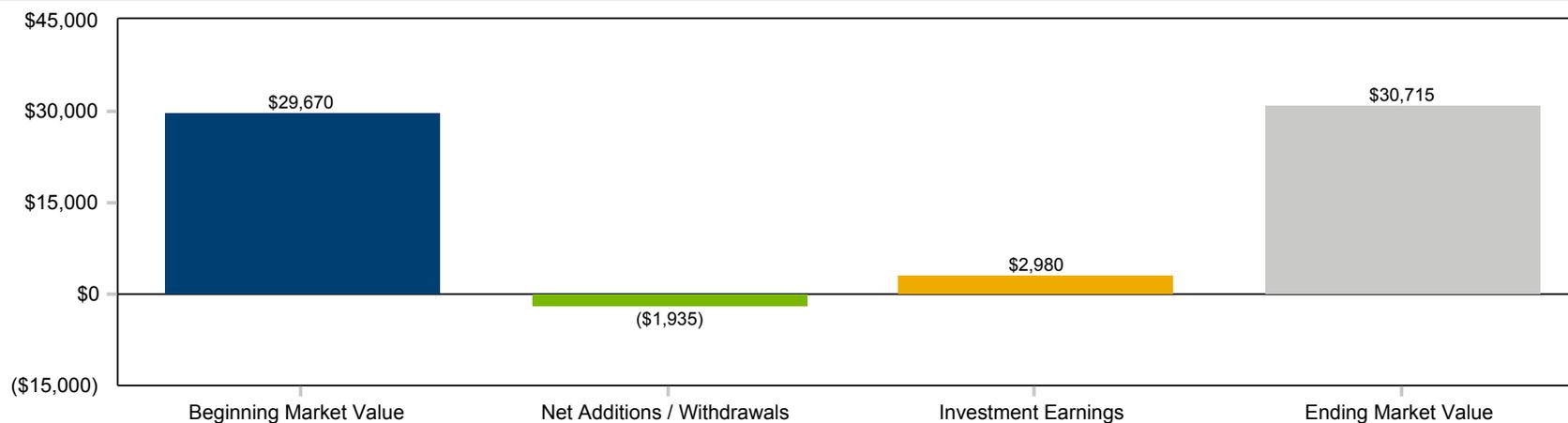
Total Fund vs. Benchmark



## E&amp;O Insurance Fund

## E&amp;O Insurance Fund Asset Summary

As of 31 December 2014

Change in Market Value (\$000)  
From 1 January 2013 to 31 December 2014

## Summary of Cash Flows (\$000)

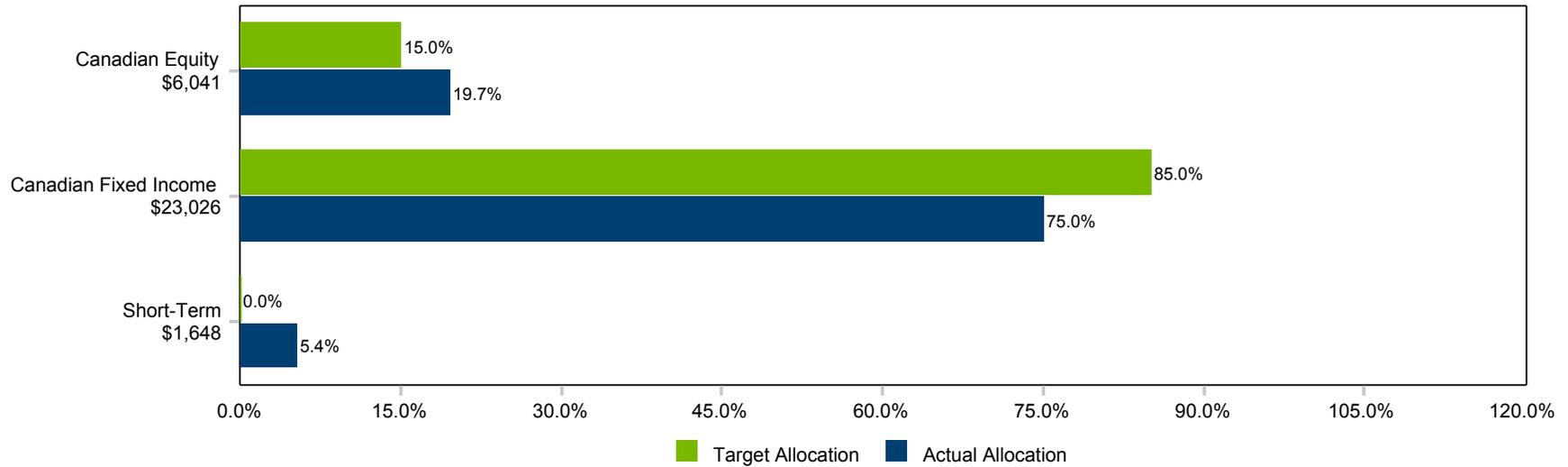
	Jan-2013 To Dec-2014
<b>E&amp;O Insurance Fund</b>	
Beginning Market Value	29,670
+/- Net Cash Flows	-1,935
+/- Income	2,193
+/- Capital Gains / Losses	787
<b>= Ending Market Value</b>	<b>30,715</b>

Note: Capital Gains / Losses also includes Accretion / Amortization

E&O Insurance Fund

**Asset Allocation Compliance**

As of 31 December 2014 (\$000)



	Market Value (\$000)	Market Value (%)	Target Allocation (%)	Differences (%)	Minimum Allocation (%)	Maximum Allocation (%)
Total Fund	30,715	100.0	100.0	0.0		
Canadian Equity	6,041	19.7	15.0	4.7	5.0	25.0
Canadian Fixed Income	23,026	75.0	85.0	-10.0	60.0	95.0
Short-Term	1,648	5.4	0.0	5.4	0.0	15.0

## Compensation Fund Analysis

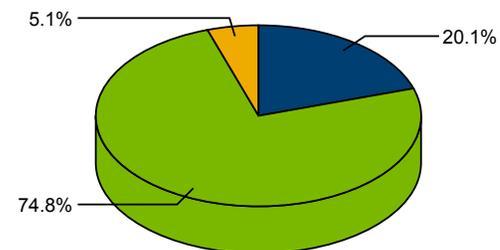
Compensation Fund

**Asset Allocation by Segment**

**Compensation Fund**

Segments	Market Value (\$)	Allocation (%)
Canadian Equity	7,254,169	20.1
Canadian Fixed Income	26,988,528	74.8
Short-Term	1,837,070	5.1

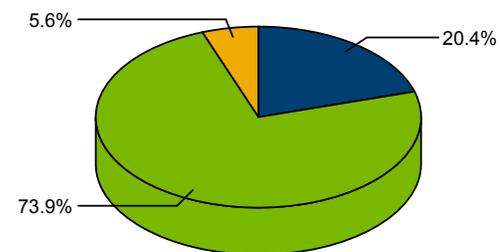
**31 December 2014 : \$36,079,767**



Segments	Market Value (\$)	Allocation (%)
Canadian Equity	7,372,921	20.4
Canadian Fixed Income	26,670,792	73.9
Short-Term	2,026,969	5.6

■ Canadian Equity    
 ■ Canadian Fixed Income    
 ■ Short-Term

**30 June 2014 : \$36,070,683**



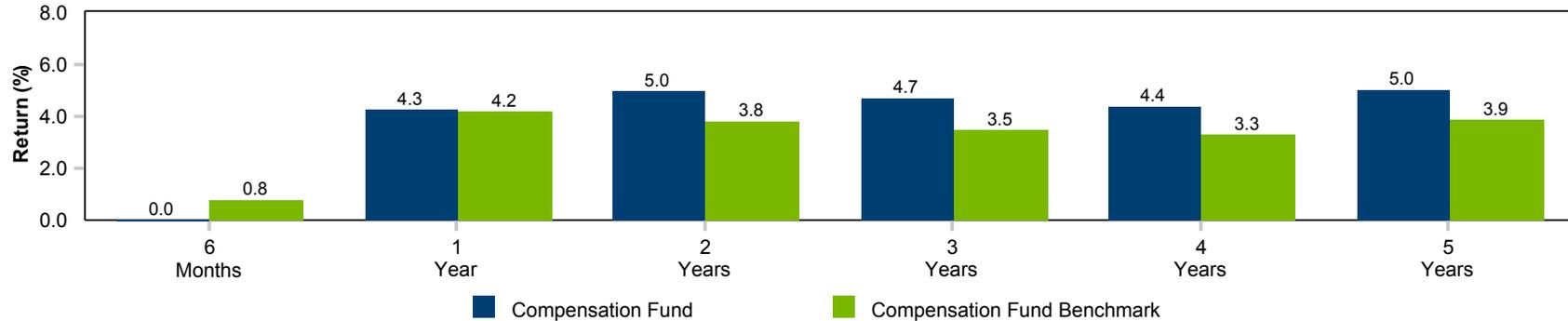
■ Canadian Equity    
 ■ Canadian Fixed Income    
 ■ Short-Term

Compensation Fund

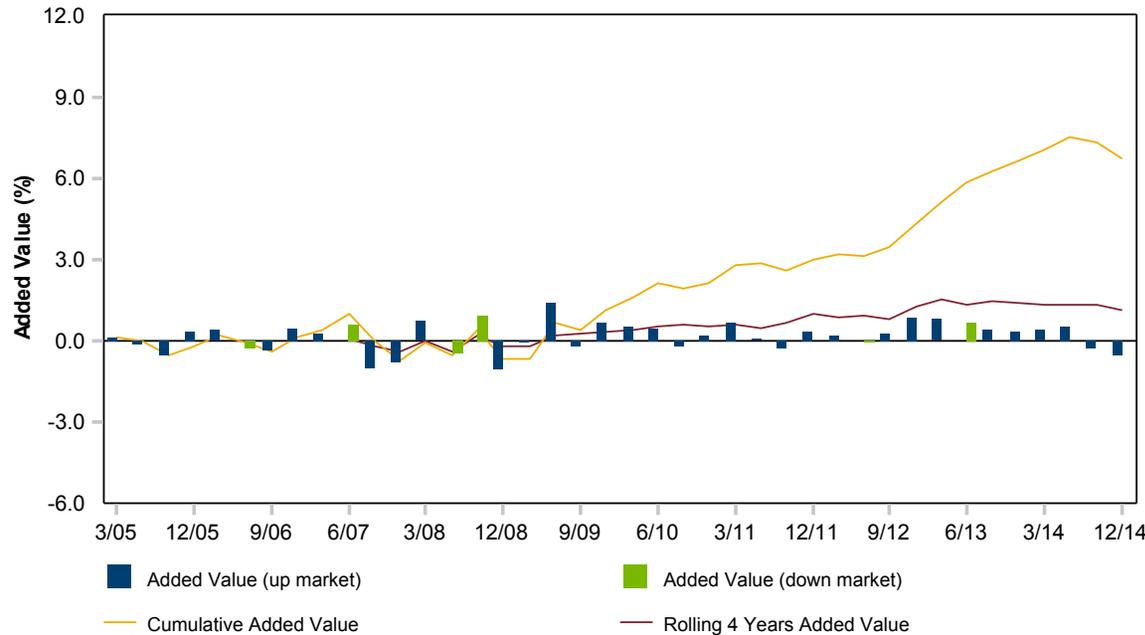
**Compensation Fund Performance Summary**

As of 31 December 2014

**Return Summary**



**Added Value History (%)**



**Performance Statistics**

	Quarters	%
<b>Market Capture</b>		
Up Markets	34	110.3
Down Markets	6	76.4
<b>Batting Average</b>		
Up Markets	34	64.7
Down Markets	6	50.0
Overall	40	62.5

Negative asset class performance within Canadian equities, an overweight to Canadian equities and an underweight to Canadian fixed income detracted value from the overall portfolio over the six month period.

FGP Canadian equities underperformed the Index due to negative stock picks in Energy, Industrials, Consumer Discretionary and Telecommunications. An underweight to Health Care and Industrials, as well as an overweight to Energy also detracted value from the Fund. Strong stock picks in Materials along with an overweight to Consumer Discretionary and an underweight to Materials provided a partial offset to the Fund's overall negative performance.

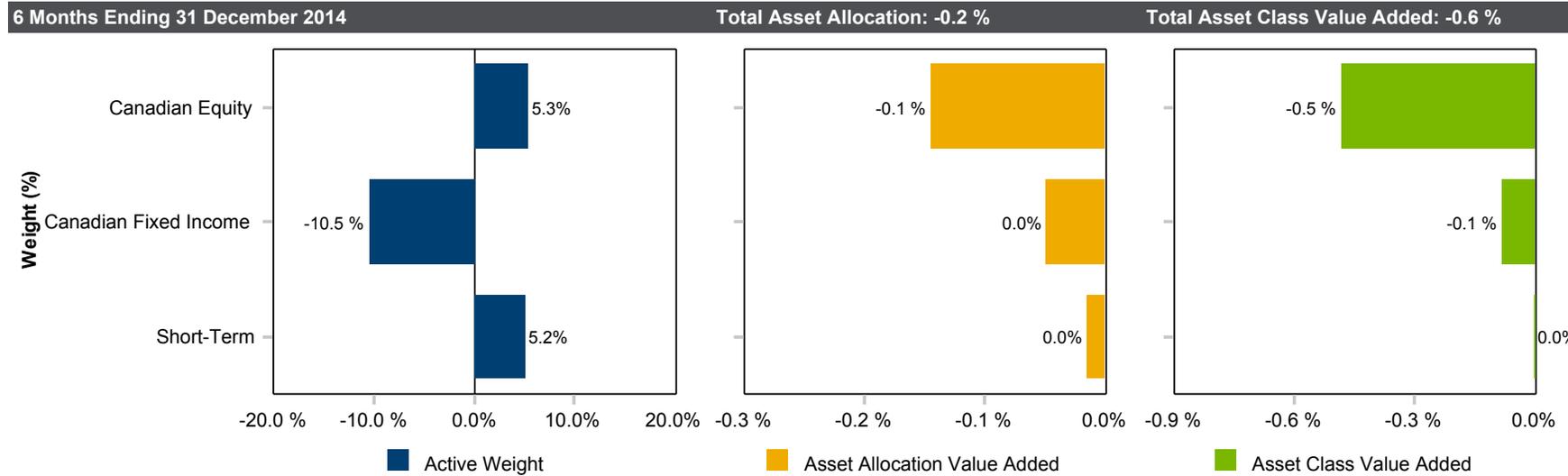
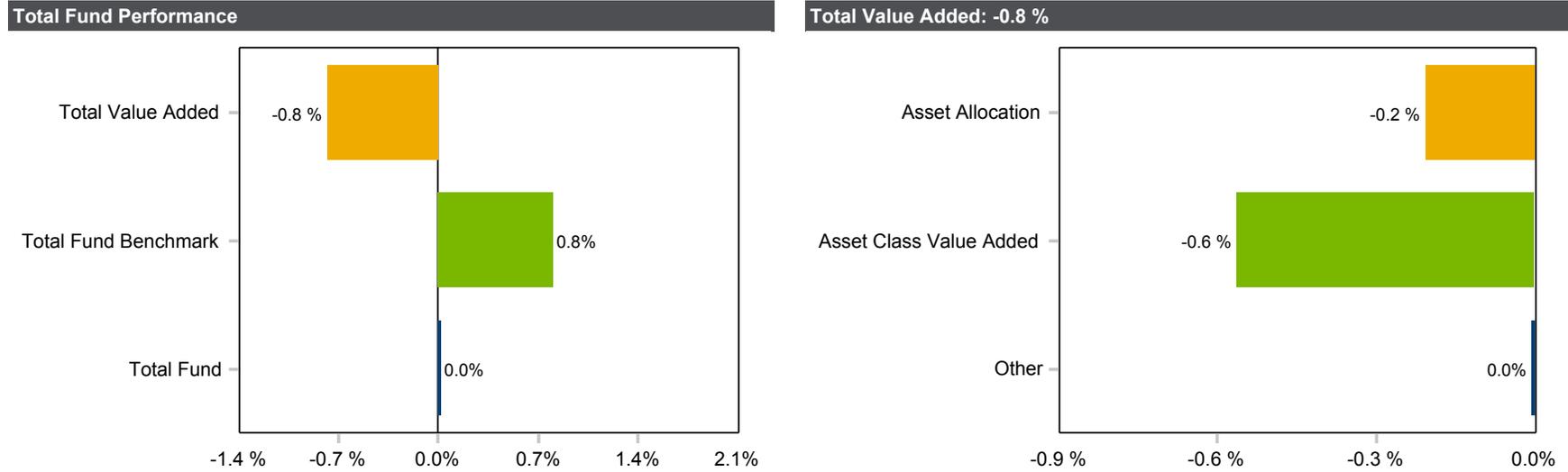
Fixed income underperformance was mainly due to its underweight in the provincials and a slightly lower than Index duration, as yields continued to fall during the period.

Compensation Fund

Compensation Fund Performance Attribution

6 Months Ending 31 December 2014

Total Fund vs. Benchmark

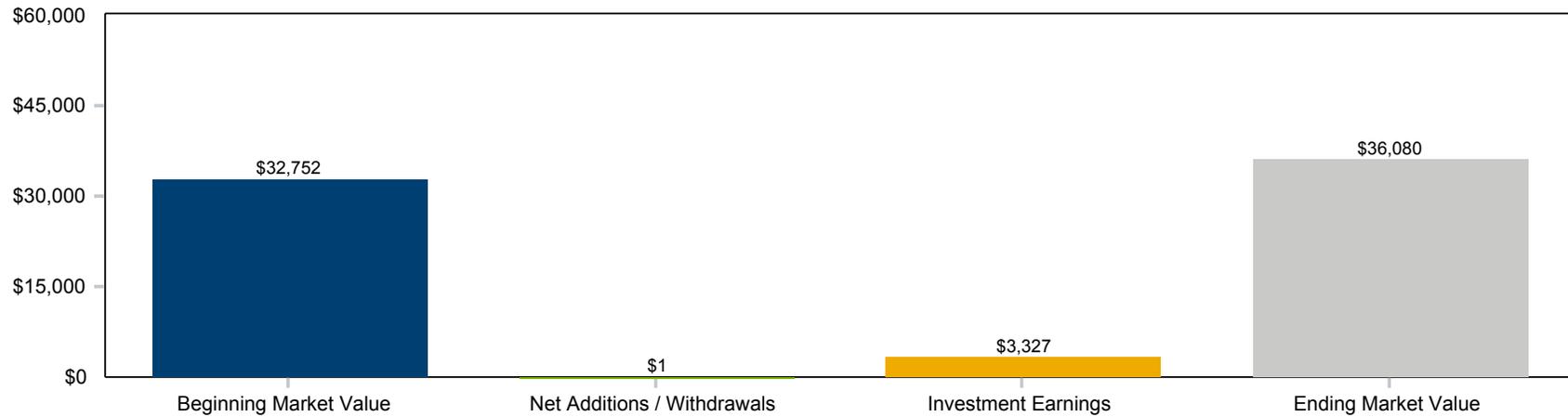


Compensation Fund

**Compensation Fund Asset Summary**

As of 31 December 2014

Change in Market Value (\$000)  
From 1 January 2013 to 31 December 2014



**Summary of Cash Flows (\$000)**

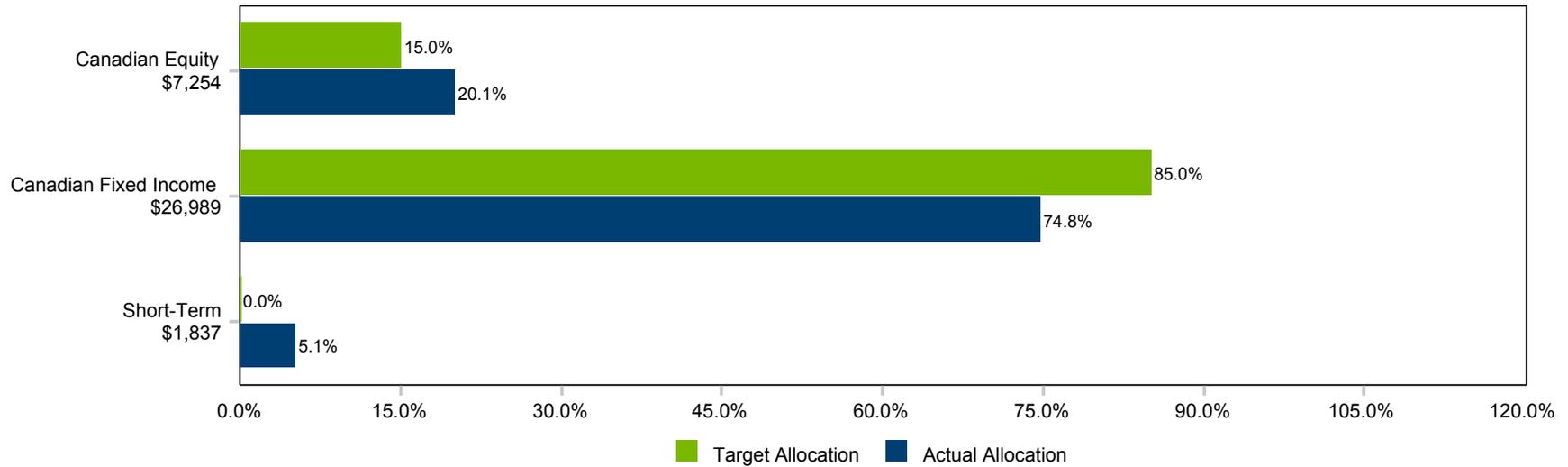
	Jan-2013 To Dec-2014
<b>Compensation Fund</b>	
Beginning Market Value	32,752
+/- Net Cash Flows	1
+/- Income	2,181
+/- Capital Gains / Losses	1,146
<b>= Ending Market Value</b>	<b>36,080</b>

Note: Capital Gains / Losses also includes Accretion / Amortization

Compensation Fund

**Asset Allocation Compliance**

As of 31 December 2014 (\$000)



	Market Value (\$000)	Market Value (%)	Target Allocation (%)	Differences (%)	Minimum Allocation (%)	Maximum Allocation (%)
Total Fund	36,080	100.0	100.0	0.0		
Canadian Equity	7,254	20.1	15.0	5.1	5.0	25.0
Canadian Fixed Income	26,989	74.8	85.0	-10.2	60.0	95.0
Short-Term	1,837	5.1	0.0	5.1	0.0	15.0

## General Fund Analysis

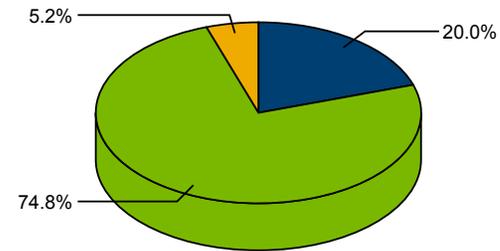
General Fund

**Asset Allocation by Segment**

General Fund

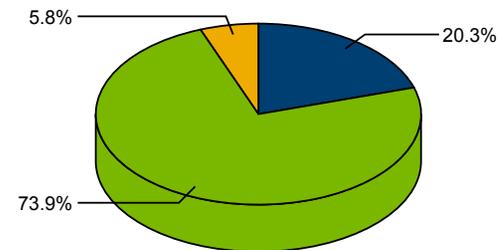
Segments	Market Value (\$)	Allocation (%)
Canadian Equity	3,181,034	20.0
Canadian Fixed Income	11,909,385	74.8
Short-Term	827,311	5.2

31 December 2014 : \$15,917,730



Segments	Market Value (\$)	Allocation (%)
Canadian Equity	3,223,326	20.3
Canadian Fixed Income	11,769,437	73.9
Short-Term	922,758	5.8

30 June 2014 : \$15,915,520



Canadian Equity Canadian Fixed Income Short-Term

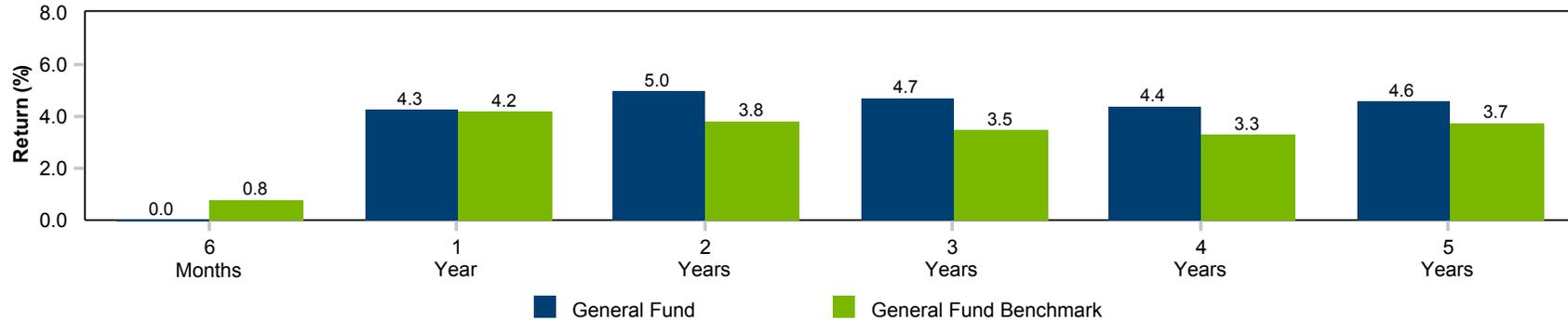
Canadian Equity Canadian Fixed Income Short-Term

General Fund

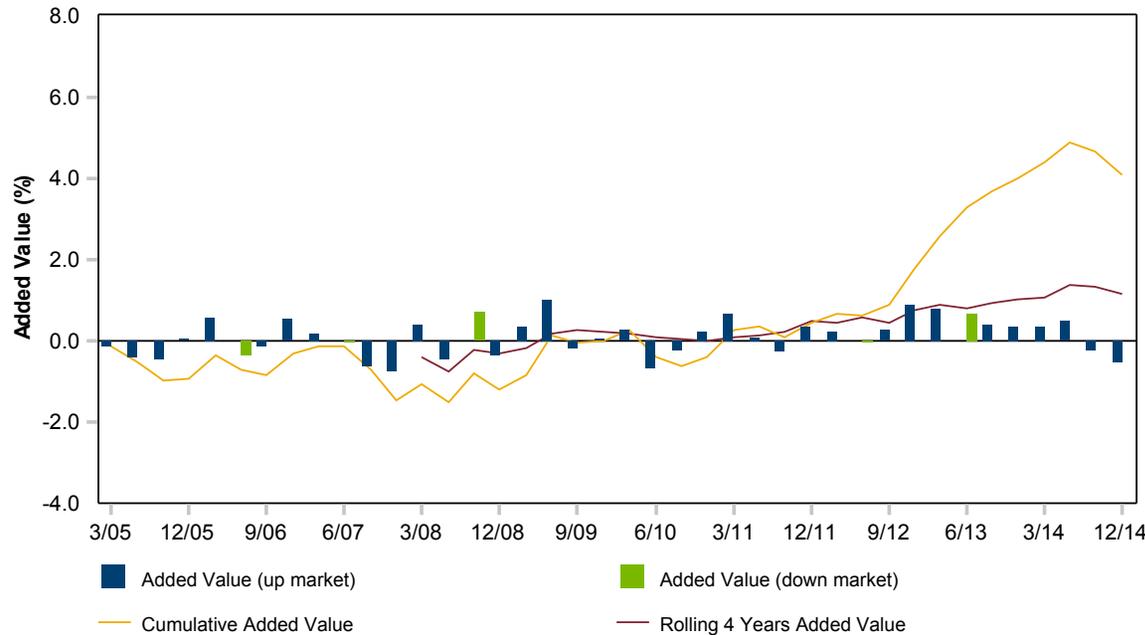
General Fund Performance Summary

As of 31 December 2014

Return Summary



Added Value History (%)



Performance Statistics

	Quarters	%
<b>Market Capture</b>		
Up Markets	37	103.9
Down Markets	6	44.6
<b>Batting Average</b>		
Up Markets	37	59.5
Down Markets	6	66.7
Overall	43	60.5

Negative asset class performance within Canadian equities, an overweight to Canadian equities and an underweight to Canadian fixed income detracted value from the overall portfolio over the six month period.

FGP Canadian equities underperformed the Index due to negative stock picks in Energy, Industrials, Consumer Discretionary and Telecommunications. An underweight to Health Care and Industrials, as well as an overweight to Energy also detracted value from the Fund. Strong stock picks in Materials along with an overweight to Consumer Discretionary and an underweight to Materials provided a partial offset to the Fund's overall negative performance.

Fixed income underperformance was mainly due to its underweight in the provincials and a slightly lower than Index duration, as yields continued to fall during the period.

General Fund

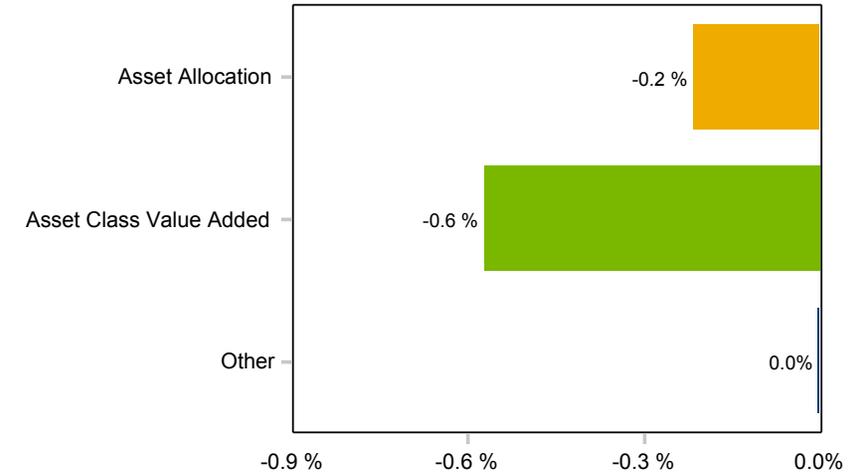
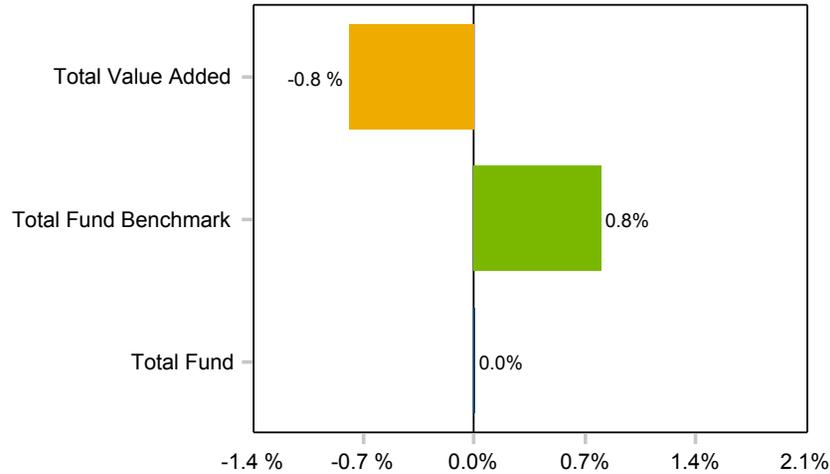
**General Fund Performance Attribution**

6 Months Ending 31 December 2014

Total Fund vs. Benchmark

Total Fund Performance

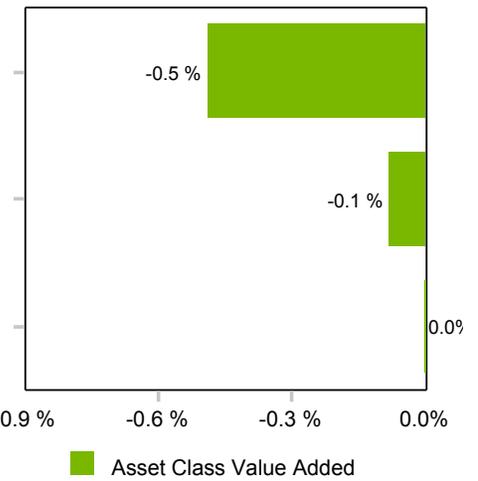
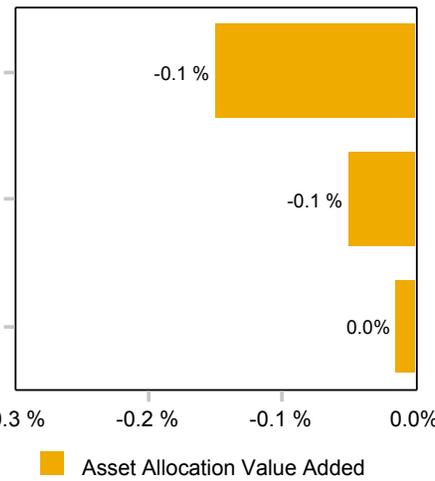
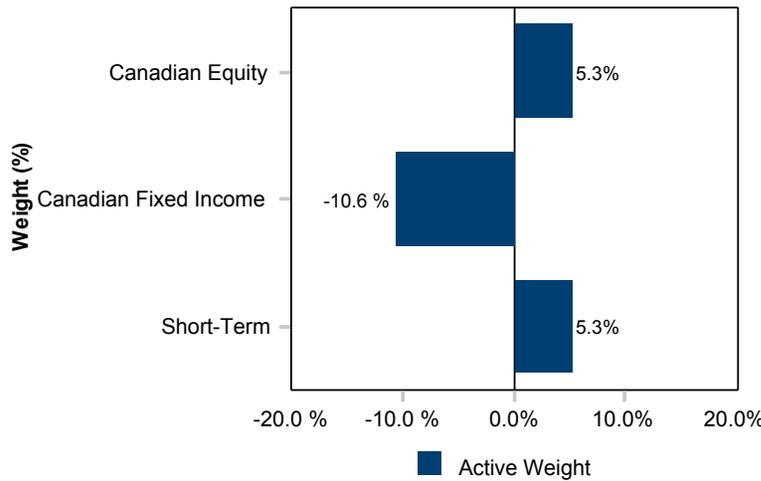
Total Value Added: -0.8 %



6 Months Ending 31 December 2014

Total Asset Allocation: -0.2 %

Total Asset Class Value Added: -0.6 %



Active Weight

Asset Allocation Value Added

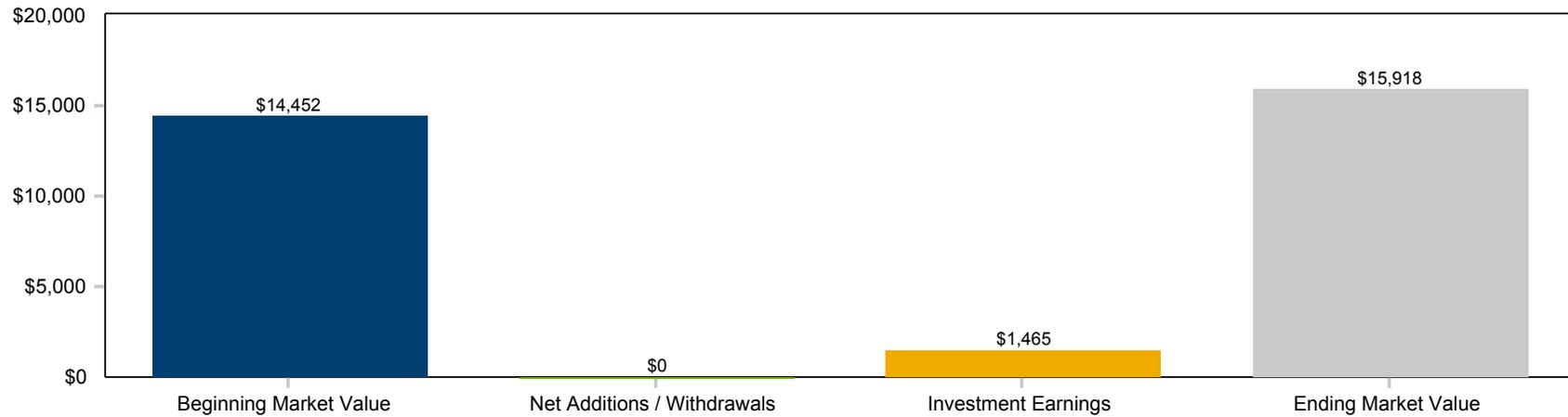
Asset Class Value Added

General Fund

**General Fund Asset Summary**

As of 31 December 2014

**Change in Market Value (\$000)  
From 1 January 2013 to 31 December 2014**



**Summary of Cash Flows (\$000)**

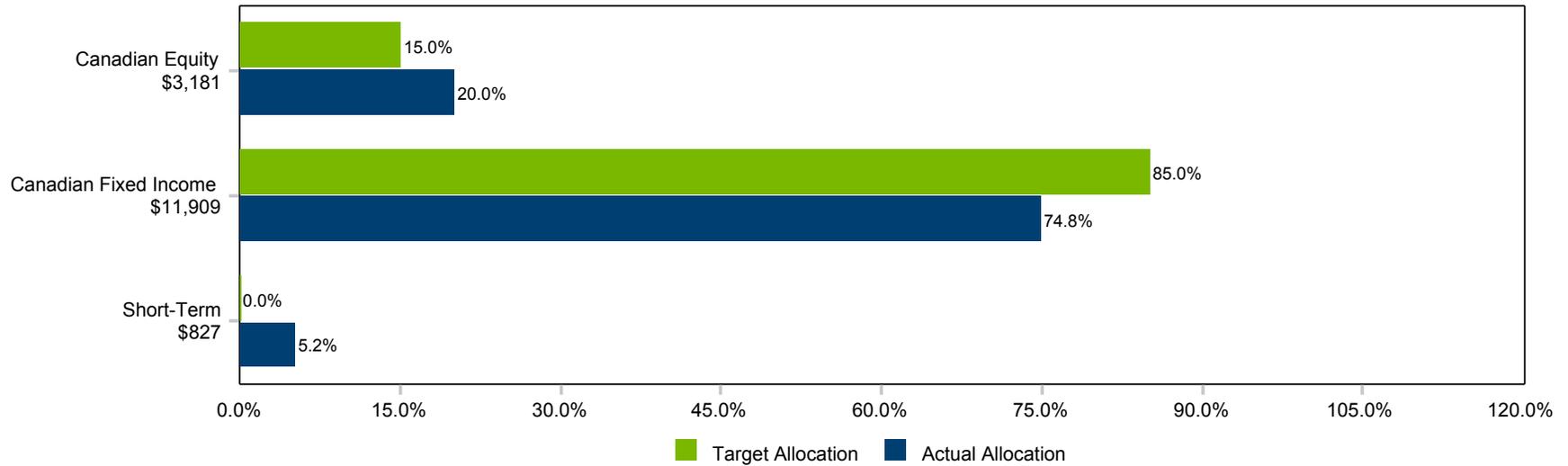
	Jan-2013 To Dec-2014
<b>General Fund</b>	
Beginning Market Value	14,452
+/- Net Cash Flows	-
+/- Income	963
+/- Capital Gains / Losses	503
<b>= Ending Market Value</b>	<b>15,918</b>

Note: Capital Gains / Losses also includes Accretion / Amortization

General Fund

**Asset Allocation Compliance**

As of 31 December 2014 (\$000)



	Market Value (\$000)	Market Value (%)	Target Allocation (%)	Differences (%)	Minimum Allocation (%)	Maximum Allocation (%)
Total Fund	15,918	100.0	100.0	0.0		
Canadian Equity	3,181	20.0	15.0	5.0	5.0	25.0
Canadian Fixed Income	11,909	74.8	85.0	-10.2	60.0	95.0
Short-Term	827	5.2	0.0	5.2	0.0	15.0

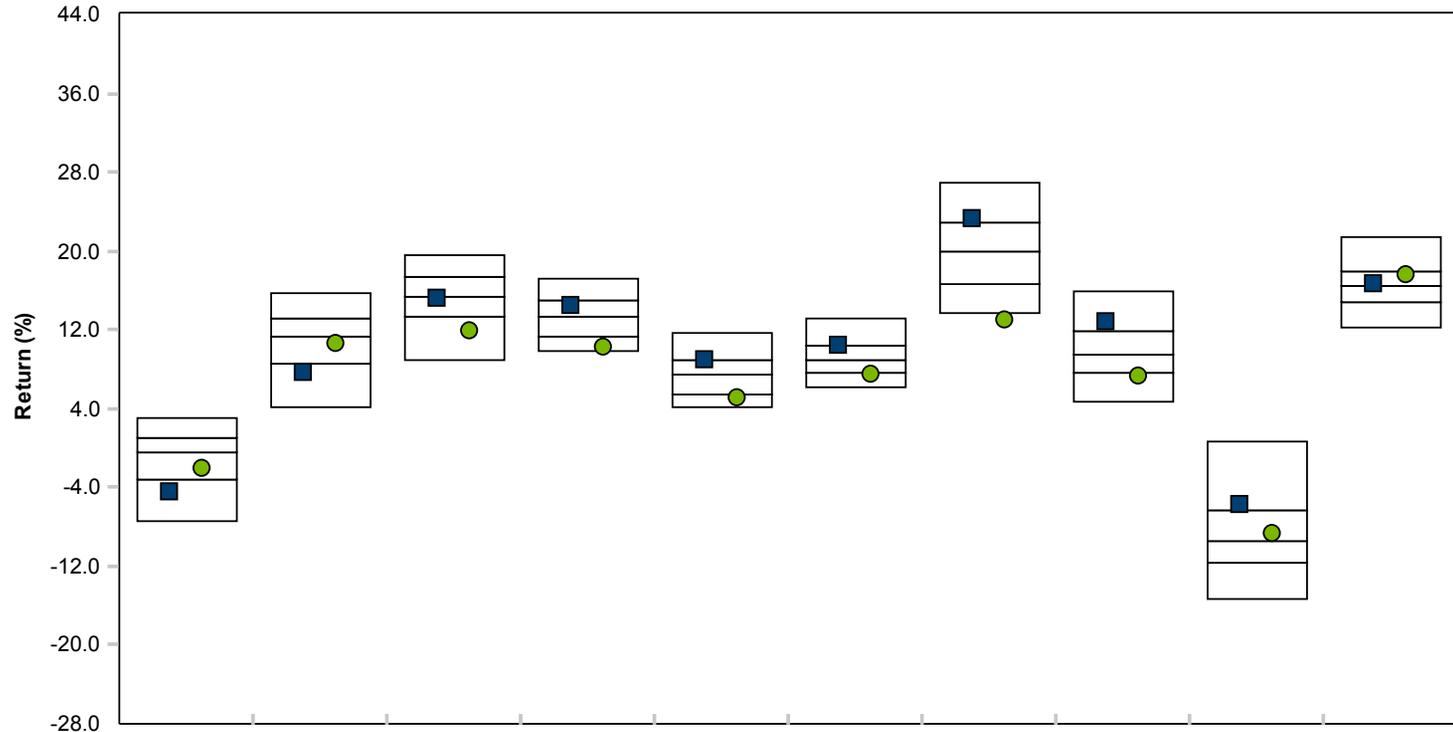
## Asset Class Analysis

Canadian Equity Funds

Peer Group Analysis

As of 31 December 2014

Canadian Equity



	6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	2013	2012	2011	2010
■ FGP Canadian Equity	-4.4 (86)	7.7 (85)	15.2 (51)	14.4 (38)	9.0 (25)	10.5 (23)	23.3 (25)	12.7 (21)	-5.8 (22)	16.6 (47)
● S&P/TSX Capped Composite	-2.0 (69)	10.6 (59)	11.8 (86)	10.2 (91)	5.1 (82)	7.5 (80)	13.0 (97)	7.2 (77)	-8.7 (41)	17.6 (29)
5th Percentile	3.1	15.6	19.6	17.2	11.6	13.1	27.0	15.9	0.7	21.4
1st Quartile	1.0	13.1	17.3	15.0	8.9	10.4	22.9	11.8	-6.3	18.0
Median	-0.5	11.2	15.3	13.4	7.5	8.9	19.9	9.5	-9.5	16.5
3rd Quartile	-3.1	8.5	13.3	11.2	5.5	7.7	16.7	7.6	-11.6	14.8
95th Percentile	-7.5	4.2	9.0	9.8	4.2	6.2	13.8	4.7	-15.3	12.1
Population	89	89	89	89	89	88	92	97	100	103

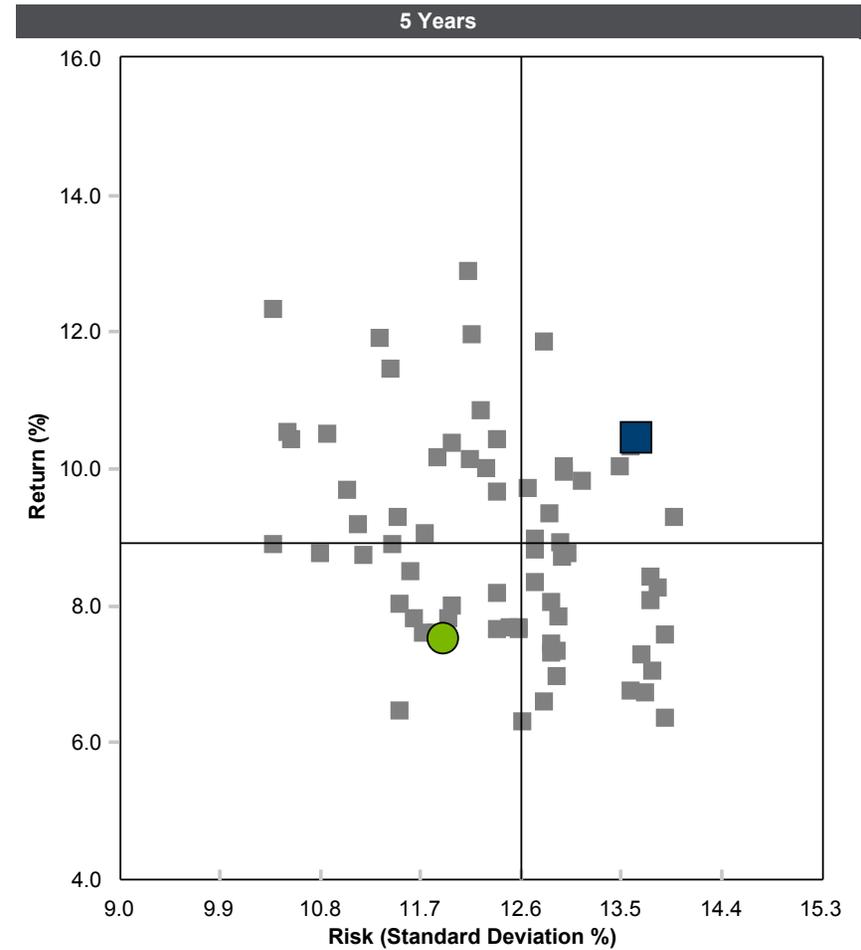
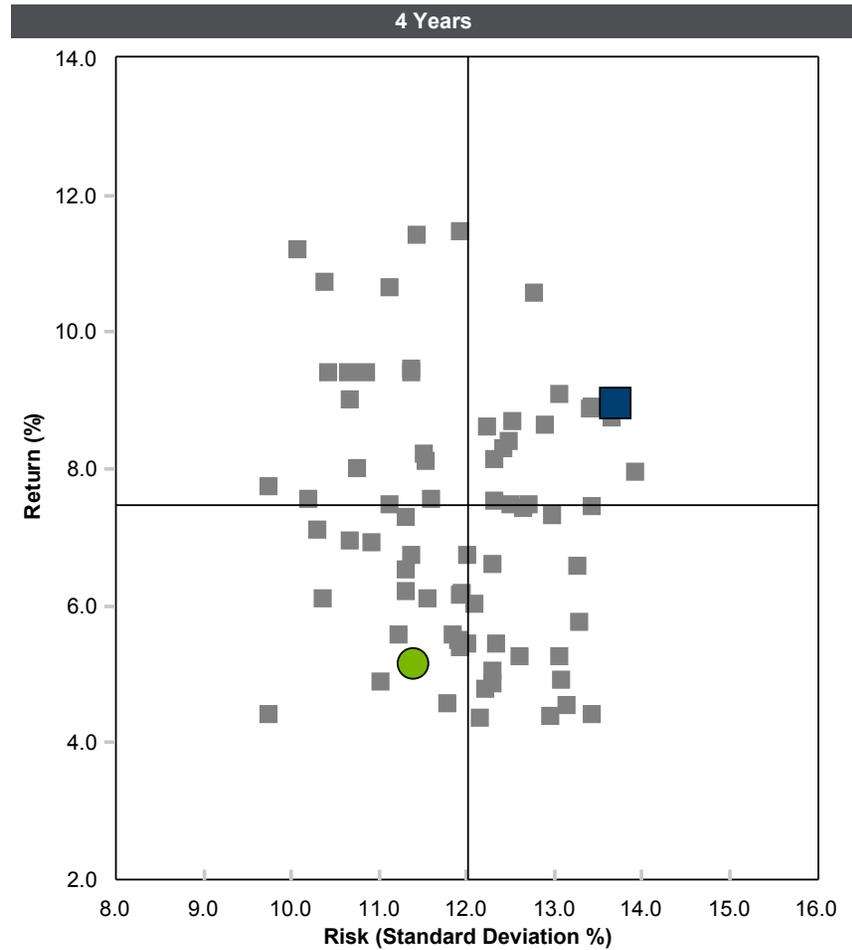
Parenteses contain percentile rankings.  
Returns for periods greater than one year are annualized.  
Source: Aon Hewitt Manager Universe.

Canadian Equity Funds

Peer Group Scattergram

Periods Ending 31 December 2014

Canadian Equity



	Return	Standard Deviation
■ FGP Canadian Equity	9.0	13.7
● S&P/TSX Capped Composite	5.1	11.4
— Median	7.5	12.0

	Return	Standard Deviation
■ FGP Canadian Equity	10.5	13.6
● S&P/TSX Capped Composite	7.5	11.9
— Median	8.9	12.6

Returns for periods greater than one year are annualized.  
Source: Aon Hewitt Manager Universe.



Canadian Equity Funds

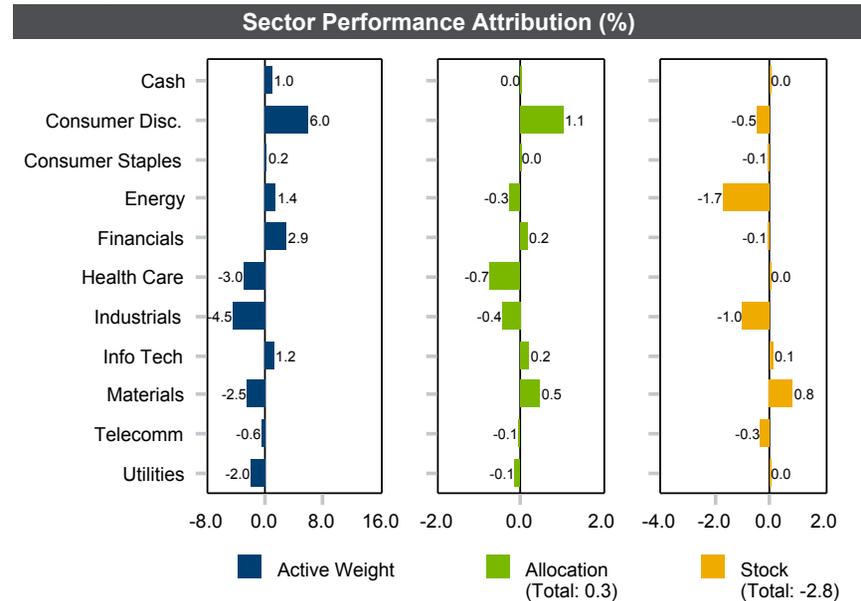
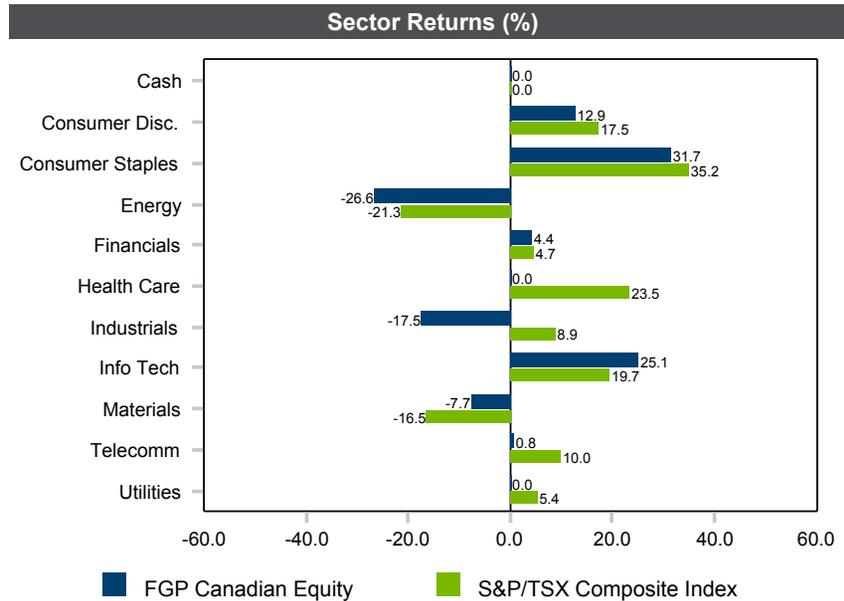
**FGP Canadian Equity Portfolio Characteristics**

6 Month Period Ending 31 December 2014

Portfolio Characteristics		
	Portfolio	Benchmark
Wtd. Avg. Mkt. Cap (\$M)	34,132	32,563
Median Mkt. Cap (\$M)	11,937	2,369
Price/Earnings ratio	13.9	16.6
Price/Book ratio	1.9	2.2
5 Yr. EPS Growth Rate (%)	17.5	13.8
Current Yield (%)	3.3	2.9
Debt to Equity	1.2	1.4
Number of Stocks	36	250

Manager Top Ten Holdings				
	Portfolio Weight (%)	Benchmark Weight (%)	Active Weight (%)	6 Months Return (%)
Royal Bank of Canada	7.54	6.34	1.20	7.14
Bank of Nova Scotia	7.21	4.42	2.79	-5.89
Toronto-Dominion Bank	6.15	5.61	0.54	2.80
Suncor Energy	5.48	2.93	2.55	-17.75
CIBC	5.00	2.17	2.83	4.90
Imperial Oil	4.92	0.70	4.22	-10.56
Canadian Natural Resources	4.92	2.15	2.77	-25.88
Great-West Lifeco	3.58	0.53	3.05	13.41
Magna International	3.49	1.43	2.06	10.36
Husky Energy Inc	3.18	0.44	2.74	-18.56

% of Portfolio 51.47 26.72

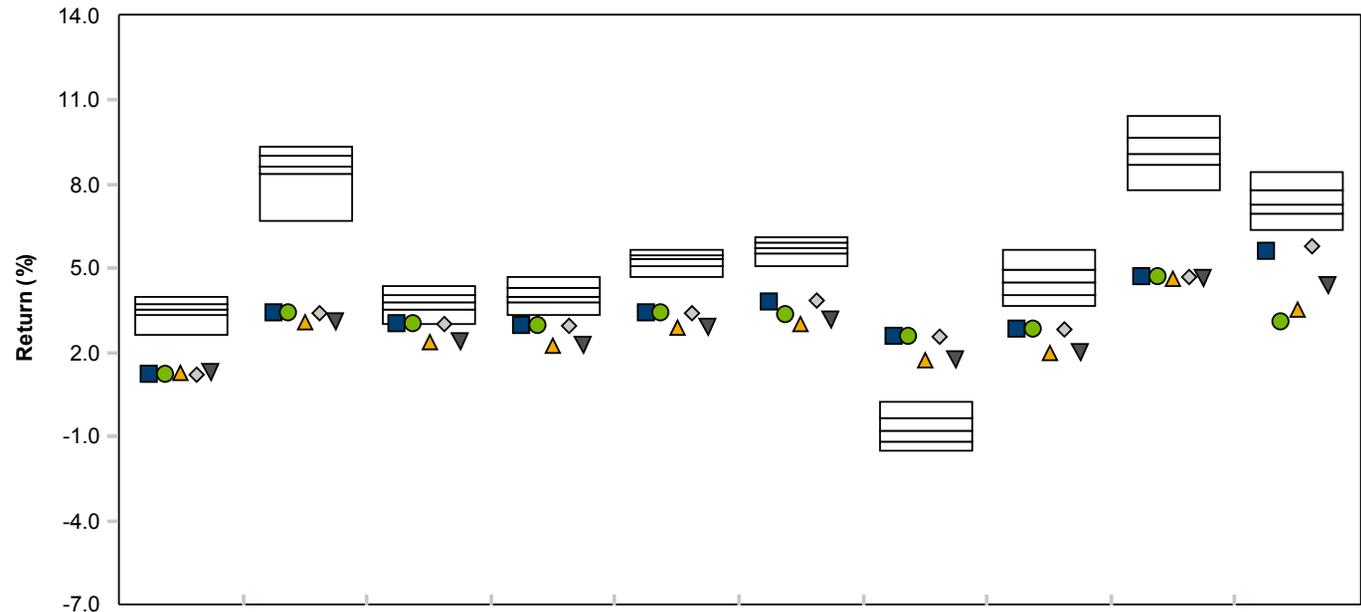


Fixed Income Funds

Peer Group Analysis

As of 31 December 2014

Canadian Bonds



	6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	2013	2012	2011	2010
■ E&O Fixed Income	1.2 (100)	3.4 (100)	3.0 (96)	2.9 (99)	3.4 (100)	3.8 (100)	2.5 (1)	2.8 (100)	4.7 (100)	5.6 (100)
● General Fixed Income	1.2 (100)	3.4 (100)	3.0 (95)	2.9 (99)	3.4 (100)	3.3 (100)	2.6 (1)	2.8 (100)	4.7 (100)	3.1 (100)
▲ FTSE TMX Short Term Bond	1.3 (100)	3.1 (100)	2.4 (100)	2.3 (100)	2.9 (100)	3.0 (100)	1.7 (1)	2.0 (100)	4.7 (100)	3.6 (100)
◇ Compensation Fixed Income	1.2 (100)	3.4 (100)	3.0 (96)	2.9 (99)	3.4 (100)	3.9 (100)	2.6 (1)	2.8 (100)	4.7 (100)	5.8 (99)
▼ Compensation Fixed Income Benchmark	1.3 (100)	3.1 (100)	2.4 (100)	2.3 (100)	2.9 (100)	3.2 (100)	1.7 (1)	2.0 (100)	4.7 (100)	4.4 (100)
5th Percentile	4.0	9.4	4.4	4.7	5.7	6.1	0.2	5.7	10.4	8.4
1st Quartile	3.7	9.0	4.1	4.3	5.5	5.9	-0.4	4.9	9.7	7.8
Median	3.5	8.6	3.8	4.0	5.3	5.7	-0.8	4.5	9.1	7.2
3rd Quartile	3.4	8.4	3.5	3.8	5.1	5.5	-1.2	4.1	8.7	6.9
95th Percentile	2.7	6.7	3.0	3.4	4.7	5.1	-1.5	3.7	7.8	6.4
Population	50	50	50	50	50	50	51	55	57	59

Parentheses contain percentile rankings.

Returns for periods greater than one year are annualized.

For illustrative purposes, Aon Hewitt has used the FTSE TMX Universe Bond Index for the purpose of a peer group analysis.

Note, this is not a direct comparison between FGP's Canadian fixed income mandate and the Canadian bonds universe.

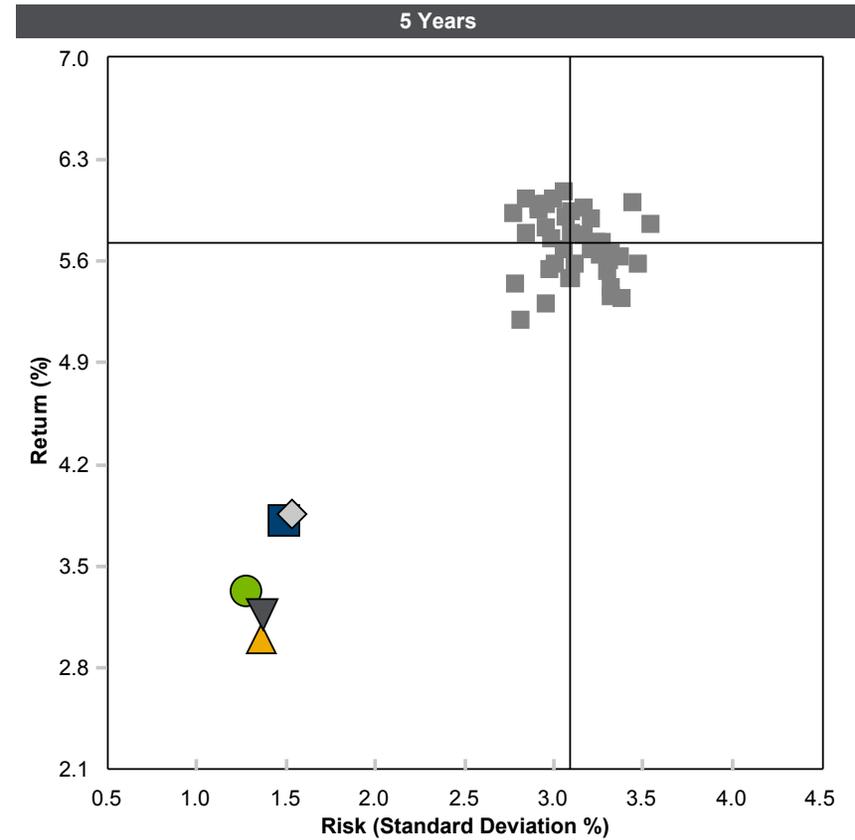
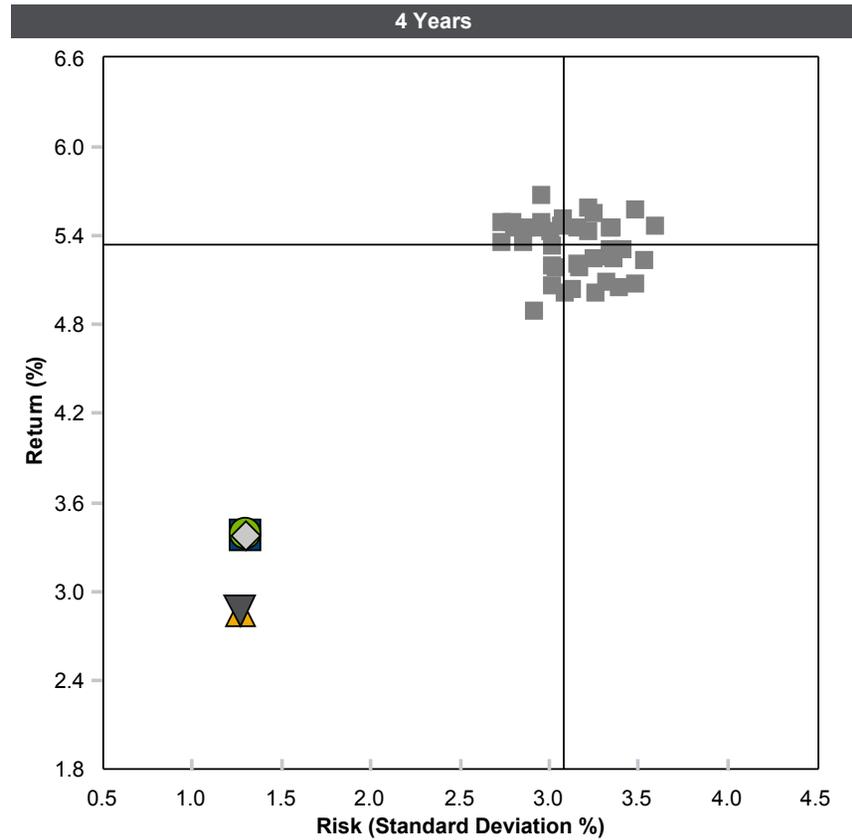
Source: Aon Hewitt Manager Universe.

Fixed Income Funds

Peer Group Scattergram

Periods Ending 31 December 2014

Canadian Bonds



	Return	Standard Deviation
■ E&O Fixed Income	3.4	1.3
● General Fixed Income	3.4	1.3
▲ FTSE TMX Short Term Bond	2.9	1.3
◆ Compensation Fixed Income	3.4	1.3
▼ Compensation Fixed Income Benchmark	2.9	1.3
— Median	5.3	3.1

	Return	Standard Deviation
■ E&O Fixed Income	3.8	1.5
● General Fixed Income	3.3	1.3
▲ FTSE TMX Short Term Bond	3.0	1.4
◆ Compensation Fixed Income	3.9	1.5
▼ Compensation Fixed Income Benchmark	3.2	1.4
— Median	5.7	3.1

Returns for periods greater than one year are annualized.  
 For illustrative purposes, Aon Hewitt has used the FTSE TMX Universe Bond Index for the purpose of a peer group analysis.  
 Note, this is not a direct comparison between FGP's Canadian fixed income mandate and the Canadian bonds universe.  
 Source: Aon Hewitt Manager Universe.

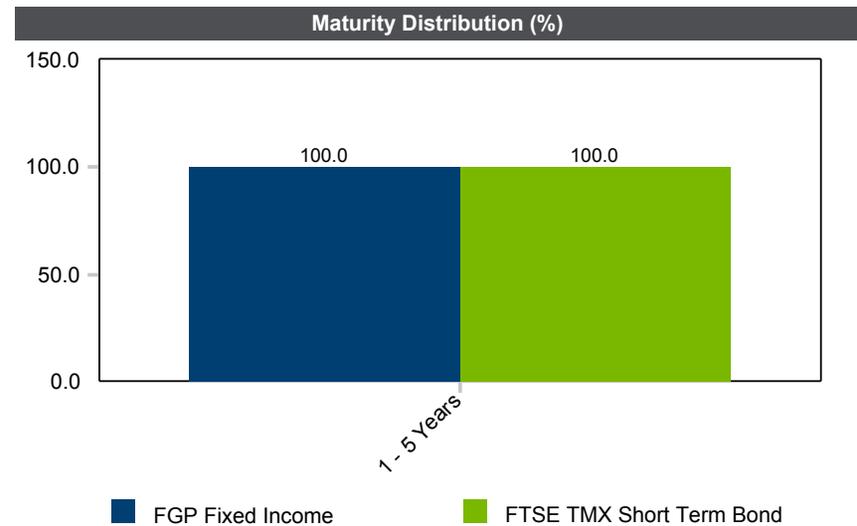
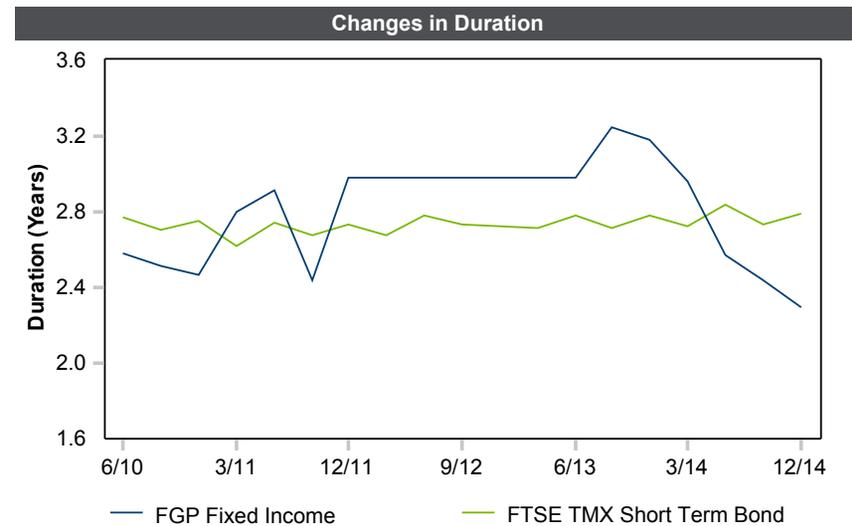
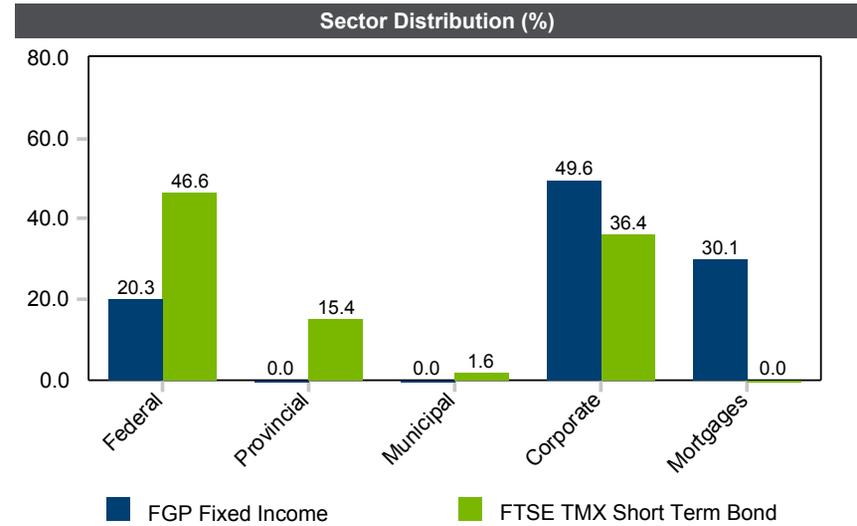


Fixed Income Funds

**FGP Fixed Income Fund Characteristics**

As of 31 December 2014

Portfolio Characteristics		
	Portfolio	Benchmark
Modified Duration	2.3	2.8
Avg. Maturity	2.5	3.0
Avg. Quality	AA	AA
Yield To Maturity (%)	1.7	1.6



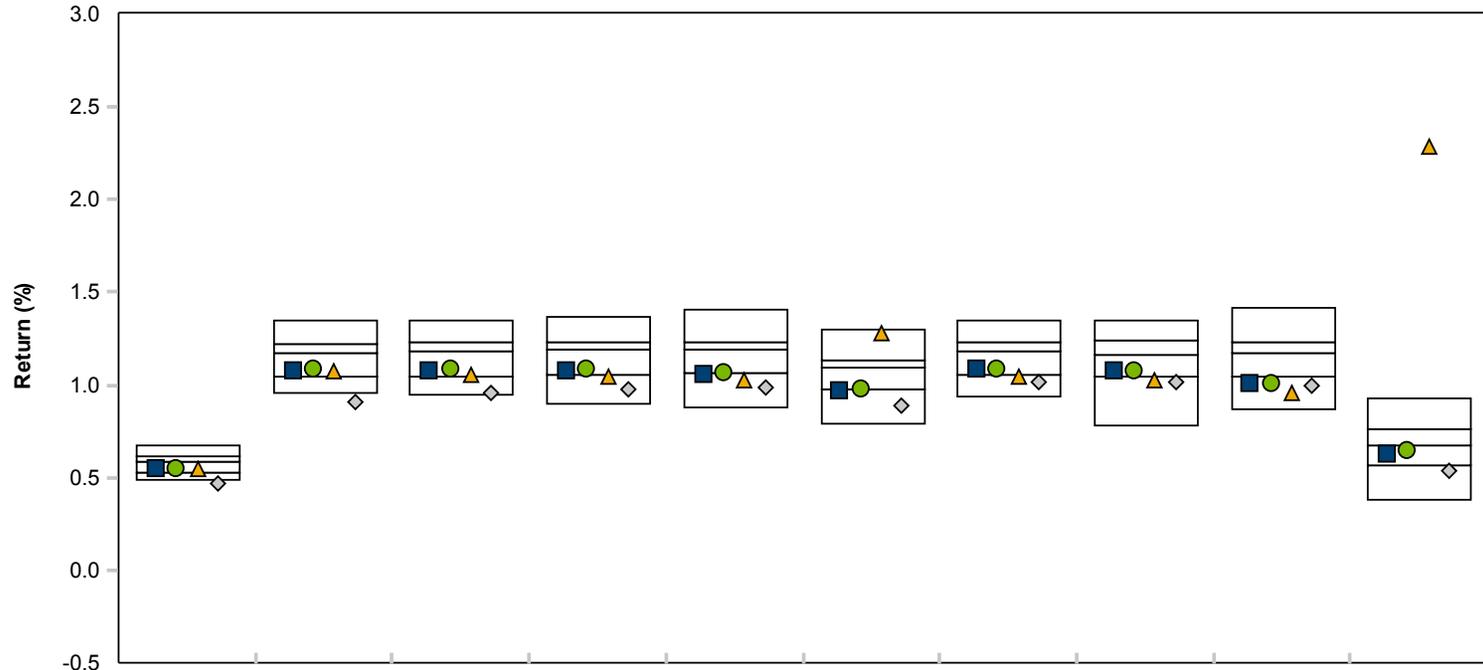
\*The Mortgages sector is comprised of Mortgage-Backed Securities (MBS)

Money Market Funds

Peer Group Analysis

As of 31 December 2014

Money Market



	6 Months	1 Year	2 Years	3 Years	4 Years	5 Years	2013	2012	2011	2010
■ E&O Short-Term	0.5 (64)	1.1 (71)	1.1 (71)	1.1 (71)	1.1 (80)	1.0 (76)	1.1 (66)	1.1 (66)	1.0 (80)	0.6 (61)
● Compensation Short-Term	0.5 (65)	1.1 (70)	1.1 (70)	1.1 (71)	1.1 (79)	1.0 (75)	1.1 (66)	1.1 (66)	1.0 (80)	0.6 (58)
▲ General Short-Term	0.5 (65)	1.1 (71)	1.1 (73)	1.0 (80)	1.0 (83)	1.3 (8)	1.0 (79)	1.0 (77)	1.0 (92)	2.3 (1)
◇ FTSE TMX 91-Day T-Bill	0.5 (97)	0.9 (97)	1.0 (94)	1.0 (88)	1.0 (87)	0.9 (89)	1.0 (86)	1.0 (78)	1.0 (80)	0.5 (80)
5th Percentile	0.7	1.3	1.3	1.4	1.4	1.3	1.3	1.3	1.4	0.9
1st Quartile	0.6	1.2	1.2	1.2	1.2	1.1	1.2	1.2	1.2	0.8
Median	0.6	1.2	1.2	1.2	1.2	1.1	1.2	1.2	1.2	0.7
3rd Quartile	0.5	1.0	1.0	1.1	1.1	1.0	1.1	1.0	1.0	0.6
95th Percentile	0.5	1.0	1.0	0.9	0.9	0.8	0.9	0.8	0.9	0.4
Population	30	30	30	30	30	30	32	34	36	38

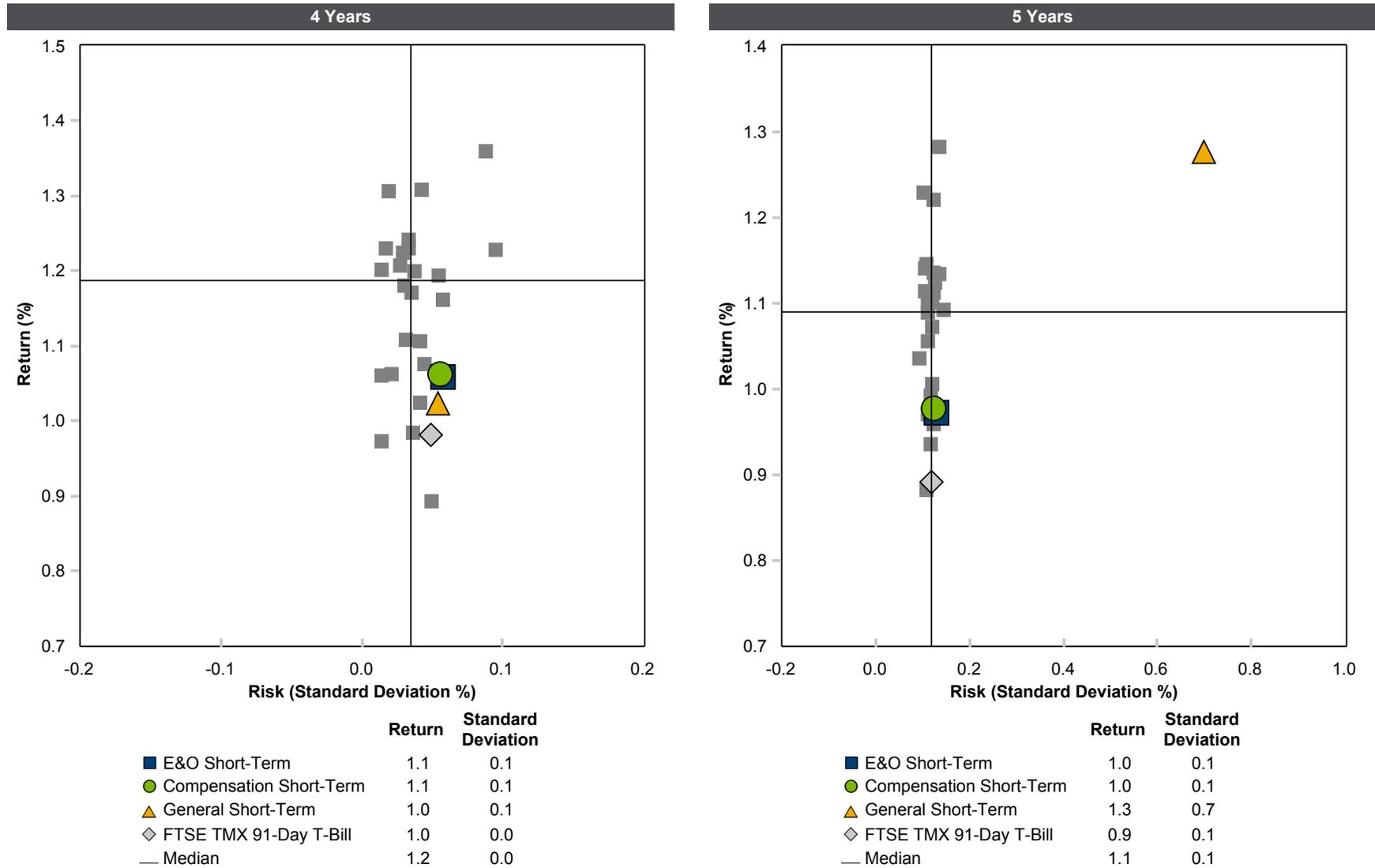
Parenteses contain percentile rankings.  
Returns for periods greater than one year are annualized.  
Source: Aon Hewitt Manager Universe.

Money Market Funds

**Peer Group Scattergram**

Periods Ending 31 December 2014

Money Market



Returns for periods greater than one year are annualized.  
 Source: Aon Hewitt Manager Universe.



## Appendix A - Plan Information

## Plan Information

## Summary of Investment Objectives

The investment policy contains specific performance objectives for the fund and for the investment manager.

Investment rates of return are reported on a calendar basis and include realized and unrealized capital gains and losses, plus income.

Returns are calculated on a time-weighted basis and are compared to the objectives described below in order to assess the performance of the investment manager.

The primary objective is to outperform a benchmark portfolio over moving four-year periods. The specific benchmark weights are provided on the following page.

Management Mandates: Active management of the asset allocation  
Active management of the asset classes

Management Structure: One Short-Term bond mandate  
One Canadian equity mandate

Management Firm: Foyston, Gordon & Payne Inc. (FGP)

Investment Products:	Prior to 30 June 2009	From 1 July 2009 to 21 May 2010	From 21 May 2010 23 June 2014	After 23 June 2014
<u>E&amp;O Insurance Fund</u>				
Short-Term	-	Pooled	Pooled	Pooled
Canadian Bonds	Pooled	Pooled	Segregated	Pooled
Canadian Equities	Pooled	Pooled	Pooled	Pooled
Private U.S. Equities	Pooled	-	-	-
<u>Compensation &amp; General Fund</u>				
Short-Term	Pooled	Pooled	Pooled	Pooled
Canadian Bonds	Segregated	Segregated	Segregated	Pooled
Canadian Equities	Pooled	Pooled	Pooled	Pooled
Private U.S. Equities	Segregated	-	-	-

Note: Segregated = Individual Securities

## Plan Information

## Summary of Investment Objectives

## Blended Benchmark Composition

E&O Insurance Fund Benchmark		Compensation Fund Benchmark	
Components	Weight (%)	Components	Weight (%)
Mar-2006		Jun-2003	
S&P/TSX Composite	15.00	S&P/TSX Composite	7.50
S&P 500 (CAD)	15.00	S&P 500 (CAD)	7.50
FTSE TMX Short Term Bond	70.00	FTSE TMX Short Term Bond	85.00
Jul-2009		Jan-2004	
S&P/TSX Composite	15.00	S&P/TSX Composite	7.50
FTSE TMX Short Term Bond	85.00	S&P 500 (CAD)	7.50
FTSE TMX 91-Day T-Bill	0.00	FTSE TMX Universe Bond	85.00
		Jul-2009	
		S&P/TSX Composite	13.00
		FTSE TMX Universe Bond	87.00
		Apr-2010	
		S&P/TSX Composite	15.00
		FTSE TMX Short Term Bond	85.00
		FTSE TMX 91-Day T-Bill	0.00
General Fund Benchmark		Compensation Fund Fixed Income Benchmark	
Components	Weight (%)	Components	Weight (%)
Mar-2004		Jun-2003	
S&P/TSX Composite	7.50	FTSE TMX Short Term Bond	100.00
S&P 500 (CAD)	7.50	Jan-2004	
FTSE TMX Short Term Bond	85.00	FTSE TMX Universe Bond	100.00
Jul-2009		Apr-2010	
S&P/TSX Composite	13.00	FTSE TMX Short Term Bond	100.00
FTSE TMX Short Term Bond	87.00		
Apr-2010			
S&P/TSX Composite	15.00		
FTSE TMX Short Term Bond	85.00		
FTSE TMX 91-Day T-Bill	0.00		

## Appendix B - Manager Updates

**Manager Updates****Manager Updates****As of 31 December 2014****Foyston, Gordon & Payne ("FGP")****Q4 2014****Business**

There were no significant events.

**Staff**

The following staff changes took place during the fourth quarter of 2014:

- Michel Rheaume, Vice President and Portfolio Manager, Institutional Client Services, left the firm in November 2014.
- Jim Houston, President, resigned from FGP in December. He was replaced by Bryan Pilsworth, who has been with FGP since 2007. In addition to managing the Canadian Small Cap equity strategies, Bryan will also lead the firm's strategic direction.

**Q3 2014****Business**

There were no significant events.

**Staff**

The following staff changes took place during the third quarter of 2014:

- Mujahi Masson joined the firm as an Assistant Portfolio Manager, Private Clients; and
- Patty Zhao joined the firm as a Production Control Analyst.

## Appendix C - Capital Markets Environment

## Capital Markets Environment

## Capital Markets Environment

As of 31 December 2014

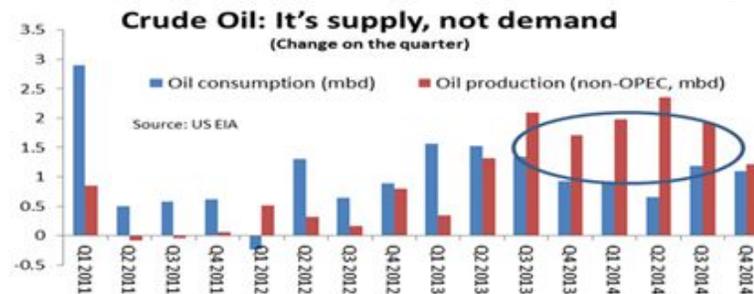
## Outlook for Oil Prices

## Summary

- The halving of oil prices since June is more supply than demand driven.
- At these levels, oil prices are too low to be sustainable.
- Prices will rebound, but only after production is cut. The timing of a production cut is highly uncertain. Even so, oil futures markets are being too pessimistic.
- Weaker oil prices will boost the global economy modestly in 2015.
- Lower oil prices completed the 'perfect storm' in the bond market. Lower oil is sentimentally good for bonds, but provides no lasting fundamental support.
- We do not expect low oil prices will impact global equity markets negatively.

## Supply not Demand is the Issue

Crude oil prices have fallen substantially in the past few weeks, falling by half since their June highs.



The increase in the supply outside of the OPEC, in particular the increase in US shale oil production, is the key driver contributing to the fall in oil prices. The supply-demand imbalance became noticeable through the middle of the year (see chart above).

## Capital Markets Environment

## Capital Markets Environment

As of 31 December 2014

**OPEC**

The OPEC announcement on November 25, refusing to reduce production, caused further price declines, highlighting the absence of a market stabilizer.

The unwillingness to cut output appears to be a concerted attempt to hurt higher cost capacity outside OPEC. New production coming from Canadian oil sands or expensive off shore fields like the Kashagan (Caspian sea) have costs 4-5 times Saudi Arabia's estimated \$15-\$20/barrel. Even US shale oil average costs are somewhere in the mid to upper \$50s/barrel.

**Are the Price Decreases Sustainable?**

Whatever the true 'marginal cost' of oil production globally, the lowest levels generally quoted by experts are around \$80/barrel. Current prices are therefore substantially below the level needed to balance supply and demand. Inevitably supply will fall in response to current low prices (with demand possibly also moving a little higher even though weakness in demand has not been the problem), eventually taking prices higher once again.

However, the classic conundrum with commodities, and the feature that causes high intrinsic volatility, is that price changes are followed by long lags before supply responses come through – a multi-year process, but with little visibility on duration.

As a result, prices could fall further and the timing of a recovery in oil prices is very uncertain.

**Lower Oil Prices Will Have a Positive Impact on the Economy**

What will be the effect of these lower prices on economic activity? The general consensus is that the boost to consumer purchasing power will help economic activity. Consumers will spend more of their gains - and more quickly than producers will cut back spending. At a country level, oil importing countries gain (think Europe, much of Asia and even the U.S. which remains a net importer). Oil producers (Canada, Russia, Mexico, the OPEC block, and to an extent the UK) lose.

All told, we do expect a modest boost to global economic activity in 2015 on the reasonable view that the oil price holds somewhere near current levels for at least the first half of 2015.

Capital Markets Environment

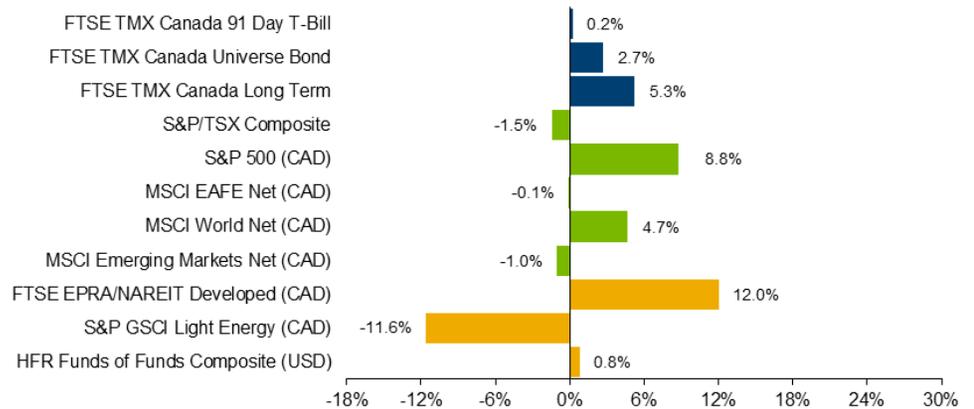
**Capital Markets Environment**

As of 31 December 2014

Review of Financial Markets

- Commodity prices declined further in the last quarter, in particular oil prices, causing a loss of 11.6% for the S&P GSCI Light Energy Index. The S&P/TSX fell as well (-1.5%) due to the underperformance of the Energy and Material sectors. Canadian equity investors benefitted from the depreciation of the Canadian dollar versus the U.S. dollar which increased the return of the S&P 500 from 4.9% to 8.8% when expressed in Canadian dollars. In international equity markets, returns ranged from -1.0% for the MSCI Emerging Markets Net to 4.7% for the MSCI World Index. The FTSE TMX Long Term Bond Index (which can be considered a proxy for pension solvency liabilities) returned 5.3% while the FTSE TMX Universe Bond Index gained 2.7%. The FTSE EPRA/NAREIT Developed posted a comfortable return of 12.0%.

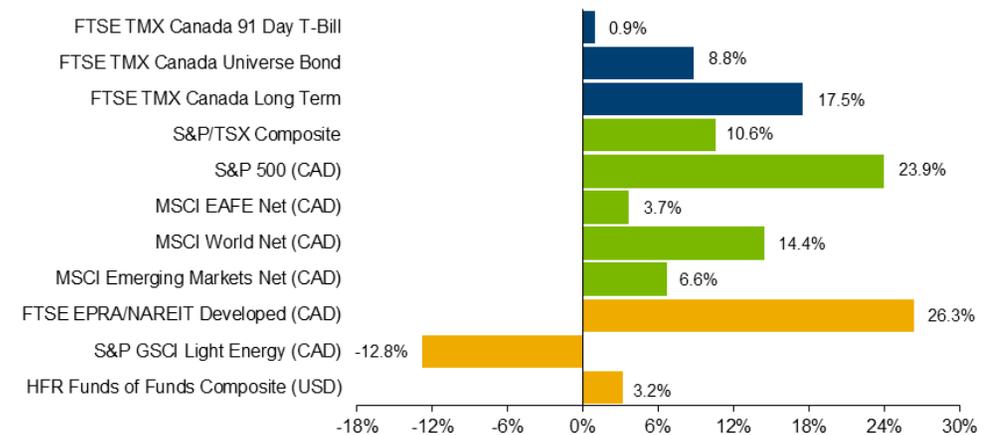
**Financial Markets Performance Review  
3-Month Period Ending 31 December 2014**



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- For the year 2014, all major indices posted positive returns with the exception of the S&P GSCI Light Energy Index which lost 12.8%. The best performing indices were the FTSE EPRA/NAREIT Developed (26.3%), the S&P 500 (23.9%) and the FTSE TMX Canada Long Term Bond Index (17.5%). The MSCI EAFE underperformed other equity indices with a return of 3.7%, while hedge funds, represented by the HFR Funds of Funds Composite Index, gained a meager 3.2%.

**Financial Markets Performance Review  
1-year Period Ending 31 December 2014**



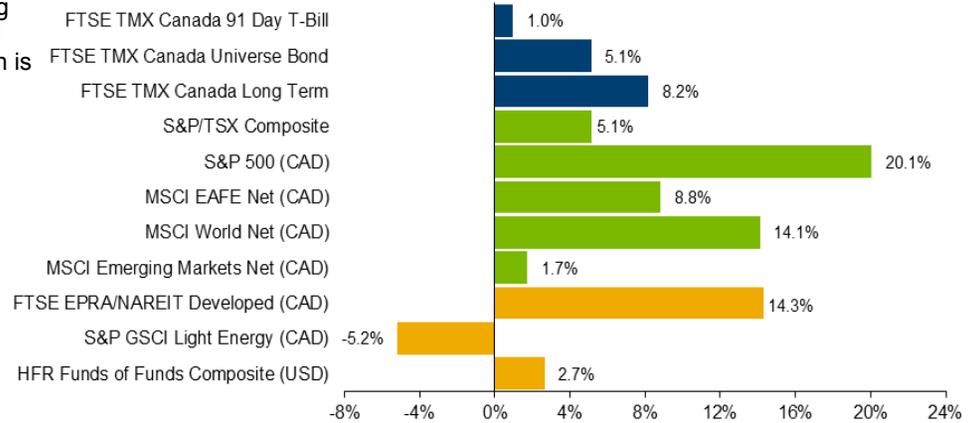
Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

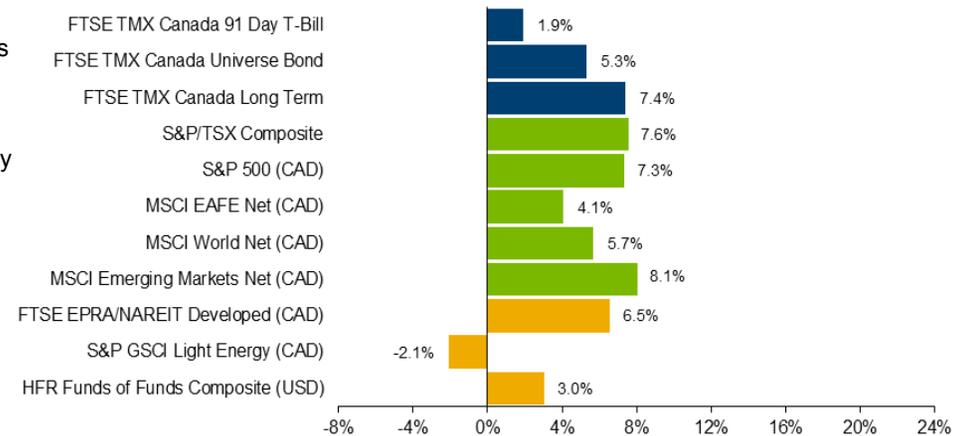
- The S&P 500 Index (CAD) posted the best return for the four-year period ending December 31, 2014, with a return of 20.1%. Strong returns were also earned in global equities (14.1%) and in global listed real estate (14.3%). Long-term bonds returned 8.2% which is higher than the S&P/TSX Index (5.1%). Trailing the other categories were commodities with a negative return of -5.2%.

**Financial Markets Performance Review  
4-Year Period Ending December 31, 2014**



- For the ten-year period ending December 31, 2014, strong returns were earned in emerging market equities (8.1%), Canadian equities (7.6%), long-term bonds (7.4%) and in the S&P 500 (7.3%). Global listed real estate (6.5%) were also strong performers while the S&P GSCI Light Energy (-2.1%) was the only major index posting a negative return for this period.

**Financial Markets Performance Review  
10-Year Period Ending December 31, 2014**



Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

Comparison of Financial Indices

Annual returns - Calendar Years											Annualized Total
2005	2006	2007	2008	2009	2010	2011	2012	2013	2014		
30.6%	41.8%	18.2%	6.4%	51.6%	17.6%	18.1%	25.8%	41.3%	26.3%	8.06%	
24.1%	31.7%	10.3%	3.3%	35.1%	14.1%	9.7%	15.6%	35.2%	23.9%	7.60%	
16.3%	25.9%	9.8%	2.7%	17.4%	12.7%	4.6%	14.7%	31.0%	17.5%	7.42%	
13.8%	19.6%	4.4%	-21.2%	11.9%	12.5%	1.0%	13.4%	13.0%	14.4%	7.31%	
12.5%	17.3%	4.0%	-21.4%	11.5%	11.0%	-3.2%	13.3%	11.4%	10.6%	6.54%	
10.7%	15.4%	3.7%	-24.3%	10.4%	9.1%	-3.5%	7.2%	9.0%	8.8%	5.67%	
7.5%	10.4%	3.4%	-25.8%	7.4%	6.7%	-4.9%	5.2%	3.9%	6.6%	5.32%	
6.7%	4.1%	-5.7%	-29.2%	5.5%	5.9%	-5.7%	4.8%	1.0%	3.7%	4.08%	
6.5%	4.1%	-7.5%	-33.0%	5.4%	5.7%	-8.7%	3.6%	-1.2%	3.2%	3.02%	
2.6%	4.0%	-10.5%	-34.6%	0.6%	2.1%	-10.0%	1.0%	-1.9%	0.9%	1.93%	
2.3%	0.6%	-21.1%	-41.6%	-2.0%	0.5%	-16.4%	-0.6%	-6.2%	-12.8%	-2.10%	

Best

↑

↓

Worst

FTSE TMX Canada 91 Day T-Bill

FTSE TMX Canada Universe Bond

FTSE TMX Canada Long Term

S&P/TSX Capped Composite

S&P 500 (CAD)

MSCI EAFE (CAD) (Net dividend)

MSCI World (CAD) (Net dividend)

MSCI Emerging Markets (CAD) (Net dividend)

FTSE EPRA/NAREIT Developed (CAD)

S&P GSCI Commodity Index, Light Energy (CAD)

HFR Funds of Funds Composite (USD)

- This table illustrates the performance ranking of the various asset classes for each annual period over the last 10 years. Over that period, the best performing asset class was emerging market equities, followed by Canadian equities. Next were long-term bonds, which was a dominant theme of the last decade.
- The distribution of the color codes in our sample highlights the importance of diversification - in order to obtain stable performance, it is necessary to invest in several asset classes.

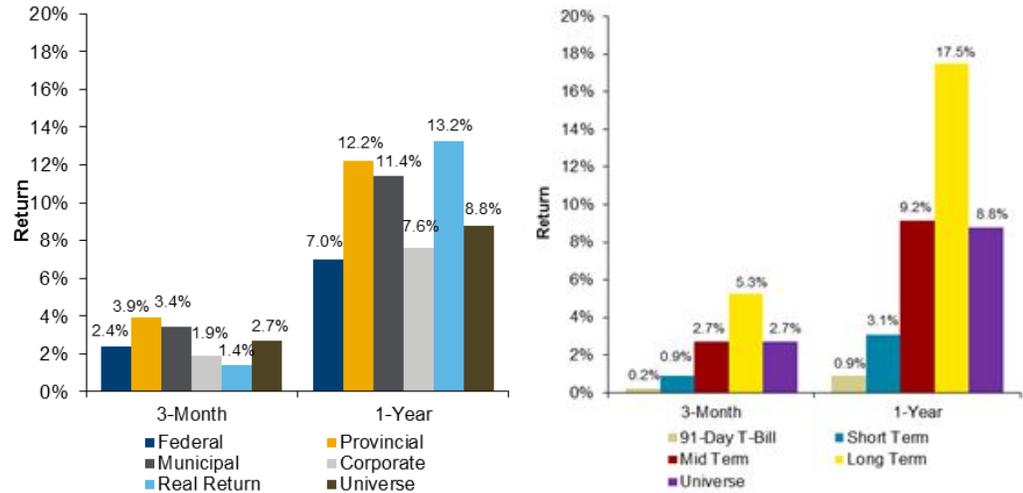
Capital Markets Environment

**Capital Markets Environment**

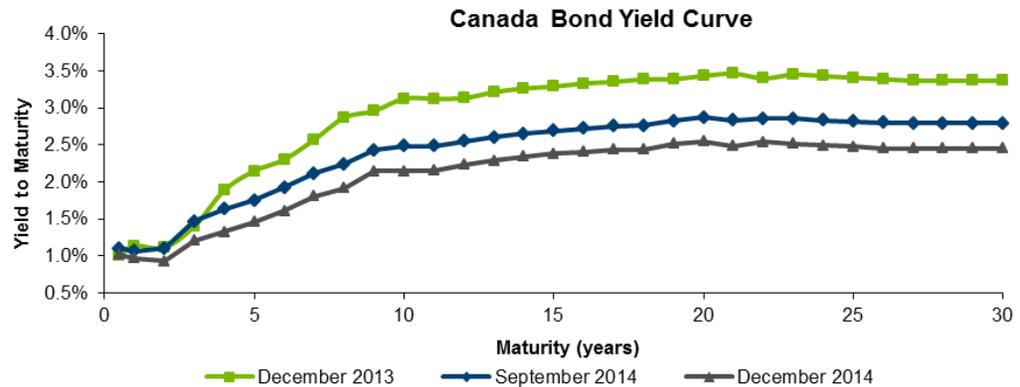
As of 31 December 2014

- Bond market returns were positive across all sectors and maturities for both the 3 month and the 1 year periods. Real return bonds led the other sectors for the 1 year period (13.2%). During the last quarter, the best returns were earned in provincial bonds (3.9%) and in municipal bonds (3.4%). For the 1 year period, provincial bonds (12.2%) slightly outperformed municipal bonds (11.4%).
- With rates decreasing across most of the yield curve, performance was directly proportional to maturity, with longer maturities outperforming shorter maturities.

**Canadian Bond Market Performance Review**  
 Periods Ending December 31, 2014  
 Return by Issuer and by Term - FTSE TMX



- The yield curve moved lower across all maturity terms during the last quarter with rates significantly declining across most maturities. The short end remained anchored due to the unchanged Bank of Canada Overnight Rate. The last Bank of Canada rate change was a 0.25% increase to 1.0% in September of 2010.
- The yield curve maintained a positive slope up to 20 years with longer maturities yielding more than shorter maturities.



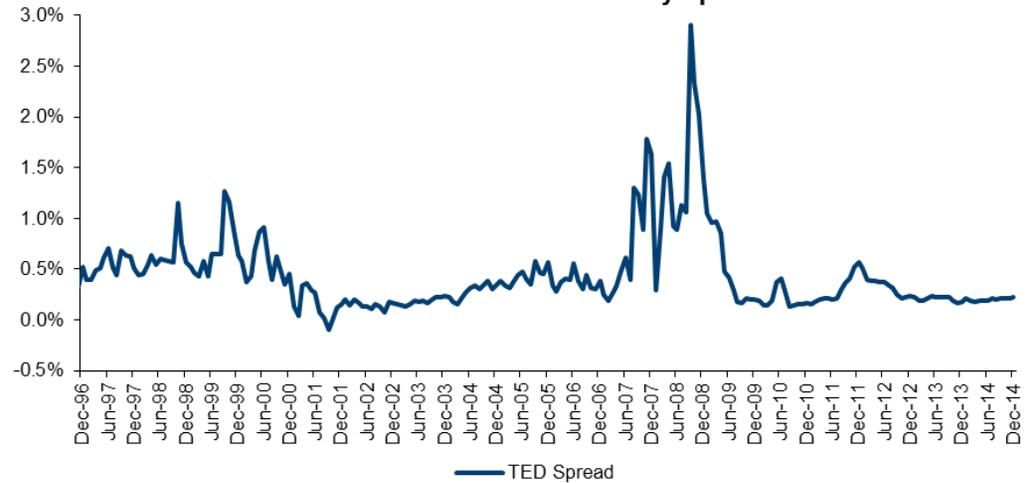
Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

- LIBOR, the London Interbank Offered Rate, is an estimate of the rate at which banks lend to one another. The spread between LIBOR and U.S. Treasury bills (the TED spread) is an indicator of perceived credit risk in the general economy. The TED spread has been fairly stable since 2009.

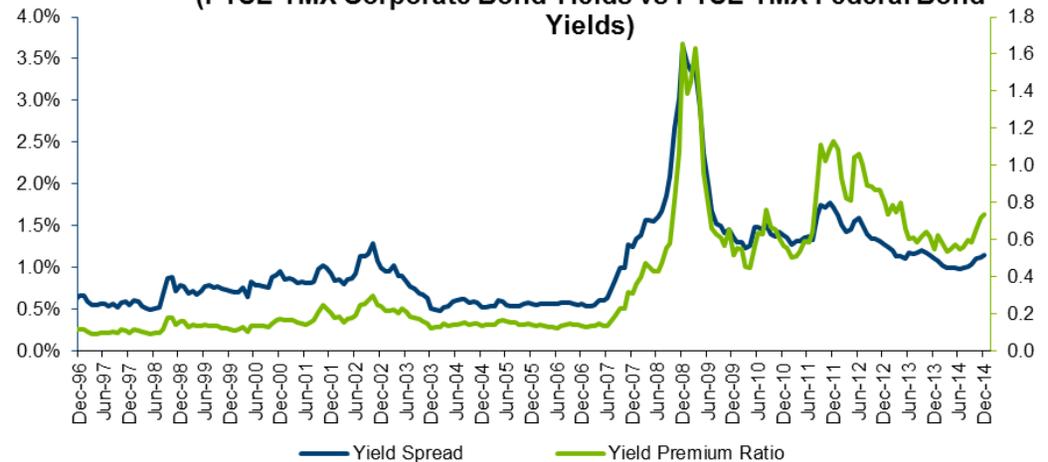
Libor U.S. vs Treasury Spread



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- The yield premium between corporate and government bonds increased during the last quarter, reversing the downward trend it has exhibited since latter 2011.

Canadian Corporate Bond Yield Spread (FTSE TMX Corporate Bond Yields vs FTSE TMX Federal Bond Yields)



Capital Markets Environment

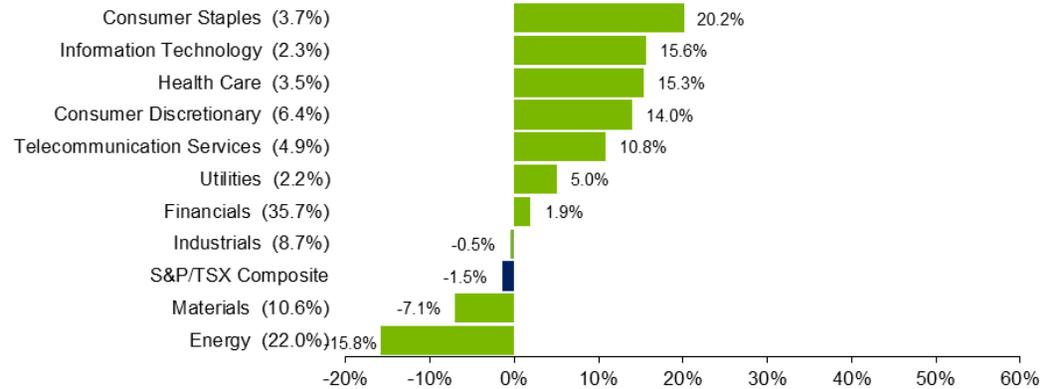
**Capital Markets Environment**

As of 31 December 2014

- Only three of the ten sectors of the Canadian equity market posted negative returns during the last quarter. These include the Energy and Materials sectors, which lost a significant 15.8% and 7.1%, respectively. These two sectors account for around 33% of the Canadian index, explaining the loss of 1.5% posted by the Index. The top performing sectors were Consumer Staples (20.2%), Information Technology (15.6%), and Health Care (15.3%) which represent around 10% of the Canadian index.

**Canadian Stock Markets Performance Review  
S&P/TSX Composite Sector Returns (Sector Weights)**

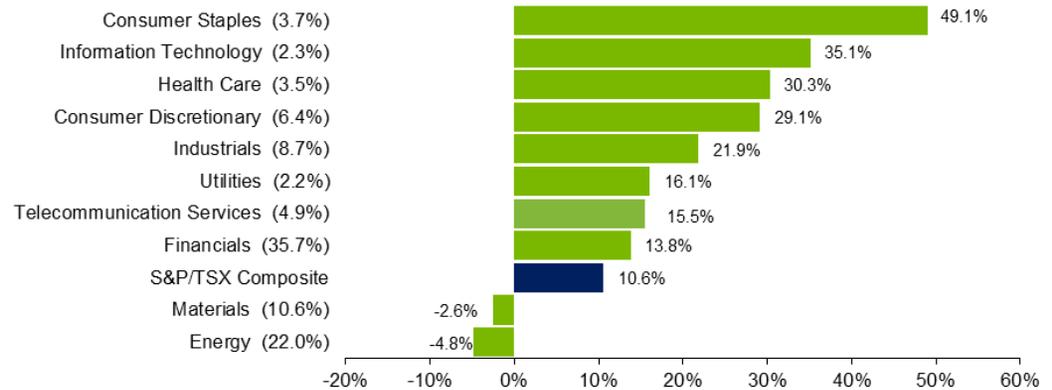
3-Month Period Ending December 31, 2014



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- For the 1-year period ending December 31, 2014, all sectors had positive returns with the exception of Materials (-2.6%) and Energy (-4.8%). The top performers were Consumer Staples (49.1%), Information Technology (35.1%), and Health care (30.3%).

1-Year Period Ending December 31, 2014



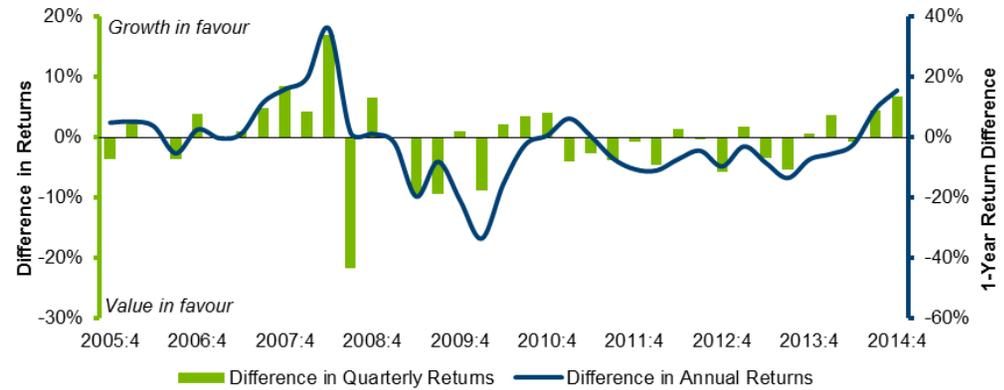
Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

- In the fourth quarter of 2014, Canadian growth stocks outperformed value stocks. The growth stocks continued to outperform value stocks over the trailing 12-month period.

**Growth vs. Value Investment Style - Canadian Equity Market\***  
Comparison to December 31, 2014

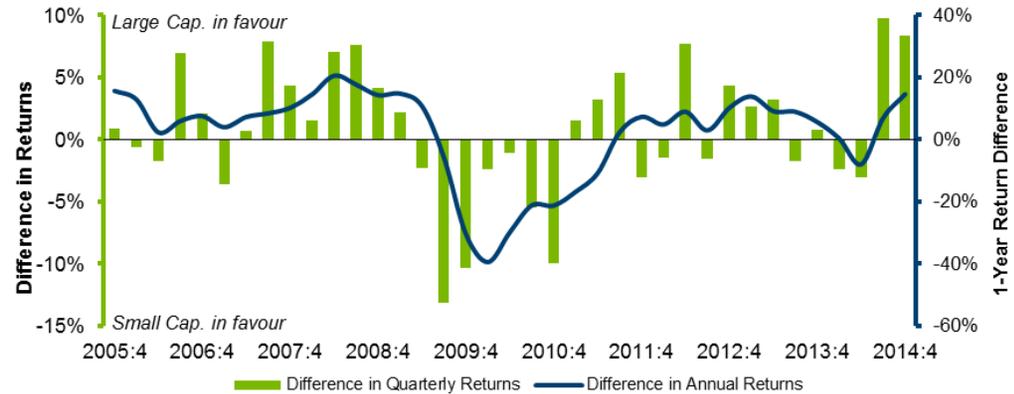


\*MSCI Canada, Growth vs. MSCI Canada, Value

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- For a second quarter in a row, Canadian large cap stocks significantly outperformed small cap stocks during the last quarter.

**Large Cap. vs. Small Cap. Universe - Canadian Equity Market\*\***  
Comparison to December 31, 2014



\*\*S&P/TSX 60 vs. S&P/TSX Small Cap

Capital Markets Environment

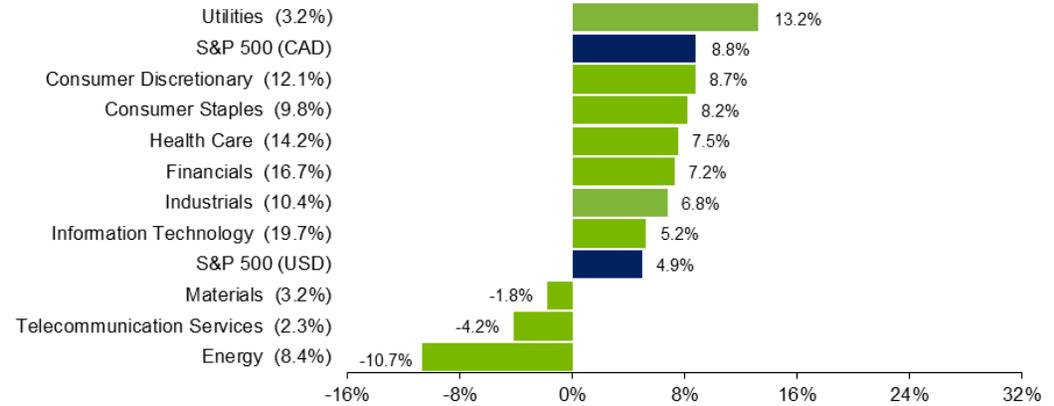
**Capital Markets Environment**

As of 31 December 2014

- Seven out of the ten sectors in the S&P 500 Index (USD) had positive returns during the last quarter. The top performing sectors were Utilities (13.2%), Consumer Discretionary (8.7%) and Consumer Staples (8.2%), while at the bottom were Energy (-10.7%) and Telecommunication Services (-4.2%). The depreciation of the Canadian dollar versus the U.S. dollar increased the return for Canadian investors by 3.9%.

**US Stock Markets Performance Review  
S&P 500 (USD) Sector Returns (Sector Weights)**

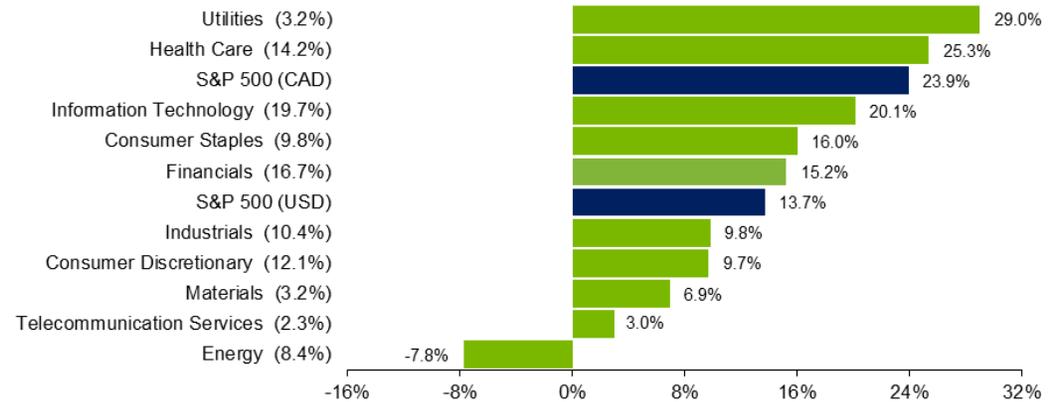
3-Month Period Ending December 31, 2014



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- For the last 1-year period all sectors of the S&P 500 Index (USD) posted positive returns with the exception of Energy (-7.8%). The best performing sectors were Utilities (29.0%), Health Care (25.3%) and Information Technology (20.1%). Other underperforming sectors were Telecommunication Services (3.0%) and Materials (6.9%). The depreciation of the Canadian dollar versus the U.S. dollar increased the return for Canadian investors by 10.2%.

1-Year Period Ending December 31, 2014



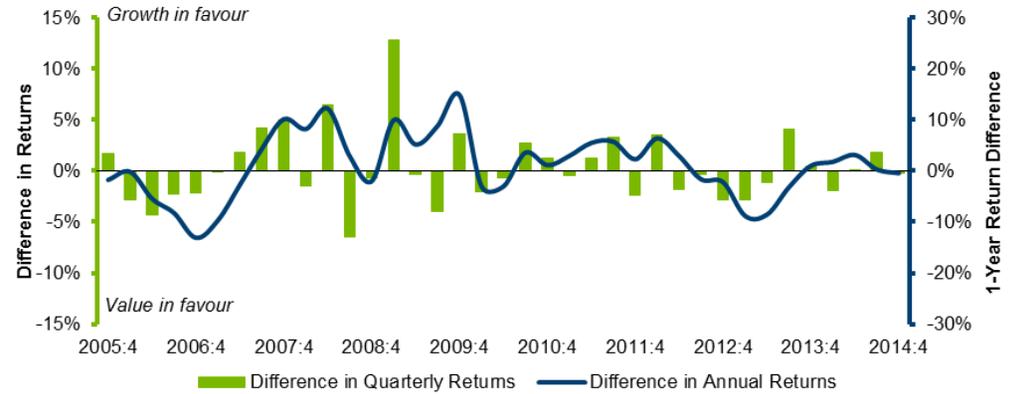
Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

- In the U.S. equity market, value stocks slightly outperformed growth stocks in the most recent quarter. Over the 12-month trailing period the performance of both segments was almost equivalent.

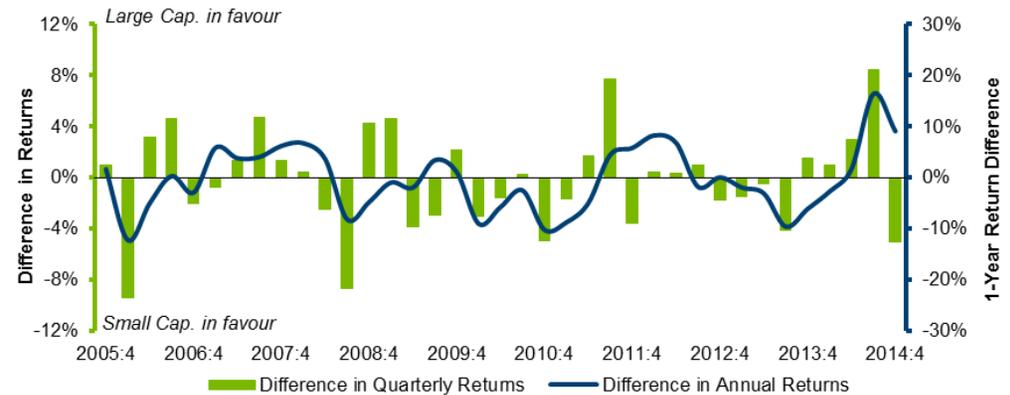
**Growth vs. Value Investment Style – U. S. Equity Market\***  
Comparison to December 31, 2014



\*Russell 1000, Growth (CAD) vs. Russell 1000, Value (CAD)

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**Large Cap vs. Small Cap Universe – U.S. Equity Market\*\***  
Comparison to December 31, 2014



\*\*Russell 1000 (CAD) vs. Russell 2000 (CAD)

- In the fourth quarter of 2014, U.S. small cap stocks generated higher returns than large cap for the first time since the last five quarters. However, large cap stocks still outperformed small cap stocks by a large margin over the last 12-month period.

Capital Markets Environment

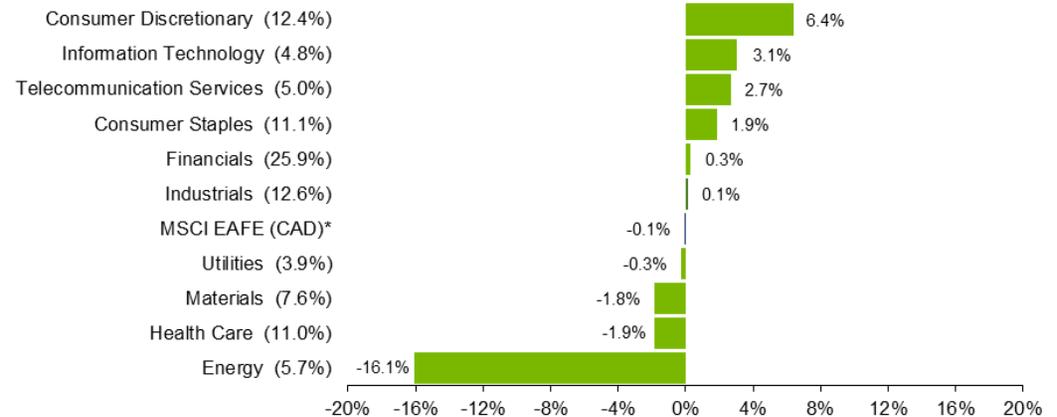
**Capital Markets Environment**

As of 31 December 2014

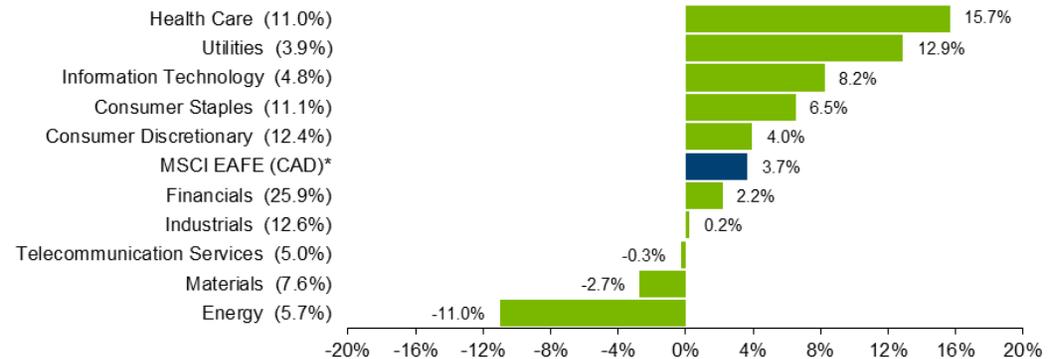
- Four of the ten sectors in international equity markets had negative returns during the last quarter, namely Energy (-16.1%), Health Care (-1.9%), Materials (-1.8%), and Utilities (-0.3%). Leading the best performers were Consumer Discretionary (6.4%), Information Technology (3.1%), and Telecommunication Services (2.7%).

**International Stock Markets Performance Review  
MSCI EAFE (CAD) Sector Returns (Sector Weights)**

3-Month Period Ending December 31, 2014



1-Year Period Ending December 31, 2014



\*MSCI EAFE (Net dividend)

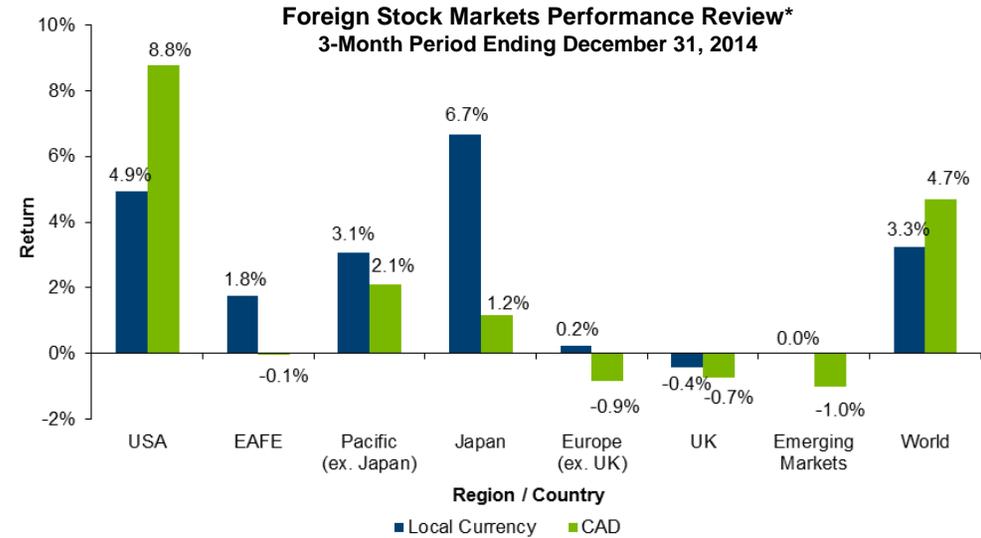
- For the last 1-year period, strong returns were earned in Health Care (15.7%) and Utilities (12.9%), while Energy (-11.0%) and Materials (-2.7%) trailed the pack.

Capital Markets Environment

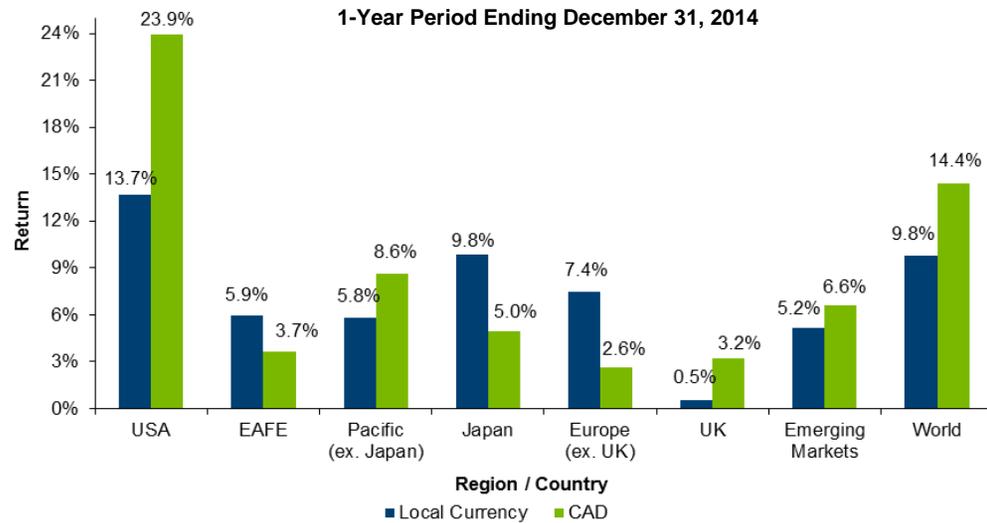
**Capital Markets Environment**

As of 31 December 2014

- Currency fluctuations resulted in increases in returns for Canadian investors in the U.S. and in World markets. In other regions the local currency weakened against the Canadian dollar resulting in lower returns for Canadian investors.



- For the past year, equity returns were positive in all major regions. Currency fluctuations, in the form of a weakening Canadian dollar, provided an additional boost for Canadian investors in all markets with the exception of Europe (ex. UK), EAFE and Japan.



\*Benchmark indexes are, from left to right, S&P 500, MSCI EAFE Net, MSCI Pacific Free (ex. Japan), MSCI Japan, MSCI Europe (ex. UK), MSCI UK, MSCI EM Net and MSCI World Net.

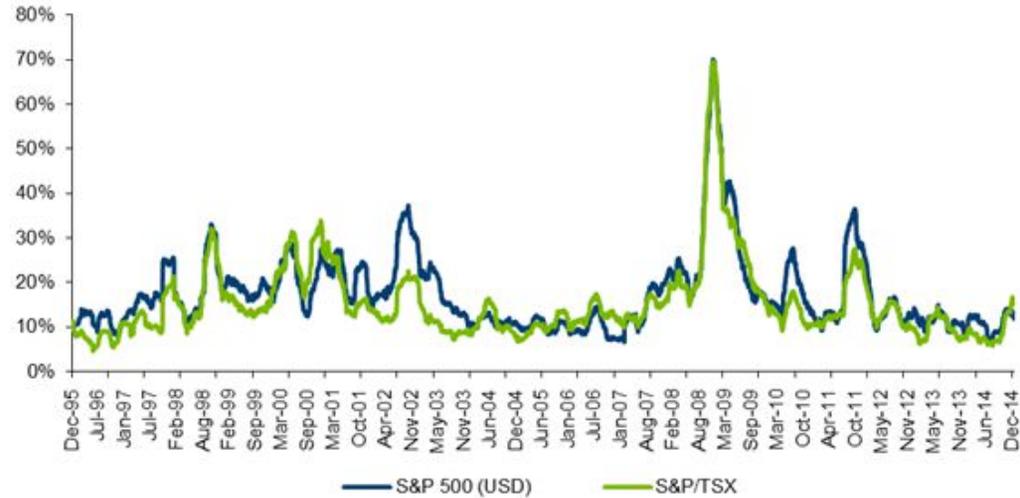
Capital Markets Environment

**Capital Markets Environment**

As of 31 December 2014

- During the last quarter, volatility increased in both the U.S. and Canadian stock markets. As shown in the graph to the right, volatility of the U.S. and Canadian equity indices has been very similar, although the U.S. market experienced slightly higher volatility during several periods in 2010 and 2011.
- Market volatility is an indication of uncertainty in financial markets. During the past 2 years, markets have been relatively calm despite continuing economic and political concerns throughout the U.S., Europe and China.

**Annualized Standard Deviation - 60-Day Rolling Periods  
S&P/TSX (CAD) and S&P 500 (USD)**



## Appendix D - Description of Market Indices and Statistics

## Description of Market Indices and Statistics

## Index Definitions

**S&P/TSX Composite**

S&P/TSX Composite Index comprises approximately 71 percent of market capitalization for Canadian-based, Toronto Stock Exchange listed companies. It is calculated on a float market capitalization and is the broadest Canadian equity index available. The index also serves as the premier benchmark for Canadian pension funds and mutual market funds.

**S&P 500**

Standard and Poor's 500 Composite Stock Index consists of the largest 500 companies in the United States chosen for market size, liquidity and industry group representation. It is a market-value weighted index, with each stock's weight in the index proportionate to its market value. For the purposes of this report, the S&P 500 Index returns are converted from U.S. dollars into Canadian dollars, and therefore reflect currency gains or losses.

**FTSE TMX Universe Bond (formerly DEX Universe Bond)**

The FTSE TMX Universe Bond Index covers all marketable Canadian bonds with term to maturity of more than one year. The Universe contains approximately one thousand marketable Canadian bonds with an average term of 10.1 years and an average duration of 7.1 years. The purpose of the index is to reflect the performance of the broad "Canadian Bond Market" in a similar manner to the S&P/TSX Composite Index.

**FTSE TMX 91-Day T-Bill (formerly DEX 91-Day T-Bill)**

Canada Treasury Bills represent the highest quality short-term instruments available. The index is constructed by selling and repurchasing Government of Canada T-Bills with an average term to maturity of 91 days. The 91-Day Treasury Bill Index is calculated and marked to market daily.

**Description of Market Indices and Statistics****Statistic Definitions****As of 31 December 2014****Active Return**

Arithmetic difference between the portfolio return and the benchmark return over a specified time period.

**Active Weight**

The difference between the portfolio weight and the benchmark weight, where the weight is based on the beginning of period weights for the sector/region/asset class for a certain periodicity (monthly or quarterly, depending upon the reporting frequency), adjusted by the relative return for the sector/region/asset class.

**Annualized Value Added**

A portfolio's excess return over a benchmark, annualized as it is recorded.

**Asset Allocation**

The value added or subtracted by under or over weighting sectors/regions/asset classes versus the benchmark weights. Asset allocation measures the impact on performance attributed only to the sector/region/asset class weighting decisions by the manager. It assumes that the manager holds the same securities in each sector/region/asset class and in the same proportion as in the benchmark. Any differences in return can be attributed to differences in sector weights between the manager's fund and the benchmark.

**Batting Average**

The frequency, expressed in percentage terms, of the portfolio's return equaling or exceeding the benchmark's return.

**Beta**

A measure of the sensitivity of a portfolio to the movements in the market. It is a measure of a portfolio's non-diversifiable or systematic risk.

**Correlation**

Also called coefficient of correlation, it is a measure of the co-movements of two sets of returns. Indicates the degree in which two sets of returns move in tandem.

**Cumulative Added Value**

The geometrically linked excess return of a portfolio over a benchmark.

**Down Market Capture**

The portfolio's average return as a percentage of the benchmark return, during periods of negative benchmark return. Lower values indicate better portfolio performance.

**Downside Risk**

A measure similar to standard deviation, but focuses only on the negative movements of the return series. It is calculated by taking the standard deviation of the negative quarterly set of returns. The higher the factor, the riskier the portfolio.

## Description of Market Indices and Statistics

**Statistic Definitions**

As of 31 December 2014

**Duration**

A measure of a bond portfolio's sensitivity to movements in interest rates.

**EPS**

Earnings Per Share

**Excess Return**

Arithmetic difference between the managers return and the risk-free return over a specified time period.

**Excess Risk**

A measure of the standard deviation of a portfolio's performance relative to the risk free return.

**Information Ratio**

Measured by dividing the active rate of return by the tracking error. The higher the Information Ratio, the more value-added contribution by the manager.

**Return**

Compounded rate of return for the period.

**R-Squared**

The percentage of a portfolio's performance explained by the behaviour of the appropriate benchmark. High R-Square means a higher correlation of the portfolio's performance to the appropriate benchmark.

**Security Selection**

The value added or subtracted by holding securities at weights which differ from those in the benchmark, including securities not in the benchmark or a zero weight. The security selection return assumes the manager weights for each sector/region/asset class in the portfolio are in the same proportion as in the overall benchmark, and excess returns are due to security selection. That is, differences in returns between the manager's fund and the benchmark are attributed to the securities the manager has chosen.

**Sharpe Ratio**

Represents the excess rate of return over the risk free return divided by the standard deviation of the excess return. The result is the absolute rate of return per unit of risk. The higher the value, the better the portfolio's historical risk-adjusted performance.

**Simple Alpha**

The difference between the portfolio's return and the benchmark's return.

**Description of Market Indices and Statistics****Statistic Definitions****As of 31 December 2014****Standard Deviation**

A statistical measure of the range of a portfolio's performance, the variability of a return around its average return over a specified time period.

**Tracking Error**

A measure of the standard deviation of a portfolio's performance relative to the performance of an appropriate benchmark.

**Treynor Ratio**

Similar to Sharpe ratio, but focuses on beta rather than excess risk (standard deviation). Represents the excess rate of return over the risk free rate divided by the beta. The result is the absolute rate of return per unit of risk. The higher the value, the better the portfolio's historical risk-adjusted performance.

**Up Market Capture**

The portfolio's average return as a percentage of the benchmark return, during periods of positive benchmark return. Higher values indicate better portfolio performance.

## Appendix E - Fee Analysis

## Fee Analysis

Manager Fees					
Account	Fee Schedule	Market Value	Percentage of Portfolio	Estimated Annual Fee (\$)	Estimated Annual Fee (%)
<b>Total</b>		<b>\$82,712,865</b>	<b>100.0%</b>	<b>\$107,261</b>	<b>0.130%</b>
<b>FGP - Equities</b>	0.450% of the first \$50 Million 0.300% of the next \$25 Million 0.200% of the balance	\$16,476,264	19.9%	\$74,143	0.450%
<b>FGP - Fixed Income &amp; Short-Term</b>	0.050% of the balance	\$66,236,601	80.1%	\$33,118	0.050%

## Appendix F - Compliance

Compliance

E&O Insurance Fund, Compensation Fund and General Fund								
Category	Guidelines	Dec-11	Jun-12	Dec-12	Jun-13	Dec-13	Jun-14	Dec-14
General	Confirm whether the following transactions have occurred in the portfolio:							
	Use of non-taxable accounts.	✓	✓	✓	✓	✓	✓	✓
	Use of derivatives.	✓	✓	✓	✓	✓	✓	✓
	Short selling investments.	✓	✓	✓	✓	✓	✓	✓
	Use of margin.	✓	✓	✓	✓	✓	✓	✓
	Direct investment in real estate.	✓	✓	✓	✓	✓	✓	✓
Money Market Investments	Investments have a minimum rating of R1 or equivalent, by DBRS, Moody's or Standard and Poor.	✓	✓	✓	✓	✓	✓	✓
	Investments have a maximum maturity of 1 year (364 days).	✓	✓	✓	✓	✓	✓	✓
	Money Market/Short Term Investments are only in these type of investments: • Federal Government T-Bills (including Federal and Provincial agencies) • Bankers Acceptance • Commercial Paper	✓	✓	✓	✓	✓	✓	✓
	No more than 8% of the total portfolio has been invested with any single issuer other than Government of Canada securities.	✓	✓	✓	✓	✓	✓	✓
	Investments have a minimum rating of BBB for bonds and debentures or P2 for preferred stocks or equivalent by DBRS, Moody's or Standard and Pools.	✓	✓	✓	✓	✓	✓	✓
Fixed Income Investments	Investments are in Canadian Currency.	✓	✓	✓	✓	✓	✓	✓
	No more than 10% of the market value of the fixed income portfolio has been invested with any one security or issuer other than holdings with Federal and Provincial Governments and their guarantees.	✓	✓	✓	✓	✓	✓	✓
	Portfolio's weighted average duration is between 1 to 5 years and in-line with DEX Short Term Bond Index.	✓	✓	✓	✓	✓	✓	✓
	Fixed Income Investments are only in these type of investments: • Bonds, Debentures, Notes, Non-Convertible Preferred Stocks, Term Deposits and GICs • Bonds of Foreign Issuers denominated in Canadian Dollars • NHA-insured Mortgage-Backed Securities or Collateralized Mortgage-Backed Securities • Marketable Private Placement of Bonds	✓	✓	✓	✓	✓	✓	✓
	Confirm whether the fixed income portion of the portfolio's asset mix has been within the ranges defined below for the previous month:							
	Government of Canada Debt Obligations: Max 100%	✓	✓	✓	✓	✓	✓	✓
	Provincial Government Debt Obligations: Max 60%	✓	✓	✓	✓	✓	✓	✓
	Municipal Government Debt Obligations: Max 10%	✓	✓	✓	✓	✓	✓	✓
	Corporate Debt Obligations: Max 50%	✓	✓	✓	✓	✓	✓	✓
	Foreign Issuer or Canadian Issuer in foreign currency: Max 10%	✓	✓	✓	✓	✓	✓	✓
	Equity Securities	Stocks are listed on one of the major stock exchanges.						
No more than 10% of market value of the total portfolio is invested with a single issuer.		✓	✓	✓	✓	✓	✓	✓
Asset Mix (based on market value)	Confirm whether the portfolio asset mix has been within the ranges defined below for the previous month:							
	Money Market: Min 0%, Max 15%	✓	✓	✓	✓	✓	✓	✓
	Canadian Fixed Income: Min 60%, Max 95%	✓	✓	✓	✓	✓	✓	✓
	Total Fixed Income: Min 75%, Max 95%	✓	✓	✓	✓	✓	✓	✓
Canadian Equities: Min 5%, Max 25%	✓	✓	✓	✓	✓	✓	✓	

## Appendix G - Latest Thinking

## Executive Summary

## Latest Thinking

During the last quarter, we have produced papers on the following topics. Although these topics may not be directly applicable to your Fund, they may be of general interest and provide some insight into Aon Hewitt's global research. For copies of the papers, or for more details, please contact your Aon Hewitt Investment Consultant.

Topic	Summary
<b>Sustainable Investing – Opportunity or Obstacle?</b>	<p>Is the future of institutional investing sustainable? Should pension plans, foundations and endowments include sustainable investing policies in their investment policy statements? What do stakeholders think about sustainable investing? How can we access sustainable investing strategies? These are all questions that Canadian fiduciaries are asking. The answers are unique to each investor.</p> <p>A short paper discusses the definition of sustainable investing, the presence of such funds in Canada, as well as details on divestment and implementation.</p>
<b>Opportunistic Strategies for Navigating a Changing Credit Landscape</b>	<p>The global financial crisis continues to cast a long shadow on the credit markets, causing structural shifts in the way many businesses and consumers obtain credit. As banks cut back on lending, certain industries, individual companies and consumer groups previously reliant on bank financing have found their access to credit hampered.</p> <p>We believe that a diversified, global approach to credit that incorporates a variety of strategies poised to benefit from dislocations caused by this trend offers investors the potential to earn attractive returns in an otherwise low-yielding environment.</p> <p>This paper provides a background on the situation which has developed over the past few years and details the various funds that are able to take advantage of the current environment.</p>
<b>A Holistic Approach to Equity Investing</b>	<p>Many institutional investors are increasing their allocations to alternative investments, including hedge funds and private equity. The capital markets offer a combination of low expected returns and heightened risks in the current market environment, prompting a search for new solutions.</p> <p>We continue to see reduced upside in global equity markets as well as significant risks to be recognized and managed – in this environment, investors are attracted to approaches with the potential to earn continued strong returns and thrive outside a bull market.</p> <p>A detailed paper discusses the benefits of equity alternatives and why you should consider them as part of your wider equity allocation.</p>

Executive Summary

**Latest Thinking**

<b>Topic</b>	<b>Summary</b>
<b>Opportunistic Deep Value Investing: A Multi-Asset Class Approach</b>	<p>In recent years, the capital markets offered an abundance of "deep value" investing opportunities that subsequently yielded outsized returns relative to broad equity and bond market benchmarks. Despite the rich opportunity set, for a variety of reasons many investors did not participate in these high-performing investments. We embarked on our research of deep-value investing with these investors in mind, hoping to lay a foundation for approaching these investments in advance of the next deep-value investing cycle and to broaden the use of this strategy in portfolios where it is appropriate.</p> <p>This detailed paper highlights the benefits of deep value investing, when it may be appropriate to invest in these strategies, the main drawbacks and risks and how these can be mitigated as well as our abilities to help find solutions for your specific fund.</p>

## Appendix H - Disclosure

## Disclosure

**Statement of Disclosure****As of 31 December 2014**

Aon Hewitt Inc. reconciles the rates of return with each investment manager quarterly. Aon Hewitt Inc. calculates returns from the custodian/trustee statements while the managers use different data sources. Occasionally discrepancies occur because of differences in computational procedures, security prices, "trade date" versus "settlement date" accounting, etc. We monitor these discrepancies closely and find that they generally do not tend to persist over time. However, if a material discrepancy arises or persists, we will bring the matter to your attention after discussion with your money manager.

*This report may contain slight discrepancies due to rounding in some of the calculations.*

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TAB 4.4

## FOR DECISION

## CHEQUE SIGNING AUTHORITY

**Motion:**

35. **That Convocation approve a new banking resolution.**
36. The new resolution updates the old titles of Managers of Trustee Services and Manager of the Compensation Fund with the new combined role of Manager of Trustee Services and Compensation Fund and replaces the old role of Unclaimed Trust Fund Officer with the new role of Forensic Auditor, Trustee Services.
37. As detailed in the accompanying banking resolution, the authorized signing officers of the Law Society are:
- the Treasurer
  - the Chairs of the Audit & Finance Committee
  - the Vice-Chair of the Audit & Finance Committee
  - designated Bencher(s)
  - the Chief Executive Officer (“CEO”)
  - the Chief Financial Officer (“CFO”)
  - the Director, Policy
  - Senior Manager, Finance
  - Officers of Trustee Services and the Compensation Fund for accounts specific to their department.
38. Paul Schabas and John Callaghan are the designated bencher signing officers due to their proximity to Osgoode Hall.
39. With the merging of the Trustee Services and Compensation Fund departments and the retirement of two employees, the signing officers for bank accounts used in support of Trustee Services operations require updating. The positions of Trustee Services Manager and the Compensation Fund Manager were combined into one position of Trustee Services and Compensation Fund Manager. The responsibilities of the signing officer previously handled by the Unclaimed Trust Fund Officer are now handled by the role of Forensic Auditor, Trustee Services.

**SCHEDULE A TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT  
(LF 327)**

Effective Date: April 23, 2015

Schedule Dated: April 23, 2015

The names of the signing officers associated with the titles identified in this Schedule are set out in *Attachment to Schedule A Law Society of Upper Canada Banking Resolution Signing Officers*.

**Account Numbers:**

xxxx-xxx (General Fund - General Bank Account)  
 xxxx-xxx (Compensation Fund - Compensation Bank Account)  
 xxxx-xxx (General Fund - Payroll Bank Account)  
 xxxx-xxx (General Fund - Accounts Payable Bank Account)  
 xxxx-xxx (General Fund - Unclaimed Trust Fund Bank Account)  
 xxxx-xxx (General Fund - Online Payments Bank Account)  
 xxxx-xxx (Osgoode Society in Trust - McMurtry Fellowship Bank Account)  
 xxxx-xxx (General Fund - Business Premium Rate Savings Account)  
 xxxx-xxx (Compensation Fund – Business Premium Rate Savings Account)  
 xxxx-xxx (Unclaimed Trust Fund – Business Premium Rate Savings Account)  
 xxxx-xxx (Osgoode Society in Trust – Business Premium Rate Savings Account)

Please Refer to Certificate and Agreement (LF327) dated: **February 27, 2014**

Title

Treasurer	Chief Executive Officer
Chair, Audit & Finance Committee	Vice Chair, Audit & Finance Committee
Director, Policy	Chief Financial Officer
Designated Bencher(s)	Senior Manager, Finance

Signing Instructions:

All Law Society cheques, for the bank accounts identified above, require two signatures from the above noted list of positions. Cheques in excess of \$200,000 require that the first signature be that of the Treasurer, the Chair of the Audit & Finance Committee, the Vice Chair of the Audit & Finance Committee or a designated bencher with the second signature being that of the Chief Executive Officer, Chief Financial Officer, the Senior Manager, Finance or the Director, Policy.

**SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT  
(LF 327)**

**Account Numbers:**

xxxx-xxx (General Fund – Trustee Services)  
xxxx-xxx (General Fund - Trustee Services USD)

Title

Chief Executive Officer	Executive Director, Professional Regulation
Chief Financial Officer	Trustee Services & Compensation Fund Manager
Senior Manager, Finance	Senior Counsel & Assistant Manager, Trustee Services

Signing Instructions

All Law Society cheques for account xxxx-xxx and xxxx-xxx require two signatures from the above noted list of positions.

**Account Number:**

xxxx-xxx (General Fund – Petty Cash)

Title

Chief Executive Officer	Executive Director, Professional Regulation
Chief Financial Officer	Trustee Services & Compensation Fund Manager
Senior Manager, Finance	Senior Counsel & Assistant Manager, Trustee Services
Counsel, Trustee Services	Forensic Auditor, Trustee Services

Signing Instructions

All Law Society cheques for the account number xxxx-xxx require one signature from the above noted list of positions.

Corporation Name: The Law Society of Upper Canada

Per: \_\_\_\_\_  
Name:  
Title:  
Date:

Per: \_\_\_\_\_  
Name:  
Title:  
Date:

**ATTACHMENT TO SCHEDULE A  
THE LAW SOCIETY OF UPPER CANADA  
BANKING RESOLUTION  
UPDATE OF SIGNING OFFICERS**

The schedule below provides the names of the individuals associated with Schedule A to the Incorporated Company Certificate and Authorization ( LF327 ) form signed on April 23, 2015 and supported by the signatures on file with the Bank of Montreal.

**Signing Officer****Title**

Janet E. Minor	Treasurer
Robert Lapper	Chief Executive Officer
Chris Bredt	Co-Chair, Audit & Finance Committee
Peter Wardle	Co-Chair, Audit & Finance Committee
Vacant	Vice Chair, Audit & Finance Committee
Paul Schabas	Designated Bencher
John Callaghan	Designated Bencher
Wendy Tysall	Chief Financial Officer
Fred Grady	Senior Manager, Finance
James Varro	Director, Policy
Zeynep Onen	Executive Director, Professional Regulation
Dan Abrahams	Trustee Services & Compensation Fund Manager
Nadia Musclow	Senior Counsel & Assistant Manager, Trustee Services
Joanne MacMillan	Counsel, Trustee Services
Rhys Walker	Forensic Auditor, Trustee Services

Corporation Name: The Law Society of Upper Canada

Per: \_\_\_\_\_  
Name: Wendy Tysall  
Title: Chief Financial Officer  
Date: April 23, 2015

Per: \_\_\_\_\_  
Name: Fred Grady  
Title: Senior Manager, Finance  
Date: April 23, 2015

**TAB 4.5**

**REPORTS FOR INFORMATION**

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

TAB 4.5.2

## FOR INFORMATION

**FINANCIAL STATEMENTS OF THE LAWYERS' PROFESSIONAL INDEMNITY  
COMPANY FOR THE YEAR ENDED DECEMBER 31, 2014**

42. **The audited financial statements for the Lawyers' Professional Indemnity Company ("LAWPRO") for the year ended December 31, 2014 are for information.**
  
43. The Law Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly owned subsidiary of the Society. A Report to the Audit & Finance Committee including a Key Point Summary and the financial statements of LAWPRO follows on the next page.
  
44. The financial statements have been approved by LAWPRO 's board.



***Report to the Audit and Finance  
Committee of the Law Society of  
Upper Canada***

***April 8, 2015***



***Report to the Audit and Finance Committee – Law Society***

***April 8, 2015***

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▪ <b><i>Review of Insurance Ratios</i></b>	<b>50</b>
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– <b><i>CIBC Global Asset Management Inc.</i></b>	<b>52</b>
– <b><i>Letko Brosseau &amp; Associates Inc.</i></b>	<b>53</b>

## Key Point Summary

- *The 2014 financial statements of LAWPRO received an unqualified opinion from its external auditor.*
- *The financial statements in this report were prepared in accordance with both new and revised International Financial Reporting Standards. For more details regarding the accounting policies the Company has established under these accounting standards, see note 2 of the financial statements.*
- *LAWPRO's net income for the year ended December 31, 2014 was \$17.1 million compared to an income of \$5.9 million in 2013. Net premiums earned increased by \$8.4 million to \$114.9 million in 2014. Investment income for 2014 was \$26.5 million, an increase of \$10.3 million from 2013.*
- *Investment income for 2014 was impacted by \$7.6 million of realized gains from regular trading during the year, a \$2.4 million increase in unrealized gains on the Company's asset-liability matched portfolio, and a \$0.9 million impairment expense relating to some equities that have experienced a significant or prolonged decline in value, compared to \$5.6 million in realized gains, a \$5.9 million decrease in unrealized gains, and a \$0.9 million impairment expense in 2013.*
- *In total, during 2014 LAWPRO earned a comprehensive income of \$18.8 million which includes an increase in unrealized gains on its surplus investments of \$2.3 million and a remeasurement loss on its defined benefit pension plan of \$0.6 million, compared to a comprehensive income of \$18.6 million during 2013 which includes an increase in unrealized gains on its surplus investments of \$12.2 million and a remeasurement income on its defined benefit pension plan of \$0.5 million.*
- *As a result of its comprehensive income, the Company increased its shareholder's equity by \$18.8 million in 2014 compared to an increase of \$18.6 million in 2013.*
- *LAWPRO is in compliance with all regulatory requirements regarding solvency and filing of financial information. A summary of LAWPRO's position with respect to insurance ratios at year-end is included on pages 50-51.*
- *Assets recorded in LAWPRO's financial statements are sufficient to discharge its claim liabilities at December 31, 2014. Investment assets, inclusive of cash and cash equivalent holdings and investment income due and accrued, total \$616.7 million. These funds have been invested in accordance with the Company's investment policy. Investment managers have submitted letters of compliance with investment policies (pages 52 and 53).*

- *There were 24,919 full-time equivalent lawyers covered under the Ontario Mandatory Professional Liability Program at December 31, 2014, an increase of approximately 3% over 2013. The base annual premium per lawyer remained flat at \$3,350 in 2014. The \$8.4 million increase in earned premiums from 2013 to 2014 is attributable to a \$5.0 million premium contribution from the Errors & Omissions Insurance Fund in 2014 (\$nil for 2013), as well as an increase in the number of insured lawyers purchasing insurance coverage in 2014.*
- *Revenues from transaction levies and claims history surcharge levies amounted to \$26.6 million in 2014 compared to \$26.3 million in 2013 for the Ontario Program. While generally in line with the 2013 results, the current year transaction levy revenue was \$1.5 million under budget expectations. As a result, an additional \$1.5 million of premium revenue was charged to the Errors & Omissions Insurance Fund in 2014, pursuant to LAWPRO's insurance arrangement with the Law Society of Upper Canada.*
- *The number of claims reported on the Ontario mandatory errors and omissions insurance program during 2014 was 2,572, slightly higher than the level experienced in 2013, bringing the number of open claim files to 3,813. Claims relating to prior years developed favourably in the aggregate, resulting in a reduction in previously established net claims liabilities of \$19.0 million for LAWPRO in 2014. However, this result was offset somewhat by an increase in the current year losses incurred. The current fund year claims estimate is just under \$100 million for 2014, even higher than the adverse environment established in the 2007 through 2013 fund years.*
- *As a result of the positive 2014 results, LAWPRO may expect to undergo the regulatory and accounting changes anticipated in the next 12 to 36 months with slightly more margin for absorption than may otherwise have been expected. In particular, significant changes to the calculation of the Minimum Capital Test have been released by the regulator for 2015. Many of these changes will have an adverse impact on LAWPRO's test results, similar to the insurance industry overall. Also, anticipated changes to various accounting standards, such as for insurance contracts under the next phase of IFRS, as well as the accounting for investments, could have an adverse impact on the Company's financial position and/or regulatory capital. Having the increase in shareholder's equity effective December 31, 2014 is positive in assisting with both of these issues.*

# Independent Auditor's Report



Deloitte LLP  
Brookfield Place  
181 Bay Street, Suite 1400  
Toronto, Ontario M5J 2V1  
Canada

Tel: 416-601-6150  
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www.deloitte.ca

To the Shareholder of Lawyers' Professional Indemnity Company

We have audited the accompanying financial statements of Lawyers' Professional Indemnity Company, which comprise the statement of financial position as at December 31, 2014, and the statements of profit or loss, comprehensive income, changes in equity and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

## Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

## Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of Lawyers' Professional Indemnity Company as at December 31, 2014, and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards.

Chartered Professional Accountants, Chartered Accountants  
Licensed Public Accountants  
February 25, 2015

# Appointed Actuary's Report

## **Eckler**

I have valued the policy liabilities including reinsurance recoverables of Lawyers' Professional Indemnity Company for its statement of financial position as at December 31, 2014, and their changes in its statement of profit or loss for the year then ended, in accordance with accepted actuarial practice in Canada, including selection of appropriate assumptions and methods.

In my opinion, the amount of the policy liabilities makes appropriate provision for all policy obligations, and the financial statements fairly present the results of the valuation.

Toronto, Ontario  
February 25, 2015

A handwritten signature in black ink, appearing to read "B. Pelly", with a stylized flourish extending from the end.

Brian G. Pelly  
Fellow, Canadian Institute of Actuaries  
Eckler Ltd.  
110 Sheppard Avenue East, Suite 900  
Toronto, Ontario M2N 7A3

# Statement of Financial Position

Stated in thousands of Canadian dollars

As at	December 31, 2014	December 31, 2013
<b>Assets</b>		
Cash and cash equivalents	\$ 17,328	14,525
Investments (note 5)	597,280	575,039
Investment income due and accrued	2,012	2,136
Due from reinsurers	726	309
Due from insureds	1,909	2,027
Due from the Law Society of Upper Canada (note 12)	6,623	-
Reinsurers' share of provision for unpaid claims and adjustment expenses (note 9)	44,900	40,487
Other receivables	1,404	1,419
Other assets	1,984	2,758
Property and equipment (note 7)	1,658	2,193
Intangible asset (note 8)	1,028	-
Deferred income tax asset (note 14)	5,057	4,543
<b>Total assets</b>	<b>\$ 681,909</b>	<b>645,436</b>
<b>Liabilities</b>		
Provision for unpaid claims and adjustment expenses (note 9)	\$ 468,493	447,912
Unearned premiums (note 10)	769	749
Due to reinsurers	612	591
Due to insureds	265	66
Due to Law Society of Upper Canada (note 12)	-	3
Expenses due and accrued	1,635	1,526
Income taxes due and accrued	1,054	4,312
Other taxes due and accrued	456	402
	<b>\$ 473,284</b>	<b>455,561</b>
<b>Equity</b>		
Capital stock (note 17)	\$ 5,000	5,000
Contributed surplus (note 17)	30,645	30,645
Retained earnings	145,566	129,076
Accumulated other comprehensive income	27,414	25,154
	<b>208,625</b>	<b>189,875</b>
<b>Total liabilities and equity</b>	<b>\$ 681,909</b>	<b>645,436</b>

Accompanying notes are an integral part of the financial statements.

On behalf of the Board

*K. Waters*

Kathleen A. Waters  
Director

*Susan T. McGrath*

Susan T. McGrath  
Director

# Statement of Profit or Loss

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Revenue</b>		
Gross written premiums	\$ 122,149	113,561
Premiums ceded to reinsurers (note 11)	(7,229)	(7,051)
Net written premiums	114,920	106,510
(Increase) decrease in unearned premiums (note 10)	(20)	(26)
Net premiums earned	<b>114,900</b>	<b>106,484</b>
Net investment income (note 5)	26,472	16,255
Ceded commissions	1,679	1,535
	<b>\$ 143,051</b>	<b>124,274</b>
<b>Expenses</b>		
Gross claims and adjustment expenses (note 9)	\$ 104,847	99,178
Reinsurers' share of claims and adjustment expenses	(5,262)	(2,475)
Net claims and adjustment expenses	99,585	96,703
Operating expenses (note 15)	16,830	16,330
Premium taxes	3,665	3,408
	<b>120,080</b>	<b>116,441</b>
<b>Profit (loss) before income taxes</b>	<b>\$ 22,971</b>	<b>7,833</b>
Income tax expense (recovery) (note 14)		
Current	\$ 6,220	2,126
Deferred	(309)	(226)
	<b>5,911</b>	<b>1,900</b>
<b>Profit (loss)</b>	<b>\$ 17,060</b>	<b>5,933</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Comprehensive Income

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Profit (loss)</b>	<b>\$ 17,060</b>	<b>5,933</b>
Other comprehensive income (loss), net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit obligation, net of income tax expense (recovery) of (\$206) [2013: (\$174)]	(570)	480
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<u>Available-for-sale assets</u>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of \$2,517 (2013: \$5,780)	6,979	16,034
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$1,929) [2013: (\$1,618)]	(5,349)	(4,486)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$227 (2013: \$226) (note 5)	630	625
<b>Other comprehensive income (loss)</b>	<b>1,690</b>	<b>12,653</b>
<b>Comprehensive income</b>	<b>\$ 18,750</b>	<b>18,586</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Changes In Equity

Stated in thousands of Canadian dollars

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2012</b>	<b>\$ 5,000</b>	<b>30,645</b>	<b>122,663</b>	<b>12,981</b>	<b>171,289</b>
Total comprehensive income for the year	-	-	5,933	12,653	18,586
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	480	(480)	-
<b>Balance at December 31, 2013</b>	<b>5,000</b>	<b>30,645</b>	<b>129,076</b>	<b>25,154</b>	<b>189,875</b>
Total comprehensive income for the year	-	-	17,060	1,690	18,750
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	(570)	570	-
<b>Balance at December 31, 2014</b>	<b>\$ 5,000</b>	<b>30,645</b>	<b>145,566</b>	<b>27,414</b>	<b>208,625</b>

The aggregate of retained earnings and accumulated other comprehensive income as at December 31, 2014 is \$172,980 (December 31, 2013: \$154,230).

Accompanying notes are an integral part of the financial statements.

# Statement of Cash Flows

Stated in thousands of Canadian dollars

For the year ended December 31	2014	2013
<b>Operating Activities</b>		
Profit (loss)	\$ 17,060	5,933
Items not affecting cash:		
Deferred income taxes	(309)	(226)
Amortization of property and equipment	728	815
Realized (gains) losses on disposition or impairment	(6,588)	(4,712)
Amortization of premiums and discounts on bonds	(2,159)	(2,503)
Changes in unrealized (gains) losses	(2,333)	6,003
	6,399	5,310
Changes in non-cash working capital balances:		
Investment income due and accrued	124	(234)
Due from reinsurers	(396)	2,564
Due from insureds	317	(428)
Due from the Law Society of Upper Canada	(6,626)	(2,562)
Reinsurers' share of provision for unpaid claims and adjustment expenses	(4,413)	(551)
Other receivables	15	(374)
Other assets	(2)	(398)
Income taxes due and accrued (recoverable)	(4,073)	2,595
Provision for unpaid claims and adjustment expenses	20,581	14,583
Unearned premiums	20	26
Expenses due and accrued	109	(108)
Other taxes due and accrued	54	(10)
<b>Net cash inflow from operating activities</b>	<b>\$ 12,109</b>	<b>20,413</b>
<b>Investing Activities</b>		
Purchases of property and equipment	\$ (193)	(173)
Purchases of intangible asset	(1,028)	-
Purchases of investments	(226,092)	(254,038)
Proceeds from sales and maturities of investments	218,007	229,946
<b>Net cash outflow from investing activities</b>	<b>\$ (9,306)</b>	<b>(24,265)</b>
Net change in cash and cash equivalents during the year	2,803	(3,852)
Cash and cash equivalents, beginning of year	14,525	18,377
<b>Cash and cash equivalents, end of year</b>	<b>\$ 17,328</b>	<b>14,525</b>
<b>Cash and cash equivalents at end of year consists of:</b>		
Cash	9,353	10,325
Cash equivalents	7,975	4,200
	<b>\$ 17,328</b>	<b>14,525</b>
<b>Supplemental disclosure of cash flow information:</b>		
Income taxes paid	\$ 10,293	2,206
Interest received	\$ 13,614	13,119
Dividends received	\$ 2,825	2,602

Accompanying notes are an integral part of the financial statements.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 1. Nature of Operations

Lawyers' Professional Indemnity Company (the "Company") is an insurance company, incorporated on March 14, 1990 under the *Corporations Act* (Ontario) and licensed to provide lawyers professional liability insurance in Ontario and title insurance in all provinces and territories in Canada. The Company is a wholly-owned subsidiary of the Law Society of Upper Canada (the "Law Society"), which is the governing body for lawyers in Ontario. The Company's registered office is located at 250 Yonge Street, Toronto, Ontario, Canada.

## 2. Basis of Preparation and Significant Accounting Policies

These financial statements have been prepared under the *Insurance Act* (Ontario) and related regulations which require that, except as otherwise specified by the Company's primary insurance regulator, the Financial Services Commission of Ontario ("FSCO"), the financial statements of the Company are to be prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

These financial statements have been prepared in accordance with accounting standards issued and effective on or before December 31, 2014. None of the accounting requirements of FSCO represent exceptions to IFRS. These financial statements were authorized for issuance by the Company's Board of Directors on February 25, 2015.

The significant accounting policies used in the preparation of these financial statements are summarized below. These accounting policies conform, in all material respects, to IFRS.

### Basis of measurement

The financial statements have been prepared under the historical cost basis, except for certain financial instruments that are measured at the end of each reporting period, as explained in the accounting policies below. Historical cost is generally based on the fair value of the consideration given for goods and services.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, regardless of whether that price is directly observable or estimated using another valuation technique. In estimating the fair value of an asset or liability, the Company takes into account the characteristics of the asset or liability that market participants would likely take into account when pricing the asset or liability at the measurement date. A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. Fair value for measurement and/or disclosure purposes in these financial statements is determined on such a basis, except for example, lease transactions that are within the scope of IAS 17 "*Leases*", and measurements that have some similarities to fair value but are not fair value, such as value in use in IAS 36 "*Impairment of Assets*".

The valuation process includes utilizing market driven fair value measurements from active markets where available, considering other observable and unobservable inputs and employing valuation techniques which make use of current market data. Considerable judgement may be required in interpreting market data used to develop the estimates of fair value. Accordingly, the estimates presented in these financial statements are not necessarily indicative of the amounts that would be realized in a current market exchange.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The Company utilizes a fair value hierarchy to categorize the inputs used in valuation techniques to measure fair value, which prioritizes these inputs into three broad levels. The level in the fair value hierarchy within which the fair value measurement is categorized in its entirety is determined on the basis of the lowest level input that is significant to the fair value measurement in its entirety. For this purpose, the significance of an input is assessed against the fair value measurement in its entirety. The three levels of the fair value hierarchy are:

## **Level 1 – Quoted market prices in active markets**

Inputs to Level 1, the highest level of the hierarchy, reflect fair values that are quoted prices (unadjusted) in active markets for identical assets and liabilities. An active market is considered to be one in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. Level 1 assets and liabilities include debt and equity securities, quoted unit trusts and derivative contracts that are traded in an active exchange market, as well as certain government and agency mortgage-backed debt securities that are highly liquid and are actively traded in over-the-counter markets.

## **Level 2 – Modelled with significant observable market inputs**

Inputs to Level 2 fair values are inputs, other than quoted prices within Level 1 prices, that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Level 2 inputs include: quoted prices for similar (i.e. not identical) assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active, the prices are not current, or price quotations vary substantially either over time or among market makers, or in which little information is released publicly; inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment spreads, loss severities, credit risks, and default rates); and inputs that are derived principally from, or corroborated by, observable market data by correlation or other means (market corroborated inputs). Valuations incorporate credit risk by adjusting the spread above the yield curve for government treasury securities for the appropriate amount of credit risk for each issuer, based on observed market transactions. To the extent observed market spreads are either not used in valuing a security, or do not fully reflect liquidity risk, the valuation methodology reflects a liquidity premium. Examples of these are securities measured using discounted cash flow models based on market observable swap yields, and listed debt or equity securities in a market that is inactive. This category generally includes government and agency mortgage-backed debt securities and corporate debt securities.

## **Level 3 – Modelled with significant unobservable market inputs**

Inputs to Level 3 are unobservable, supported by little or no market activity, and are significant to the fair value of the assets or liabilities. Unobservable inputs may have been used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date (or market information for the inputs to any valuation models). As such, unobservable inputs reflect the assumptions the business unit considers that market participants would use in pricing the asset or liability. Where estimates are used, these are based on a combination of independent third-party evidence and internally developed models, calibrated to market observable data where possible. Level 3 assets and liabilities generally include certain private equity investments, certain asset-backed securities, highly structured, complex or long-dated derivative contracts, and certain collateralized debt obligations where independent pricing information was not able to be obtained for a significant portion of the underlying assets.

## **Use of estimates and judgments made by management**

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates and changes in estimates are recorded in the reporting period in which they are determined. Key estimates are discussed in the following accounting policies and applicable notes.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Key areas where management has made difficult, complex or subjective judgments in the process of applying the Company's accounting policies, often as a result of matters that are inherently uncertain, include:

Impairment	Note 5c
Fair value measurements	Note 6
Property and equipment	Note 7
Unpaid claims and adjustment expenses	Note 9
Employee future benefits	Note 13
Income taxes	Note 14

## Financial instruments – recognition and measurement

Financial assets are classified as fair value through profit or loss ("FVTPL"), available-for-sale, held to maturity or loans and receivables. Financial liabilities are classified as FVTPL or as other financial liabilities. These classifications are determined based on the characteristics of the financial assets and liabilities, the company's choice and/or the company's intent and ability. As permitted under the IFRS standards, a company has the ability to designate any financial instrument irrevocably, on initial recognition or adoption of the standards, as FVTPL provided certain criteria are met.

The Company's financial assets and liabilities are measured on the statement of financial position at fair value on initial recognition and are subsequently measured at fair value or amortized cost depending on their classification as indicated below.

Transaction costs for FVTPL investments are expensed in the current period, and for all other categories of investments are capitalized and, when applicable, amortized over the expected life of the investment. The Company accounts for the purchase and sale of securities using trade date accounting. Realized gains or losses on disposition are determined on an average cost basis.

The effective interest method is used to calculate amortization/accretion of premiums or discounts on fixed income securities over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts (including all fees and points paid or received that form an integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the fixed income security, or, where appropriate, a shorter period, to the net carrying amount on initial recognition.

## Financial assets at fair value through profit or loss

Financial assets at FVTPL are measured at fair value in the statement of financial position with realized gains and losses and net changes in unrealized gains and losses recorded in net investment income along with dividends and interest earned.

The Company maintains an investment portfolio, referred to as the cash-flow matched portfolio, which is designated as FVTPL. This portfolio is invested with the primary objective of matching the cash inflows from fixed income investment securities with the expected timing and magnitude of future payments of claims and adjustment expenses. The cash-flow matched portfolio represents a significant component of the Company's risk management strategy for meeting its claims obligations. The designation of the financial assets in the cash-flow matched investment portfolio as FVTPL is intended to significantly reduce the measurement or recognition inconsistency that would otherwise arise from measuring assets, liabilities, and gains and losses under different accounting methods. Interest rate movements cause changes in the values of the investment portfolio and of discounted estimated future claims liabilities. As the changes in values of the matched portfolio and of the discounted estimated future claims liabilities flow through profit or loss, the result is an offset of a significant portion of these changes.

Cash and cash equivalents are also classified as FVTPL. Cash and cash equivalents consist of cash on deposit and short-term investments that mature in three months or less from the date of acquisition. The net gain or loss recognized incorporates any interest earned on the financial asset.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Available-for-sale financial assets

Financial assets classified as available-for-sale are measured at fair value in the statement of financial position. Net interest income, including amortization of premiums and the accretion of discounts, are recorded in investment income in profit or loss. Dividend income on common and preferred shares is included in investment income on the ex-dividend date. Changes in fair value of available-for-sale fixed income securities resulting from changes to foreign exchange rates are recognized in net investment income as incurred. Changes in the fair value of available-for-sale fixed income securities related to the underlying investment in its issued currency, as well as all elements of fair value changes of available-for-sale equity securities, are recorded to unrealized gains and losses in accumulated other comprehensive income ("AOCI") until disposition or impairment is recognized, at which time the cumulative gain or loss is reclassified to net investment income in profit or loss. When a reliable estimate of fair value cannot be determined for equity securities that do not have quoted market prices in an active market, the security is valued at cost.

Financial assets in the Company's surplus portfolio (consisting of all investments outside the cash-flow matched portfolio), including fixed income securities and equities, are designated as available-for-sale.

## Other financial assets and liabilities

The Company has not designated any financial assets as held to maturity. Loans and receivables and other financial liabilities are carried at amortized cost using the effective interest rate method. Given the short term nature of other financial assets and other financial liabilities, amortized cost approximates fair value.

## Property and equipment

Property and equipment are recorded in the statement of financial position at cost less accumulated amortization. Amortization is charged to operating expense on a straight-line basis over the estimated useful lives of the assets as follows:

Furniture and fixtures	5 years
Computer equipment	3 years
Computer software	1 to 3 years
Leasehold improvements	Term of lease

An item of property and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising from the disposal or retirement of an item of property and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized immediately in profit or loss.

## Intangible Assets

Intangible assets with finite useful lives that are acquired separately are carried at cost, less any applicable accumulated amortization and accumulated impairment losses. Once an acquired intangible asset is available for use, amortization is recognized on a straight-line basis over its estimated useful life. The estimated useful life and amortization method are reviewed at the end of each reporting period, with the effect of any changes in estimate being accounted for on a prospective basis.

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from its use or disposal. Gains and losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying cost of the asset, are recognized in profit and loss when the asset is derecognized.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Impairment

### Financial Assets

Available-for-sale financial assets are tested for impairment on a quarterly basis. Objective evidence of impairment for fixed income securities includes financial difficulty of the issuer, bankruptcy or defaults and delinquency in payments of interest or principal. Objective evidence of impairment for equities includes a significant or prolonged decline in fair value of the equity below cost or changes with adverse effects that have taken place in the technological, market, economic or legal environment in which the issuer operates that indicates the cost of the security may not be recovered. In general, an equity security is considered impaired if the decline in fair value relative to cost has been either at least 25% for a continuous nine-month period or more than 40% at the end of the reporting period, or been in an unrealised loss position for a continuous period of 18 months.

Where there is objective evidence that an available-for-sale asset is impaired, the loss accumulated in AOCI is reclassified to net investment income. Once an impairment loss is recorded to profit or loss, the loss can only be reversed into income for fixed income securities to the extent a subsequent increase in fair value can be objectively correlated to an event occurring after the loss was recognized. Following impairment loss recognition, further decreases in fair value are recorded as an impairment loss to profit or loss, while a subsequent recovery in fair value for equity securities, and fixed income securities that do not qualify for loss reversal treatment, are recorded to other comprehensive income ("OCI"). Interest continues to be accrued, but at the effective rate of interest based on the fair value at impairment, and dividends of equity securities are recognized in income when the Company's right to receive payment has been established.

### Non-Financial Assets

At the end of each reporting period, the Company reviews the carrying amount of its property and equipment, intangible assets and other non-financial assets to determine whether there is any indication that those assets have suffered an impairment loss. If any indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment loss, if any. When it is not possible to estimate the recoverable amount of an individual asset, the Company estimates the recoverable amount of the cash-generating unit to which the asset belongs. Intangible assets not yet available for use are tested for impairment at least annually, and whenever there is an indication that the asset may be impaired.

Recoverable amount is the higher of fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset for which the estimates of future cash flows have not been adjusted. If the recoverable amount of an asset (or cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (or cash-generating unit) is reduced to its recoverable amount. An impairment loss is recognized immediately in profit or loss. If an impairment loss subsequently reverses, the carrying amount of the asset (or cash-generating unit) is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognized for the asset (or cash-generating unit) in prior years. A reversal of impairment loss is recognized immediately in profit or loss.

## Foreign currency translation

The Canadian dollar is the functional and presentation currency of the Company. Transactions in foreign currencies are translated into Canadian dollars at rates of exchange at the time of such transactions. Monetary assets and liabilities are translated at current rates of exchange, with all translation differences recognized in investment income in the current period. Non-monetary assets and liabilities are translated at the date the fair value is determined, with the translation differences recognized in AOCI until disposition or impairment of the underlying asset or liability.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Premium-related balances

The Company issues two types of professional liability policies: a primary lawyer's errors and omissions policy and an excess policy increasing the insurance coverage limit to a maximum of \$9 million per claim/\$9 million in the aggregate above the \$1 million per claim/\$2 million aggregate levels provided by the primary policy; and a title insurance policy. Insurance policies written under the professional liability insurance program are effective on a calendar year basis. Professional liability insurance premium income is earned on a *pro rata* basis over the term of coverage of the underlying insurance policies, which is generally one year, except for policies for retired lawyers, which have terms of up to five years. Title insurance premiums are earned at the inception date of the policies.

Unearned premiums reported on the statement of financial position represent the portion of premiums written that relate to the unexpired risk portion of the policy at the end of the reporting period.

Premiums receivable are recorded in the statement of financial position as amounts due from insureds, net of any required provision for doubtful amounts. Premiums received from insureds in advance of the effective date of the insurance policy are recorded as amounts due to insureds in the statement of financial position.

The Company defers policy acquisition expenses, primarily premium taxes on its written professional liability insurance premiums, to the extent these costs are considered recoverable. These costs are expensed on the same basis that the related premiums are earned. The method to determine recoverability of deferred policy acquisition expenses takes into consideration future claims and adjustment expenses to be incurred as premiums are earned and anticipated net investment income. Deferred policy acquisition expenses are not material at year-end, and therefore the Company's policy is to not recognize an asset on the statement of financial position.

## Unpaid claims and adjustment expenses

The provision for unpaid claims and adjustment expenses includes an estimate of the cost of projected final settlements of insurance claims incurred on or before the date of the statement of financial position, consisting of case estimates prepared by claims adjusters and a provision for incurred but not reported claims ("IBNR") calculated based on accepted actuarial practice in Canada as required by the Canadian Institute of Actuaries ("CIA"). These estimates include the full amount of all expected expenses, including related investigation, settlement and adjustment expenses, net of any anticipated salvage and subrogation recoveries. The professional liability insurance policy requires insureds to pay deductibles to the maximum extent of \$25,000 on each individual claim, subject to an additional \$10,000 for certain claims involving an administrative dismissal. Expected deductible recoveries on paid and unpaid claims are recognized net of any required provision for uncollectible accounts at the same time as the related claims liability.

The provision takes into consideration the time value of money using discount rates based on the estimated market value based yield to maturity of the underlying assets backing these liabilities, with reductions for estimated investment-related expense and credit risk. A provision for adverse deviations ("PfAD") is then added to the discounted liabilities, to allow for possible deterioration of experience in claims development, recoverability of reinsurance balances and investment risk, in order to generate the actuarial present value.

These estimates of future claims payments and adjustment expenses are subject to uncertainty and are selected from a wide range of possible outcomes. All provisions are periodically reviewed and evaluated in light of emerging claims experience and changing circumstances. The resulting changes in estimates of the ultimate liability are reported as net claims and adjustment expenses in the reporting period in which they are determined.

## Reinsurance

In the normal course of business, the Company enters into per claim and excess of loss reinsurance contracts with other insurers in order to limit its net exposure to significant losses. Amounts relating to reinsurance in respect of the premiums and claims-related balances in the statements of financial position and profit or loss are recorded separately.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Premiums ceded to reinsurers are presented before deduction of broker commission and any premium-based taxes or duty. Amounts recoverable from reinsurers are estimated and recognized in a manner consistent with the Company's method of determining the underlying provision for unpaid claims and adjustment expenses covered by the reinsurance contract. Amounts recoverable from reinsurers are assessed for indicators of impairment at the end of each reporting period. An impairment loss is recognized and the amount recoverable from reinsurers is reduced by the amount by which the carrying value exceeds the expected recoverable amount under the impairment analysis.

Ceding commissions, which relate to amounts received from the Company's reinsurers on the placement of its reinsurance contracts, is earned into income on a *pro rata* basis over the contract period.

## Income taxes

Income tax expense is recognized in profit or loss and the statement of profit or loss and other comprehensive income. Current tax is based on taxable income which differs from profit or loss as reported in the statement of profit or loss and statement of profit or loss and other comprehensive income because of items of income or expense that are taxable or deductible in other years and items that are never taxable or deductible. Current tax includes any adjustments in respect of prior years.

Deferred tax assets are generally recognized for all deductible temporary income tax differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilized. Deferred tax liabilities are generally recognized for all taxable temporary differences. Deferred tax assets and liabilities are determined based on the enacted or substantively enacted tax laws and rates that are anticipated to apply in the period of realization. The measurement of deferred tax assets and liabilities utilizes the liability method, reflecting the tax consequences that would follow from the manner in which the Company expects to recover or settle the carrying amount of the related assets and liabilities. The carrying amount of the deferred tax asset is reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Income tax assets and liabilities are offset when the income taxes are levied by the same taxation authority and there is a legally enforceable right to offset current tax assets with current tax liabilities.

## Employee benefits

The Company maintains a defined contribution pension plan for its employees as well as a supplemental defined benefit pension plan for certain designated employees, which provides benefits in excess of the benefits provided by the Company's defined contribution pension plan. For the supplemental defined benefit pension plan, the benefit obligation is determined using the projected unit credit method. Actuarial valuations are carried out at the end of each annual reporting period using management's assumptions on items such as discount rates, expected asset performance, salary growth and retirement ages of employees. The discount rate is determined based on the market yields of high quality, mid-duration corporate fixed income securities.

Defined contribution plan expenses are recognized in the reporting period in which services are rendered. Regarding the supplemental defined benefit pension plan, remeasurements comprising actuarial gains and losses, the effect of the changes to the asset ceiling (if applicable) and the return on plan assets (excluding net interest cost), is reflected immediately in the statement of profit or loss and other comprehensive income with a charge or credit recognized in OCI in the period in which they occur. Remeasurements recognized in OCI are transferred immediately to retained earnings and will not be reclassified to profit or loss. Past service cost is recognized in profit or loss in the period of a plan amendment. Net interest is calculated by applying the discount rate at the beginning of the period to the net defined benefit liability or asset. Defined benefit costs are categorized as follows: service cost (including current service, past service cost, as well as gains or losses on curtailments and settlements), net interest expense or income, and remeasurements. The Company presents the first two components of defined benefit cost as part of operating expenses in the statement of profit or loss.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The retirement benefit obligation recognized in the statement of financial position represents the actual deficit or surplus in the Company's defined benefit pension plan. Any surplus resulting from this calculation is limited to the present value of any economic benefits available in the form of refunds from the plan or reductions in future contributions to the plan.

## 3. Application of New and Revised IFRSs Relevant to the Company

In the current year, the Company has applied a number of new and revised IFRSs issued by the IASB that are mandatorily effective for an accounting period that begins on or after January 1, 2014.

### a) Amendments to IAS 32 "*Offsetting Financial Assets and Financial Liabilities*"

The Company has applied the amendments to IAS 32 for the first time in the current year, and they have been applied retrospectively. The amendments clarify the requirements relating to the offset of financial assets and financial liabilities. Specifically, the amendments clarify the meaning of "currently has a legal enforceable right of offset" and "simultaneous realisation and settlement". The application of the amendments to IAS 32 has not had any material impact on the amounts recognized or disclosed in the financial statements.

### b) IFRIC 21 "*Levies*"

The Company has applied IFRIC 21 for the first time in the current year, and it has been applied retrospectively. IFRIC 21 "*Levies*" was issued to introduce an interpretation of IAS 37 "*Provisions, Contingent Liabilities and Contingent Assets*" on the accounting for levies (except income taxes) imposed by governments, government agencies and similar bodies. IFRIC 21 defines a levy, and clarifies that the obligating event that gives rise to a liability to pay a levy is the activity described in the relevant legislation that triggers the payment of the levy. The interpretation provides guidance on how many different levy arrangements should be accounted for, in particular, it clarifies that neither economic compulsion nor the going concern basis of financial statement preparation implies that an entity has a present obligation to pay a levy that will be triggered by operating in a future period. The liability to pay a levy is recognized progressively if the obligating event occurs over a period of time. The application of IFRIC 21 has not had any material impact on the amounts recognized or disclosed in the financial statements.

## 4. New and Revised IFRSs Issued but not yet Effective

The Company has not applied the following new and revised IFRSs that have been issued but are not yet effective:

### a) IFRS 9 "*Financial Instruments*"

IFRS 9, issued in November 2009 as part of a three-phase project to replace IAS 39 "*Financial Instruments: Recognition and Measurement*", introduced new requirements for the classification and measurement of financial assets. IFRS 9 was subsequently amended in October 2010 to include requirements for the classification and measurement of financial liabilities and for derecognition, and in November 2013 to include the new requirements for general hedge accounting. Another revised version of IFRS 9 was issued in July 2014 mainly to include impairment requirements for financial assets as well as limited amendments to the classification and measurements by introducing fair value through other comprehensive income ("FVOCI") measurement category for certain simple debt instruments.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Pursuant to IFRS 9, all recognized financial assets that are within the scope of IAS 39 are required to be subsequently measured at amortized cost or fair value. Specifically, debt instruments that are held within a business model whose objective is to collect the contractual cash flows, and that have contractual cash flows that are solely payments of principal and interest on the principal outstanding are generally measured at amortized cost. Debt instruments that are held within a business model whose objective is achieved both by collecting contractual cash flows and selling financial assets, and that have contractual terms that give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding, are measured at FVOCI. All other debt securities, as well as equity securities, are measured at FVTPL. Entities may make an irrevocable election to present subsequent changes in the fair value of an equity security in OCI, with only dividend income generally recognized in profit or loss. In addition, under the fair value option, entities may elect for amortized cost or FVOCI debt securities to be designated as FVTPL.

With regard to the measurement of financial liabilities designated as FVTPL, IFRS 9 requires that the amount of change in the fair value of the financial liability that is attributable to changes in the credit risk of that liability is to be recognized in OCI, unless the recognition of the effects of changes in the liability's credit risk in OCI would create or enlarge an accounting mismatch in profit or loss. Under IAS 39, the entire amount of the change in the fair value of the financial liability designated as FVTPL is recognized in profit or loss.

With regards to debt securities measured at amortized cost or FVOCI, IFRS 9 requires an expected credit loss model for determining impairment, as opposed to an incurred credit loss model under IAS 39. The expected credit loss model requires an entity to account for expected credit losses and changes in those expected credit losses at each reporting date to reflect changes in credit risk since initial recognition. In other words, it is no longer necessary for a credit event to have occurred before impairment losses are recognized. Under IFRS 9, impairment is not considered for equity securities.

IFRS 9 as revised (2014) is effective for annual periods beginning on or after January 1, 2018. The Company anticipates that the application of IFRS 9 in the future may have a material impact on amounts reported in respect of the Company's financial assets. However, it is not practicable to provide a reasonable estimate of the effect of IFRS 9 until the Company undertakes a detailed review.

## **b) Amendments to IAS 19 “*Defined Benefit Plans: Employee Contributions*”**

The amendments to IAS 19 clarify how an entity should account for contributions made by employees or third parties to defined benefit plans, based on whether those contributions are dependent of the number of years of service provided by the employee. For contributions that are independent of the number of years of service, the entity may either recognize the contributions as a reduction in the service cost in the period in which the related service is rendered, or attribute them to the employees' periods of service using the projected unit credit method; whereas for contributions that are dependent on the number of years of service, the entity is required to attribute them to the employees' periods of service. These amendments are effective for accounting periods beginning on or after July 1, 2014. The Company does not anticipate a significant impact from the implementation of these amendments.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 5. Investments

### a) Summary

The tables below provide details of the amortized cost and fair value of the Company's investments, classified by accounting category and investment type:

December 31, 2014				
	Cost or amortized cost	Gross unrealized gains	Gross unrealized losses and impairments	Fair value
Available-for-sale				
Fixed income securities	\$ 138,248	4,662	(28)	142,882
Common equities	66,840	30,828	(2,999)	94,669
	<u>205,088</u>	<u>35,490</u>	<u>(3,027)</u>	<u>237,551</u>
Designated as FVTPL				
Fixed income securities	\$ 348,878	11,186	(851)	359,213
Preferred equities	615	-	(99)	516
	<u>349,493</u>	<u>11,186</u>	<u>(950)</u>	<u>359,729</u>
<b>Total</b>	<b>\$ 554,581</b>	<b>46,676</b>	<b>(3,977)</b>	<b>597,280</b>
Reconciled in aggregate to asset classes as follows:				
Fixed income securities	\$ 487,126	15,848	(879)	502,095
Equities	67,455	30,828	(3,098)	95,185
<b>Total</b>	<b>\$ 554,581</b>	<b>46,676</b>	<b>(3,977)</b>	<b>597,280</b>

December 31, 2013				
	Cost or amortized cost	Gross unrealized gains	Gross unrealized losses and impairments	Fair value
Available-for-sale				
Fixed income securities	\$ 115,700	2,956	(227)	118,429
Common equities	63,801	29,433	(2,779)	90,455
	<u>179,501</u>	<u>32,389</u>	<u>(3,006)</u>	<u>208,884</u>
Designated as FVTPL				
Fixed income securities	\$ 357,638	9,365	(1,347)	365,656
Preferred equities	615	-	(116)	499
	<u>358,253</u>	<u>9,365</u>	<u>(1,463)</u>	<u>366,155</u>
<b>Total</b>	<b>\$ 537,754</b>	<b>41,754</b>	<b>(4,469)</b>	<b>575,039</b>
Reconciled in aggregate to asset classes as follows:				
Fixed income securities	\$ 473,338	12,321	(1,574)	484,085
Equities	64,416	29,433	(2,895)	90,954
<b>Total</b>	<b>\$ 537,754</b>	<b>41,754</b>	<b>(4,469)</b>	<b>575,039</b>

In the above tables, the gross unrealized figures for common equities securities includes recognized impairments. As at December 31, 2014, of the total cumulative impairments of \$5,339,916 (December 31, 2013: \$5,335,662) an amount of \$3,975,633 is included in gross unrealized losses (December 31, 2013: \$3,248,254) and an amount of \$1,364,283 is included in gross unrealized gains (December 31, 2013: \$2,087,408). For additional details, see note 5c.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## b) Maturity profile of fixed income securities

The maturity profile of fixed income securities and its analysis by type of issuer is as follows:

	December 31, 2014			Total
	Within 1 year	1 to 5 years	Over 5 years	
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ -	23,482	309	23,791
Canadian provincial and municipal governments	1,741	76,846	14,838	93,425
Mortgage backed securities	206	1,534	-	1,740
Corporate debt	903	14,880	8,143	23,926
	<u>2,850</u>	<u>116,742</u>	<u>23,290</u>	<u>142,882</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 29,186	17,906	-	47,092
Canadian provincial and municipal governments	6,304	30,574	43,611	80,489
Mortgage backed securities	6,008	14,639	-	20,647
Corporate debt	39,388	72,596	99,001	210,985
	<u>80,886</u>	<u>135,715</u>	<u>142,612</u>	<u>359,213</u>
Fixed income securities	<b>\$ 83,736</b>	<b>252,457</b>	<b>165,902</b>	<b>502,095</b>
Percent of total	17%	50%	33%	100%

	December 31, 2013			Total
	Within 1 year	1 to 5 years	Over 5 years	
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 50	16,420	323	16,793
Canadian provincial and municipal governments	-	57,895	22,867	80,762
Mortgage backed securities	83	1,869	-	1,952
Corporate debt	502	9,190	9,230	18,922
	<u>635</u>	<u>85,374</u>	<u>32,420</u>	<u>118,429</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 28,228	21,830	-	50,058
Canadian provincial and municipal governments	22,753	34,905	44,439	102,097
Mortgage backed securities	361	10,352	-	10,713
Corporate debt	27,642	83,286	91,860	202,788
	<u>78,984</u>	<u>150,373</u>	<u>136,299</u>	<u>365,656</u>
Fixed income securities	<b>\$ 79,619</b>	<b>235,747</b>	<b>168,719</b>	<b>484,085</b>
Percent of total	16%	49%	35%	100%

The weighted average duration of fixed income securities as at December 31, 2014 is 2.77 years (December 31, 2013: 3.10 years). The effective yield on fixed income securities as at December 31, 2014 is 2.67% (December 31, 2013: 2.79%).

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## c) Impairment Analysis

Management performs a quarterly analysis of the Company's available-for-sale investments to determine whether there is objective evidence that the estimated cash flows of the investments have been affected. The analysis includes the following procedures as deemed appropriate by management:

- identifying all security holdings in unrealized loss positions that have existed for a length of time that management believes may impact the recoverability of the investment;
- identifying all security holdings in unrealized loss positions that have an unrealized loss magnitude that management believes may impact the recoverability of the investment;
- reviewing the trading range of certain investments over the preceding calendar period;
- assessing whether any credit losses are expected for those investments. This assessment includes consideration of, among other things, all available information and factors having a bearing upon collectability such as changes to credit rating by rating agencies, financial condition of the issuer, expected cash flows and value of any underlying collateral;
- assessing whether declines in fair value for any fixed income securities represent objective evidence of impairment based on their investment grade credit ratings from third party security rating agencies;
- assessing whether declines in fair value for any fixed income securities with non-investment grade credit rating represent objective evidence of impairment based on the history of its debt service record; and
- obtaining a valuation analysis from third party investment managers regarding the intrinsic value of these holdings based on their knowledge, experience and other market based valuation techniques.

As a result of the impairment analysis performed by management, \$857,061 in write-downs to various equity securities were required for the year ended December 31, 2014 (2013: \$850,680).

The movements in cumulative impairment write-downs on available-for-sale investments for the years ended December 31 were as follows:

	2014	2013
Balance, as at January 1	\$ 5,336	5,174
Increase for the year charged to the income statement	857	851
Release upon disposition	(853)	(689)
<b>Balance, as at December 31</b>	<b>\$ 5,340</b>	<b>5,336</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Net investment income

Net investment income arising from investments designated as FVTPL and classified as available-for-sale recorded in profit or loss for the year ended December 31 is as follows:

	2014			2013		
	Designated as FVTPL	Available-for-sale	Total	Designated as FVTPL	Available-for-sale	Total
Interest	\$ 12,166	3,480	15,646	12,777	3,042	15,819
Dividends	21	2,817	2,838	21	2,613	2,634
Net realized gains (losses)	307	7,278	7,585	(475)	6,104	5,629
Change in net unrealized gains (losses)	2,333	97	2,430	(6,003)	67	(5,936)
Impairments	-	(857)	(857)	-	(851)	(851)
	14,827	12,815	27,642	6,320	10,975	17,295
Less: Investment expenses	(781)	(389)	(1,170)	(388)	(652)	(1,040)
Net investment income	<b>\$ 14,046</b>	<b>12,426</b>	<b>26,472</b>	<b>5,932</b>	<b>10,323</b>	<b>16,255</b>

## e) Realized and change in unrealized gains and losses

The realized gains (losses) and increase (decrease) in the unrealized gains and losses of the Company's available-for-sale investments recorded in OCI for the year ended December 31 are as follows:

	2014					
	Net realized gains (losses)			Increase (decrease) in unrealized gains and losses		
	Gross	Tax	Net	Gross	Tax	Net
Fixed income securities	\$ 415	(110)	305	1,905	(505)	1,400
Equities	6,863	(1,819)	5,044	1,170	(310)	860
Total	<b>\$ 7,278</b>	<b>(1,929)</b>	<b>5,349</b>	<b>3,075</b>	<b>(815)</b>	<b>2,260</b>

	2013					
	Net realized gains (losses)			Increase (decrease) in unrealized gains and losses		
	Gross	Tax	Net	Gross	Tax	Net
Fixed income securities	\$ 911	(241)	670	(2,235)	592	(1,643)
Equities	5,193	(1,377)	3,816	18,797	(4,981)	13,816
Total	<b>\$ 6,104</b>	<b>(1,618)</b>	<b>4,486</b>	<b>16,562</b>	<b>(4,389)</b>	<b>12,173</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 6. Fair Value Measurements of Financial Assets and Liabilities

The following tables present the fair value of the Company's financial assets and liabilities categorized by either recurring or non-recurring. The items presented below include related accrued interest or dividends, as appropriate.

As at December 31, 2014	Carrying amount				Fair value				
	Designated at fair value	Loans and receivables	Available-for-sale	Other financial liabilities	Total	Level 1	Level 2	Level 3	Total
<b>Financial assets measured at fair value (recurring basis)</b>									
Cash and cash equivalents	\$ 17,333	-	-	-	17,333	17,333	-	-	17,333
Fixed income securities	360,398	-	143,409	-	503,807	238,857	264,950	-	503,807
Common equities	-	-	94,958	-	94,958	94,958	-	-	94,958
Preferred equities	522	-	-	-	522	-	522	-	522
	378,253	-	238,367	-	616,620	351,148	265,472	-	616,620
<b>Financial assets measured at fair value (non-recurring basis)</b>									
Due from reinsurers	-	726	-	-	726	-	726	-	726
Due from insureds	-	1,909	-	-	1,909	-	1,909	-	1,909
Due from the Law Society of Upper Canada	-	6,623	-	-	6,623	-	6,623	-	6,623
Other receivables	-	1,404	-	-	1,404	-	1,404	-	1,404
Other assets	-	294	-	-	294	-	294	-	294
	-	10,956	-	-	10,956	-	10,956	-	10,956
<b>Financial liabilities measured at fair value (non-recurring basis)</b>									
Due to reinsurers	-	-	-	612	612	-	612	-	612
Due to insureds	-	-	-	265	265	-	265	-	265
Expenses due and accrued	-	-	-	1,635	1,635	-	1,635	-	1,635
Other taxes due and accrued	-	-	-	456	456	-	456	-	456
	-	-	-	2,968	2,968	-	2,968	-	2,968
<b>Total</b>	<b>\$ 378,253</b>	<b>10,956</b>	<b>238,367</b>	<b>(2,968)</b>	<b>624,608</b>	<b>351,148</b>	<b>273,460</b>	<b>-</b>	<b>624,608</b>

As at December 31, 2013	Carrying amount				Fair value				
	Designated at fair value	Loans and receivables	Available-for-sale	Other financial liabilities	Total	Level 1	Level 2	Level 3	Total
<b>Financial assets measured at fair value (recurring basis)</b>									
Cash and cash equivalents	\$ 14,525	-	-	-	14,525	14,525	-	-	14,525
Fixed income securities	367,033	-	118,897	-	485,930	244,017	241,913	-	485,930
Common equities	-	-	90,740	-	90,740	90,740	-	-	90,740
Preferred equities	505	-	-	-	505	-	505	-	505
	382,063	-	209,637	-	591,700	349,282	242,418	-	591,700
<b>Financial assets measured at fair value (non-recurring basis)</b>									
Due from reinsurers	-	309	-	-	309	-	309	-	309
Due from insureds	-	2,027	-	-	2,027	-	2,027	-	2,027
Other receivables	-	1,419	-	-	1,419	-	1,419	-	1,419
Other assets	-	280	-	-	280	-	280	-	280
	-	4,035	-	-	4,035	-	4,035	-	4,035
<b>Financial liabilities measured at fair value (non-recurring basis)</b>									
Due to reinsurers	-	-	-	591	591	-	591	-	591
Due to insureds	-	-	-	66	66	-	66	-	66
Due from the Law Society of Upper Canada	-	-	-	3	3	-	3	-	3
Expenses due and accrued	-	-	-	1,526	1,526	-	1,526	-	1,526
Other taxes due and accrued	-	-	-	402	402	-	402	-	402
	-	-	-	2,588	2,588	-	2,588	-	2,588
<b>Total</b>	<b>\$ 382,063</b>	<b>4,035</b>	<b>209,637</b>	<b>(2,588)</b>	<b>593,147</b>	<b>349,282</b>	<b>243,865</b>	<b>-</b>	<b>593,147</b>

There were no transfers between any levels during the year ended December 31, 2014 (2013: none).

Note that for financial instruments such as short term trade receivables and payables, the Company believes that their carrying amounts are reasonable approximations of fair value.

## Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

### 7. Property and Equipment

During the years ending December 31, details of the movement in the carrying values by class of property and equipment are as follows:

	Furniture and fixtures	Computer equipment	Computer software	Leasehold improvements	Total
January 1, 2013	\$ 57	562	204	2,012	2,835
Additions	7	90	62	14	173
Amortization	(31)	(292)	(119)	(373)	(815)
December 31, 2013	33	360	147	1,653	2,193
Additions	36	25	98	34	193
Amortization	(15)	(216)	(116)	(381)	(728)
December 31, 2014	\$ 54	169	129	1,306	1,658

Details of the cost and accumulated amortization of property and equipment are as follows:

	December 31, 2014			December 31, 2013		
	Cost	Accumulated amortization	Carrying value	Cost	Accumulated amortization	Carrying value
Furniture and fixtures	\$ 1,407	(1,353)	54	1,372	(1,339)	33
Computer equipment	2,065	(1,896)	169	2,040	(1,680)	360
Computer software	732	(603)	129	633	(486)	147
Leasehold improvements	3,441	(2,135)	1,306	3,407	(1,754)	1,653
<b>Total</b>	<b>\$ 7,645</b>	<b>(5,987)</b>	<b>1,658</b>	<b>7,452</b>	<b>(5,259)</b>	<b>2,193</b>

### 8. Intangible Asset

The Company's recognized intangible asset consists of a license. During the years ending December 31, details of the movement in the carrying values are as follows:

	2014	2013
<b>Cost</b>	-	-
Balance, beginning of year	\$ -	-
Additions from separate acquisitions	1,028	-
Additions from internal developments	-	-
Disposals or classified as held for sale	-	-
Balance, end of year	1,028	-
<b>Accumulated amortization and impairment</b>	-	-
Balance, beginning of year	-	-
Amortization expense	-	-
Disposals or classified as held for sale	-	-
Impairment losses	-	-
Balance, end of year	-	-
<b>Carrying amount</b>	<b>\$ 1,028</b>	<b>-</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 9. Provision for Unpaid Claims and Adjustment Expenses

### a) Nature of unpaid claims and adjustment expenses

The determination of the provision for unpaid claims and adjustment expenses is a complex process based on known facts, interpretations and judgment and is influenced by a variety of factors. These factors include the Company's own experience with similar cases and historical trends involving claim payment patterns, loss payments, pending levels of unpaid claims and adjustment expenses, product mix and concentration, claims severity and claim frequency patterns.

Other factors include the continually evolving and changing regulatory and legal environment, actuarial studies, professional experience and expertise of the Company's claim departments' personnel and independent adjusters retained to handle individual claims, the quality of the data used for projection purposes, existing claims management practices including claims handling and settlement practices, the effect of inflationary trends on future claims settlement costs, investment rates of return, court decisions and economic conditions. In addition, time can be a critical part of the provision determination, since the longer the span between the incidence of a loss and the settlement of the claim, the more potential for variation in the ultimate settlement amount. Accordingly, short-tailed claims, such as property claims, tend to be more reasonably predictable than long-tailed claims, such as professional liability and title claims.

The process of establishing the provision relies on the judgment and opinions of a large number of individuals, on historical precedents and trends, on prevailing legal, economic, social and regulatory trends and on expectations as to future developments. The provision reflects expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, together with a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors.

Consequently, the measurement of the ultimate settlement costs of claims to date that underlies the provision for unpaid claims and adjustment expenses, and any related recoveries for reinsurance and deductibles, involves estimates and measurement uncertainty. The amounts are based on estimates of future trends in claim severity and other factors which could vary as claims are settled. Variability can be caused by several factors including the emergence of additional information on claims, changes in judicial interpretation, significant changes in severity or frequency of claims from historical trends, and inclusion of exposures not contemplated at the time of policy inception. Ultimate costs incurred could vary from current estimates. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the methods of estimation that have been used will produce reasonable results given the current information.

### b) Methodologies and assumptions

The best estimates of future claims payments and adjustment expenses are determined based on one or more of the following actuarial methods: the Adler-Kline method, the chain ladder method, the frequency and severity method and the expected loss ratio method. Considerations in the choice of methods to estimate ultimate claims include, among other factors, the line of business, the number of years of experience and the relative maturity of the experience, and as such, reflect methods for lines of business with long settlement patterns and which are subject to the occurrence of large claims.

Each method involves tracking claims data by "policy year", which is the year in which such claims are made for the Company's professional liability policies, and the year in which such policies were written for its title policies. Claims paid and reported, gross and net of reinsurance recoveries and net of salvage and subrogation, are tracked by lines of business, policy years and development periods in a format known as claims development triangles.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

A description of each of these methods is as follows:

## i. Adler-Kline method

This is a form of frequency and severity method which involves estimation of the closing pattern for current open and estimated unreported claims, which is combined with estimates of the average severity across successive intervals of percentage claims closed, based on consideration of historical claim settlement patterns and average amounts paid on closed claims.

## ii. Chain ladder method

The distinguishing characteristic of this form of development method is that ultimate claims for each policy year are projected from recorded values assuming the future claim development is similar to the prior years' development.

## iii. Frequency and severity method

This method assumes that, for each identified homogenous claims type group, claims count reported to date will develop to ultimate in a similar manner to historical patterns, and settle at predictable average severity amounts. This method involves applying the developed estimated ultimate claims count to selected estimated ultimate average claim severities.

## iv. Expected loss ratio method

Using the expected loss ratio method, ultimate claims projections are based upon *a priori* measures of the anticipated claims. An expected loss ratio is applied to the measure of exposure to determine estimated ultimate claims for each year. This method is commonly used in lines of business with a limited experience history.

Claims data includes external claims adjustment expenses, and for a portion of the portfolio includes internal claims adjustment expenses ("IAE"). A provision for IAE has been determined based on the Mango-Allen claim staffing technique, a transaction-based method which utilizes expected future claims handler workload per claim per handler, claims closure rates and ultimate claims count. The IAE provision is included in the IBNR balances.

The provision for unpaid claims and adjustment expenses is discounted using an interest rate based on the estimated market value based yield to maturity, inherent credit risk and related investment expense of the Company's fixed income securities supporting the provision for unpaid claims and adjustment expense as at December 31, 2014, which was 1.95% (December 31, 2013: 2.69%). Reinsurance recoverable estimates and claims recoverable from other insurers are discounted in a manner consistent with the method used to establish the related liability. Based on published guidance from the CIA, as at December 31, 2014 the PfAD was calculated at 15% (December 31, 2013: 15%) of the net discounted claim liabilities, 1.5% (December 31, 2013: 1.5%) of the ceded discounted claim liabilities, and a 0.50% reduction to the discount rate (December 31, 2013: 0.50%).

As the provision for unpaid claims and adjustment expenses is recorded on a discounted basis and reflects the time value of money, its carrying value is expected to provide a reasonable basis for the determination of fair value. However, determination of fair value also requires the practical context of a buyer and seller, both of whom are willing and able to enter into an arm's length transaction. In the absence of such a practical context, the fair value is not readily determinable.

The following table shows unpaid claims and adjustment expenses on an undiscounted basis and a discounted basis:

	December 31, 2014		December 31, 2013	
	Undiscounted	Discounted	Undiscounted	Discounted
Unpaid claims and adjustment expenses	\$ 426,622	468,493	417,231	447,912
Recoverable from reinsurers	(41,349)	(44,900)	(38,063)	(40,487)
Net	<b>\$ 385,273</b>	<b>423,593</b>	<b>379,168</b>	<b>407,425</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Details of the provision for unpaid claims and adjustment expenses, by line of business, are summarized as follows:

	December 31, 2014			December 31, 2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Professional liability	\$ 453,626	(44,814)	408,812	430,823	(40,348)	390,475
Title	14,867	(86)	14,781	17,089	(139)	16,950
<b>Total</b>	<b>\$ 468,493</b>	<b>(44,900)</b>	<b>423,593</b>	<b>447,912</b>	<b>(40,487)</b>	<b>407,425</b>

The provision for unpaid claims and adjustment expenses by case reserves and IBNR are as follows:

	December 31, 2014			December 31, 2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Case reserves	\$ 287,235	(3,056)	284,179	269,525	(3,473)	266,052
IBNR	181,258	(41,844)	139,414	178,387	(37,014)	141,373
<b>Total</b>	<b>\$ 468,493</b>	<b>(44,900)</b>	<b>423,593</b>	<b>447,912</b>	<b>(40,487)</b>	<b>407,425</b>

An evaluation of the adequacy of claims liabilities is completed at the end of each financial quarter. This evaluation includes a re-estimation of the liability for unpaid claims and adjustment expenses compared to the liability that was originally established. As adjustments to estimated claims liabilities become necessary, they are reflected in current operations.

## c) Changes in methodologies or basis of selection of assumptions

Based on the Company's actuarial valuation process, at each valuation the Company's claims data is analyzed to determine whether the current methodologies and basis of selection of actuarial assumptions continue to be appropriate for the determination of the IBNR provision. As a result, the Company revised the basis of selection of some key assumptions used in its actuarial valuation methods as at December 31, 2014 and December 31, 2013.

In 2014, the Company updated the methodologies and basis of selection of key assumptions used in determining its provision for unpaid claims and adjustment expenses to ensure they appropriately reflect emerging experience and changes in risk profile, which resulted in a change to projected net cash outflows and, therefore, to the provision. In addition, as at December 31, 2014, an amount of \$2,303,584 was added explicitly to the IBNR provision to account for a group of related claims. The net impact of these changes was a \$4,979,000 decrease in the provision, before reinsurance, as at December 31, 2014, which included a net decrease of \$5,378,629 relating to severity assumptions and an increase of \$399,629 relating to claim frequency assumptions. This total impact has been allocated by policy year as a \$2,607,000 decrease related to the current year and a \$2,372,000 decrease related to the prior years, and by line of business as a \$4,135,119 net decrease to professional liability and an \$843,881 net decrease to title.

In 2013, the Company performed a detailed re-evaluation of the methodologies and basis of selection of key assumptions used in determining its provision for unpaid claims and adjustment expenses to ensure they appropriately reflect emerging experience and changes in risk profile. Changes to the actuarial methods and assumptions resulted in a change to projected net cash outflows and, therefore, to the provision. The net impact of the changes in the basis of selection of assumptions and model enhancements was an \$11,417,969 decrease in the provision, before reinsurance, as at December 31, 2013, which included a net decrease of \$11,609,994 relating to severity assumptions, and an increase of \$192,025 relating to claim frequency assumptions. This total impact has been allocated by policy year as a \$4,925,517 decrease related to the current year and a \$6,492,452 decrease related to the prior years and by line of business as a \$12,136,482 net decrease to professional liability and a \$718,513 increase to title.

# Notes to Financial Statements

For the year ended December 31, 2014  
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Details of the claims and adjustment expenses for the year ended December 31 are as follows:

	2014			2013		
	Gross	Ceded	Net	Gross	Ceded	Net
Claims & external adjustment expenses paid	\$ 76,408	849	75,559	77,248	1,924	75,324
Change in case reserves	10,501	(500)	11,001	1,930	(3,106)	5,036
Change in IBNR	(2,176)	3,786	(5,962)	(4,446)	2,300	(6,746)
Discount expense	11,190	1,127	10,063	14,763	1,357	13,406
IAE paid	7,858	-	7,858	7,347	-	7,347
Change in provision for IAE	1,066	-	1,066	2,336	-	2,336
	<b>\$ 104,847</b>	<b>5,262</b>	<b>99,585</b>	<b>99,178</b>	<b>2,475</b>	<b>96,703</b>

Changes in the provision for unpaid claims and adjustment expenses, including IAE, recorded in the statement of financial position during the year is comprised of the following:

	2014	2013
Provision for unpaid claims and adjustment expenses – January 1 – net	\$ 407,425	393,393
Change in net provision for claims and adjustment expenses due to:		
Prior years' incurred claims	(19,658)	(24,366)
Current year's incurred claims	109,180	107,663
Net claims and adjustment expenses paid in relation to:		
Prior years	(74,147)	(74,920)
Current year	(9,270)	(7,751)
Impact of discounting	<b>10,063</b>	<b>13,406</b>
Provision for unpaid claims and adjustment expenses – December 31 – net	423,593	407,425
Reinsurers' share of provisions for unpaid claims and adjustment expenses	44,900	40,487
Provision for unpaid claims and adjustment expenses – December 31 – gross	<b>\$ 468,493</b>	<b>447,912</b>

## d) Loss development tables

The tables on the following pages show the development of claims, excluding IAE, by policy year over a period of time. The first table reflects development for gross claims, which excludes any reductions for reinsurance recoverables. The second table reflects development for net claims, which is gross claims less reinsurance recoverables. The top triangle in each table shows how the estimates of total claims for each policy year develop over time as more information becomes known regarding individual claims and overall claims frequency and severity. Claims are presented on an undiscounted basis in the top triangle. The bottom triangle in each table presents the cumulative amounts paid for claims and external loss adjustment expenses for each policy year at the end of each successive year. At the bottom of each table, the provision for IAE as well as the effect of discounting and the PfAD, as at December 31, 2014, is presented based on the net amounts of the two triangles.

# Notes to Financial Statements

For the year ended December 31, 2014

Amounts stated in Canadian dollars (amounts in tables in thousands)

Before the effect of reinsurance, the loss development table is as follows:

	All Prior Years	Policy Year										Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
<b>Estimate of Ultimate Claims</b>												
At end of Policy year	\$	76,338	82,043	88,720	91,567	94,936	90,778	98,870	110,380	102,937	103,962	
One Year Later		77,704	81,820	90,139	99,776	95,781	90,585	100,573	93,630	95,423		
Two Years Later		78,736	82,040	95,375	94,086	97,708	89,394	97,841	90,749			
Three Years Later		72,246	78,097	93,715	93,942	96,541	87,128	96,265				
Four Years Later		74,959	72,438	93,424	92,322	94,258	87,341					
Five Years Later		71,851	70,399	90,823	89,566	91,157						
Six Years Later		68,675	71,942	91,450	88,292							
Seven Years Later		66,854	71,364	90,168								
Eight Years Later		64,347	70,799									
Nine Years Later		63,693										
<b>Cumulative Claims Paid</b>												
At end of Policy year		(3,792)	(4,811)	(4,100)	(5,593)	(6,726)	(4,628)	(6,868)	(4,744)	(4,167)	(5,516)	
One Year Later		(14,771)	(15,829)	(21,723)	(19,886)	(21,366)	(16,553)	(17,678)	(15,743)	(18,406)		
Two Years Later		(26,437)	(25,463)	(37,033)	(32,641)	(35,997)	(30,239)	(30,885)	(26,124)			
Three Years Later		(35,268)	(35,114)	(51,509)	(47,582)	(48,477)	(42,488)	(44,452)				
Four Years Later		(43,306)	(44,050)	(59,136)	(55,086)	(59,669)	(54,208)					
Five Years Later		(50,379)	(49,252)	(65,553)	(63,348)	(67,445)						
Six Years Later		(53,878)	(56,997)	(71,553)	(66,017)							
Seven Years Later		(56,628)	(60,476)	(75,582)								
Eight Years Later		(58,992)	(61,965)									
Nine Years Later		(60,194)										
Estimate of Ultimate Claims		63,693	70,799	90,168	88,292	91,157	87,341	96,265	90,749	95,423	103,962	
Cumulative Claims Paid		(60,194)	(61,965)	(75,582)	(66,017)	(67,445)	(54,208)	(44,452)	(26,124)	(18,406)	(5,516)	
Undiscounted Claims Liabilities	13,422	3,499	8,834	14,586	22,275	23,712	33,133	51,813	64,625	77,017	98,446	<b>411,362</b>
Provision for IAE	147	81	136	264	421	540	711	1,364	2,354	3,395	5,847	<b>15,260</b>
Discounting (including PfAD)	1,398	378	905	1,562	2,427	2,487	3,468	5,398	6,778	7,712	9,358	<b>41,871</b>
Present Value recognized in the Statement of Financial Position	\$ 14,967	3,958	9,875	16,412	25,123	26,739	37,312	58,575	73,757	88,124	113,651	<b>468,493</b>

# Notes to Financial Statements

For the year ended December 31, 2014

Amounts stated in Canadian dollars (amounts in tables in thousands)

After the effect of reinsurance, the loss development table is as follows:

	All Prior Years	Policy Year										Total	
		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014		
<b>Estimate of Ultimate Claims</b>													
At end of Policy year	\$	72,615	78,076	84,240	86,762	89,886	86,458	94,874	106,381	98,696	99,579		
One Year Later		73,981	77,873	85,659	94,971	91,732	86,265	96,577	89,631	91,183			
Two Years Later		75,013	78,093	90,895	90,242	93,660	85,075	93,845	86,750				
Three Years Later		68,523	74,150	90,130	90,098	92,492	82,808	92,269					
Four Years Later		71,236	69,280	89,840	88,478	90,209	83,022						
Five Years Later		68,873	67,241	87,238	85,722	87,108							
Six Years Later		65,696	68,785	87,866	84,448								
Seven Years Later		63,875	68,207	86,584									
Eight Years Later		64,347	67,641										
Nine Years Later		63,693											
<b>Cumulative Claims Paid</b>													
At end of Policy year		(3,792)	(4,811)	(4,100)	(5,593)	(6,726)	(4,628)	(6,868)	(4,744)	(4,167)	(5,516)		
One Year Later		(14,771)	(15,829)	(21,723)	(19,886)	(21,366)	(16,553)	(17,678)	(15,741)	(18,406)			
Two Years Later		(26,437)	(25,463)	(37,033)	(32,641)	(35,997)	(30,239)	(29,976)	(26,122)				
Three Years Later		(35,268)	(35,114)	(51,509)	(47,582)	(48,477)	(42,466)	(43,542)					
Four Years Later		(43,306)	(44,050)	(59,136)	(55,086)	(59,669)	(54,111)						
Five Years Later		(50,379)	(49,252)	(65,553)	(63,348)	(67,409)							
Six Years Later		(53,878)	(56,997)	(71,553)	(66,017)								
Seven Years Later		(56,628)	(60,476)	(75,582)									
Eight Years Later		(58,992)	(61,965)										
Nine Years Later		(60,194)											
Estimate of Ultimate Claims		63,693	67,641	86,584	84,448	87,108	83,022	92,269	86,750	91,183	99,579		
Cumulative Claims Paid		(60,194)	(61,965)	(75,582)	(66,017)	(67,409)	(54,111)	(43,542)	(26,122)	(18,406)	(5,516)		
Undiscounted Claims Liabilities	6,600	3,499	5,676	11,002	18,431	19,699	28,911	48,727	60,628	72,777	94,063	<b>370,013</b>	
Provision for IAE	147	81	136	264	421	540	711	1,364	2,354	3,395	5,847	<b>15,260</b>	
Discounting (including PfAD)	816	378	637	1,237	2,070	2,133	3,094	5,129	6,430	7,367	9,029	<b>38,320</b>	
Present Value recognized in the													
Statement of Financial Position	\$	7,563	3,958	6,449	12,503	20,922	22,372	32,716	55,220	69,412	83,539	108,939	<b>423,593</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 10. Unearned Premiums

The following changes have occurred in the provision for unearned premiums during the years ended December 31:

	2014	2013
Balance, as at January 1	\$ 749	723
Net premiums written during the year	114,920	106,510
Less: Net premiums earned during the year	(114,900)	(106,484)
Increase (decrease) in unearned premiums	20	26
Balance, as at December 31	<b>\$ 769</b>	<b>749</b>

The estimates for unearned premium liabilities have been actuarially tested to ensure that they are sufficient to pay for future claims and expenses in servicing the unexpired policies as of the valuation dates.

## 11. Reinsurance

The Company's reinsurance program consists of a 90% quota share cession on its excess professional liability policies (2013: 90%), and a \$10 million in excess of \$5 million per occurrence clash reinsurance arrangement which provides protection for single events that bring about multiple professional liability and/or title claims with an additional \$20 million in excess of \$15 million per occurrence relating to class action proceedings (2013: \$20 million in excess of \$15 million). Reinsurance does not relieve the Company of its primary liability as the originating insurer. In the event that a reinsurer is unable to meet obligations assumed under reinsurance agreements, the Company is liable for such amounts. Reinsurance treaties typically renew annually and the terms and conditions are reviewed by senior management and reported to the Company's Board of Directors. Reinsurance agreements are negotiated with reinsurance companies that have an independent credit rating of "A-" or better and that the Company considers creditworthy. Based on current information on the financial health of the reinsurers, no provision for doubtful debts has been made in the financial statements in respect of reinsurers.

## 12. Related Party Transactions

Pursuant to a service agreement effective January 1, 1995, and as amended effective September 30, 2009, the Company administers the Errors and Omissions Insurance Fund (the "Fund") of the Law Society and provides all services directly related to the operations and general administration of the Fund in consideration for the Law Society insuring its mandatory professional liability insurance program with the Company.

The insurance policy under the mandatory professional liability insurance program of the Law Society is written by the Company and is effective on a calendar year basis. The insurance policy is renewed effective January 1 each year subject to the Law Society's acceptance of the terms of renewal submitted by the Company. The annual policy limits for each of the years effective January 1, 1995 to December 31, 2014 are \$1 million per claim and \$2 million in aggregate per member. Under the insurance policy that was in force between July 1, 1990 and December 31, 1994, the Company was responsible for claims in excess of the Law Society and member deductibles. The provision for unpaid claims and adjustment expenses is net of amounts relating to policies for years prior to 1995 that are payable by the Law Society.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

For the year ended December 31, 2014, \$110,871,667 of the gross premiums written related to mandatory insurance coverage provided to the Law Society and its members (2013: \$102,093,412). As at December 31, 2014, the Company had a balance due from the Law Society of \$6,622,607 (December 31, 2013: \$2,896 due to Law Society).

For the year ended December 31, 2014, the Company contributed to the Law Society \$231,194 in regards to a wellness program to be made available to the insureds of the Company's primary liability policy (2013: \$210,230). This expenditure is included in operating expenses (see note 15).

The total compensation to Company personnel classified as key management, being those having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including directors of the Company, is as follows:

	2014	2013
Short-term compensation and benefits	\$ 3,372	3,163
Post employment benefits	246	251
	<b>\$ 3,618</b>	<b>3,414</b>

## 13. Employee Benefits

The Company has a defined contribution pension plan which is available to all its employees upon meeting the eligibility requirements. Each employee is required to contribute 4.5% of yearly maximum pensionable earnings, and 6% in excess thereof, of an employee's annual base earnings. Under the plan, the Company matches all employee contributions. In 2014, the Company made payments of \$641,012 (2013: \$603,836) and recorded pension expense of \$675,910 (2013: \$630,402).

The Company also has a supplemental defined benefit pension plan, which provides pension benefits on a final salary or fixed schedule basis, depending on certain criteria. Measurements and funding requirements of this plan are based on valuations prepared by an external actuary. For reporting purposes the plan is measured using the projected unit credit method, which involves calculating the actuarial present value of the past service liability to members including an allowance for their projected future earnings. Funding requirements for the plan are determined using the solvency method, which utilizes the estimated cost of securing each member's benefits with an insurance company or alternative buy-out provider as at the valuation date. The valuation methods are based on a number of assumptions, which vary according to economic conditions, including prevailing market interest rates, and changes in these assumptions can significantly affect the measurement of the pension obligations.

Funding for the supplemental plan commenced in 2005, with no payments made in 2014 (2013: \$248,402) and recorded pension expenses of \$11,865 in 2014 (2013: \$59,671). Funding requirements are reviewed annually with an actuarial valuation for funding purposes effective as at December 31. As the Company's defined benefit pension plan qualifies as a "retirement compensation arrangement" pursuant to the *Income Tax Act*, half of any required annual contribution to the plan is remitted to the Canada Revenue Agency, held in a refundable tax account and refunded in prescribed amounts as actual benefit payments are made to the participants. The most recent actuarial valuation for funding purposes was performed effective December 31, 2013. Management's preliminary estimate is that no contribution is required to the plan during the year ending December 31, 2015.

The assets of both pension plans are held separately from those of the Company in funds under the control of trustees.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The defined benefit pension plan exposes the Company to risks such as: investment risk, interest rate risk, longevity risk and salary risk.

<b>Investment risk</b>	The present value of the defined benefit plan liability is calculated using a discount rate determined by reference to high quality mid-duration corporate bond yields; if the return on plan assets is below this rate, it will create a plan deficit. Currently the plan has a relatively balanced investment in equity and fixed income securities. Due to the long-term nature of the plan liabilities, the Company considers it appropriate that a reasonable portion of the plan assets should be invested in equity securities to leverage the return generated by the fund.
<b>Interest rate risk</b>	A decrease in the market interest rate will increase the plan obligation; however, this will be partially offset by an increase in the return of the plan's fixed income securities.
<b>Longevity risk</b>	The present value of the defined benefit plan obligation is calculated by reference to the best estimate of the mortality of plan participants both during and after their employment. An increase in the life expectancy of the plan participants will increase the plan's obligation.
<b>Salary risk</b>	The present value of the defined benefit plan liability is calculated by reference to the future salaries of plan participants. As such, an increase in the salary of the plan participants will increase the plan's obligation.

The following represents the assets and liabilities associated with pension benefits measured using values as at December 31:

## Defined benefit plan obligation

	2014	2013
<b>Accrued benefit obligation</b>		
Balance, as at January 1	\$ 6,253	6,343
Current service cost	120	126
Interest cost	287	249
Remeasurement (gains) losses:		
Actuarial (gains) losses – demographic assumptions	72	285
Actuarial (gains) losses – financial assumptions	704	(545)
Actuarial (gains) losses – experience adjustments	(5)	-
Benefits paid	(273)	(205)
Balance, as at December 31	<b>\$ 7,158</b>	<b>6,253</b>

## Defined benefit plan assets

	2014	2013
<b>Plan assets</b>		
Fair value, as at January 1	\$ 8,731	7,978
Interest income on plan assets	395	316
Remeasurement gains (losses):		
Return on plan assets greater (less) than discount rate	(5)	394
Benefits paid	(273)	(205)
Employer contribution	-	248
Fair value, as at December 31	<b>\$ 8,848</b>	<b>8,731</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The defined benefit plan assets arise primarily from employer contributions that are originally allocated equally between deposits with the Government of Canada and investments in the units of a balanced pooled fund. The fair values of the above equity and fixed income securities are derived based on quoted market prices in active markets. The plan assets contain the following financial instrument allocation:

	December 31, 2014	December 31, 2013
Equity securities	33.21%	36.42%
Fixed income securities	17.32%	16.48%
Cash and cash equivalents	4.55%	1.31%
Refundable-tax account	44.92%	45.79%
	<b>100%</b>	<b>100%</b>

Reconciliation of funded status surplus of the benefit plans to the amounts recorded in the financial statements is as follows:

	December 31, 2014	December 31, 2013
Fair value of plan assets	\$ 8,848	8,731
Accrued benefit obligation	(7,158)	(6,253)
Funded status surplus	1,690	2,478
Irrecoverable surplus (effect of asset ceiling)	-	-
Accrued benefit asset	<b>\$ 1,690</b>	<b>2,478</b>

The accrued benefit asset is included in other assets in the statement of financial position.

Amounts recognized in comprehensive income in respect of the defined benefit plan in the year ended December 31:

	2014	2013
Service cost:		
Current service cost	\$ 120	126
Past service cost and (gain) loss from settlements	-	-
Net interest (income) expense	(108)	(67)
Components of defined benefit costs recognized in profit or loss	<b>12</b>	<b>59</b>
Remeasurement on the net defined benefit liability		
Actuarial (gain) loss due to liability experience	(5)	-
Actuarial (gain) loss due to liability assumption changes	776	(260)
Actuarial (gain) loss arising during year	771	(260)
Return on plan assets (greater) less than discount rate	5	(394)
Change in irrecoverable surplus (effect of asset ceiling)	-	-
Components of defined benefit costs recognized in OCI	<b>776</b>	<b>(654)</b>
<b>Total</b>	<b>\$ 788</b>	<b>(595)</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The significant assumptions used by the Company for year-end measurement purposes are as follows:

	2014	2013
Discount rate	3.80%	4.60%
Rate of compensation increase	3.50%	3.50%
Mortality	CPM 2014Priv mortality table with generational mortality improvements following Scale CPM-B; pension size adjustment factors of 0.83 for males and 0.88 for females	CPM-RPP2014Priv mortality table with generational mortality improvements following Scale CPM-A; pension size adjustment factors of 0.84 for males and 0.96 for females

The sensitivity of the key assumption, namely discount rate, assuming all other assumptions remain constant, is as follows: as at December 31, 2014, if the discount rate was 1% higher/(lower) the defined benefit obligation would decrease by \$863,800 (increase by \$1,061,400). Note that the sensitivity analysis may not be representative of the actual change in the defined benefit obligation as it is unlikely that the change in assumption would occur in isolation of one or other changes as some of the assumptions may be correlated.

The expected maturity profile of the defined benefit obligation as at December 31, 2014 is as follows:

	2015	2016	2017	2018	2019	Thereafter
Expected benefit payments	273	282	281	280	401	1,983

The defined benefit obligation as at December 31, 2014 by participant category is as follows:

Active participants	2,412
Pensioners	4,746

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 14. Income Taxes

### a) Income tax expense recognized in profit or loss

The total income tax expense recognized in profit or loss is comprised as follows:

	2014	2013
<b>Current income tax</b>		
(Recovered) expensed during the year	\$ 6,220	2,129
Prior year adjustments	-	(3)
<b>Total current income tax expense (recovery)</b>	<b>6,220</b>	<b>2,126</b>
<b>Deferred income tax</b>		
Origination and reversal of temporary differences	(309)	(226)
Changes in statutory tax rates	-	-
<b>Total deferred income tax expense (recovery)</b>	<b>(309)</b>	<b>(226)</b>
<b>Total income tax expense (recovery)</b>	<b>\$ 5,911</b>	<b>1,900</b>

Deferred income tax expense recognized in profit or loss represents movements on the following items:

	2014	2013
Unpaid claims and adjustment expenses	\$ (214)	(186)
Investments	(40)	(42)
Pensions	(12)	43
Property and equipment	(43)	(41)
	<b>\$ (309)</b>	<b>(226)</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## b) Income tax expense recognized in the statement of profit or loss and other comprehensive income

The total income tax expense recognized in OCI is comprised as follows:

	2014	2013
<b>Current income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	\$ 815	4,388
Pensions	-	-
<b>Total current income tax expense</b>	<b>815</b>	<b>4,388</b>
<b>Deferred income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	-	-
Pensions	(206)	174
<b>Total deferred income tax expense</b>	<b>(206)</b>	<b>174</b>
<b>Total income tax expense in OCI</b>	<b>\$ 609</b>	<b>4,562</b>

## c) Income tax reconciliation

The following is a reconciliation of income taxes, calculated at the statutory income tax rate, to the income tax provision included in profit or loss.

	2014	2013
Profit or loss before income taxes	\$ 22,971	7,833
Statutory income tax rate	26.50%	26.50%
Provision for (recovery of) income taxes at statutory rates	6,087	2,076
Increase (decrease) resulting from:		
Investments	(198)	(193)
Non-deductible meals and entertainment	13	12
Other non-deductible items	9	5
Provision for (recovery of) income taxes	<b>\$ 5,911</b>	<b>1,900</b>

The statutory rate applicable to the Company at December 31, 2014 is same as at December 31, 2013.

During the year, the Company made income tax payments of \$10,293,132 (2013: \$2,205,734) and received no income tax refunds (2013: \$2,674,499) from the various taxing authorities.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Net deferred income tax asset

The Company's net deferred income tax asset is the result of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The sources of these temporary differences and the tax effects are as follows:

	December 31, 2014	December 31, 2013
<b>Deferred tax assets</b>		
Net provision for unpaid claims and adjustment expenses	\$ 5,613	5,398
Property and equipment	292	249
	5,905	5,647
<b>Deferred tax liabilities</b>		
Investments	(433)	(471)
Pension	(415)	(633)
	(848)	(1,104)
<b>Total net deferred tax assets</b>	<b>\$ 5,057</b>	<b>4,543</b>

The Company believes that, based on available information, it is probable that the deferred income tax assets will be realized through a combination of future reversals of temporary differences and taxable income.

## 15. Operating Expenses

The following table summarizes the Company's operating expenses by nature:

	2014	2013
Salaries and benefits	\$ 9,755	9,373
Administrative expenses	2,631	2,203
Professional fees	1,746	1,682
Occupancy lease	1,047	1,100
Communication	463	582
Information systems	746	875
Amortization of property and equipment	442	515
<b>Total</b>	<b>\$ 16,830</b>	<b>16,330</b>

Included in salaries and benefits are amounts for future employee benefits under a defined contribution plan of \$641,012 (2013: \$603,836) and a supplementary defined benefit plan of \$11,865 (2013: \$59,671).

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 16. Operating Lease Commitments

The Company entered into a lease agreement for premises at 250 Yonge Street, with an effective date of February 1, 2008 and an expiry date of May 31, 2018. The Company has an option to extend the lease period for five additional years under the current general terms and conditions.

At December 31, 2014, lease obligations on office premises were as follows:

2015	1,220
2016	1,220
2017	1,220
2018	508

## 17. Capital Stock and Contributed Surplus

Capital stock of the Company represents:

30,000 Common Shares of par value of \$100 each – authorized, issued and paid.

20,000 6% non-cumulative, redeemable, non-voting Preferred Shares of par value of \$100 each – authorized, issued and paid.

The Preferred Shares meet the definition of equity in accordance with the criteria outlined in IAS 32 “*Financial Instruments: Presentation*”.

Contributed surplus represents additional capitalization funding provided by the Law Society.

## 18. Statutory Insurance Information

The Company is the beneficiary of trust accounts in the amount of \$1,238,354 as at December 31, 2014 (December 31, 2013: \$1,247,970) which are held as security for reinsurance ceded to unregistered reinsurers. This trust balance is not reflected in these financial statements but is considered in determining statutory capital requirements.

In accordance with licensing requirements, the Company no longer requires deposited securities with the regulatory authorities (December 31, 2013: market value of \$50,416).

## 19. Capital Management

Capital is comprised of the Company’s equity. As at December 31, 2014 the Company’s equity was \$208,625,233 (December 31, 2013: \$189,875,442). The Company’s objectives when managing capital are to maintain financial strength and protect its claims paying abilities, to maintain creditworthiness and to provide a reasonable return to the shareholder over the long term. In conjunction with the Company’s Board of Directors and its Audit Committee, senior management develops the capital strategy and oversees the capital management processes of the Company. Capital is managed using both regulatory capital measures and internal metrics.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

FSCO, the Company's primary insurance regulator, along with other provincial insurance regulators, regulate the capital required in the Company using two key measures, i.e., Minimum Capital Test ("MCT") and the Dynamic Capital Adequacy Test ("DCAT"). FSCO has established an MCT guideline which sets out 100% as the minimum and 150% as the supervisory target for P&C insurance companies. To ensure that it attains its objectives, the Company has established an internal target of 180% (2013: 180%) in excess of which, under normal circumstances, the Company will maintain its capital. During the year ended December 31, 2014, the Company complied with the various provincial regulators' guidelines and as at December 31, 2014, the Company has a MCT ratio of 251% (December 31, 2013: 233%). Annually, the Company's Appointed Actuary prepares a DCAT on the MCT to ensure that the Company has adequate capital to withstand significant adverse event scenarios. These scenarios are reviewed each year to ensure appropriate risks are included in the testing process. The Appointed Actuary must present both an annual report and the DCAT report to management and the Audit Committee. The DCAT report prepared during the year indicated that the Company's capital position is satisfactory. In addition, the target, actual and forecasted capital position of the Company is subject to ongoing monitoring by management using stress and scenario analysis to ensure its adequacy.

The Company may use reinsurance to manage its capital position.

## 20. Risk Management

By virtue of the nature of the insurance company business, financial instruments comprise the majority of the Company's statement of financial position as at both December 31, 2014 and 2013. The most significant identified risks to the Company which arise from holding financial instruments and insurance contract liabilities include insurance risk, credit risk, liquidity risk and market risk. The market risk exposure of the Company is primarily related to changes in interest rates and adverse movement in equity prices.

The Company employs an enterprise-wide risk management framework which establishes practices for risk management and includes policies and processes to identify, assess, manage and monitor risks and risk tolerance limits. It provides governance and supervision of risk management activities across the Company's business units, promoting the discipline and consistency applied to the practice of risk management.

The Company's risk framework is designed to minimize risks that could materially adversely affect the value or stature of the Company, to contribute to stable and sustainable returns, to identify risks that the Company can manage in order to increase earnings, and to provide transparency of the Company's risks through internal and external reporting. The Company's risk philosophy involves undertaking risks for appropriate return and accepting those risks that meet its objectives. The Company's risk management program is aligned with its long term vision and its culture supports an effective risk management program. The key components of the risk culture include acting with fairness, appreciating the impact of risk on all major stakeholders, embedding risk management into day to day business activities, fostering full and transparent communications, cooperation, and aligning of objectives and incentives. The Company's risk management activities are monitored by its Risk Committee and Board of Directors.

The risk exposure measures expressed below primarily include the sensitivity of the Company's profit or loss, and OCI as applicable, to the movement of various economic factors. These risk exposures include the sensitivity due to specific changes in market prices and interest rate levels projected using internal models as at a specific date, and are measured relative to a starting level reflecting the Company's assets and liabilities at that date and the actuarial factors, investment returns and investment activity the Company assumes in the future. The risk exposures measure the impact of changing one factor at a time and assume that all other factors remain unchanged. Actual results can differ materially from these estimates for a variety of reasons including the interaction among these factors when more than one changes, changes in actuarial and investment return and future investment activity assumptions, actual experience differing from the assumptions, changes in business mix, effective tax rates, and other market factors and general limitations of the Company's internal models.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## a) Insurance risk

Insurance risk is the risk of loss due to actual experience differing from the experience assumed when a product was designed and priced with respect to claims, policyholder behaviour and expenses. The Company has identified pricing risk, concentration of risk and reserving risk as its most significant sources of insurance risks. The Company's underwriting objective is to develop business within its target market on a prudent and diversified basis and to achieve profitable operating results.

### Pricing risk

Pricing risk arises when actual claims experience differs from the assumptions included in pricing calculations. Historically, the underwriting results of the property and casualty industry have fluctuated significantly due to the cyclical nature of the insurance market. The market cycle is affected by the frequency and severity of claims, levels of capacity and demand, general economic conditions and price competition.

The Company focuses on profitable underwriting using a combination of experienced underwriting staff, pricing models and price adequacy monitoring tools. The Company prices its products taking into account numerous factors including claims frequency and severity trends, product line expense ratios, special risk factors associated with the product line, and the investment income earned on premiums held until the payment of claims and expenses. The Company's pricing is designed to ensure an appropriate return while also providing long-term rate stability. These factors are reviewed and adjusted periodically to ensure they reflect the current environment.

### Concentration of risk

A concentration of risk represents the exposure to increased losses associated with an inadequately diversified portfolio of policy coverage. The Company has a reinsurance program to limit its exposure to catastrophic losses from any one event or set of events. The Company has approximately 99% of its business in Ontario (2013: 99%) and 96% in professional liability (2013: 95%), and consequently is exposed to trends, inflation, judicial changes and regulatory changes affecting these segments. The geographical diversity by location of the underlying insurance risk for the year ended December 31 is summarized below:

Gross written premium	2014			2013		
	Ontario	All other provinces	Total	Ontario	All other provinces	Total
Professional liability	\$ 116,979	-	116,979	108,009	-	108,009
Title	4,966	204	5,170	5,257	295	5,552
Total	\$ 121,945	204	122,149	113,266	295	113,561

### Reserving risk

Reserving risk arises because actual claims experience can differ adversely from the assumptions included in setting reserves, in large part due to the length of time between the occurrence of a loss, the reporting of the loss to the insurer and the ultimate resolution of the claim. Claims provisions reflect expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors. Reserve changes associated with claims of prior periods are recognized in the current period, which could have a significant impact on current year profit or loss. In order to mitigate this risk the Company utilizes information systems in order to maintain claims data integrity, and the claims provision valuations are prepared by an internal actuary on a quarterly basis, and are reviewed separately by, and must be acceptable to, management of the Company every quarter and the external Appointed Actuary at mid-year and year-end.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## Sensitivity analyses

Risks associated with property and casualty insurance contracts are complex and subject to a number of variables which complicate quantitative sensitivity analysis. The Company considers that the provision for its unpaid claims and adjustment expenses recognized in the statement of financial position is adequate. However, actual experience will differ from the expected outcome. Among the Company's lines of business, the professional liability line of business has the largest provision for unpaid claims and adjustment expenses. Given this line of business and the actuarial methods utilized to estimate the related provision for unpaid claims and adjustment expenses, the reported claims count development factors and average claim severity selections are the most critical of the assumptions used. The following table provides the estimated increase (decrease) of the net provision for unpaid claims and adjustment expense and the after-tax net effect on equity if the reported claims count development factors were increased such that the estimate of unreported claims was 20% higher or the average claim severity selections were 1% higher. Other changes in assumptions are considered to be less material.

	December 31, 2014		December 31, 2013	
	Net provision for unpaid claims and adjustment expenses	Equity	Net provision for unpaid claims and adjustment expenses	Equity
Unreported claims +20%	5,283	(3,883)	4,904	(3,605)
Average claim severities +1%	5,299	(3,895)	4,843	(3,560)

## b) Credit risk

Credit risk is the risk of loss due to the inability or unwillingness of a borrower or counterparty to fulfill its payment obligation to the Company. Credit risks arise from investments in fixed income securities and preferred shares, and balances due from insureds and reinsurers.

Management monitors credit risk and any mitigating controls. The Company has established a credit review process where the credit quality of all exposures is continually monitored so that appropriate prompt action can be taken when there is a change which may have material impact.

Governance processes around investments include oversight by the Board of Directors' Investment Committee. The oversight includes reviews of the Company's third party investment managers, investment performance and adherence to the Company's investment policy. The Company's investment policy statement is reviewed at least on an annual basis and addresses various matters including investment objectives, risks and management. Guidelines and limits have been established in respect of asset classes, issuers of securities and the nature of securities to address matters such as quality and concentration of risks.

With respect to credit risk arising from balances due from reinsurers, the Company's exposure is measured to reflect both current exposure and potential future exposure to ceded liabilities. Reinsurance and insurance counterparties must also meet minimum risk rating criteria. The Company's Board of Directors has approved a reinsurance policy, which is monitored by the Company's Audit Committee.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The following table provides a credit risk profile of the Company's applicable investment assets and amounts recoverable from reinsurers.

	December 31, 2014						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 3,580	-	-	-	-	13,748	17,328
Fixed income securities	93,346	92,900	224,115	66,619	-	25,115	502,095
Investment income due and accrued	182	286	891	470	1	182	2,012
Due from reinsurers	-	-	651	-	7	68	726
Due from insureds	-	-	-	-	-	1,909	1,909
Due from the Law Society of Upper Canada	-	-	-	-	-	6,623	6,623
Reinsurers' share of provisions for unpaid claims and adjustment expenses	-	-	44,595	-	53	252	44,900
Other receivables	-	-	-	-	-	1,404	1,404
Other assets	\$ -	-	-	-	-	1,984	1,984

	December 31, 2013						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 550	-	-	-	-	13,975	14,525
Fixed income securities	107,128	109,025	193,069	69,077	-	5,786	484,085
Investment income due and accrued	216	294	832	678	-	116	2,136
Due from reinsurers	-	-	276	-	7	26	309
Due from insureds	-	-	-	-	-	2,027	2,027
Reinsurers' share of provisions for unpaid claims and adjustment expenses	-	-	40,049	-	-	438	40,487
Other receivables	-	-	-	-	-	1,419	1,419
Other assets	\$ -	-	-	-	-	2,758	2,758

Fixed income securities are rated using a composite of Moody's, Standard & Poor and Dominion Bond Rating Service ratings, and reinsurers are rated using A.M. Best. The balances in the above tables do not contain any amounts that are past due.

## c) Liquidity risk

Liquidity risk is the risk that the Company will not have enough funds available to meet all expected and unexpected cash outflow commitments as they fall due. Under stressed conditions, unexpected cash demands could arise primarily from a significant increase in the level of claim payment demands.

To manage its cash flow requirements, the Company has arranged diversified funding sources and maintains a significant portion of its invested assets in highly liquid securities such as cash and cash equivalents and government bonds (see note 5b). In addition, the Company has established counterparty exposure limits that aim to ensure that exposures are not so large that they may impact the ability to liquidate investments at their market value.

Claims liabilities account for the majority of the Company's liquidity risk. A significant portion of the investment portfolio is invested with the primary objective of matching the investment asset cash flows with the expected future payments on these claims liabilities. This portion, referred to as the cash-flow matched investment portfolio, consists of fixed income and preferred equity securities that are intended to address the liquidity and cash flow needs of the Company as claims are settled. The remainder of the Company's overall investment portfolio, the available-for-sale portfolio, backs equity and is invested in fixed income securities and equities with the objective of preserving capital and achieving an appropriate return consistent with the objectives of the Company.

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

The following tables summarize the carrying amounts of financial instruments and insurance assets and liabilities by contractual maturity or expected cash flow dates (the actual repricing dates may differ from contractual maturity because certain securities and debentures have the right to call or prepay obligations with or without call or prepayment penalties) as at:

December 31, 2014					
	Within one year	One to five years	More than five years	No fixed maturity	Total
<b>Assets</b>					
Cash and cash equivalents	\$ 17,328	-	-	-	17,328
Investments – designated as FVTPL	80,885	135,715	142,612	516	359,728
Investments – available-for-sale	2,850	116,742	23,291	94,669	237,552
Investment income due and accrued	2,012	-	-	-	2,012
Due from reinsurers	726	-	-	-	726
Due from insureds	1,909	-	-	-	1,909
Reinsurers' share of unpaid claims	10,691	25,157	7,496	1,556	44,900
Due from Law Society	6,623	-	-	-	6,623
Other receivable	1,404	-	-	-	1,404
Other assets	1,984	-	-	-	1,984
<b>Total</b>	<b>126,412</b>	<b>277,614</b>	<b>173,399</b>	<b>96,741</b>	<b>674,166</b>
<b>Liabilities</b>					
Provision for unpaid claims	111,554	262,493	78,213	16,233	468,493
Due to reinsurers	612	-	-	-	612
Due to insureds	265	-	-	-	265
Expenses due and accrued	1,635	-	-	-	1,635
<b>Total</b>	<b>\$ 114,066</b>	<b>262,493</b>	<b>78,213</b>	<b>16,233</b>	<b>471,005</b>

December 31, 2013					
	Within one year	One to five years	More than five years	No fixed maturity	Total
<b>Assets</b>					
Cash and cash equivalents	\$ 14,525	-	-	-	14,525
Investments – designated as FVTPL	78,984	150,373	136,299	499	366,155
Investments – available-for-sale	635	85,374	32,420	90,455	208,884
Investment income due and accrued	2,136	-	-	-	2,136
Due from reinsurers	309	-	-	-	309
Due from insureds	2,027	-	-	-	2,027
Reinsurers' share of unpaid claims	10,347	18,989	5,952	5,199	40,487
Other receivable	1,419	-	-	-	1,419
Other assets	2,758	-	-	-	2,758
<b>Total</b>	<b>113,140</b>	<b>254,736</b>	<b>174,671</b>	<b>96,153</b>	<b>638,700</b>
<b>Liabilities</b>					
Provision for unpaid claims	98,586	215,468	70,553	63,305	447,912
Due to reinsurers	591	-	-	-	591
Due to insureds	66	-	-	-	66
Due to Law Society	3	-	-	-	3
Expenses due and accrued	1,526	-	-	-	1,526
<b>Total</b>	<b>\$ 100,772</b>	<b>215,468</b>	<b>70,553</b>	<b>63,305</b>	<b>450,098</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## d) Market and interest rate risk

Market risk is the risk that the fair value or future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rate, foreign exchange rates, and equity prices. Due to the nature of the Company's business, invested assets and insurance liabilities as well as revenues and expenses are impacted by movements in capital markets, interest rates, and to a lesser extent, foreign currency exchange rates. Accordingly, the Company considers these risks together in managing its asset and liability positions and ensuring that risks are properly addressed. These risks are referred to collectively as market price and interest rate risk - the risk of loss resulting from movements in market price, interest rate, credit spreads and foreign currency rates.

Interest rate risk is the potential for financial loss arising from changes in interest rates. The Company is exposed to interest rate price risk on monetary financial assets and liabilities that have a fixed interest rate and is exposed to interest rate cash flow risk on monetary financial assets and liabilities with floating interest rates that are reset as market rates change.

For FVTPL assets and other financial assets supporting actuarial liabilities, the Company is exposed to interest rate risk when the cash flows from assets and the policy obligations they support are significantly mismatched, as this may result in the need to either sell assets to meet policy payments and expenses or reinvest excess asset cash flows under unfavourable interest environments. Bonds designated as available-for-sale generally do not support actuarial liabilities. Changes in fair value, other than foreign exchange rate gains and losses, of available-for-sale fixed income securities are recorded to OCI.

The following chart provides the estimated increase (decrease) on the Company's net investment income, net provision for unpaid claims and adjustment expenses, and after-tax OCI, after an immediate parallel increase or decrease of 1% in interest rates as at December 31 across the yield curve in all markets.

		December 31, 2014			December 31, 2013		
		Net investment income	Net provision for unpaid claims and adjustment expenses	After-tax OCI	Net investment income	Net provision for unpaid claims and adjustment expenses	After-tax OCI
Interest rates	+1%	(9,224)	(12,741)	(2,951)	(10,780)	(11,686)	(3,003)
	-1%	9,664	13,428	3,092	11,332	9,717	3,161

Market price and interest rate risk is managed through established policies and standards of practice that limit market price and interest rate risk exposure. Company-wide market price and interest rate risk limits are established and actual positions are monitored against limits. Target asset mixes, term profiles, and risk limits are updated regularly and communicated to portfolio managers. Actual asset positions are periodically rebalanced to within established limits.

Equity price risk is the risk that the fair values of equities decrease as the result of changes in the levels of equity indices and the value of individual equity securities. The Company's equities are designated as available-for-sale and generally do not support actuarial liabilities. The following chart provides the estimated increase (decrease) on the Company's after-tax OCI, assuming all other variables held constant, after an immediate 10% increase or decrease in equity prices as at December 31.

		2014 After-tax OCI	2013 After-tax OCI
Equity prices	+10%	6,958	6,648
	-10%	(6,958)	(6,648)

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates, in particular when an asset and liability mismatch exists in a different currency than the currency in which they are measured. As the Company does not hold significant liabilities in foreign currencies, the resulting currency risk is borne by the Company and forms part of its overall investment income. The table below details the effect of a 10% movement of the currency rate against the Canadian dollar as at December 31, with all other variables held constant.

Currency	2014		2013	
	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)
US Dollar	356	3,081	344	2,600
Euro	-	1,142	1	1,204
Other	-	830	-	847
	<b>356</b>	<b>5,053</b>	<b>345</b>	<b>4,651</b>

The Company also manages possible excessive concentration of risk. Excessive concentrations arise when a number of counterparties are engaged in similar business activities, or activities in the same geographic region, or have similar economic features that would cause their ability to meet contractual obligations to be similarly affected by changes in economic, political and other conditions. Concentrations indicate the relative sensitivity of the Company's performance to developments affecting a particular industry or geographic location. In order to avoid excessive concentrations of risk, the Company applies specific policies on maintaining a diversified portfolio. Identified risk concentrations are managed accordingly.

The following tables summarize the carrying amounts of financial instruments by geographical location of the issuer, as at:

	December 31, 2014					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 13,770	486,983	25,358	1,772	527,883	85.6%
USA	3,558	-	39,083	61	42,702	6.9%
France	-	-	9,573	-	9,573	1.6%
Netherlands	-	-	5,216	-	5,216	0.8%
Others	-	15,112	15,955	179	31,246	5.1%
Total	<b>\$ 17,328</b>	<b>502,095</b>	<b>95,185</b>	<b>2,012</b>	<b>616,620</b>	<b>100.0%</b>

	December 31, 2013					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 11,068	465,013	26,786	1,911	504,778	85.3%
USA	3,443	-	29,961	50	33,454	5.7%
France	-	-	9,155	-	9,155	1.6%
Australia	-	4,197	1,387	30	5,614	0.9%
Others	14	14,875	23,665	145	38,699	6.5%
Total	<b>\$ 14,525</b>	<b>484,085</b>	<b>90,954</b>	<b>2,136</b>	<b>591,700</b>	<b>100.0%</b>

# Notes to Financial Statements

For the year ended December 31, 2014  
Amounts stated in Canadian dollars (amounts in tables in thousands)

## 21. Contingent Liability

During 2012, three insurance companies providing a separate coverage to the insured in excess of the Company's primary professional liability policy commenced independent but related legal actions against the Company, claiming total damages of \$28,000,000 for alleged breaches of duty in the Company's handling of a claim. The Company believes that the actions lack merit and will vigorously defend its position. Accordingly, the Company has not recorded any related provision in its statement of financial position. Subsequent to the claims being brought forward, two claimants have agreed to drop their actions against the Company without costs. The amount of damages claimed by the remaining claimant is \$14,000,000.

## 22. Contingent Asset

In 2013, the *Income Tax Act* was amended to extend tax exempt status given to certain subsidiaries of Canadian municipalities to also include certain subsidiaries of public bodies performing a function of government in Canada. Transitional rules were also included to allow applicable taxpayers to refile on this tax exempt basis for their taxation years beginning after May 8, 2000. After completing a detailed and careful evaluation of the applicability of the new provisions to the Company, the Company believes that it is probable that a refund claim would be successful. Accordingly, during the current year the Company has filed as a tax exempt organization for income tax purposes, and has requested full retrospective exemption back to its 2001 taxation year. The income tax payments relating to taxation years 2001 onwards total as much as \$65,810,261. The exemption would also give rise to significant ongoing future income tax savings, but the Company's deferred income tax asset would be of nil value.

## **Management Statement on Responsibility for Financial Information**

The preparation of the annual financial statements, Management's Discussion and Analysis and all other information in the Company's Annual Report is the responsibility of the Company's management, and the annual financial statements have been approved by the Board of Directors.

The financial statements have been prepared in accordance with International Financial Reporting Standards. Financial statements, by their very nature, include amounts and disclosures based on estimates and judgments. Where alternative methods or interpretations exist, management has chosen those it deems most appropriate in the circumstances, including appropriate consideration to relevance and materiality. Actual results in the future may differ materially from management's current assessment given the inherent variability of future events and circumstances. Financial information appearing elsewhere in the Company's Annual Report is consistent with the financial statements.

Management maintains the necessary system of internal controls over financial reporting to meet its responsibility for the reliability of the financial statements. These controls are designed to provide management with reasonable assurance that the financial records are reliable for preparing financial statements and other financial information, assets are safeguarded against unauthorized use or disposition and liabilities are recognized.

The Board of Directors is responsible to ensure that management fulfils its responsibilities for financial reporting and is ultimately responsible for reviewing and approving the financial statements. The Board carries out its responsibility primarily through its Audit Committee, which is independent of management. The Audit Committee reviews the financial statements and recommends them to the Board for approval. The Audit Committee also reviews and monitors the Company's system of internal controls over financial reporting in the context of reports made by management or the external auditor.

### **Role of the Auditor**

The external auditor, Deloitte LLP, has been appointed by the shareholder. Its responsibility is to conduct an independent and objective audit of the financial statements in accordance with Canadian generally accepted auditing standards and to report thereon to the Company's shareholder. In carrying out its audit, the auditor considers the work of the appointed actuary and his report on the policy liabilities of the Company. The external auditor has full and unrestricted access to the Audit Committee and the Board of Directors to discuss audit, financial

reporting and related findings. The auditor's report outlines the scope of its audit and its opinion.

## Role of the Appointed Actuary

The actuary is appointed by the Board of Directors of the Company. With respect to the preparation of these financial statements, the appointed actuary is required to carry out a valuation of the policy liabilities and to report thereon to the Company's shareholder. The valuation is carried out in accordance with accepted actuarial practice and regulatory requirements. The scope of the valuation encompasses the policy liabilities as well as any other matter specified in any direction that may be made by the regulators. The policy liabilities consist of a provision for unpaid claims and adjustment expenses on the expired portion of policies, a provision for future obligations on the unexpired portion of policies, and other policy liabilities that may be applicable to the specific circumstances of the Company.

In performing the valuation of the policy liabilities, which are by their very nature inherently variable, the appointed actuary makes assumptions as to the future rates of claims severity, inflation, reinsurance recoveries, expenses and other matters, taking into consideration the circumstances of the Company and the nature of the insurance coverage being offered. The valuation is necessarily based on estimates; consequently, the final values may vary significantly from those estimates. The appointed actuary also makes use of management information provided by the Company, and uses the work of the auditor with respect to the verification of the underlying data used in the valuation.

Toronto, Ontario

February 25, 2015

Kathleen A. Waters  
President and CEO

Steve Jorgensen  
Chief Financial Officer

## Exhibit 12 – Insurance Ratios<sup>1</sup>

TEST	RECOMMENDED RANGE	DEC	DEC	DEC
		2014	2013	2012
<b>I. Solvency Ratios</b>				
<b>1. Minimum Capital Test</b>				
<i>(Measures the excess of capital available to capital required based on a risk-based capital adequacy framework and is used to determine capital adequacy of a company.)</i>	Preferred: 220-230% Minimum: 180%	251% Better than Range	233% Better than Range	223% Better than Range
<b>2. Loss reserves to equity</b>				
<i>(Measures unpaid claim and adjustment reserves as a percentage of surplus and provides a simple test of the leveraged position of the company.)</i>	Preferred: < 225% Maximum: 250%	203% Better than Range	215% Better than Range	230% Within Range
<b>II. Other Select Ratios</b>				
<b>1. Liabilities as a % of liquid assets</b>				
<i>(Liabilities as a percentage of Cash and other liquid assets-measures company's ability to meet its financial demands.)</i>	Preferred: < 80% Maximum: 105%	70% Better than Range	70% Better than Range	72% Better than Range
<b>2. Net premiums written as a % of surplus</b>				
<i>(Net risk ratio measures the company's ability to absorb financial shocks. The higher the ratio of premiums to surplus, the greater is the potential risk borne by the company in relation to the surplus available to absorb loss variations.)</i>	Preferred: < 80% Maximum: 100%	55% Better than Range	56% Better than Range	61% Better than Range
<b>3. Return on equity</b>				
	Greater than 0% <sup>2</sup> ,			
<i>(Measures an insurer's net income as a percentage of equity. The higher the ratio, the greater the return to shareholders per unit of invested capital. Sustainability of earnings is more important than periods of high returns followed by periods of low returns or losses.)</i>	Net income	9% Better than Range	3% Better than Range	(1%) Outside of Range
	Comprehensive Income	9% Better than Range	10% Better than Range	2% Better than Range

TEST	RECOMMENDED RANGE	DEC	DEC	DEC
		2014	2013	2012
<b>4. General expense ratio</b>				
<i>(Measures an insurer's general expenses, excluding commissions, as a percentage of net earned premiums.). This ratio should be maintained at lower than or equal to comparable small insurance companies.</i>	Up to small insurance company benchmark (27% as at Dec 2013)	18% Better than Range	19% Better than Range	20% Better than Range
<b>5. Optional business segment</b>				
<i>(Excess program and TitlePLUS title insurance) is planned to operate on a break-even or better basis.</i>	Greater than \$0 (stated in \$'000s)	2,049 Better than Range	993 Better than Range	(753) Outside of Range

**Note:**

1. The above metrics reflect the Risk Appetite Statement approved by the Board of Directors on June 25, 2014.
2. Sufficient to maintain/grow MCT.

Legend
Better Than Range
Within Range
Outside of Range



CIBC Asset Management Inc.  
18 York Street, Suite 1400  
Toronto ON M5J 2T8  
Tel: 416-364-5620  
Fax: 416-364-3286

Confidential

February 5, 2015

Subject: Quarterly Compliance Report as at December 31, 2014  
for Lawyers' Professional Indemnity Company

As of and for the quarter ending December 31, 2014, we hereby certify that to the best of our knowledge the investments in the Lawyers' Professional Indemnity Company portfolio were in compliance, based on our records which are issued on a trade date basis, in accordance with the Investment Policy Statement dated January 1, 2014.

Yours truly,

A handwritten signature in black ink, appearing to read "Deborah Lewis", written in a cursive style.

Deborah Lewis, CFA  
First Vice President



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February 9th, 2015

Lawyers' Professional Indemnity Company  
C/O Ms. Kathleen A. Waters, President & CEO  
250 Yonge Street, Suite 3101  
P.O. Box 3  
Toronto, Ontario  
M5B 2L7

SUBJECT: COMPLIANCE CERTIFICATE

Dear Ms. Waters,

This is to confirm that, at the end of each month of the quarter ending December 31st, 2014, Letko Brosseau was in compliance with the requirements of the Statement of Investment Policies and Procedures, effective January 1st, 2014. To the best of our knowledge, we have no reason to believe that we were not in compliance with all such requirements at any other time during such period.

We also confirm that as of January 1st, 2015, the new Investment Policy Statement is being applied to the portfolio.

Should you require additional information, please do not hesitate to contact us at your convenience.

Regards,

Original letter signed by Peter Letko

Peter Letko  
Letko Brosseau & Associates Inc.  
PL/mn

TAB 4.5.3

## FOR INFORMATION

**LIBRARYCO INC. – AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED  
DECEMBER 31, 2014**

45. **The audited financial statements for LibraryCo Inc. for the year ended December 31, 2014 are for information.**
46. LibraryCo, a wholly-owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Society.
47. LibraryCo's Annual Financial Statements have been approved by LibraryCo's Board.

**LIBRARYCO INC.  
FINANCIAL STATEMENTS 2014**

**LIBRARYCO INC.  
MANAGEMENT DISCUSSION AND ANALYSIS  
DECEMBER 31, 2014**

**Results of Operations**

Results for the year identify a deficit of \$242,000 compared to a deficit of \$88,000 in 2013 and a budgeted deficit in 2014 of \$278,000. Year on year, revenues declined by \$180,000 to \$8 million and expenses declined by \$28,000 to \$8.3 million.

Most revenues and expenses were in line with projections, but the most significant event during the year was at the start of the fourth quarter, when LibraryCo terminated the employment of all its employees. Administrative duties have been taken up by The Law Society of Upper Canada for no increase in the administration fee.

The deficit for the year has reduced the General Fund balance to \$141,000 and the Reserve Fund balance is unchanged at \$500,000.

**Statement of Revenues and Expenses — Revenues**

The Law Society grant is the lawyer-based fee that is transferred to LibraryCo totalling \$7.5 million, the same as 2013.

The Law Foundation of Ontario grant of \$542,000 was provided to LibraryCo to subsidize the purchase of electronic resources. The grant declined by 25% in 2014 and has not been renewed in 2015, leading to a renegotiation of the contract for the provision of electronic products in 2015.

**Statement of Revenues and Expenses — Expenses**

The salaries and administration expense of \$640,000 declined by \$25,000 in 2014 and comprises staff salaries and the administration fee paid to the Law Society. As noted above, LibraryCo terminated the employment of all its employees in the last quarter of 2014.

Professional fees increased by nearly \$6,000 to \$20,000 due to a strategic planning session and an assessment of the impact of the Canadian Anti-Spam Legislation on LibraryCo.

Other head-office expenses increased by \$82,000 to \$143,000 due to severance costs and changes in publication expenses, 1-800 line charges, professional development, web initiatives and miscellaneous expenses.

Electronic product expenses decreased by \$147,000 based on the new contract for 2014.

Group benefits costs have increased by \$16,000 to \$282,000 providing the same level of coverage to staff within the county library system. In recent years, LibraryCo has received premium refunds based on claims experience and the 2014 refund was smaller than in 2013.

Other centralized expenses have decreased by \$13,000 to \$138,000 with savings spread across publications, Conference for Ontario Law Association's Libraries (COLAL) expenses, continuing education, staff and travel, and courier/postage costs.

County and District law libraries grants increased by \$53,000 to \$6.3 million. As detailed in the notes to the financial statements, grants to individual libraries typically increased by 1% in line

with the budget, with capital and special needs grants effecting the totals in both years, such as the \$25,000 paid to Thunder Bay in 2014, to assist with moving costs.

**Balance Sheet and Statement of Changes in Fund Balances**

Cash and short-term investments have decreased by \$201,000 due to the operating deficit and changes in the other working capital items. The accounts receivable total has increased based on the timing of benefit premium refunds and accrued liabilities includes staffing cost accruals in 2014.

The General Fund accounts for the delivery, management and administration of library services. The General Fund has decreased by \$242,000 to \$141,000 over the last 12 months in line with the budget for the period which used the General Fund to finance expenses. The 2015 budget includes funding of \$100,000 from the General Fund almost depleting it.

The Reserve Fund has an unchanged balance of \$500,000. In accordance with Board policy it comprises a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000.



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## Independent Auditor's Report

To the Shareholders of LibraryCo Inc.

We have audited the accompanying financial statements of LibraryCo Inc., which comprise the balance sheet as at December 31, 2014, and the statements of revenues and expenses, changes in fund balances and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.

In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of LibraryCo as at December 31, 2014, and the results of its operations and its cash flows for the year then ended, in accordance with Canadian accounting standards for not-for-profit organizations.

A handwritten signature in blue ink that reads "Deloitte LLP".

Chartered Professional Accountants, Chartered Accountants  
Licensed Public Accountants  
March 24, 2015

**LIBRARYCO INC.**

Balance Sheet  
 Stated in dollars  
 As at December 31

	2014	2013
<b>Current Assets</b>		
Cash and short-term investments	663,373	863,847
Accounts receivable	46,997	18,917
Prepaid expenses	29,574	26,798
<b>Total Assets</b>	<b>739,944</b>	<b>909,562</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued liabilities (notes 4 and 6)	98,388	26,426
<b>Total Liabilities</b>	<b>98,388</b>	<b>26,426</b>
<b>Share Capital and Fund Balances</b>		
Share capital (note 5)	200	200
General fund (note 2)	141,356	382,936
Reserve fund (note 2)	500,000	500,000
<b>Total Share Capital and Fund Balances</b>	<b>641,556</b>	<b>883,136</b>
<b>Total Liabilities, Share Capital and Fund Balances</b>	<b>739,944</b>	<b>909,562</b>

See accompanying notes

On behalf of the Board of Directors



Chair – Board of Directors



Vice Chair – Board of Directors

**LIBRARYCO INC.**

Statement of Revenues and Expenses

Stated in dollars

*For the year ended December 31*

	2014	2013
<b>Revenues</b>		
Law Society of Upper Canada grant	7,498,519	7,498,524
Law Foundation of Ontario grant	542,000	722,500
Interest income	8,269	8,551
<b>Total Revenues</b>	<b>8,048,788</b>	<b>8,229,575</b>
<b>Expenses</b>		
<b>Head Office/Administration</b>		
Salaries and administration	639,657	664,725
Professional fees	20,173	14,614
Other (note 7)	142,547	60,147
<b>Total Head Office/Administration Expenses</b>	<b>802,377</b>	<b>739,486</b>
<b>Law Libraries - Centralized Purchases</b>		
Electronic products and services	746,220	892,518
Group benefits	281,976	266,253
Other (note 8)	138,170	151,027
<b>Total Law Libraries - centralized purchases</b>	<b>1,166,366</b>	<b>1,309,798</b>
County and District Law Libraries Grants (note 9)	6,321,625	6,268,543
<b>Total County and District Law Libraries Expenses</b>	<b>7,487,991</b>	<b>7,578,341</b>
<b>Total Expenses</b>	<b>8,290,368</b>	<b>8,317,827</b>
<b>Deficit for the year</b>	<b>(241,580)</b>	<b>(88,252)</b>

*See accompanying notes*

**LIBRARYCO INC.**

Statement of Changes in Fund Balances

Stated in dollars

*For the year ended December 31*

	2014			2013
	General Fund	Reserve Fund	Total	Total
Balances, beginning of year	382,936	500,000	<b>882,936</b>	971,188
Deficit for the year	(241,580)	-	<b>(241,580)</b>	(88,252)
<b>Balances, end of year</b>	<b>141,356</b>	<b>500,000</b>	<b>641,356</b>	882,936

*See accompanying notes*

**LIBRARYCO INC.**

Statement of Cash Flows

Stated in dollars

*For the year ended December 31*

	2014	2013
<b>Net outflow of cash related to operating activities:</b>		
<b>Deficit for the year</b>	<b>(241,580)</b>	(88,252)
Net change in non-cash operating working capital items:		
Accounts receivable	<b>(28,080)</b>	13
Prepaid expenses	<b>(2,776)</b>	(8,978)
Accounts payable and accrued liabilities	<b>71,962</b>	(681)
<b>Cash used in operating activities</b>	<b>(200,474)</b>	(97,898)
Cash and short-term investments, beginning of year	<b>863,847</b>	961,745
<b>Cash and short-term investments, end of year</b>	<b>663,373</b>	863,847

*See accompanying notes*

**LibraryCo Inc.**  
**Notes to financial statements**  
**For the year ended December 31, 2014**

**1. General**

LibraryCo Inc. (“the Organization”) was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding from The Law Society of Upper Canada (“the Society”).

The Organization has two classes of shares: Common shares and Special shares. The Society holds all of the 100 Common shares outstanding. Of the 100 Special shares outstanding, 25 are held by the Toronto Lawyers’ Association (TLA) and 75 are held by the County and District Law Presidents’ Association (CDLPA). The Society may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

The Organization is not subject to federal or provincial income taxes.

Under an Administrative Services Agreement, the Society provides the administrative functions of the Organization.

**2. Significant Accounting Policies**

*Basis of presentation*

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations set out in Part III of the *CPA Canada Handbook — Accounting*.

*General and reserve funds*

The General Fund accounts for the delivery, management and administration of library services. The Reserve Fund is maintained to assist the Organization’s cash flows and act as a contingency fund. In accordance with a Board resolution, the Reserve Fund will be maintained at a minimum of \$500,000, comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000; any expenses of this fund that would reduce the fund balance below \$500,000 should be replenished in the following year.

*Cash and short-term investments*

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Organization’s investment policy.

*Revenue recognition*

Grants are recorded as revenue in the General Fund in the fiscal year in which they are received. Investment income is recognized when receivable, if the amount can be reasonably estimated.

*Grants paid*

Grants are recognized in the fiscal year in which they are paid.

**3. Financial Instruments**

The Organization's financial assets and financial liabilities are classified and measured as follows:

<b>Asset / Liability</b>	<b>Measurement</b>
Cash and short-term investments	Fair value
Accounts receivable	Amortized cost
Accounts payable and accrued liabilities	Amortized cost

**4. Accounts Payable and Accrued Liabilities**

There are no amounts payable for government remittances.

**5. Share Capital**

Authorized

Unlimited number of Common shares

Unlimited number of Special shares

Issued	<b>2014</b>	2013
100 Common shares	<b>\$100</b>	\$100
100 Special shares	<b>100</b>	100
	<b>\$200</b>	\$200

**6. Related Party Transactions**

The Society provides administrative services to the Organization (note 1) as well as certain other services and publications. The total amount billed by the Society for 2014 was \$589,092 (2013: \$590,555). Included in accounts payable and accrued liabilities are amounts due to the Society of \$492 (2013: \$8,526).

**7. Other Expenses — Head Office/Administration**

Included in these expenses are costs associated with administration by the Society, directors' and officers' insurance, Board of Directors' meetings and other miscellaneous items.

**8. Other Expenses — County and District Law Libraries — centralized purchases**

Included in these expenses are costs associated with staffing and travel, document delivery, publications, committee meetings and miscellaneous items.

**9. County and District Law Library Grants**

These grants represent the quarterly distribution of funds to the 48 County and District Law Libraries and any capital and special needs grants. The grants are distributed in accordance with policies and procedures established by the Organization's Board of Directors.

The following individual law library grants were distributed by the Organization during 2014 and 2013:

<b>Law Association</b>	<b>2014</b>	<b>2013</b>
Algoma County	\$132,937	\$ 130,972
Brant	98,754	100,239
Bruce	56,079	54,265
Carleton County	608,596	599,602
Cochrane	48,805	47,141
Dufferin	46,884	45,890
Durham	128,161	126,267
Elgin	76,244	75,632
Essex	277,862	272,770
Frontenac	129,263	128,853
Grey County	65,220	67,256
Haldimand	30,445	30,510
Halton County	137,400	139,369
Hamilton	442,317	435,780
Hastings County	84,540	85,607
Huron	74,745	73,640
Kenora District	85,951	86,891
Kent	69,402	68,376
Lambton	73,798	75,707
Lanark	38,683	41,105
Leeds & Grenville	70,734	72,535
Lennox & Addington	26,196	27,309
Lincoln	175,778	173,180
Manitoulin	2,500	0
Middlesex	357,979	351,703
Muskoka	64,561	64,122
Nipissing	84,918	83,663
Norfolk	70,424	69,898
Northumberland County	75,747	76,023
Oxford	70,071	70,159
Parry Sound	38,791	39,718
Peel	293,852	288,524
Perth	53,966	54,667
Peterborough	130,629	128,699
Prescott & Russell	13,698	14,993
Rainy River	26,566	26,173
Renfrew County	122,323	120,515
Simcoe County	138,304	136,260
Stormont, Dundas & Glengarry	79,148	75,275
Sudbury	184,535	184,339
Temiskaming	42,563	41,934
Thunder Bay	193,776	165,297
Toronto	579,321	570,760
Victoria-Haliburton	87,300	85,025
Waterloo	236,095	267,606
Welland County	92,447	94,471
Wellington	74,601	74,487
York	228,716	225,336
	<b>\$ 6,321,625</b>	<b>\$ 6,268,543</b>

**TAB 4.5.4**

**FOR INFORMATION**

**INVESTMENT COMPLIANCE REPORTING**

48. **Investment Compliance Statements as at December 31, 2014 are for information.**

**STATEMENT OF INVESTMENT COMPLIANCE  
SHORT TERM  
For the three months ended December 31, 2014**

Investment Parameters	Guidelines for Both	COMPENSATION FUND	GENERAL FUND
		Compliance	Compliance
1. <u>Asset Mix</u>			
Federal & provincial treasury bills	Allowed	Yes	Yes
Bankers acceptances	Allowed	Yes	Yes
Commercial paper	Allowed	Yes	Yes
Investment manager Money Market Fund	Allowed	Yes	Yes
Premium Savings Account	Allowed	Yes	Yes
FGP S/T Invest Fund	Allowed	Yes	Yes
2. <u>Quality Requirements</u>			
Commercial paper rating	Min. R1	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes
3. <u>Quantity Restrictions</u>			
Commercial paper of a single corporate issuer	Max. 8% of Fund	Yes	Yes
4. <u>Other Restrictions</u>			
Equity securities	None	Yes	Yes
Direct investments in:			
resource properties	None	Yes	Yes
mortgages and mortgage-backed securities	None	Yes	Yes
real estate	None	Yes	Yes
venture capital financings	None	Yes	Yes
Derivatives	None	Yes	Yes

Fred Grady  
Manager of Finance

**STATEMENT OF INVESTMENT COMPLIANCE  
LONG TERM  
For the three months ended December 31, 2014**

Investment Parameters	Guidelines	COMPENSATION	GENERAL	E & O
		FUND	FUND	FUND
		Compliance	Compliance	Compliance
1. <u>Asset Mix</u>				
Cash and Short-Term	0 - 15%	Yes	Yes	Yes
Equity investments	5 - 25%	Yes	Yes	Yes
Bonds	60 - 95%	Yes	Yes	Yes
2. <u>Quality Requirements</u>				
Bonds	Min. BBB	Yes	Yes	Yes
3. <u>Quantity Restrictions</u>				
Equities:				
single holding	Max. 10%	Yes	Yes	Yes
weight in portfolio > weight in S&P/TSX Composite Index	Varies	Yes	Yes	Yes
derivatives etc.	None	Yes	Yes	Yes
Non-Canadian	None	Yes	Yes	Yes
Bonds:				
single security or issuer (non-government)	Max. 10%	Yes	Yes	Yes
corporate issues	Max 50%	Yes	Yes	Yes
provincial govt. issues	Max 60%	Yes	Yes	Yes
municipal issues	Max 10%	Yes	Yes	Yes
foreign issues	Max 10%	Yes	Yes	Yes
BBB issues	Max. 10%	Yes	Yes	Yes



Fred Grady  
Manager of Finance

**The Law Society of Upper Canada  
General Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending December 31, 2014)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>5%</b>	<b>15%</b>	<b>25%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				
Max. 10% BBB rated bonds.				Y
Max. 100% in Government of Canada or Government of Canada guaranteed bonds.				Y
Max. 60% in Provincial government and Provincial government guaranteed bonds.				Y
Max. 10% in Municipal bonds.				Y
Max. 50% in Corporate issues.				Y
Max. 10% in non-Government issuers.				Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.				Y
Bond portfolio duration 1 to 5 years.				Y

Note: In mid June 2014 Law Society General Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2014.

\*If policy not complied with, comment on specifics.

January 21, 2015

Date:



**Stephen P. Copeland**  
Senior Vice President Investments  
& Private Client Services

**The Law Society of Upper Canada  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending December 31, 2014)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>5%</b>	<b>15%</b>	<b>25%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				
Max. 10% in BBB rated bonds.				Y
Max. 100% in Government of Canada or Government of Canada guaranteed bonds.				Y
Max. 60% in Provincial government and Provincial government guaranteed bonds.				Y
Max. 10% in Municipal bonds.				Y
Max. 50% in Corporate issues.				Y
Max. 10% in non-Government issuers.				Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.				Y
Bond portfolio duration 1 to 5 years.				Y

Note: In mid June 2014 Law Society Compensation Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2014.

\*If policy not complied with, comment on specifics.

January 21, 2015

Date:



**Stephen P. Copeland**  
Senior Vice President Investments  
& Private Client Services



January 2015

Ms. Wendy Tysall  
Chief Financial Officer  
Osgoode Hall  
Finance Dept., 1<sup>st</sup> Floor  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6

Dear Wendy:

**Re: Manager Compliance Reporting**

For the Law Society of Upper Canada Errors and Omissions Insurance Fund, we wish to confirm that the portfolio being managed by Foyston, Gordon & Payne Inc. was in compliance with the Fund's Investment Policy Statement in effect (latest revision May 2014), for the quarter ending December 31, 2014.

Yours truly,

Stephen P. Copeland  
Senior Vice President Investments  
& Private Client Services

TAB 5



## Report to Convocation

April 23, 2015

---

### 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

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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Challenges Faced by Racialized Licensees Working Group – Interim Report to Convocation, April 2015

Snapshots of the Professions

*Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period of July 1 to December 31, 2014

Equity Legal Education and Rule of Law Series Calendar - 2015

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on April 9, 2015. Committee members bencher Julian Falconer, Chair, bencher Janet Leiper, Chair, bencher Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee, and benchers Constance Backhouse, Avvy Go, Howard Goldblatt, Jeffrey Lem, Marian Lippa, Barbara Murchie, Judith Potter and Beth Symes participated. Bencher Raj Anand participated to make a presentation. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Sandra Yuko Nishikawa, Chair of the Equity Advisory Group, also participated. Staff members Josée Bouchard, Sabreena Delhon, Marisha Roman, Ekua Quansah, Susan Tonkin and Grant Wedge also attended.

TAB 5.1

## FOR DECISION

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS**

2. **That Convocation approve the letters and public statements in the following cases:**
  - a. **Lawyer Alberto Nisman – Argentina – letters of intervention and public statement presented at [TAB 5.1.1](#);**
  - b. **Lawyers in the Philippines – public statement presented at [TAB 5.1.2](#).**

**Rationale**

3. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
  - a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. determine if the matter is one that requires a response from the Law Society; and,
  - c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

4. The Monitoring Group considered the following factors when making a decision about the death of lawyer Alberto Nisman:
  - a. there are no concerns about the quality of sources used for this report; and
  - b. although there is an ongoing investigation into Alberto Nisman’s death, the Monitoring Group is of the view that it is within its mandate to request that the investigation be conducted in a fair, impartial and independent way.
5. The Monitoring Group considered the following factors when making a decision about the treatment of lawyers in the Philippines:
  - a. the Law Society was asked to intervene by Lawyers for Lawyers and Amnesty International Canada, two stakeholders that work collaboratively with the Law Society;
  - b. there are no concerns about the quality of sources used for this report;
  - c. the case falls within the mandate of the Monitoring Group;
  - d. the Law Society has previously intervened in cases of lawyers facing persecution in the Philippines. In November 2008, the Law Society released a public statement announcing its support for a fact-finding mission investigating the human rights

situation in the Philippines, noting that the situation of attacks against lawyers in the Philippines has been ongoing for years. In June 2014, the Law Society intervened in the case of Maria Catherine Dannug-Salucon as a result of reports that the human rights lawyer was facing ongoing surveillance and intimidation.

6. There are no significant cost implications in proceeding with this request.

## Background

### ARGENTINA – DEATH OF PROSECUTOR ALBERTO NISMAN

#### Sources of Information

7. The background information for this report was taken from the following sources:
- a. Al Jazeera;<sup>1</sup>
  - b. British Broadcasting Corporation (“BBC”);<sup>2</sup>
  - c. The Guardian<sup>3</sup>
  - d. Lawyers’ Rights Watch Canada (“LRWC”);<sup>4</sup>
  - e. The New Yorker;<sup>5</sup> and
  - f. The New York Times.<sup>6</sup>

#### Background

8. On January 18, 2015, Alberto Nisman, Argentine’s state prosecutor, was found dead in his apartment. The cause of death was identified as a gunshot wound to the head.<sup>7</sup> Four days prior to his death, he had accused President Cristina Fernández de Kirchner and Foreign

<sup>1</sup> Al Jazeera is based in Qatari and owned by the Al Jazeera Media Network. Al Jazeera an international 24 hour English language news and current affairs channel.

<sup>2</sup> The BBC, founded in 1922, is one of the world’s most respected sources for news. It has been a global service since 1932.

<sup>3</sup> The Guardian is a globally respected news source, founded in Manchester, England, in 1821, and first printed in that year. It was named Newspaper of the Year in 2011 at the internationally recognized Press Awards.

<sup>4</sup> LRWC was incorporated as a non-profit organization on 8 June 2000. It is a committee of Canadian lawyers that promotes human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. Their work includes: campaigning for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy; producing legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and, working in cooperation with other human rights organizations.

<sup>5</sup> The New Yorker is an American magazine of reportage, commentary, criticism, essays, fiction, satire, cartoons, and poetry. It is published by [Condé Nast](#). Started as a weekly in 1925, the magazine is now published 47 times annually, with five of these issues covering two-week spans.

<sup>6</sup> The New York Times was established in 1851 and is considered one of the world’s great newspapers. By 2011, the Times had won 106 Pulitzer Prizes, more than any other news organization.

<sup>7</sup> “Draft of Arrest Request for Argentine President Found at Dead Prosecutor’s Home” (3 February 2015), online: <[http://www.nytimes.com/2015/02/04/world/americas/argentina-prosecutor-alberto-nisman-arrestwarrant-cristina-de-kirchner.html?\\_r=0](http://www.nytimes.com/2015/02/04/world/americas/argentina-prosecutor-alberto-nisman-arrestwarrant-cristina-de-kirchner.html?_r=0)> [New York Times]

Minister, Héctor Timerman, of conspiring to cover up Iran's alleged involvement in a 1994 attack on a Jewish community centre located in Buenos Aires that killed 85 people.<sup>8</sup> Alberto Nisman had spent more than ten years investigating this case and he was scheduled to testify before Congress about this matter on January 19, 2015.<sup>9</sup>

9. Reports indicate that President Fernández has “wavered back and forth between suggesting [Alberto Nisman's death] was a suicide and a political murder by rogue intelligence agents out to discredit Fernández.”<sup>10</sup> A prosecutor, Viviana Fein, has been placed in charge of investigating Alberto Nisman's death.<sup>10</sup> It is reported that “though no official ruling has been made on Nisman's cause of death, the investigation has leaned strongly towards suicide.”<sup>11</sup> Viviana Fein has insisted that she is independent and impartial, stating that she is “transparent and honest” and “not worried about public opinion”.<sup>13</sup> She has also noted that, at this point, “there has been nothing which allows [her] to say categorically whether this was a suicide or a homicide.”<sup>12</sup>
10. Alberto Nisman's ex-wife, Sandra Arroyo Salgado, recently commissioned an unofficial investigation into Alberto Nisman's death. According to reports, the findings of this investigation have ruled out theories of accident or suicide.<sup>15</sup>
11. The official investigation into Alberto Nisman's death is ongoing.<sup>13</sup>
12. In February 2015, Lawyers' Rights Watch Canada sent a letter of intervention to the Attorney General of Argentina and the Minister of Justice and Human Rights calling on the government of Argentina:
  - a. to appoint an Independent Commission of Inquiry empowered to conduct a full and independent investigation into the death of Alberto Nisman;
  - b. to conduct a full and independent investigation into the nature and extent of protective measures put in place by the government of Argentina to protect its prosecutors, and the insufficiency of those measures in Alberto Nisman's case, that will make recommendations for implementing and enforcing effective protective measures for prosecutors in the future; and

<sup>8</sup> “Family of Alberto Nisman say Argentinian prosecutor was murdered” (5 March 2015), online: <<http://www.theguardian.com/world/2015/mar/05/alberto-nisman-argentina-president-fernandez>> [Guardian]

<sup>9</sup> *Ibid.* Also see “What Happened to Alberto Nisman” (31 January 2015), online: <<http://www.newyorker.com/news/news-desk/happened-alberto-nisman>> [New Yorker]

<sup>10</sup> *Guardian supra* note 8.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.* 13

*Ibid.*

<sup>12</sup> “What lies behind Alberto Nisman's death?” (28 January 2015), online: <<http://www.bbc.com/news/worldlatin-america-30937055>> [BBC] 15 *Ibid.*

<sup>13</sup> “Argentine prosecutor Alberto Nisman was ‘murdered’” (5 March 2015), online: <<http://www.aljazeera.com/news/2015/03/argentine-prosecutor-alberto-nisman-murdered150305194708529.html>>

- c. to make a public statement of commitment to ensure the independent continuation of the work of Alberto Nisman in investigating and prosecuting perpetrators of the Amia bombing, including allegations of attempts by governments authorities to suppress evidence or otherwise improperly influence the investigation or prosecution.<sup>14</sup>

## LAWYERS IN THE PHILIPPINES

### Request from Lawyers for Lawyers

13. In January 2015, Josée Bouchard received a request from Adrie van de Streek, Executive Director, Lawyers for Lawyers, asking the Law Society to co-sign a petition for the Day of the Endangered Lawyer. The petition called on the current government of the Philippines to investigate and prevent the killings and harassment of lawyers in the Philippines. As this request was received the day before the Day of the Endangered Lawyers, the Law Society took no action.

### Day of the Endangered Lawyer 2015: The Philippines

14. The International Day of the Endangered Lawyer began in 2010 and was first organized by the European Democratic Lawyers Association (AED-EDL) in support of lawyers in Iran. Each year the AED-EDL focuses on a country where lawyers are endangered due to their advocacy work. This year, the International Day of the Endangered Lawyer was dedicated to lawyers in the Philippines. According to Lawyers for Lawyers, “since 2001, at least 41 lawyers and 18 judges have been murdered in the Philippines. The suspects of these crimes seem to be in the army and the police, but the government refuses to take any action. Since 2013, the number of murders on lawyers and judges have been increasing [sic].”<sup>15</sup>
15. The AED-EDL, the European Association of Lawyers for Democracy and World Human Rights (ELDH) and the European Bar Human Rights Institute, with the support of the International Association of Democratic Lawyers, the National Union of Peoples’ Lawyers (Philippines) and Lawyers for Lawyers, have drafted a report titled, *Basic Report on the Human Rights Lawyers Under Continuing Threat in the Philippines*, which provides information on lawyers in the Philippines who have been killed or attacked since July 2012. The report can be found on-line at the following:

[http://www.ccbe.eu/fileadmin/user\\_upload/document/Events/Basic\\_report\\_for\\_the\\_Day\\_of\\_the\\_Endangered\\_Lawyer\\_2015.pdf](http://www.ccbe.eu/fileadmin/user_upload/document/Events/Basic_report_for_the_Day_of_the_Endangered_Lawyer_2015.pdf)

<sup>14</sup> Lawyers Rights Watch Canada, Argentina: Responsibilities of the Government of Argentina in the Death of Prosecutor Alberto Nisman | Letter. 8 February 2015, online: < <http://www.lrwc.org/argentinaresponsibilities-of-the-government-of-argentina-in-the-death-of-prosecutor-alberto-nisman-letter/> >

<sup>15</sup> Lawyers for Lawyers, “Philippines: Day of the Endangered Lawyers”, online: <<http://www.advocatenvooradvocaten.nl/10031/philippines-day-of-the-endangered-lawyer/>>

### **Request from Amnesty International**

16. In February 2015, Josée Bouchard received a request from Alex Neve, Secretary General, Amnesty International Canada. Mr. Neve asked the Law Society to endorse a statement calling on the Secretary of Justice of the Philippines to urgently address cases of torture and other ill-treatment in the Philippines by taking concrete action to ensure those responsible are brought to justice.

### **Monitoring Group's Recommended Action**

17. The Monitoring Group considered the Amnesty International request and decided it could not recommend the support of a broad statement against torture in the Philippines it does not fall within its mandate. However, in light of the information produced by Lawyers for Lawyers regarding the ongoing killings and harassment of lawyers and judges in the Philippines, it is within its mandate to recommend the release of a public statement. The proposed public statement is presented at [TAB 5.1.2](#).

TAB 5.1.1

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****ALBERTO NISMAN**

Her Excellency Cristina Fernández de Kirchner  
 Presidencia de la Nación  
 Balcarce 50, piso 1.  
 (1064) Ciudad Autónoma de Buenos Aires  
 Argentina

President Fernández:

**Re: The death of prosecutor Alberto Nisman**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the death of prosecutor Alberto Nisman. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Reports indicate that on January 18, 2015, Alberto Nisman, Argentine's state prosecutor, was found dead in his apartment. The cause of death was identified as a gunshot wound to the head. Four days prior to his death, he had accused the President and Foreign Minister, Héctor Timerman, of conspiring to cover up Iran's alleged involvement in a 1994 attack on a Jewish community centre located in Buenos Aires that killed 85 people. Alberto Nisman had spent more than ten years investigating this case and he was scheduled to testify before Congress about this matter on January 19, 2015.

We understand that a prosecutor, Viviana Fein, has been placed in charge of investigating Alberto Nisman's death. According to reports, Alberto Nisman's ex-wife, Sandra Arroyo Salgado, recently commissioned an unofficial investigation into Alberto Nisman's death. The findings of this investigation have ruled out theories of accident or suicide.

The Law Society would like to remind Your Excellency of Principles 16 and 17 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Concerns have been raised that Alberto Nisman was killed as a result of fulfilling his legitimate legal duties. The Law Society urges the government of Argentina to,

- a. ensure that the investigation into the death of Alberto Nisman is fair, impartial and independent;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

Alejandra Magdalena Gils Carbó  
Attorney General of Argentina  
Avenida de Mayo 760  
Buenos Aires, B.A., Argentina  
Email [agils@mfp.com.ar](mailto:agils@mfp.com.ar)

Dr. Julio Alak, Minister of Justice and Human Rights  
Minister of Justice and Human Rights:  
Sarmiento 329, C1041AAG Buenos Aires  
Email: [prensa@jus.gov.ar](mailto:prensa@jus.gov.ar) Dr. Daniel Jorge Bugallo Olano

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers, via email

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Advisor, The Law Society of England and Wales

## Proposed Public Statement

### **The Law Society of Upper Canada Expresses Concern about the Death of Alberto Nisman**

The Law Society of Upper Canada is deeply concerned about the death of prosecutor Alberto Nisman in Argentina.

Reports indicate that on January 18, 2015, Alberto Nisman, Argentine's state prosecutor, was found dead in his apartment. The cause of death was identified as a gunshot wound to the head. Four days prior to his death, he had accused President Cristina Fernández de Kirchner and Foreign Minister Héctor Timerman of conspiring to cover up Iran's alleged involvement in a 1994 attack on a Jewish community centre located in Buenos Aires that killed 85 people. Alberto Nisman had spent more than ten years investigating this case and he was scheduled to testify before Congress about this matter on January 19, 2015.

We understand that a prosecutor, Viviana Fein, has been placed in charge of investigating Alberto Nisman's death. According to reports, Alberto Nisman's ex-wife, Sandra Arroyo Salgado, recently commissioned an unofficial investigation into Alberto Nisman's death. The findings of this investigation have ruled out theories of accident or suicide.

The Law Society would like to remind the government of Argentina of Principles 16 and 17 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Concerns have been raised that Alberto Nisman was killed as a result of fulfilling his legitimate legal duties. The Law Society urges the government of Argentina to,

- a. ensure that the investigation into the death of Alberto Nisman is fair, impartial and independent;
- b. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations;
- c. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

### Proposed Letter to Lawyers' Associations

Dear [Name],

**Re: The death of prosecutor Alberto Nisman**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Cristina Fernández de Kirchner of Argentina, expressing our deep concern over reports of the death of Alberto Nisman.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [jbouchar@lsuc.on.ca](mailto:jbouchar@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Paul Schabas  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

Alex Neve, Colegio de Abogados de la Ciudad de Buenos Aires

ary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers, via email

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriella Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Sarah Smith, Human Rights and Rule of Law Policy Advisor, The Law Society of England and Wales

## TAB 5.1.2

**The Law Society of Upper Canada Expresses Concern about Human Rights Violations  
faced by Lawyers and Members of the Judiciary in the Philippines**

The Law Society of Upper Canada is deeply concerned about the ongoing human rights violations faced by lawyers and judges in the Philippines.

The 2015 Day of the Endangered Lawyer was dedicated to lawyers in the Philippines. **Reports indicate that at least 41 lawyers and 18 judges have been murdered in the Philippines since 2001.** An increasing number of lawyers and judges have been harassed and attacked. According to the *Basic Report on the Human Rights Lawyers under Continuing Threat in the Philippines*, in these cases “only very scarcely a perpetrator is arrested and nearly never prosecuted or punished by the courts.”

The Law Society reminds the government of the Philippines of Principles 16, 17 and 23 of the United Nations *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

The Law Society urges the government of the Philippines to,

- a. put an end to all acts of violence and harassment against human rights lawyer and defenders in the Philippines;
- b. guarantee in all circumstances the physical and psychological safety and integrity of all human rights lawyers and defenders;

- c. conduct a fair, impartial and independent investigation into the cases of human rights lawyers who have been murdered, harassed or attacked in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- d. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*\*The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 7,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

TAB 5.1.3

## FOR INFORMATION

## MONITORING GROUP PAST INTERVENTION – WALEED ALBULKHAIR

## SUMMARY

1. On April 1, 2015, Lawyers' Rights Watch Canada asked the Law Society of Upper Canada to join a Petition to the UN Working Group on Arbitrary Detention for Saudi Arabian lawyer Waleed Albulkhair, on whose behalf the Law Society has intervened twice, most recently in early March 2015.
2. Waleed Albulkhair is serving a 15 year sentence for peacefully advocating reforms necessary to protect rights. He is a lawyer and has been an outspoken advocate for an elected parliament, an independent judiciary, a constitutional monarchy and recognition of human rights. He has also advocated on behalf of prisoners of conscience and written many articles identifying human rights abuses and the need for legal reform. In 2012 he was awarded the Olof Palme Prize for his strong, self-sacrificing and sustained struggle to promote respect for human and civil rights for both men and women in Saudi Arabia.<sup>[1]</sup>
3. In April 2012 the Government of Saudi Arabia banned him from traveling outside Saudi Arabia. Some of the advocacy for recognition of human rights and democratic reform that led to his prosecution and imprisonment include:
  - o In 2007 he signed the *Features of a Constitutional Monarchy* a petition calling for a constitutional monarchy;
  - o In 2008 he founded the Monitor for Human Rights in Saudi Arabia (MHRSA). MHRSA and the Saudi Civil and Political Rights Association (ACPRA) became the first to highlight the plight of prisoners of conscience in Saudi Arabia;
  - o In 2008 he initiated a 48-hour hunger strike for prisoners of conscience which led to sit-ins and demonstrations;
  - o In 2011 he signed *Towards a State of Rights and Institutions*, a 9-point petition calling for elections, an independent judiciary and the establishment of civil society institutions and labour unions. The petition was posted on a dedicated website and Facebook and signed by over 9,000 before it was removed;

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<sup>[1]</sup> Olof Palmes Minnesfond, 2012. <http://www.palmefonden.se/2012-radhia-nasraoui-och-waleed-sami-abu-alkhair-2/>

- In 2012 he began hosting weekly meetings in his home called 'samood' (which connotes resistance or steadfastness) to discuss social, political and philosophical issues. He was arrested temporarily in October 2013 as a result of these meetings. These sessions began in reaction to the government clamp down on gatherings in public places following the 8 February 2012 arrest of journalist Hamza Kashgari;
  - In 2012 he publically criticized the "war" on freedom of expression and the "criminalization" of thought in Saudi Arabia;
  - In 2013 he publically criticized the lack of codified laws and interference by the Minister of the Interior as factors contributing to "religious extremism and intolerance among the judiciary" and the conviction of human rights and civil society advocates;<sup>[2]</sup>
  - He has represented Raif Badawi, the organizer of the Saudi Liberal Network internet discussion group who was convicted of insulting Islam and sentenced to 10 years in prison, a fine, and 1,000 lashes to be administered 50 lashes at a time; and
  - He has attended meetings regarding human rights concerns with the Gulf Cooperation Council (GCC).
4. As this matter was of an urgent nature, the Treasurer approved the request to support the petition and informs Convocation of this action. The action was taken in accordance with the Monitoring Group's mandate stating "where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Human Rights Monitoring Group shall report on the matters at the next meeting of Convocation."

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<sup>[2]</sup> "The legal system is based on uncodified principles of Islamic law, which leaves judges largely free to decide what actions, in their view, are crimes, as well as the appropriate punishments. I believe that the Interior Ministry actively encourages religious extremism and intolerance among the judiciary, recognizing that judges with these views are far more willing to convict human rights and civil society advocates of vague religious and social offenses." Waleed Abu Alkhair, *Sentenced in Saudi Arabia for peaceful activism*, Washington Post, 26 November 2013. [http://www.washingtonpost.com/opinions/sentenced-in-saudi-arabia-for-peaceful-activism/2013/11/26/95fbcc6e-507b-11e3-9fe0-fd2ca728e67c\\_story.html](http://www.washingtonpost.com/opinions/sentenced-in-saudi-arabia-for-peaceful-activism/2013/11/26/95fbcc6e-507b-11e3-9fe0-fd2ca728e67c_story.html)

TAB 5.2

**REPORTS FOR INFORMATION****BENCHER SUSAN HARE'S ADDRESS TO CONVOCATION  
RENEWAL PROCESS FOR THE ABORIGINAL INITIATIVES STRATEGY**

18. Bencher Susan Hare, Vice-Chair of the Equity and Aboriginal Issues Committee, presents an address to Convocation that is based on the address reproduced at [TAB 5.2.1](#).

**CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP  
– INTERIM REPORT TO CONVOCATION, APRIL 2015**

19. Since 2012, the Challenges Faced by Racialized Licensees Working Group (RWG) has been mandated 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; and
  - 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 these challenges.
20. Since its inception, the RWG has gathered information about the challenges using formal and informal engagement processes. The qualitative and quantitative data obtained from the engagement processes identified widespread barriers experienced by racialized licensees within the legal profession at all stages of their careers.
21. 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.
22. The RWG reviewed all of the information gathered and drafted a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*. The consultation paper summarized the findings of the engagement process and posed seven questions for the profession focused on addressing the challenges faced by racialized licensees.
23. Convocation approved a consultation paper in November 2014, and the Working Group consulted with lawyers, paralegals and members of the public throughout the province of Ontario between January and March 2015.

24. The Interim report, presented at [TAB 5.2.2](#), provides an overview of the consultation process and activities, and observations from the meetings.

## SNAPSHOTS OF THE PROFESSION

25. Professor Ornstein was retained at the end of 2014 to analyze the 2013 results of the self-identification questions. The snapshots of the professions are presented at [TABS 5.2.3](#) and [5.2.4](#).

### ***REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL FOR THE LAW SOCIETY OF UPPER CANADA FOR THE PERIOD OF JULY 1 TO DECEMBER 31, 2014***

26. Subsection 20(1)(a) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence*, provides that, unless the Committee directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee no later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year.
27. In February 2015, the DHC requested, and the Equity and Aboriginal Issues Committee approved, an extension of the deadline to the end of March 2015.
28. Subsection 20(2) of By-Law 11 provides “The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting”.
29. The Equity and Aboriginal Issues Committee, pursuant to Subsection 20(2) of By-Law 11, presents to Convocation the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada for the period of July 1 to December 31, 2014*, reproduced at [TAB 5.2.5](#).

**MATERIALS TO FOLLOW  
WHEN AVAILABLE**













TAB 5.2.2



## Challenges Faced by Racialized Licensees Working Group: Interim Report to Convocation

April 2015

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## Introduction

This interim report to Convocation provides an overview of the consultations by the Challenges Faced by Racialized Licensees Working Group (the Working Group) based on the findings in its consultation paper published in October of 2014, “Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees”.<sup>1</sup>

From across the legal and paralegal professions, there has been an interested and enthusiastic response to addressing the challenges. We heard from all parts of the province that the Law Society has a role to play in being part of the solution to the challenges identified in the consultation report. The following sections outline the background to the consultation process and summarize the ideas for fostering growth and positive change that we have heard during our discussions with the profession and the public.

## Background

Since 2012, the Law Society’s Working Group has been mandated 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 Committee and other committees, to address these challenges.

The Working Group gathered information about the challenges using formal and informal engagement processes. Further information about this part of our work can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

The qualitative and quantitative data we obtained from the engagement processes identified widespread barriers experienced by racialized licensees within the legal profession at all stages of their careers. Examples of challenges faced in the legal profession 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 the additional 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

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<sup>1</sup> A copy of the Consultation Paper can be found at: <http://www.lsuc.on.ca/racialized-licensees/>

profession. Generally, participants noted the vulnerability of racialized licensees in the legal profession in the context of professional regulation and discipline.

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.

The Working Group reviewed all of the information we gathered and drafted a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*.<sup>2</sup> The consultation paper summarized the findings of the engagement process and posed seven (7) questions for the profession focused on addressing the challenges faced by racialized licensees. The questions are organized within five 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; and
- The operations of The Law Society of Upper Canada.

Convocation approved the consultation paper in November 2014, and the Working Group consulted with lawyers, paralegals and members of the public throughout the province of Ontario between January and March 2015

## The Consultation

The Working Group embarked on a journey of listening and learning, which involved holding twelve (12) open house learning and consultation programs around the province and participating in meetings with representatives from law firms, legal clinics, banks, government and legal associations. A summary of activities and submissions is presented in a separate report entitled *Challenges Faced by Racialized Licensees Working Group – Consultation Activities and Overview of Observations* (TAB 5.2.2.1).

These meetings were focused on practical solutions the Law Society could initiate or facilitate to specifically address the challenges faced by racialized licensees and to enhance diversity and inclusion within the legal profession.

The Working Group has heard from over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public in the Greater Toronto Area (Downtown Toronto, Brampton, Newmarket, Oshawa), Hamilton, London, Ottawa, Sudbury, Thunder Bay, and Windsor. Three Toronto open houses (one in French and two in English) were webcast to ensure full access to all lawyers, paralegals and members of the public in Ontario.

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<sup>2</sup> Available at: <http://www.lsuc.on.ca/racialized-licensees/>.

The Working Group has met or heard from a broad range of organizational stakeholders including:

- The Advocates' Society;
- The African Canadian Legal Clinic;
- The Arab Canadian Lawyers Association;
- The Association des juristes d'expression française de l'Ontario;
- The Association of Law Officers of the Crown;
- The Canadian Association of Black Lawyers;
- The Canadian Association of South Asian Lawyers;
- The Canadian Association of Muslim Women in Law;
- The Canadian Hispanic Bar Association;
- The Canadian Italian Advocates Association;
- The Canadian Muslim Lawyers Association;
- The Canadian Somali Lawyers Association;
- The County & District Law Presidents' Association;
- The Family Lawyers Association;
- The Federation of Asian Canadian Lawyers;
- The Human Rights Legal Support Centre;
- The Indigenous Bar Association;
- The Law Firms Diversity and Inclusion Network;
- The Law Society's Equity Advisory Group;
- The Law Students Society of Ontario
- The Legal Leaders for Diversity and Inclusion (LLD);
- The Ontario Bar Association;
- The Ontario Paralegal Association;
- The South Asian Bar Association;
- The Roundtable of Diversity Associations of the Toronto Lawyers' Association<sup>3</sup>;
- The University of Windsor, Equity and Diversity Committee;
- The University of Ottawa, Faculty of Law, faculty
- The Women Legal Mentoring Program;
- The Women Paralegal Association of Ontario; and
- law students and professors.

As part of the consultation process, the Working Group also reached out to larger law firms in Toronto to discuss the questions raised in the consultation paper. The Chair of the Working Group and Law Society staff met with managing partners and often recruitment partners or partner representatives on the Law Firms Diversity and Inclusion Network. The meetings have

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<sup>3</sup> Including the Arab Canadian Lawyers Association, the Association of Chinese Canadian Lawyers of Ontario, the Canadian Association of Black Lawyers, the Canadian Association of South Asian Lawyers, the Canadian Italian Advocates Organization, the Federation of Asian Canadian Lawyers, the Hellenic Canadian Lawyers Association, the Canadian Hispanic Bar Association, the Iranian Canadian Lawyers Association, the Korean Canadian Lawyers Association, the Macedonian Canadian Lawyers Association, Pro Bono Law Ontario, the Sexual Orientation and Gender Identity Conference of the Ontario Bar Association, the South Asian Bar Association, the Toronto Lawyers Association, and the Women's Law Association of Ontario

yielded positive discussions about policy options for addressing many of the challenges identified in the consultation paper. There has been interest and enthusiasm expressed for working collaboratively with the Law Society. Firms have begun a number of initiatives to create more inclusive workspaces. There is recognition of the business and human drivers for increasing competence in the diversity and inclusion aspects of hiring and retention.

We expect to complete the meetings in April so that the information obtained at these meetings can be considered in the context of our policy work. It is gratifying to see that a corresponding amount of interest exists within the larger firms in addition to the interest already demonstrated by the bar across Ontario during our meetings with groups, individuals and via webcast.

Also noteworthy is the exceptional amount of media interest in the consultation paper from media outlets across the province. In total, 18 stories appeared via mainstream, regional and legal media outlets, including the Globe and Mail, CBC Metro Morning, the Hamilton Spectator, the Brampton Guardian, CKPR Thunder Bay, 1310 News Ottawa, the Lawyers Weekly, Law Times, and CBA National Magazine. All coverage was extremely positive and included key messages from the consultation paper. This underscores the importance of the project to the professions and the public.

## White Privilege

Consultant participants spoke of “white privilege”<sup>4</sup>, and expressed the need for all of us 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.

## Aboriginal 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 Aboriginal licensees and licensees that self-identify as racialized in the context of the definition put forward by the Working Group and the importance of considering geographical location. Participants in Thunder Bay noted that, in terms of race and racism, the population in northern areas of the province is often divided into Aboriginal and non-Aboriginal peoples. Participants identified several examples where they had witnessed racism directed at Aboriginal people and where they had observed that racialized people were not treated differently from non-racialized people. It was noted that because of constitutionally protected Aboriginal and Treaty rights, Aboriginal peoples are in a different position than racialized and non-racialized peoples in Canada. As a result of these distinctive histories, strategies to respond to racism faced by Aboriginal peoples

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<sup>4</sup> 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.

and to racism faced by racialized peoples should differ. The Law Society's policy work reflects this uniqueness, including the work of the Equity and Aboriginal Issues Committee and other initiatives that are outside the scope of this Working Group. The Law Society is also vigorously pursuing an Aboriginal Strategy in consultation with the Aboriginal Bar.

## The Consultation Results:

The Working Group encouraged written submissions on the questions posed in the consultation paper or any additional initiatives, ideas or practices that could address the challenges faced by racialized licensees. The deadline for submissions was extended from March 1, 2015 to March 15, 2015, as a result of a number of requests for extra time.

This report summarizes the comments and ideas we have received to date from our meetings and consultations. A more complete record of the consultation activities and aggregated comments is available in a separate report entitled *Challenges Faced by Racialized Licensees Working Group – Consultation Activities*. At the time of writing this report, we were still receiving written submissions. These will be discussed and considered in a separate report. However, the written submissions received to date and for which we have received the expressed consent to publish are available on-line at <http://www.lsuc.on.ca/racialized-licensees/>. The list of those who have provided their express consent is available at Appendix 1 of this report.

### 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<sup>5</sup> 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

There is significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in firms and other legal organizations. Participants

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<sup>5</sup> References to 'firms' in this document encompasses law firms, paralegal firms, legal clinics, non-profit organizations, in-house legal departments, government legal departments, and other professional legal environments.

have reminded the Working Group that firm size, industry and geographical location need to be considered should the Law Society decide to develop diversity programs.

A number of participants support the creation of a diversity project modelled on the Law Society of Upper Canada's *Justicia Project*.<sup>6</sup> Participants are divided, however, on whether diversity programs should be mandatory or voluntary. Some participants have noted that voluntary programs create buy-in and a willingness to create change. A number of participants have stated that it is important to have "diversity champions" who will lead change from the top-down. Participants outside of the GTA that work in small firms see the value of voluntary programs as small firms may lack the resources to implement mandatory programs. Some participants have noted that mandatory programs could create backlash.

Participants in favour of mandatory programs argue that mandatory programs create stronger awareness of equity and diversity issues. One participant, who had experience with employment equity programs, said it is necessary to have an enforcement mechanism in place. Other participants believe that, at the very least, the Law Society should require firms and legal organizations to have equity 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. Some participants suggested that requirements could include quotas for the number of racialized licensees that must be interviewed or hired by firms and legal organizations; however the majority of participants were strongly opposed to the creation of quota systems.

Some participants support 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 way 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 law firms and legal organizations with self-assessment templates and tools.

## Collecting Demographic Data

*"Data collection is a humble but important first step."*

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<sup>6</sup> 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.

## -Participant

The Working Group has 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 believe that mandatory data collection is crucial to advancing diversity and inclusion, while others believe that mandatory collection could halt the progress that is already being made by firms and legal organizations in the area of equity 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 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 firms and legal organizations with their individual firm/organization demographic data and aggregate demographic data of firms 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 create change, the demographic information for each firm should be publicly available.

One participant noted that if the Law Society determines that firms and legal organizations should be required to provide their own demographic data, the Law Society should ensure that there are processes in place for employees to self-identify.

Participants in favour of voluntary data collection have 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 have indicated that they are unsure how mandatory data collection would be enforced. Some participants believe 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.

In 2009, the Law Society began collecting demographic data, including race-based data, through the Lawyer Annual Report and the Paralegal Annual Report. A self-identification question was included in the annual reports to allow the Law Society to be aware of the extent to which the legal profession is reflective of the broader community it serves, to help meet the needs of the public, and to develop programs to enhance the diversity of the profession. The Law Society does not link demographic information to firms or legal organizations, however the Law Society could consider doing so.

## Contract Compliance

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

- Participant

We heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider supplier equity and diversity. A number of participants have 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 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 smaller firms being unable to compete for work for larger entities and corporations.

## 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

*"Mentorship is not one size fits all"*  
- Participant

In November 2013, Convocation created the Mentoring and Advisory Services Proposal Task Force (the Task Force), which is examining the issue of mentoring. The Working Group will consult with the Task Force concerning the information obtained on mentoring and advisory services from our consultation process.

### *Types of Mentoring and Advisory Services*

Generally, the Working Group has heard that there is no "one-size-fits all" model for mentorship. Different types of mentorship may be required at different stages of a person's career for different purposes. For example, mentoring could be case-specific or it could be related to how to navigate the profession as a racialized licensee.

A number of participants highlighted the importance of providing mentoring for sole practitioners. Paralegal participants told us that there is a shortage of mentorship programs in the paralegal community and thus a significant need. Other participants have noted that racialized licensees in large firms do not have role models within their firms so they should be provided with assistance to find mentors from outside their firms.

A significant number of participants emphasized that sponsorship 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 a licensees' career, including providing advice on navigating barriers, substantive legal issues or on career advancement . Participants have also noted that mentorship should be provided to students before law school, to address pipelines issues, and in law school.

A number of organizations have described their mentoring programs and expressed interest in working collaboratively with the Law Society to help licensees in need of mentorship. One way in which this could take place using enhanced website services, the creation of a highly functional and welcoming on line mentoring community with links to partner organizations. As many organizations have their own websites, the Law Society could function as a connector to these kinds of services.

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

Participants have noted that often mentoring programs have difficulty finding willing mentors. One participant also noted difficulties finding racialized mentors because, "we are not grooming racialized lawyers to become leaders." Some participants suggested that the Law Society have licensees note on the annual report if they are willing to be mentors. The Law Society could then create a mentor roster. Similarly, other participants suggested having a web-based sign up for mentors, which would allow the mentors to indicate their area of law and their time availability. Incentives for mentors could include the receipt of professionalism hours for mentoring services. Participants also suggested that mentors receive cultural competence training.

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 equity-seeking groups do not operate outside of the GTA, which limits access to association-based mentorship programs. One participant stated that if mentorship was to be offered in-person, it should be geographically accessible for licensees in under-served areas.

### *Networking*

*"Have more inclusive events."*

- Participant

Many participants have stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging. Some participants have suggested that it would be useful for the Law Society to facilitate collaboration amongst the various associations. Some participants told us that legal associations are often too costly to join. 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 have proposed that the Law Society hold regional networking events for licensees. Others note that Continuing Professional Development (CPD) programs can be good networking opportunities.

Participants have 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 profession

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

- How could the Law Society enhance the profession’s 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 competence, unconscious bias, and anti-racism. 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 would be counter-productive. In either case however, participants agreed that professionalism credits should be provided for CPD training on these topics.

Some participants highlighted the importance of requiring licensees involved in recruitment, hiring and promotion decisions to participate in CPDs related to cultural competence 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 competence, 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.

It was proposed that all benchers be provided with the training under consideration in order to create a deeper policy understanding of this aspect of the report and to inform Convocation's discussions of the policy alternatives.

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 and the Paralegal Rules of conduct to specifically address systemic discrimination and subtle forms of discrimination, so licensees are aware that the Rules do allow for complaints of systemic discrimination to be made to the Law Society. Some participants recommended advertising that complaints of discrimination can be made through the complaints process.

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".

Participants also noted they feared "micro-aggressions"<sup>7</sup> In order to address this fear, some participants are 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 support an anonymous complaints process recommended that the Law Society investigate firms that have been the subject of a number of anonymous complaints. Participants have also suggested amending the Rules of Professional Conduct and the Paralegal Rules of Conduct to include a

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<sup>7</sup> Examples included intrusive questioning on country of origin, education, year of call and age.

provision that states that reprisals for complaints of discrimination and harassment are prohibited.

Participants believe that bringing a complaint through an association may not alleviate the issues raised. Some participants have suggested that the Law Society ask licensees, using the annual report, whether they have ever experienced discrimination. This information could then be collected by firm or legal organization and provided to firm or legal organization management. Other participants propose that the Law Society audit firms to ensure that they have policies related to equity, diversity, discrimination and harassment.

Regardless of the method taken to receive complaints, participants have noted that it is important for the Law Society to advise complainants of what action was taken.

## 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 has received support from participants for its proposals to enhance its current Equity Compliance Program, conduct an internal equity audit, collect further data on the regulatory process and to 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 legal profession, which would include increasing diversity at both the governance and the staff levels.

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 were those from the dominant culture who are interested in being part of change and in hearing from licensees on these subjects.

## Moving Forward

*“Perhaps we are at an inflection point?”*  
-Participant

The Working Group believes that we are at a particular point in the history of the legal professions where there is a significant possibility for change in the way in which the professions engage with equity and diversity principles and practices. There is a role for the Law Society to play in ensuring that we can be a part of a turning point that leads to positive change for racialized licensees and the professions in general.

As a result, the Working Group plans to continue to consider the balance of the submissions, to consider policy options that are within the mandate of the Law Society, apply what we have heard about best practices and bring a final report to Convocation in fall 2015.

## Appendix 1 - List of Written Submissions Posted on Line

Note that the following is a list of submissions received to date where the authors have consented to the publication of their submissions. Other confidential submissions have been received and further submissions are expected.

[Arab Canadian Lawyers Association](#)

[Association des juristes d'expression française de l'Ontario - French submissions](#)

[Association des juristes d'expression française de l'Ontario - English translation](#)

[Association of Law Officers of the Crown](#)

[Canadian Association of Muslim Women Lawyers in Law](#)

[Canadian Association of Somali Lawyers](#)

[Canadian Hispanic Bar Association](#)

[Canadian Muslim Lawyers Association](#)

[Dhaliwal, Manpreet; Kassam, Abbas; de Mello, Toni; Dabo, Anne-Karine](#)

[Dosanjh, Balraj](#)

[Equity Advisory Group of the Law Society of Upper Canada](#)

[Family Lawyers Association](#)

[Federation of Asian Canadian Lawyers](#)

[Girvan, Robert](#)

[Human Rights Legal Support Centre](#)

[Indigenous Bar Association](#)

[Law Firm](#)

[LawPRO](#)

[Law Students Society of Ontario](#)

[Luu, Molly](#)

[Ontario Bar Association](#)

[Ontario Paralegal Association](#)

[Scorey, Andrew](#)

[Dean Lorne Sossin](#)

[South Asian Bar Association](#)

[St. Patrick Baxter, Michael](#)

[The Advocates' Society](#)

[University of Ottawa, Faculty of Law Students](#)

[University of Windsor, Faculty of Law, Equity and Diversity Committee](#)

[Jun Cai Wang](#)

[Women Paralegal Association of Ontario](#)

**TAB 5.2.2.1**



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

## **Challenges Faced by Racialized Licensees Working Group Consultation Activities and Overview of Observations**

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## 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. The RWG relied on the advice received to develop the following consultation methodology:
  - a. Posting the consultation paper on-line and inviting written submissions from the profession, the judiciary, academia and the public;
  - b. Holding open house meetings across Ontario, including in Durham region, Hamilton, London, Ottawa, Peel region, Sudbury, Thunder Bay, Windsor and York region.
  - c. Holding two open house meetings in English and one in French in Toronto. These meetings were held at the Law Society and webcast.
  - d. Meeting with associations such as the County and District Law Presidents' Association, the Ontario Bar Association, the Ontario Paralegal Association, CABL, SABA, CASAL, FACL, the African Canadian Legal Clinic, the Canadian Association of Muslim Women Lawyers in Law, and the Arab Canadian Lawyers Association. Members of the judiciary and academia were also included, along with associations representing members of the public.
  - e. Meeting with representatives of law firms, including Managing Partners.
3. On October 27, 2014, the consultation paper was posted in French and English on-line with a deadline for written submissions of March 1, 2015. This deadline was extended to March 15, 2015. The following reports were also included on-line: the Stratcom Final Report, the Law Society Studies and Scan of Best Practices Report, the Equity Advisory Group Submissions, the Community Liaison Report and the Results from Informal Engagements report.

### Promotional activities

4. On November 3, 2014, the Treasurer's office sent an email informing a number of associations and individuals of the consultation paper, the consultation process and inviting written submissions. The list of individuals and organizations included,
  - the African Canadian Legal Clinic;
  - the Arab Canadian Lawyers Association;
  - the Association of Chinese Canadian Lawyers of Ontario;
  - the Association of Corporate Counsel, Ontario Chapter;
  - the Association des juristes d'expression française;

- the Association of the Law Officers of the Crown;
- the Black Female Lawyers Network;
- the Canadian Association of Black Lawyers;
- the Canadian Association of South Asian Lawyers;
- the Canadian Corporate Counsel Association;
- the Canadian Italian Advocates Association;
- the Centre for Spanish-Speaking Peoples;
- the Canadian Bar Association;
- members of the judiciary;
- the Human Rights Tribunal of Ontario;
- the County & District Law Presidents' Association;
- the Criminal Lawyers' Association;
- the Department of Justice representative;
- the Family Lawyers' Association;
- the Federation of Asian Canadian Lawyers;
- the Hellenic Canadian Lawyers Association;
- the Hispanic Ontario Lawyers Association;
- the Indigenous Bar Association;
- the Internationally Trained Lawyers Program – University of Toronto;
- the Iranian Canadian Lawyers Association;
- Justicia Project firm representatives;
- the Korean Canadian Lawyers Association;
- the Law Firm Diversity and Inclusion Network;
- Ontario law school deans;
- the Law Students Society of Ontario;
- Legal Leaders for Diversity and Inclusion;
- the Macedonian Canadian Lawyers Association;
- law firm managing partners;
- the Metro Toronto Chinese and Southeast Asian Legal Clinic;
- the Ministry of the Attorney General;
- NALP Canada;
- the Ontario Bar Association;
- the Ontario Crown Attorneys' Association;
- the Ontario Human Rights Commission;
- the Ontario Paralegal Association;
- the Ontario Paralegal Network;
- Presidents of regional law associations;
- Pro Bono Law Ontario;
- the Public Prosecution Service of Canada;
- the Toronto Lawyers Association Roundtable of Diversity Associations (RODA);
- the South Asian Bar Association;
- the South Asian Legal Clinic of Ontario;
- the South West Region Women's Law Association;

- The Advocates' Society;
- the Toronto Lawyers' Association;
- the Urban Alliance on Race Relations;
- the Women's Law Association of Ontario;
- the Women's Paralegal Association of Ontario; and
- Young Women in Law.

5. An Ontario Report advertisement has been regularly published in French and English since mid-November, emails have been sent to the profession informing them of the consultation process and the consultation process is well advertised on the Law Society website.

### Meetings held to date

6. The following table provides an overview of the meetings held to date.

Date	Event/Organization	Working Group Members and Law Society Representatives	Number of Participants
October 29, 2014	University of Ottawa, Common Law Faculty	Raj Anand	100 students and 10 professors
October 31, 2014	Canadian Association of Black Lawyers annual conference	Julian Falconer (Vice-Chair) and Howard Goldblatt (Vice-Chair)	70 lawyers and paralegals
November 3, 2014	Treasurer Liaison Group	Julian Falconer	15 lawyers and paralegals
November 13, 2014	CDLPA plenary	Josée Bouchard, Director, Equity	70 lawyers
November 17, 2014	Sexual Orientation and Gender Identity Committee meeting of the Ontario Bar Association	Raj Anand	30 participants
November 18, 2014	Conference and launch of a book on employment equity at Ryerson University	Raj Anand	85 participants

Date	Event/Organization	Working Group Members and Law Society Representatives	Number of Participants
November 19, 2014	New Paralegal Reception	Treasurer Minor and Cathy Corsetti introduced the Consultation Paper	100 paralegals and lawyers
November 22, 2014	Ontario Paralegal Association Annual General Meeting	Raj Anand	170 paralegals in person and 125 via webcast
December 1, 2014	Representatives of Legal Leaders for Diversity	Treasurer Minor, Janet Leiper, Raj Anand	4 LLD senior general counsel
December 3, 2014	Ottawa French Law Practice Program	Josée Bouchard	20 candidates
January 12, 2015	Brampton Open House	Robert Burd, Janet Leiper and Malcolm Mercer	59 licensees
January 14, 2015	Law Firms Inclusion and Diversity Network	Raj Anand, Janet Leiper and Malcolm Mercer	25 firm representatives
January 15, 2015	Toronto Open House	Treasurer Janet Minor and Robert Burd, Howard Goldblatt, Janet Leiper, Malcolm Mercer and Marion Boyd	100 licensees in person and 170 via webcast
January 19, 2015	Arab Canadian Lawyers Association	Raj Anand and Howard Goldblatt	5 board members
January 20, 2015	Windsor Open House	Raj Anand and Howard Goldblatt	22 lawyers and paralegals

Date	Event/Organization	Working Group Members and Law Society Representatives	Number of Participants
January 21, 2015	Federation of Asian Canadian Lawyers	Raj Anand and Janet Leiper	15 board members
January 26, 2015	London Open House	Howard Goldblatt and William McDowell. Also attending were benchers Michael Lerner and Judith Potter.	25 lawyers and paralegals
January 27, 2015	BMO representatives	Raj Anand, Janet Leiper and Malcolm Mercer	2 representatives
January 27, 2015	York Region Open House	Howard Goldblatt, Janet Leiper and Malcolm Mercer	20 lawyers and paralegals
January 30, 2015	Law Firm Inclusion and Diversity Network representative	Janet Leiper	
January 30, 2015	Sudbury Open House	Susan Richer. Also attending –bencher Jack Braithwaite.	7 lawyers and paralegals
February 3, 2015	Durham Region Open House	Raj Anand and Malcolm Mercer	15 lawyers and paralegals
February 5, 2015	Ottawa Open House	Treasurer Janet Minor, Raj Anand and Malcolm Mercer. Also attending – benchers Constance Backhouse and Adriana Doyle.	80 lawyers and paralegals

Date	Event/Organization	Working Group Members and Law Society Representatives	Number of Participants
February 9, 2015	African Canadian Legal Clinic	Raj Anand, Avvy Go, Howard Goldblatt and Malcolm Mercer	3 representatives
February 18, 2015	South Asian Bar Association	Raj Anand, Avvy Go, Janet Leiper, Malcolm Mercer	9 board members
February 19, 2015	Canadian Association of Muslim Women Lawyers	Malcolm Mercer	5 members
February 23, 2015	Thunder Bay Open House	Julian Falconer	17 lawyers, paralegals and law students
February 23, 2015	Osgoode Hall Law School Diversity Week	Raj Anand	20 participants
February 24, 2015	Hamilton Open House	Malcolm Mercer, William McDowell, Susan Richer. Also attending – benchers Ross Earnshaw, Gerald Swaye and James Scarfone.	

Date	Event/Organization	Working Group Members and Law Society Representatives	Number of Participants
February 24, 2015	Roundtable of Diversity Organizations (RODA)	Raj Anand, Janet Leiper, Avvy Go	15 members
February 25, 2015	Toronto Open House	Treasurer Janet Minor, Raj Anand, Julian Falconer, Avvy Go, Janet Leiper, William McDowell, Susan Richer. Bencher Jeffrey Lem also attended.	70 licensees in person and 169 via webcast
February 27, 2015	Canadian Hispanic Bar Association	Avvy Go, Janet Leiper, Malcolm Mercer	2 members
March 11, 2015	Canadian Italian Advocates' Organization	Janet Leiper	11 members
March 17, 2015	Toronto Open House in French	Raj Anand and Josée Bouchard	35 participants
March 18, 2015	University of Ottawa, Faculty of Law, faculty members	Raj Anand	9 participants
March 20, 2015	BMO Open House	Avvy Go and Malcolm Mercer	60 participants
March 25, 2015	Iranian Canadian Legal Professionals	Janet Leiper, Jeffrey Lem and Malcolm Mercer	9 members

## Observations to Date

The following are observations raised by participants in the consultation meetings outlined above.

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

### *Diversity Programs*

- Interested in the Law Society of England and Wales model. The Law Society of Upper Canada could adopt an inclusion charter. Participating in the inclusion charter project would not be mandatory but once committed to the program, firms would have to report annually to the Law Society. The charter would be a principles-based document that could address articling, recruitment and promotion practices, and there could be incentives to adhere to the charter. Participants could be asked to report to the Law Society about systems improvements and progress. The firms would collaborate to develop relevant resources. Voluntary participation would be better as it creates buy-in.
- Not in favour of requiring standards and compelling someone to do something but in favour of a self-assessment approach. Reforming the culture from the top down is a good approach. Putting the ideas into the mainstream discourse would have a huge impact on large firms.
- Adopting a model like the Justicia project would be good because it was a successful project.
- Proposing several approaches targeted to different types of practices could be an acceptable approach. For example, a small firm may not have the resources to undertake a voluntary project. However, if standards and resources are made available, that could be helpful. For the larger firm environment, different factors are at play.
- Not in favour of mandating programs. The research from the Law Society of England and Wales and Australia show that change happens slowly. If the Law Society asks firms to self-assess, it should ask more than numbers.
- There are a variety of tools on diversity and inclusion. It is important to look beyond the numbers, for example, consider the way in which interactions are made, the way in which people are hired, the way in which mentoring programs are structured.
- Where the Law Society can really assist is by developing an assessment tool that can be used by all law firms and even beyond, for example by government and the judiciary.
- The idea of a diversity project or education in firms is good but firms should do more than provide bare minimum training that does not address cultural inclusivity. Measuring the quality and implementation of programs is important.
- Law Society should consider adopting programs for regions and for all sizes of firms.
- Racialized lawyers do not want to be recognized because of their race, they want to be recognized because of their competency. It is important to hire based on competence, not colour.
- Doing a project on race without looking at other factors such as gender, sexual orientation, religion, socioeconomic class, is incomplete. It might be a richer picture to look at intersectional matrixes and those who are particularly vulnerable.

- For many of the firms, they are just starting to measure progress through for example inclusion and diversity surveys. Mandatory reporting would lead to losing faith in the system. Change is slow and we need to do things that have an impact.
- Because we are just starting to implement strategies for change, the Law Society should start with the carrot rather than a stick.
- For larger firms, look at whether they are hiring diverse cultures. Diversity makes good business sense and the Law Society should impose self-assessments.
- It is difficult for the Law Society to regulate certain policies in law firms. Mandatory programs would not be effective.
- Problem with mandatory diversity programs is the risk of backlash from the bar. If anything is going to be implemented, such as a diversity project or initiative, it should be on a voluntary basis by building the social consciousness of the bar. We have a larger responsibility as members of the Law Society to increase access to justice. If voluntary, then there can be a genuine impact on society.
- Required standards would be too bold. If it is a requirement, it gets peoples` back up.
- Mandatory hiring practices would make those who are already feeling marginalized, feel even more so.
- It is not just an issue of human rights, it is an issue of professional conduct. There are rules prohibiting discrimination already. The approach ignores the fact that this is a professional conduct issue. The requirement that there must be a policy is important but imposing what the policy must look like would not be as useful. The Justicia model is a wonderful idea. We are well beyond whether or not we should have discrimination policies.
- Not seeing anything regarding setting the example, templates for what policies should look like, hiring people to work in the office to assist firms to create these policies. Have meetings with managing partners and offer to assist in recruiting better and interviewing using questions that do not focus on fit. Model questions to pass to recruiters.
- When we talk about mandatory, paralegals struggle to make ends meet. More mandatory programs would impact on paralegals more than lawyers.
- Programs have to start with the Law Society as the governing body. It will not happen by relying on the firms only. This is an issue that has been ongoing for many years.

#### *Mandatory Programs and External Monitoring*

- These are really important issues and if we are going to make programs mandatory, education should be a component.
- Based on the experience with employment equity in the federal sector, it is not successful when it is voluntary. You need the mechanism for enforcement. It works if you have bonuses attached to promoting equity. People say the right things on paper but not in practice.

- The Law Society could do audits. What works is shaming.
- There needs to be outside monitoring. It is more than demographics and one needs to look at the quality of work etc.
- The Law Society has access to the data from the lawyer and paralegal annual reports. Include broader questions to the members such as “does your law firm have diversity policies”? If a lawyer or paralegal does not know the answer, he or she can go to the managing partner to ask for the policies. And if enough members go to their managing partner with that question, if there isn't a policy, the managing partner may decide to set up a committee to develop a diversity policy.
- If you don't comply with CPD requirements, the sanction is suspension of license. Maybe something like that could be implemented.
- We need to look at what has happened in the past. The gender equity gap is still there even with employment equity. The problem was partly lack of enforcement. The example of the Securities Commission and women on boards is good. Organizations have to self-report and they will make the numbers public or the organizations will and then the clients can make informed decisions. Put things in place so firms can see it is within their own best interest.
- There should be a requirement for a diversity policy, at the very minimum. If you have the policy or are required to have the policy, eventually people start talking about it. For example, workplace violence policies led to employees and clients talking about the issue. If you want law firms to start doing things and talking about it, should require at a minimum diversity policies. Encourage firms to conduct interviews with standardized and non-discriminatory questions.
- Requiring standards model is the best model because there are concerns with leaving it up to firms. Making it mandatory would be more efficient. Mandatory standards for larger firms only, not sole practitioners or sole firms - don't want to add to their burden.
- Mandatory standard for hiring practices – make hiring committee itself more diverse, where applicable. This to apply at all stages, i.e. articling hiring committee to consider diversity when picking which articling students to interview. Diversity lens to be applied at all stages, and if people equally qualified and one racialized and one not, racialized licensee should at least be considered.
- The Law Society should enforce minimum standards so there is consistency in the province in terms of diversity standards and goals. Ontario is a diverse place but in some communities there are few racialized licensees. Firms can report on these standards in the “comply or explain” method. No one wants the Law Society to impose punitive measures for not meeting certain standards.
- Mandatory self-examination is the right approach, for example: self-examination with demographics, contract compliance, what steps have you taken this year to augment your firm's knowledge of diversity issues.
- If firms have implemented a diversity project and it is not meeting the benchmark, they should explain.

- The Law Society could require firms to interview a certain number of students from racialized backgrounds.
- In the same way that lawyers have to submit a yearly report about their practice at the end of the year, they should also have to report on diversity within their firm, the demographics of their firm, what policies they have in place to accommodate diverse identities and which areas they should improve on –i.e. recruiting and retaining racialized articling students and lawyers.

#### *Create Incentives*

- Reward firms that demonstrate that they are diverse by giving them reduced fees. Do not force them, but encourage them to bear that in mind when hiring.
- Don't know if offering incentives for diverse workforces would be particularly feasible or correct. It doesn't get to the root of the problem.
- We should propose that if a firm is hiring diverse candidates and have diversity and inclusion program, they will be honoured and there will be financial benefits. There can be a financial penalty for not following policies. Prefer honouring than shaming.

#### *Begin at Law School*

- Inappropriate comments are made in interviews and at the workplace, but they are also made as early as law school. Those at law school don't have the tools to address inappropriate comments.
- Many students do not know what is and isn't appropriate. Some students do not know that there are programs to report inappropriate behaviour. They attend all kinds of seminars, such as how to dress for an interview, but there is nothing about how and where to report inappropriate questions or comments. Some of the information provided during interviews for example is inappropriate and borders on offensive. It would be great to make students aware that if they are asked inappropriate questions, they can report.
- The report talked about how large numbers of racialized licensees are forced into sole practice. What is the Law Society doing with the community colleges to teach them how to build and run a business?
- The Law Society should offer resources at an earlier point. It could offer more mentoring and resources for students.
- Some form of education should be done with professors at law schools. They invite their preferred students to social events, they help them with job opportunities, and they provide references. This starts at university. Not just in the workplace.
- The articling recruitment process is not transparent enough. It is unsettling that students don't know why they didn't get hired.

*Conduct Continuing Profession Development Programs (CPD) on Cultural Competence*

- Firms could do general CPDs on cultural competence, inclusiveness and unconscious bias. Only one firm is conducting CPD programs on those topics at the managing partner levels.

*Consider Diversity at the Law Society*

- To "act as a catalyst", you need to look at how many benchers are racialized and whether it reflects the 17% in the profession.
- The Law Society needs benchers who are champions and champions in firms.
- There are deeper issues than numbers, such as the difference in perception of understanding of issues. The best thing the Law Society can do is start to mirror the behaviour it wants to see. Have a more reflective Law Society.
- How The Law Society should be a role model to other firms. Diversity at the board level and committees is important. They should all show and lead by example.

*Impact of Fees*

- Have you considered that many racialized licensees do not come from affluent backgrounds and have to open sole practices to work? Fees are prohibitive.

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

- The data has to be voluntary, confidential.
- It might be difficult to make self-identification an obligation as part of the lawyers or paralegals job.
- In order to be measurable, the data collection piece is crucial. One of the thing, in addition to tracking how many racialized lawyers there may be (not sure whether mandatory or voluntary) is to track progress of racialized lawyers. It is more difficult to do. The advancement is where the consultation has revealed that there is a lot of concerns/challenges in the profession.
- Reporting on a firm by firm basis is important. Let firms know the number of racialized licensees in their firms and then publish the information. Take them to task for their business case on diversity.
- If we are reporting either through mandatory reporting to the Law Society or through the annual report, the firms should be aware of the numbers for their firms.
- The Law Society should have mandatory data collection. Not so you can identify specific individuals, but so you can see trends in the profession. Provide incentives for firms to disclose the data. The Law Society could work with firms to develop incentivized systems. The Law Society could report on an aggregate basis and could include the Law Society reporting to firms.
- To implement change we need more stick than carrot.
- Developing a matrix with respect to the assessment tool and then requiring the firms to be champions of diversity is a good idea. You can then rate them: gold, silver, bronze.
- Firms need to feel comfortable that they have contributed in the way the data is collected. It is also important to capture more than just data, more particularly inclusion information. How lawyers feel in their firms.
- The annual report does not have to be only about head count. If you ask questions about equity programs in the annual report, then the lawyers would ask their firms about those programs.
- Racialized lawyers have gravitated to public sector/government. The Judicial Appointments Advisory Committee (JAAC) is a good model to follow. The hiring committee is very diverse and the onus is to be more representative. There was an analysis done of the 27 years that they have been in existence. When they first started, the provincial bench was over 95% White male and less than 3 or 4% women. Now it's 37% of women. And racialized judges were way less than 1% and now it is at 7.5%. It was not mandatory, but just having a mandate, a public policy and committee that was diverse and had an open mind made change happen. It took 25 years.

- Do not think you would prompt firms to make changes if the Law Society just collects and aggregate the numbers. The Law Society would need to identify firms.
- There is value in looking at how long licensees stay at a firm. For example, if you have a first year associate who stays one year and gets replaced by someone else. How do you count?
- When measuring becomes mandatory how do you deal with the perception that it is quotas?
- Data should be collected. We are in a privileged profession that few people have access to – we should know its composition. Like the idea of Law Society collecting the data because every individual licensee can report on their own. Maybe the Law Society can do both: from the firm's perspective and from the individual basis. Perhaps it should be voluntary.
- There is a big debate on who considers themselves to be racialized. When other people identify the diversity of the firm membership it is problematic.
- If you don't collect the data, how do you understand the problem?
- There is no real debate about the need for data collection. The issue is how we do it and how we use it. To collect data and not share it is useless. Firms collecting data internally and not reporting is meaningless. It doesn't do anything to help us understand what is going on and it doesn't help to see what is happening over time. We need the data shared, not just collected. Yes, it should be mandatory because if not, there will be holes. There will be some reporting and some not. In order to understand the whole, we need to have all the information available to us.
- We need to collect data, but what data? Not just how many people in the firm but also what are they doing in the firm? Are they sitting on boards? We need to start with Law Society not just firms. Entry into profession: we should ask questions on the Licensing exam regarding responsibilities to uphold equity and diversity. The Law Society should collect numbers for the Law Society itself - staff, benchers.
- Le premier point c'est le Barreau. Il faudrait que tous les comités du Barreau aient des personnes racialisées.
- We need to have policies. We can't legislate kindness and fairness. If firms have to say how many people are racialized, that works. If numbers are published, firms will change.
- Would like to see law firms promote diversity through their website by publishing the numbers of different diverse lawyers. The Law Society can encourage instead of punish. If I can go to a website one day and see people from different countries that makes me feel welcome.
- Mandatory monitoring leads to push back. Before we resort to the stick, try the carrot first.
- More data needs to be collected in addition to someone's skin colour. Some tend to hire from the same race. Not all racialized licensees come from the same background. This needs to be addressed.

- All the findings should be disclosed by the firms. The new generation is interested in companies that are hiring diversity. In 10 to 20 years, having the data out there will have an impact.
- Consistent demographic data standards are important, data should also be public to legal profession. This will help with consistency of data: number of racialized licensees at associate, partner, new hire, articling student, summer student levels.
- Need to also collect and analyze data, more specifically, which racialized groups are moving up and which are not.
- The voluntary self-identification survey in annual report should be mandatory. The Law Society should get firm data. The comparison should be to the Ontario population. The results should be provided to everyone in the firm.
- The Law Society should make firms disclose publicly. If it is public, things will change.
- Firms could report demographic data to a third party, instead of the Law Society.
- The gathering of demographic data should be mandatory because without numbers, many people deny that there is even a problem. That data is essential to moving forward with effective diversity and inclusion initiatives and having a broader impact on access to justice.

**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?**

- The Law Society should work with the Legal Leaders for Diversity to develop model contract compliance programs that would require potential suppliers to provide diversity statistics during the RFP process.
- This depends on firm size. Data gathering in a bigger firm is a lot easier. They are more institutionally disposed.
- The recruitment for in-house legal departments should be more transparent.
- There needs to be some process where large organizations like banks collect data. How do lawyers give input so that they are not excluded from the process?
- The Law Society could create tools for clients who can ask their law firms to reflect these characteristics.
- The Law Society could tell people in CPD that this is coming – provide examples of companies that do impose.
- While the idea of contract compliance is a good one, would discourage any mandatory contract compliance.
- In-house departments can hire consultants in race relations and diversity to help them with contract compliance - not the Law Society's role. The Law Society's role should be limited because of the private nature of contracts and tenders.
- The Law Society could have a roster of firms and members that have said they are committed to diversity and these are the steps they are taking and then get recognized for it. If someone is looking for firm to do business with, they can go to the Law Society website and see firms that have committed to diversity.

#### **Question 4 and 5: What are the preferred mentoring and/or advisory services models for racialized licensees?**

- Mentorship is not one-size fits all. There are different types of mentorship needs at different stages of your career for different things.
- Substance based and professional based mentoring is needed. It is needed in law school.
- Racialized lawyers also need guidance from non-racialized lawyers. Their network is so small.
- There is a lot of value in one-on-one contact. However, it is better to have a diversity of perspectives. Especially new lawyers - they don't necessarily have the connections so a mix based on the person's interests is important. Mentors do not necessarily have to be racialized. There needs to be adequate representation.
- Limited scope advisory services provide opportunities to have conversations about work in a structured way.
- Reservations about remunerated services because of potential failure. Also, remuneration changes the dynamic of the relationship (e.g. the time is limited).
- Legal Leaders for Diversity's mentorship program is great. They get mentees to come to each event. Mentorship outside of the firm is important.
- We need to move away from looking at senior lawyers being a mentor to junior lawyers from same community. We should train recent lawyers on how to become leaders in law firms or organizations.
- The Law Society has huge resources. Have an incentive for mentoring and put it on the website (on-line mentoring). Form a culture about giving our time.
- Mentoring is challenging. People do not understand what mentoring means. It is hard to develop that relationship with someone and get them interested. Mentoring should be a combination of one-on-one and group - depending on what the person needs.
- If racialized and born outside Canada, the problem is compounded. You turn to your community and they are your competitors. Mentors are not opening up.
- Reward positive behaviour - give recognition for mentoring. In firms, you can give compensation.
- In terms of what the mentoring would look like: large firms could provide mentoring for paralegals. They could provide the experience of working in a firm.
- The Law Society could disseminate the information more broadly - notices to the profession, more marketing.
- The Law Society should offer resources at an earlier point. More emphasis should be placed on pre-law.

- Racialized licensees need to have someone who understands their experience and the mainstream experience.
- Study groups would be great to integrate racialized licensees with people who have the same challenges.
- There is a lot of value in peers getting together.
- The profession does not really know the professional associations of racialized licensees. It would be a good practice to disseminate that information more broadly so if a licensee has an issue, they can call upon one of these associations.
- It is useful to have different mentors that can speak to different challenges - gender, advancement, moving into new area; to have more than one person who can provide that unique perspective that someone that is young might need.
- Law schools have mentors for law students. Racialized students work together and talk to each other. There are not a lot of role models (even on faculty). We need to have a safe place to have discussions.
- A good mentor (could have more than one) gives you career advice and substantive advice. You can have all of that but if there is still systemic discrimination, it does not work.
- It is worth thinking about the value of cross cultural mentorship. The Law Society could play a real leadership role there. In terms of gender too, senior women can mentor young men.
- The Law Society should have people note on annual report that they are willing to be mentor and create a roster.
- By the time people have their licenses it's too late. Schools are supposed to provide networks.
- Mentorship must be work-related. Mentorship should be within organizations by senior dominant people with women or racialized individuals.
- The Law Society should encourage recognition amongst members of the bar that mentoring should not just be unidirectional. It can help to develop relationships with younger lawyers because mentors and mentees have a lot to learn from each other. Intercultural, intergenerational.
- The Law Society could develop an initiative addressing specific areas where a sole practitioner may need assistance. Licensees could apply to a fellow-type program (e.g. Maytree's fellow program) where you have a series of different sessions on how to run a practice.
- Mentoring or networking events have to be able to cater to racialized licensees who work in under services areas.
- The Law Society could give an incentive of 1 professional hour for mentoring.

- The Law Society should send a mass e-mail to new licensees, at first contact with the Law Society, encouraging them to contact organizations such as the South Asian Bar Association and the Federation of Asian Canadian Lawyers. The Law Society should train mentors within those associations to standardize mentorship and provide logistical support, like meeting space.
- Why reinvent the wheel – mentoring can be done through organizations. Organizations would require some support, but organizations would best serve needs of mentees.
- Sponsorship is different than mentoring because sponsors take an ongoing interest in the career development of the mentee.
- There are too many mentoring options – Law Society, Ontario Bar Associations, law schools, large firms etc. There must be a better way of coordinating. The regulator has a role in this.

**Question 5: What are the preferred networking models for racialized licensees?**

- CPD budgets are small for sole practitioners. It would be useful to have CPD sessions that the Ontario Bar Association and the Law Society could jointly host. There could be well-known experts in the area and they could make a presentation for free. This could be mandatory. There would be one event per section per year.
- Having organizations of specific cultures that can relate and assist is helpful.
- When racialized licensees are restricted to racialized groups, they can sympathize and develop opportunities within these groups – but this also insulates them from the rest of the networking that could be much larger and provide more opportunities. Networking should be available to everyone.
- The Law Society should have regional networking events sponsored by the Law Society and encourage people to come out.
- Networking should start very early. The Law Society should provide internationally trained lawyers with networking opportunities – the exemption from articling results in internationally trained lawyers having no contacts in legal community. This should be communicated to lawyers applying for an exemption.
- Associations are costly and for someone unemployed, it may be difficult to join.
- The Law Society should have more inclusive events - e.g. consider excluding alcohol from some networking events, to make them more accessible. The Law Society should also have events that are more financially accessible. The Law Society could provide space/other support.
- The Law Society should not charge organizations so much to have events. They should recognize that organizations are in the trenches (working with lawyers, volunteers). There should be some recognition that the Law Society has a facility, and organizations can come and use it.
- There should be more broad-based networking events that are not focused on being culturally in Canada for a long time to understand them. Because events are informal, there is a lowering of formality in the sense of how you deal with individuals.

**Question 6: How could the Law Society enhance the profession's cultural competence through its Continuing Professional Development (CPD) programs?**

- In favour of having some type of CPD to address unconscious/semi-conscious bias as a start. CPD should start early. Networking, mentoring and CPD should start at law school - then Licensing Process and running through the profession. The break between the Law Society and law schools is an artificial division because a lot of problems start at law school. The Law Society should tell, suggest, and strongly encourage law schools to adopt programs. There should be meshing between law schools and the Law Society.
- Unconscious bias training should start the top down. This could be done in firms of more than 10 people – does not have to be only in 50 person law firms.
- The cost of CPD is a big issue for sole and small practitioners. The prices of the programs could be reduced. More sessions means more socialization.
- In order for people to go to cultural competence training, there needs to be a draw factor. It would be challenging to attend if it is not attached to substantive topics.
- The starting point is to take the dominance and understand the privilege that we face. Teaching White people about their privilege is a good starting point. Don't teach about cultural competence, teach about privilege.
- This would require a mandatory CPD hour on understanding of the barriers as an initial step. One hour for 1 professional credit. The Law Society can then build on that. Do not teach on cultural competence –teach on understanding the barriers.
- Racialized lawyers tend to work in smaller firms. Smaller firms don't have money for CPD. The Law Society should not make cultural competence CPD mandatory because a lot of firms don't have money to spend.
- The Law Society should have cultural competence CPDs with professionalism credits. This should be offered as webinar and should be recorded.
- The Law Society should have all interviewers do unconscious bias training, delivered as a webinar. There would be good uptake.
- The Law Society could go to law firms and provide training programs on workplace harassment.
- The Law Society requires CPD for professional content hours, why not include certain hours dealing with cultural exploration or understanding?
- Cultural competence training should be offered in law school and to those responsible for student applications for law schools. There should be mandatory CPD programs that address these issues and an incentive provided for participation.
- Cultural competence is not recognized as an important competency for lawyers in Canada, but it should be. The Law Society could use its seat on the Federation to include cultural competency and diversity awareness as part of core curriculum.

- Diversity education should be over and above current CPD. There should be a different category that is a requirement (i.e. under professionalism).
- This is a systemic issue. There are a lot of CPD programs on cultural competency. The Law Society has to get to decision makers - it's about unconscious bias. The Law Society needs to provide mandated topics that firms have to talk about and do some work on.
- Cultural competence training could be mandatory to allow for standardized values across the province. The profession needs to be educated about our diversity. Make the training affordable for everyone.
- One of the main problems is accessibility of education. The Law Society should make it easier to get the education in the regions.
- The Law Society should consider anti-racist programs. The Law Society could include an element into each CPD programs, for example in anti-racist education. The Law Society cannot legislate societal change.
- "Anti-discrimination" might be more useful terminology as opposed to "cultural competency". It can be hard to avoid stereotypes and hard to have sophisticated conversation about these issues.
- There is CPD on how to not get sued/how to be professional/get retainers/protect yourself. This should be more of an education process. The Law Society should start bringing in a bit more awareness through the education process of what the issues are and how you can become better person. A little bit could be included at one CPD or more at another. We should be made to realize that there are some biases there.
- For cultural competence CPD, The Law Society will have to use associations. Big providers will not be able to do it and people will not be able to pay for it. Big firms give their employees all of their professionalism hours - not everyone has access. Associations can provide CPD at a reasonable cost.
- The Law Society should have more diversity on CPD panels.
- Canadian law firms could benefit from direction on best practices in creating diversity programming. It is not enough to do a one or two hour workshop for 150 lawyers to provide 2 hours of CPD accreditation. It takes 30-50 hours of individual self-work to move up in cultural competence. Canadian law firms should have intensive, in-depth behavioural change programming that causes people to be more inclusive. Key challenges - behavioural change both individual and systemic. It costs money to drive behavioural change. The Law Society can provide guidance when it comes behavioural change and cultural competence.

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

- Increase the knowledge of the complaint process.
- The Law Society could have an anonymous process to receive complaints.
- There should be a 'no reprisal' section in the Rules.
- A place to start to make sure all licensees know about the possibility of systemic complaints would be updating the Rules of Professional Conduct.
- The associations may have a role to play.
- One issue is that the Rules do not get at subtle forms of discrimination - discrimination on a daily basis. The Law Society should give thought as to how the Rules can be crafted to address subtle discrimination.
- The issue of fear is a really significant issue, especially for younger lawyers who are afraid of what a complaint would mean for their career. Bringing a complaint through an association may not alleviate the problem. The Law Society could build in confidentiality mechanisms.
- If anonymous complaints regarding the same firm are made, then the Law Society could send investigators.
- An anonymous complaints service might be helpful, especially because data shows that a huge part of this is invisible biases. People don't even realize when they are discriminating. The Law Society should inform them that there is a problem. This does not address the situation in smaller or medium sized firms. The Law Society could ask licensees in the annual report whether they have ever experienced discrimination, collect the information by firm, and pass it on to managing or senior partners.
- The concept of the complaint process is key. People have to feel comfortable in accessing the process. The idea of an audit can be helpful. It takes the onus off the individuals and puts the onus on the firm. Firms will feel they have to answer if the Law Society is asking.

## On Connections between Aboriginal Peoples' and Racialized Peoples' Experiences

- Indigenous is not defined along the basis of race, but of nationhood. The obligation the Canadian government owes to Indigenous people is very different from what is owed to racialized people in Canada. Therefore, the strategies to respond to racism against Indigenous people will be different because of that history.
- Geography can be a factor in understanding racism.
- There are important reasons for keeping key, specific concerns relating to Aboriginal issues separate. The acuteness of the Indigenous experience of racism relates to the history of Indigenous people in Canada. It's a problem that needs to be named, identified, and addressed. It's a complex problem and not enough research has been done on it yet.
- It's a false dichotomy to force people to either follow the Aboriginal or the racialized path. There can be both alliances and specialized paths to create solutions that recognize the different issues.
- There are parallels between various groups in the experience of racism that can be discussed under the umbrella of diversity. But Indigenous people are not the same as others. The diversity umbrella came after Indigenous people were here. Anti-racism can be discussed along multi-cultural themes.
- Aboriginal people are between a rock and a hard place when talking about racism. There are commonalities but the unique historical context that makes succeeding in the legal professional for Aboriginal people additionally hard needs to be acknowledged. The way that "business is done" in the legal world is a cultural barrier for Aboriginal people. There is the added responsibility of representing your own community. You are seen as an expert in all Aboriginal issues by non-Aboriginals. There is also an expectation that you will go home to work for your community. There is pressure to bring your education back home that non-Aboriginal students would not feel. These different pressures and stresses mean that supports for Aboriginal lawyers would be very different.

### Other

- Racialized licensees are more likely to be unemployed or underemployed, yet the fees that they pay are exorbitant (approximately \$500 a year for non-practising or unemployed licensees). The Law Society should implement a fee waiver/fee reduction program to alleviate some of the disproportionate burden that racialized licensees face (or all licensees for that matter). Part-time lawyers, including those on parental leave, would also benefit.



# Statistical Snapshot of Lawyers in Ontario

from the Lawyer Annual Report (LAR) 2013

## RESPONSE RATES

The Law Society of Upper Canada has been collecting self-identification data in the Lawyer Annual Report since 2009. The structure of the survey at the time permitted the lawyer to opt to pass over the question and provide no response. This option has been modified so that, while a lawyer can still decline to self-identify, the person must now so indicate by expressly entering this response.

## RESPONSE RATES FOR EACH QUESTION

The response rate for each question is as follows:

- Aboriginal 88%
- Racialized 77%
- Sexual orientation 81%
- Francophone 91%
- Able to practice in French 87%
- Disability 85%
- Gender 100%

## RACE AND ABORIGINAL

General Data — \* Indicates less than 0.1%

Categories from LAR	Number of Lawyer Respondents	% of all Lawyer Respondents	Total Ontario Population %	Persons in the Labour Force Age 25 or more %	University Graduates in the Labour Force, Age 25 or more %
Inuk	5	*	*	*	*
First Nations	277	0.9	1.6	1.2	0.5
Métis	136	0.5	0.7	0.6	0.3
Other Aboriginal			0.1	0.1	0.1
Multiple Aboriginal			*	*	*
<b>All Aboriginal communities</b>	<b>418</b>	<b>1.4</b>	<b>2.3</b>	<b>1.9</b>	<b>0.8</b>
Arab	234	0.8	1.1	0.9	1.5
Black	851	2.9	4.3	3.8	2.7
Chinese	932	3.1	5.0	5.1	8.5
East Asian (e.g. Japanese, Korean)	358	1.2	3.0	3.2	4.7
Latino	146	0.5	1.4	1.5	1.2
South Asian (e.g. Indo-Canadian, Indian Subcontinent)	1,670	5.6	7.7	7.2	10.8
Southeast Asian	191	0.6	1.1	1.1	0.9
West Asian (e.g. Iranian, Afghan)	253	0.8	1.0	0.8	1.3
Other racialized			0.6	0.6	0.4
More than one racialized group	98	0.3	0.7	0.5	0.7
Racialized and White	305	1.0			
<b>Total racialized</b>	<b>5,038</b>	<b>16.9</b>	<b>26</b>	<b>25</b>	<b>33</b>
<b>White</b>	<b>24,341</b>	<b>81.7</b>	<b>71.8</b>	<b>73.4</b>	<b>66.4</b>
Total		100.00	100.00	100.00	100.00
<b>Total respondents to the question about being Aboriginal</b>	<b>34,270</b>				
<b>Total respondents to the question about race</b>	<b>29,797</b>				

The National Household Survey uses the term "Black" only.

The National Household Survey uses the categories of "Korean" and "Japanese" separately

The National Household Survey uses the category "Latin American" only.

The National Household Survey uses the following examples for South Asian: "East Indian, Pakistani, Sri Lankan, etc."

## Age, Race and Aboriginal — in Percentages

The proportion of racialized and Aboriginal lawyers continues to increase.

For Aboriginal lawyers, it goes from 0.6 percent of the group age 65 and older to 1.5 percent of the group under 35 and 1.7 of lawyers age 35-44. For racialized lawyers, it goes from 3.9 percent of the group age 65 and older to 27.5 percent of the group under 35 and 23.7 percent of lawyers age 35-44.

Except for Black and Aboriginal lawyers, the representation of each group is greater, in many cases much greater, in the 35-44 than in the 45-54 age group. For a number of groups, the percentage doubles or nearly doubles in that 10-year interval showing an increase the proportion of those lawyers entering the profession.

It is important to note that the similarity in the proportion of Aboriginal lawyers in the 25-34, 35-44 and 45-54 age groups, and of Black lawyers under 35, and in the 35-44 and 45-54 age groups suggests that their proportion entering the profession is not increasing.

	Under 35	35-44	45-54	55-64	65 or more
<b>Aboriginal</b>					
First Nations and Inuk	0.8	1.2	1.2	0.8	0.3
Métis	0.7	0.5	0.5	0.3	0.3
<b>Aboriginal Total</b>	<b>1.5</b>	<b>1.7</b>	<b>1.7</b>	<b>1.1</b>	<b>0.6</b>
<b>Racialized</b>					
Arab	1.4	1.1	0.6	0.3	0.1
Black	3.0	3.7	3.8	1.4	0.7
Chinese	5.2	4.1	2.4	1.5	1.0
East Asian	1.7	1.9	1.0	0.4	0.3
Latino	1.0	0.8	0.3	0.1	0.0
South Asian	9.3	8.1	4.4	1.6	1.6
Southeast Asian	1.1	1.0	0.4	0.3	0.0
West Asian	2.5	1.0	0.3	0.1	0.1
More than one Racialized Group	0.7	0.5	0.2	0.1	0.0
Racialized and White	1.6	1.5	1.0	0.2	0.1
<b>Racialized Total</b>	<b>27.5</b>	<b>23.7</b>	<b>14.4</b>	<b>6.0</b>	<b>3.9</b>
<b>White</b>	<b>71.0</b>	<b>74.9</b>	<b>84.0</b>	<b>93.1</b>	<b>95.5</b>
<b>Total</b>	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	5,854	8,422	7,053	5,705	2,763

## Year of Call, Race and Aboriginal — in Percentages

	2013	2010-2012	2005-2009	1995-2004	1985-1994	1975-1984	Before 1975
	First Year	2nd-4th Years	5th-9th Years	10th-19th Years	20th-29th Years	30th-39th Years	40th or more
<b>Aboriginal</b>							
First Nations and Inuk	0.7	1.0	1.4	1.4	0.6	0.3	0.3
Métis	0.5	0.9	0.7	0.4	0.4	0.1	0.2
<b>Aboriginal Total</b>	<b>1.2</b>	<b>1.9</b>	<b>2.1</b>	<b>1.8</b>	<b>1.0</b>	<b>0.4</b>	<b>0.5</b>
<b>Racialized</b>							
Arab	1.1	1.2	1.3	0.9	0.4	0.2	0.1
Black	4.0	4.5	4.2	3.8	1.4	0.3	0.1
Chinese	5.7	5.1	4.4	3.4	2.1	0.9	0.1
East Asian	1.4	1.7	2.1	1.5	0.6	0.3	0.2
Latino	1.3	1.2	0.8	0.4	0.1	0.1	0.0
South Asian	12.8	10.4	8.8	6.5	1.6	0.6	0.2
Southeast Asian	1.1	1.2	1.1	0.7	0.2	0.0	0.0
West Asian	3.2	2.5	1.3	0.5	0.1	0.0	0.1
More than one Racialized Group	0.9	0.6	0.6	0.3	0.1	0.0	0.0
Racialized and White	1.5	1.8	1.7	1.1	0.5	0.2	0.0
<b>Racialized Total</b>	<b>33.0</b>	<b>30.2</b>	<b>26.3</b>	<b>19.1</b>	<b>7.1</b>	<b>2.6</b>	<b>0.8</b>
<b>White</b>	<b>65.8</b>	<b>68.0</b>	<b>71.6</b>	<b>79.0</b>	<b>91.8</b>	<b>97.1</b>	<b>98.6</b>
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Total numbers</b>	<b>1,519</b>	<b>3,712</b>	<b>4,925</b>	<b>8,294</b>	<b>5,801</b>	<b>4,130</b>	<b>1,416</b>

## Type of Employment, Race and Aboriginal — in Percentages

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
First Nations and Inuk	28	7	14	2	3	12	25	2	6	100	255
Métis	24	8	20	3	2	9	29	2	2	100	125
<b>Aboriginal Total</b>	<b>27</b>	<b>8</b>	<b>16</b>	<b>2</b>	<b>3</b>	<b>11</b>	<b>26</b>	<b>2</b>	<b>5</b>	<b>100</b>	<b>380</b>
Arab	22	12	22	5	2	11	17	0	9	100	218
Black	36	7	14	2	2	13	19	2	5	100	773
Chinese	21	10	24	3	2	18	14	0	7	100	838
East Asian	19	15	21	3	1	17	18	0	7	100	313
Latino	22	12	26	4	3	14	15	1	4	100	137
South Asian	30	10	20	3	2	13	15	2	6	100	1,529
Southeast Asian	27	8	25	6	2	11	15	2	5	100	170
West Asian	26	5	34	6	0	11	13	1	3	100	231
More than One Group	20	5	29	3	2	12	20	0	9	100	92
Racialized and White	12	11	23	6	4	15	19	2	7	100	284
<b>Racialized Total</b>	<b>26</b>	<b>10</b>	<b>21</b>	<b>3</b>	<b>2</b>	<b>14</b>	<b>16</b>	<b>1</b>	<b>6</b>	<b>100</b>	<b>4,585</b>
<b>White</b>	<b>21</b>	<b>21</b>	<b>18</b>	<b>3</b>	<b>1</b>	<b>12</b>	<b>15</b>	<b>2</b>	<b>7</b>	<b>100</b>	<b>22,486</b>
<b>Total</b>	<b>22</b>	<b>19</b>	<b>19</b>	<b>3</b>	<b>1</b>	<b>13</b>	<b>16</b>	<b>2</b>	<b>7</b>	<b>100</b>	<b>27,451</b>

Aboriginal and racialized lawyers, compared to White lawyers, are more likely to be in sole practice or in a legal clinic and less likely to be law firm partners. Age could account for some of these differences. Aboriginal lawyers are more likely to work in government

## Size of Firms for those in Private Practice — in Percentages

	fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
<b>Aboriginal</b>									
First Nations and Inuk	37	20	27	8	0	5	3	100	60
Métis	23	13	36	13	0	5	10	100	39
<b>Aboriginal Total</b>	<b>31</b>	<b>17</b>	<b>30</b>	<b>10</b>	<b>0</b>	<b>5</b>	<b>6</b>	<b>100</b>	<b>99</b>
<b>Racialized</b>									
Arab	33	12	18	7	8	9	13	100	85
Black	31	17	15	10	7	8	13	100	172
Chinese	19	16	13	8	8	8	27	100	308
East Asian	19	15	12	12	10	15	17	100	121
Latino	34	14	14	9	4	13	13	100	56
South Asian	31	19	13	9	5	10	13	100	497
Southeast Asian	23	18	22	12	6	8	11	100	65
West Asian	29	17	19	8	5	5	17	100	106
More than one Racialized Group	31	17	9	9	6	6	23	100	35
Racialized and White	22	12	12	14	4	15	20	100	114
<b>Racialized Total</b>	<b>27</b>	<b>16</b>	<b>14</b>	<b>10</b>	<b>6</b>	<b>10</b>	<b>17</b>	<b>100</b>	<b>1,559</b>
<b>White</b>	<b>18</b>	<b>16</b>	<b>16</b>	<b>12</b>	<b>7</b>	<b>14</b>	<b>18</b>	<b>100</b>	<b>9,363</b>
<b>Total</b>	<b>19</b>	<b>16</b>	<b>16</b>	<b>11</b>	<b>7</b>	<b>13</b>	<b>17</b>	<b>100</b>	<b>11,021</b>

## Region, Race and Aboriginal — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
<b>Aboriginal</b>										
First Nations and Inuk	8	11	26	9	10	15	15	6	100	272
Métis	6	2	29	4	10	13	31	5	100	131
<b>Aboriginal Total</b>	<b>8</b>	<b>8</b>	<b>27</b>	<b>7</b>	<b>10</b>	<b>14</b>	<b>21</b>	<b>5</b>	<b>100</b>	<b>403</b>
<b>Racialized</b>										
Arab	8	3	48	13	0	1	27	1	100	231
Black	3	3	56	21	3	1	11	1	100	834
Chinese	1	2	71	17	1	0	8	0	100	920
East Asian	1	3	71	16	1	1	6	1	100	355
Latino	7	5	59	13	2	1	12	1	100	145
South Asian	2	3	58	30	1	0	6	0	100	1,651
Southeast Asian	2	3	57	24	2	1	11	1	100	190
West Asian	1	3	69	16	1	0	9	0	100	249
More than one Racialized Group	3	3	69	14	0	2	8	1	100	96
Racialized and White	2	4	63	11	1	2	15	2	100	300
<b>Racialized Total</b>	<b>2</b>	<b>3</b>	<b>61</b>	<b>21</b>	<b>1</b>	<b>1</b>	<b>9</b>	<b>1</b>	<b>100</b>	<b>4,971</b>
<b>White</b>	<b>6</b>	<b>7</b>	<b>55</b>	<b>11</b>	<b>4</b>	<b>2</b>	<b>12</b>	<b>3</b>	<b>100</b>	<b>24,099</b>
<b>Total</b>	<b>6</b>	<b>6</b>	<b>55</b>	<b>13</b>	<b>3</b>	<b>2</b>	<b>12</b>	<b>2</b>	<b>100</b>	<b>29,473</b>

Aboriginal lawyers are much more likely to work in the Central North, Northern Ontario, Eastern Ontario and Ottawa and less likely to be in Toronto. Racialized lawyers are concentrated in Toronto, except for the high representation of Arab lawyers in Ottawa and South Asian lawyers in the combination of Durham, Halton, Peel and York.

**GENDER**

## Age and Gender — in Percentages

	Total	Under 35	35-44	45-54	55-64	65 or more
Women	41.9	54.0	51.6	43.7	31.5	10.6
Men	58.1	46.0	48.4	56.3	68.5	89.4
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	38,593	7,072	10,527	9,271	7,869	3,854

Note: A comparison of the age groups 35-44 and the older groups of lawyers reveals outstanding growth in the proportion of women in the profession.

## Type of Employment and Gender — in Percentages

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
<b>Women</b>											
under 35	7.9	2.5	50.2	5.4	2.1	9.9	15.2	0.8	6.0	100.0	3,363
35-44	12.5	11.0	18.8	2.9	1.8	19.0	24.9	2.2	6.9	100.0	4,761
45-54	20.6	15.0	6.7	2.7	1.5	17.2	25.2	2.4	8.7	100.0	3,687
55-64	26.0	16.9	3.9	2.2	2.1	11.7	23.3	4.2	9.7	100.0	2,050
65 or older	48.8	17.2	3.8	3.0	1.5	2.4	13.0	3.6	6.8	100.0	338
<b>Total</b>	16.4	11.0	20.6	3.4	1.8	14.9	22.2	2.2	7.5	100.0	14,199
<b>Men</b>											
under 35	11.7	3.8	55.8	4.5	1.1	9.8	9.3	0.3	3.6	100.0	3,063
35-44	17.1	20.9	20.3	2.9	0.5	16.7	14.6	1.0	6.0	100.0	4,920
45-54	25.8	30.8	5.4	2.3	0.5	13.4	13.1	1.4	7.4	100.0	5,034
55-64	34.3	33.9	4.4	1.4	0.7	7.4	10.1	1.2	6.6	100.0	5,049
65 or older	50.3	29.6	5.7	1.9	0.2	2.9	3.6	0.7	5.0	100.0	3,287
<b>Total</b>	27.6	25.2	15.9	2.5	0.6	10.6	10.7	1.0	6.0	100.0	21,353

Men are more likely to be in sole practice and law firm partners, while there is a higher proportion of women in all the other statuses, especially in-house, in clinics, in government and in education.

## Size of Firms for those in Private Practice and Gender — in Percentages

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
Women	20.9	15.9	16.0	11.8	7.4	11.8	16.2	100.0	4,951
Men	20.4	16.0	16.0	11.5	6.8	12.6	16.9	100.0	9,296
<b>Total</b>	20.6	16.0	16.0	11.6	7.0	12.3	16.6	100.0	14,247

## Region and Gender — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
Women	6.0	6.9	54.3	13.7	3.6	2.7	10.4	2.4	100.0	15,951
Men	5.1	4.8	56.6	12.6	3.2	1.8	13.6	2.3	100.0	22,221
<b>Total</b>	5.6	6.0	55.2	13.2	3.4	2.3	11.7	2.4	100.0	38,172

## FRANCOPHONE

Five point two percent of the profession self-identifies as Francophone while 4.8 percent of the Ontario population is Francophone<sup>1</sup>. Almost 14 percent of the profession indicate being able provide legal services in French.

## Identifies as Francophone and Age

	Total Francophones	Under 35	35-44	45-54	55-64	65 or more
Francophone in percentages	5.2	6.6	6.5	5.6	3.0	2.1
Total numbers	1,810	441	630	460	209	70

A comparison of the three oldest age groups, 45-54, 55-64 and 65 or more shows a remarkable increase in the proportion of lawyers who identify as Francophone.

## Type of Employment for those who Identify as Francophone — in Percentages

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
Francophone	16.5	12.9	14.8	3.2	1.6	10.8	30.5	2.6	7.1	100	1,665
Not Francophone	23.0	19.4	18.3	2.8	1.1	12.5	14.7	1.4	6.7	100	30,508
<b>Total</b>	<b>22.7</b>	<b>19.1</b>	<b>18.1</b>	<b>2.8</b>	<b>1.1</b>	<b>12.4</b>	<b>15.5</b>	<b>1.5</b>	<b>6.7</b>	<b>100</b>	<b>32,173</b>

## Size of Firms for those in Private Practice who Identify as Francophone — in Percentages

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
Francophone	24.9	19.8	17.9	7.2	5.6	11.7	12.8	100.0	514
Not Francophone	19.7	16.0	15.5	11.6	7.1	12.8	17.2	100.0	12,348
<b>Total</b>	<b>19.9</b>	<b>16.1</b>	<b>15.6</b>	<b>11.4</b>	<b>7.1</b>	<b>12.8</b>	<b>17.1</b>	<b>100.0</b>	<b>12,862</b>

## Region and Francophone — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
Francophone	2.2	1.7	28.9	6.1	1.0	7.7	45.8	6.7	100.0	1,749
Not Francophone	5.6	6.2	57.1	13.6	3.5	2.0	9.9	2.1	100.0	32,783
<b>Total</b>	<b>5.4</b>	<b>5.9</b>	<b>55.7</b>	<b>13.2</b>	<b>3.4</b>	<b>2.3</b>	<b>11.7</b>	<b>2.3</b>	<b>100.0</b>	<b>34,532</b>

Francophone lawyers are about twice as likely to be employed by government and they are more than five times as likely to work in Ottawa. They are also more likely to work in Eastern Ontario.

<sup>1</sup> Based on 2011 Statistics Canada census results.

**DISABILITY**

The number of lawyers self-reporting disability is inexplicably low and further sampling over time may have to be conducted.

**Disability and Age — in Percentages**

	Total	Under 35	35-44	45-54	55-64	65 or more
Disability	3.0	2.3	2.5	3.5	4.2	2.7
No Disability	97.0	97.7	97.5	96.5	95.8	97.3
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	32,953	6,289	9,219	7,768	6,433	3,244

**Type of Employment and Disability — in Percentages**

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
Has a Disability	28.8	12.0	10.0	2.4	3.6	8.0	25.7	3.5	6.0	100.0	851
No Disability	22.4	19.3	18.6	2.8	1.0	12.6	15.0	1.4	6.8	100.0	29,598
<b>Total</b>	22.6	19.1	18.4	2.8	1.1	12.5	15.3	1.5	6.8	100.0	30,449

Disability is significantly related to sector of employment. Most notably, 25.7 percent of lawyers with a disability work for government, compared to 15.0 percent of those without a disability. While total employment is much smaller, 3.3 percent of lawyers with a disability work for government, compared to 1.4 percent for those without and the corresponding figures for legal clinics are 3.6 and 1.0 percent. They are less likely to be associates when they are young and less likely to be law firm partners when they are older.

**Size of Firms for those in Private Practice and Disability — in Percentages**

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
Has a Disability	29.5	16.4	10.6	11.6	7.7	10.1	14.0	100.0	207
No Disability	19.5	16.2	15.7	11.4	7.1	12.7	17.3	100.0	12,019
<b>Total</b>	19.7	16.2	15.6	11.5	7.2	12.7	17.2	100.0	12,226

**Region and Disability — in Percentages**

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
Has a Disability	5.6	6.6	51.0	10.9	3.1	2.6	16.6	3.6	100.0	990
No Disability	5.3	5.8	56.0	13.4	3.3	2.3	11.6	2.3	100.0	31,600
<b>Total</b>	5.3	5.8	55.8	13.3	3.3	2.3	11.7	2.4	100.0	32,590

## LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER (LGBTQ)

### LGBTQ and Age — in Percentages

	Total	Under 35	35-44	45-54	55-64	65 or more
LGBTQ	2.8	3.4	2.9	3.6	1.9	1.1
Not LGBTQ	97.2	96.6	97.1	96.4	98.1	98.9
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	31,241	6,096	8,827	7,331	6,027	2,960

### Type of Employment for LGBTQ — in Percentages

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
LGBTQ	16.2	12.3	16.2	2.5	3.1	13.8	25.2	4.2	6.5	100	804
Not LGBTQ	22.4	19.2	18.6	2.8	1.1	12.6	15.0	1.4	6.8	100	27,992
<b>Total</b>	22.2	19.0	18.5	2.8	1.2	12.7	15.3	1.5	6.8	100	28,796

LGBTQ lawyers are about three times more likely to be in education, to work in a legal clinic and to work for government. They are less likely to be sole practitioners and law firm partners.

### Size of Firms for LGBTQ in Private Practice — in Percentages

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
LGBTQ	21.3	18.1	12.9	11.2	7.6	8.8	20.1	100.0	249
Not LGBTQ	19.3	16.0	15.8	11.6	7.1	13.0	17.3	100.0	11,352
<b>Total</b>	19.3	16.0	15.7	11.6	7.1	12.9	17.3	100.0	11,601

### Region for LGBTQ — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
LGBTQ	3.0	3.3	66.7	7.1	2.1	1.6	14.4	1.7	100.0	860
Not LGBTQ	5.4	5.9	55.5	13.6	3.3	2.2	11.7	2.4	100.0	30,041
<b>Total</b>	5.4	5.8	55.8	13.4	3.3	2.2	11.7	2.4	100.0	30,901

LGBTQ lawyers are concentrated in Toronto and Ottawa.



# Statistical Snapshot of Paralegals in Ontario

from the Paralegal Annual Report (PAR) 2013

## RESPONSE RATES

The Law Society of Upper Canada has been collecting self-identification data in the Paralegal Annual Report since 2009. The structure of the survey at the time permitted the paralegal to opt to pass over the question and provide no response. This option has been modified so that, while a paralegal can still decline to self-identify, the person must now so indicate by expressly entering this response.

## RESPONSE RATES FOR EACH QUESTION

- Aboriginal 90%
- Racialized 82%
- Sexual orientation 86%
- Francophone 92%
- Able to practice in French 87%
- Disability 90%
- Gender 100%

## RACE AND ABORIGINAL

General Data — \* means less than 0.1 percent

Categories from LAR	Number of Paralegal Respondents	% of all Paralegals Respondents	Total Ontario Population %	Persons in the Labour Force Age 25 or more %	University Graduates in the Labour Force, Age 25 or more %
First Nations	51	1.1	1.6	1.2	0.5
Inuk	0	0	*	*	*
Métis	25	0.6	0.7	0.6	0.3
Other Aboriginal			0.1	0.1	0.1
Multiple Aboriginal			*	*	*
<b>All Aboriginal communities</b>	<b>76</b>	<b>1.7</b>	<b>2.3</b>	<b>1.9</b>	<b>0.8</b>
Arab	57	1.3	1.1	0.9	1.5
Black (e.g. African-Canadian, African, Caribbean)	303	6.8	4.3	3.8	2.7
Chinese	213	4.8	5.0	5.1	8.5
East-Asian (e.g. Japanese, Korean)	46	1.0	3.0	3.2	4.7
Latin American, Hispanic	160	3.6	1.4	1.5	1.2
South Asian (e.g. Indo-Canadian, Indian Subcontinent)	414	9.3	7.7	7.2	10.8
<b>Southeast Asian</b>	<b>108</b>	<b>2.4</b>	<b>1.1</b>	<b>1.1</b>	<b>0.9</b>
West Asian (e.g. Iranian, Afghan)	108	2.4	1.0	0.8	1.3
Other racialized			0.6	0.6	0.4
More than one racialized group	35	0.8	0.7	0.5	0.7
Racialized and White	37	0.8			
<b>Total racialized</b>	<b>1,481</b>	<b>33.2</b>	<b>25.9</b>	<b>24.8</b>	<b>32.7</b>
<b>White</b>	<b>2,899</b>	<b>65.1</b>	<b>71.8</b>	<b>73.4</b>	<b>66.4</b>
Total		100.0	100.0	100.0	100.0
<b>Total respondents to question about being Aboriginal</b>	<b>5,009</b>				
<b>Total respondents to question about race</b>	<b>4,456</b>				

For more information about the Law Society of Upper Canada please visit our website at [www.lsuc.on.ca](http://www.lsuc.on.ca)

The National Household Survey uses the term "Black" only.

The National Household Survey uses the categories of "Korean" and "Japanese" separately

The National Household Survey uses the category "Latin American" only.

The National Household Survey uses the following examples for South Asian: "East Indian, Pakistani, Sri Lankan, etc."

Just over one-third, 34.9 percent, of Ontario paralegals are Aboriginal or Racialized, compared to 28.2 percent of the Ontario population, 26.7 percent of labour force participants 25 or older and 33.5 percent of university graduates in the labour force and 25 or older. Thus, one cannot argue that paralegals are disproportionately White.

Aboriginal paralegals account for 1.7 percent of the total, compared to 2.3 percent of the Ontario population, 1.9 percent of labour force participants who are 25 or older and 0.8 percent of university graduates of the labour force who are 25 or older. For members of racialized groups the figures are 33.2 percent of paralegals, 25.9 percent of the population, 24.8 percent of labour force participants who are 25 or older and 32.7 percent of university graduates in the labour force who are 25 or older.

Exact comparisons are difficult, but there are quite large differences between racialized groups. The Black, Latino, Southeast Asian and West Asians communities include more paralegals than their representation in the population.

Some of the groups are small numerically: The data indicates that there are just 76 Aboriginal paralegals in Ontario, 57 Arab paralegals, 46 East Asian paralegals, 108 Southeast Asian and 108 West Asian paralegals.

### Age, Race and Aboriginal — in Percentages

	20-29	30-39	40-49	50-59	60 or more
<b>Aboriginal</b>					
First Nations and Inuk	1.1	0.7	1.5	1.1	1.4
Métis	0.7	0.3	0.4	0.7	0.8
<b>Aboriginal Total</b>	<b>1.8</b>	<b>1.0</b>	<b>1.9</b>	<b>1.8</b>	<b>2.2</b>
<b>Racialized</b>					
Arab	2.2	1.9	0.8	0.3	0.4
Black	5.3	8.4	7.9	6.0	5.9
Chinese	2.8	6.0	6.4	4.4	3.9
East Asian	0.9	1.5	1.1	0.8	0.4
Latino	4.2	3.9	4.2	3.2	1.2
South Asian	11.0	9.1	8.9	8.9	7.5
Southeast Asian	3.0	2.6	3.1	1.7	0.8
West Asian	3.0	4.2	1.6	1.6	0.6
More than one Racialized Group	1.7	0.7	0.4	0.6	0.2
Racialized and White	1.4	0.8	0.6	0.5	0.8
<b>Racialized Total</b>	<b>35.5</b>	<b>39.1</b>	<b>35.0</b>	<b>28.0</b>	<b>21.7</b>
<b>White</b>	<b>62.7</b>	<b>60.0</b>	<b>62.9</b>	<b>70.1</b>	<b>76.0</b>
<b>Total</b>	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	<b>1,075</b>	<b>1,035</b>	<b>977</b>	<b>877</b>	<b>492</b>

Seventy-six percent of paralegals age 60 and older are White, compared to 70.1 percent of paralegals age 50-59 and about 61 percent of paralegals under 50. There is no consistent trend among the three youngest ten-year groups, suggesting that the shift towards an increased proportion of non-White paralegals was a phenomenon of the 1970s and 1980s.

Aboriginal paralegals are small in number and their age distribution suggests no trend in their share of the profession over the years.

There is continuing growth in the proportion of paralegals who identify as Arab and, not quite so consistently, as West Asian.

There are substantially fewer Black paralegals under 30 than between 30 and 39, down from 8.4 percent to 5.3 percent, and Chinese paralegals, down from 6.0 percent to 2.8 percent.

### Region, Race and Aboriginal — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
<b>Aboriginal</b>										
First Nations and Inuk	16	4	25	22	14	6	6	8	100	51
Métis	8	4	16	16	16	28	4	8	100	25
<b>Aboriginal Total</b>	<b>13</b>	<b>4</b>	<b>22</b>	<b>20</b>	<b>14</b>	<b>13</b>	<b>5</b>	<b>8</b>	<b>100</b>	<b>76</b>
<b>Racialized</b>										
Arab	11	0	41	34	2	0	13	0	100	56
Black	2	2	51	38	1	0	5	0	100	302
Chinese	1	0	67	29	1	0	2	0	100	213
East Asian	0	2	71	27	0	0	0	0	100	45
Latino	4	3	63	26	1	0	3	0	100	160
South Asian	1	2	40	56	1	0	0	0	100	412
Southeast Asian	3	4	59	31	0	0	2	1	100	108
West Asian	3	2	53	38	0	0	5	0	100	108
More than one Racialized Group	0	6	54	40	0	0	0	0	100	35
Racialized and White	5	3	46	27	3	3	14	0	100	37
<b>Racialized Total</b>	<b>2</b>	<b>2</b>	<b>52</b>	<b>39</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>100</b>	<b>1,476</b>
<b>White</b>	<b>9</b>	<b>10</b>	<b>32</b>	<b>29</b>	<b>9</b>	<b>3</b>	<b>5</b>	<b>4</b>	<b>100</b>	<b>2,896</b>
<b>Total</b>	<b>7</b>	<b>7</b>	<b>39</b>	<b>32</b>	<b>6</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>100</b>	<b>4,448</b>

There is a significant geographical aspect to the distribution of paralegals. By a wide margin, the largest numbers are in Toronto and in the combination of the Durham, Halton, Peel and York areas surrounding Toronto; respectively, they account for 39 and 32 percent of all paralegals. Seven percent of paralegals are in Ontario's Southwest, 7 percent in the Central South and 6 percent in the Central North. Just 2 percent of paralegals are in the North, 4 percent in Ottawa and 3 percent in the East.

Just over half of racialized paralegals, 52 percent, are in Toronto and 39 percent are in Durham, Halton, Peel and York. This leaves just 9 percent in the entire rest of the province. In contrast, only 44 percent of Aboriginal paralegals are in these two largest areas and they are over-represented everywhere else. The North accounts for 13 percent of Aboriginal paralegals, compared to 3 percent of White paralegals and almost no racialized paralegals.

## Type of Employment, Race and Aboriginal — in Percentages

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
First Nations and Inuk	43	2	2	7	5	2	7	0	32	100	44
Métis	37	0	5	16	5	16	5	0	16	100	19
<b>Aboriginal Total</b>	<b>41</b>	<b>2</b>	<b>3</b>	<b>10</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>0</b>	<b>27</b>	<b>100</b>	<b>63</b>
Arab	40	0	2	8	4	8	8	0	29	100	48
Black	36	1	1	8	0	8	8	1	37	100	226
Chinese	45	5	1	16	1	3	4	1	25	100	166
East Asian	31	11	11	14	0	3	6	0	25	100	36
Latino	30	5	5	15	4	5	8	0	27	100	130
South Asian	42	4	3	10	1	2	4	1	33	100	306
Southeast Asian	37	2	2	14	0	6	2	0	36	100	84
West Asian	39	1	4	18	0	5	3	1	28	100	76
More than One Group	36	0	0	18	4	0	18	4	21	100	28
Racialized and White	31	0	3	7	3	10	17	0	28	100	29
<b>Racialized Total</b>	<b>38</b>	<b>3</b>	<b>3</b>	<b>12</b>	<b>1</b>	<b>5</b>	<b>6</b>	<b>1</b>	<b>31</b>	<b>100</b>	<b>1,129</b>
<b>White</b>	<b>30</b>	<b>3</b>	<b>4</b>	<b>16</b>	<b>2</b>	<b>10</b>	<b>9</b>	<b>1</b>	<b>24</b>	<b>100</b>	<b>2,482</b>
<b>Total</b>	<b>33</b>	<b>3</b>	<b>4</b>	<b>15</b>	<b>2</b>	<b>9</b>	<b>8</b>	<b>1</b>	<b>26</b>	<b>100</b>	<b>3,674</b>

Paralegals are most likely to work as sole practitioners, including 41 percent of Aboriginal paralegals, 38 percent of racialized paralegals and 30 percent of White paralegals.

The moderate difference in the employment profiles of Aboriginal, racialized and White paralegals could in part result from the White paralegals being older.

Disregarding the “others”, the second largest category of paralegal employment is working for a law firm, which accounts for 10, 12 and 16 percent of Aboriginal, racialized and White paralegals, respectively.

Other paralegals are employed “in house” and by government, and a small number are classified as law firm partners and law firm associates.

Because of the small numbers in the various racialized groups and uncertainty due to the large “other” category, we cannot with confidence describe differences in type of employment between the specific racialized groups.

## Size of Firms for those in Firms — in Percentages

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
<b>Aboriginal</b>									
First Nations and Inuk	60	20	20	0	0	0	0	100	5
Métis	0	25	50	25	0	0	0	100	4
<b>Aboriginal Total</b>	<b>33</b>	<b>22</b>	<b>33</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>100</b>	<b>9</b>
<b>Racialized</b>									
Arab	60	0	20	0	0	0	20	100	5
Black	46	25	8	13	8	0	0	100	24
Chinese	59	19	8	11	0	0	3	100	37
East Asian	46	23	23	0	8	0	0	100	13
Latino	29	21	26	9	12	3	0	100	34
South Asian	67	16	12	6	0	0	0	100	51
Southeast Asian	63	19	13	0	6	0	0	100	16
West Asian	61	17	11	6	6	0	0	100	18
More than one Racialized Group	80	0	0	20	0	0	0	100	5
Racialized and White	67	0	0	33	0	0	0	100	3
<b>Racialized Total</b>	<b>55</b>	<b>18</b>	<b>14</b>	<b>8</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>100</b>	<b>206</b>
<b>White</b>	<b>53</b>	<b>21</b>	<b>10</b>	<b>13</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>100</b>	<b>582</b>
<b>Total</b>	<b>53</b>	<b>20</b>	<b>11</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>100</b>	<b>797</b>

**GENDER****Age and Gender — in Percentages**

	Total	20-29	30-39	40-49	50-59	60 or more
Women	58.4	77.4	66.9	55.7	48.6	23.0
Men	41.6	22.6	33.1	44.3	51.4	77.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	<b>5,428</b>	<b>1,290</b>	<b>1,264</b>	<b>1,213</b>	<b>1,051</b>	<b>610</b>

In 2013, 58.4 percent of paralegals were women, a figure that will definitely increase in coming years. There is a strong and consistent increase in the representation of women, from just 23.0 percent of paralegals age 60 and older, to 48.6 percent for paralegals age 50 to 59, 55.7 percent for ages 40-49, 66.9 percent for ages 30-39 and 77.4 percent for paralegals under 30.

**Type of Employment and Gender — in Percentages**

	Sole Practice	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other	Total	Total numbers
<b>Women</b>											
<b>Total</b>	<b>21.5</b>	<b>2.0</b>	<b>3.2</b>	<b>17.1</b>	<b>2.7</b>	<b>7.5</b>	<b>9.9</b>	<b>1.2</b>	<b>35.0</b>	<b>100.0</b>	<b>2,502</b>
under 35	7.7	0.9	2.9	17.0	0.8	4.6	8.0	1.0	57.2	100.0	766
35-44	18.2	2.0	4.5	18.2	1.3	7.2	11.9	0.9	35.7	100.0	638
45-54	31.9	1.8	2.5	20.1	3.2	7.9	10.4	1.1	21.2	100.0	567
55-64	34.7	3.8	2.4	12.0	5.9	9.7	11.3	2.1	18.2	100.0	424
65 or older	31.8	4.7	4.7	15.9	9.3	18.7	3.7	0.0	11.2	100.0	107
<b>Men</b>											
<b>Total</b>	<b>48.7</b>	<b>5.0</b>	<b>3.4</b>	<b>12.8</b>	<b>0.8</b>	<b>10.2</b>	<b>4.5</b>	<b>0.5</b>	<b>14.2</b>	<b>100.0</b>	<b>1,939</b>
under 35	28.3	4.4	6.3	16.6	0.5	2.9	2.9	0.5	37.6	100.0	205
35-44	40.2	3.6	3.9	16.8	0.0	8.8	7.2	0.6	19.0	100.0	363
45-54	48.4	7.1	5.1	12.6	0.6	9.6	4.5	0.4	11.6	100.0	467
55-64	52.0	4.8	2.1	10.5	1.1	11.4	5.9	0.8	11.4	100.0	475
65 or older	62.2	4.2	1.2	10.3	1.4	14.0	1.4	0.2	5.1	100.0	429

Men are much more likely to be sole practitioners, partners in a firm and to be employed “in house”, while women paralegals are more likely to be employed as law firm employees – though this different is largely attributable to lower ages of women paralegals, and in legal clinics (though the number is small).

## Size of Firms for those in Firms — in Percentages

	Fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Total numbers
Women	49.8	25.3	10.9	9.0	3.4	0.7	0.9	100.0	558
Men	56.8	15.6	9.8	15.4	2.2	0.0	0.2	100.0	410
<b>Total</b>	<b>52.8</b>	<b>21.2</b>	<b>10.4</b>	<b>11.7</b>	<b>2.9</b>	<b>0.4</b>	<b>0.6</b>	<b>100.0</b>	<b>968</b>

## Region and Gender — in Percentages

	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Total numbers
Women	6.5	6.5	39.9	31.4	5.9	2.6	4.2	2.9	100.0	3,164
Men	6.9	6.8	38.3	35.0	5.1	1.8	3.8	2.2	100.0	2,254
<b>Total</b>	<b>6.7</b>	<b>6.6</b>	<b>39.3</b>	<b>32.9</b>	<b>5.6</b>	<b>2.3</b>	<b>4.0</b>	<b>2.6</b>	<b>100.0</b>	<b>5,418</b>

## FRANCOPHONE

3.1 percent of the profession self-identifies as Francophone while 4.8 percent of the Ontario population identifies as Francophone.<sup>1</sup> Almost 4.5% of the profession indicate being able to provide legal services in French.

## DISABILITY

## Age and Disability — in Percentages

	Total	20-29	30-39	40-49	50-59	60 or more
Disability	5.4	2.5	4.2	6.1	7.7	9.1
No Disability	94.6	97.5	95.8	93.9	92.3	90.9
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	<b>4,883</b>	<b>1,215</b>	<b>1,132</b>	<b>1,079</b>	<b>921</b>	<b>536</b>

The incidence of disability, 5.4 percent overall, climbs steadily with age, from 2.5 percent for paralegals under 30 to 6.2 percent of paralegal 40-49 to 9.1 percent of paralegals over 60. Disability, this suggests, heavily involves the development or worsening of health conditions with age.

## LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER (LGBTQ)

## Age and LGBTQ — in Percentages

	Total	20-29	30-39	40-49	50-59	60 or more
LGBTQ	1.6	1.7	2.1	1.2	2.0	1.0
Not LGBTQ	98.4	98.3	97.9	98.8	98.0	99.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Total numbers</b>	<b>4,675</b>	<b>1,148</b>	<b>1,089</b>	<b>1,035</b>	<b>887</b>	<b>516</b>

<sup>1</sup> Based on 2011 Statistics Canada Census.

**TAB 5.2.5**

**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF UPPER CANADA**

**For the period from July 1, 2014 to December 31, 2014**

**Prepared by Cynthia Petersen  
Discrimination and Harassment Counsel**

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## **A. INTRODUCTION**

1. The DHC provides a wide range of services to individuals who make discrimination or harassment complaints about lawyers, articling students or paralegals. Complaints are received from both members of the public and members of the legal profession.
2. The complaints arise in a variety of contexts, such as clients who report that they have been subjected to sexual harassment and/or sexual assault by their lawyer or paralegal, lawyers who are experiencing workplace discrimination relating to a maternity leave, law firm employees with disabilities who confront discriminatory barriers to employment or challenges in obtaining appropriate workplace accommodation, and paralegals, articling students and lawyers who are experiencing discriminatory (eg. racist, sexist, homophobic) treatment by opposing counsel in their cases.
3. The DHC provides complainants with safe counsel, coaching, information, referrals to other agencies and resources, informal mentoring, and general (non-legal) advice about options and avenues of recourse – some on an ongoing basis. The DHC also provides mediation services, described below.

## **B. SERVICES PROVIDED TO COMPLAINANTS**

4. Complainants who contact the DHC are advised of various avenues of recourse open to them, including (where applicable):
  - confronting the respondent lawyer or paralegal directly with their concerns;
  - speaking to their union representative (if they are unionized and their complaint relates to their employment by a lawyer or paralegal);

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- filing an internal discrimination or harassment complaint within their workplace;
  - making a complaint to the law firm that employs the respondent lawyer;
  - filing an Application with the Human Rights Tribunal of Ontario;
  - filing a complaint about professional misconduct with the Law Society;
  - reporting to the police (where criminal conduct is alleged); and
  - consulting a lawyer for legal advice regarding possible claims and causes of action.
5. Complainants are provided with information about each of these options, including:
- what (if any) costs might be involved in pursuing an option;
  - whether legal representation is required in order to pursue an option;
  - referral to resources on how to obtain legal representation (actual referrals to lawyers are not made by the DHC);
  - how to file a complaint, Application or report (eg. whether it can be done electronically, whether particular forms are required, etc.)
  - the processes involved in each option (eg. investigation, conciliation, mediation, hearing, etc.)

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- the general types of remedies that may be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, public interest remedies); and
  - the existence of time limits for each avenue of redress (complainants are advised to seek legal advice with respect to precise limitation periods).
6. Complainants are told that the options available to them are not mutually exclusive.
  7. In some cases, upon request, strategic tips and/or coaching are provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).
  8. Student complainants whose articles are terminated or who decide to withdraw from their articles before completion also receive counselling and advice from the DHC about transferring their articles, as well as support in their job search for a new articling position. They are also referred to appropriate resources within the Law Society.
  9. Some complainants are referred to other agencies/organizations (such as the Law Society's Member Assistance Program and the Human Rights Legal Support Centre) or are directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.

### **C. MEDIATION / CONCILIATION**

10. In addition to being advised about the above-noted options, where appropriate, complainants are offered the mediation or conciliation/intervention services of the DHC Program.

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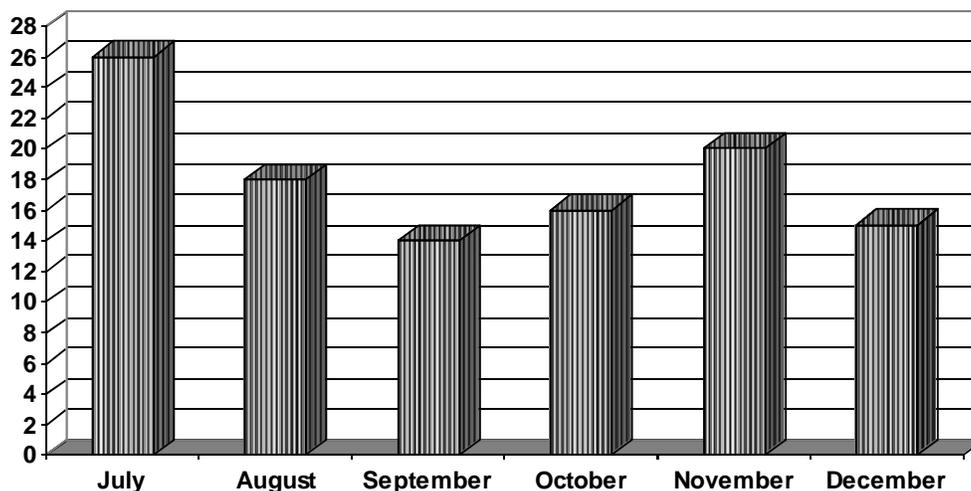
11. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory resolution of the complaint.
12. When a complainant opts for mediation, s/he is given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass his/her willingness to participate. If the complainant elects to have the DHC contact the respondent, written instructions must be provided. If both parties are willing to participate, they are required to sign a mediation agreement prior to entering into mediated discussions with the DHC.
13. Where informal conciliation/intervention services are offered, the complainant is advised that the DHC could contact the respondent confidentially and discuss the complainant's concerns, in the hope of achieving a resolution to the complaint. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel or representative, but rather as a go-between to facilitate constructive dialogue between the parties. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent.
14. Some complainants decline the offer of the DHC's mediation and conciliation services, notwithstanding that the services are free, confidential, and in the case of formal mediation, subject to a mutual "without prejudice" undertaking by both parties. The reasons why complainants decline mediation are varied and include: a complainant desiring to have a fact-finding investigation, believing that the respondent will not participate in good faith, wanting to create a formal record of the respondent's misconduct through an adjudicative process, and/or hoping to have professional discipline imposed on the respondent.

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15. During this reporting period, there were no formal in-person mediation sessions conducted by the DHC. Formal mediation was not requested by any complainants.
16. There were, however, a number of informal interventions made at complainants' request. The DHC spoke with the respondents in several cases and, in all but one instance, was thereby able to achieve resolutions to complaints.

#### D. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

17. During this six month reporting period, 109 individuals contacted the DHC Program with a new matter.<sup>1</sup> This represents average of 18 new contacts per month.
18. The volume of new contacts with the Program was distributed as follows:



<sup>1</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number.

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19. Of the 109 individuals who contacted the DHC, 72 (66%) used the telephone to make their initial contact and 37 (34%) used email.
20. During this reporting period, four (4) individuals were provided services in French. The remaining clients of the Program were provided services in English.

#### **E. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS**

21. Of the 109 new contacts with the Program, 36 individuals reported specific complaints of discrimination or harassment by a lawyer or paralegal in Ontario.
22. In this reporting period, 2 complaints were made against paralegals. The remaining 34 complaints were made against lawyers. There were no complaints about articling students.
23. The 2 complaints against paralegals were made by members of the public. Of the 34 complaints against lawyers, 18 (53%) were made by members of the public and 16 (47%) were made by members (including student members) of the Law Society.

#### **F. COMPLAINTS AGAINST LAWYERS BY LICENSEES**

24. In this reporting period, there were 16 complaints against lawyers by members (or student members) of the Law Society. Nine (9) of these complaints were made by lawyers and 7 were made by articling students. There were no complaints about lawyers made by paralegals.
25. Of the 16 complaints by members of the Law Society, 14 (87%) were made by women and 2 (13%) were made by men. All of the student complainants were female.

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26. Of the 9 complaints made by lawyers, 6 (67%) arose in the context of the complainant's employment. Of the remaining 3 complaints, one complaint was made against a lawyer who was providing a public service to the complainant, one was made about opposing counsel involved in litigation, and one was made about a lawyer with whom the complainant was professionally acquainted.
27. All of the student complaints arose in the context of the complainants' employment.
28. There were 11 complaints against lawyers based (in whole or in part) on sex. Of these,
- Six (6) involved allegations of sexual harassment:
    - Three (3) female students reported sexual harassment by their male principal or by a male partner in their firm. (In one case, the allegations included unwanted sexual touching and the withholding of wages for refusal to submit to sexual advances.)
    - A female junior associate in private practice reported sexual harassment by a male partner in her firm.
    - A female lawyer employed in a government legal office reported suffering employment reprisals for having made a sexual harassment complaint against her male manager.<sup>2</sup>
    - A female lawyer reported stalking by a male lawyer with whom she was professionally acquainted.

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<sup>2</sup> This same complainant also reported racial harassment by a different supervising lawyer.

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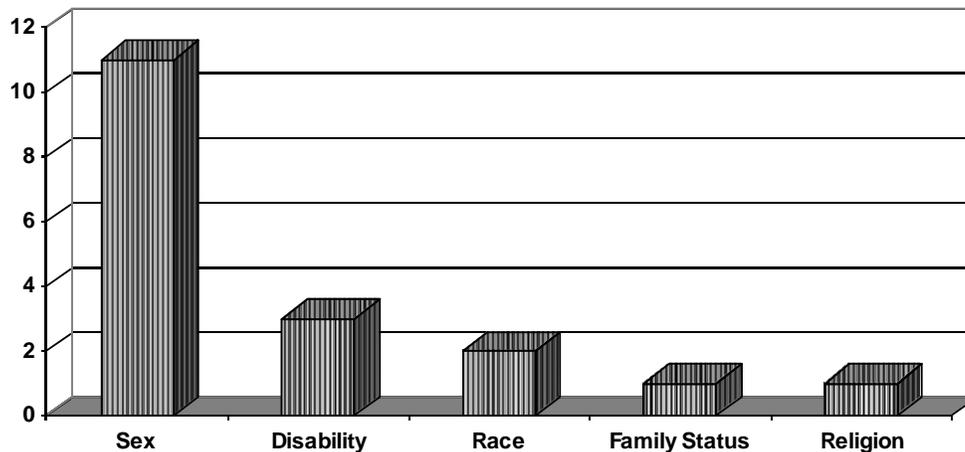
- Four (4) involved complaints about gender-based harassment and discriminatory behaviour by male lawyers, including inappropriate comments about women's bodies and misogynist name calling ("bitch"). Two female lawyers and one female articling student reported such behaviour by male lawyers in their workplace and one female lawyer reported such behaviour by an opposing counsel in one of her cases.
  - One involved allegations by an articling student of discrimination in employment based on her pregnancy.
29. All of the complainants who reported sex-based discrimination or harassment were female and all of the respondent lawyers were male.
30. There were 3 complaints against lawyers based (in whole or in part) on disability:
- A male law student reported that an offer of articles was rescinded after the employing sole practitioner learned that he had a disability.
  - A female articling student reported that her principal was not providing appropriate workplace accommodation relating to her disability.
  - A male lawyer claimed that he was being subjected to discrimination based on his disability in the provision of services by another lawyer.
31. There were 2 complaints based (in whole or in part) on race. Both involved Black female lawyers who reported racial discrimination in their employment. One of these complaints was against a supervising female lawyer to whom the complainant reported (in a government legal office) and the other was against a male co-worker of the complainant in private practice.

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32. There was one complaint of discrimination in employment based on family status, involving the denial of a female lawyer's request for flexible work hours to enable her to meet her parenting/childcare needs.
33. There was one complaint based on religion. A female lawyer reported that her employer made derogatory statements about her religion.<sup>3</sup>
34. In summary, the number of complaints<sup>4</sup> by lawyers and articling students in which each of the following prohibited grounds of discrimination was raised are:

- sex 11 (6 sexual harassment; 1 pregnancy)
- disability 3
- race 2
- family status 1
- religion 1

#### Grounds Raised in Complaints against Lawyers by Members of the Bar



<sup>3</sup> This complainant also reported the use of inappropriate sexist language by a male coworker.

<sup>4</sup> The total number exceeds 16 because a number of complaints involved multiple grounds of discrimination.

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## **G. COMPLAINTS AGAINST LAWYERS BY THE PUBLIC**

35. During this reporting period, there were 18 complaints against lawyers made by members of the public.
36. Thirteen (72%) of the public complaints were made by women and 5 (28%) were made by men.
37. Of the 18 public complaints:
  - Twelve (12) involved clients complaining about the conduct of their own lawyer;
  - Four (4) involved litigants complaining about the conduct of opposing counsel in their cases; and
  - Two (2) involved employment-related complaints by individuals working in law firms.
38. There were 9 complaints from members of the public based (in whole or in part) on sex:
  - Seven (7) of these complaints involved allegations of sexual harassment:
    - Five (5) of these consisted of complaints by clients about sexual harassment by their own lawyer.
    - One complaint was by a litigant who alleged that she was being sexually harassed by the opposing counsel in her case.

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- One complaint was by a legal assistant employed in a law firm who reported sexual harassment by her boss.

Six of the sexual harassment complainants were female and all of the respondent lawyers were male. One of the sexual harassment complainants was male, but he was calling on behalf of his female partner who he claimed had been subjected to sexual harassment by her male lawyer.

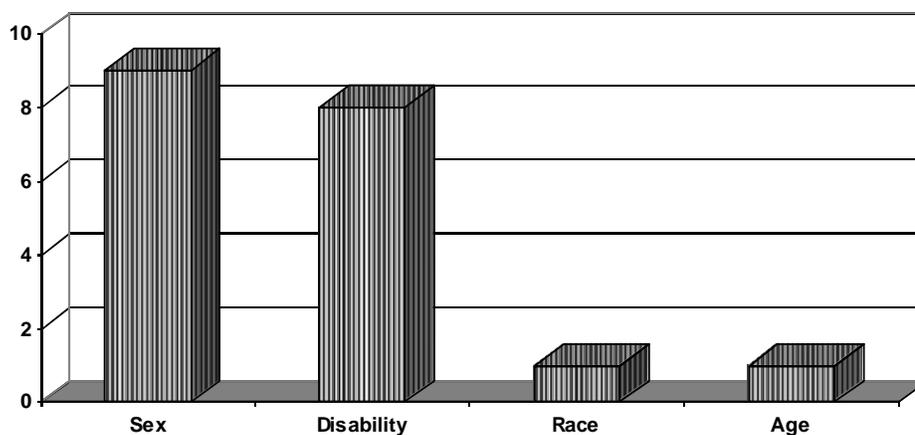
- One client complained about sexist remarks and discriminatory treatment by her male lawyer based on her pregnancy.
  - One man complained about the anti-male (and ageist) discriminatory recruitment and hiring practices of a lawyer who advertised a job posting for a “young female” legal assistant.
39. There were 8 complaints from members of the public based on disability:
- Three (3) litigants with disabilities complained about the discriminatory conduct and/or derogatory comments of opposing counsel in their cases.
  - Five (5) clients complained about their lawyers’ failure to accommodate their disability-related needs by providing accessible legal services.
40. There was one complaint from the public based on race. A client complained about derogatory racist language used by his lawyers.
41. There was one complaint from the public based in part on age. As previously mentioned, a man complained about a lawyer who advertised a job posting for a “young female” legal assistant.

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42. In summary, the number of public complaints<sup>5</sup> in which each of the following grounds of discrimination was raised are as follows:

- sex 9
- disability 8
- race 1
- age 1

#### Grounds Raised in Complaints by Members of the Public



#### **H. COMPLAINTS AGAINST LAWYERS BY PARALEGALS**

43. During this reporting period, there were no complaints about lawyers by paralegals.

<sup>5</sup> The total of these numbers exceeds 18 because one of the complaints involved multiple intersecting grounds of discrimination.

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## **I. COMPLAINTS AGAINST PARALEGALS**

44. During this reporting period, there were 2 complaints against paralegals.<sup>6</sup> Both were made by members of the public and both were based on the prohibited ground of sex:

- A female client complained about gender based discriminatory language used by a male paralegal who was representing her; and
- A woman complained about sexual harassment by a male paralegal with whom she was acquainted.

## **G. GENERAL INQUIRIES**

45. Of the 109 new contacts with the DHC during this reporting period, 20 involved general inquiries about matters within the mandate of the DHC program and did not involve reports of misconduct by licensees.

## **H. MATTERS OUTSIDE THE DHC MANDATE**

46. During this reporting period, the DHC received 45 calls and emails relating to matters outside the Program's mandate.

47. These contacts included complaints about paralegals and lawyers that did not involve allegations of discrimination or harassment based on human rights grounds (such as allegations of unethical behaviour, confidentiality breaches, bullying, or incivility). They also included complaints about discriminatory and/or

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<sup>6</sup> There were three additional complaints about the conduct of paralegals, but they did not raise issues of discrimination or harassment based on human rights grounds. They involved allegations of bullying and intimidation. The data regarding these complaints are captured later in this report, in the section about contacts "outside the mandate" of the DHC program because harassment complaints only fall within the mandate of the program if they include allegations of harassment based on prohibited grounds enumerated in the Ontario *Human Rights Code* and the Law Society's Rules.

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harassing conduct by non-licensees, such as judges, landlords and non-legal employers.

48. Several individuals contacted the DHC to obtain a referral to a lawyer to deal with a harassment or discrimination case. They were referred to the Law Society's Lawyer Referral Service.
49. An explanation of the DHC's mandate, role and duties was provided to each person who called with a matter outside the Program's mandate. Some of these individuals were referred to other agencies for assistance.
50. Although there are a number of these "outside mandate" contacts during every reporting period, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

## **J. PROMOTIONAL ACTIVITIES**

51. The LSUC maintains a bilingual website for the DHC Program. During this reporting period, the website content was reviewed and updated. The new revised website should be on-line shortly. It will be fully compliant with the requirements of the *Accessibility for Ontarians with Disabilities Act*.
52. Throughout this reporting period, periodic advertisements were placed (in English and French) in the *Ontario Reports* to promote the DHC Program. In addition, French and English brochures (updated in 2013) continued to be placed in circulation in legal clinics, law firms, community centres, libraries, government agencies, faculties of law, etc.
53. The DHC works closely with the Law Society's Director of Equity (Josée Bouchard) to design and deliver *Discrimination and Harassment Prevention* and

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*Violence Prevention* workshops to law firms across Ontario and also within the Law Society (for Law Society managers and staff). In addition to delivering important educational content, these workshops also serve as a useful opportunity to promote awareness of the DHC Program's services.

## EQUITY LEGAL EDUCATION AND RULE OF LAW SERIES CALENDAR 2015

### MENTAL HEALTH WEEK EVENT

**Description:** In honour of Mental Health Week, join the Law Society for a panel discussion about mental health and fostering wellness in the legal profession.

A reception will follow

**Date:** May 6, 2015  
**Location:** Donald Lamont Learning Centre and Convocation Hall  
**Time:** Panel Discussion: 4:00-5:30 p.m.  
 Reception: 5:30 p.m. – 6:30 p.m.

**Moderator:**  
 Bencher Janet Leiper

#### Speakers:

- Cynthia Petersen, Lawyer, Sack Goldblatt Mitchell LLP and Law Society Discrimination and Harassment Counsel
- Ryan Fritsch, Policy Counsel, Legal Aid Ontario
- Doron Gold, Staff Clinician and Presenter, Homewood Human Solutions

### DIVERSE CAREERS FOR WOMEN IN LAW

**Description:** The Women's Law Association of Ontario and the Law Society of Upper Canada are pleased to present a panel discussion to promote diverse careers for women in the legal profession.

A reception will follow

**Date:** May 7, 2015  
**Location:** Convocation Hall  
**Time:** Panel Discussion: 5:30 p.m. – 7:00 p.m.  
 Reception: 7:00 – 8:00

**Moderator:** Ronda Bessner, Chair, Women's Law Association of Ontario

#### Speakers:

- Mara Clarke, Director of Strategic Initiatives, OJEN
- Keya Dasgupta, Learning and Development Director, Norton Rose Fullbright
- Freya Kristianjson, Counsel, Wardle, Daley, Bernstein, Beiber LLP
- Michelle Moldofsky, General Counsel St. Michael's Hospital (former)
- Maud Murray, Deputy Minister, Government and Consumer Services

### **ASIAN AND SOUTH ASIAN HERITAGE MONTH**

**Date:** May 12, 2015  
**Location:** Donald Lamont Learning Centre followed by Convocation Hall for reception.  
**Time:** 4:30 p.m. – 7:30 p.m.

### **ACCESS AWARENESS FORUM**

**Date:** June 4, 2015  
**Location:** Donald Lamont Learning Centre  
**Time:** 4:30 p.m. – 7:30 p.m.

### **NATIONAL ABORIGINAL HISTORY MONTH**

**Date:** June 19, 2015  
**Location:** Donald Lamont Learning Centre and Upper and Lower Barristers Lounges  
**Time:** 4:00 p.m. – 8:00 p.m.

### **PRIDE WEEK**

**Date:** June 23, 2015  
**Location:** Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.  
**Time:** 4:30 p.m. – 7:30 p.m.



**TAB 6**

**Report to Convocation  
April 23, 2015**

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**Heritage Committee**

**Committee Members**

Constance Backhouse (Chair)  
Patrick Furlong  
Virginia MacLean  
Nicholas Pustina  
Jan Richardson

**Purposes of Report: Decision**

**Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)**

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**Decision**

Proposal for the Establishment of the J. Shirley Denison Award

**TAB 6.1**

**COMMITTEE PROCESS**

1. The Committee met on February 11, 2015. Committee members Constance Backhouse (Chair), Virginia MacLean and Jan Richardson participated. Professor Philip Girard also attended. Staff members Paul Leatherdale and Sophia Spurdakos also attended.
2. The Committee met with the Access to Justice Committee on April 8, 2015. Committee members Constance Backhouse (Chair), Jan Richardson and Pat Furlong attended. Staff member Sophia Spurdakos also attended.

TAB 6.1

## DECISION

**PROPOSAL FOR ESTABLISHMENT OF THE  
J. SHIRLEY DENISON AWARD****Motion**

3. That Convocation approve the establishment of the J. Shirley Denison Award as set out in paragraph 13 of this Report, with the first award to be made in 2016.

**Proposal for Consideration**

4. The Heritage Committee, with the support of the Access to Justice Committee, is recommending the establishment of a *J. Shirley Denison Award* to be awarded annually for significant contribution to access to justice and/or poverty issues. The award would be named in Mr. Denison's honour to recognize his commitment to helping others.

**Rationale for the Project**

5. John Shirley Denison K.C. was born in 1870, was called to the bar in 1892 and practised in Toronto. He was a bencher from 1931-1944, a life bencher from 1946-1951 and Treasurer from 1944-1947. He died in 1951. Mr. Denison's Treasurer's portrait hangs in the public area of the Law Society with a plaque describing his bequest, which became the J. Shirley Denison Fund.
6. He was particularly well known for his great interest and contribution to the work of the Law Society. In 1968 Mr. Denison made a significant contribution to the Law Society and the legal profession by leaving the residue of his estate to the Law Society to be used to assist impoverished or indigent members and their families.
7. His will contained the following provision: "my Trustee shall ... pay to or deliver to the Law Society of Upper Canada the residue of my estate the same to be applied from time to time by the Treasurer and Benchers and both as to capital and income as they may see fit for the relief of impoverished or indigent members of the Law Society and of their wives widows and children including among such wives widows and children those of any member of the Law Society who may have been disbarred or suspended."
8. The capital receipt in 1968 was \$190,005. There were times when payments from the Fund did not exceed the interest earned on the capital sum. More recently, payments increased due to factors such as increased publicity for the Fund. Since 2000, the Fund has paid a total of \$432,000 to 134 applicants. The final payment from the fund was made in November 2014.

9. The J. Shirley Denison bequest to the Law Society was noteworthy for a number of reasons, but in the context of the proposed award, is particularly noteworthy because it sought to assist the vulnerable within the profession and their families. Moreover, unlike many bequests of its day it contained no restrictions by race, gender or otherwise. It passed no judgment on those members or former members of the profession who had been suspended or disbarred.
10. Given J. Shirley Denison's significant contribution to the profession, the amount of money paid out of his estate to assist people and the number of years over which the bequest lasted it is important that Mr. Denison not be forgotten.
11. By naming an award in his honour the importance of his legacy will be recognized and celebrated each year as will the activities of recipients in making a significant contribution in the area of access to justice and/or poverty issues.

### **Key Considerations**

12. In considering the nature of the proposed award the following considerations have been taken into account:
  - a. The award's purpose should be simply stated to ensure that nominees can be drawn from a broad spectrum of those working in the area sought to be recognized.
  - b. To reflect J. Shirley Denison's inclusive attitudes, the award should be open to both lawyer and paralegal nominees.
  - c. In recognition of the need to manage Law Society costs and use of resources, the award process and ceremony should make use of infrastructure already in place to determine recipients and present the award. As such there will be no significant additional costs to introducing the award or managing the process.

### **The Proposal**

13. In keeping with these considerations the Heritage Committee, with the support of the Access to Justice Committee, proposes the following:

The award's name:                   The J. Shirley Denison Award.

The award's purpose:               To recognize outstanding contributions to access to justice and/or poverty issues.

The criteria for the award:       The recipient must have demonstrated an outstanding contribution (either a single outstanding contribution or over a long term) to efforts to promote access to justice and/or address poverty issues. The recipient must not have received the award previously. (The award, in consultation with the proposed recipient's family/next of kin, may be granted posthumously.)

Eligibility for the Award:	Lawyer and paralegal licensees of the Law Society of Upper Canada.
Frequency of the Award:	Annually
Process and Ceremony:	<p>The process should be similar to that followed for the Law Society Medal, Lincoln Alexander Award and Laura Legge Award, using the Law Society Awards Committee. To reflect that a recipient may be a paralegal the Committee's membership for consideration of this award should be expanded to include paralegal representation from the Paralegal Standing Committee.</p> <p>The award should be presented at the same event as the Law Society Medals.</p>
Award Commemoration:	The details of this will be finalized once the award is approved, but would likely include an engraved award and a certificate.



**TAB 7**

**Report to Convocation  
April 23, 2015**

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**Professional Development & Competence Committee**

**Committee Members**

Howard Goldblatt (Chair)  
Barbara Murchie (Vice-Chair)  
Alan Silverstein (Vice-Chair)  
Raj Anand  
Constance Backhouse  
Jack Braithwaite  
Robert Burd  
Mary Louise Dickson  
Ross Earnshaw  
Larry Eustace  
Peter Festeryga  
Susan Hare  
Vern Krishna  
Michael Lerner  
Marion Lippa  
Virginia MacLean  
Judith Potter  
Nicholas Pustina  
Jack Rabinovitch  
Joe Sullivan  
Gerald Swaye  
Peter Wardle

**Purpose of Report: Decision**

**Prepared by the Policy Secretariat  
(Sophia Sperdakos 416-947-5209)**

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**Decision**

Continuing Professional Development Compliance Audits

**TAB 7.1**

**COMMITTEE PROCESS**

1. The Committee met on April 9, 2015. Committee members Howard Goldblatt (Chair), Barbara Murchie (Vice-Chair), Alan Silverstein (Vice-Chair), Constance Backhouse, Jack Braithwaite, Robert Burd, Mary Louise Dickson, Ross Earnshaw, Larry Eustace, Michael Lerner, Marian Lippa, Virginia MacLean, Judith Potter, Jack Rabinovitch, Joe Sullivan and Gerry Swaye attended. Staff members Diana Miles and Sophia Sperdakos also attended.

TAB 7.1

## DECISION

**CPD COMPLIANCE AUDITS****Motion**

2. **That Convocation approve the elimination of Continuing Professional Development (“CPD”) desk audits.**

**Matter for Consideration**

3. The mandatory CPD program, originally approved in 2010, includes provision for annual CPD audits to monitor compliance. The audits were to be done in two circumstances:
  - a. As part of a lawyer practice management reviews and paralegal practice audits.
  - b. By random selection chosen from among all paralegals and lawyers subject to the requirement. These are referred to as desk audits as no site visit is required.
4. Based on the results of audits conducted since the inception of the program, it appears that CPD compliance desk audits are no longer necessary. The audits conducted as part of lawyer practice management reviews and paralegal practice audits would continue.

**Rationale**

5. The effectiveness and impact of the CPD compliance and monitoring approach was to be analyzed after a period of time as part of the evaluation of various components of the CPD recommendations.
6. Much has been done over the last number of years to streamline the program to make it as user-friendly as possible while maintaining its integrity. This is an ongoing process. Consideration of the audit process is important to the program evaluation as well as relevant for resource allocation.

**Key Issues and Considerations**

7. The report at **TAB 7.1.1: CPD Audit Results Report** sets out the compliance process that has been followed, its results and reasons for considering a change to the compliance process.
8. Adoption of the proposal to eliminate the desk audits would lead to a reduction of a full-time equivalent staff for the 2016 budget year.
9. Licensees, particularly those in sole and small practices, have indicated that they prefer a reduction in unnecessary regulatory administrative requirements. TAB 7.1.1 confirms such a reduction is viable without negatively affecting the program.



## **Report on CPD Audit Activities: Proposed Change in Audit Process**

Diana C. Miles, BA LLB CDir  
Executive Director of Organizational Strategy/  
Professional Development and Competence  
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[dmiles@lsuc.on.ca](mailto:dmiles@lsuc.on.ca)

**April 2015**

**Report on CPD Audit Activities: Proposed Change in Audit Process**

In 2010 Convocation approved a continuing professional development requirement. At the same time it approved a compliance process in which the Professional Development and Competence Division's practice audit team would conduct annual compliance reviews of lawyer and paralegal CPD completion.

The terms of the CPD audit policy were set out in the joint report of the PD&C Committee and the PSC Committee to Convocation on February 25, 2010. In that report, the following recommendations relating to CPD audits were made and approved:

**Recommendation 16**

That there be provision for random annual CPD audits to monitor compliance with the CPD requirement, to be undertaken as part of a practice management review or paralegal practice audit; and by random selection chosen from among all paralegals and lawyers subject to the requirement.

**Recommendation 17**

That the randomly selected CPD audits take the form of a written request for proof of completion.

**Recommendation 18**

That there be a total of 500 audits of lawyers and 25 audits of paralegals annually respecting CPD compliance.

The program's annual objective, as approved by Convocation, is to conduct 1,000 CPD audits (lawyers: 900 and paralegals: 100) through a combination of practice management review engagements (recommendation 16 above) and desk audits (recommendation 17 and 18 above), with both audit streams assessing a licensee's compliance with the CPD documentation requirements set out in section 4 of By-law 6.1.

The records that must be maintained by licensees in support of the reporting of CPD hours filed with the Law Society include a range of information as proof of completion depending on the type of eligible activity. In a CPD audit, the compliance review will confirm of program/course/seminar registration, receipts for payment of activities, date and times and locations of attendances, sponsoring organization, copies of CPD materials, documentation supporting publications or oral presentations or groups work with colleagues.

No immediate action is taken when a licensee is found not to be in compliance. Following the CPD audits, detailed and specific information is provided to licensees to assist them to support full compliance with their CPD record keeping requirements for future activities. The licensee receives a warning, is provided with information to correct reporting in the following year, and then revisited with an audit in the following year.

No licensee has in fact been the subject of additional regulatory review or procedures for failing to meet the requirements during the initial audit or in any follow up audit. This outcome is distinct from those licensees who may have failed to report their CPD completion at year end and were administratively suspended.

Set out below are the compliance statistics for both CPD Desk Audits and Practice Management Review/Practice Audits CPD activities since 2012.

The Practice Audits department has conducted 3,161 CPD compliance audits, comprised of 1,854 CPD compliance desk audits of lawyers and paralegals and 1,307 Practice Management (lawyer) and Practice Audit (paralegal) reviews.

Of the 1,854 CPD compliance desk audits, less than 0.3% (5 licensees) were not in compliance with the record keeping requirements. A slightly higher incidence of non-compliance has been found through the in-person CPD audits conducted during reviews at the licensees' places of business.

#### **Compliance Statistics**

	Desk Lawyers	%	Desk Paralegals	%	Review Lawyers	%	Review Paralegals	%
<b>2012</b>								
Compliant	590	95.0%	22	84.6%	277	92.0%	89	83.2%
Non-Compliant	1	0.2%	0	0.00%	3	1.0%	2	1.8%
Partial Compliance	30	4.8%	4	15.4%	21	7.0%	16	15.0%
	<b>621</b>		<b>26</b>		<b>301</b>		<b>107</b>	
<b>2013</b>								
Compliant	553	97.7%	24	96.0%	339	96.0%	91	87.5%
Non-Compliant	2	0.3%	0	0.0%	2	0.6%	1	1.0%
Partial Compliance	11	2.0%	1	4.0%	12	3.4%	12	11.5%
	<b>566</b>		<b>25</b>		<b>353</b>		<b>104</b>	
<b>2014</b>								
Compliant	563	97.2%	35	94.6%	344	94.8%	69	87.3%
Non-Compliant	2	0.4%	0	0.00%	3	0.8%	2	2.5%
Partial Compliance	14	2.4%	2	5.4%	16	4.4%	8	10.2%
	<b>579</b>		<b>37</b>		<b>363</b>		<b>79</b>	

**Evaluation of Process**

The PD&C Division employs two full-time equivalent staff to support the CPD compliance audit program. In addition to conducting the desk audits, CPD compliance staff facilitate the CPD audit reviews conducted by the reviewers at the licensee's place of business by pre-reviewing the CPD audit reports, verifying all internal courses and identifying specific sections for the reviewer to assess in more detail.

Of the 1,307 practice management review files conducted during the 2012-2014 period, almost 50% of the CPD compliance component of the engagement was conducted by the desk audit staff. This alleviated the need for Reviewers to conduct the preparatory work for the compliance review component, allowing them more time to focus on other more critical practice management components of the review engagement. CPD continues to be an important component of practice management and development for licensees, and part of an appropriately holistic practice review and audit process that should be conducted by the regulator, providing an opportunity for the Reviewer to discuss ongoing learning and competence development strategies with licensees, as necessary.

However, to date the outcomes of the CPD compliance audit programs suggest that there is no further need to continue with the CPD Compliance Desk Audit Program. The number of licensees with CPD record keeping deficiencies is extremely low. In addition, the Law Society now has very robust reminder processes and sanctions, including the application of late fees, to ensure that licensees maintain their CPD requirements.

**Recommendation**

It is recommended that the PD&C Committee consider a change in the mandatory CPD requirements that would eliminate CPD compliance Desk Audits, while maintaining CPD audits conducted in formal Practice Management Review (lawyer) and Practice Audit (paralegal) visits. This in turn will lead to a reduction of one full time equivalent staff for the 2016 budget year.



**TAB 8**

**Report to Convocation  
April 23, 2015**

---

**Tribunal Committee**

**Committee Members**

- Raj Anand (Chair)
- Janet Leiper (Vice-Chair)
- Larry Banack
- Jack Braithwaite
- Christopher Bredt
- Robert Burd
- Lee Ferrier
- Alan Gold
- Barbara Murchie
- Linda Rothstein
- Mark Sandler
- Baljit Sikand
- Peter Wardle

**Purpose of Report: Decision  
Information**

**Prepared by the Policy Secretariat  
(Sophia Spurdakos 416-947-5209)**

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**Decision**

Housekeeping Amendments to Hearing Division Forms **TAB 8.1**

**Information**

Tribunal Annual Report **TAB 8.2**

**COMMITTEE PROCESS**

1. The Committee met on April 9, 2015. Committee members Raj Anand (Chair), Janet Leiper (Vice-Chair), Larry Banack, Jack Braithwaite, Robert Burd, Alan Gold, Barbara Murchie, Linda Rothstein, Mark Sandler, Baljit Sikand and Peter Wardle participated. Tribunal Chair David Wright and staff members David Draper, Grace Knakowski, Lisa Mallia and Sophia Sperdakos also participated. CEO Robert Lapper and Facilities Manager, Mona Elali, attended part of the meeting.

TAB 8.1

## FOR DECISION

**HOUSEKEEPING AMENDMENTS – HEARING DIVISION FORMS****Motion**

2. That Convocation revoke Hearing Division Forms 9A, 9B, 13A and 24A (English and French) and replace them with revised Hearing Division Forms 9A, 9B, 13A and 24A (English and French) as set out in the motion at [TAB 8.1.1](#).

**Proposal for Consideration**

3. The Tribunal will be moving during the week of August 10, 2015 to its new premises at 375 University, 4<sup>th</sup> Floor.
4. Hearing Division Forms 9A, 9B, 13A and 24A make specific reference to the Tribunal address at 130 Queen Street West and must be amended.

**Rationale**

5. It is necessary to replace the specific address on the forms templates to remove the current address for the Tribunal. It is most efficient to replace a specific address with a generic reference in which the relevant address can be inserted.

TAB 8.1.1

THE LAW SOCIETY OF UPPER CANADA

**LAW SOCIETY TRIBUNAL  
RULES OF PRACTICE AND PROCEDURE**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 23, 2015

MOVED BY

SECONDED BY

THAT the Forms under the Rules of Practice and Procedure (“the Rules”) applicable to proceedings before the Hearing Division, made by Convocation on March 12, 2014 be amended as follows:

1. Form 9A, in English and French, be revoked and replaced with the forms attached.
2. Form 9B, in English and French, be revoked and replaced with the forms attached.
3. Form 13A, in English and French, be revoked and replaced with the forms attached.
4. Form 24A, in English and French, be revoked and replaced with the forms attached.

**FORM 9A - NOTICE OF APPLICATION***(General heading)***NOTICE OF APPLICATION**

TO THE RESPONDENT:

A (*CONDUCT OR CAPACITY OR COMPETENCE OR NON-COMPLIANCE OR REINSTATEMENT OR TERMS DISPUTE*) PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

YOU ARE REQUIRED TO ATTEND at a proceeding management conference on (*day*), (*date*) at (*time*) at the Law Society Tribunal, (*address*), Toronto, Ontario. You may elect to attend by your representative.

IF YOU OR YOUR REPRESENTATIVE FAIL TO ATTEND AT THE PROCEEDING MANAGEMENT CONFERENCE, THE PANELIST CONDUCTING THE CONFERENCE MAY PROCEED IN YOUR ABSENCE.

*(OR*

*THIS APPLICATION will come on for a hearing on (day), (date) at (time) at the Law Society Tribunal, (address), Toronto, Ontario.)*

Date of issue:

TO: (*Name and address of respondent*)

## APPLICATION

1. The applicant makes application for:
2. The grounds for the application are:
3. The particulars of the application are:

*(Name, address for service, telephone number, fax number and e-mail address of applicant or applicant's representative)*

**FORMULAIRE 9A – AVIS DE REQUÊTE**

(titre)

**AVIS DE REQUÊTE**

À L'INTIMÉ(E)

UNE INSTANCE PORTANT SUR (LA CONDUITE, LA CAPACITÉ, LA COMPÉTENCE PROFESSIONNELLE, L'INOBSERVATION, LE RÉTABLISSEMENT VISÉ À L'ARTICLE 49.42 DE LA LOI OU UN DIFFÉREND CONCERNANT DES CONDITIONS) A ÉTÉ INTRODUITE par le(la) requérant(e). La demande présentée par le(la) requérant(e) est exposée dans la page suivante.

VOUS ÊTES REQUIS(E) DE VOUS PRÉSENTER à une conférence de gestion de l'instance le (jour) (date), à (heure), au Tribunal du Barreau, (adresse), Toronto (Ontario). Vous pouvez choisir de comparaître par ministère de représentant.

SI VOUS OU VOTRE REPRÉSENTANT(E) NE VOUS PRÉSENTEZ PAS À LA CONFÉRENCE DE GESTION DE L'AUDIENCE, LE MEMBRE DE LA FORMATION QUI LA PRÉSIDE POURRA PROCÉDER EN VOTRE ABSENCE.

(OU

LA PRÉSENTE REQUÊTE sera entendue le (jour) (date), à (heure), au Tribunal du Barreau, (adresse), Toronto (Ontario).)

Date :

DESTINATAIRE : (nom et adresse de l'intimé)

**REQUÊTE**

1. L'objet de la requête est le suivant :
2. Les motifs de la requête sont les suivants :
3. Les allégations de la requête sont les suivantes :

(nom, adresse aux fins de signification, numéro de téléphone, numéro de télécopieur et adresse électronique du requérant ou du représentant du requérant)

**FORM 9B - NOTICE OF REFERRAL FOR HEARING**

*(General heading)*

**NOTICE OF REFERRAL FOR HEARING**

TO THE APPLICANT:

YOUR APPLICATION (*FOR A LICENCE OR TO HAVE YOUR LICENCE RESTORED*) HAS BEEN REFERRED FOR HEARING TO THE LAW SOCIETY TRIBUNAL HEARING DIVISION, thereby resulting in the commencement of a (*licensing OR restoration*) proceeding.

YOU ARE REQUIRED TO ATTEND at a proceeding management conference on (*day*), (*date*) at (*time*) at the Law Society Tribunal, (*address*), Toronto, Ontario. You may elect to attend by your representative.

IF YOU OR YOUR REPRESENTATIVE FAIL TO ATTEND AT THE PROCEEDING MANAGEMENT CONFERENCE, THE PANELIST CONDUCTING THE CONFERENCE MAY PROCEED IN YOUR ABSENCE.

Date of issue:

TO: (*Name and address of applicant*)

*(Name, address for service, telephone number,  
fax number and e-mail address of the representative for  
The Law Society of Upper Canada)*

**FORMULAIRE 9B – AVIS DE RENVOI À L’AUDIENCE**

(titre)

**AVIS DE RENVOI À L’AUDIENCE**

AU(À LA) REQUÉRANT(E) :

VOTRE DEMANDE DE (*PERMIS OU RÉTABLISSEMENT DE VOTRE PERMIS EN APPLICATION DE L’ARTICLE 31 DE LA LOI*) A ÉTÉ RENVOYÉE À L’AUDIENCE DEVANT LA SECTION DE PREMIÈRE INSTANCE DU TRIBUNAL DU BARREAU, ce qui entraîne l’introduction d’une instance (*portant sur la délivrance d’un permis OU le rétablissement visé à l’article 31 de la Loi*).

VOUS ÊTES REQUIS(E) DE VOUS PRÉSENTER à une conférence de gestion de l’instance le (*jour*) (*date*), à (*heure*), au Tribunal du Barreau, (*adresse*), Toronto (Ontario). Vous pouvez choisir de comparaître par ministère de représentant.

SI VOUS OU VOTRE REPRÉSENTANT(E) NE VOUS PRÉSENTEZ PAS À LA CONFÉRENCE DE GESTION DE L’AUDIENCE, LE MEMBRE DE LA FORMATION QUI LA PRÉSIDE POURRA PROCÉDER EN VOTRE ABSENCE.

Date :

DESTINATAIRE : (*nom et adresse du requérant*)

(*nom, adresse aux fins de signification, numéro de téléphone, numéro de télécopieur et adresse électronique du représentant du Barreau du Haut-Canada*)

**FORM 13A - NOTICE OF MOTION***(General heading)***NOTICE OF MOTION**

The *(identify moving party)* will make a motion to the Law Society Tribunal Hearing Division on *(day)*, *(date)* at *(time)*, or as soon after that time as the motion can be heard, at the Law Society Tribunal, *(address)*, Toronto, Ontario *(or name place)*.

PROPOSED METHOD OF HEARING: The motion is to be heard *(choose appropriate option)*:

- Electronically under subrule 16.02 (1) because it is *(on consent OR for an adjournment)*.
- In writing under subrule 16.03 (1) because it is for an order that a hearing be held as an electronic hearing.
- In writing under subrule 16.03 (2) because it is *(on consent OR for an adjournment)*.
- Orally.

THE MOTION IS FOR: *(Set out precise relief sought)*.

THE GROUNDS FOR THE MOTION ARE: *(Set out the grounds to be argued)*.

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

*(List the affidavits or other documentary evidence to be relied on)*.

*(Date)*

*(Name, address, telephone number, fax number  
and e-mail address of moving party's  
representative or moving party)*

TO: *(Name and address of responding  
party's representative or responding party)*

**FORMULAIRE 13A – AVIS DE MOTION***(titre)***AVIS DE MOTION**

Le/La/L' (*désigner l'auteur de la motion*) présentera auprès de la Section de première instance du Tribunal du Barreau une motion le (*jour*) (*date*), à (*heure*), ou dès que possible par la suite, au Tribunal du Barreau, (*adresse*), Toronto (Ontario) (*ou préciser l'endroit*).

TYPE D'AUDIENCE PROPOSÉ : Je propose que la motion soit entendue (*cocher la case appropriée*) :

- par voie d'audience électronique en vertu du paragraphe 16.02 (1) parce (*qu'elle est présentée sur consentement OU qu'il s'agit d'une motion d'ajournement*).
- sur pièces en vertu du paragraphe 16.03 (1) parce qu'il s'agit d'une motion présentée en vue d'obtenir une ordonnance disposant qu'une audience se tienne électroniquement.
- sur pièces en vertu du paragraphe 16.03 (2) parce (*qu'elle est présentée sur consentement OU qu'il s'agit d'une motion d'ajournement*).
- oralement.

L'OBJET DE LA MOTION EST LE SUIVANT : (*indiquer ici la mesure de redressement précise demandée*).

LES MOYENS À L'APPUI DE LA MOTION SONT LES SUIVANTS : (*préciser les moyens qui seront plaidés*).

LA PREUVE DOCUMENTAIRE SUIVANTE sera utilisée lors de l'audition de la motion : (*indiquer les affidavits ou les autres preuves documentaires à l'appui de la motion*).  
(*date*)

*(nom, adresse, numéro de téléphone,  
numéro de télécopieur et adresse  
électronique du représentant de l'auteur de  
la motion ou de l'auteur de la motion)*

DESTINATAIRE : (*nom et adresse du représentant de l'intimé ou de l'intimé*)

**FORM 24A – SUMMONS***(General heading)***SUMMONS TO A WITNESS BEFORE THE LAW SOCIETY TRIBUNAL HEARING  
DIVISION**TO: *(Name and address of witness)**(For oral hearing)*

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on *(day)* , *(date)* at *(time)* at the Law Society Tribunal, *(address)*, Toronto, Ontario *(or name place)* and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT

*(For electronic hearing)*

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on *(day)*, *(date)* at *(time)* in the following manner: *(Give sufficient particulars to enable witness to participate.)*

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

*(Date)*

Law Society Tribunal

---

 Registrar

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice.

**FORMULAIRE 24A – ASSIGNATION**

(titre)

**ASSIGNATION À TÉMOIGNER DEVANT DE LA SECTION DE PREMIÈRE  
INSTANCE DU TRIBUNAL DU BARREAU**

À (nom et adresse du témoin)

(audience orale)

VOUS ÊTES REQUIS(E) DE VOUS PRÉSENTER DEVANT LA SECTION DE PREMIÈRE INSTANCE AFIN D'Y TÉMOIGNER lors de l'instruction de la présente instance le (jour), (date), à (heure), au Tribunal du Barreau, (adresse), Toronto (Ontario) (ou indiquer l'endroit) et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

VOUS ÊTES REQUIS(E) D'APPORTER AVEC VOUS et de produire, lors de l'instruction, les documents et objets suivants : (indiquer la nature et la date de chaque document et donner suffisamment de précisions pour permettre d'identifier chaque document et objet)

SI VOUS NE VOUS PRÉSENTEZ PAS OU NE DEMEUREZ PAS PRÉSENT(E) COMME LE REQUIERT LA PRÉSENTE ASSIGNATION, LA COUR SUPÉRIEURE DE JUSTICE PEUT ORDONNER QU'UN MANDAT D'ARRÊT SOIT DÉCERNÉ CONTRE VOUS OU QUE VOUS SOYEZ SANCTIONNÉ(E) DE LA MÊME FAÇON QUE POUR OUTRAGE AU TRIBUNAL.

(audience électronique)

VOUS ÊTES REQUIS(E) DE PARTICIPER À UNE AUDIENCE ÉLECTRONIQUE le (jour) (date), à (heure), de la manière suivante : (donner suffisamment de précisions pour permettre au témoin de participer)

SI VOUS NE PARTICIPEZ PAS À L'AUDIENCE COMME LE REQUIERT LA PRÉSENTE ASSIGNATION, LA COUR SUPÉRIEURE DE JUSTICE PEUT ORDONNER QU'UN MANDAT D'ARRÊT SOIT DÉCERNÉ CONTRE VOUS OU QUE VOUS SOYEZ SANCTIONNÉ(E) DE LA MÊME FAÇON QUE POUR OUTRAGE AU TRIBUNAL.

(date)

Tribunal du Barreau

---

Greffier/Greffière

REMARQUE : Vous avez le droit de toucher la même indemnité pour votre présence ou votre participation à l'audience que celle que toucherait une personne assignée à comparaître devant la Cour supérieure de justice.

## TAB 8.2

## INFORMATION

## TRIBUNAL ANNUAL REPORT

6. Pursuant to the June 2012 Tribunal Reform Report (the “2012 Report”) the Tribunal Chair is to provide an Annual Report to Convocation on Tribunal operations.
7. The Chair’s Annual Report, in French and English, is set out at **TABS 8.2.1: Annual Report (English) and 8.2.2: Annual Report (French)** for Convocation’s information.
8. The annual report requirement provides for an annual snapshot of the Tribunal’s operations and developments. The 2014 Tribunal Annual Report also provides an overview to the progress of the 2012 reforms implementation. As an electronic document the Annual Report enables readers to access additional, more specific information in many of the areas touched on. As a public document it also reflects the Tribunal’s and the Law Society’s commitment to transparent processes.



# ANNUAL REPORT

MESSAGE FROM THE CHAIR >

TRIBUNAL EVOLUTION >

TRIBUNAL OPERATIONS >

TRIBUNAL METRICS >

# 2014

## Message from the Chair

I am pleased to present the first Annual Report of the Law Society Tribunal, which was formally established in March 2014. This report describes the many initiatives we undertook throughout 2014 in support of the establishment of an independent administrative tribunal within The Law Society of Upper Canada. These initiatives are designed to enhance the quality of the Tribunal's work in fairly and impartially processing, hearing and deciding the cases that come before us.

Tribunal members include benchers, who also have a role in governance of the Law Society, and other appointees to the Tribunal who are lawyers, paralegals and members of the public. Each panel is assigned by the Chair; important considerations in composing panels include ensuring bencher and lay representation and diversity in expertise and experience.



David A. Wright  
Chair, Law Society Tribunal

Several types of cases are worth highlighting. Decisions on allegations of professional misconduct connected to mortgage fraud were prominent. Also significant were issues relating to mental health. Decisions addressed incapacity, health as a mitigating factor in penalty and requests to order an independent medical examination. Finally, the Tribunal's single-adjudicator summary hearing process dealt with many cases alleging failure to respond to the Law Society or violations of rules relating to financial records.

We continue to develop our jurisprudence. Significant 2014 Appeal Division decisions provided guidance on transparency of hearings (*Law Society of Upper Canada v. Xynnis, 2014 ONLSAP 9*); ungovernability and the application of progressive discipline (*Law Society of Upper Canada v. Shifman, 2014 ONLSTA 21*); and standards in criminal law practice (*Law Society of Upper Canada v. Besant, 2014 ONLSTA 50*).

We are committed to enhancing case management and alternative dispute resolution in the pre-hearing process, thereby reducing hearing time and adjournments. A small group of Tribunal members presides at pre-hearing conferences, and meets regularly to discuss common issues and promote consistency in approach.

This year, our staff's reporting relationships changed: the Registrar and Senior Counsel, who manages the Tribunal Office, now reports to the Chair. Staff have embraced the Tribunal's identity and put in extra effort in a year filled with changes to their work and a busy caseload.

I have learned a great deal from the Tribunal's stakeholders, members and staff in my first full year as Chair. I look forward to continued input and feedback from them, the Tribunal Committee, Convocation and the public as we continue the process of building an independent tribunal within self-governance of the legal and paralegal professions.

# Tribunal Evolution

## A Distinct Identity

### MISSION STATEMENT AND CORE VALUES

The Law Society Tribunal is an independent adjudicative tribunal within The Law Society of Upper Canada. The Tribunal was formally established on March 12, 2014, through implementation of the *Modernizing Regulation of the Legal Profession Act, 2013*.

In recognition of the Tribunal's distinct identity and commitment to an enhanced tribunal process, a *mission statement and core values* were created and implemented through a process of consultation with stakeholders and members.

The Law Society Tribunal processes, hears and decides regulatory cases about Ontario lawyers and paralegals in a manner that is fair, just and in the public interest. The work of Tribunal members and staff is informed and governed by this mission statement and the core values of fairness, quality, transparency and timeliness.

### TRIBUNAL TEAM

The Tribunal is made up of members and staff. Tribunal members are the adjudicators who hear and decide cases. All are part-time, with the exception of the Chair. There are 13 full-time staff, including the Chair, and one part-time staff member.

### Members

The Tribunal consists of a Hearing and Appeal Division. The Chair of the Tribunal is Chair of both the Hearing and Appeal Divisions, and each Division has a Vice-Chair. Pursuant to the *Law Society Act*, the Chair must be a lawyer who is not a benchner and the Vice-Chairs must be elected benchers.

Other tribunal members include elected and other lawyer and paralegal benchers, lay (public) benchers appointed by the Lieutenant Governor in Council and lawyers, paralegals and lay (public) Tribunal members appointed by Convocation on recommendation of the Chair. Public members must also be approved by the Attorney General for Ontario. Currently, there are 81 members of the Tribunal in addition to the Chair and Vice-Chairs. All Tribunal members are members of the Hearing Division. Twenty Tribunal members are also members of the Appeal Division. The Chair is appointed for a four-year term, and Vice-Chairs and members are appointed for terms of up to two years.

Members sit in panels of one, three or five to hear and decide cases. Panels are composed by the Chair in accordance with the requirements set out in *Ontario Regulation 167/07*.

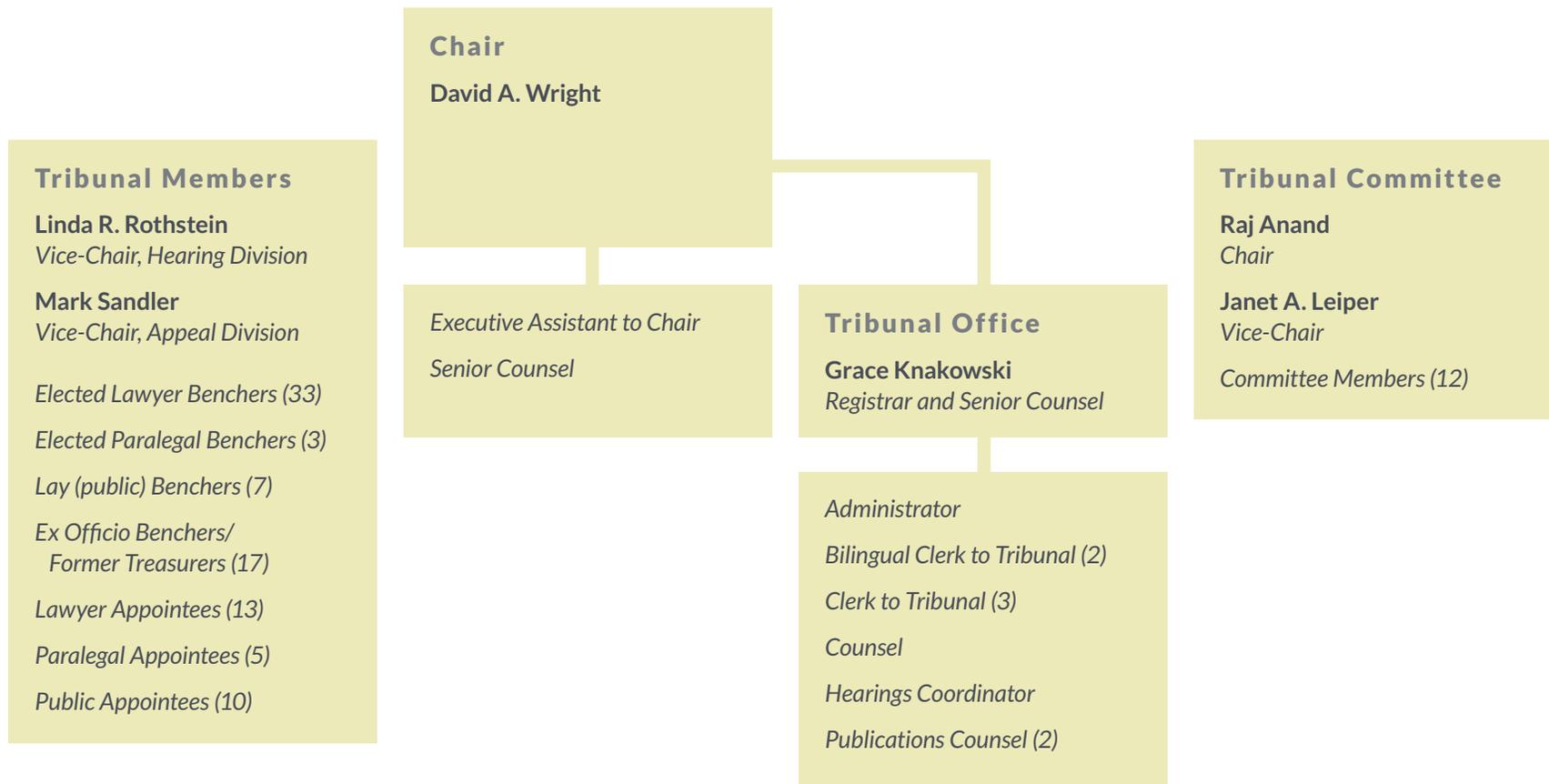
### Tribunal Office

The Tribunal Office is led by the Registrar and Senior Counsel, who reports to the Chair. Tribunal Office staff support the adjudicative work of the Tribunal by coordinating file management, scheduling hearings, releasing orders and reasons and providing support at hearings.

### Tribunal Committee

The Tribunal Committee is a standing committee of Convocation. Its mandate is to develop for Convocation's approval, in conjunction with the Chair, policy options on all matters relating to the Tribunal, including practice directions, the Adjudicator Code of Conduct, publication protocols for tribunal decisions, Tribunal member professional development and rules of practice and procedure.

**TRIBUNAL STRUCTURE**



## Tribunal Advancement

The Law Society Tribunal is committed to continuous improvement and advancement. As part of this commitment, a detailed Tribunal *member position description* and formal performance development process for members have been approved by Convocation and implemented.

### APPOINTMENT AND REAPPOINTMENT PROCESS

Members are appointed and reappointed to the Tribunal by Convocation on recommendation of the Chair. Benchers are eligible to be appointed to an initial term by virtue of their position. Other members are appointed following a competitive process and must have adjudicative experience. Tribunal members must adhere to the Law Society Tribunal Adjudicator Code of Conduct and demonstrate many aptitudes, including:

- Knowledge of administrative law, legislation and rules
- Commitment to procedurally fair and transparent hearings
- Production of quality jurisprudence
- Collegiality and self-reflection
- Continuous development through education of adjudicative skills and knowledge of issues before the Tribunal

### RECRUITMENT

In 2014, the Law Society Tribunal initiated two separate competitive processes to recruit public and lawyer appointee members. As a result of these competitions, five public and four lawyer appointees were added to the Tribunal. The addition of these members strengthens the Tribunal's ability to conduct French language hearings and increases the diversity of expertise and experience among Tribunal members.

### ORIENTATION AND EDUCATION

All new Tribunal members attend a multi-day orientation. Continuing education is offered to members and staff throughout the year, and attendance at two half-day sessions is mandatory for all members. This year's sessions focused on evidence, the role of the adjudicator and reason writing.

## Outreach

### STAKEHOLDER INPUT

The new *Chair's Practice Roundtable* has given Tribunal stakeholders a collegial forum in which to comment on the work of the Tribunal. The Chair's Practice Roundtable is comprised of duty counsel who regularly assist lawyers and paralegals at the Tribunal and individuals who regularly represent lawyers and paralegals or The Law Society of Upper Canada before the Tribunal.

The Chair's Practice Roundtable also provides an effective channel for the Tribunal to share and receive comment on developments and proposals about its processes.

Lawyers, paralegals and members of the public can receive email updates and consultation documents from the Tribunal by asking to be included on the Tribunal's *Stakeholder's List*.

### REGULATORY AND ADMINISTRATIVE JUSTICE COMMUNITY

The Law Society Tribunal continues to establish its new identity within the regulatory and administrative justice community through the Chair's speaking engagements at conferences and events, including:

- Canadian Institute for the Administration of Justice Conference – Advanced Judicial Seminar on Administrative Law
- Federation of Law Societies of Canada – The Law Society of Upper Canada's Independent Tribunal Model
- The Society of Ontario Adjudicators and Regulators and Osgoode Professional Development – Ethics of Alternative Dispute Resolution in Administrative Justice

# Tribunal Operations

## Core Values

# FAIRNESS

### *Fairness – Legislative Amendments*

To create the Law Society Tribunal, the *Law Society Act*, *By-Law 3*, *Ontario Regulation 167/07* and the *Rules of Practice and Procedure* were amended.

More recently, the *Rules of Practice and Procedure* were amended to require a lawyer, paralegal or lawyer or paralegal applicant involved in a Tribunal proceeding to prepare a pre-hearing conference (PHC) memorandum. Previously, only the Law Society was required to do so. Requiring both parties to prepare a PHC memorandum gives equal opportunity to state a position and promotes more detailed discussions at the PHC.

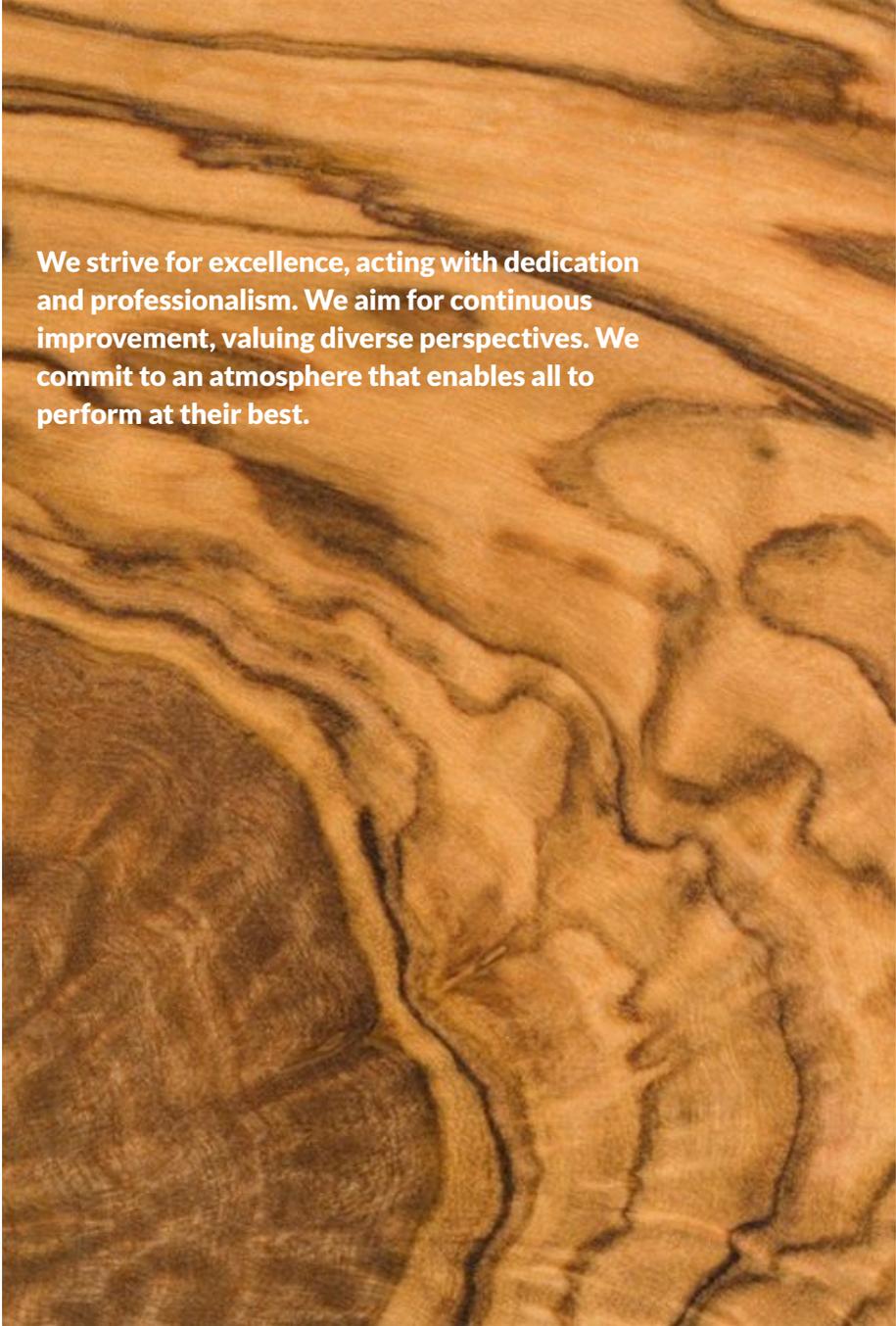


We will be fair and impartial in our processes and proceedings, treating all with respect, courtesy and dignity.

# QUALITY

## *Quality - Case Management System*

Work is underway, together with the Law Society's Project Management Office, to create a new electronic case management system to facilitate the filing of documents and the work of Tribunal members and staff, and to easily generate statistics about the Tribunal's work. The Tribunal's new case management system is being built within SharePoint to capitalize on The Law Society of Upper Canada's decision to move to this platform across the organization.



**We strive for excellence, acting with dedication and professionalism. We aim for continuous improvement, valuing diverse perspectives. We commit to an atmosphere that enables all to perform at their best.**

# TRANSPARENCY

## *Transparency – Website and Law Society Tribunal Identity*

The *Law Society Tribunal website* was created and launched on March 12, 2014. Internet presence through an independent website has dramatically increased the profile and transparency of the Tribunal. It allows for ease of access to Tribunal information by the public, media and parties. The website contains a wealth of information about the Tribunal and its activities.

A unique Law Society Tribunal identity was enhanced with the design of a logo and stationery allowing lawyers, paralegals, the public and the media to visualize the Tribunal's independence within The Law Society of Upper Canada. This has assisted in educating parties and stakeholders about the distinction between the Law Society Tribunal and The Law Society of Upper Canada's Professional Regulation Division while emphasizing the Tribunal's independence and neutrality.

**We will act in a manner that bears the closest scrutiny. Our decisions, rules, processes and policies will be available to licensees and the public, accessible and easily understandable.**

# TIMELINESS

## *Timeliness – New Scheduling Process*

On May 2, 2014, the Law Society Tribunal initiated a new *scheduling process*. The new scheduling process maximizes hearing date options and provides parties with exact hearing dates, as opposed to a range of dates as was the former practice. Certainty of hearing dates promotes timely scheduling and translates into cost savings for parties as representatives are only required to attend on actual hearing dates.

**We are guided by the importance of timely resolution of all matters. We will schedule hearing and continuation dates expeditiously and complete written reasons promptly.**

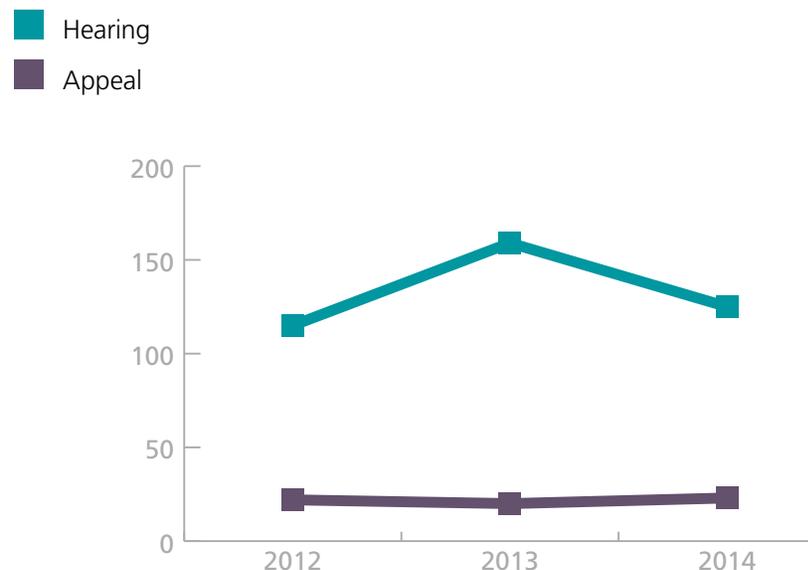
# Tribunal Metrics

The Law Society Tribunal's 2014 statistics may be [found here](#).

## HEARING AND APPEAL FILES OPENED IN 2014



## HEARING AND APPEAL FILES OPENED BY YEAR



## Statistical Highlights and Trends

### FILES OPENED

The Law Society Tribunal continued to administer a very busy caseload in 2014. While fewer originating processes were filed with the Tribunal than the year before, the overall work of the Tribunal remained steady as more files were closed by the Tribunal than in 2013. The Tribunal Office received 125 notices of application or referral for hearing and motions for interlocutory suspension or practice restriction to be considered by the Hearing Division, compared to 159 filings in 2013, a 21% decrease. The Tribunal Office also received 23 notices of appeal to be considered by the Appeal Division compared to 20 filings in 2013, a 15% increase. The total number of filings in 2014 is similar to that of 2012 filings.

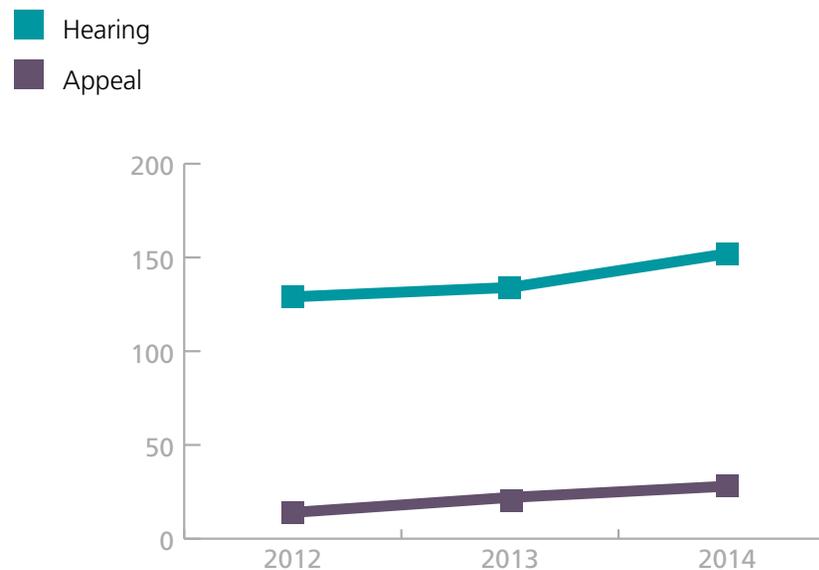
# Tribunal Metrics

The Law Society Tribunal's 2014 statistics may be [found here](#).

## HEARING AND APPEAL FILES CLOSED IN 2014



## HEARING AND APPEAL FILES CLOSED BY YEAR



## FILES CLOSED

In 2014, the Tribunal closed 152 files that were before the Hearing Division compared to 134 closed files in 2013, a 13% increase. The Tribunal also closed 28 files that were before the Appeal Division compared to 22 closed files in 2013, a 27% increase.

**OPEN FILES BY AGE**

At year-end 2014, the Tribunal's open or active file inventory of 152 files may be sorted by age as:  
0 to 6 months - 64 files (42%), 7 to 18 months - 60 files (40%), 19 to 24 months - 17 files (11%) and over 24 months - 11 files (7%).

Almost half of the Tribunal's open or active inventory at 2014 year-end is less than six months old and 82% of the Tribunal's open or active inventory is less than 18 months old. These figures are identical to year-end 2013 figures and improve on 2012 percentages of 33% and 76%, respectively. At 2014 year-end, only 7% of open or active files were over 24 months old, compared to 13% in 2013 and 16% in 2012.

**NUMBER OF FILES AND FREQUENCY BEFORE THE TRIBUNAL**

Case management and adjudication activity before the Tribunal remained high in 2014. The proceeding management conference considered 144 files and the Hearing Division considered 190 files in 2014. The appeal management conference considered 15 files and the Appeal Division considered 26 files.

**TOTAL HEARINGS SCHEDULED AND VACATED**

In 2014, hearings were scheduled on 96% of all available calendar days. A total of 450 single-day or multiple day hearing blocks were scheduled before the Hearing and Appeal Divisions. Of these, 407 were for Hearing Division hearings and 43 were for Appeal Division hearings. Of the 407 Hearing Division blocks scheduled, 17% were vacated which is an improvement from the 23% and 22% of vacated hearings in 2013 and 2012, respectively. The Appeal Division experienced the same improvement as only 12% of blocks scheduled were vacated, compared to 16% in 2013 and 13% in 2012. The decrease in adjournments is likely due to an emphasis on more active pre-hearing case management and more consistent application and awareness of the Tribunal's practice direction for adjournment requests.

**TRIBUNAL REASONS PRODUCED AND PUBLISHED**

In 2014, 183 written reasons were produced, an increase of 29% from 2013 and 27% from 2012. Tribunal written and oral reasons continue to be published on The Canadian Legal Information Institute website to ensure that Law Society Tribunal jurisprudence is available to licensees and the public in an accessible format that may be researched.



Law Society Tribunal  
Tribunal du Barreau

- MESSAGE DU PRÉSIDENT >
- ÉVOLUTION DU TRIBUNAL >
- OPÉRATIONS DU TRIBUNAL >
- MÉTRIQUES DU TRIBUNAL >

# RAPPORT ANNUEL

# 2014

## Message du président

Je suis heureux de présenter le premier rapport annuel du Tribunal du Barreau, officiellement créé en mars 2014. Le présent rapport décrit les nombreuses initiatives entreprises en 2014 pour soutenir la création d'un tribunal administratif indépendant au sein du Barreau du Haut-Canada. Le but de ces initiatives est d'améliorer la qualité du travail du Tribunal ainsi que de traiter, d'entendre et de trancher de façon juste et impartiale les causes qui nous sont présentées.

Les membres du Tribunal comprennent des conseillers et des conseillères, qui jouent un rôle dans la gouvernance du Barreau, et d'autres membres avocats, parajuristes et membres du public nommés au Tribunal. Chaque formation est affectée par le président; la composition des formations tient compte du besoin de représenter les conseillers et les non-juristes, ainsi que de la diversité de l'expertise et de l'expérience.

Plusieurs types de causes valent la peine d'être soulignés. Les décisions portant sur les allégations de manquement professionnel liées à la fraude



David A. Wright, président,  
Tribunal du Barreau

hypothécaire sont d'une importance considérable, tout comme les questions liées à la santé mentale. Les décisions ont porté sur la capacité, la santé comme facteur atténuant pour déterminer la sanction et les demandes d'ordonner un examen médical indépendant. Enfin, le processus d'audience sommaire du Tribunal devant un seul arbitre traite de nombreuses causes alléguant un manquement à répondre au Barreau ou des violations des règles du *Code de déontologie* portant sur les registres financiers.

Nous continuons à développer notre jurisprudence. Des décisions majeures de la Section d'appel en 2014 ont orienté la transparence des audiences (*Barreau du Haut-Canada c. Xynnis, 2014 ONLSAP 9*); l'ingouvernabilité et l'application de la discipline progressive (*Barreau du Haut-Canada c. Shifman, 2014 ONLSTA 21*); et les normes de la pratique de droit criminel (*Barreau du Haut-Canada c. Besant, 2014 ONLSTA 50*).

Nous sommes engagés à améliorer la gestion des cas et la résolution extra judiciaire de différends dans le processus préalable aux audiences, réduisant ainsi la durée des audiences et les ajournements. Un petit groupe de membres du tribunal préside les conférences préalables à l'audience et se réunit régulièrement pour discuter des problèmes communs et promouvoir une approche uniforme.

Cette année, nos liens hiérarchiques ont changé : la greffière et avocate principale, qui gère le greffe du Tribunal, se rapporte maintenant au président. Le personnel a accepté l'identité du Tribunal et fourni un effort additionnel pendant cette année de changements et de volume de travail considérable.

J'ai beaucoup appris des intervenants du Tribunal, des membres et du personnel en cette première année entière comme président. Je compte sur leurs commentaires continus, ainsi que sur ceux du comité du Tribunal, du Conseil et du public pour développer un tribunal indépendant au sein de professions juridique et parajuridique autogouvernées.

# Évolution du Tribunal

## Identité distincte

### MISSION ET VALEURS

Le Tribunal du Barreau est un tribunal d'arbitrage indépendant au sein du Barreau du Haut-Canada. Le Tribunal du Barreau a été constitué officiellement le 12 mars 2014 en vertu de la *Loi de 2013 sur la modernisation de la réglementation de la profession juridique*.

En reconnaissance de l'identité du Tribunal et de son engagement envers l'amélioration de sa procédure, un *énoncé de mission et de valeurs* a été créé et mis en œuvre après une consultation avec les intervenants et les membres.

Le Tribunal du Barreau traite, entend et tranche des cas de réglementation concernant les avocates, les avocats et les parajuristes de l'Ontario de manière équitable, juste et dans l'intérêt public. Ces valeurs essentielles guident et gouvernent le travail des membres et du personnel du Tribunal : équité, qualité, transparence et délais.

### ÉQUIPE DU TRIBUNAL

Le Tribunal est formé de membres du tribunal et de personnel. Les membres du Tribunal sont les arbitres qui entendent et tranchent les causes. Tous les arbitres agissent à temps partiel, à l'exception du président. Le Tribunal compte 13 employés à temps plein, dont le président, et un employé à temps partiel.

## Membres

Le Tribunal est constitué d'une section de première instance et d'une section d'appel. Le président du Tribunal préside ces deux sections, chacune ayant un vice-président. Conformément à la *Loi sur le Barreau*, le président doit être avocat non conseiller et les vice-présidents doivent être des conseillers élus.

Les autres membres du Tribunal comprennent des conseillers avocats ou parajuristes élus ou non élus; des conseillers non juristes (public) nommés par le Lieutenant-gouverneur en conseil, et des membres du Tribunal avocats, parajuristes et non-juristes (public) nommés par le Conseil sur recommandation du président. Les membres publics doivent aussi être approuvés par la procureure générale de l'Ontario. En ce moment, le Tribunal compte 81 membres, en plus du président et des vice-présidents. Tous les membres du Tribunal sont membres de la Section de première instance. Vingt membres du Tribunal sont également membres de la Section d'appel. Le président est nommé pour un mandat de quatre ans, et les vice-présidents et membres sont nommés pour des mandats de deux ans maximum.

Les membres siègent à des formations de un, trois ou cinq pour entendre et trancher les causes. Les formations sont composées par le président conformément aux exigences énoncées dans le *Règlement de l'Ontario 167/07*.

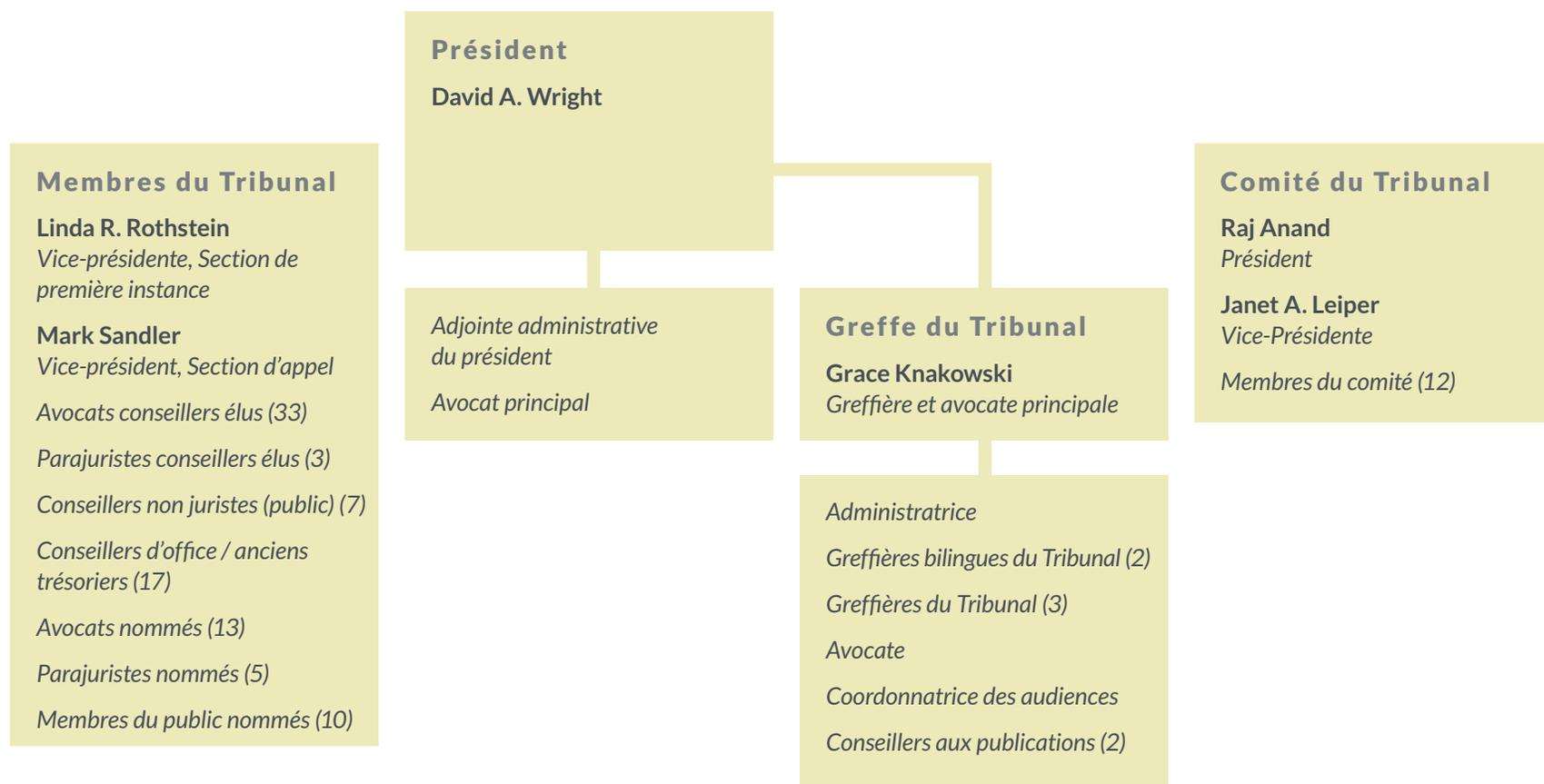
## Greffe du Tribunal

Le greffe du Tribunal est mené par la greffière et avocate principale, qui se rapporte au président. Le personnel du greffe du Tribunal soutient le travail d'arbitrage du Tribunal en coordonnant la gestion des dossiers, l'établissement d'horaires, la publication des ordonnances et des motifs, et en fournissant un appui aux audiences.

## Comité du Tribunal

Le Comité du Tribunal est un comité permanent du Conseil. Son mandat est d'élaborer, de concert avec le président du Tribunal du Barreau, pour approbation du Conseil, différentes politiques sur toutes les questions portant sur le Tribunal, y compris l'élaboration ou la préparation des directives de cabinet, le *Code de déontologie des arbitres*, un protocole de publication pour rendre les décisions du tribunal, le perfectionnement professionnel des arbitres et des règles de pratique et de procédure.

## STRUCTURE DU TRIBUNAL



## Avancement du Tribunal

Le Tribunal du Barreau s'engage à continuer de s'améliorer. Dans le cadre de cet engagement, *une description de postes* pour les membres du Tribunal et un processus de perfectionnement professionnel officiel pour les membres ont été approuvés par le Conseil et mis en œuvre.

### PROCESSUS DE NOMINATION ET DE RENOUVELLEMENT DES NOMINATIONS

Les membres sont nommés et renommés au Tribunal par le Conseil, sur recommandation du président. Les conseillers peuvent être nommés pour un mandat initial du fait de leur charge. D'autres membres sont nommés après un processus concurrentiel et doivent avoir une expérience d'arbitrage. Les membres du Tribunal doivent respecter le *Code de déontologie des arbitres* du Tribunal du Barreau et faire preuve de diverses aptitudes, comme :

- La connaissance du droit administratif, de la loi et des règles
- Un engagement envers des audiences équitables et transparentes
- La production de jurisprudence de qualité
- La collégialité et la réflexion personnelle
- Le perfectionnement continu par l'éducation des habiletés d'arbitrage et des connaissances des questions présentées au Tribunal

### RECRUTEMENT

En 2014, le Tribunal du Barreau a amorcé deux processus concurrentiels séparés pour recruter des membres du public et des avocats. À l'issue de ces compétitions, cinq membres du public et quatre avocats additionnels ont été nommés au Tribunal. L'ajout de ces membres renforce la capacité du Tribunal de mener des audiences en français et augmente la diversité de l'expertise et de l'expérience parmi les membres du Tribunal.

### ORIENTATION ET ÉDUCATION

Tous les nouveaux membres du Tribunal participent à une orientation sur plusieurs jours. La formation continue est offerte aux membres et au personnel durant l'année, et la participation aux séances de deux demi-journées est obligatoire pour tous les membres. Les séances de cette année portaient sur la preuve, le rôle de l'arbitre et la rédaction de motifs.

## Rayonnement

### OPINIONS DES INTERVENANTS

La nouvelle *Table ronde du président concernant les pratiques* a fourni aux intervenants du Tribunal un forum collégial pour exprimer leurs opinions sur le travail du Tribunal. La Table ronde du président est constituée d'avocats de service qui aident régulièrement les avocats et les parajuristes au Tribunal, et de personnes qui représentent régulièrement les avocats et les parajuristes ou le Barreau du Haut-Canada devant le Tribunal.

La Table ronde du président fournit également un canal efficace au Tribunal pour partager et recevoir des commentaires sur les développements et les propositions concernant ses processus.

Les avocates, avocats, parajuristes et membres du public peuvent recevoir les mises à jour et les documents de consultation du Tribunal en demandant d'être ajoutés à la *liste des intervenants*.

### COMMUNAUTÉ DE JUSTICE ADMINISTRATIVE ET RÉGLEMENTAIRE

Le Tribunal du Barreau continue d'établir sa nouvelle identité dans la communauté de justice administrative et réglementaire grâce aux engagements oratoires du président à des conférences et événements, y compris :

- Conférence de l'Institut canadien d'administration de la justice – séminaire sur le droit administratif pour la magistrature
- Fédération des ordres professionnels de juristes du Canada – le modèle de tribunal indépendant du Barreau du Haut-Canada
- La *Society of Ontario Adjudicators and Regulators* et perfectionnement professionnel d'Osgoode – éthique et règlement extra judiciaire des différends en justice administrative

# Opérations du Tribunal

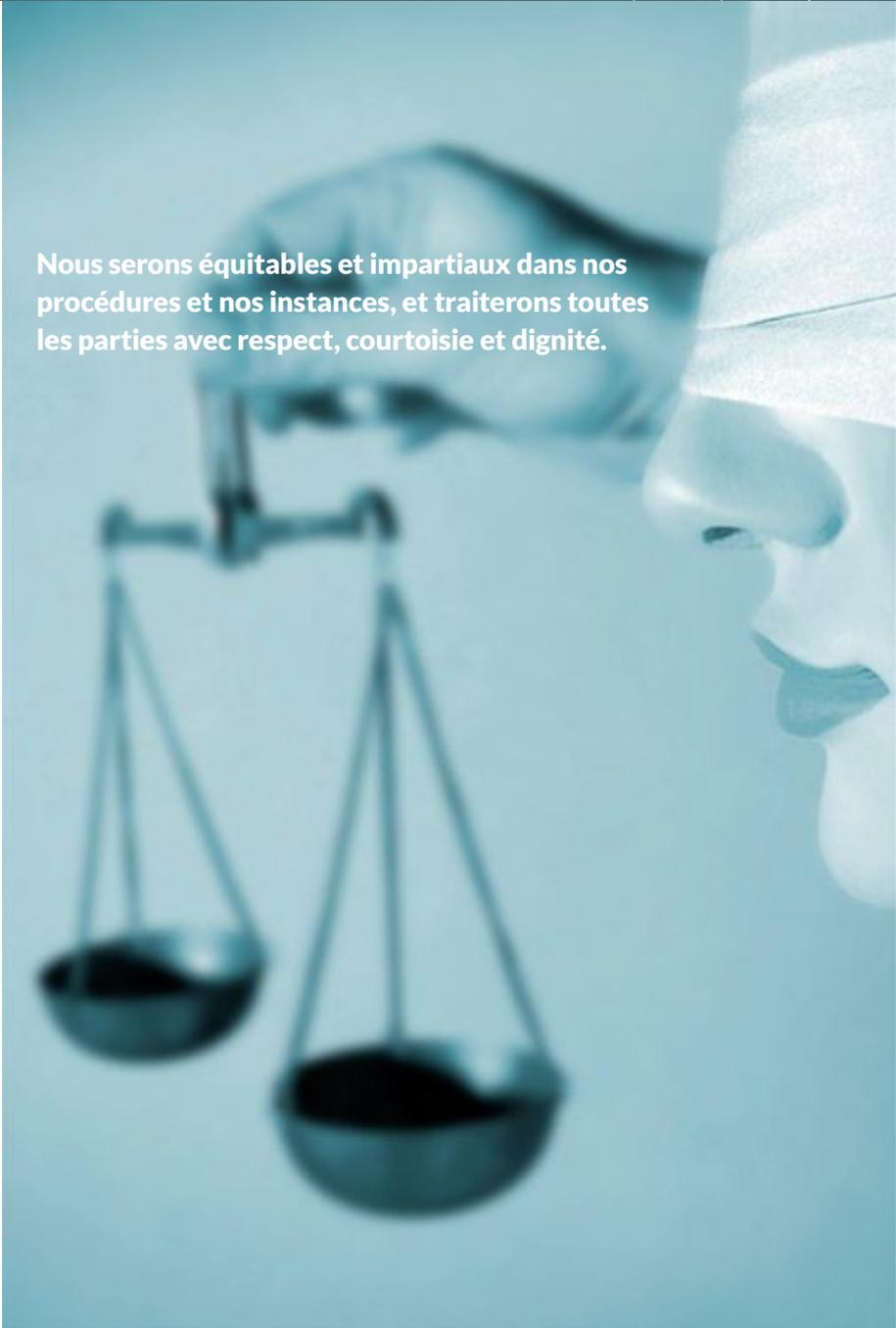
## Valeurs

# ÉQUITÉ

### ÉQUITÉ – Modifications législatives

La *Loi sur le Barreau*, le Règlement administratif n° 3, le Règlement de l'Ontario 167/07 et les *Règles de pratique et de procédure* ont été modifiés pour créer le Tribunal du Barreau.

Plus récemment, les *Règles de pratique et de procédure* ont également été modifiées pour exiger que les avocats, parajuristes ou demandeurs avocats ou parajuristes engagés dans une instance du Tribunal préparent un mémoire de conférence préparatoire à l'audience (CPA), ce qui auparavant incombait seulement au Barreau. En préparant un tel mémoire, les deux parties ont ainsi la même chance de se positionner et de favoriser des discussions plus approfondies au stade de la CPA.

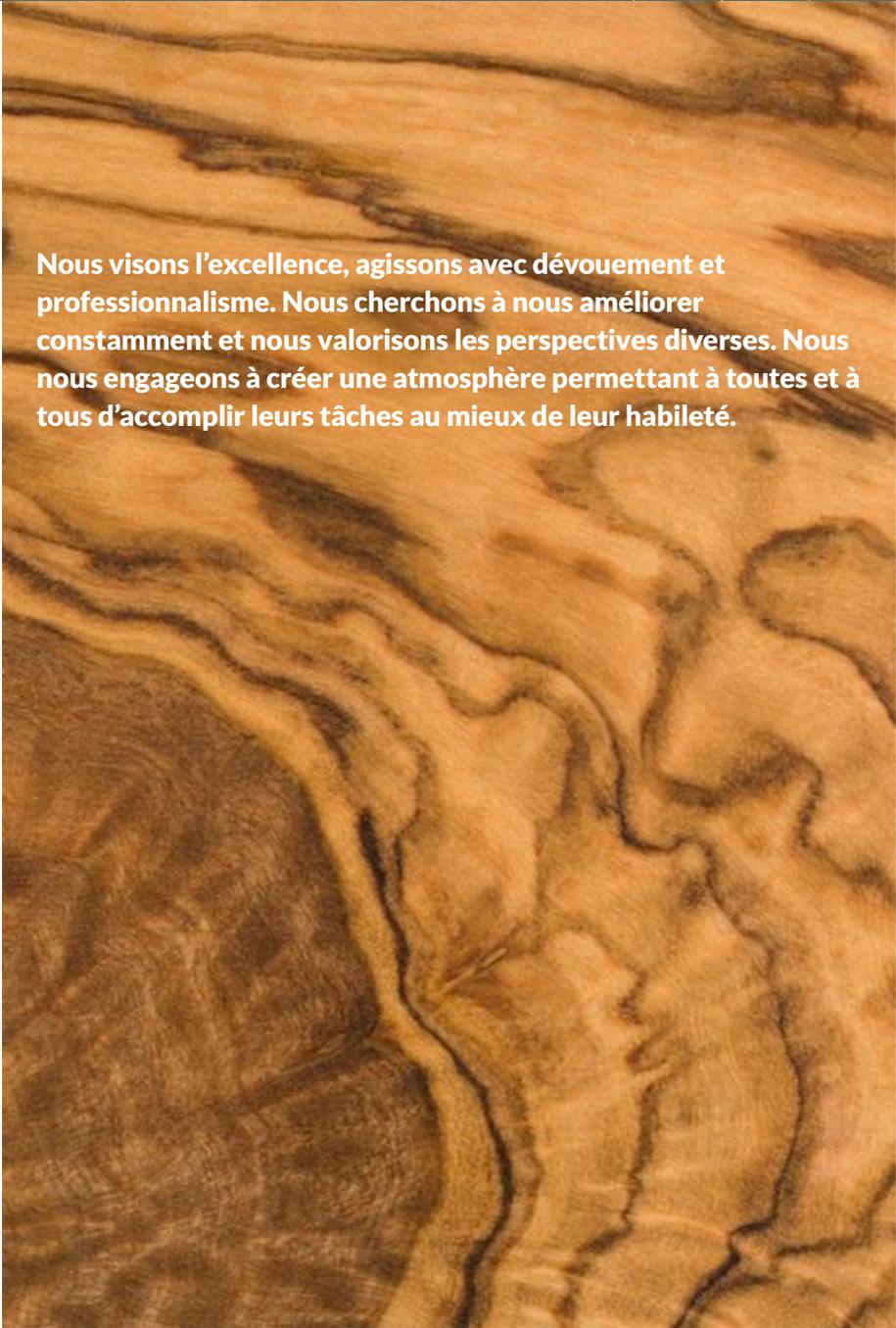


Nous serons équitables et impartiaux dans nos procédures et nos instances, et traiterons toutes les parties avec respect, courtoisie et dignité.

# QUALITÉ

## *QUALITÉ – Système de gestion des cas*

Le travail est en cours avec le Bureau de gestion de projets du Barreau pour créer un nouveau système électronique de gestion des cas visant à faciliter le dépôt de documents au Tribunal et le travail des membres et du personnel du Tribunal, ainsi qu'à facilement produire des statistiques sur le travail du Tribunal. Le nouveau système de gestion des cas du Tribunal est développé dans SharePoint pour mettre à profit la décision du Barreau du Haut-Canada de passer à cette plate-forme dans toute l'organisation.



**Nous visons l'excellence, agissons avec dévouement et professionnalisme. Nous cherchons à nous améliorer constamment et nous valorisons les perspectives diverses. Nous nous engageons à créer une atmosphère permettant à toutes et à tous d'accomplir leurs tâches au mieux de leur habileté.**

# TRANSPARENCE

## *Transparence – Site Web et identité du Tribunal du Barreau*

Le [site Web du Tribunal du Barreau](#) a été créé et lancé le 12 mars 2014. La présence sur Internet d'un site Web indépendant a considérablement augmenté le profil et la transparence du Tribunal. Il permet une facilité d'accès aux renseignements sur le Tribunal par le public, les médias et les parties. Le site Web contient une mine de renseignements sur le Tribunal et sur ses activités.

L'identité unique du Tribunal du Barreau a été améliorée par la conception d'un logo et de papier à entête permettant aux avocats, parajuristes, membres du public et aux médias de visualiser l'indépendance du Tribunal au Barreau du Haut-Canada. Cela a aidé à instruire les parties sur la distinction entre le Tribunal du Barreau et la Direction de la réglementation professionnelle du Barreau du Haut-Canada tout en mettant l'accent sur l'indépendance et la neutralité du Tribunal.

**Nous agissons d'une manière qui résiste à l'examen le plus minutieux. Nos décisions, règles, procédures et politiques seront à la disposition de tous les titulaires de permis et du public, en format accessible et facile à comprendre.**

# DÉLAIS

## *Délais – nouveau processus d'établissement des horaires*

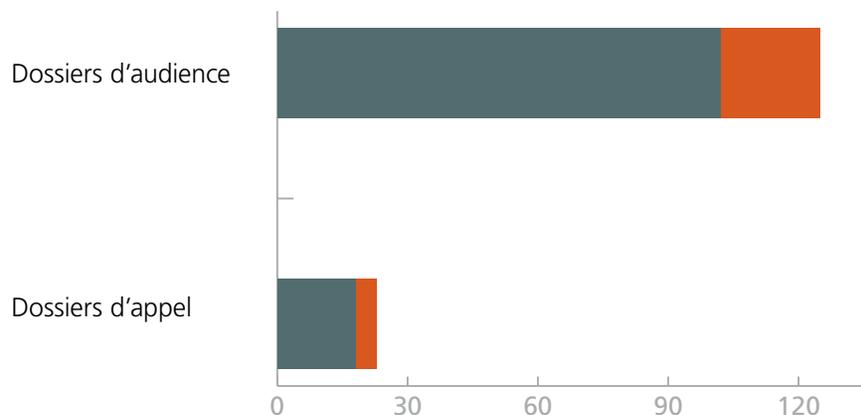
Le 2 mai 2014, le Tribunal du Barreau amorçait un *nouveau processus d'établissement des horaires*. Ce nouveau processus optimise les choix de dates d'audience et offre aux parties des dates exactes, au lieu d'une gamme de dates comme avant. La certitude des dates d'audience favorise des délais rapides et se traduit par un gain de temps pour les parties puisque les représentants n'ont besoin de comparaître qu'aux dates réelles de leur audience.

**Nous sommes guidés par l'importance d'une résolution de toutes les affaires en temps utile. Nous fixerons rapidement des dates d'audition et de reprise et rendrons promptement des motifs écrits.**

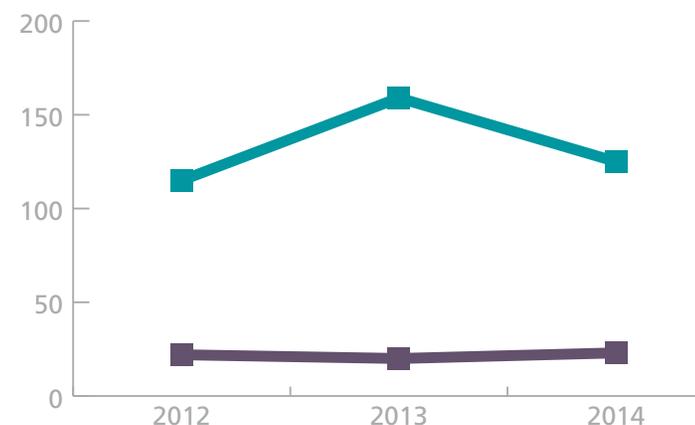
# Métriques du Tribunal

Les statistiques du Tribunal du Barreau pour 2014 *se trouvent ici*.

## DOSSIERS D'AUDIENCE ET D'APPEL OUVERTS EN 2014



## DOSSIERS D'AUDIENCE ET D'APPEL OUVERTS PAR ANNÉE



## Sommaire et tendances statistiques

### DOSSIERS OUVERTS

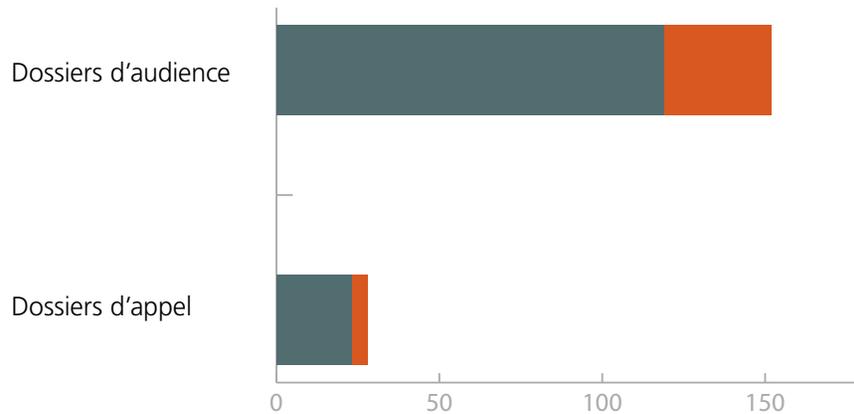
Le Tribunal du Barreau a continué de gérer une forte charge de travail en 2014. Si les actes introductifs d'instance déposés auprès du Tribunal ont été moins nombreux que l'année précédente, le travail global du Tribunal, lui, est demeuré constant et le nombre de dossiers clos a été plus élevé qu'en 2013. Le greffe du Tribunal a reçu 125 avis de requête ou de renvoi pour des audiences et des motions de suspension interlocutoire ou de restriction de la pratique à présenter à la Section de première instance, comparativement à 159 dépôts en 2013, soit une diminution de 21 %. Le greffe du Tribunal a également reçu 23 avis d'appel à présenter devant la Section d'appel, comparativement à 20 dépôts en 2013, soit une augmentation de 15 %. Le nombre total de dépôts en 2014 est le même qu'en 2012.

# Métriques du Tribunal

Les statistiques du Tribunal du Barreau pour 2014 *se trouvent ici*.

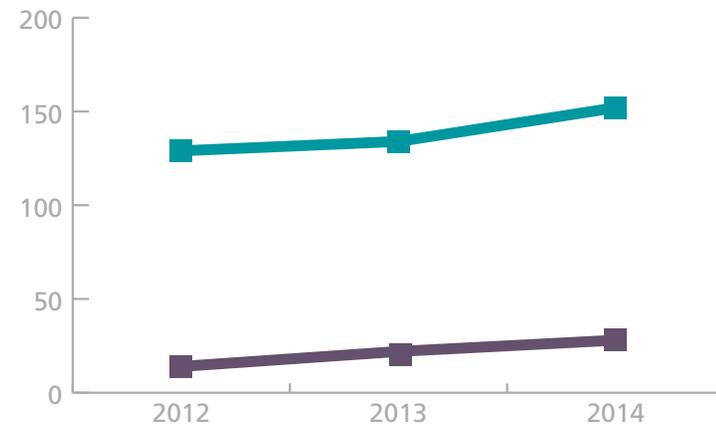
## DOSSIERS D'AUDIENCE ET D'APPEL CLOS EN 2014

- Avocats
- Parajuristes



## DOSSIERS D'AUDIENCE ET D'APPEL CLOS PAR ANNÉE

- Audiences
- Appels



## DOSSIERS CLOS

En 2014, le Tribunal a clos 152 dossiers dont la Section de première instance était saisie, comparativement à 134 dossiers clos en 2013, soit une augmentation de 13 %. Le Tribunal a également clos 28 dossiers introduits à la Section d'appel, comparativement à 22 dossiers clos en 2013, soit une augmentation de 27 %.

**DOSSIERS OUVERTS SELON L'ANCIENNETÉ**

À la fin de 2014, l'inventaire de 152 dossiers ouverts ou actifs du Tribunal peut être classé selon l'ancienneté de la façon suivante : 0 à 6 mois – 64 dossiers (42 %), 7 à 18 mois – 60 dossiers (40 %), 19 à 24 mois – 17 dossiers (11 %) et plus de 24 mois – 11 dossiers (7 %).

Près de la moitié de l'inventaire de dossiers actifs ou ouverts du Tribunal à la fin de 2014 sont de moins de six mois et 82 % de l'inventaire de dossiers actifs ou ouverts du Tribunal sont de moins de 18 mois. Ces chiffres sont identiques à ceux de la fin de 2013 et marquent une amélioration par rapport aux pourcentages de 2012, soit 33 % et 76 %, respectivement. À la fin de 2014, seulement 7 % de dossiers ouverts ou actifs étaient de plus de 24 mois, par rapport à 13 % en 2013 et 16 % en 2012.

**NOMBRE DE DOSSIERS ET FRÉQUENCE DE COMPARUTION DEVANT LE TRIBUNAL**

La gestion des cas et l'arbitrage devant le Tribunal sont demeurés élevés en 2014. La conférence de gestion de l'instance a examiné 144 dossiers et la Section de première instance en a examiné 190 en 2014. La gestion des appels a examiné 15 dossiers et la Section d'appel en a examiné 26.

**NOMBRE TOTAL D'AUDIENCES PRÉVUES ET ANNULÉES**

En 2014, les audiences se sont réparties sur 96 % de tous les jours civils disponibles. Un total de 450 groupes de dates d'audience sur un jour ou sur plusieurs jours ont été fixés devant les sections de première instance ou d'appel. De ce nombre, 407 visaient la Section de première instance et 43 la Section d'appel. Sur les 407 groupes prévus devant la Section de première instance, 17 % ont été annulés, une amélioration par rapport aux 23 % et 22 % des audiences annulées en 2013 et en 2012. La Section d'appel a connu la même amélioration puisque seulement 12 % des groupes prévus ont été annulés, par rapport à 16 % en 2013 et à 13 % en 2012. La réduction du nombre d'ajournements est vraisemblablement due à une gestion préalable des cas plus active et à une application et une sensibilité plus constante de la direction sur la pratique du Tribunal relative aux demandes d'ajournement.

**PRODUCTION ET PUBLICATION DES MOTIFS DU TRIBUNAL**

En 2014, 183 motifs ont été écrits, une augmentation de 29 % par rapport à 2013 et de 27 % par rapport à 2012. Les motifs écrits et oraux du Tribunal continuent d'être publiés sur le site Web de l'Institut canadien d'information juridique pour veiller à ce que les décisions du Tribunal du Barreau soient à la portée des titulaires de permis et du public dans un format accessible et consultable.





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

**Tab 9**

**Report to Convocation  
April 23, 2015**

---

**Access to Justice Committee**

**Committee Members**

Cathy Corsetti, Co-Chair  
Paul Schabas, Co-Chair  
Susan Hare, Vice-Chair and  
Special Liaison with the Equity and Aboriginal Issues Committee  
Beth Symes, Vice-Chair  
Raj Anand  
Marion Boyd  
Mary Louise Dickson  
Robert Evans  
Avvy Go  
George Hunter  
Brian Lawrie  
Michael Lerner  
Virginia MacLean  
Malcolm Mercer  
Barbara Murchie  
Susan Richer  
Baljit Sikand  
Bradley Wright

**Purpose of Report: Decision and Information**

**Prepared by the Equity Initiatives Department  
(Marisha Roman, Aboriginal Initiatives and Policy Counsel – 416-947-3989)**

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### For Decision

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### For Information

Proposal for Establishment of the J. Shirley Denison Award ..... [TAB 9.2](#)

**COMMITTEE PROCESS**

1. The Access to Justice Committee (the “Committee”) met on April 8, 2015. Committee members Cathy Corsetti (Co-chair), Paul Schabas (Co-chair), Susan Hare (Vice-chair), Beth Symes (Vice-chair), Raj Anand (telephone), Marion Boyd, Mary Louis Dickson, Bob Evans, Avvy Go, Brian Lawrie, Michael Lerner, Virginia MacLean (telephone), Malcolm Mercer, Barbara Murchie, Baljit Sikand, and Bradley Wright (telephone) attended. Constance Backhouse, Robert Burd, Michelle Haigh, Ross Earnshaw, Marian Lippa, Susan McGrath and Jan Richardson also attended. Aneurin Thomas, Marcus Pratt, Heather Morgan, Emma Barz and Ashley Arrobas attended for a presentation on Legal Aid Ontario.
2. Staff in attendance were Julia Bass, Sabreena Delhon, Denise McCourtie, Marisha Roman, Grant Wedge and Sheena Weir.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

TAB 9.2

**FOR INFORMATION**

**PROPOSAL FOR ESTABLISHMENT OF**

**THE J. SHIRLEY DENISON AWARD**

31. The Access to Justice Committee considered a proposal submitted by the Heritage Committee for the establishment of the J. Shirley Denison Award and voted unanimously to support the proposal as submitted to Convocation.



**TAB 10**

**Report to Convocation  
April 23, 2015**

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**Paralegal Standing Committee**

**Committee Members**  
**Michelle Haigh, Chair**  
**Susan McGrath, Vice-Chair**  
**Marion Boyd**  
**Robert Burd**  
**Cathy Corsetti**  
**Ross Earnshaw**  
**Robert Evans**  
**Brian Lawrie**  
**Marian Lippa**  
**Malcolm M. Mercer**  
**Barbara Murchie**  
**Baljit Sikand**  
**Catherine Strosberg**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
Julia Bass 416 947 5228**

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**For Decision**

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**For Information**

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**COMMITTEE PROCESS**

1. The Committee met on April 8<sup>th</sup>, 2015. Committee members present were: Michelle Haigh (Chair), Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, Cathy Corsetti, Ross Earnshaw, Robert Evans, Brian Lawrie, Marian Lippa (by telephone), Malcolm M. Mercer, Barbara Murchie, Baljit Sikand and Catherine Strosberg (by telephone).
2. Staff in attendance were: Zeynep Onen, Diana Miles, Jim Varro and Julia Bass.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

Tab 10.2

**FOR INFORMATION****ELECTION OF THE PARALEGAL STANDING COMMITTEE CHAIR**

13. Sections 130.1 to 130.13 of By-law 3 provide for the annual election of the Chair of the Paralegal Standing Committee. The By-Law requires the election of the Chair to be the first item of business at the meeting one year from the last Committee Chair election, or, in a year in which the paralegal members of the Committee are elected, the first meeting of the Committee following that election.
14. Since the last election of the Committee Chair was in April 2014, election of the Chair was required to be the first item of business at the meeting in April 2015.
15. In accordance with section 130.4 of the by-law, the Director of Policy, Jim Varro, was appointed Elections Officer by the CEO, Robert Lapper. Mr Varro attended the meeting and administered the election.
16. The By-law further requires that the person elected be appointed Chair.
17. Since there was only one nomination for the position, Ms Michelle Haigh, Ms Haigh was declared elected and was therefore appointed Chair of the Committee for a one year term.



Tab 11

## **Report to Convocation April 23, 2015**

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### **Report on the Federation of Law Societies of Canada Council and Related Meetings, Ottawa, Ontario March 25-28, 2015**

**Purpose of Report: Information**

**Prepared by Jim Varro and Juda Strawczynski  
Policy Secretariat**

**COUNCIL MEETING AND RELATED MEETINGS OF THE  
FEDERATION OF LAW SOCIETIES OF CANADA**

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## INTRODUCTION

1. The Federation of Law Societies of Canada (the “Federation”) is the national coordinating body for Canada’s 14 law societies. It operates the National Committee on Accreditation (“NCA”), a Standing Committee at the Federation whose primary mandate is to assess the legal education and professional experience of persons whose legal education and professional experience were obtained outside of Canadian common law jurisdictions and who wish to be admitted to a common law bar in Canada. It provides administrative support to the National Criminal Law Program and the National Family Law Program. The Federation additionally engages in a number of national initiatives on which reports are received at its annual and semi-annual meetings.
2. Former Treasurer Thomas Conway is the Federation’s President for 2014-2015. Former Treasurer Laurie Pawlitza serves as the Federation Council member representing the Law Society of Upper Canada.
3. More information about the Federation can be found on its website at [www.flsc.ca/](http://www.flsc.ca/).
4. The Federation typically organizes two conferences a year, at the times of its business meetings, for Council members, benchers and law society staff addressing regulatory themes of national importance.<sup>1</sup> At its most recent meetings, held March 25-28, 2015 in Ottawa, Ontario, in addition to a Council Meeting (March 26), the Federation held governance meetings in the context of its governance review with Federation Council members, Law Society CEOs and Law Society Presidents and Vice-Presidents on March 25 and 26, and a governance workshop for all participants on March 27 and 28.
5. Treasurer Janet Minor, Federation Council member Laurie Pawlitza, and staff Robert Lapper and Jim Varro attended the meetings on behalf of the Law Society of Upper Canada. Staff members Mary Shena and Marisha Roman were also present to assist with the organization of the dinner for delegates hosted by the Law Society on Friday, March 27.

## GOVERNANCE MEETINGS

6. In June 2014, Federation Council approved the creation of a Governance Review Committee to conduct a governance review of the Federation. The review was prompted by, among other things, the growing demands on the Federation to lead national

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<sup>1</sup>All of the Federation’s national initiatives are funded by a levy assessed to each member law society. The levy is based on the number of “full-time equivalent” (“FTE”) members in the jurisdiction. In 2013-2014, the levy was \$25 per FTE in common law jurisdictions. The amount was raised to \$28.50 for 2014-2015, in part in order to develop appropriate resources for the Federation to meet its mandate.

regulatory initiatives and the expectation that the Federation will perform at high standards.

7. In July 2014, Council approved the composition of the Committee, which includes the Law Society of Upper Canada's Robert Lapper, as well as Marie-Claude Bélanger-Richard, Past Federation President (Chair); Jeff Hirsch, Federation Vice President; Sheila Greene, Council member for the Law Society of Newfoundland & Labrador; Sheila MacPherson, Council member for the Law Society of the Northwest Territories; Steve Raby, Council member for the Law Society of Alberta; Johanne Brodeur, former Bâtonnière of the Barreau du Québec, and Tim McGee, CEO, Law Society of British Columbia.
8. The Ottawa meeting provided all Federation member law societies with an opportunity to continue to work on the important governance issues.
9. The Governance Review Committee will endeavor to bring proposals for change to Council and law societies later in 2015.

#### **COUNCIL MEETING**

10. The Council met on March 26, 2015. It received reports from the Federation's President, Thomas Conway, and its CEO, Jonathan Herman. The Council Meeting agenda addressed a range of Federation matters, including the following.

##### National Mobility

11. Council received an update regarding the status of national mobility. The National Mobility Agreement 2013 and Territorial Mobility Agreement 2013 have been approved by all jurisdictions, but have not yet been implemented.
12. Implementation is awaiting approval by the government of Quebec of the required changes to the Barreau's regulations. Pursuant to the statutory regime governing all professions in Quebec, amendments to regulations require government approval.

##### National Committee on Accreditation (NCA)

13. The NCA reports that in the first eight months of 2014/2015 it:
  - a. received 847 applications for assessment (consistent with the number of applications received last year);
  - b. issued 662 Certificates of Qualification;
  - c. considered 11 appeals of NCA assessments (8 dismissed, 2 successful in whole or in part, and 1 requiring further materials to be provided); and

- d. delivered 3,724 examinations, which were written both in Canada and in locations around the world.
14. The NCA also approved a new [Assessment Policy](#), effective January 1, 2015 that brings it into compliance with the National Requirement.

#### Standing Committee on Access to Legal Services

15. The Standing Committee on Access to Legal Services (“SCALS”) facilitates the Federation’s strategic objective of collaborating with other participants in the legal system to foster greater public satisfaction with access to legal services. Law Society CEO Robert Lapper is a member of this Standing Committee. The Standing Committee has recently:
- a. Established a working group to facilitate exchange of information between law societies about access to justice;
  - b. Assisted in planning and attended an in-person meeting of representatives of provincial and territorial access to justice committees held in Toronto on March 13, 2015; and
  - c. Prepared a submission to the Federal Court’s Rules Committee in response to a public consultation, describing the Federation and law society approaches taken with respect to limited scope retainers.

#### Standing Committee on the Model Code of Professional Conduct

16. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code. The Law Society’s Jim Varro, Director of Policy, serves on the Standing Committee.
17. In the first quarter of 2015, the Standing Committee has engaged in numerous discussions with its law society liaisons, in an effort to more deeply integrate law society and Standing Committee work on the Model Code. Several of its members participated in a CBA-Federation Annual Ethics Forum, held in Toronto on March 6, 2015.
18. The Standing Committee also continues to consider potential amendments to the Model Code. It is studying submissions it received in response to public consultations held between July and November 2014 on a number of draft amendments to the Model Code, including, for example, proposed rule changes to eliminate language that stigmatizes those suffering from mental health problems or that might discriminate against equity seeking groups, and proposed new guidance for communicating with expert witnesses. The Standing Committee is also drafting amendments related to lawyers departing from law firms, having consulted with several law society liaisons regarding this area. It is also

preparing draft amendments related to dishonesty/fraud by lawyers, which will be included in its next round of consultations with all law societies.

#### National Requirement Review Committee

19. The National Requirement for entry to law society admission or licensing programs was approved in 2010, and takes effect in 2015. In June 2014, the Federation Council approved the establishment of a National Requirement Review Committee (the “Review Committee”), and at its October meeting Council approved this Committee’s Terms of Reference for it to:
  - a. Conduct an initial evaluation of the National Requirement focusing on identifying immediate issues that have become evident as part of early implementation; and
  - b. Consider and make recommendations on whether to include a non-discrimination provision in the National Requirement.
  
20. Following extensive consultations by the Federation Executive with respect to the composition of the Review Committee, at its Ottawa meeting Council approved the appointment of the following individuals to the Review Committee:
  - (a) Thomas G. Conway, Federation President, Chair
  - (b) Herman Van Ommen, Q.C. (Law Society of British Columbia)
  - (c) Kevin Feth, Q.C. (Law Society of Alberta)
  - (d) Peter Wardle (Law Society of Upper Canada)
  - (e) Tilly Pillay, Q.C. (Nova Scotia Barristers’ Society)
  - (f) Shauna Van Praagh (Faculty of Law, McGill University)
  - (g) Trevor Farrow (Osgoode Hall Law School)
  - (h) Diana Miles (Executive Director, Organizational Strategy /Professional Development & Competence, Law Society of Upper Canada)
  
21. In addition, the Chairs of the Canadian Common Law Program Approval Committee and the National Committee on Accreditation or their respective designates will be appointed as *ex officio* members without voting rights so as to ensure effective dialogue between the Canadian Common Law Program Approval Committee, the National Committee on Accreditation and the Review Committee.
  
22. Council approved amended terms of reference which require the Review Committee to report to Council by May 2015 with its proposed work plan.

#### Canadian Common Law Program Approval Committee

23. Laurie Pawlitz, Treasurer Emeritus of the Law Society and Chair of the Canadian Common Law Program Approval Committee (the “Approval Committee”), presented a report on the Approval Committee’s recent activities. Approval Committee members include Morgan Cooper (Newfoundland & Labrador), Steve Raby (Alberta), Alan

Treleaven (British Columbia), Dean Lorne Sossin (Osgoode Hall Law School), Dean Mary Anne Bobinski (University of British Columbia) and Dean Sébastien Lebel-Grenier (Université de Sherbrooke). Law Society of Upper Canada policy counsel Sophia Sperdakos and Juda Strawczynski are providing policy and operational support to the Approval Committee.

24. Council reappointed Laurie Pawlitzka and Steve Raby to the Approval Committee for three year terms. Ms. Pawlitzka was re-appointed as Chair.
25. Dean Bobinski is stepping down as Dean of the University of British Columbia Faculty of Law, and her replacement will be determined later this year based on a nomination by the Canadian Council of Law Deans ("CCLD").
26. The Approval Committee is engaged in the iterative process of determining law school program compliance with the Federation's national requirement for entry to law society admission programs in Canadian common law jurisdictions ([the "National Requirement"](#)), which took effect January 2015.
27. Over the past several months, the Approval Committee's work has included:
  - a. Evaluating and making decisions on all Canadian JD programs, approving 19 programs, and providing preliminary approval for 2 programs, pending graduation of their first classes;
  - b. Finalizing the 2015 law school report form;
  - c. Developing criteria to evaluate joint programs (as joint and dual programs will be subject to the National Requirement in 2017);
  - d. Liaising with the CCLD; and
  - e. Developing a list of issues which should be considered by the National Requirement Review Committee.
28. As described above, the Approval Committee will work closely with the Review Committee, in addition to continuing with its regular mandate. It will be meeting in June 2015 to, *inter alia*, consider the 2015 law school reports.

#### National Admission Standards Project (NASP)

29. The National Admission Standards Project ("NASP") was established in 2009. At that time, the CEOs of the law societies and the Council of the Federation identified the need to develop national standards for admission to practice. The project reflects an important strategic priority identified by the Council of the Federation: the development and implementation of high, consistent and transparent national standards for the regulation of the legal profession.
30. The driving force behind national admission standards is mobility. Through the Federation's mobility agreements, members of the legal profession in Canada today

enjoy unprecedented mobility between jurisdictions. Changes to the federal provincial-territorial Agreement on Internal Trade have also resulted in mobility rights for all licensed professionals and certified workers being enshrined in legislation.

31. Mobility has generated increased reflection about what the law societies do and why. With admission as a lawyer in one jurisdiction effectively opening the door to admission in all jurisdictions in Canada, mobility may make different regulatory practices difficult to justify as being in the public interest. The NASP seeks to address this concern through common and consistent standards.
32. General oversight of the project is provided by a Steering Committee comprised of:
  - (a) Don Thompson, Q.C., Executive Director, Law Society of Alberta, Chair;
  - (b) Tim McGee, Q.C., CEO, Law Society of British Columbia;
  - (c) Alan Treleaven, Director, Education and Practice, Law Society of British Columbia;
  - (d) Jeff Hirsch, Council Vice-President and President-elect and past president, Law Society of Manitoba;
  - (e) Allan Fineblit, Q.C., former CEO, Law Society of Manitoba;
  - (f) Laurie Pawlitzka, Council member and past Treasurer, Law Society of Upper Canada;
  - (g) Robert Lapper, CEO, Law Society of Upper Canada;
  - (h) Diana Miles, Executive Director, Organizational Strategy / Professional Development and Competence, Law Society of Upper Canada;
  - (i) Lise Tremblay, CEO, Barreau du Quebec;
  - (j) Bâtonnier Bernard Synnott, Barreau du Quebec;
  - (k) Darrel Pink, Executive Director, Nova Scotia Barristers' Society;
  - (l) Bâtonnière Marie-Claude Bélanger-Richard, Q.C., Federation past president and former Bâtonnière, Law Society of New Brunswick; and
  - (m) Jonathan Herman, Federation CEO.
33. The Steering Committee is supported by Frederica Wilson, Senior Director, Regulatory and Public Affairs, Stephanie Spiers, Director, Regulatory Affairs and project manager, and Daphne Keevil-Harrold, Policy Counsel.
34. The NASP's work relates to the development of a profile of the competencies required upon entry to the profession and their assessment, and developing a standard for ensuring that applicants meet the requirement to be of good character.
35. The NASP developed the National Competency Profile, a profile competency required upon entry to the profession. It has been adopted by 13 law societies subject to the development and approval of a plan for implementation, including developing an appropriate assessment mechanism.
36. The NASP continues to focus on how the National Competency Profile will be assessed. In 2014, the NASP met with ten law societies to consider a range of possible methods for assessing the competencies. It is now developing a Business Plan to provide the

vision and structure for moving forward with developing a national qualifying assessment regime. It will be based on developing a defensible assessment program that will be developed and implemented in phases, with each phase building on the last. The Business Plan will also outline costs and timelines for the initiative.

37. The NASP intends to circulate the Business Plan together with a proposal for consideration, and to begin meeting with law societies in the spring of 2015.
38. It will be up to each law society to decide whether they are ready to commit to the proposed plan, and it may be that not all law societies will be ready to move forward at the same time. Law societies that commit at the outset will have the opportunity to be involved in the development process. Some law societies may decide to take a wait and watch approach, and join in at a later stage of implementation. Once a critical mass of law societies have decided to participate in the assessment plan, the technical work required to develop the assessment will begin. Development will involve law society staff from the participating jurisdictions with the relevant expertise. Law societies involved in the new assessment regime will be consulted and have opportunities to provide their input as the project progresses.
39. In addition to its work related to assessing competencies, the NASP continues to consider the development of a national Suitability to Practice / Good Character Standard through its Suitability to Practice Working Group comprised of staff from several law societies. The Law Society of Upper Canada's Sophia Sperdakos and Naomi Bussin serve on this Working Group.
40. The Suitability to Practice Working Group has considered feedback received in response to a fall 2013 consultation report on the Suitability to Practice / Good Character standard, and, based on the feedback received to date, will be circulating a further consultation report to law societies shortly.

#### National Discipline Standards Project (NDSP)

41. The National Discipline Standards Project ("NDSP") was launched in 2010 to develop national standards for the handling of complaints and discipline matters. After piloting 23 standards, 21 standards were included in the final National Discipline Standards. These final standards were approved on April 3, 2014 by Council for referral to the law societies for adoption and implementation by January 1, 2015. The Law Society of Upper Canada and all other law societies have now approved the standards and have agreed to participate in the implementation phase of the National Discipline Standards project.
42. On April 3, 2014 Council also approved terms of reference for a standing committee of the Federation to monitor implementation of the standards and to recommend such refinements to them as might be advisable in the future. Zeynep Onen, the Law Society's Director of Professional Responsibility, has been appointed to the standing

committee.

43. The standing committee has begun considering a variety of issues related to the implementation of the standards. Most law societies provided a first progress report in early 2015, and a further report will be provided later this year. Reporting data will assist the standing committee in identifying problems with the standards and areas for fine tuning.
44. Finally, as Standard 20 requires mandatory, annual training for adjudicators and references an optional national curriculum, the Standing Committee has established an Adjudicator Training Working Group whose mandate is to make a recommendation on a national curriculum for adjudicator training and effective delivery methods. The Law Society Tribunal's David Wright has been appointed to this Working Group which first met in March 2015.

#### Government Relations – Submission on Bill C-44

45. The Federation monitors federal legislative initiatives to determine whether they raise any issues of concern falling within the mandate of the Federation and its members. When proposed legislation raises issues relating to such matters as protection of solicitor-client privilege, the rule of law, or the independence of the legal profession, or where there might be an impact on the regulatory functions of law societies, the Federation's Executive assesses whether it would be appropriate to make submissions to the government and perhaps seek the opportunity to appear in person before parliamentary committees reviewing the legislation.
46. Where the position that might be taken by the Federation is consistent with those it has previously taken publicly, the Executive authorizes the submissions. In the event that a legislative initiative raises novel concerns, the Executive seeks the approval of Council and the views of the law societies before taking any position.
47. In November 2014 the Executive approved submissions regarding Bill C-44, *An Act to Amend the Canadian Security Intelligence Service Act and other Acts*. The Federation's submissions related to concerns that the proposed amendments could lead to situations in which a person who has been detained on the basis of confidential human source information may not know the basis for detention and may be denied the right to effective counsel. The Federation's submissions were sent to the Standing Committee on Public Safety and National Security. As the proposed legislation was approved by the House of Commons without change, referred to the Senate earlier this year, and subsequently referred to the Senate Standing Committee on National Security and Defense, the Executive has renewed the Federation's submission before this Senate committee.

**CanLII REPORT**

48. The Federation is the sole member of the Canadian Legal Information Institute (CanLII), which is financed by a separate membership levy paid through the Federation. CanLII President and CEO Colin Lachance reported on CanLII's activities and plans to Federation Council.
49. As announced in February, Mr. Lachance will be stepping down as President and CEO of CanLII effective April 30, 2015. A national search to find the next CanLII leader is ongoing.



**TAB 12**

## **MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE**

**April 23, 2015**

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### **Interim Report to Convocation**

#### **Task Force Members**

Linda Rothstein (Co-chair)  
Peter Wardle (Co-Chair)  
Howard Goldblatt (Vice-Chair)  
Larry Eustace  
Julian Falconer  
Michelle Haigh  
Susan Hare  
Jacqueline Horvat  
Virginia MacLean  
Derry Millar  
Paul Schabas

**Purpose of Report: Information**

**Prepared by the Policy Secretariat  
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Interim Report

**TAB 12.1**

## **TASK FORCE PROCESS**

1. Since its establishment in November 2013, the Task Force has met on the following dates:
  - March 13, 2014
  - April 25, 2014
  - May 8, 2014
  - August 27, 2014
  - November 26, 2014
  - March 30, 2015

TAB 12.1

**INFORMATION****INTERIM REPORT****MENTORING AND ADVISORY SERVICES PROPOSAL TASK FORCE****Issue under Consideration**

2. The Task Force is mandated to consider the nature of current mentoring and advisory services programs and possible initiatives for enhancing services, while addressing a number of factors, including the financial consequences of various approaches.

**Rationale**

3. The components of the 2011-2015 strategic plan relating to post-licensing competence included as one element of its work plan “developing initiatives to institutionalize mentoring, advisor and other support services for lawyers and paralegals.”
4. The Task Force was established in November 2013 to consider issues that could guide the realization of this component of the strategic plan. Other key elements of the post-licensing competence priority put in place over the last four years have enabled the discussion of advisory initiatives to be more coherently situated within the Law Society’s competence mandate.

**Key Issues and Considerations**

5. There are currently numerous mentoring programs offered by legal organizations and the Law Society to address a variety of licensee needs. In general, however, they do not reflect a coherent developmental framework.
6. In considering the development of enhanced mentoring and advisory initiatives the Task Force has determined that it is essential to consider,
  - a. specific goals and objectives;
  - b. the fundamental components of any initiative, including measurements of success;
  - c. whether the initiative should be directed at mentoring for career networking, advisory services for addressing substantive file issues, coaching with a view to longer term professional development or some combination;
  - d. the intended audience/participants and relevant stakeholder input;

- e. the appropriate advisor/mentor/coach profiles, including attention to, and training for, cultural competence;
- f. accessibility of services across Ontario;
- g. the most effective structure for any initiative;
- h. the possible role of the Law Society;
- i. the 2015-2019 strategic planning process; and
- j. cost implications.

## DISCUSSION

### Background

7. The Task Force's mandate has included considering mentoring initiatives in place in Ontario and in other jurisdictions. The Task Force has examined reports and information on mentoring done over a number of years on this subject. **TAB 12.1.1: Mentoring Programs for Regulated Professionals** looks at international programs for lawyers and other professions. The Task Force has also reviewed preliminary information on mentoring programs for lawyers and paralegals in Ontario. The information does not provide an exhaustive survey of initiatives and the number and nature of programs vary over time, with some ending or becoming inactive and others beginning. The information has been useful to highlight the kinds of programs that exist or have existed. The Task Force continues to update its information.
8. In considering the information, the Task Force has noted that with respect to international programs in law or programs in other professions, their nature and profile must be analyzed with an understanding of their specific context. For example, some are developed in jurisdictions where pre-licensing experiential training requirements are minimal. Programs are not identical, have different goals, occur at different points in professionals' careers and are in some cases mandatory, in others voluntary and in still others a mixture. In the Ontario context, programs offered by legal organizations are diverse and designed in the context of the organizations' needs, budget and mandate.
9. The information has been helpful to enable the Task Force to see a snapshot of the mentoring landscape and to reflect on interesting and often innovative approaches. At the same time, the Task Force has concluded that to frame the development of a broad reaching initiative in Ontario, it will be more useful to consider the specific factors that that should underlie the initiative in the Ontario context. In its view, based on its observations and research to date, the following factors should play a role in the development of the Task Force's ultimate proposal:

- a. Mentoring and advisory services are linked to a post-licensing preventive competence strategy that may enhance practices and assist practitioners to avoid the Law Society's discipline or other conduct streams.
- b. While "mentoring," as used in the traditional sense to mean networking and general career advice is a valuable tool, what is better described as an advisory and coaching program may more effectively address licensee needs.
- c. A well-focused system of advisor and coaching services, designed to support the needs of lawyers and paralegals who might otherwise not have practical guidance from experienced colleagues, may address a gap in the professional development of such legal practitioners.
- d. Access to information on substantive law and practice management to assist legal practitioners has never been more readily available and easier to access. At the same time, however, sole and small firm practitioners may lack the contacts and advisors who can assist them to distill the wealth of information, apply it most effectively and develop advising relationships that can become part of their professional development plan.
- e. The usefulness of a coherent advisory services initiative would be in its ability to support the needs of those lawyers and paralegals to whom services are directed in completion of legal tasks, including daily management of client files, substantive and procedural issues relating to those files and practice management obligations.
- f. Any proposal the Law Society puts forward must have articulated goals and be capable of evaluation and measurement to determine,
  - i. its progress;
  - ii. whether its goals are being met;
  - iii. whether it is focusing on those most likely to benefit from it;
  - iv. the seriousness and commitment of those who are using it;
  - v. the effectiveness of the advisors, including assessing their cultural competence; and
  - vi. whether it has the appropriate scope.
- g. Any discussion of an advisory services initiative with which the Law Society is to be involved must continue to come within its strategic priorities.

- h. Any discussion of an advisory services initiative with which the Law Society is to be involved must reflect a consideration of immediate and long term financial implications.

**Next Steps**

- 10. The Task Force will continue to consider the factors set out above in the context of the Law Society's strategic priority development, with a view to developing a proposal for Convocation's consideration for an appropriate advisory and coaching service initiative.



## Review of Mentoring Programs for Regulated Professionals

**FOR INFORMATION ONLY**

**PREPARED BY:**

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**April 2013**

This paper examines a variety of mandatory and optional mentoring programs that are provided to lawyers by their regulatory bodies and bar associations outside Canada, including the Hong Kong and Singapore Law Societies, U.S. State Courts, and the bar associations in Australia, New Zealand, and in England and Wales. For comparison purposes, the paper also includes a brief outline of the mandatory and optional mentoring programs developed by provincial and national organizations in Canada that are responsible for regulating the professions of accountancy, architecture, engineering, and medicine.

## 1. LAW

### United States of America

#### a) Mandatory Programs

In Georgia, Kentucky, Nevada, New Mexico, Oregon, and Utah, new lawyers are required to participate in a prescribed mentoring program. The programs are similar to the Law Society of Upper Canada's articling program, in that they are required as a condition of licensing or registration and the regulator prescribes learning objectives and other rules for the mentoring relationship.

**Georgia** was the first jurisdiction to make mentoring mandatory. Its "Transition into Practice Program" took effect on January 1, 2006 and it has since become a mentoring model for the other mandatory states. It combines mentoring with CLE in that the CLE component lays the groundwork for and supports the mentoring component.

The program offers three types of mentoring:

1. If a lawyer practises in a firm or organizational setting, s/he will have an "inside mentor" from that practice.
2. If the new lawyer does not practise with other lawyers (for instance, is a sole practitioner) s/he will have an "outside mentor" – someone who works outside of the new lawyer's office.
3. Group mentoring is available when the new lawyer is unemployed or does not work in a legal setting. Some firms, government agencies, and other organizations have developed their own "Master Mentoring Plans" that they use for all newly admitted attorneys subject to the Transition into Law Program. If an employer has such a plan, the mentor and mentee do not need to create and submit a written mentoring plan.

The only mentoring activity that new lawyers must complete is the Advocacy Experience and only if they appear as sole or lead counsel in Georgia's Superior or State Courts in a contested civil case or criminal trial. Mentoring activities and experiences can be created to best suit the needs and circumstances of the mentor and the mentee but must include the following:

1. Regular contact and meetings between the mentor and new lawyer
2. Continuing discussions between the mentor and new lawyer on at least the following topics: a) ethics and professionalism; b) relationships with clients, other lawyers (both in and outside the firm), the judiciary and the public, including unrepresented parties; c) professional work habits, organizational skills and practice management; d) economics

- of practising law in the relevant practice setting; e) responsibility and opportunities for pro bono work, Bar activities, and community service
- 3. Introduction to the local legal community
- 4. Specific planning for professional development and continuing legal education in and outside the firm
- 5. Periodic evaluation of the mentor-new lawyer relationship

If the lawyer fails to complete the mentoring program within one year, s/he must complete an approved Rehabilitation Plan or attend a session of the State Bar's Ethics School.

The results of a telephone survey, conducted by the Schapiro Research Group at one-year intervals during Georgia's two-year Pilot Project, showed that approximately 85% of both the mentors and the new lawyers rated the Pilot Project as satisfactory in varying degrees. The Committee on the Standards of the Profession noted that on professionalism measures, such as dealing with clients, the new lawyer's self-perceptions of their skills matched the perceptions of their mentors. Additionally, "the beginning lawyers' rating of their ability to handle the ethical aspects of law practice increased consistently from the baseline over the course of the Pilot Project. This was also true for dealing with other lawyers, judges, and court personnel." The Schapiro Survey also revealed that new lawyers' self-perceptions were positive and career satisfaction increased over the course of the Pilot Project. At the end of the second year, "60% of the group rated themselves "very satisfied with their legal careers." ("Best Practices for Legal Education: Mentoring Programs in the U.S.", <http://bestpracticeslegaled.albanylawblogs.org/2011/01/31mentoring-programs-in-the-u-s/>)

**Utah's** New Lawyer Training Program (NLTP) is very similar to the Georgia program and includes the same three kinds of mentoring. However, Utah provides fewer guidelines for mandatory activities, e.g. working with clients is mandatory, while negotiation is elective. For both mandatory and elective subjects, new lawyers have a variety of activities that they either must or may complete. After the mentor and new lawyer develop a plan, they must submit it for approval by the NLTP program administrator and the New Lawyer Training Committee. Once the plan is approved, the new lawyer has 12 months to complete the NLTP.

The **Oregon** State Bar launched the New Lawyer Mentoring Program (NLMP) for incoming bar members in May of 2011. This mandatory program formalizes a process that for many decades took place organically, through connections forged at law firms and other close-knit bar communities. The NLMP offers new bar members one-on-one guidance on the elements of a highly competent practice, while promoting professionalism, civility and collegiality.

The program is loosely modeled on programs in Georgia and Utah, which have received accolades for giving all new bar members meaningful access to experienced lawyers and a well-developed mentoring program in their first year. The Oregon model emphasizes a flexible approach in which mentors and new lawyers take the core curriculum and shape it to best meet the needs of the new lawyer.

### **Pilot/Proposed Mandatory Mentoring Programs**

The **Supreme Court of South Carolina** ordered a pilot mandatory mentoring program for all newly admitted lawyers, which ran through 2012 and is being evaluated. The pilot required one-

on-one mentoring for every new lawyer on nine separate areas important to a successful, ethical practice. Law firms could be certified to mentor their own new associates. The program had to be completed within 12 months and mentees had to certify completion. New lawyers were expected to find their own mentors. Mentors received 2 hours of CLE credit.

The **Wyoming** Bar has proposed a New Lawyer Mentoring Program for all newly admitted lawyers. Mentors who complete the plan with at least one mentored new lawyer will receive an annual maximum of 15 hours of CLE, including one ethics hour.

#### **b) Optional Programs**

To date, optional programs for new and/or less experienced lawyers have been established by state bars in 20 U.S. states. For example, in the **Arizona** Bar Association's One-to-One Mentor Program, experienced lawyers answer substantive and procedural questions from mentees either over the telephone or in person.

The **Connecticut** Bar Association provides every newly admitted lawyer with access to an experienced member of the Bar, who has volunteered to provide guidance, direction, and advice for the new lawyer's first year of practice. The **Texas** Bar Association offers a similar program. Every other month, a group meeting of all participants takes place with programming planned around one or more specific mentoring topics. During alternate months, mentors and mentees meet in small groups or one-on-one.

#### **Pilot Optional Mentoring Programs**

**Colorado** is piloting an optional new member program in which the executive director of the Bar reviews applications and facilitates a match. Upon completion of the program, both the mentor and mentee are awarded 15 hours of CLE credit.

The **Maryland** Court of Appeals has adopted a pilot optional mentoring program for newly admitted applicants. The program is administered by the Court through the Executive Director of the Commission on Professionalism. The new law applicants and mentors select activities and topics from a Mentoring Plan, which guides their meetings throughout the course of a one-year mentoring term. Mentors and new applicants meet in-person at least 6 times.

The **Mississippi** Bar's Professionalism Committee is in the initial stages of establishing a pilot mentoring program for new applicants. The committee, in cooperation with both Mississippi law schools, is assigning applicants to participate in the program.

The Young Lawyer's Division (YLD) of the **South Dakota** Bar will choose mentors to participate in the program on an optional basis. Although the goal is that the mentor/mentee relationship will be indefinite, mentors and mentees are entitled to end their relationship at any time. The YLD requires mentors to sign and submit an agreement before they contact their mentees.

The **Alabama** Bar has discontinued its mentoring program. The program had matched 2 volunteer mentors with 8 mentees, each with fewer than 5 years as members of the Alabama Bar.

**Note:** The **National Legal Mentoring Consortium** consists of administrators and contributors of mentoring programs sponsored by law schools, Bar associations, State supreme courts, law firms, and other organizations. The Consortium is supported by the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. The purposes of the Consortium are

- to encourage mentoring in the legal profession
- to provide a venue for the exchange of ideas related to mentoring in the legal profession
- to provide resources to aid in the successful creation and operation of mentoring initiatives within law firms, Bar organizations, law schools, courts, and other entities within the legal profession

The Consortium's online list of state-level mentoring programs for mostly new lawyers is set out in Appendix A (p. 10).

### **Australia**

Law Society-sponsored mentoring programs in Australia include the following:

1. The Law Institute Victoria (<http://www.liv.asn.au/For-Lawyers/Careers-Centre/LIV-Mentoring-Program>) offers an optional **Mentoring Program** that links experienced legal practitioners with those seeking professional development, support or guidance. Mentees can view the list of potential mentors on the Law Institute's online Mentor Directory.
2. The Law Society of New South Wales launched an optional **Women's Mentoring Program** in 2012. Female members of the Law Society and 10-15 years post-admission submitted applications to be matched with more senior and experienced members. There were 42 applications from mentees and only 25 mentors. Applications for the 2013/14 program opens in July 2013.
3. The Law Society of Western Australia (<http://www.lawsocietywa.asn.au>) offers an optional mentoring program for Aboriginal or Torres Strait Islander law students. They encourage lawyers who are members of those groups to apply to be mentors. Mentors must participate in a 2-hour training session focussing on the skills necessary to develop a mentoring relationship.
4. The Family Law Committee of the Law Society of Australian Capital Territory (<http://www.lawsocact.asn.au/content/home2/index.asp>) has offered an optional mentoring program for family lawyers since 2005. The program serves a wide range of practitioners in all areas of the territory. Each paired mentor and mentee normally work together for 2 or 3 years. Materials and general guidelines are provided to participants but the mentor and mentee agree at the outset what the role the mentor is to take, the mode and frequency of contact between the mentee and mentor, the goals, and the duration of the mentoring relationship.

## England and Wales

The Law Society of England and Wales' Law Society **Diversity Access Scheme**, which has been in operation since 2004, provides full scholarships for the Legal Practice Course (LPC) to entrants to the solicitors' profession who also face exceptional, social, educational, financial or personal obstacles to qualification.

This optional program is aimed at boosting social mobility and making the legal profession more accessible to those from diverse backgrounds who are financially disadvantaged. The students receive insights into working in certain areas of law as well as support and advice on obtaining a training contract, flexible working, paralegal work, and issues for mature/disabled students.

Mentors sign up to a minimum of 12 months (October to September) and complete a detailed application form on the area(s) where they are able to offer assistance; mentees do the same. Both mentors and mentees are issued detailed mentoring guidelines outlining the mentoring process, to ensure that both have a clear understanding and are then matched by areas of experience and specialism, as opposed to by geographical location.

All mentors must attend a free half-day training session in order to be able to participate in the scheme. It is accredited with 3.5 CPD hours and mentors are required to sign the registration form on the day to claim the allocated hours.

The Law Society has also developed an **Advocacy Section** to provide solicitor advocates with optional mentoring, training, and networking opportunities at the circuit and national level. It was developed for the 5,200 solicitors who have qualified as higher court advocates in either criminal or civil jurisdictions. The objective of the new service is to equip solicitors with the necessary skills and confidence to appear in the courts. In the first half of 2012, the section focused on the criminal solicitor advocates, as their needs were considered the most acute. The Law Society also wanted to help them prepare for the introduction of the new Quality Assurance Scheme for Advocates assessment regime. The service will also cater to the needs of advocates at the magistrates' and county court levels, as well as civil, family, and children advocates.

## Ireland

The Law Society of Ireland launched a new optional **Mentor Support Programme** in 2012. Its goal is to provide support to newly qualified solicitors by putting them in touch with more senior colleagues who provide guidance based on their own experience. The program was designed to help new solicitors, qualified for fewer than three years, to build their confidence and knowledge about the legal profession and further develop their professional skills. The programme is being provided on a pilot basis initially, with a limited number of mentors. If a suitable match is made, the mentor and new solicitor work together over a 12-month period to confidentially discuss issues by face-to-face meetings, telephone, and/or e-mail. A guide to the new program, and the new solicitor application form and agreement are provided on the members' area of the "support services" section of the Law Society's website.

## New Zealand

The New Zealand Bar Association offers an optional **Mentoring Programme** designed to help new members and less experienced practitioners receive support and guidance in their professional development from a senior member of the Association.

The Bar Association states on its website (<http://www.nzBar.org.nz/MainMenu>) that “[T]he Mentoring Programme is an informal arrangement that is made between a mentor and mentee.” The New Zealand Law Society Council, of which the Bar Association is a member, describes the approach as follows: “[T]here are far too many variables to consider a “one size fits all” approach. For that reason the aim of the programme is to be flexible in a way that allows a mentee to develop at a comfortable pace...the program is not a substitute for continuing legal education or intended as a junioring scheme. Nor is it a ‘friends panel.’ Essentially, the mentor is someone who can provide a helpful ‘sounding board’ for the mentee in advancing his/her professional development.”

## Singapore

The Law Society of Singapore offers an optional **PracMentor** program under which young lawyers may seek guidance and advice from a senior volunteer lawyer on issues in the following practice areas: administrative and constitutional law; arbitration; banking; bankruptcy; insolvency and judicial management; civil procedure; construction; conveyancing; corporate; criminal; defamation; equity and trusts; evidence; family law; intellectual property; international business transactions; labour and employment; personal injury claims; shipping and admiralty; tax; probate and wills. To seek guidance, lawyers call a staff member whose name and number appears on the Law Society’s website (<http://www.lawsociety.org.sg/>)

The Law Society also runs two optional mentoring programs for lawyers who have started their own practice. Under the **Practice Consult** scheme, practitioners with queries on legal practice management issues such as practice risk management, business development and planning, human resources and personnel management, and client relationships and communication may seek assistance from a legal practice management consultant. The cost of the first hour of consultation is borne by the Society. Under the **Mentoring Scheme for Small Firms**, proprietors of small law practices may seek the mentorship of senior lawyers on practice management issues. Mentorship is provided on an *ex gratia* basis.

## 2. OTHER PROFESSIONAL ENVIRONMENTS

### A. Accounting

CMA Ontario (<http://www.cmaontario.org/Home.aspx>) requires new Consulting Certified Management Accountants who offer Compilation, Financial Statement Preparation, and/or Personal or Corporate Taxation services, to engage a CMA Ontario approved mentor. New CMA’s receive details about the mandatory mentoring program when they receive their Practice Registration Form. The Consulting CMA must engage a mentor for a minimum of 6 months. At the end of that period, the mentor issues a report to the Society indicating any strengths or weaknesses in the management of the member’s practice. If the Society’s practice standards have not been met, the mentoring period is extended. In geographic regions where a CMA

mentor is not available, the Society establishes a list of acceptable non-CMA licensed public accountants. The mentor is required to review all engagements undertaken by the member prior to any release to a client.

The Institute of Chartered Accountants of Alberta (ICAA) offers a **Foreign Trained CAs Mentoring Program** designed to facilitate the exchange of knowledge from more experienced CAs to less experienced CAs and registered CA students. It matches CA mentors with foreign-trained professionals who are either internationally trained and are interested in earning, or in the process of earning, their CA designation, or foreign-trained CAs very early in their careers. The duration of the program is one year and the focus is on soft skills, workplace/employment skills, and cultural norms and expectations. Mentors do not necessarily have to possess a background similar to that of the mentee.

The ICAA intends to expand the mentorship program to the wider CA and CA student community. To assist their mentors and mentees, the ICAA adapted the Association of Professional Engineers and Geoscientists of Alberta's (APEGA) mentorship handbook, which includes worksheets and guidelines. The program's guiding principles are set out on the ICAA website: <https://www.albertacas.ca/ServicesforCAs/MentorshipProgram>

## B. Architecture

Canadian architecture graduates are required to secure a mentor during their internship with the **Intern Architect Program (IAP)** as a condition of licensure. The IAP is a national mandatory program that documents and evaluates internship activities, provides structure to the transition between education and registration, and encourages involvement of practitioners in the development of new architects. The IAP was established by the [Committee of Canadian Architectural Councils \(CCAC\)](#), which is composed of representatives from each of the ten provincial associations of architects.

Mentors, who must be Ontario Architects, are required to meet with their interns two or three times a year, review their progress, and offer constructive advice. The OAA notes that every year, interns delay licensure because they have difficulty finding a mentor. Mentors are eligible to claim up to six Continuing Education hours per cycle.

The OAA's Young Architects and Interns Forums are considering the introduction of supplemental and optional forms of mentorship that could be offered in addition to the existing mandatory system. Forms of mentorship could include collaborative design projects for not-for-profits, design charettes (group problem-solving activities) and/or community build projects.

## C. Engineering

Professional Engineers Ontario (PEO), the licensing and regulating body for engineers in the province, offers the **PEO Mentorship Program** (<http://www.peop.on.ca/Program/mentorship.html>), which links Engineering Interns with Professional Engineers licensed with PEO to provide guidance and support as the interns progress toward professional licensure status. The program is optional and not all PEO Chapters participate in it.

**Women in Engineering Mentoring Initiative (WEMI)** is an initiative of the Ministry of the Environment and supported by partner ministries and organizations. Launched in 2011, WEMI provides mentoring and guidance to women engineering students in their final year of study by partnering them with women engineers working across the Ontario Public Service. It is a virtual mentoring program, making it flexible and accessible to mentors and mentees across Ontario. Mentors and mentees connect at least six times during the course of the program, which follows the academic year from September to May. It is designed as an optional learning and development opportunity for women engineering students in their final year of study and women engineers in the Ontario Public Service (OPS). Participants are encouraged to share insights and experiences through formal and informal meetings and dialogue.

#### **D. Medicine**

The College of Physicians and Surgeons of Ontario (CPSO) defines “Mentor” as a member of the CPSO who serves to guide the physician through the health care system in Ontario.” The mentor’s role is to provide advice on how to deal with clinical and other practice concerns. Mentors do not have the responsibilities of supervisors, who are required to provide supervision reports to the CPSO, although mentors may sometimes augment supervision arrangements. Some residencies include a mentoring component.

In 2007, an e-Mentorship Program was launched by the Hamilton-based de Souza Institute ([http://fhsson.mcmaster.ca/apnment/index.php?option=com\\_content&view=article&id=51](http://fhsson.mcmaster.ca/apnment/index.php?option=com_content&view=article&id=51)) with funding from the Ontario Ministry of Health and Long-Term Care Inter-professional Coaching and Mentorship Fund. The initial program focused on the mentorship needs of oncology advanced practice nurses in Ontario and was led by the Mentorship Sub-Committee of Cancer Care Ontario's Advanced Practice Nursing Community of Practice in partnership with the School of Nursing at McMaster University. During the first year of the program, a rigorous evaluation demonstrated high participant satisfaction with program services and a positive impact on mentee and mentor job satisfaction and role implementation.

In September 2008, the de Souza Institute collaborated with Cancer Care Ontario and McMaster University to become a formal partner and the primary funder of the Oncology Advanced Practice Nurse Inter-professional e-Mentorship Program.

The program has now expanded to provide career development and mentorship services to all nurses in the province involved in cancer care. In 2009, a Steering Committee involving nurses and healthcare leaders from a variety of sectors led the completion of a comprehensive needs assessment to inform the development of the expanded program. The program is located at the Juravinski Cancer Centre in Hamilton, Ontario.

Participants attend an in-person or online career development workshop to help them determine what their career and professional development needs are. Mentors and mentees use e-mail, Skype, online discussions, videoconferencing, and teleconferencing to communicate across Canada.

**APPENDIX A: National Legal Mentoring Consortium List of State-Level Mentoring Programs**

<http://www.legalmentoring.org/index.shtml>

**Alabama**

<http://www.alaBar.org/mentoring/>

*Optional*

*Status: Discontinued*

*Type: Group new lawyer mentoring program*

The program is designed to provide support and networking for professional and client development issues. The program is not intended to provide substantive advice or training in the practice of law. Each mentor group consists of two volunteer mentors and eight mentees, each with less than five years as members of the Alabama Bar.

**Arizona**

<http://www.azBar.org/sectionsandcommittees/committees/mentorcommittee>

*Optional*

*Status: Ongoing*

*Type: Formal One on One Mentoring*

The program provides experienced attorneys as mentors to answer substantive and procedural questions and offer management ideas for less experienced attorneys. The mentees can receive advice either by asking questions by telephone or in person through the One-to-One Mentor Program.

**Arkansas**

[http://www.arkBar.com/pages/mentor\\_program.aspx](http://www.arkBar.com/pages/mentor_program.aspx)

Note: Log in required for detailed information on this program.

**Colorado**

<http://www.lawweekonline.com/2011/09/new-mentoring-program-for-new-lawYERS-approved/>

*Optional*

*Status: Pilot*

*Type: Individual New Lawyer Assistance*

The program provides experienced attorneys as mentors to newly admitted attorneys. The executive director reviews applications and facilitates a match. Upon completion of the program both the mentor and mentee are awarded 15 hours of CLE credit.

**Connecticut**

[https://www.ctBar.org/userfiles/Sections/YLS/Mentoring\\_Program\\_flyer.pdf](https://www.ctBar.org/userfiles/Sections/YLS/Mentoring_Program_flyer.pdf)

*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Assistance*

The program provides every new lawyer newly admitted to the State Bar of Connecticut with meaningful access to an experienced member of the Bar, who will provide guidance, direction and advice the new attorney will require during their first year of practice; the customs, usages and unwritten rules of practice, and the ethical and professional values that represent the best traditions and highest aspirations of the legal profession.

**Delaware**

<http://dsba.org/index.php/standing-committees/professional-guidance.html>

*Optional*

*Status: Ongoing*

*Type: Individual/ Group Mentoring Program*

This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

**Florida**

<http://www.floridaBar.org/tfb/tfbmentor.nsf/welcome?openform>

*Optional*

*Status: Ongoing*

*Type: Law Students Communicate with Mentors Via Email*

**Georgia**

[http://www.gaBar.org/programs/transition\\_into\\_law\\_practice\\_program/](http://www.gaBar.org/programs/transition_into_law_practice_program/)

*Mandatory*

*Status: Ongoing*

*Type: Individual New Lawyer Mentoring Program*

The transition into law program assists beginning lawyers with their transition from student to professional. The educational program combines a mentoring component with a CLE component. It is mandatory for any newly admitted active member of the State Bar of Georgia admitted after June 30, 2005.

**Idaho**

[http://isb.idaho.gov/member\\_services/mentorprogram.html](http://isb.idaho.gov/member_services/mentorprogram.html)

*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Assistance*

The program assists new lawyers in the transition from law school to a successful new practice. Mentees are paired with an experienced lawyer in their local community who has agreed to respond to general questions, give suggestions, and offer guidance about the practical aspects of practicing law.

**Illinois**

<http://www.isba.org/mentorcenter/>

*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Assistance*

The ISBA offers a Commission-Approved Mentoring Program. In this year-long mentoring program, the ISBA uses the Commission developed structured curriculum which pairs experienced lawyers with new lawyers to provide guidance during the first year of practice. Upon successful completion of the curriculum, both the mentor and mentee will be eligible to receive 6 hours of PMCLE credit.

**Indiana**

<http://www.inBar.org/ISBALinks/MentorMatch/tabid/382/Default.aspx>

*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Mentoring Program*

The ISBA will help locate a mentor from their database or new attorneys can find a mentor on their own. Once mentees have a mentor, they schedule their first meeting they submit the "Mentoring Agreement" to the ISBA. Once the individual curriculum is designed for the program to receive your CLE/Ethics/APC Credits, all the features of the program and the curriculum can easily be downloaded from the ISBA website. The ISBA gives some materials to read for the program. Lastly, when the necessary 6 hours of mentoring time are completed and the mentor and mentee have concluded all four quarters of time and discussion, they can submit the Certificate of Completion signed by the mentor and mentee to receive the appropriate accreditation.

**Kentucky**

<http://www.kyBar.org/>

*Mandatory*

*Status: Pilot*

*Type: Individual New Lawyer Mentoring Program*

The Kentucky New Lawyer Pilot Program assists beginning lawyers in their transition from student to professional. The main goal of the program is to determine whether a mandatory uniform mentoring program is appropriate and practical to all types of legal practice.

**Louisiana**

<http://www.lsba.org/Mentoring/Mentoring.asp>

*Optional*

*Status: Ongoing*

*Type: Informal Question/ Answer Assistance Via an Internet Based Program*

The program enables Bar members to seek advice and discuss topics including: (1) practice and law office management related issues; (2) issues involving such matters as personnel, escrow or other accounts; (3) substantive areas of law and related procedural issues; (4) appropriate and professional conduct and how to deal with inappropriate conduct; and (5) the importance and means of being involved in Bar and community activities and in developing a support network for a lawyer's practice. The purpose of the mentoring relationship is to provide counseling, guidance and an open atmosphere for learning.

**Maryland**

<http://mdcourts.gov/professionalism/mentoringprogram.html>

*Optional*

*Status: Pilot*

*Type: Individual New Lawyer Mentoring Program*

The Court of Appeals has adopted a pilot mentoring program for newly admitted Maryland attorneys. The pilot program is administered by the Court through the Executive Director of the Commission on Professionalism. New admittees and mentors select activities and topics from a Mentoring Plan, which guides their meetings throughout the course of a one-year mentoring term. Mentors and new admittees meet in-person at least six times, during which they will engage in various professional activities.

**Massachusetts**

<http://www.massBar.org/for-attorneys/mentor-program>

*Optional*

*Status: Ongoing*

*Type: Informal Question/ Answer Assistance Via Telephone*

The program offers Massachusetts Bar Association members the opportunity to speak with an experienced attorney for advice. Mentors are MBA members who are knowledgeable practitioners, in good standing, have practiced law for more than seven years and have volunteered to advise other attorneys on selected legal topics.

**Mississippi**

<http://www.msBar.org/professionalism.php>

*Optional*

*Status: Pilot*

*Type: Individual New Lawyer Mentoring Program*

The Mississippi Bar's Professionalism Committee is in the initial stages of establishing a pilot-mentoring program for new admittees. The committee, in cooperation with both Mississippi law schools, is assigning admittees to participate in the program.

**Missouri**

<http://members.moBar.org/lpmonline/themissouriBarmentoringprogram.html>

*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Mentoring Program*

Practicing law is a very complex profession. Through The Missouri Bar Mentoring Program you can regularly meet and talk with a lawyer who will answer your questions or help you find the answers, guide you, and ultimately help you make decisions that may affect your life for years to come.

**Nebraska**

<http://www.neBar.com/displaycommon.cfm?an=7>

**Nevada**

<http://www.nvBar.org/tip/faq#ls%20the%20Transitioning%20into%20Practice%20program%20mandatory?>

**Mandatory***Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

All newly admitted members of the State Bar of Nevada must participate in "Transitioning into Practice" unless exempt or deferred. New lawyers must enroll in the TIP program by filing the enrollment form within four weeks after admission to the Bar. Unless otherwise arranged, all new lawyers will begin the next available program cycle following their admission to the Bar. There are three ways that mentors will be identified for new lawyers. If a newly admitted lawyer is hired by a firm or organization, their employer may assign a senior associate to serve as their mentor. The second option is for a new lawyer to select a mentor from the published list of Supreme Court-appointed mentors or seek out a respected member of the Bar and ask if they are willing to serve as a mentor (in this latter instance, the Mentor will be provisionally approved pending their appointment by the Supreme Court). In the event that a new lawyer's choice of Mentor is not available, the Bar will match the new attorney with a mentor based principally on geographical and practice area.

**New Hampshire**<http://www.nhBar.org/uploads/pdf/MentorProgramBooklet.pdf>*Optional**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

Principle goals of the program are to promote professional development and provide assistance regarding ethical, practical and professional issues and concerns; helping support lawyers with their transition into the New Hampshire legal community, and promoting positive relationships among members of the Bar Association. Mentors and mentees are matched by the program.

**New Jersey**<http://www.njsba.com/about/news-archives/archived-press-releases/345.html>*Optional**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

Mentors and mentees can obtain applications to be a mentor or a protégé online. Mentors must have at least 15 years of practical experience and 10 years in the New Jersey Bar to serve as a mentor.

**New Mexico**<http://www.nmBar.org/Attorneys/Mentorship/mentorship.html>*Mandatory**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

The Bridge the Gap Mentorship Program was approved by the New Mexico Supreme Court, through NMRA 24-110. Bridge the Gap joins new attorneys, who have recently been admitted to practice, with experienced attorneys who serve as mentors for a twelve-month period. Mentors and new lawyers meet in person a minimum of seven times a year to discuss the practice of law and work on activities they choose from a mentoring plan.

**North Carolina**<http://www.ncBar.org/about/ncba-mentorship-program.aspx>*Optional**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

The goal of the program is to help the entire legal profession by assisting young lawyers develop good character, competence, and a deeper appreciation for the responsibilities of the profession. The program offers two distinct mentoring opportunities. The first is the more traditional approach in which a new lawyer and a more experienced lawyer develop an ongoing relationship, wherein the mentor guides the mentee through the many pitfalls associated with early practice. The second branch of the program is the situational mentoring initiative.

**Ohio**<http://www.sconet.state.oh.us/AttySvcs/mentoring/default.asp>*Optional*

*Status: Ongoing*

*Type: Individual New Lawyer Mentoring Program*

The program links experienced attorneys with new lawyers who have recently been admitted to the practice of law. Mentors and new lawyers meet in person six times during the course of a year to discuss topics and engage in activities they select from a mentoring plan. Upon completion of the program, mentors receive CLE credit and new lawyers receive required new lawyer training credit.

### **Oklahoma**

<http://www.okBar.org/members/committees/mentormatch.htm>

*Optional*

*Status: Ongoing*

*Type: Group/ Individual/ Transitional Lawyer Mentoring Program*

The program attempts to match new attorneys with mentors based on criteria for compatibility. It utilizes group mentoring, individual mentoring and also limited mentoring and is designed not only for new attorneys but also for experienced attorneys who may be venturing into a new area of the law. The program started as a pilot program in 2007 with plans to expand to a full program in 2008.

### **Oregon**

<http://www.osBar.org/programs/mentoring>

*Mandatory*

*Status: Ongoing*

*Type: Individual New Lawyer Mentoring Program*

The New Lawyer Mentoring Program (launched for incoming Bar members in May of 2011) formalizes a process that for many decades took place organically, through connections forged at law firms and other close-knit Bar communities. As the Oregon Bar has grown, the process of introducing new lawyers to the legal community, and guiding them through the transition to law practice, has grown more amorphous. The NLMP offers new Bar members one-on-one guidance on elements of a highly competent practice, while promoting the professionalism, civility and collegiality that make Oregon among the best places in the country to practice law. The program is loosely modeled on programs in Georgia and Utah, which have received accolades for giving all new Bar members meaningful access to experienced lawyers and a well-developed mentoring program in their first year. The Oregon model emphasizes a flexible approach in which mentors and new lawyers take the core curriculum and shape it to best meet the needs of the new lawyer.

### **South Carolina**

<http://www.sccourts.org/Bar/PilotMentoringProgram.htm>

*Mandatory*

*Status: Pilot*

*Type: Individual New Lawyer Mentoring Program*

The Supreme Court of South Carolina has ordered a pilot mandatory mentoring program for all newly admitted lawyers. The pilot program will run through 2012 and will be evaluated at that time for permanent adoption. The pilot program requires one on one or group mentoring for every new lawyer on nine separate areas important to successful, ethical practice. Law firms can be certified to mentor their own new associates. The program must be completed within 12 months and mentees must certify completion. New lawyers are expected to find their own mentors. Mentors receive 2 hours of CLE credit. Mentors also must not have a history of grievances.

### **South Dakota**

<http://www.sdBar.org/newsletters/color-nov.pdf>

*Optional*

*Status: Pilot*

*Type: Individual New Lawyer Mentoring Program*

Mentors chosen by the YLD participate in the program on an optional basis. Although the goal is that the mentor/mentee relationship will be indefinite, mentors and mentees are entitled to end their relationship at any time. They YLD must receive the signed mentor agreement before mentors are able to contact their mentees.

### **Tennessee**

<http://www.tba.org/programs/mentoring-program>

*Optional**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

During the mentoring experience, lawyers would be able to explore issues of professionalism, client and practice management, legal ethics, professional and leadership development, life balance and well-being, and pro bono/charitable work. The mentoring pair is required to complete exercises associated with the proposed eight core topics and any number of elective topics in its plan. Progress reports would be filed with the TBA, with CLE credit to be awarded at the completion of the program.

**Texas**[http://www.texasBar.com/AM/PrinterTemplate.cfm?Section=Transition\\_to\\_Practice](http://www.texasBar.com/AM/PrinterTemplate.cfm?Section=Transition_to_Practice)*Optional**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

The program is targeted to lawyers in their first several years of licensure. Newly-licensed lawyers are matched with more experienced attorneys who volunteer to participate in the project. Mentoring covers many areas, including law practice management, effective client representation, pro bono opportunities, career development, and other aspects of successfully practicing law. Every other month, a group meeting of all participants takes place with programming planned around one or more specific mentoring topics. During alternate months, mentors and mentees meet in small groups or one-on-one.

**Utah**<http://www.utahBar.org/nltp/Welcome.html>*Mandatory**Status: Ongoing**Type: Individual New Lawyer Mentoring Program*

The program matches new lawyers with more experienced lawyers for training during their first year of practice in professionalism, ethics, and civility; to assist new lawyers in acquiring the practical skills and judgment necessary to practice in a highly competent manner; and to provide a means for all Utah attorneys to learn the importance of organizational mentoring, including the building of developmental networks and long-term, multiple mentoring relationships. Lawyers newly admitted to the Bar with an active license are required to complete the program their first year of practice in Utah. The requirement for judicial law clerks is deferred until completion of the clerkship.

**Vermont**<https://www.vtBar.org/FOR%20ATTORNEYS/Mentorship%20Program/What%20is%20the%20Mentor%20Program.a>*SDX**Optional**Status: Ongoing**Type: Individual Mentor Matching Assistance*

The VBA Mentoring Program provides VBA members a way to seek and receive advice on, and to discuss, a wide range of general issues in the practice of law. These issues include, but are not limited to, substantive law questions, attorney-client communications, law office management, and professional ethics. The purpose of the program is to provide counseling, guidance, and an open atmosphere for learning and developing professional skills.

**Wyoming**<http://www.wyomingBar.org/>*Mandatory**Status: Proposed**Type: Individual Mentor Matching Assistance*

All new lawyers admitted to practice law in Wyoming on active status must timely complete the requirements of the NLMP unless otherwise specified in these Rules. Mentors who successfully complete the NLMP Plan with at least one mentored new lawyer will receive an annual maximum of 15 hours of CLE, which includes one ethics hour.



TAB 13

## Report to Convocation April 23, 2015

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### Professional Regulation Committee

#### Committee Members

Malcolm Mercer (Chair)  
Susan Richer (Vice-Chair)  
Paul Schabas (Vice-Chair)  
Robert Armstrong  
John Callaghan  
John Campion  
Cathy Corsetti  
Seymour Epstein  
Robert Evans  
Julian Falconer  
Patrick Furlong  
Carol Hartman  
Jacqueline Horvat  
Brian Lawrie  
Jeffrey Lem  
William C. McDowell  
Ross Murray  
Jan Richardson  
Heather Ross

**Purpose of Report: Information**

**Prepared by the Policy Secretariat  
(Margaret Drent (416-947-7613))**

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**For Information**

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**COMMITTEE PROCESS**

1. The Professional Regulation Committee (“the Committee”) met on April 9, 2015. In attendance were Malcolm Mercer (Chair), John Callaghan, Cathy Corsetti, Seymour Epstein, Robert Evans, Julian Falconer, Patrick Furlong (by telephone), Carol Hartman, Jacqueline Horvat, Brian Lawrie, Jeffrey Lem, Ross Murray, Paul Schabas (by telephone), Jan Richardson, and Heather Ross. Staff members attending were Robert Lapper, Q.C., C.E.O., Zeynep Onen, Elliot Spears, Jim Varro, Naomi Bussin, and Margaret Drent.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

Tab 13.2

**FOR INFORMATION****COMPLIANCE BASED, ENTITY REGULATION**

44. Further to its report to January 2015 Convocation, the Committee provides this status report on the development of a framework for compliance based, entity regulation at the Law Society.
45. As reported in January, on February 27, 2014, Convocation approved the development of a framework for the regulation of firms using a compliance based approach but has not yet determined a specific direction on the subject. The framework is being prepared for the consideration of Convocation. The Professional Regulation Committee has directed Law Society staff to develop models for its consideration.
46. A compliance-based, entity approach to professional regulation is characterized by the following:
  - a. acting proactively in addressing issues of public protection and the quality of services provided to the public;
  - b. enhancing public protection and public confidence in the Law Society and licensees by focusing on management principles and systems to improve practise and controlling practise management risks;
  - c. regulating more effectively through firm regulation in addition to regulation of individuals;
  - d. enhancing the autonomy of licensees and firms; and
  - e. designing changes that are efficient and not costly to the extent that is possible.
47. Entity regulation can be defined as the regulation of legal services provided by any entity, including a law firm. Currently law firms are the only type of entity that is permitted by the Law Society. Consequently, only law firms would be regulated unless any other type of entity were permitted by the Law Society.
48. In a compliance based model, the regulator sets out expected outcomes and licensees have flexibility in how they meet those objectives. The Law Society currently engages in some compliance based activities but the regulatory process is generally reactive, rules based, and focussed on the individual licensee.

49. The following advantages of entity-based compliance regulation have been identified:
- a. Entity regulation would permit a more proactive, compliance based approach for firms. In other jurisdictions, compliance based regulation has been found to have a significant positive effect on the number of complaints received about a firm and its licensees. Establishing regulatory objectives for entities may improve practice and therefore better protect clients and the public interest.
  - b. Entity regulation may enhance the Law Society's ability to respond to complaints, through systems that could, for example, provide for a designated person to respond to the Law Society or ensure that a response is obtained; a designated person responsible for trust accounting matters and for ensuring that the firm's record-keeping is current; a process where the Law Society provides notification to the firm that one of its licensees is under investigation; and addressing issues that are firm level, for example, lack of supervision, advertising or conflicts issues.
50. Entity regulation may also be a more effective response for regulation of entities that provide legal services both within and outside of Ontario.
51. Some of the issues being considered by the Committee, which are part of regulatory systems in other jurisdictions, are described in greater detail in this report are as follows:
- a. the role of a "Legal Director";
  - b. establishing an "ethical infrastructure" in a firm; and
  - c. the development of rules specific to firms.
52. A Legal Director, or designated person in a law firm or regulated entity, can be a component of a compliance-based entity regulatory scheme. The Legal Director may be designated by the firm to receive notice about complaints. They may also be required to take reasonable steps to address a firm's failure to meet its regulatory responsibilities.
53. An "ethical infrastructure" describes a law firm's organization, policies and operating procedures.<sup>1</sup>
54. Jurisdictions that have adopted compliance based regulation have used different tools to build an ethical infrastructure for firms. One area of focus has been to adopt outcomes focused principles applicable to firms – firms are required to comply but the regulator does not prescribe how to achieve compliance.

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<sup>1</sup> This term was first used by Professor Ted Schneyer of the University of Arizona; see, for example, "On Further Reflection: How 'Professional Self-Regulation' Should Promote Compliance With Broad Ethical Duties of Law Firm Management", (2011) 53 Arizona Law Review Vol. 577 at 585.

55. For example, a principle for firms would be to avoid conflicts of interest. One way to achieve compliance would be to implement a conflicts checking system. The key principle is that the responsibility is that of the firm to determine how to achieve compliance. The regulator would assist firms to achieve compliance by providing tools and templates and working with firms if they are non-compliant.
56. Other Canadian legal and financial services regulators have adopted requirements regarding firm-wide policies and procedures. One specific area of focus for firms could be trust accounts. Law societies in Nova Scotia and Alberta, for example, have specific compliance oriented rules regarding firm trust accounts:
  - a. The Nova Scotia Barristers Society requires an annual law firm report and a specific trust account report, which must be signed by at least four partners of the firm.
  - b. The Law Society of Alberta requires a number of specific controls on trust accounts.
  - c. The Ontario Securities Commission requires a firm to set up a compliance system which includes internal controls for safeguarding client and firm assets and accuracy of books and records.
57. Some regulators require law firms to make reasonable efforts to ensure that all licensees comply with the Rules. A law firm may demonstrate compliance with this requirement by demonstrating that it has policies and procedures.
58. Some of these regulators also have rules specifically for firms. These can include the duty to report certain breaches, inappropriate advertising, failure to serve a client, sexual harassment, conflict of interest, failure to supervise, failure to maintain financial records and failure to respond to or cooperate with the regulator.

### **Next Steps**

59. The Committee will continue its consideration of these issues and report back to Convocation as appropriate.



Tab 14

April 16, 2015

## Update Report TAG – The Action Group on Access to Justice

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This report provides a brief overview of TAG's evolving structure and an update of recent TAG activities.

### **National Action Committee Meeting**

The Law Society hosted a meeting of the National Action Committee (NAC) on March 9, 2015. Justice Cromwell, the Treasurer and representatives from across the country engaged in productive dialogue about the ongoing role of NAC in raising the profile of access to justice. Discussions also focused on how best to coordinate communication across jurisdictions about access to justice best practices, initiatives and news.

### **Improving Access to Justice - Flip Your Wig CPD Event**

On April 8, 2015 TAG participated in Improving Access to Justice, a CPD event organized by Flip Your Wig. Panelists included Justice Cromwell (*Supreme Court of Canada*), Ron Franklin (*Franklinlaw*) and Patricia Hughes (*Law Commission of Ontario*) with Lorne Sossin (*Osgoode Hall Law School*) as moderator. The speakers provided insight into the various barriers and potential opportunities that exist within the sphere of access to justice concerns. Additional comments were featured from Michele M. Leering (*Community Advocacy & Legal Centre*), Barbara Grossman (*Dentons*) and Grant Wedge (*Law Society of Upper Canada*).

### **Reference Group**

The Reference Group, which acts as the TAG planning committee, met on March 2, 2015 and is working on developing and implementing a public engagement strategy. The aim is to produce a destination for organizations, individuals and institutions from across the province that are interested in developing or learning more about innovative solutions to Ontario's access to justice crisis. The group's next meeting is scheduled for late May 2015.

## **Clusters**

### **Online Family Law Shared Steps Resource**

This initiative focuses on common legal problems faced by people who have low or moderate incomes or face other disadvantages. The project is aimed at the first-contact community workers whom these people trust and turn to for help. The resource is currently being beta tested with assistance from Ryerson University. We look forward to supporting its official launch this summer.

### **Targeted Legal Services**

“Targeted Legal Services & Access to Justice: We Are All Pieces of the Puzzle” is a series of three symposia organized by TAG, Social Justice Tribunals Ontario and the Law Society of Upper Canada. On May 12, 2015, the second symposium in this series will build on the discussion at the first symposium by focussing on “success stories” in the delivery of targeted legal services. The final symposium in this series will take place in September 16, 2015.

### **Task Force on Custody and Access Assessors**

For the past five years, family justice system participants, including lawyers, judges, psychologists, social workers and psychiatrists have been calling for reforms to address the shortage of qualified custody and access assessors in the family court system. One of the major concerns that has repeatedly been identified as contributing to this problem is the impact of insufficient complaints on the willingness of assessors to do this important and challenging work. On June 8, 2015 TAG will hold a facilitated session about Professional Complaints Against Custody/Access Assessors. This session will convene family justice system participants in order to explore potential solutions and considerations to this significant access to justice problem.

### **Aboriginal Restorative Justice**

In order to develop a strong, collaborative, consultative relationship TAG is focusing on outreach with Aboriginal licensees, organizations and communities. What are the key action items for Aboriginal communities and how can we develop measures that promote Aboriginal justice? At this early stage in outreach we see an emerging role for TAG as a support for restorative justice programs within First Nations, Metis and Inuit communities.

### **In Development**

Additional clusters addressing Mental Health issues related to client service and Public Legal Education are expected to be starting shortly.



**Submission to the Standing Committee on Justice Policy in  
Respect of Bill 49, *Ontario Immigration Act, 2015***

**Law Society of Upper Canada**

**Toronto, April 16, 2015**

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## I. INTRODUCTION

1. Good Morning. My name is Robert Lapper and I'm the CEO of the Law Society of Upper Canada. I'm here today with Ms. Sheena Weir, our Director of Public Affairs, and Ms. Elliot Spears, our General Counsel.
2. The Law Society of Upper Canada is the independent regulator of Ontario's over 47,000 lawyers and 7,000 licensed paralegals. The Law Society appreciates the opportunity to contribute to this Committee's study of Bill 49, the *Ontario Immigration Act, 2015* (the "Bill").

## II. SUBMISSION HIGHLIGHTS

3. As you know, the Bill's general purpose is to implement a provincial immigration system that recognizes the important role that immigrants play in Ontario's economic and social fabric. The Bill would establish two classes of persons, recruiters and representatives, to provide services in connection with the programs established by the government to promote the settlement and integration of immigrants and foreign nationals to Ontario.
4. Today, the Law Society wishes to comment on three aspects of the Bill, aspects that relate to the Law Society's mandate to regulate Ontario's lawyers and paralegals in the public interest. These three aspects are as follows:
  - 1) Safeguarding solicitor-client privilege;
  - 2) Ensuring that the Bill's definition of a representative is drafted so as to be consistent with the existing law as to who may act as a representative; and
  - 3) Providing for continued dialogue between the government and the Law Society to ensure that areas of concurrent regulation in the new immigration system are addressed by having our regulatory spheres work in concert.

## III. SAFEGUARDING SOLICITOR-CLIENT PRIVILEGE

5. The Law Society's first point relates to safeguarding solicitor-client privilege. The Bill requires representatives and recruiters to disclose information. Applied to lawyers

and paralegals, this requirement is at odds with protections granted to clients through confidentiality and solicitor-client privilege.

6. The Bill as currently drafted grants broad search and investigatory powers to inspectors and investigators. It expressly permits warrantless searches of "representatives" premises in certain circumstances (Bill, s.23.(2)4). As "representatives" includes lawyers and licensed paralegals, this would expressly permit warrantless law and paralegal office searches. Investigators would be permitted to obtain materials which would otherwise be privileged (Bill, s.23.3). These materials could be used in proceedings. It is also possible that they would be shared with other government agencies and the federal government. (Searches may also be conducted with a warrant.) It is an offence under the Bill to obstruct an investigation.
7. There is no exception for lawyers or licensed paralegals with respect to confidential or privileged information. The Bill does not expressly provide any mechanisms to protect privileged information.
8. In 2015, the Supreme Court of Canada stated that it is a "principle of fundamental justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes."<sup>1</sup> It has also described solicitor-client privilege as "a principle of fundamental justice and a civil right of supreme importance in Canadian law" and "must remain as close to absolute as possible if it is to retain relevance."<sup>2</sup>
9. These statements from the Supreme Court reflect the fact that our system of justice relies on full and frank communication between clients and their legal representatives. Without it, legal representatives would be unable to protect or advance the legal rights of their clients. As the Supreme Court has also stated, "[i]t is in the public interest that this free flow of legal advice be encouraged. Without it, access to justice and the quality of justice in this country would be severely compromised."<sup>3</sup>

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<sup>1</sup> *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 (CanLII).

<sup>2</sup> *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, 2002 SCC 61 (CanLII) ["*Lavallee*"].

<sup>3</sup> *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 (CanLII).

10. When applied to lawyers and licensed paralegals, the effect of the investigatory provisions of the Bill is akin to a law office search. The Law Society would expect that these provisions would not require disclosure of privileged information and that the protections set out by the courts to govern such searches would apply.
11. An amendment to the Bill to make the protection of privileged information explicit would be appropriate. Given the importance accorded to solicitor-client privilege, any amendment must be carefully drafted and meet established judicial precedent. For example, in *Lavallee, Rockel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, the Supreme Court of Canada struck down s.488.1 of the *Criminal Code*, which set out a procedure for searching law offices. It held that the section violated s.8 of the Charter of Rights and Freedoms, the right to be secure against unreasonable search and seizure. The Court set out the features that law office searches are required to ensure solicitor-client privilege is safeguarded.
12. The Law Society has provided guidance in this area by issuing Guidelines for Law Office Searches which were developed in response to the Supreme Court's statements about how law office searches may be conducted. The Law Society would appreciate the opportunity to work with the government to develop an appropriate amendment that would expressly protect privileged information in a manner that would be consistent with the Charter of Rights and Freedoms.

#### **IV. DEFINING THE TERM "REPRESENTATIVE" HAVING REGARD TO CURRENT LAW**

13. Our second point concerns the definition of the term "representative". The Bill defines a "representative" as a person who, for consideration, represents, assists or advises an applicant in connection to an application. The Bill limits who may act (or offer to act) as a representative. As presently drafted, lawyers and licensed paralegals would be able to act as "representatives" (Bill, s.14(1)).
14. The *Law Society Act* grants the Law Society the authority to regulate the practice of law and the provision of legal services in Ontario. The Law Society is authorized to establish classes of licence to practise law and provide legal services, to determine the scope of activities authorized under each class of licence and to impose any terms, conditions, limitations or restrictions on any class of licence (*Law Society Act*,

s. 27 (1)).

15. In exercising its authority to regulate the practice of law and the provision of legal services, the Law Society is guided by a description of its function and a set of principles that are set out in the *Law Society Act*. The Law Society's function (as set out in the *Law Society Act*) includes ensuring that "all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide". The principles that guide the Law Society's activities include a duty to maintain and advance the cause of justice and the rule of law, a duty to act so as to facilitate access to justice for the people of Ontario and a duty to protect the public interest.
16. In Ontario, lawyers and paralegals practise law and provide legal services within the scope of activities defined for them by the Law Society. The Law Society seeks to ensure that the Bill reflects this with respect to immigration law.

## **V. CONCURRENT REGULATION AND THE NEED FOR CONTINUED DIALOGUE**

17. The Law Society's third and final point relates to how issues arise in the context of concurrent regulation and the need for continued dialogue. The Law Society highlights three examples of areas of dual or concurrent regulation which could arise if Ontario enacts the proposed new immigration system. These are:
  - 1) Concurrent regulation of lawyer or paralegal licensees governed by the Law Society who act as "representatives";
  - 2) Concurrent regulation of lawyer or paralegals who act as both "representatives and recruiters"; and
  - 3) Concurrent regulatory responsibility to address unauthorized practice.

### **(1) Regulating Lawyer or Paralegal "Representatives"**

18. The Bill does not contain any specific provisions for the regulation of "representatives", although by creating the new field of "representatives", the Bill appears to anticipate their regulation. The Law Society would be interested in receiving more information about any contemplated regulatory oversight of

representatives. The Law Society would appreciate being consulted in advance of any regulations being developed in this regard, so as to ensure that any regulations regarding “representatives” are developed in a way that recognize and work together with the Law Society’s regulatory authority.

## **(2) Regulating Lawyer or Paralegal “Representatives and Recruiters”**

19. The Bill contemplates that an individual may act as both a recruiter and a representative in relation to an applicant (Bill, subsection 1(2)). As noted previously, the Bill contemplates regulation of representatives. Similarly, the Bill contemplates regulation of recruiters.
20. As also noted previously, lawyers and licensed paralegals who act as representatives are already subject to regulation by the Law Society.
21. It is possible that some lawyers and licensed paralegals will act in dual roles, as both representatives and recruiters. This raises questions about regulation. The Law Society believes that further clarification is needed on how the government proposes to regulate persons acting as both recruiters and representatives and, specifically, on how the government proposes to address lawyers and licensed paralegals working as both representatives and recruiters. The Law Society would welcome the opportunity to work with government to ensure any of its licensees who also act as recruiters and representatives are regulated by the appropriate entities in the appropriate circumstances.

## **(3) Addressing Unauthorized Practice**

22. Finally, section 29 of the Bill sets out the offence of acting as a representative without the authority to do so. The Law Society similarly acts in the public interest by prosecuting unauthorized practice of law and provision of legal services. It is possible that both the Bill’s offence of acting as a representative without the authority to do so and the Law Society’s unauthorized practice of law and provision of legal services provisions will target the same activities. In such circumstances, it will be important to have a coordinated, collaborative approach to dealing with the unauthorized activities. In the absence of a coordinated, collaborative approach, it is possible that unauthorized activities will go unchecked, resulting in a risk of harm to the public.

The Law Society urges the development of clear frameworks to govern the handling of instances of unauthorized activities when the activities could constitute unauthorized practice in two or more statutes.

23. The three examples demonstrate that continued collaboration will be necessary in order to regulate areas of concurrent regulation in the public interest. The Law Society looks forward to continuing to work in an open and collaborative manner with government to ensure that areas of concurrent regulation are addressed from the outset in a way that protects the public and the public interest.

## **VI. CONCLUDING REMARKS**

24. We again thank the Committee for the opportunity to appear here today. We would be pleased to discuss the issues raised in this submission with you further, and answer any questions.

This is **Exhibit K** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



Tab 3.1

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

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**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](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](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.”<sup>1</sup>

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.

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<sup>1</sup> “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."<sup>2</sup>

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.

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<sup>2</sup> "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.”<sup>3</sup>*

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 licensees<sup>4</sup> 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

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<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup>

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.<sup>7</sup>

<sup>5</sup> Referred to as “the engagement process”.

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

<sup>7</sup> 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*<sup>8</sup> and the *Paralegal Rules of Conduct*<sup>9</sup> 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;<sup>10</sup>
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***

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

<sup>9</sup> *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](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:

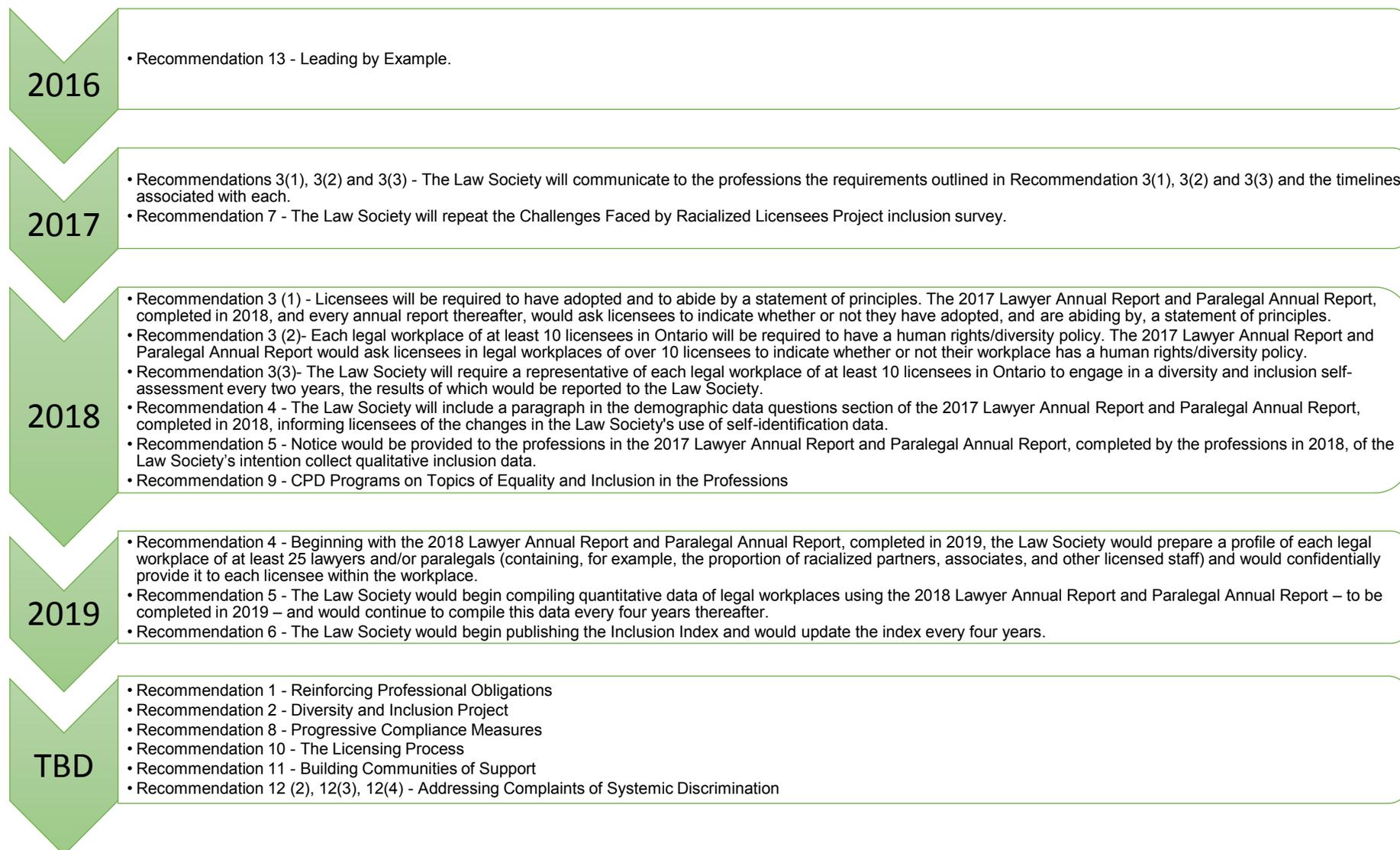
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 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 King<sup>11</sup>

### 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 racialized<sup>12</sup> lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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:

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<sup>11</sup> Daughter of Martin Luther King

<sup>12</sup> 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>.

<sup>13</sup> 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>

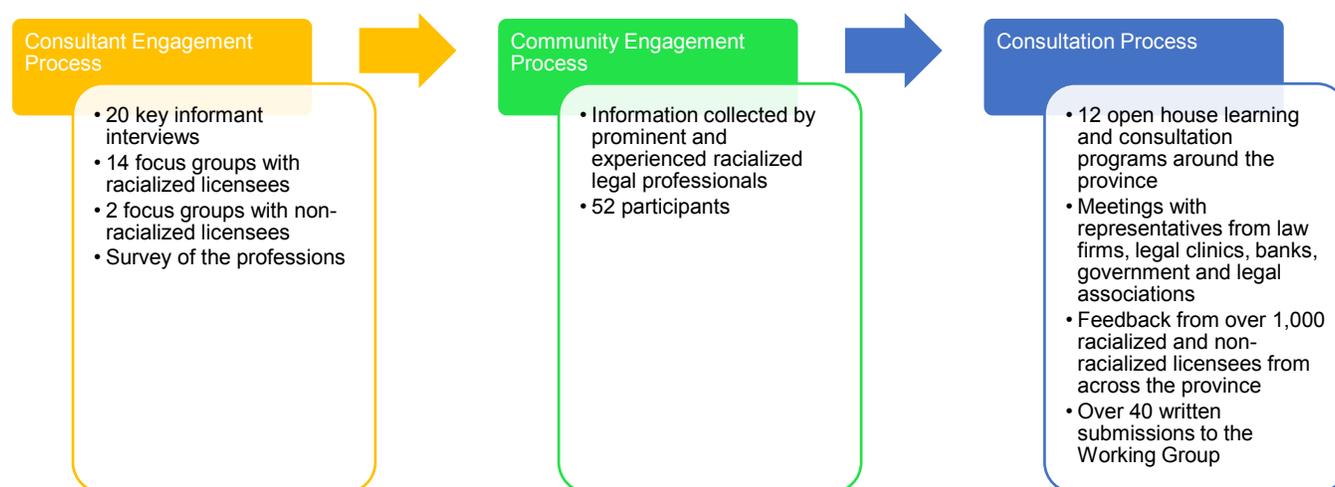
<sup>14</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>15</sup> 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;<sup>16</sup>
  - 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.<sup>17</sup>



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:

<sup>16</sup> 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.

<sup>17</sup> 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.”<sup>18</sup>*

— 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.”<sup>19</sup> 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.”<sup>20</sup>
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.”<sup>21</sup> 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 #OscarsSoWhite<sup>22</sup> — 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

<sup>18</sup> *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>

<sup>19</sup> “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>

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

<sup>21</sup> “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>

<sup>22</sup> 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.”<sup>23</sup>

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 prisons<sup>24</sup> 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”<sup>25</sup> 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”,<sup>26</sup> 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*.”<sup>27</sup>
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”*<sup>28</sup>

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

<sup>23</sup> “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>

<sup>24</sup> 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>

<sup>25</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

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

<sup>27</sup> “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](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>28</sup> 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."<sup>29</sup> 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*<sup>30</sup> and *By-Laws*<sup>31</sup> 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.

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<sup>29</sup> "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](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

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

<sup>31</sup> 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;<sup>32</sup>
  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,<sup>33</sup> 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.

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<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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

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<sup>34</sup> “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/>

<sup>35</sup>, “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](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

departments in Québec.<sup>36</sup> 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.<sup>37</sup>

### **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.

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

<sup>37</sup> *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.<sup>38</sup>

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*].”<sup>39</sup>
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.”<sup>40</sup>
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.<sup>41</sup>
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

<sup>38</sup> *Rules of Professional Conduct*, supra note 6.

<sup>39</sup> *Paralegal Rules of Conduct*, supra note 7.

<sup>40</sup> Participating legal association.

<sup>41</sup> “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.<sup>42</sup> 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*.<sup>43</sup> 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.<sup>44</sup>
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.<sup>45</sup>
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."<sup>46</sup> 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).

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<sup>42</sup> "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>

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

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

<sup>45</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>46</sup> "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”<sup>47</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>48</sup>
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.”<sup>49</sup>

### **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**

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

<sup>48</sup> *Ibid.*

<sup>49</sup> 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.”<sup>50</sup>*

— 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.<sup>51</sup>
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;<sup>52</sup>
  - 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.

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<sup>50</sup> “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>

<sup>51</sup> *Supra* note 11 & note 13

<sup>52</sup> “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.”<sup>53</sup>
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.”<sup>54</sup>
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,<sup>55</sup> 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.<sup>56</sup>
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

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<sup>53</sup> *Supra* note 47.

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

<sup>55</sup> “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 commentators<sup>57</sup> 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.).”<sup>58</sup>

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<sup>57</sup> 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)

<sup>58</sup> *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.”<sup>59</sup>
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”.<sup>60</sup> 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.<sup>61</sup>
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”.<sup>62</sup>
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.<sup>63</sup>
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>64</sup>

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<sup>59</sup> *Ibid.*

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

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

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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-

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<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.<sup>65</sup>
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.”<sup>66</sup> 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.

<sup>65</sup> Policy and Guidelines on Racism, *supra* note 39 at 50.

<sup>66</sup> 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\\_Compentence\\_Bhasin.pdf](http://www.practicepro.ca/LawproMag/Cultural_Compentence_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.”<sup>67</sup>
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 Report<sup>68</sup> 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

<sup>67</sup> Law firm representative.

<sup>68</sup> “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/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convov2013_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."<sup>69</sup>

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.<sup>70</sup> 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.

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<sup>69</sup>"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](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

<sup>70</sup> *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.<sup>71</sup>
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.<sup>72</sup> For example, Menteer, a free, open source online platform,<sup>73</sup> 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

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

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

<sup>73</sup> 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.<sup>74</sup>

#### *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.<sup>75</sup> 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

<sup>74</sup> "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>

<sup>75</sup> "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*<sup>76</sup>, 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

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<sup>76</sup> "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.”<sup>77</sup>
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.<sup>78</sup> 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.”<sup>79</sup>
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.<sup>80</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>81</sup>
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,

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<sup>77</sup> 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>

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

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

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

<sup>81</sup> *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.<sup>82</sup>

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,

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<sup>82</sup> 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.

## 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.<sup>83</sup> 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

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<sup>83</sup> 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.”<sup>84</sup>

### 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 sponsorship<sup>85</sup> 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.

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

<sup>85</sup> 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*<sup>86</sup> and the *Paralegal Rules of Conduct*<sup>87</sup> 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

<sup>86</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>87</sup> *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”<sup>88</sup>, 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

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<sup>88</sup> 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.<sup>89</sup> 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.

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<sup>89</sup> 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](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)

MINUTES OF CONVOCATION

Friday, 2<sup>nd</sup> December, 2016  
8:30 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), Anand, Armstrong, Banack, Beach, Bickford, Boyd (by telephone), Braithwaite, Bredt, Burd (by telephone), Callaghan, Chrétien, Clément, Cooper, Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Falconer, Finkelstein (by telephone), Furlong, Galati, Go, Goldblatt, Groia, Haigh, Hartman (by telephone), Horvat, Krishna, Lawrie, Leiper (by telephone), Lem, Lerner, Lippa, MacLean, Manes (by telephone), McDowell, McGrath, Merali, Mercer, Millar, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Porter (by telephone), Potter, Richardson, Richer, Rosenthal (by telephone), Ross, Ruby (by telephone), Sharda (by telephone), Sheff, Sikand, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg (by telephone), Swaye, Troister, Udell, Vespry, Walker, Wardle and Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC  
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### TREASURER'S REMARKS

The Treasurer welcomed everyone joining Convocation by webcast.

The Treasurer recognized that Convocation is meeting in Toronto, which is a Mohawk word that means “where there are trees standing in the water.”

The Treasurer acknowledged that Convocation is meeting in the traditional territory of the Mississaugas of New Credit First Nation and also acknowledged the Haudenosaunee, and recognized the long history of all First Nations in Ontario and the Métis and Inuit peoples, and thanked the First Nations people who lived and live in their lands for sharing them with us in peace.

The Treasurer welcomed everyone to Convocation in the Lamont Learning Centre, including public attendees.

The Treasurer addressed protocols for Convocation in the Lamont Learning Centre.

The Treasurer advised that he attended the launch of the Coach and Advisor Network on November 24, 2016 and thanked Diana Miles and Kerry Boniface for their work on this initiative.

The Treasurer advised that he recently hosted a dinner for the new Indigenous Legal Issues Specialist Certification designation. The Treasurer thanked the Law Society staff team and volunteer subject matter advisors for their work on the initiative.

The Treasurer noted his meetings with the Minister of Justice and Attorney General for Ontario last week.

The Treasurer reminded benchers that the Honourable Justice Annemarie E. Bonkalo will be submitting her Family Law Services Review Report to the Attorney General and the Law Society by the end of December.

The Treasurer announced the recipients of the Law Society Human Rights Award:

- Dr. Cindy Blackstock
- Waleed Abu al-Khair

and that the awards will be bestowed at a ceremony on February 22, 2017.

The Treasurer reminded benchers that nominations for the Law Society Awards close on January 27, 2017.

The Treasurer thanked Policy Counsel Sophia Sperdakos, who will be leaving the Law Society this month, for her outstanding contribution to the work of the Law Society over the past 26 years.

MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. MacLean, seconded by Mr. Anand, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

**Tab 1**

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

MOVED BY: Virginia MacLean

SECONDED BY: Raj Anand

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of November 9 and 17, 2016 were confirmed.

DRAFT

MINUTES OF CONVOCATION

Wednesday, 9<sup>th</sup> November, 2016  
9:00 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), Anand, Armstrong, Beach, Bickford, Boyd (by telephone), Braithwaite, Bredt, Burd, Callaghan, Chrétien, Clément, Cooper, Copeland (by telephone), Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Ferrier, Finkelstein (by telephone), Furlong, Galati, Goldblatt, Gottlieb, Groia, Haigh, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacKenzie (by telephone), MacLean, McDowell, McGrath, Merali, Mercer, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Porter, Potter, Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Sharda, Sheff, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg, Swaye (by telephone), Troister, Udell (by telephone), Vespry, Wardle and Wright.

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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TREASURER’S REMARKS

The Treasurer welcomed those joining Convocation by webcast.

The Treasurer recognized that the meeting is held in Toronto, which is a Mohawk word meaning “where there are trees standing in the water”, and thanked the First Nations people who lived and live in these lands for sharing them with us in peace. The Treasurer also acknowledged that Convocation is meeting on the traditional territory of the Mississaugas of New Credit First Nation, acknowledged the Haudenosaunee, and recognized the long history of all First Nations in Ontario and the Métis and Inuit peoples.

The Treasurer advised that December 2, 2016 Convocation will be held in the Lamont Learning Centre.

The Treasurer expressed condolences to the family of former appointed benchers Robert Tebbutt, of Toronto and Andrew Coffey of Thunder Bay, who recently passed away.

The Treasurer informed Convocation of the work of the Treasurer's Appointments Advisory Group, and the urgent request for nominees for the federal Judicial Advisory Committees for Ontario, and encouraged benchers to provide names of appropriate individuals for consideration.

The Treasurer informed benchers of The Action Group (TAG)'s very successful Access to Justice Week, and noted the interest expressed in the Law Society's Public Perceptions of Access to Justice in Ontario study. The Treasurer congratulated Sabreena Delhon, Law Society staff, for her efforts in supporting this event.

The Treasurer announced the formation and composition of the Legal Aid Working Group and referred to its terms of reference at Tab 12 of the Convocation materials.

The Treasurer informed Convocation of various outreach initiatives and meetings, including the Federation of Law Societies of Canada's meeting in St. Andrews-by-the-Sea, New Brunswick, a meeting with the Treasurer's Liaison Group and various conferences, including that of the Federation of Ontario Law Associations (FOLA).

The Treasurer congratulated Sandra Nishikawa on receiving the Lawyer of Distinction Award at the Federation of Asian Canadian Lawyers' 10<sup>th</sup> Annual Conference and Gala on October 29, 2016.

The Treasurer advised of upcoming events, including the Remembrance Day ceremony tomorrow, Louis Riel Day on November 17, 2016, and the Paralegal Welcome Reception on December 1, 2016.

The Treasurer advised that nominations are now open for the Law Society Awards, and that nominations close on January 27, 2017.

#### MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Clément, seconded by Mr. Burd, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of September 22, 2016 were confirmed.

#### Tab 1.2 – MOTION – COMMITTEE AND OTHER APPOINTMENTS

THAT Janis Criger be appointed to the Governance Task Force 2016.

THAT Ross Earnshaw and Janet Leiper be appointed to the Priority Planning Committee.

THAT Janis Criger, Isfahan Merali, Sandra Nishikawa and Joanne St. Lewis be appointed to the Appeal Division of the Law Society Tribunal for a term ending May 25, 2017.

THAT Teresa Donnelly be removed from the Hearing Division of the Law Society Tribunal at her own request.

THAT Susan E. Opler and Judith M. Potter be removed from the Hearing and Appeal Divisions of the Law Society Tribunal at their own request.

Carried

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Donnelly presented the Report.

Re: Human Rights Monitoring Group Requests for Intervention

It was moved by Ms. Donnelly, seconded by Ms. St. Lewis, that Convocation approve the letters and public statements in the following cases:

- a. Ramón Cadena Rámila – as set out at Tab 4.1.1.
- b. Jamshed Yorov – as set out at Tab 4.1.2.

Carried

*For Information:*

- Public Education Equality and Rule of Law Series Calendar 2016

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Wardle presented the Report

Re: Pathways Pilot Project Review

It was moved by Mr. Wardle, seconded by Mr. Goldblatt, that Convocation:

1. approve an extension of the current Pathways Pilot Project for two years, specifically the 2017-2018 and 2018-2019 licensing years;
2. at this time, withdraw consideration of the recommendations at paragraphs 3 and 4 of the September 22, 2016 PD&C Committee Report to Convocation;

3. direct that an analysis of the licensing process be undertaken for the purpose of making long-term recommendations for an appropriate, sustainable Law Society licensing process;
4. approve that in the first quarter of 2017, the PD&C Committee provide Convocation with:
  - a. a report identifying the issues that should be the focus of the analysis and a proposed plan to address them;
  - b. a proposal for an engagement strategy that will involve relevant stakeholders throughout the process; and
  - c. a budget that will address resource requirements, including staffing and research resources.

CarriedAUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: 2017 LibraryCo Inc. Budget

It was moved by Mr. Bredt, seconded by Ms. Clément, that Convocation approve the LibraryCo Inc. budget for 2017 incorporating Law Society funding of \$7,815,300.

CarriedRe: 2017 Law Society Budget

It was moved by Mr. Bredt, seconded by Ms. Clément, that Convocation approve the Law Society's 2017 Budget, including the annual fee amounts as follows:

For lawyers:

General Fee	1,329
Compensation Fund	289
LibraryCo	194
Capital	104
<u>Total</u>	<u>\$1,916</u>

For paralegals:

General Fee	788
Compensation Fund	154
Capital	104
<u>Total</u>	<u>\$1,046</u>

and \$4.8 million allocated from the Lawyer General Fund balance and \$600,000 from the accumulated surplus investment income in the E&O Fund to mitigate the fee increase for lawyers, and \$1 million allocated from the Paralegal General Fund balance to mitigate the fee increase for paralegals.

Carried

*For Information:*

- Performance of Portfolio Manager

GOVERNANCE TASK FORCE 2016

Ms. Leiper, chair of the Task Force, updated Convocation on its work to date.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. McDowell presented the Report.

Re: Expanded Use of Regulatory Meetings by the Proceedings Authorization Committee

It was moved by Mr. McDowell, seconded by Ms. Strosberg, that Convocation expand the circumstances in which the Proceedings Authorization Committee may authorise the invitation of a licensee to a Regulatory Meeting by removing the requirement that the conduct has been the subject of comment in a public forum.

Carried

Re: Advertising and Fee Arrangements Issues Working Group

Mr. Mercer, chair of the Working Group, provided an update on its work.

*For Information:*

- Update on Work of the Advertising and Fee Arrangements Issues Working Group

TRIBUNAL COMMITTEE REPORT

Ms. Murchie presented the Report.

Re: Amendments to the Law Society Tribunal Hearing Division and Appeal Division Rules of Practice and Procedure

It was moved by Ms. Murchie, seconded by Ms. Merali, that Convocation approve the proposed English and French amendments to the Law Society Tribunal Hearing Division and Appeal Division Rules of Practice and Procedure, effective January 1, 2017, set out in the Motion at Tab 6.1.1.

Carried

SECRETARY'S REPORT

Ms. McGrath presented the Report.

Re: Amendments to By-Law 6

It was moved by Ms. McGrath, seconded by Ms. Criger, that Convocation make the amendments to By-Law 6 [Professional Liability Insurance] as set out in the motion at Tab 7.1 respecting lawyers who are seconded to corporate clients to provide professional services to them.

Carried

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IN PUBLIC

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*REPORT FOR INFORMATION ONLY*

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

CONVOCATION ROSE AT 12:48 P.M.

Tab 1.2 – MOTIONSTab 1.2.1 – Appointments

THAT Gisèle Chrétien, Ross Earnshaw, Jacqueline Horvat and W. A. Derry Millar be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2016.

THAT Isfahan Merali be removed from the Human Rights Monitoring Group at her own request.

THAT Michelle Haigh be appointed to the Litigation Committee.

Carried

**Tab 1.2.1**

**THE LAW SOCIETY OF UPPER CANADA**MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

THAT Gisèle Chrétien, Ross Earnshaw, Jacqueline Horvat and W. A. Derry Millar be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2016.

THAT Isfahan Merali be removed from the Human Rights Monitoring Group at her own request.

THAT Michelle Haigh be appointed to the Litigation Committee.

Tab 1.2.2 – Proposed Amendment to The Law Society Tribunal Appeal Division Rules Of Practice And Procedure

THAT effective January 1, 2017, Convocation amend the Law Society Tribunal Appeal Division Rules of Practice and Procedure, made by Convocation on March 12, 2014 and amended by Convocation on October 30, 2014, June 23 and November 9, 2016 by revoking the General Heading form and replacing it with the proposed amended form as set at Tab 1.2.2.

Carried

**Tab 1.2.2**

THE LAW SOCIETY OF UPPER CANADA

**LAW SOCIETY TRIBUNAL**

**RULES OF PRACTICE AND PROCEDURE**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

THAT effective January 1, 2017, Convocation amend the Law Society Tribunal Appeal Division Rules of Practice and Procedure, made by Convocation on March 12, 2014 and amended by Convocation on October 30, 2014, June 23 and November 9, 2016 by revoking the General Heading form and replacing it with the following:

**GENERAL HEADING**

**APPEAL**

*(Law Society Tribunal file No.)*

**LAW SOCIETY TRIBUNAL  
APPEAL DIVISION**

BETWEEN:

*(name)*

Appellant

and

*(name)*

Respondent in appeal

*(Title of document)*

*(Text of document)*

**TITRE GÉNÉRAL**

**APPEL**

*(N° de dossier du Tribunal du Barreau)*

**TRIBUNAL DU BARREAU  
SECTION D'APPEL**

ENTRE :

*(nom)*

Appelant

et

*(nom)*

Intimé en appel

*(Titre du document)*

*(Texte du document)*

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

**Tab 1.3**

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

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CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Friday, December 2<sup>nd</sup> 2016

ALL OF WHICH is respectfully submitted

DATED this 2<sup>nd</sup> day of December, 2016

**CANDIDATES FOR CALL TO THE BAR**  
**December 2<sup>nd</sup> 2016**

**Transfer from another province (Mobility)**

Maral Dolatabadi Alacer  
Ryan Gurshan Singh Ghuman  
Aubrey Breughel Guild-Young  
Shari Jeanette Leahy  
Lianne Marie Locke  
Zhicheng Ma  
Gayatri Nicholas  
Sara Katherine Robinson

**L3**

Julie-Anne Marie Rose Pariseau  
Peter William Hutchins

REPORT OF THE CHIEF EXECUTIVE OFFICER

Mr. Lapper presented the Chief Executive Officer's Report for information.



## CEO's REPORT

This has been a particularly busy period for operations at the Law Society. Since my last report to Convocation in June 2016, outside of day to day regulatory activities the organization has focused much of its efforts on the following initiatives:

- Budget planning for 2017 and beyond;
- Review of Professional Regulation Division processes and structure;
- Development and launch of the new Coach and Advisor Network program;
- Administration and ongoing review of LibraryCo and library services;
- Development and roll-out of the Share-Point based case management system for the Law Society Tribunal;
- Completion of a risk assessment to support the Relationship Management System Project;
- Completion of a Law Society Diversity Census and Inclusion Survey;
- Completion of an Employee Engagement and Enablement Survey;
- Ongoing work on various policy initiatives including Challenges Faced by Racialized Licensees, review of the Law Practice Program, advertising and fees, and Compliance-Based Entity Regulation;
- Continuing support of TAG - The Action Group on Access to Justice.

This report will provide an overview of operational trends and activities and policy and other initiatives that are currently underway or in development to support strategic priorities.



## STRATEGIC PLANNING UPDATE

We continue to make very good progress on Convocation's strategic priorities. Since the last update in June, work has advanced on a number of initiatives, some mentioned later in this report – an extension of the LPP for another two years and a comprehensive analysis of the licensing process, a disclosure policy framework for PRD investigations, launch of the new coach and advisor network ("CAN"), implementation of our mental health strategy, a new task force on governance and the final report of the Challenges Faced by Racialized Licensees Working Group. Work on other initiatives is ongoing, including our policy development "rethink" and the diversity survey of benchers.

In addition to operational work plans related to the priorities, in September the Treasurer set out his expectations for policy work during his term in his memoranda to committee chairs, linked to the strategic plan's priorities. In this report, I aim to show that the priorities are being achieved in an effective, efficient way.

## 2016 BUDGET UPDATE AND DEVELOPMENT OF THE 2017 BUDGET PLAN

### Financial Reporting

Interim financial statements for the third quarter for the Law Society, LawPro and LibraryCo have been reviewed by the Audit & Finance Committee and are reported to Convocation this month. The Society is on track to exceed its 2016 budget expectations and its financial position remains strong. Some specific notes are:

- The Lawyer General Fund incurred a surplus of \$4.8 million compared to a surplus of \$2.6 million in 2015 and a break-even position for the prorated budget period.
- The Paralegal General Fund generated a surplus of \$1.3 million at the end of the third quarter compared to \$945,000 for 2015 and a budgeted deficit for the period of \$243,000.
- The main revenue sources are above budget and all of the major expense categories on the financial statements are less than budget.



- There was a deficit of \$927,000 in the Lawyer Compensation Fund as claims incurred to date exceed budgeted funding for the year.
- The projection for 2016 year end is for a surplus of approximately \$4 million in the combined Lawyer and Paralegal General Funds.

Planning for the 2016 year-end audits has been ongoing and the Audit & Finance Committee met with PWC in November to formalize these plans.

### **Budget**

The 2017 Budget process has completed its normal cycle of review by the Audit and Finance Committee in September and October. Convocation approved the budget on November 9, which sets the annual fee for lawyers at \$1,916 and for paralegals at \$1,046, an increase of \$50 for both professions, with an option to reduce the fee by \$50.00 if it is paid by pre-authorized debit (see below).

### **Operational Activities**

The Finance department is working with the Audit & Finance Committee to ensure appropriate accountability and fiscal responsibility by organizations funded by the Law Society such as the Federation of Law Societies, FOLA and the Law Commission of Ontario.

The Finance department processes the applications for the Parental Leave Assistance Program. The number of applicants approved continues to decrease below projections estimated during program development. To the end of September 2016, payments for the year total \$128,000. The budget funding request for 2016 was \$200,000. For the 2017 budget, the fund balance (\$437,000 at September 30, 2016) is sufficient will not require a further contribution to the Parental Leave Assistance Plan for 2017.

The Society introduced electronic fee billing in 2015. Along with this, an on-line application process for payment by preauthorized electronic debit was also created. With the automation of the application process, a second preauthorized payment plan (PAP) option in addition to the existing monthly PAP has been introduced for 2017. This annual PAP plan withdraws the balance on their account in the first week of February each year. There is no administration fee for this plan. In the 2017 budget, a discount of



\$50 (prorated by fee category, \$25 for 50% fee and \$12.50 for 25% fee) will be offered to members enrolling in this plan.

Since my last report, the Finance department is currently conducting or has conducted its periodic review of the following policies:

- Investment Policy – changes are being assessed to slightly increase the equity component of the asset mix;
- Treasurer and Benchers Expense Reimbursement and Remuneration Policies – the assessment is still in the early stage;
- Business Conduct Policy – periodic update including assessment of whistleblowing provisions;
- Compensation Fund Balance Policy - reducing the minimum balance from three one-in-one hundred year events to one one-in-two hundred year event.

## **LibraryCo**

The Finance department continues to provide financial services to LibraryCo through the Administrative Services Agreement that includes preparation of financial reports, development of the annual budget and administrative assistance to county associations on financial matters. The Law Society is working with the other shareholders of LibraryCo (Federation of Ontario Law Associations and Toronto Lawyers' Association) to set a direction for the evolution of libraries and library services going forward. In November, Convocation approved LibraryCo's budget for 2016, incorporating a contingency for the transition process and increased funding to county libraries.

## **REGULATION**

### **COMPLAINTS, INVESTIGATIONS AND PROSECUTIONS**

#### **Complaint Trends**

Complaint trends fluctuate year by year. While 2013 showed a noticeable increase in new cases, a downward trend in 2014 continued in 2015. In 2016, the downward trend has reversed. Between January 1 and October 31, the Division received 4016 new



complaints, an increase of approximately 2% from the same period in 2015. An analysis of the complaints received during the period reveals the following:

- consistent with previous years, approximately 75% of new complaints involve lawyers and 12% of new complaints involve paralegals.
- sole practitioners and licensees in small firms (up to 5 licensees) continue to receive the largest number and proportion of complaints (approximately 74% for lawyers and 93% for paralegals).
- as in other years, the highest proportion received contain service related issues (approximately 50% of all new complaints) followed by integrity issues (46% of all new complaints), governance issues (17% of all new complaints), financial issues (10% of all new complaints) and conflict issues (8% of all new complaints).
- the highest proportion (30%) of new complaints received by lawyers and by paralegals continues to be in the area of civil litigation, for lawyers, in family and real estate law and for paralegals, in criminal/quasi-criminal matters.

## Investigations

The focus in the investigating departments, particularly in the past 5 months, has been on the backlog of cases in the departments. A number of process changes and strategies have been instituted and with the additional resources which Convocation initially approved in February 2016 (and included in the approved 2017 budget), staff have effectively increased the number of case completions and reduced investigation inventories. To date, the inventory of investigations has decreased to a total of 2322 complaints, down from an inventory of 2493 complaints at the beginning of 2016.

In the first 10 months of 2016, 3817 complaints have been closed at the end of the investigative phase. Of these 3817 complaints:

- 111 (3% of all closings), a substantial increase over 2015, have been closed with diversion (e.g. invitation to attend, letter of advice, practice review/spot audit recommendation, undertaking, mentoring).
- 550 complaints were closed with a staff caution or best practises advice in 2016 to date.



The number of reports received of lawyers engaged in mortgage fraud remains at an average of about 2.5 per month. However, the inventory of investigations remains lower than in previous years (42% fewer than at the end of October 2015). In addition, the number of matters proceeding to Discipline remains low (5 licensees in 2016 to date). The Investigations department continues to closely track and regularly monitor these matters for timely completion.

### **Advertising & Fee Issues**

One of the early steps taken by the new Executive Director, Professional Regulation was to form a strategic priority team within the Professional Regulation Division to undertake investigations and, where required, prosecutions in the area of advertising and referral fees. The creation of this team will facilitate a timely and focused response to these issues. The work of the team is informed by the work of the Advertising & Fee Issues Working Group, to ensure that policy focused attention is brought to bear on the Law Society's regulatory response. There are currently approximately 90 cases involving advertising and referral fees that are under active investigation.

### **Discipline**

The number of new matters coming into Discipline fluctuates from year to year. The number of licensee / applicant matters coming into the department in the first 10 months of 2016 appear to be similar to the numbers in the same period in 2015. However, the number of Notices issued by Discipline to commence a proceeding before the Hearing Division has increased.

As at October 31, 2016, Discipline had issued a total of 140 Notices: 110 Notices of Application (conduct and capacity prosecutions), 12 Notices of Referral for Hearing (good character and reinstatement/terms dispute prosecutions) and 18 Notices of Motion for interlocutory suspension/restriction. In 2014, a total of 124 Notices were issued and in 2015 a total of 142 Notices were issued.

The number of motions for interlocutory suspension / restrictions (18 as at October 31) have increased from the 14 issued in all of 2014 and the 14 issued in all of 2015.



## Court Decisions

In 2016, the Law Society received ten decisions from the Ontario Superior Court; and eight decisions from the Court of Appeal.

Seventeen of these matters were initiated by a licensee or an applicant for a license. The Law Society initiated one matter and brought two cross appeals.

Issues considered by the courts in these decisions included:

- Prematurity of court intervention regarding constitutional issues that can be heard by the Law Society Tribunal – *DioGuardi Tax Law et al*
- Jurisdiction to award costs when a licensing application is abandoned after the notice of hearing is issued but prior to the commencement of good character hearing on the merits – *Riddell*
- Penalty – the effect to be given to delay in an investigation in what would otherwise be a revocation case – *Abbott*
- Jurisdiction to provide relief sought – *Speck, Amiri*
- Failing to perfect application/extension of time for motion for leave – *Ebagua, Amiri*
- Delay by licensee in seeking appellate relief – *Coady*
- What is a final order – *Kivisto*
- Factors to be considered in a motion for delay – *Totera*
- Ability to raise new issues on appeal – *Molson*
- Costs awarded as a result of the recusal of panellists – *James*
- Validity of the presumptive disposition of revocation – *Bishop*
- Jurisdiction of the Law Society to regulate in-court civility, the definition of civility and the duty to advocate zealously – *Groia*

## Trusteeships, Compensation Fund And Monitoring & Enforcement

Between January 1 and October 31, 2016, Trustee Services has obtained 14 new formal trusteeship matters, which are dealt with in the Superior Court, and 17 formal trusteeships have been completed and closed. An additional 39 cases have been opened in which guidance and information has been provided on how to wind up a licensee's practice. The department has received 1211 and closed 1061 requests from clients and others concerning licensees' practices.



Between January 1 and October 31, 2016, a total of 143 applications for compensation have been received by the Compensation Fund: 131 claims involving 45 lawyers and 12 claims involving 9 paralegals. During this period, a total of 29 claims have been granted: \$2,798,897 has been paid on 93 claims against 26 lawyers and \$36,221 has been paid on 18 claims against 7 paralegals. The Compensation Fund continues to carry a number of potential claims related to a very high-profile real estate loss.

In the period from January 1 to October 31, 2016, Monitoring & Enforcement has:

- collected a total of \$410,658 in costs, including \$311,005 in discipline costs
- received 79 new undertakings to be monitored. This represents an increase from the number of new undertakings received in all of 2015 (63) and 2014 (58).
- received 125 new orders to be monitored.
- received and responded to 3944 regulatory inquiries involving 4431 licensees.

### **PROCESS AND STRUCTURAL CHANGES IN THE PROFESSIONAL REGULATION DIVISION**

The Professional Regulation Division is currently undergoing a restructuring process. The key changes can be summarized as:

- more robust, early triage and resolution carried out by a larger Intake Resolution department
- merger of the Complaints Resolution and Investigations departments
- creation of new multi-functional Enforcement teams with different types of Investigators and Discipline Counsel working together in teams
- creation of an Technology & Evidence Control department to enhance the Division's ability to receive, produce, manage and control electronic data.

Transitional planning is already underway and a multi-functional team is already underway on a pilot project basis. Throughout 2016, steps have been taken to streamline processes and increase efficiencies. The new organizational structure will come into effect on February 6, 2017. Next steps are to design the physical changes required to fully implement the new structure.



## **ADMINISTRATIVE SUSPENSION DUE DILIGENCE**

In addition to the over 1500 notices and reminders that were published to licensee LSUC Portal accounts this quarter, the staff in the CSC continue to uphold due diligence standards regarding licensee administrative obligations.

For example, during the Annual Report suspension follow-up process, the By-Law Administration Services Department has sent 128,411 automated emails to licensees reminding them of their filing obligation. At the end of the 60 day default period, 2,584 licensees had yet to file their Annual Report and staff in the CSC will attempt to personally contact each licensee at least one final time. Law Society staff similarly followed up with 957 licensees who had not fulfilled their CPD obligations and 2149 licensees who did not fulfill their Annual Fee obligations.

## **QUALITY ASSURANCE**

### **Practice Audits**

In addition to continuing to provide proactive supports to law practitioners and law practices across the province, Practice Review and Spot Audit have conducted a number of presentations as part of their outreach program to licensees to support ongoing learning related to establishing and maintaining viable and vibrant practices. During 2016, Practice Review developed a CPD webcast for paralegals on how to assess practice management processes to improve efficiencies. Reviewers have also responded to invitations to present on practice management topics to various law associations, such as Prescott, Peel and Hamilton, and to the University of Ottawa Business Law Clinic.

Outreach to paralegal practitioners included best practices presentations to paralegal classes at both Algonquin and Conestoga Colleges, and to the Ontario Paralegal Association.

Spot Audit has been actively involved on a number of educational presentations to the Law Society's Professional Conduct and Practice in Ontario program, the Ontario Bar Association, the Barrie Real Estate Law Association and the Peel Real Estate Law Association to discuss Spot Audit processes and a variety of financial books and records topics.



Spot Audit and Practice Review representatives were present at the June 9<sup>th</sup> Sole Practitioner and Small Firm Conference's "Ingenious Bar" to respond to licensees' questions on the Practice Review and Spot Audit programs, books and records, and practice management systems. The Spot Audit and Practice Review outreach initiatives continue to be well received and appreciated by licensees, and reinforce the importance of the Law Society's Competence Mandate and focus on providing proactive assistance.

## **PROFESSIONAL DEVELOPMENT AND COMPETENCE**

The Professional Development and Competence Committee evaluated the Pathways Pilot Project and proposed enhancements to the licencing process in its September 2016 Report. As a result of careful consideration of the 93 public submissions from individuals, 104 individual comments linked to a petition and 32 submissions from organizations, associations, legal clinics, law schools and others, the Committee recommended that the Pathways Pilot Project be continued for two years and that a complete review of the licensing process be undertaken. PD&C will develop a plan to implement this review which will include an engagement strategy to involve relevant stakeholders throughout the process.

### **Continuing Professional Development**

While the CPD department has kept the number of unique programs it produces at 90 for the last several years, and then provides replays bringing the actual amount of program offerings to between 125 and 140 per year, it has been making changes to operations and planning in 2016 to vary those offerings. This provides additional flexibility and CPD opportunities for members.

For example, the team increased the number of replay programs offered, from 34 in 2015 to 58 in 2016 and offered replay programs in July and August for the first time, so that lawyers and paralegals could watch them during the sometimes-quieter summer months. These replays were well received, with the August programs attracting an average of 72 registrants at each. While members can purchase any CPD program to view "on demand" at their convenience after the live date for the program, some members prefer viewing the archive at a scheduled time. The group will offer summer replay programming again in 2017.



Five online eCourse titles were produced in 2016, adding to the current stable of 13 eLearning programs. eCourses are a popular alternative (or adjunct) to attending traditional CPD programs for many members.

While the trend of live, in-person attendance continues to decline in favour of the flexibility of webcast viewing - currently at a ratio of four who watch the webcast for every one live attendee, the large one and two-day Summit programs maintain a high demand related to on-site attendance. These flagship programs, held in core practice areas including real estate and family law, among others, provide an annual forum for practitioners to come together for networking, to share ideas and stories and to experience their professional learning within a community environment. These programs account for a significant portion of the organization's net CPD revenue. The team is currently planning a new cross-disciplinary two-day program, to be held in November 2017 that will be similar to the Special Lectures series which the Law Society previously hosted. To commemorate the country's sesquicentennial, the focus for this special program will be on constitutional law issues and its impact in several practice areas. The Symposium will culminate in the publication of a hard-bound volume of materials authored by its speakers.

We continue to work on refinements to the new eCommerce platform, the "LSUC Store" which was launched in mid-May. This new system allows members to log on using their Law Society portal credentials instead of requiring an additional set of user names and passwords as in the previous e-commerce site. This functionality makes ordering easier and more convenient for our members, and improves security by funneling members' sensitive information, such as credit card information, through a dedicated eCommerce platform.

The CPD department, in accordance with the Law Society's strategic priorities, has transformed program planning to ensure that all programs are developed with reference to a draft set of learning competencies at stages of basic, intermediate and advanced levels of learning. This focus assists to better articulate the educational and experiential objectives to be achieved in each practice area throughout a member's professional practice life. The framework will be further refined and finalized in 2017 through a series of consultations with the professions to discuss and validate the listings, and more formally identify the competencies to be covered in CPD programming on a yearly (and multi-year) basis in major practice areas.



### **Certified Specialist Program**

The Law Society's Certified Specialist Program is adding a new area of specialization in Indigenous Legal Issues. This will be the 16<sup>th</sup> practice area now available through this competence-based credentialing process, which promotes high standards of knowledge, skill, experience and professional conduct to support access to quality legal representation by the public. Development of the new area began in early 2014 and has involved subject matter area experts and senior practitioners from a broad array of practice contexts, client groups and geographical locations to assist with the drafting, review and validation of the standards. Input on the standards was sought from client and professional stakeholder groups. The new specialization in Indigenous Legal Issues is expected to be available to the profession in the fall of 2016.

### **Practice Supports and Resources**

The Department's work has been focused on launching the new Coach and Advisor Network ("CAN"), while maintaining and enhancing the quality of service provided by the Practice Management and the CPD Accreditation teams.

CAN is now online and accepting applications for volunteer Coaches and Advisors. Orientation materials and templates for Coaches and Advisors have been posted on CAN's Resources page and additional training materials and supports will soon be available at no cost through the LSUC store. In November, lawyers and paralegals will be able to submit *Requests for Time* with a CAN Coach or Advisor and resources to support preparation by those Participants will be available.

CAN has developed "*The Introduction to the CAN Coaching Model*" program and will offer this skills training in a number of locations throughout the province in the coming year. In addition, CAN is developing e-learning options to ensure that all CAN Coaches will have ready access to quality training.

CAN has initiated contact with the leadership of mentorship programs provided by law associations and legal professional organizations in Ontario. CAN plans to host an information sharing and mentoring best practices event with interested representatives of those organizations before year-end.



The Practice Management Helpline (PMH) has answered more than 7,300 inquiries since the beginning of the year, and anticipates more than 8,000 inquiries by year end, representing a notable increase year to year. Between 2007 and 2015, PMH inquiries steadily increased from 4,337 to 7,423 per year. This is an overall increase of 71%. From January to October 2016, PMH handled 6,951 inquiries, which is a further increase of 9.8% over the same period in 2015. New resources have been developed and existing resources updated to reflect the recent amendments to the *Rules of Professional Conduct* and paralegal *Rules of Conduct*. A number of new Practice Tips on emerging technology issues have also been created and are now available online in MP3 and transcribed formats.

CPD Accreditation has developed a comprehensive audit process for Accredited Providers of Professionalism Content to ensure alignment of their programming with the Accreditation Criteria. CPD Accreditation has begun to implement this audit process with 10 of its Accredited Providers.

## **LICENSING UPDATE**

### **Lawyer Licensing Process**

There are approximately 2350 newly registered lawyer licensing candidates in the 2015-16 process which is now well under way, with most candidates having been called to the bar recently. The new group of licensing candidates for 2016-17 have started their process and licensing examinations were held this past June.

The second year of the Pathways Pilot Project is also now completed. The Law Practice Program alternative pathway was selected by 231 candidates for the 2015-16 licensing year – 220 completing the English program with Ryerson University and 11 completing the French program with the University of Ottawa. In the 2016-17 licensing year, there are currently 234 candidates in the English program and 23 candidates in the French program.

In the June 2016 call to the bar ceremonies, the Law Society called 1600 candidates to the Bar of Ontario. In addition to the ceremonial calls held in January and September, and administrative calls throughout the year, it is anticipated that the Law Society will call over 2200 lawyer licensing candidates to the Bar in 2016.



## **Paralegal Licensing Process**

Following the introduction of new accreditation protocols for Paralegal College Programs, which took effect in the 2015-16 academic year for the colleges, 11 intakes of paralegal college programming were not entitled to proceed. This was predominantly due to lack of sufficient enrollment in those intakes. At this time, there are 29 approved paralegal programs, at 45 college campuses, with 64 class intakes on a cohort to cohort basis. Since the inception of the paralegal college program audits for accreditation and ongoing quality assurance, the Law society has conducted 51 rigorous audits and continues to do so.

## **LEGAL INFORMATION AND LIBRARY SERVICES**

The Great Library is moving toward providing additional space for use by members, in response to needs expressed by members themselves. They have finished transitioning the Riddell print collection of historic books donated by Justice Riddell to new high-density shelving. This compact, rolling shelving has freed up significant storage space in the basement of Osgoode Hall, which the library will now fill with older parts of the print collection shifted from the Main and first floors of the library. These shifts will eventually culminate in increased research space on the main floor of the library.

Corporate Records and Archives continues to work on SharePoint related projects related to document retention and tracking protocols. In particular, they have been working closely with Information Technology staff for the past year and are close to a working prototype that will enable document tagging within SharePoint by Law Society staff. Once in place, this will provide a foundation for a SharePoint-based records centre in 2018.

## **POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)**

### **Advertising and Fee Arrangements Issues**

As referred to above, the Advertising and Fee Arrangements Issues Working Group is considering the issues raised in the Working Group's paper of June 2016 and the submissions received following a call for feedback. The Working Group is examining issues of advertising and marketing that may be false or misleading and fees that are



not transparent and may have an impact on the way in which legal services are provided. The Working Group is expected to continue its work into early 2017.

### **Disclosure Working Group**

In September 2016 Convocation adopted a report from the Disclosure Working Group recommending the approval of a disclosure policy framework regarding the disclosure of information about complaints and investigations. Statutory amendments may be required to fully implement the framework.

### **Governance Task Force**

The Governance Task Force was established in September 2016 following a commitment by Convocation to review the Law Society's governance structure in the Strategic Plan. The Task Force has commenced meeting and is discussing the principles to govern its work, as directed by the Strategic Plan and the Task Force's terms of reference. The Task Force is considering a broad range of governance initiatives and will be reporting to Convocation on an on-going basis.

### **The Real Estate Issues Working Group**

The Real Estate Issues Working Group continues to deal with issues and developments related to real estate practice in Ontario. The Working Group is currently considering the implications of third party electronic funds transfer products for the public and for lawyers, including the extent to which the use of such products is consistent with lawyers' professional obligations.

### **Mental Health Strategy Task Force**

A Mental Health Strategy Implementation Task Force has been established to monitor implementation of the Mental Health Strategy Convocation approved this year. Building on the efforts the Law Society is already undertaking in this area, the Strategy includes a Vision and Commitment to underpin the Law Society's work, two Strategic Directions with a focus on preventive/management strategies and regulatory strategies and a number of Key Elements and Initiatives that will advance those Directions. As implementation progresses, we expect that policy issues related to the strategy will be referred to the appropriate committees for consideration.



### **Access to Justice and the Action Group (TAG)**

TAG coordinated Ontario's first Access to Justice Week with a wide range of partners from October 17 to 21. The week resulted in engagement with the public as well as representatives from technology, business, social sectors in addition to our justice system partners. Together, these participants explored different elements of the access to justice crisis such as public opinion, child welfare and importance of innovative collaborations in the development of meaningful solutions.

The events received coverage from 25 media outlets as well as letters of support from The Honourable Beverley McLachlin, as well as Federal Justice Minister Jody Wilson Raybould. As well the Attorney General of Ontario, Yasir Naqvi made a ministerial statement commending Access to Justice week.

### **Equity Initiatives**

The Challenges Faced by Racialized Licensees Working Group is reporting to Convocation this month with 13 recommendations aimed at addressing these challenges. This is the culmination of a lengthy study, including a comprehensive consultative phase, and I look forward to the results of Convocation's consideration of the report.

Our Equity and Aboriginal Affairs Committee and its Indigenous Advisory Group (IAG) continue their joint development of an Indigenous Strategy/Framework that will formulate approaches to priorities set out in Treasurer's Memorandum to the Committee. This includes developing programs to enhance cultural competence on the part of the professions and Law Society in dealings with Indigenous peoples, improving access to the complaints process for Indigenous communities and supporting and implementing the work of reconciliation, in collaboration with IAG, by responding to and implementing the Truth and Reconciliation Commission of Canada's Final Report (TRC Final Report) Calls to Action related to the Law Society's mandate.

We have also begun consideration of the process for review of the Discrimination and Harassment Council program as set out in the Treasurer's Memorandum.



## **Federation of Law Societies of Canada**

The Law Society's contribution in both human and financial resources to the Federation continues to be significant. The report on the Federation's October 2016 meetings to Convocation this month shows the extensive contribution from the Law Society benchers and staff. In particular, several senior staff are involved in a number of initiatives. These include Diana Miles, Executive Director, Organizational Strategy /Professional Development & Competence, who participates as a member of the National Requirement Review Committee and serves on the CanLII Board Nominating Committee, Karen Manarin who serves on the Standing Committee on National Discipline Standards, Jim Varro who serves on the Anti-Money Laundering and Terrorist Financing Working Group and Naomi Bussin, Senior Counsel, Professional Regulation who is a member of the Standing Committee on the Model Code of Professional Conduct. I serve as a member of the Finance and Audit Committee.

Special mention should be made of Policy Counsel Juda Strawczynski who did an extraordinary amount of work in preparing submissions in concert with the Federation on a number of government-initiated consultations this past summer.

## **Government Relations**

Public Affairs liaises with all levels of government to ensure ongoing and enhanced networks and relationships. In addition, Government initiatives that affect the Law Society's mandate currently being monitored and addressed include:

- The expansion of Unified Family Courts in Ontario
- Legal Aid (both as a supporter seeking enhanced funding to address eligibility levels, and as a partner in recommending appointments to the board)
- Paralegal Exemptions
- Real Estate issues
- Monitoring search and seizure provisions in provincial regulatory statutes, to protect privilege
- Working with the government on new initiatives on issues such as prevention of sexual violence and managing auto insurance costs
- Managing the Law Society's legislative agenda
- Public policy participation thru various think tanks and forums



### **Treasurer's Appointments Advisory Group (TAAG)**

In September 2016, the Treasurer established a group of benchers to co-ordinate the process for the various external appointments made by the Law Society and to provide advice to the Treasurer on these appointments. Public Affairs is assisting with outreach to stakeholders and the recruitment of diverse candidates. TAAG is currently reviewing a recruitment process policy, which will include a policy statement and appropriate criteria that will guide the appointment of well-qualified persons to the various boards, councils and committees of external bodies and has already provided names to both the Federal and Provincial governments for appointments.

### **Legal Aid Working Group**

In October 2016, the Treasurer established the Legal Aid Working Group (LAWG) to identify opportunities for engagement and enhancement of the Law Society's relationship with Legal Aid Ontario (LAO), Alliance for Sustainable Legal Aid (ASLA), government and other justice system and community services partners in accordance with and further to the Law Society's functions and duties respecting competence, access to justice, the rule of law and the public interest. Public Affairs has played a significant role in developing and organizing the committee and will continue to play a supporting role. The Law Society is also a member organization of the ASLA and provides bencher support for the Alliance. Its mandate is to communicate to the provincial and federal government the importance of the provision of properly funded and consistently high quality legal aid services in a cost-effective and efficient manner to low-income Ontarians throughout the province.

### **Real Estate Liaison Group (RELG)**

The Real Estate Liaison Group, created by the Treasurer together with the Ontario Bar Association, FOLA and LawPRO engages in dialogue on real estate issues of common interest and planning in response to expressed concern about the future and current state of real estate practice in Ontario. The group continues to meet to discuss current issues, including ABS, regulatory policy issues touching on real estate practice and legislative developments.



## **MEDIA RELATIONS AND ISSUES MANAGEMENT (MRIM)**

The Media Relations and Issues Management (MRIM) team works to ensure that the Law Society, its mandate, initiatives and operations are positively and accurately represented in the public sphere.

These activities include managing a high volume of media enquiries and pursuing positive earned media coverage. MRIM also supports external communications activities for the Treasurer, Convocation and the work of their committees.

Over the last year, MRIM has taken a proactive approach to media relations and to communicating Law Society initiatives which have resulted in expanded editorial reach and increased coverage, most of it positive or neutral in tone. For example in the third quarter alone, total editorial reach was over seventy three million with 790 stories related to the Law Society.

MRIM this year has also strived to have a significant spokesperson quote in media stories that invokes one of our strategic priorities and/or the Law Society's public protection mandate. In the last quarter, 55% of coverage included a spokesperson quote.

MRIM continues to distribute weekly to media all of the Law Society Tribunal proceedings and notices which have contributed to a continual increase in media coverage for the Law Society.

In addition, MRIM has received and responded to 320 different media inquiries to date. Overall, discipline matters garner the most interest and coverage.

Other topics of interest include TWU, Challenges faced by Racialized Licensees Working Group, the LPP, new Treasurer election, Calls to the Bar, Personal Injury Advertising and Compensation Fund increase. TAG's first Access to Justice Week last October also garnered significant coverage in 25 different media outlets across the province.

As well, over the past year, the Treasurer, working group chairs and other Law Society representatives conducted a number of interviews, both with legal trade and mainstream publications or networks MRIM also initiates a broad range of internal and



external communications materials. To date this year, the department prepared over 70 speeches or speaker notes in addition to news releases, positioning statements, media plans and Convocation News that support Law Society priorities and the Treasurer's outreach initiatives. MRIM also developed and maintains a targeted community partner and justice sector distribution process for legal information guides available in Cree, Oji-Cree and Northwestern Ojibway, as well as English and French.

## **COMMUNICATIONS AND MARKETING (C&M)**

Over the course of the year, the focus for Communications and Marketing continues to be the strategic evolution of digital initiatives and communications as directed by the Law Society's strategic priorities for 2015-2019.

### **Social Media**

In March 2016, the Law Society revised its approach to strategic content marketing through Facebook, Twitter and LinkedIn with the intent of growing social media audiences, increasing engagement and enhancing the Law Society's reputation and brand.

For other channels such as YouTube, we implemented a plan this quarter to better utilize the platform by reorganizing video inventory and increasing new, well-branded and timely content. This included the launch of the Treasurer's video blog, which was developed to provide opportunities to increase engagement. The Treasurer's Twitter account incorporates an integrated communications approach with the Law Society Twitter account. Communications and Marketing has also tested Instagram as a new platform to focus on Law Society news. .

The Law Society's social media audience continues to grow: our Facebook page now has 3,785 likes; 8,108 follow us on LinkedIn; and we've reached the 10,000 mark for Twitter followers. Overall, the results indicate that targeted messaging on timely topics has increased engagement.

### **Websites**

Communications and Marketing together with Information Technology, is leading a corporate website redesign project to engage the public, professions and stakeholders



and to build a strategic communications tool that effectively supports the organization's core work. The new Law Society website will offer target audiences a cohesive online experience where relevant information, services and resources can be easily accessed in an understandable way.

An extensive content inventory and audit of the current website was completed, along with interviews with key stakeholders and departments. The content strategy and design phase of the project will begin in late November and will continue into the first quarter of 2017.

The *Gazette*, the Law Society's online magazine, has had a 15% increase in 2016, most notably from referral traffic from social channels and the corporate website. Mobile traffic, an important and growing source, has increased 81% in 2016. The top performing *Gazette* article was our Mental Health Week promotion, which had the most views this year.

## TECHNOLOGY

### SharePoint

Our largest SharePoint related project in 2016 has been the design and rollout of the Tribunal Information Management (TIM) System, a SharePoint-based case management system for use by Law Society Tribunals staff. The development is complete, with implementation scheduled for December and go-live for January 2017. We are also in discussions to plan the next phase of this project, which involves the redevelopment of the portions of the process which are currently hosted on the AS/400. This year we also successfully completed the Discipline History SharePoint Scanning Integration project, which involved transferring approximately 23,000 discipline history files from a network drive to SharePoint to make them easier to access and search.

### Relationship Management System Project (RMS)

The Relationship Management System is the name of the project to modernize the Lawyer & Paralegal Database, or as many people call it, the AS/400 (after the name of the IBM server it runs on). In this age of "big data," and with the demand for more



automation and self-service, the current system severely limits us from being as effective, proactive, and service-oriented as we can and should be. In addition to addressing technical risks, one of the major business goals of the RMS is to increase the efficiency of our existing staff to prepare us for taking on new, data-intensive initiatives. Other goals, requested by users, include redesigning the class/status code system, and working towards a more comprehensive, “one-stop-shop” approach to data access to improve staff efficiency and service quality.

As part of our extensive work plan this year, we have:

- Developed initial estimates of the cost, duration, and platform options for the project
- Created a representative Steering Committee, led by Terry Knott, for strategic guidance and business decisions
- Engaged a professional consulting firm to provide advice and assistance in planning
- Developed detailed business requirements and data model for use in purchasing.

As the project funding has been approved, the Steering Committee plans to initiate the detailed design and implementation of the Relationship Management System in 2017. The Request for Proposal will be released in the first quarter of 2017; followed by the beginning of the Discovery Phase with the selected vendor late in the second quarter. Design and Development will begin in the fourth quarter, provided a fixed price contract is negotiated after the Discovery Phase.

### **LSUC Portal**

The Lawyer Annual Report and Paralegal Annual Report will look different for the 2016 filing year, as they will be fully integrated into the LSUC Portal. The Annual Report section of the Portal will look more like the other portlets and will provide more flexibility for development in the future.

The Law Society Referral Service application and renewal process moved into the LSUC Portal in the middle of November. This allows licensees to manage their own LSRS profile, including areas of law and dates they are not available to accept referrals.



## Digital Information Risk Management Program

Having designated Information Security as a major theme of this year, we have taken serious action on a number of fronts to increase our security against the growing tide of hacker attacks, data breaches, and increasingly destructive malware. This summer, for example, we encrypted the hard drives of over 300 laptops, so that the data they contain remains secure even if they should be lost or stolen. We also connected 66 iPads to our mobile device management server, which allows us to lock them down and to remotely wipe them should they be lost or stolen—and which allowed us to provide secure access to SharePoint on them. On the server side, we are adding some additional layers of protection against the new wave of malware attacks that come in via email and USB drives; by our latest measurement, almost 2% of incoming email contains a virus (and is blocked by our servers).

## Other Projects

Other business-focused projects we have completed this year include the replacement the Law Society's old eCommerce system with a newer high-capacity system, the update of the Articling Registry application to improve its security and usability, and the implementation of changes in iLaws to support Experiential Training.

## OUR PEOPLE

### Diversity Census and Inclusion Survey initiative

In March, the Law Society launched its first Diversity Census and Inclusion Survey - to help us better understand the demographic characteristics that make up our team. There was a 72% participation rate, with high rates of feelings of inclusion overall. We communicated the final analysis and action plans from the survey results to employees during the Town Hall meeting in September, and plan to discuss them with the Equity and Indigenous Affairs Committee early in the New Year.



## **Employee Engagement and Enablement Survey**

In June 2016 the Law Society conducted an Employee Engagement and Enablement Survey to help improve the effectiveness of our organization and enhance communications between management and employees at all levels. The results were as follows:

- 77% employee response rate – 427 participants
- 73% employee engagement – (commitment & discretionary effort)
- 71% employee enablement – (optimized roles & supportive environment)

These scores are very high, positioning the Law Society above the average for public/not-for-profit organizations, and for organizations in Canada generally.

## **SERVICES FOR MEMBERS AND THE PUBLIC**

### **LAW SOCIETY REFERRAL SERVICE**

From January 1, 2016 to October 31, 2016, the Law Society Referral Service provided 36,745 referrals. Of those, 26,087 were provided through the online service; 9,734 referrals were provided through the crisis line; and 924 referrals were provided by email.

From January 1 to October 31, 2016, LSRS also provided the names of 11,106 LSRS members to people who did not qualify for a referral. A member of the public would not qualify for a referral if they do not live in Ontario, if their legal matter is urgent and they cannot wait up to three business days for the licensee to arrange a consultation, or if they have already received a referral for the same legal issue within the calendar year.

### **MEMBER ASSISTANCE PLAN (MAP)**

#### **Usage**

For the period of January 1 to September 30, 2016 there were 1,115 MAP cases. As a result, Homewood Health, the Law Society's Member Assistance Program provider, has a projected an annual utilization rate for 2016 to be 5.13%.



The awareness source of the MAP continues to arrive predominantly from a previous client (36.1%), which again allows us to infer that the program is being shared through word of mouth from prior recipients of the program.

There was good distribution of age groups accessing MAP, with the largest cohorts in the age ranges of 21-30 (25.6%) and 31-40 (36.9%).

The top MAP counselling categories for this time period in 2016 was psychological counselling (49.7%); work counselling (18.7%) and marital/relationship counselling (16.2%). Of the psychological cases, stress had the highest number of cases at 14.3%, followed by anxiety at 14.2% and depression at 10.4%.

The method of distribution for counselling was 77.4% face-to-face; 16.8% over the phone; and 5.8% over the web.

Looking at overall utilization, the top area of Plan Smart cases were: career counselling at 38.9%, 12 weeks to wellness at 21.6% and nutritional counselling at 10.8%.

### **Peer Conclave**

Friday, October 28th, marked the second annual Peer Conclave. The objective of this event is to bring together volunteers from across the membership with a shared mission towards supporting professionals in the legal profession in managing some of their most challenging mental, physical and social health issues. Peers come from all corners of the profession - lawyers, judges, paralegals and students.

In this year's program, the Peers were joined by Mr. Michael Bryant, former Attorney General. Mr. Bryant, a recovering alcoholic, openly shared his story, more specifically, his struggle with addiction, and its impact on his personal and professional life. Mr. Bryant's willingness to share his story of recovery had a tremendous and positive impact on the Peer group.

A long term commitment has been made to ensure that Peers continue to receive this type of inspiration, along with the education, training and support provided by MAP Program.



## CONCLUSION

It is when my staff assembles the information for this report that I perhaps most often marvel at the depth and breadth of the operations of the Law society of Upper Canada and the dedication of our staff to delivering on our strategic priorities that are informed by our statutory mandates. As always, I want to acknowledge my appreciation for that dedication. As we look back on the year, 2016 has been a time of significant and exciting changes in some important parts of our operation. These aren't easy. They challenge staff and management to think and work differently. I have been deeply impressed and grateful for the willingness of staff and our management teams to embrace change, and their patience in working through it. I am also most grateful for the support of our new Treasurer, Paul Schabas, and Members of Convocation. The change management process is made easier and more interesting by their commitment to it.

**TAB 3**



## **Report to Convocation**

**December 2, 2016**

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

**Committee Members**  
Dianne Corbiere, Co-Chair  
Julian Falconer, Co-Chair  
Sandra Nishikawa, Vice-Chair  
Gina Papageorgiou, Vice-Chair  
Marion Boyd  
Suzanne Clément  
Robert Evans  
Avvy Go  
Howard Goldblatt  
Marian Lippa  
Isfahan Merali  
Sidney Troister  
Tanya Walker

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Ekua Quansah – 416-947-3425)**

## **COMMITTEE PROCESS**

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on November 10, 2016. Committee members, benchers Dianne Corbiere, Co-Chair, Julian Falconer, Co-Chair, Sandra Nishikawa, Vice-Chair, Suzanne Clément, Robert Evans, Marian Lippa, Sidney Troister and Tanya Walker attended. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, were present. Staff members CEO Robert Lapper, Darcy Belisle, Hyacinth Khin, Jennifer Khor, Terry Knott, Marian MacGregor, Karen Manarin and Ekua Quansah also participated.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Anand presented the Report.

Re: Report of the Challenges Faced by Racialized Licensees Working Group – “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions”

It was moved by Mr. Anand, seconded by Mr. Falconer, that Convocation approve the thirteen recommendations as outlined in the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report.

Pursuant to a notice of motion provided on November 4, 2016, it was moved by Mr. Troister, seconded by Mr. Lem, that each of the recommendations contained in the report of the Challenges Faced by Racialized Licensees Working Group be discussed and voted on separately rather than as a package in order that benchers have an opportunity to consider the advisability of approving some but not all of the recommendations.

Lost

ROLL-CALL VOTE

Anand	Against	Leiper	Against
Armstrong	For	Lem	For
Beach	For	Lerner	Abstain
Bickford	Against	Lippa	Against
Boyd	Against	MacLean	For
Braithwaite	Against	McDowell	Against
Bredt	For	McGrath	For
Burd	Against	Merali	Against
Callaghan	For	Mercer	Against
Chrétien	Against	Murchie	Against
Cooper	Against	Nishikawa	Against
Corbiere	Against	Papageorgiou	Against
Corsetti	Against	Richardson	For
Criger	For	Richer	Against
Donnelly	Against	Rosenthal	Against
Earnshaw	For	Sharda	Against
Evans	Against	Sheff	For
Falconer	Against	Sikand	Against
Galati	Abstain	Spurgeon	Against
Go	Against	St. Lewis	For
Goldblatt	Against	C. Strosberg	For
Groia	For	H. Strosberg	For
Haigh	Against	Troister	For
Hartman	Against	Udell	For
Horvat	For	Vespry	For
Lawrie	Against	Walker	Against

Vote: 19 For; 31 Against; 2 Abstentions

**THE LAW SOCIETY OF UPPER CANADA**

**Notice of Motion made pursuant to Section 93 of By-Law 3  
[Benchers, Convocation and Committees]**

**Notice is hereby given of the following motion  
to be made at Convocation on December 2, 2016**

THAT each of the recommendations contained in the report of the Challenges Faced by Racialized Licensees Working Group be discussed and voted on separately rather than as a package in order that benchers have the opportunity to consider the advisability of approving some but not all of the recommendations.

Mover: Sidney Troister LSM 

Seconder: [name   
JEFFREY W. LEM

[date]  
November 4/16

It was moved by Ms. St. Lewis, seconded by Ms. Vespry, that the main motion be amended by adding the words “in a manner consistent with the best practices established to protect licensees vulnerable to harm which may flow from this disclosure” following the phrase “Paralegal Annual Report” in Recommendation 4 of the Report.

Carried

It was moved by Ms. Criger, seconded by Mr. Bredt, that the main motion be amended to replace the word “require” in Recommendation 3, paragraph 1) of the Report with the word “encourage”.

Lost

ROLL-CALL VOTE

Anand	Against	Leiper	Against
Beach	For	Lem	For
Bickford	Against	Lerner	Against
Boyd	Against	Lippa	Against
Braithwaite	Against	MacLean	Against
Bredt	For	McDowell	Against
Burd	Against	McGrath	Against
Callaghan	Against	Merali	Against
Chrétien	Against	Mercer	Against
Cooper	Against	Murchie	Against
Corbiere	Against	Nishikawa	Against
Corsetti	Against	Papageorgiou	Against
Criger	For	Richardson	Against
Donnelly	Against	Richer	Against
Earnshaw	Against	Rosenthal	Against
Evans	Against	Sharda	Against
Falconer	Against	Sikand	Against
Galati	Against	Spurgeon	Against
Go	Against	St. Lewis	Abstain
Goldblatt	Against	C. Strosberg	Against
Groia	Against	H. Strosberg	Against
Haigh	Against	Troister	For
Hartman	Against	Udell	Abstain
Horvat	Against	Vespry	For
Lawrie	Against	Walker	Against

Vote: 6 For; 42 Against; 2 Abstentions

The main motion as amended carried.

ROLL-CALL VOTE

Anand	For	Leiper	For
Beach	Abstain	Lem	For
Bickford	For	Lerner	For
Boyd	For	Lippa	For
Braithwaite	For	MacLean	For
Bredt	For	McDowell	For
Burd	For	McGrath	For
Callaghan	For	Merali	For
Chrétien	For	Mercer	For
Cooper	For	Murchie	For
Corbiere	For	Nishikawa	For
Corsetti	For	Papageorgiou	For
Criger	For	Richardson	For
Donnelly	For	Richer	For
Earnshaw	For	Rosenthal	For
Evans	For	Sharda	For
Falconer	For	Sikand	For
Galati	For	Spurgeon	For
Go	For	St. Lewis	For
Goldblatt	For	C. Strosberg	For
Groia	For	H. Strosberg	For
Haigh	For	Troister	Abstain
Hartman	For	Udell	For
Horvat	For	Vespry	Abstain
Lawrie	For	Walker	For

Vote: 47 For; 0 Against; 3 Abstentions



**Tab 3.1**

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

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**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;
- 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 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:

- 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

## **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](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](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.”<sup>1</sup>

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.

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<sup>1</sup> “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."<sup>2</sup>

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.

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<sup>2</sup> "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.”<sup>3</sup>*

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 licensees<sup>4</sup> 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

<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup>

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.<sup>7</sup>

<sup>5</sup> Referred to as “the engagement process”.

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

<sup>7</sup> 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*<sup>8</sup> and the *Paralegal Rules of Conduct*<sup>9</sup> 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;<sup>10</sup>
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;**

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

<sup>9</sup> *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 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](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:

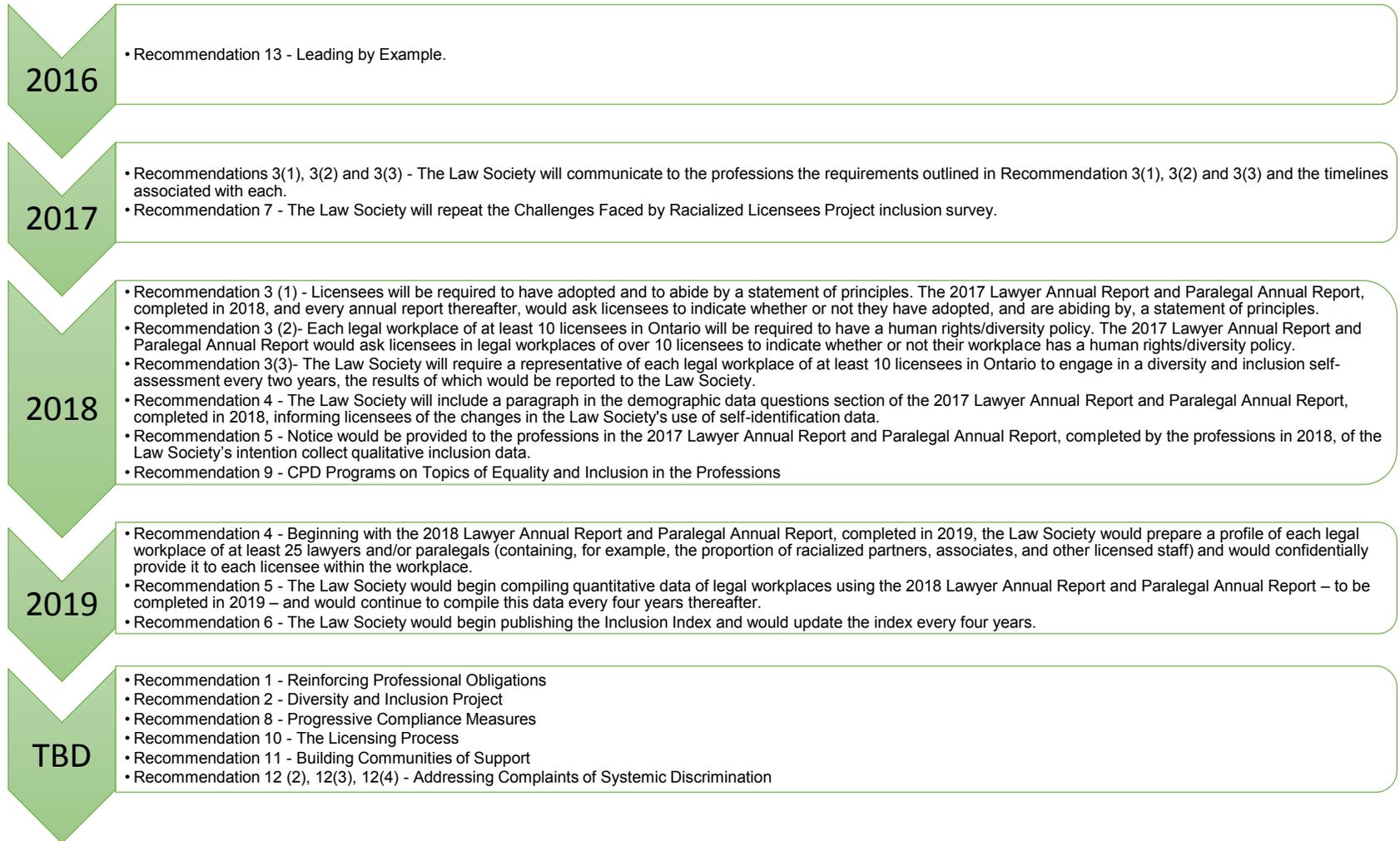
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 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 King<sup>11</sup>

### 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 racialized<sup>12</sup> lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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:

<sup>11</sup> Daughter of Martin Luther King

<sup>12</sup> 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>.

<sup>13</sup> 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>

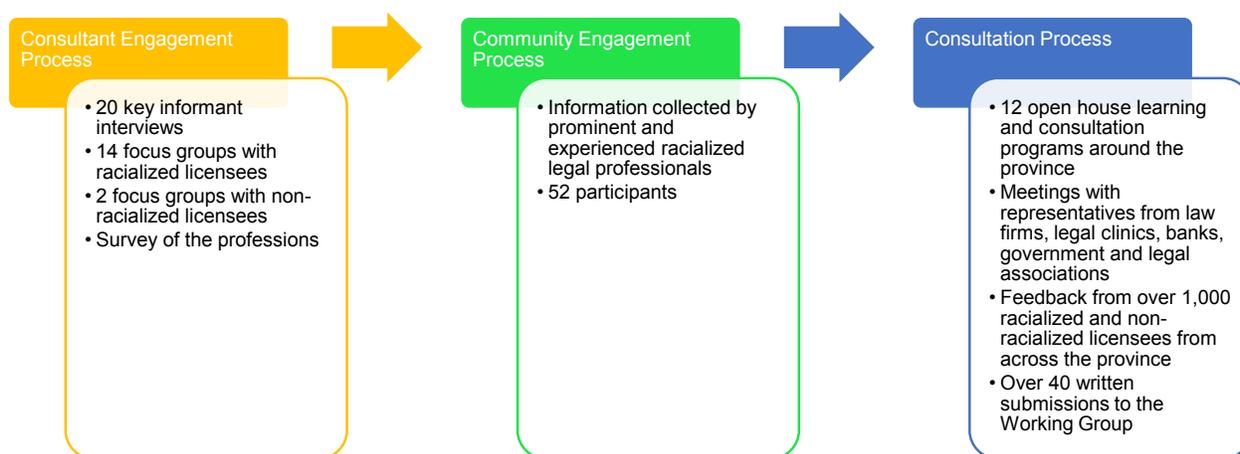
<sup>14</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>15</sup> 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;<sup>16</sup>
  - 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.<sup>17</sup>



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:

<sup>16</sup> 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.

<sup>17</sup> 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.”<sup>18</sup>*

— 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.”<sup>19</sup> 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.”<sup>20</sup>
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.”<sup>21</sup> 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 #OscarsSoWhite<sup>22</sup> — 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

<sup>18</sup>*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>

<sup>19</sup> “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>

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

<sup>21</sup> “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>

<sup>22</sup> 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.””<sup>23</sup>

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 prisons<sup>24</sup> 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”<sup>25</sup> 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”,<sup>26</sup> 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*.”<sup>27</sup>
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”<sup>28</sup>

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

<sup>23</sup> “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>

<sup>24</sup> 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>

<sup>25</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

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

<sup>27</sup> “Towards a new OHRC policy on racial profiling”, online: Legal Aid Ontario <http://legalaid.on.ca/en/news/newsarchive/2016-06-13-racialized-communities-strategy.asp>

<sup>27</sup> “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](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>27</sup> “Towards a new OHRC policy on racial profiling”, online: Ontario Human Rights Commission

<sup>28</sup> 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."<sup>29</sup> 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*<sup>30</sup> and *By-Laws*<sup>31</sup> 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.

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<sup>29</sup> "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](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

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

<sup>31</sup> 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;<sup>32</sup>
  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;<sup>33</sup> 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.

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<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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

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<sup>34</sup> “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/>

<sup>35</sup>, “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](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

departments in Québec.<sup>36</sup> 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.<sup>37</sup>

### **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;**
- 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.

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

<sup>37</sup> *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.<sup>38</sup>

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*].”<sup>39</sup>
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.”<sup>40</sup>
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.<sup>41</sup>
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

<sup>38</sup> *Rules of Professional Conduct*, *supra* note 6.

<sup>39</sup> *Paralegal Rules of Conduct*, *supra* note 7.

<sup>40</sup> Participating legal association.

<sup>41</sup> “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.<sup>42</sup> 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*.<sup>43</sup> 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.<sup>44</sup>
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.<sup>45</sup>
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."<sup>46</sup> 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).

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<sup>42</sup> "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>

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

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

<sup>45</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>46</sup> "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”<sup>47</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>48</sup>
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.”<sup>49</sup>

### **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 so they can compare**

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

<sup>48</sup> *Ibid.*

<sup>49</sup> 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>.

**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.”<sup>50</sup>*

— 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.<sup>51</sup>
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;<sup>52</sup>
  - 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.

<sup>50</sup> “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>

<sup>51</sup> *Supra* note 11 & note 13

<sup>52</sup> “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.”<sup>53</sup>
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.”<sup>54</sup>
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,<sup>55</sup> 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.<sup>56</sup>
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

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<sup>53</sup> *Supra* note 47.

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

<sup>55</sup> “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 commentators<sup>57</sup> 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.).”<sup>58</sup>

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<sup>57</sup> 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)

<sup>58</sup> *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.”<sup>59</sup>
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”.<sup>60</sup> 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.<sup>61</sup>
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”.<sup>62</sup>
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.<sup>63</sup>
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>64</sup>

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<sup>59</sup> *Ibid.*

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

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

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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-

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<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.<sup>65</sup>
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.”<sup>66</sup> 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.

<sup>65</sup> Policy and Guidelines on Racism, *supra* note 39 at 50.

<sup>66</sup> 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](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.”<sup>67</sup>
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 Report<sup>68</sup> 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

<sup>67</sup> Law firm representative.

<sup>68</sup> “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/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2013/convov2013_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."<sup>69</sup>

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.<sup>70</sup> 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.

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<sup>69</sup>"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](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

<sup>70</sup> *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.<sup>71</sup>
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.<sup>72</sup> For example, Menteer, a free, open source online platform,<sup>73</sup> 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

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

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

<sup>73</sup> 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.<sup>74</sup>

#### *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.<sup>75</sup> 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

<sup>74</sup> "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>

<sup>75</sup> "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*<sup>76</sup>, 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

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<sup>76</sup> "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.”<sup>77</sup>
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.<sup>78</sup> 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.”<sup>79</sup>
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.<sup>80</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>81</sup>
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,

<sup>77</sup> 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>

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

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

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

<sup>81</sup> *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.<sup>82</sup>

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,

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<sup>82</sup> 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.<sup>83</sup> 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

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<sup>83</sup> 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, one 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.”<sup>84</sup>

### 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 sponsorship<sup>85</sup> 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.

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

<sup>85</sup> 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*<sup>86</sup> and the *Paralegal Rules of Conduct*<sup>87</sup> 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

<sup>86</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>87</sup> *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”<sup>88</sup>, 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

<sup>88</sup> 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.<sup>89</sup> 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.

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<sup>89</sup> 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](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)



**Tab 3.1.1**

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

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November 14<sup>th</sup>, 2016

## **Submissions to the Law Society of Upper Canada on the Experiences of Racialized Licensees**

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### **Background on the Barbra Schlifer Commemorative Clinic**

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It has been providing legal representation, counselling, and interpretation in over 100 languages to women who have experienced all forms of violence, since 1985. The Clinic was established in the memory of Barbra Schlifer, an idealistic young lawyer whose life was cut short by violence on the night of her call to the bar of Ontario on April 11, 1980. The Clinic is not part of the LAO suite of community and specialized clinics. Rather, it is a separately incorporated not-for-profit that supplements the lack of legal services for survivors of violence.

We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals, and clinical education for law students. We work on law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact women survivors of violence. The Clinic serves women from ethno-racially and socio-economically diverse backgrounds, frequently from highly marginalized communities. Our clients often experience multiple social inequalities, including poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability.

On the basis of the experiences of our staff, (among whom are a high number of racialized licensees) we recommend that the Law Society of Upper Canada ("LSUC") allocate resources and provide a platform for racialized licensees to combat systemic racism and ensure a lasting culture of change in the legal profession. In this way, LSUC could move its commitment toward systematically supporting the implementation of concrete initiatives. Racialized licensees in the profession should lead the discussion and planning that will create lasting change. This change is imperative to the ongoing

success of the profession, which numerous reports have called for in response to barriers and an ossified professional culture.<sup>1</sup>

### **Professional Obligations and Practices**

*Relevant Recommendations: 1, 2, 3, 9, 10*

The LSUC must ensure its commitment to reinforcing the professional obligations of its members to recognize and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation. This includes, specifically and annually, addressing the lack of focus on diversity and systemic racism in law school curricula. Continuing professional development (“CPD”) for lawyers and legal practitioners must also emphasize this priority. To operationalize diversity and

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<sup>1</sup> Trevor C. W. Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall L.J. 51 at pp. 51 - 55, 63 - 68, 71 - 78 , online: SSRN < [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1151799](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151799) >

Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism’ : Historical Perspectives,” pp . 2 - 1 to 2 - 13, 2 - 21 to 2 - 26 (“Barriers to Entry: Something Less than a Warm Welcome?”) , paper presented at the Chief Justice of Ontario ’ s Advisory

Michael Ornstein, Racialization and Gender of Lawyers in Ontario , a Report for the LSUC (Toronto: LSUC, April 2010), pp . i - ii (“Executive Summary”) and 34 - 36 (“Conclusions”) , online: LSUC < [www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf) > • Sabrina Lyon &

Lorne Sossin, “Data and Diversity in the Canadian Justice System” (2014) Journal of Law & Equality , pp .3 - 12, 15 - 16 , online, Osgoode Digital Commons: < <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps> >

Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), fact sheet, online: LSUC [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf)

David Lepofsky , “Making Courts and Mediations Accessible for People with Disabilities” (2014) video, online: < [https://www.youtube.com/watch?v=p3d73L\\_GpGXY&feature=share&list=PLDGgB77j2ZYrl\\_rtp32nSjOXfrDAGvnn&index=7](https://www.youtube.com/watch?v=p3d73L_GpGXY&feature=share&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=7) >

Law Society of Upper Canada, Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), pp. 10 - 21, online: LSUC < [www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Offical%2812%29.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical%2812%29.pdf) >

Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) < [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/2013\\_Snapshot\\_Lawyers.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf) >

equality training, the LSUC should develop clear guidelines for delivering relevant, timely, and meaningful educational and CPD programs which address the historic inequalities in Canada for racialized communities and the lack of diversity and plurality that is a persistent problem in the legal profession. These programs should also focus on the experiences of licensees who may experience multiple and intersecting forms of marginalization, including racialized women, religious minorities, sexual and gender expression minorities, or licensees from low-income backgrounds.

### **Building Communities of Support and Addressing Systemic Discrimination**

*Relevant Recommendations: 11, 12*

The LSUC must actively seek to build sustainable communities of support to recognize the unique experiences of racialized licensees. There is a profound lack of meaningful and ongoing mentorship for racialized licensees in the profession, and very little systematic fostering of natural connections and capacity building between senior and junior counsel. Building communities of support requires recognition of the social location of licensees and their lived experiences as minorities in a very hierarchical profession. Often, the narrative of “firsts” replaces the hard work of substantive and sustainable change, and creates an impression of “progress.”<sup>2</sup>

The LSUC and employers should also examine practices which reinforce so-called “token diversity,” which can result in the hiring of a few racialized licensees to meet the mandate of diversity and equality, without addressing ongoing oppressive workplace culture and the historical disadvantage faced by minority licensees. Ultimately, the concept of the plurality is useful here, as a commitment to diversity is empty without providing racialized and minority licensees access to meaningful positions of power within the legal profession.

Racialized licensees also experience gaps in employment equity, particularly if they are women. “Men are more likely to be in sole practice and law firm partners, while there is a higher proportion of women in all the other stations, especially in house, in clinics, in

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<sup>2</sup> Laura Beeston, “Canada appoints its first transgender judge” The Globe and Mail (December 18, 2015) <http://www.theglobeandmail.com/news/national/canadas-named/article27876501/> - first - transgender - judge -

government and education.”<sup>3</sup> As with gender wage gaps in other fields, women lawyers are at a definite economic disadvantage vis-à-vis their male colleagues.<sup>4</sup>

Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women, exemplifying and maintaining women’s subordinate positions in such a material way, contributes to an overall vulnerability to violence and disrespect, including the daily experiences of racialized licensees who are women. The LSUC should commit to employment equity for all its licensees and create meaningful mechanisms to allow licensees to excel in their legal careers while living balanced lives. This commitment includes both an eradication of the gender and racial wage gap, as well as a commitment to providing equitable parental leave for families having children, and not penalizing women for taking time away from their legal practice.

Sexual violence and its impacts in the employment context highlight yet another dimension of the unique experiences of racialized licensees, particularly in a hierarchical profession such as law. In situations that exacerbate unequal power dynamics, such as employment contexts, women, particularly visible minorities, continue to be deterred from reporting sexual assault and adequate state protection mechanisms are often not available, especially when negative repercussions on one’s reputation or employment are at stake.<sup>5</sup>

<sup>3</sup> Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) <  
[https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/2013\\_Snapshot\\_Lawyers.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf)>

<sup>4</sup> Statistics Canada. 2011. “Average female and male earnings.” Online:  
<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>  
United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en)

OECD. 2014. “Gender Wage Gap.” Online: <http://www.oecd.org/gender/data/genderwagegap.htm>

See for example, Sheila Block and Grace-Edward Galabuzi. 2011. Canada’s Colour Coded Labour Market: The gap for racialized workers. Online: [http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour\\_Coded\\_Labour\\_MarketFINAL.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf); Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:  
[http://ywcacanada.ca/data/research\\_docs/00000140.pdf](http://ywcacanada.ca/data/research_docs/00000140.pdf)

Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:  
[http://ywcacanada.ca/data/research\\_docs/00000140.pdf](http://ywcacanada.ca/data/research_docs/00000140.pdf)

<sup>5</sup> Alice Woolley, <http://www.slaw.ca/2014/06/10/yesallwomennotallmen-sexual-harassment-in-the-legal-profession/>

The power dynamics inherent in the practice of law also exacerbate daily microaggressions experienced by racialized licensees in the workplace, such as when interacting with court staff, or with the judiciary. Our students report ongoing struggles with sexualized work environments throughout the profession. These power dynamics are also inherent in the employment opportunities, and the experiences of racialized licensees during interview processes, both at the entry-level during the law school On-Campus Interview (“OCI”) processes, as well as during individual interviews at law firms, clinics, and the government. Comments about a candidate’s ethnic background or chosen hairstyle may seem minimal, yet they underscore their minority status in a profession still mostly populated by white, male, Anglo-Saxon legal practitioners, particularly in positions of power such as partners, CEOs, or judges.

If the goal of the LSUC is to foster an inclusive profession responsive to the increasing diversity of the Canadian population, there must be a sustained commitment to address the root causes of discrimination and racism still inherent in the legal profession. This commitment must include law school initiatives as well as CPD initiatives for all members of the profession, including students, in a climate of careful monitoring and compliance within the profession to professional obligations of equity. It must also include profession-wide community building and meaningful solutions to the ongoing systemic inequality of racialized licensees, such as combating pay inequity, sexual violence in the workplace, and the inherent power imbalances. These goals are especially pertinent in a profession committed to providing justice and protecting the public interest.

**Barbra Schlifer Commemorative Clinic**  
Per:



**Amanda Dale**, Executive Director  
**Deepa Mattoo**, Legal Director  
**Petra Molnar**, Articling Student



Monday, November 14, 2016

Via Email: racialized.licensees@lsuc.on.ca

The Law Society of Upper Canada  
c/o Ekuu Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

The Black Law Students' Association of Canada ("BLSA Canada") is a national organization that represents Black law students across Canada in both official languages. Our purpose is to promote increased representation of Black students in law schools and to support and enhance academic and professional opportunities for Black law students. BLSA Canada and its chapters at law schools nationwide are concerned with the challenges faced by racialized licensees in the legal profession and the barriers these challenges represent with regard to entering the profession.

In its September 22, 2016 Report to Convocation, the Equity and Aboriginal Issues Committee of the Law Society of Upper Canada ("LSUC") released the final report of the Challenges Faced by Racialized Licensees Working Group ("The report"), containing 13 recommendations in 5 broad categories for addressing barriers faced by racialized licensees in the legal profession. In furtherance of our organizational purpose, BLSA Canada offers the following comments on the recommendations outlined in the report.

In providing these comments, it is not BLSA Canada's aim to critique each of the proposed recommendations set out in the report. Instead, BLSA Canada's comments are structured more broadly to point out overarching areas of concern and to highlight ways in which some of LSUC's recommendations might be better supplemented. In providing these comments, BLSA Canada believes it can offer some insight on the perspectives of racialized students who are not yet licensees but soon will be.

**The need for the LSUC's leadership**

BLSA Canada would first like to applaud the law society for undertaking this initiative and for creating space in which the concerns of racialized licensees can be heard. Racial inequality and discrimination have long been concerns for racialized licensees and any proposed solutions must address the systemic roots of the challenges which racialized licensees face. In taking this long overdue and much needed step, the LSUC is showing leadership in taking measures to eliminate the barriers which contribute to the underrepresentation, marginalization and isolation of racialized licensees in the legal profession. As the regulator of the legal profession, any success that is to be had in addressing these barriers requires that the LSUC shows strong leadership.



**There must be a focus from the LSUC on challenges that arise before entry into practice**

Challenges faced by racialized licensees do not all of a sudden arise at the point of entry into the profession. Racialized law students and licensing candidates experience many of the challenges that are identified in the report (i.e. discrimination and stereotyping, lack of mentors and role models) long before they are seeking articling placements, completing the licensing process or being called to the Bar.

It is our opinion, that if the LSUC is committed to addressing the systemic challenges faced by racialized licensees, it should look for ways to work with law schools to address these hurdles long before their entry into the legal profession. We believe that collecting this data would allow for the assessment and identification of existing issues from the moment future licensees enter law school.

Another way in which the LSUC could work more closely with law schools is during the LSUC-regulated recruitment processes (i.e. the summer recruitment of 1L and 2L students as well as articling recruitment). As the report considers developing guidelines and collecting information on hiring practices, recruitment and retention, this presents an opportunity for the LSUC to facilitate better assessment of hiring practices in the profession. As the LSUC already puts rules in place that firms are to abide by during the structured recruitment processes, it would require very little of the LSUC to have some sort of follow-up measures to ensure that these recruitment processes are sensitive to issues of discrimination and stereotyping.

In the report, Recommendation 2 contemplates enhancing the On-Campus Interview (“OCI”) process for the dissemination of information. We suggest that it would also be beneficial to consider how OCIs and other such recruitment processes could be enhanced to better collect information.

*Exit surveys as a follow-up to recruitment processes*

It has become a common practice at a number of law schools to conduct anonymous surveys once the OCI process is completed as a means for law faculties to provide useful information to their respective student populations about how the process unfolds (i.e. this has been done in recent years by way of student newspapers like *Ultra Vires* at the University of Toronto Faculty of Law and *Obiter Dicta* at Osgoode Hall Law School). Such anonymous surveys provide opportunities to collect qualitative and quantitative data about the OCI process. The information that is compiled has often been relied upon by other students as a source of candid information about a process that is largely driven by the pursuit of the elusively-defined and extremely subjective quality of firm culture “fit”.

In working with the law schools to gather information in this manner, the LSUC could potentially obtain much more relevant and reliable information than that which can be obtained through self-assessed and self-reported data about firm hiring practices. We suggest that such information be included as a helpful supplement to the proposed inclusion index recommended in the report.



### **Concerns about what information is shared publicly and what is only released to firms**

The collection of quantitative self-identification data is beneficial and will in fact assist in measuring progress. However, information is only as valuable as it is accessible. Many legal employers already have diversity policies in place and even more state their commitment to fostering diverse workplaces, yet the manifestations of these policies and commitments are seldom disclosed. As a result, we are concerned that the data made available to the public will be insufficient.

Racialized candidates have an interest in knowing about the diversity and inclusion efforts and results of their prospective employers and not just those who are the top ranked diversity employers. Indeed, the accessibility of this information would be of great benefit in assisting students to make informed decisions about where they seek employment. And while we recognize that some are weary of adopting a “name and shame” approach to compliance, this legitimate concern of racialized students should be considered when determining what sort of information should be made publicly available.

While BLSA Canada recognizes that naming and shaming may not be the most useful approach, the accepted alternative should not be to deprive licensees of this valuable data. We encourage the law society to explore means to make the information publically available while mitigating the repercussions associated with so-called “name and shame” approaches.

### **Recognizing how the LPP oversight affects racialized licensees**

By the LSUC’s own account, racialized candidates are overrepresented in the Law Practice Program (“LPP”). The overrepresentation of racialized candidates in this program is of concern to BLSA Canada. Further though, we also have concerns as to how participation in the LPP impacts their legal careers. Given the overrepresentation of racialized candidates in the LPP, we strongly advocate that these concerns must be considered by the LSUC if it is to successfully address the issue of systemic racism in the legal profession.

By virtue of the fact that the consultation process for the report began prior to the creation of the LPP, the implications the program has for racialized candidates seeking entry into the legal profession has thus been overlooked. It is our opinion that the LSUC must assess how the LPP impacts racialized licensees.

Though we are glad that the LSUC has backtracked on its recent proposal to discontinue the LPP, it is extremely concerning that this proposal was put forth in light of the LSUC’s knowledge that racialized candidates disproportionately rely on this program to satisfy their licensing requirements. Such a proposal to discontinue a program that is still very much needed at this time (especially by racialized candidates), without proposing any alternative to replace it contradicts the LSUC’s stated commitments to ensuring that the practice of law is reflective of all peoples in Ontario.

On a related note, the LSUC must recognize the impact its recent increase in licensing fees has on racialized licensees who have only recently entered or are trying to enter the profession. The increased cost places an extra burden on the shoulders of racialized licensees. While the LSUC endeavours to eliminate the systemic barriers that have long kept certain communities out of the profession, it should not introduce new ones.



**BLACK LAW STUDENTS  
ASSOCIATION OF CANADA**  
L'ASSOCIATION DES ÉTUDIANTS NOIRS  
EN DROIT DU CANADA

### **Mentorship for new entry racialized licensees needs to be a priority**

The working group's final report aptly recognizes that racialized licensees require access to professional mentors and networking avenues. However, the LSUC must recognize that while mentoring is critical at all stages of a lawyer's career, it is perhaps most critical at the outset of their career. The demands and stresses placed on new entries are becoming increasingly burdensome and increasingly harder to overcome.

The continuous decrease in new articling positions and a lessened demand for first-year hires means that many new licensees are increasingly incapable of coping with their high debt burdens. The relative precariousness of their situation (as compared with those who have been called to the Bar for several years and have secured employment) coupled with the systemic challenges they face justifies the formation of an LSUC supported mentoring initiative specifically for new entry racialized licensees. While professional mentoring is undoubtedly significant, racialized new entries would benefit from additional support from their mentors that goes beyond simply developing their practice. This sort of mentoring—mentoring that extends beyond life in the office—is often difficult to find.

### **Final Remarks**

BLSA Canada welcomes the final report of the Challenges Faced by Racialized Licensees Working Group as a first step taken by the LSUC towards reducing systemic racism and discrimination in the legal profession. The LSUC has identified many of the barriers impeding the development and progression of racialized lawyers. BLSA Canada applauds many of the working group's proposed recommendations. However, we believe that to reduce the systemic barriers that racialized licensees face requires that the LSUC considers the unique perspectives and experience of racialized students who ultimately represent the future of the legal profession.

The cyclical nature of the systemic challenges faced by racialized law students and licensing candidates needs to be properly addressed. Hence, if the Law Society of Upper Canada is committed to eliminating the longstanding barriers faced by racialized licensees and to ensuring that the practice of law is better reflective of Ontario's diverse peoples and communities, it must take an approach that considers the barriers that racialized licensees face before they even enter the profession.

Ultimately, the LSUC needs to have a holistic understanding and approach to the challenges faced by racialized law students, licensing candidates and racialized licensees.

Yours truly,

BLACK LAW STUDENTS' ASSOCIATION OF CANADA

*K. Hayward*

Kojo Hayward  
Vice President, External Affairs

Kyle Elliott  
National Articling Representative

c. Stéphanie Déborah Jules, National President, BLSACanada



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 401 Sunset, Windsor ON N9B 3P4  
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Equity and Diversity Committee  
 University of Windsor  
 Faculty of Law

November 2, 2016

**RE: BLSA Feedback – LSUC Report on Challenges Faced by Racialized Licensees**

To Whom It May Concern,

The Black Law Students' Association – Windsor Chapter is pleased to provide feedback regarding the Law Society of Upper Canada's report *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. We have given careful thought to the report and its proposed recommendations and hope that our input will be strongly considered.

We would like to emphasize that the concerns raised by racialized licensees in Ontario are multi-faceted and occur at various stages in the lawyer's career. In providing feedback, we have focused our attention on racialized law school applicants, law students and those undertaking the licensing process. We believe that the Law Society cannot effectively address barriers experienced by racialized licensees without first actively working to eliminate the challenges that arise at these foundational stages.

**Recommendations**

*Gather information:* Law schools, the Ontario Universities' Application Centre, and the Law Society should keep track of the number of racialized (1) law school applicants, (2) admitted students, (3) participants in the OCI process, (4) participants who successfully attained positions through OCIs, and (5) licensing candidates who attained traditional articling positions (national, mid-size and small firms) and those entering the Law Practice Program. It would also be worthy to gather statistics regarding the number of racialized individuals that remain at a law firm after completing articles and the average length of time that these individuals remain at the firm.

The experiences will vary, but collecting and publishing statistics on these areas will assist the Law Society in determining how to help the upcoming generations of racialized licensees. In addition, this information may help to assess systemic factors that result in racialized individuals remaining overly represented in some categories and significantly underrepresented in others.

*Understand the barriers that exist:* Racialized licensees often come from cultural and socioeconomic backgrounds which place a strong emphasis on values that may be overlooked or minimized within the legal profession. Racialized law school applicants, in many cases, have had less exposure to mentors in the legal profession and face barriers through lack of resources, information or financial means. These factors create obstacles for racialized individuals with regards to developing effective law school applications and achieving academic success while in law school.

The Law Society must work to mitigate these early barriers faced by racialized applicants and law students as these initial challenges often lay the groundwork for further obstacles to be faced once these individuals become licensees. The Law Society should collaborate with law schools to reduce barriers that exist in the application and law school admissions processes and should consider developing guidelines to inform the admissions process, with a view to eliminating such obstacles.

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*Start early:* The Law Society must invest in initiatives that focus on providing racialized law school applicants and law students with resources, support, mentorship and information. These tools are necessary to developing effective applications and succeeding academically. We recommend that the Law Society work collaboratively with law schools, dedicate funding and resources, and develop mentorship initiatives with an express focus on these early and crucial development stages for future licensees.

While we welcome recommendation 11 in the report which speaks to “building communities of support” through “mentoring and networking initiatives”, we again would like to emphasize that these measures should be extended to include racialized law school applicants and law students. Recommendation 2 aims to work 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.” The Law Society must be conscious of limited resources available within law schools and is strongly urged to dedicate adequate financial support to aid law schools in achieving this goal.

The Law Society should also examine initiatives that can cultivate safe spaces where racialized licensees and law students can express their concerns and receive practical advice on how to address the particular challenges they face. For instance, the Law Society provides a resource for licensees to obtain advice on matters concerning professional conduct. A similar resource made available to assist racialized licensees, and a separate initiative dedicated to law students, could be developed to ensure guidance is readily available. This resource is an important tool as the challenges faced by racialized licensees and law students can involve issues that are highly sensitive or controversial, and confidentiality may be a strong concern for individuals seeking advice.

*Think critically about hiring and lack of opportunity in the profession:* A significant number of law firms hire based on the ‘fit’. It must be acknowledged that many racialized candidates, by virtue of their diverse cultural and socioeconomic backgrounds, are disadvantaged by ‘fit-based hiring’. The Law Society must do more to encourage law firms to adopt hiring practices that strive to eliminate bias. In order for racialized licensees to move beyond sole practitioner and small firm practice, and gain access to a greater number of opportunities, inherently biased hiring practices must be critically examined and more strongly discouraged by the Law Society.

*Meeting service needs:* The report recommends developing a resource centre with materials for “licensees in sole practice, associations of sole practitioners and small partnerships” to help overcome the fact that “24% of racialized lawyers are in sole practice and 33% ...in legal workplaces of two to five.” Such resources should be extended to law schools to better prepare racialized students for the range of options available within the legal profession.

*Sharing the responsibility for change:* Recommendations 9 and 10 consider initiatives that seek to promote cultural competency, equity and inclusion within the profession. In order to be effective, these initiatives must assist in uncovering unconscious prejudices. Furthermore, it must be made clear that the responsibility of ensuring inclusion does not fall solely on the hands of racialized licensees. Eliminating the challenges faced by racialized licensees must be a shared responsibility that is also carried by non-racialized licensees and the Law Society must work to encourage this notion within the profession.

Thank you for the opportunity to provide feedback. We look forward to continuing this discussion with you should you require further information.

Best Regards,  
 Black Law Students’ Association – Windsor Chapter

Feedback on LSUC's report *Working Together for Change:  
Strategies to Address Issues of Systemic Racism in the Legal Professions* –  
Proposal to Implement Recommendations 1, 2, 3, 4, 5, 6, 8, & 9:  
Proposed Amendment to the Rules of Professional Conduct

**R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule**

**November 3, 2016**

**Proposed Amendment to the Rules of Professional Conduct**

**R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule**

**Prepared by Students at Windsor Law**

**Prepared for Professor Tanovich's Legal Profession class Winter 2016**

**R6.3.1-4 – Transparency and Cultural Competence in the Hiring Process**

**Employers shall ensure transparency and abide by principles of cultural competence in their hiring processes. Employers have an obligation to disclose clear and definitive job descriptions, as well as all phases of any recruitment process, to all applicants.**

**Commentary****Preamble**

[1] Although the legal profession is committed to diversifying its workforce, discriminatory hiring practices continue. This is demonstrated by reports of:

- a. Racialized applicants “whitening” their resumes and downplaying their ethnic experiences and / or feeling like they must to be more attractive to firms to secure employment
- b. Racialized licensees are severely underrepresented in big firms<sup>1</sup>
- c. Large numbers of women leaving firms as a result of lack of accommodation for maternity and parenting accommodations and for lack of promotion to partner<sup>2</sup>
- d. LGBTQ++ licensees are significantly underrepresented in big firms
- e. Licensees with disabilities are discriminated against in hiring processes as stereotypes and common misperceptions are relied on and a lack of accommodations are provided

[2] Ranking candidates based on how well they fit a firm’s image is a problem. This practice is ambiguous and could be coded language for discriminatory hiring practices. It presents barriers for persons who appear to be different than the workplace norm, and particularly for peoples protected under the Ontario *Human Rights Code*. Increased transparency and integrating cultural competence into the hiring processes will strengthen equity and diversity initiatives with the aim of reducing these barriers.

**Cultural competency in hiring processes**

[3] Principles of cultural competence can be useful outside of the lawyer-client relationship. Fundamentally, cultural competence training is an exercise in training lawyers to understand 1; that they are cultural beings and 2; that we cannot escape the influence culture has on our

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<sup>1</sup> The Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees: Consultation Paper* (Toronto: LSUC, 2014) online:< [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Offical\(12\).pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical(12).pdf)>

<sup>2</sup> Fiona M Kay et al, *Leaving Law and Barriers to Re-entry: A Study of Departures from and Re-entries to Private Practice: A Report to the Law Society of Upper Canada* (23 April, 2013) online: < <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147494539>>.

decisions. Susan Bryant, Associate Professor at CUNY School of Law, had this to say about culture's "invisible lens";

We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.

[4] Cultural competence training seeks to cultivate a legal profession wherein lawyers are capable of rendering their own personal "invisible cultural lenses" visible. Culturally competent lawyers acknowledge "racism, power, privilege, and stereotyped thinking as influencing [their] interactions [...] and [work] to lessen the effect of these pernicious influences." Infusing principles of cultural competence into the hiring process will serve to stifle conscious and unconscious bias and reliance on stereotypes.

### **Transparency/Disclosure**

[5] Applicants must be given clear and consistent information about job requirements. A written job description should be available. A clear and definitive job description will include an outline of the actual work performed, necessary skills, and qualities expected of successful applications. Job requirements should be rationally connected to performing the job, adopted in good faith, and reasonably necessary to accomplish the work-related purpose.

[6] Information about the recruitment process, including the hiring committee membership and the use of any secondary interviews or receptions, must be disclosed to all applicants. Recruitment processes must be rationally connected to the job requirements and adopted in good faith.

[7] These principles are also applicable to student recruitment practices.

### **Reporting**

[8] All law firms must disclose to the Law Society biennially their hiring criteria, processes, and demographics for further review. The report must be submitted to the Law Society Equity Director for inclusion in the Law Society's Model Policies, Publications and Reports. The records must include detailed information including gender and age of those hired by the firm, as well as information regarding Aboriginal and minority demographics.

[9] Law firms must keep up to date records of all employment practices, as the Law Society Equity Director may, at any time, conduct a random check of policies in order to ensure transparency. These records must include information on all lawyers, students and paralegals hired within the two-year period.

[10] Those firms that do not disclose their hiring practices or do not keep current records may be subject to fines and other disciplinary action that the Board deems fit.

### **Examples of contravening behavior**

[11] Ambiguous terms such as 'Cultural Fit' must not be used as hiring criteria. All criteria must be clearly defined and in compliance with the Ontario *Human Rights Code*.

[12] Ambiguous language and terms used during the hiring process can have an adverse and discriminatory effect. These unintended consequences depart from the standards of employment prescribed in Rule 6.3.1-1.

[13] "Cultural Fit" is demonstrative of a term used in hiring practices that appears neutral, but has adverse effects. For example, "Cultural Fit" may present barriers for persons who are, or appear to be, different than the dominant group in a workplace. These barriers can manifest at all stages of the hiring process. When such ambiguous terms are offered as an explanation for unsuccessful applicants seeking feedback, they have the potential to conceal discriminatory practice, hamper diversity and equity initiatives and entrench the status quo.

### **Hiring Process Best Practices**

[14] Legal recruitment practices should acknowledge that discrimination occurs in hiring processes and take steps to avoid perpetuating it. Employers should aim for fair processes that focus on each candidate's ability to perform essential job duties. For example, best practices within the legal profession can include;

- a. Having a multi-person panel conduct formal interviews;
- b. Establishing objective assessment criteria and marking schemes determined before answers are graded
- c. Ensuring consistency in interview questions, based on the job's essential duties and bona fide requirements.
- d. Documentation of any judgments based on appearances or other subjective features in order to eliminate unconscious bias.

[15] While not directly regulated by the Law Society, it is recommended that law schools engage in career preparation programming that does not perpetuate discriminatory practices. For example, guest speakers focusing on professional attire for women should not go into detail about length of skirts, cut of blouses, or colour of lipstick.

[16] In addition to ensuring substantial transparency within the hiring processes, rule 6.3.1, requires transparency in the retention process. As an example, although there has been a large number of women entering private practice, they have also been leaving in large numbers. This is a symptom of the fact that women retained by firms are not being promoted to partnership and other decision-making positions. To increase transparency, there must be ongoing research regarding the retention of individuals within gendered, racialized, lgbtq++, and disability communities in firms, government and private practice. The profession must recognize the challenges that these individuals face and make substantial efforts to accommodate their needs and reduce these barriers.

## Racialized Licensee Response

November 4, 2016

To: Dean Chris Waters

From: Faculty of Law Equity and Diversity Committee

### **Re: Recommendations for a Windsor Law / Canadian Council of Law Deans Response to the 2016 LSUC Report on Challenges faced by Racialized Licensees**

You requested feedback from the EDC regarding this report. The EDC has consulted with the students via an email request for feedback, and has otherwise reviewed the report. We would make the following recommendations:

1. The Committee strongly supports Recommendation 1 “Reinforcing Professional Obligations.” This recommendation is important for ensuring that individual members of the Law Society are held accountable by the LSUC for their conduct. It also opens up new channels for those who interact with LSUC members to utilize the existing complaints mechanisms to resolve matters pertaining to equality, diversity and equity.
2. The Committee supports Recommendation 2 and notes that Law Schools could benefit from, and contribute to, the development and implementation of model policies and resources.
3. The Committee supports Recommendations 3, 4, 5 and 6 and notes the following:
  - a) Law Schools could adopt item 1) with respect to their own student populations. “The Law Society will 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”;
  - b) Are Law Schools considered “legal workplaces of at least 10 (or 25) licensees in Ontario” who would be subject to the data collection requirements?

We recommend that the LSUC define the term "legal workplaces". Law schools should be consulted when both the quantitative and qualitative surveys are being prepared. Law school student and applicant surveys could closely mirror the survey used by the LSUC so that the data can be used for comparative purposes.

- c) Qualitative data taken from inclusion surveys may also be useful to receive from law students, so as to ensure that the full picture of the challenges faced by racialized licensees can be demonstrated. This will ensure that broad context is provided in the Inclusion Index;

- d) The data collection requirements of law schools and other legal workplaces should be clearly stated from the outset when implementing this report, as it is an important aspect of the Inclusion Index. The Inclusion Index should not be built without taking this data into consideration. The power of statistical reporting is in being able to compare against historical data. If the Inclusion Index is not built properly from the outset, amending the formulas within it will be difficult later on, and will compromise the integrity of the data over time.

If the Law Society does not consider it to be within the scope of this report to require law schools to provide data about student populations, then we would recommend the Law Society raise the matter at the Federation of Law Societies of Canada.

4. Understanding the complex nature of systemic barriers to diversity and inclusion, the Committee strongly supports Recommendation 8 “Progressive Compliance Measures”, as another important measure for ensuring organizational accountability.
5. The Committee supports Recommendation 10 “The Licensing Process” but requests clarification from the LSUC about whether it is envisioned that law schools should also adopt cultural competency as a core competency. Again, if the LSUC does not envision that law schools should be included under this recommendation, then this recommendation should be forwarded to the Federation for implementation with respect to law schools.

The committee notes that “racialized licensee” is not defined in the report. The report would benefit from clarifying this point. For example, reference could be made to Statistics Canada “Visible Minority and Population Group Reference Guide, National Household Survey, 2011” Cat No 99-010-XWE2011009, online: <https://www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.cfm> to ensure a standard approach.

6. The Committee strongly supports Recommendation 12 as an important tool in ensuring that Recommendation 8 has effective enforcement measures. It will also ensure that the LSUC is appropriately prepared to deal with such complaints in the future. Without having these foundations in place, the LSUC itself will perpetuate discrimination by having inadequate processes in place, and inadequately trained personnel, to handle these complex and sensitive complaints. In particular, protecting persons from reprisal for making complaints is significant.
7. The committee strongly supports Recommendation 13 “Leading by Example”, as being tremendously important for creating strong foundations for the entire profession.

The Committee should be encouraged to share an anonymized version of the comments that were made by licensees during the consultation process. If these could be categorized so that, for example, law schools and other workplaces could have access to relevant feedback, this may be helpful.

Generally, we would commend the Equity and Aboriginal Issues Committee on the broad consultations that were undertaken to prepare this report, and for their responsiveness to the feedback that they received.

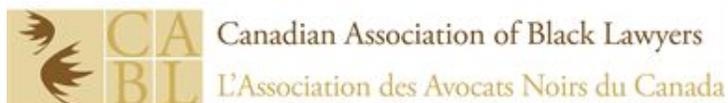
Please note that we have also received a written submission from the Black Law Students' Association, Windsor Chapter. That report is attached.

Respectfully submitted,

On behalf of the Faculty of Law Equity and Diversity Committee:

Annette Demers and Naina Singh (co-Chairs)  
Jasminka Kalajdzic, Associate Dean  
Francine Herlehy, Assistant Dean, Student Services  
Mary Mitchell (staff representative)  
Yasmeen Peer, Student Member  
Amneet Bali, Student Member  
Mahnaz Shariati, Student Member  
Ethan Chang, Student Member

Att.



November 14, 2016

Mr. Paul B. Schabas  
 Law Society Treasurer  
 Law Society of Upper Canada  
 c/o Ekua Quansah- Policy Counsel  
 Osgoode Hall, 130 Queen Street West  
 Toronto, ON M5H 2N6

Janet Leiper and Raj Anand  
 Co-chairs Challenges Faced by Racialized Licensees Working Group  
 c/o Ekua Quansah – Policy Counsel  
 Law Society of Upper Canada  
 Osgoode Hall, 130 Queen Street West  
 Toronto, ON M5H 2N6

Email: racialized.licensees@lsuc.on.ca

Dear Treasurer Schabas, Co-Chairs Leiper and Anand:

**Re: Final Report of the Challenges Faced by Racialized Licensees (CFRL) Working Group**

The Canadian Association of Black Lawyers (CABL) would like to comment on the final report submitted by the CFRL Working Group. We make these comments in light of our letter submitted to the Law Society of Upper Canada (LSUC) on May 14, 2015. In this letter we recommended a number of measures to the Working Group<sup>1</sup>.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession. From the advent of the creation of the CFRL Working Group in 2012, CABL has been involved in supporting, informing and contributing to the process specifically in regards to research, analysis and discussions of the report.

CABL is a member of the Equity Advisory Group (EAG) of the LSUC and had a representative sitting on the EAG working group for the CFRL report. Our members participated in focus groups, town hall meetings, surveys and direct meetings with the CFRL Working Group.

CABL notes that the process of recalling, reliving and publicly discussing systemic and sometimes overt racism is gruelling and uncomfortable. Our members shared intimate details of their experiences in order to draw attention to the challenges faced by black and other minority

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<sup>1</sup> Please see Attached letter dated May 14, 2015 – addressed to Joséé Bouchard.

lawyers in Ontario. We hope that our efforts will eventually lead to more than an initial step to change.

CABL acknowledges that the final report released by the CFRL Working Group highlights some of the challenges faced by racialized licensees and is an initial step towards addressing these challenges. The summary and expressions of hope set the tone for the 13 recommendations the report is making to Convocation.

CABL is fully in support of the LSUC addressing the challenges our members and other minority groups face in the practice of law. The members of the Bar have failed in their obligation not to “discriminate on the grounds of race, ancestry, pledge of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person (as defined in the *Ontario Human Rights Code*)”<sup>2</sup> It is for this very reason that we believe the report places too much faith in the ability of the Bar to self-monitor and correct the systemic issues recognized in the report. There must be direct regulation from the LSUC. We believe that the recommendations should be strengthened to reflect LSUC regulation rather than suggestion.

In the short time available for submissions and commentary, CABL would like to highlight a few things that we suggested in May 2015 that we believe should have been adopted in the final report.

#### **Data Collection:**

We note that there is no mandatory internal collection of demographic data by legal organizations as we suggested. The LSUC will, through its licensee annual reporting mechanism, collect the data and present this to legal organizations. CABL notes that mandatory internal collection of data on an annual basis forces legal organization to “look at themselves in the mirror” and recognise the trends that so far they have not addressed. How will the LSUC ensure that legal organizations will review the numbers provided by the LSUC on a yearly basis? Our letter of May 14, 2015, noted that just as trust accounts and other features of legal organizations are regulated, data collection by legal organizations can be enforced and regulated.

#### **Self-Assessment:**

CABL is sceptical of the LSUC recommending to “encourage” legal workplaces to conduct inclusion surveys by providing them with sample templates. Despite the tenor of the report, the Working Group had concerns about unnecessary burdens placed on many groups that have already moved forward proactively with equality measures of their own. Legal Organizations that are ahead of the curve will not be burdened by less. On the other hand, the many that have

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<sup>2</sup> See *The Rules of Professional Conduct* section 6.3.1-1

nothing in place will have a standard to live up to. CABL would like the adoption of equality, diversity and inclusion principles to be more than voluntary and subject to periodic review for compliance. CABL notes that unconscious bias can be made conscious through self-assessment. However, we accept that the CFRL Working Group were weighing competing interests in deciding to adopt a less onerous approach. We hope that the global effect of the recommendations will lead to a future that includes compliance review.

### **Progressive Compliance Measures**

CABL believes the LSUC must now commit to, not merely consider, developing and implementing 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. The recommendations are not onerous. In light of the Working Group's findings, they reflect a basic standard required of any legal workplaces serious about diversity and inclusions.

In general the report falls short of adequately identifying enforcement mechanisms. What happens if legal organizations are not encouraged and/or do not adopt policies? Or even worse create policies and ignore them? The report does not address this.

### **CPD Training:**

CPD programs limited to once in three years places the issue of systemic racism on the shelf only to be uncomfortably addressed after long periods. The issue can be addressed and kept alive by requiring an annual one hour program. The report is also vague on the implementation of the training. Who are the experts the LSUC will approach to help with developing this curriculum? CABL hopes that our organization will be consulted before the curriculum and process are discussed and implemented.

### **Complaints of Systemic Discrimination:**

The Discrimination and Harassment Counsel Program was created under a different principle and ideology. CABL would prefer to "create a specialized and trained team to address complaints of discrimination"<sup>3</sup> that reports to the LSUC disciplinary committee.

### **Conclusion:**

Moving forward, CABL expects the LSUC to continue to involve us as well as the Roundtable of Diversity Associations (RODA), EAG and other equity seeking legal organizations in the implementation of the recommendations and the planning of new policies.

CABL's submission is a comment on some aspects of the report that we believe could be strengthened. However, there is no policy in place at this time and, as noted earlier, the adopting

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<sup>3</sup> CFRL Working Group Report Recommendation 12 subset 4

of this report would be a positive first step towards change. CABL fully supports Convocation adopting the CFRL Working Group Final Report in its entirety.

CABL does not support a vote of the CFRL Working Group Final Report on a recommendation by recommendation basis. We reiterate that our hope is that the global influence of the recommendations will effect change. A vote on recommendation by recommendation will most likely change the overall influence of the report.

CABL is aware that Convocation will also be considering a motion that the recommendations from the CFRL Working Group Report form the benchmark for approaching issues with other equity seeking groups. CABL supports this motion.

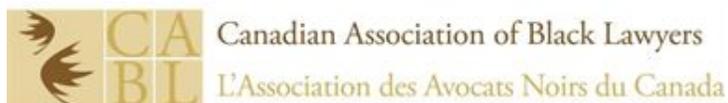
CABL will rely on the hope that the recommendations will become the root of a living tree that will grow, flourish and become stronger by the day. First let's plant the tree.

Yours truly,

**CANADIAN ASSOCIATION OF BLACK LAWYERS**



Gordon Cudjoe  
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Enclosure



May 14, 2015

**Via Email**

Ms. Joséé Bouchard  
 Director, Equity Initiatives Department  
 The Law Society of Upper Canada  
 Osgoode Hall  
 130 Queen Street West  
 Toronto, ON M5H 2N6

Dear Ms. Bouchard:

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

The Canadian Association of Black Lawyers (“CABL”) takes this opportunity to offer the following submissions in respect to the above-noted Consultation Paper authored by The Challenges Faced by Racialized Licensees Working Group (the “Working Group”). We note that CABL Board members and other CABL members have participated in the in-person consultation process following the publication of the Consultation Paper. These submissions are not meant to modify or abrogate from those individual submissions in any respect.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary. CABL is both a member of The Law Society of Upper Canada (the “Law Society”)’s Treasurer’s Liaison Group and a member of the Law Society’s Equity Advisory Group (“EAG”). CABL is also a member of the Ontario Bar Association (“OBA”)’s Diversity Program and a member of the Toronto Lawyers Association (“TLA”)’s Roundtable of Diversity Associations (“RODA”). CABL has participated in numerous consultations with the Law Society, the Canadian Bar Association (“CBA”) and the OBA on issues of access, diversity and equity affecting the legal profession and the legal system within Canada and Ontario.

We wish to commend the Law Society and the Working Group on the comprehensive and detailed scope of the Consultation Paper. As you are aware, CABL has long been advocating for a comprehensive investigation by the Law Society into the experiences of Racialized Lawyers, and in particular Black Lawyers, based upon concerns raised by CABL members and others relating to their experiences within the profession; from the articling stage and subsequent. We note that a summary of those experiences have been materially captured throughout the Consultation Paper. In that regard, these submissions shall focus more particularly on responding to the Questions for the Profession section of the Consultation Paper and our additional submissions in relation thereto.

## **I. ENHANCING THE INTERNAL CAPACITY OF ORGANIZATIONS**

The mandate, and reasons for the mandate of the Law Society in this area, is readily apparent: as a regulator, the Law Society's interest should be to ensure that members of the profession are being treated with fairness and dignity by other Licensees and in a manner which enhances the diversity of the profession and provides equal opportunities to all members thereof.

The Law Society has a crucial role to play to establish "best practices" by way of policies, standards and resources devoted to the recruitment, retention and career progression of Racialized Licensees within law firms and other legal organizations, such as legal clinics, in house legal departments, etc. (collectively "Legal Organizations").

Similar to the Justicia Project in respect to addressing gender imbalance and discrimination within the profession, the Law Society should be addressing the lack of opportunities for Racialized Licensees within the legal profession. While as a minimum, the Law Society should be expanding the scope of the Justicia Project to include Racialized Licensees, CABL maintains that more significant strategies are necessary to address the issues raised in the Consultation Paper.

### **A. Establishing Diversity Programs Within Firms**

While the Law Society has identified three proposed models in this area, CABL does not see them as mutually exclusive. Rather, they are interrelated and complementary to each other.

As the Consultation Paper notes, the Law Society already has a template for approaching these issues by way of the Justicia Project materials distributed to law firms. However, CABL advocates that unlike the Justicia Project, the Law Society should be requiring Legal Organizations to commit, by way of a written agreement, to adopt diversity "best practices" within their respective Legal Organizations as per the Law Society guidelines and as more particularly discussed below.

### **B. Self-Assessment**

There is little point to Legal Organizations developing and adopting "best practices" without a form of self-assessment tool to measure their progress in respect to both implementation and results. The self-assessment aspect is **critical**.

### **C. Requiring Standards**

CABL recognizes that this could be a controversial issue. However, we query what concrete steps will be taken by Legal Organizations if there is no element of requirement, as there is with other forms of human rights related policies, so as to promote equality and protect the vulnerable from discriminatory practices. Granted, there are a number of firms who will "opt in" voluntarily, as with the Justicia Project. However, we can see that of the Firms of more than 25 lawyers within the province, only approximately 55 Firms have signed commitment agreements with the Law Society in respect to the current Justicia Project.

The issues identified in the Consultation Paper are also systemic in nature and arguably more difficult than gender discrimination for Legal Organizations to grapple with and address in any effective and systemic way.

Requiring Legal Organizations to adopt recruitment, retention and career advancement standards and resources to provide opportunities for Racialized Licensees would:

- (i) make the efforts of the Law Society in this area more far reaching by ensuring that every legal environment has considered these important issues and has put in place the necessary “best practices” to encourage racial diversity;
- (ii) remove the choice of “opting out” as a clear signal from the Law Society that equity is not a choice but a directive; and
- (iii) allow the Law Society to act as a vehicle for change; by requiring an infrastructure for inclusiveness and accountability within all Legal Organizations.

To be clear, while CABL believes that the Law Society should provide Legal Organizations with proposed best practices template standard policies for recruitment, retention and career advancement of Racialized Licensees, and **require** that every Legal Organization have such policies in place, the actual content of these policies, as long as they contain the essential elements of the best practices standards templates, would be for each Legal Organization to design for itself keeping in mind the nature of the particular Organization.

#### **D. Collecting Demographic Data**

CABL wholly endorses the **mandatory** internal collection of demographic data by Legal Organizations in respect of their Racialized Licensees. The internal mandatory collection of data is the only way in which Legal Organizations can monitor, in a transparent fashion, and be accountable for their progress in respect to the policy implementation and their corresponding recruitment, retention and advancement strategies, as well as the resources devoted to such strategies, so as to adjust and modify the strategies for efficacy.

In respect to what use should be made of the internal data collection, the Legal Organizations should be required to report, **on a mandatory basis**, certain aggregate demographic data to the Law Society. Such mandatory data would be in the nature of:

- (i) the size and geographic location of the firm;
- (ii) the racial demographics of the summer/articling/LPP students, associates, partners and paralegals within the Legal Organization;
- (iii) the number of racialized summer/articling students/LLP students who were hired and the number hired back to the Legal Organization and their areas of practice;

- (iv) the number of racialized associates who are employed, the length of employment and their areas of practice;
- (v) the number of racialized partners who are employed, their tenure, their areas of practice, how many were advanced to the partnership from associate status and after how many years;
- (vi) the number of racialized paralegals and their length of employment; and
- (vii) similar information in respect to the Legal Organization's non-racialized licensees for comparison purposes.

The Law Society must provide Legal Organizations with a standard data collection template with the required demographic data to be collected such that there is consistency and reliability among data collection and reporting in order to allow for meaningful analysis of trends and progress.

It has been suggested by some groups, such as the Federation of Asian Canadian Lawyers ("FACL"), that other types of equity demographic data (such as sexual orientation, abilities, socio-economic disadvantage) should also be collected so as to take an intersectionality approach to the analysis. CABL does not have the expertise to assess the proportionate value of such information for the purpose of addressing the issues raised in the Consultation Paper other than to acknowledge the well documented sociological evidence of the intersectionality of race and other factors, such as gender. Accordingly, it may be worthwhile for the Law Society to consult with equity experts as to what indicators would be worthwhile to track.

The mandatory data collected by the Legal Organizations and submitted to the Law Society should be summarized, on an aggregate basis, and reported by the Law Society to the profession annually. This information, together with the Law Society's collection of demographic data through the Licensees Members' Annual Reports (which reporting should also be made **mandatory** on the part of individual Licensees), will provide a clearer understanding of the existing profile of the legal profession within Ontario and can be used to track demographic trends on a short term and long term basis.

The above submissions are in no way meant to be a suggestion or recommendation for the implementation of diversity targets or "quotas". CABL does not believe that diversity targets or quotas are necessary if **mandatory** strategies are put in place, as endorsed above, to encourage and promote systemic organizational change.

CABL is of the view that a requirement of **mandatory** data reporting in respect to certain aggregate information does not require a regulation of Legal Organizations or firms in the same way that such regulation is not required for the Law Society to impose mandatory reporting requirements in respect to the handling of trust funds and other professional requirements. Also, many of the large firms are already required, through the process of diversity and contract compliance procedures, to report similar demographic information as is being proposed above.

Further, the Law Society must engage in a wide spread proactive strategy of education within the profession as to the purpose and goal of mandatory data collection and reporting and emphasize that the purpose is not punitive, but to obtain useful information in order to assist the profession as a whole with useful strategies to promote racial diversity and opportunities within Legal Organizations.

### **E. Diversity and Contract Compliance**

The Law Society's role with in-house legal departments should be similar to that advocated above. In that regard, our recommendations in respect of the Law Society providing templates for mandatory "best practices" policies, standards, mandatory internal data collection and mandatory reporting of certain aggregate data to the Law Society would apply.

With respect to the data collection and reporting of data in relation to the **procurement** of legal services, CABL recommends that the Law Society works directly with the Legal Leaders for Diversity ("LLD"), Law Firm Diversity and Inclusion Network ("LFDIN"), Call to Action and other organizations, to discuss purchasing practices and to **voluntarily** develop model procurement and contract compliance policies as they relate to diversity in order to promote and/or expand the opportunities for Racialized Licensees on significant/important files. CABL also fully endorses that the Law Society encourage such organizations, **on a voluntary basis**, to provide demographic statistics during the RFP and in respect to the file progress.

## **II. MENTORING, ADVISORY SERVICES AND NETWORKING**

### **A. Mentoring and Advisory Services**

CABL is of the view that mentoring, both within the Racialized bar and outside the Racialized bar, is a necessary and crucial part of providing professional opportunities for Racialized Licensees. To that end, CABL approves of and endorses the following mentoring and advisory services:

- (i) that the Law Society develop technology based performance oriented and career and personal advice oriented mentoring and advisory services, based upon best practices, and widely promote their availability; with an emphasis on establishing short and long term mentoring relationships for Racialized Licensees;
- (ii) that the Law Society audit the formal (performance based) and informal (career and personal advice based) mentoring and advisory services available within Legal Organizations, with an emphasis on investigating what specific mentoring and advisory services have been established to address the concerns of Racialized Licensees;
- (iii) that the Law Society make available to Racialized Licensees advisors/coaches who have received diversity training and are available to provide one on one professional career counselling to Racialized

Licensees, from a pool of compensated coaches/advisors, at a cost fully borne by the Law Society;

- (iv) that the Law Society make available to Racialized Licensees performance mentors to provide practice based assistance to Racialized Licensees who do not have access to other practice based information/assistance, from a pool of compensated mentors, at a cost fully borne by the Law Society;
- (v) that the Law Society, in conjunction with Racialized legal and other associations, organize, promote and endorse informal mentorship events (i.e. CABL's Annual Speed Mentoring event). As the Racialized legal associations are not for profit organizations with limited funds, the Law Society should provide financial assistance at least by way of subsidizing the full cost of facilities, security and refreshments etc. to encourage such events; and
- (vi) that Racialized legal associations provide one on one volunteer professional career mentoring and advisory services to their members through a mentoring program organized and implemented by the associations.

## **B. Networking**

As with mentoring, networking is a crucial tool for the creation of opportunities for Racialized Licensees, who, as noted in the Consultation Paper, are often more isolated and lacking support networks. Many of these Racialized Lawyers are in sole practice or small firms of one or two lawyers.

CABL believes that it is crucial to involve Racialized Licensees in both Racialized and non-Racialized network opportunities. Racialized networks are essential for validation, comradery and shared experiences. However, networking opportunities must also extend to the legal "mainstream" in order to create broader professional opportunities.

Resources are a significant impediment to formal networking structures, such as professional development. Racialized legal associations are therefore an excellent source of networking opportunities. To the extent that resources are an impediment for Racialized Licensees to become members of such associations, the Law Society could offer subsidies to assist Racialized Licensees to join such organizations for a fixed period of time (i.e. one or two year membership years). This would allow the Racialized Licensees to avail themselves of the networking (and mentorship) benefits of such associations at a reduced cost for a period of time and thereafter they would be persuaded to continue membership at regular cost on the basis of the beneficial networking and mentorship experiences/services such associations provide.

More difficult is how to achieve networking opportunities among the mainstream Legal Organizations. One way is for the Law Society to encourage mainstream Legal Organizations to

offer regular “networking invitations” to Racialized Legal Associations to promote dialogue and interaction.

We note that the Internationally Trained Lawyers have the same access to Racialized Legal Associations as do other Racialized lawyers.

### **III. ENHANCING CULTURAL COMPETENCE IN THE PROFESSION**

CABL believes that all of the three proposals contained in the Consultation Paper are advisable. There should certainly be more availability of accredited CPD Programs on cultural competence and equity principles of diversity inclusion and systemic bias. Further, the Professional Responsibility and Practice (“PRP”) Course should include cultural competency, diversity and inclusion as **mandatory** topics for accreditation.

In the same vein, accredited lawyers should be required to evidence their continued cultural competence by engaging in at least **one hour** of CPD annually, as part of the current 3 hours of mandatory professionalism hours, on cultural competence, equity and diversity as these issues impact upon the practice of law and the experiences of Racialized Licensees and their career development opportunities. Both the widespread availability of such programs and the one hour requirement go hand in hand. These CPD programs should be taught by individuals with equity and diversity expertise and they themselves should be demographically diverse.

### **IV. DISCRIMINATION AND THE ROLE OF THE COMPLAINTS PROCESS**

The Law Society has a critical role to play in ensuring that Racialized Licensees’ legal right to be free from discrimination is enforced. While updating the Rules of Professional Conduct and the Paralegal Rules of Conduct is a first step, much more needs to be done to address what is essentially a systemic problem within the profession. Specific CPD programs and mandatory one hour CPD on cultural sensitivity/systemic bias has been mentioned above. Communication to the profession is another important element as are the recommended strategies outlined above in respect of establishing diversity programs within firms.

The Law Society should also take steps to publicize the Discrimination and Harassment Counsel to ensure that Racialized Licensees are fully aware of their right to make a complaint of incidents of harassment and discrimination engaged in by other Licensees to an independent “ombudsman”.

The Law Society should also be allocating resources to the training of specialized Professional Regulation staff to accept and process complaints of racial discrimination and bias as a breach of the Rules of Professional Conduct and Paralegal Rules of Conduct and to have available proper supports to assist complainants with the process. The Law Society should also provide coaches/advisors to discuss and address with complainants the personal and professional issues arising from discriminatory conduct.

The Law Society must be mindful that the confidential reporting of incidents of racial discrimination is extremely difficult for Racialized Licensees. By virtue of the paucity of

Racialized Licensees within Legal Organizations, the fact of a complaint being made to the Law Society about a particular Legal Organization will, by its nature, most likely reveal the identity of the complainant.

Therefore, the Law Society must derive an effective investigation and enforcement mechanism which does not place the Racialized Licensee in harm or subject them to reprisals. Part of the investigation process might involve a general audit of the “respondent” Legal Organization for compliance in respect of the creation and implementation of the “best practices” policies/procedures and a general audit of all Racialized Licensees within the “respondent” as to their experiences so as to not single out the complainant. Again, the primary focus should be to protect the complainant, who is in an extremely vulnerable situation, from reprisal and to remediate the situation rather than to penalize. However, it should be made clear in the Rules of Professional Conduct and the Paralegal Rules of Conduct that reprisals, as well as the discriminatory conduct itself, is a breach subject to prosecution and penalties.

The Law Society should be engaging in direct dialogue with Racialized legal associations as well as the OBA/CBA and county and district law associations, to discuss specific suggestions in order to derive an effective, yet protective, investigation/enforcement process, and as to the mentoring/advisory capabilities of such organizations to assist the Law Society in supporting members engaged in initiating a complaint.

The tracking of such complaints is also necessary so as to create/modify existing strategies and policies based upon efficacy.

CABL is of the view that no regulatory changes would be required to implement the proposals outlined in the Consultation Paper or detailed above. The Law Society has, as part of its current mandate, the regulation of each Licensee and their conduct in respect to the practice of law. The implementation and enforcement of the proposals hereinbefore described are an integral part of such mandate, whether implemented on an individual Licensee or aggregate Firm basis.

## **V. THE OPERATIONS OF THE LAW SOCIETY OF UPPER CANADA**

CABL is in favour of the Law Society’s adoption of Initiatives 1 through 4 of the Consultation Paper. It is important that the Law Society itself engage in, and be seen to be engaging in, the same initiatives as are being proposed for the profession as a whole; including, without limitation, the implementation of “best practices” policies and standards; mandatory internal data collection; mandatory reporting of certain aggregate data and the other proposals discussed herein.

An equity audit of the services provided by the Equity Initiatives Department and publication of such services to the profession would also enhance the importance of the work of the Department and the supports offered.

The “face” of the Law Society needs to undergo significant change. It is not reflective, from Benchers to staff, of the demographics of our profession or the population at large. The Law Society needs to “look at its own house” in respect to its recruitment and hiring practices as well

as retention and career advancement of Racialized individuals (as well as individuals from the other equity seeking groups) to achieve a greater representation of equity seeking individuals in all areas of its operations.

As well, as a priority mandate, the Law Society should embark on equity sensitivity training for Benchers and staff. It is crucial that an equity “lens” be brought to all operations of the Law Society, including Finance and other operations, rather than to approach equity as a “silo” to be addressed only by the Equity and Aboriginal Issues Committee and Equity Initiatives Department. Only by taking such a holistic approach will the Law Society truly achieve equity infused governance, for itself and for the profession as a whole.

We hope that the above submissions are of assistance to the Working Group. CABL remains committed to the work of the Law Society and the Working Group and is fully prepared to participate in the consultation process going forward with a view to finalizing and implementing the proposals under consideration in a fulsome and expeditious manner.

Yours truly,



Arleen Huggins  
Immediate Past President and Chair of the Racialized Licensees Subcommittee of the Canadian Association of Black Lawyers

c. Ekua Quansah

**CALL**  
CANADIAN ASSOCIATION  
OF LABOUR LAWYERS

**ACAMS**  
ASSOCIATION CANADIENNE DES AVOCATS  
DU MOUVEMENT SYNDICAL

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**By Email:** racialized.licensees@lsuc.on.ca

November 25, 2016

The Law Society of Upper Canada  
c/o Ekuia Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

Re: Final Report of the Challenges Faced by Racialized Licensees  
Working Group, "*Working Together for Change: Strategies to Address  
Issues in Systemic Racism in the Legal Professions*"

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I write on behalf of the Canadian Association of Labour  
Lawyers/Association Canadienne des Avocats du Mouvement Syndical  
(CALL - ACAMS). CALL - ACAMS is a national association of labour  
lawyers who represent unions and workers in Canada.

As advocates for both labour rights and human rights, I am writing to  
express CALL/ACAMS' s support for the work of the Challenges Faced by  
Racialized Licensees Working Group and its final report, "*Working  
Together for Change: Strategies to Address Issues in Systemic Racism in  
the Legal Professions*".

We welcome the Law Society of Upper Canada's leadership on these  
important issues.

Yours truly,

CANADIAN ASSOCIATION | ASSOCIATION CANADIENNE DES  
OF LABOUR LAWYERS | AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle  
CALL/ACAMS President/ Présidente de l'ACAMS/CALL

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OF LABOUR LAWYERS

**ACAMS**  
ASSOCIATION CANADIENNE DES AVOCATS  
DU MOUVEMENT SYNDICAL

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**Par courriel:** racialized.licensees@lsuc.on.ca

November 25, 2016

Barreau du Haut-Canada  
A/s Ekua Quansah, conseillère aux politiques  
Osgoode Hall, 130 Queen Street West  
Toronto ON M5H 2N6

Objet : Rapport final du groupe de travail sur les difficultés auxquelles les  
titulaires de permis racialisés font face, intitulé *Collaborer au  
changement : stratégies de lutte contre le racisme systémique dans les  
professions juridiques*

Chère Madame,

Je vous écris au nom de l'Association canadienne des avocats du mouvement  
syndical/Canadian Association of Labour Lawyers (ACAMS-CALL),  
laquelle représente les syndicats et les travailleurs dans l'ensemble du  
Canada.

Les membres de notre association, en tant qu'avocats de droit du travail et de  
la personne, souhaitent exprimer leur appui pour le travail accompli par votre  
groupe sur les difficultés auxquelles les titulaires de permis racialisés font  
face et pour votre rapport final intitulé *Collaborer au changement : stratégies  
de lutte contre le racisme systémique dans les professions juridiques*.

Nous apprécions le leadership du Barreau du Haut-Canada sur ces enjeux  
importants.

Veuillez recevoir, chère Madame, nos salutations le plus distinguées.

CANADIAN ASSOCIATION OF LABOUR LAWYERS | ASSOCIATION CANADIENNE DES  
AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle  
CALL/ACAMS President/ Présidente de l'ACAMS/CALL



## Canadian Centre for Diversity and Inclusion Centre canadien pour la diversité et l'inclusion

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6  
[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

November 13, 2016

I write today in response to the Law Society of Upper Canada's ("The Law Society") public consultation related to challenges faced by racialized licensees and the 13 recommendations contained in the Racialized Licensees Working Group's (the "Working Group") final report, titled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*.

We applaud the Working Group for their outstanding effort and the thoughtful and detailed presentation of their findings. From the outset, allow me to make it clear that we agree with the assertion that "racialized licensees face widespread barriers within the (legal) profession at all stages of their careers." Through our own research on the legal profession, we have come to a similar conclusion, however it is important to note that there are mitigating factors that have a significant impact on those barriers.

The Canadian Centre for Diversity and Inclusion ("CCDI") has a mission to generate the awareness, dialogue and action for Canadians to recognize diversity as an asset and not an obstacle. Through the research, reports and toolkits we develop and our workshops, events and workplace consultations, we're helping Canadian employers understand their diversity, plan for it and create inclusion.

CCDI's leadership has a proven model that's cultivated trust as an impartial third party. Our expertise is focused on the topics of inclusion that are relevant in Canada now and the regional differences that shape diversity.

A charitable organization that thinks like a business, we have created a niche with our innovative research technology and data analysis that brings a deeper understanding of Canadian diversity demographics and mindsets at any given moment.

In 2014 we developed and launched a project entitled *Diversity by the Numbers: The Legal Profession* ("DBTN"). This project is an exciting initiative that seeks to better understand the demographic makeup of the Legal Profession in Canada. To date, over thirty law firms across Canada have participated and over 8000 respondents have completed the census.

[www.ccdi.ca](http://www.ccdi.ca)

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It is our experience with DBTN that brings us to prepare this response. And it is the mitigating factors indicated earlier that are the basis of, and reason for our response.

## Overall Commentary

### What should be measured?

Benchmarks, goals, and accountabilities.

A primary mandate of The Working Group report is to better understand systemic barriers within the legal profession through collecting Diversity and Inclusion data. In an article that critically assesses the implications of the report<sup>1</sup>, Joanne St. Lewis argues that the methods of addressing these barriers proposed in the report are ineffective because they are applied through codes of professional conduct rather than through “entity regulation.” That is to say, they do not measure and make accountable the workplaces in which these barriers play out.

We agree that effective movement on Diversity and Inclusion issues necessitates accountabilities specific to each firm. However, the question then becomes, what should be measured to expose the barriers firms will be accountable for? The report provides a clear objective to enhance representation of racialized licensees “in proportion to representation of the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.” Irrespective of where accountabilities are placed, The Working Group's approach of analysis at each of these levels will help isolate instances of systemic discrimination. This is because each of these comparisons makes data accountable to the group they are being benchmarked against. However, efforts to counter systemic discrimination become regulated, these levels of data comparison will allow the setting of representation goals.

Focusing on ways to put Diversity and Inclusion into practice in law firms, the report proposes that a fairer culture will be fostered in firms if they are required to have a diversity policy. St. Lewis suggests that, to propel action, their needs to be outside scrutiny. To achieve this, she proposes that all law firms have a diversity strategy that is available to the public. Building on these points, we would further suggest processes surrounding how a diversity policy and strategy are actualized within firms. Initial questions that should be ask to enhance the effectiveness of any diversity strategy include:

- » Has the strategy been linked to a formal business case?
- » Are senior leaders being held accountable, and if so, how?
- » Does the strategy consider diversity in senior leadership appointments?
- » Is the strategy communicated, to and understood by all firm members?

These questions and the actions they stimulate will cast diversity as a genuine priority within an organization's culture rather than a well-intentioned, inactive edict.

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1 Joanne St. Lewis, “If Not Us, Who? if Not Now, When?': Reflections on the Law Society's Challenges Faced by Racialized Licensees Working Group Report,” *Slaw*, last modified October 31, 2016.



### Linking demographic and inclusion data.

The Working Group recognizes that analysis of diversity must be complemented by analysis of inclusion, stating that a law firm's diversity performance will be measured through "self-identification data" and "climate data." Throughout the report, specifically in relation to a proposed Inclusion Index, there are references to the measurement of both. However, the report does not specifically state that inclusion survey results will be presented and analyzed through demographic categories, which is vital to isolating specific groups that are feeling excluded.

What is the difference between demographic and inclusion data that is linked and unlinked? To explain the impact linking has on data insights, consider the demographic gender and the inclusion question "everybody at the firm has equal opportunity to advance." Unlinked data can only show the percentage of female, male, and trans-identified respondents and the overall percentage of respondents that agree, are neutral, or disagree with the statement. Linked data will allow you to isolate and compare the rates of agreement or disagreement between females, males, and trans-identified respondents. Understanding the insights you want to draw from the data is necessary before implementing a survey. Any gaps in data collection will limit the potential of the information that is gathered.

### Reasons for a focus on Diversity and Inclusion.

The report proposes that Diversity and Inclusion will attract an ever-diversifying talent pool and give firms a competitive advantage in securing clients that request information on their demographic makeup. These statements are true, but do not comment on individual experiences in the workplace and the link these experiences have to business outcomes.

To the report's arguments for why Diversity and Inclusion should be fostered we would add findings from the growing research in this field. The research shows that nurturing diversity as well as inclusion (rather than one or the other) is necessary, and it can substantially increase the engagement of employees.

Research by Deloitte Australia found that strong focus on both can double employee engagement and increase the chances that "an employee is likely to stay with their employer, advocate for their employer and go the extra mile" at work<sup>[2]</sup>. An organization that does not prioritize Diversity and Inclusion is missing out on a truly talented and dedicated workforce. For the more bottom-line-minded audience, the research also shows that a focus on Diversity and Inclusion can increase organizational performance through increased sales, greater market share, and larger relative profits<sup>[3]</sup>.

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2 Deloitte Australia, "Waiter, is that inclusion in my soup?: A new recipe to improve business performance", last modified April 16, 2015, <http://www.globaldiversityexchange.ca/waiter-is-that-inclusion-in-my-soup/>.

3 Cedric Herring, "Does Diversity Pay?: Race, Gender, and the Business Case for diversity", *American Sociological Review* 74 (2009): 208.



## How should Diversity and Inclusion data be analyzed?

Measuring the association between demographics.

When analyzing categorical demographic data, a methodology we use and recommend is cross-tabulations. Cross-tabulation is the measurement of the association between two variables, and it investigates how much the distribution of one variable differs according to the various levels of another variable. Further, when the goal is uncovering racialized barriers to things like advancement, you can construct cross-tabulations in a way that shows the representation of racialized and non-racialized respondents at different levels of an organization's hierarchy.

Using an example relevant to the legal profession, we can construct a cross-tabulation that measures racial representation by the roles in the Partner track hierarchy (**Error! Reference source not found.**). A comparison of these role-specific representations to the overall representation of race within a firm provides the contextual evidence needed to uncover barriers to advancement. This benchmarking technique exposes concentrations or omissions of racialized groups along the hierarchy, which can then guide hiring or advancement goals that can be measured over time.

	Racialized	Non-Racialized
<b>OVERALL</b>	127 33.87%	248 66.13%
<b>Equity Partner</b>	12 12.24%	86 87.76%
<b>Income Partner</b>	15 26.32%	42 73.68%
<b>Associate</b>	85 43.15%	112 56.85%
<b>Articling or Summer Student</b>	15 65.22%	8 34.78%

*Table 1: Representation of Race by Role in Partner Track.*

Are the differences significant or is it a product of chance?

To ensure that you are properly assessing an over- or under-representation, statistical techniques like the chi square test of association can be applied. Explained plainly, this test uses cross-tabulated data to see if any concentrations or omissions of groups are outside of the realm of mere chance. These tests of association can answer Diversity and Inclusion questions such as, “do non-racialized respondents have a statistically significant larger representation in Equity Partner roles?” or “do racialized respondents disagree at a statistically significant higher rate with an inclusion question asking if they feel there is equal opportunity to advance?”

Measuring outcomes based on overlapping demographic characteristics.

Up to now we have only suggested ways to analyze representation of one demographic at a time, which is a necessary start to measuring trends in any data set. However, to look only at single demographics is a disservice to the reality that experiences and outcomes vary based on



overlapping demographic characteristics. This gap in The Working Group's recommendations was noted by St. Lewis, and she encouraged collecting data on all equality-seeking groups.

We support her in this recommendation - data needs to be collected and analyzed using an intersectional lens. We add to her recommendation methodologies that support an investigation of how multiple identities create unique experiences of discrimination.

### Introduce a third demographic to analysis.

We previously mentioned a two-way cross-tabulation and tests of association between variables. If you are taking an intersectional approach, another demographic can be added to the data table to further segment the results to a more diverse subgroup: when race is added as the third variable, a data comparison of female versus male becomes a comparison of racialized female versus non-racialized female and racialized male versus non-racialized male. This analysis can be applied to representation as well as opinion data, as it can be performed on both demographic and inclusion results.

		Senior Level	
		Yes	No
<b>Female</b>	Racialized	2 8.70%	21 91.30%
	Non-Racialized	23 40.35%	34 59.65%
<b>Male</b>	Racialized	65 66.33%	33 33.67%
	Non-Racialized	92 66.19%	47 33.81%

*Table 2: Representation of Senior Level Status by Race and Gender.*

A possible application with representation data would be an analysis of the interaction of race and gender on the likelihood of being at the senior level of a firm (**Error! Reference source not found.**). To do this, we test the association between race and seniority for females, and then males. A potential result would be that there is an association for females but not for males, meaning that the impact of race on career advancement is evident only for females.

The same process can be applied to perception-based data by substituting the senior level variable with agreement versus disagreement to an inclusion survey question. As an example, we will again use the inclusion survey question about equal opportunity to advance in the firm. If you found an association between race and agreement in equal opportunity to advance, you can add the third variable gender to see if the association holds for males and females. The results could show that racialized males showed significantly lower agreement than non-racialized males, suggesting a unique racialized experience for males in their perception of discrimination.



### Compare odds of a specific outcome between subgroups.

Odds can be used to understand whether or not there is an association between two personal demographics (race and gender, Indigenous and disability status, sexual orientation and gender) and the likelihood of an outcome. Another method of exploring intersectionality would be comparing the odds

	Senior Level		Odds of being Senior Level
	Yes	No	
<b>Non-Racialized Male</b>	92 66.19%	47 33.81%	2:1
<b>Racialized Male</b>	65 66.33%	33 33.67%	2:1
<b>Non-Racialized Female</b>	23 40.35%	34 59.65%	2:3
<b>Racialized Female</b>	2 8.70%	21 91.30%	1:9

*Table 3: Odds of being Senior Level by Race/Gender Subgroups.*

of a specific firm-based outcome like being senior level between groups. Once you filter the data to subgroups you could then calculate each of their odds of being senior level versus non-senior level and compare across these subgroups. The potential with this would be ranking the odds from highest to lowest to see a how these demographic combinations are positioned within the hierarchy of the firm.

We appreciate the opportunity to respond to this consultation and hope that this information is valuable. Should you have any questions regarding our submission, please do not hesitate to contact us.

Sincerely,

Michael Bach, CCDP/AP  
 CEO  
 Canadian Centre for Diversity and Inclusion

TO: The Law Society of Upper Canada Convocation  
FROM: The Canadian Hispanic Bar Association  
DATE: November 14, 2016  
RE: Submissions on the Challenges Faced by Racialized Licensees Final Report

#### BACKGROUND

1. The Canadian Hispanic Bar Association (the "CHBA") is a national, non-profit organization representing Hispanic/Latin American lawyers, law students, Articling/LPP students and NCA students.
2. The CHBA was founded in 2005 and was formerly known as the Hispanic Ontario Lawyers Association (HOLA). The CHBA has member representatives in the Roundtable of Diversity Associations (RODA), the Equity Advisory Group (EAG), JusticeNet Ontario and the US National Hispanic Bar Association.
3. The CHBA works to promote diversity within the profession, to increase the number of Hispanic lawyers across Canada and to provide support to its members.
4. In March of 2015, the CHBA responded to the Working Group on the Challenges Faced by Racialized Licensees interim report by providing submissions to this group as well as participating in the submissions of the Equity Advisory Group.
5. Presently, the CHBA has also participated in EAG's Working Group on the Challenges Faced by Racialized Licensees in addition to providing its own submissions.

#### **The Law Society Should Vote on the Recommendations as an Omnibus Motion**

6. The CHBA submits that all thirteen (13) recommendations contained in the final report should be adopted in their entirety. The CHBA believes that the efficacy of the recommendations will increase if they are implemented together. As such, we do not support the motion to vote on the recommendations on an individual basis. We strongly urge Convocation to accept the recommendations as an omnibus package.
6. The CHBA submits that the recommendations contained in the final report are minimum requirements to create a regulatory framework and culture that is responsive to the varied and systemic needs of racialized licensees.
6. The CHBA also submits that the recommendations represent proposals that are fundamental and basic in nature, and that if needed, can be further expanded or refined in the future, after their implementation has been approved.

#### **Comments on the Recommendations**

9. The CHBA adopts and endorses the submissions of the EAG regarding the recommendations contained in the final report.
9. The CHBA agrees that anti-discrimination matters should be aligned with each licensee's professional obligations. It also agrees with the various manners outlined to measure progress, and believes that the collection of data will be a key driver to addressing issues of systemic discrimination while promoting inclusion.
9. For clarity, the CHBA is supportive of the recommended CPD requirement of three (3) hours every two (2) or three (3) years. The CHBA believes that such a requirement is not onerous, and will have a net benefit on the profession.

9. The CHBA strongly supports the further development of the Discrimination and Harassment Counsel Program, as well as the development of alternative streams in which to address complaints.

9. The CHBA recognizes the Law Society as a strong driver in the organizational behaviour and culture of licensees and prospective licensees. As such, it agrees with the proposed changes to the Law Society's own processes and appreciates the Law Society's leadership in this respect.

#### **Implementation Considerations**

14. The CHBA strongly supports the motion brought forth by Bencher Joanne St. Lewis and Barbara Murchie to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups. In this respect, we further submit that the Law Society should consider all motions from an equity-sensitive perspective as applicable.

15. The CHBA also submits that the Law Society should consult and work with various stakeholders, including the CHBA and other equity seeking legal associations on the implementation of the recommendations.

16. We thank the Working Group for the opportunity to make these submissions and we look forward to working with the Law Society to address the issues raised within the report.

Sincerely,

The CHBA Challenges Faced by Racialized Licensees Working Group:

Sandra Lozano  
Jennifer Quito



November 8, 2016

**Via Email: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)**

Equity and Aboriginal Issues Committee  
Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West,  
Toronto ON M5H 2N6

Attention: Ekua Quansah, Policy Secretariat

Dear Ms. Quansah,

**Re: CCLA comments on the proposed LSUC Motion to approve Challenges Faced by Racialized Licensees Working Group – Final Report**

On behalf of the County of Carleton Law Association (CCLA), the CCLA Diversity Committee thanks you for this opportunity to contribute to the discussion on the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“the Report”).

The CCLA is Ottawa and Eastern Ontario’s leading association for the professional legal community. It has over 1,598 licensed members from all range of legal practice areas, including paralegals. Close to half of our members practice in firms of 9 licensees or less. While we acknowledge that our legal population is less racialized than the GTA, the racialized licensees in our region often face the same identified challenges but in a more isolated context.<sup>1</sup>

The CCLA Diversity Committee was created to assist the Membership Committee in identifying and determining the overall approach / philosophy that the CCLA should adopt to ensure it is inclusive of the entire legal community that the CCLA serves. Its purpose is to foster a culture of diversity and inclusion in the CCLA by enabling the values and principles of equality and equity in its organizational structure, policies, programs, and services.

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<sup>1</sup> *Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (2014)*, [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16\\_apr13.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf) at p.7.

We commend the Working Group on the work that has been completed to date. The Report makes thirteen recommendations that, in general, we support. However, the Report is noticeably silent on three key issues and two particular recommendations require a different approach. Before this is brought before Convocation for approval, these topics must be addressed.

We provide comments on the following five areas:

1. Racialized sole practitioners and small firms;
2. Economic vulnerability of racialized licensees;
3. Education and training;
4. Using the DHC as a way to address systemic racism; and
5. Monitoring and accountability.

Several of our suggestions should be accommodated at this time and could be undertaken with reasonable effort; other suggestions are intended to guide the LSUC on its next steps in taking action on the issues of systemic racism and bias within the profession.

## COMMENTARY

### 1. Silence surrounding racialized sole practitioners and small firms

In short, the Report does not comment on this group. Many racialized licensees find themselves practicing in small firms or as sole practitioners; this is largely as a result of their lack of ties within the legal community and systemic racism. The Report addresses remedies for firms with over 25 licensees, but fails to address the sole practitioner and small firms who are already a marginalized group.

According to the LSUC's *Statistical Snapshot of Lawyers in Ontario* from the *Lawyer Annual Report (2014)*<sup>2</sup>:

- 24% of racialized lawyers practice as sole practitioners;
- 14% of racialized lawyers are in house counsel; and
- 14% of racialized lawyers are in government.

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<sup>2</sup>*Ibid* at p. 5

We further note that 33% of racialized lawyers work in firms of fewer than 5 people; 16% of racialized lawyers are in firms of 5-9 people.<sup>3</sup> Given that 49% of racialized lawyers work in practices of less than 9 people, this group has to be acknowledged in the Challenges Faced by Racialized Licensees. The Law Society of Upper Canada has this data readily available, therefore, it should be relied upon for the purposes of this Report. The Report fails to address the racism this particular group encounters and ways in which to eliminate the challenges faced by this racialized group.

If the report is approved as it is, we will be essentially failing to address almost half of the racialized lawyers who are encountering various forms of racism within their immediate work environments, the professional organizations they may or may not be a part of, and, within the legal community at large.

## **2. Economic vulnerability of racialized licensees**

The Report does not address the issue of economic barriers for racialized licensees and licensees representing other equity-seeking groups. These begin as economic barriers to the profession and continue on through the licensee's career.

Racialized, first-generation law students, with little or no connections to the profession, often have limited familial financial support to help pay for their legal education. They may already be carrying significant student debt coming into law school. These students rely on government student loans and professional student lines of credit to finance their professional degree. This means that economically-disadvantaged students are graduating with extraordinary debt loads.

This economic stratification is amplified in the licensing process and an ultra-competitive articling system, in which law students vie for a limited number of well-paying articling positions. In order to become licenced, economically-disadvantaged law students may have to choose a low-paying or unpaid articling position with a sole practitioner or small firm or to enroll in the LPP. These low-paid / unpaid articling students and LPP students continue to accumulate debt during the licensing process. Further, licensing fees are the same for all licensing candidates, regardless of articling employer and articling remuneration, or unpaid experiential training through the LPP. These fees become disproportionately onerous when low-paid / unpaid articling students have to pay their licensing fees themselves, while large firms pay for their articling students' licensing fees as standard practice.

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<sup>3</sup>*Ibid* at p. 6

These economic barriers continue on after licensing. Whereas articling students at large firms have the opportunity to be hired back, those who articulated with sole practitioners or came through the LPP are more likely to become sole practitioners themselves or stay on at the small firm where they articulated.<sup>4</sup> These new practitioners may continue to rely on bank loans and lines of credit to finance the significant costs of opening a sole practice or contributing to the small practice. As sole practitioners, they must bear alone the regular costs of the profession, including law society fees and insurance premiums, law association membership fees, CPD courses and conference fees, etc.

These licensees juggle: the financial burdens of a sole practice, while attempting to build a client base and business; finding a way to support themselves, while paying off their student debt within a reasonable time; and making the pronounced effort to network and seek out mentorship in order to ameliorate the isolation of sole practice. These factors impede their progression in the profession, and hinder their ability to obtain leadership roles within the legal community or to devote time to volunteer positions or appointments on committees.

The Report must recognize that economic barriers disproportionately affect racialized licensees and that this may represent one of the most significant challenges facing racialized licensees.

### **3. Education and training**

We believe that mandatory education and training are foundational to address the challenges faced by racialized licensees. However, the Report is not clear about what CPD programs would meet the criteria for accreditation and does not explain why three hours every three years is an appropriate benchmark. Developing an understanding of diversity does not flow from an intense one-off kind of event; it comes from an internalization of the issues and challenges by way of regular, ongoing and progressive dialogue that is relevant to our day-to-day ways of thinking and acting. The Report needs to require annual CPD/training as well as other means to demonstrate competence and currency in this area. Perhaps this could be part of a no charge professionalism credit.

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<sup>4</sup>This is reflected in the 2014 Lawyer Annual Report that showed that 24 percent of racialized respondents were sole practitioners, whereas 19 percent of non-racialized respondents were sole practitioners.

#### **4. Problematic use of the DHC as a way to address systemic racism**

While a review of the Discrimination and Harassment Counsel Program (“DHCP”) is laudable, the LSUC should avoid tampering with the complete confidentiality and privacy that complainants currently enjoy. The small numbers of racialized licensees in particular locations make it difficult to remain anonymous should a complaint be acted upon or become public. If the sharing of a discriminatory experience automatically led to a formal investigation or complaint (and how would a particular licensee know they would be hitting a “threshold”), then this would undermine the confidence and trust that has been the key to the DHCP’s current ability to support racialized licensees.

#### **5. Monitoring and Accountability**

The Report should address monitoring and accountability. As we have seen from the limited progress made on similar past recommendations on this topic<sup>5</sup>, if there is no ongoing monitoring and reporting on progress, then action is simply not taken. With the evidence before us, we know that the identified challenges are longstanding, ongoing and increasing. There needs to be accountability processes built into the Recommendations right from the start.

One way that this could be done is through having the LSUC produce an annual report card on what progress has been made on each of the Recommendations. This report card should be reviewed by a committee of benchers but also include other stakeholders.

### **INTERSECTIONAL ISSUES**

Amongst other issues that require further attention, we note that at page 4 of the Report, the Engagement Process Results identified the issue of additional intersecting experiences of discrimination, however the Report does not address this topic. The next phase should encompass an in-depth analysis and clear recommendations on intersectional issues.

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<sup>5</sup>*Racial Equality in the Canadian Legal Profession*, Working Group on Racial Equality in the Legal Profession, Canadian Bar Association, February 1999.  
<https://www.cba.org/getattachment/Sections/Equality-Committee/Resources/Resources/2013/Racial-Equality-in-the-Canadian-Legal-Profession/racialEquality.pdf>

## **CONCLUSION**

Although this Report has been long anticipated and many in the profession are ready to act, it behooves us to step forward with the best foot we can. We are not advocating a complete rewrite of the Report, but believe that the Report should and could be modified within a reasonable timeframe.

On behalf of the CCLA, we urge you to consider expanding the scope, making some modifications and, ultimately, capitalizing on the impact of the Recommendations.

We thank you for your time and consideration of this submission.

Yours very truly,

Asfrah Syed-Emond, Chair, CCLA Diversity Committee  
Juliet Knapton, Vice Chair, CCLA Diversity Committee  
David Ang, Vice Chair, CCLA Diversity Committee



November 14, 2016

Email: racialized.licensees@lsuc.on.ca

Challenges Faced by Racialized Licensees Working Group  
The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Stret West  
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Dear Members of the Challenges Faced by Racialized Licensees Working Group:

**Re: Submission by the Federation of Asian Canadian Lawyers on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

The Federation of Asian Canadian Lawyers (“FACL”) is pleased to comment on the recommendations outlined in the Law Society of Upper Canada’s (“Law Society”) Challenges Faced by Racialized Licensees’ (“CFRL”) Working Group Final Report – *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“Final Report”).

As you are aware, FACL is a diverse coalition of Asian Canadian legal professionals working to promote equity, justice, and opportunity for Asian Canadian legal professionals and the wider community, and to foster advocacy, community involvement, legal scholarship, and professional development. FACL is a key stakeholder in this initiative and has long supported and contributed to the crucial work of this group. FACL applauds the efforts of the CFRL Working Group, the Final Report, and its recommendations.

FACL is of the view that the recommendations represent a critical step in the right direction towards addressing the challenges faced by racialized licensees. As such,

FACL urges the immediate adoption of these recommendations as an omnibus package by Convocation on December 2, 2016. The time to act is now.

FACL supports the Final Report's recommendations individually and categorically. A change in culture and attitudes in our profession is overdue and the recommended educational, policy, and regulatory measures will assist in accelerating this culture shift. FACL looks forward to working with the Law Society and other stakeholders in developing appropriate policies, practices, and resources aimed at addressing the many gaps and barriers encountered by racialized licensees.

FACL especially supports the regulated collection, analysis, and publication of demographic data as a means of measuring progress. This will enhance transparency and accountability in the legal profession's efforts to improve access to and public confidence in Ontario's legal profession, which is a necessary part of ensuring that all licensees have an equal chance of success in this profession.

FACL is encouraged by the consideration of progressive compliance measures but standards are only meaningful if they are enforceable and only effective if they are enforced. There must be real consequences for non-compliance and FACL looks forward to seeing the form and substance of such compliance measures as they evolve from this process.

FACL is pleased that the Law Society is taking a leadership role by internally promoting diversity, inclusion, and equality. FACL also strongly supports the recommendation to strengthen and better equip the Law Society's Discrimination and Harassment Counsel Program to address complaints of systemic discrimination.

As FACL has previously commented, the challenges faced by women, Indigenous, LGBTQ, and disabled licensees intersect with those faced by racialized lawyers and paralegals. These issues should not be compartmentalized or separated. Thus, FACL is hopeful that the implementation process of the recommendations will situate race in an appropriate context and not in isolation from the intersecting challenges faced by all equity-seeking groups.

Accordingly, FACL supports the motion by Bencher Murchie to ensure that the recommendations herein are appropriately extended to all equality-seeking group and urges Convocation to pass this motion.

Historically, the voices of racialized communities in Ontario have been appropriated by having others speak for us. To maintain legitimacy, racialized licensees need a voice in the implementation of these recommendations. FACL believes that the dialogue initiated by this process must be continued by having all stakeholders meaningfully and regularly engaged throughout the process of implementing the recommendations.

Thank you for considering our comments. Should you have any questions about this matter, we would be happy to discuss this with you further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brendan Wong', with a horizontal line extending to the right.

Brendan Wong  
President, Federation of Asian Canadian Lawyers (Ontario)



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Director

Kelly Lovell, Executive  
Assistant

## Response by FOLA to the Report of the Challenges Faced by Racialized Licensees Working Group: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

Submitted to:

The Law Society of Upper Canada

c/o Ekuu Quansah, Policy Counsel

Osgoode Hall, 130 Queen Street West

Toronto, ON M5H 2N6

[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Submitted November 14, 2016

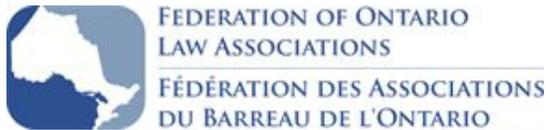
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*“The Voice of the Practising Lawyer in Ontario”*

Dear Working Group Members,

The Federation of Ontario Law Associations (“FOLA”) commends the Law Society of Upper Canada in attempting to develop a concrete framework to recognize and address the challenges that are faced by racialized licensees throughout Ontario. The pragmatic approach and timeline suggested within the report illustrate an understanding by the Working Group of the time necessary to effect meaningful change moving forward.

FOLA notes, however, that while the Working Group’s mandate (established in 2012) focused only on racialized licensees, this restricted mandate, in and of itself, creates unnecessary barriers and limitations. Since 2012, a greater societal understanding of other disadvantaged groups including gender identity, gender expression, disability, sexual orientation, class and creed creates a need to ensure that these other groups are not left behind as we move forward with the Working Group’s recommendations. This proposed expansion would acknowledge the broad range of human rights issues which exist while not precluding the possibility of variations or focussed initiatives for certain groups where appropriate. It would also take into account the intersectionality issues associated with discrimination. FOLA therefore would propose that, as any recommendations move forward through development and implementation, the mandate of the Working Group expand beyond racialized licensees to include all areas of potential discrimination.

The expansion of mandate set out above would only require a slight adjustment to the three objectives stated by the Working Group. The objectives would become:

- a) Inclusive legal workplaces in Ontario
- b) Reduction of barriers created by unconscious bias and discrimination; and
- c) Better representation of all minority groups in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority..

The public needs to trust the legal profession. A profession that does not reflect the diversity of the public creates both real and perceived barriers and there is no reason to break down these barriers one group at a time.

FOLA is also very mindful of the parallel mandates of the Law Society to promote access to justice and to protect the public interest. In that context, FOLA is very aware of the economic costs to the practice of law in Ontario and of the struggle that some practising lawyers – particularly those in marginalized communities – engage in every day to remain economically viable. Whether they are marginalized by geography or the economic situation of the clients they choose to represent, there are many lawyers in Ontario for whom it is a daily struggle to maintain an economically viable legal business.

Since FOLA’s mandate is primarily as an advocate for the interests of the practising lawyer – the majority of whom are in sole and small practice in Ontario – a good deal of our commentary is

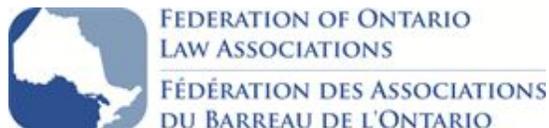
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coming from this perspective. These comments are not, however, only concerned with the "cost" of implementing these recommendations. They are also mindful of the fact that many of the racialized or otherwise marginalized licensees entering the practice are working in solo or small practice and, in turn, serve minority populations that can often be economically disadvantaged in communities across Ontario. These economic pressures are, in our view, some of the greatest barriers to full equity. A key component to realizing the goal of equity in our profession is to make the practice of law and access to law more affordable to more people.

With that in mind, we contend that one of the most important ways the Law Society of Upper Canada can promote equity and access is to be ever mindful of the costs it imposes or has an influence on. Every regulatory mandate and licensing procedure has a cost and this cost should be kept as low as possible. CPD programming must be kept affordable and the operations of the Law Society, in general, must be constantly evaluated with a view to keeping costs down. Likewise, the Law Society should join others in the profession to maintain or increase pressure on law schools across the country to make law school more affordable and access to financial assistance less burdensome on practitioners in their early years of practice..

#### **FOLA's position on the Recommendations made by the Working Group**

FOLA agrees with Recommendations 1, 3, 8, 10, 12 and 13 without the need for further comment.

#### **Recommendation 2 and 11**

FOLA would appreciate the opportunity to work with the Law Society to develop policies to address the challenges licensees face through bias and discrimination. Our Executive Board has taken note that within the leadership of our member law associations, there is an apparent underrepresentation of lawyers who come from minority populations. While we cannot dictate the complement of our members' leadership structure, FOLA is committed to assisting the Law Society in effecting change at the ground level with the hope that this will create future change in the leadership of the profession. To that end, our Executive Board is more mindful of the need to recruit from minority populations to stand for Executive Board positions and we have implemented the practice of having at least one speaker from an equity-seeking bar association join our bi-annual Plenary meetings. These are small steps to be sure, but we think they are important and we are encouraging more of our members to do the same.

We also view the local associations and their Practice Resource Centres as a terrific conduit for the development of policies, the dissemination of information and the promotion of equity. A very large, but often overlooked, part of the mandate of our local associations is the promotion of collegiality and mentorship among the profession. This collegiality and relationship building cannot be underestimated in its ability to break down barriers and promote cross-cultural understanding. The primary user of the courthouse library is often a sole or small firm practitioner – the most likely current firm structure of minority licensees. Law Associations and the Practice Resource Centre staff are in the unique position of knowing these licensees, knowing potential mentors and providing a forum for mentorship, networking and collaboration. Further, the Law Association lounges in county courthouses across Ontario are places where all licensees

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should feel welcome and should find a colleague who is willing to help, consult or simply "shoot the breeze" fostering ongoing relationships. Likewise, it is critical that our local associations reach out to racialized and other minority populations for candid internal conversations to implement policies that removes all possible barriers. As such, in considering resources available to address the challenges faced by these licensees, FOLA considers our courthouse Practice Resource Centres (known in the past as libraries) to be a key component to this effort. In fact, we would argue that further investments in Practice Resource Centres will further assist racialized and other minority licensees to build sustainable legal practices.

**Recommendation 4, 5, 6, and 7**

It is FOLA's belief that in providing these recommendations, the Working Group has acknowledged the need for evidence based decision making. We believe this is a key precondition to any analysis by the Law Society when considering imposing further regulation on the profession.

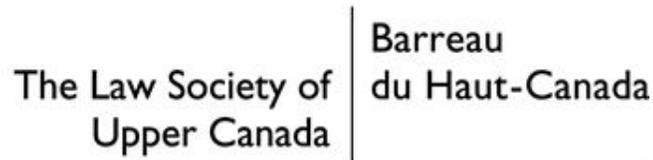
**Recommendation 9**

FOLA does not disagree with the suggestion that there is value in CPD programs on equality and inclusion. We would however caution that any requirement for specific CPD courses recognize limitations for practitioners in the North or other parts of rural Ontario who cannot always access streamed CPD. In this regard, and to reiterate the point made above, the Practice Resource Centre network across Ontario can be an important, and inexpensive, conduit for the dissemination of this information and training. We suggest that these materials be made available through the Practice Resource Centres, and that the program be available for distribution in other formats for those practicing in remote locations.

Thank you for the opportunity to provide these submissions. We look forward to further dialogue and to standing with the Law Society and all of our colleagues across the legal profession in moving toward a goal of equity and inclusion.

Eldon Horner  
Chair

Jaye Hooper  
1<sup>st</sup> Vice Chair



## EQUITY INITIATIVES DEPARTMENT

TO: Members of the Challenges Faced by Racialized Licensees Working Group

FROM: Members of the Indigenous Advisory Group

DATE: November 17, 2016

RE: Submission by the Indigenous Advisory Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

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The Indigenous Advisory Group was provided with a copy of the *Final Report of the Challenges Faced by Racialized Licensees Working Group* delivered to the Equity and Aboriginal Issues Committee. While Indigenous lawyers and paralegals were not included in the consultant or community engagement processes, we understand the findings of widespread barriers experienced by racialized licensees within the profession at all stages of their careers. The report provided, in summary form, some examples of the experiences faced in the legal profession including discrimination, negotiating concepts of "culture" and "fit", lack of mentors, networks and role models; we believe many of these same experiences are shared by Indigenous lawyers and paralegals.

As the report so aptly states, "the Law Society of Upper Canada 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. The Law Society is committed to adhering to its obligations under the *Human Rights Code*".

All licensees should be committed to eliminating harassment and discrimination in the profession; however, the current experiences relayed by respondents during this consultation may run at odds to the very standard we are held to protect.

The Indigenous Advisory Group supports the implementation of the Report's recommendations by the Law Society staff as overseen by the Equity and Aboriginal Issues Committee and is prepared to assist wherever necessary. To this end, we will be working with EAIC to articulate how the 7 Sacred Teachings of wisdom; love; respect; bravery; honesty; humility and truth must be practiced together to restore balance.

In our view, these teachings provide a framework through which all actions of the Law Society must be viewed and applied.

Respectfully,

Kathleen Lickers on behalf of  
The Indigenous Advisory Group



November 14, 2016

Ekua Quansah  
The Law Society of Upper Canada Osgoode Hall  
130 Queen Street West Toronto, Ontario

Dear Ms. Quansah:

BY EMAIL: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

**Re: Response to the Working Group Final Report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

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The Indigenous Bar Associations (IBA) would like to take this opportunity to thank the Law Society of Upper Canada's Equity and Aboriginal Issues Committee for their initiative and dedication in completing this essential Final Report. The IBA appreciates the time expended by the Committee in addition to their comments and suggestions to continue to address the challenges faced by racialized licensees. In support of the Working Group Final Report the IBA provides the following comments.

### **Recommendation 1 – Reinforcing Professional Obligations**

The IBA supports the recommendation of the Law Society to amend 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.

Due to the history and intergenerational impacts of colonialism, legislated assimilationist policies and Indian Residential Schools, Indigenous licensees face many complicated challenges due to the historic disadvantages that tend to be perpetuated by the status quo inherent in the legal system. In addressing these challenges LSUC is encouraged to employ an approach that addresses both the unique and collective challenges as well as the individual challenges facing Indigenous licensees. The IBA requests that the Law Society make specific mention of the *Truth and Reconciliation Commission's Final Report* and the

requirement to address “reconciliation” between Indigenous and non-Indigenous Peoples.

#### **Recommendations 4 to 7 (Collection of Data and Qualitative, Quantitative Analysis)**

The collection of demographic data to identify racialized licensees is essential to addressing the issue of systemic discrimination. It is difficult to address the issue without the data to support the numbers and analytical trends. The IBA requests that this essential data be posted as it becomes available.

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

The IBA recommends that in developing continuing professional development programs on Equality and Inclusion special consideration be given to the unique challenges faced by Indigenous licensees, including remote access, and financial considerations for mandatory fees and materials.

#### **Recommendation 10 – The Licensing Process**

Please see the above noted comments with respect to *Recommendation 1 – Reinforcing Professional Obligations* in considering to include the topics of cultural competency, equality and inclusion in the profession as competencies as part of the Licensing Process.

#### **Recommendation 11 – Building Communities of Support**

The Law Society recommendation to provide support to racialized licensees through mentoring and networking initiatives was highlighted by the IBA as a key priority in its consultation submissions. It is important for the success of Indigenous licensees to connect and associate with other Indigenous law students and licensees. To the extent that its resources permit the IBA encourages the Law Society to seek its assistance in providing opportunities for Indigenous licensees to network with Indigenous law students, licensees, academics and judges and other members of the IBA.

The IBA also requests the Law Society undertake efforts towards monitoring the success of all mentoring and networking initiatives for racialized licensees and identify any improvements.

3

Thank you for your consideration of these submissions.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Robertson', written over a horizontal line.

Scott Robertson  
Vice-President Indigenous Bar Association  
[srobertson@indigenousbar.ca](mailto:srobertson@indigenousbar.ca)

cc Koren Lightening-Earle, President, Indigenous Bar Association

The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**EQUITY INITIATIVES DEPARTMENT**

**TO:** Members of the Challenges Faced by Racialized Licensees Working Group

**FROM:** Members of the Equity Advisory Group Working Group

**DATE:** November 14, 2016

**RE:** Submission by the Equity Advisory Group Working Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

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Members of the Equity Advisory Group (“EAG”) Working Group have carefully considered the thirteen recommendations presented in the Challenges Faced by Racialized Licensees Working Group Final Report (“final report”), *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The following document offers general comments on the final report as well as comments specific to some recommendations.

**Background**

1. EAG represents the diverse interests of lawyers and paralegals who identify as a member of one or more equity-seeking groups. EAG, through its organizational and individual members, is actively involved in the advancement of equity and inclusion within the legal professions with respect to gender, sexual orientation, gender identity, language, ability, religion, and most relevant to these submissions, race.

2. EAG's mandate includes commenting on Law Society reports and studies relating to equity issues and access to justice within the profession. EAG is of the view that the Report dated September 22 ought to be considered from an equity and diversity lens, access to justice, and the Law Society's mandate to protect the public interest.
3. EAG supports an approach that advances access to justice and protection of the public interest for equity seeking clients, while ensuring the regulatory balance struck does not disproportionately impact licensees from equity seeking groups, where it is unnecessary to protect the public interest.
4. The commitment of the EAG Working Group to the *Challenged Faced by Racialized Licensees* report has spanned two terms of Law Society Benchers as well as EAG members. The Working Group is currently comprised of the following individual and organizational members:
  - a. Tahlee Afzal, individual member;
  - b. Ranjan Agarwal, on behalf of the South Asian Bar Association;
  - c. Sharan Basran, individual member;
  - d. Maureen Bennett Henry, on behalf of the Canadian Association of Black Lawyers;
  - e. Gerald Chan, on behalf of the Federation of Asian Canadian Lawyers;
  - f. Gordon Cudjoe, on behalf of the Canadian Association of Black Lawyers;
  - g. Imtenan El-Razik, on behalf of the Canadian Association of Muslim Women in Law;
  - h. Lai-King Hum, on behalf of the Roundtable of Diversity Associations;
  - i. Leonard Kim, individual member;

- j. Ayesha Laldin, on behalf of the Women's Law Association of Ontario;
  - k. Sandra Lozano, on behalf of the Canadian Hispanic Bar Association;
  - l. Jennifer Quito, on behalf of the Canadian Hispanic Bar Association;
  - m. Paul Saguil, individual member;
  - n. Jason Tam, individual member; and
  - o. Joyce Tam, on behalf of the Federation of Asian Canadian Lawyers.
5. The EAG Working Group agreed to provide written submissions to the CFRL Working Group in response to the final report. The EAG Working Group provides submissions that focus on what the Law Society of Upper Canada proposes to do to remove barriers faced by racialized licensees in the legal profession.
6. The EAG Working Group submits its written feedback to the CFRL Working Group for its consideration, in preparation for the decision before Convocation on December 2, 2016.

#### **Unequivocal Consensus among all EAG Working Group Members**

7. There is unequivocal consensus among all EAG Working Group members that the thirteen recommendations should be approved in their entirety. The EAG Working Group urges the Law Society to vote on and approve the thirteen recommendations in the final report as an omnibus package at Convocation. The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis. The challenges faced by racialized licensees must be addressed in a multi-faceted way

that will be best achieved through the approval of all thirteen recommendations as an omnibus package.

8. The EAG Working Group is unanimous in its recommendation that the Executive Summary in the final report should include a reference to section 15(1) of the *Canadian Charter of Rights and Freedoms*.<sup>1</sup> An example of the included reference is below:

“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 **constitutionally enshrined in the *Charter of Canadian Rights and Freedoms***, and already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, 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 **while upholding the spirit and letter of the law of equality rights outlined in the *Charter***.”

### **Approving all Recommendations is a Necessary First Step**

9. There is consensus among all EAG Working Group members that the approval of all recommendations is a basic, minimum first step that is required to begin to address and improve accessibility to and advancement within the legal professions for racialized licensees.
10. These thirteen recommendations work together to address the systemic issues faced by racialized licensees. Their interplay and resultant effects lay the foundation for initiatives that can begin to ameliorate systemic issues of race within the profession. Voting on each recommendation, one by one, will diminish their full impact and restrict how they can and must work together to create practical change.

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<sup>1</sup> *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

11. The approval of all thirteen recommendations is urgent. This is not only fundamental to creating a more inclusive profession, but it is an action that is long overdue.
12. Considering the range of stakeholders that are represented by and actively involved in EAG, the EAG Working Group's inclusion in the future implementation of these recommendations is important and necessary, if the final report is approved at Convocation on December 2, 2016. The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the application in a manner that is responsive to the specific needs of a particular community.

### **Recommendation-Specific Comments by Theme**

#### ***Accelerating Culture Shift: Recommendations 1 to 3***

13. Although these recommendations are basic requirements, the EAG Working Group believes there is a need to identify these issues to address equality and anti-discrimination in alignment with each licensee's duty to fulfill their professional obligations. Aligning these principles with one's professional responsibilities requires each licensee to develop a sensitivity and an awareness of these issues. Each licensee will then have the capacity and responsibility to act according to these basic principles.
14. These are a minimum requirement that are important and necessary to deal with issues in a proactive manner.

***Measuring Progress: Recommendations 4 to 8***

15. EAG Working Group members suggest that the active gathering of this data will highlight to the profession that issues of diversity and inclusion remain a top priority for the Law Society.
16. EAG Working Group members identify the need for statistical information regarding the demographic composition of legal workplaces. EAG Working Group members agree that the Law Society mandate demographic data reporting and agree that this information should be publicly available.
17. The members of the EAG Working Group note that the Law Society already collects demographic information from licensees through the Lawyer Annual Report and the Paralegal Annual Report. The Law Society also has information regarding where licensees are employed. The Law Society could produce this information if legal workplaces are not willing to do so.
18. EAG Working Group members believe that legal workplaces should also track the progression of students and licensees within their workplaces, from the articling student level to the partner/managerial level. Demographic data should also include information that would indicate the number of members of different equity-seeking groups in various positions in legal workplaces – i.e. students, associates, and partners. This may help legal workplaces identify any issues that may exist with retention and may provide some insight as to why there may be a lack of representation of racialized groups. In the same vein, it is suggested that when licensees change their status with the Law Society, the form they are required to fill out should include a question as to why the licensee changed their status. This would assist in tracking retention and progression.

19. The EAG Working Group suggests that the Law Society continue to collect demographic data from licensees through the Lawyers Annual Report (LAR) and the Paralegal Annual Report (PAR). The Law Society should provide a clear explanation as to why licensees are being asked to provide demographic data and how the collected data will be used.
20. The Law Society could publicly report aggregate demographic data based on legal workplace size and region. The Law Society could then provide legal workplaces with their own demographic data and the Law Society could require legal workplaces to comment on their diversity statistics in light of the standards and resources they have adopted.

***Educating for Change: Recommendations 9 to 10***

21. The EAG Working Group agrees that cultural competency, equality and inclusion as competencies are basic job traits in today's legal profession. These are required qualities and measurement of professionalism for new lawyers that hope to effectively serve a diverse population in Ontario.
22. The EAG Working Group supports the CPD requirement of three hours every 2-3 years. This recommendation amounts to a net amount of 1 hour of CPD programs per year.

***Implementing Supports: Recommendations 11 to 12***

23. The EAG Working Group suggests that, despite much success, there is much work to do to develop the complaints process. The re-assessment of the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC) would be prudent considering the dynamic nature of this ongoing challenge in the legal profession. Furthermore, amending where necessary, the Rules of Professional Conduct and Paralegal Rules of Conduct is an important part of the

review process in order to enable the Law Society to have the necessary tools to follow through.

24. Creative ways to address complaints and the formation of specialized teams to address complaints of discrimination (and systemic discrimination) may promote a mature and measured response to situations of discrimination or harassment that have the potential to be effectively addressed.

***The Operations of the Law Society of Upper Canada: Recommendation 13***

25. The EAG Working Group suggests that, by following through with this recommendation, the Law Society will add credibility to the process and to the profession. The Law Society will be in a position to gain a firsthand understanding of the advantages and limitations in fulfilling the full recommendations.

**Conclusion**

26. The EAG Working Group is united and absolute in its support for the approval of all thirteen recommendations in the report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The approval of these recommendations lay the foundation to initiate vital and long overdue policies and programs that advance the profession in the direction of equity, diversity and inclusion.
27. The EAG Working Group views the approval of these recommendations as a moment that could have a positive and profound impact on other equity-seeking groups. If these thirteen recommendations are approved at Convocation, the EAG Working Group urges the Law Society to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the

application in a manner that appropriately addresses the specific needs of a particular community.

28. To summarize, EAG's unanimous position is outlined in the three following points:
- (i) The thirteen recommendations outlined in the final report should be voted on and approved as an omnibus package at Convocation on December 2, 2016;
  - (ii) The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis; and,
  - (iii) The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, provided that the Law Society must consider whether further consultation is required to make these extensions in a manner that is responsive to the specific needs of equity-seeking communities on a case-by-case basis.



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November 18, 2016

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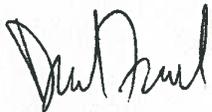
The Law Society of Upper Canada  
c/o Ekuia Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

Legal Aid Ontario congratulates the Law Society and the Equity and Aboriginal Issues Committee on its report "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions". We support the goals of the report and the general framework established to support greater diversity and inclusion of racialized licensees within the legal profession. We would welcome an opportunity to meet with the Equity and Aboriginal Issues Committee and staff of the Law Society to discuss the report. As one of the largest employer of licensees, many of whom we are proud to say are from racialized communities, we would also like to extend an offer to work with the Law Society and the Committee to consider how Legal Aid Ontario can effectively implement the actions recommended in the report.

We wish you success on the consideration of the report by Convocation on December 2<sup>nd</sup> and look forward to hearing from you.

Yours truly,



David Field  
President & CEO  
Legal Aid Ontario



November 14, 2016

Legal Leaders for Diversity and Inclusion (LLD) is an organization of General Counsel from across Canada which supports a more inclusive legal profession in Canada. In just over 5 years, our organization has grown to over 100 General Counsel from across Canada and across many business sectors. Thank you for providing us with the opportunity to respond to the Challenges Faced by Racialized Licensees Working Group Final Report titled “*Working together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*” (“Final Report”).

We want to express our support for measures which create a more inclusive legal profession. Though it is difficult to comment on the right approach to be taken for law firms, we thought it might be helpful to the Law Society of Upper Canada to have the benefit of our insights on what LLD members are doing with respect to this issue in order to remove barriers faced by racialized lawyers in Ontario.

We believe that true and effective change within the legal profession will only come about through collaboration and cooperation. The LLD has created and supported a number of inclusive initiatives. Many of these are aligned with the recommendations found in the Final Report. These initiatives include:

- ***Building a relationship with LFDIN:*** One of LLD’s early successes was a collective ask to our external counsel community that they consider how the external bar could promote and support diversity and inclusiveness initiatives. The law firms answered with the Law Firm Diversity and Inclusiveness Network (“LFDIN”), which currently has 35 law firm members that have agreed to work together to promote diversity and encourage a culture of inclusion within their firms and within the broader legal profession.
- ***Mentorship Programs:*** LLD and the LFDIN established a formal Mentoring Program to match LFDIN member firm associate lawyers, who self-identify as being from groups that have been traditionally under-represented in the legal profession, with lawyers from LLD member organizations who have 10 or more years’ experience. At its core, is our belief that mentoring can help create an ‘equal playing field’ for lawyers who are from diverse backgrounds.
- ***Legal Programs:*** LLD members are also involved in programs such as Law in Action within Schools (LAWS) (sponsored by the University of Toronto Law School), the Internationally Trained Lawyers Program (ITLP) for foreign qualified lawyers, and other diversity focused organizations. All of these organizations provide access, exposure and opportunity for students and lawyers of diverse backgrounds. LLD members participate.



- **Scholarship Support:** LLD (supported by the LFDIN) established the Legal Leaders for Diversity Trust Fund to annually provide scholarships for law students with disabilities who are studying at Canadian law schools. In addition to this, an LLD scholarship was established for an in house lawyer with disabilities to attend the Canadian Corporate Counsel Association/Rotmans In House Counsel certification program.
- **Indigenous Peoples, Laws, Reconciliation & Practice introductory CLE program:** LLD is the driving force behind the First Nations Initiative which will be a CLE accredited program that will be used not only by General Counsel, but by many others as a core educational tool on Indigenous law.
- **Affinity Relationships:** The success of LLD also lies in the group's spirit of cooperation and sharing, and the power of collaborating with other organizations and speaking and participating on diversity related issues. By working together in this manner, we can best support each other and grow and learn together.

LLD supports initiatives which develop and advance our common objective of achieving a diverse and inclusive legal profession. The profession is being challenged within Canada and globally and law schools and law societies must take steps to make our profession globally competitive and reflective of the population in our communities. We believe that creating a more diverse legal profession in Canada will play a role in creating that competitive advantage.

We applaud the focus of the Law Society of Upper Canada on this important issue.

Executive  
Legal Leaders for Diversity



# Legal Leaders for Diversity

## A Statement of Support for Diversity and Inclusion by General Counsel in Canada



**We commit to promoting a diverse and inclusive workplace.** We value the range of perspectives, ideas and experiences that diversity provides, whether grounded in gender, race, the spectrum of sexual orientation and gender identity, disability, cultural background, religion, economic position or age.

**We believe diversity and inclusion create a broader, richer environment** that enhances creative thinking, innovation and problem solving. Inclusive organizations attract and retain top talent.

**We will therefore encourage greater diversity and inclusion** in our own law departments, businesses and co-operate to foster these same values throughout the legal profession and the larger Canadian business community.

**We undertake to practice and advance diversity and inclusion by:**

- Promoting diversity within our own departments;
- Considering diversity in our hiring and purchasing practices;
- Working with Canadian law firms, law schools and others to advance these values;
- Promoting diversity initiatives at all levels in the legal and business community;
- Measuring the effectiveness of our efforts.

**We, as advocates for diversity and inclusion,** will demonstrate our commitment through specific actions including one or more of the "Be an Advocate" initiatives.



## **Comments on the Working Together for Change Report: Strategies to Address Issues of Systemic Racism in the Legal Profession**

**Submitted by  
Metro Toronto Chinese & Southeast Asian Legal Clinic**

### **INTRODUCTION**

The **Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC)** is a community based legal clinic which provides free legal services to low income Chinese, Vietnamese, Cambodian, and Laotian communities in the Greater Toronto Area. Established in 1987, MTCSALC has served thousands of immigrants and racialized members of the aforementioned communities.

The following are our comments and recommendations on the Law Society of Upper Canada's Working Together for Change Report ("Report").

### **COMMENTS AND RECOMMENDATIONS**

#### **Addressing Systemic Racism Through a Holistic Approach**

We fully endorse all 13 recommendations proposed by the Equity and Aboriginal Issues Committee ("Committee") to achieve the stated objectives of inclusive legal workplaces, reduction of barriers created by racism, and better representation of racialized licensees in all legal workplaces and at all levels of seniority.

We stress the importance of adopting a holistic approach in achieving these overarching objectives. Systemic racism is a complex and multifaceted issue which takes on many forms. There is no singular manifestation of systemic racism in legal workplaces and consequently no single solution. The varied nature of systemic racism necessitates a holistic response. As such, we submit that all 13 recommendations should be adopted together as they complement and reinforce the overall scheme to reduce racial barriers and achieve equity in legal workplaces. From our perspective, the 13 recommendations collectively tackle the issue of systemic racism from different fronts:

- Recommendations 1 (reinforcing professional obligations), 9 (continuing professional development), and 10 (licensing process) engrain and reinforce the principles of equality and inclusion for current and future licensees.
- Recommendations 2 (diversity and inclusion project), 3 (adoption of diversity and inclusion practices), and 11 (building communities of support) create and maintain practices for eliminating barriers to racialized licensees.
- Recommendations 4 and 5 (measuring progress through quantitative and qualitative analysis), 6 (inclusion index), and 7 (racialized licensees project inclusion survey) create a process for gathering data to measure the effectiveness of the recommended substantive practices and publicizing the results.

- Recommendations 8 (progressive compliance measures) and 12 (addressing complaints of systemic discrimination) create and strengthen compliance measures to address non-conformity with the recommendations.
- Recommendation 13 reaffirms the leading role and responsibility that the Law Society of Upper Canada has in implementing the aforementioned recommendations.

We submit that each set of recommendations complement each other and form an intertwined web of diversity and inclusion strategies. The removal of any strand from the web through partial or non-adoption of any of the 13 recommendations would seriously undermine the effectiveness of all recommendations and the viability of the overarching objectives.

### **Publication of Inclusion Index, Progressive Compliance, and Complaints of Systematic Discrimination**

As noted by the Committee, the publication of an inclusion index would allow legal workplaces to demonstrate their performance and progress by providing a transparent measure to prospective clients and licensees. We believe that this transparency is crucial in achieving the goals of the Report and to further encourage and reinforce diversity and inclusion practices within larger legal workplaces.

Compliance measures and investigation of complaints is a core responsibility of regulatory bodies and an integral part of ensuring adherence to prescribed rules and practices. We are supportive of progressive compliance measures and submit that immediate consultation should commence on the structure of specific measures once the Committee's recommendations are adopted.

Furthermore, we are in favor of an individual complaint process through a specialized professional regulation team as it would provide nuanced redress on an individual level from staff members of the Law Society of Upper Canada with expertise in discrimination complaints in the legal workplace context.

### **CONCLUSION**

We ask the Law Society's Board of Directors to fully adopt all 13 recommendations in the Report as a cohesive whole and consider and incorporate these perspectives in the Convocation Decision.

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November 14, 2016

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario  
M5H 2N6

Dear Ekua Quansah,

The Ministry of the Attorney General (MAG) is pleased with the opportunity to provide comments on the Law Society of Upper Canada (LSUC)'s final report on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The Working Group's final report reflects a comprehensive approach, broad consultation and thoughtful analysis on the experiences of Racialized licensees and on how to identify and remove barriers to their inclusion and equal participation at all career stages. I commend the licensees and organizations who have shared their experiences and the LSUC's Working Group for this important report.

As you may know, the ministry made oral remarks to the Working Group in May 2015, and a written submission in November 2015. We highlighted diversity and inclusion initiatives of the ministry and the Ontario Public Service (OPS) including the policies and procedures in place, the compilation of an Inclusion Index through the OPS' Employee Engagement Survey, and the release of the OPS Anti-Racism Action Plan. In addition, as noted on page 13 of your final report, the OPS has created the Anti-Racism Directorate which will provide guidance to the OPS on addressing racism.

Since that time, the OPS has continued to implement further measures including:

- A review of both the OPS policy and program on workplace discrimination and harassment resulting in a new updated policy, the Respectful Workplace Policy that was effective September 1, 2016
- Collection of diversity data on senior executives through the Leadership Profile Data Collection pilot project
- Collection of data on interns through the Ontario Internship Program Applicant Survey.

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In addition to the corporate initiatives identified above, the ministry is continuing to explore a variety of new initiatives including:

- A pilot of a roster of managers and subject matter experts to support diverse hiring panels
- A community outreach event to familiarize legal professionals from under-represented groups with the types of legal positions available in the Ontario Public Service
- A review of barriers in ministry hiring processes and practices.

As a ministry, we continue to focus our efforts on identifying and removing barriers in our workplace and on promoting greater diversity and cultivating an even more inclusive organization.

We recognize that the OPS is only one of a very diverse range of organizations that employ licensees, each of which are at various points on the inclusion continuum. Many of the recommendations in the final report will ensure the LSUC provides essential support to both licensees and organizations through CPD programs, clarifying professional obligations, collecting aggregate demographic data on the profession, and supporting mentoring and networking programs.

As part of our comments, we note the following points for consideration by the LSUC:

- Some recommendations, as drafted, appear to include requirements that may impact on governments and private organizations as employers of licensees (this potential impact is noted in footnote 7 of the report). At present it is difficult to determine whether the LSUC would have jurisdiction to regulate government and in-house legal departments as “legal workplaces” because the specific requirements of the Report’s proposed mandatory human rights policy/diversity policy have not yet been determined. In any event, given the fact that MAG shares the same goals as the LSUC on this matter, we do not find it necessary to express a view on this aspect of the Report.
- There may also be a need to consider the complexity of implementation of specific requirements. For example, all employees of an organization, including licensees, are usually subject to the same employer policies and initiatives.
- Some organizations may already have similar obligations as those proposed in the final report under the Federal Employment Equity Act and the Legislated Employment Equity Program, or under the Federal Contractors Program; programs which promote equitable representation for women, Aboriginal peoples, persons with disabilities and members of visible minorities. Other organizations, as noted in the final report, have voluntarily implemented policies, training, and initiatives on diversity, inclusion or anti-racism that would potentially be duplicated by the proposed LSUC requirements.
- Given the diversity of organizations that employ licensees, there may not be a “one size fits all” approach but rather a need for a flexible approach that focuses on progress for each organization.

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The Ontario Public Service and the Ministry of the Attorney General are committed to continuing efforts to identify, remove and prevent barriers to Racialized licensees in the Ontario Public Service. As a ministry, we look forward to working with the LSUC and other organizations where licensees work, to identify how we can each do our part to address the lived experience of Racialized licensees in the context of our own workplaces; for the benefit of the legal profession and society at large.

Thank you again for your strong effort and focus on this issue and for the opportunity for our ministry to provide comments.

Yours truly,



Patrick Monahan  
Deputy Attorney General

## The Voice of the Legal Profession

### Law Society of Upper Canada Challenges Faced by Racialized Licensees Working Group Final Report

**Date:** November 14, 2016

**Submitted to:** Law Society of Upper Canada

**Submitted by:** The Ontario Bar Association



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien



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## Addressing Challenges Faced by Racialized Licensees

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## Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on issues raised in the Law Society of Upper Canada (“Law Society”) Challenges Faced by Racialized Licensees Working Group (“Working Group”) Final Report “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions” (the “Final Report”).

## The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents 16,000 lawyers, judges, law professors and law students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA is pleased to assist government, the Law Society, and other decision-makers with dozens of policy initiatives each year – in the interests of the public, the profession, and the administration of justice.

In preparing this submission, the OBA has sought input from our governing council of members representing a critical cross-section of the bar, including senior and junior lawyers from managing partners to new calls, who practice across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province. The submission has also sought input from members of the OBA’s Equality Committee, Young Lawyers Divisions, Women Lawyers Forum, the Sole, Small Firm and General Practice section, the Canadian Corporate Counsel Association – Ontario Chapter, and our new Student Section.

## Response to the Final Report

### General Comments

The Working Group was formed in 2012 to identify the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages. The Working Group conducted a process to collect information on those challenges, and subsequently released a consultation paper in 2014 to collect feedback from the profession and public on questions intended to engage the profession in a consideration of strategies to address the challenges faced by racialized licensees.<sup>1</sup>

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<sup>1</sup> Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October, 2014 (<https://www.lsuc.on.ca/racialized-licensees/>) [the “Consultation Paper”]



Building on that work, the Final Report concludes that the challenges faced by racialized licensees are both longstanding and significant, that the Law Society must take a leadership role in bringing about a lasting culture change, and that prescribing minimum standards of equality, diversity and inclusion are consistent with human rights responsibilities of the profession that are already in place. The Final Report makes thirteen recommendations under five categories: accelerating culture shift, measuring progress, educating for change, implementing supports, and Law Society operations.

As we stated in our response to the Consultation Paper, the OBA is committed to enhancing and promoting equality and diversity within our association and the legal profession, including assisting the efforts of law firms to promote equity and diversity.<sup>2</sup> As set out in a recent CBA resolution, “ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice.”<sup>3</sup> We therefore support the Working Group’s “intention to create long lasting systemic change within the professions,” and its recommendation that the Law Society use a combination of voluntary and mandatory measures.<sup>4</sup> The Working Group recognizes that lawyers are already bound by the Rules of Professional Conduct, and all recommendations proposed in the report should be interpreted consistently with those requirements.

Further, we agree that close collaboration between the Law Society, legal workplaces and associations will be “essential to the success of the proposed measures and projects” proposed by the Working Group.<sup>5</sup> As we set out in the OBA Initial Report, the OBA has a history of providing programming, mentoring and diversity initiatives for members, in addition to the tools and resources developed by the Canadian Bar Association (the “CBA”) to support diversity initiatives.<sup>6</sup> We believe that the Law Society should promote and support legal workplaces and associations to develop new, and deliver existing programming, initiatives and materials to support the Working Group’s recommendations.

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<sup>2</sup> See the Ontario Bar Association, Addressing Challenges Faced by Racialized Licensees, March 15, 2015. (<http://www.oba.org/submissions>) [“OBA Initial Report” at p. 2]

<sup>3</sup> CBA Resolution 14-04-M, “Non-Discrimination in Legal Education”, February 22-23, 2014. (<https://www.cba.org/Our-Work/Resolutions>)

<sup>4</sup> Final Report, p. 14-15.

<sup>5</sup> Final Report, p. 15.

<sup>6</sup> OBA Initial Report at p. 3-8. The CBA is the OBA’s national organization, which presently represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practising lawyers in Canada belong to the CBA. See also the “[The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations](#)” and the “[Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance](#)”



Before moving on to provide specific comments relating to the five areas covered by the Final Report, we would like to provide some general comments on the recommendations contained in the Final Report.

First, we note that the Working Group has not provided recommended timelines for several of its recommendations.<sup>7</sup> The OBA supports the prompt implementation of the Final Report's recommendations. We request that the Law Society and/or the Working Group continue work with stakeholders to develop appropriate timelines for their implementation, along with appropriate plans to measure and report on their effectiveness, in order to allow for adjustment and renewal as necessary, and to ensure the approach adopted meets the intended goals.

Second, we recognize that the challenges faced by racialized licensees occur at all stages throughout their careers, starting with the Licensing Process. We note that the Law Society Professional Development and Competence Committee's recently released Final Report to Convocation dealing with the Pathways Pilot Project, which includes the Law Practice Program and other lawyer licensing elements, reported "interest from a range of perspectives for a broader analysis to be undertaken of the licensing process."<sup>8</sup> As part of this initiative, we support the recommendation that the Law Society consider the impact that the licensing process has on racialized licensees, including but not limited to systemic bias and economic barriers.

We also recognize that the challenges faced by racialized licensees occur whether they are members of large or small firms. Lawyers have a range of reasons to practice in solo and small firms and they comprise an important segment of the bar, however, we note that a disproportionate number of racialized licensees are counted in this group. We recommend that the Law Society continue to explore opportunities to ensure that the profession is inclusive of those individuals, regardless of firm size.

Finally, if approved, we recommend that the Law Society consider how the proposals might be extended to benefit other equity-seeking groups through a process of consultation and information sharing with the profession and legal associations.

### **Accelerating Culture Shift**

As part of this category, the Working Group recommends several steps including amendments to the Rules of Professional Conduct to ensure licensees infuse the principles of equality, diversity and inclusion into their everyday practice; developing model policies and resources to address the challenges faced by racialized licensees using the Justicia Project as a model; and, requiring the adoption of equality, diversity and inclusion principles and practices by every licensee, with

<sup>7</sup> See Final Report, p. 10, "Timeline for Implementation of Recommendations."

<sup>8</sup> Professional Development and Competence Committee Final Report to November 9, 2016 Convocation, October 27, 2016 (<https://www.lsuc.on.ca/Pathways/>)



particular requirements for workplaces with 10 or more licensees. All licensees will be required to adopt a “statement of principles”, while workplaces with 10 or more licensees must implement a diversity policy, and complete diversity self-assessments.

The OBA has adopted a series of measures intended to support diversity in our association. Through a consultation led by the OBA’s Equality Committee, the OBA has adopted an organization-wide diversity statement, committed to maintain and report on self-identification membership data, and committed to maintain and report on diversity leadership targets.<sup>9</sup> In this context, several measures recommended by the Working Group are similar in their objective to measures already in place at the OBA. Accordingly, as stated in our Initial Report the OBA strongly supports assisting law firms to establish diversity programs that set out a firm’s commitment and plan for meeting its goals and collecting demographic data and assessing the diversity climate to analyze the successes and areas for improvement.<sup>10</sup>

### Measuring Progress

As part of this category, the Working Group recommends for workplaces with more than 25 licensees a) quantitative self-identification data collected annually and provided in aggregate to the legal workplace, b) qualitative self-identification data collected every four years and provided to the legal workplace in summary form, and c) a workplace “Inclusion Index” developed and published every four years; repeating the Challenges Faced by Racialized Licensees Inclusion Survey; and, developing and implementing progressive compliance measures for workplaces that do not comply with the required adoption of equality, diversity and inclusion principles and practices.

As noted above, the OBA has committed to measure diversity and inclusion data within its own organization. As noted in the Initial Report, in 2012 the Equality Committee of the CBA issued “Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance” (the “Measuring Diversity Guide”). The OBA Initial Report discussed the Measuring Diversity Guide in detail, providing recommendations with respect to the appropriate development, assessment, and continuous improvement of measurement tools for law firms.<sup>11</sup> We continue to encourage the Law Society to work with the profession to ensure that the proposed tools deliver meaningful and actionable results for the profession, while respecting the need to maintain the privacy and confidentiality of respondents.

While we support the Working Group’s recommendations to initiate the quantitative and qualitative data collection with larger firms, our members have also suggested that the Law Society allow for voluntary provision of diversity data from smaller firms that would not otherwise be

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<sup>9</sup> [Letter to Members](#) from OBA President David Sterns, October 2015.

<sup>10</sup> See OBA Initial Report, p. 2.

<sup>11</sup> OBA Initial Report, p. 3-6.



subject to that requirement. That would allow for participation from the broadest possible segment of the profession.

In addition, the Law Society should commit to continually monitor and assess the effectiveness of any measures implemented and to share that information with the profession on an ongoing basis.

### **Educating for Change**

The Final Report recommends requiring licensees to complete mandatory continuing professional development programs on topics of equality and inclusion, and including these topics as competencies to be acquired within the Licensing Process.

While we support the principle that training in equality and inclusion will benefit the profession, engendering understanding of diversity in the profession will require an ongoing commitment from the profession, of which training programs can form but one part. As part of our recommendation that the Law Society continually evaluate the effectiveness of the measures implemented, we note the need to assess whether the requirement adopted is proving effective. We look forward to further engagement with the Law Society to develop appropriate criteria for accreditation, and appropriate guides for these programs to ensure that the training received is both relevant and actionable.

As stated above, the OBA has a history of providing programming to support diversity initiatives. The Law Society Scan of Best Practices notes that legal associations are uniquely positioned to impact diversity within the legal profession.<sup>12</sup> In this regard, although the text of Recommendation #9 does not explicitly recognize the role of legal associations in delivering diversity programming, it is clear from the analysis that the Working Group provided in the Final Report that legal associations can continue to demonstrate leadership in the design and delivery of accredited programming focused on advancing equality and inclusion.<sup>13</sup>

We have also noted that the means by which topics of cultural competency, equality and inclusion will be included in the Licensing Process have not been particularized. Recent licensing candidates have noted that effectively implementing this recommendation will require careful consideration, in order to ensure that the Licensing Process achieves the desired learning outcomes. We would be pleased to provide input on developing appropriate materials if the Law Society implements this recommendation.

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<sup>12</sup> Law Society of Upper Canada, "Law Society Studies and Scan of Best Practices," October, 2014, (<https://www.lsuc.on.ca/racialized-licensees/>) p. 27.

<sup>13</sup> See Final Report, Recommendation 9.



### Implementing Supports

The Final Report provides several recommendations related to addressing complaints of systemic discrimination, and recommends providing support to racialized licensees through mentoring and networking initiatives. With respect to addressing complaints of systemic discrimination, the OBA supports the recommendations presented in the Final Report to review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHCP), and the other related recommendations. We note that confidentiality is an important factor for the success of the current DHCP, and that appropriate confidentiality must be maintained if the program is to be modified to address complaints of systemic discrimination.

As stated in our Initial Report, an effective review of this area will require issues of human resources management within the Law Society structure. It is important for all individuals involved in the complaints process at the Law Society to be sensitive to unique issues that may arise with complaints of discrimination. This helps ensure that complaints are effectively addressed and instills confidence in the process for those wishing to bring a complaint.<sup>14</sup>

With respect to providing support to racialized licensees through mentoring and networking initiatives, the OBA provides a host of unique opportunities for racialized lawyers to network with colleagues through our governing bodies, 40 practice sections, Women Lawyers Forum (“WLF”), Sexual Orientation and Gender Identity Conference (“SOGIC”) and the Equality Committee.”<sup>15</sup> The OBA also offers high quality professional development programs, developed by our volunteer members and program planning lawyers that respond to current issues of diversity and inclusion.

The Law Society could play a helpful role by promoting awareness and encouraging participation in the mentoring, professional development, and networking opportunities already offered by legal associations. Increasing participation in core legal association offerings with a track record for success helps overcome the barriers of exclusion and isolation identified by racialized lawyers and promotes a more inclusive profession.<sup>16</sup>

### Law Society Operations

We agree that the Law Society should lead efforts to promote diversity and inclusion by example. As we stated in our Initial Report, the Law Society should also continue and enhance its recruitment and hiring efforts to ensure diversity within and throughout the organization. This includes encouraging racialized lawyers to participate in the election of Convocation. The Law Society could

<sup>14</sup> See OBA Initial Report, p. 8-9.

<sup>15</sup> The Equality Committee was established in September 1992 and is, in part, responsible for identifying and recommending methods of eliminating the incidence of inequality of opportunity in the legal profession in Ontario based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

<sup>16</sup> See OBA Initial Report, p. 7-8.



examine making available and communicating more information about the election process and the importance of the work of benchers.<sup>17</sup>

## Conclusion

The OBA appreciates the opportunity to comment on the important initiatives presented in the Working Group's Final Report.

The Working Group has been considering challenges faced by racialized licensees since 2012. The Final Report concludes 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.

The OBA has long recognized the importance of diversity and inclusion to the profession. While the Working Group could no doubt deliberate further on the best approaches to undertake, our members broadly support the recommendations articulated in the Final Report as a reasonable way of moving forward to address the concerns identified.

That said, while moving forward is important, the Law Society should do so with the commitment to continually monitor and assess the effectiveness of measures implemented and to share that information with the profession. Such an ongoing collaborative process would assist the Law Society in understanding the complexities of the issues and developing options that enjoy the confidence of racialized licensees and the profession as a whole. The OBA looks forward to the opportunity to participate in that process as it goes forward.

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<sup>17</sup> See OBA Initial Report, p. 8-9.



November 14<sup>th</sup>, 2016

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

**Re: Request for Comments on Final Report of the Challenges Faced by Racialized Licensees Working Group**

The Ontario Crown Attorneys' Association (OCCA) welcomes the opportunity to provide comments about the recommendations contained in the final report of the Challenges Faced by Racialized Licensees Working Group entitled: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*. We also wish to commend the members of the Working Group for the significant time and effort dedicated to the development of a comprehensive report that examines systemic racism in the legal profession and which provides strategies that encourage all stakeholders to work together in an effort to eliminate the systemic barriers that adversely impact fellow licensees in the profession.

The OCAA represents over 850 Assistant Crown Attorneys and Crown Counsel employed by the Ministry of the Attorney General (MAG). We are a labour organization that represents licensees employed within MAG's Criminal Law Division, and are distinct from the Association of Law Officers of the Crown (ALOC), whose members are employed in non-criminal legal service branches across government. Our members play an integral role in the administration of criminal justice in Ontario and are responsible for the administration of hundreds of thousands of criminal cases that flow through the courts every year in all regions across the province. As an association, the OCAA actively promotes the professional interests of its members, and frequently acts in a supportive role by providing continuing education and training in collaboration with MAG.

The OCAA supports the recommendations set out in the Working Group's final report. The recommendations provide important and concrete steps designed to reduce the disproportionate and adverse impact that systemic barriers have on racialized licensees in the profession. The recommendations promote increased awareness and inclusive practices that can help achieve better representation of racialized licensees



in all practice settings in Ontario, including government legal departments and Crown Attorney offices. Implementation of the report's recommendations is good for the legal profession and for public confidence in the legal profession and the administration of the justice system as a whole. It is important that the demographics of our legal profession reflect the diversity of the public we serve.

With respect to the differing opinions on the definition of "legal workplace" at footnote 7 (and repeated at footnote 27) of the final report, we note that our members serve the public and are not subject to client decisions. We agree that, at a minimum, government and in-house legal departments should be encouraged to engage in the mandatory activities outlined in the report. We believe that the legal profession should constantly strive to develop, monitor and maintain better inclusive practices from student outreach and articling recruitment, through to hiring, promotion and retention. We also believe in the importance of leading by example.

As a strong leader in the development and dissemination of continuing legal education for our members, the OCAA welcomes opportunities to work with the Law Society in developing programs that are focused on enhancing inclusion and diversity in the profession.

We look forward to continuing our engagement with the Law Society and further opportunities to provide our input on the important work involved in addressing systemic racism in the legal profession.

Sincerely,

Kate Matthews  
President  
Ontario Crown Attorneys' Association



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Email to [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

November 11, 2016

**Paul Schabas, Treasurer**

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**Raj Anand, Chair**

**Janet Leiper, Chair**  
Challenges Faced by Racialized Licensees Working Group  
Law Society of Upper Canada  
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[janet.leiper@15bedford.com](mailto:janet.leiper@15bedford.com) ]

Dear Treasurer Schabas and Co-Chairs Anand and Leiper:

**Re: Final Report of the Challenges Faced by Racialized Licensees Working Group,  
*Working Together for Change: Strategies to Address Issues of  
Systemic Racism in the Legal Professions***

As Chair of the Roundtable of Diversity Associations (RODA)<sup>1</sup>, I convey RODA's written comments on the thirteen recommendations ("Recommendations") made in the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Final Report").

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<sup>1</sup> On November 29, 2016, RODA celebrates its 5<sup>th</sup> Diversity Soiree and its 2<sup>nd</sup> Diversity Conference. RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association; Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

RODA brings together a diverse group of legal associations with the goal of fostering dialogue and creating initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and within the community.

Of particular importance to RODA and its member associations is the issue of diversity in the legal profession, and the desire to hold law firms accountable to increasing diversity and breaking the privilege that non-racialized licensees have held, disproportionate to an increasingly diverse population.

## A. BACKGROUND

RODA believes it is important not to be short-sighted and to remember the backdrop against which the Final Report is released. Many of our member associations have made significant contributions along the long path leading to the Final Report. Association representatives have changed over the years, but our member associations have been consistent in advocating for equity, diversity and inclusion over at least the last two decades, without seeing any concrete results. We should not lose sight of the battles that were previously fought.

The backdrop of decades laid the groundwork for the Final Report, which is the culmination of recent focused effort. In September 2011, Convocation of the Law Society of Upper Canada ("LSUC") first identified the enhancement of diversity within law firms as a priority. Under the aegis of the Challenges Faced by Racialized Licensees Working Group ("CFRL Working Group"), and managed by the equity initiatives department at the LSUC, the LSUC hired an external consultant to:

- Identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- Identify factors and practice challenges that could increase the risk of regulatory complaints and discipline against racialized licensees; and
- Identify perceptions of best practises for preventive, remedial, and support strategies.

Following the creation of the CFRL Working Group, RODA and representatives of our member associations:

- Engaged in the initial community engagement process;
- Reviewed the results of the Consultant Engagement Process (contained in the external consultant's *Stratcom Report* released in March 2014), and provided further input and insight into the challenges faced by racialized licensees;
- These comments were then integrated into the Consultation Paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, released in October 2014;
- Between January and March 2015, provided comments to the Consultation Paper (this consultation process is said to include twelve (12) open house learning and consultation programs, and meetings with representatives from law firms, legal clinics, banks, government and legal associations, throughout the province);
- Reviewed an interim report released in April 23, 2015, *Challenges Faced by Racialized Licensees Working Group – Interim Report to Convocation*, April 2015. This interim report stated that participants spoke of "white privilege" and the need for all of us to

acknowledge its existence in order to address the challenges faced by racialized licensees, and the importance for licensees to understand how power operates to produce advantages for some and deny advantages to others. It is noted that 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.

- By late 2015, demanded that the CFRL Working Group account for its delays in framing the recommendation for concrete action items to address the conclusions in the Consultation Paper.
- Finally in September 2016, **five years** after the need was first formally identified by the LSUC, the Final Report was released with its thirteen recommendations.

Based on my observations, the initial reaction of equity seeking legal associations was understandingly sceptical. RODA and its members have met to discuss the Final Report. We have also had discussions and consultations with our colleagues, allies and other stakeholders. We have listened to members of the CFRL Working Group speak to the underlying rationale for the 13 recommendations.

## **B. RODA RECOMMENDATION**

***After a period of studying the Final Report, consultation and reflection, RODA is of the view that the Recommendations are an encouraging initial step that should be adopted, on an omnibus basis, by Convocation.***

***RODA also recommends that the LSUC be required to hold regular quarterly consultation meetings with RODA, the LSUC's Equity Advisory Group, and other racialized equity seeking legal associations, to monitor and ensure accountability over the implementation of the Recommendations. The results of these consultations should be put to Benchers at Convocation.***

The Recommendations fall into 5 broad categories of action: measuring progress, accelerating culture shift, educating for change, implementing supports, and operations of the Law Society. These 5 categories are inter-related, and support each other. They provide basic specific action items that serve to address the various challenges faced by racialized licensees, and includes both mandatory and voluntary steps that law firms, licensees and the LSUC will take to tackle the long-standing issues of unconscious bias and systemic racism that have plagued racialized licensees.

RODA recognizes that the Final Report is the result of consensus amongst the Benchers in the CFRL Working Group. As will happen when consensus building is involved, the Final Report has not met all expectations of racialized equity seeking legal associations. However, RODA is encouraged, and its member associations have voted in favour of recommending that Convocation adopt the Recommendations on an omnibus basis.

We are aware that there is a Notice of Motion brought by Benchers, Sidney Troister and Jeffrey W. Lem. RODA is discouraged by this Motion that requests that each of the Recommendations be discussed and voted on separately. RODA fears that if passed, it could end up breaking down the cohesive nature of the Recommendations and lead to an impasse that will kibosh two decades of hard work that finally began to crystallize with the CFRL Working Group and its resulting Final Report and Recommendations. ***RODA strongly opposes this motion, and asks that Convocation vote against it.***

However, if this motion is passed, RODA strongly recommends that Convocation pass each and every one of the Recommendations.

### C. INTERSECTION WITH RULES OF PROFESSIONAL CONDUCT

RODA understands that some have questioned the LSUC's jurisdiction to implement at least some of the Recommendations.

RODA submits that the *Law Society Act*, the Rules of Professional Conduct (see Schedule "A": Excerpt from the Rules of Professional Conduct), and Ontario's *Human Rights Code* provide a sufficient basis for the LSUC to implement all of the Recommendations. This position would be supplemented if the LSUC is able to adopt Compliance-Based Entity Regulation.

### D. INTERSECTION WITH ENTITY REGULATION

RODA also encourages the CFRL Working Group to coordinate the implementation of action items arising from the Recommendations with the anticipated recommendations of the Task Force on Compliance-Based Entity Regulation ("Task Force"), should the Task Force's anticipated recommendations also be passed by Convocation. Given that the LSUC is self-funded by its licensees, coordination of the work of the CFRL Working Group and the Task Force is a more efficient use of limited resources. Actual implementation of the Recommendations is expected to start in 2018, after the year 2017 is devoted to educating the Ontario bar. This timeline aligns with the expected delivery in 2017 of the recommendations of the Task Force on Compliance-Based Entity, which recommendations could presumably be implemented in 2018<sup>2</sup>.

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<sup>2</sup> RODA notes that on November 9, 2016, Convocation voted on and passed the LSUC's Professional Development and Competence Committee's recommendation to extend the LPP for an additional two years to enable the gathering of more data on the LPP and articling, and the larger analysis of licensing. Its work would also align with the work of the CFRL Working Group and the Task Force. All three initiatives have significant links to challenges faced by racialized licensees, and their work should be coordinated. For example, just as Compliance-Based Entity Regulation will require diversity and inclusion as a practice management principle, so the Final Report includes a recommendation to add cultural competency, diversity and inclusion, and education components into the licensing process.

RODA has expressed its support for compliance-based entity regulation, and in particular noted:

According to the Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and

2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.<sup>3</sup>

RODA submits that the LSUC has sufficient authority to implement all the Recommendations without adopting Compliance-Based Entity Regulation. The adoption of Compliance Based-Entity Regulation will provide stronger enforcement mechanisms and make the implementation of the Recommendations more effective. As such, RODA recommends that the CFRL Working Group coordinate its efforts with the Task Force.

## **E. EXTENSION OF RECOMMENDATIONS TO ALL EQUALITY-SEEKING GROUPS**

RODA is aware of a motion that will be brought by Benchers, Barbara Murchie and Joanne St. Lewis, to Convocation on December 2, 2016. The Notice of Motion asks that:

As it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

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<sup>3</sup> RODA’s letter dated March 31, 2016 is attached.

Consistent with its mandate to promote the advancement of diversity, equality and inclusion in the legal profession and within the community, RODA supports this motion, and asks that Convocation vote in its favour.

## CONCLUSION

RODA has not provided comments on a recommendation by recommendation basis. Rather, RODA takes the position that the Final Report, and its Recommendations, are a cohesive whole and should be voted on an omnibus basis. The Recommendations are an encouraging starting point to address unconscious bias, systemic racism and the long-standing challenges faced by racialized licensees. The Final Report may not be a clarion call, but RODA believes that it and its member associations, and allies and stakeholders, can work with the Final Report's basic call to action.

RODA will continue to be engaged during the implementation process and provide input to flesh out the implementation and eventual enforcement mechanisms.

The Final Report will be before Convocation for decision on December 2, 2016. In light of the above, RODA strongly encourages all Benchers to vote in favour of adopting all the Recommendations.

Sincerely,



Lai-King Hum  
Chair, Roundtable of Diversity Associations

Encl. RODA letter dated March 31, 2016 on Compliance-Based Entity Regulation

- C. Benchers of the Law Society of Upper Canada  
Members of the LSUC Equity Advisory Group

## Schedule "A"

### Excerpt from the Rules of Professional Conduct

**6.3.1-1** A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

*[Amended - June 2007, January 2014]*

#### **Commentary**

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

[3] Rule 6.3.1-1 will be interpreted according to the provisions of the Human Rights Code (Ontario) and related case law.

....

[12] Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Human Rights Code (Ontario) requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

[13] A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.



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**Via email: mdrent@lsuc.on.ca**

March 31, 2016

To the Members of Task Force on Compliance-Based Entity Regulation:

Ross Earnshaw (Chair), Gavin MacKenzie (Vice-Chair), Raj Anand, Robert Burd, Teresa Donnelly, Howard Goldblatt, Joseph Groia, Carol Hartman, Malcolm Mercer and Peter Wardle

c/o Call for Input on Compliance-Based Entity Regulation  
Policy Secretariat  
Law Society of Upper Canada  
130 Queen Street West  
Toronto, ON M5H 2N6

To the Task Force on Compliance-Based Entity Regulation:

**Re: Entity Regulation - Submission**

On behalf of the Roundtable of Diversity Associations (RODA), I write to provide input on the *Consultation Paper: Promoting better legal practices* (the "Consultation Paper"), prepared by the Law Society's Task Force on Compliance-Based Entity Regulation.

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\*RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

The Task Force was established by Convocation in June 2015 to study and make recommendations on options for professional regulation that focus on objectives for the entities, or organizations, through which lawyers and paralegals provide legal services.

RODA brings together a diverse group of legal associations with the goal of fostering a dialogue and initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and the judiciary. RODA has a seat at the Equity Advisory Group at the Law Society of Upper Canada ("LSUC"). It is from this perspective that our input is provided.

In light of RODA's mandate, we are providing the Task Force with input on one of the key components, or principles, for compliance and entity regulation proposed in the Consultation Paper.

Specifically, the Task Force proposed that the following, described as principle 6 in the Consultation Paper, might be included as one of the key principles for compliance and entity regulation.

Equity, Diversity and Inclusion, which refers to the entity's policies regarding matters such as

- a respectful workplace environment that appropriately accommodates equity, diversity, inclusion, and disabilities;
- equality of opportunity and respect for diversity and inclusion in recruitment and hiring;
- equality of opportunity and respect for diversity and inclusion in decision-making regarding advancement; and
- cultural competency in the delivery of legal services.\*

\*The Challenges Faced By Racialized Licensees Working Group has been considering equity, diversity and inclusion issues for Racialized Licensees in the legal professions. It is expected that the Working Group will report to Convocation in 2016. In the event that Convocation adopts recommendations in these areas, there may be additional guidance respecting the implementation of this proposed framework.

The Consultation Paper was distributed to RODA member associations, and comments solicited. RODA wholeheartedly supports entity regulation in Ontario addressing equity and diversity considerations in an explicit and expansive manner, and supports its inclusion as a practice management principle.

According to the *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and
2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.

We thank the Task Force for its work and we are encouraged by its proposed addition of equity, diversity and inclusion as a principle of Practice Management. for the opportunity to make submissions. We look forward to receiving its report.

Yours very truly,



Lai-King Hum  
Chair,  
Roundtable of Diversity Associations

cc: Member Associations

South Asian Bar Association of Toronto  
 300-20 Toronto Street  
 Toronto, ON M5C 2B8  
 sabatoronto@gmail.com  
 sabatoronto.com  
 @SABAToronto



**Via Email (racialized.licensees@lsuc.on.ca)**

November 14, 2016

The Law Society of Upper Canada  
 c/o Ekua Quansah, Policy Counsel  
 Osgoode Hall, 130 Queen Street West  
 Toronto, ON M5H 2N6

Dear Ms. Quansah:

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

The South Asian Bar Association of Toronto (**SABA Toronto**) makes these written comments on the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions report (the **Report**).

SABA Toronto is a voluntary bar organization and the local Toronto chapter of SABA North America. SABA Toronto provides professional growth and advancement for South Asian lawyers in the Greater Toronto Area and seeks to protect the rights and liberties of the South Asian community across Ontario.

***SABA Toronto's position is Convocation should pass these recommendations as they are and as an omnibus motion. To the extent the Law Society is directed to apply these recommendations, where applicable, to other equality-seeking groups, SABA Toronto supports such a motion.***

The Report is a long-time coming. For almost four years, racialized lawyers have waited for the Law Society to acknowledge what they have known all along: the profession, despite its facial commitment to inclusion, presents unique, profound and, in some cases, troubling challenges to racialized licensees. A quick perusal of the websites of Toronto's largest 30 firms, as an example, will quickly disclose that the profession remains largely white, especially at the equity partner and management level. Where, for example, South Asians are represented, it is rare to see, for example, an orthodox Sikh or Muslim, suggesting to us that where South Asians have overcome challenges, such success is still localized to certain members of our bar that look and act like their majoritarian colleagues.

This is not a "law firm" problem. This is not even a "lawyers" problem. This is an access to justice problem. If Ontarians do not believe that the justice system is fair because it is not representative, we do violence to the administration of that system. As officers of the court, we should be the first to demand that the public's confidence in the justice system is not

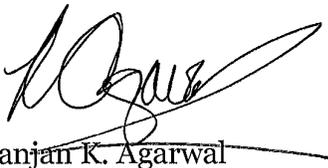
undermined because our courtrooms look nothing like our communities, workplaces and public spaces.

Regarding the specific recommendations, our view is that they are a minimum baseline for any organization in Ontario, never mind a legal workplace that should have a commitment to diversity and inclusion. In our view, the most important recommendations are those around qualitative and quantitative analysis: SABA Toronto has long advocated for the profession to keep better statistics about racialized (and other equality-seeking) licensees. The profession should not fear the publication of an inclusion index. It is hard for us to believe that any legal workplace in Ontario would not be striving to be more inclusive and diverse, and therefore, more representative by 2020.

After four long years, the Challenges Faced by Racialized Licensees Working Group has reached a consensus. They have sent their best work to Convocation. ***Pass it.***

Sincerely,

**SOUTH ASIAN BAR ASSOCIATION OF TORONTO**



Ranjan K. Agarwal  
President

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November 14, 2016

VIA EMAIL: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Ekua Quansah  
Policy Counsel  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms Quansah:

**RE: Response to the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

The Advocates' Society, founded in 1963, is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of The Advocates' Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

The Advocates' Society has reviewed with interest the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Law Society Report"), presented to Convocation on September 22, 2016. As stated in our letter of February 27, 2015 to Josée Bouchard, past Director, Equity Initiatives Department, The Advocates' Society is committed to the principles of substantive equality and access to justice, and supports redressing the challenges faced by racialized licensees. The Advocates' Society makes the following comments on the Recommendations as outlined in the Report, speaking to the perspective of lawyers (based on the membership of The Advocates' Society) and not paralegals.

**General Comment**

In respect of many of these recommendations, The Advocates' Society believes that it is important that the Law Society deal with diversity as a whole (including disability, gender and sexual orientation) rather than focusing only on measuring progress and inclusion with respect to racialized licensees. Many of The Advocates' Society's members' firms have diversity committees and diversity policies which address the whole spectrum of diversity issues. Our view is that the Law Society ought to be addressing the entire spectrum of issues here; if the administrative infrastructure is being put into place to implement these recommendations with respect to racialized licensees, it would be most efficient to address all diversity issues, both in self-reporting and the proposed inclusion questions, subject to any additional privacy issues that this might raise.

**Accelerating Culture Shift (Recommendations 1-3)****Recommendation 1: Reinforcing Professional Obligations***Summary of the Working Group's Recommendation:*

- The Law Society would amend the *Rules of Professional Conduct* to recognize, acknowledge and promote principles of equality, diversity and inclusion.

*Comments:*

- The Advocates' Society agrees with Recommendation 1 and would welcome the opportunity to provide input into proposed changes to the *Rules of Professional Conduct* and their Commentaries.

**Recommendation 2: Diversity and Inclusion Project***Summary of the Working Group's Recommendation:*

- The Law Society would develop model policies and resources to encourage best practices in legal workplaces.

*Comments:*

- The Advocates' Society agrees with Recommendation 2 and recognizes the central importance of diversity to the profession. It would welcome the opportunity to comment on model policies and resources to address the challenges faced by racialized licensees.
- The Advocates' Society would bring the perspective and experience of lawyers who practise as advocates to issues such as competency hiring, assignment of work and career development. The Advocates' Society also has expertise in the mentoring of young advocates and could offer its experience in the development of mentoring programs.

**Recommendation 3: The Adoption of Equality, Diversity and Inclusion Principles and Practices***Summary of the Working Group's Recommendation:*

- The Law Society would require every licensee to adopt and abide by a statement of principles to promote equality, diversity and inclusion.
- The Law Society would require every legal workplace of at least 10 licensees to develop a diversity policy to cover recruitment, retention and advancement, and to file a compliance self-assessment every two years with the Law Society.

*Comments:*

- The Advocates' Society agrees with Recommendation 3 and supports the nuanced approach to implementation proposed by the Law Society which recognizes that the nature of policies and self-assessment tools will vary based on the size and type of legal workplace.
- The Advocates' Society supports the Law Society's proposal that templates for the statements of principles, policies and self-assessment tools be developed collaboratively with legal workplaces and organizations that wish to participate. The development of resources that take into account the realities of legal workplaces is important to the success of the initiative.

**Measuring Progress (Recommendations 4-8)****Recommendation 4: Measuring Progress through Quantitative Analysis***Summary of the Working Group's Recommendation:*

- The Law Society would collect the self-identification data from licensees in the Lawyer Annual Report and provide reports to legal workplaces of at least 25 licensees, to compare to provincial statistics (and to use in requests for proposal, student recruitment, etc.).

*Comments:*

- The Advocates' Society believes that the proposal to analyze the self-identification data provided by licensees in their Annual Reports and to pass that information along to firms may provide useful information about their progress relative to the profession as a whole.
- However, The Advocates' Society believes that limiting this initiative to "legal workplaces of at least 25 licensees" would overlook a large group of lawyers in solo and smaller workplaces, practising in a wide range of practice areas and geographical areas.<sup>1</sup> Data from smaller workplaces could be aggregated and reported on an anonymous basis, by size of workplace and geographic region, for example.
- The Advocates' Society would also appreciate clarification from the Law Society as to whether it suggests that the diversity makeup in all legal workplaces should *mirror* the aggregate data, which may be an unreasonable expectation for certain workplaces.
- The Advocates' Society would also appreciate clarity as to whether organizations like banks or insurance companies that have more than 25 licensees qualify as "legal workplaces".

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<sup>1</sup> See p. 32 of the Law Society Report: "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.

## **Recommendation 5: Measuring Progress through Qualitative Analysis**

### *Summary of the Working Group's Recommendation:*

- The Law Society would ask licensees, every four years, for their assessment of inclusion at their workplace, and then provide reports to the legal workplaces of at least 25 licensees.

### *Comments:*

- The Advocates' Society believes that this recommendation raises privacy concerns; even workplaces with 25 or more licensees may have a small (and thus identifiable) number of racialized lawyers.
- The Advocates' Society is concerned that providing law firms, particularly smaller law firms closer to the 25-member end of the spectrum, with the results of inclusion questions and a summary of the information gathered will be problematic because the respondents will know that the data will be reported back to their place of employment, even if the information is in "summarized" or "compiled" form. The prospect of this disclosure may discourage candid responses.
- The Law Society should give consideration to collecting responses on an anonymous basis and advising individuals who provide responses that their views will be kept confidential by the Law Society and not provided to their places of employment. An anonymous and confidential elicitation of comments is more likely to capture representative information. The Law Society could then use this anonymous data for its own analysis and reporting on an aggregate basis to the profession.
- Consideration might also be given to advising or reminding all licensees of the existing avenues available to them (or perhaps new avenues) to make an anonymous whistleblower comment or complaint with the Law Society if the individual wishes the Law Society to do something about a particular incident or workplace.
- To the extent the Law Society decides to collect this information for its own purposes, but not report or publish the information, with attributions, to law firms or the public, it should consider whether to collect this information from smaller law firms as well (given that privacy would no longer be an issue). Proceeding with anonymous or confidential comments would allow the Law Society to canvass a broader cross-section of licensees than simply licensees at workplaces with 25 or more licensees. A large part of the practice would be excluded numerically, geographically and by practice area in focusing on licensees in these larger workplace environments – thereby not providing a truly accurate measurement of progress, insight or accountability across the profession.

## **Recommendation 6: Inclusion Index**

### *Summary of the Working Group's Recommendation:*

- The Law Society will publish the data about workplaces of at least 25 licensees – meaning the self-assessment; the quantitative data; and the qualitative data – as a means of transparency and accountability.

*Comments:*

- The Advocates' Society is concerned about the publication of the qualitative information recorded in the proposed "inclusion index" on an individual firm basis without any consideration of the merits or context of the comments.
- Further, there are more robust means of reviewing a workplace's commitment to racialized persons and diversity than simply looking at quantitative numbers, which may under-represent the initiatives of employers. For example, a more comprehensive matrix of indices of commitment to diversity can be developed (e.g. TSX board matrix) that not only looks at the number of racialized licensees, but also elements such as programs and training implemented, outreach program participation, articling positions offered to racialized licensees (whether or not accepted), and participation in workplace leadership positions.

**Recommendation 7: Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey***Summary of the Working Group's Recommendation:*

- In 2013, the Law Society had all licensees complete an anonymous survey as to career barriers, stereotypes, and disadvantages. A similar survey would be conducted every four years to evaluate systemic change.

*Comments:*

- The Advocates' Society believes that an interval of four years for measuring and reporting data on diversity and inclusion will not capture the full story, given the rate at which lawyers, particularly young lawyers and lawyers from diverse backgrounds, leave law firms. The administrative burden posed by a shorter interval must be balanced with the quality and impact of the data collection.

**Recommendation 8: Progressive Compliance Measures***Summary of the Working Group's Recommendation:*

- The Law Society would use graduated responses to address non-compliance by legal workplaces, from meetings and warnings, to discipline.

*Comments:*

- The Advocates' Society believes the profession would benefit from further detail on progressive compliance. It is unclear how the Law Society proposes to deal with compliance on an entity-based level and it is unclear how enforcement will define or address issues of systemic discrimination.

## **Educating for Change (Recommendations 9-10)**

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

#### *Summary of the Working Group's Recommendation:*

- The Law Society will offer a three-hour accredited program for equality and inclusion, and will assist workplaces to offer their own programs.
- Licensees will be required to complete a three hour CPD program every three years.

#### *Comments:*

- The Advocates' Society supports the recommendation of a three-hour accredited program. Program developers should consult not only legal resources, but also equity-seeking groups and leading thinkers in the areas of psychology, neuroscience and organizational behavior, with materials tailored to the legal context. Other groups (e.g. Human Resources Professionals Association) may be well ahead in the development of appropriate programming, and, in any event, can offer a diverse perspective.
- The Advocates' Society recommends that the Law Society actively work with groups in other jurisdictions experienced in the development of diversity and inclusion practices to ensure that we are meeting or exceeding the international standards in development.
- Given the importance of early and frequent exposure to effect change, the Law Society should consult with law faculties to express the Law Society's commitment to issues of diversity, equality and inclusion, to allow it to benefit from programs deployed in law schools, and to coordinate the development of programs to ensure educational continuity.
- The Advocates' Society also supports the recommendation of having licensees complete accredited programming focused on equality and inclusion, but would suggest one hour every year, rather than three hours every three years, as a minimum requirement, following an initial, three-hour training program.

### **Recommendation 10: The Licensing Process**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would include equality and inclusion principles in licensing materials.

#### *Comments:*

- The Advocates' Society supports this recommendation, subject to its comments above.

## **Supporting Racialized Licensees (Recommendations 11-12)**

### **Recommendation 11: Building Communities of Support**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would increase mentoring and advisory services to address in particular the isolation of racialized lawyers in sole or small firms.
- The Law Society would assist legal associations and support networking events.

#### *Comments:*

- The Advocates' Society commends the Law Society for its commitment to improving access to mentoring and networking opportunities for racialized licensees. Improving access to mentoring improves access to the profession, and improves the opportunities for racialized licensees to excel in the profession. The Advocates' Society supports the specific proposals put forward by the Law Society, and thanks the Law Society for having considered and adopted many of the recommendations put forward by The Advocates' Society in our letter of February 25, 2015.
- The Advocates' Society would be pleased to share information with the Law Society about the mentoring and programming initiatives which are offered by The Advocates' Society.
- As noted in our letter for February 25, 2015, The Advocates' Society offers a variety of mentoring programs and initiatives that our young advocate members (advocates who have been called to the bar for 10 years or less) have found to be beneficial in their professional development. For example, The Advocates' Society offers a variety of Group Mentoring programs. While Group Mentoring events have their own limitations and are not meant to be a substitute for one-on-one mentoring relationships that should ideally be developed within a licensee's own practice setting, Group Mentoring has several benefits. Group Mentoring events offer mentees the opportunity to pose questions to mentors in a safe environment outside the mentees' own firm settings, where they may be reluctant to ask certain questions or otherwise do not have good (or any) internal mentoring networks. Mentees also benefit from hearing the questions posed by their peers, which lets them know they are not alone in their questions or concerns. The social setting demonstrates that a variety of approaches and styles can be used to address challenges and achieve success in the profession.
- The Advocates' Society would welcome the development by the Law Society of cultural/diversity content that organizations such as The Advocates' Society can incorporate into their mentoring, education and other programs.
- In addition to the networking opportunities available at our mentoring programs, The Advocates' Society also offers a variety of affordable networking opportunities, including: family-friendly programs; Brown Bag and Court House continuing legal education series; Young Advocates' Pub Nights; and Practice Group programs and events.
- For all of our mentoring and networking programs, The Advocates' Society will continue to advertise these events in the normal course, but they could also be promoted through the Law Society and through groups representing racialized licensees to increase diversity of attendance and communication/collaboration among associations.

## Recommendation 12: Addressing Complaints of Systemic Discrimination

### Summary of the Working Group's Recommendation:

- The Law Society is concerned that incidents of systemic discrimination are not being reported. It plans to review its own processes, and the *Rules of Professional Conduct*, and re-train its disciplinary staff, including creating a specialized team, all to raise awareness and effectiveness in responding.
- The Law Society is considering soliciting anonymous complaints, in order to approach identified workplaces for remedial, not punitive, discussions.

### Comments:

- The Advocates' Society commends the Law Society for its commitment to addressing issues of systemic discrimination in the legal profession.
- The Report proposes, among other things, to amend the *Rules of Professional Conduct* (the "Rules") so that systemic discrimination is clearly identified as a breach of professional conduct. Given that the Rules presently focus on *individual* accountability, whereas systemic discrimination operates on a systems-wide and institutional level, this endeavour will undoubtedly involve challenging practical and legal questions. We look forward to working with the Law Society and other stakeholders in exploring these questions further.
- Recognizing the limits of enforcement in combating the root causes of systemic discrimination, The Advocates' Society emphasizes the importance of education, training and remediation in identifying and eliminating systemic discrimination. Where possible, professional regulation should focus on securing voluntary compliance with best practices rather than enforcement through the disciplinary process.

Thank you for providing The Advocates' Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours very truly,



Bradley E. Berg  
President

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November 14, 2016

**The Law Society of Upper Canada**  
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[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Dear Mesdames/Sirs,

**RE: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions dated September 22, 2016**

The Toronto Lawyers' Association (**TLA**) is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide its comments to the Law Society of Upper Canada (**LSUC**) on the final report dated September 22, 2016 of the Challenges Faced by Racialized Licensees Working Group (the **Working Group**) entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the **Report**).

It is indeed unfortunate that despite the progress that has been made by many lawyers and law firms in the elimination of racism and other discrimination within their firms, racism still exists in our profession to the extent that the LSUC is required to mandate policies for lawyers and firms. As a lawyer, I have had the privilege of being a student, associate and now partner at a firm without such barriers. Upon reading the Report, I realize that I may have taken my good fortune for granted, as I believed that my experience was the norm for many firms and lawyers. It is the only firm at which I have worked since articling in 1999. Before and since, my firm has hired students and lawyers with the primary consideration being merit. In the process, without intention or design, we have created a firm of female and male lawyers, students and staff of different backgrounds, races, cultures, religions and sexual orientation, which reflects the wonderful mosaic found in Canada, and specifically Toronto.

As President of the TLA, I can attest to the TLA's dedication to eliminating racism and ensuring that our profession is more inclusive. The TLA, which itself has a diverse board of directors, is also a member of the Roundtable of Diversity Associations (**RODA**).

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**KNOWLEDGE • ADVOCACY • COMMUNITY**

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Apparently, given the Report and the recommendations contained therein, our profession is not moving forward quickly enough on its own and requires a helping hand from the LSUC. However, I am indeed optimistic that with our generation of lawyers, and each successive one that follows, systemic racism and the barriers for racialized lawyers will continue to erode until they no longer exist. The LSUC report contains a similarly optimistic quote from Yolanda King, daughter of Martin Luther King, Jr.:

*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 King

The TLA commends the Working Group for its efforts and, subject to our comments below, recommends that the Report be adopted by Convocation. The TLA recognizes and supports the importance of this initiative and the need to dismantle barriers within the legal profession faced by racialized licensees.

#### Timeline for Implementation of Recommendations

Page 10 of the Report contains a timeline for implementation of the recommendations in the Report. We note that the implementation dates for recommendations 1, 2, 8, 10, 11, 12(2), 12(3) and 12(4) have yet to be determined. To enhance accountability and ensure that these important recommendations are implemented in a timely way, we encourage the LSUC to adopt at the outset clear dates for the implementation of all of these recommendations.

#### 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 behavior towards colleagues, employees, clients and the public;*
- 2) *require a 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;*
- 3) *require a 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.*

We are concerned that item 1) of Recommendation 3 is overly broad and has the potential to conflict with certain practice areas. For example, could a professional who advocates on behalf of a client find himself or herself offside this item because the client's interests do not "promote equality, diversity and inclusion"? Moreover, we question whether the requirement to adopt and to abide by such a statement of principles is necessary in light of Recommendation 1.

We also have concerns that the requirement in item 2) that each legal workplace of at least 10 licensees in Ontario develop a human rights/diversity policy for their legal workplace by January 1, 2018 could be burdensome to smaller legal workplaces and may result in a lack of uniformity in

.../3

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such policies. We acknowledge the LSUC's stated intention to guide legal workplaces in the development of policies and to "develop resources, such as templates, guides and model policies." It is the TLA's view that the templates, guides and model policies need to be developed well in advance of the effective date of the requirement.

Similarly, we recommend that the LSUC create a template for the "equality, diversity and inclusion self-assessment" referred to in item 3) of Recommendation 3 to encourage consistency of assessments and avoid placing undue burden on legal workplaces.

#### Recommendation 8 – Progressive Compliance Measures

*The Law Society will consider developing and implementing 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 8 does not provide us sufficient information to provide constructive feedback. We request the opportunity to comment on the development of compliance measures by the LSUC in connection with this recommendation.

#### 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 complaints 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.*

Items 3) and 4) of Recommendation 12 also do not provide us sufficient information to provide constructive feedback. We request an opportunity to comment on the development of effective ways to address complaints of systemic discrimination and on the creation of a specialized team to address complaints of discrimination.

Furthermore, the TLA supports the motion to be made at Convocation to extend the implementation of recommendations for racialized licensees to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

The TLA appreciates the opportunity to comment on the Report and looks forward to a continuing dialogue with the LSUC as it continues to address systemic racism in the legal professions.

Yours very truly,



Stephen Mullings  
President  
Toronto Lawyers Association



LAWYERS | AVOCATS

VIA EMAIL: [espears@lsuc.on.ca](mailto:espears@lsuc.on.ca)

November 16, 2016

Elliot Spears  
General Counsel  
Law Society of Upper Canada  
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130 Queen Street West  
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Dear Ms. Spears:

**RE: Opinion on Working Group's Recommendations re Challenges Facing Racialized Licensees**

The Law Society of Upper Canada ("**Law Society**") has asked us to provide a legal opinion on the following question in respect of its *Challenges Faced by Racialized Licensees Working Group Final Report*, ("**Final Report**"):

Are any of the following recommendations – 3 (1), (2) and (3) – inconsistent with the rights and obligations of The Law Society of Upper Canada and its licensees under the *Law Society Act*, the *Ontario Human Rights Code* and/or the *Canadian Charter of Rights and Freedoms*?

The recommendations constitute three subsections of Recommendation 3 in the *Final Report* dealing with:

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;



- 2) require a 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; and
- 3) require a 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.

(Hereinafter the “**Recommendations**”)

Our opinion is organized as follows:

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## 1. Executive Summary

The Law Society has identified a significant problem in the lawyer and paralegal professions: widespread barriers experienced by racialized licensees at all stages of their careers. In its *Final Report*, the Working Group noted, at page 4:

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.

The Working Group has proposed several recommendations, in particular, Recommendation 3, dealing with the Adoption of Equality, Diversity and Inclusion Principles and Practices. The Law Society has asked us to determine whether the three specific recommendations under Recommendation 3 are inconsistent with the *Law Society Act* (“*LSA*”), the Ontario *Human Rights Code* (“*Code*”), and the *Canadian Charter of Rights and Freedoms* (“*Charter*”). We have concluded as follows:

- Recommendation 3(1) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter*. The Law Society has an obligation to promote human rights in the legal profession and licensees are already bound by human rights equality, diversity and inclusion principles under their respective professional rules of conduct and the *Code*.

The implementation challenge that we envisage is that, for in-house licensees or licensees working in government, their employer may already have a human rights policy in place so there may be inconsistencies between the employer’s policy and the licensee’s statement of principles. While we describe this as a “challenge,” the challenge may be more apparent than real.

- Recommendation 3(2) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter* assuming that the “representative” referred to in the Recommendation is a licensee of the Law Society and assuming that the intended benefit of such a human rights/diversity policy is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and application of the Recommendation.



While we acknowledge that Recommendation 3(2) may face some implementation challenges, we do not see them as insurmountable. We note that Recommendation 3(2) uses the word “maintain,” which we interpret as meaning “maintenance of” or “providing support to.” However, “maintain” does not necessarily mean making decisions under the policy. We suggest that the measure of whether the representative is implementing and maintaining the human rights/diversity policy be based on effort and not purely on outcome.

- Recommendation 3(3) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter* assuming that the “representative” referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of the self-assessment is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and scope of application to the Recommendation.

We acknowledge that nothing in Recommendation 3(3) can compel an employer (who is not a licensee) to complete and submit a self-assessment for its workforce. Rather, this Recommendation simply requires a representative licensee in a given legal workplace of 10 licensees or more to conduct a self-assessment *amongst licensees* and report their findings to the Law Society. This is more akin to a licensee completing their annual report for the Law Society, but in a collaborative way with all other licensees in their workplace.

We determined that, under the *LSA*, the Law Society and its licensees have the following relevant rights and obligations:

- The Law Society has a duty to advance the cause of justice and the rule of law.
- The Law Society has a duty to facilitate access to justice for the people of Ontario.
- The Law Society has a duty to protect the public interest.
- The Law Society has a duty to act in a timely, open and efficient manner.
- Regulation should be proportionate to the regulatory objectives intended.
- Licensees have a duty to discharge all their professional responsibilities including to other members of the profession honourably and with integrity.
- Licensees have a special responsibility to recognize the diversity of the Ontario community and to respect human rights.
- Licensees have a duty to advance the goals of the legal profession.



- Lawyers should not hesitate to speak out against an injustice.
- Licensees have a special responsibility to respect the requirements of human rights including with respect to the professional employment of others in the profession and with respect to licensees' employment practices.
- The Law Society has historically acted to remove obstacles to the profession and to provide previously excluded groups the opportunity to become members of the profession.

The Law Society's regulatory authority under the *LSA* extends to regulating licensees. The Law Society does not have authority to regulate non-licensees or other types of enterprises. However, there is nothing in the *LSA* that prohibits the Law Society from regulating licensees that are employed "in-house" or in government legal departments.

Human rights law in Ontario is governed by the *Code*. The *Code* applies to every person in Ontario, including public and private institutions and businesses. The *Code* regulates conduct in certain social areas and in respect of certain prohibited grounds. It does not regulate thought, belief, or conscience. Individuals are free to think and believe what they want including disagreeing with the precepts of equality and non-discrimination in the *Code*; however, it is at the point of conduct that their freedom is constrained.

The *Code* has primacy over any other statute in Ontario (generally, in cases of conflict, other legislation must conform to the *Code*); and is viewed by the courts as being quasi-constitutional in nature because of its unique and fundamental importance.

The rights and obligations deriving from the *Code* that are applicable to the Law Society and its licensees are as follows:

- Licensees have the right to be free from discrimination on the basis of race (and any other enumerated ground of discrimination) in their employment (which includes hiring and promotion), in contracts (which might include partnership agreements), and in vocational associations (including membership in the Law Society). This right of a licensee to be *free from* discrimination in employment entails the corollary, namely, that employers of licensees have a duty under the *Code* to *ensure* a discrimination-free environment for its licensees.



- Licensees also have obligations not to discriminate against members of the public who seek out or retain their legal services, or with regard to one another in their employment.
- Licensees also have a right not to be forced to disclose a human rights ground, such as their sexual orientation, age or disability, since such disclosure would have a disproportionate impact on certain *Code*-protected groups and has, historically, led to discrimination.
- The Law Society has an obligation not to discriminate against its members. Under the *Code*, promoting equality, diversity and inclusion is not inconsistent with this obligation.

The *Charter* is part of the Constitution of Canada. It is the supreme law of the land and all federal and provincial/territorial laws, and government action under those laws, must comply with the *Charter*. Law societies may be subject to the *Charter* where they are exercising statutory authority. In *Doré v Barreau du Québec* (“*Doré*”), the Supreme Court directed that law societies must take *Charter* values into account in their discretionary regulatory decisions.

The *Charter* applies to the Law Society’s Recommendations and how they will impact licensees. Per *Doré*, a court or tribunal would examine whether the Law Society has sufficiently balanced its statutory objectives against licensees’ *Charter* rights and freedoms.

The *Charter* values that appear to be implicated are: freedom of conscience; freedom of thought, belief, opinion and expression; freedom of association; right to liberty; and the right to equality. It is conceivable that a licensee may assert that some or all of the above constitutional rights and freedoms are compromised by the implementation of the Recommendations. However, the Recommendations sufficiently represent a balancing of the Law Society’s statutory objectives (which include ameliorating discrimination) and protecting licensees’ constitutional rights. If the Recommendations are challenged from the perspective that they constitute discrimination against non-equity seeking groups, the Law Society would likely be able to characterize its equity, diversity and inclusion initiatives as an ameliorative program, defensible under section 15(2) of the *Charter*.

Perfection can be the enemy of the good. The Law Society should be careful not to see only problems in the implementation of the Recommendations where, in fact, opportunities to make progress through the Recommendations exist.



## 2. Our Approach

We consider it helpful to indicate what our opinion entails. We are being asked about whether the Recommendations are inconsistent with the rights and obligations of the Law Society and its licensees under the three statutes. While the question does not ask us to opine *directly* on whether the Recommendations are workable in practice, our opinion ultimately entails an examination of the Law Society's regulatory reach, particularly beyond licensee firms and into corporations and governments where licensees work, yet where the Law Society has no control.

The Law Society is interested in knowing whether the Recommendations can be implemented given that the Law Society does not regulate non-licensees, yet the Recommendations appear on their face to require licensees to promote certain principles, develop / implement / maintain a policy, and report to the Law Society in respect of their "legal workplaces." We are asked whether the implementation of the Recommendations can be reconciled with the principle that the Law Society has no power to regulate non-licensees, corporations or governments.

Recommendations 3(2) and 3(3) refer specifically to "legal workplaces" which is a term that is not defined, including in any of the three statutes we were tasked with reviewing. In its *Final Report*, the Working Group noted an internal disagreement about the meaning of "legal workplace" and whether the Recommendations should apply in the same way to all types of legal workplaces:

Working Group members' opinions differ as to the definition of "legal workplace". The majority of Working Group members believe that all law firms, in-house legal departments, government legal departments, clinics and other practise settings in Ontario should be subject to the requirements outlined in the recommendations. Other members of the Working Group, however, believe that at this time, government legal departments and in-house legal departments should not be required to comply with the mandatory recommendations as government and in-house licensees are employees whose hiring, promotion and retention are client decisions. Government and in-house legal departments should, however, be encouraged to engage in the mandatory activities outlined in this report. The definition of "legal workplaces" used in the report is that of the majority perspective.<sup>1</sup>

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<sup>1</sup> *Final Report*, p. 5-6, note 7.



In our legal review and analysis below, we bear in mind the above noted concern about the definition of “legal workplace” raised within the Working Group, and whether and how the Recommendations may apply to in-house counsel and licensees who work in government. It is vital to note that limiting and applying the Recommendations only to licensee firms misses the opportunity to effect change throughout the professions who work in diverse organizational settings. This was emphasized by the Working Group’s guiding principle:

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.<sup>2</sup>

We propose to look at the relevant rights and obligations under the three statutes first, and then apply those rights and obligations to the Recommendations we have been asked to review.

Unless otherwise noted, underlined passages indicate our own emphasis, as opposed to emphasis in the original.

### 3. The Law Society Act

#### A. **Functions, Duties and Powers of the Law Society**

The Law Society is a not-for-profit corporation that derives its authority from its enabling statute the *Law Society Act*.<sup>3</sup> The *LSA* creates a framework of authority for the Law Society to regulate lawyers and paralegals in Ontario by way of legislated functions, duties and powers, including the power to make by-laws.

Section 4.1 of the *LSA* sets out the Law Society’s functions:

4.1 It is a function of the Law Society to ensure that,

<sup>2</sup> *Final Report*, p. 14.

<sup>3</sup> *Law Society Act*, RSO 1990, c L 8 [“*LSA*”].



(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Section 4.2 of the *LSA* sets out the principles to be applied by the Law Society:

4.2 In carrying out its functions, duties and powers under this Act, the Law Society shall have regard to the following principles:

1. The Law Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Law Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Law Society has a duty to protect the public interest.
4. The Law Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

We consider the Recommendations to fall within the Law Society's regulation of "professional conduct," although some may consider that the Recommendations relate as well to professional competence or standards of learning that are necessary for licensees in a pluralistic society.

We note that, with respect to section 4.2 of the *LSA*, the Law Society's duty is not just to maintain but also advance the cause of justice and the rule of law; and that it must do so in a timely, open and efficient manner. It appears that acting in an untimely manner, or simply maintaining the status quo which perpetuates injustice would be contrary to the principles that govern the Law Society in the conduct of its functions. Finally, on this point, we note that the Law Society should regulate in a manner proportionate to the significance of the regulatory objectives sought to be realized.



The recommendations we are asked to look at refer to a “licensee,” which is defined in the *LSA* as:

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
- (b) a person licensed to provide legal services in Ontario.<sup>4</sup>

## **B. Rules of Conduct for Licensees**

The Law Society’s *Rules of Professional Conduct* and *Paralegal Rules of Conduct* (collectively, the “**Rules of Conduct**”) set out the standards of professional conduct for lawyers and paralegals, respectively.<sup>5</sup>

The Rules of Conduct and their Commentaries indicate strong support for the principle that licensees have special duties and responsibilities in terms of recognizing diversity and respecting human rights. For example, the *Rules of Professional Conduct* state:

Rule 2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity

### Commentary

[4.1] 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.

The duty of a lawyer also extends to advancing the goals of the legal profession and improving the administration of justice.

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<sup>4</sup> *LSA* s. 1 (1).

<sup>5</sup> Under section 62(0.1) -10 of the *LSA*, Convocation may make by-laws regarding a Code of Professional Conduct and Ethics. Under section 120(b) of By-Law 3 (*Bencher, Convocation and Committees*), the Professional Regulations Committee has a mandate to provide policy options for Convocation’s approval in relation to the *Rules of Professional Conduct*. Under section 130-4 of By-Law 3, the Paralegal Standing Committee has the mandate to provide the equivalent for paralegals.



Rule 2.1-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Based on the concept that lawyers have greater responsibilities than private citizens and lawyers' special role in the community, lawyers' obligations to encourage public respect for, and to try to improve the administration of justice, extends beyond their professional activities.

Rule 5.6-1 A lawyer shall encourage public respect for and try to improve the administration of justice.

#### Commentary

[1] The obligation set out in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

Non-Discrimination Rule: Rule 6.3.1 deals specifically with lawyers' special responsibility not to discriminate including with respect to the professional employment of licensees:

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on [grounds prohibited in the Code] with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

Moreover, Rule 6.3.1 contains a comprehensive Commentary section, fleshing out a lawyer's human rights duties and responsibilities. Key points from the commentary are:

#### Commentary

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.



[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

And, further, Rule 6.3.1 states:

Rule 6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Rule 6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1 and 6.3.1-2.

Section 2.03 of the *Paralegal Rules of Conduct* contains a similar requirement to acknowledge and abide by human rights laws in Ontario with respect to both the provision of services to the public and employment practices.

### C. **Judicial Commentary on the *Law Society Act***

In *Trinity Western University v The Law Society of Upper Canada*,<sup>6</sup> the Divisional Court held that a complete reading of the *LSA* shows that the Law Society is empowered to carry out more functions than just the one set out in s. 4.1 and that:

[58] For all of these reasons, therefore, we conclude that the principles that are set out in s. 4.2, and that are to govern the respondent's exercise of its functions, duties and powers under the *Law Society Act*, are not restricted simply to standards of competence. Rather, they engage the respondent in a much broader spectrum of considerations with respect to the public interest when they are exercising their functions, duties and powers, including whether or not to accredit a law school.

[96] In addition to those realities, we are satisfied that, in carrying out its mandate under its enabling statute, the respondent, throughout its long history, has acted to remove obstacles based on considerations, other than ones based on merit, such as religious affiliation, race, and gender, so as to provide previously excluded groups the opportunity to obtain a legal education and thus become members of the legal profession in Ontario.

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<sup>6</sup> *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 (Div Ct) ["*TWU*"].



[97] In keeping with that tradition, throughout those many years, the respondent has acted to remove all barriers to entry to the legal profession save one – merit. It is the respondent's position that it is in the public interest to ensure that the legal profession is open to everyone. It views that approach as being fundamental to its functions. In adopting that position, the respondent says that it achieves two companion objectives. One is to ensure diversity in the legal profession. The other is that, if the legal profession is open to everyone then, perforce, it is open to "the best and the brightest".

On appeal of that decision, the Ontario Court of Appeal grappled with section 4.1 and 4.2 of the *LSA*, finding that:

[108] I agree with Ms. Kristjanson's analysis and the Divisional Court's conclusion. There is no wall between ss. 4.1 and 4.2 of the *LSA*. The LSUC has an obligation to govern the legal profession in the public interest: see *Groia v. Law Society of Upper Canada*, 2016 ONCA 471 (CanLII), at para. 89. In setting and maintaining standards of learning, professional competence and professional conduct under s. 4.1 of the *LSA*, the LSUC is entitled to do so against the backdrop of the composition of the legal profession, including the desirable goal of promoting a diverse profession.

[110] That the LSUC is also subject to the *Charter* and the *HRC* means that *Charter* and human rights values must inform how the LSUC pursues its stated objective of ensuring equal access to the profession.<sup>7</sup>

The Court of Appeal also noted a key component of the Divisional Court's reasons that:

...in assessing the "public interest", the LSUC is entitled to consider that the impact of TWU's Community Covenant on members of the LGBTQ community is contrary to the equality rights protections in the *Charter* and the *HRC*;<sup>8</sup>

Similarly, we might say that in its duty to advance the cause of justice, the Law Society is entitled to consider that the impact of systemic barriers on racialized licensees in the legal professions is contrary to their equality rights protections in the *Charter* and the *Code*.

<sup>7</sup> *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518 ["TWU"].

<sup>8</sup> *Ibid.* at para. 51.



#### D. Summary of the *Law Society Act*

Our review of the *LSA*, the Rules of Conduct and relevant judicial commentary indicates that:

- The Law Society has a duty to advance the cause of justice and the rule of law.
- The Law Society has a duty to facilitate access to justice for the people of Ontario.
- The Law Society has a duty to protect the public interest.
- The Law Society has a duty to act in a timely, open and efficient manner.
- Regulation should be proportionate to the regulatory objectives intended.
- Licensees have a duty to discharge all their professional responsibilities including to other members of the profession honourably and with integrity.
- The Law Society's exercise of its functions, duties and powers are not restricted simply to standards of competence and engage a much broader spectrum of considerations with respect to the public interest.
- Licensees have a special responsibility to recognize the diversity of the Ontario community and to respect human rights.
- Licensees have a duty to advance the goals of the legal profession.
- Lawyers should not hesitate to speak out against an injustice.
- Licensees have a special responsibility to respect the requirements of human rights including with respect to professional employment of others in the profession and with respect to licensees' employment practices.
- With the desirable and legitimate goal of ensuring diversity in the profession, the Law Society has historically acted to remove obstacles to the profession and to provide previously excluded groups the opportunity to become members of the profession.

#### 4. The Ontario Human Rights Code

Human rights law in Ontario is governed by the *Human Rights Code*.<sup>9</sup> The *Code* applies to every person in Ontario, including both public and private institutions and businesses. "Person" is broadly defined and includes an individual as well as a corporation.<sup>10</sup>

The Preamble to the *Code* states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination.

<sup>9</sup> *Human Rights Code*, RSO 1990, c H 19 ["Code"].

<sup>10</sup> *Code* s. 46 and *Legislation Act, 2006*, SO 2006, c 21, Sch F, s. 87.



The *Code* aims to create a climate of understanding and mutual respect for the dignity and worth of each person.

The *Code* provides protection from discrimination in the following five “social areas”:

- employment
- goods, services and facilities
- accommodation (housing)
- membership in a vocational association (including a self-governing profession)
- contracts

There are 17 “prohibited grounds” of discrimination under the *Code*:

- race, ancestry, place of origin, colour, ethnic origin
- citizenship
- creed
- sex
- sexual orientation
- gender identity
- gender expression
- disability
- age
- marital status
- family status
- receipt of public assistance (in accommodation only)
- record of offences (in employment only)

The *Code* regulates conduct in the above social areas and in respect of the prohibited grounds. It does not regulate thought, belief, or conscience. This point cannot be overstated. Individuals are free to think and believe what they want including disagreeing with the precepts of equality and non-discrimination in the *Code*; however, it is at the point of conduct that their freedom is constrained. The Supreme Court of Canada explained this succinctly: “The freedom to hold beliefs is broader than the freedom to act on them.”<sup>11</sup> In other words, people are entitled to hold

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<sup>11</sup> *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31 at para 36.



prejudicial views; but they are not entitled to act upon them (i.e. discriminate) in the social areas identified in the *Code*.

The *Code* has primacy over any other statute in Ontario (generally, in cases of conflict, other legislation must conform to the *Code*); and is viewed by the courts as being quasi-constitutional in nature because of its unique and fundamental importance.<sup>12</sup>

The *Code* prohibits both direct and indirect discrimination. Section 9 of the *Code* provides that: “No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.”

The sections of the Ontario *Code* that are germane to this opinion are:

- Section 1 (equal treatment without discrimination in services);
- Section 5 (equal treatment without discrimination in employment);
- Section 6 (equal treatment without discrimination in the area of vocational associations, which includes membership in a self-governing profession);
- Section 14 (special programs)

The *Code* makes specific provision for the implementation of a special program designed to ameliorate discrimination and disadvantage. Section 14 of the *Code* states:

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

In *Carter v Elementary Teachers Federation of Ontario*, the Human Rights Tribunal of Ontario held:

[24] Section 14 of the *Code* is a complete defence to an allegation of discrimination when the challenge to the program comes from someone whose needs do not fall within the purpose or underlying rationale of the program (*Ball v. Ontario (Community and*

<sup>12</sup> *Code*, s. 47(2). See also: *Tranchemontagne v Ontario (Directors, Disability Support Program)*, 2006 SCC 14 at para 33 [“*Tranchemontagne*”]. The Court cites *Battlefords and District Co-operative Ltd v Gibbs*, [1996] 3 SCR 566 at para 18 and *Insurance Corp of British Columbia v Heerspink*, [1982] 2 SCR 145 at 158.



*Social Services*), 2010 HRTO 360 (CanLII) (at para. 123). In *Ontario (Human Rights Commission) v. Ontario* (1994), 1994 CanLII 1590 (ON CA), 19 O.R. (3d) 387 (C.A.) (“*Roberts*”), at page 401, the court stated that the exemption of section 14 is invoked when the challenge to the program comes from a member of a historically privileged group. A special program can only be challenged by a member of a disadvantaged group that the special program is designed to assist, but who is otherwise excluded from that program (on the basis of age, for example).<sup>13</sup> (Emphasis in original)

The rights and obligations deriving from the *Code* that are applicable to the Law Society and its licensees are as follows:

- Licensees have the right to be free from discrimination on the basis of race (and any other enumerated ground of discrimination) in their employment (which includes hiring and promotion), in contracts (which might include partnership agreements), and in vocational associations (including membership in the Law Society). This right of a licensee to be *free from* discrimination in employment entails the corollary, namely, that employers of licensees have a duty under the *Code* to *ensure* a discrimination-free environment for its licensees.<sup>14</sup>
- Licensees also have obligations not to discriminate against members of the public who seek out or retain their legal services, or with regard to one another in their employment.
- Licensees also have a right not to be forced to disclose a human rights ground, such as their sexual orientation, age or disability, since such disclosure would have a disproportionate impact on certain *Code*-protected groups and has, historically, led to discrimination. In the section below dealing with Recommendation 3(3) (self-assessment survey) we deal with the question of whether asking individuals to self-disclose is inconsistent with the *Code*.
- The Law Society has an obligation not to discriminate against its members. In the section below dealing with Recommendation 3(1) (adopt and abide by a set of principles) we

<sup>13</sup> *Carter v Elementary Teachers Federation of Ontario*, 2011 HRTO 1604 at para 24.

<sup>14</sup> We note that licensees working in a federally regulated environment would not be subject to the *Code*, but rather the *Canadian Human Rights Act*.



deal with the question of whether this obligation extends to “promoting equality, diversity and inclusion” in the professions.

### 5. The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms*<sup>15</sup> is part of the Constitution of Canada. It is the supreme law of the land and all federal and provincial/territorial laws, and government action under those laws, must comply with the *Charter*. The *Charter* does not directly regulate private activity or activity where there is no state involvement. Law societies and quasi-governmental institutions like universities may be subject to the *Charter* where they are found to be implementing a specific governmental policy or program, or exercising statutory authority.<sup>16</sup>

In Mahmud Jamal’s legal opinion on the *Charter*,<sup>17</sup> provided to Convocation in the context of TWU’s request for accreditation, he explained how the Law Society may be subject to the *Charter*:

The *Charter* may apply to an organization such as the Society as part of the apparatus of government or as a delegate of statutory authority. Even though the Society is insufficiently linked to or controlled by government to be considered part of its apparatus (given the independence of the bar), the *Charter* applies to the Society when it exercises its statutory discretion to set the requirement for licensing under the *LSA*. The Society must in these instances reach a decision that is consistent with the *Charter*.

Mr. Jamal’s opinion went on to describe the impact of the Supreme Court’s decision in *Doré v Barreau du Québec*:<sup>18</sup>

In *Doré*, the Court had to decide whether the Disciplinary Council of the Barreau du Québec had failed to respect a lawyer’s freedom of expression under s. 2(b) of the *Charter* when it decided to reprimand him for writing an inflammatory letter to a judge

<sup>15</sup> *Canadian Charter of Rights and Freedoms*, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [“*Charter*”].

<sup>16</sup> See: *McKinney v University of Guelph*, [1990] 3 SCR 229; *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at paras 42-43; and *Pridgen v University of Calgary*, 2012 ABCA 139 at paras 78-99.

<sup>17</sup> Jamal, Mahmud, “The *Charter* and the Law Society’s accreditation decision” April 5, 2014. Online: <http://www.lsuc.on.ca/uploadedFiles/IssuesCanadianCharterRightsFreedoms.pdf>. In the excerpts from Mr. Jamal’s legal opinion, we have not included legal citation, but it can be found in his opinion.

<sup>18</sup> *Doré v Barreau du Québec*, 2012 SCC 12 [“*Dore*”].



after a court hearing. In addressing this issue, the Court took the opportunity to clarify “how to protect *Charter* guarantees and the values they reflect in the context of adjudicated administrative decisions.”

The Court held that administrative decision-makers must consider the *Charter* when they exercise discretion granted under statutory authority. The Court stated that “administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values.” The Court embraced what it called a “richer conception of administrative law, under which discretion is exercised ‘in light of constitutional guarantees and the values they reflect’”, such that “administrative decisions are always required to consider fundamental values.” The Court stated that “administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise.”

*Doré* also provides guidance on how the *Charter* applies when a decision-maker exercises discretion granted under statutory authority. The Court stated that, fundamentally, a statutory decision-maker must “balance the *Charter* values with the statutory objectives.” This involves a two-step process:

At the first stage, “the decision-maker should first consider the statutory objectives.”

At the second stage, “the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives.” This “requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives.”

The Court explained that this decision-making process is fundamentally about ensuring “balance and proportionality.” That is, the decision-maker must strike “an appropriate balance between rights and objectives” to ensure that the “rights at issue are not unreasonably limited.” Put differently, the decision-maker must ensure that any decision “interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives.”

In *Doré* and *TWU*, the Barreau du Québec and the Law Society respectively were making specific discretionary decisions that would directly impact a licensee (or potential licensee). Here, the Law Society is engaged in a similar kind of exercise, the imposition of conditions on



licensees in relation to their acknowledgment and promotion of equality, diversity and inclusion principles, and certain reporting requirements. Accordingly, we believe that *Doré* applies.

The first stage of the analysis, considering the statutory objectives, has already been done (see the above section on Summary of the *LSA*). The Law Society is pursuing a statutory mandate to advance justice in the public interest to eradicate barriers for racialized licensees, and others, in the legal professions.

The second stage involves identifying the *Charter* values at issue and determining if the Law Society has struck the appropriate balance to ensure *Charter* rights are not unreasonably limited. In *Doré*, the Supreme Court clarified that, to determine whether administrative decision-makers have exercised their statutory discretion in accordance with *Charter* protections, the review should be in accordance with an administrative law approach (set out in *Doré*), not a s. 1 *Oakes* analysis. The standard of review is reasonableness.

The *Charter* values (and corresponding *Charter* sections) that appear to be implicated are:

- Freedom of conscience (s. 2a)
- Freedom of thought, belief, opinion and expression (s. 2b)
- Freedom of association (s. 2d)
- Right to liberty (s. 7); and
- Right to Equality (s.15).

It is conceivable that a licensee may assert that some or all of the above constitutional rights and freedoms are compromised by the implementation of the Recommendations. The licensee could assert that, pursuant to the Recommendations, they must abide by a statement of principles that they may not believe in; hire, promote and associate with licensees they may otherwise avoid; and complete certain reporting activities that they would rather not. Further, the licensee may take the position that the Recommendations favour racialized and/or other equity seeking groups and, in that sense, discriminate against other licensees contrary to the equality provisions of the *Charter*.

On the last point, we are confident that the Law Society would avoid liability and be able to characterize its Recommendations as an ameliorative program, defensible under section 15(2) of the *Charter*. In *R v Kapp*, the Supreme Court held that:



[3] ...where a program makes a distinction on one of the grounds enumerated under s. 15 or an analogous ground but has as its object the amelioration of the conditions of a disadvantaged group, s. 15's guarantee of substantive equality is furthered, and the claim of discrimination must fail. ...<sup>19</sup>

With respect to the other *Charter* rights and freedoms, the question is whether the Recommendations strike the appropriate balance between removing barriers for entry and progression in the professions and licensees' constitutional freedoms. We think they do. The Divisional Court in Ontario, albeit in the *TWU* context, has already spoken favourably about the Law Society attempting to eradicate discrimination in its ranks:

[116] In exercising its mandate to advance the cause of justice, to maintain the rule of law, and to act in the public interest, the respondent was entitled to balance the applicants' rights to freedom of religion with the equality rights of its future members, who include members from two historically disadvantaged minorities (LGBTQ persons and women). It was entitled to consider the impact on those equality rights of accrediting TWU's law school, and thereby appear to give recognition and approval to institutional discrimination against those same minorities. Condoning discrimination can be ever much as harmful as the act of discrimination itself.

We provide further reasons for why the Recommendations likely satisfy the *Doré* requirement to balance statutory objective with *Charter* values in our discussion of the specific Recommendations below.

In summary, the *Charter* applies to the Recommendations and how they will impact licensees. Per *Doré*, a court or tribunal would examine whether the Law Society has sufficiently balanced its statutory objectives against licensees' *Charter* rights and freedoms. If the Recommendations are challenged from the perspective that they constitute discrimination against non-equity seeking groups, the Law Society would likely be able to characterize its equity, diversity and inclusion initiatives as an ameliorative program, defensible under section 15(2).

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<sup>19</sup> *R v Kapp*, 2008 SCC 41 at para. 3 [“*Kapp*”].



## 6. Analysis

*Are any of the following recommendations – 3 (1), (2) and (3) – inconsistent with the rights and obligations of The Law Society of Upper Canada and its licensees under the Law Society Act, the Ontario Human Rights Code and/or the Canadian Charter of Rights and Freedoms?*

In this section we apply the rights and obligations of the Law Society and its licensees in the *LSA*, *Code*, and *Charter* to determine whether or not the Recommendations are inconsistent with these rights and obligations. We also identify any implementation challenges.

### A. **Recommendation 3(1)**

*The Law Society will... 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.*

In our view, there is nothing inconsistent with Recommendation 3(1) having regard to the rights and obligations of the Law Society and its licensees under the *LSA*, *Code*, or *Charter*. The reality is that licensees are already bound by human rights equality, diversity and inclusion principles under the *LSA*, lawyer and paralegal Rules, and the *Code*. What Recommendation 3(1) would do, is:

- i. Require licensees to adopt a statement of principles regarding their own behaviour;
- ii. Require licensees to abide by and acknowledge their own statement of principles;
- iii. Require that the statement of principles acknowledges the obligation is to promote equality, diversity and inclusion generally; and
- iv. Specifically in their behaviour towards colleagues, employees, clients and the public.

We deal with each of these aspects in turn to determine if the proposal is inconsistent with the three statutes or raises implementation challenges.

#### i) **Require licensees to adopt a statement of principles regarding their own behaviour**

The Law Society is within its authority to require the adoption of a statement of principles since section 62 of the *LSA* provides Convocation with the power to make By-Laws including with respect to “prescribing oaths and affirmations for applicants for a license” and “authorizing and providing for the preparation, publication and distribution of a code of professional conduct and



ethics.” By-Law 4 sets out the general requirements for issuing a license, which includes an applicant taking an oath.<sup>20</sup>

Furthermore, By-Law 3 of the Law Society creates and empowers the Professional Regulation Committee and Paralegal Committee to recommend, for Convocation’s approval, policy options in relation to the regulation of licensees, and creates and empowers the Equity and Aboriginal Issues Committee to develop policy options for the promotion of equity and diversity related to the practice of law and provision of legal services in Ontario.<sup>21</sup> In our view, the Law Society does not need to create a new By-Law specifically for a “Human Rights Statement of Principles.”

Conceptually, requiring licensees to adopt a human rights statement of principles is likely to make tangible, more personal and more readily accessible what is currently a generic human rights obligation towards the professions that already exists in the *LSA*, lawyer and paralegal Rules, and the *Code*.

**ii) Require licensees to abide by and acknowledge their own statement of principles**

Under this Recommendation, not only must licensees adopt a human rights statement of principles, but they must also abide by it. This represents licensees having to “walk the walk” in respect of their human rights obligations towards the professions. Once again, we do not see this as inconsistent, in any way, with licensees’ current obligations as outlined above, except the obligations would be specified in an “in-house” statement of principles document, not located in some regulatory document maintained by the Law Society.

**iii) Require that the statement of principles acknowledges the obligation to promote equality, diversity and inclusion generally**

The *Final Report* has identified a significant problem of system discrimination in the lawyer and paralegal professions:

<sup>20</sup> The Law Society of Upper Canada, By-Law 4, s. 8(1).

<sup>21</sup> The Law Society of Upper Canada, By-Law 3, ss. 120 and 122.



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.<sup>22</sup>

Recommendation 3(1) represents the Law Society taking action on this problem by requiring that every licensee effectively promote equality, diversity and inclusion generally. At first glance, this particular aspect of the Recommendation gave us pause. We wondered whether the obligation on licensees to “promote” equality, diversity and inclusion is something wholly different than a mere obligation to not discriminate; and further, we were uncertain what promoting equality, diversity and inclusion “generally” meant (discussed below).

We concluded that promoting means “to encourage” and encouraging equality, diversity and inclusion is indeed something more than not discriminating. It connotes taking an active, not passive, role. However, given statutory mandates to “advance the cause of justice,” “act in a timely manner,” and act “in the public interest” nothing in this Recommendation was inconsistent with the three statutes. We also do not think that the language of “promoting equality, diversity and inclusion” is so vague as to set an impossible standard of professional regulation. The *Rules of Professional Conduct*, for instance, contain other terms such as acting “honourably and with integrity,” which similarly have a broad meaning.

Recall that the Commentary to the non-discrimination Rule 6.3.1 speaks of “the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario,” and that Rule 6.3.1-2 requires that lawyers ensure that their employment practices do not offend the non-discrimination Rule. Also recall the Ontario Court of Appeal’s language in *TWU* that “the LSUC is entitled [in setting and maintaining standards of professional conduct] to do so against the back drop of the composition of the legal profession, including the desirable goal of promoting a diverse profession.”<sup>23</sup> Furthermore, since the Law Society has identified systemic barriers facing licensees as a significant problem, and eradicating those barriers as a goal, lawyers have a duty to advance that goal (Rule 2.1-2). Mandating promotion of equality, diversity and inclusion is within the scope of permissible regulation, not something outside of it.

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<sup>22</sup> *Final Report*, p. 4.

<sup>23</sup> *TWU (CA)*, *supra* note 7, para. 108.



**iv) Promoting equality, diversity and inclusion “generally” versus “in their behaviour towards colleagues, employees, clients and the public”**

We had difficulties interpreting the word “generally” in the Recommendation. Does the Recommendation mean that licensees have a general responsibility to promote equality, diversity and inclusion beyond their professional activities? This would be akin to a lawyer’s obligation, resulting from the lawyer’s position in the community, to encourage public respect for and to try to improve the administration of justice.<sup>24</sup>

Conversely, does the Recommendation mean that licensees must promote equality, diversity and inclusion in their professional practices only? Or does the word “generally” refer to the breadth and variety of the groups that are to be assisted under promotion of equality, diversity and inclusion? For instance, even though the focus of the *Final Report* is on racialized licensees, perhaps the Law Society is encouraging licensees to think of equality, diversity and inclusion in all its facets (gender, regional, income, etc.). Or alternatively, is the juxtaposition of “generally” and what follows meant to suggest that licensees have an obligation to promote equality, diversity and inclusion in their behaviour and other people’s behaviour towards colleagues, employees, clients and the public?

We recommend that the Law Society clear up this ambiguity but, without necessarily knowing the Law Society’s exact intention here, we feel that the present language is not inconsistent with the *LSA* or the *Code*.

With respect to the *Charter*, Recommendation 3(1) appears to balance the Law Society’s statutory objectives sufficiently with licensees’ constitutional rights and freedoms. The words “acknowledging their obligation to promote” suggest that freedom of conscience, and freedom of thought, belief, opinion and expression are all constrained. However given that:

- equality and non-discrimination (s.15) is a *Charter* value itself;
- s.15(2) of the *Charter* permits an ameliorative program to combat discrimination;
- the *LSA* already incorporates a balancing requirement whereby professional regulation for licensees must “be proportionate to the significance of the regulatory objectives sought to be realized”;

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<sup>24</sup> *Rules of Professional Conduct*, Rule 5.6-1.



- the statutory mandate of the Law Society includes non-discrimination as per the *Code*, which is quasi-constitutional legislation; and
- the special responsibility of licensees to respect human rights including with respect to professional employment of others in the profession,

it appears that the Recommendation is not a disproportionate response to a serious problem.

The Law Society is not ordering licensees, as a condition of their license, to hire and promote racialized lawyers and paralegals. Rather, the Law Society is requiring licensees to adopt and abide by a set of principles which will inform how they approach recruitment, retention and promotion decisions. Systemically, Recommendation 3(1) is designed to create a new framework where licensees adopt a set of principles that is more likely to reduce or remove barriers for racialized licensees and other equity seeking groups in the legal professions, but it does not direct a particular hiring or promotion outcome in any given case.

The implementation challenge that we envisage is that, for in-house licensees or licensees working in government, their employer may already have a human rights policy in place so there may be inconsistencies between the employer's policy and the licensees' statement of principles. While we describe this as a "challenge," the challenge may be more apparent than real.

First, we assume that any human rights policy will promote ("encourage") equality. We cannot imagine a so-called human rights policy that promotes "inequality." Second, while many institutional human rights policies may not necessarily promote diversity and inclusion, it would be surprising if the licensees' new Law Society obligation to promote diversity and inclusion *contradicts* the corporation's or government's human rights policy. Finally, federal, provincial and municipal governments all now have diversity and inclusion principles so, upon closer examination, we do not believe that the implementation of this Recommendation places the licensee, or for that matter their employer, in conflict.<sup>25</sup>

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<sup>25</sup> Federal Public Service, "Employment Equity Policy" <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12543&section=html>

Ontario Public Service, "Diversity and accessibility" <https://www.ontario.ca/page/about-ontario-public-service#section-3>;

City of Toronto, "Employment Equity Policy" <http://wx.toronto.ca/intra/hr/policies.nsf/9fff29b7237299b385256729004b844b/755a03e5d9c008fd85256927004b786c?OpenDocument>



We repeat, however, that in implementing this Recommendation the Law Society is not regulating the employer of the licensee. Instead, the Law Society is imposing upon licensees a new obligation, as per Recommendation 3(1), that is based on a duty that already exists arising from, *inter alia*, the Non-Discrimination Rule (Rule 6.3.1): a special responsibility to respect the requirements of human rights including with respect to the professional employment of others in the profession and with respect to licensees' employment practices.

#### **B. Recommendation 3(2)**

***The Law Society will... require a 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.***

In our opinion, Recommendation 3(2) is consistent with the *LSA*, *Code*, and *Charter* assuming that the "representative" referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of such a human rights/diversity policy is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and application of the Recommendation.

There are a variety of examples in the law where an employer is required to develop and implement a workplace policy. The *Occupational Health and safety Act*, for example, requires that an employer prepare policies addressing workplace violence and harassment, including workplace sexual harassment.<sup>26</sup> The *Accessibility for Ontarians with Disabilities Act, 2005*, requires certain organizations to develop, implement and maintain accessibility standards for persons with disabilities.<sup>27</sup> We note that there will be a subset of licensees in Ontario who work for federally regulated entities or the federal government that are already subject to the federal *Employment Equity Act*. The *Employment Equity Act* seeks to achieve employment equity in private sector employers as well as portions of the federal public administration in part through instituting "positive policies and practices... as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce...."<sup>28</sup>

<sup>26</sup> RSO 1990, c O1, s. 32.0.1 (1).

<sup>27</sup> SO 2005, c 11, s. 1 and Part III.

<sup>28</sup> SC 1995, c 44, s. 5 (b).



The Ontario *Code* has no such requirement to develop and implement a human rights or diversity policy. Notwithstanding this lack of statutory obligation, in our opinion it is not inconsistent with the *Code* for the Law Society to be proactive and require certain legal workplaces to do so.

First, the Ontario Human Rights Commission (the “Commission”) strongly encourages organizations to have an internal human rights policy for their workplace and the Commission has prepared two documents to assist organizations with developing human rights policies and procedures.<sup>29</sup>

Second, in the Human Rights Tribunal of Ontario’s (“Tribunal”) Form 2 (Response to an Application under Section 34 of the *Human Rights Code*), the Tribunal explicitly asks organizational respondents whether or not they have internal human rights policies related to the alleged discrimination.

Third, section 45.2 of the *Code* vests the Tribunal with a remedial power to make an order in the public interest and aimed at future compliance with the *Code*. In practice, this often translates into an order requiring an employer that is found to have violated a right under the *Code* to develop and implement a human rights policy if it does not already have one.

Thus, we can take from the above that the creation of a human rights and diversity policy under Recommendation 3(2) is consistent with the *Code*.

We also believe that Recommendation 3(2) represents a reasonable balancing between the Law Society’s statutory objectives, including with respect to advancing human rights, and licensees’ *Charter* rights. We do not take a position on what number of licensees should be present in each legal workplace before the obligation to maintain a human rights/diversity policy is engaged. However, for reasons similar to those explained in regards to Recommendation 3(1), we believe that Recommendation 3(2) is not inconsistent with the *Charter*. Requiring a group of licensees in a legal workplace to develop, implement and maintain a policy, while constraining their *Charter* liberty rights, among others, does not seem to attack the core of an individual’s liberty interests. Put another way, if a licensee were to define his or her liberty interest as “the right to

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<sup>29</sup> Ontario Human Rights Commission, *Guidelines on Developing Human Rights Policies and Procedure* (Toronto: Ontario Human Rights Commission, June 19, 1996 (revised January 30, 2008)); and Ontario Human Rights Commission, *A policy primer: Guide to developing human rights policies and procedures* (Toronto: Ontario Human Rights Commission, June 19, 1996 (revised December 2013)).



do whatever I want to in my legal workplace,” even in the face of non-discrimination laws, that liberty interest is not the kind that has enjoyed much protection at law.

To the extent that someone may object to this requirement, the Law Society may look to avail itself of the Special Program exemption under the *Code* or the protection of section 15(2) under the *Charter*.

In summary, nothing in this Recommendation is inconsistent with the *LSA*, the *Code*, or the *Charter* so long as the representative in question is a licensee.

Notwithstanding our view that this Recommendation is consistent with the three statutes, we wish to comment on the issue of the Recommendation applying to a “representative of each legal workplace... to develop, implement and maintain a human rights/diversity policy for their legal workplace....”

First, the Law Society has regulatory authority over licensees only. To the extent that this Recommendation purports to regulate a non-licensee “representative” it goes beyond the Law Society’s scope of authority. Thus, we recommend that the Working Group amend the wording of this recommendation to clarify that a “representative” must be a licensee.

Second, as noted above and in the *Final Report*, the term “legal workplace” is not defined in the *LSA* and remains a contentious term within the Working Group. We note that Recommendations 3(2) and 3(3) use the terminology “their legal workplace.” This suggests that the target of the Recommendations 3(2) and 3(3) is, or ought to be, the licensees in a licensee firm, corporation or government. With respect to Recommendation 3(2), once there are more than 10 licensees in an Ontario workplace (howsoever defined), the Recommendation would require that a licensee representative (i) develop; (ii) implement; and (iii) maintain a human rights/diversity policy *for the benefit of* the licensees in that workplace; (iv) with the specification that a minimum standard for the content of the human rights/diversity policy is that it address fair recruitment, retention and advancement.

We see the implementation of Recommendation 3(2) occurring along a spectrum: the further one moves away from law firms / paralegal firms, and the more employers object to the “licensees only” human right/diversity policy, the greater the challenge.



Let's start with the easy end of the spectrum: Recommendation 3(2) applying to a firm of lawyers and/or paralegals. The Law Society clearly regulates licensees so when the representative licensee is developing, implementing and maintaining the human rights/diversity policy, as required by the Law Society, the representative's actions can speak to and for the entire organization made up of licensees.

Moving further along the spectrum we next envisage the example of licensees employed by the Government of Ontario, which has its own human rights, diversity and inclusion principles and policies. There, the Law Society is not purporting to regulate the government, however, under Recommendation 3(2) a representative of those licensees (or multiple representatives if there are multiple workplaces) would be charged with developing, implementing and maintaining a human rights/diversity policy for those licensees which may or may not "bump up" against the government's human rights policy. While this scenario is clearly different than the law firm scenario, the implementation challenges may not be all that difficult if, in practice, it means that the representative can adopt or "tweak and adopt" the government's human rights/diversity policy assuming that the government's policy addresses "fair recruitment, retention and advancement" practices.

Moving even further along the spectrum, let's use the example of a large private corporation with 15 licensees with no human rights/diversity policy. In the extreme scenario, the corporate employer may reject outright and prohibit a licensee from developing, implementing and maintaining a human rights/diversity policy for licensees at its workplace. However, the employer would still be legally bound by the *Code* to ensure its employment practices are non-discriminatory, which, in effect, would require substantive compliance by the employer with the "unwritten" policy. We would envisage that the resolution of this issue may be left to discussions amongst the representative, the licensees, the Law Society and the corporation. We see outright non-cooperation with the Law Society's Recommendation 3(2) and the failure of a resolution a rather farfetched scenario.

In a less extreme scenario, while we do not think that the representative "developing" a policy just for the 15 licensees presents much of an issue, the employer may raise an issue around who controls the implementation of the policy; that is, the representative's vision of what that the policy means for the corporation's employment practices may diverge from the corporation's vision. We note that Recommendation 3(2) uses the word "maintain," which we interpret as meaning "maintenance of" or "providing support to." However, "maintain" does not necessarily mean making decisions under the policy. But even if we were to assume that "maintain"



included a decision-making role, we think the representative's role would be advisory and not necessarily determinative. For instance, with respect to the promotion of a racialized lawyer to a General Counsel position, the representative may, on balance, believe that the racialized lawyer is deserving of the position including based on an interpretation of the representative's human rights/diversity policy, whereas the corporation may see things differently. Does this mean that if the corporation places another candidate in the General Counsel position that the representative has failed to "implement and maintain" the licensees' human rights/diversity policy? We think not.

In both corporate employer scenarios described above, we believe that the concept of best efforts or, in the alternative, reasonable efforts, as opposed to outcome should be the correct measure of whether the representative has, in fact, complied with their regulatory obligation.

So, while we acknowledge that Recommendation 3(2) may face some implementation challenges, we do not see them as insurmountable so long as:

- (a) The representative is a licensee;
- (b) The target or beneficiaries of the human rights/diversity policy are only licensees; and
- (c) The measure of whether the representative is implementing and maintaining the human rights/diversity policy is based on effort and not purely on outcome.

We think that the Law Society should be candid about the impact and cultural change that it seeks to achieve by the implementation of Recommendation 3(2): requiring all entities that employ licensees, including corporations and governments, to use the proposed human rights/diversity policy and thereby be more self-conscious about the impact of their recruitment, retention and advancement decisions on racialized licensees. However, while this is the goal, it does not mean that the Law Society is now regulating these entities. The effects of the Recommendation should be distinguished from the Recommendation itself, which is limited in scope to licensees.

### **C. Recommendation 3(3)**

***The Law Society will... require a 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.***



In our opinion, Recommendation 3(3) is consistent with the *LSA*, *Code*, and *Charter* assuming that the “representative” referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of the self-assessment is limited in its application to licensees only. We recommend that the Working Group amend this recommendation to clarify the above limits and scope of application to the Recommendation.

The Recommendation raises a few questions, including whether the intention is for a representative to complete a self-assessment of only licensees for their legal workplace, or of all employees at a legal workplace; would this create a mandatory requirement on licensees to answer the self-assessment or can a licensee opt not to answer, in similar fashion to the voluntary self-assessment contained in a licensee’s annual report?

In its *Final Report*, the Working Group provided further insight into the motivation behind and intention of this Recommendation:

- Legal workplaces would report to the Law Society on whether they had completed the self-assessment and, if not, explain their reasons for not having done so
- Recommendation 3(3) 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<sup>30</sup>

To the extent that this recommendation would make it mandatory for every licensee (in a legal workplace of 10 or more licensees) to disclose personal information, it may run afoul of the *Code* unless they can opt out.

The Law Society already has a self-assessment demographic survey for licensees, but it qualifies the survey with it being voluntary, confidential and anonymous.<sup>31</sup> The survey asks about a licensee’s Francophone status, Indigenous status, ethnic identity, religion or creed, disability status, and sexual orientation. For each question there is an option to select “I do not wish to answer.” This type of survey is not inconsistent with either the *Code* or the *Charter*. And, if this

<sup>30</sup> *Final Report*, pp. 19 and 21.

<sup>31</sup> The Demographic Survey is part of the Law Society’s Lawyer Annual Report and the Law Society’s Equity Initiatives Department, made pursuant to section 62 of the *LSA* and By-law 8. Convocation approved the inclusion of the voluntary question in these reports at its May 2009 meeting.



type of survey qualifies as “completing” a self-assessment for a legal workplace, then there should be no concern.

It is also the view of the Ontario Human Rights Commission that seeking such demographic information is not a violation of the *Code*. The Commission makes recommendations for how to undertake such data collection to ensure it is compliant with the *Code*.<sup>32</sup> The Commission makes the following recommendations to collecting data in a *Code*-consistent way:

- Clearly set out a purpose that is consistent with the *Code* such as an intention to assist disadvantaged licensees in the profession;
- Advise why such information is being gathered and its potential uses;
- Inform how the data will be collected, steps that will be taken to protect privacy and confidentiality, benefits of collecting data, and progress reached in achieving stated goals and objectives;
- Consult with affected communities about the need for data collection and appropriate methodology;
- Use the least intrusive means that most respects the dignity and privacy of individuals: one means is self-identification, another is observation through a trained employee or external expert;
- Assure anonymity;
- Distinguish between collection, use and disclosure; and
- Comply with freedom of information and privacy protection legislation.

With respect to the *Charter*, Recommendation 3(3) appears to be very reasonable when it requires, only once every two years, the completion of an equality, diversity and inclusion self-assessment. It seems a stretch for a licensee to assert that their *Charter* liberty interest or freedom of conscience is constrained in a disproportionate manner.

We acknowledge that nothing in Recommendation 3(3) can compel an employer (who is not a licensee) to complete and submit a self-assessment for its workforce. Rather, this Recommendation simply requires a representative licensee in a given legal workplace of 10 licensees or more to conduct a self-assessment *amongst licensees* and report their findings to the Law Society. There is nothing inconsistent in this Recommendation with respect to the Law

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<sup>32</sup> Ontario Human Rights Commission, *Count me in! Collecting Human Rights-Based Data* (Toronto: Ontario Human Rights Commission, 2010).



Society or its licensees' rights and obligations under the three statutes. We do not see the concern that requiring licensees in non-law firm settings somehow overreaches on the Law Society's regulatory authority; or that this Recommendation in any way places an obligation on non-licensees or their employer. Rather, this is more akin to a licensee completing their annual report for the Law Society, but in a collaborative way with all other licensees in their workplace.

## 7. Conclusion

The process of determining whether the Recommendations are inconsistent with the *LSA*, the *Code* and the *Charter* should begin by acknowledging the reality of the situation. That reality, according to the *Final Report*, is “widespread barriers experienced by racialized licensees within the legal professions at all stages of their careers”<sup>33</sup> As the Divisional Court noted in *TWU*, “condoning discrimination can be ever much as harmful as the act of discrimination itself.”<sup>34</sup>

It is unlikely that most licensees intend to discriminate. Yet, it is the impact of conduct on protected groups and not intention that counts. The *Final Report* concluded that systemic barriers for racialized licensees continue to persist. The Recommendations represent the Working Group's proposal to do something about the problem consistent with the Law Society's obligation to advance the cause of justice and the rule of law in the public interest. Whereas constraints and implementation challenges do exist, in terms of how far the Law Society can go, our review of the Recommendations suggests that they do not cross the line into impermissible professional regulation. They are not inconsistent with the *LSA*, the *Code* or the *Charter*. Some of the implementation challenges are more apparent than real and, in the most challenging scenario where employers and representatives disagree on the outcome of employment decisions, it does not mean that the representative has necessarily failed to abide by their professional obligation.

Perfection can be the enemy of the good. The Law Society should be careful not to see only problems in the implementation of the Recommendations where, in fact, opportunities to make progress through the Recommendations exist.

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<sup>33</sup> *Final Report*, p. 4.

<sup>34</sup> *TWU* (Div Ct), *supra* note 6, para 116.



We hope that the Law Society will find our opinion of assistance in their upcoming deliberations.

Yours truly,  
**PINTO WRAY JAMES LLP**

A handwritten signature in blue ink that reads "Andrew Pinto".

Andrew Pinto

Pursuant to a notice of motion provided November 9, 2016, it was moved by Ms. Murchie, seconded by Ms. St. Lewis, that as it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

Carried

The Treasurer thanked members of the Working Group and staff for their hard work on this initiative.

## THE LAW SOCIETY OF UPPER CANADA

### Notice of Motion made pursuant to Section 93 of By-Law 3 [Benchers, Convocation and Committees]

#### Notice is hereby given of the following motion to be made at Convocation on December 2, 2016

Whereas the Challenges Faced by Racialized Licensees Working Group (the "Working Group") and racialized communities have taken a leadership role in developing recommendations for Convocation to address direct and systemic discrimination against racialized licensees;

Whereas the recommendations seek to create a framework for equality initiatives that are also valuable and should be extended to licensees from other equality-seeking communities who are not racialized;

Whereas extending the recommendations facilitates an intersectional approach that recognizes that racialized and other equality-seeking licensees are vulnerable to compounded inequalities as members of more than one equality-seeking community;

And whereas extension of the recommendations to acknowledge the intersectionality of disadvantage and discrimination ensures that data is sufficiently comprehensive to support the goals of the Working Group's Report;

Whereas the recommendations of the Working Group's Report as adopted by Convocation will be implemented by the Law Society through staff as overseen by the Equity and Aboriginal Issues Committee and other committees as may be appropriate with input from the Equity Advisory Group and the Indigenous Advisory Group in the normal course;

#### I MOVE THAT:

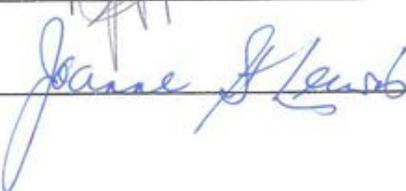
As it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

Mover: Barbara Murchie



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Seconder: Joanne St. Lewis



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November 9, 2016

*For Information:*

- Public Education Equality and Rule of Law Series Calendar Winter 2017

**TAB 3.3**

**FOR INFORMATION**

**EQUITY LEGAL EDUCATION AND RULE OF LAW  
SERIES CALENDAR**

**WINTER 2017**

There will be no Equity Legal Education Series events in January 2017. Additional information about Winter 2017 events will be available in mid-December 2016.

.....  
IN PUBLIC  
.....

*REPORTS FOR INFORMATION ONLY*

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society Financial Statements Nine Months Ended September 30, 2016
- LibraryCo Inc. Financial Statements Nine Months Ended September 30, 2016
- Investment Compliance Reporting
- Other Committee Work

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

TAB 10

**Report to Convocation  
December 2, 2016**

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**Audit & Finance Committee**

**Committee Members**

- Chris Bredt (Chair)**
- Suzanne Clément (Vice Chair)**
- Teresa Donnelly (Vice-Chair)**
- Peter Beach
- Paul Cooper
- Janis Criger
- Seymour Epstein
- Rocco Galati
- Michelle Haigh
- Vern Krishna
- Gina Papageorgiou
- Jan Richardson
- Andrew Spurgeon
- Cathy Strosberg
- Tanya Walker

**Purpose of Report: Information**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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Investment Compliance Reporting ..... TAB 10.3  
Other Committee Work ..... TAB 10.4

**COMMITTEE PROCESS**

1. The Audit & Finance Committee (“the Committee”) met on November 9, 2016. Committee members in attendance were Chris Bredt (Chair), Suzanne Clément (Vice Chair), Peter Beach, Paul Cooper, Janis Criger, Seymour Epstein, Vern Krishna, Gina Papageorgiou, Jan Richardson (phone), Andrew Spurgeon, Cathy Strosberg, and Tanya Walker. Robert Evans also attended.
2. Also in attendance: Michael Hawtin, Lauren Levine and Sadia Khan from PWC. Stephanie Kalinowski from Hicks Morley.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier, Mary Giovinazzo and Andrew Cawse.

TAB 10.1

**FOR INFORMATION****LAW SOCIETY OF UPPER CANADA FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2016**

6. **Convocation is requested to receive the third quarter financial statements for the Law Society for information.**

**Rationale**

7. This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.
8. The quarterly financial statements for the subsidiary, LibraryCo is included in this Committee material. The quarterly financial statements for the subsidiary, LAWPRO, will be presented to the Committee and Convocation after approval by LAWPRO's board.

**Law Society of Upper Canada  
Financial Statements  
For the nine months ended September 30, 2016**

**Financial Statement Highlights**

9. The Lawyer General Fund incurred a surplus of \$4.8 million at the end of the third quarter of 2016, compared to a surplus of \$2.6 million in 2015.
10. The Paralegal General Fund generated a surplus of \$1.3 million at the end of the third quarter of 2016 compared to \$945,000 at the end of the third quarter of 2015. For the year, the 2016 budget uses \$340,000 of the General Fund accumulated surplus as a source of funding to mitigate a fee increase for paralegals.
11. As noted on the Schedule of Revenues and Expenses for the Lawyer and Paralegal General Fund the total surplus for the nine months is \$6.1 million compared to a nominal deficit for the prorated budget for the period. In comparing revenues to budget, there are some large positive variances, specifically in the licensing process and other revenues such as late fees. In comparing expenses to budget, variances in the major income statement categories are all positive. While some variances from budget are attributable to timing differences, a surplus for the year is projected, although as set out on the Projection for the Year Ended December 31, the total lawyer and paralegal General Fund surplus is forecast to be closer to \$4 million because of the weighting of some expenses towards the end of the year.
12. The Law Society's restricted funds report a deficit of \$2.1 million (2015: deficit of \$8.7 million). The deficit in 2015 was primarily in the Lawyer Compensation Fund and in the current year the deficit primarily comprises:
  - \$927,000 in the Lawyer Compensation Fund as the claims from two major defalcations continue to be processed. The 2016 budget included a provision of \$700,000 to replenish the lawyer Compensation Fund balance.
  - \$2.2 million in the Invested in Capital Assets Fund, representing amortization.These deficits are slightly offset by a surplus of \$895,000 in the Errors & Omissions Insurance Fund from investment income.

**Potential Negative Variances**

13. At the end of June, the Ontario Court of Appeal dismissed Trinity Western University's (TWU) appeal of the Divisional Court's decision, upholding the Law Society's denial of accreditation of TWU's proposed law school. TWU has requested the Supreme Court of Canada to hear an appeal. The timing and extent of costs for this process is uncertain.

14. There is at least a reasonable possibility that one or more cost awards from the Law Society's regulatory proceedings may be awarded against the Law Society but the amount of any losses cannot be reliably estimated at this time. The Society has determined that the ultimate settlement for these costs awards could range from nil to approximately \$5 million, of which only \$500,000 has been included in accrued liabilities.

### **Background**

15. The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting.
16. The Financial Statements for the nine months ended September 30, 2016 comprise the following statements:
  - Balance Sheet
  - Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
  - Schedule of Restricted Funds
  - Supplemental schedules include Schedules of Revenues and Expenses for the Combined General Fund, Lawyer and Paralegal General Funds, the Compensation Fund, the Errors and Omissions Insurance Fund and a Combined General Fund Projection for the Year Ended December 31, 2016.

### **Statement of Revenues and Expenses and Change in Fund Balances**

17. The Lawyer General Fund has a surplus of \$4.8 million at the end of the third quarter of 2016, compared with a surplus of \$2.6 million in the first nine months of 2015. As noted in the highlights, the reasons for this positive financial performance are spread across most revenue and expense categories. The 2016 budget incorporated \$1.2 million in funding from surplus investment income in the E&O Fund which has not been used because of the General Fund surplus.
18. The Paralegal General Fund had a surplus of \$1.3 million versus a surplus of \$945,000 last year. The 2016 budget allocated \$340,000 from the General Fund accumulated surplus to mitigate fee increase for paralegals. Actual use of these funds is contingent on results for the year.
19. The Law Society's restricted funds report a deficit of \$2.1 million (2015: deficit of \$8.7 million). The deficit in 2015 was primarily in the Lawyer Compensation Fund and in the current year the deficit primarily comprises:
  - \$927,000 in the Lawyer Compensation Fund as the claims from two major defalcations continue to be processed. The 2016 budget included a provision of \$700,000 to replenish the lawyer Compensation Fund balance.
  - \$2.2 million in the Invested in Capital Assets Fund, representing amortization.

In the Errors & Omissions Insurance Fund, the current annual premium revenue typically matches current annual premium expenses. In 2016, revenue is higher than expenses for the first nine months due to investment income of \$0.9 million and there has been no premium contribution under the insurance contract with LAWPRO to mitigate insurance premiums for lawyers.

The Capital Allocation Fund had \$1.6 million in revenues and \$1.5 million in expenses. The Law Society is in the third year of a three year, \$8 million Information Technology capital plan.

20. Annual fee revenue is recognized on a monthly basis. One of the goals of having a three-year rolling budget is to stabilize fees and the 2016 budget maintained the annual fee for lawyers (\$1,866) and paralegals (\$996) at 2014 and 2015 levels although there were fluctuations in the individual fee components. Total annual fees recognized in the first nine months of the year of \$58.1 million have increased slightly compared to 2015 because the number of lawyers and paralegals billed increased. Based on the number of new lawyers and paralegals to date, the increase in the number of licensees will exceed budget in 2016.
21. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base annual premium of \$3,350 has not changed in recent years, with the increase in number of insureds leading to a slight increase in premium and levy revenue to \$80 million.
22. Professional development and competence revenue comprises licensing process and continuing professional development revenue:
  - Lawyer licensing process revenue has increased by \$500,000 to \$9.3 million. This revenue also significantly exceeds the prorated budget for the year and the 2017 budget has been increased as a result of this experience. The total lawyer Licensing Process fee for 2015-2016, including the fees for the initial application, the Barrister and Solicitor Licensing Examinations and the Call to the Bar is \$4,710, the same as last year. There is a higher number of licensing process candidates contributing to both the lawyer and paralegal licensing revenues. In addition, there is an increase in the number of candidates writing the exams multiple times. As noted in the expense section, the higher numbers have increased the expenses to administer exams.
  - At \$1.6 million, paralegal licensing process revenue is nominally higher than last year and is more than the prorated budget for the year.
  - Through September 2016, CPD revenue of \$5.2 million exceeds both the prior year comparative and the prorated budget by \$500,000. Traditionally, the Fall is CPD's busiest period.
23. At \$1.4 million, investment income continues the decreasing trend from previous years reflecting market conditions of low fixed income returns. The positive change in the fair

value of investments (\$1.4 million) compared to the loss in the comparative period also reflects market conditions.

24. Other income primarily comprises late fees, catering, monitoring & enforcement revenues, Ontario Reports and the LibraryCo administration fee.
25. Total regulatory expenses of \$20.3 million are effectively the same as last year and are under budget with spending constrained throughout the division, in particular some unfilled staff positions. The additional resources approved by Convocation in February are being phased in. The projection for complaints received in the division during this year follows the trend of slight decreases over recent years although the 2016 budget noted other factors such as increasing case complexity. Outside counsel fees are a significant variable expense and are at lower levels than the prorated budget.
26. Total professional development and competence expenses have increased from \$18.8 million to \$19.5 million. As approved in the 2016 budget, CPD staffing increased with more resources devoted to program development and webcast services. As this increase phases in, total CPD expenses of \$2.6 million are well under budget but slightly more than last year. In the Licensing Process, the higher candidate numbers have increased the expenses to administer exams. Also, there has been an increase in the number of candidates requiring special services, for instance rooms, chairs, proctors, software. At \$7.7 million, Licensing Process expenses are slightly more than budget and last year. Ultimately, the licensing process anticipates a net favourable position compared to budget at the end of the year.
27. Corporate services expenses include Finance & the CEO, Facilities, the Client Service Centre, Information Technology, Office of the General Counsel (OGC) and Human Resources and have decreased from \$17 million to \$16.7 million.
28. Convocation, Policy and Outreach Expenses include Policy, Equity, Public Affairs, Bencher expenses and Communications and at \$6 million are effectively the same as last year at this time. These expenses are under budget with bencher expenses being the biggest contributor to this variance although the timing of bencher remuneration and expenses is not regular and depends on submissions from benchers. The Society has received a \$400,000 grant from the Law Foundation of Ontario funding the development and delivery of Access to Justice initiatives.
29. Service to members and the public expenses primarily comprise the Law Society Referral Service, Catering, CANLII and the Member Assistance Plan and total \$3 million, slightly more than the first three quarters of 2015 and in line with the budget for the first three quarters of 2016.

**Schedule of Restricted Funds**

30. The Errors & Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Law Society which is administered by LAWPRO. The insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The Law Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies. The fund is reporting a surplus of \$895,000 (2015 - \$1.9 million deficit) due to investment income and the lack of any contribution in the current year to mitigate the base insurance levy for lawyers. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base premium of \$3,350 has not changed from 2014, with the increase in number of insured's leading to a slight increase in premium and levy revenue to \$80 million. Expenses in the Errors and Omissions Insurance Fund are consistent at \$80 million.
31. The lawyer Compensation Fund annual fee income increased from \$6.4 million in 2015 to \$7.4 million in line with the increase in the levy from \$225 to \$254 per lawyer. The paralegal levy also increased. The Compensation Fund's total investment results have swung from a small loss to income of \$1.3 million in 2016 due market conditions. Other income representing recoveries also substantially increased to \$547,000. Recoveries do not follow a pattern.
32. The Compensation Fund continues to experience a high claims experience with provision for unpaid grant expenses increasing from \$3.7 million in 2015 to \$4.3 million in 2016. The Compensation Fund balance management policy was amended by Convocation in September.
33. County Libraries Fund revenues and expenses are relatively static at \$5.7 million.
34. Use of the Parental Leave Assistance Plan, included in Other Restricted Funds, continues to decline with expenses of \$120,000 in the first nine months of 2016 compared to \$156,000 in 2015.

**Balance Sheet**

35. Cash and short-term investments have increased by \$7 million to \$61 million over the last twelve months after operating surpluses, capital transfers from portfolio investments and the investment manager adopting a conservative approach with an increased short-term orientation.
36. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

37. The Investment in LAWPRO totaling \$36 million is made up of two parts. The investment represents the share capital of \$5 million purchased in 1991 when LAWPRO was established, plus contributed capital of \$31 million accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.
38. Portfolio investments are shown at fair value of \$67 million, compared to \$70 million in 2015. The short-term components of these investments are re-categorized to the “cash and short-term investments” line on the balance sheet which have increased reflecting the investment manager’s asset mix. Approximately 20% of the portfolio is held in equity investments.
39. Deferred revenue (\$47 million) is made up of annual fees, licensing process revenues and insurance premiums which are recognized over the full year with the increased balance at the end of September reflecting the increased underlying revenues in 2016.
40. Due to LAWPRO (\$25 million) will decline by year-end as insurance premiums and levies collected are paid to LAWPRO.
41. The provision for unpaid grants of \$21 million (2015 - \$22 million) represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The Fund continues to process some large alleged defalcations on the part of certain licensees. The Compensation Fund describes a major defalcation as being over 35 claims arising from the conduct of one licensee in a single year and the Fund currently has two of these major defalcations. In September, Convocation approved an increase in the individual grant limit from \$150,000 to \$500,000.
42. The paralegal Compensation Fund provision for unpaid grants comprises \$178,000 of the total Compensation Fund provision for unpaid grants.
43. The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of September, unclaimed money held in trust amounts to nearly \$5 million, compared to \$4 million in the prior year.

#### **Other Schedules**

44. Supplementary budget to actual income and expense schedules for the Lawyer General Fund and the Paralegal General Fund are included. Significant variances have been analyzed above.
45. A supplementary income and expense schedule for the Compensation Fund is included with variances analyzed above.

46. A supplementary income and expense schedule for the E&O Fund is also shown with variances analyzed above.
47. A combined General Fund Projection for the Year Ended December 31, 2016 is also provided.

**Conclusion**

48. Overall, the first three quarters of the year have resulted in greater than projected revenues and less than projected expenses. The Law Society is on track to exceed its 2016 budget expectations, its financial position remains strong although claims against the Compensation Fund continue to reduce the fund balance.

**THE LAW SOCIETY OF UPPER CANADA****Balance Sheet***Unaudited**Stated in thousands of dollars**As at September 30*

	2016	2015
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	29,399	24,746
2 Short-term investments	31,689	29,677
3 Accounts receivable	24,627	18,235
4 Prepaid expenses	29,446	29,807
5 <b>Total current assets</b>	<b>115,161</b>	<b>102,465</b>
6 <b>Investment in subsidiaries</b>	<b>35,642</b>	<b>35,642</b>
7 <b>Portfolio investments</b>	<b>66,979</b>	<b>70,361</b>
8 <b>Capital assets</b>	<b>8,459</b>	<b>9,001</b>
9 <b>Intangible assets</b>	<b>548</b>	<b>903</b>
10 <b>Total Assets</b>	<b>226,789</b>	<b>218,372</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
11 Accounts payable and accrued liabilities	10,609	11,661
12 Deferred revenue	47,018	46,113
13 Due to LAWPRO	25,342	21,832
14 <b>Total current liabilities</b>	<b>82,969</b>	<b>79,606</b>
15 Provision for unpaid grants	21,199	22,200
16 Unclaimed trust funds	4,863	4,180
17 <b>Total Liabilities</b>	<b>109,031</b>	<b>105,986</b>
<b>Fund Balances</b>		
<b>General funds</b>		
18 Lawyers	26,102	22,705
19 Paralegals	5,163	3,919
<b>Restricted funds</b>		
20 Compensation - lawyers	13,978	12,553
21 Compensation - paralegals	595	346
22 Errors and omissions insurance	55,237	54,859
23 Capital allocation	6,868	7,225
24 Invested in capital and intangible assets	9,007	9,904
25 Other	808	875
26 <b>Total Fund Balances</b>	<b>117,758</b>	<b>112,386</b>
27 <b>Total Liabilities and Fund Balances</b>	<b>226,789</b>	<b>218,372</b>

**THE LAW SOCIETY OF UPPER CANADA****Statement of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016	2015	2016	2015	2016	2015	2016	2015
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total	
<b>Revenues</b>								
1 Annual fees	39,479	38,345	3,143	3,019	15,437	15,159	58,059	56,523
2 Insurance premiums and levies	-	-	-	-	79,945	78,593	79,945	78,593
3 Professional development and competence	13,835	13,020	2,330	2,158	-	-	16,165	15,178
4 Investment income	434	500	41	47	978	1,203	1,453	1,750
5 Change in fair value of investments	304	(409)	29	(39)	1,110	(1,592)	1,443	(2,040)
6 Other	5,464	5,303	684	709	644	174	6,792	6,186
7 <b>Total revenues</b>	<b>59,516</b>	<b>56,759</b>	<b>6,227</b>	<b>5,894</b>	<b>98,114</b>	<b>93,537</b>	<b>163,857</b>	<b>156,190</b>
<b>Expenses</b>								
8 Professional regulation, tribunals and compliance	18,578	18,500	1,759	1,747	-	-	20,337	20,247
9 Professional development and competence	17,903	17,227	1,580	1,539	-	-	19,483	18,766
10 Corporate services	15,226	15,563	1,442	1,474	-	-	16,668	17,037
11 Convocation, policy and outreach	5,518	5,461	440	456	-	-	5,958	5,917
12 Services to members and public	2,826	2,690	159	154	-	-	2,985	2,844
13 Allocated to Compensation Fund	(5,318)	(5,249)	(450)	(421)	-	-	(5,768)	(5,670)
14 Restricted	-	-	-	-	100,197	102,265	100,197	102,265
15 <b>Total expenses</b>	<b>54,733</b>	<b>54,192</b>	<b>4,930</b>	<b>4,949</b>	<b>100,197</b>	<b>102,265</b>	<b>159,860</b>	<b>161,406</b>
16 <b>Surplus (Deficit)</b>	<b>4,783</b>	<b>2,567</b>	<b>1,297</b>	<b>945</b>	<b>(2,083)</b>	<b>(8,728)</b>	<b>3,997</b>	<b>(5,216)</b>
17 <b>Fund balances, beginning of year</b>	<b>21,407</b>	<b>18,507</b>	<b>3,866</b>	<b>2,974</b>	<b>88,488</b>	<b>96,121</b>	<b>113,761</b>	<b>117,602</b>
18 <b>Interfund transfers</b>	<b>(88)</b>	<b>1,631</b>	<b>-</b>	<b>-</b>	<b>88</b>	<b>(1,631)</b>	<b>-</b>	<b>-</b>
19 <b>Fund balances, end of period</b>	<b>26,102</b>	<b>22,705</b>	<b>5,163</b>	<b>3,919</b>	<b>86,493</b>	<b>85,762</b>	<b>117,758</b>	<b>112,386</b>

**THE LAW SOCIETY OF UPPER CANADA****Schedule of Restricted Funds***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016							2015	
	Compensation Fund		Errors and omissions insurance	Capital allocation	Invested in capital and intangible assets	County libraries	Other restricted	Total Restricted funds	Total
	Lawyer	Paralegal							
1 <b>Fund balances, beginning of year</b>	14,905	441	54,342	6,716	11,185	-	899	88,488	96,121
<b>Revenues</b>									
2 Annual fees	7,441	550	-	1,563	-	5,683	200	15,437	15,159
3 Insurance premiums and levies	-	-	79,945	-	-	-	-	79,945	78,593
4 Investment income	560	53	365	-	-	-	-	978	1,203
5 Change in fair value of investments	594	56	460	-	-	-	-	1,110	(1,592)
6 Other	500	47	-	97	-	-	-	644	174
7 <b>Total revenues</b>	9,095	706	80,770	1,660	-	5,683	200	98,114	93,537
<b>Expenses</b>									
8 Allocated expenses	5,318	450	-	-	-	-	-	5,768	5,670
9 Direct expenses	4,704	102	79,875	1,527	2,178	5,747	296	94,429	96,595
10 <b>Total expenses</b>	10,022	552	79,875	1,527	2,178	5,747	296	100,197	102,265
11 <b>(Deficit) Surplus</b>	(927)	154	895	133	(2,178)	(64)	(96)	(2,083)	(8,728)
12 <b>Interfund transfers</b>	-	-	-	19	-	-	69	88	(1,631)
13 <b>Fund balances, end of period</b>	13,978	595	55,237	6,868	9,007	(64)	872	86,493	85,762

**THE LAW SOCIETY OF UPPER CANADA**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	41,364	42,622	42,667	(45)
2 Professional development and competence	15,178	16,165	13,778	2,387
3 Investment income	547	475	581	(106)
4 Change in fair value of investments	(448)	333	-	333
5 Other	6,012	6,148	5,297	851
6 <b>Total revenues</b>	<b>62,653</b>	<b>65,743</b>	<b>62,323</b>	<b>3,420</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	20,247	20,337	21,157	820
8 Professional development and competence	18,766	19,483	20,382	899
9 Corporate services	17,037	16,668	17,382	714
10 Convocation, policy and outreach	5,917	5,958	6,565	607
11 Services to members and public	2,844	2,985	3,048	63
12 Allocated to Compensation Fund	(5,670)	(5,768)	(5,964)	(196)
13 <b>Total expenses</b>	<b>59,141</b>	<b>59,663</b>	<b>62,570</b>	<b>2,907</b>
14 <b>Surplus (Deficit)</b>	<b>3,512</b>	<b>6,080</b>	<b>(247)</b>	<b>6,327</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	38,345	39,479	39,681	(202)
2 Professional development and competence	13,020	13,835	12,007	1,828
3 Investment income	500	434	513	(79)
4 Change in fair value of investments	(409)	304	-	304
5 Other	5,303	5,464	4,740	724
6 <b>Total revenues</b>	<b>56,759</b>	<b>59,516</b>	<b>56,941</b>	<b>2,575</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	18,500	18,578	19,282	704
8 Professional development and competence	17,227	17,903	18,558	655
9 Corporate services	15,563	15,226	15,709	483
10 Convocation, policy and outreach	5,461	5,518	6,011	493
11 Services to members and public	2,690	2,826	2,880	54
12 Allocated to Compensation Fund	(5,249)	(5,318)	(5,495)	(177)
13 <b>Total expenses</b>	<b>54,192</b>	<b>54,733</b>	<b>56,945</b>	<b>2,212</b>
14 <b>Surplus (Deficit)</b>	<b>2,567</b>	<b>4,783</b>	<b>(4)</b>	<b>4,787</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	3,019	3,143	2,986	157
2 Professional development and competence	2,158	2,330	1,771	559
3 Investment income	47	41	68	(27)
4 Change in fair value of investments	(39)	29	-	29
5 Other	709	684	557	127
6 <b>Total revenues</b>	<b>5,894</b>	<b>6,227</b>	<b>5,382</b>	<b>845</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	1,747	1,759	1,875	116
8 Professional development and competence	1,539	1,580	1,824	244
9 Corporate services	1,474	1,442	1,673	231
10 Convocation, policy and outreach	456	440	554	114
11 Services to members and public	154	159	168	9
12 Allocated to Compensation Fund	(421)	(450)	(469)	(19)
13 <b>Total expenses</b>	<b>4,949</b>	<b>4,930</b>	<b>5,625</b>	<b>695</b>
14 <b>Surplus (Deficit)</b>	<b>945</b>	<b>1,297</b>	<b>(243)</b>	<b>1,540</b>

**THE LAW SOCIETY OF UPPER CANADA****Compensation Fund****Schedule of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016			2015		
	Lawyers	Paralegals	Total	Lawyers	Paralegals	Total
<b>Revenues</b>						
1 Annual fees	7,441	550	7,991	6,416	458	6,874
2 Investment income	560	53	613	683	65	748
3 Change in fair value of investments	594	56	650	(931)	(88)	(1,019)
4 Recoveries	500	47	547	91	-	91
5 <b>Total Revenues</b>	<b>9,095</b>	<b>706</b>	<b>9,801</b>	<b>6,259</b>	<b>435</b>	<b>6,694</b>
<b>Expenses</b>						
6 Provision for unpaid grants	4,292	63	4,355	3,685	55	3,740
7 Spot audit	2,741	260	3,001	2,728	258	2,986
8 Share of investigation and discipline	1,485	82	1,567	1,454	80	1,534
9 Administrative	1,106	147	1,253	1,070	122	1,192
10 Salaries and benefits	398	-	398	387	-	387
11 <b>Total Expenses</b>	<b>10,022</b>	<b>552</b>	<b>10,574</b>	<b>9,324</b>	<b>515</b>	<b>9,839</b>
12 <b>(Deficit) Surplus</b>	<b>(927)</b>	<b>154</b>	<b>(773)</b>	<b>(3,065)</b>	<b>(80)</b>	<b>(3,145)</b>
13 Fund balances, beginning of year	14,905	441	15,346	15,618	426	16,044
14 <b>Fund Balances, end of period</b>	<b>13,978</b>	<b>595</b>	<b>14,573</b>	<b>12,553</b>	<b>346</b>	<b>12,899</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Errors and Omissions Insurance Fund**  
**Schedule of Revenues and Expenses and Change in Fund Balance**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	<b>2016</b>	<b>2015</b>
	<b>Actual</b>	<b>Actual</b>
<b>REVENUES</b>		
1 Insurance premiums and levies	<b>79,945</b>	78,593
2 Investment income	<b>365</b>	455
3 Change in fair value of investments	<b>460</b>	(573)
4 Other income	-	-
5 <b>Total revenues</b>	<b>80,770</b>	<b>78,475</b>
<b>EXPENSES</b>		
6 Administrative	-	-
7 Claims	<b>(70)</b>	(47)
8 Insurance	<b>79,945</b>	80,468
9 <b>Total expenses</b>	<b>79,875</b>	<b>80,421</b>
10 <b>Surplus (Deficit)</b>	<b>895</b>	(1,946)
10 Interfund transfers	-	(1,500)
11 Change in fund balance	<b>895</b>	(3,446)
12 Fund balance, beginning of year	<b>54,342</b>	58,305
13 Fund balance, end of period	<b>55,237</b>	54,859

**THE LAW SOCIETY OF UPPER CANADA**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*Projection for the year ended December 31, 2016*

	9 Month Actual	2016 Projection	Annual Budget
<b>REVENUES</b>			
1 Annual fees	42,622	56,829	57,539
2 Professional development and competence	16,165	21,553	20,138
3 Investment income	475	633	775
4 Change in fair value of investments	333	444	-
5 Other	6,148	8,197	7,067
<b>6 Total revenues</b>	<b>65,743</b>	<b>87,657</b>	<b>85,519</b>
<b>EXPENSES</b>			
7 Professional regulation, tribunals and compliance	20,337	28,479	29,393
8 Professional development and competence	19,483	27,284	27,420
9 Corporate services	16,668	23,341	24,470
10 Convocation, policy and outreach	5,958	8,343	10,430
11 Services to members and public	2,985	4,180	4,055
12 Allocated to Compensation Fund	(5,768)	(8,077)	(8,708)
<b>13 Total expenses</b>	<b>59,663</b>	<b>83,551</b>	<b>87,059</b>
<b>14 Surplus (Deficit)</b>	<b>6,080</b>	<b>4,107</b>	<b>(1,540)</b>

**TAB 10.2**

**FOR INFORMATION  
LIBRARYCO INC. FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED  
SEPTEMBER 30, 2016**

49. **Convocation is requested to receive the third quarter financial statements for LibraryCo Inc. for information.**

**Rationale**

50. The quarterly financial statements have been presented to the LibraryCo Board.

**LIBRARYCO INC.  
FINANCIAL REPORT  
For the nine months ended September 30, 2016**

**KEY POINT SUMMARY**

Overall Results

51. Results for the third quarter identify a deficit of \$5,968 compared to a budgeted deficit of \$102,988 for the 9 months. The 2016 budget envisages a \$143,000 deficit for the year through the use of the General Fund balance.
52. The positive variance from budget of \$97,020 is spread across most expense categories particularly consulting fees, publications, the group benefit plan and the bursaries, capital and special needs expenses.

Revenues

53. The Law Society grant (line 1) includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was \$5.7 million and matched budgeted amounts for the period.
54. Interest Income (line 2) is earned on LibraryCo's cash and short term investments.

Expenses

55. Total expenses (line 16) were \$5,725,491 compared to a budgeted total for the period of \$5,849,489.
56. The administration expense (line 4) of \$228,750 represents the fee paid to the Law Society and equals budget. The fee was reduced from 2015.
57. Professional fees (line 5) include audit expenses and consulting fees. The consulting fee budget remains unspent which has resulted in a positive variance of \$13,095. Unspent amounts will be used to augment the budget for transition expenses.
58. Transition expenses (line 6) of \$85,852 represents three of the four payments for a user needs survey. Expenses associated with the transition initiative are projected to exceed the total transition expense budget of \$84,836 by approximately \$40,000. The currently unused budget of \$17,000 for consulting and positive variances in other expense accounts can be used to fund the full amount.
59. Other head-office expenses (line 7) include the production of the Annual Report, head office courier/postage costs, Directors and Officers insurance, bank charges, website maintenance costs, the cost of providing most libraries with a toll free telephone number and governance meeting expenses.

60. Totalling \$13,449, other head-office expenses are lower than budget for the period by approximately \$24,454 primarily as a result of underspending for the production of the Annual Report, board of directors' meetings, web initiatives, toll free telephone charges, and miscellaneous expenses.
61. Electronic product expenses of \$254,250 (line 9) are in line with the agreement with LexisNexis and budget.
62. Group benefits and insurance (line 10) of \$234,334 consist of the Group Benefits for enrolled library staff and library D&O and property insurance.
63. Group benefits and insurance are lower than budget by \$21,818 as group benefits premiums are negotiated after the budget and these are budgeted conservatively. Based on the program's claims experience, a return of premium is unlikely in the current year.
64. Given that both the D&O and property insurance policies expired at the end of April, a conservative increase in insurance for the remainder of 2016 was also taken into consideration when budgeting for 2016.
65. Other centralized expenses (line 11) of \$46,773 include continuing education bursaries for library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 law libraries, and the Federation of Ontario Law Associations' (FOLA) meeting expenses for their Library Committee.
66. Other centralized expenses are lower than budget by \$22,352 due to underspending in continuing education bursaries, publications and courier costs.
67. County and District law libraries grants (line 13) are in line with budget at \$4,857,573 and increased from 2015.
68. Bursaries, capital and special needs grants (line 14) of \$25,766 consist of computer refreshment grants, special needs grants and conference bursaries for library staff. Computer purchases by the libraries during the year do not follow a pattern.

#### Balance Sheet

69. Short-term investments (line 2) of \$402,159 consist of a one year GIC and accrued interest.
70. Accounts receivable (line 3) are long term disability benefits premiums paid by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.
71. Prepaid expenses (line 4) primarily represent the property and D&O insurance policies for LibraryCo and the libraries which were renewed at the end of April.

72. Accounts payable and accrued liabilities (line 6) are \$16,675 higher than 2015 due to the accrual for Phase 5's third invoice.
73. The General Fund has increased to \$247,113. The 2016 budget forecasted a decrease of \$143,000 during the year however, based on information available at September 30, 2016, estimates for year-end show a decrease in the General Fund of approximately \$70,000, meaning a projected General Fund balance at 2016 year-end of \$183,000. LibraryCo's budget for 2017 envisages using \$158,000 of this fund balance to finance operations next year.
74. The Reserve Fund has a balance at the end of September of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

**LIBRARYCO INC.****Schedule of Actual and Budgeted Revenues and Expenses**

Stated in Dollars

*For the nine months ended September 30*

Unaudited

	2016 Actual	YTD Budget	Variance	Annual Budget	2015 Actual
<b>REVENUES</b>					
1 Law Society of Upper Canada grant	5,746,501	5,746,501	-	7,662,000	5,772,001
2 Interest income	3,683	-	3,683	-	4,699
3 <b>Total revenues</b>	<b>5,750,184</b>	<b>5,746,501</b>	<b>3,683</b>	<b>7,662,000</b>	<b>5,776,700</b>
<b>EXPENSES</b>					
<b>Head office/administration</b>					
4 Administration	228,750	228,750	-	305,000	322,500
5 Professional fees	9,405	22,500	13,095	30,000	11,028
6 Transition expenses	85,852	84,836	(1,016)	84,836	-
7 Other	13,449	37,903	24,454	49,300	26,188
8 <b>Total Head office/administration expenses</b>	<b>337,456</b>	<b>373,989</b>	<b>36,533</b>	<b>469,136</b>	<b>359,716</b>
<b>Law Libraries - centralized purchases</b>					
9 Electronic products and services	254,250	254,250	-	339,000	254,250
10 Group benefits and insurance	234,334	256,152	21,818	345,000	225,953
11 Other	46,773	69,125	22,352	130,700	59,514
12 <b>Total Law Libraries - centralized purchases</b>	<b>535,357</b>	<b>579,527</b>	<b>44,170</b>	<b>814,700</b>	<b>539,717</b>
13 County and District law libraries - grants	4,857,573	4,857,573	-	6,476,764	4,757,804
14 Bursaries, capital and special needs grants	25,766	38,400	12,634	44,400	24,397
15 <b>Total County and District Law Libraries Expenses</b>	<b>4,883,339</b>	<b>4,895,973</b>	<b>12,634</b>	<b>6,521,164</b>	<b>4,782,201</b>
16 <b>Total expenses</b>	<b>5,756,152</b>	<b>5,849,489</b>	<b>93,337</b>	<b>7,805,000</b>	<b>5,681,634</b>
17 <b>Surplus (Deficit)</b>	<b>(5,968)</b>	<b>(102,988)</b>	<b>97,020</b>	<b>(143,000)</b>	<b>95,066</b>

*This statement includes the revenues and expenses of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Balance Sheet**  
**Stated in Dollars**  
*As at September 30*  
**Unaudited**

	<b>2016</b>	<b>2015</b>
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	338,368	311,621
2 Short-term investments	402,159	402,447
3 Accounts receivable	20,925	19,980
4 Prepaid expenses	54,041	54,079
5 <b>Total Assets</b>	<b>815,493</b>	<b>788,127</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Current Liabilities</b>		
6 Accounts payable and accrued liabilities	68,180	51,505
7 <b>Total Liabilities</b>	<b>68,180</b>	<b>51,505</b>
<b>Share Capital and Fund Balances</b>		
8 Share capital	200	200
9 General fund	247,113	236,422
10 Reserve fund	500,000	500,000
11 <b>Total Share Capital and Fund Balances</b>	<b>747,313</b>	<b>736,622</b>
12 <b>Total Liabilities, Share Capital and Fund Balances</b>	<b>815,493</b>	<b>788,127</b>

*This Balance Sheet includes the financial resources of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Statement of Changes in Fund Balances**  
**Stated in Dollars**  
*For the nine months ended September 30*

	2016		2015	
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	253,081	500,000	<b>753,081</b>	<b>641,356</b>
2 Surplus (Deficit)	(5,968)	-	<b>(5,968)</b>	<b>95,066</b>
<b>3 Balance, end of period</b>	<b>247,113</b>	<b>500,000</b>	<b>747,113</b>	<b>736,422</b>

*This statement includes the fund balances of the LibraryCo entity only.*

**TAB 10.3**

**FOR INFORMATION**

**INVESTMENT COMPLIANCE REPORTS**

75. Investment Compliance Reports for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund portfolios as at September 30, 2016 are for information and appear on the following page. No exceptions are noted.

**STATEMENT OF INVESTMENT COMPLIANCE  
SHORT TERM  
As at September 30, 2016**

Investment Parameters	Guidelines for Both	COMPENSATION	GENERAL
		Compliance	Compliance
1. <u>Asset Mix</u>			
Federal & provincial treasury bills	Allowed	Yes	Yes
Bankers acceptances	Allowed	Yes	Yes
Commercial paper	Allowed	Yes	Yes
Investment manager Money Market Fund	Allowed	Yes	Yes
Premium Savings Account	Allowed	Yes	Yes
FGP S/T Invest Fund	Allowed	Yes	Yes
2. <u>Quality Requirements</u>			
Commercial paper rating	Min. R1	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes
3. <u>Quantity Restrictions</u>			
Commercial paper of a single corporate issuer	Max. 8% of Fund	Yes	Yes
4. <u>Other Restrictions</u>			
Equity securities	None	Yes	Yes
Direct investments in:			
resource properties	None	Yes	Yes
mortgages and mortgage-backed securities	None	Yes	Yes
real estate	None	Yes	Yes
venture capital financings	None	Yes	Yes
Derivatives	None	Yes	Yes




---

Fred Grady  
Senior Manager, Finance

**STATEMENT OF INVESTMENT COMPLIANCE  
LONG TERM  
As at September 30, 2016**

Investment Parameters	Guidelines	Target	COMPENSATION	GENERAL	E & O
			FUND	FUND	FUND
			Compliance	Compliance	Compliance
1. <u>Asset Mix</u>					
Cash and Short-Term	0 - 15%	0%	Yes	Yes	Yes
Equity investments	5 - 25%	15%	Yes	Yes	Yes
Bonds	60 - 95%	85%	Yes	Yes	Yes
2. <u>Quality Requirements</u>					
Bonds	Min. BBB		Yes	Yes	Yes
3. <u>Quantity Restrictions</u>					
Equities:					
Single holding	Max. 10%		Yes	Yes	Yes
Weight in portfolio > weight in S&P/TSX Composite Index	Varies		Yes	Yes	Yes
Derivatives etc.	None		Yes	Yes	Yes
Non-Canadian	None		Yes	Yes	Yes
Bonds:					
Government of Canada or Government of Canada guaranteed bond	26-100%	46%	Yes	Yes	Yes
Provincial Government and Provincial Government guaranteed bonds and municipal bonds	0-38%	18%	Yes	Yes	Yes
Corporate Bonds*	0-56%	36%	Yes	Yes	Yes
* Target for BBB bonds within corporate bonds of the fixed income portfolio	8-18%	8%	Yes	Yes	Yes



Fred Grady  
Senior Manager, Finance

**The Law Society of Upper Canada  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending September 30, 2016)**

<b>1. Asset Mix:</b>	<b>Min.</b>	<b>Mid-Point</b>	<b>Max.</b>	<b>Compliance* (Y/N)</b>
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>5%</b>	<b>15%</b>	<b>25%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
<b>Each bond portfolio may be invested within the following parameters:</b>				
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			<b>Y</b>
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			<b>Y</b>
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			<b>Y</b>
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			<b>Y</b>
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				<b>Y</b>
Bond portfolio duration 1 to 5 years.				<b>Y</b>
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				<b>Y</b>

Note: In mid-June 2014 Law Society Compensation Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

October 27, 2016  
Date:

Colin Ripsman  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

**The Law Society of Upper Canada  
General Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending September 30, 2016)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
Canadian Equity	5%	15%	25%	Y
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			Y
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			Y
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			Y
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Note: In mid-June 2014 Law Society General Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

Date:

*October 28, 2016*

*Colin Ripsman*  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services



October 2016

Ms. Wendy Tysall  
Chief Financial Officer  
Osgoode Hall  
Finance Dept., 1<sup>st</sup> Floor  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6

Dear Wendy:

**Re: Manager Compliance Reporting**

For the Law Society of Upper Canada Errors and Omissions Insurance Fund, we wish to confirm that the portfolio being managed by Foyston, Gordon & Payne Inc. was in compliance with the Fund's Investment Policy Statement dated May 2016, for the quarter ending September 30, 2016.

Yours truly,

Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

**TAB 10.4****FOR INFORMATION****OTHER COMMITTEE WORK**

76. The Committee received pension plan governance fiduciary training and adopted a revised Statement of Investment Policies and Procedures for the Law Society's pension plan and the Plan Text. Under its mandate, the Committee is the administrator of the registered pension plan for the employees of the Society.
77. The Committee met with the Law Society's auditors, PwC, on planning the audit for the 2016 financial year including views on audit risks, the nature, extent and timing of audit work, as well as proposed fees and the terms of engagement.
78. The Committee discussed the process for a possible revision to the Investment Policy for the Law Society increasing the equity component of the portfolio.
79. The Committee commenced a review of the Treasurer Expense Reimbursement Policy to assess the need for revisions to the policy and reporting of activities.

TAB 11



November 22, 2016

## Update Report TAG – The Action Group on Access to Justice

### Addiction in the Legal Profession

On November 28, 2016 TAG co-hosted a continuing professional development session with the Canadian Institute for the Administration of Justice titled *Addiction in the Legal Profession*. The keynote speaker was Patrick Krill, author of [“The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys.”](#) a study that was published in the *Journal of Addiction Medicine*. The discussion explored culture change, ethical issues and practical strategies related to addressing high rates of addiction in the legal profession. The webcast will be available on the [TAG website](#).

### Podcast

TAG will be launching a podcast in the coming weeks that explores different dimensions of the access to justice crisis. Receive the latest updates by subscribing to [TAG’s mailing list](#).

### Access to Justice Week

Access to Justice Week follow-up materials are now available on the [TAG website](#).



CONVOCATION ROSE AT 5:06 P.M.

Confirmed in Convocation this 23<sup>rd</sup> day of February, 2017.

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Paul B. Schabas,  
Treasurer

This is **Exhibit L** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

MINUTES OF CONVOCATION

Friday, 2<sup>nd</sup> December, 2016  
8:30 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), Anand, Armstrong, Banack, Beach, Bickford, Boyd (by telephone), Braithwaite, Bredt, Burd (by telephone), Callaghan, Chrétien, Clément, Cooper, Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Falconer, Finkelstein (by telephone), Furlong, Galati, Go, Goldblatt, Groia, Haigh, Hartman (by telephone), Horvat, Krishna, Lawrie, Leiper (by telephone), Lem, Lerner, Lippa, MacLean, Manes (by telephone), McDowell, McGrath, Merali, Mercer, Millar, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Porter (by telephone), Potter, Richardson, Richer, Rosenthal (by telephone), Ross, Ruby (by telephone), Sharda (by telephone), Sheff, Sikand, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg (by telephone), Swaye, Troister, Udell, Vespry, Walker, Wardle and Wright.

.....

Secretary: James Varro

The Reporter was sworn.

.....  
IN PUBLIC  
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### TREASURER'S REMARKS

The Treasurer welcomed everyone joining Convocation by webcast.

The Treasurer recognized that Convocation is meeting in Toronto, which is a Mohawk word that means “where there are trees standing in the water.”

The Treasurer acknowledged that Convocation is meeting in the traditional territory of the Mississaugas of New Credit First Nation and also acknowledged the Haudenosaunee, and recognized the long history of all First Nations in Ontario and the Métis and Inuit peoples, and thanked the First Nations people who lived and live in their lands for sharing them with us in peace.

The Treasurer welcomed everyone to Convocation in the Lamont Learning Centre, including public attendees.

The Treasurer addressed protocols for Convocation in the Lamont Learning Centre.

The Treasurer advised that he attended the launch of the Coach and Advisor Network on November 24, 2016 and thanked Diana Miles and Kerry Boniface for their work on this initiative.

The Treasurer advised that he recently hosted a dinner for the new Indigenous Legal Issues Specialist Certification designation. The Treasurer thanked the Law Society staff team and volunteer subject matter advisors for their work on the initiative.

The Treasurer noted his meetings with the Minister of Justice and Attorney General for Ontario last week.

The Treasurer reminded benchers that the Honourable Justice Annemarie E. Bonkalo will be submitting her Family Law Services Review Report to the Attorney General and the Law Society by the end of December.

The Treasurer announced the recipients of the Law Society Human Rights Award:

- Dr. Cindy Blackstock
- Waleed Abu al-Khair

and that the awards will be bestowed at a ceremony on February 22, 2017.

The Treasurer reminded benchers that nominations for the Law Society Awards close on January 27, 2017.

The Treasurer thanked Policy Counsel Sophia Sperdakos, who will be leaving the Law Society this month, for her outstanding contribution to the work of the Law Society over the past 26 years.

MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. MacLean, seconded by Mr. Anand, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

**Tab 1**

**THE LAW SOCIETY OF UPPER CANADA**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

MOVED BY: Virginia MacLean

SECONDED BY: Raj Anand

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of November 9 and 17, 2016 were confirmed.

DRAFT

MINUTES OF CONVOCATION

Wednesday, 9<sup>th</sup> November, 2016  
9:00 a.m.

PRESENT:

The Treasurer (Paul B. Schabas), Anand, Armstrong, Beach, Bickford, Boyd (by telephone), Braithwaite, Bredt, Burd, Callaghan, Chrétien, Clément, Cooper, Copeland (by telephone), Corbiere, Corsetti, Criger, Donnelly, Earnshaw, Epstein, Evans, Ferrier, Finkelstein (by telephone), Furlong, Galati, Goldblatt, Gottlieb, Groia, Haigh, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacKenzie (by telephone), MacLean, McDowell, McGrath, Merali, Mercer, Murchie, Murray, Nishikawa, Papageorgiou, Pawlitza, Porter, Potter, Richardson (by telephone), Richer, Rosenthal, Ross, Ruby (by telephone), Sharda, Sheff, Spurgeon, St. Lewis, C. Strosberg, H. Strosberg, Swaye (by telephone), Troister, Udell (by telephone), Vespry, Wardle and Wright.

.....

Secretary: James Varro

The Reporter was sworn.

.....

IN PUBLIC

.....

TREASURER’S REMARKS

The Treasurer welcomed those joining Convocation by webcast.

The Treasurer recognized that the meeting is held in Toronto, which is a Mohawk word meaning “where there are trees standing in the water”, and thanked the First Nations people who lived and live in these lands for sharing them with us in peace. The Treasurer also acknowledged that Convocation is meeting on the traditional territory of the Mississaugas of New Credit First Nation, acknowledged the Haudenosaunee, and recognized the long history of all First Nations in Ontario and the Métis and Inuit peoples.

The Treasurer advised that December 2, 2016 Convocation will be held in the Lamont Learning Centre.

The Treasurer expressed condolences to the family of former appointed benchers Robert Tebbutt, of Toronto and Andrew Coffey of Thunder Bay, who recently passed away.

The Treasurer informed Convocation of the work of the Treasurer's Appointments Advisory Group, and the urgent request for nominees for the federal Judicial Advisory Committees for Ontario, and encouraged benchers to provide names of appropriate individuals for consideration.

The Treasurer informed benchers of The Action Group (TAG)'s very successful Access to Justice Week, and noted the interest expressed in the Law Society's Public Perceptions of Access to Justice in Ontario study. The Treasurer congratulated Sabreena Delhon, Law Society staff, for her efforts in supporting this event.

The Treasurer announced the formation and composition of the Legal Aid Working Group and referred to its terms of reference at Tab 12 of the Convocation materials.

The Treasurer informed Convocation of various outreach initiatives and meetings, including the Federation of Law Societies of Canada's meeting in St. Andrews-by-the-Sea, New Brunswick, a meeting with the Treasurer's Liaison Group and various conferences, including that of the Federation of Ontario Law Associations (FOLA).

The Treasurer congratulated Sandra Nishikawa on receiving the Lawyer of Distinction Award at the Federation of Asian Canadian Lawyers' 10<sup>th</sup> Annual Conference and Gala on October 29, 2016.

The Treasurer advised of upcoming events, including the Remembrance Day ceremony tomorrow, Louis Riel Day on November 17, 2016, and the Paralegal Welcome Reception on December 1, 2016.

The Treasurer advised that nominations are now open for the Law Society Awards, and that nominations close on January 27, 2017.

#### MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Clément, seconded by Mr. Burd, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of September 22, 2016 were confirmed.

#### Tab 1.2 – MOTION – COMMITTEE AND OTHER APPOINTMENTS

THAT Janis Criger be appointed to the Governance Task Force 2016.

THAT Ross Earnshaw and Janet Leiper be appointed to the Priority Planning Committee.

THAT Janis Criger, Isfahan Merali, Sandra Nishikawa and Joanne St. Lewis be appointed to the Appeal Division of the Law Society Tribunal for a term ending May 25, 2017.

THAT Teresa Donnelly be removed from the Hearing Division of the Law Society Tribunal at her own request.

THAT Susan E. Opler and Judith M. Potter be removed from the Hearing and Appeal Divisions of the Law Society Tribunal at their own request.

Carried

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Donnelly presented the Report.

Re: Human Rights Monitoring Group Requests for Intervention

It was moved by Ms. Donnelly, seconded by Ms. St. Lewis, that Convocation approve the letters and public statements in the following cases:

- a. Ramón Cadena Rámila – as set out at Tab 4.1.1.
- b. Jamshed Yorov – as set out at Tab 4.1.2.

Carried

*For Information:*

- Public Education Equality and Rule of Law Series Calendar 2016

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Wardle presented the Report

Re: Pathways Pilot Project Review

It was moved by Mr. Wardle, seconded by Mr. Goldblatt, that Convocation:

1. approve an extension of the current Pathways Pilot Project for two years, specifically the 2017-2018 and 2018-2019 licensing years;
2. at this time, withdraw consideration of the recommendations at paragraphs 3 and 4 of the September 22, 2016 PD&C Committee Report to Convocation;

3. direct that an analysis of the licensing process be undertaken for the purpose of making long-term recommendations for an appropriate, sustainable Law Society licensing process;
4. approve that in the first quarter of 2017, the PD&C Committee provide Convocation with:
  - a. a report identifying the issues that should be the focus of the analysis and a proposed plan to address them;
  - b. a proposal for an engagement strategy that will involve relevant stakeholders throughout the process; and
  - c. a budget that will address resource requirements, including staffing and research resources.

CarriedAUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: 2017 LibraryCo Inc. Budget

It was moved by Mr. Bredt, seconded by Ms. Clément, that Convocation approve the LibraryCo Inc. budget for 2017 incorporating Law Society funding of \$7,815,300.

CarriedRe: 2017 Law Society Budget

It was moved by Mr. Bredt, seconded by Ms. Clément, that Convocation approve the Law Society's 2017 Budget, including the annual fee amounts as follows:

For lawyers:

General Fee	1,329
Compensation Fund	289
LibraryCo	194
Capital	104
<u>Total</u>	<u>\$1,916</u>

For paralegals:

General Fee	788
Compensation Fund	154
Capital	104
<u>Total</u>	<u>\$1,046</u>

and \$4.8 million allocated from the Lawyer General Fund balance and \$600,000 from the accumulated surplus investment income in the E&O Fund to mitigate the fee increase for lawyers, and \$1 million allocated from the Paralegal General Fund balance to mitigate the fee increase for paralegals.

Carried

*For Information:*

- Performance of Portfolio Manager

GOVERNANCE TASK FORCE 2016

Ms. Leiper, chair of the Task Force, updated Convocation on its work to date.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. McDowell presented the Report.

Re: Expanded Use of Regulatory Meetings by the Proceedings Authorization Committee

It was moved by Mr. McDowell, seconded by Ms. Strosberg, that Convocation expand the circumstances in which the Proceedings Authorization Committee may authorise the invitation of a licensee to a Regulatory Meeting by removing the requirement that the conduct has been the subject of comment in a public forum.

Carried

Re: Advertising and Fee Arrangements Issues Working Group

Mr. Mercer, chair of the Working Group, provided an update on its work.

*For Information:*

- Update on Work of the Advertising and Fee Arrangements Issues Working Group

TRIBUNAL COMMITTEE REPORT

Ms. Murchie presented the Report.

Re: Amendments to the Law Society Tribunal Hearing Division and Appeal Division Rules of Practice and Procedure

It was moved by Ms. Murchie, seconded by Ms. Merali, that Convocation approve the proposed English and French amendments to the Law Society Tribunal Hearing Division and Appeal Division Rules of Practice and Procedure, effective January 1, 2017, set out in the Motion at Tab 6.1.1.

Carried

SECRETARY'S REPORT

Ms. McGrath presented the Report.

Re: Amendments to By-Law 6

It was moved by Ms. McGrath, seconded by Ms. Criger, that Convocation make the amendments to By-Law 6 [Professional Liability Insurance] as set out in the motion at Tab 7.1 respecting lawyers who are seconded to corporate clients to provide professional services to them.

Carried

.....

IN PUBLIC

.....

*REPORT FOR INFORMATION ONLY*

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

CONVOCATION ROSE AT 12:48 P.M.

Tab 1.2 – MOTIONSTab 1.2.1 – Appointments

THAT Gisèle Chrétien, Ross Earnshaw, Jacqueline Horvat and W. A. Derry Millar be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2016.

THAT Isfahan Merali be removed from the Human Rights Monitoring Group at her own request.

THAT Michelle Haigh be appointed to the Litigation Committee.

Carried

**Tab 1.2.1**

**THE LAW SOCIETY OF UPPER CANADA**MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

THAT Gisèle Chrétien, Ross Earnshaw, Jacqueline Horvat and W. A. Derry Millar be reappointed to the LibraryCo Inc. Board of Directors for a one year term commencing December 31, 2016.

THAT Isfahan Merali be removed from the Human Rights Monitoring Group at her own request.

THAT Michelle Haigh be appointed to the Litigation Committee.

Tab 1.2.2 – Proposed Amendment to The Law Society Tribunal Appeal Division Rules Of Practice And Procedure

THAT effective January 1, 2017, Convocation amend the Law Society Tribunal Appeal Division Rules of Practice and Procedure, made by Convocation on March 12, 2014 and amended by Convocation on October 30, 2014, June 23 and November 9, 2016 by revoking the General Heading form and replacing it with the proposed amended form as set at Tab 1.2.2.

Carried

**Tab 1.2.2**

THE LAW SOCIETY OF UPPER CANADA

**LAW SOCIETY TRIBUNAL**

**RULES OF PRACTICE AND PROCEDURE**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON DECEMBER 2, 2016

THAT effective January 1, 2017, Convocation amend the Law Society Tribunal Appeal Division Rules of Practice and Procedure, made by Convocation on March 12, 2014 and amended by Convocation on October 30, 2014, June 23 and November 9, 2016 by revoking the General Heading form and replacing it with the following:

**GENERAL HEADING**

**APPEAL**

*(Law Society Tribunal file No.)*

**LAW SOCIETY TRIBUNAL  
APPEAL DIVISION**

BETWEEN:

*(name)*

Appellant

and

*(name)*

Respondent in appeal

*(Title of document)*

*(Text of document)*

**TITRE GÉNÉRAL**

**APPEL**

*(N° de dossier du Tribunal du Barreau)*

**TRIBUNAL DU BARREAU  
SECTION D'APPEL**

ENTRE :

*(nom)*

Appelant

et

*(nom)*

Intimé en appel

*(Titre du document)*

*(Texte du document)*

Tab 1.3 – REPORT OF THE EXECUTIVE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

THAT the Report of the Executive Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

**Tab 1.3**

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Executive Director of Professional Development and Competence reports as follows:

---

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Friday, December 2<sup>nd</sup> 2016

ALL OF WHICH is respectfully submitted

DATED this 2<sup>nd</sup> day of December, 2016

**CANDIDATES FOR CALL TO THE BAR**  
**December 2<sup>nd</sup> 2016**

**Transfer from another province (Mobility)**

Maral Dolatabadi Alacer  
Ryan Gurshan Singh Ghuman  
Aubrey Breughel Guild-Young  
Shari Jeanette Leahy  
Lianne Marie Locke  
Zhicheng Ma  
Gayatri Nicholas  
Sara Katherine Robinson

**L3**

Julie-Anne Marie Rose Pariseau  
Peter William Hutchins

REPORT OF THE CHIEF EXECUTIVE OFFICER

Mr. Lapper presented the Chief Executive Officer's Report for information.



## CEO's REPORT

This has been a particularly busy period for operations at the Law Society. Since my last report to Convocation in June 2016, outside of day to day regulatory activities the organization has focused much of its efforts on the following initiatives:

- Budget planning for 2017 and beyond;
- Review of Professional Regulation Division processes and structure;
- Development and launch of the new Coach and Advisor Network program;
- Administration and ongoing review of LibraryCo and library services;
- Development and roll-out of the Share-Point based case management system for the Law Society Tribunal;
- Completion of a risk assessment to support the Relationship Management System Project;
- Completion of a Law Society Diversity Census and Inclusion Survey;
- Completion of an Employee Engagement and Enablement Survey;
- Ongoing work on various policy initiatives including Challenges Faced by Racialized Licensees, review of the Law Practice Program, advertising and fees, and Compliance-Based Entity Regulation;
- Continuing support of TAG - The Action Group on Access to Justice.

This report will provide an overview of operational trends and activities and policy and other initiatives that are currently underway or in development to support strategic priorities.



## STRATEGIC PLANNING UPDATE

We continue to make very good progress on Convocation's strategic priorities. Since the last update in June, work has advanced on a number of initiatives, some mentioned later in this report – an extension of the LPP for another two years and a comprehensive analysis of the licensing process, a disclosure policy framework for PRD investigations, launch of the new coach and advisor network (“CAN”), implementation of our mental health strategy, a new task force on governance and the final report of the Challenges Faced by Racialized Licensees Working Group. Work on other initiatives is ongoing, including our policy development “rethink” and the diversity survey of benchers.

In addition to operational work plans related to the priorities, in September the Treasurer set out his expectations for policy work during his term in his memoranda to committee chairs, linked to the strategic plan's priorities. In this report, I aim to show that the priorities are being achieved in an effective, efficient way.

## 2016 BUDGET UPDATE AND DEVELOPMENT OF THE 2017 BUDGET PLAN

### Financial Reporting

Interim financial statements for the third quarter for the Law Society, LawPro and LibraryCo have been reviewed by the Audit & Finance Committee and are reported to Convocation this month. The Society is on track to exceed its 2016 budget expectations and its financial position remains strong. Some specific notes are:

- The Lawyer General Fund incurred a surplus of \$4.8 million compared to a surplus of \$2.6 million in 2015 and a break-even position for the prorated budget period.
- The Paralegal General Fund generated a surplus of \$1.3 million at the end of the third quarter compared to \$945,000 for 2015 and a budgeted deficit for the period of \$243,000.
- The main revenue sources are above budget and all of the major expense categories on the financial statements are less than budget.



- There was a deficit of \$927,000 in the Lawyer Compensation Fund as claims incurred to date exceed budgeted funding for the year.
- The projection for 2016 year end is for a surplus of approximately \$4 million in the combined Lawyer and Paralegal General Funds.

Planning for the 2016 year-end audits has been ongoing and the Audit & Finance Committee met with PWC in November to formalize these plans.

### **Budget**

The 2017 Budget process has completed its normal cycle of review by the Audit and Finance Committee in September and October. Convocation approved the budget on November 9, which sets the annual fee for lawyers at \$1,916 and for paralegals at \$1,046, an increase of \$50 for both professions, with an option to reduce the fee by \$50.00 if it is paid by pre-authorized debit (see below).

### **Operational Activities**

The Finance department is working with the Audit & Finance Committee to ensure appropriate accountability and fiscal responsibility by organizations funded by the Law Society such as the Federation of Law Societies, FOLA and the Law Commission of Ontario.

The Finance department processes the applications for the Parental Leave Assistance Program. The number of applicants approved continues to decrease below projections estimated during program development. To the end of September 2016, payments for the year total \$128,000. The budget funding request for 2016 was \$200,000. For the 2017 budget, the fund balance (\$437,000 at September 30, 2016) is sufficient will not require a further contribution to the Parental Leave Assistance Plan for 2017.

The Society introduced electronic fee billing in 2015. Along with this, an on-line application process for payment by preauthorized electronic debit was also created. With the automation of the application process, a second preauthorized payment plan (PAP) option in addition to the existing monthly PAP has been introduced for 2017. This annual PAP plan withdraws the balance on their account in the first week of February each year. There is no administration fee for this plan. In the 2017 budget, a discount of



\$50 (prorated by fee category, \$25 for 50% fee and \$12.50 for 25% fee) will be offered to members enrolling in this plan.

Since my last report, the Finance department is currently conducting or has conducted its periodic review of the following policies:

- Investment Policy – changes are being assessed to slightly increase the equity component of the asset mix;
- Treasurer and Benchers Expense Reimbursement and Remuneration Policies – the assessment is still in the early stage;
- Business Conduct Policy – periodic update including assessment of whistleblowing provisions;
- Compensation Fund Balance Policy - reducing the minimum balance from three one-in-one hundred year events to one one-in-two hundred year event.

## LibraryCo

The Finance department continues to provide financial services to LibraryCo through the Administrative Services Agreement that includes preparation of financial reports, development of the annual budget and administrative assistance to county associations on financial matters. The Law Society is working with the other shareholders of LibraryCo (Federation of Ontario Law Associations and Toronto Lawyers' Association) to set a direction for the evolution of libraries and library services going forward. In November, Convocation approved LibraryCo's budget for 2016, incorporating a contingency for the transition process and increased funding to county libraries.

## REGULATION

### COMPLAINTS, INVESTIGATIONS AND PROSECUTIONS

#### Complaint Trends

Complaint trends fluctuate year by year. While 2013 showed a noticeable increase in new cases, a downward trend in 2014 continued in 2015. In 2016, the downward trend has reversed. Between January 1 and October 31, the Division received 4016 new



complaints, an increase of approximately 2% from the same period in 2015. An analysis of the complaints received during the period reveals the following:

- consistent with previous years, approximately 75% of new complaints involve lawyers and 12% of new complaints involve paralegals.
- sole practitioners and licensees in small firms (up to 5 licensees) continue to receive the largest number and proportion of complaints (approximately 74% for lawyers and 93% for paralegals).
- as in other years, the highest proportion received contain service related issues (approximately 50% of all new complaints) followed by integrity issues (46% of all new complaints), governance issues (17% of all new complaints), financial issues (10% of all new complaints) and conflict issues (8% of all new complaints).
- the highest proportion (30%) of new complaints received by lawyers and by paralegals continues to be in the area of civil litigation, for lawyers, in family and real estate law and for paralegals, in criminal/quasi-criminal matters.

## Investigations

The focus in the investigating departments, particularly in the past 5 months, has been on the backlog of cases in the departments. A number of process changes and strategies have been instituted and with the additional resources which Convocation initially approved in February 2016 (and included in the approved 2017 budget), staff have effectively increased the number of case completions and reduced investigation inventories. To date, the inventory of investigations has decreased to a total of 2322 complaints, down from an inventory of 2493 complaints at the beginning of 2016.

In the first 10 months of 2016, 3817 complaints have been closed at the end of the investigative phase. Of these 3817 complaints:

- 111 (3% of all closings), a substantial increase over 2015, have been closed with diversion (e.g. invitation to attend, letter of advice, practice review/spot audit recommendation, undertaking, mentoring).
- 550 complaints were closed with a staff caution or best practises advice in 2016 to date.



The number of reports received of lawyers engaged in mortgage fraud remains at an average of about 2.5 per month. However, the inventory of investigations remains lower than in previous years (42% fewer than at the end of October 2015). In addition, the number of matters proceeding to Discipline remains low (5 licensees in 2016 to date). The Investigations department continues to closely track and regularly monitor these matters for timely completion.

### **Advertising & Fee Issues**

One of the early steps taken by the new Executive Director, Professional Regulation was to form a strategic priority team within the Professional Regulation Division to undertake investigations and, where required, prosecutions in the area of advertising and referral fees. The creation of this team will facilitate a timely and focused response to these issues. The work of the team is informed by the work of the Advertising & Fee Issues Working Group, to ensure that policy focused attention is brought to bear on the Law Society's regulatory response. There are currently approximately 90 cases involving advertising and referral fees that are under active investigation.

### **Discipline**

The number of new matters coming into Discipline fluctuates from year to year. The number of licensee / applicant matters coming into the department in the first 10 months of 2016 appear to be similar to the numbers in the same period in 2015. However, the number of Notices issued by Discipline to commence a proceeding before the Hearing Division has increased.

As at October 31, 2016, Discipline had issued a total of 140 Notices: 110 Notices of Application (conduct and capacity prosecutions), 12 Notices of Referral for Hearing (good character and reinstatement/terms dispute prosecutions) and 18 Notices of Motion for interlocutory suspension/restriction. In 2014, a total of 124 Notices were issued and in 2015 a total of 142 Notices were issued.

The number of motions for interlocutory suspension / restrictions (18 as at October 31) have increased from the 14 issued in all of 2014 and the 14 issued in all of 2015.



## Court Decisions

In 2016, the Law Society received ten decisions from the Ontario Superior Court; and eight decisions from the Court of Appeal.

Seventeen of these matters were initiated by a licensee or an applicant for a license. The Law Society initiated one matter and brought two cross appeals.

Issues considered by the courts in these decisions included:

- Prematurity of court intervention regarding constitutional issues that can be heard by the Law Society Tribunal – *DioGuardi Tax Law et al*
- Jurisdiction to award costs when a licensing application is abandoned after the notice of hearing is issued but prior to the commencement of good character hearing on the merits – *Riddell*
- Penalty – the effect to be given to delay in an investigation in what would otherwise be a revocation case – *Abbott*
- Jurisdiction to provide relief sought – *Speck, Amiri*
- Failing to perfect application/extension of time for motion for leave – *Ebagua, Amiri*
- Delay by licensee in seeking appellate relief – *Coady*
- What is a final order – *Kivisto*
- Factors to be considered in a motion for delay – *Totera*
- Ability to raise new issues on appeal – *Molson*
- Costs awarded as a result of the recusal of panellists – *James*
- Validity of the presumptive disposition of revocation – *Bishop*
- Jurisdiction of the Law Society to regulate in-court civility, the definition of civility and the duty to advocate zealously – *Groia*

## Trusteeships, Compensation Fund And Monitoring & Enforcement

Between January 1 and October 31, 2016, Trustee Services has obtained 14 new formal trusteeship matters, which are dealt with in the Superior Court, and 17 formal trusteeships have been completed and closed. An additional 39 cases have been opened in which guidance and information has been provided on how to wind up a licensee's practice. The department has received 1211 and closed 1061 requests from clients and others concerning licensees' practices.



Between January 1 and October 31, 2016, a total of 143 applications for compensation have been received by the Compensation Fund: 131 claims involving 45 lawyers and 12 claims involving 9 paralegals. During this period, a total of 29 claims have been granted: \$2,798,897 has been paid on 93 claims against 26 lawyers and \$36,221 has been paid on 18 claims against 7 paralegals. The Compensation Fund continues to carry a number of potential claims related to a very high-profile real estate loss.

In the period from January 1 to October 31, 2016, Monitoring & Enforcement has:

- collected a total of \$410,658 in costs, including \$311,005 in discipline costs
- received 79 new undertakings to be monitored. This represents an increase from the number of new undertakings received in all of 2015 (63) and 2014 (58).
- received 125 new orders to be monitored.
- received and responded to 3944 regulatory inquiries involving 4431 licensees.

### **PROCESS AND STRUCTURAL CHANGES IN THE PROFESSIONAL REGULATION DIVISION**

The Professional Regulation Division is currently undergoing a restructuring process. The key changes can be summarized as:

- more robust, early triage and resolution carried out by a larger Intake Resolution department
- merger of the Complaints Resolution and Investigations departments
- creation of new multi-functional Enforcement teams with different types of Investigators and Discipline Counsel working together in teams
- creation of an Technology & Evidence Control department to enhance the Division's ability to receive, produce, manage and control electronic data.

Transitional planning is already underway and a multi-functional team is already underway on a pilot project basis. Throughout 2016, steps have been taken to streamline processes and increase efficiencies. The new organizational structure will come into effect on February 6, 2017. Next steps are to design the physical changes required to fully implement the new structure.



## **ADMINISTRATIVE SUSPENSION DUE DILIGENCE**

In addition to the over 1500 notices and reminders that were published to licensee LSUC Portal accounts this quarter, the staff in the CSC continue to uphold due diligence standards regarding licensee administrative obligations.

For example, during the Annual Report suspension follow-up process, the By-Law Administration Services Department has sent 128,411 automated emails to licensees reminding them of their filing obligation. At the end of the 60 day default period, 2,584 licensees had yet to file their Annual Report and staff in the CSC will attempt to personally contact each licensee at least one final time. Law Society staff similarly followed up with 957 licensees who had not fulfilled their CPD obligations and 2149 licensees who did not fulfill their Annual Fee obligations.

## **QUALITY ASSURANCE**

### **Practice Audits**

In addition to continuing to provide proactive supports to law practitioners and law practices across the province, Practice Review and Spot Audit have conducted a number of presentations as part of their outreach program to licensees to support ongoing learning related to establishing and maintaining viable and vibrant practices. During 2016, Practice Review developed a CPD webcast for paralegals on how to assess practice management processes to improve efficiencies. Reviewers have also responded to invitations to present on practice management topics to various law associations, such as Prescott, Peel and Hamilton, and to the University of Ottawa Business Law Clinic.

Outreach to paralegal practitioners included best practices presentations to paralegal classes at both Algonquin and Conestoga Colleges, and to the Ontario Paralegal Association.

Spot Audit has been actively involved on a number of educational presentations to the Law Society's Professional Conduct and Practice in Ontario program, the Ontario Bar Association, the Barrie Real Estate Law Association and the Peel Real Estate Law Association to discuss Spot Audit processes and a variety of financial books and records topics.



Spot Audit and Practice Review representatives were present at the June 9<sup>th</sup> Sole Practitioner and Small Firm Conference's "Ingenious Bar" to respond to licensees' questions on the Practice Review and Spot Audit programs, books and records, and practice management systems. The Spot Audit and Practice Review outreach initiatives continue to be well received and appreciated by licensees, and reinforce the importance of the Law Society's Competence Mandate and focus on providing proactive assistance.

## **PROFESSIONAL DEVELOPMENT AND COMPETENCE**

The Professional Development and Competence Committee evaluated the Pathways Pilot Project and proposed enhancements to the licencing process in its September 2016 Report. As a result of careful consideration of the 93 public submissions from individuals, 104 individual comments linked to a petition and 32 submissions from organizations, associations, legal clinics, law schools and others, the Committee recommended that the Pathways Pilot Project be continued for two years and that a complete review of the licensing process be undertaken. PD&C will develop a plan to implement this review which will include an engagement strategy to involve relevant stakeholders throughout the process.

### **Continuing Professional Development**

While the CPD department has kept the number of unique programs it produces at 90 for the last several years, and then provides replays bringing the actual amount of program offerings to between 125 and 140 per year, it has been making changes to operations and planning in 2016 to vary those offerings. This provides additional flexibility and CPD opportunities for members.

For example, the team increased the number of replay programs offered, from 34 in 2015 to 58 in 2016 and offered replay programs in July and August for the first time, so that lawyers and paralegals could watch them during the sometimes-quieter summer months. These replays were well received, with the August programs attracting an average of 72 registrants at each. While members can purchase any CPD program to view "on demand" at their convenience after the live date for the program, some members prefer viewing the archive at a scheduled time. The group will offer summer replay programming again in 2017.



Five online eCourse titles were produced in 2016, adding to the current stable of 13 eLearning programs. eCourses are a popular alternative (or adjunct) to attending traditional CPD programs for many members.

While the trend of live, in-person attendance continues to decline in favour of the flexibility of webcast viewing - currently at a ratio of four who watch the webcast for every one live attendee, the large one and two-day Summit programs maintain a high demand related to on-site attendance. These flagship programs, held in core practice areas including real estate and family law, among others, provide an annual forum for practitioners to come together for networking, to share ideas and stories and to experience their professional learning within a community environment. These programs account for a significant portion of the organization's net CPD revenue. The team is currently planning a new cross-disciplinary two-day program, to be held in November 2017 that will be similar to the Special Lectures series which the Law Society previously hosted. To commemorate the country's sesquicentennial, the focus for this special program will be on constitutional law issues and its impact in several practice areas. The Symposium will culminate in the publication of a hard-bound volume of materials authored by its speakers.

We continue to work on refinements to the new eCommerce platform, the "LSUC Store" which was launched in mid-May. This new system allows members to log on using their Law Society portal credentials instead of requiring an additional set of user names and passwords as in the previous e-commerce site. This functionality makes ordering easier and more convenient for our members, and improves security by funneling members' sensitive information, such as credit card information, through a dedicated eCommerce platform.

The CPD department, in accordance with the Law Society's strategic priorities, has transformed program planning to ensure that all programs are developed with reference to a draft set of learning competencies at stages of basic, intermediate and advanced levels of learning. This focus assists to better articulate the educational and experiential objectives to be achieved in each practice area throughout a member's professional practice life. The framework will be further refined and finalized in 2017 through a series of consultations with the professions to discuss and validate the listings, and more formally identify the competencies to be covered in CPD programming on a yearly (and multi-year) basis in major practice areas.



### **Certified Specialist Program**

The Law Society's Certified Specialist Program is adding a new area of specialization in Indigenous Legal Issues. This will be the 16<sup>th</sup> practice area now available through this competence-based credentialing process, which promotes high standards of knowledge, skill, experience and professional conduct to support access to quality legal representation by the public. Development of the new area began in early 2014 and has involved subject matter area experts and senior practitioners from a broad array of practice contexts, client groups and geographical locations to assist with the drafting, review and validation of the standards. Input on the standards was sought from client and professional stakeholder groups. The new specialization in Indigenous Legal Issues is expected to be available to the profession in the fall of 2016.

### **Practice Supports and Resources**

The Department's work has been focused on launching the new Coach and Advisor Network ("CAN"), while maintaining and enhancing the quality of service provided by the Practice Management and the CPD Accreditation teams.

CAN is now online and accepting applications for volunteer Coaches and Advisors. Orientation materials and templates for Coaches and Advisors have been posted on CAN's Resources page and additional training materials and supports will soon be available at no cost through the LSUC store. In November, lawyers and paralegals will be able to submit *Requests for Time* with a CAN Coach or Advisor and resources to support preparation by those Participants will be available.

CAN has developed "*The Introduction to the CAN Coaching Model*" program and will offer this skills training in a number of locations throughout the province in the coming year. In addition, CAN is developing e-learning options to ensure that all CAN Coaches will have ready access to quality training.

CAN has initiated contact with the leadership of mentorship programs provided by law associations and legal professional organizations in Ontario. CAN plans to host an information sharing and mentoring best practices event with interested representatives of those organizations before year-end.



The Practice Management Helpline (PMH) has answered more than 7,300 inquiries since the beginning of the year, and anticipates more than 8,000 inquiries by year end, representing a notable increase year to year. Between 2007 and 2015, PMH inquiries steadily increased from 4,337 to 7,423 per year. This is an overall increase of 71%. From January to October 2016, PMH handled 6,951 inquiries, which is a further increase of 9.8% over the same period in 2015. New resources have been developed and existing resources updated to reflect the recent amendments to the *Rules of Professional Conduct* and paralegal *Rules of Conduct*. A number of new Practice Tips on emerging technology issues have also been created and are now available online in MP3 and transcribed formats.

CPD Accreditation has developed a comprehensive audit process for Accredited Providers of Professionalism Content to ensure alignment of their programming with the Accreditation Criteria. CPD Accreditation has begun to implement this audit process with 10 of its Accredited Providers.

## **LICENSING UPDATE**

### **Lawyer Licensing Process**

There are approximately 2350 newly registered lawyer licensing candidates in the 2015-16 process which is now well under way, with most candidates having been called to the bar recently. The new group of licensing candidates for 2016-17 have started their process and licensing examinations were held this past June.

The second year of the Pathways Pilot Project is also now completed. The Law Practice Program alternative pathway was selected by 231 candidates for the 2015-16 licensing year – 220 completing the English program with Ryerson University and 11 completing the French program with the University of Ottawa. In the 2016-17 licensing year, there are currently 234 candidates in the English program and 23 candidates in the French program.

In the June 2016 call to the bar ceremonies, the Law Society called 1600 candidates to the Bar of Ontario. In addition to the ceremonial calls held in January and September, and administrative calls throughout the year, it is anticipated that the Law Society will call over 2200 lawyer licensing candidates to the Bar in 2016.



## **Paralegal Licensing Process**

Following the introduction of new accreditation protocols for Paralegal College Programs, which took effect in the 2015-16 academic year for the colleges, 11 intakes of paralegal college programming were not entitled to proceed. This was predominantly due to lack of sufficient enrollment in those intakes. At this time, there are 29 approved paralegal programs, at 45 college campuses, with 64 class intakes on a cohort to cohort basis. Since the inception of the paralegal college program audits for accreditation and ongoing quality assurance, the Law society has conducted 51 rigorous audits and continues to do so.

## **LEGAL INFORMATION AND LIBRARY SERVICES**

The Great Library is moving toward providing additional space for use by members, in response to needs expressed by members themselves. They have finished transitioning the Riddell print collection of historic books donated by Justice Riddell to new high-density shelving. This compact, rolling shelving has freed up significant storage space in the basement of Osgoode Hall, which the library will now fill with older parts of the print collection shifted from the Main and first floors of the library. These shifts will eventually culminate in increased research space on the main floor of the library.

Corporate Records and Archives continues to work on SharePoint related projects related to document retention and tracking protocols. In particular, they have been working closely with Information Technology staff for the past year and are close to a working prototype that will enable document tagging within SharePoint by Law Society staff. Once in place, this will provide a foundation for a SharePoint-based records centre in 2018.

## **POLICY, EQUITY AND PUBLIC AFFAIRS (PEPA)**

### **Advertising and Fee Arrangements Issues**

As referred to above, the Advertising and Fee Arrangements Issues Working Group is considering the issues raised in the Working Group's paper of June 2016 and the submissions received following a call for feedback. The Working Group is examining issues of advertising and marketing that may be false or misleading and fees that are



not transparent and may have an impact on the way in which legal services are provided. The Working Group is expected to continue its work into early 2017.

### **Disclosure Working Group**

In September 2016 Convocation adopted a report from the Disclosure Working Group recommending the approval of a disclosure policy framework regarding the disclosure of information about complaints and investigations. Statutory amendments may be required to fully implement the framework.

### **Governance Task Force**

The Governance Task Force was established in September 2016 following a commitment by Convocation to review the Law Society's governance structure in the Strategic Plan. The Task Force has commenced meeting and is discussing the principles to govern its work, as directed by the Strategic Plan and the Task Force's terms of reference. The Task Force is considering a broad range of governance initiatives and will be reporting to Convocation on an on-going basis.

### **The Real Estate Issues Working Group**

The Real Estate Issues Working Group continues to deal with issues and developments related to real estate practice in Ontario. The Working Group is currently considering the implications of third party electronic funds transfer products for the public and for lawyers, including the extent to which the use of such products is consistent with lawyers' professional obligations.

### **Mental Health Strategy Task Force**

A Mental Health Strategy Implementation Task Force has been established to monitor implementation of the Mental Health Strategy Convocation approved this year. Building on the efforts the Law Society is already undertaking in this area, the Strategy includes a Vision and Commitment to underpin the Law Society's work, two Strategic Directions with a focus on preventive/management strategies and regulatory strategies and a number of Key Elements and Initiatives that will advance those Directions. As implementation progresses, we expect that policy issues related to the strategy will be referred to the appropriate committees for consideration.



### **Access to Justice and the Action Group (TAG)**

TAG coordinated Ontario's first Access to Justice Week with a wide range of partners from October 17 to 21. The week resulted in engagement with the public as well as representatives from technology, business, social sectors in addition to our justice system partners. Together, these participants explored different elements of the access to justice crisis such as public opinion, child welfare and importance of innovative collaborations in the development of meaningful solutions.

The events received coverage from 25 media outlets as well as letters of support from The Honourable Beverley McLachlin, as well as Federal Justice Minister Jody Wilson Raybould. As well the Attorney General of Ontario, Yasir Naqvi made a ministerial statement commending Access to Justice week.

### **Equity Initiatives**

The Challenges Faced by Racialized Licensees Working Group is reporting to Convocation this month with 13 recommendations aimed at addressing these challenges. This is the culmination of a lengthy study, including a comprehensive consultative phase, and I look forward to the results of Convocation's consideration of the report.

Our Equity and Aboriginal Affairs Committee and its Indigenous Advisory Group (IAG) continue their joint development of an Indigenous Strategy/Framework that will formulate approaches to priorities set out in Treasurer's Memorandum to the Committee. This includes developing programs to enhance cultural competence on the part of the professions and Law Society in dealings with Indigenous peoples, improving access to the complaints process for Indigenous communities and supporting and implementing the work of reconciliation, in collaboration with IAG, by responding to and implementing the Truth and Reconciliation Commission of Canada's Final Report (TRC Final Report) Calls to Action related to the Law Society's mandate.

We have also begun consideration of the process for review of the Discrimination and Harassment Council program as set out in the Treasurer's Memorandum.



## **Federation of Law Societies of Canada**

The Law Society's contribution in both human and financial resources to the Federation continues to be significant. The report on the Federation's October 2016 meetings to Convocation this month shows the extensive contribution from the Law Society benchers and staff. In particular, several senior staff are involved in a number of initiatives. These include Diana Miles, Executive Director, Organizational Strategy /Professional Development & Competence, who participates as a member of the National Requirement Review Committee and serves on the CanLII Board Nominating Committee, Karen Manarin who serves on the Standing Committee on National Discipline Standards, Jim Varro who serves on the Anti-Money Laundering and Terrorist Financing Working Group and Naomi Bussin, Senior Counsel, Professional Regulation who is a member of the Standing Committee on the Model Code of Professional Conduct. I serve as a member of the Finance and Audit Committee.

Special mention should be made of Policy Counsel Juda Strawczynski who did an extraordinary amount of work in preparing submissions in concert with the Federation on a number of government-initiated consultations this past summer.

## **Government Relations**

Public Affairs liaises with all levels of government to ensure ongoing and enhanced networks and relationships. In addition, Government initiatives that affect the Law Society's mandate currently being monitored and addressed include:

- The expansion of Unified Family Courts in Ontario
- Legal Aid (both as a supporter seeking enhanced funding to address eligibility levels, and as a partner in recommending appointments to the board)
- Paralegal Exemptions
- Real Estate issues
- Monitoring search and seizure provisions in provincial regulatory statutes, to protect privilege
- Working with the government on new initiatives on issues such as prevention of sexual violence and managing auto insurance costs
- Managing the Law Society's legislative agenda
- Public policy participation thru various think tanks and forums



### **Treasurer's Appointments Advisory Group (TAAG)**

In September 2016, the Treasurer established a group of benchers to co-ordinate the process for the various external appointments made by the Law Society and to provide advice to the Treasurer on these appointments. Public Affairs is assisting with outreach to stakeholders and the recruitment of diverse candidates. TAAG is currently reviewing a recruitment process policy, which will include a policy statement and appropriate criteria that will guide the appointment of well-qualified persons to the various boards, councils and committees of external bodies and has already provided names to both the Federal and Provincial governments for appointments.

### **Legal Aid Working Group**

In October 2016, the Treasurer established the Legal Aid Working Group (LAWG) to identify opportunities for engagement and enhancement of the Law Society's relationship with Legal Aid Ontario (LAO), Alliance for Sustainable Legal Aid (ASLA), government and other justice system and community services partners in accordance with and further to the Law Society's functions and duties respecting competence, access to justice, the rule of law and the public interest. Public Affairs has played a significant role in developing and organizing the committee and will continue to play a supporting role. The Law Society is also a member organization of the ASLA and provides bencher support for the Alliance. Its mandate is to communicate to the provincial and federal government the importance of the provision of properly funded and consistently high quality legal aid services in a cost-effective and efficient manner to low-income Ontarians throughout the province.

### **Real Estate Liaison Group (RELG)**

The Real Estate Liaison Group, created by the Treasurer together with the Ontario Bar Association, FOLA and LawPRO engages in dialogue on real estate issues of common interest and planning in response to expressed concern about the future and current state of real estate practice in Ontario. The group continues to meet to discuss current issues, including ABS, regulatory policy issues touching on real estate practice and legislative developments.



## **MEDIA RELATIONS AND ISSUES MANAGEMENT (MRIM)**

The Media Relations and Issues Management (MRIM) team works to ensure that the Law Society, its mandate, initiatives and operations are positively and accurately represented in the public sphere.

These activities include managing a high volume of media enquiries and pursuing positive earned media coverage. MRIM also supports external communications activities for the Treasurer, Convocation and the work of their committees.

Over the last year, MRIM has taken a proactive approach to media relations and to communicating Law Society initiatives which have resulted in expanded editorial reach and increased coverage, most of it positive or neutral in tone. For example in the third quarter alone, total editorial reach was over seventy three million with 790 stories related to the Law Society.

MRIM this year has also strived to have a significant spokesperson quote in media stories that invokes one of our strategic priorities and/or the Law Society's public protection mandate. In the last quarter, 55% of coverage included a spokesperson quote.

MRIM continues to distribute weekly to media all of the Law Society Tribunal proceedings and notices which have contributed to a continual increase in media coverage for the Law Society.

In addition, MRIM has received and responded to 320 different media inquiries to date. Overall, discipline matters garner the most interest and coverage.

Other topics of interest include TWU, Challenges faced by Racialized Licensees Working Group, the LPP, new Treasurer election, Calls to the Bar, Personal Injury Advertising and Compensation Fund increase. TAG's first Access to Justice Week last October also garnered significant coverage in 25 different media outlets across the province.

As well, over the past year, the Treasurer, working group chairs and other Law Society representatives conducted a number of interviews, both with legal trade and mainstream publications or networks MRIM also initiates a broad range of internal and



external communications materials. To date this year, the department prepared over 70 speeches or speaker notes in addition to news releases, positioning statements, media plans and Convocation News that support Law Society priorities and the Treasurer's outreach initiatives. MRIM also developed and maintains a targeted community partner and justice sector distribution process for legal information guides available in Cree, Oji-Cree and Northwestern Ojibway, as well as English and French.

## **COMMUNICATIONS AND MARKETING (C&M)**

Over the course of the year, the focus for Communications and Marketing continues to be the strategic evolution of digital initiatives and communications as directed by the Law Society's strategic priorities for 2015-2019.

### **Social Media**

In March 2016, the Law Society revised its approach to strategic content marketing through Facebook, Twitter and LinkedIn with the intent of growing social media audiences, increasing engagement and enhancing the Law Society's reputation and brand.

For other channels such as YouTube, we implemented a plan this quarter to better utilize the platform by reorganizing video inventory and increasing new, well-branded and timely content. This included the launch of the Treasurer's video blog, which was developed to provide opportunities to increase engagement. The Treasurer's Twitter account incorporates an integrated communications approach with the Law Society Twitter account. Communications and Marketing has also tested Instagram as a new platform to focus on Law Society news. .

The Law Society's social media audience continues to grow: our Facebook page now has 3,785 likes; 8,108 follow us on LinkedIn; and we've reached the 10,000 mark for Twitter followers. Overall, the results indicate that targeted messaging on timely topics has increased engagement.

### **Websites**

Communications and Marketing together with Information Technology, is leading a corporate website redesign project to engage the public, professions and stakeholders



and to build a strategic communications tool that effectively supports the organization's core work. The new Law Society website will offer target audiences a cohesive online experience where relevant information, services and resources can be easily accessed in an understandable way.

An extensive content inventory and audit of the current website was completed, along with interviews with key stakeholders and departments. The content strategy and design phase of the project will begin in late November and will continue into the first quarter of 2017.

The *Gazette*, the Law Society's online magazine, has had a 15% increase in 2016, most notably from referral traffic from social channels and the corporate website. Mobile traffic, an important and growing source, has increased 81% in 2016. The top performing *Gazette* article was our Mental Health Week promotion, which had the most views this year.

## TECHNOLOGY

### SharePoint

Our largest SharePoint related project in 2016 has been the design and rollout of the Tribunal Information Management (TIM) System, a SharePoint-based case management system for use by Law Society Tribunals staff. The development is complete, with implementation scheduled for December and go-live for January 2017. We are also in discussions to plan the next phase of this project, which involves the redevelopment of the portions of the process which are currently hosted on the AS/400. This year we also successfully completed the Discipline History SharePoint Scanning Integration project, which involved transferring approximately 23,000 discipline history files from a network drive to SharePoint to make them easier to access and search.

### Relationship Management System Project (RMS)

The Relationship Management System is the name of the project to modernize the Lawyer & Paralegal Database, or as many people call it, the AS/400 (after the name of the IBM server it runs on). In this age of "big data," and with the demand for more



automation and self-service, the current system severely limits us from being as effective, proactive, and service-oriented as we can and should be. In addition to addressing technical risks, one of the major business goals of the RMS is to increase the efficiency of our existing staff to prepare us for taking on new, data-intensive initiatives. Other goals, requested by users, include redesigning the class/status code system, and working towards a more comprehensive, “one-stop-shop” approach to data access to improve staff efficiency and service quality.

As part of our extensive work plan this year, we have:

- Developed initial estimates of the cost, duration, and platform options for the project
- Created a representative Steering Committee, led by Terry Knott, for strategic guidance and business decisions
- Engaged a professional consulting firm to provide advice and assistance in planning
- Developed detailed business requirements and data model for use in purchasing.

As the project funding has been approved, the Steering Committee plans to initiate the detailed design and implementation of the Relationship Management System in 2017. The Request for Proposal will be released in the first quarter of 2017; followed by the beginning of the Discovery Phase with the selected vendor late in the second quarter. Design and Development will begin in the fourth quarter, provided a fixed price contract is negotiated after the Discovery Phase.

### **LSUC Portal**

The Lawyer Annual Report and Paralegal Annual Report will look different for the 2016 filing year, as they will be fully integrated into the LSUC Portal. The Annual Report section of the Portal will look more like the other portlets and will provide more flexibility for development in the future.

The Law Society Referral Service application and renewal process moved into the LSUC Portal in the middle of November. This allows licensees to manage their own LSRS profile, including areas of law and dates they are not available to accept referrals.



## Digital Information Risk Management Program

Having designated Information Security as a major theme of this year, we have taken serious action on a number of fronts to increase our security against the growing tide of hacker attacks, data breaches, and increasingly destructive malware. This summer, for example, we encrypted the hard drives of over 300 laptops, so that the data they contain remains secure even if they should be lost or stolen. We also connected 66 iPads to our mobile device management server, which allows us to lock them down and to remotely wipe them should they be lost or stolen—and which allowed us to provide secure access to SharePoint on them. On the server side, we are adding some additional layers of protection against the new wave of malware attacks that come in via email and USB drives; by our latest measurement, almost 2% of incoming email contains a virus (and is blocked by our servers).

## Other Projects

Other business-focused projects we have completed this year include the replacement the Law Society's old eCommerce system with a newer high-capacity system, the update of the Articling Registry application to improve its security and usability, and the implementation of changes in iLaws to support Experiential Training.

## OUR PEOPLE

### Diversity Census and Inclusion Survey initiative

In March, the Law Society launched its first Diversity Census and Inclusion Survey - to help us better understand the demographic characteristics that make up our team. There was a 72% participation rate, with high rates of feelings of inclusion overall. We communicated the final analysis and action plans from the survey results to employees during the Town Hall meeting in September, and plan to discuss them with the Equity and Indigenous Affairs Committee early in the New Year.



## Employee Engagement and Enablement Survey

In June 2016 the Law Society conducted an Employee Engagement and Enablement Survey to help improve the effectiveness of our organization and enhance communications between management and employees at all levels. The results were as follows:

- 77% employee response rate – 427 participants
- 73% employee engagement – (commitment & discretionary effort)
- 71% employee enablement – (optimized roles & supportive environment)

These scores are very high, positioning the Law Society above the average for public/not-for-profit organizations, and for organizations in Canada generally.

## SERVICES FOR MEMBERS AND THE PUBLIC

### LAW SOCIETY REFERRAL SERVICE

From January 1, 2016 to October 31, 2016, the Law Society Referral Service provided 36,745 referrals. Of those, 26,087 were provided through the online service; 9,734 referrals were provided through the crisis line; and 924 referrals were provided by email.

From January 1 to October 31, 2016, LSRS also provided the names of 11,106 LSRS members to people who did not qualify for a referral. A member of the public would not qualify for a referral if they do not live in Ontario, if their legal matter is urgent and they cannot wait up to three business days for the licensee to arrange a consultation, or if they have already received a referral for the same legal issue within the calendar year.

### MEMBER ASSISTANCE PLAN (MAP)

#### Usage

For the period of January 1 to September 30, 2016 there were 1,115 MAP cases. As a result, Homewood Health, the Law Society's Member Assistance Program provider, has a projected an annual utilization rate for 2016 to be 5.13%.



The awareness source of the MAP continues to arrive predominantly from a previous client (36.1%), which again allows us to infer that the program is being shared through word of mouth from prior recipients of the program.

There was good distribution of age groups accessing MAP, with the largest cohorts in the age ranges of 21-30 (25.6%) and 31-40 (36.9%).

The top MAP counselling categories for this time period in 2016 was psychological counselling (49.7%); work counselling (18.7%) and marital/relationship counselling (16.2%). Of the psychological cases, stress had the highest number of cases at 14.3%, followed by anxiety at 14.2% and depression at 10.4%.

The method of distribution for counselling was 77.4% face-to-face; 16.8% over the phone; and 5.8% over the web.

Looking at overall utilization, the top area of Plan Smart cases were: career counselling at 38.9%, 12 weeks to wellness at 21.6% and nutritional counselling at 10.8%.

### **Peer Conclave**

Friday, October 28th, marked the second annual Peer Conclave. The objective of this event is to bring together volunteers from across the membership with a shared mission towards supporting professionals in the legal profession in managing some of their most challenging mental, physical and social health issues. Peers come from all corners of the profession - lawyers, judges, paralegals and students.

In this year's program, the Peers were joined by Mr. Michael Bryant, former Attorney General. Mr. Bryant, a recovering alcoholic, openly shared his story, more specifically, his struggle with addiction, and its impact on his personal and professional life. Mr. Bryant's willingness to share his story of recovery had a tremendous and positive impact on the Peer group.

A long term commitment has been made to ensure that Peers continue to receive this type of inspiration, along with the education, training and support provided by MAP Program.



## CONCLUSION

It is when my staff assembles the information for this report that I perhaps most often marvel at the depth and breadth of the operations of the Law society of Upper Canada and the dedication of our staff to delivering on our strategic priorities that are informed by our statutory mandates. As always, I want to acknowledge my appreciation for that dedication. As we look back on the year, 2016 has been a time of significant and exciting changes in some important parts of our operation. These aren't easy. They challenge staff and management to think and work differently. I have been deeply impressed and grateful for the willingness of staff and our management teams to embrace change, and their patience in working through it. I am also most grateful for the support of our new Treasurer, Paul Schabas, and Members of Convocation. The change management process is made easier and more interesting by their commitment to it.

**TAB 3**



## **Report to Convocation**

**December 2, 2016**

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

**Committee Members**  
Dianne Corbiere, Co-Chair  
Julian Falconer, Co-Chair  
Sandra Nishikawa, Vice-Chair  
Gina Papageorgiou, Vice-Chair  
Marion Boyd  
Suzanne Clément  
Robert Evans  
Avvy Go  
Howard Goldblatt  
Marian Lippa  
Isfahan Merali  
Sidney Troister  
Tanya Walker

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Ekua Quansah – 416-947-3425)**

## **COMMITTEE PROCESS**

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on November 10, 2016. Committee members, benchers Dianne Corbiere, Co-Chair, Julian Falconer, Co-Chair, Sandra Nishikawa, Vice-Chair, Suzanne Clément, Robert Evans, Marian Lippa, Sidney Troister and Tanya Walker attended. Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, and Paul Saguil, Chair of the Equity Advisory Group, were present. Staff members CEO Robert Lapper, Darcy Belisle, Hyacinth Khin, Jennifer Khor, Terry Knott, Marian MacGregor, Karen Manarin and Ekua Quansah also participated.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Anand presented the Report.

Re: Report of the Challenges Faced by Racialized Licensees Working Group – “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions”

It was moved by Mr. Anand, seconded by Mr. Falconer, that Convocation approve the thirteen recommendations as outlined in the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report.

Pursuant to a notice of motion provided on November 4, 2016, it was moved by Mr. Troister, seconded by Mr. Lem, that each of the recommendations contained in the report of the Challenges Faced by Racialized Licensees Working Group be discussed and voted on separately rather than as a package in order that benchers have an opportunity to consider the advisability of approving some but not all of the recommendations.

Lost

ROLL-CALL VOTE

Anand	Against	Leiper	Against
Armstrong	For	Lem	For
Beach	For	Lerner	Abstain
Bickford	Against	Lippa	Against
Boyd	Against	MacLean	For
Braithwaite	Against	McDowell	Against
Bredt	For	McGrath	For
Burd	Against	Merali	Against
Callaghan	For	Mercer	Against
Chrétien	Against	Murchie	Against
Cooper	Against	Nishikawa	Against
Corbiere	Against	Papageorgiou	Against
Corsetti	Against	Richardson	For
Criger	For	Richer	Against
Donnelly	Against	Rosenthal	Against
Earnshaw	For	Sharda	Against
Evans	Against	Sheff	For
Falconer	Against	Sikand	Against
Galati	Abstain	Spurgeon	Against
Go	Against	St. Lewis	For
Goldblatt	Against	C. Strosberg	For
Groia	For	H. Strosberg	For
Haigh	Against	Troister	For
Hartman	Against	Udell	For
Horvat	For	Vespry	For
Lawrie	Against	Walker	Against

Vote: 19 For; 31 Against; 2 Abstentions

**THE LAW SOCIETY OF UPPER CANADA**

**Notice of Motion made pursuant to Section 93 of By-Law 3  
[Benchers, Convocation and Committees]**

**Notice is hereby given of the following motion  
to be made at Convocation on December 2, 2016**

THAT each of the recommendations contained in the report of the Challenges Faced by Racialized Licensees Working Group be discussed and voted on separately rather than as a package in order that benchers have the opportunity to consider the advisability of approving some but not all of the recommendations.

Mover: Sidney Troister LSM 

Seconder: [name   
JEFFREY W. LEM

[date]  
November 4/16

It was moved by Ms. St. Lewis, seconded by Ms. Vespry, that the main motion be amended by adding the words “in a manner consistent with the best practices established to protect licensees vulnerable to harm which may flow from this disclosure” following the phrase “Paralegal Annual Report” in Recommendation 4 of the Report.

Carried

It was moved by Ms. Criger, seconded by Mr. Bredt, that the main motion be amended to replace the word “require” in Recommendation 3, paragraph 1) of the Report with the word “encourage”.

Lost

ROLL-CALL VOTE

Anand	Against	Leiper	Against
Beach	For	Lem	For
Bickford	Against	Lerner	Against
Boyd	Against	Lippa	Against
Braithwaite	Against	MacLean	Against
Bredt	For	McDowell	Against
Burd	Against	McGrath	Against
Callaghan	Against	Merali	Against
Chrétien	Against	Mercer	Against
Cooper	Against	Murchie	Against
Corbiere	Against	Nishikawa	Against
Corsetti	Against	Papageorgiou	Against
Criger	For	Richardson	Against
Donnelly	Against	Richer	Against
Earnshaw	Against	Rosenthal	Against
Evans	Against	Sharda	Against
Falconer	Against	Sikand	Against
Galati	Against	Spurgeon	Against
Go	Against	St. Lewis	Abstain
Goldblatt	Against	C. Strosberg	Against
Groia	Against	H. Strosberg	Against
Haigh	Against	Troister	For
Hartman	Against	Udell	Abstain
Horvat	Against	Vespry	For
Lawrie	Against	Walker	Against

Vote: 6 For; 42 Against; 2 Abstentions

The main motion as amended carried.

ROLL-CALL VOTE

Anand	For	Leiper	For
Beach	Abstain	Lem	For
Bickford	For	Lerner	For
Boyd	For	Lippa	For
Braithwaite	For	MacLean	For
Bredt	For	McDowell	For
Burd	For	McGrath	For
Callaghan	For	Merali	For
Chrétien	For	Mercer	For
Cooper	For	Murchie	For
Corbiere	For	Nishikawa	For
Corsetti	For	Papageorgiou	For
Criger	For	Richardson	For
Donnelly	For	Richer	For
Earnshaw	For	Rosenthal	For
Evans	For	Sharda	For
Falconer	For	Sikand	For
Galati	For	Spurgeon	For
Go	For	St. Lewis	For
Goldblatt	For	C. Strosberg	For
Groia	For	H. Strosberg	For
Haigh	For	Troister	Abstain
Hartman	For	Udell	For
Horvat	For	Vespry	Abstain
Lawrie	For	Walker	For

Vote: 47 For; 0 Against; 3 Abstentions



**Tab 3.1**

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

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**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;
- 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 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:

- 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

## 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](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](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.”<sup>1</sup>

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.

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<sup>1</sup> “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."<sup>2</sup>

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.

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<sup>2</sup> "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.”<sup>3</sup>*

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 licensees<sup>4</sup> 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

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<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup>

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.<sup>7</sup>

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<sup>5</sup> Referred to as “the engagement process”.

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

<sup>7</sup> 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*<sup>8</sup> and the *Paralegal Rules of Conduct*<sup>9</sup> 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;<sup>10</sup>
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;**

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

<sup>9</sup> *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 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:

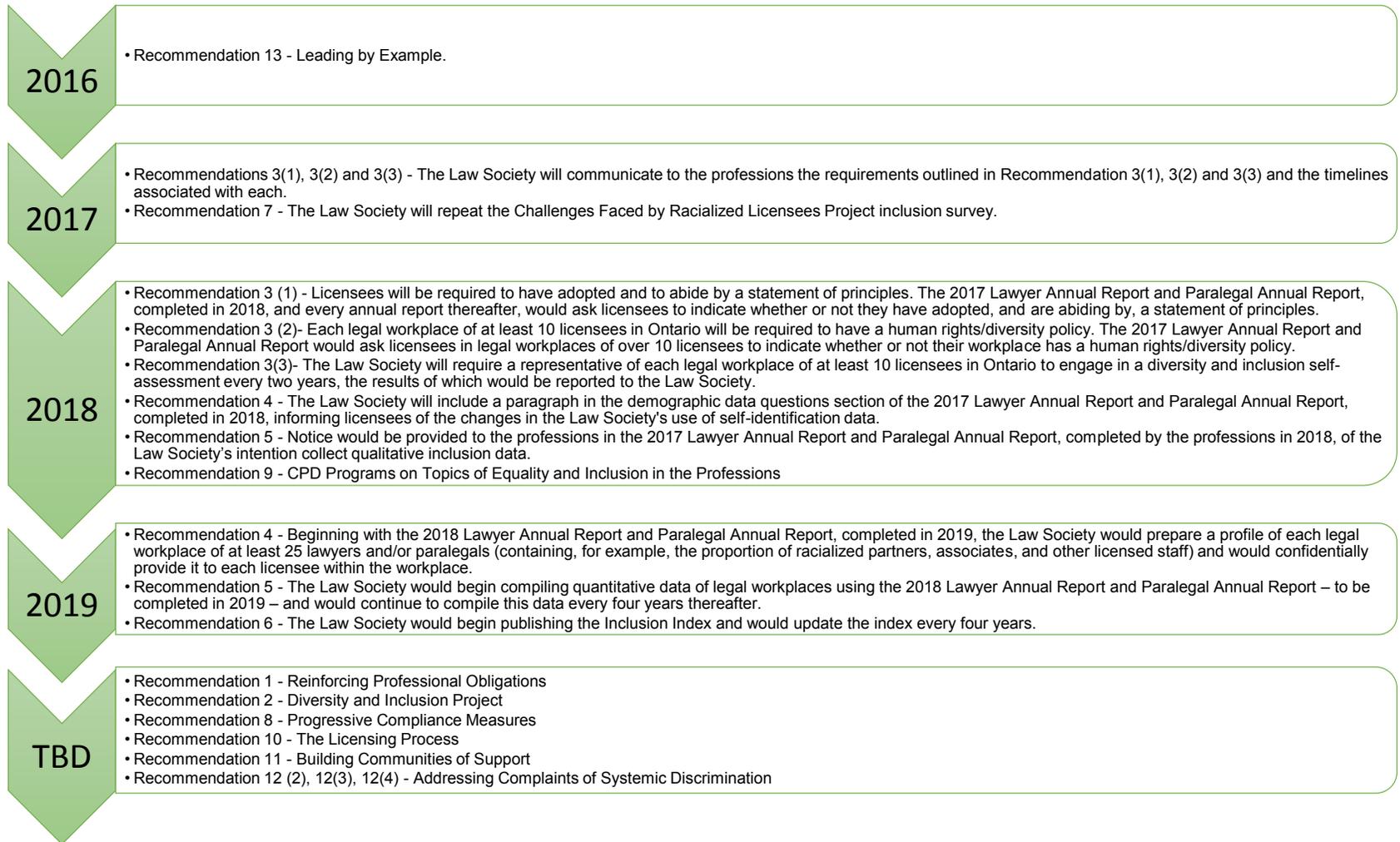
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 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 King<sup>11</sup>

### 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 racialized<sup>12</sup> lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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:

<sup>11</sup> Daughter of Martin Luther King

<sup>12</sup> 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>.

<sup>13</sup> 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>

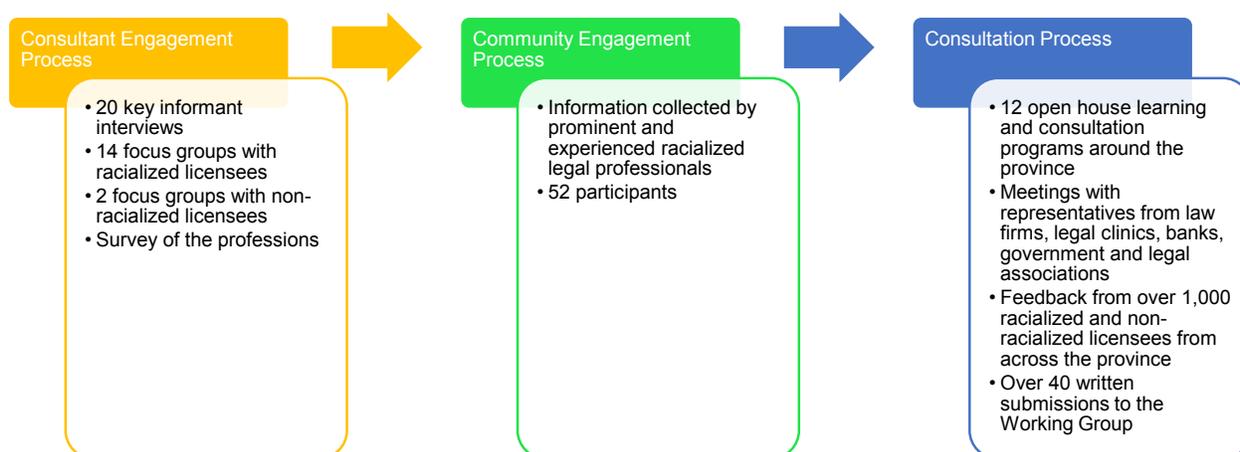
<sup>14</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>15</sup> 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;<sup>16</sup>
  - 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.<sup>17</sup>



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:

<sup>16</sup> 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.

<sup>17</sup> 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.”<sup>18</sup>*

— 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.”<sup>19</sup> 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.”<sup>20</sup>
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.”<sup>21</sup> 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 #OscarsSoWhite<sup>22</sup> — 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

<sup>18</sup>*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>

<sup>19</sup> “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>

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

<sup>21</sup> “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>

<sup>22</sup> 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.””<sup>23</sup>

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 prisons<sup>24</sup> 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”<sup>25</sup> 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”,<sup>26</sup> 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*.”<sup>27</sup>
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”<sup>28</sup>

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

<sup>23</sup> “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>

<sup>24</sup> 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>

<sup>25</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

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

<sup>27</sup> “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](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>28</sup> 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."<sup>29</sup> 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*<sup>30</sup> and *By-Laws*<sup>31</sup> 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.

<sup>29</sup> "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](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

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

<sup>31</sup> 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;<sup>32</sup>
  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;<sup>33</sup> 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.

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<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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

<sup>34</sup> “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/>

<sup>35</sup>, “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](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

departments in Québec.<sup>36</sup> 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.<sup>37</sup>

### **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;**
- 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.

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

<sup>37</sup> *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.<sup>38</sup>

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*].”<sup>39</sup>
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.”<sup>40</sup>
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.<sup>41</sup>
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

<sup>38</sup> *Rules of Professional Conduct*, *supra* note 6.

<sup>39</sup> *Paralegal Rules of Conduct*, *supra* note 7.

<sup>40</sup> Participating legal association.

<sup>41</sup> “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.<sup>42</sup> 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*.<sup>43</sup> 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.<sup>44</sup>
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.<sup>45</sup>
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."<sup>46</sup> 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).

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<sup>42</sup> "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>

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

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

<sup>45</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>46</sup> "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”<sup>47</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>48</sup>
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.”<sup>49</sup>

### **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 so they can compare**

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

<sup>48</sup> *Ibid.*

<sup>49</sup> 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>.

**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.”<sup>50</sup>*

— 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.<sup>51</sup>
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;<sup>52</sup>
  - 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.

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<sup>50</sup> “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>

<sup>51</sup> *Supra* note 11 & note 13

<sup>52</sup> “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.”<sup>53</sup>
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.”<sup>54</sup>
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,<sup>55</sup> 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.<sup>56</sup>
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

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<sup>53</sup> *Supra* note 47.

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

<sup>55</sup> “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 commentators<sup>57</sup> 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.).”<sup>58</sup>

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<sup>57</sup> 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)

<sup>58</sup> *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.”<sup>59</sup>
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”.<sup>60</sup> 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.<sup>61</sup>
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”.<sup>62</sup>
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.<sup>63</sup>
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>64</sup>

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<sup>59</sup> *Ibid.*

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

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

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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-

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<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.<sup>65</sup>
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.”<sup>66</sup> 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.

<sup>65</sup> Policy and Guidelines on Racism, *supra* note 39 at 50.

<sup>66</sup> 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](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.”<sup>67</sup>
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 Report<sup>68</sup> 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

<sup>67</sup> Law firm representative.

<sup>68</sup> “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/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2013/convov2013_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."<sup>69</sup>

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.<sup>70</sup> 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.

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<sup>69</sup>"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](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

<sup>70</sup> *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.<sup>71</sup>
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.<sup>72</sup> For example, Menteer, a free, open source online platform,<sup>73</sup> 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

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

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

<sup>73</sup> 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.<sup>74</sup>

#### *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.<sup>75</sup> 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

<sup>74</sup> "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>

<sup>75</sup> "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*<sup>76</sup>, 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

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<sup>76</sup> "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."<sup>77</sup>
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.<sup>78</sup> 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."<sup>79</sup>
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.<sup>80</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>81</sup>
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,

<sup>77</sup> 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>

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

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

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

<sup>81</sup> *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.<sup>82</sup>

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,

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<sup>82</sup> 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.<sup>83</sup> 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

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<sup>83</sup> 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, one 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.”<sup>84</sup>

### 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 sponsorship<sup>85</sup> 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.

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

<sup>85</sup> 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*<sup>86</sup> and the *Paralegal Rules of Conduct*<sup>87</sup> 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

<sup>86</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>87</sup> *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”<sup>88</sup>, 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

<sup>88</sup> 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.<sup>89</sup> 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.

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<sup>89</sup> 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](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)



Tab 3.1.1

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

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November 14<sup>th</sup>, 2016

## **Submissions to the Law Society of Upper Canada on the Experiences of Racialized Licensees**

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### **Background on the Barbra Schlifer Commemorative Clinic**

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It has been providing legal representation, counselling, and interpretation in over 100 languages to women who have experienced all forms of violence, since 1985. The Clinic was established in the memory of Barbra Schlifer, an idealistic young lawyer whose life was cut short by violence on the night of her call to the bar of Ontario on April 11, 1980. The Clinic is not part of the LAO suite of community and specialized clinics. Rather, it is a separately incorporated not-for-profit that supplements the lack of legal services for survivors of violence.

We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals, and clinical education for law students. We work on law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact women survivors of violence. The Clinic serves women from ethno-racially and socio-economically diverse backgrounds, frequently from highly marginalized communities. Our clients often experience multiple social inequalities, including poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability.

On the basis of the experiences of our staff, (among whom are a high number of racialized licensees) we recommend that the Law Society of Upper Canada ("LSUC") allocate resources and provide a platform for racialized licensees to combat systemic racism and ensure a lasting culture of change in the legal profession. In this way, LSUC could move its commitment toward systematically supporting the implementation of concrete initiatives. Racialized licensees in the profession should lead the discussion and planning that will create lasting change. This change is imperative to the ongoing

success of the profession, which numerous reports have called for in response to barriers and an ossified professional culture.<sup>1</sup>

### **Professional Obligations and Practices**

*Relevant Recommendations: 1, 2, 3, 9, 10*

The LSUC must ensure its commitment to reinforcing the professional obligations of its members to recognize and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation. This includes, specifically and annually, addressing the lack of focus on diversity and systemic racism in law school curricula. Continuing professional development ("CPD") for lawyers and legal practitioners must also emphasize this priority. To operationalize diversity and

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<sup>1</sup> Trevor C. W. Farrow, "Sustainable Professionalism" (2008) 46 Osgoode Hall L.J. 51 at pp. 51 - 55, 63 - 68, 71 - 78, online: SSRN < [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1151799](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151799) >

Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives," pp. 2 - 1 to 2 - 13, 2 - 21 to 2 - 26 ("Barriers to Entry: Something Less than a Warm Welcome?"), paper presented at the Chief Justice of Ontario's Advisory

Michael Ornstein, Racialization and Gender of Lawyers in Ontario, a Report for the LSUC (Toronto: LSUC, April 2010), pp. i - ii ("Executive Summary") and 34 - 36 ("Conclusions"), online: LSUC < [www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf) > • Sabrina Lyon &

Lorne Sossin, "Data and Diversity in the Canadian Justice System" (2014) Journal of Law & Equality, pp. 3 - 12, 15 - 16, online, Osgoode Digital Commons: < <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps> >

Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), fact sheet, online: LSUC [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf)

David Lepofsky, "Making Courts and Mediations Accessible for People with Disabilities" (2014) video, online: < [https://www.youtube.com/watch?v=p3d73L\\_GpGXY&feature=share&list=PLDGgB77j2ZYrl\\_rtp32nSjOXfrDAGvnn&index=7](https://www.youtube.com/watch?v=p3d73L_GpGXY&feature=share&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=7) >

Law Society of Upper Canada, Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), pp. 10 - 21, online: LSUC < [www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Official%2812%29.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Official%2812%29.pdf) >

Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) < [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/2013\\_Snapshot\\_Lawyers.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf) >

equality training, the LSUC should develop clear guidelines for delivering relevant, timely, and meaningful educational and CPD programs which address the historic inequalities in Canada for racialized communities and the lack of diversity and plurality that is a persistent problem in the legal profession. These programs should also focus on the experiences of licensees who may experience multiple and intersecting forms of marginalization, including racialized women, religious minorities, sexual and gender expression minorities, or licensees from low-income backgrounds.

### **Building Communities of Support and Addressing Systemic Discrimination**

*Relevant Recommendations: 11, 12*

The LSUC must actively seek to build sustainable communities of support to recognize the unique experiences of racialized licensees. There is a profound lack of meaningful and ongoing mentorship for racialized licensees in the profession, and very little systematic fostering of natural connections and capacity building between senior and junior counsel. Building communities of support requires recognition of the social location of licensees and their lived experiences as minorities in a very hierarchical profession. Often, the narrative of “firsts” replaces the hard work of substantive and sustainable change, and creates an impression of “progress.”<sup>2</sup>

The LSUC and employers should also examine practices which reinforce so-called “token diversity,” which can result in the hiring of a few racialized licensees to meet the mandate of diversity and equality, without addressing ongoing oppressive workplace culture and the historical disadvantage faced by minority licensees. Ultimately, the concept of the plurality is useful here, as a commitment to diversity is empty without providing racialized and minority licensees access to meaningful positions of power within the legal profession.

Racialized licensees also experience gaps in employment equity, particularly if they are women. “Men are more likely to be in sole practice and law firm partners, while there is a higher proportion of women in all the other stations, especially in house, in clinics, in

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<sup>2</sup> Laura Beeston, “Canada appoints its first transgender judge” The Globe and Mail (December 18, 2015) <http://www.theglobeandmail.com/news/national/canadas-named/article27876501/> - first - transgender - judge -

government and education.”<sup>3</sup> As with gender wage gaps in other fields, women lawyers are at a definite economic disadvantage vis-à-vis their male colleagues.<sup>4</sup>

Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women, exemplifying and maintaining women’s subordinate positions in such a material way, contributes to an overall vulnerability to violence and disrespect, including the daily experiences of racialized licensees who are women. The LSUC should commit to employment equity for all its licensees and create meaningful mechanisms to allow licensees to excel in their legal careers while living balanced lives. This commitment includes both an eradication of the gender and racial wage gap, as well as a commitment to providing equitable parental leave for families having children, and not penalizing women for taking time away from their legal practice.

Sexual violence and its impacts in the employment context highlight yet another dimension of the unique experiences of racialized licensees, particularly in a hierarchical profession such as law. In situations that exacerbate unequal power dynamics, such as employment contexts, women, particularly visible minorities, continue to be deterred from reporting sexual assault and adequate state protection mechanisms are often not available, especially when negative repercussions on one’s reputation or employment are at stake.<sup>5</sup>

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<sup>3</sup> Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) <  
[https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/2013\\_Snapshot\\_Lawyers.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf)>

<sup>4</sup> Statistics Canada. 2011. “Average female and male earnings.” Online:  
<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>  
United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en)

OECD. 2014. “Gender Wage Gap.” Online: <http://www.oecd.org/gender/data/genderwagegap.htm>

See for example, Sheila Block and Grace-Edward Galabuzi. 2011. Canada’s Colour Coded Labour Market: The gap for racialized workers. Online: [http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour\\_Coded\\_Labour\\_MarketFINAL.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf); Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:  
[http://ywcacanada.ca/data/research\\_docs/00000140.pdf](http://ywcacanada.ca/data/research_docs/00000140.pdf)

Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:  
[http://ywcacanada.ca/data/research\\_docs/00000140.pdf](http://ywcacanada.ca/data/research_docs/00000140.pdf)

<sup>5</sup> Alice Woolley, <http://www.slw.ca/2014/06/10/yesallwomennotallmen-sexual-harassment-in-the-legal-profession/>

The power dynamics inherent in the practice of law also exacerbate daily microaggressions experienced by racialized licensees in the workplace, such as when interacting with court staff, or with the judiciary. Our students report ongoing struggles with sexualized work environments throughout the profession. These power dynamics are also inherent in the employment opportunities, and the experiences of racialized licensees during interview processes, both at the entry-level during the law school On-Campus Interview (“OCI”) processes, as well as during individual interviews at law firms, clinics, and the government. Comments about a candidate’s ethnic background or chosen hairstyle may seem minimal, yet they underscore their minority status in a profession still mostly populated by white, male, Anglo-Saxon legal practitioners, particularly in positions of power such as partners, CEOs, or judges.

If the goal of the LSUC is to foster an inclusive profession responsive to the increasing diversity of the Canadian population, there must be a sustained commitment to address the root causes of discrimination and racism still inherent in the legal profession. This commitment must include law school initiatives as well as CPD initiatives for all members of the profession, including students, in a climate of careful monitoring and compliance within the profession to professional obligations of equity. It must also include profession-wide community building and meaningful solutions to the ongoing systemic inequality of racialized licensees, such as combating pay inequity, sexual violence in the workplace, and the inherent power imbalances. These goals are especially pertinent in a profession committed to providing justice and protecting the public interest.

**Barbra Schlifer Commemorative Clinic**

Per:



**Amanda Dale**, Executive Director  
**Deepa Mattoo**, Legal Director  
**Petra Molnar**, Articling Student



Monday, November 14, 2016

Via Email: racialized.licensees@lsuc.on.ca

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

The Black Law Students' Association of Canada ("BLSA Canada") is a national organization that represents Black law students across Canada in both official languages. Our purpose is to promote increased representation of Black students in law schools and to support and enhance academic and professional opportunities for Black law students. BLSA Canada and its chapters at law schools nationwide are concerned with the challenges faced by racialized licensees in the legal profession and the barriers these challenges represent with regard to entering the profession.

In its September 22, 2016 Report to Convocation, the Equity and Aboriginal Issues Committee of the Law Society of Upper Canada ("LSUC") released the final report of the Challenges Faced by Racialized Licensees Working Group ("The report"), containing 13 recommendations in 5 broad categories for addressing barriers faced by racialized licensees in the legal profession. In furtherance of our organizational purpose, BLSA Canada offers the following comments on the recommendations outlined in the report.

In providing these comments, it is not BLSA Canada's aim to critique each of the proposed recommendations set out in the report. Instead, BLSA Canada's comments are structured more broadly to point out overarching areas of concern and to highlight ways in which some of LSUC's recommendations might be better supplemented. In providing these comments, BLSA Canada believes it can offer some insight on the perspectives of racialized students who are not yet licensees but soon will be.

**The need for the LSUC's leadership**

BLSA Canada would first like to applaud the law society for undertaking this initiative and for creating space in which the concerns of racialized licensees can be heard. Racial inequality and discrimination have long been concerns for racialized licensees and any proposed solutions must address the systemic roots of the challenges which racialized licensees face. In taking this long overdue and much needed step, the LSUC is showing leadership in taking measures to eliminate the barriers which contribute to the underrepresentation, marginalization and isolation of racialized licensees in the legal profession. As the regulator of the legal profession, any success that is to be had in addressing these barriers requires that the LSUC shows strong leadership.



**There must be a focus from the LSUC on challenges that arise before entry into practice**

Challenges faced by racialized licensees do not all of a sudden arise at the point of entry into the profession. Racialized law students and licensing candidates experience many of the challenges that are identified in the report (i.e. discrimination and stereotyping, lack of mentors and role models) long before they are seeking articling placements, completing the licensing process or being called to the Bar.

It is our opinion, that if the LSUC is committed to addressing the systemic challenges faced by racialized licensees, it should look for ways to work with law schools to address these hurdles long before their entry into the legal profession. We believe that collecting this data would allow for the assessment and identification of existing issues from the moment future licensees enter law school.

Another way in which the LSUC could work more closely with law schools is during the LSUC-regulated recruitment processes (i.e. the summer recruitment of 1L and 2L students as well as articling recruitment). As the report considers developing guidelines and collecting information on hiring practices, recruitment and retention, this presents an opportunity for the LSUC to facilitate better assessment of hiring practices in the profession. As the LSUC already puts rules in place that firms are to abide by during the structured recruitment processes, it would require very little of the LSUC to have some sort of follow-up measures to ensure that these recruitment processes are sensitive to issues of discrimination and stereotyping.

In the report, Recommendation 2 contemplates enhancing the On-Campus Interview (“OCI”) process for the dissemination of information. We suggest that it would also be beneficial to consider how OCIs and other such recruitment processes could be enhanced to better collect information.

*Exit surveys as a follow-up to recruitment processes*

It has become a common practice at a number of law schools to conduct anonymous surveys once the OCI process is completed as a means for law faculties to provide useful information to their respective student populations about how the process unfolds (i.e. this has been done in recent years by way of student newspapers like *Ultra Vires* at the University of Toronto Faculty of Law and *Obiter Dicta* at Osgoode Hall Law School). Such anonymous surveys provide opportunities to collect qualitative and quantitative data about the OCI process. The information that is compiled has often been relied upon by other students as a source of candid information about a process that is largely driven by the pursuit of the elusively-defined and extremely subjective quality of firm culture “fit”.

In working with the law schools to gather information in this manner, the LSUC could potentially obtain much more relevant and reliable information than that which can be obtained through self-assessed and self-reported data about firm hiring practices. We suggest that such information be included as a helpful supplement to the proposed inclusion index recommended in the report.



### **Concerns about what information is shared publicly and what is only released to firms**

The collection of quantitative self-identification data is beneficial and will in fact assist in measuring progress. However, information is only as valuable as it is accessible. Many legal employers already have diversity policies in place and even more state their commitment to fostering diverse workplaces, yet the manifestations of these policies and commitments are seldom disclosed. As a result, we are concerned that the data made available to the public will be insufficient.

Racialized candidates have an interest in knowing about the diversity and inclusion efforts and results of their prospective employers and not just those who are the top ranked diversity employers. Indeed, the accessibility of this information would be of great benefit in assisting students to make informed decisions about where they seek employment. And while we recognize that some are weary of adopting a “name and shame” approach to compliance, this legitimate concern of racialized students should be considered when determining what sort of information should be made publicly available.

While BLSA Canada recognizes that naming and shaming may not be the most useful approach, the accepted alternative should not be to deprive licensees of this valuable data. We encourage the law society to explore means to make the information publically available while mitigating the repercussions associated with so-called “name and shame” approaches.

### **Recognizing how the LPP oversight affects racialized licensees**

By the LSUC’s own account, racialized candidates are overrepresented in the Law Practice Program (“LPP”). The overrepresentation of racialized candidates in this program is of concern to BLSA Canada. Further though, we also have concerns as to how participation in the LPP impacts their legal careers. Given the overrepresentation of racialized candidates in the LPP, we strongly advocate that these concerns must be considered by the LSUC if it is to successfully address the issue of systemic racism in the legal profession.

By virtue of the fact that the consultation process for the report began prior to the creation of the LPP, the implications the program has for racialized candidates seeking entry into the legal profession has thus been overlooked. It is our opinion that the LSUC must assess how the LPP impacts racialized licensees.

Though we are glad that the LSUC has backtracked on its recent proposal to discontinue the LPP, it is extremely concerning that this proposal was put forth in light of the LSUC’s knowledge that racialized candidates disproportionately rely on this program to satisfy their licensing requirements. Such a proposal to discontinue a program that is still very much needed at this time (especially by racialized candidates), without proposing any alternative to replace it contradicts the LSUC’s stated commitments to ensuring that the practice of law is reflective of all peoples in Ontario.

On a related note, the LSUC must recognize the impact its recent increase in licensing fees has on racialized licensees who have only recently entered or are trying to enter the profession. The increased cost places an extra burden on the shoulders of racialized licensees. While the LSUC endeavours to eliminate the systemic barriers that have long kept certain communities out of the profession, it should not introduce new ones.



**BLACK LAW STUDENTS  
ASSOCIATION OF CANADA**

**L'ASSOCIATION DES ÉTUDIANTS NOIRS  
EN DROIT DU CANADA**

### **Mentorship for new entry racialized licensees needs to be a priority**

The working group's final report aptly recognizes that racialized licensees require access to professional mentors and networking avenues. However, the LSUC must recognize that while mentoring is critical at all stages of a lawyer's career, it is perhaps most critical at the outset of their career. The demands and stresses placed on new entries are becoming increasingly burdensome and increasingly harder to overcome.

The continuous decrease in new articling positions and a lessened demand for first-year hires means that many new licensees are increasingly incapable of coping with their high debt burdens. The relative precariousness of their situation (as compared with those who have been called to the Bar for several years and have secured employment) coupled with the systemic challenges they face justifies the formation of an LSUC supported mentoring initiative specifically for new entry racialized licensees. While professional mentoring is undoubtedly significant, racialized new entries would benefit from additional support from their mentors that goes beyond simply developing their practice. This sort of mentoring—mentoring that extends beyond life in the office—is often difficult to find.

### **Final Remarks**

BLSA Canada welcomes the final report of the Challenges Faced by Racialized Licensees Working Group as a first step taken by the LSUC towards reducing systemic racism and discrimination in the legal profession. The LSUC has identified many of the barriers impeding the development and progression of racialized lawyers. BLSA Canada applauds many of the working group's proposed recommendations. However, we believe that to reduce the systemic barriers that racialized licensees face requires that the LSUC considers the unique perspectives and experience of racialized students who ultimately represent the future of the legal profession.

The cyclical nature of the systemic challenges faced by racialized law students and licensing candidates needs to be properly addressed. Hence, if the Law Society of Upper Canada is committed to eliminating the longstanding barriers faced by racialized licensees and to ensuring that the practice of law is better reflective of Ontario's diverse peoples and communities, it must take an approach that considers the barriers that racialized licensees face before they even enter the profession.

Ultimately, the LSUC needs to have a holistic understanding and approach to the challenges faced by racialized law students, licensing candidates and racialized licensees.

Yours truly,

BLACK LAW STUDENTS' ASSOCIATION OF CANADA

*K. Hayward*

Kojo Hayward  
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Equity and Diversity Committee  
University of Windsor  
Faculty of Law

November 2, 2016

**RE: BLSA Feedback – LSUC Report on Challenges Faced by Racialized Licensees**

To Whom It May Concern,

The Black Law Students' Association – Windsor Chapter is pleased to provide feedback regarding the Law Society of Upper Canada's report *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. We have given careful thought to the report and its proposed recommendations and hope that our input will be strongly considered.

We would like to emphasize that the concerns raised by racialized licensees in Ontario are multi-faceted and occur at various stages in the lawyer's career. In providing feedback, we have focused our attention on racialized law school applicants, law students and those undertaking the licensing process. We believe that the Law Society cannot effectively address barriers experienced by racialized licensees without first actively working to eliminate the challenges that arise at these foundational stages.

**Recommendations**

*Gather information:* Law schools, the Ontario Universities' Application Centre, and the Law Society should keep track of the number of racialized (1) law school applicants, (2) admitted students, (3) participants in the OCI process, (4) participants who successfully attained positions through OCIs, and (5) licensing candidates who attained traditional articling positions (national, mid-size and small firms) and those entering the Law Practice Program. It would also be worthy to gather statistics regarding the number of racialized individuals that remain at a law firm after completing articles and the average length of time that these individuals remain at the firm.

The experiences will vary, but collecting and publishing statistics on these areas will assist the Law Society in determining how to help the upcoming generations of racialized licensees. In addition, this information may help to assess systemic factors that result in racialized individuals remaining overly represented in some categories and significantly underrepresented in others.

*Understand the barriers that exist:* Racialized licensees often come from cultural and socioeconomic backgrounds which place a strong emphasis on values that may be overlooked or minimized within the legal profession. Racialized law school applicants, in many cases, have had less exposure to mentors in the legal profession and face barriers through lack of resources, information or financial means. These factors create obstacles for racialized individuals with regards to developing effective law school applications and achieving academic success while in law school.

The Law Society must work to mitigate these early barriers faced by racialized applicants and law students as these initial challenges often lay the groundwork for further obstacles to be faced once these individuals become licensees. The Law Society should collaborate with law schools to reduce barriers that exist in the application and law school admissions processes and should consider developing guidelines to inform the admissions process, with a view to eliminating such obstacles.

1/2



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*Start early:* The Law Society must invest in initiatives that focus on providing racialized law school applicants and law students with resources, support, mentorship and information. These tools are necessary to developing effective applications and succeeding academically. We recommend that the Law Society work collaboratively with law schools, dedicate funding and resources, and develop mentorship initiatives with an express focus on these early and crucial development stages for future licensees.

While we welcome recommendation 11 in the report which speaks to “building communities of support” through “mentoring and networking initiatives”, we again would like to emphasize that these measures should be extended to include racialized law school applicants and law students. Recommendation 2 aims to work 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.” The Law Society must be conscious of limited resources available within law schools and is strongly urged to dedicate adequate financial support to aid law schools in achieving this goal.

The Law Society should also examine initiatives that can cultivate safe spaces where racialized licensees and law students can express their concerns and receive practical advice on how to address the particular challenges they face. For instance, the Law Society provides a resource for licensees to obtain advice on matters concerning professional conduct. A similar resource made available to assist racialized licensees, and a separate initiative dedicated to law students, could be developed to ensure guidance is readily available. This resource is an important tool as the challenges faced by racialized licensees and law students can involve issues that are highly sensitive or controversial, and confidentiality may be a strong concern for individuals seeking advice.

*Think critically about hiring and lack of opportunity in the profession:* A significant number of law firms hire based on the ‘fit’. It must be acknowledged that many racialized candidates, by virtue of their diverse cultural and socioeconomic backgrounds, are disadvantaged by ‘fit-based hiring’. The Law Society must do more to encourage law firms to adopt hiring practices that strive to eliminate bias. In order for racialized licensees to move beyond sole practitioner and small firm practice, and gain access to a greater number of opportunities, inherently biased hiring practices must be critically examined and more strongly discouraged by the Law Society.

*Meeting service needs:* The report recommends developing a resource centre with materials for “licensees in sole practice, associations of sole practitioners and small partnerships” to help overcome the fact that “24% of racialized lawyers are in sole practice and 33% ...in legal workplaces of two to five.” Such resources should be extended to law schools to better prepare racialized students for the range of options available within the legal profession.

*Sharing the responsibility for change:* Recommendations 9 and 10 consider initiatives that seek to promote cultural competency, equity and inclusion within the profession. In order to be effective, these initiatives must assist in uncovering unconscious prejudices. Furthermore, it must be made clear that the responsibility of ensuring inclusion does not fall solely on the hands of racialized licensees. Eliminating the challenges faced by racialized licensees must be a shared responsibility that is also carried by non-racialized licensees and the Law Society must work to encourage this notion within the profession.

Thank you for the opportunity to provide feedback. We look forward to continuing this discussion with you should you require further information.

Best Regards,  
 Black Law Students’ Association – Windsor Chapter

Feedback on LSUC's report *Working Together for Change:  
Strategies to Address Issues of Systemic Racism in the Legal Professions* –  
Proposal to Implement Recommendations 1, 2, 3, 4, 5, 6, 8, & 9:  
Proposed Amendment to the Rules of Professional Conduct

**R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule**

**November 3, 2016**

**Proposed Amendment to the Rules of Professional Conduct**

**R6.3.1-4 Transparency and Cultural Competence in the Hiring Process Rule**

**Prepared by Students at Windsor Law**

**Prepared for Professor Tanovich's Legal Profession class Winter 2016**

### **R6.3.1-4 – Transparency and Cultural Competence in the Hiring Process**

**Employers shall ensure transparency and abide by principles of cultural competence in their hiring processes. Employers have an obligation to disclose clear and definitive job descriptions, as well as all phases of any recruitment process, to all applicants.**

#### **Commentary**

##### **Preamble**

[1] Although the legal profession is committed to diversifying its workforce, discriminatory hiring practices continue. This is demonstrated by reports of:

- a. Racialized applicants “whitening” their resumes and downplaying their ethnic experiences and / or feeling like they must to be more attractive to firms to secure employment
- b. Racialized licensees are severely underrepresented in big firms<sup>1</sup>
- c. Large numbers of women leaving firms as a result of lack of accommodation for maternity and parenting accommodations and for lack of promotion to partner<sup>2</sup>
- d. LGBTQ++ licensees are significantly underrepresented in big firms
- e. Licensees with disabilities are discriminated against in hiring processes as stereotypes and common misperceptions are relied on and a lack of accommodations are provided

[2] Ranking candidates based on how well they fit a firm’s image is a problem. This practice is ambiguous and could be coded language for discriminatory hiring practices. It presents barriers for persons who appear to be different than the workplace norm, and particularly for peoples protected under the Ontario *Human Rights Code*. Increased transparency and integrating cultural competence into the hiring processes will strengthen equity and diversity initiatives with the aim of reducing these barriers.

##### **Cultural competency in hiring processes**

[3] Principles of cultural competence can be useful outside of the lawyer-client relationship. Fundamentally, cultural competence training is an exercise in training lawyers to understand 1; that they are cultural beings and 2; that we cannot escape the influence culture has on our

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<sup>1</sup> The Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees: Consultation Paper* (Toronto: LSUC, 2014) online: <[https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Consultation\\_Paper\\_Official\(12\).pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Official(12).pdf)>

<sup>2</sup> Fiona M Kay et al, *Leaving Law and Barriers to Re-entry: A Study of Departures from and Re-entries to Private Practice: A Report to the Law Society of Upper Canada* (23 April, 2013) online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147494539>>.

decisions. Susan Bryant, Associate Professor at CUNY School of Law, had this to say about culture's "invisible lens";

We are constantly attaching culturally-based meaning to what we see and hear, often without being aware that we are doing so. Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.

[4] Cultural competence training seeks to cultivate a legal profession wherein lawyers are capable of rendering their own personal "invisible cultural lenses" visible. Culturally competent lawyers acknowledge "racism, power, privilege, and stereotyped thinking as influencing [their] interactions [...] and [work] to lessen the effect of these pernicious influences." Infusing principles of cultural competence into the hiring process will serve to stifle conscious and unconscious bias and reliance on stereotypes.

### **Transparency/Disclosure**

[5] Applicants must be given clear and consistent information about job requirements. A written job description should be available. A clear and definitive job description will include an outline of the actual work performed, necessary skills, and qualities expected of successful applications. Job requirements should be rationally connected to performing the job, adopted in good faith, and reasonably necessary to accomplish the work-related purpose.

[6] Information about the recruitment process, including the hiring committee membership and the use of any secondary interviews or receptions, must be disclosed to all applicants. Recruitment processes must be rationally connected to the job requirements and adopted in good faith.

[7] These principles are also applicable to student recruitment practices.

### **Reporting**

[8] All law firms must disclose to the Law Society biennially their hiring criteria, processes, and demographics for further review. The report must be submitted to the Law Society Equity Director for inclusion in the Law Society's Model Policies, Publications and Reports. The records must include detailed information including gender and age of those hired by the firm, as well as information regarding Aboriginal and minority demographics.

[9] Law firms must keep up to date records of all employment practices, as the Law Society Equity Director may, at any time, conduct a random check of policies in order to ensure transparency. These records must include information on all lawyers, students and paralegals hired within the two-year period.

[10] Those firms that do not disclose their hiring practices or do not keep current records may be subject to fines and other disciplinary action that the Board deems fit.

### **Examples of contravening behavior**

[11] Ambiguous terms such as 'Cultural Fit' must not be used as hiring criteria. All criteria must be clearly defined and in compliance with the Ontario *Human Rights Code*.

[12] Ambiguous language and terms used during the hiring process can have an adverse and discriminatory effect. These unintended consequences depart from the standards of employment prescribed in Rule 6.3.1-1.

[13] "Cultural Fit" is demonstrative of a term used in hiring practices that appears neutral, but has adverse effects. For example, "Cultural Fit" may present barriers for persons who are, or appear to be, different than the dominant group in a workplace. These barriers can manifest at all stages of the hiring process. When such ambiguous terms are offered as an explanation for unsuccessful applicants seeking feedback, they have the potential to conceal discriminatory practice, hamper diversity and equity initiatives and entrench the status quo.

### **Hiring Process Best Practices**

[14] Legal recruitment practices should acknowledge that discrimination occurs in hiring processes and take steps to avoid perpetuating it. Employers should aim for fair processes that focus on each candidate's ability to perform essential job duties. For example, best practices within the legal profession can include;

- a. Having a multi-person panel conduct formal interviews;
- b. Establishing objective assessment criteria and marking schemes determined before answers are graded
- c. Ensuring consistency in interview questions, based on the job's essential duties and bona fide requirements.
- d. Documentation of any judgments based on appearances or other subjective features in order to eliminate unconscious bias.

[15] While not directly regulated by the Law Society, it is recommended that law schools engage in career preparation programming that does not perpetuate discriminatory practices. For example, guest speakers focusing on professional attire for women should not go into detail about length of skirts, cut of blouses, or colour of lipstick.

[16] In addition to ensuring substantial transparency within the hiring processes, rule 6.3.1, requires transparency in the retention process. As an example, although there has been a large number of women entering private practice, they have also been leaving in large numbers. This is a symptom of the fact that women retained by firms are not being promoted to partnership and other decision-making positions. To increase transparency, there must be ongoing research regarding the retention of individuals within gendered, racialized, lgbtq++, and disability communities in firms, government and private practice. The profession must recognize the challenges that these individuals face and make substantial efforts to accommodate their needs and reduce these barriers.

## Racialized Licensee Response

November 4, 2016

To: Dean Chris Waters

From: Faculty of Law Equity and Diversity Committee

### **Re: Recommendations for a Windsor Law / Canadian Council of Law Deans Response to the 2016 LSUC Report on Challenges faced by Racialized Licensees**

You requested feedback from the EDC regarding this report. The EDC has consulted with the students via an email request for feedback, and has otherwise reviewed the report. We would make the following recommendations:

1. The Committee strongly supports Recommendation 1 “Reinforcing Professional Obligations.” This recommendation is important for ensuring that individual members of the Law Society are held accountable by the LSUC for their conduct. It also opens up new channels for those who interact with LSUC members to utilize the existing complaints mechanisms to resolve matters pertaining to equality, diversity and equity.
2. The Committee supports Recommendation 2 and notes that Law Schools could benefit from, and contribute to, the development and implementation of model policies and resources.
3. The Committee supports Recommendations 3, 4, 5 and 6 and notes the following:
  - a) Law Schools could adopt item 1) with respect to their own student populations. “The Law Society will 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”;
  - b) Are Law Schools considered “legal workplaces of at least 10 (or 25) licensees in Ontario” who would be subject to the data collection requirements?

We recommend that the LSUC define the term "legal workplaces". Law schools should be consulted when both the quantitative and qualitative surveys are being prepared. Law school student and applicant surveys could closely mirror the survey used by the LSUC so that the data can be used for comparative purposes.

- c) Qualitative data taken from inclusion surveys may also be useful to receive from law students, so as to ensure that the full picture of the challenges faced by racialized licensees can be demonstrated. This will ensure that broad context is provided in the Inclusion Index;

- d) The data collection requirements of law schools and other legal workplaces should be clearly stated from the outset when implementing this report, as it is an important aspect of the Inclusion Index. The Inclusion Index should not be built without taking this data into consideration. The power of statistical reporting is in being able to compare against historical data. If the Inclusion Index is not built properly from the outset, amending the formulas within it will be difficult later on, and will compromise the integrity of the data over time.

If the Law Society does not consider it to be within the scope of this report to require law schools to provide data about student populations, then we would recommend the Law Society raise the matter at the Federation of Law Societies of Canada.

4. Understanding the complex nature of systemic barriers to diversity and inclusion, the Committee strongly supports Recommendation 8 “Progressive Compliance Measures”, as another important measure for ensuring organizational accountability.
5. The Committee supports Recommendation 10 “The Licensing Process” but requests clarification from the LSUC about whether it is envisioned that law schools should also adopt cultural competency as a core competency. Again, if the LSUC does not envision that law schools should be included under this recommendation, then this recommendation should be forwarded to the Federation for implementation with respect to law schools.

The committee notes that “racialized licensee” is not defined in the report. The report would benefit from clarifying this point. For example, reference could be made to Statistics Canada “Visible Minority and Population Group Reference Guide, National Household Survey, 2011” Cat No 99-010-XWE2011009, online: <https://www12.statcan.gc.ca/nhs-enm/2011/ref/guides/99-010-x/99-010-x2011009-eng.cfm> to ensure a standard approach.

6. The Committee strongly supports Recommendation 12 as an important tool in ensuring that Recommendation 8 has effective enforcement measures. It will also ensure that the LSUC is appropriately prepared to deal with such complaints in the future. Without having these foundations in place, the LSUC itself will perpetuate discrimination by having inadequate processes in place, and inadequately trained personnel, to handle these complex and sensitive complaints. In particular, protecting persons from reprisal for making complaints is significant.
7. The committee strongly supports Recommendation 13 “Leading by Example”, as being tremendously important for creating strong foundations for the entire profession.

The Committee should be encouraged to share an anonymized version of the comments that were made by licensees during the consultation process. If these could be categorized so that, for example, law schools and other workplaces could have access to relevant feedback, this may be helpful.

Generally, we would commend the Equity and Aboriginal Issues Committee on the broad consultations that were undertaken to prepare this report, and for their responsiveness to the feedback that they received.

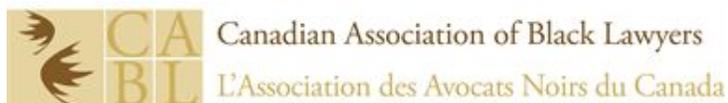
Please note that we have also received a written submission from the Black Law Students' Association, Windsor Chapter. That report is attached.

Respectfully submitted,

On behalf of the Faculty of Law Equity and Diversity Committee:

Annette Demers and Naina Singh (co-Chairs)  
Jasminka Kalajdzic, Associate Dean  
Francine Herlehy, Assistant Dean, Student Services  
Mary Mitchell (staff representative)  
Yasmeen Peer, Student Member  
Amneet Bali, Student Member  
Mahnaz Shariati, Student Member  
Ethan Chang, Student Member

Att.



November 14, 2016

Mr. Paul B. Schabas  
Law Society Treasurer  
Law Society of Upper Canada  
c/o Ekua Quansah- Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Janet Leiper and Raj Anand  
Co-chairs Challenges Faced by Racialized Licensees Working Group  
c/o Ekua Quansah – Policy Counsel  
Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Email: racialized.licensees@lsuc.on.ca

Dear Treasurer Schabas, Co-Chairs Leiper and Anand:

**Re: Final Report of the Challenges Faced by Racialized Licensees (CFRL) Working Group**

The Canadian Association of Black Lawyers (CABL) would like to comment on the final report submitted by the CFRL Working Group. We make these comments in light of our letter submitted to the Law Society of Upper Canada (LSUC) on May 14, 2015. In this letter we recommended a number of measures to the Working Group<sup>1</sup>.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession. From the advent of the creation of the CFRL Working Group in 2012, CABL has been involved in supporting, informing and contributing to the process specifically in regards to research, analysis and discussions of the report.

CABL is a member of the Equity Advisory Group (EAG) of the LSUC and had a representative sitting on the EAG working group for the CFRL report. Our members participated in focus groups, town hall meetings, surveys and direct meetings with the CFRL Working Group.

CABL notes that the process of recalling, reliving and publicly discussing systemic and sometimes overt racism is gruelling and uncomfortable. Our members shared intimate details of their experiences in order to draw attention to the challenges faced by black and other minority

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<sup>1</sup> Please see Attached letter dated May 14, 2015 – addressed to Joséé Bouchard.

lawyers in Ontario. We hope that our efforts will eventually lead to more than an initial step to change.

CABL acknowledges that the final report released by the CFRL Working Group highlights some of the challenges faced by racialized licensees and is an initial step towards addressing these challenges. The summary and expressions of hope set the tone for the 13 recommendations the report is making to Convocation.

CABL is fully in support of the LSUC addressing the challenges our members and other minority groups face in the practice of law. The members of the Bar have failed in their obligation not to “discriminate on the grounds of race, ancestry, pledge of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person (as defined in the *Ontario Human Rights Code*)”<sup>2</sup> It is for this very reason that we believe the report places too much faith in the ability of the Bar to self-monitor and correct the systemic issues recognized in the report. There must be direct regulation from the LSUC. We believe that the recommendations should be strengthened to reflect LSUC regulation rather than suggestion.

In the short time available for submissions and commentary, CABL would like to highlight a few things that we suggested in May 2015 that we believe should have been adopted in the final report.

**Data Collection:**

We note that there is no mandatory internal collection of demographic data by legal organizations as we suggested. The LSUC will, through its licensee annual reporting mechanism, collect the data and present this to legal organizations. CABL notes that mandatory internal collection of data on an annual basis forces legal organization to “look at themselves in the mirror” and recognise the trends that so far they have not addressed. How will the LSUC ensure that legal organizations will review the numbers provided by the LSUC on a yearly basis? Our letter of May 14, 2015, noted that just as trust accounts and other features of legal organizations are regulated, data collection by legal organizations can be enforced and regulated.

**Self-Assessment:**

CABL is sceptical of the LSUC recommending to “encourage” legal workplaces to conduct inclusion surveys by providing them with sample templates. Despite the tenor of the report, the Working Group had concerns about unnecessary burdens placed on many groups that have already moved forward proactively with equality measures of their own. Legal Organizations that are ahead of the curve will not be burdened by less. On the other hand, the many that have

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<sup>2</sup> See *The Rules of Professional Conduct* section 6.3.1-1

nothing in place will have a standard to live up to. CABL would like the adoption of equality, diversity and inclusion principles to be more than voluntary and subject to periodic review for compliance. CABL notes that unconscious bias can be made conscious through self-assessment. However, we accept that the CFRL Working Group were weighing competing interests in deciding to adopt a less onerous approach. We hope that the global effect of the recommendations will lead to a future that includes compliance review.

### **Progressive Compliance Measures**

CABL believes the LSUC must now commit to, not merely consider, developing and implementing 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. The recommendations are not onerous. In light of the Working Group's findings, they reflect a basic standard required of any legal workplaces serious about diversity and inclusions.

In general the report falls short of adequately identifying enforcement mechanisms. What happens if legal organizations are not encouraged and/or do not adopt policies? Or even worse create policies and ignore them? The report does not address this.

### **CPD Training:**

CPD programs limited to once in three years places the issue of systemic racism on the shelf only to be uncomfortably addressed after long periods. The issue can be addressed and kept alive by requiring an annual one hour program. The report is also vague on the implementation of the training. Who are the experts the LSUC will approach to help with developing this curriculum? CABL hopes that our organization will be consulted before the curriculum and process are discussed and implemented.

### **Complaints of Systemic Discrimination:**

The Discrimination and Harassment Counsel Program was created under a different principle and ideology. CABL would prefer to "create a specialized and trained team to address complaints of discrimination"<sup>3</sup> that reports to the LSUC disciplinary committee.

### **Conclusion:**

Moving forward, CABL expects the LSUC to continue to involve us as well as the Roundtable of Diversity Associations (RODA), EAG and other equity seeking legal organizations in the implementation of the recommendations and the planning of new policies.

CABL's submission is a comment on some aspects of the report that we believe could be strengthened. However, there is no policy in place at this time and, as noted earlier, the adopting

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<sup>3</sup> CFRL Working Group Report Recommendation 12 subset 4

of this report would be a positive first step towards change. CABL fully supports Convocation adopting the CFRL Working Group Final Report in its entirety.

CABL does not support a vote of the CFRL Working Group Final Report on a recommendation by recommendation basis. We reiterate that our hope is that the global influence of the recommendations will effect change. A vote on recommendation by recommendation will most likely change the overall influence of the report.

CABL is aware that Convocation will also be considering a motion that the recommendations from the CFRL Working Group Report form the benchmark for approaching issues with other equity seeking groups. CABL supports this motion.

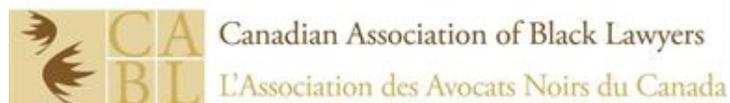
CABL will rely on the hope that the recommendations will become the root of a living tree that will grow, flourish and become stronger by the day. First let's plant the tree.

Yours truly,

**CANADIAN ASSOCIATION OF BLACK LAWYERS**



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Enclosure



May 14, 2015

**Via Email**

Ms. Joséé Bouchard  
 Director, Equity Initiatives Department  
 The Law Society of Upper Canada  
 Osgoode Hall  
 130 Queen Street West  
 Toronto, ON M5H 2N6

Dear Ms. Bouchard:

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

The Canadian Association of Black Lawyers (“CABL”) takes this opportunity to offer the following submissions in respect to the above-noted Consultation Paper authored by The Challenges Faced by Racialized Licensees Working Group (the “Working Group”). We note that CABL Board members and other CABL members have participated in the in-person consultation process following the publication of the Consultation Paper. These submissions are not meant to modify or abrogate from those individual submissions in any respect.

CABL is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and judiciary. CABL is both a member of The Law Society of Upper Canada (the “Law Society”)’s Treasurer’s Liaison Group and a member of the Law Society’s Equity Advisory Group (“EAG”). CABL is also a member of the Ontario Bar Association (“OBA”)’s Diversity Program and a member of the Toronto Lawyers Association (“TLA”)’s Roundtable of Diversity Associations (“RODA”). CABL has participated in numerous consultations with the Law Society, the Canadian Bar Association (“CBA”) and the OBA on issues of access, diversity and equity affecting the legal profession and the legal system within Canada and Ontario.

We wish to commend the Law Society and the Working Group on the comprehensive and detailed scope of the Consultation Paper. As you are aware, CABL has long been advocating for a comprehensive investigation by the Law Society into the experiences of Racialized Lawyers, and in particular Black Lawyers, based upon concerns raised by CABL members and others relating to their experiences within the profession; from the articling stage and subsequent. We note that a summary of those experiences have been materially captured throughout the Consultation Paper. In that regard, these submissions shall focus more particularly on responding to the Questions for the Profession section of the Consultation Paper and our additional submissions in relation thereto.

## **I. ENHANCING THE INTERNAL CAPACITY OF ORGANIZATIONS**

The mandate, and reasons for the mandate of the Law Society in this area, is readily apparent: as a regulator, the Law Society's interest should be to ensure that members of the profession are being treated with fairness and dignity by other Licensees and in a manner which enhances the diversity of the profession and provides equal opportunities to all members thereof.

The Law Society has a crucial role to play to establish "best practices" by way of policies, standards and resources devoted to the recruitment, retention and career progression of Racialized Licensees within law firms and other legal organizations, such as legal clinics, in house legal departments, etc. (collectively "Legal Organizations").

Similar to the Justicia Project in respect to addressing gender imbalance and discrimination within the profession, the Law Society should be addressing the lack of opportunities for Racialized Licensees within the legal profession. While as a minimum, the Law Society should be expanding the scope of the Justicia Project to include Racialized Licensees, CABL maintains that more significant strategies are necessary to address the issues raised in the Consultation Paper.

### **A. Establishing Diversity Programs Within Firms**

While the Law Society has identified three proposed models in this area, CABL does not see them as mutually exclusive. Rather, they are interrelated and complementary to each other.

As the Consultation Paper notes, the Law Society already has a template for approaching these issues by way of the Justicia Project materials distributed to law firms. However, CABL advocates that unlike the Justicia Project, the Law Society should be requiring Legal Organizations to commit, by way of a written agreement, to adopt diversity "best practices" within their respective Legal Organizations as per the Law Society guidelines and as more particularly discussed below.

### **B. Self-Assessment**

There is little point to Legal Organizations developing and adopting "best practices" without a form of self-assessment tool to measure their progress in respect to both implementation and results. The self-assessment aspect is **critical**.

### **C. Requiring Standards**

CABL recognizes that this could be a controversial issue. However, we query what concrete steps will be taken by Legal Organizations if there is no element of requirement, as there is with other forms of human rights related policies, so as to promote equality and protect the vulnerable from discriminatory practices. Granted, there are a number of firms who will "opt in" voluntarily, as with the Justicia Project. However, we can see that of the Firms of more than 25 lawyers within the province, only approximately 55 Firms have signed commitment agreements with the Law Society in respect to the current Justicia Project.

The issues identified in the Consultation Paper are also systemic in nature and arguably more difficult than gender discrimination for Legal Organizations to grapple with and address in any effective and systemic way.

Requiring Legal Organizations to adopt recruitment, retention and career advancement standards and resources to provide opportunities for Racialized Licensees would:

- (i) make the efforts of the Law Society in this area more far reaching by ensuring that every legal environment has considered these important issues and has put in place the necessary “best practices” to encourage racial diversity;
- (ii) remove the choice of “opting out” as a clear signal from the Law Society that equity is not a choice but a directive; and
- (iii) allow the Law Society to act as a vehicle for change; by requiring an infrastructure for inclusiveness and accountability within all Legal Organizations.

To be clear, while CABL believes that the Law Society should provide Legal Organizations with proposed best practices template standard policies for recruitment, retention and career advancement of Racialized Licensees, and **require** that every Legal Organization have such policies in place, the actual content of these policies, as long as they contain the essential elements of the best practices standards templates, would be for each Legal Organization to design for itself keeping in mind the nature of the particular Organization.

#### **D. Collecting Demographic Data**

CABL wholly endorses the **mandatory** internal collection of demographic data by Legal Organizations in respect of their Racialized Licensees. The internal mandatory collection of data is the only way in which Legal Organizations can monitor, in a transparent fashion, and be accountable for their progress in respect to the policy implementation and their corresponding recruitment, retention and advancement strategies, as well as the resources devoted to such strategies, so as to adjust and modify the strategies for efficacy.

In respect to what use should be made of the internal data collection, the Legal Organizations should be required to report, **on a mandatory basis**, certain aggregate demographic data to the Law Society. Such mandatory data would be in the nature of:

- (i) the size and geographic location of the firm;
- (ii) the racial demographics of the summer/articling/LPP students, associates, partners and paralegals within the Legal Organization;
- (iii) the number of racialized summer/articling students/LLP students who were hired and the number hired back to the Legal Organization and their areas of practice;

- (iv) the number of racialized associates who are employed, the length of employment and their areas of practice;
- (v) the number of racialized partners who are employed, their tenure, their areas of practice, how many were advanced to the partnership from associate status and after how many years;
- (vi) the number of racialized paralegals and their length of employment; and
- (vii) similar information in respect to the Legal Organization's non-racialized licensees for comparison purposes.

The Law Society must provide Legal Organizations with a standard data collection template with the required demographic data to be collected such that there is consistency and reliability among data collection and reporting in order to allow for meaningful analysis of trends and progress.

It has been suggested by some groups, such as the Federation of Asian Canadian Lawyers ("FACL"), that other types of equity demographic data (such as sexual orientation, abilities, socio-economic disadvantage) should also be collected so as to take an intersectionality approach to the analysis. CABL does not have the expertise to assess the proportionate value of such information for the purpose of addressing the issues raised in the Consultation Paper other than to acknowledge the well documented sociological evidence of the intersectionality of race and other factors, such as gender. Accordingly, it may be worthwhile for the Law Society to consult with equity experts as to what indicators would be worthwhile to track.

The mandatory data collected by the Legal Organizations and submitted to the Law Society should be summarized, on an aggregate basis, and reported by the Law Society to the profession annually. This information, together with the Law Society's collection of demographic data through the Licensees Members' Annual Reports (which reporting should also be made **mandatory** on the part of individual Licensees), will provide a clearer understanding of the existing profile of the legal profession within Ontario and can be used to track demographic trends on a short term and long term basis.

The above submissions are in no way meant to be a suggestion or recommendation for the implementation of diversity targets or "quotas". CABL does not believe that diversity targets or quotas are necessary if **mandatory** strategies are put in place, as endorsed above, to encourage and promote systemic organizational change.

CABL is of the view that a requirement of **mandatory** data reporting in respect to certain aggregate information does not require a regulation of Legal Organizations or firms in the same way that such regulation is not required for the Law Society to impose mandatory reporting requirements in respect to the handling of trust funds and other professional requirements. Also, many of the large firms are already required, through the process of diversity and contract compliance procedures, to report similar demographic information as is being proposed above.

Further, the Law Society must engage in a wide spread proactive strategy of education within the profession as to the purpose and goal of mandatory data collection and reporting and emphasize that the purpose is not punitive, but to obtain useful information in order to assist the profession as a whole with useful strategies to promote racial diversity and opportunities within Legal Organizations.

#### **E. Diversity and Contract Compliance**

The Law Society's role with in-house legal departments should be similar to that advocated above. In that regard, our recommendations in respect of the Law Society providing templates for mandatory "best practices" policies, standards, mandatory internal data collection and mandatory reporting of certain aggregate data to the Law Society would apply.

With respect to the data collection and reporting of data in relation to the **procurement** of legal services, CABL recommends that the Law Society works directly with the Legal Leaders for Diversity ("LLD"), Law Firm Diversity and Inclusion Network ("LFDIN"), Call to Action and other organizations, to discuss purchasing practices and to **voluntarily** develop model procurement and contract compliance policies as they relate to diversity in order to promote and/or expand the opportunities for Racialized Licensees on significant/important files. CABL also fully endorses that the Law Society encourage such organizations, **on a voluntary basis**, to provide demographic statistics during the RFP and in respect to the file progress.

### **II. MENTORING, ADVISORY SERVICES AND NETWORKING**

#### **A. Mentoring and Advisory Services**

CABL is of the view that mentoring, both within the Racialized bar and outside the Racialized bar, is a necessary and crucial part of providing professional opportunities for Racialized Licensees. To that end, CABL approves of and endorses the following mentoring and advisory services:

- (i) that the Law Society develop technology based performance oriented and career and personal advice oriented mentoring and advisory services, based upon best practices, and widely promote their availability; with an emphasis on establishing short and long term mentoring relationships for Racialized Licensees;
- (ii) that the Law Society audit the formal (performance based) and informal (career and personal advice based) mentoring and advisory services available within Legal Organizations, with an emphasis on investigating what specific mentoring and advisory services have been established to address the concerns of Racialized Licensees;
- (iii) that the Law Society make available to Racialized Licensees advisors/coaches who have received diversity training and are available to provide one on one professional career counselling to Racialized

Licensees, from a pool of compensated coaches/advisors, at a cost fully borne by the Law Society;

- (iv) that the Law Society make available to Racialized Licensees performance mentors to provide practice based assistance to Racialized Licensees who do not have access to other practice based information/assistance, from a pool of compensated mentors, at a cost fully borne by the Law Society;
- (v) that the Law Society, in conjunction with Racialized legal and other associations, organize, promote and endorse informal mentorship events (i.e. CABL's Annual Speed Mentoring event). As the Racialized legal associations are not for profit organizations with limited funds, the Law Society should provide financial assistance at least by way of subsidizing the full cost of facilities, security and refreshments etc. to encourage such events; and
- (vi) that Racialized legal associations provide one on one volunteer professional career mentoring and advisory services to their members through a mentoring program organized and implemented by the associations.

## **B. Networking**

As with mentoring, networking is a crucial tool for the creation of opportunities for Racialized Licensees, who, as noted in the Consultation Paper, are often more isolated and lacking support networks. Many of these Racialized Lawyers are in sole practice or small firms of one or two lawyers.

CABL believes that it is crucial to involve Racialized Licensees in both Racialized and non-Racialized network opportunities. Racialized networks are essential for validation, comradery and shared experiences. However, networking opportunities must also extend to the legal "mainstream" in order to create broader professional opportunities.

Resources are a significant impediment to formal networking structures, such as professional development. Racialized legal associations are therefore an excellent source of networking opportunities. To the extent that resources are an impediment for Racialized Licensees to become members of such associations, the Law Society could offer subsidies to assist Racialized Licensees to join such organizations for a fixed period of time (i.e. one or two year membership years). This would allow the Racialized Licensees to avail themselves of the networking (and mentorship) benefits of such associations at a reduced cost for a period of time and thereafter they would be persuaded to continue membership at regular cost on the basis of the beneficial networking and mentorship experiences/services such associations provide.

More difficult is how to achieve networking opportunities among the mainstream Legal Organizations. One way is for the Law Society to encourage mainstream Legal Organizations to

offer regular “networking invitations” to Racialized Legal Associations to promote dialogue and interaction.

We note that the Internationally Trained Lawyers have the same access to Racialized Legal Associations as do other Racialized lawyers.

### **III. ENHANCING CULTURAL COMPETENCE IN THE PROFESSION**

CABL believes that all of the three proposals contained in the Consultation Paper are advisable. There should certainly be more availability of accredited CPD Programs on cultural competence and equity principles of diversity inclusion and systemic bias. Further, the Professional Responsibility and Practice (“PRP”) Course should include cultural competency, diversity and inclusion as **mandatory** topics for accreditation.

In the same vein, accredited lawyers should be required to evidence their continued cultural competence by engaging in at least **one hour** of CPD annually, as part of the current 3 hours of mandatory professionalism hours, on cultural competence, equity and diversity as these issues impact upon the practice of law and the experiences of Racialized Licensees and their career development opportunities. Both the widespread availability of such programs and the one hour requirement go hand in hand. These CPD programs should be taught by individuals with equity and diversity expertise and they themselves should be demographically diverse.

### **IV. DISCRIMINATION AND THE ROLE OF THE COMPLAINTS PROCESS**

The Law Society has a critical role to play in ensuring that Racialized Licensees’ legal right to be free from discrimination is enforced. While updating the Rules of Professional Conduct and the Paralegal Rules of Conduct is a first step, much more needs to be done to address what is essentially a systemic problem within the profession. Specific CPD programs and mandatory one hour CPD on cultural sensitivity/systemic bias has been mentioned above. Communication to the profession is another important element as are the recommended strategies outlined above in respect of establishing diversity programs within firms.

The Law Society should also take steps to publicize the Discrimination and Harassment Counsel to ensure that Racialized Licensees are fully aware of their right to make a complaint of incidents of harassment and discrimination engaged in by other Licensees to an independent “ombudsman”.

The Law Society should also be allocating resources to the training of specialized Professional Regulation staff to accept and process complaints of racial discrimination and bias as a breach of the Rules of Professional Conduct and Paralegal Rules of Conduct and to have available proper supports to assist complainants with the process. The Law Society should also provide coaches/advisors to discuss and address with complainants the personal and professional issues arising from discriminatory conduct.

The Law Society must be mindful that the confidential reporting of incidents of racial discrimination is extremely difficult for Racialized Licensees. By virtue of the paucity of

Racialized Licensees within Legal Organizations, the fact of a complaint being made to the Law Society about a particular Legal Organization will, by its nature, most likely reveal the identity of the complainant.

Therefore, the Law Society must derive an effective investigation and enforcement mechanism which does not place the Racialized Licensee in harm or subject them to reprisals. Part of the investigation process might involve a general audit of the “respondent” Legal Organization for compliance in respect of the creation and implementation of the “best practices” policies/procedures and a general audit of all Racialized Licensees within the “respondent” as to their experiences so as to not single out the complainant. Again, the primary focus should be to protect the complainant, who is in an extremely vulnerable situation, from reprisal and to remediate the situation rather than to penalize. However, it should be made clear in the Rules of Professional Conduct and the Paralegal Rules of Conduct that reprisals, as well as the discriminatory conduct itself, is a breach subject to prosecution and penalties.

The Law Society should be engaging in direct dialogue with Racialized legal associations as well as the OBA/CBA and county and district law associations, to discuss specific suggestions in order to derive an effective, yet protective, investigation/enforcement process, and as to the mentoring/advisory capabilities of such organizations to assist the Law Society in supporting members engaged in initiating a complaint.

The tracking of such complaints is also necessary so as to create/modify existing strategies and policies based upon efficacy.

CABL is of the view that no regulatory changes would be required to implement the proposals outlined in the Consultation Paper or detailed above. The Law Society has, as part of its current mandate, the regulation of each Licensee and their conduct in respect to the practice of law. The implementation and enforcement of the proposals hereinbefore described are an integral part of such mandate, whether implemented on an individual Licensee or aggregate Firm basis.

## **V. THE OPERATIONS OF THE LAW SOCIETY OF UPPER CANADA**

CABL is in favour of the Law Society’s adoption of Initiatives 1 through 4 of the Consultation Paper. It is important that the Law Society itself engage in, and be seen to be engaging in, the same initiatives as are being proposed for the profession as a whole; including, without limitation, the implementation of “best practices” policies and standards; mandatory internal data collection; mandatory reporting of certain aggregate data and the other proposals discussed herein.

An equity audit of the services provided by the Equity Initiatives Department and publication of such services to the profession would also enhance the importance of the work of the Department and the supports offered.

The “face” of the Law Society needs to undergo significant change. It is not reflective, from Benchers to staff, of the demographics of our profession or the population at large. The Law Society needs to “look at its own house” in respect to its recruitment and hiring practices as well

as retention and career advancement of Racialized individuals (as well as individuals from the other equity seeking groups) to achieve a greater representation of equity seeking individuals in all areas of its operations.

As well, as a priority mandate, the Law Society should embark on equity sensitivity training for Benchers and staff. It is crucial that an equity “lens” be brought to all operations of the Law Society, including Finance and other operations, rather than to approach equity as a “silo” to be addressed only by the Equity and Aboriginal Issues Committee and Equity Initiatives Department. Only by taking such a holistic approach will the Law Society truly achieve equity infused governance, for itself and for the profession as a whole.

We hope that the above submissions are of assistance to the Working Group. CABL remains committed to the work of the Law Society and the Working Group and is fully prepared to participate in the consultation process going forward with a view to finalizing and implementing the proposals under consideration in a fulsome and expeditious manner.

Yours truly,



Arleen Huggins  
Immediate Past President and Chair of the Racialized Licensees Subcommittee of the Canadian Association of Black Lawyers

c. Ekua Quansah

**CALL**  
CANADIAN ASSOCIATION  
OF LABOUR LAWYERS

**ACAMS**  
ASSOCIATION CANADIENNE DES AVOCATS  
DU MOUVEMENT SYNDICAL

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*Northwest Territories*

**By Email:** racialized.licensees@lsuc.on.ca

November 25, 2016

The Law Society of Upper Canada  
c/o Ekuia Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

Re: Final Report of the Challenges Faced by Racialized Licensees  
Working Group, "*Working Together for Change: Strategies to Address  
Issues in Systemic Racism in the Legal Professions*"

---

I write on behalf of the Canadian Association of Labour  
Lawyers/Association Canadienne des Avocats du Mouvement Syndical  
(CALL - ACAMS). CALL - ACAMS is a national association of labour  
lawyers who represent unions and workers in Canada.

As advocates for both labour rights and human rights, I am writing to  
express CALL/ACAMS' s support for the work of the Challenges Faced by  
Racialized Licensees Working Group and its final report, "*Working  
Together for Change: Strategies to Address Issues in Systemic Racism in  
the Legal Professions*".

We welcome the Law Society of Upper Canada's leadership on these  
important issues.

Yours truly,

CANADIAN ASSOCIATION | ASSOCIATION CANADIENNE DES  
OF LABOUR LAWYERS | AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle  
CALL/ACAMS President/ Présidente de l'ACAMS/CALL

**CALL**  
CANADIAN ASSOCIATION  
OF LABOUR LAWYERS

**ACAMS**  
ASSOCIATION CANADIENNE DES AVOCATS  
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Austin F. Marshall  
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**Par courriel:** racialized.licensees@lsuc.on.ca

November 25, 2016

Barreau du Haut-Canada  
A/s Ekua Quansah, conseillère aux politiques  
Osgoode Hall, 130 Queen Street West  
Toronto ON M5H 2N6

Objet : Rapport final du groupe de travail sur les difficultés auxquelles les titulaires de permis racialisés font face, intitulé *Collaborer au changement : stratégies de lutte contre le racisme systémique dans les professions juridiques*

Chère Madame,

Je vous écris au nom de l'Association canadienne des avocats du mouvement syndical/Canadian Association of Labour Lawyers (ACAMS-CALL), laquelle représente les syndicats et les travailleurs dans l'ensemble du Canada.

Les membres de notre association, en tant qu'avocats de droit du travail et de la personne, souhaitent exprimer leur appui pour le travail accompli par votre groupe sur les difficultés auxquelles les titulaires de permis racialisés font face et pour votre rapport final intitulé *Collaborer au changement : stratégies de lutte contre le racisme systémique dans les professions juridiques*.

Nous apprécions le leadership du Barreau du Haut-Canada sur ces enjeux importants.

Veillez recevoir, chère Madame, nos salutations le plus distinguées.

CANADIAN ASSOCIATION OF LABOUR LAWYERS | ASSOCIATION CANADIENNE DES AVOCATS DU MOUVEMENT SYNDICAL

per:



Peter Barnacle  
CALL/ACAMS President/ Présidente de l'ACAMS/CALL



## Canadian Centre for Diversity and Inclusion Centre canadien pour la diversité et l'inclusion

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6  
[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

November 13, 2016

I write today in response to the Law Society of Upper Canada's ("The Law Society") public consultation related to challenges faced by racialized licensees and the 13 recommendations contained in the Racialized Licensees Working Group's (the "Working Group") final report, titled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*.

We applaud the Working Group for their outstanding effort and the thoughtful and detailed presentation of their findings. From the outset, allow me to make it clear that we agree with the assertion that "racialized licensees face widespread barriers within the (legal) profession at all stages of their careers." Through our own research on the legal profession, we have come to a similar conclusion, however it is important to note that there are mitigating factors that have a significant impact on those barriers.

The Canadian Centre for Diversity and Inclusion ("CCDI") has a mission to generate the awareness, dialogue and action for Canadians to recognize diversity as an asset and not an obstacle. Through the research, reports and toolkits we develop and our workshops, events and workplace consultations, we're helping Canadian employers understand their diversity, plan for it and create inclusion.

CCDI's leadership has a proven model that's cultivated trust as an impartial third party. Our expertise is focused on the topics of inclusion that are relevant in Canada now and the regional differences that shape diversity.

A charitable organization that thinks like a business, we have created a niche with our innovative research technology and data analysis that brings a deeper understanding of Canadian diversity demographics and mindsets at any given moment.

In 2014 we developed and launched a project entitled *Diversity by the Numbers: The Legal Profession* ("DBTN"). This project is an exciting initiative that seeks to better understand the demographic makeup of the Legal Profession in Canada. To date, over thirty law firms across Canada have participated and over 8000 respondents have completed the census.

[www.ccdi.ca](http://www.ccdi.ca)

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It is our experience with DBTN that brings us to prepare this response. And it is the mitigating factors indicated earlier that are the basis of, and reason for our response.

## Overall Commentary

### What should be measured?

Benchmarks, goals, and accountabilities.

A primary mandate of The Working Group report is to better understand systemic barriers within the legal profession through collecting Diversity and Inclusion data. In an article that critically assesses the implications of the report<sup>1</sup>, Joanne St. Lewis argues that the methods of addressing these barriers proposed in the report are ineffective because they are applied through codes of professional conduct rather than through “entity regulation.” That is to say, they do not measure and make accountable the workplaces in which these barriers play out.

We agree that effective movement on Diversity and Inclusion issues necessitates accountabilities specific to each firm. However, the question then becomes, what should be measured to expose the barriers firms will be accountable for? The report provides a clear objective to enhance representation of racialized licensees “in proportion to representation of the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.” Irrespective of where accountabilities are placed, The Working Group's approach of analysis at each of these levels will help isolate instances of systemic discrimination. This is because each of these comparisons makes data accountable to the group they are being benchmarked against. However, efforts to counter systemic discrimination become regulated, these levels of data comparison will allow the setting of representation goals.

Focusing on ways to put Diversity and Inclusion into practice in law firms, the report proposes that a fairer culture will be fostered in firms if they are required to have a diversity policy. St. Lewis suggests that, to propel action, their needs to be outside scrutiny. To achieve this, she proposes that all law firms have a diversity strategy that is available to the public. Building on these points, we would further suggest processes surrounding how a diversity policy and strategy are actualized within firms. Initial questions that should be ask to enhance the effectiveness of any diversity strategy include:

- » Has the strategy been linked to a formal business case?
- » Are senior leaders being held accountable, and if so, how?
- » Does the strategy consider diversity in senior leadership appointments?
- » Is the strategy communicated, to and understood by all firm members?

These questions and the actions they stimulate will cast diversity as a genuine priority within an organization's culture rather than a well-intentioned, inactive edict.

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1 Joanne St. Lewis, “If Not Us, Who? if Not Now, When?': Reflections on the Law Society's Challenges Faced by Racialized Licensees Working Group Report,” *Slaw*, last modified October 31, 2016.



### Linking demographic and inclusion data.

The Working Group recognizes that analysis of diversity must be complemented by analysis of inclusion, stating that a law firm's diversity performance will be measured through "self-identification data" and "climate data." Throughout the report, specifically in relation to a proposed Inclusion Index, there are references to the measurement of both. However, the report does not specifically state that inclusion survey results will be presented and analyzed through demographic categories, which is vital to isolating specific groups that are feeling excluded.

What is the difference between demographic and inclusion data that is linked and unlinked? To explain the impact linking has on data insights, consider the demographic gender and the inclusion question "everybody at the firm has equal opportunity to advance." Unlinked data can only show the percentage of female, male, and trans-identified respondents and the overall percentage of respondents that agree, are neutral, or disagree with the statement. Linked data will allow you to isolate and compare the rates of agreement or disagreement between females, males, and trans-identified respondents. Understanding the insights you want to draw from the data is necessary before implementing a survey. Any gaps in data collection will limit the potential of the information that is gathered.

### Reasons for a focus on Diversity and Inclusion.

The report proposes that Diversity and Inclusion will attract an ever-diversifying talent pool and give firms a competitive advantage in securing clients that request information on their demographic makeup. These statements are true, but do not comment on individual experiences in the workplace and the link these experiences have to business outcomes.

To the report's arguments for why Diversity and Inclusion should be fostered we would add findings from the growing research in this field. The research shows that nurturing diversity as well as inclusion (rather than one or the other) is necessary, and it can substantially increase the engagement of employees.

Research by Deloitte Australia found that strong focus on both can double employee engagement and increase the chances that "an employee is likely to stay with their employer, advocate for their employer and go the extra mile" at work<sup>[2]</sup>. An organization that does not prioritize Diversity and Inclusion is missing out on a truly talented and dedicated workforce. For the more bottom-line-minded audience, the research also shows that a focus on Diversity and Inclusion can increase organizational performance through increased sales, greater market share, and larger relative profits<sup>[3]</sup>.

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2 Deloitte Australia, "Waiter, is that inclusion in my soup?: A new recipe to improve business performance", last modified April 16, 2015, <http://www.globaldiversityexchange.ca/waiter-is-that-inclusion-in-my-soup/>.

3 Cedric Herring, "Does Diversity Pay?: Race, Gender, and the Business Case for diversity", *American Sociological Review* 74 (2009): 208.



## How should Diversity and Inclusion data be analyzed?

Measuring the association between demographics.

When analyzing categorical demographic data, a methodology we use and recommend is cross-tabulations. Cross-tabulation is the measurement of the association between two variables, and it investigates how much the distribution of one variable differs according to the various levels of another variable. Further, when the goal is uncovering racialized barriers to things like advancement, you can construct cross-tabulations in a way that shows the representation of racialized and non-racialized respondents at different levels of an organization's hierarchy.

Using an example relevant to the legal profession, we can construct a cross-tabulation that measures racial representation by the roles in the Partner track hierarchy (**Error! Reference source not found.**). A comparison of these role-specific representations to the overall representation of race within a firm provides the contextual evidence needed to uncover barriers to advancement. This benchmarking technique exposes concentrations or omissions of racialized groups along the hierarchy, which can then guide hiring or advancement goals that can be measured over time.

	Racialized	Non-Racialized
<b>OVERALL</b>	127 33.87%	248 66.13%
<b>Equity Partner</b>	12 12.24%	86 87.76%
<b>Income Partner</b>	15 26.32%	42 73.68%
<b>Associate</b>	85 43.15%	112 56.85%
<b>Articling or Summer Student</b>	15 65.22%	8 34.78%

*Table 1: Representation of Race by Role in Partner Track.*

Are the differences significant or is it a product of chance?

To ensure that you are properly assessing an over- or under-representation, statistical techniques like the chi square test of association can be applied. Explained plainly, this test uses cross-tabulated data to see if any concentrations or omissions of groups are outside of the realm of mere chance. These tests of association can answer Diversity and Inclusion questions such as, “do non-racialized respondents have a statistically significant larger representation in Equity Partner roles?” or “do racialized respondents disagree at a statistically significant higher rate with an inclusion question asking if they feel there is equal opportunity to advance?”

Measuring outcomes based on overlapping demographic characteristics.

Up to now we have only suggested ways to analyze representation of one demographic at a time, which is a necessary start to measuring trends in any data set. However, to look only at single demographics is a disservice to the reality that experiences and outcomes vary based on



overlapping demographic characteristics. This gap in The Working Group's recommendations was noted by St. Lewis, and she encouraged collecting data on all equality-seeking groups.

We support her in this recommendation - data needs to be collected and analyzed using an intersectional lens. We add to her recommendation methodologies that support an investigation of how multiple identities create unique experiences of discrimination.

### Introduce a third demographic to analysis.

We previously mentioned a two-way cross-tabulation and tests of association between variables. If you are taking an intersectional approach, another demographic can be added to the data table to further segment the results to a more diverse subgroup: when race is added as the third variable, a data comparison of female versus male becomes a comparison of racialized female versus non-racialized female and racialized male versus non-racialized male. This analysis can be applied to representation as well as opinion data, as it can be performed on both demographic and inclusion results.

		Senior Level	
		Yes	No
<b>Female</b>	Racialized	2 8.70%	21 91.30%
	Non-Racialized	23 40.35%	34 59.65%
<b>Male</b>	Racialized	65 66.33%	33 33.67%
	Non-Racialized	92 66.19%	47 33.81%

*Table 2: Representation of Senior Level Status by Race and Gender.*

A possible application with representation data would be an analysis of the interaction of race and gender on the likelihood of being at the senior level of a firm (**Error! Reference source not found.**). To do this, we test the association between race and seniority for females, and then males. A potential result would be that there is an association for females but not for males, meaning that the impact of race on career advancement is evident only for females.

The same process can be applied to perception-based data by substituting the senior level variable with agreement versus disagreement to an inclusion survey question. As an example, we will again use the inclusion survey question about equal opportunity to advance in the firm. If you found an association between race and agreement in equal opportunity to advance, you can add the third variable gender to see if the association holds for males and females. The results could show that racialized males showed significantly lower agreement than non-racialized males, suggesting a unique racialized experience for males in their perception of discrimination.



### Compare odds of a specific outcome between subgroups.

Odds can be used to understand whether or not there is an association between two personal demographics (race and gender, Indigenous and disability status, sexual orientation and gender) and the likelihood of an outcome. Another method of exploring intersectionality would be comparing the odds

	Senior Level		Odds of being Senior Level
	Yes	No	
<b>Non-Racialized Male</b>	92 66.19%	47 33.81%	2:1
<b>Racialized Male</b>	65 66.33%	33 33.67%	2:1
<b>Non-Racialized Female</b>	23 40.35%	34 59.65%	2:3
<b>Racialized Female</b>	2 8.70%	21 91.30%	1:9

*Table 3: Odds of being Senior Level by Race/Gender Subgroups.*

of a specific firm-based outcome like being senior level between groups. Once you filter the data to subgroups you could then calculate each of their odds of being senior level versus non-senior level and compare across these subgroups. The potential with this would be ranking the odds from highest to lowest to see a how these demographic combinations are positioned within the hierarchy of the firm.

We appreciate the opportunity to respond to this consultation and hope that this information is valuable. Should you have any questions regarding our submission, please do not hesitate to contact us.

Sincerely,

Michael Bach, CCDP/AP  
 CEO  
 Canadian Centre for Diversity and Inclusion

TO: The Law Society of Upper Canada Convocation  
FROM: The Canadian Hispanic Bar Association  
DATE: November 14, 2016  
RE: Submissions on the Challenges Faced by Racialized Licensees Final Report

#### BACKGROUND

1. The Canadian Hispanic Bar Association (the "CHBA") is a national, non-profit organization representing Hispanic/Latin American lawyers, law students, Articling/LPP students and NCA students.
2. The CHBA was founded in 2005 and was formerly known as the Hispanic Ontario Lawyers Association (HOLA). The CHBA has member representatives in the Roundtable of Diversity Associations (RODA), the Equity Advisory Group (EAG), JusticeNet Ontario and the US National Hispanic Bar Association.
3. The CHBA works to promote diversity within the profession, to increase the number of Hispanic lawyers across Canada and to provide support to its members.
4. In March of 2015, the CHBA responded to the Working Group on the Challenges Faced by Racialized Licensees interim report by providing submissions to this group as well as participating in the submissions of the Equity Advisory Group.
5. Presently, the CHBA has also participated in EAG's Working Group on the Challenges Faced by Racialized Licensees in addition to providing its own submissions.

#### **The Law Society Should Vote on the Recommendations as an Omnibus Motion**

6. The CHBA submits that all thirteen (13) recommendations contained in the final report should be adopted in their entirety. The CHBA believes that the efficacy of the recommendations will increase if they are implemented together. As such, we do not support the motion to vote on the recommendations on an individual basis. We strongly urge Convocation to accept the recommendations as an omnibus package.
6. The CHBA submits that the recommendations contained in the final report are minimum requirements to create a regulatory framework and culture that is responsive to the varied and systemic needs of racialized licensees.
6. The CHBA also submits that the recommendations represent proposals that are fundamental and basic in nature, and that if needed, can be further expanded or refined in the future, after their implementation has been approved.

#### **Comments on the Recommendations**

9. The CHBA adopts and endorses the submissions of the EAG regarding the recommendations contained in the final report.
9. The CHBA agrees that anti-discrimination matters should be aligned with each licensee's professional obligations. It also agrees with the various manners outlined to measure progress, and believes that the collection of data will be a key driver to addressing issues of systemic discrimination while promoting inclusion.
9. For clarity, the CHBA is supportive of the recommended CPD requirement of three (3) hours every two (2) or three (3) years. The CHBA believes that such a requirement is not onerous, and will have a net benefit on the profession.

9. The CHBA strongly supports the further development of the Discrimination and Harassment Counsel Program, as well as the development of alternative streams in which to address complaints.

9. The CHBA recognizes the Law Society as a strong driver in the organizational behaviour and culture of licensees and prospective licensees. As such, it agrees with the proposed changes to the Law Society's own processes and appreciates the Law Society's leadership in this respect.

#### **Implementation Considerations**

14. The CHBA strongly supports the motion brought forth by Bencher Joanne St. Lewis and Barbara Murchie to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups. In this respect, we further submit that the Law Society should consider all motions from an equity-sensitive perspective as applicable.

15. The CHBA also submits that the Law Society should consult and work with various stakeholders, including the CHBA and other equity seeking legal associations on the implementation of the recommendations.

16. We thank the Working Group for the opportunity to make these submissions and we look forward to working with the Law Society to address the issues raised within the report.

Sincerely,

The CHBA Challenges Faced by Racialized Licensees Working Group:

Sandra Lozano  
Jennifer Quito



November 8, 2016

**Via Email: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)**

Equity and Aboriginal Issues Committee  
Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West,  
Toronto ON M5H 2N6

Attention: Ekua Quansah, Policy Secretariat

Dear Ms. Quansah,

**Re: CCLA comments on the proposed LSUC Motion to approve Challenges Faced by Racialized Licensees Working Group – Final Report**

On behalf of the County of Carleton Law Association (CCLA), the CCLA Diversity Committee thanks you for this opportunity to contribute to the discussion on the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“the Report”).

The CCLA is Ottawa and Eastern Ontario’s leading association for the professional legal community. It has over 1,598 licensed members from all range of legal practice areas, including paralegals. Close to half of our members practice in firms of 9 licensees or less. While we acknowledge that our legal population is less racialized than the GTA, the racialized licensees in our region often face the same identified challenges but in a more isolated context.<sup>1</sup>

The CCLA Diversity Committee was created to assist the Membership Committee in identifying and determining the overall approach / philosophy that the CCLA should adopt to ensure it is inclusive of the entire legal community that the CCLA serves. Its purpose is to foster a culture of diversity and inclusion in the CCLA by enabling the values and principles of equality and equity in its organizational structure, policies, programs, and services.

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<sup>1</sup> *Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (2014)*, [https://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16\\_apr13.pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf) at p.7.

We commend the Working Group on the work that has been completed to date. The Report makes thirteen recommendations that, in general, we support. However, the Report is noticeably silent on three key issues and two particular recommendations require a different approach. Before this is brought before Convocation for approval, these topics must be addressed.

We provide comments on the following five areas:

1. Racialized sole practitioners and small firms;
2. Economic vulnerability of racialized licensees;
3. Education and training;
4. Using the DHC as a way to address systemic racism; and
5. Monitoring and accountability.

Several of our suggestions should be accommodated at this time and could be undertaken with reasonable effort; other suggestions are intended to guide the LSUC on its next steps in taking action on the issues of systemic racism and bias within the profession.

## COMMENTARY

### 1. Silence surrounding racialized sole practitioners and small firms

In short, the Report does not comment on this group. Many racialized licensees find themselves practicing in small firms or as sole practitioners; this is largely as a result of their lack of ties within the legal community and systemic racism. The Report addresses remedies for firms with over 25 licensees, but fails to address the sole practitioner and small firms who are already a marginalized group.

According to the LSUC's *Statistical Snapshot of Lawyers in Ontario* from the *Lawyer Annual Report (2014)*<sup>2</sup>:

- 24% of racialized lawyers practice as sole practitioners;
- 14% of racialized lawyers are in house counsel; and
- 14% of racialized lawyers are in government.

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<sup>2</sup>*Ibid* at p. 5

We further note that 33% of racialized lawyers work in firms of fewer than 5 people; 16% of racialized lawyers are in firms of 5-9 people.<sup>3</sup> Given that 49% of racialized lawyers work in practices of less than 9 people, this group has to be acknowledged in the Challenges Faced by Racialized Licensees. The Law Society of Upper Canada has this data readily available, therefore, it should be relied upon for the purposes of this Report. The Report fails to address the racism this particular group encounters and ways in which to eliminate the challenges faced by this racialized group.

If the report is approved as it is, we will be essentially failing to address almost half of the racialized lawyers who are encountering various forms of racism within their immediate work environments, the professional organizations they may or may not be a part of, and, within the legal community at large.

## **2. Economic vulnerability of racialized licensees**

The Report does not address the issue of economic barriers for racialized licensees and licensees representing other equity-seeking groups. These begin as economic barriers to the profession and continue on through the licensee's career.

Racialized, first-generation law students, with little or no connections to the profession, often have limited familial financial support to help pay for their legal education. They may already be carrying significant student debt coming into law school. These students rely on government student loans and professional student lines of credit to finance their professional degree. This means that economically-disadvantaged students are graduating with extraordinary debt loads.

This economic stratification is amplified in the licensing process and an ultra-competitive articling system, in which law students vie for a limited number of well-paying articling positions. In order to become licenced, economically-disadvantaged law students may have to choose a low-paying or unpaid articling position with a sole practitioner or small firm or to enroll in the LPP. These low-paid / unpaid articling students and LPP students continue to accumulate debt during the licensing process. Further, licensing fees are the same for all licensing candidates, regardless of articling employer and articling remuneration, or unpaid experiential training through the LPP. These fees become disproportionately onerous when low-paid / unpaid articling students have to pay their licensing fees themselves, while large firms pay for their articling students' licensing fees as standard practice.

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<sup>3</sup>*Ibid* at p. 6

These economic barriers continue on after licensing. Whereas articling students at large firms have the opportunity to be hired back, those who articulated with sole practitioners or came through the LPP are more likely to become sole practitioners themselves or stay on at the small firm where they articulated.<sup>4</sup> These new practitioners may continue to rely on bank loans and lines of credit to finance the significant costs of opening a sole practice or contributing to the small practice. As sole practitioners, they must bear alone the regular costs of the profession, including law society fees and insurance premiums, law association membership fees, CPD courses and conference fees, etc.

These licensees juggle: the financial burdens of a sole practice, while attempting to build a client base and business; finding a way to support themselves, while paying off their student debt within a reasonable time; and making the pronounced effort to network and seek out mentorship in order to ameliorate the isolation of sole practice. These factors impede their progression in the profession, and hinder their ability to obtain leadership roles within the legal community or to devote time to volunteer positions or appointments on committees.

The Report must recognize that economic barriers disproportionately affect racialized licensees and that this may represent one of the most significant challenges facing racialized licensees.

### **3. Education and training**

We believe that mandatory education and training are foundational to address the challenges faced by racialized licensees. However, the Report is not clear about what CPD programs would meet the criteria for accreditation and does not explain why three hours every three years is an appropriate benchmark. Developing an understanding of diversity does not flow from an intense one-off kind of event; it comes from an internalization of the issues and challenges by way of regular, ongoing and progressive dialogue that is relevant to our day-to-day ways of thinking and acting. The Report needs to require annual CPD/training as well as other means to demonstrate competence and currency in this area. Perhaps this could be part of a no charge professionalism credit.

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<sup>4</sup>This is reflected in the 2014 Lawyer Annual Report that showed that 24 percent of racialized respondents were sole practitioners, whereas 19 percent of non-racialized respondents were sole practitioners.

#### **4. Problematic use of the DHC as a way to address systemic racism**

While a review of the Discrimination and Harassment Counsel Program (“DHCP”) is laudable, the LSUC should avoid tampering with the complete confidentiality and privacy that complainants currently enjoy. The small numbers of racialized licensees in particular locations make it difficult to remain anonymous should a complaint be acted upon or become public. If the sharing of a discriminatory experience automatically led to a formal investigation or complaint (and how would a particular licensee know they would be hitting a “threshold”), then this would undermine the confidence and trust that has been the key to the DHCP’s current ability to support racialized licensees.

#### **5. Monitoring and Accountability**

The Report should address monitoring and accountability. As we have seen from the limited progress made on similar past recommendations on this topic<sup>5</sup>, if there is no ongoing monitoring and reporting on progress, then action is simply not taken. With the evidence before us, we know that the identified challenges are longstanding, ongoing and increasing. There needs to be accountability processes built into the Recommendations right from the start.

One way that this could be done is through having the LSUC produce an annual report card on what progress has been made on each of the Recommendations. This report card should be reviewed by a committee of benchers but also include other stakeholders.

### **INTERSECTIONAL ISSUES**

Amongst other issues that require further attention, we note that at page 4 of the Report, the Engagement Process Results identified the issue of additional intersecting experiences of discrimination, however the Report does not address this topic. The next phase should encompass an in-depth analysis and clear recommendations on intersectional issues.

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<sup>5</sup>*Racial Equality in the Canadian Legal Profession*, Working Group on Racial Equality in the Legal Profession, Canadian Bar Association, February 1999.  
<https://www.cba.org/getattachment/Sections/Equality-Committee/Resources/Resources/2013/Racial-Equality-in-the-Canadian-Legal-Profession/racialEquality.pdf>

## **CONCLUSION**

Although this Report has been long anticipated and many in the profession are ready to act, it behooves us to step forward with the best foot we can. We are not advocating a complete rewrite of the Report, but believe that the Report should and could be modified within a reasonable timeframe.

On behalf of the CCLA, we urge you to consider expanding the scope, making some modifications and, ultimately, capitalizing on the impact of the Recommendations.

We thank you for your time and consideration of this submission.

Yours very truly,

Asfrah Syed-Emond, Chair, CCLA Diversity Committee  
Juliet Knapton, Vice Chair, CCLA Diversity Committee  
David Ang, Vice Chair, CCLA Diversity Committee



November 14, 2016

Email: racialized.licensees@lsuc.on.ca

Challenges Faced by Racialized Licensees Working Group  
The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto ON M5H 2N6

Dear Members of the Challenges Faced by Racialized Licensees Working Group:

**Re: Submission by the Federation of Asian Canadian Lawyers on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

The Federation of Asian Canadian Lawyers (“FACL”) is pleased to comment on the recommendations outlined in the Law Society of Upper Canada’s (“Law Society”) Challenges Faced by Racialized Licensees’ (“CFRL”) Working Group Final Report – *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“Final Report”).

As you are aware, FACL is a diverse coalition of Asian Canadian legal professionals working to promote equity, justice, and opportunity for Asian Canadian legal professionals and the wider community, and to foster advocacy, community involvement, legal scholarship, and professional development. FACL is a key stakeholder in this initiative and has long supported and contributed to the crucial work of this group. FACL applauds the efforts of the CFRL Working Group, the Final Report, and its recommendations.

FACL is of the view that the recommendations represent a critical step in the right direction towards addressing the challenges faced by racialized licensees. As such,

FACL urges the immediate adoption of these recommendations as an omnibus package by Convocation on December 2, 2016. The time to act is now.

FACL supports the Final Report's recommendations individually and categorically. A change in culture and attitudes in our profession is overdue and the recommended educational, policy, and regulatory measures will assist in accelerating this culture shift. FACL looks forward to working with the Law Society and other stakeholders in developing appropriate policies, practices, and resources aimed at addressing the many gaps and barriers encountered by racialized licensees.

FACL especially supports the regulated collection, analysis, and publication of demographic data as a means of measuring progress. This will enhance transparency and accountability in the legal profession's efforts to improve access to and public confidence in Ontario's legal profession, which is a necessary part of ensuring that all licensees have an equal chance of success in this profession.

FACL is encouraged by the consideration of progressive compliance measures but standards are only meaningful if they are enforceable and only effective if they are enforced. There must be real consequences for non-compliance and FACL looks forward to seeing the form and substance of such compliance measures as they evolve from this process.

FACL is pleased that the Law Society is taking a leadership role by internally promoting diversity, inclusion, and equality. FACL also strongly supports the recommendation to strengthen and better equip the Law Society's Discrimination and Harassment Counsel Program to address complaints of systemic discrimination.

As FACL has previously commented, the challenges faced by women, Indigenous, LGBTQ, and disabled licensees intersect with those faced by racialized lawyers and paralegals. These issues should not be compartmentalized or separated. Thus, FACL is hopeful that the implementation process of the recommendations will situate race in an appropriate context and not in isolation from the intersecting challenges faced by all equity-seeking groups.

Accordingly, FACL supports the motion by Bencher Murchie to ensure that the recommendations herein are appropriately extended to all equality-seeking group and urges Convocation to pass this motion.

Historically, the voices of racialized communities in Ontario have been appropriated by having others speak for us. To maintain legitimacy, racialized licensees need a voice in the implementation of these recommendations. FACL believes that the dialogue initiated by this process must be continued by having all stakeholders meaningfully and regularly engaged throughout the process of implementing the recommendations.

Thank you for considering our comments. Should you have any questions about this matter, we would be happy to discuss this with you further.

Sincerely,

A handwritten signature in black ink, appearing to be 'Brendan Wong', written in a cursive style.

Brendan Wong  
President, Federation of Asian Canadian Lawyers (Ontario)



2016 EXECUTIVE

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Kelly Lovell, Executive  
Assistant

## Response by FOLA to the Report of the Challenges Faced by Racialized Licensees Working Group: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

Submitted to:

The Law Society of Upper Canada

c/o Ekuu Quansah, Policy Counsel

Osgoode Hall, 130 Queen Street West

Toronto, ON M5H 2N6

[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Submitted November 14, 2016

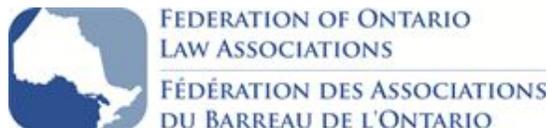
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*"The Voice of the Practising Lawyer in Ontario"*

Dear Working Group Members,

The Federation of Ontario Law Associations ("FOLA") commends the Law Society of Upper Canada in attempting to develop a concrete framework to recognize and address the challenges that are faced by racialized licensees throughout Ontario. The pragmatic approach and timeline suggested within the report illustrate an understanding by the Working Group of the time necessary to effect meaningful change moving forward.

FOLA notes, however, that while the Working Group's mandate (established in 2012) focused only on racialized licensees, this restricted mandate, in and of itself, creates unnecessary barriers and limitations. Since 2012, a greater societal understanding of other disadvantaged groups including gender identity, gender expression, disability, sexual orientation, class and creed creates a need to ensure that these other groups are not left behind as we move forward with the Working Group's recommendations. This proposed expansion would acknowledge the broad range of human rights issues which exist while not precluding the possibility of variations or focussed initiatives for certain groups where appropriate. It would also take into account the intersectionality issues associated with discrimination. FOLA therefore would propose that, as any recommendations move forward through development and implementation, the mandate of the Working Group expand beyond racialized licensees to include all areas of potential discrimination.

The expansion of mandate set out above would only require a slight adjustment to the three objectives stated by the Working Group. The objectives would become:

- a) Inclusive legal workplaces in Ontario
- b) Reduction of barriers created by unconscious bias and discrimination; and
- c) Better representation of all minority groups in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority..

The public needs to trust the legal profession. A profession that does not reflect the diversity of the public creates both real and perceived barriers and there is no reason to break down these barriers one group at a time.

FOLA is also very mindful of the parallel mandates of the Law Society to promote access to justice and to protect the public interest. In that context, FOLA is very aware of the economic costs to the practice of law in Ontario and of the struggle that some practising lawyers – particularly those in marginalized communities – engage in every day to remain economically viable. Whether they are marginalized by geography or the economic situation of the clients they choose to represent, there are many lawyers in Ontario for whom it is a daily struggle to maintain an economically viable legal business.

Since FOLA's mandate is primarily as an advocate for the interests of the practising lawyer – the majority of whom are in sole and small practice in Ontario – a good deal of our commentary is

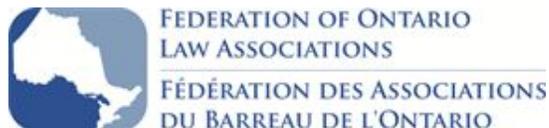
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coming from this perspective. These comments are not, however, only concerned with the "cost" of implementing these recommendations. They are also mindful of the fact that many of the racialized or otherwise marginalized licensees entering the practice are working in solo or small practice and, in turn, serve minority populations that can often be economically disadvantaged in communities across Ontario. These economic pressures are, in our view, some of the greatest barriers to full equity. A key component to realizing the goal of equity in our profession is to make the practice of law and access to law more affordable to more people.

With that in mind, we contend that one of the most important ways the Law Society of Upper Canada can promote equity and access is to be ever mindful of the costs it imposes or has an influence on. Every regulatory mandate and licensing procedure has a cost and this cost should be kept as low as possible. CPD programming must be kept affordable and the operations of the Law Society, in general, must be constantly evaluated with a view to keeping costs down. Likewise, the Law Society should join others in the profession to maintain or increase pressure on law schools across the country to make law school more affordable and access to financial assistance less burdensome on practitioners in their early years of practice..

#### **FOLA's position on the Recommendations made by the Working Group**

FOLA agrees with Recommendations 1, 3, 8, 10, 12 and 13 without the need for further comment.

#### **Recommendation 2 and 11**

FOLA would appreciate the opportunity to work with the Law Society to develop policies to address the challenges licensees face through bias and discrimination. Our Executive Board has taken note that within the leadership of our member law associations, there is an apparent underrepresentation of lawyers who come from minority populations. While we cannot dictate the complement of our members' leadership structure, FOLA is committed to assisting the Law Society in effecting change at the ground level with the hope that this will create future change in the leadership of the profession. To that end, our Executive Board is more mindful of the need to recruit from minority populations to stand for Executive Board positions and we have implemented the practice of having at least one speaker from an equity-seeking bar association join our bi-annual Plenary meetings. These are small steps to be sure, but we think they are important and we are encouraging more of our members to do the same.

We also view the local associations and their Practice Resource Centres as a terrific conduit for the development of policies, the dissemination of information and the promotion of equity. A very large, but often overlooked, part of the mandate of our local associations is the promotion of collegiality and mentorship among the profession. This collegiality and relationship building cannot be underestimated in its ability to break down barriers and promote cross-cultural understanding. The primary user of the courthouse library is often a sole or small firm practitioner – the most likely current firm structure of minority licensees. Law Associations and the Practice Resource Centre staff are in the unique position of knowing these licensees, knowing potential mentors and providing a forum for mentorship, networking and collaboration. Further, the Law Association lounges in county courthouses across Ontario are places where all licensees

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should feel welcome and should find a colleague who is willing to help, consult or simply "shoot the breeze" fostering ongoing relationships. Likewise, it is critical that our local associations reach out to racialized and other minority populations for candid internal conversations to implement policies that removes all possible barriers. As such, in considering resources available to address the challenges faced by these licensees, FOLA considers our courthouse Practice Resource Centres (known in the past as libraries) to be a key component to this effort. In fact, we would argue that further investments in Practice Resource Centres will further assist racialized and other minority licensees to build sustainable legal practices.

**Recommendation 4, 5, 6, and 7**

It is FOLA's belief that in providing these recommendations, the Working Group has acknowledged the need for evidence based decision making. We believe this is a key precondition to any analysis by the Law Society when considering imposing further regulation on the profession.

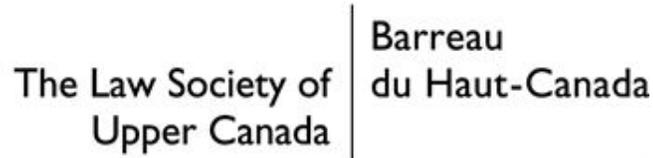
**Recommendation 9**

FOLA does not disagree with the suggestion that there is value in CPD programs on equality and inclusion. We would however caution that any requirement for specific CPD courses recognize limitations for practitioners in the North or other parts of rural Ontario who cannot always access streamed CPD. In this regard, and to reiterate the point made above, the Practice Resource Centre network across Ontario can be an important, and inexpensive, conduit for the dissemination of this information and training. We suggest that these materials be made available through the Practice Resource Centres, and that the program be available for distribution in other formats for those practicing in remote locations.

Thank you for the opportunity to provide these submissions. We look forward to further dialogue and to standing with the Law Society and all of our colleagues across the legal profession in moving toward a goal of equity and inclusion.

Eldon Horner  
Chair

Jaye Hooper  
1<sup>st</sup> Vice Chair



## EQUITY INITIATIVES DEPARTMENT

TO: Members of the Challenges Faced by Racialized Licensees Working Group

FROM: Members of the Indigenous Advisory Group

DATE: November 17, 2016

RE: Submission by the Indigenous Advisory Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

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The Indigenous Advisory Group was provided with a copy of the *Final Report of the Challenges Faced by Racialized Licensees Working Group* delivered to the Equity and Aboriginal Issues Committee. While Indigenous lawyers and paralegals were not included in the consultant or community engagement processes, we understand the findings of widespread barriers experienced by racialized licensees within the profession at all stages of their careers. The report provided, in summary form, some examples of the experiences faced in the legal profession including discrimination, negotiating concepts of "culture" and "fit", lack of mentors, networks and role models; we believe many of these same experiences are shared by Indigenous lawyers and paralegals.

As the report so aptly states, "the Law Society of Upper Canada 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. The Law Society is committed to adhering to its obligations under the *Human Rights Code*".

All licensees should be committed to eliminating harassment and discrimination in the profession; however, the current experiences relayed by respondents during this consultation may run at odds to the very standard we are held to protect.

The Indigenous Advisory Group supports the implementation of the Report's recommendations by the Law Society staff as overseen by the Equity and Aboriginal Issues Committee and is prepared to assist wherever necessary. To this end, we will be working with EAIC to articulate how the 7 Sacred Teachings of wisdom; love; respect; bravery; honesty; humility and truth must be practiced together to restore balance.

In our view, these teachings provide a framework through which all actions of the Law Society must be viewed and applied.

Respectfully,

Kathleen Lickers on behalf of  
The Indigenous Advisory Group



November 14, 2016

Ekua Quansah  
The Law Society of Upper Canada Osgoode Hall  
130 Queen Street West Toronto, Ontario

Dear Ms. Quansah:

BY EMAIL: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

**Re: Response to the Working Group Final Report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

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The Indigenous Bar Associations (IBA) would like to take this opportunity to thank the Law Society of Upper Canada's Equity and Aboriginal Issues Committee for their initiative and dedication in completing this essential Final Report. The IBA appreciates the time expended by the Committee in addition to their comments and suggestions to continue to address the challenges faced by racialized licensees. In support of the Working Group Final Report the IBA provides the following comments.

### **Recommendation 1 – Reinforcing Professional Obligations**

The IBA supports the recommendation of the Law Society to amend 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.

Due to the history and intergenerational impacts of colonialism, legislated assimilationist policies and Indian Residential Schools, Indigenous licensees face many complicated challenges due to the historic disadvantages that tend to be perpetuated by the status quo inherent in the legal system. In addressing these challenges LSUC is encouraged to employ an approach that addresses both the unique and collective challenges as well as the individual challenges facing Indigenous licensees. The IBA requests that the Law Society make specific mention of the *Truth and Reconciliation Commission's Final Report* and the

requirement to address “reconciliation” between Indigenous and non-Indigenous Peoples.

#### **Recommendations 4 to 7 (Collection of Data and Qualitative, Quantitative Analysis)**

The collection of demographic data to identify racialized licensees is essential to addressing the issue of systemic discrimination. It is difficult to address the issue without the data to support the numbers and analytical trends. The IBA requests that this essential data be posted as it becomes available.

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

The IBA recommends that in developing continuing professional development programs on Equality and Inclusion special consideration be given to the unique challenges faced by Indigenous licensees, including remote access, and financial considerations for mandatory fees and materials.

#### **Recommendation 10 – The Licensing Process**

Please see the above noted comments with respect to *Recommendation 1 – Reinforcing Professional Obligations* in considering to include the topics of cultural competency, equality and inclusion in the profession as competencies as part of the Licensing Process.

#### **Recommendation 11 – Building Communities of Support**

The Law Society recommendation to provide support to racialized licensees through mentoring and networking initiatives was highlighted by the IBA as a key priority in its consultation submissions. It is important for the success of Indigenous licensees to connect and associate with other Indigenous law students and licensees. To the extent that its resources permit the IBA encourages the Law Society to seek its assistance in providing opportunities for Indigenous licensees to network with Indigenous law students, licensees, academics and judges and other members of the IBA.

The IBA also requests the Law Society undertake efforts towards monitoring the success of all mentoring and networking initiatives for racialized licensees and identify any improvements.

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Thank you for your consideration of these submissions.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Robertson', written over a horizontal line.

Scott Robertson  
Vice-President Indigenous Bar Association  
[srobertson@indigenousbar.ca](mailto:srobertson@indigenousbar.ca)

cc Koren Lightening-Earle, President, Indigenous Bar Association

The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**EQUITY INITIATIVES DEPARTMENT**

**TO:** Members of the Challenges Faced by Racialized Licensees Working Group

**FROM:** Members of the Equity Advisory Group Working Group

**DATE:** November 14, 2016

**RE:** Submission by the Equity Advisory Group Working Group in response to *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*

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Members of the Equity Advisory Group (“EAG”) Working Group have carefully considered the thirteen recommendations presented in the Challenges Faced by Racialized Licensees Working Group Final Report (“final report”), *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The following document offers general comments on the final report as well as comments specific to some recommendations.

**Background**

1. EAG represents the diverse interests of lawyers and paralegals who identify as a member of one or more equity-seeking groups. EAG, through its organizational and individual members, is actively involved in the advancement of equity and inclusion within the legal professions with respect to gender, sexual orientation, gender identity, language, ability, religion, and most relevant to these submissions, race.

2. EAG's mandate includes commenting on Law Society reports and studies relating to equity issues and access to justice within the profession. EAG is of the view that the Report dated September 22 ought to be considered from an equity and diversity lens, access to justice, and the Law Society's mandate to protect the public interest.
3. EAG supports an approach that advances access to justice and protection of the public interest for equity seeking clients, while ensuring the regulatory balance struck does not disproportionately impact licensees from equity seeking groups, where it is unnecessary to protect the public interest.
4. The commitment of the EAG Working Group to the *Challenged Faced by Racialized Licensees* report has spanned two terms of Law Society Benchers as well as EAG members. The Working Group is currently comprised of the following individual and organizational members:
  - a. Tahlee Afzal, individual member;
  - b. Ranjan Agarwal, on behalf of the South Asian Bar Association;
  - c. Sharan Basran, individual member;
  - d. Maureen Bennett Henry, on behalf of the Canadian Association of Black Lawyers;
  - e. Gerald Chan, on behalf of the Federation of Asian Canadian Lawyers;
  - f. Gordon Cudjoe, on behalf of the Canadian Association of Black Lawyers;
  - g. Imtenan El-Razik, on behalf of the Canadian Association of Muslim Women in Law;
  - h. Lai-King Hum, on behalf of the Roundtable of Diversity Associations;
  - i. Leonard Kim, individual member;

- j. Ayesha Laldin, on behalf of the Women's Law Association of Ontario;
  - k. Sandra Lozano, on behalf of the Canadian Hispanic Bar Association;
  - l. Jennifer Quito, on behalf of the Canadian Hispanic Bar Association;
  - m. Paul Saguil, individual member;
  - n. Jason Tam, individual member; and
  - o. Joyce Tam, on behalf of the Federation of Asian Canadian Lawyers.
5. The EAG Working Group agreed to provide written submissions to the CFRL Working Group in response to the final report. The EAG Working Group provides submissions that focus on what the Law Society of Upper Canada proposes to do to remove barriers faced by racialized licensees in the legal profession.
6. The EAG Working Group submits its written feedback to the CFRL Working Group for its consideration, in preparation for the decision before Convocation on December 2, 2016.

#### **Unequivocal Consensus among all EAG Working Group Members**

7. There is unequivocal consensus among all EAG Working Group members that the thirteen recommendations should be approved in their entirety. The EAG Working Group urges the Law Society to vote on and approve the thirteen recommendations in the final report as an omnibus package at Convocation. The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis. The challenges faced by racialized licensees must be addressed in a multi-faceted way

that will be best achieved through the approval of all thirteen recommendations as an omnibus package.

8. The EAG Working Group is unanimous in its recommendation that the Executive Summary in the final report should include a reference to section 15(1) of the *Canadian Charter of Rights and Freedoms*.<sup>1</sup> An example of the included reference is below:

“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 **constitutionally enshrined in the *Charter of Canadian Rights and Freedoms***, and already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, 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 **while upholding the spirit and letter of the law of equality rights outlined in the *Charter***.”

### **Approving all Recommendations is a Necessary First Step**

9. There is consensus among all EAG Working Group members that the approval of all recommendations is a basic, minimum first step that is required to begin to address and improve accessibility to and advancement within the legal professions for racialized licensees.
10. These thirteen recommendations work together to address the systemic issues faced by racialized licensees. Their interplay and resultant effects lay the foundation for initiatives that can begin to ameliorate systemic issues of race within the profession. Voting on each recommendation, one by one, will diminish their full impact and restrict how they can and must work together to create practical change.

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<sup>1</sup> *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

11. The approval of all thirteen recommendations is urgent. This is not only fundamental to creating a more inclusive profession, but it is an action that is long overdue.
12. Considering the range of stakeholders that are represented by and actively involved in EAG, the EAG Working Group's inclusion in the future implementation of these recommendations is important and necessary, if the final report is approved at Convocation on December 2, 2016. The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the application in a manner that is responsive to the specific needs of a particular community.

### **Recommendation-Specific Comments by Theme**

#### ***Accelerating Culture Shift: Recommendations 1 to 3***

13. Although these recommendations are basic requirements, the EAG Working Group believes there is a need to identify these issues to address equality and anti-discrimination in alignment with each licensee's duty to fulfill their professional obligations. Aligning these principles with one's professional responsibilities requires each licensee to develop a sensitivity and an awareness of these issues. Each licensee will then have the capacity and responsibility to act according to these basic principles.
14. These are a minimum requirement that are important and necessary to deal with issues in a proactive manner.

***Measuring Progress: Recommendations 4 to 8***

15. EAG Working Group members suggest that the active gathering of this data will highlight to the profession that issues of diversity and inclusion remain a top priority for the Law Society.
16. EAG Working Group members identify the need for statistical information regarding the demographic composition of legal workplaces. EAG Working Group members agree that the Law Society mandate demographic data reporting and agree that this information should be publicly available.
17. The members of the EAG Working Group note that the Law Society already collects demographic information from licensees through the Lawyer Annual Report and the Paralegal Annual Report. The Law Society also has information regarding where licensees are employed. The Law Society could produce this information if legal workplaces are not willing to do so.
18. EAG Working Group members believe that legal workplaces should also track the progression of students and licensees within their workplaces, from the articling student level to the partner/managerial level. Demographic data should also include information that would indicate the number of members of different equity-seeking groups in various positions in legal workplaces – i.e. students, associates, and partners. This may help legal workplaces identify any issues that may exist with retention and may provide some insight as to why there may be a lack of representation of racialized groups. In the same vein, it is suggested that when licensees change their status with the Law Society, the form they are required to fill out should include a question as to why the licensee changed their status. This would assist in tracking retention and progression.

19. The EAG Working Group suggests that the Law Society continue to collect demographic data from licensees through the Lawyers Annual Report (LAR) and the Paralegal Annual Report (PAR). The Law Society should provide a clear explanation as to why licensees are being asked to provide demographic data and how the collected data will be used.
20. The Law Society could publicly report aggregate demographic data based on legal workplace size and region. The Law Society could then provide legal workplaces with their own demographic data and the Law Society could require legal workplaces to comment on their diversity statistics in light of the standards and resources they have adopted.

***Educating for Change: Recommendations 9 to 10***

21. The EAG Working Group agrees that cultural competency, equality and inclusion as competencies are basic job traits in today's legal profession. These are required qualities and measurement of professionalism for new lawyers that hope to effectively serve a diverse population in Ontario.
22. The EAG Working Group supports the CPD requirement of three hours every 2-3 years. This recommendation amounts to a net amount of 1 hour of CPD programs per year.

***Implementing Supports: Recommendations 11 to 12***

23. The EAG Working Group suggests that, despite much success, there is much work to do to develop the complaints process. The re-assessment of the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC) would be prudent considering the dynamic nature of this ongoing challenge in the legal profession. Furthermore, amending where necessary, the Rules of Professional Conduct and Paralegal Rules of Conduct is an important part of the

review process in order to enable the Law Society to have the necessary tools to follow through.

24. Creative ways to address complaints and the formation of specialized teams to address complaints of discrimination (and systemic discrimination) may promote a mature and measured response to situations of discrimination or harassment that have the potential to be effectively addressed.

***The Operations of the Law Society of Upper Canada: Recommendation 13***

25. The EAG Working Group suggests that, by following through with this recommendation, the Law Society will add credibility to the process and to the profession. The Law Society will be in a position to gain a firsthand understanding of the advantages and limitations in fulfilling the full recommendations.

**Conclusion**

26. The EAG Working Group is united and absolute in its support for the approval of all thirteen recommendations in the report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The approval of these recommendations lay the foundation to initiate vital and long overdue policies and programs that advance the profession in the direction of equity, diversity and inclusion.
27. The EAG Working Group views the approval of these recommendations as a moment that could have a positive and profound impact on other equity-seeking groups. If these thirteen recommendations are approved at Convocation, the EAG Working Group urges the Law Society to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, with the caveat that the Law Society must consider whether further consultation is required for the

application in a manner that appropriately addresses the specific needs of a particular community.

28. To summarize, EAG's unanimous position is outlined in the three following points:
- (i) The thirteen recommendations outlined in the final report should be voted on and approved as an omnibus package at Convocation on December 2, 2016;
  - (ii) The EAG Working Group is not supportive of the motion brought forward by Benchers Sidney Troister and Jeffrey Lem to vote on each recommendation on an individual basis; and,
  - (iii) The EAG Working Group is supportive of the motion brought forward by Benchers Barbara Murchie and Joanne St. Lewis to extend, as appropriate, the resulting policies, procedures, measures and initiatives to all equity-seeking groups, provided that the Law Society must consider whether further consultation is required to make these extensions in a manner that is responsive to the specific needs of equity-seeking communities on a case-by-case basis.



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November 18, 2016

VIA EMAIL: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

The Law Society of Upper Canada  
c/o Ekuia Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

Legal Aid Ontario congratulates the Law Society and the Equity and Aboriginal Issues Committee on its report "Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions". We support the goals of the report and the general framework established to support greater diversity and inclusion of racialized licensees within the legal profession. We would welcome an opportunity to meet with the Equity and Aboriginal Issues Committee and staff of the Law Society to discuss the report. As one of the largest employer of licensees, many of whom we are proud to say are from racialized communities, we would also like to extend an offer to work with the Law Society and the Committee to consider how Legal Aid Ontario can effectively implement the actions recommended in the report.

We wish you success on the consideration of the report by Convocation on December 2<sup>nd</sup> and look forward to hearing from you.

Yours truly,

A handwritten signature in black ink, appearing to read "David Field", is written in a cursive style.

David Field  
President & CEO  
Legal Aid Ontario



November 14, 2016

Legal Leaders for Diversity and Inclusion (LLD) is an organization of General Counsel from across Canada which supports a more inclusive legal profession in Canada. In just over 5 years, our organization has grown to over 100 General Counsel from across Canada and across many business sectors. Thank you for providing us with the opportunity to respond to the Challenges Faced by Racialized Licensees Working Group Final Report titled “*Working together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*” (“Final Report”).

We want to express our support for measures which create a more inclusive legal profession. Though it is difficult to comment on the right approach to be taken for law firms, we thought it might be helpful to the Law Society of Upper Canada to have the benefit of our insights on what LLD members are doing with respect to this issue in order to remove barriers faced by racialized lawyers in Ontario.

We believe that true and effective change within the legal profession will only come about through collaboration and cooperation. The LLD has created and supported a number of inclusive initiatives. Many of these are aligned with the recommendations found in the Final Report. These initiatives include:

- ***Building a relationship with LFDIN:*** One of LLD’s early successes was a collective ask to our external counsel community that they consider how the external bar could promote and support diversity and inclusiveness initiatives. The law firms answered with the Law Firm Diversity and Inclusiveness Network (“LFDIN”), which currently has 35 law firm members that have agreed to work together to promote diversity and encourage a culture of inclusion within their firms and within the broader legal profession.
- ***Mentorship Programs:*** LLD and the LFDIN established a formal Mentoring Program to match LFDIN member firm associate lawyers, who self-identify as being from groups that have been traditionally under-represented in the legal profession, with lawyers from LLD member organizations who have 10 or more years’ experience. At its core, is our belief that mentoring can help create an ‘equal playing field’ for lawyers who are from diverse backgrounds.
- ***Legal Programs:*** LLD members are also involved in programs such as Law in Action within Schools (LAWS) (sponsored by the University of Toronto Law School), the Internationally Trained Lawyers Program (ITLP) for foreign qualified lawyers, and other diversity focused organizations. All of these organizations provide access, exposure and opportunity for students and lawyers of diverse backgrounds. LLD members participate.



- **Scholarship Support:** LLD (supported by the LFDIN) established the Legal Leaders for Diversity Trust Fund to annually provide scholarships for law students with disabilities who are studying at Canadian law schools. In addition to this, an LLD scholarship was established for an in house lawyer with disabilities to attend the Canadian Corporate Counsel Association/Rotmans In House Counsel certification program.
- **Indigenous Peoples, Laws, Reconciliation & Practice introductory CLE program:** LLD is the driving force behind the First Nations Initiative which will be a CLE accredited program that will be used not only by General Counsel, but by many others as a core educational tool on Indigenous law.
- **Affinity Relationships:** The success of LLD also lies in the group's spirit of cooperation and sharing, and the power of collaborating with other organizations and speaking and participating on diversity related issues. By working together in this manner, we can best support each other and grow and learn together.

LLD supports initiatives which develop and advance our common objective of achieving a diverse and inclusive legal profession. The profession is being challenged within Canada and globally and law schools and law societies must take steps to make our profession globally competitive and reflective of the population in our communities. We believe that creating a more diverse legal profession in Canada will play a role in creating that competitive advantage.

We applaud the focus of the Law Society of Upper Canada on this important issue.

Executive  
Legal Leaders for Diversity



# Legal Leaders for Diversity

## A Statement of Support for Diversity and Inclusion by General Counsel in Canada



**We commit to promoting a diverse and inclusive workplace.** We value the range of perspectives, ideas and experiences that diversity provides, whether grounded in gender, race, the spectrum of sexual orientation and gender identity, disability, cultural background, religion, economic position or age.

**We believe diversity and inclusion create a broader, richer environment** that enhances creative thinking, innovation and problem solving. Inclusive organizations attract and retain top talent.

**We will therefore encourage greater diversity and inclusion** in our own law departments, businesses and co-operate to foster these same values throughout the legal profession and the larger Canadian business community.

**We undertake to practice and advance diversity and inclusion by:**

- Promoting diversity within our own departments;
- Considering diversity in our hiring and purchasing practices;
- Working with Canadian law firms, law schools and others to advance these values;
- Promoting diversity initiatives at all levels in the legal and business community;
- Measuring the effectiveness of our efforts.

**We, as advocates for diversity and inclusion,** will demonstrate our commitment through specific actions including one or more of the "Be an Advocate" initiatives.



## **Comments on the Working Together for Change Report: Strategies to Address Issues of Systemic Racism in the Legal Profession**

**Submitted by  
Metro Toronto Chinese & Southeast Asian Legal Clinic**

### **INTRODUCTION**

The **Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC)** is a community based legal clinic which provides free legal services to low income Chinese, Vietnamese, Cambodian, and Laotian communities in the Greater Toronto Area. Established in 1987, MTCSALC has served thousands of immigrants and racialized members of the aforementioned communities.

The following are our comments and recommendations on the Law Society of Upper Canada's Working Together for Change Report ("Report").

### **COMMENTS AND RECOMMENDATIONS**

#### **Addressing Systemic Racism Through a Holistic Approach**

We fully endorse all 13 recommendations proposed by the Equity and Aboriginal Issues Committee ("Committee") to achieve the stated objectives of inclusive legal workplaces, reduction of barriers created by racism, and better representation of racialized licensees in all legal workplaces and at all levels of seniority.

We stress the importance of adopting a holistic approach in achieving these overarching objectives. Systemic racism is a complex and multifaceted issue which takes on many forms. There is no singular manifestation of systemic racism in legal workplaces and consequently no single solution. The varied nature of systemic racism necessitates a holistic response. As such, we submit that all 13 recommendations should be adopted together as they complement and reinforce the overall scheme to reduce racial barriers and achieve equity in legal workplaces. From our perspective, the 13 recommendations collectively tackle the issue of systemic racism from different fronts:

- Recommendations 1 (reinforcing professional obligations), 9 (continuing professional development), and 10 (licensing process) engrain and reinforce the principles of equality and inclusion for current and future licensees.
- Recommendations 2 (diversity and inclusion project), 3 (adoption of diversity and inclusion practices), and 11 (building communities of support) create and maintain practices for eliminating barriers to racialized licensees.
- Recommendations 4 and 5 (measuring progress through quantitative and qualitative analysis), 6 (inclusion index), and 7 (racialized licensees project inclusion survey) create a process for gathering data to measure the effectiveness of the recommended substantive practices and publicizing the results.

- Recommendations 8 (progressive compliance measures) and 12 (addressing complaints of systemic discrimination) create and strengthen compliance measures to address non-conformity with the recommendations.
- Recommendation 13 reaffirms the leading role and responsibility that the Law Society of Upper Canada has in implementing the aforementioned recommendations.

We submit that each set of recommendations complement each other and form an intertwined web of diversity and inclusion strategies. The removal of any strand from the web through partial or non-adoption of any of the 13 recommendations would seriously undermine the effectiveness of all recommendations and the viability of the overarching objectives.

### **Publication of Inclusion Index, Progressive Compliance, and Complaints of Systematic Discrimination**

As noted by the Committee, the publication of an inclusion index would allow legal workplaces to demonstrate their performance and progress by providing a transparent measure to prospective clients and licensees. We believe that this transparency is crucial in achieving the goals of the Report and to further encourage and reinforce diversity and inclusion practices within larger legal workplaces.

Compliance measures and investigation of complaints is a core responsibility of regulatory bodies and an integral part of ensuring adherence to prescribed rules and practices. We are supportive of progressive compliance measures and submit that immediate consultation should commence on the structure of specific measures once the Committee's recommendations are adopted.

Furthermore, we are in favor of an individual complaint process through a specialized professional regulation team as it would provide nuanced redress on an individual level from staff members of the Law Society of Upper Canada with expertise in discrimination complaints in the legal workplace context.

### **CONCLUSION**

We ask the Law Society's Board of Directors to fully adopt all 13 recommendations in the Report as a cohesive whole and consider and incorporate these perspectives in the Convocation Decision.

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November 14, 2016

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, Ontario  
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Dear Ekua Quansah,

The Ministry of the Attorney General (MAG) is pleased with the opportunity to provide comments on the Law Society of Upper Canada (LSUC)'s final report on *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*. The Working Group's final report reflects a comprehensive approach, broad consultation and thoughtful analysis on the experiences of Racialized licensees and on how to identify and remove barriers to their inclusion and equal participation at all career stages. I commend the licensees and organizations who have shared their experiences and the LSUC's Working Group for this important report.

As you may know, the ministry made oral remarks to the Working Group in May 2015, and a written submission in November 2015. We highlighted diversity and inclusion initiatives of the ministry and the Ontario Public Service (OPS) including the policies and procedures in place, the compilation of an Inclusion Index through the OPS' Employee Engagement Survey, and the release of the OPS Anti-Racism Action Plan. In addition, as noted on page 13 of your final report, the OPS has created the Anti-Racism Directorate which will provide guidance to the OPS on addressing racism.

Since that time, the OPS has continued to implement further measures including:

- A review of both the OPS policy and program on workplace discrimination and harassment resulting in a new updated policy, the Respectful Workplace Policy that was effective September 1, 2016
- Collection of diversity data on senior executives through the Leadership Profile Data Collection pilot project
- Collection of data on interns through the Ontario Internship Program Applicant Survey.

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In addition to the corporate initiatives identified above, the ministry is continuing to explore a variety of new initiatives including:

- A pilot of a roster of managers and subject matter experts to support diverse hiring panels
- A community outreach event to familiarize legal professionals from under-represented groups with the types of legal positions available in the Ontario Public Service
- A review of barriers in ministry hiring processes and practices.

As a ministry, we continue to focus our efforts on identifying and removing barriers in our workplace and on promoting greater diversity and cultivating an even more inclusive organization.

We recognize that the OPS is only one of a very diverse range of organizations that employ licensees, each of which are at various points on the inclusion continuum. Many of the recommendations in the final report will ensure the LSUC provides essential support to both licensees and organizations through CPD programs, clarifying professional obligations, collecting aggregate demographic data on the profession, and supporting mentoring and networking programs.

As part of our comments, we note the following points for consideration by the LSUC:

- Some recommendations, as drafted, appear to include requirements that may impact on governments and private organizations as employers of licensees (this potential impact is noted in footnote 7 of the report). At present it is difficult to determine whether the LSUC would have jurisdiction to regulate government and in-house legal departments as “legal workplaces” because the specific requirements of the Report’s proposed mandatory human rights policy/diversity policy have not yet been determined. In any event, given the fact that MAG shares the same goals as the LSUC on this matter, we do not find it necessary to express a view on this aspect of the Report.
- There may also be a need to consider the complexity of implementation of specific requirements. For example, all employees of an organization, including licensees, are usually subject to the same employer policies and initiatives.
- Some organizations may already have similar obligations as those proposed in the final report under the Federal Employment Equity Act and the Legislated Employment Equity Program, or under the Federal Contractors Program; programs which promote equitable representation for women, Aboriginal peoples, persons with disabilities and members of visible minorities. Other organizations, as noted in the final report, have voluntarily implemented policies, training, and initiatives on diversity, inclusion or anti-racism that would potentially be duplicated by the proposed LSUC requirements.
- Given the diversity of organizations that employ licensees, there may not be a “one size fits all” approach but rather a need for a flexible approach that focuses on progress for each organization.

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- 3 -

The Ontario Public Service and the Ministry of the Attorney General are committed to continuing efforts to identify, remove and prevent barriers to Racialized licensees in the Ontario Public Service. As a ministry, we look forward to working with the LSUC and other organizations where licensees work, to identify how we can each do our part to address the lived experience of Racialized licensees in the context of our own workplaces; for the benefit of the legal profession and society at large.

Thank you again for your strong effort and focus on this issue and for the opportunity for our ministry to provide comments.

Yours truly,



Patrick Monahan  
Deputy Attorney General



# The Voice of the Legal Profession

## Law Society of Upper Canada Challenges Faced by Racialized Licensees Working Group Final Report

**Date:** November 14, 2016

**Submitted to:** Law Society of Upper Canada

**Submitted by:** The Ontario Bar Association



ONTARIO  
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A Branch of the  
Canadian Bar Association

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BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien



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## Addressing Challenges Faced by Racialized Licensees

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## Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on issues raised in the Law Society of Upper Canada (“Law Society”) Challenges Faced by Racialized Licensees Working Group (“Working Group”) Final Report “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions” (the “Final Report”).

## The OBA

Established in 1907, the OBA is the largest voluntary legal association in Ontario and represents 16,000 lawyers, judges, law professors and law students. OBA members are on the frontlines of our justice system in no fewer than 40 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA is pleased to assist government, the Law Society, and other decision-makers with dozens of policy initiatives each year – in the interests of the public, the profession, and the administration of justice.

In preparing this submission, the OBA has sought input from our governing council of members representing a critical cross-section of the bar, including senior and junior lawyers from managing partners to new calls, who practice across Ontario as solicitors and barristers in solo, small, medium and large firms from all eight judicial regions of the province. The submission has also sought input from members of the OBA’s Equality Committee, Young Lawyers Divisions, Women Lawyers Forum, the Sole, Small Firm and General Practice section, the Canadian Corporate Counsel Association – Ontario Chapter, and our new Student Section.

## Response to the Final Report

### General Comments

The Working Group was formed in 2012 to identify the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages. The Working Group conducted a process to collect information on those challenges, and subsequently released a consultation paper in 2014 to collect feedback from the profession and public on questions intended to engage the profession in a consideration of strategies to address the challenges faced by racialized licensees.<sup>1</sup>

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<sup>1</sup> Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October, 2014 (<https://www.lsuc.on.ca/racialized-licensees/>) [the “Consultation Paper”]



Building on that work, the Final Report concludes that the challenges faced by racialized licensees are both longstanding and significant, that the Law Society must take a leadership role in bringing about a lasting culture change, and that prescribing minimum standards of equality, diversity and inclusion are consistent with human rights responsibilities of the profession that are already in place. The Final Report makes thirteen recommendations under five categories: accelerating culture shift, measuring progress, educating for change, implementing supports, and Law Society operations.

As we stated in our response to the Consultation Paper, the OBA is committed to enhancing and promoting equality and diversity within our association and the legal profession, including assisting the efforts of law firms to promote equity and diversity.<sup>2</sup> As set out in a recent CBA resolution, “ending discrimination in the legal profession benefits the profession by enabling it to represent itself with integrity as an advocate for justice.”<sup>3</sup> We therefore support the Working Group’s “intention to create long lasting systemic change within the professions,” and its recommendation that the Law Society use a combination of voluntary and mandatory measures.<sup>4</sup> The Working Group recognizes that lawyers are already bound by the Rules of Professional Conduct, and all recommendations proposed in the report should be interpreted consistently with those requirements.

Further, we agree that close collaboration between the Law Society, legal workplaces and associations will be “essential to the success of the proposed measures and projects” proposed by the Working Group.<sup>5</sup> As we set out in the OBA Initial Report, the OBA has a history of providing programming, mentoring and diversity initiatives for members, in addition to the tools and resources developed by the Canadian Bar Association (the “CBA”) to support diversity initiatives.<sup>6</sup> We believe that the Law Society should promote and support legal workplaces and associations to develop new, and deliver existing programming, initiatives and materials to support the Working Group’s recommendations.

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<sup>2</sup> See the Ontario Bar Association, Addressing Challenges Faced by Racialized Licensees, March 15, 2015. (<http://www.oba.org/submissions>) [“OBA Initial Report” at p. 2]

<sup>3</sup> CBA Resolution 14-04-M, “Non-Discrimination in Legal Education”, February 22-23, 2014. (<https://www.cba.org/Our-Work/Resolutions>)

<sup>4</sup> Final Report, p. 14-15.

<sup>5</sup> Final Report, p. 15.

<sup>6</sup> OBA Initial Report at p. 3-8. The CBA is the OBA’s national organization, which presently represents some 37,000 lawyers, judges, notaries, law teachers, and law students from across Canada. Approximately two-thirds of all practising lawyers in Canada belong to the CBA. See also the “[The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations](#)” and the “[Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance](#)”



Before moving on to provide specific comments relating to the five areas covered by the Final Report, we would like to provide some general comments on the recommendations contained in the Final Report.

First, we note that the Working Group has not provided recommended timelines for several of its recommendations.<sup>7</sup> The OBA supports the prompt implementation of the Final Report's recommendations. We request that the Law Society and/or the Working Group continue work with stakeholders to develop appropriate timelines for their implementation, along with appropriate plans to measure and report on their effectiveness, in order to allow for adjustment and renewal as necessary, and to ensure the approach adopted meets the intended goals.

Second, we recognize that the challenges faced by racialized licensees occur at all stages throughout their careers, starting with the Licensing Process. We note that the Law Society Professional Development and Competence Committee's recently released Final Report to Convocation dealing with the Pathways Pilot Project, which includes the Law Practice Program and other lawyer licensing elements, reported "interest from a range of perspectives for a broader analysis to be undertaken of the licensing process."<sup>8</sup> As part of this initiative, we support the recommendation that the Law Society consider the impact that the licensing process has on racialized licensees, including but not limited to systemic bias and economic barriers.

We also recognize that the challenges faced by racialized licensees occur whether they are members of large or small firms. Lawyers have a range of reasons to practice in solo and small firms and they comprise an important segment of the bar, however, we note that a disproportionate number of racialized licensees are counted in this group. We recommend that the Law Society continue to explore opportunities to ensure that the profession is inclusive of those individuals, regardless of firm size.

Finally, if approved, we recommend that the Law Society consider how the proposals might be extended to benefit other equity-seeking groups through a process of consultation and information sharing with the profession and legal associations.

### **Accelerating Culture Shift**

As part of this category, the Working Group recommends several steps including amendments to the Rules of Professional Conduct to ensure licensees infuse the principles of equality, diversity and inclusion into their everyday practice; developing model policies and resources to address the challenges faced by racialized licensees using the Justicia Project as a model; and, requiring the adoption of equality, diversity and inclusion principles and practices by every licensee, with

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<sup>7</sup> See Final Report, p. 10, "Timeline for Implementation of Recommendations."

<sup>8</sup> Professional Development and Competence Committee Final Report to November 9, 2016 Convocation, October 27, 2016 (<https://www.lsuc.on.ca/Pathways/>)



particular requirements for workplaces with 10 or more licensees. All licensees will be required to adopt a “statement of principles”, while workplaces with 10 or more licensees must implement a diversity policy, and complete diversity self-assessments.

The OBA has adopted a series of measures intended to support diversity in our association. Through a consultation led by the OBA’s Equality Committee, the OBA has adopted an organization-wide diversity statement, committed to maintain and report on self-identification membership data, and committed to maintain and report on diversity leadership targets.<sup>9</sup> In this context, several measures recommended by the Working Group are similar in their objective to measures already in place at the OBA. Accordingly, as stated in our Initial Report the OBA strongly supports assisting law firms to establish diversity programs that set out a firm’s commitment and plan for meeting its goals and collecting demographic data and assessing the diversity climate to analyze the successes and areas for improvement.<sup>10</sup>

### Measuring Progress

As part of this category, the Working Group recommends for workplaces with more than 25 licensees a) quantitative self-identification data collected annually and provided in aggregate to the legal workplace, b) qualitative self-identification data collected every four years and provided to the legal workplace in summary form, and c) a workplace “Inclusion Index” developed and published every four years; repeating the Challenges Faced by Racialized Licensees Inclusion Survey; and, developing and implementing progressive compliance measures for workplaces that do not comply with the required adoption of equality, diversity and inclusion principles and practices.

As noted above, the OBA has committed to measure diversity and inclusion data within its own organization. As noted in the Initial Report, in 2012 the Equality Committee of the CBA issued “Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance” (the “Measuring Diversity Guide”). The OBA Initial Report discussed the Measuring Diversity Guide in detail, providing recommendations with respect to the appropriate development, assessment, and continuous improvement of measurement tools for law firms.<sup>11</sup> We continue to encourage the Law Society to work with the profession to ensure that the proposed tools deliver meaningful and actionable results for the profession, while respecting the need to maintain the privacy and confidentiality of respondents.

While we support the Working Group’s recommendations to initiate the quantitative and qualitative data collection with larger firms, our members have also suggested that the Law Society allow for voluntary provision of diversity data from smaller firms that would not otherwise be

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<sup>9</sup> [Letter to Members](#) from OBA President David Sterns, October 2015.

<sup>10</sup> See OBA Initial Report, p. 2.

<sup>11</sup> OBA Initial Report, p. 3-6.



subject to that requirement. That would allow for participation from the broadest possible segment of the profession.

In addition, the Law Society should commit to continually monitor and assess the effectiveness of any measures implemented and to share that information with the profession on an ongoing basis.

### **Educating for Change**

The Final Report recommends requiring licensees to complete mandatory continuing professional development programs on topics of equality and inclusion, and including these topics as competencies to be acquired within the Licensing Process.

While we support the principle that training in equality and inclusion will benefit the profession, engendering understanding of diversity in the profession will require an ongoing commitment from the profession, of which training programs can form but one part. As part of our recommendation that the Law Society continually evaluate the effectiveness of the measures implemented, we note the need to assess whether the requirement adopted is proving effective. We look forward to further engagement with the Law Society to develop appropriate criteria for accreditation, and appropriate guides for these programs to ensure that the training received is both relevant and actionable.

As stated above, the OBA has a history of providing programming to support diversity initiatives. The Law Society Scan of Best Practices notes that legal associations are uniquely positioned to impact diversity within the legal profession.<sup>12</sup> In this regard, although the text of Recommendation #9 does not explicitly recognize the role of legal associations in delivering diversity programming, it is clear from the analysis that the Working Group provided in the Final Report that legal associations can continue to demonstrate leadership in the design and delivery of accredited programming focused on advancing equality and inclusion.<sup>13</sup>

We have also noted that the means by which topics of cultural competency, equality and inclusion will be included in the Licensing Process have not been particularized. Recent licensing candidates have noted that effectively implementing this recommendation will require careful consideration, in order to ensure that the Licensing Process achieves the desired learning outcomes. We would be pleased to provide input on developing appropriate materials if the Law Society implements this recommendation.

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<sup>12</sup> Law Society of Upper Canada, "Law Society Studies and Scan of Best Practices," October, 2014, (<https://www.lsuc.on.ca/racialized-licensees/>) p. 27.

<sup>13</sup> See Final Report, Recommendation 9.



### Implementing Supports

The Final Report provides several recommendations related to addressing complaints of systemic discrimination, and recommends providing support to racialized licensees through mentoring and networking initiatives. With respect to addressing complaints of systemic discrimination, the OBA supports the recommendations presented in the Final Report to review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHCP), and the other related recommendations. We note that confidentiality is an important factor for the success of the current DHCP, and that appropriate confidentiality must be maintained if the program is to be modified to address complaints of systemic discrimination.

As stated in our Initial Report, an effective review of this area will require issues of human resources management within the Law Society structure. It is important for all individuals involved in the complaints process at the Law Society to be sensitive to unique issues that may arise with complaints of discrimination. This helps ensure that complaints are effectively addressed and instills confidence in the process for those wishing to bring a complaint.<sup>14</sup>

With respect to providing support to racialized licensees through mentoring and networking initiatives, the OBA provides a host of unique opportunities for racialized lawyers to network with colleagues through our governing bodies, 40 practice sections, Women Lawyers Forum ("WLF"), Sexual Orientation and Gender Identity Conference ("SOGIC") and the Equality Committee.<sup>15</sup> The OBA also offers high quality professional development programs, developed by our volunteer members and program planning lawyers that respond to current issues of diversity and inclusion.

The Law Society could play a helpful role by promoting awareness and encouraging participation in the mentoring, professional development, and networking opportunities already offered by legal associations. Increasing participation in core legal association offerings with a track record for success helps overcome the barriers of exclusion and isolation identified by racialized lawyers and promotes a more inclusive profession.<sup>16</sup>

### Law Society Operations

We agree that the Law Society should lead efforts to promote diversity and inclusion by example. As we stated in our Initial Report, the Law Society should also continue and enhance its recruitment and hiring efforts to ensure diversity within and throughout the organization. This includes encouraging racialized lawyers to participate in the election of Convocation. The Law Society could

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<sup>14</sup> See OBA Initial Report, p. 8-9.

<sup>15</sup> The Equality Committee was established in September 1992 and is, in part, responsible for identifying and recommending methods of eliminating the incidence of inequality of opportunity in the legal profession in Ontario based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

<sup>16</sup> See OBA Initial Report, p. 7-8.



examine making available and communicating more information about the election process and the importance of the work of benchers.<sup>17</sup>

## Conclusion

The OBA appreciates the opportunity to comment on the important initiatives presented in the Working Group's Final Report.

The Working Group has been considering challenges faced by racialized licensees since 2012. The Final Report concludes 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.

The OBA has long recognized the importance of diversity and inclusion to the profession. While the Working Group could no doubt deliberate further on the best approaches to undertake, our members broadly support the recommendations articulated in the Final Report as a reasonable way of moving forward to address the concerns identified.

That said, while moving forward is important, the Law Society should do so with the commitment to continually monitor and assess the effectiveness of measures implemented and to share that information with the profession. Such an ongoing collaborative process would assist the Law Society in understanding the complexities of the issues and developing options that enjoy the confidence of racialized licensees and the profession as a whole. The OBA looks forward to the opportunity to participate in that process as it goes forward.

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<sup>17</sup> See OBA Initial Report, p. 8-9.



November 14<sup>th</sup>, 2016

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah,

**Re: Request for Comments on Final Report of the Challenges Faced by Racialized Licensees Working Group**

The Ontario Crown Attorneys' Association (OCCA) welcomes the opportunity to provide comments about the recommendations contained in the final report of the Challenges Faced by Racialized Licensees Working Group entitled: *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession*. We also wish to commend the members of the Working Group for the significant time and effort dedicated to the development of a comprehensive report that examines systemic racism in the legal profession and which provides strategies that encourage all stakeholders to work together in an effort to eliminate the systemic barriers that adversely impact fellow licensees in the profession.

The OCAA represents over 850 Assistant Crown Attorneys and Crown Counsel employed by the Ministry of the Attorney General (MAG). We are a labour organization that represents licensees employed within MAG's Criminal Law Division, and are distinct from the Association of Law Officers of the Crown (ALOC), whose members are employed in non-criminal legal service branches across government. Our members play an integral role in the administration of criminal justice in Ontario and are responsible for the administration of hundreds of thousands of criminal cases that flow through the courts every year in all regions across the province. As an association, the OCAA actively promotes the professional interests of its members, and frequently acts in a supportive role by providing continuing education and training in collaboration with MAG.

The OCAA supports the recommendations set out in the Working Group's final report. The recommendations provide important and concrete steps designed to reduce the disproportionate and adverse impact that systemic barriers have on racialized licensees in the profession. The recommendations promote increased awareness and inclusive practices that can help achieve better representation of racialized licensees



in all practice settings in Ontario, including government legal departments and Crown Attorney offices. Implementation of the report's recommendations is good for the legal profession and for public confidence in the legal profession and the administration of the justice system as a whole. It is important that the demographics of our legal profession reflect the diversity of the public we serve.

With respect to the differing opinions on the definition of "legal workplace" at footnote 7 (and repeated at footnote 27) of the final report, we note that our members serve the public and are not subject to client decisions. We agree that, at a minimum, government and in-house legal departments should be encouraged to engage in the mandatory activities outlined in the report. We believe that the legal profession should constantly strive to develop, monitor and maintain better inclusive practices from student outreach and articling recruitment, through to hiring, promotion and retention. We also believe in the importance of leading by example.

As a strong leader in the development and dissemination of continuing legal education for our members, the OCAA welcomes opportunities to work with the Law Society in developing programs that are focused on enhancing inclusion and diversity in the profession.

We look forward to continuing our engagement with the Law Society and further opportunities to provide our input on the important work involved in addressing systemic racism in the legal profession.

Sincerely,

Kate Matthews  
President  
Ontario Crown Attorneys' Association



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Email to [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

November 11, 2016

**Paul Schabas, Treasurer**

Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6

[email: [lawsociety@lsuc.on.ca](mailto:lawsociety@lsuc.on.ca)]

**Raj Anand, Chair**

**Janet Leiper, Chair**

Challenges Faced by Racialized Licensees Working Group  
Law Society of Upper Canada  
Osgoode Hall

130 Queen Street West

Toronto, ON M5H 2N6

[email: [ranand@weirfoulds.com](mailto:ranand@weirfoulds.com) and

[janet.leiper@15bedford.com](mailto:janet.leiper@15bedford.com) ]

Dear Treasurer Schabas and Co-Chairs Anand and Leiper:

**Re: Final Report of the Challenges Faced by Racialized Licensees Working Group,  
*Working Together for Change: Strategies to Address Issues of  
Systemic Racism in the Legal Professions***

As Chair of the Roundtable of Diversity Associations (RODA)<sup>1</sup>, I convey RODA's written comments on the thirteen recommendations ("Recommendations") made in the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Final Report").

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<sup>1</sup> On November 29, 2016, RODA celebrates its 5<sup>th</sup> Diversity Soiree and its 2<sup>nd</sup> Diversity Conference. RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

RODA brings together a diverse group of legal associations with the goal of fostering dialogue and creating initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and within the community.

Of particular importance to RODA and its member associations is the issue of diversity in the legal profession, and the desire to hold law firms accountable to increasing diversity and breaking the privilege that non-racialized licensees have held, disproportionate to an increasingly diverse population.

## A. BACKGROUND

RODA believes it is important not to be short-sighted and to remember the backdrop against which the Final Report is released. Many of our member associations have made significant contributions along the long path leading to the Final Report. Association representatives have changed over the years, but our member associations have been consistent in advocating for equity, diversity and inclusion over at least the last two decades, without seeing any concrete results. We should not lose sight of the battles that were previously fought.

The backdrop of decades laid the groundwork for the Final Report, which is the culmination of recent focused effort. In September 2011, Convocation of the Law Society of Upper Canada ("LSUC") first identified the enhancement of diversity within law firms as a priority. Under the aegis of the Challenges Faced by Racialized Licensees Working Group ("CFRL Working Group"), and managed by the equity initiatives department at the LSUC, the LSUC hired an external consultant to:

- Identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- Identify factors and practice challenges that could increase the risk of regulatory complaints and discipline against racialized licensees; and
- Identify perceptions of best practises for preventive, remedial, and support strategies.

Following the creation of the CFRL Working Group, RODA and representatives of our member associations:

- Engaged in the initial community engagement process;
- Reviewed the results of the Consultant Engagement Process (contained in the external consultant's *Stratcom Report* released in March 2014), and provided further input and insight into the challenges faced by racialized licensees;
- These comments were then integrated into the Consultation Paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, released in October 2014;
- Between January and March 2015, provided comments to the Consultation Paper (this consultation process is said to include twelve (12) open house learning and consultation programs, and meetings with representatives from law firms, legal clinics, banks, government and legal associations, throughout the province);
- Reviewed an interim report released in April 23, 2015, *Challenges Faced by Racialized Licensees Working Group – Interim Report to Convocation*, April 2015. This interim report stated that participants spoke of "white privilege" and the need for all of us to

acknowledge its existence in order to address the challenges faced by racialized licensees, and the importance for licensees to understand how power operates to produce advantages for some and deny advantages to others. It is noted that 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.

- By late 2015, demanded that the CFRL Working Group account for its delays in framing the recommendation for concrete action items to address the conclusions in the Consultation Paper.
- Finally in September 2016, **five years** after the need was first formally identified by the LSUC, the Final Report was released with its thirteen recommendations.

Based on my observations, the initial reaction of equity seeking legal associations was understandingly sceptical. RODA and its members have met to discuss the Final Report. We have also had discussions and consultations with our colleagues, allies and other stakeholders. We have listened to members of the CFRL Working Group speak to the underlying rationale for the 13 recommendations.

## **B. RODA RECOMMENDATION**

***After a period of studying the Final Report, consultation and reflection, RODA is of the view that the Recommendations are an encouraging initial step that should be adopted, on an omnibus basis, by Convocation.***

***RODA also recommends that the LSUC be required to hold regular quarterly consultation meetings with RODA, the LSUC's Equity Advisory Group, and other racialized equity seeking legal associations, to monitor and ensure accountability over the implementation of the Recommendations. The results of these consultations should be put to Benchers at Convocation.***

The Recommendations fall into 5 broad categories of action: measuring progress, accelerating culture shift, educating for change, implementing supports, and operations of the Law Society. These 5 categories are inter-related, and support each other. They provide basic specific action items that serve to address the various challenges faced by racialized licensees, and includes both mandatory and voluntary steps that law firms, licensees and the LSUC will take to tackle the long-standing issues of unconscious bias and systemic racism that have plagued racialized licensees.

RODA recognizes that the Final Report is the result of consensus amongst the Benchers in the CFRL Working Group. As will happen when consensus building is involved, the Final Report has not met all expectations of racialized equity seeking legal associations. However, RODA is encouraged, and its member associations have voted in favour of recommending that Convocation adopt the Recommendations on an omnibus basis.

We are aware that there is a Notice of Motion brought by Benchers, Sidney Troister and Jeffrey W. Lem. RODA is discouraged by this Motion that requests that each of the Recommendations be discussed and voted on separately. RODA fears that if passed, it could end up breaking down the cohesive nature of the Recommendations and lead to an impasse that will kibosh two decades of hard work that finally began to crystallize with the CFRL Working Group and its resulting Final Report and Recommendations. **RODA strongly opposes this motion, and asks that Convocation vote against it.**

However, if this motion is passed, RODA strongly recommends that Convocation pass each and every one of the Recommendations.

### C. INTERSECTION WITH RULES OF PROFESSIONAL CONDUCT

RODA understands that some have questioned the LSUC's jurisdiction to implement at least some of the Recommendations.

RODA submits that the *Law Society Act*, the Rules of Professional Conduct (see Schedule "A": Excerpt from the Rules of Professional Conduct), and Ontario's *Human Rights Code* provide a sufficient basis for the LSUC to implement all of the Recommendations. This position would be supplemented if the LSUC is able to adopt Compliance-Based Entity Regulation.

### D. INTERSECTION WITH ENTITY REGULATION

RODA also encourages the CFRL Working Group to coordinate the implementation of action items arising from the Recommendations with the anticipated recommendations of the Task Force on Compliance-Based Entity Regulation ("Task Force"), should the Task Force's anticipated recommendations also be passed by Convocation. Given that the LSUC is self-funded by its licensees, coordination of the work of the CFRL Working Group and the Task Force is a more efficient use of limited resources. Actual implementation of the Recommendations is expected to start in 2018, after the year 2017 is devoted to educating the Ontario bar. This timeline aligns with the expected delivery in 2017 of the recommendations of the Task Force on Compliance-Based Entity, which recommendations could presumably be implemented in 2018<sup>2</sup>.

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<sup>2</sup> RODA notes that on November 9, 2016, Convocation voted on and passed the LSUC's Professional Development and Competence Committee's recommendation to extend the LPP for an additional two years to enable the gathering of more data on the LPP and articling, and the larger analysis of licensing. Its work would also align with the work of the CFRL Working Group and the Task Force. All three initiatives have significant links to challenges faced by racialized licensees, and their work should be coordinated. For example, just as Compliance-Based Entity Regulation will require diversity and inclusion as a practice management principle, so the Final Report includes a recommendation to add cultural competency, diversity and inclusion, and education components into the licensing process.

RODA has expressed its support for compliance-based entity regulation, and in particular noted:

According to the Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and

2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.<sup>3</sup>

RODA submits that the LSUC has sufficient authority to implement all the Recommendations without adopting Compliance-Based Entity Regulation. The adoption of Compliance Based-Entity Regulation will provide stronger enforcement mechanisms and make the implementation of the Recommendations more effective. As such, RODA recommends that the CFRL Working Group coordinate its efforts with the Task Force.

## **E. EXTENSION OF RECOMMENDATIONS TO ALL EQUALITY-SEEKING GROUPS**

RODA is aware of a motion that will be brought by Benchers, Barbara Murchie and Joanne St. Lewis, to Convocation on December 2, 2016. The Notice of Motion asks that:

As it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

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<sup>3</sup> RODA’s letter dated March 31, 2016 is attached.

Consistent with its mandate to promote the advancement of diversity, equality and inclusion in the legal profession and within the community, RODA supports this motion, and asks that Convocation vote in its favour.

## CONCLUSION

RODA has not provided comments on a recommendation by recommendation basis. Rather, RODA takes the position that the Final Report, and its Recommendations, are a cohesive whole and should be voted on an omnibus basis. The Recommendations are an encouraging starting point to address unconscious bias, systemic racism and the long-standing challenges faced by racialized licensees. The Final Report may not be a clarion call, but RODA believes that it and its member associations, and allies and stakeholders, can work with the Final Report's basic call to action.

RODA will continue to be engaged during the implementation process and provide input to flesh out the implementation and eventual enforcement mechanisms.

The Final Report will be before Convocation for decision on December 2, 2016. In light of the above, RODA strongly encourages all Benchers to vote in favour of adopting all the Recommendations.

Sincerely,



Lai-King Hum  
Chair, Roundtable of Diversity Associations

Encl. RODA letter dated March 31, 2016 on Compliance-Based Entity Regulation

- C. Benchers of the Law Society of Upper Canada  
Members of the LSUC Equity Advisory Group

## Schedule "A"

### Excerpt from the Rules of Professional Conduct

**6.3.1-1** A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

*[Amended - June 2007, January 2014]*

#### **Commentary**

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

[3] Rule 6.3.1-1 will be interpreted according to the provisions of the Human Rights Code (Ontario) and related case law.

....

[12] Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Human Rights Code (Ontario) requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

[13] A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.



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**Via email: mdrent@lsuc.on.ca**

March 31, 2016

To the Members of Task Force on Compliance-Based Entity Regulation:

Ross Earnshaw (Chair), Gavin MacKenzie (Vice-Chair), Raj Anand, Robert Burd, Teresa Donnelly, Howard Goldblatt, Joseph Groia, Carol Hartman, Malcolm Mercer and Peter Wardle

c/o Call for Input on Compliance-Based Entity Regulation  
Policy Secretariat  
Law Society of Upper Canada  
130 Queen Street West  
Toronto, ON M5H 2N6

To the Task Force on Compliance-Based Entity Regulation:

**Re: Entity Regulation - Submission**

On behalf of the Roundtable of Diversity Associations (RODA), I write to provide input on the *Consultation Paper: Promoting better legal practices* (the "Consultation Paper"), prepared by the Law Society's Task Force on Compliance-Based Entity Regulation.

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\*RODA's current member associations include the following: Arab Canadian Lawyers Association; Association of Chinese Canadian Lawyers of Ontario; Canadian Association of Black Lawyers; Canadian Association of South Asian Lawyers; Canadian Hispanic Bar Association; Canadian Italian Advocates Organization; Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers; Hellenic Canadian Lawyers Association; Iranian Canadian Legal Professionals; Korean Canadian Lawyers Association; Macedonian Canadian Lawyers; OBA Equality Committee; Sexual Orientation & Gender Identity Caucus; South Asian Bar Association of Toronto; Toronto Lawyers Association; Women's Law Association of Ontario.

The Task Force was established by Convocation in June 2015 to study and make recommendations on options for professional regulation that focus on objectives for the entities, or organizations, through which lawyers and paralegals provide legal services.

RODA brings together a diverse group of legal associations with the goal of fostering a dialogue and initiatives relating to the advancement of diversity, equality and inclusion in the legal profession and the judiciary. RODA has a seat at the Equity Advisory Group at the Law Society of Upper Canada ("LSUC"). It is from this perspective that our input is provided.

In light of RODA's mandate, we are providing the Task Force with input on one of the key components, or principles, for compliance and entity regulation proposed in the Consultation Paper.

Specifically, the Task Force proposed that the following, described as principle 6 in the Consultation Paper, might be included as one of the key principles for compliance and entity regulation.

Equity, Diversity and Inclusion, which refers to the entity's policies regarding matters such as

- a respectful workplace environment that appropriately accommodates equity, diversity, inclusion, and disabilities;
- equality of opportunity and respect for diversity and inclusion in recruitment and hiring;
- equality of opportunity and respect for diversity and inclusion in decision-making regarding advancement; and
- cultural competency in the delivery of legal services.\*

\*The Challenges Faced By Racialized Licensees Working Group has been considering equity, diversity and inclusion issues for Racialized Licensees in the legal professions. It is expected that the Working Group will report to Convocation in 2016. In the event that Convocation adopts recommendations in these areas, there may be additional guidance respecting the implementation of this proposed framework.

The Consultation Paper was distributed to RODA member associations, and comments solicited. RODA wholeheartedly supports entity regulation in Ontario addressing equity and diversity considerations in an explicit and expansive manner, and supports its inclusion as a practice management principle.

According to the *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper, presented to Convocation in October 2014, Black, South Asian and West Asian lawyers are disproportionately represented in sole practice and are much less likely to practise in medium and large firms. In line with the “equity, diversity and inclusion” principle excepted above, and with a view to increasing equity and diversity in medium to large sized firms, RODA submits that:

1. RODA is encouraged by the inclusion of “equity, diversity and inclusion” in the list of practice management principles for compliance-based entity regulation, but asks that the Task Force consider some form of reporting requirement in order to ensure that “equity, diversity and inclusion” principles are not merely declarations of commitment but actually implemented throughout an entity’s hiring, promotion, and elevation to partnership practises. As such, RODA member associations are in favour of mandatory data collection for medium to large-sized firms; and
2. Diversity and cultural competency training should be part of required training within medium to large-sized firms.

The inclusion of a principle of equity, diversity and inclusion in compliance-based entity regulation provides the Law Society with a basis to better identify and address systemic discrimination within an entity. A means of monitoring the actual implementation of equity, diversity and inclusion within law firms would also provide the Law Society with the data and tools to investigate and discipline entities that have received multiple complaints of discrimination.

We thank the Task Force for its work and we are encouraged by its proposed addition of equity, diversity and inclusion as a principle of Practice Management. for the opportunity to make submissions. We look forward to receiving its report.

Yours very truly,



Lai-King Hum  
Chair,  
Roundtable of Diversity Associations

cc: Member Associations

South Asian Bar Association of Toronto  
300-20 Toronto Street  
Toronto, ON M5C 2B8  
sabatoronto@gmail.com  
sabatoronto.com  
@SABAToronto



**Via Email (racialized.licensees@lsuc.on.ca)**

November 14, 2016

The Law Society of Upper Canada  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms. Quansah:

**Re: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions**

The South Asian Bar Association of Toronto (**SABA Toronto**) makes these written comments on the Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions report (the **Report**).

SABA Toronto is a voluntary bar organization and the local Toronto chapter of SABA North America. SABA Toronto provides professional growth and advancement for South Asian lawyers in the Greater Toronto Area and seeks to protect the rights and liberties of the South Asian community across Ontario.

***SABA Toronto's position is Convocation should pass these recommendations as they are and as an omnibus motion. To the extent the Law Society is directed to apply these recommendations, where applicable, to other equality-seeking groups, SABA Toronto supports such a motion.***

The Report is a long-time coming. For almost four years, racialized lawyers have waited for the Law Society to acknowledge what they have known all along: the profession, despite its facial commitment to inclusion, presents unique, profound and, in some cases, troubling challenges to racialized licensees. A quick perusal of the websites of Toronto's largest 30 firms, as an example, will quickly disclose that the profession remains largely white, especially at the equity partner and management level. Where, for example, South Asians are represented, it is rare to see, for example, an orthodox Sikh or Muslim, suggesting to us that where South Asians have overcome challenges, such success is still localized to certain members of our bar that look and act like their majoritarian colleagues.

This is not a "law firm" problem. This is not even a "lawyers" problem. This is an access to justice problem. If Ontarians do not believe that the justice system is fair because it is not representative, we do violence to the administration of that system. As officers of the court, we should be the first to demand that the public's confidence in the justice system is not

undermined because our courtrooms look nothing like our communities, workplaces and public spaces.

Regarding the specific recommendations, our view is that they are a minimum baseline for any organization in Ontario, never mind a legal workplace that should have a commitment to diversity and inclusion. In our view, the most important recommendations are those around qualitative and quantitative analysis: SABA Toronto has long advocated for the profession to keep better statistics about racialized (and other equality-seeking) licensees. The profession should not fear the publication of an inclusion index. It is hard for us to believe that any legal workplace in Ontario would not be striving to be more inclusive and diverse, and therefore, more representative by 2020.

After four long years, the Challenges Faced by Racialized Licensees Working Group has reached a consensus. They have sent their best work to Convocation. ***Pass it.***

Sincerely,

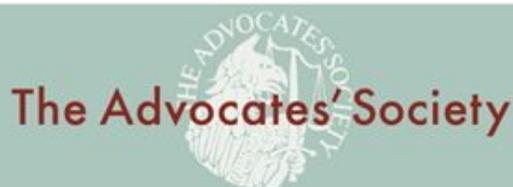
**SOUTH ASIAN BAR ASSOCIATION OF TORONTO**



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November 14, 2016

VIA EMAIL: [racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Ekua Quansah  
Policy Counsel  
The Law Society of Upper Canada  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Dear Ms Quansah:

**RE: Response to the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions***

The Advocates' Society, founded in 1963, is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of The Advocates' Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates.

The Advocates' Society has reviewed with interest the Final Report of the Challenges Faced by Racialized Licensees Working Group entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* ("Law Society Report"), presented to Convocation on September 22, 2016. As stated in our letter of February 27, 2015 to Josée Bouchard, past Director, Equity Initiatives Department, The Advocates' Society is committed to the principles of substantive equality and access to justice, and supports redressing the challenges faced by racialized licensees. The Advocates' Society makes the following comments on the Recommendations as outlined in the Report, speaking to the perspective of lawyers (based on the membership of The Advocates' Society) and not paralegals.

**General Comment**

In respect of many of these recommendations, The Advocates' Society believes that it is important that the Law Society deal with diversity as a whole (including disability, gender and sexual orientation) rather than focusing only on measuring progress and inclusion with respect to racialized licensees. Many of The Advocates' Society's members' firms have diversity committees and diversity policies which address the whole spectrum of diversity issues. Our view is that the Law Society ought to be addressing the entire spectrum of issues here; if the administrative infrastructure is being put into place to implement these recommendations with respect to racialized licensees, it would be most efficient to address all diversity issues, both in self-reporting and the proposed inclusion questions, subject to any additional privacy issues that this might raise.

## **Accelerating Culture Shift (Recommendations 1-3)**

### **Recommendation 1: Reinforcing Professional Obligations**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would amend the *Rules of Professional Conduct* to recognize, acknowledge and promote principles of equality, diversity and inclusion.

#### *Comments:*

- The Advocates' Society agrees with Recommendation 1 and would welcome the opportunity to provide input into proposed changes to the *Rules of Professional Conduct* and their Commentaries.

### **Recommendation 2: Diversity and Inclusion Project**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would develop model policies and resources to encourage best practices in legal workplaces.

#### *Comments:*

- The Advocates' Society agrees with Recommendation 2 and recognizes the central importance of diversity to the profession. It would welcome the opportunity to comment on model policies and resources to address the challenges faced by racialized licensees.
- The Advocates' Society would bring the perspective and experience of lawyers who practise as advocates to issues such as competency hiring, assignment of work and career development. The Advocates' Society also has expertise in the mentoring of young advocates and could offer its experience in the development of mentoring programs.

### **Recommendation 3: The Adoption of Equality, Diversity and Inclusion Principles and Practices**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would require every licensee to adopt and abide by a statement of principles to promote equality, diversity and inclusion.
- The Law Society would require every legal workplace of at least 10 licensees to develop a diversity policy to cover recruitment, retention and advancement, and to file a compliance self-assessment every two years with the Law Society.

*Comments:*

- The Advocates' Society agrees with Recommendation 3 and supports the nuanced approach to implementation proposed by the Law Society which recognizes that the nature of policies and self-assessment tools will vary based on the size and type of legal workplace.
- The Advocates' Society supports the Law Society's proposal that templates for the statements of principles, policies and self-assessment tools be developed collaboratively with legal workplaces and organizations that wish to participate. The development of resources that take into account the realities of legal workplaces is important to the success of the initiative.

**Measuring Progress (Recommendations 4-8)****Recommendation 4: Measuring Progress through Quantitative Analysis***Summary of the Working Group's Recommendation:*

- The Law Society would collect the self-identification data from licensees in the Lawyer Annual Report and provide reports to legal workplaces of at least 25 licensees, to compare to provincial statistics (and to use in requests for proposal, student recruitment, etc.).

*Comments:*

- The Advocates' Society believes that the proposal to analyze the self-identification data provided by licensees in their Annual Reports and to pass that information along to firms may provide useful information about their progress relative to the profession as a whole.
- However, The Advocates' Society believes that limiting this initiative to "legal workplaces of at least 25 licensees" would overlook a large group of lawyers in solo and smaller workplaces, practising in a wide range of practice areas and geographical areas.<sup>1</sup> Data from smaller workplaces could be aggregated and reported on an anonymous basis, by size of workplace and geographic region, for example.
- The Advocates' Society would also appreciate clarification from the Law Society as to whether it suggests that the diversity makeup in all legal workplaces should *mirror* the aggregate data, which may be an unreasonable expectation for certain workplaces.
- The Advocates' Society would also appreciate clarity as to whether organizations like banks or insurance companies that have more than 25 licensees qualify as "legal workplaces".

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<sup>1</sup> See p. 32 of the Law Society Report: "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.

**Recommendation 5: Measuring Progress through Qualitative Analysis***Summary of the Working Group's Recommendation:*

- The Law Society would ask licensees, every four years, for their assessment of inclusion at their workplace, and then provide reports to the legal workplaces of at least 25 licensees.

*Comments:*

- The Advocates' Society believes that this recommendation raises privacy concerns; even workplaces with 25 or more licensees may have a small (and thus identifiable) number of racialized lawyers.
- The Advocates' Society is concerned that providing law firms, particularly smaller law firms closer to the 25-member end of the spectrum, with the results of inclusion questions and a summary of the information gathered will be problematic because the respondents will know that the data will be reported back to their place of employment, even if the information is in "summarized" or "compiled" form. The prospect of this disclosure may discourage candid responses.
- The Law Society should give consideration to collecting responses on an anonymous basis and advising individuals who provide responses that their views will be kept confidential by the Law Society and not provided to their places of employment. An anonymous and confidential elicitation of comments is more likely to capture representative information. The Law Society could then use this anonymous data for its own analysis and reporting on an aggregate basis to the profession.
- Consideration might also be given to advising or reminding all licensees of the existing avenues available to them (or perhaps new avenues) to make an anonymous whistleblower comment or complaint with the Law Society if the individual wishes the Law Society to do something about a particular incident or workplace.
- To the extent the Law Society decides to collect this information for its own purposes, but not report or publish the information, with attributions, to law firms or the public, it should consider whether to collect this information from smaller law firms as well (given that privacy would no longer be an issue). Proceeding with anonymous or confidential comments would allow the Law Society to canvass a broader cross-section of licensees than simply licensees at workplaces with 25 or more licensees. A large part of the practice would be excluded numerically, geographically and by practice area in focusing on licensees in these larger workplace environments – thereby not providing a truly accurate measurement of progress, insight or accountability across the profession.

**Recommendation 6: Inclusion Index***Summary of the Working Group's Recommendation:*

- The Law Society will publish the data about workplaces of at least 25 licensees – meaning the self-assessment; the quantitative data; and the qualitative data – as a means of transparency and accountability.

*Comments:*

- The Advocates' Society is concerned about the publication of the qualitative information recorded in the proposed "inclusion index" on an individual firm basis without any consideration of the merits or context of the comments.
- Further, there are more robust means of reviewing a workplace's commitment to racialized persons and diversity than simply looking at quantitative numbers, which may under-represent the initiatives of employers. For example, a more comprehensive matrix of indices of commitment to diversity can be developed (e.g. TSX board matrix) that not only looks at the number of racialized licensees, but also elements such as programs and training implemented, outreach program participation, articling positions offered to racialized licensees (whether or not accepted), and participation in workplace leadership positions.

**Recommendation 7: Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey***Summary of the Working Group's Recommendation:*

- In 2013, the Law Society had all licensees complete an anonymous survey as to career barriers, stereotypes, and disadvantages. A similar survey would be conducted every four years to evaluate systemic change.

*Comments:*

- The Advocates' Society believes that an interval of four years for measuring and reporting data on diversity and inclusion will not capture the full story, given the rate at which lawyers, particularly young lawyers and lawyers from diverse backgrounds, leave law firms. The administrative burden posed by a shorter interval must be balanced with the quality and impact of the data collection.

**Recommendation 8: Progressive Compliance Measures***Summary of the Working Group's Recommendation:*

- The Law Society would use graduated responses to address non-compliance by legal workplaces, from meetings and warnings, to discipline.

*Comments:*

- The Advocates' Society believes the profession would benefit from further detail on progressive compliance. It is unclear how the Law Society proposes to deal with compliance on an entity-based level and it is unclear how enforcement will define or address issues of systemic discrimination.

## **Educating for Change (Recommendations 9-10)**

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

#### *Summary of the Working Group's Recommendation:*

- The Law Society will offer a three-hour accredited program for equality and inclusion, and will assist workplaces to offer their own programs.
- Licensees will be required to complete a three hour CPD program every three years.

#### *Comments:*

- The Advocates' Society supports the recommendation of a three-hour accredited program. Program developers should consult not only legal resources, but also equity-seeking groups and leading thinkers in the areas of psychology, neuroscience and organizational behavior, with materials tailored to the legal context. Other groups (e.g. Human Resources Professionals Association) may be well ahead in the development of appropriate programming, and, in any event, can offer a diverse perspective.
- The Advocates' Society recommends that the Law Society actively work with groups in other jurisdictions experienced in the development of diversity and inclusion practices to ensure that we are meeting or exceeding the international standards in development.
- Given the importance of early and frequent exposure to effect change, the Law Society should consult with law faculties to express the Law Society's commitment to issues of diversity, equality and inclusion, to allow it to benefit from programs deployed in law schools, and to coordinate the development of programs to ensure educational continuity.
- The Advocates' Society also supports the recommendation of having licensees complete accredited programming focused on equality and inclusion, but would suggest one hour every year, rather than three hours every three years, as a minimum requirement, following an initial, three-hour training program.

### **Recommendation 10: The Licensing Process**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would include equality and inclusion principles in licensing materials.

#### *Comments:*

- The Advocates' Society supports this recommendation, subject to its comments above.

## **Supporting Racialized Licensees (Recommendations 11-12)**

### **Recommendation 11: Building Communities of Support**

#### *Summary of the Working Group's Recommendation:*

- The Law Society would increase mentoring and advisory services to address in particular the isolation of racialized lawyers in sole or small firms.
- The Law Society would assist legal associations and support networking events.

#### *Comments:*

- The Advocates' Society commends the Law Society for its commitment to improving access to mentoring and networking opportunities for racialized licensees. Improving access to mentoring improves access to the profession, and improves the opportunities for racialized licensees to excel in the profession. The Advocates' Society supports the specific proposals put forward by the Law Society, and thanks the Law Society for having considered and adopted many of the recommendations put forward by The Advocates' Society in our letter of February 25, 2015.
- The Advocates' Society would be pleased to share information with the Law Society about the mentoring and programming initiatives which are offered by The Advocates' Society.
- As noted in our letter for February 25, 2015, The Advocates' Society offers a variety of mentoring programs and initiatives that our young advocate members (advocates who have been called to the bar for 10 years or less) have found to be beneficial in their professional development. For example, The Advocates' Society offers a variety of Group Mentoring programs. While Group Mentoring events have their own limitations and are not meant to be a substitute for one-on-one mentoring relationships that should ideally be developed within a licensee's own practice setting, Group Mentoring has several benefits. Group Mentoring events offer mentees the opportunity to pose questions to mentors in a safe environment outside the mentees' own firm settings, where they may be reluctant to ask certain questions or otherwise do not have good (or any) internal mentoring networks. Mentees also benefit from hearing the questions posed by their peers, which lets them know they are not alone in their questions or concerns. The social setting demonstrates that a variety of approaches and styles can be used to address challenges and achieve success in the profession.
- The Advocates' Society would welcome the development by the Law Society of cultural/diversity content that organizations such as The Advocates' Society can incorporate into their mentoring, education and other programs.
- In addition to the networking opportunities available at our mentoring programs, The Advocates' Society also offers a variety of affordable networking opportunities, including: family-friendly programs; Brown Bag and Court House continuing legal education series; Young Advocates' Pub Nights; and Practice Group programs and events.
- For all of our mentoring and networking programs, The Advocates' Society will continue to advertise these events in the normal course, but they could also be promoted through the Law Society and through groups representing racialized licensees to increase diversity of attendance and communication/collaboration among associations.

## Recommendation 12: Addressing Complaints of Systemic Discrimination

### Summary of the Working Group's Recommendation:

- The Law Society is concerned that incidents of systemic discrimination are not being reported. It plans to review its own processes, and the *Rules of Professional Conduct*, and re-train its disciplinary staff, including creating a specialized team, all to raise awareness and effectiveness in responding.
- The Law Society is considering soliciting anonymous complaints, in order to approach identified workplaces for remedial, not punitive, discussions.

### Comments:

- The Advocates' Society commends the Law Society for its commitment to addressing issues of systemic discrimination in the legal profession.
- The Report proposes, among other things, to amend the *Rules of Professional Conduct* (the "Rules") so that systemic discrimination is clearly identified as a breach of professional conduct. Given that the Rules presently focus on *individual* accountability, whereas systemic discrimination operates on a systems-wide and institutional level, this endeavour will undoubtedly involve challenging practical and legal questions. We look forward to working with the Law Society and other stakeholders in exploring these questions further.
- Recognizing the limits of enforcement in combating the root causes of systemic discrimination, The Advocates' Society emphasizes the importance of education, training and remediation in identifying and eliminating systemic discrimination. Where possible, professional regulation should focus on securing voluntary compliance with best practices rather than enforcement through the disciplinary process.

Thank you for providing The Advocates' Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours very truly,



Bradley E. Berg  
President

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Sarah J. Armstrong, *Fasken Martineau LLP*, Toronto

Colin S. Baxter, *Conway Baxter Wilson LLP*, Ottawa

P. A. Neena Gupta, *Gowling WLG*, Kitchener

Nader R. Hasan, *Stockwoods LLP*, Toronto

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Yashoda Ranganathan, *Ministry of the Attorney General, Constitutional Law Branch*, Toronto  
Chloe Snider, *Dentons Canada LLP*, Toronto  
Steve Tenai, *Norton Rose Fulbright Canada LLP*, Toronto  
Dave Mollica, Director of Policy and Practice



November 14, 2016

**The Law Society of Upper Canada**  
c/o Ekua Quansah, Policy Counsel  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

[racialized.licensees@lsuc.on.ca](mailto:racialized.licensees@lsuc.on.ca)

Dear Mesdames/Sirs,

**RE: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions dated September 22, 2016**

The Toronto Lawyers' Association (**TLA**) is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide its comments to the Law Society of Upper Canada (**LSUC**) on the final report dated September 22, 2016 of the Challenges Faced by Racialized Licensees Working Group (the **Working Group**) entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the **Report**).

It is indeed unfortunate that despite the progress that has been made by many lawyers and law firms in the elimination of racism and other discrimination within their firms, racism still exists in our profession to the extent that the LSUC is required to mandate policies for lawyers and firms. As a lawyer, I have had the privilege of being a student, associate and now partner at a firm without such barriers. Upon reading the Report, I realize that I may have taken my good fortune for granted, as I believed that my experience was the norm for many firms and lawyers. It is the only firm at which I have worked since articling in 1999. Before and since, my firm has hired students and lawyers with the primary consideration being merit. In the process, without intention or design, we have created a firm of female and male lawyers, students and staff of different backgrounds, races, cultures, religions and sexual orientation, which reflects the wonderful mosaic found in Canada, and specifically Toronto.

As President of the TLA, I can attest to the TLA's dedication to eliminating racism and ensuring that our profession is more inclusive. The TLA, which itself has a diverse board of directors, is also a member of the Roundtable of Diversity Associations (**RODA**).

.../2

**KNOWLEDGE • ADVOCACY • COMMUNITY**

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Apparently, given the Report and the recommendations contained therein, our profession is not moving forward quickly enough on its own and requires a helping hand from the LSUC. However, I am indeed optimistic that with our generation of lawyers, and each successive one that follows, systemic racism and the barriers for racialized lawyers will continue to erode until they no longer exist. The LSUC report contains a similarly optimistic quote from Yolanda King, daughter of Martin Luther King, Jr.:

*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 King

The TLA commends the Working Group for its efforts and, subject to our comments below, recommends that the Report be adopted by Convocation. The TLA recognizes and supports the importance of this initiative and the need to dismantle barriers within the legal profession faced by racialized licensees.

#### Timeline for Implementation of Recommendations

Page 10 of the Report contains a timeline for implementation of the recommendations in the Report. We note that the implementation dates for recommendations 1, 2, 8, 10, 11, 12(2), 12(3) and 12(4) have yet to be determined. To enhance accountability and ensure that these important recommendations are implemented in a timely way, we encourage the LSUC to adopt at the outset clear dates for the implementation of all of these recommendations.

#### 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 behavior towards colleagues, employees, clients and the public;*
- 2) *require a 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;*
- 3) *require a 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.*

We are concerned that item 1) of Recommendation 3 is overly broad and has the potential to conflict with certain practice areas. For example, could a professional who advocates on behalf of a client find himself or herself offside this item because the client's interests do not "promote equality, diversity and inclusion"? Moreover, we question whether the requirement to adopt and to abide by such a statement of principles is necessary in light of Recommendation 1.

We also have concerns that the requirement in item 2) that each legal workplace of at least 10 licensees in Ontario develop a human rights/diversity policy for their legal workplace by January 1, 2018 could be burdensome to smaller legal workplaces and may result in a lack of uniformity in

.../3

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such policies. We acknowledge the LSUC's stated intention to guide legal workplaces in the development of policies and to "develop resources, such as templates, guides and model policies." It is the TLA's view that the templates, guides and model policies need to be developed well in advance of the effective date of the requirement.

Similarly, we recommend that the LSUC create a template for the "equality, diversity and inclusion self-assessment" referred to in item 3) of Recommendation 3 to encourage consistency of assessments and avoid placing undue burden on legal workplaces.

#### Recommendation 8 – Progressive Compliance Measures

*The Law Society will consider developing and implementing 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 8 does not provide us sufficient information to provide constructive feedback. We request the opportunity to comment on the development of compliance measures by the LSUC in connection with this recommendation.

#### 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 complaints 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.*

Items 3) and 4) of Recommendation 12 also do not provide us sufficient information to provide constructive feedback. We request an opportunity to comment on the development of effective ways to address complaints of systemic discrimination and on the creation of a specialized team to address complaints of discrimination.

Furthermore, the TLA supports the motion to be made at Convocation to extend the implementation of recommendations for racialized licensees to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

The TLA appreciates the opportunity to comment on the Report and looks forward to a continuing dialogue with the LSUC as it continues to address systemic racism in the legal professions.

Yours very truly,



Stephen Mullings  
President  
Toronto Lawyers Association



LAWYERS | AVOCATS

VIA EMAIL: [espears@lsuc.on.ca](mailto:espears@lsuc.on.ca)

November 16, 2016

Elliot Spears  
General Counsel  
Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
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M5H 2N6

Dear Ms. Spears:

**RE: Opinion on Working Group's Recommendations re Challenges Facing Racialized Licensees**

The Law Society of Upper Canada ("**Law Society**") has asked us to provide a legal opinion on the following question in respect of its *Challenges Faced by Racialized Licensees Working Group Final Report*, ("**Final Report**"):

Are any of the following recommendations – 3 (1), (2) and (3) – inconsistent with the rights and obligations of The Law Society of Upper Canada and its licensees under the *Law Society Act*, the *Ontario Human Rights Code* and/or the *Canadian Charter of Rights and Freedoms*?

The recommendations constitute three subsections of Recommendation 3 in the *Final Report* dealing with:

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;



- 2) require a 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; and
- 3) require a 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.

(Hereinafter the “**Recommendations**”)

Our opinion is organized as follows:

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## 1. Executive Summary

The Law Society has identified a significant problem in the lawyer and paralegal professions: widespread barriers experienced by racialized licensees at all stages of their careers. In its *Final Report*, the Working Group noted, at page 4:

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.

The Working Group has proposed several recommendations, in particular, Recommendation 3, dealing with the Adoption of Equality, Diversity and Inclusion Principles and Practices. The Law Society has asked us to determine whether the three specific recommendations under Recommendation 3 are inconsistent with the *Law Society Act* (“*LSA*”), the Ontario *Human Rights Code* (“*Code*”), and the *Canadian Charter of Rights and Freedoms* (“*Charter*”). We have concluded as follows:

- Recommendation 3(1) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter*. The Law Society has an obligation to promote human rights in the legal profession and licensees are already bound by human rights equality, diversity and inclusion principles under their respective professional rules of conduct and the *Code*.

The implementation challenge that we envisage is that, for in-house licensees or licensees working in government, their employer may already have a human rights policy in place so there may be inconsistencies between the employer’s policy and the licensee’s statement of principles. While we describe this as a “challenge,” the challenge may be more apparent than real.

- Recommendation 3(2) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter* assuming that the “representative” referred to in the Recommendation is a licensee of the Law Society and assuming that the intended benefit of such a human rights/diversity policy is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and application of the Recommendation.



While we acknowledge that Recommendation 3(2) may face some implementation challenges, we do not see them as insurmountable. We note that Recommendation 3(2) uses the word “maintain,” which we interpret as meaning “maintenance of” or “providing support to.” However, “maintain” does not necessarily mean making decisions under the policy. We suggest that the measure of whether the representative is implementing and maintaining the human rights/diversity policy be based on effort and not purely on outcome.

- Recommendation 3(3) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter* assuming that the “representative” referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of the self-assessment is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and scope of application to the Recommendation.

We acknowledge that nothing in Recommendation 3(3) can compel an employer (who is not a licensee) to complete and submit a self-assessment for its workforce. Rather, this Recommendation simply requires a representative licensee in a given legal workplace of 10 licensees or more to conduct a self-assessment *amongst licensees* and report their findings to the Law Society. This is more akin to a licensee completing their annual report for the Law Society, but in a collaborative way with all other licensees in their workplace.

We determined that, under the *LSA*, the Law Society and its licensees have the following relevant rights and obligations:

- The Law Society has a duty to advance the cause of justice and the rule of law.
- The Law Society has a duty to facilitate access to justice for the people of Ontario.
- The Law Society has a duty to protect the public interest.
- The Law Society has a duty to act in a timely, open and efficient manner.
- Regulation should be proportionate to the regulatory objectives intended.
- Licensees have a duty to discharge all their professional responsibilities including to other members of the profession honourably and with integrity.
- Licensees have a special responsibility to recognize the diversity of the Ontario community and to respect human rights.
- Licensees have a duty to advance the goals of the legal profession.



- Lawyers should not hesitate to speak out against an injustice.
- Licensees have a special responsibility to respect the requirements of human rights including with respect to the professional employment of others in the profession and with respect to licensees' employment practices.
- The Law Society has historically acted to remove obstacles to the profession and to provide previously excluded groups the opportunity to become members of the profession.

The Law Society's regulatory authority under the *LSA* extends to regulating licensees. The Law Society does not have authority to regulate non-licensees or other types of enterprises. However, there is nothing in the *LSA* that prohibits the Law Society from regulating licensees that are employed "in-house" or in government legal departments.

Human rights law in Ontario is governed by the *Code*. The *Code* applies to every person in Ontario, including public and private institutions and businesses. The *Code* regulates conduct in certain social areas and in respect of certain prohibited grounds. It does not regulate thought, belief, or conscience. Individuals are free to think and believe what they want including disagreeing with the precepts of equality and non-discrimination in the *Code*; however, it is at the point of conduct that their freedom is constrained.

The *Code* has primacy over any other statute in Ontario (generally, in cases of conflict, other legislation must conform to the *Code*); and is viewed by the courts as being quasi-constitutional in nature because of its unique and fundamental importance.

The rights and obligations deriving from the *Code* that are applicable to the Law Society and its licensees are as follows:

- Licensees have the right to be free from discrimination on the basis of race (and any other enumerated ground of discrimination) in their employment (which includes hiring and promotion), in contracts (which might include partnership agreements), and in vocational associations (including membership in the Law Society). This right of a licensee to be *free from* discrimination in employment entails the corollary, namely, that employers of licensees have a duty under the *Code* to *ensure* a discrimination-free environment for its licensees.



- Licensees also have obligations not to discriminate against members of the public who seek out or retain their legal services, or with regard to one another in their employment.
- Licensees also have a right not to be forced to disclose a human rights ground, such as their sexual orientation, age or disability, since such disclosure would have a disproportionate impact on certain *Code*-protected groups and has, historically, led to discrimination.
- The Law Society has an obligation not to discriminate against its members. Under the *Code*, promoting equality, diversity and inclusion is not inconsistent with this obligation.

The *Charter* is part of the Constitution of Canada. It is the supreme law of the land and all federal and provincial/territorial laws, and government action under those laws, must comply with the *Charter*. Law societies may be subject to the *Charter* where they are exercising statutory authority. In *Doré v Barreau du Québec* (“*Doré*”), the Supreme Court directed that law societies must take *Charter* values into account in their discretionary regulatory decisions.

The *Charter* applies to the Law Society’s Recommendations and how they will impact licensees. Per *Doré*, a court or tribunal would examine whether the Law Society has sufficiently balanced its statutory objectives against licensees’ *Charter* rights and freedoms.

The *Charter* values that appear to be implicated are: freedom of conscience; freedom of thought, belief, opinion and expression; freedom of association; right to liberty; and the right to equality. It is conceivable that a licensee may assert that some or all of the above constitutional rights and freedoms are compromised by the implementation of the Recommendations. However, the Recommendations sufficiently represent a balancing of the Law Society’s statutory objectives (which include ameliorating discrimination) and protecting licensees’ constitutional rights. If the Recommendations are challenged from the perspective that they constitute discrimination against non-equity seeking groups, the Law Society would likely be able to characterize its equity, diversity and inclusion initiatives as an ameliorative program, defensible under section 15(2) of the *Charter*.

Perfection can be the enemy of the good. The Law Society should be careful not to see only problems in the implementation of the Recommendations where, in fact, opportunities to make progress through the Recommendations exist.



## 2. Our Approach

We consider it helpful to indicate what our opinion entails. We are being asked about whether the Recommendations are inconsistent with the rights and obligations of the Law Society and its licensees under the three statutes. While the question does not ask us to opine *directly* on whether the Recommendations are workable in practice, our opinion ultimately entails an examination of the Law Society's regulatory reach, particularly beyond licensee firms and into corporations and governments where licensees work, yet where the Law Society has no control.

The Law Society is interested in knowing whether the Recommendations can be implemented given that the Law Society does not regulate non-licensees, yet the Recommendations appear on their face to require licensees to promote certain principles, develop / implement / maintain a policy, and report to the Law Society in respect of their "legal workplaces." We are asked whether the implementation of the Recommendations can be reconciled with the principle that the Law Society has no power to regulate non-licensees, corporations or governments.

Recommendations 3(2) and 3(3) refer specifically to "legal workplaces" which is a term that is not defined, including in any of the three statutes we were tasked with reviewing. In its *Final Report*, the Working Group noted an internal disagreement about the meaning of "legal workplace" and whether the Recommendations should apply in the same way to all types of legal workplaces:

Working Group members' opinions differ as to the definition of "legal workplace". The majority of Working Group members believe that all law firms, in-house legal departments, government legal departments, clinics and other practise settings in Ontario should be subject to the requirements outlined in the recommendations. Other members of the Working Group, however, believe that at this time, government legal departments and in-house legal departments should not be required to comply with the mandatory recommendations as government and in-house licensees are employees whose hiring, promotion and retention are client decisions. Government and in-house legal departments should, however, be encouraged to engage in the mandatory activities outlined in this report. The definition of "legal workplaces" used in the report is that of the majority perspective.<sup>1</sup>

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<sup>1</sup> *Final Report*, p. 5-6, note 7.



In our legal review and analysis below, we bear in mind the above noted concern about the definition of “legal workplace” raised within the Working Group, and whether and how the Recommendations may apply to in-house counsel and licensees who work in government. It is vital to note that limiting and applying the Recommendations only to licensee firms misses the opportunity to effect change throughout the professions who work in diverse organizational settings. This was emphasized by the Working Group’s guiding principle:

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.<sup>2</sup>

We propose to look at the relevant rights and obligations under the three statutes first, and then apply those rights and obligations to the Recommendations we have been asked to review.

Unless otherwise noted, underlined passages indicate our own emphasis, as opposed to emphasis in the original.

### 3. The Law Society Act

#### A. **Functions, Duties and Powers of the Law Society**

The Law Society is a not-for-profit corporation that derives its authority from its enabling statute the *Law Society Act*.<sup>3</sup> The *LSA* creates a framework of authority for the Law Society to regulate lawyers and paralegals in Ontario by way of legislated functions, duties and powers, including the power to make by-laws.

Section 4.1 of the *LSA* sets out the Law Society’s functions:

4.1 It is a function of the Law Society to ensure that,

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<sup>2</sup> *Final Report*, p. 14.

<sup>3</sup> *Law Society Act*, RSO 1990, c L 8 [“*LSA*”].



(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Section 4.2 of the *LSA* sets out the principles to be applied by the Law Society:

4.2 In carrying out its functions, duties and powers under this Act, the Law Society shall have regard to the following principles:

1. The Law Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Law Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Law Society has a duty to protect the public interest.
4. The Law Society has a duty to act in a timely, open and efficient manner.
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

We consider the Recommendations to fall within the Law Society's regulation of "professional conduct," although some may consider that the Recommendations relate as well to professional competence or standards of learning that are necessary for licensees in a pluralistic society.

We note that, with respect to section 4.2 of the *LSA*, the Law Society's duty is not just to maintain but also advance the cause of justice and the rule of law; and that it must do so in a timely, open and efficient manner. It appears that acting in an untimely manner, or simply maintaining the status quo which perpetuates injustice would be contrary to the principles that govern the Law Society in the conduct of its functions. Finally, on this point, we note that the Law Society should regulate in a manner proportionate to the significance of the regulatory objectives sought to be realized.



The recommendations we are asked to look at refer to a “licensee,” which is defined in the *LSA* as:

- (a) a person licensed to practise law in Ontario as a barrister and solicitor, or
- (b) a person licensed to provide legal services in Ontario.<sup>4</sup>

## **B. Rules of Conduct for Licensees**

The Law Society’s *Rules of Professional Conduct* and *Paralegal Rules of Conduct* (collectively, the “**Rules of Conduct**”) set out the standards of professional conduct for lawyers and paralegals, respectively.<sup>5</sup>

The Rules of Conduct and their Commentaries indicate strong support for the principle that licensees have special duties and responsibilities in terms of recognizing diversity and respecting human rights. For example, the *Rules of Professional Conduct* state:

Rule 2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity

Commentary

[4.1] 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.

The duty of a lawyer also extends to advancing the goals of the legal profession and improving the administration of justice.

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<sup>4</sup> *LSA* s. 1 (1).

<sup>5</sup> Under section 62(0.1) -10 of the *LSA*, Convocation may make by-laws regarding a Code of Professional Conduct and Ethics. Under section 120(b) of By-Law 3 (*Bencher, Convocation and Committees*), the Professional Regulations Committee has a mandate to provide policy options for Convocation’s approval in relation to the *Rules of Professional Conduct*. Under section 130-4 of By-Law 3, the Paralegal Standing Committee has the mandate to provide the equivalent for paralegals.



Rule 2.1-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Based on the concept that lawyers have greater responsibilities than private citizens and lawyers' special role in the community, lawyers' obligations to encourage public respect for, and to try to improve the administration of justice, extends beyond their professional activities.

Rule 5.6-1 A lawyer shall encourage public respect for and try to improve the administration of justice.

#### Commentary

[1] The obligation set out in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.

Non-Discrimination Rule: Rule 6.3.1 deals specifically with lawyers' special responsibility not to discriminate including with respect to the professional employment of licensees:

6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on [grounds prohibited in the Code] with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

Moreover, Rule 6.3.1 contains a comprehensive Commentary section, fleshing out a lawyer's human rights duties and responsibilities. Key points from the commentary are:

#### Commentary

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.



[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

And, further, Rule 6.3.1 states:

Rule 6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Rule 6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1 and 6.3.1-2.

Section 2.03 of the *Paralegal Rules of Conduct* contains a similar requirement to acknowledge and abide by human rights laws in Ontario with respect to both the provision of services to the public and employment practices.

### C. **Judicial Commentary on the *Law Society Act***

In *Trinity Western University v The Law Society of Upper Canada*,<sup>6</sup> the Divisional Court held that a complete reading of the *LSA* shows that the Law Society is empowered to carry out more functions than just the one set out in s. 4.1 and that:

[58] For all of these reasons, therefore, we conclude that the principles that are set out in s. 4.2, and that are to govern the respondent's exercise of its functions, duties and powers under the *Law Society Act*, are not restricted simply to standards of competence. Rather, they engage the respondent in a much broader spectrum of considerations with respect to the public interest when they are exercising their functions, duties and powers, including whether or not to accredit a law school.

[96] In addition to those realities, we are satisfied that, in carrying out its mandate under its enabling statute, the respondent, throughout its long history, has acted to remove obstacles based on considerations, other than ones based on merit, such as religious affiliation, race, and gender, so as to provide previously excluded groups the opportunity to obtain a legal education and thus become members of the legal profession in Ontario.

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<sup>6</sup> *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 (Div Ct) ["*TWU*"].



[97] In keeping with that tradition, throughout those many years, the respondent has acted to remove all barriers to entry to the legal profession save one – merit. It is the respondent's position that it is in the public interest to ensure that the legal profession is open to everyone. It views that approach as being fundamental to its functions. In adopting that position, the respondent says that it achieves two companion objectives. One is to ensure diversity in the legal profession. The other is that, if the legal profession is open to everyone then, perforce, it is open to "the best and the brightest".

On appeal of that decision, the Ontario Court of Appeal grappled with section 4.1 and 4.2 of the *LSA*, finding that:

[108] I agree with Ms. Kristjanson's analysis and the Divisional Court's conclusion. There is no wall between ss. 4.1 and 4.2 of the *LSA*. The LSUC has an obligation to govern the legal profession in the public interest: see *Groia v. Law Society of Upper Canada*, 2016 ONCA 471 (CanLII), at para. 89. In setting and maintaining standards of learning, professional competence and professional conduct under s. 4.1 of the *LSA*, the LSUC is entitled to do so against the backdrop of the composition of the legal profession, including the desirable goal of promoting a diverse profession.

[110] That the LSUC is also subject to the *Charter* and the *HRC* means that *Charter* and human rights values must inform how the LSUC pursues its stated objective of ensuring equal access to the profession.<sup>7</sup>

The Court of Appeal also noted a key component of the Divisional Court's reasons that:

...in assessing the "public interest", the LSUC is entitled to consider that the impact of TWU's Community Covenant on members of the LGBTQ community is contrary to the equality rights protections in the *Charter* and the *HRC*;<sup>8</sup>

Similarly, we might say that in its duty to advance the cause of justice, the Law Society is entitled to consider that the impact of systemic barriers on racialized licensees in the legal professions is contrary to their equality rights protections in the *Charter* and the *Code*.

<sup>7</sup> *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518 ["TWU"].

<sup>8</sup> *Ibid.* at para. 51.



#### D. Summary of the *Law Society Act*

Our review of the *LSA*, the Rules of Conduct and relevant judicial commentary indicates that:

- The Law Society has a duty to advance the cause of justice and the rule of law.
- The Law Society has a duty to facilitate access to justice for the people of Ontario.
- The Law Society has a duty to protect the public interest.
- The Law Society has a duty to act in a timely, open and efficient manner.
- Regulation should be proportionate to the regulatory objectives intended.
- Licensees have a duty to discharge all their professional responsibilities including to other members of the profession honourably and with integrity.
- The Law Society's exercise of its functions, duties and powers are not restricted simply to standards of competence and engage a much broader spectrum of considerations with respect to the public interest.
- Licensees have a special responsibility to recognize the diversity of the Ontario community and to respect human rights.
- Licensees have a duty to advance the goals of the legal profession.
- Lawyers should not hesitate to speak out against an injustice.
- Licensees have a special responsibility to respect the requirements of human rights including with respect to professional employment of others in the profession and with respect to licensees' employment practices.
- With the desirable and legitimate goal of ensuring diversity in the profession, the Law Society has historically acted to remove obstacles to the profession and to provide previously excluded groups the opportunity to become members of the profession.

#### 4. The Ontario Human Rights Code

Human rights law in Ontario is governed by the *Human Rights Code*.<sup>9</sup> The *Code* applies to every person in Ontario, including both public and private institutions and businesses. "Person" is broadly defined and includes an individual as well as a corporation.<sup>10</sup>

The Preamble to the *Code* states that it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination.

<sup>9</sup> *Human Rights Code*, RSO 1990, c H 19 ["Code"].

<sup>10</sup> *Code* s. 46 and *Legislation Act, 2006*, SO 2006, c 21, Sch F, s. 87.



The *Code* aims to create a climate of understanding and mutual respect for the dignity and worth of each person.

The *Code* provides protection from discrimination in the following five “social areas”:

- employment
- goods, services and facilities
- accommodation (housing)
- membership in a vocational association (including a self-governing profession)
- contracts

There are 17 “prohibited grounds” of discrimination under the *Code*:

- race, ancestry, place of origin, colour, ethnic origin
- citizenship
- creed
- sex
- sexual orientation
- gender identity
- gender expression
- disability
- age
- marital status
- family status
- receipt of public assistance (in accommodation only)
- record of offences (in employment only)

The *Code* regulates conduct in the above social areas and in respect of the prohibited grounds. It does not regulate thought, belief, or conscience. This point cannot be overstated. Individuals are free to think and believe what they want including disagreeing with the precepts of equality and non-discrimination in the *Code*; however, it is at the point of conduct that their freedom is constrained. The Supreme Court of Canada explained this succinctly: “The freedom to hold beliefs is broader than the freedom to act on them.”<sup>11</sup> In other words, people are entitled to hold

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<sup>11</sup> *Trinity Western University v British Columbia College of Teachers*, 2001 SCC 31 at para 36.



prejudicial views; but they are not entitled to act upon them (i.e. discriminate) in the social areas identified in the *Code*.

The *Code* has primacy over any other statute in Ontario (generally, in cases of conflict, other legislation must conform to the *Code*); and is viewed by the courts as being quasi-constitutional in nature because of its unique and fundamental importance.<sup>12</sup>

The *Code* prohibits both direct and indirect discrimination. Section 9 of the *Code* provides that: “No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.”

The sections of the Ontario *Code* that are germane to this opinion are:

- Section 1 (equal treatment without discrimination in services);
- Section 5 (equal treatment without discrimination in employment);
- Section 6 (equal treatment without discrimination in the area of vocational associations, which includes membership in a self-governing profession);
- Section 14 (special programs)

The *Code* makes specific provision for the implementation of a special program designed to ameliorate discrimination and disadvantage. Section 14 of the *Code* states:

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

In *Carter v Elementary Teachers Federation of Ontario*, the Human Rights Tribunal of Ontario held:

[24] Section 14 of the *Code* is a complete defence to an allegation of discrimination when the challenge to the program comes from someone whose needs do not fall within the purpose or underlying rationale of the program (*Ball v. Ontario (Community and*

<sup>12</sup> *Code*, s. 47(2). See also: *Tranchemontagne v Ontario (Directors, Disability Support Program)*, 2006 SCC 14 at para 33 [“*Tranchemontagne*”]. The Court cites *Battlefords and District Co-operative Ltd v Gibbs*, [1996] 3 SCR 566 at para 18 and *Insurance Corp of British Columbia v Heerspink*, [1982] 2 SCR 145 at 158.



*Social Services*), 2010 HRTO 360 (CanLII) (at para. 123). In *Ontario (Human Rights Commission) v. Ontario* (1994), 1994 CanLII 1590 (ON CA), 19 O.R. (3d) 387 (C.A.) (“*Roberts*”), at page 401, the court stated that the exemption of section 14 is invoked when the challenge to the program comes from a member of a historically privileged group. A special program can only be challenged by a member of a disadvantaged group that the special program is designed to assist, but who is otherwise excluded from that program (on the basis of age, for example).<sup>13</sup> (Emphasis in original)

The rights and obligations deriving from the *Code* that are applicable to the Law Society and its licensees are as follows:

- Licensees have the right to be free from discrimination on the basis of race (and any other enumerated ground of discrimination) in their employment (which includes hiring and promotion), in contracts (which might include partnership agreements), and in vocational associations (including membership in the Law Society). This right of a licensee to be *free from* discrimination in employment entails the corollary, namely, that employers of licensees have a duty under the *Code* to *ensure* a discrimination-free environment for its licensees.<sup>14</sup>
- Licensees also have obligations not to discriminate against members of the public who seek out or retain their legal services, or with regard to one another in their employment.
- Licensees also have a right not to be forced to disclose a human rights ground, such as their sexual orientation, age or disability, since such disclosure would have a disproportionate impact on certain *Code*-protected groups and has, historically, led to discrimination. In the section below dealing with Recommendation 3(3) (self-assessment survey) we deal with the question of whether asking individuals to self-disclose is inconsistent with the *Code*.
- The Law Society has an obligation not to discriminate against its members. In the section below dealing with Recommendation 3(1) (adopt and abide by a set of principles) we

<sup>13</sup> *Carter v Elementary Teachers Federation of Ontario*, 2011 HRTO 1604 at para 24.

<sup>14</sup> We note that licensees working in a federally regulated environment would not be subject to the *Code*, but rather the *Canadian Human Rights Act*.



deal with the question of whether this obligation extends to “promoting equality, diversity and inclusion” in the professions.

### 5. The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms*<sup>15</sup> is part of the Constitution of Canada. It is the supreme law of the land and all federal and provincial/territorial laws, and government action under those laws, must comply with the *Charter*. The *Charter* does not directly regulate private activity or activity where there is no state involvement. Law societies and quasi-governmental institutions like universities may be subject to the *Charter* where they are found to be implementing a specific governmental policy or program, or exercising statutory authority.<sup>16</sup>

In Mahmud Jamal’s legal opinion on the *Charter*,<sup>17</sup> provided to Convocation in the context of TWU’s request for accreditation, he explained how the Law Society may be subject to the *Charter*:

The *Charter* may apply to an organization such as the Society as part of the apparatus of government or as a delegate of statutory authority. Even though the Society is insufficiently linked to or controlled by government to be considered part of its apparatus (given the independence of the bar), the *Charter* applies to the Society when it exercises its statutory discretion to set the requirement for licensing under the *LSA*. The Society must in these instances reach a decision that is consistent with the *Charter*.

Mr. Jamal’s opinion went on to describe the impact of the Supreme Court’s decision in *Doré v Barreau du Québec*:<sup>18</sup>

In *Doré*, the Court had to decide whether the Disciplinary Council of the Barreau du Québec had failed to respect a lawyer’s freedom of expression under s. 2(b) of the *Charter* when it decided to reprimand him for writing an inflammatory letter to a judge

<sup>15</sup> *Canadian Charter of Rights and Freedoms*, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [“*Charter*”].

<sup>16</sup> See: *McKinney v University of Guelph*, [1990] 3 SCR 229; *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at paras 42-43; and *Pridgen v University of Calgary*, 2012 ABCA 139 at paras 78-99.

<sup>17</sup> Jamal, Mahmud, “The *Charter* and the Law Society’s accreditation decision” April 5, 2014. Online: <http://www.lsuc.on.ca/uploadedFiles/IssuesCanadianCharterRightsFreedoms.pdf>. In the excerpts from Mr. Jamal’s legal opinion, we have not included legal citation, but it can be found in his opinion.

<sup>18</sup> *Doré v Barreau du Québec*, 2012 SCC 12 [“*Dore*”].



after a court hearing. In addressing this issue, the Court took the opportunity to clarify “how to protect *Charter* guarantees and the values they reflect in the context of adjudicated administrative decisions.”

The Court held that administrative decision-makers must consider the *Charter* when they exercise discretion granted under statutory authority. The Court stated that “administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values.” The Court embraced what it called a “richer conception of administrative law, under which discretion is exercised ‘in light of constitutional guarantees and the values they reflect’”, such that “administrative decisions are always required to consider fundamental values.” The Court stated that “administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise.”

*Doré* also provides guidance on how the *Charter* applies when a decision-maker exercises discretion granted under statutory authority. The Court stated that, fundamentally, a statutory decision-maker must “balance the *Charter* values with the statutory objectives.” This involves a two-step process:

At the first stage, “the decision-maker should first consider the statutory objectives.”

At the second stage, “the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives.” This “requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives.”

The Court explained that this decision-making process is fundamentally about ensuring “balance and proportionality.” That is, the decision-maker must strike “an appropriate balance between rights and objectives” to ensure that the “rights at issue are not unreasonably limited.” Put differently, the decision-maker must ensure that any decision “interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives.”

In *Doré* and *TWU*, the Barreau du Québec and the Law Society respectively were making specific discretionary decisions that would directly impact a licensee (or potential licensee). Here, the Law Society is engaged in a similar kind of exercise, the imposition of conditions on



licensees in relation to their acknowledgment and promotion of equality, diversity and inclusion principles, and certain reporting requirements. Accordingly, we believe that *Doré* applies.

The first stage of the analysis, considering the statutory objectives, has already been done (see the above section on Summary of the *LSA*). The Law Society is pursuing a statutory mandate to advance justice in the public interest to eradicate barriers for racialized licensees, and others, in the legal professions.

The second stage involves identifying the *Charter* values at issue and determining if the Law Society has struck the appropriate balance to ensure *Charter* rights are not unreasonably limited. In *Doré*, the Supreme Court clarified that, to determine whether administrative decision-makers have exercised their statutory discretion in accordance with *Charter* protections, the review should be in accordance with an administrative law approach (set out in *Doré*), not a s. 1 *Oakes* analysis. The standard of review is reasonableness.

The *Charter* values (and corresponding *Charter* sections) that appear to be implicated are:

- Freedom of conscience (s. 2a)
- Freedom of thought, belief, opinion and expression (s. 2b)
- Freedom of association (s. 2d)
- Right to liberty (s. 7); and
- Right to Equality (s.15).

It is conceivable that a licensee may assert that some or all of the above constitutional rights and freedoms are compromised by the implementation of the Recommendations. The licensee could assert that, pursuant to the Recommendations, they must abide by a statement of principles that they may not believe in; hire, promote and associate with licensees they may otherwise avoid; and complete certain reporting activities that they would rather not. Further, the licensee may take the position that the Recommendations favour racialized and/or other equity seeking groups and, in that sense, discriminate against other licensees contrary to the equality provisions of the *Charter*.

On the last point, we are confident that the Law Society would avoid liability and be able to characterize its Recommendations as an ameliorative program, defensible under section 15(2) of the *Charter*. In *R v Kapp*, the Supreme Court held that:



[3] ...where a program makes a distinction on one of the grounds enumerated under s. 15 or an analogous ground but has as its object the amelioration of the conditions of a disadvantaged group, s. 15's guarantee of substantive equality is furthered, and the claim of discrimination must fail. ...<sup>19</sup>

With respect to the other *Charter* rights and freedoms, the question is whether the Recommendations strike the appropriate balance between removing barriers for entry and progression in the professions and licensees' constitutional freedoms. We think they do. The Divisional Court in Ontario, albeit in the *TWU* context, has already spoken favourably about the Law Society attempting to eradicate discrimination in its ranks:

[116] In exercising its mandate to advance the cause of justice, to maintain the rule of law, and to act in the public interest, the respondent was entitled to balance the applicants' rights to freedom of religion with the equality rights of its future members, who include members from two historically disadvantaged minorities (LGBTQ persons and women). It was entitled to consider the impact on those equality rights of accrediting TWU's law school, and thereby appear to give recognition and approval to institutional discrimination against those same minorities. Condoning discrimination can be ever much as harmful as the act of discrimination itself.

We provide further reasons for why the Recommendations likely satisfy the *Doré* requirement to balance statutory objective with *Charter* values in our discussion of the specific Recommendations below.

In summary, the *Charter* applies to the Recommendations and how they will impact licensees. Per *Doré*, a court or tribunal would examine whether the Law Society has sufficiently balanced its statutory objectives against licensees' *Charter* rights and freedoms. If the Recommendations are challenged from the perspective that they constitute discrimination against non-equity seeking groups, the Law Society would likely be able to characterize its equity, diversity and inclusion initiatives as an ameliorative program, defensible under section 15(2).

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<sup>19</sup> *R v Kapp*, 2008 SCC 41 at para. 3 [“*Kapp*”].



## 6. Analysis

*Are any of the following recommendations – 3 (1), (2) and (3) – inconsistent with the rights and obligations of The Law Society of Upper Canada and its licensees under the Law Society Act, the Ontario Human Rights Code and/or the Canadian Charter of Rights and Freedoms?*

In this section we apply the rights and obligations of the Law Society and its licensees in the *LSA*, *Code*, and *Charter* to determine whether or not the Recommendations are inconsistent with these rights and obligations. We also identify any implementation challenges.

### A. **Recommendation 3(1)**

*The Law Society will... 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.*

In our view, there is nothing inconsistent with Recommendation 3(1) having regard to the rights and obligations of the Law Society and its licensees under the *LSA*, *Code*, or *Charter*. The reality is that licensees are already bound by human rights equality, diversity and inclusion principles under the *LSA*, lawyer and paralegal Rules, and the *Code*. What Recommendation 3(1) would do, is:

- i. Require licensees to adopt a statement of principles regarding their own behaviour;
- ii. Require licensees to abide by and acknowledge their own statement of principles;
- iii. Require that the statement of principles acknowledges the obligation is to promote equality, diversity and inclusion generally; and
- iv. Specifically in their behaviour towards colleagues, employees, clients and the public.

We deal with each of these aspects in turn to determine if the proposal is inconsistent with the three statutes or raises implementation challenges.

#### i) **Require licensees to adopt a statement of principles regarding their own behaviour**

The Law Society is within its authority to require the adoption of a statement of principles since section 62 of the *LSA* provides Convocation with the power to make By-Laws including with respect to “prescribing oaths and affirmations for applicants for a license” and “authorizing and providing for the preparation, publication and distribution of a code of professional conduct and



ethics.” By-Law 4 sets out the general requirements for issuing a license, which includes an applicant taking an oath.<sup>20</sup>

Furthermore, By-Law 3 of the Law Society creates and empowers the Professional Regulation Committee and Paralegal Committee to recommend, for Convocation’s approval, policy options in relation to the regulation of licensees, and creates and empowers the Equity and Aboriginal Issues Committee to develop policy options for the promotion of equity and diversity related to the practice of law and provision of legal services in Ontario.<sup>21</sup> In our view, the Law Society does not need to create a new By-Law specifically for a “Human Rights Statement of Principles.”

Conceptually, requiring licensees to adopt a human rights statement of principles is likely to make tangible, more personal and more readily accessible what is currently a generic human rights obligation towards the professions that already exists in the *LSA*, lawyer and paralegal Rules, and the *Code*.

**ii) Require licensees to abide by and acknowledge their own statement of principles**

Under this Recommendation, not only must licensees adopt a human rights statement of principles, but they must also abide by it. This represents licensees having to “walk the walk” in respect of their human rights obligations towards the professions. Once again, we do not see this as inconsistent, in any way, with licensees’ current obligations as outlined above, except the obligations would be specified in an “in-house” statement of principles document, not located in some regulatory document maintained by the Law Society.

**iii) Require that the statement of principles acknowledges the obligation to promote equality, diversity and inclusion generally**

The *Final Report* has identified a significant problem of system discrimination in the lawyer and paralegal professions:

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<sup>20</sup> The Law Society of Upper Canada, By-Law 4, s. 8(1).

<sup>21</sup> The Law Society of Upper Canada, By-Law 3, ss. 120 and 122.



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.<sup>22</sup>

Recommendation 3(1) represents the Law Society taking action on this problem by requiring that every licensee effectively promote equality, diversity and inclusion generally. At first glance, this particular aspect of the Recommendation gave us pause. We wondered whether the obligation on licensees to “promote” equality, diversity and inclusion is something wholly different than a mere obligation to not discriminate; and further, we were uncertain what promoting equality, diversity and inclusion “generally” meant (discussed below).

We concluded that promoting means “to encourage” and encouraging equality, diversity and inclusion is indeed something more than not discriminating. It connotes taking an active, not passive, role. However, given statutory mandates to “advance the cause of justice,” “act in a timely manner,” and act “in the public interest” nothing in this Recommendation was inconsistent with the three statutes. We also do not think that the language of “promoting equality, diversity and inclusion” is so vague as to set an impossible standard of professional regulation. The *Rules of Professional Conduct*, for instance, contain other terms such as acting “honourably and with integrity,” which similarly have a broad meaning.

Recall that the Commentary to the non-discrimination Rule 6.3.1 speaks of “the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario,” and that Rule 6.3.1-2 requires that lawyers ensure that their employment practices do not offend the non-discrimination Rule. Also recall the Ontario Court of Appeal’s language in *TWU* that “the LSUC is entitled [in setting and maintaining standards of professional conduct] to do so against the back drop of the composition of the legal profession, including the desirable goal of promoting a diverse profession.”<sup>23</sup> Furthermore, since the Law Society has identified systemic barriers facing licensees as a significant problem, and eradicating those barriers as a goal, lawyers have a duty to advance that goal (Rule 2.1-2). Mandating promotion of equality, diversity and inclusion is within the scope of permissible regulation, not something outside of it.

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<sup>22</sup> *Final Report*, p. 4.

<sup>23</sup> *TWU (CA)*, *supra* note 7, para. 108.



**iv) Promoting equality, diversity and inclusion “generally” versus “in their behaviour towards colleagues, employees, clients and the public”**

We had difficulties interpreting the word “generally” in the Recommendation. Does the Recommendation mean that licensees have a general responsibility to promote equality, diversity and inclusion beyond their professional activities? This would be akin to a lawyer’s obligation, resulting from the lawyer’s position in the community, to encourage public respect for and to try to improve the administration of justice.<sup>24</sup>

Conversely, does the Recommendation mean that licensees must promote equality, diversity and inclusion in their professional practices only? Or does the word “generally” refer to the breadth and variety of the groups that are to be assisted under promotion of equality, diversity and inclusion? For instance, even though the focus of the *Final Report* is on racialized licensees, perhaps the Law Society is encouraging licensees to think of equality, diversity and inclusion in all its facets (gender, regional, income, etc.). Or alternatively, is the juxtaposition of “generally” and what follows meant to suggest that licensees have an obligation to promote equality, diversity and inclusion in their behaviour and other people’s behaviour towards colleagues, employees, clients and the public?

We recommend that the Law Society clear up this ambiguity but, without necessarily knowing the Law Society’s exact intention here, we feel that the present language is not inconsistent with the *LSA* or the *Code*.

With respect to the *Charter*, Recommendation 3(1) appears to balance the Law Society’s statutory objectives sufficiently with licensees’ constitutional rights and freedoms. The words “acknowledging their obligation to promote” suggest that freedom of conscience, and freedom of thought, belief, opinion and expression are all constrained. However given that:

- equality and non-discrimination (s.15) is a *Charter* value itself;
- s.15(2) of the *Charter* permits an ameliorative program to combat discrimination;
- the *LSA* already incorporates a balancing requirement whereby professional regulation for licensees must “be proportionate to the significance of the regulatory objectives sought to be realized”;

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<sup>24</sup> *Rules of Professional Conduct*, Rule 5.6-1.



- the statutory mandate of the Law Society includes non-discrimination as per the *Code*, which is quasi-constitutional legislation; and
- the special responsibility of licensees to respect human rights including with respect to professional employment of others in the profession,

it appears that the Recommendation is not a disproportionate response to a serious problem.

The Law Society is not ordering licensees, as a condition of their license, to hire and promote racialized lawyers and paralegals. Rather, the Law Society is requiring licensees to adopt and abide by a set of principles which will inform how they approach recruitment, retention and promotion decisions. Systemically, Recommendation 3(1) is designed to create a new framework where licensees adopt a set of principles that is more likely to reduce or remove barriers for racialized licensees and other equity seeking groups in the legal professions, but it does not direct a particular hiring or promotion outcome in any given case.

The implementation challenge that we envisage is that, for in-house licensees or licensees working in government, their employer may already have a human rights policy in place so there may be inconsistencies between the employer's policy and the licensees' statement of principles. While we describe this as a "challenge," the challenge may be more apparent than real.

First, we assume that any human rights policy will promote ("encourage") equality. We cannot imagine a so-called human rights policy that promotes "inequality." Second, while many institutional human rights policies may not necessarily promote diversity and inclusion, it would be surprising if the licensees' new Law Society obligation to promote diversity and inclusion *contradicts* the corporation's or government's human rights policy. Finally, federal, provincial and municipal governments all now have diversity and inclusion principles so, upon closer examination, we do not believe that the implementation of this Recommendation places the licensee, or for that matter their employer, in conflict.<sup>25</sup>

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<sup>25</sup> Federal Public Service, "Employment Equity Policy" <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12543&section=html>

Ontario Public Service, "Diversity and accessibility" <https://www.ontario.ca/page/about-ontario-public-service#section-3>;

City of Toronto, "Employment Equity Policy" <http://wx.toronto.ca/intra/hr/policies.nsf/9fff29b7237299b385256729004b844b/755a03e5d9c008fd85256927004b786c?OpenDocument>



We repeat, however, that in implementing this Recommendation the Law Society is not regulating the employer of the licensee. Instead, the Law Society is imposing upon licensees a new obligation, as per Recommendation 3(1), that is based on a duty that already exists arising from, *inter alia*, the Non-Discrimination Rule (Rule 6.3.1): a special responsibility to respect the requirements of human rights including with respect to the professional employment of others in the profession and with respect to licensees' employment practices.

#### **B. Recommendation 3(2)**

***The Law Society will... require a 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.***

In our opinion, Recommendation 3(2) is consistent with the *LSA*, *Code*, and *Charter* assuming that the "representative" referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of such a human rights/diversity policy is limited in its application to licensees only. We recommend that the Working Group amend this Recommendation to clarify the above limits and application of the Recommendation.

There are a variety of examples in the law where an employer is required to develop and implement a workplace policy. The *Occupational Health and safety Act*, for example, requires that an employer prepare policies addressing workplace violence and harassment, including workplace sexual harassment.<sup>26</sup> The *Accessibility for Ontarians with Disabilities Act, 2005*, requires certain organizations to develop, implement and maintain accessibility standards for persons with disabilities.<sup>27</sup> We note that there will be a subset of licensees in Ontario who work for federally regulated entities or the federal government that are already subject to the federal *Employment Equity Act*. The *Employment Equity Act* seeks to achieve employment equity in private sector employers as well as portions of the federal public administration in part through instituting "positive policies and practices... as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce...."<sup>28</sup>

<sup>26</sup> RSO 1990, c O1, s. 32.0.1 (1).

<sup>27</sup> SO 2005, c 11, s. 1 and Part III.

<sup>28</sup> SC 1995, c 44, s. 5 (b).



The Ontario *Code* has no such requirement to develop and implement a human rights or diversity policy. Notwithstanding this lack of statutory obligation, in our opinion it is not inconsistent with the *Code* for the Law Society to be proactive and require certain legal workplaces to do so.

First, the Ontario Human Rights Commission (the “Commission”) strongly encourages organizations to have an internal human rights policy for their workplace and the Commission has prepared two documents to assist organizations with developing human rights policies and procedures.<sup>29</sup>

Second, in the Human Rights Tribunal of Ontario’s (“Tribunal”) Form 2 (Response to an Application under Section 34 of the *Human Rights Code*), the Tribunal explicitly asks organizational respondents whether or not they have internal human rights policies related to the alleged discrimination.

Third, section 45.2 of the *Code* vests the Tribunal with a remedial power to make an order in the public interest and aimed at future compliance with the *Code*. In practice, this often translates into an order requiring an employer that is found to have violated a right under the *Code* to develop and implement a human rights policy if it does not already have one.

Thus, we can take from the above that the creation of a human rights and diversity policy under Recommendation 3(2) is consistent with the *Code*.

We also believe that Recommendation 3(2) represents a reasonable balancing between the Law Society’s statutory objectives, including with respect to advancing human rights, and licensees’ *Charter* rights. We do not take a position on what number of licensees should be present in each legal workplace before the obligation to maintain a human rights/diversity policy is engaged. However, for reasons similar to those explained in regards to Recommendation 3(1), we believe that Recommendation 3(2) is not inconsistent with the *Charter*. Requiring a group of licensees in a legal workplace to develop, implement and maintain a policy, while constraining their *Charter* liberty rights, among others, does not seem to attack the core of an individual’s liberty interests. Put another way, if a licensee were to define his or her liberty interest as “the right to

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<sup>29</sup> Ontario Human Rights Commission, *Guidelines on Developing Human Rights Policies and Procedure* (Toronto: Ontario Human Rights Commission, June 19, 1996 (revised January 30, 2008)); and Ontario Human Rights Commission, *A policy primer: Guide to developing human rights policies and procedures* (Toronto: Ontario Human Rights Commission, June 19, 1996 (revised December 2013)).



do whatever I want to in my legal workplace,” even in the face of non-discrimination laws, that liberty interest is not the kind that has enjoyed much protection at law.

To the extent that someone may object to this requirement, the Law Society may look to avail itself of the Special Program exemption under the *Code* or the protection of section 15(2) under the *Charter*.

In summary, nothing in this Recommendation is inconsistent with the *LSA*, the *Code*, or the *Charter* so long as the representative in question is a licensee.

Notwithstanding our view that this Recommendation is consistent with the three statutes, we wish to comment on the issue of the Recommendation applying to a “representative of each legal workplace... to develop, implement and maintain a human rights/diversity policy for their legal workplace....”

First, the Law Society has regulatory authority over licensees only. To the extent that this Recommendation purports to regulate a non-licensee “representative” it goes beyond the Law Society’s scope of authority. Thus, we recommend that the Working Group amend the wording of this recommendation to clarify that a “representative” must be a licensee.

Second, as noted above and in the *Final Report*, the term “legal workplace” is not defined in the *LSA* and remains a contentious term within the Working Group. We note that Recommendations 3(2) and 3(3) use the terminology “their legal workplace.” This suggests that the target of the Recommendations 3(2) and 3(3) is, or ought to be, the licensees in a licensee firm, corporation or government. With respect to Recommendation 3(2), once there are more than 10 licensees in an Ontario workplace (howsoever defined), the Recommendation would require that a licensee representative (i) develop; (ii) implement; and (iii) maintain a human rights/diversity policy *for the benefit of* the licensees in that workplace; (iv) with the specification that a minimum standard for the content of the human rights/diversity policy is that it address fair recruitment, retention and advancement.

We see the implementation of Recommendation 3(2) occurring along a spectrum: the further one moves away from law firms / paralegal firms, and the more employers object to the “licensees only” human right/diversity policy, the greater the challenge.



Let's start with the easy end of the spectrum: Recommendation 3(2) applying to a firm of lawyers and/or paralegals. The Law Society clearly regulates licensees so when the representative licensee is developing, implementing and maintaining the human rights/diversity policy, as required by the Law Society, the representative's actions can speak to and for the entire organization made up of licensees.

Moving further along the spectrum we next envisage the example of licensees employed by the Government of Ontario, which has its own human rights, diversity and inclusion principles and policies. There, the Law Society is not purporting to regulate the government, however, under Recommendation 3(2) a representative of those licensees (or multiple representatives if there are multiple workplaces) would be charged with developing, implementing and maintaining a human rights/diversity policy for those licensees which may or may not "bump up" against the government's human rights policy. While this scenario is clearly different than the law firm scenario, the implementation challenges may not be all that difficult if, in practice, it means that the representative can adopt or "tweak and adopt" the government's human rights/diversity policy assuming that the government's policy addresses "fair recruitment, retention and advancement" practices.

Moving even further along the spectrum, let's use the example of a large private corporation with 15 licensees with no human rights/diversity policy. In the extreme scenario, the corporate employer may reject outright and prohibit a licensee from developing, implementing and maintaining a human rights/diversity policy for licensees at its workplace. However, the employer would still be legally bound by the *Code* to ensure its employment practices are non-discriminatory, which, in effect, would require substantive compliance by the employer with the "unwritten" policy. We would envisage that the resolution of this issue may be left to discussions amongst the representative, the licensees, the Law Society and the corporation. We see outright non-cooperation with the Law Society's Recommendation 3(2) and the failure of a resolution a rather farfetched scenario.

In a less extreme scenario, while we do not think that the representative "developing" a policy just for the 15 licensees presents much of an issue, the employer may raise an issue around who controls the implementation of the policy; that is, the representative's vision of what that the policy means for the corporation's employment practices may diverge from the corporation's vision. We note that Recommendation 3(2) uses the word "maintain," which we interpret as meaning "maintenance of" or "providing support to." However, "maintain" does not necessarily mean making decisions under the policy. But even if we were to assume that "maintain"



included a decision-making role, we think the representative's role would be advisory and not necessarily determinative. For instance, with respect to the promotion of a racialized lawyer to a General Counsel position, the representative may, on balance, believe that the racialized lawyer is deserving of the position including based on an interpretation of the representative's human rights/diversity policy, whereas the corporation may see things differently. Does this mean that if the corporation places another candidate in the General Counsel position that the representative has failed to "implement and maintain" the licensees' human rights/diversity policy? We think not.

In both corporate employer scenarios described above, we believe that the concept of best efforts or, in the alternative, reasonable efforts, as opposed to outcome should be the correct measure of whether the representative has, in fact, complied with their regulatory obligation.

So, while we acknowledge that Recommendation 3(2) may face some implementation challenges, we do not see them as insurmountable so long as:

- (a) The representative is a licensee;
- (b) The target or beneficiaries of the human rights/diversity policy are only licensees; and
- (c) The measure of whether the representative is implementing and maintaining the human rights/diversity policy is based on effort and not purely on outcome.

We think that the Law Society should be candid about the impact and cultural change that it seeks to achieve by the implementation of Recommendation 3(2): requiring all entities that employ licensees, including corporations and governments, to use the proposed human rights/diversity policy and thereby be more self-conscious about the impact of their recruitment, retention and advancement decisions on racialized licensees. However, while this is the goal, it does not mean that the Law Society is now regulating these entities. The effects of the Recommendation should be distinguished from the Recommendation itself, which is limited in scope to licensees.

### **C. Recommendation 3(3)**

***The Law Society will... require a 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.***



In our opinion, Recommendation 3(3) is consistent with the *LSA*, *Code*, and *Charter* assuming that the “representative” referred to in the recommendation is a licensee of the Law Society and assuming that the intended benefit of the self-assessment is limited in its application to licensees only. We recommend that the Working Group amend this recommendation to clarify the above limits and scope of application to the Recommendation.

The Recommendation raises a few questions, including whether the intention is for a representative to complete a self-assessment of only licensees for their legal workplace, or of all employees at a legal workplace; would this create a mandatory requirement on licensees to answer the self-assessment or can a licensee opt not to answer, in similar fashion to the voluntary self-assessment contained in a licensee’s annual report?

In its *Final Report*, the Working Group provided further insight into the motivation behind and intention of this Recommendation:

- Legal workplaces would report to the Law Society on whether they had completed the self-assessment and, if not, explain their reasons for not having done so
- Recommendation 3(3) 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<sup>30</sup>

To the extent that this recommendation would make it mandatory for every licensee (in a legal workplace of 10 or more licensees) to disclose personal information, it may run afoul of the *Code* unless they can opt out.

The Law Society already has a self-assessment demographic survey for licensees, but it qualifies the survey with it being voluntary, confidential and anonymous.<sup>31</sup> The survey asks about a licensee’s Francophone status, Indigenous status, ethnic identity, religion or creed, disability status, and sexual orientation. For each question there is an option to select “I do not wish to answer.” This type of survey is not inconsistent with either the *Code* or the *Charter*. And, if this

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<sup>30</sup> *Final Report*, pp. 19 and 21.

<sup>31</sup> The Demographic Survey is part of the Law Society’s Lawyer Annual Report and the Law Society’s Equity Initiatives Department, made pursuant to section 62 of the *LSA* and By-law 8. Convocation approved the inclusion of the voluntary question in these reports at its May 2009 meeting.



type of survey qualifies as “completing” a self-assessment for a legal workplace, then there should be no concern.

It is also the view of the Ontario Human Rights Commission that seeking such demographic information is not a violation of the *Code*. The Commission makes recommendations for how to undertake such data collection to ensure it is compliant with the *Code*.<sup>32</sup> The Commission makes the following recommendations to collecting data in a *Code*-consistent way:

- Clearly set out a purpose that is consistent with the *Code* such as an intention to assist disadvantaged licensees in the profession;
- Advise why such information is being gathered and its potential uses;
- Inform how the data will be collected, steps that will be taken to protect privacy and confidentiality, benefits of collecting data, and progress reached in achieving stated goals and objectives;
- Consult with affected communities about the need for data collection and appropriate methodology;
- Use the least intrusive means that most respects the dignity and privacy of individuals: one means is self-identification, another is observation through a trained employee or external expert;
- Assure anonymity;
- Distinguish between collection, use and disclosure; and
- Comply with freedom of information and privacy protection legislation.

With respect to the *Charter*, Recommendation 3(3) appears to be very reasonable when it requires, only once every two years, the completion of an equality, diversity and inclusion self-assessment. It seems a stretch for a licensee to assert that their *Charter* liberty interest or freedom of conscience is constrained in a disproportionate manner.

We acknowledge that nothing in Recommendation 3(3) can compel an employer (who is not a licensee) to complete and submit a self-assessment for its workforce. Rather, this Recommendation simply requires a representative licensee in a given legal workplace of 10 licensees or more to conduct a self-assessment *amongst licensees* and report their findings to the Law Society. There is nothing inconsistent in this Recommendation with respect to the Law

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<sup>32</sup> Ontario Human Rights Commission, *Count me in! Collecting Human Rights-Based Data* (Toronto: Ontario Human Rights Commission, 2010).



Society or its licensees' rights and obligations under the three statutes. We do not see the concern that requiring licensees in non-law firm settings somehow overreaches on the Law Society's regulatory authority; or that this Recommendation in any way places an obligation on non-licensees or their employer. Rather, this is more akin to a licensee completing their annual report for the Law Society, but in a collaborative way with all other licensees in their workplace.

## 7. Conclusion

The process of determining whether the Recommendations are inconsistent with the *LSA*, the *Code* and the *Charter* should begin by acknowledging the reality of the situation. That reality, according to the *Final Report*, is “widespread barriers experienced by racialized licensees within the legal professions at all stages of their careers”<sup>33</sup> As the Divisional Court noted in *TWU*, “condoning discrimination can be ever much as harmful as the act of discrimination itself.”<sup>34</sup>

It is unlikely that most licensees intend to discriminate. Yet, it is the impact of conduct on protected groups and not intention that counts. The *Final Report* concluded that systemic barriers for racialized licensees continue to persist. The Recommendations represent the Working Group's proposal to do something about the problem consistent with the Law Society's obligation to advance the cause of justice and the rule of law in the public interest. Whereas constraints and implementation challenges do exist, in terms of how far the Law Society can go, our review of the Recommendations suggests that they do not cross the line into impermissible professional regulation. They are not inconsistent with the *LSA*, the *Code* or the *Charter*. Some of the implementation challenges are more apparent than real and, in the most challenging scenario where employers and representatives disagree on the outcome of employment decisions, it does not mean that the representative has necessarily failed to abide by their professional obligation.

Perfection can be the enemy of the good. The Law Society should be careful not to see only problems in the implementation of the Recommendations where, in fact, opportunities to make progress through the Recommendations exist.

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<sup>33</sup> *Final Report*, p. 4.

<sup>34</sup> *TWU* (Div Ct), *supra* note 6, para 116.



We hope that the Law Society will find our opinion of assistance in their upcoming deliberations.

Yours truly,  
**PINTO WRAY JAMES LLP**

A handwritten signature in blue ink that reads "Andrew Pinto".

Andrew Pinto

Pursuant to a notice of motion provided November 9, 2016, it was moved by Ms. Murchie, seconded by Ms. St. Lewis, that as it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

Carried

The Treasurer thanked members of the Working Group and staff for their hard work on this initiative.

## THE LAW SOCIETY OF UPPER CANADA

### Notice of Motion made pursuant to Section 93 of By-Law 3 [Benchers, Convocation and Committees]

#### Notice is hereby given of the following motion to be made at Convocation on December 2, 2016

Whereas the Challenges Faced by Racialized Licensees Working Group (the "Working Group") and racialized communities have taken a leadership role in developing recommendations for Convocation to address direct and systemic discrimination against racialized licensees;

Whereas the recommendations seek to create a framework for equality initiatives that are also valuable and should be extended to licensees from other equality-seeking communities who are not racialized;

Whereas extending the recommendations facilitates an intersectional approach that recognizes that racialized and other equality-seeking licensees are vulnerable to compounded inequalities as members of more than one equality-seeking community;

And whereas extension of the recommendations to acknowledge the intersectionality of disadvantage and discrimination ensures that data is sufficiently comprehensive to support the goals of the Working Group's Report;

Whereas the recommendations of the Working Group's Report as adopted by Convocation will be implemented by the Law Society through staff as overseen by the Equity and Aboriginal Issues Committee and other committees as may be appropriate with input from the Equity Advisory Group and the Indigenous Advisory Group in the normal course;

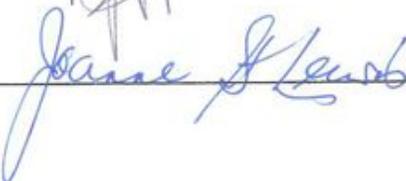
#### I MOVE THAT:

As it moves forward with implementation of the recommendations for racialized licensees, the Law Society will ensure that the policies, procedures, measures and initiatives are extended as appropriate to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

Mover: Barbara Murchie

  
\_\_\_\_\_

Seconder: Joanne St. Lewis

  
\_\_\_\_\_

November 9, 2016

*For Information:*

- Public Education Equality and Rule of Law Series Calendar Winter 2017

**TAB 3.3**

**FOR INFORMATION**

**EQUITY LEGAL EDUCATION AND RULE OF LAW  
SERIES CALENDAR**

**WINTER 2017**

There will be no Equity Legal Education Series events in January 2017. Additional information about Winter 2017 events will be available in mid-December 2016.

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IN PUBLIC  
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*REPORTS FOR INFORMATION ONLY*

AUDIT AND FINANCE COMMITTEE REPORT

- Law Society Financial Statements Nine Months Ended September 30, 2016
- LibraryCo Inc. Financial Statements Nine Months Ended September 30, 2016
- Investment Compliance Reporting
- Other Committee Work

REPORT FROM THE ACTION GROUP ON ACCESS TO JUSTICE (TAG)

TAB 10

**Report to Convocation  
December 2, 2016**

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**Audit & Finance Committee**

**Committee Members**

- Chris Bredt (Chair)**
- Suzanne Clément (Vice Chair)**
- Teresa Donnelly (Vice-Chair)**
- Peter Beach
- Paul Cooper
- Janis Criger
- Seymour Epstein
- Rocco Galati
- Michelle Haigh
- Vern Krishna
- Gina Papageorgiou
- Jan Richardson
- Andrew Spurgeon
- Cathy Strosberg
- Tanya Walker

**Purpose of Report: Information**

**Prepared by the Finance Department  
Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca**

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Investment Compliance Reporting ..... TAB 10.3  
Other Committee Work ..... TAB 10.4

### **COMMITTEE PROCESS**

1. The Audit & Finance Committee (“the Committee”) met on November 9, 2016. Committee members in attendance were Chris Bredt (Chair), Suzanne Clément (Vice Chair), Peter Beach, Paul Cooper, Janis Criger, Seymour Epstein, Vern Krishna, Gina Papageorgiou, Jan Richardson (phone), Andrew Spurgeon, Cathy Strosberg, and Tanya Walker. Robert Evans also attended.
2. Also in attendance: Michael Hawtin, Lauren Levine and Sadia Khan from PWC. Stephanie Kalinowski from Hicks Morley.
3. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier, Mary Giovinazzo and Andrew Cawse.

## TAB 10.1

## FOR INFORMATION

**LAW SOCIETY OF UPPER CANADA FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2016**

6. **Convocation is requested to receive the third quarter financial statements for the Law Society for information.**

**Rationale**

7. This is part of the quarterly financial reporting schedule to Convocation. These interim statements convey the performance of the Law Society before the end of the year. Unlike annual statements, interim statements are not audited.
8. The quarterly financial statements for the subsidiary, LibraryCo is included in this Committee material. The quarterly financial statements for the subsidiary, LAWPRO, will be presented to the Committee and Convocation after approval by LAWPRO's board.

**Law Society of Upper Canada  
Financial Statements  
For the nine months ended September 30, 2016**

**Financial Statement Highlights**

9. The Lawyer General Fund incurred a surplus of \$4.8 million at the end of the third quarter of 2016, compared to a surplus of \$2.6 million in 2015.
10. The Paralegal General Fund generated a surplus of \$1.3 million at the end of the third quarter of 2016 compared to \$945,000 at the end of the third quarter of 2015. For the year, the 2016 budget uses \$340,000 of the General Fund accumulated surplus as a source of funding to mitigate a fee increase for paralegals.
11. As noted on the Schedule of Revenues and Expenses for the Lawyer and Paralegal General Fund the total surplus for the nine months is \$6.1 million compared to a nominal deficit for the prorated budget for the period. In comparing revenues to budget, there are some large positive variances, specifically in the licensing process and other revenues such as late fees. In comparing expenses to budget, variances in the major income statement categories are all positive. While some variances from budget are attributable to timing differences, a surplus for the year is projected, although as set out on the Projection for the Year Ended December 31, the total lawyer and paralegal General Fund surplus is forecast to be closer to \$4 million because of the weighting of some expenses towards the end of the year.
12. The Law Society's restricted funds report a deficit of \$2.1 million (2015: deficit of \$8.7 million). The deficit in 2015 was primarily in the Lawyer Compensation Fund and in the current year the deficit primarily comprises:
  - \$927,000 in the Lawyer Compensation Fund as the claims from two major defalcations continue to be processed. The 2016 budget included a provision of \$700,000 to replenish the lawyer Compensation Fund balance.
  - \$2.2 million in the Invested in Capital Assets Fund, representing amortization.These deficits are slightly offset by a surplus of \$895,000 in the Errors & Omissions Insurance Fund from investment income.

**Potential Negative Variances**

13. At the end of June, the Ontario Court of Appeal dismissed Trinity Western University's (TWU) appeal of the Divisional Court's decision, upholding the Law Society's denial of accreditation of TWU's proposed law school. TWU has requested the Supreme Court of Canada to hear an appeal. The timing and extent of costs for this process is uncertain.

14. There is at least a reasonable possibility that one or more cost awards from the Law Society's regulatory proceedings may be awarded against the Law Society but the amount of any losses cannot be reliably estimated at this time. The Society has determined that the ultimate settlement for these costs awards could range from nil to approximately \$5 million, of which only \$500,000 has been included in accrued liabilities.

### **Background**

15. The Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit organizations using the restricted fund method of accounting.
16. The Financial Statements for the nine months ended September 30, 2016 comprise the following statements:
  - Balance Sheet
  - Statement of Revenues and Expenses and Change in Fund Balances, detailing results of operations for lawyers and paralegals
  - Schedule of Restricted Funds
  - Supplemental schedules include Schedules of Revenues and Expenses for the Combined General Fund, Lawyer and Paralegal General Funds, the Compensation Fund, the Errors and Omissions Insurance Fund and a Combined General Fund Projection for the Year Ended December 31, 2016.

### **Statement of Revenues and Expenses and Change in Fund Balances**

17. The Lawyer General Fund has a surplus of \$4.8 million at the end of the third quarter of 2016, compared with a surplus of \$2.6 million in the first nine months of 2015. As noted in the highlights, the reasons for this positive financial performance are spread across most revenue and expense categories. The 2016 budget incorporated \$1.2 million in funding from surplus investment income in the E&O Fund which has not been used because of the General Fund surplus.
18. The Paralegal General Fund had a surplus of \$1.3 million versus a surplus of \$945,000 last year. The 2016 budget allocated \$340,000 from the General Fund accumulated surplus to mitigate fee increase for paralegals. Actual use of these funds is contingent on results for the year.
19. The Law Society's restricted funds report a deficit of \$2.1 million (2015: deficit of \$8.7 million). The deficit in 2015 was primarily in the Lawyer Compensation Fund and in the current year the deficit primarily comprises:
  - \$927,000 in the Lawyer Compensation Fund as the claims from two major defalcations continue to be processed. The 2016 budget included a provision of \$700,000 to replenish the lawyer Compensation Fund balance.
  - \$2.2 million in the Invested in Capital Assets Fund, representing amortization.

In the Errors & Omissions Insurance Fund, the current annual premium revenue typically matches current annual premium expenses. In 2016, revenue is higher than expenses for the first nine months due to investment income of \$0.9 million and there has been no premium contribution under the insurance contract with LAWPRO to mitigate insurance premiums for lawyers.

The Capital Allocation Fund had \$1.6 million in revenues and \$1.5 million in expenses. The Law Society is in the third year of a three year, \$8 million Information Technology capital plan.

20. Annual fee revenue is recognized on a monthly basis. One of the goals of having a three-year rolling budget is to stabilize fees and the 2016 budget maintained the annual fee for lawyers (\$1,866) and paralegals (\$996) at 2014 and 2015 levels although there were fluctuations in the individual fee components. Total annual fees recognized in the first nine months of the year of \$58.1 million have increased slightly compared to 2015 because the number of lawyers and paralegals billed increased. Based on the number of new lawyers and paralegals to date, the increase in the number of licensees will exceed budget in 2016.
21. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base annual premium of \$3,350 has not changed in recent years, with the increase in number of insureds leading to a slight increase in premium and levy revenue to \$80 million.
22. Professional development and competence revenue comprises licensing process and continuing professional development revenue:
  - Lawyer licensing process revenue has increased by \$500,000 to \$9.3 million. This revenue also significantly exceeds the prorated budget for the year and the 2017 budget has been increased as a result of this experience. The total lawyer Licensing Process fee for 2015-2016, including the fees for the initial application, the Barrister and Solicitor Licensing Examinations and the Call to the Bar is \$4,710, the same as last year. There is a higher number of licensing process candidates contributing to both the lawyer and paralegal licensing revenues. In addition, there is an increase in the number of candidates writing the exams multiple times. As noted in the expense section, the higher numbers have increased the expenses to administer exams.
  - At \$1.6 million, paralegal licensing process revenue is nominally higher than last year and is more than the prorated budget for the year.
  - Through September 2016, CPD revenue of \$5.2 million exceeds both the prior year comparative and the prorated budget by \$500,000. Traditionally, the Fall is CPD's busiest period.
23. At \$1.4 million, investment income continues the decreasing trend from previous years reflecting market conditions of low fixed income returns. The positive change in the fair

value of investments (\$1.4 million) compared to the loss in the comparative period also reflects market conditions.

24. Other income primarily comprises late fees, catering, monitoring & enforcement revenues, Ontario Reports and the LibraryCo administration fee.
25. Total regulatory expenses of \$20.3 million are effectively the same as last year and are under budget with spending constrained throughout the division, in particular some unfilled staff positions. The additional resources approved by Convocation in February are being phased in. The projection for complaints received in the division during this year follows the trend of slight decreases over recent years although the 2016 budget noted other factors such as increasing case complexity. Outside counsel fees are a significant variable expense and are at lower levels than the prorated budget.
26. Total professional development and competence expenses have increased from \$18.8 million to \$19.5 million. As approved in the 2016 budget, CPD staffing increased with more resources devoted to program development and webcast services. As this increase phases in, total CPD expenses of \$2.6 million are well under budget but slightly more than last year. In the Licensing Process, the higher candidate numbers have increased the expenses to administer exams. Also, there has been an increase in the number of candidates requiring special services, for instance rooms, chairs, proctors, software. At \$7.7 million, Licensing Process expenses are slightly more than budget and last year. Ultimately, the licensing process anticipates a net favourable position compared to budget at the end of the year.
27. Corporate services expenses include Finance & the CEO, Facilities, the Client Service Centre, Information Technology, Office of the General Counsel (OGC) and Human Resources and have decreased from \$17 million to \$16.7 million.
28. Convocation, Policy and Outreach Expenses include Policy, Equity, Public Affairs, Bencher expenses and Communications and at \$6 million are effectively the same as last year at this time. These expenses are under budget with bencher expenses being the biggest contributor to this variance although the timing of bencher remuneration and expenses is not regular and depends on submissions from benchers. The Society has received a \$400,000 grant from the Law Foundation of Ontario funding the development and delivery of Access to Justice initiatives.
29. Service to members and the public expenses primarily comprise the Law Society Referral Service, Catering, CANLII and the Member Assistance Plan and total \$3 million, slightly more than the first three quarters of 2015 and in line with the budget for the first three quarters of 2016.

**Schedule of Restricted Funds**

30. The Errors & Omissions Insurance (E&O) Fund accounts for the mandatory professional liability insurance program of the Law Society which is administered by LAWPRO. The insurance premium expense, as well as related levies and income from their investment are tracked within this fund. The Law Society is insured for lawyers' professional liability and recovers annual premium costs from lawyers through a combination of annual base levies and additional levies that are charged based on a lawyer's claims history, status, and real estate and litigation levies. The fund is reporting a surplus of \$895,000 (2015 - \$1.9 million deficit) due to investment income and the lack of any contribution in the current year to mitigate the base insurance levy for lawyers. Revenue from insurance premiums and levies is recognized on a monthly basis. LAWPRO's base premium of \$3,350 has not changed from 2014, with the increase in number of insured's leading to a slight increase in premium and levy revenue to \$80 million. Expenses in the Errors and Omissions Insurance Fund are consistent at \$80 million.
31. The lawyer Compensation Fund annual fee income increased from \$6.4 million in 2015 to \$7.4 million in line with the increase in the levy from \$225 to \$254 per lawyer. The paralegal levy also increased. The Compensation Fund's total investment results have swung from a small loss to income of \$1.3 million in 2016 due market conditions. Other income representing recoveries also substantially increased to \$547,000. Recoveries do not follow a pattern.
32. The Compensation Fund continues to experience a high claims experience with provision for unpaid grant expenses increasing from \$3.7 million in 2015 to \$4.3 million in 2016. The Compensation Fund balance management policy was amended by Convocation in September.
33. County Libraries Fund revenues and expenses are relatively static at \$5.7 million.
34. Use of the Parental Leave Assistance Plan, included in Other Restricted Funds, continues to decline with expenses of \$120,000 in the first nine months of 2016 compared to \$156,000 in 2015.

**Balance Sheet**

35. Cash and short-term investments have increased by \$7 million to \$61 million over the last twelve months after operating surpluses, capital transfers from portfolio investments and the investment manager adopting a conservative approach with an increased short-term orientation.
36. Most of the prepaid expense balance relates to annual E&O insurance premiums paid or payable for the year, which are expensed over the full year.

37. The Investment in LAWPRO totaling \$36 million is made up of two parts. The investment represents the share capital of \$5 million purchased in 1991 when LAWPRO was established, plus contributed capital of \$31 million accumulated between 1995 and 1997 from a special capitalization levy by the Law Society.
38. Portfolio investments are shown at fair value of \$67 million, compared to \$70 million in 2015. The short-term components of these investments are re-categorized to the “cash and short-term investments” line on the balance sheet which have increased reflecting the investment manager’s asset mix. Approximately 20% of the portfolio is held in equity investments.
39. Deferred revenue (\$47 million) is made up of annual fees, licensing process revenues and insurance premiums which are recognized over the full year with the increased balance at the end of September reflecting the increased underlying revenues in 2016.
40. Due to LAWPRO (\$25 million) will decline by year-end as insurance premiums and levies collected are paid to LAWPRO.
41. The provision for unpaid grants of \$21 million (2015 - \$22 million) represents the estimate for unpaid claims and inquiries against the Compensation Fund, supplemented by the costs for processing these claims. The Fund continues to process some large alleged defalcations on the part of certain licensees. The Compensation Fund describes a major defalcation as being over 35 claims arising from the conduct of one licensee in a single year and the Fund currently has two of these major defalcations. In September, Convocation approved an increase in the individual grant limit from \$150,000 to \$500,000.
42. The paralegal Compensation Fund provision for unpaid grants comprises \$178,000 of the total Compensation Fund provision for unpaid grants.
43. The Law Society Act permits a member who has dormant trust funds, to apply for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. At the end of September, unclaimed money held in trust amounts to nearly \$5 million, compared to \$4 million in the prior year.

#### **Other Schedules**

44. Supplementary budget to actual income and expense schedules for the Lawyer General Fund and the Paralegal General Fund are included. Significant variances have been analyzed above.
45. A supplementary income and expense schedule for the Compensation Fund is included with variances analyzed above.

46. A supplementary income and expense schedule for the E&O Fund is also shown with variances analyzed above.
47. A combined General Fund Projection for the Year Ended December 31, 2016 is also provided.

**Conclusion**

48. Overall, the first three quarters of the year have resulted in greater than projected revenues and less than projected expenses. The Law Society is on track to exceed its 2016 budget expectations, its financial position remains strong although claims against the Compensation Fund continue to reduce the fund balance.

**THE LAW SOCIETY OF UPPER CANADA****Balance Sheet***Unaudited**Stated in thousands of dollars**As at September 30*

	2016	2015
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	29,399	24,746
2 Short-term investments	31,689	29,677
3 Accounts receivable	24,627	18,235
4 Prepaid expenses	29,446	29,807
5 <b>Total current assets</b>	<b>115,161</b>	<b>102,465</b>
6 <b>Investment in subsidiaries</b>	<b>35,642</b>	<b>35,642</b>
7 <b>Portfolio investments</b>	<b>66,979</b>	<b>70,361</b>
8 <b>Capital assets</b>	<b>8,459</b>	<b>9,001</b>
9 <b>Intangible assets</b>	<b>548</b>	<b>903</b>
10 <b>Total Assets</b>	<b>226,789</b>	<b>218,372</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
11 Accounts payable and accrued liabilities	10,609	11,661
12 Deferred revenue	47,018	46,113
13 Due to LAWPRO	25,342	21,832
14 <b>Total current liabilities</b>	<b>82,969</b>	<b>79,606</b>
15 Provision for unpaid grants	21,199	22,200
16 Unclaimed trust funds	4,863	4,180
17 <b>Total Liabilities</b>	<b>109,031</b>	<b>105,986</b>
<b>Fund Balances</b>		
<b>General funds</b>		
18 Lawyers	26,102	22,705
19 Paralegals	5,163	3,919
<b>Restricted funds</b>		
20 Compensation - lawyers	13,978	12,553
21 Compensation - paralegals	595	346
22 Errors and omissions insurance	55,237	54,859
23 Capital allocation	6,868	7,225
24 Invested in capital and intangible assets	9,007	9,904
25 Other	808	875
26 <b>Total Fund Balances</b>	<b>117,758</b>	<b>112,386</b>
27 <b>Total Liabilities and Fund Balances</b>	<b>226,789</b>	<b>218,372</b>

**THE LAW SOCIETY OF UPPER CANADA****Statement of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016	2015	2016	2015	2016	2015	2016	2015
	General Fund Lawyer		General Fund Paralegal		Restricted Funds		Total	
<b>Revenues</b>								
1 Annual fees	39,479	38,345	3,143	3,019	15,437	15,159	58,059	56,523
2 Insurance premiums and levies	-	-	-	-	79,945	78,593	79,945	78,593
3 Professional development and competence	13,835	13,020	2,330	2,158	-	-	16,165	15,178
4 Investment income	434	500	41	47	978	1,203	1,453	1,750
5 Change in fair value of investments	304	(409)	29	(39)	1,110	(1,592)	1,443	(2,040)
6 Other	5,464	5,303	684	709	644	174	6,792	6,186
7 <b>Total revenues</b>	<b>59,516</b>	<b>56,759</b>	<b>6,227</b>	<b>5,894</b>	<b>98,114</b>	<b>93,537</b>	<b>163,857</b>	<b>156,190</b>
<b>Expenses</b>								
8 Professional regulation, tribunals and compliance	18,578	18,500	1,759	1,747	-	-	20,337	20,247
9 Professional development and competence	17,903	17,227	1,580	1,539	-	-	19,483	18,766
10 Corporate services	15,226	15,563	1,442	1,474	-	-	16,668	17,037
11 Convocation, policy and outreach	5,518	5,461	440	456	-	-	5,958	5,917
12 Services to members and public	2,826	2,690	159	154	-	-	2,985	2,844
13 Allocated to Compensation Fund	(5,318)	(5,249)	(450)	(421)	-	-	(5,768)	(5,670)
14 Restricted	-	-	-	-	100,197	102,265	100,197	102,265
15 <b>Total expenses</b>	<b>54,733</b>	<b>54,192</b>	<b>4,930</b>	<b>4,949</b>	<b>100,197</b>	<b>102,265</b>	<b>159,860</b>	<b>161,406</b>
16 <b>Surplus (Deficit)</b>	<b>4,783</b>	<b>2,567</b>	<b>1,297</b>	<b>945</b>	<b>(2,083)</b>	<b>(8,728)</b>	<b>3,997</b>	<b>(5,216)</b>
17 <b>Fund balances, beginning of year</b>	<b>21,407</b>	<b>18,507</b>	<b>3,866</b>	<b>2,974</b>	<b>88,488</b>	<b>96,121</b>	<b>113,761</b>	<b>117,602</b>
18 <b>Interfund transfers</b>	<b>(88)</b>	<b>1,631</b>	<b>-</b>	<b>-</b>	<b>88</b>	<b>(1,631)</b>	<b>-</b>	<b>-</b>
19 <b>Fund balances, end of period</b>	<b>26,102</b>	<b>22,705</b>	<b>5,163</b>	<b>3,919</b>	<b>86,493</b>	<b>85,762</b>	<b>117,758</b>	<b>112,386</b>

**THE LAW SOCIETY OF UPPER CANADA****Schedule of Restricted Funds***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016							2015	
	Compensation Fund		Errors and omissions insurance	Capital allocation	Invested in capital and intangible assets	County libraries	Other restricted	Total Restricted funds	Total
	Lawyer	Paralegal							
1 <b>Fund balances, beginning of year</b>	14,905	441	54,342	6,716	11,185	-	899	88,488	96,121
<b>Revenues</b>									
2 Annual fees	7,441	550	-	1,563	-	5,683	200	15,437	15,159
3 Insurance premiums and levies	-	-	79,945	-	-	-	-	79,945	78,593
4 Investment income	560	53	365	-	-	-	-	978	1,203
5 Change in fair value of investments	594	56	460	-	-	-	-	1,110	(1,592)
6 Other	500	47	-	97	-	-	-	644	174
7 <b>Total revenues</b>	9,095	706	80,770	1,660	-	5,683	200	98,114	93,537
<b>Expenses</b>									
8 Allocated expenses	5,318	450	-	-	-	-	-	5,768	5,670
9 Direct expenses	4,704	102	79,875	1,527	2,178	5,747	296	94,429	96,595
10 <b>Total expenses</b>	10,022	552	79,875	1,527	2,178	5,747	296	100,197	102,265
11 <b>(Deficit) Surplus</b>	(927)	154	895	133	(2,178)	(64)	(96)	(2,083)	(8,728)
12 <b>Interfund transfers</b>	-	-	-	19	-	-	69	88	(1,631)
13 <b>Fund balances, end of period</b>	13,978	595	55,237	6,868	9,007	(64)	872	86,493	85,762

**THE LAW SOCIETY OF UPPER CANADA**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	41,364	42,622	42,667	(45)
2 Professional development and competence	15,178	16,165	13,778	2,387
3 Investment income	547	475	581	(106)
4 Change in fair value of investments	(448)	333	-	333
5 Other	6,012	6,148	5,297	851
6 <b>Total revenues</b>	<b>62,653</b>	<b>65,743</b>	<b>62,323</b>	<b>3,420</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	20,247	20,337	21,157	820
8 Professional development and competence	18,766	19,483	20,382	899
9 Corporate services	17,037	16,668	17,382	714
10 Convocation, policy and outreach	5,917	5,958	6,565	607
11 Services to members and public	2,844	2,985	3,048	63
12 Allocated to Compensation Fund	(5,670)	(5,768)	(5,964)	(196)
13 <b>Total expenses</b>	<b>59,141</b>	<b>59,663</b>	<b>62,570</b>	<b>2,907</b>
14 <b>Surplus (Deficit)</b>	<b>3,512</b>	<b>6,080</b>	<b>(247)</b>	<b>6,327</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	38,345	39,479	39,681	(202)
2 Professional development and competence	13,020	13,835	12,007	1,828
3 Investment income	500	434	513	(79)
4 Change in fair value of investments	(409)	304	-	304
5 Other	5,303	5,464	4,740	724
6 <b>Total revenues</b>	<b>56,759</b>	<b>59,516</b>	<b>56,941</b>	<b>2,575</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	18,500	18,578	19,282	704
8 Professional development and competence	17,227	17,903	18,558	655
9 Corporate services	15,563	15,226	15,709	483
10 Convocation, policy and outreach	5,461	5,518	6,011	493
11 Services to members and public	2,690	2,826	2,880	54
12 Allocated to Compensation Fund	(5,249)	(5,318)	(5,495)	(177)
13 <b>Total expenses</b>	<b>54,192</b>	<b>54,733</b>	<b>56,945</b>	<b>2,212</b>
14 <b>Surplus (Deficit)</b>	<b>2,567</b>	<b>4,783</b>	<b>(4)</b>	<b>4,787</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	2015 Actual	2016 Actual	Budget YTD	Variance
<b>REVENUES</b>				
1 Annual fees	3,019	3,143	2,986	157
2 Professional development and competence	2,158	2,330	1,771	559
3 Investment income	47	41	68	(27)
4 Change in fair value of investments	(39)	29	-	29
5 Other	709	684	557	127
6 <b>Total revenues</b>	<b>5,894</b>	<b>6,227</b>	<b>5,382</b>	<b>845</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	1,747	1,759	1,875	116
8 Professional development and competence	1,539	1,580	1,824	244
9 Corporate services	1,474	1,442	1,673	231
10 Convocation, policy and outreach	456	440	554	114
11 Services to members and public	154	159	168	9
12 Allocated to Compensation Fund	(421)	(450)	(469)	(19)
13 <b>Total expenses</b>	<b>4,949</b>	<b>4,930</b>	<b>5,625</b>	<b>695</b>
14 <b>Surplus (Deficit)</b>	<b>945</b>	<b>1,297</b>	<b>(243)</b>	<b>1,540</b>

**THE LAW SOCIETY OF UPPER CANADA****Compensation Fund****Schedule of Revenues and Expenses and Change in Fund Balances***Unaudited**Stated in thousands of dollars**For the nine months ended September 30*

	2016			2015		
	Lawyers	Paralegals	Total	Lawyers	Paralegals	Total
<b>Revenues</b>						
1 Annual fees	7,441	550	7,991	6,416	458	6,874
2 Investment income	560	53	613	683	65	748
3 Change in fair value of investments	594	56	650	(931)	(88)	(1,019)
4 Recoveries	500	47	547	91	-	91
5 <b>Total Revenues</b>	<b>9,095</b>	<b>706</b>	<b>9,801</b>	<b>6,259</b>	<b>435</b>	<b>6,694</b>
<b>Expenses</b>						
6 Provision for unpaid grants	4,292	63	4,355	3,685	55	3,740
7 Spot audit	2,741	260	3,001	2,728	258	2,986
8 Share of investigation and discipline	1,485	82	1,567	1,454	80	1,534
9 Administrative	1,106	147	1,253	1,070	122	1,192
10 Salaries and benefits	398	-	398	387	-	387
11 <b>Total Expenses</b>	<b>10,022</b>	<b>552</b>	<b>10,574</b>	<b>9,324</b>	<b>515</b>	<b>9,839</b>
12 <b>(Deficit) Surplus</b>	<b>(927)</b>	<b>154</b>	<b>(773)</b>	<b>(3,065)</b>	<b>(80)</b>	<b>(3,145)</b>
13 Fund balances, beginning of year	14,905	441	15,346	15,618	426	16,044
14 <b>Fund Balances, end of period</b>	<b>13,978</b>	<b>595</b>	<b>14,573</b>	<b>12,553</b>	<b>346</b>	<b>12,899</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**Errors and Omissions Insurance Fund**  
**Schedule of Revenues and Expenses and Change in Fund Balance**

*Unaudited*

*Stated in thousands of dollars*

*For the nine months ended September 30*

	<b>2016</b>	<b>2015</b>
	<b>Actual</b>	<b>Actual</b>
<b>REVENUES</b>		
1 Insurance premiums and levies	<b>79,945</b>	78,593
2 Investment income	<b>365</b>	455
3 Change in fair value of investments	<b>460</b>	(573)
4 Other income	-	-
5 <b>Total revenues</b>	<b>80,770</b>	<b>78,475</b>
<b>EXPENSES</b>		
6 Administrative	-	-
7 Claims	<b>(70)</b>	(47)
8 Insurance	<b>79,945</b>	80,468
9 <b>Total expenses</b>	<b>79,875</b>	<b>80,421</b>
10 <b>Surplus (Deficit)</b>	<b>895</b>	(1,946)
10 Interfund transfers	-	(1,500)
11 Change in fund balance	<b>895</b>	(3,446)
12 Fund balance, beginning of year	<b>54,342</b>	58,305
13 Fund balance, end of period	<b>55,237</b>	54,859

**THE LAW SOCIETY OF UPPER CANADA**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*Projection for the year ended December 31, 2016*

	9 Month Actual	2016 Projection	Annual Budget
<b>REVENUES</b>			
1 Annual fees	42,622	56,829	57,539
2 Professional development and competence	16,165	21,553	20,138
3 Investment income	475	633	775
4 Change in fair value of investments	333	444	-
5 Other	6,148	8,197	7,067
6 <b>Total revenues</b>	<b>65,743</b>	<b>87,657</b>	<b>85,519</b>
<b>EXPENSES</b>			
7 Professional regulation, tribunals and compliance	20,337	28,479	29,393
8 Professional development and competence	19,483	27,284	27,420
9 Corporate services	16,668	23,341	24,470
10 Convocation, policy and outreach	5,958	8,343	10,430
11 Services to members and public	2,985	4,180	4,055
12 Allocated to Compensation Fund	(5,768)	(8,077)	(8,708)
13 <b>Total expenses</b>	<b>59,663</b>	<b>83,551</b>	<b>87,059</b>
14 <b>Surplus (Deficit)</b>	<b>6,080</b>	<b>4,107</b>	<b>(1,540)</b>

**TAB 10.2**

**FOR INFORMATION  
LIBRARYCO INC. FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED  
SEPTEMBER 30, 2016**

49. **Convocation is requested to receive the third quarter financial statements for LibraryCo Inc. for information.**

**Rationale**

50. The quarterly financial statements have been presented to the LibraryCo Board.

**LIBRARYCO INC.  
FINANCIAL REPORT  
For the nine months ended September 30, 2016**

**KEY POINT SUMMARY**

Overall Results

51. Results for the third quarter identify a deficit of \$5,968 compared to a budgeted deficit of \$102,988 for the 9 months. The 2016 budget envisages a \$143,000 deficit for the year through the use of the General Fund balance.
52. The positive variance from budget of \$97,020 is spread across most expense categories particularly consulting fees, publications, the group benefit plan and the bursaries, capital and special needs expenses.

Revenues

53. The Law Society grant (line 1) includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was \$5.7 million and matched budgeted amounts for the period.
54. Interest Income (line 2) is earned on LibraryCo's cash and short term investments.

Expenses

55. Total expenses (line 16) were \$5,725,491 compared to a budgeted total for the period of \$5,849,489.
56. The administration expense (line 4) of \$228,750 represents the fee paid to the Law Society and equals budget. The fee was reduced from 2015.
57. Professional fees (line 5) include audit expenses and consulting fees. The consulting fee budget remains unspent which has resulted in a positive variance of \$13,095. Unspent amounts will be used to augment the budget for transition expenses.
58. Transition expenses (line 6) of \$85,852 represents three of the four payments for a user needs survey. Expenses associated with the transition initiative are projected to exceed the total transition expense budget of \$84,836 by approximately \$40,000. The currently unused budget of \$17,000 for consulting and positive variances in other expense accounts can be used to fund the full amount.
59. Other head-office expenses (line 7) include the production of the Annual Report, head office courier/postage costs, Directors and Officers insurance, bank charges, website maintenance costs, the cost of providing most libraries with a toll free telephone number and governance meeting expenses.

60. Totalling \$13,449, other head-office expenses are lower than budget for the period by approximately \$24,454 primarily as a result of underspending for the production of the Annual Report, board of directors' meetings, web initiatives, toll free telephone charges, and miscellaneous expenses.
61. Electronic product expenses of \$254,250 (line 9) are in line with the agreement with LexisNexis and budget.
62. Group benefits and insurance (line 10) of \$234,334 consist of the Group Benefits for enrolled library staff and library D&O and property insurance.
63. Group benefits and insurance are lower than budget by \$21,818 as group benefits premiums are negotiated after the budget and these are budgeted conservatively. Based on the program's claims experience, a return of premium is unlikely in the current year.
64. Given that both the D&O and property insurance policies expired at the end of April, a conservative increase in insurance for the remainder of 2016 was also taken into consideration when budgeting for 2016.
65. Other centralized expenses (line 11) of \$46,773 include continuing education bursaries for library staff, library courier costs for inter-library loans of materials, publications provided by the Law Society to each of the 48 law libraries, and the Federation of Ontario Law Associations' (FOLA) meeting expenses for their Library Committee.
66. Other centralized expenses are lower than budget by \$22,352 due to underspending in continuing education bursaries, publications and courier costs.
67. County and District law libraries grants (line 13) are in line with budget at \$4,857,573 and increased from 2015.
68. Bursaries, capital and special needs grants (line 14) of \$25,766 consist of computer refreshment grants, special needs grants and conference bursaries for library staff. Computer purchases by the libraries during the year do not follow a pattern.

#### Balance Sheet

69. Short-term investments (line 2) of \$402,159 consist of a one year GIC and accrued interest.
70. Accounts receivable (line 3) are long term disability benefits premiums paid by LibraryCo on the libraries' behalf for the past quarter. These receivables are usually repaid early in the next quarter.
71. Prepaid expenses (line 4) primarily represent the property and D&O insurance policies for LibraryCo and the libraries which were renewed at the end of April.

72. Accounts payable and accrued liabilities (line 6) are \$16,675 higher than 2015 due to the accrual for Phase 5's third invoice.
73. The General Fund has increased to \$247,113. The 2016 budget forecasted a decrease of \$143,000 during the year however, based on information available at September 30, 2016, estimates for year-end show a decrease in the General Fund of approximately \$70,000, meaning a projected General Fund balance at 2016 year-end of \$183,000. LibraryCo's budget for 2017 envisages using \$158,000 of this fund balance to finance operations next year.
74. The Reserve Fund has a balance at the end of September of \$500,000 comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000 in accordance with Board policy.

**LIBRARYCO INC.****Schedule of Actual and Budgeted Revenues and Expenses**

Stated in Dollars

For the nine months ended September 30

Unaudited

	2016 Actual	YTD Budget	Variance	Annual Budget	2015 Actual
<b>REVENUES</b>					
1 Law Society of Upper Canada grant	5,746,501	5,746,501	-	7,662,000	5,772,001
2 Interest income	3,683	-	3,683	-	4,699
3 <b>Total revenues</b>	<b>5,750,184</b>	<b>5,746,501</b>	<b>3,683</b>	<b>7,662,000</b>	<b>5,776,700</b>
<b>EXPENSES</b>					
<b>Head office/administration</b>					
4 Administration	228,750	228,750	-	305,000	322,500
5 Professional fees	9,405	22,500	13,095	30,000	11,028
6 Transition expenses	85,852	84,836	(1,016)	84,836	-
7 Other	13,449	37,903	24,454	49,300	26,188
8 <b>Total Head office/administration expenses</b>	<b>337,456</b>	<b>373,989</b>	<b>36,533</b>	<b>469,136</b>	<b>359,716</b>
<b>Law Libraries - centralized purchases</b>					
9 Electronic products and services	254,250	254,250	-	339,000	254,250
10 Group benefits and insurance	234,334	256,152	21,818	345,000	225,953
11 Other	46,773	69,125	22,352	130,700	59,514
12 <b>Total Law Libraries - centralized purchases</b>	<b>535,357</b>	<b>579,527</b>	<b>44,170</b>	<b>814,700</b>	<b>539,717</b>
13 County and District law libraries - grants	4,857,573	4,857,573	-	6,476,764	4,757,804
14 Bursaries, capital and special needs grants	25,766	38,400	12,634	44,400	24,397
15 <b>Total County and District Law Libraries Expenses</b>	<b>4,883,339</b>	<b>4,895,973</b>	<b>12,634</b>	<b>6,521,164</b>	<b>4,782,201</b>
16 <b>Total expenses</b>	<b>5,756,152</b>	<b>5,849,489</b>	<b>93,337</b>	<b>7,805,000</b>	<b>5,681,634</b>
17 <b>Surplus (Deficit)</b>	<b>(5,968)</b>	<b>(102,988)</b>	<b>97,020</b>	<b>(143,000)</b>	<b>95,066</b>

*This statement includes the revenues and expenses of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Balance Sheet**  
**Stated in Dollars**  
*As at September 30*  
**Unaudited**

	<b>2016</b>	<b>2015</b>
<b>Assets</b>		
<b>Current Assets</b>		
1 Cash	338,368	311,621
2 Short-term investments	402,159	402,447
3 Accounts receivable	20,925	19,980
4 Prepaid expenses	54,041	54,079
5 <b>Total Assets</b>	<b>815,493</b>	<b>788,127</b>
<b>Liabilities, Share Capital and Fund Balances</b>		
<b>Current Liabilities</b>		
6 Accounts payable and accrued liabilities	68,180	51,505
7 <b>Total Liabilities</b>	<b>68,180</b>	<b>51,505</b>
<b>Share Capital and Fund Balances</b>		
8 Share capital	200	200
9 General fund	247,113	236,422
10 Reserve fund	500,000	500,000
11 <b>Total Share Capital and Fund Balances</b>	<b>747,313</b>	<b>736,622</b>
12 <b>Total Liabilities, Share Capital and Fund Balances</b>	<b>815,493</b>	<b>788,127</b>

*This Balance Sheet includes the financial resources of the LibraryCo entity only.*

**LIBRARYCO INC.**  
**Statement of Changes in Fund Balances**  
**Stated in Dollars**  
*For the nine months ended September 30*

	2016		2015	
	General Fund	Reserve Fund	Total	Total
1 Balance, beginning of year	253,081	500,000	<b>753,081</b>	<b>641,356</b>
2 Surplus (Deficit)	(5,968)	-	<b>(5,968)</b>	<b>95,066</b>
<b>3 Balance, end of period</b>	<b>247,113</b>	<b>500,000</b>	<b>747,113</b>	<b>736,422</b>

*This statement includes the fund balances of the LibraryCo entity only.*

**TAB 10.3**

**FOR INFORMATION**

**INVESTMENT COMPLIANCE REPORTS**

75. Investment Compliance Reports for the General Fund, Compensation Fund, and Errors & Omissions Insurance Fund portfolios as at September 30, 2016 are for information and appear on the following page. No exceptions are noted.

**STATEMENT OF INVESTMENT COMPLIANCE  
SHORT TERM  
As at September 30, 2016**

Investment Parameters	Guidelines for Both	COMPENSATION	GENERAL
		Compliance	Compliance
1. <u>Asset Mix</u>			
Federal & provincial treasury bills	Allowed	Yes	Yes
Bankers acceptances	Allowed	Yes	Yes
Commercial paper	Allowed	Yes	Yes
Investment manager Money Market Fund	Allowed	Yes	Yes
Premium Savings Account	Allowed	Yes	Yes
FGP S/T Invest Fund	Allowed	Yes	Yes
2. <u>Quality Requirements</u>			
Commercial paper rating	Min. R1	N/A	N/A
Liquidity	Max. term to maturity of 365 days	Yes	Yes
3. <u>Quantity Restrictions</u>			
Commercial paper of a single corporate issuer	Max. 8% of Fund	Yes	Yes
4. <u>Other Restrictions</u>			
Equity securities	None	Yes	Yes
Direct investments in:			
resource properties	None	Yes	Yes
mortgages and mortgage-backed securities	None	Yes	Yes
real estate	None	Yes	Yes
venture capital financings	None	Yes	Yes
Derivatives	None	Yes	Yes




---

Fred Grady  
Senior Manager, Finance

**STATEMENT OF INVESTMENT COMPLIANCE  
LONG TERM  
As at September 30, 2016**

Investment Parameters	Guidelines	Target	COMPENSATION	GENERAL	E & O
			FUND	FUND	FUND
			Compliance	Compliance	Compliance
1. <u>Asset Mix</u>					
Cash and Short-Term	0 - 15%	0%	Yes	Yes	Yes
Equity investments	5 - 25%	15%	Yes	Yes	Yes
Bonds	60 - 95%	85%	Yes	Yes	Yes
2. <u>Quality Requirements</u>					
Bonds	Min. BBB		Yes	Yes	Yes
3. <u>Quantity Restrictions</u>					
Equities:					
Single holding	Max. 10%		Yes	Yes	Yes
Weight in portfolio > weight in S&P/TSX Composite Index	Varies		Yes	Yes	Yes
Derivatives etc.	None		Yes	Yes	Yes
Non-Canadian	None		Yes	Yes	Yes
Bonds:					
Government of Canada or Government of Canada guaranteed bond	26-100%	46%	Yes	Yes	Yes
Provincial Government and Provincial Government guaranteed bonds and municipal bonds	0-38%	18%	Yes	Yes	Yes
Corporate Bonds*	0-56%	36%	Yes	Yes	Yes
* Target for BBB bonds within corporate bonds of the fixed income portfolio	8-18%	8%	Yes	Yes	Yes



Fred Grady  
Senior Manager, Finance

**The Law Society of Upper Canada  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending September 30, 2016)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
Canadian Equity	5%	15%	25%	Y
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				Y
<b>Each bond portfolio may be invested within the following parameters:</b>				
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			Y
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			Y
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			Y
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Note: In mid-June 2014 Law Society Compensation Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

October 27, 2016  
Date:

Colin Ripsman  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

**The Law Society of Upper Canada  
General Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending September 30, 2016)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	60%	85%	95%	Y
<b>Total Fixed Income</b>	<b>75%</b>	<b>85%</b>	<b>95%</b>	<b>Y</b>
Canadian Equity	5%	15%	25%	Y
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
Minimum holding in Federal and Federally Guaranteed Bonds	FTSE TMX Short Term Bond Index Benchmark Weight minus 20%			Y
Provincials, Provincially Guarantees and Municipals	FTSE TMX Short Term Bond Index Benchmark Weight plus or minus 20%			Y
Maximum Total Corporate Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 20%			Y
Maximum Total Corporate BBB Issues	FTSE TMX Short Term Bond Index Benchmark Weight plus 10%			Y
Not more than 10% of the total market value of the bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Note: In mid-June 2014 Law Society General Fund moved into the FGP Short Term Bond Fund from the segregated Short Term Bonds.

Investment policy dated May 2016.

\*If policy not complied with, comment on specifics.

Date:

*October 28, 2016*

*Colin Ripsman*  
Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services



October 2016

Ms. Wendy Tysall  
Chief Financial Officer  
Osgoode Hall  
Finance Dept., 1<sup>st</sup> Floor  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6

Dear Wendy:

**Re: Manager Compliance Reporting**

For the Law Society of Upper Canada Errors and Omissions Insurance Fund, we wish to confirm that the portfolio being managed by Foyston, Gordon & Payne Inc. was in compliance with the Fund's Investment Policy Statement dated May 2016, for the quarter ending September 30, 2016.

Yours truly,

Colin Ripsman  
Vice President & Portfolio Manager –  
Institutional Client Services

**TAB 10.4****FOR INFORMATION****OTHER COMMITTEE WORK**

76. The Committee received pension plan governance fiduciary training and adopted a revised Statement of Investment Policies and Procedures for the Law Society's pension plan and the Plan Text. Under its mandate, the Committee is the administrator of the registered pension plan for the employees of the Society.
77. The Committee met with the Law Society's auditors, PwC, on planning the audit for the 2016 financial year including views on audit risks, the nature, extent and timing of audit work, as well as proposed fees and the terms of engagement.
78. The Committee discussed the process for a possible revision to the Investment Policy for the Law Society increasing the equity component of the portfolio.
79. The Committee commenced a review of the Treasurer Expense Reimbursement Policy to assess the need for revisions to the policy and reporting of activities.

TAB 11



November 22, 2016

## Update Report TAG – The Action Group on Access to Justice

### Addiction in the Legal Profession

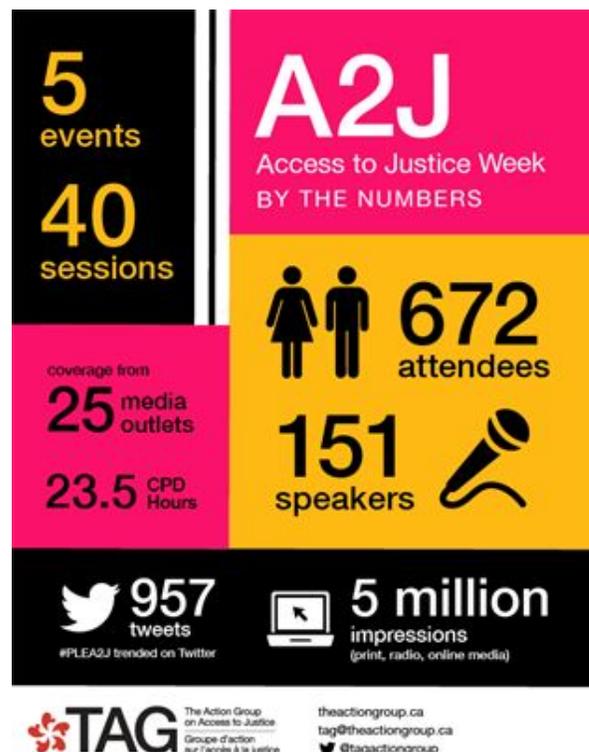
On November 28, 2016 TAG co-hosted a continuing professional development session with the Canadian Institute for the Administration of Justice titled *Addiction in the Legal Profession*. The keynote speaker was Patrick Krill, author of [“The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys.”](#) a study that was published in the *Journal of Addiction Medicine*. The discussion explored culture change, ethical issues and practical strategies related to addressing high rates of addiction in the legal profession. The webcast will be available on the [TAG website](#).

### Podcast

TAG will be launching a podcast in the coming weeks that explores different dimensions of the access to justice crisis. Receive the latest updates by subscribing to [TAG’s mailing list](#).

### Access to Justice Week

Access to Justice Week follow-up materials are now available on the [TAG website](#).



CONVOCATION ROSE AT 5:06 P.M.

Confirmed in Convocation this 23<sup>rd</sup> day of February, 2017.

---

Paul B. Schabas,  
Treasurer

This is **Exhibit M** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

**TAB 5**



## **Report to Convocation**

**June 29, 2017**

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### **Equity and Indigenous Affairs Committee/ Comité sur l'équité et les affaires autochtones**

**Committee Members**  
**Dianne Corbiere, Co-Chair**  
**Julian Falconer, Co-Chair**  
**Sandra Nishikawa, Vice-Chair**  
**Gina Papageorgiou, Vice-Chair**  
**Marion Boyd**  
**Suzanne Clément**  
**Robert Evans**  
**Avvy Go**  
**Howard Goldblatt**  
**Marian Lippa**  
**Isfahan Merali**  
**Sidney Troister**  
**Tanya Walker**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Marian MacGregor – 416-947-3464)**

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### For Information

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Update on the Discrimination and Harassment Counsel Program Review.....	TAB 5.6

**COMMITTEE PROCESS**

1. The Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones ("EIAC" or the "Committee") met on June 8, 2017. In attendance were Dianne Corbiere (Co-Chair), Julian Falconer (Co-Chair) Sandra Nishikawa (Vice-Chair) as well as Committee members Suzanne Clément, Marian Lippa, Isfahan Merali, Bob Evans and Sidney Troister.
2. Sonia Ouellet, representative of the Association des juristes d'expression française de l'Ontario ("AJEFO") was present. Paul Saguil, representative of the Equity Advisory Group ("EAG"), and Kathleen Lickers, representative of the Indigenous Advisory Group ("IAG"), also participated by telephone.
3. Staff members Jim Varro, Terry Knott, Karen Manarin, Marian MacGregor, Darcy Belisle and Hyacinth Khin were present.

TAB 5.1

## FOR DECISION

**INDIGENOUS FRAMEWORK****Motion**

4. That Convocation approve the Indigenous Framework for the Law Society, set out at [Tab 5.1.1](#).

**Introduction and Purpose**

5. As stated in the [Treasurer's September 22, 2017 Memorandum](#) (Treasurer's Memorandum) to the Equity and Indigenous Affairs Committee (EIAC),

the promotion of equity and diversity must prioritize reconciliation with Indigenous peoples. The Truth and Reconciliation Commission of Canada's Final Report reminded us of the reality that Indigenous peoples have a "deep and abiding distrust of Canada's...legal systems". The Law Society can play a part in working towards reconciliation.

6. At the Treasurer's direction, the EIAC, in partnership with the Indigenous Advisory Group (IAG), has developed an Indigenous Framework. The Framework is before Convocation for approval as a document to guide the Law Society's work within its mandate on Indigenous issues and the relationship with the Indigenous community.
7. The Indigenous Framework represents the Law Society's work towards fulfilment of the Law Society's mandate, particularly in relation to access to justice, and the equity and other principles by which it regulates, in relation to legal and regulatory issues affecting Indigenous peoples.
8. It also represents progress towards reconciliation with First Nations, Métis and Inuit communities, whose members are licensees, clients, individuals who interact with the justice and legal systems, and Ontarians to whom the Law Society, in accordance with s. 4.2(2) of the *Law Society Act*, owes a duty to act so as to facilitate access to justice.

**Background to Development of the Framework**The Indigenous Advisory Group (IAG)

9. Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission of Canada's Final Report (TRC Report), the Law Society expressed its

desire to formally re-establish and strengthen its relationship with Indigenous people on justice issues.

10. Reaching out to the Indigenous Bar Association for support, an interim IAG was formed to begin addressing issues related to reconciliation and Indigenous issues as well as the development of a permanent IAG. In April 2016, this interim Indigenous Advisory Group provided Terms of Reference to EIAC and was introduced to EIAC members.
11. On June 23, 2016, this IAG was publicly announced at the *Celebration of Indigenous Peoples* event at the Law Society.
12. The IAG was established as an independent body to:
  - a. advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to
  - b. promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
13. The Terms of Reference of the Indigenous Advisory Group are attached at [TAB 5.1.2](#).
14. To fulfill the Terms of Reference and mandate of the IAG, diverse representation amongst IAG members is key factor to facilitating discussion and decision on policies to address the wide ranging and unique realities that First Nations, Metis and Inuit communities and individuals across Ontario face in relation to the regulation of legal profession and access to justice. Thus, the IAG is inclusive of representatives from First Nations, Métis, Inuit communities that are located across the province, including southern and northern Ontario. Moreover, members are representative of the legal professions (lawyers and paralegals) and also include non-licensees. A range of experience is also key to maintaining balance within the group with experienced lawyers and early career representatives.
15. The IAG is also comprised of an Elders Council. Elders play central roles First Nations, Métis and Inuit communities. Among the many roles that Elders play, they hold significant wisdom in areas of traditional knowledge, are recognized as having that wisdom by their communities and Nations and have the capacity to transmit this knowledge to others. The role of the Elders Council is to establish a foundation of knowledge and wisdom to ground the IAG's efforts. The Elders Council also played a significant role in the formation of the IAG, having provided recommendations in relation to potential members.
16. As a key partner with the Law Society, the IAG, through the diverse voices of its membership and Elders Council, is helping to identify and assist the Law Society in

making critical changes to the practices and policies of the Law Society that are reflective of the critical justice and regulatory issues that affect First Nation, Métis and Indigenous communities and peoples in Ontario.

#### The EIAC and IAG: Collaborative Development of The Indigenous Framework

17. In September 2016, the IAG and the EIAC embarked on a collaboration in the development of the Law Society's Indigenous Framework. It was also decided in late 2016 that the IAG, as a partner with EIAC, the Chair and members of the Elders Council would attend EIAC meetings to provide updates on the work of the IAG and to provide Indigenous teachings to the EIAC members. This informs the work of the EIAC and enhances the knowledge of EIAC members.
18. The EIAC and the IAG met in November 2016 to discuss the development of the Indigenous Framework and began the development of a Draft Indigenous Framework. In collaboration with staff, the EIAC and the IAG made progress on the Indigenous Framework throughout 2017. In early June, the IAG completed its work on the Framework, which was reviewed at the June meeting of the EIAC.

#### **Key Features of the Indigenous Framework**

19. The Treasurer's Memorandum indicates that one of the initiatives that is to be undertaken by the EIAC in collaboration with the IAG is the development of an "Indigenous lens to all we do at the Law Society". The Indigenous Framework is responsive to this direction as it outlines a series of principles that form the scope of this lens. As stated in the Indigenous Framework:

The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.

20. The Indigenous lens sets the Indigenous Framework on four foundational pillars, which provide perspective and guidance for the Law Society in its interaction with Indigenous peoples. These four pillars, which were distilled from priorities outlined in documents that informed the development of the Indigenous Framework (e.g. Treasurer's Mandate), include:

- Creating and Enhancing Cultural Competency
- Achieving and Improving Access to Justice
- Promoting and Supporting Knowledge of Indigenous Legal Systems

- Taking Action on Reconciliation

21. A number of things, described below, have informed the development of a foundation, now realized in the Framework, to guide the actions of the Law Society in relation to Indigenous issues.
22. They include the Law Society's 2009 [\*Final Report of the Indigenous Bar Consultation\*](#), particularly around mentorship initiatives for Indigenous law students and licensees and the 94 Calls to Action outlined in the TRC Final Report, particularly those that provide direction to institutions and individuals on how to take action towards the achievement of reconciliation. It should be noted that a detailed response to the TRC Final Report is proposed within the priorities identified under the pillar of Taking Action on Reconciliation. This response is not to be limited to Calls to Action 27<sup>1</sup> and 28<sup>2</sup>, but is to include all matters identified in the report that intersect with the mandate of the Law Society. This includes but is not limited to issues such as cultural competency and equity for Indigenous people in the justice system.
23. The discussions within the Law Society between the EIAC, IAG and Law Society staff and information from events such as the 2016 Indigenous Bar Association Conference, where a review of Law Society functions in the context of reconciliation was led by the IAG Chair and members, have also been helpful in contributing to the content of the Indigenous Framework.
24. Critical provincial and national issues have also influenced the development of the Indigenous Framework, particularly those that intersect with justice issues, including but not limited to
  - a. the crisis of missing and murdered Indigenous women, girls and LGBTQ2S people and the current National Inquiry into Missing and Murdered Indigenous Women and Girls;
  - b. the Crisis of Indigenous Children and Youth in Care;

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<sup>1</sup> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

<sup>2</sup> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

- c. barriers to access to justice that disproportionately affect First Nations, Métis and Inuit peoples and the resulting and urgent need to accommodate the unique historical and cultural circumstances of Indigenous peoples and Indigenous approaches to conflict resolution in the justice system;
  - d. the overrepresentation of Indigenous people in legal proceedings, care and incarceration;
  - e. as identified in the TRC Final Report, “the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools”<sup>3</sup>; and
  - f. the historical suppression of and resonant need to support and promote Indigenous legal traditions, laws and their applications across Canada.
25. The EIAC and the IAG have also considered key policy and justice reports and documents that have been produced by provincial, national and international bodies, which are identified in Appendix A of **TAB 5.1.1**, in developing the Indigenous Framework.
26. Not unlike the TRC Final Report, many of these reports include recommendations that support improved relations between Indigenous and non-Indigenous peoples. These reports are provided in the Appendix to the Framework as they are critical in understanding the legacy of marginalization from contemporary discourse and action in relation to Indigenous peoples locally, nationally and globally, and the need to move forward to achieve equality and inclusion:
- Report of the Royal Commission on Aboriginal Peoples (also known as RCAP)
  - The Ipperwash Inquiry - Final Report
  - the *United Nations Declaration on the Rights of Indigenous Peoples*
  - The Iacobucci Report – First Nations Representation on Ontario Juries

### Next Steps

27. The Indigenous Framework provides the Law Society with a foundation to take action on reconciliation within the ambit of its mandate, which as the TRC states “is about

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<sup>3</sup> [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#) at Pg. 168.

establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country".<sup>4</sup>

28. In moving forward with the Framework, the Law Society will collaborate with the IAG beginning in the summer on the development of a work plan to be derived from the Framework which will set the groundwork for the implementation of the Framework. The EIAC will report to Convocation on the progress of this work in the fall of 2017.

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<sup>4</sup> [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#) at Pg. 6.



## Law Society of Upper Canada Draft Indigenous Framework

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**Draft Date: December 2, 2016  
May 1<sup>st</sup> 2017 (revised)  
June 5th 2017 (revised)**

**Prepared by the Policy Secretariat  
and the Indigenous Advisory Group**

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<sup>1</sup> These Terms of Reference are subject to amendment as of June 5th

## BACKGROUND

1. The Law Society of Upper Canada (Law Society), as a regulator of all lawyers and licensed paralegals in the province of Ontario, pursuant to its legislative mandate under the *Law Society Act R.S.O. 1990, Chapter L.8* (the *Act*) must have regard to the following duties:
  - To maintain and advance the cause of justice and the rule of law;
  - To act so as to facilitate access to justice for the people of Ontario;
  - To protect the public interest;
  - To act in a timely, open and efficient manner; and
  - Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized
2. In 2000, consistent with the duties encoded in the *Act*, the Law Society established a standing committee of Convocation called the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee or EIAC)<sup>2</sup>, to develop policies, programs and initiatives to best serve and promote an inclusive profession. Subject to Convocation's approval, the EIAC's mandate is to develop policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples. As a best practice, the EIAC consults with Indigenous peoples, Francophone citizens and other communities in the development of such policy options.
3. As part of the Law Society's efforts over the years to consult with Indigenous peoples, a number of working groups and strategies have been established including Rotiio>taties<sup>3</sup> in 1998.
4. Rotiio>taties was an independent board of Elders, Indigenous lawyers<sup>4</sup>, community representatives and law students who advised various bodies, including the Law Society, on Indigenous issues arising in law and the legal profession. The membership of Rotiio>taties changed over the years until its eventual transition to an Aboriginal Working Group.

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<sup>2</sup> By motion of February 9, 2017, EAIC amended its name to the Equity and Indigenous Affairs Committee.

<sup>3</sup> Meaning "continuously working" in the Mohawk language.

<sup>4</sup> At the time Rotiio>taties was created, paralegals were not yet licensees within the profession.

5. In 2009 Convocation approved the *Final Report of the Indigenous Bar Consultation* which identified a number of recommended actions the Law Society could undertake. These recommendations included:
  - Expanding the Members' Annual Report Practice Categories to include Aboriginal Law (to determine how many lawyers in Ontario self-identify as practicing Aboriginal law)
  - Mentoring and Networking Program
  - Continuing Legal Education Course in Aboriginal Law and Issues
  - Certified Specialist Program in Aboriginal Law<sup>5</sup>
6. In 2014, Convocation affirmed its commitment to place emphasis, through the EIAC, on Indigenous issues. In June 2016, the Indigenous Advisory Group<sup>6</sup> (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
7. In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and on November 5, 2016, the EIAC and the IAG held a joint meeting to begin the development of this Indigenous Framework.

## INTRODUCTION

8. The Indigenous Framework has been developed in accord with the priorities identified in three key Law Society documents:
  - Convocation's 2015-2019 Strategic Plan, as relevant to the EIAC's mandate;
  - Treasurer's Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016); and
  - Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada (TRC) Final Report (Sept. 2, 2016).<sup>7</sup>

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<sup>5</sup> 2009 *Final Report of the Indigenous Bar Consultation*, pp. 32-35.

<sup>6</sup> The Indigenous Advisory Group's Terms of Reference are attached as Appendix A. For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, non-Status, Inuit and Métis peoples.

<sup>7</sup> Each of these key documents has been reproduced in Appendix B.

9. The priorities identified in the above documents often intersect and coalesce, helping to shape this Framework into the following Four Pillars:
- Creating and Enhancing Cultural Competency
  - Achieving and Improving Access to Justice
  - Promoting and Supporting Knowledge of Indigenous Legal Systems
  - Taking Action on Reconciliation
10. The development of every initiative by the Law Society within any one of these Four Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of this Framework. The Treasurer, through his Memorandum to the Equity and Aboriginal Issues Committee, directed the EIAC to develop policies that will ensure an Indigenous lens to all the Law Society does.
11. The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws ; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.<sup>8</sup> Such principles are :
- **Love:** To know love is to know peace.
  - **Respect:** To honour all Creation is to have respect
  - **Courage:** To face life with courage is to know bravery
  - **Honesty:** To walk through life with integrity is to know honesty
  - **Humility:** To accept yourself as a sacred part of Creation is to know humility
  - **Wisdom:** To cherish knowledge is to know wisdom
  - **Truth:** To know of these things is to know truth

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<sup>8</sup> Inuuqatigiitsiarniq- Respecting others, relationships and caring for people.

Tunnganarniq- Fostering good spirit by being open, welcoming and inclusive.

Pijitsirniq- Serving and providing for family and/or community. Aajiqatigiinni- Decision making through discussion and consensus. Pilimmaksarniq- Development of skills through practice, effort and action.

Piliriqatigiinni/Ikajuqtigiingniq- Working together for a common cause.

Qanuqtuurniq- Being innovative and resourceful

Avatittinnik Kamatsiarniq- Respect and care for the land, animals and the environment. (Source:Tungasuvvingat Inuit Restorative Justice Initiative)

## THE FOUR FRAMEWORK PILLARS

### CREATING AND ENHANCING CULTURAL COMPETENCY<sup>9</sup>

12. The Law Society will work in partnership with the IAG to create and enhance cultural competency recognizing the continued need for licensees to be equipped with the cultural, historical and legal knowledge that will enable the provision of legal services in a manner that supports Indigenous peoples in addressing their unique interests, issues and challenges.
13. The Law Society prioritizes life-long competence for lawyers and paralegals. The Treasurer's Memorandum to the Equity and Aboriginal Issues Committee further contextualizes this priority, and directs the EIAC to develop programs that will enhance cultural competence internally to the Law Society (staff, Benchers) and the profession (licensees) in dealings with Indigenous peoples.<sup>10</sup>
14. Specific proposed approaches towards supporting cultural competency are detailed in the Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada Final Report and include knowledge enhancements, working with the Federation of Law Societies of Canada and developing skills-based training and other supports.

#### ***I. Creating and Enhancing Knowledge***

- a. Ensure Law Society ***staff and Benchers*** have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, Aboriginal-Crown relations and basic cultural protocols.
- b. Ensure ***licensees*** have the opportunity to access cultural competency training that includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.
- c. Ensure ***licensees that are required by their employment*** to engage directly with the Indigenous people of Ontario, undertake cultural competency training

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<sup>9</sup> To be clear, the language of inter-cultural "competency" comes from the Truth and Reconciliation Calls to Action. In applying the term within this Framework, the IAG is not asking everyone to adopt the cultural practices that are unique to the Indigenous peoples of Ontario, rather, to gain knowledge of and respect for each Indigenous person's right to maintain justice in their own way. The IAG will further develop what is the intended meaning within this Framework and include examination of systemic barriers and anti-racism measures.

<sup>10</sup> Convocation's 2015-2019 Strategic Plan prioritizes life-long competence for lawyers and paralegals. Priorities include enhancing licensing standards, improving and increasing practice supports and considering education beyond traditional Continuing Professional Development formats (e.g. possible multiple-day courses including practical application of knowledge and skills), and working with the professions to develop initiatives that institutionalize mentoring, advisory services and other types of support.

which includes the history of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.

- d. Work with **Deans, law faculty and students** of Ontario Law Schools and colleges (paralegal education) to enhance their knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- e. Develop and offer **Continuing Professional Development (CPD)** programs and legal education sessions independently and in collaboration with partners to illustrate the relevance of the *United Nations Declaration on the Rights of Indigenous Peoples* in Ontario and its relevance to various practice areas.

## **II. Working with Partners**

- a. Participate with **other Law Societies in Canada and the Federation of Law Societies** in examining whether changes can be made to the *National Standards* and other licensing requirements to enhance knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- b. In partnership with the **Indigenous Bar Association**, examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services.
- c. Engage with **other legal associations, advocates and professional entities** in Ontario to further educate, consult and inform.

## **III. Developing Skills-Based Training and Other Supports**

- a. Support, develop and offer independently and/or in partnership with other providers, skills-based training and practice supports in inter-cultural competency, conflict resolution, human rights and anti-racism.
- b. Support Deans, law faculty and students of Law Schools and Colleges in Ontario regarding how skills-based training in inter-cultural competency, conflict resolution, human rights, and anti-racism can be introduced into experiential learning in Law Schools and Colleges.
- c. Support the Law Society's Equity Legal Education programs—developed, as appropriate, in partnership with Deans, faculty and students of Law Schools as well as Indigenous knowledge keepers, practitioners, organizations and others—to address the legacy of the Indian Residential School experience and Canada's colonialist law and policy, Treaty and Aboriginal Rights, the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and current initiatives of First Nations, Métis and Inuit peoples.

## ACHIEVING AND IMPROVING ACCESS TO JUSTICE

15. The Law Society will work with the IAG recognizing that achieving and enhancing Access to Justice across Ontario is a key priority of the Law Society. It identifies strategic goals towards increasing collaboration with access to justice partners and other stakeholders as well as developing and implementing a more concrete access to justice action plan.
16. Additional priorities in the Strategic Plan, including engaging stakeholders and the public with responsive communications and increasing organizational effectiveness, will also support enhancing access to justice.
17. An important element of achieving and improving access to justice will be the review and improvement of the Mentoring and Networking Program to ensure it continues to deliver the objectives called for in 2009 by the Final Report of the Indigenous Bar Consultation.
18. The Treasurer's Memo provides further direction on specific priorities in relation to improving access to justice for Indigenous peoples, including improving access to the complaints process for Indigenous communities.
19. Improve the Law Society's hearing and regulatory process, including the Tribunal, in every interaction with Indigenous people.
20. Engage with the Law Society's Legal Aid Working Group to examine and improve the delivery of legal aid to Indigenous people community and address the financial barriers that prohibit meaningful access to justice.
21. Provide support for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), including:
  - a. Further support for Inquiry processes
  - b. Develop communication materials to promote awareness and access to justice, published in English, French and Indigenous languages.
  - c. Commit to address Inquiry recommendations.
22. Contribute to the elimination of the overrepresentation of Indigenous people in legal proceedings, care and incarceration through a number of channels:
  - a. Supporting the implementation of the recommendations of the Debwewin Implementation Committee's Final Report and Feathers of Hope.
  - b. Considering the results of TAG's cluster on "the Seventh Generation – the Crisis of Aboriginal Children and Youth in Care".

- c. Considering, as a justice system stakeholder, actions the Law Society can take and what collaborative opportunities exist with other stakeholders to promote alternatives to community sanctions, mandatory minimum sentences, bail procedurals and supporting culturally appropriate services to reduce domestic violence, dispute resolution mechanisms, Aboriginal healing lodges and halfway homes.
- d. Undertaking a study on barriers to access to justice in Northern Ontario, including the efficacy and standardization of the preparation of Gladue Reports (across all of Ontario).
- e. Expanding the Guidelines for Lawyers Representing Residential School Claimants to other areas within the Law Society's regulatory scope.

#### PROMOTING AND SUPPORTING KNOWLEDGE OF INDIGENOUS LEGAL SYSTEMS

23. The Law Society will work with the IAG recognizing that knowledge of Indigenous legal systems is an essential as part of the Law Society's commitment to prioritizing life-long competence and enhancing access to justice for Indigenous peoples. The promotion and support of knowledge of Indigenous legal systems can include:
- a. In response to Call to Action 50, support "the establishment of Indigenous Law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique characteristics of Aboriginal peoples in Canada."
  - b. Develop and offer Continuing Professional Development (CPD) programs and legal education sessions independently and with partners to support understanding, respect for and application of Indigenous legal systems in Ontario.
  - c. Develop and enhance services available to licensees, including practice supports and learning resources that could provide guidance on Indigenous justice issues, including but not limited to the application of the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, and the MMIWG.
  - d. Enhance the Law Society's Lawyer Referral Program and Mentorship to provide support and guidance on Indigenous justice issues.
  - e. Enhance the Member Assistance Program to provide for the well-being of Indigenous licensees in ways that promote and support Indigenous, traditional healing methods.
  - f. Enhance supports for small and solo firm practices within the Indigenous community (i.e. mentoring).

## TAKING ACTION ON RECONCILIATION

24. The Law Society recognizes that it will work in partnership with the IAG and be guided by Indigenous knowledge keepers, leaders and citizens, Indigenous practitioners and others, in the development of the Law Society's responses to the Final Report of the Truth and Reconciliation's Calls to Action.
25. The Law Society's priority to engage with stakeholders and the public with responsive communications will support strengthened relationships with Indigenous and non-Indigenous licensees and members of the public, as well as build greater awareness of the Law Society's role in the reconciliation process.
26. Specific proposed actions related to reconciliation are outlined in the TRC Responses document and include:
  - a. A statement of support for the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation.
  - b. A commitment to actively consider opportunities to collaborate with partners, including legal and professional entities in Ontario to extend the impact of the responses the Law Society undertakes and explore how the Law Society can support the work of partners in advancing reconciliation.
  - c. Examine, in partnership with the Indigenous Bar Association, the codes of professional conduct and the commentaries as well as the Federation Model Code to consider changes to promote reconciliation and culturally competent service delivery.

## **List of References**

**1982**

- [The Constitution Act, 1982](#)

**1996**

- [Report of the Royal Commission on Aboriginal Peoples](#)

**1999**

- [R v. Gladue, \[1999\] 1 S.C.R. 688](#)

**2005**

- [The Kelowna Accord](#)

**2007**

- [The Ipperwash Inquiry - Final Report](#)

**2008**

- [United Nations Declaration on the Rights of Indigenous Peoples](#)

**2012**

- [Forsaken: The Report of the missing Women Commission of Inquiry](#) (The BC Missing Women Commission of Inquiry)

**2013**

- [The Iacobucci Report – First Nations Representation on Ontario Juries](#)
- [Feathers of Hope: A First Nations Youth Action Plan](#)
- [Feathers of Hope: Justice and Juries](#)

**2015**

- [The Truth and Reconciliation of Canada Final Report](#)
- [Concluding observations on the sixth periodic report of Canada, United Nations Human Rights Committee](#)

*April 5th, 2016 Draft*

## Indigenous Advisory Group

### Draft

#### Terms of Reference

##### **Purpose:**

Adopting the United Nations Declaration on the Rights of Indigenous<sup>1</sup> Peoples as its framework, the Indigenous Advisory Group will advance and encourage the reconciliation of Indigenous peoples and Indigenous legal systems with the Canadian legal system (its Constitution, laws and legal framework) and promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

##### **Principles:**

The conduct of each member and the work of the Indigenous Advisory Group will be guided by the following core principles:

- Mutual Respect and Understanding: Each member will afford respect to and strive to understand one another, the diversity of Indigenous cultures, legal systems, clients' needs and experiences, and the issues to be addressed.
- Consensus Building: Each member and as a group will work to find consensus in the discussion of issues. Disagreements will be acknowledged and the members commit to compromise to find solutions wherever possible and practical.
- Cooperation: Each member and as a group will work together toward realizing our shared purpose.
- Words and Action Match: Each member and as a group will work to demonstrate integrity in carrying out our work. Efforts will be put forth towards prompt follow up on actions identified by the Advisory Group.
- Confidentiality: Each member commits to maintaining the confidences of the membership and the discussions that occur and to refrain from disclosing any material deemed confidential that may come into the possession of the group.

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<sup>1</sup>For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, Non-Status, Inuit and Métis peoples.

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**Mandate:**

To provide a forum:

- To promote the implementation of recommendations and calls to action from reports generated regarding Indigenous peoples and Canada's legal system, including the Truth & Reconciliation Commission of Canada's Final Report and Calls to Action (2015) and the First Nations Representation on Ontario Juries Report by Justice Frank Iacobucci (2013).
- To encourage partnerships and relationships between Indigenous peoples, the Indigenous Bar Association in Canada and the Law Society.
- To directly interact and partner with the Law Society, its Equity and Aboriginal Issues Committee, Benchers committees and affiliated working groups; Executive Director, Policy, Equity & Public Affairs; Director – Equity, Indigenous Initiatives Counsel and other staff at the Law Society on all issues affecting Indigenous peoples in relation to the Law Society;
- To identify priorities and make recommendations on the provision of legal services by and for Indigenous peoples in Ontario;
- To initiate, inform, promote and advance reform of policies, procedures, rules and regulations for the benefit of Indigenous peoples;
- To promote public awareness and educate members of the Law Society on issues related to and affecting Indigenous peoples;
- To review, comment and make recommendations on reports affecting Indigenous peoples with respect to the legal profession;
- To assess the progress and effectiveness of initiatives undertaken by the Law Society that address or relate to legal issues affecting Indigenous Peoples.

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### **Membership:**

The membership of the Indigenous Advisory Group will comprise of diverse representation by up to nine individuals from the Indigenous community, including lawyers and paralegals from various geographic regions of Ontario, Indigenous law professors, community members and youth.

Members of the Indigenous Advisory Group will be recommended for appointment by an "Elders Council" and confirmed by consensus by the existing membership.

Members of the "Elders Council" will be comprised of at least three individuals and will be selected by the membership of the Indigenous Advisory Group as needed. The Elders Council will forever be standing members of the Indigenous Advisory Group.

A "Proto Group" was established to create these Terms of Reference. Members of the "Proto Group" will become the initial members of the Indigenous Advisory Group and will serve as members over a period of six months to one year until such time as new membership of the Indigenous Advisory Group is determined.

### **Co-Chairs:**

There shall, whenever possible, be two co-Chairs that represent a gender balance. Co-chairs are appointed through consensus of the membership and will sit for a term of two years.

In the interests of continuity, relationship building and effectiveness, where possible these terms will be staggered to ensure an overlap and avoid situations where both co-Chairs begin their terms simultaneously.

Responsibilities of the Co-Chairs are shared, and include:

- chairing the meetings (on a rotating basis) of the Indigenous Advisory Group
- taking direction from the Indigenous Advisory Group;
- overseeing the work of the ad hoc / working committees;
- representing the Indigenous Advisory Group at Committees of the Law Society;

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- working with the Law Society's Executive Director, Policy, Equity & Public Affairs Department and Indigenous Initiatives Counsel in supporting the work of the Advisory Group.

### **Committees:**

Ad hoc / working committees will be struck as required and will be subject to time designated existence.

The work of the ad hoc/working committees will be shared with the Advisory Group for discussion and action, as necessary.

### **Quorum and Meetings:**

There must be quorum to constitute a meeting, which shall consist of at least 50% plus one of the membership participating in person or by telephone, at least one of whom must be a co-Chair.

The Indigenous Advisory Group will meet bi-monthly, or as deemed necessary by the Co-Chairs at a location agreed upon by the Indigenous Advisory Group.

Members will seek reimbursement from the Law Society for reasonable out of pocket expenses incurred for travel, where travel is determined necessary by the co-Chairs for the workings of the Advisory Group. The Law Society's Executive Director, Policy, Equity & Public Affairs will determine whether the Law Society will reimburse such expenses.

All decisions will be reached by consensus. Consensus means that all members participating in a meeting have an opportunity to openly and freely discuss issues raised with an earnest and sincere attempt to arrive at agreement and acceptance of a decision. Consensus does not require that all members must be present, nor does it necessitate that all members voice an opinion or agree.

All decisions will be recorded and a summary of each meeting will be prepared by an agreed upon member at the start of each meeting.

The Law Society will provide:

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- advice and resources as appropriate;
- support to facilitate meeting location, reports and minutes on a regular basis;
- prepare proposals, submissions etc as approved and directed by the Indigenous Advisory Group

**Review of the Mandate:**

This mandate may be subject to review as determined necessary by a consensus of the membership.

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**TAB 5.2**

**FOR DECISION**

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION**

29. **That Convocation approve the letters and public statements in the following cases:**
- a. **Chief Justice Sushila Karki – Nepal – letters of intervention and public statement presented at [TAB 5.2.1](#).**
  - b. **Fayzinisso Vohidova – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.2](#).**
  - c. **Muazzamakhon Kadirova (Muazzama Qodirova) – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.3](#).**
  - d. **Buzurgmehr Yorov – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.4](#).**
  - e. **Michel Togué – Cameroon – letters of intervention and public statement presented at [TAB 5.2.5](#).**

**Rationale**

30. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
- a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. determine if the matter is one that requires a response from the Law Society; and
  - c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

31. The Monitoring Group considered the following factors when making a decision about the impeachment proceedings against Chief Justice Sushila Karki in Nepal:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the impeachment proceedings against Chief Justice Sushila Karki fall within the mandate of the Monitoring Group.

32. The Monitoring Group considered the following factors when making a decision about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the travel ban against lawyer Fayzinisso Vohidova falls within the mandate of the Monitoring Group.
33. The Monitoring Group considered the following factors when making a decision about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) falls within the mandate of the Monitoring Group.
34. The Monitoring Group considered the following factors when making a decision about the conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the conviction and pending charges against lawyer Buzurgmehr Yorov falls within the mandate of the Monitoring Group.
35. The Monitoring Group considered the following factors when making a decision about the harassment and intimidation of lawyer Michel Togué in Cameroon:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the harassment and intimidation of lawyer Michel Togué falls within the mandate of the Monitoring Group.

## KEY BACKGROUND

### ***NEPAL – IMPEACHMENT PROCEEDINGS AGAINST CHIEF JUSTICE SUSHILA KARKI***

#### ***Sources of Information***

36. The background information for this report was retrieved from the following sources:
- a. Aljazeera;<sup>1</sup>
  - b. BBC;<sup>2</sup>

<sup>1</sup> "Nepal: Chief justice Sushila Karki suspended", *Aljazeera* (1 May 2017), online: <<http://www.aljazeera.com/news/2017/05/nepal-chief-justice-sushila-karki-suspended-170501124314347.html>>.

- c. The Himalayan Times;<sup>3</sup>
- d. Hindustan Times;<sup>4</sup>
- e. NDTV;<sup>5</sup> and
- f. Sri Lanka Guardian.<sup>6</sup>

### **Background**

37. Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.
38. On April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police,<sup>7</sup> accuses the Chief Justice of delivering biased verdicts,<sup>8</sup> interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.
39. On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

<sup>2</sup> "Nepal's first female chief justice faces impeachment", *BBC* (30 April 2017), online: <<http://www.bbc.com/news/world-asia-39764830>>.

<sup>3</sup> Keshav P. Koirala, "Impeachment proposal against CJ Karki on Silwal verdict's eve", *The Himalayan Times* (30 April 2017), online: <<https://thehimalayantimes.com/kathmandu/impeachment-proposal-filed-chief-justice-sushila-karki/>>.

<sup>4</sup> Anil Giri, "Nepal deputy PM quits over move to impeach first woman chief justice", *Hindustan Times* (30 April 2017), online: <<http://www.hindustantimes.com/world-news/nepal-deputy-pm-quits-over-move-to-impeach-first-woman-chief-justice/story-4JIYN3xW76lJHG9x6YqkvL.html>>; Anil Giri, "Nepal's Supreme Court reinstates Chief Justice Sushila Karki", *Hindustan Times* (5 May 2017), online: <<http://www.hindustantimes.com/world-news/nepal-s-supreme-court-reinstates-chief-justice-sushila-karki/story-SjXTxi8LmnasdqP1ZpLcsL.html>>.

<sup>5</sup> "Nepal Moves To Impeach First Woman Chief Justice Sushila Karki", *NDTV* (1 May 2017), online: <<http://www.ndtv.com/world-news/nepal-moves-to-impeach-first-female-chief-justice-sushila-karki-1688083>>.

<sup>6</sup> "Nepal: Moves to impeach Chief Justice — an assault on human rights — UN", *Sri Lanka Guardian* (5 May 2017), online: <<https://www.slguardian.org/2017/05/nepal-moves-to-impeach-chief-justice-an-assault-on-human-rights-un/>>.

<sup>7</sup> The court ruled that the government had violated existing processes and regulations in appointing Jaya Bahadur Chand as police chief instead of Navaraj Silwal, the highest-ranking officer.

<sup>8</sup> "We have decided to impeach Chief Justice Sushila Karki... after she visibly started taking sides in cases," Min Biswakarma, a member of the ruling coalition who proposed the motion. (See *NDTV, ibid.*)

40. Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

## **TAJIKISTAN – TRAVEL BAN AGAINST LAWYER FAYZINISSO VOHIDOVA**

### **Sources of Information**

41. The background information for this report was retrieved from the following sources:
- a. Amnesty International; and<sup>9</sup>
  - b. Human Rights Watch.<sup>10</sup>

### **Background**

42. Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.
43. Most recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Travel bans cannot be appealed. It should be noted that in the weeks that preceded this incident, Fayzinisso Vohidova had been interrogated several times by Tajik security services.
44. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically

<sup>9</sup> Amnesty International, “Tajikistani lawyers harassed, intimidated and imprisoned” (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, “In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan” (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>10</sup> Human Rights Watch, “Tajikistan: Travel Ban on Rights Lawyer” (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>; Human Rights Watch, “Tajikistan: Free Human Rights Lawyers” (4 May 2016), online: <<https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>>.

motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

### **Broader Issues Regarding Lawyers in Tajikistan**

45. Over the last three years, defence lawyers in Tajikistan who have taken up politically sensitive cases or cases related to national security and counter-terrorism have faced increasing harassment, intimidation and pressure as a result of their legitimate professional activities. In some cases, lawyers have been subjected to punitive arrest, criminal prosecution on national security-related or politically-motivated charges, and sentenced to long prison terms following unfair trials. Some lawyers have fled the country to avoid such persecution. Meanwhile, their families have also been targeted, harassed and threatened with reprisals by security forces and local authorities.
46. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the president and the government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. Few have been prepared to take up this role because of the associated risks, and some of those who have have faced harassment and threats as a result.
47. Amendments to legislation which concerns the regulation of the legal profession in Tajikistan (Law on Advokatura) have been instrumental in reducing the number of licensed lawyers by more than half and further restricting the already limited access to justice for Tajikistani citizens. Prominent lawyers and domestic and international experts and NGOs have expressed concern that some of the amending provisions (introduced in November 2015) threaten the independence of the legal profession and jeopardize access to legal services by: 1) bringing control over the licensing of lawyers firmly back into the hands of the executive branch of government, specifically the Ministry of Justice; 2) mandating that the deciding vote on who qualifies as a lawyer be held by a Deputy Minister of Justice; and 3) forcing all lawyers to pass the new qualification exams by the end of March 2016 or lose their licence to practice. As of May 2017, only about half of the previously licensed lawyers had successfully requalified under the new regulatory regime. Tajikistan now has approximately 600 lawyers (a significant decrease from over 1200 in 2015) for a population of over eight million, a ratio of approximately one lawyer per 13,000 inhabitants.

### **TAJIKISTAN – HARASSMENT OF LAWYER MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)**

#### **Sources of Information**

48. The background information for this report was retrieved from the following sources:

- a. Amnesty International; and<sup>11</sup>
- b. RadioFreeEurope / RadioLiberty.<sup>12</sup>

### **Background**

49. In October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.
50. Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.
51. As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.
52. In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.
53. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

### **TAJIKISTAN – CONVICTION AND PENDING CHARGES AGAINST LAWYER BUZURGMEHR YOROV**

<sup>11</sup> Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>12</sup> RadioFreeEurope / RadioLiberty, "Rights Watchdog Condemns Tajikistan's Crackdown On Lawyers" (24 May 2017), online: <<https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-yorov-mahkamov-kudratov/28505124.html>>; RadioFreeEurope / RadioLiberty, "Lawyer For Jailed Tajik Human Rights Attorney Flees To Germany" (30 March 2017), online: <<https://www.rferl.org/a/lawyer-jailed-tajikistan-human-rights-attorney-flees-germany/28399757.html>>.

### **Sources of Information**

54. The background information for this report was retrieved from the following sources:
- a. Amnesty International;<sup>13</sup>
  - b. Human Rights Watch;<sup>14</sup>
  - c. Lawyers for Lawyers;<sup>15</sup> and
  - d. RadioFreeEurope / RadioLiberty.<sup>16</sup>

### **Background**

55. The Law Society previously intervened on behalf of Buzurgmehr Yorov in February 2016<sup>17</sup> and January 2017.<sup>18</sup>
56. Several developments have taken place since the Law Society's last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.
57. On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.
58. As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina

<sup>13</sup> Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>14</sup> Human Rights Watch, "Tajikistan: Travel Ban on Rights Lawyer" (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>.

<sup>15</sup> Lawyers for Lawyers, "Tajikistan Court rejects appeal of lawyer Buzurgmehr Yorov" (11 April 2017), online: <<http://www.advocatenvooradvocaten.nl/12527/tajikistan-court-rejects-appeal-of-lawyer-buzurgmehr-yorov/>>.

<sup>16</sup> RadioFreeEurope / RadioLiberty, "Reading Of 11th-Century Poem Could Earn More Time For Imprisoned Tajik Lawyer" (14 December 2016), online: <<https://www.rferl.org/a/tajikistan-lawyer-rights-poem-yorov/28176119.html>>.

<sup>17</sup> The Law Society of Upper Canada, "Re: Detention of human rights lawyer Buzurgmehr Yorov" (4 February 2016), online: <[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Human\\_Rights\\_Monitoring\\_Group/Tajikistan-Buzurgmehr%20Yorov.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan-Buzurgmehr%20Yorov.pdf)>.

<sup>18</sup> The Law Society of Upper Canada, "Re: Convictions of Human Rights Lawyers Buzurgmehr Yorov and Nuriddin Makhkamov" (23 January 2017), online: <[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Human\\_Rights\\_Monitoring\\_Group/Tajikistan\\_Convictions%20of%20Human%20Rights%20Lawyers%20Buzurgmehr%20Yorov%20and%20Nuriddin%20Makhkamov.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan_Convictions%20of%20Human%20Rights%20Lawyers%20Buzurgmehr%20Yorov%20and%20Nuriddin%20Makhkamov.pdf)>.

Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

59. Buzurgmehr Yorov's family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.
60. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

## ***CAMEROON – HARASSMENT AND INTIMIDATION OF LAWYER MICHEL TOGUÉ***

### ***Sources of Information***

61. The background information for this report was retrieved from the following sources:
  - a. Council of Bars and Law Societies of Europe;<sup>19</sup>
  - b. Human Rights Watch;<sup>20</sup> and
  - c. NewNowNext.<sup>21</sup>

### ***Background***

62. Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.
63. In early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

<sup>19</sup> Council of Bars and Law Societies of Europe, "Re: Concerns regarding threats against human rights lawyer Michel Togué" (3 May 2017), online:

<[http://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/Cameroon\\_-\\_Cameroon/2017/EN\\_HRL\\_20170503\\_Cameroon\\_Concerns-regarding-threats-against-human-rights-lawyer-Michel-Togue.pdf](http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Cameroon_-_Cameroon/2017/EN_HRL_20170503_Cameroon_Concerns-regarding-threats-against-human-rights-lawyer-Michel-Togue.pdf)>.

<sup>20</sup> Human Rights Watch, "Your Children Will Die if You Don't Stop" (13 March 2017), online: <<https://www.hrw.org/news/2017/03/13/your-children-will-die-if-you-dont-stop>>.

<sup>21</sup> Brandon Voss, "Cameroon Lawyer Told That His Family Will Die If He Doesn't Stop Defending LGBT People", *NewNowNext* (8 April 2017), online: <<http://www.newnownext.com/cameroon-lawyer-michel-togue-death-threats-africa-homophobia/04/2017/>>.

64. Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

## FOR INFORMATION

### HUMAN RIGHTS MONITORING GROUP RESPONSES TO INTERVENTIONS

65. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
  
66. In June 2017, the Monitoring Group received two responses to the Law Society’s recent intervention letters:
  - a. The Monitoring Group received a response from the High Commissioner of Cameroon, regarding the Law Society’s intervention in the case related to the arrest and detention of Justice Paul Ayah Abime (Cameroon);
  - b. The Monitoring Group received a response from Front Line Defenders, thanking the Law Society for its efforts regarding the Law Society’s intervention in the case of Emil Kurbedinov (Crimea).

## HUMAN RIGHTS MONITORING GROUP ANNUAL UPDATE

67. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
68. There are seven bench member members of the Monitoring Group: Teresa Donnelly (Chair), Robert Evans, Julian Falconer, Avvy Go, Judith Potter, Heather Ross and Joanne St. Lewis.

### Orientation Materials

69. Members of the Monitoring Group, including new members, receive orientation materials that include:
- The mandate of the HRMG
  - Information about interventions and the interventions to date
  - Criteria for intervention
  - The Basic Principles on the Role of Lawyers and on the Independence of the Judiciary
  - The Facilitating International Access to Justice Through Intervention – Report to Convocation October 2014.
  - Information about the Human Rights Award
  - Information about Human Rights Monitoring Group events

### Interventions

70. An extensive Access to Justice document was prepared in October 2014 and presented to Convocation entitled *Facilitating International Access to Justice Through Intervention*. An updated report was provided to Convocation in January 2017. It will now be kept as a living document that is continually updated each time the Law Society intervenes.
71. The Monitoring Group has also prepared two different lists which will be updated when the Law Society intervenes in a case. The lists are organized by country and by the name of the person on whose behalf the Law Society has intervened. The intent of these lists is to ensure that the Monitoring Group can easily and quickly determine if the Law Society has previously intervened in the country or on behalf of the individual or group.

72. In an effort to standardize the language for interventions, the Monitoring Group has prepared a document that contains suggested wording for its interventions to ensure that it is consistent across its interventions.
73. The Monitoring Group continues to bring forward interventions in cases of lawyers and judges who face human rights violations as result of their legal work.

#### **Outreach to National and International Partners**

74. To ensure that the Monitoring Group understands the work of our national and international partners, it has invited guests to attend its meetings. This process has been very rewarding, informative and validating for the work of the Monitoring Group. It is in the process of collating its notes of these meetings into one document so that going forward, starting in September 2017, it will have substantive discussion about how to expand its role within the mandate and also collaborate with its partners.
75. Speakers to date have been:
  - November 10, 2016 - Andrew Guaglio, Board Member, Lawyers' Rights Watch Canada
  - January 12, 2017 - Marina Brilman, International Human Rights Policy Adviser, International Department The Law Society of England and Wales
  - February 9, 2017 - Alex Neve, Secretary General, Amnesty International
  - April 6, 2017 - Judith Lichtenberg, Board Member, Lawyers for Lawyers
  - June 8, 2017 – Farida Deif, Canada Director, Human Rights Watch

#### **Human Rights Award**

76. The Law Society presented the second Human Rights Award to Dr. Cindy Blackstock and Waleed Abu al-Khair. The Awards lunch was very moving and the ceremony was very powerful. The Award reinforces the Law Society's commitment to protecting human rights.

#### **Looking forward to 2017-2018**

77. For 2017-2018, the Monitoring Group intends to focus on the following:
  - Finalizing the standardized intervention document
  - Reviewing how to expand its role within the mandate
  - Increasing collaboration with national and international partners
  - Continuing to intervene in cases
  - Continuing to promote human rights through education and outreach.

TAB 5.2.1

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****CHIEF JUSTICE SUSHILA KARKI**

H.E. Pushpa Kamal Dahal  
Prime Minister of the Federal Democratic Republic of Nepal  
Office of the Prime Minister and Council of Ministers  
Singh Durbar  
Kathmandu, Nepal  
Fax: 4211065, 4211086, 4211038, 4211021, 4211047  
P.O. Box: 23312  
Email: info@nepal.gov.np

Your Excellency:

**Re: Impeachment proceedings against Chief Justice Sushila Karki**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the impeachment proceedings against Chief Justice Sushila Karki. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise

to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law”.

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

In light of these circumstances, the Law Society urges Your Excellency to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;
- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Kali Prasad Pokhrel  
Ambassador of Nepal

Embassy of Nepal  
408 Queen Street  
Ottawa, Ontario  
K1R 5A7  
Fax: 613 422 5149  
Email: nepalembassy@rogers.com; eonottawa@mofa.gov.np

Mr. Raman Kumar Shrestha, President  
Nepal Bar Council  
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Kupondole, Lalitpur, Nepal  
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Sher Bahadur K.C., President  
Nepal Bar Association  
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The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
125 Sussex Drive  
Ottawa, Ontario  
K1A 0G2  
Email: chrystia.freeland@international.gc.ca

Consulate of Canada in Kathmandu  
GPO Box 3596  
Kathmandu  
Nepal

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Impeachment proceedings against Chief Justice Sushila Karki in Nepal**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to Prime Minister Pushpa Kamal Dahal, the Prime Minister of the Federal Democratic Republic of Nepal, expressing our deep concern over reports of the impeachment proceedings against Chief Justice Sushila Karki.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Raman Kumar Shrestha, President, Nepal Bar Council
- Sher Bahadur K.C., President, Nepal Bar Association

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue "annoyed the politicians".

In light of these circumstances, the Law Society urges the Government of Nepal to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;

- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.2

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****FAYZINISSO VOHIDOVA**

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

**Re: Travel ban against lawyer Fayzinisso Vohidova**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the travel ban against lawyer Fayzinisso Vohidova. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

It has come to the Law Society's attention that on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a "defect" in her passport and that she "had no right to leave Tajikistan". Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

According to information received by the Law Society, in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to Your Excellency through social media, criticizing the government's imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The

Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and

protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor

New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brillman, International Human Rights Policy Adviser, The Law Society of England and Wales

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Travel ban against lawyer Fayzinisso Vohidova in Tajikistan**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the travel ban against lawyer Fayzinisso Vohidova.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

More recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights (ICCPR)*, which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

Reports further indicate that in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova’s situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;

- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.3

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)**

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

**Re: Harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova)**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova). When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's

case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and

protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor

New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

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Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brillman, International Human Rights Policy Adviser, The Law Society of England and Wales

### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova).

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;

- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.4

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT****BUZURGMEHR YOROV**

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

**Re: Conviction and pending charges against lawyer Buzurgmehr Yorov**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the conviction and pending charges against lawyer Buzurgmehr Yorov. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society first intervened on behalf of Buzurgmehr Yorov in February 2016 and again in January 2017. It has come to the Law Society's attention that several developments have taken place since its last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.

On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.

As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

Further compounding Buzurgmehr Yorov's situation is the fact that his family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.

The Law Society of Upper Canada is deeply troubled by Buzurgmehr Yorov's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

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The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally release Buzurgmehr Yorov;
- b. pending his release, ensure that Buzurgmehr Yorov is detained in an official place of detention; is not subjected to torture or other ill-treatment; and has regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;
- c. immediately and unconditionally vacate the convictions rendered against Buzurgmehr Yorov;
- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmadaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor  
New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

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has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

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regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;

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- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.2.5

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

### MICHEL TOGUÉ

H.E. Paul Biya  
President of the Republic of Cameroon  
Presidency of the Republic  
Civil Cabinet  
Communication Unit  
E-mail: cellcom@prc.cm

Your Excellency:

#### **Re: Harassment and intimidation of lawyer Michel Togué**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the harassment and intimidation of lawyer Michel Togué. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges Your Excellency to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and

- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Solomon Azoh-Mbi  
High Commissioner of the Republic of Cameroon in Canada  
High Commission for the Republic of Cameroon in Canada  
170 Clemow Avenue  
Ottawa, Ontario  
K1S 2B4  
Fax: 613-236-3885  
E-mail: cameroun@rogers.com

Ngnie Kamga Jackson  
President of the Cameroon Bar Association  
816-824 Rue Frédéric  
Foe, BP 13488  
Yaoundé, Cameroon

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: chrystia.freeland@parl.gc.ca

Jean Pierre Lavoie, The High Commissioner

The High Commission of Canada  
P.O. Box 572  
Yaoundé, Cameroon

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Letter to be sent to:

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- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
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Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges the Government of Cameroon to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

TAB 5.3

**IN CAMERA**  
**FOR DECISION**

**APPOINTMENT OF ALTERNATE DISCRIMINATION AND  
HARASSMENT COUNSEL**

**Motion**

78. **That Convocation appoint three Alternate Discrimination and Harassment Counsel (DHCs) as set out in this report for a term of one year, in accordance with the provisions of By-law 11 – Regulation of Conduct, Capacity and Professional Competence.**

**Background**

DHC Program Review and Impact on the Alternate DHCs

79. On February 9, 2017 the Committee approved the review of the Discrimination and Harassment Counsel Program in accordance with the Challenges Final Report, Recommendation 12 (1).
80. At its February 9, 2017 meeting, EIAC reviewed the contracts of the Alternate DHCs, David Bennett and Lynn Bevan.
81. The review was prompted by:
- a. EIAC's engagement in the Program review; and
  - b. The fact that the contracts for the Alternate DHCs were set to expire on May 28, 2017.
82. EIAC determined that in keeping with the full review planned to commence in the spring of 2017, and considerations for the review as they related to the Alternate DHCs, described below, the contracts of the DHC alternates would not be renewed.
83. EIAC decided to engage in a full recruitment process for the DHC Alternates. At its April 6, 2017 meeting, EIAC adopted the Recruitment Process for the Discrimination and Harassment Counsel Alternates in accordance with By-law 11 s.17.<sup>1</sup>

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<sup>1</sup> 17. (1) Convocation shall not appoint a person as Alternate Counsel unless the appointment is recommended by the standing Committee:

**Vacancy in office**

- (2) If the Committee wishes Convocation to appoint another person as Alternate Counsel, the Committee shall give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

84. EIAC considered that the review of the DHC Program was an opportunity to consider expanding the role of the Alternate DHC to give them more exposure than they would typically be afforded <sup>2</sup> and to provide complainants with options as to who they wish to consult.
85. In its preliminary assessment, EIAC determined that the DHC program should still be operationalized through a central number/email that is answered by the DHC. In the initial contact with the complainant the DHC would determine whether this was a matter within the scope of the DHC as established in By-law 11. Complainants with matters within the scope of the DHC would then be given the option of continuing to speak with the DHC to discuss their complaint or provided with the profile(s) of the alternate(s) and the opportunity to work with the Alternate DHC.
86. In circumstances where a conflict arises and the chosen DHC is unable to act, one of the other DHCs would be assigned. Other circumstances may also preclude a specific DHC from being available to complainants.

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**Same**

- (3) If the Committee is not able to give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, the Committee shall,
- (a) conduct a search for candidates for appointment as Alternate Counsel in accordance with procedures and criteria established by the Committee; and
  - (b) at the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

**Additional candidates**

- (4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

**Recommendations considered in absence of public**

- (5) Convocation shall consider the Committee's recommendations in the absence of the public.

<sup>2</sup> For the past 12 years the role of the Alternate DHC has been to act in the place of the DHC. Typically the Alternate has taken over the role of DHC in the following circumstances:

- a. Scheduled vacation
- b. Work commitments (particularly those that take the DHC out of town for an extended period)
- c. Conflict of interest
- d. Extended sick leaves
- e. Extended absences (leave of absence)

Early on in her appointment as DHC Cynthia Petersen was advised that should she be "unable to perform the function" she was first to contact David Bennett and only if he was "unable to perform the function" would Lynda Bevan be contacted. This has resulted in an uneven distribution of work between the Alternates with more work being directed to David Bennett over Lynda Bevan. All advertising efforts, as well as promotional and educational events, have highlighted the role of Cynthia Petersen as DHC and have typically not mentioned (or highlighted) the role of the Alternates. Other than in exceptional circumstances the Alternates do not participate in delivering educational or information sessions.

87. In EIAC's view, the opportunity that this arrangement offers is that complainants are given a choice of a person from whom they seek counsel, which gives a higher profile and larger role to Alternate DHC. The EIAC also thought that this may lead to increased usage of the DHC Program.
88. These considerations established the basis for the recruitment of the alternate DHCs, and the recruitment process in which the EIAC engaged, through its recruitment committee.

### **Recruitment Process**

89. A job posting, in French and English, was placed in the Ontario Reports. The position posting was also advertised on the Law Society website and circulated widely, to over 100 individuals and associations, with a purposeful outreach to diverse and equality seeking groups/associations and individuals.
90. The Recruitment Committee, in keeping with the process approved by EIAC, consisted of the following members:
- Sandra Nishikawa, Co-Chair of EIAC
  - Tanya Walker, Licensee Bencher
  - Gisele Chretien, Appointed Bencher
  - Michael Doi, Member of EAG
  - Constance Simmonds, Member of IAG
  - Marian MacGregor, Equity Advisor, support to the Committee
  - Suzanne Douglas, Senior Resource Manager, support to the Committee
91. In response to the posting, the Law Society received 32 applications, each of whom were mapped onto a matrix which identified the experiences and skills vis-à-vis the DHC criteria.<sup>3</sup>

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#### <sup>3</sup> DHC Criteria

- a. Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.
- b. Knowledge of the Law Society's complaint procedure and discipline process.
- c. Knowledge of the Law Society's Rules of Professional Conduct and Paralegal Rules of Conduct.
- d. Knowledge of alternate dispute resolution techniques including: mediation, complaints investigations and legal actions through courts.
- e. Proven ability and experience in applying alternate dispute resolution techniques.
- f. Knowledge of resources and options available to assist complainants who allege harassment or discrimination.
- g. The ability to assist complainants to take action to resolve complaints.

92. The Recruitment Committee eventually narrowed the group of proposed candidates to eight applicants who received telephone interviews.
93. Following this assessment and discussion, the Recruitment Committee decided to conduct four in-person interviews before the Committee. In selecting Applicants for an interview, special attention was paid to Applicants who identified as bilingual (French and English) and have experience with or knowledge of Indigenous communities.
94. At the close of the discussion the Recruitment Committee prepared a recommendation for EIAC's consideration.
95. After discussions held on June 8, 2017, EIAC unanimously recommends the appointment of three candidates, whose qualifications are summarized below.

### **The Candidates**

96. As By-Law 11 requires a ranked list of the candidates, the candidates who are recommended are ranked in the order show below. However, the recommendation of EIAC is that all three candidates be appointed Alternate DHCs.

- 1 Fay Faraday
- 2 Lai-King Hum
- 3 Natasha Persaud

### Fay Faraday

97. *Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.*

Ms. Faraday was Called to the Bar in 1996 and has focused her practice exclusively in the areas of human rights and labour law. Her work on behalf of equality-seeking groups has addressed a broad range of systemic human rights issues including racial discrimination, gender and work, rights of persons with disabilities, pay equity, employment equity, poverty, income security, LGBTQ rights and rights of Indigenous

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- h. Experience in providing services on a one-on-one basis.
  - i. Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination.
  - j. Knowledge of diversity issues particularly as they impact equality seeking communities.
  - k. Cultural competency in working with diverse communities.
  - l. Knowledge of Indigenous ways of thinking and of the Indigenous community.
  - m. Ability to converse in English and French is an asset.

communities. Ms. Faraday has appeared before administrative Tribunals and all levels of court including the Supreme Court of Canada.

98. *Knowledge of the Law Society's complaint procedure and discipline process. Knowledge of the Law Society's Rules of Professional Conduct and Paralegal Rules of Conduct.*

In addition to her human rights practice, Ms. Faraday is currently appointed as the Course Director for Osgoode Hall Law School's first year mandatory course "Ethical Lawyering in a Global Community" and holds the Packer Visiting Chair in Social Justice at York University. As Course Director her priority is to ensure that there is a focus on lawyers' equity and anti-discrimination obligations, cultural competence and access to justice for marginalized communities. She utilizes materials from the Law Society including the Rules of Professional Conduct and the Discrimination and Harassment Counsel reports to assist in illustrating these points and the obligations of all professionals.

99. *Knowledge of alternate dispute resolution techniques including: mediation, complaints investigations and legal actions through courts. Proven ability and experience in applying alternate dispute resolution techniques.*

Ms. Faraday has an extensive practice background appearing at all levels of court including appearing before the Supreme Court of Canada. She understood and has put into practice alternate dispute resolution techniques and provided practical examples that illustrate her expertise in this area.

100. *Knowledge of resources and options available to assist complainants who allege harassment or discrimination. The ability to assist complainants to take action to resolve complaints. Experience in providing services on a one-on-one basis.*

Ms. Faraday has extensive experience in her 20-year legal career in human rights and is well equipped to outline and explain the various options to assist complainants. Ms. Faraday understands the power imbalances embedded in the situations and relationships being discussed. Ms. Faraday notes that she is often sought out by racialized lawyers and law students to act as a mentor in working through issues of systemic discrimination that they have encountered within the legal profession.

101. *Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination. Knowledge of diversity issues particularly as they impact equality seeking communities.*

In addition to the above noted skills and experience, Ms. Faraday also works with community-based organizations to develop strategic law reform strategies so as to address systemic discrimination issues. Ms. Faraday has an extensive publication record in peer reviewed academic journals, book chapters and books on the broad

themes of equity and human rights issues. Her publication record also extends to law reform reports and legislative briefs. Ms. Faraday drew upon her own experiences as a racialized lawyer to give a deeper understanding of the power dynamics embedded in law and her approach to advocacy in dealing with discrimination and harassment.

102. *Cultural competency in working with diverse communities. Knowledge of Indigenous ways of thinking and of the Indigenous community.*

Ms. Faraday had a thorough and deep understanding of the unique barriers facing Indigenous complainants accessing the Discrimination and Harassment Counsel and the legal system more generally. She had a thoughtful and comprehensive understanding of the impact colonialism has on Indigenous communities and used examples from her own litigation practice in which she represented Elders in a dispute regarding Treaty Lands to illustrate her points.

#### Lai-King Hum

103. *Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.*

Ms. Hum was Called to the Bar in Quebec in 1997 and Ontario in 1999 and is fluent in English and French. Ms. Hum's practice is focused in the areas of employment and labour law, human rights and administrative law and most often represents employers. She has a special focus on workplace investigations and mediations particularly as they relate to human rights. More recently, Ms. Hum was appointed Deputy Judge in the Small Claims Court in early 2017.

104. *Knowledge of the Law Society's complaint procedure and discipline process. Knowledge of the Law Society's Rules of Professional Conduct and Paralegal Rules of Conduct.*

As a former Bilingual Complaints Resolution Counsel at the Law Society from 2004-2007 Ms. Hum has solid experience and knowledge with the Law Society's complaints procedure.

105. *Knowledge of alternate dispute resolution techniques including: mediation, complaints investigations and legal actions through courts. Proven ability and experience in applying alternate dispute resolution techniques.*

Ms. Hum displayed a thorough understanding of alternative dispute resolution theory and processes and was able to relate and apply this to case specific experiences. She also brings perspectives to mediation; as a judge, an investigator/mediator and as a lawyer. She has a strong litigation background and has appeared in administrative Tribunals and courts throughout her career.

106. *Knowledge of resources and options available to assist complainants who allege harassment or discrimination. The ability to assist complainants to take action to resolve complaints. Experience in providing services on a one-on-one basis.*

Ms. Hum's practice has a focus on workplace investigations as they relate to harassment and discrimination. She demonstrates a complete understanding of the resources and options available to complainants from informal resolutions that involve just the complainant and licensee (where she notes the DHC can play a supporting role in the background) to more formal resolutions that involve mediation (with a possible role for the DHC) and/or litigation options for the complainant. Ms. Hum has experience providing one-on-one services in her practice and throughout her career. Her law firm also runs a bi-weekly pro-bono legal clinic at the Scadding Court Community Centre. Ms. Hum recently became an Advisor in the Law Society's Coach and Advisor Network (CAN

107. *Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination. Knowledge of diversity issues particularly as they impact equality seeking communities.*

In addition to the skills and experiences noted above Ms. Hum demonstrated a thoughtful and deep understanding of the issues facing racialized complainants. She noted the important work begun by Convocation in unanimously passing the 13 Recommendations and the review of the Discrimination and Harassment Counsel as being one important step. She noted the potential to expand the outreach and educational role of the DHC as an opportunity to address systemic discrimination issues.

108. *Cultural competency in working with diverse communities. Knowledge of Indigenous ways of thinking and of the Indigenous community.*

Ms. Hum demonstrated knowledge of the barriers facing Indigenous complainants and emphasized the role that colonialism plays in creating power imbalances. Ms. Hum also noted that lack of knowledge of the DHC role and proximity were additional barriers. Lastly, Ms. Hum noted that the DHC will need to be particularly sensitive to this communities needs and to find opportunities to do appropriate outreach.

#### Natasha Persaud

109. *Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.*

Ms. Persaud was Called to the Bar in 2008 and has spent her practice immersed in human rights issues. In her former role as Staff Lawyer at the Human Rights Legal Support Centre and now in her own private practice Ms. Persaud provides advice and representation to those experiencing human rights violations. She is knowledgeable in

the most recent jurisprudence and appears before the Human Rights Tribunal and civil courts regularly.

110. *Knowledge of the Law Society's complaint procedure and discipline process. Knowledge of the Law Society's Rules of Professional Conduct and Paralegal Rules of Conduct.*

Ms. Persaud displayed a thorough understanding of the Law Society's rules and procedures. In the context of her role as Review Counsel at CLASP Ms. Persaud has the opportunity to impress the importance of ethical practises to the law students working in the clinic.

111. *Knowledge of alternate dispute resolution techniques including: mediation, complaints investigations and legal actions through courts. Proven ability and experience in applying alternate dispute resolution techniques.*

Ms. Persaud fully understands the role of alternate dispute resolution techniques and engages in mediation frequently in the resolution of her cases. She provided practical examples of how she utilized mediation to create long term solutions for her clients that was consistent with their goals and desired outcomes. She is clear, compassionate and empathetic to clients with systemic discrimination issues and advises clients on the realistic outcomes vis-à-vis their goals.

112. *Knowledge of resources and options available to assist complainants who allege harassment or discrimination. The ability to assist complainants to take action to resolve complaints. Experience in providing services on a one-on-one basis.*

As a community based lawyer Ms. Persaud has a solid understanding of the resources available to complainants and brings a special knowledge of the issues facing complainants who are not in the legal profession and are from diverse backgrounds. Ms. Persaud works directly with clients in her private practice and as Review Counsel.

113. *Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination. Knowledge of diversity issues particularly as they impact equality seeking communities.*

In addition to the skills and experience noted above Ms. Persaud brings to the role her own personal experience with discrimination within the legal profession. As one of only a few law students and now lawyers who wear the hijab Ms. Persaud related to experiences of discrimination both explicit and implicit. Her ability to reflect on those experiences and use them as moments of education allowed her to reflect on the wider role that the DHC can play in terms of educating the legal profession. From her unique position at one of Ontario's largest law schools she plays the role of mentor to other students who identify as racialized and can see the opportunities for education and outreach within the Discrimination and Harassment Counsel role.

114. *Cultural competency in working with diverse communities. Knowledge of Indigenous ways of thinking and of the Indigenous community.*

Ms. Persaud demonstrated knowledge of the barriers facing Indigenous complainants and emphasized that colonialism is still impacting Indigenous communities. Ms. Persaud noted that the impacts of the Indian Residential School system has engendered systemic violence that has yet to be resolved. It will be necessary to engage in appropriate and specific outreach to the Indigenous community about the office of the DHC and its role.

TAB 5.4

***IN CAMERA***  
**FOR INFORMATION**

**INFORMATION ON THE OFFICE OF THE DISCRIMINATION  
AND HARASSMENT COUNSEL**

115. On June 23, 2017, the Law Society's Discrimination and Harassment Counsel (DHC), Cynthia Petersen, resigned her position as DHC as a result of her appointment to the Ontario Superior Court of Justice.
116. On June 29, 2017, Convocation is being requested to appoint three Alternate Discrimination and Harassment Counsel (DHCs) as set out in a separate *in camera* report in the June Convocation Materials. If the appointments are approved, the Law Society will have three Alternate DHCs in office.
117. Under the DHC provisions in By-Law 11, section 22 provides as follows:

Alternate Counsel: Counsel unable to act

22. (1) If the Counsel for any reason is unable to perform the function of the Counsel during his or her term in office, an Alternate Counsel shall perform the function of the Counsel.

Selection of Alternate Counsel

(2) The Alternate Counsel mentioned in subsection (1) shall be chosen by the Counsel or, if the Counsel is unable to do so, by the Chief Executive Officer.

Alternate Counsel: Counsel office vacant

**(3) Despite subsection (1), if there is a vacancy in the office of the Counsel, an Alternate Counsel chosen by the Committee shall perform the function of the Counsel until a Counsel is appointed under section 15.**

(emphasis added)

118. In accordance with subsection 22(3), the EIAC will be appointing an Alternate DHC from among the three Alternate DHC to perform the function of the DHC until a DHC is

appointed in accordance with the By-Law provisions set out in section 15 of the By-Law<sup>1</sup>, if Convocation approves the appointment of the three Alternate DHCs.

119. The co-chairs of EIAC anticipate that the name of the Alternate DHC to be appointed by EIAC will be provided to June 29 Convocation if Convocation approves the appointment of the three Alternate DHCs.

**NOTE:**

*Paragraphs 120 to 125: no text*

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<sup>1</sup> Appointment

15. (1) Convocation shall appoint a person as Discrimination and Harassment Counsel in accordance with section 16.

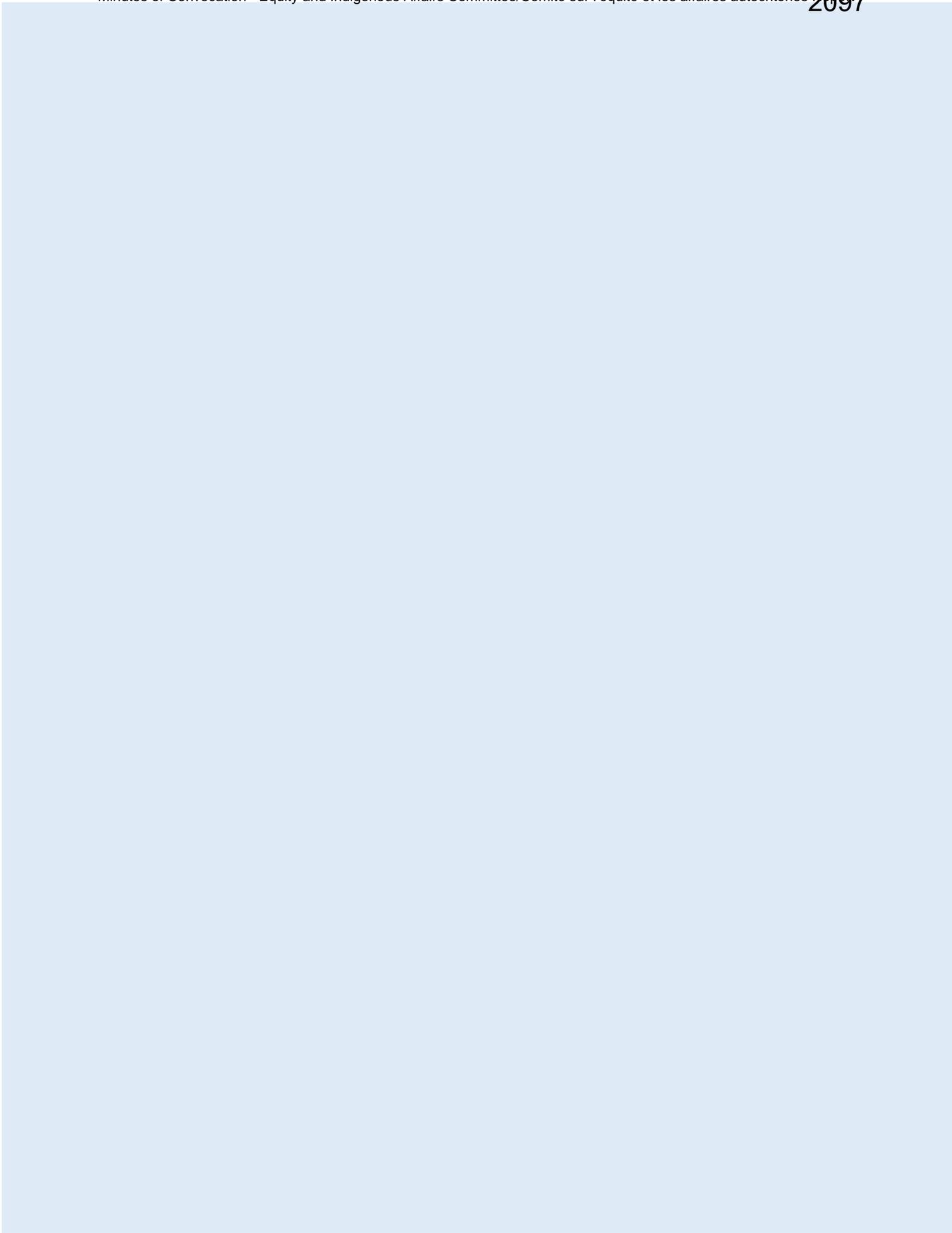
Same (2) Convocation may appoint one or more persons as Alternate Discrimination and Harassment Counsel in accordance with section 17.

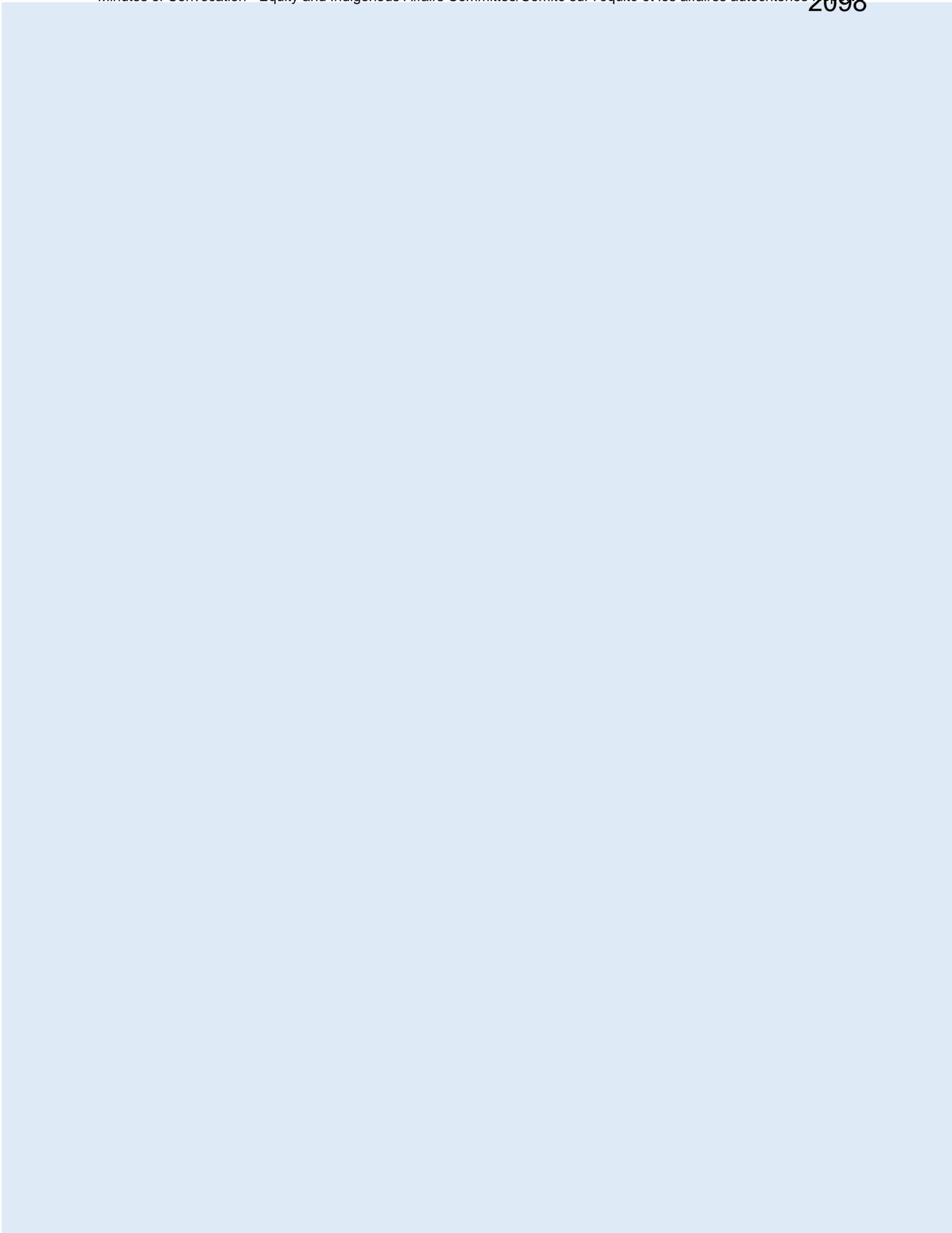
Term of office

(3) Subject to subsection (4), the Counsel and each Alternate Counsel hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

(4) The Counsel and each Alternate Counsel hold office at the pleasure of Convocation.





**TAB 5.5**

**FOR INFORMATION**

**UPDATE ON IMPLEMENTATION OF THE  
RECOMMENDATIONS OF THE CHALLENGES FACED BY  
RACIALIZED LICENSEES REPORT  
("THE CHALLENGES REPORT")**

**Introduction**

126. This report provides an update on the implementation of certain recommendations of the [Challenges Report](#).
127. To manage the implementation of the Challenges Report, the Equity Initiatives department is tasked with management oversight from the operations perspective and works in tandem with the EIAC which is tasked with the oversight and facilitation of the implementation of the recommendations.
128. Close attention is being paid to recommendations that are to be implemented in 2017 and 2018 which is co-ordinated with the timeline set out in the Challenges Report (**TAB 5.5.1**). The EIAC is updated on the progress of implementation at its Committee meetings.
129. Recommendations that are to be implemented in 2017 and 2018 are the current focus. As discussed in the Challenges Report, the recommendations are part of a framework that is designed to permit implementation to be strategically undertaken to support continuing implementation of recommendations for 2019 and beyond.
130. The following is a recommendation by recommendation review of the steps taken towards implementation for 2017 and 2018.

**Implementation Update**

Recommendations 3(1) and 3(2)

*Changes to the Lawyer and Paralegal Annual Reports (LAR and PAR)*

131. With respect to implementation of Recommendations 3(1) and (2), the Law Society is required to make changes to the Lawyer Annual Report and the Paralegal Annual Report (LAR/PAR) in 2017 to enable reporting on certain requirements in early 2018. These changes are being implemented and are on track for completion in anticipation of the March 31, 2018 reporting deadline. The requirements include a declaration with respect to abiding by a statement of principles to promote equality, diversity and inclusion and a requirement to create and implement a human rights/diversity policy for legal workplaces of 10 or more licensees.

### *Communications Initiatives*

132. Communications are currently being prepared, which will provide information and guidance to the professions on the requirements outlined in the Challenges Report. The first of these will appear in the *Ontario Reports* in the upcoming weeks. Particular attention is paid to Recommendations 3(1) and 3(2) and the timelines associated with these requirements. Beginning in June 2017, information will be made available and distributed to the legal professions to create awareness around the requirements and obligations of recommendations 3(1) and 3(2).
133. Resources to assist members in meeting the obligations of this recommendation are being developed. Part of the communications approach is to maintain a dedicated webpage for members to access resources as needed. This will include a series of FAQs and similar resources to address questions and concerns that may arise when licensees take steps to meet the requirements.

### Recommendations 4 and 5

134. Work has begun at the staff level to prepare language that will be included in the LAR/PAR for 2017 advising of the anticipated change in the use of inclusion and diversity data currently captured through the LAR and PAR in the self-identification demographic questions. Once prepared, this will serve as notice to profession regarding the changing use of data in the coming year (2018 LAR/PAR).

### Recommendation 7

135. Work has also begun to conceptualize the inclusion survey required of this recommendation, which the report suggests will be similar to that conducted by Stratcom in 2016. This recommendation is to be implemented by the end of 2017.

### Recommendation 12 (2)

136. As required by Recommendation 12(2), the Committee received a report from the Executive Director, Professional Regulation Division advising that the Division has created multi-functional enforcement teams with a range of types of Investigators and Discipline Counsel/Paralegals who are working together to be sensitive to, recognize and deal with issues of systemic discrimination. Training of the teams is planned.

### Recommendation 13(1)(g) – Leading by Example

137. The Law Society has established a Diversity and Inclusion Committee with a mandate to organize educational events for Law Society staff to promote an equality and inclusive workplace. With the Committee membership, which is comprised of Law Society staff, now established, they have had the opportunity to meet and are developing a plan for diversity and inclusion events for 2017 and 2018.

## TAB 5.5.1

2016	<ul style="list-style-type: none"> <li>• Recommendation 13 - Leading by Example.</li> </ul>
2017	<ul style="list-style-type: none"> <li>• Recommendations 3(1), 3(2) and 3(3) - The Law Society will communicate to the professions the requirements outlined in Recommendation 3(1), 3(2) and 3(3) and the timelines associated with each.</li> <li>• Recommendation 7 - The Law Society will repeat the Challenges Faced by Racialized Licensees Project inclusion survey.</li> </ul>
2018	<ul style="list-style-type: none"> <li>• Recommendation 3 (1) - Licensees will be required to have adopted and to abide by a statement of principles. The 2017 Lawyer Annual Report and Paralegal Annual Report, completed in 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.</li> <li>• Recommendation 3 (2)- Each legal workplace of at least 10 licensees in Ontario will be required to have a human rights/diversity policy. The 2017 Lawyer Annual Report and Paralegal Annual Report would ask licensees in legal workplaces of over 10 licensees to indicate whether or not their workplace has a human rights/diversity policy.</li> <li>• Recommendation 3(3)- The Law Society will require a representative of each legal workplace of at least 10 licensees in Ontario to engage in a diversity and inclusion self-assessment every two years, the results of which would be reported to the Law Society.</li> <li>• Recommendation 4 - The Law Society will include a paragraph in the demographic data questions section of the 2017 Lawyer Annual Report and Paralegal Annual Report, completed in 2018, informing licensees of the changes in the Law Society's use of self-identification data.</li> <li>• Recommendation 5 - 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.</li> <li>• Recommendation 9 - CPD Programs on Topics of Equality and Inclusion in the Professions</li> </ul>
2019	<ul style="list-style-type: none"> <li>• Recommendation 4 - Beginning with the 2018 Lawyer Annual Report and Paralegal Annual Report, completed in 2019, the Law Society would prepare a profile of each legal workplace of at least 25 lawyers and/or paralegals (containing, for example, the proportion of racialized partners, associates, and other licensed staff) and would confidentially provide it to each licensee within the workplace.</li> <li>• Recommendation 5 - 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.</li> <li>• Recommendation 6 - The Law Society would begin publishing the Inclusion Index and would update the index every four years.</li> </ul>
TBD	<ul style="list-style-type: none"> <li>• Recommendation 1 - Reinforcing Professional Obligations</li> <li>• Recommendation 2 - Diversity and Inclusion Project</li> <li>• Recommendation 8 - Progressive Compliance Measures</li> <li>• Recommendation 10 - The Licensing Process</li> <li>• Recommendation 11 - Building Communities of Support</li> <li>• Recommendation 12 (2), 12(3), 12(4) - Addressing Complaints of Systemic Discrimination</li> </ul>

TAB 5.6

## FOR INFORMATION

**UPDATE ON REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM****Introduction**

138. As a companion report to this month's update on implementation of the recommendations in the Challenges Faced by Racialized Licensees Report ("the Challenges Report"), this update provides information on the status of the review of the Discrimination and Harassment Counsel (DHC) Program.

**Background**

139. Recommendation 12(1) of the Report directs the Law Society to "review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC)<sup>1</sup>, including considering effective ways for the DHC to address issues of systemic discrimination."
140. The concept for the review of the Program predated the Report's approval at December 2016 Convocation, as the EIAC in June 2015 directed that a review be undertaken. This was based on a number of factors, which coincide with those reflected in the Report, and include the following:
- a. The Challenges Faced by Racialized Licensees Working Group (RWG), relying on the results of an extensive consultation with the profession, identified the reluctance of racialized licensees to bring forward matters of systemic discrimination;
  - b. In discussing the renewal of the Indigenous Framework, the EIAC noted that the DHC Program does not have a counsel in the North or a counsel that is versed in Indigenous ways of knowing and being; and
  - c. The DHC Program has been reviewed on two previous occasions—in 2001 and 2005. In 2005, Convocation approved a recommendation that the Law Society undertake a review of the DHC Program every three years to determine how to improve the Program's effectiveness.
141. The [Treasurer's mandate letter to EAIC](#) (September 2016) also indicated that the Committee should undertake: A review and assessment of the Office of Discrimination

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<sup>1</sup> A description of the Program appears at [TAB 5.6.1](#)

and Harassment Counsel with specific reference to its effectiveness in addressing various forms of discrimination.

142. Following the June and other developments described above, the review of the DHC Program was placed on hold given the work that was progressing on the Report and which eventually led to adoption of the recommendations, including Recommendation 12(1), in December 2016.
143. In February 2017, the EIAC approved a process for the review and staff began work on the review shortly thereafter.

#### Update on Recruitment of Alternate Discrimination and Harassment Counsel

144. On a matter related to the operation of the DHC, pursuant to the Law Society's by-laws, the EIAC may recommend to Convocation the appointment of one or more Alternate DHCs.
145. As reported to Convocation in April 2017, the Law Society has recently engaged in a recruitment process for the appointment of Alternate DHCs, which included a job posting, in French and English, in the *Ontario Reports* and advertising the position on the Law Society's website. The recruitment committee, struck by EIAC as part of the process in accordance with the authority in the by-laws, was composed of:
- Sandra Nishikawa, Co-Chair of EIAC
  - Tanya Walker, Licensee Bencher
  - Gisele Chretien, Appointed Bencher
  - Michael Doi, Member of the Equity Advisory Group
  - Constance Simmonds, Member of the Indigenous Advisory Group
146. The EIAC will report to Convocation on the results of the recruitment process and its recommendations at the appropriate time and, in accordance with the by-law provisions, in the absence of the public.

#### **Scope of the DHC Program Review**

147. According to the Challenges Report, "The objective of [the review identified under Recommendation 12(1)] would be to identify how the DHC role can be better used to 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".
148. The review is intended to determine how effective the DHC Program is in addressing issues of discrimination and harassment, including individual and systemic racism. The

review is designed to be comprehensive and will take into account the current circumstances surrounding the DHC, seek information from relevant sources about the Program and determine how the issues identified can be addressed.

149. The EIAC Executive has been designated as the steering group for the review which is being managed by Equity Initiatives staff.

### **Status of the DHC Program Review**

150. The first part of the review, a Phase I Literature Review, has been completed.
151. Staff engaged in a review of key resource material at the Law Society and elsewhere to identify key originating documents, policy directions and previous Program reviews. The reviewers also looked at best practices for similar ombuds programs in Ontario and in other jurisdictions. The staff is also assessing the DHC budget.
152. Phase II will commence within the next few months. This phase will gather qualitative data about the Program. The methodology will include interviews with the current DHC and the alternate DHCs to gather their input on the key questions and issues related to the Program. The reviewers will also interview key staff within the Law Society whose roles intersect with those seeking access to the Program such as Client Services Department, Professional Regulation Division and Equity Department. The plan also involves hosting a number of focus group interviews utilizing existing advisory groups, such as L'Association des juristes d'expression française de l'Ontario (AJEFO), the Indigenous Advisory Group, Equity Advisory Group, Treasurer's Liaison Group and others as appropriate.
153. Phase III will commence following the completion and assessment of the results of information from Phase II. Phase III, utilizing the qualitative data from Phase II, will involve a survey of the legal professions and licensing process students to explore such things as awareness of the Program, consideration of use of the Program, views on the purpose and value of the Program and options for improvements or enhancements to the Program. The survey would be conducted by a third party and the results reported and assessed.
154. As work progresses on the review, further reports will be provided to keep Convocation apprised of this important work.

TAB 5.6.1

## DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM DESCRIPTION

### Background

1. Funded by the Law Society of Upper Canada, the [Discrimination and Harassment Counsel \(DHC\) Program](#) operates at arm's length, and is available free-of-charge to the Ontario public, lawyers, paralegals and students. The DHC derives its mandate and authority from [By-law 11- Regulation of Conduct, Capacity and Professional Competence Part II](#).
2. In May 1997, the Law Society adopted the [Bicentennial Report and Recommendations on Equity Issues in the Legal Profession](#) (Bicentennial Report) which has since guided the Law Society's efforts to advance equity and diversity in the legal profession. Recommendation 11 of the report stated that, "The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession." The description of the recommendation speaks to the creation of a "safe counsel" program for "victims of discrimination and harassment" that would operate independent of the Law Society.
3. In fall 1998, Convocation approved the creation of a Discrimination and Harassment Ombudsperson role. In June 1999, Convocation adopted a submission from the Treasurer's Equity Advisory Group setting out the parameters for the position. On September 1, 1999, the DHC began operating as a pilot project. In June 2001, after a [review of the program](#), which included consideration of the relationship of the DHC with the professional regulation functions and the equity initiatives function of the Law Society, the Discrimination and Harassment Counsel was established as a permanent initiative.
4. While operating at arms-length,<sup>1</sup> the DHC forms an integral part of the Law Society's equity initiatives and regulatory functions. The DHC's role is primarily directed to support complainants and the resources of the DHC have been focused in this area.
5. The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. Since its creation, the person who has held the position of DHC has been bilingual (French and English).

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<sup>1</sup> The DHC is not an in-house employee of the Law Society. As outlined in By-law 11 Part II Discrimination and Harassment Counsel, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.

6. The DHC's role is to:
  - Listen to concerns;
  - Clarify issues;
  - Provide information and advice;
  - Review options and avenues of recourse (e.g. filing a complaint with the Law Society, filing an application with the Human Rights Tribunal of Ontario);
  - Explain the advantages and disadvantages of each option; and
  - Provide referrals to other resources that may be of assistance.
7. Upon request, the DHC may attempt to resolve issues through intervening informally as a neutral facilitator or by conducting formal mediation, where appropriate. Mediation is a voluntary process and requires the consent of all parties. The DHC facilitates the discussion and assists the parties in crafting their own resolution.
8. The DHC does not have investigative powers and does not operate a formal complaints process that involves fact-finding. The DHC also does not provide legal advice or legal representation and cannot make referrals to lawyers or paralegals.
9. All information obtained by the DHC is kept in strict confidence. By-law 11 formally exempts the DHC from reporting requirements under the Rules of Professional Conduct. As the program was created to provide counsel to those who do not wish to approach the Law Society through its complaints process, there a separation of the DHC and professional regulation. The DHC's duty of confidentiality overrides any requirement to report misconduct of another lawyer or paralegal under the Rules of Professional Conduct and the Paralegal Rules of Conduct.
10. The current DHC was appointed on November 21, 2002, replacing the first DHC, and has been in the position since that date. She was reappointed on September 25, 2003, following a search for candidates pursuant to what was then By-Law 36 – Discrimination and Harassment Counsel. She was then reappointed in 2006, 2009, 2012 and 2015.
11. In May 2016, Convocation approved the reappointment of the current DHC, effective, September 28, 2016, for a term of one year. The Committee recommended the reappointment for one year in order to allow it to conduct a review of the DHC Program and, if required, implement changes in a timely fashion.
12. In November 2003, Convocation approved the creation an Alternate DHC position to provide backup when the permanent DHC is unable to fulfill their duties. Following a recruitment process, the Alternate DHC position was filled. The Alternate DHC assume the functions of the DHC when she is unavailable. There are currently two Alternative DHC.

This is **Exhibit N** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
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# Memorandum

To: Equity and Indigenous Affairs Committee  
 From: Ada Maxwell-Alleyne  
 Date: November 17, 2021  
 Re.: **Challenges Report Implementation Update**

## Purpose

This memo provides the Equity and Indigenous Affairs Committee (“Committee”) with:

1. an update on the implementation of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report* (“Challenges Report”); and
2. an outline of the peer review undertaken to evaluate the implementation of the Challenges Report, with decisions on the use of the results of the Inclusion Index to be made following that review.

## Timeline

The following outlines the significant steps in the development and implementation of the Challenges Report:

2012: Challenges Working Group begins an engagement process to gather information about barriers faced by racialized licensees. The firm Strategic Communications Inc. (Stratcom) manages this data gathering process employing a multi-model research approach and presents its final report.

2014: The Working Group reviews the data from the engagement process and drafts a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*. Convocation approves this consultation paper.

2014-2015: The Working Group consults broadly with licensees, law students, articling students and the public. The Law Firms Diversity and Inclusion Network and legal organizations are also consulted.

2015-2016: The Working Group develops its final report with 13 recommendations.

2016: Convocation approves the final report and recommendations in December.

2017 forward: Implementation of recommendations.

## Status of the Challenges Report

The Challenges Report outlines five strategies and 13 recommendations to address systemic barriers faced by racialized licensees. Most of the recommendations have been

implemented and others are in process. The recommendations and the status of each can be found at TAB 5.1.

To date, the Law Society has not evaluated the project, its recommendations or its implementation to assess the effectiveness in achieving the Law Society's goal to reduce barriers faced by racialized and Indigenous licensees, thereby helping to ensure healthy and successful legal professions and advancing the public interest. Project reviews are generally seen as standard best practice when an institution undertakes a major initiative. Moreover, before moving forward with outstanding recommendations developed in 2016, the Law Society should obtain expert advice on the relevance of those recommendations in the 2021 environment.

### **The Inclusion Index**

One of the outstanding recommendations of the Challenges Report is Recommendation 6 which provides that:

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).<sup>1</sup>

The data underlying the Index comes from the 2018 Annual Report and was collected in the first quarter of 2019. In April 2019, the Law Society engaged the firm Diversio to develop the Index. Diversio delivered a draft of the Index in the fall of 2019. By that time, Law Society counsel who were originally involved in the development of the Index had left the organization. New Policy counsel engaged with Diversio to further develop the Index and understand the methodology underlying the results before planning its release.

In March 2020, the Law Society shifted its focus to addressing the challenges and disruptions caused by the pandemic. EIAC resumed its regular work in late 2020. Before a decision is made on how to move forward with the information collected for the Index, a number of questions should be considered:

1. Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
2. Given the three-year period between the collection of the data and the current date, is it scientifically sound to release the data?
3. The data on which the Index is based is now three years old. Is the Inclusion Index based on that data relevant today?

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<sup>1</sup> Recommendations 3, 4, 5 and 6 of the Challenges Report speak to the creation of an Inclusion Index for legal workplaces with 25 or more licensees. The Index was to include data from three sources in the 2018 Members' Annual Report: the legal workplace mandatory self-assessment responses; individual licensee voluntary responses to self-identification; and inclusion questions. The Index was to be published every four years.

4. In anticipation of the release of the Inclusion Index, some workplaces proactively adopted strategies to promote equity, diversity and inclusion within their workplaces. The progress of these workplaces is not reflected in the current Index. Would the release of the Index at this point support the Law Society's goal of reducing barriers faced by racialized and Indigenous licensees?
5. If the answer to any of the above questions is "no", would the Law Society's reputation be negatively impacted by the release of the Index?

### **Peer Review of Challenges Report**

Given this context, a peer review of the Challenges Report has been undertaken. A decision on how to move forward with the Inclusion Index data will be made once the review is completed. The review will explore whether the implementation of the Challenges Report provides effective requirements, incentives and information that assist in reducing barriers faced by racialized and Indigenous licensees. The review will assess:

- a. the impact of fully implemented recommendations of the Challenges Report (e.g. Recommendation 9, regarding mandatory EDI CPD and related products);
- b. the impediments to implementing certain recommendations (e.g. Recommendation 12, regarding addressing systemic discrimination); and
- c. the reliability of the data collection and analysis used in 2019;
- d. the extent to which the above data and analysis is relevant for 2021.

The review will also provide recommendations for the further enhancement of EDI within the legal community.

### **Structure of the Peer Review**

The peer review is being conducted by a panel of experts and will be completed in April 2022. The three experts who have been retained possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to compile a list of experts who can provide a neutral and objective commentary. A summary of the review will be presented to the Committee and Convocation in May or June 2022.

An evaluation rubric will be provided to the reviewers. Some of the questions to be addressed through this review include:

#### *With respect to the Challenges Report*

- Was the data collection process valid?
- Were response rates sufficient?
- Were the questions posed as part of the membership survey appropriate?
- Is the process of using key informants effective/reliable?

#### *With respect to the Inclusion Index*

- Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
- Was the scope appropriate?

- Would the Index, as produced, achieve the desired result vis-à-vis legal workplaces?
- Is the data still reliable?
- Should the next version include any changes?

*With respect to future equity work at the Law Society*

- Is there a more effective way to collect equity data than the Law Society's current approach?
- Is the format of the collected data appropriate? (for example, are the Law Society's demographic categories generally accepted?)
- Are there other probative questions that can assist in the equity agenda? (i.e. income related to demographics)

The Committee will receive the Inclusion Index and the supporting materials for the peer review when the peer review is completed.

**Challenges Report Recommendations: Status Update as of November 2021**

Recommendation	Status/Date Completed
<p><b>Recommendation 1 – Reinforcing Professional Obligations</b> 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.</p>	<p>Amended Rule 6.3 in 2018 to address results of articling survey</p> <p>In 2019, Convocation approved a motion requiring licensees to acknowledge in their Annual Report Filing, in accordance with the professional conduct rules, their special responsibility to respect the requirements of human rights laws in Ontario and to honour the obligation not to discriminate.</p> <p>The Law Society is actively participating in the Federation of Law Societies’ TRC Calls to Action Advisory Committee. One of the Committee’s priorities is implementing recommendations related to cultural competency training.</p>
<p><b>Recommendation 2 – Diversity and Inclusion Project</b> 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.</p>	<p>The Law Society maintains an EDI resources webpage, that includes model workplace policies. The model policies were completely updated and shared with the equity partners before being posted to the Law Society website.</p> <p>The Law Society will enhance resources available to assist and support women in law. This will be done in collaboration with the Treasurer’s Women in Law Advisory Group that was appointed in 2021.</p> <p>In terms of other resources, the Law Society continues to host an annual Equity Legal Series in partnership with our equity stakeholder groups. These events are extremely well-attended, and attendance has been steadily increasing since early 2020.</p> <p>The Law Society is reviewing the decision and approval process for new Equity Legal Series offerings to ensure they are diverse, topical and offer useful EDI content for licensees and students.</p>
<p><b>Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices</b> The Law Society will:</p>	<p>Completed</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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;</p> <p>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;</p> <p>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</p> <p>4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.</p>	
<p><b>Recommendation 4 – Measuring Progress through Quantitative Analysis</b> 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.</p>	<p>Self-identification data is part of the Inclusion Index package. Diversio offers a dashboard to legal workplaces based on their individual inclusion scores. Discussions are under way to determine next steps regarding the dashboards and their efficacy as they are based on 2018 data.</p> <p>Outside of collecting data on legal workplaces, the Law Society develops annual demographic “snapshots” of the legal professions that indicate the breakdown of the professions in terms of race, language, Indigeneity, gender and sexual orientation.</p>
<p><b>Recommendation 5 – Measuring Progress through Qualitative Analysis</b> The Law Society will measure progress by:</p> <p>1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and</p>	<p>1) Completed</p> <p>2) Forms part of the Inclusion Index; information has been collected but not distributed. Further steps are on hold pending a review of the Inclusion Index.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

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	
<b>Recommendation 6 – Inclusion Index</b> 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).	Inclusion Index has been compiled but not published or distributed. See attached memorandum to EIAC outlining proposed review of Challenges Report and Index.
<b>Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey</b> 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 <a href="http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf">http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf</a> ). 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.	Survey completed in 2017; recommendation is to complete a peer review of the Challenges Report and Inclusion Index before launching further surveys.
<b>Recommendation 8 – Progressive Compliance Measures</b> 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.	SME has considered this matter and concluded that progressive compliance measures are not appropriate at this time. As part of the review of the Challenges Report, the Law Society should receive information regarding the efficacy of progressive compliance measures in furthering the goals of EDI.
<b>Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions</b> 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	All elements are completed.

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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 4 recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.</p>	
<p><b>Recommendation 10 – The Licensing Process</b> 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.</p>	<p>Education on these competencies has been developed for EDI in general; Indigenous competencies are scheduled to be included in the June 2022 licensing exam.</p> <p>Specific changes include:</p> <ul style="list-style-type: none"> <li>• a new chapter on EDI in paralegal and lawyer licensing examination study materials (introduced in the 2019-20 licensing year);</li> <li>• New EDI competencies;</li> <li>• Licensing examination questions to assess EDI competence (these were introduced following the introduction of the new materials);</li> <li>• New paralegal education competencies related to EDI developed (taught by institutions commencing September 2019);</li> <li>• New chapter on Indigenous/TRC-related matters in paralegal and lawyer licensing examination study materials (being introduced in the 2022-23 licensing year);</li> <li>• New Indigenous/TRC-related competencies developed (these will be posted for candidates after completion of the winter 2022 licensing examinations);</li> <li>• Licensing examination questions to assess Indigenous/TRC-related matter competence (to be introduced following the introduction of the new materials); and</li> <li>• New paralegal education competencies related to Indigenous/TRC matters developed (to be taught by institutions commencing September 2022).</li> </ul>
<p><b>Recommendation 11 – Building Communities of Support</b> The Law Society, in collaboration with legal associations where</p>	<p>Resources exist through the Coach and Advisor Network as well as the Equity Legal Education Series. The evaluation of the Challenges Report</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.</p>	<p>may provide advice on the implementation strategy for this recommendation.</p> <p>The Law Society Treasurer conducts regular outreach to law schools and paralegal colleges and has presented on EDI and professionalism to students.</p> <p>The Law Society Treasurer meets regularly with legal associations and equity-seeking stakeholder groups and collects feedback for consideration by the Law Society.</p> <p>Where opportunities arise, the Law Society co-hosts and provides in-kind support to equity-seeking legal organizations mentoring and networking events (i.e. Canadian Association of Black Lawyers Conference).</p> <p>The Law Society is working with the Association of French Speaking Jurists of Ontario to strengthen the organizations’ relationship and to improve French language offerings from the Law Society.</p> <p>The Law Society Treasurer has appointed a Women in Law Advisory Group to provide advice to the organization on implementing strategies to support women in the legal professions.</p>
<p><b>Recommendation 12 – Addressing Complaints of Systemic Discrimination</b> The Law Society, in light of the findings of this project and emerging issues in the professions, will:</p> <p>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;</p> <p>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;</p>	<p>1) Review is completed and EIAC’s direction to enhance awareness and education regarding DHC is being implemented. This includes a “plain-language” advertisement of the DHC services and processes which has been widely circulated. The Law Society DHC website will be renewed and enhanced. The DHC is planning broader outreach plans in consultation with Law Society staff.</p> <p>EIAC decided not to address systemic discrimination during discussions regarding the DHC review.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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.</p>	<p>2) This recommendation is under consideration and will be assessed as part of the Challenges Report review.</p> <p>3) – 4) The Law Society has reconstituted the First Nations, Metis and Indigenous Team to support Indigenous complainants and advise staff on Indigenous issues.</p> <p>Additional cultural awareness training and supports are being provided to Law Society staff to educate on systemic discrimination.</p> <p>The Law Society has retained an Indigenous counsel and investigator for matters involving Indigenous complainants and licensees.</p>
<p><b>Recommendation 13 – Leading by Example</b></p> <p>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:</p> <p>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.</p> <p>2) The Law Society will: a) conduct an internal diversity assessment of the bench composition and publicize the results; provide</p>	<p>1 a) Completed in 2017 1 b) Completed, latest survey done 2021 1 c) Complete, see above 1 d) Complete (LSO completes the questions described in Recommendation 3(3); diversity questions also included in Internal LSO People Survey. 1 e &amp; f) In progress. Work is ongoing at both the SME and the volunteer Diversity &amp; Inclusion Council (reconstituted in 2020)</p> <p>Working group has been struck to advise on Indigenous cultural programming for both staff and benchers.</p> <p>Recent staff education programs at the Law Society have included a seminar on the legacy of residential schools in conjunction with the National Day for Truth and Reconciliation and a seminar with the Dean of the Faculty of Social Work at Wilfred Laurier University regarding anti-racism.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>equality and inclusion education programs for Convocation on a regular basis</p>	<p>2) Assessment conducted in 2017 and the results were presented to EIAC later that year. Survey results included recommendations regarding maintaining and/or increasing diversity amongst the benchers.</p> <p>Actions that have been taken in support of bencher diversity include an increased representation of racialized and Indigenous benchers in Treasurer appointments, committee executives, external appointments, and award nominations and honours.</p> <p>Specific EDI programming was provided for benchers in 2015-2019.</p> <p>An EDI component is included in bencher orientation materials.</p> <p>The Law Society plans to develop a catalogue of Indigenous cultural competency programming for benchers and staff.</p> <p>Benchers and staff are encouraged to participate in the Equity Legal Education events and can access LSO’s 3-hour EDI program.</p>
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*Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at ICES. In her role, she focuses on building partnerships with key stakeholders, with a focus on the integration of intersectoral data, leading to innovative research. In addition, she has significant experience working with a variety of stakeholders including policy makers at various levels of government and Indigenous organizations. At ICES, Sujitha co-chairs the Diversity Committee, is a member of the Race and Ethnicity Data Working Group and has been a guest lecturer at the University of Toronto. Prior to her role at ICES, Sujitha has worked at Public Health Ontario, Toronto Public Health and the World Health Organization. Sujitha also has a Master's degree in Epidemiology from the University of Toronto.*



*Michael Ornstein is Associate Professor of Sociology at York University. He was Director of the University's Institute for Social Research for a decade. The Institute houses the largest academic survey organization in Canada, and provides statistical consulting, data analysis and courses on methods and statistics.*

*Dr. Ornstein has been active in the development, design and execution of numerous large-scale research projects including the first Canadian study on knowledge, behaviour, and attitudes about AIDS. His recent research addresses the decline of the middle class, precarious employment and the transformation of Toronto's gay village.*

*Ornstein's *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, co-authored with H. Michael Stevenson, was the 2001 winner of the Harold Adams Innis Prize for the best SSFC supported book in the Social Sciences and English. He is author of *A Companion to Survey Research*, from Sage and numerous academic articles.*



*Dr. Wortley has been a Professor at the Centre of Criminology and Sociolegal Studies, University of Toronto since 1996. His academic career began in 1993 as a researcher with the Commission on Systemic Racism in the Ontario Criminal Justice System. Over the past twenty-five years Professor Wortley has conducted numerous studies on various issues including youth violence and victimization, street gangs, drug trafficking and substance use, crime and violence within the Caribbean, public perceptions of the police and criminal courts, police in schools, police use of force, and racial bias within the Canadian criminal justice system. In 2007, he was appointed by Metropolis to the position of National Priority Leader for research on Immigration, Justice, Policing and Security. Professor Wortley has also served as Research Director for several government commissions including the Ontario Government's Roots of Youth Violence Inquiry. In 2017 Professor Wortley worked with Ontario's Anti-Racism Directorate to develop standards and guidelines for the collection and dissemination of race-based data within the public sector. Professor Wortley is currently leading three major investigations into possible racial bias within policing for the Nova Scotia, Ontario, and British Columbia Human Rights Commissions. He is also leading an inquiry – with Dr. Akwasi Owusu-Bempah – into bias within the Toronto Transit Commissions enforcement unit. Professor Wortley has published in a wide variety of academic journals and edited volumes and has produced numerous report for all levels of government.*

This is **Exhibit O** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Alexandra Heine  
(LSO #83514R)



Law Society  
of Ontario

Barreau  
de l'Ontario

**Agenda and Materials  
Tuesday, October 8, 2019  
Benchers Dining Room  
1:00 pm – 3:00 pm**

---

**Equity and Indigenous Affairs Committee**

**IF JOINING BY TELEPHONE:  
PLEASE NOTIFY ADA MAXWELL-ALLEYNE AT (416) 947-3996 OR [AMAXWELL@LSO.CA](mailto:AMAXWELL@LSO.CA)  
PRIOR TO THE MEETING DAY IF YOU ARE JOINING BY TELEPHONE.**

**CALL-IN INFORMATION:**

**Local Dial-in: 416-883-0133  
Toll Free (Canada and US): 1-877-385-4099  
Participant Access Code: 5123747#**

Dianne Corbiere (Chair)  
Atrisha Lewis (Vice-Chair)  
Jorge Pineda (Vice-Chair)  
Robert Bateman  
Robert Burd  
Etienne Esquega  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Cheryl Lean  
Isfahan Merali  
Gina Papageorgiou  
Chi-Kun Shi  
Tanya Walker  
Doug Wellman  
Alexander Wilkes

**EQUITY AND INDIGENOUS AFFAIRS COMMITTEE MEETING AGENDA**  
**Tuesday, October 8, 2019**  
**Benchers' Dining Room**  
**1:00 pm – 3:00 pm**

1. Introductions (D. Corbiere)
2. Indigenous Teaching (Chief Myeengun Henry)
3. Indigenous Advisory Group Update (D. Lussier)
4. Equity Advisory Group Update (N. Hojjati)
5. AJEFO Update (M. Vermette)
6. Introduction and Overview of Equity and Indigenous Affairs  
*(For Information)*.....[TAB 1](#)
  - Working Together for Change* Final Report.....[TAB 1.1](#)
  - Indigenous Framework.....[TAB 1.2](#)
  - Review Panel on Regulatory and Hearing Processes  
Affecting Indigenous Peoples.....[TAB 1.3](#)
  - Overview Presentation.....[TAB 1.4](#)
7. **Discrimination and Harassment Counsel for the Law Society of Ontario**
  - Discrimination and Harassment Counsel Overview *(For Information)*.....[TAB 2](#)
  - Report of the Activities of the Discrimination and Harassment Counsel for the  
Law Society of Ontario.....[TAB 2.1](#)
  - Confidential Report to the Equity and Indigenous Affairs Committee of the Law Society  
of Ontario *(in camera)*.....[TAB 2.2](#)

**8. Upcoming Equity Legal Education Events (*Verbal Update*)**

TAB 1



130 Queen Street West  
 Toronto, Ontario  
 M5H 2N6  
<https://www.lso.ca>

Policy  
 Tel 416-947-3996  
 Fax 416-947-7623  
[amaxwell@lso.ca](mailto:amaxwell@lso.ca)

# Memorandum

To: Equity and Indigenous Affairs Committee  
 From: Ada Maxwell-Alleyne  
 Date/Time: October 4, 2019

**Re.: Introduction and Overview of the Equity and Indigenous Affairs Committee**

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## Background

In 1997 the Law Society adopted the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the Bicentennial Report). The Bicentennial Report reviewed the initiatives the Law Society had taken to address barriers facing racialized, Indigenous, LGBTQ, and Francophone individuals as well as people with disabilities. The Report made sixteen recommendations that have since guided the Law Society in advancing equity and diversity within the legal profession. In the mid-1990's, the Law Society created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee), with the following mandate set out in By-law 3, s. 122 of the Law Society:

- a. Develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law or provision of legal services in Ontario and for addressing matters related to Aboriginal peoples and Francophones; and
- b. To consult with Aboriginal, Francophone and other equality-seeking communities in the development of such policy options.

## EIAC's Consultation Process for Equity, Diversity and Inclusion (EDI) Initiatives

The Law Society relies on input from and dialogue with the Indigenous Advisory Group (IAG), the Equity Advisory Group (EAG) and L'Association des juristes d'expression française de l'Ontario (AJEFO) in setting the committee's strategic priorities and planning. In addition, EIAC frequently consults equity-seeking stakeholder groups including:

- Roundtable of Diversity Associations (RODA)
- South Asian Bar Association (SABA)
- Canadian Black Lawyer's Association (CABL)
- Canadian Hispanic Bar Association (CHBA)
- Federation of Asian Canadian Lawyers (FACL).

We frequently consult with Legal Leaders in Diversity and Inclusion (a group of Canadian General Counsel who support diversity and inclusion), law firm EDI departments, academic institutions and social justice organizations.

**Current Landscape**

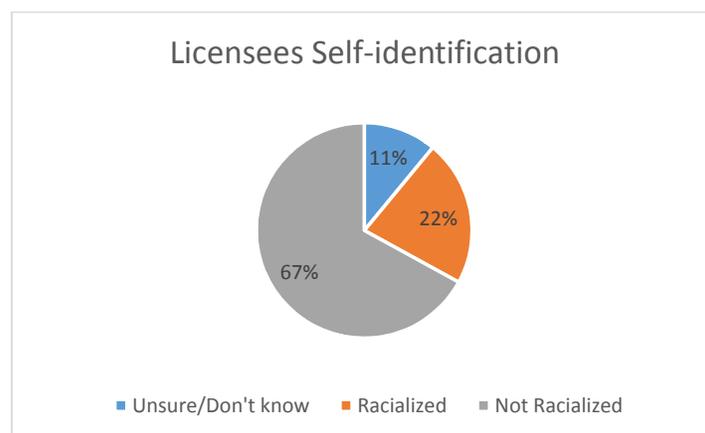
EIAC initiatives that have been undertaken in pursuit of its mandate have been deployed with consideration of the current legal and cultural/ethnic/racial landscape of Ontario, some of which is outlined below:

- 2016 Canada Census – 29.3% of the Ontario population indicated that they are a “visible minority”.
- Since 2001, the Ontario legal profession has seen a steady increase of racialized lawyers: In 2001, 9.2% of the legal profession was racialized. In 2006, 11.5% of the profession was racialized and the current numbers are below:

LAWYER AND PARALEGAL ENROLMENT IN LICENSING PROCESS BY EQUITY SEEKING GROUPS IN 2018 (DATA OBTAINED FROM LICENSING PROCESS APPLICATIONS)		
RACIALIZED COMMUNITY	<b>587</b>	<b>22.94%</b>
FRANCOPHONE	<b>147</b>	<b>5.74%</b>
INDIGENOUS	<b>40</b>	<b>1.56%</b>

- The Law Society’s Statistical Snapshot of Paralegals from the Paralegal Annual Report 2014 shows racialized paralegals at 34% of the profession.

Over the last several years, in developing its major reports on equity and diversity, the Law Society has commissioned studies and surveys as part of community consultations. In particular, the Challenges Faced by Racialized Licensees Working Group gathered a great deal of statistical information about licensee experiences. Below are some of the findings from the Challenges Report consultations that will provide the Committee with context for EIAC’s ongoing work:

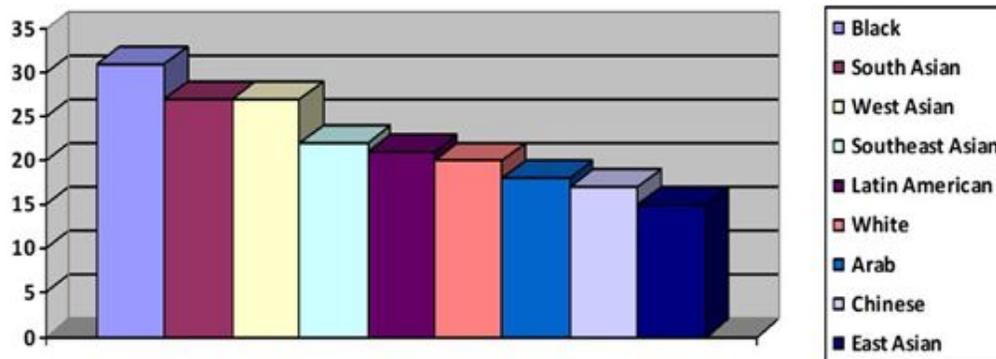


**Impacts of Racialization on Career Development:**

- Racialized licensees find it more difficult to secure articling positions and are less likely to be hired back to the firm where they articulated. Racialized licensees also have more challenges in finding employment generally, as well as in their practice area.
- Racialized licensees are twice as likely as their non-racialized counterparts (with similar qualifications) to experience slow career advancement.
- 40% of racialized licensees rank ethnic/racial identity as the most serious barrier to entry to practice.
- 43% of racialized licensees rank ethnic/racial identity as the most serious barrier to career advancement.
- 50% of licensees name racial prejudice as a top factor that has disadvantaged them at any stage in their career.
- 42% of racialized licensees identify expectations to perform to a higher standard than others based on racial stereotypes as a source of career disadvantage.
- 26% of racialized lawyers report experiencing disrespectful remarks by judges and other lawyers occasionally, routinely or frequently.

**Racialization, Complaints and Discipline:**

Sole Practitioners in percentages



- The higher representation of racialized lawyers in sole practice is significant as 78% of racialized licensees note a lack of mentors and professional networks to assist with practice challenges.
- 71% perceive racial stereotyping by clients as a risk factor for discipline.
- 70% note lower quality articling positions and inadequate training as putting them at greater risk for complaints and discipline.

**Law Firms Interviewing and Hiring Processes**

- Racialized licensees express general concerns that they do not fit in at law firms.
- Equity-seeking groups are less likely to article for large private law firms in Toronto and students who article at small firms are less likely to be hired back because the firm is less likely to be able to take on another lawyer.
- Compared to white lawyers, indigenous lawyers are more likely to be in sole practice or practice in a legal clinic, education or government and are much less likely to be law firm partners and somewhat less likely to be in-house lawyers and associates.

- 20% of law firm associates are racialized, compared to about 18% of white lawyers which portends growth in the percentage of racialized law firm partners.
- Racialized lawyers are more likely than non-racialized lawyers to report that they have been assigned tasks that were beneath their skill level.
- 10% of racialized lawyers report that they have been denied an opportunity for a case or file, frequently or a few times, because clients had objected, compared to 4% of non-racialized lawyers.

### Earnings

- Evidence suggests that racialized lawyers earn less, on average, than non-racialized lawyers. The difference in the median earnings of racialized and white lawyers is \$4,000 per year for lawyers between 25 and 29 but grows to more than \$40,000 by ages 40 to 44.<sup>1</sup>
- According to the 2016 Census, racialized women earn 58 cents, and racialized men earn 76 cents, for every dollar a white man earns in Ontario in 2015 (across all industries).
- There is a 45% income gap between Indigenous women and non-Indigenous men, while the average income gap between all Indigenous and non-Indigenous people is 33%.
- A 2018 Law Society survey concluded that 21% of respondents face harassment and discrimination while articling. 1 in 5 respondents face comments or conduct based on their gender, race, sexual orientation, citizenship, disability or other personal characteristics during articling.
- These experiences are not unique to Ontario - a 2019 survey conducted by the Law Societies of Alberta, Saskatchewan and Manitoba reveal that nearly 1 in 3 articling students and new lawyer respondents experience discrimination and harassment during recruitment or articling.

Outside organizations have called upon the Law Society to fulfill its responsibility in addressing systemic racism. The Truth and Reconciliation Commission of Canada (TRC) has called on Canadian law societies to ensure that lawyers receive appropriate cultural competency training, including skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. The National Inquiry into Missing and Murdered Indigenous Women and Girls called upon legal institutions and law professionals to enhance cultural competency standards. The Law Society has publicly reaffirmed its commitment to addressing systemic inequality in responding to the TRC and the National Inquiry recommendations.

EIAC has approached this responsibility by not only looking at the macro effects of racism and discrimination but also by examining barriers that are entrenched in the legal community and in legal institutions that exclude or disadvantage racialized lawyers and clients.

### Challenges Faced by Racialized Licensees Working Group Report

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;

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<sup>1</sup> Law Society of Ontario. Racialization and Gender of Lawyer in Ontario, 2010. Available at: <https://lso.ca/about-lso/initiatives/closed-initiatives/racialization-and-gender-of-lawyers-in-ontario>

- 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 Indigenous Affairs Committee and other committees, to address these challenges.

### *The Working Group's Approach*

In order to fulfil its mandate, the Working Group gathered information about the challenges faced by racialized licensees using an extensive community engagement process. Statistical data, research results and anecdotal evidence reviewed prior to the start of the project suggested that despite the increase in representation of racialized lawyers, they still face challenges in the practice of law. This information was corroborated by the results of stakeholder consultations.

The Challenges Working Group provided its final report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* in the fall of 2016. The report and its 13 recommendations (**TAB 1.1**) were approved by Convocation on December 2, 2016. The report's recommendations fall into five broad Equity, Diversity and Inclusion strategies are:

1. Accelerating Culture Shift
2. Measuring Progress
3. Educating for Change
4. Building Communities of Support
5. Leading by Example

Several of the recommendations have led to other consultations. For example, Recommendation 12(1) of the *Working Together* Report directs the Law Society to review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including ways for the DHC to address complaints of systemic racism. This review was completed in April 2019 in conjunction with the public relations firm Navigator. Navigator undertook a research process that included a broad consultation with stakeholders and resulted in a number of considerations for ways in which the DHC may be able to facilitate education on issues of systemic racism in the legal profession.

### **Indigenous Framework**

In June 2016, the Indigenous Advisory Group (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures in a manner that respects Indigenous values, beliefs and legal systems.

In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and in 2017 the Law Society adopted the Indigenous Framework to ensure that Indigenous communities see their identity, culture and laws reflected in the Law Society and its processes.

The Framework is based on the following Four Pillars:

- Creating and Enhancing Cultural Competency
- Achieving and Improving Access to Justice
- Promoting and Supporting Knowledge of Indigenous Legal Systems
- Taking Action on Reconciliation

The development of every Law Society initiative within any one of these Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of the Framework. The Indigenous lens is an analytical tool that includes guiding principles and laws from First Nations, Inuit and Métis peoples. The Indigenous Framework can be found at **TAB 1.2**.

### **Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples**

In June 2017, the Treasurer appointed a Review Panel to identify issues and make recommendations on opportunities for the inclusion of Indigenous perspectives in Law Society regulatory and hearing processes. The review was prompted by the Law Society’s experience in *Law Society of Upper Canada v. Keshen* which raised questions about the Law Society’s regulatory and hearing process in relation to Indigenous persons, complaints, and issues.

The Review Panel reviewed key resources, conducted interviews and consulted with a range of individuals, including experts from the Indigenous community, the chair and vice chair of the Law Society Tribunal and a number of Law Society Professional Regulation Division staff. The Law Society work was carried out alongside an Independent Reviewer, First Nations National Chief Ovide Mercredi. The Law Society engaged with indigenous stakeholders including First Nations in the north, Elders and residential school survivors in developing the recommendations. The outcome of the Review Panel, including the Independent Reviewer, was a series of recommendations to legal organizations to become culturally competent and support broader change in the interests of Indigenous communities and to support healing strategies for survivors. The full report and recommendations can be found at **TAB 1.3**.



**Tab 3.1**

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

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**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](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](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](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.”<sup>1</sup>

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.

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<sup>1</sup> “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."<sup>2</sup>

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.

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<sup>2</sup> "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.”<sup>3</sup>*

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 licensees<sup>4</sup> 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

<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup>

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.<sup>7</sup>

<sup>5</sup> Referred to as “the engagement process”.

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

<sup>7</sup> 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*<sup>8</sup> and the *Paralegal Rules of Conduct*<sup>9</sup> 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;<sup>10</sup>
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*

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

<sup>9</sup> *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](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:**

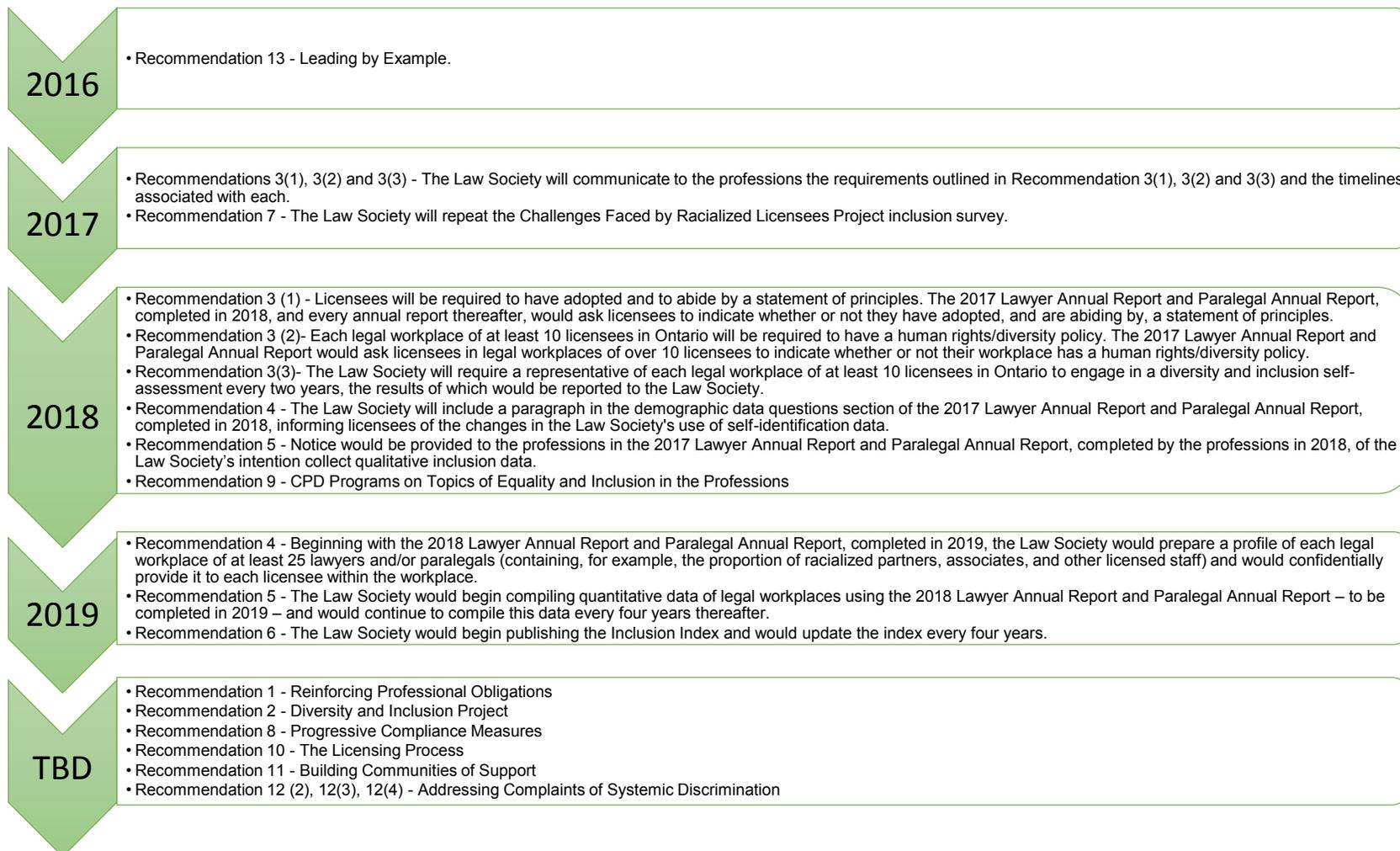
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;**

- 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 King<sup>11</sup>

### 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 racialized<sup>12</sup> lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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:

<sup>11</sup> Daughter of Martin Luther King

<sup>12</sup> 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>.

<sup>13</sup> 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>

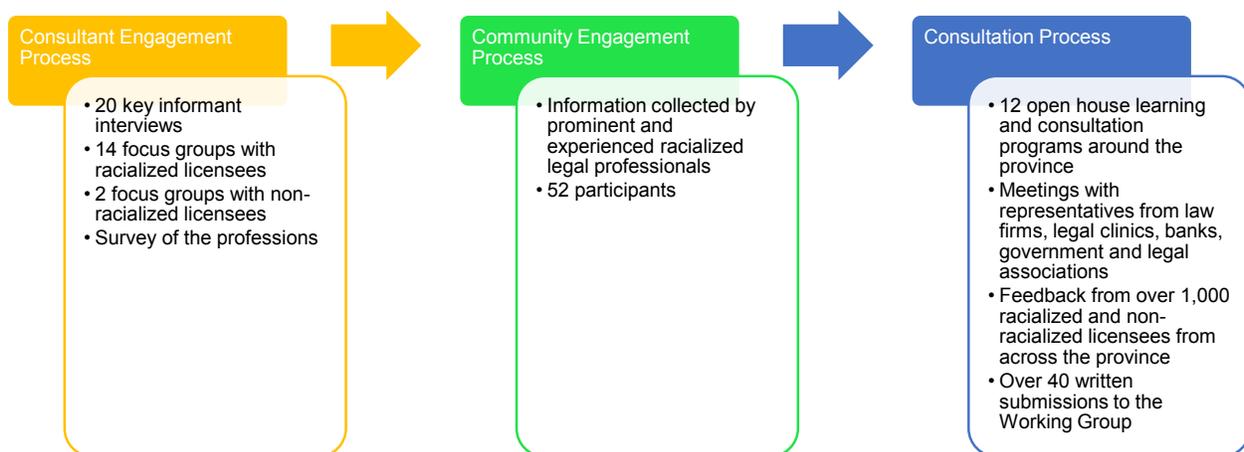
<sup>14</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>15</sup> 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;<sup>16</sup>
  - 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.<sup>17</sup>



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:

<sup>16</sup> 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.

<sup>17</sup> 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.”<sup>18</sup>*

— 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.”<sup>19</sup> 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.”<sup>20</sup>
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.”<sup>21</sup> 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 #OscarsSoWhite<sup>22</sup> — 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

<sup>18</sup>*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>

<sup>19</sup> “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>

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

<sup>21</sup> “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>

<sup>22</sup> 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.””<sup>23</sup>

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 prisons<sup>24</sup> 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”<sup>25</sup> 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”,<sup>26</sup> 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*.”<sup>27</sup>
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*”<sup>28</sup>

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

<sup>23</sup> “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>

<sup>24</sup> 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>

<sup>25</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

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

[06-13 racialized-communities-strategy.asp](http://legalaid.on.ca/en/news/newsarchive/2016-06-13-racialized-communities-strategy.asp)

<sup>27</sup> “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](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>28</sup> 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."<sup>29</sup> 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*<sup>30</sup> and *By-Laws*<sup>31</sup> 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.

<sup>29</sup> "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](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

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

<sup>31</sup> 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;<sup>32</sup>
  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;<sup>33</sup> 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.

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<sup>33</sup> 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.<sup>34</sup>
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.<sup>35</sup> 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

<sup>34</sup> “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/>

<sup>35</sup>, “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](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

departments in Québec.<sup>36</sup> 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.<sup>37</sup>

### **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.

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

<sup>37</sup> *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.<sup>38</sup>

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*].”<sup>39</sup>
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.”<sup>40</sup>
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.<sup>41</sup>
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

<sup>38</sup> *Rules of Professional Conduct*, *supra* note 6.

<sup>39</sup> *Paralegal Rules of Conduct*, *supra* note 7.

<sup>40</sup> Participating legal association.

<sup>41</sup> “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.<sup>42</sup> 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*.<sup>43</sup> 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.<sup>44</sup>
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.<sup>45</sup>
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."<sup>46</sup> 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).

<sup>42</sup> "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>

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

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

<sup>45</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>46</sup> "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”<sup>47</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>48</sup>
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.”<sup>49</sup>

### **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**

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

<sup>48</sup> *Ibid.*

<sup>49</sup> 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.”<sup>50</sup>*

— 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.<sup>51</sup>
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;<sup>52</sup>
  - 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.

<sup>50</sup> “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>

<sup>51</sup> *Supra* note 11 & note 13

<sup>52</sup> “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.”<sup>53</sup>
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.”<sup>54</sup>
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,<sup>55</sup> 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.<sup>56</sup>
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

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<sup>53</sup> *Supra* note 47.

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

<sup>55</sup> “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 commentators<sup>57</sup> 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.).”<sup>58</sup>

<sup>57</sup> 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)

<sup>58</sup> *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.”<sup>59</sup>
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”.<sup>60</sup> 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.<sup>61</sup>
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”.<sup>62</sup>
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.<sup>63</sup>
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>64</sup>

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<sup>59</sup> *Ibid.*

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

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

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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-

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<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.<sup>65</sup>
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.”<sup>66</sup> 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.

<sup>65</sup> Policy and Guidelines on Racism, *supra* note 39 at 50.

<sup>66</sup> 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\\_Compentence\\_Bhasin.pdf](http://www.practicepro.ca/LawproMag/Cultural_Compentence_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.”<sup>67</sup>
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 Report<sup>68</sup> 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

<sup>67</sup> Law firm representative.

<sup>68</sup> “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/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2013/convov2013_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."<sup>69</sup>

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.<sup>70</sup> 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.

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<sup>69</sup>"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](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

<sup>70</sup> *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.<sup>71</sup>
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.<sup>72</sup> For example, Menteer, a free, open source online platform,<sup>73</sup> 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

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

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

<sup>73</sup> 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.<sup>74</sup>

#### *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.<sup>75</sup> 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

<sup>74</sup> "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>

<sup>75</sup> "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*<sup>76</sup>, 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

<sup>76</sup> "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.”<sup>77</sup>
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.<sup>78</sup> 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.”<sup>79</sup>
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.<sup>80</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>81</sup>
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,

<sup>77</sup> 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>

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

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

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

<sup>81</sup> *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.<sup>82</sup>

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,

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<sup>82</sup> 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.<sup>83</sup> 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

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<sup>83</sup> 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, one 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.”<sup>84</sup>

### 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 sponsorship<sup>85</sup> 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.

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

<sup>85</sup> 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*<sup>86</sup> and the *Paralegal Rules of Conduct*<sup>87</sup> 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

<sup>86</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>87</sup> *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”<sup>88</sup>, 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

<sup>88</sup> 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.<sup>89</sup> 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.

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<sup>89</sup> 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](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)

Convocation - Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones Report

**TAB 5**



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

## **Report to Convocation**

**June 29, 2017**

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### **Equity and Indigenous Affairs Committee/ Comité sur l'équité et les affaires autochtones**

#### **Committee Members**

**Dianne Corbiere, Co-Chair  
Julian Falconer, Co-Chair  
Sandra Nishikawa, Vice-Chair  
Gina Papageorgiou, Vice-Chair  
Marion Boyd  
Suzanne Clément  
Robert Evans  
Avvy Go  
Howard Goldblatt  
Marian Lippa  
Isfahan Merali  
Sidney Troister  
Tanya Walker**

**Purpose of Report: Decision and Information**

**Prepared by the Policy Secretariat  
(Marian MacGregor – 416-947-3464)**

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Convocation - Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones Report

## **COMMITTEE PROCESS**

1. The Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones ("EIAC" or the "Committee") met on June 8, 2017. In attendance were Dianne Corbiere (Co-Chair), Julian Falconer (Co-Chair) Sandra Nishikawa (Vice-Chair) as well as Committee members Suzanne Clément, Marian Lippa, Isfahan Merali, Bob Evans and Sidney Troister.
2. Sonia Ouellet, representative of the Association des juristes d'expression française de l'Ontario ("AJEFO") was present. Paul Saguil, representative of the Equity Advisory Group ("EAG"), and Kathleen Lickers, representative of the Indigenous Advisory Group ("IAG"), also participated by telephone.
3. Staff members Jim Varro, Terry Knott, Karen Manarin, Marian MacGregor, Darcy Belisle and Hyacinth Khin were present.

TAB 5.1

FOR DECISION

## INDIGENOUS FRAMEWORK

### Motion

4. That Convocation approve the Indigenous Framework for the Law Society, set out at [Tab 5.1.1](#).

### Introduction and Purpose

5. As stated in the [Treasurer's September 22, 2017 Memorandum](#) (Treasurer's Memorandum) to the Equity and Indigenous Affairs Committee (EIAC),

the promotion of equity and diversity must prioritize reconciliation with Indigenous peoples. The Truth and Reconciliation Commission of Canada's Final Report reminded us of the reality that Indigenous peoples have a "deep and abiding distrust of Canada's...legal systems". The Law Society can play a part in working towards reconciliation.

6. At the Treasurer's direction, the EIAC, in partnership with the Indigenous Advisory Group (IAG), has developed an Indigenous Framework. The Framework is before Convocation for approval as a document to guide the Law Society's work within its mandate on Indigenous issues and the relationship with the Indigenous community.
7. The Indigenous Framework represents the Law Society's work towards fulfilment of the Law Society's mandate, particularly in relation to access to justice, and the equity and other principles by which it regulates, in relation to legal and regulatory issues affecting Indigenous peoples.
8. It also represents progress towards reconciliation with First Nations, Métis and Inuit communities, whose members are licensees, clients, individuals who interact with the justice and legal systems, and Ontarians to whom the Law Society, in accordance with s. 4.2(2) of the *Law Society Act*, owes a duty to act so as to facilitate access to justice.

### Background to Development of the Framework

#### The Indigenous Advisory Group (IAG)

9. Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission of Canada's Final Report (TRC Report), the Law Society expressed its

## Convocation - Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones Report

desire to formally re-establish and strengthen its relationship with Indigenous people on justice issues.

10. Reaching out to the Indigenous Bar Association for support, an interim IAG was formed to begin addressing issues related to reconciliation and Indigenous issues as well as the development of a permanent IAG. In April 2016, this interim Indigenous Advisory Group provided Terms of Reference to EIAC and was introduced to EIAC members.
11. On June 23, 2016, this IAG was publicly announced at the *Celebration of Indigenous Peoples* event at the Law Society.
12. The IAG was established as an independent body to:
  - a. advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to
  - b. promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
13. The Terms of Reference of the Indigenous Advisory Group are attached at [TAB 5.1.2](#).
14. To fulfill the Terms of Reference and mandate of the IAG, diverse representation amongst IAG members is key factor to facilitating discussion and decision on policies to address the wide ranging and unique realities that First Nations, Métis and Inuit communities and individuals across Ontario face in relation to the regulation of legal profession and access to justice. Thus, the IAG is inclusive of representatives from First Nations, Métis, Inuit communities that are located across the province, including southern and northern Ontario. Moreover, members are representative of the legal professions (lawyers and paralegals) and also include non-licensees. A range of experience is also key to maintaining balance within the group with experienced lawyers and early career representatives.
15. The IAG is also comprised of an Elders Council. Elders play central roles First Nations, Métis and Inuit communities. Among the many roles that Elders play, they hold significant wisdom in areas of traditional knowledge, are recognized as having that wisdom by their communities and Nations and have the capacity to transmit this knowledge to others. The role of the Elders Council is to establish a foundation of knowledge and wisdom to ground the IAG's efforts. The Elders Council also played a significant role in the formation of the IAG, having provided recommendations in relation to potential members.
16. As a key partner with the Law Society, the IAG, through the diverse voices of its membership and Elders Council, is helping to identify and assist the Law Society in

Convocation - Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones Report

making critical changes to the practices and policies of the Law Society that are reflective of the critical justice and regulatory issues that affect First Nation, Métis and Indigenous communities and peoples in Ontario.

#### The EIAC and IAG: Collaborative Development of The Indigenous Framework

17. In September 2016, the IAG and the EIAC embarked on a collaboration in the development of the Law Society's Indigenous Framework. It was also decided in late 2016 that the IAG, as a partner with EIAC, the Chair and members of the Elders Council would attend EIAC meetings to provide updates on the work of the IAG and to provide Indigenous teachings to the EIAC members. This informs the work of the EIAC and enhances the knowledge of EIAC members.
18. The EIAC and the IAG met in November 2016 to discuss the development of the Indigenous Framework and began the development of a Draft Indigenous Framework. In collaboration with staff, the EIAC and the IAG made progress on the Indigenous Framework throughout 2017. In early June, the IAG completed its work on the Framework, which was reviewed at the June meeting of the EIAC.

#### **Key Features of the Indigenous Framework**

19. The Treasurer's Memorandum indicates that one of the initiatives that is to be undertaken by the EIAC in collaboration with the IAG is the development of an "Indigenous lens to all we do at the Law Society". The Indigenous Framework is responsive to this direction as it outlines a series of principles that form the scope of this lens. As stated in the Indigenous Framework:

The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.

20. The Indigenous lens sets the Indigenous Framework on four foundational pillars, which provide perspective and guidance for the Law Society in its interaction with Indigenous peoples. These four pillars, which were distilled from priorities outlined in documents that informed the development of the Indigenous Framework (e.g. Treasurer's Mandate), include:

- Creating and Enhancing Cultural Competency
- Achieving and Improving Access to Justice
- Promoting and Supporting Knowledge of Indigenous Legal Systems

## Convocation - Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones Report

- Taking Action on Reconciliation

21. A number of things, described below, have informed the development of a foundation, now realized in the Framework, to guide the actions of the Law Society in relation to Indigenous issues.
22. They include the Law Society's 2009 [Final Report of the Indigenous Bar Consultation](#), particularly around mentorship initiatives for Indigenous law students and licensees and the 94 Calls to Action outlined in the TRC Final Report, particularly those that provide direction to institutions and individuals on how to take action towards the achievement of reconciliation. It should be noted that a detailed response to the TRC Final Report is proposed within the priorities identified under the pillar of Taking Action on Reconciliation. This response is not to be limited to Calls to Action 27<sup>1</sup> and 28<sup>2</sup>, but is to include all matters identified in the report that intersect with the mandate of the Law Society. This includes but is not limited to issues such as cultural competency and equity for Indigenous people in the justice system.
23. The discussions within the Law Society between the EIAC, IAG and Law Society staff and information from events such as the 2016 Indigenous Bar Association Conference, where a review of Law Society functions in the context of reconciliation was led by the IAG Chair and members, have also been helpful in contributing to the content of the Indigenous Framework.
24. Critical provincial and national issues have also influenced the development of the Indigenous Framework, particularly those that intersect with justice issues, including but not limited to
- a. the crisis of missing and murdered Indigenous women, girls and LGBTQ2S people and the current National Inquiry into Missing and Murdered Indigenous Women and Girls;
  - b. the Crisis of Indigenous Children and Youth in Care;

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<sup>1</sup> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

<sup>2</sup> We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

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- c. barriers to access to justice that disproportionately affect First Nations, Métis and Inuit peoples and the resulting and urgent need to accommodate the unique historical and cultural circumstances of Indigenous peoples and Indigenous approaches to conflict resolution in the justice system;
  - d. the overrepresentation of Indigenous people in legal proceedings, care and incarceration;
  - e. as identified in the TRC Final Report, “the need for lawyers to develop a greater understanding of Aboriginal history and culture as well as the multi-faceted legacy of residential schools”<sup>3</sup>; and
  - f. the historical suppression of and resonant need to support and promote Indigenous legal traditions, laws and their applications across Canada.
25. The EIAC and the IAG have also considered key policy and justice reports and documents that have been produced by provincial, national and international bodies, which are identified in Appendix A of [TAB 5.1.1](#), in developing the Indigenous Framework.
26. Not unlike the TRC Final Report, many of these reports include recommendations that support improved relations between Indigenous and non-Indigenous peoples. These reports are provided in the Appendix to the Framework as they are critical in understanding the legacy of marginalization from contemporary discourse and action in relation to Indigenous peoples locally, nationally and globally, and the need to move forward to achieve equality and inclusion:

- 
- [Report of the Royal Commission on Aboriginal Peoples](#) (also known as RCAP)
  - The Ipperwash Inquiry - Final Report
  - the *United Nations Declaration on the Rights of Indigenous Peoples*
  - [The Iacobucci Report – First Nations Representation on Ontario Juries](#)

### Next Steps

27. The Indigenous Framework provides the Law Society with a foundation to take action on reconciliation within the ambit of its mandate, which as the TRC states “is about

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<sup>3</sup> [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#) at Pg. 168.

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establishing and maintaining a mutually respectful relationship between Aboriginal and non-Aboriginal peoples in this country".<sup>4</sup>

28. In moving forward with the Framework, the Law Society will collaborate with the IAG beginning in the summer on the development of a work plan to be derived from the Framework which will set the groundwork for the implementation of the Framework. The EIAC will report to Convocation on the progress of this work in the fall of 2017.

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<sup>4</sup> [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#) at Pg. 6.

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## Law Society of Upper Canada Draft Indigenous Framework

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**Draft Date: December 2, 2016  
May 1<sup>st</sup> 2017 (revised)  
June 5th 2017 (revised)**

**Prepared by the Policy Secretariat  
and the Indigenous Advisory Group**

Confidential Draft

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APPENDICES

    APPENDIX A: INDIGENOUS ADVISORY GROUP TERMS OF REFERENCE<sup>1</sup>

    APPENDIX B: FINAL REPORT OF THE INDIGENOUS BAR CONSULTATION, 2009

        CONVOCAATION'S 2015-2019 STRATEGIC PLAN

        TRESURER'S MEMORANDUM TO EAIC, SEPT 22 2016

        APPROACHES FOR THE LAW SOCIETY OF UPPER CANADA'S  
    RESPONSES TO THE TRUTH AND RECONCILIATION  
    COMMISSION OF CANADA (TRC) FINAL REPORT, SEPT 2 2016

<sup>1</sup> These Terms of Reference are subject to amendment as of June 5th

## BACKGROUND

1. The Law Society of Upper Canada (Law Society), as a regulator of all lawyers and licensed paralegals in the province of Ontario, pursuant to its legislative mandate under the *Law Society Act R.S.O. 1990, Chapter L.8* (the *Act*) must have regard to the following duties:
  - To maintain and advance the cause of justice and the rule of law;
  - To act so as to facilitate access to justice for the people of Ontario;
  - To protect the public interest;
  - To act in a timely, open and efficient manner; and
  - Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized
2. In 2000, consistent with the duties encoded in the *Act*, the Law Society established a standing committee of Convocation called the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee or EIAC)<sup>2</sup>, to develop policies, programs and initiatives to best serve and promote an inclusive profession. Subject to Convocation's approval, the EIAC's mandate is to develop policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples. As a best practice, the EIAC consults with Indigenous peoples, Francophone citizens and other communities in the development of such policy options.
3. As part of the Law Society's efforts over the years to consult with Indigenous peoples, a number of working groups and strategies have been established including Rotiio>taties<sup>3</sup> in 1998.
4. Rotiio>taties was an independent board of Elders, Indigenous lawyers<sup>4</sup>, community representatives and law students who advised various bodies, including the Law Society, on Indigenous issues arising in law and the legal profession. The membership of Rotiio>taties changed over the years until its eventual transition to an Aboriginal Working Group.

<sup>2</sup> By motion of February 9, 2017, EAIC amended its name to the Equity and Indigenous Affairs Committee.

<sup>3</sup> Meaning "continuously working" in the Mohawk language.

<sup>4</sup> At the time Rotiio>taties was created, paralegals were not yet licensees within the profession.

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5. In 2009 Convocation approved the *Final Report of the Indigenous Bar Consultation* which identified a number of recommended actions the Law Society could undertake. These recommendations included:
  - Expanding the Members' Annual Report Practice Categories to include Aboriginal Law (to determine how many lawyers in Ontario self-identify as practicing Aboriginal law)
  - Mentoring and Networking Program
  - Continuing Legal Education Course in Aboriginal Law and Issues
  - Certified Specialist Program in Aboriginal Law<sup>5</sup>
6. In 2014, Convocation affirmed its commitment to place emphasis, through the EIAC, on Indigenous issues. In June 2016, the Indigenous Advisory Group<sup>6</sup> (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
7. In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and on November 5, 2016, the EIAC and the IAG held a joint meeting to begin the development of this Indigenous Framework.

## INTRODUCTION

8. The Indigenous Framework has been developed in accord with the priorities identified in three key Law Society documents:
  - Convocation's 2015-2019 Strategic Plan, as relevant to the EIAC's mandate;
  - Treasurer's Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016); and
  - Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada (TRC) Final Report (Sept. 2, 2016).<sup>7</sup>

<sup>5</sup> 2009 *Final Report of the Indigenous Bar Consultation*, pp. 32-35.

<sup>6</sup> The Indigenous Advisory Group's Terms of Reference are attached as Appendix A. For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, non-Status, Inuit and Métis peoples.

<sup>7</sup> Each of these key documents has been reproduced in Appendix B.

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9. The priorities identified in the above documents often intersect and coalesce, helping to shape this Framework into the following Four Pillars:
- Creating and Enhancing Cultural Competency
  - Achieving and Improving Access to Justice
  - Promoting and Supporting Knowledge of Indigenous Legal Systems
  - Taking Action on Reconciliation
10. The development of every initiative by the Law Society within any one of these Four Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of this Framework. The Treasurer, through his Memorandum to the Equity and Aboriginal Issues Committee, directed the EIAC to develop policies that will ensure an Indigenous lens to all the Law Society does.
11. The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws ; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.<sup>8</sup> Such principles are :
- **Love:** To know love is to know peace.
  - **Respect:** To honour all Creation is to have respect
  - **Courage:** To face life with courage is to know bravery
  - **Honesty:** To walk through life with integrity is to know honesty
  - **Humility:** To accept yourself as a sacred part of Creation is to know humility
  - **Wisdom:** To cherish knowledge is to know wisdom
  - **Truth:** To know of these things is to know truth

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<sup>8</sup> Inuuqatigiitsiarniq- Respecting others, relationships and caring for people.  
 Tunnganarniq- Fostering good spirit by being open, welcoming and inclusive.  
 Pijitsirniq- Serving and providing for family and/or community. Aajiiqatigiinni- Decision making through discussion and consensus. Pilimmaksarniq- Development of skills through practice, effort and action.  
 Piliriqatigiinni/Ikajuqtigiingni- Working together for a common cause.  
 Qanuqtuurniq- Being innovative and resourceful  
 Avatittinnik Kamatsiarniq- Respect and care for the land, animals and the environment. (Source:Tungasuvvingat Inuit Restorative Justice Initiative)

## THE FOUR FRAMEWORK PILLARS

### CREATING AND ENHANCING CULTURAL COMPETENCY<sup>9</sup>

12. The Law Society will work in partnership with the IAG to create and enhance cultural competency recognizing the continued need for licensees to be equipped with the cultural, historical and legal knowledge that will enable the provision of legal services in a manner that supports Indigenous peoples in addressing their unique interests, issues and challenges.
13. The Law Society prioritizes life-long competence for lawyers and paralegals. The Treasurer's Memorandum to the Equity and Aboriginal Issues Committee further contextualizes this priority, and directs the EIAC to develop programs that will enhance cultural competence internally to the Law Society (staff, Benchers) and the profession (licensees) in dealings with Indigenous peoples.<sup>10</sup>
14. Specific proposed approaches towards supporting cultural competency are detailed in the Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada Final Report and include knowledge enhancements, working with the Federation of Law Societies of Canada and developing skills-based training and other supports.

#### ***I. Creating and Enhancing Knowledge***

- a. Ensure Law Society ***staff and Benchers*** have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, Aboriginal-Crown relations and basic cultural protocols.
- b. Ensure ***licensees*** have the opportunity to access cultural competency training that includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.
- c. Ensure ***licensees that are required by their employment*** to engage directly with the Indigenous people of Ontario, undertake cultural competency training

<sup>9</sup> To be clear, the language of inter-cultural "competency" comes from the Truth and Reconciliation Calls to Action. In applying the term within this Framework, the IAG is not asking everyone to adopt the cultural practices that are unique to the Indigenous peoples of Ontario, rather, to gain knowledge of and respect for each Indigenous person's right to maintain justice in their own way. The IAG will further develop what is the intended meaning within this Framework and include examination of systemic barriers and anti-racism measures.

<sup>10</sup> Convocation's 2015-2019 Strategic Plan prioritizes life-long competence for lawyers and paralegals. Priorities include enhancing licensing standards, improving and increasing practice supports and considering education beyond traditional Continuing Professional Development formats (e.g. possible multiple-day courses including practical application of knowledge and skills), and working with the professions to develop initiatives that institutionalize mentoring, advisory services and other types of support.

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which includes the history of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.

- d. Work with **Deans, law faculty and students** of Ontario Law Schools and colleges (paralegal education) to enhance their knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- e. Develop and offer **Continuing Professional Development (CPD)** programs and legal education sessions independently and in collaboration with partners to illustrate the relevance of the *United Nations Declaration on the Rights of Indigenous Peoples* in Ontario and its relevance to various practice areas.

## II. Working with Partners

- a. Participate with **other Law Societies in Canada and the Federation of Law Societies** in examining whether changes can be made to the *National Standards* and other licensing requirements to enhance knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- b. In partnership with the **Indigenous Bar Association**, examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services.
- c. Engage with **other legal associations, advocates and professional entities** in Ontario to further educate, consult and inform.

## III. Developing Skills-Based Training and Other Supports

- a. Support, develop and offer independently and/or in partnership with other providers, skills-based training and practice supports in inter-cultural competency, conflict resolution, human rights and anti-racism.
- b. Support Deans, law faculty and students of Law Schools and Colleges in Ontario regarding how skills-based training in inter-cultural competency, conflict resolution, human rights, and anti-racism can be introduced into experiential learning in Law Schools and Colleges.
- c. Support the Law Society's Equity Legal Education programs—developed, as appropriate, in partnership with Deans, faculty and students of Law Schools as well as Indigenous knowledge keepers, practitioners, organizations and others—to address the legacy of the Indian Residential School experience and Canada's colonialist law and policy, Treaty and Aboriginal Rights, the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and current initiatives of First Nations, Métis and Inuit peoples.

## ACHIEVING AND IMPROVING ACCESS TO JUSTICE

15. The Law Society will work with the IAG recognizing that achieving and enhancing Access to Justice across Ontario is a key priority of the Law Society. It identifies strategic goals towards increasing collaboration with access to justice partners and other stakeholders as well as developing and implementing a more concrete access to justice action plan.
16. Additional priorities in the Strategic Plan, including engaging stakeholders and the public with responsive communications and increasing organizational effectiveness, will also support enhancing access to justice.
17. An important element of achieving and improving access to justice will be the review and improvement of the Mentoring and Networking Program to ensure it continues to deliver the objectives called for in 2009 by the Final Report of the Indigenous Bar Consultation.
18. The Treasurer's Memo provides further direction on specific priorities in relation to improving access to justice for Indigenous peoples, including improving access to the complaints process for Indigenous communities.
19. Improve the Law Society's hearing and regulatory process, including the Tribunal, in every interaction with Indigenous people.
20. Engage with the Law Society's Legal Aid Working Group to examine and improve the delivery of legal aid to Indigenous people community and address the financial barriers that prohibit meaningful access to justice.
21. Provide support for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), including:
  - a. Further support for Inquiry processes
  - b. Develop communication materials to promote awareness and access to justice, published in English, French and Indigenous languages.
  - c. Commit to address Inquiry recommendations.
22. Contribute to the elimination of the overrepresentation of Indigenous people in legal proceedings, care and incarceration through a number of channels:
  - a. Supporting the implementation of the recommendations of the Debwewin Implementation Committee's Final Report and Feathers of Hope.
  - b. Considering the results of TAG's cluster on "the Seventh Generation – the Crisis of Aboriginal Children and Youth in Care".

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- c. Considering, as a justice system stakeholder, actions the Law Society can take and what collaborative opportunities exist with other stakeholders to promote alternatives to community sanctions, mandatory minimum sentences, bail procedural and supporting culturally appropriate services to reduce domestic violence, dispute resolution mechanisms, Aboriginal healing lodges and halfway homes.
- d. Undertaking a study on barriers to access to justice in Northern Ontario, including the efficacy and standardization of the preparation of Gladue Reports (across all of Ontario).
- e. Expanding the Guidelines for Lawyers Representing Residential School Claimants to other areas within the Law Society's regulatory scope.

#### PROMOTING AND SUPPORTING KNOWLEDGE OF INDIGENOUS LEGAL SYSTEMS

23. The Law Society will work with the IAG recognizing that knowledge of Indigenous legal systems is an essential as part of the Law Society's commitment to prioritizing life-long competence and enhancing access to justice for Indigenous peoples. The promotion and support of knowledge of Indigenous legal systems can include:

- a. In response to Call to Action 50, support "the establishment of Indigenous Law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique characteristics of Aboriginal peoples in Canada."
- b. Develop and offer Continuing Professional Development (CPD) programs and legal education sessions independently and with partners to support understanding, respect for and application of Indigenous legal systems in Ontario.
- c. Develop and enhance services available to licensees, including practice supports and learning resources that could provide guidance on Indigenous justice issues, including but not limited to the application of the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, and the MMIWG.
- d. Enhance the Law Society's Lawyer Referral Program and Mentorship to provide support and guidance on Indigenous justice issues.
- e. Enhance the Member Assistance Program to provide for the well-being of Indigenous licensees in ways that promote and support Indigenous, traditional healing methods.
- f. Enhance supports for small and solo firm practices within the Indigenous community (i.e. mentoring).

## TAKING ACTION ON RECONCILIATION

24. The Law Society recognizes that it will work in partnership with the IAG and be guided by Indigenous knowledge keepers, leaders and citizens, Indigenous practitioners and others, in the development of the Law Society's responses to the Final Report of the Truth and Reconciliation's Calls to Action.
25. The Law Society's priority to engage with stakeholders and the public with responsive communications will support strengthened relationships with Indigenous and non-Indigenous licensees and members of the public, as well as build greater awareness of the Law Society's role in the reconciliation process.
26. Specific proposed actions related to reconciliation are outlined in the TRC Responses document and include:
  - a. A statement of support for the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation.
  - b. A commitment to actively consider opportunities to collaborate with partners, including legal and professional entities in Ontario to extend the impact of the responses the Law Society undertakes and explore how the Law Society can support the work of partners in advancing reconciliation.
  - c. Examine, in partnership with the Indigenous Bar Association, the codes of professional conduct and the commentaries as well as the Federation Model Code to consider changes to promote reconciliation and culturally competent service delivery.

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## **List of References**

**1982**

- [The Constitution Act, 1982](#)

**1996**

- [Report of the Royal Commission on Aboriginal Peoples](#)

**1999**

- [R v. Gladue, \[1999\] 1 S.C.R. 688](#)

**2005**

- [The Kelowna Accord](#)

**2007**

- [The Ipperwash Inquiry - Final Report](#)

**2008**

- [United Nations Declaration on the Rights of Indigenous Peoples](#)

**2012**

- [Forsaken: The Report of the missing Women Commission of Inquiry \(The BC Missing Women Commission of Inquiry\)](#)

**2013**

- [The Iacobucci Report – First Nations Representation on Ontario Juries](#)
- [Feathers of Hope: A First Nations Youth Action Plan](#)
- [Feathers of Hope: Justice and Juries](#)

**2015**

- [The Truth and Reconciliation of Canada Final Report](#)
- [Concluding observations on the sixth periodic report of Canada, United Nations Human Rights Committee](#)

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## **Indigenous Advisory Group**

### **Draft**

### **Terms of Reference**

#### **Purpose:**

Adopting the United Nations Declaration on the Rights of Indigenous<sup>1</sup> Peoples as its framework, the Indigenous Advisory Group will advance and encourage the reconciliation of Indigenous peoples and Indigenous legal systems with the Canadian legal system (its Constitution, laws and legal framework) and promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

#### **Principles:**

The conduct of each member and the work of the Indigenous Advisory Group will be guided by the following core principles:

- **Mutual Respect and Understanding**: Each member will afford respect to and strive to understand one another, the diversity of Indigenous cultures, legal systems, clients' needs and experiences, and the issues to be addressed.
- **Consensus Building**: Each member and as a group will work to find consensus in the discussion of issues. Disagreements will be acknowledged and the members commit to compromise to find solutions wherever possible and practical.
- **Cooperation**: Each member and as a group will work together toward realizing our shared purpose.
- **Words and Action Match**: Each member and as a group will work to demonstrate integrity in carrying out our work. Efforts will be put forth towards prompt follow up on actions identified by the Advisory Group.
- **Confidentiality**: Each member commits to maintaining the confidences of the membership and the discussions that occur and to refrain from disclosing any material deemed confidential that may come into the possession of the group.

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<sup>1</sup>For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, Non-Status, Inuit and Métis peoples.

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**Mandate:**

To provide a forum:

- To promote the implementation of recommendations and calls to action from reports generated regarding Indigenous peoples and Canada's legal system, including the Truth & Reconciliation Commission of Canada's Final Report and Calls to Action (2015) and the First Nations Representation on Ontario Juries Report by Justice Frank Iacobucci (2013).
- To encourage partnerships and relationships between Indigenous peoples, the Indigenous Bar Association in Canada and the Law Society.
- To directly interact and partner with the Law Society, its Equity and Aboriginal Issues Committee, Benchers committees and affiliated working groups; Executive Director, Policy, Equity & Public Affairs; Director – Equity, Indigenous Initiatives Counsel and other staff at the Law Society on all issues affecting Indigenous peoples in relation to the Law Society;
- To identify priorities and make recommendations on the provision of legal services by and for Indigenous peoples in Ontario;
- To initiate, inform, promote and advance reform of policies, procedures, rules and regulations for the benefit of Indigenous peoples;
- To promote public awareness and educate members of the Law Society on issues related to and affecting Indigenous peoples;
- To review, comment and make recommendations on reports affecting Indigenous peoples with respect to the legal profession;
- To assess the progress and effectiveness of initiatives undertaken by the Law Society that address or relate to legal issues affecting Indigenous Peoples.

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### **Membership:**

The membership of the Indigenous Advisory Group will comprise of diverse representation by up to nine individuals from the Indigenous community, including lawyers and paralegals from various geographic regions of Ontario, Indigenous law professors, community members and youth.

Members of the Indigenous Advisory Group will be recommended for appointment by an "Elders Council" and confirmed by consensus by the existing membership.

Members of the "Elders Council" will be comprised of at least three individuals and will be selected by the membership of the Indigenous Advisory Group as needed. The Elders Council will forever be standing members of the Indigenous Advisory Group.

A "Proto Group" was established to create these Terms of Reference. Members of the "Proto Group" will become the initial members of the Indigenous Advisory Group and will serve as members over a period of six months to one year until such time as new membership of the Indigenous Advisory Group is determined.

### **Co-Chairs:**

There shall, whenever possible, be two co-Chairs that represent a gender balance. Co-chairs are appointed through consensus of the membership and will sit for a term of two years.

In the interests of continuity, relationship building and effectiveness, where possible these terms will be staggered to ensure an overlap and avoid situations where both co-Chairs begin their terms simultaneously.

Responsibilities of the Co-Chairs are shared, and include:

- chairing the meetings (on a rotating basis) of the Indigenous Advisory Group
- taking direction from the Indigenous Advisory Group;
- overseeing the work of the ad hoc / working committees;
- representing the Indigenous Advisory Group at Committees of the Law Society;

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- working with the Law Society's Executive Director, Policy, Equity & Public Affairs Department and Indigenous Initiatives Counsel in supporting the work of the Advisory Group.

### **Committees:**

Ad hoc / working committees will be struck as required and will be subject to time designated existence.

The work of the ad hoc/working committees will be shared with the Advisory Group for discussion and action, as necessary.

### **Quorum and Meetings:**

There must be quorum to constitute a meeting, which shall consist of at least 50% plus one of the membership participating in person or by telephone, at least one of whom must be a co-Chair.

The Indigenous Advisory Group will meet bi-monthly, or as deemed necessary by the Co-Chairs at a location agreed upon by the Indigenous Advisory Group.

Members will seek reimbursement from the Law Society for reasonable out of pocket expenses incurred for travel, where travel is determined necessary by the co-Chairs for the workings of the Advisory Group. The Law Society's Executive Director, Policy, Equity & Public Affairs will determine whether the Law Society will reimburse such expenses.

All decisions will be reached by consensus. Consensus means that all members participating in a meeting have an opportunity to openly and freely discuss issues raised with an earnest and sincere attempt to arrive at agreement and acceptance of a decision. Consensus does not require that all members must be present, nor does it necessitate that all members voice an opinion or agree.

All decisions will be recorded and a summary of each meeting will be prepared by an agreed upon member at the start of each meeting.

The Law Society will provide:

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- advice and resources as appropriate;
- support to facilitate meeting location, reports and minutes on a regular basis;
- prepare proposals, submissions etc as approved and directed by the Indigenous Advisory Group

**Review of the Mandate:**

This mandate may be subject to review as determined necessary by a consensus of the membership.

DRAFT

## TAB 5.2

## FOR DECISION

**HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTION**

29. That Convocation approve the letters and public statements in the following cases:
- a. Chief Justice Sushila Karki – Nepal – letters of intervention and public statement presented at [TAB 5.2.1](#).
  - b. Fayzinisso Vohidova – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.2](#).
  - c. Muazzamakhon Kadirova (Muazzama Qodirova) – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.3](#).
  - d. Buzurgmehr Yorov – Tajikistan – letters of intervention and public statement presented at [TAB 5.2.4](#).
  - e. Michel Togué – Cameroon – letters of intervention and public statement presented at [TAB 5.2.5](#).

**Rationale**

30. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
- a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
  - b. determine if the matter is one that requires a response from the Law Society; and
  - c. prepare a response for review and approval by Convocation.

**Key Issues and Considerations**

31. The Monitoring Group considered the following factors when making a decision about the impeachment proceedings against Chief Justice Sushila Karki in Nepal:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the impeachment proceedings against Chief Justice Sushila Karki fall within the mandate of the Monitoring Group.

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32. The Monitoring Group considered the following factors when making a decision about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the travel ban against lawyer Fayzinisso Vohidova falls within the mandate of the Monitoring Group.
33. The Monitoring Group considered the following factors when making a decision about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) falls within the mandate of the Monitoring Group.
34. The Monitoring Group considered the following factors when making a decision about the conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the conviction and pending charges against lawyer Buzurgmehr Yorov falls within the mandate of the Monitoring Group.
35. The Monitoring Group considered the following factors when making a decision about the harassment and intimidation of lawyer Michel Togué in Cameroon:
- a. there are no concerns about the quality of sources used for this report; and
  - b. the harassment and intimidation of lawyer Michel Togué falls within the mandate of the Monitoring Group.

## KEY BACKGROUND

### ***NEPAL – IMPEACHMENT PROCEEDINGS AGAINST CHIEF JUSTICE SUSHILA KARKI***

#### ***Sources of Information***

36. The background information for this report was retrieved from the following sources:
- a. Aljazeera;<sup>1</sup>
  - b. BBC;<sup>2</sup>

<sup>1</sup> “Nepal: Chief justice Sushila Karki suspended”, *Aljazeera* (1 May 2017), online: <http://www.aljazeera.com/news/2017/05/nepal-chief-justice-sushila-karki-suspended-170501124314347.html>.

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- c. The Himalayan Times;<sup>3</sup>
- d. Hindustan Times;<sup>4</sup>
- e. NDTV;<sup>5</sup> and
- f. Sri Lanka Guardian.<sup>6</sup>

**Background**

37. Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.
38. On April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police,<sup>7</sup> accuses the Chief Justice of delivering biased verdicts,<sup>8</sup> interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.
39. On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

<sup>2</sup> "Nepal's first female chief justice faces impeachment", *BBC* (30 April 2017), online: <<http://www.bbc.com/news/world-asia-39764830>>.

<sup>3</sup> Keshav P. Koirala, "Impeachment proposal against CJ Karki on Silwal verdict's eve", *The Himalayan Times* (30 April 2017), online: <<https://thehimalayantimes.com/kathmandu/impeachment-proposal-filed-chief-justice-sushila-karki/>>.

<sup>4</sup> Anil Giri, "Nepal deputy PM quits over move to impeach first woman chief justice", *Hindustan Times* (30 April 2017), online: <<http://www.hindustantimes.com/world-news/nepal-deputy-pm-quits-over-move-to-impeach-first-woman-chief-justice/story-4JIYN3xW76IJHG9x6YqkvL.html>>; Anil Giri, "Nepal's Supreme Court reinstates Chief Justice Sushila Karki", *Hindustan Times* (5 May 2017), online: <<http://www.hindustantimes.com/world-news/nepal-s-supreme-court-reinstates-chief-justice-sushila-karki/story-SjXTxi8LmnsdQp1ZpLcSL.html>>.

<sup>5</sup> "Nepal Moves To Impeach First Woman Chief Justice Sushila Karki", *NDTV* (1 May 2017), online: <<http://www.ndtv.com/world-news/nepal-moves-to-impeach-first-female-chief-justice-sushila-karki-1688083>>.

<sup>6</sup> "Nepal: Moves to impeach Chief Justice — an assault on human rights — UN", *Sri Lanka Guardian* (5 May 2017), online: <<https://www.siguardian.org/2017/05/nepal-moves-to-impeach-chief-justice-an-assault-on-human-rights-un/>>.

<sup>7</sup> The court ruled that the government had violated existing processes and regulations in appointing Jaya Bahadur Chand as police chief instead of Navaraj Silwal, the highest-ranking officer.

<sup>8</sup> "We have decided to impeach Chief Justice Sushila Karki... after she visibly started taking sides in cases," Min Biswakarma, a member of the ruling coalition who proposed the motion. (See *NDTV, ibid.*)

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40. Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

## **TAJIKISTAN – TRAVEL BAN AGAINST LAWYER FAYZINISSO VOHIDOVA**

### **Sources of Information**

41. The background information for this report was retrieved from the following sources:
- a. Amnesty International; and<sup>9</sup>
  - b. Human Rights Watch.<sup>10</sup>

### **Background**

42. Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.
43. Most recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Travel bans cannot be appealed. It should be noted that in the weeks that preceded this incident, Fayzinisso Vohidova had been interrogated several times by Tajik security services.
44. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically

<sup>9</sup> Amnesty International, “Tajikistani lawyers harassed, intimidated and imprisoned” (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, “In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan” (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>10</sup> Human Rights Watch, “Tajikistan: Travel Ban on Rights Lawyer” (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>; Human Rights Watch, “Tajikistan: Free Human Rights Lawyers” (4 May 2016), online: <<https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>>.

motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

### **Broader Issues Regarding Lawyers in Tajikistan**

45. Over the last three years, defence lawyers in Tajikistan who have taken up politically sensitive cases or cases related to national security and counter-terrorism have faced increasing harassment, intimidation and pressure as a result of their legitimate professional activities. In some cases, lawyers have been subjected to punitive arrest, criminal prosecution on national security-related or politically-motivated charges, and sentenced to long prison terms following unfair trials. Some lawyers have fled the country to avoid such persecution. Meanwhile, their families have also been targeted, harassed and threatened with reprisals by security forces and local authorities.
46. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the president and the government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. Few have been prepared to take up this role because of the associated risks, and some of those who have have faced harassment and threats as a result.
47. Amendments to legislation which concerns the regulation of the legal profession in Tajikistan (Law on Advokatura) have been instrumental in reducing the number of licensed lawyers by more than half and further restricting the already limited access to justice for Tajikistani citizens. Prominent lawyers and domestic and international experts and NGOs have expressed concern that some of the amending provisions (introduced in November 2015) threaten the independence of the legal profession and jeopardize access to legal services by: 1) bringing control over the licensing of lawyers firmly back into the hands of the executive branch of government, specifically the Ministry of Justice; 2) mandating that the deciding vote on who qualifies as a lawyer be held by a Deputy Minister of Justice; and 3) forcing all lawyers to pass the new qualification exams by the end of March 2016 or lose their licence to practice. As of May 2017, only about half of the previously licensed lawyers had successfully requalified under the new regulatory regime. Tajikistan now has approximately 600 lawyers (a significant decrease from over 1200 in 2015) for a population of over eight million, a ratio of approximately one lawyer per 13,000 inhabitants.

### ***TAJIKISTAN – HARASSMENT OF LAWYER MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)***

#### ***Sources of Information***

48. The background information for this report was retrieved from the following sources:

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- a. Amnesty International; and<sup>11</sup>
- b. RadioFreeEurope / RadioLiberty.<sup>12</sup>

**Background**

49. In October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.
50. Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.
51. As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.
52. In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.
53. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

**TAJIKISTAN – CONVICTION AND PENDING CHARGES AGAINST LAWYER BUZURGMIEHR YOROV**

<sup>11</sup> Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>12</sup> RadioFreeEurope / RadioLiberty, "Rights Watchdog Condemns Tajikistan's Crackdown On Lawyers" (24 May 2017), online: <<https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-yorov-mahkamov-kudratov/28505124.html>>; RadioFreeEurope / RadioLiberty, "Lawyer For Jailed Tajik Human Rights Attorney Flees To Germany" (30 March 2017), online: <<https://www.rferl.org/a/lawyer-jailed-tajikistan-human-rights-attorney-flees-germany/28399757.html>>.

### Sources of Information

54. The background information for this report was retrieved from the following sources:

- a. Amnesty International;<sup>13</sup>
- b. Human Rights Watch;<sup>14</sup>
- c. Lawyers for Lawyers;<sup>15</sup> and
- d. RadioFreeEurope / RadioLiberty.<sup>16</sup>

### Background

55. The Law Society previously intervened on behalf of Buzurgmehr Yorov in February 2016<sup>17</sup> and January 2017.<sup>18</sup>
56. Several developments have taken place since the Law Society's last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.
57. On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.
58. As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina

<sup>13</sup> Amnesty International, "Tajikistani lawyers harassed, intimidated and imprisoned" (24 May 2017), online: <<https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>>; Amnesty International, "In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan" (23 May 2017), online: <<https://www.amnesty.org/en/documents/eur60/6266/2017/en/>>.

<sup>14</sup> Human Rights Watch, "Tajikistan: Travel Ban on Rights Lawyer" (16 May 2017), online: <<https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>>.

<sup>15</sup> Lawyers for Lawyers, "Tajikistan Court rejects appeal of lawyer Buzurgmehr Yorov" (11 April 2017), online: <<http://www.advocatenvooradvocaten.nl/12527/tajikistan-court-rejects-appeal-of-lawyer-buzurgmehr-yorov/>>.

<sup>16</sup> RadioFreeEurope / RadioLiberty, "Reading Of 11th-Century Poem Could Earn More Time For Imprisoned Tajik Lawyer" (14 December 2016), online: <<https://www.rferl.org/a/tajikistan-lawyer-rights-poem-yorov/28176119.html>>.

<sup>17</sup> The Law Society of Upper Canada, "Re: Detention of human rights lawyer Buzurgmehr Yorov" (4 February 2016), online: <[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Human\\_Rights\\_Monitoring\\_Group/Tajikistan-Buzurgmehr%20Yorov.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan-Buzurgmehr%20Yorov.pdf)>.

<sup>18</sup> The Law Society of Upper Canada, "Re: Convictions of Human Rights Lawyers Buzurgmehr Yorov and Nuriddin Makhkamov" (23 January 2017), online: <[http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Human\\_Rights\\_Monitoring\\_Group/Tajikistan\\_Convictions%20of%20Human%20Rights%20Lawyers%20Buzurgmehr%20Yorov%20and%20Nuriddin%20Makhkamov.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/Tajikistan_Convictions%20of%20Human%20Rights%20Lawyers%20Buzurgmehr%20Yorov%20and%20Nuriddin%20Makhkamov.pdf)>.

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Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

59. Buzurgmehr Yorov's family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.
60. See also "Broader Issues Regarding Lawyers in Tajikistan" under **Tajikistan – Travel Ban Against Lawyer Fayzinisso Vohidova**.

### **CAMEROON – HARASSMENT AND INTIMIDATION OF LAWYER MICHEL TOGUÉ**

#### **Sources of Information**

61. The background information for this report was retrieved from the following sources:
  - a. Council of Bars and Law Societies of Europe;<sup>19</sup>
  - b. Human Rights Watch;<sup>20</sup> and
  - c. NewNowNext.<sup>21</sup>

#### **Background**

62. Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.
63. In early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

<sup>19</sup> Council of Bars and Law Societies of Europe, "Re: Concerns regarding threats against human rights lawyer Michel Togué" (3 May 2017), online:

<[http://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTERS/Cameroon\\_-\\_Cameroon/2017/EN\\_HRL\\_20170503\\_Cameroon\\_Concerns-regarding-threats-against-human-rights-lawyer-Michel-Togue.pdf](http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Cameroon_-_Cameroon/2017/EN_HRL_20170503_Cameroon_Concerns-regarding-threats-against-human-rights-lawyer-Michel-Togue.pdf)>.

<sup>20</sup> Human Rights Watch, "'Your Children Will Die if You Don't Stop'" (13 March 2017), online: <<https://www.hrw.org/news/2017/03/13/your-children-will-die-if-you-dont-stop>>.

<sup>21</sup> Brandon Voss, "Cameroon Lawyer Told That His Family Will Die If He Doesn't Stop Defending LGBT People", *NewNowNext* (8 April 2017), online: <<http://www.newnownext.com/cameroon-lawyer-michel-togue-death-threats-africa-homophobia/04/2017/>>.

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64. Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

## FOR INFORMATION

### HUMAN RIGHTS MONITORING GROUP RESPONSES TO INTERVENTIONS

65. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
66. In June 2017, the Monitoring Group received two responses to the Law Society’s recent intervention letters:
- a. The Monitoring Group received a response from the High Commissioner of Cameroon, regarding the Law Society’s intervention in the case related to the arrest and detention of [Justice Paul Ayah Abime](#) (Cameroon);
  - b. The Monitoring Group received a response from Front Line Defenders, thanking the Law Society for its efforts regarding the Law Society’s intervention in the case of [Emil Kurbedinov](#) (Crimea).

## HUMAN RIGHTS MONITORING GROUP ANNUAL UPDATE

67. The Human Rights Monitoring Group (“the Monitoring Group”) monitors cases of members of the legal profession and the judiciary who are facing persecution as a result of the discharge of their legitimate professional duties. When appropriate, the Monitoring Group prepares intervention letters and public statements related to these cases for Convocation’s approval. Intervention letters are sent to heads of state and are copied, for information, to relevant bar associations, human rights organizations and, when contact information is available, to the lawyers and/or judges who are the subjects of the interventions.
68. There are seven bench member members of the Monitoring Group: Teresa Donnelly (Chair), Robert Evans, Julian Falconer, Avvy Go, Judith Potter, Heather Ross and Joanne St. Lewis.

### Orientation Materials

69. Members of the Monitoring Group, including new members, receive orientation materials that include:
- The mandate of the HRMG
  - Information about interventions and the interventions to date
  - Criteria for intervention
  - The Basic Principles on the Role of Lawyers and on the Independence of the Judiciary
  - The Facilitating International Access to Justice Through Intervention – Report to Convocation October 2014.
  - Information about the Human Rights Award
  - Information about Human Rights Monitoring Group events

### Interventions

70. An extensive Access to Justice document was prepared in October 2014 and presented to Convocation entitled *Facilitating International Access to Justice Through Intervention*. An updated report was provided to Convocation in January 2017. It will now be kept as a living document that is continually updated each time the Law Society intervenes.
71. The Monitoring Group has also prepared two different lists which will be updated when the Law Society intervenes in a case. The lists are organized by country and by the name of the person on whose behalf the Law Society has intervened. The intent of these lists is to ensure that the Monitoring Group can easily and quickly determine if the Law Society has previously intervened in the country or on behalf of the individual or group.

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72. In an effort to standardize the language for interventions, the Monitoring Group has prepared a document that contains suggested wording for its interventions to ensure that it is consistent across its interventions.
73. The Monitoring Group continues to bring forward interventions in cases of lawyers and judges who face human rights violations as result of their legal work.

#### **Outreach to National and International Partners**

74. To ensure that the Monitoring Group understands the work of our national and international partners, it has invited guests to attend its meetings. This process has been very rewarding, informative and validating for the work of the Monitoring Group. It is in the process of collating its notes of these meetings into one document so that going forward, starting in September 2017, it will have substantive discussion about how to expand its role within the mandate and also collaborate with its partners.
75. Speakers to date have been:
- November 10, 2016 - Andrew Guaglio, Board Member, Lawyers' Rights Watch Canada
  - January 12, 2017 - Marina Brilman, International Human Rights Policy Adviser, International Department The Law Society of England and Wales
  - February 9, 2017 - Alex Neve, Secretary General, Amnesty International
  - April 6, 2017 - Judith Lichtenberg, Board Member, Lawyers for Lawyers
  - June 8, 2017 – Farida Deif, Canada Director, Human Rights Watch

#### **Human Rights Award**

76. The Law Society presented the second Human Rights Award to Dr. Cindy Blackstock and Waleed Abu al-Khair. The Awards lunch was very moving and the ceremony was very powerful. The Award reinforces the Law Society's commitment to protecting human rights.

#### **Looking forward to 2017-2018**

77. For 2017-2018, the Monitoring Group intends to focus on the following:
- Finalizing the standardized intervention document
  - Reviewing how to expand its role within the mandate
  - Increasing collaboration with national and international partners
  - Continuing to intervene in cases
  - Continuing to promote human rights through education and outreach.

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**TAB 5.2.1**

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**CHIEF JUSTICE SUSHILA KARKI**

H.E. Pushpa Kamal Dahal  
Prime Minister of the Federal Democratic Republic of Nepal  
Office of the Prime Minister and Council of Ministers  
Singh Durbar  
Kathmandu, Nepal  
Fax: 4211065, 4211086, 4211038, 4211021, 4211047  
P.O. Box: 23312  
Email: info@nepal.gov.np

Your Excellency:

**Re: Impeachment proceedings against Chief Justice Sushila Karki**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the impeachment proceedings against Chief Justice Sushila Karki. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise

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to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law”.

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue “annoyed the politicians”.

In light of these circumstances, the Law Society urges Your Excellency to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

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The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;
- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Kali Prasad Pokhrel  
Ambassador of Nepal

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Embassy of Nepal  
408 Queen Street  
Ottawa, Ontario  
K1R 5A7  
Fax: 613 422 5149  
Email: nepalembassy@rogers.com; eonottawa@mofa.gov.np

Mr. Raman Kumar Shrestha, President  
Nepal Bar Council  
Park Ln, Patan 44600  
Kupondole, Lalitpur, Nepal  
Fax: 977-01-5261884  
Email: info@nepalbarcouncil.org.np

Sher Bahadur K.C., President  
Nepal Bar Association  
Ramshah Path, Kathmandu, Nepal  
Fax: 977-1-4218049; 4262755  
Email: neba@wlink.com.np

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
125 Sussex Drive  
Ottawa, Ontario  
K1A 0G2  
Email: chrystia.freeland@international.gc.ca

Consulate of Canada in Kathmandu  
GPO Box 3596  
Kathmandu  
Nepal

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

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David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Impeachment proceedings against Chief Justice Sushila Karki in Nepal**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to Prime Minister Pushpa Kamal Dahal, the Prime Minister of the Federal Democratic Republic of Nepal, expressing our deep concern over reports of the impeachment proceedings against Chief Justice Sushila Karki.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Raman Kumar Shrestha, President, Nepal Bar Council
- Sher Bahadur K.C., President, Nepal Bar Association

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- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the impeachment proceedings against Chief Justice Sushila Karki in Nepal.

Sushila Karki is the first female Chief Justice of the Supreme Court of Nepal. She is known for her zero-tolerance stance on corruption in the judiciary and has been instrumental in a number of high-profile and politically sensitive decisions. Recent rulings by the Supreme Court, with Sushila Karki as its Chief Justice, have been critical in advancing human rights in Nepal, assisting victims seeking justice for the crimes and serious human rights violations committed against them.

It has come to the Law Society's attention that on April 30, 2017, the two main parties in the ruling coalition government brought an impeachment motion against Chief Justice Sushila Karki, resulting in her automatic suspension. The motion, which came on the heels of the Supreme Court's decision to overturn the Nepalese government's choice for Chief of Police, accuses the Chief Justice of delivering biased verdicts, interfering in the executive's jurisdiction, breaching the principle of separation of powers, influencing her fellow justices, and failing to fulfill her judicial duties.

On May 5, 2017, the Supreme Court issued an interim order directing Parliament to halt impeachment proceedings against Chief Justice Sushila Karki and to allow her to return to her duties. In making the order, the Supreme Court opined that the allegations against the Chief Justice were baseless and that the commencement of impeachment proceedings against her would be at odds with the spirit of Nepal's Constitution. Relatedly, the UN High Commissioner for Human Rights has stated that "the attempt to remove [Chief Justice Sushila Karki] gives rise to serious concerns about the Government [of Nepal]'s commitment to transitional justice and the rule of law".

Nepal has a history of political interference in key civil appointments such as the Chief of Police. Since the end of the civil war in 2006, the country has had nine governments, each of which sought to fill key positions with their respective loyalists. According to her supporters, Chief Justice Sushila Karki is a staunch opponent of such corruption and that her tough stance on this issue "annoyed the politicians".

In light of these circumstances, the Law Society urges the Government of Nepal to comply with Nepal's obligations under international human rights laws, including the United Nations' *Basic Principles on the Independence of the Judiciary*.

Articles 1 to 6 of the *Basic Principles on the Independence of the Judiciary* state:

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1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The Law Society urges the Government of Nepal to:

- a. immediately and unconditionally discontinue the impeachment proceedings against Chief Justice Sushila Karki, if this has not already occurred;
- b. immediately and unconditionally lift the interim suspension imposed on Chief Justice Sushila Karki so that she may return to her judicial duties and activities, if this has not already occurred;
- c. put an end to all acts of harassment against Chief Justice Sushila Karki and all other judges in Nepal;
- d. guarantee in all circumstances the physical and psychological integrity of Chief Justice Sushila Karki;

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- e. ensure that all judges in Nepal can carry out their judicial duties and activities without fear of reprisals, physical violence or other human rights violations; and
- f. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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**TAB 5.2.2**

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**FAYZINISSO VOHIDOVA**

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

**Re: Travel ban against lawyer Fayzinisso Vohidova**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the travel ban against lawyer Fayzinisso Vohidova. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

It has come to the Law Society's attention that on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a "defect" in her passport and that she "had no right to leave Tajikistan". Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

According to information received by the Law Society, in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to Your Excellency through social media, criticizing the government's imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The

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Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and

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protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

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*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor

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New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Travel ban against lawyer Fayzinisso Vohidova in Tajikistan**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the travel ban against lawyer Fayzinisso Vohidova.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

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- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the travel ban against lawyer Fayzinisso Vohidova in Tajikistan.

Fayzinisso Vohidova is a Khujand-based lawyer known for her human rights and criminal defence work in politically sensitive cases. As a result of her professional activities, she has long been the target of government harassment. Since July 2015, she has endured surveillance and intimidation. In early 2016, she received credible information that law enforcement officials had initiated a criminal investigation against her.

More recently, on May 14, 2017, border guards with the State Committee on State Security prevented Fayzinisso Vohidova from traveling to Kyrgyzstan. They detained her for eight hours, stating that there was a “defect” in her passport and that she “had no right to leave Tajikistan”. Eventually, the border guards conceded that Fayzinisso Vohidova had been placed on a list of individuals banned from leaving the country. Arbitrary bans on travel violate article 12(2) of the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees every individual the right to leave any country, including his or her own. Tajikistan became a party to the ICCPR in 1999.

Reports further indicate that in the weeks that preceded the above-mentioned incident, Fayzinisso Vohidova had been interrogated multiple times by Tajik security services. Human rights organizations believe that these latest acts of harassment against Fayzinisso Vohidova are related to the critical remarks she made about the imprisonment of two Tajik human rights lawyers, Buzurgmehr Yorov and Nuriddin Makhkamov. In April 2017, she had publicly appealed to President Emomali Rahmon through social media, criticizing the government’s imprisonment of Yorov and Makhkamov, both of whom were convicted and sentenced in October 2016 following a prosecution and trial that appeared to be politically motivated. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

The Law Society of Upper Canada is deeply troubled by Fayzinisso Vohidova’s situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

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November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally lift all restrictions on Fayzinisso Vohidova's freedom of movement;
- b. put an end to all acts of harassment against Fayzinisso Vohidova and all other lawyers in Tajikistan;

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- c. guarantee in all circumstances the physical and psychological integrity of Fayzinisso Vohidova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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TAB 5.2.3

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

### MUZZAMAKHON KADIROVA (MUZZAMA QODIROVA)

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

#### **Re: Harassment of lawyer Muzzamakhon Kadirova (Muzzama Qodirova)**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the harassment of lawyer Muzzamakhon Kadirova (Muzzama Qodirova). When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muzzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muzzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muzzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muzzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muzzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muzzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's

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case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;
- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor

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New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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### Proposed Letter to Lawyers' Associations

Dear [Name],

**Re: Harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova).

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

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- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the harassment of lawyer Muazzamakhon Kadirova (Muazzama Qodirova) in Tajikistan.

It has come to the Law Society's attention that in October 2015 and again in September 2016, human rights lawyer Muazzamakhon Kadirova agreed, at great risk to herself and her family, to act as defence counsel for fellow lawyers Buzurgmehr Yorov and Nuriddin Makhkamov. The Law Society intervened on behalf of Buzurgmehr Yorov in February 2016 and January 2017, and on behalf of Nuriddin Makhkamov in January 2017.

Due to the fact that the trials of Buzurgmehr Yorov and Nuriddin Makhkamov were conducted behind closed doors, Muazzamakhon Kadirova was effectively the only link between them, their families and the wider public. She told journalists and other activists that the prosecution had not been able to present any compelling evidence against her clients and that the trials were clearly politically motivated.

As the trials progressed, Muazzamakhon Kadirova became increasingly aware of the risks associated with representing Buzurgmehr Yorov and Nuriddin Makhkamov; by November 2016, she was concerned about her safety and possible reprisals from Tajikistani authorities. On December 27, 2016, Muazzamakhon Kadirova was summoned to the Prosecutor General's Office and questioned about her professional activities for several hours. In the days that followed her questioning, she noticed that she was under surveillance.

In January 2017, Muazzamakhon Kadirova learned from a confidential source that a criminal case was being prepared against her. Fearing for her safety and concerned that she could be arrested at any time, Muazzamakhon Kadirova fled Tajikistan and sought protection abroad. In March 2017, she told journalists that Tajikistani authorities had threatened to launch a criminal case against her, accusing her of leaking confidential information about Buzurgmehr Yorov's case to foreign media. As of March 29, 2017, she is seeking refuge in Germany and has applied for political asylum there.

The Law Society of Upper Canada is deeply troubled by Muazzamakhon Kadirova's situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in

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November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally cease the preparation of a criminal case against Muazzamakhon Kadirova;
- b. put an end to all acts of harassment against Muazzamakhon Kadirova and all other lawyers in Tajikistan;

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- c. guarantee in all circumstances the physical and psychological integrity of Muazzamakhon Kadirova;
- d. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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**TAB 5.2.4**

**PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT**

**BUZURGMEHR YOROV**

H.E. Emomali Rahmon  
President of the Republic of Tajikistan  
Rudaki Avenue, 80  
Dushanbe 734023  
Republic of Tajikistan

Your Excellency:

**Re: Conviction and pending charges against lawyer Buzurgmehr Yorov**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the conviction and pending charges against lawyer Buzurgmehr Yorov. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

The Law Society first intervened on behalf of Buzurgmehr Yorov in February 2016 and again in January 2017. It has come to the Law Society's attention that several developments have taken place since its last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.

On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.

As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

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Further compounding Buzurgmehr Yorov's situation is the fact that his family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.

The Law Society of Upper Canada is deeply troubled by Buzurgmehr Yorov's situation, particularly in light of reports that repressive tactics are commonly used by Your Excellency's government to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of Your Excellency's government. Most notably, defending arrested lawyers has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges Your Excellency to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally release Buzurgmehr Yorov;
- b. pending his release, ensure that Buzurgmehr Yorov is detained in an official place of detention; is not subjected to torture or other ill-treatment; and has regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;
- c. immediately and unconditionally vacate the convictions rendered against Buzurgmehr Yorov;
- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Mahmamin Mahmaminov  
Permanent Representative of Tajikistan to the United Nations  
216 East 49th Street, 4th Floor  
New York, NY 10017  
USA

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: [chrystia.freeland@parl.gc.ca](mailto:chrystia.freeland@parl.gc.ca)

Alex Neve, Secretary General, Amnesty International Canada

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Emma Achili, Head of European Union Office, Front Line Defenders

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Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Emomali Rahmon, the President of the Republic of Tajikistan, expressing our deep concern over reports of the conviction and pending charges against lawyer Buzurgmehr Yorov.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekuia Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

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- Andrew Anderson, Executive Director, Front Line Defenders
- Emma Achili, Head of European Union Office, Front Line Defenders

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## PROPOSED PUBLIC STATEMENT

### **The Law Society of Upper Canada expresses grave concern about the conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan**

Toronto, ON — The Law Society of Upper Canada expresses grave concern about the conviction and pending charges against lawyer Buzurgmehr Yorov in Tajikistan.

The Law Society first intervened on behalf of Buzurgmehr Yorov in February 2016 and again in January 2017. It has come to the Law Society's attention that several developments have taken place since its last intervention. In February 2017, the Supreme Court of Tajikistan rejected Buzurgmehr Yorov's appeal, upholding his conviction and the accompanying 23-year prison term. That same month, additional charges of fraud were brought against Buzurgmehr Yorov. Alleged to be based on new complaints made against him by members of the public, these charges carry a sentence of up to 12 years in prison.

On March 16, 2017, the Supreme Court of Tajikistan found Buzurgmehr Yorov guilty of contempt and "insulting government officials", and added an additional two years to his sentence (for a total of 25 years). The hearing into these charges opened on December 12, 2016 after authorities accused him of disrespecting the court and insulting government officials by quoting a celebrated 11th century poet in his closing statement to the Dushanbe City Court during his original trial.

As of May 2017, yet another criminal case is pending against Buzurgmehr Yorov. This new charge of "insulting the leader of the Nation" apparently stems from statements he made in court in response to the aforementioned fraud charges. According to his wife Zarina Nabieva, Buzurgmehr Yorov had told the court that, as a lawyer, he had always operated within the country's legal framework. Given that this legal framework had been approved by the president of Tajikistan, he argued that if he was guilty of fraud, then so was everyone else in the country, including the president. The subsequent publication of this statement on the independent news website Payom.net apparently served as the grounds upon which the criminal charge was advanced.

Further compounding Buzurgmehr Yorov's situation is the fact that his family has been unable to find an independent lawyer willing to represent him in court. Consequently, his wife Zarina Nabieva has taken on his legal defence.

The Law Society of Upper Canada is deeply troubled by Buzurgmehr Yorov's situation, particularly in light of reports that repressive tactics are commonly used by the Government of Tajikistan to intimidate and silence lawyers in Tajikistan, effectively precluding their legitimate professional activities. Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as deterrents for anyone daring to defend the fundamental rights of those willing or perceived to challenge the authority of the Tajikistani government. Most notably, defending arrested lawyers

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has become increasingly risky for other lawyers. This and other government actions (for example, legislative amendments regarding the licensing of lawyers which were introduced in November 2015) have led to a dramatic decrease in the number of licensed lawyers in Tajikistan over the last two years (from more than 1200 in 2015 to just 600 today).

In light of the foregoing, the Law Society urges the Government of Tajikistan to comply with Tajikistan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Tajikistan to:

- a. immediately and unconditionally release Buzurgmehr Yorov;
- b. pending his release, ensure that Buzurgmehr Yorov is detained in an official place of detention; is not subjected to torture or other ill-treatment; and has

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regular, unrestricted access to his family, lawyer(s) of his choice, and medical care on request or as necessary;

- c. immediately and unconditionally vacate the convictions rendered against Buzurgmehr Yorov;
- d. immediately and unconditionally withdraw all charges against Buzurgmehr Yorov;
- e. guarantee all of the procedural rights that should be accorded to Buzurgmehr Yorov in accordance with the *Universal Declaration of Human Rights*, including equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence;
- f. ensure that Buzurgmehr Yorov is able to secure the services of and is able to communicate and consult in confidence with independent legal counsel;
- g. put an end to all acts of harassment against Buzurgmehr Yorov and all other lawyers in Tajikistan;
- h. guarantee in all circumstances the physical and psychological integrity of Buzurgmehr Yorov;
- i. ensure that all lawyers in Tajikistan can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

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TAB 5.2.5

## PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

### MICHEL TOGUÉ

H.E. Paul Biya  
President of the Republic of Cameroon  
Presidency of the Republic  
Civil Cabinet  
Communication Unit  
E-mail: cellcom@prc.cm

Your Excellency:

#### **Re: Harassment and intimidation of lawyer Michel Togué**

I write on behalf of the Law Society of Upper Canada\* to voice our grave concern over the harassment and intimidation of lawyer Michel Togué. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges Your Excellency to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

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Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

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Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and

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- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul B. Schabas  
Treasurer

*\*The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

H.E. Mr. Solomon Azoh-Mbi  
High Commissioner of the Republic of Cameroon in Canada  
High Commission for the Republic of Cameroon in Canada  
170 Clemow Avenue  
Ottawa, Ontario  
K1S 2B4  
Fax: 613-236-3885  
E-mail: cameroun@rogers.com

Ngnie Kamga Jackson  
President of the Cameroon Bar Association  
816-824 Rue Frédéric  
Foe, BP 13488  
Yaoundé, Cameroon

The Honourable Chrystia Freeland  
Minister of Foreign Affairs  
House of Commons  
Ottawa, Ontario  
K1A 0A6  
Email: chrystia.freeland@parl.gc.ca

Jean Pierre Lavoie, The High Commissioner

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The High Commission of Canada  
P.O. Box 572  
Yaoundé, Cameroon

Alex Neve, Secretary General, Amnesty International Canada

Andrew Anderson, Executive Director, Front Line Defenders

Emma Achili, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Farida Deif, Canada Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Hina Jilani, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Marina Brilman, International Human Rights Policy Adviser, The Law Society of England and Wales

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### **Proposed Letter to Lawyers' Associations**

Dear [Name],

#### **Re: Harassment and intimidation of lawyer Michel Togué in Cameroon**

I write to inform you that on the advice of the Human Rights Monitoring Group\*, the Law Society of Upper Canada sent the attached letter to President Paul Biya, the President of the Republic of Cameroon, expressing our deep concern over reports of the harassment and intimidation of lawyer Michel Togué.

We would be very interested in hearing from you in regard to the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have misapprehended any of the facts in this case. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Ekua Quansah, Policy Counsel, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to [equansah@lsuc.on.ca](mailto:equansah@lsuc.on.ca).

I thank you for your time and consideration.

Sincerely,

Teresa Donnelly  
Chair, Human Rights Monitoring Group

\* The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary in Canada and abroad. The Human Rights Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Ngnie Kamga Jackson, President, Cameroon Bar Association
- Alex Neve, Secretary General, Amnesty International Canada
- Andrew Anderson, Executive Director, Front Line Defenders

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- Emma Achili, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Farida Deif, Canada Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- Executive Director, Judges for Judges
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Hina Jilani, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Diego García-Sayán, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Marina Brillman, International Human Rights Policy Adviser, The Law Society of England and Wales

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## PROPOSED PUBLIC STATEMENT

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Michel Togué is a human rights lawyer who defends clients charged with homosexuality in Cameroon, where consensual same-sex conduct is criminalized and subject to a maximum prison sentence of five years. In March 2017, he was awarded the Dutch Geuzenpenning Award for his work and advocacy on behalf of the LGBT community in his country.

It has come to the Law Society's attention that in early 2017, Michel Togué received multiple death threats as a result of his legal work on behalf of individuals who identify as LGBT. Reports indicate that when he subsequently approached Cameroon's Lawyer's Association for assistance, its president advised Michel Togué: "Stop defending the LGBT community and you won't have problems anymore." Similarly, his request for protection was denied by Cameroonian police.

Michel Togué, along with his wife and children, first began receiving death threats in the form of emails and text messages in October 2012. As the death threats against him and his family escalated, his wife and children sought asylum in the United States. Michel Togué, however, chose to remain in Cameroon to continue his work with the LGBT community.

In light of these circumstances, the Law Society urges the Government of Cameroon to comply with Cameroon's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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The Law Society urges the Government of Cameroon to:

- a. immediately conduct a fair, impartial and independent investigation into the harassment and intimidation of Michel Togué in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- b. put an end to all acts of harassment against Michel Togué and all other lawyers in Cameroon;
- c. guarantee in all circumstances the physical and psychological integrity of Michel Togué;
- d. ensure that all lawyers in Cameroon can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

*THIS SECTION CONTAINS  
IN CAMERA MATERIAL*

## TAB 5.5

## FOR INFORMATION

**UPDATE ON IMPLEMENTATION OF THE  
RECOMMENDATIONS OF THE CHALLENGES FACED BY  
RACIALIZED LICENSEES REPORT  
("THE CHALLENGES REPORT")****Introduction**

126. This report provides an update on the implementation of certain recommendations of the [Challenges Report](#).
127. To manage the implementation of the Challenges Report, the Equity Initiatives department is tasked with management oversight from the operations perspective and works in tandem with the EIAC which is tasked with the oversight and facilitation of the implementation of the recommendations.
128. Close attention is being paid to recommendations that are to be implemented in 2017 and 2018 which is co-ordinated with the timeline set out in the Challenges Report ([TAB 5.5.1](#)). The EIAC is updated on the progress of implementation at its Committee meetings.
129. Recommendations that are to be implemented in 2017 and 2018 are the current focus. As discussed in the Challenges Report, the recommendations are part of a framework that is designed to permit implementation to be strategically undertaken to support continuing implementation of recommendations for 2019 and beyond.
130. The following is a recommendation by recommendation review of the steps taken towards implementation for 2017 and 2018.

**Implementation Update**Recommendations 3(1) and 3(2)*Changes to the Lawyer and Paralegal Annual Reports (LAR and PAR)*

131. With respect to implementation of Recommendations 3(1) and (2), the Law Society is required to make changes to the Lawyer Annual Report and the Paralegal Annual Report (LAR/PAR) in 2017 to enable reporting on certain requirements in early 2018. These changes are being implemented and are on track for completion in anticipation of the March 31, 2018 reporting deadline. The requirements include a declaration with respect to abiding by a statement of principles to promote equality, diversity and inclusion and a requirement to create and implement a human rights/diversity policy for legal workplaces of 10 or more licensees.

### *Communications Initiatives*

132. Communications are currently being prepared, which will provide information and guidance to the professions on the requirements outlined in the Challenges Report. The first of these will appear in the *Ontario Reports* in the upcoming weeks. Particular attention is paid to Recommendations 3(1) and 3(2) and the timelines associated with these requirements. Beginning in June 2017, information will be made available and distributed to the legal professions to create awareness around the requirements and obligations of recommendations 3(1) and 3(2).
133. Resources to assist members in meeting the obligations of this recommendation are being developed. Part of the communications approach is to maintain a dedicated webpage for members to access resources as needed. This will include a series of FAQs and similar resources to address questions and concerns that may arise when licensees take steps to meet the requirements.

### Recommendations 4 and 5

134. Work has begun at the staff level to prepare language that will be included in the LAR/PAR for 2017 advising of the anticipated change in the use of inclusion and diversity data currently captured through the LAR and PAR in the self-identification demographic questions. Once prepared, this will serve as notice to profession regarding the changing use of data in the coming year (2018 LAR/PAR).

### Recommendation 7

135. Work has also begun to conceptualize the inclusion survey required of this recommendation, which the report suggests will be similar to that conducted by Stratcom in 2016. This recommendation is to be implemented by the end of 2017.

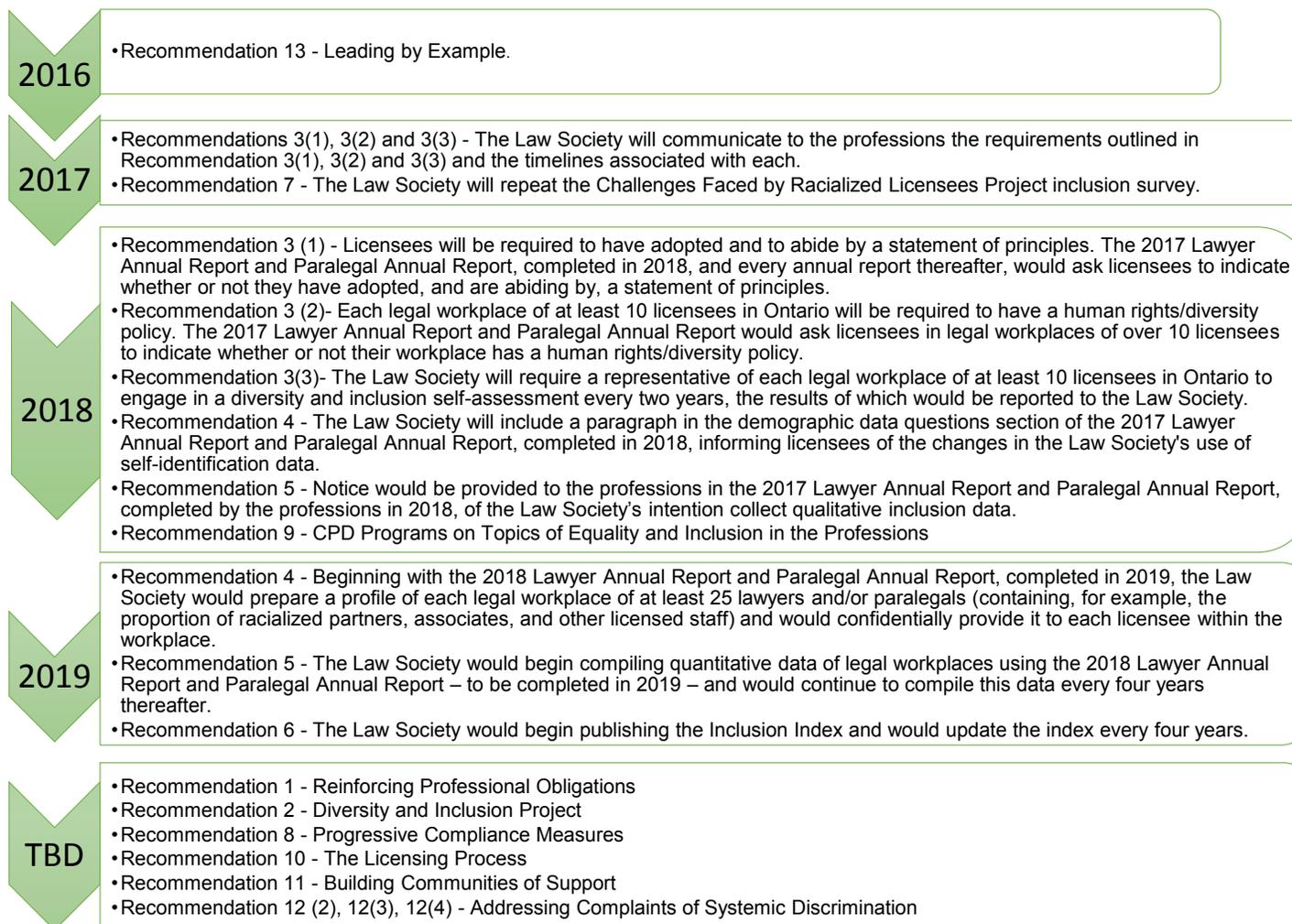
### Recommendation 12 (2)

136. As required by Recommendation 12(2), the Committee received a report from the Executive Director, Professional Regulation Division advising that the Division has created multi-functional enforcement teams with a range of types of Investigators and Discipline Counsel/Paralegals who are working together to be sensitive to, recognize and deal with issues of systemic discrimination. Training of the teams is planned.

### Recommendation 13(1)(g) – Leading by Example

137. The Law Society has established a Diversity and Inclusion Committee with a mandate to organize educational events for Law Society staff to promote an equality and inclusive workplace. With the Committee membership, which is comprised of Law Society staff, now established, they have had the opportunity to meet and are developing a plan for diversity and inclusion events for 2017 and 2018.

## TAB 5.5.1



## TAB 5.6

## FOR INFORMATION

**UPDATE ON REVIEW OF THE DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM****Introduction**

138. As a companion report to this month's update on implementation of the recommendations in the Challenges Faced by Racialized Licensees Report ("the Challenges Report"), this update provides information on the status of the review of the Discrimination and Harassment Counsel (DHC) Program.

**Background**

139. Recommendation 12(1) of the Report directs the Law Society to "review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC)<sup>1</sup>, including considering effective ways for the DHC to address issues of systemic discrimination."
140. The concept for the review of the Program predated the Report's approval at December 2016 Convocation, as the EIAC in June 2015 directed that a review be undertaken. This was based on a number of factors, which coincide with those reflected in the Report, and include the following:
- a. The Challenges Faced by Racialized Licensees Working Group (RWG), relying on the results of an extensive consultation with the profession, identified the reluctance of racialized licensees to bring forward matters of systemic discrimination;
  - b. In discussing the renewal of the Indigenous Framework, the EIAC noted that the DHC Program does not have a counsel in the North or a counsel that is versed in Indigenous ways of knowing and being; and
  - c. The DHC Program has been reviewed on two previous occasions—in 2001 and 2005. In 2005, Convocation approved a recommendation that the Law Society undertake a review of the DHC Program every three years to determine how to improve the Program's effectiveness.
141. The [Treasurer's mandate letter to EAIC](#) (September 2016) also indicated that the Committee should undertake: A review and assessment of the Office of Discrimination

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<sup>1</sup> A description of the Program appears at [TAB 5.6.1](#)

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and Harassment Counsel with specific reference to its effectiveness in addressing various forms of discrimination.

142. Following the June and other developments described above, the review of the DHC Program was placed on hold given the work that was progressing on the Report and which eventually led to adoption of the recommendations, including Recommendation 12(1), in December 2016.
143. In February 2017, the EIAC approved a process for the review and staff began work on the review shortly thereafter.

#### Update on Recruitment of Alternate Discrimination and Harassment Counsel

144. On a matter related to the operation of the DHC, pursuant to the Law Society's by-laws, the EIAC may recommend to Convocation the appointment of one or more Alternate DHCs.
145. As reported to Convocation in April 2017, the Law Society has recently engaged in a recruitment process for the appointment of Alternate DHCs, which included a job posting, in French and English, in the *Ontario Reports* and advertising the position on the Law Society's website. The recruitment committee, struck by EIAC as part of the process in accordance with the authority in the by-laws, was composed of:
  - Sandra Nishikawa, Co-Chair of EIAC
  - Tanya Walker, Licensee Bencher
  - Gisele Chretien, Appointed Bencher
  - Michael Doi, Member of the Equity Advisory Group
  - Constance Simmonds, Member of the Indigenous Advisory Group
146. The EIAC will report to Convocation on the results of the recruitment process and its recommendations at the appropriate time and, in accordance with the by-law provisions, in the absence of the public.

#### **Scope of the DHC Program Review**

147. According to the Challenges Report, "The objective of [the review identified under Recommendation 12(1)] would be to identify how the DHC role can be better used to 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".
148. The review is intended to determine how effective the DHC Program is in addressing issues of discrimination and harassment, including individual and systemic racism. The

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review is designed to be comprehensive and will take into account the current circumstances surrounding the DHC, seek information from relevant sources about the Program and determine how the issues identified can be addressed.

149. The EIAC Executive has been designated as the steering group for the review which is being managed by Equity Initiatives staff.

#### **Status of the DHC Program Review**

150. The first part of the review, a Phase I Literature Review, has been completed.
151. Staff engaged in a review of key resource material at the Law Society and elsewhere to identify key originating documents, policy directions and previous Program reviews. The reviewers also looked at best practices for similar ombuds programs in Ontario and in other jurisdictions. The staff is also assessing the DHC budget.
152. Phase II will commence within the next few months. This phase will gather qualitative data about the Program. The methodology will include interviews with the current DHC and the alternate DHCs to gather their input on the key questions and issues related to the Program. The reviewers will also interview key staff within the Law Society whose roles intersect with those seeking access to the Program such as Client Services Department, Professional Regulation Division and Equity Department. The plan also involves hosting a number of focus group interviews utilizing existing advisory groups, such as L'Association des juristes d'expression française de l'Ontario (AJEFO), the Indigenous Advisory Group, Equity Advisory Group, Treasurer's Liaison Group and others as appropriate.
153. Phase III will commence following the completion and assessment of the results of information from Phase II. Phase III, utilizing the qualitative data from Phase II, will involve a survey of the legal professions and licensing process students to explore such things as awareness of the Program, consideration of use of the Program, views on the purpose and value of the Program and options for improvements or enhancements to the Program. The survey would be conducted by a third party and the results reported and assessed.
154. As work progresses on the review, further reports will be provided to keep Convocation apprised of this important work.

## TAB 5.6.1

## DISCRIMINATION AND HARASSMENT COUNSEL PROGRAM DESCRIPTION

### Background

1. Funded by the Law Society of Upper Canada, the [Discrimination and Harassment Counsel \(DHC\) Program](#) operates at arm's length, and is available free-of-charge to the Ontario public, lawyers, paralegals and students. The DHC derives its mandate and authority from [By-law 11- Regulation of Conduct, Capacity and Professional Competence Part II](#).
2. In May 1997, the Law Society adopted the [Bicentennial Report and Recommendations on Equity Issues in the Legal Profession](#) (Bicentennial Report) which has since guided the Law Society's efforts to advance equity and diversity in the legal profession. Recommendation 11 of the report stated that, "The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession." The description of the recommendation speaks to the creation of a "safe counsel" program for "victims of discrimination and harassment" that would operate independent of the Law Society.
3. In fall 1998, Convocation approved the creation of a Discrimination and Harassment Ombudsperson role. In June 1999, Convocation adopted a submission from the Treasurer's Equity Advisory Group setting out the parameters for the position. On September 1, 1999, the DHC began operating as a pilot project. In June 2001, after a [review of the program](#), which included consideration of the relationship of the DHC with the professional regulation functions and the equity initiatives function of the Law Society, the Discrimination and Harassment Counsel was established as a permanent initiative.
4. While operating at arms-length,<sup>1</sup> the DHC forms an integral part of the Law Society's equity initiatives and regulatory functions. The DHC's role is primarily directed to support complainants and the resources of the DHC have been focused in this area.
5. The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. Since its creation, the person who has held the position of DHC has been bilingual (French and English).

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<sup>1</sup> The DHC is not an in-house employee of the Law Society. As outlined in By-law 11 Part II Discrimination and Harassment Counsel, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.

6. The DHC's role is to:
  - Listen to concerns;
  - Clarify issues;
  - Provide information and advice;
  - Review options and avenues of recourse (e.g. filing a complaint with the Law Society, filing an application with the Human Rights Tribunal of Ontario);
  - Explain the advantages and disadvantages of each option; and
  - Provide referrals to other resources that may be of assistance.
7. Upon request, the DHC may attempt to resolve issues through intervening informally as a neutral facilitator or by conducting formal mediation, where appropriate. Mediation is a voluntary process and requires the consent of all parties. The DHC facilitates the discussion and assists the parties in crafting their own resolution.
8. The DHC does not have investigative powers and does not operate a formal complaints process that involves fact-finding. The DHC also does not provide legal advice or legal representation and cannot make referrals to lawyers or paralegals.
9. All information obtained by the DHC is kept in strict confidence. By-law 11 formally exempts the DHC from reporting requirements under the Rules of Professional Conduct. As the program was created to provide counsel to those who do not wish to approach the Law Society through its complaints process, there is a separation of the DHC and professional regulation. The DHC's duty of confidentiality overrides any requirement to report misconduct of another lawyer or paralegal under the Rules of Professional Conduct and the Paralegal Rules of Conduct.
10. The current DHC was appointed on November 21, 2002, replacing the first DHC, and has been in the position since that date. She was reappointed on September 25, 2003, following a search for candidates pursuant to what was then By-Law 36 – Discrimination and Harassment Counsel. She was then reappointed in 2006, 2009, 2012 and 2015.
11. In May 2016, Convocation approved the reappointment of the current DHC, effective, September 28, 2016, for a term of one year. The Committee recommended the reappointment for one year in order to allow it to conduct a review of the DHC Program and, if required, implement changes in a timely fashion.
12. In November 2003, Convocation approved the creation of an Alternate DHC position to provide backup when the permanent DHC is unable to fulfill their duties. Following a recruitment process, the Alternate DHC position was filled. The Alternate DHC assumes the functions of the DHC when she is unavailable. There are currently two Alternative DHC.

Convocation - Law Society Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples Report



**Tab 2**

## **Report to Convocation May 24, 2018**

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### **Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples**

#### **Review Panel**

Dianne Corbiere (Chair)  
Robert Burd  
Teresa Donnelly  
Myeengun Henry  
Kathleen Lickers  
Isfahan Merali

#### **Independent Reviewer**

Ovide Mercredi

**Purpose of Report: Decision**

**Prepared by Jim Varro, CEO's Office and  
Darcy Belisle, Senior Indigenous Counsel, Equity Initiatives**

## Tab 2.1

## EXECUTIVE SUMMARY

**REPORT OF THE REVIEW PANEL ON REGULATORY AND HEARING PROCESSES AFFECTING INDIGENOUS PEOPLES****Introduction**

On June 28, 2017, Law Society Treasurer Paul Schabas announced the creation of the Review Panel to examine the way in which the Law Society and its Tribunal address regulatory matters involving Indigenous persons, complaints and issues. The review was prompted by the Law Society's experience in *Law Society of Upper Canada v. Keshen* (Keshen) which raised questions about the Law Society's regulatory and hearing process in relation to Indigenous persons, complaints, and issues. The Review Panel has completed its work under its Terms of Reference and has prepared a series of recommendations for Convocation's consideration and approval.

**Overview of the Review Panel's Work**

The Review Panel's process included an educational component, review of key resources and presentations by and interviews with several experts from the Indigenous community, the Chair and Vice Chair of the Law Society Tribunal and a number of Law Society Professional Regulation Division staff.

The work of the Review Panel was carried out alongside the mandate of the Independent Reviewer. Former Assembly of the First Nations National Chief Ovide Mercredi was appointed as the Independent Reviewer to engage with the First Nations community in Treaty 3 and Nishnawbe Aski Nation treaty territories in Northern Ontario. The experiences of First Nations in the north that Mr. Mercredi shared with the Review Panel and the valuable perspective and key insights he offered were crucial to forming the recommendations in this report.

In September 2017, the Treasurer, members of the Review Panel and staff attended a community meeting in Sioux Lookout. The Review Panel met the Leadership of a number of First Nations in the north, Elders and Residential School Survivors, listened to their views and their stories, and conveyed the message from the Law Society that it is committed to the work for which the Review Panel was established.

**Summary of the Keshen Prosecution**

Based on complaints received in 2013 and 2014 about Mr. Keshen in representing clients in connection with Independent Assessment Process ("IAP") applications to the Indian Residential Schools Adjudication Secretariat pursuant to the Indian Residential Schools Settlement Agreement, a new investigation team was formed under the direction of the Executive Director of the Law Society's Professional Regulation Division, called the First Nations, Métis and Inuit

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(FNMI) Team. This team was assigned the Keshen complaints and over the course of the investigation, the Law Society dealt with 57 individual complaints through the work of 19 Law Society Professional Regulation Division staff and three outside prosecutors.

The investigation resulted in the authorization of two Notices of Application containing allegations connected with 34 complainants. The Notices alleged that Mr. Keshen, among other things, did not serve his clients properly, assigned tasks to staff that he should not have, took clients' money from his trust account to pay his fees without sending a bill, charged unfair legal fee and did not handle settlement monies correctly.

The conduct hearing began in Kenora on June 27, 2016 and continued over 25 hearing days until February, 2017, when the prosecution closed its case and filed two replacement Notices to significantly reduce the number and nature of the original allegations. A re-evaluation of the case by the Professional Regulation Division of the Law Society in March 2017 concluded that a settlement was appropriate in all the circumstances. The conduct hearing was converted to an Invitation to Attend pursuant to s. 36 of the *Law Society Act*, with Mr. Keshen agreeing to attend on both April 25, 2017 in the presence of the Elders and again on July 4, 2017 before the Hearing Panel.

### **Report of the Independent Reviewer**

Mr. Mercredi explained his work as the Independent Reviewer as fulfilling a quiet non-judgemental role that required a compassionate and interested listener, engaging with the Leadership and Elders of First Nations communities, and talking to victims of process, including Residential School Survivors. While he was specifically required to focus on the Keshen matter and on the future of First Nations-Law Society of Ontario relationships, the range of issues brought to his attention went deep into the impact of the Residential Schools on personal lives (families and communities), the shortcomings of the Indian Residential Schools Settlement Agreement (processes and mechanisms) and the Law Society's regulatory and hearing processes.

In a series of recommendations, which the Review Panel report indicates by way of recommendation that the Law Society should accept, Mr. Mercredi urges the Law Society to focus on the need to become culturally competent, to support broader change in the interests of Indigenous communities and to support healing strategies for Survivors.

### **The Recommendations**

#### **GENERAL**

#### **Recommendation 1**

##### **The Law Society:**

- 1. must make an organizational commitment to establish and maintain a culturally competent regulatory process; and**

- 2. should consider establishing a new office to support the work that the Law Society undertakes pursuant to its mandate when that work involves Indigenous communities and to create a culturally safe environment.**

To ensure Law Society services are provided to members of Indigenous communities specifically, and in a culturally sensitive manner, staff dealing directly with members of Indigenous communities should have a sufficient understanding of Indigenous culture, beliefs and values, which will engender appropriate communication and interaction. This requires knowledge of Indigenous ways of knowing, Indigenous Legal Orders, values and interests, and the sensitive history of Residential School abuses that has had a multi-generational impact on the physical, emotional, mental and spiritual condition of first Nation, Inuit and Métis communities and individuals. This responsibility to enhance competence also includes knowledge of the historical and contemporary impacts of colonization on Indigenous communities.

The Review Panel received valuable insights from Terry Swan, who is a Cree/Saulteaux/ Métis and currently the Team Lead, Family Information Liaison Unit within the Indigenous Justice Division of the Ontario Ministry of Attorney General. She spoke of the path to “cultural safety”, which begins with cultural awareness, where the differences between what the institution represents and the Indigenous community are respected, which leads to cultural knowledge, or learning, and cultural competence. The path eventually leads to cultural safety for both the institution and members of the Indigenous community - it is a framework that captures the relationship between legal services and Indigenous experiences of colonization, discrimination and marginalization, and is sensitive to the traumatic repercussions on multiple generations.

A commitment to developing cultural awareness must involve engagement with the necessary Indigenous experts. This engagement could be led by a new office within the Law Society, with the appointment of an Indigenous person with the right skills and talents to provide leadership in understanding and responding to Indigenous peoples’ experience with the Law Society.

## **COMMUNICATION AND ENGAGEMENT**

### **Recommendation 2**

#### **Where complainants are members of Indigenous communities:**

- 1. information about the Law Society, its regulatory process and the role of complainants must be available and communicated in an understandable and culturally appropriate way; and**
- 2. depending upon the stage of the complaint matter at the Law Society, communications should include discussion of the issue of remedy from the complainant’s perspective (using the complainant vs prosecutorial lens), including the concept of restoration and how that intersects with the Law Society’s regulatory mandate.**

Engagement with members of Indigenous communities should take into account the needs of the complainants and the likelihood that some may be vulnerable and marginalized in society. Some complainants will have difficulty trusting the system in which the Law Society operates as a legal institution and will have challenges interacting with it. It is also recognized that some complainants perceive or experience a power imbalance as a client in a solicitor-client relationship, which may be replicated in the Law Society's complaints and discipline process, where the complainant is not a party to the proceeding, has no formal role in the disposition of a case and remains unrepresented.

Law Society staff should ensure that they are accessible to complainants and that clear lines of communication exist with a person at all times identified as a contact for any inquiry or question. Complainants should be informed about and consulted as much as possible on the progress of the complaint. Communications should be respectful and must not result in further trauma to the complainant and should take into account special needs that may be presented.

Communication at all stages of the matter should be timely and effective. This also involves being clear with the complainant at all stages about what the Law Society can and cannot remedy and explaining the steps and important decisions points.

### **Recommendation 3**

**The Law Society must do more to engage with Indigenous people in their community to:**

- 1. express the Law Society's commitment to create a trusting relationship, to enable the Law Society to meet its regulatory mandate in ways that respect the culture of the community;**
- 2. explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions to help the Law Society advance its commitment, and build trust in the community; and**
- 3. explore ways to increase access to justice, including considering the need to develop a cultural liaison with the public.**

To continue the important dialogue that began in September 2017, the Law Society must engage with Leadership, Elders and other Knowledge Keepers to learn and transform the Law Society's regulatory processes in matters involving Indigenous communities.

In considering ongoing issues, the Law Society should consider, where appropriate:

- a. retaining local counsel who is culturally competent from an Indigenous community for the purpose of assisting the Law Society in communicating information to complainants and to ensure over regular periods of time that the complainants' understanding remains accurate and current, and
- b. providing funding for independent counsel, perhaps by augmenting the scope of the services of existing legal clinics, to assist complainants in understanding the scope of the Law Society's jurisdiction and to offer advice and, if appropriate, legal assistance, in disputes.

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The proposals above may be effective in addressing the obligation to assist in complainants' understanding of the Law Society.

## **SPECIFIC PROFESSIONAL REGULATION FUNCTIONS**

### **Recommendation 4**

**The Professional Regulation Division should:**

- 1. be appropriately resourced to ensure timely, efficient and effective operation of regulatory functions;**
- 2. build its capacity to develop formal policies and procedures that flow from decisions of the Tribunal (following all levels of appeal) that raise important regulatory policy issues;**
- 3. formulate a plan for the investigation of "major cases" to assist in the management of investigations;**
- 4. support prosecutors in developing and refining the skills required to manage and prosecute major cases; and**
- 5. ensure all staff have available the necessary mental and emotional supports when working with complainants that are survivors of trauma. This may include but not be limited to the Members Assistance Program.**

The ability to develop policies and procedures as described in Recommendation 4 will enable consistent, informed application of relevant principles, including Indigenous Law principles. The Review Panel's view is that there is an opportunity to examine policy-making that will embrace Indigenous Law principles.

With respect to management of major cases, elements of such an approach might include the following:

- a. Defining a "major case", which would involve consideration of such factors as the complexity of the issues, the volume of complaints, the resources needed to properly manage the case and risk to the public;
- b. Considering how to improve the current model to facilitate early communication and consultation between investigators and prosecutors to promote the efficient use of investigative and prosecutorial resources; and
- c. Identifying the exceptional administrative and personnel needs associated with major cases, and the related resources, and recommendations as to how they should be managed to guide future investigations.

Aspects of a major case plan may include observing established processes and protocols, including those related to the responsibility of the team lead, decision-making and communication.

With respect to supports for prosecutors, these measures should include educational opportunities to prosecutors in the management and prosecution of major cases and

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encouraging prosecutors to increase their experience level with larger cases through exploring secondments to other prosecutorial offices.

## Recommendation 5

The Law Society should:

1. **take the necessary steps to ensure that anyone who investigates complaints at the Law Society involving Indigenous licensees or complainants, in addition to required investigatory experience and skills, is culturally competent to perform these investigations and has the necessary resources available to engage appropriately with members of the Indigenous communities in this process; and**
2. **explore ways to incorporate principles of Indigenous Legal Systems into**
  - a. **dispute resolution resources available to Law Society investigators, which may be applied in appropriate cases, and**
  - b. **prosecutorial and dispute resolution resources available to Law Society prosecutors, which may be applied in appropriate cases.**

First steps should be to enrich the education of staff with initial training, and ensure appropriate resources are offered to the relevant staff. This may involve working with Indigenous community partners, like the Indigenous Advisory Group and others.

Terry Swan referred to becoming “trauma-informed” and approaching matters from this perspective. She advised that the recognition and understanding of trauma translates into responses to the individual that integrates knowledge about trauma in practices, procedures and settings.

The Honourable Leonard S. Mandamin, a judge of the Federal Court and an Anishnaabe member of the Wiikwemkoong Unceded Indian Reserve on Manitoulin Island, Ontario, who met with the Review Panel, spoke of his work that led to applying restorative justice principles. Justice Mandamin referenced the Law Reform Commission of Canada 1996 publication *Bridging the Cultural Divide: a report on Aboriginal people and criminal justice in Canada / Royal Commission on Aboriginal Peoples*, and its discussion of “creating conceptual space” for Indigenous systems of justice.

The Review Panel believes there are approaches and processes that may be options to the Law Society’s adversarial adjudicative model. They should be explored for matters involving Indigenous complainants or Indigenous licensees at the Law Society.

Delia Opekokew, a lawyer and a member of the Canoe Lake First Nation in Saskatchewan, met with the Review Panel and discussed her experiences as a Deputy Chief Adjudicator in the IAP process. Her advice was to ensure that the environment for questioning a Survivor is sensitive to their experience. She also stressed the need for appropriate supports for those staff directly involved with Survivors as complainants and witnesses.

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Professor Jeffrey Hewitt, a Cree, spoke with the Review Panel about the Law Society's processes and Indigenous Law. In his view, trying to apply Indigenous law within the Law Society will not fix anything if the underlying architecture of the Law Society's structure does not change. In determining that change, an examination and the process of change is part of the longer term decolonization work for the Law Society and it is important to include, through both recognition and structure, Indigenous legal orders.

### **Recommendation 6**

**The Professional Regulation Division should create the required permanent internal structures and supports to appropriately manage investigations and prosecutions of licensees who are the subject of complaints from Indigenous people and of Indigenous licensees. These structures and supports should extend to other divisions at the Law Society to the extent that processes related to investigations and/or prosecutions intersect with them.**

Despite all of the efforts taken and unique processes instituted by the Law Society to deal with the numerous complaints received from Survivors, there were gaps in approaches, coupled with several staff changes at key critical stages and an aggressive timeline for completion of the investigation, which added to an already complex file.

A required level of knowledge and expertise in Indigenous culture to deal with demanding investigations and the unique circumstances of Indigenous complainants is necessary. The Review Panel believes the Law Society should explore the following:

- a. Specialized teams that are appropriately trained;
- b. Comprehensive professional resources across departments covering a range of topics and subjects;
- c. Established advisory channels with the Indigenous community in ways that respect the principles of fairness and independence of the Law Society's regulatory process); and
- d. Personal resources for both the Law Society staff and Indigenous complainants or licensees for required support.

In cases involving vulnerable complainants where actual harm is capable of resulting from their appearance as witnesses, the Law Society should consider a specialized analysis that is aimed at determining whether the public interest requires that vulnerable complainants appear as witnesses, which would include consideration of a fully informed consent. Further, the Law Society should take into account the possibility that further counselling after the hearing may be required and recognize the potential cost of that assistance.

A fully informed consent may require retaining independent counsel for the witness who can provide neutral explanations and independent advice, both for the benefit of the witness and the protection of the Law Society.

## Recommendation 7

**The Law Society Tribunal and the Tribunal Committee should explore, with the assistance of Indigenous experts, how to incorporate Indigenous Law principles within its adjudicative and dispute resolution processes and apply them in the appropriate case.**

The Review Panel believes the Tribunal should learn from the experience in the Keshen case and determine the most effective method of including Indigenous perspectives in the adjudicative process.

Law Society Tribunal Chair David Wright advised the Review Panel that, for example, the current *Rules of Practice and Procedure* adopted by Convocation provide that the civil rules of evidence apply to Tribunal proceedings. However, as a policy discussion, the application of the *Statutory Power and Procedures Act* (SPPA) specifically and the proceedings of other adjudicative tribunals might be an appropriate subject of further study.

Consideration should be given to developing practice directions on what is currently permissible within the Law Society Tribunal Hearing Division Rules of Practice and Procedure. This may include, for example,

- a. permitting a witness to testify with a support worker nearby;
- b. permitting a witness to testify outside the hearing room by closed circuit television or behind a screen;
- c. allowing a victim's statement (done currently by affidavit) in certain cases to be admitted as evidence for the truth of its content; and
- d. requiring the cessation of any part of an examination or cross-examination of a witness that is, in the opinion of the adjudicator, abusive, repetitive or otherwise inappropriate.

The Review Panel also suggests that the availability of independent counsel for complainants should be explored.

The Review Panel noted that the Federal Court Practice Guidelines for Aboriginal Law Proceedings provide that, for cross-examination of Elders, "The special context of the testimony of Elders suggests that alternative ways of questioning on cross-examination should be explored in appropriate cases." In referencing these Guidelines, Justice Mandamin described circumstances where the adjudicator, rather than the examining counsel, asks the questions of the Elder where circumstances may warrant such an approach.

The Tribunal should determine how to ensure the appointment to the Tribunal of otherwise qualified adjudicators who are Indigenous or who have experience with Indigenous legal issues and/or the Indigenous communities. The Tribunal should also consider the merits of a guideline for the composition of Tribunal hearing panels convened to hear conduct applications based on complaints from Indigenous people or where the licensee is Indigenous, together with the process considerations this may involve.

### **Recommendation 8**

**Law Society Tribunal adjudicators should receive ongoing training in the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics.**

The Tribunal should consider the merits of a competency matrix for trainers for adjudicators on Indigenous Law, dispute resolution processes and protocols and customs that may be relevant to the Tribunal process.

As the design and implementation of training for adjudicators is one of the responsibilities of the Tribunal Chair, the Law Society should refer this issue to David Wright for review and implementation.

### **OTHER LAW SOCIETY FUNCTIONS**

#### **Recommendation 9 – Practice Supports**

**The Law Society should ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients who have experienced trauma arising from the Indian Residential School experience, the Sixties Scoop or the Day Schools settlement to assist in their competent representation of these individuals.**

The Review Panel believes there is merit to including additional commentary in the *Rules of Professional Conduct* and *Paralegal Professional Conduct Guidelines* in relation to the representation of vulnerable clients, such as Residential School Survivors, and recommends that the competence rules be reviewed for this purpose. The Law Society should review the *Guidelines for Lawyers Acting in Aboriginal Residential School Cases* and revise them accordingly as required to ensure they are current and cover the broad scope of representation of those from Indigenous communities who may seek legal assistance as a claimant.

The Law Society should also explore partnering with other organizations who have the knowledge and experience to help frame guidance, act as referrals for resources for lawyers or contribute to targeted continuing professional development programs to assist lawyers and paralegals who may serve these clients.

**Tab 2.2**

**For Decision**

**REPORT OF THE REVIEW PANEL ON REGULATORY AND HEARING PROCESSES AFFECTING INDIGENOUS PEOPLES**

**Motion**

1. That Convocation approve the recommendations set out in this report to incorporate Indigenous perspectives in the Law Society's regulatory and hearing processes, in keeping with the Law Society's commitment through the Indigenous Framework adopted by the Law Society to work within its mandate on Indigenous issues and the relationship with the Indigenous community.

**Introduction**

2. On June 28, 2017, Law Society Treasurer Paul Schabas announced the creation of a Review Panel to examine the way in which the Law Society and its Tribunal address regulatory matters involving Indigenous persons, complaints and issues. The Review Panel was charged with identifying issues and making recommendations on opportunities for inclusion of Indigenous perspectives in Law Society processes. The Terms of Reference for the Review Panel are set out at [Tab 2.2.1](#).
3. The Review Panel's Terms of Reference note that the experience of the Law Society in *Law Society of Upper Canada v. Keshen* (Keshen) raised questions about the Law Society's regulatory and hearing process in relation to Indigenous persons, complaints, and issues. The Law Society recognized that it needed to learn from this experience and reform its processes to accommodate the unique historical and cultural circumstances of Indigenous Peoples and Indigenous approaches to conflict resolution.
4. This report summarizes the work the Review Panel has undertaken since June of 2017 and sets out its recommendations.
5. Upon approval of the recommendations in this report, the activities related to implementation of the recommendations will move to Law Society operations under the oversight of the Chief Executive Officer, who will ensure appropriate engagement with relevant Law Society committees and partner groups, including the Indigenous Advisory Group, and report to Convocation on outcomes as matters progress.

**Overview of the Review Panel's Work**

6. The Review Panel met on 20 occasions beginning in the summer of 2017 through to May 2018, and by the fall of 2017 had formulated a work plan, as requested by the Treasurer. The work plan established a robust and effectual review process that included an

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educational component, review of key resources and presentations by and interviews with a wide range of individuals, including several experts from the Indigenous community, the Chair and Vice Chair of the Law Society Tribunal and a number of Law Society Professional Regulation Division staff. A list of those interviewed by the Review Panel and with whom the Review Panel consulted is at [Tab 2.2.2](#).

7. The Review Panel is grateful to these individuals who made time to speak with the Review Panel and share their information, thoughts and views with honesty and candour. Their contributions were vital to the Review Panel's work and assisted in framing a number of the recommendations.
8. The work of the Review Panel was carried out alongside the mandate of the Independent Reviewer, the mandate for whom is set out separately in the Review Panel Terms of Reference. Former Assembly of First Nations National Chief Ovide Mercredi was appointed as the Independent Reviewer to engage with the First Nations community in Treaty 3 and Nishnawbe Aski Nation treaty territories in Northern Ontario. A map of the First Nation treaty territories is at [Tab 2.2.3](#).<sup>1</sup> Mr. Mercredi was able to listen and learn from the experiences of First Nations in the north and share this with the Law Society. He attended many of the Review Panel meetings, providing a valuable perspective and key insights that assisted the Review Panel. The information he obtained and relayed to the Review Panel was crucial to forming the recommendations in this report. The Review Panel is deeply indebted to Mr. Mercredi for his contribution to its work.
9. An important event in the work of the Review Panel occurred on September 20, 2017 when the Treasurer, members of the Review Panel and three Law Society senior staff attended a community meeting in Sioux Lookout. This meeting was arranged through the efforts of Mr. Mercredi. This was a first opportunity for the Review Panel to meet with the Leadership of a number of First Nations in the north, Elders and Residential School Survivors, listen to their views and their stories, and convey the message from the Law Society that it is committed to the work for which the Review Panel was established. It was an opportunity for the Law Society to learn about how, as a regulator, it needs to become more culturally competent on Indigenous histories, cultures and affairs, including the impacts of settlor/colonial systems on Indigenous Peoples, This learning will ensure that the Law Society can appropriately address regulatory matters that arise from these communities and the lawyers who serve them.
10. The Review Panel is grateful to Chief Clifford Bull of the Lac Seul First Nation for the gracious welcome extended to the Law Society attendees. The Review Panel also benefited greatly from the comments of Ogichidaa Francis Kavanaugh, Grand Council

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<sup>1</sup> For more general information about treaties with First Nations in Ontario, see also <https://www.ontario.ca/page/treaties>.

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Treaty #3 and Derek Fox, Deputy Grand Chief, Nishnawbe Aski Nation, and all of the other participants who were generous with their time and spoke with candour and pain about their experiences with the Law Society, the Indian Residential Schools Agreement and Mr. Keshen.

11. The Review Panel recognized that the outcome of the Law Society's conduct application against Mr. Keshen was regrettable for the complainants. It exposed gaps and failings by the Law Society as it related to the Residential School Survivors and the Indigenous community as a whole. Many of the Law Society staff involved in the Keshen case, based on the interviews conducted by the Review Panel, expressed this sentiment, having invested significant time and effort in the investigation and prosecution, including engagement with the Survivors in the process.
12. As articulated by Review Panel member Kathleen Lickers, a lawyer and a Seneca from the Six Nations of the Grand River, "the Keshen matter illustrates a particular paradigm at the Law Society that calls for change."
13. The Review Panel believes the recommendations in this report for Convocation's approval will be the catalyst for that change.

**Summary of the Keshen Prosecution**

14. As stated, the experience of the Law Society in the Keshen case raised questions about the Law Society's regulatory and hearing process in relation to Indigenous persons, complaints and issues. To provide additional context, the following summarizes the Law Society's investigation and prosecution of Mr. Keshen.
15. In 2013 and 2014, the Law Society began to receive complaints from clients whom Mr. Keshen had represented in connection with Independent Assessment Process ("IAP") applications to the Indian Residential Schools Adjudication Secretariat pursuant to the Indian Residential Schools Settlement Agreement.
16. In November 2013, through the office of the Executive Director of the Law Society's Professional Regulation Division, a team was created in response to this specific development called the First Nations, Métis and Inuit (FNMI) Team. It was a multi-departmental group of staff that received specialized training and other supports for its work on the Indigenous complaints relating to Mr. Keshen, which were assigned to this team for investigation.
17. Complaints to the Law Society are instructed for investigation within the Professional Regulation Division when information is presented that suggests a licensee may have engaged in professional misconduct. Following investigation, where the complaints are of a sufficiently serious nature, information about the conduct issues is prepared for review by the Law Society's Proceedings Authorization Committee, which makes decisions on

the appropriate regulatory action. Among the actions the Committee may authorize is a conduct application for a discipline hearing before the Law Society Tribunal.

18. The investigation eventually resulted in the authorization by the Proceedings Authorization Committee of two Notices of Application containing allegations connected with 34 complainants. They were issued on June 10, 2015 (LCN 64/15) and November 20, 2015 (LCN116/15) respectively. The allegations were that Mr. Keshen, among other things:
  - a. did not serve his clients properly;
  - b. assigned tasks to staff that he should not have;
  - c. took clients' money from his trust account to pay his fees without sending a bill;
  - d. charged unfair legal fees; and
  - e. did not handle settlement monies correctly.
19. The Law Society's conduct hearing began in Kenora on June 27, 2016 and continued over 25 hearing days until February, 2017. On February 16, 2017 (day 22), the prosecution closed its case, filing two replacement Notices to significantly reduce the number and nature of the original allegations. The remaining three hearing days were devoted to the commencement of the defence case, including evidence relevant to an abuse of process motion filed in late January 2017.
20. To summarize the Law Society's operational commitment over the course of the Keshen case, the Law Society dealt with 57 individual complaints through the work of 19 Law Society Professional Regulation Division staff and three outside prosecutors. The main investigative work spanned the period from late 2013 to the late summer of 2015 and transitioned between two investigation team leads and five different investigators, some of whom assisted the prosecutors in the lead up to and following the commencement of the conduct hearing in June 2016. Over the course of the hearing, the responsibility for the prosecution was with a team of two prosecutors, who then handed the file to a second team of two prosecutors in the fall of 2016 (one internal counsel and one external counsel). A change in external counsel on that team was the result of a judicial appointment. That team subsequently withdrew as prosecutors in March 2017. A third prosecutor (external counsel) acted for the remainder of the case.
21. A re-evaluation of the case by the Professional Regulation Division of the Law Society in March 2017 concluded that a settlement was appropriate in the circumstances and a resolution proposal was accepted by the Tribunal on April 25, 2017. The conduct hearing was converted to an Invitation to Attend pursuant to s. 36 of the *Law Society Act*, with Mr. Keshen agreeing to attend on both April 25, 2017 in the presence of the Elders and again on July 4, 2017 before the Hearing Panel. He also agreed to the following additional terms:
  - a. A formal undertaking to cooperate with a practice review and a spot audit;
  - b. A commitment to take additional CPD courses in the area of practice and records management;

- c. Participation in between one and three circles to be funded by the Law Society focusing on restorative justice to be organized and conducted by leaders and Elders in the communities in which he practised;
- d. A withdrawal of his motion alleging abuse of process by the Law Society; and
- e. An agreement not to request costs.

### **Report of the Independent Reviewer - Ovide William Mercredi**

My work as the Independent Reviewer was essentially fulfilling a quiet non-judgemental role that required a compassionate and interested listener. My role was about gathering information, going to the Leadership and Elders of First Nations communities, and talking to victims of process, including Residential School Survivors. While I was specifically required to focus on the Keshen matter and on the future of First Nations-Law Society of Ontario relationships, the range of issues brought to my attention went deep into the impact of the Residential Schools on personal lives (families and communities), the shortcomings of the Indian Residential Schools Settlement Agreement (processes and mechanisms) and the Law Society's regulatory and hearing processes.

My work allowed for many Keshen complainants and other Residential School Survivors to tell their full stories in a safe, supportive and respectful manner. Their experiences in Residential Schools hurt them deeply and such wounds remain for many as regress, doubts and ongoing challenges. The nature and scope of the Indian Residential Schools Settlement Agreement and the applications to the Indian Residential Schools Adjudication process did little to satisfy the individual hopes for closure and settlement. The majority of the individual interviewed believe, and for good reasons, that the awards they received were very low and did not compensate them based on their stories.

The healing journey has been part of their story; a journey begun by many returning to their homelands, learning their languages, having families and trying to normalize their daily living. They wanted healing and closure! They wanted to share their LIFE STORIES without feeling like a loser or a criminal, feelings that brought to the forefront by foreign and often adversarial processes. Most Residential School Survivors felt that they were not heard and accepted. It was not easy for them to disclose deep wounds, especially the sexual assault and abuses they experienced in Residential Schools.

Unfortunately, for the Keshen complainants and other Residential School Survivors who were unhappy with their lawyers, the hurt and regrets have been compounded. Where are the reports from the lawyer explaining what was done for their client? Where are the letters explaining the award granted and the breakdown for legal fees and costs? They want to know the answers - answers no Independent Reviewer can provide. Can the Law Society of Ontario provide them with the answers? They

are waiting. In speaking with the Survivors, I dealt with a lot of emotion. They felt betrayed by their lawyer. It also appeared that they did not understand the Law Society's process. Many of them think they went to court when attending before the Law Society Tribunal.

In terms of Law Society process, when a complaint is made, the Law Society needs to determine the competence of the lawyer conducting the investigation to do it. To discover all information, there needs to be engagement with the complainant in their own language and full knowledge of their culture. Investigations need to be done in a manner that allows the complainant to tell their story fully.

The Law Society needs to decide how to conduct interviews arising from complaints properly, understanding protocol, to make sure Indigenous perspectives are part of the process. The Law Society also needs to take into account Indigenous notions of conflict resolution (non-adversarial). The part of the problem for the Tribunal is the adversarial nature of the process and no representation for the complainant. Perhaps there is another way of settling complaints against lawyers. This is why there is a need to speak with the Leadership, Elders and others in the communities.

Ideas need to be developed to address the competence of the complainants themselves to understand what is going on and level of literacy in First Nations communities. There were very few supports and where there were supports, the Survivors used them very heavily. There is a need understand who the client is, their capacity and knowledge in relation to these processes.

While the hope remains that the Law Society of Ontario will radically alter its understanding of First Nations histories, cultures, societies, customs, traditions, world views and internal sovereignty, the time for reform is present and imminent. The days of the *status quo* or business as usual will not lead to reconciliation nor will the relationship with First Nations be provided the requisite priority and appropriate actions and responses.

The complainants against Keshen, Residential School Survivors in general, and the administration of justice as it impacts on First Nations in Ontario requires the immediate attention, action, cooperation, and support of the entire legal profession.

To do less than what justice demands be done will be seen as not just as a lost opportunity, but as another betrayal of the ideals of social justice in Canada. Going forward for the Law Society of Ontario, as a self-governing professional body, will mean recognizing First Nations as self-governing Nations who have a right and duty to protect their members and citizens from destructive colonialism and the vestiges of colonial powers still exercised by the Canadian State and other institutions within Canada.

The Law Society needs to determine how it can best support the Indigenous communities. The following are some proposals that can be pursued:

- Annual or semi-annual Law Society meetings with Indigenous communities in Ontario, to engage and discuss matters of mutual interest between the Law Society and the communities;
- Providing legal supports to Indigenous communities as outlined in Recommendation 3 of the Review Panel report, as part of engagement and in keeping with the access to justice focus of the Law Society; and
- Considering how the Law Society can support funding similar to that provided through the now dissolved Aboriginal Healing Foundation, to support Survivors and their families and, in partnership with Indigenous communities, pursuing healing initiatives.

## RECOMMENDATIONS

1. Given the gap between the Settler Society and Indigenous Nations and people, the Law Society of Ontario needs to become more proactive in reconciliation work directed towards building capacity on Cultural Competency for lawyers in general and for lawyers practicing with Indigenous clients in particular.

Cultural Competency means knowing and understanding the historical relationships, the impact and legacy of colonialism, the results of Federalism, the *Indian Act* and Residential Schools, the vision of the Treaties and the lack of implementation of Treaty Rights, the evolution of Canadian law as it relates directly to Indigenous Peoples and with a greater focus on Indigenous laws, traditions, customs, ceremonies, worldviews, cultures and societies. Knowing your clients, to properly represent them, is always a pre-requisite to professional conduct and standard of care. For lawyers from mainstream society, as members of the majority, and as products of Canadian society, they more or less have Cultural Competency to represent non-Indigenous clients but the same cannot be said concerning Indigenous Nations and people.

2. Knowing and being supportive of Indigenous Nations' rights and freedoms, and their quest for belonging in their Homelands, including their aspirations for a better relationship with Canadians and Canada, the Law Society of Ontario, as a powerful and significant institution for law reform, the rule of law, and the administration of justice, has a major obligation, if not an inherent duty, to become a strong advocate for fundamental reforms that will perfect Canada and restore the rightful inheritance of Indigenous Nations to self-determination.
3. Belonging to a multi-cultural Country does not mean automatic harmony between distinct peoples and cultures within Canada; therefore, direct measures and actions are required to address racism, prejudice and discrimination in this country, a human condition that is not the natural

consequence of being a human being but the result of ignorance, fear, hatred or crime. The Law Society of Ontario and the lawyers in this Province need to become more aware of the negative impacts of prejudice, discrimination and racism on Indigenous people, especially now given the ever increasing urban populations of Indigenous people. Lawyers and the Law Society need to become anti-racism advocates as part of their Cultural Competency in an increasingly pluralistic country.

4. Knowing that Canada has responded to the crimes of the Residential Schools, albeit under pressure and inadequately, the Law Society of Ontario needs to call upon the Federal Government to undertake an immediate review of the adequacy, strength and weakness of the Indian Residential Schools Settlement Agreement, with a particular attention to the cap on awards and the role of the Independent Assessment Process and the role of lawyers in that regard.
5. Residential School Survivors continue to advocate for their healing as individuals, families and communities. Their cry for help is worthy of immediate support and action from lawyers and the Law Society of Ontario. When I spoke to Treasurer Paul Schabas about the mandate of the Review Panel and my role, I made it clear that the affected people should have some sort of remedial measures available to them, and this is critical. Some of these people are the most vulnerable in society. We need to begin the process of how the Law Society and Indigenous communities are going to work together. The Aboriginal Healing Foundation closed on September 30, 2014, and thereby, by government neglect, was unable to continue to support important community-based healing initiatives aimed at resolving the individual and collective trauma of the abuses experienced at Residential Schools. The Law Society of Ontario needs to call upon the Federal Government to re-instate a properly funded Healing Foundation.
6. Canadians in general abhor poverty and inequality with regard to income or wealth distribution in their country. Unfortunately for Indigenous people, their poverty remains out of mind and out of sight for the most part. However, the lack of jobs, wealth generation or even a subsistence economy within most Indigenous communities renders Indigenous Nations dependent upon government funding to address social issues and problems like poor housing, poor health and emergencies like the diabetes epidemic and recurring youth suicides. While slow and sporadic gains are being made in addressing Indigenous poverty within Canada, help from other than government sources are needed to accelerate the rise from poverty. The Law Society can help by creating a funding opportunity and mechanism for its members to make charitable donations to support the healing call by Residential School Survivors, their families and communities.

## **The Recommendations**

### **RECOMMENDATION WITH RESPECT TO THE INDEPENDENT REVIEWER'S REPORT**

**The Law Society should accept the Independent Reviewer's Recommendations, which include recommendations that align with others in this report (Recommendations 1 and 3), and commit to determining actions that should be taken with respect to Recommendations 2, 4, 5 and 6 of the Independent Reviewer.**

### **GENERAL**

#### **Recommendation 1**

**The Law Society:**

- 1. must make an organizational commitment to establish and maintain a culturally competent regulatory process; and**
- 2. should consider establishing a new office to support the work that the Law Society undertakes pursuant to its mandate when that work involves Indigenous communities and to create a culturally safe environment.**

### **COMMUNICATION AND ENGAGEMENT**

#### **Recommendation 2**

**Where complainants are members of Indigenous communities:**

- 1. information about the Law Society, its regulatory process and the role of complainants must be available and communicated in an understandable and culturally appropriate way; and**
- 2. depending upon the stage of the complaint matter at the Law Society, communications should include discussion of the issue of remedy from the complainant's perspective, (using the complainant vs prosecutorial lens), including the concept of restoration and how that intersects with the Law Society's regulatory mandate.**

#### **Recommendation 3**

**The Law Society must do more to engage with Indigenous people in their community to:**

- 1. express the Law Society's commitment to create a trusting relationship, to enable the Law Society to meet its regulatory mandate in ways that respect the culture of the community;**
- 2. explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions to help the Law Society advance its commitment, and build trust in the community; and**

3. explore ways to increase access to justice, including considering the need to develop a cultural liaison with the public.

### **SPECIFIC PROFESSIONAL REGULATION FUNCTIONS**

#### **Recommendation 4**

**The Professional Regulation Division should:**

1. be appropriately resourced to ensure timely, efficient and effective operation of regulatory functions;
2. build its capacity to develop formal policies and procedures that flow from decisions of the Tribunal (following all levels of appeal) that raise important regulatory policy issues;
3. formulate a plan for the investigation of "major cases" to assist in the management of investigations;
4. support prosecutors in developing and refining the skills required to manage and prosecute major cases; and
5. ensure all staff have available the necessary mental and emotional supports when working with complainants who are survivors of trauma. This may include but not be limited to the Members Assistance Program.

#### **Recommendation 5**

**The Law Society should:**

1. take the necessary steps to ensure that anyone who investigates complaints at the Law Society involving Indigenous licensees or complainants, in addition to required investigatory experience and skills, is culturally competent to perform these investigations and has the necessary resources available to engage appropriately with members of the Indigenous communities in this process; and
2. explore ways to incorporate principles of Indigenous Legal Systems into
  - a. dispute resolution resources available to Law Society investigators, which may be applied in appropriate cases, and
  - b. prosecutorial and dispute resolution resources available to Law Society prosecutors, which may be applied in appropriate cases.

#### **Recommendation 6**

**The Professional Regulation Division should create the required permanent internal structures and supports to appropriately manage investigations and prosecutions of licensees who are the subject of complaints from Indigenous people and of Indigenous licensees. These structures and supports should extend to other divisions at the Law Society to the extent that processes related to investigations and/or prosecutions intersect with them.**

**Recommendation 7**

**The Law Society Tribunal and the Tribunal Committee should explore how to incorporate Indigenous Law principles within its adjudicative and dispute resolution processes and apply them in the appropriate case.**

**Recommendation 8**

**Law Society Tribunal adjudicators should receive ongoing training in the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics.**

**OTHER LAW SOCIETY FUNCTIONS**

**Recommendation 9 – Practice Supports**

**The Law Society should ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients who have experienced trauma arising from the Indian Residential School experience, the Sixties Scoop or the Day Schools settlement to assist in their competent representation of these individuals.**

**Discussion of the Recommendations**

**GENERAL**

**Recommendation 1**

**The Law Society:**

- 1. must make an organizational commitment to establish and maintain a culturally competent regulatory process, and**
  - 2. should consider establishing a new office to support the work that the Law Society undertakes pursuant to its mandate when that work involves Indigenous communities and to create a culturally safe environment.**
22. As an organization, the Law Society needs to demonstrate competence in working effectively across cultures.
23. To ensure Law Society services are provided competently to members of Indigenous communities specifically, and in a culturally sensitive manner, staff dealing directly with members of Indigenous communities should have a sufficient understanding of Indigenous culture, beliefs and values, which will engender appropriate communication and interaction.

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24. The loss of culture, language and mutually respectful relationships between Indigenous and non-Indigenous communities has led to social challenges for Indigenous people, which can impact interaction with an organization like the Law Society. The Law Society needs to gain a meaningful understanding of the issues affecting Residential School Survivors, other vulnerable Indigenous peoples and Indigenous peoples generally. This requires knowledge of Indigenous ways of knowing, Indigenous Legal Orders, values and interests, and the sensitive history of Residential School abuses that has had a multi-generational impact on the physical, emotional, mental and spiritual condition of first Nation, Inuit and Métis communities and individuals. This responsibility to enhance competence also includes knowledge of the historical and contemporary impacts of colonization on Indigenous communities.
25. Sensitivity to the emotional, spiritual and intellectual needs of complainants who are Residential School Survivors or other vulnerable Indigenous peoples is required. Many survivors have had control taken from their lives and were child victims of physical, psychological and sexual abuse. The Law Society must also recognize and respect that, for complainants, interaction with the organization and its complaints and hearing processes is quite unfamiliar to them and can be exceptionally stressful and difficult.
26. The Law Society has the opportunity to transform itself as an institution to become more relevant and more competent in its work on matters involving Indigenous communities. Beyond the matter of Residential Schools, the Law Society anticipates that other issues may arise (i.e. Day Schools, Day Scholars and the Sixties Scoop cases). Also, Indigenous communities suffer ongoing trauma from Residential Schools and colonization. The First Nations Child and Family Caring Society of Canada case before the Canadian Human Rights Tribunal, for example, illustrates how Residential Schools continue to have an ongoing impact on Indigenous peoples and intergenerational trauma.<sup>2</sup>
27. The Review Panel received valuable insights from many experts with whom the Review Panel consulted. Terry Swan, who is a Cree/Saulteaux/ Métis and currently the Team Lead, Family Information Liaison Unit within the Indigenous Justice Division of the Ontario Ministry of Attorney General, works to compliment the work of the National Inquiry into Missing and Murdered Indigenous Women and Girls. She advised that in recognizing that there are power differentials between the Law Society and Indigenous community members who may seek to complain about a lawyer or paralegal, the Law Society needs to understand the path to “cultural safety”.
28. The path begins with cultural awareness, where the differences between what the institution represents and the Indigenous community are respected, which leads to cultural knowledge, or learning, and cultural competence. The path eventually leads to cultural

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<sup>2</sup> The case may be accessed at

<https://www.canlii.org/en/ca/chrt/doc/2016/2016chrt2/2016chrt2.html?autocompleteStr=caring%20soci&autocompletePos=1>

safety for both the institution and members of the Indigenous community who are interacting with the institution. The path to cultural safety is a framework that captures the relationship between legal services and Indigenous experiences of colonization, discrimination and marginalization, and is sensitive to the traumatic repercussions on multiple generations.

29. A commitment to developing cultural awareness and the ability to provide competent services for Indigenous peoples must involve engagement with the necessary Indigenous experts. This engagement could be led by a new office within the Law Society. The office may include the appointment of an appropriate Indigenous person with the right skills and talents to provide leadership in understanding and responding to Indigenous peoples' experience with the Law Society. The office could play a key role in advising on how Law Society programs and services can become inclusive and responsive to the needs of Indigenous communities and their members while similarly raising the competencies of the profession. This office could also be mandated with strengthening relationships between the Indigenous community and the Law Society. Indigenous community outreach in Ontario and the north would be an important part of this office.
30. The Law Society has begun work to create cultural awareness through the adoption of the Indigenous Framework in June 2017 as a critical first step. The Framework is at [Tab 2.2.4](#). While much work needs to be done, the Review Panel was encouraged by the progress that has been made to date on implementing the various components of the Framework in partnership with the Law Society's Indigenous Advisory Group (IAG), the Indigenous Bar Association and other stakeholders such as The Advocates Society. Most importantly, some of these components relate directly to the recommendations in this report. In particular,
  - a. The Law Society is exploring multi-day cultural competence training for benchers and staff using Indigenous methodologies;
  - b. The Law Society has expressed interest in working with the IAG and other partners in developing CPD programs to meet the new CPD requirements on equality, diversity and inclusion required by 2020;
  - c. The Law Society through bencher Dianne Corbiere is participating in the Federation of Law Societies working group examining responses to the TRC Calls to Action as part of a commitment to reconciliation;
  - d. The Law Society will be updating its *Practice Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse*;
  - e. The Law Society's Senior Indigenous Counsel, Darcy Belisle, has engaged in Law Society Divisional training initiatives for Law Society staff on Indigenous cultural competence;
  - f. Several members of the Review Panel and members of senior staff attended a three-day Indigenous Law Camp in September 2017, led by Professor John Borrows, who is Anishinabe/Ojibway and a member of the Chippewa of the Nawash First Nation in Ontario and Canada Research Chair in Indigenous Law at the University of Victoria Law School; and

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- g. In partnership with the Indigenous Bar Association and the Law Society, The Advocates' Society has developed the *Guide for Lawyers Working with Indigenous Peoples* as a resource for litigators working with Indigenous peoples. The Guide includes important historical and cultural elements that provide context for the professional relationships among Indigenous persons, their lawyers and other participants in the justice system
31. The Review Panel believes that for the Law Society, success will be achieved when the Indigenous communities see their identity, culture and laws - their "faces" – reflected and respected in the Law Society and its processes. This transformation, which should align with the commitment to reconciliation, is understood as a long term goal that begins with a vision for the Law Society towards change and is followed by a set of principles that will guide the organization.

**COMMUNICATION AND ENGAGEMENT****Recommendation 2****Where complainants are members of Indigenous communities,**

- 1. information about the Law Society, its regulatory process and the role of complainants must be available and communicated in an understandable and culturally appropriate way, and**
  - 2. depending upon the stage of the complaint matter at the Law Society, communications should include discussion of the issue of remedy from the complainant's perspective (using the complainant vs prosecutorial lens), including the concept of restoration and how that intersects with the Law Society's regulatory mandate.**
32. Engagement with members of Indigenous communities should take into account the needs of the complainants and the likelihood that some may be vulnerable and marginalized in society.
33. The hesitation to complain or difficulty in complaining to an authority like the Law Society for some Indigenous people may be a function of culture and an inability of the Law Society to make itself accessible. The fact that some complainants have been marginalized in society means they will have difficulty trusting the system in which the Law Society operates as a legal institution and will have challenges interacting with it. This distrust may arise from the historical experience of Indigenous people where such institutions and their real and perceived authority were used as a means to colonize Indigenous lands, resources and communities.
34. It is also recognized that some complainants perceive or experience a power imbalance as a client in a solicitor-client relationship, especially where the complainant is emotionally and/or physically vulnerable. In the Law Society's complaints and discipline process,

without additional steps, the complainant is not a party to the proceeding, has no formal role in the disposition of a case and remains unrepresented. A complainant may also not have the means to hire counsel to help them engage with the process. This experience may in fact contribute to a further imbalance as a systemic issue.

35. Because of these and other factors, Law Society staff, which includes any external parties who may be retained or engaged, should ensure that they are accessible to complainants and that clear lines of communication exist with a person at all times identified as a contact for any inquiry or question. Complainants should be informed about and consulted as much as possible on the progress of the complaint. Law Society staff who work directly with complainants must appreciate the need for the utmost sensitivity in dealings with those complainants who are Residential School Survivors or other vulnerable Indigenous peoples. Communications should be respectful and must not result in further trauma to the complainant. Community support should always be an option for complainants to access throughout the process with the Law Society.
36. Special communication needs and challenges may be presented, such as language barriers, cultural barriers and limited access to telephone service. The services of interpreters may be necessary. In some cases, the integrity of the investigation process on a complaint matter may require that the complainant communicate with the Law Society in their own language, if the complainant so desires. This allows the complainant to tell their story in a way that respects their sharing of information and that will benefit the Law Society in obtaining the information it needs to effectively investigate the matter.
37. Written communications to Indigenous complainants should be provided in an understandable and accessible format and reasonable efforts should be made to follow up to ensure understanding. In this respect, the Law Society should explore creating a lexicon that includes culturally appropriate terms and phrases, and engage with the Leadership, Elders and others in the Indigenous community in this initiative.
38. Communication at all stages of the matter should be timely and effective. This also involves being clear with the complainant about what the Law Society can and cannot remedy and, depending on the circumstances, involving the complainant in the approach to gathering information relevant to the complaint, if appropriate, and explaining the steps and important decisions points. This is especially important at the Law Society Tribunal hearing level if the complainant is to be a witness.

### **Recommendation 3**

**The Law Society must do more to engage with Indigenous people in their community to:**

1. **express the Law Society's commitment to create a trusting relationship, to enable the Law Society to meet its regulatory mandate in ways that respect the culture of the community;**

- 2. explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions to help the Law Society advance its commitment, and build trust in the community; and**
  - 3. explore ways to increase access to justice, including considering the need to develop a cultural liaison with the public.**
39. As noted earlier in this report, at the suggestion of the Independent Reviewer and with the agreement of the Chiefs and Elders of Lac Seul First Nation, Review Panel members attended a meeting in Sioux Lookout near the beginning of the Review Panel's mandate, in September 2017. This was an important gathering for the community and an invaluable learning experience for the Review Panel.
40. The Law Society made a commitment at that gathering to work towards a better regulatory process for Indigenous complainants and better relationships with Indigenous communities. This is a long term commitment.
41. To continue the important dialogue that began in September 2017, the Law Society must engage with Leadership, Elders and other Knowledge Keepers to learn and transform the Law Society's regulatory processes in matters involving Indigenous communities. Meetings should take place at appropriate times in the community and at a minimum should involve the Treasurer and others at the Law Society who are in positions to commit to and lead change. In this engagement, the initial approach should be the Law Society's request to be informed, educated and gain understanding. It is hoped that this will set the stage for an open dialogue about the Law Society's obligation to the community as a public interest regulator.
42. In considering ongoing issues, the Review Panel sees a role for the Law Society within its duty to facilitate access to justice to ensure a clear understanding of the Law Society's process and to offer valuable assistance to Indigenous complainants apart from any engagement in individual complaints investigations or prosecutions. In this respect, the Law Society should consider, where appropriate:
- a. retaining local counsel, who is culturally competent, from an Indigenous community for the purpose of assisting the Law Society in communicating information to complainants and to ensure over regular periods of time that the complainants' understanding remains accurate and current, and
  - b. providing funding for independent counsel, perhaps by augmenting the scope of the services of existing legal clinics, to assist complainants in understanding the scope of the Law Society's jurisdiction and to offer advice and, if appropriate, legal assistance, in disputes.
43. These are two examples of potential enhancements to the Law Society's engagement with Indigenous complainants in ways that respect language and culture, with the assistance of those who immediately understand Indigenous culture, language and history.

- 44. The proposals above may help to address the circumstances that arose in the Keshen case. The Review Panel heard that the process of the Tribunal's hearing and cross-examination in particular was extremely difficult for the complainants who became witnesses in the proceedings. In many instances, the process aggravated the trauma they had previously experienced as residential school survivors. Their interactions with the Law Society at the intake, investigative and hearing stages led to their belief that the Law Society intended to help them. The gulf between their hope for assistance and the reality of the true nature of the proceedings left some of the complainants re-traumatized and with a deep resentment of the process and the Law Society.
- 45. At least three factors contribute to consideration of a different approach to complainants like those involved in the Keshen case:
  - a. the complainants were all members of northern First Nations communities, which created logistical challenges for the Law Society based in Toronto and more importantly for the complainants in remote communities;
  - b. the complainants were also Residential School Survivors, which required an approach that would ensure cultural safety; and
  - c. the Law Society had already expressed a commitment to improve the quality of justice for Indigenous peoples, as part of its Indigenous Framework initiative, in keeping with the TRC Calls to Action.
- 46. As such, the two proposals outlined above may be effective in addressing the obligation to assist in complainants' understanding of the Law Society and the Tribunal's process. The hope is that this becomes a practical implementation of the continuing policy objectives that support engagement with Indigenous communities, advanced by the Law Society through practical solutions tailored to the communities' legal needs. The office described in Recommendation 1 would assist in this regard.

**SPECIFIC PROFESSIONAL REGULATION FUNCTIONS**

**Recommendation 4**

**The Professional Regulation Division should:**

- 1. be appropriately resourced to ensure timely, efficient and effective operation of regulatory functions,**
- 2. build its capacity to develop formal policies and procedures that flow from decisions of the Tribunal (following all levels of appeal) that raise important regulatory policy issues;**
- 3. formulate a plan for the investigation of "major cases" to assist in the management of investigations,**
- 4. support prosecutors in developing and refining the skills required to manage and prosecute major cases, and**

- 5. ensure all staff have available the necessary mental and emotional supports when working with complainants that are survivors of trauma. This may include but not be limited to the Members Assistance Program.**
47. The Professional Regulation Division (“PRD”) of the Law Society is a large department which performs a crucial function in the regulation of lawyers and paralegals. The PRD Executive Director’s responsibilities are extensive and significant in the context of the public interest obligations of the Law Society. The Executive Director’s professional judgment must be exercised in a way that meets the Law Society’s professional regulatory objectives and ensures the integrity of the process that accomplishes that goal.
48. Through this recommendation, the Review Panel acknowledges the efforts currently being made by the CEO to ensure that the Executive Director is given the required support, staff and financial resources to perform her functions to meet the standard required and expected of the Law Society in addressing complaints, including those that require disciplinary measures.
49. The ability to develop policies and procedures as described in Recommendation 4 will enable consistent, informed application of relevant principles, including Indigenous Law principles. For example, the Review Panel discussed the 2013 Law Society Tribunal case involving First Nations lawyer Terence Robinson<sup>3</sup>, in which the discussion of Gladue principles<sup>4</sup> as applicable to the case came at the request of the Hearing Panel. The matter was concluded at the Law Society Tribunal’s Appeal Panel which upheld the application of Gladue principles. In the Review Panel’s view, there is an opportunity to integrate the application of Gladue principles as part of regulatory policy. This approach aligns with the views of the Law Society Tribunal Chair, David Wright, discussed later in this report.
50. With respect to management of major cases, an important feature of planning as described is communication and consultation. It is understood that there needs to be early

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<sup>3</sup> Mr. Robinson pled guilty to a criminal charge of aggravated assault. At his discipline hearing, he agreed that the facts underlying his conviction amounted to conduct unbecoming a lawyer. The Hearing Panel imposed a two-year suspension as a penalty. He appealed this penalty with the primary ground of appeal being the application of Gladue principles. The Appeal Panel granted the appeal and substituted a penalty of 12 months suspension which was already served at the time the appeal was heard. The case may be accessed at <https://www.canlii.org/en/on/onlst/doc/2013/2013onlsap18/2013onlsap18.html?autocompleteStr=robinson&autocompletePos=1>

<sup>4</sup> The Gladue Sentencing Principles arose from the 1999 decision of the Supreme Court of Canada *R. v. Gladue*. The case dealt with section 718.2(e) of the *Criminal Code* and provided that when courts are addressing the detention of an Aboriginal person at the bail, sentencing or appeal stages, a court is required to take into account circumstances facing Aboriginal people and must consider all appropriate options other than jail.

communication and consultation between investigators and prosecutors. The challenge is designing and supervising a process in which limited discipline resources are applied to the highest priority files, and doing so in a way that empowers investigation staff and complements their skill set. Creating the appropriate plan will avoid situations in which, for example, work is shifted from investigations to discipline, or where work is duplicated in a way that may undermine the efforts of Investigation managers.

51. Elements of such an approach might include the following:
  - a. Defining a “major case”, which would involve consideration of such factors as the complexity of the issues, the volume of complaints, the resources needed to properly manage the case, the time needed to complete the investigation and risk to the public;
  - b. Considering how to improve the current model to facilitate early communication and consultation between investigators and prosecutors to promote the efficient use of investigative and prosecutorial resources; and
  - c. Identifying the exceptional administrative and personnel needs associated with major cases, and the related resources, and recommendations as to how they should be managed to guide future investigations.
  
52. Based on information the Review Panel received, the following would be important aspects of a major case plan:
  - a. Planning the approach to the case, including appropriate timelines, assignments and required resources;
  - b. Establishing procedures, processes and protocols;
  - c. Observing established processes and protocols, including
    - i. the overall responsibility of the team lead,
    - ii. responsibility of the team lead for decision-making,
    - iii. when decision-making must be elevated, and
    - iv. reporting requirements, and varying from them only in exceptional circumstances and with full knowledge of the reasons for doing so;
  - d. Regular updates to all staff involved on the progress of the case, including updates on specific challenges; and
  - e. Regular communication and updates with the complainant(s).
  
53. With respect to supports for prosecutors, these measures should include the following:
  - a. Providing educational opportunities to prosecutors in the management and prosecution of major cases, such as exploring attendance at courses in this area conducted by the Ministry of the Attorney General of Ontario or by the Public Prosecution Service of Canada; and
  - b. Encouraging prosecutors to increase their experience level with larger cases through exploring secondments to other prosecutorial offices, such as the Crown Law Office – Criminal, or the office of the Crown Attorney in Toronto, perhaps with a corresponding exchange to maintain the number of prosecutors in both offices.

54. The Review Panel heard comment on information “silos”, which was language used by some of the Law Society staff interviewees to describe a source of difficulty they experienced in managing their responsibilities in the Keshen matter. Relevant information within the Professional Regulation Division (PRD) should be shared and processes instituted to do so in an effective and appropriate way to eliminate unhelpful “information silos”.
55. The Law Society should also consider a review of current policies restricting the dissemination of useful information among the PRD and other Divisions, including, for example, Practice Audits. There may be many legitimate reasons for not sharing certain types of information between departments. However, current policies should be reviewed to ensure that there continues to be a sound public interest rationale for a department to decline to provide or receive pertinent information from another department. This will contribute to a better understanding of the basis for any restriction.

### Recommendation 5

#### The Law Society should:

1. **take the necessary steps to ensure that anyone who investigates complaints at the Law Society involving Indigenous licensees or complainants, in addition to required investigatory experience and skills, is culturally competent to perform these investigations and has the necessary resources available to engage appropriately with members of the Indigenous communities in this process; and**
  2. **explore ways to incorporate principles of Indigenous Legal Systems into**
    - a. **dispute resolution resources available to Law Society investigators, which may be applied in appropriate cases, and**
    - b. **prosecutorial and dispute resolution resources available to Law Society prosecutors, which may be applied in appropriate cases.**
56. First steps should be to enrich the education of staff with initial training, and ensure appropriate resources are offered to the relevant staff. This will involve engagement with the Equity and Indigenous Affairs Committee and should involve working with Indigenous community partners, like the Indigenous Advisory Group and others. It is also recognized that competency of the Law Society staff to engage in this way is not accomplished at any one point in time. It is a continuum of learning - a “journey”.
57. Ms. Swan noted that empathy for the circumstances of Survivors drives cultural safety, described earlier in this report. Achieving cultural competency in this progression to cultural safety involves a number of important steps for those working with Survivors, including:
- a. understanding complex trauma;
  - b. understanding institutional trauma;
  - c. employing grounding techniques for the Survivors, where, for example, they are given the opportunity to have whomever they wish as support in the room; and

- d. making sure that appropriate breaks are taken when working closely with the Survivors and their issues.
58. Ms. Swan also referred to becoming “trauma-informed” and approaching matters from this perspective. She advised that the recognition and understanding of trauma translates into responses to the individual that integrates knowledge about trauma in practices, procedures and settings.
59. In terms of the integration of Indigenous Law principles into common law practices and procedures, resources are available to the Law Society, including the processes applied in the Independent Assessment Process (IAP)<sup>5</sup> and procedures in the Federal Court Practice Guidelines for Aboriginal Law Proceedings.<sup>6</sup> The Law Society should consider how to adapt and incorporate them in its own regulatory process to improve the manner in which these types of complaints are investigated and prosecuted.
60. The Review Panel was privileged to meet with The Honourable Leonard S. Mandamin, a judge of the Federal Court and an Anishinaabe member of the Wiikwemkoong Unceded Indian Reserve on Manitoulin Island, Ontario. Justice Mandamin was involved in the initiative that resulted in the Federal Court Guidelines. Prior to his appointment to the Federal Court, he was a Provincial Court judge in the Calgary Criminal Division of the Provincial Court of Alberta and presided in the Tsuu T’ina Court which involved a First Nation peacemaker justice initiative and in the Siksika Court at Siksika which also involved traditional First Nation mediation.
61. Justice Mandamin described the touchstones that guide his approach to his First Nations legal work. The first is continuity – ongoing involvement in the community to create relationships, understanding the community, working so that the members of the community understand each other and ensuring good communications within the community. The second is hearing and understanding – making sure people have an opportunity to be heard in the process but also ensuring that as part of being heard, they are being understood. The third is fairness – ensuring that whomever is mediating or deciding a dispute, fairness operates for both or all sides of the matter.
62. In relaying his work that led to applying restorative justice principles, Justice Mandamin referenced the Law Reform Commission of Canada 1996 publication *Bridging the Cultural Divide: a report on Aboriginal people and criminal justice in Canada / Royal Commission*

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<sup>5</sup> The Indian Residential Schools Adjudication Secretariat published “Expectations of Legal Practice in the IAP” which sets out detailed guidance, stated to supplement the specific rules and guidance in Law Society rules. The Expectations appear in a comprehensive Desk Guide for Legal Counsel Practising in the IAP at <http://www.iap-pei.ca/media/information/publication/pdf/pub/desk-guide-v6-eng.pdf>

<sup>6</sup> [http://cas-cdc-www02.cas-satj.qc.ca/fct-cf/pdf/Aboriginal%20Law%20Practice%20Guidelines%20April-2016%20\(En\).pdf](http://cas-cdc-www02.cas-satj.qc.ca/fct-cf/pdf/Aboriginal%20Law%20Practice%20Guidelines%20April-2016%20(En).pdf)

on *Aboriginal Peoples*, and its discussion of “creating conceptual space” for Indigenous systems of justice. He also described in some detail the processes used in the Tsuu T’ina Court and in the Siksika Court.

63. The Review Panel believes these are examples of approaches and processes that may be options to the Law Society’s adversarial adjudicative model. They should be explored for matters involving Indigenous complainants or Indigenous licensees at the Law Society.
64. The Review Panel also received information on the importance of the right process. Delia Opekokew, a lawyer and a member of the Canoe Lake First Nation in Saskatchewan, met with the Review Panel and discussed her experiences as a Deputy Chief Adjudicator in the IAP process. Her advice was to ensure that the environment for questioning a Survivor is sensitive to their experience, and that questions that relate to their experience as a Survivor be asked in a gentle way.
65. Law Society prosecutors should also have prior knowledge of the traumatic material likely to be heard in certain proceedings, and the benefit of a pre-determined plan to remain as healthy and committed as possible throughout the duration of the proceedings. Ms. Opekokew, in relaying her experience as an adjudicator in the IAP, stressed the importance of self-awareness of the effect of hearing the Survivors’ stories. Supports for those staff directly involved with Survivors as complainants and witnesses should be made available through the Law Society.
66. The Review Panel under Recommendation 1 refers to the visioning exercise for the Law Society to begin the journey to transformative change. This was part of the advice received from Professor Jeffery Hewitt, a Cree, who spoke with the Review Panel about the Law Society’s processes and Indigenous legal orders (in particular Cree and Anishinaabe).
67. In Professor Hewitt’s view, the Law Society has rules and regulations applying to legal practitioners that should be rigorously enforced. These rules and processes should not be suspended or varied from a misguided sense of moral righteousness when dealing with those from the Indigenous community who intersect with those processes. In his view, trying to apply Indigenous law within the Law Society will not fix anything if the underlying architecture of the Law Society’s structure does not change. In determining that change, the questions of why and for whom the Law Society exists are key. Professor Hewitt stated that an examination and the process of change is part of the longer term decolonization work for the Law Society and it is important to include, through both recognition and structure, Indigenous legal orders.

### **Recommendation 6**

**The Professional Regulation Division should create the required permanent internal structures and supports to appropriately manage investigations and prosecutions of**

**licensees who are the subject of complaints from Indigenous people and of Indigenous licensees. These structures and supports should extend to other divisions at the Law Society to the extent that processes related to investigations and/or prosecutions intersect with them.**

68. The Review Panel is aware that a special First Nations Inuit and Metis (FNMI) team was established within the Professional Regulation Division as an attempt to deal in a co-ordinated way with the numerous complaints the Law Society was receiving from First Nations Residential School Survivors in 2013. The team included staff from various departments within the Division based on the skills and expertise required to deal with the complaints. A number of unique processes were instituted and resources and supports provided over the course of the Keshen investigation and prosecution.<sup>7</sup>

<sup>7</sup> These supports and resources included the following:

- Extensive resource materials about the IAP, IRSSA, Apology, IRSSA Agreement, Schedule “D”, Financial Administration Act, decisions of the IRS Supervising Judges were prepared by the Executive Director’s Office and shared with team members;
- An educational brochure and video prepared by the Indian Residential School Adjudication Secretariat “Telling your Story” was provided to team members assigned to the Keshen complaints;
- Important IRSSA decisions were brought to attention of team on an ongoing basis
- IRS Health & Cultural Support Workers were available to Survivors and their families during all aspects of our complaint and investigative processes. (e.g. interviews, witness preparation, and at the hearing)
- NAN Legal designated and made available one of its Victim Witness staff to all Law Society Survivor witnesses
- The Division arranged for a male and female Elder from the Treaty #3 territory to be present at each day of the hearing
- Interpreters, drawn from and recommended by the Indigenous community, fluent in the first language and culturally appropriate and respectful of the language, were made available during investigative meetings and interviews
- The Professional Regulation Division arranged for lawyers to give independent legal advice to survivor witnesses re: confidentiality etc.
- NAN Legal agreed to offer legal services to any Law Society complainant Survivor
- Aboriginal Legal Services upon request made legal assistance available to Survivor complainants
- Lawyers were retained to meet with and provide legal advice to Survivor complainants prior to testifying in the proceedings
- A 1-800- number was offered as a direct line to Intake staff person who was member of the dedicated team; this number was for Indigenous people alone. IRS Health Support Workers agreed to share the number with Survivors and Indigenous people
- The Compensation Fund Department set up a 1-800 number that Indigenous people could use that would provide direct access to counsel who was a member of the Team, available to assist them in making an application and to answer questions; a simplified application form was developed that was prepopulated with a synopsis of the investigation that the Indigenous claimant could look at, review, agreed, modify or augment

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69. However, there were gaps in approaches, despite efforts that were well-intentioned, which may have exacerbated the difficulties some complainants were experiencing in understanding the Law Society role and processes. An aggressive timeline for the investigation and a number of staff changes at crucial stages of the investigation and prosecution were elements added to an already complex process.
70. Based on information received from Law Society staff in the course of its review, the Review Panel recognized that the Law Society was doing its best to address a unique situation in processing and investigating complaints. However, the Law Society was not able to rely on any established culturally-informed process for working with and supporting complainants who were Residential School Survivors from northern First Nations communities or dealing with the complexity of the issues that were presented by the community members.
71. A required level of knowledge and expertise in Indigenous culture to deal with demanding investigations and the unique circumstances of Indigenous complainants is necessary. The Law Society needs learn from the efforts it undertook to establish these and other procedures as process standards within the Division.
72. The Review Panel believes the Law Society should explore the following:
- a. Specialized teams that are appropriately trained;
  - b. Comprehensive professional resources across departments covering a range of topics and subjects;
  - c. Established advisory channels with the Indigenous community in ways that respect the principles of fairness and independence of the Law Society's regulatory process); and
  - d. Personal resources for both the Law Society staff and Indigenous complainants or licensees for required support.
73. For example, it may be appropriate to explore establishing a specialized support unit for victims who are complainants. The role of the team would be to provide information generally about the Law Society process and make referrals for counselling or other support resources.
74. In cases involving vulnerable complainants where actual harm is capable of resulting from their appearance as witnesses, the Law Society should consider a specialized analysis that is aimed at determining whether the public interest requires that vulnerable complainants appear as witnesses. This analysis may include:
- a. identifying with precision the nature of the true harm sought to be addressed through the use of the regulatory hearing process;
- 
- The Compensation Fund department reviewed and revised its forms to use plain language and developed an information sheet specifically for the Indigenous applicant.

- b. considering whether the public interest requires a regulatory hearing to address that harm, given that there is a potential for adverse impact upon vulnerable witnesses at both the investigative and hearing stages;
  - c. if a hearing is necessary, ascertaining whether the presentation of the case could be configured in such a way as to avoid the appearance of vulnerable witnesses; and
  - d. if the public interest required that vulnerable witnesses appear, determining whether alternate methods are available through which their evidence could be presented to minimize the adverse effects arising from their appearances.
75. If the Law Society is not required to compel a witness because they voluntarily choose to testify<sup>8</sup>, the Law Society should ensure that the consent of the witness to appear is fully informed and that the process is fully understood. Further, as a component of the assessment of whether vulnerable witnesses should be requested to testify in a conduct hearing, the Law Society should take into account the possibility that further counselling after the hearing may be required and recognize that it should share in the potential cost of making that assistance available.
76. A fully informed consent would ensure that the witness has an adequate understanding of the purpose of the hearing, the true jurisdictional scope of the Tribunal and the Law Society, the issues raised in the allegations, the general function of witnesses and the areas in which the witnesses can be expected to be examined in chief and cross-examined. In certain cases where the complainant is a client of the lawyer appearing before the Tribunal, this advice should include an explanation of the potential nature of the cross-examination by the lawyer or their counsel, which may include other matters disclosed within the solicitor-client relationship.
77. Providing this advice may require retaining counsel for the witness who can provide neutral explanations and independent advice, both for the benefit of the witness and the protection of the Law Society. In the Keshen case, the Law Society hired independent counsel to be available to Survivor witnesses to give them independent legal advice. The advice was limited to whether or not they wished to give evidence and protecting the confidentiality of the witnesses' identity and evidence. Independent counsel was not otherwise involved in the prosecution.
78. Generally, procurement processes and protocols should be established for the retention of external counsel, where required, who are engaged to work on files involving Indigenous complainants or Indigenous licensees, to ensure appropriate competencies for this work.

### **Recommendation 7**

**The Law Society Tribunal and the Tribunal Committee should explore, with the assistance of Indigenous Law experts, how to incorporate Indigenous Law principles**

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<sup>8</sup> This was the case in the Keshen matter.

**within its adjudicative and dispute resolution processes and apply them in the appropriate case.**

79. The following excerpt from the oral reasons for decision of the Law Society Tribunal Hearing Panel<sup>9</sup> concluding the Keshen prosecution describes the Hearing Panel's approach to its adjudicative process in this case:

[17] Within the limits of the process we have to follow under the law and considering the rights of the parties to the hearing – the Law Society and Mr. Keshen -- we tried to incorporate Anishinaabe culture and values into the process. We arranged the hearing room in a circle and made sure the circle had a central place for community members attending. We have valued the openings, closings, smudging and advice from Elders and the support and advice from health support workers. We tried to ensure that to the extent possible we engaged with community members present on a personal level, avoiding discussions about the subject of the hearing. The panel was honoured to attend a sweat lodge in the evening after one of our early hearing dates.

[18] We are grateful for the willingness to teach us about and allow us to participate in your culture, history and traditions and your understanding when we made mistakes. We tried very hard to learn, to listen in a good way to the Elders and to the witnesses and the submissions. We know, though, that the hearing did not meet what many of you were hoping for.

[19] We have tremendous respect for the residential school survivors who told us their stories during the hearing. We come away with a deeper understanding of the terrible impact of residential schools on those forced to attend them and on their families and communities. We saw how that impact continues throughout survivors' lives and in many generations. We were struck by the courage of those survivors in putting their stories down on paper as part of the hearing process and we heard how, for many, Canada's legal processes did not bring the closure and healing they were hoping for. We reflected on how important it is for those representing Indigenous peoples to understand, and have the trust and confidence of those communities. We recognize that the process of being examined and cross-examined and questioned by us in this hearing was often stressful and difficult.

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<sup>9</sup> The entire reasons may be found on CanLII at [https://www.canlii.org/en/on/onlst/doc/2017/2017onslth90/2017onslth90.html?searchUrlHash=AAAAQA Ga2VzaGVuAAAAAAE&resultIndex=1](https://www.canlii.org/en/on/onlst/doc/2017/2017onslth90/2017onslth90.html?searchUrlHash=AAAAQA%20Ga2VzaGVuAAAAAAE&resultIndex=1)

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[20] We recognize that overall, this Tribunal's hearing did not give many complainants and the communities affected the answers they were hoping for. From our perspective as the adjudicators, it seemed that in many ways that came from the adversarial process, with the parties' roles built on the criminal law model. It appeared to leave many witnesses feeling they couldn't tell their stories the way they wanted to and that it was held in a way disconnected from Anishinaabe culture. We often wished we could adapt the process to something that would allow the survivors to tell their stories in a more meaningful way for them. That was hard given the legal constraints and that the issues in the hearing were mostly about whether Mr. Keshen did things wrong and should be punished and whether the Law Society had been fair to him.

[21] We have seen in this process how important it is that administrative tribunals that serve Indigenous people and communities build the trust of those communities. Although we have done some work in this, including a recent training session for all adjudicators at our Tribunal, we recognize as individuals, as adjudicators of the Law Society Tribunal and decision makers in the Canadian justice system that we have more learning and thinking to do in this regard. We see how those involved in the administration of justice need to pay much more attention to how we serve Canada's Indigenous peoples.

80. As indicated above, the Tribunal Panel recognized that it has more learning and thinking to do to build trust with Indigenous communities.

81. As the above excerpt indicates, a number of steps were taken during the hearing process in the Keshen case, some arranged by the Law Society Tribunal, to accommodate complainants and adopt special processes for this hearing.<sup>10</sup> The Review Panel believes

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<sup>10</sup> These steps included the following (some already referred to earlier in this report):

- The hearing took place in Kenora (and the panel offered to hold hearings in other communities).
- A room was provided at the hearing site for survivors to meet with health support workers.
- Many witnesses had a health support worker or other support person sit next to them during testimony.
- Elders were present throughout the hearing, conducted openings, closings and smudging throughout the day for all participants, provided support to witnesses on request and feedback to the panel.
- The Law Society retained counsel to advise survivors on confidentiality issues, and all survivors were given the option to have their names, testimony and exhibits referring to them not public, which most accepted.
- The room was arranged in a circle rather than a traditional courtroom style.
- The panel asked participants not to stand when the panel entered and left the room and the lawyers not to stand when making submissions/questioning witnesses.

the Tribunal should build on this experience and institutionalize certain features of this approach for cases involving Indigenous complainants or Indigenous licensees who are the subject of a complaint that results in a hearing before the Tribunal.

82. The Tribunal should determine the most effective method of including Indigenous perspectives in the adjudicative process. This will involve understanding the nature of dispute resolution systems of Indigenous people and determining how they may be applied within the current more adversarial approach to Law Society discipline.
83. As the Review Panel learned, this is a crucial point to understand. It is not within the Indigenous community's cultural norms to enter into an adversarial exercise. This type of process to resolve disputes is not aligned with Indigenous culture, ways of knowing or values. As such, the Law Society needs to determine a different approach and how Indigenous perspectives can be included and reconciled in the Law Society's hearing process. The wisdom of experience shared by Justice Mandamin and summarized in the discussion under Recommendation 5 is relevant here.
84. The Review Panel received the advice of the chair of the Law Society Tribunal, David Wright. He indicated that on a go forward basis, the Law Society needs to approach solutions in a spirit of reconciliation. For example, he indicated that the Law Society needs to explore the Indigenous legal principles that would advance the Law Society's learning about alternatives to the classic litigation model and the approaches that might be adapted in the hearing process. Mr. Wright indicated that the current *Rules of Practice and Procedure* adopted by Convocation provide that the civil rules of evidence apply to Tribunal proceedings. However, as a policy discussion, the application of the *Statutory Power and Procedures Act* (SPPA) specifically, discussed below, and the proceedings of other adjudicative tribunals might be an appropriate subject of further study.

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- The Tribunal sat late or started early and took extended breaks to accommodate witness requests and schedules. Scheduling of particular witnesses was flexible.
  - On several occasions the Tribunal purchased food for witnesses. For one survivor witness, the panel funded transportation home as the witness had no other way to get home.
  - The panel asked and reframed questions from lawyers to witnesses to ensure understanding, plain language and reduce the adversarial tone.
  - The panel and clerks wore casual attire and encouraged counsel to do the same, upon request of community members/Elders.
  - For one witness, the panel chair sat next to the witness at her request.
  - The panel attended a sweat lodge, upon request of community members/Elders.
  - The panel consulted with Elders, health support workers and experts on process.
  - Before the settlement was reached, the Tribunal raised with the parties the possibility of Elder assistance to the panel in deliberations (submissions were to be made later). Elders were consulted in deliberations about the joint submission with consent of the parties, and participated in the invitation to attend process.

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85. Mr. Wright advised that the Tribunal, through the Tribunal Committee, is working on a new set of rules and practice directions to be presented to Convocation that will be more flexible, user-friendly and plain language.
86. In the spirit of this ongoing work, consideration should be given to developing practice directions that make clear what is currently permissible within the Law Society Tribunal Hearing Division Rules of Practice and Procedure, but which may not be widely understood. This may include, for example,
  - a. permitting a witness to testify with a support worker nearby;
  - b. permitting a witness to testify outside the hearing room by closed circuit television or behind a screen;
  - c. allowing a victim's statement (done currently by affidavit) in certain cases to be admitted as evidence for the truth of its content; and
  - d. requiring the cessation of any part of an examination or cross-examination of a witness that is, in the opinion of the adjudicator, abusive, repetitive or otherwise inappropriate.
87. The Tribunal Committee should also explore the possibility of a rule that would permit the appointment of a lawyer to cross-examine a witness if the subject licensee at the hearing is unrepresented.
88. Mr. Wright advised that testifying by video is already proposed in the new draft rules for the Tribunal (to be reported to Convocation later this year) and is part of current practice. Written evidence-in-chief is permitted in the often-used ability to call a witness's evidence-in-chief by affidavit.
89. Mr. Wright also advised that subsection 23(2) of the SPPA allows a Tribunal to "reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding." The ability to use this and other sections of the SPPA that allow for departures from the civil rules of evidence will be a decision for Convocation. In that respect, the Tribunal Committee may wish to consider whether the current Rules that apply the civil rules of evidence and thereby exclude the SPPA evidence provisions should continue.
90. Earlier in this report, the Review Panel noted that in the Law Society's process, the complainant is not a party to the Tribunal proceeding and is not represented. David Wright advised that he saw no impediment, other than funding, to Indigenous complainants having independent counsel available to advise them throughout the hearing process. The Review Panel understands that any funding for counsel for complainants or respondents should be the responsibility of the Law Society, and not the Tribunal, to protect the

Tribunal's impartiality and neutral role.<sup>11</sup> The Review Panel suggests that the availability of counsel as described should be explored.

91. With respect to applying procedures that integrate Indigenous traditions and beliefs, Mr. Wright's advice was that this could be implemented within the Tribunal process. His view was that the appropriate process would be best implemented after extensive consultation and under the leadership or co-leadership of Indigenous lawyers and paralegals, and other relevant stakeholders. The Tribunal pre-hearing process is highly flexible and the proposals for the new rules promote flexibility in process and responsiveness to individual cases. The Review Panel recognizes that it is important to have clear statutory and rule authority for processes that are implemented.
92. As noted earlier, resources are available to the Law Society, including the processes applied in the Independent Assessment Process and procedures in the Federal Court Guidelines. The Law Society should consider how to adapt and incorporate these processes in its own hearing process to improve the manner in which these types of cases are heard.
93. For example, the Federal Court Guidelines provide that, for cross-examination of Elders, "The special context of the testimony of Elders suggests that alternative ways of questioning on cross-examination should be explored in appropriate cases. This exploration should be done on consent of the parties or on direction of the Case Management Judge." In referencing these Guidelines, Justice Mandamin described circumstances where the adjudicator, rather than the examining counsel, asks the questions of the Elder where circumstances may warrant such an approach. Another example may be the use of an independent examiner who, with the consent of both parties, would examine the witness and provide the evidence through an affidavit or oral testimony.
94. Mr. Wright advised that he saw no impediments to exploring how such practices could be incorporated in the Tribunal processes. He indicated that the Tribunal's protocols and policies should respond to the particular issues involving Indigenous peoples that can arise in different Tribunal cases - Indigenous lawyers and paralegals as respondents, Indigenous complainants who are represented by lawyers and paralegals as individuals, and Indigenous governments and communities as complainants about the legal services they received. Given the fact that the Gladue principles have been recognized as applying to penalty at the Tribunal, Mr. Wright believes it is essential that best practices for applying Gladue in the professional regulatory context be part of any policy.

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<sup>11</sup> In another context, in certain circumstances, the Law Society will cover the cost of counsel in capacity proceedings, where external counsel is appointed for the licensee by the Proceedings Authorization Committee under [By-Law 11](#)

95. The Tribunal should determine how to ensure the appointment to the Tribunal of otherwise qualified adjudicators who are Indigenous or who have experience with Indigenous legal issues and/or the Indigenous communities. This would involve the Tribunal Chair in establishing criteria and recruiting the right members. This may evolve to take the form of an 'expert panel' within the Tribunal from which adjudicators with relevant experience may be assigned to hearings.
96. The Tribunal should also consider the merits of a guideline for the composition of Tribunal hearing panels convened to hear conduct applications relating to complaints from Indigenous people or where the licensee is Indigenous. In this respect, consideration will be required of the nexus between the current process to select panels and the experience and competence required, and how to address discretionary powers and codification of the process around the selection of panel members, with fairness as the overarching principle to be observed.

### **Recommendation 8**

**Law Society Tribunal adjudicators should receive ongoing training in the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics.**

97. There are a number of efforts that could be undertaken to ensure competency among adjudicators for these matters.
98. The Tribunal should consider the merits of a competency matrix for trainers for adjudicators on Indigenous Law, dispute resolution processes and protocols and customs that may be relevant to the Tribunal process.
99. As the design and implementation of training for adjudicators is one of the responsibilities of the Tribunal Chair, the Law Society should refer this issue to David Wright for review and implementation.
100. The Review Panel notes that, as noted earlier, under the Indigenous Framework approved by Convocation in June 2017, Law Society staff and benchers are to have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of Residential Schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous Laws, Aboriginal-Crown relations and basic cultural protocols.

## **OTHER LAW SOCIETY FUNCTIONS**

### **Recommendation 9 – Practice Supports**

**The Law Society should ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients and in particular individuals who have experienced trauma arising from the Indian Residential School experience, the Sixties Scoop or Day Schools to assist in their competent representation of these individuals.**

101. While the Law Society's *Rules of Professional Conduct* and *Paralegal Rules of Conduct* provide comprehensive guidance on competence in legal practice, the Review Panel believes there is merit to including additional commentary in the rules in relation to the representation of vulnerable clients, such as Residential School Survivors, and recommends that the competence rules be reviewed for this purpose.
102. As stated previously, in 2003, the Law Society created *Guidelines for Lawyers Representing Residential School Claimants*<sup>12</sup>, updated recently to reflect changes in the Rules of Professional Conduct more generally. The Law Society should review the Guidelines and revise them accordingly as required to ensure they are current and cover the broad scope of representation of those from Indigenous communities who may seek legal assistance as a claimant.
103. The Law Society should also explore partnering with other organizations who have the knowledge and experience to help frame guidance, act as referrals for resources for lawyers or contribute to continuing professional development programs to assist lawyers and paralegals who may serve these clients. A recent example, as noted earlier in this report, is the Guide for Lawyers Working with Indigenous Peoples which is a joint project of The Advocates' Society, the Indigenous Bar Association the Law Society.
104. The Review Panel also notes, as mentioned earlier, that the IRS Adjudication Secretariat has published expectations for legal professionals representing claimants in the IAP process in its Desk Guide for Legal Counsel Practising in the IAP.
105. With respect to CPD, the Review Panel also believes the Law Society should explore targeted CPD offerings that would be mandatory for lawyers who are representing these affected clients.

### **Concluding Comments**

106. As the Review Panel concludes its work, it offers the recommendations in this report in support of the Law Society's commitment to the First Nations communities in Northern Ontario to listen, learn and engage in respectful and ongoing dialogue. This will help to

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<sup>12</sup> Passed by Convocation on October 23, 2003; amended February 23, 2012; amended October 2015.

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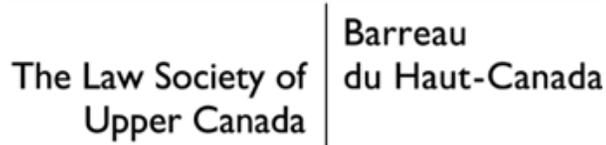
make the Law Society an organization that is responsive to Indigenous communities and how they and the Law Society may interact.

107. As noted in this report, the Law Society will achieve success in its journey to become culturally competent when the Indigenous communities see their identity, culture and laws as part of the Law Society and its processes. This is central to the Law Society's ongoing commitment to reconciliation. The vision for change described earlier in this report will be advanced through the principles that underlie the recommendations, which focus on processes and procedures that are inclusive of Indigenous perspectives.
108. The Review Panel will be returning to Sioux Lookout with the Treasurer in mid-June 2018 to meet once again with the Leadership of a number of First Nations in the north, Elders and Residential School Survivors and to present this report. The Review Panel looks forward to this second opportunity to visit the community and listen to the views and stories of those in attendance. The hope is that the Review Panel can convey the message that the report represents the Law Society's commitment to becoming a more culturally competent organization on Indigenous histories, experiences, cultures and affairs, in an effort to build mutually respectful relationships with Indigenous communities.

Convocation - Law Society Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples Report

Tab 2.2.1

## REVIEW PANEL TERMS OF REFERENCE



### OFFICE OF THE TREASURER MEMORANDUM

**TO: ALL BENCHERS**  
**FROM: TREASURER**  
**DATE: JUNE 27, 2017**  
**RE: REVIEW PANEL ON REGULATORY AND HEARING PROCESSES AFFECTING INDIGENOUS PEOPLES**

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The experience of the Law Society of Upper Canada in *Law Society of Upper Canada v. Keshen* (“Keshen”) raised questions about the Law Society’s regulatory and hearing process in relation to Indigenous persons, complaints, and issues. We need to listen and learn from our historical experiences in dealing with Indigenous issues and review and reform our processes to accommodate the unique historical and cultural circumstances of Indigenous peoples and Indigenous approaches to conflict resolution.

I am therefore today establishing a Review Panel to undertake an immediate review of the way in which the Law Society and its Tribunal address regulatory matters involving Indigenous issues. The review is intended to identify issues and make recommendations on opportunities for inclusion of Indigenous perspectives.

#### **The Review Panel shall consist of:**

- Dianne Corbiere, Bencher, Co-Chair
- Julian Falconer, Bencher, Co-Chair<sup>1</sup>
- Robert Burd, Bencher
- Teresa Donnelly, Bencher
- Isfahan Merali, Bencher
- Kathleen Lickers, Co-Chair of the Indigenous Advisory Group
- Elder Advisor Myeengun Henry, Co-Chair of the Indigenous Advisory Group

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<sup>1</sup> Mr. Falconer served as Co-Chair until March 2018.

**The mandate of the Review Panel is as follows:**

The review of the Law Society's complaints, investigation, prosecution and adjudication processes will include:

- an analysis of the effects on Indigenous complainants of the processes used to gather, assess, introduce and submit evidence during investigations and hearings;
- consideration of the nature and goals of prosecutions that involve Indigenous people and Indigenous communities;
- consideration of the differences that exist between Indigenous perspectives regarding conflict resolution, and the traditional approach of the Law Society and the Law Society Tribunal to investigation, discipline and adjudication
- how to incorporate Indigenous perspectives into Law Society complaints, investigation, discipline and Tribunal processes and procedures;
- consideration of cultural competence at the Law Society, and opportunities for training and development;
- consideration of the use of expertise on Indigenous issues by Law Society staff, the Tribunal and outside counsel, and opportunities to enhance the use of expertise where required;
- consideration of the Law Society's approach to regulating licensees in rural or remote communities, with particular focus on those who serve Indigenous communities or address Indigenous legal issues; and
- identification of proactive and possible remedial measures to address the impacts of licensee misconduct on Indigenous complainants and their communities.

In conducting its review, the Review Panel will conduct interviews with key stakeholders, including Law Society staff and members of the Law Society Tribunal (in a manner consistent with its independence). Within eight weeks of its appointment, the Review Panel, and the Independent Reviewer described below, will each prepare a Workplan, both of which will be provided to me, outlining the anticipated scope of their work, including interviews, and the procedures to be undertaken to gather information to complete their work.

To the extent that there are other major issues that arise as the review is conducted, the Review Panel will identify these to me for consideration as additions to its Terms of Reference, or for further examination in another context.

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## **Recommendations**

The Review Panel will prepare a written report containing its recommendations for future action to me within six months from the date on which the Workplan is provided to me.

## **Independent Reviewer**

Based upon consultations with the Law Society's Indigenous Advisory Group, I will also be appointing an Independent Reviewer, Ovide Mercredi, former National Chief of the Assembly of First Nations.

### Objective

Following the experience in the *Keshen* matter, there is an immediate need to hear directly from the complainants and Indigenous community stakeholders in an objective and neutral environment. It will also be necessary to learn from their experience in guiding best practices which the Independent Reviewer can help define in consultation with the complainants and other experts. The Independent Reviewer will be supported by the Indigenous Advisory Group wherever necessary.

### The mandate of the Independent Reviewer

The mandate of the Independent Reviewer will be to work in tandem with the Review Panel and meet with complainants and residential school survivors, community stakeholders and other experts to provide guidance on a way forward for the Law Society to improve its processes and relations with Indigenous communities. The work of the Independent Reviewer in accordance with his Workplan will be based on the guidance and advice received from the community consultations and our Indigenous Advisory Group.

**Tab 2.2.2**

**LIST OF PARTICIPANTS IN REVIEW PANEL MEETINGS**

**Experts**

Jeffrey Hewitt - Assistant Professor, University of Windsor, Faculty of Law

The Honourable Justice Leonard Mandamin – Judge of the Federal Court

Delia Opekokew - Barrister & Solicitor, Toronto

Terry Swan - Team Lead, Family Information Liaison Unit within the Indigenous Justice Division of the Ontario Ministry of Attorney General

**Law Society of Ontario Tribunal**

David Wright - Chair

Christopher Bredt – Vice-Chair, Appeal Division

**Law Society of Ontario Staff (Professional Regulation Division)**

Allane Andrusko

Graham Hanlon

Susan Heakes

Maria Loukidelis

Janice Laforme (on secondment)

Renae Oliphant

Emma Seth

Cheryl Smith

Curtis Smith

**Former Law Society of Ontario Staff**

Lisa Freeman

Karen Manarin

Janice Walker

**External Counsel**

Sacha Paul, Partner, Thompson Dorfman Sweatman LLP, Winnipeg



Convocation - Law Society Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples Report



## Law Society of Upper Canada Draft Indigenous Framework

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**Draft Date: December 2, 2016  
May 1<sup>st</sup> 2017 (revised)  
June 5th 2017 (revised)**

**Prepared by the Policy Secretariat  
and the Indigenous Advisory Group**

Confidential Draft

1

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### APPENDICES

APPENDIX A: INDIGENOUS ADVISORY GROUP TERMS OF REFERENCE<sup>1</sup>

APPENDIX B: FINAL REPORT OF THE INDIGENOUS BAR CONSULTATION, 2009

CONVOCAATION'S 2015-2019 STRATEGIC PLAN

TRESURER'S MEMORANDUM TO EAIC, SEPT 22 2016

APPROACHES FOR THE LAW SOCIETY OF UPPER CANADA'S  
RESPONSES TO THE TRUTH AND RECONCILIATION

COMMISSION OF CANADA (TRC) FINAL REPORT, SEPT 2 2016

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<sup>1</sup> These Terms of Reference are subject to amendment as of June 5th

## BACKGROUND

1. The Law Society of Upper Canada (Law Society), as a regulator of all lawyers and licensed paralegals in the province of Ontario, pursuant to its legislative mandate under the *Law Society Act R.S.O. 1990, Chapter L.8* (the *Act*) must have regard to the following duties:
  - To maintain and advance the cause of justice and the rule of law;
  - To act so as to facilitate access to justice for the people of Ontario;
  - To protect the public interest;
  - To act in a timely, open and efficient manner; and
  - Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized
2. In 2000, consistent with the duties encoded in the *Act*, the Law Society established a standing committee of Convocation called the Equity and Aboriginal Issues Committee (now the Equity and Indigenous Affairs Committee or EIAC)<sup>2</sup>, to develop policies, programs and initiatives to best serve and promote an inclusive profession. Subject to Convocation's approval, the EIAC's mandate is to develop policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples. As a best practice, the EIAC consults with Indigenous peoples, Francophone citizens and other communities in the development of such policy options.
3. As part of the Law Society's efforts over the years to consult with Indigenous peoples, a number of working groups and strategies have been established including Rotiio>taties<sup>3</sup> in 1998.
4. Rotiio>taties was an independent board of Elders, Indigenous lawyers<sup>4</sup>, community representatives and law students who advised various bodies, including the Law Society, on Indigenous issues arising in law and the legal profession. The membership of Rotiio>taties changed over the years until its eventual transition to an Aboriginal Working Group.

<sup>2</sup> By motion of February 9, 2017, EAIC amended its name to the Equity and Indigenous Affairs Committee.

<sup>3</sup> Meaning "continuously working" in the Mohawk language.

<sup>4</sup> At the time Rotiio>taties was created, paralegals were not yet licensees within the profession.

5. In 2009 Convocation approved the *Final Report of the Indigenous Bar Consultation* which identified a number of recommended actions the Law Society could undertake. These recommendations included:
  - Expanding the Members' Annual Report Practice Categories to include Aboriginal Law (to determine how many lawyers in Ontario self-identify as practicing Aboriginal law)
  - Mentoring and Networking Program
  - Continuing Legal Education Course in Aboriginal Law and Issues
  - Certified Specialist Program in Aboriginal Law<sup>5</sup>
6. In 2014, Convocation affirmed its commitment to place emphasis, through the EIAC, on Indigenous issues. In June 2016, the Indigenous Advisory Group<sup>6</sup> (IAG) was established as an independent body to advise the Law Society on the unique issues faced by Indigenous practitioners, paralegals and Indigenous peoples in Ontario and to promote the development of the relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.
7. In September 2016, the EIAC and the IAG committed to work collaboratively in the development of the Law Society's Indigenous Framework and on November 5, 2016, the EIAC and the IAG held a joint meeting to begin the development of this Indigenous Framework.

## INTRODUCTION

8. The Indigenous Framework has been developed in accord with the priorities identified in three key Law Society documents:
  - Convocation's 2015-2019 Strategic Plan, as relevant to the EIAC's mandate;
  - Treasurer's Memorandum to the Equity and Aboriginal Issues Committee (September 22, 2016); and
  - Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada (TRC) Final Report (Sept. 2, 2016).<sup>7</sup>

<sup>5</sup> 2009 *Final Report of the Indigenous Bar Consultation*, pp. 32-35.

<sup>6</sup> The Indigenous Advisory Group's Terms of Reference are attached as Appendix A. For greatest certainty, the term "Indigenous" is inclusive of First Nations, Status, non-Status, Inuit and Métis peoples.

<sup>7</sup> Each of these key documents has been reproduced in Appendix B.

9. The priorities identified in the above documents often intersect and coalesce, helping to shape this Framework into the following Four Pillars:
- Creating and Enhancing Cultural Competency
  - Achieving and Improving Access to Justice
  - Promoting and Supporting Knowledge of Indigenous Legal Systems
  - Taking Action on Reconciliation
10. The development of every initiative by the Law Society within any one of these Four Framework Pillars must be guided through an “Indigenous lens” in order to fully meet the objective of this Framework. The Treasurer, through his Memorandum to the Equity and Aboriginal Issues Committee, directed the EIAC to develop policies that will ensure an Indigenous lens to all the Law Society does.
11. The IAG define the Indigenous lens as inclusive of the Anishinabe Seven Sacred Laws ; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles.<sup>8</sup> Such principles are :
- **Love:** To know love is to know peace.
  - **Respect:** To honour all Creation is to have respect
  - **Courage:** To face life with courage is to know bravery
  - **Honesty:** To walk through life with integrity is to know honesty
  - **Humility:** To accept yourself as a sacred part of Creation is to know humility
  - **Wisdom:** To cherish knowledge is to know wisdom
  - **Truth:** To know of these things is to know truth

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<sup>8</sup> Inuuqatigiitsiarniq- Respecting others, relationships and caring for people.  
 Tunnganarniq- Fostering good spirit by being open, welcoming and inclusive.  
 Pijitsirniq- Serving and providing for family and/or community. Aajiiqatigiinni- Decision making through discussion and consensus. Pilimmaksarniq- Development of skills through practice, effort and action.  
 Piliriqatigiinni/Ikajuqtigiingniq- Working together for a common cause.  
 Qanuqtuurniq- Being innovative and resourceful  
 Avatittinnik Kamatsiarniq- Respect and care for the land, animals and the environment. (Source:Tungasuvvingat Inuit Restorative Justice Initiative)

## THE FOUR FRAMEWORK PILLARS

### CREATING AND ENHANCING CULTURAL COMPETENCY<sup>9</sup>

12. The Law Society will work in partnership with the IAG to create and enhance cultural competency recognizing the continued need for licensees to be equipped with the cultural, historical and legal knowledge that will enable the provision of legal services in a manner that supports Indigenous peoples in addressing their unique interests, issues and challenges.
13. The Law Society prioritizes life-long competence for lawyers and paralegals. The Treasurer's Memorandum to the Equity and Aboriginal Issues Committee further contextualizes this priority, and directs the EIAC to develop programs that will enhance cultural competence internally to the Law Society (staff, Benchers) and the profession (licensees) in dealings with Indigenous peoples.<sup>10</sup>
14. Specific proposed approaches towards supporting cultural competency are detailed in the Approaches for the Law Society of Upper Canada's Responses to the Truth and Reconciliation Commission of Canada Final Report and include knowledge enhancements, working with the Federation of Law Societies of Canada and developing skills-based training and other supports.

#### ***I. Creating and Enhancing Knowledge***

- a. Ensure Law Society ***staff and Benchers*** have the opportunity to access cultural competency training within the Law Society that includes unconscious bias, the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, Aboriginal-Crown relations and basic cultural protocols.
- b. Ensure ***licensees*** have the opportunity to access cultural competency training that includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.
- c. Ensure ***licensees that are required by their employment*** to engage directly with the Indigenous people of Ontario, undertake cultural competency training

<sup>9</sup> To be clear, the language of inter-cultural "competency" comes from the Truth and Reconciliation Calls to Action. In applying the term within this Framework, the IAG is not asking everyone to adopt the cultural practices that are unique to the Indigenous peoples of Ontario, rather, to gain knowledge of and respect for each Indigenous person's right to maintain justice in their own way. The IAG will further develop what is the intended meaning within this Framework and include examination of systemic barriers and anti-racism measures.

<sup>10</sup> Convocation's 2015-2019 Strategic Plan prioritizes life-long competence for lawyers and paralegals. Priorities include enhancing licensing standards, improving and increasing practice supports and considering education beyond traditional Continuing Professional Development formats (e.g. possible multiple-day courses including practical application of knowledge and skills), and working with the professions to develop initiatives that institutionalize mentoring, advisory services and other types of support.

which includes the history of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws, and Aboriginal-Crown relations and basic cultural protocols.

- d. Work with **Deans, law faculty and students** of Ontario Law Schools and colleges (paralegal education) to enhance their knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- e. Develop and offer **Continuing Professional Development (CPD)** programs and legal education sessions independently and in collaboration with partners to illustrate the relevance of the *United Nations Declaration on the Rights of Indigenous Peoples* in Ontario and its relevance to various practice areas.

## II. Working with Partners

- a. Participate with **other Law Societies in Canada and the Federation of Law Societies** in examining whether changes can be made to the *National Standards* and other licensing requirements to enhance knowledge of a range of subjects, including but not limited to the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations.
- b. In partnership with the **Indigenous Bar Association**, examine the codes of professional conduct and the commentaries as well as the Federation Model Code to explore changes, where necessary, to promote reconciliation and culturally competent provision of legal services.
- c. Engage with **other legal associations, advocates and professional entities** in Ontario to further educate, consult and inform.

## III. Developing Skills-Based Training and Other Supports

- a. Support, develop and offer independently and/or in partnership with other providers, skills-based training and practice supports in inter-cultural competency, conflict resolution, human rights and anti-racism.
- b. Support Deans, law faculty and students of Law Schools and Colleges in Ontario regarding how skills-based training in inter-cultural competency, conflict resolution, human rights, and anti-racism can be introduced into experiential learning in Law Schools and Colleges.
- c. Support the Law Society's Equity Legal Education programs—developed, as appropriate, in partnership with Deans, faculty and students of Law Schools as well as Indigenous knowledge keepers, practitioners, organizations and others—to address the legacy of the Indian Residential School experience and Canada's colonialist law and policy, Treaty and Aboriginal Rights, the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and current initiatives of First Nations, Métis and Inuit peoples.

## ACHIEVING AND IMPROVING ACCESS TO JUSTICE

15. The Law Society will work with the IAG recognizing that achieving and enhancing Access to Justice across Ontario is a key priority of the Law Society. It identifies strategic goals towards increasing collaboration with access to justice partners and other stakeholders as well as developing and implementing a more concrete access to justice action plan.
16. Additional priorities in the Strategic Plan, including engaging stakeholders and the public with responsive communications and increasing organizational effectiveness, will also support enhancing access to justice.
17. An important element of achieving and improving access to justice will be the review and improvement of the Mentoring and Networking Program to ensure it continues to deliver the objectives called for in 2009 by the Final Report of the Indigenous Bar Consultation.
18. The Treasurer's Memo provides further direction on specific priorities in relation to improving access to justice for Indigenous peoples, including improving access to the complaints process for Indigenous communities.
19. Improve the Law Society's hearing and regulatory process, including the Tribunal, in every interaction with Indigenous people.
20. Engage with the Law Society's Legal Aid Working Group to examine and improve the delivery of legal aid to Indigenous people community and address the financial barriers that prohibit meaningful access to justice.
21. Provide support for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), including:
  - a. Further support for Inquiry processes
  - b. Develop communication materials to promote awareness and access to justice, published in English, French and Indigenous languages.
  - c. Commit to address Inquiry recommendations.
22. Contribute to the elimination of the overrepresentation of Indigenous people in legal proceedings, care and incarceration through a number of channels:
  - a. Supporting the implementation of the recommendations of the Debwewin Implementation Committee's Final Report and Feathers of Hope.
  - b. Considering the results of TAG's cluster on "the Seventh Generation – the Crisis of Aboriginal Children and Youth in Care".

- c. Considering, as a justice system stakeholder, actions the Law Society can take and what collaborative opportunities exist with other stakeholders to promote alternatives to community sanctions, mandatory minimum sentences, bail procedurals and supporting culturally appropriate services to reduce domestic violence, dispute resolution mechanisms, Aboriginal healing lodges and halfway homes.
- d. Undertaking a study on barriers to access to justice in Northern Ontario, including the efficacy and standardization of the preparation of Gladue Reports (across all of Ontario).
- e. Expanding the Guidelines for Lawyers Representing Residential School Claimants to other areas within the Law Society's regulatory scope.

#### PROMOTING AND SUPPORTING KNOWLEDGE OF INDIGENOUS LEGAL SYSTEMS

23. The Law Society will work with the IAG recognizing that knowledge of Indigenous legal systems is an essential as part of the Law Society's commitment to prioritizing life-long competence and enhancing access to justice for Indigenous peoples. The promotion and support of knowledge of Indigenous legal systems can include:
- a. In response to Call to Action 50, support "the establishment of Indigenous Law institutes for the development, use and understanding of Indigenous laws and access to justice in accordance with the unique characteristics of Aboriginal peoples in Canada."
  - b. Develop and offer Continuing Professional Development (CPD) programs and legal education sessions independently and with partners to support understanding, respect for and application of Indigenous legal systems in Ontario.
  - c. Develop and enhance services available to licensees, including practice supports and learning resources that could provide guidance on Indigenous justice issues, including but not limited to the application of the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal Rights, and the MMIWG.
  - d. Enhance the Law Society's Lawyer Referral Program and Mentorship to provide support and guidance on Indigenous justice issues.
  - e. Enhance the Member Assistance Program to provide for the well-being of Indigenous licensees in ways that promote and support Indigenous, traditional healing methods.
  - f. Enhance supports for small and solo firm practices within the Indigenous community (i.e. mentoring).

## TAKING ACTION ON RECONCILIATION

24. The Law Society recognizes that it will work in partnership with the IAG and be guided by Indigenous knowledge keepers, leaders and citizens, Indigenous practitioners and others, in the development of the Law Society's responses to the Final Report of the Truth and Reconciliation's Calls to Action.
25. The Law Society's priority to engage with stakeholders and the public with responsive communications will support strengthened relationships with Indigenous and non-Indigenous licensees and members of the public, as well as build greater awareness of the Law Society's role in the reconciliation process.
26. Specific proposed actions related to reconciliation are outlined in the TRC Responses document and include:
  - a. A statement of support for the adoption and implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework for reconciliation.
  - b. A commitment to actively consider opportunities to collaborate with partners, including legal and professional entities in Ontario to extend the impact of the responses the Law Society undertakes and explore how the Law Society can support the work of partners in advancing reconciliation.
  - c. Examine, in partnership with the Indigenous Bar Association, the codes of professional conduct and the commentaries as well as the Federation Model Code to consider changes to promote reconciliation and culturally competent service delivery.

## **List of References**

**1982**

- [The Constitution Act, 1982](#)

**1996**

- [Report of the Royal Commission on Aboriginal Peoples](#)

**1999**

- [R v. Gladue, \[1999\] 1 S.C.R. 688](#)

**2005**

- [The Kelowna Accord](#)

**2007**

- [The Ipperwash Inquiry - Final Report](#)

**2008**

- [United Nations Declaration on the Rights of Indigenous Peoples](#)

**2012**

- [Forsaken: The Report of the missing Women Commission of Inquiry \(The BC Missing Women Commission of Inquiry\)](#)

**2013**

- [The Iacobucci Report – First Nations Representation on Ontario Juries](#)
- [Feathers of Hope: A First Nations Youth Action Plan](#)
- [Feathers of Hope: Justice and Juries](#)

**2015**

- [The Truth and Reconciliation of Canada Final Report](#)
- [Concluding observations on the sixth periodic report of Canada, United Nations Human Rights Committee](#)

October 8, 2019

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# Equity and Indigenous Affairs Committee Overview



Barreau  
de l'Ontario

# EIAC's Purpose and Mandate

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- 1997 LSO Adopts Bicentennial Report Recommendations
- Creation of standing committee of Convocation dedicated to equity and diversity issues
- By-Law 3, s.122 sets out Committee's mandate:
  - a. Develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law or provision of legal services in Ontario and for addressing matters related to Aboriginal peoples and Francophones; and
  - b. To consult with Aboriginal, Francophone and other equality-seeking communities in the development of such policy options.

# Purpose of EIAC:

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- This mandate is important because licensees and articling students report barriers that limit entry and advancement in the profession based on race, ethnicity, gender, or other personal characteristics
- We have data that supports anecdotal evidence
- The committee works to identify obstacles (often hidden) that contribute to a lack of diversity in the field
- We do this through stakeholder consultation and by consulting with communities impacted by unconscious bias and systemic inequality
- We develop strategies based on consultation to help address barriers that impact licensees and the public in the delivery of legal services

# Stakeholders for EIAC Consultations

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- Indigenous Advisory Group (IAG)
- Equity Advisory Group (EAG)
- L'Association des juristes d'expression française de l'Ontario (AJEFO)
  
- Roundtable of Diversity Associations (RODA)
- South Asian Bar Association (SABA)
- Canadian Black Lawyer's Association (CABL)
- Canadian Hispanic Bar Association (CHBA)
- Federation of Asian Canadian Lawyers (FACL)
  
- Legal Leaders in Diversity and Inclusion (group of Canadian General Counsel)
- Law firms Diversity and Inclusion Network
- Academic institutions
- Social justice organizations.

# Background (Data)

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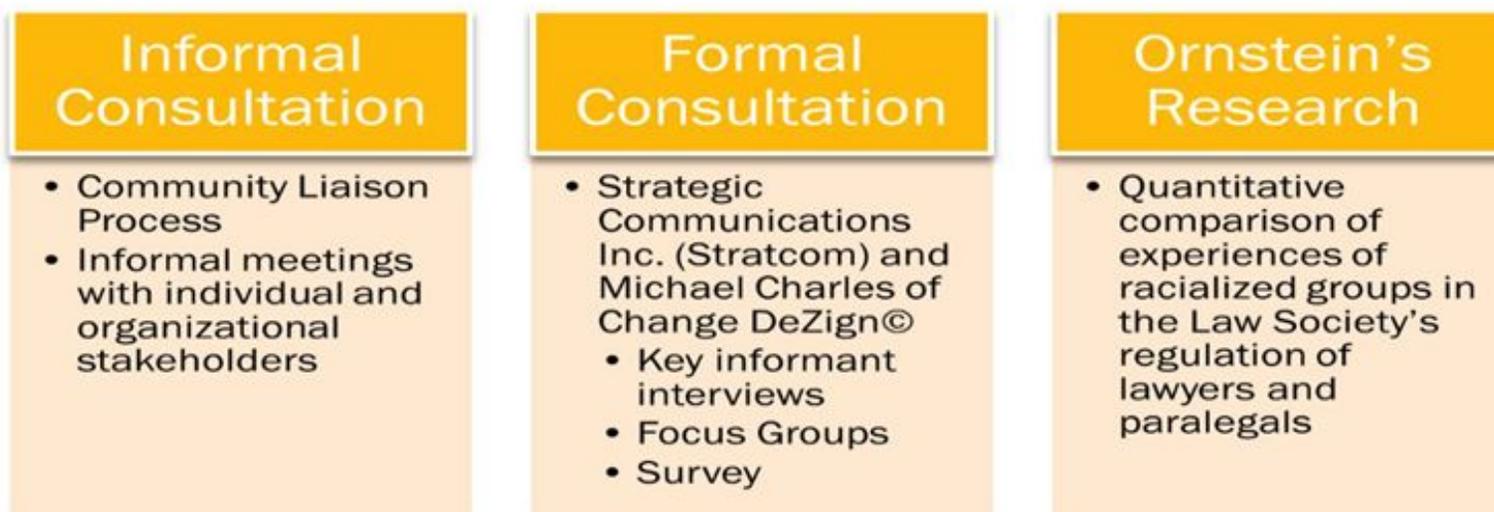
- 2016 Canada Census – 29.3% of the Ontario population are a “visible minorities”
- Since 2001, steady increase of racialized lawyers:
  - In 2001, 9.2% of the legal profession was racialized
  - In 2006, 11.5% of the profession was racialized
  - Currently, 22.94% of lawyer and paralegal in licensing process are racialized, 5.74% are Francophone and 1.56% are Indigenous
  - This data comes from licensing process applications

# Data

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**-In developing recent reports, LSO commissioned a number of studies and surveys**

- A significant amount of data comes from research by the Challenges Faced by Racialized Licensees Working Group**
- That research process included:**



# What the Data Tells Us: Racialization impacts aspects of professional life

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## Career Development

- More difficult to secure articling positions
- Less likely to be hired back
- More challenges finding employment generally, as well as in practice area
- Racialized licensees twice as likely to experience slow career advancement
- 40% rank ethnic/racial identity as the most serious barrier to entry to practice
- 43% rank ethnic/racial identity as the most serious barrier to career advancement
- 50% name racial prejudice as having disadvantaged during career
- 42% identify expectations to perform to a higher standard because of racial stereotypes
- 26% report experiencing disrespectful remarks by judges and other lawyers

# What the Data Tells Us

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## Complaints and Discipline

- **Higher representation of racialized lawyers in sole practice is significant; 78% of racialized licensees note a lack of mentors and professional networks**
- **71% perceive racial stereotyping by clients as a risk factor for discipline**
- **-70% note lower quality articling positions and inadequate training as putting them at greater risk for complaints and discipline**

# What the Data Tells Us

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## Firm Interviewing and Hiring Processes

- Equity-seeking groups less likely to article for large private law firms in Toronto
- Students who article at small firms are less likely to be hired back (firm less likely to take on another lawyer)
- Indigenous lawyers more likely to be in sole practice or practice in a legal clinic, education or government and are much less likely to be law firm partners
- 20% of law firm associates are racialized, compared to about 18% of white lawyers - portends growth in the percentage of racialized law firm partners
- Racialized lawyers more likely to be assigned tasks that were beneath their skill level
- 10% of racialized lawyers have been denied an opportunity for a case or file because clients had objected, compared to 4% of non-racialized lawyers.

# What the Data Tells Us: Racialization impacts several aspects of professional life

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## Earnings

- Evidence suggests racialized lawyers earn less, on average, than non-racialized lawyers - difference in the median earnings of racialized and white lawyers is \$4,000 between 25 and 29 but grows to more than \$40,000 by 40 to 44.
- 2016 Census, racialized women earn 58 cents, and racialized men earn 76 cents, for every dollar a white man earns in Ontario in 2015 (across all industries)
- 45% income gap between Indigenous women and non-Indigenous men, while the average income gap between all Indigenous and non-Indigenous people is 33%
- 2018 Law Society survey respondents: 21% face harassment and discrimination while articling. 1 in 5 face comments/conduct based on personal characteristics during articling.
- 2019 survey by the Law Societies of Alberta, Saskatchewan and Manitoba: 1 in 3 articling students and new lawyer respondents experience discrimination and harassment during recruitment or articling

# Conclusions Drawn from Data and Recommendations

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- Impacts of discrimination are experienced by licensees in various aspects of professional life
- Racialization establishes measurable career challenges for racialized licensees distinct from those of their non-racialized colleagues
- Challenges are rooted in racialized status and many related challenges are compounded and amplified as a consequence of racialization
- Broader data around race and diversity (i.e.. census) support notion that inequality exists
- The Challenges Working Group's 16 recommendations fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports
- The recommendations were developed with the following objectives in mind:
  - Achieve inclusive legal workplaces in Ontario;
  - Reduce barriers created by racism, unconscious bias and discrimination; and
  - Assist in improving 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
- Most of the recommendations embrace a voluntary approach but speak to the obligation of the Law Society to facilitate and provide leadership in the area of EDI

# Indigenous Framework

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- 2017 - All LSO initiatives are to be designed using this framework
- Ensures that indigenous communities see their identity, culture and laws reflected in the LSO
- Acknowledges importance of LSO ensuring its approach is consistent with Indigenous, Inuit and Metis traditions and laws

# Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples

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- 2017 – the Review Panel identified issues and made recommendations regarding regulatory and hearing processes at the LSO involving Indigenous, Inuit and Metis people
- Prompted by experience in LSUC v. Keshen.
- Ultimate goal of implementing recommendations to become culturally competent and support broader change in the interest of Indigenous communities

# Common Goals of Challenges Report, Indigenous Framework and Review Panel

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Pursuing diversity, inclusion and cultural competence is directly linked to the LSO purpose:

*The Law Society governs Ontario's lawyers and paralegals in the public interest by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct.*

- The 3 reports recognized a fundamental need for the LSO to better serve all people of Ontario
- We are pursuing this goal using equity initiatives by:
  - Building and supporting a diverse profession (removing barriers to entry and career advancement) that can better serve diverse communities
  - Having enhanced regulatory processes that address the persistent effect of historical oppression in disenfranchising members of the public and the profession (recommendations of the Review Panel and Indigenous Framework)
  - Promoting a high standard of professional conduct by ensuring that all lawyers and paralegals have equal opportunity to seek out mentorship, a foundation of good practice which is often achieved in larger firms/organizations with HR/mentorship infrastructure.

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# Questions or comments?



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne  
Date/Time: September 30, 2019

**Re.: Discrimination and Harassment Counsel Overview**

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1. Funded by the Law Society of Ontario, the Discrimination and Harassment Counsel (DHC) Program operates at arm's length, and is available free-of-charge to the Ontario public, lawyers, paralegals and students. The DHC derives its mandate and authority from By-law 11- Regulation of Conduct, Capacity and Professional Competence Part II.
2. In May 1997, the Law Society adopted the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession which has since guided the Law Society's efforts to advance equity and diversity in the legal profession. One of the report's recommendations speaks to the creation of a "safe counsel" program for "victims of discrimination and harassment" that would operate independent of the Law Society.
3. On September 1, 1999, the DHC began operating as a pilot project. In June 2001, after a review of the program, the Discrimination and Harassment Counsel was established as a permanent initiative.
4. While operating at arms-length, the DHC forms an integral part of the Law Society's equity initiatives and regulatory functions. The DHC's role is primarily to support complainants and the resources of the DHC have been focused in this area.
5. The DHC assists anyone who may have experienced discrimination or harassment based on human rights grounds by a lawyer, paralegal or student member of the Law Society. Since its creation, the DHC has been bilingual. The DHC is not an in-house employee of the Law Society and as per By-law 11, information received by the DHC is kept confidential. The only information provided to the Law Society is anonymous statistical data showing the number and type of complaints and anonymous demographic data about complainants.
6. The DHC's role is to:
  - Listen to concerns

- Clarify issues
  - Provide information and advice
  - Review options and avenues of recourse (e.g. filing a complaint with the Law Society, filing an application with the Human Rights Tribunal of Ontario)
  - Explain the advantages and disadvantages of each option
  - Provide referrals to other resources that may be of assistance.
7. Upon request, the DHC may attempt to resolve issues through intervening informally as a neutral facilitator or by conducting formal mediation. Mediation is a voluntary process and requires the consent of all parties.
8. The DHC does not have investigative powers and does not operate a formal complaints process that involves fact-finding. The DHC does not provide legal advice or legal representation and cannot make referrals to lawyers or paralegals.
9. There are currently two Alternate DHCs.
10. The DHC provides regular reports to Committee as outlined in By-law 11:

Annual and semi-annual report to Committee

20. (1) Unless the Committee directs otherwise, the Counsel shall make a report to the Committee,

(a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and

(b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year

11. The public semi-annual report (**TAB 2.1**) is presented to EIAC for information. This report also goes to Convocation for information. There is a supplemental, **confidential** report that includes additional details about the activities of the DHC. The confidential report is attached at **TAB 2.2**.

**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF ONTARIO**

For the period from 1 January 2019 to 30 June 2019

Prepared By Fay Faraday  
with Lai-King Hum and Natasha Persaud  
Discrimination and Harassment Counsel

5 September 2019

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## A. INTRODUCTION

1. Under their respective *Rules of Professional Conduct* and *Paralegal Rules of Conduct*, lawyers and paralegals licensed in Ontario have legal and ethical obligations as professionals to deliver their services and engage in and conduct their employment practices in a manner that is free of discrimination and harassment.
2. Rules 6.3 and 6.3.1 of the *Rules of Professional Conduct* set out these professional obligations as follows:
  - 6.3-3 A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.
  - 6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other licensees or any other person.
  - 6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
  - 6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1, 6.3.1-2 and 6.3-3.
3. These *Rules of Professional Conduct* are supplemented by 29 paragraphs of commentary that provide guidance on the interpretation and application of these *Rules* and outline how they are anchored in equivalent legal obligations under the provincial *Human Rights Code* and *Occupational Health and Safety Act*.
4. Rule 2.03 of the *Paralegal Rules of Conduct* holds paralegals to professional standards of human rights compliance as follows:

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(3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.

(5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

(6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

(7) A paralegal shall ensure that his or her employment practices do not offend this rule.

5. The Discrimination and Harassment Counsel (DHC) program was established in 1999 as an independent office funded by, but operating at arm's length from, the Law Society of Ontario. The DHC began operating in the fall of 1999 to provide information to and support individuals who had experienced discrimination or harassment by licensees contrary to their binding rules of professional conduct as a means to help eradicate discrimination in the legal profession.
6. The DHC can be accessed by email at [assistance@dhcounsel.on.ca](mailto:assistance@dhcounsel.on.ca), toll free by phone at 1-877-790-2200, or through direct message on Twitter @DH\_Counsel. In this reporting period, for the first time, the DHC office was also approached by complainants through private direct messages on Twitter.

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7. The DHC serves two important functions:
  - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
  - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that it can better understand the dynamic and nature of discrimination and harassment in the legal professions and address systemic issues of discrimination and harassment in the legal professions. This statistical data is released publicly to support public accountability of a profession that is self-governing.
8. The DHC services are provided without charge to members of the public as well as to licensees.
9. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in the Ontario *Human Rights Code*. This is the discriminatory conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any human rights grounds does not fall within the mandate of the DHC Program.
10. The complaints reported to the DHC arise in a variety of contexts, including but not limited to:
  - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
  - (b) participants in litigation – whether they are clients, witnesses, articling students, paralegals or lawyers – who have experienced discrimination and/or harassment by opposing counsel or opposing paralegals and justice system employees (such as court/tribunal staff, law firm staff,

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process servers, etc.) who have experienced discrimination and/or harassment by licensees in the course of litigation;

- (c) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced harassment and/or discrimination by licensees in the workplace based on intersecting or distinct grounds of prohibited discrimination;
- (d) service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing and/or have experienced discrimination and/or harassment by licensees in the context of professional training programs, continuing professional education programs, public or privately hosted legal events; and
- (e) members of the public, service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing or have experienced discrimination and/or harassment by licensees in other contexts which implicate the licensees professional obligations.

11. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals seeking service in French.

#### **B. SERVICES PROVIDED BY THE DHC**

12. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals with an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who is an expert in discrimination and harassment law and issues, who has skills of

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mediation and conciliation regarding human rights, and who is committed to promoting equality and compliance with professional ethical standards in the legal professions.

13. The DHC also supports lawyers and paralegals to comply with their professional rules of conduct by participating in continuing professional education events to advance licensees' training on the substantive legal issues and best practices to ensure compliance with their codes of conduct and human rights laws.
14. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and support to complainants to assist them in identifying and evaluating their options to resolve their concerns, provides information to licensees to support best practices, and where appropriate to provide mediation or conciliation. The nature of services provided is outlined below.

#### **Counselling, Data Collection and Coaching for Self-Help**

15. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
16. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for systemic change.
17. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
18. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with DHC. This coaching of respondent licensees aims to ensure that they understand their professional obligations regarding human rights compliance in their service

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delivery and workplaces and that they move toward best practices. This informal coaching may be appropriate in situations where the complainant wishes to remain anonymous but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and educate or remind the respondent of their professional and legal obligations. Even though the DHC cannot make any factual findings, such calls are effective in providing education and guidance to respondent licensees.

### **Information about Avenues of Recourse**

19. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
- (f) speaking to their union representative (if they are unionized and the complaint relates to their employment);
  - (g) filing an internal complaint within their workplace (if the complaint relates to their employment);
  - (h) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
  - (i) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
  - (j) filing a formal complaint of professional misconduct with the Law Society;
  - (k) contacting the police (where criminal conduct is alleged);
  - (l) applying to the Criminal Injuries Compensation Board;
  - (m) filing a complaint about an articling principal with the Law Society's Articling Program; and
  - (n) contacting a lawyer and/or Human Rights Legal Support Centre for legal

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advice regarding possible civil causes of action.

20. Complainants are provided with information about each of these options, including:
- (a) what (if any) costs might be involved in pursuing an option;
  - (b) whether legal representation is required in order to pursue an option;
  - (c) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service (actual referrals to lawyers or paralegals are not made by the DHC);
  - (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are required, where to locate the requisite forms, etc.);
  - (e) what processes are involved in pursuing any of the available options (e.g. investigation, conciliation, mediation, adjudication, etc.);
  - (f) what general types of remedies that might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
  - (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

### **Resolution Services**

21. In addition to being advised about the above-noted options, where appropriate,

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complainants are offered resolution services (mediation or conciliation).

22. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory settlement of the issues raised in the complaint.
23. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual "without prejudice" undertaking by both parties.
24. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant's concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
25. Some complainants are not interested in the DHC's resolution services because they are seeking an adjudicative process to create a formal record of the respondent's misconduct or they desire a process that includes a fact-finding

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investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC's offer of resolution services. On occasion, however, respondents decline to participate.

26. During this reporting period no mediation/conciliation processes were completed, though two formal mediation processes were requested by complainants and are ongoing. Multiple informal resolutions have been used.

### **Referrals**

27. The DHC refers some complainants to other agencies or organizations (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other organizations.
28. The DHC does not operate a lawyer referral service.

### **C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM**

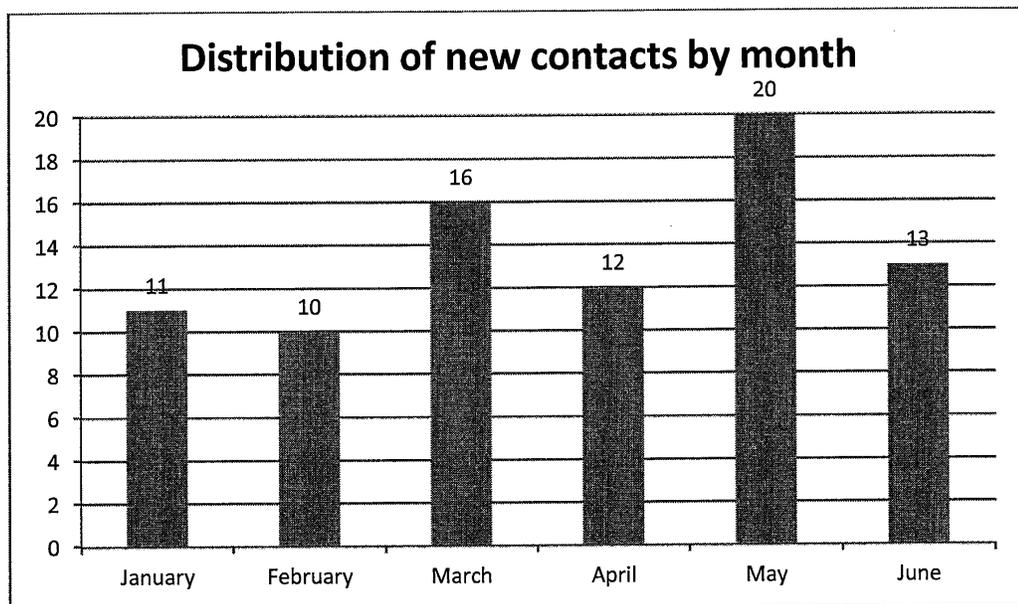
29. During this reporting period, 80 individuals and 2 groups of complainants contacted the DHC Program with a new matter.<sup>1</sup> This represents an average of 13.7 new contacts per month, up from 11 new contacts per month in the previous six-month reporting period.

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<sup>1</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

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The volume of new contacts with the Program was distributed monthly as shown in the following chart.

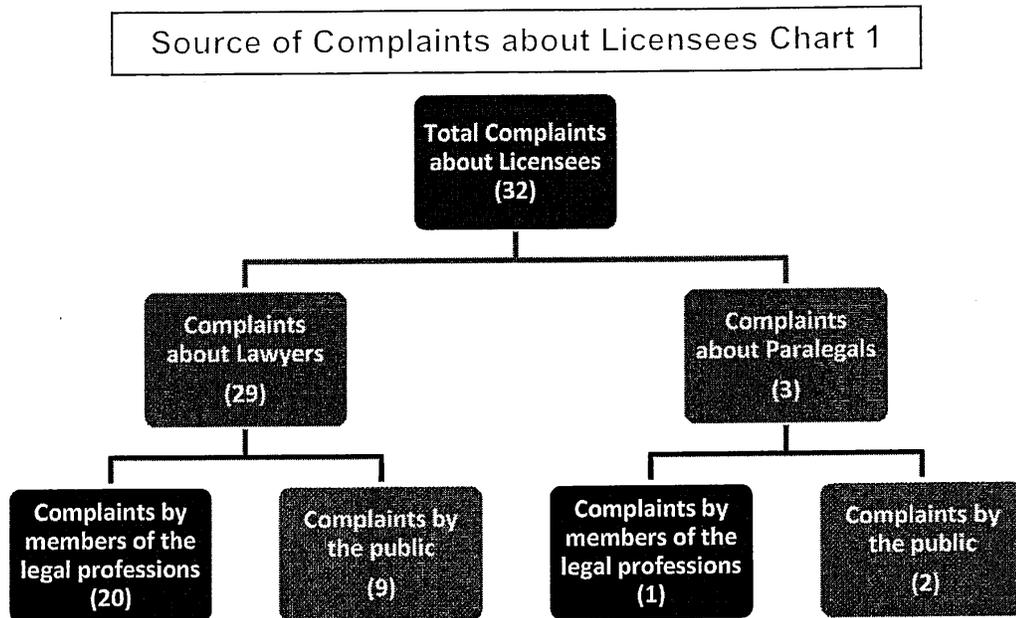


30. During this reporting period, one individual sought French-language services.

### C. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

31. Of the 82 new contacts with the Program, 32 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. Three complaints concerned the conduct of a paralegal. The remaining 29 complaints were about lawyers' conduct. Two of the complaints against lawyers involved multiple complainants.
32. Of the three complaints about paralegals, two were made by a member of the public; one was made by another paralegal.
33. Of the 29 complaints about lawyers, 9 were made by members of the public, 3 were made by a person within the justice system, 17 were made by individuals or groups within the legal professions.

The breakdown of complaints made about licensees can be represented as follows:

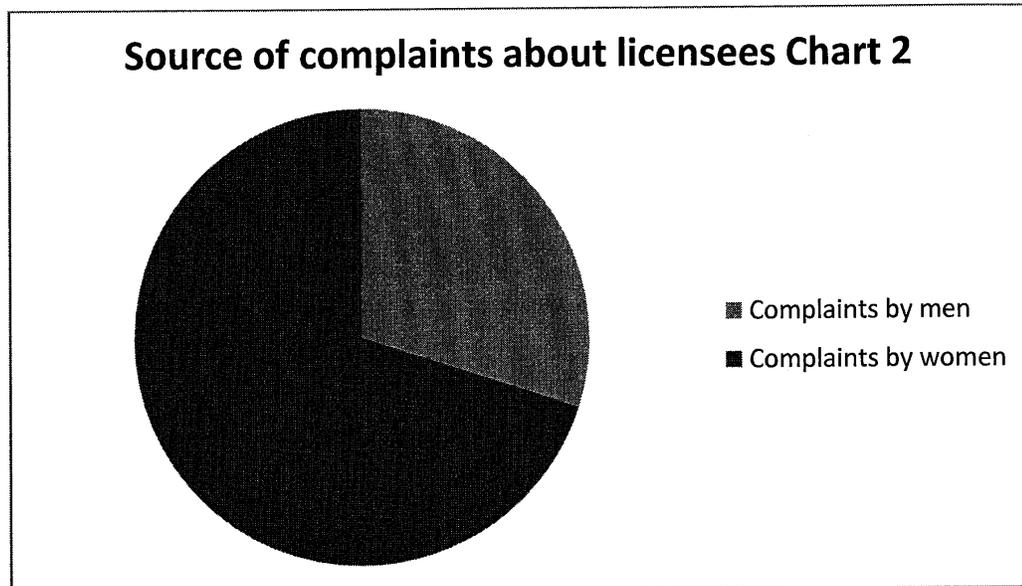


**Complaints about Lawyers by Members of the Legal Profession**

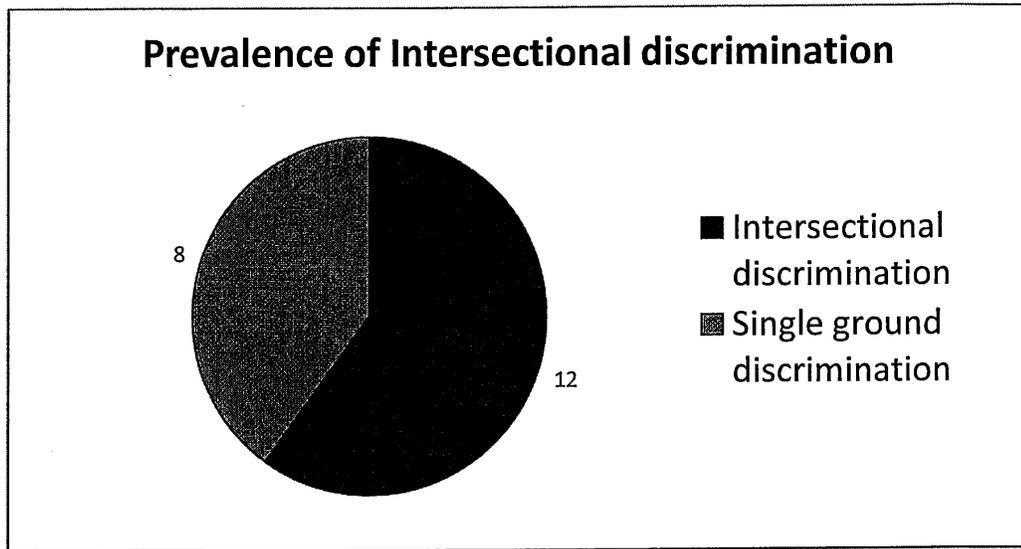
34. The 20 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system:
  - 12 complaints by lawyers;
  - 5 complaints by articling students/law students; and
  - 3 by other members of the justice system (including legal staff).
  
35. Of the 20 complaints against lawyers made by members of the legal profession:
  - 14 (70%) were made by women, 64% of whom (9) voluntarily self-identified as racialized women and/or women with disabilities;
  - 6 (30%) were made by men, all of whom are racialized, have disabilities

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and/or are members of minority religions.



36. For complaints against lawyers made by students, two were made by women and three were made by men.
37. Of the 20 complaints from members of the legal profession, 13 complaints (65%) related to the complainants' employment and 4 complaints (31%) related to training contexts. The remaining complaints (3) related to interactions with lawyers in other professional contexts.
38. Of the 20 complaints from members of the legal profession:
- 12 complaints (60%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, religion, age, and place of origin.
  - 8 complaints raised only a single ground of discrimination, all involving sex, race or disability.

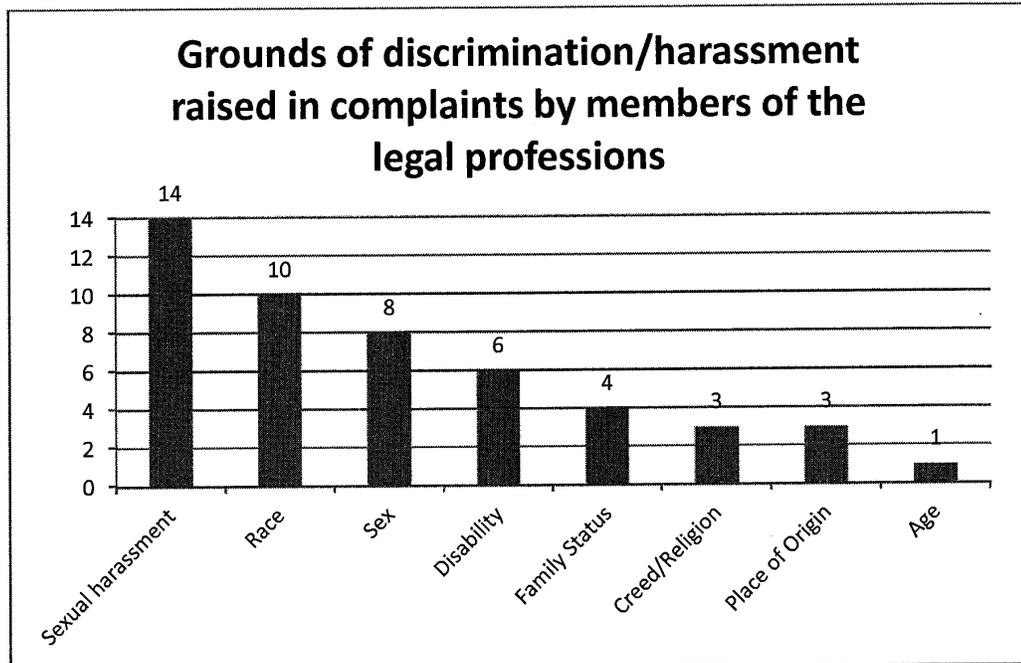


39. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by members of the legal profession about the conduct of lawyers. The total exceeds 20 as most complaints raised more than one ground of discrimination

Sexual harassment	14
Race	10
Sex	8
Disability	6
Family Status	4
Creed/Religion	3
Place of Origin	3
Age	1

The distribution of grounds of discrimination and harassment are depicted in the table on the following page.

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40. The complaints with respect to employment typically involved a power (seniority, security of employment) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:

- (a) Sexual harassment, including verbal harassment; sexually explicit harassment and comments; pressuring complainant(s) for sexual relationships, including pressuring complainant(s) to have sexual relationships with clients; disparaging women in front of colleagues; physical sexual harassment; and the employer's failure to respond appropriately when complaints of harassment were raised;
- (b) Racial discrimination and harassment, including verbal harassment; verbal and physical harassment; differential access to files; unequal pay; and the employer's failure to respond appropriately when complaints of harassment were raised;

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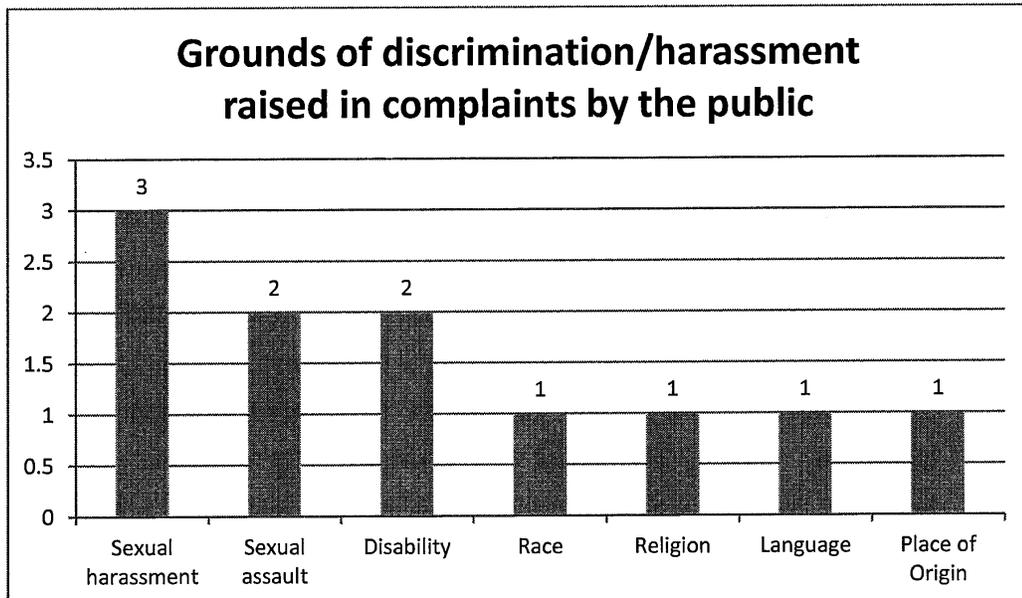
- (c) Half of the sex discrimination complaints related to discrimination and reprisals against female lawyers for taking maternity leave, including being terminated while on maternity leave; being harassed repeatedly to return to work early from maternity leave; and on return from leave being removed from files and/or practice areas, and/or having their pay and/or benefits cut. Other sex discrimination matters included significant pay disparities between women and men at the workplace; women being denied access to more desirable work; and reprisals for raising concerns about discrimination.
  - (d) Discrimination and harassment with respect to disability, including verbal harassment, verbal abuse, refusal to accommodate and reprisals;
  - (e) Harassment and refusal to accommodate with respect to religion, family status and age; and
  - (f) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
41. The range of behaviour identified in complaints about lawyers in other professional settings included sexual and/or racial harassment; discriminatory conduct in the context of public legal events and legal training; and failure to accommodate disability.
42. The DHC observes that in addition to formal complaints that were received during this reporting period, a significant number of complaints by members of the professions were raised publicly, during and following the spring Benchers Election, regarding licensees' behaviour in the course of disputing the Statement of Principles. These public complaints highlighted the tone of the public discourse, including the denial of the existence of systemic racism by some licensees, and the attacks of a personal nature which lead some licensees to publicly voice their misgivings at being and/or becoming members of the professions. The DHC has not included these public complaints in the tabulation

of its statistics. The volume and intensity of the concerns expressed, however, were significant enough that they warrant noting in this report.

**Complaints about Lawyers by Members of the Public**

- 43. During this reporting period, 9 complaints were made about lawyers by members of the public: 5 complaints were made by clients who reported discrimination or harassment by their own lawyer; 2 complaints were made about opposing counsel; and 2 complaints were made about a lawyer outside of a lawyer-client relationship.
  
- 44. The grounds of discrimination and harassment raised by the public were sexual harassment, disability, race, religion, language and place of origin. The grounds exceed 6 because complaints raised intersecting grounds of discrimination and harassment:

Sexual harassment	3
Sexual assault	2
Disability	2
Race	1
Religion	1
Place of Origin	1



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45. The behaviour identified in complaints relating to the complainant's own lawyer included:
- (a) Sexual harassment and coercion, including intimidation and demanding sex as a form of payment for legal services;
  - (b) Sexual assault in relation to which complaints were made to the police and criminal charges were laid;
  - (c) Failure to accommodate a client's disabilities; and
  - (d) Harassment based on race, language, place of origin and religion.

#### **Complaints about Paralegals**

46. Three complaints were made about paralegals, two about paralegals representing another party and one about the complainant's own paralegal. All three complaints raised issues of failure to accommodate disabilities and harassment based on disabilities.

#### **D. MATTERS OUTSIDE THE DHC MANDATE**

47. During this reporting period, the DHC received 50 contacts by phone or email relating to matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.
48. We stress, however, that the fact that these contacts may be outside the DHC mandate in that they do not fall squarely within violations of the rules of conduct and law on discrimination and harassment, nearly half of the calls raise allegations of serious misconduct by licensees that implicates other professional conduct rules and/or legal obligations. In redirecting these contacts to the appropriate agencies, the DHC serves its public interest mandate of supporting public accountability of the legal professions and of (re)building public trust in the

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legal professions and of support public access to justice.

49. A slight majority of these new “outside mandate” contacts inquired about discriminatory and/or harassing behaviour by individuals who are not licensees including employers, landlords, healthcare providers or others. As these actors are beyond the Law Society’s and DHC’s mandate, the DHC redirects these callers to the appropriate agencies and sources for legal support.
50. The second largest category of new contacts outside the DHC mandate (21 contacts, or 42% of the outside mandate contacts) involved complaints about the conduct of Ontario lawyers (17), and paralegals (2). Two involved complaints about judges and were redirected to the appropriate judicial councils. The complaints about licensees did not involve discrimination or harassment on *Human Rights Code* grounds but did report behaviour that reflects breaches of the *Rules of Professional Conduct* or *Paralegal Rules of Conduct*, abusive employment relationships, and/or potentially criminal conduct. These contacts were redirected to the Law Society Complaint and Compliance office and/or police.
51. An explanation of the DHC’s mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program’s mandate. All new contacts raising matters outside the DHC mandate were referred to other agencies for assistance.

#### **E. PROMOTIONAL AND EDUCATIONAL ACTIVITIES**

52. During this reporting period, the DHC undertook a variety of proactive actions to raise awareness of the DHC’s services and promote licensee compliance with the relevant codes of conduct, including:
  - (a) We promoted the DHC services and engaged in public conversation about the DHC on Twitter (@DH\_Counsel);

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- (b) We conducted media interviews to raise awareness of the DHC's mandate, including in the *Toronto Star*;
  - (c) All three DHC counsel attended an Innovation Session with community stakeholders convened by the Law Society of Ontario as part of the review of the DHC program;
  - (d) We participated in a number of continuing professional development events, including:
    - (i) Lai-King Hum chaired a program and Fay Faraday spoke about equity and equality at the Law Society of Ontario CPD program "Practice Management for Litigators" (2 April 2019);
    - (ii) Fay Faraday presented at the Law Society of Ontario CPD program "Litigating Harassment: A Strategic Focus for Practitioners" (3 April 2019);
    - (iii) Lai-King Hum co-chaired a Law Society of Ontario CPD program on "Addressing Harassment and Discrimination in Lawyer and Paralegal Workplaces" (28 May 2019); and
    - (iv) Fay Faraday spoke about the DHC services at the national Canadian Association of Labour Lawyers on a panel discussion about "#MeToo V2: Discrimination and Harassment in the Legal Profession" (1 June 2019).
53. Throughout this reporting period, periodic advertisements continued to be placed (in English and French) in the *Ontario Reports* to promote the DHC Program within the legal profession. The LSO continues to maintain a bilingual website for the DHC Program.

**CONFIDENTIAL REPORT TO THE  
EQUITY AND INDIGENOUS AFFAIRS COMMITTEE  
OF THE LAW SOCIETY OF ONTARIO**

Prepared By Fay Faraday,  
with Lai-King Hum and Natasha Persaud  
Discrimination and Harassment Counsel

5 September 2019

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## A. INTRODUCTION

1. This report was prepared at the request of the Equity and Indigenous Affairs Committee (EIAC). We have been asked to supplement the statistical report on the activities of the Discrimination and Harassment Counsel (DHC) Program with a confidential report about the outcomes of longstanding mediation/conciliation matters and/or observations about trends of note.
2. We have been reassured that this confidential report **will not be made public** and it is on that basis that we have provided this additional information. We have endeavoured to do so without jeopardizing the anonymity of any complainants or respondents and without violating our obligations of confidentiality as DHC.
3. This report covers the period from 1 January 2019 to 30 June 2019, and deals mainly with the “in mandate” files.

## B. CONCILIATION AND MEDIATION FILES

4. As conciliation or mediation is voluntary, both parties must agree to participate in order to proceed.
5. Two formal mediations were requested by complainants during this 6-month period and remain ongoing.
6. Cases that do not go to conciliation or mediation do, nevertheless, typically involve multiple contacts between the complainant and the DHC. Often complainants contact the DHC office in a state of significant stress or trauma. It often takes a few conversations to build trust and help complainants understand and weigh their options. In addition to substantive knowledge about human rights law, ethics and professional codes of conduct, working with these complainants requires DHC Program counsel to have advanced skills in trauma-informed legal practice, cultural competence, communication and trust building. This is necessary particularly as complainants’ experiences of discrimination and harassment by licensees creates heightened distrust of all legal professionals.

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7. In other cases which do not proceed to conciliation or mediation, the DHC provides ongoing coaching where a complainant is trying to resolve the dispute themselves.
8. Over the past year, the DHC office has addressed some complaints by offering informal conversations with respondents in a manner that preserves anonymity while providing an opportunity for education on their professional obligations and coaching toward best practices.

**C. PERSISTENT OUT OF MANDATE CONTACTS**

9. Usually the out of mandate contacts received by the DHC are handled easily and quickly, typically in less than 10 minutes. These contacts typically involve redirecting the caller to one or more appropriate resources.
10. However, occasionally situations arise in which a caller with mental health concerns becomes fixated on the DHC and makes repeated contact with the office even though their concerns do not fall within the DHC mandate.
11. For a period of about five years (beginning before the tenure of current DHC counsel), one complainant has gone through and continues to go through cycles of silence followed by a period with dozens of repeated contacts. We continue to monitor the emails but, consistent with our previous communications to the complainant, we are not responding unless the emails raise a new issue that is within mandate. The DHC Program counsel consult as a group to ensure that matters such as this are dealt with consistently, and without drawing inappropriately on the Program's resources.

**D. OBSERVATIONS ABOUT THE DHC PROGRAM**

12. As a team, the DHC Program counsel meet regularly to ensure we take a consistent approach to the contacts that arise, to ensure consistent communications, to confer on complex matters, and to discuss emerging trends.

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13. We offer a few observations about the trends that we are observing among the contacts to the DHC Program.

**(a) Number of New Contacts**

14. From January to June 2019, there was a 20% increase in the number of new contacts over the period from July to December 2018. As anticipated in our last report, the drop in contacts that appeared in that six-month period in 2018 was not indicative of an overall downward trend.

**(b) Abusive Articling Experiences**

15. Since January 2018 we have detailed our concerns about the numbers of “out of mandate” contacts we receive from articling students who are experiencing abusive employment practices in their articling placements. The nature of the abusive employment practices extend beyond discrimination or harassment into abusive practices such as verbal abuse, threats and humiliation; not being paid for hours worked; being forced to work 100+ hours per week every week; being subject to bullying; and being threatened with termination if they do not comply with unreasonable demands. Media within the legal profession have begun reporting on this issue in response to the DHC reports, as have the mainstream press. We continue to receive contacts of this nature from articling students.

**(c) Discrimination and/or Harassment on the Basis of Disability**

16. Since the current DHC Program counsel began their mandate in July 2017, we have consistently observed that a significant proportion of complaints deal with a client’s own lawyer/paralegal or an opposing lawyer/paralegal failing to appropriately accommodate clients with disabilities. In addition to undermining service quality and access to justice, these skill deficits create high levels of stress, anger, anxiety, alienation and distrust among clients that undermine the client-lawyer relationship and often create delays in delivering the required services. Often only small changes in behaviour are required to avoid or pre-empt discriminatory relationships from developing but these changes are not

- 4 -

made. We note that this continues to be a pressing concern and an obvious area of skill deficit within the profession that needs to be addressed.

**(d) Public Profile of the DHC**

14. The DHC Program launched its Twitter feed in November 2018 using the handle @DH\_Counsel. The Twitter account is managed by Fay Faraday. We tweet about the DHC Program, about equity, diversity and inclusion issues in the legal profession, and circulate information about continuing education programs on equity, diversity and inclusion in the profession. Our tweets reached over 11,000 people during this six month period. Sometimes we engage in twitter conversations with members of the legal profession who tweet at us to ask if particular kinds of issues are dealt with by the DHC. Other times, members of the legal profession who are engaged in twitter discussions about equity in the legal profession remind people to raise their concerns with the DHC and we amplify those messages. We participate in these online conversations to remind people of the DHC's mandate, to tell them they can reach out to us and to circulate our email, phone, website and social media contacts. During this six month period, for the first time, individuals with substantive complaints about licensees contacted the DHC office through private direct messages via Twitter.

This is **Exhibit P** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September , 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

**Alexandra Heine**

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**From:** Murray Klippenstein <murray.klippenstein@klippensteins.ca>  
**Sent:** Tuesday, September 15, 2020 10:56 AM  
**To:** Dianne Corbiere (dgcobriere@nncfirm.ca); Jared Brown; Alexander Wilkes; Andrew Spurgeon (aspurgeon@rossmcbride.com); Lewis, Atrisha S; Jack Braithwaite (jbraithwaite@weaversimmons.com); Brian Prill; Robert Burd (robertburd@hotmail.com); Scott Marshall; Cecil Lyon; Cheryl Lean; Chi-Kun Shi; Claire Wilkinson (Claire.Wilkinson@mhalaw.ca); Cathy Corsetti (cathy@corsetti.ca); Etienne Esquega (Etienne Esquega <ee@esquegalaw.com>) <Etienne Esquega; Gary Graham; Geoff Pollock; Jacqueline Horvat (jacqueline@spark.law); Jean-Jacques Desgranges (DesgrangesLaw@ncf.ca); John Fagan; Jonathan Rosenthal; Jorge E. P.; Julia Shin Doi (julia.shindo@ryerson.ca); Julian Falconer; Marian Lippa (lippalegal@gmail.com); Lubomir Poliacik; Megan Shortreed (Megan.Shortreed@paliareroland.com); Isfahan Merali (isfahanmerali@gmail.com); Michelle Lomazzo (michelle@lomazzoappeals.com); Nick Wright; Philip Horgan; Bob Adourian; Ryan Alford; Sam Goldstein; Shelina Lalji (shelina@slpc.legal); Sidney H. Troister, LSM; Tanya Walker (tanya@tcwalkerlawyers.com); Trevor Parry; Charette, Gerard P.; Joseph Groia; Benson Lau (drpslau@yahoo.ca); Clare Sellers; Doug Wellman (dougwellman@gmail.com); Epstein, Seymour; Genevieve Painchaud; Nancy Lockhart; Gerald Sheff; Minor, Janet; Pawlitz, Laurie; Thomas G. Conway (tconway@conway.pro); Ferrier, Lee K.; Robert Armstrong (rarmstrong@arbitrationplace.com); Rock, Allan; Harvey T. Strosberg Q.C.; Vern Krishna; Derry Millar; georgehunter1@icloud.com; ascace@mccarthy.ca; j.k.spence@sympatico.ca; Bob Aaron; Larry Banack; chris.bentley@ryerson.ca; Boyd, Marion; Michael Bryant; Paul Copeland; feinstea@solowaywright.com; pglawyer@gmail.com; glggc@interlog.com; jground@amicuschambers.com; hghampton5@gmail.com; charnick@counselpa.com; rmanes@torkinmanes.com; alanwpope@hotmail.com; julian.porter@julianporterqc.com; Judith Potter; ruby@rubyskiller.com; normsterling@gmail.com; gswaye@swaye.ca; jwardlaw@rogers.com; bradley@wrightlawfirm.com; dyoung@bensonpercival.com; Diana Miles; Mirka Adamsky-Rackova; Jim Varro; Cara-Marie O'Hagan; Teresa Donnelly; Joseph Chiummiento; Malcolm Mercer; malcolm@malcolmmrcer.ca; Paul Cooper; Michael; Barbara Murchie; Ross Murray; Reshma Budhwani; Margaret Drent  
**Subject:** Concerns about the upcoming "Inclusion Index"

**CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.**

Dear colleagues,

I am writing to convey my concerns about developments at the Equity and Indigenous Affairs Committee regarding the upcoming "Inclusion Index".

The Treasurer's recent mandate letter to Committees suggested that if Committee members had issues or concerns about a topic in an upcoming meeting, they should raise them with Committee chairs before the meeting. Accordingly, prior to the EIA meeting of September 10, I wrote to EIA Committee chairs and members outlining some specific and (I believe) important concerns about the Inclusion Index which, it is said, will be publicly released by the Law Society "this fall".

I reproduce the text of my email to the Committee below, in case you are interested.

At the meeting there was no effort to address my concerns – quite the opposite. I was told that my concerns 1) dealt with "operational" matters and therefore were not the purview of Committee members, 2) were out of place because

they dealt with “implementation” of a previous Convocation decision, and 3) that I and others would receive further information when the Inclusion Index was ready to be released (that is, when it is more or less a “fait accompli”).

The Committee, in my view, is deliberately turning a blind eye to what I would suggest are some serious problems.

The Inclusion Index seems to be part of the current movement at the Law Society towards prioritizing birth characteristics such as skin colour and facial features and sex chromosomes over competence. This radical identity politics is, in my opinion, not progressive, and not progress, and will drag us all backwards and downwards.

One of the lessons I believe I have learned in life is that problems are of two kinds: first, those problems that, if ignored, go away, and second, those problems that, if ignored, get worse. I believe that the problems described in my email are of the second type.

Respectfully,

Murray Klippenstein

#### TEXT OF MY EMAIL OF SEPT 9 2020

Dear Committee Chairs and Committee members,

I am writing to convey a number of concerns regarding a matter to be considered at tomorrow’s EIA meeting.

I have reviewed the Treasurer’s “mandate memo” to the EIA Committee dated September 4, which states that “Prior to the [Committee] meeting, if a bencher ... has issues or questions about the work of the committee, that bencher should communicate with the chairs of the committee in advance of the meeting”. I am writing to provide to the Committee Chairs and the Committee members ahead of tomorrow’s Committee meeting my serious concerns regarding the issue of the “Inclusion Index” mentioned in the Treasurer’s memo. In her memo the Treasurer states that it is a priority for the Committee to “prepare for the fall release of the Inclusion Index as per recommendation six of the Working Together for Change [Report]”.

On reflection, I in fact have some broader concerns with the basic idea of a “mandate memo”, since it seems to me to create new and unprecedented powers in the position of the Treasurer, and severely restricts the role of elected Benchers in committees. However, I will set aside the details of those concerns for now and focus on the Inclusion Index.

The planned Inclusion Index is a momentous and unprecedented public interference in the internal operations of more than 100 of Ontario’s largest law firms. And yet it appears that the planned Inclusion Index has received no significant review or scrutiny by the EIA Committee or Benchers in general.

1. The Inclusion Index will publicly identify by name, and then rank (by categories), more than 100 of Ontario’s law firms, based on a complex and detailed matter of internal firm operations. This is a public and detailed intrusion into the management of Ontario’s law firms of unprecedented scope.
2. The basis for this unprecedented interference is an extremely complex but untested and never-before used method of evaluation. It is, according to the consulting firm’s website, the “first of its kind”. This is apparently a worldwide first.
3. The methodology of the Inclusion Index has received no scrutiny by the EIA Committee or by Benchers in general, despite its unprecedented nature and momentous implications. There is considerable irony in the fact that the consulting company is trumpeting this Inclusion Index on its public promotional website when it has received no actual serious review by the sponsoring organization.

4. The consulting company states on its website that it uses “advanced analytics” and its own “proprietary Inclusion Score technology”. That suggests that its methodology is confidential, and that the actual way that it operates will not be allowed to be reviewed by anyone, including Benchers. Further, this apparently complex technology has, it would seem, not been the subject of any outside professional scrutiny or testing or peer review (as in the academic field of statistics or data management). It is a complete secret to everyone.
5. It appears that the project of the Inclusion Index has for the last almost two years been “managed” entirely by four (now three) Benchers, and presumably some LSO staff members, with no significant reporting to anyone else, and no significant input or oversight from anyone else.

According to the Minutes of the November 15, 2018 EIAC meeting (emphases added):

27. Marian MacGregor also provided an update on Recommendation 6 – the Inclusion Index. She noted that the EIAC executive has agreed to the creation of a Steering Committee. The Steering Committee will review the vendor proposals and make a decision on the provider for the project. The Steering Committee will update EIAC at regular intervals.

29. Vice-Chair of EIAC, Isfahan Merali, will chair the Steering Committee. Benchers Robert Burd, Julian Falconer and Avvy Go will also sit on the Steering Committee.

Then, at the February 14, 2019 meeting of EIAC, a report “For Information” (that is, not for consideration for approval by vote) at Tab 3.1 was included about “Implementation of ... Inclusion Index”. The report includes the following:

7. The Steering Committee has reviewed and selected the Inclusion Index provider from the proposals provided in response to the RFQ. The Steering Committee will provide oversight, with the support of staff, as the development of the Inclusion Index unfolds. The steering committee will also provide updates to EIAC at appropriate intervals.

It should be noted that according to the above, it seems that the EIA “executive” appointed a powerful four person Steering Committee, without an actual vote by the Committee, which Steering Committee has now been “managing” this extremely important Inclusion Index project, which will constitute an unprecedented public interference in the internal management of Ontario’s law firms, “behind the scenes” for the last almost two years, with no reporting or oversight.

6. Former Treasurer Mercer recently announced, in a public letter dated June 25, 2020, that “We expect to release the Inclusion Index this fall.”
7. The forthcoming Inclusion Index is based on seriously invalid and misleading previous research, that is, the Challenges report of 2014 prepared by Stratcom Communications.

The consulting company’s website states that the “Regulatory body study found evidence of systemic racism and sexism within the sector”. The website then quotes three specific data points from the Stratcom Report, stating that 52%, 52%, and 43% of “racialized members” experienced certain disadvantages.

The Stratcom report was critiqued in my Critical Review dated January 8, 2020, which was distributed to all Benchers and became publicly available. The Critical Review showed how the report’s stark proclamations about how specific percentages of members in the legal professions felt a certain way had no valid statistical foundation. The conclusion of the Critical Review was that: “the *Challenges* Report ... 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 ...”.

Despite its detailed and harsh and public critique, the Critical Review has not received any rational rebuttal from anyone. The conclusions of the Critical Review stand.

In addition to relying on the invalid Stratcom report, the Inclusion Index appears, like the Stratcom report, to be basing all its work on a statistically invalid self-selected and skewed data base (derived from the voluntary questions in an annual Law Society filing by all licensees).

8. The problem of survey sample self-selection bias could possibly, and indeed is likely to, exist in the Inclusion Index because persons-of-colour (or of other so-called “equity seeking groups”) who in fact feel “included” in their firms are less likely to voluntarily answer the survey questions because they have less motivation to do so, or perhaps because they find the questions personally insulting or offensive as a matter of principle. Such a sample self-selection bias would potentially be a very serious issue for two reasons.

First, the Inclusion Index would, quite simply, be inaccurate. That in itself is a serious issue. Second, since the survey results will be made public by firm name (in ranked groupings), individual firms are vulnerable to public disparagement by name, in effect by the Law Society, based on methodologically invalid data.

Consider an example. Firm A employs ten persons of colour, and three feel motivated to complete the survey questions because they are not satisfied with their situation (while seven are more or less satisfied with their situation and decide not to bother with the questions). Firm B, on the other hand, employs ten persons of colour but seven are unhappy and say so in survey answers.

The survey data analyst, it would appear, has no way to account for the seven in Firm A who chose not to answer – because of a reason that is “good” in terms of the goals of the survey (that is, they feel “included”). In particular, the survey data analyst, it would appear, has no way to “adjust” for those non-reporting “contented” individuals for reporting purposes, for the simple reason that the analyst doesn’t know that they exist. Will the data analyst treat the three responders from Firm A as being equivalent to the seven responders from Firm B, when clearly they are not?

There is an additional important factor which it appears that the Inclusion Index will not, and indeed cannot, account for. Not all legal work is equal. Firm B may be a “higher end” firm, that does more advanced, more difficult, and more stressful legal work. That is, persons in Firm B may simply be under more day-to-day work pressure than persons in Firm A – because of the nature of the Firm’s work. That factor, while in a sense laudable from a professional point of view, may result in persons in the firm sometimes feeling less content in certain ways. The rewards of high achievement, while real, do not always manifest themselves in day-to-day cheerfulness. The result of not accounting for this factor may be that the survey, and the Inclusion Index, in effect “punishes” those firms who aim for high professional achievement.

These are serious and important questions. Do the Steering Committee and the consultant have answers? I am asking.

9. According to the consultant’s original proposal, the project was expected to cost \$225,000 in consultant fees, plus \$15,000 in expenses. These funds, of course, come out of our membership’s pocket by way of compulsory annual license fees. How much has been spent to date? How much more expenditure is expected?

10. The entire Inclusion Index project is clearly centred on advancing a particular political ideology under the rubric of “diversity and inclusion”. That ideology throws out the window the basic ideas and principles of equality and non-discrimination, and openness and opportunity, which have been the core of Ontario’s human rights policy for more than half a century (and which have resulted in a great deal of social progress, in my opinion), and puts in their place a general rule of discrimination and across-the-board preferential treatment based on the skin colour, facial features, and sex chromosomes that a person was born with, rather than relying on principles of competence, smarts, skills, effort, and contribution.

This ideology assumes that persons with certain categories of birth characteristics should be hired, promoted, and appointed “in all legal workplaces, at all levels of seniority” based on the proportion of those birth features in the general population (see the *Working Together* report, p. 14). This idea of “entitlement by population percentage” is a radical idea with no serious intellectual foundation and with serious pernicious effects, in my opinion.

That ideology is currently fashionable in many circles, but it is inappropriate for a regulatory body with the serious responsibilities of the Law Society to engage in the massive intrusion into its membership's business affairs (as represented by the Inclusion Index) based on a particular political ideology (the Law Society intrudes into the business affairs of its licensees on a significant number of important matters, such as the management of trust funds, but those are in an entirely different category).

11. The current pushing ahead of the Inclusion Index without meaningful input or oversight ignores the results of the last Bencher election. I was elected as Regional Bencher on a platform explicitly based on concerns such as those expressed above. Twenty-one other Benchers were similarly elected. Those views and those results are being ignored.

Given that this Inclusion Index appears to be a runaway freight train, I am doubtful that my concerns will be addressed. I hope that they are.

Sincerely,

Murray Klippenstein

This is **Exhibit Q** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

## MINUTES OF CONVOCATION

Thursday, 22<sup>nd</sup> April, 2021  
9:00 a.m.  
Via Videoconference

## PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Armstrong, Banack, Banning, Braithwaite, Brown, Burd, Charette, Chiummiento, Conway, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Lalji, Lau, Lean, Lesage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Merali, Minor, Murchie, Painchaud, Parry, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Troister, Walker, Wellman, Wilkes, Wilkinson and N. Wright.

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLIC

TREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

LL.D. CEREMONY – BARBARA McISAAC, Q.C.

The Treasurer introduced Barbara McIsaac, Q.C., the candidate for the degree of Doctor of Laws, *honoris causa*.

Mr. Wilkes read the citation.

The Treasurer admitted Ms. McIsaac to the degree of Doctor of Laws, *honoris causa*.

Ms. McIsaac addressed Convocation.

The Treasurer thanked Ms. McIsaac for honouring Convocation with her presence.

### TREASURER'S REMARKS

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer expressed condolences to the family of former bencher Philip M. Epstein, C.M., O.Ont, Q.C., LL.D., LSM who passed away on April 4, 2021.

The Treasurer congratulated the family of former bencher William J. Simpson, Q.C. who posthumously received the Meritorious Service Cross (Civilian) from the Governor General for leading the Law Society's paralegal regulation effort.

The Treasurer advised that the Law Society Awards ceremony will be held virtually on May 26, 2021 and congratulated all recipients.

The Treasurer congratulated Professor Payam Akhavan, the recipient of the Law Society's Human Rights Award, which will be bestowed at a virtual ceremony scheduled for June 15, 2021.

The Treasurer noted the renaming of the Ryerson University Faculty of Law to the Lincoln Alexander School of Law, which will officially occur at an inaugural year end virtual event on May 6, 2021.

The Treasurer noted upcoming events:

- Mental Health Awareness Week, May 3 to 9, 2021
- Asian South Asian Heritage Event, May 6, 2021 from 5:00 to 6:00 p.m.

The Treasurer advised that the Law Society's Annual General Meeting will take place on Wednesday, May 12, 2021 online. Details on access to the meeting will be provided by email and on the Law Society website.

The Treasurer reported on some of her outreach initiatives:

- in March, the Law Students' Society of Ontario (LSSO) and the Law Society hosted meetings with Ontario Law Students
- in April, a Women's Roundtable was held in partnership with the Law Society and the Canadian Chapter of the International Association of Women Judges
- a Paralegal Roundtable was held on April 28, 2021

The Treasurer updated Convocation on the changes with respect to contingency fee regulation.

### MOTION – CONSENT AGENDA – Tab 2

It was moved by Mr. Desgranges, seconded by Mr. Parry, that Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

Carried

### Tab 2.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of February 25, 2021 were confirmed.

## Tab 2.2 – MOTIONS

### Re: Tab 2.2.1: Appointments

THAT Catherine Banning be appointed to the Audit and Finance Committee, the Equity and Indigenous Affairs Committee and the Tribunal Committee.

THAT Jorge Pineda be removed from the Professional Regulation Committee at his own request.

Carried

### Re: Tab 2.2.2: Tribunal Appointments

THAT Catherine Banning and Joseph Chiumminto be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

Carried

## TREASURER'S REPORT

### Re: LAWPRO Annual Shareholders Resolutions

That Convocation authorize the Treasurer to sign the shareholder resolutions for the Lawyers' Professional Indemnity Company (LAWPRO) set out at Tab 2.3.1.

Carried

IN PUBLIC

Mr. Adourian declared a conflict with respect to the Technology Task Force Report and removed himself from the meeting.

TECHNOLOGY TASK FORCE REPORT

Ms. Horvat presented the Report.

Re: Report on Regulatory Sandbox for Innovative Technological Legal Services

It was moved by Ms. Horvat, seconded by Mr. Graham, that Convocation:

1. Approve the launch of a regulatory sandbox as a five-year pilot with the following features:
  - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
  - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
  - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes
2. Adopt amendments to the Law Society's By-Laws, as set out at Tab 1.1.

Mr. Fagan moved, seconded by Ms. Shi, that the Technology Task Force Report currently before Convocation be referred to Convocation's Professional Regulation Committee for further study, the matters to be studied further there, after solicitations for input from the legal and paralegal professions at large, to include:

- a) What is in the true overall public interest in this matter?
- b) What might the LSO do to attempt to deter any unauthorized legal practice/provision of legal services via technology?
- c) Such further considerations as may be presented to the Professional Regulation Committee for further study.

Mr. Desgranges moved, seconded by Mr. Prill, that the motion be amended as follows:

That paragraph 1 be amended as follows:

That:

1. Subject to paragraphs 2, 3 and 4 below, Convocation approve the launch of a regulatory sandbox as a five-year pilot with the following features:
  - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
  - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.

- Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.

That paragraph 2 be added to the motion to read:

2. As of October 31, 2022, the pilot project shall be continued on a full cost-recovery basis (which may include grants from outside funding sources) such that no annual fees or other monies derived from Licensees shall be used to subsidize: (i) the ongoing operations of the sandbox or any derivative thereof, (ii) any staffing salaries, benefits or other costs associated with retaining any staff, data analysts, program managers, advisory councils or any other consultants of any nature whatsoever with respect to the operations of the sandbox or (iii) any additional costs associated with any additional internal or external resources that may be needed to support the sandbox project.

That paragraph 3 be added to the motion to read:

3. A detailed yearly financial report be presented to Convocation for consideration of the progress of the pilot project.

That paragraph 4 be added to the motion to read:

4. As soon as possible and at the latest, after the five-year pilot period after the completion of the five-year pilot project the LSO devolves itself of the responsibility of managing the sandbox project, the development or regulation of ITLS software and the approval or permitting of any other legal software whatsoever.

That paragraph 5 be amended as follows:

5. Convocation adopt amendments to the Law Society's By-laws as set out at Tab 1.1.

That Tab 1.1 be amended as to include paragraph 2:

1. For the purposes of the Act, By-law 16 shall be a temporary exemption from the Society's requirements with respect to the practicing of law or providing legal services and By-Law 16 shall expire and be automatically repealed with no further action on the part of the Society on the earlier of 5 years from the date this By-Law is brought into force or such other date as such other independent regulatory body is brought into existence for the purposes of approving or permitting such ITLS tools or programs.

So that the motion would now read:

That:

1. Subject to paragraphs 2, 3 and 4 below, Convocation approve the launch of a regulatory sandbox as a five-year pilot with the following features:
  - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
  - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
  - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.
2. That as of October 31, 2022, the pilot project shall be continued on a full cost-recovery basis (which may include grants from outside funding sources) such that annual fees or

other monies derived from Licencees shall not be used to subsidize the: (i) the ongoing operations of the sandbox or any derivative thereof, (ii) any staffing salaries, benefits or other costs associated with retaining any staff, data analysts, program managers, advisory councils or any other consultants of any nature whatsoever with respect to the operations of the sandbox or (iii) additional costs associated with any additional internal or external resources that may be needed to support the sandbox project.

3. A detailed yearly financial report be presented to Convocation for consideration of the progress of the pilot project.
4. As soon as possible and at the latest, after the five-year pilot period after the completion of the five-year pilot project the LSO devolves itself of the responsibility of managing the sandbox project, the development or regulation of ITLS software and the approval or permitting of any other legal software whatsoever.
5. Convocation adopt amendments to the Law Society's By-laws as set out at Tab 1.1

And that Tab 1.1 would now read:

1. For the purposes of the Act, a person, including an individual, corporation or other entity, who is an approved participant in the Societies innovative technological legal services ("ITLS") sandbox program, or who has received a permit from the Society to provide an ITLS, and in each case is operating an ITLS tool or program in compliance with the Societies requirements, shall be deemed to not be practicing law or providing legal services with respect to the operation of that ITLS tool or program.
2. For the purposes of the Act, By-law 16 shall be a temporary exemption from the Society's requirements with respect to the practicing of law or providing legal services and By-Law 16 shall expire and be automatically repealed with no further action on the part of the Society on the earlier of 5 years from the date this By-Law is brought into force or such other date as such other independent regulatory body is brought into existence for the purposes of approving or permitting such ITLS tools or programs.

The Treasurer called for debate on the motion to amend.

The motion to amend was lost.

#### ROLL-CALL VOTE

Alford	For
Banning	Against
Braithwaite	Against
Brown	Against
Burd	Against
Charette	For
Chiumminto	Against
Cooper	Against
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against

Fagan	For
Falconer	Against
Goldstein	Against
Graham	Against
Groia	Against
Horgan	Against
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	Against
Lesage	For
Lewis	Against
Lippa	Against
Lockhart	Against
Lomazzo	Against
Lyon	For
Marshall	Against
Merali	Against
Murchie	Against
Painchaud	Against
Parry	Against
Poliacik	Against
Pollock	For
Prill	For
Rosenthal	Against
Sellers	Against
Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Against
Wilkinson	Against
Wright	Against

Vote: 10 For; 40 Against

The Treasurer called for debate on the Fagan/Shi motion.

The Fagan/Shi motion was lost.

#### ROLL-CALL VOTE

Alford	For
Banning	Against
Braithwaite	Against
Brown	Against
Burd	Against

Charette	For
Chiummiento	For
Cooper	Against
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against
Esquega	For
Fagan	For
Falconer	Against
Goldstein	Against
Graham	Against
Groia	Against
Horgan	For
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	For
Lesage	For
Lewis	Against
Lippa	For
Lockhart	Against
Lomazzo	Against
Lyon	For
Marshall	Against
Merali	Against
Murchie	Against
Painchaud	Against
Parry	For
Poliacik	For
Pollock	For
Prill	For
Rosenthal	Against
Sellers	Against
Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Against
Wilkinson	Against
Wright	Against

Vote: 17 For; 34 Against

The main motion carried.

ROLL-CALL VOTE

Alford	Against
Banning	For
Braithwaite	For
Brown	Against
Burd	Abstain
Charette	Against
Chiumminto	Against
Cooper	For
Corbiere	For
Corsetti	For
Desgranges	Abstain
Epstein	For
Esquega	Abstain
Fagan	Against
Falconer	For
Goldstein	For
Graham	For
Groia	For
Horgan	For
Horvat	For
Klippenstein	Against
Lalji	For
Lau	For
Lean	For
Lesage	Against
Lewis	For
Lippa	Abstain
Lockhart	For
Lomazzo	For
Lyon	Against
Marshall	Against
Merali	For
Murchie	For
Painchaud	For
Parry	Against
Poliacik	For
Pollock	Against
Prill	Abstain
Rosenthal	For
Sellers	For
Sheff	For
Shi	Against
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For

Wilkinson For  
Wright For

Vote: 34 For; 12 Against; 5 Abstain

Mr. Adourian returned to Convocation.

## FINANCIAL UPDATE

Mr. Groia provided an update on the Law Society's financial situation for information.

## AUDIT AND FINANCE COMMITTEE REPORT

Mr. Groia presented the Report.

Re: Law Society of Ontario Annual Financial Statements for the Year Ended December 31, 2020

It was moved by Mr. Groia, seconded by Mr. Poliacik, that Convocation approve the audited annual financial statements for the Law Society of Ontario for the financial year ended December 31, 2020, including the net inter-fund transfers listed in Note 14, which are as follows:

- \$1,519,000 from the Capital Allocation Fund to the Invested in Capital and Intangible Assets Fund representing assets capitalized during the year in compliance with the Society's accounting policies;
- \$156,000 from the Special Projects Fund to the General Fund to fund the facilities condition assessment, work related to the implementation of approved recommendations from the Challenges Faced by Racialized Licensees Working Group and maintenance of the Society's grounds, net of funding transferred to the Special Projects Fund to fund the next bench election; and
- \$100,000 from the lawyer General Fund to the Repayable Allowance Fund, as provided in the 2020 budget to fund the Repayable Allowance Program in the Licensing Process.

Carried

### *For Information*

- LAWPRO Audited Financial Statements for the year ended December 31, 2020
- LIRN Inc. Audited Financial Statements for the year ended December 31, 2020
- Investment Compliance Reports for the Quarter ended December 31, 2020
- In Camera Matters

## LAWPRO ANNUAL REPORT

Mr. Spurgeon presented the report for information.

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

Re: Amendments to the Rules of Professional Conduct – Definition of “Lending Client”

It was moved by Ms. Shortreed, seconded by Mr. Adourian, that Convocation approve the amendments to Rules 3.4-13 at Tab 4.1.1 (English) and Tab 4.1.2 (French), as detailed in this report and summarized as follows:

- That the definition of “lending client” in Rule 3.4-13 be amended to clarify those entities that qualify as “finance companies”.

Carried

It was moved by Ms. Lomazzo, seconded by Mr. Rosenthal, that Convocation approve the amendments to Rules 3.4-14 at Tab 4.1.1 (English) and Tab 4.1.2 (French), as detailed in this report and summarized as follows:

- That Rule 3.4-14 be amended to increase the amount of consideration from \$50,000 to \$75,000 for a mortgage or loan under which a lawyer may act for both borrower and lender.

Carried

Mr. Adourian, Mr. Esquega, Mr. Graham, Mr. Spurgeon and Ms. Walker abstained.

Re: Amendments to the By-Laws – Mobility for Quebec Lawyers

It was moved by Ms. Shortreed, seconded by Ms. Horvat, that Convocation approve the motion at Tab 4.2.1, which amends By-Law 4 in order to permit lawyers from Quebec to practise in Ontario on the same basis as lawyers from all other Canadian provinces as detailed in this report.

Carried

ROLL-CALL VOTE

Adourian	Abstain
Alford	Against
Banning	For
Braithwaite	For
Brown	For
Burd	For
Charette	For
Chiumminto	For
Corbiere	For
Corsetti	For
Desgranges	Against
Epstein	For
Esquega	For
Fagan	Against

Falconer	For
Graham	For
Groia	For
Horgan	Abstain
Horvat	For
Klippenstein	For
Lalji	For
Lau	For
Lean	Against
Lesage	Against
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	Against
Marshall	For
Murchie	For
Painchaud	For
Parry	Against
Poliacik	For
Pollock	Against
Prill	For
Rosenthal	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For
Wright	For

Vote: 36 For; 8 Against; 3 Abstain

*For Information*

- 2020 Annual Report of the Complaints Resolution Commissioner

REPORTS FOR INFORMATION

TRIBUNAL COMMITTEE REPORT

The Treasurer highlighted the report on the proposed amendments to the Law Society Tribunal Rules of Practice and Procedure.

TRIBUNAL COMMITTEE AND EQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORTS

Benchers raised questions and offered comments on the information reports from the Tribunal Committee and the Equity and Indigenous Affairs Committee.

IN PUBLICREPORTS FOR INFORMATION ONLYEQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

- Report of the Discrimination and Harassment Counsel for July 1, 2020 to December 31, 2020
- In Camera Item
- Human Rights Monitoring Group Intervention (Myanmar)

TRIBUNAL COMMITTEE REPORT

- Proposed Amendments to the Law Society Tribunal Rules of Practice and Procedure
- Law Society Tribunal Quarterly Statistics for the period from October 1, 2020 to December 31, 2020

LAWPRO ANNUAL REPORTIN CAMERA REPORT

CONVOCATION ROSE AT 3:47 P.M.

Confirmed in Convocation this 27<sup>th</sup> day of May 2021.

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Teresa Donnelly,  
Treasurer

**Tab 1**

## **Technology Task Force**

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### **Report on Regulatory Sandbox for Innovative Technological Legal Services**

April 22, 2021

**Committee Members:**

Jacqueline Horvat (Chair)  
Jack Braithwaite (Vice-Chair)  
Gary Graham (Vice-Chair)  
Paul Cooper  
Seymour Epstein  
Cheryl Lean  
Michelle Lomazzo  
Brian Prill  
Clare Sellers  
Andrew Spurgeon  
Harvey Strosberg  
Nicholas Wright

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**Working Title:**  
**Regulatory Sandbox for Innovative Technological Legal Services**

**Motion**

That Convocation:

1. Approve the launch of a regulatory sandbox as a five-year pilot with the following features:
  - Approved participants will receive permission from the Law Society to serve consumers through innovative technological legal services while complying with requirements for risk-based monitoring and reporting.
  - The Law Society will determine whether, and under what conditions, participants may receive a permit to continue providing the services after their participation in the sandbox has ended.
  - Annual reports will be submitted to Convocation to enable consideration of possible regulatory changes.
2. Adopt amendments to the Law Society's By-Laws, as set out at **Tab 1.1**.

**Executive Summary**

The Law Society's Technology Task Force recommends the creation of a regulatory sandbox for innovative technological legal services ("ITLS") as a five-year pilot.

Advancements in technological capabilities like artificial intelligence have contributed to the rapid rise of ITLS. Through websites, apps and software, ITLS providers offer tools to help people find legal information, answer routine questions, navigate legal processes, analyze contracts, generate legal documents, or predict outcomes. Consumers may see such tools as the only practical option for legal assistance or as a precursor or supplement to a legal professional. There is a growing demand for ITLS due to unmet legal needs, consumer comfort with technologically delivered services, and the convenience of accessing help on demand.

The trend in technological advancement in the legal sector has accelerated during the COVID-19 pandemic with the adoption of digital and online tools by public institutions, private enterprises, and community organizations. Moving more of the justice sector infrastructure online (such as through e-filing portals and video hearings) has opened up new pathways for ITLS tools in Ontario.

Despite the growth of digital innovation, ITLS currently operate in an environment of regulatory uncertainty. Standards for competent and ethical legal tech services have not been established. ITLS provided by persons not licensed as lawyers or paralegals may be subject to prosecution for the unauthorized practice of law. ITLS provided by licensees may be subject to professional conduct rules in ways that have not been

clarified. This uncertainty can both deter the best innovation and deprive ITLS consumers of basic safeguards accorded to clients of licensees.

An “Uber moment” is arriving in the legal sector as it has in other sectors and industries when innovative technologies transform markets and consumer choices. Inaction on the Law Society’s part would risk allowing ITLS providers to proliferate in Ontario outside of an effective regulatory scheme.

In the proposed sandbox pilot, approved participants will receive permission from the Law Society to serve consumers through ITLS while complying with requirements for risk-based monitoring and reporting. Amendments will be required to create a new category of permitted exception from licensure in the Law Society’s By-Laws (See **Tab 1.1**). The Law Society will determine whether, and under what conditions, participants should receive a permit to continue providing the services after their participation in the sandbox has ended. During the pilot the Law Society will gather critical information about the operation of ITLS and will use that information to inform policy and regulatory decisions, including possible changes to professional conduct rules.

The sandbox will help to fulfill the Law Society’s responsibilities as a public interest regulator by:

- Facilitating access to justice: By eliminating regulatory uncertainty, the sandbox will remove barriers to the development of ITLS that could reach new consumers in new ways, especially in areas of high unmet need.
- Protecting the public: The sandbox will provide a mechanism to ensure ITLS consumers have the same type of safeguards available to clients of licensees: competent and ethical services, recourse when required, and the provision of relevant details enabling informed choices to be made about the providers of the services.
- Informing future regulatory development: The sandbox will gather evidence to inform longer term decision-making about ITLS regulation. During the pilot period, the sandbox team will report, at a minimum, annually to Convocation, thus enabling Convocation to review and potentially adjust rules, by-laws, or standards that participants have demonstrated can be satisfied in alternative ways.

The sandbox will also enable licensees to better understand how the public is using ITLS and the impact on legal service delivery. With this information, licensees can enhance their practices by using, adapting to, or developing ITLS tools.

The presence in Ontario of leading legal tech entrepreneurs and proponents in legal, academic, government, and judicial circles bodes well for attracting sandbox participants and expert advisors. Several entrepreneurs have already expressed interest in participating. Participation in the sandbox would provide a measure of quality assurance to consumers and reassurance to developers and investors who would

otherwise be wary of investing resources in an enterprise that could be shut down by the regulator.

This report begins by describing developments in Ontario and elsewhere that have created the impetus to move forward in establishing the Law Society's regulatory role for ITLS. It then discusses benefits and risks of proceeding (or inaction) to launch the sandbox pilot. The latter half of the report provides an overview of the sandbox proposal, including the project's purpose, concept, key features, and legal framework. It concludes with a discussion of budgetary considerations along with the need for a small staff team and expert volunteer advisory council. An Appendix provides additional detail on operational issues.

The Task Force recommends the sandbox as an imperative in regulatory advancement. The Law Society is well positioned to assess the potential benefits of innovative legal technologies, minimize risks of harm, and identify new pathways for regulation in the public interest.

## Background

The Law Society's Technology Task Force was formed in 2018. Its mandate is to consider the role of technologies in the delivery of legal services, and the Law Society's role as a regulator in this changing environment.

The Task Force submitted an Update Report<sup>1</sup> to Convocation in November 2019. That report discusses the technological landscape for legal services, implications for access to justice and the regulation of legal services, and potential regulatory directions. Building on extensive research and consultation, the Task Force recommends that the Law Society launch a regulatory sandbox to test ITLS in a safe environment.

## Momentum for Change

Several factors have created momentum for the Law Society to establish a role in relation to ITLS. Key factors are the proliferation of and demand for legal technological tools, the accelerated adoption of digital and online tools during the pandemic, and the emergence of regulatory sandboxes in the legal sectors of other jurisdictions.

### *Emergence of and Demand for Legal Tech Tools*

There has been a rapid rise of novel legal technological tools and services due to advancements such as artificial intelligence. The new technologies are developing unprecedented capabilities at an unprecedented pace, sparking innovations in the ways that legal services are being delivered. The demand for ITLS has grown stronger due to rising unmet legal needs, constant downward pressure on prices for legal services and increasing consumer expectations for on-demand online services.

Many of the new tools aim to help consumers of legal services make more informed decisions in their own legal matters. Different consumers may see such "direct-to-public" tools as the only practical option for legal assistance or as a precursor or supplement to a legal professional. Such tools may perform a range of legal tasks and functions, assisting people with locating and identifying legal information, answering routine questions, navigating legal processes, analyzing contracts, generating legal documents, and predicting case outcomes. Such services are commonly delivered through websites, apps, or software. As of August 2019, 88 direct-to-public legal tech tools have been identified as operating in Canada.<sup>2</sup>

Direct-to-public legal tech tools are currently subject to regulatory uncertainty or, in many cases, clear prohibition. If the providers are not licensees, they may be engaging in the unauthorized practice of law and may be subject to Law Society prosecution. If

<sup>1</sup> <https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/2019/technologytaskforce-report-en.pdf>

<sup>2</sup> Amy Salyzyn, William Burke, and Angela Lee, "Direct-to-Public Legal Digital Tools in Canada: A Draft Inventory" (2019), online: <https://techlaw.uottawa.ca/direct-public-legal-digital-tools-canada>

licensees are providing the tools, they may be subject to the Law Society's professional conduct rules, by-laws and other rules in ways that have not been clarified.

### *Tech Innovation during COVID-19 Pandemic*

The impacts of the COVID-19 pandemic have accelerated consumer adoption of digital and online tools, as well as the development of innovative tech products. These patterns have been widely observed across many sectors of the economy, and the legal sector is no different. The announcements since March 2020 of tech modernization projects for Ontario's court and tribunal systems illustrate this trend. Most recently, Attorney General Doug Downey announced the Justice Accelerated Strategy, which includes a \$28.5 million investment for a digital case management and dispute resolution system for tribunals and a plan for moving more services online.<sup>3</sup>

Moving the infrastructure of the justice system online (such as through e-filing portals and video hearings) opens more pathways for ITLS tools. For example, platforms that help users prepare legal documents for court filings can now build in the added feature of filing the completed document on the user's behalf, through the court's e-filing portal.<sup>4</sup>

For ITLS developers, the economic impacts of the pandemic have also highlighted opportunities for new services.<sup>5</sup> Innovation can thrive in circumstances where established practices and consumer expectations are disrupted. Ontario can expect to see continued growth in the development of disruptive legal services, which has set the stage for the Law Society to consider its regulatory role.

### *Sandboxes and Regulatory Reform in Other Jurisdictions*

Legal services regulators in other jurisdictions have accelerated reforms that support innovation, including through the use of sandboxes that have attracted a significant number of participants. Momentum for these regulatory reforms is particularly building in the United States. As these other jurisdictions progress in their experiments with ITLS providers, this could change conditions in Ontario's legal sector and increase pressure on the Law Society to act.

In August 2020, the Utah Supreme Court approved the implementation of a regulatory sandbox for non-traditional legal services and providers.<sup>6</sup> A new office within the Supreme Court – the Office of Legal Services Innovation – oversees the approval and

<sup>3</sup> Ontario's Accelerated Justice Strategy, March 11, 2021, <https://news.ontario.ca/en/backgrounder/60642/ontarios-justice-accelerated-strategy>; <https://www.lawtimesnews.com/resources/professional-regulation/ontarios-justice-accelerated-strategy-includes-new-digital-case-management-system-for-tribunals/354031>

<sup>4</sup> <https://www.canadianlawyermag.com/resources/legal-technology/legal-tech-company-releases-toolkit-summarizing-e-filing-requirements-across-canada/332994>

<sup>5</sup> <https://www.ryerson.ca/zone-learning/legal-innovation-zone/news/blogs/2020/07/for-startups-can-crisis-fuel-opportunity/>

<sup>6</sup> <https://iaals.du.edu/blog/utah-supreme-court-makes-history-vote-establish-regulatory-sandbox>

monitoring of sandbox participants.<sup>7</sup> The Utah sandbox had about a dozen applications within a week of announcing its launch.<sup>8</sup> As of April 1, 2021, 22 applications had been approved.<sup>9</sup>

Examples of innovations in the Utah sandbox include a technological solution that provides information about Utah's Clean Slate law and legal advice to people with criminal records,<sup>10</sup> a software platform to guide consumers through the process of completing financial disclosures related to divorce proceedings,<sup>11</sup> and a platform to generate legal documents in contested and uncontested divorce and custody cases, eviction cases, and debt-related property seizure cases.<sup>12</sup>

A working group of the California State Bar Board of Trustees is exploring the development of a regulatory sandbox for the innovation of accessible legal services.<sup>13</sup> In Florida, a Special Committee to Improve the Delivery of Legal Services is considering the regulation of online service providers.<sup>14</sup> In its regulatory reform efforts, the Arizona Supreme Court has changed the state's rules around legal services delivery models in order to spur innovation.<sup>15</sup>

A task force established by the Chicago Bar Association and the Chicago Bar Foundation<sup>16</sup> has prioritized the use of legal technology to improve the ability of courts and lawyers to provide legal services to consumers and to make legal services more affordable and accessible.<sup>17</sup> The task force recommends the creation of an "Approved Legal Technology Provider". Lawyers would be able to collaborate with approved entities in the provision of technology-based legal products and services.<sup>18</sup>

<sup>7</sup> <https://sandbox.utcourts.gov/interested>

<sup>8</sup> <https://legaltechnology.com/us-regulatory-reform-utah-sandbox-leader-john-lund-gives-us-insight-into-the-changes-you-can-expect/>

<sup>9</sup> <https://sandbox.utcourts.gov/approved>

<sup>10</sup> The service will aim to help people with criminal records access their criminal history, understand what it means, learn whether they have been impacted by Utah's Clean Slate law, and whether they might be eligible for petition-based expungement under Utah law.

[https://drive.google.com/file/d/1QGSOQFkxkcfi\\_1ARkpk4yI7rM8ZmFlxA/view](https://drive.google.com/file/d/1QGSOQFkxkcfi_1ARkpk4yI7rM8ZmFlxA/view)

<sup>11</sup> The software walks consumers through the Utah disclosure form and provides basic information and nonlegal advice assistance to enable completion. The software can be used by lawyers or by pro se litigants. The software was developed and is managed by a Utah licensed lawyer employed by the company. [https://drive.google.com/file/d/1ti6HRrHY\\_Qma6Mmu1r6Lsko07kgG3nAx/view](https://drive.google.com/file/d/1ti6HRrHY_Qma6Mmu1r6Lsko07kgG3nAx/view)

<sup>12</sup> The platform will guide consumers through a series of questions to help them complete the forms and proceed pro se. <https://drive.google.com/file/d/1ZC5uv1HqQUeJMAABdkkSYEiwZT9qzK7N/view>

<sup>13</sup> <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Closing-the-Justice-Gap-Working-Group>

<sup>14</sup> <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/>

<sup>15</sup> <http://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf>

<sup>16</sup> <https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/>

<sup>17</sup> <https://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

<sup>18</sup> *Ibid.*

In Canada, the Law Society of British Columbia took an initial step by introducing its “Innovation Sandbox” in the fall of 2020.<sup>19</sup> The BC sandbox had 25 applications in its first two months of operations. As of March 8, 2021, there were 32 applications, five of which have been approved thus far.<sup>20</sup>

### **Benefits of Creating a Regulatory Sandbox**

The advantages of creating a sandbox at this time include enhanced access to justice, better protection for the public and the ability to inform future regulatory policy through detailed evidence about an emerging area of service. In addition to achieving these regulatory objectives, the sandbox can also lead to new opportunities for licensees.

#### *Access to Justice*

Despite concerted efforts across the justice system, access to legal assistance continues to remain elusive for many people with everyday legal problems. Research shows that Canadians do not seek professional assistance for more than 80% of their legal issues.<sup>21</sup> Everyday legal problems can take a considerable toll, including increased stress, poor physical health, emotional issues, and strained relationships with family members.<sup>22</sup> They can also threaten a family’s basic security by potentially leading to a loss of employment or housing.<sup>23</sup>

Regulatory uncertainty inhibits the development of new services that enhance access to justice through innovative legal services that reach new consumers in new ways. Thoughtful developers and investors may not want to operate in an environment where they risk being shut down by the regulator or becoming the test case on unauthorized practice. By removing that uncertainty, the sandbox can stimulate innovation, including attracting ITLS providers who focus on everyday legal problems in areas of high unmet need such as family law, employment, residential tenancies disputes, wills or powers of attorney.<sup>24</sup>

#### *Public Protection*

<sup>19</sup> <https://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox/>

<sup>20</sup> <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/InnovationSandbox-presentation.pdf>

<sup>21</sup> A 2016 study found that 19% of Canadians sought legal advice for the legal problems they identified: Trevor C.W. Farrow et al., “Everyday Legal Problems and the Cost of Justice in Canada: Overview Report” (2016), at p. 9, online: <http://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>

A 2018 study found that 14% of low-income British Columbians sought legal assistance for their everyday legal problem: BC Legal Services Society, “Everyday Legal Problems” (2018), at p. 17, online: [https://lss.bc.ca/sites/default/files/2019-03/lssEverydayLegalProblems07\\_2018.pdf](https://lss.bc.ca/sites/default/files/2019-03/lssEverydayLegalProblems07_2018.pdf).

<sup>22</sup> Farrow et al., *supra* note 21, at p. 12.

<sup>23</sup> *Ibid.*

<sup>24</sup> <http://angusreid.org/will-and-testament/>

- ITLS tools pose unique, novel, and complex risks for the public. The sandbox can help to protect the public from the risks while also providing the benefits of expanded opportunities for obtaining legal assistance. The sandbox will help to ensure ITLS consumers have the same type of safeguards available to clients of licensees: competent and confidential services, recourse when required, and the provision of relevant details enabling informed choices to be made about the providers of the services.

Simply shutting down these services would be neither practical nor desirable in the public interest. Consumers are demanding cheaper and more convenient legal services and technological platforms for delivering them.

### *Informing Regulatory Development*

The sandbox presents an opportunity for the Law Society to obtain detailed evidence about the market interest in the new services, as well as their risks and benefits. Sandbox participants would be required to disclose information about their operations as a condition of participation. This would allow the Law Society to learn what kind of consumer uptake there is for these products, which aspects of these services particularly appeal to consumers, and which aspects are posing challenges. This information will aid future policy development.

The sandbox is also consistent with the Law Society's strategic plan, which states that the Law Society must "periodically confirm the scope of what and how it regulates, particularly in an environment where accessibility of affordable legal services is an issue and significant advances in technology and related innovations are taking place."<sup>25</sup>

Through thoughtful operating criteria and ongoing supervision, the Law Society can also help to shape the delivery of emerging services. The sandbox parameters would give providers targets for the features and protections they would need to build into their products.

### *Impacts on Licensees*

As new service models and tools become increasingly available, they will present innovation opportunities across all legal practice areas and settings, and clients will expect providers to take advantage of these opportunities.

The sandbox's information-gathering and awareness-raising functions can benefit lawyers and paralegals by providing information about how the public is using legal technologies and how these tools are impacting legal practices. This will provide a window into the development of tech tools so that licensees can either develop their own tools or adapt their practices.

<sup>25</sup> <https://lawsocietyontario.azureedge.net/media/lsos/media/about/convocation/convocation-february-2020-priorityplanningcommittee-report.pdf> at p. 7.

Establishing this sandbox will help licensees compete in innovative new markets. Lawyers and paralegals start with the built-in advantages of subject matter expertise and client bases. Whether they choose to develop tech tools themselves or to incorporate other tech tools into their services, the scale and convenience offered by the tools can give firms – especially smaller firms – opportunities to build sustainable practices for a more digital future. The Law Society, in turn, can learn from this experience and better tailor regulation for licensees in these practice settings.

### *Window of Opportunity*

The legal sector has reached an “Uber moment.” As with other sectors and industries, the proliferation of new market entrants and innovative technologies will continue to transform markets and gain users, with or without the regulator’s involvement. Inertia on the Law Society’s part risks allowing ITLS providers to proliferate in Ontario outside of an effective regulatory scheme. The time is right for the Law Society to move forward, ensuring the chance for input and regulatory influence.

## **Risks and Risk Mitigation**

### *The Public*

There is a risk that sandbox participants may fail to deliver quality legal services and therefore harm the public. Such risks could be both significant and novel with the use of tech tools. For example, if an algorithm is inadvertently programmed to make an error, it could affect everyone who uses the tool. Such risks will be mitigated by careful vetting and monitoring participants and by imposing tailored operating conditions. As indicated below in the Overview of the Sandbox Proposal, quality assurance processes and tools will focus on key risks of harm to the public. Please also see the Appendix on Sandbox Operations for details about eligibility, approvals, participation agreements, reporting, and final determinations.

It should be noted that such risks already exist in the market for direct-to-public ITLS. The public will continue to be exposed to them if the Law Society does not act. It will be better to learn about problems with an ITLS tool in a structured sandbox with safeguards as opposed to in the open market. And if some or all of the services prove to be effective, the Law Society will see new pathways forward for effective regulation and quality assurance.

### *The Law Society*

There is a risk that the sandbox will fail to attract a sufficient number of applicants. However, the Task Force has consulted with legal tech entrepreneurs and closely observed developments in other jurisdictions. Many entrepreneurs have confirmed that they would be interested in participating, so long as the sandbox provides a potential pathway to long-term operation. In addition to providing a measure of quality assurance for consumers, sandbox participation will also provide reassurance to developers and

investors who would otherwise be wary of investing resources in an enterprise that could be shut down by the regulator.

The experience of regulatory sandboxes in other jurisdictions also provides some assurance of an interest among legal entrepreneurs to engage with sandboxes. As noted above, sandboxes in Utah and British Columbia have attracted a significant number of participants shortly after launching.

The jurisdictions of Utah and British Columbia are both smaller than Ontario. Moreover, the interest of Ontario government and judicial officers in innovative technologies, along with a healthy legal tech sector, will help to create a climate conducive to participation in the sandbox initiative.

A further risk is that the sandbox will not generate sufficient evidence to support Convocation's decision-making. To mitigate this risk, ongoing reporting requirements will be imposed on participants to generate data that will help to inform decision-making. The parameters will be designed and negotiated with the assistance of a skilled data analyst who can gather, analyze and present data to Convocation in formats that are accessible to policy-makers.

Finally, there is a potential risk that the Law Society could be exposed to legal action or damage to its reputation for approving a tool that fails to deliver quality legal services. The Law Society has statutory protection for good faith actions<sup>26</sup> and there is no known precedent for successful claims in comparable situations. The legal and policy risks of launching the sandbox are likely less than the risks of doing nothing.

## **Overview of the Sandbox Proposal**

This section provides an overview of the proposed sandbox. Please see the Appendix for additional details about sandbox operations.

### *Purpose*

The purpose of the sandbox is to assess and facilitate access to technological innovation in legal service delivery, especially in areas of unmet legal needs. The sandbox will also provide detailed evidence to the Law Society to inform regulatory policy-making.

<sup>26</sup> See *Law Society Act*, s. 9: "No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power."

<https://www.ontario.ca/laws/statute/90I08#BK15>

### *Project Concept*

Interested individuals and entities will apply to provide ITLS tools and programs in Ontario. The sandbox is intended to be exploratory and innovative. For this reason, eligibility at the initial application stage will be open to a wide range of ITLS and providers, including licensees, governments, charities, not-for-profit and for-profit corporations.

Accepted participants will be permitted to serve consumers while complying with risk-based monitoring and reporting requirements during their allotted operating period in the sandbox. Each participant is expected to operate in the sandbox for about two years. At the end of that period, the Law Society will determine whether (and under what conditions) the participant should be permitted to continue providing the services. It is expected that different participants will start their operating period at different times throughout the five-year life of the sandbox.

### *Key Features*

The Law Society will evaluate and monitor sandbox participants in order to protect the public and gain valuable insights into potential regulatory reforms for Convocation's consideration.

The sandbox will introduce novel, tailored quality assurance processes and tools that will need to be continually re-evaluated and honed. At the outset, they will focus on key risks of harm to the public:

- Failure to exercise legal rights or pursue legal recourse as a result of ignorance, error, or poor-quality legal services;
- Purchase of unnecessary or inappropriate legal services;
- Exposure or sale of confidential client data to third parties; and
- Inability to seek redress or recompense from a legal service provider that has failed to provide the service expected or agreed.

Applicants who meet approval criteria will be permitted to participate in the sandbox. The criteria will be designed to serve the following objectives:

- Expand public access to ITLS tools and programs, particularly in areas of high unmet need;
- Explore flexible new approaches to protecting the public from risk of harm when using ITLS tools and programs;
- Collect information about ITLS outcomes that will support evidence-based regulatory policy-making; and
- Foster responsible development of ITLS tools and programs.

Metrics will be developed in order to evaluate the success of individual participants and the pilot as a whole.

### *Pathways to Ongoing Delivery*

Two key pathways will be available for ITLS providers that have completed their participation in the pilot to continue operating in Ontario:

- (a) *Individual permits* - Individual participants that have satisfied their performance objectives at the conclusion of their sandbox period may be given permission to continue operating in Ontario on an ongoing basis, notwithstanding their continued non-compliance with certain Law Society standards that apply to lawyer and paralegal licensees. The Law Society's permit could continue to impose any conditions deemed necessary based on the participant's experience in the sandbox.
- (b) *Annual reviews of regulatory standards* - Annually, for the duration of the sandbox pilot project, the Law Society will formally review and potentially adjust any rules, by-laws, or other regulatory standards that participants have demonstrated can be satisfied in alternative ways. If Convocation approves amendments of general application, certain participants' permits (obtained through pathway (a)) might be obsolete, as their operations would now be compliant with the Law Society's amended regulatory framework.

### *Duration*

The sandbox will be established as a five-year pilot project as opposed to a permanent program. A five-year window will enable the Law Society to inform itself for longer-term and broader regulatory decision-making and to observe trends regarding the capabilities of ITLS and consumer interest.

### *Legal Framework*

The sandbox will operate pursuant to a new category of permitted exception from licensure under the Law Society's By-Laws. The *Law Society Act* permits the Law Society to use its by-laws to deem certain activities not to be the practice of law or the provision of legal services, as well as to identify certain classes of persons who may provide legal services without a licence.<sup>27</sup> This authority permits the Law Society to establish a comprehensive set of circumstances and conditions in its By-Laws under

<sup>27</sup> See *Law Society Act*, paragraph 5 of s.1 (8): "For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services: A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws." See also paragraph 3.1 of s. 62 (0.1): "Convocation may make by-laws, for the purposes of paragraph 5 of subsection 1 (8), prescribing persons or classes of persons who shall be deemed not to be practising law or providing legal services and the circumstances in which each such person or class of persons shall be deemed not to be practising law or providing legal services;" <https://www.ontario.ca/laws/statute/90I08#BK184>

which an approved sandbox participant (an individual or an entity) may provide legal services to the public. Proposed amendments to the By-Laws are found at **Tab 1.1**.

## **Resources**

### *Staffing*

The sandbox will begin with three staff: a manager, data analyst, and program administrator. The manager will be a full-time position reporting jointly to the Executive Directors of Policy and Professional Development & Competence. The other two positions will be filled by contract and will report to the manager.

The manager will have lead responsibility for policy and program development, outreach and communications, evaluation of applicants, negotiation of participation agreements, monitoring of participants, analysis and reports to Convocation. The data analyst will establish data reporting and protection protocols, monitor compliance with data reporting and protection, and assist with analysis and reporting. The administrator will manage routine communications with applicants, participants and the advisory council, coordinate media requests, manage records, and publish decisions, in addition to scheduling and general administrative work.

### *Advisory Council*

A volunteer advisory council of external experts will be established to help steer the sandbox to meet its objectives, by providing advice and assisting in reviewing applications and evaluating participants. Advisory council members would represent a range of expertise, including: legal technology and innovation; legal regulation and professional ethics; priority legal practice areas such as family law; consumer protection and advocacy; economics; regulatory sandboxes and government or judicial administration.

Advisory bodies are common for regulatory sandboxes. They allow the regulator to tap into skills and perspectives that it lacks in-house. They also give the public and participants confidence that the regulator will be open to exploring new ideas, guided by leading independent experts.

### *Program Costs*

There will be one-time start-up costs associated with implementing and launching the sandbox, followed by ongoing operating costs, the bulk of which will relate to compensation for the three positions. The table below contains a preliminary cost projection, on the understanding that specific operational details are still to be developed<sup>28</sup>. The projected costs include inflationary increases of approximately 2% in Year 2.

<sup>28</sup> Spending for Year 1 is expected to start around the midpoint of 2021. The 2021 budget includes \$200,000 to support the sandbox. The estimated budget requirements for 2022 are preliminary, and need

Expenses	Basis	Annual Budget Year 1 (\$)*	Annual Budget Year 2 (\$)*
Staffing Salaries & Benefits	Based on the hiring of the following positions: <ul style="list-style-type: none"> <li>• Manager (full time)</li> <li>• Administrator (full-time)</li> </ul>	270,000	276,000
Data Analyst	Part-time contract or consulting role	100,000	102,000
Staffing Operating Expenses	Based on \$15,000 per person in the first year for technology needs, office supplies, professional development etc. and \$10,000 per person in succeeding years.	45,000	30,000
Advisory Council	Reimbursement of expenses (one or two onsite meetings in the year) and costs of engagement.	20,000	20,500
Contingency	Potential legal, technical or business expertise required from external service providers.	Funded from operational contingency, if required. See below.	
<b>Total</b>		<b>\$435,000</b>	<b>\$428,500</b>

*\*Would be prorated for portion of year of operations*

### *Funding Sources*

Initially, the sandbox will be funded by licensee annual fees. Ideally, ongoing operations can ultimately be funded on a cost recovery basis, recognizing however that unduly high fees could deter applicants, especially those with limited access to capital, thereby undermining the sandbox's overall potential.<sup>29</sup> Tiered fee structures may be needed, including separate fee categories for not-for-profit providers and small or early-stage companies.

Additional funding will be sought from external sources, which could offset participant fee shortfalls or help to minimize participant fees. Exploratory conversations have taken place but formal fundraising cannot take place until Convocation's approval has been provided and publicly communicated. Potential funders include government

to be revisited once further information is available. Funding requirements for 2023 and onwards will be assessed as the sandbox evolves. As the sandbox initiative is at the conceptual stage, it is not possible to project possible additional costs of internal or external resources that may be needed to support the project.

<sup>29</sup> The legal innovation sandboxes in BC and Utah do not currently charge fees to applicants or participants, although the Supreme Court of Utah has expressly given Utah's program the power to do so. It is first working on learning more about the profiles of participants before determining fee structures.

contributions, grants from funding organizations, and collaboration or resource-sharing with other regulators.

### Implementation and Launch

If Convocation approves the pilot, an early priority will be to recruit sandbox staff and advisory council members. These individuals will be centrally involved in completing the pre-launch implementation work. Staff will keep the Task Force updated on implementation progress.

Timing 2021	Milestone
March-April	<ul style="list-style-type: none"> <li>• Convocation approval in principle of sandbox proposal and by-law amendments</li> <li>• Preliminary outreach to funding sources</li> </ul>
May - July	<ul style="list-style-type: none"> <li>• Outreach to government and regulators</li> <li>• Recruit sandbox manager</li> <li>• Develop communications plan and webpage</li> </ul>
June -Sept	<ul style="list-style-type: none"> <li>• Recruit advisory council, data analyst, and program administrator</li> <li>• Develop pre-launch criteria, protocols, processes, strategies, and communications</li> </ul>
Sept	<ul style="list-style-type: none"> <li>• Organize launch</li> <li>• Communicate with potential applicants</li> </ul>
Oct	<ul style="list-style-type: none"> <li>• Launch</li> </ul>

### Conclusion

The Law Society has an opportunity to play a proactive, forward thinking role in developing a regulatory framework for ITLS. The technologies will continue to develop, but the Law Society may lose the opportunity to have an influence if it does not act quickly. Through the sandbox pilot, the Law Society can establish a presence in the ITLS field while building evidence to inform longer term decision-making about future regulatory policies. The Law Society is well positioned to assess the potential benefits of innovative technologies, minimize risks of harm, and identify new pathways for regulation in the public interest. Entering this arena represents an imperative in regulatory advancement and leadership.

## **Appendix: Sandbox Operations**

Operating the sandbox will involve the following functions:

- Communicating with potential applicants and other stakeholders;
- Fundraising and liaising with governments and other regulators;
- Reviewing and approving applications;
- Drafting participation agreements for eligible applicants;
- Publishing application decisions;
- Monitoring and auditing participants;
- Evaluating data received from participants and users, and potentially gathering data in other ways such as conducting surveys or focus groups or consultation with courts;
- Making final determinations following a participant's sandbox period;
- Publicly reporting participant evaluation outcomes; and
- Reporting annually to Convocation about overall sandbox outcomes and making recommendations for Convocation to review and amend any rules, by-laws, or other regulatory standards that can demonstrably be satisfied in alternative ways.

### Communications

A branding and communications strategy will be developed for the sandbox. This will address how to present the sandbox to potential applicants, the public, licensees and other stakeholders.

One of the key pre-launch outreach functions will be to identify target sandbox participants, as well as target users of participants' ITLS tools and programs.

### Eligibility

Any person or entity that is prevented by current regulations from operating an ITLS tool or program may apply to the sandbox.

The sandbox is intended to be exploratory, innovative, and educational. For this reason, eligibility at the initial application stage will be open to the widest possible range of ITLS tools and programs. While applicants' tools or programs must have as a central feature the innovative delivery of legal services via technology, there will not be restrictions on the kinds of legal tasks and functions performed. The approval and evaluation processes serve as safeguards to ensure that only participants who do not pose unacceptable risks of harm to the public will be permitted to operate. Applicants must have obtained all applicable permissions, such as business permits, to operate their ITLS tool or program in Ontario.

Some applicants may be given priority, such as those that are focused on expanding access to justice in areas of law with high unmet legal needs.

### Intake, Application Review and Approval

Successful applicants will be permitted to join the sandbox at any point during the five-year pilot period, rather than at certain fixed intake periods. This rolling admission offers participants flexibility to apply at whatever stage in their development works best for them, with the caveat that applicants cannot join so late in the pilot period that there is insufficient time to monitor and assess their service.

The following process will be used to review and approve participants' applications:

- Sandbox staff receive and process applications, including following up with applicants to identify gaps or concerns.
- The advisory council reviews completed applications and prepares a recommendation to approve, reject, or return the application for further information.
- After reviewing the advisory council's recommendation, the sandbox manager decides to approve, reject, or return the application.
- Applicants may request a review of a decision to reject an application, or of conditions imposed in a decision to approve an application; review decisions are made by a Law Society Executive Director.

Application approval decisions will be made with reference to a detailed set of approval criteria, which will be publicly available. The following are examples of topics that the detailed criteria will include:

- Viability (whether the applicant or its tool demonstrates capability of delivering legal services over the duration of sandbox participation; whether it is at a sufficient stage of development to launch);
- Consumer benefit (whether the tool offers a good prospect of identifiable benefit to users (either directly or via increased competition) and whether it poses likely detrimental impacts to users or to the legal system);
- Licensee involvement (whether the tool has involved licensed Ontario lawyers or paralegals in its development, delivery, or both);
- Insurance (whether the applicant carries appropriate insurance commensurate to the risks involved in the delivery of its services, e.g. errors and omissions insurance, product liability insurance, general commercial liability insurance, and/or cyber insurance);
- Quality assurance (whether the applicant has appropriate mechanisms in place for continuously assuring and enhancing the tool's technical quality; whether persons involved with the operation of the tool receive appropriate training and support); and
- Exit strategy (whether the applicant has adequate plans for protecting users' rights and interests in the event of either the tool or the entity itself ceasing operation due to business or regulatory reasons).

Approval criteria will be designed to be flexible and responsive to novel proposals. Operating conditions can be imposed to address certain weaknesses in an applicant's overall compliance with the criteria. Approval criteria should focus on the outcomes that ITLS tools generate, though in some circumstances it will also be appropriate to focus on those tools' processes. They will aim to measure tools in terms of both risks and benefits so that a balancing exercise can be done.

Approval decisions will aim to ensure that minimum viability and public protection requirements are met, while recognizing that some degree of uncertainty is acceptable in this environment, and indeed is beneficial for the sandbox's testing, evaluation, and learning functions. Approval decisions at this entry stage will aim to minimally impair innovation and public access to legal services. Insurance requirements, consumer communication and disclosure requirements, and compliance with other relevant law (such as privacy legislation) will also serve as concurrent public protection safeguards.

The sandbox office will publish a written decision for each completed application that it receives.

### Participation Agreements

If approved to join the sandbox, participants will need to enter into a participation agreement with the Law Society, which will set out the conditions under which the participant can provide legal services. Conditions will include:

- protocols for data collection and data governance;
- requirements for participants to communicate certain information to users and the public;
- requirements for participants to address user complaints;
- maintenance of approval conditions, e.g., carrying insurance; and
- reporting and auditing requirements.

These approvals and agreements will bring participants under the exception to be created in the By-Laws that will permit participants to provide legal services. They will preclude the Law Society from exercising its "unauthorized practice" enforcement powers as long as a participant abides by the terms of its approval and agreement.

Each approved participant will be given an individualized operating period in the sandbox that best meets the needs of both the Law Society and the participant. As a general rule, participants would be given an operating period of two years, with options to extend on mutual consent. Participants need sufficient time to effectively demonstrate their viability. At the end of a participant's operating period in the sandbox, the Law Society will need to decide whether the participant can continue operating under an ongoing permit.

A process for suspension or revocation of an approval will be established, where serious problems have arisen during a participant's operating period in the sandbox. Suspension or revocation could be based on non-compliance with the participant's

approval conditions or participation agreement, as a result of a complaint resolution process, or as a result of the entity ceasing operations.

### Reporting on Data and Outcomes

Each participant would have individually tailored reporting requirements. The resulting data would be evaluated based on the individualized risks of the participant and would inform decision-making about the participant. Examples of information that participants may be required to report include:

- Consumer demographics;
- Consumer interest and uptake;
- Performance outcomes and quality of service;
- Legal process outcomes;
- Complaint resolution outcomes and service feedback;
- Pricing information;
- Financial and other business outcomes;
- Marketing models; and
- Viability and sustainability of the tool.

Policies will also be developed for the Law Society's own use and protection of data shared by sandbox participants. Such policies would likely include:

- A requirement that participants anonymize any data shared with the Law Society;
- A guarantee that the Law Society would keep data provided by sandbox participants confidential, and not share it with any other organization, except for certain legal reasons, or to publicly report certain sandbox outcomes
- A policy governing who within the Law Society can access the data and for what purposes; and
- A policy for maintaining and ultimately destroying shared data.

Participants will also be required to communicate certain information to users and the public. This information could include, for example:

- Information about the sandbox program and the tool's permission to operate within it, including any conditions imposed;
- Informed consent disclosures, acknowledging that the tool or service:
  - is not being provided by an Ontario licensee,
  - carries liability insurance, and/or
  - has certain limitations in terms of the tasks or functions that it can perform, as applicable; and
- Information about the applicable complaint resolution processes and feedback channels available through the participant and/or the Law Society.

There may also be a need for escalation protocols for users who are unsatisfied with the participant's process.

A protocol will also be established for users who wish to provide additional feedback about the tool, the entity, or the sandbox pilot.

#### *Making Final Determinations about Participants*

Individual participants that have satisfied their performance objectives at the conclusion of their sandbox period may be given permission to continue operating in Ontario on an ongoing basis, notwithstanding their continued non-compliance with certain Law Society standards that apply to lawyer and paralegal licensees. The permit issued by the Law Society could continue to impose any conditions deemed necessary based on the participant's experience in the sandbox.

The decisions about participants will be made public to support transparency and to educate the public, the professions, and legal innovators about the benefits, risks, and other developments in this emerging field.

#### *Dealing with Non-Participants*

A strategy will be developed with respect to entities that do not apply to participate in the pilot project but conduct similar operations to sandbox participants, in contravention of Law Society rules and by-laws. Some of these entities may operate outside of the Law Society's traditional purview, and some may raise challenging issues about whether they provide legal services as defined by the *Law Society Act*.

Prosecution is only one among several tools available to the Law Society for these circumstances, and has a variety of practical and strategic limitations. A staged approach will be coordinated with the Law Society's Professional Regulation Division, with the aim of incentivizing non-participants to apply for participation in the sandbox. This approach will accord with the Law Society's current approach to addressing unauthorized practice complaints.

Tab 1.1

**LAW SOCIETY OF ONTARIO**  
**BY-LAWS MADE UNDER**  
**SUBSECTIONS 62 (0.1) AND (1) OF THE**  
**LAW SOCIETY ACT**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021

MOVED BY

SECONDED BY

THAT Convocation make the following by-law:

**BY-LAW 16**

**INNOVATIVE TECHNOLOGICAL LEGAL SERVICES**

1. For the purposes of the Act, a person, including an individual, corporation or other entity, who is an approved participant in the Society's innovative technological legal services ("ITLS") sandbox program, or who has received a permit from the Society to provide an ITLS, and, in each case, is operating an ITLS tool or program in compliance with the Society's requirements, shall be deemed not to be practising law or providing legal services with respect to the operation of that ITLS tool or program.

## Onglet 1.1

**BARREAU DE L'ONTARIO****RÈGLEMENTS ADMINISTRATIFS PRIS EN APPLICATION DES  
PARAGRAPHERS 62 (0.1) ET (1) DE LA *LOI SUR LE BARREAU***

MOTION QUI SERA PROPOSÉE LORS DE LA RÉUNION DU CONSEIL LE 22 OCTOBRE 2021

APPUYÉE PAR

Il est proposé que le Conseil adopte le règlement administratif suivant :

**RÈGLEMENT ADMINISTRATIF N° 16****SERVICES JURIDIQUES TECHNOLOGIQUES  
NOVATEURS**

1. Pour l'application de la Loi, une personne, y compris un particulier, une société ou une autre entité qui a reçu l'autorisation de participer au programme de bac à sable du Barreau pour la prestation de services juridiques technologiques novateurs (SJTN), ou qui a reçu un permis du Barreau pour fournir des SJTN et qui, dans chacun de ces cas, exploite un outil ou un programme de SJTN conformément aux exigences du Barreau, est réputée ne pas pratiquer le droit ou ne pas fournir des services juridiques en exploitant cet outil ou ce programme de SJTN.

**LAW SOCIETY OF ONTARIO**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021

MOVED BY:           Jean-Jacques Desgranges

SECONDED BY:      Trevor Parry

THAT Convocation approve the consent agenda set out at Tab 2 of the Convocation Materials.

DRAFT

## MINUTES OF CONVOCATION

Thursday, 25<sup>th</sup> February, 2021  
9:00 a.m.  
Via Videoconference

## PRESENT:

The Treasurer (Teresa Donnelly), Adourian, Alford, Armstrong, Banack, Banning, Braithwaite, Brown, Burd, Charette, Chiummiento, Conway, Cooper, Corbiere, Corsetti, Desgranges, Epstein, Esquega, Fagan, Falconer, Ferrier, Goldstein, Graham, Groia, Horgan, Horvat, Klippenstein, Lalji, Lau, Lean, Lesage, Lewis, Lippa, Lockhart, Lomazzo, Lyon, Marshall, Merali, Minor, Murchie, Murray, Painchaud, Parry, Pawlitza, Pineda, Poliacik, Pollock, Prill, Rosenthal, Sellers, Sheff, Shi, Shin Doi, Shortreed, Spurgeon, Strosberg, Troister, Walker, Wellman, Wilkes, Wilkinson and N. Wright.

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLICTREASURER'S REMARKS

The Treasurer welcomed everyone to Convocation.

The Treasurer recognized that Convocation would normally be meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She also acknowledges the Haudenosaunee. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Métis and Inuit peoples and thanks the First Nations people who lived and live in these lands for sharing them with us in peace.

The Treasurer welcomed Catherine Banning who was appointed a lay bencher on February 18, 2021.

LL.D. CEREMONY – CATHY CROWE

The Treasurer introduced Cathy Crowe, the candidate for the degree of Doctor of Laws, *honoris causa*.

Ms. Lalji read the citation.

The Treasurer admitted Ms. Crowe to the degree of Doctor of Laws, *honoris causa*.

Ms. Crowe addressed Convocation.

The Treasurer thanked Ms. Crowe for honouring Convocation with her presence.

#### LAW SOCIETY FOUNDATION REPORT

The Treasurer introduced Ian Hull, Chair of the Law Society Foundation Board of Trustees.

Mr. Hull provided Convocation with a report on the work of the Foundation.

#### TREASURER'S REMARKS

The Treasurer addressed the protocol for Convocation via Zoom videoconference.

The Treasurer congratulated former bencher Philip Epstein, C.M., O.Ont, Q.C., LL.D. who was recently inducted into the Order of Canada.

The Treasurer congratulated bencher Nicholas Wright and his wife on the birth of their daughter this week.

The Treasurer updated Convocation on her outreach initiatives.

The Treasurer advised Convocation that she delivered greetings on behalf of the Law Society at the swearing in of The Honourable Faye E. McWatt, Associate Chief Justice of the Superior Court of Justice.

The Treasurer noted her participation in a CPD program hosted by LawPRO and the Toronto Lawyers Association (TLA) on February 5, 2021 focused on mental health and the impact of the pandemic on the professions.

The Treasurer noted upcoming events:

- Mental Health Awareness Week, May 3 to 9, 2021 and the Mental Health Summit, May 19 and 20, 2021
- Black History Month Event, February 25, 2021
- International Women's Day Celebrations, March 4, 2021
- International Francophonie Day Event, March 23, 2021

The Treasurer noted that one year ago, the COVID-19 pandemic began and required various changes and pivots to adjust to these circumstances. The Treasurer thanked benchers and staff for their work throughout this period.

The Treasurer announced the nomination of bencher Etienne Esquega for election to the LawPRO Board of Directors to replace Julia Shin Doi, who resigned at her own request.

The Treasurer noted the tragic death of lawyer Scott Rosen, and expressed condolences to the Rosen family.

The Treasurer advised that two items on the agenda will not be dealt with today:

- Priority Planning Committee Report – to be referred back to Committee;
- Lewis/Lesage Notice of Motion – with the agreement of Ms. Lewis and Mr. Lesage, to be referred to the Audit and Finance Committee.

The Treasurer referred benchers to several reports for information that appear in the Convocation agenda.

### POINT OF PRIVILEGE

Mr. Lyon expressed concern about the volume of materials for February Convocation.

The Treasurer noted the concern and her intention to look into the matter.

### MOTION – CONSENT AGENDA – Tab 1

It was moved by Ms. Murchie, seconded by Mr. Poliacik, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Mr. Goldstein requested that the Human Rights Monitoring Group Report be removed from the Consent Agenda.

The remaining items on the Consent Agenda carried.

### Tab 1.1 – DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of November 27, 2020 and February 9, 2021 were confirmed.

### Tab 1.2 – MOTIONS

#### Re: Tab 1.2.1: Annual General Meeting

THAT Convocation approve that the Law Society's Annual General Meeting take place on Wednesday May 12, 2021 at 5:15 p.m. by electronic means, in accordance with Section 5 of By-Law 2 [Corporate Provisions].

Carried

#### Re: Tab 1.2.2: Appointments

THAT Ryan Alford be removed from the Audit and Finance Committee at his own request.

THAT Jack Braithwaite be appointed to the Law Foundation of Ontario Board of Trustees, to replace Etienne Esquega who has resigned at his own request.

Carried

Re: Tab 1.2.3: Law Society Tribunal Appointment

THAT D. Jared Brown be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 28, 2021.

Carried

SECRETARY'S REPORT

Re: Amendments to By-Law 2 Respecting the Law Society's Annual General Meeting

That Convocation make amendments to By-Law 2 [Corporate Provisions] as set out in the motion at Tab 1.4.1 to facilitate electronic access and participation for the Law Society's Annual General Meeting.

Carried

JOINT REPORT OF THE PARALEGAL STANDING COMMITTEE AND PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Re: Update on Pandemic Response Measures: Licensing Examinations and Articling Term

That Convocation adopt the recommendations by the Professional Development and Competence, and Paralegal Standing Committees to extend the following pandemic related measures as follows:

- a) The online delivery model for licensing examinations will continue for the next 3 years, until the end of the 2023-2024 licensing cycle; and
- b) The reduction in the minimum required length of articling placements, from 10 months to 8 months, will continue for the 2021-2022 licensing cycle.

Carried

HUMAN RIGHTS MONITORING GROUP REPORT

Re: Letter of Intervention on Behalf of Zhang Zhan

It was moved by Ms. Walker, seconded by Mr. Poliacik, that Convocation approve the letters and public statements in the following case: Zhang Zhan – China – letter of intervention and public statement presented at Tab 1.3.1 and 1.3.2.

Carried

ROLL-CALL VOTE

Adourian	For
Alford	For
Banning	For
Braithwaite	For
Brown	For

Burd	For
Chiummiento	For
Cooper	For
Corbiere	For
Corsetti	For
Desgranges	For
Epstein	Abstain
Esquega	For
Fagan	Abstain
Falconer	For
Goldstein	Abstain
Graham	For
Groia	For
Horgan	For
Horvat	For
Klippenstein	For
Lalji	For
Lau	Abstain
Lean	For
Lesage	For
Lewis	For
Lippa	For
Lockhart	For
Lomazzo	For
Lyon	Abstain
Marshall	For
Murchie	For
Painchaud	For
Pineda	For
Poliacik	For
Pollock	For
Prill	For
Rosenthal	For
Sellers	For
Sheff	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For
Wright	For

Vote: 44 For; 6 Abstentions

Mr. Fagan moved that the Equity and Indigenous Affairs Committee Report be moved from the in camera portion of Convocation to the public portion of Convocation.

The Treasurer advised the Convocation would deal with this matter in camera.

IN PUBLICPOINT OF PRIVILEGE

Mr. Lyon raised an issue about his request for information on costs of an investigation under the Benchers Code of Conduct, which information has yet to be provided.

The Treasurer ruled that this was not a point of privilege but relates to a confidential matter and would not be discussed.

FINANCIAL UPDATE

Mr. Groia provided an update on the Law Society's financial situation for information.

REPORT OF THE CHIEF EXECUTIVE OFFICER

Ms. Miles presented the Report for information.

LAW STUDENTS' SOCIETY OF ONTARIO (LSSO) MOTIONS FROM THE 2020 ANNUAL GENERAL MEETING

The Treasurer introduced the report, and referred to the two questions to be answered by Convocation, based on the LSSO motions, as set out in the Report, as follows:

## Question 1

Should the matter of a Law Student or Licensing Candidate being a permanent member of the Professional Development and Competence Committee or attending the Committee by way of permanent invitation be further considered by the Law Society at this time?

## Question 2

Should the matter of candidates in the licensing process being permitted to vote in Benchers Elections be further considered by the Law Society at this time?

After considering the motions, in answer to Question 1, Convocation answered in the negative.

ROLL-CALL VOTE

Adourian	Against
Alford	Against
Banning	Against
Braithwaite	Against
Brown	Against

Burd	Against
Charette	Against
Chiummiento	Against
Cooper	For
Corbiere	For
Corsetti	Against
Desgranges	Against
Epstein	For
Esquega	For
Fagan	Against
Falconer	For
Goldstein	Against
Graham	Against
Groia	For
Horgan	Against
Horvat	For
Klippenstein	Against
Lalji	Against
Lean	Against
Lesage	Against
Lewis	For
Lippa	Against
Lockhart	For
Lomazzo	Against
Lyon	Against
Marshall	Against
Murchie	For
Painchaud	Against
Parry	Against
Pineda	Against
Poliacik	Against
Pollock	Against
Prill	Against
Rosenthal	For
Sellers	For
Sheff	Against
Shi	Against
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	Against
Walker	For
Wellman	Against
Wilkes	Against
Wilkinson	For
Wright	Against

Vote: 17 For; 34 Against

In answer to Question 2, Convocation answered in the negative.

ROLL-CALL VOTE

Adourian	Against
Alford	Against
Banning	Against
Braithwaite	Against
Brown	Against
Burd	Against
Charette	Against
Chiumminto	Against
Cooper	For
Corbiere	For
Corsetti	Against
Desgranges	Against
Epstein	Against
Esquega	For
Fagan	Against
Falconer	For
Goldstein	Against
Graham	Against
Groia	For
Horgan	Against
Horvat	For
Klippenstein	Against
Lalji	Against
Lean	Against
Lesage	Against
Lewis	For
Lippa	Against
Lockhart	For
Lomazzo	Against
Lyon	Against
Marshall	Against
Murchie	For
Painchaud	Against
Parry	Against
Pineda	Against
Poliacik	Against
Pollock	Against
Prill	Against
Rosenthal	For
Sellers	For
Sheff	Against
Shi	Against
Shin Doi	For
Shortreed	For
Spurgeon	For
Troister	Against
Walker	For
Wellman	Against

Wilkes           Against  
 Wilkinson       Against  
 Wright           Against

Vote: 15 For; 36 Against

#### PARALEGAL STANDING COMMITTEE REPORT

Mr. Burd presented the Report.

##### Re: Expansion of Eligibility for the Lincoln Alexander Award

It was moved by Mr. Burd, seconded by Mr. Chiumminto, that Convocation expand the eligibility for the Lincoln Alexander Award to include paralegal licensees, effective immediately.

Carried

##### Re: Paralegal Criminal Scope – Non-Offence Summary Proceedings

It was moved by Mr. Burd, seconded by Mr. Chiumminto, that Convocation approve an amendment to By-Law 4 subsection 6(1)(c)(i) to remove the words “in respect of an offence” to allow certain non-offence summary proceedings to fall within the scope of the section as set out at Tab 5.2.1.

Carried

#### PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

##### Re: Amendments to By-Laws 4, 7 and 14

It was moved by Ms. Shortreed, seconded by Mr. Wright, that Convocation approve the motion at Tab 6.1.1, which amends By-Laws 4, 7, and 14, in order to implement the strategic change items detailed in this report.

Carried

##### *For information*

- Update on Civil Rules Motion from the 2020 Annual General Meeting
- Professional Regulation Division 2020 End of Year Report

#### NOTICE OF MOTION

Ms. Shi moved, seconded by Mr. Fagan, THAT:

##### WHEREAS

- (1) Since the passage of The Law of the People’s Republic of China for Safeguarding National Security in the Hong Kong Special Administrative Region (the “National Security Law”), Hong Kong government has used it to arrest and charge dissenters. Those targeted are

mostly activists and young people who did no more than to participate in expressing views on how Hong Kong should be governed.

The latest round of arresting 55 activists was condemned around the world, including Canada. (Tab 1)

Respected Chinese human rights artist Ai Weiwei made a film about the struggle of Hongkongers, including teenagers, for freedom and the price that they have paid for it. (Tab 2)

Amnesty International raised its concern about this Law. (Tab 3)

- (2) On January 14, 2021, Hong Kong passed another grim milestone. A lawyer has been arrested with others for having assisted protesters seeking universal suffrage (Tab 4)
- (3) The Right Honourable Beverley McLachlin, former Chief Justice of Canada, is a current overseas non-permanent judge of Hong Kong Court of Final Appeal and therefore part of the system of enforcement of the National Security Law. (Tab 5)
- (4) Unlike Canada, Hong Kong does not enjoy any constitutional guarantee of fundamental rights and freedoms that the judiciary can safeguard by striking down any laws that are in breach of such rights and freedoms.
- (5) Instead, this National Security Law specifically stipulates in *Article 65 that*

*The power of interpretation of this law shall be vested in the Standing Committee of the National People's Congress (of the People's Republic of China)* (Tab 6)

- (6) There is increasing concern that the Communist rulers of China use foreign judges in the Hong Kong Court of Final Appeal as a fig leaf to create the illusion of legitimacy to an increasingly oppressive regime and its latest and most blatant oppression of the fundamental freedoms of people of Hong Kong.
- (7) Noted UK barrister David Perry QC has withdrawn from Hong Kong government's team that will prosecute Martin Lee QC, a noted Hong Kong barrister and the founder of Hong Kong Democratic Party. Mr. Lee was arrested for having participated in the well-known demonstration in Hong Kong which was attended by over 1 million Hongkongers last year. (Tab 7, 8)

UK has commenced discussion on whether UK judges should continue their membership of said Court. (Tab 9)

- (8) It is time that LSO and the former Chief Justice address such concern.
- (9) Not only is it a moral imperative for LSO to take a stand with respect to one of the highest and most respected legal officers of Canada and her continuing membership in an oppressive and brutal regime, but it is also difficult to justify the LSO's having a Human Rights Monitoring Group advocating human rights to foreigners, while remaining silent as Canada's own former Chief Justice sits on a court whose mandate from a brutal regime is to enforce a law as interpreted by the Communist government of China, a law that is antithetical to all that Canada stands for, and one that punishes a lawyer for doing his or her job in supporting fundamental freedoms.

THEREFORE BE IT RESOLVED that Convocation direct LSO to write to the Right Honourable Beverly McLachlin forthwith, and request that she resign her position at the Hong Kong Court of Final Appeal immediately.

Links to Tabs referred to in Shi/Fagan Notice of Motion

Link to Tab 1 information:

<https://www.ctvnews.ca/world/canada-joins-other-nations-in-condemning-hong-kong-mass-arrests-1.5260744>

Link to Tab 2 information:

<https://www.artnews.com/art-news/artists/ai-weiwei-cockroach-hong-kong-protests-review-1234579945/>

Link to Tab 3 information:

<https://www.amnesty.org/en/latest/news/2020/07/hong-kong-national-security-law-10-things-you-need-to-know/>

Link to Tab 4 information:

<https://globalnews.ca/news/7575459/hong-kong-lawyer-arrested/>

Link to Tab 5 information:

[https://www.hkcfca.hk/en/about/who/judges/nps/index\\_id\\_61.html](https://www.hkcfca.hk/en/about/who/judges/nps/index_id_61.html)

Link to Tab 6 information:

[https://www.elegislation.gov.hk/doc/hk/a406/eng\\_translation\\_\(a406\)\\_en.pdf](https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_(a406)_en.pdf)

Link to Tab 7 information:

[https://www.spectator.co.uk/article/the-legal-profession-s-troubling-relationship-with-china?irclidid=z8Mxsn2k%3AxyLWKAwUx0Mo3b3UkEWUbxNMSqsyA0&utm\\_source=27795&utm\\_medium=planit\\_affiliates&irgwc=1](https://www.spectator.co.uk/article/the-legal-profession-s-troubling-relationship-with-china?irclidid=z8Mxsn2k%3AxyLWKAwUx0Mo3b3UkEWUbxNMSqsyA0&utm_source=27795&utm_medium=planit_affiliates&irgwc=1)

Link to Tab 8 information:

<https://www.washingtonpost.com/opinions/2020/04/21/i-was-arrested-hong-kong-its-part-chinas-larger-plan/>

Link to Tab 9 information:

<https://www.reuters.com/article/hongkong-britain/uk-considers-whether-to-remove-british-judges-from-hong-kong-court-idINKBN28405V>

Mr. Falconer moved, seconded by Mr Goldstein, that the motion be tabled.

Lost

ROLL-CALL VOTE

Adourian	Against
Alford	Against
Banning	Against
Braithwaite	For

Brown	Against
Burd	For
Charette	For
Chiummiento	For
Cooper	Against
Corbiere	For
Corsetti	Against
Desgranges	Against
Epstein	For
Esquega	For
Fagan	Against
Falconer	For
Goldstein	For
Graham	For
Groia	Against
Horgan	Against
Horvat	Against
Klippenstein	Against
Lalji	Against
Lau	For
Lean	Against
Lesage	Against
Lewis	For
Lippa	Against
Lomazzo	Against
Marshall	Against
Murchie	Against
Painchaud	Against
Pineda	Against
Poliacik	Against
Pollock	Against
Prill	Against
Rosenthal	Against
Sellers	Against
Sheff	For
Shi	Against
Shin Doi	For
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	For
Wellman	Against
Wilkes	Against
Wilkinson	Against
Wright	Against

Vote: 15 For; 34 Against

The main motion was put to a vote and was lost.

ROLL-CALL VOTE

Adourian	For
Alford	For
Banning	Against
Braithwaite	Against
Brown	For
Burd	Against
Charette	Against
Chiumminto	Against
Cooper	Against
Corbiere	Against
Corsetti	Against
Desgranges	For
Epstein	Against
Esquega	Against
Fagan	For
Falconer	Against
Goldstein	Abstain
Graham	For
Groia	Against
Horgan	For
Horvat	Against
Klippenstein	For
Lalji	Against
Lau	Against
Lean	For
Lesage	For
Lewis	Abstain
Lippa	Abstain
Lomazzo	Against
Marshall	For
Murchie	Against
Painchaud	Against
Pineda	For
Poliacik	For
Pollock	For
Prill	For
Rosenthal	Against
Sellers	Against
Sheff	Against
Shi	For
Shin Doi	Against
Shortreed	Against
Spurgeon	Against
Troister	Against
Walker	Against
Wellman	Against
Wilkes	Abstain
Wilkinson	Against
Wright	For

Vote: 17 For; 28 Against; 4 Abstain

IN PUBLICREPORTS FOR INFORMATION ONLYPRIORITY PLANNING COMMITTEE REPORT

- Update on 2019-2023 Strategic Plan Implementation

AUDIT & FINANCE COMMITTEE REPORT

- LawPRO Financial Statements for the Nine Months Ended September 30, 2020
- LIRN Inc. Financial Statements for the Nine Months Ended September 30, 2020

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

- Professional Development & Competence Division 2020 Program and Resource Report

TRIBUNAL COMMITTEE REPORT

- Law Society Tribunal Quarterly Statistics from July 1, 2020 to September 30, 2020

UPDATE FROM THE LAW SOCIETY FOUNDATION

CONVOCATION ROSE AT 5:07 P.M

**LAW SOCIETY OF ONTARIO**MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021

THAT Catherine Banning be appointed to the Audit and Finance Committee, the Equity and Indigenous Affairs Committee and the Tribunal Committee.

THAT Jorge Pineda be removed from the Professional Regulation Committee at his own request.

## LAW SOCIETY OF ONTARIO

### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021

THAT Catherine Banning and Joseph Chiumminto be appointed to the Hearing Division of the Law Society Tribunal for a term ending May 31, 2023.

#### Explanatory Note

Benchers Catherine Banning and Joseph Chiumminto have applied to be members of the Tribunal. Under the Tribunal model passed by Convocation in 2012, benchers are eligible to be appointed to an initial term by virtue of their position. Before appointment or reappointment, all adjudicators sign an application in which they make various commitments and must complete extensive training before sitting on a panel.



**Tab 2.3**

## **Treasurer's Report**

### **LawPRO Annual Shareholder Resolutions**

April 22, 2021

**Authored By:**

James Varro, Director, Office of the CEO and Corporate Secretary

[jvarro@lso.ca](mailto:jvarro@lso.ca)

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## Motion

That Convocation authorize the Treasurer to sign the shareholder resolutions for the Lawyers' Professional Indemnity Company (LawPRO) set out at **Tab 2.3.1**.

## Background

As a result of amendments to LawPRO's By-law No. 1, which the Law Society and all shareholders approved in 2014, the Law Society became the sole shareholder of LawPRO effective January 1, 2015.

Accordingly, Convocation's approval is sought to direct the Treasurer to sign the annual Resolutions of the Shareholder. The proposed shareholder resolutions appear at **Tab 2.3.1**.

Also included for the information of Convocation is biographical information on the members of the LawPRO Board at **Tab 2.3.2**. LawPRO's 2020 Financial Statements are included in the LawPRO Annual Report in the report from the Audit and Finance Committee at **Tab 9**.

**LAWYERS' PROFESSIONAL INDEMNITY COMPANY  
(the "Corporation")**

**RESOLUTIONS OF THE SHAREHOLDER**

Dated as of the  
22<sup>nd</sup> day of April, 2021

**FINANCIAL STATEMENTS**

WHEREAS the Board of Directors has approved the financial statements of the Corporation for the year ending December 31, 2020;

AND WHEREAS the shareholder has received a report of the auditor which includes statements regarding management's responsibility and the auditor's responsibility and an opinion from the auditor;

**RESOLVED** that the financial statements of the Corporation for the year ended December 31, 2020 are approved.

**ELECTION OF DIRECTORS**

**RESOLVED** that the following individuals are elected directors of the Corporation to hold office until the next annual meeting of the shareholder or until their successors are elected or appointed:

Robert P. Adourian  
Susan M. Armstrong  
Clare A. Brunetta  
Etienne Esquega  
Frederick W. Gorbet  
Malcolm L. Heins  
Rita Hoff  
Diana C. Miles  
Binah Nathan  
David R. Oliver  
Daniel E. Pinnington  
Clare Sellers  
Andrew J. Spurgeon  
Mark D. Tamminga  
Anne-Marie Vanier

**APPOINTMENT OF AUDITOR**

**RESOLVED** that PricewaterhouseCoopers LLP is appointed as auditor of the Corporation to hold office until the next annual meeting of the shareholder at such remuneration as may be fixed by the directors and the directors are authorized to fix such remuneration.

**CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS**

**RESOLVED** that all acts, contracts, by-laws, proceedings, appointments, elections and payments enacted, made, done and taken by the directors and officers of the Corporation to the date hereof, as the same are set out or referred to in the resolutions of the board of directors, the minutes of the meetings of the board of directors or in the financial statements of the Corporation are approved, sanctioned and confirmed.

Consented to in writing by the sole shareholder of the Corporation.

LAW SOCIETY OF ONTARIO

Per: \_\_\_\_\_  
TERESA DONNELLY  
Treasurer,  
Law Society of Ontario

## LAWPRO Board of Directors' Biographies as at April 15, 2021



**Andrew J. Spurgeon**  
 Chair, LAWPRO  
 Board of Directors  
 Partner, Ross & McBride LLP

Andrew is a partner of Ross & McBride LLP. He received his LLB from Osgoode Hall Law School, and his B.A. and M.A. from York University. He has appeared in all levels of Court in Ontario. He frequently speaks at legal education events relating to advocacy, tort, insurance, civil procedure and legal ethics.

Andrew is a past President of the Hamilton Law Association, a former Director of the Advocates Society, and a recipient of the Ontario Trial Lawyers Association's: Distinguished Service Award.

Andrew is an Adjunct Professor of Law at Western University and a Bencher of the Law Society of Ontario.



**Susan M. Armstrong, FCPA, FCA, ICD.D**  
 Vice-Chair, LAWPRO  
 Board of Directors  
 Corporate Director

Sue Armstrong is an experienced corporate director and retired President & CEO of CDSPI, an organization that offers insurance and investment products, services and advice to the Canadian dental community. Previously, Sue served as Senior Vice-President of Swiss Reinsurance Company Canada, Senior Vice-President and Chief Financial Officer of CIBC Insurance, and Vice-President and Chief Financial Officer of Dominion of Canada General Insurance Company.

Sue brings a wealth of corporate director experience in the insurance and healthcare sectors. She is currently Chair of the Board of OMA Insurance and Chair of the Audit and Conduct Review Committee of Canadian Premier Life Insurance Company and Canadian Premier General Insurance Company. Sue also serves on the Board of Trustees of CAMH and on the Board of West Park Healthcare Centre.

Past roles include serving as Chair of the Board of Michael Garron Hospital and serving on the Boards of McGraw-Hill Ryerson Limited, The George Hull Centre for Children and Families, and the Toronto Rehabilitation Institute.

Ms. Armstrong has a Bachelor of Commerce degree from the University of Toronto. She is a fellow of the Chartered Professional Accountants of Ontario and holds the ICD.D designation from the Institute of Corporate Directors.



**Robert P. Adourian**  
Partner, Devry Smith Frank LLP

Robert Adourian is a partner at Devry Smith Frank LLP in Toronto. He is a graduate of the University of Windsor Law School and was called to the Bar in 1980. He practices in the areas of real estate, wills, estate planning, and estate administration. He gives presentations to community groups on topics such as “Buying Your First Home” and “Why You Should Make A Will.”

His real estate practice includes residential, commercial and industrial transactions, including representing major banks and trust companies in financing transactions.

He has taught in the Real Estate section of the Bar Admission Course and has served as a mentor to law students and young lawyers.

Robert is an active member of the Armenian Bar Association, a worldwide organization of Armenian lawyers, and has served on the Association’s Board of Governors.



**Clare A. Brunetta**  
Principal, Clare A. Brunetta

Clare A. Brunetta is a general practitioner whose office is located in Fort Frances. Primarily serving the District of Rainy River in northwestern Ontario, he practises with his son Paul Brunetta. Mr. Brunetta is former President of the Rainy River Law Library Association, a Charter Member of the Canadian Italian Advocates Society, a past member of the Law Society of Ontario Joint Working Group on Real Estate, a past Chair of the Real Estate committee of the County and District Law Presidents Association (CDLPA), and past Co-Chair of the Working Group on Lawyers and Real Estate. He has been a Deputy Judge of the Small Claims Court since 1991.

Mr. Brunetta serves on the LAWPRO Governance and Risk committees.



Etienne G.D. Esquega, B.A., LL.B

Etienne is a sole practitioner and is based in Fort William First Nation. He practices in the areas of Indigenous law, corporate and commercial law, and civil litigation.

He has appeared on numerous occasions before administrative tribunals, the courts of Ontario, and the Federal Court of Canada. Etienne routinely provides advice and representation on governance, negotiations, strategy, and corporate/commercial matters.

He earned a Bachelor of Arts (Political Science) from the University of Windsor and his LLB from Osgoode Hall Law School. He was called to the Bar in 2005.

He is a member of the: Indigenous Bar Association; Canadian Bar Association; Ontario Bar Association; and Thunder Bay Law Association. He is also an elected Bencher of the Law Society of Ontario where he represents the Northwest Region and is an adjudicator with the Law Society Tribunal. Recently, Etienne was also selected by the Chief Coroner's Office of Ontario to be on its roster of Inquest Hearing Officers.

Mr. Esquega was born and raised in Thunder Bay and is a member of the Biinjitiwaabik Zaaging Anishinaabek. Outside of his law practice, he enjoys spending as much time as possible with his wife and children, traveling, golfing, playing hockey, and spending time in the outdoors.



Frederick W. Gorbet, O.C.

Fred Gorbet has extensive experience in public policy advice and formulation, particularly with regard to financial institutions and energy policy. Following a 25-year career in the Canadian public service, where he served as Associate Secretary to the Cabinet and as Deputy Minister of Finance for Canada, Mr. Gorbet has held several senior executive positions in the life insurance industry and in academe, serving for many years as the CIT Chair in Financial Services and Director of the Financial Services Program at the Schulich School of Business (York University).

A member of the LAWPRO Board of Directors since 2004, Mr. Gorbet currently chairs the Audit Committee and is a member of the Executive, Conduct Review, Governance and Risk committees.

Since leaving government service, he has continued his involvement with public policy by serving as the Executive Director of the MacKay Task Force on the future of the financial services sector of Canada, the Executive Director of the Saucier Task Force on Corporate Governance, the Senior Policy Advisor to the Credit Union Central of Canada on the National Initiative, and the founding Chair of the Market Surveillance Panel for administered electricity markets in Ontario. His most recent assignment was as Chair of the Task Force on Auto Insurance Fraud in Ontario.

Mr. Gorbet has also served as a corporate director of many firms in the private and public sectors. He is currently a Trustee and past Chair of the North American Electric Reliability Corporation.

Mr. Gorbet has a B.A. from York University and a Ph.D. in Economics from Duke University. He was appointed to the Order of Canada in 2000 and was promoted to Officer of the Order of Canada in 2014.



Malcolm Heins, LSM  
Lawyer & Director

A lawyer and former insurance industry executive, Malcolm Heins was appointed Chief Executive Officer of the Law Society of Ontario in 2001, retiring in early 2012.

Mr. Heins joined the Counsel Public Affairs team in June 2012, resigning in April of 2015 when he was appointed by the Ontario Minister of Finance to chair The Special Committee to Consider Financial Advisory and Financial Policy Alternatives. The Committee's report was delivered in November of 2016.

Mr. Heins also served as an interim Chief Executive Officer of the Federation of Law Societies of Canada from November 2005 to June 2006, and from 1994 to 2001, he served as LAWPRO's first President and Chief Executive Officer.

Prior to that, Mr. Heins was the President and Chief Operating Officer of Gan Canada, formerly Simcoe Erie Group, then one of the largest underwriters of professional liability insurance in Canada.

Before joining Gan Canada in 1981, he practised insurance and commercial litigation in Toronto.

With his background in insurance, regulatory oversight, business and law, Mr. Heins now provides consulting services and is a Corporate Director. He is a graduate of the University of Toronto and Dalhousie Law School.

Mr. Heins chairs LAWPRO's Risk Committee and is a member of LAWPRO's Executive, Conduct Review, Audit, Governance and Investment committees.

Mr. Heins is a member of the Law Society of Ontario and in addition to LAWPRO, serves as a Director of OMEX, Legal Aid Ontario and the Investment Industry Regulatory Organization of Canada. He received the Law Society Medal in June 1999, the 2002 Award of Distinction from the Metropolitan Toronto Lawyers Association and, in March 2005, Communicator of the Year by the International Association of Broadcasters (Toronto).



Rita Hoff

Rita Hoff had a long and distinguished career in the investment industry, where she broke the glass ceiling by becoming the first female CEO of a member firm - First Canada Securities, which she co-founded. She merged the firm with Canaccord Capital where she served as Vice-President and Director, Debt Capital Markets, retiring in 2009.

Her 30 years of Board experience was shaped by serving with a variety of organizations in the private sector, on Advisory Boards and on Associations, most notably The Investment Dealers Association of Canada and CAA, Central Ontario.

Ms. Hoff has served on the LAWPRO Board for many years and is chair of the Investment committee and is a member of the Governance and Risk committees. She also serves as a Director of Operation Eyesight Universal, an international development organization working to eliminate avoidable blindness and restore eyesight in developing countries.

Spending the winters in Puerto Vallarta, Mexico, Ms. Hoff is actively engaged with her Condominium Board as Treasurer, as well as on her Community Association's Board focusing on challenging illegal development and ensuring preservation of green spaces.

Ms. Hoff has a Bachelor of Commerce from the University of Bombay, India. Continuing her education in the investment industry, she earned many designations from the Canadian Securities Institute.



**Diana C. Miles**  
Chief Executive Officer  
Law Society of Ontario

Diana Miles is the Chief Executive Officer of the Law Society of Ontario. The Law Society licenses and regulates Ontario's lawyers and paralegals pursuant to the *Law Society Act* and the *Law Society's Rules of Professional Conduct*, by-laws, regulations and guidelines.

Diana joined the Law Society in 2001 as the Executive Director of Professional Development and Competence. She held numerous positions in the organization in addition to the competence portfolio, including Executive Director of Organizational Strategy, Executive Director of Communications and Executive Director of Professional Regulation. Diana was appointed Acting CEO in September 2017 and CEO in March 2018.

Throughout her career at the Law Society, Diana has provided proactive and effective policy-oriented leadership to the Board. Her responsibilities have included strategic and operational planning, financial management, governance assessment, board education, creation of defensible and valid licensure systems, provision of resources and supports for legal practitioners, and the development of progressive regulation, risk management and quality assurance for lawyer and paralegal licensees and their legal practices.

Prior to joining the Law Society, Diana was the Chief Operating Officer of a large Toronto law firm and in that capacity supported business development, client services, firm administration, strategic planning and financial accountability.

Diana has extensive governance and board experience, is a Chartered Director (CDir), and has worked with private and not-for-profit boards as a board member and governance facilitator in the energy, health care, insurance and professional services industries. She was called to the bar in Ontario in 1990.



Binah Nathan

Binah Nathan is an experienced and accredited corporate director. She is a former senior capital markets professional who has more than 25 years of experience in the financial services industry. Ms. Nathan's expertise includes investment management, risk management and mergers and acquisitions.

In addition to serving on the Board of Directors of LAWPRO, Ms. Nathan serves on the Board of Directors of Pro-Demnity Insurance Company and is a Lay Member of the Competition Tribunal (A Governor in Council Appointment).

Ms. Nathan holds an ICD.D designation offered through the Institute of Corporate Directors in partnership with University of Toronto's Rotman School of Management. She is also a Chartered Financial Analyst (CFA) and has an MBA from the University of Windsor and an Honours BSc in Biochemistry from McMaster University.



David R. Oliver  
President, Oliver Advisory

David Oliver has extensive leadership experience on corporate boards and in the investment management industry, currently serving as President and Chief Executive Officer at BRJO Investments Ltd. Previously, he held the position of National Lead and Vice President at MD Financial Management, heading MD Private Investment Counsel and MD Management. Prior to joining MD Financial Management, he was the Chief Portfolio Manager, Vice-President and Executive Director at CIBC, as well as Vice-President and Portfolio Manager at TD Bank.

In addition to serving on the Board of Directors of LAWPRO, Mr. Oliver serves on the Boards of CDSPI, the Auto Sector Retiree Health Care Trust (asrTrust), BRJO Investments Ltd., and the Retirement Homes Regulatory Authority. Previously, he served on the Board of Directors of North York Arts and was a Member of the Canadian Medical Association Pension Plan Investment Committee.

Mr. Oliver graduated from the University of Toronto with a Bachelor of Commerce and a Master's Degree in Economics. As well, he was awarded the Corporate Director Certificate from Harvard Business School. Mr. Oliver holds the Chartered Director, Chartered Financial Analyst, Chartered Investment Manager, and Fellow of the Canadian Securities Institute designations.



**Daniel E. Pinnington**  
President & Chief Executive Officer,  
LAWPRO

Daniel E. Pinnington was appointed President & Chief Executive Officer of LAWPRO in 2018. From 2012 to 2018, he served as Vice-President, Claims Prevention and Stakeholder Relations, overseeing LAWPRO's claims prevention and outreach initiatives.

Dan joined LAWPRO in 2001 as Director, practicePRO and was the driving force behind the practicePRO program - LAWPRO's innovative and internationally recognized claims prevention initiative. He used his unique combination of practice experience and technology expertise to provide lawyers with tools and resources to assist them in avoiding malpractice claims and succeeding in the practice of law.

Before joining LAWPRO, Dan practised for eight years in the Litigation Department of a Niagara-area law firm. Dan was called to the bar in 1993, having graduated with a combined LL.B./J.D. from the University of Windsor and Detroit Mercy College of Law.

Dan is a Fellow of the College of Law Practice Management and is a prolific writer, speaker and blogger on risk management, legal technology and law practice management issues. He has given hundreds of presentations all over North America and has chaired more than a dozen major conferences.

He is very active in the American Bar Association's Law Practice Division, was Chair of ABA TECHSHOW 2007 and Editor-in-Chief of Law Practice magazine from 2009-2012. He was co-author of *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, he has contributed chapters to several other books published by the ABA LPM section. He was a long-standing member of the ABA Legal Professional Liability Standing Committee. Over the years, Dan has also been very active in the Canadian and Ontario Bar Associations in a variety of roles.



Clare Sellers  
Bencher-Director

Clare Sellers joined the Board of Directors of LAWPRO as of September 11, 2020.

Ms. Sellers also serves as a Lay Bencher of the Law Society of Ontario, as a public representative for the regulatory body overseeing over 55,000 licensees in the province, and is a member of its Audit & Finance, Compensation Fund committees along with the Technology and Proportionate Regulation working groups.

She has also been on the Board of Directors of SickKids Foundation since June 2016, serving formerly as Chair of Governance & Nominating Committee and currently is the Chair of the Development Committee focused on fundraising operations to support the well-being and health of children and their families. Formerly, she served as a Trustee of Over the Wall, an organization that runs residential camps for children in the United Kingdom affected by serious and life-threatening illnesses.

Previous professional roles in both Canada and the UK include working as the Managing Director for Investment 2020, the Director & Chief Operating Officer at ABN AMRO Rothschild and as Vice-President, Corporate Finance. She also served for 8 years as a Trustee with the University of Western Ontario United Kingdom Foundation. Ms. Sellers is a graduate of the Master's program at the Ivey School of Business, a Chartered Financial Analyst and holds the ICD.D designation.



Mark D. Tamminga  
Partner, Gowling WLG

Mark Tamminga is a partner in Gowling WLG's Hamilton office. He provides strategic and practical advice in the areas of real estate law and recovery services, with a focus on mortgage remedies and creditors' rights.

He has pioneered the use of practice automation software tools for lawyers, having automated the firm's recovery services practice and having designed, built and implemented a number of additional practice systems in the areas of debt collection, loan placement and civil litigation.

Mark has taken on various management roles in the firm, including acting as managing partner of the Hamilton office from 2008-2012. In his current role as Leader, Innovation Initiatives, Mark is leading the firm's transformational process improvement and project management program.

He is a regular presenter on the subject of automation in legal practice and has participated in numerous technology conferences in Canada and the United States. He has chaired the American Bar Association's Techshow legal technology conference and co-chaired the College of Law Practice Management's Futures Conference.



Anne-Marie Vanier  
Partner, Gowling WLG

Anne-Marie is a consultant with broad general insurance experience as a Senior Executive and Chief Actuary. More recently she served as Executive Director and Chief Actuary of Aviva Canada and as the Chief Property and Casualty Actuary for RBC Insurance. She is a strategic thinker with expertise in risk management, capital modeling, financial reporting and regulatory issues. She currently works as a consulting actuary providing actuarial advisory services and audit support.

Anne-Marie has board experience and serves as an independent director for Gore Mutual Insurance, she is a Trustee of the Foundation of the George Hull Centre for Children and Families (and has served as Chair of its board of directors) and is the Chair of the Rainbow Railroad Risk Management Committee.

She is passionate about community service, diversity and inclusion and mentoring of emerging leaders. In 2013, she received a Professional Leadership Award (Out on Bay Street) recognizing her as an experienced senior professional who has shown exceptional ability, has a strong track record of leadership and professional excellence, and is publicly recognized as a role-model by LGBTQ community.

Anne-Marie is a Fellow of the Canadian Institute of Actuaries and of the Casualty Actuarial Society and holds a Chartered Director designation from the Directors College. She graduated from Laval University with a Bachelor of Actuarial Science and received an MBA from the Ivey School of Business, University of Western Ontario.



**Tab 3**

## **Audit & Finance Committee**

### **Report to Convocation**

April 22, 2021

**Committee Members:**

Joseph Groia (Chair)  
Lubomir Poliacik (Vice-Chair)  
Seymour Epstein  
Gary Graham  
Philip Horgan  
Vern Krishna  
Shelina Lalji  
Michelle Lomazzo  
Cecil Lyon  
Clare Sellers  
Sidney Troister  
Tanya Walker

**Authored By:**

Finance  
Brenda Albuquerque-Boutilier, Executive Director, Finance & CFO  
416-947-3436

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### For Information:

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LIRN Inc. Annual Financial Statements for the year ended December 31, 2020 .....	Tab 3.4
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**FOR DECISION****Law Society of Ontario  
Annual Financial Statements  
for the year ended December 31, 2020****Motion:**

That Convocation approve the audited annual financial statements for the Law Society of Ontario for the financial year ended December 31, 2020, including the net inter-fund transfers listed in Note 14, which are as follows:

- **\$1,519,000 from the Capital Allocation Fund to the Invested in Capital and Intangible Assets Fund representing assets capitalized during the year in compliance with the Society's accounting policies;**
- **\$156,000 from the Special Projects Fund to the General Fund to fund the facilities condition assessment, work related to the implementation of approved recommendations from the Challenges Faced by Racialized Licensees Working Group and maintenance of the Society's grounds, net of funding transferred to the Special Projects Fund to fund the next bench election; and**
- **\$100,000 from the lawyer General Fund to the Repayable Allowance Fund, as provided in the 2020 budget to fund the Repayable Allowance Program in the Licensing Process.**

The financial statements are accompanied by an unmodified opinion from the auditor. Michael Hawtin, Partner Assurance, from PricewaterhouseCoopers LLP will be in attendance.

The financial statements present the financial position and operations of the Law Society and include the General Funds (or operating funds) and a number of special purpose or restricted funds. The restricted funds are described in the financial statements and are:

- The Compensation Fund, restricted by the Law Society Act;
- The Errors & Omissions Insurance Fund (E&O Fund), the Capital Allocation Fund, the Invested in Capital & Intangible Assets Fund, the County Libraries Fund, the Repayable Allowance Fund, the Special Projects Fund and the Parental Leave Assistance Fund, all restricted by policies of Convocation.

## Inter-fund Transfers

The net inter-fund transfers are listed in Note 14 to the Annual Financial Statements and are routine in nature. Generally, inter-fund transfers relate to the capitalization of capital and intangible assets at year-end or the transfer of budgeted funds to appropriate Restricted Funds based on the criteria of the Fund. As these Funds are restricted by Convocation, the transfers are requested to be specifically approved by Convocation as part of the approval of the financial statements.

As the Special Projects Fund sees the transfer of budgeted funds in and out of that Fund, the following information is intended to provide greater clarity.

The net inter-fund transfer of \$156,000 from the Special Projects Fund to the General Fund includes \$184,000 of transfers from the Special Projects Fund to the General Fund offset by \$28,000 of transfers from the General Fund to the Special Projects Fund. The Special Projects Fund ensures that budgeted funds have been approved by Convocation and are intended for a specific initiative in a given budget year, remain available for the successful completion of the project in the following year if the project is delayed.

In 2020, the transfers from the Special Projects Fund to the General Fund relate to:

- \$109,000 to fund the Facilities Condition Assessment and 10-year Facility Plan (FCA) that informed the capital process for 2021 and onwards. The FCA was budgeted in 2019 but was delayed to allow the completion of some large facilities projects in 2019, which would impact the assessment. Spending occurred in 2020 and the results of the FCA were used in the 2021 capital budget.
- \$55,000 to fund the work to implement approved recommendations from the Challenges Faced by Racialized Licensees Working Group. The initiative was budgeted in 2018 but was delayed as further consideration was required by the Equity and Indigenous Affairs Committee prior to commencing the project. Work on this initiative was completed over 2019 and 2020.
- \$20,000 to fund grounds maintenance activities in 2020. The funding was originally received as a grant from Canada Life in response to the development of a building adjacent to the Law Society's property and the negative impact it would have on sun exposure for our grounds.

Transfers from the General Funds to the Special Projects Fund relate to the following expenditures in 2020:

- \$28,000 to fund the next bench election. To evenly allocate the cost of the bench election over four years rather than budget for all election expenses in one year, funds are transferred to the Special Projects Fund each year. This approach allows for the smoothing of the impact on annual fees.

**Management Discussion & Analysis**

The primary Management Discussion and Analysis can be found at the start of the Annual Financial Statements. In addition, supplementary unaudited Schedules of Revenues and Expenses for the General Fund, Compensation Fund and Errors & Omissions Fund comparing actual results to budget are included at [Tab 3.1.3](#).

LAW SOCIETY OF ONTARIO  
**2020 Annual Financial Statements**

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# LAW SOCIETY OF ONTARIO

## 2020 ANNUAL FINANCIAL STATEMENTS

### MANAGEMENT DISCUSSION AND ANALYSIS

#### **Summary of Financial Performance**

The Law Society of Ontario's ("Society") Lawyer and Paralegal General Funds, which account for the Society's program delivery and administrative activities, are reporting combined revenues in excess of expenses of \$4.1 million (2019 - \$836,000 excess of expenses over revenues). To reduce annual fees for licensees, the 2020 budget incorporated funding of \$5.1 million from the fund balance of the Lawyer General Fund along with \$1.2 million in funding from surplus investment income in the Errors & Omissions Insurance Fund ("E&O Fund"). Similarly, the 2020 budget planned for utilization of \$2.4 million of the Paralegal General Fund balance to fund operations associated with the Paralegal General Fund. The use of the fund balances is based on the Society's Fund Balance Management Policy and not-for-profit budgeting best practices. The Society did not use these sources of funding in 2020 despite experiencing a decrease in revenues as it proactively introduced expenditure containment measures in response to the COVID-19 pandemic.

The Society's restricted funds are reporting combined excess of revenues over expenses of \$10.9 million in 2020 (2019 - \$8.4 million) with the lawyer pool of the Compensation Fund experiencing revenues in excess of expenses of \$8.7 million (2019 - \$10.1 million). In response to unusually high claims arising prior to 2017 against the lawyer pool of the Compensation Fund, which led to the decline of the fund balance below the Fund Balance Management Policy minimum threshold, the Society implemented a three-year plan from 2018 to 2020 to replenish the Fund and restore its financial stability. As part of the three-year replenishment plan, the annual fee for the lawyer pool of the Compensation Fund was set with the objective of increasing the fund balance by an additional \$5 million in each of the three years. As at the end of 2020, this plan, coupled with claims returning to a more normal level, has resulted in the fund balance increasing to \$30.5 million, which is above the minimum permissible threshold under the Society's Fund Balance Management Policy.

#### **Statement of Revenues and Expenses and Change in Fund Balances**

##### **Revenues**

The Society implemented a number of different initiatives to assist licensees in addressing the challenges of the COVID-19 pandemic in 2020 and beyond. These include the deferral of withdrawals for those licensees on the Society's monthly pre-authorized payment plan for annual fees and the delay of administrative late fees and suspension for those licensees who had not complied with annual fee and filing obligations.

##### **Annual Fees**

With an annual fee reduction of \$135 for lawyers and \$109 for paralegals approved in the 2020 budget, total annual fee revenues have decreased to \$95.3 million (2019 - \$99.3 million). The reduction in annual fees was partially offset by an increase in the number of licensees billed in 2020 although the rate of growth in the number of full-fee-paying-equivalent paralegals has continued to slow over the last several years.

### ***Insurance Premiums and Levies***

The E&O Fund accounts for insurance related transactions between Lawyers' Professional Indemnity Company ("LAWPRO"), the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers and remits these amounts to LAWPRO. Insurance premiums and levies decreased slightly to \$101.8 million in 2020 (2019 - \$102.8 million). The base premium for professional liability insurance coverage for Ontario lawyers remained unchanged at \$2,950 in 2020. The overall reduction in revenue is attributable to a decline in transaction levies partially offset by an increase in the number of lawyers obtaining insurance coverage.

### ***Professional Development & Competence ("PD&C")***

PD&C revenue comprises licensing process and continuing professional development fees. With COVID-19 restrictions on large gathering and physical distancing requirements, total PD&C revenue decreased this year to \$20.0 million (2019 - \$23.1 million).

Licensing Process revenue from lawyer (\$11.6 million) and paralegal candidates (\$2.2 million) has decreased by \$1.1 million from 2019. The underlying licensing process fees charged to candidates were unchanged, but several factors drove the decrease in revenue. Among these was an increase in the number of candidates deferring their examinations to the following year. COVID-19 restrictions resulted in a reduction in the number of articling positions contributing to a decline in articling fee revenue from the prior year. In addition, with large gathering restrictions, the Society was not able to hold the ceremonial component of the Call to the Bar for lawyer candidates and reduced fees accordingly, resulting in a reduction in the Call to the Bar fee revenues.

Total Continuing Professional Development ("CPD") revenue decreased to \$6.3 million (2019 - \$8.2 million). Revenues from CPD were adversely impacted by COVID-19 as all in-person programming was cancelled effective March 2020. The Society provided several complimentary CPD webinars to support licensees during the pandemic and opened the CPD archives to allow licensees to watch these programs free of charge while still meeting their CPD requirements. The Society mitigated revenue declines in the second half of the year by delivering programming through alternate delivery methods including on-demand webinars, audio recordings, live webcasts and pivoting program delivery to reflect emerging topics as a result of the pandemic.

### ***Investment Income and Change in Fair Value of Investments***

There was significant financial market volatility in 2020, resulting in lower investment returns of \$3.9 million (2019 - \$4.9 million). Increases in the market value of Canadian equities resulted in unrealized gains of \$1.7 million for the year (2019 - \$2.6 million unrealized gains) while lower interest rates led to a reduction in investment income to \$2.2 million (2019 - \$2.3 million).

### ***Other Revenue***

Other revenue of \$7.5 million (2019 - \$8.4 million) primarily comprises income from *Ontario Reports* royalties, administrative fees, regulatory compliance ordered cost recoveries, and catering sales. The decrease from 2019 is primarily due to a decline in catering revenue. All restaurant and catering operations were closed in mid-March 2020 through to the end of the year because of the COVID-19 related restrictions.

### **Expenses**

The Society proactively addressed the uncertainties associated with the COVID-19 pandemic through cost containment measures that cut across the organization. In 2020, the decrease in expenditures are as a result of intentional staffing cost reductions and lower operating expenses due to the impact of COVID-19 on aspects of operations.

***Professional Regulation, Tribunals and Compliance***

Total regulatory expenses increased slightly to \$30.7 million (2019 - \$30.5 million) but were less than budget. The variance from budget was driven by staff vacancies and the circumstantial impact of work at home protocols that produced savings in travel, office and document reproduction costs.

***Professional Development and Competence***

Total PD&C expenses have decreased to \$26.8 million (2019 - \$30.8 million).

With CPD revenue declining due to the cancellation of large flagship summits and in-person programming, costs related to hosting these large programs including venue rental, catering, audio-visual and contract staffing to administer in-person programming were also eliminated. As a result, CPD expenses were reduced to \$3.3 million (2019 - \$4.2 million) coinciding with the reduction in CPD revenues during the year.

Lawyer and paralegal licensing examination costs were reduced to \$10.6 million (2019 - \$13.2 million). The decrease in the examination costs were the combination of lower numbers of candidates writing examinations in the current year reducing revenue and a transition to online examinations from in-person as a result of COVID-19. The lower examination costs were partially offset by online implementation expenses in 2020, with further spending on infrastructure and technology requirements anticipated in the next few years.

***Corporate Services***

Corporate services expenses, primarily comprising the Client Service Centre, Information Technology, Facilities, Finance, Office of General Counsel and Human Resources, along with general corporate costs, were \$27.6 million (2019 – \$33.9 million). The decrease was primarily due to a legal matter that was settled in the prior year and for which the Society is actively pursuing recovery through its insurer.

***Convocation, Policy and Outreach***

Convocation, policy and outreach expenses, primarily related to Policy, External Relations & Communications, and Governance, including bencher related expenses, decreased to \$6.0 million (2019 – \$8.8 million).

With COVID-19 restrictions, all Committee and Convocation meetings moved from in-person to virtual from March 16, 2020 through to the end of the year. This reduced bencher related travel time impacting the associated remuneration and expense reimbursements as well as catering costs. In addition, bencher remuneration was also reduced with Convocation's decision to not claim for governance work occurring from April 9, 2020 to June 30, 2020. Bencher and Convocation related expenses declined to \$932,000 (2019 - \$2.2 million). Similarly, the restrictions resulted in stakeholder engagement shifting to virtual platforms with reductions in related expenses.

**Changes in Fund Balances*****General Fund***

The excess of revenues over expenses for the year of \$4.1 million led to an increase in the fund balance of the Lawyer General Fund to \$30.3 million. Convocation's fund balance management policy establishes minimum and maximum benchmarks of two and three months of operating expenses, respectively, to be maintained as the Lawyer General Fund balance; a balance between \$17 million and \$26 million. As the fund balance of the Lawyer General Fund was projected to exceed three months of budgeted General Fund expenses, the Society has budgeted to use \$6.2 million of the fund balance in 2021 to reduce the lawyer annual fee.

Revenues in excess of expenses for the year of \$8,000 led to the fund balance of the Paralegal General Fund remaining at \$1.8 million.

**Restricted Funds**

In 2020, the excess of revenues over expenses for the year in the lawyer pool of the Compensation Fund amounted to \$8.7 million, increasing the fund balance for lawyers to \$30.5 million. The Society utilizes stochastic modeling to forecast future claims experience against the lawyer pool of the Compensation Fund. This model is also used by the Society's Lawyer Compensation Fund Balance Management Policy to determine fund balance minimum and maximum thresholds, which are set at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenario (a one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (four one-in-one-hundred-year events). The 2020 year was the final year of a three-year plan to restore the fund balance with it now above the minimum fund balance threshold of \$19.6 million.

In 2020, the Compensation Fund balance for paralegals increased slightly to \$959,000 after revenues in excess of expenses for the year of \$11,000.

The E&O Fund balance increased slightly to \$55.4 million after revenues in excess of expenses for the year of \$941,000. The transfer of \$1.2 million from the E&O Fund to the Lawyer General Fund approved in the 2020 budget was not executed due to the favourable operating results in the Lawyer General Fund.

**Balance Sheet****Portfolio Investments**

Portfolio investments are shown at fair value of \$69.7 million (2019 – \$63.8 million). Portfolio investments have increased because of total unrealized gains and investment income. Investments comprise Canadian equities (30%) and Canadian fixed income instruments (70%).

**Deferred Revenue**

Deferred revenue relates primarily to licensee annual fees, insurance premiums and licensing process fees collected prior to December 31 relating to fees for the subsequent fiscal year. Deferred revenue decreased to \$5.7 million (2019 - \$16.0 million). This decrease is primarily due to the change in the timing of the issuance of licensee annual fee invoices from the December prior to the year being billed for to the January of the given year. This change was made to align with decisions made by Convocation in 2020, which take effect in 2021, to harmonize the date for licensees to fulfill their administrative requirements by March 31. Annual fees were payable by March 1 in 2020.

**Provision for Unpaid Grants**

The Compensation Fund liability for unpaid grants decreased to \$16.9 million (2019 – \$17.4 million). The provision for unpaid grants in the Compensation Fund represents the estimate for unpaid claims against the Compensation Fund, supplemented by the costs for processing these claims. The slight decrease in this liability in the current year is a reflection of normal Compensation Fund operations.

**Conclusion**

Despite the challenges faced by the Society in 2020 due to the COVID-19 pandemic, the Society is in a financially sound position, is in compliance with its fund balance management policies and is well placed for the future. In 2020, the Society implemented initiatives to assist licensees and reduce the overall cost of its operations. Looking forward to 2021, these initiatives, including the 2021 Annual Fee COVID-19 Deferral Option, will assist licensees dealing with the burdens of the COVID-19 pandemic.



## Independent auditor's report

To the Members of the Law Society of Ontario

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### Our opinion

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Law Society of Ontario (the Law Society) as at December 31, 2020 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

#### What we have audited

The Law Society's financial statements comprise:

- the balance sheet as at December 31, 2020;
- the statement of revenues and expenses and change in fund balances for the year then ended;
- the statement of cash flows for the year then ended; and
- the notes to the financial statements, which include significant accounting policies and other explanatory information.

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### Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Independence

We are independent of the Law Society in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

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### Other information

Management is responsible for the other information. The other information comprises the information, other than the financial statements and our auditor's report thereon, included in the annual report.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.



In connection with our audit of the financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

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### **Responsibilities of management and those charged with governance for the financial statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Law Society's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Law Society or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Law Society's financial reporting process.

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### **Auditor's responsibilities for the audit of the financial statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.



- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Law Society's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Law Society's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Law Society to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

(to be signed - PricewaterhouseCoopers LLP/s.r.l./s.e.n.c.r.l.)

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Ontario  
April 22, 2021

## LAW SOCIETY OF ONTARIO

**Balance Sheet**

Stated in thousands of dollars

As at December 31

	2020	2019
<b>Assets</b>		
<b>Current Assets</b>		
Cash (note 10)	31,625	34,863
Short-term investments	17,740	19,709
Accounts receivable (notes 4, 5, and 9)	13,258	11,967
Prepaid expenses	2,507	3,134
<b>Total current assets</b>	<b>65,130</b>	<b>69,673</b>
Investment in subsidiaries (note 4)	35,642	35,642
Portfolio investments (note 6)	69,711	63,821
Loan receivable (note 7)	1,427	1,162
Capital assets (note 8)	7,727	8,651
Intangible assets (note 8)	2,821	3,127
<b>Total Assets</b>	<b>182,458</b>	<b>182,076</b>
<b>Liabilities and Fund Balances</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued liabilities (notes 5 and 9)	9,126	13,906
Deferred revenue	5,744	16,031
Due to LAWPRO (note 4)	7,764	7,354
<b>Total current liabilities</b>	<b>22,634</b>	<b>37,291</b>
Provision for unpaid grants/claims	16,853	17,439
Unclaimed trust funds (note 10)	6,075	5,587
Lease obligations	756	648
<b>Total Liabilities</b>	<b>46,318</b>	<b>60,965</b>
<i>Other trust funds (note 11), Commitments (note 16), and Contingent liabilities (note 17)</i>		
<b>Fund Balances</b>		
<b>General funds</b>		
Lawyers	30,301	26,106
Paralegals	1,832	1,834
<b>Restricted funds (note 19)</b>		
Compensation - lawyers	30,543	21,818
Compensation - paralegals	959	948
Errors and omissions insurance	55,386	54,445
Capital allocation	5,458	2,927
Invested in capital and intangible assets	10,548	11,778
County libraries	85	189
Other	1,028	1,066
<b>Total Fund Balances</b>	<b>136,140</b>	<b>121,111</b>
<b>Total Liabilities and Fund Balances</b>	<b>182,458</b>	<b>182,076</b>

COVID-19 Pandemic (note 18)

The accompanying notes are an integral part of these financial statements.

**On behalf of Convocation****Treasurer****Chair, Audit & Finance Committee**

## LAW SOCIETY OF ONTARIO

## Statement of Revenues and Expenses and Change in Fund Balances

Stated in thousands of dollars

	2020	2019	2020	2019	2020	2019	2020	2019
	General Fund Lawyer		General Fund Paralegal		Restricted Funds (note 19)		Total	
<b>Revenues</b>								
Annual fees	67,836	70,927	5,525	6,073	21,953	22,330	95,314	99,330
Insurance premiums and levies	—	—	—	—	101,820	102,772	101,820	102,772
Professional development and competence	17,075	19,876	2,886	3,245	—	—	19,961	23,121
Investment income	653	803	83	96	1,452	1,447	2,188	2,346
Change in fair value of investments	493	1,002	62	127	1,108	1,472	1,663	2,601
Other (note 12)	6,040	7,090	1,064	1,239	397	89	7,501	8,418
<b>Total revenues</b>	<b>92,097</b>	<b>99,698</b>	<b>9,620</b>	<b>10,780</b>	<b>126,730</b>	<b>128,110</b>	<b>228,447</b>	<b>238,588</b>
<b>Expenses</b>								
Professional regulation, tribunals and compliance	28,179	27,046	2,547	3,433	—	—	30,726	30,479
Professional development and competence	24,094	27,482	2,745	3,314	—	—	26,839	30,796
Corporate services	24,387	30,335	3,190	3,531	—	—	27,577	33,866
Convocation, policy and outreach (note 13)	5,457	7,934	544	861	—	—	6,001	8,795
Fund contribution - unclaimed trust	5,851	6,777	586	601	—	—	6,437	7,378
Restricted (note 19)	—	—	—	—	115,838	119,679	115,838	119,679
<b>Total expenses</b>	<b>87,968</b>	<b>99,574</b>	<b>9,612</b>	<b>11,740</b>	<b>115,838</b>	<b>119,679</b>	<b>213,418</b>	<b>230,993</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>4,129</b>	<b>124</b>	<b>8</b>	<b>(960)</b>	<b>10,892</b>	<b>8,431</b>	<b>15,029</b>	<b>7,595</b>
<b>Fund balances, beginning of year</b>	<b>26,106</b>	<b>25,138</b>	<b>1,834</b>	<b>3,074</b>	<b>93,171</b>	<b>85,304</b>	<b>121,111</b>	<b>113,516</b>
<b>Interfund transfers (notes 2 and 14)</b>	<b>66</b>	<b>844</b>	<b>(10)</b>	<b>(280)</b>	<b>(56)</b>	<b>(564)</b>	<b>—</b>	<b>—</b>
<b>Fund balances, end of year</b>	<b>30,301</b>	<b>26,106</b>	<b>1,832</b>	<b>1,834</b>	<b>104,007</b>	<b>93,171</b>	<b>136,140</b>	<b>121,111</b>

The accompanying notes are an integral part of these financial statements

## LAW SOCIETY OF ONTARIO

**Statement of Cash Flows***Stated in thousands of dollars**For the year ended December 31*

	2020	2019
<b>Net inflow (outflow) of cash related to the following activities</b>		
<b>Operating</b>		
Excess of revenues over expenses	15,029	7,595
Items not affecting cash:		
Amortization of capital assets	1,936	2,003
Amortization of intangible assets	797	374
Loss on disposal of capital and intangible assets	16	1,434
Lease obligations	108	126
	<b>17,886</b>	<b>11,532</b>
Net change in non-cash operating items:		
Accounts receivable	(1,291)	449
Prepaid expenses	627	(736)
Accounts payable and accrued liabilities	(4,780)	(1,254)
Provision for unpaid grants/claims	(586)	(7,310)
Due (to)/from LAWPRO	410	(1,129)
Deferred revenue	(10,287)	(922)
Fund contribution - unclaimed trust	488	197
<b>Cash from operating activities</b>	<b>2,467</b>	<b>827</b>
<b>Investing</b>		
Portfolio investments - net	(5,890)	(2,241)
Loan receivable	(265)	(284)
Short-term investments - net	1,969	(5,788)
Capital asset and intangible asset additions	(1,519)	(2,303)
<b>Cash used in investing activities</b>	<b>(5,705)</b>	<b>(10,616)</b>
<b>Net outflow of cash, during the year</b>	<b>(3,238)</b>	<b>(9,789)</b>
Cash, beginning of year	34,863	44,652
<b>Cash, end of year</b>	<b>31,625</b>	<b>34,863</b>

*The accompanying notes are an integral part of these financial statements*

# LAW SOCIETY OF ONTARIO

## Notes to Financial Statements, December 31, 2020

*Stated in whole dollars except where indicated*

### 1. Background

The Law Society of Ontario (“Society”) was founded in 1797 and incorporated in 1822 with the enactment of the Law Society Act.

The Law Society Act, section 4.1, states that it is a function of the Society to ensure that:

- all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

In carrying out its functions, duties and powers, the Society, pursuant to section 4.2 of the Law Society Act, shall have regard to the following principles:

- the Society has a duty to maintain and advance the cause of justice and the rule of law;
- the Society has a duty to act so as to facilitate access to justice for the people of Ontario;
- the Society has a duty to protect the public interest;
- the Society has a duty to act in a timely, open and efficient manner;
- standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

The governing body of the Society, which is known as Convocation, carries out this mandate. Convocation comprises benchers and the Treasurer who presides over Convocation.

As at December 31, 2020, lawyers entitled to practice law and paralegals entitled to provide legal services in Ontario numbered approximately 57,000 and 9,600, respectively. The primary sources of revenues are licensee annual fees and insurance premiums and levies, set by Convocation, based on the financial requirements of the Society.

The Society is not subject to federal or provincial income taxes.

### 2. Nature of Financial Statements

These financial statements present the financial position and operations of the Society and include the General Funds and a number of special purpose funds restricted by the *Law Society Act* or Convocation.

## Subsidiaries and Related Entity

The Society has two wholly-owned subsidiaries: Lawyers' Professional Indemnity Company ("LAWPRO"), and LIRN Inc. ("LIRN") and a related entity, The Law Society Foundation. The audited annual financial statements for these three entities are available separately.

## General Funds

The General Funds account for the Society's program delivery and administrative activities related to the regulation and licensing of lawyers and paralegals. These funds report unrestricted resources. As at December 31, 2020, the Lawyer General Fund balance was \$30,301,000 (2019 – \$26,106,000). The Paralegal General Fund balance was \$1,832,000 (2019 – \$1,834,000).

The Society's policy is to maintain the Lawyer General Fund balance at no less than two and no more than three months of Lawyer General Fund budgeted expenses.

If the Lawyer General Fund balance exceeds three months of budgeted Lawyer General Fund expenses, Convocation shall utilize the excess for one or more of the following:

- mitigate the Lawyer General Fund levy for the next fiscal year;
- transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

If the Lawyer General Fund balance is less than two months of budgeted Lawyer General Fund expenses, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the Lawyer General Fund balance is more than two months of budgeted Lawyer General Fund expenses and less than three months of budgeted Lawyer General Fund expenses, Convocation may appropriate funds from the Lawyer General Fund balance for one or more of the following:

- mitigate the Lawyer General Fund levy for the next fiscal year;
- transfer the excess to another Society fund if the fund balance is below its stated policy benchmark.

## Restricted Funds

### ***Compensation Fund***

The Society maintains the Compensation Fund pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a licensee, in connection with the licensee's professional business or in connection with any trust of which the licensee was a trustee.

Pursuant to the *Law Society Act*, the Compensation Fund is supported by licensee annual fees, investment income and recoveries. The Compensation Fund expenses are only for payment of grants, and direct program delivery and administration costs. There are separate fund balances for lawyer licensees and paralegal licensees.

The Society's policy is to maintain the lawyer pool of the Compensation Fund balance at an amount sufficient to provide for a minimum of one 97.5th percentile aggregate claim scenarios (one-in-forty-year event) and a maximum of four 99th percentile aggregate claim scenarios (one-in-one hundred-year event). The estimated amount of aggregate claims is to be actuarially reviewed at least every three years.

If the lawyer pool of the Compensation Fund balance exceeds four one-in-one hundred-year events, Convocation shall utilize some or all of the excess for the following:

- mitigation of the lawyer pool of the Compensation Fund levy for the next fiscal year; or
- annual mitigation of the lawyer pool of the Compensation Fund levy shall continue such that within the next three fiscal years, the maximum benchmark shall be achieved.

If the lawyer pool of the Compensation Fund balance is less than the minimum of one one-in-forty-year event, Convocation shall budget for an annual surplus to restore the fund balance to its minimum policy objective. The minimum policy benchmark should be restored within three fiscal periods.

If the lawyer pool of the Compensation Fund balance is more than the minimum of one one-in-forty-year event and less than four one-in-one-hundred-year events, Convocation may:

- mitigate the lawyer pool of the Compensation Fund levy for the next fiscal year;
- budget for a surplus sufficient to increase the fund balance to its maximum policy objective of four one-in-one-hundred-year events;
- leave the fund balance at its current balance for the upcoming fiscal year.

The statement of financial position for the Compensation Fund is set out below:

(\$000s)	2020	2019
Cash and short term investments	18,433	12,128
Other assets	-	233
Portfolio investments	30,541	28,080
<b>Total assets</b>	<b>48,974</b>	<b>40,441</b>
Other liabilities	620	236
Provision for unpaid grants - lawyers	16,628	17,324
Provision for unpaid grants - paralegals	224	115
<b>Total liabilities</b>	<b>17,472</b>	<b>17,675</b>
Fund balance - lawyers	30,543	21,818
Fund balance - paralegals	959	948
<b>Total liabilities and fund balances</b>	<b>48,974</b>	<b>40,441</b>

### ***Errors and Omissions Insurance Fund***

The Errors and Omissions Insurance Fund (“E&O Fund”) accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers. The E&O Fund collects premiums and levies from lawyers, reported as revenues, and remits these amounts to LAWPRO, reported as expenses.

Pursuant to section 61 of the *Law Society Act*, the Society arranges mandatory professional liability insurance for practising lawyers with LAWPRO, and through the E&O Fund, levies the insured lawyers. Each year, the premium for the insurance program is established through a process whereby LAWPRO provides an offer for review and acceptance by Convocation. The offer provides details on the components of the insurance program, including anticipated base premiums, claims history levies, transaction-based levies and amounts to be drawn from the E&O Fund balance.

Commencing in 2010, there was an additional premium endorsement included in the Society's insurance policy with LAWPRO. To the extent actual underwriting results exceeded an approved threshold loss ratio, additional premiums could be charged. The aggregate total of additional premium that could be charged for all claims years was capped at \$15 million. From 2010 to 2019, no additional premium was assessed against the Society and this endorsement has been discontinued for the 2020 insurance program.

From 2010 to 2019, Convocation restricted \$15 million of the E&O Fund balance as a backstop for this additional premium endorsement. Removal of the additional premium endorsement from the 2020 LAWPRO insurance policy enabled Convocation to remove this restriction.

As at December 31, 2020, the E&O Fund balance was \$55,386,000 (2019 – \$54,445,000). The fund balance is comprised of:

(\$000s)	<b>2020</b>	2019
Investment in LAWPRO shares	<b>5,000</b>	5,000
Contributed capital	<b>30,642</b>	30,642
Additional premium backstop	-	15,000
Unrestricted	<b>19,744</b>	3,803
<b>Total fund balance</b>	<b>55,386</b>	54,445

Convocation, with the adoption of the Society's annual budget, has periodically approved the transfer of accumulated investment income surplus to the needs of the E&O Fund to the Lawyer General Fund. In 2020, \$nil (2019 – \$1,200,000) was transferred from the E&O Fund to the Lawyer General Fund.

#### ***Capital Allocation Fund***

The Capital Allocation Fund is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital and intangible assets, which comprise buildings and major equipment including computers and software. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital and Intangible Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund. As at December 31, 2020, the fund balance was \$5,458,000 (2019 – \$2,927,000).

#### ***Invested in Capital and Intangible Assets Fund***

The Invested in Capital and Intangible Assets Fund records transactions related to the Society's capital assets and intangible assets, specifically acquisitions, amortization and disposals. As at December 31, 2020, the balance was \$10,548,000 (2019 – \$11,778,000), representing the net book value of the Society's capital and intangible assets.

#### ***County Libraries Fund***

The County Libraries Fund records transactions related to the Society's support of county law libraries. As approved by Convocation, the fund accumulates funds for county library purposes, which are remitted to LIRN. The fund balance as at December 31, 2020 was \$85,000 (2019 – \$189,000).

#### ***Other Restricted Funds***

The Repayable Allowance Fund provides loans for tuition and living expenses to candidates in the lawyer licensing process. As at December 31, 2020, the fund balance was \$84,000 (2019 – \$76,000).

The Special Projects Fund is maintained to ensure that financing is available for ongoing special projects. The fund balance as at December 31, 2020 was \$778,000 (2019 – \$934,000).

The Parental Leave Assistance Fund accounts for the delivery of the Parental Leave Assistance Program (“PLAP”) and is funded by lawyers’ annual fees. PLAP provides financial assistance to lawyers in firms of five lawyers or fewer who have a net annual practice income of less than \$50,000 and who do not have access to any other parental leave financial benefits. Under PLAP, the Society provides a fixed sum of \$750 a week to eligible applicants for up to 12 weeks to cover expenses associated with maintaining their practice during a maternity, parental or adoption leave. As at December 31, 2020, the fund balance was \$166,000 (2019 – \$56,000).

### 3. Significant Accounting Policies

#### ***Basis of presentation***

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations set out in Part III of the Chartered Professional Accountants of Canada Handbook – Accounting (“Part III”).

#### ***Financial instruments***

The Society’s financial assets and financial liabilities are measured at fair value on the original date of the transaction and then subsequently measured as follows:

<b>Asset / Liability</b>	<b>Measurement</b>
Cash	Fair value
Short-term investments	Fair value
Accounts receivable	Amortized cost
Portfolio investments	Fair value
Loan receivable	Amortized cost
Accounts payable and accrued liabilities	Amortized cost
Unclaimed trust funds	Amortized cost

Investments in subsidiaries are reported at cost.

The fair value of portfolio investments is determined by reference to transactional net asset values for the fixed income and Canadian equity pooled funds. Transaction costs are expensed as incurred. The carrying values of accounts receivable, loan receivable, accounts payable and accrued liabilities and unclaimed trust funds approximate fair value due to their nature or capacity for prompt liquidation.

There has been no change in risk exposures from the previous period.

#### ***Interest rate risk***

The risk that the fair value of financial instruments will fluctuate due to changes in market interest rates is managed through compliance with the Society’s investment policy. The normal duration range for the bond portfolio administered under the policy is between 1 and 5 years. The Society has no material interest-bearing liabilities.

Fluctuations in interest rates do not have a significant effect on cash and short-term investments of the Society.

**Market risk**

The risk that the fair value of financial instruments will fluctuate due to changes in market prices is managed through compliance with the Society's investment policy, which requires a diversified portfolio of government bonds, corporate bonds and Canadian equities meeting specified quality requirements.

**Credit risk**

Credit risk is the possibility that other parties may default on their financial obligations. At year-end, the maximum exposure of the Society to credit risk in cash, loan receivable, short and long-term fixed income investments was \$96,100,000 (2019 – \$100,253,000). In compliance with the Society's investment policy, fixed income investments are in the financial obligations of governments, major financial institutions and commercial paper with investment grade ratings.

At year-end, the maximum exposure of the Society to credit risk in accounts receivable was \$13,258,000 (2019 – \$11,967,000). This credit risk is minimized by the credit quality and a diverse debtor base. The Society maintains an allowance for potential credit losses.

**Liquidity risk**

Liquidity risk is the risk that the Society will not be able to fund its obligations as they come due, including being unable to liquidate assets in a timely manner at a reasonable price. The Society monitors forecasts of cash flows from operations and investments and holds investments that can readily be converted into cash. Investment income is not a primary source of revenue for the Society and all underlying long-term securities are publicly listed.

The Society has not entered into any derivative transactions. In addition, the Society's contractual arrangements do not have any embedded features.

**Cash and short-term investments**

Cash (bank balances) and short-term investments (less than one year) are amounts on deposit and invested in short-term investment vehicles according to the Society's investment policy.

**Portfolio investments**

Portfolio investments are recorded at fair value. The Society manages financial risk associated with portfolio investments in accordance with its investment policy. The primary objective of the investment policy is to preserve and enhance the real capital base. The secondary objective is to generate investment returns to assist the Society in funding its programs. Convocation monitors compliance with the investment policy and regularly reviews the policy.

**Capital assets**

Capital assets are presented at cost net of accumulated amortization. Amortization is charged to expenses on a straight-line basis over the estimated useful lives of the assets as follows:

Buildings	30 years
Building and leasehold improvements	Lesser of 10 years or term of lease
Furniture, equipment and computer hardware	3 to 5 years

**Intangible assets**

Intangible assets comprising computer applications and software are presented at cost net of accumulated amortization. Amortization is charged to expenses on a straight-line basis over three years.

**Revenue recognition**

Annual licensee fees, insurance premiums and levies are set annually by Convocation and are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Insurance premiums related to the unexpired term of coverage at the balance sheet date are reported as deferred revenue.

Professional development and competence revenues are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next year.

Other revenues and realized investment gains/losses are recognized when receivable if the amount can be reasonably estimated. Unrealized investment gains/losses are recognized with changes in the fair value of financial instruments.

Fees, insurance premiums and other revenues receivable are recorded as accounts receivable on the balance sheet, net of any required provision for doubtful amounts.

**Provision for unpaid grants**

Pursuant to section 51(5) of the *Law Society Act*, the payment of grants from the Compensation Fund is at the discretion of Convocation. Grants paid from the lawyer pool of the Compensation Fund are subject to a limit per claimant of \$150,000 for claims incurred before September 22, 2016 and \$500,000 thereafter. Grants paid from the paralegal pool of the Compensation Fund are subject to a \$10,000 limit per claimant. The Compensation Fund expense represents a provision for unpaid grants and administrative expenses.

Provisions for unpaid grants are recorded as liabilities on the balance sheet. The measurement of the ultimate settlement costs of claims made to date that underlies the provision for unpaid grants involves estimates and measurement uncertainty. Ultimate costs incurred could vary from current estimates. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the methods of estimation that have been used will produce reasonable results given the current information. These provisions represent an estimate of the present value of grants to be paid for claims and the associated administrative costs net of recoveries. Grant liabilities are carried on a discounted basis using the yield of the underlying assets backing the grant liabilities with a provision for adverse deviation. The discount rate is 0.61% (2019 – 1.95%).

**Collections**

The Society owns a collection of legal research and reference material as well as a collection of portraits and sculptures. The cost of additions to the collections is expensed as incurred. No value is recorded in these financial statements for donated items. There have not been any significant changes to the collections in the current year.

**Volunteer services**

Convocation, consisting of the Treasurer and benchers, governs the Society. Benchers may be elected by lawyers, paralegals, appointed by the provincial government, or achieve ex-officio or emeritus status based on past service.

Elected and ex-officio benchers are remunerated for adjudication and authorization activities. They are only remunerated for eligible governance work after contributing 26 days of voluntary time. The work of the Society is also dependent on other voluntary services by lawyers and paralegals. No value has been included in these financial statements for volunteer services.

### ***Measurement uncertainty***

The preparation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingencies at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The valuation of certain liabilities, unpaid grants and unpaid claims anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimation and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates.

## **4. Investment in Subsidiaries**

Investment in the Society's subsidiaries is recorded at cost:

	<b>2020</b>	2019
LAWPRO	<b>35,642,000</b>	35,642,000
LIRN	<b>100</b>	100
<b>Total investment in subsidiaries</b>	<b>35,642,100</b>	35,642,100

### ***LAWPRO***

The Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly-owned subsidiary of the Society.

The professional liability insurance program generally requires practising lawyers to pay premiums and levies to the E&O Fund that contribute toward the premium paid by the Society to fund the anticipated costs of professional liability claims made in each annual policy period.

Paralegals obtain this form of coverage through independent insurance companies. In addition to providing mandatory professional liability insurance to lawyers, LAWPRO also sells optional excess professional liability and title insurance.

The investment in LAWPRO comprises:

(\$000s)	<b>2020</b>	2019
30,000 common shares of par value of \$100 each	<b>3,000</b>	3,000
20,000 6% non-cumulative, redeemable, non-voting preferred shares of par value of \$100 each	<b>2,000</b>	2,000
Investment in LAWPRO shares	<b>5,000</b>	5,000
Contributed capital	<b>30,642</b>	30,642
<b>Total investment</b>	<b>35,642</b>	35,642

Summarized below is the financial information of LAWPRO. LAWPRO prepares their financial statements under International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board. There are significant differences between IFRS and accounting standards for not-for-profit organizations set out in Part III of the Chartered Professional Accountants of Canada Handbook – Accounting including the accounting for leases and for unrealized gains and losses and other items that are reflected through the statement of comprehensive income of LAWPRO.

Summarized balance sheet of LAWPRO:

(\$000s)	2020	2019
Total assets	<b>802,396</b>	779,801
Total liabilities	<b>532,826</b>	508,500
Total shareholders equity	<b>269,570</b>	271,301
Total liabilities and shareholders equity	<b>802,396</b>	779,801

Summarized statement of income of LAWPRO for the year ended December 31:

(\$000s)	2020	2019
Revenue	<b>154,459</b>	132,152
Expenses	<b>126,469</b>	125,821
Income before taxes	<b>27,990</b>	6,331
Income tax expense	<b>6,980</b>	1,483
Net income	<b>21,010</b>	4,848
Other comprehensive income (loss) net of tax	<b>(22,741)</b>	12,991
Comprehensive income (loss)	<b>(1,731)</b>	17,839

Summarized statement of cash flows of LAWPRO for the year ended December 31:

(\$000s)	2020	2019
Net cash inflow from operating activities	<b>14,558</b>	11,359
Net cash outflow from investing activities	<b>(24,538)</b>	(3,112)
Net cash outflow from financing activities	<b>(389)</b>	(411)
Cash and cash equivalents, beginning of year	<b>18,117</b>	10,281
Cash and cash equivalents, end of year	<b>7,748</b>	18,117

LAWPRO administers the operations of the E&O Fund on behalf of the Society at no charge under an administrative services agreement. LAWPRO billed the Society \$101,820,000 (2019 – \$102,772,000) for premiums during the year. LAWPRO contributed \$561,000 to the Society towards directors’ fees for benchers appointed to the LAWPRO Board and a wellness program available to licensees (2019 – \$523,000). These transactions are entered in the ordinary course of business and are measured at fair value. Included in the Society’s financial statements are amounts due to LAWPRO of \$7,764,000 (2019 – \$7,354,000). The amounts due to LAWPRO are non-interest bearing and have no fixed terms of repayment.

**LIRN**

LIRN, a wholly-owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines, and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Society. LIRN was incorporated under the *Business Corporations Act (Ontario)* in 2001 and at the beginning of 2020, Articles of Amendment were filed to rename LibraryCo. Inc. as LIRN Inc.

The Society holds all of the 100 common shares. Of the 100 special shares, 25 are held by the Toronto Lawyers Association (“TLA”) and 75 are held by the Federation of Ontario Law Associations (“FOLA”). The independent skills-based board of directors of LIRN is appointed based on the recommendations of a Nominating Committee comprised of three members from the Society, two members from FOLA and one member from TLA.

The Society levies and collects funds for county and district law library purposes and transfers these funds to LIRN. Convocation internally restricts these funds for use by county and district law libraries to carry out their annual operations and any special projects approved by Convocation.

Summarized balance sheet of LIRN:

(\$000s)	2020	2019
Total assets	<b>1,091</b>	1,067
Total liabilities	<b>57</b>	59
Total share capital and fund balances	<b>1,034</b>	1,008
<b>Total liabilities, share capital and fund balances</b>	<b>1,091</b>	1,067

Summarized statement of income of LIRN for the year ended December 31:

(\$000s)	2020	2019
Total revenue	<b>8,027</b>	8,076
Total expenses	<b>8,001</b>	7,777
<b>Excess of revenues over expenses</b>	<b>26</b>	299

Summarized statement of cash flows of LIRN for the year ended December 31:

(\$000s)	2020	2019
Net cash inflow from operating activities	<b>25</b>	333
Cash, beginning of year	<b>1,009</b>	676
<b>Cash, end of year</b>	<b>1,034</b>	1,009

The Society provided LIRN with a grant of \$8,000,000 (2019 – \$8,100,000) during the year. The Society provides some administrative services to LIRN as well as certain other services and publications. The total amount billed by the Society for 2020 was \$11,000 (2019 – \$32,000). These transactions are entered in the ordinary course of business and are measured at fair value. Included in accounts receivables are amounts due from LIRN of \$1,000 (2019 – \$6,000).

## 5. Related Entity

The Law Society Foundation (“LSF”) is regarded as a related entity, although the Society does not have an equity interest in the LSF.

The LSF, a registered charity, was incorporated by Letters Patent in 1962. The objectives of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to licensing process candidates in Ontario, restore and preserve land and buildings of historical significance to Canada’s legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada’s legal heritage, maintain a collection of gifts of books and other written material for use by educational institutions in Canada and receive donations and maintain funds for the relief of poverty by providing meals to persons in need.

The Society provides facilities and certain administration services at no cost to the LSF. Trustees of the LSF are elected by the members of the LSF. Included in the Society’s accounts are amounts due to the LSF of \$1,000 (2019 – due from of \$9,000).

## 6. Portfolio Investments

(\$000s)	2020	2019
Debt securities	45,308	44,519
Canadian equities	24,403	19,302
<b>Total portfolio investments</b>	<b>69,711</b>	<b>63,821</b>

The debt securities have effective interest rates and maturity dates as follows:

	2020	2019
Effective interest rates (%)	0.2 – 2.6	1.7 – 3.7
Maturity dates (years)	1 – 8	1 – 8

## 7. Loan Receivable

Canadian Legal Information Institute (“CanLII”) is a not-for-profit organization established by the Federation of Law Societies to provide access to judicial decisions and legislative documents on the internet. Lexum Informatique Juridique Inc. (“Lexum”) is a software company that operates online legal information delivery products, primarily for CanLII. CanLII purchased all the shares of Lexum in 2018. The Society contributed \$878,000 to a subordinated syndicated loan with all the other Canadian law societies as part of the funding of this purchase in 2018. This loan has an annual interest rate of 4.74%, compounded semi-annually and will mature in full five years from the date of closing.

In 2020, the Society made an annual repayable capital payment of \$274,000 (2019 - \$280,000) as the second of three annual balance of sale payments to the vendors of Lexum.

## 8. Capital Assets and Intangible Assets

Capital Assets (\$000s)	2020			2019
	Cost	Accumulated amortization	Net	Net
Land and buildings	25,395	24,927	468	1,019
Building and leasehold improvements	30,259	23,591	6,668	7,015
Furniture, equipment and computer hardware	3,302	2,711	591	617
<b>Total capital assets</b>	<b>58,956</b>	<b>51,229</b>	<b>7,727</b>	<b>8,651</b>

Intangible Assets (\$000s)	2020			2019
	Cost	Accumulated amortization	Net	Net
Computer applications and software	9,631	6,810	2,821	3,127
<b>Total intangible assets</b>	<b>9,631</b>	<b>6,810</b>	<b>2,821</b>	<b>3,127</b>

## 9. Accounts Payable and Accrued Liabilities and Accounts Receivable

Included in accounts receivable, accounts payable and accrued liabilities is \$404,978 due from government remittances, primarily sales taxes (2019 – due to of \$642,000).

The accounts receivable balance comprises:

(\$000s)	2020	2019
Accounts receivable	36,416	33,014
Allowance for doubtful accounts	23,158	21,047
<b>Accounts receivable – net</b>	<b>13,258</b>	<b>11,967</b>

The allowance for doubtful accounts mainly relates to annual fees, regulatory compliance ordered costs and licensing process fees.

## 10. Unclaimed Trust Funds

Section 59.6 of the *Law Society Act* permits a licensee who has held money in trust for, or on account of, a person for a period of at least two years, to apply in accordance with the by-laws for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. Subject to certain provisions in the *Law Society Act* enabling the Society to recover its expenses associated with maintaining these funds, net income from the money held in trust shall be paid to the Law Foundation of Ontario. Unclaimed money held in trust amounts to \$6,075,000 (2019 – \$5,587,000).

## 11. Other Trust Funds

The Society administers client funds for licensees under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. As at December 31, 2020, total funds held in trust amount to \$3,815,000 (2019 – \$4,132,000).

## 12. Other Revenues

Other Revenues primarily comprise income from *Ontario Reports* royalties, administrative fees, regulatory compliance ordered cost recoveries and catering.

## 13. Other Expenses

Included in Convocation, policy and outreach expenses are payments for the remuneration of elected, ex-officio and lay benchers during the year of \$309,000 (2019 – \$693,000). The total expense reimbursements of the elected, ex-officio and lay benchers during the year was \$61,000 (2019 – \$430,000). The Treasurer's honorarium expense for the year was \$206,000 (2019 – \$203,000).

## 14. Interfund Transfers

During the year, the following net interfund transfers took place, which have been approved by Convocation:

- \$1,519,000 from the Capital Allocation Fund to the Invested in Capital and Intangible Assets Fund representing assets capitalized during the year in compliance with the Society's accounting policies;
- \$156,000 from the Special Projects Fund to the General Fund to fund the facilities condition assessment, work related to the implementation of approved recommendations of the Challenges Faced by Racialized Licensees Working Group, and maintenance of the Society's grounds, net of funding transferred to the Special Projects Fund to fund the next bencher election; and
- \$100,000 from the Lawyer General Fund to the Repayable Allowance Fund, as provided in the 2020 budget to fund the Repayable Allowance Program in the Licensing Process.

## 15. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. Each member of the plan, other than designated employees, elects to contribute matching employee and employer contributions from 1% to 6% of annual earnings up to the maximum deduction allowed by the Canada Revenue Agency. Designated employees, who hold executive positions, have contributions made to the plan by the Society equivalent to 12% of annual earnings up to the maximum deduction allowed by the Canada Revenue Agency. The Society's pension expense in 2020 amounted to \$3,017,000 (2019 – \$2,846,000).

## 16. Commitments

The Society is committed to monthly lease payments for basic and additional rent for property under leases having various terms up to February 2028. Aggregate minimum annual payments to the expiry of the leases are approximately as follows:

2021	\$2,348,000
2022	\$2,464,000
2023	\$2,580,000
2024	\$2,697,000
2025	\$2,813,000
Thereafter	\$ 6,296,000
Total	<u>\$19,198,000</u>

In 2016, Convocation approved the Society's support for the Law Commission of Ontario's mandate for a third five-year period. The Society's contribution will be \$157,000 in 2021.

Pursuant to the loan arrangement described in Note 7, the Society is committed to pay \$265,000 in 2021 to fund annual balance of sale payments to the vendors of Lexum.

## 17. Contingent Liabilities

A number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims. Management is of the opinion, based on the information presently available, that it is unlikely any liability, to the extent not covered by insurance or inclusion in the financial statements, would be material to the Society's financial position.

## 18. COVID-19 Pandemic

The COVID-19 outbreak negatively impacted the timing and amount of the Society's revenues in 2020, and the duration and overall impact on the Society's future revenues is unknown at this time. There were deliberate measures taken by the Society in 2020 along with circumstantial savings that resulted in expense reductions greater than the decline in revenue. It is not possible to reliably estimate the length and severity of the COVID-19 pandemic on the financial results and condition of the Society in future periods.

## 19. Schedule of Restricted Funds

A schedule of Restricted Funds is set out below

*Stated in thousands of dollars*

	2020							2019	
	Compensation Fund Lawyer	Paralegal	Errors and omissions insurance	Capital allocation	Invested in capital and intangible assets	County libraries	Other restricted	Total	Total
<b>Fund balances, beginning of year</b>	21,818	948	54,445	2,927	11,778	189	1,066	93,171	85,304
<b>Revenues</b>									
Annual fees	9,266	55	-	4,517	-	7,915	200	21,953	22,330
Insurance premiums and levies	-	-	101,820	-	-	-	-	101,820	102,772
Investment income	912	48	492	-	-	-	-	1,452	1,447
Change in fair value of investments	625	33	450	-	-	-	-	1,108	1,472
Other	353	44	-	-	-	-	-	397	89
<b>Total revenues</b>	<b>11,156</b>	<b>180</b>	<b>102,762</b>	<b>4,517</b>	<b>-</b>	<b>7,915</b>	<b>200</b>	<b>126,730</b>	<b>128,110</b>
<b>Total expenses</b>	<b>2,431</b>	<b>169</b>	<b>101,821</b>	<b>467</b>	<b>2,749</b>	<b>8,019</b>	<b>182</b>	<b>115,838</b>	<b>119,679</b>
<b>Excess of revenues over expenses (expenses over revenues)</b>	<b>8,725</b>	<b>11</b>	<b>941</b>	<b>4,050</b>	<b>(2,749)</b>	<b>(104)</b>	<b>18</b>	<b>10,892</b>	<b>8,431</b>
<b>Interfund transfers (note 14)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(1,519)</b>	<b>1,519</b>	<b>-</b>	<b>(56)</b>	<b>(56)</b>	<b>(564)</b>
<b>Fund balances, end of year</b>	<b>30,543</b>	<b>959</b>	<b>55,386</b>	<b>5,458</b>	<b>10,548</b>	<b>85</b>	<b>1,028</b>	<b>104,007</b>	<b>93,171</b>

**SUPPLEMENTARY SCHEDULES**  
**UNAUDITED**

**LAW SOCIETY OF ONTARIO**  
**Lawyers and Paralegals General Fund**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	73,361	74,219	(858)	77,000
2 Professional development and competence	19,961	22,050	(2,089)	23,121
3 Investment income	736	775	(39)	899
4 Change in fair value of investments	555	-	555	1,129
5 Other	7,104	7,943	(839)	8,329
<b>6 Total revenues</b>	<b>101,717</b>	<b>104,987</b>	<b>(3,270)</b>	<b>110,478</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	30,726	33,700	2,974	30,479
8 Professional development and competence	26,839	32,335	5,496	30,796
9 Corporate services	27,577	28,206	629	33,866
10 Convocation, policy and outreach	6,001	11,814	5,813	8,795
11 Services to licensees and public	6,437	7,643	1,206	7,378
<b>12 Total expenses</b>	<b>97,580</b>	<b>113,698</b>	<b>16,118</b>	<b>111,314</b>
<b>13 Excess of revenues over expenses (expenses over revenues)</b>	<b>4,137</b>	<b>(8,711)</b>	<b>12,848</b>	<b>(836)</b>

**LAW SOCIETY OF ONTARIO**  
**General Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	67,836	68,406	(570)	70,927
2 Professional development and competence	17,075	18,950	(1,875)	19,876
3 Investment income	653	688	(35)	803
4 Change in fair value of investments	493	-	493	1,002
5 Other	6,040	6,873	(833)	7,090
<b>6 Total revenues</b>	<b>92,097</b>	<b>94,917</b>	<b>(2,820)</b>	<b>99,698</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	28,179	29,897	1,718	27,046
8 Professional development and competence	24,094	28,743	4,649	27,482
9 Corporate services	24,387	24,984	597	30,335
10 Convocation, policy and outreach	5,457	10,672	5,215	7,934
11 Services to licensees and public	5,851	6,943	1,092	6,777
<b>12 Total expenses</b>	<b>87,968</b>	<b>101,239</b>	<b>13,271</b>	<b>99,574</b>
<b>13 Excess of revenues over expenses (expenses over revenues)</b>	<b>4,129</b>	<b>(6,322)</b>	<b>10,451</b>	<b>124</b>

**LAW SOCIETY OF ONTARIO**  
**General Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	5,525	5,813	(288)	6,073
2 Professional development and competence	2,886	3,100	(214)	3,245
3 Investment income	83	87	(4)	96
4 Change in fair value of investments	62	-	62	127
5 Other	1,064	1,070	(6)	1,239
<b>6 Total revenues</b>	<b>9,620</b>	<b>10,070</b>	<b>(450)</b>	<b>10,780</b>
<b>EXPENSES</b>				
7 Professional regulation, tribunals and compliance	2,547	3,803	1,256	3,433
8 Professional development and competence	2,745	3,592	847	3,314
9 Corporate services	3,190	3,222	32	3,531
10 Convocation, policy and outreach	544	1,142	598	861
11 Services to licensees and public	586	700	114	601
<b>12 Total expenses</b>	<b>9,612</b>	<b>12,459</b>	<b>2,847</b>	<b>11,740</b>
<b>13 Excess of revenues over expenses (expenses over revenues)</b>	<b>8</b>	<b>(2,389)</b>	<b>2,397</b>	<b>(960)</b>

**LAW SOCIETY OF ONTARIO**  
**Compensation Fund**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	9,321	9,411	(90)	9,694
2 Investment income	960	975	(15)	988
3 Change in fair value of investments	658	-	658	855
4 Recoveries	397	351	46	89
5 <b>Total revenues</b>	<b>11,336</b>	<b>10,737</b>	<b>599</b>	<b>11,626</b>
<b>EXPENSES</b>				
6 Provision for unpaid grants	1,870	9,956	8,086	551
7 Administrative	730	763	33	722
8 <b>Total expenses</b>	<b>2,600</b>	<b>10,719</b>	<b>8,119</b>	<b>1,273</b>
9 <b>Excess of revenues over expenses (expenses over revenues)</b>	<b>8,736</b>	<b>18</b>	<b>8,718</b>	<b>10,353</b>

**LAW SOCIETY OF ONTARIO**  
**Compensation Fund - Lawyers**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	9,266	9,354	(88)	9,603
2 Investment income	912	926	(14)	877
3 Change in fair value of investments	625	-	625	724
4 Recoveries	353	333	20	68
<b>5 Total revenues</b>	<b>11,156</b>	<b>10,613</b>	<b>543</b>	<b>11,272</b>
<b>EXPENSES</b>				
6 Provision for unpaid grants	1,731	9,840	8,109	575
7 Administrative	700	725	25	641
<b>8 Total expenses</b>	<b>2,431</b>	<b>10,565</b>	<b>8,134</b>	<b>1,216</b>
<b>9 Excess of revenues over expenses (expenses over revenues)</b>	<b>8,725</b>	<b>48</b>	<b>8,677</b>	<b>10,056</b>

**LAW SOCIETY OF ONTARIO**  
**Compensation Fund - Paralegals**  
**Schedule of Revenues and Expenses**

*Stated in thousands of dollars*  
*For the year ended December 31*

	<b>2020 Actual</b>	<b>2020 Budget</b>	<b>Variance</b>	<b>2019 Actual</b>
<b>REVENUES</b>				
1 Annual fees	55	57	(2)	91
2 Investment income	48	49	(1)	111
3 Change in fair value of investments	33	-	33	131
4 Recoveries	44	18	26	21
<b>5 Total revenues</b>	<b>180</b>	<b>124</b>	<b>56</b>	<b>354</b>
<b>EXPENSES</b>				
6 Provision for unpaid grants	139	116	(23)	(24)
7 Administrative	30	38	8	81
<b>8 Total expenses</b>	<b>169</b>	<b>154</b>	<b>(15)</b>	<b>57</b>
<b>9 Excess of revenues over expenses (expenses over revenues)</b>	<b>11</b>	<b>(30)</b>	<b>41</b>	<b>297</b>

**LAW SOCIETY OF ONTARIO**  
**Errors and Omissions Insurance Fund**  
**Schedule of Revenues and Expenses and Change in Fund Balance**

*Stated in thousands of dollars*

*For the year ended December 31*

	<b>2020 Actual</b>	<b>2019 Actual</b>
<b>REVENUES</b>		
1 Insurance premiums and levies	101,820	102,772
2 Investment income	492	459
3 Change in fair value of investments	450	617
4 Other income	-	-
<b>5 Total revenues</b>	<b>102,762</b>	<b>103,848</b>
<b>EXPENSES</b>		
6 Administrative	-	-
7 Expenses	1	3
8 Insurance	101,820	102,772
<b>9 Total expenses</b>	<b>101,821</b>	<b>102,775</b>
<b>10 Excess of revenues over expenses (expenses over revenues)</b>	<b>941</b>	<b>1,073</b>
10 Interfund transfers	-	(1,200)
11 Change in fund balance	941	(127)
12 Fund balance, beginning of year	54,445	54,572
<b>13 Fund balance, end of year</b>	<b>55,386</b>	<b>54,445</b>

**FOR INFORMATION**  
**Lawyers' Professional Indemnity Company**  
**Audited Financial Statements**  
**for the year ended December 31, 2020**

**The Committee recommends the audited financial statements for the Lawyers' Professional Indemnity Company (LAWPRO) for the year ended December 31, 2020 be received by Convocation for information.**

The Law Society provides mandatory professional liability insurance to lawyers through LAWPRO, a provincially licensed insurer and wholly-owned subsidiary of the Law Society. The statements have been approved by LAWPRO's Board.

The professional liability insurance program generally requires practising lawyers to pay premiums and levies to the E&O Fund that contribute toward the premium paid by the Law Society to fund the anticipated costs of professional liability claims made in each annual policy period.

In addition to providing mandatory lawyers professional liability insurance, LAWPRO also sells optional excess lawyers professional liability insurance and title insurance.

The audited financial statements for LAWPRO were received for information by the Audit & Finance Committee at its April meeting. They are available as part of LAWPRO's Annual Report found at [Tab 9](#).

## FOR INFORMATION

### LIRN INC. Audited Financial Statements for the year ended December 31, 2020

**The Committee recommends the audited Annual Financial Statements for LIRN Inc. (LIRN) for December 31, 2020 be received by Convocation for information.**

LIRN is the central manager of the Ontario county courthouse library system in accordance with the objectives, policies and principles established and approved by the Law Society, in consultation with the Federation of Ontario Law Associations and the Toronto Lawyers' Association, all shareholders of the organization. This is the first year of operations as LIRN since the transition from LibraryCo Inc. at the beginning of 2020. As part of the transition, the governance structure shifted from shareholder appointed directors to a new skills-based board that includes independent board members nominated to provide specified knowledge and skills that would best support the future decision-making of LIRN.

LIRN is a wholly-owned subsidiary of the Law Society with two classes of shares: 100 common shares and 100 special shares. The Law Society holds all of the common shares outstanding. Of the special shares outstanding, 25 are held by the Toronto Lawyers' Association and 75 are held by the Federation of Ontario Law Associations.

LIRN is fully funded by the Law Society through the lawyer's annual fee. The LIRN component of the annual fee for 2020 was \$182 per lawyer. Grants to the 48 county libraries comprised most of LIRN's expenditures with the balance being centralized expenses such as access to online research products.

These financial statements have been approved by the LIRN Board. They received an unqualified audit opinion from the auditors, PricewaterhouseCoopers LLP, with no issues or exceptions identified.



Legal Information and Resource Network

## **MANAGEMENT DISCUSSION AND ANALYSIS**

*DECEMBER 31, 2020*

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Articles of Amendment were filed with the Minister of Government Services at the beginning of 2020 to rename LibraryCo Inc. as LIRN Inc. with a new governance structure to oversee the delivery of library services and legal information to Ontario licensees. This is the first year of operation under this new structure with a new independent, skills-based board of directors focussed on the modernization of the delivery of legal information and library services.

### **Results of Operations**

Results for the year identify an excess of revenues over expenses of \$25,692 (2019 - \$299,499). The 2020 budget approved the utilization of \$89,000 of the General Fund balance to support the operations of LIRN. Transition to the new structure was completed during the year resulting in expenditures being less than planned. This resulted in the small excess of revenues over expenses for 2020. While core expenses such as grants to county libraries increased from 2019, a number of smaller expense categories were under budget and the draw on the General Fund balance did not occur.

### **Statement of Revenues and Expenses – Revenues**

The Law Society of Ontario (the Society) grant totalled \$8 million (2019 - \$8.1 million). The slight decline in the Society grant from 2019 is a reflection of the growth in the General Fund balance experienced by LIRN. The 2020 funding of operations by the Society grant was intended to be supplemented by the utilization of the General Fund balance as previously mentioned.

### **Statement of Revenues and Expenses – Expenses**

Administration expenses were incurred as LIRN Inc. transitioned from LibraryCo Inc., and a Managing Director was hired. In 2019 these services were provided by the Law Society at no charge.

Electronic products and services expenses of \$363,000 increased slightly over 2019.

County and district law library grants of \$7.1 million (2019 - \$6.9 million) are detailed by county in the notes to the financial statements and include both the annual grants

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approved as part of the budget process and also special needs grants. All counties received increases in their annual grants in 2020.

### **Balance Sheet and Statement of Changes in Fund Balances**

The General Fund accounts for the delivery, management and administration of library services. The General Fund has increased by the excess of revenues over expenses of \$25,692 to \$533,689. LIRN's budget for 2021 envisages using \$456,000 of the fund balance to finance operations.

The Reserve Fund has an unchanged balance of \$500,000.

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## Independent auditor's report

To the Board of Directors of LIRN Inc.

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### Our opinion

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of LIRN Inc. (the Organization) as at December 31, 2020 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

#### What we have audited

The Organization's financial statements comprise:

- the statement of financial position as at December 31, 2020;
- the statement of revenues and expenses for the year then ended;
- the statement of changes in fund balances for the year then ended;
- the statement of cash flows for the year then ended; and
- the notes to the financial statements, which include significant accounting policies and other explanatory information.

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### Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Independence

We are independent of the Organization in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.



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## Other information

Management is responsible for the other information. The other information comprises the information, other than the financial statements and our auditor's report thereon, included in the annual report.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

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## Responsibilities of management and those charged with governance for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Organization's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Organization or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Organization's financial reporting process.

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## Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.



As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Organization's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Organization to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*PricewaterhouseCoopers LLP*

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Ontario  
March 25, 2021

## STATEMENT OF FINANCIAL POSITION

*Stated in dollars*

*As at December 31, 2020*

	2020	2019
<b>Assets</b>		
<b>Current Assets</b>		
Cash	1,034,262	1,009,725
Accounts Receivable	23,403	25,355
Prepaid Expenses	33,692	31,604
<b>Total Assets</b>	<b>1,091,357</b>	<b>1,066,684</b>
<b>Liabilities, Share Capital &amp; Fund Balances</b>		
<b>Current Liabilities</b>		
Accounts Payable & Accrued Liabilities (note 4 and 6)	57,468	58,487
<b>Total Liabilities</b>	<b>57,468</b>	<b>58,487</b>
<b>Share Capital &amp; Fund Balances</b>		
Share Capital (notes 1 and 5)	200	200
General Fund (note 2)	533,689	507,997
Reserve Fund (note 2)	500,000	500,000
<b>Total Share Capital &amp; Fund Balances</b>	<b>1,033,889</b>	<b>1,008,197</b>
<b>Total Liabilities, Share Capital &amp; Fund Balances</b>	<b>1,091,357</b>	<b>1,066,684</b>

*The accompanying notes are an integral part of these financial statements*

On behalf of the Board of Directors



Chair – Board of Directors



Vice-Chair – Board of Directors

## STATEMENT OF REVENUES AND EXPENSES

*Stated in dollars**For the year ended December 31, 2020*

	2020	2019
<b>Revenues</b>		
Law Society of Ontario grant (note 6)	8,019,094	8,057,936
Interest income	7,628	18,219
<b>Total Revenues</b>	<b>8,026,722</b>	<b>8,076,155</b>
<b>Expenses</b>		
<b>Head Office Administration</b>		
Administration	79,068	-
Professional fees	25,043	24,201
Other (note 7)	100,948	13,891
Total Head Office / Administration Expenses	205,059	38,092
<b>Law Libraries - Centralized Purchases</b>		
Electronic products and services	363,137	352,668
Group benefits and insurance	336,607	338,052
Other (note 6 and 8)	20,564	103,593
Total Law Libraries - Centralized Purchases	720,308	794,313
County and District Law Libraries Grants (note 9)	7,075,663	6,944,251
Total County and District Law Libraries Expenses	7,795,971	7,738,564
<b>Total Expenses</b>	<b>8,001,030</b>	<b>7,776,656</b>
<b>Excess of Revenues over Expenses for the Year</b>	<b>25,692</b>	<b>299,499</b>

*The accompanying notes are an integral part of these financial statements*

## STATEMENT OF CHANGES IN FUND BALANCES

*Stated in dollars*

*For the year ended December 31, 2020*

	<b>2020</b>			2019
	General Fund	Reserve Fund	Total	
Balances - beginning of year	507,997	500,000	<b>1,007,997</b>	708,498
Excess of Revenues over Expenses for the year	25,692	-	<b>25,692</b>	299,499
<b>Balances - end of year</b>	<b>533,689</b>	<b>500,000</b>	<b>1,033,689</b>	1,007,997

*The accompanying notes are an integral part of these financial statements*

## STATEMENT OF CASH FLOWS

*Stated in dollars**For the year ended December 31, 2020*

	2020	2019
<b>Net inflow (outflow) of cash related to the following activities</b>		
<b>Excess of revenues over expenses for the year</b>	<b>25,692</b>	299,499
Net change in non-cash operating working capital items:		
Accounts receivable	<b>1,952</b>	1,348
Prepaid expenses	<b>(2,088)</b>	(1,190)
Accounts Payable & Accrued Liabilities	<b>(1,019)</b>	33,597
<b>Cash sourced in operating activities</b>	<b>24,537</b>	333,254
<b>Net inflow of cash during the year</b>	<b>24,537</b>	333,254
Cash - beginning of year	<b>1,009,725</b>	676,471
<b>Cash - end of year</b>	<b>1,034,262</b>	1,009,725

*The accompanying notes are an integral part of these financial statements*



Legal Information and Resource Network

## NOTES TO THE FINANCIAL STATEMENTS

*For the year ended December 31, 2020*

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### 1. General

At the beginning of 2020, the name of the corporation was changed from LibraryCo Inc. to LIRN Inc. (the Organization). The Organization was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding from the Law Society of Ontario (the Society).

The Organization has two classes of shares: Common shares and Special shares. The Society holds all of the 100 Common shares outstanding. Of the 100 special shares outstanding, 25 are held by the Toronto Lawyers Association (TLA) and 75 are held by the Federation of Ontario Law Associations (FOLA).

The organization is not subject to federal or provincial incomes taxes.

The Society provides certain administrative functions of the Organization for no fee.

### 2. Significant Accounting Policies

#### ***Basis of Presentation***

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations (ASNPO) set out in Part III of the Chartered Professional Accountants of Canada Handbook – Accounting.

#### ***General and Reserve Funds***

The organization follows the restricted fund method.

The General Fund accounts for the delivery, management and administration of library services. The Reserve Fund is maintained to assist the Organization's cash flows and act as a contingency fund.

#### ***Cash***

Cash consists of amounts on deposit with the Organization's financial institution.

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**Revenue Recognition**

Grants are recorded as revenue in the General Fund in the fiscal year in which they are received or receivable.

Interest income is recognized when receivable if the amount can be reasonably estimated.

**Grants Paid**

Grants paid are recognized in the fiscal year in which they are paid or payable.

**Use of Estimates**

The preparation of financial statements in accordance with ASNPO requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenditures during the year. Actual results could differ from such estimates.

**3. Financial Instruments**

The Organization's financial assets and financial liabilities are classified and measured as follows:

<b>Asset / Liability</b>	<b>Measurement</b>
Cash	Fair value
Accounts receivable	Amortized cost
Accounts payable and accrued liabilities	Amortized cost

**4. Accounts Payable and Accrued Liabilities**

There are no amounts of payable for government remittances.

**5. Share Capital****Authorized:**

Unlimited number of Common shares

Unlimited number of Special shares

---

**Issued:**

	<b>2020</b>	2019
100 Common shares	<b>\$100</b>	\$100
100 Special shares	<b>100</b>	100
<b>Total</b>	<b>\$200</b>	\$200

**6. Related Party Transactions**

The Society provided the Organization with a grant of \$8,000,000 (2019 - \$8,100,000) during the year.

The Society provides certain administrative services to the Organization (note 1) as well as other services and publications. The total amount billed by the Society for 2020 was \$17,400 (2019 - \$32,378). Included in accounts payable and accrued liabilities are amounts due to the Society of \$453 (2019 - \$5,768).

Lawyers' Professional Indemnity Company (LAWPRO) provides professional liability insurance to lawyers in Ontario and is also a wholly owned subsidiary of the Society. There were no transactions with LAWPRO during 2020 or 2019.

These transactions are entered in the ordinary course of business and are measured at fair value.

**7. Other Expenses – Head Office/Administration**

Included in these expenses are directors' and officers' insurance, Board of Directors' meetings, transition expenses and other miscellaneous items.

**8. Other Expenses – County and District Law Libraries – Centralized Purchases**

Included in these expenses are costs associated with continuing education bursaries, conference bursaries, the Conference for Ontario Law Associations' Libraries, document delivery, publications, committee meetings and miscellaneous items.

## **9. County and District Law Libraries Grants**

These grants represent the quarterly distribution of funds to the 48 County and District Law Libraries and any capital and special needs grants. The grants are distributed in accordance with policies and procedures established by the Organization's Board of Directors. The following page contains individual law library grants that were distributed by the Organization during 2020 and 2019.

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Law Association	2020	2019
Algoma	\$148,240	\$146,334
Brant	110,123	107,964
Bruce	61,420	64,057
Carleton	678,659	665,352
Cochrane	53,356	52,310
Dufferin	51,173	50,170
Durham	169,136	164,839
Elgin	89,887	88,125
Essex	310,734	302,681
Frontenac	146,768	142,910
Grey	72,728	72,302
Haldimand	33,835	32,191
Halton	154,218	150,213
Hamilton	493,237	488,352
Hastings	93,157	91,331
Huron	83,350	81,715
Kenora	95,846	93,967
Kent	77,392	78,874
Lambton	84,518	82,880
Lanark	43,136	42,290
Leeds & Grenville	78,877	77,330
Lennox & Addington	29,212	28,639
Lincoln	196,014	192,170
Manitoulin	2,788	2,733

Law Association	2020	2019
Middlesex	399,075	394,802
Muskoka	71,879	69,489
Nipissing	94,694	92,837
Norfolk	78,416	76,898
Northumberland	91,285	89,495
Oxford	78,138	76,606
Parry Sound	48,290	47,343
Peel	326,565	320,162
Perth	61,179	58,999
Peterborough	145,668	142,812
Prescott & Russell	16,275	14,976
Rainy River	30,624	29,043
Renfrew	136,405	133,730
Simcoe	154,226	151,202
Stormont Dundas & Glengarry	85,200	83,529
Sudbury	205,779	201,744
Temiskaming	47,463	47,532
Thunder Bay	187,091	183,422
Toronto	646,013	633,346
Victoria-Haliburton	96,235	94,348
Waterloo	274,037	269,534
Welland	105,090	101,068
Wellington	83,189	81,558
York	255,043	250,047
<b>TOTAL</b>	<b>\$7,075,663</b>	<b>\$6,944,251</b>

**FOR INFORMATION****Investment Compliance Reports  
for the Quarter ended December 31, 2020**

**The Committee recommends that Convocation receive the Investment Compliance Reports for the quarter ended December 31, 2020 for information.**

Under the Law Society Investment Policy, Law Society management shall report quarterly on compliance with the Policy.

The Law Society, and its investment manager, have complied with the Investment Policy for the quarter ending December 31, 2020.

**LAW SOCIETY OF ONTARIO  
STATEMENT OF INVESTMENT COMPLIANCE  
SHORT TERM INVESTMENTS  
As at December 31, 2020**

<b>Investment Parameters</b>	<b>Guidelines</b>	<b>Compliance</b>
<b>1. Asset Mix</b>		
Federal and provincial treasury bills	Allowed	Yes
Bankers acceptances	Allowed	Yes
Commercial paper	Allowed	Yes
Investment Manager Money Market Fund	Allowed	Yes
Premium Savings Account	Allowed	Yes
FGP Money Market Fund	Allowed	Yes
<b>2. Quality Requirements</b>		
Commercial paper rating	Min. R1	N/A
Liquidity	Max term to maturity of 365 days	Yes
<b>3. Quantity Restrictions</b>		
Commercial paper of a single corporate issuer	Max 8% of fund	Yes
<b>4. Other Restrictions</b>		
Equity Securities	None	Yes
Direct investments in:		
Resource properties	None	Yes
Mortgages and mortgage-backed securities	None	Yes
Real estate	None	Yes
Venture capital financing	None	Yes
Derivatives	None	Yes

*Christianne Abou-Saab*

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Christianne Abou-Saab  
Director, Finance

**Law Society of Ontario  
General Fund**  
**Manager: Foyston, Gordon & Payne Inc.**  
**Compliance Report**  
 (Period ending December 31, 2020)

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
<b>Canadian Equity</b>	<b>20%</b>	<b>30%</b>	<b>40%</b>	<b>Y</b>
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				<b>Y</b>
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio in the exception of Government of Canada and provincial government bonds in their guarantees.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017. \*If policy not complied with, comment on specifics.

January 2021

Date:



**Philip Stathopoulos**  
**Manager, Compliance**

**Law Society of Ontario  
Compensation Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending December 31, 2020)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
Canadian Equity	20%	30%	40%	Y
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				Y
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio in the exception of Government of Canada and provincial government bonds in their guarantees.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017.

\*If policy not complied with, comment on specifics.

January 2021

Date:



**Philip Stathopoulos  
Manager, Compliance**

**Law Society of Ontario  
E&O Insurance Fund  
Manager: Foyston, Gordon & Payne Inc.  
Compliance Report  
(Period ending December 31, 2020)**

1. Asset Mix:	Min.	Mid-Point	Max.	Compliance* (Y/N)
Cash & Short Term	0%	0%	15%	Y
Bonds	45%	70%	80%	Y
<b>Total Fixed Income</b>	<b>60%</b>	<b>70%</b>	<b>80%</b>	<b>Y</b>
Canadian Equity	20%	30%	40%	Y
<b>Minimum bond rating "BBB" or better by the Dominion Bond Rating Service or equivalent rating by another recognized bond rating service.</b>				Y
<b>Each bond portfolio may be invested within the following parameters:</b>				
Bond Holdings	Asset Mix			
	Maximum	Target	Minimum	Compliance* (Y/N)
Federal and Federally Guaranteed Bonds	100%	46%	26%	Y
Provincials, Provincially Guarantees and Municipals	38%	18%	0%	Y
Total Corporate Issues	56%	36%	0%	Y
Total BBB Issues with Corporate Issues	18%	8%	0%	Y
Cash or Money Market	5%	0%	0%	Y
Investment in any one security or issuer shall not exceed 10% of each Bond portfolio in the exception of Government of Canada and provincial government bonds in their guarantees.				Y
Bond portfolio duration 1 to 5 years.				Y
The Market value of any one common equity issuer cannot represent more than 10% of the market value of the total portfolio, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.				Y

Investment policy dated February 23, 2017.

\*If policy not complied with, comment on specifics

January 2021

Date:



**Philip Stathopoulos  
Manager, Compliance**

**TAB 4**  
**Report to Convocation**  
**April 22, 2021**

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**Professional Regulation Committee**

**Committee Members**

Megan Shortreed (Chair)  
Jacqueline Horvat (Vice-Chair)  
Michelle Lomazzo (Vice-Chair)  
Robert Adourian  
Gerard Charette  
Etienne Esquega  
Julian Falconer  
Jorge Pineda  
Jonathan Rosenthal  
Clare Sellers  
Andrew Spurgeon  
Nicholas Wright

**Purpose of Report: Decision and Information**

**Prepared by the Policy Division**  
**Matthew Wylie (416-947-3953)**

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Amendments to By-Laws – Mobility for Quebec Lawyers.....4.2

**For Information**

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Tab 4.1

## Professional Regulation Committee

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### Amendments to the *Rules of Professional Conduct* - Definition of “Lending Client”

April 22, 2021

**Committee Members:**

**Megan Shortreed (Chair)**  
**Jacqueline Horvat (Vice-Chair)**  
**Michelle Lomazzo (Vice-Chair)**  
Robert Adourian  
Gerard Charette  
Etienne Esquega  
Julian Falconer  
Jorge Pineda  
Jonathan Rosenthal  
Clare Sellers  
Andrew Spurgeon  
Nicholas Wright

**Authored By:**

Matthew Wylie  
[mwylie@lso.ca](mailto:mwylie@lso.ca)

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## Motion

**That Convocation approve the amendments to Rules 3.4-13 and 3.4-14 at Tab 4.1.1 (English) and Tab 4.1.2 (French), as detailed in this report and summarized as follows:**

- **That the definition of “lending client” in Rule 3.4-13 be amended to clarify those entities that qualify as “finance companies”; and**
- **That Rule 3.4-14 be amended to increase the amount of consideration from \$50,000 to \$75,000 for a mortgage or loan under which a lawyer may act for both borrower and lender.**

## Executive Summary

In March 2018, the Professional Regulation Committee (the “Committee”) began considering a proposal from the Ontario Bar Association’s Real Property Law Executive (the “OBA”) to define the term “finance company”, as used in Rules 3.4-12 to 3.4-16 (Acting for Borrower and Lender). At that time, the Committee agreed with the objective of the OBA’s proposal, that is, to provide clarity and certainty to lawyers and their clients.

With some modifications, the Committee adopted the definition recommended by the OBA. Before proceeding to Convocation, input was sought from the Real Estate Liaison Group (“RELG”).<sup>1</sup> RELG advised of concerns among some real estate lawyers that certain mortgage investment companies (“MICs”) would be excluded by the definition. A public call for comment was launched to solicit feedback, in particular with respect to the issue of MICs. While responses generally supported the need for clarity in the rules, there was a lack of consistency in the responses and no viable solutions to issues surrounding MICs were proposed. The submissions were reviewed in consultation with RELG, which embarked on further consideration and discussion.

At its meeting in January 2021, RELG proposed amendments to Rule 3.4-13 to define the term “finance company”. RELG’s definition tracks the Committee’s prior proposed definition, but adds Community Futures Development Corporations, federal and provincial Crown corporations, municipalities, and agencies affiliated with or funded by such corporations or municipalities. RELG also recommended the addition of Commentary to note specifically that a mortgage investment company that does not meet the criteria in the definition is not considered a finance company under the Rule. At its meeting on April 8, 2021, the Committee accepted the amendments proposed by RELG and recommends that they be adopted by Convocation.

RELG has also proposed increasing the threshold amount of the consideration for a mortgage or a loan under which a lawyer may act for both borrower and lender from

<sup>1</sup> The Real Estate Liaison Group is comprised of Benchers and representatives from stakeholder groups with a real estate law focus.

\$50,000 to \$100,000. LAWPRO has advised, however, that they have concerns that this increase will result in increased claims costs. Therefore, the Committee recommends a more measured increase to \$75,000, as well as the addition of Commentary to highlight the risks of acting for borrower and lender in a mortgage or loan transaction, as requested by LAWPRO.

## Background

In March 2018, the Law Society received submissions from the OBA, which advised of a possible gap in the *Rules of Professional Conduct* and provided suggestions for a solution. The issue identified by the OBA related to the meaning of “lending client” as used in Rules 3.4-12 to 3.4-16.

Those rules provide an exception to a lawyer’s general duty to avoid conflicts of interest by allowing a lawyer to represent both a borrower and a lender in a mortgage or loan transaction in certain situations, including when the lender is a “lending client”. Lending client is defined in Rule 3.4-13 as a “client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.”

The OBA suggested that the inclusion of “finance company” in the list of lending clients without defining the term creates confusion for licensees because it does not provide sufficient guidance about what types of entities should be considered to fall within the rule. As a result, lawyers who are asked to act for both a borrower and a lender, in certain circumstances, may be unsure about whether doing so would be permissible, and may act inadvertently for both a borrower and a lender in a conflict of interest. Anecdotally, it also appears that some lenders may exert pressure on lawyers to interpret the Rule so as to apply to them, even though that may not have been the rule’s intent.

Information from Law Society operational departments supports the OBA’s conclusion that there may be confusion among licensees about what constitutes a finance company for the purposes of Rules 3.4-14 to 3.4-16.

### A. Acting for Borrower and Lender

The rules regarding acting for a borrower and a lender appear in the conflicts section of the Rules.

Rule 3.4-12 provides that:

Subject to rule 3.4-14, a lawyer or two or more lawyers acting in partnership or association must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

Rule 3.4-14 provides that a lawyer may represent both a borrower and a lender in a mortgage or loan transaction in certain enumerated situations, including where the lender is a lending client or where the consideration for the mortgage or loan does not exceed \$50,000. As discussed above, rule 3.4-13 provides a definition of “lending client”, which includes a “finance company”.

Although the rules regarding acting for borrower and lender are not explicit in this regard, it appears that the provisions were originally drafted to prohibit a lawyer from acting for both parties unless the funds being advanced by the lender are below a certain threshold or the lender is an institutional lending client, which would presumably have the sophistication to understand and consent to the requirements of a joint retainer. Convocation may have also considered that clients would be able to seek remedies against institutional lenders if necessary, or that the terms and conditions under which such entities would lend funds would be somewhat standardized and understood by most borrowers, thereby decreasing the likelihood of subsequent conflicts between the parties, and the need for independent legal advice. Paragraph [1] of the Commentary to Rule 3.4-16 provides

Rules 3.4-13 to 3.4-16 are intended to simplify the advice and consent process between a lawyer and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint retainer is usually confirmed in the documentation of the transaction (e.g. mortgage loan instructions) and the consent is generally acknowledged by such clients when the lawyer is requested to act.<sup>2</sup>

In order for a lawyer to represent both a borrower and a lending client, according to a leading legal ethics text, “the lending client must be a regulated financial institution (bank, trust company, insurance company, credit union or finance company) which lends money in the ordinary course of its business.”<sup>3</sup> The definition of lending client in rule 3.4-13 does not specifically indicate that the lending client must be a regulated institution, although banks, trust companies, insurance companies, and credit unions are statutorily regulated entities.

## **B. Prior to Consultation**

The Committee began considering this issue in February 2019, and at that time agreed that the uncertainty about what entities are finance companies should be addressed.

From the information provided by the OBA, and from the Law Society’s operational units, there does not appear to be any confusion with respect to the references to banks, trust

<sup>2</sup> See also Minutes of Convocation: February 22, 2007, available at [http://lx07.lsuc.on.ca/R/2QH9H7CV8QT1H6D8IJEUUYYTDADUTARXHGX1S5C8ELKTIQPFVUJ-01854?func=collections-result&collection\\_id=2472](http://lx07.lsuc.on.ca/R/2QH9H7CV8QT1H6D8IJEUUYYTDADUTARXHGX1S5C8ELKTIQPFVUJ-01854?func=collections-result&collection_id=2472).

<sup>3</sup> Simon Chester and Charlotte Conlin, “Conflicts of Interest”, *Canadian Legal Practice* ed. Adam M. Dodek and Jeffrey Hoskins, Toronto: Lexis Nexis, 2018), Looseleaf ed., paragraph 4.403.3.

companies, insurance companies, and credit unions. All are known entities defined by governing legislation. For instance, banks are listed in Schedules I or II to the *Bank Act*, S.C. 1991, c.46, while trust companies, insurance companies, and credit unions are all defined and regulated under various provincial and federal statutes. The types of entities that may be considered finance companies, however, are not so generally identifiable or as clearly defined in statute.

The OBA suggested a definition of finance company, which was largely accepted by the Committee. That definition incorporated two primary features:

### 1. A known definition of finance company

As noted by the OBA, finance company is a defined term in two regulations to the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (“MBLAA”). For instance, section 17(2) of O.Reg. 407/07 to the MBLAA, defines a finance company as a corporation or a partnership, other than a financial institution, that satisfies both of the following two criteria:

- I) a material business activity of the corporation or partnership involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit; and
- II) the shares or ownership interests of the corporation or partnership, or another person or entity with which it is affiliated, are listed on a stock exchange in Canada or outside Canada that is a **prescribed stock exchange** for the purposes of the Income Tax Act (Canada) (emphasis added).<sup>4</sup>

### 2. Other approved institutional lenders

The OBA also suggested extending the scope of the exemption to include other institutional lenders listed as approved lenders under the *National Housing Act* (“NHA”), as published by the Canadian Mortgage and Housing Corporation (“CMHC”).<sup>5</sup>

NHA-approved lenders must satisfy the requirements in a regulation under that Act (SOR 2012-232 under the Act). Section 2 of the Regulation provides that in order to be designated as an approved lender for the purposes of Part 1 under the NHA, a person must meet the criteria set out in paragraphs 3(1)(a) or (b):

<sup>4</sup> See O. Reg. 407-07 under the *Mortgage Brokers, Lenders and Administrators Act*, section 7(2), online at <https://www.ontario.ca/laws/regulation/070407>, and O. Reg. 409-07 (s. 17(2) under the *Mortgage Brokers, Lenders and Administrators Act*, online at <https://www.ontario.ca/laws/regulation/070409>.

<sup>5</sup> The NHA list of approved lenders is available at <https://www.cmhc-schl.gc.ca/en/hoficlincl/moloin/ape/index.cfm>.

- a) a corporation whose articles do not restrict its powers to lend in the jurisdictions in which it operates and
- (i) a financially sound institution with at least \$3,000,000 of unencumbered paid-up capital that is incorporated by or under an Act of Parliament or of the legislature of a province;
  - (ii) a federal financial institution or an authorized foreign bank within the meaning of section 2 of the Bank Act;
  - (iii) a trust, loan or insurance corporation that is incorporated or regulated by or under an Act of the legislature of a province,
  - (iv) a cooperative credit society that is incorporated and regulated by or under an Act of the legislature of a province;
  - (v) a federal or provincial department, agency, or Crown corporation; or
  - (vi) any other entity as long as the housing loans that it insures with the Corporation are guaranteed by Her Majesty in the right of Canada or a province; or
- b) a federally or provincially-regulated pension fund, or its subsidiary, that was designated, before the coming into force of these Regulations, as an approved lender under section 5 of the Act.<sup>6</sup>

### **Stock Exchange**

As detailed above, the MBLAA definition of “finance company” includes a requirement that the entity be listed on a “stock exchange within or outside Canada that is a prescribed stock exchange for the purposes of the *Income Tax Act (Canada)*”. It appears, however, that there have been changes to the concept of “prescribed stock exchange” as had been used for a variety of purposes under the *Income Tax Act*.

<sup>6</sup> Housing Loan (Insurance, Guarantee and Protection) Regulations, SOR 2012-232, online at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-232/page-1.html>.

As explained by the Department of Finance, in 2007, the two lists of prescribed stock exchanges were replaced with three categories of stock exchange: Designated Stock Exchange, Recognized Stock Exchange and Stock Exchange.<sup>7</sup>

Designated stock exchanges are designated by the Minister of Finance and are listed on the Department of Finance website. They include all stock exchanges that were prescribed in the Income Tax Regulations immediately before the new regime took effect in 2007. In considering whether a stock exchange should be designated, the Minister of Finance considers a number of factors relating to its structure and governance. For foreign-based exchanges, those criteria include that the host country is a member in good standing of the international financial community through membership in organizations such as the World Trade Organization, and that there is a securities and judicial framework in the host country that provides rights and remedies to Canadian investors.<sup>8</sup>

Recognized stock exchanges are used for limited purposes under the *Income Tax Act* and consists of exchanges that are located in Canada or in another country that is a member of the Organization for Economic Cooperation and development, and that has a tax treaty with Canada.<sup>9</sup> This category of stock exchanges is based strictly on location and is not approved by the Minister.

The stock exchange category includes all stock exchanges, regardless of location. There is no process by which any particular exchange is categorized as a stock exchange. This category is used for the purposes of the securities lending rules under the *Income Tax Act*.

Given that all stock exchanges that were prescribed under the *Income Tax Act* in 2007 are now Designated Stock Exchanges, that category would appear to correspond most closely to the intent of the definition of finance company in the MBLAA.

### **Mortgage Investment Companies**

The Committee also considered Mortgage Investment Companies (MICs), which under the above criteria would not be considered finance companies unless they could satisfy either the NHA requirements, or fall within the MBLAA's definition.

A MIC is an unregulated lender.<sup>10</sup> As a result, the residential mortgages provided by these entities are not subject to the lending rules set out by federal or provincial governments. MICs provide mortgages to borrowers who would typically not qualify for a loan with a

<sup>7</sup> See Department of Finance Canada <https://www.canada.ca/en/department-finance/services/designated-stock-exchanges.html>, which includes information about the designation process as well as a list of designated stock exchanges.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Canada Mortgage and Housing Corporation, "Research Insight. Risk Profile of Mortgage Investment Corporations". August 2016, available online at <https://financialfreedomisajourney.com/wp-content/uploads/2017/06/Mortgage-Investment-Corporations-Risk-Profile-CMHC.pdf>

regulated financial institution because of their credit histories and credit risk profiles. Such borrowers may include self-employed individuals, real estate investors and recent immigrants. According to the CMHC, MICs typically charge higher mortgage rates compared to regulated and quasi-regulated lenders.<sup>11</sup> There are an estimated 200-300 MICs in Canada, with a significant number formed since 2007.<sup>12</sup>

While it was acknowledged that there are a wide array of MICs, many of whom may be sophisticated lenders, there did not appear to be a reasonable means by which to make that determination other than the proposed definition. Therefore, the Committee decided that MICs that could not satisfy either of the above two defining features should not be included in the definition of finance company.

### **The Committee's Definition**

Based on the above, the Committee approved amendments to the Rule 3.4-13 to clarify the meaning of "finance company" as follows:

3.4-13 In Rules 3.4-14 to 3.4-16 a 'lending client' is any of the following:

- a) a bank, trust company, insurance company, or credit union;
- b) a finance company that is a corporation or partnership :
  - i) whose material business involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit; and,
  - ii) whose shares or ownership interests (or another person or entity with which it is affiliated) are listed on a stock exchange within or outside Canada that is a Designated Stock exchange for the purposes of the Income Tax Act (Canada); or
- c) a person designated as an approved lender under the National Housing Act (Canada).

### **C. Consultation with the Real Estate Liaisons Group and Public Call for Comment**

Prior to proceeding to Convocation, the proposed amendments were discussed with RELG at its meeting in March, 2019. After that meeting, one member of RELG advised that members of a county law association had expressed concerns that large MICs that are not publicly traded, but are nonetheless sophisticated, would not be considered to be a finance company under the proposed amendments.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

In April 2019, the Committee was advised of RELG's concern, and determined that a public call for comment should be held to solicit feedback from the profession. Although it was hoped that the call for comment might provide clarity, in particular with respect to issues concerning MICs, that was ultimately not the case. Approximately 20 submissions were received but there was not consensus on any issues. While there appeared to be some agreement that clarity was needed with respect to the definition of finance company, there were no viable solutions offered nor any reasonable suggestions beyond the proposed amendments about how to address MICs or other lenders. There were a number of submissions that identified Community Futures Development Corporations as entities that should be included within the definition of finance company.<sup>13</sup>

The submissions were reviewed in consultation with RELG, which embarked on further consideration and discussion, in particular with respect to the issue of MICs.

## Proposed Amendments

The proposed amendments at Tabs 4.1.1 (English) and 4.1.2 (French) were the subject of considerable discussion among members of RELG. It was generally agreed that clarity about the meaning of "finance company" was required. However, it was also acknowledged that defining the term would necessarily require drawing a line that would exclude some lenders. This was noted as being particularly relevant in respect of MICs.

Exempting all MICs from the two-lawyer rule was considered; however, RELG ultimately agreed with the Committee's initial determination that doing so would be contrary to the intent of the exemption, given the limited regulation of MICs. Prescribing additional tests to determine the sophistication of particular MICs was not considered a practical solution to impose on real estate lawyers.

Therefore, RELG recommended amendments that include a definition of "finance company", which tracks the Committee's prior proposed definition, but adds Community Futures Development Corporations, federal and provincial Crown corporations, municipalities, and agencies affiliated with or funded by such corporations or municipalities.

Members of RELG also suggested that Commentary be added to Rule 3.4-13 to confirm that a mortgage investment company is not considered a finance company unless it fits within the criteria in the Rule.

In addition, a majority of RELG recommended changing the amount of consideration for a mortgage or loan under which a lawyer may act for both a borrower and a lender from \$50,000 to \$100,000. The \$50,000 threshold was set by Convocation in 2000, when what

<sup>13</sup> Community Futures Development Corporations offer a number of services to small and medium size businesses in Ontario, including providing loans for start-up and expansion.

was then Rule 2.04(11) was added to prohibit a lawyer or law firm acting for both a borrower and lender except in limited defined circumstances, including with respect to the amount of the consideration for the mortgage or the loan.<sup>14</sup> Among RELG members there was consensus that the \$50,000 amount was too low and should be adjusted. It was also suggested that the Committee should revisit the amount periodically, perhaps every five years, and adjust it for inflation.

Subsequent to RELG's meeting, LAWPRO advised that they had concerns with the proposed increase. In particular, they advised that while they support the amendments to define "finance company", they are concerned that increasing the \$50,000 threshold "can be expected to increase claims costs".

## Recommendation and Rationale

It is recommended that Convocation adopt the amendments to Rule 3.4-13 as proposed by RELG and approved by the Committee.

The proposed amendments offer clarity and certainty for lawyers about what entities are considered finance companies to ensure that they do not act in circumstances that are impermissible or inadvertently act in a conflict of interest. Instead of having to make a determination each time they are faced with a possible finance company, and possibly facing pressure from lenders or clients about the interpretation of the rule, lawyers will have clear guidance and verifiable sources by which to make the determination about whether a lender qualifies as a finance company.

In addition, a fundamental principle of the *Rules of Professional Conduct* is that lawyers must avoid conflicts of interest, which exist when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially or adversely affected by the lawyer's duties to another client. While exceptions to the conflicts rule are in the public interest in certain circumstances, those exceptions should be limited and clearly defined to preserve the duties owed to the client. Clients' interests are better served by providing clarity to the exception regarding when a lawyer can act for both a borrower and a lending client.

It is also recommended that Commentary be added to the Rules to confirm that a mortgage investment company is not considered a finance company unless it fits within the criteria detailed in the Rule.

Given LAWPRO's concerns about increasing the \$50,000 threshold, a more moderate increase to \$75,000 is recommended. This measured increase is more closely tied to

<sup>14</sup> In the Minutes of Convocation it is noted that the \$50,000 threshold was lower in the original draft of the Rules, however, the original amount was not stated.

inflation<sup>15</sup> and would allow for a more cautious adjustment to the current regime. In addition, as suggested by LAWPRO, it is recommended that Commentary be added to encourage lawyers to recognize the risk of conflicts claims in these transactions.

The proposed amendments at Tab 4.1.1 (English) and 4.1.2 (French) reflect these recommendations.

## Next Steps

If approved by the Convocation, the *Rules of Professional Conduct* will be amended as detailed at Tab 4.1.1 (English) and Tab 4.1.2 (French).

<sup>15</sup> According to the Bank of Canada inflation calculator, a “basket of goods” that cost \$50,000 in 2000 would cost \$73,804.46 in 2021 (as at April 12, 2021, <https://www.bankofcanada.ca/rates/related/inflation-calculator/>).

**3.4-13** In rules 3.4-14 to 3.4-16 "lending client" means: ~~a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.~~

- a) a bank, trust company, insurance company, or credit union;
- b) a finance company that is a corporation or partnership:
  - i) whose material business involves making or refinancing loans, or entering into other similar arrangements for advancing funds or credit; and
  - ii) whose shares or ownership interests (or another person or entity with which it is affiliated) are listed on a stock exchange within or outside Canada that is a Designated Stock exchange for the purposes of the *Income Tax Act* (Canada);

including any subsidiaries of such finance companies;
- c) a corporation or partnership designated as an approved lender under the *National Housing Act* (Canada); or
- d) a Community Futures Development Corporation, a federal or provincial crown corporation or a corporation or agency affiliated with or funded by such a corporation, a municipality or an agency affiliated with or funded by a municipality.

#### Commentary

[1] A mortgage investment company is not considered a finance company unless it satisfies the criteria in Rule 3.4-13.

**3.4-14** Provided there is compliance with this rule and rules 3.4-15 to 3.4-19, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction in any of the following situations:

- (a) the lender is a lending client;
- (b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price;

(c) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction;

(c.1) the consideration for the mortgage or loan does not exceed ~~\$50,000~~ \$75,000; or

(d) the lender and borrower are not at "arm's length" as defined in section 251 of the *Income Tax Act* (Canada).

Commentary

[1] There is an increased risk that conflicts of interest may arise where a lawyer acts for both borrower and lender. Lawyers should review rules 3.4-5 to 3.4-9 (Joint Retainers) and should exercise the appropriate degree of formality with respect to these retainers, including making contemporaneous notes, obtaining a signed acknowledgment of the joint retainer from lender and borrower, and retaining copies of other relevant documents.

**3.4-13** Dans les règles 3.4-14 à 3.4-16, « client prêteur » s'entend : ~~d'un client qui est une banque, une société de fiducie, une compagnie d'assurance, une caisse populaire ou une société de financement qui prête de l'argent dans le cours normal de ses activités.~~

- a) d'un client qui est une banque, une société de fiducie, une compagnie d'assurance, une caisse populaire ;
- b) d'une société de crédit qui est une société ou une société de personnes :
  - i) dont les principales activités professionnelles visent à prêter de l'argent, à refinancer des prêts ou à prendre d'autres dispositions similaires pour avancer des fonds ou du crédit ;
  - ii) dont les actions ou titres de participation (ou ceux d'une autre personne ou entité avec qui elle est affiliée) sont cotés à une bourse de valeurs désignée au Canada ou à l'étranger aux termes de la Loi de l'impôt sur le revenu (Canada) ;  
y compris toute filiale de telles sociétés de crédit ;
- c) d'une société ou d'une société de personnes désignée prêteur agréé en vertu de la Loi nationale sur l'habitation (Canada) ;
- d) d'une société d'aide au développement des collectivités, d'une société fédérale ou provinciale de la Couronne ou d'une société ou d'une commission affiliée ou financée par une telle société, d'une municipalité ou d'une commission affiliée ou financée par une municipalité.

#### Commentaire

[1] Une société de placements hypothécaires n'est pas considérée comme une société de crédit sauf si elle répond aux critères établis à la Règle 3.4-13.

**3.4-14** Pourvu que la présente règle soit respectée, et particulièrement les règles 3.4-15 à 3.4-19, un avocat peut agir pour, ou autrement représenter, à la fois le prêteur et l'emprunteur dans une opération hypothécaire ou une opération de prêt dans l'une ou l'autre des circonstances suivantes :

a) le prêteur est un client prêteur ;

b) le prêteur vend un bien-fonds à l'emprunteur et le prêt hypothécaire représente une partie du prix d'achat ;

c) l'avocat exerce dans une région éloignée où il n'y a aucun autre avocat que l'une ou l'autre des parties pourrait facilement engager pour la représenter dans l'opération hypothécaire ou l'opération de prêt ;

c.1) la contrepartie du prêt hypothécaire ou autre ne dépasse pas ~~50 000 \$~~ 75 000 \$ ;

d) le prêteur et l'emprunteur ont un lien de dépendance au sens de l'article 251 de la *Loi de l'impôt sur le revenu* (Canada).

#### Commentaire

[1] Il existe un risque accru de conflits d'intérêts lorsqu'un avocat agit à la fois pour l'emprunteur et le prêteur. Les avocats doivent examiner les règles 3.4-5 à 3.4-9 (mandats communs) et doivent respecter le degré de formalité approprié en ce qui concerne ces mandats, notamment en prenant des notes contemporaines, en obtenant du prêteur et de l'emprunteur une reconnaissance signée du mandat commun et en conservant des copies des autres documents pertinents.

Tab 4.2

## Professional Regulation Committee

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### Amendments to the By-Laws – Mobility for Quebec Lawyers

April 22, 2021

**Committee Members:**

**Megan Shortreed (Chair)**  
**Jacqueline Horvat (Vice-Chair)**  
**Michelle Lomazzo (Vice-Chair)**  
Robert Adourian  
Gerard Charette  
Etienne Esquega  
Julian Falconer  
Jorge Pineda  
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## Motion

**That Convocation approve the Motion at Tab 4.2.1, which amends By-Law 4 in order to permit lawyers from Quebec to practice in Ontario on the same basis as lawyers from all other Canadian provinces as detailed in this report.**

## Executive Summary

Beginning in June 2020, the Priority Planning Committee (“PPC”) considered various proposals for strategic change made by the CEO and informed by the deliberations and decisions of the Proportionate Regulation and Program Review Task Forces. Included in those strategic change items, PPC and Convocation approved in principle the implementation of aspects of the National Mobility Agreement (2013) in order to permit lawyers from Quebec to practice in Ontario on the same basis as lawyers from all other Canadian provinces.

The Motion at Tab 4.2.1 includes specific by-law amendments to implement this strategic change item.<sup>1</sup>

## Context

### A. Background

In June 2020, PPC began a review of several proposals for strategic change made by the CEO and informed by the deliberations of the Proportionate Regulation and Program Review Task Forces.

The strategic change items are intended to:

- Reduce regulatory burdens on licensees;
- Modernize and streamline the Law Society’s internal processes, providing flexibility to adapt to new circumstances and challenges; and
- Achieve savings and internal efficiencies.

Among the items PPC considered was implementing mobility for Quebec lawyers on the same basis as lawyers from other Canadian provinces.

Convocation approved this change in principle in June 2020.

The proposed amendments in the Motion at Tab 4.2.1 implement Convocation’s decision.

<sup>1</sup> Redlined excerpts of the amendments to By-Law 4 are attached at Tab 4.2.2.

## B. Recommended Change

Canadian law societies have facilitated temporary and permanent national mobility for lawyers through a series of mobility agreements, which have been implemented in Ontario in By-Law 4.

Subject to terms and conditions in that by-law, lawyers from all Canadian provinces other than Quebec (the “common law provinces”) may practise law in Ontario on a temporary basis for up to 100 days in a calendar year without permission, and may apply for an extension if necessary.<sup>2</sup> Lawyers from the common law provinces who wish to transfer to Ontario on a permanent basis may do so by application with only a requirement to complete reading materials about substantive law, professional responsibility, and practice management.

Under the current by-law provisions in Part VII of By-Law 4, lawyers from Quebec who wish to practise in Ontario on a temporary basis may only do so for up to 10 matters in a calendar year, and must apply for a permit before representing clients in those matters (an Occasional Practice Permit).

Lawyers from Quebec who wish to fully transfer to Ontario on a permanent basis must complete examinations. If they do not have a common law degree, they may have to complete additional educational requirements through the National Committee on Accreditation (“NCA”).

Lawyers from the Territories of Canada are subject to the same permanent and temporary mobility provisions as lawyers from Quebec.

Lawyers from Quebec may also apply for an L3 licence, as a “Canadian Legal Advisor”.<sup>3</sup> The scope of practice for the L3 licence is limited. L3 licensees are permitted to provide advice in Ontario with respect to:

- The laws of Quebec;
- The laws of Canada; and
- Public international law.

They may also select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada and represent a person in a proceeding with respect to matters concerning the laws of Canada. There are currently approximately 55 L3 licensees.

Through an addendum to the Quebec Mobility Agreement, mobility rights have also been extended to Quebec notaries, based on the recognition that Quebec’s civil law system divides the legal profession in that province between advocates, who are governed by the Barreau du Québec and notaries, who are governed by the Chambre des notaires du Québec.<sup>4</sup> Quebec notaries provide solicitor services relating to real estate law, corporate law, family law, and succession law. They may also provide mediation and arbitration services, and may appear before courts and tribunals in

<sup>2</sup> Mobility for lawyers from the common law provinces is based on the National Mobility Agreement <https://flsc.ca/wp-content/uploads/2014/10/mobility1.pdf>.

<sup>3</sup> Quebec Mobility Agreement (2010) at <https://flsc.ca/wp-content/uploads/2014/10/mobility5.pdf> as implemented in By-Law 4.

<sup>4</sup> See Addendum to the Quebec Mobility Agreement (2012) <https://flsc.ca/wp-content/uploads/2014/10/mobility6.pdf>.

certain circumstances.<sup>5</sup> Mobility for Quebec notaries was implemented into section 52 of By-Law 4, which allows members of the Chambre des Notaires du Québec to apply to provide limited legal services within the L3 scope in Ontario.<sup>6</sup> The proposed amendments in the Motion at Tab 4.2.1 do not alter mobility rights or the mobility application process for Quebec Notaries.

In 2013, all Canadian provinces signed the National Mobility Agreement 2013, which extends mobility to Quebec lawyers on the same terms as are currently applicable to lawyers from other Canadian provinces.<sup>7</sup> That agreement, however, requires implementation in each province in order for it to come into force. In Quebec, approval is required through a government agency, the Office de Professions du Québec. Approval has not been granted and does not appear to be forthcoming. Even though the agreement has not been implemented in Quebec, other law societies have begun to enact provisions in their jurisdictions to allow for the mobility of lawyers licensed in Quebec.

Between 2018 to 2020 the Law Society received the following applications from Quebec lawyers and notaries:

<b>Application Type</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Occasional Practice Permit	175	169	139
Permanent Transfer	42	40	32
L3	5	8	4
Quebec Notary	1	0	2

In its report to Convocation in June, 2020, PPC recommended that Quebec lawyers be permitted to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces. This proposed change would allow the Law Society to streamline its application processes and reallocate resources that are currently used to grant Occasional Practice Permits and administer examinations for Quebec lawyers.

Accordingly, Convocation approved the following motion:

That amendments in principle to By-Law 4 be approved to permit Quebec lawyers to practise in Ontario subject to the same terms and conditions as lawyers from other Canadian provinces.

<sup>5</sup> See the website for the Chambre des notaries du Québec, FAQs – “What is the notary’s role?”, at <https://www.cng.org/en/your-notary/frequently-asked-questions-on-the-notary/the-notarys-role/#faq-8924>.

<sup>6</sup> The L3 scope of activity includes selecting, drafting, completing or revising a document for use in a proceeding and represent parties in such proceedings before an adjudicative body with respect to matters concerning the laws of Canada. Pursuant to section 52 of By-Law 4, notaries who provide legal services in Ontario may only select, draft, complete or revise documents for use in a proceeding or represent parties before adjudicative bodies in matters concerning the law of Canada, if expressly authorized by law.

<sup>7</sup> National Mobility Agreement 2013 <https://flsc.ca/wp-content/uploads/2014/10/mobility2.pdf>

### C. L3 – L1 Transition

To allow for permanent mobility for Quebec lawyers on the same basis as lawyers from the common law provinces, existing L3 licensees will be given the opportunity to transition to L1 licensees, during a six month transition period.<sup>8</sup> If they confirm within the transition period that they wish to transition to an L1 licence, and they meet the technical requirements specified below, their class of licence would change from L3 to L1.

To obtain a L1 licence, L3 licensees will be required to:

- Complete an L1 application
- Provide an up-to-date Certificate of Standing
- Complete reading materials that all mobility transfer candidates currently complete, including new content respecting civil/common law issues.<sup>9</sup>
- Pay a fee that is the difference between the usual mobility transfer fee and the fee they originally paid for obtaining the L3 licence, which is \$950 plus HST.<sup>10</sup>

In order to practice in Ontario, Quebec lawyers who become L1 licensees must purchase LAWPRO insurance and are not able to rely on their liability insurance coverage in Quebec as an exemption from coverage in this province.

During the transition period, the Law Society will have both L1 and L3 licensees. However, the L3 class of licence will be discontinued at the end of the six months following the proposed amendments coming into force.

A L3 licensee who does not complete the L1 application process before the end of the transition period will be deemed to have surrendered their L3 licence. If they wish to obtain an L1 licence at a later date, they will be treated as any other new mobility applicant for an L1 licence. New applicants from the Barreau du Québec, other than those licensed under their mobility agreement with France<sup>11</sup>, will follow the same procedure as mobility applicants from the other provinces, but will not be required to have a common law degree or NCA certificate.<sup>12</sup> Quebec lawyers licensed under that province's mobility agreement with France are excluded from the permanent mobility

<sup>8</sup> The National Mobility Agreement (2013) replaces existing Quebec mobility provisions, including substituting the L3 or Canadian Legal Advisor regime with permanent transfer with Quebec on the same terms as are already in place between the other provinces.

<sup>9</sup> Prepared under the auspices of the Federation of Law Societies of Canada. Completion of the reading materials is provided for under the general requirement in paragraph 8(1) 5 of By-Law 4 that an applicant must provide all documents and information, as required by the Law Society.

<sup>10</sup> NMA transfer candidates are required to pay a non-refundable licensing application fee of \$1,450 plus HST.

<sup>11</sup> In June 2010, Quebec implemented an agreement with the bars of France providing for permanent mobility, which allows for the reciprocal transfer of lawyers between Quebec and France subject only to the successful completing of an exam on ethical principles and regulations applicable to practice in each jurisdiction (*Règlement sur la délivrance d'un permis du Barreau du Québec pour donner effet à l'Arrangement conclu par le Barreau du Québec en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles*). See <https://www.barreau.qc.ca/en/ressources-avocats/tableau-ordre/permit-practise/>.

<sup>12</sup> That process is detailed on the Law Society's website at <https://lso.ca/lawyers/about-your-licence/manage-your-licence/lawyers-from-outside-ontario/permanent-transfer-under-the-nma-or-tma>.

provisions in the National Mobility Agreement (2013), on the basis that they do not have the same knowledge of Canadian law, government, and legal structures as those who have gone through the Barreau's full admissions process. In the proposed amendments detailed in the Motion at Tab 4.2.1, this exclusion is maintained for these Quebec lawyers with respect to both permanent and temporary mobility.

If the proposed amendments in the Motion at Tab 4.2.1 are adopted by Convocation, L3 licensees will be provided with a notification advising of the process that will apply and the steps that they will be required to take if they wish to transition to an L1 licence.

## D. Proposed Amendments

The proposed amendments in the Motion at Tab 4.2.1 amend By-Law 4 in order to implement the provisions necessary to enact this strategic change item as follows:

- Amendments to subsection 1(1) remove the L3 licence from the Law Society's classes of licence to practise to law.
- A new subsection 1(5) establishes the six month transition period after which L3 licensees are deemed to have surrendered their licence.
- A new subsection 1(6) provides that L3 licensees will continue to hold their licence until it is forfeited and they are issued a class L1 licence, or until it is deemed to be surrendered at the end of the transition period.
- Subsection 1(7) is added to detail the L3 scope of activities during the transition period. That scope of activity, which is deleted from subsection 2(3), remains the same.
- A new subsection 1(8) maintains the terms, conditions, limitations, and restrictions applicable to L3 licensees during the transition period. In particular, they must remain active and in good standing with the Barreau and must maintain liability insurance in Quebec. These provisions are deleted at section 4.1 as they will no longer be applicable beyond the transition period.
- Amendments at section 9 apply the same permanent transfer requirements to Quebec lawyers, other than those licensed under the mobility agreement with France, as are currently in place for licensees from other Canadian provinces, specifically:
  - Paragraph 9(1.1)(c) is added to exempt Quebec lawyers from the requirement to have a bachelor of laws or juris doctor degree from an accredited law school, or a certificate from the National Committee on Accreditation;
  - Paragraph 9(2)(i) exempts Quebec lawyers from the requirement to successfully complete licensing examinations; and
  - Paragraph 9(3)(a.1) extends the exemption from the experiential training requirement to Quebec lawyers.
- Those requirements remain in place for Quebec lawyers licensed under the Quebec-France agreement.
- Section 10.001 is repealed to remove the requirements for the issuance of a L3 licence.
- Section 10.01 is amended to provide that if an applicant for an L1 licence holds any other licence issued by the Law Society, that licence is forfeited upon the issuance of a L1.
- Subsection 40(16), which applies to all temporary mobility permits, is amended to allow the Law Society the flexibility to issue practice permits for a specified time period, rather than until December 31 of each year.

- Subsection 45(3) is repealed. That subsection allowed the Law Society to permit an applicant for a licence to practice law on a more than temporary basis pending their licensing application. The temporal flexibility provided by the amendment to subsection 40(16) makes this subsection no longer necessary.
- Sections 46-50, which govern temporary mobility for Quebec lawyers and lawyers from the Territories of Canada, are amended as follows:
  - The temporary mobility rules applicable to lawyers from the common-law provinces are applied to Quebec lawyers, who may practice in Ontario for up to 100 days in a calendar year without permission, and may apply for an extension if necessary.
  - Quebec lawyers licensed under the Quebec-France agreement and lawyers from the Territories of Canada remain subject to limited mobility and may apply to the Law Society for permission to practise law in Ontario in respect of not more than ten matters per year.
  - Quebec lawyers licensed under the Quebec-France Agreement and lawyers from the Territories of Canada may exceed 10 matters in a calendar year with permission from the Law Society.

## Next Steps

If the Motion at Tab 4.2.1 is adopted by Convocation, By-Law 4 will be amended.

**LAW SOCIETY OF ONTARIO****BY-LAWS MADE UNDER  
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT**

BY-LAW 4

[LICENSING]

**MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 22, 2021**

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], in force immediately before this motion is moved, be amended as follows:

**1. Subsection 1 (1) of the English version of the By-Law is revoked and the following substituted:****Classes of licence**

1. (1) Subject to subsection (6), there shall be the following classes of licence to practise law in Ontario as a barrister and solicitor:

1. Class L1.
2. Class L2.

**2. Subsection 1 (1) of the French version of the By-Law is revoked and the following substituted:****Catégories de permis**

1. (1) Sous réserve du paragraphe (6), les catégories suivantes de permis autorisent l'exercice du droit en Ontario à titre d'avocat ou d'avocate :

1. La catégorie L1.
2. La catégorie L2.

**3. Section 1 of the English version of the By-Law is further amended by adding the following subsections:**

**Class L3 licence: deemed surrender**

(5) Every person who holds a Class L3 licence immediately before the day on which this subsection comes into force shall be deemed to have surrendered the licence on the day that is six months after the day on which this subsection comes into force.

**Transition period: Class L3 licence**

(6) Every person who holds a Class L3 licence immediately before the day on which this subsection comes into force shall continue to hold the licence until the earlier of,

- (a) the day on which it is forfeited upon the issuance to the person of a Class L1 licence; and
- (b) the day on which it is deemed to have been surrendered

**Transition period: Class L3 licence scope of activities**

(7) Subject to subsection (8), any terms, conditions, limitations or restrictions imposed on the person and any order made under the Act, a person who continues to hold a Class L3 licence pursuant to subsection (6) is authorized to do any of the following:

1. Give a person advice with respect to the laws of Quebec, the laws of Canada and public international law.
2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada.
3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada.

**Transition period: Class L3 licence terms, etc.**

(8) A person who continues to hold a Class L3 licence pursuant to subsection (6) is subject to the following terms, conditions, limitations and restrictions:

1. The person is subject to any term, condition, limitation or restriction imposed on the person's authority to practise law in Quebec.
2. The person is prohibited from practising law in Ontario as a barrister and solicitor if the person is prohibited from practising law in Quebec.
3. The person is prohibited from practising law in Ontario as a barrister and solicitor if the person does not maintain the full mandatory professional liability insurance coverage required by the Barreau du Québec.

**4. Section 1 of the French version of the By-Law is further amended by adding the following subsections:****Permis de catégorie L3 : réputé remis**

(5) Quiconque détient un permis de catégorie L3 immédiatement avant le jour de l'entrée en vigueur du présent paragraphe est réputé avoir remis son permis six mois jour pour jour après l'entrée en vigueur du présent paragraphe.

**Période de transition : permis de catégorie L3**

(6) Quiconque détient un permis de catégorie L3 immédiatement avant le jour de l'entrée en vigueur du présent paragraphe continue de détenir son permis jusqu'à la première des deux dates suivantes :

- a) le jour où il est annulé par suite de la délivrance d'un permis de catégorie L1 ;
- b) le jour où il est réputé avoir été remis.

**Période de transition : portée des activités relatives au permis de catégorie L3**

(7) Sous réserve du paragraphe (8), de toutes conditions ou restrictions imposées à la personne et de toute ordonnance prise en application de la Loi, une personne qui continue de détenir un permis de catégorie L3 conformément au paragraphe (6) est autorisée à faire ce qui suit :

- 1. Fournir un avis à l'égard des lois du Québec, des lois du Canada et du droit international public.
- 2. Choisir, rédiger, remplir ou réviser un document à utiliser dans une instance tenue à l'égard d'affaires concernant les lois du Canada.
- 3. Agir pour autrui dans le cadre d'une instance tenue devant un organisme juridictionnel à l'égard d'affaires concernant les lois du Canada.

**Période de transition : conditions du permis de catégorie L3**

(8) Une personne qui continue de détenir un permis de catégorie L3 conformément au paragraphe (6) est assujettie aux conditions et aux restrictions suivantes :

- 1. La personne est assujettie aux conditions et aux restrictions dont est assorti son pouvoir d'exercer la profession d'avocat au Québec.
- 2. Il est interdit à la personne d'exercer le droit en Ontario à titre d'avocat ou d'avocate s'il lui est interdit d'exercer la profession d'avocat au Québec.
- 3. Il est interdit à la personne d'exercer le droit en Ontario à titre d'avocat ou d'avocate si elle ne souscrit pas dans son intégralité la protection d'assurance responsabilité professionnelle obligatoire du Barreau du Québec.

**5. Subsection 9 (1.1) of the English version of the By-Law is amended by,**

- (a) striking out "or" at the end of clause (a);**
- (b) striking out the period at the end of clause (b) and substituting "; or"; and**
- (c) adding the following clause:**

(c) the applicant is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Quebec.

**6. Subsection 9 (1.1) of the French version of the By-Law is amended by,**

- (a) striking out the period at the end of clause b) and substituting "; or"; and**
- (b) adding the following clause:**

c) le requérant ou la requérante est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

**7. Subclause 9 (2) (a) (i) of the English version of the By-Law is revoked and the following substituted:**

(i) (A) is authorized to practise law in a province or territory of Canada outside Ontario other than Quebec, or

(B) is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Quebec,

**8. Subclause 9 (2) (a) (i) of the French version of the By-Law is revoked and the following substituted:**

(i) (A) est autorisé(e) à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario ou le Québec ;

(B) est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec ;

**9. Subsection 9 (3) of the English version of the By-Law is amended by,**

- (a) adding "other than Quebec" at the end of clause (a);**
- (b) adding ", other than pursuant to a class of licence no longer issued by the Society" at the end of clause (d); and**
- (c) adding the following clause:**

(a.1) the applicant is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, and is authorized to practise law in Quebec;

**10. Subsection 9 (3) of the French version of the By-Law is amended by,**

- (a) adding "ou le Québec" at the end of clause a);**
- (b) adding ", autre que conformément à une catégorie de permis qui n'est plus délivré par le Barreau" at the end of clause d); and**
- (c) adding the following clause:**

a.1) Le requérant ou la requérante est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec ;

**11. Section 10.01 of the English version of the By-Law is revoked and the following substituted:**

**Forfeiture of licence held upon issuance of Class L1 licence**

10.01. If an applicant for a Class L1 licence holds any other class of licence, that licence is forfeited to the Society at the time the Class L1 licence is issued.

**12. Section 10.01 of the French version of the By-Law is revoked and the following substituted:**

**Déchéance du permis sur délivrance d'un permis de catégorie L1**

10.01. Tout autre permis que détient le titulaire d'un permis de catégorie L1 est déchu en faveur du Barreau au moment de la délivrance du permis de catégorie L1.

**13. Subsection 40 (16) of the English version of the By-Law is revoked and the following substituted:**

**Duration of permission**

(16) Permission to practise law in Ontario under a section in this Part granted to a person remains in effect for a time period specified by the Society.

**14. Subsection 40 (16) of the French version of the By-Law is revoked and the following substituted:**

**Durée de l'autorisation**

(16) L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie reste en vigueur pour la période fixée par le Barreau.

**15. Subsection 42 (5) of the English version of the By-Law is amended by striking out "sections 43 and 45" and substituting "section 43".**

**16. Subsection 42 (5) of the French version of the By-Law is amended by striking out "des articles 43 and 45" and substituting "de l'article 43".**

**17. Section 46 of the English version of the By-Law is revoked and the following substituted:**

**Member of the Barreau du Québec other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.1. Sections 42 to 45.1, and section 50 with necessary modifications, apply to a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Quebec.

**Member of the Barreau du Québec who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.2. Sections 47 to 51 apply to a member of the Barreau du Québec who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles who is authorized to practise law in Quebec.

**Authorized to practise law in a territory of Canada**

46.3. Sections 47 to 51 apply to a person who is authorized to practise law in a territory of Canada.

**18. Section 46 of the French version of the By-Law is revoked and the following substituted:**

**Membre du Barreau du Québec autre qu'un membre admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.1. Les articles 42 à 45.1, et l'article 50 avec les modifications nécessaires s'appliquent à un membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

**Membre du Barreau du Québec admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.2. Les articles 47 à 51 s'appliquent à un membre du Barreau du Québec admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

**Autorisé à exercer le droit dans un territoire du Canada**

46.3. Les articles 47 à 51 s'appliquent à une personne qui est autorisée à exercer le droit dans un territoire du Canada.

**19. Section 48 of the English version of the By-Law is amended by striking out "46" and substituting "46.2 or 46.3".**

**20. Section 48 of the French version of the By-Law is amended by striking out "46" and substituting "46.2 ou 46.3".**

**21. Clause 49 (1) (a) of the English version of the By-Law is amended by striking out "46" and substituting "46.2 or 46.3".**

**22. Clause 49 (1) (a) of the French version of the By-Law is amended by striking out "46" and substituting "46.2 ou 46.3".**

**23. Subsection 50 (1) of the English version of the By-Law is amended by adding "or 49.1" after "49".**

**24. Subsection 50 (1) of the French version of the By-Law is amended by adding "ou 49.1" after "49".**

**25. Section 51 of the English version of the By-Law is amended by adding "or 49.1" after "49".**

**26. Section 51 of the French version of the By-Law is amended by adding “ou 49.1” after “49”.**

**27. Subsection 2 (3), sections 4.1 and 10.0.01 and subsection 45 (3) of the By-Law are revoked.**

**28. The English version of the By-Law is further amended by adding the following section:**

**Practising on more than an occasional basis: prior permission required**

49.1. A person who was entitled to practise law in Ontario under section 48 or who was permitted to practise law in Ontario under subsection 49 (1) and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 48 or subsection 49 (1).

**29. The French version of the By-Law is further amended by adding the following section:**

**Exercice du droit plus souvent qu'à titre occasionnel : autorisation préalable requise**

49.1. Quiconque a été habilité à exercer le droit en Ontario en vertu de l'article 48 ou autorisé à le faire en vertu du paragraphe 49 (1) et qui a fait une demande de permis pour exercer le droit en Ontario à titre d'avocat ou d'avocate peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario plus souvent qu'à titre occasionnel, tel que permis par le Barreau, dans la mesure où cette personne satisfait aux exigences applicables mentionnées à l'article 48 ou au paragraphe 49 (1).

**BY-LAW 4**

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**LICENSING****PART I****CLASSES OF LICENCE**

## LICENCE TO PRACTISE LAW

**Classes of licence**

~~1. (1) There shall be the following classes of licence to practise law in Ontario as a barrister and solicitor:~~

~~1. Class L1.~~

~~2. Class L2.~~

~~3. Class L3.~~

**Classes of licence**

1. (1) Subject to subsection (6), there shall be the following classes of licence to practise law in Ontario as a barrister and solicitor:

1. Class L1.

2. Class L2.

**Transition****Interpretation**

(2) In subsections (3) and (4),

“member” means a member as defined in section 1 of the Act as it read immediately before May 1, 2007;

“temporary member” means a person admitted as a temporary member of the Society under section 28.1 of the Act as it read immediately before May 1, 2007.

**Member other than temporary member**

(3) Every person who is a member, other than a temporary member, immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L1 licence.

**Temporary member**

(4) Every person who is a temporary member immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L2 licence.

**Class L3 licence: deemed surrender**

(5) Every person who holds a Class L3 licence immediately before the day on which this subsection comes into force shall be deemed to have surrendered the licence on the day that is six months after the day on which this subsection comes into force.

**Transition period: Class L3 licence**

(6) Every person who holds a Class L3 licence immediately before the day on which this subsection comes into force shall continue to hold the licence until the earlier of,

(a) the day on which it is forfeited upon the issuance to the person of a Class L1 licence; and

(b) the day on which it is deemed to have been surrendered

**Transition period: Class L3 licence scope of activities**

(7) Subject to subsection (8), any terms, conditions, limitations or restrictions imposed on the person and any order made under the Act, a person who continues to hold a Class L3 licence pursuant to subsection (6) is authorized to do any of the following:

1. Give a person advice with respect to the laws of Quebec, the laws of Canada and public international law.
2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada.
3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada.

**Transition period: Class L3 licence terms, etc.**

(8) A person who continues to hold a Class L3 licence pursuant to subsection (6) is subject to the following terms, conditions, limitations and restrictions:

1. The person is subject to any term, condition, limitation or restriction imposed on the person's authority to practise law in Quebec.
2. The person is prohibited from practising law in Ontario as a barrister and solicitor if the person is prohibited from practising law in Quebec.
3. The person is prohibited from practising law in Ontario as a barrister and solicitor if the person does not maintain the full mandatory professional liability insurance coverage required by the Barreau du Québec.

**Scope of activities**

**Class L1**

2. (1) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L1 licence is entitled to practise law in Ontario as a barrister and solicitor.

**Class L2**

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L2 licence is entitled to practise law in Ontario as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or as an assistant Crown Attorney.

**~~Class L3~~**

~~(3) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L3 licence is authorized to do any of the following:~~

- ~~1. Give a person advice with respect to,~~
  - ~~i. the laws of Quebec,~~
  - ~~ii. the laws of Canada, and~~
  - ~~iii. public international law.~~
- ~~2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada.~~
- ~~3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada.~~

**Terms, etc.: Class L1 licence****Application of section**

3. (1) This section applies to licensees who hold a Class L1 licence.

**Incapacity**

(2) A licensee who is exempted from payment of the annual fee under subsection 5 (1) of By-Law 5 is prohibited from practising law in Ontario as a barrister and solicitor.

**Exempt from payment of insurance premium levies**

(3) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being exempted from payment of the annual fee under subsection 5 (2) of By-Law 5, and who is exempted from payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis,

- i. for or on behalf of non-profit organizations, or
- ii. through a program registered with Pro Bono Law Ontario.

**Authorized to practise law outside Ontario**

(4) A licensee who is authorized to practise law in a province or territory of Canada outside Ontario is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in that province or territory.

**Duration of terms, etc.**

(5) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 4.

**Cancellation of terms, etc.**

4. (1) A licensee who is subject to terms, conditions, limitations and restrictions under section 3 may apply to the Society to have the terms, conditions, limitations and restrictions cancelled and the Society may,

- (a) cancel the terms, conditions, limitations and restrictions;
- (b) require the licensee to complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions, and, if the licensee completes the education and obtains the experience, cancel the terms, conditions, limitations and restrictions; or
- (c) cancel the terms, conditions, limitations and restrictions subject to the following terms, conditions, limitations and restrictions:

(i) the licensee must practise law only,

- (A) as an employee of a person approved by the Society,
- (B) as an employee or partner, and under the supervision, of a licensee who holds a Class L1 licence who is approved by the Society, or

(C) under the supervision of a licensee who holds a Class L1 licence who is approved by the Society,

(ii) the licensee must, within a time specified by the Society, complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions.

**Breach of terms, etc. imposed under subs. (1)**

(2) If a licensee fails to comply with a term, condition, limitation or restriction imposed on the licensee under clause (1) (c), the cancellation of terms, conditions, limitations and restrictions under clause (1) (c) is deemed thereafter to be void.

**Information to be provided by licensee**

(3) A licensee shall provide to the Society all documents and information, as may be required by the Society, relating to this section.

**Terms, etc.: Class L3 licence**

~~4.1. A licensee who holds a Class L3 licence is subject to the following terms, conditions, limitations and restrictions:~~

~~1. The licensee is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in Quebec.~~

~~2. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee is prohibited from practising law in Quebec.~~

~~3. The licensee is prohibited from practising law in Ontario as a barrister and solicitor if the licensee does not maintain the full mandatory professional liability insurance coverage required by the Barreau du Québec.~~

LICENCE TO PROVIDE LEGAL SERVICES

**Classes of licence**

5. There shall be the following classes of licence to provide legal services in Ontario:

1. Class P1.

**Scope of activities**

**Class P1**

**Interpretation**

6. (1) In this section, unless the context requires otherwise,

“amendment day” means the day sections 316 and 317.1 of An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts come into force;

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

“party” means a party to a proceeding;

“proceeding” means a proceeding or intended proceeding,

- (a) in the Small Claims Court,
- (b) in the Ontario Court of Justice under the *Provincial Offences Act*,
- (c) in a summary conviction court under the Criminal Code (Canada),

(i) where under the Criminal Code (Canada) immediately before the amendment day an accused was permitted to appear or examine or cross-examine witnesses by agent, or

(ii) in respect of an offence under subsection 320.13 (1), subsection 320.16 (1), section 320.17 or subsection 320.18 (1) of the Criminal Code (Canada),

(d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or

(e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

“Statutory Accident Benefits Schedule” means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

#### **Activities authorized**

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

2. Represent a party before,

- i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
- ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
- iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
- iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
- v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.

3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.

4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.

5. Negotiate a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

**Terms, etc.****Incapacity**

6.1. (1) A licensee who holds a Class P1 licence who is exempted from payment of the annual fee under subsection 5 (1) of By-Law 5 is prohibited from providing legal services in Ontario.

**Duration of restriction**

(2) The restriction imposed on a licensee under this section remains in effect until, on application by the licensee, the Society cancels it.

**PART II****ISSUANCE OF LICENCE****INTERPRETATION****Interpretation**

7. In this Part,

“accredited law school” means a law school in Canada that is accredited by the Society;

“accredited program” means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“integrated law degree” means a bachelor of laws or juris doctor degree the conferral of which requires the successful completion of instruction and training in the practical skills and task competencies that the Society has determined are necessary for a Class L1 licence which instruction and training have been approved by the Society in advance of their delivery;

“law practice program” means a program approved by the Society in advance of its delivery that consists of a course component and a work placement component that provide instruction and training in the practical skills and task competencies that the Society has determined are necessary for a Class L1 licence;

“licensing cycle” means,

(a) for a person registering with the Society to be eligible to take a licensing examination or to enter into experiential training that is a requirement for a Class L1 licence, a period running from May 1 in a year to April 30 in the following year; and

(b) for a person registering with the Society to be eligible to take a licensing examination that is a requirement for a Class P1 licence, a period running from June 1 in a year to May 31 in the following year.

**GENERAL REQUIREMENTS****Requirements for issuance of any licence**

8. (1) The following are the requirements for the issuance of any licence under the Act:

1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.

2. The applicant must pay the applicable fees, including the applicable application fee.
3. The applicant must be of good character.
4. The applicant must take the applicable oath.
5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

**Time for submitting application**

(1.1) An application for a licence shall be submitted contemporaneously with the applicant's registration form under section 18.

**Submitting another application after one is deemed abandoned**

(1.2) If an application for a licence is deemed to have been abandoned by the applicant under clause (4) (b), another application for a licence may not be submitted until after one year after the date on which the previous application was deemed to have been abandoned and may only be submitted if a material change in circumstances is demonstrated to the Society.

**Submitting another application after licence surrendered in certain circumstances**

(1.3) A licensee, who applied to surrender his or her licence while a subject of an audit, investigation, search or seizure by the Society or a party to a proceeding under Part II of the Act and whose application was accepted by the Society pursuant to subsection 26 (3) of this By-Law, may not submit a fresh application for a licence until after,

- (a) five years after the date on which the Society accepted his or her application to surrender his or her previous licence;
- (b) payment of all costs awarded to the Society against the licensee under the Act; and
- (c) payment to the Society for the Compensation Fund an amount equal to the total amount of grants made from the Fund as a result of dishonesty on the part of the licensee.

**Misrepresentations**

(2) An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

**Documents and information re good character requirement**

(3) An applicant shall provide to the Society,

- (a) at the time she or he submits her or his completed application, all documents and information specified by the Society on the application form relating to the requirement that the applicant be of good character; and
- (b) by the time specified by the Society, all additional documents and information specified by the Society relating to the requirement that the applicant be of good character.

**Failure to do something: abandonment of application**

(4) An applicant's application for a licence is deemed to have been abandoned by the applicant if the applicant,

- (a) fails to do anything required to be done under subsection (3), under paragraph 2 of subsection 9 (1), under paragraph 2 of subsection 13 (1), under subclause 13 (2) (b) (iii), subclause 13 (2) (c) (iii) or subclause 13 (2) (d) (iii) or under subsection 15 (2.2) within the time specified for the thing to be done; or
- (b) takes the same licensing examination three, or if entitled four, times and fails to successfully complete the licensing examination.

## LICENCE TO PRACTISE LAW

### Requirements for issuance of Class L1 licence

9. (1) The following are the requirements for the issuance of a Class L1 licence:

1. The applicant must have one of the following:

- i. A bachelor of laws or juris doctor degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.
- ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

3. The applicant must have,

i. experiential training by successfully completing,

A. service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society and all other requirements, as determined by the Society, that must be completed during the time of service under articles of clerkship, or

B. the law practice program, and

ii. if the experiential training mentioned in subparagraph i was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

### Exemption from degree or certificate requirement

(1.1) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; ~~or~~

(b) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position; ~~and~~

(c) the applicant is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Québec.

### Exemption from examination requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if,

(a) the applicant,

~~(i) is authorized to practise law in a province or territory of Canada outside Ontario where the governing body of the legal profession would authorize a licensee holding a Class L1 licence to practise law in that province or territory without requiring the licensee to successfully complete an examination,~~

(i) (A) is authorized to practise law in a province or territory of Canada outside Ontario other than Quebec, or

(B) is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Quebec,

(ii) reviews the materials that the Society, acting reasonably, determines are necessary to ensure that the applicant is familiar with current law and practice in Ontario, and

(iii) certifies that he or she has reviewed and understands the materials mentioned in sub-clause (ii), in a form provided by the Society;

(b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;

(c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position; or

(d) the applicant was previously licensed to practise law in Ontario as a barrister and solicitor.

#### **Exemption from experiential training requirement**

(3) An applicant is exempt from the requirements mentioned in paragraph 3 of subsection (1) if,

(a) the applicant is authorized to practise law in a province or territory of Canada outside Ontario other than Quebec;

(a.1) the applicant is a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, and is authorized to practise law in Quebec;

(b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position;

(c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position;

(d) the applicant was previously licensed to practise law in Ontario as a barrister and solicitor, other than pursuant to a class of licence no longer issued by the Society;

(e) the applicant has practised law in a common law jurisdiction outside Canada for a minimum of ten months and the Society reasonably believes such practice compares to the requirements in paragraph 3; or

(f) the applicant has an integrated law degree.

#### **Requirements for issuance of Class L2 licence**

10. The following are the requirements for the issuance of a Class L2 licence:

1. The applicant must be authorized to practise law outside Ontario

2. The Attorney General for Ontario must request the Society to issue the licence to the applicant.

#### **Requirements for issuance of Class L3 licence**

~~10.0.01. The following are the requirements for the issuance of a Class L3 licence:~~

- ~~1. The applicant must be a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.~~
- ~~2. The applicant must be authorized to practise law in Quebec.~~

#### **Forfeiture of Class P1**

~~10.01. If an applicant for a Class L1 licence holds a Class P1 licence, the Class P1 licence is forfeited to the Society at the time the class L1 licence is issued.~~

#### **Forfeiture of licence held upon issuance of Class L1 licence**

10.01. If an applicant for a Class L1 licence holds any other class of licence, that licence is forfeited to the Society at the time the Class L1 licence is issued.

## **PART VII**

### **INTER-PROVINCIAL PRACTICE OF LAW**

#### **GENERAL**

#### **Insurance and defalcation coverage**

36. (1) No person shall practise law in Ontario under this Part unless the person,

- (a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence; and
- (b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a licensee who holds a Class L1 licence.

#### **Insurance: exemption**

(2) A person is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified in By-Law 6 for licensees who hold a Class L1 licence.

#### **Interpretation: "National Excess Plan"**

(3) In clause (1) (b), "National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person authorized to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

#### **Interpretation: "Inter-Jurisdictional Practice Protocol"**

(4) In subsection (3), "Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law.

**Application of Act, etc.**

37. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence apply, with necessary modifications, to a person who practises law in Ontario under this Part, other than a person who practises law in Ontario under this Part,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

**Conflict**

(2) In the event of a conflict between the provisions of this Part and the provisions of any other by-law, the provisions of this Part prevail.

**Proof of Compliance**

38. (1) A person who is not a licensee and who purports to practise law in Ontario under this Part shall, upon the request of the Society and by not later than the day specified by the Society, provide proof to the satisfaction of the Society that he or she is in compliance with this Part.

**Deemed failure to comply**

(2) If the person fails to provide proof to the Society by the day specified by the Society, the person shall be deemed not to be in compliance with this Part.

**Disclosure of information**

39. (1) If a licensee is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the licensee's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the licensee as is reasonable for the Society to provide in the circumstances.

**Same**

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a licensee necessary to permit the governing body to determine if the licensee qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

**PRIOR PERMISSION TO PRACTISE LAW****Application of section**

40. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario under a section in this Part.

**Application for permission**

(2) A person who requires prior permission to practise law in Ontario under a section in this Part shall apply to the Society.

**Application form and fee**

(3) An application under subsection (2) shall be contained in a form provided by the Society and shall be accompanied by payment of an application fee, if any.

**Documents, explanations, releases, etc.**

(4) For the purposes of assisting the Society to consider an application under subsection (2), an applicant shall provide,

- (a) to the Society, such documents and explanations as may be required; and
- (b) to a person named by the Society, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

**Application to be considered by Society**

(5) Every application under subsection (2) shall be considered by the Society.

**Decision on application**

(5.1) After considering an application under subsection (2), the Society shall determine, in accordance with the relevant section in this Part, that the applicant may practise law in Ontario or may not practise law in Ontario and so notify the applicant in writing.

**Terms and conditions**

(6) Permission to practise law in Ontario under a section in this Part granted to a person by the Society may include such terms and conditions as the Society considers appropriate.

**Application to committee of benchers**

(7) If the Society refuses to permit a person to practise law in Ontario under a section in this Part or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario under the section or of whether the terms and conditions are appropriate.

**Time for application**

(8) An application under subsection (7) shall be commenced by the applicant notifying the Society in writing of the application within thirty days after the day the applicant receives notice of the Society's refusal to permit the applicant to practise law in Ontario under a section in this Part.

**Parties**

(9) The parties to an application under subsection (7) are the applicant and the Society.

**Quorum**

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

**Procedure**

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for a licence under section 27 of the Act.

**Same**

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

**Decision on application**

(13) After considering an application under subsection (7), the committee of benchers shall determine, in accordance with the relevant section in this Part, that,

- (a) the applicant may practise law in Ontario or may not practise law in Ontario; or
- (b) the terms and conditions included by the Society in its permission to practise law in Ontario are or are not appropriate.

**Terms and conditions**

(14) Permission to practise law in Ontario under a section in this Part granted to a person by the committee of benchers, or a decision with respect to the terms and conditions included by the Society in its permission to practise law in Ontario, may include such terms and conditions as the committee of benchers considers appropriate.

**Decision final**

(15) The decision of the committee of benchers on an application under subsection (7) is final.

**Duration of permission**

~~(16) Permission to practise law in Ontario under a section in this Part granted to a person remains in effect until December 31 of the year in which permission is granted, unless otherwise provided for in this Part.~~

**Duration of permission**

(16) Permission to practise law in Ontario under a section in this Part granted to a person remains in effect for a time period specified by the Society.

**Permission automatically withdrawn**

(17) Permission to practise law in Ontario under a section in this Part granted to a person is automatically withdrawn immediately the person,

- (a) does not meet the requirements, if any, for permission to practise law in Ontario under the section;
- (b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario under the section;
- (c) does not comply with clause 36 (1) (a);
- (d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada in which the person is authorized to practise law,
  - (i) revoking the person's authorization to practise law, or
  - (ii) suspending the person's authorization to practise law; or
- (e) practises law in Ontario in contravention of this Part.

**Permission withdrawn**

(17.1) Permission to practise law in Ontario under a section in this Part granted to a person may be withdrawn by the Society if the Society determines that continued permission to practise law in Ontario would be contrary to the public interest.

**Application to committee of benchers**

(17.2) If the Society, under subsection (17.1) withdraws a person's permission to practise law in Ontario under a section in this Part, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the permission was properly withdrawn.

**Application of provisions to application to committee**

(17.3) Subsections (8) to (15) apply, with necessary modifications, to an application under subsection (17.2).

**Fee to practise law**

(18) A person permitted to practise law in Ontario under a section in this Part may be required to, and if required to shall, pay a fee, to practise law in Ontario.

TEMPORARY PRACTICE OF LAW: LAWYERS FROM BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR AND  
PRINCE EDWARD ISLAND

**Application of ss 42 to 45**

41. Sections 42 to 45 apply to a person if the person is authorized to practise law in any of the following provinces:

1. British Columbia.
2. Alberta.
3. Saskatchewan.
4. Manitoba.
5. New Brunswick.
6. Nova Scotia.
7. Newfoundland and Labrador.
8. Prince Edward Island.

**Definition: "day"**

42. (1) In this section and in sections 43 to 45, "day" means a calendar day or part of a calendar day.

**Interpretation: practice of law**

(2) In this section and in sections 43 to 45.1, a person practises law in Ontario if the person,

- (a) performs professional services for others in the capacity of a barrister or solicitor; or
- (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

**Interpretation: occasional practice of law**

(3) In sections 43 to 45, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

**Occasional practice of law: excluded activities**

(4) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the maximum number of days a person is entitled to practise law in Ontario under subsection 43 (1) or permitted to practise law in Ontario under section 44.

**Interpretation: economic nexus**

(5) For the purposes of ~~sections 43 and 45~~ [section 43](#), subject to subsection (6), a person establishes an economic nexus with Ontario if the person,

(a) practises law in Ontario for more than the maximum number of days the person is entitled to practise law in Ontario under section 43 or permitted to practise law in Ontario under section 44, if the person is not granted permission to practise law in Ontario under subsection 45 (1) or (2);

(a.1) practises law in Ontario for more than the maximum number of days the person is permitted to practise law in Ontario under subsection 45 (1) or (2);

(b) opens an office in Ontario from which to practise law;

(c) opens or operates a trust account at a financial institution located in Ontario;

(d) receives money in trust for a client other than as permitted under section 45.1;

(e) becomes a resident in Ontario; or

(f) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

**Same**

(6) A person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the person is authorized to practise law.

**Occasional practice of law: prior permission not required**

43. (1) A person who is not a licensee may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

(a) is authorized to practise law in a province named in section 41;

(b) is not the subject of a criminal proceeding in any jurisdiction;

(c) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;

(d) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in any jurisdiction in which the person is authorized to practise law that affects the person's authorization to practise law in the jurisdiction;

(e) has no record of any order having been made against the person by a tribunal of the governing body of the legal profession in any jurisdiction in which the person is or was authorized to practise law as a result of a conduct, capacity or competence proceeding, other than an order suspending or limiting the person's authorization to practise law for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;

(f) has no terms, conditions, limitations or restrictions on the person's authorization to practise law in any jurisdiction in which the person is authorized to practise law; and

(g) does not establish an economic nexus with Ontario.

**Same**

(2) A person who is not a licensee, if and so long as the person is authorized to practise law in a province mentioned in section 41 and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

**Occasional practice of law: prior permission required**

44. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under subsection 43 (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

**Requirement for permission**

(2) Permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

**Practising on more than an occasional basis**

45. (1) A person who is entitled under section 43 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 43.

**Same**

(2) A person who was permitted under section 44 to practise law in Ontario on an occasional basis may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society.

**~~Practising on more than an occasional basis: economic nexus established~~**

~~—(3) A person who was entitled to practise law in Ontario under section 43 or who was permitted to practise law in Ontario under section 44, subsection (1) or subsection (2), who has established an economic nexus with Ontario and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario, subject to subsections 40 (17) and (17.1), until the later of,~~

- ~~—(a) the date the person is granted a licence to practise law in Ontario as a barrister and solicitor; and~~
- ~~—(b) the effective date of the final decision and order, with respect to the individual's application for a licence to practise law in Ontario as a barrister and solicitor, of the Hearing Division or, if there is an appeal from the decision and order of the Hearing Division, of the Appeal Division.~~

**Handling of money**

45.1. A person who is entitled to practise law in Ontario under section 43 or who is permitted to practise law in Ontario under section 44 or 45 may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

- (a) the person pays the money into a trust account at a financial institution located in a province mentioned in section 41 in which the person is authorized to practise law; or
- (b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with ByLaw 9 [Financial Transactions and Records].

#### TEMPORARY PRACTICE OF LAW: LAWYERS FROM QUEBEC AND THE TERRITORIES OF CANADA

##### **Application of ss 47 to 50**

~~46. Sections 47 to 50 apply to a person if,~~

- ~~–(a) the person is authorized to practise law in Quebec by the Barreau du Québec; or~~
- ~~–(b) the person is authorized to practise law in any territory of Canada.~~

##### **Member of the Barreau du Québec other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.1. Sections 42 to 45.1, and section 50 with necessary modifications, apply to a member of the Barreau du Québec, other than a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles, who is authorized to practise law in Quebec.

##### **Member of the Barreau du Québec who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.2. Sections 47 to 51 apply to a member of the Barreau du Québec who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles who is authorized to practise law in Quebec.

##### **Authorized to practise law in a territory of Canada**

46.3. Sections 47 to 51 apply to a person who is authorized to practise law in a territory of Canada.

##### **Interpretation: practice of law**

47. (1) In this section and in sections 48 to 51, a person practises law in Ontario if the person,

- (a) performs professional services for others in the capacity of a barrister or solicitor; or
- (b) gives legal advice to others with respect to the laws of Ontario, the laws of a province or territory of Canada in which the person is authorized to practise law, the laws of Canada or public international law.

##### **Interpretation: occasional practice of law**

(2) In sections 48 and 49, a person practises law in Ontario on an occasional basis if, during a calendar year, the person practises law in Ontario in respect of not more than ten matters.

##### **Occasional practice of law: excluded activities**

(3) The practice of law in Ontario as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the ten matters mentioned in subsection (2) for the purposes of subsection 49 (1).

**Occasional practice of law: prior permission not required**

48. A person who is not a licensee, if and so long as the person is authorized to practise law in a province or territory mentioned in section [4646.2 or 46.3](#), may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

**Occasional practice of law: prior permission required**

49. (1) A person who is not a licensee and who is not entitled to practise law in Ontario on an occasional basis under section 48 may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

- (a) is authorized to practise law in a province or territory mentioned in section [4646.2 or 46.3](#);
- (b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario in which the person is authorized to practise law; and
- (c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

**Additional requirement for permission**

(2) Despite subsection (1), permission to practise law in Ontario on an occasional basis under this section shall not be granted if to grant permission to practise law in Ontario on an occasional basis would be contrary to the public interest.

**Practising on more than an occasional basis: prior permission required**

[49.1. A person who was entitled to practise law in Ontario under section 48 or who was permitted to practise law in Ontario under subsection 49 \(1\) and who has applied for a licence to practise law in Ontario as a barrister and solicitor may, with the prior permission of the Society, practise law in Ontario on more than an occasional basis, as permitted by the Society, if, and so long as, the person meets the applicable requirements mentioned in section 48 or subsection 49 \(1\).](#)

**Law specific to Ontario: competence**

50. (1) A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 [or 49.1](#) shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

**Interpretation: "law specific to Ontario"**

(2) In subsection (1), "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

**Handling of money**

51. A person who is entitled to practise law in Ontario under section 48 or who is permitted to practise law in Ontario under section 49 [or 49.1](#) may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

- (a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory mentioned in section 46 in which the person is authorized to practise law; or
- (b) the person pays the money into a trust account that is kept in the name of and operated by a licensee in accordance with By-Law 9 [Financial Transactions and Records] and the money is handled only by the licensee in accordance with By-Law 9 [Financial Transactions and Records].

#### PRACTICE OF LAW IN ONTARIO BY NOTARIES FROM QUEBEC

##### **Permission to practise law in Ontario**

52. (1) A person who is not a licensee, who is a member of the Chambre des Notaires du Québec, who is authorized to practise the notarial profession in Quebec and who is of good character may, with the prior permission of the Society, do any of the following:

1. Give a person advice with respect to,
  - i. the laws of Quebec,
  - ii. the laws of Canada, and
  - iii. public international law.
2. Select, draft, complete or revise a document for use in a proceeding with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.
3. Represent a person in a proceeding before an adjudicative body with respect to matters concerning the laws of Canada, if the laws of Canada expressly authorize the person to represent a party in the proceeding.

##### **Interpretation: member of the Chambre des Notaires du Québec**

(2) For the purposes of subsection (1), a member of the Chambre des Notaires du Québec does not include a member who qualified for membership under the Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

##### **Additional requirement for permission**

(3) Despite subsection (1), permission to practise law in Ontario under this section shall not be granted if to grant permission to practise law in Ontario would be contrary to the public interest.

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#### **RÈGLEMENT ADMINISTRATIF N° 4**

#### **OCTROI DE PERMIS**

#### **PARTIE I**

#### **CATÉGORIES DE PERMIS**

#### **PERMIS D'EXERCICE DU DROIT**

**Catégories de permis**

~~1. (1) Les catégories suivantes de permis autorisent l'exercice du droit en Ontario à titre d'avocat ou d'avocate :~~

- ~~1. La catégorie L1.~~
- ~~2. La catégorie L2.~~
- ~~3. La catégorie L3.~~

**Catégories de permis**

1. (1) Sous réserve du paragraphe (6), les catégories suivantes de permis autorisent l'exercice du droit en Ontario à titre d'avocat ou d'avocate :

- 1. La catégorie L1.
- 2. La catégorie L2

**Disposition transitoire****Interprétation**

(2) Aux paragraphes (3) et (4) :

« membre » S'entend d'une personne qui est membre selon la définition qu'en donne l'article 1 de la Loi dans sa version en vigueur immédiatement avant le 1<sup>er</sup> mai 2007.

« membre provisoire » S'entend d'une personne reçue à titre de membre provisoire du Barreau en vertu de l'article 28.1 de la Loi dans sa version en vigueur immédiatement avant le 1<sup>er</sup> mai 2007.

**Membre qui n'est pas membre provisoire**

(3) Quiconque, à l'exception des membres provisoires, est membre immédiatement avant le 1<sup>er</sup> mai 2007 est réputé détenir un permis de catégorie L1 le 1<sup>er</sup> mai 2007.

**Membre provisoire**

(4) Quiconque est membre provisoire immédiatement avant le 1<sup>er</sup> mai 2007 est réputé détenir un permis de catégorie L2 le 1<sup>er</sup> mai 2007.

**Permis de catégorie L3 : réputé remis**

(5) Quiconque détient un permis de catégorie L3 immédiatement avant le jour de l'entrée en vigueur du présent paragraphe est réputé avoir remis son permis six mois jour pour jour après l'entrée en vigueur du présent paragraphe.

**Période de transition : permis de catégorie L3**

(6) Quiconque détient un permis de catégorie L3 immédiatement avant le jour de l'entrée en vigueur du présent paragraphe continue de détenir son permis jusqu'à la première des deux dates suivantes :

- a) le jour où il est annulé par suite de la délivrance d'un permis de catégorie L1 ;
- b) le jour où il est réputé avoir été remis.

**Période de transition : portée des activités relatives au permis de catégorie L3**

(7) Sous réserve du paragraphe (8), de toutes conditions ou restrictions imposées à la personne et de toute ordonnance prise en application de la Loi, une personne qui continue de détenir un permis de catégorie L3 conformément au paragraphe (6) est autorisée à faire ce qui suit :

- 1. Fournir un avis à l'égard des lois du Québec, des lois du Canada et du droit international public.
- 2. Choisir, rédiger, remplir ou réviser un document à utiliser dans une instance tenue à l'égard d'affaires concernant les lois du Canada.
- 3. Agir pour autrui dans le cadre d'une instance tenue devant un organisme juridictionnel à l'égard d'affaires concernant les lois du Canada.

**Période de transition : conditions du permis de catégorie L3**

(8) Une personne qui continue de détenir un permis de catégorie L3 conformément au paragraphe (6) est assujettie aux conditions et aux restrictions suivantes :

- 1. La personne est assujettie aux conditions et aux restrictions dont est assorti son pouvoir d'exercer la profession d'avocat au Québec.
- 2. Il est interdit à la personne d'exercer le droit en Ontario à titre d'avocat ou d'avocate s'il lui est interdit d'exercer la profession d'avocat au Québec.
- 3. Il est interdit à la personne d'exercer le droit en Ontario à titre d'avocat ou d'avocate si elle ne souscrit pas dans son intégralité la protection d'assurance responsabilité professionnelle obligatoire du Barreau du Québec.

**Champ d'application des activités****Catégorie L1**

2. (1) Sous réserve des conditions applicables ou des restrictions imposées à une catégorie de permis ou aux titulaires de permis et de toute ordonnance rendue en vertu de la Loi, les titulaires de permis qui détiennent un permis de catégorie L1 sont autorisés à exercer le droit en Ontario à titre d'avocat ou d'avocate.

**Catégorie L2**

(2) Sous réserve des conditions applicables ou des restrictions imposées à une catégorie de permis ou aux titulaires de permis et de toute ordonnance rendue en vertu de la Loi, les titulaires de permis qui détiennent un permis de catégorie L2 sont habilités à exercer le droit en Ontario à titre d'avocat ou

d'avocate au service du procureur général de l'Ontario ou, s'ils sont nommés en vertu de la *Loi sur les procureurs de la Couronne*, procureurs de la Couronne ou procureurs adjoints de la Couronne.

### **Catégorie L3**

~~—(3) Sous réserve des conditions applicables ou des restrictions imposées à une catégorie de permis ou aux titulaires de permis et de toute ordonnance rendue en vertu de la Loi, les titulaires de permis qui détiennent un permis de catégorie L3 sont autorisés à poser les actes suivants :~~

~~—1. Donner des conseils concernant :~~

- ~~—i. le droit du Québec,~~
- ~~—ii. le droit du Canada,~~
- ~~—iii. le droit international public.~~

~~—2. Choisir, rédiger, achever ou réviser un document devant servir dans une instance tenue à l'égard d'affaires concernant le droit du Canada.~~

~~—3. Agir pour autrui dans le cadre d'une instance tenue devant un organisme juridictionnel à l'égard d'affaires concernant le droit du Canada.~~

### **Conditions : permis de catégorie L1**

#### **Application de l'article**

3. (1) Le présent article s'applique aux titulaires d'un permis de catégorie L1.

#### **Incapacité**

(2) Il est interdit aux titulaires de permis qui sont exonérés de la cotisation annuelle en vertu du paragraphe 5 (1) du Règlement administratif n° 5 d'exercer le droit en Ontario à titre d'avocat ou d'avocate.

#### **Exonération du paiement des contributions au titre des assurances**

(3) Les titulaires de permis qui sont tenus de payer la cotisation annuelle, ou qui le seraient si on ne les en avait pas exonérés en vertu du paragraphe 5 (2) du Règlement administratif no 5, et qui sont exonérés du paiement des contributions au titre des assurances sont assujettis aux conditions et aux restrictions suivantes :

1. Les titulaires de permis ne peuvent exercer le droit en Ontario à titre d'avocat ou d'avocate au sein d'une entreprise individuelle, d'une société de personnes, d'une société professionnelle ou en vertu de tout arrangement qui permet à au moins deux titulaires de permis de partager les dépenses communes, en totalité ou en partie, tout en exerçant le droit en tant que praticien autonome, mais non à titre bénévole,

- i. pour le compte ou au nom d'organismes sans but lucratif ;
- ii. par l'intermédiaire d'un programme agréé par Pro Bono Ontario.

#### **Autorisation d'exercer le droit à l'extérieur de l'Ontario**

(4) Les titulaires de permis autorisés à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario sont assujettis aux conditions ou aux restrictions visant l'autorisation d'exercer le droit dans cette province ou ce territoire.

**Durée des dispositions**

(5) Les conditions ou restrictions imposées aux titulaires de permis en vertu du présent article demeurent en vigueur jusqu'à leur annulation en vertu de l'article 4.

**Annulation des dispositions**

4. (1) Les titulaires de permis qui sont assujettis à des conditions ou à des restrictions en vertu de l'article 3 peuvent s'adresser au Barreau pour faire annuler ces conditions ou restrictions, et le Barreau peut :

- a) annuler ces conditions ou restrictions ;
- b) exiger que les titulaires de permis terminent leur formation et acquièrent l'expérience que le Barreau juge nécessaire pour s'assurer que les titulaires de permis possèdent les compétences requises pour exercer le droit en Ontario à titre d'avocat ou d'avocate sans conditions ni restrictions et, si les titulaires de permis terminent leur formation et acquièrent l'expérience prescrite, annuler les conditions et les restrictions ;

c) annuler les conditions ou les restrictions sous réserve des conditions et des restrictions suivantes :

(i) les titulaires de permis ne doivent exercer le droit :

- (A) qu'à titre d'employés d'une personne approuvée par le Barreau ;
- (B) qu'à titre d'employé ou d'associé, et sous la surveillance d'un ou d'une titulaire de permis de catégorie L1 qui est approuvé(e) par le Barreau ;
- (C) que sous l'autorité d'un ou d'une titulaire de permis de catégorie L1 qui est approuvé(e) par le Barreau ;

(ii) les titulaires de permis doivent, dans le délai prescrit par le Barreau, suivre la formation et acquérir l'expérience que le Barreau juge nécessaire pour s'assurer que les titulaires de permis possèdent les compétences requises pour exercer le droit en Ontario à titre d'avocat ou d'avocate sans conditions ni restrictions.

**Violation des conditions imposées en application du paragraphe (1)**

(2) Si les titulaires de permis omettent de se conformer à une restriction ou à une condition qui leur est imposée en vertu de l'alinéa (1) c), l'annulation des conditions et des restrictions prévues en vertu de l'alinéa (1) c) est dès lors réputée sans effet.

**Renseignements que les titulaires de permis sont tenus de communiquer**

(3) Les titulaires de permis sont tenus de communiquer au Barreau tous les documents et renseignements que peut exiger le Barreau au sujet du présent article.

**Conditions : permis de catégorie L3**

4.1. Les titulaires d'un permis de catégorie L3 sont assujettis aux conditions et aux restrictions suivantes :

- ~~1. Les titulaires de permis sont assujettis aux conditions et aux restrictions dont est assorti leur pouvoir d'exercer la profession d'avocat au Québec.~~
- ~~2. Il est interdit aux titulaires de permis d'exercer le droit en Ontario à titre d'avocat ou d'avocate s'il leur est interdit d'exercer la profession d'avocat au Québec.~~

~~3. Il est interdit aux titulaires de permis d'exercer le droit en Ontario à titre d'avocat ou d'avocate s'ils ne souscrivent pas dans son intégralité la protection d'assurance responsabilité professionnelle obligatoire du Barreau du Québec.~~

## PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES

### Catégories de permis

5. Les catégories de permis suivantes autorisent la prestation de services juridiques en Ontario :

1. La catégorie P1.

### Champ d'activité

#### Catégorie P1

#### Définitions

6. (1) Dans le présent article, sauf indication contraire du contexte :

« Annexe sur les indemnités d'accident légales » S'entend de l'Annexe sur les indemnités d'accident légales au sens de la *Loi sur les assurances*.

« demande d'indemnité » S'entend d'une demande d'indemnité d'accident légale au sens de la *Loi sur les assurances*, sauf une demande d'indemnité de la part d'une personne qui a ou qui semble avoir une déficience invalidante au sens de l'Annexe sur les indemnités d'accident légales.

« instance » S'entend d'une instance réelle ou d'une instance projetée

- a) devant la Cour des petites créances,
- b) devant la Cour de justice de l'Ontario en vertu de la *Loi sur les infractions provinciales*,
- c) devant un tribunal des poursuites sommaires en vertu du Code criminel (Canada),

(i) en vertu du Code criminel (Canada), immédiatement avant le jour de la modification, un accusé était autorisé à comparaître ou à faire interroger ou contrinterroger des témoins par un mandataire,

(ii) à l'égard d'une infraction en vertu du paragraphe 320.13 (1), du paragraphe 320.16 (1), de l'article 320.17 ou du paragraphe 320.18 (1) du Code criminel (Canada),

- d) devant un tribunal constitué en vertu d'une loi de l'Ontario ou en vertu d'une loi fédérale,
- e) devant une personne qui traite une demande d'indemnité ou une question liée à une demande d'indemnité dont un médiateur ou une médiatrice, une personne qui effectue une évaluation, un ou une arbitre ou un administrateur ou une administratrice en vertu des articles 280, 280.1, 282 ou 283 ou 284, respectivement, de la *Loi sur les assurances*.

« jour de la modification » désigne le jour où les articles 316 et 317.1 de la Loi modifiant le Code criminel, la Loi sur le système de justice pénale pour les adolescents et d'autres lois et apportant des modifications corrélatives à certaines lois entrent en vigueur ;

« partie » S'entend d'une partie à une instance judiciaire.

**Activités autorisées**

(2) Sous réserve des conditions ou des restrictions imposées à la catégorie de permis ou aux titulaires de permis, et sous réserve de toute ordonnance rendue en vertu de la Loi, les titulaires de permis qui détiennent un permis de catégorie P1 sont autorisés à poser les actes suivants :

1. fournir un avis à une personne concernant ses intérêts juridiques et ses responsabilités ou ses droits légaux relativement à une instance ou à l'objet d'une instance.
2. représenter une partie :
  - i. dans le cadre d'une instance à la Cour des petites créances, devant la Cour des petites créances,
  - ii. dans le cadre d'une instance en vertu de la *Loi sur les infractions provinciales*, devant la Cour de justice de l'Ontario,
  - iii. dans le cadre d'une instance en vertu du *Code criminel*, devant un tribunal des poursuites sommaires,
  - iv. dans le cadre d'une instance devant un tribunal constitué en vertu d'une loi de l'Ontario ou en vertu d'une loi fédérale, devant le tribunal,
  - v. dans le cadre d'une instance devant une personne qui traite une demande d'indemnité ou une question liée à une demande d'indemnité, devant la personne.
3. Poser tout acte mentionné au paragraphe 1 (7) de la Loi, à condition que l'activité soit prescrite par les règles de procédure régissant une instance.
4. Choisir, rédiger, achever, réviser ou aider au choix, à la rédaction, à l'achèvement ou à la révision d'un document devant servir dans une instance.
5. Négocier les intérêts juridiques, droits ou responsabilités d'une personne relativement à une instance ou à l'objet d'une instance.
6. Choisir, rédiger, achever, réviser un document qui touche les intérêts juridiques et les responsabilités ou les droits légaux d'une personne relativement à une instance ou à l'objet d'une instance ou aider au choix, à la rédaction, à l'achèvement ou à la révision d'un tel document.

**Conditions****Incapacité**

6.1. (1) Il est interdit aux titulaires de permis de catégorie P1 qui sont exonérés de la cotisation annuelle en vertu du paragraphe 5 (1) du Règlement administratif no 5 de fournir des services juridiques en Ontario.

**Durée des restrictions**

(2) Les restrictions imposées aux titulaires de permis en vertu du présent article demeurent en vigueur jusqu'à leur annulation par le Barreau, à la demande du titulaire de permis.

**PARTIE II****DÉLIVRANCE DU PERMIS****INTERPRÉTATION****Définitions**

7. Dans la présente partie :

« cycle d'admission » S'entend :

- a) dans le cas d'une personne qui s'inscrit au Barreau pour être admissible à passer un examen d'admission ou à suivre une formation expérientielle, condition essentielle pour obtenir un permis de catégorie L1, de la période allant du 1<sup>er</sup> mai d'une année au 30 avril de l'année suivante,
- b) dans le cas d'une personne qui s'inscrit au Barreau pour être admissible à passer un examen d'admission qui est une condition essentielle pour obtenir un permis de catégorie P1, de la période allant du 1<sup>er</sup> juin d'une année au 31 mai de l'année suivante.

« diplôme intégré en droit » S'entend d'un baccalauréat ou d'un doctorat en droit dont la remise est subordonnée à la réussite d'enseignement et de formation dans les habiletés pratiques et les compétences propres aux tâches considérées par le Barreau comme étant nécessaires à l'obtention d'un permis de catégorie L1 et qui ont été approuvées par le Barreau avant leur prestation.

« faculté de droit agréée » S'entend d'une faculté de droit au Canada agréée par le Barreau.

« programme agréé » S'entend d'un programme de services juridiques en Ontario approuvé par le ministre de la Formation et des Collèges et Universités et agréé par le Barreau.

« programme de pratique du droit » S'entend d'un programme approuvé par le Barreau avant sa prestation et qui comprend des cours et une période de placement professionnel qui fournissent l'enseignement et la formation dans les habiletés pratiques et les compétences propres aux tâches considérées par le Barreau comme étant nécessaires à l'obtention d'un permis de catégorie L1.

## EXIGENCES GÉNÉRALES

### Exigences relatives à la délivrance d'un permis

8. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis en vertu de la Loi :

1. Le requérant ou la requérante doit présenter au Barreau une demande dûment remplie pour la catégorie de permis souhaitée sur le formulaire que lui remet le Barreau.
2. Le requérant ou la requérante est tenu(e) de payer les droits applicables, notamment les frais liés à la demande.
3. Le requérant ou la requérante doit être de bonnes mœurs.
4. Le requérant ou la requérante doit prêter le serment applicable.
5. Le requérant ou la requérante doit remettre au Barreau tous les documents et renseignements exigés du Barreau pour la délivrance d'un permis.

### Délai de présentation de la demande

(1.1) La demande de permis se présente en même temps que la demande d'inscription prévue à l'article 18.

### Présentation d'une nouvelle demande après une renonciation réputée survenue

(1.2) Le requérant ou la requérante qui est réputé avoir renoncé à une demande de permis en application de l'alinéa (4) b) ne peut pas en présenter une nouvelle dans l'année qui suit la date à laquelle il est réputé avoir renoncé à la demande précédente et seulement s'il démontre au Barreau un changement important dans sa situation.

### **Présentation d'une nouvelle demande après avoir remis un permis dans certaines circonstances**

(1.3) Un titulaire de permis qui a fait une demande de remise de permis pendant qu'il ou elle fait l'objet d'un audit, d'une investigation, d'une perquisition ou d'une saisie de la part du Barreau ou qui est visé(e) par une instance aux termes de la partie II de la Loi et dont la demande a été acceptée par le Barreau aux termes du paragraphe 26 (3) du présent règlement administratif ne peut présenter de nouvelle demande de permis que dans les situations suivantes :

- a) cinq ans révolus après la date à laquelle le Barreau a accepté sa demande de remettre son permis précédent ;
- b) après le paiement de tous les dépens accordés au Barreau contre la ou le titulaire de permis aux termes de la Loi ;
- c) après le paiement au Barreau à l'égard du Fonds d'indemnisation d'un montant égal au total des indemnités faites à partir du Fonds à la suite de la malhonnêteté du titulaire de permis.

### **Assertions inexactes**

(2) Le requérant ou la requérante qui, soit par commission, soit par omission, fait une assertion ou déclaration inexacte ou trompeuse relativement à une demande de permis est dès lors réputé ne pas satisfaire et ne pas avoir satisfait aux exigences propres à la délivrance d'un permis en vertu de la Loi.

### **Documents et renseignements portant sur les bonnes mœurs**

(3) Le requérant ou la requérante fournit au Barreau :

- a) au moment de la présentation de sa demande remplie en bonne et due forme, tous les documents et renseignements que le Barreau précise sur le formulaire de demande en ce qui concerne l'exigence voulant que le requérant ou la requérante soit de bonnes mœurs ;
- b) au moment précisé par le Barreau, tous les autres documents et renseignements qu'il précise en ce qui concerne l'exigence voulant que le requérant ou la requérante soit de bonnes mœurs.

### **Omission de prendre une mesure : renonciation à la demande**

(4) Est réputé avoir renoncé à sa demande de permis le requérant ou la requérante qui :

- a) soit ne prend pas une mesure exigée au paragraphe (3), à l'alinéa 2 du paragraphe 9 (1), à l'alinéa 2 du paragraphe 13 (1), au sous-alinéa 13 (2) b) (iii), au sous-alinéa 13 (2) c) (iii) ou au sous-alinéa 13 (2) d) (iii) ou au paragraphe 15 (2.2) dans le délai imparti ;
- b) soit passe le même examen d'admission à trois reprises ou, à condition d'y avoir le droit, à quatre reprises, et y échoue.

## **PERMIS AUTORISANT L'EXERCICE DU DROIT**

### **Exigences relatives à la délivrance d'un permis de catégorie L1**

9. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie L1 :

- 1. Le requérant ou la requérante doit détenir soit :
  - i. Un baccalauréat ou un doctorat en droit d'une faculté de droit au Canada qui était, au moment où elle lui a conféré ce diplôme, une faculté de droit agréée.
  - ii. Un certificat de qualification professionnelle émis par le Comité national sur les équivalences des diplômes de droit nommé par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada.

2. Le requérant ou la requérante doit avoir réussi l'examen ou les examens essentiels à la délivrance du permis établis par le Barreau, et ce, au plus tard deux ans après la fin du cycle d'admission pour lequel il est inscrit.

3. Le requérant ou la requérante doit :

i. d'une part, avoir une formation expérientielle en ayant effectué avec succès :

A. soit le temps de service prévu en vertu de la convention de stage pour une période d'au plus dix mois, tel que fixé par le Barreau et toutes les autres exigences fixées par le Barreau auxquelles il doit être satisfait pendant le temps de service prévu en vertu de la convention de stage,

B. soit le programme de pratique du droit,

ii. d'autre part, si la formation expérientielle visée à la sous-disposition i a été terminée plus de trois ans avant la demande de permis, avoir réussi la formation complémentaire et obtenu l'expérience supplémentaire que le Barreau juge nécessaires pour veiller à ce que le requérant ou la requérante soit au fait de la loi et de la pratique en vigueur.

#### **Dispense de l'exigence de diplôme ou de certificat**

(1.1) Le requérant ou la requérante est dispensé de l'exigence prévue à l'alinéa 1 du paragraphe (1) dans les conditions suivantes :

a) le requérant ou la requérante est doyen ou doyenne d'une faculté de droit agréée et a entamé la deuxième année consécutive à ce poste ;

b) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agréée et a entamé la troisième année consécutive dans ces fonctions ;-

c) le requérant ou la requérante est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

#### **Dispense d'examen**

(2) Le requérant ou la requérante est dispensé(e) de l'exigence prévue à l'alinéa 2 du paragraphe (1) dans les conditions suivantes :

a) Le requérant ou la requérante :

(i) (A) est autorisé(e) à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario ou le Québec ;

(B) est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec ;

~~est autorisé(e) à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario dont l'organisme de réglementation de la profession juridique autoriserait les titulaires de permis de catégorie L1 à exercer le droit dans cette province ou dans ce territoire sans les avoir obligés au préalable à réussir un examen ;~~

(ii) examine la documentation que le Barreau, faisant preuve de diligence raisonnable, juge nécessaire pour s'assurer que le requérant ou la requérante connaît bien la pratique et le droit en Ontario ;

(iii) atteste qu'il ou elle a examiné et qu'il ou elle comprend la documentation dont il est fait mention au sous-alinéa (ii), en la forme fournie par le Barreau ;

- b) le requérant ou la requérante est doyen ou doyenne d'une faculté de droit agréée et a entamé la deuxième année consécutive à ce poste ;
- c) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agréée et a entamé la troisième année consécutive dans ces fonctions ;
- d) le requérant ou la requérante avait déjà le permis d'exercice du droit en Ontario à titre d'avocat.

### **Dispense de la formation expérientielle et autres exigences**

(3) Le requérant ou la requérante est dispensé(e) des exigences mentionnées à l'alinéa 3 du paragraphe (1) dans les cas suivants :

- a) le requérant ou la requérante est autorisé(e) à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario ou le Québec ;
  - a.1) Le requérant ou la requérante est membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec ;
- b) le requérant ou la requérante est doyen d'une faculté de droit agréée et a entamé une deuxième année consécutive à ce poste ;
- c) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agréée et a entamé une troisième année consécutive dans ces fonctions ;
- d) le requérant ou la requérante avait déjà le permis d'exercice du droit en Ontario à titre d'avocat autre que conformément à une catégorie de permis qui n'est plus délivré par le Barreau ;
- e) le requérant ou la requérante a exercé le droit dans un ressort de common law hors du Canada pendant au moins dix mois et le Barreau estime de façon raisonnable que cet exercice est comparable aux exigences de la disposition 3 ;
- f) le requérant ou la requérante est titulaire d'un diplôme intégré en droit.

### **Exigences relatives à la délivrance d'un permis de catégorie L2**

10. Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie L2 :

1. Le requérant ou la requérante doit être autorisé(e) à exercer le droit à l'extérieur de l'Ontario.
2. Le procureur général de l'Ontario doit demander au Barreau de délivrer le permis au requérant ou à la requérante.

### **~~Exigences relative à la délivrance d'un permis de catégorie L3~~**

~~10.0.01. Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie L3 :~~

- ~~1. Le requérant ou la requérante doit être membre du Barreau du Québec, mais n'y est pas admissible dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.~~
- ~~2. Le requérant ou la requérante doit être autorisé à exercer la profession d'avocat au Québec.~~

### **~~Déchéance du permis de catégorie P1~~**

~~10.01. Le permis de catégorie P1 que détient le titulaire d'un permis de catégorie L1 est déchu en faveur du Barreau au moment de la délivrance du permis de catégorie L1.~~

### **Déchéance du permis sur délivrance d'un permis de catégorie L1**

10.01. Tout autre permis que détient le titulaire d'un permis de catégorie L1 est déchu en faveur du Barreau au moment de la délivrance du permis de catégorie L1.

#### PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES

##### **Exigence pour l'octroi d'un permis de catégorie P1 : pas d'autre permis**

10.1. Pour obtenir un permis de catégorie P1, le requérant ou la requérante ne peut pas déjà détenir un permis autorisant la prestation des mêmes services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir.

##### **Exigences relatives à la délivrance d'un permis de catégorie P1 : demande reçue avant le 1<sup>er</sup> novembre 2007**

11. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie P1 à l'intention d'un requérant ou d'une requérante qui en fait la demande avant le 1<sup>er</sup> novembre 2007 :

1. Le requérant ou la requérante doit avoir satisfait à l'une des exigences suivantes :

i. Avoir fourni les services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir, à temps plein pendant un total de trois (3) ans au cours des cinq (5) ans ayant précédé le 1<sup>er</sup> mai 2007.

ii. Avoir obtenu, dans le cadre d'un programme de services juridiques en Ontario, une formation que le Barreau juge équivalente à au moins neuf cours dans le cadre d'un programme de services juridiques en Ontario qui est agréé par le ministère de la Formation et des Collèges et Universités de l'Ontario, et avoir fourni des services juridiques, que les titulaires de permis de catégorie P1 sont autorisés à fournir, au cours des cinq ans ayant précédé le 1<sup>er</sup> mai 2007, services juridiques qui comprennent dix (10) cas de représentation d'une partie devant la Cour des petites créances, la Cour de justice de l'Ontario, un tribunal des poursuites sommaires, un tribunal établi en vertu d'une loi de l'Ontario ou d'une loi fédérale ou devant une personne traitant une demande d'indemnisation, au sens de l'article 6, ou une question liée à une demande d'indemnisation lorsque la Cour des petites créances, la Cour de justice de l'Ontario, le tribunal des poursuites sommaires ou la personne était saisie du bienfondé d'une instance.

iii. Avoir obtenu, dans les trois (3) ans précédant la demande de permis, un diplôme décerné dans le cadre d'un programme de services juridiques qui était alors agréé par le ministère de la Formation, des Collèges et Universités, et qui comprenait :

A. dix-huit (18) cours, dont la plupart assuraient une formation sur les services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir et dont un cours portait sur la responsabilité et la déontologie professionnelles,

B. un stage pratique d'au moins 120 heures.

2. Le requérant ou la requérante doit avoir réussi l'examen ou les examens d'admission applicables établis par le Barreau.

3. Le requérant ou la requérante doit présenter la confirmation écrite de deux personnes, figurant sur la liste de personnes et dans le formulaire que lui fournit le Barreau, attestant que le requérant ou la requérante satisfait aux exigences énoncées à l'alinéa 1.

##### **Interprétation : « à temps plein »**

(2) Aux fins du présent article, on considère que le requérant ou la requérante fournisse des services juridiques à temps plein si celui-ci ou celle-ci fournit des services juridiques en moyenne 30 heures par semaine.

**Exigences préalables à la délivrance d'un permis de catégorie P1 : Demande reçue après le 31 octobre 2007 et avant le 1<sup>er</sup> juillet 2010**

12. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie P1 à l'intention d'un requérant ou d'une requérante qui demande le permis après le 31 octobre 2007, mais avant le 1<sup>er</sup> juillet 2010 :

1. Le requérant ou la requérante doit, dans les trois (3) ans précédant sa demande de permis, avoir obtenu un diplôme décerné dans le cadre d'un programme de services juridiques en Ontario qui était alors agréé par le ministère de la Formation, des Collèges et Universités, et qui comprenait,

- i. dix-huit cours, dont la plupart assuraient une formation sur les services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir et dont un cours portait sur la responsabilité et la déontologie professionnelles,
- ii. un stage pratique d'au moins 120 heures.

2. Le requérant ou la requérante doit avoir réussi l'examen ou les examens d'admission applicables établis par le Barreau.

**Dispense de l'exigence de formation**

(2) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 1 du paragraphe (1) si, selon le cas :

- a) pour un total d'au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d'un juge de paix en Ontario à plein temps ;
- b) il ou elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario, qu'il ou elle a demandé avant le 1<sup>er</sup> novembre 2007.

**Dispense de l'exigence d'examen**

(3) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 2 du paragraphe (1) s'il ou si elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario.

**Exigences préalables à la délivrance d'un permis de catégorie P1 : Demande reçue après le 30 juin 2010**

13. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie P1 à l'intention d'un requérant ou d'une requérante qui demande le permis après le 30 juin 2010 :

1. Le requérant ou la requérante doit avoir obtenu un diplôme décerné dans le cadre d'un programme de services juridiques qui était alors agréé en Ontario.

2. Le requérant ou la requérante doit avoir réussi le ou les examens d'admission applicables établis par le Barreau dans les deux ans qui suivent la fin du cycle d'admission pour lequel il ou elle est inscrit.

**Dispense de l'exigence de formation**

(2) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 1 du paragraphe (1) si, selon le cas :

- a) pour un total d'au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d'un juge de paix en Ontario à plein temps ;
- b) il ou elle est visé au paragraphe (4) et, à la fois :

(i) a fourni les services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir, à temps plein pendant un total de trois ans au cours des cinq ans ayant précédé la présentation de sa demande de permis de catégorie P1,

(ii) a présenté la confirmation écrite de deux personnes, figurant sur la liste de personnes et dans le formulaire que lui fournit le Barreau, attestant qu'il ou elle satisfait aux exigences énoncées au sous-alinéa (i),

(iii) a réussi un cours de déontologie et de représentation donné par le Barreau dans les deux ans qui suivent la fin du cycle d'admission pour lequel il ou elle est inscrit ;

c) il ou elle est membre en règle de l'association appelée *Human Resources Professionals Association of Ontario*, de l'Institut des planificateurs professionnels de l'Ontario, du Conseil canadien des professionnels en sécurité agréés ou de l'Institut canadien des évaluateurs et, à la fois :

(i) l'a été pendant un total de trois ans au cours des cinq ans ayant précédé la présentation de sa demande de permis de catégorie P1,

(ii) a exercé la profession ou l'occupation représentée par l'organisme, notamment en se livrant aux activités liées à la prestation des services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir, à temps plein pendant un total de trois ans au cours des cinq ans ayant précédé la présentation de sa demande de permis de catégorie P1,

(iii) a réussi un cours de déontologie et de représentation donné par le Barreau dans les deux ans qui suivent la fin du cycle d'admission pour lequel il ou elle est inscrit ;

d) il ou elle est inscrit comme agent de recouvrement et est en règle à ce titre sous le régime de la *Loi sur les agences de recouvrement* et, à la fois :

(i) a été inscrit et en règle à ce titre pendant un total de trois ans au cours des cinq ans ayant précédé la présentation de sa demande de permis de catégorie P1,

(ii) a agi comme agent de recouvrement, notamment en se livrant aux activités liées à la prestation des services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir, à temps plein pendant un total de trois ans au cours des cinq ans ayant précédé la présentation de sa demande de permis de catégorie P1,

(iii) a réussi un cours de déontologie et de représentation donné par le Barreau dans les deux ans qui suivent la fin du cycle d'admission pour lequel il ou elle est inscrit ;

e) il ou elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario, qu'il ou elle a demandé avant le 1<sup>er</sup> juillet 2010 ;

f) pour un total d'au moins 5 ans, le requérant ou la requérante a assumé les fonctions et exécuté les tâches d'un membre à plein temps d'au moins une des entités suivantes :

(i) Tribunal d'appel de l'agriculture, de l'alimentation et des affaires rurales,

(ii) Commission d'étude des soins aux animaux,

(iii) Commission de révision de l'évaluation foncière,

(iv) Commission de négociation maintenue en vertu du paragraphe 27 (1) de la *Loi sur l'expropriation*,

(v) Commission de négociation créée en vertu du paragraphe 172 (5) de la *Loi sur la protection de l'environnement*,

(vi) Commission du code du bâtiment,

(vii) Commission de révision des services à l'enfance et à la famille,

(viii) Comité d'étude de la podologie,

(ix) Commission du consentement et de la capacité,

- (x) Commission des biens culturels,
- (xi) Commission d'indemnisation des victimes d'actes criminels,
- (xii) Commission de règlement des griefs des employés de la Couronne,
- (xiii) Commission de révision des placements sous garde,
- (xiv) Comité d'étude de la dentisterie,
- (xv) Tribunal de l'environnement,
- (xvi) Commission de la sécurité-incendie,
- (xvii) Commission d'appel et de révision des professions de la santé,
- (xviii) Commission d'appel et de révision des services de santé,
- (xix) Tribunal des droits de la personne de l'Ontario,
- (xx) Commission de la location immobilière,
- (xxi) Tribunal d'appel en matière de permis,
- (xxii) Comité d'admissibilité médicale constitué en vertu du paragraphe 7 (1) de la *Loi sur l'assurance-santé*,
- (xxiii) Commission de protection des pratiques agricoles normales,
- (xxiv) Commission civile de l'Ontario sur la police,
- (xxv) Commission des relations de travail de l'Ontario,
- (xxvi) Commission des affaires municipales de l'Ontario,
- (xxvii) Commission ontarienne des libérations conditionnelles,
- (xxviii) Commission ontarienne d'examen,
- (xxix) Tribunal de l'enfance en difficulté de l'Ontario (anglais),
- (xxx) Tribunal de l'enfance en difficulté de l'Ontario (français),
- (xxxi) Comité d'étude de l'optométrie,
- (xxxii) Tribunal de l'équité salariale,
- (xxxiii) Commission de révision des paiements effectués aux médecins,
- (xxxiv) Commission des griefs de la fonction publique,
- (xxxv) Tribunal de l'aide sociale,
- (xxxvi) Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ;

(g) pour un total d'au moins 5 ans, le requérant ou la requérante a assumé à plein temps les fonctions et exécuté les tâches d'un commissaire aux appels de la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail.

#### **Interprétation : « à temps plein »**

(2.1) Pour l'application du paragraphe (2), à l'exception des alinéas (2) f) et g), le fait de se livrer à une activité ou d'agir à un titre quelconque à temps plein s'entend du fait de se livrer à cette activité ou d'agir à ce titre en moyenne 30 heures par semaine.

#### **Dispense de l'exigence d'examen**

(3) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 2 du paragraphe (1) s'il ou si elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario.

#### **Champ d'application de l'alinéa (2) b)**

(4) L'alinéa (2) b) s'applique aux requérants et aux requérantes qui se livrent à l'une des activités suivantes et qui s'y livraient le 1<sup>er</sup> novembre 2007 :

1. Fournir des services juridiques sans permis dans le cadre de la disposition 1 du paragraphe 30 (1).
2. Fournir des services juridiques sans permis dans le cadre de la disposition 2 du paragraphe 30 (1) comme personne au service d'une clinique, au sens de la *Loi de*

1998 sur les services d'aide juridique, qui est financée par Aide juridique Ontario.

3. Fournir des services juridiques sans permis dans le cadre de la disposition 4 du paragraphe 30 (1).
4. Fournir des services juridiques sans permis dans le cadre de l'article 31.
5. Fournir des services juridiques sans permis dans le cadre de l'article 32.

#### **Champ d'application des alinéas 2 b), c) et d)**

(5) Les alinéas 2 b), c) et d) s'appliquent seulement aux requérants et aux requérantes qui présentent au Barreau une demande de permis de catégorie P1 dûment remplie au plus tard le 30 septembre 2011.

### **EXAMENS D'ADMISSION**

#### **Exigences générales**

14. (1) Quiconque satisfait aux exigences suivantes est habilité à passer un examen d'admission établi par le Barreau :

1. La personne doit être inscrite au Barreau.
  - 1.1. La personne ne doit pas avoir passé le même examen d'admission à plus de deux reprises durant le cycle d'admission pour lequel elle est inscrite.
2. La personne doit présenter au Barreau une demande d'examen dûment remplie, pour l'examen qu'elle souhaite passer, et ce, à l'aide du formulaire fourni par le Barreau, avant le jour de l'examen et, au plus tard, au moment indiqué par le Barreau.
3. La personne doit acquitter les frais d'examen applicables, avant la date d'examen et, au plus tard, au moment indiqué par le Barreau.
4. La personne doit fournir au Barreau tous les documents et renseignements que le Barreau peut lui demander concernant les exigences auxquelles satisfaire pour se présenter à l'examen.
5. La personne ne doit pas être inadmissible à passer l'examen en vertu du présent règlement administratif.

#### **Droit de passer le même examen d'admission à plus de deux reprises**

(1.1) La personne qui satisfait aux exigences énoncées aux dispositions 1, 2, 3, 4 et 5 du paragraphe (1) mais non à celles énoncées à la disposition 1.1 de ce paragraphe a le droit de passer un examen d'admission établi par le Barreau si les conditions suivantes sont réunies :

- a) elle n'a pas passé le même examen d'admission à plus de trois reprises au cours du cycle d'admission pour lequel elle était inscrite ;
- b) elle convainc le Barreau que des circonstances extraordinaires ont ou pourraient avoir une incidence sur sa capacité à réussir l'examen d'admission.

#### **Assertions inexactes**

(2) Quiconque fait, soit par commission, soit par omission, une assertion ou une déclaration inexacte ou trompeuse relativement à une demande d'examen, est dès lors réputé ne pas satisfaire, et ne pas avoir satisfait, aux exigences donnant droit à passer un examen d'admission et, sous réserve du paragraphe (3), son examen d'admission n'est pas pris en compte même s'il le réussit.

#### **Annulation reportée du résultat d'un examen**

(3) Lorsque l'assertion inexacte ou trompeuse dont il est question au paragraphe (2) concerne le respect de l'exigence de l'alinéa 1 du paragraphe 9 (1) ou de l'alinéa 1 du paragraphe 13 (1) et a été faite par la personne de bonne foi, la personne est réputée ne pas satisfaire, et ne pas avoir satisfait, aux exigences donnant droit à passer un examen d'admission, et son examen d'admission n'est pas pris en compte

même si elle le réussit si la personne ne satisfait pas à l'exigence de l'alinéa 1 du paragraphe 9 (1) ou à l'alinéa 1 du paragraphe 13 (1), selon le cas, au plus tard à la fin du cycle d'admission pour lequel la personne est inscrite au Barreau pour être admissible à passer l'examen d'admission applicable.

#### **Examen d'admission ouvrant droit au permis de catégorie L1**

15. (1) Quiconque répond à l'exigence de l'alinéa 1 du paragraphe 9 (1) est admissible à l'examen d'admission, qui est une exigence préalable à la délivrance d'un permis de catégorie L1.

#### **Examen d'admission ouvrant droit au permis de catégorie P1**

(2) Une personne est admissible à l'examen d'admission, qui est une exigence préalable à l'obtention du permis de catégorie P1, si :

- a) dans le cas d'un requérant ou d'une requérante qui demande un permis de catégorie P1 avant le 1<sup>er</sup> novembre 2007, la personne satisfait aux exigences des alinéas 1 et 3 du paragraphe 11 (1) ;
- b) dans le cas d'un requérant ou d'une requérante qui demande un permis de catégorie P1 après le 31 octobre 2007, mais avant le 1<sup>er</sup> juillet 2010, la personne satisfait à l'exigence de l'alinéa 1 de l'article 12 ;
- c) dans le cas d'un requérant ou d'une requérante qui demande un permis de catégorie P1 après le 30 juin 2010 :

- (i) soit la personne satisfait à l'exigence prévue à la disposition 1 du paragraphe 13 (1),
- (ii) soit la personne est dispensée de l'exigence prévue à la disposition 1 du paragraphe 13 (1) en application de l'alinéa 13 (2) b), 13 (2) c) ou 13 (2) d).

#### **Examen d'admission ouvrant droit au permis de catégorie P1 : permission de passer l'examen**

(2.1) Malgré le sous-alinéa (2) c) (ii), le requérant ou la requérante visé à ce sous-alinéa n'est admissible à passer l'examen d'admission, qui est une exigence préalable à l'obtention du permis de catégorie P1, qu'après avoir fourni au Barreau tous les documents et renseignements qu'il peut lui demander concernant l'exigence voulant que le requérant ou la requérante qui présente une demande de permis de catégorie P1 soit de bonnes mœurs et qu'après que le Barreau l'ait avisé qu'il ou elle a la permission de passer l'examen.

#### **Délai pour réussir l'examen d'admission**

(2.2) Malgré la disposition 2 du paragraphe 13 (1), le requérant ou la requérante qui a la permission, en application du paragraphe (2.1), de passer l'examen d'admission, qui est une exigence préalable à l'obtention du permis de catégorie P1, doit réussir l'examen dans celui des délais suivants qui se termine le plus tard :

- a) deux ans après la fin du cycle d'admission pour lequel il ou elle est inscrit ;
- b) 12 mois après la date à laquelle le Barreau l'avise qu'il ou elle a la permission de passer l'examen.

#### **Échec d'un examen d'admission**

(3) Quiconque a été admis à un examen d'admission, qui est une exigence préalable à l'obtention d'un permis de catégorie P1, du fait qu'il a satisfait à l'exigence du sous-alinéa (i) ou (ii) de l'alinéa 1 du paragraphe 11 (1) et a échoué l'examen à trois reprises ne peut plus être admissible à passer l'examen en satisfaisant à l'exigence du sous-alinéa (i) ou (ii) de l'alinéa 1 du paragraphe 11 (1).

**Exigences**

16. Quiconque satisfait aux exigences suivantes est habilité à suivre la formation expérientielle en entrant en service en vertu de la convention de stage ou du programme de pratique du droit :

1. L'intéressé ou l'intéressée est inscrit au Barreau.
2. L'intéressé ou l'intéressée satisfait à l'exigence de l'alinéa 1 du paragraphe 9 (1).
3. L'intéressé ou l'intéressée fournit au Barreau tous les documents et renseignements que peut exiger le Barreau concernant les exigences préalables à l'entrée en service en vertu de la convention de stage ou du programme de pratique du droit.
4. L'intéressé ou l'intéressée acquitte les frais applicables dans le délai fixé par le Barreau.

**Étudiant**

17. (1) Quiconque est entré en service en vertu de la convention de stage ou du programme de pratique du droit est un étudiant.

**Application de la Loi aux étudiants**

(2) Les dispositions suivantes s'appliquent, avec les adaptations nécessaires, à un étudiant :

1. Les articles suivants de la Loi :
  - i. Les articles 33 à 40.
  - ii. L'article 45.
  - iii. L'article 49.3.
  - iv. Les articles 49.8 à 49.13.
  - v. Les articles 49.20 à 49.43.
2. Le règlement de l'Ontario 167/07, adopté en vertu de la Loi.
3. Les articles 2 et 3 du règlement administratif n° 8 [Déclarations obligatoires].
4. Les parties I, II, III et VI du règlement administratif n° 11 [Règlementation de la conduite, de la capacité et de la compétence professionnelle].
5. Les règles de pratique et de procédure.

## COURS DE DÉONTOLOGIE ET DE REPRÉSENTATION

**Exigences**

17.1. (1) Quiconque répond aux exigences suivantes est admissible au cours de déontologie et de représentation donné par le Barreau et dont la réussite est une exigence pour pouvoir jouir de la dispense, prévue à l'alinéa 13 (2) b), c) ou d), de l'exigence prévue à la disposition 1 du paragraphe 13 (1) :

1. La personne doit être inscrite auprès du Barreau.
2. La personne doit acquitter les frais applicables dans le délai fixé par le Barreau.
3. La personne doit fournir au Barreau tous les documents et renseignements qu'il peut exiger concernant l'audition du cours dans le délai qu'il fixe.

## INSCRIPTION

**Exigences générales**

18. (1) Quiconque satisfait aux exigences suivantes est habilité à s'inscrire au Barreau :

1. La personne doit présenter au Barreau une demande d'inscription dûment remplie, en utilisant le formulaire fourni par le Barreau.
2. La personne doit payer les droits d'inscription applicable.
3. La personne doit fournir au Barreau tous les documents et renseignements que peut exiger le Barreau concernant les exigences préalables aux inscriptions.

### **Inscription après une renonciation réputée survenue**

(1.1) Malgré le paragraphe (1), la personne dont l'inscription est annulée parce qu'elle est réputée avoir renoncé à sa demande de permis en application de l'alinéa 8 (4) b) n'a pas le droit d'être inscrite au Barreau à nouveau jusqu'au moment où elle peut présenter une autre demande de permis en application du paragraphe 8 (1.2).

### **Assertions inexactes**

(2) Quiconque fait, soit par commission, soit par omission, une assertion ou déclaration inexacte ou trompeuse relativement à une demande d'inscription, est dès lors réputé ne pas satisfaire, et ne pas avoir satisfait, aux exigences d'inscription, et l'inscription de la personne est dès lors réputée sans effet ; la réussite de tout examen d'admission passé par la personne est dès lors réputée sans effet ; la réussite de tout cours de déontologie offert par le Barreau suivi par la personne est dès lors réputée sans effet, et tout service en vertu de la convention de stage est dès lors réputé sans effet.

### **Inscription au cycle d'admission**

19. Quiconque s'inscrit au Barreau doit être inscrit à un cycle d'admission déterminé.

### **Annulation de l'inscription**

19.1. L'inscription d'une personne auprès du Barreau est annulée si elle est réputée avoir renoncé à sa demande de permis en application du paragraphe 8 (4).

### **Mise à la disposition du public du nom de l'inscrit**

20. Le Barreau peut, aux fins d'examen, rendre publics les noms des inscrits à un moment donné.

## **ASSERMENTATION**

### **Serment requis : permis d'exercer le droit en Ontario à titre d'avocat ou d'avocate**

21. (1) Le serment requis d'un requérant ou d'une requérante qui demande la délivrance d'un permis l'autorisant à exercer le droit en Ontario à titre d'avocat ou d'avocate est le suivant :

J'accepte l'honneur, le privilège, les devoirs et les responsabilités liés à l'exercice du droit en qualité d'avocat plaidant et de procureur dans la Province de l'Ontario. Je protégerai et défendrai les droits et les intérêts des personnes qui m'embauchent. Je conduirai toutes les instances avec fidélité et au mieux de ma compétence. Je ne négligerai les intérêts de personne, j'assurerai un service fidèle et représenterai avec diligence l'intérêt véritable de mes clients. Je ne refuserai pas les plaintes dont les fondements sont raisonnables, ni n'intenterai aucune cause frivole. Je ne détournerai pas la loi pour favoriser ou défavoriser qui que ce soit, mais en toutes choses, j'agirai avec honnêteté, intégrité et politesse. Je chercherai à assurer l'accès à la justice et aux services juridiques. Je chercherai à améliorer l'administration de la justice. Je mettrai de l'avant la primauté du droit et veillerai à respecter les droits et libertés de tous. Je me soumettrai strictement aux normes de déontologie qui régissent ma profession. Je jure ou affirme solennellement que je traiterai toutes ces questions au mieux de ma connaissance et de ma compétence.

**Serment requis : permis autorisant à offrir des services juridiques en Ontario**

(2) Le serment requis pour un requérant ou la requérante qui demande la délivrance d'un permis l'autorisant à offrir des services juridiques en Ontario est le suivant :

J'accepte l'honneur, le privilège, les devoirs et les responsabilités liés à la prestation des services juridiques en qualité de parajuriste dans la Province de l'Ontario. Je protégerai et défendrai les droits et les intérêts des personnes qui m'embauchent. Je conduirai toutes les instances avec fidélité et au mieux de ma compétence. Je ne négligerai les intérêts de personne, j'assurerai un service fidèle et représenterai avec diligence l'intérêt véritable de mes clients. Je ne refuserai pas les plaintes dont les fondements sont raisonnables, ni n'intenterai aucune cause frivole. Je ne détournerai pas la loi pour favoriser ou défavoriser qui que ce soit, mais en toutes choses, j'agirai avec honnêteté, intégrité et politesse. Je chercherai à assurer l'accès à la justice et aux services juridiques. Je chercherai à améliorer l'administration de la justice. Je mettrai de l'avant la primauté du droit et veillerai à respecter les droits et libertés de tous. Je me soumettrai strictement aux normes de déontologie qui régissent ma profession. Je jure ou affirme solennellement que je traiterai toutes ces questions au mieux de ma connaissance et de ma compétence.

**Serment facultatif : serment d'allégeance**

22. Le requérant ou la requérante d'un permis l'autorisant à exercer le droit en Ontario à titre d'avocat ou d'avocate ou d'un permis l'autorisant à offrir des services juridiques en Ontario peut prêter le serment suivant :

Je jure ou affirme solennellement et sincèrement que je serai fidèle et porterai allégeance à Sa Majesté la Reine Élisabeth Deux (ou au souverain régnant, le cas échéant), à ses héritiers et successeurs, conformément à la loi.

**PARTIE III****REMISE DU PERMIS****Marche à suivre pour la remise du permis**

23. (1) Sous réserve de l'article 25, les titulaires de permis qui veulent remettre leur permis doivent en faire la demande au Barreau par écrit.

**Déclaration solennelle ou affidavit**

(2) Toute demande présentée conformément au paragraphe (1) est accompagnée d'une déclaration solennelle ou, lorsque le requérant ou la requérante n'est pas résident(e) du Canada, d'un affidavit précisant :

- a) l'âge du requérant ou de la requérante, la date de délivrance de son permis, le lieu de résidence du requérant ou de la requérante, l'adresse professionnelle du requérant ou de la requérante, le cas échéant, le nombre d'années pendant lesquelles le requérant ou la requérante a exercé le droit en Ontario ou fourni des services juridiques en Ontario, le cas échéant, et les raisons pour lesquelles il ou elle veut remettre son permis ;
- b) que le requérant ou la requérante a rendu compte de tous les fonds et biens détenus en fiducie dont il ou elle était responsable et qu'il ou elle les a remis aux personnes y ayant droit, ou, selon le cas, qu'il ou elle n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie ;

c) que les dossiers de tous les clients ont été réglés et fermés ou que des dispositions ont été prises à la satisfaction des clients pour que leurs documents leur soient rendus ou soient transmis à un autre ou à une autre titulaire de permis pertinent, ou bien que le requérant ou la requérante :

(i) soit n'a pas exercé le droit en Ontario à titre d'avocat ou d'avocate ou n'a pas fourni des services juridiques en Ontario,

(ii) soit a exercé le droit en Ontario à titre d'avocat ou d'avocate ou a fourni des services juridiques en Ontario, mais seulement dans des circonstances où il ou elle est autorisé, dans le cadre de la Loi, à ce faire sans permis ;

d) que le requérant ou la requérante n'a connaissance d'aucune réclamation à son égard à titre professionnel à l'égard de la façon dont il ou elle exerce le droit en Ontario ou fournit des services juridiques en Ontario ;

e) toute information ou explication qui peut s'avérer pertinente sous forme d'amplification des dispositions précédentes.

### **Exposé conjoint des faits**

(3) Une demande présentée en application du paragraphe (1) par une ou un titulaire de permis qui fait l'objet d'un audit, d'une investigation, d'une perquisition ou d'une saisie de la part du Barreau ou qui est visé(e) par une instance aux termes de la partie II de la Loi est accompagnée, outre la déclaration solennelle ou l'affidavit exigé au paragraphe (2), d'un exposé des faits accepté par le Barreau aux fins particulières d'une demande aux termes du paragraphe (1) et accepté par le Barreau au plus trente jours avant le jour où la demande est présentée en vertu du paragraphe (1).

24. Abrogé.

### **Demande effectuée par un représentant du ou de la titulaire de permis**

25. (1) Le Barreau peut permettre à toute personne de faire, au nom du ou de la titulaire de permis, une demande conformément au paragraphe 23 (1) si le Barreau est convaincu que le ou la titulaire de permis ne peut, pour une quelconque raison, faire la demande lui-même ou elle-même.

### **Application des paragraphes 23 (2) et (3) et des articles 26 et 27**

(2) Les paragraphes 23 (2) et (3) et les articles 26 et 27 s'appliquent, avec les modifications qui s'imposent, à toute demande faite conformément au paragraphe 23 (1) par une personne au nom du ou de la titulaire d'un permis.

### **Examen de la demande par le Barreau**

26. (1) Le Barreau étudie toutes les demandes faites conformément au paragraphe 23 (1) à l'égard desquelles les exigences énoncées aux paragraphes 23 (2) et (3) ont été respectées, et le Barreau peut examiner une demande faite conformément au paragraphe 23 (1) à l'égard de laquelle les exigences énoncées aux paragraphes 23 (2) n'ont pas été respectées :

a) Sous réserve du paragraphe (3), le Barreau doit accepter une demande s'il est convaincu de ce qui suit :

(i) le requérant ou la requérante qui présente la demande a rendu compte de tous les fonds et biens en fiducie dont il ou elle était responsable et qu'il ou elle les a remis aux personnes y ayant droit, ou, selon le cas, qu'il ou elle n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie ;

(ii) les dossiers de tous les clients ont été réglés et fermés ou des dispositions ont été prises à la satisfaction des clients pour que leurs documents leur soient rendus ou soient transmis à un autre ou à une autre titulaire de permis concerné, ou bien le requérant ou la requérante :

(A) soit n'a pas exercé le droit en Ontario à titre d'avocat ou d'avocate ou n'a pas fourni des services juridiques en Ontario ;

(B) soit a exercé le droit en Ontario à titre d'avocat ou d'avocate ou a fourni des services juridiques en Ontario, mais seulement dans des circonstances où il ou elle est autorisé(e), en vertu de la Loi, à le faire sans permis ;

(iii) le requérant ou la requérante ne fait l'objet d'aucune réclamation à l'égard de ses activités professionnelles ou de la façon dont il ou elle exerce le droit en Ontario ou fournit des services juridiques en Ontario ;

(iv) le requérant ou la requérante a payé toutes les cotisations d'assurance qu'il ou elle doit payer et a déposé tous les certificats, rapports et autres documents qu'il ou elle est tenu(e) de déposer en raison de toute police d'assurance responsabilité civile professionnelle ;

(v) le requérant ou la requérante n'est plus assujéti(e) ou s'est pleinement conformé(e) aux conditions d'une ordonnance rendue en application de la partie II de la Loi, à une ordonnance en application de la partie II de la Loi selon son libellé préalable au 1er mai 2007, à toute ordonnance autre qu'une ordonnance de révocation de la qualité de membre conformément à l'article 34 de la Loi, selon son libellé préalable au 1er février 1999, et à toute ordonnance en application de l'article 35 ou 36 de la Loi, selon le libellé de ces articles avant le 1er février 1999 ;

b) Sous réserve du paragraphe (2), le Barreau doit refuser une demande s'il n'est pas convaincu d'un des énoncés de l'alinéa a).

### **Acceptation de la demande**

(2) Sous réserve du paragraphe (3), le Barreau peut accepter une demande même s'il n'est pas convaincu des énoncés des sous-alinéas (1) a) (i), (ii) et (iii), mais est convaincu de ceux des sous-alinéas (1) a) (i), (ii), (iii) et (vi).

### **Acceptation d'une demande dans certains cas**

(3) Le Barreau n'accepte une demande présentée par une ou un titulaire de permis qui fait l'objet d'un audit, d'une investigation, d'une perquisition ou d'une saisie de la part du Barreau ou qui est visé(e) par une instance aux termes de la partie II de la Loi que s'il détermine que cette acceptation ne serait pas contraire à l'intérêt public.

### **Documents, explications, décharges**

(4) Pour aider le Barreau à étudier la demande, le requérant ou la requérante doit procéder ainsi :

- a) fournir au Barreau les documents et les explications dont le Barreau peut avoir besoin ;
- b) fournir à l'assureur du régime d'assurance du Barreau les décharges, directives et lettres de consentement requises pour permettre à l'assureur de mettre à la disposition du Barreau tous les renseignements relatifs au versement des contributions au titre des assurances par le requérant ou la requérante ainsi qu'au dépôt des certificats, rapports et autres documents requis conformément à la police d'assurance responsabilité civile professionnelle.

**Rejet de la demande**

27. Si le Barreau rejette une demande en vertu de la clause 26 (1) b), le Barreau peut indiquer les conditions auxquelles que le requérant ou la requérante devra satisfaire pour que sa demande puisse être acceptée, et si le requérant ou la requérante respecte ces conditions à la satisfaction du Barreau, le Barreau devra accepter la demande.

**PARTIE IV****NON-EXERCICE DU DROIT ET NON-PRESTATION DE SERVICES JURIDIQUES****Non-exercice du droit et non-prestation de services juridiques**

28. Aux fins de la Loi, les personnes suivantes sont réputées ne pas exercer le droit ni offrir de services juridiques :

**Programme d'assistance parajudiciaire aux Autochtones**

1. Toute personne qui offre des services d'assistance parajudiciaire aux Autochtones par l'intermédiaire d'un organisme autochtone de prestation de services qui a conclu un contrat avec le gouvernement ontarien ou le gouvernement canadien pour la prestation de services d'assistance parajudiciaire dans le cadre du Programme d'assistance parajudiciaire des Autochtones.

**Autre profession ou emploi**

2. Toute personne dont la profession ou l'emploi ne consiste pas à offrir des services juridiques ni à exercer le droit, qui agit dans le cadre normal de sa profession ou de son emploi, et ne représente pas une personne dans la conduite d'une instance devant un organe juridictionnel.

**Comité de dérogation**

3. Toute personne dont la profession ou l'emploi ne consiste pas à offrir des services juridiques ni à exercer le droit et qui participe pour le compte d'un tiers aux audiences d'un comité de dérogation constitué en application de l'article 44 de la *Loi sur l'aménagement du territoire*.

**PARTIE V****PRESTATION DE SERVICES JURIDIQUES SANS PERMIS****Interprétation**

29. Aux fins de l'article 30 :

« étudiant canadien en droit » S'entend d'une personne inscrite à une faculté de droit canadienne agréée par le Barreau.

« étudiant parajuriste en Ontario » S'entend d'une personne inscrite à un programme d'enseignement de services juridiques en Ontario, approuvé par le ministère de la Formation et des Collèges et Universités et agréé par le Barreau.

« cabinet de titulaires de permis » S'entend d'une société de personnes ou d'un autre type d'association de titulaires de permis, d'une société de personnes ou d'une autre association visée à la partie III du Règlement administratif n° 7 [Entreprises] ou d'une société professionnelle.

**Fournir des services juridiques de catégorie P1 sans permis**

30. Les personnes suivantes peuvent, sans permis, fournir en Ontario des services juridiques identiques à ceux que les titulaires d'un permis de catégorie P1 sont autorisés à fournir :

**Fournisseurs de services juridiques internes**

1. Une personne, autre qu'un étudiant canadien en droit ou un étudiant parajuriste de l'Ontario, qui :
  - i. est au service d'un seul employeur, lequel n'est pas un titulaire d'un permis ni un cabinet de titulaires de permis ;
  - ii. fournit des services juridiques uniquement pour l'employeur ou au nom de celui-ci ;
  - iii. ne fournit des services juridiques à nul autre que son employeur.

**Cliniques d'aide juridique**

2. Une personne, autre qu'un étudiant canadien en droit ou un étudiant parajuriste de l'Ontario, qui :
  - i. travaille pour une clinique, au sens de la *Loi de 1998 sur les services d'aide juridique*, qui est financée par Aide juridique Ontario ;
  - ii. fournit, par l'intermédiaire de la clinique, des services juridiques à la collectivité que sert la clinique, mais ne fournit pas d'autres services juridiques ;
  - iii. est protégée par une assurance responsabilité civile professionnelle pour la prestation de services juridiques en Ontario, assurance dont la protection et les limites sont comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires d'un permis de catégorie L1.

**Organismes sans but lucratif**

3. Toute personne qui répond aux critères suivants :
  - i. Elle est au service d'un organisme sans but lucratif qui a été mis sur pied pour fournir des services juridiques et est financé par le gouvernement ontarien, le gouvernement canadien ou une administration municipale de l'Ontario.
  - ii. Elle fournit, par l'intermédiaire de l'organisme, des services juridiques à la collectivité que sert l'organisme, mais ne fournit pas d'autres services juridiques.
  - iii. Elle est protégée par une assurance responsabilité civile professionnelle pour la prestation de services juridiques en Ontario, assurance dont la protection et les limites sont comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires d'un permis de catégorie L1.

**Services offerts à des amis ou à des voisins**

4. Toute personne qui répond aux critères suivants :
  - i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.
  - ii. Elle fournit des services juridiques uniquement pour et au nom d'un ami ou d'une amie ou d'un voisin ou d'une voisine.
  - iii. Elle ne fournit les services juridiques qu'à l'égard d'au plus trois affaires par an.
  - iv. Elle ne reçoit ni n'attend aucune rétribution directe ou indirecte — honoraires, gain ou récompense — pour la prestation des services juridiques.

**Services offerts à des membres de la famille**

5. Toute personne qui répond aux critères suivants :

- i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.
- ii. Elle fournit des services juridiques uniquement pour et au nom d'une personne liée, au sens de la *Loi de l'impôt sur le revenu* (Canada).
- iii. Elle ne reçoit ni n'attend aucune rétribution directe ou indirecte — honoraires, gain ou récompense — pour la prestation des services juridiques.

### **Députés provinciaux**

6. Toute personne qui répond aux critères suivant :

- i. Sa profession ou son occupation ne consiste pas à fournir des services juridiques ou à exercer le droit et ne comporte pas la prestation de services juridiques ou l'exercice du droit.
- ii. Elle est députée provinciale ou député provincial ou un membre désigné de son personnel.
- iii. Elle fournit des services juridiques pour et au nom d'un mandant du député ou de la députée.

### **Autre profession ou emploi**

7. Toute personne :

- i. dont la profession ou l'emploi ne consiste pas à fournir des services juridiques ni à exercer le droit ;
- ii. qui fournit des services juridiques à l'occasion seulement ;
- iii. qui fournit des services juridiques à titre d'auxiliaire dans le cadre de sa profession ou de son emploi ;
- iv. qui est membre de la Human Resources Professionals Association of Ontario, dans la catégorie des professionnels en ressources humaines agréés.

### **Définitions**

31. (1) Dans le présent article,

« employeur » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*.

« fonctionnaire » S'entend au sens de la *Loi de 2006 sur la fonction publique de l'Ontario*.

« groupe de travailleurs blessés » S'entend d'un organisme à but non lucratif financé par la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail pour fournir des services juridiques précis aux travailleurs.

« survivant » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*.

« travailleur » S'entend au sens de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*.

### **Bureau des conseillers des travailleurs**

(2) Une ou un fonctionnaire au service du Bureau des conseillers des travailleurs peut, sans permis, fournir les services juridiques suivants par l'entremise du Bureau :

- 1. Informer un travailleur ou une travailleuse, qui n'est pas membre d'un syndicat de salariés, ou les survivants du travailleur ou de la travailleuse de leurs intérêts en droit et de leurs droits et

responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*.

2. Agir au nom d'un travailleur ou d'une travailleuse, qui n'est pas membre d'un syndicat de salariés, ou les survivants du travailleur ou de la travailleuse devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

### **Bureau des conseillers des employeurs**

(3) Une ou un fonctionnaire au service du Bureau des conseillers des employeurs peut, sans permis, fournir les services juridiques suivants par l'entremise du Bureau :

1. Informer un employeur de ses intérêts en droit et de ses droits et responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail* ou de toute disposition antérieure.

2. Agir au nom d'un employeur devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

### **Groupes de travailleurs blessés**

(4) Toute personne qui fait du travail bénévole dans un groupe de travailleurs blessés peut, sans permis, fournir les services juridiques suivants par l'entremise du groupe :

1. Informer un travailleur ou une travailleuse de ses intérêts en droit, droits ou responsabilités en vertu de la *Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*.

2. Agir au nom d'un travailleur ou d'une travailleuse devant la Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail ou le Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail ou dans d'autres instances connexes.

### **Définitions**

32. (1) Dans le présent article :

« lieu de travail » S'entend :

a) dans le cas d'un ancien membre d'un syndicat, du lieu de travail de l'ancien membre lorsqu'il ou elle était membre du syndicat ;

b) dans le cas d'un survivant, du lieu de travail d'un membre décédé lorsqu'il ou elle était membre du syndicat.

« personne à charge » S'entend de chacune des personnes suivantes au moment de son décès, qui vivait entièrement ou partiellement de son salaire, ou qui, n'eût été l'incapacité résultant de l'accident, aurait été ainsi à sa charge :

1. Parent, beau-parent ou personne qui tenait le rôle de parent du membre.
2. Sœur, frère ou demi-sœur ou demi-frère.
3. Grands-parents.
4. Petits-enfants.

« survivant » S'entend d'un conjoint ou conjointe, d'un enfant ou d'une personne à charge d'un membre décédé d'un syndicat de salariés.

**Syndicats de salariés**

(2) Un employé de syndicat, un représentant bénévole de syndicat ou une personne désignée par l'*Ontario Federation of Labour* peut, sans permis, fournir les services juridiques suivants au syndicat, à un membre du syndicat, à un ancien membre du syndicat ou à un survivant :

1. Informer la personne sur ses intérêts en droit, ses droits et responsabilités relativement à un problème ou un différend portant sur le lieu de travail.
2. Agir au nom d'une personne relativement à un problème ou un différend portant sur le lieu de travail ou sur une instance devant un organe juridictionnel autre qu'une cour provinciale ou fédérale.
3. Malgré la disposition 2, agir au nom d'une personne relativement à l'obtention d'avantages payables dans le cadre d'une convention collective devant la Cour des petites créances.

33. [Abrogé.]

**Prestation de services juridiques par un stagiaire**

34. Sans permis, un étudiant ou une étudiante peut fournir des services juridiques en Ontario sous la surveillance immédiate d'un ou d'une titulaire de permis de catégorie L1 agréé(e) par le Barreau s'il ou elle se trouve dans l'une ou l'autre des situations suivantes :

- a) l'étudiant ou l'étudiante est en service en vertu de la convention de stage ;
- b) l'étudiant ou l'étudiante est en période de placement professionnel dans le cadre du programme de pratique du droit.

**PARTIE VI****EXERCICE DU DROIT SANS PERMIS****Exercice du droit sans permis**

35. Peut exercer le droit en Ontario sans permis :

1. Toute personne qui
  - i. est autorisée, aux termes de la partie VII du présent règlement administratif, à exercer le droit en Ontario,
  - ii. exerce le droit en Ontario en conformité avec la partie VII du présent règlement administratif.
2. Toute personne :
  - i. qui est autorisée à exercer le droit dans un ressort autre que l'Ontario,
  - ii. dont l'exercice du droit en Ontario se limite à l'exercice du droit en qualité d'avocat ou d'avocate d'une partie à un arbitrage commercial ayant lieu en Ontario et est considéré comme « international » au sens de la *Loi sur l'arbitrage commercial international*.

**PARTIE VII****EXERCICE INTER-PROVINCIAL DU DROIT**

## GÉNÉRALITÉS

### **Assurance et garantie contre les détournements**

36. (1) Personne ne peut exercer le droit en Ontario aux termes de la présente partie à moins de satisfaire aux conditions suivantes :

- a) elle a une assurance responsabilité civile professionnelle la protégeant dans l'exercice du droit en Ontario, assurance dont la protection et les limites sont raisonnablement comparables à celles de l'assurance responsabilité civile professionnelle exigée des titulaires de permis de catégorie L1 ;
- b) elle a une couverture contre les détournements de fonds, autre que le Plan national d'indemnisation supplémentaire, qui protège spécifiquement la personne dans l'exercice du droit en Ontario et qui est au moins équivalente à la protection offerte aux titulaires de permis de catégorie L1.

### **Assurance : exonération**

(2) Quiconque satisfait à l'une des exigences pour l'exemption de la contribution au titre des assurances prévue pour les titulaires de permis de catégorie L1 dans le règlement administratif n° 6 est dispensé de l'exigence décrite à l'alinéa (1) a).

### **Interprétation : « Plan national d'indemnisation supplémentaire »**

(3) À l'alinéa (1) b), « Plan national d'indemnisation supplémentaire » s'entend du plan établi dans le cadre du Protocole sur l'exercice interjuridictionnel du droit dans le but d'indemniser toute personne qui subit une perte financière en raison du détournement de fonds ou d'autres biens par une personne autorisée à exercer le droit dans toute province ou tout territoire du Canada alors que la personne est engagée dans l'exercice du droit interprovincial.

### **Interprétation : « Protocole sur l'exercice interjuridictionnel du droit »**

(4) Au paragraphe (3), « Protocole sur l'exercice interjuridictionnel du droit » signifie le protocole signé en 1994 et entre 1994 et 1996 au sujet de l'exercice interjuridictionnel du droit par le Barreau, le Law Society of British Columbia, le Law Society of Alberta, le Law Society of Saskatchewan, la Société du Barreau du Manitoba, le Barreau du Québec, la Chambre des notaires du Québec, le Barreau du Nouveau-Brunswick, le Law Society of Prince Edward Island, The Nova Scotia Barristers Society et le Law Society of Newfoundland, avec les modifications pouvant y être apportées.

### **Application de la Loi**

37. (1) La Loi, les règlements, les règlements administratifs, les règles de pratique et de procédure et le Code de déontologie applicables aux titulaires de permis de catégorie L1 s'appliquent, avec les modifications nécessaires, à une personne qui exerce le droit en Ontario conformément à la présente partie, autre qu'une personne qui exerce le droit en Ontario conformément à la présente partie :

- a) en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal établi en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada ; ou
- b) en qualité d'avocat ou d'avocate devant une cour ou un tribunal mentionné à l'alinéa a).

### **Incompatibilité**

(2) En cas d'incompatibilité entre les dispositions de la présente partie et les dispositions de tout autre règlement administratif, les dispositions de la présente partie ont préséance.

**Preuve de conformité**

38. (1) Une personne non titulaire d'un permis qui prétend exercer le droit en Ontario en application de la présente partie doit, à la demande du Barreau et au plus tard le jour indiqué par le Barreau, fournir à ce dernier la preuve qu'il respecte la présente partie.

**Présomption**

(2) Si la personne n'a pas fourni au Barreau à la date indiquée par ce dernier la preuve demandée, elle est réputée ne pas respecter la présente partie.

**Divulgence de renseignements**

39. (1) Si des titulaires de permis font l'objet d'une enquête ou d'une instance à l'initiative de l'organisme de réglementation de la profession juridique d'un territoire ou d'une province du Canada autre que l'Ontario en raison de l'exercice du droit interprovincial par ces titulaires de permis dans la province ou le territoire, le Barreau peut, à la demande de l'organisme de réglementation, fournir à ce dernier l'information qu'il est raisonnable de fournir au sujet des titulaires de permis compte tenu des circonstances.

**Idem**

(2) Le Barreau peut fournir à l'organisme de réglementation de la profession juridique d'un territoire ou d'une province du Canada autre que l'Ontario les renseignements sur des titulaires de permis dont l'organisme a besoin pour établir si ces titulaires de permis sont habilités à exercer le droit à titre occasionnel ou plus souvent qu'à titre occasionnel, mais non de façon régulière, dans cette province ou ce territoire.

**AUTORISATION PRÉALABLE D'EXERCER LE DROIT****Champ d'application de l'article**

40. (1) Le présent article s'applique aux personnes qui sont tenues d'obtenir l'autorisation préalable du Barreau pour exercer le droit en Ontario en vertu d'une disposition de la présente partie.

**Demande d'autorisation**

(2) Quiconque a besoin d'une autorisation préalable pour exercer le droit en Ontario en vertu d'une disposition de la présente partie présente une demande en ce sens au Barreau.

**Formulaire de demande et frais**

(3) La demande prévue au paragraphe (2) est présentée à l'aide du formulaire fourni par le Barreau et est accompagnée, s'il y a lieu, du paiement des frais liés à la demande.

**Documents, explications, renoncations**

(4) Pour aider le Barreau à étudier sa demande présentée en application du paragraphe (2), le requérant ou la requérante fait ce qui suit :

- a) il ou elle fournit au Barreau les documents et les explications qu'exige celui-ci ;
- b) il ou elle fournit, à la personne désignée nommément par le Barreau, les renoncations, directives et consentements nécessaires pour lui permettre de communiquer au Barreau les renseignements qu'exige celui-ci.

**Examen de la demande par le Barreau**

(5) Le Barreau étudie chaque demande présentée en application du paragraphe (2).

**Décision**

(5.1) Après avoir étudié la demande présentée en vertu du paragraphe (2), le Barreau décide, conformément à la disposition pertinente de la présente partie, que le requérant ou la requérante peut ou ne peut pas exercer le droit en Ontario et en avise le demandeur par écrit.

**Conditions**

(6) L'autorisation d'exercer le droit en Ontario qu'accorde le Barreau en vertu d'une disposition de la présente partie peut être assortie des conditions que le Barreau estime appropriées.

**Demande présentée à un comité de conseillers**

(7) Si le Barreau refuse d'autoriser une personne à exercer le droit en Ontario en vertu d'une disposition de la présente partie ou assortit l'autorisation de conditions, cette personne peut demander, par voie de requête, à un comité de conseillers nommé à cet effet par le Conseil de décider si elle peut exercer le droit en Ontario en vertu de cette disposition ou si les conditions sont appropriées.

**Délai de présentation de la requête**

(8) Une requête au titre du paragraphe (7) doit commencer par l'envoi par le requérant ou la requérante d'un avis écrit au Barreau dans les trente jours suivant la réception par le requérant ou la requérante de l'avis de refus du Barreau empêchant le requérant ou la requérante d'exercer le droit en Ontario en vertu d'une disposition de la présente partie.

**Parties**

(9) Les parties à une requête présentée en vertu du paragraphe (7) sont le requérant ou la requérante et le Barreau.

**Quorum**

(10) Au moins trois membres du comité de conseillers examinent la requête présentée en vertu du paragraphe (7) et rendent une décision à cet égard.

**Procédure**

(11) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen, par le comité de conseillers, d'une requête présentée en vertu du paragraphe (7) comme si l'examen de la requête était une audience portant sur une demande de permis présentée en application de l'article 27 de la Loi.

**Idem**

(12) Si les règles de pratique et de procédure n'abordent pas un point de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen, par le comité de conseillers, d'une requête présentée en vertu du paragraphe (7).

**Décision**

(13) Après avoir examiné la requête présentée en vertu du paragraphe (7), le comité de conseillers décide, conformément à la disposition pertinente de la présente partie,

- a) que le requérant ou la requérante peut exercer le droit en Ontario ou ne peut pas le faire ;
- b) que les conditions dont le Barreau a assorti l'autorisation d'exercer le droit en Ontario sont ou ne sont pas appropriées.

**Conditions**

(14) L'autorisation d'exercer le droit en Ontario qu'accorde le comité de conseillers en vertu d'une disposition de la présente partie, ou une décision concernant les conditions dont le Barreau a assorti l'autorisation d'exercer le droit en Ontario, peut être assortie des conditions que le comité estime appropriées.

**Décision définitive**

(15) La décision du comité de conseillers à l'égard d'une requête présentée en vertu du paragraphe (7) est définitive.

**Durée de l'autorisation**

(16) L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie reste en vigueur pour la période fixée par le Barreau. ~~L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie reste en vigueur jusqu'au 31 décembre de l'année où l'autorisation a été accordée, sauf dispositions contraires de la présente partie.~~

**Retrait de l'autorisation**

(17) L'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie est automatiquement retirée à celle-ci dans les cas suivants :

- a) la personne ne satisfait pas, le cas échéant, aux exigences relatives à l'autorisation d'exercer le droit en Ontario en vertu de cette disposition ;
- b) elle cesse d'avoir le pouvoir d'exercer le droit dans un territoire ou une province du Canada autre que l'Ontario, pouvoir en raison duquel elle a reçu l'autorisation d'exercer le droit en Ontario en vertu de cette disposition ;
- c) elle ne se conforme pas à l'alinéa 36 (1) a) ;
- d) elle est visée par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont elle est membre a rendue à son encontre et qui :
  - (i) révoque l'autorisation de la personne à exercer le droit ;
  - (ii) suspend l'autorisation de la personne à exercer le droit ;
- e) elle exerce le droit en Ontario à l'encontre d'une disposition de la présente partie.

**Idem**

(17.1) Le Barreau peut retirer l'autorisation d'exercer le droit en Ontario accordée à une personne en vertu d'une disposition de la présente partie s'il détermine que le maintien de cette autorisation serait contraire à l'intérêt public.

**Demande présentée à un comité de conseillers**

(17.2) Si le Barreau retire, en vertu du paragraphe (17.1), l'autorisation d'une personne à exercer le droit en Ontario en vertu d'une disposition de la présente partie, cette personne peut demander, par voie de requête, à un comité de conseillers nommé à cet effet par le Conseil de décider si l'autorisation a été retirée à bon droit.

**Dispositions applicables à la requête**

(17.3) Les paragraphes (8) à (15) s'appliquent, avec les adaptations nécessaires, à une requête présentée conformément au paragraphe (17.2).

**Frais d'autorisation d'exercice**

(18) Toute personne autorisée à exercer le droit en Ontario en vertu d'une disposition de la présente partie peut être tenue de payer des frais pour y exercer le droit.

EXERCICE DU DROIT À TITRE TEMPORAIRE : AVOCATS ET AVOCATES DE LA COLOMBIE-BRITANNIQUE, DE L'ALBERTA, DE LA SASKATCHEWAN, DU MANITOBA, DU NOUVEAU-BRUNSWICK, DE LA NOUVELLE-ÉCOSSE, DE TERRE-NEUVE-ET-LABRADOR ET DE L'ÎLE-DU-PRINCE-ÉDOUARD

**Application des articles 42 à 45**

41. Les articles 42 à 45 s'appliquent à une personne si elle est autorisée à pratiquer le droit dans l'une des provinces suivantes :

1. Colombie-Britannique ;
2. Alberta ;
3. Saskatchewan ;
4. Manitoba.
5. Nouveau-Brunswick ;
6. Nouvelle-Écosse ;
7. Terre-Neuve-et-Labrador ;
8. Île-du-Prince-Édouard.

**Définition : « jour »**

42. (1) Dans le présent article et aux articles 43 à 45, « jour » s'entend d'un jour civil complet ou partiel.

**Interprétation : exercice du droit**

(2) Dans le présent article et aux articles 43 à 45.1, une personne exerce le droit en Ontario dans les cas suivants :

- a) elle fournit des services professionnels en qualité d'avocat ou d'avocate ;
- b) elle offre des conseils juridiques sur le droit ontarien, sur le droit de la province ou du territoire du Canada où elle est autorisée à exercer le droit, sur le droit canadien ou sur le droit international public.

**Interprétation : exercice du droit à titre occasionnel**

(3) Aux articles 43 à 45, exerce le droit à titre occasionnel en Ontario quiconque n'y exerce pas le droit pendant plus de 100 jours au cours de l'année civile.

**Exercice occasionnel du droit : activités exclues**

(4) N'entre pas dans le calcul du nombre maximal de jours pendant lesquels une personne est habilitée à exercer le droit en Ontario conformément au paragraphe 43 (1) ou y est autorisée conformément à l'article 44 toute période consacrée à l'exercice du droit en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada.

**Interprétation : présence économique**

(5) Aux fins de ~~l's~~ articles 43 et 45, sous réserve du paragraphe (6), une personne établit une présence économique en Ontario dans les cas suivants :

a) elle exerce le droit en Ontario pendant plus longtemps que le nombre maximal de jours pendant lesquels elle y est habilitée conformément à l'article 43 ou autorisée conformément à l'article 44, si elle n'a pas été autorisée à exercer le droit en Ontario conformément aux paragraphes 45 (1) ou (2) ;

(a.1) elle exerce le droit en Ontario pendant plus longtemps que le nombre maximal de jours pendant lesquels elle y est autorisée conformément aux paragraphes 45 (1) ou (2) ;

b) elle ouvre, en Ontario, un bureau où elle exerce le droit ;

c) elle ouvre ou gère un compte en fiducie dans une institution financière établie en Ontario ;

d) elle reçoit des sommes d'argent en fiducie pour un client ou une cliente d'une autre manière que celle permise aux termes de l'article 45.1 ;

e) elle devient une résidente de l'Ontario ;

f) elle agit de toute autre manière incompatible avec l'exercice du droit en Ontario à titre occasionnel seulement.

**Idem**

(6) N'établit pas une présence économique en Ontario quiconque ne fait qu'exercer le droit en Ontario à partir d'un bureau situé en Ontario qui est affilié à un cabinet d'avocats d'une province ou d'un territoire du Canada autre que l'Ontario où la personne est autorisée à exercer le droit.

**Autorisation préalable d'exercice occasionnel non requise**

43. (1) Quiconque n'est pas titulaire de permis peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel tant qu'il remplit les conditions suivantes :

a) il est autorisé à exercer le droit dans une province désignée à l'article 41 ;

b) il ne fait l'objet d'une instance criminelle dans aucun ressort ;

c) il ne fait l'objet d'une instance en matière de conduite, de capacité ou de compétence dans aucun ressort ;

d) il n'est visé par aucune ordonnance rendue par un tribunal de l'organisme de réglementation de la profession juridique d'un ressort où il est autorisé à exercer le droit et qui restreint son autorisation d'exercer le droit dans ce ressort ;

e) il n'a jamais été visé, par suite d'une instance relative à sa conduite, à sa qualité ou à sa compétence, par une ordonnance rendue par un tribunal de l'organisme de réglementation de la profession juridique d'un ressort où il est ou a été autorisé à exercer le droit ordonnance suspendant ou limitant son autorisation à exercer le droit pour un autre motif que le défaut de payer des frais à l'organisme de réglementation, l'insolvabilité ou la faillite ou un autre problème administratif ;

f) son autorisation d'exercer le droit n'est assortie de conditions ou de restrictions dans aucun ressort où il est autorisé à exercer le droit ;

g) il n'établit pas de présence économique en Ontario.

**Idem**

(2) Quiconque n'est pas titulaire de permis peut, tant qu'il est autorisé à exercer le droit dans une province désignée à l'article 41 et qu'il n'établit pas de présence économique en Ontario, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel en qualité :

a) soit d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada ;

b) soit d'avocat ou d'avocate d'un tribunal judiciaire ou administratif visé à l'alinéa a).

#### **Autorisation préalable d'exercice occasionnel requise**

44. (1) Quiconque n'est pas titulaire de permis et n'est pas habilité à exercer le droit en Ontario à titre occasionnel en application du paragraphe 43 (1) peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel.

#### **Autorisation requise**

(2) L'autorisation d'exercer le droit en Ontario à titre occasionnel conformément au présent article est refusée si elle est contraire à l'intérêt public.

#### **Exercice du droit plus souvent qu'à titre occasionnel**

45. (1) Quiconque est habilité en vertu de l'article 43 à exercer le droit en Ontario à titre occasionnel peut le faire plus souvent qu'à ce titre, avec l'autorisation préalable du Barreau et de la manière autorisée par celui-ci, tant qu'il satisfait aux exigences énoncées à l'article 43.

#### **Idem**

(2) Quiconque est habilité en vertu de l'article 44 à exercer le droit en Ontario à titre occasionnel peut le faire plus souvent qu'à ce titre, avec l'autorisation préalable du Barreau et de la manière autorisée par celui-ci.

#### **~~Exercice du droit plus souvent qu'à titre occasionnel : présence économique~~**

~~(3) Quiconque a été habilité à exercer le droit en Ontario en vertu de l'article 43 ou autorisé à le faire en vertu de l'article 44, du paragraphe (1) ou du paragraphe (2), a établi une présence économique en Ontario et a demandé un permis d'exercice du droit en Ontario à titre d'avocat ou d'avocate peut exercer le droit en Ontario, avec l'autorisation préalable du Barreau et sous réserve des paragraphes 40 (17) et (17.1), jusqu'à la plus tardive des occurrences suivantes :~~

~~a) la date où la personne reçoit un permis d'exercice du droit en Ontario en tant qu'avocat ou avocate ; et~~

~~b) la date de prise d'effet de la décision sans appel et de l'ordonnance rendues par la Section de première instance ou, en cas d'appel de la décision et de l'ordonnance de la Section de première instance, par la Section d'appel, relativement à la demande de la personne en vue d'obtenir un permis d'exercice du droit en Ontario à titre d'avocat ou d'avocate.~~

#### **Opérations touchant des fonds**

45.1. Quiconque est habilité à exercer le droit en Ontario en application de l'article 43 ou autorisé à le faire en application de l'article 44 ou de l'article 45 peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

a) il dépose les fonds dans un compte en fiducie ouvert auprès d'une institution financière située dans une province désignée à l'article 41 où il est autorisé à exercer le droit ;

b) il dépose les fonds dans un compte en fiducie établi au nom du ou de la titulaire de permis et exploité par ce dernier ou cette dernière, en conformité avec le règlement administratif n° 9 [Transactions

financières et registres] et l'argent est manipulé exclusivement par le ou la titulaire de permis en conformité avec le règlement administratif n° 9 [Transactions financières et registres].

## EXERCICE TEMPORAIRE DU DROIT : AVOCATS ET AVOCATES DU QUÉBEC ET DES TERRITOIRES DU CANADA

### **Membre du Barreau du Québec autre qu'un membre admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.1. Les articles 42 à 45.1, et l'article 50 avec les modifications nécessaires s'appliquent à un membre du Barreau du Québec, autre qu'un membre admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

### **Membre du Barreau du Québec admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles**

46.2. Les articles 47 à 51 s'appliquent à un membre du Barreau du Québec admis en vertu de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles qui est autorisé à exercer le droit au Québec.

### **Autorisé à exercer le droit dans un territoire du Canada**

46.3. Les articles 47 à 51 s'appliquent à une personne qui est autorisée à exercer le droit dans un territoire du Canada.

### **Application des articles 47 à 50**

46. Les articles 47 à 50 s'appliquent à une personne dans les cas suivants :

- ~~a) elle est autorisée à exercer le droit au Québec par le Barreau du Québec;~~
- ~~b) elle est autorisée à exercer le droit dans un territoire du Canada.~~

### **Interprétation : exercice du droit**

47. (1) Dans le présent article et aux articles 48 à 51, une personne exerce le droit en Ontario dans les cas suivants :

- a) elle fournit des services professionnels en qualité d'avocat ou d'avocate ;
- b) elle offre des conseils juridiques sur le droit ontarien, sur le droit de la province ou du territoire du Canada où elle est autorisée à exercer le droit, sur le droit canadien ou sur le droit international public.

### **Interprétation : exercice du droit à titre occasionnel**

(2) Aux articles 48 et 49, exerce le droit à titre occasionnel en Ontario quiconque y exerce le droit à l'égard de dix affaires ou moins au cours de l'année civile.

### **Exercice occasionnel du droit : activités exclues**

(3) Aux fins du paragraphe 49 (1), n'entre pas dans le calcul des dix affaires mentionnées au paragraphe (2) l'exercice du droit en Ontario en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal administratif créé en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada.

**Exercice occasionnel du droit : autorisation préalable non requise**

48. Quiconque n'est pas titulaire de permis peut, dans la mesure où il est autorisé à exercer le droit dans une province ou un territoire désigné à l'article 46.2 ou 46.3, exercer le droit en Ontario à titre occasionnel, sans l'autorisation préalable du Barreau,

- a) en qualité d'avocat ou d'avocate dans une instance tenue devant la Cour suprême du Canada, la Cour fédérale, la Cour d'appel fédérale, la Cour canadienne de l'impôt, un tribunal établi en application d'une loi fédérale, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada ;
- b) en qualité d'avocat ou d'avocate devant un tribunal judiciaire ou administratif mentionné à l'alinéa a).

**Exercice occasionnel du droit : autorisation préalable requise**

49. (1) Quiconque n'est pas titulaire de permis et n'est pas habilité à exercer le droit en Ontario à titre occasionnel en vertu de l'article 48 peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel s'il remplit les conditions suivantes :

- a) il est autorisé à exercer le droit dans une province ou un territoire désigné à l'article 46.2 ou 46.3 ;
- b) il n'est visé par aucune ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada où il est autorisé à exercer le droit a rendue à son encontre ;
- c) son autorisation d'exercer le droit dans chaque province ou territoire du Canada où il est autorisé à exercer le droit n'est assortie d'aucune condition ni restriction.

**Exigence additionnelle**

(2) Malgré le paragraphe (1), l'autorisation d'exercer le droit en Ontario à titre occasionnel conformément au présent article est refusée si elle est contraire à l'intérêt public.

**Exercice du droit plus souvent qu'à titre occasionnel : autorisation préalable requise**

49.1. Quiconque a été habilité à exercer le droit en Ontario en vertu de l'article 48 ou autorisé à le faire en vertu du paragraphe 49 (1) et qui a fait une demande de permis pour exercer le droit en Ontario à titre d'avocat ou d'avocate peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario plus souvent qu'à titre occasionnel, tel que permis par le Barreau, dans la mesure où cette personne satisfait aux exigences applicables mentionnées à l'article 48 ou au paragraphe 49 (1).

**Droit propre à l'Ontario : compétence**

50. (1) Quiconque est habilité en vertu de l'article 48 ou autorisé en vertu de l'article 49 ou 49.1 à exercer le droit en Ontario ne doit pas exercer le droit propre à l'Ontario sauf s'il a la compétence nécessaire pour exercer le droit propre à l'Ontario.

**Interprétation : « droit propre à l'Ontario »**

(2) Au paragraphe (1), « droit propre à l'Ontario » s'entend des règles juridiques de fond ou des règles de procédure qui s'appliquent spécifiquement à l'Ontario.

**Opérations touchant des fonds**

51. Quiconque est habilité en vertu de l'article 48 ou autorisé en vertu de l'article 49 ou 49.1 à exercer le droit en Ontario peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

- a) il ne reçoit ces fonds qu'à titre d'honoraires pour des services qui n'ont pas été encore rendus au client ou à la cliente et les dépose dans un compte en fiducie ouvert auprès d'une institution financière située dans une province ou un territoire désigné à l'article 46 où il est autorisé à exercer le droit ;
- b) il verse l'argent dans un compte en fiducie établi au nom d'un ou d'une titulaire de permis et exploité par ce dernier ou cette dernière, en conformité avec le règlement administratif n° 9 [Transactions financières et registres] et l'argent est manipulé exclusivement par le ou la titulaire de permis en conformité avec le règlement administratif n° 9 [Transactions financières et registres].

#### EXERCICE DU DROIT EN ONTARIO PAR LES NOTAIRES DU QUÉBEC

##### **Autorisation d'exercer le droit en Ontario**

52. (1) Quiconque n'est pas titulaire de permis, est membre de la Chambre des notaires du Québec, est autorisé à exercer la profession de notaire au Québec et est de bonnes mœurs peut, avec l'autorisation préalable du Barreau, poser les actes suivants :

1. Fournir un avis à une personne :

- i. sur les lois du Québec,
- ii. sur les lois du Canada,
- iii. sur le droit international public.

2. Choisir, rédiger, remplir ou réviser un document devant servir dans une instance tenue à l'égard d'affaires concernant les lois du Canada, si les lois du Canada l'autorisent expressément à représenter une partie à cette instance.

3. Agir pour autrui dans le cadre d'une instance tenue devant un organisme juridictionnel à l'égard d'affaires concernant les lois du Canada, si les lois du Canada l'autorisent expressément à représenter une partie à cette instance.

##### **Interprétation : membre de la Chambre des notaires du Québec**

(2) Aux fins du paragraphe (1), n'est pas membre de la Chambre des notaires du Québec un membre qui y a été admis dans le cadre de l'Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles.

##### **Exigence additionnelle**

(3) Malgré le paragraphe (1), l'autorisation d'exercer le droit en Ontario conformément au présent article est refusée si elle est contraire à l'intérêt public.

# Annual Report of the Complaints Resolution Commissioner

January 1, 2020 – December 31, 2020

Submitted by Marilyn E. Marshall,  
Complaints Resolution Commissioner

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## **A. Introduction**

I am pleased to present this 2020 Annual Report of the Office of the Complaints Resolution Commissioner (Office of the Commissioner).

The Office of the Commissioner is part of the broader organizational regulation of the conduct, capacity and professional competence of licensed lawyers and paralegals. The role of the Complaints Resolution Commissioner (Commissioner) was established in 1998, by the *Law Society Amendment Act, 1998*, as part of a package of reforms designed to support the Law Society of Ontario (Law Society) in carrying out its mandate to protect the public and consumers of legal services. The role of the Commissioner was described during debate on the proposed amendments as one that would “ensure that complainants are dealt with fairly and that complaints receive thorough attention.”<sup>1</sup> The independence of the Office of the Commissioner and its accessibility to people with complaints were emphasized.<sup>2</sup>

In 1998, when the role of the Commissioner was established, there were some 28,665 members of the Law Society. The number of total licensees, both lawyers and paralegals, has more than doubled, to 66,550.

Section 49.14 of the *Law Society Act*, R.S.O. 1990, c. L.8 (Act) gives Convocation statutory authority to appoint the Commissioner in accordance with O. Reg. 31/99. Marilyn Marshall was appointed Commissioner effective April 1, 2018 and subsequently reappointed for a three-year term commencing April 1, 2020.

The Commissioner’s functions, powers of investigation and right to access information are set out in section 49.15 of the Act. Sections 49.16 to 49.18 address administrative matters, and section 49.19 provides that decisions of the Commissioner are final and not subject to appeal. A copy of these sections is attached as Appendix 1.

Part 1 of By-Law 11<sup>3</sup>, made pursuant to subsection 62 (0.1) clause 32 of the Act, provides additional detail on what complaints are reviewable, the process that applies to the review, and the dispositions available following a review. A copy of Part 1 of By-Law 11 is attached as Appendix 2.

Under section 3 of By-Law 11, the Commissioner is required to submit an Annual Report to the Professional Regulation Committee of the Law Society “upon the affairs of the office of the Commissioner during the immediately preceding year.”

<sup>1</sup>[https://www.ola.org/en/legislative-business/house-documents/parliament-36/session-2/1998-10-07/hansard-1#P567\\_111840](https://www.ola.org/en/legislative-business/house-documents/parliament-36/session-2/1998-10-07/hansard-1#P567_111840)

<sup>2</sup> Ibid.

<sup>3</sup> By-Law 11 was made May 1, 2007 and was last amended October 24, 2019.

This Annual Report covers the activities of the Office of the Commissioner for the 2020 calendar year, and includes statistical information, comparisons to prior years, and the Commissioner's observations.

## **B. The Role of the Commissioner**

By-Law 11 provides the Commissioner with two distinct functions: complaints resolution and complaints review.

### **Complaints Resolution Function**

The complaints resolution function provides the Commissioner with the statutory authority to perform a formal resolution role. It allows the Law Society, with the consent of the complainant and the licensee, to refer a matter to the Commissioner for resolution before the Law Society itself has attempted any resolution.

The Commissioner has broad discretion to determine the process for the resolution function.

The resolution function has been available since 2007. To date, the Commissioner has not been called upon to perform the resolution function.

### **Complaints Review Function**

By-Law 11 provides the Commissioner with the statutory authority to review a complaint if a complainant requests that the Law Society refer a reviewable complaint to the Commissioner for review.

Subsection 4 (1) of By-Law 11 establishes four criteria for a complaint to be reviewable by the Commissioner. A complaint may be reviewed if,

- (a) the merits of the complaint have been considered by the Law Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Law Society has notified the complainant that it will be taking no further action in respect of the complaint.

Subsection 4 (2) of By-Law 11 provides that a complaint may not be reviewed by the Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, requirements imposed on a licensee under By-Law 9 (financial transactions and records), or the negligence of a licensee.

Subsection 5 (3) of By-Law 11 requires that a request to refer a reviewable complaint to the Commissioner for review be made within 60 days after the day on which the Law Society notifies the complainant that it will be taking no further action in respect of the complaint.

## **Referral of Complaints to the Commissioner**

Section 6 of By-Law 11 provides that the Society shall refer every reviewable complaint to the Commissioner, where a complainant has made a request under, and in accordance with, section 5. The licensee concerned is notified by the Law Society that the complaint has been referred to the Commissioner for review but does not participate in the review.

## **Fresh Evidence**

Subsection 7 (1) of By-Law 11 provides that when “reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner’s opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.”

## **Standard of Review and Outcomes**

Subsection 7 (2) of By-Law 11 requires the Commissioner to apply a standard of reasonableness in the review of the Law Society’s consideration of a complaint and its decision to take no further action.

If the Commissioner is satisfied that the Law Society’s consideration of a complaint and its decision to take no further action in respect of the complaint are reasonable, the Commissioner will notify the complainant and the Law Society of this decision. If the Commissioner is not satisfied that the Law Society’s consideration of a complaint and its decision to take no further action in respect of the complaint are reasonable, the complaint will be referred back to the Law Society with a recommendation for further action. The Commissioner will notify the complainant of this decision.

Subsection 7 (4) of By-Law 11 states that if the Commissioner refers a complaint back to the Law Society with a recommendation that the Law Society take further action in respect of the complaint, or in respect of the licensee who is the subject of the complaint, the Law Society shall consider the recommendation and notify the Commissioner, complainant, and licensee who is the subject of the complaint, in writing, whether the Law Society will be following the recommendation. If the Law Society determines that it will not follow the Commissioner’s recommendation for further action, subsection 7 (5) of By-Law 11 requires that the Law Society provide the complainant, the Commissioner, and the licensee with a written explanation for its determination.

## **C. Brief Overview of Law Society’s Historical Approach to Referral of Complaints to the Commissioner**

This section sets out historical changes that have occurred in the Professional Regulation Division (PRD) over the past few years that impacted the process of referral of complaints to

the Commissioner. This brief overview provides contextual information for the statistical information in this Annual Report.

### Prior to February 2017

Prior to February 2017, when a complaint was received by the Law Society, the Intake Department (Intake) would consider it and determine whether to close the file or send it for investigation to either the Investigations Department (Investigations) or to the Complaints Resolution Department (Complaints Resolution). Complainants who had a file that was closed in Investigations or Complaints Resolution, which complaint had been reviewed on the merits, were offered the opportunity to have the Commissioner review the decision of the Law Society.

### February 2017 and Ongoing

On February 7, 2017, a reorganization of the PRD was implemented. The Intake, Complaints Resolution and Investigations departments were eliminated and a new Intake & Resolution Department (Intake & Resolution) and three Enforcement Departments (Enforcement), now Investigation Services (Investigations), were established. Staff from Complaints Resolution were transferred to either Intake & Resolution or Investigations.

Complaints Resolution staff, who were transferred to Intake & Resolution, continued to offer a review by the Commissioner on Complaints Resolution files received prior to February 7, 2017. However, complainants whose files were opened in the new Intake & Resolution on or after February 7, 2017 were not offered a review by the Commissioner. Rather than referring the complaint to the Commissioner, where a complainant disagreed with the decision of Intake & Resolution, the complainant was offered a managerial review by a manager of Intake & Resolution. Complainants whose files were transferred to Investigations continued to be offered a review by the Commissioner. The 2017 reorganization significantly decreased the number of files referred to the Commissioner for review during this time period.

The PRD's rationale for the limited right to request a review by the Commissioner was based on the Law Society's position, at the time, that a complaint file closed in Intake & Resolution had not been considered on its merits and, accordingly, did not meet the criteria for a reviewable complaint as defined in By-Law 11.

The Office of the Commissioner disagreed with the Law Society's rationale and was of the view that many of the complaints closed in Intake & Resolution had been reviewed on the merits and complainants should have been offered a review by the Commissioner. The view of the Office of the Commissioner was set out in greater detail in the Commissioner's Annual Reports of 2018 and 2017.

In early 2019, the Office of the Commissioner and the PRD had discussions regarding reviews by the Commissioner of Intake & Resolution files which were reviewed on the merits.

On August 12, 2019, Intake & Resolution started advising complainants, whose complaints were closed in Intake & Resolution and that were eligible for review by the Commissioner, of their right to ask that their complaint be referred to the Commissioner for review.

Intake & Resolution had a number of files which had been closed prior to August 12, 2019, where the complainants had been offered and accepted a managerial review, but the review had not yet occurred. To assist with these outstanding files, complainants whose files were closed between January 1, 2019 and August 11, 2019, and who had accepted to have a managerial review, were offered a review by the Commissioner. Unlike the 60-day time period in place under By-Law 11 for requesting a review by the Commissioner, no time limit had been in place for a complainant to ask for a managerial review. Between June 2019 and November 2019, the Office of the Commissioner received 102 of the outstanding Intake & Resolution files.

As part of an organizational realignment to better meet strategic and operational priorities, effective November 30, 2020 the Office of the Commissioner transitioned from the Professional Regulation Division to the Office of General Counsel.

#### **D. Complaints Review Process**

Complainants are advised by staff in Investigations and Intake & Resolution of their right to request a review by the Commissioner if the merits of their complaint have been considered by the Law Society and it has determined that no further action would be taken in response to the complaint. The Law Society's letter to the complainant refers them to the Law Society's website where a link to the Commissioner's Request for Review form and Information Sheet can be found. A copy of the Request for Review form is attached as Appendix 3 and a copy of the Information Sheet is attached as Appendix 4.

Where the complainant has submitted a request for a review within 60 days after the day they are notified by the Law Society that it will be taking no further action in respect of the complaint, the Office of the Commissioner will confirm the request and notify the Law Society.

In 2020, changes were implemented by the PRD to support and strengthen a move to the use of electronic files for complaints dealt with at Intake & Resolution.

This change has resulted in the Office of the Commissioner receiving file materials from Intake & Resolution in both paper form and electronically during 2020.

Where the complaint was dealt with at Investigations, a bound copy of pertinent materials, referred to as the document book, was prepared. The document book generally included the Law Society's closing letter and copies of relevant materials submitted by the complainant in support of their complaint. In some instances, it also included either the licensee's written response to the complaint or a summary of the response, and other material arising out of the investigation. Investigations prepared a second copy of the document book which the

Office of the Commissioner provided to the complainant, prior to the review, for their use during the review meeting.

Investigations also provided the Office of the Commissioner with documents that fell within the confidentiality provisions of section 49.12<sup>4</sup> of the Act. This material was not shared with the complainant.

As with the receipt of electronic files from Intake & Resolution, it is expected that the Office of the Commissioner will soon receive electronic files from Investigations, and that document books will no longer be prepared.

The licensee is notified by the Law Society of the request for review, but pursuant to subsection 8 (4) of By-Law 11, does not participate in the review. Once the review is concluded, it is the Law Society that notifies the licensee, in writing, of the Commissioner's decision.

Previously complainants were offered a choice of a review being conducted in person, by teleconference or in writing.<sup>5</sup> However, due to the Covid-19 pandemic, complainants who had asked for an in-person review were offered the option of a written review, a teleconference meeting, or a video conference meeting. If a teleconference or video conference review is chosen, the complainant is advised in writing of the time, date and how to call into or join the review meeting. The Office of the Commissioner will continue to offer the option of a video conference meeting when in-person meetings resume.

Under subsection 8 (1) of By-Law 11, the Commissioner determines what procedures apply to the review of a complaint. For example, the practice has been that review meetings are not recorded, and complainants are asked to confirm they are not recording the meeting.

## **E. Statistical Information**

### **Number of Requests for Review**

Of the 304 requests for review received by the Office of the Commissioner in 2020, no reviews were conducted in respect of 50 of the complaint files for the following reasons:

<sup>4</sup> Unless exempt under subsection 49.12 (2) e.g. disclosure required in connection with the administration of the Act, subsection 49.12 (1) provides that "A benchler, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part."

<sup>5</sup> Subsection 8 (2) of By-Law 11 provides that "The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously."

- 28 requests for review were of Intake & Resolution decisions and the complaint had not been referred to the Commissioner for a review by Intake & Resolution for the reason that they were not reviewable complaints as set out in section 4 of By-Law 11. These complaints included complaints not reviewed on the merits, and complaints that dealt only with issues of negligence or fees. A copy of the Commissioner's response letter to the complainant's request for a review, which explains why the Commissioner will not be conducting a review, is forwarded to the Director of Intake & Resolution.
- 11 requests were received beyond the 60-day time period for requesting a review.
- In three requests for review, the Commissioner determined that the file was not one for which a review should have been offered, as the merits of the complaint had not been considered or the complaint was in respect of matters the Law Society had determined were not within its jurisdiction. As such, they were not reviewable by the Commissioner.
- Two requests were not eligible for review as they were open files that were still being considered by Intake & Resolution.
- Two requests for review were accepted, however, the subject licensee passed away before the conclusion of the review process. The files were returned to the Law Society and no further steps were taken by the Commissioner.
- One request was for a review of a decision made by the Law Society's Complaints and Compliance Department in respect of a complaint that had not been reviewed on the merits by Intake & Resolution or Investigations.
- One request was for a review of a decision from Investigations dealing with unauthorized practice and had not been referred to the Commissioner for review.
- One request was in respect of a decision of the Compensation Fund and was not reviewable by the Commissioner.
- One request was in respect of a matter that had not been reviewed by any department at the Law Society.

Of the 304 requests for review received by the Office of the Commissioner in 2020, 254 requests were accepted for review.

By comparison, in 2019 there were 264 requests for review received, of which 191 were accepted for review.

In 2018, of the 91 requests for review received, 31 were accepted for review.

**Table 1 – Comparison of Requests for Review Received in 2020, 2019 and 2018**

Table 1, above, provides a comparison of files accepted or not accepted for review, for the years 2020, 2019 and 2018. As in 2020, in 2019 and 2018, the basis for not accepting most of the files was because the complaint file had not been referred to the Commissioner by Intake & Resolution for review.

### Number of Reviews Conducted

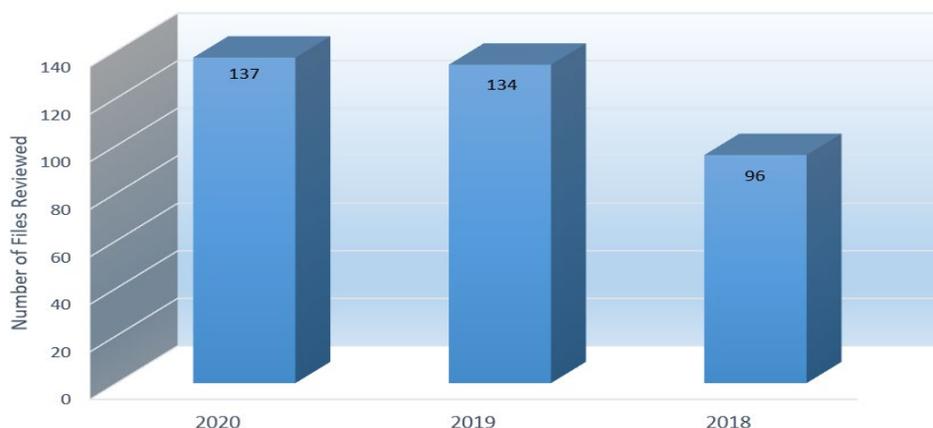
**Table 2 – Comparison of Reviews Conducted in 2020, 2019 and 2018**

Table 2, above, provides a comparison of the number of files reviewed in 2020, 2019 and 2018. In 2020, the Office of the Commissioner reviewed 137<sup>6</sup> files. By comparison, 134 files were reviewed in 2019 and 96 files were reviewed in 2018.

<sup>6</sup> One file not captured was reviewed by the Commissioner prior to meeting with the complainant. However, on the day of the review meeting, the complainant advised he was withdrawing from the review process. The file was closed, and no decision letter was prepared.

## Format of Review Meetings

**Table 3 – Comparison of Format of Reviews for 2020, 2019 and 2018**

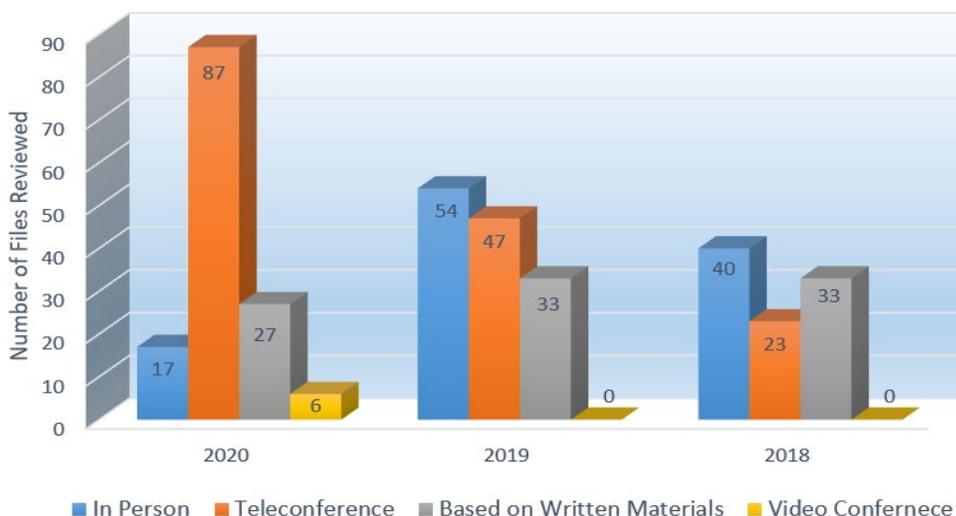


Table 3, above, shows that of the 137 files reviewed in 2020, 17 (12%) proceeded by an in-person meeting, 87 (64%) were conducted by teleconference, 27 (20%) proceeded based on the written material in the file, and 6 (4%) were conducted by video conference.

Due to the Covid-19 pandemic, in mid-March the Office of the Commissioner started working remotely. Consequently, in-person meetings were no longer being conducted. Of the 43 in-person meetings that were rescheduled, 36 proceeded by teleconference, six were conducted by video conference, and one was reviewed based on the written material in the file, as requested by the complainants.

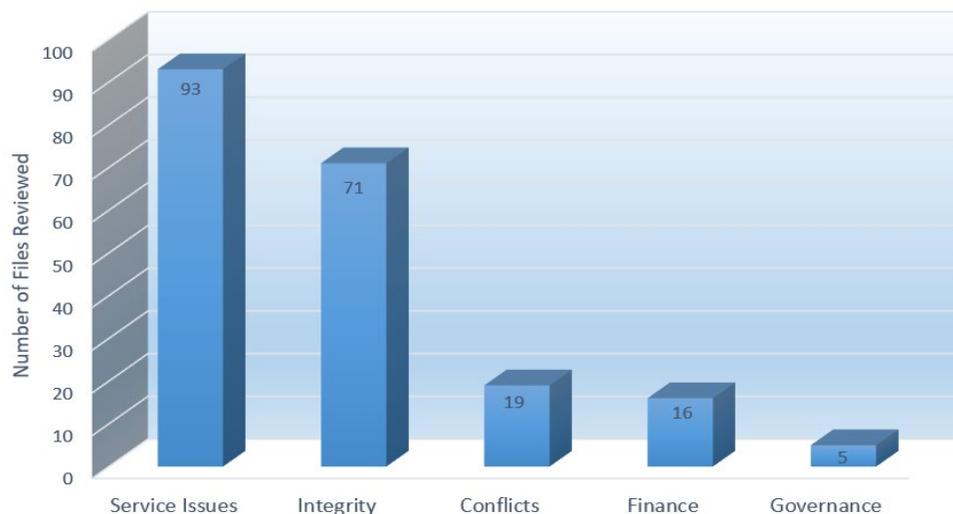
By comparison, of the 134 files reviewed in 2019, 54 (40%) proceeded by an in-person meeting, 47 (35%) were conducted by teleconference, and 33 (25%) proceeded based on the written material in the file.

In 2018, of the 96 files reviewed, 40 (42%) proceeded by an in-person meeting, 23 (24%) were conducted by teleconference, and 33 (34%) proceeded based on the written material in the file.

Had it not been for the Covid-19 pandemic, it is likely that an in-person review would have continued to be the preferred meeting format.

## Issues Identified in Files Reviewed

*Table 4 –Issues by Category for Files Reviewed in 2020*



The Law Society tracks the regulatory issues raised in each file. Relying on the Law Society's categorization, Table 4, above, identifies the five categories of issues raised in the 137 files reviewed in 2020. Since the current case management system may record more than one issue in each file, the total number of issues identified exceeds the number of files reviewed.

In 2020, as in previous years, service and integrity issues continued to be the predominant issues raised by complainants.

## Results of Reviews Conducted in 2020 with Comparisons to 2019 and 2018

**Figure 1 – Results of Reviews Conducted in 2020**

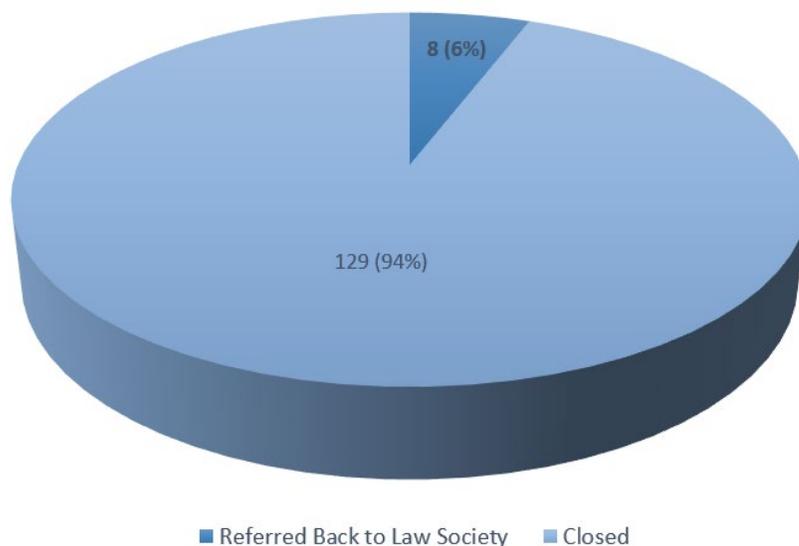


Figure 1, above, shows the outcome of the files reviewed in 2020 by number and percentage. The Commissioner reviewed and rendered a decision in 137 files. Of those 137 files, 129 (94%) remained closed and eight (6%) were referred back to the Law Society with a recommendation for further action.

In seven of the eight files that were referred back to the Law Society, the Commissioner was not satisfied that the decision to close was reasonable. In one file, while satisfied that the decision to close was reasonable, the Commissioner referred the matter back for other reasons. All files were referred back pursuant to subsection 7 (2) (b) of By-Law 11, with recommendations for further action.

In three of 129 files closed, while the Commissioner was satisfied that the decisions to close the files were reasonable in respect of the issues raised in the complaint, the Commissioner brought practice and process concerns to the Law Society's attention for its consideration.

By way of comparison, in 2019, the Commissioner reviewed and rendered a decision in 134 files. Of those 134 files, 125 (93%) remained closed and nine (7%) were referred back to the Law Society.

In 2018, of the 96 decisions rendered, 91 files (95%) remained closed and five (5%) were referred back to the Law Society.

The Manager and Counsel in the Office of the Commissioner, together with Counsel to the Executive Director of the PRD and department directors, work to resolve and clarify process related issues raised in specific files. More generally, the Manager in the Office of the Commissioner and the Executive Director, and her staff, have engaged in discussions on

systemic practice and process concerns identified through the review process, including issues relating to the sharing of information with complainants.

### **Executive Director's Response to Files Referred Back to the Law Society in Respect of Reviews Conducted in 2020 with Comparisons to 2019 and 2018**

In 2020, the Executive Director agreed to take further action on the recommendations made by the Commissioner on seven files referred back and declined to take further action on one file. The Executive Director also agreed to inquire further into the three files where the Commissioner identified practice and process concerns.

In 2019, the Executive Director agreed to take further action on all nine files referred back by the Commissioner to the Law Society.

In 2018, of the five files referred back by the Commissioner to the Law Society, the Executive Director agreed to take further action on the recommendations made by the Commissioner on four of those files and declined to take further action on one file.

### **F. Age Tracking of Files Closed in 2020 with Comparisons to 2019 and 2018**

What follows is statistical data regarding the average time it took to advance a file through the complaints review process in 2020 with comparisons to 2019 and 2018.

#### **Average Age of Reviews Completed**

	<b>2020 (days)</b>	<b>2019 (days)</b>	<b>2018 (days)</b>
<b>Average age from the receipt of the request to the date the Commissioner's decision was released</b>	<b>241</b>	<b>352</b>	<b>496</b>
(a) Average age from the date the request for a review was received to the date the PRD was notified of the request	2	2	2
(b) Average age from the date that the PRD was notified of the request to the date the file materials were received in the Office of the Commissioner	65	98	120
(c) Average age from the date the file materials were received to the date the review meeting was first scheduled	69	80	119
(d) Average age from the date the review meeting was first scheduled to the date the review meeting was conducted	84	56	143
(e) Average age from the date the review meeting was conducted to the date of the Commissioner's decision	43	37	108

## **Active Inventory as of December 31, 2020**

There were 206 files in the Office of the Commissioner's active inventory as of December 31, 2020, with the following status:

- 18 files scheduled for review in 2021
- 118 files awaiting materials from the Law Society prior to being scheduled, including both physical and electronic files
- 70 files ready to be scheduled

The Office of the Commissioner typically schedules meetings no more than three months out to minimize missed or cancelled review meetings.

## **G. Commissioner's Observations**

### **Capacity, Wills and Powers of Attorney**

2020 had several complaint files involving seniors, and their wills and powers of attorney. The complaint files had siblings, and other family members and friends, at odds with each other when an elderly parent or relative finds themselves in vulnerable circumstances. Complainants made allegations that an adult child or relative had put undue pressure on an elderly person and that the lawyer had failed to act in that person's best interests or had failed to ensure that the person had the necessary capacity to make the decisions they were making. Some complainants struggled with what they saw as a failure on the part of the licensee to protect the senior client from being manipulated and subjected to undue pressure.

When coupled with one family member arranging the appointment with the lawyer, sometimes their own lawyer, and physically bringing the parent to the meeting with the lawyer, you have all the elements to fuel a belief that there is undue influence being brought to bear on the elderly person, a potential conflict of interest, and a resulting perception that the lawyer did nothing to stop it from happening.

In some files, there was a misunderstanding of the lawyer's standard for determining whether a person has capacity to give instructions as distinct from a medical determination of capacity.

There were files where lawyers were alert to the risk of undue pressure and made significant documented efforts to ensure that instructions were properly and independently given. I have also seen files where there was limited evidence of what inquiries were made into the circumstances that brought the client to the lawyer, and on the matter of competency.

Proposed amendments to the *Substitute Decisions Act, 1992*<sup>7</sup> would permit remote witnessing of powers of attorney on a permanent basis, a continuation of interim measures introduced because of Covid-19. Witnessing of powers of attorney could be done by audio-visual communication technology. For wills, proposed amendments to section 4 of the *Succession Law Reform Act*, governing the execution of wills, would also permit remote witnessing by means of audio-visual communication technology. If the proposed changes become law, they would apply to powers of attorney entered into, and wills made, on and after April 7, 2020.

While there are benefits to remote witnessing, it is not without its own risks. One proposed safeguard that would accompany the changes is that at least one person who is acting as a witness must be a Law Society licensed lawyer or paralegal. These new procedures add to the already significant responsibility of the licensee when dealing with an elderly client who may find themselves in vulnerable circumstances.

I committed to the complainants to bring these concerns to the attention of the Law Society. I would urge the Law Society to consider whether there are measures that might be introduced to this area of practice.

### **Paralegal Engaging Lawyer to Act as Lawyer for the Paralegal's Client**

Some complaint files pointed to issues with how paralegals describe the services they are authorized to provide and how arrangements are made by them to engage a lawyer to act for the paralegal's client, when a lawyer is needed. Issues include how the lawyer is retained and paid, and the client's role.

While the *Paralegal Rules of Conduct* (Paralegal Rules) speak to advertising and to how fees are paid to or shared with a lawyer, it may be timely to reinforce the paralegal's obligation to be clear in communications about the services they are authorized to provide. Additional guidance might also be helpful in respect of the engagement of a lawyer by a paralegal for a client's matter, specifically how to ensure that a client understands what costs they will be responsible for and how instructions will be given to the lawyer.

### **Fees and Accounting**

The perennial problem of disputes about licensee fees and accounting remains. While generally outside the jurisdiction of the Law Society, except in limited circumstances where the broader allegation is that the fees are not fair or reasonable, disputes over fees are matters to be addressed through the assessment process for lawyers and Small Claims Court for paralegals.

However, this can be a hollow remedy in many cases, as the time for pursuing a dispute over fees through the assessment process or Small Claims Court is often well past by the time the complainant has the process explained to them, and the cost and complexity of seeking an

<sup>7</sup> <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-245>

extension of time can be a challenge. Whether some information about the assessment process or Small Claims Court process should be included as part of a written or verbal retainer should perhaps be considered. Steps have been taken in this direction for contingency fees, with new rules requiring disclosure of information about the assessment process, including contact information for the Superior Court in the applicable jurisdiction.

### **Recent Law Society Changes – Contingency Fees and Firms**

I am pleased to see the Law Society's announcement of changes in respect of two areas of concern discussed in previous Annual Reports: contingency fees and firm regulation. I note that contingency fee reforms are scheduled to take effect July 1, 2021. The reforms include clearer communications on maximum fees, a standard form consumer guide on contingency fees for clients, and a new standard form contingency fee agreement.

The Law Society's decision to proceed with legislative changes to permit regulation of firms is also welcome. The changes will permit regulation of firms in a way that is consistent with the public interest and supports consumers in making informed choices when choosing a licensee to represent them.

### **French and Other Language Reviews**

The Office of the Commissioner supports complainants in participating in the review process by offering reviews in French, and the opportunity of having an interpreter present for reviews in other languages, when requested. In 2020, six review meetings were conducted in French and one review meeting was conducted with the aid of an Arabic interpreter. The complainants expressed appreciation for having been offered these opportunities.

### **Ethics at the Core of the Rules**

The Law Society of Ontario *Rules of Professional Conduct* (Rules) and the Paralegal Rules are detailed codes of professional conduct for lawyers and paralegals, respectively. In format, they might look more like regulatory statutes than codes, with their many prescriptive obligations and expectations. However, they are more than technical sets of rules to be followed. Underlying the Rules and the Paralegal Rules are ethical foundations that reflect something more than a set of minimum standards. It was just over 100 years ago that the Canadian Bar Association adopted the 1920 Canons of Legal Ethics. The Canons formed the basis of the various provincial rules of professional conduct that were to follow, and their ethical core continues to influence the application of the Rules and Paralegal Rules. It is this ethical element that figures prominently in the complaint process.

Complainants can be forgiving of technical slips - a phone call not returned or being late for a meeting. What is more difficult to accept, and what presents itself in many complaints, is a complainant's feeling of having been abandoned, treated indifferently, having their voice ignored or, worse yet, simply used as a means of generating income. This sense of an injustice having been committed is often what propels a complaint forward.

There was a lesson taught many years ago at the Bar Admission Course as part of the Practice Management and Professional Conduct Module. There was a short video of a solicitor moving from London to a small community. She gave perfectly good advice in a business dispute but at the end of the day, the owner did not continue with her services. What she had missed was the dynamics at the local community level, the interdependencies of the various businesses that were unique to that community. In short, she was “Perfectly Competent But...”. As with the fictional London solicitor, the complaint files remind us that meeting one’s responsibilities as a licensee is about more than adherence to the technical requirements of the Rules.

### **Closing Comments**

I would like to thank the staff, Counsel, Senior Counsel, and Senior Counsel and Manager for their dedication to the mandate and the work of the Office of the Commissioner. Their hard work and commitment supported a seamless move to working remotely when the Covid-19 pandemic hit in mid-March. Their exceptional professionalism and dedication ensured that, despite the challenges presented by the pandemic and the temporary loss of one counsel position, the work of the Office of the Commissioner proceeded with minimal disruption.

## COMPLAINTS RESOLUTION COMMISSIONER

**Appointment**

**49.14** (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

**Restriction**

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

**Term of office**

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

**Removal from office**

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

**Restriction on practice of law**

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

**Functions of Commissioner**

**49.15** (1) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

**Investigation by Commissioner**

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

**Access to information**

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

2006, c. 21, Sched. C, s. 48 (1, 2) - 01/05/2007

**Delegation**

**49.16** (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

**Terms and conditions**

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

**Identification**

**49.17** On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

**Confidentiality**

**49.18** (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

**Exceptions**

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

**Testimony**

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

**Decisions final**

**49.19** A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

**Section Amendments with date in force (d/m/y)**

1998, c. 21, s. 21 - 01/02/1999

**BY-LAW 11**

Made: May 1, 2007  
 Amended: June 28, 2007  
 September 20, 2007 (editorial changes)  
 October 25, 2007 (editorial changes)  
 February 21, 2008  
 April 24, 2008  
 October 30, 2008  
 January 29, 2009  
 October 28, 2010  
 April 25, 2013  
 May 30, 2013  
 March 4, 2014  
 June 26, 2014  
 February 23, 2017  
 May 25, 2017  
 December 12, 2018 (editorial changes)  
 October 24, 2019

**REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE****PART I****COMPLAINTS RESOLUTION COMMISSIONER****GENERAL****Definitions**

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 4 (1).

**Provision of funds by Society**

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

**Restrictions on spending**

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

**Annual report**

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

## REVIEW OF COMPLAINTS

**Reviewable complaints**

4. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
  - (c) the complaint has not been previously reviewed by the Commissioner; and
  - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

**Same**

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

**Interpretation: “previously reviewed”**

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

**Right to request referral**

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

**Request in writing**

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

**Time for making request**

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

**When notice given**

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

**Referral of complaints**

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

**Notice**

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

**Fresh evidence**

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

**Disposition of complaint referred for review**

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

**Disposition of complaint referred for review: notice**

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

**Referral back to Society: notice**

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

**Same**

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the

recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

#### **Procedure**

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

#### **Meeting**

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

#### **Participation in review: Society**

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

#### **Participation in review: licensee**

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

#### **Description of consideration, etc.**

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

#### **Requirement to answer questions**

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

### **RESOLUTION**

#### **Discretionary referral of complaints**

9. (1) The Society may refer a complaint to the Commissioner for resolution if,

- (a) the complaint is within the jurisdiction of the Society to investigate;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
- (c) the complaint has not been referred to the Proceedings Authorization Committee;
- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

**Parties**

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

**Outcome of Resolution**

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

**No resolution**

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

**Enforcement of resolution**

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

**Confidentiality: Commissioner**

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

**Exceptions**

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

**Without prejudice**

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

**Procedure**

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

Before you complete the request form, please read the Office of the Complaints Resolution Commissioner (CRC) information sheet.

A request for review must be made **in writing** within **60 days** of the day you are notified that the Law Society will not be taking further action and that a review is available to you. Please complete and send a separate Request for Review form for separate complaints.

To submit a Request for Review, please complete this form online or send it by facsimile, email or regular mail. Our contact information is as follows:

Office of the Complaints Resolution Commissioner  
393 University Avenue  
Suite 515  
Toronto ON M5G 1E6  
Telephone: 416-947-3442  
Toll Free: 1-866-880-9480  
Fax: 416-947-5213  
Email: [complaintsreview@lso.ca](mailto:complaintsreview@lso.ca)

If you have any questions about your request for a review, please contact our office.

## 1. INFORMATION ABOUT YOU (THE COMPLAINANT)

Salutation: Mr. \_\_\_ Ms. \_\_\_ Mrs. \_\_\_ Dr. \_\_\_ Other (specify): \_\_\_\_\_

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Primary Phone Number: \_\_\_\_\_ Secondary Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ Unit/Apt.: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

What is the best way to contact you from Monday to Friday between the hours of 9:00 a.m. and 5:00 p.m. (select one)?

Telephone

Email

Are you a licensed lawyer or paralegal: Yes \_\_\_ No \_\_\_

## 2. DETAILS OF LAW SOCIETY COMPLAINT

- Law Society file number: \_\_\_\_\_
- Name of lawyer/paralegal: \_\_\_\_\_
- Date of Law Society's letter notifying you that the file was closed: \_\_\_\_\_
- What is your relationship to the lawyer/paralegal?  
 Client  Opposing lawyer or paralegal  Other (specify): \_\_\_\_\_
- Are you acting under a Power of Attorney or some other form of authorization?  Yes  No

**If yes**, please include supporting documentation with your Request for Review.

List any other complaints you have submitted which are still under investigation with the Law Society:

File Number(s)	Name of Lawyer(s)/Paralegal(s)
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

## Request for Review by the Complaints Resolution Commissioner

### 3. PREFERENCE FOR REVIEW FORMAT

Please check **one** box to show your preference for the format of the Commissioner's review.

- In Person** - At the Office of the Complaints Resolution Commissioner in Toronto.
- Video Conference** - Required is an internet connection, webcam, microphone and speaker
- Teleconference** - Your telephone number for the Review Meeting: \_\_\_\_\_
- In writing** - In your absence, based on the documents in the file.

The information in the Law Society's file will be provided to the Commissioner in advance of the Review Meeting. Please do not resend copies of documents already provided to the Law Society.

If you want to send written submissions or additional documents, please send them to the Office of the Complaints Resolution Commissioner as soon as possible.

### 4. REASON FOR YOUR REQUEST FOR REVIEW

**Please briefly explain why you believe the Law Society's decision to close the file was not reasonable.** Before you complete this section, please review the information sheet which explains the Commissioner's role.

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### 5. SIGNATURE

**Date:** \_\_\_\_\_ **Name:** \_\_\_\_\_

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.

# Office of the Complaints Resolution Commissioner

## INFORMATION SHEET

This information sheet will help you request a review by the Complaints Resolution Commissioner (Commissioner).

### **REQUEST FOR REVIEW:**

The Commissioner, at your request, will do an independent review of the Law Society's investigation and the decision to close your complaint file. If you want to have the Law Society's decision to close your complaint file reviewed by the Commissioner, please complete the Request for Review form. Please return the form to the Office of the Complaints Resolution Commissioner following the instructions on the Request for Review form. **A request for review by the Commissioner must be made in writing within 60 days of the day you are notified that the Law Society will not be taking further action involving your complaint, and that a review is available to you.**

### **THE ROLE OF THE COMPLAINTS RESOLUTION COMMISSIONER:**

The role of the Commissioner is to review the Law Society's investigation of your complaint and its decision to take no further action in respect of your complaint.

### **POSSIBLE OUTCOMES OF THE REVIEW**

After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner will,

- If satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society.
- If not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

### **THE COMPLAINTS RESOLUTION COMMISSIONER CANNOT:**

- make a finding of professional misconduct
- impose disciplinary penalties
- make a finding of professional negligence
- award payment of money or other compensation for financial losses
- direct a licensee (lawyer or paralegal) to refund fees or disbursements

# Office of the Complaints Resolution Commissioner

INFORMATION SHEET

## MEETING WITH THE COMPLAINTS RESOLUTION COMMISSIONER:

Review Meetings may be in person, by video conference, by teleconference or based on the materials in the file. In-person, video conference and teleconference Review Meetings are informal and involve a discussion of your complaint and the concerns you have with the Law Society's decision to close your file. Your meeting will be scheduled for one hour.

The Commissioner will consider your preference for the Review Meeting format.

If you wish, you may bring a friend, family member or a legal representative to the Review Meeting.

Legal Counsel to the Commissioner is present at the Review Meeting to assist the Commissioner and respond to legal questions raised by the Commissioner. Legal Counsel's role is limited to providing assistance to the Commissioner and Counsel cannot give you legal advice.

The lawyer or paralegal who is the subject of your complaint does not participate in the review.

## SCHEDULING OF THE REVIEW MEETING:

The Review Meeting will be scheduled as soon as possible. It may take several months for the Review Meeting to take place. We appreciate and thank you for your patience.

If you are unable to participate in the Review Meeting on the scheduled date and want it rescheduled, or have decided not to proceed with the Review Meeting, please notify the Office of the Complaints Resolution Commissioner as soon as possible. If you want the Review Meeting date to be rescheduled, the Commissioner may ask for supporting documentation explaining why you cannot participate on the scheduled date.

## PROVIDING NEW INFORMATION:

If you have new information concerning your complaint or you want to make written submissions to the Commissioner, please send this material as soon as possible. **Please do not send original documents.**

Do not resend copies of documents which have already been provided to the Law Society. The information contained in the Law Society's file is provided to the Commissioner in advance of the Review Meeting. **Resending copies of documents or repeating information already provided to the Law Society may delay the review.**

*Office of the*  
**Complaints Resolution Commissioner**

INFORMATION SHEET

**DECISION OF THE COMPLAINTS RESOLUTION COMMISSIONER:**

The Commissioner will send you the decision in writing after the review has been conducted. If the Commissioner agrees with the Law Society's decision to take no further action and close the complaint file, the Commissioner's decision concludes the matter. There are no further reviews and the decision is final.

**FOR MORE INFORMATION:**

If you have any questions about how to request a review by the Commissioner, please contact the Office of the Complaints Resolution Commissioner and we will be pleased to help you:

**393 University Avenue**  
**Suite 515**  
**Toronto, ON M5G 1E6**  
**Telephone: 416-947-3442**  
**Toll-Free: 1-866-880-9480**  
**Fax: 416-947-5213**  
**Email: [complaintsreview@lso.ca](mailto:complaintsreview@lso.ca)**

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.



**TAB 7**

## **Equity and Indigenous Affairs Committee**

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### **Reports for Information**

April 22, 2021

**Committee Members:**

Dianne Corbiere (Chair)  
Atrisha Lewis (Vice-Chair)  
Jorge Pineda (Vice-Chair)  
Rob Burd  
Etienne Esquega  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Megan Shortreed  
Alexander Wilkes

**Authored By:**

Reshma Budhwani  
[rbudhwan@lso.ca](mailto:rbudhwan@lso.ca)

**For Information**

**Tab 7.1** Report on the Activities of the Discrimination and Harassment Counsel for July 1, 2020 to December 31, 2020

**Tab 7.2** In Camera Matter

**Tab 7.3** Human Rights Monitoring Group Intervention (Myanmar)



TAB 7.1

## **Equity and Indigenous Affairs Committee**

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### **Report on the Activities of the Discrimination and Harassment Counsel**

April 22, 2021

**Committee Members:**

Dianne Corbiere (Chair)  
Atrisha Lewis (Vice-Chair)  
Jorge Pineda (Vice-Chair)  
Rob Burd  
Etienne Esquega  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Megan Shortreed  
Alexander Wilkes

**Authored By:**

Reshma Budhwani  
[rbudhwan@lso.ca](mailto:rbudhwan@lso.ca)

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## Purpose

The Equity and Indigenous Affairs Committee (Committee) submits the following report to Convocation for information:

1. Report of the Activities of the Discrimination and Harassment Counsel (DHC) for the Law Society of Ontario for the period of July 1, 2020 to December 31, 2020 (**TAB 7.1.1**).

## Context

The DHC provides regular reports on its activities to the Committee as outlined in subsection 20(1) of By-law 11, *Regulation of Conduct, Capacity and Professional Competence*.

The Acting DHC Counsel, Fay Faraday, and the Alternate DHC Counsel, Lai-King Hum and Natasha Persaud, reported on the DHC's activities from July 1, 2020 to December 31, 2020 at the April Committee meeting. The Committee voted unanimously to refer the report to Convocation for information. The reports provide a summary of data, including new contacts, languages in which services were provided, and new complaints.

**REPORT OF THE ACTIVITIES OF  
THE DISCRIMINATION AND HARASSMENT COUNSEL  
FOR THE LAW SOCIETY OF ONTARIO**

For the period from 1 July 2020 to 31 December 2020

Prepared by Fay Faraday  
with Lai-King Hum and Natasha Persaud

Discrimination and Harassment Counsel

16 February 2021

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## A. INTRODUCTION

1. Under their respective *Rules of Professional Conduct* and *Paralegal Rules of Conduct*, lawyers and paralegals licensed in Ontario have legal and ethical obligations as professionals to deliver their services and engage in and conduct their employment practices in a manner that is free of discrimination and harassment.
2. Rules 6.3 and 6.3.1 of the *Rules of Professional Conduct* set out these professional obligations as follows:
  - 6.3-3 A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.
  - 6.3.1-1 A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.
  - 6.3.1-2 A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
  - 6.3.1-3 A lawyer shall ensure that their employment practices do not offend rule 6.3.1-1, 6.3.1-2 and 6.3-3.
3. The “requirements of human rights laws in force in Ontario” which lawyers have a “special responsibility to respect” are the prohibitions against both discrimination or harassment on prohibited grounds of discrimination listed in the Ontario *Human Rights Code*. The discrimination or harassment must have taken place within one of the social areas recognized in the *Human Rights Code* (discrimination or harassment in relations to goods, services and facilities; accommodation; employment; contracts; and vocational associations).

4. These *Rules of Professional Conduct* are supplemented by 29 paragraphs of commentary that provide guidance on the interpretation and application of these *Rules* and outline how they are anchored in equivalent legal obligations under the provincial *Human Rights Code* and *Occupational Health and Safety Act*.
5. Rule 2.03 of the *Paralegal Rules of Conduct* holds paralegals to professional standards of human rights compliance as follows:
  - (3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.
  - (4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability with respect to the employment of others or in dealings with other licensees or any other person.
  - (5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.
  - (6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.
  - (7) A paralegal shall ensure that his or her employment practices do not offend this rule.
6. The Discrimination and Harassment Counsel (DHC) program was established in 1999 as an independent office funded by, but operating at arm's length from, the Law Society of Ontario. The DHC began operating in the fall of 1999 to provide information to and support individuals who had experienced discrimination or harassment by licensees contrary to their binding rules of professional conduct as

a means to help eradicate discrimination in the legal profession.<sup>1</sup>

7. In carrying out its functions, the DHC supports the LSO's core regulatory function of holding licensees accountable for compliance with their *Rules of Professional Conduct* and *Paralegal Code of Conduct*. This is necessary to ensure that public trust in the self-governing legal professions is not eroded by abuses of power through discriminatory or harassing behaviour by professionals.
8. The DHC can be accessed by email at [assistance@dhcounsel.on.ca](mailto:assistance@dhcounsel.on.ca), toll free by phone at 1-877-790-2200, or through direct message on Twitter @DH\_Counsel.
9. The DHC serves two important functions:
  - (a) The DHC provides a range of confidential services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario, or by students in the Ontario licensing process; and
  - (b) The DHC provides anonymized statistical data to the Law Society of Ontario so that the regulator can better understand the dynamic and nature of concerns about discrimination and harassment that are being raised in the legal professions and address possibly systemic issues of discrimination and harassment in the legal professions. This statistical data is released publicly to support public accountability of a profession that is self-governing.
10. The DHC services are provided without charge to members of the public as well as to licensees.
11. In order to fall within the mandate of the DHC Program, allegations of misconduct must be based on one or more of the prohibited grounds of discrimination listed in

<sup>1</sup> In its current mandate, the DHC does not provide representation or legal advice to individuals, nor does the DHC investigate or decide complaints.

the Ontario *Human Rights Code*, in one or more of the five social areas to which the *Code* applies. This is the discriminatory conduct prohibited by the Law Society's codes of conduct for licensees. Personal harassment (e.g. intimidation and bullying) that is not based on any of the listed prohibited grounds does not fall within the mandate of the DHC Program.

12. The complaints reported to the DHC arise in a variety of contexts, including but not limited to:
  - (a) clients who report that they have been subjected to discrimination or harassment by their own lawyer or paralegal;
  - (b) participants in litigation – whether they are clients, witnesses, articling students, paralegals or lawyers – who have experienced discrimination and/or harassment by opposing counsel or opposing paralegals and justice system employees (such as court/tribunal staff, law firm staff, process servers, etc.) who have experienced discrimination and/or harassment by licensees in the course of litigation;
  - (c) law firm employees, summer students, articling students, paralegals and lawyers who are experiencing or have experienced harassment and/or discrimination by licensees in the workplace based on intersecting or distinct grounds of prohibited discrimination;
  - (d) service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing and/or have experienced discrimination and/or harassment by licensees in the context of professional training programs, continuing professional education programs, public or privately hosted legal events; and
  - (e) members of the public, service providers, law firm employees, law students, summer students, articling students, paralegals and lawyers who are experiencing or have experienced discrimination and/or harassment by

licensees in other contexts which implicate the licensees' professional obligations.

13. For complaints that do not fall within the DHC Program's mandate, the DHC will provide information and guidance about other resources that the individual can access.
14. The DHC services are delivered by Fay Faraday, Lai-King Hum and Natasha Persaud. The Counsel who is on duty rotates each week. When any individual Counsel is unable to act due to a conflict of interest, one of the other Counsels handles the matter. To promote accessibility for those who contact the DHC office, the biographies of Ms Faraday, Ms Hum and Ms Persaud are posted on the DHC website. Ms Hum assists individuals who seek service in French.

#### **B. SERVICES PROVIDED BY THE DHC**

15. The DHC provides individuals who have experienced or witnessed discrimination or harassment by lawyers and/or paralegals an opportunity to discuss their concerns confidentially with a knowledgeable and empathetic listener who is an expert in discrimination and harassment law and issues, who has skills of mediation and conciliation regarding human rights, who has skills of cultural competence, and who is committed to promoting compliance with professional ethical standards in the legal professions.
16. The DHC also supports lawyers and paralegals to comply with their professional rules of conduct by participating in continuing professional education events to advance licensees' training on the substantive legal issues and best practices to ensure compliance with their codes of conduct and human rights laws.
17. The DHC does not provide legal advice or legal representation. The DHC does not conduct investigations or fact finding. Instead, the DHC provides general information and guidance to complainants to assist them in identifying and evaluating their options to resolve their concerns, provides information to licensees

to support best practices, and where appropriate, provides focused mediation or conciliation. The nature of services provided is outlined below.

### **Counselling, Data Collection and Coaching for Self-Help**

18. For some complainants, the ability to talk through their issues confidentially with an objective, knowledgeable outsider is all they want.
19. Some complainants want to report their experiences to the DHC so that their experience will be recorded as part of the DHC's semi-annual statistics. For complainants, this is an important means of alerting the legal profession to the reality and frequency of discrimination and harassment by licensees and of providing an evidence-based foundation for change.
20. In some cases, strategic tips and/or coaching are provided by the DHC to complainants who want to handle a situation directly by themselves.
21. The DHC also provides informal resolutions, which involve education or reminders to respondent licensees by way of a discussion with the DHC. This coaching of respondent licensees aims to ensure that they understand their professional obligations regarding human rights compliance in their service delivery and workplaces and that they move toward best practices. This informal coaching may be appropriate in situations where the complainant wishes to remain anonymous but authorizes the DHC to contact the respondent, advise them of their alleged behaviour in breach of human rights without making any finding, and educate or remind the respondent of their professional and legal obligations. Even though the DHC cannot make any factual findings, such calls are effective in providing education and guidance to respondent licensees.

### **Information about Avenues of Recourse**

22. Complainants who contact the DHC are informed about the avenues of recourse available to them, including (where applicable):
  - (a) speaking to their union representative (if they are unionized and the

- complaint relates to their employment);
  - (b) filing an internal complaint within their workplace (if the complaint relates to their employment);
  - (c) making a complaint to the respondent licensee's employer (e.g. the managing partner of the respondent's law firm or supervisor of a respondent who works in-house or in government);
  - (d) filing an application with the Human Rights Tribunal of Ontario or the Canadian Human Rights Commission;
  - (e) filing a formal complaint of professional misconduct with the Law Society;
  - (f) contacting the police (where criminal conduct is alleged);
  - (g) filing a complaint about an articling principal with the Law Society's Articling Program;
  - (h) contacting the Human Rights Legal Support Centre for legal advice on Human Rights Tribunal of Ontario matters; and
  - (i) contacting a lawyer regarding possible civil causes of action.
23. Complainants are provided with information about each of these options, including:
- (a) what (if any) costs might be involved in pursuing an option;
  - (b) whether legal representation is required in order to pursue an option;
  - (c) referral to resources on how to obtain legal representation such as the Law Society's Lawyer Referral Service, <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>, (actual referrals to specific lawyers, paralegals or law firms are not made by the DHC);
  - (d) how to file a complaint or initiate an application (e.g. whether it can be done electronically, whether there are filing fees, whether particular forms are

required, where to locate the requisite forms, etc.);

- (e) what processes are involved in pursuing any of the available options (e.g. investigation, conciliation, mediation, adjudication, etc.);
- (f) what general types of remedies might be available in different fora (e.g. compensatory remedies in contrast to disciplinary penalties; reinstatement to employment versus monetary damages; public interest remedies); and
- (g) what general time limits exist for each avenue of redress (complainants are advised to seek legal advice with respect to specific limitation periods).

Complainants are advised that the options available to them are generally not mutually exclusive (though some exceptions apply).

### **Resolution Services**

- 24. In addition to being advised about the above-noted options, where appropriate, complainants are offered resolution services (mediation or conciliation).
- 25. Whenever formal mediation is offered, the nature and purpose of mediation is explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in negotiating the terms of a mutually satisfactory settlement of the issues raised in the complaint.
- 26. When a complainant opts for mediation, they are given the choice of contacting the respondent to propose the mediation or having the DHC contact the respondent to canvass their willingness to participate (prior written consent for the DHC to contact the respondent licensee must be provided). If both parties are willing to participate, they are required to sign a mediation agreement (setting out the parameters of the mediation and ground rules) prior to entering into discussions facilitated by the DHC. The agreement clearly stipulates that the mediation process is confidential and subject to a mutual “without prejudice”

undertaking by both parties.

27. Where informal conciliation services are offered, the complainant is advised that the DHC can contact the respondent confidentially and discuss the complainant's concerns with the goal of achieving a resolution to the complaint through shuttle diplomacy. Where such an intervention occurs, both the complainant and respondent are advised that the DHC is not acting as the complainant's counsel, advocate or representative, but rather as an impartial go-between to facilitate constructive dialogue between the parties and try to resolve their issues. When a complainant requests such an intervention, written consent must be provided before the DHC contacts the respondent. Depending on the nature of the complaint and the parties involved, a conciliation agreement is sometimes executed to set out the ground-rules for the conciliation process.
28. Some complainants are not interested in the DHC's resolution services because they are seeking an adjudicative process to create a formal record of the respondent's misconduct or they desire a process that includes a fact-finding investigation. Sometimes they decline an offer of resolution services based on a belief that the respondent would not participate in good faith. When a complainant elects to attempt mediation or conciliation, respondent licensees are generally receptive to the DHC's offer of resolution services. On occasion, however, respondents decline to participate.
29. During this reporting period two formal mediation processes were requested by complainants. One mediation was successfully completed during the reporting period. Multiple informal resolutions have been used.

### **Referrals**

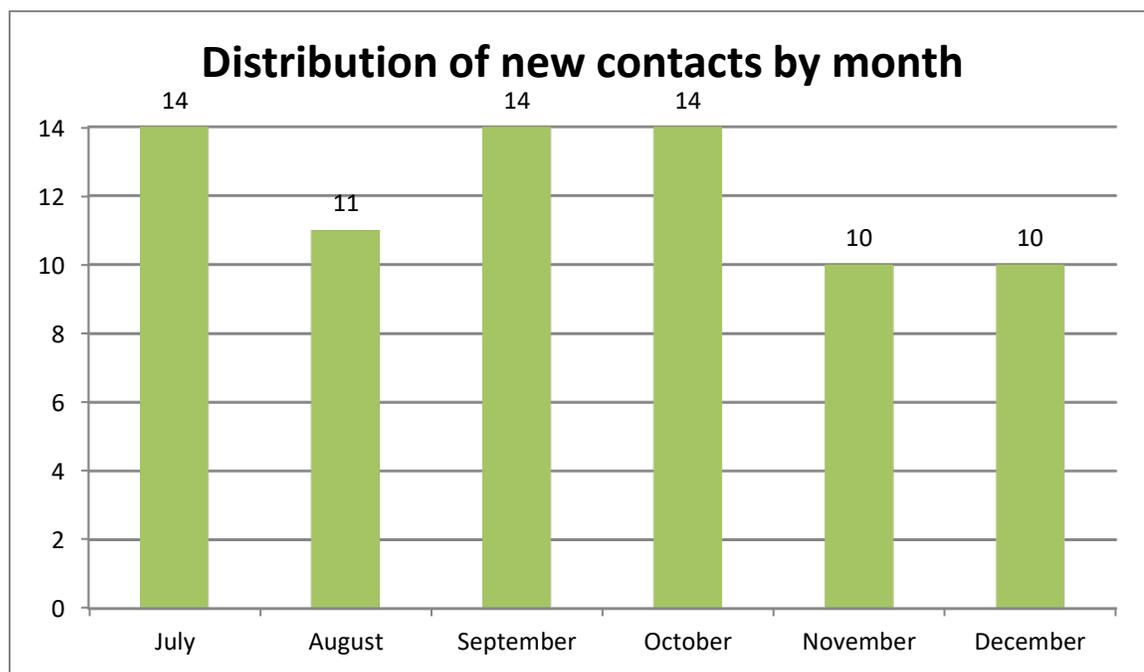
30. The DHC refers some complainants to other agencies or organizations where appropriate (such as the Member Assistance Program, a sexual assault crisis centre, a suicide prevention helpline, the Barbra Schlifer Commemorative Clinic, ARCH Disability Law Centre, or the Human Rights Legal Support Centre). The DHC also directs complainants to relevant resource materials available from the

Law Society, the Ontario Human Rights Commission, or other organizations.

31. The DHC does not operate a lawyer referral service.

### C. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

32. The six months covered by this report falls entirely within the period of COVID-19 pandemic. Throughout this period, legal professionals have worked primarily from home in accordance with pandemic physical distancing directives and lockdowns. Nevertheless, from July to December 2020, 73 individuals contacted the DHC with a new matter,<sup>2</sup> for an average of 12.2 new contacts per month. While this is 16% lower than the corresponding period in 2019, it is consistent with the first four months of the pandemic and a higher proportion were in mandate. The frequency of new contacts was fairly consistently distributed throughout the six month period as shown in the following chart.



<sup>2</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same ongoing matter are not counted in this number. Individuals who had multiple communications with the DHC about the same matter are only counted once.

33. During this reporting period, one new contact requested services in French.

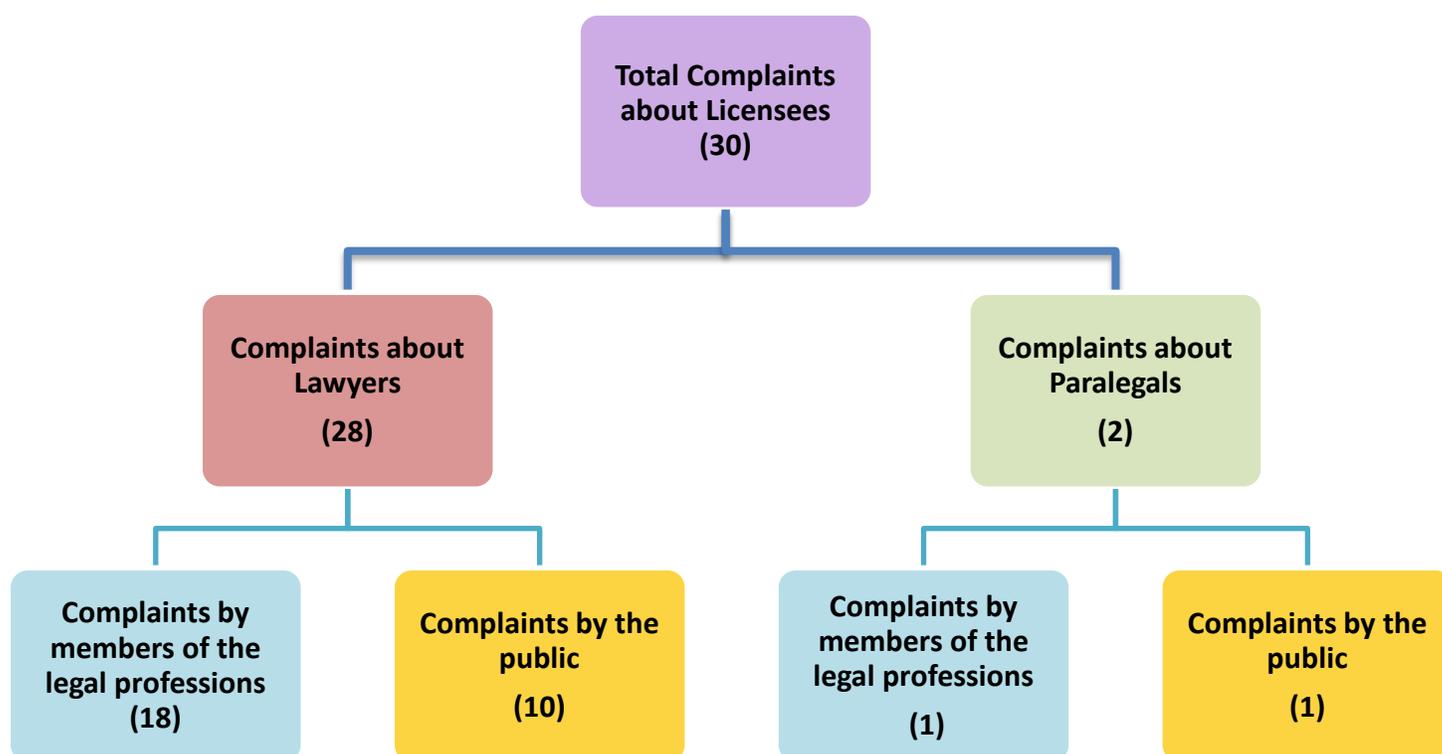
#### D. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

34. Of the 73 new contacts with the Program, 30 contacts raised substantive concerns about discrimination and/or harassment by licensees that fall within the mandate of the DHC program. Two complaints concerned the conduct of a paralegal. The remaining 28 complaints were about lawyers' conduct.

35. One complaint about a paralegal was made by a member of the public, the other was made by a member of the legal professions.

36. Of the 28 complaints about lawyers, 10 were made by members of the public, and 18 were made by individuals or groups within the legal professions. The breakdown of complaints made about licensees is represented on the chart below.

**Source of Complaints Against Licensees – Chart 1**



### **Complaints about Lawyers by Members of the Legal Profession**

37. The 18 complaints about lawyers that were made by members of the legal profession were made by individuals with a variety of careers/career stages within the profession and a variety of roles within the justice system:

11 complaints by lawyers;

6 complaints by articling students, LPP students, or law students;

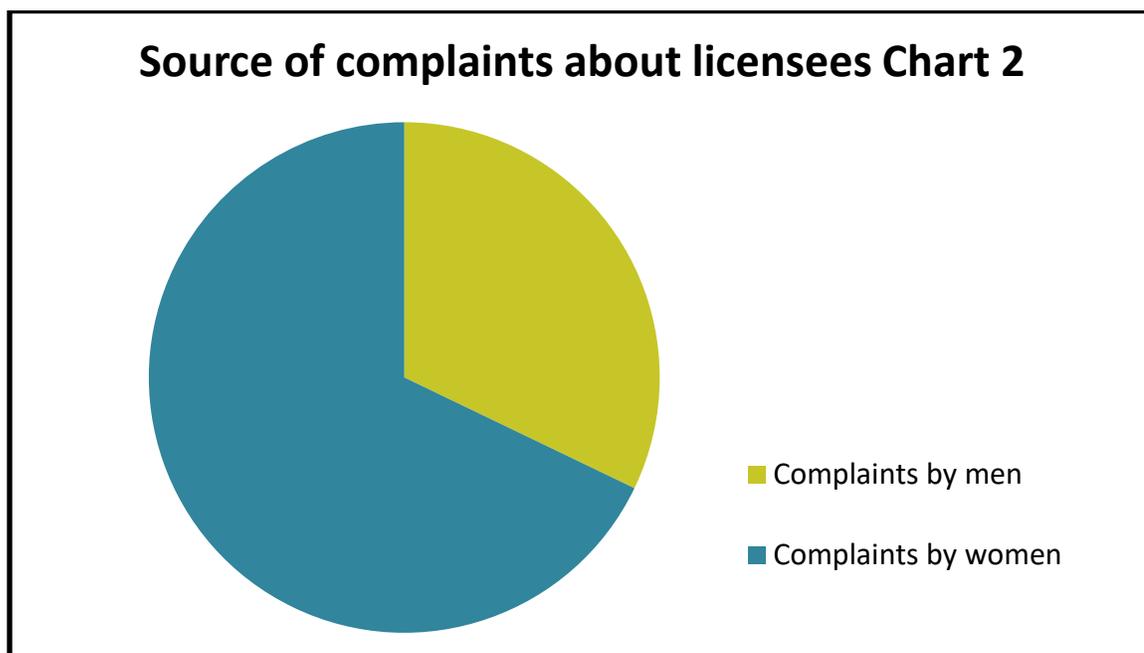
1 by paralegals; and

0 by non-licensee staff at legal workplaces.

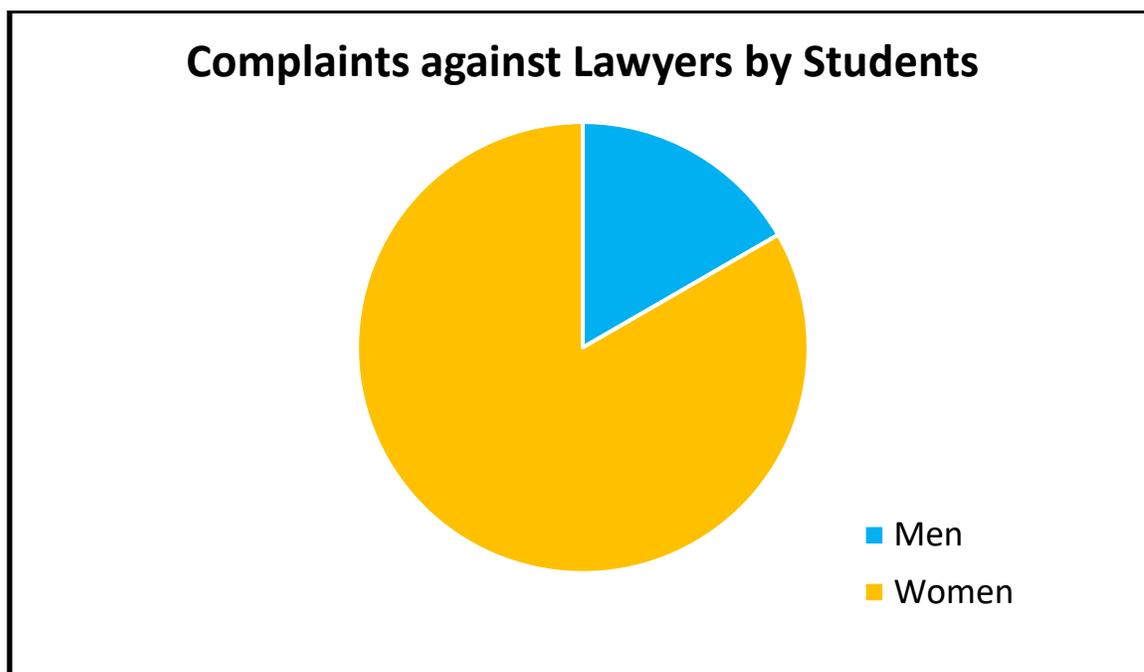
38. Of the 18 complaints against lawyers made by members of the legal profession:

14 (78%) were made by women, 10 of whom (71%) voluntarily self-identified as racialized women and/or women with disabilities;

4 (22%) were made by men, 3 of whom (75%) are racialized or have disabilities.



39. Five of the six complaints by students were made by women.

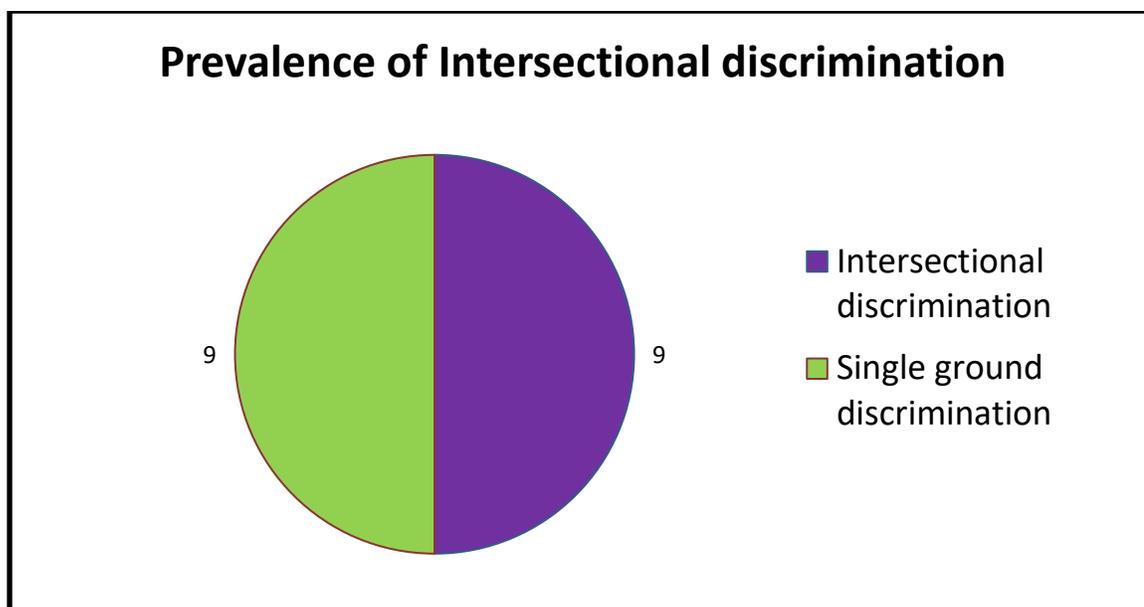


40. Of the 18 complaints from members of the legal profession, 13 complaints (72%) related to the complainants' employment and the remaining 5 complaints (28%) related to interactions with lawyers in other professional contexts.

41. Of the 18 complaints from members of the legal profession:

9 complaints (50%) raised allegations of harassment and discrimination on intersecting grounds including combinations of sex, race, disability, ethnic origin, age, and family status.

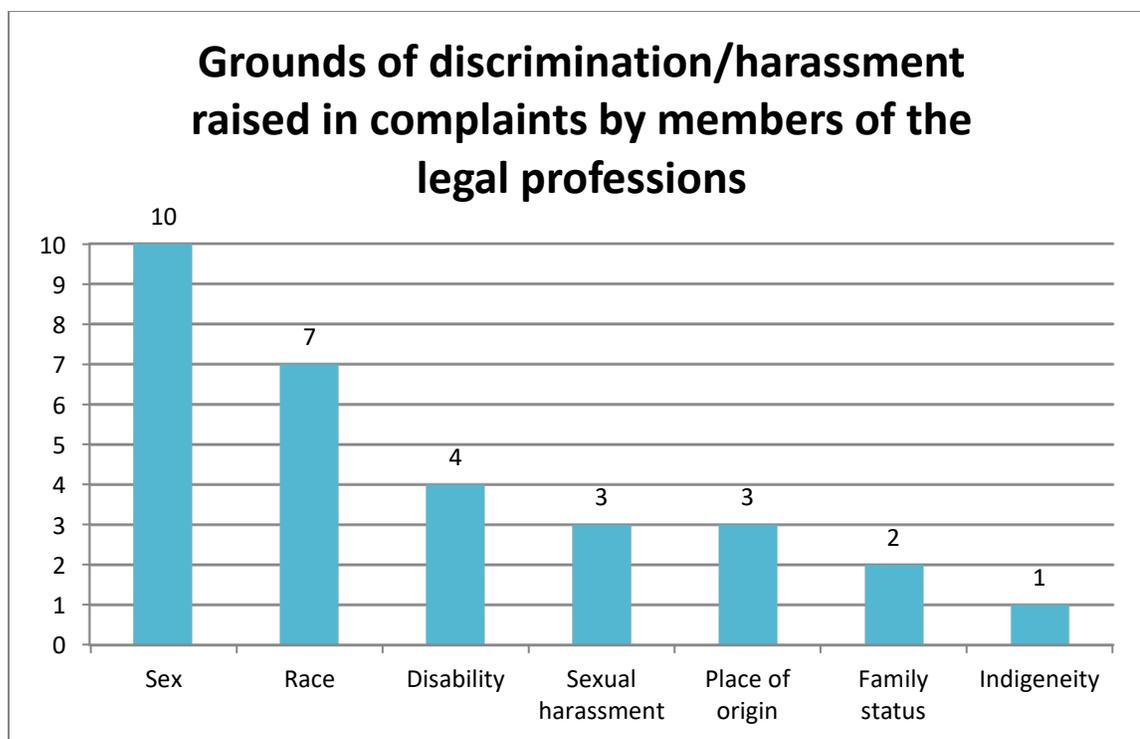
9 complaints (50%) raised a single ground of discrimination, primarily sexual harassment and disability.



42. In summary, the following prohibited grounds of discrimination were raised with the following frequency in complaints by members of the legal profession about the conduct of lawyers. The total exceeds 18 as half of the complaints raised more than one ground of discrimination

Sex	10
Race	7
Disability	4
Sexual harassment	3
Place of origin	3
Family status	2
Indigeneity	1

The distribution of grounds of discrimination and harassment are depicted in the table on the following page.



43. The complaints with respect to employment typically involved a power (seniority, security of employment) differential between the complainant and the lawyer complained about, although some complaints concerned peer-level harassment. The range of behaviour that was complained about in the context of employment included:
- (a) Sex discrimination including denial of opportunities and/or support provided to male colleagues; discriminatory recruitment practices; being subjected to explicitly misogynistic comments; actual or perceived threat to employment due to pregnancy and/or family status; being subjected to reprisals, including threats, for complaining about discrimination;
  - (b) Sexual harassment, including verbal abuse; sexually explicit harassment and comments; physical harassment and pressure by lawyer in position of authority to enter sexual relationships.
  - (c) Racial discrimination and harassment, including verbal harassment; racist comments; refusal to address racialized employees by their names; denial

of opportunities available to non-racialized colleagues; being assigned to menial non-legal tasks; and employers' failure to respond appropriately when complaints of harassment were raised.

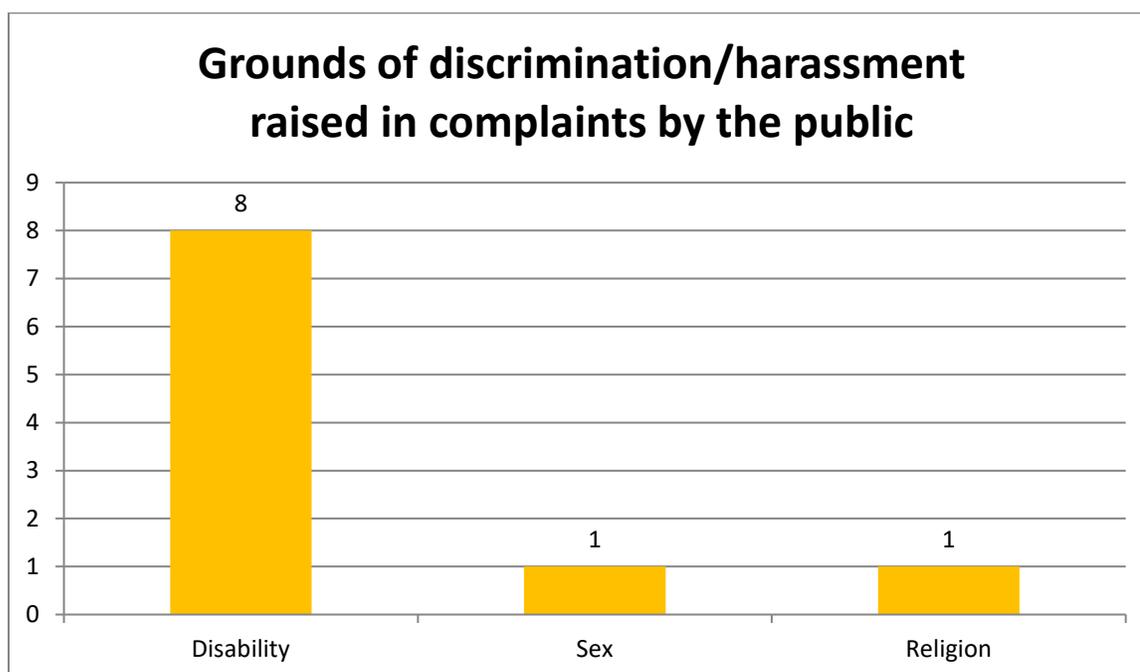
- (d) Discrimination and harassment with respect to disability, refusal to accommodate disabilities, denial of opportunities and denial of career progression due to disabilities;
  - (e) Verbal harassment with respect to place of origin/ethnic origin and denial of opportunities at work; and
  - (f) Reprisals for raising complaints about discriminatory treatment, including reprisals in the form of termination.
44. The range of behaviour identified in complaints about lawyers in other professional settings included sexist and racist comments directed at individuals in public settings; sexual and/or racial harassment; and harassment on the basis of place of origin.
45. During this period, there has been a notable increase in complaints about lawyers engaging in online racial and sexual harassment in public contexts/on public platforms and in targeted communications, some of which include threats of potential violence directed at the complainants.
46. Since July 2017, the DHC has been compiling statistics that are disaggregated by sex, race, disability and other grounds of discrimination as well as compiling statistics about contacts that raise multiple intersecting grounds of discrimination. This provides a sufficient time frame to identify meaningful patterns in the contacts to the DHC office.
47. It is significant to note that in this report, as has been the case consistently in previous reports since July 2017, contacts to the DHC indicate that the burden of discriminatory and harassing behaviour within the legal profession falls most heavily on women, and particularly racialized women. Moreover, this

discriminatory and harassing behaviour is experienced at all stages of women's careers in law from their time as students through to senior stages in their careers. The DHC reports also show a consistent pattern by which members of the profession of all genders who have disabilities consistently reports the next most frequent incidence of discrimination and harassment. The consistency of these systemic patterns is concerning.

### **Complaints about Lawyers by Members of the Public**

48. During this reporting period, 10 complaints were made about lawyers by members of the public: 4 complaints were made by clients who reported discrimination or harassment by their own lawyer; 6 complaints were made about opposing counsel.
49. Eight of the ten complaints involved discrimination and/or harassment on the basis of disability, one involved sex discrimination and one involved discrimination on the basis of religion:

Disability	8
Sex	1
Religion	1



50. The complaints about disability were divided equally those reporting behaviour about a complainant's own lawyer and about opposing counsel. The issues raised were the complainant's own lawyer failing to accommodate disabilities, opposing counsel's refusal to agree to accommodations in the context of legal proceedings, and lawyers about taking advantage of the complainant because of their disability. Again, this pattern of complaints about failure to accommodate disabilities has remained a consistent priority for clients and points to need for focused professional training to ensure that all lawyers know and are able to meet their obligations to accommodate to the point of undue hardship.

### **Complaints about Paralegals**

51. The two complaints made about paralegals were made by women and involved incidents of sexual harassment and sexual assaults.

## **E. MATTERS OUTSIDE THE DHC MANDATE**

52. During this reporting period, the DHC received 43 contacts by phone or email relating to matters outside the Program's mandate. The "outside mandate" calls typically are dealt with quickly and typically do not involve follow up by the individual complainant.
53. An explanation of the DHC's mandate, role and duties was provided to each person who contacted the DHC with a matter outside the Program's mandate. All new contacts raising matters outside the DHC mandate were referred to other agencies for assistance.
54. While they are labelled "out of mandate", the majority of "out of mandate" contacts (23 of 43, or 54%) related directly to the regulatory mandate of the LSO and to the public's respect for the legal professions and the administration of justice. These "out of mandate" contacts do not directly raise issues of discrimination and harassment under the anti-discrimination/anti-harassment rules of the relevant rules or code of professional conduct, but they do raise serious issues of professionalism and professional conduct by lawyers and paralegals. During this

reporting period, of these 23 contacts:

- (a) 21 (91%) raised concerns about conduct by Ontario lawyers and paralegals that reflect breaches of their respective professional conduct rules, potentially criminal conduct and/or abusive employment practices. These contacts were redirected to the Law Society Complaint and Compliance office and/or police as appropriate; and
  - (b) 2 contacts (9%) raised concerns about systemic barriers to access to justice.
55. As in past reports, the DHC again flags the continuing complaints about toxic and abusive legal work environments including workplaces where verbal abuse, yelling, demeaning comments, abusive emails, bullying, aggressive intimidation and inappropriate intrusion on personal time are routine.

#### **F. PROMOTIONAL AND EDUCATIONAL ACTIVITIES**

56. While the DHC's ability to engage in proactive actions to raise awareness of the DHC's services and promote licensee compliance with the relevant codes of conduct was restricted due to the COVID-19 pandemic, the DHC counsel were able to engage in some promotional activities including the following:
- (a) Lai-King Hum and Natasha Persaud attended a Law Society Equity Network event in November 2020 to discuss the role of the DHC;
  - (b) Lai-King Hum did an interview with the *Globe and Mail* in December about women in the legal profession; and
  - (c) Fay Faraday, Lai-King Hum and Natasha Persaud conducted a CPD event with the Ontario Trial Lawyers Association addressing the role of the DHC.

Throughout this reporting period, the DHC Program was promoted in the Law Society's monthly e-Bulletins to licensees. The LSO continues to maintain a bilingual website for the DHC Program.

Tab 7.3

## Human Rights Monitoring Group

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### **Information Report: Arrest and detention of lawyers and law students in Myanmar**

April 12, 2021

**Committee Members:**

**Julian Falconer (Co-Chair)**

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## Executive Summary

On March 18, 2021 the Law Society sent a letter of intervention to the military junta controlling Myanmar, demanding that they comply with international human rights laws after reports emerged of numerous incidents of violence against Myanmar citizens, including lawyers and law students. A public statement was also posted on the Law Society of Ontario's (LSO) website, outlining the information gathered in preparing the intervention, as well as the demands made by the LSO.

These documents were prepared using the same standard approach and process that the Human Rights Monitoring Group (the Monitoring Group) has used to prepare interventions in the past. Information was gathered from trusted sources, such as the United Nations and Human Rights Watch, and the intervention was written and approved by the Monitoring Group during a meeting on March 16. During the meeting, the Monitoring Group discussed the rapidly escalating violence in Myanmar and decided to ask that the Treasurer review the materials so that they could be issued as soon as possible. This procedure is written into the Convocation-approved mandate of the Monitoring Group which provides that "where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation."

The Treasurer reviewed the Monitoring Group's materials, and agreed that the intervention should be issued urgently. The intervention letter was signed and sent on March 18, and the public statement was posted at the same time.

As was feared by the Monitoring Group, the situation in Myanmar has dramatically worsened, since the LSO's intervention letter was sent. As of March 18, 70 people had been killed and 1726 citizens were being detained. At least 45 lawyers and 15 law students were among those who were being detained. As of April 13, the number detained citizens has increased to 3054, and the number of citizens killed has risen to 693. Calls from the international community continue to demand an immediate halt to the violence against Myanmar citizens by the military junta.

# Context

## A. Rationale

The request for intervention to the Treasurer fell within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to:

- a. review information that comes to its attention about human rights violations that target members of the professions and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- b. determine if the matter is one that requires a response from the Law Society; and
- c. prepare a response for review and approval

## B. Considerations

The Monitoring Group considered the following factors when making a decision about the case:

- a. there are no concerns about the quality of sources used for this report; and
- b. the letter and public statement regarding the arrest and detention of lawyers and law students in Myanmar falls within the mandate of the Monitoring Group.

The background information used to support the intervention was retrieved from the following sources:

- a. The United Nations<sup>1, 2</sup>
- b. Human Rights Watch<sup>3</sup>

<sup>1</sup> UN News. “Myanmar: UN condemns escalating violence in deadliest day of protests so far”. February 28, 2021. Online: [Myanmar: UN condemns escalating violence in deadliest day of protests so far | UN News](#)

<sup>2</sup> Andrews, Thomas H. “Report of the Special Rapporteur on the situation of human rights in Myanmar”. United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](#)

<sup>3</sup> Human Rights Watch. “Myanmar: Military Coup Kills Fragile Democracy.” Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](#)

- c. The Law Society of England and Wales<sup>4</sup>
- d. Global News<sup>5</sup>
- e. The Star<sup>6</sup>
- f. Al Jazeera<sup>7</sup>

### C. Human Rights Monitoring Group mandate

The mandate of the Monitoring Group is to:

- i. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- ii. to review information that comes to its attention about human rights violations that target human rights defenders in the same event or circumstances as a member of the legal profession or the judiciary as described above;
- iii. determine if the matter is one that requires a response from the Law Society; and
- iv. prepare a response for review and approval by Convocation.

Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation.

<sup>4</sup> The Law Society of England and Wales. "Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar" Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>5</sup> Global News. "At least 38 dead as Myanmar forces open fire on anti-coup protesters". March 3, 2021. Online: [\(1\) At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](#)

<sup>6</sup> The Star. "Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions" February 16, 2021. Online: [Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions | The Star](#)

<sup>7</sup> Al Jazeera. "Myanmar military 'murdered' at least 70 since coup: UN". March 11, 2021. Online: [Myanmar military 'murdered' at least 70 since coup: UN | Crimes Against Humanity News | Al Jazeera](#)

## **D. Review and Approval process**

The intervention documents were prepared using the same standard approach and process that the Human Rights Monitoring Group (the Monitoring Group) has used to prepare interventions in the past. The Chairs of the Monitoring Group received a request from a former bencher to investigate reports of possible human rights violations against members of the legal professions in Myanmar. Staff gathered information from trusted sources, such as the United Nations and Human Rights Watch, following the standard procedure used to create each intervention the Monitoring Group has proposed. Once staff was satisfied that there were sufficient reports from trusted, high-quality sources draft intervention documents were written and presented to the Monitoring Group during a meeting on March 16. The Monitoring Group agreed that case merited intervention. The discussion then shifted to the rapidly escalating violence in Myanmar and the Monitoring group decided to ask that the Treasurer review the materials so that they could be issued as soon as possible. This procedure is written into the Convocation-approved mandate of the Monitoring Group, as follows:

Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate and shall report on the matter at the next Convocation.

The Treasurer reviewed the Monitoring Group's materials, and agreed that the intervention should be issued urgently. The intervention letter was signed and sent on March 18, and the public statement was posted at the same time. This information report is intended to inform Convocation of the actions taken the Monitoring Group, as required by the Monitoring Group's mandate..

## Background

On February 1, 2021, the Myanmar military arrested the elected civilian leaders of the national and state governments and announced the start of year-long state of emergency<sup>8</sup>. The state of emergency is intended to be in place until a new round of elections could be held. The military arrested leader Aung San Suu Kyi, President Win Myint, and several dozen other senior officials in early morning raids in the capital, Naypyidaw<sup>9</sup>. The officials were in Naypyidaw for the convention of the lower house of parliament, following the November 2020 national elections, which were won decisively by the National League for Democracy (NLD) party<sup>10</sup>. The military also detained NLD officials and civil society activists in other parts of Myanmar, and cut telecommunications and the internet so that citizens and journalists within the country could not publicly report on the military's actions<sup>11</sup>.

Additionally, the military's commander-in-chief, Senior General Min Aung Hlaing, has been credibly implicated in crimes against humanity on several occasions, most recently for his role in the military's actions against Rohingya Muslims in 2017<sup>12</sup>. Similar reports have also been made regarding several other members of the military-installed government<sup>13</sup>.

According to the International Commission of Jurists, since the February 1 coup the military has made changes to several laws that have eliminated many human rights for citizens<sup>14</sup>. For example, laws against arbitrary detention have been suspended and the

<sup>8</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>9</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>10</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>11</sup> Human Rights Watch. "Myanmar: End Crackdown on Media, Communications" Press release. February 5, 2021. Online: [Myanmar: End Crackdown on Media, Communications | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/05/myanmar-end-crackdown-on-media-communications)

<sup>12</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>13</sup> Human Rights Watch. "Myanmar: Military Coup Kills Fragile Democracy." Press release. February 1, 2021. Online: [Myanmar: Military Coup Kills Fragile Democracy | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy)

<sup>14</sup> Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: [Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights)

penal code has been amended to make speaking critically of the military a punishable offense<sup>15</sup>.

Since the February 1 coup by the military, Myanmar citizens have been protesting in increasingly large numbers. On February 16, over 40 lawyers were arrested for peacefully protesting the military's coup.<sup>16</sup> On February 28, 18 protestors were killed and 30 others were injured when the police and military used live rounds of ammunition to disperse crowds who were participating in the nationwide protests<sup>17</sup>. On March 3, another 38 protestors were killed<sup>18</sup>. The arrest, detention, and death numbers continue to grow, according to reports by the Assistance Association for Political Prisoners. As of March 5, 1522 people had been arrested, charged or sentenced; 1215 continued to be detained; and 50 people had been killed<sup>19</sup>. As of March 11, 2045 individuals have been arrested, charged or sentenced; 1726 remain in detention or have outstanding warrants; and at least 70 have been killed<sup>20</sup>. There are numerous stories about individuals who are in hiding, or have tried to flee the country out of fear for their lives. Although it is unclear how many detainees are members of the legal profession, several stories have surfaced outlining how members of the legal professions have been targeted by the military. The targeting of lawyers, along with civil servants, doctors, and healthcare workers, has been documented by the UN.<sup>21</sup>

On March 5, the Law Society of England and Wales called for the immediate release of three lawyers, and asked the military to guarantee that all lawyers in Myanmar would be

<sup>15</sup> Human Rights Watch. "Myanmar: Post-Coup Legal Changes Erode Human Rights". Press release. March 2, 2021. Online: [Myanmar: Post-Coup Legal Changes Erode Human Rights | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights)

<sup>16</sup> The Star. "Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions" February 16, 2021. Online: [Over 40 Mandalay lawyers face lawsuits for joining Myanmar protests, five journalists freed after signing confessions | The Star](https://www.thestar.com/news/asia/2021/02/16/over-40-mandalay-lawyers-face-lawsuits-for-joining-myanmar-protests-five-journalists-freed-after-signing-confessions.html)

<sup>17</sup> UN News. "Myanmar: UN condemns escalating violence in deadliest day of protests so far". February 28, 2021. Online: [Myanmar: UN condemns escalating violence in deadliest day of protests so far | UN News](https://www.un.org/en/news/story/2021/02/28/myanmar-un-condemns-escalating-violence-in-deadliest-day-of-protests-so-far)

<sup>18</sup> Global News. "At least 38 dead as Myanmar forces open fire on anti-coup protesters". March 3, 2021. Online: [\(1\) At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](https://www.globalnews.ca/news/2021/03/03/at-least-38-dead-as-myanmar-forces-open-fire-on-anti-coup-protesters/)

<sup>19</sup> Assistance Association for Political Prisoners. "March 5 2021 daily briefing, detention and fatality lists in relation to military coup". March 5, 2021. Online: [AAPP | Assistance Association for Political Prisoners » Blog Archive » 5 March 2021 Daily Briefing, Detention and Fatality Lists in Relation to Military Coup \(aappb.org\)](https://www.aappb.org/blog/2021/03/05/march-5-2021-daily-briefing-detention-and-fatality-lists-in-relation-to-military-coup/)

<sup>20</sup> Assistance Association for Political Prisoners. "March 2021 daily briefing, detention and fatality lists in relation to military coup". March 11, 2021. Online: [\(1\) At least 38 dead as Myanmar forces open fire on anti-coup protesters - National | Globalnews.ca](https://www.aappb.org/blog/2021/03/11/march-2021-daily-briefing-detention-and-fatality-lists-in-relation-to-military-coup/)

<sup>21</sup> Andrews, Thomas H. "Report of the Special Rapporteur on the situation of human rights in Myanmar". United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](https://www.ohchr.org/en/hrbodies/hrc/special-reports/sr-situations/situation-of-human-rights-in-myanmar)

able to carry out their professional duties without intimidation<sup>22</sup>. On March 7, according to reporting by JURIST, 15 law students were arrested and continue to be detained by Myanmar authorities following protests in the city of Mandalay<sup>23</sup>. Lawyer Khin Maung Zaw is representing NLD leader Aung San Suu Kyi in her trial on several trivial charges relating to possessing walkie-talkies and breaching COVID restrictions. He has stated that he has had to stay in a set of rotated lodgings due to threats made against him and his family<sup>24</sup>.

As of April 13, the number detained citizens has increased to 3054, and the number of citizens killed has risen to 693. Calls from the international community continue to demand an immediate halt to the violence against Myanmar citizens by the military junta.

## A. International Response

On February 23, the foreign affairs ministers of all G7 nations and the European Union jointly issued a statement condemning the acts of violence against Myanmar citizens.<sup>25</sup>

On February 28, the Honourable Marc Garneau, Minister of Foreign Affairs issued a statement on behalf of the Canadian government, which demanded that the military stop using violence against its own citizens, urged the restoration of democracy, and called on the international community to unite in condemning the violent acts committed against Myanmar citizens.<sup>26</sup>

On March 2, 2021 the Law Society of England and Wales sent an intervention letter to the chairman of the State Administrative council and the Myanmar ambassador in the UK. The

<sup>22</sup> The Law Society of England and Wales. "Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar" Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>23</sup> JURIST. "Myanmar: 15 law students still detained by military junta; another recalls flight from police and soldiers after Mandalay protest". March 9, 2021. Online: [Myanmar: 15 law students still detained by military junta; another recalls flight from police and soldiers after Mandalay protest - JURIST - News - Legal News & Commentary](https://www.jurist.org/news/2021/03/09/myanmar-15-law-students-still-detained-by-military-junta-another-recalls-flight-from-police-and-soldiers-after-mandalay-protest/)

<sup>24</sup> France 24. "Suu Kyi's lawyer soldiers on 'in defence of democracy'". February 23, 2021. Online: [Suu Kyi's lawyer soldiers on 'in defence of democracy' - France 24](https://www.france24.com/en/asia/myanmar/20210223-suu-kyi-lawyer-soldiers-on-in-defence-of-democracy/)

<sup>25</sup> Global Affairs Canada. « G& Foreign Ministers' Statement on Myanmar". February 23, 2021. Online: <https://www.canada.ca/en/global-affairs/news/2021/02/g7-foreign-ministers-statement-on-myanmar.html>

<sup>26</sup> Garneau, Marc. "Statement of Minister of Foreign Affairs on Myanmar". Global Affairs Canada. February 28, 2021. Online: <https://www.canada.ca/en/global-affairs/news/2021/02/statement-by-minister-of-foreign-affairs-on-myanmar0.html>

letter outlines five instances of human rights violations against members of the legal community and calls on the relevant authorities to remedy the situations immediately.<sup>27</sup>

The presidents of the Northern Ireland, Ireland, and Scotland law societies have condemned the coup through a joint statement.<sup>28</sup>

The UN special rapporteur for Myanmar, Thomas Andrews told the UN Human Rights Council on March 11 that Myanmar is “being controlled by a murderous, illegal regime”<sup>29</sup>. On March 4 he issued a special report on the coup, calling for international intervention to protect and promote the human rights of Myanmar citizens<sup>30</sup>.

On March 28, the Secretary of State from the United States, as well as defence chiefs from 12 countries condemned Myanmar’s use of lethal force against civilians, calling it “a reign of terror”<sup>31</sup>.

<sup>27</sup> The Law Society of England and Wales. “Arbitrary arrest, detention and alleged enforced disappearance of lawyers in Myanmar” Intervention letter. March 5, 2021. Online: <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/arrest-and-detention-of-lawyers-in-myanmar>

<sup>28</sup> Irish Legal News. “Law societies condemn Myanmar military coup”. March 4, 2021. Online: [Law societies condemn Myanmar military coup - Irish Legal News](#)

<sup>29</sup> Al Jazeera. “Myanmar military ‘murdered’ at least 70 since coup: UN”. March 11, 2021. Online: [Myanmar military ‘murdered’ at least 70 since coup: UN | Crimes Against Humanity News | Al Jazeera](#)

<sup>30</sup> Andrews, Thomas H. “Report of the Special Rapporteur on the situation of human rights in Myanmar”. United Nations Human Rights Council. March 4, 2021. Online: [Report of the Special Rapporteur on the situation of human rights in Myanmar \(ohchr.org\)](#)

<sup>31</sup> BBC News. “Myanmar coup: Generals celebrated amid global fury over massacre”. March 28, 2021. Online: <https://www.bbc.com/news/world-asia-56547381>



**Tab 8**

## **Tribunal Committee**

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### **For information**

April 22, 2021

#### **Committee Members:**

Julia Shin Doi (Chair)

Ryan Alford (Vice-Chair)

Marian Lippa (Vice-Chair)

Malcolm M. Mercer (*ex officio*)

Jared Brown

Paul Cooper

Jean-Jacques Desgranges

John Fagan

Michael LeSage

C. Scott Marshall

Isfahan Merali

Barbara Murchie

Geneviève Painchaud

Chi-Kun Shi

Tanya Walker

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## For information

Tab 8.1 Proposed amendments to the Rules of Practice and Procedure

Tab 8.2 Tribunal Statistics Q4 2020

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# Rules of Practice and Procedure

## A. Executive Summary

Beginning in November 2020, the Tribunal Committee has worked with Tribunal Chair Malcolm M. Mercer to review the policy implications brought about by the government measures undertaken following the declaration of a COVID-19 pandemic and the Tribunal's mandate to continue operations. The focus has been on what has been learned and accomplished at the Tribunal during this time and how to best proceed in the future. Convocation is provided with a copy of the draft changes to the Law Society Tribunal *Rules of Practice and Procedure*. We invite comment from Law Society and public stakeholders by May 30, 2021.

## B. Committee Process

The Committee discussed the Rules and proposed policy changes and later draft language at the November 2020, and January, February, and April 2021 Committee meetings. The Rules were also discussed at the March 2021 meeting of the Tribunal Chair's Practice Roundtable and meetings and e-mail exchanges with the Law Society Tribunal's post-pandemic working group.

The Tribunal Chair's Practice Roundtable is a forum for the Tribunal to consult with and obtain feedback from those who practice before the Tribunal and is made up of individuals who regularly appear before the Tribunal as counsel whether representing licensees / licence applicants, the Law Society or as duty counsel.

The Tribunal's post-pandemic working group is a group made up of Tribunal staff, adjudicators (Benchers) and counsel from the LSO and the duty counsel program who expressed an interest in considering how the Tribunal can best respond to the pandemic and moving forward.

## C. Background

As a result of pandemic measures, all Law Society staff, including those at the Tribunal, began working at home during the last two weeks of March 2020. All in-person appearances were cancelled at that time and since then, appearances have taken place by videoconference, teleconference or in writing.

Most merits and motion hearings have taken place by videoconference; PMCs have taken place by teleconference, and PHCs have transitioned from primarily by teleconference to primarily by videoconference. While most of the hearings initially scheduled for videoconferences were summary hearings or uncontested matters, as the pandemic continues more continuation dates, and hearings for more complex matters, are being scheduled to take place by videoconference. As of February 17, 2021, all in-person hearings at the Tribunal have been cancelled to the end of September 2021.

The professions and the public have been kept up-to-date by notices posted on the Tribunal's website such as [this one](#). The notices are also published on the Tribunal's twitter feed.

While many of the steps taken to adapt the Tribunal's processes in response to pandemic measures were ad-hoc, the Tribunal Committee, together with the Tribunal Chair, is tasked with considering the policy implications on the Tribunal of pandemic measures.

## **D. Discussion**

The proposed changes to the *Rules of Practice and Procedure* reflect the discussions that have taken place at the Committee and also comments received from the Roundtable and working group.

### **Electronic Documents**

There was little, if any, negative response to the proposed move to electronic filing of documents and maintaining an electronic record of proceeding, supplemented by physical documents only where physical documents are, by their nature, required.

Concern was raised that some licensees / licence applicants will require assistance to ensure that their documents complied with any requirements set out in a practice direction. Standardization of formats, file naming conventions, pagination and ease of use were all issues discussed in regards to electronic documents. It is desirable to ensure that panels of three or five are not unnecessarily duplicating work to access filed materials.

### **Electronic Appearances**

There has been much discussion about whether certain types of, or indeed all, appearances should be electronic by default or not. The responses to this question have been varied.

On the one hand, some have suggested that in addition to substantial savings for parties and for the Tribunal (on office space, transportation, hotel accommodations etc.), moving to a presumption of videoconference hearings will also increase access to the Tribunal for licensees / licence applicants residing outside of Toronto. Licensees / licence applicants and out of town adjudicators would not have to travel to Toronto, incurring transportation, accommodation and other costs which would be compounded if they are also represented at the Tribunal. Positive environmental impacts were also raised.

On the other hand, feedback received from representatives appearing at the Tribunal included concern about any presumption of virtual hearings. Some suggested that in-person hearings should remain the default and/or the licensee / licence applicant ought to retain the right to choose an in-person reason. Others did not agree that the licensee / licence applicant ought to have essentially a veto but agreed that videoconference hearings ought not to be the default.

There was broad agreement that videoconference appearances and hybrid hearings would be appropriate. The differences of opinion were with respect to the extent to which in-person hearings were appropriate.

### Availability of technology and connectivity

Concerns about difficulties accessing reliable technology (both hardware and reliable/sufficient internet connection) by licensees / licence applicants and the need to address those difficulties were often mentioned. In addition, the ability of all licensees / licence applicants to actually use the technology was raised. The issue of access to justice also includes improving access to the Tribunal for licensees and licence applicants wherever located throughout the province. There is substantial interest in working to ensure access to technology and connectivity for effective remote access to the Tribunal and its proceedings.

## **E. Proposed Amendments to the Rules of Practice and Procedure**

The proposed draft amendments to the Rules (**Tab 8.1**) reflect the Committee's intent to move forward with greater reliance on electronic / videoconference hearings and acceptance of electronic documents.

Rule 1 has been updated to include the importance of efficient processes and proceedings.

Rule 5 has been updated to reflect the move to electronic documents. Corresponding changes have also been made in Rule 3 regarding starting proceedings. Rule 13 – record of proceedings has been updated to reflect this move as well. Rule 18.2 was similarly updated.

Rule 9 addresses the manner of appearance and sets out that the Tribunal will direction the manner of the appearance. Rule 2.1(2) sets out a non-exhaustive list of considerations to be taken into account in making the determination. Rule 7.3 has been deleted as a consequence.

We are also using this time to make some updates to the language and certain rules to make them easier to understand and apply, based on experience gained over the last year.

Rule 6.4 is updated to reflect the language used in the Act. The same is true for Rules 9.9 and 9.10, though Rule 9.10 requires someone who wants to make an audio recording to notify the Tribunal.

Improvements have been proposed for Rule 17 to account for experience in applying the rule over the past year. Issues have arisen in multiple proceedings because of the requirement in the initial rule to base calculations on the date a notice of appeal was filed, regardless of any steps taken afterwards. The update proposed changes this to use a "deadline" as the basis for calculating time; either the deadline established in Rule 17.3 or as otherwise set by the Tribunal.

# Tribunal Statistics – For Information

## A. Executive Summary

Ongoing collection and reporting of Tribunal operational statistics assists the Tribunal to track issues, identify needs and monitor emerging trends in Tribunal proceedings. This enables the Tribunal Committee and Convocation to make policy decisions with a more fulsome understanding of the Tribunal's work.

## B. Committee Process

The Committee met on April 8, 2020. Committee members Julia Shin Doi (Chair), Marian Lippa (Vice-Chair), Malcolm M. Mercer, (*ex officio*), Jared Brown, Jean-Jacques Desgranges, John Fagan, Michael Lesage, C. Scott Marshall, Barbara Murchie, Geneviève Painchaud, and Chi-Kun Shi attended. Bencher Cathy Banning and staff members Celia Lieu and Lisa Mallia also attended.

## C. Background

The statistics that the Tribunal reports on were decided upon through an extensive process. In 2016, the Tribunal Committee considered what types of data would be useful in public and internal reports. This review was done while considering the goals of the Tribunal model as well as issues raised in the 2016 Tribunal Model Three-Year Review final report. That report highlighted the need for a revised approach to data collection that would focus on adjudicative purposes in order to measure the effectiveness of the Tribunal's processes.

In 2017, the Committee approved a list of statistics to be gathered and reported on quarterly and annually. The Tribunal then designed data collection and technology around this list. The goal of the statistics the Committee chose is to have focused reporting that:

- measures outcomes;
- measures efficiency;
- monitors trends; and
- monitors data around adjudicators, duty counsel/self-represented licensees, French language hearings, and licensee/licensee applicant data.

These goals must be pursued while bearing in mind the public interest nature of the information and the goal of transparency.

The Tribunal provides five statistical reports each year to Convocation: four quarterly reports and one year-end report. The Q4 2020 quarterly report is set out at **TAB 8.2**.

## D. Q4 2020 quarterly report

The Fourth Quarter 2020 report provides operational statistics during a period where the Tribunal continued to operate remotely. In this quarter, the Tribunal rescheduled many of its cancelled hearings from earlier in the year and converted all in-person hearings to videoconference.

The volume of cases open at any point in time is generally between 165 and 175. In 2020, the case load was higher: from 185 files open at the end of Q1 to 219 at the end of Q4: Caseload on page 6 of the Q4 report.

The number of hearing files opened in Q4 of 2020 (47) was an increase from Q3 of 2020 (40) and also an increase from Q4 of 2019 (34): Figure 1 on page 2. Slightly fewer files were closed in Q4 of 2020 (33) than Q3 2020 (37) but more than in Q4 2019 (28): Figure 6 on page 5.

Following a significant decrease in full days used for hearings from Q1 to Q2, the number of full days used more than doubled from Q2 to Q3 and more than doubled again from Q3 to Q4: Figure 14 on page 7. Most longer, more complex hearings were cancelled during the first months of pandemic measures and have now begun to be heard by videoconference.

The Tribunal also measures the length of time taken to complete reasons: Figure 20 on page 13. The average number of days to deliver written reasons continues to decrease from 82 in Q1 to 69.5 in Q2 to 61 in Q3 and 57 days in Q4.

The report also shows that 25 applications by the Law Society were closed in Q4: Figure 25 on page 14. Most were granted in full (19), four were withdrawn, one was dismissed and one was granted in part. There were two motions for interlocutory suspension closed in Q4, both of which were granted in full. Five matters initiated by the licensee / licence applicant were closed in Q4, four were granted and one withdrawn – they were all licencing matters: Figure 32 on page 16.

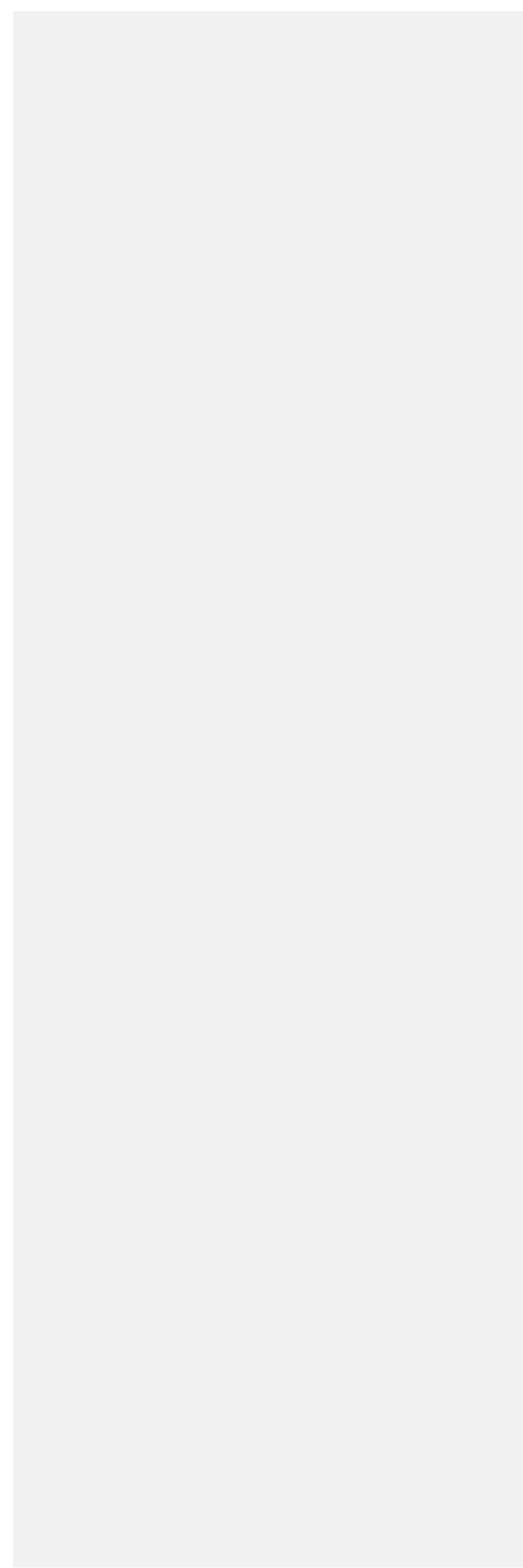
One appeal brought by a licensee / licence applicant was closed in Q4: it was abandoned/withdrawn: Figure 36 on page 17. No appeals brought by the Law Society were closed in Q4.

# LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

*Effective January 1, 2020, amended effective October 1, 2020*

[DRAFT EDITS TO CONVOCATION APRIL 2021](#)

DRAFT



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## RULE 1: PURPOSES AND INTERPRETATION

### Purposes

1.1 The purposes of these rules are to:

- (a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;
- ~~(b)~~ [\(b\)](#) promote timely determination of proceedings in accordance with the public interest;
- ~~(c)~~ [\(c\)](#) ensure efficient processes and proceedings;
- ~~(d)~~ [\(d\)](#) ensure that the Tribunal's processes are clear and understandable;
- ~~(e)~~ [\(e\)](#) allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;
- ~~(f)~~ [\(f\)](#) promote early identification of issues in dispute and facilitate agreement and resolution;
- ~~(g)~~ [\(g\)](#) ensure that processes and proceedings are transparent to the public and to licensees and licence applicants; and
- ~~(h)~~ [\(h\)](#) allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

### Interpretive Principles

- 1.2 These rules shall be interpreted and applied in accordance with their purposes.
- 1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.
- 1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.
- [1.5](#) The Tribunal may decide not to ~~strictly~~ apply these rules [strictly](#) unless to do so would be inconsistent with legislation, regulations or a mandatory rule.
- [4-51.6](#) [The Tribunal operates electronically to the extent reasonably possible taking into account the purposes set out in Rule 1.1 and where doing so improves access to the Tribunal and is procedurally fair.](#)

## RULE 2: APPLICATION AND DEFINITIONS

### Name

- 2.1 These rules are referred to as the Law Society Tribunal *Rules of Practice and Procedure*.

### Application

- 2.2 These rules apply to all proceedings before the Hearing and Appeal Divisions of the Law Society Tribunal, starting January 1, 2020.

### Definitions

- 2.3 In these rules, unless the context requires otherwise:

“Act” means the *Law Society Act*, RSO 1990, c. L. 8 (“*Loi*”);

“administrative suspension order appeal” means an appeal from an order under section 46, 47, 47.1, 48, or 49 of the Act (“*appel d’une ordonnance de suspension administrative*”);

“appeal” includes, where appropriate, a cross-appeal (“*appel*”);

“appearance” means a hearing, motion, case conference, pre-hearing conference or proceeding management conference (“*comparution*”);

“appellant” means a person who starts an appeal, including, where appropriate, a person who starts a cross-appeal (“*appellant*”);

“assigned hearing panel” means the Tribunal member or members assigned to a merits hearing or motion by the Chair (“*formation d’audience*”);

“authenticity” includes: (a) the fact that a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been; (b) a document that is said to be a copy is a true copy of the original; and (c) where the document is a copy of a letter or electronic communication, the original was sent as it purports to have been sent and received by the person to whom it is addressed (“*authenticité*”);

“Chair” means the Chair of the Law Society Tribunal, or a Vice-Chair of the Hearing or Appeal Division acting in the Chair’s absence (“*Président*”);

“document” includes electronic records (“*document*”);

“endorsement” means a record of an action taken by the Tribunal, made by a member of the Tribunal or Tribunal staff (“*inscription*”);

“file” means to provide a document to the Tribunal in accordance with Rules 5.4 to 5.11 (“*deposer*”);

“holiday” means any Saturday, Sunday, statutory holiday or other day on which the Tribunal is closed (“*jour férié*”);

“intervenor” means a person or organization granted leave to participate in a proceeding or a part of a proceeding under Rule 4 (“*intervenant*”);

“Law Society” means the Law Society of Ontario (“*Barreau*”);

“leave” means permission granted by a panel (“*autorisation*”);

“licensee” means a lawyer or paralegal who is a party to a proceeding (“*titulaire de permis*”);

“licence applicant” means the applicant for a licence in a licensing proceeding (“*demandeur de permis*”);

“non-disclosure order” means an order that the transcript or a part of the transcript of a public appearance be not public, and that anyone who was present may not disclose what occurred (“*ordonnance de non-divulgation*”);

“not public order” means an order that an appearance or document, or a part of the appearance or document, be not public (“*ordonnance de non-publicité*”);

“originating process” means a Notice of Application, Notice of Referral for Hearing, Notice of Appeal, Notice of Administrative Suspension Order Appeal, Notice of Cross-Appeal, Notice of Motion – Interlocutory Suspension or Restriction or Notice of Motion – Vary or Cancel Interlocutory Suspension or Restriction (“*acte introductif d’instance*”);

“panel” means the member or members of the Tribunal assigned to an appearance by the Chair (“*formation*”);

“panelist” means a member of a panel (“*membre de la formation*”);

“previously admitted evidence” means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted (“*prevue déjà admise*”);

“publication ban” means an order that no one may publish information about what occurred at a public appearance or the contents of public documents (“*interdiction de publication*”);

“representative” means a person representing a party in the proceeding (“*représentant*”);

“serve” means to provide documents to the other party or parties in accordance with Rule 3.1 or Rule 5.1 (“*signifier*”);

“summary hearing” means a proceeding in which the Law Society requests that the matter be assigned to a single member panel under para. 1 of s. 2(1) of O. Reg. 167/07 (“*audience sommaire*”);

“Tribunal” means the Law Society Tribunal, and includes a panel (“*Tribunal*”);

[“Tribunal’s File Sharing Platform” means an electronic file sharing system established by or approved by the Tribunal for use by parties and others in Tribunal proceedings \(“\*•\*”\);](#)

“Tribunal member” means a member of the Hearing Division or Appeal Division (“*membre du Tribunal*”).

Same meaning as in the Act

2.4 If a word or phrase is defined in the Act, it has the same meaning in these rules unless the rules specify otherwise.

Calculating time

2.5 In calculating time under these rules, or under a direction or order made under these rules:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

## RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).

(2) A party must serve an originating process and information sheet by:

(a) hand delivery to the person being served;

~~(b)~~ regular mail, registered mail or courier sent to the party's home and / or business addresses;

~~(b)(c)~~ electronically by e-mail sent to the party's home and / or business e-mail addresses; or

~~(c)~~(d) any other method agreed to by the person being served or directed by the Tribunal.

(3) The Law Society must file originating processes and information sheets electronically.

(4) The addresses mentioned in Rule 3.1 (2) (b) and (c) are:

(a) in the case of licensees, the addresses provided to the Law Society under By-Law 8; and

(b) in the case of licence applicants, the addresses provided to the Law Society during the licensing process.

**Commented [A1]:** This addition makes it clearer that the LSO will rely on the information that the licensee has provided to the Law Society either pursuant to By-Law 8 or the licensing process.

#### Amending an originating process

3.2 (1) A party may amend an originating process by serving and filing an amended version that clearly indicates the nature of the changes:

(a) in a proceeding in the Hearing Division, no later than 10 days before the hearing on the merits; and

(b) in a proceeding in the Appeal Division, at any time before the appeal is perfected.

(2) A party may amend an originating process after the deadline with consent of the other party or with leave.

#### Withdrawing a proceeding or motion

3.3 (1) A party may, at any time, withdraw a proceeding or motion by serving and filing a Notice of Withdrawal (Form 26).

(2) A party that brought a proceeding or motion and does not attend an appearance or meet a deadline set by the Tribunal may be deemed to have withdrawn the proceeding or motion.

(3) A responding party may request costs after a proceeding or motion is withdrawn or deemed withdrawn.

## RULE 4: ADDITIONAL PARTICIPANTS

### Adding parties

4.1 The Tribunal may make an order adding a person as a party where the person is entitled under the Act or otherwise by law to be a party to the proceeding.

### Intervenors

4.2 (1) The Tribunal may make an order permitting a person to participate in the proceeding or a part of the proceeding as an intervenor if this would be in the interests of justice.

(2) The Tribunal shall determine the extent of an intervenor's participation and may make other directions about that participation.

### Friend of the Tribunal

4.3 The Tribunal may invite a person to participate in the proceeding or part of the proceeding to assist the Tribunal. A person who participates under this rule is not a party and no costs order may be made against that person.

## RULE 5: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS

### How to serve

5.1 A document other than an originating process may be served by:

- (a) hand delivery;
- (b) regular mail, registered mail or courier;
- (c) e-mail, if less than 20 MB;
- (d) [uploading an electronic document to the Tribunal's File Sharing Platform and serving notice on the other party that the electronic document has been uploaded](#); ~~fax, if the document is 20 pages or less~~; or
- (e) any other method agreed to by the person being served or directed by the Tribunal.

## Effective date of service

### 5.2 Service is deemed to be effective:

- (a) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~ served, other than by mail, before 5 p.m. on a business day, on that day;
- (b) if the document is ~~faxed, e-mailed, uploaded to the file-sharing system, hand delivered or delivered by courier~~ served, other than by mail, on a holiday or after 5 p.m. on a business day, on the next business day;
- (c) if the document is mailed, on the fifth business day after mailing.

**Commented [A2]:** This change makes the rule simpler to understand.

## Service using contact information in the Law Society's records

- 5.3 Service on a licensee using contact information provided to the Law Society under By-Law 8, ss. 3 and 4 is considered effective unless otherwise ordered by the Tribunal.

## Confirmation of service

### 5.4 When a document is filed with the Tribunal, service must be confirmed by:

- (a) a Confirmation of Service form (Form 27), which may be provided in the body of an e-mail;
- (b) an affidavit of the person who served it;
- (c) an e-mail showing that the document was sent to the other person's e-mail address including by
  - i. copying the Tribunal in the original e-mail to the other person; or
  - ii. forwarding the original e-mail to the Tribunal; or
- ~~(e)~~ (d) written acceptance of service by the person served, which may be provided electronically by e-mail to the Tribunal.

## Communication with the Tribunal

- 5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.
- (2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

### Respectful communication

5.6 (1) All documents filed, and all written and oral communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal.

(2) Failure to comply with this rule is a relevant factor in making a costs award.

### Acceptance of documents by the Tribunal

5.7 Acceptance of documents by the Tribunal does not mean that they are timely, properly served or otherwise comply with these rules or the order or direction under which they were filed. The Tribunal may reject documents after they are filed.

### Filing requirements: electronic and hard copies

~~5.8~~

~~5.9~~ Other than physical documents filed at an in-person appearance, (1) The following Aall documents must be filed in electronic copy form and be in accordance with the Tribunal's practice direction on electronic filing:-

~~(a) pre-hearing conference memoranda;~~

~~5.105.8 (b) any document less than 10 pages, unless filed at an appearance.~~

~~(2) The following documents, if 10 pages or more, must be filed in both electronic and hard copy:~~

~~(a) agreed statements of facts (not including exhibits);~~

~~(b) affidavits (not including exhibits);~~

~~(c) requests to admit;~~

~~(d) draft orders;~~

~~(e) facta;~~

~~(f) written submissions; and~~

~~(g) notices of motion.~~

~~(3) All other documents must be filed in hard copy.~~

### Filing electronic documents

**Commented [A3]:** This is a major change. All documents, unless provided in hard copy at an in-person appearance, must be filed in electronic form.

This also anticipates a practice direction on electronic filing. A practice direction is preferred as it is an easier process for amending in the future – although practice directions go to Convocation for approval currently, changes to practice directions are not as significant as changes to the Rules.

~~5.115.9~~ Where possible, ~~Electronic copies of documents may~~ must be filed in pdf format or, alternatively, in both pdf and other formats such as .doc, .ppt and .xlsx. ~~Word and/or pdf format. Electronic documents may be filed~~ by e-mail (if less than 20 MB), on a USB drive, ~~by the Tribunal's File Sharing Platform~~ or by such other method as the Tribunal may permit. The ~~document~~ file name ~~and the structure and format of the electronic document~~ must include the Tribunal file number, the name of the document and the party filing ~~comply with the Tribunal's practice direction on electronic documents filing.~~

Filing ~~physical documents~~ ~~hard copy documents~~

5.10 ~~When~~ Where a party files a document ~~sing~~ in physical form ~~hard copy at an in-person appearance:~~

(1) ~~the party must file:~~

- (a) two copies of the document if the appearance is before a single-member panel;
- (b) four copies of the document if the appearance is before a three-member panel; or
- (c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy, or an additional un-tabbed and unbound ~~hard copy, of the physical document.~~

(2) ~~the electronic copy of the physical document filed by the party, or an electronic copy created by the Tribunal if no electronic copy is filed by the party, becomes part of the record of proceeding but the physical document does not.~~

Layout

5.11 (1) Documents ~~prepared for~~ filed with the Tribunal ~~proceedings~~ must be legible. Written documents must be typed or printed. Electronic documents must be formatted to be printed on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches), using 12 point font, double spaced, except for quotations which may be single spaced, with a margin of at least 1 ½ inches on the left hand side.

(2) Physical documents must be on white 8.5 by 11 inch paper 216 millimetres by 279 millimetres (8.5 by 11 inches).

5.12 (3) ~~These requirements do not apply to documentary evidence or copies of documentary evidence.~~

Commented [A4]: This mirrors the current Rules of Civil Pro.

Commented [A5]: This mirrors the current Rules of Civil Pro.

Facta

5.13 A factum must include at least the following sections:

- (a) overview;

- (b) issues;
- (c) facts, argument and law;
- (d) the order requested;
- (e) schedule A, containing a list of authorities referred to; and
- (f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

5.14 Without leave, a factum shall be no more than 30 pages.

#### Books of authorities

- 5.15 (1) Parties must mark those passages in their book of authorities to which they intend to refer in oral argument.
- (2) Parties should not include authorities contained in the Tribunal Book of Authorities or in a book of authorities already filed by another party.

#### Covers

~~5.16—The front and back covers of bound documents must be:~~

- ~~(a) green if filed by the Law Society;~~
- ~~(b) white if filed by a licensee or licence applicant;~~
- ~~(c) buff if filed by any other party; or~~
- ~~(d)(a) red if the document is subject to a not public order, non-disclosure order or publication ban, unless the document was filed before the order was made.~~

## RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

### First appearance

- 6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.
- (2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The applicant must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

(3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.

(4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

#### Who may schedule or adjourn

6.2 An appearance may be scheduled or adjourned by:

- (a) a pre-hearing conference or proceeding management conference;
- (b) the assigned hearing panel or its chair; or
- (c) the Tribunal Office, if the scheduling or adjournment is on consent.

#### Adjournments

6.3 Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances, as set out in the Tribunal's Practice Direction on Adjournments. Parties must be ready to proceed on the dates scheduled.

6.4 An order adjourning an appearance may include such terms and conditions as the panel considers appropriate. The Tribunal may order that there be terms to an adjournment.

**Commented [A6]:** Tracking the language of section 49.26 of the Act

#### Accommodation

6.5 Participants in proceedings are entitled to accommodation of their needs under the *Human Rights Code*, RSO 1990, c. H. 19, to the point of undue hardship. A participant in a proceeding must notify the Tribunal as soon as possible of any accommodation requests.

#### Accommodation for Witnesses

6.6 Where it would be fair and in the interests of justice, the Tribunal may:

- (a) permit a support person to sit near a witness while the witness testifies;
- (b) order that a witness testify in a manner that would allow the witness not to see the licensee, licence applicant or any other person;
- (c) order that a licensee or licence applicant not personally conduct the cross-examination of a witness, and shall appoint counsel for the purpose of conducting the cross-examination without cost to the licensee or licence applicant; and

- (d) make other orders accommodating or protecting witnesses.

#### Failure to attend or participate

- 6.7 Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation. The party will not be entitled to any further notice in the proceeding.

## RULE 7: CASE MANAGEMENT

### Principles

- 7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:
- (a) proceedings move forward in a fair and timely way, in the public interest;
  - (b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;
  - (c) issues are identified early so the parties have the opportunity to fully prepare; and
  - (d) adjournments are granted only due to unforeseeable and exceptional circumstances.

### Case management directions

- 7.2 Case management directions may be made at the request of a party or on the Tribunal's own initiative at:
- (a) a proceeding management conference;
  - (b) a pre-hearing conference;
  - (c) a hearing or case conference, by the assigned hearing panel; or
  - (d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

### [Format

- 7.3 ~~A proceeding management conference, pre-hearing conference or case conference may be held in person, by telephone, by videoconference, in writing or any combination of these formatsDeleted].~~

#### Endorsement

- 7.4 A panelist shall prepare an endorsement after each proceeding management conference, pre-hearing conference or case conference, recording any directions made and appearances scheduled.

#### Proceeding management conference

- 7.5 The Tribunal may hold a proceeding management conference on its own initiative or at the request of any party.

#### Directions at proceeding management conference

- 7.6 A proceeding management conference panel may:
- (a) schedule or adjourn an appearance;
  - (b) set timelines and deadlines for steps in the proceeding;
  - (c) hear and decide a procedural motion;
  - (d) make a not public order, non-disclosure order or publication ban; and
  - (e) make any other procedural directions, including directions about process at the hearing.

#### Pre-hearing conference

- 7.7 The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

#### Issues discussed at pre-hearing conference

- 7.8 A pre-hearing conference panel may discuss with the parties,
- (a) the identification, limitation or simplification of the issues in the proceeding;
  - (b) the identification and limitation of evidence and witnesses;
  - (c) the possibility of settlement of any or all of the issues in the proceeding;
  - (d) the possibility of the parties entering into an agreed statement of facts; and
  - (e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

#### When a pre-hearing conference is scheduled

- 7.9 A pre-hearing conference shall be promptly scheduled in every proceeding other than a summary hearing, interlocutory suspension or restriction motion, motion to vary or cancel an interlocutory suspension or restriction, or appeal unless the matter is ready for hearing. The Tribunal may, at the request of a party, or on its own initiative, schedule a pre-hearing conference in any proceeding, at any time.

#### Confidential and without prejudice

- 7.10 A pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a pre-hearing conference or what is contained in a pre-hearing conference memorandum, unless otherwise ordered or required by law. The panel may summarize in the endorsement the results of the discussions and the directions made.

#### Directions at pre-hearing conference

- 7.11 (1) A pre-hearing conference panel may:
- (a) schedule or adjourn an appearance;
  - (b) set timelines and deadlines for steps in the proceeding; and
  - (c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.
- (2) Procedural directions may be made by a pre-hearing conference panel whether or not the parties consent.

#### Pre-hearing conference memoranda

- 7.12 (1) Each party must prepare a pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.
- (2) Each party's memorandum must be sent by e-mail to the other parties and to the Tribunal Office. The Law Society's memorandum must be sent at least seven days prior to the first pre-hearing conference. The licensee or licence applicant's memorandum must be sent at least two days prior to the first pre-hearing conference.
- (3) The Tribunal may waive the requirement to file a memorandum, if the preparation of the memorandum would not be practical or of assistance in the circumstances.

#### Limitation on assignment of pre-hearing conference Tribunal member

- 7.13 (1) Except with agreement of the parties, a Tribunal member who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing

or to any appeal of that proceeding, nor shall a member of the panel assigned to a hearing preside at a pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 31).

(2) This rule does not preclude a Tribunal member who conducted a pre-hearing conference from conducting a proceeding management conference.

#### Case conference

7.14 The Tribunal may hold a case conference on the assigned hearing panel's own initiative, as directed at a proceeding management conference, or at the request of any party.

#### Directions at case conference

7.15 At a case conference, the assigned hearing panel or its chair may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding;
- (c) make a not public order, non-disclosure order or publication ban; and
- (d) make any other procedural directions.

## RULE 8: MOTIONS

#### Motions

8.1 (1) A motion must be made by notice of motion (Form 28) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion must indicate that the motion will be heard on a date to be set by the Tribunal.

(3) The Tribunal may direct that the parties attend a proceeding management conference before setting a motion date.

(4) A motion may not be brought prior to the start of the proceeding to which it relates.

#### Motion materials

8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.

(3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.

(4) A motion record must have consecutively numbered pages and contain;

- (a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;
- (b) the notice of motion, if not already included in another party's motion record; and
- (c) all affidavits and other material upon which the party intends to rely.

(5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before a court reporter. The party calling the witness must ensure the attendance of the witness for cross-examination.

#### Motions on consent or unopposed motions

8.3 When a motion is on consent or unopposed:

- (a) facta and books of authorities are not required unless ordered by the Tribunal; and
- (b) the moving party must file a draft of the order sought and any consents.

## RULE 9: APPEARANCES

### Manner of appearance

9.1 (1) Unless otherwise provided, an appearance shall take place in person. As directed by the Tribunal, an appearance shall occur by telephone, by videoconference, in writing or in person.

(2) In directing the manner of an appearance, the Tribunal takes into account the purposes set out in Rule 1.1, that applications before the Tribunal involve parties, witnesses and members who may be remote from the Tribunal and that there are costs and benefits associated with in-person hearings to be taken into account.

**Commented [A7]:** This change removes the default of in-person hearings.

### Attending an in-person appearance electronically

~~9.49.2~~ (1) Subject to Rule 9.2(2), a party or the party's representative may attend an in-person appearance by telephone or by videoconference electronically on request.

(2) A witness giving oral evidence and a representative or self-represented party examining a witness must attend an in-person appearance in person, unless the other party consents or the Tribunal gives leave.

(3) Subject to direction by the panel, a panelist may attend an in-person appearance by videoconference.

### Written or electronic appearance

~~9.2~~ (1) The Tribunal may direct, at the request of a party or on its own initiative, that an appearance or part of an appearance take place in writing or electronically.

~~(2) A request that an appearance take place in writing or electronically may be heard in writing.~~

### Converting the manner of appearance

~~9.3~~ (3) The panel assigned to an ~~in writing~~ appearance may convert the appearance to a telephone, a videoconference, an in-writing or an in-person appearance from the manner of appearance otherwise directed. to an electronic or in-person appearance and the panel assigned to an electronic appearance may convert the appearance to an in-person appearance.

### Language

~~9.49.3~~ (1) A proceeding shall be conducted in English, French, or both English and French, at the choice of the licensee or licence applicant.

(2) A licensee or licence applicant who asks that the language of the proceeding be changed from the language in which it was started must make the request within 30 days of service of the originating process.

(3) Documents provided in a language other than English or French must be accompanied by a translation of the document into the language of the proceeding by a qualified translator as well as a certificate by the translator setting out that the translation is a true and accurate translation to the best of the translator's skill and ability.

(4) A party intending to call a witness whose testimony will require interpretation must notify the Tribunal as early as possible, no later than seven days before the hearing at which the witness will be examined.

### Location

9-59.4 (1) Subject to Rules 9.5(2) and (3), an in-person hearing shall be held at the Law Society Tribunal in Toronto.

(2) Where all parties consent to a hearing being held outside Toronto and within the Province of Ontario, the hearing shall be held in that place.

(3) The Tribunal may order that a hearing be held in another place.

### Hearing proceedings together or consecutively

9-69.5 (1) The Tribunal may order that two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other, if:

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made under this rule.

(2) Where an order is made under Rule 9.6 (1), the Tribunal shall determine the effects of hearing the merits of the proceedings together or one immediately after the other, and may give directions about those effects.

### Consent to hearing before one member of the Tribunal

9-79.6 The parties to a conduct proceeding may consent to the application being heard by one member of the Tribunal under O. Reg. 167/07, s. 2(1) by filing a consent (Form 31) with the Tribunal.

### Transcripts

9-89.7 (1) A person wishing to have a copy of the transcript of a public appearance must order it, at their own expense, from the reporting service that recorded the appearance.

(2) The first party to obtain a transcript of an appearance is responsible for the cost of the Tribunal's electronic and hard copies, which will be provided to the Tribunal directly by the reporting service.

### Images and recording

9.9 Subject to rule 9.10, No one other than a court reporting service may, without leave:

(a) take photographs or make a video or audio recording in the Tribunal premises or the hearing room; or

~~(b)~~ take a screen shot or make a video or audio recording of an **electronic** appearance.

9.10 Subject to providing prior written notice to the Tribunal, a representative, a party acting in person or a journalist may unobtrusively make an audio recording at an appearance for the sole purpose of supplementing or replacing notes made during the appearance.

## RULE 10: DISCLOSURE AND PRODUCTION

### Law Society's obligation to disclose

10.1 The Law Society must disclose to the licensee or licence applicant, within a reasonable period of time following the filing of the application, all potentially relevant documents in its possession, except for those it is not disclosing due to privilege. Privileged documents must be identified to the other party.

### Production from the Law Society

10.2 A licensee or licence applicant bringing a motion for further production from the Law Society must include in the motion record prior correspondence to the Law Society's representative requesting the documents and the Law Society representative's response.

### Interlocutory suspension or restriction motions

10.3 Rules 10.1 and 10.2 do not apply to interlocutory suspension or restriction motions, but this rule does not preclude a panel from making disclosure orders in such cases.

### Production from third parties

10.4 Where a party seeks production of documents from a third party, the party seeking the documents must obtain a motion date, and serve on the third party a summons to witness requiring the third party to attend on the motion date, attendance money and a Notice of Motion. The Notice of Motion must set out the relevance of the documents requested from the third party.

### Witness statements and document books

10.5 (1) Each party must provide to every other party:

(a) a document book containing all anticipated documentary evidence;

(b) a list of witnesses that the party intends to call; and

(c) an affidavit, signed witness statement or summary of the anticipated oral evidence of each witness, as well as the witness's contact information or the contact information of a person through whom the witness may be contacted.

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence applicant must comply with this rule no later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

#### Expert reports

10.6 (1) Each party must provide to every other party, no later than 60 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.

(2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 33).

#### Consequences of failure to disclose

10.7 Evidence not disclosed or produced as required by this rule may not be relied upon without leave of the Tribunal.

## RULE 11: EVIDENCE

#### Agreed facts

11.1 A panel may receive and rely on any facts agreed to by the parties without further proof or evidence.

#### Affidavit evidence

11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

(2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.

(3) The party calling the witness must ensure the attendance of the witness for cross-examination.

#### Deemed admissions

11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form

29 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request must be served no later than:

- (a) 30 days before the hearing if the request contains 75 paragraphs or less;
  - (b) 50 days before the hearing if the request contains 76-200 paragraphs;
  - (c) 70 days before the hearing if the request contains more than 200 paragraphs.
- (2) The party on whom the request is served must serve a response no later than:
- (a) 20 days after the date of service if the request contains 75 paragraphs or less;
  - (b) 40 days after the date of service if the request contains 76-200 paragraphs;
  - (c) 60 days after the date of service if the request contains more than 200 paragraphs.
- (3) The response must be in Form 30 and must, in relation to each fact and document mentioned in the request:
- (a) admit the truth of the fact or the authenticity of the document;
  - (b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or
  - (c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.
- (4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.
- (7) The Tribunal may relieve a party from a deemed admission.

#### Filing materials before the hearing

- 11.4 A party may file an agreed statement of facts, request to admit that has been deemed admitted, affidavit or document book for the panel to review to prepare for the hearing. Filing such documents does not preclude another party from objecting to their admissibility at the hearing. Parties may request that documents be not public pending the hearing.

#### Summons

- 11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.
- (2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.
- (3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.
- (4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

#### Exclusion of witnesses

- 11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.
- (2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.
- (3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

#### Admission of evidence

- 11.7 (1) The rules of evidence applicable in civil proceedings apply in Tribunal proceedings, except where these rules provide otherwise.
- (2) Sections 15(4) and 16 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 apply to the admission of evidence in Tribunal proceedings.
- (3) Sections 15(1) and (2) of the *Statutory Powers Procedure Act* apply to the admission of evidence in interlocutory suspension or restriction motions.

(4) Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

#### Previously Admitted Evidence

11.8 Previously admitted evidence may be admitted on consent, or if

- (a) the party against whose interest the evidence is sought to be admitted was a party to the other proceeding,
- (b) the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and
- (c) an issue in the other proceeding is substantially similar to an issue in the current proceeding.

#### Limits on examination or cross-examination

11.9 (1) A panel shall not permit cross-examination that is repetitive, abusive or otherwise inappropriate.

(2) A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

#### Information obtained by the Discrimination and Harassment Counsel

11.10 Despite any other rule, information obtained by the Discrimination and Harassment Counsel as a result of the performance of her duties under clause 19 (1) (a) of By-Law 11 must not be used and is inadmissible in a hearing.

## RULE 12: INTERLOCUTORY SUSPENSION OR RESTRICTION MOTIONS

#### Authority

12.1 (1) On the motion of the Law Society, the Tribunal may make an interlocutory order suspending a licence or restricting the manner in which a licensee may practise law or provide legal services.

(2) On the motion of a licensee or the Law Society, the Tribunal may vary or cancel an interlocutory order made under this rule.

#### Motions rule applies

- 12.2 Rule 8 applies to interlocutory suspension or restriction motions, except where it differs from this rule.

#### When authorization required

- 12.3 If the motion relates to a proceeding where the Hearing Division has not started a hearing on the merits, the Law Society shall obtain the authorization of the Proceedings Authorization Committee to bring an interlocutory suspension or restriction motion.

#### Service and materials

- 12.4 (1) In an interlocutory suspension or restriction motion, the Law Society must serve and file its Notice of Motion, Information Sheet, motion record, factum and book of authorities at least three days before the hearing of the motion unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than 10 days prior to the hearing, or unless the Tribunal orders otherwise.
- (2) The Tribunal may order that service is not necessary if:
- (a) it is not practical; or
  - (b) the delay it could cause may lead to serious consequences.
- (3) The licensee must serve and file a motion record, factum and book of authorities, if any, not later than 2 p.m. on the day before the hearing of the motion, unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than three days prior to the hearing.

#### Interim interlocutory suspension or restriction

- 12.5 Unless ordered otherwise, an interim interlocutory suspension or restriction order remains in effect until the interlocutory suspension or restriction motion is determined.

#### Duration of interlocutory suspension or restriction

- 12.6 Unless ordered otherwise, an interlocutory suspension or restriction order remains in effect until a final order is made in the conduct proceeding to which the motion relates, or the Tribunal varies or cancels the order.

#### Grounds to vary or cancel

- 12.7 An interlocutory suspension or restriction order may be varied or cancelled on the basis of fresh evidence or a material change in circumstances.

### Motion to vary or cancel

- 12.8 A party starts a request to vary or cancel an interlocutory suspension or restriction order by serving and filing a Motion – Vary or Cancel Interlocutory Suspension or Restriction (Form 8 or 9) and information sheet (Form 21 or 22).

## RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

### Record of proceeding

- 13.1 [\(1\)](#) The record of proceeding consists of:

- (a) all materials filed with the Tribunal, unless the Tribunal refuses them for failure to comply with these rules, an order or direction;
- (b) all exhibits, including any marked “for identification”;
- (c) all other documents and correspondence from a party or other participant, reviewed by a panel, except for the purpose of a pre-hearing conference;
- (d) all notices of hearing;
- (e) all endorsements;
- (f) all orders made by the Tribunal;
- (g) all reasons issued by the Tribunal; and
- [\(h\)](#) all transcripts filed with the Tribunal.

[\(2\) Items listed out in Rule 13.1\(a\) to 13.1\(h\) that became part of the Record of Proceeding after \[date to be determined\] shall be maintained in electronic form unless the Tribunal determines otherwise.](#)

**Commented [A8]:** This change reflects the intention that the Tribunal will only maintain electronic files in the future. Physical documents provided at an in-person hearing for example, will be scanned and retained electronically only unless the nature of the document dictates otherwise.

### Open tribunal

- 13.2 (1) The contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Tribunal or a court orders otherwise.
- (2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

### Departing from openness

- 13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:

- (a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and
- (b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.

(2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

#### Capacity proceedings

13.4 In applying Rule 13.3 to a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:

- (a) that a central issue in capacity proceedings is the licensee's health;
- (b) the nature and impact on the public of any of the licensee's actions that led to the proceeding;
- (c) any stigma related to the nature of the licensee's health issues;
- (d) the possible impact of disclosure on the licensee's or others' health; and
- (e) any other relevant factor.

#### Children and sexual misconduct complainants

13.5 A not public order, non-disclosure order or publication ban shall be made to ensure that the identities of children and persons who allege sexual assault or misconduct are not made public, except where an adult who alleges sexual assault or misconduct requests otherwise.

#### Privilege

13.6 Unless the holder of the privilege has given consent, the Tribunal shall order that privileged or possibly privileged documents, and evidence about privileged or possibly privileged documents and communications be not public.

#### Effect of not public order

13.7 (1) When an appearance is not public, no one may attend except for the licensee or licence applicant, the parties' representatives, witnesses and anyone else permitted by the panel.

(2) When an appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(3) When a document is not public, it must not be provided to anyone other than the parties, their representatives, or a witness testifying about the document.

(4) No one may disclose what occurred during a not public appearance to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of the proceeding may disclose its contents to anyone other than the parties or their representatives.

#### Effect of non-disclosure order

13.8 (1) When there is a non-disclosure order, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(2) No one may disclose what occurred during an appearance subject to a non-disclosure order to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of attending the appearance may disclose its contents to anyone other than the parties or their representatives.

#### Effect of publication ban

13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.

(2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.

(3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

#### Effect of order

13.10 No order under this part prevents Tribunal staff or panelists from accessing materials in the Tribunal's file or attending an appearance.

## RULE 14: ORDERS AND REASONS

### Orders

- 14.1 Unless otherwise provided, an order or direction is effective from the date it is made, whether orally on the record, in an endorsement, in reasons or in a formal order, and whether or not an endorsement or formal order has been issued.

### Power to make orders

- 14.2 A single member of the Tribunal assigned to a summary hearing shall not make an order revoking a licensee's licence or permitting a licensee to surrender a licence.

### Addressing capacity issues in conduct applications

- 14.3 With the consent of the parties, a panel assigned to a conduct application under s. 34 of the Act may deal with matters that would otherwise have to be the subject of a capacity application under s. 38 of the Act, and may make any order referred to in s. 40 of the Act.

### Formal order

- 14.4 (1) Any party may prepare a draft of a formal order.
- (2) A formal order shall be in Form 34-38 as appropriate.
- (3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.
- (4) The draft order will be treated as a submission and the panel may amend the order.
- (5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.
- (6) Any member of a panel may sign the formal order or reasons.

### Reasons

- 14.5 A panel must give reasons for its final order in any capacity proceeding or appeal. For any other proceeding, the panel is required to give reasons only if a party, within 30 days of the order, has requested them.

### Correction of errors

- 14.6 The Registrar, the Registrar's designate or a panelist on the panel that made the endorsement, order or reasons may correct typographical errors, errors of calculation or similar minor errors.

## RULE 15: COSTS

### Power to award costs

- 15.1 (1) Costs may only be awarded against the Law Society,
- (a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or
  - (b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.
- (2) Costs may be awarded against the licensee or licence applicant,
- (a) where a determination adverse to the licensee or licence applicant was made; or
  - (b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.
- (3) Costs may be awarded against an intervenor or third party where the intervenor or third party caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

### Tariff

- 15.2 When a panel awards costs, it shall consider, but is not bound by, the tariff of fees for services (Appendix A).

### Security for costs

- 15.3 (1) Security for costs may be sought by the Law Society in: a licensing proceeding, if the applicant was previously a licensee of the Law Society in Ontario; a restoration proceeding; a reinstatement proceeding; or a terms dispute proceeding.
- (2) On the motion of the Law Society, an order may be made for security for costs as is just where it appears that,
- (a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;
  - (b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has

insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

- (c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

(3) Unless the Tribunal orders otherwise, the applicant against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

(4) Where the applicant defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

## RULE 16: REPRIMANDS

### Administration of reprimands

- 16.1 (1) A reprimand shall be administered either orally at a hearing open to the public or in writing.
- (2) A written reprimand is part of the record of the proceeding.
- (3) A reprimand may be administered by any panelist on the panel that ordered the reprimand.

### Appeals and reprimands

- 16.2 The administration of a reprimand does not affect the right to appeal the order or the arguments that can be raised on appeal.

## RULE 17: APPEALS

### Orders that may be appealed

- 17.1 (1) Sections 49.32 and 49.33 of the Act set out when an appeal of a final order may be started.
- (2) There is no appeal of an interim or interlocutory order of the Hearing Division, except of an order that finally disposes of an interlocutory suspension or restriction motion, which can be appealed by either party.

### Deadline for appeal

- 17.2 (1) To start an appeal, the appellant must file a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) within 30 days of the date of the final order in the

Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.

(2) The motion record for a motion to extend the time to appeal must include a draft notice of appeal.

(3) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that all transcripts of the proceeding under appeal not already filed in the Hearing Division, have been ordered.

(4) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

#### Perfecting the appeal

17.3 The appellant must perfect the appeal within 60 days of filing the notice of appeal or 60 days from the panel giving its reasons for the final order, whichever comes last. An appeal is perfected by serving and filing the appellant's appeal book, factum, book of authorities and any transcripts not filed in the Hearing Division proceeding.

#### Dismissal for delay and deemed **withdrawal**

17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.

(2) If the appeal has not been perfected ~~five-three~~ months from the ~~date the notice of appeal was filed~~~~deadline~~, the Registrar shall ~~advise-notify~~ the parties that the appeal will be deemed withdrawn if not perfected within ~~six months after the notice of appeal was filed by 30 days after the date of the Registrar's notice~~.

(3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal ~~within two weeks by 14 days after the date of of receiving~~ the Registrar's notice under Rule 17.4 (2).

(4) If the appeal has not been perfected within ~~six months of the date the notice of appeal was filed by 30 days after the date of the Registrar's notice under Rule 17.4(2)~~, the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

(5) The Tribunal may reinstate an appeal or cross-appeal that was deemed withdrawn.

**Commented [A9]:** This change updates 17.4 so that the actions taken to deem an appeal withdrawn are all based off of the deadline (either Rule 17.3 or as otherwise set by an adjudicator) and not tied to the date the appeal was filed.

The change is recommended based on recent experience with implementing the Rule.

#### Deadline for respondent's materials if no cross-appeal filed

- 17.5 If the respondent has not filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 14 days before the appeal hearing.

#### Deadline for respondent's materials if cross-appeal filed

- 17.6 If the respondent has filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 30 days after the appeal was perfected. The respondent must file a factum and appeal book that cover both the appeal and cross appeal.

#### Respondent to cross-appeal materials

- 17.7 If the respondent has filed a cross-appeal, the appellant must file a factum as respondent by cross-appeal and may file a supplementary appeal book and book of authorities no later than 14 days prior to the appeal hearing.

#### Compendia

- 17.8 No later than five days before the hearing of the appeal, each party must file a compendium containing the documents it intends to refer to in oral argument.

## RULE 18: FRESH EVIDENCE ON APPEAL

#### Motion to introduce fresh evidence

- 18.1 Except where the respondent consents, an appellant who wishes to introduce evidence at the hearing of the appeal that was not before the Hearing Division must, by notice of motion, make a motion to the Appeal Division to do so.

#### Proposed fresh evidence ~~in sealed envelope~~

- 18.2 The appellant who makes a fresh evidence motion must file, together with the motion record, sufficient an electronic copies copy of the evidence ~~as required by Rule 5.6, each copy in a separate sealed envelope, identified as proposed fresh evidence,~~ which shall not be public pending a decision on the motion.

#### Hearing of fresh evidence motion

- 18.3 A motion under this rule will be heard at the beginning of the appeal hearing.

#### Hearing of appeal in any event

- 18.4 The parties must be prepared to proceed with the hearing of the appeal on the date scheduled regardless of the disposition of a motion under this rule.

#### Where respondent consents

- 18.5 Where the respondent consents to the introduction of fresh evidence, the evidence may be included and referred to in the parties' materials, so long as the evidence is clearly identified as fresh evidence that was not before the Hearing Division.

#### Timing of Fresh Evidence Motion

- 18.6 A fresh evidence motion shall be served and filed at the same time as the appeal is perfected, unless the fresh evidence is discovered after that time.

## RULE 19: APPEAL MATERIALS

#### Appeal books

- 19.1 (1) The appellant's appeal book must contain, in consecutively numbered pages with numbered tabs:
- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
  - (b) a copy of the notice of appeal and any notice of cross-appeal, as amended;
  - (c) a copy of the order or orders appealed from;
  - (d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;
  - (e) a copy of the originating process that initiated the proceeding before the Hearing Division;
  - (f) a copy of any exhibits that are referred to in the appellant's factum;
  - (g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;
  - (h) a copy of any directions given at a proceeding management conference in the appeal;
  - (i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and
  - (j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.
- (2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs:

- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
- (b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and
- (c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.

(3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

#### Appeal facta

19.2 (1) In an appeal factum, references to the transcript of the proceeding before the Hearing Division must be by date, page number and line, while references to exhibits must be by tab and page number in the appropriate appeal book.

## RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

### Starting administrative suspension order appeal

20.1 (1) An appellant may start an administrative suspension order appeal by serving on the Law Society and filing with the Tribunal a Notice of Administrative Suspension Order Appeal (Form 16) and an information sheet (Form 25) no later than 30 days from the date the administrative suspension order was deemed to have been received by the appellant.

(2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

### Administrative suspension order appeals on consent

20.2 Where an administrative suspension order appeal is on consent, the appeal shall be heard in writing. The written consent of the parties and a draft order must be filed with the Tribunal at the time the notice of administrative suspension order appeal is filed or as soon after that as possible. No other material needs to be filed unless directed by the Tribunal.

### Filing of affidavits and hearing

20.3 (1) The Law Society must file an affidavit or affidavits that set out the factual basis for making the administrative suspension order no later than 30 days after the filing of the Notice of Administrative Suspension Order Appeal.

(2) The appellant must file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Administrative Suspension Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will take place orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

#### Pre-hearing conference

20.4 The Tribunal Office shall schedule a pre-hearing conference in every administrative suspension order appeal after filing of the affidavits.

## APPENDIX A – Tariff of Fees for Services

<b>Experience</b>	<b>Rate</b>
Lawyer (20 years and over)	Up to \$350 per hour
Lawyer (12 to 20 years)	Up to \$325 per hour
Lawyer (11 to 12 years)	Up to \$315 per hour
Lawyer (10 to 11 years)	Up to \$300 per hour
Lawyer (9 to 10 years)	Up to \$285 per hour
Lawyer (8 to 9 years)	Up to \$270 per hour
Lawyer (7 to 8 years)	Up to \$255 per hour
Lawyer (6 to 7 years)	Up to \$240 per hour
Lawyer (5 to 6 years)	Up to \$225 per hour
Lawyer (4 to 5 years)	Up to \$215 per hour
Lawyer (3 to 4 years)	Up to \$205 per hour
Lawyer (2 to 3 years)	Up to \$195 per hour
Lawyer (1 to 2 years)	Up to \$180 per hour
Lawyer (less than 1 year)	Up to \$165 per hour
Lawyer on staff with the Law Society of Ontario, other than Discipline Counsel	Up to \$190 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (10 years and more of paralegal experience)	Up to \$150 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (5 to 10 years of paralegal experience)	Up to \$120 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (1 to 5 years of paralegal experience)	Up to \$90 per hour
Student	Up to \$90 per hour

Experience	Rate
Law Clerk	Up to \$90 per hour
Forensic auditor on staff with the Law Society of Ontario	Up to \$190 per hour
Investigator or Complaints Resolution Officer on staff with the Law Society of Ontario	Up to \$90 per hour



# Law Society Tribunal Quarterly Statistics

For the period from October 1, 2020 to December 31, 2020

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## Introduction

Statistics are critical to understanding the work of the Law Society Tribunal. By recording, analyzing and sharing data, we can identify areas for improvement, inform the continual evolution of our processes and policies, assist Convocation in making policy decisions, and be transparent with the public about the work we do.

This report provides operational statistics during a period where the Tribunal continued to operate remotely during COVID-19.

In this quarter, the Tribunal saw an increase in hearings held due to the result of rescheduled hearings that were previously cancelled due to COVID-19.

## Volume

### Files Opened

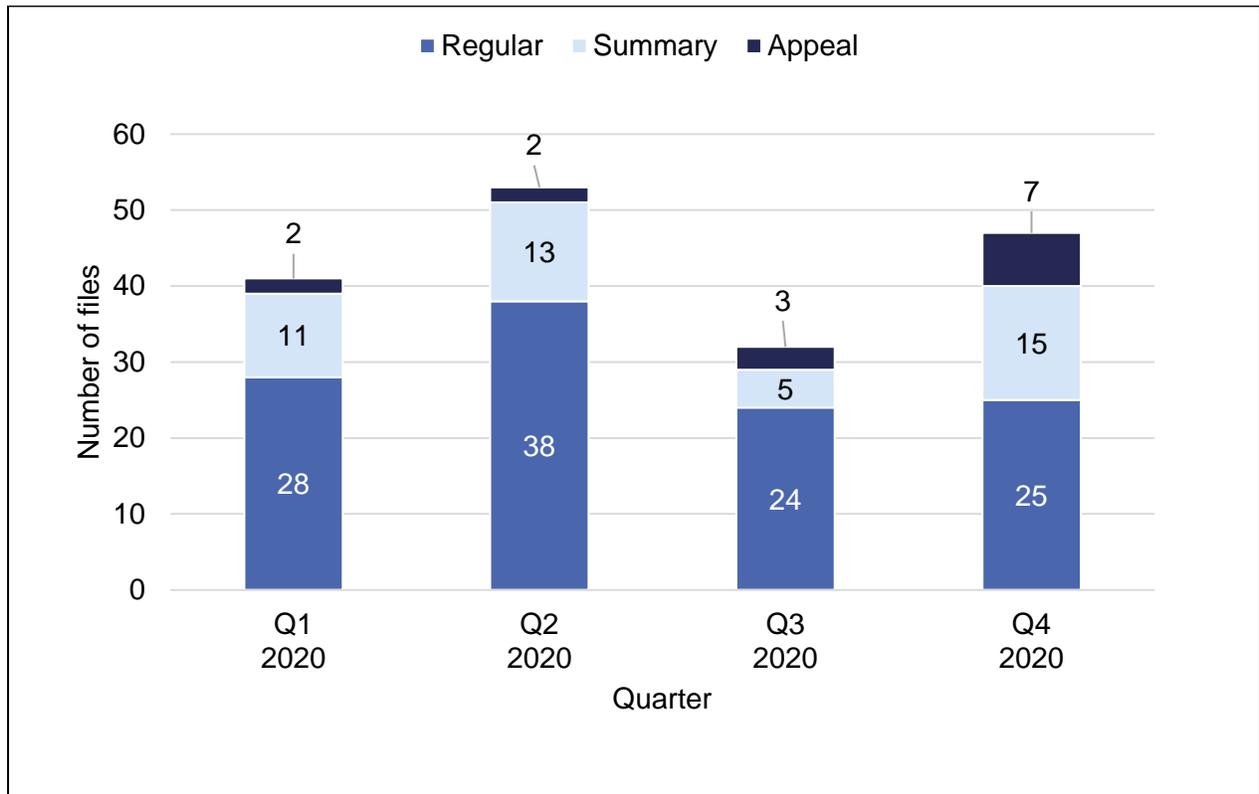
A Tribunal file is opened when an applicant files a notice of application, notice of referral for hearing, notice of motion for an interlocutory suspension or restriction or notice of appeal with the Tribunal.

**Figure 1: Types of files opened in this quarter**

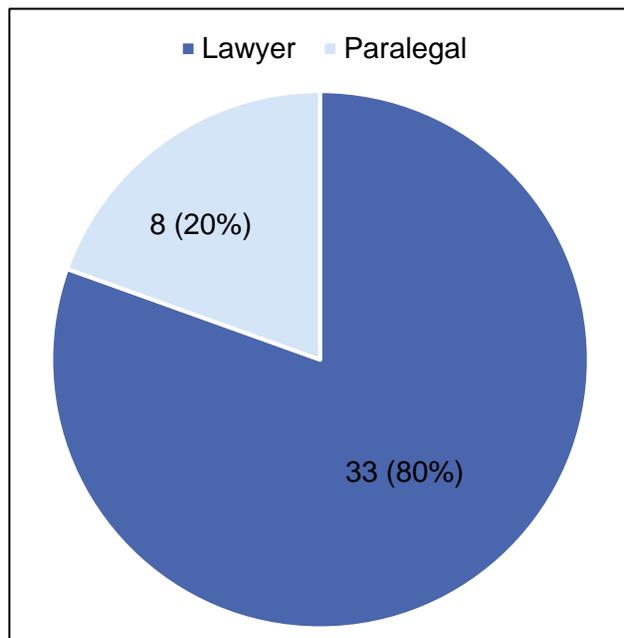
Type of file	Lawyer	Paralegal	Total
Regular	16	9	25
Summary	7	8	15
Appeal	5	2	7

Unlike non-summary files, summary hearings tend to be brief, and are always heard by a single adjudicator.

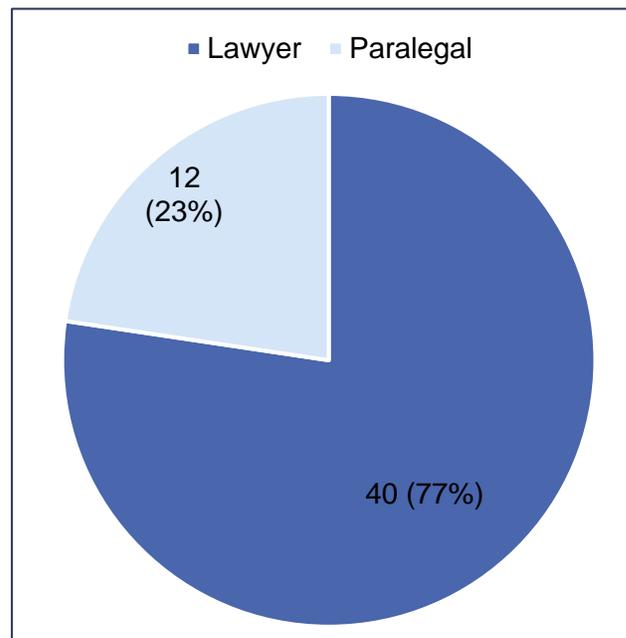
There has been an increase with the number of files opened compared to quarter three of 2020, when there were 32 files opened. There was also an increase in files opened compared to the third quarter of last year, representing a 38% increase in files that were opened in this quarter.

**Figure 2: Files opened in each quarter by file type**

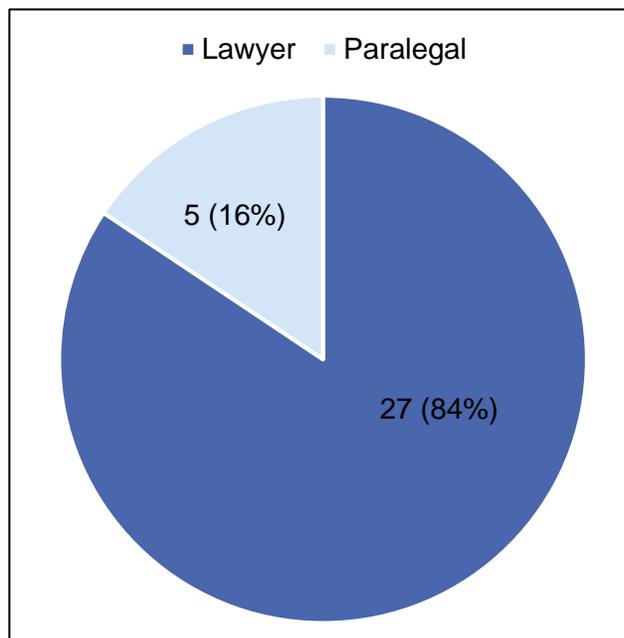
**Figure 3: Ratio of licence types for the 41 files opened in Q1 of 2020**



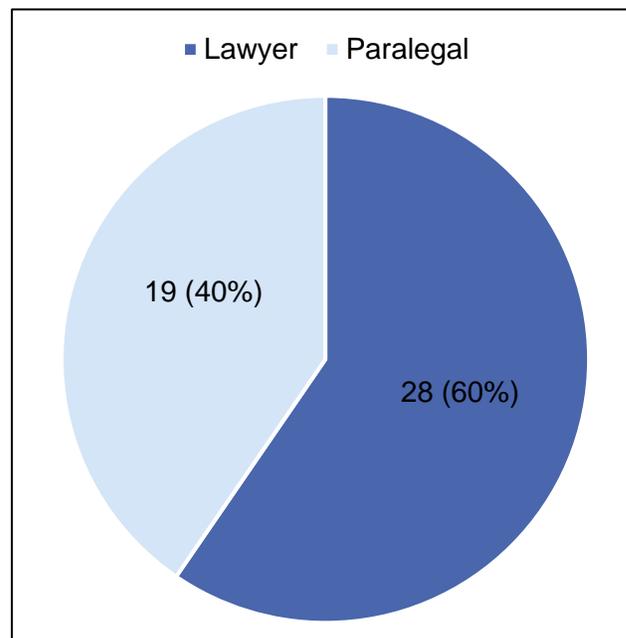
**Figure 4: Ratio of licence types for the 52 files opened in Q2 of 2020**



**Figure 5: Ratio of licence types for the 32 files opened in Q3 of 2020**



**Figure 6: Ratio of licence types for the 47 files opened in Q4 of 2020**



There has been an increase in the number of paralegal licence type related cases opened in the fourth quarter compared to previous quarters of this year.

## Files Closed

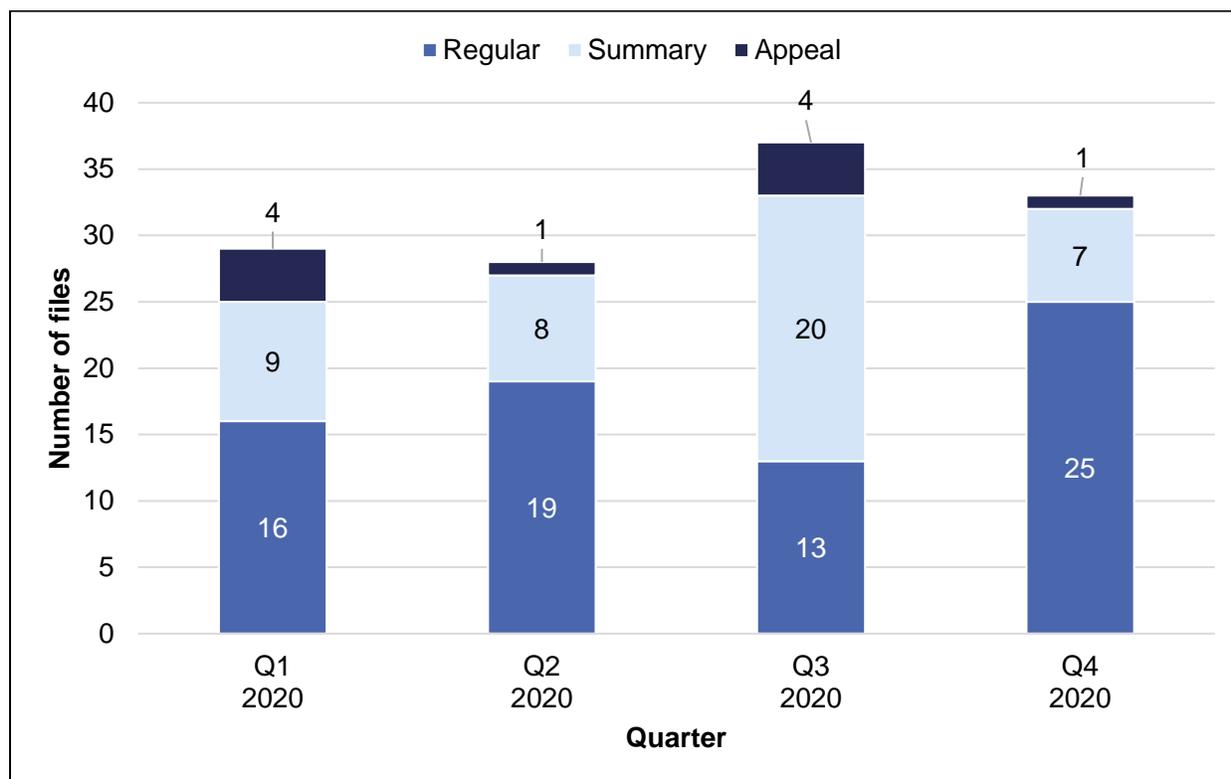
The Tribunal closes a file after the final order is issued, final reasons are published, or if the matter is withdrawn, abandoned or deemed abandoned.

**Figure 7: Types of files closed in this quarter**

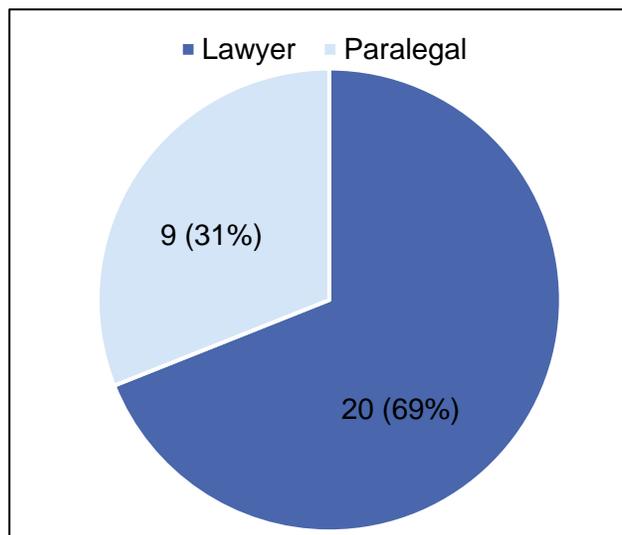
Type of file	Lawyer	Paralegal	Total
Regular	20	5	25
Summary	4	3	7
Appeal	1	0	1

There has been a slight decrease in the number of files closed in this quarter compared to last quarter, however, there was an increase of 18% when compared to the fourth quarter of 2019.

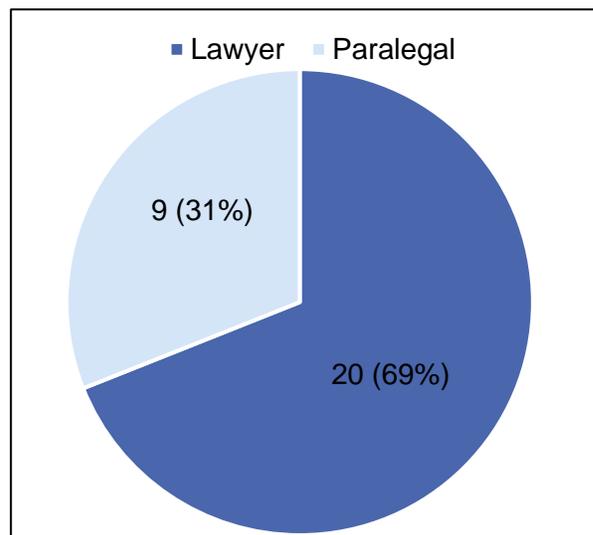
**Figure 8: Files closed in each quarter by file type**



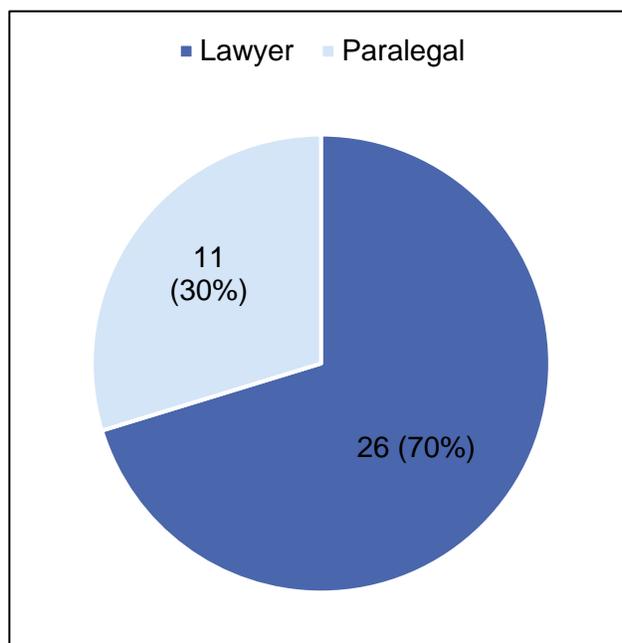
**Figure 9: Ratio of licence types for the 29 files closed in Q1 of 2020**



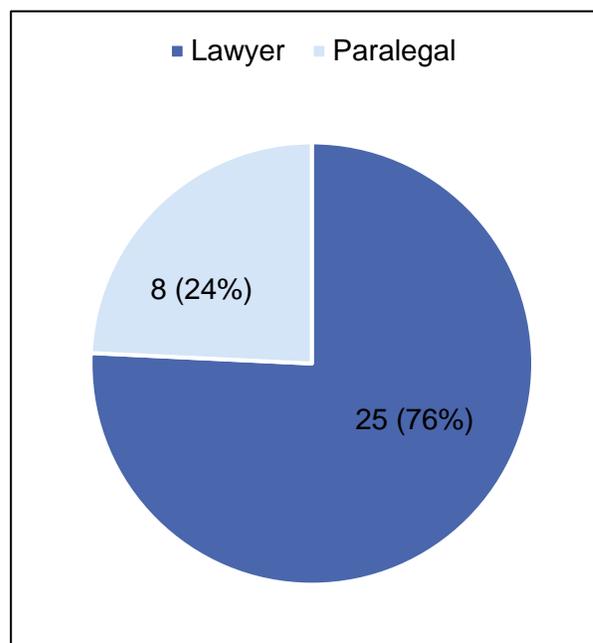
**Figure 10: Ratio of licence types for the 28 files closed in Q2 of 2020**



**Figure 11: Ratio of licence types for the 37 files closed in Q3 of 2020**



**Figure 12: Ratio of licence types for the 33 files closed in Q4 of 2020**



## Caseload

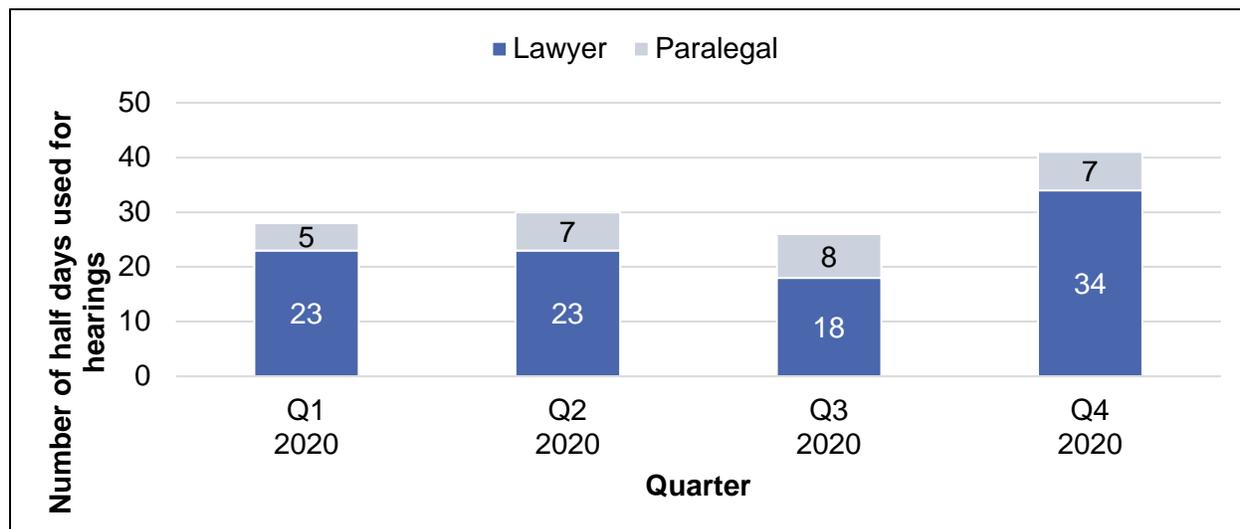
**219** files (173 lawyer and 46 paralegal files) were open at the end of the fourth quarter of 2020 compared to 205 at the end of the previous quarter and 173 at the end of the quarter of 2019.

## Hearings

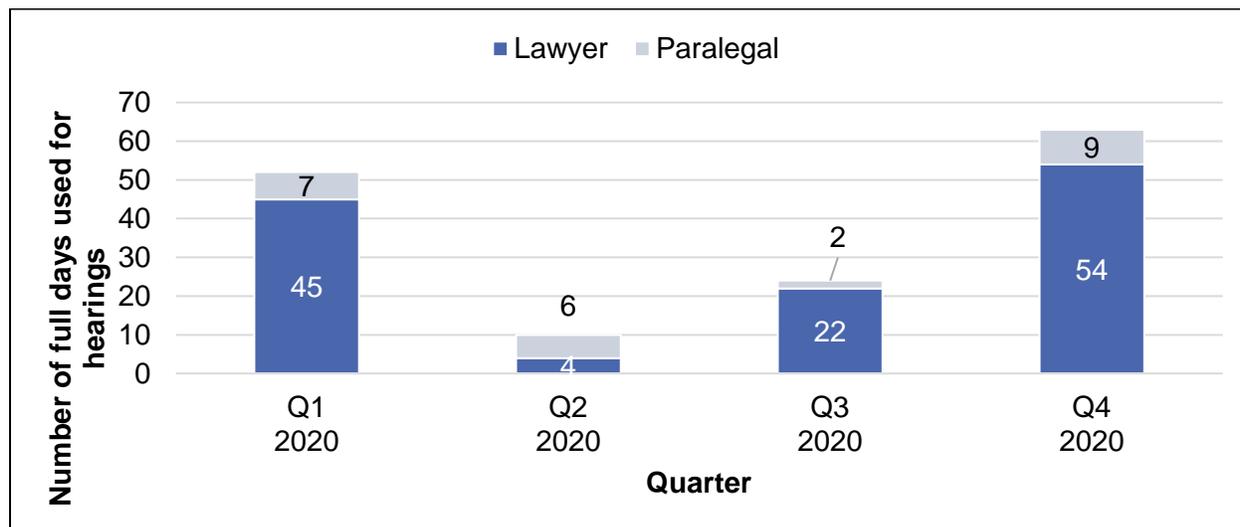
Oral hearing days (either in-person or electronic) that are more than three hours are considered a full hearing day and those that conclude within three hours are considered a half hearing day.

Written hearings are conducted by written submissions, with the panel making its decision based on the documents without an in-person or electronic hearing. There were 27 written hearings this quarter compared to 7 last quarter and 19 in the fourth quarter of 2019.

**Figure 13: Half days used for hearings in each quarter**



**Figure 14: Full days used for hearings in each quarter**



The increase in hearing days used can be attributed to the fact that most hearings were rescheduled in the third quarter and held during this quarter.

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*The average number of hearing days used per file closed in this quarter was 1.7 days.*

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## Timeliness

### Proceedings Milestones

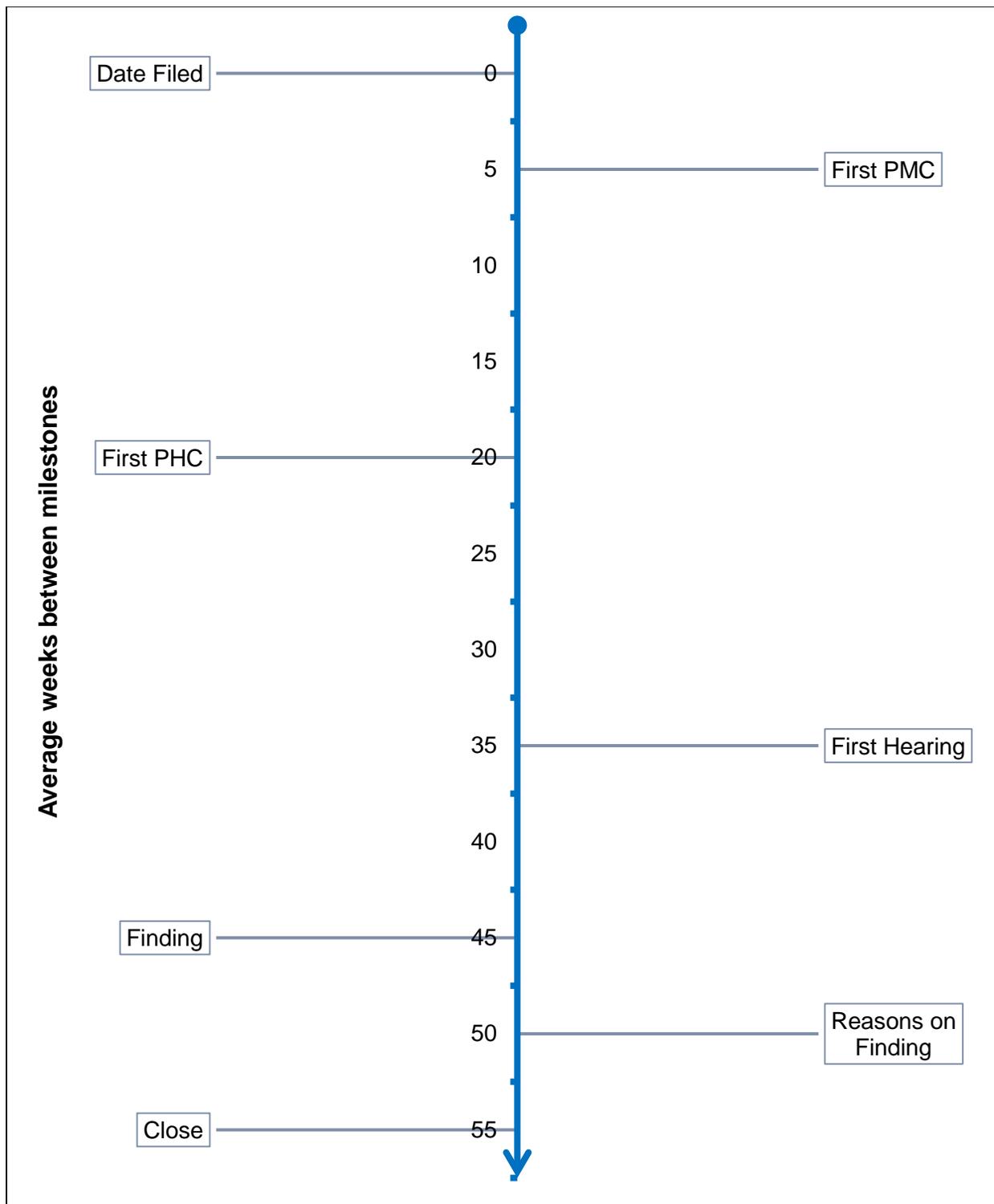
Tribunal proceedings pass most or all of the following milestones, though not always in the order listed below.

Averages are based on files that do pass the corresponding milestone.

**Figure 15: Average days to significant milestones for files closed in Q4**

<b>Milestone</b>	<b>Lawyer files</b>	<b>Paralegal files</b>	<b>All files</b>
First PMC	34	94	<b>49</b>
First PHC	184	82	<b>153</b>
First hearing	261	215	<b>249</b>
Decision on finding / determination	311	320	<b>313</b>
Reasons on finding / determination	327	346	<b>332</b>
Decision on penalty (conduct matters only)	228	336	<b>264</b>
Reasons on penalty (conduct matters only)	270	380	<b>307</b>
File closed	373	480	<b>399</b>

Figure 16: Approximate average weeks between milestones for files closed this quarter



The Law Society of Ontario requires approval from the Proceedings Authorization Committee (PAC) to commence certain proceedings at the Tribunal. Conduct, capacity, non-compliance and interlocutory suspension or restriction motions require PAC approval.

Of the 33 files closed in this quarter **25** files were authorized by PAC.

**Figure 17: Average days from authorization to significant milestones for PAC-authorized files closed this quarter**

<b>Milestone</b>	<b>Lawyer files</b>	<b>Paralegal files</b>	<b>Overall average</b>
Date filed	22	21	<b>22</b>
First PMC	56	59	<b>56</b>
First PHC	159	110	<b>150</b>
First hearing	242	180	<b>223</b>
Decision on finding / determination	288	285	<b>287</b>
Reasons on finding / determination	305	306	<b>305</b>
Last hearing / written submissions	302	287	<b>298</b>
Decision on penalty (conduct matters only)	183	268	<b>211</b>
Reasons on penalty (conduct matters only)	308	401	<b>341</b>
File closed	399	401	<b>399</b>

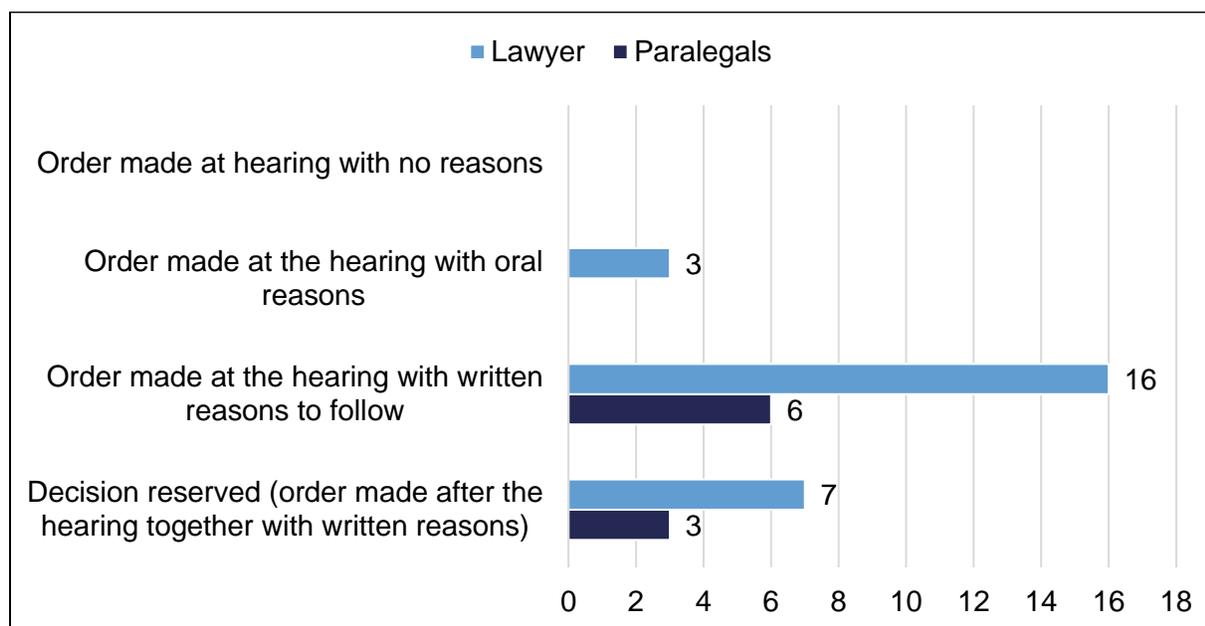
## Orders and Reasons

### Orders

There are many types of orders that the Tribunal may make during a proceeding. Merits orders decide an application on its merits (for example, whether an interlocutory suspension is granted or whether a licensee has engaged in misconduct and will be subject to penalty) and are often accompanied by reasons.

The panel may reserve its decision at the end of a hearing or may provide its decision at the hearing with oral reasons given on the record or with written reasons to follow.

Figure 18: Merits orders issued this quarter and their corresponding reasons



The Tribunal issued **64** orders this quarter, 35 of which were merits only or merits and costs orders while the remaining 29 were orders pertaining to a motion, public access or costs only. This is an increase from last quarter and in keeping with the number of overall orders issued in 2019 for the same period. However, there is a 30% increase in merits or disposition orders from the same period last year, which may be a result of the increased hearings held during this reporting period.

### Reasons

At the end of an oral hearing, or when the last submissions are received in a written hearing, the panel can begin the process of writing reasons. The Tribunal publishes written reasons on CanLII, usually within a week of their delivery to the parties.

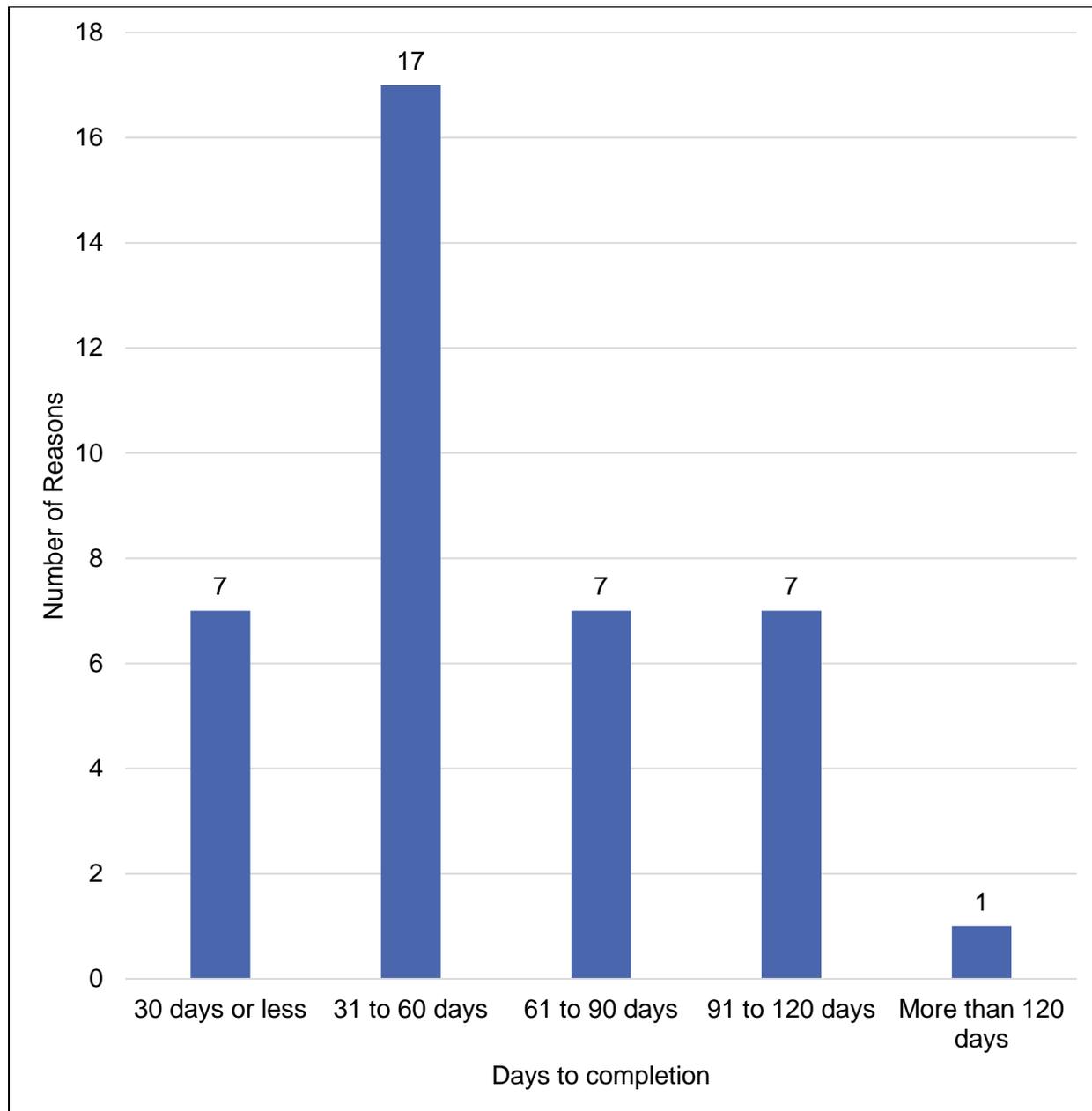
Sometimes the panel delivers oral reasons at the end of the hearing instead of written reasons. When oral reasons are given, the Tribunal also publishes a written version on CanLII.

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*The Tribunal published a total of **40** reasons this quarter, with 39 written reasons and 1 written version of oral reasons.*

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**Figure 19: Number of written reasons issued this quarter and time taken to release them**



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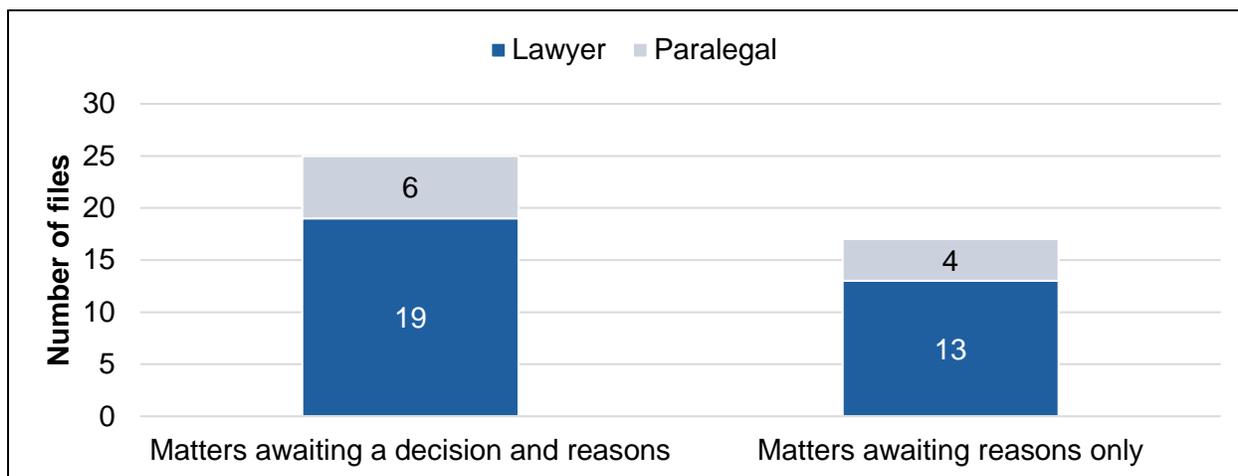
*The average number of days taken to deliver written reasons this quarter was 57 days compared with 61 in the last quarter.*

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Figure 20: Time taken to complete reasons in each quarter

Days taken to deliver reasons to the parties	Q1 2020	Q2 2020	Q3 2020	Q4 2020
Oral reasons at the hearing	6	5	3	1
30 days or less	7	8	10	7
31 to 60 days	10	11	13	17
61 to 90 days	6	7	7	7
91 to 120 days	5	4	3	7
More than 120 days	11	6	2	1
<b>Total</b>	<b>45</b>	<b>41</b>	<b>38</b>	<b>40</b>

Figure 21: Matters awaiting reasons and/or a decision at the end of this quarter




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*42 reasons were outstanding at the end of this quarter. Of those, 5 had been outstanding for more than 90 days.*

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## Outcomes

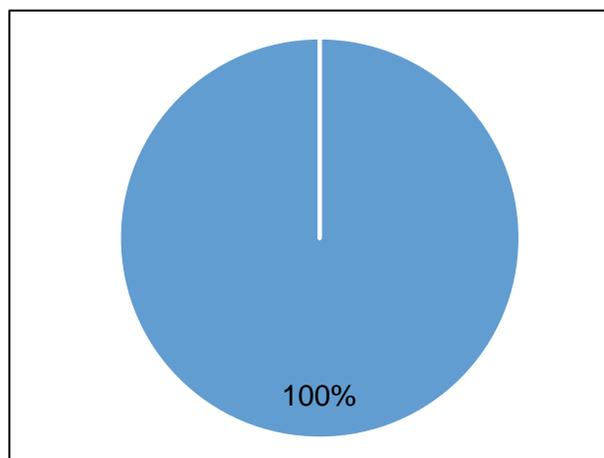
### Applications by the Law Society

Most matters that are heard by the Tribunal are initiated by the Law Society, with the Law Society as the applicant and a licensee as the respondent.

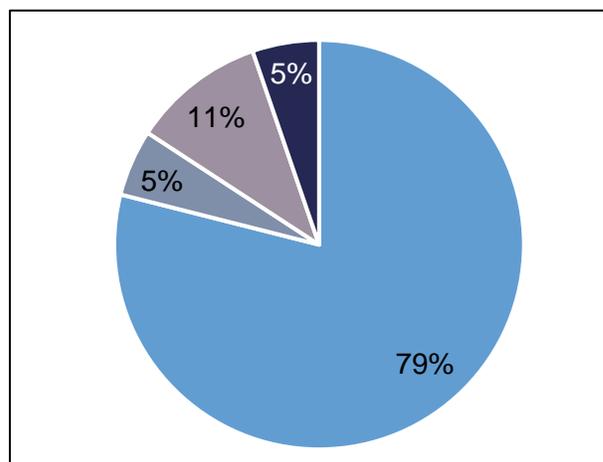
For Figures 22-25 below please refer to the following legend key.

■ Granted in full   
 ■ Granted in part   
 ■ Dismissed   
 ■ Abandoned / Withdrawn

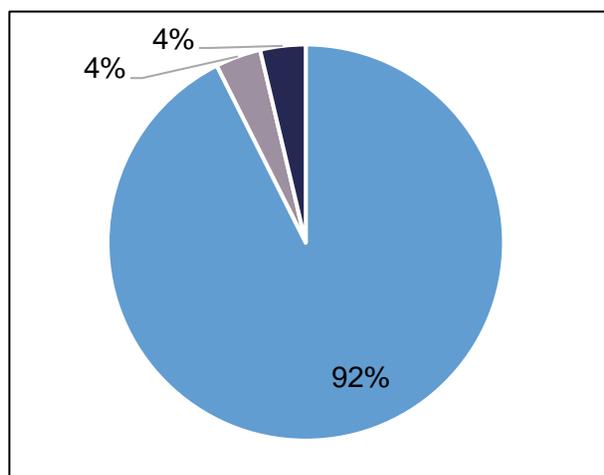
**Figure 22: Results of the 17 applications by the Law Society that were closed in Q1 of 2020**



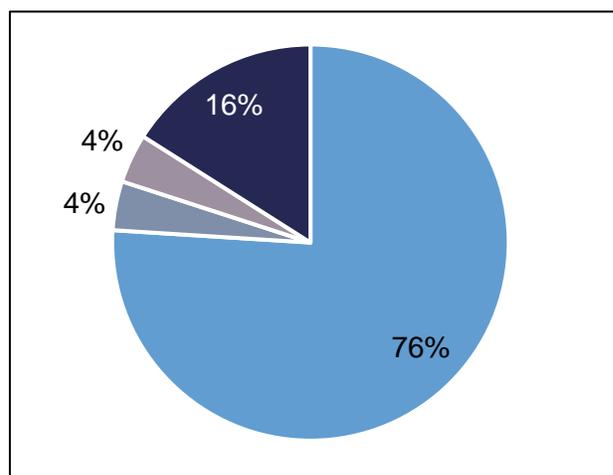
**Figure 23: Results of the 19 applications by the Law Society that were closed in Q2 of 2020**



**Figure 24: Results of the 27 applications by the Law Society that were closed in Q3 of 2020**



**Figure 25: Results of the 25 applications by the Law Society that were closed in Q4 of 2020**



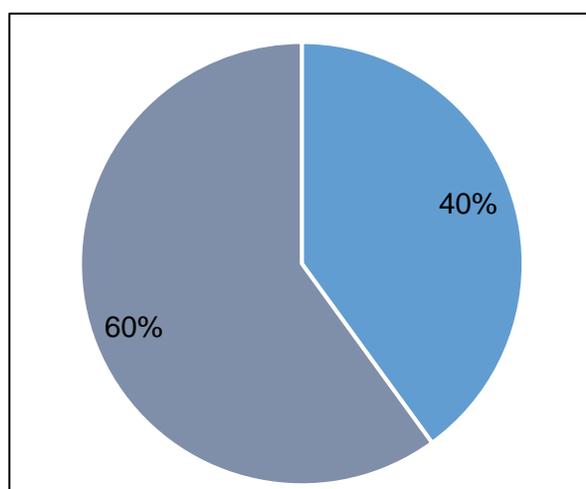
## Interlocutory Suspension or Restriction Motions

An interlocutory suspension or restriction is an interim measure that may be requested by the Law Society before a case is heard on its merits. Interlocutory suspensions may be ordered when significant risk to the public, or to the public interest in the administration of justice, has been demonstrated.

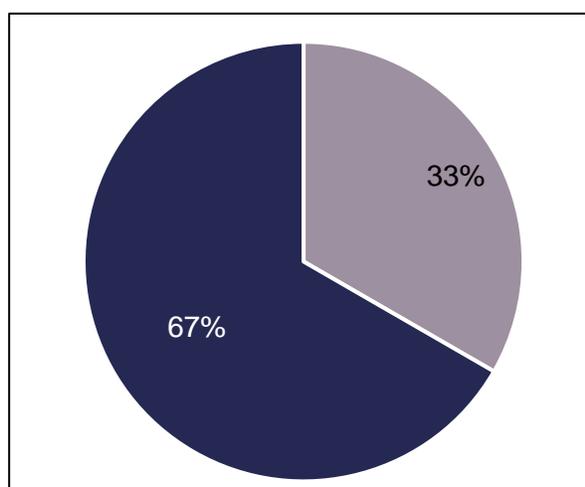
For Figures 26-28 below please refer to the following legend key.

■ Granted in full   
 ■ Granted in part   
 ■ Dismissed   
 ■ Abandoned / Withdrawn

**Figure 26: Results of the 5 motions for interlocutory suspension or restriction closed in Q1 of 2020**

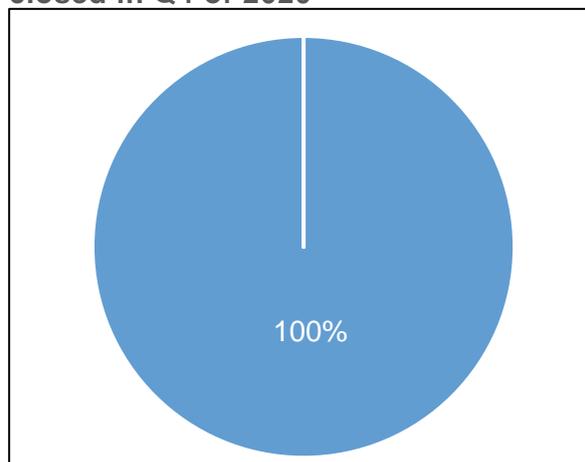


**Figure 27: Results of the 3 motions for interlocutory suspension or restriction closed in Q2 of 2020**



There were no motions for interlocutory suspension or restriction files closed in Q3 of 2020.

**Figure 28: Results of the 2 motions for interlocutory suspension or restriction closed in Q4 of 2020**



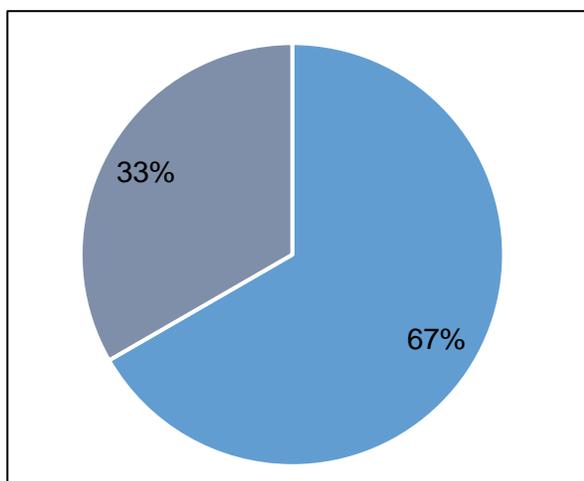
## Applications by the Licensee or Licence Applicant

Some matters that are heard by the Tribunal are initiated by the licensee or licence applicant with the Law Society as the respondent.

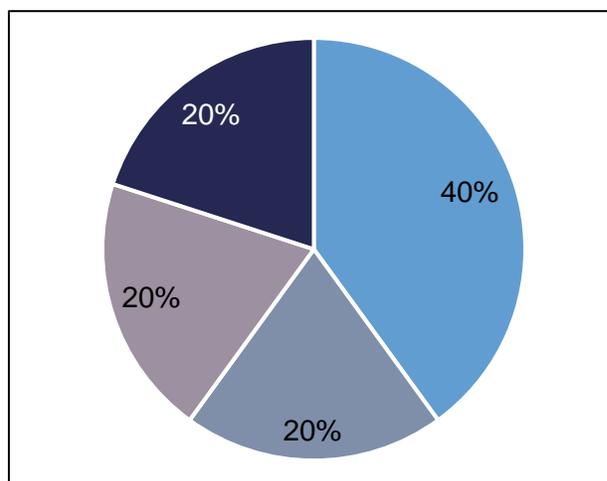
For Figures 29-32 below please refer to the following legend key.

■ Granted in full   
 ■ Granted in part   
 ■ Dismissed   
 ■ Abandoned / Withdrawn

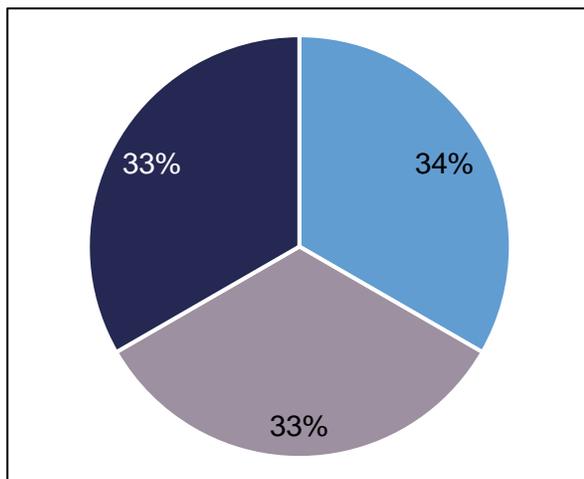
**Figure 29: Results of the 3 matters initiated by the licensee / licence applicant that were closed in Q1 of 2020**



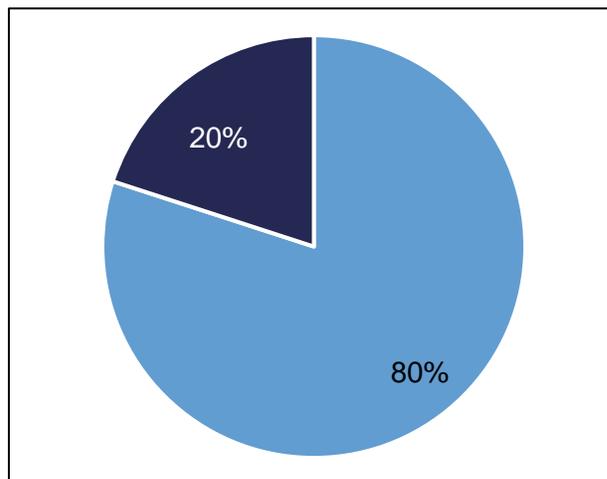
**Figure 30: Results of the 5 matters initiated by the licensee / licence applicant that were closed in Q2 of 2020**



**Figure 31: Results of the 6 matters initiated by the licensee / licence applicant that were closed in Q3 of 2020**



**Figure 32: Results of the 5 matters initiated by the licensee / licence applicant that were closed in Q4 of 2020**



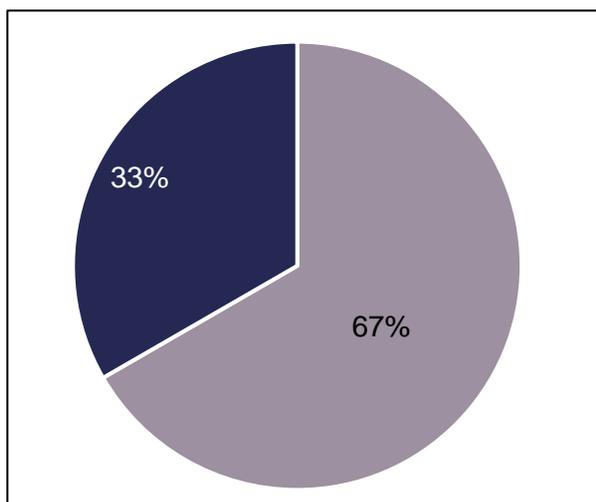
## Appeals

If an applicant or respondent believes that the Tribunal's Hearing Division has made an incorrect decision, they may appeal the decision to the Appeal Division.

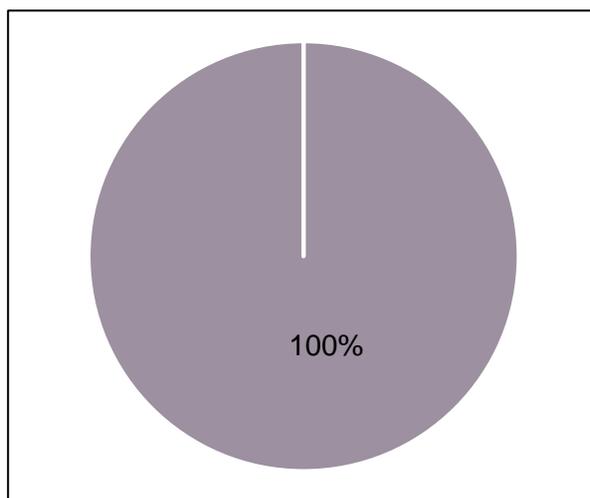
For Figures 33-36 below please refer to the following legend key.

■ Granted in full   
 ■ Granted in part   
 ■ Dismissed   
 ■ Abandoned / Withdrawn

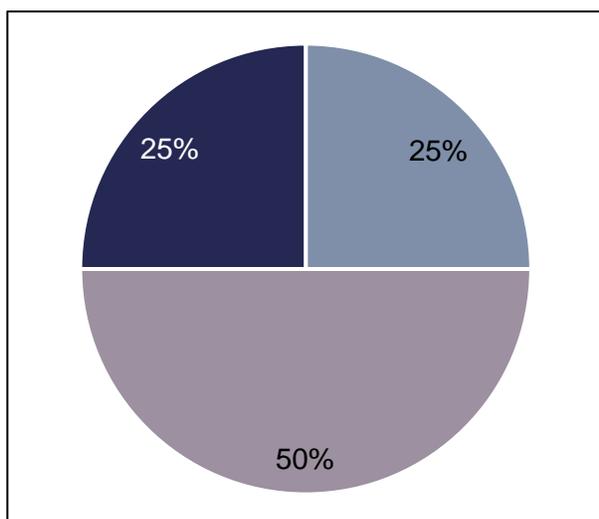
**Figure 33: Results of the 3 appeals by licensee / licence applicant that were closed in Q1 of 2020**



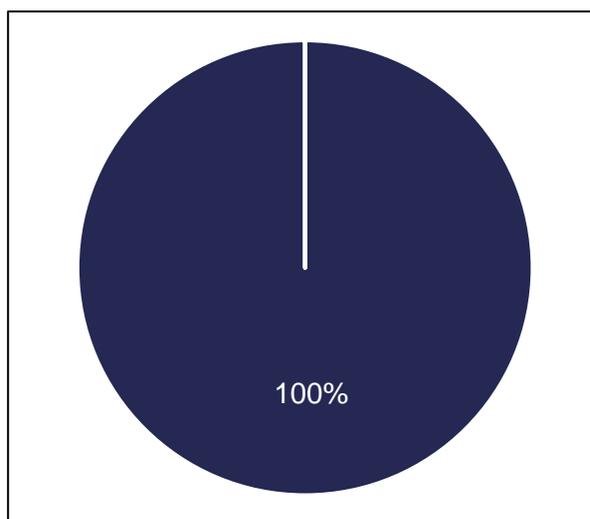
**Figure 34: Results of the 1 appeal by licensee / licence applicant that was closed in Q2 of 2020**



**Figure 35: Results of the 4 appeals by licensee / licence applicant that were closed in Q3 of 2020**



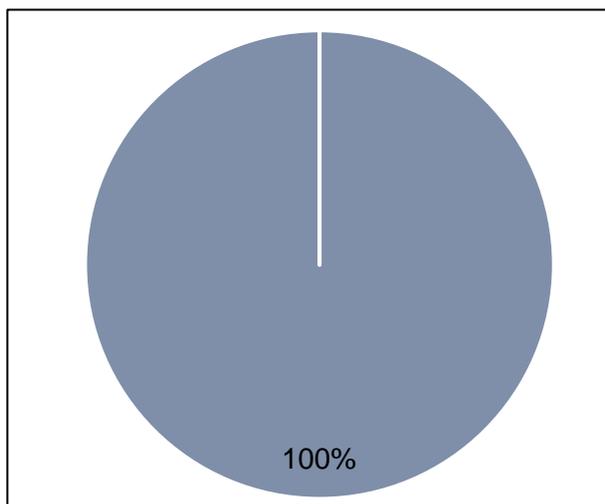
**Figure 36: Results of the 1 appeal by licensee / licence applicant that were closed in Q4 of 2020**



For Figure 37 below please refer to the following legend key.

■ Granted in full   ■ Granted in part   ■ Dismissed   ■ Abandoned / Withdrawn

**Figure 37: Results of the one appeal by the Law Society that was closed in Q1 2020**



**There were no appeals by the Law Society closed in Q2, Q3 and Q4 of 2020.**

20

LAWPRO®  
Lawyers' Professional Indemnity Company

# annual report



20

# About LAWPRO

LAWPRO provides primary errors and omissions insurance coverage for Ontario lawyers, Excess insurance for law firms and TitlePLUS title insurance across Canada.

# Our mission

to provide insurance products and services that enhance the viability and competitive position of the legal profession through the values of

- Professionalism
- Innovation
- Integrity
- Service
- Leadership

## LAWPRO survey results

The annual survey of LAWPRO E&O insureds with a closed claim indicated the following:

97%

said that they were satisfied with how LAWPRO handled the claim

87%

said they would have the defence counsel firm represent them again

87%

said they were satisfied with our process of selecting defence counsel

88%

said LAWPRO received good value for defence monies spent

## In 2020 LAWPRO provided:

LIABILITY INSURANCE:

almost  
29,000

members of the Law Society of Ontario

EXCESS INSURANCE:

1,558

law firms

TITLEPLUS:

over  
20,000

title insurance policies



## Remarks of the Chair

**2020 was a year like no other in living memory, but the business of law managed to continue, even if the way we accomplished it felt completely unfamiliar.**

Likewise, LAWPRO continued to operate, even though the pandemic impacted us in many ways including closed courts and a real estate market that sprung back to life quickly after a short-lived lull in the spring. As expected, we saw a decline in the number of claims and transaction levies. However, some of what we saw was unexpected such as an increase in the number of lawyers we insure by 2% from the previous year.

Gross written premiums were slightly lower in 2020: \$113.9 million, compared to the \$114.7 million seen in 2019. Net claims expenses of \$100.9 million were above last year's total of \$99.4 million. Even as LAWPRO transitioned to work from home and adapted to new processes, we were able to cut general expenses to 10% under budget and 3% below 2019. LAWPRO had sufficient capital available to cover requirements as demonstrated by the Minimum Capital Test (MCT) of 229% at year end, within our preferred range of 210% to 240%.

As the financial statements in the following pages demonstrate, LAWPRO continues to fulfill the mandate given by Convocation more than two decades ago. To do so we navigate a careful balancing act: keeping revenues (i.e., premiums, levies, and investment returns) high enough to be commercially viable and satisfy regulators that the company is financially healthy, while handling claims and carefully controlling premiums to maintain affordability and properly reflect the cost of risk. In doing so, we effectively operate as a not-for-profit entity, while being regulated as a for profit insurance company.

Even with the changes and challenges brought on by the COVID-19 pandemic, we remain financially healthy as we plan for scenarios similar to what we are now experiencing as part of our corporate governance processes and risk management strategies put in place by our Board. As a measure of our success, I am pleased, that for the 20<sup>th</sup> consecutive year, insurance rating agency AM Best Co. issued LAWPRO an "A" rating for financial strength and "a" issuer credit rating in November of 2020. This independent rating is provided to companies that have an "excellent" ability to meet ongoing insurance obligations and reflects our long-term financial stability.

LAWPRO is steady and secure and we remain ready to pay claims and help our insureds, even in and after the exceptional circumstances we experienced in 2020.

LAWPRO emerged as a separate, commercially run, regulated insurance company out of the legal professional liability insurance crisis that occurred in the late 1980's and early 1990's. At that time, the liability indemnity program was run in-house in the Law Society and the lawyers of Ontario were faced with a \$200 million dollar liability shortfall.

In response to this crisis, the Law Society set up the Lawyers' Professional Indemnity Company (now LAWPRO) as a fully regulated insurance company in order to prevent similar circumstances from happening again.

LAWPRO has been remarkably successful in achieving the mandate the Law Society gave it in 1994. It is a success the Benchers who made the decision to set up LAWPRO in the early 1990's can justifiably be proud of. Today, because of their foresight, and the prudent and skilled management of LAWPRO's executive leadership and the thoughtful and accomplished oversight of its largely independent Board of Directors, LAWPRO offers many advantages to the bar including:

- Guaranteed availability of affordable insurance to all lawyer licensees;
- Consistent coverage, terms, and conditions for all;
- Claims prevention efforts and resources;
- Automatic, free Run-off coverage; and
- Company stability.

LAWPRO will continue to serve and support Ontario lawyers in 2021 and beyond as together we tackle the challenges of the COVID-19 pandemic. Good claims service and financial stability not only protects Ontario lawyers, but also indirectly, the public.

*Andrew J. Spurgeon*

Andrew J. Spurgeon  
Chair



## Remarks of the President & CEO

**My remarks for last year's annual report were written in late March, just a few weeks after the pandemic started. The "incredible events and changes" of those first few weeks (as I then described them) did little to foreshadow the countless ways the COVID-19 pandemic upended our personal and professional lives through the rest of 2020.**

Needless to say, the pandemic led to major transformations at LAWPRO. While many activities slowed or stopped in 2020, they did not do so in the world of malpractice claims. We saw some significant impacts on the claims portfolio, some of which we expect will carry into future years in ways we are still trying to understand. For the first time in a long time, LAWPRO saw the number of new claims decrease with 2,768 reported claims, down 11.3% from the 3,121 reported in 2019. Along with the courts being closed we attribute this decrease to less economic activity and work for law firms. But, despite seeing fewer reported claims, total claims costs only decreased by 2.7% (from \$76.7m to \$74.6m). Interestingly, 2021 Q1 claims reports appear higher than last year. Perhaps we are seeing some catch-up. Only time will tell.

At December 31, we had 46 claims that were directly attributed to COVID-19 related circumstances. While some of these claims saw clients seeking recompense for economic losses they suffered (something we typically see in economic downturns), the majority of pandemic related claims now being reported involve limitation periods and procrastination. Many of these claims are from confusion about the emergency suspension of limitations during the pandemic. We also saw more claims involving the inadequate investigation or discovery of the client's circumstances and more clerical errors. These claims are likely a symptom of virtual client meetings and remote work.

While only one or two of our pandemic related claims have an obvious mental health or wellness aspect to them, we know that many lawyers and firm staff are struggling with the stresses and isolation of remote work. LAWPRO continues to provide major financial support to the Members Assistance Program and I am very proud of the mental health and wellness focused issue of *LAWPRO Magazine* that we published in early 2020. In the coming months and beyond, we all need to continue to focus on supporting the mental health and wellness of lawyers, law firm staff and their family members.

I am proud to report that LAWPRO continued its commitment to the profession, our communities, employee wellness, and the environment in 2020 – despite impacts of the pandemic. On top of the multiple resources and updates related to the COVID-19 pandemic that we provided to lawyers, LAWPRO became an accredited CPD

provider in Ontario and we provided multiple free Continuing Professional Development programs on risks associated with COVID-19, cultural competency, real estate fraud, cybersecurity, and common claims, to name a few.

As we emerge from this pandemic, I expect that many of the changes forced upon us will stay in one form or another, including work from home and the broader use of technology. There is a lesson to be learned here: the legal profession can change and be resilient. Lawyers continued to serve their clients through a once in lifetime upheaval. Necessity was the catalyst for significant change, much of which had been resisted in the past. As we leave the pandemic behind, many of these changes are harbingers of the future of legal services. LAWPRO is working to fully understand how these changes are affecting our insureds and their claims exposures.

The bottom line, after a year of ups and downs and many unexpected challenges, the plans and preparations LAWPRO made for adverse financial scenarios worked as intended. Although the common shares held in our investment portfolio were down \$50 million at the end of March, we recovered slightly more than half of that by year end. As well, the majority of our investments are held in relatively stable fixed income products that increased in value over the year. LAWPRO remains financially healthy and continues to meet all regulatory requirements. I thank everyone on the LAWPRO team for stepping up and responding to everything we faced in 2020. I also acknowledge the extra engagement and support that LAWPRO's Board of Directors provided as we navigated the financial and operational changes the company faced.

As we patiently wait for everyone to get vaccinated, we will continue to provide the same level of service we always have. LAWPRO will support lawyers and protect the public through the remainder of the pandemic as we prepare to operate in a post pandemic world.

*Daniel E. Pinnington*

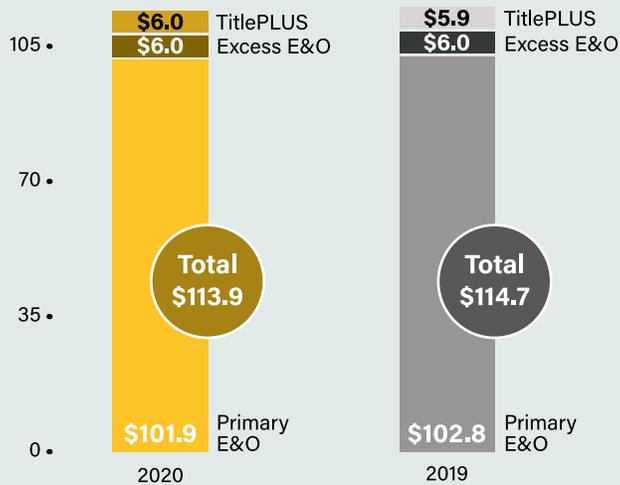
Daniel E. Pinnington  
President & CEO

# 2020 Highlights

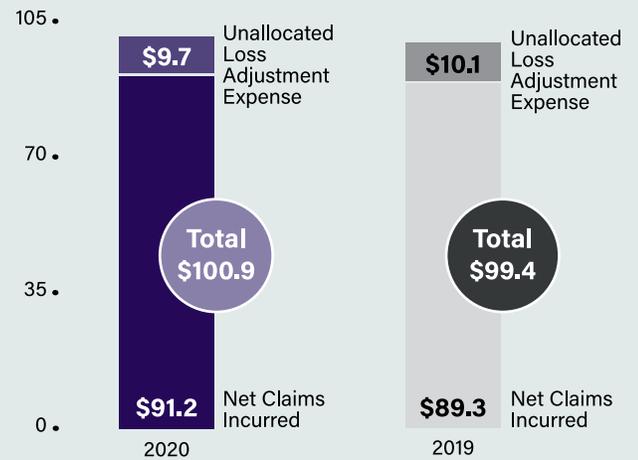
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All numbers stated in millions of Canadian Dollars.

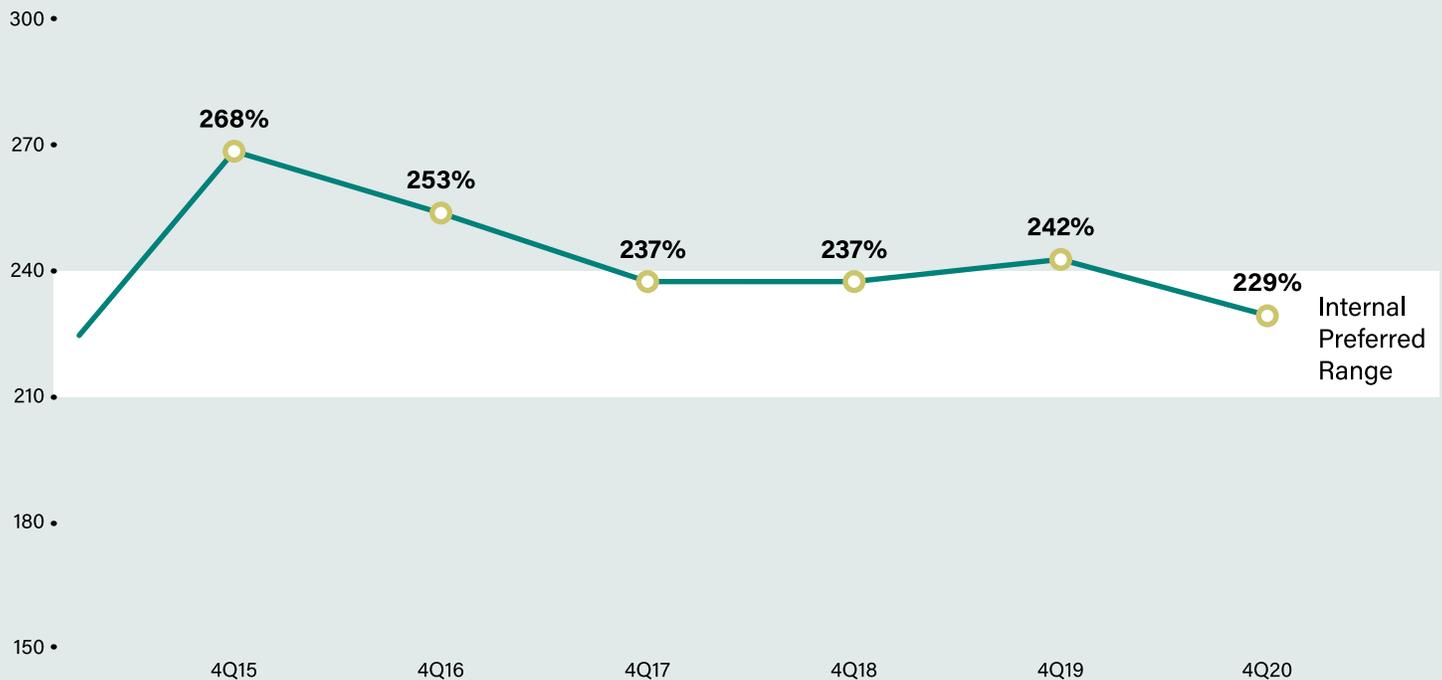
## Gross Written Premium



## Net Claims Incurred



## Minimum Capital Test



The Minimum Capital Test is designed to ensure that an insurance company's assets are sufficient to meet its present and future obligations. The MCT ratio is impacted by insurance risk, market risk, credit risk, and operational risk.

The MCT ratio at December 31, 2020 of 229% is within the Company's preferred operating range of 210% to 240%.

# 2020 Highlights

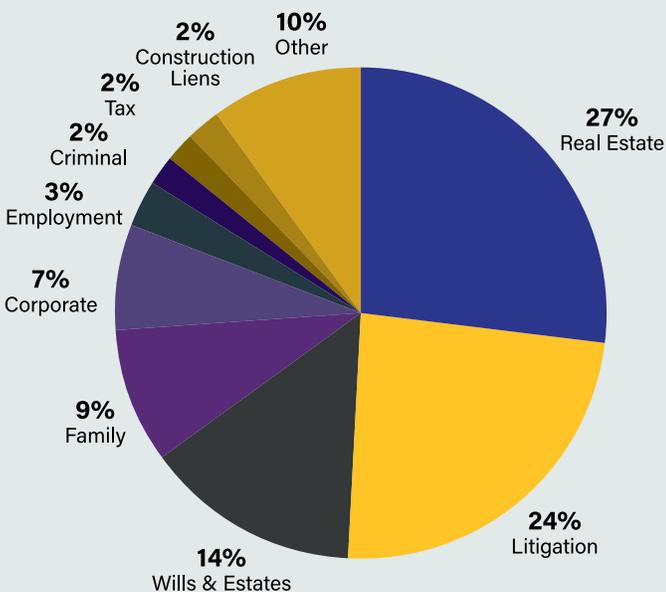
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## Claims per 1,000 Lawyers



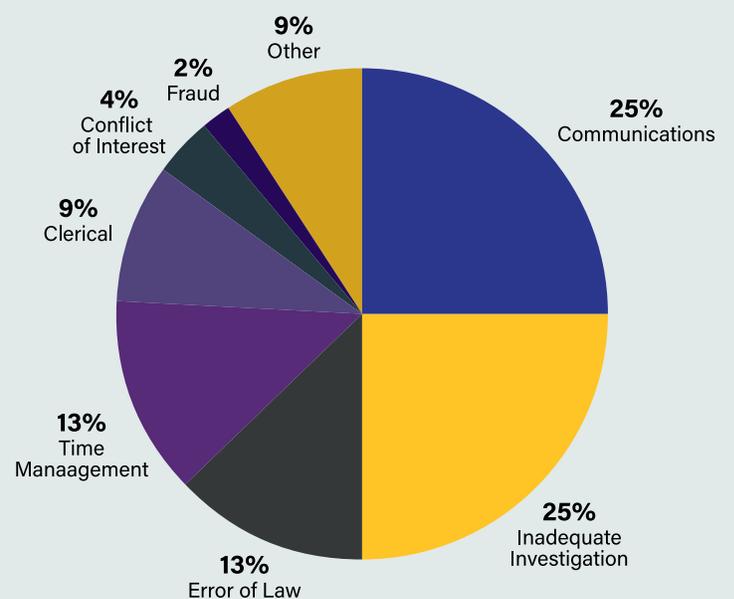
## Claims Count by Area of Law

(Fund Year 2020\*)



## Claims Count by Description of Law

(Fund Year 2020\*)



# Primary E&O Program Claims



**Insurance can be a source of stability and calm in a storm and a foundation from which to rebuild after a storm has passed.**

2020 was an alarming year in an unpredictable world. It often seemed to be a year on pause.

But the legal profession did not stop. The number of insured lawyers in Ontario continued to grow at a steady pace. In 2020, the number of full premium equivalent (FPE) lawyers insured under the LAWPRO primary E&O program increased by over 2% to just over 28,600 FPE lawyers, up from about 27,900 in 2019.

These lawyers found innovative ways to work and advocate for their clients during a global pandemic and LAWPRO continued alongside them to provide the stability and security they expect.

## Fewer claims, but likely not for long

For the first time in recent years, the number of new claims decreased slightly in 2020. Widespread and long-lasting health and safety restrictions led to reduced economic activity and, for many, a reduction in legal activity. Less legal work meant fewer claims.

In 2020, LAWPRO dealt with 2,768 reported claims, a decrease of 11.3% from the 3,121 reported in 2019. Claims frequency was down slightly to 93 claims per thousand lawyers, as compared to 106 claims per thousand lawyers last year.

Litigation-related claims showed a particularly substantial decline, largely due to the temporary court closures and delays associated with implementing virtual court access.

However, with the increase in technological availability and competency, along with the gradual re-opening of Ontario's economy and in-person legal proceedings, LAWPRO expects this temporary decrease in claims to reverse. LAWPRO anticipates deferred activity and claims from 2020 to show up in subsequent years.

Despite seeing approximately 11.3% fewer claims in 2020, total claims costs only decreased by 2.7% (from \$76.7m to \$74.6m). Coupled with a reduction in premiums and levies in 2020, this led to financial impacts discussed further below.

## The types of claims we saw, and didn't see

As in past years, the largest percentage of reported claims were related to real estate (27%) and litigation (24%). However, the number of real estate-related claims decreased to 609 in 2020, from 648 the previous year. Litigation-related claims had an even larger decrease to 549 in 2020, from 822 the previous year.

This reduction in litigation and real estate-related claims (two areas particularly affected by closures due to the pandemic) account for most of the decline in new claims for 2020. Claims in the family and criminal areas were also down, while labour/employment and wills/estates claims were up.

## Meeting challenges, closing claims

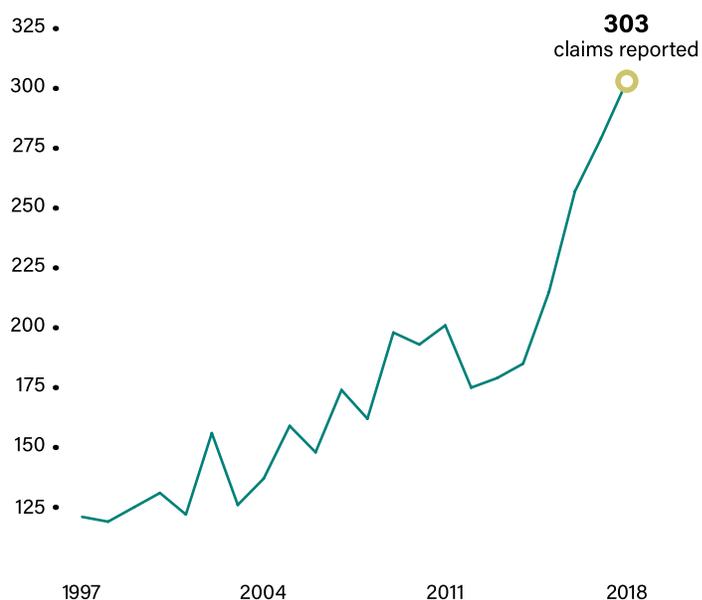
Like others, LAWPRO's operations were disrupted by the pandemic. But LAWPRO's staff and counsel quickly rose to these challenges. Despite the restrictions imposed throughout much of the year by stay-at-home orders and other health and safety requirements, LAWPRO closed 3% more files in 2020 than in 2019. Of these files, 88% of claims were closed without any indemnity payment, an increase from 86% in 2019.

LAWPRO's claims management philosophy is to resolve claims quickly in situations where there is liability, defend vigorously if the claim has no merit, and avoid economic settlements.

In 2020, LAWPRO won two of four matters brought to trial and in which a decision was rendered, succeeded in the one appeal we argued, and won 7 of 13 summary judgment motions at first instance.

**FIGURE 1**  
**Number of claims reported with a value greater than \$100,000\***

\*As at December 31, 2020



## Causes of loss

The investigation of claims can take up to a year or more after an initial report. For this reason, LAWPRO is cautious when interpreting short term fluctuations in the cause-of-loss data. This is particularly important for a year as anomalous as 2020.

In 2020, inadequate investigation and communications errors tied – at 609 each – for the cause of the highest number of claims followed by time management and errors of law.

There were 609 communication-related claims in 2020, a decrease from 724 the previous year. Similarly, there were 309 time management-related claims in 2020 compared with 494 the previous year. The reduction in time management-related claims was a direct result of the closing of the courts and follows the long-term trends we have observed since 2011, when 570 time management-related errors were reported. The previous highs and subsequent reduction in time management errors were caused by the introduction of Rule 48, which led to a temporary increase in administrative dismissals and a corresponding temporary increase in time management claims.

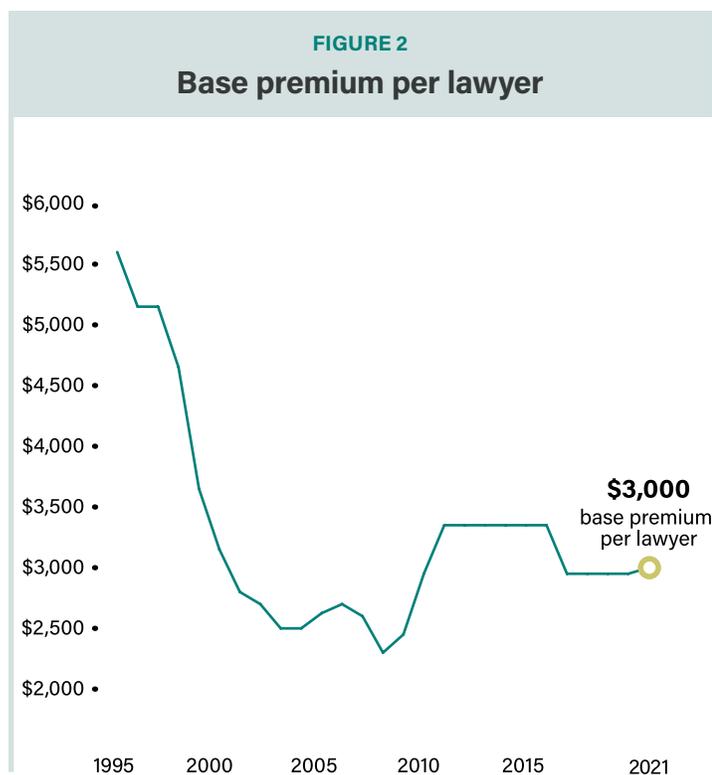
# Coverage and Insurance Options

## Putting insureds first

In 2020, LAWPRO maintained a base premium of \$2,950. Because of extraordinary circumstances, LAWPRO offered premium deferrals for part of the year.

Cost-cutting measures, including a wage and hiring freeze and a reduction in operational expenses, were implemented in order to prudently respond to budgetary pressures.

One of the hallmarks of the LAWPRO E&O insurance program is its flexibility. Lawyers have a number of options to tailor their insurance coverage to their specific needs – often with the added benefit of reducing the actual premium payable below the base premium level. The number of lawyers availing themselves of these options continues to increase, as indicated in Figure 3.



## Policy changes

To reflect changing events and the evolving understanding of claims and lawyer practices, the primary policy is updated annually. For 2020, changes included a refinement of the definitions under the policy for “spouse,” “dishonest conduct,” and the “circumstances” in which notice of a claim or potential claim must be provided.

Starting in the 2021 policy year, Innocent Party coverage will be included in the base coverage and required for all insureds. Accordingly, the base premium for 2021 is \$3,000. The inclusion of Innocent Party coverage will reduce the total premiums paid by more than 70% of Ontario lawyers by \$75. Roughly 30% of Ontario lawyers will see their annual premium increase by \$25 or \$50 because of this change.

## Notable reduction in levies collected

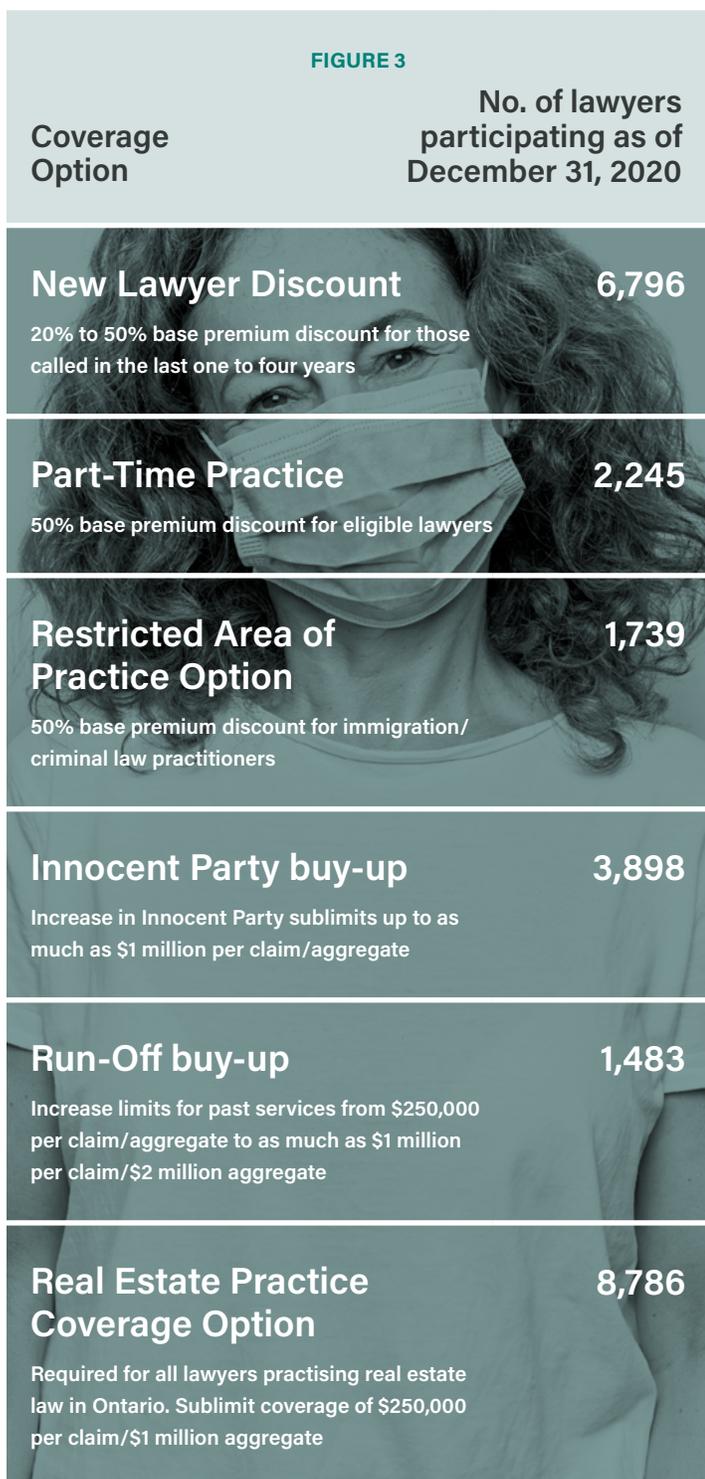
In addition to the modest reduction in premiums collected in 2020, there was a more notable reduction in transaction levies, which are particularly vulnerable to market forces. These levies reflect the higher risk of claims associated with real estate and civil litigation and impose per-transaction surcharges in those areas. The reduction in activity within these areas led to a substantial reduction in collected levies and a budgetary shortfall for LAWPRO.

Real estate and litigation continue to be the costliest areas of law with respect to claims. The use of levies to impose a fair distribution of claims costs among the profession helps LAWPRO to use risk-rating levers to benefit the program and insureds.

## Coverage for new lawyers and those retiring

For new or retiring lawyers, LAWPRO offers reduced premiums to address their reduced risk profiles. New lawyers see fewer claims than those with more experience, which may be partly due to new calls often having less responsibility over various files than their senior colleagues. LAWPRO responds to the reduced risk inherent in new calls by providing premium discounts to new lawyers with

FIGURE 3



less than four years of practice. This discount ranges from 50% of base premium (for lawyers with less than one full year in practice) to 20% of base premium (for lawyers with between three and four years in practice).

For lawyers that are retiring or leaving private practice and provide notice of such, LAWPRO offers Run-Off coverage of \$250,000 per claim and in the aggregate, at no charge. Additional coverage options are available for lawyers who need more protection beyond that amount.

## Excess Insurance

Since it was established in 1997, LAWPRO's optional Excess insurance program has posted consistent annual growth in revenues and numbers of law firms (and lawyers) insured under the program. An impressive 1,557 firms received their excess insurance from LAWPRO as at the end of 2020, 211 of which chose the maximum \$9 million limit option.

With 121 new firms opting to buy excess coverage from LAWPRO, our client base saw approximately 12% growth from the previous year. The Company's retention rate on excess business of 92% is evidence that this program meets the needs of the small and medium-sized firms of fewer than 50 lawyers that it is designed to serve.

LAWPRO's Excess program insures approximately 15% of the lawyers employed in firms of 50 or fewer lawyers. Prudent underwriting and solid claims management have helped ensure that the Excess program is a successful line of business for LAWPRO.

## The TitlePLUS Program

The TitlePLUS program is the only wholly Canadian-owned title insurance program available in Canada. It is underwritten by LAWPRO and protects not only Canadian homeowners and lenders, but also lawyers through included legal services coverage which covers errors and omissions made by the lawyer for the entire transaction, excluding properties in Quebec and OwnerEXPRESS policies.

## Service

### Working from home; working for insureds

LAWPRO's Underwriting & Customer Service department is the point of contact for licensees seeking to renew, change, or inquire about their insurance options, including the primary policy. A new account is established soon after a lawyer is called to the Ontario bar, and existing accounts are adjusted as lawyers move their practice or move out of private practice entirely.

This year, customer service saw a 4% increase in correspondence volume. At the same time, health and safety restrictions meant this correspondence, and most company operations, had to be carried out

remotely. Like much of the Ontario workforce, many staff members had to adapt to more flexible work hours to accommodate care-giving responsibilities.

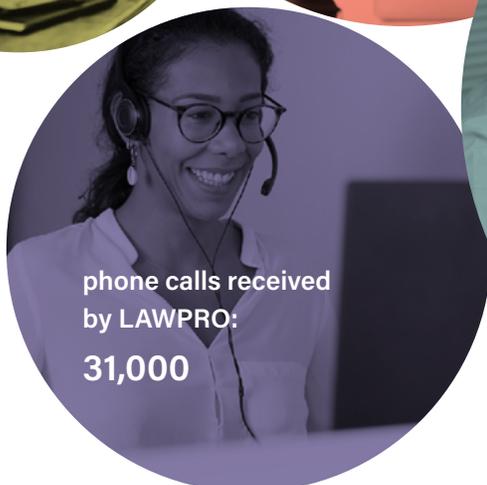
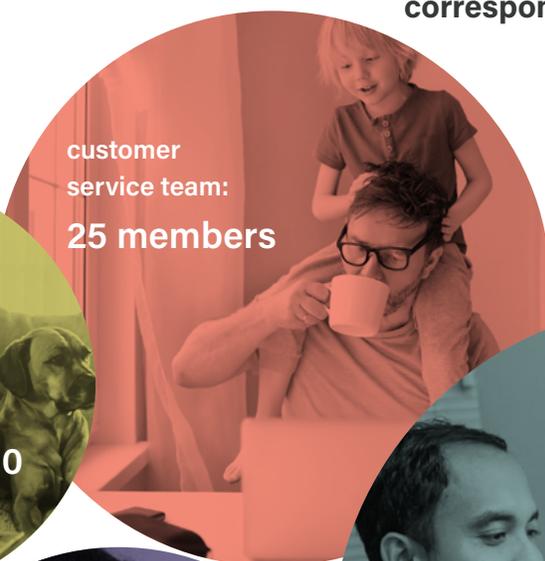
Nevertheless, the customer service team adapted quickly and was able to sustain response times and meet client needs, delivering service levels throughout the year that were on par with previous years.

LAWPRO takes its commitment to customer service seriously. Consisting of approximately 25 team members, the department is responsible for maintaining accurate records for all insureds; policy drafting; creation of program guides, forms, and other explanatory materials; underwriting optional coverages; processing filings; and, answering questions from licensees.

In 2020

correspondence & most company operations

carried out  
remotely



# LAWPRO

successfully  
repairs



When LAWPRO is quickly alerted to potential claims, we are often able to rectify the problem and prevent loss and further lawsuits from arising. Our counsel know how to best address issues such as failure to comply with strict notice requirements, failure to discover unknown defendants within the limitation period, and the threat of dismissal on account of delay.

Here are a few examples of cases where LAWPRO successfully repaired potential losses in 2020.

## 1. The fast and the curious: Delayed discoverability of defendants

It's hard to sue someone when you don't know they exist. Unfortunately, the discoverability doctrine sometimes requires lawyers to not only dig a little deeper and ask whether there may be additional defendants in a given action, but do it fast before potential limitation periods expire.

In this case, the Plaintiff had been struck by the First Defendant's vehicle while using a crosswalk.

The Plaintiff retained a Lawyer and filed a cause of action one month before the expiration of the relevant limitation period. However, upon receiving the First Defendant's pleadings, the Plaintiff and their Lawyer became aware that the First Defendant claimed that a second vehicle, driven by a Second Defendant, had stopped in the middle of the intersection at the time of the accident, causing the First Defendant to swerve into the Plaintiff.

The Plaintiff and their Lawyer had previously been unaware of the existence of this Second Defendant. The redacted police report initially made available to them had not made this clear, although an unredacted report would later confirm the involvement of the Second Defendant.

The Plaintiff moved to have the Second Defendant added to the proceedings.

However, the Second Defendant claimed they could no longer be added to the proceedings as the limitation period had expired. The Second Defendant took the position that their own potential liability was reasonably discoverable by the Plaintiff more than two years prior.

LAWPRO assisted the Plaintiff in successfully arguing that the redacted police report was not sufficiently clear and could not have alerted the Plaintiff to the existence of a Second Defendant. The redacted report was, in parts, illegible, and in other parts, confusingly drafted. There was no additional evidence suggesting the involvement of the Second Defendant available to the Plaintiff, and it was therefore not reasonable to have expected the Plaintiff to discover the Second Defendant prior to receiving the pleadings of the First Defendant.

The limitation period had not expired, and the claim against both Defendants was allowed to proceed.

## 2. The fairest claim of all: Mirror claims and unreasonable delay

Unreasonable delay or abandonment of a cause of action will generally lead to an order for dismissal. But dismissing a claim while allowing a mirror-like counterclaim to proceed can have unfair consequences.

That was the circumstance in this case where the Plaintiff entered into an Agreement of Purchase and Sale involving a \$50,000 deposit. The Agreement required the Plaintiff to obtain financing. When they were unable to do so, the Plaintiff terminated the Agreement.

The Plaintiff then commenced a proceeding for recovery of the deposit and additional damages. In response, the Defendant counterclaimed for damages and breach of contract. Then, no action was taken on either side for an extended period of time.

Four years later, the Plaintiff acquired new counsel. One year after that, the Defendant acquired new counsel and the Plaintiff filed a motion in the proceeding to prevent an administrative dismissal. At that time, a Master ordered that the case not be dismissed, a litigation timetable be set, and a trial be scheduled within approximately one year.

Again, no immediate action was taken by the Plaintiff. The following year, the Defendant sought to have the Plaintiff's claim dismissed for delay or, in the alternative for summary judgment to be rendered.

The motion judge found that the action satisfied all the relevant *Reid* criteria and dismissed the Plaintiff's action for delay. However, the motion judge did not address the Defendant's Counterclaim and, therefore, the Counterclaim continued.

The Plaintiff appealed on the grounds that the motion judge should not have dismissed the claim for delay, but should have instead resolved the claims summarily on the merits. Further, the Plaintiff claimed it was unjust for the motion judge to dismiss their Claim while the Defendant's mirror Counterclaim continued.

LAWPRO successfully assisted the Plaintiff in appealing the dismissal of the action. The appeal court agreed that, although the motion judge correctly applied the test, and their decision would normally be subject to deference, this particular context led to an unjust result. Since the Counterclaim dealt with the same facts and issues as the Claim, allowing one to continue and not the other did not save judicial time or resources and was not in the interests of justice. The matter was remitted to the Superior Court for determination.

### 3. Authority issues: Keeping courts in the loop

Lawyers act as officers of the court and are obligated to present an accurate account of relevant law to the presiding judge. But does this mean a lawyer is obligated to provide continuing updates on new case law developments after a hearing ends?

That question arose in this case where the Lawyer acted for an Applicant seeking summary judgment in an estates dispute. After the motion was heard, but before judgment was rendered, new, on-point authority was rendered by the Court of Appeal that undermined the Lawyer's position in the motion. The Lawyer did not bring this new authority to the court's attention while judgment was under reserve.

The court found that the Lawyer's failure to immediately bring new relevant authority to their attention while the judgment was under reserve breached the Lawyer's duty to the court, and therefore awarded substantial indemnity costs against the Lawyer's client. This led to the Client refusing to pay the Lawyer's fees, for which the Lawyer sued.

Meanwhile, the underlying matter for which the costs judgment was awarded was settled by the parties, making an appeal of the summary judgment application moot. Nevertheless, the Lawyer sought leave to intervene in the matter and have an appeal heard despite its mootness. It was the Lawyer's position that the costs award was wrongly decided and had an adverse impact on the Lawyer's reputation as well as the standards expected of the rest of the profession.

LAWPRO supported the Lawyer in their intervention and application for leave to appeal, and arranged for an *amicus curiae* to argue against the Lawyer's position in the absence of other interested parties.

The court found that this was an appropriate circumstance to depart from the doctrine of mootness and grant leave to appeal. The Lawyer had a meaningful interest in the outcome of the appeal, as their fee dispute with their client relied substantially on whether the Lawyer's alleged error warranted the adverse costs award. The appeal was allowed.

### 4. Notionally "notable" notices: Complying with notification requirements

Combining distinct statutory obligations into a single document, when not expressly authorized, can lead to avoidable frustrations and disputes. This happened to a Lawyer whose franchisee client encountered financial problems and defaulted on a bank loan made for the acquisition of the franchise.

The franchisee issued a Third Party Notice to the franchisor, claiming damages and rescission of the franchise agreement. The *Arthur Wishart Act (Franchise Disclosure)*, required notice of such a rescission of the franchise agreement to be delivered in writing. However, the franchisee's Lawyer opted to provide such notice within the pleadings of the *Third Party Notice*, rather than as a separate written notice.

The franchisor claimed that using the *Third Party Notice* to also satisfy the rescission notice requirements did not comply with the *Act*, and therefore notice was not provided within the time period allotted. As such, rescission could not be claimed under the *Act*.

The franchisee then brought their Lawyer into the proceedings in the Lawyer's personal capacity as an additional third party potentially liable for negligence for failing to comply with the terms of the *Act*. With both the franchisor and franchisee claiming that the *Third Party Notice* did not meet the requirements under the *Act*.

The motion judge found that a pleading could not constitute notice under the *Act*, and therefore the rescission claim could not proceed. The Lawyer appealed.

The appeal court found that, although the use of a *Third Party Notice* to satisfy the rescission notice requirements of the *Arthur Wishart Act* was irregular and not ideal, the express language of the *Act* only required the notice to be in writing and delivered within a certain period. The *Third Party Notice* satisfied these requirements. Therefore, the rescission claim could proceed and there was no potential claim for negligence against the Lawyer.

## 5. Overruling the rule in *Medhurst*: Notice requirements in condo disputes

Requiring strict adherence to statutory provisions can sometimes have unintended outcomes that undermine the purpose of those very provisions. When binding precedent leads to such perverse outcomes, it's sometimes necessary to seek the overturning of that precedent.

In this case, a condominium Corporation issued a notice of claim against various Defendants allegedly responsible for defects in the construction of the condominium. The *Condominium Act* required that notice of such an action be provided to the corporation's owners prior to commencing the action.

In this case, the condominium Corporation provided notice to the owners after the notice of action was issued but before filing the statement of claim. The Defendants, relying on the binding ONCA authority of *Medhurst*, argued that this failed to comply with the *Act's* notice requirements and the action was therefore a nullity.

The Corporation argued that the notice provided did comply with the statutory requirements, or, in the further alternative, failure of providing such notice did not render the action a nullity.

A summary judge found in favour of the Corporation on the basis that sufficient notice was provided or, in the alternative, notice was not required in these circumstances.

The Defendants appealed.

LAWPRO assisted the condominium Corporation in seeking a five-judge panel at the Court of Appeal and successfully argued that *Medhurst* should be overturned. The Court found that Supreme Court of Canada jurisprudence released subsequent to *Medhurst* attenuated the result of that case and, further, that the decision in *Medhurst* resulted in unjust consequences, as it allowed defendants to undermine the interests of the Corporation's owners by relying on a provision that was intended to protect those owners.

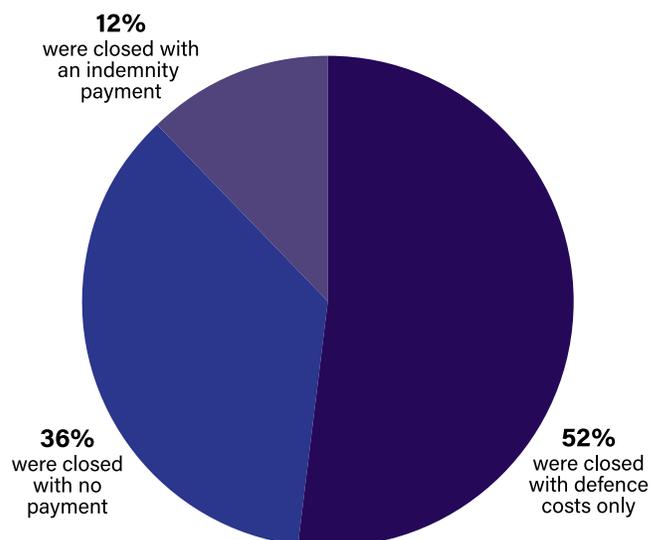
Failure to comply with the notice requirements under the *Act* was found to *not* automatically render the action a nullity, and the appeal was dismissed.

## Small fixes now prevent big problems later

Every year, LAWPRO resolves potential claims before they become actual claims. In 2019, 86% of claims were closed without any indemnity payment, and 35% of claims were closed without any defence costs whatsoever.

Immediately notifying LAWPRO of potential errors or omissions means steps can be taken to resolve the situation before it develops into a malpractice claim. If you make an error, or believe you could be accused of making an error down the road, don't try to resolve the problem on your own. A call to LAWPRO means we can provide expedient and experienced advice and assistance.

**FIGURE 4**  
**Claims by outcome**



# Defending lawyers in court



**Despite any attempts to resolve claims without litigation, sometimes court is inevitable. Every year, LAWPRO steps in to defend licensees from unwarranted lawsuits and accusations.**

**Here are a few examples of defences successfully advanced by LAWPRO in 2020 on behalf of insureds.**

## Contract law – Claims against alleged partners of debtors

Partners in a legal firm can be held liable for the business debts incurred by other partners as part of the partnership. In some circumstances, it may be unclear whether lawyers are practising in partnership, or as sole practitioners in “association” with one another.

That was the situation in this case, where a solicitor Debtor had practised in association with a Litigation Firm for many years, sharing things like office space and holiday parties, and whose name was included in the name of the litigation firm.

The Debtor, however, kept separate finances and files and was not included in the Litigation Firm’s partnership agreement.

The Debtor incurred a substantial amount of business debt from multiple parties and eventually defaulted on it. The Creditors

sought judgment against the Litigation Firm and its Partners as being liable for the amounts owing by the Debtor.

The Partners argued that the Debtor was not part of their firm, as the Debtor kept separate finances with a different banking institution, did not work with the Litigation Firm on business matters, and was not included in the Partnership Agreement, which expressly stated that the Debtor was *not* defined as a founding partner of the Litigation Firm.

The Creditors argued that the Debtor's name was included in the name of the Litigation Firm, that the Debtor was listed as a partner and member of the Litigation Firm in multiple online summaries of the Litigation Firm, and the Debtor was held out as a partner either explicitly or implicitly on multiple occasions. In the alternative, the Creditors argued that the Partners were responsible for the debts pursuant to the *Partnership Act*, since the Debtor was held out as a Partner and the Creditors relied on that representation when advancing loans to the Debtor.

The court found that the Debtor was not a partner in the Litigation Firm, as the parties practised independently and the Debtor was not included in the Partnership Agreement. Further, even if the Debtor was held out as a Partner, the Creditors could not prove that they relied on that alleged relationship when advancing funds to the Debtor, and therefore the Litigation Firm and its Partners could not be held liable for the unpaid debts. The claim against the Litigation Firm and its Partners was dismissed.

## Criminal law – Ineffective representation and collateral attacks

When alleging that counsel's negligence led to a criminal conviction, the appropriate forum for litigating such a claim is an appeal of the conviction itself. Pursuing a separate claim of negligence after losing an appeal case is a collateral attack on the conviction and is impermissible.

In this case, Lawyers represented the Plaintiffs in defending a proceeding before the Ontario Securities Commission. The defence was unsuccessful, and the OSC found the Plaintiffs guilty of securities fraud.

The Plaintiffs appealed the OSC's decision, alleging ineffective representation by counsel. The Lawyers were granted intervenor status and provided evidence in the appeal to dispute the Plaintiffs' arguments about ineffective representation. The appeal was dismissed.

Before the appeal was even argued, however, the Plaintiffs commenced this civil action against the Lawyers for professional negligence. After the appeal was dismissed, the Lawyers moved to also have the civil action dismissed as a collateral attack on the conviction.

The motion judge dismissed the Plaintiffs' claims against the Lawyers, as the negligence allegations were *res judicata*. The Plaintiffs appealed.

LAWPRO successfully assisted the Lawyers in having the appeal dismissed. The appeal court agreed that the civil claim was as a collateral attack on the conviction. The proper forum for arguing ineffective representation is an appeal of the conviction itself, which the Plaintiffs had already unsuccessfully pursued. A civil claim was therefore inappropriate.

## Corporate law – Conflicts of interest

Circumstances will sometimes arise where lawyers find themselves asked to represent multiple sides in a transaction; or, alternatively, representing one side before later representing another. These situations place the lawyer in a conflict of interest and should be avoided unless all parties agree to the situation and all ethical rules are complied with.

This case involved the sale of a medical equipment distribution business. The Plaintiff owned both the distribution business and a manufacturing counterpart for many years before selling the distribution arm to an American corporation. The Plaintiff maintained ownership of the manufacturing arm and entered into a supply agreement with the American Purchaser. The Plaintiff's In-House Lawyer represented the Plaintiff in this transaction.

After the transaction was completed, the Plaintiff's In-House Lawyer took a position with the American Purchaser.

The supply agreement was unsuccessful, as the Purchaser failed to satisfy many of the terms of the Agreement, including minimum purchase amounts. The Plaintiff sued the Purchaser in response. This claim was brought to arbitration, where the Plaintiff was represented by the Defendant Law Firm. In this arbitration, the In-House Lawyer was part of the Purchaser's legal team.

The arbitration was settled, and a new supply agreement was made between the Plaintiff and the Purchaser. Unfortunately, this new agreement led to further struggles for the Plaintiff's business, and the Plaintiff was eventually forced to wind down the business.

By this point, the former In-House Lawyer was no longer working with the American Purchaser, but was now practising with the Defendant Law Firm. This put both the Defendant Law Firm and the former In-House Lawyer in a conflict of interest with respect to the ongoing dispute between the Plaintiff and the Purchaser, as the former In-House Lawyer had formerly worked with both parties on matters central to their dispute. The Plaintiff had never provided informed consent to the Defendant Law Firm with respect to this conflict of interest.

The Plaintiff sued the Defendant Law Firm and the former In-House Lawyer for breach of fiduciary duty. The Plaintiff alleged that had they known about the former In-House Lawyer's conflict, they never would have agreed to the arbitration settlement and would have avoided subsequent business losses.

The court found that both the Defendant Law Firm and the former In-House Lawyer had breached their fiduciary duties to the Plaintiff, as the actions of the former In-House Lawyer constituted a conflict of interest to which the Plaintiff never provided consent.

However, the court also found that this breach of duty was not causative of the business failure, nor could the Plaintiff connect any actual business losses to this breach. Therefore, the court only awarded nominal damages to the Plaintiff in the amount of \$2,000.

## Tort law – Negligent representation

Unsuccessful clients can sometimes direct follow-up lawsuits to their former counsel, regardless of the merits of such claims.

In this case, the Plaintiffs had been sued by their former employer, who alleged the Plaintiffs had stolen confidential and proprietary information. In response, the Plaintiffs retained the Defendant Lawyers and pursued an aggressive litigation strategy in hopes of motivating their former employer to settle. The strategy was unsuccessful, and the Plaintiffs were found liable to their former employer.

The Plaintiffs then retained new counsel and sued the Defendant Lawyers, alleging professional negligence in the conduct of their unsuccessful litigation strategy.

The trial judge found in favour of the Defendant Lawyers and dismissed the claim. The Plaintiffs appealed.

LAWPRO successfully assisted the Defendant Lawyers in defending the appeal. The court agreed that the Defendant Lawyers took steps to communicate all relevant information and advice to the Plaintiffs, who considered the information and provided instructions to the Defendant Lawyers to pursue a specific course of action. The Plaintiffs were advised of the risks associated with the litigation, and the Defendant Lawyers were not professionally negligent.

## Real estate law – No duty of care to opposing parties

This case arose in the context of a failed real estate transaction. The Plaintiff agreed to purchase a particular property from the Vendors. After signing the Agreement of Purchase and Sale, the Plaintiff assigned their rights in the Agreement to the Defendant Purchaser. The Vendors then failed to close the transaction and subsequently sold the property to alternate buyers. The Defendant Purchaser responded with an action against the Vendors for specific performance.

The Plaintiff then sued the Defendant Purchaser as well as the Defendant Purchaser's Lawyer for failing to inform the Plaintiff of the failure to close the transaction. Specifically, the Plaintiff alleged that the Lawyer was negligent in allowing the Defendant Purchaser to breach the assignment agreement.

The Lawyer sought a dismissal of the Plaintiff's claims against them as disclosing no cause of action.

LAWPRO successfully assisted the Lawyer in having the claim against them dismissed. The court agreed that the Plaintiff was always adverse in interest to the Lawyer's client, both before and after signing the Assignment Agreement. As well, the Plaintiff did not allege that it placed any reliance on the Lawyer.

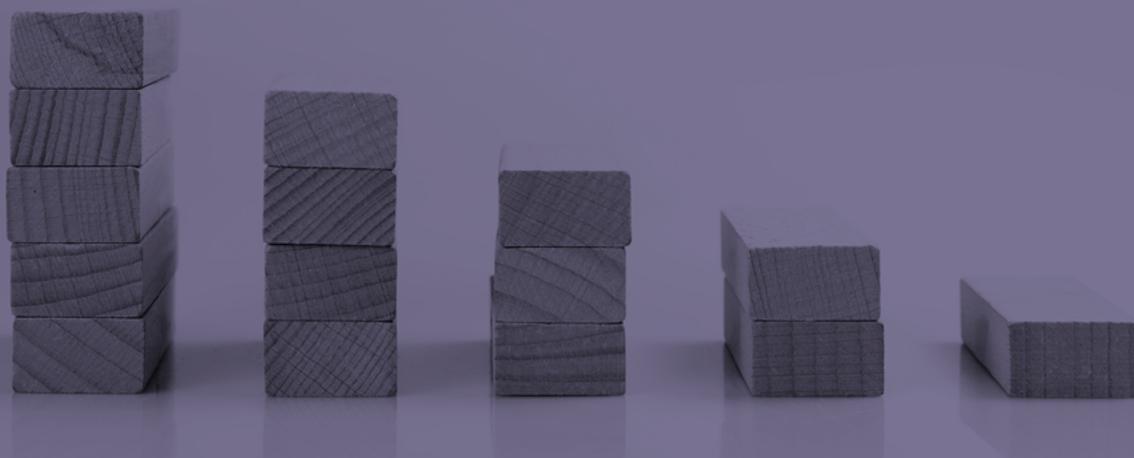
Further, the only evidence of negligence advanced by the Plaintiff was that the Lawyer had made a false statement in pleadings filed in other proceedings against the Vendors. The court found that this could not be used against the Lawyer as the statement was subject to the doctrine of absolute immunity.

Therefore, the Lawyer had no duty of care to the Plaintiff, there was no evidence of negligence or misconduct, and the claim was dismissed as disclosing no cause of action and an abuse of process.

## Lawyers for lawyers

A malpractice claim doesn't necessarily mean a lawyer made a mistake, but a defence still needs to be raised. LAWPRO provides effective assistance and prides itself on defending licensees.

# practicePRO Initiatives



## Top 2020 initiatives to help lawyers succeed

An important focus for LAWPRO is to help lawyers avoid claims before they happen. LAWPRO's [practicePRO risk management initiative](#) is a widely-recognized and well-respected provider of tools and resources to help members of the practising bar identify practice risks and take steps to minimize their claims exposure. A few examples of our 2020 resources are highlighted here.



### Practice Tip Sheets

While earlier tip sheets focused on specific areas of law, the new series of tip sheets provided advice on avoiding the top common claims causes generally such as, [properly understanding a client's matter](#), [managing deadlines](#), [keeping up with the law](#), [better communications](#), and [avoiding conflicts of interest](#).



## COVID-19 Articles and Resources

The disruptions resulting from the COVID-19 virus caused uncertainty for many lawyers as they attempted to run their practices remotely while continuing to provide professional services to their clients. This new page on [practicepro.ca](https://practicepro.ca) offered help with virtual meetings, understanding e-signatures, working from home tech tips, and cyber security advice.

Lawyers, particularly litigators, had to keep up with emergency changes to court rules and limitation periods. Articles and alerts kept lawyers informed of changes to Ontario and federal limitation periods and court procedures, and an article with tips for calculating limitation periods helped ensure new deadlines would not be missed. For real estate lawyers, the *Planning Act* emergency period suspension calculator helped navigate the new timelines for *Planning Act* matters. Wills and estates lawyers were advised on how to reduce the risk of claims when virtually witnessing wills and powers of attorney.



## Free Video CPD Programs

Ten new videos were created that can be viewed for both the LAWPRO Risk Management Credit and Law Society of Ontario professionalism hours. Topics include common claims and how to avoid them, navigating the second wave of COVID-19, fraud and cybersecurity (in English and French), cultural competence, and tips for delivering pro bono services.



## Technology Products for Lawyers and Law Firms

A comprehensive overview of software and services available for tasks such as document signing, note taking, firm management, dictation, social media, and video conferencing, as well as programs tailored to specific areas of law like litigation, family law and wills & estates are available.

The following Management Discussion and Analysis provides a review of the activities, results of operations and financial condition of Lawyers' Professional Indemnity Company ("LAWPRO" or the "Company") for the year ended December 31, 2020, in comparison with the year ended December 31, 2019. These comments should be read in conjunction with the corresponding audited financial statements, including the accompanying notes.

## Financial highlights

### Statement of profit or loss

During 2020 the Company generated a profit of \$21.0 million, an increase in earnings of \$16.2 million over 2019, and experienced a comprehensive loss of \$1.7 million compared to \$17.8 million comprehensive income during the prior year.

#### Premiums

Gross premium written decreased by \$0.9 million to \$113.9 million, due to lower transaction levies collected during the pandemic in 2020. Premiums earned, net of reinsurance ceded, decreased by \$0.8 million to \$106.8 million in 2020. Premiums from the mandatory Ontario errors and omissions ("E&O") insurance program were \$0.9 million lower than 2019 results. The optional excess E&O insurance program remained steady in the year, while TitlePLUS premiums were \$0.1 million higher than 2019 results.

#### Net claims incurred

Incurred claims in 2020, net of reinsurance recoveries, was \$1.5 million higher than in 2019. Due to a decline in market interest yields in 2020, discounted actuarial reserves were increased by \$14.1 million compared to an increase of \$4.4 million in 2019. The impact of discounting was partially offset by a \$11.2 million net reduction in the E&O program's reserves due to favourable development of prior Fund Years' loss experience (compared to a reduction of \$29.3 million in 2019).

#### Reinsurance

Similar to recent years, the Company purchased two layers of excess-of-loss clash reinsurance coverage, which limits its exposure to one or more large aggregations of multiple claims arising from the same proximate cause. Furthermore, the Company maintained its 10% retention in the optional excess E&O program, whereas prior to 2011 the program was fully reinsured. The high level of reinsurance significantly mitigates exposure to the Company from claims in this program.

#### General expenses

LAWPRO's general expenses in 2020 were \$0.8 million lower than 2019, and \$2.3 million lower than its annual budget, primarily due to savings in salaries and benefits related expenses (\$0.8 million savings compared with 2019, and \$1.9 million savings compared with budget).

#### Commissions earned

The Company earned reinsurance commissions of \$1.5 million on premium ceded in respect of its 2020 optional excess E&O insurance program, a similar result to 2019. In addition, the Company also incurred a slight profit commission expense (less than \$0.1 million) for unfavourable claims development on the quota share reinsurance arrangements that it had prior to January 1, 2003, compared to a slight profit commission income (less than \$0.1 million) in 2019. As claims estimates become more certain with time, there is generally less potential for favourable development on claims relating to older fund years, resulting in a tendency towards lower profit commissions.

#### Investment income

Income generated from investments increased by \$23.2 million to \$46.2 million in 2020. Investment income from interest and dividend receipts decreased by \$2.3 million to \$18.3 million, primarily due to the decrease in dividend income from equity portfolio amid the pandemic. As a result of the sharply lowered market yields during 2020, the Company experienced a \$13.0 million increase in net

unrealized gains on its fixed income security portfolio used to match its claims liabilities, compared to \$4.0 million increase in 2019. The 2020 results also included net capital gains of \$16.1 million realized on disposition of investments, compared to net loss of \$0.3 million in 2019.

## Statement of comprehensive income

### Other comprehensive loss

During 2020, LAWPRO experienced other comprehensive loss of \$22.7 million, primarily due to a significant decrease in net unrealized gains on its surplus investments in the equity security markets, in addition to the impact of unwinding the impairment losses associated with the disposition of securities held in the surplus portfolio as part of the portfolio manager transition. These results compare to other comprehensive income of \$13.0 million experienced during 2019.

## Statement of financial position

Overall, the Company ended 2020 in a satisfactory financial position, with shareholder's equity down slightly by \$1.7 million year over year, as the significant other comprehensive loss recorded during the year was offset somewhat by the net income experienced during the same period.

### Investments

As at December 31, 2020, the market value of the Company's investment portfolio exceeded its cost by \$32.1 million, compared to 2019 where the market value exceeded cost by \$38.2 million. Investment assets, inclusive of cash and cash equivalents and investment income due and accrued, increased by \$11.9 million to \$714.7 million as at December 31, 2020. This reflects the overall positive investment returns as interest and dividend income and strong performance of fixed income securities outweighed negative returns on the equity portfolio.

The investment portfolio is managed in accordance with the investment policy approved by the Company's Board of Directors in diversified, high-quality assets. A portion of the investment portfolio, which is composed of primarily fixed income securities, is invested in a manner that is expected to substantially match in maturity to the payment of claims liabilities in future years. The portion of the Company's investment portfolio which is considered surplus to the requirements of settling claims liabilities is managed separately and includes fixed income securities and equity investments in publicly traded companies, the values of which are more subject to market volatility.

### Claims liabilities

The claims liabilities represent the amount required to satisfy all of the Company's obligations to claimants prior to reinsurance recoveries. This balance has increased by \$20.5 million. Reinsurance recoverables have increased by \$3.9 million and accordingly the increase in the net provision is \$16.6 million. This increase is attributable to the fact that the claims expense relating to the additional risk associated with underwriting the 2020 program is greater than the net favourable development of prior years' reserves experienced during the year.

## Report on LAWPRO operations

LAWPRO is an insurance company with three product lines: a mandatory E&O insurance program, as required by the Law Society for all lawyers in private practice in Ontario; an optional excess E&O insurance program that enables Ontario law firms to increase their insurance coverage limit to a maximum of \$9 million per claim/\$9 million in the aggregate above the \$1 million per claim/\$2 million aggregate levels provided by the mandatory E&O program; and an optional TitlePLUS title insurance product that real estate practitioners across Canada can make available to their clients.

# Management Statement on Responsibility for Financial Information

The preparation of the annual financial statements, Management's Discussion and Analysis and all other information in the Company's Annual Report is the responsibility of the Company's management, and the annual financial statements have been approved by the Board of Directors.

The financial statements have been prepared in accordance with International Financial Reporting Standards. Financial statements, by their very nature, include amounts and disclosures based on estimates and judgements. Where alternative methods or interpretations exist, management has chosen those it deems most appropriate in the circumstances, including appropriate consideration to relevance and materiality. Actual results in the future may differ materially from management's current assessment given the inherent variability of future events and circumstances. Financial information appearing elsewhere in the Company's Annual Report is consistent with the financial statements.

Management maintains the necessary system of internal controls over financial reporting to meet its responsibility for the reliability of the financial statements. These controls are designed to provide management with reasonable assurance that the financial records are reliable for preparing financial statements and other financial information, assets are safeguarded against unauthorized use or disposition and liabilities are recognized.

The Board of Directors is responsible to ensure that management fulfils its responsibilities for financial reporting and is ultimately responsible for reviewing and approving the financial statements. The Board carries out its responsibility primarily through its audit committee, which is independent of management. The audit committee reviews the financial statements and recommends them to the Board for approval. The audit committee also reviews and monitors the Company's system of internal controls over financial reporting in the context of reports made by management or the external auditor.

## Role of the Auditor

The external auditor, PricewaterhouseCoopers LLP, has been appointed by the shareholder. Its responsibility is to conduct an independent and objective audit of the financial statements in accordance with Canadian generally accepted auditing standards and to report thereon to the Company's shareholder. In carrying out its audit, the auditor considers the work of the appointed actuary and his report on the policy liabilities of the Company. The external auditor has full and unrestricted access to the audit committee and the Board of Directors to discuss audit, financial reporting and related findings. The auditor's report outlines the scope of its audit and its opinion.

## Role of the Appointed Actuary

The actuary is appointed by the Board of Directors of the Company. With respect to the preparation of these financial statements, the appointed actuary is required to carry out a valuation of the policy liabilities and to report thereon to the Company's shareholder. The valuation is carried out in accordance with accepted actuarial practice and regulatory requirements. The scope of the valuation encompasses the policy liabilities as well as any other matter specified in any direction that may be made by the regulators. The policy liabilities consist of a provision for unpaid claims and adjustment expenses on the expired portion of policies, a provision for future obligations on the unexpired portion of policies, and other policy liabilities that may be applicable to the specific circumstances of the Company.

In performing the valuation of the policy liabilities, which are by their very nature inherently variable, the appointed actuary makes assumptions as to the future rates of claims severity, inflation, reinsurance recoveries, expenses and other matters, taking into consideration the circumstances of the Company and the nature of the insurance coverage being offered. The valuation is necessarily based on estimates; consequently, the final values may vary significantly from those estimates. The appointed actuary also makes use of management information provided by the Company, and uses the work of the auditor with respect to the verification of the underlying data used in the valuation.

Toronto, Ontario  
February 24, 2021

*Dan Pinnington*  
Daniel E. Pinnington  
President & CEO

*Krista Franklin*  
Krista Franklin  
Chief Financial Officer



## Our opinion

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Lawyers' Professional Indemnity Company (the Company) as at December 31, 2020 and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS).

### What we have audited

The Company's financial statements comprise:

- the statement of financial position as at December 31, 2020;
- the statement of profit or loss for the year then ended;
- the statement of comprehensive income for the year then ended;
- the statement of changes in equity for the year then ended;
- the statement of cash flows for the year then ended; and
- the notes to the financial statements, which include significant accounting policies and other explanatory information.

## Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Independence

We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

PricewaterhouseCoopers LLP  
PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario, Canada M5J 0B2  
T: +1416 863 1133, F: +1416 365 8215

"PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership.

## Responsibilities of management and those charged with governance for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

## Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*PricewaterhouseCoopers LLP*

Chartered Professional Accountants, Licensed Public Accountants

Toronto, Ontario

February 24, 2021

## ECKLER

February 24, 2021

I have valued the policy liabilities including reinsurance recoverables of Lawyers' Professional Indemnity Company for its statement of financial position as at 31 December 2020 and their changes in the statement of income for the year then ended, in accordance with accepted actuarial practice in Canada, including selection of appropriate assumptions and methods.

In my opinion, the amount of the policy liabilities makes appropriate provision for all policy obligations and the financial statements fairly present the results of the valuation.



Louis-Christian Dupuis, FCAS, FCIA

Eckler Ltd.  
1801 McGill College Avenue, Suite 1460  
Montréal, Québec, H3A 2N4

# Statement of Financial Position

Amounts stated in thousands of Canadian dollars

AS AT	DECEMBER 2020	DECEMBER 2019
<b>Assets</b>		
Cash and cash equivalents	\$ 7,748	18,117
Investments (note 5)	704,018	682,034
Investment income due and accrued	2,977	2,620
Due from reinsurers	22	70
Due from insureds	3,652	2,024
Due from the Law Society of Ontario (note 13)	7,936	7,422
Reinsurers' share of Claims Liabilities (note 10)	50,189	46,297
Other receivables	796	897
Other assets	1,466	1,296
Property and equipment (note 7)	11,690	11,900
Intangible asset (note 8)	1,006	449
Income taxes recoverable	4,938	892
Deferred income tax asset (note 15)	5,958	5,783
<b>Total assets</b>	<b>\$ 802,396</b>	<b>779,801</b>
<b>Liabilities</b>		
Claims liabilities (note 9, 10)	\$ 512,155	491,644
Unearned premiums (note 11)	1,130	1,100
Due to reinsurers	831	814
Due to insureds	110	100
Expenses due and accrued	7,866	3,776
Lease liabilities (note 9)	10,263	10,653
Other taxes due and accrued	471	413
	<b>\$ 532,826</b>	<b>508,500</b>
<b>Equity</b>		
Capital stock (note 17)	\$ 5,000	5,000
Contributed surplus (note 17)	30,645	30,645
Retained earnings	223,967	203,480
Accumulated other comprehensive income	9,958	32,176
	269,570	271,301
<b>Total liabilities and equity</b>	<b>\$ 802,396</b>	<b>779,801</b>

Accompanying notes are an integral part of the financial statements.

On behalf of the Board

*Andrew J. Spurgeon*

Andrew J. Spurgeon  
Director

*Daniel E. Pinnington*

Daniel E. Pinnington  
Director

# Statement of Profit or Loss

Amounts stated in thousands of Canadian dollars

FOR THE YEAR ENDED DECEMBER 31	2020	2019
<b>Income</b>		
Gross written premiums	\$ 113,865	114,724
Premiums ceded to reinsurers (note 12)	(7,024)	(7,128)
Net written premiums	106,841	107,596
(Increase) decrease in unearned premiums (note 11)	(30)	11
Net premiums earned	<b>106,811</b>	<b>\$ 107,607</b>
Net investment income (note 5)	46,162	23,021
Ceded commissions	1,486	1,524
	<b>\$ 154,459</b>	<b>\$ 132,152</b>
<b>Expenses</b>		
Gross Claims incurred (note 10)	\$ 105,953	104,337
Reinsurers' share of claims incurred (note 10)	(5,052)	(4,909)
Net Claims incurred	100,901	99,428
Operating expenses (note 16)	21,738	22,522
Finance costs	413	428
Premium taxes	3,417	3,443
	<b>126,469</b>	<b>125,821</b>
<b>Profit (loss) before income taxes</b>	<b>\$ 27,990</b>	<b>\$ 6,331</b>
Income tax expense (recovery) (note 15)		
Current	6,967	\$ 1,409
Deferred	13	74
	<b>6,980</b>	<b>1,483</b>
<b>Profit (loss)</b>	<b>\$ 21,010</b>	<b>4,848</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Comprehensive Income

Amounts stated in thousands of Canadian dollars

FOR THE YEAR ENDED DECEMBER 31	2020	2019
<b>Profit (loss)</b>	\$ 21,010	4,848
Other comprehensive income (loss), net of income tax:		
<u>Items that will not be reclassified subsequently to profit or loss:</u>		
Remeasurements of defined benefit obligation, net of income tax expense (recovery) of (\$189) (note 14) [2019: (\$194)]	(523)	(539)
<u>Items that may be reclassified subsequently to profit or loss:</u>		
<i>Available-for-sale assets</i>		
Net changes unrealized gains (losses), net of income tax expense (recovery) of (\$4,271) (2019: \$4,721)	(11,848)	13,092
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$7,551) [2019: (\$730)]	(20,944)	(2,023)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense (note 5) of \$3,812 (2019: \$887)	10,574	2,461
<b>Other comprehensive income (loss)</b>	<b>(22,741)</b>	<b>12,991</b>
<b>Comprehensive income (loss)</b>	<b>\$ (1,731)</b>	<b>17,839</b>

Accompanying notes are an integral part of the financial statements.

# Statement of Changes in Equity

Amounts stated in thousands of Canadian dollars

	Capital stock	Contributed surplus	Retained earnings	Accumulated other comprehensive income	Equity
<b>Balance at December 31, 2018</b>	\$ 5,000	30,645	199,171	18,646	253,462
Total comprehensive income (loss) for the year	-	-	4,848	12,991	17,839
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	(539)	539	-
<b>Balance at December 31, 2019</b>	<b>5,000</b>	<b>30,645</b>	<b>203,480</b>	<b>32,176</b>	<b>271,301</b>
Total comprehensive income (loss) for the year	-	-	21,010	(22,741)	(1,731)
Transfer of defined benefit remeasurements from OCI to retained earnings	-	-	(523)	523	-
<b>Balance at December 31, 2020</b>	<b>\$5,000</b>	<b>\$30,645</b>	<b>223,967</b>	<b>9,958</b>	<b>269,570</b>

The aggregate of retained earnings and accumulated other comprehensive income as at December 31, 2020 is \$233,925 (December 31, 2019: \$235,656).

Accompanying notes are an integral part of the financial statements.

# Statement of Cash Flows

Amounts stated in thousands of Canadian dollars

FOR THE YEAR ENDED DECEMBER 31

## Operating Activities

	2020	2019
Profit (loss)	\$ 21,010	4,848
Items not affecting cash:		
Deferred income taxes	13	74
Amortization of property and equipment	1,085	1,050
Amortization of intangible asset	220	219
Realized (gains) losses on disposition or impairment	(16,109)	256
Amortization of premiums and discounts on bonds	(251)	(1,685)
Changes in unrealized (gains) losses	(12,967)	(4,023)
	(6,999)	739
Changes in non-cash working capital balances:		
Investment income due and accrued	(357)	(90)
Due from reinsurers	65	698
Due from insureds	(1,618)	(153)
Due from the Law Society of Ontario	(514)	1,159
Reinsurers' share of claims liabilities	(3,892)	(5,791)
Other receivables	101	155
Other assets	(882)	(495)
Income taxes due and accrued (recoverable)	3,965	(2,315)
Claims liabilities	20,511	16,995
Unearned premiums	30	(11)
Expenses due and accrued	4,090	504
Other taxes due and accrued	58	(36)
<b>Net cash inflow from operating activities</b>	<b>\$ 14,558</b>	<b>11,359</b>

## Investing Activities

Purchases of property and equipment	(875)	(154)
Purchases of intangible asset	(777)	(229)
Purchases of investments	(770,786)	(249,417)
Proceeds from sales and maturities of investments	747,900	246,688
<b>Net cash outflow from investing activities</b>	<b>\$ (24,538)</b>	<b>(3,112)</b>

## Financing Activities

Payment of lease liabilities	(389)	(411)
<b>Total cash inflow (outflow) from financing activities</b>	<b>(389)</b>	<b>(411)</b>

Net change in cash and cash equivalents during the year

	(10,369)	7,836
Cash and cash equivalents, beginning of year	18,117	10,281
<b>Cash and cash equivalents, end of year</b>	<b>\$ 7,748</b>	<b>18,117</b>

Cash and cash equivalents at end of year consists of:

Cash	6,080	8,274
Cash equivalents	1,668	9,843
<b>\$</b>	<b>7,748</b>	<b>18,117</b>

Supplemental disclosure of cash flow information:

Income taxes paid (operating activity)	3,002	3,724
Interest received (investing activity)	13,014	13,787
Interest paid (financing activity)	414	393
Dividends received (investing activity)	4,693	5,047

Accompanying notes are an integral part of the financial statements.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 1. Nature of Operations

Lawyers' Professional Indemnity Company (the "Company") is an insurance company, incorporated on March 14, 1990 under the *Corporations Act* (Ontario) and licensed to provide lawyers professional liability insurance in Ontario and title insurance in all provinces and territories in Canada. The Company is a wholly-owned subsidiary of the Law Society of Ontario (the "Law Society"), which is the governing body for lawyers and paralegals in Ontario. The Company's registered office is located at 250 Yonge Street, Toronto, Ontario, Canada.

## 2. Basis of Preparation and Significant Accounting Policies

These financial statements have been prepared under the *Insurance Act* (Ontario) and related regulations which require that, except as otherwise specified by the Company's primary insurance regulator, the Financial Services Regulatory Authority of Ontario ("FSRA"), the financial statements of the Company are to be prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

These financial statements have been prepared in accordance with accounting standards issued and effective on or before December 31, 2020. None of the accounting requirements of FSRA represent exceptions to IFRS. These financial statements were authorized for issuance by the Company's Board of Directors on February 24, 2021.

The significant accounting policies used in the preparation of these financial statements are summarized below. These accounting policies conform, in all material respects, to IFRS.

### Basis of measurement

The financial statements have been prepared under the historical cost basis that are measured at the end of each reporting period, except for certain financial instruments and the claims liabilities, as explained in the accounting policies below. Historical cost is generally based on the fair value of the consideration given for goods and services.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, regardless of whether that price is directly observable or estimated using another valuation technique. In estimating the fair value of an asset or liability, the Company takes into account the characteristics of the asset or liability that market participants would likely take into account when pricing the asset or liability at the measurement date. A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use.

The valuation process includes utilizing market driven fair value measurements from active markets where available, considering other observable and unobservable inputs and employing valuation techniques which make use of current market data. Considerable judgement may be required in interpreting market data used to develop the estimates of fair value. Accordingly, the estimates presented in these financial statements are not necessarily indicative of the amounts that would be realized in a current market exchange.

The Company utilizes a fair value hierarchy to categorize the inputs used in valuation techniques to measure fair value, which prioritizes these inputs into three broad levels. The level in the fair value hierarchy within which the fair value measurement is categorized in its entirety is determined on the basis of the lowest level input that is significant to the fair value measurement in its entirety. For this purpose, the significance of an input is assessed against the fair value measurement in its entirety. The three levels of the fair value hierarchy are:

#### Level 1 - Quoted market prices in active markets

Inputs to Level 1, the highest level of the hierarchy, reflect fair values that are quoted prices (unadjusted) in active markets for identical assets and liabilities. An active market is considered to be one in which transactions for the asset or liability occur with sufficient frequency

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

and volume to provide pricing information on an ongoing basis. Level 1 assets and liabilities include debt and equity securities, quoted unit trusts and derivative contracts that are traded in an active exchange market, as well as certain government and agency mortgage-backed debt securities that are highly liquid and are actively traded in over-the-counter markets.

## **Level 2 – Modelled with significant observable market inputs**

Inputs to Level 2 fair values are inputs, other than quoted prices within Level 1 prices that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Level 2 inputs include: quoted prices for similar (i.e. not identical) assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active, the prices are not current, or price quotations vary substantially either over time or among market makers, or in which little information is released publicly; inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment spreads, loss severities, credit risks, and default rates); and inputs that are derived principally from, or corroborated by, observable market data by correlation or other means (market corroborated inputs). Valuations incorporate credit risk by adjusting the spread above the yield curve for government treasury securities for the appropriate amount of credit risk for each issuer, based on observed market transactions. To the extent observed market spreads are either not used in valuing a security, or do not fully reflect liquidity risk, the valuation methodology reflects a liquidity premium. Examples of these are securities measured using discounted cash flow models based on market observable swap yields, and listed debt or equity securities in a market that is inactive. This category generally includes government and agency mortgage-backed debt securities and corporate debt securities.

## **Level 3 - Modelled with significant unobservable market inputs**

Inputs to Level 3 are unobservable, supported by little or no market activity, and are significant to the fair value of the assets or liabilities. Unobservable inputs may have been used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date (or market information for the inputs to any valuation models). As such, unobservable inputs reflect the assumptions the business unit considers that market participants would use in pricing the asset or liability. Where estimates are used, these are based on a combination of independent third-party evidence and internally developed models, calibrated to market observable data where possible. Level 3 assets and liabilities generally include certain private equity investments, certain asset-backed securities, highly structured, complex or long-dated derivative contracts, and certain collateralized debt obligations where independent pricing information was not able to be obtained for a significant portion of the underlying assets.

## **Use of estimates and judgments made by management**

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates and changes in estimates are recorded in the reporting period in which they are determined. Key estimates are discussed in the following accounting policies and applicable notes.

Key areas where management has made difficult, complex or subjective judgments in the process of applying the Company's accounting policies, often as a result of matters that are inherently uncertain, include:

Impairment	Note 5c
Unpaid claims incurred	Note 10
Income taxes	Note 15

## **Financial instruments – recognition and measurement**

Financial assets are classified as fair value through profit or loss ("FVTPL"), available-for-sale ("AFS"), held to maturity or loans and receivables. Financial liabilities are classified as FVTPL or as other financial liabilities. These classifications are determined based on the characteristics of the financial assets and liabilities, the company's choice and/or the company's intent and ability. As permitted under the IFRS standards, a company has the ability to designate any financial instrument irrevocably, on initial recognition or adoption of the standards, as FVTPL provided certain criteria are met.

# Notes to Financial Statements

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The Company's financial assets and liabilities are measured on the statement of financial position at fair value on initial recognition and are subsequently measured at fair value or amortized cost depending on their classification as indicated below.

Transaction costs for FVTPL investments are expensed in the current period, and for all other categories of investments are capitalized and, when applicable, amortized over the expected life of the investment. The Company accounts for the purchase and sale of securities using trade date accounting. Realized gains or losses on disposition are determined on an average cost basis.

The effective interest method is used to calculate amortization/accretion of premiums or discounts on fixed income securities over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the fixed income security, or, where appropriate, a shorter period, to the net carrying amount on initial recognition.

## Financial assets at fair value through profit or loss

Financial assets at FVTPL are measured at fair value in the statement of financial position with realized gains and losses and net changes in unrealized gains and losses recorded in net investment income along with dividends and interest earned.

The Company maintains an investment portfolio, referred to as the asset-liability matched ("ALM") portfolio, which is designated as FVTPL. This portfolio is invested with the primary objective of matching the cash inflows from fixed income investment securities with the expected timing and magnitude of future payment of net claims liabilities. The ALM portfolio represents a significant component of the Company's risk management strategy for meeting its claims obligations. The designation of the financial assets in the ALM investment portfolio as FVTPL is intended to significantly reduce the measurement or recognition inconsistency that would otherwise arise from measuring assets, liabilities, and gains and losses under different accounting methods. Interest rate movements cause changes in the values of the investment portfolio and of discounted estimated future claims liabilities. As the changes in values of the matched portfolio and of the discounted estimated future claims liabilities flow through profit or loss, the result is an offset of a significant portion of these changes.

Cash and cash equivalents are also classified as FVTPL. Cash and cash equivalents consist of cash on deposit and short-term investments that mature in three months or less from the date of acquisition. The net gain or loss recognized incorporates any interest earned on the financial asset.

## AFS financial assets

Financial assets classified as AFS are measured at fair value in the statement of financial position. Net interest income, including amortization of premiums and the accretion of discounts, are recorded in net investment income in the statement of profit or loss. Dividend income on common and preferred shares is included in investment income on the ex-dividend date. Changes in fair value of AFS fixed income securities resulting from changes to foreign exchange rates are recognized in net investment income as incurred. Changes in the fair value of AFS fixed income securities related to the underlying investment in its issued currency, as well as all elements of fair value changes of AFS equity securities, are recorded to unrealized gains and losses in accumulated other comprehensive income ("AOCI") until disposition or impairment is recognized, at which time the cumulative gain or loss is reclassified to net investment income in profit or loss.

Financial assets in the Company's surplus portfolio (consisting of all investments outside the ALM portfolio), including fixed income securities and equities, are designated as AFS.

## Loan and receivables and Other liabilities

The Company has not designated any financial assets as held to maturity. Due from reinsurers, insureds and Law Society of Ontario and Other receivables and Due to reinsurers and insureds are carried at amortized cost using the effective interest rate method. Given the short term nature of these financial assets and liabilities, amortized cost approximates fair value.

## Leases

The Company is a lessee under various operating leases relating to premises and equipment. For all leases, except for leases which are short term or of low value, a right-of-use asset and a lease liability are recognized on the statement of financial position. Right-of-use

# Notes to Financial Statements

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assets are initially measured at cost, which comprises the amount of the initial measurement of the lease liability. Right-of-use assets are subsequently measured at amortized cost. Right-of-use assets are depreciated on a straight-line basis over the lease term. Lease liabilities are measured at the present value of future payments, using the Company's incremental borrowing rates. Interest charge is applied based on the discount rate used in the calculation of the initial lease liability, and increases the value of the lease liability. Amounts paid under the terms of the lease are deducted from the value of the lease liability, representing the reduction in the Company's payment obligations.

## Property and equipment

Property and equipment are recorded in the statement of financial position at cost less accumulated amortization. Amortization is charged to operating expense on a straight-line basis over the estimated useful lives of the assets as follows:

Furniture and fixtures	5 years
Computer equipment	3 years
Computer software	1 to 3 years
Leasehold improvements	Term of lease
Right-of-use assets	Term of lease

An item of property and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising from the disposal or retirement of an item of property and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized immediately in profit or loss.

## Intangible Assets

Intangible assets with finite useful lives that are acquired separately or internally developed are carried at cost, less any applicable accumulated amortization and accumulated impairment losses. Once an acquired intangible asset is available for use, amortization is recognized on a straight-line basis over its estimated useful life. The estimated useful life and amortization method are reviewed at the end of each reporting period, with the effect of any changes in estimate being accounted for on a prospective basis.

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from its use or disposal. Gains and losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying cost of the asset, are recognized in profit and loss when the asset is derecognized.

## Impairment

### Financial Assets

AFS financial assets are tested for impairment on a quarterly basis. Objective evidence of impairment for fixed income securities includes financial difficulty of the issuer, bankruptcy or defaults and delinquency in payments of interest or principal. Objective evidence of impairment for equities includes a significant or prolonged decline in fair value of the equity below cost or changes with adverse effects that have taken place in the technological, market, economic or legal environment in which the issuer operates that indicates the cost of the security may not be recovered. In general, an equity security is considered impaired if the decline in fair value relative to cost has been either at least 25% for a continuous nine-month period or more than 40% at the end of the reporting period, or been in an unrealized loss position for a continuous period of 18 to 24 months.

Where there is objective evidence that an AFS asset is impaired, the loss accumulated in AOCI is reclassified to net investment income. Once an impairment loss is recorded to profit or loss, the loss can only be reversed into income for fixed income securities to the extent a subsequent increase in fair value can be objectively correlated to an event occurring after the loss was recognized. Following impairment loss recognition, further decreases in fair value are recorded as an impairment loss to profit or loss, while a subsequent recovery in fair value for equity securities, and fixed income securities that do not qualify for loss reversal treatment, are recorded to other comprehensive income ("OCI"). Interest continues to be accrued, but at the effective rate of interest based on the fair value at impairment, and dividends of equity securities are recognized in income when the Company's right to receive payment has been established.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## Non-Financial Assets

At the end of each reporting period, the Company reviews the carrying amount of its property and equipment, intangible assets and other non-financial assets to determine whether there is any indication that those assets have suffered an impairment loss. If any indication exists, the recoverable amount of the asset is estimated in order to determine the extent of the impairment loss, if any. When it is not possible to estimate the recoverable amount of an individual asset, the Company estimates the recoverable amount of the cash-generating unit to which the asset belongs. Intangible assets not yet available for use are tested for impairment at least annually, and whenever there is an indication that the asset may be impaired.

Recoverable amount is the higher of fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset for which the estimates of future cash flows have not been adjusted. If the recoverable amount of an asset (or cash-generating unit) is estimated to be less than its carrying amount, the carrying amount of the asset (or cash-generating unit) is reduced to its recoverable amount. An impairment loss is recognized immediately in profit or loss. If an impairment loss subsequently reverses, the carrying amount of the asset (or cash-generating unit) is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognized for the asset (or cash-generating unit) in prior years. A reversal of impairment loss is recognized immediately in profit or loss.

## Foreign currency translation

The Canadian dollar is the functional and presentation currency of the Company. Transactions in foreign currencies are translated into Canadian dollars at rates of exchange at the time of such transactions. Monetary assets and liabilities are translated at current rates of exchange, with all translation differences recognized in investment income in the current period. If a gain or loss on a non-monetary asset and liability is recognized in OCI, any exchange component of that gain or loss is also recognized in OCI, and conversely, if a gain or loss on a non-monetary asset and liability is recognized in profit or loss, any exchange component of that gain or loss is also recognized in profit or loss.

## Premium-related balances

The Company issues two types of professional liability policies: a primary lawyer's errors and omissions policy and an excess policy increasing the insurance coverage limit to a maximum of \$9 million per claim/\$9 million in the aggregate above the \$1 million per claim/\$2 million aggregate levels provided by the primary policy; and a title insurance policy. Insurance policies written under the professional liability insurance program are effective on a calendar year basis. Professional liability insurance premium income is earned on a *pro rata* basis over the term of coverage of the underlying insurance policies, which is generally one year, except for policies for retired lawyers, which have terms of up to five years. Title insurance premiums are earned at the inception date of the policies.

Unearned premiums reported on the statement of financial position represent the portion of premiums written that relate to the unexpired risk portion of the policy at the end of the reporting period.

Premiums receivable are recorded in the statement of financial position as amounts due from insureds, net of any required provision for doubtful amounts. Premiums received from insureds in advance of the effective date of the insurance policy are recorded as amounts due to insureds in the statement of financial position.

The Company defers policy acquisition expenses, primarily premium taxes on its written professional liability insurance premiums, to the extent these costs are considered recoverable. These costs are expensed on the same basis that the related premiums are earned. Deferred policy acquisition expenses are not material at year-end, and therefore the Company's policy is to not recognize an asset on the statement of financial position.

## Claims liabilities

The Claims liabilities includes an estimate of the cost of projected final settlements of insurance claims incurred on or before the date of the statement of financial position, consisting of case estimates prepared by claims adjusters and a provision for incurred but not reported claims ("IBNR") calculated based on accepted actuarial practice in Canada as required by the Canadian Institute of Actuaries ("CIA"). These estimates include the full amount of all expected expenses, including related investigation, settlement and adjustment expenses, net

# Notes to Financial Statements

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of any anticipated salvage and subrogation recoveries. The professional liability insurance policy requires insureds to pay deductibles to the maximum extent of \$25,000 on each individual claim, subject to an additional \$10,000 for certain claims involving an administrative dismissal. Expected deductible recoveries on paid and unpaid claims are recognized net of any required provision for uncollectible accounts at the same time as the related claims liability.

The Claims liabilities takes into consideration the time value of money using discount rates based on the estimated market value based yield to maturity of the underlying assets backing these liabilities, with reductions for estimated investment-related expense and credit risk. A provision for adverse deviations (“PfAD”) is then added to the discounted liabilities, to allow for possible deterioration of experience in claims development, recoverability of reinsurance balances and investment risk, in order to generate the actuarial present value.

These estimates of claims liabilities are subject to uncertainty and are selected from a wide range of possible outcomes. All provisions are periodically reviewed and evaluated in light of emerging claims experience and changing circumstances. The resulting changes in estimates of the ultimate liability are reported as net claims incurred in the reporting period in which they are determined.

## Reinsurance

In the normal course of business, the Company enters into per claim and excess of loss reinsurance contracts with other insurers in order to limit its net exposure to significant losses. Amounts relating to reinsurance in respect of the premiums and claims-related balances in the statements of financial position and profit or loss are recorded separately. Premiums ceded to reinsurers are presented before deduction of broker commission and any premium-based taxes or duty. Amounts recoverable from reinsurers are estimated and recognized in a manner consistent with the Company’s method of determining the underlying claims liabilities covered by the reinsurance contract. Amounts recoverable from reinsurers are assessed for indicators of impairment at the end of each reporting period. An impairment loss is recognized and the amount recoverable from reinsurers is reduced by the amount by which the carrying value exceeds the expected recoverable amount under the impairment analysis.

Ceding commissions, which relate to amounts received from the Company’s reinsurers on the placement of its reinsurance contracts, is earned into income on a *pro rata* basis over the contract period.

## Income taxes

Income tax expense is recognized in profit or loss and the statement of profit or loss and other comprehensive income. Current tax is based on taxable income which differs from profit or loss as reported in the statement of profit or loss and in the statement of other comprehensive income because of items of income or expense that are taxable or deductible in other years and items that are never taxable or deductible. Current tax includes any adjustments in respect of prior years.

Deferred tax assets are generally recognized for all deductible temporary income tax differences to the extent that it is probable that taxable profits will be available against which those deductible temporary differences can be utilized. Deferred tax liabilities are generally recognized for all taxable temporary differences. Deferred tax assets and liabilities are determined based on the enacted or substantively enacted tax laws and rates that are anticipated to apply in the period of realization. The measurement of deferred tax assets and liabilities utilizes the liability method, reflecting the tax consequences that would follow from the manner in which the Company expects to recover or settle the carrying amount of the related assets and liabilities. The carrying amount of the deferred tax asset is reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered.

Income tax assets and liabilities are offset when the income taxes are levied by the same taxation authority and there is a legally enforceable right to offset current tax assets with current tax liabilities.

## Employee benefits

The Company maintains a defined contribution pension plan (“DCPP”) for its employees. It also maintains a defined benefit pension plan (“DBPP”), also called a supplemental designated executive plan (“SDEP”), for certain designated employees, which provides benefits in excess of the benefits provided by the Company’s DCPP. For the SDEP, the benefit obligation is determined using the projected unit credit method. Actuarial valuations are carried out at the end of each annual reporting period using management’s assumptions on items such

# Notes to Financial Statements

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as discount rates, expected asset performance, salary growth and retirement ages of employees. The discount rate is determined based on the market yields of high quality, mid-duration corporate fixed income securities.

DCPP expenses are recognized in the reporting period in which services are rendered. Regarding the SDEP, remeasurements comprising actuarial gains and losses, the effect of the changes to the asset ceiling (if applicable) and the return on plan assets (excluding net interest cost), is reflected immediately in the statement of profit or loss and other comprehensive income with a charge or credit recognized in OCI in the period in which they occur. Remeasurements recognized in OCI are transferred immediately to retained earnings and will not be reclassified to profit or loss. Past service cost is recognized in profit or loss in the period of a plan amendment. Net interest is calculated by applying the discount rate at the beginning of the period to the net defined benefit liability or asset. Defined benefit costs are categorized as follows: service cost (including current service, past service cost, as well as gains or losses on curtailments and settlements), net interest expense or income, and remeasurements. The Company presents the first two components of defined benefit cost as part of operating expenses in the statement of profit or loss.

The retirement benefit obligation recognized in the statement of financial position represents the actual deficit or surplus in the Company's SDEP. Any surplus resulting from this calculation is limited to the present value of any economic benefits available in the form of refunds from the plan or reductions in future contributions to the plan.

## 3. Application of New and Revised IFRSs Relevant to the Company

In the current year, the Company has applied the following revised IFRSs issued by the IASB that are mandatorily effective for an accounting period that begins on or after January 1, 2020.

### **a) Amendments to IAS 1 "Presentation of Financial Statements" and IAS 8 "Accounting Policies, Changes in Accounting Estimates and Errors"**

In October 2018, the IASB issued amendments to IAS 1 and IAS 8 to align the definition of "material" across the standards and to clarify certain aspects of the definition. The objective of this amendment is to improve disclosure effectiveness in the financial statements by improving the understanding of the existing requirements rather than to significantly impact an entity's materiality judgements. The amendments apply prospectively to annual periods beginning on or after January 1, 2020. The adoption of these amendments did not have an impact on the Company's financial statements.

### **b) Conceptual Framework for Financial Reporting**

In March 2018, the IASB issued a comprehensive set of concepts for financial reporting: the revised Conceptual Framework for Financial Reporting ("Conceptual Framework"), which replaces its previous version. The Conceptual Framework assists companies in developing accounting policies when no IFRS standard applies to a particular transaction and it helps stakeholders more broadly to better understand the standards. The revised Conceptual Framework's effective date is January 1, 2020. The adoption of these amendments did not have an impact on the Company's financial statements.

### **c) Amendments to IFRS 9, 'Financial instruments', IAS 39, 'Financial instruments', and IFRS 7, 'Financial instruments: disclosures' - Interest rate benchmark reform**

Following the financial crisis, the replacement of benchmark interest rates such as LIBOR and other interbank offered rates ('IBORs') has become a priority for global regulators. Given this potential impact on financial reporting, the IASB has devised two-phase amendments

- Phase 1: considers reliefs to hedge accounting in the period before the reform, has led to these amendments.
- Phase 2: addresses issues that arise once the existing interest rate is replaced with an alternative interest rate.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The amendments are particularly relevant and provide temporary relief to entities that utilize hedge accounting. The amendments are effective for periods beginning after January 1, 2020. The adoption of these amendments did not have an impact on the Company's financial statements.

## 4. New and Revised IFRSs Issued but Not Yet Effective

The Company has not applied the following new and revised IFRSs that have been issued but are not yet effective:

### a) IFRS 9 "Financial Instruments"

IFRS 9, issued in November 2009 as part of a three-phase project to replace IAS 39 "Financial Instruments: Recognition and Measurement", introduced new requirements for the classification and measurement of financial assets. IFRS 9 was subsequently amended in October 2010 to include requirements for the classification and measurement of financial liabilities and for derecognition, and in November 2013 to include the new requirements for general hedge accounting. Another revised version of IFRS 9 was issued in July 2014 mainly to include impairment requirements for financial assets as well as limited amendments to the classification and measurements by introducing fair value through other comprehensive income ("FVOCI") measurement category for certain simple debt instruments.

Pursuant to IFRS 9, all recognized financial assets that are within the scope of IAS 39 are required to be subsequently measured at amortized cost or fair value. Specifically, debt instruments that are held within a business model whose objective is to collect the contractual cash flows, and that have contractual cash flows that are solely payments of principal and interest on the principal outstanding, are generally measured at amortized cost. Debt instruments that are held within a business model whose objective is achieved both by collecting contractual cash flows and selling financial assets, and that have contractual terms that give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding, are measured at FVOCI. All other debt securities, as well as equity securities, are measured at FVTPL. Entities may make an irrevocable election to present subsequent changes in the fair value of an equity security in OCI, with only dividend income generally recognized in profit or loss. In addition, under the fair value option, entities may elect for amortized cost or FVOCI debt securities to be designated as FVTPL.

With regard to the measurement of financial liabilities designated as FVTPL, IFRS 9 requires that the amount of change in the fair value of the financial liability that is attributable to changes in the credit risk of that liability is to be recognized in OCI, unless the recognition of the effects of changes in the liability's credit risk in OCI would create or enlarge an accounting mismatch in profit or loss. Under IAS 39, the entire amount of the change in the fair value of the financial liability designated as FVTPL is recognized in profit or loss.

With regards to debt securities measured at amortized cost or FVOCI, IFRS 9 requires an expected credit loss model for determining impairment, as opposed to an incurred credit loss model under IAS 39. The expected credit loss model requires an entity to account for expected credit losses and changes in those expected credit losses at each reporting date to reflect changes in credit risk since initial recognition. In other words, it is no longer necessary for a credit event to have occurred before impairment losses are recognized. Under IFRS 9, impairment is not considered for equity securities.

IFRS 9 as revised (2014) is effective for annual periods beginning on or after January 1, 2019. In September 2016, the IASB published amendments to IFRS 4 "Insurance Contracts", which provides two options for entities that issue insurance contracts: a) recognize in OCI, rather than profit or loss, the volatility that could arise when IFRS 9 is applied before the new insurance contracts standard is effective (the 'overlay approach') and b) if the entity's activities are predominantly connected with insurance it may exercise a temporary exemption to continue applying IAS 39 instead of IFRS 9 until January 1, 2021 (the 'deferral approach'). The Company qualifies for, and has elected to apply, the deferral option. The Company has concluded that its activities are predominantly connected with insurance, as the amount of its insurance liabilities are significant compared with its total amount of liabilities and the percentage of its liabilities connected with insurance relative to its total amount of liabilities is greater than 90%. The Company anticipates that the application of IFRS 9 in the future may have a material impact on amounts reported in respect of the Company's financial assets. However, it is not practicable to provide a reasonable estimate of the effect of IFRS 9 until the Company completes its detailed review.

# Notes to Financial Statements

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In November 2018, the IASB tentatively decided that the mandatory effective date of IFRS 17 should be deferred by one year, and consequently, the fixed expiry date for the temporary exemption in IFRS 4 should be amended to annual periods beginning on or after January 1, 2022, subject to public consultation. Further, in their March 2020 meeting the IASB decided to defer the effective date of IFRS 17 another year to January 1, 2023.

## b) IFRS 17 "Insurance Contracts"

In May 2017, the IASB published IFRS 17, a comprehensive new accounting standard for insurance contracts covering recognition and measurement, presentation and disclosure, which replaces IFRS 4 and introduces consistent accounting for all insurance contracts. IFRS 17 provides a general model for the recognition of insurance contracts, as well as a simplified model (premium allocation approach) for short-duration contracts, which will be applicable to most property and casualty insurance contracts. The standard requires a company to measure insurance contracts using updated estimates and assumptions that reflect the timing of cash flows and any uncertainty relating to insurance contracts. Additionally, IFRS 17 requires a company to recognize profits as it delivers insurance services.

The main features of the simplified new accounting model for property and casualty insurance contracts are as follows:

- the concept of portfolio, which is a group of contracts covering similar risks and managed together as a single pool. As such, contracts will be grouped for allocation of deferred acquisition costs, the calculation of risk adjustment, the determination of onerous contracts and the application of the discount rate;
- insurance liabilities will be discounted at a rate that reflects the characteristics of the liabilities (as opposed to a rate based on asset returns) and the duration of each portfolio. Entities will record the effect of changes in discount rates either in profit or loss or OCI, according to their accounting policy choice;
- changes in statement of financial position presentation where unearned premiums will correspond to premiums received in advance, while accounts receivable will be constituted of amounts not received when revenue is recognized. In profit or loss, direct premiums written will no longer be presented (only earned premiums). Also, insurance results will be presented without the impact of discounting. Amounts relating to financing and changes in discount rates will be shown separately;
- disclosure: extensive disclosures to provide information on the recognized amounts from insurance contracts and the nature and extent of risks arising from these contracts.

The standard applies to annual periods beginning on or after January 1, 2023, (see note 4a above). Retrospective application is required, but, if full retrospective application for a group of insurance contracts is impracticable, then the entity is required to choose either a modified retrospective approach or a fair value approach. The Company plans to adopt the new standard on the required effective date together with IFRS 9 (see note 4b above). The Company has been performing a high-level impact assessment of IFRS 17. The Company expects that the new standard will result in significant changes to accounting policies for insurance contract liabilities, but the impact has not yet been determined.

## c) Amendments to IAS 1, 'Presentation of financial statements' – Classification of liabilities as current or non-current Effective date EU adoption status

On January 23, 2020, the IASB issued a narrow-scope amendment to IAS 1 to clarify that liabilities are classified as either current or non-current, depending on the rights that exist at the end of the reporting period. The amendment changes the guidance for the classification of liabilities as current or non-current. It could affect the classification of liabilities, particularly for entities that previously considered management's intentions to determine classification and for some liabilities that can be converted into equity. The amendments apply retrospectively to annual periods beginning on or after January 1, 2022. The Company is currently assessing the impact of these amendments.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 5. Investments

### a) Summary

The tables below provide details of the cost or amortized cost as well as the fair value of the Company's investments, classified by accounting category and investment type:

	DECEMBER 31, 2020			DECEMBER 31, 2019		
	Cost or amortized cost	Net Unrealized Gain/Loss	Fair value	Cost or amortized cost	Net Unrealized Gain/Loss	Fair value
Available-for-sale						
Fixed income securities	\$ 161,797	1,990	163,787	141,718	630	142,348
Common equities	123,714	12,054	135,768	126,545	32,533	159,078
	285,511	14,044	299,555	268,263	33,163	301,426
Designated as FVTPL						
Fixed income securities	385,823	18,289	404,112	374,936	5,305	380,241
Preferred equities	615	(264)	351	615	(248)	367
	386,438	18,025	404,463	375,551	5,057	380,608
<b>Total</b>	<b>\$ 671,949</b>	<b>32,069</b>	<b>704,018</b>	<b>643,814</b>	<b>38,220</b>	<b>682,034</b>
Reconciled in aggregate to asset classes as follows:						
Fixed income securities	547,620	20,279	567,899	516,654	5,935	522,589
Equities	124,329	11,790	136,119	127,160	32,285	159,445
<b>Total</b>	<b>\$ 671,949</b>	<b>32,069</b>	<b>704,018</b>	<b>\$643,814</b>	<b>38,220</b>	<b>682,034</b>

As at December 31, 2020, the Company did not hold any impaired securities (as at December 31, 2019, the net unrealized loss for common equities included a cumulative recognized impairment loss of \$11,121,738).

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## b) Maturity profile of fixed income securities

The maturity profile of fixed income securities and its analysis by type of issuer is as follows:

	DECEMBER 31, 2020			
	Within 1 year	1 to 5 years	Over 5 years	Total
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 780	4,542	13,296	18,618
Canadian provincial and municipal governments	1,081	19,846	41,804	62,731
Mortgage backed securities	-	791	-	791
Corporate debt	1,900	46,053	33,694	81,647
	<u>\$ 3,761</u>	<u>71,232</u>	<u>88,794</u>	<u>163,787</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 39,527	21,870	-	61,397
Canadian provincial and municipal governments	11,382	53,109	49,823	114,314
Mortgage backed securities	-	2,820	8,622	11,442
Corporate debt	11,556	108,817	96,586	216,959
	<u>62,465</u>	<u>186,616</u>	<u>155,031</u>	<u>404,112</u>
<b>Fixed income securities</b>	<b>\$ 66,226</b>	<b>257,848</b>	<b>243,825</b>	<b>567,899</b>
<b>Percent of total</b>	<b>12%</b>	<b>45%</b>	<b>43%</b>	<b>100%</b>
	DECEMBER 31, 2019			
	Within 1 year	1 to 5 years	Over 5 years	Total
<b>Available-for-sale</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 33,023	10,444	241	43,708
Canadian provincial and municipal governments	17,324	62,465	1,363	81,152
Corporate debt	6,170	10,678	640	17,488
	<u>\$ 56,517</u>	<u>83,587</u>	<u>2,244</u>	<u>142,348</u>
<b>Designated as FVTPL</b>				
Issued or guaranteed by:				
Canadian federal government	\$ 64,213	44,665	-	108,878
Canadian provincial and municipal governments	11,856	51,171	33,427	96,454
Mortgage backed securities	-	836	1,223	2,059
Corporate debt	10,804	68,432	93,614	172,850
	<u>86,873</u>	<u>165,104</u>	<u>128,264</u>	<u>380,241</u>
<b>Fixed income securities</b>	<b>\$ 143,390</b>	<b>248,691</b>	<b>130,508</b>	<b>522,589</b>
<b>Percent of total</b>	<b>27%</b>	<b>48%</b>	<b>25%</b>	<b>100%</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The weighted average duration of fixed income securities as at December 31, 2020 is 4.16 years (December 31, 2019: 2.93 years). The effective yield on fixed income securities as at December 31, 2020 is 2.55% (December 31, 2019: 2.18%).

## c) Impairment Analysis

Management performs a quarterly analysis of the Company's AFS investments to determine whether there is objective evidence that the estimated cash flows of the investments have been affected. The analysis includes the following procedures as deemed appropriate by management:

- identifying all security holdings in unrealized loss positions that have existed for a length of time that management believes may impact the recoverability of the investment;
- identifying all security holdings in unrealized loss positions that have an unrealized loss magnitude that management believes may impact the recoverability of the investment;
- reviewing the trading range of certain investments over the preceding calendar period;
- assessing whether any credit losses are expected for those investments. This assessment includes consideration of, among other things, all available information and factors having a bearing upon collectability such as changes to credit rating by rating agencies, financial condition of the issuer, expected cash flows and value of any underlying collateral;
- assessing whether declines in fair value for any fixed income securities represent objective evidence of impairment based on their investment grade credit ratings from third party security rating agencies;
- assessing whether declines in fair value for any fixed income securities with non-investment grade credit rating represent objective evidence of impairment based on the history of its debt service record; and
- obtaining a valuation analysis from third party investment managers regarding the intrinsic value of these holdings based on their knowledge, experience and other market based valuation techniques.

The movements in cumulative impairment write-downs on AFS investments (in OCI, pre-tax) for the years ended December 31 were as follows:

	2020	2019
Balance, as at January 1	\$ 11,122	9,298
Increase for the year charged to profit or loss	14,386	3,348
Release upon disposition	(25,508)	(1,524)
<b>Balance, as at December 31</b>	<b>\$ -</b>	<b>11,122</b>

## d) Net investment income

Net investment income arising from investments designated as FVTPL and classified as AFS recorded in profit or loss for the year ended December 31 is as follows:

	2020			2019		
	Designated as FVTPL	Available- for-sale	Total	Designated as FVTPL	Available- for-sale	Total
Interest and dividends	\$ 11,339	6,964	18,303	12,310	8,315	20,625
Net realized gains (losses)	1,879	14,171	16,050	278	(568)	(290)
Change in net unrealized gains (losses)	12,967	4	12,971	4,023	(6)	4,017
	26,185	21,139	47,324	16,611	7,741	24,352
Less: Investment expenses	(363)	(799)	(1,162)	(368)	(963)	(1,331)
<b>Net investment income</b>	<b>\$ 25,822</b>	<b>20,340</b>	<b>46,162</b>	<b>16,243</b>	<b>6,778</b>	<b>23,021</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 6. Fair Value Measurements of Financial Assets

The following tables present the Company's financial assets measured at fair value.

AS AT DECEMBER 31, 2020	CARRYING AMOUNT			FAIR VALUE			Total
	Designated at fair value	Available-for-sale	Total	Level 1	Level 2	Level 3	
<b>Financial assets measured at fair value</b>							
Cash and cash equivalents	\$ 7,748	-	<b>7,748</b>	7,748	-	-	<b>7,748</b>
Fixed income securities	404,112	163,787	<b>567,899</b>	245,055	322,844	-	<b>567,899</b>
Common equities	-	135,768	<b>135,768</b>	135,768	-	-	<b>135,768</b>
Preferred equities	351	-	<b>351</b>	-	351	-	<b>351</b>
	<b>\$ 412,211</b>	<b>299,555</b>	<b>711,766</b>	<b>388,571</b>	<b>323,195</b>	-	<b>711,766</b>

AS AT DECEMBER 31, 2019	CARRYING AMOUNT			FAIR VALUE			Total
	Designated at fair value	Available-for-sale	Total	Level 1	Level 2	Level 3	
<b>Financial assets measured at fair value</b>							
Cash and cash equivalents	\$ 18,117	-	<b>18,117</b>	18,117	-	-	<b>18,117</b>
Fixed income securities	380,241	142,348	<b>522,589</b>	317,927	204,662	-	<b>522,589</b>
Common equities	-	159,078	<b>159,078</b>	159,078	-	-	<b>159,078</b>
Preferred equities	367	-	<b>367</b>	-	367	-	<b>367</b>
	<b>\$ 398,725</b>	<b>301,426</b>	<b>700,151</b>	<b>495,122</b>	<b>205,029</b>	-	<b>700,151</b>

There were no transfers between any levels during the year ended December 31, 2020 (2019: none).

## 7. Property and Equipment

During the years ending December 31, details of the movement in the carrying values by class of property and equipment are as follows:

	Furniture and fixtures	Computer equipment	Computer software	Leasehold improvements	Right-of-use assets	Total
January 1, 2019	\$ 631	261	136	703	-	<b>1,731</b>
Additions	24	81	48	1	-	<b>154</b>
Adoption of IFRS 16	-	-	-	-	11,065	<b>11,065</b>
Amortization	(158)	(148)	(91)	(74)	(579)	<b>(1,050)</b>
December 31, 2019	497	194	93	630	10,486	<b>11,900</b>
Additions	10	642	223	-	-	<b>875</b>
Amortization	(158)	(181)	(92)	(75)	(579)	<b>(1,085)</b>
<b>December 31, 2020</b>	<b>\$ 349</b>	<b>655</b>	<b>224</b>	<b>555</b>	<b>9,907</b>	<b>11,690</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

Details of the cost and accumulated amortization of property and equipment are as follows:

	DECEMBER 31, 2020			DECEMBER 31, 2019		
	Cost	Accumulated amortization	Carrying value	Cost	Accumulated amortization	Carrying value
Furniture and fixtures	\$ 2,205	(1,856)	349	2,195	(1,698)	497
Computer equipment	3,554	(2,899)	655	2,912	(2,718)	194
Computer software	1,295	(1,071)	224	1,072	(979)	93
Leasehold improvements	4,403	(3,848)	555	4,403	(3,773)	630
Right-of-use assets	11,065	(1,158)	9,907	11,065	(579)	10,486
<b>Total</b>	<b>\$ 22,522</b>	<b>(10,832)</b>	<b>11,690</b>	<b>21,647</b>	<b>(9,747)</b>	<b>11,900</b>

The right-of-use assets above is the office premises and equipment leases, which were recognized on January 1, 2019 as per IFRS 16.

The Company has a lease agreement for premises at 250 Yonge Street, commencing June 1, 2018 and expiring on May 31, 2028. The Company has an option to extend the lease period for two additional terms of five years each under the current general terms and conditions. The above capitalized amount takes into account 10 years of extension.

## 8. Intangible Asset

The Company's intangible asset consists of a license and internally developed new platform for TitlePLUS product. The license associated software became available for use during 2015, and as a result, has been amortized over its expected useful life of 68 months, which ended December 31, 2020. The Company also started the capitalization of development cost related to a new TitlePLUS platform from January 1, 2019. During the years ending December 31, details of the movement in the carrying values are as follows:

	2020	2019
<b>Cost</b>		
Balance, beginning of year	\$ 1,472	1,243
Software in development not yet in use	777	229
Balance, end of year	\$ 2,249	1,472
<b>Accumulated amortization and impairment</b>		
Balance, beginning of year	\$ (1,023)	(804)
Amortization expense	(220)	(219)
Balance, end of year	(1,243)	(1,023)
<b>Carrying amount</b>	<b>\$ 1,006</b>	<b>449</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 9. Claim Liabilities and Lease Liabilities

Provisions and other liabilities are comprised of the following:

	2020	2019
<b>Claims Liabilities</b>		
Expected to be settled in less than one year	\$ 105,362	102,808
Expected to be settled in more than one year	406,793	388,836
<b>Total</b>	<b>\$ 512,155</b>	<b>491,644</b>
<b>Lease Liabilities</b>		
Expected to be settled in less than one year	405	389
Expected to be settled in more than one year	\$ 9,858	10,263
<b>Total</b>	<b>\$ 10,263</b>	<b>10,652</b>

## 10. Claims Liabilities

### a) Nature of claims liabilities

The determination of the claims liabilities is a complex process based on known facts, interpretations and judgment and is influenced by a variety of factors. These factors include the Company's own experience with similar cases and historical trends involving claim payment patterns, loss payments, pending levels of unpaid claims liabilities, product mix and concentration, claims severity and claim frequency patterns.

Other factors include the continually evolving and changing regulatory and legal environment, actuarial studies, professional experience and expertise of the Company's claim departments' personnel and independent adjusters retained to handle individual claims, the quality of the data used for projection purposes, existing claims management practices including claims handling and settlement practices, the effect of inflationary trends on future claims settlement costs, investment rates of return, court decisions and economic conditions. In addition, time can be a critical part of the provision determination, since the longer the span between the incidence of a loss and the settlement of the claim, the more potential for variation in the ultimate settlement amount. Accordingly, short-tailed claims, such as property claims, tend to be more reasonably predictable than long-tailed claims, such as professional liability and title claims.

The process of establishing the provision relies on the judgment and opinions of a number of individuals, on historical precedents and trends, on prevailing legal, economic, social and regulatory trends and on expectations as to future developments. The provision reflects expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, together with a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors.

Consequently, the measurement of the ultimate settlement costs of claims to date that underlies the claims liabilities, and any related recoveries for reinsurance and deductibles, involves estimates and measurement uncertainty. The amounts are based on estimates of future trends in claim severity and other factors which could vary as claims are settled. Variability can be caused by several factors including the emergence of additional information on claims, changes in judicial interpretation, significant changes in severity or frequency of claims from historical trends, and inclusion of exposures not contemplated at the time of policy inception. Ultimate costs incurred could vary from current estimates. Although it is not possible to measure the degree of variability inherent in such estimates, management believes that the methods of estimation that have been used will produce reasonable results given the current information.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## b) Methodologies and assumptions

The best estimates of claims payments and adjustment expenses are determined based on one or more of the following actuarial methods: the chain ladder method, the paid frequency and severity method, the expected loss ratio method, and the Bornheutter-Ferguson method. Considerations in the choice of methods to estimate ultimate claims include, among other factors, the line of business, the number of years of experience and the relative maturity of the experience, and as such, reflect methods for lines of business with long settlement patterns and which are subject to the occurrence of large claims.

Each method involves tracking claims data either by “accident year”, which is the year in which such claims are made for the Company’s professional liability policies, or by “policy year”, the year in which such policies were written for its title policies. Claims paid and reported, gross and net of reinsurance recoveries and net of salvage and subrogation, are tracked by lines of business, accident/policy years and development periods in a format known as claims development triangles.

A description of each of these methods is as follows:

### i. Chain ladder method

The distinguishing characteristic of this form of development method is that ultimate claims for each policy year are projected from recorded values assuming the future claim development is similar to the prior years’ development.

### ii. Paid frequency and severity (“PFS”) method

The PFS method assumes that, for each identified homogenous claims type group, claims count reported to date will develop to ultimate in a similar manner to historical patterns, and settle at predictable average severity amounts. This method involves applying the developed estimated ultimate claims count to selected estimated ultimate average claim severities.

### iii. Expected loss ratio method

Using the expected loss ratio method, ultimate claims projections are based upon *a priori* measures of the anticipated claims. An expected loss ratio is applied to the measure of exposure to determine estimated ultimate claims for each year. This method is commonly used in lines of business with a limited experience history.

### iv. Bornheutter-Ferguson (“BF”) method

The BF method applied to reported loss data relies on the assumption that remaining unreported losses are a function of total expected losses rather than a function of currently reported losses. The BF method is most useful when the actual reported losses do not provide a good indicator of future losses (e.g. for immature and/or unstable accident years).

Claims data includes external claims adjustment expenses (Allocated Loss Adjustment Expenses or ALAE), and for a portion of the portfolio includes internal claims adjustment expenses (Unallocated Loss Adjustment Expenses or ULAE). A provision for ULAE has been determined based on the Mango-Allen claim staffing technique, a transaction-based method which utilizes expected future claims handler workload per claim per handler, claims closure rates and ultimate claims count.

The claims liabilities are discounted using an interest rate based on the estimated market value based yield to maturity, inherent credit risk and related investment expense of the Company’s fixed income securities supporting the claims liabilities as at December 31, 2020, which was 1.26% (December 31, 2019: 2.45%). Reinsurance recoverable estimates and claims recoverable from other insurers are discounted in a manner consistent with the method used to establish the related liability. The provision for adverse development has been selected based on the risk associated with development and within the prescribed CIA guidelines.

As the claims liabilities are recorded on a discounted basis and reflect the time value of money, its carrying value is expected to provide a reasonable basis for the determination of fair value. However, determination of fair value also requires the practical context of a buyer and seller, both of whom are willing and able to enter into an arm’s length transaction. In the absence of such a practical context, the fair value is not readily determinable.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The following table shows claims liabilities on an undiscounted basis and a discounted basis:

	DECEMBER 31, 2020		DECEMBER 31, 2019	
	Undiscounted	Discounted	Undiscounted	Discounted
Claims Liabilities	\$ 467,269	512,155	456,185	491,644
Recoverable from reinsurers	(46,451)	(50,189)	(43,331)	(46,297)
<b>Net</b>	<b>\$ 420,818</b>	<b>461,966</b>	<b>412,854</b>	<b>445,347</b>

Details of the claims liabilities, by line of business, are summarized as follows:

	DECEMBER 31, 2020			DECEMBER 31, 2019		
	Gross	Ceded	Net	Gross	Ceded	Net
Professional liability	\$ 493,003	(50,157)	<b>442,846</b>	473,748	(46,250)	<b>427,498</b>
Title	19,152	(32)	<b>19,120</b>	17,896	(47)	<b>17,849</b>
<b>Total</b>	<b>\$ 512,155</b>	<b>(50,189)</b>	<b>461,966</b>	<b>491,644</b>	<b>(46,297)</b>	<b>445,347</b>

The claims liabilities by case reserves and IBNR are as follows:

	DECEMBER 31, 2020			DECEMBER 31, 2019		
	Gross	Ceded	Net	Gross	Ceded	Net
Case reserves	\$ 352,335	(4,161)	<b>348,174</b>	340,465	(3,919)	<b>336,546</b>
IBNR	159,820	(46,028)	<b>113,792</b>	151,179	(42,378)	<b>108,801</b>
<b>Total</b>	<b>\$ 512,155</b>	<b>(50,189)</b>	<b>461,966</b>	<b>491,644</b>	<b>(46,297)</b>	<b>445,347</b>

An evaluation of the adequacy of claims liabilities is completed at the end of each financial quarter. This evaluation includes a re-estimation of the claims liabilities compared to the liability that was originally established. As adjustments to estimated claims liabilities become necessary, they are reflected in current operations.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## c) Changes in methodologies or basis of selection of assumptions

Based on the Company's actuarial valuation process, at each valuation the Company's claims data is analyzed to determine whether the current methodologies and basis of selection of actuarial assumptions continue to be appropriate for the estimation of unpaid claims liabilities. Upon review, the Company has incorporated the BF method in addition to the already prescribed methods and consequently deemed it appropriate to modify the basis of its selected methods from the prior year-end for the purposes of its actuarial evaluation as at December 31, 2020.

Details of the claims incurred for the year ended December 31 are as follows:

	2020			2019		
	Gross	Ceded	Net	Gross	Ceded	Net
Claims & external adjustment expenses paid	\$ 75,727	1,160	<b>74,567</b>	77,217	(881)	<b>78,098</b>
Change in case reserves	6,537	183	<b>6,354</b>	15,287	2,533	<b>12,754</b>
Change in IBNR	3,630	2,937	<b>693</b>	(6,206)	2,374	<b>(8,580)</b>
Discount expense	9,426	772	<b>8,654</b>	7,057	883	<b>6,174</b>
ULAE paid	9,716	-	<b>9,716</b>	10,125	-	<b>10,125</b>
Change in provision for ULAE	\$ 917	-	<b>917</b>	857	-	<b>857</b>
<b>Total</b>	<b>\$ 105,953</b>	<b>5,052</b>	<b>100,901</b>	<b>104,337</b>	<b>4,909</b>	<b>99,428</b>

Changes in the claims liabilities recorded in the statement of financial position during the year is comprised of the following:

	2020	2019
Claims Liabilities – January 1 – net	\$ 445,347	434,143
Change in net Claims Liabilities:		
Prior years' incurred claims	(11,634)	(27,927)
Current year's incurred claims	103,880	121,181
Net claims liabilities paid in relation to:		
Prior years	(71,783)	(74,327)
Current year	(12,499)	(13,897)
Impact of discounting	\$ 8,655	6,174
Claims Liabilities – December 31 – net	461,966	445,347
Reinsurers' share of Claims Liabilities	\$ 50,189	46,297
<b>Claims Liabilities– December 31 – gross</b>	<b>\$ 512,155</b>	<b>491,644</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## d) Loss development tables

The tables on the following pages show the development of claims, excluding IAE, by policy year over a period of time. The first table reflects development for gross claims, which excludes any reductions for reinsurance recoverables. The second table reflects development for net claims, which is gross claims less reinsurance recoverables. The top triangle in each table shows how the estimates of total claims for each policy year develop over time as more information becomes known regarding individual claims and overall claims frequency and severity. Claims are presented on an undiscounted basis in the top triangle. The bottom triangle in each table presents the cumulative amounts paid for claims and external loss adjustment expenses for each policy year at the end of each successive year. At the bottom of each table, the provision for IAE as well as the effect of discounting and the PfAD, as at December 31, 2020, is presented based on the net amounts of the two triangles.

Before the effect of reinsurance, the loss development table is as follows:

LAWPRO as at December 31, 2020 – Gross Basis

	All Prior Years	POLICY YEAR										Total
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	
<b>Estimate of Ultimate Claims</b>												
At end of Policy year	\$	98,870	110,380	102,937	103,962	106,879	113,990	112,943	109,102	112,533	96,552	
One Year Later		100,573	93,630	95,423	92,844	96,377	107,475	100,803	93,763	105,152		
Two Years Later		97,841	90,749	91,649	87,845	91,393	99,401	97,582	95,653			
Three Years Later		96,265	88,237	89,307	88,634	95,395	97,735	96,340				
Four Years Later		87,906	84,248	88,060	84,889	92,689	95,765					
Five Years Later		87,930	86,065	85,900	81,410	90,670						
Six Years Later		90,765	75,850	83,205	81,121							
Seven Years Later		88,168	75,276	82,179								
Eight Years Later		89,480	75,351									
Nine Years Later		88,959										
<b>Cumulative Claims Paid</b>												
At end of Policy year		(6,868)	(4,744)	(4,167)	(5,516)	(5,896)	(7,299)	(6,969)	(8,043)	(8,233)	(7,632)	
One Year Later		(17,678)	(15,743)	(18,406)	(18,123)	(19,993)	(21,104)	(22,535)	(21,020)	(25,783)		
Two Years Later		(30,885)	(26,124)	(30,668)	(30,339)	(30,943)	(35,102)	(33,687)	(32,348)			
Three Years Later		(44,452)	(36,429)	(41,705)	(40,880)	(42,433)	(45,204)	(41,954)				
Four Years Later		(54,632)	(46,319)	(50,229)	(45,911)	(54,319)	(55,156)					
Five Years Later		(62,242)	(54,637)	(56,457)	(51,069)	(59,854)						
Six Years Later		(70,458)	(61,579)	(62,188)	(55,520)							
Seven Years Later		(74,595)	(64,018)	(65,879)								
Eight Years Later		(77,873)	(64,990)									
Nine Years Later		(79,225)										
Estimate of Ultimate Claims		88,959	75,351	82,179	81,121	90,670	95,765	96,340	95,653	105,152	96,552	
Cumulative Claims Paid		(79,225)	(64,990)	(65,879)	(55,520)	(59,854)	(55,156)	(41,954)	(32,348)	(25,783)	(7,632)	
Undiscounted Claims Liabilities	27,995	9,734	10,361	16,300	25,601	30,816	40,609	54,386	63,305	79,369	88,920	<b>447,396</b>
Provision for IAE	190	156	227	444	625	867	1,267	2,009	2,739	4,589	6,760	<b>19,873</b>
Discounting (including PfAD)	2,777	915	980	1,550	2,416	2,984	3,893	5,154	5,947	7,352	10,917	<b>44,885</b>
Present Value recognized in the Statement of Financial Position	\$ 30,963	10,805	11,568	18,294	28,642	34,667	45,769	61,549	71,991	91,310	106,597	<b>512,155</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

After the effect of reinsurance, the loss development table is as follows:

LAWPRO as at December 31, 2020 – Net Basis

	All Prior Years	POLICY YEAR										Total
		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	
<b>Estimate of Ultimate Claims</b>												
At end of Policy year	\$	94,874	106,381	98,696	99,579	102,534	109,643	108,683	104,752	108,190	92,253	
One Year Later		96,577	89,631	91,183	88,460	92,032	103,128	96,542	89,413	100,810		
Two Years Later		93,845	86,750	87,409	83,462	87,047	95,054	93,322	91,303			
Three Years Later		92,269	84,238	85,066	84,251	91,049	93,388	92,079				
Four Years Later		83,910	80,249	83,819	80,506	88,344	91,419					
Five Years Later		83,934	82,066	81,660	77,027	86,324						
Six Years Later		86,769	71,851	78,964	76,737							
Seven Years Later		84,173	71,277	77,938								
Eight Years Later		85,484	71,352									
Nine Years Later		84,963										
<b>Cumulative Claims Paid</b>												
At end of Policy year		(6,868)	(4,744)	(4,167)	(5,516)	(5,896)	(7,299)	(6,969)	(8,043)	(8,233)	(7,632)	
One Year Later		(17,678)	(15,741)	(18,406)	(18,123)	(19,993)	(21,104)	(22,535)	(21,020)	(25,783)		
Two Years Later		(29,976)	(26,122)	(30,668)	(30,339)	(30,943)	(35,002)	(33,687)	(32,348)			
Three Years Later		(43,542)	(36,421)	(41,705)	(40,880)	(42,433)	(45,105)	(41,954)				
Four Years Later		(53,722)	(46,312)	(50,229)	(45,911)	(54,319)	(53,954)					
Five Years Later		(61,207)	(54,628)	(56,449)	(51,069)	(59,854)						
Six Years Later		(69,423)	(59,086)	(62,180)	(55,520)							
Seven Years Later		(73,560)	(62,575)	(65,871)								
Eight Years Later		(76,838)	(63,548)									
Nine Years Later		(78,190)										
Estimate of Ultimate Claims		84,963	71,352	77,938	76,737	86,324	91,419	92,079	91,303	100,810	92,253	
Cumulative Claims Paid		(78,190)	(63,548)	(65,871)	(55,520)	(59,854)	(53,954)	(41,954)	(32,348)	(25,783)	(7,632)	
Undiscounted Claims Liabilities	20,421	6,773	7,804	12,067	21,217	26,470	37,465	50,125	58,955	75,027	84,621	<b>400,945</b>
Provision for IAE	190	156	227	444	625	867	1,267	2,009	2,739	4,589	6,760	<b>19,873</b>
Discounting (including PfAD)	2,153	681	778	1,217	2,074	2,635	3,645	4,825	5,617	7,034	10,489	<b>41,148</b>
Present Value recognized in the Statement of Financial Position	\$ 22,764	7,610	8,809	13,728	23,916	29,972	42,377	56,959	67,311	86,650	101,870	<b>461,966</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 11. Unearned Premiums

The following changes have occurred in the provision for unearned premiums during the years ended December 31:

	2020	2019
Balance, as at January 1	\$ 1,100	1,111
Net premiums written during the year	106,841	107,596
Less: Net premiums earned during the year	(106,811)	(107,607)
Increase (decrease) in unearned premiums	30	(11)
<b>Balance, as at December 31</b>	<b>\$ 1,130</b>	<b>1,100</b>

The estimates for unearned premium liabilities have been actuarially tested to ensure that they are sufficient to pay for future claims and expenses in servicing the unexpired policies as of the valuation dates.

## 12. Reinsurance

The Company's reinsurance program consists of a 90% quota share cession on its excess professional liability policies (2019: 90%), and a \$10 million in excess of \$5 million per occurrence clash reinsurance arrangement which provides protection for single events that bring about multiple professional liability and/or title claims with an additional \$20 million in excess of \$15 million per occurrence. Reinsurance does not relieve the Company of its primary liability as the originating insurer. In the event that a reinsurer is unable to meet obligations assumed under reinsurance agreements, the Company is liable for such amounts. Reinsurance treaties typically renew annually and the terms and conditions are reviewed by senior management and reported to the Company's Board of Directors. Reinsurance agreements are negotiated with reinsurance companies that have an independent credit rating of "A-" or better and that the Company considers creditworthy. Based on current information on the financial health of the reinsurers, no provision for doubtful debts has been made in the financial statements in respect of reinsurers.

## 13. Related Party Transactions

Pursuant to a service agreement effective January 1, 1995, and as amended effective September 30, 2009, the Company administers the Errors and Omissions Insurance Fund (the "Fund") of the Law Society and provides all services directly related to the operations and general administration of the Fund in consideration for the Law Society insuring its mandatory professional liability insurance program with the Company.

The insurance policy under the mandatory professional liability insurance program of the Law Society is written by the Company and is effective on a calendar year basis. The insurance policy is renewed effective January 1 each year subject to the Law Society's acceptance of the terms of renewal submitted by the Company. The annual policy limits for each of the years effective January 1, 1995 to December 31, 2019 are \$1 million per claim and \$2 million in aggregate per member. Under the insurance policy that was in force between July 1, 1990 and December 31, 1994, the Company was responsible for claims in excess of the Law Society and member deductibles. The claims liabilities is net of amounts relating to policies for years prior to 1995 that are payable by the Law Society.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

For the year ended December 31, 2020, \$101,819,906 of the gross premiums written related to mandatory insurance coverage provided to the Law Society and its members (2019: \$102,772,498). As at December 31, 2020, the Company had a balance due from the Law Society of \$7,935,624 (December 31, 2019: \$7,422,485 due from Law Society).

The total compensation to Company personnel classified as key management, being those having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including directors of the Company, is as follows:

	2020	2019
Short-term compensation and benefits	\$ 3,560	3,112
Post employment benefits	465	390
	<b>\$ 4,025</b>	<b>3,502</b>

The Law Society offers a wellness program to their members, the Company shares a portion of this cost in order to make the program available to their insureds. The amounts expensed are included in operating expenses under professional fees (see note 16).

## 14. Employee Benefits

The Company has a DCP which is available to all its employees upon meeting the eligibility requirements. Each employee is required to contribute 4.5% of yearly maximum pensionable earnings, and 6% in excess thereof, of an employee's annual base earnings. Under the plan, the Company matches all employee contributions. In 2020, the Company made payments of \$809,639 (2019: \$761,697) and recorded pension expense of \$853,985 (2019: \$826,418).

The Company also has a SDEP or DBPP, which provides pension benefits on a final salary or fixed schedule basis, depending on certain criteria. Measurements and funding requirements of this plan are based on valuations prepared by an external actuary. For reporting purposes the plan is measured using the projected unit credit method, which involves calculating the actuarial present value of the past service liability to members including an allowance for their projected future earnings. Funding requirements for the plan are determined using the solvency method, which utilizes the estimated cost of securing each member's benefits with an insurance company or alternative buy-out provider as at the valuation date. The valuation methods are based on a number of assumptions, which vary according to economic conditions, including prevailing market interest rates, and changes in these assumptions can significantly affect the measurement of the pension obligations.

Funding for the supplemental plan commenced in 2005, with \$818,906 in contributions made in 2020 (2019: 1,156,227) and recorded pension expenses of \$343,264 in 2020 (2019: \$241,903). Funding requirements are reviewed annually with an actuarial valuation for funding purposes effective as at December 31. As the Company's DBPP qualifies as a "retirement compensation arrangement" pursuant to the *Income Tax Act*, half of any required annual contribution to the plan is remitted to the Canada Revenue Agency, held in a refundable tax account and refunded in prescribed amounts as actual benefit payments are made to the participants. The most recent actuarial valuation for funding purposes was performed effective December 31, 2020. Management's preliminary estimate is that \$852,000 is the required contribution to the plan during the year ending December 31, 2021.

The assets of both pension plans are held separately from those of the Company in funds under the control of trustees.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The DBPP exposes the Company to risks such as: investment risk, interest rate risk, longevity risk and salary risk.

Investment risk	The present value of the defined benefit plan liability is calculated using a discount rate determined by reference to high quality mid-duration corporate bond yields; if the return on plan assets is below this rate, it will create a plan deficit. Currently the plan has a relatively balanced investment in equity and fixed income securities. Due to the long-term nature of the plan liabilities, the Company considers it appropriate that a reasonable portion of the plan assets should be invested in equity securities to leverage the return generated by the fund.
Interest rate risk	A decrease in the market interest rate will increase the plan obligation; however, this will be partially offset by an increase in the return of the plan's fixed income securities.
Longevity risk	The present value of the defined benefit plan obligation is calculated by reference to the best estimate of the mortality of plan participants both during and after their employment. An increase in the life expectancy of the plan participants will increase the plan's obligation.
Salary risk	The present value of the defined benefit plan liability is calculated by reference to the future salaries of plan participants. As such, an increase in the salary of the plan participants will increase the plan's obligation.

The following represents the assets and liabilities associated with pension benefits measured using values as at December 31:

## *DBPP obligation*

	2020	2019
<b>Accrued benefit obligation</b>		
Balance, as at January 1	\$ 9,613	8,552
Current service cost	383	294
Interest cost	298	323
Remeasurement (gains) losses:		
Actuarial (gains) losses - demographic assumptions	-	-
Actuarial (gains) losses - financial assumptions	789	801
Actuarial (gains) losses - experience adjustments	(38)	123
Benefits paid	(480)	(480)
<b>Balance, as at December 31</b>	<b>\$ 10,565</b>	<b>\$9,613</b>

## *DBPP assets*

	2020	2019
<b>Plan assets</b>		
Fair value, as at January 1	\$ 10,735	9,492
Interest income on plan assets	336	376
Remeasurement gains (losses):		
Return on plan assets greater (less) than discount rate	39	191
Benefits paid	(480)	(480)
Employer contribution	819	1,156
<b>Fair value, as at December 31</b>	<b>\$ 11,449</b>	<b>10,735</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The DBPP assets arise primarily from employer contributions that are originally allocated equally between deposits with the Government of Canada and investments in the units of a balanced pooled fund. The fair values of the above equity and fixed income securities are derived based on quoted market prices in active markets. The plan assets contain the following financial instrument allocation:

	DECEMBER 31, 2020	DECEMBER 31, 2019
Equity securities	32.14%	30.62%
Fixed income securities	18.46%	20.63%
Cash and cash equivalents	0.34%	0.23%
Refundable-tax account	49.06%	48.52%
	<b>100%</b>	<b>100%</b>

Reconciliation of funded status surplus of the benefit plans to the amounts recorded in other assets in the financial statements is as follows:

	DECEMBER 31, 2020	DECEMBER 31, 2019
Fair value of plan assets	\$ 11,449	10,735
Accrued benefit obligation	(10,564)	(9,613)
<b>Accrued benefit asset</b>	<b>\$ 885</b>	<b>1,122</b>

The accrued benefit asset is included in other assets in the statement of financial position.

	2020	2019
Service cost:		
Current service cost	\$ 383	294
Past service cost and (gain) loss from settlements	-	-
Net interest (income) expense	(40)	(52)
Components of defined benefit costs recognized in profit or loss	<b>\$ 343</b>	<b>242</b>
Remeasurement on the net defined benefit liability:		
Actuarial (gain) loss due to liability experience	\$ (38)	123
Actuarial (gain) loss due to liability assumption changes	789	801
Actuarial (gain) loss arising during year	751	924
Return on plan assets (greater) less than discount rate	(39)	(191)
Change in irrecoverable surplus (effect of asset ceiling)	-	-
Components of defined benefit costs recognized in OCI	<b>712</b>	<b>733</b>
<b>Total</b>	<b>\$ 1,055</b>	<b>975</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The significant assumptions used by the Company for year-end measurement purposes are as follows:

	2020	2019
Discount rate	2.45%	3.05%
Rate of compensation increase	4.50% starting in 2021	4.50% starting in 2021
Mortality	CPM 2014 Priv mortality table with generational mortality improvements following Scale MI-2017; pension size adjustment factors of 0.83 for males and 0.88 for females	CPM 2014 Priv mortality table with generational mortality improvements following Scale MI-2017; pension size adjustment factors of 0.83 for males and 0.88 for females

The sensitivity of the key assumption, namely discount rate, assuming all other assumptions remain constant, is as follows: as at December 31, 2020, if the discount rate was 0.6% higher / (lower) the defined benefit obligation would increase by \$788,666 (decrease by \$1,111,816). Note that the sensitivity analysis may not be representative of the actual change in the defined benefit obligation as it is unlikely that the change in assumption would occur in isolation of one or other changes as some of the assumptions may be correlated.

The expected maturity profile of the DBPP obligation as at December 31, 2020 is as follows:

	2020	2021	2022	2023	2024	Thereafter
Expected benefit payments	\$ 480	480	480	479	479	2,442

The DBPP obligation as at December 31, 2020 by participant category is as follows:

Active participants	1,296
Pensioners	9,268

## 15. Income Taxes

### a) Income tax expense recognized in profit or loss

The total income tax expense recognized in profit or loss is comprised as follows:

	2020	2019
<b>Current income tax</b>		
(Recovered) expensed during the year	\$ 6,959	1,022
Prior year adjustments	8	387
<b>Total current income tax expense</b>	<b>6,967</b>	<b>1,409</b>
<b>Deferred income tax</b>		
Origination and reversal of temporary differences	13	74
Total deferred income tax expense	13	74
<b>Total income tax expense (recovery)</b>	<b>\$ 6,980</b>	<b>1,483</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

Deferred income tax expense (recovery) recognized in profit or loss represents movements on the following items:

	2020	2019
Unpaid claims incurred	\$ (220)	(148)
Investments	(39)	(39)
Pensions	124	238
Property and equipment	148	23
	<b>\$ 13</b>	<b>74</b>

## b) Income tax expense recognized in the statement of profit or loss and comprehensive income

The total income tax expense recognized in OCI is comprised as follows:

	2020	2019
<b>Current income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	\$ (8,010)	4,878
Pensions	-	-
<b>Total current income tax expense</b>	<b>(8,010)</b>	<b>4,878</b>
<b>Deferred income tax</b>		
Unrealized investment gains and losses on available-for-sale portfolio	-	-
Pensions	(189)	(194)
<b>Total deferred income tax expense</b>	<b>(189)</b>	<b>(194)</b>
<b>Total income tax expense in OCI</b>	<b>\$ (8,199)</b>	<b>4,684</b>

## c) Income tax reconciliation

The following is a reconciliation of income taxes, calculated at the statutory income tax rate, to the income tax provision included in profit or loss.

	2020	2019
Profit or loss before income taxes	\$ 27,990	6,331
Statutory income tax rate	26.50%	26.50%
Provision for (recovery of) income taxes at statutory rates	7,417	1,678
Increase (decrease) resulting from:		
Investments	(452)	(613)
Non-deductible meals and entertainment	7	31
Other non-deductible items	8	387
<b>Provision for (recovery of) income taxes</b>	<b>\$ 6,980</b>	<b>1,483</b>

The statutory rate applicable to the Company at December 31, 2020 is same as at December 31, 2019.

During the year, the Company made income tax payments of \$3,001,784 (2019: \$3,724,353) and received no income tax refunds (2019: nil) from the various taxing authorities.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## d) Net deferred income tax asset

The Company's net deferred income tax asset is the result of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The sources of these temporary differences and the tax effects are as follows:

	DECEMBER 31, 2020	DECEMBER 31, 2019
Deferred tax assets		
Unpaid claims incurred	\$ 6,121	5,901
Property and equipment	186	334
	6,307	6,235
Deferred income tax liabilities		
Investments	(198)	(236)
Pension	(151)	(216)
	(349)	(452)
<b>Total net deferred tax assets</b>	<b>\$ 5,958</b>	<b>5,783</b>
Within one year	1,380	1,333
Greater than one year	4,927	4,902
	6,307	6,235
Deferred income tax liabilities		
Within one year	(39)	(39)
Greater than one year	(310)	(413)
	(349)	(452)
<b>Total net deferred tax assets</b>	<b>\$ 5,958</b>	<b>5,783</b>

The Company believes that, based on available information, it is probable that the deferred income tax assets will be realized through a combination of future reversals of temporary differences and taxable income.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 16. Operating Expenses

The following table summarizes the Company's operating expenses by nature:

	2020	2019
Salaries and benefits	\$ 13,398	13,791
Information systems	1,989	1,607
Professional fees	1,770	2,293
Occupancy lease	1,138	1,252
Directors remuneration	939	1,052
Financial processing fees	881	881
Amortization of property and equipment	808	859
Office and administrative expenses	460	395
Communication	355	392
<b>Total</b>	<b>\$ 21,738</b>	<b>22,522</b>

Included in salaries and benefits are amounts for future employee benefits under a defined contribution plan of \$809,639 (2019: \$761,697) and a supplementary defined benefit plan of \$343,264 (2019: \$241,903).

## 17. Capital Stock and Contributed Surplus

Capital stock of the Company represents:

30,000 Common Shares of par value of \$100 each - authorized, issued and paid.

20,000 6% non-cumulative, redeemable, non-voting Preferred Shares of par value of \$100 each - authorized, issued and paid.

The Preferred Shares meet the definition of equity in accordance with the criteria outlined in IAS 32 "*Financial Instruments: Presentation*".

Contributed surplus represents additional capitalization funding provided by the Law Society.

## 18. Statutory Insurance Information

The Company is the beneficiary of trust accounts in the amount of \$ nil as at December 31, 2020 (December 31, 2019: \$1,097,800) which are held as security for amounts recoverable from unregistered reinsurers of \$65,061 (2019: \$70,879). This trust balance is not reflected in these financial statements but is considered in determining statutory capital requirements.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 19. Capital Management

Capital is comprised of the Company's equity. As at December 31, 2020 the Company's equity was \$269,569,898 (December 31, 2019: \$271,301,246). The Company's objectives when managing capital are to maintain financial strength and protect its claims paying abilities, to maintain creditworthiness and to provide a reasonable return to the shareholder over the long term. In conjunction with the Company's Board of Directors and its Audit Committee, senior management develops the capital strategy and oversees the capital management processes of the Company. Capital is managed using both regulatory capital measures and internal metrics.

FSRA, the Company's primary insurance regulator, along with other provincial insurance regulators, regulate the capital required in the Company using two key measures, i.e., Minimum Capital Test ("MCT") and the Financial Condition Testing ("FCT"). FSRA mandates the MCT guideline which sets out 100% as the minimum and 150% as the supervisory target for P&C insurance companies. To ensure that it attains its objectives, the Company has established an internal target of 170% (2019: 170%) in excess of which, under normal circumstances, the Company will maintain its capital. During the year ended December 31, 2020, the Company complied with the various provincial regulators' guidelines and as at December 31, 2020, the Company has a MCT ratio of 229% (December 31, 2019: 242%). Annually, the Company's Appointed Actuary prepares a FCT on the MCT to ensure that the Company has adequate capital to withstand significant adverse event scenarios. These scenarios are reviewed each year to ensure appropriate risks are included in the testing process. The Appointed Actuary must present both an annual report and the FCT report to management and the Audit Committee. The FCT report prepared during the year indicated that the Company's capital position is satisfactory. In addition, the target, actual and forecasted capital position of the Company is subject to ongoing monitoring by management using stress and scenario analysis to ensure its adequacy.

The Company may use reinsurance to manage its capital position.

## 20. Risk Management

By virtue of the nature of the insurance company business, financial instruments comprise the majority of the Company's statement of financial position as at both December 31, 2020 and 2019. The most significant identified risks to the Company which arise from holding financial instruments and insurance contract liabilities include insurance risk, credit risk, liquidity risk and market risk. The market risk exposure of the Company is primarily related to changes in interest rates and adverse movement in equity prices.

The Company employs an enterprise-wide risk management framework which establishes practices for risk management and includes policies and processes to identify, assess, manage and monitor risks and risk tolerance limits. It provides governance and supervision of risk management activities across the Company's business units, promoting the discipline and consistency applied to the practice of risk management.

The Company's risk framework is designed to minimize risks that could materially adversely affect the value or stature of the Company, to contribute to stable and sustainable returns, to identify risks that the Company can manage in order to increase earnings, and to provide transparency of the Company's risks through internal and external reporting. The Company's risk philosophy involves undertaking risks for appropriate return and accepting those risks that meet its objectives. The Company's risk management program is aligned with its long term vision and its culture supports an effective risk management program. The key components of the risk culture include acting with fairness, appreciating the impact of risk on all major stakeholders, embedding risk management into day to day business activities, fostering full and transparent communications, cooperation, and aligning of objectives and incentives. The Company's risk management activities are monitored by its Risk Committee and Board of Directors.

The risk exposure measures expressed below primarily include the sensitivity of the Company's profit or loss, and OCI as applicable, to the movement of various economic factors. These risk exposures include the sensitivity due to specific changes in market prices and interest

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

rate levels projected using internal models as at a specific date, and are measured relative to a starting level reflecting the Company's assets and liabilities at that date and the actuarial factors, investment returns and investment activity the Company assumes in the future. The risk exposures measure the impact of changing one factor at a time and assume that all other factors remain unchanged. Actual results can differ materially from these estimates for a variety of reasons including the interaction among these factors when more than one changes, changes in actuarial and investment return and future investment activity assumptions, actual experience differing from the assumptions, changes in business mix, effective tax rates, and other market factors and general limitations of the Company's internal models.

## a) Insurance risk

Insurance risk is the risk of loss due to actual experience differing from the experience assumed when a product was designed and priced with respect to claims, policyholder behaviour and expenses. The Company has identified pricing risk, concentration of risk and reserving risk as its most significant sources of insurance risks. The Company's underwriting objective is to develop business within its target market on a prudent and diversified basis and to achieve profitable operating results.

### Pricing risk

Pricing risk arises when actual claims experience differs from the assumptions included in pricing calculations. Historically, the underwriting results of the property and casualty industry have fluctuated significantly due to the cyclical nature of the insurance market. The market cycle is affected by the frequency and severity of claims, levels of capacity and demand, general economic conditions and price competition.

The Company focuses on profitable underwriting using a combination of experienced underwriting staff, pricing models and price adequacy monitoring tools. The Company prices its products taking into account numerous factors including claims frequency and severity trends, product line expense ratios, special risk factors associated with the product line, and the investment income earned on premiums held until the payment of claims and expenses. The Company's pricing is designed to ensure an appropriate return while also providing long-term rate stability. These factors are reviewed and adjusted periodically to ensure they reflect the current environment.

### Concentration of risk

A concentration of risk represents the exposure to increased losses associated with an inadequately diversified portfolio of policy coverage. The Company has a reinsurance program to limit its exposure to catastrophic losses from any one event or set of events. The Company has approximately 99% of its business in Ontario (2019: 99%) and 95% in professional liability (2019: 95%), and consequently is exposed to trends, inflation, judicial changes and regulatory changes affecting these segments.

### Reserving risk

Reserving risk arises because actual claims experience can differ adversely from the assumptions included in setting reserves, in large part due to the length of time between the occurrence of a loss, the reporting of the loss to the insurer and the ultimate resolution of the claim. Claims provisions reflect expectations of the ultimate cost of resolution and administration of claims based on an assessment of facts and circumstances then known, a review of historical settlement patterns, estimates of trends in claims severity and frequency, legal theories of liability and other factors. Reserve changes associated with claims of prior periods are recognized in the current period, which could have a significant impact on current year profit or loss. In order to mitigate this risk the Company utilizes information systems in order to maintain claims data integrity, and the claims provision valuations are prepared by an internal actuary on a quarterly basis, and are reviewed separately by, and must be acceptable to, management of the Company every quarter and the external Appointed Actuary at mid-year and year-end.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## Sensitivity analyses

Risks associated with property and casualty insurance contracts are complex and subject to a number of variables which complicate quantitative sensitivity analysis. The Company considers the claims liabilities recognized in the statement of financial position is adequate. However, actual experience will differ from the expected outcome. Among the Company's lines of business, the professional liability line of business has the largest claims liabilities. Given this line of business and the actuarial methods utilized to estimate the related claims liabilities, the reported claims count development factors and average claim severity selections are the most critical of the assumptions used. The following table provides the estimated increase (decrease) of net claims liabilities and the after-tax net effect on equity if the reported claims count development factors were increased such that the estimate of unreported claims was 20% higher or the average claim severity selections were 1% higher. Other changes in assumptions are considered to be less material.

	DECEMBER 31, 2020		DECEMBER 31, 2019	
	Net claims liabilities	Equity	Net claims liabilities	Equity
Unreported claims +20%	\$ 4,628	(3,402)	4,493	(3,302)
Average claim severities +1%	\$ 3,749	(2,755)	3,757	(2,761)

## b) Credit risk

Credit risk is the risk of loss due to the inability or unwillingness of a borrower or counterparty to fulfill its payment obligation to the Company. Credit risks arise from cash and cash equivalents, investments in fixed income securities and preferred shares, and balances due from insureds and reinsurers.

Management monitors credit risk and any mitigating controls. The Company has established a credit review process where the credit quality of all exposures is continually monitored so that appropriate prompt action can be taken when there is a change which may have material impact.

Governance processes around investments include oversight by the Board of Directors' Investment Committee. The oversight includes reviews of the Company's third party investment managers, investment performance and adherence to the Company's investment policy. The Company's investment policy statement is reviewed at least on an annual basis and addresses various matters including investment objectives, risks and management. Guidelines and limits have been established in respect of asset classes, issuers of securities and the nature of securities to address matters such as quality and concentration of risks.

With respect to credit risk arising from balances due from reinsurers, the Company's exposure is measured to reflect both current exposure and potential future exposure to ceded liabilities. Reinsurance and insurance counterparties must also meet minimum risk rating criteria. The Company's Board of Directors has approved a reinsurance policy, which is monitored by the Company's Audit Committee.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

The following table provides a credit risk profile of the Company's applicable investment assets and amounts recoverable from reinsurers.

	DECEMBER 31, 2020						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 1,668	5,646	-	-	-	434	7,748
Fixed income securities	111,580	120,546	222,016	111,342	2,415	-	567,899
Investment income due and accrued	147	394	1,411	842	19	164	2,977
Due from reinsurers	-	-	22	-	-	-	22
Due from insureds	-	-	-	-	-	3,652	3,652
Due from the Law Society of Ontario	-	-	-	-	-	7,936	7,936
Reinsurers' share of Claims liabilities	-	-	50,189	-	-	-	50,189
Other receivables	-	-	-	-	-	796	796
<b>Total</b>	<b>\$ 113,395</b>	<b>126,586</b>	<b>273,638</b>	<b>112,184</b>	<b>2,434</b>	<b>12,982</b>	<b>641,219</b>

	DECEMBER 31, 2019						Carrying value
	AAA	AA	A	BBB	BB and lower	Not rated	
Cash and cash equivalents	\$ 6,622	8,110	3,130	-	-	255	18,117
Fixed income securities	172,252	136,238	132,626	81,271	202	-	522,589
Investment income due and accrued	291	373	983	744	11	218	2,620
Due from reinsurers	-	-	70	-	-	-	70
Due from insureds	-	-	-	-	-	2,024	2,024
Due from the Law Society of Ontario	-	-	-	-	-	7,422	7,422
Reinsurers' share of Claims liabilities	-	-	46,297	-	-	-	46,297
Other receivables	-	-	-	-	-	897	897
<b>Total</b>	<b>\$ 179,165</b>	<b>144,721</b>	<b>183,106</b>	<b>82,015</b>	<b>213</b>	<b>10,816</b>	<b>600,036</b>

Fixed income securities are rated using a composite of Moody's, Standard & Poor and Dominion Bond Rating Service ratings, and reinsurers are rated using A.M. Best. The balances in the above tables do not contain any amounts that are past due.

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## c) Liquidity risk

Liquidity risk is the risk that the Company will not have enough funds available to meet all expected and unexpected cash outflow commitments as they fall due. Under stressed conditions, unexpected cash demands could arise primarily from a significant increase in the level of claim payment demands.

To manage its cash flow requirements, the Company has arranged diversified funding sources and maintains a significant portion of its invested assets in highly liquid securities such as cash and cash equivalents and government bonds (see note 5b). In addition, the Company has established counterparty exposure limits that aim to ensure that exposures are not so large that they may impact the ability to liquidate investments at their market value.

Claims liabilities account for the majority of the Company's liquidity risk. A significant portion of the investment portfolio is invested with the primary objective of matching the investment asset cash flows with the expected future payments on these claims liabilities. This portion, referred to as the ALM investment portfolio, consists of fixed income and preferred equity securities that are intended to address the liquidity and cash flow needs of the Company as claims are settled. The remainder of the Company's overall investment portfolio, the AFS portfolio, backs equity and is invested in fixed income securities and equities with the objective of preserving capital and achieving an appropriate return consistent with the objectives of the Company.

The following tables summarize the maturities of the assets and contractual obligations by contractual maturity or expected cash flow dates (the actual repricing dates may differ from contractual maturity because certain securities and debentures have the right to call or prepay obligations with or without call or prepayment penalties) as at:

	DECEMBER 31, 2020				Total
	Within one year	One to five years	More than five years	No fixed maturity	
<b>Assets</b>					
Cash and cash equivalents	\$ 7,748	-	-	-	7,748
Investments - designated as FVTPL	62,465	186,616	155,031	351	404,463
Investments - available-for-sale	3,761	71,232	88,794	135,768	299,555
Investment income due and accrued	2,977	-	-	-	2,977
Due from reinsurers	22	-	-	-	22
Due from insureds	3,652	-	-	-	3,652
Reinsurers' share of claim liabilities	11,070	25,409	9,972	-	46,451
Due from Law Society of Ontario	7,936	-	-	-	7,936
Other receivable	796	-	-	-	796
Other assets	581	-	-	885	1,466
<b>Total</b>	<b>\$ 101,008</b>	<b>283,257</b>	<b>253,797</b>	<b>137,004</b>	<b>775,066</b>
<b>Liabilities</b>					
Claims liabilities	\$ 105,975	252,595	108,699	-	467,269
Due to reinsurers	831	-	-	-	831
Due to insureds	110	-	-	-	110
Lease liabilities	803	3,256	10,165	-	14,224
Expenses due and accrued	7,866	-	-	-	7,866
<b>Total</b>	<b>\$ 115,585</b>	<b>255,851</b>	<b>118,864</b>	<b>-</b>	<b>490,300</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## d) Market and interest rate risk

Market risk is the risk that the fair value or future cash flows of financial instruments will fluctuate due to changes in market variables such as interest rate, foreign exchange rates, and equity prices. Due to the nature of the Company's business, invested assets and insurance liabilities as well as revenues and expenses are impacted by movements in capital markets, interest rates, and to a lesser extent, foreign currency exchange rates. Accordingly, the Company considers these risks together in managing its asset and liability positions and ensuring that risks are properly addressed. These risks are referred to collectively as market price and interest rate risk - the risk of loss resulting from movements in market price, interest rate, credit spreads and foreign currency rates.

Interest rate risk is the potential for financial loss arising from changes in interest rates. The Company is exposed to interest rate price risk on monetary financial assets and liabilities that have a fixed interest rate and is exposed to interest rate cash flow risk on monetary financial assets and liabilities with floating interest rates that are reset as market rates change.

For FVTPL assets and other financial assets supporting actuarial liabilities, the Company is exposed to interest rate risk when the cash flows from assets and the policy obligations they support are significantly mismatched, as this may result in the need to either sell assets to meet policy payments and expenses or reinvest excess asset cash flows under unfavourable interest environments. Bonds designated as AFS generally do not support actuarial liabilities. Changes in fair value, other than foreign exchange rate gains and losses, of AFS fixed income securities are recorded to OCI.

The following chart provides the estimated increase (decrease) on the Company's net investment income, net claims liabilities, and after-tax comprehensive income, after an immediate parallel increase or decrease of 1% in interest rates as at December 31 across the yield curve in all markets.

		DECEMBER 31, 2020			
		Net investment income	Net claims liabilities	After-tax OCI	After-tax CI
Interest rates	+1%	\$ (10,854)	(12,027)	(5,668)	(28,549)
	-1%	\$ 10,314	8,745	5,327	24,386

		DECEMBER 31, 2019			
		Net investment income	Net claims liabilities	After-tax OCI	After-tax CI
Interest rates	+1%	\$ (8,792)	(11,136)	(1,327)	(21,255)
	-1%	\$ 9,283	11,493	1,366	22,142

Market price and interest rate risk is managed through established policies and standards of practice that limit market price and interest rate risk exposure. Company-wide market price and interest rate risk limits are established and actual positions are monitored against limits. Target asset mixes, term profiles, and risk limits are updated regularly and communicated to portfolio managers. Actual asset positions are periodically rebalanced to within established limits.

Equity price risk is the risk that the fair values of equities decrease as the result of changes in the levels of equity indices and the value of individual equity securities. The Company's equities are designated as AFS and generally do not support actuarial liabilities. The following chart provides the estimated increase (decrease) on the Company's after-tax OCI, assuming all other variables held constant, after an immediate 10% increase or decrease in equity prices as at December 31.

		2020	2019
		After-tax OCI	
Equity prices	+10%	9,979	11,692
	-10%	(9,979)	(11,692)

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates, in particular when an asset and liability mismatch exists in a different currency than the currency in which they are measured. As the Company does not hold significant liabilities in foreign currencies, the resulting currency risk is borne by the Company and forms part of its overall investment income. The table below details the effect of a 10% movement of the currency rate against the Canadian dollar as at December 31, with all other variables held constant.

Currency	2020		2019	
	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)	Effect on profit (loss) before taxes (+/-)	Effect on OCI (+/-)
US Dollar	9	3,906	26	4,150
Euro	-	159	-	1,333
Other	-	2,316	1	2,115
	<b>9</b>	<b>6,381</b>	<b>27</b>	<b>7,598</b>

The Company also manages possible excessive concentration of risk. Excessive concentrations arise when a number of counterparties are engaged in similar business activities, or activities in the same geographic region, or have similar economic features that would cause their ability to meet contractual obligations to be similarly affected by changes in economic, political and other conditions. Concentrations indicate the relative sensitivity of the Company's performance to developments affecting a particular industry or geographic location. In order to avoid excessive concentrations of risk, the Company applies specific policies on maintaining a diversified portfolio. Identified risk concentrations are managed accordingly.

The following tables summarize the carrying amounts of financial assets by geographical location of the issuer, as at:

	DECEMBER 31, 2020					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 7,645	548,692	49,481	2,700	<b>608,518</b>	<b>85.1%</b>
USA	89	14,062	53,122	67	<b>67,340</b>	<b>9.4%</b>
Switzerland	-	-	10,735	13	<b>10,748</b>	<b>1.5%</b>
United Kingdom	-	-	9,365	-	<b>9,365</b>	<b>1.3%</b>
Others	14	5,145	13,416	197	<b>18,772</b>	<b>2.7%</b>
<b>Total</b>	<b>\$ 7,748</b>	<b>567,899</b>	<b>136,119</b>	<b>2,977</b>	<b>714,743</b>	<b>100.0%</b>

	DECEMBER 31, 2019					
	Cash and cash equivalents	Fixed income securities	Equities	Investment income due and accrued	Total	% of total
Canada	\$ 17,948	515,300	56,014	2,295	<b>591,557</b>	<b>84.2%</b>
USA	54	1,002	44,986	53	<b>46,095</b>	<b>6.6%</b>
France	-	-	9,743	23	<b>9,766</b>	<b>1.4%</b>
Japan	-	-	8,776	-	<b>8,776</b>	<b>1.2%</b>
Others	115	6,287	39,926	249	<b>46,577</b>	<b>6.6%</b>
<b>Total</b>	<b>\$ 18,117</b>	<b>522,589</b>	<b>159,445</b>	<b>2,620</b>	<b>702,771</b>	<b>100.0%</b>

# Notes to Financial Statements

For the year ended December 31, 2020 (Amounts stated in thousands of Canadian dollars)

## 21. Contingent Asset

In 2013, the *Income Tax Act* was amended to extend tax exempt status given to certain subsidiaries of Canadian municipalities to also include certain subsidiaries of public bodies performing a function of government in Canada. Transitional rules were also included to allow applicable taxpayers to refile on this tax exempt basis for their taxation years beginning after May 8, 2000. After completing a detailed and careful evaluation of the applicability of the new provisions to the Company, the Company believes that it is probable that a refund claim would be successful. Accordingly, during 2014 the Company began filing as a tax exempt organization for income tax purposes, and has requested full retrospective exemption back to its 2001 taxation year. The income tax payments relating to taxation years 2001 onwards total as much as \$90,527,811. The exemption would also give rise to significant ongoing future income tax savings, but the Company's deferred income tax asset would be of nil value.

Canada Revenue Agency did not approve the Company's request for exemption and the Company appealed to the Tax Court of Canada. The judgement was released in 2018 and the Company was not successful. The Company further appealed to the Federal Court of Appeal. The judgement was released in 2020 and the Company was not successful. In November 2020, the Company sought leave from the Supreme Court of Canada to submit a further appeal and is awaiting a decision on the leave application.

# Board of Directors

As at December 31, 2020



**Andrew J. Spurgeon**  
Chair of the Board



**Susan M. Armstrong,**  
FCPA FCA  
Board Vice Chair



**Daniel E. Pinnington**  
President & CEO, LAWPRO



**Robert Adourian**  
Devry Smith Frank LLP



**Clare A. Brunetta**  
Principal, Clare A. Brunetta



**Frederick W. Gorbet, O.C.**



**Malcolm L. Heins, LSM**



**Rita Hoff**  
President, R. Hoff Financial  
Management Ltd.



**Diana C. Miles**  
Chief Executive Officer, The Law  
Society of Ontario



**David R. Oliver**  
President and CEO, BRJO  
Investments Ltd.



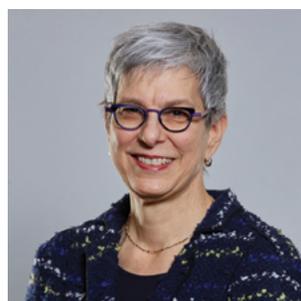
**Clare Sellers**  
Bencher-Director



**Julia S. Shin Doi**  
General Counsel & Secretary of the Board  
of Governors, Ryerson University



**Mark D. Tamminga**  
Partner, Gowling WLG



**Anne-Marie Vanier**

FCA denotes Fellow  
Chartered Accountant

FCPA denotes Fellow Chartered  
Professional Accountant

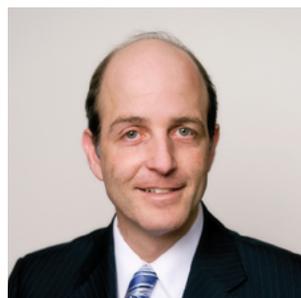
LSM denotes Law Society Medal

# Management

As at December 31, 2020



**Daniel E. Pinnington**  
President & CEO



**Stephen R. Freedman**  
Executive Vice President and  
General Counsel



**Krista Franklin**  
Chief Financial Officer



**Ernest Solomon**  
Chief Information Officer



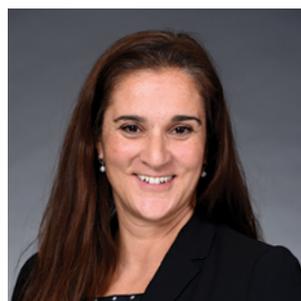
**Domenic Bellacicco**  
Vice President, Claims



**Victoria Crewe-Nelson**  
Vice President, Underwriting &  
Customer Service and Secretary



**Lisa Weinstein**  
Vice President, TitlePLUS



**Naomi Dummett**  
Director of Communications



**Ray Leclair**  
Vice President Public Affairs



**Juda Strawczynski**  
Director, practicePRO



**Karen Wood**  
Director, Human Resources  
& Administration

## Board Committees

Effective November 26, 2020

### EXECUTIVE COMMITTEE<sup>1</sup>

Malcolm L. Heins\*  
Frederick W. Gorbet  
Daniel E. Pinnington (A)

### AUDIT COMMITTEE<sup>2</sup>

Frederick W. Gorbet\*  
Diana C. Miles (A)  
Malcolm L. Heins  
David R. Oliver  
Anne-Marie Vanier

### CONDUCT REVIEW COMMITTEE<sup>2</sup>

Susan M. Armstrong\*  
Frederick W. Gorbet  
Malcolm L. Heins  
David R. Oliver  
Anne-Marie Vanier

### INVESTMENT COMMITTEE

Rita Hoff\*  
David R. Oliver  
Clare Sellers  
Malcolm L. Heins

### GOVERNANCE COMMITTEE

Clare A. Brunetta\*  
Frederick W. Gorbet  
Rita Hoff  
Robert P. Adourian  
Julia S. Shin Doi  
Malcolm L. Heins

### RISK COMMITTEE

Malcolm L. Heins\*  
Clare A. Brunetta  
Frederick W. Gorbet  
Rita Hoff  
Anne-Marie Vanier  
Mark D. Tamminga  
Clare Sellers

### TECHNOLOGY STRATEGY WORKING GROUP (RISK SUB-COMMITTEE)

Mark D. Tamminga\*  
Daniel E. Pinnington\* (A)  
Susan M. Armstrong  
Ernest Solomon  
Andrew J. Spurgeon

\* Committee Chair

(A) Affiliated Director within meaning  
of Ontario *Insurance Act*

N.B. The Chair and Vice-Chair of LAWPRO are ex-officio members of all committees, by resolution of the Board.

<sup>1</sup> The Prudent Portfolio Governance Policy provides that a quorum of Executive Committee requires at least one member of the Committee who is not affiliated with LAWPRO.

<sup>2</sup> The Audit and Conduct Review Committees must have at least three director-members and a majority must be non-affiliated directors. Officers or employees of LAWPRO cannot be members of the Committees.

The Board of Directors, either directly or through its committees, bears responsibility for the stewardship of the Company. To discharge that responsibility, the Board supervises the management of the business and the affairs of the Company, including the oversight or monitoring of all significant aspects of the operation, so that the Company effectively and efficiently fulfills its mission, vision and values.

The Company's corporate governance framework, processes, structures and information are designed to strengthen the ability of the Board to oversee management, and to enhance long-term policyholder value. Every director has a duty to guide the Company's affairs in a manner that achieves the Company's objectives.

The corporate governance processes and mandate are derived, in part, from the Ontario *Insurance Act* and regulatory "best practices," and are expressed in the Company's corporate governance framework.

## Board Independence

Demonstrable evidence of independence is at the heart of effective governance. Independence is normally a matter of a board demonstrating its ability to act independently of management when appropriate. Currently, only the chief executive officers of LAWPRO and the Law Society of Ontario are "affiliated" to the Company within the meaning of applicable legislation. A minority of directors are Benchers or employees of the Law Society of Ontario.

## Board Composition

Annually, the Board reviews its composition to determine whether or not the Board is optimally structured to ensure the achievement of the corporate strategy and business plan. Also important is a regular assessment of the skills, experience and independence of those on the Board.

## Board Responsibilities

The basic oversight responsibilities of the Board are described in its corporate governance framework, and include:

- **Corporate performance oversight:** The Board ensures that corporate management continuously and effectively strives to meet the two opposing goals of minimizing premiums and achieving a satisfactory financial result, taking account of risk.
- **Appointment of CEO and related human resources issues:** The Board appoints the CEO and approves the CEO's objectives, assesses their performance and determines compensation of the CEO. As well, the Board approves key appointments reporting to the CEO, reviews key executive performance and approves compensation policy and succession plans.

- **Strategic direction and policy:** The Board reviews and approves management's proposed strategic direction and policy matters, and ensures that policies on key issues, including exposure to various risks, are in place, are appropriate and are reviewed to ensure compliance with same.
- **Budgeting and planning:** The Board approves the Company's proposed budgets and other performance goals, reviews performance against goals and recommends corrective actions.
- **Risk Management:** The Board monitors all categories of risk affecting the Company's operations, approves risk management strategies and assesses risk management performance, including the Company's audit universe and its Own Risk and Solvency Assessment (ORSA).
- **Regulatory compliance and financial monitoring:** Through an independent audit committee, the Board requires and monitors regulatory compliance, appoints the auditor, oversees the audit process and reviews and approves financial reports. The Board also ensures that financial systems produce accurate and timely information, and that appropriate controls are in place.
- **Ensuring its own effectiveness:** The Board establishes committee structures that assist the effective operations of the Board, and enable a review and assessment of the Board's own performance.
- **Setting an appropriate cultural tone:** Through its support for the corporation's vision, mission and values and corporate social responsibility statement and its adherence to the Code of Business Conduct, the Board promotes a culture of integrity, exemplary business conduct, and due regard for the fair treatment of customers while acting in a commercially reasonable manner.

## Board Committees

The members of the Board are assisted in fulfilling the responsibilities explained above through the following committees:

### Audit committee

The audit committee assists the Board in monitoring:

- the integrity of the Company's financial reporting process;
- the financial and solvency risks that the Company is exposed to;
- the controls for managing those risks, including the internal audit function; and
- the independence and performance of the Company's external auditor and actuary.

### Conduct review committee

The conduct review committee oversees the Company's compliance with the related party provisions of the Ontario insurance legislation.

### Executive committee

The executive committee has the authority of the Board, subject to the limitations of law and those set forth in the Company's bylaws, to consider urgent matters that require action prior to the next Board meeting. Actions taken by the executive committee are reported to the full Board at the next meeting.

### Governance committee

The governance committee:

- assists the Board in its oversight role with respect to: a) the development of the Company's corporate governance policies, practices and processes; and b) the effectiveness of the Board and its committees;
- identifies individuals qualified and suitable to become Board members and recommends the director nominees to each annual meeting of the shareholder;
- assists the Board in its oversight role with respect to: a) the Company's human resources strategy, policies and programs; and b) all matters relating to proper utilization of human resources within the Company, with special focus on management succession, development and compensation;
- oversees procedures for resolving conflicts of interest; and
- assists the Board in liaising with the shareholder.

### Investment committee

The investment committee:

- assists the Board and management in managing the invested assets of the Company;
- develops and monitors investment policies and guidelines;
- provides recommendations to the Board in connection with the hiring of external investment managers; and
- meets with and monitors the performance of external investment managers.

### Risk committee

The risk committee assists the Board in monitoring all risks (other than financial and solvency risks) to which the Company is subject and overseeing the development and implementation of appropriate risk management policies and programs.

# LAWPRO®

Lawyers' Professional Indemnity Company  
Assurance LAWPRO<sup>MD</sup>

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This is **Exhibit R** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Alexandra Heine  
(LSO #83514R)

**From:** [Murray Klippenstein](#)  
**To:** [Teresa Donnelly](#); [Bob Adourian](#); [Ryan Alford](#); [Jack Braithwaite \(jbraithwaite@weaversimmons.com\)](#); [Jared Brown](#); [Robert Burd \(robertburd@hotmail.com\)](#); [Charette, Gerard P.](#); [Joseph Chiumminto](#); [Dianne Corbiere \(dgcobiere@nncfirm.ca\)](#); [Cathy Corsetti \(cathy@corsetti.ca\)](#); [Jean-Jacques Desgranges \(desgrangeslaw@ncf.ca\)](#); [Etienne Esquega \(Etienne.Esquega <ee@esquegalaw.com>\) <Etienne.Esquega](#); [John Fagan](#); [Julian Falconer](#); [Sam Goldstein](#); [Gary Graham](#); [Joseph Groia](#); [Philip Horgan](#); [Jacqueline Horvat \(jacqueline@spark.law\)](#); [Murray Klippenstein](#); [Shelina Lalji \(shelina@slpc.legal\)](#); [Cheryl Lean](#); [Michael](#); [Lewis, Atrisha S](#); [Marian Lippa \(lippalegal@gmail.com\)](#); [Michelle Lomazzo \(michelle@lomazzoappeals.com\)](#); [Cecil Lyon](#); [scottmlaw2002@yahoo.com](#); [Scott Marshall](#); [Isfahan Merali \(isfahanmerali@gmail.com\)](#); [Barbara Murchie](#); [Trevor Parry](#); [Jorge E. P.](#); [Lubomir Poliacik](#); [Geoff Pollock](#); [Brian Prill](#); [Jonathan Rosenthal](#); [gmross@rossfirm.com](#); [Chi-Kun Shi](#); [Julia Shin Doi \(julia.shindo@ryerson.ca\)](#); [Megan Shortreed \(Megan.Shortreed@paliareroland.com\)](#); [Andrew Spurgeon \(aspurgeon@rossmcbride.com\)](#); [Sidney H. Troister, LSM](#); [Tanya Walker \(tanya@tcwalkerlawyers.com\)](#); [Alexander Wilkes](#); [Claire Wilkinson \(Claire.Wilkinson@mhalaw.ca\)](#); [bencher](#); [Nick Wright](#); [cathy@maawandoon.ca](#); [Epstein, Seymour](#); [Benson Lau \(drpslau@yahoo.ca\)](#); [Nancy Lockhart](#); [Genevieve Painchaud](#); [Clare Sellers](#); [Gerald Sheff](#); [Doug Wellman \(dougwellman@gmail.com\)](#); [Robert Armstrong \(rarmstrong@arbitrationplace.com\)](#); [Thomas G. Conway \(tconway@conway.pro\)](#); [Ferrier, Lee K.](#); [georgehunter1@icloud.com](#); [Malcolm Mercer](#); [malcolm@malcolmmercer.ca](#); [Vern Krishna](#); [Derry Millar](#); [lpawlitza@torinmanes.com](#); [Rock, Allan](#); [j.k.spence@sympatico.ca](#); [Harvey T. Strosberg Q.C.](#); [Bob Aaron](#); [Larry Banack](#); [chris.bentley@ryerson.ca](#); [Michael Bryant](#); [Paul Copeland](#); [pqlawyer@gmail.com](#); [glgqc@interlog.com](#); [jground@amicuschambers.com](#); [rmanes@torkinmanes.com](#); [Ross Murray](#); [alanwpope@hotmail.com](#); [julian.porter@julianporterqc.com](#); [Judith Potter](#); [ruby@rubyshiller.com](#); [normwsterling@gmail.com](#); [gswave@swave.ca](#); [jwardlaw@rogers.com](#); [Bradley Wright](#); [dyoung@bensonpercival.com](#); [Diana Miles](#); [Mirka Adamsky-Rackova](#); [Jim Varro](#); [Cara-Marie O'Hagan](#); [Reshma Budhwani](#); [Ada Maxwell-Alleyne](#)  
**Subject:** Serious concerns about new (secret) expert hires at LSO EIA Committee  
**Date:** Monday, November 22, 2021 2:32:02 PM  
**Attachments:** [MK draft email to EIAC and Benchers re three experts - 10VW1.docx](#)

**CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.**

Chair and Members of EIA Committee (with copy to all Benchers, and some senior staff),

I am writing as a member of EIAC to express my most serious concerns about being advised, for the first time, in the briefing memo received on Nov. 19 in preparation for the upcoming EIA Committee meeting on Thursday, that "someone" (I don't know who) has, without any prior notice to or involvement of the Committee, already selected and retained three unnamed "experts" to perform major (and no doubt expensive) work on a fundamental issue pertaining to this Committee's and Convocation's work.

None of the important (and controversial) work, or the expenditures, that this involves has, as far as I can tell, been discussed with, or been authorized by, the Committee or Convocation.

The gist of things seems to be that the Law Society a few years ago spent close to half a million dollars on some seriously unprofessional and extremely misleading consultants reports, which were then used and are still being used on important policy matters, and now a small group of Law Society staff and Benchers have, in secret, decided to spend probably hundreds of thousands of dollars more to try to cover up and clean up the previous (and continuing) mess, without letting on that that is what they are doing. All without any authorization from the Committee or Convocation.

I regret feeling that I have to send this to all Benchers, but as Benchers, we are also each a director of the Law Society corporation, with individual fiduciary duties, and I believe that the issues herein raise serious issues of financial management, good governance, and quite simply, honesty and integrity at the Law Society, of which I believe each of us needs to be aware in order to carry out our due diligence.

For the reasons and in the context summarized below, I am therefore formally requesting that I promptly be provided (by the appropriate staff member) with:

1. The names of the three experts who have been retained;
- 2.. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of this process);
3. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of this process);

4. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them; and

5. The amounts already paid to those experts, and the amounts agreed to be paid to them in the future.

Please note that this is a formal request as a director of the Law Society corporation for information to which I believe I am legally entitled under s. 302 (a), (b) and (d) and s. 304(1) of the Ontario *Corporations Act*, and under the common law rights of a corporate director (see also *Tyler v. Envacon Inc.*, 2012 ABQB 631). Further, given the circumstances, I believe that I need the above information to properly carry out my due diligence role as a director of the Law Society corporation.

For context, the memo dated November 17, 2021 (and posted to members of the Committee on November 19) states regarding the retaining of the three experts:

Given [the above] context, a peer review of the Challenges Report has been undertaken. A decision on how to move forward with the Inclusion Index data will be made once the review is completed. The review will explore whether the implementation of the Challenges Report provides effective requirements, incentives and information that assist in reducing barriers faced by racialized and Indigenous licensees. ... The review will also provide recommendations for further enhancement of EDI within the legal community. (p. 3)

...

The peer review is being conducted by a panel of experts and will be completed in April 2022. The three experts who have been retained possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to compile a list of experts who can provide neutral and objective commentary. A summary of the review will be presented to the Committee and Convocation in May or June 2022. (p. 3)

What is omitted from this memo is any mention of the reality that the Challenges/Stratcom report (and the Inclusion Index which was recommended as an eventual offshoot) were both simply appallingly bad, in terms of the quality of the surveying and statistical methodology, interpretation, and presentation. One would get no hint of that reality in reading this memo. What seems to be going on here is that "someone" has secretly hired several experts basically to try to re-do the work that was originally completely bungled (at great expense to the Law Society). It seems like a small secret cabal of Benchers and staff, presumably with the knowledge and approval of the CEO, is unilaterally spending large amounts of our members' licensing dues to try to repair a massive and expensive previous mistake - without hinting that there is any problem.

A central and key part of the Challenges report by Stratcom was what they called a "survey" involving all (approximately 52,000, at that time) of the members of the lawyer and paralegal professions in Ontario. However, the survey had no element of random sampling (which is critical), the response rate was extremely low (about 6% overall, and about 10% from the key visible minority segment of the target population), there was no recognition or discussion whatsoever of the enormous potential for non-response bias and self-selection bias, and the survey questions were incompetently worded. Nor were many of the critical data points actually presented in the report, thus breaching fundamental principles of disclosure that are basic to survey professionalism - perhaps because clearly presenting that data would have exposed the incompetence of the "survey" and would have made clear some "real" results that did not fit the preexisting political purpose of the project.

Yet the Stratcom consultants stated that the survey had resulted in a sample "that produces representative, unbiased estimates of the views and opinions of Law Society licensees." It beggars the imagination as to how Stratcom could make that pronouncement. As I have repeatedly stated in meetings, the consultant was either seriously unprofessional, or seriously dishonest, or both.

Furthermore, the Challenges/Stratcom report was partly based on interviews with 27 so-called "experts", whose identity, and whose basis for the asserted expertise, was never provided. Nor were their actual views described, other than in a short summary by an unknown LSO staff member. The result was that a reader had no way at all of assessing whether this so-called "expert" evidence actually meant anything at all.

Finally, the Challenges/Stratcom report itself was never actually provided to or presented to Benchers or Convocation for their review (as is the almost universal practice for important documents at the LSO), which made it very difficult for the Benchers at the time to carry out any sort of proper due diligence check.

And yet the subsequent use made of this appallingly poor-quality report was immense. It served as the foundation for a massive suite of policy initiatives implementing sweeping changes within the Law Society and throughout the legal professions in Ontario. Its results were trumpeted in the media, and have been

cited in at least one court decision. At least one of its (false) statistical “findings” found its way into the EDI CPD videos which all licensees are required to watch, so the misrepresentations of the Stratcom report have been disseminated far and wide, seemingly backed up by the authority of the Law Society.

One example of the extreme distortion resulting from the grossly unprofessional Challenges/Stratcom report is that no one has mentioned a critically important fact revealed by the survey: that when every single member of the legal professions in Ontario was directly and repeatedly invited to anonymously fill out a major survey on the topic of discrimination in the professions, about 90% of visible minority licensees simply decided to not bother at all. Furthermore, and importantly, of the extremely small percentage that did answer, in response to one oft-cited question (Question 17) regarding whether they had experienced their race as a barrier, the majority of visible minority respondents answered "no" (or some other answer, but not "yes"). That is, given the opportunity, only about 4% of visible minority members of the legal professions as a whole answered "yes" – not the 40% that is frequently repeated and broadcast.

Similarly, the Inclusion Index plan that was adopted based on the Challenges/Stratcom report suffered from severe (and fatal) survey methodological errors (including a critical error that was expressly warned against by the very expert who was cited in support of the Inclusion Index).

These various fundamental and egregious errors have been repeatedly pointed out by me, including in a *Critical Review* distributed by me on January 8, 2020, and in detailed emails to all Benchers (see my emails to all Benchers dated Sept. 15, 2020 and Sept. 29, 2020). One would have thought that if my critiques were misplaced, someone - the experts whom I criticized, or LSO staff - would have pointed out my mistakes and defended the Report and the Index. That has not happened. Not a single point of my critiques has ever been rebutted or even addressed. They have been met with a “wall of silence” from the majority of Benchers and from all staff, probably because the Challenges/Stratcom report, and the planned Inclusion Index, are so bad that they are simply indefensible (almost the only response received was a “reply-all” from Bencher Falconer, who tersely stated only that my critiques were “meritless”, without any elaboration. Presumably these three new “secret” experts are now needed because it has dawned on some that my critiques were not, indeed, “meritless”).

I suppose one might ask whether someone concerned about the Stratcom report and the Inclusion Index, or a critic of them such as myself, should not draw some comfort from the fact that they are now going to be reviewed by “a panel of experts”. I wish that that were the case, but it is not. The current process of selecting these experts, and of instructing them, has been conducted so far in complete secrecy (for almost a year (?) - without most of us even being aware that any of this was going on), and based on the memo, that secrecy appears to be the plan for the rest of their work, for the next six or so months - all seemingly under the guidance of some individuals who already have been heavily involved from the start in what I call “the ideologically-driven train-wreck” in which we now find ourselves.

Finally, I would quote from the Law Society's “Business Conduct Policy”, which states: “The Law Society's reputation for integrity is one of its most valued assets and essential to the fulfillment of its mission of governing the profession and protecting the public interest. It is imperative that honesty and fair dealing characterize all of the Law Society's activities both with the public and the profession.”

It is time for the Law Society to be frank and transparent about what has happened, both financially and substantively, with the Challenges/Stratcom report and the Inclusion Index.

I look forward to the prompt delivery of the requested information.

Sincerely,

Murray Klippenstein

Toronto Regional Bencher

This is **Exhibit S** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Agenda and Materials  
Thursday, November 25, 2021  
Zoom Video Conference  
2:00 pm – 4:00 pm**

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**Equity and Indigenous Affairs Committee**

**Join Zoom Videoconference:**  
<https://us02web.zoom.us/j/81619608481?pwd=LytpSFVoaHNuaGVsVUZkemJTdENkQT09>  
**Join Zoom teleconference: [1 855 703 8985](https://us02web.zoom.us/j/81619608481?pwd=LytpSFVoaHNuaGVsVUZkemJTdENkQT09)**  
**Meeting ID: 816 1960 8481**  
**Password: 528341**

Committee Members:

**Dianne Corbiere (Chair)**  
**Etienne Esquega (Vice-Chair)**  
**Atrisha Lewis (Vice-Chair)**  
Catherine Banning  
Robert Burd  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Jorge Pineda  
Julia Shin Doi  
Megan Shortreed  
Alexander Wilkes

**EQUITY AND INDIGENOUS AFFAIRS COMMITTEE MEETING AGENDA**  
**Thursday, November 25, 2021**  
**2:00 pm – 4:00 pm**

**Opening Ceremony and Indigenous Teaching** (Elder Larry McDermott)

- 1. Update on the Activities of the Equity Partners (IAG, EAG, AJEFO)** (*For Information*) (5 minutes)  
 Update from the Indigenous Advisory Group (Catherine Rhineland & Danielle Lussier Meek)  
 Update from the Equity Advisory Group (TBD)  
 Update from L'Association des juristes d'expression française de l'Ontario (Marc Sauvé)
- 2. Change of Status Survey for Lawyers and Paralegals (2016-2017 and 2019-2020)** (*For Information*) (35 minutes)  
 Overview of the Change of Status Survey ..... **TAB 1**  
 Summary of Results for Lawyers..... **TAB 1.1**  
 Summary of Results for Paralegals..... **TAB 1.2**
- 3. Recap of 2021 Access to Justice Week**..... **TAB 2**  
 (*For Information*) (10 minutes)
- 4. Update on Recruitment of Paralegal Alternate to the DHC**..... **TAB 3**  
 (*In Camera; For Decision*) (15 minutes)  
 Selection Criteria for recruitment of Paralegal DHC ..... **TAB 3.1**
- 5. Reappointment of the Discrimination and Harassment Counsel** (*In Camera; For Decision*) (20 minutes)  
 Memorandum on the Reappointment of the DHC Counsel..... **TAB 4**  
 Draft Contract for Fay Faraday, Acting DHC..... **TAB 4.1**  
 Draft Contract for Lai King Hum, Alternate DHC..... **TAB 4.2**  
 Draft Contract for Natasha Persaud, Alternate DHC..... **TAB 4.3**  
 Selection Criteria for DHC recruitment..... **TAB 4.4**  
 Biographies of the DHC..... **TAB 4.5**  
 LSO By-Law 11, Part II..... **TAB 4.6**

**6. Challenges Report Implementation Update** (*In Camera; For Information*) (35 minutes)Memo on Status and Next Steps for Challenges Report.....**TAB 5**Status of the Challenges Report Recommendations.....**TAB 5.1****For Information Only****7. Overview of the 2020 Statistical Snapshots**.....**TAB 6***(For Information)*2020 Statistical Snapshots of Lawyers and Paralegals in Ontario.....**TAB 6.1**Key Points about the 2020 Snapshots.....**TAB 6.2****8. Upcoming Equity Legal Education Series Events**.....**TAB 7***(For Information)***9. Decision Direction Summary from Previous Meetings**.....**TAB 8***(For Information)*



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: November 15, 2021  
Re.: **Change of Status Survey Results for Lawyers and Paralegals**

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## 1. Purpose

To provide the Committee with an update on the Change of Status Survey results for lawyers and paralegals.

## 2. Background

In 2008, the Retention of Women in Private Practice Working Group (the “Working Group”) of the Law Society conducted a series of consultations to better understand movements within the legal profession in Ontario among women.

The final consultation report of the Working Group put forth a series of recommendations to promote the advancement of women in private practice.

In order to better understand and begin benchmarking movements and changes of women lawyers and paralegals, the Law Society commissioned Navigator to undertake an analysis of legal professionals who have filed a change of status.

Navigator will present their research findings to the Committee at its November meeting. Slide presentations summarizing the findings can be found at TAB 1.1 and TAB 1.2.

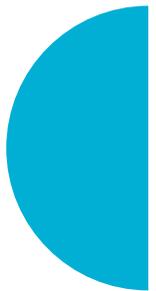
**NAVIGATOR**

**DISCOVER**

**Executive Summary**

October 29, 2021

# Law Society of Ontario Lawyer Change Survey



## About the Research



### Background and Purpose

In 2008, the Retention of Women in Private Practice Working Group of The Law Society conducted a series of consultations to better understand movements within the legal profession in Ontario among women.

The Final Consultation Report of the Working Group put forth a series of recommendations to promote the advancement of women in private practice.

In order to better understand and begin benchmarking movements and changes within the legal profession among women, The Law Society commissioned Navigator to undertake an analysis of lawyers who have filed a notice of change.

Three years of research data (2016-17 and 2019 and 2020) have been collected and combined in order to inform the Law Society about gender-related trends among lawyers, in addition to informing the development of initiatives to support and retain women and men in the legal profession – with an emphasis on private practice.

This report also compares the 2016-2020 data with two previous waves of research (2010-2012 and 2013-2015) to provide analysis of changes over time.

## Issues Explored in the Research



### What the Research Explored

The main trends among lawyers who make a change:

- Is there a shift to or away from private practice?
- Where are those leaving private practice going:
  - Practise in a non-private practice setting;
  - Working, but not practising law;
  - Not working.

For those leaving private practice, what are the greatest motivators?

How do trends differ, if at all, between women and men?

Are there trends in movement across the three waves of research (2010-2012, 2013-2015, 2016-2020)?

### Who was Surveyed

The current wave of the survey was conducted online among lawyer members who made a change in 2016-2017 and 2019-2020.

During these time periods, 10,872 lawyers submitted a change notice.

The response rate for the current wave of the survey was 23% (n=2473).

## Respondent Characteristics



### Analytical Approach:

The analysis focuses on strictly those whose change did not involve a move into or out of maternity/ parental leave or retirement.

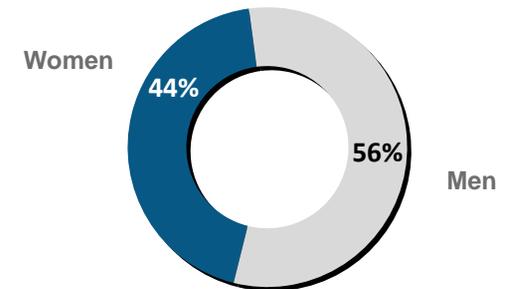
The representation of women among the Law Society of Ontario's membership is 44%.

Those who have submitted a change notice to the LSO, are significantly more likely to be women (59%) than men (41%).

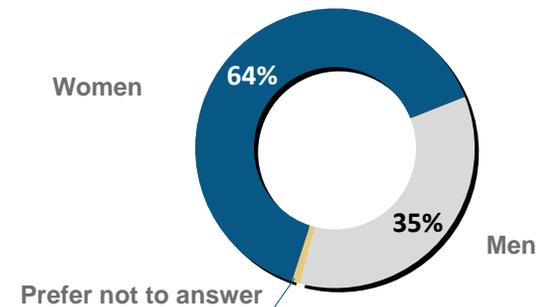
The representation of women among survey respondents is slightly higher (64%) than the broader population of those who submitted a change notice.

\* 2020 Law Society Annual Report (<https://lso.ca/annualreport/2020/home>)

Lawyer Membership of The Law Society in 2020\*

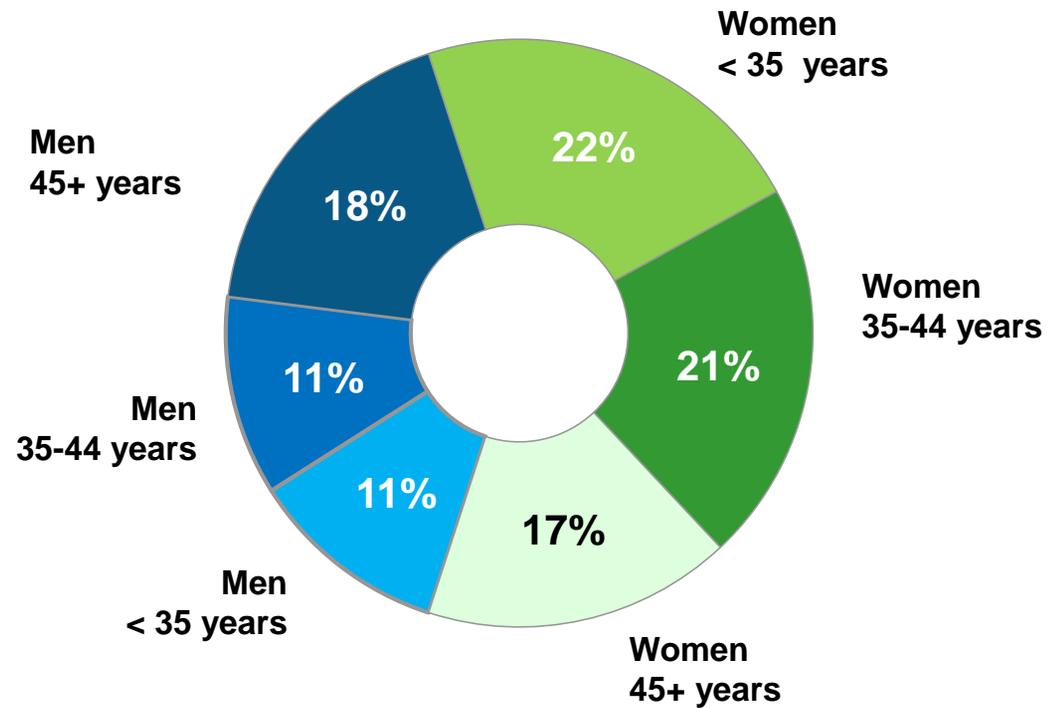


% Among survey respondents (excluding those whose change is related to maternity/ parental leave or retirement)



## Respondent Characteristics\*\*

Among those who have submitted a change notice, over four-in-ten are women under 45 years of age, with one-in-five under the age of 35. By contrast, only one-in-five are men are under 45 years of age, and just one-in-ten is under 35 years.



## Key Trends

As the Law Society seeks to promote the retention of women in private practice, trends among those who are moving to non-private practice are significant.

The incidence of those who are making a change from a position in private practice has increased significantly with each wave (9 points over three waves). Further, over the last two waves, the drop in those who are in private practice has more than doubled (from 7 points to fully 15 points). These results indicate that there is a challenge in private practice retention and are reflective of an overall decline of members in private practice evident in LSO's membership statistics.

Change trends among women are critical given that women are disproportionately represented among those who submitted a change notice (59%) compared to their representation within LSO's lawyer membership (44%).

- 1) Across all three waves of research, while at least half of women were in private practice prior to their change, 45% or less are in private practice after their change. The rate of retention in private practice for women compared to men is significantly lower across all waves of the research. These findings strongly suggest that a private practice retention challenge exists for women lawyers.
- 2) The research finds that in the last two waves, there has been a significant loss from private practice of younger women (<45 years) who have no dependent children. While there has been a loss in 2016-2020 among men, the rate is lower than for women. There was no significant decline in the incidence of private practice among younger men with no dependents in 2013-2015. For those with dependents under 13 years of age, there are no significant differences in private practice retention rates between women and men. This suggests that there is a particular retention concern among younger female lawyers who have not become parents.

## Key Trends

- 3) Women who have left private practice for non-private practice are more likely than men who have done the same to report on an unprompted basis that work-life balance, poor fit or negative aspects of previous job or discrimination / harassment were important factors in their decision to leave. On a prompted basis, work-life balance also emerges more strongly for women than men who have left private practice, as do the need to reduce stress in the workplace, decrease workload, and the availability of a pension and parental leave in non-private practice positions.
- 4) Digging more deeply into the reasons why the youngest cohort of women – specifically those with no dependents – are leaving private practice for non-private positions, fit appears to be a driving factor. The data provide some evidence that these women are seeking more team-oriented environments, and those that are less competitive in nature.
- 5) Once women have left private practice, the vast majority report that they will be unlikely to return.

## Change Trends

### Incidence of private practice setting prior to and after a change

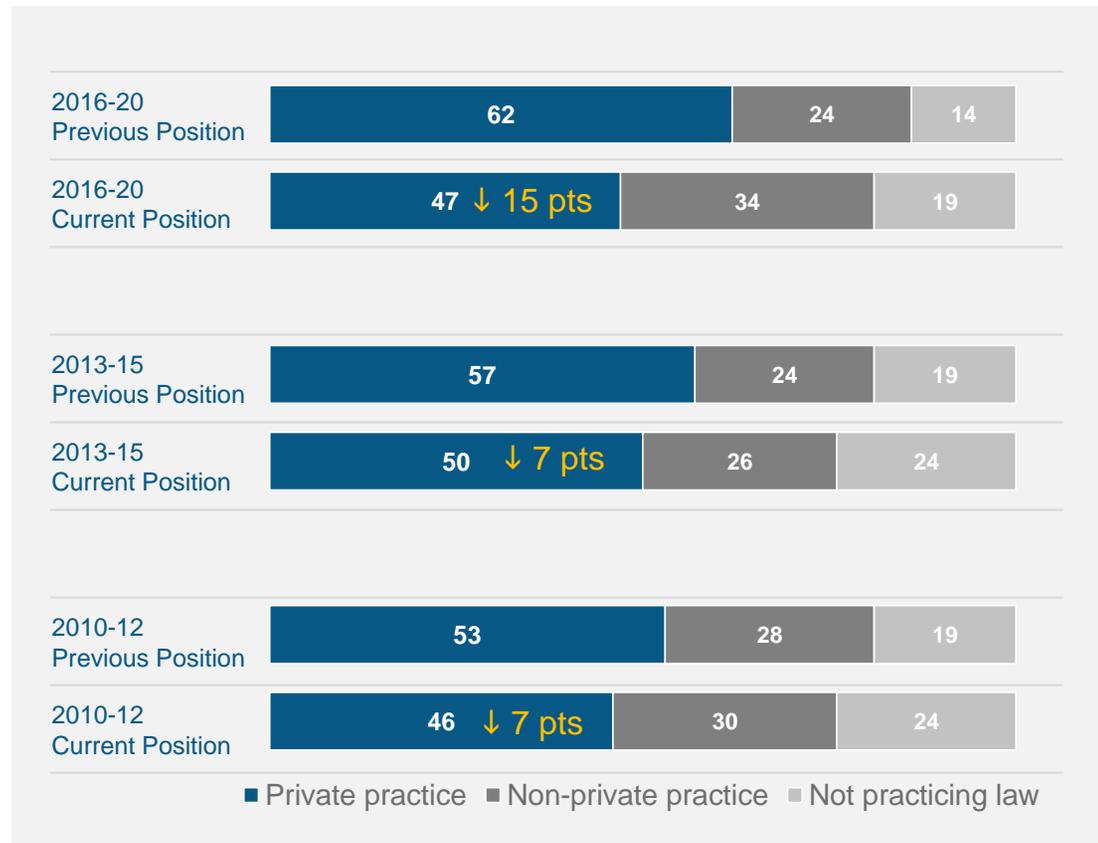
There is an overall decline in the incidence of those in private practice after a change across all three waves of research.

Six-in-ten (62%) respondents\*\* in the 2016-2020 wave indicate that they were in private practice prior to their change.

Only 47% were in private practice following a change – down 15 points.

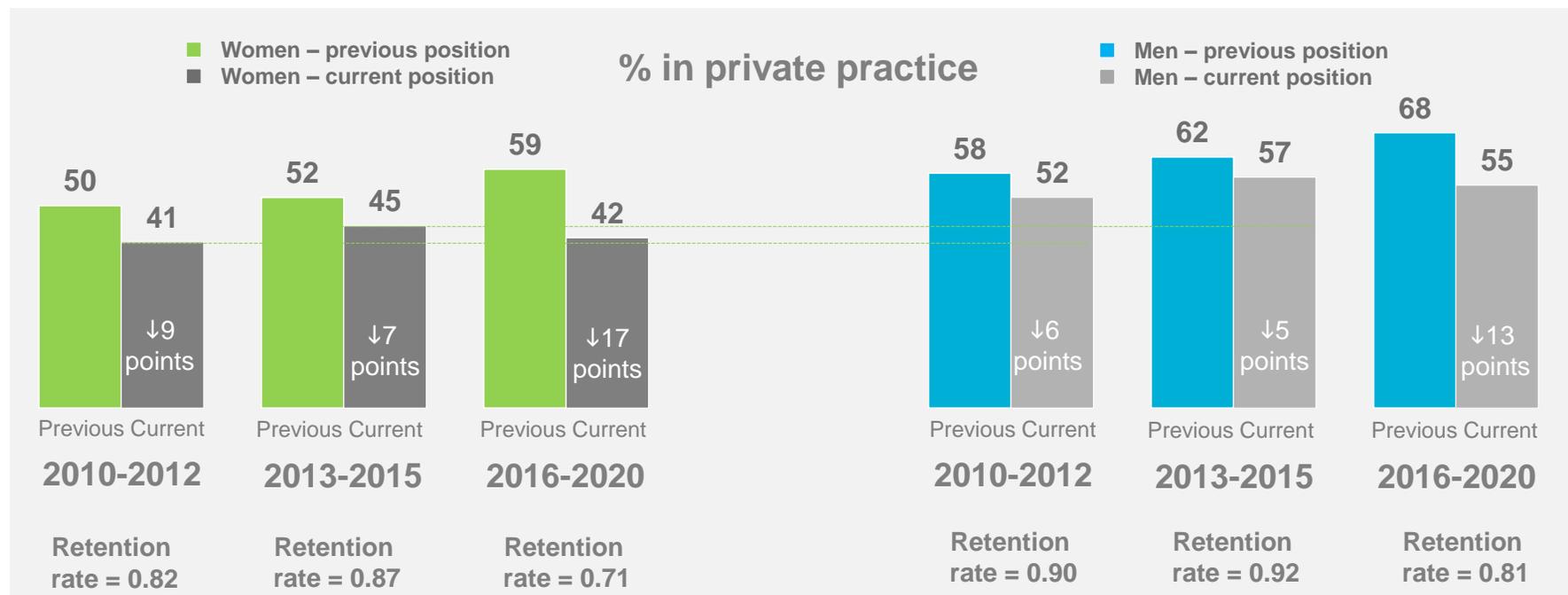
There were also declines in the previous two waves, but those declines were significantly smaller (down 7 points in each wave).

### Overall Change Trends



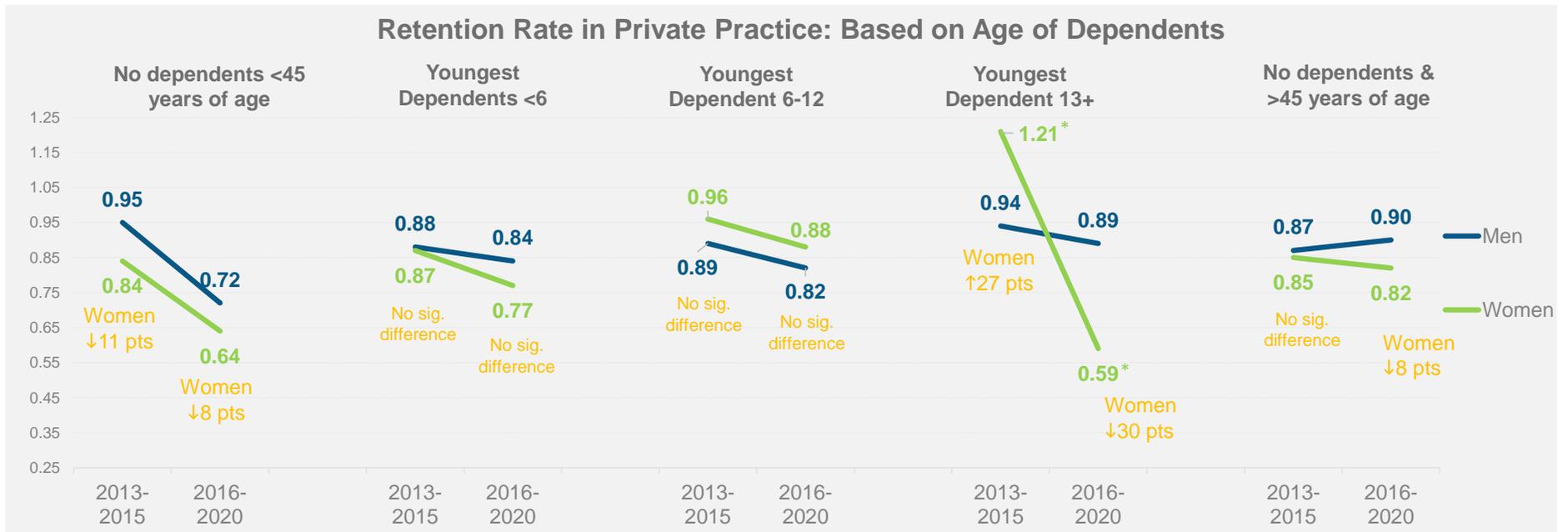
## Incidence of Private Practice Setting by Gender

Across all three waves, the decline is evident among both men and women, although for women the decline is greater in each wave. The private practice retention rate (i.e., the proportion who are in private practice after a change of status divided by the proportion in private practice prior a change of status) is significantly lower for women than it is for men (0.87 and 0.92, respectively).



## Private Practice Retention Rates Based on Age of Dependents

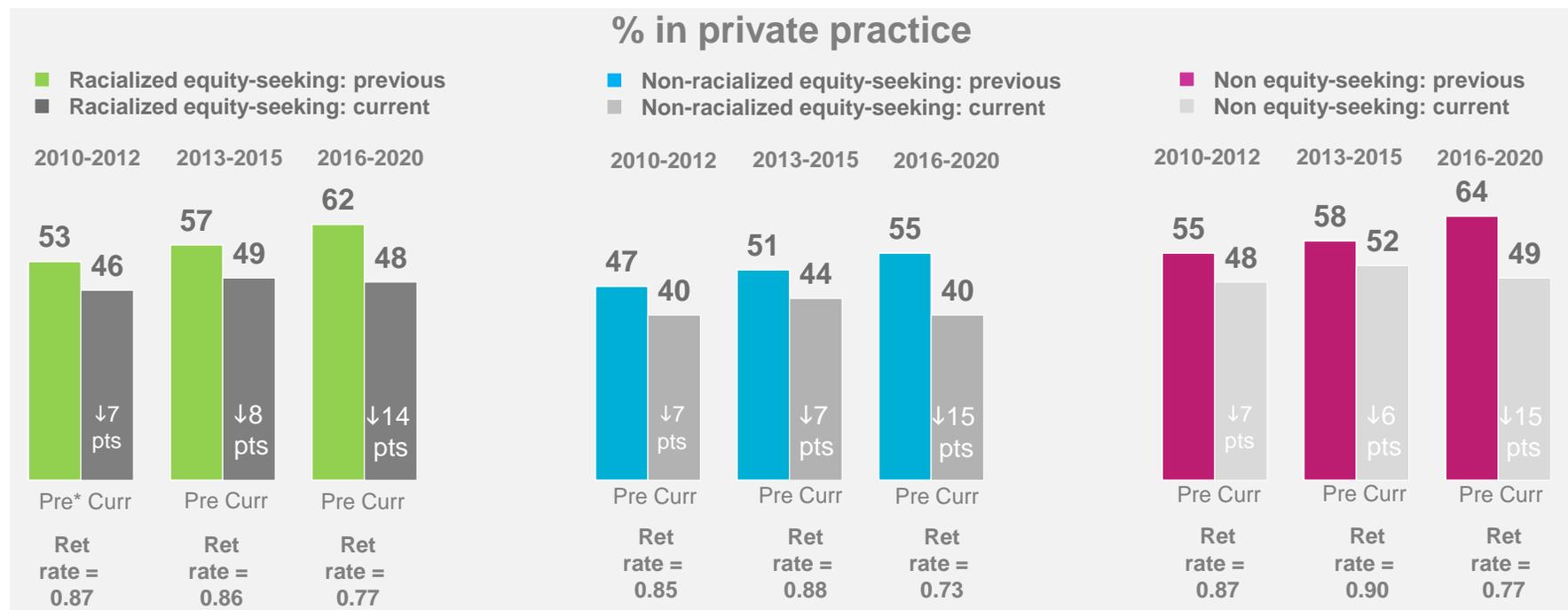
An examination of change rates based on age of dependents in the household finds that women under 45 years of age with no dependents are more likely to be leaving private practice than their male counterparts in 2013-2015 and 2016-2020. Over half of women in this cohort in each wave (56% and 66%, respectively) were in private practice prior to their change, but less than half (47% and 42%) were in private practice after a change (declines of 9 points and 24 points respectively). Among men, the declines are significantly smaller (-3 points and -19 points). Retention rates reflect the declines among women compared to men.



\* Caution: Sample size is under 75. Results should be considered directional

## Incidence of Private Practice by Equity-Seeking Communities

There have been no significant differences across equity-seeking and non-equity seeking communities in the private practice retention rates over the three waves.



\* This category includes: Laid off, termination, contract ended, semi-retired, health problems leading to leave, back to original position, firm closure, relocation, leave, return after leave, end of articling, return from clerkship.

## Unprompted Key Factors for a Change

Two approaches were taken to explore why lawyers made their change. First, they were asked to identify, on an unprompted basis, the key factors that influenced their decision to make a change. Following this unprompted approach, they were provided with a list of potential reasons for a change and asked how important each was in their decision.

This approach ensures that the exploration taps into both top-of-mind (unprompted) reasons for a change, and also peels the onion to tap into other, more latent factors that played a role in their decision (prompted reasons).

### Unprompted key factors for a change

Among all respondents, the factor cited most frequently for a change – on an unprompted basis - is improved professional opportunities.

The end of a position, contract or leave is cited by over one-quarter. Work-life balance is a factor among just under one-quarter of those who made a change.

Unprompted key factors  
for a change among all respondents

**Improved professional opportunities  
(e.g. better quality of work, use of skills, opportunities for advancement)**

38%

**Position ended, contract ended, requirement or want to move to new position\***

28%

**Work-life balance issues**

23%

## Unprompted Factors for Change by Gender

Improved professional opportunities is the key factor cited for leaving private practice for a non-private position among both women and men – although slightly more prevalent among men.

Work-life balance is next on the list for women (41%) – but is significantly less likely to be cited by men (27%).

Other issues that are significantly more likely to drive a change among women than among men who have left private practice for a non-private position are negative aspects of a previous position\*\* and discrimination or harassment.

Unprompted key factors among those who were in private practice prior to a change

% Unprompted key reasons for change	Women			Men		
	Remain in PP	Moved to non-private	Moved out of practice	Remain in PP	Moved to non-private	Moved out of practice
n=	334	224	45*	317	133	30*
Improved professional opportunities	38	51	24	30	58	17
Position ended or required to leave position	25	13	56	31	11	50
Work-life balance	22	41	24	15	27	17
Remuneration / Benefits	21	35	11	16	29	3
Poor fit, negative aspects of previous job	15	30	11	9	23	17
Discrimination / Harassment	6	11	7	2	2	7

\* Base sizes are small. Results should be considered directional only

\*\* e.g., Didn't like job, poor fit, billing or client development pressures, did not like type of practice, did not like type of work, conflict at previous position.

13

## Prompted Reasons for a Change by Gender and Change Outcome

Women who have left private practice are significantly more likely than the comparative groups (women remaining in private practice, and men both having stayed in or left private practice) to identify the following as important reasons for having made their change:

- Balancing career and family
- Reducing stress in the workplace
- Decreased workload
- Pension
- Parental leave

Importance of **prompted** reasons for change among those who were in private practice prior to a change

% Who identify reason for change as important	Women		Men	
	Remained in private practice	Moved out of private practice	Remained in private practice	Moved out of private practice
n=	334	224	317	133
Allows me to use my talents and legal skills	57	67	48	64 <sup>1</sup>
Job allows me to balance career & family	55	80 <sup>1</sup>	43	67 <sup>1</sup>
I control the scheduling	56	36	49	38
My job is less stressful	40	68	37	59
My workload has decreased	29	62	27	49
There is a pension plan	5	62	4	52
There is paid maternity or parental leave	10	37	7	11

## Top Prompted Reasons For Change Among Younger Lawyers

Noted earlier, younger women with no dependents have had lower private practice retention rates than men over the past two waves.

Looking at the prompted reasons that have driven a change among these women, the most likely to be identified as an important reason is the ability to use their skills (63%). Although this is the top reason among young men as well, the frequency with which it is considered an important reason is lower (54%) compared to women.

Second most important among younger women is the ability to balance career and family (58%). This reason is lower down on the list among men at 45%.

Sample sizes restrict the ability to look specifically at the differences in reasons among younger women who have left private practice compared to other cohorts and younger men who have left private practice.

### Top three **prompted** reasons for a change

% Important Reason for Change	Women <45yrs no dependents n=422	Men <45 yrs no dependents n=231
Allows me to use talents/ skills	63% ①	54% ①
Allows balance career and family	58% ②	45% ⑤
Job security is good	55% ③	48% ③
I have the freedom to decide what I do in my job	49% ④	45% ④
The pay is better	49% ⑤	48% ②

## Digging More Deeply into Why Younger Lawyers with No Dependents are Leaving Private Practice for Non-Private Practice

A new set of questions was added to the Change Survey in the most recent wave.

Those who have made a change were asked to think back to their first position out of articling. If they started out in private practice and moved to another practice setting, the reasons for doing so were explored. Some of the reasons for leaving private practice probed in this wave were not probed in previous waves.

As women with no child dependents have consistently been moving out of private practice to non-private practice positions at a greater rate than men over the past two waves, the findings among this segment are particularly important. While the results should be considered qualitative in nature due to the relatively small sample sizes, they do provide some insights into why younger women are leaving.

The results suggest that women and men with no dependents who have moved to a non-private practice position are equally as likely to report that they started out in private practice after articling. Those who reported that they intended to make their careers in private practice but their path changed were asked why this has been the case.

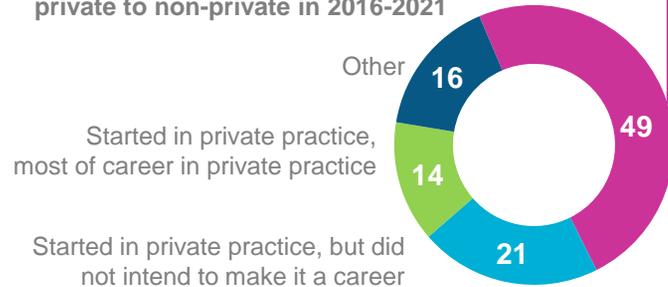
Women place a greater focus than their male counterparts on finding workplace environments that are more team-oriented, and those that are less competitive in nature. Further, they are more likely to be seeking a workplace culture that promotes and exhibits equality, diversity and inclusion.

## Digging More Deeply into Why Younger Lawyers with no Dependents Leaving Private Practice for Non-Private Practice

First position out of articles - women < 45 years who have moved from private to non-private in 2016-2021



First position out of articles - men < 45 years who have moved from private to non-private in 2016-2021



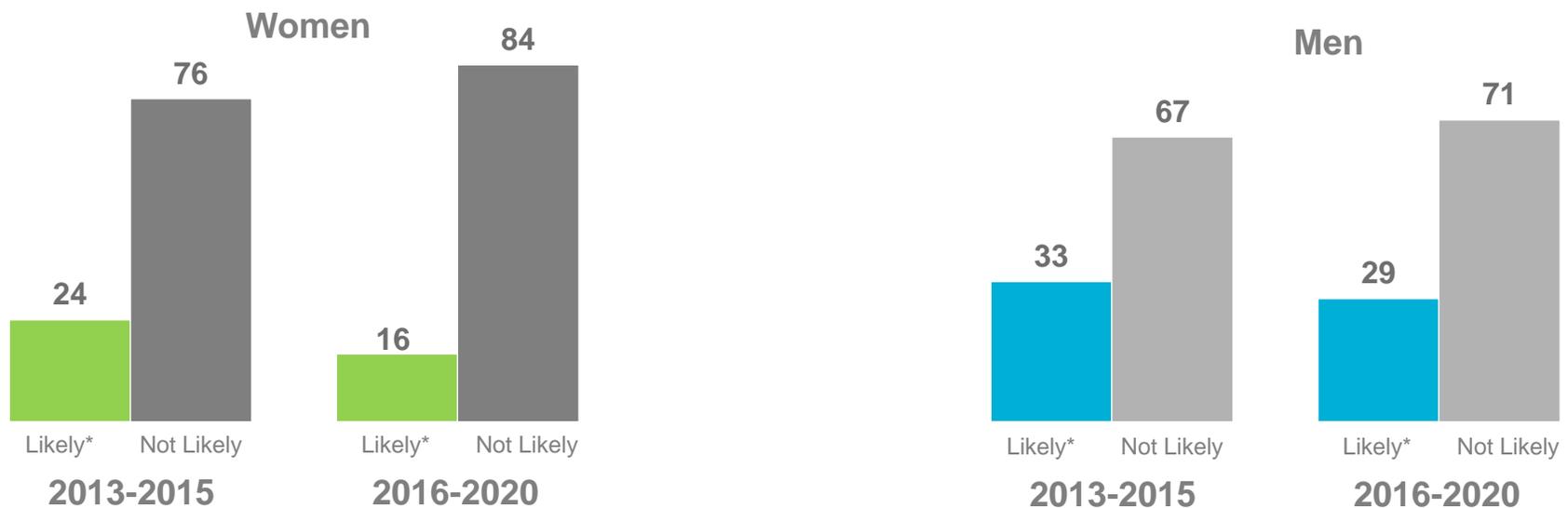
Started in private, intended to make career there but changed path

% Who identify reason for change as important	Women <45 years no dependents	Men <45 years no dependents
	Private to non-private practice	Private to non-private practice
	n= 32*	44*
I was seeking better work-life balance	79	73
I was seeking an atmosphere that was more team-oriented	61	45
I was seeking a less competitive environment	47	27
I was seeking a position where strong network of legal professionals, mentors or sponsors could provide guidance and advocate for me	29	25
I was seeking a setting that promoted and exhibited principles of equality, diversity and inclusion	45	25
I was seeking a setting in which I saw myself reflected in the leadership	43	41
The requirements for business development were too heavy	47	41

\* Base sizes are small. Results should be considered directional only

## Likelihood of Returning to Private Practice Among Those who have moved to Non-Private Practice

Women who have left private practice for a non-private practice position are significantly less likely than are men to report that they would consider returning to private practice. Less than one-quarter in the last two waves report some likelihood to return to private practice.



## Suggestions for What LSO Can Do to Assist

Those who have left private practice for non-private practice but might consider returning were invited to provide suggestions as to how the LSO could assist them to return.

The sample sizes for this area of exploration are small as only a small proportion of these respondents say that they might return to practice. As such, results should be considered directional.

Among women, interest in seeing a change in corporate culture emerges as a suggestion. This does not appear to be an issue among men.

Among men, there appears to be a greater emphasis on education and training opportunities.

Suggestions for how LSO can assist those who have left private practice for a non-private practice position to return to private practice

	Women n=33*	Men n=35*
Change/Improve corporate culture/work environment	15	-
Change focus on billable hours/ Lower fee rates	12	6
Allow for different job arrangements/Flexible/Part-time	12	-
Mentoring	6	6
Job search assistance/Networking/ Job postings	6	9
Be family-friendly/Support those with children or caring for relatives	6	3
Education / Training / Refresher courses for those returning	3	23
Lower LSO fees	3	9
Free / lower cost CPD / Better CPD courses	3	9

\* Base sizes are very small. Results should be considered directional only

19



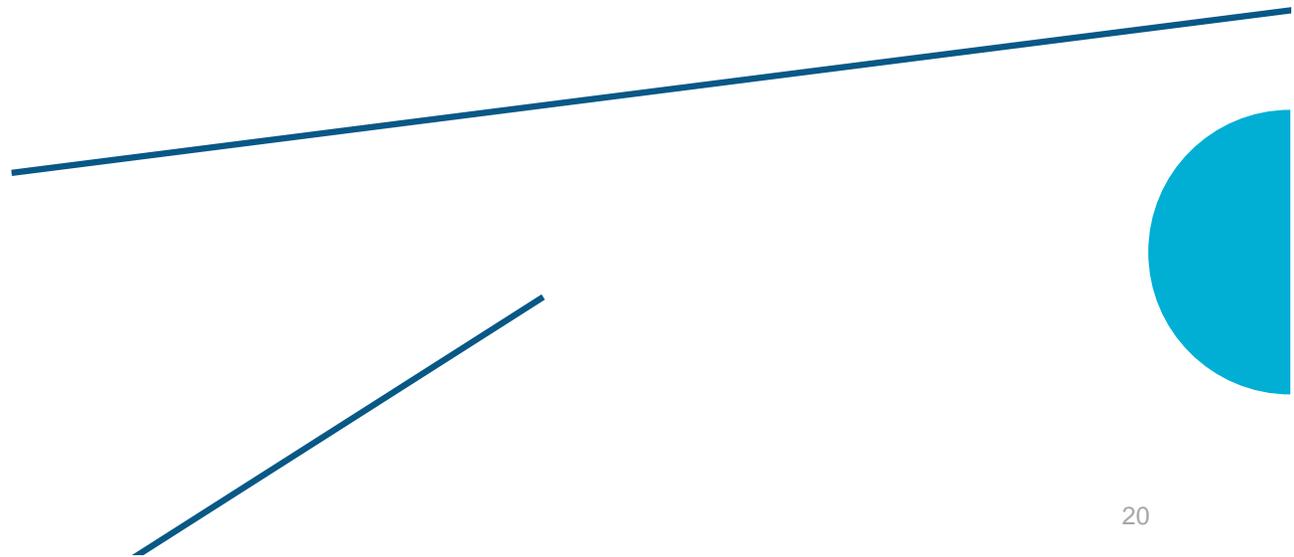
**Anne Kilpatrick**  
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**Sabeen Thaver**  
Consultant

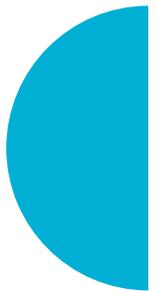


**NAVIGATOR**

**DISCOVER**

September 9, 2021

# Law Society of Ontario Paralegal Change Survey



## Issues Explored in the Research



### WHAT THE RESEARCH EXPLORED

The main trends among paralegals who make a change:

- Is there a shift to or away from private practice?
- Where are those leaving private practice going:
  - Practise in a non-private practice setting;
  - Non-paralegal work setting (non-practice work);
  - Not working; or
  - Some other setting.

For those leaving private practice, what are the greatest motivators?

How do trends differ, if at all, between women and men?

Are there trends in movement across waves of research 2012-2014 and 2016-2020?

### WHO WAS SURVEYED

The current wave of the survey was conducted online among paralegal members who made a change in 2016-2017 and 2019-2020.

During these time periods, 2623 paralegals submitted a change notice.

The response rate for the survey across these two periods was 24% (n=642).

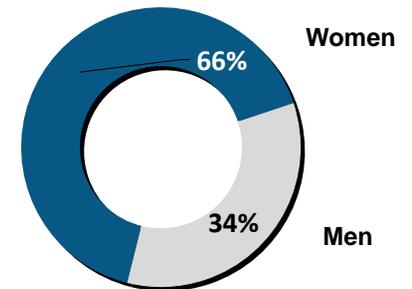
## Respondent Characteristics



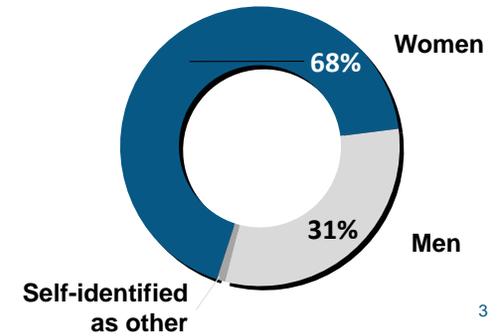
The analysis focuses on strictly those whose change did not involve a move into or out of maternity/ parental leave or retirement.

The gender representation of survey respondents is consistent with the Law Society's of Ontario's (LSO) paralegal membership overall\*.

Paralegal Membership of The Law Society in 2020\*



% Among survey respondents (excluding those whose change is related to maternity/ parental leave or retirement)



## Research Context and Key Trends

As the Law Society sees paralegal practice as enhancing access to justice, trends among those in private practice who make a change are highly significant. The importance is underscored by the fact that according to LSO member data from 2020, only 38% of the paralegal membership is providing legal services.

Related to this analysis, trends among women are also critical given that women comprise 66% of paralegals.

- 1) Across both waves of research, at least four-in-ten women and men who were in private practice prior to a change report that they are no longer practising as a paralegal. In the current wave, the proportion no longer practising is fully half among both women and men. These findings strongly suggest that a private practice retention challenge exists.
- 2) The research finds that there is a significant loss of women from private practice among the youngest age cohort (<35 years). By contrast, there is no significant change in the incidence of the youngest cohort of men in private practice. This suggests that there is a particular retention concern among women under the age of 35.
- 3) Women who left private practice for another setting are more likely than their colleagues (both women and men who have stayed in private practice, and men who have left private practice) to report better remuneration, job security, opportunities for promotion and benefits were important factors in their decision to leave. Sample sizes preclude analysis of women younger than 35 on this issue.
- 4) Those who have left private practice altogether were invited to provide suggestions as to how the LSO could assist them to return. Analysis of this question among women who have left private practice does not provide any significant amount of guidance. Responses are widely diffused, with no single type of suggestion being made by more than one-in-five of these women and the majority being provided by 12% or less. Mentioned by at least one-in-ten are job search and networking assistance, a focus on billable hours, and mentoring.

# Executive Summary

## INCIDENCE OF PRIVATE PRACTICE SETTING PRIOR TO A CHANGE

There is an overall decline in the incidence of those in private practice after a change across both waves of research.

Six-in-ten (60%) respondents\*\* in the 2016-2020 wave indicate that they were in private practice prior to their change. The proportion declined significantly following a change – down 18 points to 42%. The decline in 2012-2014 was significantly smaller at -5 points.

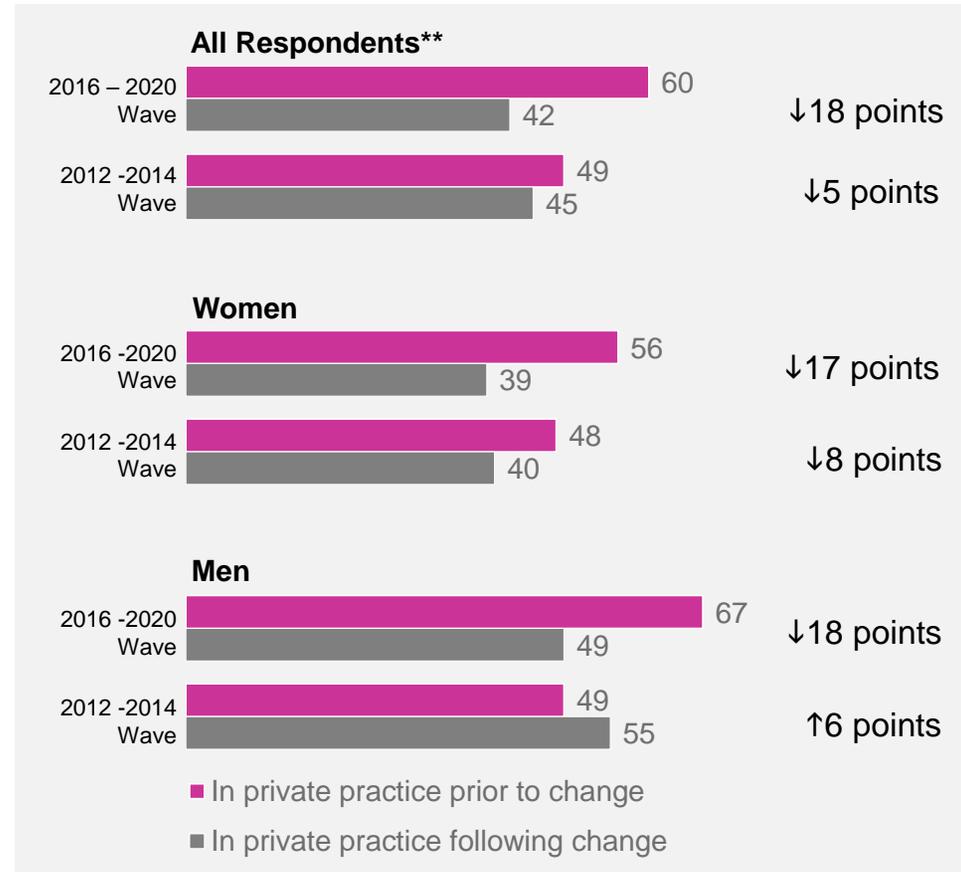
In both the 2012-2014 and 2016-2020 waves, the incidence of women in private practice declines significantly (down 8 points and 17 points, respectively).

In both waves, the incidence of women in private practice after a change is lower than the incidence among men.

Among men, the movement is not consistent across waves.

- The representation of men in private practice after a change increased by 6 points in the 2012-2014 wave. In the 2016-2020 wave, by contrast, the incidence declined by 18 points.

Incidence of Private Practice



# Executive Summary

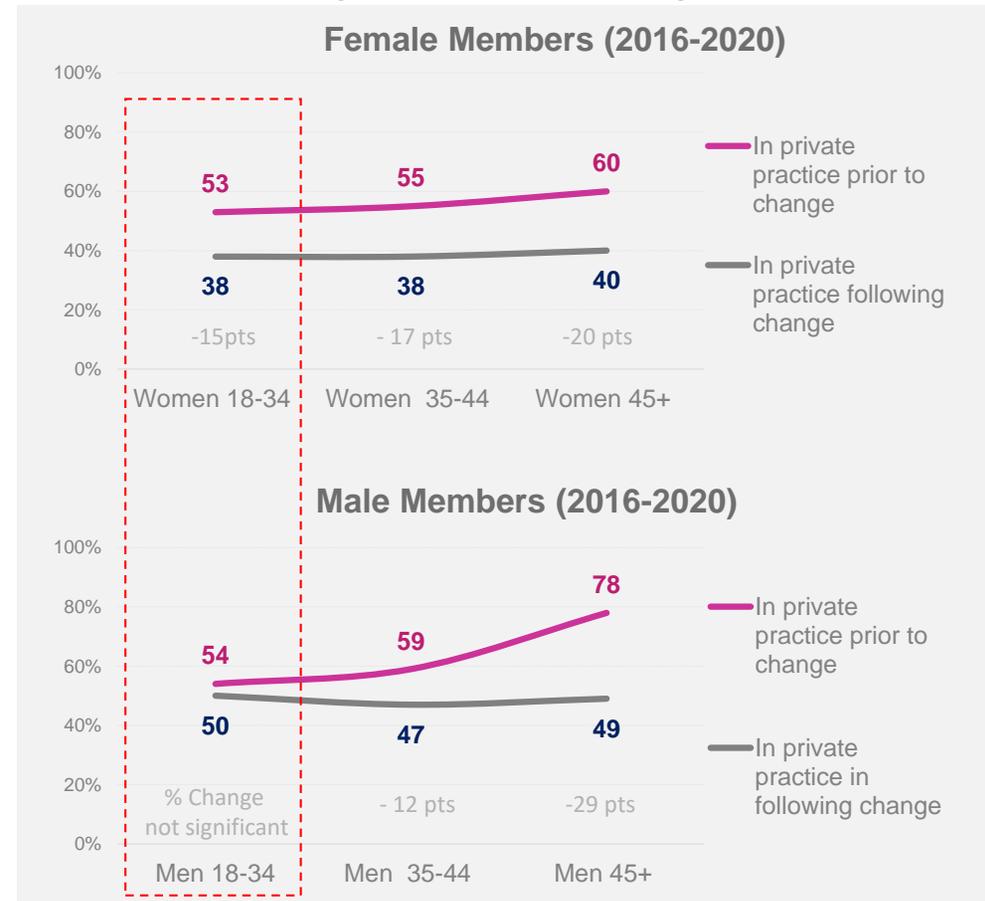
## PRIVATE PRACTICE REPRESENTATION BASED ON AGE OF THOSE WHO HAVE MADE A CHANGE

In both waves of research, younger women are leaving private practice, whereas the incidence of younger men in private practice remains stable.

- The representation of women in private practice in the 2016-2020 wave declines fully 15 points among those <35 years of age who have made a change.
- By contrast, there is no significant difference in the representation of men <35 years of age in private practice after a change.
- This trend is evident in the 2012-2014 results as well.

Among the middle and older age cohorts in both waves, there is a significant decline in the representation of both women and men in private practice after a change.

Representation in private practice prior to change and in current setting



# Executive Summary

## DESTINATION OF CHANGE – THOSE WHO WERE IN PRIVATE PRACTICE

In both waves of research, almost half of those who made a change from a position in private practice left the profession entirely (45% and 49%, respectively, were no longer practising in 2012-2014 and 2016-2020 after their change).

Fully 49% of women who left private practice in the 2016-2020 wave are no longer practising.

- 29% are employed but not practising as a paralegal, 14% report they are not working, and 6% indicate they are in some other setting.

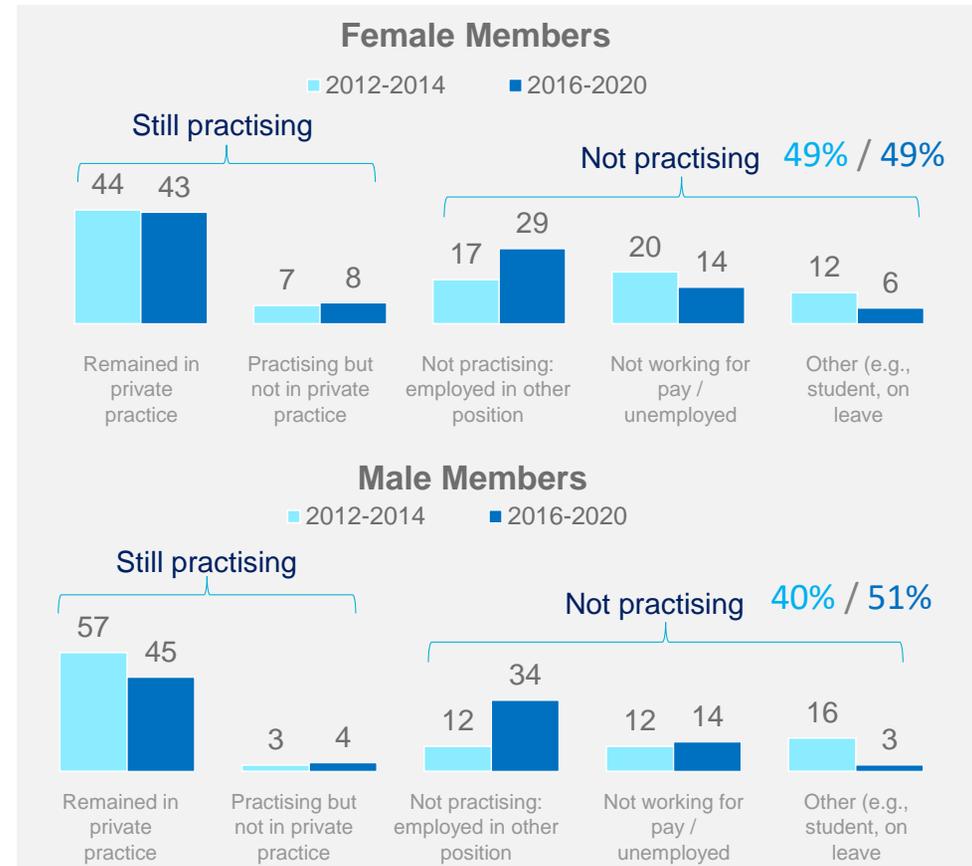
Similarly, 51% of men who were in private practice prior to a change are no longer in paralegal practice in the most recent wave.

- 34% are employed but not practising as a paralegal, 14% report they are not working for pay or unemployed, and 3% indicate they are in some other setting.

The trend away from paralegal practice altogether among those who started out in private practice is consistent for women across both waves of research (49% in both waves). Among men, the decline in practice is higher in this wave (51% are no longer practising) than in the 2012-2014 wave (40%).



Destination of change among those who were in private practice prior to their change



## Executive Summary

Two approaches were taken to explore why paralegal members made their change. First, they were asked to identify, on an unprompted basis, the key factors that influenced their decision to make a change. Following this unprompted approach, they were provided with a list of potential reasons for a change and asked how important each was in their decision.

This approach ensures that the exploration taps into both top-of-mind (unprompted) reasons for a change, and also peels the onion to tap into other, more latent factors that played a role in their decision (prompted reasons).

### UNPROMPTED KEY FACTORS FOR A CHANGE

Among all respondents, the key factors cited most frequently unprompted as influencing a change are improved remuneration and benefits and improved professional opportunities.

Samples sizes for both women and men preclude examination of key factors influencing a change among those who have left private practice by gender and age combined.

Unprompted key factors  
for a change among all respondents

**Improved remuneration  
& benefits**  
(e.g., better pay, stable  
income, pension)

28%

**Improved professional  
opportunities**  
(e.g. better quality of work,  
use of skills, opportunities  
for advancement)

25%

# Executive Summary

## UNPROMPTED KEY FACTORS FOR A CHANGE (CONT'D)

Sample sizes do, however, allow a high-level view by age of why women who started out in a private practice position have decided to make a change.

The youngest cohort of women - under 35 years – are almost equally likely to identify remuneration and benefits (35%) as they are improved opportunities in their new position (36%) as the main unprompted factor for their change.

In particular, this younger group is significantly more likely than their older colleagues to cite improved or new workplace opportunities.

## Unprompted factors among women whose previous position was in private practice

% Who identify reason for change on unprompted basis	Women		
	<35 years	35-45 years	45+ years
	n= 116	47	94
Improved remuneration & benefits (e.g., better pay, stable income, pension)	35	28	29
Improved professional opportunities (e.g. better quality of work, use of skills, opportunities for advancement)	36	21	19
Position ended or required to leave position (e.g., laid off, terminated, contract ended, health problems, went back to original position after secondment, was previously unemployed, relocation)	10	19	25
Worklife balance (e.g., family balance, flexible work schedule, better hours, control over hours, reduction in stress, burn outs at previous position)	19	17	9
Challenges/changes to previous position (e.g., dissolving partnership, didn't like job or firm, can't make enough to practice, didn't like previous position)	13	4	8

Q.15: What were the key factors that influenced your decision to change your status or position. Base: Women whose previous position was a private practice (women <35 n=106; women 35-44 n=44 caution small base; women 45+ n=89)



## Executive Summary

### TOP PROMPTED REASONS FOR CHANGE AMONG WOMEN - BASED ON AGE

Younger women are more likely than other cohorts to identify pay and job security as factors driving their change. By contrast, among those in the age group where young children are most likely to be in the household (35-44 years) work-life balance is the primary factor.

- Younger women place a greater emphasis on pay and job security as reasons for making a change from a position in private practice. Over six-in-ten report these issues are important factors in their decision to make a change.
- Those in the middle age cohort place significantly greater emphasis on balancing career and family (70% report this is important).
- The oldest cohort – those 45+ years – place the greatest emphasis on their new position allowing them to use their skills (49%).

Top three prompted reasons for change among WOMEN who started out in private practice.

% Important Reason for Change	Women 18-34 yrs
The pay is better	66% ①
Job security is good	65% ②
The job allows me to balance career and family	59% ③
	Women 35-44 yrs*
The job allows me to balance career and family	70% ①
Freedom to decide what to do in my job	64% ②
The pay is better	61% ③
	Women 45+ yrs
The job allows me to use my talents and paralegal skills	49% ①
The job allows me to balance career and family	44% ②
Job security is good	42% ③

Q.13aa: Please indicate how important each of the following were in your decision to move from previous status or position to your current status or position. Base: Women whose previous position was in private practice (<35 n=106; 35-44 n=44 caution small base; women 45+ n=89)

# Executive Summary

## UNPROMPTED KEY FACTORS INFLUENCING A CHANGE

Unprompted, among both men and women who have left private practice, improved remuneration and benefits is the key factor cited most frequently.

- Over four-in ten women (44%) and men (45%) cite this as a key factor. Comparatively, less than one quarter of those who remained in private practice do so (23% and 18%, respectively).
- The second most frequently cited key factor among women who have left private practice is improved professional opportunities (30%). The proportion of women citing this factor is twice that compared to men who have left private practice (15%).
- While the sample size is limited, men who have left private practice cite work-life balance second most frequently as a key factor (25%). Among women who have left private practices by contrast, just 14% cite work-life balance as a key factor.

Unprompted key factors influencing a change among those who were in private practice

% Unprompted key reasons for change	Women		Men	
	Moved out of private practice	Remained in private practice	Moved out of private practice	Remained in private practice
n=	117	87	50	50
Improved remuneration & benefits (e.g., better pay, stable income, pension, financial reasons)	44	23	45	18
Improved professional opportunities (e.g. better quality of work, use of skills, opportunities for advancement)	30	23	15	26
Position ended or required to leave position (e.g., laid off, terminated, contract ended, health problems, went back to original position after secondment, was previously unemployed, relocation)	19	20	15	20
Work-life balance (e.g., family balance, flexible work schedule, better hours, control over hours, reduction in stress, burn outs at previous position)	14	18	25	6
Challenges/changes to previous position (e.g., dissolving partnership, didn't like job or firm, can't make enough to practice, didn't like previous position)	13	9	8	10

## Executive Summary

### PROMPTED REASONS FOR A CHANGE – WOMEN VS MEN WHO STARTED FROM PRIVATE PRACTICE

Women who have left private practice are significantly more likely than women who have stayed in private practice, as well as all men (both those who left and those who stayed in private practice) to identify the following as important reasons for having made their change out of private practice:

- Better pay
- Job security
- Opportunities for promotion
- Benefits

The single most important reason among both women and men who stayed in private practice is the ability to use talents and paralegal skills (60% and 66%, respectively). This stands in contrast to those who have left private practice. One-third of women (32%) and just one-quarter of men (24%) identify this as important in their change.

Importance of prompted reasons for change among those who were in private practice

% Who identify reason for change as important	Women		Men	
	Moved out of private practice	Remained in private practice	Moved out of private practice	Remained in private practice
n=	117	87	60	50
The pay is better	69	44	54	44
Job security is good	67	47	46	50
The job allows me to balance career and family	60	56	44	56
Opportunities for promotion are excellent	57	31	28	32
The benefits are better	55	30	42	38
Current position promotes principles of equality, diversity & inclusion	47	39	44	48
Freedom to decide what to do in my job	40	53	26	58
I control the scheduling	40	49	30	52
The job allows me to use my talents and paralegal skills	32	60	24	66

# Executive Summary

## ASSESSMENTS OF PREVIOUS AND POSITION

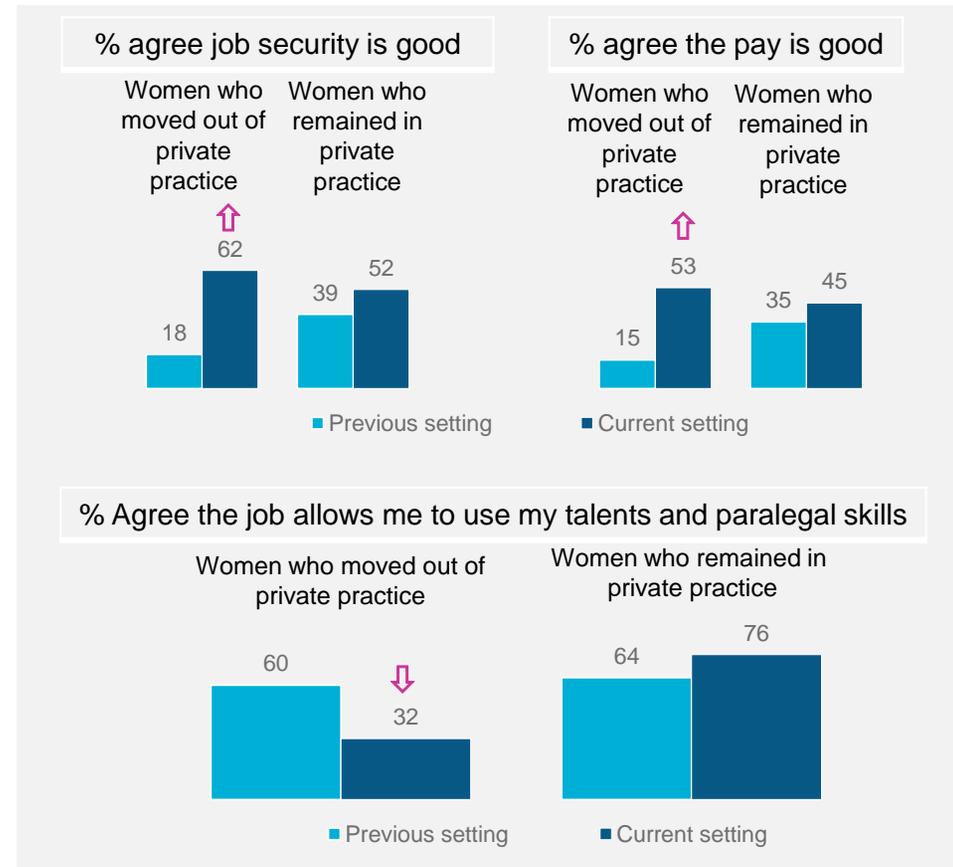
When women who have left private practice are asked to assess key characteristics of their current position compared to their previous position, the results reflect their expressed motivations for leaving.

- Women who moved out of private practice are more than three times more likely to agree that their current position outside of private practice offers them job security (62%) and good pay (53%) compared to their previous position (18% and 15%, respectively).
- While among women who stayed in private practice the proportions reporting good job security and good pay have increased from previous to current setting, the increases are much smaller than found among women who have left private practice.

The research suggests that women who have left private practice have less scope for using their talents and paralegal skills in their new position.

- There has been a significant decline in the proportion agreeing that their current position allows them to use their paralegal skills (a 28-point drop). By contrast, there has been a 12-point increase in agreement among women who have remained in private practice.

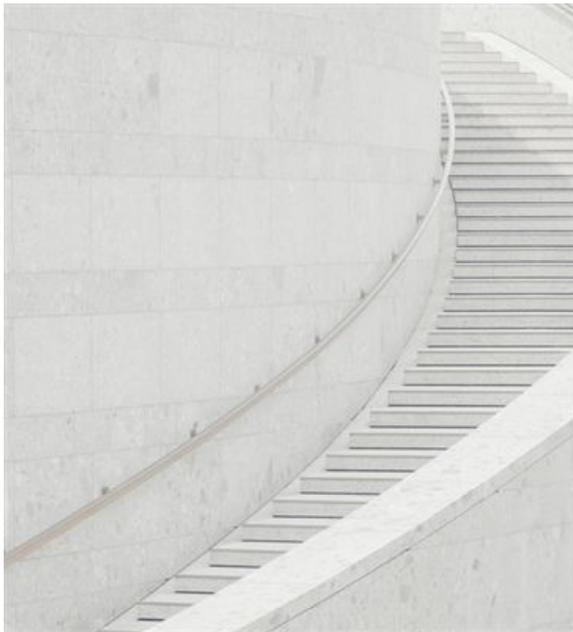
Agreement that previous versus current position offers specific attributes among WOMEN who started in private practice



Q12: Please indicate how strongly you agree or disagree with the following statements as they relate to your previous status or position to your current status or position. Please do this using a scale from 1 to 5, where "1" means you agree strongly and a "5" means that disagree strongly. If you don't know or you do not feel the statement is applicable to you, you may indicate that.



## Executive Summary



### THE ROLE OF BENEFITS IN A CHANGE

While benefits are identified less frequently as a driving factor in a change compared to remuneration and job security, the results suggest that the type of positions that are sought by women offer a cross-section of benefits that were not available to many in their previous work setting.

Women, more so than men, are moving to settings where there is an availability of:

- Pension plans;
- Flexible work arrangements (e.g., flexible full-time work hours, part-time work, leaves of absence);
- Policies to address discrimination; and
- Harassment, special needs, and formal mentoring policies

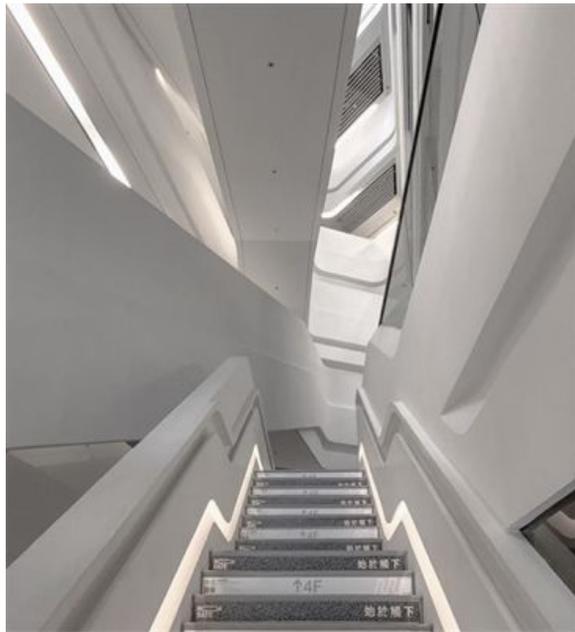
The greater likelihood of having access to benefits/policies after a change is most evident among women who have left a private practice setting. There is a greater incidence of access in their current position to benefits/policies in 13 of 19 benefit and policy categories explored:

- Medical Insurance; Dental plan; Long-term disability; Pension plan; Flexible full-time work hours; Paid maternity leave; Paid parental leave; Childcare benefits; Sick leave; Leave of absence or sabbatical; Harassment and discrimination policy; Accommodation for special needs policy; Formal mentoring policy.

This contrasts with women who remained in a private practice setting, among whom there was an increase in access for only 5 of the categories examined:

- Flexible full-time work; Job sharing; Paid maternity leave; Paid parental leave; Childcare benefits.

# Executive Summary



## LIKELIHOOD OF RETURNING TO PRACTICE AS A PARALEGAL

One-third of all those who have left paralegal practice\* in 2016-2020 believe it is unlikely they will return.

There is no significant difference between women and men on this issue, nor has the incidence changed significantly compared to the 2012-2014 wave.

## BRINGING PARALEGALS BACK TO PRACTICE

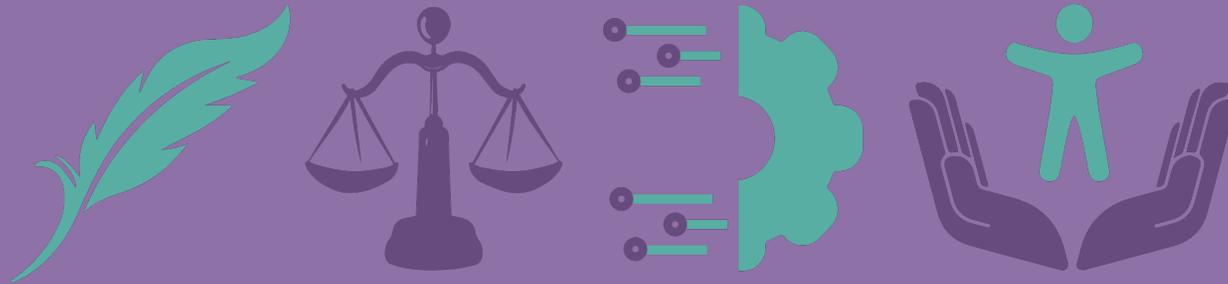
Those who have left paralegal practice were invited to provide suggestions as to how the LSO could assist them to return.

Suggested most frequently by women who have left private practice were...

Suggestions for how LSO can assist WOMEN who have left private practice to return



\* excluding those whose change is related to maternity/ parental leave or retirement



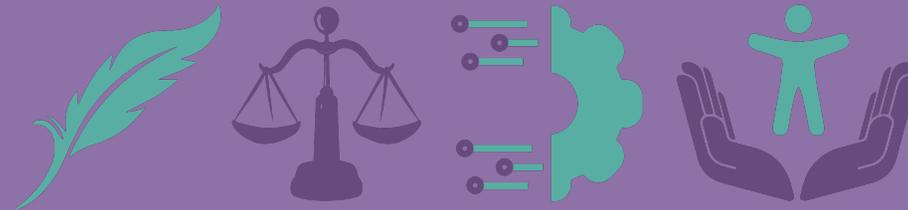
# Access to Justice Week 2021



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# Access to Justice Week 2021

Presented to the  
Equity and Indigenous Affairs Committee



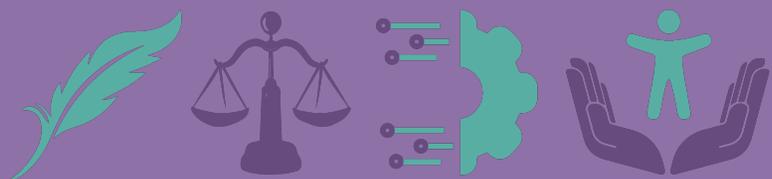
Law Society  
of Ontario

Barreau  
de l'Ontario



TAG

November 25, 2021  
Sheena Weir, Executive Director, ERC



# Access to Justice Week 2021

## AGENDA

- Review of The Action Group on Access to Justice (TAG)'s purpose and activities
- 2021 Access to Justice Week highlights

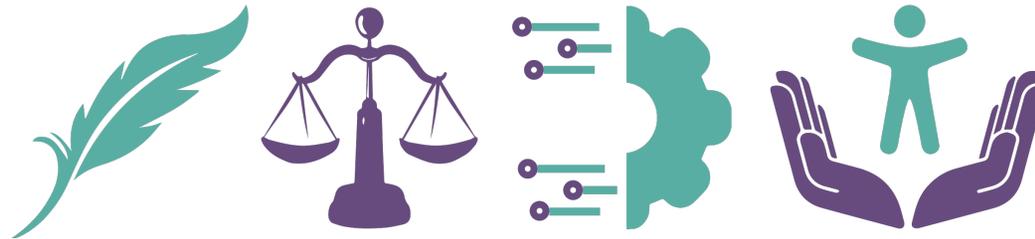


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of Ontario

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de l'Ontario

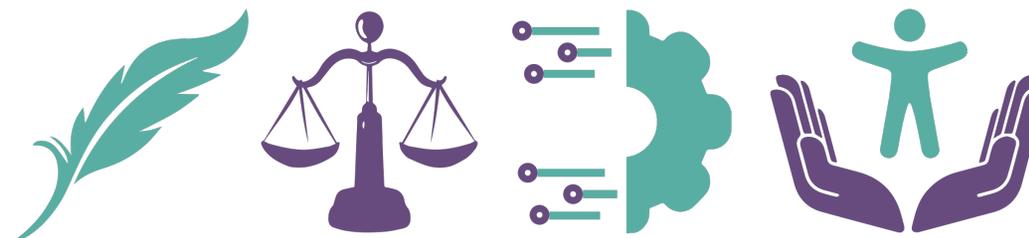


TAG



## TAG'S PURPOSE

- Advances the Law Society's legislative obligations
- Implements recommendations in 2014 Convocation report
- Strengthens relationships with governments and other stakeholders
- Leverages the Law Society's convening ability
- Establishes partnerships that:
  - enhance efficiency
  - pool scarce resources
  - eliminate duplication



## ACTIVITIES: FULFILLING OUR PURPOSE

### Partnerships

- TAG subcommittee on digital justice
- Programming partnerships for Access to Justice Week
- Family law working group

### Public Engagement

- Public perceptions research

### Communications

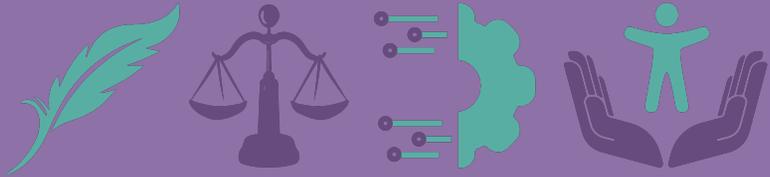
- Enhanced promotions of Access to Justice Week

### Events

- Robust Access to Justice Week program with 20+ CPD accredited programs

### National Link

- Nation Action Committee Justice Development Goals report submissions
- Community Justice Colloquium hosted in Ontario



# Access to Justice Week 2021

## 2021 ACCESS TO JUSTICE WEEK HIGHLIGHTS

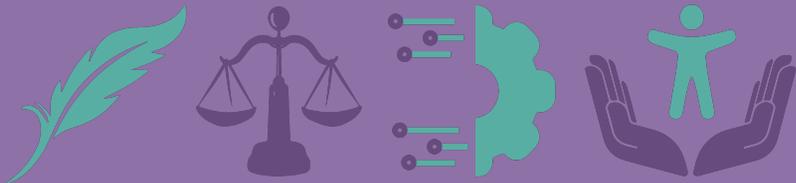


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# Access to Justice Week 2021



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25 Programs

6 national programs  
19 Ontario programs

2,675 Participants tuned-in



up from 1534 in 2020

98 Speakers

up from 63 in 2020

104,878 Social Media impressions

LSO LinkedIn Impressions: 23,565

LSO Facebook Impressions: 9,035

LSO Instagram Impressions: 1,788

LSO Twitter Impressions: 21,718

Treasurer Twitter Impressions: 20,972

TAG Twitter: 27,800

Traffic on TAG's new website\*



Pageviews: 32,345

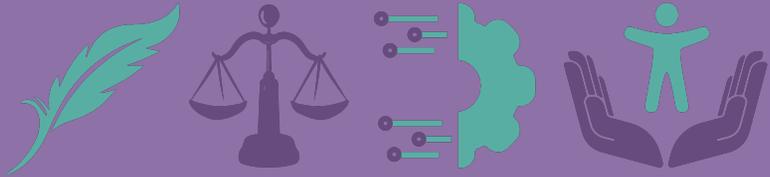
Sessions: 25,853

\*FROM OCTOBER 1-31, 2021



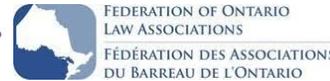
Joint national news release

Generated 59 million media impressions

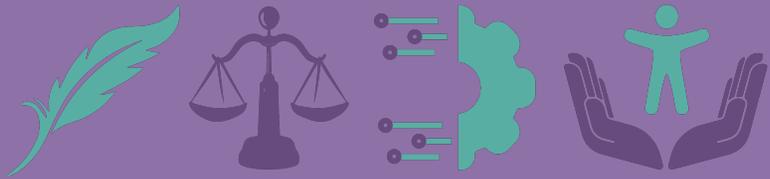


# Access to Justice Week 2021

## PROGRAMMING PARTNERS

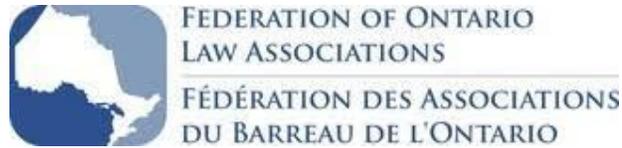


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# Access to Justice Week 2021

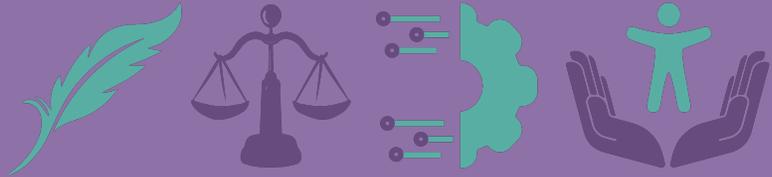
## PUBLIC LEGAL SEMINARS



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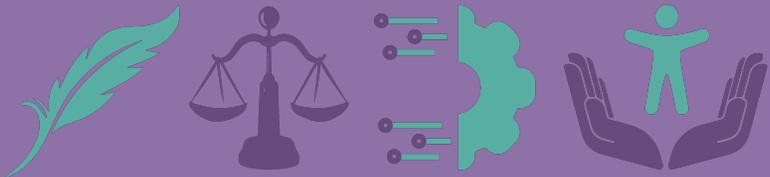
# Access to Justice Week 2021

## IN THE MEDIA

The screenshot shows the TAG website's news section. At the top is the TAG logo and navigation links: About, Access to Justice Week, Resources, News, and Contact Us. The main heading is "News". Two news items are displayed:

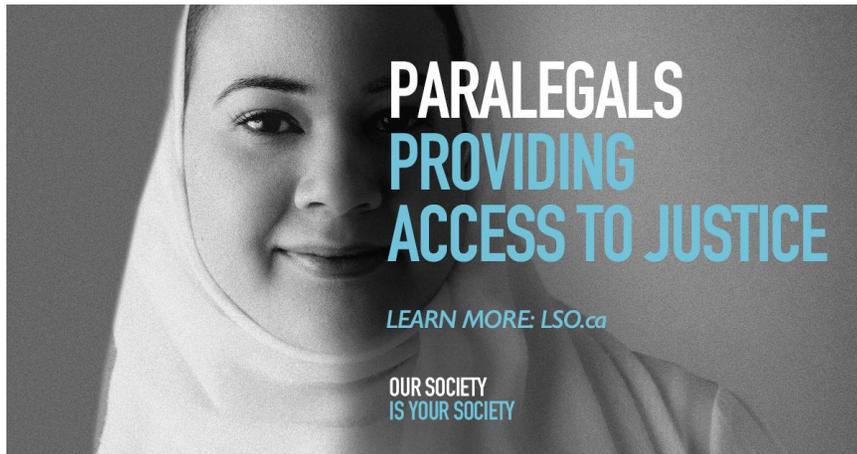
- Canada's Access to Justice Week events promote Truth and Reconciliation, inclusivity and affordable justice for all**  
 OCTOBER 22, 2021 News Releases  
 The second annual National Access to Justice Week is taking place from October 25 to 29, 2021 in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island. This year's theme is inclusivity with a focus on Truth and Reconciliation. Each province will host free, virtual events highlighting community justice work in Canada and the importance of inclusivity in providing legal services.
- Support for Access to Justice Week**  
 OCTOBER 22, 2021  
 Access to Justice Week is recognized by all levels of government and the judiciary. The Action Group on Access to Justice (TAG) is pleased to share letters of support for the 2021 Access to Justice Week.

- [Ontario's sixth annual Access to Justice Week demonstrates the professions' commitment to advancing access to justice](#)
- [Canada's Access to Justice Week events promote Truth and Reconciliation, inclusivity and affordable justice for all](#)
- [Support for Access to Justice Week](#)
- [Access to Justice Week 2021 - Register now for free public legal seminars](#)
- [LSO kicks off sixth annual A2J Week with sunrise ceremony at Osgoode Hall](#)
- [Ontario's sixth annual Access to Justice Week kicks off with a sunrise ceremony and promises diverse programming for legal professionals and the public](#)



# Access to Justice Week 2021

## INITIATIVES LAUNCHED DURING A2J WEEK



The Law Society of Ontario's  
Treasurer's Roundtable on Women in Law  
In collaboration with



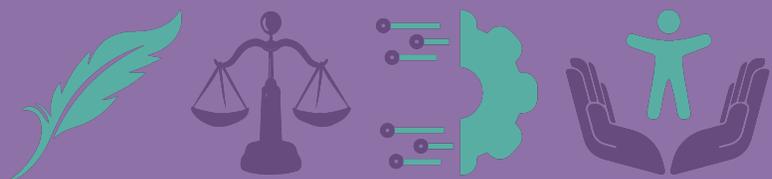
International Association of Women Judges  
Advancing Human Rights and Equal Justice for All



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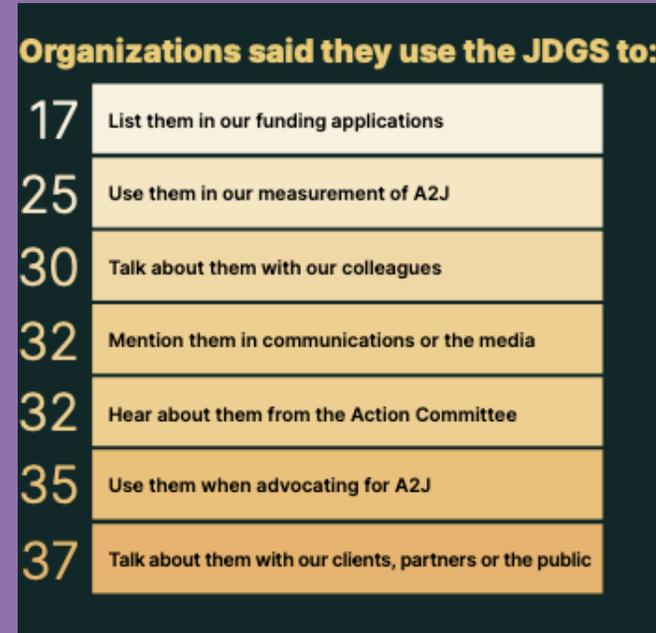


## Access to Justice Week 2021

### 2020 PLENARY SESSION COMMITMENTS

- Cohesive justice sector COVID-19 response
- Greater sharing of data and innovations
- Use a Leave No One Behind lens
- Generate new data and be evidence-based in decision making
- Engage with the Indigenous community, tribunals or self-represented litigants
- Promote A2J issues to the public
- Advance the national Justice Development Goals
- Continue TAG's work as the critical convener of A2J partners in Ontario

# Progress on A2J

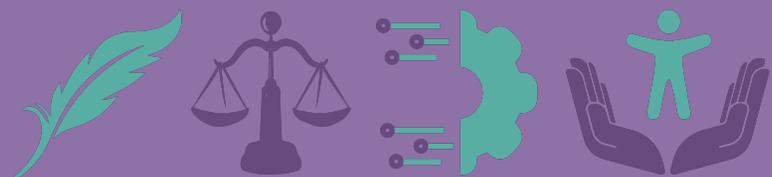


## Challenge & Change

Canada's Justice Development Goals 2020

[www.justicedevelopmentgoals.ca](http://www.justicedevelopmentgoals.ca)

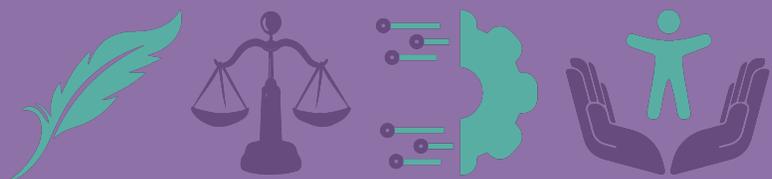




## Access to Justice Week 2021

### 2021 PLENARY: EMERGING THEMES

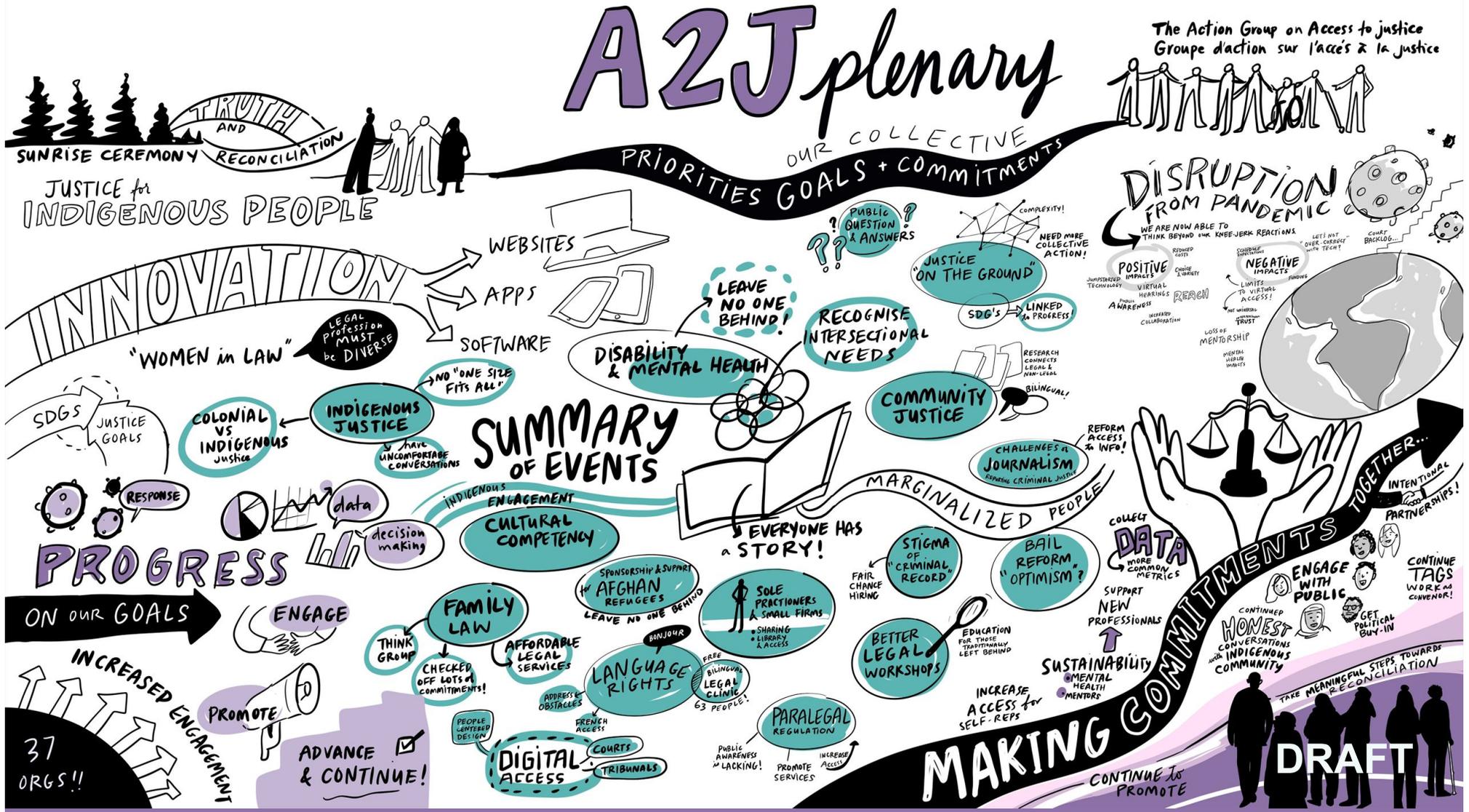
- Accessibility, particularly with respect to technology
- Mental health, mentoring and supporting new licensees for a sustainable legal profession
- Skill development for new professionals in court and tribunal settings
- Promotion of services and information to the public
- Authentic engagement with the Indigenous community and meaningful steps on the path to Reconciliation

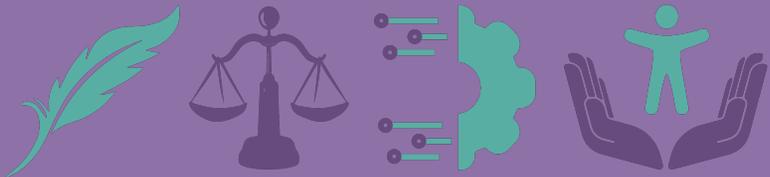


## Access to Justice Week 2021

### 2021 PLENARY: EMERGING THEMES

- Collaboration with non-legal partners to expand front-line services and increased public awareness to help navigate the justice system
- Data collection and information sharing
- Continue to promote robust and sustainable legal aid services including through Legal Aid Ontario
- Advance the national justice development goals.

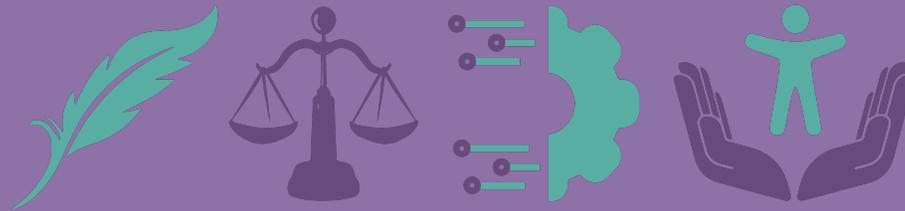




# Access to Justice Week 2021

## SUMMARY

- TAG is adaptable and responsive
- TAG promotes information sharing, reduces duplication and increases collaboration
- TAG connects partners to influence and achieve tangible, measurable results
- TAG is an effective and productive mechanism in the Law Society's approach to meet its statutory obligations.



# Access to Justice Week 2021

Questions? Comments?



Law Society  
of Ontario

Barreau  
de l'Ontario



TAG



# Access to Justice Week 2021

## Appendices



Law Society  
of Ontario

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TAG



## ACTIVITIES – 2015

- **Partnerships**

Steps to Justice | Targeted Legal Services | Opening Minds to Mental Health | The Seventh Generation: Access to Justice for Aboriginal Children and Youth in Care | Inclusive Digital Justice | Equity as Access | Public Legal Education & Information (PLEI) | ASLA | Reference Group

- **Digital Communications**

- TAG launched a new website, created TAG eNews and Twitter

- **Public Engagement**

- *Law in Your Life* and Family Dispute Resolution Week

- **Reference Group Structure established**

- Broad justice sector representation



## ACTIVITIES – 2016

- **Partnerships**

Inclusive Technology | Indigenous Children and Youth | Remote Libraries | Expert Evidence | Mental Health and Wellness | Targeted Legal Services | ASLA | Reference Group

- **Digital Communications**

- Building TAG's social channels and website

- **Public Engagement**

- Public Perceptions of Access to Justice Study
- Architects of Justice

- **National**

- Action Committee meetings and AGM

- **Access to Justice Week**

- Ontario's first Access to Justice Week



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# Access to Justice Week 2021



## ACTIVITIES – 2017

- **Partnerships**

Steps to Justice | Millennials, Technology and A2J | Architects of Justice | ASLA | Reference Group

- **Digital Communications**

- Website, newsletters, social and podcast

- **Public Engagement**

- Public Perceptions Report
- Architects of Justice

- **National**

- Action Committee meetings and AGM

- **Access to Justice Week**



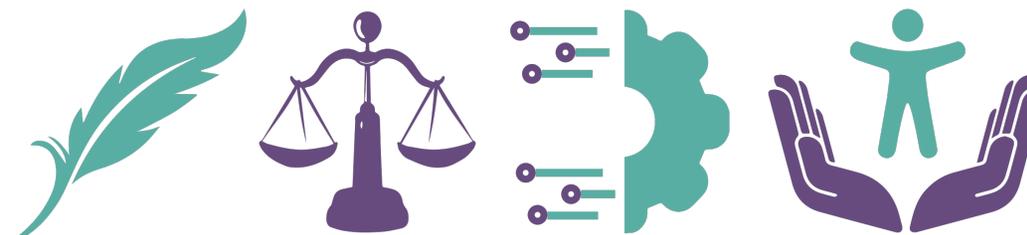
Law Society  
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# Access to Justice Week 2021



## ACTIVITIES – 2018

- **Partnerships**

Steps to Justice | Architects of Justice | Digital Design (CoLab collaboration) | ASLA | Reference Group

- **Digital Communications**

- TAG launched a new website, created TAG eNews and Twitter

- **Public Engagement**

- Public Perceptions report

- **National**

- Action Committee meetings and AGM

- **Access to Justice Week**

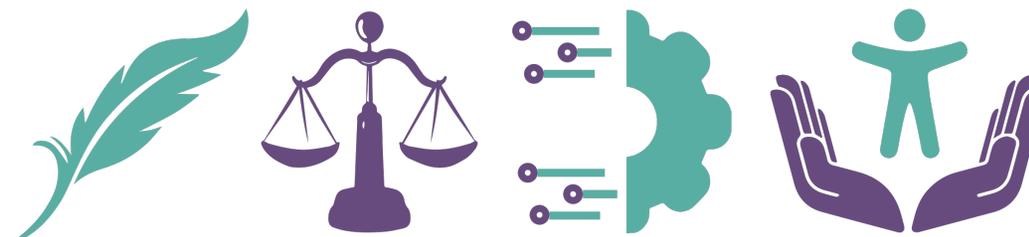


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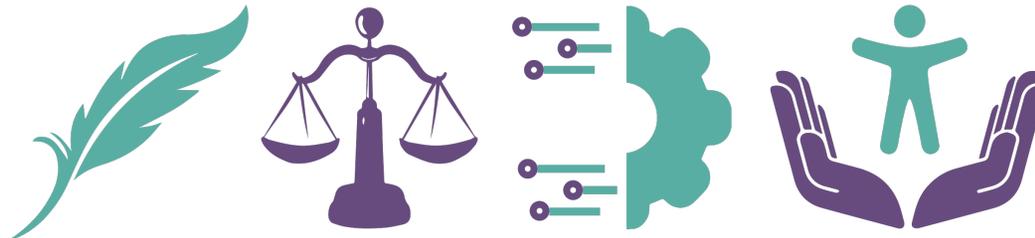
TAG

# Access to Justice Week 2021



## ACTIVITIES – 2019

- **Partnerships**
  - Steps to Justice | Architects of Justice | Law and Design CoLab | ASLA | Reference Group
- **Digital Communications**
  - Website, newsletters, social
- **Evaluation**
  - Assessing LSO *Call for Comment* and TAG evaluation
- **National**
  - NAC A2J Conference (Montreal)
- **Access to Justice Week**
  - Plenary established



## ACTIVITIES – 2020

- **Partnerships**
  - Steps to Justice | Architects of Justice | Law and Design CoLab | ASLA | Reference Group
- **Digital Communications**
  - Website, newsletters, social
- **Evaluation**
  - Public perceptions study
- **National**
  - NAC A2J Conference (Virtual)
- **Access to Justice Week**
  - Plenary established



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: November 25, 2021  
Re: **Update on Recruitment of Paralegal Alternate to the DHC**

---

## 1. Purpose

To request the approval of a proposal to recruit a paralegal to fulfill the role of Discrimination & Harassment Educator to work in collaboration with and be mentored by the Acting and Alternate Discrimination and Harassment Counsel (DHC).

## 2. Background

At its January 28, 2021 meeting, at the request of Benchers Marian Lippa and Rob Burd, the majority of the Committee voted to recruit a paralegal who could perform the functions of the DHC. The Committee directed staff to develop a draft recruitment plan.

At its April 8, 2021, the Committee approved the process and selection criteria for the recruitment. The Committee agreed to use the same selection criteria used for the recruitment of the current DHCs. The selection criteria is attached at **Tab 3.1**. To date, a suitable candidate has not been recruited, despite extensive advertising of the position.

## 3. Recruitment for the Paralegal Alternate to the DHC

The job posting with the selection criteria for the paralegal alternate to the DHC was advertised on the Law Society's website and the Ontario Reports in French and English. The job posting was promoted through various Law Society communication platforms, including the Gazette, e-Bulletins and Licensee Updates, and through various social media channels. This process is typically used for most Law Society appointment and employment opportunities and has been successful in most cases.

A selection committee composed of Bencher Rob Burd, Bencher Nancy Lockhart and Kate Lamb Executive Director, Client and People Services, was formed to oversee the recruitment. Tessa Meyer, Recruitment Manager, Human Resources and Courtney Carrier, Executive Assistant, Policy, provided staff support to the selection committee and conducted the initial screening process, in keeping with standard Law Society processes

The selection committee undertook the first round of interviews for the three candidates in July. Upon completing the interviews, the selection committee recommended a second round of interviews as there was no consensus on the preferred candidate. The second round of

interviews were conducted by Kate Lamb and two DHCs Fay Faraday and Natasha Persaud in October. Unfortunately, the interview process did not result in a successful recruitment, possibly because the pool of candidates is small. The position as advertised required a seasoned professional with extensive experience in the area of human rights. However, a very small number of paralegals focus their practices on human rights and even fewer have the required years of experience. According to data from the 2020 Annual Report filings, only 84 paralegals reported spending 25% or more of their time providing legal services in human rights. Of those, only 18 paralegals reported spending 75% or more of their time providing legal services in human rights. Furthermore, according to internal Law Society data from 2020, over a third of paralegals have been licensed for less than 5 years (37.12%) and three-quarters of paralegals (75%) have been licensed for less than 10 years.

#### **4. Enhancing the Education and Outreach Function in the DHC Program**

The education and outreach function has always been a critical element of the DHC program. The duties of the DHC as set out in By-Law 11<sup>1</sup> and the DHCs' contracts for services specifically require the DHCs to promote their services and develop and conduct informational and educational programs.

Policy reviews of the DHC's function have also stressed the need for enhanced education and awareness of the program among the lawyer and paralegal communities and the public. The DHC program review conducted by Navigator Ltd. identified the need for enhanced awareness of the DHC. At its May 13, 2021 meeting, the Committee responded to the review by approving a communication and awareness plan to be implemented by the Law Society. In particular, the review noted that awareness of the DHC is particularly low among paralegals and recommended that information sessions about the DHC should be undertaken at a number of points during the term of the paralegal education program. The review also found that paralegals on average were less likely to be aware of the DHC program. Of those paralegals who were aware of the DHC program (1/3 of those interviewed), a large percentage reported becoming aware of the DHC program through their educational institution. The task of reaching out and educating paralegal students is particularly challenging for the DHCs. Paralegal students are found in 28 accredited paralegal education programs at Ontario colleges, operating across 34 campuses.

To address these needs, a new position of Discrimination & Harassment Educator ("D&H Educator") was identified in consultation with the DHCs. The position is best suited for a paralegal professional as they will have greater knowledge of paralegal programs and are better positioned to develop relationships with paralegal licensees and paralegal organizations. Furthermore, this will provide an opportunity for the Law Society to further enhance its relationship and credibility within the paralegal profession.

The D&H Educator will work with the DHCs to develop educational materials and deliver presentations, with an initial focus on paralegal students, licensing candidates and practising paralegals. The role would include developing relationships with paralegal associations and the

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<sup>1</sup> Subsection 19 of By-Law 11 sets out of the function of the DHC, which includes developing and conducting information and educational programs relating to discrimination and harassment for licensees.

paralegal education programs at Ontario colleges. While the role would focus initially on the paralegal community, it would also include outreach and education for law students, lawyers and lawyer licensing candidates.

In addition to working with the D&H Educator on presentations and other materials, the DHCs will provide mentorship on all aspects of the role. This will give all parties the opportunity to consider how the educator role could evolve. After two years, the role would be evaluated with a view to determining if the role should expand to contain the other functions of the DHC.

## **5. Analysis**

The creation of the D&H Educator role could enhance awareness of the DHC program in a focused and effective manner, while creating an opportunity for an interested paralegal to learn new skills and grow into a DHC role. It plays to the strengths of paralegals who are educated and trained in oral advocacy and communication. It promises to be an innovative way to enhance the DHC program at a time when ways of addressing discrimination and harassment are a significant concern within the legal professions. It is estimated that the additional fees involved in supporting a D&H Educator could be managed from the existing budget allocation.

## **6. Next Steps**

While this position would not require an amendment to By-Law 11<sup>2</sup>, it would require adjustments to the contracts for services of the DHC to ensure that the obligations of collaboration and mentorship are included in the contractual duties of the DHC.

If the proposal for the D&H position is approved, staff will work the Human Resources department to develop the selection criteria for the D&H Educator and take the necessary steps to move forward with the recruitment. The Committee will be provided with periodic updates with respect to the recruitment as matters progress.

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<sup>2</sup> The Office of General Counsel has advised that the position would be in furtherance of developing and conducting information and educational programs as set out in subsection 19(1)(b) of By-Law 11.

**Tab 3.1 – Selection Criteria for Paralegal Alternate**

Selection criteria for the recruitment of the Alternate DHC in 2017:

- i. Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.
- ii. Knowledge of the Law Society's complaint procedure and discipline process.
- iii. Knowledge of the *Rules of Professional Conduct and Paralegal Rules of Conduct*.
- iv. Knowledge of alternate dispute resolution techniques including mediation, complaints investigations and legal actions through courts.
- v. Proven ability and experience in applying alternate dispute resolution techniques.
- vi. Knowledge of resources and options available to assist complainants who allege harassment or discrimination.
- vii. The ability to assist complainants to take action to resolve complaints.
- viii. Experience in providing services on a one-on-one basis
- ix. Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination
- x. Knowledge of diversity issues particularly as they impact equality seeking communities
- xi. Cultural competency in working with diverse communities
- xii. Knowledge of Indigenous ways of thinking and of the Indigenous community
- xiii. Ability to converse in English and French is an asset.



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: November 25, 2021  
Re.: **Reappointment of the Discrimination and Harassment Counsel**

---

## 1. Purpose

The Equity and Indigenous Affairs Committee (“EIAC”) is asked to recommend that Convocation approve the following:

- i. The reappointment of Fay Faraday as Acting Discrimination and Harassment Counsel (“DHC”) effective February 24, 2022 to February 23, 2025, in accordance with the terms set out in the draft contract attached at **Tab 4.1.**, with eligibility for reappointment, in accordance with subsection 15 of [By-Law 11 – Regulation of Conduct, Capacity and Professional Competence](#);
- ii. The reappointment of Lai-King Hum as Alternate DHC, effective February 24, 2022 to February 23, 2025, in accordance with the terms set out in the draft contract attached at **Tab 4.2**, with eligibility for reappointment, in accordance with subsection 15 of [By-Law 11 – Regulation of Conduct, Capacity and Professional Competence](#);
- iii. The reappointment of Natasha Persaud as Alternate DHC, effective February 24, 2022 to February 23, 2025, in accordance with the terms set out in the draft contract attached at **Tab 4.3**, with eligibility for reappointment, in accordance with subsection 15 of [By-Law 11 – Regulation of Conduct, Capacity and Professional Competence](#); and
- iv. An increase to the DHC hourly fee from \$315.00 to \$345.00 commencing February 24, 2022.

## 2. Background

The DHC program was previously reviewed in 2001 and 2005. In February 2017, EIAC approved a third review of the DHC program (“DHC program review”) in accordance with recommendation 12(1) of *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the “Challenges Report”) which called for the Law Society to review the function, processes and structure of the DHC program. The Challenges Report was approved by Convocation in December 2016.

EIAC determined that the approval of the program review was an opportunity to:

- Expand the role of the Alternate DHCs to give them an equal profile to the DHC in order to make the program more responsive and efficient;
- Provide complainants with the option of who they want to consult; and
- Create a more diverse and inclusive DHC Program that would be representative of the communities that the DHC serves.

In keeping with the purpose of the program review, EIAC approved the reappointment of DHC Cynthia Petersen, but did not renew the contracts of the Alternate DHCs, David Bennett and Lynda Bevan. Starting in April 2017, EIAC engaged in a full recruitment process for the Alternate DHCs. EIAC adopted the recruitment process for the DHC Alternates in accordance with subsection 17 of By-Law 11<sup>1</sup>.

A recruitment committee was established by EIAC.<sup>2</sup> EIAC approved the selection criteria for the recruitment of the Alternate DHCs. The selection criteria is attached at **Tab 4.4**.

The positions were advertised in both English and French on the Law Society website and the Ontario Reports. A total of 32 applications were received for the positions. The recruitment committee narrowed the group of proposed candidates to eight applicants for telephone interviews, and eventually conducted in-person interviews with four candidates. In selecting applicants to interview, special attention was paid to applicants who identified as bilingual (French and English) and had experience with or knowledge of Indigenous communities. At the close of discussions, the recruitment committee prepared a recommendation for EIAC's consideration.

On June 29, 2017, Convocation approved the appointments of Fay Faraday, Lai-King Hum, and Natasha Persaud as Alternate DHCs for a one-year term, at the recommendation of EIAC. In June of 2017, EIAC appointed Fay Faraday to the position of Acting DHC due to departure of Cynthia Petersen who was appointed to the Superior Court of Justice<sup>3</sup>. EIAC also expanded the role of the Alternate DHCs to give them an equal profile to the DHC as equal work distribution would allow the DHC to respond to calls more quickly and efficiently. There was no additional cost as a result of this change as the DHCs are paid on an hourly basis.

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<sup>1</sup> Subsection 17 of By-Law 11 sets out the appointment process for the Alternate DHCs: <https://lso.ca/about-lso/legislation-rules/by-laws/by-law-11>

<sup>2</sup> The Recruitment Committee consisted of the following members:

- Sandra Nishikawa, then-Co-Chair of EIAC
- Tanya Walker, Licensee Bencher
- Gisele Chretien, Appointed Bencher
- Michael Doi, Member of EAG
- Constance Simmonds, Member of IAG
- Marian MacGregor, Equity Advisor, support to the Committee
- Suzanne Douglas, Senior Resource Manager, support to the Committee

<sup>3</sup> Subsection 22(3) of By-Law 11 states: Despite subsection (1), if there is a vacancy in the office of the Counsel, an Alternate Counsel chosen by the Committee shall perform the function of the Counsel until a Counsel is appointed under section 15.

Since their initial appointment, the Acting DHC and Alternate DHCs have been reappointed by Convocation for one-year terms at the recommendation of EIAC to allow for the completion and consideration of the DHC program review. The DHCs current term ends February 24, 2022.

On May 13, 2021, EIAC considered the results of the DHC program review. The committee approved a plan to make changes to the DHC program, which includes raising awareness of the DHC program through existing communications channels and enhancing the educational function of the DHC through a redesign of the DHC's website. Since that decision, the Policy and External Relations and Communications divisions have been implementing the awareness campaign according to the workplan considered by EIAC at its May meeting.

### **3. Analysis**

As the DHC program review has been completed<sup>4</sup>, it is recommended that the committee appoint each DHC for a three-year term, effective February 24, 2022 to February 23, 2025. A three-year appointment will provide stability to the DHC program, enhance the effectiveness of the awareness campaign, and allow the seasoned DHCs to collaborate with and mentor the Discrimination & Harassment Educator, if the latter position is approved by EIAC.

#### The Appointment Process

The recommended appointment process outlined above is consistent with Part II of the By-Law 11.

- EIAC has the authority to recommend the reappointment of the Alternate Counsel pursuant to subsection 17 and to enable Fay Faraday to continue in the role of Acting DHC pursuant to subsection 22(3).
- Pursuant to subsection 18, the requirement to provide a ranked list to Convocation or undergo a candidate search does not apply in the case of a reappointment of the Alternate Counsel.
- Subsection 17(5) of By-Law 11 requires Convocation to consider EIAC's recommendations in the absence of the public.

#### Reasons Supporting the Reappointments

The reappointments of Fay Faraday, Lai-King Hum and Natasha Persaud as alternate DHCS are recommended based on their outstanding credentials, extensive practice experience in human rights law and alternate dispute resolution techniques and successes in their current roles. The three counsel were recruited in 2017 after an extensive recruitment process and have been in their current positions for approximately 52 months. Fay Faraday has assumed the role of Acting DHC since 2017 when she was appointed by EIAC pursuant to subsection 22(3) of By-Law 11 to perform the functions of the Discrimination and Harassment Counsel. Since their appointments,

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<sup>4</sup> On May 13, 2021, EIAC considered the results of the DHC program review. The committee approved a plan to make changes to the DHC program, which includes raising awareness of the DHC program through existing communications channels and enhancing the educational function of the DHC through a redesign of the DHC's website.

all three DHCs have gained additional experience and profile as DHCs to the benefit of the program. Each DHC has indicated an interest in continuing to participate in the program and to collaborate with and mentor the Discrimination & Harassment Educator, should this committee approve that position.

In addition, Ms. Faraday and Ms. Hum are fully bilingual and able to provide services in English and French. The bios of the three counsel are attached at **Tab 4.5**.

#### Increase to the DHC's Hourly Rate

An increase to the DHC's hourly fee from \$315.00 to \$345.00 without an increase to the annual DHC budget is recommended for the following reasons:

- The rate of \$315.00 has not been increased since 2012, when it was increased from \$250.00 per hour.
- The increased fee is lower than the rate of inflation from 2012 to 2021<sup>5</sup>;
- The increase in the hourly fee could be managed within the existing the \$160,000 annual budget;
- There have been no significant changes in the position of the DHC since 2017 when the current DHCs were appointed following a comprehensive recruitment process; and
- Historically, the hourly fee of the DHC has been approved by Convocation.

#### Implications if No Reappointments

If the DHCs are not reappointed, EIAC will need to engage in a full recruitment process to fill the positions of the DHC and Alternate DHCs. This will have financial and resource impacts and could adversely affect the education and awareness campaign approved by EIAC in May 2021. A decision to not reappoint could also interrupt the provision of services to vulnerable individuals who have been negatively impacted by the behaviour of lawyers or paralegals.

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<sup>5</sup> The [Bank of Canada inflation calculator](#) estimates a 17.13 per cent rate of inflation from 2012 to 2021, which would amount to an hourly rate of \$368.96.



## DISCRIMINATION AND HARASSMENT COUNSEL AGREEMENT

**THIS AGREEMENT** is made

BETWEEN

**LAW SOCIETY OF ONTARIO**

(the "**Society**")

and

**FAY FARADAY**

(the "**Contractor**")

**WHEREAS** the Contractor is to be appointed by Convocation to the office of Discrimination and Harassment Counsel on February 24, 2022;

**AND WHEREAS**, the Contractor accepts this appointment and has agreed to enter into this agreement;

**NOW THEREFORE**, the parties agree as follows:

### **1.0 Legal Relationship**

**1.1** There is no employment relationship between the Society and the Contractor and nothing in this agreement shall be deemed or construed to create any such relationship.

### **2.0 Non-Exclusivity**

**2.1** This agreement is not exclusive. The Contractor may provide similar services for others to the extent the provision of such services does not conflict

with the provision of the Services, as set out in this agreement. The Society may contract with others for the provision of the Services.

### **3.0 Non-Interference with Practice of Law**

**3.1** The Contractor may continue in the Contractor's private practice of law, while providing the Services, to the extent doing so does not conflict with the provision of the Services.

### **4.0 Services**

**4.1** The Contractor, as the Society's Acting Discrimination and Harassment Counsel, shall provide to the Society the following services (the "**Services**"):

- a) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to receive complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- b) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to gather and analyze data on complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- c) Provide direct services to complainants of discrimination or harassment by paralegal or lawyer licensees including first contact, issue clarification, exploration of options, consensual mediation and non-legal support to complainants taking lawful action to resolve issues; and
- d) Upon prior approval from the Society, provide such other services as may promote the direct services provided by the Contractor under clause (c) of this section or the mandate of the office of the Discrimination and Harassment Counsel as set out in Part II of By-Law 11 made under the *Law Society Act*, including developing and conducting information and educational programs relating to discrimination and harassment for licensees and licensing applicants.
- e) Where the Society has engaged a paralegal licensee in furtherance of the provision of such other services as may promote the direct services, the Contractor shall collaborate with, and provide mentoring to, that individual, as well as perform other tasks in connection thereto, as identified by the Executive Director, Policy.

**4.2** Unless directed otherwise in accordance with By-Law 11, the Contractor shall assist in the preparation of, or prepare and submit to the Society, a report that summarizes the Services provided ("**Report**"),

- a) in an accessible electronic format consistent with O. Reg. 191/11: INTEGRATED ACCESSIBILITY STANDARDS made under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, or as otherwise indicated by the Executive Director, Policy;
- b) by January 31 in each year of this agreement, with respect to the period July 1 to December 31 of the previous year;
- c) by September 1 in each year of this agreement, with respect to the period January 1 to June 30 of that year; and
- d) on the date of termination of this agreement, with respect to any period of time not covered by any Report previously prepared and submitted to the Society under this section.

**4.3** The Report prepared by the Contractor shall include,

- (a) where available, and without identifying any individual complainant,
  - (i) demographic data on the complainants served;
  - (ii) data on nature of complaints; and
  - (iii) data on geographic distribution of complainants;
- (b) description of types of support provided by the Contractor to the complainants;
- (c) discussion of general and specific issues emerging from provision of Services; and
- (d) recommendations to the Society with respect to handling of complaints of discrimination or harassment.

## **5.0 Carrying out of Services**

**5.1** The Contractor shall provide the Services in a manner of professional thoroughness and competence and to the standard normally exercised by persons performing work of similar nature.

**5.2** Unless otherwise permitted by the Society, the Contractor shall maintain professional office space with photocopying, facsimile, telephone, email and meeting facilities.

**5.3** The Contractor may utilize the services of an administrative assistant (the "**Assistant**") for the provision of support services in providing the Services.

**5.4** If the Contractor, for any reason, is unable temporarily to provide the Services, the Contractor shall notify the Society immediately once the Contractor becomes aware of this fact.

**5.5** The Society shall provide the Contractor with business cards and letterhead as required.

**5.6** The Contractor shall report to the Executive Director, Policy, as directed by same. The Executive Director, Policy, may, at their discretion, exercise the authority to oversee matters of interest to the Society in connection with the Services, excluding the oversight of direct services described in subclause 4.1 (c).

## **6.0 Confidential Information**

**6.1** Any information, document, report or note that comes to the knowledge of the Contractor, any document, written material, report, analysis, compilation or memorandum created or produced by the Contractor, and any program or procedure acquired or developed by the Contractor, in the provision of the Services is confidential (the "**Confidential Information**").

**6.2** The Contractor shall hold in confidence and shall not disclose the Confidential Information to any person, firm, partnership, corporation, government or authority, except as permitted in this agreement or as required by law. The Contractor will make no disclosure in response to any demand, summons, subpoena, or order of a court without giving prior written notice to the Society so that the Society may have a reasonable opportunity to obtain a protective order or other remedy.

**6.3** The Contractor may disclose the Confidential Information to the Assistant, if such disclosure is reasonably required for the Contractor to provide the Services and produce the Reports, provided that, prior to disclosure, the Contractor ensures that the Assistant is made aware of, and will comply with, the obligation of the Contractor under this agreement with respect to the non-disclosure of the Confidential Information. The Contractor may also disclose

the Confidential Information to any other person appointed to provide the Services in the stead of the Contractor.

**6.4** The Confidential Information is and at all times shall remain the property of the Society. In the possession of the Society, access to the Confidential Information shall be in accordance with the Society's policies on access to such information and in accordance with the Society's policies regarding the confidentiality of the Discrimination and Harassment Counsel program.

## **7.0 Term and Termination**

**7.1** This agreement shall commence following the appointment of the Discrimination and Harassment Counsel by Convocation on February 24, 2022 and continue in full force and effect until midnight February 23, 2025 ("**Initial Term**") or the date this agreement is terminated in accordance with the provisions of this agreement.

**7.2** If it is determined that Convocation will not be in a position to appoint another Discrimination and Harassment Counsel at the expiry of the Initial Term, the parties may agree to continue this agreement on a month-to-month basis (each month after the Initial Term being a "**Subsequent Term**").

**7.3** The Contractor may terminate this agreement during the Initial Term with or without cause upon ninety (90) days' written notice to the Society.

**7.4** If the Contractor terminates this agreement under section 7.3, the Contractor shall assist in the transition of the Services to the person who will provide the Services in the stead of the Contractor.

**7.5** The Society may terminate this agreement with or without cause upon written notice to the Contractor.

**7.6** Upon termination of this agreement, the Contractor shall deliver all Confidential Information in the possession of the Contractor to the Society.

**7.7** Upon termination of this agreement, any amounts owing to the Contractor by the Society shall be immediately due.

## **8.0 No Liability unless Default**

**8.1** No action shall be brought by the Society against the Contractor related to this agreement, other than for breach of this agreement.

## **9.0 Indemnification**

**9.1** The Society shall indemnify and save harmless the Contractor from any damages, losses, costs and expenses (including legal costs) that the Contractor may incur, suffer or become liable for as a result of or in connection with any claim asserted against the Contractor to the extent such claim is based upon the provision of the Services, other than the negligence or deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

**9.2** The Contractor shall indemnify and save harmless the Society, its benchers, officers, employees and agents from any damages, losses, costs and expenses (including legal costs) that the Society, its benchers, officers, employees and agents may incur, suffer or become liable for as a result of or in connection with any claim asserted against such party to the extent such claim is based upon the deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

## **10.0 Insurance**

**10.1** The Society shall include the Contractor as an insured in its professional liability insurance policy relating to the provision of the Services. The Society shall provide the Contractor with a copy of the insurance policy. The Contractor shall comply with all provisions of the insurance policy.

## **11.0 Fees and Payments**

**11.1** The Society shall pay the Contractor fees for the Services based on time spent by the Contractor at a rate of three hundred and fifteen dollars (\$345.00) per hour plus applicable taxes.

**11.2** The Society shall pay the Contractor for the provision of support services by the Assistant on time spent by the Assistant at a rate of fifty dollars (\$50.00) per hour plus applicable taxes.

**11.3** The Society shall pay the Contractor for the actual costs of all reasonable disbursements, including applicable taxes. The Contractor shall, upon request, provide the Society the supporting documentation for such disbursements.

**11.4** The Contractor shall invoice the Society for Services rendered, support services and disbursements on a monthly basis.

**11.5** The Society shall remit to the Contractor full payment within thirty (30) days of receipt of such invoice.

**11.6** Interest on unpaid amounts shall accrue daily at an interest rate from and including the date such payment is due until the date it is paid. The interest rate shall be, for any day, the annual rate of interest equal to the rate which the Bank of Montreal establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest", plus two per cent (2%).

**11.7** For the term of the agreement for the Discrimination and Harassment Counsel program, which includes the provision of Services by the Discrimination and Harassment Counsel as well as each Alternate Discrimination and Harassment Counsel, the Society shall only be responsible for the payment of fees, support services and disbursements up to a maximum of \$160,000 per calendar year.

**11.8** In accordance with the position of the Contractor as a person who holds the office of Discrimination and Harassment Counsel under the *Law Society Act* and By-law 11 made under that Act, statutory deductions required to be made to payments to the holder of an office shall be made to payments to the Contractor, including statutory deductions in respect of income tax and Canada Pension Plan.

## **12.0 Notice or Correspondence**

**12.1** Any notice or written correspondence which may or is required to be given under this agreement shall be delivered by hand, sent by email or sent by prepaid courier directed to the party for which the notice or written correspondence is intended at the address indicated below.

**12.2** Any notice or written correspondence delivered by hand or prepaid courier shall be deemed to be received on the date of actual delivery. Any notice or written correspondence sent by email shall be deemed to have been received on the next business day following transmission.

**12.3** Address for notice and written correspondence to the Society:

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

Attention: Cara-Marie O'Hagan, Executive Director, Policy  
Email: cohagan@lso.ca

Address for notice and written correspondence to the Contractor:

[Name]  
[Address]  
[Email]

### **13.0 Entire Agreement**

**13.1** This agreement constitutes the entire agreement between the Society and the Contractor and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties, with respect to the subject matter of this agreement.

### **14.0 Independent Legal Advice**

**14.1** The Contractor acknowledges either having obtained independent legal advice from the Contractor's own lawyer, or having had the opportunity to do so and having opted against doing so, with respect to the terms of this agreement prior to its execution, and that the Contractor understands the terms and the Contractor's rights and obligations under this agreement.

### **15.0 Mediation**

**15.1** All disputes, disagreements, controversies, questions or claims arising out of or relating to this agreement shall be settled through mediation, or, failing mediation, through arbitration under the *Arbitrations Act*, with a mediator and/or arbitrator mutually agreed upon by the parties, and shall take place in Toronto.

### **16.0 Governing Law**

**16.1** This agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **17.0 Survival**

**17.1** Sections 6.0, 7.0, 8.0, 9.0, 10.0, 12.0, 15.0, 16.0 and 17.0 survive the expiry or earlier termination of this agreement.

**IN WITNESS WHEREOF**, the Society and the Contractor have executed this agreement to take effect as of February 24, 2022.

**LAW SOCIETY OF ONTARIO**

**CONTRACTOR**

Name: Cara-Marie O’Hagan

Name: \_\_\_\_\_

Title: Executive Director, Policy

Title: Acting Discrimination and Harassment Counsel

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## ALTERNATE DISCRIMINATION AND HARASSMENT COUNSEL AGREEMENT

**THIS AGREEMENT** is made

BETWEEN

**LAW SOCIETY OF ONTARIO**

(the "**Society**")

and

**LAI KING HUM**

(the "**Contractor**")

**WHEREAS** the Contractor is to be appointed by Convocation to the office of Alternate Discrimination and Harassment Counsel on February 24, 2022;

**AND WHEREAS**, the Contractor accepts this appointment and has agreed to enter into this agreement;

**NOW THEREFORE**, the parties agree as follows:

### **1.0 Legal Relationship**

**1.1** There is no employment relationship between the Society and the Contractor and nothing in this agreement shall be deemed or construed to create any such relationship.

### **2.0 Non-Exclusivity**

**2.1** This agreement is not exclusive. The Contractor may provide similar services for others to the extent the provision of such services does not conflict

with the provision of the Services, as set out in this agreement. The Society may contract with others for the provision of the Services.

### **3.0 Non-Interference with Practice of Law**

**3.1** The Contractor may continue in the Contractor's private practice of law, while providing the Services, to the extent doing so does not conflict with the provision of the Services.

### **4.0 Services**

**4.1** The Contractor, as the Society's Alternate Discrimination and Harassment Counsel, shall, in the manner and under the circumstances described herein, provide to the Society the following services (the "**Services**"):

- a) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to receive complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- b) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to gather and analyze data on complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- c) Provide direct services to complainants of discrimination or harassment by paralegal or lawyer licensees including first contact, issue clarification, exploration of options, consensual mediation and non-legal support to complainants taking lawful action to resolve issues; and
- d) Upon prior approval from the Society, provide such other services as may promote the direct services provided by the Contractor under clause (c) of this section or the mandate of the office of the Discrimination and Harassment Counsel as set out in Part II of By-Law 11 made under the *Law Society Act*, including developing and conducting information and educational programs relating to discrimination and harassment for licensees and licensing applicants.
- e) Where the Society has engaged a paralegal licensee in furtherance of the provision of such other services as may promote the direct services, the Contractor shall collaborate with, and provide mentoring to, that individual, as well as perform other tasks in connection thereto, as identified by the Executive Director, Policy.

**4.2** If there is a vacancy in the office of the Discrimination and Harassment Counsel, the Contractor shall provide the Services if, and for as long as, directed to do so by the Equity and Indigenous Affairs Committee.

**4.3** Unless directed otherwise in accordance with By-Law 11, the Contractor shall assist in the preparation of, or prepare and submit to the Society, a report that summarizes the Services provided ("**Report**"),

- a) in an accessible electronic format consistent with O. Reg. 191/11: INTEGRATED ACCESSIBILITY STANDARDS made under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, or as otherwise indicated by the Executive Director, Policy;
- b) by January 31 in each year of this agreement, with respect to the period July 1 to December 31 of the previous year;
- c) by September 1 in each year of this agreement, with respect to the period January 1 to June 30 of that year; and
- d) on the date of termination of this agreement, with respect to any period of time not covered by any Report previously prepared and submitted to the Society under this section.

**4.4** The Report prepared by the Contractor shall include,

- (a) where available, and without identifying any individual complainant,
  - (i) demographic data on the complainants served;
  - (ii) data on nature of complaints; and
  - (iii) data on geographic distribution of complainants;
- (b) description of types of support provided by the Contractor to the complainants;
- (c) discussion of general and specific issues emerging from provision of Services; and
- (d) recommendations to the Society with respect to handling of complaints of discrimination or harassment.

**4.5** If the office of the Discrimination and Harassment Counsel is occupied, the Contractor shall provide the Services if, and for as long as, directed to do so by the Discrimination and Harassment Counsel or the Chief Executive Officer of the Society.

## 5.0 Carrying out of Services

5.1 The Contractor shall provide the Services in a manner of professional thoroughness and competence and to the standard normally exercised by persons performing work of similar nature.

5.2 Unless otherwise permitted by the Society, the Contractor shall maintain professional office space with photocopying, facsimile, telephone, email and meeting facilities.

5.3 The Contractor may utilize the services of an administrative assistant (the "**Assistant**") for the provision of support services in providing the Services.

5.4 If the Contractor, for any reason, is unable temporarily to provide the Services, the Contractor shall notify the Society immediately once the Contractor becomes aware of this fact.

5.5 The Society shall provide the Contractor with business cards and letterhead as required.

5.6 The Contractor shall report to the Executive Director, Policy, as directed by same. The Executive Director, Policy, may, at their discretion, exercise the authority to oversee matters of interest to the Society in connection with the Services, excluding the oversight of direct services described in subclause 4.1 (c).

## 6.0 Confidential Information

6.1 Any information, document, report or note that comes to the knowledge of the Contractor, any document, written material, report, analysis, compilation or memorandum created or produced by the Contractor, and any program or procedure acquired or developed by the Contractor, in the provision of the Services is confidential (the "**Confidential Information**").

6.2 The Contractor shall hold in confidence and shall not disclose the Confidential Information to any person, firm, partnership, corporation, government or authority, except as permitted in this agreement or as required by law. The Contractor will make no disclosure in response to any demand, summons, subpoena, or order of a court without giving prior written notice to the Society so that the Society may have a reasonable opportunity to obtain a protective order or other remedy.

**6.3** The Contractor may disclose the Confidential Information to the Assistant, if such disclosure is reasonably required for the Contractor to provide the Services and produce the Reports, provided that, prior to disclosure, the Contractor ensures that the Assistant is made aware of, and will comply with, the obligation of the Contractor under this agreement with respect to the non-disclosure of the Confidential Information. The Contractor may also disclose the Confidential Information to any other person appointed to provide the Services in the stead of the Contractor.

**6.4** The Confidential Information is and at all times shall remain the property of the Society. In the possession of the Society, access to the Confidential Information shall be in accordance with the Society's policies on access to such information and in accordance with the Society's policies regarding the confidentiality of the Discrimination and Harassment Counsel program.

## **7.0 Term and Termination**

**7.1** This agreement shall commence following the appointment of the Alternate Discrimination and Harassment Counsel by Convocation on February 24, 2022 and continue in full force and effect until midnight February 23, 2025 ("**Initial Term**") or the date this agreement is terminated in accordance with the provisions of this agreement.

**7.2** If it is determined that Convocation will not be in a position to appoint another Alternate Discrimination and Harassment Counsel at the expiry of the Initial Term, the parties may agree to continue this agreement on a month-to-month basis (each month after the Initial Term being a "**Subsequent Term**").

**7.3** The Contractor may terminate this agreement during the Initial Term with or without cause upon ninety (90) days' written notice to the Society.

**7.4** If the Contractor terminates this agreement under section 7.3, the Contractor shall assist in the transition of the Services to the person who will provide the Services in the stead of the Contractor.

**7.5** The Society may terminate this agreement with or without cause upon written notice to the Contractor.

**7.6** Upon termination of this agreement, the Contractor shall deliver all Confidential Information in the possession of the Contractor to the Society.

**7.7** Upon termination of this agreement, any amounts owing to the Contractor by the Society shall be immediately due.

**8.0 No Liability unless Default**

**8.1** No action shall be brought by the Society against the Contractor related to this agreement, other than for breach of this agreement.

**9.0 Indemnification**

**9.1** The Society shall indemnify and save harmless the Contractor from any damages, losses, costs and expenses (including legal costs) that the Contractor may incur, suffer or become liable for as a result of or in connection with any claim asserted against the Contractor to the extent such claim is based upon the provision of the Services, other than the negligence or deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

**9.2** The Contractor shall indemnify and save harmless the Society, its benchers, officers, employees and agents from any damages, losses, costs and expenses (including legal costs) that the Society, its benchers, officers, employees and agents may incur, suffer or become liable for as a result of or in connection with any claim asserted against such party to the extent such claim is based upon the deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

**10.0 Insurance**

**10.1** The Society shall include the Contractor as an insured in its professional liability insurance policy relating to the provision of the Services. The Society shall provide the Contractor with a copy of the insurance policy. The Contractor shall comply with all provisions of the insurance policy.

**11.0 Fees and Payments**

**11.1** The Society shall pay the Contractor fees for the Services based on time spent by the Contractor at a rate of three hundred and fifteen dollars (\$345.00) per hour plus applicable taxes.

**11.2** The Society shall pay the Contractor for the provision of support services by the Assistant on time spent by the Assistant at a rate of fifty dollars (\$50.00) per hour plus applicable taxes.

**11.3** The Society shall pay the Contractor for the actual costs of all reasonable disbursements, including applicable taxes. The Contractor shall, upon request, provide the Society the supporting documentation for such disbursements.

**11.4** The Contractor shall invoice the Society for Services rendered, support services and disbursements on a monthly basis.

**11.5** The Society shall remit to the Contractor full payment within thirty (30) days of receipt of such invoice.

**11.6** Interest on unpaid amounts shall accrue daily at an interest rate from and including the date such payment is due until the date it is paid. The interest rate shall be, for any day, the annual rate of interest equal to the rate which the Bank of Montreal establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest", plus two per cent (2%).

**11.7** For the term of the agreement for the Discrimination and Harassment Counsel program, which includes the provision of Services by the Discrimination and Harassment Counsel as well as each Alternate Discrimination and Harassment Counsel, the Society shall only be responsible for the payment of fees, support services and disbursements up to a maximum of \$160,000 per calendar year.

**11.8** In accordance with the position of the Contractor as a person who holds the office of Alternate Discrimination and Harassment Counsel under the *Law Society Act* and By-law 11 made under that Act, statutory deductions required to be made to payments to the holder of an office shall be made to payments to the Contractor, including statutory deductions in respect of income tax and Canada Pension Plan.

## **12.0 Notice or Correspondence**

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notice or written correspondence sent by email shall be deemed to have been received on the next business day following transmission.

**12.3** Address for notice and written correspondence to the Society:

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6  
Attention: Cara-Marie O'Hagan, Executive Director, Policy  
Email: cohagan@lso.ca

Address for notice and written correspondence to the Contractor:

[Name]  
[Address]  
[Email]

**13.0** **Entire Agreement**

**13.1** This agreement constitutes the entire agreement between the Society and the Contractor and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties, with respect to the subject matter of this agreement.

**14.0** **Independent Legal Advice**

**14.1** The Contractor acknowledges either having obtained independent legal advice from the Contractor's own lawyer, or having had the opportunity to do so and having opted against doing so, with respect to the terms of this agreement prior to its execution, and that the Contractor understands the terms and the Contractor's rights and obligations under this agreement.

**15.0** **Mediation**

**15.1** All disputes, disagreements, controversies, questions or claims arising out of or relating to this agreement shall be settled through mediation, or, failing mediation, through arbitration under the *Arbitrations Act*, with a mediator and/or arbitrator mutually agreed upon by the parties, and shall take place in Toronto.

**16.0 Governing Law**

**16.1** This agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**17.0 Survival**

**17.1** Sections 6.0, 7.0, 8.0, 9.0, 10.0, 12.0, 15.0, 16.0 and 17.0 survive the expiry or earlier termination of this agreement.

**IN WITNESS WHEREOF**, the Society and the Contractor have executed this agreement to take effect as of February 24, 2022.

**LAW SOCIETY OF ONTARIO**

**CONTRACTOR**

Name: Cara-Marie O’Hagan

Name: \_\_\_\_\_

Title: Executive Director, Policy

Title: Alternate Discrimination and Harassment Counsel

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**ALTERNATE DISCRIMINATION AND HARASSMENT COUNSEL AGREEMENT**

**THIS AGREEMENT** is made

BETWEEN

**LAW SOCIETY OF ONTARIO**

(the "**Society**")

and

**NATASHA PERSAUD**

(the "**Contractor**")

**WHEREAS** the Contractor is to be appointed by Convocation to the office of Alternate Discrimination and Harassment Counsel on February 24, 2022;

**AND WHEREAS**, the Contractor accepts this appointment and has agreed to enter into this agreement;

**NOW THEREFORE**, the parties agree as follows:

**1.0 Legal Relationship**

**1.1** There is no employment relationship between the Society and the Contractor and nothing in this agreement shall be deemed or construed to create any such relationship.

**2.0 Non-Exclusivity**

**2.1** This agreement is not exclusive. The Contractor may provide similar services for others to the extent the provision of such services does not conflict

with the provision of the Services, as set out in this agreement. The Society may contract with others for the provision of the Services.

### **3.0 Non-Interference with Practice of Law**

**3.1** The Contractor may continue in the Contractor's private practice of law, while providing the Services, to the extent doing so does not conflict with the provision of the Services.

### **4.0 Services**

**4.1** The Contractor, as the Society's Alternate Discrimination and Harassment Counsel, shall, in the manner and under the circumstances described herein, provide to the Society the following services (the "**Services**"):

- a) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to receive complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- b) Maintain the system, established and maintained by the Discrimination and Harassment Counsel, to gather and analyze data on complaints of discrimination and harassment against paralegal or lawyer licensees from members of the public and the legal professions;
- c) Provide direct services to complainants of discrimination or harassment by paralegal or lawyer licensees including first contact, issue clarification, exploration of options, consensual mediation and non-legal support to complainants taking lawful action to resolve issues; and
- d) Upon prior approval from the Society, provide such other services as may promote the direct services provided by the Contractor under clause (c) of this section or the mandate of the office of the Discrimination and Harassment Counsel as set out in Part II of By-Law 11 made under the *Law Society Act*, including developing and conducting information and educational programs relating to discrimination and harassment for licensees and licensing applicants.
- e) Where the Society has engaged a paralegal licensee in furtherance of the provision of such other services as may promote the direct services, the Contractor shall collaborate with, and provide mentoring to, that individual, as well as perform other tasks in connection thereto, as identified by the Executive Director, Policy.

**4.2** If there is a vacancy in the office of the Discrimination and Harassment Counsel, the Contractor shall provide the Services if, and for as long as, directed to do so by the Equity and Indigenous Affairs Committee.

**4.3** Unless directed otherwise in accordance with By-Law 11, the Contractor shall assist in the preparation of, or prepare and submit to the Society, a report that summarizes the Services provided ("**Report**"),

- a) in an accessible electronic format consistent with O. Reg. 191/11: INTEGRATED ACCESSIBILITY STANDARDS made under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, or as otherwise indicated by the Executive Director, Policy;
- b) by January 31 in each year of this agreement, with respect to the period July 1 to December 31 of the previous year;
- c) by September 1 in each year of this agreement, with respect to the period January 1 to June 30 of that year; and
- d) on the date of termination of this agreement, with respect to any period of time not covered by any Report previously prepared and submitted to the Society under this section.

**4.4** The Report prepared by the Contractor shall include,

- (a) where available, and without identifying any individual complainant,
  - (i) demographic data on the complainants served;
  - (ii) data on nature of complaints; and
  - (iii) data on geographic distribution of complainants;
- (b) description of types of support provided by the Contractor to the complainants;
- (c) discussion of general and specific issues emerging from provision of Services; and
- (d) recommendations to the Society with respect to handling of complaints of discrimination or harassment.

**4.5** If the office of the Discrimination and Harassment Counsel is occupied, the Contractor shall provide the Services if, and for as long as, directed to do so by the Discrimination and Harassment Counsel or the Chief Executive Officer of the Society.

## 5.0 Carrying out of Services

5.1 The Contractor shall provide the Services in a manner of professional thoroughness and competence and to the standard normally exercised by persons performing work of similar nature.

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5.3 The Contractor may utilize the services of an administrative assistant (the "**Assistant**") for the provision of support services in providing the Services.

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5.6 The Contractor shall report to the Executive Director, Policy, as directed by same. The Executive Director, Policy, may, at their discretion, exercise the authority to oversee matters of interest to the Society in connection with the Services, excluding the oversight of direct services described in subclause 4.1 (c).

## 6.0 Confidential Information

6.1 Any information, document, report or note that comes to the knowledge of the Contractor, any document, written material, report, analysis, compilation or memorandum created or produced by the Contractor, and any program or procedure acquired or developed by the Contractor, in the provision of the Services is confidential (the "**Confidential Information**").

6.2 The Contractor shall hold in confidence and shall not disclose the Confidential Information to any person, firm, partnership, corporation, government or authority, except as permitted in this agreement or as required by law. The Contractor will make no disclosure in response to any demand, summons, subpoena, or order of a court without giving prior written notice to the Society so that the Society may have a reasonable opportunity to obtain a protective order or other remedy.

**6.3** The Contractor may disclose the Confidential Information to the Assistant, if such disclosure is reasonably required for the Contractor to provide the Services and produce the Reports, provided that, prior to disclosure, the Contractor ensures that the Assistant is made aware of, and will comply with, the obligation of the Contractor under this agreement with respect to the non-disclosure of the Confidential Information. The Contractor may also disclose the Confidential Information to any other person appointed to provide the Services in the stead of the Contractor.

**6.4** The Confidential Information is and at all times shall remain the property of the Society. In the possession of the Society, access to the Confidential Information shall be in accordance with the Society's policies on access to such information and in accordance with the Society's policies regarding the confidentiality of the Discrimination and Harassment Counsel program.

## **7.0 Term and Termination**

**7.1** This agreement shall commence following the appointment of the Alternate Discrimination and Harassment Counsel by Convocation on February 24, 2022 and continue in full force and effect until midnight February 23, 2025 ("**Initial Term**") or the date this agreement is terminated in accordance with the provisions of this agreement.

**7.2** If it is determined that Convocation will not be in a position to appoint another Alternate Discrimination and Harassment Counsel at the expiry of the Initial Term, the parties may agree to continue this agreement on a month-to-month basis (each month after the Initial Term being a "**Subsequent Term**").

**7.3** The Contractor may terminate this agreement during the Initial Term with or without cause upon ninety (90) days' written notice to the Society.

**7.4** If the Contractor terminates this agreement under section 7.3, the Contractor shall assist in the transition of the Services to the person who will provide the Services in the stead of the Contractor.

**7.5** The Society may terminate this agreement with or without cause upon written notice to the Contractor.

**7.6** Upon termination of this agreement, the Contractor shall deliver all Confidential Information in the possession of the Contractor to the Society.

**7.7** Upon termination of this agreement, any amounts owing to the Contractor by the Society shall be immediately due.

**8.0 No Liability unless Default**

**8.1** No action shall be brought by the Society against the Contractor related to this agreement, other than for breach of this agreement.

**9.0 Indemnification**

**9.1** The Society shall indemnify and save harmless the Contractor from any damages, losses, costs and expenses (including legal costs) that the Contractor may incur, suffer or become liable for as a result of or in connection with any claim asserted against the Contractor to the extent such claim is based upon the provision of the Services, other than the negligence or deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

**9.2** The Contractor shall indemnify and save harmless the Society, its benchers, officers, employees and agents from any damages, losses, costs and expenses (including legal costs) that the Society, its benchers, officers, employees and agents may incur, suffer or become liable for as a result of or in connection with any claim asserted against such party to the extent such claim is based upon the deliberate act of the Contractor in the provision of the Services or breach of section 6 of this agreement by the Contractor.

**10.0 Insurance**

**10.1** The Society shall include the Contractor as an insured in its professional liability insurance policy relating to the provision of the Services. The Society shall provide the Contractor with a copy of the insurance policy. The Contractor shall comply with all provisions of the insurance policy.

**11.0 Fees and Payments**

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**11.2** The Society shall pay the Contractor for the provision of support services by the Assistant on time spent by the Assistant at a rate of fifty dollars (\$50.00) per hour plus applicable taxes.

**11.3** The Society shall pay the Contractor for the actual costs of all reasonable disbursements, including applicable taxes. The Contractor shall, upon request, provide the Society the supporting documentation for such disbursements.

**11.4** The Contractor shall invoice the Society for Services rendered, support services and disbursements on a monthly basis.

**11.5** The Society shall remit to the Contractor full payment within thirty (30) days of receipt of such invoice.

**11.6** Interest on unpaid amounts shall accrue daily at an interest rate from and including the date such payment is due until the date it is paid. The interest rate shall be, for any day, the annual rate of interest equal to the rate which the Bank of Montreal establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest", plus two per cent (2%).

**11.7** For the term of the agreement for the Discrimination and Harassment Counsel program, which includes the provision of Services by the Discrimination and Harassment Counsel as well as each Alternate Discrimination and Harassment Counsel, the Society shall only be responsible for the payment of fees, support services and disbursements up to a maximum of \$160,000 per calendar year.

**11.8** In accordance with the position of the Contractor as a person who holds the office of Alternate Discrimination and Harassment Counsel under the *Law Society Act* and By-law 11 made under that Act, statutory deductions required to be made to payments to the holder of an office shall be made to payments to the Contractor, including statutory deductions in respect of income tax and Canada Pension Plan.

## **12.0 Notice or Correspondence**

**12.1** Any notice or written correspondence which may or is required to be given under this agreement shall be delivered by hand, sent by email or sent by prepaid courier directed to the party for which the notice or written correspondence is intended at the address indicated below.

**12.2** Any notice or written correspondence delivered by hand or prepaid courier shall be deemed to be received on the date of actual delivery. Any

notice or written correspondence sent by email shall be deemed to have been received on the next business day following transmission.

**12.3** Address for notice and written correspondence to the Society:

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6  
Attention: Cara-Marie O'Hagan, Executive Director, Policy  
Email: cohagan@lso.ca

Address for notice and written correspondence to the Contractor:

[Name]  
[Address]  
[Email]

**13.0** Entire Agreement

**13.1** This agreement constitutes the entire agreement between the Society and the Contractor and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties, with respect to the subject matter of this agreement.

**14.0** Independent Legal Advice

**14.1** The Contractor acknowledges either having obtained independent legal advice from the Contractor's own lawyer, or having had the opportunity to do so and having opted against doing so, with respect to the terms of this agreement prior to its execution, and that the Contractor understands the terms and the Contractor's rights and obligations under this agreement.

**15.0** Mediation

**15.1** All disputes, disagreements, controversies, questions or claims arising out of or relating to this agreement shall be settled through mediation, or, failing mediation, through arbitration under the *Arbitrations Act*, with a mediator and/or arbitrator mutually agreed upon by the parties, and shall take place in Toronto.

**16.0 Governing Law**

**16.1** This agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**17.0 Survival**

**17.1** Sections 6.0, 7.0, 8.0, 9.0, 10.0, 12.0, 15.0, 16.0 and 17.0 survive the expiry or earlier termination of this agreement.

**IN WITNESS WHEREOF**, the Society and the Contractor have executed this agreement to take effect as of February 24, 2022.

**LAW SOCIETY OF ONTARIO**

**CONTRACTOR**

Name: Cara-Marie O’Hagan

Name: \_\_\_\_\_

Title: Executive Director, Policy

Title: Alternate Discrimination and Harassment Counsel

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Tab 4.4 – Selection Criteria for the DHC**

Selection criteria for the recruitment of the Alternate DHC in 2017:

- i. Knowledge of, and experience in, human rights legislation including jurisprudence and best practices.
- ii. Knowledge of the Law Society's complaint procedure and discipline process.
- iii. Knowledge of the *Rules of Professional Conduct and Paralegal Rules of Conduct*.
- iv. Knowledge of alternate dispute resolution techniques including mediation, complaints investigations and legal actions through courts.
- v. Proven ability and experience in applying alternate dispute resolution techniques.
- vi. Knowledge of resources and options available to assist complainants who allege harassment or discrimination.
- vii. The ability to assist complainants to take action to resolve complaints.
- viii. Experience in providing services on a one-on-one basis
- ix. Ability to identify systemic issues of discrimination and the ability to make recommendations about policies, programs and services to promote non-discrimination
- x. Knowledge of diversity issues particularly as they impact equality seeking communities
- xi. Cultural competency in working with diverse communities
- xii. Knowledge of Indigenous ways of thinking and of the Indigenous community
- xiii. Ability to converse in English and French is an asset.

**TAB 4.5 - Bios of DHC****Biographies of the Discrimination and Harassment Counsel****FAY FARADAY**

Fay Faraday is a human rights, labour and constitutional lawyer and the founder of an innovative social justice law and strategic consulting practice in Toronto. Since 1996 Fay has represented unions, civil society, community coalitions and individuals in human rights, labour, constitutional, pay equity, administrative and public law litigation. She also works collaboratively with organizations and multi-stakeholder coalitions to develop strategic visions and practical action plans to advance human rights and social justice outcomes. Fay has represented clients on many leading constitutional and human rights cases at the Supreme Court of Canada and Ontario Court of Appeal. Her work has addressed a wide range of systemic human rights issues including gender and work, rights of persons with disabilities, racial discrimination, pay equity, employment equity, poverty, income security, rights of transnational migrant workers, LGBTQ rights, rights of Indigenous communities, homelessness, economic and social rights, and international human rights norms. Fay has published extensively on constitutional law, labour and human rights, including co-authoring and co-editing three books on human rights: *Making Equality Rights Real* (2006), *Enforcing Human Rights in Ontario* (2009) and *Constitutional Labour Rights in Canada* (2012). In addition to her legal practice, Fay is a Visiting Professor at Osgoode Hall Law School. She has taught courses on legal ethics and professional regulation of lawyers since 2010 and has also taught courses on human rights/anti-discrimination law. Since 2015 Fay has been the Course Director of Osgoode's program on ethical lawyering.

**LAI-KING HUM**

After 15 years at large national firms in Montreal and Toronto, in 2014, Lai founded a boutique law firm focused on advocacy in employment and labour law, human rights, administrative law, and litigation. Licensed as a lawyer in both Ontario and Quebec, and

working in both official languages, her team assists businesses, not-for-profit organizations, entrepreneurs and individuals across Canada, as well as U.S., China and Hong Kong. She is a member of Alternative Dispute Resolution Ontario, and conducts workplace investigations as well as mediations. In January 2017, she was also appointed Deputy Judge, Superior Court of Justice, Toronto Small Claims Court. As Deputy Judge, she presides over trials, motions and settlement conferences. Lai also has an extensive history of speaking and writing engagements. She has written articles and spoken on issues of: workplace law, discrimination and accommodation, professional regulation and discipline, professional ethics, leadership and diversity and cultural competence. She is a past President of the Federation of Asian Canadian Lawyers (FACL) Ontario, and inaugural National President, FACL (June 2015-June 2017). In early 2020, Lai was recognized by FACL as a Distinguished Lawyer. Lai is also past Chair of the Roundtable of Diversity Associations (April 2015-March 2017), and a member of the Ontario Bar Association. Lai is also a Board member of Up with Women (a not-for-profit organization that provides support and coaching to homeless women in various cities in Ontario and Montreal), and a Trustee on CPAC Foundation. A native Toisan speaker, she also speaks some Mandarin.

### **NATASHA PERSAUD**

Natasha Persaud is a Partner at Formative LLP where she practices Human Rights and Employment Law. She is also an Adjunct Faculty Member at Osgoode Hall Law School where she supervises students at the Community and Legal Aid Services Programme, focusing on issues of poverty in the Administrative law context. Formerly a lawyer with the Human Rights Legal Support Centre, Natasha has litigated before various courts and tribunals and has appeared as a panelist in forums addressing issues of race, gender and islamophobia. Natasha is a Steering Committee member of the Canadian Association of Muslim Women in Law (CAMWL), a former Advisory Council member of CAIR-Can (now National Council of Canadian Muslims) and has provided research assistance with respect to Charter issues including *Ishaq v. Canada*.

**Tab 4.6: Law Society of Ontario By-Law 11, Part II: Discrimination and Harassment Counsel**

## By-Law 11, PART II

# DISCRIMINATION AND HARASSMENT COUNSEL

### **Interpretation**

14. In this Part, “Committee” means the Equity and Indigenous Affairs Committee.

### **Appointment**

15. (1) Convocation shall appoint a person as Discrimination and Harassment Counsel in accordance with section 16.

### **Same**

(2) Convocation may appoint one or more persons as Alternate Discrimination and Harassment Counsel in accordance with section 17.

### **Term of office**

(3) Subject to subsection (4), the Counsel and each Alternate Counsel hold office for a term not exceeding three years and are eligible for reappointment.

### **Appointment at pleasure**

(4) The Counsel and each Alternate Counsel hold office at the pleasure of Convocation.

### **No appointment without recommendation**

16. (1) Convocation shall not appoint a person as Counsel unless the appointment is recommended by the Committee.

### **Vacancy in office**

(2) When a vacancy exists in the office of Counsel, the Committee shall conduct a search for candidates for appointment as Counsel in accordance with procedures and criteria established by the Committee.

### **List of candidates**

(3) At the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Counsel, with brief supporting reasons.

### **Additional candidates**

(4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

### **Recommendations considered in absence of public**

(5) Convocation shall consider the Committee's recommendations in the absence of the public.

### **No appointment without recommendation**

17. (1) Convocation shall not appoint a person as Alternate Counsel unless the appointment is recommended by the standing Committee.

### **Vacancy in office**

(2) If the Committee wishes Convocation to appoint another person as Alternate Counsel, the Committee shall give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

### **Same**

(3) If the Committee is not able to give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, the Committee shall,

- (a) conduct a search for candidates for appointment as Alternate Counsel in accordance with procedures and criteria established by the Committee; and
- (b) at the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

### **Additional candidates**

(4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

### **Recommendations considered in absence of public**

(5) Convocation shall consider the Committee's recommendations in the absence of the public.

### **Application of ss. 16 and 17**

18. If Convocation, on the recommendation of the Committee,

- (a) reappoints the Counsel, subsections 16 (2) to (4) do not apply; or
- (b) reappoints an Alternate Counsel, subsections 17 (2) to (4) do not apply.

### **Function of Counsel**

19. (1) It is the function of the Counsel,

- (a) to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a licensee;
- (b) to assist the Society, as required, to develop and conduct for licensees information and educational programs relating to discrimination and harassment; and
- (c) to perform such other functions as may be assigned to the Counsel by Convocation.

### **Information received not for investigation**

(2) Information received by the Counsel under clause (1) (a) is not information received by the Society for the purposes of section 49.3 of the Act.

### **Access to information**

(3) Except with the prior permission of the Society, the Counsel is not entitled to have any information in the records or within the knowledge of the Society respecting a licensee.

### **Annual and semi-annual report to Committee**

20. (1) Unless the Committee directs otherwise, the Counsel shall make a report to the Committee,

(a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and

(b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

### **Report to Convocation**

(2) The Committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting.

### **Confidentiality**

21. (1) The Counsel shall not disclose,

(a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 19 (1) (a); or

(b) any information that comes to his or her knowledge under subsection 19 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.

### **Rules of professional conduct**

(2) For greater certainty, clause (1) (a) prevails over the Society's rules of professional conduct to the extent that the rules require the Counsel to disclose to the Society the information mentioned in clause (1) (a).

### **Exceptions**

(3) Subsection (1) does not prohibit,

(a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;

(b) disclosure of information that is a matter of public record;

(c) disclosure of information where the Counsel has reasonable grounds to believe that there is an imminent risk to an identifiable individual or group of individuals of death, serious bodily harm or serious psychological harm that substantially interferes with the individual=s or group=s health or well-being and that the disclosure is necessary to

prevent the death or harm;

(d) disclosure by the Counsel to his or her counsel; or

(e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

### **Alternate Counsel: Counsel unable to act**

22. (1) If the Counsel for any reason is unable to perform the function of the Counsel during his or her term in office, an Alternate Counsel shall perform the function of the Counsel.

### **Selection of Alternate Counsel**

(2) The Alternate Counsel mentioned in subsection (1) shall be chosen by the Counsel or, if the Counsel is unable to do so, by the Chief Executive Officer.

### **Alternate Counsel: Counsel office vacant**

(3) Despite subsection (1), if there is a vacancy in the office of the Counsel, an Alternate Counsel chosen by the Committee shall perform the function of the Counsel until a Counsel is appointed under section 15.

### **Annual and semi-annual report to Committee**

(4) If the Committee directs, an Alternate Counsel shall make any report mentioned in section 20.

### **Application of s. 21**

(5) Section 21 applies to an Alternate Counsel while performing the function of the Counsel.



Law Society  
of Ontario

Barreau  
de l'Ontario

130 Queen Street West  
Toronto, Ontario  
M5H 2N6  
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Tel 416-947-3996  
Fax 416-947-7623  
[amaxwell@lso.ca](mailto:amaxwell@lso.ca)

# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne  
Date: November 17, 2021  
Re.: **Challenges Report Implementation Update**

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## Purpose

This memo provides the Equity and Indigenous Affairs Committee (“Committee”) with:

1. an update on the implementation of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report* (“Challenges Report”); and
2. an outline of the peer review undertaken to evaluate the implementation of the Challenges Report, with decisions on the use of the results of the Inclusion Index to be made following that review.

## Timeline

The following outlines the significant steps in the development and implementation of the Challenges Report:

2012: Challenges Working Group begins an engagement process to gather information about barriers faced by racialized licensees. The firm Strategic Communications Inc. (Stratcom) manages this data gathering process employing a multi-model research approach and presents its final report.

2014: The Working Group reviews the data from the engagement process and drafts a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*. Convocation approves this consultation paper.

2014-2015: The Working Group consults broadly with licensees, law students, articling students and the public. The Law Firms Diversity and Inclusion Network and legal organizations are also consulted.

2015-2016: The Working Group develops its final report with 13 recommendations.

2016: Convocation approves the final report and recommendations in December.

2017 forward: Implementation of recommendations.

## Status of the Challenges Report

The Challenges Report outlines five strategies and 13 recommendations to address systemic barriers faced by racialized licensees. Most of the recommendations have been

implemented and others are in process. The recommendations and the status of each can be found at TAB 5.1.

To date, the Law Society has not evaluated the project, its recommendations or its implementation to assess the effectiveness in achieving the Law Society's goal to reduce barriers faced by racialized and Indigenous licensees, thereby helping to ensure healthy and successful legal professions and advancing the public interest. Project reviews are generally seen as standard best practice when an institution undertakes a major initiative. Moreover, before moving forward with outstanding recommendations developed in 2016, the Law Society should obtain expert advice on the relevance of those recommendations in the 2021 environment.

### **The Inclusion Index**

One of the outstanding recommendations of the Challenges Report is Recommendation 6 which provides that:

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).<sup>1</sup>

The data underlying the Index comes from the 2018 Annual Report and was collected in the first quarter of 2019. In April 2019, the Law Society engaged the firm Diversio to develop the Index. Diversio delivered a draft of the Index in the fall of 2019. By that time, Law Society counsel who were originally involved in the development of the Index had left the organization. New Policy counsel engaged with Diversio to further develop the Index and understand the methodology underlying the results before planning its release.

In March 2020, the Law Society shifted its focus to addressing the challenges and disruptions caused by the pandemic. EIAC resumed its regular work in late 2020. Before a decision is made on how to move forward with the information collected for the Index, a number of questions should be considered:

1. Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
2. Given the three-year period between the collection of the data and the current date, is it scientifically sound to release the data?
3. The data on which the Index is based is now three years old. Is the Inclusion Index based on that data relevant today?

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<sup>1</sup> Recommendations 3, 4, 5 and 6 of the Challenges Report speak to the creation of an Inclusion Index for legal workplaces with 25 or more licensees. The Index was to include data from three sources in the 2018 Members' Annual Report: the legal workplace mandatory self-assessment responses; individual licensee voluntary responses to self-identification; and inclusion questions. The Index was to be published every four years.

4. In anticipation of the release of the Inclusion Index, some workplaces proactively adopted strategies to promote equity, diversity and inclusion within their workplaces. The progress of these workplaces is not reflected in the current Index. Would the release of the Index at this point support the Law Society's goal of reducing barriers faced by racialized and Indigenous licensees?
5. If the answer to any of the above questions is "no", would the Law Society's reputation be negatively impacted by the release of the Index?

### **Peer Review of Challenges Report**

Given this context, a peer review of the Challenges Report has been undertaken. A decision on how to move forward with the Inclusion Index data will be made once the review is completed. The review will explore whether the implementation of the Challenges Report provides effective requirements, incentives and information that assist in reducing barriers faced by racialized and Indigenous licensees. The review will assess:

- a. the impact of fully implemented recommendations of the Challenges Report (e.g. Recommendation 9, regarding mandatory EDI CPD and related products);
- b. the impediments to implementing certain recommendations (e.g. Recommendation 12, regarding addressing systemic discrimination); and
- c. the reliability of the data collection and analysis used in 2019;
- d. the extent to which the above data and analysis is relevant for 2021.

The review will also provide recommendations for the further enhancement of EDI within the legal community.

### **Structure of the Peer Review**

The peer review is being conducted by a panel of experts and will be completed in April 2022. The three experts who have been retained possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to compile a list of experts who can provide a neutral and objective commentary. A summary of the review will be presented to the Committee and Convocation in May or June 2022.

An evaluation rubric will be provided to the reviewers. Some of the questions to be addressed through this review include:

#### *With respect to the Challenges Report*

- Was the data collection process valid?
- Were response rates sufficient?
- Were the questions posed as part of the membership survey appropriate?
- Is the process of using key informants effective/reliable?

#### *With respect to the Inclusion Index*

- Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
- Was the scope appropriate?

- Would the Index, as produced, achieve the desired result vis-à-vis legal workplaces?
- Is the data still reliable?
- Should the next version include any changes?

*With respect to future equity work at the Law Society*

- Is there a more effective way to collect equity data than the Law Society's current approach?
- Is the format of the collected data appropriate? (for example, are the Law Society's demographic categories generally accepted?)
- Are there other probative questions that can assist in the equity agenda? (i.e. income related to demographics)

The Committee will receive the Inclusion Index and the supporting materials for the peer review when the peer review is completed.

**Challenges Report Recommendations: Status Update as of November 2021**

Recommendation	Status/Date Completed
<p><b>Recommendation 1 – Reinforcing Professional Obligations</b> 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.</p>	<p>Amended Rule 6.3 in 2018 to address results of articling survey</p> <p>In 2019, Convocation approved a motion requiring licensees to acknowledge in their Annual Report Filing, in accordance with the professional conduct rules, their special responsibility to respect the requirements of human rights laws in Ontario and to honour the obligation not to discriminate.</p> <p>The Law Society is actively participating in the Federation of Law Societies’ TRC Calls to Action Advisory Committee. One of the Committee’s priorities is implementing recommendations related to cultural competency training.</p>
<p><b>Recommendation 2 – Diversity and Inclusion Project</b> 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.</p>	<p>The Law Society maintains an EDI resources webpage, that includes model workplace policies. The model policies were completely updated and shared with the equity partners before being posted to the Law Society website.</p> <p>The Law Society will enhance resources available to assist and support women in law. This will be done in collaboration with the Treasurer’s Women in Law Advisory Group that was appointed in 2021.</p> <p>In terms of other resources, the Law Society continues to host an annual Equity Legal Series in partnership with our equity stakeholder groups. These events are extremely well-attended, and attendance has been steadily increasing since early 2020.</p> <p>The Law Society is reviewing the decision and approval process for new Equity Legal Series offerings to ensure they are diverse, topical and offer useful EDI content for licensees and students.</p>
<p><b>Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices</b> The Law Society will:</p>	<p>Completed</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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;</p> <p>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;</p> <p>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</p> <p>4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.</p>	
<p><b>Recommendation 4 – Measuring Progress through Quantitative Analysis</b> 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.</p>	<p>Self-identification data is part of the Inclusion Index package. Diversio offers a dashboard to legal workplaces based on their individual inclusion scores. Discussions are under way to determine next steps regarding the dashboards and their efficacy as they are based on 2018 data.</p> <p>Outside of collecting data on legal workplaces, the Law Society develops annual demographic “snapshots” of the legal professions that indicate the breakdown of the professions in terms of race, language, Indigeneity, gender and sexual orientation.</p>
<p><b>Recommendation 5 – Measuring Progress through Qualitative Analysis</b> The Law Society will measure progress by:</p> <p>1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and</p>	<p>1) Completed</p> <p>2) Forms part of the Inclusion Index; information has been collected but not distributed. Further steps are on hold pending a review of the Inclusion Index.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

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	
<b>Recommendation 6 – Inclusion Index</b> 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).	Inclusion Index has been compiled but not published or distributed. See attached memorandum to EIAC outlining proposed review of Challenges Report and Index.
<b>Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey</b> 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 <a href="http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf">http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf</a> ). 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.	Survey completed in 2017; recommendation is to complete a peer review of the Challenges Report and Inclusion Index before launching further surveys.
<b>Recommendation 8 – Progressive Compliance Measures</b> 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.	SME has considered this matter and concluded that progressive compliance measures are not appropriate at this time. As part of the review of the Challenges Report, the Law Society should receive information regarding the efficacy of progressive compliance measures in furthering the goals of EDI.
<b>Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions</b> 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	All elements are completed.

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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 4 recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.</p>	
<p><b>Recommendation 10 – The Licensing Process</b> 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.</p>	<p>Education on these competencies has been developed for EDI in general; Indigenous competencies are scheduled to be included in the June 2022 licensing exam.</p> <p>Specific changes include:</p> <ul style="list-style-type: none"> <li>• a new chapter on EDI in paralegal and lawyer licensing examination study materials (introduced in the 2019-20 licensing year);</li> <li>• New EDI competencies;</li> <li>• Licensing examination questions to assess EDI competence (these were introduced following the introduction of the new materials);</li> <li>• New paralegal education competencies related to EDI developed (taught by institutions commencing September 2019);</li> <li>• New chapter on Indigenous/TRC-related matters in paralegal and lawyer licensing examination study materials (being introduced in the 2022-23 licensing year);</li> <li>• New Indigenous/TRC-related competencies developed (these will be posted for candidates after completion of the winter 2022 licensing examinations);</li> <li>• Licensing examination questions to assess Indigenous/TRC-related matter competence (to be introduced following the introduction of the new materials); and</li> <li>• New paralegal education competencies related to Indigenous/TRC matters developed (to be taught by institutions commencing September 2022).</li> </ul>
<p><b>Recommendation 11 – Building Communities of Support</b> The Law Society, in collaboration with legal associations where</p>	<p>Resources exist through the Coach and Advisor Network as well as the Equity Legal Education Series. The evaluation of the Challenges Report</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.</p>	<p>may provide advice on the implementation strategy for this recommendation.</p> <p>The Law Society Treasurer conducts regular outreach to law schools and paralegal colleges and has presented on EDI and professionalism to students.</p> <p>The Law Society Treasurer meets regularly with legal associations and equity-seeking stakeholder groups and collects feedback for consideration by the Law Society.</p> <p>Where opportunities arise, the Law Society co-hosts and provides in-kind support to equity-seeking legal organizations mentoring and networking events (i.e. Canadian Association of Black Lawyers Conference).</p> <p>The Law Society is working with the Association of French Speaking Jurists of Ontario to strengthen the organizations’ relationship and to improve French language offerings from the Law Society.</p> <p>The Law Society Treasurer has appointed a Women in Law Advisory Group to provide advice to the organization on implementing strategies to support women in the legal professions.</p>
<p><b>Recommendation 12 – Addressing Complaints of Systemic Discrimination</b> The Law Society, in light of the findings of this project and emerging issues in the professions, will:</p> <p>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;</p> <p>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;</p>	<p>1) Review is completed and EIAC’s direction to enhance awareness and education regarding DHC is being implemented. This includes a “plain-language” advertisement of the DHC services and processes which has been widely circulated. The Law Society DHC website will be renewed and enhanced. The DHC is planning broader outreach plans in consultation with Law Society staff.</p> <p>EIAC decided not to address systemic discrimination during discussions regarding the DHC review.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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.</p>	<p>2) This recommendation is under consideration and will be assessed as part of the Challenges Report review.</p> <p>3) – 4) The Law Society has reconstituted the First Nations, Metis and Indigenous Team to support Indigenous complainants and advise staff on Indigenous issues.</p> <p>Additional cultural awareness training and supports are being provided to Law Society staff to educate on systemic discrimination.</p> <p>The Law Society has retained an Indigenous counsel and investigator for matters involving Indigenous complainants and licensees.</p>
<p><b>Recommendation 13 – Leading by Example</b></p> <p>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.</p> <p>2) The Law Society will: a) conduct an internal diversity assessment of the bench composition and publicize the results; provide</p>	<p>1 a) Completed in 2017 1 b) Completed, latest survey done 2021 1 c) Complete, see above 1 d) Complete (LSO completes the questions described in Recommendation 3(3); diversity questions also included in Internal LSO People Survey. 1 e &amp; f) In progress. Work is ongoing at both the SME and the volunteer Diversity &amp; Inclusion Council (reconstituted in 2020)</p> <p>Working group has been struck to advise on Indigenous cultural programming for both staff and benchers.</p> <p>Recent staff education programs at the Law Society have included a seminar on the legacy of residential schools in conjunction with the National Day for Truth and Reconciliation and a seminar with the Dean of the Faculty of Social Work at Wilfred Laurier University regarding anti-racism.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>equality and inclusion education programs for Convocation on a regular basis</p>	<p>2) Assessment conducted in 2017 and the results were presented to EIAC later that year. Survey results included recommendations regarding maintaining and/or increasing diversity amongst the benchers.</p> <p>Actions that have been taken in support of bencher diversity include an increased representation of racialized and Indigenous benchers in Treasurer appointments, committee executives, external appointments, and award nominations and honours.</p> <p>Specific EDI programming was provided for benchers in 2015-2019.</p> <p>An EDI component is included in bencher orientation materials.</p> <p>The Law Society plans to develop a catalogue of Indigenous cultural competency programming for benchers and staff.</p> <p>Benchers and staff are encouraged to participate in the Equity Legal Education events and can access LSO’s 3-hour EDI program.</p>
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*Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at ICES. In her role, she focuses on building partnerships with key stakeholders, with a focus on the integration of intersectoral data, leading to innovative research. In addition, she has significant experience working with a variety of stakeholders including policy makers at various levels of government and Indigenous organizations. At ICES, Sujitha co-chairs the Diversity Committee, is a member of the Race and Ethnicity Data Working Group and has been a guest lecturer at the University of Toronto. Prior to her role at ICES, Sujitha has worked at Public Health Ontario, Toronto Public Health and the World Health Organization. Sujitha also has a Master's degree in Epidemiology from the University of Toronto.*



*Michael Ornstein is Associate Professor of Sociology at York University. He was Director of the University's Institute for Social Research for a decade. The Institute houses the largest academic survey organization in Canada, and provides statistical consulting, data analysis and courses on methods and statistics.*

*Dr. Ornstein has been active in the development, design and execution of numerous large-scale research projects including the first Canadian study on knowledge, behaviour, and attitudes about AIDS. His recent research addresses the decline of the middle class, precarious employment and the transformation of Toronto's gay village.*

*Ornstein's *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, co-authored with H. Michael Stevenson, was the 2001 winner of the Harold Adams Innis Prize for the best SSFC supported book in the Social Sciences and English. He is author of *A Companion to Survey Research*, from Sage and numerous academic articles.*



*Dr. Wortley has been a Professor at the Centre of Criminology and Sociolegal Studies, University of Toronto since 1996. His academic career began in 1993 as a researcher with the Commission on Systemic Racism in the Ontario Criminal Justice System. Over the past twenty-five years Professor Wortley has conducted numerous studies on various issues including youth violence and victimization, street gangs, drug trafficking and substance use, crime and violence within the Caribbean, public perceptions of the police and criminal courts, police in schools, police use of force, and racial bias within the Canadian criminal justice system. In 2007, he was appointed by Metropolis to the position of National Priority Leader for research on Immigration, Justice, Policing and Security. Professor Wortley has also served as Research Director for several government commissions including the Ontario Government's Roots of Youth Violence Inquiry. In 2017 Professor Wortley worked with Ontario's Anti-Racism Directorate to develop standards and guidelines for the collection and dissemination of race-based data within the public sector. Professor Wortley is currently leading three major investigations into possible racial bias within policing for the Nova Scotia, Ontario, and British Columbia Human Rights Commissions. He is also leading an inquiry – with Dr. Akwasi Owusu-Bempah – into bias within the Toronto Transit Commissions enforcement unit. Professor Wortley has published in a wide variety of academic journals and edited volumes and has produced numerous report for all levels of government.*



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne  
Date: November 15, 2021  
Re.: **2020 Statistical Snapshots of Lawyers and Paralegals in Ontario**

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## 1. Purpose

To provide the Committee with an update on the 2020 Statistical Snapshots of Lawyers and Paralegals.

## 2. Background

Since 2009, the Law Society has asked licensees to voluntarily answer self-identification demographic questions in the lawyer and paralegal annual report filings. The questions allow the Law Society to compare the demographics of the Ontario population with those of the legal professions. The Law Society publishes yearly snapshots of the professions that provide statistical data on women, LGBTQ2+, Francophone, Indigenous, and racialized licensees in Ontario.

These Snapshots are developed by Michael Ornstein, Associate Professor of Sociology at York University. The 2020 Statistical Snapshots are available at TAB 6.1 for the Committee's information. The Snapshots will be posted to the Law Society website in the coming weeks once they have been edited and formatted for publishing.

Table 1

## Indigenous and Racialized Lawyers in Ontario in 2020, Compared to the 2016 Ontario Population

e	Lawyers			2016 Ontario Population		
	Number	Percent	Percent Women	Everyone	Persons in the Labour Force, Age 25-69	University Graduates in the Labour Force, Age 25-69
					<i>percent</i>	
Indigenous						
First Nations	387	0.90	58.4	1.84	1.40	0.54
Inuk	9	0.02	*	0.03	0.02	0.01
Métis	215	0.50	56.3	0.94	0.89	0.49
Other and Multiple Indigenous				0.10	0.07	0.04
Total	611	1.42	57.8	2.91	2.38	1.08
Racialized						
Arab	505	1.3	53.5	1.56	1.12	1.89
Black	1,477	3.8	61.9	4.20	4.00	2.91
Chinese	1,699	4.3	59.0	5.41	5.44	9.05
Filipino	150	0.4	58.0	2.24	2.75	3.43
Japanese	67	0.2	49.3	0.14	0.15	0.25
Korean	417	1.1	59.2	0.60	0.60	1.04
Latino	276	0.7	55.8	1.42	1.59	1.29
South Asian	3,277	8.4	51.9	8.50	8.35	13.21
Southeast Asian	179	0.5	60.9	0.90	0.89	0.66
West Asian	584	1.5	60.1	1.10	1.03	1.61
Other Visible Minority	426	1.1	58.9	0.71	0.70	0.45
More than one Racialized Group				0.74	0.54	0.66
Racialized and White	742	1.9	60.6	1.76	0.79	1.16
Total	9,799	25.1	56.8	29.28	27.95	37.61
White	28,725	73.5	47.4	67.82	69.65	61.32
Not Indigenous, Declined Racialization Question	3,914		40.6			
Declined Indigenous and Racialization Questions	6,157		29.6			
Total		100.0	46.6	100.00	100.00	100.00
Number	49,206			12,998,640	5,810,371	1,962,679

\* too few in total for a meaningful estimate

Sources: 2020 Lawyer Annual Report and 2016 Canadian Census Public-Use Master File

Analysis: Michael Ornstein

Table 2A  
Year of Call by Indigeneity and Racialization for Ontario Lawyers, 2020

Year Since Call	Years Since Call / Year of Call										Total
	0	1	2-4	5-9	10-14	15-19	20-24	25-29	30-39	40+ Before	
Year of Call	2020	2019	2016-2018	2011-2015	2006-2010	2001-2005	1996-2000	1991-1995	1981-1990	1981	
<i>number</i>											
<b>Indigenous</b>											
First Nations and Inuk	25	26	55	67	49	70	52	28	20	4	396
Métis	18	11	40	47	31	26	16	16	8	2	215
Total	43	37	95	114	80	96	68	44	28	6	611
<b>Racialized</b>											
Arab	46	67	106	97	72	63	24	10	17	3	505
Black	122	107	265	308	229	224	116	74	28	4	1,477
Chinese	141	139	317	385	240	186	122	82	71	16	1,699
Filipino	12	9	29	34	29	17	9	6	5	0	150
Japanese	1	0	0	3	12	10	17	10	8	6	67
Korean	28	30	83	85	69	56	39	19	8	0	417
Latino	29	23	64	81	34	26	12	4	3	0	276
South Asian	362	275	691	800	464	371	193	80	34	7	3,277
Southeast Asian	13	9	37	49	30	23	9	4	4	1	179
West Asian	58	53	133	189	77	43	21	7	3	0	584
More than one Racialized Group	42	37	67	110	71	47	32	11	9	0	426
Racialized and White	53	62	162	183	103	83	48	28	16	4	742
Total	907	811	1,954	2,324	1,430	1,149	642	335	206	41	9,799
White	1,151	1,175	3,143	4,468	3,557	3,664	2,730	2,530	4,138	2,169	28,725
Not Indigenous, Declined Racialization Question	174	160	435	627	428	527	363	371	566	263	3,914
Declined Indigenous and Racialization Questions	176	165	606	966	782	787	664	610	935	466	6,157
<b>Total</b>	<b>2,451</b>	<b>2,348</b>	<b>6,233</b>	<b>8,499</b>	<b>6,277</b>	<b>6,223</b>	<b>4,467</b>	<b>3,890</b>	<b>5,873</b>	<b>2,945</b>	<b>49,206</b>

Table 2B  
Percentage Distribution of Year of Call by Racialization for Ontario Lawyers, 2020

Year Since Call	Years Since Call / Year of Call										Total
	0	1	2-4	5-9	10-14	15-19	20-24	25-29	30-39	40+ before	
Year of Call	2020	2019	2016-2018	2011-2015	2006-2010	2001-2005	1996-2000	1991-1995	1981-1990	1981	
<i>percent, excluding missing</i>											
<b>Indigenous</b>											
First Nations and Inuk	1.2	1.3	1.1	1.0	1.0	1.4	1.5	1.0	0.5	0.2	1.0
Métis	0.9	0.5	0.8	0.7	0.6	0.5	0.5	0.6	0.2	0.1	0.5
Total	2.0	1.8	1.8	1.7	1.6	2.0	2.0	1.5	0.6	0.3	1.6
<b>Racialized</b>											
Arab	2.2	3.3	2.0	1.4	1.4	1.3	0.7	0.3	0.4	0.1	1.3
Black	5.8	5.3	5.1	4.5	4.5	4.6	3.4	2.5	0.6	0.2	3.8
Chinese	6.7	6.9	6.1	5.6	4.7	3.8	3.5	2.8	1.6	0.7	4.3
Filipino	0.6	0.4	0.6	0.5	0.6	0.3	0.3	0.2	0.1	0.0	0.4
Japanese	0.0	0.0	0.0	0.0	0.2	0.2	0.5	0.3	0.2	0.3	0.2
Korean	1.3	1.5	1.6	1.2	1.4	1.1	1.1	0.7	0.2	0.0	1.1
Latino	1.4	1.1	1.2	1.2	0.7	0.5	0.3	0.1	0.1	0.0	0.7
South Asian	17.2	13.6	13.3	11.6	9.2	7.6	5.6	2.8	0.8	0.3	8.4
Southeast Asian	0.6	0.4	0.7	0.7	0.6	0.5	0.3	0.1	0.1	0.0	0.5
West Asian	2.8	2.6	2.6	2.7	1.5	0.9	0.6	0.2	0.1	0.0	1.5
More than one Racialized Group	2.0	1.8	1.3	1.6	1.4	1.0	0.9	0.4	0.2	0.0	1.1
Racialized and White	2.5	3.1	3.1	2.6	2.0	1.7	1.4	1.0	0.4	0.2	1.9
Total	43.2	40.1	37.6	33.7	28.2	23.4	18.7	11.5	4.7	1.9	25.0
White	54.8	58.1	60.5	64.7	70.2	74.6	79.4	87.0	94.6	97.9	73.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 3

## Age by Indigeneity and Racialization for Ontario Lawyers, 2020

Group	Age					Age				
	Under 35	35-44	45-54	55-64	65 or more	Under 35	35-44	45-54	55-64	65 or more
	<i>number</i>					<i>percent, excluding missing</i>				
<b>Indigenous</b>										
First Nations and Inuk	90	107	111	71	17	0.9	1.0	1.3	1.1	0.5
Métis	64	69	49	22	11	0.6	0.6	0.6	0.3	0.3
Total	154	176	160	93	28	1.5	1.6	1.9	1.5	0.8
<b>Racialized</b>										
Arab	233	165	71	31	5	2.3	1.5	0.9	0.5	0.1
Black	352	506	394	187	38	3.5	4.7	4.8	2.9	1.0
Chinese	667	538	302	142	50	6.6	5.0	3.6	2.2	1.3
Filipino	27	59	43	15	6	0.3	0.6	0.5	0.2	0.2
Japanese	3	11	28	16	9	0.0	0.1	0.3	0.3	0.2
Korean	147	141	99	28	2	1.5	1.3	1.2	0.4	0.1
Latino	87	118	58	10	3	0.9	1.1	0.7	0.2	0.1
South Asian	1,270	1,066	661	216	64	12.6	9.9	8.0	3.4	1.7
Southeast Asian	64	65	30	15	5	0.6	0.6	0.4	0.2	0.1
West Asian	251	251	58	22	2	2.5	2.3	0.7	0.3	0.1
More than one Racialized Group	148	162	87	25	4	1.5	1.5	1.1	0.4	0.1
Racialized and White	293	265	127	53	4	2.9	2.5	1.5	0.8	0.1
Total	3,542	3,347	1,958	760	192	35.2	31.2	23.6	12.0	5.2
White	6,370	7,204	6,162	5,498	3,491	63.3	67.2	74.4	86.6	94.1
Not Indigenous, Declined Racialization Question	798	1,012	857	794	453					
Declined Indigenous and Racialization Questions	1,063	1,523	1,444	1,336	791					
Total	11,927	13,262	10,581	8,481	4,955	100.0	100.0	100.0	100.0	100.0

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 4  
Gender, Sexual Orientation, Francophone Identity, Ability to Practice in French and Disability  
by Age for Ontario Lawyers, 2020

	Age					Total
	Under 35	35-44	45-54	55-64	more	
	<i>number</i>					
Gender						
Women	6,664	6,930	5,196	3,305	843	22,938
Men	5,263	6,332	5,385	5,176	4,112	26,268
Sexual Orientation						
LGBTQ2	701	542	323	245	57	1,868
Not LGBTQ2	9,111	10,129	8,019	6,167	3,712	37,138
Declined to Answer	2,115	2,591	2,239	2,069	1,186	10,200
Identify as Francophone						
Yes	815	785	613	331	106	2,650
No	10,289	11,289	8,869	7,091	4,270	41,808
Declined to Answer	823	1,188	1,099	1,059	579	4,748
Able to Practice in French						
Can Counsel and Represent	1,106	1,300	1,005	554	195	4,160
Can Counsel But Not Represent	374	632	495	340	163	2,004
Neither	9,394	10,297	8,195	6,782	4,198	38,866
Declined to Answer	1,053	1,033	886	805	399	4,176
Have a Disability						
Yes	344	432	380	365	179	1,700
No	9,431	10,118	7,992	6,203	3,600	37,344
Declined to Answer	1,566	2,015	1,916	1,747	931	8,175
All Lawyers	11,927	13,262	10,581	8,481	4,955	49,206
	<i>percent in each age group, excluding missing</i>					
Gender						
Women	55.9	52.3	49.1	39.0	17.0	46.6
Men	44.1	47.7	50.9	61.0	83.0	53.4
Sexual Orientation						
LGBTQ2	7.1	5.1	3.9	3.8	1.5	4.8
Not LGBTQ2	92.9	94.9	96.1	96.2	98.5	95.2
Identify as Francophone						
Yes	7.3	6.5	6.5	4.5	2.4	6.0
No	92.7	93.5	93.5	95.5	97.6	94.0
Able to Practice in French						
Can Counsel and Represent	10.2	10.6	10.4	7.2	4.3	9.2
Can Counsel But Not Represent	3.4	5.2	5.1	4.4	3.6	4.5
Neither	86.4	84.2	84.5	88.4	92.1	86.3
Have a Disability						
Yes	3.5	4.1	4.5	5.6	4.7	4.4
No	96.5	95.9	95.5	94.4	95.3	95.6
All Lawyers	100.0	100.0	100.0	100.0	100.0	100.0
	<i>Group Percentage Distribution of Age</i>					
Gender						
Women	29.1	30.2	22.7	14.4	3.7	100.0
Men	20.0	24.1	20.5	19.7	15.7	100.0
Sexual Orientation						
LGBTQ2	37.5	29.0	17.3	13.1	3.1	100.0
Not LGBTQ2	24.5	27.3	21.6	16.6	10.0	100.0
Identify as Francophone						
Yes	30.8	29.6	23.1	12.5	4.0	100.0
No	24.6	27.0	21.2	17.0	10.2	100.0
Able to Practice in French						
Can Counsel and Represent	26.6	31.3	24.2	13.3	4.7	100.0
Can Counsel But Not Represent	18.7	31.5	24.7	17.0	8.1	100.0
Neither	24.2	26.5	21.1	17.4	10.8	100.0
Have a Disability						
Yes	20.2	25.4	22.4	21.5	10.5	100.0
No	25.3	27.1	21.4	16.6	9.6	100.0
All Lawyers	24.2	27.0	21.5	17.2	10.1	100.0

Source: 2020 Lawyer Annual Report  
Analysis: Michael Ornstein

Table 5a

## Status, Size of Law Firm and Region by Indigeneity and Racialization for Ontario Lawyers, 2020

Group	Status*										Total	Number
	Sole Practitioner	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working		
	<i>percent</i>											
Indigenous												
First Nations and Inuk	27	8	11	2	2	10	17	2	10	11	100	386
Métis	19	8	19	4	3	8	19	3	7	10	100	210
Total	24	8	14	3	3	9	17	2	9	10	100	596
Racialized												
Arab	18	9	24	3	3	13	15	1	5	8	100	498
Black	30	6	15	4	3	12	16	2	5	8	100	1,453
Chinese	17	7	25	3	1	18	12	1	5	11	100	1,656
Filipino	31	9	18	3	1	15	13	1	5	5	100	150
Japanese	10	19	7	0	1	19	19	0	10	12	100	67
Korean	14	9	23	4	1	17	16	0	6	10	100	404
Latino	18	7	22	4	3	19	12	1	7	8	100	274
South Asian	27	8	20	3	2	12	10	1	5	10	100	3,196
Southeast Asian	22	7	23	3	3	10	11	1	8	12	100	177
West Asian	24	6	27	4	2	13	8	1	5	10	100	573
More than one Racialized Group	18	7	20	3	3	11	18	1	8	10	100	410
Racialized and White	12	7	26	3	2	16	18	2	7	8	100	718
Total	23	7	21	3	2	14	13	1	6	9	100	9,576
White	17	16	20	3	1	13	14	1	6	9	100	28,304
Not Indigenous, Declined Racialization Question	23	15	17	4	1	13	11	1	7	10	100	3,859
Declined Indigenous and Racialization Questions	24	17	15	3	1	11	12	1	5	9	100	6,094
Total	19	15	19	3	1	13	13	1	6	9	100	48,429

Table 5b

## Status, Size of Law Firm and Region by Racialization for Ontario Lawyers, 2020

	Size of Law Firm, based on Partners, Associates and Employees							Total	Number
	fewer than 5	5-9	10-24	25-49	50-99	100-199	200 or more		
	<i>percent</i>								
Indigenous									
First Nations and Inuk	30	7	26	14	2	2	19	100	81
Métis	41	17	20	9	3	2	9	100	66
Total	35	12	23	12	3	2	14	100	147
Racialized									
Arab	34	14	14	9	7	4	18	100	184
Black	36	13	13	8	3	5	20	100	348
Chinese	27	15	11	8	6	6	27	100	573
Filipino	43	7	14	14	2	2	18	100	44
Japanese	22	6	22	22	6	11	11	100	18
Korean	30	16	10	9	3	9	23	100	147
Latino	44	17	14	9	2	5	9	100	88
South Asian	44	14	12	6	3	4	16	100	1,010
Southeast Asian	38	19	10	3	3	5	21	100	58
West Asian	34	14	19	8	6	4	15	100	212
More than one Racialized Group	27	10	21	10	6	5	21	100	124
Racialized and White	31	12	14	9	5	7	23	100	264
Total	36	14	13	8	4	5	20	100	3,070
White	24	13	15	11	5	9	23	100	11,104
Not Indigenous, Declined Racialization Question	30	15	15	9	5	8	18	100	1,360
Declined Indigenous and Racialization Questions	31	15	16	9	5	7	17	100	2,189
Total	28	14	15	10	5	8	21	100	17,870

Table 5c

## Status, Size of Law Firm and Region by Racialization for Ontario Lawyers, 2020

	Region**								Total	Number	
	South West	Central South	Toronto	Durham, Halton, Peel,		Central North	North	Ottawa			East
				York							
	<i>percent</i>										
Indigenous											
First Nations and Inuk	6	10	27	10	10	18	15	4	100	365	
Métis	7	4	34	7	10	10	24	4	100	194	
Indigenous Total	6	8	30	9	10	15	18	4	100	559	
Racialized											
Arab	8	2	46	18	1	0	24	0	100	476	
Black	3	3	59	21	2	1	11	1	100	1,388	
Chinese	1	2	69	21	1	0	7	0	100	1,580	
Filipino	3	6	62	22	1	0	6	0	100	143	
Japanese	2	3	67	14	2	0	10	3	100	63	
Korean	2	3	71	16	1	1	6	0	100	380	
Latino	7	5	56	19	2	1	9	2	100	258	
South Asian	1	3	51	36	1	0	6	1	100	3,105	
Southeast Asian	1	7	56	24	0	1	10	1	100	165	
West Asian	1	2	65	23	1	0	7	0	100	548	
More than one Racialized Group	2	2	64	16	1	0	13	1	100	395	
Racialized and White	3	4	62	12	2	2	15	1	100	679	
Total	2	3	58	25	1	1	9	1	100	9,180	
White	6	6	55	11	4	3	13	3	100	27,048	
Not Indigenous, Declined Racialization Question	4	5	58	18	3	2	9	1	100	3,711	
Declined Indigenous and Racialization Questions	6	6	51	16	4	3	12	2	100	5,819	
Total	5	5	55	15	3	2	12	2	100	46,317	

\* excludes new licensees

\*\* excludes lawyers whose address is outside Ontario

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 6  
Status by Gender by Age, and Size of Law Firm and Region by Gender for Ontario Lawyers, 2020

Group	Status*											Total	Number	Percentage by Age
	Sole Practitioner	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working				
	<i>percent</i>													
<b>Women</b>														
under 35	7.4	1.6	43.9	4.8	2.4	9.9	12.6	0.5	5.4	11.4	100.0	6,353	28.2	
35-44	12.3	8.0	18.8	3.2	2.2	18.0	16.9	1.5	6.9	12.3	100.0	6,885	30.5	
45-54	16.5	13.0	6.4	2.0	1.3	18.0	22.3	2.6	7.5	10.4	100.0	5,182	23.0	
55-64	20.8	13.0	3.8	2.5	1.8	11.8	17.0	2.3	8.4	18.8	100.0	3,300	14.6	
65 or more	36.0	13.1	3.9	2.4	1.9	5.8	8.6	2.5	6.1	19.8	100.0	842	3.7	
<b>Total</b>	<b>14.0</b>	<b>8.3</b>	<b>20.3</b>	<b>3.2</b>	<b>2.0</b>	<b>14.4</b>	<b>16.6</b>	<b>1.6</b>	<b>6.8</b>	<b>12.8</b>	<b>100.0</b>	<b>22,562</b>	<b>100.0</b>	
<b>Men</b>														
under 35	11.7	3.0	48.0	5.4	0.8	9.9	10.0	0.5	4.3	6.4	100.0	4,958	19.2	
35-44	17.2	13.8	24.8	3.3	1.0	16.8	12.1	0.9	5.7	4.3	100.0	6,267	24.2	
45-54	21.0	26.6	6.8	2.4	0.4	15.7	13.8	1.5	7.1	4.6	100.0	5,368	20.8	
55-64	29.0	29.9	4.1	1.8	0.5	8.9	9.7	1.2	6.6	8.2	100.0	5,165	20.0	
65 or more	48.4	28.7	6.0	2.0	0.5	3.1	3.2	0.7	3.3	4.1	100.0	4,109	15.9	
<b>Total</b>	<b>24.2</b>	<b>20.0</b>	<b>18.4</b>	<b>3.0</b>	<b>0.7</b>	<b>11.5</b>	<b>10.2</b>	<b>1.0</b>	<b>5.5</b>	<b>5.5</b>	<b>100.0</b>	<b>25,867</b>	<b>100.0</b>	
<b>Size of Firm, based on Partners, Associates and Employees</b>														
Group	Less than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Number					
	<i>percent</i>													
	<i>percent</i>													
Women	29.9	12.9	14.0	9.9	5.6	6.8	21.0	100.0	7,164					
Men	26.0	14.2	15.1	10.2	4.9	8.3	21.2	100.0	10,706					
<b>Total</b>	<b>27.5</b>	<b>13.7</b>	<b>14.6</b>	<b>10.1</b>	<b>5.2</b>	<b>7.7</b>	<b>21.2</b>	<b>100.0</b>	<b>17,870</b>					
<b>Region**</b>														
Group	South West	Central South	Toronto	Halton, Peel, York				Central North	North	Ottawa	East	Total	Number	
				<i>percent</i>										
				<i>percent</i>										
Women	4.8	4.7	55.5	14.5	3.1	2.0	13.4	2.0	100.0	21,101				
Men	5.2	6.2	54.6	15.5	3.3	2.5	10.6	2.2	100.0	24,529				
<b>Total</b>	<b>5.0</b>	<b>5.5</b>	<b>55.0</b>	<b>15.0</b>	<b>3.2</b>	<b>2.3</b>	<b>11.9</b>	<b>2.1</b>	<b>100.0</b>	<b>45,630</b>				

\* excludes new licensees

\*\* excludes lawyers whose address is outside Ontario

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 7  
Status, Size of Law Firm and Region by Francophone Identity and Ability to Practice in French for Ontario Lawyers, 2020

Group	Status*										Total	Number
	Sole Practitioner	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working		
	<i>percent</i>											
Identify as Francophone												
Yes	13.4	10.2	16.3	3.1	2.1	11.3	26.9	2.0	6.2	8.5	100.0	2,605
No	19.4	14.6	20.0	3.1	1.3	13.0	12.3	1.3	6.2	8.8	100.0	41,126
Total	19.1	14.3	19.8	3.1	1.3	12.9	13.2	1.3	6.2	8.8	100.0	43,731
Able to Provide Service in French?												
Yes, Represent and Counsel	14.5	10.3	14.6	2.8	2.3	11.9	27.9	2.0	5.3	8.5	100.0	4,093
Counsel, but not Represent	18.7	11.7	15.5	2.3	2.4	12.7	24.6	1.6	3.8	6.8	100.0	1,978
Neither	20.5	15.6	20.3	3.3	1.2	13.0	10.9	1.1	5.9	8.4	100.0	38,250
Total	19.9	14.9	19.6	3.2	1.3	12.9	13.1	1.2	5.7	8.3	100.0	44,321
	Size of Firm, based on Partners, Associates and Employees											
	Less than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total				
	<i>percent</i>											
Identify as Francophone												
Yes	34.3	11.5	15.1	9.2	3.0	4.4	22.5	100.0	773			
No	27.0	13.8	14.5	10.2	5.3	7.9	21.3	100.0	15,496			
Total	27.4	13.7	14.6	10.1	5.2	7.7	21.4	100.0	16,269			
Able to Provide Service in French?												
Yes, Represent and Counsel	33.7	12.1	13.5	9.0	3.3	4.5	23.9	100.0	1,132			
Counsel, but not Represent	28.5	11.5	14.2	10.3	5.0	6.2	24.4	100.0	583			
Neither	27.3	14.0	14.9	10.4	5.3	7.9	20.3	100.0	14,973			
Total	27.7	13.7	14.8	10.3	5.1	7.6	20.7	100.0	16,688			
	Region**											
	South West	Central South	Toronto	Durham, Hamilton, Peel, York	Central North	North	Ottawa	East	Total			
	<i>percent</i>											
Identify as Francophone												
Yes	2.5	1.9	28.2	5.1	0.8	7.9	48.2	5.5	100.0	2,253		
No	5.0	5.7	56.9	15.6	3.3	1.9	9.7	1.8	100.0	39,608		
Total	4.9	5.5	55.4	15.0	3.1	2.2	11.8	2.0	100.0	41,861		
Able to Provide Service in French?												
Yes, Represent and Counsel	2.1	2.0	31.2	6.0	1.0	5.4	47.7	4.5	100.0	3,416		
Counsel, but not Represent	3.4	3.1	47.5	7.7	1.4	2.6	32.2	2.1	100.0	1,843		
Neither	5.6	6.0	57.2	16.4	3.6	2.0	7.4	1.9	100.0	37,250		
Total	5.2	5.6	54.7	15.1	3.3	2.3	11.7	2.1	100.0	42,509		

\* excludes new licensees

\*\* excludes lawyers whose address is outside Ontario

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 8  
Status, Size of Law Firm and Region by Disability for Ontario Lawyers, 2020

Group	Status*										Total	Number
	Sole Practitioner	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working		
	<i>percent</i>											
Has a Disability	21.3	8.1	12.8	2.5	2.9	8.8	19.5	2.8	7.6	13.7	100.0	1,910
No Disability	18.8	14.8	20.3	3.1	1.3	13.3	12.8	1.2	6.1	8.3	100.0	38,179
Total	18.9	14.5	20.0	3.1	1.3	13.0	13.1	1.3	6.2	8.6	100.0	40,089
	Size of Firm, based on Partners, Associates and Employees								Total	Number		
	Less than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Number			
	<i>percent</i>											
Has a Disability	27.8	13.9	15.9	11.4	4.5	7.2	19.3	100.0	446			
No Disability	26.9	13.6	14.3	10.1	5.2	7.9	21.9	100.0	14,608			
Total	26.9	13.6	14.4	10.2	5.2	7.8	21.9	100.0	15,054			
	Region**										Total	Number
	South West	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Number		
	<i>percent</i>											
Has a Disability	5.4	6.2	52.7	10.9	3.9	2.6	15.3	3.1	100.0	1,626		
No Disability	5.0	5.4	55.7	15.0	3.1	2.2	11.5	2.0	100.0	35,579		
Total	5.0	5.4	55.6	14.8	3.2	2.2	11.7	2.1	100.0	37,205		

\* excludes new licensees

\*\* excludes lawyers whose address is outside Ontario

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein



Table 9

## Status, Size of Law Firm and Region by Sexual Orientation for Ontario Lawyers, 2020

Group	Status*										Total	Number
	Sole Practitioner	Law Firm Partner	Law Firm Associate	Law Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working		
	<i>percent</i>											
LBGT2Q	13.9	7.0	21.9	2.8	2.9	12.4	19.6	3.1	6.1	10.3	100.0	1,800
Not LBGT2Q	18.8	14.7	19.9	3.0	1.3	13.2	13.0	1.2	6.2	8.7	100.0	36,532
Total	18.6	14.3	20.0	3.0	1.4	13.2	13.3	1.3	6.2	8.8	100.0	38,332
	Size of Firm, based on Partners, Associates and Employees								Total	Number		
	Less than 5	5-9	10-24	25-49	50-99	100-199	200 or more	Total	Number			
	<i>percent</i>											
LBGT2Q	26.8	11.9	13.0	11.6	4.7	8.1	24.0	100.0	571			
Not LBGT2Q	26.5	13.7	14.6	10.2	5.3	7.9	22.1	100.3	13,742			
Total	26.5	13.5	14.4	10.2	5.3	7.9	22.2	100.0	14,313			
	Region**									Number		
	South West	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East	Total	Number		
	<i>percent</i>											
LBGT2Q	3.5	3.7	65.3	8.4	2.3	2.0	13.0	1.9	100.0	1,679		
Not LBGT2Q	5.0	5.4	55.2	15.3	3.0	2.2	11.8	2.0	100.0	34,986		
Total	4.9	5.4	55.6	15.0	3.0	2.2	11.9	2.0	100.0	36,665		

\* excludes new licensees

\*\* excludes lawyers whose address is outside Ontario

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Table 10

## Area of Practice\* by Indigeneity and Racialization and by Gender for Ontario Lawyers, 2020

	Indigenous	Environ- ment	Criminal	Family	Health	Immigrat- ion	Real Estate	Wills and Estates	Civil Litigation - Plaintiff	Civil Litigation - Defendent
<i>percent of lawyers whose work in the area accounts for at least 30 percent of their total practice</i>										
First Nations and Inuk	28	1	18	22	1	1	5	3	5	5
Metis	9	0	18	15	4	2	9	5	11	10
Arab	1	1	12	6	1	7	14	4	13	10
Black	1	1	14	18	1	11	10	4	7	7
Chinese	0	0	5	6	1	3	19	4	8	10
Filipino	2	0	12	13	1	13	22	9	5	9
Japanese	2	0	12	4	0	2	2	6	8	23
Korean	0	0	9	6	1	6	15	3	10	11
Latino	1	1	12	12	1	8	11	4	12	10
South Asian	1	0	8	12	1	6	26	3	10	10
Southeast Asian	0	0	5	10	0	3	24	4	8	10
West Asian	1	0	10	9	1	9	16	2	13	14
More than one Racialized Group	0	0	13	11	2	7	8	2	7	13
Racialized and White	1	1	15	10	1	3	6	4	9	10
White	1	1	11	9	1	2	13	6	10	13
Not Indigenous, Declined Racialization Question	1	1	10	10	1	3	15	5	13	12
Declined Indigenous and Racialization Questions	1	1	12	8	1	2	16	7	12	11
Women	1	1	10	13	2	3	10	6	8	11
Men	1	1	11	7	1	3	17	6	13	12
Total	1	1	11	10	1	3	14	6	10	12

Source: 2020 Lawyer Annual Report

Analysis: Michael Ornstein

Workplace	Employment and Labour	Administrative	ADR	Corporate	Securities	Taxation	Bankruptcy	Construction	Franchise	Intellectual Property	Municipal	Municipal Law	Number
<i>percent of lawyers whose work in the area accounts for at least 30 percent of their total practice</i>													
0	5	6	1	11	0	1	0	0	0	0	0	3	297
0	8	9	1	9	0	1	0	3	0	1	1	5	159
1	6	5	1	21	4	2	0	3	1	4	1	5	407
0	8	7	1	17	3	1	0	2	0	2	1	6	1,158
0	5	4	0	29	7	3	0	2	0	6	2	5	1,336
0	3	3	1	21	4	0	0	1	0	2	1	2	120
0	4	8	0	23	0	2	0	2	0	4	2	6	48
0	4	4	0	23	9	4	1	2	0	3	2	6	316
1	9	5	0	22	4	2	0	2	0	2	1	5	227
1	6	4	0	18	3	1	1	1	0	2	1	4	2,626
0	5	4	0	21	4	3	1	1	0	4	0	3	136
1	6	5	0	17	5	2	1	0	0	2	1	5	472
1	7	13	0	20	3	1	1	2	0	3	2	7	320
1	7	7	1	22	3	3	1	2	0	3	1	6	579
1	8	6	1	20	5	2	1	2	0	3	2	5	22,879
0	5	5	1	21	4	2	1	2	0	3	2	5	3,114
1	5	5	0	22	4	3	1	2	0	3	2	5	4,965
1	8	7	1	19	4	2	1	1	0	2	2	6	17,120
1	6	4	1	22	5	2	1	2	0	3	2	4	22,039
1	7	6	1	20	4	2	1	2	0	3	2	5	39,159

Table 1

## Indigenous and Racialized Ontario Paralegals, 2020, compared to the 2016 Ontario Population

Group	Paralegals			2016 Ontario Population		
	<i>number</i>	<i>percent, excluding missing</i>	<i>percent Women</i>	Everyone	Persons in the Labour Force, Age 25-69	University Graduates in the Labour Force, Age 25-69
Indigenous						
First Nations	97	1.17	78	1.84	1.40	0.54
Inuk	1	0.01	*	0.03	0.02	0.01
Métis	56	0.68	63	0.94	0.89	0.49
Other and Multiple Indigenous				0.10	0.07	0.04
Total	154	1.86	73	2.91	2.38	1.08
Racialized						
Arab	146	1.9	68	1.56	1.12	1.89
Black	598	7.9	71	4.20	4.00	2.91
Chinese	486	6.4	66	5.41	5.44	9.05
Filipino	143	1.9	69	2.24	2.75	3.43
Japanese	9	0.1	*	0.14	0.15	0.25
Korean	69	0.9	65	0.60	0.60	1.04
Latino	287	3.8	69	1.42	1.59	1.29
South Asian	839	11.0	58	8.50	8.35	13.21
Southeast Asian	103	1.4	69	0.90	0.89	0.66
West Asian	228	3.0	66	1.10	1.03	1.61
Other Visible Minority	92	1.2	73	0.71	0.70	0.45
More than one Racialized Group		0.0		0.74	0.54	0.66
Racialized and White	119	1.6	69	1.76	0.79	1.16
Total	3,119	41.0	66	29.28	27.95	37.61
White	4,347	57.1	71	67.82	69.65	61.32
Not Indigenous, Declined Racialization Question	656		67			
Declined Indigenous and Racialization Questions	852		52			
Total		100.0	67	100.00	100.00	100.00
Number	9,128			12,998,640	5,810,371	1,962,679

Sources: 2020 Paralegal Annual Report and 2016 Canadian Census Public-Use Master File  
Analysis: Michael Ornstein

Table 2

## Age by Indigeneity and Racialization for Ontario Paralegals, 2020

Group	Age					Age				
	20-29	30-39	40-49	50-59	60 or more	20-29	30-39	40-49	50-59	60 or more
	<i>number</i>					<i>percent</i>				
Indigenous										
First Nations and Inuk	25	30	23	14	6	1.3	1.3	1.7	1.1	0.8
Métis	12	16	9	11	8	0.6	0.7	0.7	0.9	1.1
Total	37	46	32	25	14	2.0	2.0	2.3	2.0	1.9
Racialized										
Arab	46	44	34	17	5	2.4	1.9	2.5	1.4	0.7
Black	123	185	134	109	47	6.5	7.9	9.7	8.7	6.3
Chinese	88	148	126	94	30	4.7	6.3	9.1	7.5	4.0
Filipino	42	46	27	23	5	2.2	2.0	2.0	1.8	0.7
Japanese	0	2	4	2	1	0.0	0.1	0.3	0.2	0.1
Korean	20	26	15	8	0	1.1	1.1	1.1	0.6	0.0
Latino	52	102	69	49	15	2.8	4.4	5.0	3.9	2.0
South Asian	248	257	131	117	86	13.1	11.0	9.5	9.3	11.5
Southeast Asian	27	36	19	19	2	1.4	1.5	1.4	1.5	0.3
West Asian	41	81	57	33	16	2.2	3.5	4.1	2.6	2.1
More than one Racialized Group	32	30	14	14	2	1.7	1.3	1.0	1.1	0.3
Racialized and White	49	41	15	10	4	2.6	1.8	1.1	0.8	0.5
Total	768	998	645	495	213	40.6	42.7	46.6	39.3	28.4
White	1,085	1,293	707	738	524	57.4	55.3	51.1	58.7	69.8
Not Indigenous, Declined Racialization Question	150	207	133	97	69					
Declined Indigenous and Racialization Questions	121	294	173	161	103					
Total	2,161	2,838	1,690	1,516	923	100.0	100.0	100.0	100.0	100.0

Source: 2020 Paralegal Annual Report  
 Analysis: Michael Ornstein

Table 3

## Gender, Sexual Orientation, Francophone Identity, Ability to Practice in French and Disability by Age for Ontario Paralegals, 2020

	Age						Age					
	20-29	30-39	40-49	50-59	60 or more	Total	20-29	30-39	40-49	50-59	60 or more	Total
	<i>number</i>						<i>percent</i>					
Gender												
Women	1,741	2,104	1,109	829	329	6,112	80.6	74.1	65.6	54.7	35.6	67.0
Men	420	734	581	687	594	3,016	19.4	25.9	34.4	45.3	64.4	33.0
Sexual Orientation												
LGBT2Q	127	128	50	37	9	351	7.0	5.6	3.6	2.9	1.2	4.7
Not LGBT2Q	1,693	2,150	1,324	1,231	728	7,126	93.0	94.4	96.4	97.1	98.8	95.3
Declined to Answer	341	560	316	248	186	1,651						
Identify as Francophone												
Yes	57	65	48	56	23	249	2.8	2.5	3.1	4.0	2.7	2.9
No	2,002	2,564	1,519	1,340	814	8,239	97.2	97.5	96.9	96.0	97.3	97.1
Declined to Answer	102	209	123	120	86	640						
Able to Practice in French												
Can Counsel and Represent	47	62	42	51	29	231	2.4	2.4	2.7	3.6	3.4	2.8
Can Counsel But Not Represent	17	20	34	14	19	104	0.9	0.8	2.2	1.0	2.2	1.2
Cannot	1,859	2,513	1,485	1,364	807	8,028	96.7	96.8	95.1	95.5	94.4	96.0
Declined to Answer	238	243	129	87	68	765						
Have a Disability												
Yes	89	134	114	117	74	528	4.5	5.4	7.9	8.9	9.7	6.6
No	1,895	2,343	1,326	1,195	689	7,448	95.5	94.6	92.1	91.1	90.3	93.4
Declined to Answer	177	361	250	204	160	1,152						
<b>Total</b>	<b>2,161</b>	<b>2,838</b>	<b>1,690</b>	<b>1,516</b>	<b>923</b>	<b>9,128</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: 2020 Paralegal Annual Report  
 Analysis: Michael Ornstein

Table 4a

## Status and Region by Indigeneity and Racialization for Ontario Paralegals, 2020

	Status*										Total	Number
	Sole Practitioner	Firm Partner	Firm Associate	Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working		
	<i>percent</i>											
<b>Indigenous</b>												
First Nations and Inuk	18	3	2	4	7	2	14	1	27	21	100	91
Métis	38	4	0	4	6	4	11	0	13	21	100	53
Total	25	3	1	4	6	3	13	1	22	21	100	144
<b>Racialized</b>												
Arab	24	1	1	4	1	4	9	2	27	27	100	139
Black	20	1	2	6	1	5	10	1	29	26	100	575
Chinese	21	2	1	10	1	3	4	2	31	25	100	468
Filipino	16	4	3	6	1	7	6	0	35	22	100	136
Japanese	0	0	0	11	0	0	0	11	44	33	100	9
Korean	14	3	5	9	2	0	3	0	35	29	100	65
Latino	19	1	2	10	3	6	7	1	28	22	100	277
South Asian	20	2	3	6	0	2	5	1	32	28	100	804
Southeast Asian	12	0	4	4	1	4	4	1	38	32	100	100
West Asian	30	0	1	8	0	3	5	0	25	28	100	217
More than one Racialized Group	11	1	0	8	1	5	14	5	33	23	100	88
Racialized and White	10	2	0	9	1	3	14	0	40	21	100	116
Total	20	1	2	7	1	4	7	1	31	26	100	2,994
White	17	2	3	11	1	6	10	1	30	18	100	4,203
<b>Not Indigenous, Declined Racialization Question</b>												
Declined Indigenous and Racialization Questions	24	3	2	8	1	5	8	1	23	25	100	827
Total	19	2	3	9	1	5	9	1	29	22	100	8,800

Table 4b

## Status and Region by Indigeneity and Racialization for Ontario Paralegals, 2020

	Region**								Total	Number
	South-west	Central South	Toronto	Durham, Halton, Peel, York	Central North	North	Ottawa	East		
	<i>percent</i>									
<b>Indigenous</b>										
First Nations and Inuk	9	17	23	23	13	6	2	6	100	95
Métis	13	9	25	16	11	14	7	5	100	56
Total	11	14	24	21	12	9	4	6	100	151
<b>Racialized</b>										
Arab	14	8	31	36	1	0	10	0	100	146
Black	2	7	48	36	3	0	5	0	100	594
Chinese	2	2	56	36	1	0	2	0	100	476
Filipino	2	3	63	27	1	0	3	0	100	143
Japanese	0	0	63	25	13	0	0	0	100	8
Korean	3	1	75	17	0	0	3	0	100	69
Latino	6	8	51	28	2	0	4	0	100	283
South Asian	1	3	40	54	1	0	1	0	100	829
Southeast Asian	3	9	49	34	3	0	3	0	100	103
West Asian	0	7	48	39	0	0	4	0	100	224
More than one Racialized Group	4	3	58	31	1	1	1	0	100	90
Racialized and White	9	4	50	25	1	2	6	3	100	116
Total	3	5	48	39	1	0	3	0	100	3,081
White	9	12	30	26	10	2	6	4	100	4,284
<b>Not Indigenous, Declined Racialization Question</b>										
Declined Indigenous and Racialization Questions	5	8	37	37	5	2	3	2	100	837
Total	7	9	38	32	6	1	5	2	100	8,790

\* excludes new licensees

\*\* excludes paralegals whose address is outside Ontario

Source: 2020 Paralegal Annual Report

Analysis: Michael Ornstein

Table 5  
Status by Gender by Age and Region by Gender for Ontario Paralegals, 2020

	Status*											Total	Number	
	Sole Practitioner	Firm Partner	Firm Associate	Firm Employee	Legal Clinic	In House	Government	Education	Other Employment	Retired or Not Working	<i>percent</i>			
<b>Women</b>														
20-29	2.7	0.6	3.2	9.3	0.5	3.8	9.1	0.2	48.6	21.9	100.0	1,618		
30-39	8.2	0.8	2.5	9.4	0.9	4.2	10.3	1.0	37.6	25.0	100.0	2,033		
40-49	17.4	2.0	2.8	10.1	2.6	5.8	9.8	2.1	24.3	23.1	100.0	1,080		
50-59	23.5	1.6	1.1	10.0	2.5	5.9	10.3	1.3	20.1	23.7	100.0	816		
60 or more	27.8	2.4	1.5	9.2	6.1	5.5	8.9	3.1	11.3	24.2	100.0	327		
Total	11.6	1.2	2.5	9.6	1.6	4.7	9.8	1.2	34.3	23.6	100.0	5,874		
<b>Men</b>														
20-29	10.7	1.3	4.0	7.2	0.5	4.3	8.3	0.0	31.7	32.0	100.0	375		
30-39	20.9	2.8	3.6	9.9	0.7	5.0	9.2	0.7	26.7	20.5	100.0	718		
40-49	32.7	2.3	4.4	9.4	0.7	6.9	6.7	0.5	18.6	17.7	100.0	565		
50-59	41.2	4.9	3.1	8.0	0.4	5.0	5.8	0.7	13.1	17.8	100.0	678		
60 or more	56.1	5.3	1.9	6.3	0.2	4.9	4.4	0.8	6.4	13.7	100.0	590		
Total	33.7	3.5	3.3	8.3	0.5	5.3	6.8	0.6	18.6	19.4	100.0	2,926		
<b>Region**</b>														
	South-west	Central South	Toronto	Halton, Peel, York	Central North	North	Ottawa	East	Total			Number		
	<i>percent</i>													
Women	6.6	9.0	37.5	30.9	7.1	1.5	5.0	2.2	100.0			6,024		
Men	6.6	8.6	37.1	34.8	5.1	1.3	4.4	2.0	100.0			2,977		
Total	6.6	8.9	37.4	32.2	6.4	1.5	4.8	2.1	100.0			9,001		

\* excludes new licensees

\*\* excludes paralegals whose address is outside Ontario

Source: 2020 Paralegal Annual Report

Analysis: Michael Ornstein

Table 6

## Area of Practice by Indigeneity and Racialization and by Gender for Ontario Paralegals, 2020

	Accident Benefits	Human Rights	Landlord and Tenant	Provincial Offenses	Property Tax	Small Claims	Summary Conviction	Workers Compen- sation	Other	Number
<i>percent of paralegals whose work in the area accounts for at least 30 percent of their total practice</i>										
First Nations and Inuk	0	0	24	22	0	22	8	11	30	37
Metis	10	0	26	29	0	26	10	13	10	31
Arab	9	9	17	28	0	20	7	7	17	46
Black	12	2	25	21	4	32	3	7	15	201
Chinese	13	1	31	22	4	29	1	4	13	164
Filipino	5	0	19	28	2	30	2	5	30	43
Japanese										<5
Korean	42	0	21	16	0	32	0	0	16	19
Latino	25	1	15	15	1	19	2	8	22	109
South Asian	24	3	22	32	1	22	1	3	12	243
Southeast Asian	21	0	8	29	0	29	0	4	17	24
West Asian	5	3	19	27	1	36	3	3	21	77
More than one Racialized Group	17	0	13	21	0	33	4	0	17	24
Racialized and White	7	10	14	21	10	21	0	7	14	29
White	10	2	21	23	9	23	3	13	10	1796
Not Indigenous, Declined Racialization Question	16	2	19	24	5	21	3	10	13	242
Declined Indigenous and Racialization Questions	8	2	19	31	6	29	3	8	11	370
Women	13	2	23	18	4	25	3	10	17	1574
Men	11	2	18	32	9	25	2	10	7	1882
Total	12	2	21	24	6	25	3	10	12	3456

Source: 2020 Paralegal Annual Report

Analysis: Michael Ornstein

Table A  
Equity Survey Response Rate by  
Question, 2019

Question*	Response Rate in Percent	
	Lawyers	Paralegals
Indigenous	92.0	92.8
Racialization	79.5	83.5
Sexual Orientation	79.3	81.9
Identify as Francophone	90.4	93.0
Able to Practice in French	91.5	91.6
Have a Disability	83.4	87.4
Total Number	49,206	9,128

\* There is no missing data for gender, which is obtained from administrative records

## Key Points about Lawyers in the 2020 Snapshots

Michael Ornstein

November 2021

The tabulations include lawyers who in 2020 were:

- sole practitioners
- law firm partners, associates and employees
- lawyers working in legal clinics, in house or in government
- lawyers in education (who may or may not practice)
- lawyers in *other employment* “work but do not practise law or provide legal services, including lawyers employed in education, in government or in a corporate position where they do not practise law or provide legal services.”
- lawyers under the age of 70 who are *retired or not working* “do not engage in any remunerative work and do not engage in the practice of law or provision of legal services”
- new licensees

They exclude:

- lawyers whose practice is outside of Ontario
- legal advisors
- honorary licensees
- lawyers whose license is suspended
- lawyers whose fee is excused on grounds of disability
- lawyers whose license is in abeyance when serving on a court or board
- lawyers 70 and older who are “retired or not working”.

For an explanation of these categories see <https://www.lso.ca/lawyers/about-your-licence/annual-reports-fees-and-insurance/fee-categories>

These tabulations are based on responses to the equity survey in licensees’ annual reports. While gender is taken from LSO records, licensees were allowed to decline to answer the questions about Indigeneity, racialization, sexual orientation, Francophone identity, the ability to counsel and represent in French and disability.

### Table 1

Indigeneity and Racialization for Ontario Lawyers, 2020, compared to the 2016 Ontario Population

*In the equity survey, 6,157 out of the 49,206 licensees did not answer the questions about Indigeneity and racialization and another 3,914 answered the Indigeneity question but not the one about racialization. The figures for the distribution of groups in Table 1, which exclude non-response, are therefore biased if the characteristics of non-respondents are not the same as licensees who do answer. Short of making responses mandatory, statistical models can be used to predict the answers of the non-respondents. A disadvantage is that these models require assumptions and there is no one way to predict the answers of nonrespondents. Analysis of the responses of licensees who did not respond in one year’s annual report but did so in another year demonstrates that some non-respondents are Indigenous or racialized.*

*Comparisons to the Ontario population are based on the most recently available, 2016 Canadian Census. An update using the 2021 Census will be possible in 2023.*

1. 1.42% of lawyers are Indigenous, compared to 2.91% of the 2016 Ontario population, 2.38% of the labour force age 25-69 and 1.08% of university graduates in the labour force age 25-69.
2. Racialized Ontarians, following Statistics Canada practice of excluding Indigenous persons, account for 25.1% of lawyers, compared to 29.3% of the 2016 Ontario population, 28.0% of the labour force age 25-69 and 37.6% of university graduates in the labour force age 25-69. The totals include 1.1% of lawyers who identify with two or more racialized groups or with a racialized group not listed on the survey form (such as non-Canadian indigenous people) and 1.9% who identify as racialized *and* White.
3. 73.5% of Ontario lawyers are White, compared to 67.8% of the 2016 Ontario population, 69.7% of the Ontario labour force age 25-69 and 61.3% of Ontario university graduates in the labour force age 25-69.
4. 56.3% of Indigenous lawyers are women, along with 56.8% of racialized lawyers, compared to 47.4% of White lawyers. Table 3 shows that this is partly because non-White lawyers are younger, on average.
5. Black lawyers account for 3.8% of all licensees, compared to 4.2% of the 2016 Ontario population, 4.0% of the Ontario labour force age 25-69 and 2.9% of university graduates in the labour force age 25-69. All the other racialized groups have a smaller percentage of lawyers than their representation among Ontario university graduates in the labour force age 25-69, but the groups vary dramatically. 9.1% of Ontario university graduates in the labour force age 25-69 identify as Chinese, compared to 4.3% of lawyers; for Latinos the comparable figures are 1.3% and 0.7%; and for Filipinos 3.4% and just 0.4%. By a wide margin Filipinos have the fewest lawyers relative to population. After that, the Arab, Chinese, Latino and South Asian groups are the most under-represented groups, with about 40 to 50% as many lawyers as their percentage of employed university graduates.

Tables 2 and 3 for Year of Call and Age by Indigeneity and Racialization

*Apparent inconsistencies between Tables 2 and 3, respectively based on year of call and age, result from group differences in age at call, age-related withdrawal from the profession and age at retirement. The figures for year of call allow finely detailed study of new lawyers, but not too much emphasis should be placed on comparisons between single years.*

*Table 1 gives the number of Inuk lawyers, but due to their small number it is inappropriate to report their years of call and ages in detail. Instead, Inuk lawyers are combined with First Nations lawyers in Tables 2 and 3.*

#### Table 2

Year of Call for Ontario Lawyers by Indigeneity and Racialization, 2020

1. Just 0.3% of lawyers called before 1981 were Indigenous, rising to 2.0% for years of call 1996-2000. After steady gains between 1981 and 2000, however, the proportion of Indigenous lawyers, roughly 2.0% of all licensees called in 2020, has not increased.
2. The proportion of racialized lawyers reached its highest-ever figure of 43.2% for the 2020 year of call, up from 40.1% for lawyers called in 2019, 37.6% for 2016-18, 33.7% for 2011-2015 and 28.2% for 2006-2010. There has been remarkable, uninterrupted growth, from a base of just 1.9% racialized licensees called before 1981.

3. The representation of the Arab, Black, Chinese, South Asian groups increased substantially in recent years, reaching 2.2, 5.8, 6.7, and 17.6% in 2020, respectively. This partly reflects the changing numbers of young people potentially able to attend university and then law school.

Table 3

Age by Indigeneity and Racialization for Ontario Lawyers, 2020

1. 1.5% of lawyers under 35 are Indigenous, compared to 1.6% of lawyers 35-44 and 1.9% of lawyers 45-54.
2. Just 5.2% Ontario lawyers 65 and older are racialized, rising to 23.6% of lawyers 45-54 and 35.2% of lawyers under 35.
3. Comparing the 45-54, 55-64 and 65 and older groups, reveals major increases in the representation of *every* racialized group; starting around 1990. Under age 45 the groups diverge, with the Arab, Chinese, South Asian and West Asian groups making more progress in recent years. Black lawyers account for 3.5% of lawyers under 35, 4.7% of lawyers 35-44 and 4.8% of lawyers 45-54. This contrasts with Table 2, based on year of call, which shows a slow, but continuing increase in the representation of Black lawyers.

Table 4

Gender, Sexual Orientation, Francophone Identity, Ability to Practice in French and Disability by Age for Ontario Lawyers, 2020

*Regarding the measurement of disability, please see the note for Table 8*

1. Table 4 shows the remarkable growth in the representation of women, from 17.0% of lawyers over 65 to 52.3% of lawyers age 35-44, with a further small increase to 55.9% of lawyers under 35. Gender differences in age groups are affected by women's higher rate of withdrawal from the profession and earlier retirement.
2. The third panel of Table 4 shows male lawyers are markedly older: 15.7% are 65 and older, compared to just 3.7% of women; and 19.7% are between 55 and 64, compared to 14.4% of women. 29.1% of women lawyers are under 35 and 30.2% are 35-44, considerably more than 20.0% and 24.1% of men in these age groups.
3. 7.1% of lawyers under 35 identify as LGBT2Q, compared to 5.1% for ages 35-44, about 3.8% for ages 45-64 and 1.5% for age 65 or more. Around one-fifth of licensees do not answer this question.
4. Considerably more lawyers are able to practice in French than identify as Francophone, though the age patterns are similar. There is a dramatic increase in the proportion of lawyers identifying as Francophone, from 2.4% of lawyers over 65 to 7.3% of lawyers under 35. Over the same age range, lawyers able to counsel and represent in French increased from 4.3% to 10.2%. Counting lawyers who say they can counsel but not represent in French, the figures increase by about one-third. Assuming that lawyers who do not answer the questions about Francophone identity and practicing in French are non-Francophone and English-only practitioners, would decrease the percentages of Francophone and French practicing lawyers by about ten percent.

- 3.5% of lawyers under 35 have a disability, rising to 4.5% for ages 45-54 and 5.6% for ages 55-64. The lower proportion with a disability for ages 65 or more, 4.7%, suggests that disability leads to earlier retirement. About 15% of licensees do not answer the question.

Table 5

Status, Size of Law Firm and Region by Racialization for Ontario Lawyers, 2020

*Licensee status – especially the distinction between partners and associates, but true across the board – differs substantially for Indigenous, racialized and White lawyers. This is partly because White lawyers are older, on average.*

*The figures for location partly reflect the total population; lawyers and law firms are concentrated in Toronto, but so is the Ontario population, although to a lesser extent.*

- 27% of First Nations and Inuk lawyers and 19% of Métis are sole practitioners, compared to 17% of White lawyers; 17% of Indigenous lawyers work for government, compared to 14% of White lawyers and 3% work in legal clinics, compared to just 1% of White lawyers. Indigenous lawyers are much less likely to be law firm partners – 8% versus 16% for White lawyers – and they are somewhat less likely to be law firm associates or practice in house. Indigenous lawyers tend to work at smaller firms.
- Compared to White lawyers, racialized lawyers are somewhat more likely to be sole practitioners. Just 7% of racialized lawyers are law firm partners, compared to 16% of White lawyers. In contrast, 21% of law firm associates are racialized, compared to 20% of White associates, which portends considerable growth in the percentage of racialized partners.
- There are complex differences in the workplaces of the eight racialized groups, with Black, Filipino and Japanese lawyers most distinctive. Notably, there are low numbers of Black licensees at law firms, combined with a high level of sole practice.
- 15% of Indigenous lawyers work in the North, compared to just 2% of non-Indigenous lawyers. Then Indigenous lawyers are much more likely to practice in the Central North, Eastern Ontario and Ottawa. Racialized lawyers are concentrated in Toronto, except for the concentration of Arab lawyers in Ottawa and South Asian lawyers in (the combined area of) Durham, Halton, Peel and York. Chinese lawyers are concentrated in Toronto.

Table 6

Gender by Status, Size of Law Firm and Region for Lawyers, 2020

- Men are much more likely to be sole practitioners, 24.2% versus 14.0% of women, and law firm partners, 20.0% of men versus 8.3% of women. There are more women in all the other categories, including employment in house, at clinics, in government and in education. While women lawyers are younger than men, on average, this does not account for the dramatic gender difference in partners. In the 45-54, 55-64 and 65 and older age groups, respectively 13.0, 13.0 and 13.1% of women are partners, compared to 26.6, 29.9 and 28.7% of men. Although the comparison does not exactly account for age – so women in, say, the 45-54 age group, could on average be younger than men in that age range. The stability of this gender difference from age 45 suggests it arises from deep institutional factors.

2. The much lower representation of women among law firm partners than associates suggests that women associates are much less likely to become partners. This is consistent with other research based on the annual reports that show women are more likely than men to leave law firms for employment in government, education and in house and outside of law practice. “Retired, or not working” lawyers, account for 12.8% of all women licensees, 5.5% of men.
3. Gender differences in geographical location are small.

Table 7

Status, Size of Law Firm and Region by Francophone Identity and Ability to Practice in French for Lawyers, 2020

1. Francophone lawyers and the considerably larger number of lawyers able to practice in French are roughly twice as likely to work in government and five times more likely to work in Ottawa. Fully 48.2% of Francophone lawyers are in Ottawa and 26.9% of Francophone lawyers work in government; with similar percentages for lawyers able to counsel and represent in French. Just 12.3% of non-Francophone lawyers work in government and 9.7% are in Ottawa. Lawyers able to practice in French are also more likely to work in Eastern Ontario.
2. Their concentration in government employment means that Francophone lawyers and lawyers able to practice in French are less likely work in all the other sectors, including sole practice and law firm partners, associates and employees.

Table 8

Status, Size of Law Firm and Region by Disability for Lawyers, 2020

*The annual reports do not allow for a full understanding of disability in the profession. First, that would necessitate separating lawyers with a disability when called from those who developed it afterward. In mid-career, a licensee might require accommodation, they may be forced to change employment or retire, but this is different from the barriers to the initial employment of lawyers with a disability. A second problem is that the question does not differentiate among types of disability, or their effects on a lawyer's practice. A third concern is that disability is under-reported, perhaps out of concern it will cast doubt on a lawyer's competence. Gathering better data poses serious, though not insurmountable, concerns about privacy.*

1. Disability is significantly related to sector of employment. Most notably, 19.5% of lawyers with a disability work for government, compared to 12.8% without a disability; law firm partners account for 8.1% of lawyers with a disability, compared to 14.8% without, and for law firm associates the corresponding figures are 12.8% and 20.3%. Just over one-eighth of lawyers with a disability are “retired or not working”, versus 8.3% for lawyers who do not report a disability.
2. For lawyers at law firms, having a disability is unrelated to firm size.

Table 9

Status, Size of Law Firm and Region by Sexual Orientation for Lawyers, 2020

1. 19.6% of LGBT2Q lawyers work for government, compared to 13.0% of non-LGBT2Q lawyers; and 2.9% of LGBT2Q lawyers work in legal clinics, compared to 1.3% of non-LGBT2Q lawyers.

LGBT2Q lawyers are less slightly less likely to be sole practitioners and half as likely to be law firm partners, though this must in part reflect their younger ages, shown in Table 4.

2. LGBT2Q lawyers are concentrated in Toronto and Ottawa.

Table 10

Area of Practice by Racialization and Gender for Ontario Lawyers, 2020

*To be counted as specializing in an area in Table 10 at least 30% of a lawyer's practice must be in the area. By this criterion, most lawyers' practice is concentrated in just one of the 23 areas in the Table, although about one fifth spend at least 30% of their time in two or more areas.*

1. 28% of First Nations and 9% of Metis lawyers specialize in Aboriginal law, compared to just one percent of lawyers overall. First Nations lawyers are also more likely to specialize in criminal and family law and less likely to specialize in civil litigation, corporate law and real estate.
2. The relatively small percentages in many of the areas give rise to random variation that obscures the group differences, although a few are quite large. For example, Black lawyers are more likely to practice family and immigration law, while Chinese lawyers are under-represented in these areas and are concentrated in corporate, real estate and securities law. Generally, lawyers from communities with higher income appear to gravitate towards real estate and different areas of commercial law, while lawyers from poorer communities gravitate towards criminal, family and immigration law.
3. There are notable gender differences in specialization. Civil litigation representing plaintiffs accounts for 8% of women lawyers versus 13% of men, but there is no difference for civil litigation representing defendants; 13% of women and 7% of men specialize in family law; 10% of women and 17% of men specialize in real estate; and there is also some greater concentration of men in corporate, securities and tax law.

## Key Points about Paralegals in the 2020 Snapshots

Michael Ornstein  
November 2021

*The comparisons to the Ontario population are based on the most recently available, 2016 Canadian Census. An update using the 2021 Census will be possible in 2023.*

Table 1

Representation of Indigenous and Racialized Persons for Ontario Paralegals, 2020, compared to the Ontario Population

1. 1.9% of paralegals are Indigenous, compared to 2.9% of the 2016 Ontario population, 2.4% of labour force participants age 25-69 and 1.1% of university graduates in the labour force age 25-69.
2. 41.0% of paralegals are racialized, compared to 29.3% of the 2016 Ontario population, 28.0% of labour force participants age 25-69 and 37.6% of university graduates in the labour force age 25-69.
3. The Black, Latino and West Asian groups have considerably more paralegals than their representation in the population. South Asians are the largest non-White group, counting 11.0% of all paralegals, followed by Black paralegals, 7.9%, and Chinese paralegals, 6.4%.
4. Some groups have small numbers of paralegals. In all of Ontario there are just 9 Japanese, 69 Korean, 103 Southeast Asian and 154 Indigenous paralegals.
5. The feminization of paralegal practice is plain: 67% of all paralegals are women, including 73% of Indigenous paralegals, 66% of racialized paralegals and 71% of White paralegals.

Table 2

Age by Indigeneity and Racialization for Ontario Paralegals, 2020

1. In each of the four age groups, about 2% of paralegals identify as Indigenous. This compares to 69.8% of paralegals age 60 or more are White, compared to 58.7% for ages 50-59, 55.3% for ages 30-39 and 57.4% for the youngest, 20-29 age group.
2. There are fewer racialized paralegals 60 and older, 28.4% of the total, than in the younger groups where the figures are between 39.3 and 46.6 percent, with the youngest group age 20-29 40.6% racialized. Younger paralegals are less likely to identify as Black, Chinese, Latino and West Asian, but more likely to be South Asian.

Table 3

Age by Gender, Sexual Orientation, Francophone Identity, Ability to Practice in French and Disability for Ontario Paralegals 2020

1. 67.0% of paralegals are women. The striking and continuing feminization of paralegal practice is apparent from a comparison of age groups. From just 35.6% women among paralegals age 60 or more, their representation increases to 54.7% for ages 50-59, 65.6% for ages 40-49, 74.1% for ages 30-39 and 80.6% for paralegals under 30.

2. 4.7% of paralegals identify as LGBT2Q, with 7.0% of paralegals age 20-29 identifying as LGBT2Q, about 3.6% for ages 40-59, and 1.2% for age 60 or more.
3. 2.9% of Ontario paralegals identify as Francophone, 2.8% can counsel and represent clients in French; and another 1.2% can counsel but not represent clients in French. Both indicators are highest for older paralegals, with a decline from 3.6% for paralegals age 50-59 able to counsel and represent in French down to about 2.4% for paralegals under 40.
4. The incidence of disability is 6.6% overall, climbing steadily from 4.5% for paralegals under 30 to 7.9% of paralegals age 40-49 to 9.7% of paralegals 60 or older.

Table 4

## Status and Region by Indigeneity and Racialization for Ontario Paralegals 2020

1. Just over half of all paralegals are not practicing; 29% have other remunerative employment and 22% report they are not employed. Respectively, 43, 57 and 48% of Indigenous, racialized and White paralegals are in other employment or not employed.
2. 19% of paralegals are in sole practice and 10% are employees of a firm, with sole practice accounting for 25% of Indigenous paralegals, 20% of racialized paralegals and 17% of White paralegals.
3. The largest number of paralegals is in Toronto, 38% of the total. The combination of the Durham, Halton, Peel and York areas surrounding Toronto accounts for another 32.9%. 9 percent of paralegals work in the Central South, 7% in the Southwest, 6% in the Central North and 5% in Ottawa. Just 1% of paralegals are in the North and 2% in Eastern Ontario.
4. 48% of racialized paralegals are in Toronto and 39% are in Durham, Halton, Peel and York, leaving only 13% in the rest of the province. In contrast, 24% of Indigenous paralegals are in Toronto and 21% in Durham, Halton, Peel and York. The North accounts for 9% of Indigenous paralegals, compared to 2% of White paralegals.

Table 5

## Status by Gender by Age and Region by Gender for Ontario Paralegals, 2020

1. Male paralegals are much more likely to be sole practitioners, by a margin of 33.7% to 11.6%. The difference is almost entirely made up by “other employment”, which accounts for 34.3% of all women paralegals, compared to 18.6% of men. Sole practice increases with age, from just 2.7% of women paralegals under 30 to 18.6% for ages 40-49; and the comparable figures for men are 10.7% and 32.7%.
2. “Other employment” outside of paralegal practice, decreases from 48.6% of women paralegals under the age of 30 to 37.6% for ages 30-39 and 24.3% for ages 40-49; with comparable figures for men of 31.7, 26.7 and 18.6%. This might mean that most younger paralegals eventually practice as paralegals, but it is also possible that licensees who cannot or choose not to practice do not maintain their license.
3. Gender has little impact on the geographical distribution of paralegals.

Table 6

## Area of Practice by Racialization and by Gender for Ontario Paralegals, 2020

*To be counted as specializing in an area of practice in Table 6, at least 30% of a paralegal's practice must be in the area. By this criterion, most paralegals' practice is concentrated in just one area. Note that Table 6 reports on only 3456 of the total of 9128 licensees show in Table 1.*

1. The number of paralegals reporting their area of practice, in the rightmost column, is quite small for many of the racialized groups and this results in some random variation. For example, not too much should be made of 42% of Korean paralegals reporting "Accident Benefits" as an area of specialization, as the figure describes just 7 out of 19 individuals reporting, compared to 65 Korean paralegals in Table 1.
2. It is difficult to see meaningful differences in the areas of practice of the individual racialized groups or between racialized, Indigenous and White paralegals.
3. Similarly, the gender differences are small except that 32% of male paralegals report practicing in the area of "Provincial Offenses", compared to 18% of women, while 17% of women work in "other" areas (*not* among the eight areas listed specifically), compared to 7% of men.



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: November 25, 2021  
Re.: **Equity Legal Education Series – Fall Virtual Events**

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## Upcoming Events for Fall 2021

All Law Society events will take place virtually until further notice. Additional information about the events can be found on the Law Society's [Events webpage](#). Registration information and topics of discussion will be posted on the [Event webpage](#) as they become available.

### 1. CPD Event: Equity, Diversity, and Inclusion for Indigenous Peoples

*November 22, 2021, 12:00 PM to 2:00 PM*

Link to Event Registration: <https://store.lso.ca/equity-diversity-and-inclusion-for-indigenous-peoples>

Presenters, including EIAC Chair Dianne Corbiere, will explore why knowledge of history is critical to a better understanding of discriminatory practices and attitudes faced by Indigenous Peoples today, and the impacts on their educational and employment opportunities, health care, environmental issues, and more, including the following:

- Understand the challenges faced by Indigenous licensees
- Reducing barriers created by racism, unconscious bias, and discrimination in legal practices
- The Law Society's Indigenous Framework



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: November 25, 2021  
Re.: **Summary of Decisions and Directions from Previous Meetings**

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## A. Ongoing Work

### 1. Appointment of Paralegal Alternate to the DHC

At the February 11, 2021 meeting, the Committee was presented with a draft work plan with projected timelines for the recruitment of a paralegal alternate to the DHC. At its April 8<sup>th</sup> meeting, the Committee provided direction to begin the recruitment process for the paralegal alternate. Over the summer, the Selection Committee composed of Bencher Rob Burd, Bencher Nancy Lockart and Kate Lamb, Executive Director of People and Client Services, interviewed three shortlisted candidates. A second round of interviews with the shortlisted candidates is scheduled for the fall.

### 2. Indigenous Initiatives

At the June 10, 2021 meeting, the Committee was provided with an update on the implementation of the on the implementation of the recommendations of the Law Society's Indigenous Framework, Review Panel Report and other Indigenous Initiatives. The Law Society continues to implement the recommendations. The Committee was provided with an additional update at its October 14, 2021 meeting. The Committee will receive a further update in April 2022.

## B. Completed Work

### 1. Appointment of Equity Advisory Group membership for 2021 to 2024

At its October 14, 2021 meeting, the majority of the Committee (8 votes in favour; 1 vote against; 2 abstentions) approved the appointments of the 12 individual and 12 organizational members of the Equity Advisory Group (EAG) for the term ending in 2024. The Committee's recommendations were sent to October Convocation for information.

### 2. DHC Semi-Annual Reports for January 1, 2021 to June 30, 2021

At the September 15, 2021 meeting, the majority of the Committee approved the submission of the Report of the Activities of the DHC for the period of January 1, 2021 to June 30, 2021 to Convocation on October 1, 2021 for information.

### **3. Role of Equity Partners within EIAC**

At the September 10, 2020 meeting, Chair Dianne Corbiere formed the Equity Partners Working Group (“Working Group”) to consider the role of the equity partners (IAG, EAG, and AJEFO) within the Committee. The Committee considered the recommendations of the Working Group at the May 13, 2021 meeting and resumed discussions at the June 10, 2021 meeting.

At its June 10, 2021 meeting, the majority of the Committee (7 votes) voted to continue to have the equity partners send representatives to participate in discussions at Committee meetings, except for in camera matters and to give the equity partners an option to send up to two representatives to Committee meetings. The Committee’s recommendations were sent to June Convocation for information.

### **4. DHC Program Review**

At the February 9, 2021 meeting, the Committee was presented with three options to move forward with the recommendations of the DHC Program Review:

- Option 1. Maintain the status quo of the DHC,
- Option 2. Explore making minor changes to the DHC, by enhancing awareness, education, data collection and operational functions of the DHC
- Option 3. Explore making substantive changes to the DHC with respect to investigations and remedial action.

Bencher Fagan brought a motion to add a 4<sup>th</sup> option: Reducing or eliminating the DHC program and replacing it with an adequate substitute. The motion was seconded by Bencher Pineda. The Committee voted against this option (6 votes against; 4 votes in favour).

The Committee voted in favour of Option 2 (6 votes in favour of Option 2; 2 votes against both options; 2 abstentions).

At its May 13, 2021 meeting, the Committee considered the workplan to enhance the awareness and education function (update on website) of the DHC. The majority of the Committee approved the work plan (8 votes in favour).

### **5. DHC Semi-Annual Reports for July 1, 2020 to December 31, 2020**

At the April 8, 2021 meeting, the Committee approved the submission of the Report of the Activities of the DHC for the period of July 1, 2020 to December 31, 2020 to April Convocation for information.

### **6. Reappointment of the DHC Counsel until February 24, 2022**

At the January 28, 2021 meeting, the Committee voted to recommend to Convocation the reappoint the DHC Fay Faraday and the two Alternate DHCs, Natasha Persaud and Lai-King Hum, for one-year effective February 25, 2021 to February 24, 2022 (5 votes in favour; 4 votes against). Convocation approved the reappointments of the DHCs on February 25, 2021.

This is **Exhibit T** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

**From:** [Murray Klippenstein](#)  
**To:** [Teresa Donnelly](#); [Dianne Corbiere \(mailto@nncfirm.ca\)](mailto:mailto@nncfirm.ca); [Joseph Groia](#); [Diana Miles](#); [Cara-Marie O'Hagan](#)  
**Subject:** Bencher/Director request for information  
**Date:** Monday, November 29, 2021 3:20:52 PM

---

**CAUTION: This email originated from outside the LSO. Exercise caution before clicking links, opening attachments, or responding.**

Dear Treasurer, Benchers Corbiere and Groia, and Ms. Miles and Ms. O'Hara,

I am writing to follow up on and repeat my request for certain LSO documents, as set out in my email of Nov. 22, and to additionally request two more items, on the same basis as my Nov. 22 requests.

For convenience, I have copied the relevant parts of my earlier email:

For the reasons and in the context summarized below, I am therefore formally requesting that I promptly be provided (by the appropriate staff member) with:

1. The names of the three experts who have been retained;
2. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of this process);
3. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of this process);
4. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them; and
5. The amounts already paid to those experts, and the amounts agreed to be paid to them in the future.

Please note that this is a formal request as a director of the Law Society corporation for information to which I believe I am legally entitled under s. 302 (a), (b) and (d) and s. 304(1) of the Ontario *Corporations Act*, and under the common law rights of a corporate director (see also *Tyler v. Envacon Inc.*, 2012 ABQB 631). Further, given the circumstances, I believe that I need the above information to properly carry out my due diligence role as a director of the Law Society corporation.

Please also note that I am adding the following two items to my above requests, based on the same context summarized and partly set out in my earlier email (I also made a request for the first item below in the Nov. 25 Committee meeting):

6. A copy of the full Stratcom survey data set (that is, all the raw data from the survey of lawyers and paralegals) on which the *Challenges* report by Stratcom is based. According to the Stratcom report (p. 33, note 8), this was provided to the Law Society with the report. In addition, I would request a copy of any spreadsheets or models using that data, which were received by the Law Society; and
7. A copy of the draft Inclusion Index report provided to the Law Society by Diversio in the fall of 2019, as mentioned in the EIAC Committee memo of November 25 ("Update on the Implementation of the Challenges Report") on p. 2

I look forward to receiving this information as soon as possible.

Sincerely,

Murray Klippenstein

Toronto Regional Bencher

This is **Exhibit U** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

April 26, 2022

**VIA E-MAIL: treasurer@lso.ca**

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

**Attention: Teresa Donnelly, Treasurer**

Dear Madam:

**RE: Re: Director/Bencher Klippenstein's Request for Information**

We have been retained by Bencher Murray Klippenstein in connection with his repeated requests as a Bencher of the Law Society of Ontario ("LSO") for information, which have gone unanswered.

As you know, Mr. Klippenstein was elected a bencher in April of 2019. Pursuant to s 10 of the *Law Society Act*, RSO 1990, c L.8, the benchers are mandated to "govern the affairs of the Society." It is perhaps axiomatic, but nonetheless worth stating, that benchers are therefore the directors of the LSO. Section 283 of the *Corporations Act*, RSO 1990, c C.38 ("**Corporations Act**"), provides that the "affairs of every corporation shall be managed by a board of directors howsoever designated." In the case of the LSO, benchers are the designated directors of the corporation. Tribunals and courts across Canada have recognized this self-evident equivalency of benchers and directors.<sup>1</sup>

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<sup>1</sup> *Halsbury's Laws of Canada – Legal Profession* (2021 Reissue), R. Anand and J. Adamski explain that law societies "act through their directors generally known as benchers, who are given the statutory power to govern and administer the affairs of their law societies." See *Law Society of Upper Canada v Polisuk*, 2017 ONLSTH 171 at para 35ff, in which the Law Society Tribunal of Ontario recognized the equivalency of benchers and directors. See *Gichuru v The Law Society of British Columbia*, 2009 BCHRT 360 at para 18, in which the BC Human Rights Tribunal found that "the Board of Directors of the Law Society are called the Benchers." See also *Law Society of Saskatchewan v Peet*, [2004] LSDD No 54 at para 13, in which the LSS Discipline Committee rehearsed the platitude that the Law Society of Saskatchewan's "Board of Directors, called Benchers, consists of 17 persons." Similar language is found in other reasons of the LSS Discipline Committee, including *Law Society of Saskatchewan v Armitage*, [2009] LSDD No 147 at para 1.

As a Bencher and therefore director of the LSO, Mr. Klippenstein has both statutory and common law rights to information, to enable him to properly discharge his duties and responsibilities *qua* director. Under ss 302 and 304 of the *Corporations Act*, the LSO is required to keep proper books of account and make them available for inspection by any director during normal business hours. At common law, directors have robust and sweeping entitlement to information, as set out in the jurisprudence dating back to *Burn v London and South Wales Coal Co*, [1890] 7 TLR 118 (Eng).<sup>2</sup> A director has an unconditional right to access all records and information held by the corporation for the purpose of performing his duties, and need not provide explanation or reason for the request for inspection.<sup>3</sup> Importantly, there is a presumption that a director will “use his knowledge for the benefit of the company” in the absence of “clear proof to the contrary.”<sup>4</sup>

Regardless of any legal presumption, there can be no doubt that Mr. Klippenstein’s purpose in requesting information is to fulfill his obligations as director, for the benefit the LSO. In order to satisfy himself as to the propriety of certain decisions, policies, and expenditures, Mr. Klippenstein requires additional information and records that are being withheld from him. Accordingly, we demand that the following records be provided to Mr. Klippenstein for his use as director/bencher of the LSO. In some cases, brief explanatory notes are provided as to the significance of the record being sought, though as noted, no explanation is strictly necessary.

#### **Stratcom Report: dataset and background**

1. A copy of the full Stratcom Communication Inc. (“**Stratcom**”) survey dataset (that is, all the raw data from the survey of lawyers and paralegals), which was used to generate the report entitled *Challenges Facing Racialized Licensees: Final Report*, dated March 11, 2014, and submitted to the LSO in March of 2014 by David Kraft, John Willis, and Michael Charles on behalf of Stratcom (“**Stratcom Report**”). According to the Stratcom Report (p 33, note 8), the full survey dataset was provided to the LSO in conjunction with the report. Additionally requested is a copy of any spreadsheets or models using that data, which were received by the LSO. Mr. Klippenstein requested these materials by email dated November 29, 2021, with a follow-up request by email dated December 17, 2021. The LSO offered no response. Mr. Klippenstein requires this dataset in order to properly analyze the merits of the Stratcom Report, and to assess conclusions drawn within it or based upon it. This dataset is particularly necessary given that Stratcom performed a non-random sample survey, received a low response rate, and extrapolated the results of the non-random survey to the entire population of licensees in Ontario.

<sup>2</sup> See also *Edman v Ross*, [1922] 22 SR (NSW) 351 [New South Wales]; *Conway v Petronius Clothing*, [1978] 1 WLR 72 [England]; *Tyler v Envacon*, 2012 ABQB 631; *Leggat v Jennings*, 2013 ONSC 903, *Dilato Holdings v Learning Possibilities*, [2015] EWHC 592 (Ch) [England]; *Global Gaming Ventures*, [2017] EWHC 2381 (Ch) [England Court of Appeal].

<sup>3</sup> *Canadian Business Corporations Law*, 3<sup>rd</sup> ed (McGuiness), “Inspection of Corporate Records.”

<sup>4</sup> *Oxford Legal Group v Sibbasbridge Services*, [2008] EWCA Civ 387 [England Court of Appeal], at paras 27 and 30, *inter alia*, citing *Burn* and *Conway*, *supra*.

2. A copy of the Challenges Faced by Racialized Licensees Working Group's ("**Working Group**") "Request for Proposal" of December, 2012 regarding the consultant work eventually carried out by Stratcom.
3. A copy of the proposal submitted by Stratcom in response to the "Request for Proposal" of December, 2012.
4. A copy of the written agreement entered into between the LSO and Stratcom, circa March 15, 2013.

#### **Stratcom and the Working Group**

5. A copy of the memo provided to the Working Group Chair by Bencher Falconer prior to the May 8, 2013 Working Group meeting and considered at the meeting. This memo apparently expressed discontent with Stratcom's methodology.
6. Materials for the May 8, 2013 Working Group meeting. The materials for this contentious meeting are not posted as is normal in the bencher archives.
7. Copies of all financial records showing payments made by the LSO to Stratcom (related to the Stratcom Report) subsequent to the retainer agreement of March 15, 2013, and up to the present.
8. A copy of the draft Stratcom Report delivered to LSO staff in January of 2014.
9. Copies of minutes or meeting materials of Working Group meetings in the period between the meeting of June 27, 2013 and the meeting of October 15, 2014. The bencher record files contain no materials relating to any Working Group meeting over that one year and four-month period, contrary to usual practice. The Working Group must have met during this important and lengthy period, during which the Stratcom draft and final reports were received, and an important public consultation paper and consultation plan was prepared for presentation to Convocation on October 30, 2014.

#### **The Kay Report on Diversity in the legal profession – missing key data**

10. A copy of missing p 53 of the Kay Report. The Kay Report was a major earlier survey and study on diversity in the legal professions which was important background for Stratcom and the Working Group. The Kay Report's List of Tables refers to Table 4.19, on the important topic of "Partnership by Racial/Cultural Community, Controlling for Year of Call to the Bar", as being on p 53 of the Report, but p 53 is missing from copies provided to the Working Group, and from all available copies.

#### **Responses to Mr. Klippenstein's *A Critical Review of the Law Society's Challenges Report*, dated January 8, 2020**

11. Copies of any memos or staff notes or communications (including emails between staff and between staff and benchers), which address the detailed methodological and other critiques in Mr. Klippenstein's *A Critical Review of the Law Society's Challenges Report*, dated January 8, 2020, and distributed to senior staff and all benchers on January 8, 2020.

#### **Inclusion Index, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group Final Report* ("Working Together Report"), Recommendation 6**

12. A copy of the consulting agreement between the LSO and Diversio consultants for purposes of preparing the Inclusion Index, date unknown.

13. Copies of all records showing payments made by the LSO to Diversio (related to the Inclusion Index) after the retainer or consultation agreement (date unknown), and up to the present.
14. A copy of the draft Inclusion Index report by Diversio delivered to Law Society staff in the fall of 2019. Mr. Klippenstein requested a copy of this draft report by email dated December 17, 2021.

**Changes to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* related to the prohibition of “systemic discrimination” by any licensee (Working Together Report, Recommendation 12(2))**

15. Copies of any proceedings by the Professional Regulation Committee of the LSO, including briefing memoranda and staff communications to this Committee, related to amending the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct* so as to prohibit “systemic discrimination”, as set out in the Working Together Report, Recommendation 12(2).

**Enforcement and compliance measures (Working Together Report, Recommendation 8)**

16. Copies of all financial records documenting resources spent on the types of investigations described in a memo from the LSO “Senior Management Team” dated April 25, 2016, entitled “Operationalizing RWG Draft Recommendations” (“**RWG Memo**”), since the adoption of the Working Together Report. Also requested are copies of records indicating how many of the types of investigations described in the RWG Memo have been initiated since the adoption of the Working Together Report. By way of background, the RWG Memo addresses the “operational considerations” in implementing aspects of the draft Working Together Report. The RWG Memo states that “[i]nvestigations and prosecutions of failures by licensees to abide by articulated principles or failures by firms to implement human rights/diversity policies will likely be resource intensive, potentially involving interviews of and evidence from everyone in the office or firm, and perhaps others.” Further, the RWG Memo provides that “a reasonable estimate of the cost for the first few investigations and prosecutions” is \$350,000 of external investigator and prosecutorial time, plus 1,000 hours of internal investigative and prosecutorial time “per prosecution”.

**Addressing Complaints of Systemic Discrimination (Working Together Report, Recommendation 12(4))**

17. Any records describing “the specialized team that has been established,” and records providing “details related to [the] training plan,” as referred to in materials for the LSO Equity and Indigenous Affairs Committee meeting of June 8, 2017. These materials touch upon the process of how complaints of discrimination (under the heading of “systemic discrimination”) will be dealt with, and state (at p 97) that “Karen Manarin, Executive Director, Professional Regulation, will attend to discuss the specialized team that has been established and details related to a training plan for this item, in support of the implementation of Recommendation 12(4) of the Challenges Final Report.”

**Cultural Competency training in bar admission course materials (Working Together Report, Recommendation 10)**

18. A copy of the bar admission course materials pertaining to “cultural competency”, as referred to in Recommendation 10 of the Working Together Report, for the years 2017 and each year thereafter. Other benchers have also requested copies of those bar admission course materials, but have been denied such copies despite their right to information as directors. Any concern of confidentiality cannot be a ground to prevent benchers having access to this information, and could in any event be addressed if only the LSO would respond.

**Consultant panel (of three experts) retained by the Law Society in or about November, 2021 to review the Stratcom Report and the Inclusion Index and other matters.**

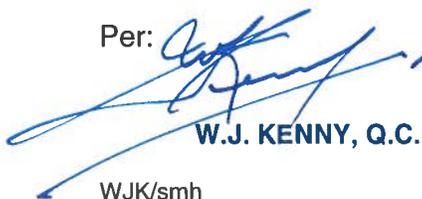
19. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of the process).
20. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of the process).
21. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them.
22. Copies of all records showing amounts already paid to those experts, and the amounts agreed to be paid to them in the future. Mr. Klippenstein requested these records (items 19-22) by email dated November 22, 2021, sent to senior staff and all benchers.
23. Copies of any materials submitted by the three consultants showing their qualifications for the review (including in relations to survey and statistical methodology).

Mr. Klippenstein requires the records described above in order to discharge his duties as director/bencher of the LSO. We ask that you provide them on or before May 20, 2022, failing which we have instructions to commence legal proceedings to compel production.

Yours truly,

**KENNY LAW**

Per:



**W.J. KENNY, Q.C.**

WJK/smh

cc: Diana Miles (dmiles@lso.ca)  
Chief Executive Officer  
Law Society of Ontario

Murray Klippenstein (murray.klippenstein@klippensteins.ca)  
Bencher  
Law Society of Ontario



**KENNY LAW**  
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Our File: 7009.001  
Your File:

May 20, 2022

**VIA E-MAIL: [treasurer@lso.ca](mailto:treasurer@lso.ca)**

Law Society of Ontario  
Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

**Attention: Teresa Donnelly, Treasurer**

Dear Madam:

**RE: Re: Director/Bencher Klippenstein's Request for Information**

We have not yet received your response to our correspondence of April 26, 2022. Frankly, we find it rather impertinent that a serious and formal legal request to the LSO by one of its Benchers would merit no response whatsoever from the LSO.

In the meantime, Bencher Klippenstein has apprised us of the two meetings of the Equity and Indigenous Affairs Committee (“**EIAC**”) that took place on May 3 and 12. We are advised that at the May 3 meeting three consultants retained by the LSO (Michael Ornstein, Sujitha Ratnasingham, and Scot Wortley), referred to by LSO staff as a “**Peer Review Panel**,” presented their assessments of the Stratcom Report and the draft Inclusion Index.

We are advised that, among other criticisms, the three consultants confirmed that there was a serious lack of transparency in the Stratcom Report. Some of the areas in which Stratcom failed to be forthright include the survey response rate, reporting in general, and analysis of the dataset. With respect to the Inclusion Index, the methodology of the consultant Diversio was similarly characterized as non-transparent in a number of respects.

Nevertheless, notwithstanding the many criticisms regarding lack of transparency, and other substantive criticisms, that the so-called Peer Review Panel leveled against the Stratcom Report and the Inclusion Index, these were described as “water under the bridge” by one consultant, and the three consultants opined that many of the policy measures based on the Stratcom Report should be continued with by the LSO. It therefore appears that Bencher

Klippenstein's longstanding and previously expressed concerns about the Stratcom Report and the Inclusion Index have been, on the one hand, validated, and on the other hand, brushed aside.

All of the foregoing strongly supports Bencher Klippenstein being provided on an urgent basis the information he has requested. If on the one hand the Peer Review Panel regards Stratcom's process and analysis as lacking transparency and integrity, but on the other hand considers such deficiencies to be merely "water under the bridge", then Mr. Klippenstein is all-the-more justified in having continuing serious concerns about these reports and the whole process, and as a director of the LSO must be furnished with all pertinent records in order to perform the detailed independent due diligence analysis necessary to discharge his duties to the LSO.

It should not be surprising that a fundamental breakdown of trust occurs in this situation that is proportional to the lack of transparency in the process that Stratcom and the LSO have undertaken with respect to the Stratcom Report, the Inclusion Index, and the Working Together Report. It takes some effort to rebuild trust. The most obvious avenue to building trust in these circumstances is to open to full scrutiny the research and analysis that have been conducted. If there is nothing to hide, full disclosure could dispel the concerns of a conscientious director, not to mention the legal profession(s) at large. On the other hand, if there is something that ought to be remedied, transparency and the shedding of light would offer the possibility of resolution of any latent issues and the reestablishment of trust.

As a result of these developments, Bencher Klippenstein requires, in addition to the records that we requested in our correspondence dated April 26, 2022, the following record:

The full dataset of answers (redacted as necessary to protect the confidentiality of the respondents) to the demographic and "inclusion" questions distributed to all lawyer licensees as part of the 2018 LSO Annual Filing required of all lawyer licensees. In that Annual Filing, answering the demographic and inclusion questions was mandatory for all individual licensees. This disclosure is required for adequate transparency, due to the possibility of misuse of these numbers, in the past and in the future, in terms of response rate and sample size, as has already occurred in a preliminary Inclusion Index analysis.

Be advised that we have instructions to issue a Statement of Claim without delay in the event that the LSO does not reply by May 27, providing the records that Bencher Klippenstein has requested.

Yours truly,

**KENNY LAW**

Per:



**W.J. KENNY, Q.C.**

WJK/smh

cc: Diana Miles (dmiles@lso.ca)  
Chief Executive Officer  
LSO of Ontario

Murray Klippenstein (murray.klippenstein@klippensteins.ca)  
Bencher  
LSO of Ontario

This is **Exhibit V** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Alexandra Heine  
(LSO #83514R)



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## Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: April 29, 2022  
Re.: **Document List: Background Materials for Challenges Report**

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Below is a list of materials that were provided to the peer reviewers to support their evaluations of the Challenges Report.

- Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, December 2016 (“Challenges Report”)
- Strategic Communications Report, March 2014
- Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October 2014
- Murray Klippenstein: Critical Review of the Challenges Report, January 2020

This is **Exhibit W** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Agenda and Materials  
Tuesday, May 3, 2022  
Zoom Video Conference  
1:00 pm – 3:00 pm**

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**Equity and Indigenous Affairs Committee**

**Join Zoom Videoconference:**  
<https://us02web.zoom.us/j/82699327567?pwd=aVhGU204SmZlcTYvWDBlV1o1S0M1UT09>  
**Join Zoom teleconference: [1 855 703 8985](https://us02web.zoom.us/j/82699327567?pwd=aVhGU204SmZlcTYvWDBlV1o1S0M1UT09)**  
**Meeting ID: 826 9932 7567**  
**Password: 065840**

Committee Members:

- Dianne Corbiere (Chair)**
- Etienne Esquega (Vice-Chair)**
- Atrisha Lewis (Vice-Chair)**
- Catherine Banning
- Robert Burd
- John Fagan
- Julian Falconer
- Murray Klippenstein
- Nancy Lockhart
- Jorge Pineda
- Julia Shin Doi
- Megan Shortreed
- Alexander Wilkes

**EQUITY AND INDIGENOUS AFFAIRS COMMITTEE  
MEETING AGENDA  
Tuesday May 3, 2022  
1:00 pm – 3:00 pm**

**Opening Ceremony and Indigenous Teaching**

- 1. Presentation from Peer Reviewers** (*For Discussion*) (*Michael Ornstein, Sujitha Ratnasingham, Scot Wortley*)
  - Memo Findings of the Peer Review.....**TAB 1**
  - Update on the Challenges Report Implementation (November 2021 memo).....**TAB 1.1**
  
- 2. Background Materials for the Challenges Report** (*For Information*)
  - Document List.....**TAB 2**
  - Challenges Report, December 2016 .....**TAB 2.1**
  - [Stratcom Report, March 2014](#) .....**TAB 2.2**
  - Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October 2014.....**TAB 2.3**
  - Murray Klippenstein: Critical Review of the Challenges Report, January 2020.....**TAB 2.4**
  
- 3. Background Materials for the Inclusion Index** (*For Information*)
  - Document List.....**TAB 3**
  - Memo Inclusion Index Background Memo, December 7, 2021.....**TAB 3.1**
  - Inclusion Index .....**TAB 3.2**
  - Archetype Legend.....**TAB 3.3**
  - Diversio’s Guide to the Inclusion Index .....**TAB 3.4**
  - Diversio Legal Workplace Individual Response Rates.....**TAB 3.5**
  - Diversio’s Sample Dashboard.....**TAB 3.6**
  - Diversio’s Plain Language Guide to Inclusion Index.....**TAB 3.7**
  - 2018 Lawyer Annual Report (Section 2 EDI Questions).....**TAB 3.8**
  
- 4. Peer Review Evaluation Guide**.....**TAB 4**



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Cara-Marie O'Hagan, Executive Director, Policy  
Date: April 29, 2022  
Re.: **For Discussion: Peer Review Findings**

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## Purpose

1. To update the Committee on the preliminary findings of the peer review of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report* (Challenges Report) and the Inclusion Index;
2. To consider whether the Inclusion Index should be released at this time;
3. To discuss next steps.

## Background

The Law Society established a facilitated peer review to evaluate the Challenges Report and its recommendations, including the Inclusion Index. The peer review was conducted by a panel of 3 experts between December 2021 and April 2022. The scope of the peer review was set out in a report to EIAC in November 2021 (Tab 1.1).

The three peer reviewers will present their findings to EIAC on May 3<sup>rd</sup> in a verbal presentation. While it was anticipated that the full written review would be available in advance of May 3<sup>rd</sup>, that is not available at this time. Due to personal circumstances, one of the reviewers was not able to complete his portion of the work. This matter is being brought to EIAC to commence the discussion of the Inclusion Index.

## Recommendation

It is recommended that the current version of the Inclusion Index (Found at Tab 3.2 of the materials) not be released. This recommendation is supported by the Treasurer, Chair Dianne Corbiere and the CEO.

## Discussion

The peer reviewers shared their preliminary findings with policy staff in March 2022. Policy staff has had the opportunity to discuss the findings with the CEO Diana Miles, Chair Dianne Corbiere and the Treasurer. For the reasons that will be presented by the peer reviewers at the May 3<sup>rd</sup> EIAC meeting, it appears that the Inclusion Index will not further the Law Society's equity goals and should not be released in its current iteration.

EIAC will need to consider this recommendation and start to consider next steps for the Law Society's equity agenda.



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne  
Date: November 17, 2021  
Re.: **Challenges Report Implementation Update**

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## Purpose

This memo provides the Equity and Indigenous Affairs Committee (“Committee”) with:

1. an update on the implementation of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report* (“Challenges Report”); and
2. an outline of the peer review undertaken to evaluate the implementation of the Challenges Report, with decisions on the use of the results of the Inclusion Index to be made following that review.

## Timeline

The following outlines the significant steps in the development and implementation of the Challenges Report:

2012: Challenges Working Group begins an engagement process to gather information about barriers faced by racialized licensees. The firm Strategic Communications Inc. (Stratcom) manages this data gathering process employing a multi-model research approach and presents its final report.

2014: The Working Group reviews the data from the engagement process and drafts a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*. Convocation approves this consultation paper.

2014-2015: The Working Group consults broadly with licensees, law students, articling students and the public. The Law Firms Diversity and Inclusion Network and legal organizations are also consulted.

2015-2016: The Working Group develops its final report with 13 recommendations.

2016: Convocation approves the final report and recommendations in December.

2017 forward: Implementation of recommendations.

## Status of the Challenges Report

The Challenges Report outlines five strategies and 13 recommendations to address systemic barriers faced by racialized licensees. Most of the recommendations have been

implemented and others are in process. The recommendations and the status of each can be found at TAB 5.1.

To date, the Law Society has not evaluated the project, its recommendations or its implementation to assess the effectiveness in achieving the Law Society's goal to reduce barriers faced by racialized and Indigenous licensees, thereby helping to ensure healthy and successful legal professions and advancing the public interest. Project reviews are generally seen as standard best practice when an institution undertakes a major initiative. Moreover, before moving forward with outstanding recommendations developed in 2016, the Law Society should obtain expert advice on the relevance of those recommendations in the 2021 environment.

### **The Inclusion Index**

One of the outstanding recommendations of the Challenges Report is Recommendation 6 which provides that:

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).<sup>1</sup>

The data underlying the Index comes from the 2018 Annual Report and was collected in the first quarter of 2019. In April 2019, the Law Society engaged the firm Diversio to develop the Index. Diversio delivered a draft of the Index in the fall of 2019. By that time, Law Society counsel who were originally involved in the development of the Index had left the organization. New Policy counsel engaged with Diversio to further develop the Index and understand the methodology underlying the results before planning its release.

In March 2020, the Law Society shifted its focus to addressing the challenges and disruptions caused by the pandemic. EIAC resumed its regular work in late 2020. Before a decision is made on how to move forward with the information collected for the Index, a number of questions should be considered:

1. Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
2. Given the three-year period between the collection of the data and the current date, is it scientifically sound to release the data?
3. The data on which the Index is based is now three years old. Is the Inclusion Index based on that data relevant today?

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<sup>1</sup> Recommendations 3, 4, 5 and 6 of the Challenges Report speak to the creation of an Inclusion Index for legal workplaces with 25 or more licensees. The Index was to include data from three sources in the 2018 Members' Annual Report: the legal workplace mandatory self-assessment responses; individual licensee voluntary responses to self-identification; and inclusion questions. The Index was to be published every four years.

4. In anticipation of the release of the Inclusion Index, some workplaces proactively adopted strategies to promote equity, diversity and inclusion within their workplaces. The progress of these workplaces is not reflected in the current Index. Would the release of the Index at this point support the Law Society's goal of reducing barriers faced by racialized and Indigenous licensees?
5. If the answer to any of the above questions is "no", would the Law Society's reputation be negatively impacted by the release of the Index?

### **Peer Review of Challenges Report**

Given this context, a peer review of the Challenges Report has been undertaken. A decision on how to move forward with the Inclusion Index data will be made once the review is completed. The review will explore whether the implementation of the Challenges Report provides effective requirements, incentives and information that assist in reducing barriers faced by racialized and Indigenous licensees. The review will assess:

- a. the impact of fully implemented recommendations of the Challenges Report (e.g. Recommendation 9, regarding mandatory EDI CPD and related products);
- b. the impediments to implementing certain recommendations (e.g. Recommendation 12, regarding addressing systemic discrimination); and
- c. the reliability of the data collection and analysis used in 2019;
- d. the extent to which the above data and analysis is relevant for 2021.

The review will also provide recommendations for the further enhancement of EDI within the legal community.

### **Structure of the Peer Review**

The peer review is being conducted by a panel of experts and will be completed in April 2022. The three experts who have been retained possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to compile a list of experts who can provide a neutral and objective commentary. A summary of the review will be presented to the Committee and Convocation in May or June 2022.

An evaluation rubric will be provided to the reviewers. Some of the questions to be addressed through this review include:

#### *With respect to the Challenges Report*

- Was the data collection process valid?
- Were response rates sufficient?
- Were the questions posed as part of the membership survey appropriate?
- Is the process of using key informants effective/reliable?

#### *With respect to the Inclusion Index*

- Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
- Was the scope appropriate?

Equity and Indigenous Affairs Committee November 25, 2021 - Update on Implementation of the Challenges Report

- Would the Index, as produced, achieve the desired result vis-à-vis legal workplaces?
- Is the data still reliable?
- Should the next version include any changes?

*With respect to future equity work at the Law Society*

- Is there a more effective way to collect equity data than the Law Society's current approach?
- Is the format of the collected data appropriate? (for example, are the Law Society's demographic categories generally accepted?)
- Are there other probative questions that can assist in the equity agenda? (i.e. income related to demographics)

The Committee will receive the Inclusion Index and the supporting materials for the peer review when the peer review is completed.

**Challenges Report Recommendations: Status Update as of November 2021**

Recommendation	Status/Date Completed
<p><b>Recommendation 1 – Reinforcing Professional Obligations</b> 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.</p>	<p>Amended Rule 6.3 in 2018 to address results of articling survey</p> <p>In 2019, Convocation approved a motion requiring licensees to acknowledge in their Annual Report Filing, in accordance with the professional conduct rules, their special responsibility to respect the requirements of human rights laws in Ontario and to honour the obligation not to discriminate.</p> <p>The Law Society is actively participating in the Federation of Law Societies’ TRC Calls to Action Advisory Committee. One of the Committee’s priorities is implementing recommendations related to cultural competency training.</p>
<p><b>Recommendation 2 – Diversity and Inclusion Project</b> 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.</p>	<p>The Law Society maintains an EDI resources webpage, that includes model workplace policies. The model policies were completely updated and shared with the equity partners before being posted to the Law Society website.</p> <p>The Law Society will enhance resources available to assist and support women in law. This will be done in collaboration with the Treasurer’s Women in Law Advisory Group that was appointed in 2021.</p> <p>In terms of other resources, the Law Society continues to host an annual Equity Legal Series in partnership with our equity stakeholder groups. These events are extremely well-attended, and attendance has been steadily increasing since early 2020.</p> <p>The Law Society is reviewing the decision and approval process for new Equity Legal Series offerings to ensure they are diverse, topical and offer useful EDI content for licensees and students.</p>
<p><b>Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices</b> The Law Society will:</p>	<p>Completed</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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;</p> <p>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;</p> <p>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</p> <p>4) encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.</p>	
<p><b>Recommendation 4 – Measuring Progress through Quantitative Analysis</b> 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.</p>	<p>Self-identification data is part of the Inclusion Index package. Diversio offers a dashboard to legal workplaces based on their individual inclusion scores. Discussions are under way to determine next steps regarding the dashboards and their efficacy as they are based on 2018 data.</p> <p>Outside of collecting data on legal workplaces, the Law Society develops annual demographic “snapshots” of the legal professions that indicate the breakdown of the professions in terms of race, language, Indigeneity, gender and sexual orientation.</p>
<p><b>Recommendation 5 – Measuring Progress through Qualitative Analysis</b> The Law Society will measure progress by:</p> <p>1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and</p>	<p>1) Completed</p> <p>2) Forms part of the Inclusion Index; information has been collected but not distributed. Further steps are on hold pending a review of the Inclusion Index.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

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	
<b>Recommendation 6 – Inclusion Index</b> 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).	Inclusion Index has been compiled but not published or distributed. See attached memorandum to EIAC outlining proposed review of Challenges Report and Index.
<b>Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey</b> 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 <a href="http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf">http://www.stratcom.ca/wp-content/uploads/manual/RacializedLicensees_Full-Report.pdf</a> ). 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.	Survey completed in 2017; recommendation is to complete a peer review of the Challenges Report and Inclusion Index before launching further surveys.
<b>Recommendation 8 – Progressive Compliance Measures</b> 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.	SME has considered this matter and concluded that progressive compliance measures are not appropriate at this time. As part of the review of the Challenges Report, the Law Society should receive information regarding the efficacy of progressive compliance measures in furthering the goals of EDI.
<b>Recommendation 9 – Continuing Professional Development (CPD)</b> 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	All elements are completed.

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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 4 recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.</p>	
<p><b>Recommendation 10 – The Licensing Process</b> 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.</p>	<p>Education on these competencies has been developed for EDI in general; Indigenous competencies are scheduled to be included in the June 2022 licensing exam.</p> <p>Specific changes include:</p> <ul style="list-style-type: none"> <li>• a new chapter on EDI in paralegal and lawyer licensing examination study materials (introduced in the 2019-20 licensing year);</li> <li>• New EDI competencies;</li> <li>• Licensing examination questions to assess EDI competence (these were introduced following the introduction of the new materials);</li> <li>• New paralegal education competencies related to EDI developed (taught by institutions commencing September 2019);</li> <li>• New chapter on Indigenous/TRC-related matters in paralegal and lawyer licensing examination study materials (being introduced in the 2022-23 licensing year);</li> <li>• New Indigenous/TRC-related competencies developed (these will be posted for candidates after completion of the winter 2022 licensing examinations);</li> <li>• Licensing examination questions to assess Indigenous/TRC-related matter competence (to be introduced following the introduction of the new materials); and</li> <li>• New paralegal education competencies related to Indigenous/TRC matters developed (to be taught by institutions commencing September 2022).</li> </ul>
<p><b>Recommendation 11 – Building Communities of Support</b> The Law Society, in collaboration with legal associations where</p>	<p>Resources exist through the Coach and Advisor Network as well as the Equity Legal Education Series. The evaluation of the Challenges Report</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.</p>	<p>may provide advice on the implementation strategy for this recommendation.</p> <p>The Law Society Treasurer conducts regular outreach to law schools and paralegal colleges and has presented on EDI and professionalism to students.</p> <p>The Law Society Treasurer meets regularly with legal associations and equity-seeking stakeholder groups and collects feedback for consideration by the Law Society.</p> <p>Where opportunities arise, the Law Society co-hosts and provides in-kind support to equity-seeking legal organizations mentoring and networking events (i.e. Canadian Association of Black Lawyers Conference).</p> <p>The Law Society is working with the Association of French Speaking Jurists of Ontario to strengthen the organizations' relationship and to improve French language offerings from the Law Society.</p> <p>The Law Society Treasurer has appointed a Women in Law Advisory Group to provide advice to the organization on implementing strategies to support women in the legal professions.</p>
<p><b>Recommendation 12 – Addressing Complaints of Systemic Discrimination</b> The Law Society, in light of the findings of this project and emerging issues in the professions, will:</p> <p>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;</p> <p>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;</p>	<p>1) Review is completed and EIAC's direction to enhance awareness and education regarding DHC is being implemented. This includes a "plain-language" advertisement of the DHC services and processes which has been widely circulated. The Law Society DHC website will be renewed and enhanced. The DHC is planning broader outreach plans in consultation with Law Society staff.</p> <p>EIAC decided not to address systemic discrimination during discussions regarding the DHC review.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>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.</p>	<p>2) This recommendation is under consideration and will be assessed as part of the Challenges Report review.</p> <p>3) – 4) The Law Society has reconstituted the First Nations, Metis and Indigenous Team to support Indigenous complainants and advise staff on Indigenous issues.</p> <p>Additional cultural awareness training and supports are being provided to Law Society staff to educate on systemic discrimination.</p> <p>The Law Society has retained an Indigenous counsel and investigator for matters involving Indigenous complainants and licensees.</p>
<p><b>Recommendation 13 – Leading by Example</b> 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.</p> <p>2) The Law Society will: a) conduct an internal diversity assessment of the bench composition and publicize the results; provide</p>	<p>1 a) Completed in 2017 1 b) Completed, latest survey done 2021 1 c) Complete, see above 1 d) Complete (LSO completes the questions described in Recommendation 3(3); diversity questions also included in Internal LSO People Survey. 1 e &amp; f) In progress. Work is ongoing at both the SME and the volunteer Diversity &amp; Inclusion Council (reconstituted in 2020)</p> <p>Working group has been struck to advise on Indigenous cultural programming for both staff and benchers.</p> <p>Recent staff education programs at the Law Society have included a seminar on the legacy of residential schools in conjunction with the National Day for Truth and Reconciliation and a seminar with the Dean of the Faculty of Social Work at Wilfred Laurier University regarding anti-racism.</p>

**Challenges Report Recommendations: Status Update as of November 2021**

<p>equality and inclusion education programs for Convocation on a regular basis</p>	<p>2) Assessment conducted in 2017 and the results were presented to EIAC later that year. Survey results included recommendations regarding maintaining and/or increasing diversity amongst the benchers.</p> <p>Actions that have been taken in support of bencher diversity include an increased representation of racialized and Indigenous benchers in Treasurer appointments, committee executives, external appointments, and award nominations and honours.</p> <p>Specific EDI programming was provided for benchers in 2015-2019.</p> <p>An EDI component is included in bencher orientation materials.</p> <p>The Law Society plans to develop a catalogue of Indigenous cultural competency programming for benchers and staff.</p> <p>Benchers and staff are encouraged to participate in the Equity Legal Education events and can access LSO’s 3-hour EDI program.</p>
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*Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at ICES. In her role, she focuses on building partnerships with key stakeholders, with a focus on the integration of intersectoral data, leading to innovative research. In addition, she has significant experience working with a variety of stakeholders including policy makers at various levels of government and Indigenous organizations. At ICES, Sujitha co-chairs the Diversity Committee, is a member of the Race and Ethnicity Data Working Group and has been a guest lecturer at the University of Toronto. Prior to her role at ICES, Sujitha has worked at Public Health Ontario, Toronto Public Health and the World Health Organization. Sujitha also has a Master's degree in Epidemiology from the University of Toronto.*



*Michael Ornstein is Associate Professor of Sociology at York University. He was Director of the University's Institute for Social Research for a decade. The Institute houses the largest academic survey organization in Canada, and provides statistical consulting, data analysis and courses on methods and statistics.*

*Dr. Ornstein has been active in the development, design and execution of numerous large-scale research projects including the first Canadian study on knowledge, behaviour, and attitudes about AIDS. His recent research addresses the decline of the middle class, precarious employment and the transformation of Toronto's gay village.*

*Ornstein's *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, co-authored with H. Michael Stevenson, was the 2001 winner of the Harold Adams Innis Prize for the best SSFC supported book in the Social Sciences and English. He is author of *A Companion to Survey Research*, from Sage and numerous academic articles.*



*Dr. Wortley has been a Professor at the Centre of Criminology and Sociolegal Studies, University of Toronto since 1996. His academic career began in 1993 as a researcher with the Commission on Systemic Racism in the Ontario Criminal Justice System. Over the past twenty-five years Professor Wortley has conducted numerous studies on various issues including youth violence and victimization, street gangs, drug trafficking and substance use, crime and violence within the Caribbean, public perceptions of the police and criminal courts, police in schools, police use of force, and racial bias within the Canadian criminal justice system. In 2007, he was appointed by Metropolis to the position of National Priority Leader for research on Immigration, Justice, Policing and Security. Professor Wortley has also served as Research Director for several government commissions including the Ontario Government's Roots of Youth Violence Inquiry. In 2017 Professor Wortley worked with Ontario's Anti-Racism Directorate to develop standards and guidelines for the collection and dissemination of race-based data within the public sector. Professor Wortley is currently leading three major investigations into possible racial bias within policing for the Nova Scotia, Ontario, and British Columbia Human Rights Commissions. He is also leading an inquiry – with Dr. Akwasi Owusu-Bempah – into bias within the Toronto Transit Commissions enforcement unit. Professor Wortley has published in a wide variety of academic journals and edited volumes and has produced numerous report for all levels of government.*



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: April 29, 2022  
Re.: **Document List: Background Materials for Challenges Report**

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Below is a list of materials that were provided to the peer reviewers to support their evaluations of the Challenges Report.

- Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, December 2016 (“Challenges Report”)
- Strategic Communications Report, March 2014
- Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October 2014
- Murray Klippenstein: Critical Review of the Challenges Report, January 2020



**Tab 3.1**

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

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**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**

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**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](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](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.”<sup>1</sup>

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.

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<sup>1</sup> “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."<sup>2</sup>

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.

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<sup>2</sup> "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.”<sup>3</sup>*

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 licensees<sup>4</sup> 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

<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup>

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.<sup>7</sup>

<sup>5</sup> Referred to as “the engagement process”.

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

<sup>7</sup> 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*<sup>8</sup> and the *Paralegal Rules of Conduct*<sup>9</sup> 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;<sup>10</sup>
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*

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

<sup>9</sup> *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](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:

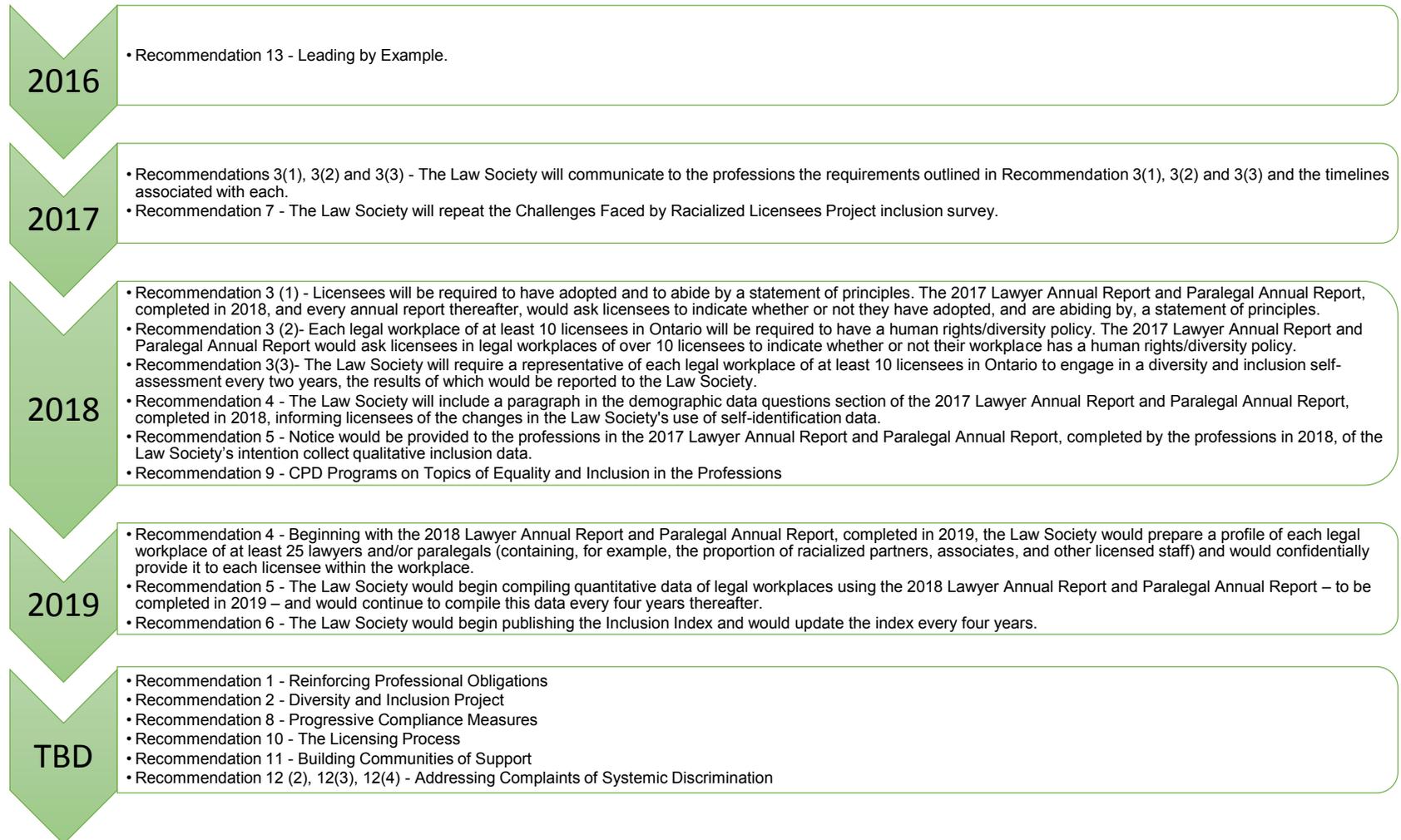
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 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 King<sup>11</sup>

### 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 racialized<sup>12</sup> lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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:

<sup>11</sup> Daughter of Martin Luther King

<sup>12</sup> 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>.

<sup>13</sup> 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>

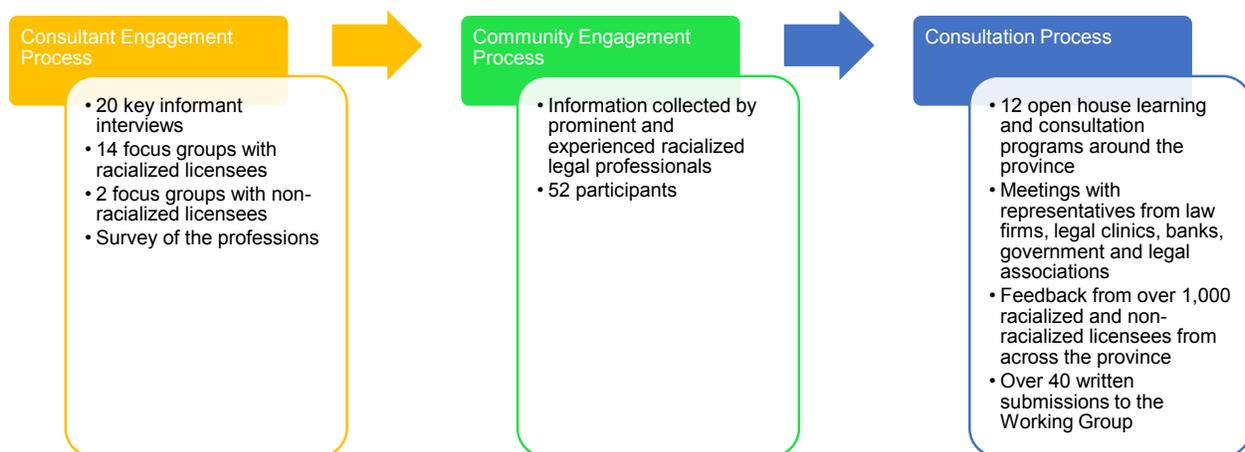
<sup>14</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

<sup>15</sup> 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;<sup>16</sup>
  - 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.<sup>17</sup>



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:

<sup>16</sup> 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.

<sup>17</sup> 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.”<sup>18</sup>*

— 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.”<sup>19</sup> 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.”<sup>20</sup>
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.”<sup>21</sup> 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 #OscarsSoWhite<sup>22</sup> — 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

<sup>18</sup>*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>

<sup>19</sup> “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>

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

<sup>21</sup> “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>

<sup>22</sup> 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.””<sup>23</sup>

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 prisons<sup>24</sup> 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”<sup>25</sup> 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”,<sup>26</sup> 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*.”<sup>27</sup>
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*”<sup>28</sup>

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

<sup>23</sup> “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>

<sup>24</sup> 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>

<sup>25</sup> Please see [https://twitter.com/blm\\_to](https://twitter.com/blm_to)

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

<sup>27</sup> “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](http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling)

<sup>28</sup> 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."<sup>29</sup> 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*<sup>30</sup> and *By-Laws*<sup>31</sup> 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.

<sup>29</sup> "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](http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)

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

<sup>31</sup> 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;<sup>32</sup>
  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;<sup>33</sup> 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.

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<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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

<sup>34</sup> “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/>

<sup>35</sup>, “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](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf)

departments in Québec.<sup>36</sup> 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.<sup>37</sup>

### **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.

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

<sup>37</sup> *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.<sup>38</sup>

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*].”<sup>39</sup>
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.”<sup>40</sup>
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.<sup>41</sup>
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

<sup>38</sup> *Rules of Professional Conduct*, *supra* note 6.

<sup>39</sup> *Paralegal Rules of Conduct*, *supra* note 7.

<sup>40</sup> Participating legal association.

<sup>41</sup> “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.<sup>42</sup> 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*.<sup>43</sup> 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.<sup>44</sup>
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.<sup>45</sup>
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."<sup>46</sup> 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).

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<sup>42</sup> "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>

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

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

<sup>45</sup> 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315).

<sup>46</sup> "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”<sup>47</sup>, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”<sup>48</sup>
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.”<sup>49</sup>

### **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**

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

<sup>48</sup> *Ibid.*

<sup>49</sup> 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.”<sup>50</sup>*

— 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.<sup>51</sup>
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;<sup>52</sup>
  - 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.

<sup>50</sup> “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>

<sup>51</sup> *Supra* note 11 & note 13

<sup>52</sup> “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.”<sup>53</sup>
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.”<sup>54</sup>
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,<sup>55</sup> 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.<sup>56</sup>
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

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<sup>53</sup> *Supra* note 47.

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

<sup>55</sup> “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 commentators<sup>57</sup> 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.).”<sup>58</sup>

<sup>57</sup> 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)

<sup>58</sup> *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.”<sup>59</sup>
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”.<sup>60</sup> 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.<sup>61</sup>
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”.<sup>62</sup>
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.<sup>63</sup>
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.<sup>64</sup>

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<sup>59</sup> *Ibid.*

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

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

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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-

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<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.<sup>65</sup>
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.”<sup>66</sup> 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.

<sup>65</sup> Policy and Guidelines on Racism, *supra* note 39 at 50.

<sup>66</sup> 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](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.”<sup>67</sup>
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 Report<sup>68</sup> 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

<sup>67</sup> Law firm representative.

<sup>68</sup> “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/convov2013\\_PRC.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2013/convov2013_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."<sup>69</sup>

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.<sup>70</sup> 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.

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<sup>69</sup>"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](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf) at para 25.

<sup>70</sup> *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.<sup>71</sup>
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.<sup>72</sup> For example, Menteer, a free, open source online platform,<sup>73</sup> 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

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

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

<sup>73</sup> 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.<sup>74</sup>

#### *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.<sup>75</sup> 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

<sup>74</sup> "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>

<sup>75</sup> "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*<sup>76</sup>, 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

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<sup>76</sup> "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.”<sup>77</sup>
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.<sup>78</sup> 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.”<sup>79</sup>
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.<sup>80</sup> In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.<sup>81</sup>
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,

<sup>77</sup> 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>

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

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

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

<sup>81</sup> *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.<sup>82</sup>

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,

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<sup>82</sup> 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.<sup>83</sup> 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

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<sup>83</sup> 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.”<sup>84</sup>

### 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 sponsorship<sup>85</sup> 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.

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

<sup>85</sup> 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*<sup>86</sup> and the *Paralegal Rules of Conduct*<sup>87</sup> 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

<sup>86</sup> *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

<sup>87</sup> *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”<sup>88</sup>, 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

<sup>88</sup> 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.<sup>89</sup> 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.

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<sup>89</sup> 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](http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf)



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: April 29, 2022  
Re.: **Stratcom Report**

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This document is available at: [Stratcom Report, March 2014](#).



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## Memorandum

**To:** Equity and Indigenous Affairs Committee  
**From:** Ada Maxwell-Alleyne, Strategic Policy Counsel  
**Date:** April 29, 2022  
**Re.:** **Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees, October 2014**

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This document is available on archived Diligent materials under Equity and Indigenous Affairs Committee, October 15, 2014.

## 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.<sup>1</sup> 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

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<sup>1</sup> The *Working Together for Change* Report, as presented to the Benchers on December 2, 2016, is found at <https://lawsocietyontario.azureedge.net/media/lso/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).<sup>2</sup>

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,

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<sup>2</sup> 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](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 sources<sup>3</sup>, 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.<sup>4</sup>

<sup>3</sup> On pages 23, 24, and 25 of the Report, and the Law Society’s numbers on its website.

<sup>4</sup> 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 survey 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.

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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.<sup>5</sup>

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

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<sup>5</sup> 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.<sup>6</sup> 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]<sup>7</sup>

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.<sup>8</sup> 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

<sup>6</sup> 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.

<sup>7</sup> *Social Statistics in Action: A Canadian Introduction*, by Andrea M. Noack, Oxford University Press, 2018, p. 137.

<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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,<sup>11</sup> 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%).

<sup>9</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> 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](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)<sup>12</sup>

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.<sup>13</sup>

### **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.<sup>14</sup> 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,<sup>15</sup> only 741 of the questionnaires completed by these lawyers and paralegals

<sup>12</sup> 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.

<sup>13</sup> Readers of the *Challenges Report* would not even become aware of the issues raised by the Report’s conflict with a previous major study.

<sup>14</sup> 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.

<sup>15</sup> 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).<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

**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).<sup>19</sup>

<sup>16</sup> 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].

<sup>17</sup> 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).

<sup>18</sup> 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.

<sup>19</sup> 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.**<sup>20</sup>

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.<sup>21</sup>

At no point does the *Challenges* Report even discuss this possibility, which is clearly raised and tentatively supported by the survey results.<sup>22</sup> 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

<sup>20</sup> These are the numbers before the Report's "adjustments". The "adjustments" would not affect the point.

<sup>21</sup> 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).

<sup>22</sup> 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).<sup>23</sup>

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.<sup>24</sup> The

<sup>23</sup> 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.

<sup>24</sup> 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.<sup>25</sup>

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).<sup>26</sup> 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-

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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.

<sup>25</sup> 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.

<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup>

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%).<sup>29</sup>

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

<sup>27</sup> 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.

<sup>28</sup> 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”.

<sup>29</sup> 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).<sup>30</sup>

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

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<sup>30</sup> 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.<sup>31</sup>

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<sup>31</sup> This writer welcomes comments on this *Review*, which may be sent to [murray.klippenstein@klippensteins.ca](mailto:murray.klippenstein@klippensteins.ca).



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: April 29, 2022  
Re.: **Document List: Background Materials for Inclusion Index**

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Below is a list of materials that were provided to the peer reviewers to support their evaluations of the Inclusion Index. **These materials are confidential and cannot be shared outside of EIAC.**

- Inclusion Index Background Memo
- Inclusion Index
- Archetype Legend
- Diversio's Guide to the Inclusion Index
- Diversio Legal Workplace Individual Response Rates
- Sample Diversio Dashboard
- Diversio Plain Language Guide to Inclusion Index
- 2018 Lawyer Annual Report (Section 2 EDI Questions)



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# Memorandum

To: Peer Review Panel  
From: Ada Maxwell-Alleyne  
Date: December 07, 2021  
Re.: **FOR REVIEW: Inclusion Index Background**

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## 1. Purpose

REVIEW the background on the development of the Inclusion Index.

## 2. Background

In 2016, Convocation committed to implementing the recommendations of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions Report* (the “Challenges Report”), including the publication and release of an Inclusion Index for legal workplaces (LWPs) with 25 or more licensees every four years. Recommendation 6 of the Challenges Report reads:

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).<sup>1</sup>

To move forward on this commitment, lawyer and paralegal licensees were asked to complete voluntary demographic<sup>2</sup> and inclusion questions in the 2018 Annual Reports (completed in 2019). LWPs with 10 or more licensees were required to complete mandatory self-assessment questions regarding their policies on diversity and inclusion.

The LSO collected the following information from licensees in the 2018 Annual Reports:

- *Demographic/Self-Identification Questions*: Voluntary questions regarding Indigenous identity, Francophone identity, race/ethnicity, gender, sexual orientation and disability.

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<sup>1</sup> Law Society of Ontario, “Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions” (December 2016), online (pdf): <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>

<sup>2</sup> Since 2009, the Law Society has been collecting licensee demographic data on a voluntary basis through the Annual Report Filing. The data has been reported in the aggregate through statistical snapshots of the lawyer and paralegal professions.

- *Inclusion Questions*: Voluntary questions related to licensees' experience with respect to inclusion, respect and safety in their workplaces. The inclusion questions include a 'self-assessment' component where licensees were asked to identify diversity-related policies and programming at their LWPs.
- *Self-Assessment Questions*: Mandatory questions related to workplace policies, programs and commitment to equality, diversity and inclusion.<sup>3</sup> These were completed by a licensee representative for each LWP with at least 10 licensees.

### 3. Inclusion Index Structure

Only LWPs with more than 10 respondents were included in the final Index for a total sample set of 192 LWPs.

The 192 LWPs listed in the Index include private firms, corporations and public interest organizations (e.g. universities, government, etc.). The Index ranks the 192 LWPs based on an overall score.

The Index assigns an individual score based on three metrics:

- Diversity (25% of the overall score)
- Commitment (25% of the overall score)
- Inclusion (50% of the overall score).

#### *Diversity Score:*

Diversio benchmarked the demographic composition of each LWP against the demographics of the region in which it is located using census data from Statistics Canada.<sup>4</sup> Each demographic trait (ethnicity, Indigenous identity, Francophone background, gender, disability, LGBTQ2+) was assigned equal importance and thus weighted equally.

LWPs with multiple offices were compared against the demographics of their primary region of operation. Ontario-wide entities were compared to province-wide demographics.

#### *Commitment Score:*

The commitment score reflects the LWP's self-reported EDI programming and policies plus licensee acknowledgement of this programming. LWPs that had implemented the most programming received top scores.

Diversio noted that 14 out of 192 LWPs did not complete the self-assessment questions. For these LWPs, a commitment score was generated using licensee responses regarding the presence of programming at their LWP.

#### *Inclusion Score:*

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<sup>3</sup> Self-Assessment questions measure for the LWP's commitment to EDI (14 commitments); policies about discrimination, harassment and sexual harassment; whether EDI considerations are made in decision making; and the availability of EDI training or education at the LWP.

<sup>4</sup> LGBTQ2+ representation threshold was set using Diversio's benchmarking data instead of census data. Diversio advised that the census benchmark for LGBTQ2+ is generally considered low.

The inclusion score was generated by aligning each of the 22 inclusion questions to one of Diversio's five sub-metrics: inclusive culture, access to networks, unbiased feedback and reviews, safe work environment, and flexible work options.

To produce the inclusion score for each LWP, Diversio compared the average score on each metric for the dominant group (white, heterosexual, Anglophone men without a disability) to the average score for the non-dominant group. The average response of the dominant group was weighted at 30% of the score, and the average response of the non-dominant group was weighted at 70%.

The Index also provides the response rate for each LWP (# of licensee responses), the type of LWP (public interest, corporate, law firm), and the regional location for each LWP. More information on Diversio's methodology is attached as "Appendix A".

Based on the LWP's scores in each of the three categories, each LWP was assigned a numerical ranking and designated as one of five archetypes (superstar, accidental superstar, inclusive, diverse, accidentally inclusive, accidentally diverse, commitment only, and needs improvement). A legend explaining the archetype assignment is attached as "Appendix B".

### ***Response Rates***

Diversio noted that the average response rate to the diversity questions across the 192 LWPs was 78%, while the average response rate to the inclusion questions was 68%. The overall response rate across LSO licensees was 80%. While the overall response rate was very high for a survey of this nature, some LWPs had lower response rates. For example, 40 LWPs had a response rate of less than 60% for the diversity questions and 55 LWPs had a response rate of less than 60% for the inclusion questions. A more detailed explanation of the response rates is attached as "Appendix C".

### ***Diversio LWP Dashboards***

In addition to a ranked Index, Diversio produced individual dashboards for each of the 192 LWPs. The dashboard provides each LWP with:

- an overall Index ranking (out of 192) and score (out of 100);
- individual scores and rankings for each of the three metrics (diversity, inclusion, and commitment);
- a diversity composition, which compares the demographics for the LWP against the average for all 192 LWPs;
- an inclusion scorecard for Diversio's five sub-metrics for inclusion (inclusive culture, access to networks, unbiased feedback and reviews, safe work environment, and flexible work options);
- recommendations to promote diversity and inclusion in the workplace

Diversio also provides LWPs an option to update their commitment data through a link on the Dashboard.

Rank	Grouped LWP	Diversity	Inclusion	Commitment	OVERALL	Responses	Category	Location	Archetype
1	Privy Council Office	50	75	92	73	11	Public Interest	Ottawa	Inclusive
2	Supreme Court of Canada	85	70	56	70	20	Public Interest	Ottawa	Accidental Superstar
3	Telus	48	76	79	70	24	Corporate	Toronto	Inclusive
4	University of Toronto	49	70	89	69	17	Public Interest	Toronto	Inclusive
5	Human Rights Legal Support Centre	92	53	79	69	30	Public Interest	Toronto	Diverse
6	Olthuis Kleer Townshend LLP	83	55	76	67	27	Law Firm	Toronto	Diverse
7	Emond Harnden LLP	41	77	69	66	35	Law Firm	Ottawa	Inclusive
8	Deloitte	40	80	64	66	17	Corporate	Ontario	Inclusive
9	Export Development Canada	71	62	67	66	22	Public Interest	Ottawa	Superstar
10	Rusonik, O'Connor, Robbins, Ross, Gorham & Angelini, LLP	63	65	68	65	34	Law Firm	Toronto	Superstar
11	Samfiru Tumarkin LLP	55	73	59	65	27	Law Firm	Toronto/Ottawa	Inclusive
12	Hicks Morley Hamilton Stewart Storie LLP	69	53	85	65	120	Law Firm	Ontario	Diverse
13	Torys LLP	62	59	77	64	237	Law Firm	Toronto	Superstar
14	Thorsteinsons LLP Tax Lawyers	35	81	55	63	21	Law Firm	Toronto	Accidentally Inclusive
15	University of Ottawa	50	77	50	63	11	Public Interest	Ottawa	Accidentally Inclusive
16	Pallett Valo LLP	34	73	70	63	39	Law Firm	Toronto	Inclusive
17	Diamond & Diamond Lawyers LLP	47	67	69	63	34	Law Firm	Ontario	Inclusive
18	RCMP	78	53	66	62	19	Public Interest	Ottawa	Diverse
19	Royal Bank of Canada	56	56	77	61	146	Corporate	Toronto	Commitment Only
20	Paliare Roland Rosenberg Rothstein LLP	38	64	80	61	37	Law Firm	Toronto	Inclusive
21	Hydro One Networks Inc	41	62	78	61	15	Corporate	Toronto	Inclusive
22	Sherrard Kuzz LLP	34	69	67	60	27	Law Firm	Toronto	Inclusive
23	Low Murchison Radnoff LLP	67	74	25	60	26	Law Firm	Ottawa	Accidental Superstar
24	Weaver Simmons LLP	62	60	58	60	25	Law Firm	Sudbury/North Bay	Superstar
25	TD Bank Group	54	55	74	59	162	Corporate	Toronto	Commitment Only
26	Office of the Worker Adviser	85	62	29	59	31	Public Interest	Toronto	Accidental Superstar
27	Goldblatt Partners LLP	71	46	73	59	49	Law Firm	Toronto/Ottawa	Diverse
28	KPMG LLP	54	54	75	59	50	Corporate	Ontario	Commitment Only
29	Ernst & Young LLP	77	56	48	59	48	Corporate	Ontario	Accidentally Diverse
30	Law Society of Ontario	71	40	81	58	148	Public Interest	Toronto	Diverse
31	Flaherty McCarthy LLP	43	59	73	58	23	Law Firm	Toronto/Ottawa	Inclusive
32	OMERS	49	56	74	58	21	Corporate	Toronto	Commitment Only
33	Desjardins General Insurance Group	68	50	57	57	55	Corporate	Toronto	Accidentally Diverse
34	Walmart	30	69	60	57	20	Corporate	Toronto	Inclusive
35	Bereskin & Parr LLP	37	52	86	57	65	Law Firm	Toronto	Commitment Only
36	Department of Justice	86	33	75	57	938	Public Interest	Ontario	Diverse
37	Cunningham, Swan, Carty, Little & Bonham LLP	37	62	68	57	32	Law Firm	Kingston	Inclusive
38	Bank of Montreal	49	47	82	56	116	Corporate	Toronto	Commitment Only
39	Howie Sacks & Henry LLP	31	70	53	56	21	Law Firm	Ontario	Accidentally Inclusive
40	CIBC	59	58	45	55	87	Corporate	Toronto	Accidental Superstar
41	Wildeboer Dellelce LLP	32	64	60	55	33	Law Firm	Toronto	Inclusive
42	Baker & McKenzie LLP	67	39	75	55	77	Law Firm	Toronto	Diverse
43	City of Ottawa	71	47	56	55	29	Public Interest	Ottawa	Accidentally Diverse
44	McMillan LLP	35	50	86	55	152	Law Firm	Toronto/Ottawa	Commitment Only
45	Ontario Teachers' Pension Plan	23	73	52	55	21	Corporate	Toronto	Accidentally Inclusive
46	Aviva Canada	54	49	86	55	55	Corporate	Toronto	Commitment Only
47	Aviva Trial Lawyers	42	58	59	54	31	Law Firm	Toronto	Inclusive
48	Grillo Barristers Professional Corporation	33	54	75	54	20	Law Firm	Toronto	Commitment Only
49	Fragomen (Canada) Co	47	51	68	54	32	Law Firm	Toronto	Commitment Only
50	Lerners LLP	58	51	55	54	131	Law Firm	London	Accidentally Diverse
51	CRTC	63	37	78	54	15	Public Interest	Ottawa	Diverse
52	Ontario Securities Commission	70	37	67	53	142	Public Interest	Toronto	Diverse
53	Norton Rose Fulbright Canada LLP	56	44	70	53	214	Law Firm	Toronto/Ottawa	Commitment Only
54	Ontario Power Generation Inc	48	46	73	53	27	Corporate	Toronto	Commitment Only
55	Borden Ladner Gervais LLP	44	46	76	53	387	Law Firm	Toronto	Commitment Only
56	Unifor	70	43	55	53	12	Public Interest	Toronto	Accidentally Diverse
57	HGR Graham Partners LLP	36	54	66	53	27	Law Firm	Barrie/Orillia/Midland	Commitment Only
58	Harrison Pensa LLP	42	53	64	53	61	Law Firm	London	Commitment Only
59	Keyser Mason Ball, LLP	38	71	31	53	26	Law Firm	Toronto	Accidentally Inclusive
60	The Personal Insurance Company	59	63	25	52	53	Corporate	Toronto	Accidental Superstar
61	Fillon Wakely Thorup Angeletti LLP	48	68	24	52	43	Law Firm	Toronto/Hamilton/London	Accidentally Inclusive
62	RZCD Law Firm LLP	52	71	16	52	24	Law Firm	Toronto	Accidentally Inclusive
63	Clyde & Co LLP	16	77	39	52	18	Law Firm	Toronto	Accidentally Inclusive
64	Sun Life Financial	61	39	70	52	53	Corporate	Toronto	Diverse
65	Travelers Canada	56	44	65	52	21	Corporate	Toronto	Commitment Only
66	Immigration & Refugee Board	69	38	65	52	31	Public Interest	Ottawa	Diverse
67	McKenzie Lake Lawyers LLP	58	56	40	52	45	Law Firm	London/Guelph	Accidentally Diverse
68	Bell Temple LLP	40	49	70	52	37	Law Firm	Toronto	Commitment Only
69	CBC	43	53	56	52	11	Public Interest	Toronto/Ottawa	Needs Improvement
70	Workplace Safety & Insurance Appeals Tribunal	43	50	66	52	31	Public Interest	Toronto	Commitment Only
71	Pricewaterhousecoopers LLP	59	45	59	52	39	Corporate	Ontario	Diverse
72	Intact Financial Corporation	68	45	45	51	145	Corporate	Toronto	Accidentally Diverse
73	Morneau Shepell Ltd	47	52	54	51	14	Corporate	Ontario	Needs Improvement
74	Soloway, Wright LLP	57	61	25	51	32	Law Firm	Kingston/Ottawa	Accidentally Inclusive
75	City of Toronto	66	38	62	51	191	Public Interest	Toronto	Diverse
76	Stikeman Elliott LLP	37	44	79	51	219	Law Firm	Toronto/Ottawa	Commitment Only
77	Gorbet & Associates	37	48	69	51	25	Law Firm	Toronto	Commitment Only
78	McCague Borlack LLP	54	42	68	51	51	Law Firm	Ontario	Commitment Only
79	Dentons Canada LLP	44	37	83	50	182	Law Firm	Toronto/Ottawa	Commitment Only
80	Devry Smith Frank LLP	49	43	63	50	58	Law Firm	Toronto/Barrie	Commitment Only
81	Osler, Hoskin & Harcourt LLP	42	46	65	50	284	Law Firm	Toronto/Ottawa	Commitment Only
82	Davies Ward Phillips & Vineberg LLP	41	41	78	50	146	Law Firm	Toronto	Commitment Only
83	Miller Thomson LLP	54	36	75	50	264	Law Firm	Ontario	Commitment Only
84	Kronis, Rotszain, Margles, Cappel LLP	29	56	58	50	32	Law Firm	Toronto	Commitment Only
85	Canadian Human Rights Commission	76	34	55	50	17	Public Interest	Ottawa	Accidentally Diverse
86	SimpsonWigle Law LLP	47	62	29	50	30	Law Firm	Hamilton	Accidentally Inclusive
87	Manulife	39	43	72	49	75	Corporate	Toronto	Commitment Only
88	Smart & Biggar/Fetherstonhaugh	38	48	64	49	44	Law Firm	Toronto/Ottawa	Commitment Only
89	Blake Cassels & Graydon LLP	38	39	80	49	332	Law Firm	Toronto/Ottawa	Commitment Only
90	Scarfone Hawkins LLP	34	50	63	49	29	Law Firm	Hamilton	Commitment Only

91 Attorney General of Ontario	49	45	60	49	21	Public Interest	Ontario	Commitment Only
92 Fasken Martineau DuMoulin LLP	50	41	64	49	273	Law Firm	Toronto/Ottawa	Commitment Only
93 Mills & Mills LLP	22	66	41	49	33	Law Firm	Toronto	Accidentally Inclusive
94 Gowling WLG (Canada) LLP	68	34	60	49	437	Law Firm	Ontario	Diverse
95 Public Service Alliance of Canada	65	38	54	49	11	Public Interest	Ottawa	Accidentally Diverse
96 Chaitons LLP	24	57	59	49	22	Law Firm	Toronto	Commitment Only
97 Sorbara, Schumacher, McCann LLP	36	64	31	49	32	Law Firm	terloo/Guelph/Markham	Accidentally Inclusive
98 Municipal Property Assessment Corporation	41	47	59	49	31	Public Interest	Toronto	Commitment Only
99 McCarthy Tetrault LLP	38	44	65	48	294	Law Firm	Toronto	Commitment Only
100 Metrolinx	46	36	74	48	22	Corporate	Toronto	Commitment Only
101 Kelly Santini LLP	35	47	62	48	38	Law Firm	Ottawa	Commitment Only
102 Sullivan Mahoney LLP	9	81	20	48	28	Law Firm	Catharines/Niagara Falls	Accidentally Inclusive
103 Canadian Armed Forces	64	30	68	48	13	Public Interest	Ottawa	Diverse
104 Legal Aid Ontario	86	26	54	48	376	Public Interest	Ontario	Accidentally Diverse
105 Regional Municipality of York	54	42	54	48	45	Public Interest	Toronto	Needs Improvement
106 Minden Gross LLP	28	47	71	48	66	Law Firm	Toronto	Commitment Only
107 Ministry of Labour	48	46	53	48	48	Public Interest	Toronto	Needs Improvement
108 Queen's University	61	38	55	48	17	Public Interest	Kingston	Accidentally Diverse
109 Rogers Communications	41	44	62	47	36	Corporate	Toronto	Commitment Only
110 Global Affairs Canada	70	24	68	47	47	Public Interest	Toronto	Diverse
111 University of Western Ontario	60	28	72	47	11	Public Interest	London	Diverse
112 Office of The Ombudsman Of Ontario	51	49	36	47	44	Public Interest	Toronto	Needs Improvement
113 Ministry of the Attorney General	75	25	61	47	1401	Public Interest	Ontario	Diverse
114 Fogler, Rubinfoff LLP	28	47	65	47	107	Law Firm	Toronto/Ottawa	Commitment Only
115 Ontario Nurses' Association	93	32	32	47	28	Public Interest	Toronto	Accidentally Diverse
116 Loblaw Companies Limited	37	53	45	47	17	Corporate	Toronto	Needs Improvement
117 Pace Law Firm Professional Corporation	52	33	70	47	33	Law Firm	Ontario	Commitment Only
118 Economical Insurance	32	54	47	47	28	Corporate	Waterloo	Needs Improvement
119 Cohen Highley LLP	37	50	48	46	34	Law Firm	Waterloo/Kitchener/Sarnia/Chatham	Needs Improvement
120 Stewart Title Guaranty Company	46	55	28	46	25	Corporate	Toronto	Needs Improvement
121 Krylow Lam & Company LLP	33	65	22	46	13	Law Firm	Toronto	Accidentally Inclusive
122 DLA Piper (Canada) LLP	27	40	78	46	69	Law Firm	Toronto	Commitment Only
123 Scotiabank	49	39	58	46	68	Corporate	Toronto	Commitment Only
124 Mann Lawyers LLP	37	52	44	46	29	Law Firm	Ottawa	Needs Improvement
125 Cavalluzzo LLP	68	35	48	46	40	Law Firm	Toronto	Accidentally Diverse
126 Cassels Brock & Blackwell LLP	44	40	61	46	196	Law Firm	Toronto	Commitment Only
127 HSBC Bank Canada	51	38	57	46	19	Corporate	Toronto	Needs Improvement
128 Macdonald Sager Manis LLP	33	48	51	45	32	Law Firm	Toronto	Needs Improvement
129 WeirFoulds LLP	53	32	62	45	105	Law Firm	Toronto	Commitment Only
130 Nelligan O'Brien Payne LLP	45	53	30	45	51	Law Firm	Ottawa	Needs Improvement
131 Torkin Manes LLP	38	37	63	44	92	Law Firm	Toronto	Commitment Only
132 Office of The Public Guardian & Trustee	55	34	51	44	20	Public Interest	Toronto	Needs Improvement
133 Infrastructure Ontario	47	39	54	44	32	Public Interest	Toronto	Needs Improvement
134 Toronto Transit Commission	27	54	39	44	23	Public Interest	Toronto	Needs Improvement
135 Loopstra Nixon LLP	52	35	49	43	45	Law Firm	Toronto	Needs Improvement
136 Perley-Robertson Hill & McDougall LLP	45	49	31	43	46	Law Firm	Ottawa	Needs Improvement
137 Goodmans LLP	29	34	75	43	182	Law Firm	Toronto	Commitment Only
138 College of Physicians & Surgeons Of Ontario	48	53	18	43	23	Public Interest	Toronto	Needs Improvement
139 Canada Revenue Agency	62	24	61	43	17	Public Interest	Ottawa	Diverse
140 City of Mississauga	51	25	68	42	24	Public Interest	Toronto	Commitment Only
141 Thomson Rogers	30	51	35	42	29	Law Firm	Toronto	Needs Improvement
142 Aird & Berlis LLP	28	50	41	42	173	Law Firm	Toronto	Needs Improvement
143 Siskinds LLP	58	47	14	42	63	Law Firm	London/Sarnia	Accidentally Diverse
144 Public Prosecution Service of Canada	75	15	63	42	154	Public Interest	Ottawa	Diverse
145 Gardiner Roberts LLP	28	46	46	41	69	Law Firm	Toronto	Needs Improvement
146 Lenczner Slaughter Royce Smith Griffin LLP	33	44	45	41	55	Law Firm	Toronto	Needs Improvement
147 X-Copper Professional Corporation	45	35	49	41	45	Law Firm	Ontario	Needs Improvement
148 Blaney McMurtry LLP	22	38	62	40	115	Law Firm	Toronto	Commitment Only
149 Scitotte Guilbault LLP	69	33	26	40	19	Law Firm	Ottawa	Accidentally Diverse
150 Koskie Minsky LLP	46	30	52	40	51	Law Firm	Toronto	Needs Improvement
151 Shibley Righton LLP	29	55	20	40	40	Law Firm	Toronto/Hamilton/Windsor	Needs Improvement
152 Lawyers' Professional Indemnity Company (LawPro)	69	16	59	40	44	Corporate	Toronto	Diverse
153 Canada Post Corporation	59	38	25	40	19	Public Interest	Ottawa	Accidentally Diverse
154 BCE Inc	39	34	54	40	43	Corporate	Toronto	Needs Improvement
155 Dutton Brock LLP	30	46	35	39	46	Law Firm	Toronto	Needs Improvement
156 Health Canada	43	22	70	39	16	Public Interest	Ottawa	Commitment Only
157 Dickinson Wright LLP	39	25	67	39	49	Law Firm	Toronto	Commitment Only
158 Barriston LLP	32	49	22	38	25	Law Firm	Kingwood/Huntsville/Windsor	Needs Improvement
159 College of Nurses of Ontario	43	39	31	38	29	Public Interest	Toronto	Needs Improvement
160 London Life Insurance Company	31	56	9	38	23	Corporate	London	Needs Improvement
161 Templeman LLP	31	48	28	38	33	Law Firm	Ontario	Needs Improvement
162 Investment Industry Regulatory Organization of Canada	49	30	42	38	28	Public Interest	Toronto	Needs Improvement
163 Green and Spiegel LLP	53	38	21	38	26	Law Firm	Toronto	Needs Improvement
164 Ridout & Maybee LLP	44	40	29	38	32	Law Firm	Toronto/Ottawa	Needs Improvement
165 Teplitsky, Colson LLP	37	38	36	37	25	Law Firm	Toronto	Needs Improvement
166 Agro Zaffiro LLP	27	46	29	37	26	Law Firm	Hamilton	Needs Improvement
167 Robins Appleby LLP	15	51	33	37	25	Law Firm	Toronto	Needs Improvement
168 Ministry of the Environment and Climate Change	36	31	51	37	21	Public Interest	Toronto	Needs Improvement
169 Children's Aid Society of Toronto	26	26	71	37	18	Public Interest	Toronto	Commitment Only
170 Barapp Law Firm Professional Corporation	38	49	11	37	23	Law Firm	Toronto	Needs Improvement
171 Zarek Taylor Grossman Hanrahan LLP	31	50	18	37	42	Law Firm	Toronto	Needs Improvement
172 Mathews, Dinsdale & Clark LLP	24	33	54	36	47	Law Firm	Toronto/Sarnia/Soo	Needs Improvement
173 Hughes Amys LLP	32	50	14	36	31	Law Firm	Toronto	Needs Improvement
174 Bennett Jones LLP	30	31	53	36	165	Law Firm	Toronto/Ottawa	Needs Improvement
175 Toronto Community Housing Corporation	33	39	34	36	20	Public Interest	Toronto	Needs Improvement
176 Brookfield	50	38	16	35	15	Corporate	Toronto	Needs Improvement
177 Altus Group	29	32	47	35	52	Corporate	Ontario	Needs Improvement
178 Dale & Lessmann LLP	21	50	16	34	26	Law Firm	Toronto	Needs Improvement
179 Stieber Berlach LLP	57	36	6	34	27	Law Firm	Toronto	Needs Improvement
180 City of Hamilton	54	18	47	34	28	Public Interest	Hamilton	Needs Improvement
181 McCarter Grespan Beynon Weir Professional Corporation	38	34	30	34	20	Law Firm	Kitchener	Needs Improvement

182 Zuber & Company	21	38	35	33	26	Law Firm	Toronto	Needs Improvement
183 City of Brampton	17	25	64	33	15	Public Interest	Toronto	Commitment Only
184 Goldman Sloan Nash & Haber LLP	18	39	33	32	32	Law Firm	Toronto	Needs Improvement
185 Canadian Tire	25	30	40	31	14	Corporate	Toronto	Needs Improvement
186 Owens Wright LLP	20	32	42	31	24	Law Firm	Toronto	Needs Improvement
187 Information and Privacy Commissioner of Ontario	60	26	13	31	33	Public Interest	Toronto	Accidentally Diverse
188 Lawson Lundell LLP	28	38	11	29	13	Law Firm	Ontario	Needs Improvement
189 Brauti Thorning Zibarras LLP	23	30	31	29	27	Law Firm	Toronto	Needs Improvement
190 Beard Winter LLP	19	35	23	28	58	Law Firm	Toronto	Needs Improvement
191 Ross & McBride LLP	27	27	24	26	41	Law Firm	Hamilton	Needs Improvement
192 Smith Valeriot Law Firm LLP	17	33	15	25	36	Law Firm	Guelph	Needs Improvement

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**LEGEND TO DIVERSIO ARCHETYPES**

	Diversity	Inclusion	Commitment
Superstars	X	X	X
Accidental Superstars	X	X	
Inclusive		X	X
Diverse	X		X
Accidentally Inclusive		X	
Accidentally Diverse	X		
Commitment Only			X
Needs Improvement			

\*Please note that names of archetypes are subject to change.



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## **Memo re: LSO Follow-up Questions on the Inclusion Index methodology**

04/22/2020

### A) GENERAL QUESTIONS

#### **1. Can Diversio provide a summary of its methodology?**

Diversio's methodology involves collecting and analyzing data from three sources: employee demographic information, employee responses to experience- and inclusion-related questions, and information about a particular organization's programs and policies. Diversio has applied this methodology in several industries across enterprise & SMEs, including Financial Services, Asset Management, Technology, Venture Capital and more. Diversio developed this methodology with input from over 100 industry experts, academics and business leaders, and has used it to assess more than 600 organizations. It has been tested, validated and endorsed by organizations such as the Human Resources Professional Association, Women in Capital Markets, Institutional Limited Partner Association, City of Toronto and Natural Resources Canada.

Diversio's methodology was adapted to the LSO context through input and consultations with the LSO. Advisors on the project included experts such as Hadiya Roderique (JD, Ph D Candidate in Organizational Behaviour), Josh Lokko (JD Candidate, President of the Black Law Students' Association of Canada), and Amy Hepburn, PhD (Professor at Duke University).

Diversio obtained three datasets from the LSO: licensee self-identified [demographic data](#), licensee responses to [inclusion questions](#), and [self-assessment](#) information regarding diversity and inclusion programming submitted by legal workplaces (LWPs).

We started by aligning these three data sources to our standard methodology, which includes three core metrics that are aggregated to create an overall score (see "Exhibit A" and "Exhibit B"). Following a joint decision with the LSO, only LWPs with more than 10 respondents were included in the final Index for a total sample set of 192 LWPs.



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The resulting Inclusion Index includes an overall score for each LWP, referred to as the **Diversio Score**, which is composed of three metrics: A **Diversity Score** (25% of the Diversio Score), an **Inclusion Score** (50% of the Diversio Score), and a **Commitment Score** (25% of the Diversio Score).

The **Diversity Score** reflects how diverse an LWP is from a demographic perspective. This metric incorporates gender, race/ethnicity (including Indigenous and Francophone identity), sexual orientation and disability. It was calculated from self-identified demographic information submitted by licensees in their Annual Reports. Race/ethnicity and gender were weighted based on regional averages, using Statistics Canada Census Economic Regions (more information below). Sexual orientation was weighted using Diversio's proprietary benchmarking data, and disability was weighted using national averages.

The **Commitment Score** reflects self-reported programming and policies the LWP indicated having in place, as well as licensee acknowledgement of this programming (i.e., licensees indicating that diversity-related programming is in place at their firm, as reported in the Inclusion Questions).<sup>1</sup> LWPs with the most implemented programming received top scores, and LWPs with less programming received lower scores.<sup>2</sup>

The **Inclusion Score** was generated by first aligning each of the LSO Inclusion Questions to one of Diversio's five sub-metrics: Inclusive Culture, Access to Networks, Unbiased Feedback and Reviews, Safe Work Environment, and Flexible Work Options. To create the Inclusion Score for each LWP, we compared the average score on each metric for the dominant group to the average score for the non-dominant group. The average response of the dominant group was weighted at 30% of the score, and the average response of the non-dominant group was weighted at 70%. (See Exhibit B for an illustrative example).

As described above, each LWP's overall Diversio Score is a composite of these three metrics. The Inclusion Index is a simple ranking of 192 LWPs in order of their overall Diversio Score, from highest (most diverse, inclusive and committed) to lowest (least diverse, inclusive and committed).

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<sup>1</sup> Note that 14 out of 192 LWPs did not complete the Self-Assessment. In this case, a Commitment score was generated using licensee responses regarding the presence of programming at their LWP.

<sup>2</sup> All programming was self-reported and not independently verified by the LSO. The robustness of the Commitment Score is reliant on the competency, knowledge and integrity of the individuals designated by each LWP to complete the Self-Assessment



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Exhibit A

### The formula: How each legal workplace was scored

Diversio Score	=	Diversity Score 25%	Inclusion Score 50%	Commitment Score 25%
<b>Key question</b>		How reflective is LWP of the local population?	How inclusive is LWP of under-represented groups?	How effective is LWP's efforts to promote inclusion through programming?
<b>Data sources</b>		Self-identification questions, municipality data from National Household Survey and Census	Self-identification questions; inclusion questions	Self-assessment questions; programming questions
<b>Calculation</b>		Determine which region each LWP is primarily based in and the proportion of underrepresented persons (gender, race, Indigenous identity, disability, LGBTQ2+, Francophone) in that region  Assign score out based on how reflective LWP is of its region	Group Inclusion Questions into five Inclusion KPIs  Compare each LWP's response variation to identify areas of systemic exclusion or bias  Score is based on overall sentiment and variance between groups	Assign score based on number of programs and policies adopted

METHODOLOGY

Exhibit B

### Inclusion Score Methodology

1. Identify the dominant and non-dominant groups within the sample set
  - The dominant group across LSO respondents is white heterosexual, Anglophone men without a disability
  - The non-dominant group includes respondents who differ from the dominant group on any demographic trait
2. For each question or metric:
  - Determine the average response of the dominant group (e.g. 8/10) for 30% of the Score
  - Determine the average response of the non-dominant group (e.g. 4/10) for 70% of the Score
  - Combine the average response of each for an overall Score (e.g.  $((0.8 \times 0.3) + (0.4 \times 0.7)) = 5.2/10$ )
3. Combine scores for the overall Inclusion Score



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## **2. Why is the Inclusion Score given more weight than the Commitment and Diversity Scores?**

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”.

It is also worth noting that the experiences of diverse employees are accorded more weight, constituting 70% of the Inclusion Score.

## **B) DETAILED EXPLANATION OF THE METRICS**

### **3. How was the Diversity Score calculated?**

The Diversity Score was calculated by first establishing a baseline against which LWPs would be measured for each demographic trait identified by the LSO. Diversio implemented the following benchmarks:

- Set representation for ethnicity, Indigenous identity, gender, and Francophone background based on Statistics Canada Census Economic Regions data, subdividing Ontario into 9 regions
- Set LGBTQ2+ representation at 10% for LWPs within Toronto and 5% for all LWPs outside of Toronto. Since detailed Statistics Canada data was not available for LGBTQ2+ representation, benchmarks were set using 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
- Set representation of persons with a disability at 20% for all LWPs, based on Statistics Canada Census data



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After setting the baseline, Diversio compared the representation of each LWP to the demographics of the region in which they were located. LWPs with multiple offices were compared against the demographics of their primary region(s) of operation. Ontario-wide entities were compared to province-wide demographics.

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.

#### 4. How was the Inclusion Score calculated?

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.

- **Inclusive Culture** refers to an environment where all employees can share their perspective regardless of their background or identity. Research shows that diverse employees often feel they need to compromise their authenticity to fit into company norms ([Harvard Business Review](#))
- **Unbiased feedback and Reviews** refers to a review and promotion process that perceived as objective, fair and free from unconscious bias. For example, research shows that women, who are part of the non-dominant group, are 1.4 times more likely to receive critical, subjective feedback ([Harvard Business Review](#))
- **Access to Networks** refers to all employees having a mentor and/or feeling that someone is invested in their growth and professional development. Research shows that equal access to mentors and sponsors boosts the number of ethnic minorities in management by 9-24% ([Harvard Business Review](#))



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- **Flexible Working Options** refers to a workplace that enables all employees to balance work and family care obligations. Research shows that women and other non-dominant employees (including New Canadians) are more likely to struggle when it comes to establishing sustainable a work-life balance ([American Psychological Association](#))
- **Safe Work Environment** refers to a workplace that is free from sexual, physical and mental harassment. Research shows that 30% of minorities and 39% of women have witnessed or experienced harassment in the workplace ([Financial Times](#), [UN Women](#))

Respondents were 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.<sup>3</sup>

- 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

## 5. How was the Commitment Score calculated?

The Commitment Score was calculated based on each LWPs self-reported implementation of diversity & inclusion programs and policies as well as licensee acknowledgement of this programming. Points were awarded to LWPs according to how many programs and policies they reported having implemented, as indicated on their LSO Self-Assessment Questionnaire, and licensee acknowledgement of this programming, as indicated in the Inclusion Questions.

Once the ranking of each LWP was established, all Commitment Scores were scaled to generate a meaningful, proportionate Index

<sup>3</sup> Respondents who provided “Prefer Not to Answer” responses were categorized into a separate Prefer Not to Answer (PNA) category.



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## C) CROSS-SECTOR COMPARISON

### 6. What is the state of inclusion in the finance, public and technology sectors? How do these compare to the legal profession?

Diversio has conducted broad-based diversity & inclusion assessments of six Canadian sectors: technology, financial services, asset management, the Ontario public service, and small- and medium-sized businesses.

A few observations from Diversio's proprietary benchmarking data:

- The Legal sector is less diverse than the **technology sector** when it comes to racialized minorities. Our benchmarking data of 100+ Canadian technology companies includes 36% self-identified racialized minorities, compared to 16% in the LSO dataset. The Legal sector is more gender diverse, with 49% of respondents identifying as female compared to 35% of technology sector employees.
- The Legal sector is significantly less diverse than the **asset management sector** when it comes to racialized minorities (16% v. 37%), individuals with a disability (3% v. 8%) and LGBTQ2+ (3% v. 14%)
- The Legal sector is roughly on-par with the **technology sector** when it comes to inclusion:

*Table 1: Inclusion Comparison: Legal v. Technology Sectors*

	Legal Sector	Technology Sector
Inclusive Culture	7.9	7.6
Unbiased Feedback & Reviews	7.7	7.3
Flexible Work Options	7.0	7.4
Access to Networks	6.5	7.0
Safe Work	8.4	8.7

- The Legal sector is more inclusive across each of the five Inclusion sub-metrics than the **asset management sector**



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Table 1: Inclusion Comparison: Legal v. Asset Management Sectors

	Legal Sector	Asset Management Sector
Inclusive Culture	7.9	5.1
Unbiased Feedback & Reviews	7.7	5.2
Flexible Work Options	7.0	4.9
Access to Networks	6.5	5.6
Safe Work	8.4	6.9

## D) RESPONSE RATES

### 7. What are the overall response rates?

Altogether, 192 LWPs met the threshold necessary to receive scores and be included in the Inclusion Index (25+ licensees, more than 10 responses to the 2018 Lawyer Annual Report).<sup>4</sup> 87.5% of these LWPs had a Diversity Response Rate (DRR) of at least 50% (i.e. self-identified demographic traits). 81.2% of LWPs had an Inclusion Response Rate (IRR) of at least 50% (i.e. Inclusion Questions).

The Average Diversity Response Rate (ADRR) across 192 LWPs was 78%, while the Average Inclusion Response Rate (AIRR) was 68%. The Overall Response Rate across LSO licensees was 80%. The Overall Response Rate is higher than ADRR and AIRR due large concentration of licensees within a subset of LWPs (i.e. over half of all licensees are employed by 30 biggest LWPs)

<sup>4</sup> The LSO provided 3 Files at the beginning of this project, the third of which was a listing of the number of licensees at each LWP. Discussions were had with the LSO to ensure understanding of the File and the process by which it was constructed. The figures in File 3 were used as the denominator. The numerator for this calculation was the sum of licensees from the Individual Record File tagged to or identifiable as working at a given LWP who also submitted a completed Annual Report. This included respondents who responded with at least 1 answer that was not "Prefer Not to Answer" or equivalent. The act of choosing a single affirmative response is sufficient evidence of answering the survey in good faith and is consistent with industry best practice.



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Response rates were significantly higher for law firms (90% ADRR, 78% AIRR) than corporate legal departments (65% ADRR, 56% AIRR) and public organizations (61% ADRR, 54% AIRR).

Large LWPs (150+ licensees) tended to have higher response rates (82% ADRR, 72% AIRR) than medium LWPs (50-149 licensees, 72% ADRR, 63% AIRR) or small LWPs (<50 licensees, 79% ADRR, 69% AIRR).

NB: These response rates are significantly higher than typical employee engagement survey results, which average between [30% and 40%](#). Given the sensitive nature of the information being collected, employees are often hesitant to self-identify as belonging to a certain group or having certain experiences. This suggests that LSO is more trusted by lawyers/paralegals than their firms would be to collect this data without repercussion.

### **8. How does the voluntary nature of questions impact results from an analytics perspective?**

According to Kiess & Bloomquist (1985), a threshold of 60% is “rule of thumb” to avoid bias by the most happy/unhappy respondents only. The American Journal of Pharmaceutical Education supports the 60% threshold ([2008](#)) as a benchmark for academically robust findings. For context, 40 LWPs had a DRR below 60%. 55 LWPs had an IRR below 60%.

### **9. What are the average response rates for other industries/sectors and other Diversio projects?**

Average response rates tend to vary by organization size as well as whether data is being collected for the first time. Typically, smaller organizations (<50 people) have higher average response rates (80-90%) than large organizations (1,000+ people, 65-80%). The first time a survey is deployed, organizations tend to have a lower response rate (40-60%), as employees have concerns about anonymity and confidentiality of their information. Successive instances of surveying yield a higher response rate (70-90%) as employee trust grows and they see the process as an effective way to steer company culture and improve their experience. There is no significant difference in response rate by sector.

## **E) MISCELLANEOUS**



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**10. Can Diversio provide more detail on how geographic location of an organization impacts results (particularly Diversity score)? Explain the level of specificity for each diversity dimension.**

For most LWPs<sup>5</sup>, we used the region in which they operate (as indicated on their website) as their benchmark. If an LWP operates in more than one region, we used an average of these regions. The rationale for this decision is that the Inclusion Index is designed to incentivize each LWP to become more reflective of the market they serve.

**Gender:** Gender was categorized as either 1) men or 2) women and other genders. LWPs were compared against the gender demographic breakdown of the Census Economic Region(s) in which they operate. For context, every region had an equal or near-equal split.

**Francophone:** Francophone background was measured on a binary scale (yes/no). LWPs were compared against the linguistic demographic breakdown of the Census Economic Region(s) in which they operate. LWPs operating in Francophone-heavy regions, such as Ottawa, were held to a higher standard, reflecting the larger pool of Francophone lawyers from which to hire.

**Indigenous, Ethnicity:** Indigenous identification was measured on a binary scale (yes/no). Ethnicity was subdivided into 12 categories; respondents could indicate that they identified with one or more of these categories<sup>6</sup>. LWPs were compared against the ethnic demographic breakdown of the Census Economic Region(s) in which they operate. LWPs operating in more ethnically diverse regions, such as Toronto, were therefore expected to be more diverse to achieve a high score.

**LGBTQ2+:** LGBTQ2+ identity was measured on a binary scale (yes/no). There were two benchmarks used in this project: one for LWPs located in Toronto, and one for LWPs located outside of Toronto. The Toronto benchmark reflects the higher proportion of LGBTQ2+ individuals in the local community (estimated at 10%, compared to 5% outside of Toronto).

**Disability:** Presence of a disability was measured on a binary scale (yes/no). As no statistics on disability are available by region, we used the Statistics Canada nation-wide benchmark, finding that 20% of working-age Canadians (25-64 years old) have at least one disability. All LWPs (regardless of Economic

<sup>5</sup> LWPs with a province-wide mandate (e.g. Department of Justice) were assigned the overall Ontario demographic rates as their baselines rather than any particular Census Economic Region(s), using the rationale that these organizations should reflect the province as a whole.

<sup>6</sup> Black, Arab, Chinese, Filipino, Japanese, Korean, Latin American, South Asian, Southeast Asian, West Asian, White, Other



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Region) were compared to this baseline with the assumption that persons with a disability are relatively consistently distributed across Canada

### **11. Can LWPs identify their problems based on results?**

Yes. LWPs will be able to easily understand their opportunity areas from a Diversity, Inclusion, and Commitment perspective.

In addition, Diversio has taken further steps to provide tactical recommendations to LWPs based on their individual scores, free of charge. LWPs will also have the option to upgrade for more detailed analytics and customized recommendations, as well as access to an expert community (see attachment: Exhibit C: Diversio Dashboard)

### **12. Clarify the transition from diversity questions to inclusion questions. Who answered these questions?**

Diversity questions are the questions answered by legal professionals in the [Self-identification](#) section of their Annual Reports. Inclusion questions were answered by legal professionals in the [Inclusion Survey](#) section of their Annual Reports. Commitment questions were answered by an LWP representative in the [Self-Assessment](#) and by legal professionals in the Inclusion Survey section of their Annual Reports

### **13. Is a heat map still a way to present the data publicly in an anonymized way?**

We would propose an anonymized ranking as a way to publish results while maintaining LWP confidentiality.

### **14. Can Diversio speak to the notion that someone with more experience in EDI completed commitment questions and therefore could skew results?**

We believe it is a fair assumption that LWPs would nominate their most experienced EDI representative to answer these questions. In the alternative, we believe that a responsible respondent would seek guidance from an experienced EDI colleague. Diversio also assumed that respondents answered honestly and did not embellish their programs and policies.

More importantly, the Commitment Score also factors in employee responses about the presence of programming at their LWP, as indicated in the Inclusion Questions. Firms that failed to submit a Self-



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Assessment were not therefore automatically penalized; rather, their Commitment Score reflects employees' reported experience of programming in their LWP.

To mitigate any risks associated with the Self-Assessment Diversio will include a section on the LWP Dashboard that will allow respondents to update their commitment data.

## OTHER INDUSTRIES

### **15. What protocol have other industries used for releasing data? Who has implemented/endorsed Certification and how?**

The [Human Resources Professional Association](#), Ontario's HR industry association, chose to endorse Diversio Certification, provide access to Diversio services through its website, and deploy an industry survey to create a baseline report of diversity & inclusion within the HR profession.

The [City of Toronto](#) has publicly endorsed Diversio Certification, committed to getting itself Certified, plans to use the program widely throughout its processes.

The [Business Development Bank of Canada](#) has rolled out Diversio's technology to assess diversity & inclusion across its portfolio investments, rank companies based on performance, and provide supplementary assistance/recommendations to those companies at risk of developing a toxic culture.

[Fintech Alliance](#), a U.K. government-backed platform for the Fintech industry, has formally endorsed Diversio Certification and provides access to Diversio's services through its website.

The [Institutional Limited Partner Association](#), the global industry body for Asset Managers, chose to [endorse](#) Diversio as a tool for measuring progress from a Diversity & Inclusion perspective.

[Women in Capital Markets](#), Canada's leading industry association dedicated to diversity in finance, chose to roll out Diversio's Inclusion Assessment to the six major Canadian banks (Big Five and HSBC) and 5 of its largest pension affiliates. They created an anonymous industry-wide report and delivered company-specific results privately to banks/pensions.

The [Canadian Venture Capital Association](#) and [Diversity VC](#) chose to [endorse](#) Diversio Certification and roll-out a voluntary Inclusion Project with its members. Members are encouraged to deploy Diversio's Inclusion Assessment and privately receive their results, with the option to publicize their involvement. They plan to promote early adopters who publish their results.



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[OneEleven](#), Toronto's leading technology accelerator, chose to roll out an Inclusion Assessment to all 50 of its member companies. OneEleven published a baseline report and companies had the option to privately access their Diversio dashboard with their results.

**16. Attach materials from the Human Resources Professions Association (HRPA)'s endorsement of Diversio's Certification**

See Exhibit D: HRPA Diversio Certification or visit their [website](#).

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## Response Rates: LSO Annual Report Survey of Licensees

03/20/2020

### A) DEMOGRAPHIC AND INCLUSION QUESTION RESPONSE RATES

**Diversity** questions relate to the demographics of the legal workplace, and **Inclusion** questions relate to the experiences of licensees within their workplaces. Diversity data was drawn from self-identification questions, while Inclusion data was drawn from a combination of [self-identification](#) questions (to identify the demographic profile of each respondent) and [Inclusion Survey](#) questions. Please refer to the LSO Guide Q&A for further explanation on this methodology.

For each category, we defined a ‘response’ as a survey where the licensee recorded at least one answer which was not ‘Prefer Not to Answer’. The tables below summarize our findings.

Please note that the ‘total’ figures are not exact. Due to the nature of the data, as discussed, some firms show response rates above 100% as a result of licensees who worked at multiple legal workplaces in the period.

The Average Diversity Response Rate (ADRR) across 192 LWPs was 78%, while the Average Inclusion Response Rate (AIRR) was 68%. The Overall Response Rate across LSO licensees was 80%. The Overall Response Rate is higher than ADRR and AIRR due large concentration of licensees within a subset of LWPs (i.e. over half of all licensees are employed by 30 biggest LWPs).

#### Average Response Rate by LWP

	Diversity	Inclusion
Law Firm	90%	78%
Big Law	90%	78%
Non-Big Law	89%	78%
Corporate	65%	56%
Public Interest	61%	54%
<b>Overall</b>	<b>78%</b>	<b>68%</b>

#### Average Response Rate by LWP

	Diversity	Inclusion
>=150	82%	72%
50-149	72%	63%
<50	79%	69%
Overall	78%	68%



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## Response Rat by LWP

Legal Workplace	Total	Diversity RR	Inclusion RR
Privy Council Office	27	41%	33%
University of Toronto	65	26%	25%
Human Rights Legal Support Centre	35	86%	80%
Samfiru Tumarkin LLP	30	90%	87%
Deloitte	88	19%	16%
Supreme Court of Canada	38	53%	50%
Rusonik, O'Connor, Robbins, Ross, Gorham & Angelini, LLP	34	100%	88%
Olthuis Klerer Townshend LLP	32	84%	84%
Telus	38	63%	53%
Torys LLP	264	90%	84%
RCMP	52	37%	27%
Diamond & Diamond Lawyers LLP	38	89%	84%
Hicks Morley Hamilton Stewart Storie LLP	127	94%	86%
Pallett Valo LLP	39	100%	90%
Sherrard Kuzz LLP	28	96%	82%
Hydro One Networks Inc	29	52%	48%
Export Development Canada	35	63%	63%
Emond Harnden LLP	34	103%	85%
Royal Bank of Canada	255	57%	49%
University of Ottawa	93	12%	9%
TD Bank Group	294	55%	49%
Goldblatt Partners LLP	50	98%	98%
Law Society of Ontario	324	46%	43%
Low Murchison Radnoff LLP	27	96%	78%
Thorsteinssons LLP Tax Lawyers	26	81%	46%
KPMG LLP	75	67%	59%
Office of the Worker Adviser	30	103%	97%
Ernst & Young LLP	77	62%	48%
Flaherty McCarthy LLP	26	88%	73%
Bereskin & Parr LLP	70	93%	91%
Cunningham, Swan, Carty, Little & Bonham LLP	33	97%	79%
Bank of Montreal	199	58%	50%
Walmart	49	41%	29%
CIBC	140	62%	53%
Desjardins General Insurance Group	74	74%	66%
Paliare Roland Rosenberg Rothstein LLP	37	100%	89%
OMERS	30	70%	60%
Aviva Canada	73	75%	70%



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Unifor	25	48%	40%
Ontario Teachers' Pension Plan	27	78%	59%
Aviva Trial Lawyers	32	97%	78%
Grillo Barristers Professional Corporation	28	71%	68%
Department of Justice	1121	84%	75%
Ontario Power Generation Inc	38	71%	61%
Howie Sacks & Henry LLP	25	84%	84%
Lerners LLP	141	93%	80%
City of Ottawa	36	81%	69%
McMillan LLP	171	89%	73%
Norton Rose Fulbright Canada LLP	266	80%	76%
Immigration & Refugee Board	120	26%	24%
CRTC	29	52%	48%
Wildeboer Dellelce LLP	37	89%	86%
Ontario Securities Commission	154	92%	82%
Bell Temple LLP	47	79%	79%
Baker & McKenzie LLP	89	87%	76%
CBC	25	44%	44%
Morneau Shepell Ltd	28	50%	36%
The Personal Insurance Company	50	106%	92%
Pricewaterhousecoopers LLP	74	53%	47%
Clyde & Co LLP	29	62%	55%
Harrison Pensa LLP	66	92%	67%
Stikeman Elliott LLP	248	88%	71%
City of Toronto	251	76%	66%
Gorbet & Associates	26	96%	85%
McKenzie Lake Lawyers LLP	49	92%	82%
Devry Smith Frank LLP	64	91%	77%
Intact Financial Corporation	174	83%	75%
Filion Wakely Thorup Angeletti LLP	42	102%	86%
Fragomen (Canada) Co	35	91%	89%
Borden Ladner Gervais LLP	428	90%	80%
SimpsonWigle Law LLP	33	91%	82%
Sun Life Financial	75	71%	68%
Smart & Biggar/Fetherstonhaugh	49	90%	82%
Blake Cassels & Graydon LLP	409	81%	71%
RZCD Law Firm LLP	26	92%	73%
Attorney General of Ontario	28	75%	75%
Soloway, Wright LLP	33	97%	85%
Osler, Hoskin & Harcourt LLP	334	85%	79%
Kronis, Rotsztain, Margles, Cappel LLP	36	89%	81%
Keyser Mason Ball, LLP	24	108%	104%



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Dentons Canada LLP	217	84%	73%
HGR Graham Partners LLP	28	96%	89%
Canadian Human Rights Commission	28	61%	61%
Fasken Martineau DuMoulin LLP	312	88%	73%
Public Service Alliance of Canada	25	44%	44%
Miller Thomson LLP	290	91%	79%
Chaitons LLP	25	88%	72%
Mills & Mills LLP	34	97%	94%
Sorbara, Schumacher, McCann LLP	34	94%	68%
Scotiabank	150	45%	37%
Stewart Title Guaranty Company	31	81%	58%
University of Western Ontario	37	30%	30%
Davies Ward Phillips & Vineberg LLP	162	90%	69%
Weaver Simmons LLP	27	93%	81%
Canadian Armed Forces	27	48%	41%
Workplace Safety & Insurance Appeals Tribunal	64	48%	44%
Pace Law Firm Professional Corporation	52	63%	62%
Loblaw Companies Limited	27	63%	63%
Infrastructure Ontario	37	86%	65%
Regional Municipality of York	63	71%	54%
Fogler, Rubinoff LLP	117	91%	80%
Kelly Santini LLP	39	97%	95%
Cohen Highley LLP	39	87%	79%
Legal Aid Ontario	423	89%	79%
Economical Insurance	30	93%	90%
Sullivan Mahoney LLP	29	97%	69%
Minden Gross LLP	69	96%	88%
McCarthy Tetrault LLP	328	90%	82%
Krylov Lam & Company LLP	25	52%	52%
McCague Borlack LLP	59	86%	76%
Manulife	93	81%	66%
Rogers Communications	56	64%	59%
DLA Piper (Canada) LLP	89	78%	62%
Macdonald Sager Manis LLP	34	94%	91%
Office of The Ombudsman Of Ontario	56	79%	66%
Mann Lawyers LLP	30	97%	80%
Municipal Property Assessment Corporation	78	40%	36%
Ministry of the Attorney General	1543	91%	78%
Queen's University	44	39%	36%
Ontario Nurses' Association	32	88%	84%
Gowling WLG (Canada) LLP	493	89%	80%
Global Affairs Canada	142	33%	27%



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Cassels Brock & Blackwell LLP	210	93%	87%
Ministry of Labour	93	52%	45%
Scarfone Hawkins LLP	30	97%	90%
Cavalluzzo LLP	42	95%	88%
Torkin Manes LLP	95	97%	82%
Nelligan O'Brien Payne LLP	56	91%	86%
Metrolinx	27	81%	78%
Travelers Canada	27	78%	70%
WeirFoulds LLP	106	99%	87%
Loopstra Nixon LLP	46	98%	83%
Toronto Transit Commission	32	72%	56%
Lenczner Slaght Royce Smith Griffin LLP	61	90%	84%
Siskinds LLP	87	72%	60%
Goodmans LLP	192	95%	84%
Canada Revenue Agency	78	22%	19%
Gardiner Roberts LLP	69	100%	64%
Office of The Public Guardian & Trustee	25	80%	72%
HSBC Bank Canada	32	59%	53%
Aird & Berlis LLP	179	97%	80%
Public Prosecution Service of Canada	158	97%	82%
City of Mississauga	33	73%	61%
College of Physicians & Surgeons Of Ontario	32	72%	59%
Thomson Rogers	33	88%	82%
Blaney McMurtry LLP	122	94%	81%
X-Copper Professional Corporation	50	90%	88%
Dutton Brock LLP	50	92%	72%
Lawyers' Professional Indemnity Company (LawPro)	49	90%	69%
Green and Spiegel LLP	32	81%	75%
Hughes Amys LLP	38	82%	76%
Barriston LLP	28	89%	71%
London Life Insurance Company	39	59%	51%
Perley-Robertson Hill & McDougall LLP	46	100%	93%
Shibley Righton LLP	43	93%	63%
Ministry of the Environment and Climate Change	36	58%	56%
Ridout & Maybee LLP	32	100%	84%
Barapp Law Firm Professional Corporation	38	61%	55%
Children's Aid Society of Toronto	41	44%	39%
Agro Zaffiro LLP	29	90%	76%
Canada Post Corporation	34	56%	44%
Zarek Taylor Grossman Hanrahan LLP	46	91%	76%
Koskie Minsky LLP	53	96%	81%
BCE Inc	57	75%	67%



Diversio Inc.  
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Teplitsky, Colson LLP	25	100%	88%
Templeman LLP	39	85%	67%
Robins Appleby LLP	30	83%	67%
Dickinson Wright LLP	51	96%	86%
Mathews, Dinsdale & Clark LLP	49	96%	84%
Toronto Community Housing Corporation	26	77%	65%
College of Nurses of Ontario	37	78%	73%
City of Hamilton	38	74%	58%
Health Canada	43	37%	30%
Bennett Jones LLP	191	86%	74%
Altus Group	113	46%	36%
McCarter Grespan Beynon Weir Professional Corporation	28	71%	43%
Sicotte Guilbault LLP	27	70%	67%
Investment Industry Regulatory Organization of Canada	32	88%	72%
Dale & Lessmann LLP	29	90%	86%
Brookfield	37	41%	41%
Stieber Berlach LLP	30	90%	60%
Zuber & Company	27	96%	89%
City of Brampton	26	58%	46%
Goldman Sloan Nash & Haber LLP	35	91%	71%
Owens Wright LLP	27	89%	74%
Canadian Tire	25	56%	52%
Information and Privacy Commissioner of Ontario	45	73%	64%
Lawson Lundell LLP	28	46%	46%
Brauti Thorning Zibarras LLP	31	87%	71%
Beard Winter LLP	65	89%	71%
Ross & McBride LLP	45	91%	67%
Smith Valeriote Law Firm LLP	38	95%	87%



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## 2) NUMBER AND PERCENTAGE OF RESPONDENTS BY DOMINANT VS. NONDOMINANT GROUP

To create the Diversity and Inclusion Scores for each LPW, Diversio first classified licensees into 'dominant' and 'nondominant' categories. The **Nondominant** category includes licensees who filled out the survey and self-identified as being at least one of the following: Indigenous, person with a disability, LGBTQ2+, woman, Francophone, or as a person of colour (POC). The **Dominant** category includes licensees who filled out the survey and did not identify themselves as belonging to an enumerated group. If a licensee recorded 'Prefer Not to Answer or equivalent to any of the five demographic categories, they were classified as **PNA** (Prefer Not to Answer) and were not considered in the dominant/nondominant calculations.

Please note that the 'total' figures are not exact. Due to the nature of the data, as discussed, some firms show response rates above 100% as a result of licensees who worked at multiple legal workplaces in the period.

### Average Inclusion Response Rate by LWP Type

	Dominant	Nondominant	PNA
Law Firm	95%	95%	65%
Big Law	96%	95%	61%
Non-Big Law	94%	95%	65%
Corporate	95%	95%	63%
Public Interest	96%	95%	71%
<b>Overall</b>	<b>95%</b>	<b>95%</b>	<b>66%</b>

### Average Inclusion Response Rate by LWP Size

	Dominant	Non-Dominant	PNA
>=150	96%	95%	63%
50-149	95%	94%	65%
<50	95%	95%	67%
<b>Overall</b>	<b>95%</b>	<b>95%</b>	<b>66%</b>

### Inclusion Response Rate by Dominant v. Non-dominant Group

Legal Workplace	Inclusion Response Rate		
	Dominant	Non-dominant	PNA
Privy Council Office	100%	100%	75%
University of Toronto	100%	92%	100%
Human Rights Legal Support Centre	100%	96%	75%
Samfiru Tumarkin LLP	100%	100%	83%



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Deloitte	100%	100%	57%
Supreme Court of Canada	100%	100%	86%
Rusonik, O'Connor, Robbins, Ross, Gorham & Angelini, LLP	100%	92%	75%
Olthuis Kleer Townshend LLP	100%	100%	100%
Telus	100%	80%	80%
Torys LLP	97%	99%	72%
RCMP	100%	80%	63%
Diamond & Diamond Lawyers LLP	92%	100%	75%
Hicks Morley Hamilton Stewart Storie LLP	97%	98%	63%
Pallett Valo LLP	100%	100%	60%
Sherrard Kuzz LLP	89%	92%	60%
Hydro One Networks Inc	100%	100%	75%
Export Development Canada	100%	100%	100%
Emond Harnden LLP	100%	87%	60%
Royal Bank of Canada	100%	95%	59%
University of Ottawa	100%	80%	50%
TD Bank Group	97%	95%	66%
Goldblatt Partners LLP	100%	100%	100%
Law Society of Ontario	94%	98%	82%
Low Murchison Radnoff LLP	75%	92%	60%
Thorsteinssons LLP Tax Lawyers	71%	71%	29%
KPMG LLP	100%	100%	65%
Office of the Worker Adviser	100%	100%	75%
Ernst & Young LLP	100%	91%	50%
Flaherty McCarthy LLP	100%	100%	64%
Bereskin & Parr LLP	100%	96%	100%
Cunningham, Swan, Carty, Little & Bonham LLP	91%	100%	44%
Bank of Montreal	94%	100%	50%
Walmart	100%	100%	14%
CIBC	82%	92%	65%
Desjardins General Insurance Group	89%	97%	60%
Paliare Roland Rosenberg Rothstein LLP	100%	92%	73%
OMERS	100%	91%	71%
Aviva Canada	93%	93%	91%
Unifor	100%	100%	50%
Ontario Teachers' Pension Plan	100%	90%	43%
Aviva Trial Lawyers	100%	88%	64%
Grillo Barristers Professional Corporation	100%	100%	67%
Department of Justice	99%	97%	72%
Ontario Power Generation Inc	100%	88%	60%
Howie Sacks & Henry LLP	100%	100%	100%
Lerners LLP	100%	93%	60%



Diversio Inc.  
*Private and confidential*

City of Ottawa	100%	92%	75%
McMillan LLP	95%	92%	49%
Norton Rose Fulbright Canada LLP	97%	99%	76%
Immigration & Refugee Board	100%	95%	89%
CRTC		100%	80%
Wildeboer Dellelce LLP	100%	100%	86%
Ontario Securities Commission	96%	94%	72%
Bell Temple LLP	100%	100%	100%
Baker & McKenzie LLP	100%	94%	75%
CBC	100%	100%	100%
Morneau Shepell Ltd	0%	83%	71%
The Personal Insurance Company	100%	96%	68%
Pricewaterhousecoopers LLP	100%	91%	80%
Clyde & Co LLP	100%	100%	50%
Harrison Pensa LLP	88%	100%	35%
Stikeman Elliott LLP	92%	88%	54%
City of Toronto	97%	97%	66%
Gorbet & Associates	100%	92%	50%
McKenzie Lake Lawyers LLP	100%	90%	73%
Devry Smith Frank LLP	95%	100%	47%
Intact Financial Corporation	100%	96%	74%
Filion Wakely Thorup Angeletti LLP	100%	87%	62%
Fragomen (Canada) Co	67%	100%	100%
Borden Ladner Gervais LLP	97%	96%	60%
SimpsonWigle Law LLP	100%	92%	67%
Sun Life Financial	100%	100%	75%
Smart & Biggar/Fetherstonhaugh	100%	100%	64%
Blake Cassels & Graydon LLP	94%	96%	62%
RZCD Law Firm LLP	80%	92%	50%
Attorney General of Ontario	100%	100%	100%
Soloway, Wright LLP	100%	100%	69%
Osler, Hoskin & Harcourt LLP	100%	93%	77%
Kronis, Rotsztain, Margles, Cappel LLP	100%	100%	25%
Keyser Mason Ball, LLP	100%	100%	86%
Dentons Canada LLP	98%	94%	59%
HGR Graham Partners LLP	100%	100%	60%
Canadian Human Rights Commission	100%	100%	100%
Fasken Martineau DuMoulin LLP	92%	96%	53%
Public Service Alliance of Canada	100%	100%	100%
Miller Thomson LLP	94%	94%	57%
Chaitons LLP	86%	100%	57%
Mills & Mills LLP	100%	100%	90%



Diversio Inc.  
*Private and confidential*

Sorbara, Schumacher, McCann LLP	86%	92%	46%
Scotiabank	100%	95%	52%
Stewart Title Guaranty Company	100%	62%	78%
University of Western Ontario	100%	100%	100%
Davies Ward Phillips & Vineberg LLP	93%	85%	44%
Weaver Simmons LLP	91%	100%	78%
Canadian Armed Forces	100%	100%	67%
Workplace Safety & Insurance Appeals Tribunal	80%	100%	80%
Pace Law Firm Professional Corporation	100%	100%	80%
Loblaw Companies Limited	100%	100%	100%
Infrastructure Ontario	86%	94%	14%
Regional Municipality of York	67%	95%	53%
Fogler, Rubinoff LLP	96%	97%	62%
Kelly Santini LLP	94%	100%	100%
Cohen Highley LLP	93%	100%	67%
Legal Aid Ontario	100%	98%	69%
Economical Insurance	100%	100%	80%
Sullivan Mahoney LLP	100%	100%	38%
Minden Gross LLP	100%	87%	86%
McCarthy Tetrault LLP	97%	98%	65%
Krylov Lam & Company LLP		100%	100%
McCague Borlack LLP	100%	91%	60%
Manulife	100%	91%	58%
Rogers Communications	100%	100%	67%
DLA Piper (Canada) LLP	96%	76%	64%
Macdonald Sager Manis LLP	100%	92%	100%
Office of The Ombudsman Of Ontario	83%	97%	44%
Mann Lawyers LLP	90%	100%	20%
Municipal Property Assessment Corporation	100%	95%	67%
Ministry of the Attorney General	94%	97%	63%
Queen's University	100%	90%	
Ontario Nurses' Association		100%	88%
Gowling WLG (Canada) LLP	98%	95%	68%
Global Affairs Canada	85%	95%	50%
Cassels Brock & Blackwell LLP	98%	98%	63%
Ministry of Labour	100%	100%	63%
Scarfone Hawkins LLP	100%	100%	50%
Cavalluzzo LLP	100%	92%	80%
Torkin Manes LLP	91%	97%	63%
Nelligan O'Brien Payne LLP	100%	100%	63%
Metrolinx	100%	100%	80%
Travelers Canada	100%	100%	60%



Diversio Inc.  
*Private and confidential*

WeirFoulds LLP	97%	98%	52%
Loopstra Nixon LLP	100%	100%	50%
Toronto Transit Commission	80%	100%	64%
Lenczner Slaght Royce Smith Griffin LLP	100%	96%	70%
Siskinds LLP	85%	97%	42%
Goodmans LLP	98%	94%	58%
Canada Revenue Agency	100%	90%	83%
Gardiner Roberts LLP	91%	71%	32%
Office of The Public Guardian & Trustee	100%	100%	60%
HSBC Bank Canada	100%	100%	0%
Aird & Berlis LLP	96%	92%	56%
Public Prosecution Service of Canada	100%	92%	67%
City of Mississauga	67%	92%	78%
College of Physicians & Surgeons Of Ontario		81%	86%
Thomson Rogers	100%	100%	80%
Blaney McMurtry LLP	96%	97%	64%
X-Copper Professional Corporation	93%	100%	100%
Dutton Brock LLP	88%	78%	57%
Lawyers' Professional Indemnity Company (LawPro)	83%	100%	61%
Green and Spiegel LLP	100%	93%	90%
Hughes Amys LLP	88%	100%	80%
Barriston LLP	91%	67%	80%
London Life Insurance Company	100%	100%	40%
Perley-Robertson Hill & McDougall LLP	100%	100%	70%
Shibley Righton LLP	85%	83%	40%
Ministry of the Environment and Climate Change	100%	100%	67%
Ridout & Maybee LLP	100%	91%	67%
Barapp Law Firm Professional Corporation	100%	100%	78%
Children's Aid Society of Toronto	100%	100%	50%
Agro Zaffiro LLP	75%	92%	83%
Canada Post Corporation	100%	91%	40%
Zarek Taylor Grossman Hanrahan LLP	85%	94%	64%
Koskie Minsky LLP	96%	87%	50%
BCE Inc	100%	95%	69%
Teplitsky, Colson LLP	100%	89%	67%
Templeman LLP	89%	92%	55%
Robins Appleby LLP	91%	100%	50%
Dickinson Wright LLP	91%	100%	81%
Mathews, Dinsdale & Clark LLP	96%	100%	38%
Toronto Community Housing Corporation	100%	92%	67%
College of Nurses of Ontario	100%	100%	75%
City of Hamilton	100%	83%	69%



Diversio Inc.  
*Private and confidential*

Health Canada	100%	75%	80%
Bennett Jones LLP	93%	92%	66%
Altus Group	95%	93%	40%
McCarter Grespan Beynon Weir Professional Corporation	60%	83%	44%
Sicotte Guilbault LLP	100%	100%	0%
Investment Industry Regulatory Organization of Canada	100%	87%	63%
Dale & Lessmann LLP	100%	100%	83%
Brookfield	100%	100%	
Stieber Berlach LLP	100%	100%	18%
Zuber & Company	100%	100%	85%
City of Brampton	100%	100%	50%
Goldman Sloan Nash & Haber LLP	92%	100%	50%
Owens Wright LLP	89%	86%	75%
Canadian Tire	100%	100%	67%
Information and Privacy Commissioner of Ontario	100%	95%	67%
Lawson Lundell LLP	100%	100%	100%
Brauti Thorning Zibarras LLP	92%	100%	43%
Beard Winter LLP	88%	89%	50%
Ross & McBride LLP	100%	93%	33%
Smith Valeriote Law Firm LLP	92%	100%	75%

### **Number of Respondents by Dominant vs. Nondominant Group**

<b>Legal Workplace</b>	<b>Total</b>	<b>Dominant</b>	<b>Non-dominant</b>	<b>PNA</b>
Privy Council Office	27	1	2	8
University of Toronto	65	2	13	2
Human Rights Legal Support Centre	35	1	25	4
Samfiru Tumarkin LLP	30	8	13	6
Deloitte	88	4	6	7
Supreme Court of Canada	38	2	11	7
Rusonik, O'Connor, Robbins, Ross, Gorham & Angelini, LLP	34	10	12	12
Olthuis Kleer Townshend LLP	32	4	17	6
Telus	38	4	10	10
Torys LLP	264	79	111	47
RCMP	52	1	10	8
Diamond & Diamond Lawyers LLP	38	12	18	4
Hicks Morley Hamilton Stewart Storie LLP	127	33	63	24
Pallett Valo LLP	39	10	19	10
Sherrard Kuzz LLP	28	9	13	5
Hydro One Networks Inc	29	2	9	4



Diversio Inc.  
*Private and confidential*

Export Development Canada	35	4	11	7
Emond Harnden LLP	34	10	15	10
Royal Bank of Canada	255	20	87	39
University of Ottawa	93	2	5	4
TD Bank Group	294	37	84	41
Goldblatt Partners LLP	50	15	28	6
Law Society of Ontario	324	16	94	38
Low Murchison Radnoff LLP	27	8	13	5
Thorsteinssons LLP Tax Lawyers	26	7	7	7
KPMG LLP	75	8	25	17
Office of the Worker Adviser	30	4	19	8
Ernst & Young LLP	77	8	22	18
Flaherty McCarthy LLP	26	5	7	11
Bereskin & Parr LLP	70	23	24	18
Cunningham, Swan, Carty, Little & Bonham LLP	33	11	12	9
Bank of Montreal	199	16	68	32
Walmart	49	5	8	7
CIBC	140	17	53	17
Desjardins General Insurance Group	74	9	36	10
Paliare Roland Rosenberg Rothstein LLP	37	13	13	11
OMERS	30	3	11	7
Aviva Canada	73	15	29	11
Unifor	25	1	7	4
Ontario Teachers' Pension Plan	27	4	10	7
Aviva Trial Lawyers	32	3	17	11
Grillo Barristers Professional Corporation	28	4	13	3
Department of Justice	1121	135	530	273
Ontario Power Generation Inc	38	6	16	5
Howie Sacks & Henry LLP	25	10	10	1
Lerners LLP	141	40	56	35
City of Ottawa	36	4	13	12
McMillan LLP	171	60	51	41
Norton Rose Fulbright Canada LLP	266	69	104	41
Immigration & Refugee Board	120	3	19	9
CRTC	29	0	10	5
Wildeboer Dellelce LLP	37	15	11	7
Ontario Securities Commission	154	23	83	36
Bell Temple LLP	47	10	15	12
Baker & McKenzie LLP	89	16	33	28
CBC	25	2	6	3
Morneau Shepell Ltd	28	1	6	7
The Personal Insurance Company	50	7	27	19



Diversio Inc.  
Private and confidential

Pricewaterhousecoopers LLP	74	7	22	10
Clyde & Co LLP	29	5	9	4
Harrison Pensa LLP	66	16	22	23
Stikeman Elliott LLP	248	79	84	56
City of Toronto	251	34	95	62
Gorbet & Associates	26	8	13	4
McKenzie Lake Lawyers LLP	49	14	20	11
Devry Smith Frank LLP	64	21	22	15
Intact Financial Corporation	174	24	79	42
Filion Wakely Thorup Angeletti LLP	42	15	15	13
Fragomen (Canada) Co	35	3	25	4
Borden Ladner Gervais LLP	428	118	182	87
SimpsonWigle Law LLP	33	11	13	6
Sun Life Financial	75	15	30	8
Smart & Biggar/Fetherstonhaugh	49	15	18	11
Blake Cassels & Graydon LLP	409	110	146	76
RZCD Law Firm LLP	26	5	13	6
Attorney General of Ontario	28	5	12	4
Soloway, Wright LLP	33	11	8	13
Osler, Hoskin & Harcourt LLP	334	100	132	52
Kronis, Rotsztain, Margles, Cappel LLP	36	12	16	4
Keyser Mason Ball, LLP	24	6	13	7
Dentons Canada LLP	217	64	72	46
HGR Graham Partners LLP	28	9	13	5
Canadian Human Rights Commission	28	3	12	2
Fasken Martineau DuMoulin LLP	312	101	100	72
Public Service Alliance of Canada	25	1	8	2
Miller Thomson LLP	290	94	119	51
Chaitons LLP	25	7	8	7
Mills & Mills LLP	34	11	12	10
Sorbara, Schumacher, McCann LLP	34	7	12	13
Scotiabank	150	10	37	21
Stewart Title Guaranty Company	31	3	13	9
University of Western Ontario	37	2	8	1
Davies Ward Phillips & Vineberg LLP	162	54	53	39
Weaver Simmons LLP	27	11	5	9
Canadian Armed Forces	27	3	4	6
Workplace Safety & Insurance Appeals Tribunal	64	5	16	10
Pace Law Firm Professional Corporation	52	9	19	5
Loblaw Companies Limited	27	2	13	2
Infrastructure Ontario	37	7	18	7
Regional Municipality of York	63	9	21	15



Diversio Inc.  
Private and confidential

Fogler, Rubinoff LLP	117	52	29	26
Kelly Santini LLP	39	18	14	6
Cohen Highley LLP	39	14	14	6
Legal Aid Ontario	423	45	215	116
Economical Insurance	30	8	15	5
Sullivan Mahoney LLP	29	11	4	13
Minden Gross LLP	69	29	23	14
McCarthy Tetrault LLP	328	98	139	57
Krylov Lam & Company LLP	25	0	11	2
McCague Borlack LLP	59	19	22	10
Manulife	93	17	32	26
Rogers Communications	56	9	18	9
DLA Piper (Canada) LLP	89	26	21	22
Macdonald Sager Manis LLP	34	14	12	6
Office of The Ombudsman Of Ontario	56	6	29	9
Mann Lawyers LLP	30	10	14	5
Municipal Property Assessment Corporation	78	6	19	6
Ministry of the Attorney General	1543	279	697	425
Queen's University	44	7	10	0
Ontario Nurses' Association	32	0	20	8
Gowling WLG (Canada) LLP	493	161	179	97
Global Affairs Canada	142	13	22	12
Cassels Brock & Blackwell LLP	210	86	83	27
Ministry of Labour	93	9	23	16
Scarfone Hawkins LLP	30	14	11	4
Cavalluzzo LLP	42	11	24	5
Torkin Manes LLP	95	33	32	27
Nelligan O'Brien Payne LLP	56	12	31	8
Metrolinx	27	5	12	5
Travelers Canada	27	2	14	5
WeirFoulds LLP	106	33	49	23
Loopstra Nixon LLP	46	14	17	14
Toronto Transit Commission	32	5	7	11
Lenczner Slaght Royce Smith Griffin LLP	61	21	24	10
Siskinds LLP	87	20	31	12
Goodmans LLP	192	83	63	36
Canada Revenue Agency	78	1	10	6
Gardiner Roberts LLP	69	23	21	25
Office of The Public Guardian & Trustee	25	2	13	5
HSBC Bank Canada	32	5	12	2
Aird & Berlis LLP	179	71	52	50
Public Prosecution Service of Canada	158	30	64	60



Diversio Inc.  
Private and confidential

City of Mississauga	33	3	12	9
College of Physicians & Surgeons Of Ontario	32	0	16	7
Thomson Rogers	33	13	6	10
Blaney McMurtry LLP	122	49	30	36
X-Copper Professional Corporation	50	14	20	11
Dutton Brock LLP	50	16	23	7
Lawyers' Professional Indemnity Company (LawPro)	49	6	15	23
Green and Spiegel LLP	32	2	14	10
Hughes Amys LLP	38	8	18	5
Barriston LLP	28	11	9	5
London Life Insurance Company	39	2	16	5
Perley-Robertson Hill & McDougall LLP	46	20	16	10
Shibley Righton LLP	43	13	12	15
Ministry of the Environment and Climate Change	36	5	13	3
Ridout & Maybee LLP	32	9	11	12
Barapp Law Firm Professional Corporation	38	7	7	9
Children's Aid Society of Toronto	41	1	13	4
Agro Zaffiro LLP	29	8	12	6
Canada Post Corporation	34	3	11	5
Zarek Taylor Grossman Hanrahan LLP	46	13	18	11
Koskie Minsky LLP	53	26	15	10
BCE Inc	57	10	20	13
Teplitsky, Colson LLP	25	10	9	6
Templeman LLP	39	9	13	11
Robins Appleby LLP	30	11	6	8
Dickinson Wright LLP	51	23	10	16
Mathews, Dinsdale & Clark LLP	49	25	14	8
Toronto Community Housing Corporation	26	1	13	6
College of Nurses of Ontario	37	3	18	8
City of Hamilton	38	3	12	13
Health Canada	43	3	8	5
Bennett Jones LLP	191	70	51	44
Altus Group	113	22	15	15
McCarter Grespan Beynon Weir Professional Corporation	28	5	6	9
Sicotte Guilbault LLP	27	10	8	1
Investment Industry Regulatory Organization of Canada	32	5	15	8
Dale & Lessmann LLP	29	12	8	6
Brookfield	37	6	9	0
Stieber Berlach LLP	30	3	13	11
Zuber & Company	27	7	6	13
City of Brampton	26	3	6	6
Goldman Sloan Nash & Haber LLP	35	12	8	12



Diversio Inc.  
*Private and confidential*

Owens Wright LLP	27	9	7	8
Canadian Tire	25	3	8	3
Information and Privacy Commissioner of Ontario	45	3	21	9
Lawson Lundell LLP	28	5	5	3
Brauti Thorning Zibarras LLP	31	13	7	7
Beard Winter LLP	65	25	19	14
Ross & McBride LLP	45	11	15	15
Smith Valeriote Law Firm LLP	38	13	15	8

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## Your Inclusion & Diversity Dashboard

### How to Use This Dashboard

This dashboard provides insights and guidance to increasing workplace diversity and improving experiences of underrepresented employees. Your Top Recommendations were identified using Diversio's advanced analytics and matching algorithms. Your Inclusion Scorecard is designed to be tracked over time.

#### Unlock Additional Insights

Opt in for features like advanced analytics, custom recommendations, employee insights, and social media sentiment tracking.

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### Show Your Commitment by Getting Certified

Diversio Certification is a trusted seal recognized by industry associations, corporations, regulators and government. Certification signals your performance on diversity as well as your commitment to continued improvement.

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Learn more about Diversio Certification tiers to understand your ranking and set future goals.

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### Your Workplace Inclusion Score

Your workplace ranking relative to other legal workplaces in Ontario with 25 or more legal professionals

Overall Inclusion Score

# 85/100

Diversity	Experience	Commitment
80/100	72/100	22/100

Index Ranking (192 legal workplaces)

# 92<sup>nd</sup>

Diversity	Experience	Commitment
17 <sup>th</sup>	82 <sup>nd</sup>	150 <sup>th</sup>

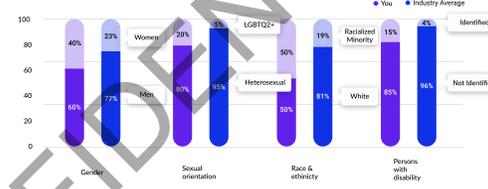
#### What is the Inclusion Index?

The Law Society of Ontario partnered with Diversio to create an Inclusion Index which ranks all legal workplaces with more than 25 lawyers or paralegals. LSO collected data from lawyers and workplaces in the 2019 Annual Report, including demographic, experience, and programming data. Diversio applied its inclusion algorithms to generate an Inclusion Score and ranking for each workplace.

[Learn More](#)

### Diversity Composition

Self-identified demographic responses from legal professionals at your workplace



Demographic	Identified	Not Identified
Gender	40% (Women), 65% (Men)	23% (Women), 77% (Men)
Sexual orientation	20% (LGBTQ2+), 85% (Heterosexual)	20% (LGBTQ2+), 85% (Heterosexual)
Race & ethnicity	19% (Racialized Minority), 81% (White)	19% (Racialized Minority), 81% (White)
Persons with disability	4% (Identified), 96% (Not Identified)	4% (Identified), 96% (Not Identified)

### Inclusion Scorecard

Areas of focus to improve employee experience in your workplace  
Scores calculated based on survey responses

	Inclusive culture	Unbiased feedback & reviews	Access to networks	Flexible working options	Safe work environment
Your KPI score	5.0	6.2	7.5	8.0	5.3
Industry average	7.3	7.0	7.1	7.5	9.0

Legend: Green circle = Strength, Red circle = Pain point

### Top Recommended Solutions

Customized programs, policies and solutions to improve your Inclusion Score

Solutions

Parental Leave Training

Real-Time Feedback Culture

Rooney Rule

Parental Leave Training

An online resource to help managers support their direct reports' transition to parenthood. Tips include remembering to keep the person on leave in mind for development and team opportunities, and providing resources to working parents, from childcare to mentoring.

Relevant KPI: Inclusive Culture, Flexible Work  
Pain Point(s): Parental Transition

[Learn More](#)

### Diversio Training

Access Diversio & HRPA training for employees and satisfy LSO's new professional development requirements for 2020.

[Click here to join the waitlist](#)

### Update Your Data

Did we miss something in your report? Feel free to leave a message and our team will reach out as soon as possible.

[Let Us Know](#)

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# LSO Inclusion Index 2020 Guide

Context, Objectives and Methodology

CONFIDENTIAL

## LSO has made a bold commitment to promote equality within Ontario legal workplaces (LWPs)

### Context

- LSO, the **governing body** for approximately 50,000 lawyers and 80,000 paralegals in Ontario, has made a commitment to advancing equality, diversity and inclusion in the legal profession
- The demographic makeup across the legal profession is not reflective of Ontario's population
  - Racialized individuals represent just **18% of lawyers** and **34% of paralegals** vs **26% of Ontarians**
- The LSO Working Group identified specific challenges facing racialized lawyers, including **low access to networks**, disadvantage due to **cultural background**, and systemic **prejudice**
- The Working Group report follows 2006 Justicia Project, which developed a plan to improve **gender equality** in the sector

### Objectives

- Develop a plan to:
  - Promote more **inclusive legal workplaces** in Ontario
  - **Reduce barriers** created by racism, unconscious bias and discrimination
  - Achieve better representation of racialized licensees in **all legal workplaces** specifically at **partner level**
- Implement 14 recommendations under four themes:
  - Accelerating culture shift
  - Measuring progress
  - Educating for change
  - Leading by example

CONTEXT

## The Inclusion Index is designed to measure and track diversity over time

LSO Task Force recommendations		Timeline
Accelerate culture shift	Reinforce Professional Obligations	TBD
	Diversity and Inclusion Project	TBD
	Adoption of Equality, Diversity and Inclusion Principles and Practices	2018
Measure progress	Measure Progress through Quantitative Analysis (self-identification data)	2019
	Measure Progress through Qualitative Analysis (inclusion questions)	2019
	<b>Inclusion Index</b>	<b>2019</b>
	Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey	2017
Educate for change	Progressive Compliance Measures	TBD
	Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions	2018
	Update the Licensing Process	TBD
Lead by example	Build Communities of Support	TBD
	Address Complaints of Systemic Discrimination	TBD
	Lead by Example through internal assessment and initiatives	2016

CONTEXT

## Similar efforts are taking place in the Canadian finance, technology, and energy sectors



Natural Resources  
Canada

Ressources naturelles  
Canada

Canada

- An effort by 12 of Canada's largest banks and asset managers to measure diversity & inclusion across Capital Markets
- Organizations received their performance ranking relative to peers and tactical action plans for improvement
- High performers can celebrate their accomplishments through certification
- A Business Development Bank of Canada initiative to measure diversity & inclusion across companies in which they are invested
- Employees across all BDC companies participated in a data-collection survey and disclosed their roles/positions, demographic traits and workplace inclusion experiences
- BDC received results for all their companies. Companies received their individual-level insights
- #EqualBy30 is an international energy-sector initiative involving 100+ energy companies committing to analyze, improve and track diversity and inclusion
- The Government of Canada is launching a data collection project to establish a baseline for all Canadian signatories
- Companies will receive robust industry benchmarks and insights on common challenges as well as ways to overcome them

CONTEXT

## The Index is designed to support LWPs on their journey to becoming highly diverse and inclusive

The Inclusion Index is not intended to ‘name and shame’ LWPs – rather, it is intended to provide useful insights that will help organizations and the sector accelerate progress



Make use of **data** to identify key **challenges** and **opportunity areas** at an organization-specific and sector-wide level



Leverage sophisticated analytics to create robust **benchmarks** and provide tactical and **impact-oriented solutions**



Celebrate **top performers** and provide everyone with positive incentive to continually improve

OBJECTIVES

## The Index was created with Diversio's unique technology that uses data science and machine learning

Inclusion Index	<ul style="list-style-type: none"> <li>▪ A <b>ranking</b> of all <b>legal workplaces</b> (LWPs) in Ontario that employ <b>25 or more</b> lawyers and/or paralegals</li> <li>▪ Based on data from the <b>2018 Lawyer Annual Report</b> to measure each LWPs' level of diversity, inclusion and commitment, as reflected by anonymous employee feedback and programming</li> </ul>
Diversio's technology	<ul style="list-style-type: none"> <li>▪ The Index uses Diversio's proprietary diversity and inclusion algorithm which analyzes legal workplace data to generate an overall <b>Inclusion Score</b></li> <li>▪ Also leverages Diversio's proprietary '<b>recommendation engine</b>' to create customized action plans to help LWPs improve their Inclusion Score</li> </ul>
How it should be used	<ul style="list-style-type: none"> <li>▪ Intended to help LWPs advance their journey towards becoming highly diverse, inclusive and <b>reflective of the communities</b> they serve</li> <li>▪ Individual LWPs are encouraged to use their <b>baseline score</b> to implement programming and signal their commitment to employees and clients</li> </ul>

OBJECTIVES

## The Inclusion Score formula: How each legal workplace was scored

Inclusion Score	=	Demographics 25%	Inclusivity 50%	Commitment 25%
Key question		How reflective is LWP of the local population?	How inclusive is LWP of under-represented groups?	How effective is LWP's efforts to promote inclusion through programming?
Data sources		Self-identification questions, municipality data from National Household Survey and Census	Self-identification questions; inclusion questions	Self-assessment questions; programming questions
Calculation		<p>Determine which municipality each LWP is primarily based in and the proportion of underrepresented persons (gender, race, Indigenous identity, disability, LGBTQ2+, Francophone) in that municipality</p> <p>Assign score out based on how reflective LWP is of its municipality</p>	<p>Group Inclusion Questions into six Inclusion KPIs</p> <p>Compare each LWP's response variation to identify areas of systemic exclusion or bias</p> <p>Assign score based on overall sentiment and variance between groups</p>	Assign score based on number of programs and policies adopted

METHODOLOGY



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**Section 2 – EQUALITY, DIVERSITY AND INCLUSION (EDI)**

In 2017, in keeping with its commitment to promote equality and diversity in the legal professions and to enhance legal services provided by and for Indigenous, Francophone and equality-seeking communities, the Law Society began implementing the 13 recommendations of the Challenges Faced by Racialized Licensees Final Report, [Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions](#), and the five strategies designed to address the systemic barriers faced by racialized and other equality-seeking licensees. The following describes actions required by licensees respecting two of the strategies: Accelerating Culture Shift and Measuring Progress.

**Question 1: Strategy - Measuring Progress: Self-Identification Data****Recommendation 4**

Since 2009, the Law Society has been collecting licensee demographic data on a voluntary basis to better understand demographic trends, to develop programs and initiatives within the mandate of the Law Society and to promote equality and diversity in the professions. The data has been reported in the aggregate in the annual publications, *Statistical Snapshot of Lawyers in Ontario* and *Statistical Snapshot of Paralegals in Ontario* (“Snapshots”). To access the yearly Snapshots from previous years, visit the Law Society’s [website](#).

Providing self-identification data will continue to be voluntary each year. In addition to reporting on the legal professions in the aggregate, the Law Society will also provide legal workplaces of at least 25 licensees in Ontario with the self-identification data of their legal workplace. The individual licensees of the workplace will also be provided with a copy. This data will allow legal workplaces to compare their data with the aggregate demographic data gathered from the professions as a whole.

The Law Society will provide the data to legal workplaces in a manner that preserves the privacy and confidentiality of individual licensees.

**Question 2: Strategy - Accelerating Culture Shift: Statement of Principles****Recommendation 3(1)**

In its commitment to promote equality, diversity and inclusion within the legal professions, the Law Society encourages licensees to consider their individual roles in creating lasting change. Recommendation 3(1) requires licensees to commit to equality, diversity and inclusion by adopting and abiding by a Statement of Principles. The requirement does not create any obligation to profess any belief or to seek to persuade anyone about anything. The requirement will be satisfied by licensees acknowledging their obligation to take reasonable steps to cease or avoid conduct that creates and/or maintains barriers for racialized licensees or other equality-seeking groups. Licensees are not required to make their Statements of Principles public. They are just required to confirm annually that they have considered and implemented this requirement. The content of the Statement of Principles does not create or derogate from, but rather reflects, professional obligations. Accordingly, licensees are not required to disclose the content of their Statement of Principles to the Law Society but are only required to confirm its existence. The Law Society has created resources to assist licensees in completing this requirement. Refer to the Guide for links to online resources.

**Question 5: Strategy - Measuring Progress: Inclusion Questions****Recommendation 5**

The Law Society encourages licensees to voluntarily answer questions about their individual experiences of inclusion within their legal workplaces. These questions will be asked every four years and a summary of the information gathered will be provided to legal workplaces of at least 25 licensees in Ontario. The responses to these inclusion questions will help the Law Society to track trends over time and refine and develop programs and initiatives to address the challenges faced by racialized licensees and other equality-seeking groups. The



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## 2018 Lawyer Annual Report

Law Society will provide the data to legal workplaces in a manner that preserves the privacy and confidentiality of individual licensees.

**If you are not in a legal workplace of at least 10 licensees in Ontario or if you are not the Licensee Representative responsible for completing the equality, diversity and inclusion self-assessment for your legal workplace, you may not be required to answer all parts of Questions 6 & 7.**

**Question 6: Strategy - Measuring Progress: Self-Assessment Questions**

**Recommendation 3(3)**

The Law Society requires a Licensee Representative from each legal workplace of at least 10 licensees in Ontario to complete an equality, diversity and inclusion self-assessment for their legal workplace. The self-assessment will assist legal workplaces in discussing and reflecting on the current state of diversity and inclusion within their legal workplace, and will encourage legal workplaces to advance diversity and inclusion efforts. The information will also assist the Law Society in understanding the environments within legal workplaces, from the perspective of the legal workplace, and assisting licensees to overcome barriers they are experiencing.

These questions will be completed every two years by the Licensee Representative on behalf of the legal workplace.

**Question 7: Strategy - Accelerating Culture Shift: Human Rights Diversity Policy**

**Recommendation 3(2)**

The Law Society requires 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. The human rights/diversity policy is to address at the very least fair recruitment, retention and advancement of licensees within their legal workplace. Adopting this policy will encourage licensees to consider their collective roles in creating lasting change within their legal workplaces. The legal workplace's human rights/diversity policy is to be available to members of the professions and the public upon request.

The Law Society has created resources to assist licensees in completing this requirement. Refer to the Guide for links to online resources.

**Strategy - Measuring Progress: Inclusion Index (Recommendation 6)**

Every four years, the Law Society will develop and publish an inclusion index for each legal workplace of at least 25 or more licensees in Ontario. The inclusion index is a tool intended to advance the goals of equality, diversity and inclusion within the legal professions by demonstrating the progress of equality, diversity and inclusion within legal workplaces. The inclusion index will reflect the responses to the self-assessment and inclusion questions and the data collected from the self-identification questions.

The Law Society will ensure that privacy and confidentiality are preserved when collecting quantitative demographic data and qualitative inclusion data from licensees.

For additional information on any of topics outline above and the questions in Section 2, please visit the Law Society's Equality, Diversity and Inclusion webpage at [LSO.ca/EDI](https://www.lso.ca/EDI).

**1. Demographic Information (Self-Identification Questions) – (To be completed by all lawyers)**

a) Are you Francophone?

Yes       No       I do not wish to answer

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b) Do you consider yourself to be an Indigenous person? (select all that apply)

- First Nations, Status Indian, Non-Status Indian
- Inuk (Inuit)
- Métis
- Other – Specify \_\_\_\_\_
- No, not an Indigenous person
- I do not wish to answer

c) Which of the following best describes your racial or ethnic identity? (select all that apply)

- Arab
- Black
- Chinese
- Filipino
- Japanese
- Korean
- Latin American
- South Asian (e.g. East Indian, Pakistani, Sri Lankan, etc.)
- Southeast Asian (e.g. Vietnamese, Cambodian, Laotian, Thai, etc.)
- West Asian (e.g. Iranian, Afghan, etc.)
- White
- Other – Specify \_\_\_\_\_
- I do not wish to answer

d) What is your religion or creed? (select all that apply)

- Atheist
- Buddhist
- Hindu
- Jewish
- Muslim
- Protestant
- Roman Catholic
- Other Christian, such as Eastern Orthodox and Ukrainian Catholic
- Sikh
- Other religion – Specify \_\_\_\_\_
- No religion
- I do not wish to answer

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e) Are you a person with a disability?

- Yes     No     I do not wish to answer

f) Are you transgender, transsexual, gay, lesbian or bisexual? (select all that apply)

- Transgender  
 Transsexual  
 Gay  
 Lesbian  
 Bisexual  
 Other – Specify \_\_\_\_\_  
 No  
 I do not wish to answer

**2. Statement of Principles**

I declare that I abide by a Statement of Principles that acknowledges my obligation to promote equality, diversity and inclusion generally, and in my behaviour towards colleagues, employees, clients and the public.

- Yes     No

If "No", provide an explanation below.

**For the purpose of answering the remaining questions in Section 2, a "legal workplace" is defined as a place of work in Ontario where legal work is being done, such as providing legal advice, guidance or opinions.**

**3. Legal Workplace**

All questions to be answered as of December 31, 2018.

To the best of my knowledge:

- I am not in any legal workplaces in Ontario.  
 I am in at least one (1) legal workplace in Ontario.

**If you are not in any legal workplaces in Ontario**

- Proceed to Section 3.



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**If you are in one legal workplace in Ontario:**

- Complete Question 4a) regarding the size of your legal workplace.
- Complete Questions 4b), if applicable, and Question 5.
- Complete Question 6, as applicable.
- Complete Question 7a) and Question 7b), if applicable.

**If you are in more than one legal workplace in Ontario, follow the instructions set out in (A), (B), or (C), as applicable:****(A) All of your legal workplaces in Ontario have 9 or fewer licensees:**

- Complete Question 4a) regarding the size of your legal workplace.
- Do not complete Question 4b).
- If you are in more than one legal workplace in Ontario and all have 9 or fewer licensees, you need only answer Question 5 once, based on your overall experience.
- Do not complete Question 6 or Question 7. Proceed to Section 3 of the Annual Report.

**(B) All of your legal workplaces in Ontario have 10 or more licensees:**

- You will need to repeat this procedure for each of your legal workplaces with 10 or more licensees. Questions relating to your second and third legal workplaces are provided after Question 7.
- For your first legal workplace in Ontario, complete Questions 4, 5, and as applicable, 6.
- Complete all applicable parts of Question 7.
- Repeat for each of your legal workplaces in Ontario.
- If you are in only one legal workplace in Ontario and it is a legal workplace with 10 or more licensees, proceed to Section 3 of the Annual Report after completing all applicable parts of Question 7.
- If you require more copies of Questions 4-7 than provided in this Annual Report, please contact By-Law Administration Services at [bylawadmin@lso.ca](mailto:bylawadmin@lso.ca) or 416-947-3315.

**(C) You are in more than one legal workplace in Ontario and at least one has 9 or fewer licensees and at least one has 10 or more licensees:**

- Follow the instructions above, as applicable to each of your legal workplaces in Ontario.

**4. Legal Workplace Details**

a) Indicate the size of your legal workplace.

- 9 or fewer licensees       10-24 licensees       25 or more licensees

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**2018 Lawyer Annual Report**

- b) Provide the name of your legal workplace (mandatory if there are 10 or more licensees in the legal workplace)

**5. Inclusion Survey**

**When responding to the survey questions, please consider your own personal experiences at your legal workplace in 2018.**

- a) At my legal workplace\*, I feel included\*.
- Always
  - Often
  - Sometimes
  - Rarely
  - Never
  - I do not know
  - I do not wish to answer
  - Not applicable
- b) At my legal workplace, I feel respected.
- Always
  - Often
  - Sometimes
  - Rarely
  - Never
  - I do not know
  - Not applicable
  - I do not wish to answer
- c) At my legal workplace, I feel free from harassment\*.
- Always
  - Often
  - Sometimes



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- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

d) At my legal workplace, I feel free from sexual harassment\*.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

e) At my legal workplace, I feel free from discrimination\*.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

f) In my opinion, all members and employees of my legal workplace are treated fairly and respectfully\* without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds\*.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know



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Not applicable

I do not wish to answer

g) As a member of the diverse Francophone\* community, I feel supported at my legal workplace and in all aspects of my identity, such as race, that intersect with my Francophone identity.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

h) I can be my authentic self\* at work.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

i) I have experienced instances of discrimination or harassment at my legal workplace.

Yes

No

I do not know

Not applicable

I do not wish to answer

j) I have observed instances of discrimination or harassment at my legal workplace.

Yes

No

I do not know

Not applicable



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I do not wish to answer

k) In response to incidents I have experienced or observed (as indicated above) (select all that apply)

- I felt comfortable speaking up to address the behaviour with the individual who engaged in this instance of discrimination or harassment.
- I spoke to the person who experienced this instance of discrimination or harassment.
- I took some form of action to report the incident to the appropriate individual within my legal workplace
- I spoke to my colleagues about the incident
- I did not know what to do

I knew what to do but opted not to take action

Not applicable

I do not wish to answer

l) The response to the action(s) I took to address incidents of discrimination or harassment I have experienced or observed (as indicated above) resulted in (select all that apply):

- Positive impact for those that experienced the discrimination or harassment
- No impact for those that experienced the discrimination or harassment
- Negative impact for those that experienced the discrimination or harassment
- Positive impact for those that demonstrated discriminatory or harassing behaviour
- Negative impact for those that demonstrated discriminatory or harassing behaviour
- No impact for those that demonstrated discriminatory or harassing behaviour
- Positive impact for me personally
- No impact for me personally
- Negative impact for me personally
- Not applicable
- I do not wish to answer

m) I am included in informal social gatherings (eg. coffee, lunch etc.) at my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never



## TAB 9.1.1

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- I do not know
- Not applicable
- I do not wish to answer

n) Opportunities for career advancement\* are based on demonstrated professional ability or achievement in my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never

- I do not know
- Not applicable
- I do not wish to answer

o) In my legal workplace, there are barriers to career advancement due to (select all that apply):

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Family status
- Marital status
- Disability
- Gender identity,
- Gender expression
- Sex
- Sexual orientation
- None of the above
- I do not know
- Not applicable
- I do not wish to answer



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## 2018 Lawyer Annual Report

p) My legal workplace makes reasonable accommodations\*.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- Not applicable
- I do not wish to answer

q) It is important to me that in my legal workplace there is a demonstrated commitment to reconciliation\* between Indigenous Peoples\* and non-Indigenous Canadians.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

r) My legal workplace provides suitable opportunities or resources\* for me to learn about reconciliation.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

s) My legal workplace provides opportunities\* for (select all that apply):

- Training to support equality, diversity, and inclusion.
- Participation in groups\* that provide support within my legal workplace.
- Participation in groups that provide support and connect licensees or professionals of similar backgrounds or experiences within my community. *(for example Canadian Association of Black Lawyers (CABL), Federation of Asian Canadian Lawyers (FACL), South Asian Bar Association (SABA), Canadian Muslim Lawyers Association (CMLA), Roundtable of Diversity Associations*



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*(RODA), Pride at Work, Women's Law Association of Ontario (WLAO), Indigenous Bar Association (IBA), etc)*

- Sharing of feedback and input about equality, diversity, and inclusion.
- I do not know
- I do not wish to answer

t) My legal workplace conducts inclusion surveys\* to measure and track its progress on equality, diversity and/or inclusion.

- Yes
- No
- I do not know

- Not applicable
- I do not wish to answer

u) My legal workplace effectively communicates\* with respect to progress, initiatives, and/or actions, and their status, related to equality, diversity, and inclusion within my organization.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know

Not applicable

I do not wish to answer

v) In my professional experiences, I am treated fairly and respectfully without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds\* by the following groups (select all that apply):

*Clients and potential clients*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know



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- Not applicable
- I do not wish to answer

*Other licensees*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable

- I do not wish to answer

*Non legal employees*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

*The administrators of justice\**

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer



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## 6. Self-Assessment Questions

- a) Are you the Licensee Representative responsible for completing the equality, diversity and inclusion self-assessment for your legal workplace?

Yes       No

If you answered, "No", complete Question 6b).

If you answered, "Yes", complete Questions 6c) through 6f).

- b) Indicated below is the Licensee Representative responsible for completing the equality, diversity and inclusion self-assessment for the legal workplace.

NOTE: The licensee who is responsible for completing the self-assessment for your legal workplace on behalf of other licensees must be listed below. Your Annual Report will be considered incomplete until the Licensee Representative has successfully submitted their Annual Report.

Licensee Name: \_\_\_\_\_

Law Society Number: \_\_\_\_\_

- c) Your legal workplace\* actively demonstrates a commitment to addressing equality\*, diversity\*, and inclusion\* by (select all that apply):

- Your leaders (for example partners, senior management, general counsel, etc.) have formally stated that equality, diversity, and inclusion are important business priorities.
- Your legal workplace has a written plan\* that features equality, diversity, and inclusion components with measurable goals and specific actions.
- Your legal workplace has formal policies\* to support equality, diversity, and inclusion including policies that address recruitment, retention, and advancement.
- Your legal workplace conducts inclusion surveys\* to identify concerns and opportunities related to workplace culture.
- Your legal workplace collects data\* to measure and track its progress on equality, diversity and/or inclusion.
- Your legal workplace has a committee, dedicated role, or human resource that supports equality, diversity, and inclusion within your organization.
- Your legal workplace has established internal initiatives\* that are designed to support equality, diversity, and inclusion.
- There are employee groups\* within your legal workplace that provide support and connect licensees of similar backgrounds or experiences.
- Licensees in your legal workplace are encouraged and supported to participate in professional groups that address diversity and community issues and promote professional opportunities for licensees who self-identify with their group. (Examples for lawyers: Canadian Association of

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Black Lawyers (CABL), Federation of Asian Canadian Lawyers (FACL), South Asian Bar Association (SABA), Canadian Muslim Lawyers Association (CMLA), Pride at Work, Women's Law Association of Ontario (WLAO), Indigenous Bar Association (IBA), Roundtable of Diversity Associations (RODA), etc. Examples for paralegals: Pride at Work, Business and Professional Women Ontario, Iranian Canadian Legal Professionals, Canadian Association of Muslim Women in Law, Canadian Italian Advocates Organization, etc.)

- Your legal workplace demonstrates an understanding of the diversity within the Francophone\* community and related inclusion concerns and opportunities for that community.
- Your legal workplace demonstrates a commitment to addressing the Calls to Action in the Truth and Reconciliation Commission of Canada's Final Report, Honouring the Truth, Reconciling for the Future\*.
- Your legal workplace provides educational opportunities or resources about reconciliation\*.
- Your legal workplace participates in community or outreach activities\* relating to equality, diversity & inclusion

In the last year, your legal workplace has internally communicated\* about the status and/or progress of equality, diversity, and inclusion initiatives or goals in your workplace.

None of the above

- d) Your legal workplace has actively demonstrated a commitment to fostering an environment that is free from discrimination, and harassment on all prohibited grounds\* by establishing and providing (select all that apply):

*Discrimination\**

- Anti-discrimination policies
- Anti-discrimination complaints process
- Education and training on anti-discrimination policies and processes
- Encouragement and support for all licensees to who report incidents of discrimination
- Anti-discrimination education or training generally
- None of the above

*Harassment\**

- Harassment policies
- Harassment complaints process
- Education and training on harassment policies and processes
- Encouragement and support for all licensees who report incidents of harassment
- Education or training on harassment in general



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None of the above

*Sexual Harassment\**

Sexual harassment policies

Sexual harassment complaints process

Education and training on sexual harassment policies and processes

Encouragement and support for all licensees who report incidents of sexual harassment

Education or training on sexual harassment in general

None of the above

e) Your legal workplace formally considers opportunities\* to support equality, diversity, and inclusion when making decisions about (select all that apply):

Recruitment

Hiring

Advancement / promotion

Training and development

Mentoring

Assignment of work

None of the above

f) Your legal workplace provides or makes available forms of equality, diversity and/or inclusion training or education\* to (select all that apply):

All licensees

Staff or licensees who make recruitment, hiring, and advancement decisions

Staff or licensees who are responsible for human resource processes and policies

All leaders (for example, partners, senior management, general counsel, etc.)

None of the above

**7. Human Rights/Diversity Policy Declaration (To be completed by all lawyers whose legal workplaces in Ontario have 10 or more licensees)**

a) Is your employer a licensee or non-licensee?

Licensee  Non-licensee



## TAB 9.1.1

## 2018 Lawyer Annual Report

If you answered "Licensee", you must answer Question 7b).  
If you answered "Non-licensee", you must answer Question 7e).

- b) Are you the Licensee Representative responsible for developing, implementing and maintaining the legal workplace's human rights/diversity policy?

Yes       No

If you answered "Yes", you must answer Question 7c).  
If you answered "No", you must answer Question 7d).

- c) I declare that a Human Rights/Diversity Policy is developed, implemented and maintained and that it addresses fair recruitment, retention and advancement in the legal workplace.

Yes       No

If you answered "No", you must answer Question 7g).

- d) Indicated below is the Licensee Representative responsible for developing, implementing and maintaining the legal workplace's Human Rights/Diversity Policy.

NOTE: The licensee who is responsible for developing, implementing and maintaining your legal workplace's Human Rights/Diversity Policy on behalf of other licensees must be listed below. Your Annual Report will be considered incomplete until the Licensee Representative has successfully submitted their Annual Report.

Licensee Name: \_\_\_\_\_

Law Society Number: \_\_\_\_\_

(e.g. 12345A or P12345)

- e) I acknowledge that my employer has developed, implemented and maintains a Human Rights/Diversity Policy and that it addresses fair recruitment, retention and advancement in the legal workplace.

Yes       No

If you answered "No", you must answer Question 7f).

- f) I acknowledge my individual obligation to have a Human Rights/Diversity Policy that addresses fair recruitment, retention and advancement in the legal workplace.

Yes       No

If you answered "No", you must answer Question 7g).



**TAB 9.1.1**

**2018 Lawyer Annual Report**

g) If you answered "No" to Questions 7c)) or 7f), provide an explanation below.

\*\*\*\*\*

Questions 4-7 for Legal Workplace #2 to be inserted here.

Questions 4-7 for Legal Workplace #3 to be inserted here.

*For further information or inquiries about the Law Society's initiatives to promote equality and diversity in the profession, please contact the Equity department:*

*Telephone: 416-947-3315 Toll-free: 1-800-668-7380*

*Fax: 416-947-3983 Email: equity@lso.ca*



## EVALUATION GUIDE

### KEY THEMES TO EXPLORE IN THE PEER REVIEW

1. How well the conclusions and recommendations are supported by the data and analyses
2. Whether the implementation of the recommendations would achieve the Law Society's equity goals
3. The efficacy of a particular recommendation that speaks to a published ranking of legal workplaces (an "Inclusion Index")
4. Strategies that can enhance the Law Society's approach in its future EDI initiatives

### EVALUATION QUESTIONS

During the **Independent Review Phase**, each reviewer is asked to assess the Challenges Report and recommendations independently. This phase includes considering the list of questions below and providing commentary where possible:

#### *With respect to the Challenges Report*

- Was the data collection process valid?
- Were response rates sufficient?
- Were the questions posed as part of the membership survey appropriate?
- Is the process of using key informants effective/reliable?

#### *With respect to the Challenges Report Recommendations*

- What is the impact of a recommendation that has been fully implemented?
- What are the impediments to implementing outstanding recommendations?
- Does the data and analysis support the recommendation?

#### *With respect to the Inclusion Index*

- Were the demographic, inclusion and self-assessment questions in the lawyer and paralegal annual reports the right questions to meet the purpose?
- Was the scope appropriate?

- Would the Index, as produced, achieve the desired result vis-à-vis legal workplaces?
- Is the data still reliable?
- Should any changes be included in future versions?

***With respect to future equity work at the Law Society***

- Is there a more effective way to collect equity data than the Law Society's current approach?
- Is the format of the collected data appropriate? (for example, are the Law Society's demographic categories generally accepted?)
- Are there other probative questions that can assist in the equity agenda? (i.e. income related to demographics)

This is **Exhibit X** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Agenda and Materials  
Thursday, May 12, 2022  
Zoom Video Conference  
1:00 pm – 3:00 pm**

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**Equity and Indigenous Affairs Committee**

**Join Zoom Videoconference:**  
<https://us02web.zoom.us/j/84091559214?pwd=YjVLRUZwWW9KRnlyTGRSbGJUTUhldz09>  
**Join Zoom teleconference: [1 855 703 8985](https://us02web.zoom.us/j/84091559214?pwd=YjVLRUZwWW9KRnlyTGRSbGJUTUhldz09)**  
**Meeting ID: 840 9155 9214**  
**Password: 698507**

Committee Members:

**Dianne Corbiere (Chair)**  
**Etienne Esquega (Vice-Chair)**  
**Atrisha Lewis (Vice-Chair)**  
Catherine Banning  
Robert Burd  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Jorge Pineda  
Julia Shin Doi  
Megan Shortreed  
Alexander Wilkes

**EQUITY AND INDIGENOUS AFFAIRS COMMITTEE MEETING AGENDA**  
**Thursday, May 12, 2022**  
**1:00 pm – 3:00 pm**

**Opening Ceremony and Indigenous Teaching (TBD)**

**1. Update on the Activities of the Equity Partners (IAG, EAG, AJEFO) (For Information)**

Update from the Indigenous Advisory Group (*Catherine Rhineland*)

Update from the Equity Advisory Group (*Nima Hojjati & Jacqueline Beckles*)

Update from L'Association des juristes d'expression française de l'Ontario (*Marc Sauvé*)

**2. Update on Competence Task Force / Indigenous Certified Specialist Program (For Information) (Priya Bhatia)**

Memo Indigenous Certified Specialist Program ..... **TAB 1**

Indigenous Legal Issues Specialty..... **TAB 1.1**

Standards for Certification..... **TAB 1.2**

**3. Peer Review of Challenges Report (For Discussion; In Camera)**

Memo Peer Review..... **TAB 2**

Notes from Peer Review Presentation on May 3, 2022..... **TAB 2.1**

Presentation from Michael Ornstein..... **TAB 2.2**

Presentation from Sujitha Ratnasingham..... **TAB 2.3**

**For Information Only**

**4. Upcoming Equity Legal Education Series Events.....TAB 3**  
*(For Information)*

**5. Decision Direction Summary from Previous Meetings.....TAB 4**  
*(For Information)*



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of Ontario

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Toronto, Ontario  
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<https://www.lso.ca>

Policy Division  
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[pskinner@lso.ca](mailto:pskinner@lso.ca)

# Memorandum

To: Equity and Indigenous Advisory Committee (EIAC)  
From: Promise Holmes Skinner, Strategic Policy Council, Indigenous Initiatives  
Date: May 6, 2022  
Re.: **Indigenous Legal Issues Specialization - Certified Specialist Program (CSP)**

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## Purpose

The purpose of this memo is to:

1. Inform the Committee of the recommendation of the Competence Task Force regarding the Certified Specialist Program and Indigenous Legal Issues Specialization;
2. Provide background on the above;
3. Inform the Committee of potential opportunities to enhance the program for its consideration.

## Background

In August 2020, the Competence Task Force (Task Force) was struck. Its mandate is to review existing programs to assess their continued relevance and determine whether new programs and rules are required to ensure that the Law Society's competence framework is keeping pace with the evolution of legal services and regulation and that licensee competence is addressed at every stage of a licensee's career.

### ***Recommendation of the Competence Task Force***

The Task Force has completed its deliberations and is planning to bring a report to Convocation in May with several recommendations, including a recommendation regarding the Certified Specialist Program (CSP). The Task Force is recommending that the CSP should be eliminated except for the Indigenous Legal Issues specialization. All existing Certified Specialists would be able to retain and use their C.S. designation until they retire, cease practising or surrender their practising license with the Law Society. The Task Force motion proposes winding up the CSP by September 1, 2022.

However, the Task Force specifically "recognized that the Indigenous Legal Issues specialization is unique in that it certifies both substantive legal specialization and inter-cultural understanding. It is intended to enhance the level of service to Indigenous Peoples by providing a mechanism by which excellence in Indigenous legal matters is both identified and encouraged. For these reasons, it is interconnected with the Law Society's Indigenous Framework and commitments to reconciliation.

As such, any recommendations regarding the Indigenous Legal Issues specialization should be made by the Equity and Indigenous Affairs Committee (EIAC), with the input of the Indigenous Advisory Group (IAG). To this end, the Task Force recommends retaining the

Indigenous Legal Issues specialization in its current form until EIAC has had an opportunity to engage with IAG, review the specialization and determine what role it plays in the Law Society's Indigenous Framework and commitment to reconciliation."<sup>1</sup>

The IAG has been informed of the Task Force recommendation and plans to discuss the recommendation at its May meeting, which was originally scheduled for May 5 and is postponed to a date in May that follows EIAC's May 12<sup>th</sup> meeting.

### ***Certified Specialist Program***

The CSP recognizes lawyers who have met established standards of experience and knowledge requirements in one or more designated areas of law and have maintained exemplary standards of professional practice. The CSP also assists members of the public to identify lawyers who can meet their needs for specialist legal assistance. The Law Society does not offer a CSP for paralegals.

### ***Indigenous Legal Issues Specialization***

The Indigenous Legal Issues specialization comprises core requirements and three distinct, but related sub-specializations, each of which has its own set of experience, knowledge and skills requirements. The three sub-specializations are: Rights and Governance, Litigation and Advocacy, and Corporate and Commercial. They were developed in 2016 after significant consultations with Indigenous organizations and members of the Indigenous legal community and broader community. Further information regarding the consultation can be found at **Tab 1.1** - Indigenous legal Issues Specialty, at pages 1-2.

The required skills for all sub-specializations include demonstration of the ability to properly articulate the Indigenous perspective and to effectively serve Indigenous clients. To this end, inter-cultural competencies have specifically been integrated into the standards. Applicants are required to submit a brief statement confirming that they have obtained a significant understanding of Indigenous cultures, perspectives and contexts. They must also submit a reference from an Indigenous community member as one of the four references required as part of the application process. See **Tab 1.2** - Standards for Certification – Indigenous Legal Issues.

### **Next Steps and Opportunities**

Assuming Convocation adopts the Task Force recommendation to wind up the CSP and maintain the Indigenous Legal Issues Specialization, the program will continue to accept applications of the Indigenous Legal Issues Specialization until otherwise determined by Convocation on the recommendation of EIAC. The CSP will be wound up with respect to all other designations as of September 1, 2022. The end date for the CSP as a whole does not dictate the end date of the Indigenous Legal Issues Specialization designation.

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<sup>1</sup> *Renewing the Law Society's Continuing Competence Framework*, Final Report of the LSO Competence Task Force, May 2022 Convocation Materials, at 13.

While the Indigenous Legal Issues Specialization is preserved and continues in its current form, discussions with EIAC and IAG are an opportunity to explore the benefits of the current design and uncover areas for adjustment and opportunities for enhancement.

There is an opportunity to incentivize licensees to achieve higher learning by completing the program; exploring the impact of the program and developing programs that meet the standards set out by the Truth and Reconciliation Commission; and promote trust and relationship-building between licensees and the public, and in particular with Indigenous individuals and communities. Consultation and engagement with the broader Indigenous and legal communities, after seeking advice from this committee and IAG, will allow opportunities to speak with community members to identify opportunities for adjustment, that may include:

- Re-situating the designation from under the CSP to the Indigenous Framework – relocating the information about the designation on the Law Society website so that it is included in the Indigenous Initiatives page; making EIAC the committee with policy oversight of the program.
- Making the designation more accessible – streamlining the initial application process, which some licensees consider onerous; re-evaluating the fee structure, which is an initial fee of \$400 plus HST and an annual program fee of \$375 plus HST, due on January 31 of each year.
- Marketing – undertaking targeted communications about the designation to attract more applicants and is better understood by potential clients.

In the longer term, the Committee may want to consider revising the designation to become a more formative process, setting targets to achieve a certain level of competence, rather than assessing and acknowledging competence that has been achieved.

Moving toward cultural competence for law society staff, benchers and all licensees remains a goal for the Law Society and this is one way to move directly toward that goal.

## TAB 1.1

## INFORMATION

## INDIGENOUS LEGAL ISSUES SPECIALTY

## Issue for Information

2. Pursuant to By-Law 15 (Certified Specialist Program) the Certified Specialist Board has certain mandated functions, one of which is to determine the areas of law in respect of which licensees may be certified as specialists. It does not require approval from the Committee or Convocation. By-Law 15 can be accessed at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485815>.
3. In May 2013 the Board approved the development of a new certified specialty in Aboriginal Law. Although not required to do so within the By-law, it sought the approval of the PD&C Committee for the proposal as interest in the specialty was widespread. The Law Society had received 59 letters of endorsement from the profession in support of development of the specialty.
4. The development of the standards for the specialty has followed a rigorous process that included research, consultation, development, review and validation. The Board approved the final standards on May 18, 2016, which are provided here at **TAB 11.1.1: Indigenous Legal Issues Specialty Standards**. The Certified Specialist Program Administrative Policies referred to in the Standards are set out at **TAB 11.1.2: CSP Admin. Policies**.
5. The Standards are provided to Convocation for its information.

## Key Issues and Considerations

6. Beginning in the spring of 2014, PD&C department team members facilitated a series of working group meetings with 16 subject matter expert practitioners in Indigenous Legal Issues from a variety of geographical areas, client perspectives and practice areas to create, review and validate the Standards. Two working groups met separately to iteratively review, amend and comment on the standards over a two-year period.
7. The focus of the working groups throughout the process has been to ensure the standards set out the requisite knowledge, skills and professional requirements for demonstration of elevated competence in this area of practice, in accordance with the Certified Specialist Program mandate.
8. As part of the final validation of the Standards, in consultation with the Law Society's Equity Initiatives Department, input was sought from the following relevant professional groups and client groups that support provision of legal services in the Indigenous Legal Issues area, many of whom provided assistance and thoughtful comment:

- Canadian Bar Association – Aboriginal Law Section
  - Ontario Bar Association - Aboriginal Law Section
  - Indigenous Bar Association
  - Legal Aid Ontario
  - Chiefs of Ontario
  - Métis Nation of Ontario
  - Ontario Federation of Indigenous Friendship Centres
  - Ontario Native Women's Association
  - Tungasuvvingat Inuit
9. The input received confirmed that the standards are appropriate and that lawyers who achieve the designation will be well qualified to serve the public and, particularly, to serve the legal needs of Indigenous individuals, communities, nations and Peoples.
  10. In developing the specialty area it became clear that the name should reflect the breadth of the practice area. Accordingly, it was determined that the new specialty area is more appropriately named Indigenous Legal Issues. The specialty comprises core requirements and three distinct, but related subspecialties that each has its own set of experience, knowledge and skills requirements. The three subspecialties are: Rights and Governance, Litigation and Advocacy, and Corporate and Commercial.
  11. The required skills for all subspecialties include demonstration of the ability to properly articulate the Indigenous perspective and to effectively serve Indigenous clients. To this end, inter-cultural competencies have specifically been integrated into the Standards. Applicants are required to submit a brief statement confirming that they have obtained a significant understanding of Indigenous cultures, perspectives and contexts. They must also submit a reference from an Indigenous Community Member as one of the four references required as part of the application process.
  12. The next steps in the process, which are underway, involve implementation, which will include program promotion to make the profession aware of the new area of specialization for the summer of 2016. Once there is an initial pool of certified specialists in Indigenous Legal Issues, the Board will be seeking a new member from that specialty area to ensure appropriate representation at the program governance level.
  13. The Certified Specialist Program assists lawyers not yet eligible to become certified to acquire the requisite skills and knowledge to qualify for certification as a specialist in a given practice area. To that end each specialty has,
    - a. learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of activity; and
    - b. detailed experience requirements for certification used to assess a lawyer's eligibility for certification.
  14. The learning criteria for the Indigenous Legal Issues Specialty are in the process of being developed in accordance with the standards and adult learning best practices.

15. As in the case of all applicants, applicants for certification as a specialist in Indigenous Legal Issues will pay an initial application fee of \$400 plus HST. Currently, the annual program fee is \$375 plus HST, due on January 31 of each year.
16. The Certified Specialist Program is a cost recovery program.

## STANDARDS FOR CERTIFICATION Indigenous Legal Issues

### Definition of Indigenous Legal Issues Specialty Area

1. The practice of **Indigenous Legal Issues** is that area of law<sup>1</sup> which incorporates Indigenous Laws, jurisdiction, and perspectives and deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples.
2. The subspecialty **Indigenous Legal Issues: Rights and Governance** is the practice of law in **Indigenous Legal Issues** relating to the regulation and management of Indigenous lands, territories, and resources, the development and implementation of Indigenous government or governance structures (internal and external), as well as the interaction of the rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples with Indigenous, federal, and provincial laws and policies that may affect Indigenous rights, interests, and claims.
3. The subspecialty **Indigenous Legal Issues: Litigation and Advocacy** is the practice of law in **Indigenous Legal Issues** before courts, tribunals, or regulatory bodies and in claims processes. This subspecialty includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
4. The subspecialty **Indigenous Legal Issues: Corporate and Commercial** is the practice of law in **Indigenous Legal Issues** in relation to the commercial activities of Indigenous individuals, communities, nations, and Peoples, and their representative organizations or governments, regarding their socio-economic development and business interests.

### Definitions

5. For the purposes of these standards,

**Cultural Identity** refers to those aspects of identity shared by members of a culture that, taken as a set, mark them as distinct from members of other cultures.

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<sup>1</sup> These standards do not derogate, abrogate, or interpret Indigenous people's own laws.

**Indigenous** means all Peoples of Canada as defined in s.35(1) of the *Constitution Act, 1982* as “Aboriginal” and includes those now known as First Nations, Métis, and Inuit Peoples in Canada regardless of status or recognition accorded by provincial or federal governments.

**Indigenous Laws** means the laws of Indigenous Peoples.

**Indigenous people** or **Indigenous Peoples** means indigenous individuals, communities, nations, and Peoples as appropriate in the particular context.

### **Designation**

6. An applicant who is certified as a specialist in Indigenous Legal Issues in rights and governance may be identified as ***Certified Specialist (Indigenous Legal Issues: Rights and Governance)***.
7. An applicant who is certified as a specialist in Indigenous Legal Issues in litigation and advocacy may be identified as ***Certified Specialist (Indigenous Legal Issues: Litigation and Advocacy)***.
8. An applicant who is certified as a specialist in Indigenous Legal Issues in corporate and commercial may be identified as ***Certified Specialist (Indigenous Legal Issues: Corporate and Commercial)***.

### **Requirements for Certification**

9. Applicants must comply with the requirements relating to Indigenous perspectives set out in these standards particularly those relating to
  - Knowledge Requirements (e.g., applicants’ knowledge relating to an Indigenous Peoples and knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact)
  - Consideration of Indigenous Perspectives (e.g., consideration of how Indigenous perspectives may assist in matters)
  - Outline, Broad and Varied Experience (e.g., applicants’ recognition and understanding of the Indigenous perspective)
  - Summaries (e.g., how matters undertaken deal with or affect Indigenous rights, interests, or claims), and
  - Reference, Indigenous Community Members (assessment of applicants’ skills and attributes e.g., respect for, curiosity for, and willingness to expand understanding of Indigenous Laws, values, norms, and way of life and willingness to develop inter-cultural relationships).
10. Applicants must comply with the requirements for certification set out in the Policies Governing the Law Society’s Certified Specialist Program (“Policies”), particularly those relating to
  - Minimum Years of Practice and Recent Experience

- Substantial Involvement in the Specialty Area
- Professional Development
- References, Indigenous Legal Issues
- Professional Standards, and
- Application Fee.

11. Applicants must satisfy the following requirements in order to demonstrate their substantial involvement in the subspecialty area(s) for which application is made:

(a) practice concentration requirements:

- applicants seeking certification in one subspecialty area of Indigenous Legal Issues will have devoted at least 30% of their practice concentration to such area averaged over the five (5) years of the recent experience,
- applicants seeking certification in two subspecialty areas of Indigenous Legal Issues will have devoted at least 60% of their practice concentration to such areas averaged over 5 years of the recent experience, and
- applicants seeking certification in all 3 subspecialty areas of Indigenous Legal Issues will have devoted at least 90% of their practice concentration to such areas averaged over 5 years of the recent experience.

(b) experience requirements: during the 5 years of their recent experience applicants will have attained broad and varied experience and a mastery of substantive law and procedures in the applicable subspecialty area(s) and comply with the experience requirements for the applicable subspecialty area(s) set out below.

12. In the event that applicants do not entirely meet the experience requirements, they may apply to the Society for consideration of their individual circumstances or their related (non-practice) skills. Consideration on a case by case basis will be given in circumstances where applicants have

- (a) limited their practice in recent years to a particular area of Indigenous Legal Issues or have been involved in matters of extraordinary length and complexity, or
- (b) engaged in advanced course work or performed related activities such as teaching, authoring books or articles for publication, completing post-graduate or other studies, participating in the development and/or presentation of professional development programs, research, participating in the policy development process, drafting legislation and/or instruments, participating as active members on boards or tribunals or on the executive of any organization related to Indigenous Legal Issues, or any other experience that applicants consider relevant to their application.

Applicants applying for consideration under this paragraph must, in addition to the brief description of their practice required pursuant to paragraph 13, include with their application

- (c) a detailed description of their individual circumstances or related (non-practice) skills, and
- (d) references from the institutions or organizations from which their experience is references from peers, samples of writing and/or research, and a complete list of publications.

**Practice Description**

13. All applicants must include a brief description (no more than 100 words) of the nature of their practice in relation to the specialty area(s) for which an application is made.

**Knowledge Requirements**

14. All applicants shall demonstrate knowledge of the unique cultural, economic, political, social, and historical context of Indigenous Peoples(s) including recognition of an Indigenous world view.

Applicants must also demonstrate an acknowledgement of past governments’ assimilation policies towards Indigenous Peoples and the current impact of those policies on Indigenous Peoples.

Finally, applicants must display general knowledge of the kinds of issues that arise when individuals from different communities, nations, or Peoples interact in the context of providing legal services.

15. Applicants are asked to place a check mark (✓) next to each of the following and provide the summary required at paragraph 16 to confirm compliance with this requirement.

All applicants will have

- Acquired significant understanding of the culture, the economic, political, social, or historical contexts, and the legal perspectives of at least one Indigenous Peoples including
  - the group’s world views, values, norms, and way of life
  - the economic, historical, and political context unique to that group, and
  - the collective nature of Indigenous rights

“Significant understanding” is not intended to describe a deep and comprehensive understanding. Rather, the term is intended to describe the knowledge required, but not necessarily sufficient to

- (a) accurately understand, articulate, and convey the Indigenous perspective as manifested in or related to each matter undertaken by a lawyer, and
- (b) act in a manner that respects the cultural identity of all Indigenous people with whom a lawyer has dealings.

- Taken steps to understand the role and impact Indigenous culture exerts on behavior and communication

## Summary

16. All applicants shall provide a brief summary of no more than 100 words outlining how they acquired significant understanding of the culture; the economic, political, social or historical contexts; and the legal perspectives of an Indigenous Peoples.

Applicants may wish to refer to one or any combination of the following possible learning experiences by which they acquired this knowledge or understanding:

- by socialization, e.g., applicants are members of an Indigenous Peoples by birth, adoption, or marriage
- by formal education or experiences, e.g., applicants have post-secondary education in Indigenous studies
- by professional life experiences, e.g., applicants have had carriage of significant cases where the Indigenous perspective is fundamental to matters undertaken, and
- by personal life experiences, e.g., applicants have lived in Indigenous communities and interacted extensively with community members.

## Core Requirements, Applicable to All Subspecialties

17. All applicants must demonstrate that during the 5 years of their recent experience they have complied with core requirements: Legal Experience and Consideration of Indigenous Perspectives.

## Legal Experience

17.1 All applicants are asked to confirm their knowledge of and experience with the following tasks.

Advised clients with respect to Aboriginal and treaty or other rights held by Indigenous Peoples informed by **each** of the following:

- the *Constitution Act*, 1982, s.35,
- the common law applying and interpreting s.35; and
- *United Nations Declaration on the Rights of Indigenous Peoples*

and **at least two** of the following (check all applicable):

- Indigenous Law
- self-governance and other policies developed by Indigenous Peoples
- *Indian Act*
- relevant United Nations and Organization of American States Human Rights Instruments, and
- treaties and modern land claim agreements in Canada

- Advised clients on developments in the jurisprudence including international law as it applies to Indigenous Peoples
- Advised clients on the constitutionality of federal and provincial laws as it applies to Indigenous Peoples
- Followed and respected Indigenous protocols while attending and or hosting meetings with Indigenous people
- Taken steps to understand the collective nature of Indigenous rights and implications for individual rights regarding representation
- Taken steps to identify and address communication barriers to ensure the applicant understands information or concepts expressed through Indigenous culture (including language, behaviour, stories, symbols, songs, dance, artifacts, etc.)

### **Consideration of Indigenous Perspectives**

17.2 All applicants shall confirm with a checkmark that for **each matter undertaken**, they have

- Familiarized themselves with
  - the unique cultural and the economic, political, social, and/or historical contexts of the Indigenous individuals, communities, nations, or Peoples involved in that specific matter
  - the Indigenous Laws relevant to that specific matter, and
  - where applicable, the territorial and/or resource base of the Indigenous individuals or Peoples involved in that specific matter
- Informed themselves about the unique and relevant Indigenous history, mandate, membership, or objectives of the Indigenous Peoples involved in that specific matter (to the degree that information is reasonably available to applicants)
- Considered the unique Indigenous Laws, traditional knowledge, and cultural, economic, political, social, and/or historical contexts of Indigenous individuals or Peoples involved in that specific matter **and** how such information may be applicable and of assistance in that specific matter
- Applied that information, knowledge, or understanding to help resolve that specific matter on the merits **and** in a manner that respects both the Indigenous and other cultural identities of individuals involved in that specific matter

### **Experience Requirements, Indigenous Legal Issues: Rights and Governance**

In addition to the complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all the requirements in one of the following: either Indigenous Rights at paragraph 18.1 or Governance at paragraph 18.2.

18. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Rights and Governance during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

### 18.1 Indigenous Rights Focus

(1) Applicants must complete at least 12 of 22 tasks listed below. Applicants are asked to place a check mark (✓) next to the tasks they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus.

- Advise or act on matters involving s.35 rights in each of the following
  - civil proceedings, and
  - provincial offences charges
- Advise or act on matters with respect to s.35 rights before each of the following
  - administrative tribunals and legislative bodies
  - courts in applications for judicial review, and
  - courts in appeals with respect to s.35 rights
- Prepare and submit or respond to claims for acceptance in a Specific Claims Entitlement process
- Negotiate and/or act as legal counsel in the treaty land entitlement processes
- Negotiate and/or act as legal counsel in the Specific Claims process or other land claims process
- Advise or act on matters before the Specific Claims Tribunal
- Prepare and submit or respond to claims for acceptance in the Aboriginal rights or title claims processes
- Negotiate and/or act as legal counsel in the Comprehensive Claims process
- Advise and/or assist a client with an Indigenous community ratification process
- Negotiate and/or act as legal counsel in the negotiation of claims of Indigenous groups for or against governments, Crown corporations, boards, or proponents
- Prepare and submit or respond to claims for lands and resources
- Draft settlement agreements in relation to Indigenous claims
- Negotiate or act as legal counsel in negotiations between Indigenous Peoples or entities and industry
- Provide written and oral opinions regarding the duty to consult and accommodate and the infringement of Indigenous or treaty rights
- Make or respond to oral and written submissions to Crown or Crown agencies on impacts to s.35 rights of proposed or existing developments
- Advise clients in the dealings between proponents and Indigenous organizations on impacts to s.35 rights and the law on the duty to consult and accommodate
- Advise on implementation of statutory requirements with respect to Indigenous consultation for proposed developments

- Advise on development and implementation of internal and external Indigenous consultation protocols
- Advise with respect to social science and traditional knowledge assessments including archaeological assessments, oral histories, traditional environmental knowledge, traditional land use, socio-economic impact, etc.
- Provide written and oral legal opinions or responses regarding the honour of the Crown or fiduciary relationship and breach by the Crown
- Assist clients in identifying recognized or asserted Indigenous or treaty rights
- Advise clients on the intersection of Indigenous and treaty rights and laws among Indigenous Peoples or collectives

### **Outline, Broad and Varied Experience**

(2) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus during the 5 years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the applicable area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

### **Summaries**

(3) In addition, applicants must provide with their application summaries of three significant matters or proceedings, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Rights and Governance, Indigenous rights focus. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (court, tribunal, policy process, etc.)

- Synopsis of outcome
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

## 18.2 Governance Focus

Applicants are asked to place a check mark (✓) next to the tasks/matters they are selecting to demonstrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus.

(1) Applicants will have advised clients with respect to at least four of the following pieces/ sections of policies, guidelines, and Ontario and Federal legislation that must involve treaty or other rights and interests held by Indigenous Peoples. Check all applicable:

- s.35 of the *Constitution Act, 1982* with respect to self-governance
- First Nations Financial Act*
- First Nations Fiscal Management Act*
- First Nations Land Management Act*
- Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Safe Drinking Water for First Nations Act*
- AANDC Default Prevention and Management Policy
- AANDC Indian Lands Management Manual
- AANDC Environment, Health and Safety Policy – Contaminated Sites Program
- Additions to Reserve Policy
- Band Advisory Services Program Policy
- AANDC Band/Tribal Council/PTO Support Funding Program Policy Funding Policies
- AANDC Specific Claims Policy
- AANDC Comprehensive Land Claims Policy
- AANDC Inherent Rights Policy
- Federal Non-Insured Health Benefits Program
- Canadian Environmental Assessment Act, 2012* (with respect to reserve lands)
- Ontario Environmental Assessment Act*
- Canada Labour Code*
- Personal Information and Protection of Electronic Documents Act*
- Income Tax Act* and CRA interpretations including CRA bulletins regarding HST/GST application to Indians and policy regarding employment income of Indians
- Employment Standards Act, 2000*
- Canadian Human Rights Act*
- Ontario Human Rights Code*

- Privacy Act*
- Not-for-Profit Corporations Act, 2010* (Ontario)
- Métis Nation of Ontario Secretariat, 2015* (Ontario)
- Canada Not-for-Profit Corporations Act*
- Police Services Act*
- Education Act* (Ontario)
- First Nations Control of First Nations Education Act* (proposed) (Canada)
- Species at Risk Act* (Canada)
- Proceedings Against the Crown Act*
- Federal Courts Act*
- Judicial Review Proceedings Act*
- Specific Claims Tribunal Act*
- National Energy Board Act, 1990*
- Ontario Energy Board Act*
- Forestry Act* (Canada)
- Mining Act* (Ontario)
- Boreal Forest Agreement Property Act*
- Far North Act, 2010*
- Other \_\_\_\_\_

(2) All applicants will have completed at least 18 of the following 33 tasks with respect to governance and or Indigenous and/or treaty rights implications. Check all applicable:

- Advise client with respect to consultation and accommodation rights and responsibilities
- Draft or provide advice relating to by-laws for Indigenous organizations, (e.g., *Indian Act* s.81 or 83 by-laws, and Métis or Inuit organization or collective by-laws)
- Draft or provide advice relating to fiscal management by-laws (e.g., under *First Nations Fiscal Management Act*)
- Draft or provide advice relating to resolutions (e.g., Band council resolution, and Métis or Inuit organization resolutions)
- Advise client with respect to election matters, including appeals or disputes
- Advise client with respect to alcohol prohibition by-laws including community vote
- Advise client with respect to Indigenous laws
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers of Indigenous governments
- Advise client with respect to membership codes, lists, or criteria under the *Indian Act*, self-government agreement, or Métis government
- Advise client with respect to negotiation of funding arrangements with other levels of government
- Advise client with respect to administrative powers and duties of Indigenous governments
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act*, and other relevant legislation (s.87 or s.89)
- Advise client with respect to applicability of provincial law to Indigenous Peoples (e.g., s.88 of the *Indian Act*, s.4.5 of the *Green Energy Act, 2009* )
- Advise client with respect to Indigenous membership entitlement (e.g., registration as an Indian under the *Indian Act*, and as a Métis under a Métis organization)

- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements or other funding arrangements with federal or provincial governments
- Advise client with respect to the creation, amalgamation, or de-amalgamation of a "Band" under the *Indian Act*
- Advise client with respect to an organization of Métis communities
- Draft a community trust for the benefit of the members of an Indigenous community
- Advise client with respect to obligations under a community trust
- Advise client with respect to fiscal difficulties (e.g., AANDC's Default Prevention and Management Policy)
- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft articles of incorporation/letters patent or advise on incorporation, by-laws for corporations owned/created or controlled by Indigenous governments or communities
- Drafting partnerships, joint venture, or other business entities that are owned/created or controlled by Indigenous governments
- Draft and/or advise on governance policies and procedures for Indigenous governments
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments and federal, provincial, or municipal governments or private companies
- Advise client with respect to devolution of program and services from a federal or provincial government to a local or regional Indigenous government
- Review, prepare, and submit a land claim
- Negotiate treaties, agreements (e.g., self-government agreements), and other constructive arrangements
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints

(3) All applicants will have represented a client(s) in at least 15 different types of matters spread across two of the following four categories: (A) Lands Management Related to Indigenous Peoples, (B) Operational Transactions, (C) Government Services, and (D) Advocacy. Place a check mark (✓) next to all applicable matters.

#### Category A: Lands Management Related to Indigenous Peoples

Advise or act for clients with respect to

- Additions to reserve policy
- Indian Act* permits or lease processes
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession
- Establishment of an Indian reserve

- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Residency by-law
- Community constitutions
- Harvesting management
- Access to lands
- Resources management
- Customary land management systems

#### Category B: Operational Transactions

- Draft or negotiate operational or service agreements to which an Indigenous government or organization is a party. Circle the type of agreements drafted or negotiated:
  - Utilities
  - Funding
  - Construction
  - Children and family services agreements
  - Emergency services
  - Employment and training
  - Financing
  - Policing services
  - Purchase of goods and services
  - Housing agreements including CMHC financing/funding for construction or renovation of homes
  - Conservation authority, parks, or protected areas co-management agreements
  - Health
  - Infrastructure including water and road management
  - Research and traditional knowledge/intellectual property
  - Capacity funding agreement
  - Impact benefit agreement
- Draft a legal opinion or report to a client relating to the contents of and obligations of Indigenous governments or organizations under operational or service agreements referred to above
- Advise on drafting documents for transactions involving assets of Indigenous governments or organizations

#### Category C: Government Services

- Advise on statutory and common law obligations or entitlements of Indigenous governments or organizations concerning any of the following. Circle the type of subject matter advised on:
  - Roads and sidewalks
  - Provision of social services or housing
  - Potable water
  - Water and sewage infrastructure
  - Nuisance discharges/environmental contamination

- Operation of public transportation
  - Maintenance of property (parks, community centres, Band Council Office, etc.)
  - Provision of education, health, or social services
  - Employment and human rights
  - Taxation
  - Insurance
  - Coroner's inquest or public inquiries
  - Financial systems and accountability
  - Waste disposal
  - Dog control
  - Other infrastructure
  - Other \_\_\_\_\_
- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services to be supplied to an Indigenous government or organization
  - Advise on education agreements and services
  - Advise on application and interpretation of privacy legislation to Indigenous governments or organizations
  - Advise on fiduciary duties of Indigenous leaders and governments to their members and organizations
  - Advise on statutory or common-law conflict of interest obligations
  - Prepare policy interpretations
  - Advise on the imposition or removal of financial intervention (third party management or co-management)
  - Advise on the obligations of Indigenous governments or their related entities in their role of service provider in relation to education, housing, health, social services, public programs administration, or other service
  - Advise on capital and land management plans
  - Advise on and draft community laws and regulation
  - Specify other service(s) if applicable: \_\_\_\_\_

Category D: Advocacy

Advise clients with respect to

- An application to judicially review the powers of an Indigenous government
- Superior Court, Federal Court, or appellate court proceedings respecting applications for judicial review and appeals with respect to the exercise of powers or decisions by federal or provincial governments in respect of Indigenous, treaty, and other rights
- Proceedings before courts, administrative tribunals or agencies, boards, or commissions regarding the exercise of Indigenous government powers or the provision of services by Indigenous governments
- Court or administrative tribunal proceedings of specific concern to Indigenous governments and organizations. Specify: \_\_\_\_\_
- Alternative dispute resolution involving Indigenous governments, communities, or organizations
- Labour arbitration or an adjudication under Division XVI of the *Canada Labour Code* or before a human rights tribunal concerning an Indigenous government or organization as employer or service provider
- Human rights arbitrations on behalf of Indigenous governments or organizations

- Commercial arbitrations on behalf of Indigenous governments or organizations
- Public inquiries or public inquests in relation to Indigenous governments or organizations
- Appearing before or advising an Indigenous tribunal, board, or commission

### **Outline, Broad and Varied Experience**

(4) Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Rights and Governance, governance focus during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in the matters undertaken.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table should include, where applicable

- Type of matter or proceeding
- Name of matter
- Your role in the matter
- Who or type of client represented
- Issues involved in matter
- Approximate dollar amount of transaction or matter if applicable
- Goals/objectives and outcome
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

### **Summaries**

(5) In addition, applicants must provide with their application summaries of 3 significant matters, each summary no longer than 2 pages, and include the following information (where applicable) to illustrate their experience in Indigenous Legal Issues: Rights and Governance, governance focus. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)

- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any, and
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

### **Experience Requirements, Indigenous Legal Issues: Litigation and Advocacy**

19. In these Standards for Certification in Indigenous Legal Issues: Litigation and Advocacy, the terms case, claim, and matter refer only to those cases, claims, or matters where the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, and claims of Indigenous individuals, communities, nations, and Peoples are in issue and includes those proceedings that affect the interests of Indigenous individuals, communities, nations, or Peoples associated with the matter and where, regardless of the claims or cultural identities of the parties to the matter, the Indigenous perspective is material in the proceeding.
20. Applicants are asked to confirm their knowledge and experience with each of the tasks listed below by placing a check mark (✓) next to the tasks to demonstrate their experience in Indigenous Legal Issues, Litigation and Advocacy during the 5 years of recent experience and submit the completed Standards with the application package, along with any supplementary information required in the Standards.
21. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed all of the following requirements. Applicants are asked to confirm their knowledge of and experience with each of the following tasks
- Identify the appropriate parties and any standing issues to bring a matter before a statutory body or court
  - Identify the rights holders and distinguish between individual and collective interests and entitlements
  - Identify the appropriate procedures to bring a matter before a statutory body or court
  - Identify the appropriate causes of action, claim, or remedy in any given case
  - Identify the full range of defences or remedies that are available and appropriate in any given case

- Draft appropriate documentation to advance or defend a claim or matter
- Apply the law relevant to limitation periods, laches, minors, parties under disability, and the discoverability principle
- Analyze, research, and develop an appropriate theory to advance or defend a claim or matter
- Identify the appropriate relief to be granted or refused in any given case and prepare the appropriate documents to obtain such relief
- Assist clients in identifying recognized or asserted Indigenous or treaty rights in the context of actual or potential litigation
- Identify the unique issues in developing and responding to a claim (i.e., evidentiary issues, basis of claim, procedural issues, etc.)

Identify, prepare, and present factual evidence to advance or defend a claim or matter including each of the following types of evidence

- Fact witnesses
- Oral history
- Documents, including those in the possession of a third party
- Archival evidence
- Demonstrative evidence
- Identify any other \_\_\_\_\_
- Identify and assess unique evidentiary issues that arise in collecting and preparing oral history, traditions, values, and teachings for disclosure (e.g., information to be imparted by Elder and community witness, customary law, etc.)
- Identify appropriate procedures to collect and present oral history, traditions, values, teachings, and customary law. Indicate procedures used:
  - Use of the Indigenous language directly or indirectly through interpreter
  - Observance of cultural protocols
  - Choice of a suitable site
  - Viewing of sites and admission of demonstrative evidence
- Determine and implement appropriate affirmation or oath
- Determine and implement in consultation with the Indigenous witness a culturally appropriate protocol to assure the tribunal that the witness will attest to the truth of the witness's testimony
- Implement special procedures to govern testimony of community witness and oral history evidence at trial, including
  - Decorum and respect to be afforded to the witness in keeping with Indigenous sensibilities for respecting Elders or community witnesses, and
  - Properly addressing how objections may be raised or developing procedures for challenging the admissibility and weight of community witness testimony

- Address the testimonial challenges that arise from the unique history and context of Indigenous Peoples or Indigenous individuals in Canada. Indicate all applicable:
  - Potential intergenerational trauma arising from residential schools, adoption out
  - Cultural differences
  - Language and communication
  - Other \_\_\_\_\_
  
- Develop alternative measures to allow for Elder testimony in a matter. Indicate measures used:
  - Video conference
  - Videotape
  - Affidavit
  - Testifying as a panel
  - Individual accompanying Elder during appearances at the hearing
  - Tribunal traveling to hear testimony at alternative site
  
- Identify, prepare, and present the necessary opinion evidence of experts to advance or defend a claim or matter. Identify range of experience with presenting opinion evidence of experts by indicating all applicable:
  - Archeologist
  - Anthropologist
  - Historical geographer
  - Historian
  - Surveyor
  - Economist
  - Land appraiser
  - Engineer
  - Oral history expert
  - Ethno-historian
  - Linguists
  - Genealogist
  - Other \_\_\_\_\_
  
- Conduct discovery
  
- Conduct cross-examination in advance of the hearing or trial
  - On affidavits
  - Of non-party witnesses including experts on Indigenous rights
  
- Advise clients with respect to the full range of alternative dispute resolution options appropriate to the matter
  
- Advocate effectively on behalf of clients in settlement procedures/processes. Indicate all applicable:
  - Negotiations
  - Mediations
  - Pre-trials and/or pre-hearings
  - Settlement conferences

- Advocate effectively on behalf of clients. Indicate all applicable:
  - On motions
  - On applications
  - At trial
  - At hearings
  - On appeals
  - Before tribunals
  - Before regulatory bodies
  
- Advise clients with respect to the appropriate procedure to present matters of leave to appeal and judicial review
  
- Effectively prepare, examine, and cross-examine expert witnesses in regard to a trial or hearing
  
- Prepare costs submissions
  
- Provide opportunities for parties, counsel, and tribunal member(s) in advancing or understanding Indigenous perspectives including but not limited to Indigenous ceremonies, protocols, and processes by which information is imparted to others
  
- Provide opportunities for Indigenous communities to learn about or understand the court process and procedures in advance of the hearing

### **Outline, Broad and Varied Experience**

22. Applicants must provide with their application a complete outline (in table format) of their Indigenous Legal Issues: Litigation and Advocacy experience as counsel during the five years of recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

Please do not include mediations and simple procedural motions under the *Rules of Civil Procedure*.

If the number of matters identified during the applicant's recent experience is limited, applicants are encouraged to outline their experience during the last ten years.

The table must include:

- Name of matter (include citation, if available)
- Type of proceeding
- Your role in the matter
- Name of opposing lawyer(s)
- Duration (# of days)
- Name of court, tribunal, or regulatory or policy process
- Year matter heard
- Substantive issues, and
- Evidentiary issues, if any.

## Summaries

23. In addition applicants must provide with their application summaries of 3 significant matters or proceedings, which may or may not be trials under paragraph 22, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Litigation and Advocacy. Summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Issues involved in matter
- Complexity of the matter
- Who represented
- Type of proceeding (application, claim, motion, etc.)
- Synopsis of how matter resolved
- Citation, if available (reported or unreported)
- Name of other lawyers involved or if other side is unrepresented
- Name of judge or mediator or arbitrator
- Name of court, tribunal, or regulatory or policy process
- Date matter heard during main proceeding (trial, application, hearing, ADR conference, etc.)
- Length of time it took to resolve matter during main proceeding
- Appeal of decision, if any
- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation, and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples,  
or  
Explanation of how the Indigenous perspective was used or incorporated in the proceeding to help resolve the matter both on the merits and in a manner that respected Indigenous and other cultural identities of each individual involved in or associated with the matter.

## **Experience Requirements, Indigenous Legal Issues: Corporate and Commercial**

24. Applicants are asked to confirm their knowledge of and experience with applicable tasks listed below by placing a check mark (✓) next to the task to demonstrate their experience in Indigenous Legal Issues: Corporate and Commercial and submit the completed Standards with the application package, along with any supplementary information required in the Standards.

25. In addition to complying with the Core Requirements at paragraphs 17, 17.1, and 17.2, applicants must have completed at least 30 of the following 90 tasks from at least two of the following three categories: (1) Advice & Opinions, (2) Agreements Arising from Crown Engagement Obligations, and (3) Transactional Agreements and Financing.

26. Applicants are asked to place a check mark (✓) next to the tasks they are selecting from the categories below to demonstrate their experience in the subspecialty.

27. It is recognized that the items listed are not necessarily of equal complexity and that facts will be taken into consideration in the assessment of the application. Consideration will also be given to the special circumstances of the applicant in accordance with paragraph 12 above when assessing an application. Applicants may also submit details of any tasks not listed below that they have performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues: Corporate and Commercial.

#### Category 1: Opinions, Advice, and Drafting

Provide advice, opinions, or draft instruments with respect to

- Exercise of powers conferred on band council(s) under the *Indian Act*, including the legal binding authority and representational authority to bind collective interests
- Exercise of rights of Indigenous governing bodies
- Additions to reserve policy
- Indian Act* permits or licences
- Expropriation or takings of reserve land
- Wills and estates on Indian reserves
- Surrender of reserve land
- Designation of reserve land
- Certificates of Possession or other customary grants
- Creation of an Indian reserve
- Land use planning and development of reserve land
- Obtaining a ministerial loan guarantee for housing on reserve
- Codes under the *First Nations Lands Management Act*
- Regulating use and occupancy of traditional land
- Access rights and requirements for enforcing security or other obligations on reserve lands
- Draft or provide advice relating to *Indian Act* s.81 or s.83 by-laws
- Draft or provide advice relating to by-laws under the *First Nations Fiscal Management Act*
- Draft or provide advice relating to Band council resolutions
- Advise client with respect to Indigenous laws and/or inherent rights
- Advise client with respect to employment, labour, human rights, or occupational health and safety matters
- Advise client with respect to taxation powers
- Advise client with respect to negotiation of funding arrangements
- Advise client with respect to administrative powers and duties of Indigenous governing bodies
- Advise client with respect to interaction between Indigenous law and Canadian law
- Advise client with respect to taxation or seizure provisions of the *Indian Act*, *Income Tax Act* (s.87 or s.89) and other relevant legislation
- Advise client with respect to applicability of provincial law to Indigenous Peoples (s.88 of *Indian Act*)
- Advise client with respect to the *Family Homes on Reserves and Matrimonial Interests or Rights Act*
- Advise client of obligations arising under Comprehensive Funding Arrangements with federal or provincial governments
- Draft/negotiate/provide advice regarding a community trust agreement for the benefit of Indigenous Peoples
- Advise client with respect to obligations under an existing community trust

- Advise client with respect to negotiation of and/or rights and obligations under a self-government agreement
- Draft or advise on articles of incorporation/letters patent and by-laws etc.
- Draft and/or advise on governance policies and procedures
- Advise client with respect to disclosure of information under freedom of information legislation
- Advise client with respect to political agreements, memoranda of understanding, and other like agreements between or among Indigenous governments or between Indigenous governments or organizations and federal, provincial, or municipal governments or private companies or other private entities
- Advise client with respect to the application of international Indigenous human rights standards and availability of international mechanisms for pursuit of human rights complaints
- Advise on contract tendering, procurement, or preparing requests for proposal for goods and services

#### Category 2: Protocols and Agreements Arising from Crown Obligations

- Participate in negotiations to formalize relationships and enter into an engagement agreement to address the rights of Indigenous Peoples
- Draft, negotiate or advise on participation, capacity funding, engagement, impact benefit, license agreements such as the following:
  - initial engagement agreements or protocols to facilitate engagement between Indigenous and non-Indigenous parties
  - engagement agreements, resource revenue sharing agreements, or other similar agreements
  - term sheets, memorandums of understanding, or other documents that describe the intentions of parties in negotiations leading to engagement agreements or other similar agreements
- Advise clients in the dealings between proponents and Indigenous Peoples on impacts to constitutional rights and the law on the duty to consult and accommodate in the context of engagement agreements
- Prepare Indigenous or community based engagement protocols
- Review and consider reports generated by environmental and technical experts
- Retain and review reports generated by financial experts to advise on the negotiation of the compensation payments
- Review reports generated by external consultants and advise on the negotiation of the business opportunities and employment opportunities
- Retain and review reports generated by anthropologists, archaeologists, or other consultants
- Retain and review reports generated by Elders in order to determine impacts of potential undertakings
- Advise on the implementation of agreements
- Conduct internal meetings with members of the negotiation committee for one or more Indigenous groups
- Advise, develop, or implement community-or statutory-based ratification processes
- Review initial project descriptions and related documentation provided by a proponent to one or more Indigenous communities

- Advise and represent clients on the rights of Indigenous Peoples in respect of a proposed project and act for the client in initial meetings with a proponent
- Review, interpret, and advise on the legislative/regulatory processes governing a proposed project and the rights of Indigenous Peoples in respect thereof
- Make submissions directly to a proponent or government (federal or provincial) concerning the impact of a proposed project in the mining/quarrying, energy, oil and gas, electricity, or public infrastructure sectors with respect to the rights of one or more Indigenous Peoples
- Draft letters to the authority responsible for overseeing the legislative/regulatory process for a proposed project and submit applications for standing of Indigenous Peoples to appear before such authority in respect of the same
- Identify and retain environmental, cultural, and financial experts to determine the scale of impacts to one or more Indigenous Peoples of a proposed project and advise client(s) accordingly

### Category 3 - Transactions and Financing

- Advise on alternative business structures and the tax consequences of using different business structures
- Draft/negotiate a partnership, limited partnership, or joint venture agreement
- Draft/negotiate a shareholder's agreement or subscription agreement
- Represent a client incorporating a corporation including preparation of by-laws and organizational resolutions
- Advise a client with respect to the nature and purpose of a non-share capital corporation including incorporating and organizing a non-share capital corporation
- Advise board of directors on procedural issues such as liability, conflicts of interest, and director and officer insurances etc.
- Organize an annual or special general meeting of shareholders
- Draft/negotiate project development agreements, including at least one of the following. Identify all applicable:
  - Interim funding agreements (respecting funding during negotiations)
  - Implementation agreement (reflecting relationship generally)
  - Construction management agreement (respecting construction phase)
  - Operations management agreement (respecting operations and maintenance phase)
  - Traditional ecological knowledge licence
  - Intellectual property agreement
  - Other: \_\_\_\_\_
- Draft/negotiate contract tendering, requests for information, requests for qualifications, requests for proposals or other procurement issues
- Act in the following transactional matters. Identify all applicable:
  - Sale
  - Purchase
  - Lease
  - Debt financing matter
  - Construction services agreement
  - Project management agreement
  - Operations management agreement
  - Architectural services agreement
  - Other: \_\_\_\_\_

- Structure a private equity financing transaction
- Draft/negotiate a confidentiality and non-disclosure agreement
- Draft/negotiate a letter of intent
- Draft/negotiate a share purchase agreement
- Draft/negotiate an asset purchase agreement
- Draft/negotiate an amalgamation agreement
- Draft/negotiate a consulting agreement
- Draft/negotiate an employment agreement
- Draft/negotiate employee non-disclosure, non-solicitation, and non-competition agreements
- Prepare a due diligence requisition list and/or respond to due diligence issues
- Prepare/negotiate closing agenda and represent a client at closing
- Review and advise on various governmental programs available to communities to facilitate purchase of ownership stake in a proposed project
- Negotiate with governmental authorities (or provide advice regarding such negotiations) on provision of a loan guarantee or other instrument to reduce the borrowing costs of an Indigenous community to purchase an ownership stake in a proposed project
- Draft/negotiate a loan/financing matter (could include commitment letter, trust indenture, share pledge, letter of credit, real property mortgage, leasehold mortgage, promissory note or guarantees)
- Obtain appropriate resolutions detailing informed approval in respect of at least one of the following. Identify all applicable:
  - Financing structure of the project and loans to Indigenous community-owned corporate entities
  - Unforeseen events, insurance, contingency planning, and exposure to liability of any Indigenous community-owned assets
  - Level of control of one or more Indigenous communities in project decisions and matters requiring unanimous consent
  - Pledging security
  - Identification of authorized representative
  - Tax treatment of project distributions
  - Anticipated returns from the project to one or more Indigenous Peoples
  - Make presentations to the membership of one or more Indigenous Peoples describing the project and the involvement of such communities in the project
  - Community consultation and ratification
  - Evolving requirements related to accountability and reporting on revenues
- Advise a client with respect to *Securities Act* matters
- Advise on priorities among landlord, mortgagee, and secured and unsecured creditors
- Advise on asset realization under the *Personal Property Security Act*
- Advise on a mortgage enforcement matter
- Advise on the bankruptcy process and procedures or the *Companies' Creditors Arrangement Act*
- Draft/negotiate a head lease or land lease, offer to lease or sublease, licence or permit pursuant to the *Indian Act* or other legislation or land codes pertaining to Indigenous lands
- Draft/negotiate an agreement to acquire or lease lands pursuant to the *Indian Act* or other legislation or land codes pertaining to First Nations lands
- Advise on the structure of a mergers and acquisitions transaction (e.g., shares v. assets, take-over bids, and amalgamations)

- Conduct negotiations and settlement discussions with or on behalf of a proponent and/or government in respect of a proposed resource development project
- Draft or provide advice regarding agreements related to resource development, such as exploration agreements or similar early and late stage project agreements
- Additional tasks not listed above performed during the period of recent experience of similar complexity and of a commercial nature in relation to Indigenous Legal Issues, Corporate and Commercial:  
(please describe)

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**Outline, Broad and Varied Experience**

28. Applicants must provide with their application a complete outline (in table format) of their experience in Indigenous Legal Issues: Corporate and Commercial during the five years of most recent experience to demonstrate attainment of broad and varied experience, a mastery of substantive law and procedures in the specialty area, and their recognition or understanding of the Indigenous perspective in matters undertaken.

If the number of matters identified during the applicant’s recent experience is limited, applicants are encouraged to complete the outline setting out their experience during the last ten years.

The table must include:

- Type of matter
- Who or type of client represented (individual, corporation, government, community etc.)
- Issues involved in matter
- Approximate dollar amount of transaction or matter, and
- Goals/Objectives and outcome.

**Summaries**

29. In addition, applicants must provide with their application summaries of three significant transactions, each summary no longer than two pages, and include the following information to illustrate their experience in Indigenous Legal Issues: Corporate and Commercial. The summaries must be presented consistent with the ethical obligation of confidentiality and the law of privilege.

- Type of matter (transaction, agreement, legal opinion, or advice)
- Who or type of client represented (individual, corporation, government, community etc.)
- Goals or objectives of the matter
- Issues involved in matter
- Approximate dollar amount of transaction or matter
- Complexity of the matter
- Who represented
- Synopsis of outcome
- Description of any insights and perspectives the applicant gained from his or her involvement in each of these matters, and

- Explanation of how each matter deals with or affects the creation, recognition, advancement, protection, exercise, implementation and reconciliation of the inherent and other rights, interests, or claims of Indigenous individuals, communities, nations, and Peoples.

### **Professional Development**

30. Applicants must attest to the completion of the professional development requirements. The requirements are

(a) not less than 50 hours of self-study in the two years immediately preceding the date of application and any other year within the 5 years of recent experience (a total of 150 hours), and

(b) not less than 12 hours of relevant professional development in the two years immediately preceding the date of application and any other year within the 5 years of recent experience.

The 12 hour professional development requirement may be met through participation at CLE programs or through alternative methods such as, but not limited to

(c) teaching or being a guest lecturer on a course in the specialty area

(d) writing and editing of published books or articles relating to the specialty area

(e) graduate or post-graduate studies in the specialty area

(f) involvement in the development and/or presentation of professional development programs related to the specialty area, and

(g) involvement in the development of policy related to the specialty area.

### **References**

31. Applicants must submit four Statements of Reference. Three references must be from lawyers eligible to practise law in Ontario who have direct knowledge of the applicant's work in the specialty area in the 5 years of the applicant's recent experience and can attest to the applicant's competent performance of the tasks outlined under the subspecialty applied for.

32. A fourth reference, Statement of Reference, Indigenous Community Member, must be from a member of an Indigenous community who may also be a lawyer eligible to practise law in Ontario and who can both assess and attest to the applicant's respect for and understanding of Indigenous perspectives: a chief, band councillor, band administrator, regional and/or national chief and leader, Indigenous Elder, Indigenous community leader, Clanmother, or Indigenous academic.

33. Applicants must provide to the referees a copy of the completed Standards to let them know which subspecialty, categories, and/or tasks applicants have selected to demonstrate their experience along with the applicable Statement of Reference. Applicants should not include as a reference judges, partners, associates, co-workers, employers, employees, relatives,

3rd party neutrals, members of the Certified Specialist Board, benchers, or employees of the Law Society.

34. The four Statements of Reference must be submitted with the application to the Law Society in confidential envelopes that have been sealed, signed, and dated by the referees. Envelopes that have been opened or appear to have been tampered with will not be accepted.

#### **Application Assessment**

35. The Society will consider the totality of an applicant's practice in the relevant specialty area(s), the applicant's Professional Development Report, and references.
36. Applicants should not assume that completion of all of the enumerated practice concentration and experience requirements will automatically entitle them to certification as a specialist.
37. Applicants may be required to provide additional information to the Society to facilitate the assessment process.
38. The Society may make discreet inquiries, as it deems appropriate, to determine the applicant's eligibility and suitability for certification as a specialist.

<b>Lawyer Referee, Assessment Grid, includes <u>all</u> Items (lawyer and community member items)</b>					
	Highest Rating	Very Good	Average	Poor	Unknown
<b>Ability to understand and consider the priorities, objectives, and perspectives of Indigenous individuals, communities, nations, or Peoples</b>					
<b>Ability to identify the rights holder</b>					
Preparation (including document preparation)					
Resourcefulness					
Knowledge of substantive issues in the specialty					
Knowledge of procedure in the specialty					
Effectiveness of advocacy (court presentations, negotiations etc. as applicable)					
Consideration for the interests of clients					
Reputation in the legal community for ability to handle a specialty matter					
<b>Reputation in the Indigenous community for ethical conduct</b>					

<b>Indigenous Community Member Referee, Assessment Grid, Includes only these items</b>			
	<b>Agree</b>	<b>Disagree</b>	<b>Unknown</b>
<b>The applicant demonstrates knowledge of and respect for Indigenous Laws</b>			
<b>The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous Laws</b>			
<b>The applicant demonstrates respect for Indigenous views, values, norms, and way of life</b>			
<b>The applicant demonstrates curiosity about <u>and</u> willingness to expand his or her understanding of Indigenous views, values, norms, and way of life</b>			
<b>The applicant demonstrates willingness to initiate and develop relationships between members of Indigenous and non-Indigenous communities, nations, or Peoples</b>			



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Ada Maxwell-Alleyne, Strategic Policy Counsel  
Date: May 12, 2022  
Re.: **For Discussion: Peer Review**

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## Purpose

The Committee is asked to:

1. Discuss findings of the peer review of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report* (Challenges Report) and the Inclusion Index that were presented at the May 3<sup>rd</sup> EIAC meeting.

## Peer Review Findings

The notes from the peer reviewers' May 3<sup>rd</sup> presentation to EIAC are attached at **Tab 2.1**.

**Notes from Presentation from Peer Reviewers**

Equity and Indigenous Affairs Meeting

May 3, 2022, from 1:00pm to 3:00pm

Welcome/Introduction from Chair Dianne Corbiere

- The Peer Review Panel will present their findings of the Challenges Report peer review. The peer review was introduced at the November 2021 EIAC meeting.
- The peer review was motivated by several factors.
  - o First, the Law Society has not evaluated the Challenges Report project, its recommendations or its implementation to assess how effective our approach is in achieving the Law Society's goal of reducing barriers faced by racialized and Indigenous licensees.
  - o Second, project evaluations are generally seen as standard best practice when an institution undertakes a major initiative.
  - o Third, before moving forward with outstanding Challenges Report recommendations developed in 2016, it seemed appropriate that the Law Society obtain expert advice on the relevance of those recommendations in the 2022 environment.
- I'd like to provide some context for today's presentations. There are three broad topics the reviewers will touch on today:
  - o First, the reviewers have been asked to comment on aspects of the Challenges Report research and recommendations that could have the most impact in reducing barriers faced by racialized and Indigenous licensees. In order to assess this, the reviewers looked at the data methodology used in collecting the information that generated the Challenges Report. Specifically, the reviewers looked at the Stratcom Report and they will talk about their observations in relation to that report.
  - o Second, the reviewers were asked to comment on the Inclusion Index. The Inclusion Index ranks legal workplaces based on each workplace's diversity, inclusion and commitment to equity. As a reminder, the consulting firm Diversio used Law Society demographic information from the 2018 Annual Report to generate the Inclusion Index. We asked the reviewers whether the Inclusion Index we currently have is a useful tool to advance our EDI objectives. In order to comment on the Inclusion Index, the reviewers considered Diversio's methodology. They will report on this today. You have the Inclusion Index in your materials for reference. It has not been released publicly and it is recommended that the Index not be released. The reasons for this will be outlined by the reviewers in their presentations.
  - o The third topic for today: the review is intended to provide recommendations to EIAC and the Law Society on how we can enhance our EDI strategy through improved research. The reviewers will provide insight on this as well. Today, you

will receive an overview from each expert outlining their own evaluations and observations in relation to these topics.

- While we had hoped to have written materials before the Committee for today's meeting, one of our reviewers, Scot Wortley had very difficult personal circumstances that made it impossible for him to complete his report for today despite his best efforts. Even though the Committee does not have written materials yet, I believe it is beneficial for you to hear from the reviewers today to understand their findings.
- The Committee will have time to ask the reviewers questions following the presentations. I ask that during the time our guests are here, we ask questions about the evaluations they present today.
- Committee members will have an opportunity to exchange observations and reactions to the findings after today at our next EIAC meeting on May 12th.
- On that note, my last comment before turning to the presentations is on the next steps following this meeting.
  - o In the coming weeks, all three peer reviewers will have had the chance to complete their work and the final review will be shared with Committee members.
  - o After the Committee considers the final review, we can discuss the next steps and have a discussion of the recommendation presented in the memo at Tab 1.
- Now, I'd like to invite the reviewers to begin their presentations. They will be present for the whole session. If we want them to come back another time, we will have to ask for their permission.
- The reviewers' bios are in the November EIAC materials.
  - o Michael Ornstein is an Associate Professor of Sociology at York University and has a great deal of experience in the development, design and execution of large-scale research projects.
  - o Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at the Institute for Clinical Evaluative Sciences. Sujitha brings expertise in integrating data to develop innovative research.
  - o Scot Wortley is a Professor at the Centre of Criminology and Sociolegal Studies at the University of Toronto. Scot brings expertise in leveraging data to understand and address issues of systemic discrimination within large systems.

## 1. Professor Michael Ornstein's Presentation

### ***Stratcom Report***

- The report begins with qualitative research including 27 key informant interviews and information received from focus groups.
- The intention of this kind of research is not to provide a representative sample, but to elucidate theoretical and policy issues. I think they were successful.

- I will read one key informant comment: “Racialization is a constant persistent factor affecting students and young licensees during their entry to practice and opportunities for career advancement. This is true in all types of practice environments. Racialization presents numerous challenges that operate in subtle ways reflecting their systemic character and may be amplified by an individual’s specific lifestyle, socioeconomic status, age, national origin, and educational pedigree.”
- The focus group participants testified eloquently to the pervasive impact of racialization. I think it’s important that they tied racism to other experiences of discrimination.
- There was a survey that followed. It took a traditional kind of mixed-method approach that is common in the social sciences. The qualitative research was used as a basis for developing a lengthy survey. There was a survey of all licensees that asked about their career, disadvantages in hiring, the impact of racialization, policies to address racism, and risks of complaints against racialized licensees.
- The problem was that the survey response rate was about 7% -- about 11% for non-white licensees and 5.5% for white licensees. In my view, it is unlikely, though we have no way of knowing, whether the survey results represented all licensees.
- There was a further problem. Licensees were asked to identify if they were racialized or not and were given an academic definition of ‘racialization’. This may not have worked in this context.
- This report did not differentiate between Indigenous and Black licensees, lawyers and paralegals, and did not address the situation of the extremely underrepresented Hispanic, Filipino or Southeast Asian licensees. It did not consider intersections with gender. It was a product of its time.
- The consequence of the report...it is water under the bridge.
- There is no point in re-analyzing the data because it is outdated. It is almost 10 years old.

### ***Diversio’s Indices and the Inclusion Index***

- The core of Diversio’s work is to develop three indices and to make them a single measure of equity.
- The recommendations that resulted from this work are almost exactly what Diversio did. There is an uncanny resemblance between what the recommendations said and what Diversio did.
- The first index is an index of commitment. It is based on workplace programming that is reported by a knowledgeable informant at each workplace. It combines the survey-based measure of licensees’ knowledge of these programs. This makes sense - if you have programs that the licensees don’t know about, you can’t say they have an impact on the environment.
- Diversity is measured by combining the employment of female, racialized, Indigenous, LGBTQ2+, Francophone licensees, and licensees with disabilities and comparing it to various norms.

- Inclusion is a survey-based measure of the licensees' view of equity.
- With respect to the Inclusion Index, you have the same issue as Stratcom. In many workplaces, the inclusion survey had an unacceptably low response rate. In some of the highest-rated workplaces, the response rate was below 20%. Response rates were much lower in legal workplaces outside of law firms.
- Diversio's index is compromised by the exclusion of responses from licensees who did not answer the question about whether they were racialized. This goes back to Stratcom's issue of self-identification and the complex nature of racialization. What it points to is that measuring attitudes toward equity through surveys in individual workplaces is problematic.
- The diversity data collected in the Annual Report is what I use to develop the Snapshots. The response rate is good. What Diversio did is that it combined female, racialized, and the other groups into a single measure of diversity.
- These might not be the same thing – there is an assumption. You can see this in Stratcom's work as well. There is a single kind of polarization -- there is white/straight/man, and then everyone else.
- The problem is that it doesn't deal with the unique situation of being male or female, it doesn't deal with disability, which is an enormously neglected aspect of equity, etc. The problem is that there is a measure based on these aspects of equity that might be correlated or might not.
- Diversio could have tested this. The data is there. The question about whether there are more racialized licensees in a workplace that has more women is not that difficult of an empirical problem. But instead, they simply assumed this.
- If you think about the Francophone dimension, a lot of Francophone licensees are in Ottawa. It is a largely regional phenomenon, and a lot are employed by the government.
- The idea that you should throw all these things in means that you cannot develop diversified policies and you are making assumptions about how these organizations work.

#### Overall Inclusion Index

- The Inclusion Index adds the three measures together. Diversio provided numbers for each of these measures. I took them off their spreadsheets and correlated them and found that there is no relationship between progressive policies and whether licensees have positive views of equity.
- Policies may be seen as rhetorical or may be seen as creating a more critical environment. The basic point is there is no relationship. There is a weak relationship between workplaces with greater diversity and more negative workplace cultures. I don't want to overemphasize this; it is a very weak relationship. There is also a small positive relationship between commitment and diversity.

- When you think about creating an index, the general idea is that there are like things that are combined to give a general picture. If these aspects of equity in the workplace are unrelated, why does it make sense to create a single index?

### ***Recommendations of the Challenges Report***

#### **Recommendation 3 - The Adoption of Equality, Diversity and Inclusion Principles and Practices**

- This recommendation talks about developing policies within workplaces. This makes sense. It suggests that each workplace should provide an equality, diversity and inclusion self-assessment and report it to the LSO. If it goes to LSO and isn't reported, what's the point?
- It also encourages legal workplaces to conduct their own inclusion surveys. This is problematic. In small workplaces, there will be issues about knowing who completed the survey.

#### **Recommendation 4 - Measuring Progress through Quantitative Analysis**

- The question here is at the level of the workplace, how wise is this?
- The Annual Report self-identification is confidential. Let's say you have 25 employees and one or two people who identify with the rarer categories. This turns a lens on how individuals are answering. There may be a discrepancy in the number of visible minorities reported to the LSO.
- This is valuable data, but we need to think about its implications in the workplace.

#### **Recommendation 5 - Measuring Progress through Qualitative Analysis**

- This recommendation speaks to a voluntary inclusion survey of workplaces. I talked about this before. It raises privacy concerns. In many workplaces, the survey is not going to produce an acceptable response rate.

#### **Recommendation 6 – Inclusion Index**

- Is the Inclusion Index a valid measure of progress and equity? If there isn't a valid single measure, why focus on it?

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

- This recommendation says that every four years, the LSO will conduct an inclusion survey. I agree with this. A key element of equity is that it isn't just numbers. Culture and attitude are really important, and they can be measured in surveys. If you have a large enough sample, you can look at individual groups. But you need to obtain an acceptable response rate.
- I propose the following modification. Instead of a survey every four years, every two years instead of surveying everyone, conduct a large sample survey addressing equity issues and other concerns such as quality of life, working conditions, hours, satisfaction,

key career decisions, etc. These all have important equity dimensions but also important aspects of the well-being of the entire profession.

### ***Future Research on Equity***

- At present, gender is measured in the snapshots from administrative data where there is a binary male and female division. Following the 2021 census, the Annual Report should have questions asking for sex at birth and gender and retain the question about sexual orientation.
- Racialization is tied up with immigration. It is theoretically different than immigration, but it's tied up in it. To understand the impact of racialization in the profession, we should try to measure immigration. The Annual Report should ask a question about the place of birth, year of settlement, and place of education. This only needs to be asked once.
- The Annual Report has a single question of disability which is not in keeping with contemporary standards. If the LSO is concerned about disability, you need to do a lot more.
- The progression to equity partnership in firms is a vital aspect of inequality and there is relatively little research on that. This research should be done.
- A key aspect of equity is income. There are no measures of income. This is not easy to do. I got into this in more detail in my report.
- Finally, I want to point out the difference between lawyers and paralegals. The Snapshots show that over 50% of paralegal licensees are not currently practising. The LSO needs to look into that.

## 2. Sujitha Ratnasingham's Presentation

### ***Personal Background***

- I am from a settler family who emigrated from Sri Lanka. I grew up in Nigeria and moved to Toronto at the age of 7.
- I did an undergraduate degree in Human Biology and a master's degree in Epidemiology at UofT. I have worked in public health at the city, provincial and global level at the WHO for the past 20 years.
- In my current role, I co-lead the EDI portfolio.
- These experiences give me a unique perspective from a personal and professional lens.
- When I started the process of assessing the work, I initially put on my research hat and took out the context of the subject matter. I initially wrote a very different assessment than what I will be presenting today. My analysis gave me a result that did not sit well with me. I really reflected on it, and I believe we have to consider the topic when looking at the tools we are examining.

## ***Data Collection Tools***

### Key Informant Interviews

- There were qualitative in-depth interviews with those who are knowledgeable about these issues. The interviews allow us to collect rich data in a relatively easy, inexpensive way. It provides an opportunity to ask clarifying questions and build and strengthen relationships with important stakeholders and raise awareness about the study at hand.
- Highlights of these particular interviews:
  - o consultation with experts in the field,
  - o anonymous (best practice as it makes informants more comfortable),
  - o part of a mixed model approach – this contributes to the credibility of the findings.
- There were some challenges: selection of key informants was narrow (not diverse enough; perspectives sought were not sufficiently broad) and lack of clarity regarding the methodology and interviews. Overall, I would consider this phase of data collection valid.

### Survey

- It is called a survey, but it is a census of population of lawyers and paralegals. A census of a population of interest.
- Highlights of survey:
  - o the number of people who completed it was over 3000; this is larger than a typical random sample,
  - o we may not know how the results apply to those not surveyed, they do represent the lived response of those who did answer,
  - o it was part of the mixed model approach,
  - o it was available in French and English.
- Challenges of survey:
  - o low response rate impacts generalizability of findings. Typically, when there are low response rates, we try and understand why people did not complete the survey. One of the challenges here is that because it was anonymous, we won't know why people did not complete the survey so we can't determine the issues or biases that exist.
  - o Topic of survey was very sensitive so there could be reasons why people did not want to complete the survey: there may have been past bad experiences, or they may not have felt strongly about the issues. That being said, we should not make assumptions about the reasons for non-participation because of the lack of data.
  - o Some of the wording of the questions was not aligned with Stats Canada language. It would be helpful to align them for future surveys so there is a comparator group.

- The term racialized – it's commonly used now and is the more academic term, there is potential for misunderstanding, and we saw some findings that support the misunderstanding.
- It is also a long survey which may have impacted the completion rate, so it may be beneficial to shorten the survey.
- No testing of statistical significance. When we are comparing the racialized and non-racialized respondents and their answers, although we may note differences, it is challenging to know if they are of statistical significance.

#### Focus Groups

- Focus groups of lawyers and paralegals in good standing that identified as racialized.
- They did try to recruit across Ontario.
- One of the challenges was that it was conducted in major cities which could have made it difficult for those in rural areas who may have different experiences to participate.
- There was limited information about the analytic methods used to interpret the focus group data.

#### Inclusion Index

- Inclusion indices are used in other sectors, especially in the EDI space with respect to organizations because it allows benchmarking with other organizations in the industry. It also allows us to look at changes over time and across other sectors.
- With this index, the demographic, inclusion and self-assessment questions were adequate with opportunities for improvement.
- There was lack of information about the methodology underlying the calculation of the index. For example, the determination of weighting 25% for demographics, 25% for commitment and 50% for inclusivity – it was not clear how they assigned the weighting.
- In addition, they standardized different attributes against different standard populations which is not the typical method – you try to standardize against the same population with different attributes. One of the attributes was standardized against a proprietary population which speaks to the lack of transparency and trust around the Index.
- In the future, the scope could be expanded to include other classes or equity groups – religions, different types of disabilities, and intersectionality.
- Indigenous is treated as one demographic group and although this is a small group, it is still important to break down First Nations, Metis, Inuit and urban Indigenous to understand the differences and experiences of those populations.

#### ***Implementation of Recommendations***

- I thought about whether the recommendations naturally fall into categories. They do fall into four broad categories: adoption of principles and policies, education for licensees, support for racialized licensees, and evaluation of progress.

- Most of the recommendations are supported by findings in the various data collection tools.
- The recommendations are in line with most sectors in terms of incorporating and addressing EDI in the workplace. The recommendations are not out of left field – this would be expected in most sectors.
- There are a couple of recommendations the Law Society may want to consider deferring or pausing:
  - o Progressive compliance measures – there is a place for this but it is not in the early stages of implementing EDI initiatives. The LSO is trying to educate and build an understanding of the issues faced by equity seeking groups in the profession and moving forward with a punitive approach prior to education does not support the equity goals of the LSO.
  - o Inclusion Index: because there are many unknowns, there may be limited buy-in using the Diversio dashboard. There may be more value in providing aggregate data itself.

### ***Future Work***

- Continue to use mixed models for future data collection – this enables us to look at attribution factors and contribution factors.
  - o Attribution factors are things you know through prior research leads to something, for example A leads to B.
  - o Contribution factors provide a deeper understanding of the context of why A and B may be related.
- Expand the scope to consider other equity seeking groups and intersectionality.
- Future surveys should use a targeted sampling strategy to reduce the number of surveys, reduce costs, improve generalizability. This could involve a short survey for the entire study population and a detailed survey for a much smaller group.
- Strategies to improve the response and completion rate should be employed. This includes notifying participants, publicizing the survey, careful survey design, etc.
- Any bias should be reported in a transparent fashion. There should be an attempt to understand any non-response.
- Use a more nuanced word than ‘racialized’.
- Unless respondents think they have been heard in the past and their concerns were addressed in a meaningful way, there may be challenges in building trust when rolling out a second survey or focus groups. We often hear from partners who work in the EDI space that it is unethical to repeatedly spend funds to measure the issue that we already know exists when the funds can be used to find a solution.

### ***Conclusions***

- The data from the key informant interviews, survey and focus groups support the recommendations.

- The EDI work undertaken by the LSO and the Challenges faced by Racialized Licensees Working Group are aligned with the best practices in approaching EDI work in organizations.
- There are challenges with aspects of the data collection tools but this does not warrant dismissal of the findings or abandoning the recommendations. The racialized respondents have shared their negative and harmful experiences – the LSO is in a unique position to support these licensees and to mitigate risks for other racialized licensees from facing the same challenges.

### 3. Scot Wortley's Presentation

#### ***Personal Background***

- I am happy to come back and present after I have completed my report.
- I have 25 years of experience working on surveys designed to address issues relating to youth crime and victimization but also perceptions and experiences of racialized people in the justice system. Many of the surveys have been published in peer review journals.
- One survey was conducted as part of an inquiry into racial bias with respect to street checks. The survey included analysis of 11 years of police data into street checks and numerous consultations with Nova Scotia's African Canadian community.
- I agree with many of the points made by my two colleagues.

#### ***Stratcom Report***

- There is valuable information that comes from the survey but there are distinct weaknesses and challenges. All social science research has its strengths and weaknesses.
- Pros of the study:
  - Quantitative and qualitative mixed methods approach was used. It is important to note that the quantitative information in the survey is highly consistent with the qualitative information derived from the interviews and focus groups.
  - The survey benefits from a large sample size.
  - There were a variety of questions asked, addressing a number of different issues but this could also be a potential weakness.
  - A large proportion of the white respondents also agreed that there were issues with respect to race and bias in the legal profession – these perceptions were not isolated to racialized licensees.
  - Valuable contribution in terms of identifying and raising the issues facing the legal professions in Ontario.
  - It justifies a further focused study, evaluation and action.
- Weaknesses of the study:
  - Although the study represents a large sample (the survey represents 10% of racialized lawyers and 5% of white lawyers), the issue of randomization and the low response rate raises concerns about whether those who did not respond to

- the survey have systematically different views or experiences than those who answered the surveys.
- 40% of the individuals who accessed the survey did not complete it – this is an issue
    - We don't know if they started the survey and did not complete it or they looked at the survey and decided not to do it.
    - Increasing the response rate is imperative and understanding why people are not responding is very important.
    - One critic assumed that the vast majority of those who did not respond do not think that racism is an issue or doesn't exist – I would argue that any individuals who have those views would want to participate in a survey like this to make their views known.
    - Lots of reasons why people don't respond to surveys – timing, time constraints, rejecting the issue as important, etc.
  - Lack of transparency with the write-up of surveys. The response rate wasn't clearly reported.
  - A major issue is the use of the term 'racialization' and what that means – the study needs to be disaggregated by different racial groups.
    - It needs to address Black and Indigenous groups compared to other racialized groups compared to experiences of a white population – this is a major weakness.
    - There is a lot of evidence to suggest that Black and Indigenous peoples have radically different experiences than other racialized groups. If you break it down into smaller groups, you can see huge racial disparities.
    - There is a possibility to reanalyze the data – it looks like the data is there and racial identification exists in the survey, but it was not analyzed or reported in a transparent fashion.
  - No statistical significance at bi-variant or multi-variant level; no multi-variant analysis. I think we observed some major racial differences and experiences, but to what extent were those impacted by race or were there other factors that could explain some of those racial disparities? There is a need to identify more clearly some of the systemic factors that racialized communities face. Things like career stage, school, practice areas, gender, and age. There are so many different variables that could impact experiences that were not controlled for and could have been.
  - The length of the survey may have been related to respondent fatigue -- shorter survey would be better.

### ***Diversio's Inclusion Index***

- The methodology was not transparent. I read through it many times but did not find it to be transparent.

- It comes across as elegant and user friendly and easy to interpret but I don't think it would pass an academic peer review journal if it was presented as a new methodology to examine the inclusivity of various law firms.
- Some distinct lack of detail – for example, how was the weighting of 25%, 25% and 50% determined? It was really just mentioned without discussion on how this weighting system was developed.
- Diversity measure – I had some concerns with relying exclusively on geographical benchmarking – the diversity of the law firm was compared to the diversity of the geographic region of the firm. This assumes those who work in the firm live in that region. Also makes assumptions about the pool of applicants who were to be hired – I assume this varies drastically based on the type of practice of law and region. This might be an additional benchmarking technique that can be used to ensure the measures.
- For example, in my department we want to hire more Indigenous faculty but there are so few Indigenous faculty available right now. Would my department be ranked low despite our efforts to hire Indigenous faculty?

#### ***Future Research***

- This should be a biannual survey – one of the problems with a survey every 4-5 years is that things change, and the data becomes outdated quickly. I have seen more changes to diversity issues in the justice sector in the past two years than I have in the last 25 years.
- These types of surveys are necessary in terms of evaluation but also for accountability. When they are out there and are talked about and transparency exists, it produces a level of accountability and encourages change.
- The other problem I had with the inclusivity survey was the potential of discomfort for those who reside or work in small law firms. If they complain on a survey, they can be easily identified. If you were breaking down the numbers into a unit the size of a 25-person law firm, you could be identified – everyone will know who the person is – this changes the responses and raises privacy concerns.
- The Index can be workable as a measure of EDI and can be re-evaluated, but not with the data that we have now.

#### **4. Committee Questions and Answers**

- **Dianne Corbiere:** We are going to consider the final review and the recommendations of the peer reviews and then we can discuss our next steps.
  - o Transparent was said a lot so to be transparent, I, as the chair of EIAC, had a preliminary meeting with staff and the Treasurer and CEO. We got an oral update from staff on what we would hear today.
  - o One of the recommendations that we heard from all three is that the current Inclusion Index should not be released – this is supported by the CEO, myself,

and the Treasurer. That will be the discussion we will be having over the coming months.

**Question from Megan Shortreed:** I understand the issues of the Inclusion Index. Is there some value in providing some of the underlying data to individual firms in an anonymous or aggregate basis so they can see how they are doing and continue their equity work? Or any other raw data? Is there a possibility if confidentiality could be protected of getting information to the law firms on a private basis so they can see how they are doing?

- **Scot Wortley:** I have concerns about that. I would not do it without getting the permission of respondents for ethical concerns. Depending on the composition of the law firm, individuals can be easily identified when there is a small firm. If there are two racialized licensees in a firm who have had a negative experience and then you communicate that to the firm, will they know immediately who is being discussed and could that impact the work environment?
  - o At the aggregate level, saying these were the responses in this type of law firm, organizations, etc. that might go further with respect to maintaining confidentiality.
  - o I am reminded of how contentious these surveys and investigations of these types of issues can be. I am reminded of a survey I was involved in many years ago that looked at the views and experiences of racialized vs white police officers in the TPS. There was a front-page Toronto Sun piece from the police union demanding that all officers burn them as a show of solidarity. That is an extreme example.
  - o Does this also affect the willingness of racialized respondents to provide information because they will be labelled as a problem?
- **Michael Ornstein:** We have to exercise caution for smaller firms. The survey data in many firms, including those from large firms, had a relatively low response rate. It is hard to argue the effect of this. There aren't that many large employers. The large workplaces are the big law firms and there are some government organizations.
  - o Maybe you could provide some data but you need to think about individual pieces of data. The commitment information that Diversio collected is a catalogue of policies. This should be known in a workplace and I don't know why it would need to be disseminated.
  - o The inclusion survey has too many problems. Issues with response rates.
  - o Regarding the demographic data, I'm just not sure how this would be useful. I would need to think about it.
- **Sujitha Ratnasingham:** My initial issue is there might be something that can be shared, but a few caveats. Confidentiality needs to be considered. What is the risk of

reidentification? It's not just using that information, but can you use that with other available information to identify an individual?

- When the response rates are low, there should be a statement around interpreting with caution.
- If you roll it up high enough it may lose value but there may be something of value there if there is transparency of what has been collected, but privacy is the first consideration.

**Question from Alexander Wilkes:** This question is trying to pick your brain for my own understanding. Professor Ornstein, you made a comment about useful data. That got me thinking about other discussions about NCA lawyers and data we want to collect. There is lots of implications of that data collection, what would we glean from it and what would be taken away from it by other people. My question is with regard to the current project -- with how many variables there are and can be considered, what variables should we be looking for as a regulator and what data should we be collecting at stage one? And then at stage two, how do we weigh that data and move forward from an equity standpoint?

- **Scot Wortley:** There are two questions -- there are outcome or dependent variables -- what experiences and outcomes you want to document -- and a list of independent variables that might impact that.
  - A lot of independent variables have already been mentioned. I strongly believe one of the biggest weaknesses was clumping of racialized and non-racialized people. You lose a lot of variation in experiences by doing that. Gender, age, being foreign trained, and what law school you come from will impact your placement and promotional activities. The type of law, language, disability issues, etc.
  - The problem is finding the perfect mix because the more information you ask, the longer the survey becomes and the more likely you will face respondent fatigue.
  - An important issue that was raised was not only immigration status, but how long you have been in the country. Some of the recent surveys we have done suggest there is a big difference between those who immigrate as adults and those who immigrate as children. Often surveys will only ask if you moved to Canada instead of looking at migration experience.
- **Michael Ornstein:** I think what you need to think about is what a model of licensee careers looks like. I think area of practice is hugely important and so are initial jobs -- they shape entire careers.
  - In sociology, we have gone from the idea of aging to the idea that there are distinct trajectories of peoples' careers. There are different caveats for women.

We know that many women leave firms to go to government, education and in house jobs at a certain point.

- To get a better grasp of equity and inequity within the profession, you need to think not about the cross-sections but of the way in which careers change over time. Is it in the law society's purview to think about who goes to law school? There is a lot of selection before we get to any licensees.
  - There is a whole framework and stratification framework for thinking about this. We need an equity lens that looks at divisive changes in individuals' careers and how that is impacted by ableism, racialization, etc.
  - There is a single question about disability. The question doesn't distinguish between whether the licensee had a disability at the time they began their career or if the disability developed once their career was launched. It doesn't differentiate between types of disabilities.
  - It is not enough to say what should we know. It needs to be motivated by the understanding of the nature of careers and of inequities at the decisive points when changes are made.
  - A critical one would be the first job – if you don't have one at a large law firm, your chances of becoming a partner at a large firm are small. That very early choice – which is an aspect of inequality – has a huge impact.
- **Sujitha Ratnasingham:** I agree with Scot and Michael.
- You need to look at the trajectory of someone's career. You need to start by looking at the entrance in to law school.
  - We are trying to recruit Indigenous scientists within our research institute. If you don't have individuals within that quantitative research, you aren't going to find people so how do you create those pathways?
  - Looking at the trajectory starting quite early to the point of making partner is really important. The framework can guide what your questions are which can then inform the data you collect. If you follow that structure, that is really helpful instead of just asking a lot of questions and hoping that you get the answers you need.
  - Given where the LSO is now, what decisions you make around which recommendations to implement versus which you will pause is important because that will inform what information gaps remain.
- **Scot Wortley:** There is something that struck me, and I'm not sure how we would measure it, but it has to do with issues of networking and nepotism. That is a form of systemic bias, it is not necessarily overt, but to what extent does first job or placement within a firm and your chance of partnership have to do with family, friends and connections that exist within the community? This is identified in many lines of work.

- As a criminologist, I teach an introduction to criminology course and in my first class I ask how many of you want to be a lawyer and about 90% of the class put up their hand. We calculated that only 5% of them actually make it into law school. What are the systemic challenges? There is a big difference between the kids who live on campus and have their tuition and life paid for by their parents and their focus is to get good grades and LSAT scores to get into law school, and the challenges faced by those who have to work to pay for school and have 4 hour commutes every day to get to campus. There may be issues with respect to systemic bias that impact the pool of potential applicants who become licensees.

**Question from Atrisha Lewis:** Sujitha – you said that there are challenges in building trust with equity-seeking groups unless we address concerns in a meaningful way. It is unethical to keep asking about what we already know exists. What do we already know that exists?

- **Sujitha Ratnasingham:** We know there are barriers faced by racialized licensees based on the focus groups and surveys – it has come across consistently across the three data tools and its important to address it.
  - This isn't unique to the legal professions; it exists across various sectors. Waiting to measure it in the best possible survey is great if you are trying to demonstrate that this is an issue that all racialized people face.
  - From my perspective, we know that people are facing these issues, I would think it's important that we act on it.
  - In the health profession, there is a lot of movement to address barriers faced by equity-seeking groups and address systemic barriers for various groups. One thing we hear as a quantitative research shop with lots of data is why do we keep measuring the same thing when we know it exists? Use those funds to make a change.
  - There are issues on the survey including generalizability, but it's important to act because we know these issues exist. People have shared painful experiences with the LSO and is it important for the LSO to act on it. This is an important way to build trust.
- **Scot Wortley:** Absolutely. Despite the methodological limitations of the survey, you had a large number of racialized lawyers talk about their experiences and their traumas. Those numbers are significant. It is enough to justify action, and further monitoring to evaluate the initiatives that will be and have been implemented.
  - The issue of fatigue emerges a lot in the studies we have been doing lately. The need to conduct research to figure out why people are not answering these questions – those justifications will vary by race. What we found was that many Black Nova Scotians are cynical about these equity exercises – they say we are

constantly sharing our pain, why should we go through this entire exercise again, etc. There is a lot of cynicism.

- I think that is the reason why a lot of racialized persons don't participate in these exercises anymore because they have lost faith that it will make a difference. That is a different reason for why racialized individuals may not want to complete these exercises as compared to non-racialized individuals.
- **Michael Ornstein:** You are all aware that many women who join large law firms as associates leave for in-house work in their late 20s or early 30s.
- We can learn a lot from these records. They don't tell you how people feel but they show trajectories over time. We should collect data on immigration, time of settlement, etc.
  - I think there should be an effort to look at income. It is a primary aspect of inequality. We know very little about income differences and we should look at that.

**Question from Atrisha:** My second question – the Law Society of Alberta put out a statement that acknowledged systemic discrimination in the justice system and legal profession... Are any of you aware of this statement and the work that went into stating this?

- **Peer Reviewers:** No.

**Question from Julian Falconer:** It is imperative that we not reverse engineer these issues. I mean we can't walk in and say there is racism and now prove it or that there is not racism and disprove it. We need to follow the data. My question is for Scot Wortley. You worked on policing for the Ontario Human Rights Commission - can you explain your role and the work?

- **Scot Wortley:** We began an inquiry in 2018 by making numerous requests to the TPS with respect to race for a number of different outcomes. This included everything from street checks, injury reports, different types of charges, use of force incidents, etc. We uncovered all types of data problems, inconsistencies, and issues with transparency.
  - The major finding was that there was a huge issue of public perception of police violence in the Black community. The trust in the police and perception of racism has increased over the past 25 years, not decreased despite the anti-racism initiatives that have been implemented.
  - We found concrete data that demonstrates a huge overrepresentation in issues with police use of force incidents within Black communities.
  - We have found over-representation in respect of arrests for various crimes, in particular for crimes with police discretion like cannabis possession. Huge overrepresentation which is interesting because white people consume more cannabis than the Black community.

- There is a need for constant data monitoring. Data is not only a research exercise to document whether something exists or not, but ongoing data collection is needed to keep the system honest.
- To a certain extent, policing now has become more transparent with respect to these issues than other elements of the justice system.

**Question from Julian Falconer:** Michael, can you tell us your views on accepting the issue around data collection? How do you see the significance of the consultation that was led by African Canadian leaders at the bar? Were you aware of that?

- **Michael Ornstein:** There is a problem here. We essentially worked with the received documents. From what I could tell, the key informants were representative of a small number of organizations. There were 500 volunteers for focus groups and about 100...
- **Julian Falconer:** I am talking about something different. There were a number of different means by which information was gathered. The Stratcom exercise was one method, another the conducting of a whole host of focus groups of racialized licensees in a safe space led by a prominent member of the racialized bar. Was the usage of that process not shared with you?
- **Michael Ornstein:** No
- **Julian Falconer:** That's troubling.
- **Michael Ornstein:** The Stratcom report on those focus groups...
- **Julian Falconer:** No, I'm talking about something different. The report explains the different means of data gathering. One of the three means was through these focus groups, conducted by prominent members of the bar in a safe space where they were allowed to exchange their experiences. Given the efforts, it's troubling that this didn't make its way to the reviewers. Can this be rectified?
- **Cara:** We will look into this and get back to the reviewers.

# Stratcom's Report, Diversio's Indexes, Recommendations 3–7 & Future Equity Research

Michael Ornstein

May 3, 2022

## Stratcom's "Challenges" Report I

Summarizing interviews with 27 "key informants"

"... 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."

Focus group participants testified eloquently to the pervasive impact of racialization on many aspects of licensees' experience. They tied racism to "the experiences of discrimination" of women, younger, older, LGBT and Jewish licensees.

## Stratcom's "Challenges" Report II

A lengthy survey of all licensees covered

- licensees' careers
- experiences of disadvantage in hiring, advancement and pursuit of an area of practice
- the impact of racialization
- policies to address racism and challenges facing racialized licensees
- factors contributing to the risk of complaints against racialized licensees

## Stratcom's "Challenges" Report III

- The survey response rate was 7.4%, about 11% for racialized licensees and 5.5 percent for self-identified "non-racialized" licensees – it is unlikely, but we have no way of knowing, whether the survey results represented all or racialized or non-racialized licensees
- Licensees' self-identification as racialized or non-racialized, is not consistent with research based on "structural" definitions (anyone could identify as racialized; and there were as many Whites identifying as racialized as Blacks)
- A product of its time in *not* differentiating Indigenous and Black licensees; also did not separate lawyers and paralegals; or attending to the situation of the very under-represented Hispanic, Southeast Asian or Filipino groups
- Did not consider intersections with gender, certainly on the radar at the time
- This is water under the bridge

## Diversio's Three Indexes

For legal workplaces with 25 or more licensees *Diversio* measured:

- **commitment**, workplace programming and policies reported by a knowledgeable informant *combined with* a survey-based measure of licensees' knowledge of them (*following Recommendation 3*)
- **diversity**, in the form of *the combined employment* of female, racialized, Indigenous, LGBTQ2+, Francophone licensees and licensees with a disability – relative to certain norms (*following Recommendation 4*)
- **inclusion**, licensees' attitudes regarding equity, measured in a survey (*following Recommendation 5*);

## The inclusion index, based on a survey

- In many workplaces the inclusion survey had an unacceptably low response rate
- In some of the highest rated workplaces, *Diversio's* response rate was below 20%
- Response rates were much lower in legal workplaces other than law firms
- The utility of *Diversio's* index was compromised by the exclusion of responses from licensees who did not self-identify as either racialized or non-racialized
- Implies that measuring attitudes towards equity in individual workplaces using a standardized survey is problematic

## The diversity index, based on the Annual Report equity survey component

- The measure of diversity combined the employment of female, racialized, Indigenous, LGBTQ2+, Francophone licensees and licensees with a disability – relative to certain norms
- *Diversion* presented no evidence these different elements of the representation historically disadvantaged groups represents a single dimension (even though this is a straightforward empirical question, they could have address with the data they had in hand)
- *Any* single index of diversity risks diverting attention away from concerns specific to Black, Indigenous, female, etc. ... licensees

## The Overall *Inclusion Index*

The components of *Diversio's* inclusion index are essentially unrelated

- There is **no relationship** between progressive policies and whether licensees have positive views of equity in their workplace; perhaps policies are seen as rhetorical or place a critical focus on diversity;
- a **very weak negative relationship** between greater diversity in employment and a workplace culture sympathetic to diversity; and
- a very weak positive relationship between commitment and diversity, casting doubt on the efficacy of formal policies to achieve diversity

The implication is that no meaningful single “inclusion” index can effectively combine measures of commitment, diversity and inclusion

*My opinion on the recommendations*

**Recommendation 3 – Equality, Diversity and Inclusion Principles and Practices** Workplaces of size 10 or more are to:

- 2) develop, implement and maintain a human rights/diversity policy ...  
*available to the public* – **Makes sense**
- 3) every two years, complete an equality, diversity and inclusion self-assessment, *provided to the LSO* – **Absent feedback, is there evidence that a confidential report to the LSO will have impact?**
- 4) encourage legal workplaces to conduct [their own] inclusion surveys.  
**Is this advisable?** In many workplaces a voluntary survey is unlikely to obtain a satisfactory response rate; disclosure of the results raises confidentiality issues in smaller workplaces; conducted by managers of the workplace, there may be pressure to complete a voluntary survey and to answer in some way; effects of disclosing the survey results are unpredictable

Ornstein Presentation May 3, 2022

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#### **Recommendation 4 – Measuring Progress through Quantitative Analysis**

Annually, workplaces of size 25 or more are to measure diversity from the Lawyers 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.

- **Risks violating privacy** in all smaller workplaces and in all workplaces for numerically smaller historically disadvantaged groups, including LGBTQ2+, Indigenous individual racialized groups and persons with a disability
- A **global measure** of the representation of all historically disadvantaged groups is **not necessarily meaningful**
- **Instead, I suggest** these measures be computed by the LSO and used to measure progress and guide policy, perhaps linking them to policies measured by Recommendation 3(2), but not released all workplaces, maybe released to some places on application only with conditions

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## **Recommendation 5 – Measuring Progress through Qualitative Analysis**

Every four years, in workplaces size 25 or more, the LSO is to:

- 1) conduct a voluntary inclusion survey;
- 2) compile the survey for each workplace and *provide the legal workplace* with a summary.

- Raises **privacy concerns** in smaller workplaces
- In many workplaces a voluntary survey will not have an acceptable response rate
- See Recommendation 7

## **Recommendation 6 – Inclusion Index**

Every four years in workplaces of size 25 or more, the LSO is to *develop and publish* [and so make public] an inclusion index [for each workplace] combining:

- 1) a workplace's self-assessment information (Recommendation 3);
  - 2) demographic data obtained from the Lawyer and Paralegal Annual Report (Recommendation 4);
  - 3) information from the inclusion survey conducted by the LSO (Recommendation 5)
- I am unconvinced that there exists a valid measure of inclusion that combines these three dimensions
  - Instead, focus on the separate dimensions and consider their (shifting?) relationship – see Recommendation 7

## **Recommendation 7 – Inclusion Survey**

Every four years, the LSO will conduct an inclusion survey.

- A vital subjective element of the understanding of equity *not* visible in the “structural” measures of employment
- Offers the opportunity to place diversity issues in the context of career trajectories
- Could identify the concerns of individual historically disadvantaged groups
- Considering all licensees and segments of the profession (sole practitioners, law firms classified by size, employment segments, geographical regions) poses no privacy concerns
- The challenge, still, is to obtain an acceptable survey response rate

## **Recommendation 7 – Inclusion Survey, CONTINUED**

Every four years, the LSO will conduct an inclusion survey.

### **I propose this modification**

**Every two years** conduct a **large sample survey** of all licensees, **addressing equity issues, and larger concerns**, for example the quality of work life (including working conditions and hours, satisfaction) and key career decisions such as changing jobs and retirement. All these have important equity dimensions.

# Future Research on Equity I

1. Consistent with the 2021 Canadian Census, add two questions to the Annual Report asking for: sex at birth and gender; retain the question about sexual orientation
2. To the Annual Report, add questions about place of birth, year of settlement; and country of first and law degrees – which need be asked only once
3. Conduct research on disability, presently measured with just one plainly inadequate question in the Annual Report, in the framework of contemporary research on activity limitation and comparable to the Census questions, to allow comparisons to the population

## Future Research on Equity II

4. Study progression to equity partnership in law firms (and maybe to other statuses). This is especially important for understanding gender inequality
5. Study income, because it is a critical aspect of inequality. But how to do so is unclear. A voluntary question in the *Annual Report* might have a very low response; maybe include this in a sample survey; maybe conduct analysis of the Census, as done once before
6. Study the very high level (around 50%!) of paralegal licensees not in practice



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: March 12, 2022  
Re.: **Equity Legal Education Series – Spring 2022 Virtual Events**

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## Upcoming Events for Spring 2022

All Law Society events will take place virtually until further notice. Additional information about the events can be found on the Law Society's [Events webpage](#). Registration information and topics of discussion will be posted on the [Event webpage](#) as they become available.

### 1. Asian & South Asian Heritage Month Event

*May 10, 2022, 5:30 PM to 7:00 PM*

Event to be held in partnership with the Federation of Asian Canadian Lawyers (FACL) and the South Asian Bar Association of Toronto (SABA).

Registration link: <https://lawsociety.forms-db.com/view.php?id=316687>

### 2. 2022 Law Society Awards: Recognizing Excellence

*May 25, 2022, 5:00 PM*

Members of Ontario's legal professions will be recognized for their outstanding career achievements and contributions to their communities at the annual Law Society Awards ceremony on May 25, 2022.

### 3. National AccessAbility Week

*June 1, 2022, 4:00 PM to 5:45 PM*

Event to be held in partnership with ARCH Law Disability Centre.

### 4. Pride Month

*June 6, 2022, 5:30 PM to 7:00 PM*

Event to be held in partnership with the Ontario Bar Association Sexual Orientation and Gender Identity Law Group.

### 5. National Indigenous History Month & National Indigenous Peoples Day

*June 14, 2022, 5:30 PM to 7:30 PM*

Event to be held in partnership with the Indigenous Advisory Group.



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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: May 12, 2022  
Re.: **Summary of Decisions and Directions from Previous Meetings**

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## A. Ongoing Work

### 1. Reappointment of the DHC Counsel until February 24, 2025

At its November 24, 2021 meeting, the Committee approved the following recommendations to Convocation on February 24, 2022:

- the reappointment of Acting DHC Fay Faraday and Alternate DHCs Natasha Persaud and Lai-King Hum for a three-year term effective February 24, 2022 to February 23, 2025 with eligibility for reappointment.
- an increase to the DHC hourly fee from \$315.00 to \$345.00 effective February 24, 2022.

### 2. Paralegal Position in the Office of the DHC

In Spring 2021, the Committee approved a proposal to recruit a paralegal alternate to the DHC and provided direction to begin the recruitment process. Over the summer of 2021, a Selection Committee composed of Bencher Rob Burd, Bencher Nancy Lockart and Kate Lamb, Executive Director of People and Client Services, understood the recruitment process and interviewed three candidates for the position. The process did not result in a successful recruitment.

At its November 2021 meeting, the Committee approved a proposal to create a new position of Discrimination & Harassment Educator (“DH Educator”) for the Office of the DHC. The DHC Educator position will be filled by a paralegal licensee and will replace the previously approved paralegal alternate position. The DH Educator will be mentored by the DHCs and work with them to develop educational materials and deliver presentations for paralegal students, licensing candidates and practising paralegals. After two years, the role would be evaluated with a view to determining if the role should expand to contain the other functions of the DHC.

### 3. Indigenous Initiatives

At its June 10, 2021 meeting, the Committee was provided with an update on the implementation of the on the implementation of the recommendations of the Law Society’s Indigenous Framework, Review Panel Report and other Indigenous Initiatives. The Law Society continues to implement the recommendations. The Committee was provided with an additional update at its October 14, 2021 meeting. The Committee will receive a further update on the Indigenous Cultural Training Working Group and the Working with Indigenous Peoples Guide Working Group at the February 10, 2022 meeting.

#### **4. Challenges Report Implementation Update**

At its November 2021 meeting, the Committee received an update on status of the recommendations in the Challenges Report and an outline of the peer review undertaken to evaluate the implementation of the Challenges Report.

### **B. Completed Work**

#### **5. DHC Semi-Annual Reports for July 1, 2020 to December 31, 2020**

At the February 10, 2022 meeting, the Committee received the submission of the Report of the Activities of the DHC for the period of July 1, 2021 to December 31, 2021. The Report was sent to February Convocation for information.

#### **6. Reappointment of the DHC Counsel until February 24, 2022**

At its November 25, 2021 meeting, the Committee voted to recommend to Convocation the reappoint the DHC Fay Faraday and the two Alternate DHCs, Natasha Persaud and Lai-King Hum, for a three-year term effective February 24, 2022 to February 23, 2025 (5 votes in favour; 4 votes against). Convocation approved the reappointments of the DHCs on February 24, 2022.

#### **7. Appointment of Equity Advisory Group membership for 2021 to 2024**

At the October 14, 2021 meeting, the majority of the Committee (8 votes in favour; 1 vote against; 2 abstentions) approved the appointments of the 12 individual and 12 organizational members of the Equity Advisory Group (EAG) for the term ending in 2024. The Committee's recommendations were sent to October Convocation for information.

#### **8. DHC Semi-Annual Reports for January 1, 2021 to June 30, 2021**

At the September 15, 2021 meeting, the majority of the Committee considered the Report of the Activities of the DHC for the period of January 1, 2021 to June 30, 2021. The report was submitted to Convocation on October 1, 2021 for information.

#### **9. DHC Semi-Annual Reports for July 1, 2020 to December 31, 2020**

At the April 8, 2021 meeting, the Committee approved the submission of the Report of the Activities of the DHC for the period of July 1, 2020 to December 31, 2020 to April Convocation for information.

#### **10. Reappointment of the DHC Counsel until February 24, 2022**

At the January 28, 2021 meeting, the Committee voted to recommend to Convocation the reappoint the DHC Fay Faraday and the two Alternate DHCs, Natasha Persaud and Lai-King Hum, for one-year effective February 25, 2021 to February 24, 2022 (5 votes in favour; 4 votes against). Convocation approved the reappointments of the DHCs on February 25, 2021.

### **11. DHC Program Review**

At the February 9, 2021 meeting, the Committee was presented with three options to move forward with the recommendations of the DHC Program Review:

- Option 1. Maintain the status quo of the DHC,
- Option 2. Explore making minor changes to the DHC, by enhancing awareness, education, data collection and operational functions of the DHC
- Option 3. Explore making substantive changes to the DHC with respect to investigations and remedial action.

Bencher Fagan brought a motion to add a 4<sup>th</sup> option: Reducing or eliminating the DHC program and replacing it with an adequate substitute. The motion was seconded by Bencher Pineda. The Committee voted against this option (6 votes against; 4 votes in favour).

The Committee voted in favour of Option 2 (6 votes in favour of Option 2; 2 votes against both options; 2 abstentions).

At its May 13, 2021 meeting, the Committee considered the workplan to enhance the awareness and education function (update on website) of the DHC. The majority of the Committee approved the work plan (8 votes in favour).

### **12. Role of Equity Partners within EIAC**

At the September 10, 2020 meeting, Chair Dianne Corbiere formed the Equity Partners Working Group (“Working Group”) to consider the role of the equity partners (IAG, EAG, and AJEFO) within the Committee. The Committee considered the recommendations of the Working Group at the May 13, 2021 meeting and resumed discussions at the June 10, 2021 meeting.

At its June 10, 2021 meeting, the majority of the Committee (7 votes) voted to continue to have the equity partners send representatives to participate in discussions at Committee meetings, except for in camera matters and to give the equity partners an option to send up to two representatives to Committee meetings. The Committee’s recommendations were sent to June Convocation for information.

This is **Exhibit Y** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

May 27, 2022

**Sent by email to [murray.klippenstein@klippensteins.ca](mailto:murray.klippenstein@klippensteins.ca)**

**Office of the Treasurer**

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M5H 2N6  
416 947 3300  
[tdonnelly@lso.ca](mailto:tdonnelly@lso.ca)

Murray Klippenstein  
Klippensteins  
Barristers & Solicitors  
160 John St., Suite 300  
Toronto, ON M5V 2E5

Dear Mr. Klippenstein:

I am writing to you as the Treasurer in your capacity as a Bencher to respond to two letters, one dated April 26, 2022, and another dated May 20, 2022, received from W. J. Kenny, an Alberta lawyer, requesting, on your behalf, that I provide to you information specified in the letters.

In the April 26, 2022, letter, the following information was requested:

1. A copy of the full Stratcom Communication Inc. survey dataset (that is, all the raw data from the survey of lawyers and paralegals), which was used to generate the report entitled *Challenges Facing Racialized Licensees: Final Report*, date March 11, 2014, and submitted to the Law Society of Ontario in March 2012 by David Kraft, John Willis, and Michael Charles on behalf of Stratcom Communications Inc.
2. A copy of the Challenges Faced by Racialized Licensees Working Group's Request for Proposal (dated December 2012) regarding the work eventually carried out by Stratcom Communications Inc.
3. A copy of the proposal submitted by Stratcom Communications Inc. in response to the aforementioned Request for Proposal.
4. A copy of the written agreement entered into between the Law Society of Ontario and Stratcom Communications Inc. in or about March 15, 2013.
5. A copy of a memorandum from bencher Julian Falconer to the Challenges Faced by Racialized Licensees Working Group prior to its meeting on May 8, 2013.

6. Materials for the May 8, 2013, meeting of the Challenges Faced by Racialized Licensees Working Group.
7. Copies of all financial records showing payments made by the Law Society of Ontario to Stratcom Communications Inc. after the March 15, 2013, agreement and up to the present.
8. A copy of the draft report delivered to the Law Society of Ontario by Stratcom Communications Inc. in January 2014.
9. Copies of minutes or meeting materials for meetings of the Challenges Faced by Racialized Licensees Working Group held in the period starting June 27, 2013, and ending October 15, 2014.
10. A copy of page 53 of the "Kay Report".
11. Copies of any memos or staff notes or communications (including emails between staff and between staff and benchers) that address the detailed methodological and other critiques in Murray Klippenstein's *A Critical Review of the Law Society's Challenges Report* dated January 8, 2020.
12. A copy of the consulting agreement between the Law Society of Ontario and Diversio for purposes of preparing the inclusion index.
13. Copies of all records showing payments made by the Law Society of Ontario to Diversio, related to the inclusion index, subsequent to the agreement and up to the present.
14. A copy of the draft inclusion index report by Diversion delivered to the Law Society of Ontario in Fall 2019.
15. Copies of any "proceedings" by the Professional Regulation Committee, including memoranda and staff communications to the Committee, related to amending the Rules of Professional Conduct or the Paralegal Rules of Conduct so as to prohibit "systemic discrimination", as set out in the Working Together Report, Recommendation 12 (2).
16. Copies of all financial records documenting resources spent on the types of investigations described in a memo from the Law Society of Ontario's Senior Management Team, dated April 25, 2016, entitled "Operationalizing RWG Draft Recommendations" since the adoption of the Working Together Report. Also, copies of records indicating how many of the types of investigations described in the memorandum have been initiated since the adoption of the Working Together Report.
17. Copies of any records describing "the specialized team that has been established" and records providing "details related to [the] training plan", as

referred to in the materials for the meeting of the Equity and Indigenous Affairs Committee on June 8, 2017.

18. A copy of the bar admission course materials pertaining to cultural competency, as referred to in Recommendation 10 of the Working Together Report, for the year 2017 and for each year thereafter.
19. A copy of any Request for Proposal or equivalent that was delivered to the three experts retained by the Law Society of Ontario in or about November 2021 to review the report referenced in paragraph 1 above.
20. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of the process).
21. A copy of any contracts, agreements or retainers entered into with the three experts, and of any directions given to them.
22. Copies of all records showing amounts already paid to the three experts and the amounts agreed to be paid to them in the future.
23. Copies of any materials submitted by the three consultants showing their qualifications for the review (including in relation to survey and statistical methodology).

In the May 20, 2022, the following additional information was requested:

1. The full dataset of answers (redated as necessary to protect the confidentiality of the respondents) to the demographic and inclusion questions contained on the 2018 lawyer annual report required to be filed by all lawyer licensees.

Following the receipt of the April 26, 2022 letter, there were two meetings of the Equity and Indigenous Affairs Committee (EIAC) held May 3 and May 12, which you attended. As you know, in support of the May 3, 2022, EIAC meeting, 161 pages of supporting materials were made accessible for Benchers relating to the Inclusion Index, Stratcom Report and the Challenges Report. Until receiving your letter dated May 20, 2022, I did not understand that you were continuing to request information related to the Inclusion Index, Stratcom Report or Challenges Report.

Let me address your requests for information.

With respect to information that is confidential to the Law Society of Ontario, under the current legislative framework governing the Law Society of Ontario, the Treasurer has no unilateral authority to decide on a request for information from a bencher. Convocation must be engaged in considering the request and providing directions on a response. With respect to information that is not confidential to the Law Society (information that is publicly available), in the first instance, a bencher's request for such information falls within the authority of the Chief Executive Officer to respond to. However, if the work of

responding to the request would exceed the normal duties of staff, the CEO would ordinarily seek directions from Convocation on proceeding with a response. Information that is regulatory in nature, obtained by the Law Society of Ontario further to its regulatory powers and, as such, intended solely for regulatory use and disclosure, cannot be provided to a bencher other than if the bencher is engaged in the regulatory process for which the information was obtained. None of the CEO, the Treasurer or Convocation has authority to decide otherwise.

I will be referring your requests for information to the Strategic Planning and Advisory Committee. I will ask the Committee to consider the requests and to recommend to Convocation whether it should refuse or accede to them, in whole or in part.

Yours truly,

A handwritten signature in black ink, appearing to read "Teresa Donnelly". The signature is fluid and cursive, with a large initial "T" and "D".

Teresa Donnelly  
Treasurer

Copy: W.J. Kenny, Q.C.  
Kenny Law  
The Phipps-McKinnon Building  
Suite 980, 10020 101A Ave NW  
Edmonton, AB T5J 3G2  
[wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

This is **Exhibit Z** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



**Agenda and Materials  
Friday June 17, 2022  
Zoom Video Conference  
9:30 am – 11:30 am**

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**Equity and Indigenous Affairs Committee**

**Join Zoom Videoconference:**  
<https://us02web.zoom.us/j/83161250360?pwd=ZW5kZjBsU1VuNXNlamlmQxQVhEdUVKUT09>  
**Join Zoom teleconference: [1 855 703 8985](https://us02web.zoom.us/j/18557038985)**  
**Meeting ID: 831 6125 0360**  
**Password: 904564**

Committee Members:

- Dianne Corbiere (Chair)**
- Etienne Esquega (Vice-Chair)**
- Atrisha Lewis (Vice-Chair)**
- Catherine Banning
- Robert Burd
- John Fagan
- Julian Falconer
- Murray Klippenstein
- Nancy Lockhart
- Jorge Pineda
- Julia Shin Doi
- Megan Shortreed
- Alexander Wilkes

**EQUITY AND INDIGENOUS AFFAIRS COMMITTEE MEETING AGENDA**  
**Friday June 17, 2022**  
**9:30 am – 11:30 am**

**Opening Ceremony and Indigenous Teaching (TBD)**

1. **Update on the Activities of the Equity Partners (IAG, EAG, AJEFO) (For Information)**  
 Update from the Indigenous Advisory Group (*Catherine Rhineland*)  
 Update from the Equity Advisory Group (*Nima Hojjati & Jacqueline Beckles*)  
 Update from L'Association des juristes d'expression française de l'Ontario (*Marc Sauvé*)
  
2. **Supplement for the Guide for Lawyers Working with Indigenous Peoples (For Information) (Kathleen Lickers)**
  
3. **Update on Supports for Indigenous Licensing Candidates (For Information) (Cara-Marie O'Hagan)**
  
4. **Update on Trip to Northern Indigenous Communities (For Information)**  
Memo Update to EIAC.....TAB 1  
Update on the Law Society's Indigenous Initiatives.....TAB 1.1
  
5. **Report to Convocation with Committee Recommendations on the Inclusion Index (For Decision; In Camera)**  
Cover Memo to EIAC.....TAB 2  
Draft Motion and Report to Convocation.....TAB 2.1  
Appendix A – Inclusion Survey.....TAB 2.1.1  
Appendix B – Sample Diversio Dashboard.....TAB 2.1.2  
Appendix C – Biographies of Peer Reviewers.....TAB 2.1.3
  
- For Information Only**
  
6. **Decision Direction Summary from Previous Meetings.....TAB 3**  
 (For Information)



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# Memorandum

**To:** Equity and Indigenous Affairs Committee  
**From:** Jim Varro, Director and Corporate Secretary, Office of the CEO  
**Date:** June 17, 2022  
**Re.:** **Update on Trip to Northern Indigenous Communities**

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## Purpose

To provide the Committee with an update on the Treasurer and Benchers' trip to visit the northern First Nations communities from June 7 to 9, 2022.

## Summary of the Trip

Treasurer Teresa Donnelly and benchers Cathy Banning, Robert Burd, Dianne Corbiere, Etienne Esquega and Julian Falconer visited northern First Nations communities June 7 through 9. Joining the Law Society was The Honourable Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice, Elder Myeengun Henry, Jim Varro, and Ovide Mercredi, who acted as the independent reviewer to the Law Society during the work undertaken by the Review Panel in 2017-2018.

On June 7, the Treasurer, benchers, Chief Justice Morawetz, Elder Henry, Jim Varro and Mr. Mercredi visited Fort William First Nation near Thunder Bay and were welcomed by Chief Peter Collins. Elder Rita Fenton led the group, which included community members, local lawyers and members of the local judiciary, in an Indigenous teaching. This was followed by a Talking Circle. Here, the Treasurer and benchers had an opportunity to listen to and learn from community leaders and members and to share about the work of the Law Society. The Treasurer confirmed the Law Society's commitment to working with Indigenous peoples on matters where the issues and interests of the Indigenous communities intersect with the work of the Law Society under its regulatory mandate.

On June 8, the Treasurer, benchers, Elder Henry, Jim Varro and Mr. Mercredi travelled to Sioux Lookout and Lac Seul First Nation, returning to the place where former Treasurer Paul Schabas presented the Review Panel Report in June 2018. They were greeted by Chief Clifford Bull and met with him and members of Council and learned more about issues and developments in the community. The Treasurer shared the work of the Law Society on implementing the recommendations of the 2018 Review Panel Report. This was followed by a Justice Forum, attended by Ogichidaa (Grand Chief) Francis Kavanagh, Grand Council Treaty #3 and Deputy Grand Chief Anna Betty Achneepineskum, NAN and other leaders and community members, including those working in the justice sector in

Lac Seul. Through a series of presentations by the leaders and justice sector representatives from Grand Council Treaty #3, the Law Society delegation learned about Indigenous specific justice programs and services to address the issues and challenges facing Indigenous peoples when they become involved in the criminal justice system. This is impacted by the history of Indigenous peoples in Canada – a history that resulted in loss of culture and identity, loss of land and livelihood and multi-generational trauma suffered through the residential schools experience and other programs that separated families and created a loss of community and a myriad of social problems. They emphasized that for many Indigenous peoples, justice is about healing and that restorative justice principles can play a major role in achieving this objective. The delegation also learned about local policing and the challenges created by resource issues for this crucial service. Chief Bull emphasized the need for Indigenous laws and governance. He also spoke about his desire to see more resources that can be used to explore new justice models and community resources for justice and healing. The Treasurer and Ms. Corbiere had an opportunity to discuss the progress made on the Review Panel recommendations and reaffirm the commitment the Law Society has made to work with Indigenous communities in keeping with the focus of the recommendations and implementation of the Law Society's Indigenous Framework. Chief Bull was grateful for the Law Society's engagement once again in Lac Seul and noted the significance of the delegation's visit in affirming the relationship with the community. He also extended an invitation to the leadership of the courts in Ontario to engage with Indigenous communities in determining how the courts, in seeing that justice is done, can be responsive to the unique issues facing Indigenous peoples involved in the justice system.

On June 9, the Treasurer, Ms. Banning, Mr. Falconer, Elder Henry and Mr. Mercredi travelled to Sandy Lake First Nation for a meeting with Chief Delores Kakegamic<sup>1</sup> and Council. Other leaders who attended were Grand Chief Derek Fox, [Nishnawbe Aski Nation](#); Deputy Grand Chief Anna Betty Achneepineskum; Harvey Yesno, NAN Legal; Don Rusnak, NAN Legal; and Chief of Police Roland Morrison, Nishnawbe Aski Police Service. Presentations were made on justice in Sandy Lake including the Mameenimwaywin Justice Project. Project Coordinator Cordia Goodman, spoke about the challenges as a result of justice participants from the Court/Personnel party not being in the community since November 2019, resulting in lengthy Ontario Court of Justice dockets – there are 269 charges against 78 clients. Some clients in the community have been awaiting trial since 2018. She spoke of the challenges of clients speaking to their lawyers. She also noted the lack of proper court facilities. The audio/video court happens at the Sandy Lake Radio station and when the fly-in Court personnel were attending, they were using the Community Youth Centre which is not an appropriate forum to hold court nor is their appropriate equipment. Other challenges noted were offenders being released into the community without notice and supports and the difficulties in receiving responses to

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<sup>1</sup> As Chief Kakegamic had COVID, she attended by telephone.

inquiries from the Kenora court. Other presenters noted the need for Indigenous laws and governance, the need for support, importance of relationships and partnerships, and the need for a healing lodge. The Treasurer spoke about the work of the Law Society in improving the regulatory processes for Indigenous peoples, facilitating access to justice, and supports for Indigenous lawyers and paralegals including the Guide for Lawyers Working with Indigenous Peoples.



Law Society of Ontario

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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: June 17, 2022  
Re.: **Update on the Law Society's Indigenous Initiatives**

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## Purpose

This memo provides background on:

- The status of implementation of the recommendations from the *Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples* ("Review Panel"); and,
- Other Law Society of Ontario ("LSO" or the "Law Society") programs and initiatives dedicated to issues affecting Indigenous peoples.

## Background

### *i. Indigenous Advisory Group*

In November 2004, the then-chair of the Equity and Indigenous Affairs Committee ("EIAC"), Joanne St. Lewis, established the Aboriginal Working Group (the "AWG") to act as a resource to EIAC on issues impacting the Indigenous bar and Indigenous peoples in Ontario. Following the release of the 94 Calls to Action from the Truth and Reconciliation Commission (the "TRC"), the Law Society expressed its desire to formally re-establish and strengthen its relationship with Indigenous peoples on justice issues. In 2016, the Law Society partnered with representatives from First Nations, Inuit and Métis communities to establish the Indigenous Advisory Group ("IAG") consisting of Indigenous legal professionals and Elders. The membership of the IAG is composed of 13 members, including three members of the Elders' Council.<sup>1</sup>

Adopting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as its framework, the IAG advances and encourages the reconciliation of Indigenous peoples and legal systems within the Canadian legal system and promotes the development of the

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<sup>1</sup> The current members of the IAG are Catherine Rhineland (Co-Chair), Danielle Lussier-Meek (Co-Chair), Caitlin Tolley, Randall Kahgee, Sheila Warner, Tamara Moore, Marcel Larouche, Jade Fletcher, Josh Favel, and Amanda McBride. The members of the Elders' Council are Elder Myeengun Henry, Elder Larry McDermott, and Tauni Sheldon.

relationships between Indigenous peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

The IAG's mandate is to:

- Promote the implementation of recommendations from reports generated on Indigenous peoples and Canada's legal system, including the Truth & Reconciliation Commission of Canada's Final Report and Calls to Action and the First Nations Representation on Ontario Juries Report by Justice Frank Iacobucci.
- Encourage partnerships and relationships between Indigenous peoples, the Indigenous Bar Association ("IBA") and the Law Society.
- Interact and partner with the Law Society, EIAC, Benchers committees, working groups, advisory groups, and the Office of the CEO and other staff on all issues affecting Indigenous peoples in relation to the Law Society.
- Identify priorities and make recommendations on the provision of legal services by and for Indigenous peoples in Ontario.
- Initiate, inform, promote and advance reform of policies, procedures, rules and regulations for the benefit of Indigenous peoples.
- Promote public awareness and educate members of the Law Society on issues related to and affecting Indigenous peoples.
- Review, comment and make recommendations on reports affecting Indigenous peoples with respect to the legal profession.
- Assess the progress and effectiveness of initiatives undertaken by the Law Society that address or relate to legal issues affecting Indigenous peoples.

The initiatives described below are carried out in collaboration with the IAG.

#### *ii. Keshen Review Panel*

On June 28, 2017, then-Treasurer Paul Schabas announced the creation of a review panel to examine the way in which the Law Society and the Tribunal address regulatory matters involving Indigenous peoples, complaints, and issues. The review was prompted by the Law Society's experience in the prosecution of a Kenora-based lawyer, Douglas Keshen<sup>2</sup>, which raised questions about the Law Society's regulatory and hearing processes involving Indigenous peoples.

Between 2014 to 2017, the Law Society investigated allegations of professional misconduct related to Mr. Keshen's representation of Indigenous clients and the handling of compensation paid under the Indian Residential Schools Settlement Agreement. The investigation culminated in a 25-day conduct hearing in Kenora which ultimately resulted

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<sup>2</sup> *Law Society of Upper Canada v. Keshen*

in a significant reduction in the number and nature of the original allegations against Mr. Keshen and the conversion of the conduct hearing into an Invitation to Attend. This prosecution was the first major case<sup>3</sup> for the Law Society involving Indigenous complainants.

The Review Panel was tasked with reviewing the Law Society's complaints, investigation, prosecution and adjudication processes in relation to Indigenous peoples. The review shed light on Indigenous histories, cultures and affairs and the impacts of settler/colonial systems on Indigenous peoples. The Law Society became acutely aware of the importance of establishing and maintaining culturally competent regulatory and hearing processes

The work on the Review Panel was carried out alongside an Independent Reviewer, former First Nations National Chief Ovide Mercredi. As part of the review, the panel engaged with First Nations communities in Treaty 3 and Nishnawbe Aski Nation territories, interviewed complainants and LSO staff and consulted with experts from the Indigenous community. Treasurer Schabas and the panel members also attended a community meeting in Sioux Lookout with First Nations in the north, Elders and residential school survivors.

In May 2018, Convocation adopted the report and the nine recommendations of the Review Panel directed at the Law Society, the Professional Regulation and the Law Society Tribunal to improve the regulatory and hearing processes for Indigenous complainants and licensees.

The Review Panel Report is attached as Appendix "A".

### **Status of the Implementation of the Recommendations of the Review Panel Report**

Below are the key initiatives that have been undertaken since the adoption of the Review Panel report. These are positive steps. However, the Law Society acknowledges that a productive relationship between itself and Indigenous peoples is built on trust. The Law Society is committed to taking sustained and meaningful action as it fulfills its commitment to reconciliation.

#### *i. Improvement to the Law Society's Regulatory Functions*

The Law Society has taken the following steps to improve internal regulatory structures for matters involving Indigenous complainants and licensees:

- Retained Shannon McDunnough, Discipline Counsel, Indigenous Matters in 2020 and Graham Hanlon, an investigator specializing in Indigenous legal issues in 2017, for matters involving Indigenous complainants and licensees.
- Retained an Indigenous lawyer, Promise Holmes Skinner in January 2022, to provide policy advice and continue outreach with Indigenous communities.

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<sup>3</sup> Major cases are cases that may include a complexity of issues, a high volume of complainants, numerous complainants, significant resources, or a risk to public safety.

- Provided cultural awareness training and supports for Law Society staff, with a particular focus on Professional Regulation and the Law Society Tribunal.
- Implemented a new protocol for major cases involving complex issues, a high volume of complainants and potential risk to the public.
- Appointed Indigenous adjudicators and implemented Indigenous training at the Law Society Tribunal.
- Incorporated additional Indigenous legal and cultural competencies as testing material in licensing exams for lawyer and paralegal licensing candidates for the 2022-2023 licensing year.

ii. *First Nation, Inuit, and Métis Team*

Following internal consultations, the First Nation, Inuit, and Métis (“FNIM”) team was reconstituted with cross-divisional representation under the leadership of Shannon McDunnough to act as a resource for staff and management in all divisions, at to:

- Function as a navigator to assist Indigenous complainants and licensees with the Law Society’s complaints and discipline processes.
- Manage the dedicated toll-free telephone line for Indigenous complainants. The telephone line was formally established around 2015, but an Aboriginal support line has been in place for many years.
- Assist in the development and delivery of internal tools and resources (including educational sessions) for staff.
- Work with management and identify trainers to develop targeted training.
- Participate in engagements with Indigenous leaders.

iii. *Organization-wide Commitment to Indigenous Cultural Awareness*

The Law Society has made an organization-wide commitment to enhancing Indigenous cultural awareness. Initiatives that have been implemented include:

- Adopted the [Indigenous Framework](#) in 2018 to ensure that an Indigenous lens is applied to all aspects of the Law Society’s work.
- Invested in cultural awareness training for staff and board directors, including cultural awareness training, Indigenous law camps, and Bimickaway training sessions.
- Opening Law Society board meetings and public events, including swearing-in ceremonies, with land acknowledgments.
- Hosting the annual Eagle Feathers Polishing Ceremony at Convocation.

- Incorporating National Aboriginal Veterans Day remembrance into the Law Society's annual Remembrance Day ceremony to recognize the contributions of First Nations, Inuit and Métis peoples to military service in Canada.
- Observing a moment of silence at the June 2021 Convocation as a symbol of respect for the Indigenous children whose bodies were uncovered in unmarked graves at the Kamloops Indian Residential School. A [public statement](#) about the tragedy was also issued on June 23, 2021.
- Hosting a Sunrise Ceremony led by Elder Myeengun Henry (IAG's Elder' Council) in 2021 with the Chief Justices of Ontario courts.
- Collaborating with law societies across Canada and the Federation of Canadian Law Societies to implement the TRC Calls to Action 27 and 28 which identify the duties of law societies and law schools regarding reconciliation.
- Promoting Indigenous voices within the Law Society's board.
  - Lawyer benchers Dianne Corbiere (Anishinaabe of M'Chigeeng First Nation) and Etienne Esquega, (Biinjitiwaabik Zaaging Anishinaabek of Rocky Bay First Nation) were appointed as the Chair and Vice-Chair of the Law Society's Equity and Indigenous Affairs Committee. The mandate of the committee is to develop for Convocation's approval policy options for the promotion of equity and diversity in the legal professions in Ontario in consultation with Indigenous, Francophone and other equity-seeking communities.
  - Catherine Banning (Nishnabe-qwe band member of Fort William First Nation) is the second ever Indigenous Lay Bencher in the 225 year history of the Law Society. She was appointed in 2021.
- Ensuring that Indigenous lawyers and paralegals are among those recommended by the Law Society for appointment to external committees. Recent recommendations made by the Law Society include the following:
  - Maggie Wente (Serpent River First Nation) was appointed to the Federal Judicial Appointments Advisory Committee (Toronto Region).
  - Jessica Belisle (Métis Anishinaabe Kwe from Sault Ste. Marie) was appointed to the Justices of the Peace Appointments Advisory Committee (Northeast).
  - Catherine Banning (Nishnaabe-qwe of Fort William First Nation; bencher appointed by the government) was appointed to the Law Foundation's board of directors.

- Etienne Esquega was appointed to LAWPRO's board of directors.
- Showcased the work of Indigenous lawyers and paralegals through the Law Society awards and honours.
  - In 2018, the Law Society awarded the honorary doctorates to:
    - The Honourable Senator Murray Sinclair (Peguis First Nation, Manitoba) for his contributions to the legal profession. Senator Sinclair is the first Indigenous judge in Manitoba and the driving force behind the Truth and Reconciliation Commission of Canada.
    - The Honourable Leonard Stephen Mandamin (Anishnawbe member of the Wikwemikong First Nation) in recognition of his work as a highly respected and dedicated leader within the legal profession and the Indigenous community.
  - In 2019, the Law Society bestowed the Law Society Medal on Professor Jeffery Hewitt (mixed-descent Cree) to honour his exemplary role as an academic, advocate and leader, and for his work on Indigenous legal initiatives and justice.
  - In 2019, the Law Society awarded the honorary doctorates to:
    - Delia Opekokew (Canoe Lake Cree Nation, Saskatchewan), the first Indigenous woman to be called in 1979 to the Ontario and Saskatchewan bars, in recognition of her advocacy work in furthering the cause of justice for Indigenous peoples and human rights for all Canadians.
    - The Honourable James Bartleman (Chippewas of Rama First Nation) in recognition of his immense contributions to the province and country throughout his distinguished career. While serving as Lieutenant Governor (2002-07) he worked to help eliminate the stigma of mental illness, to fight racism and discrimination, and to encourage Indigenous youth. Preceding his appointment, Mr. Bartleman served 35 years in Canada's Foreign Service as ambassador to Cuba, Israel, NATO, and the European Union, and as High Commissioner to South Africa and Australia.
    - Former National Chief Ovide Mercredi in recognition of his work as a leading advocate for Indigenous peoples' rights. He was a key strategist for the Assembly of First Nations during the Meech Lake Accord constitutional reform discussions and was elected Regional

Chief of the Assembly of First Nations for Manitoba in 1989. He also played a critical role in resolving the Oka Crisis in 1990.

- In 2021, the Law Society bestowed the [Law Society Medal](#) on lawyer Candace Metallic (Listuguj Mi'gmaq Nation), for devoting her career to law reform and the advancement of legal and social justice for Indigenous peoples. Her leadership and ground-breaking work have been transformative in advancing Indigenous rights in Canada.
- The 2021 [Laura Legge Award](#) was awarded to Dr. Beverly Jacobs (Mohawk Nation of the Haudenosaunee (Iroquois) Confederacy). The award recognizes women lawyers from Ontario who have exemplified leadership within the profession. Dr. Jacobs has tirelessly worked on ending gendered colonial violence against Indigenous people and restoring Indigenous legal orders.
- The 2022 [Laura Legge Award](#) was awarded to Marian Jacko (Wiikwemkoong Unceded Territory) who has made significant contributions to the legal professions by advancing access to justice for children, youth, Indigenous communities, victims of crime, and survivors of human trafficking. Marian Jacko is the first Indigenous person appointed as the Children's Lawyer for Ontario.
- The 2022 Law Society Medal was awarded to Stuart Wuttke (Garden Hill First Nation), General Counsel for the Assembly of First Nations, in recognition of his leadership in Indigenous rights and policy reform.
- At the Call to the Bar on June 16, 2022 in Ottawa, David Nahwegahbow (Anishinaabe from the Whitefish River First Nation) will be presented honorary doctorate for making significant contributions to the cause of Indigenous rights.

*iv. Improved Processes for Indigenous Peoples Engaged with the Law Society*

The Law Society has taken steps to share information about its complaints and discipline processes in a clear and culturally appropriate manner, including:

- A special protocol for receiving and responding to complaints from Indigenous peoples, including a dedicated telephone line for receiving complaints.
- A plain language information sheet on the complaints and disciplinary processes available to Indigenous complainants.
- Acknowledgment of the special status of First Nations, Inuit, and Métis peoples in correspondence to Indigenous complainants.

- Direct outreach to Indigenous organizations and communities about programs and initiatives offered by the Law Society, such as the Discrimination and Harassment Counsel, LSO's free equity legal education series events, the Members' Assistance Program and the Repayable Allowance Program.

v. *Resources for Licensees*

Below are activities in support of reconciliation that the Law Society has taken outside of the Review Panel recommendations.

- In 2016, the Law Society approved the [Indigenous Legal Issues certified specialist designation](#) for lawyers who have expertise in Indigenous legal issues. The Law Society is consulting with the IAG to determine how the scope of the certified specialist designation can be enhanced.
- Since 2018, the Law Society has launched several resources for licensees including the [Guide for Lawyers Working with Indigenous Peoples](#) which was developed in partnership with the IBA and The Advocates' Society. A supplement to the *Guide* is under development and is expected to be published in the fall of 2022. The Law Society also published the [Guidelines for lawyers who represent Indigenous clients](#), and resources on the [Sixties Scoop Settlement](#).
- The Law Society offers two half-day Continuing Professional Development (CPD) programs on Indigenous legal issues every year. In November 2021, the Law Society launched a new CPD program for all licensees on [Equity, Diversity, and Inclusion for Indigenous peoples](#).
- The Law Society continues to host free annual events to enhance awareness of Indigenous culture and legal systems for staff, licensees and members of the public, including National Indigenous History Month and Indigenous Solidarity Day celebrations. Louis Riel Day celebration, Treaty Recognition Week program (new for 2022), and the National Day for Truth and Reconciliation.
- The annual [Access to Justice Week](#) in October will feature programming on Indigenous cultural awareness and legal issues. A half-day of programming is typically devoted to Indigenous matters at the annual program.

- Reviewed the good character assessment process in 2019 to ensure that it is transparent, provides candidates with certainty, and does not include elements that constitute barriers to entry.<sup>4</sup>

A detailed discussion of the status of each of the nine Review Panel recommendations can be found in the table below.

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<sup>4</sup> In February 2019, Convocation approved enhancements and improvements to the good character assessment process aimed at enhancing transparency and clarity of the process. Recommendations with respect to Indigenous licensing candidates include:

- Inclusion of a policy statement acknowledging the LSO's commitment to working towards reconciliation with FNIM peoples and conducting the good character assessments using the principles identified in the *Gladue* and *Ipeelee* decisions.
- Enhanced communication about the good character process to improve transparency and clarity for applicants, including simplifying letters sent to candidates who are subjects of an investigation.
- Exclusion of certain minor criminal convictions and dispositions from good character investigations in acknowledgement that they are disproportionately represented amongst racialized and Indigenous licensing candidates.

Initiative	Division Lead	Recommendation	Implementation and Status
<p><b>Recommendation 1:</b> Organizational Commitment to a Culturally Competent Regulatory Process</p>	<p>Senior Management Executives</p>	<ul style="list-style-type: none"> <li>• Make an organizational commitment to establish and maintain a culturally competent regulatory process.</li> <li>• Consider establishing a new office to support the LSO's work that involves Indigenous communities and to create a culturally safe environment.</li> </ul>	<p>The LSO has made an organization-wide commitment to enhance Indigenous cultural awareness. The following initiatives have been implemented:</p> <ul style="list-style-type: none"> <li>• Reconstituted the FNIM team in 2020 with cross-divisional representation to assist Indigenous complainants and licensees with the LSO's complaints and discipline processes.</li> <li>• Appointed two Indigenous adjudicators (Laura Arndt and Kathleen Lickers) and two Indigenous bench adjudicators (Catherine Banning and Etienne Esquega) to the Law Society Tribunal.</li> <li>• Established a staff Diversity and Inclusion Council ("D&amp;I Council") that includes representatives from Professional Regulation. A key focus of the D&amp;I Council is on educating staff on Indigenous peoples and culture. For example, a recent event entitled <i>Gaining Awareness and Knowledge Through Internal and External Resources</i> featured Indigenous speakers and educators.</li> <li>• Recruited Promise Holmes Skinner, Strategic Policy Counsel, Indigenous Initiatives in Policy to ensure dedicated staff support for Indigenous initiatives.</li> <li>• Convened the Indigenous Cultural Awareness Working Group comprised of Indigenous practitioners and scholars to provide advice and guidance on developing cultural training options for LSO staff and benchers.</li> <li>• Invested in cultural awareness training for staff and board directors, including cultural awareness</li> </ul>

			<p>training, Indigenous law camps, and Bimickaway training.</p> <ul style="list-style-type: none"> <li>• Provided Indigenous cultural training to intake staff, investigators and litigation services.</li> <li>• Provided dedicated <i>Gladue</i> training provided to litigation services.</li> <li>• Expanded the use of land acknowledgments and opening of meetings with Indigenous teachings from Elders.</li> <li>• Ongoing consultation with Indigenous Advisory Group and the Elders' Council.</li> <li>• Hosting Indigenous ceremonies, including the Eagle Feathers Polishing Ceremony, at Convocation on an annual basis.</li> <li>• Hosted a number of commemorative events focused on Indigenous peoples and culture.</li> <li>• Promoted Indigenous voices within the LSO Board of Directors.</li> <li>• Recommended Indigenous lawyers and paralegals for appointment to external committees.</li> <li>• Showcased the work of Indigenous lawyers and paralegals through LSO awards and honours.</li> </ul>
<p><b>Recommendation 2:</b> Communication with Indigenous Communities about Regulatory Processes</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> <li>• Communicate information about discipline processes in an understandable and culturally appropriate way</li> <li>• Communication should include discussion of the remedy from the</li> </ul>	<ul style="list-style-type: none"> <li>• Implemented a special protocol for receiving and responding to complaints from Indigenous peoples, including a dedicated telephone line for receiving complaints from Indigenous complainants.</li> <li>• Developed <a href="#">plain language information</a> on the complaints and disciplinary processes for</li> </ul>

		<p>complainant’s perspective, including restoration.</p>	<p>Indigenous complainants that is culturally appropriate (updated in 2021).</p> <ul style="list-style-type: none"> <li>Developed plain-language correspondence template with acknowledgement of special status of FNIM peoples and their unique access to justice challenges.</li> </ul>
<p><b>Recommendation 3:</b> Building and Strengthening Relationships with Indigenous Communities</p>	<p>Policy; ERC; Treasurer’s Office</p>	<ul style="list-style-type: none"> <li>Express the LSO’s commitment to create a trusting relationship, to enable the LSO to meet its regulatory mandate in ways that respect the culture of the community;</li> <li>Explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions to help the LSO advance its commitment, and build trust in the community; and</li> <li>Explore ways to increase access to justice, including considering the need to develop a cultural liaison with the public.</li> </ul>	<ul style="list-style-type: none"> <li>Enhancing support for the work of the Indigenous Advisory Group by increasing staff support (Promise Holmes Skinner, Reshma Budhwani, and Courtney Carrier); arranging for the Elders’ strategy session; engaging IAG proactively in critical issues of the day, such as the rescheduling of licensing exams, the Family Legal Services Provider License (FLSP) and recommendations of the Competence Task Force.</li> <li>Increasing direct outreach to Indigenous organizations and communities about programs and initiatives offered by the LSO, such as the Discrimination and Harassment Counsel, LSO’s free Equity Legal Education Series events, the Members’ Assistance Program, the Coach and Advisor Network and the Repayable Allowance Program.</li> <li>Opening Law Society board meetings and public events, including swearing-in ceremonies, with land acknowledgments.</li> <li>Hosting free annual events to enhance awareness of Indigenous culture and legal systems including the National Indigenous History Month and Indigenous Solidarity Day celebrations. Louis Riel Day celebration, Treaty Recognition Week program, and the National Day for Truth and Reconciliation.</li> <li>Featuring programming on Indigenous cultural awareness and legal issues at the annual <a href="#">Access to</a></li> </ul>

			<p><a href="#">Justice Week</a> in October. A half-day of programming is typically devoted to Indigenous matters at the annual program.</p> <ul style="list-style-type: none"> <li>• Advertising LSO events in Chiefs of Ontario, Inspire and Turtle Island News publications.</li> <li>• Sponsoring the IBA's fall conference on an annual basis.</li> <li>• Implementing an Indigenous focused outreach plan for the Treasurer, including the current visit to northern communities.</li> <li>• Ensuring that Indigenous lawyers and paralegals are among those recommended by the Law Society for appointment to internal external committees.</li> <li>• Ongoing consultation between the Access to Justice Committee and the IAG to ensure that Indigenous voices are heard on issues related to legal aid services, as outlined in the LSO's 2018 report on legal aid entitled "<a href="#">An Abiding Interest</a>".</li> </ul>
<p><b>Recommendation 4:</b> Improving Professional Regulation Functions</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> <li>• The Professional Regulation Division should:             <ul style="list-style-type: none"> <li>○ be appropriately resourced to ensure timely, efficient and effective operation of regulatory functions;</li> <li>○ build its capacity to develop formal policies and procedures that flow from decisions of the Tribunal that</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Recruited an investigator specializing in Indigenous legal issues in 2017 and an Indigenous discipline counsel in January 2020.</li> <li>• Assigned staff from the FNIM team for regulatory matters involving Indigenous complainants and licensees.</li> <li>• Ongoing review of Tribunal decisions to identify policy issues affecting Indigenous peoples. For example, in a recent decision, <i>McCullough</i><sup>5</sup>, the</li> </ul>

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<sup>5</sup> *Law Society of Ontario v. McCullough*, 2022 ONLSTH 63

		<p>raise important regulatory policy issues;</p> <ul style="list-style-type: none"> <li>○ formulate a plan for the investigation of major cases to assist in the management of investigations;</li> <li>○ support prosecutors in developing and refining the skills required to manage and prosecute major cases; and,</li> <li>○ ensure all staff have available the necessary mental and emotional supports when working with complainants who are survivors of trauma.</li> </ul>	<p>Tribunal considered how its long-standing jurisprudence is impacted by institutional commitments to reconciliation for Indigenous peoples. The Tribunal applied <i>Gladue</i> principles to take into account the licensee’s Indigeneity and other unique systemic and background factors when considering the case.</p> <ul style="list-style-type: none"> <li>• Developing formal policies flowing from decisions of the Tribunal that raised important regulatory policy issues.</li> <li>• Developed a new protocol for the investigation of “major cases” involving complex issues, a high volume of complainants and potential risk to the public, including new policies, procedures and templates.</li> <li>• Providing trauma-informed training for staff who work with Indigenous complainants and licensees.</li> <li>• Providing additional cultural awareness training and other supports for PR staff provided by the FNIM team.</li> </ul>
<p><b>Recommendation 5:</b> Improving the Regulatory Process for Indigenous Complainants</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> <li>• Ensure staff investigating complaints involving Indigenous licensees or complainants is culturally competent and has the necessary resources to engage appropriately with members of the Indigenous communities.</li> <li>• Explore ways to incorporate principles of Indigenous legal systems into dispute resolution processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Reconstituted the FNIM team to advise and educate intake staff, investigators and prosecutors involved in the LSO’s complaints and discipline process on Indigenous cultural awareness.</li> <li>• Providing <i>Gladue</i> focused training to LSO Litigation Services.</li> <li>• Developing a supplement to the <i>Guide for Lawyers working with Indigenous Peoples</i>. The work on the supplement to the <i>Guide</i> will be completed in June 2022 and is expected to launch in the fall.</li> </ul>

<p><b>Recommendation 6:</b> Internal Structures and Supports to Manage Investigations and Prosecutions</p>	<p>Professional Regulation Division</p>	<ul style="list-style-type: none"> <li>• Create permanent internal structures and supports to appropriately manage investigations and prosecutions of licensees who are the subject of complaints from Indigenous peoples and of Indigenous licensees.</li> </ul>	<ul style="list-style-type: none"> <li>• Tracking and flagging complaints from Indigenous peoples since 2018; making available accommodations known early in the regulatory process to all Indigenous complainants, witnesses and licensees.</li> <li>• Reconstituting the FNIM team in 2020 with cross-divisional representation to act as a resource for management and staff.</li> </ul>
<p><b>Recommendation 7:</b> Integration of Indigenous Law Principles into Regulatory Processes</p>	<p>Law Society Tribunal</p>	<ul style="list-style-type: none"> <li>• Explore how the LSO Tribunal and the Tribunal Committee can incorporate Indigenous cultural awareness in its adjudicative and dispute resolution processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Appointing Indigenous adjudicators at the Tribunal.</li> <li>• Ongoing review of Tribunal decisions to identify policy issues affecting Indigenous peoples.</li> <li>• Developing formal policies flowing from decisions of the Tribunal that raised important regulatory policy issues.</li> <li>• Ongoing consideration on how to modify regulatory processes to incorporate restorative measures and implement <i>Gladue</i> principles into discipline proceedings and processes.</li> </ul>
<p><b>Recommendation 8:</b> Training for Tribunal Adjudicators</p>	<p>Law Society Tribunal</p>	<ul style="list-style-type: none"> <li>• Provide ongoing training for Tribunal adjudicators on the history of Indigenous Law in Canada, Indigenous methods of dispute resolution, Indigenous ceremony and protocols, the Independent Assessment Process and other relevant related topics.</li> </ul>	<ul style="list-style-type: none"> <li>• Providing regular adjudicator Indigenous cultural training sessions.</li> <li>• Completed the Guide on National Adjudicator Training in 2018.</li> <li>• Supported the work of the Federation of the Law Societies of Canada (“FLSC”) Standing Committee on National Standards in developing a National Adjudicator Training Curriculum. The curriculum includes cultural competency, diversity and awareness of Indigenous culture.</li> </ul>

			<ul style="list-style-type: none"> <li>• Endorsed the New Adjudicator Training/SOAR program which includes training on cultural competency and Indigenous legal issues.</li> </ul>
<p><b>Recommendation 9:</b> Practice Supports for Lawyers and Paralegals who Serve Indigenous Clients</p>	<p>Policy; Professional Development &amp; Competence</p>	<ul style="list-style-type: none"> <li>• Ensure that guidance and education is available for lawyers and paralegals who serve Indigenous clients who have experienced trauma arising from the Indian Residential School experience, the Sixties Scoop or the Day Schools settlement to assist in their competent representation of these individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• Developing a supplement to the <i>Guide for Lawyers working with Indigenous Peoples</i>. The work on the supplement to the <i>Guide</i> will be completed in June 2022 and is expected to launch in the fall.</li> <li>• Convened the Indigenous Cultural Awareness Working Group comprised of Indigenous practitioners and scholars<sup>6</sup> to provide advice and guidance on developing cultural training options for LSO staff and benchers.</li> <li>• Hosting annual Equity Legal Education Series Events to enhance knowledge of Indigenous culture and legal systems (e.g., National Indigenous Peoples Day, National Day for Truth and Reconciliation, Treaty Recognition Week, Louis Riel Day Celebration, etc.)</li> <li>• Providing two annual half-day Continuing Professional Development (“CPD”) programs with an on-demand replay on Indigenous law; Indigenous law-related topics are also embedded in other CPD programs.</li> <li>• Launched the <a href="#">Equity, Diversity, and Inclusion for Indigenous Peoples</a> CPD program in November 2021.</li> </ul>

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<sup>6</sup> The members of the Indigenous Cultural Awareness Working Group are Bencher Dianne Corbiere (Chair), Bencher Etienne Esquega, Bencher Cathy Banning, Catherine Rhineland (IAG) and Danielle Lussier-Meek (IAG)

		<ul style="list-style-type: none"> <li>• Published Guidelines for Lawyers Working with Indigenous Peoples launched with the assistance of the IAG in June 2018.</li> <li>• Launched resources on the Sixties Scoop Settlement in May 2018.</li> </ul>
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**vi. Other Indigenous Initiatives**

Outlined below is a summary of additional Indigenous initiatives undertaken by the LSO over the past few years.

<b>Other LSO Initiatives</b>		
1. Organization-wide Commitment to Indigenous Cultural Awareness	LSO-wide	<ul style="list-style-type: none"> <li>• Adopted the <a href="#">Indigenous Framework</a> to ensure that an Indigenous lens is applied to all aspects of the LSO's work.<sup>7</sup></li> </ul>
2. Assistance for Indigenous Licensing Candidates	Professional Development & Competence	<ul style="list-style-type: none"> <li>• Providing supports for licensing candidates, such as tutoring services, licensing examination profile report review, and a licensing process webcast. The LSO continues to consult with the IAG to ensure that the supports are accessible to Indigenous licensing candidates.</li> <li>• Developed an information sheet about lawyer licensing examinations and supports for licensing candidates. The information sheet was distributed on Student Day at the IBA Conference on October 31, 2019.</li> <li>• Offering financial assistance including a repayable allowance program and tutoring to licensing candidates.</li> </ul>

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<sup>7</sup> EIAC worked with the IAG to develop the Indigenous Framework. It was approved by Convocation in June 2017.

		<ul style="list-style-type: none"> <li>• Incorporated the following elements into the Call to the Bar ceremony and licensure activities that may be of specific interest to candidates who identify as Indigenous: <ul style="list-style-type: none"> <li>○ Attendance of an Elder at the Call to the Bar ceremonies.</li> <li>○ Wearing of Indigenous regalia at the Call to the Bar ceremonies and paralegal receptions.</li> <li>○ Smudging ceremonies at the Call to the Bar ceremonies.</li> </ul> </li> </ul>
3. Licensing and Cultural Awareness	Professional Development & Competence	<ul style="list-style-type: none"> <li>• Developed additional Indigenous legal competencies<sup>8</sup> for the barrister, solicitor, and paralegal licensing examinations, in consultation with the IAG (testing will commence during the 2022-2023 licensing year).</li> <li>• Added a new chapter on Indigenous and TRC-related matters in paralegal and lawyer licensing examination study materials (being introduced in the 2022-2023 licensing year).</li> <li>• Developed new paralegal education competencies related to Indigenous/TRC matters (to be taught by institutions commencing September 2022).</li> <li>• Reviewed the good character assessment process in 2019 to ensure that it is transparent, provides candidates with certainty, and does not include elements that constitute barriers to entry.<sup>9</sup></li> </ul>

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<sup>8</sup> The additional Indigenous competencies for the 2022-2023 licensing year are:

1. demonstrates knowledge of (i) the rights, legal interests, and governing systems of Indigenous Peoples; (ii) the unique historical and ongoing challenges facing Indigenous Peoples and communities; (iii) the history of Indigenous-Crown relations; (iv) Treaties and Aboriginal Rights; (v) the United Nations Declaration on the Rights of Indigenous Peoples; and (vi) Indigenous law.
2. demonstrates knowledge of the history and legacy of residential schools and the issues created by specific legislation regarding Indigenous Peoples that the process of reconciliation seeks to address through the Truth and Reconciliation Commission of Canada's Calls to Action.
3. recognizes the importance of a trauma-informed and anti-racist approach to the practice of law in relation to Indigenous clients.

<sup>9</sup> In February 2019, Convocation approved enhancements and improvements to the good character assessment process aimed at enhancing transparency and clarity of the process. Recommendations with respect to Indigenous licensing candidates include:

- Inclusion of a policy statement acknowledging the LSO's commitment to working towards reconciliation with FNIM peoples and conducting the good character assessments using the principles identified in the *Gladue* and *Ipeelee* decisions.

4. Specialist Program in Indigenous Law	Professional Development & Competence	<ul style="list-style-type: none"> <li>Created a certified specialist designation in Indigenous Law in 2016. The designation is currently under review in consultation with the IAG and EIAC with a view to enhance and improve the program.<sup>10</sup></li> </ul>
5. Taking Action on Reconciliation	Policy; Professional Development & Competence	<ul style="list-style-type: none"> <li>Continued LSO engagement with the FLSC's TRC Calls to Action Advisory Committee. In June 2020, the Advisory Committee released its <a href="#">final report</a><sup>11</sup> that called on law societies to act on the following: <ul style="list-style-type: none"> <li>Consider mandatory Indigenous cultural competency training.</li> <li>Ensure that legal professionals in their jurisdictions are provided with access to educational opportunities to enhance their knowledge and understanding of Indigenous peoples, the legacy of colonization and the existence of Indigenous legal orders.</li> <li>Ensure the availability of a continuum of educational opportunities and resources to recognize the diversity of legal practices and Indigenous peoples and legal orders within a given jurisdiction.</li> <li>Collaborate with Indigenous organizations in the development and delivery of cultural competency training or rely on training already developed by such organizations.</li> </ul> </li> </ul>

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- Enhanced communication about the good character process to improve transparency and clarity for applicants, including simplifying letters sent to candidates who are subjects of an investigation.
  - Exclusion of certain minor criminal convictions and dispositions from good character investigations in acknowledgement that they are disproportionately represented amongst racialized and Indigenous licensing candidates.

<sup>10</sup> In May of 2022, Convocation approved a recommendation from the Competence Task Force to wind up of the Certified Specialist Program, effective September 1, 2022 subject to the following qualifications:

- The Indigenous Legal Issues specialization will be continued subject to any future recommendation made by the Equity and Indigenous Affairs Committee to Convocation regarding the specialization.
- Current Certified Specialists will continue to be able to use the C.S. designation until they retire, cease practicing or surrender their practicing license with the Law Society.

<sup>11</sup> Final Report of the of the Truth and Reconciliation Calls to Action Advisory Committee: <https://flsc.ca/wp-content/uploads/2020/08/Advisory-Committee-Report-2020.pdf>

		<ul style="list-style-type: none"> <li>• After the Advisory Group’s final report was released, the FLSC’s Standing Committee on the Model Code of Professional Conduct was tasked with implementing the final report recommendation on mandatory cultural competency training. Cara-Marie O’Hagan, Executive Director, Policy, is the Ontario representative on the Standing Committee which is consulting with Indigenous leaders and groups.</li> <li>• Bencher Dianne Corbiere is a member of the FLSC and Council of Canadian Law Deans’ Joint Working Group on Approaches to TRC Calls to Action. This Working Group’s focus is on Calls to Action 27 and 28. It is mandated to ensure a coordinated response from the academy and the regulators by sharing information and exploring joint initiatives where appropriate.</li> </ul>
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# Memorandum

To: Equity and Indigenous Affairs Committee  
 From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
 Date: June 17, 2022  
 Re.: **Recommendation to Convocation regarding the Inclusion Index**

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## Purpose

The Equity and Indigenous Affairs Committee (the “Committee”) is asked to approve the draft report to Convocation at **Tab 2.1** which sets out the Committee’s recommendations to Convocation with respect to the Inclusion Index:

1. Approve the following recommendations of the Committee with respect to the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report* (the “Challenges Report”).
  - a. Not publicize the Inclusion Index developed in 2019 pursuant to Recommendation 6 of the Challenges Report.
  - b. Amend the recommendations of the Challenges Report as described below to enable EIAC to engage in a further study on the collection and publication of data pertaining to equity, diversity and inclusion in legal workplaces and oversee the development of a new iteration of the Inclusion Index:
    - i. Amend Recommendation 6 of the Challenges Report to remove the requirement that the Law Society develop and publish an inclusion index every four years; and that EIAC be tasked with bringing forward recommendations on how to collect and publish inclusion data for legal workplaces.
    - ii. Amend Recommendation 5(2) of the Challenges Report to remove the requirement that the Law Society compile and provide inclusion information to legal workplaces that have at least 25 licensees; and that EIAC be tasked with bringing forward recommendations regarding the size of a legal workplace under recommendation 5(2).
    - iii. Amend Recommendation 5(1) of the Challenges Report to remove the requirement that voluntary inclusion questions be asked of licensees every four years; and that EIAC be tasked with bringing forward recommendations regarding the frequency to ask such questions.



**TAB 1**

## **Equity and Indigenous Affairs Committee**

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June 28, 2022

**Committee Members:**

**Dianne Corbiere (Chair)**  
**Etienne Esquega (Vice-Chair)**  
**Atrisha Lewis (Vice-Chair)**  
Catherine Banning  
Robert Burd  
John Fagan  
Julian Falconer  
Murray Klippenstein  
Nancy Lockhart  
Jorge Pineda  
Julia Shin Doi  
Megan Shortreed  
Alexander Wilkes

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## Motion

That Convocation approve recommendations of the Equity and Indigenous Affairs Committee (“EIAC”) to:

1. Not publicize the Inclusion Index developed in 2019 pursuant to Recommendation 6 of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report* (the “Challenges Report”).
2. Amend the recommendations of the Challenges Report as described below to enable EIAC to engage in further study on the collection and publication of data pertaining to equity, diversity and inclusion in legal workplaces and oversee the development of a new iteration of the Inclusion Index:
  - a. Amend Recommendation 6 of the Challenges Report to remove the requirement that the Law Society develop and publish an inclusion index every four years; and that EIAC be tasked with bringing forward recommendations on how to collect and publish inclusion data for legal workplaces.
  - b. Amend Recommendation 5(2) of the Challenges Report to remove the requirement that the Law Society compile and provide inclusion information to legal workplaces that have at least 25 licensees; and that EIAC be tasked with bringing forward recommendations regarding the size of a legal workplace under recommendation 5(2).
  - c. Amend Recommendation 5(1) of the Challenges Report to remove the requirement that voluntary inclusion questions be asked of licensees every four years; and that EIAC be tasked with bringing forward recommendations regarding the frequency to ask such questions.

## Background

### A. Challenges Report

The following outlines the significant steps in the development and implementation of the Challenges Report:

2012: The Challenges Working Group (“Working Group”) begins an engagement process to gather information about barriers faced by racialized licensees.

2014: The Working Group reviews the data from the engagement process and drafts a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*. Convocation approves this consultation paper.

2014-2015: The Working Group consults broadly with licensees, law students, articling students and the public. The Law Firms Diversity and Inclusion Network and legal organizations are also consulted.<sup>1</sup>

2015-2016: The Working Group develops its final report with 13 recommendations, including a number related to measuring inclusion in legal workplaces (LWPs).

2016: Convocation approves the final report and recommendations in December.

2017 forward: the Law Society began implementation of recommendations 3(3), 4, 5 and 6 of the Challenges Report, designed to address systemic racism in the professions, which included:

- In 2018, the inclusion and self-assessment questions were developed for the 2018 Annual Report filings.
- In January 2019, the 2018 Annual Report filings for lawyers and paralegals were launched. The filings included the diversity, inclusion, and self-assessment questions.
- In April 2019, the development of the Inclusion Index commenced.
- In fall of 2019, the Law Society received the final Inclusion Index from the external consultant.

In adopting the Challenges Report, the Law Society committed to measuring progress in addressing barriers faced by racialized licensees in LWPs. This was to be achieved by analyzing data related to licensees' experiences of inclusion in the workplace.

The data was collected pursuant to three recommendations of the Challenges Report:

*Recommendation 3(3)* - The Law Society will...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

*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

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<sup>1</sup> The Working Group gathered information about the challenges faced by racialized licensees using an engagement process, followed by an extensive consultation process. The engagement process included key informant interviews, focus groups, a survey of the profession, and community engagement whereby information was collected from 52 participants by prominent and experienced racialized legal professions. The consultation process included open house learning and consultation programs around the province, and meetings with representatives from law firms, legal clinics, banks, and government and legal associations. The Working Group also received 40 written submissions and feedback from over 1,000 racialized and non-racialized licensees from across the province.

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).

To move forward on these two commitments, the LSO collected the following information from licensees in the 2018 Annual Reports:

- *Demographic/Self-Identification Questions:* Voluntary questions regarding Indigenous identity, Francophone identity, race/ethnicity, gender, sexual orientation and disability.
- *Inclusion Questions:* Voluntary questions related to licensees' experiences with respect to inclusion, respect and safety in their workplaces. The inclusion questions include a component where licensees were asked to identify diversity-related policies and programming at their LWPs. A list of the inclusion questions are attached as Appendix A.
- *Self-Assessment Questions:* Mandatory questions related to workplace policies, programs and commitment to equality, diversity and inclusion.<sup>2</sup> These were completed by a licensee representative for LWPs in accordance with Recommendation 3(3).

## **B. Inclusion Index**

In April 2019, the Law Society engaged an external consultant to develop an inclusion index. The data underlying the index comes from the 2018 Annual Report. The index assigns an individual score for each of the three metrics.

- **Diversity Score:** The diversity score is based on answers to the demographic questions collected in the 2018 Annual Report filings. The demographic composition of each LWP is compared to the demographics of the region in which it is located as measured by Statistics Canada Census data. LWPs with multiple offices were compared against the demographics of their primary region of operation. Ontario-wide entities were compared to province-wide demographics.

Each demographic trait was assigned equal importance and thus weighted equally. Representation for ethnicity, Indigenous identity, gender, and Francophone

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<sup>2</sup> Self-Assessment questions measure for the LWP's commitment to EDI (14 commitments); policies about discrimination, harassment and sexual harassment; whether EDI considerations are made in decision making; and the availability of EDI training or education at the LWP.

background was set based on Statistics Canada Census Economic Regions data, which subdivides Ontario into 9 regions. LGBTQ2+ representation was set at 10% for LWPs within Toronto and 5% for all LWPs outside of Toronto, using the consultant's benchmarking data. Representation of persons with a disability was set at 20% for all LWPs, based on census data.

- **Commitment Score:** The commitment score reflects the LWP's self-reported EDI programming and policies plus licensee acknowledgement of this programming (part of the inclusion questions). LWPs with the most implemented programming received top scores, and LWPs with less programming received lower scores. Fourteen out of 192 LWPs did not complete the self-assessment questions. For these LWPs, a commitment score was generated using licensee responses regarding the presence of programming at their LWP.
- **Inclusion Score:** The inclusion score was generated by aligning each of the 22 inclusion questions to one of five sub-metrics: inclusive culture, access to networks, unbiased feedback and reviews, safe work environment, and flexible work options. To produce the inclusion score for each LWP, the consultant compared the average score on each metric for the dominant group (white, heterosexual, Anglophone men without a disability) to the average score for the non-dominant group. The average response of the dominant group was weighted at 30% of the score, and the average response of the non-dominant group was weighted at 70%.

The index also provides the response rate for each LWP (# of licensee responses), the type of LWP (public interest, corporate, law firm), and the regional location for each LWP.

Based on the LWPs scores in each of the three categories, each LWP was assigned a numerical ranking and an archetype (tentatively named superstar, accidental superstar, inclusive, diverse, accidentally inclusive, accidentally diverse, commitment only, and needs improvement).

The average response rate to the diversity questions across the 192 LWPs was 78%, while the average response rate to the inclusion questions was 68%. The overall response rate across LSO licensees was 80%. While the overall response rate was very high for a survey of this nature, some LWPs had considerably lower response rates. For example the legal department in one institution had the lowest response rate of all LWPs (12% for the diversity questions and 9% for inclusion questions); it ranked 15<sup>th</sup> out of 192 on the overall index. Similarly, the legal department in another institution, which also had low response rates (26% for the diversity questions and 25% for inclusion questions), ranked 4<sup>th</sup> out of 192 on the overall index.

### ***LWP Dashboards***

In addition to a ranked index, individual dashboards were available for each of the 192 LWPs. The dashboard provides each LWP with:

- an overall index ranking (out of 192) and score (out of 100).

- individual scores and rankings for each of the three metrics (diversity, inclusion, and commitment).
- a diversity composition, which compares the demographics for the LWP against the average for all 192 LWPs.
- an inclusion scorecard for the five sub-metrics for inclusion (inclusive culture, access to networks, unbiased feedback and reviews, safe work environment, and flexible work options). The LWP's scores for the sub-metrics are compared against the average score for all 192 LWPs.

A sample dashboard from Diversio is attached as Appendix B.

### **C. Events during 2019 to 2022**

A draft of the Inclusion Index was delivered in the fall of 2019 and Law Society management and policy counsel undertook an examination of the index and dashboards to gain a thorough understanding of the development process prior to a release of the index. In March 2020, the Law Society shifted its focus to addressing the disruptions caused by the pandemic and, in many respects, that focus continues to be on pandemic-related consequences. In considering the current utility of the index, EIAC took note of many significant developments occurring since fall 2019, including:

- the move from in-person working arrangements to hybrid and remote work, which has changed the nature of workplace interactions in many ways;
- the uncovering of unmarked graves of students enrolled in residential schools, which has highlighted the need for active measures of reconciliation with Indigenous peoples;
- the murder of George Floyd, which prompted a renewed commitment on the part of many to fight racism.

These events, in addition to the passage of time, prompted a confidential peer review of the Inclusion Index to assist EIAC and Convocation in determining next steps regarding the index.

### **D. Peer Review Panel**

Three independent experts were retained as peer reviewers: Michael Ornstein, Sujitha Ratnasingham and Scot Wortley. Their biographies are attached as Appendix C. They possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to retain experts who could provide neutral and objective commentary.

With respect to the Inclusion Index, the review assessed:

- a. impediments to implementing the inclusion index recommendation (Recommendation 6);
- b. the reliability of the data collection and analysis used in 2019 to support the inclusion index;
- c. the extent to which the inclusion data and analysis is relevant for 2022.

The reviewers presented their findings on the index to EIAC at its committee meeting in May. Relevant findings of the peer reviewers and EIAC's conclusions based on those findings are discussed below.

## Discussion

EIAC's analysis is grounded in the overarching goal of the Challenges report, which says in its introduction: "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."<sup>3</sup>

With respect to the Inclusion Index in particular, the Working Group concluded that such an index would further equity and diversity within the professions by tracking how individual workplaces were progressing towards these goals. It said:

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 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.<sup>4</sup>

While the goal of the index is to provide transparency and valuable information, the data collection from individual participants was necessarily founded on two critical principles, that the confidentiality of participants' answers would be strictly maintained, and that provision of the data would be completely voluntary. This tension between striving for transparency and respecting confidentiality and choice led to issues with the data and consequently in the index itself, as identified by the peer reviewers.

While the overall response rate was high (78% for demographic questions; 68% for inclusion questions), some LWPs had a very low response rate to the inclusion questions. Some of the highest rated workplaces had response rates of less than 20%. This divergence raises questions about the reliability of the ratings for LWPs.

The risk of violating privacy is a constant, in smaller workplaces (i.e., at or around 25 licensees) and in all workplaces with numerically smaller groups, including licensees who are LGBTQ2+, Indigenous or persons with a disability. The index compensated for this risk by providing global measures of diversity and inclusion, using the methodology described above. To protect privacy, the data is highly aggregated and translated into a score, which can be

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<sup>3</sup> Challenges Report, p.19

<sup>4</sup> Ibid, p. 36

used to rate the legal workplace. For example, for diversity, the demographic composition of each LWP is compared to the demographics of the region in which it is located as measured by Statistics Canada Census data. For an inclusion score, the answers on the inclusion questions are compared between the dominant group (Anglophone, heterosexual, white men) and the non-dominant group.

However, these global measures have left the LWPs and the Law Society with little indication as to where progress has been achieved and where it has not. For example, assume an LWP had a high diversity score and a low inclusion score. Neither the index nor the dashboard would show if the low inclusion score was workplace wide or concentrated on a specific equity-seeking group of employees. The complexities of education, specialization, recruitment, retention and workplace relationships – all of which impact diversity and inclusion - are difficult to reflect in a single numerical score or archetype.

The peer reviewers noted that aggregated data, such as the global measures used here, has been seen to be less valuable in recent years. For example, the experiences of Black and Indigenous professionals may be significantly different from Asian professionals, although all come from historically disadvantaged groups. For LWPs to improve their performance in equity, diversity and inclusion, data must be more disaggregated, so that specific issues in recruitment, promotion and retention can be identified and addressed.

The reviewers' consensus was that the index was not transparent, in that the methodology and results of the index would not be evident and explicable to LWPs, clients and the professions. However, each reviewer strongly supported the concept of data collection and publication to show progress towards diversity and inclusion in the legal professions. Consequently, the reviewers recommended that the 2018 index not be released and that data collection be paused until EIAC has reconsidered how to collect and publish inclusion data for legal workplaces.

## Recommendations and Rationale

EIAC remains strongly committed to the overarching goal of the Challenges Report and to the belief that data collection and publication of diversity and inclusion in employment is a key initiative. In 2016, when the recommendations of the Challenges Report were adopted by Convocation, the Law Society of Ontario was a pioneer in addressing equality, diversity and inclusion in the legal professions. Today, other law societies and regulators in Canada have embraced the goals of the Challenges Report and developed their own measures to address equity, diversity and inclusion among their respective professions.

As an example, in April 2022, benchers from the Law Society of Alberta adopted the following Acknowledgment of Systemic Discrimination to acknowledge the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession:<sup>5</sup>

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<sup>5</sup> The full statement can be accessed below: <https://www.lawsociety.ab.ca/about-us/key-initiatives/equity-diversity-and-inclusion-initiatives/acknowledgment-of-systemic-discrimination/>

Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behaviour, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.

We recognize that systemic discrimination goes against principles of fairness that the legal profession values and upholds. Acknowledging that systemic discrimination exists within the Law Society, the legal profession and the justice system is a step towards improving how we protect the public interest and fulfill our regulatory objectives. Acknowledging the impact of systemic discrimination allows us to meaningfully continue the work of making the legal profession more equitable, increasing diversity and promoting inclusion. Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it.

EIAC considers the statement of the Law Society of Alberta to mirror its own position and objectives as set out in the Challenges Report.

As a pioneer in this field, the Law Society of Ontario experimented, assessed and innovated. Not all experiments are wholly successful. Assessment and further innovation are required to ensure that a partially successful experiment becomes wholly successful. In the case of the Inclusion Index, EIAC recognizes that any index must be transparent in its methodology and of legitimate assistance to its users, i.e., LWPs, licensees and clients.

An index must also reflect the current environment and much has changed with respect to equity matters since the Challenges Report was adopted in 2016 and the Inclusion Index was developed in 2019. Employer and institutional attitudes towards equity and reconciliation have been altered by events highlighting the brutality of racism and cruelty endured by students of residential schools. The inclusion questions developed in 2018 may not be relevant for a remote or hybrid workforce. The sheer passage of time means that the index may no longer reflect the demographics or management approaches of particular LWPs.

The current iteration of the Inclusion Index does not meet the above criteria, for reasons that can only be fully appreciated in hindsight. Further study and adjustment is required to ensure that the Inclusion Index is, in the words of the Working Group, “a valuable tool for legal workplaces and the Law Society to determine whether there is progress in the professions . . . to attract prospective clients and to recruit talent.”<sup>6</sup> Consequently, EIAC adopts the conclusion of the peer reviewers that the current version of the Inclusion Index not be released and that EIAC engage in further study on the collection and publication of data pertaining to equity, diversity and inclusion in legal workplaces. To that end, EIAC recommends the adoption of the above motion, which will amend the Challenges Report, allowing sufficient time for the development of a new index.

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<sup>6</sup> Ibid, p. 36



# Inclusion Survey

**When responding to the survey questions, please consider your own personal experiences at your legal workplace in 2018.**

a) At my legal workplace, I feel included.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- I do not wish to answer
- Not applicable

b) At my legal workplace, I feel respected.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable

I do not wish to answer

c) At my legal workplace, I feel free from harassment.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

d) At my legal workplace, I feel free from sexual harassment.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

e) At my legal workplace, I feel free from discrimination.

Always

Often

Sometimes

Rarely

Never

I do not know

Not applicable

I do not wish to answer

f) In my opinion, all members and employees of my legal workplace are treated fairly and respectfully without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of

origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

g) As a member of the diverse Francophone community, I feel supported at my legal workplace and in all aspects of my identity, such as race, that intersect with my Francophone identity.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

h) I can be my authentic self at work.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

i) I have experienced instances of discrimination or harassment at my legal workplace.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

j) I have observed instances of discrimination or harassment at my legal workplace.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

k) In response to incidents I have experienced or observed (as indicated above) (select all that apply)

- I felt comfortable speaking up to address the behaviour with the individual who engaged in this instance of discrimination or harassment.
- I spoke to the person who experienced this instance of discrimination or harassment.
- I took some form of action to report the incident to the appropriate individual within my legal workplace
- I spoke to my colleagues about the incident
- I did not know what to do
- I knew what to do but opted not to take action
- Not applicable
- I do not wish to answer

l) The response to the action(s) I took to address incidents of discrimination or harassment I have experienced or observed (as indicated above) resulted in (select all that apply):

- Positive impact for those that experienced the discrimination or harassment
- No impact for those that experienced the discrimination or harassment
- Negative impact for those that experienced the discrimination or harassment
- Positive impact for those that demonstrated discriminatory or harassing behaviour
- Negative impact for those that demonstrated discriminatory or harassing behaviour
- No impact for those that demonstrated discriminatory or harassing behaviour

- Positive impact for me personally
- No impact for me personally
- Negative impact for me personally
- Not applicable
- I do not wish to answer

m) I am included in informal social gatherings (eg. coffee, lunch etc.) at my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

n) Opportunities for career advancement are based on demonstrated professional ability or achievement in my legal workplace.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

o) In my legal workplace, there are barriers to career advancement due to (select all that apply):

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin

- Place of origin
- Creed
- Family status
- Marital status
- Disability
- Gender identity,
- Gender expression
- Sex
- Sexual orientation
- None of the above
- I do not know
- Not applicable
- I do not wish to answer

p) My legal workplace makes reasonable accommodations.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- Not applicable
- I do not wish to answer

q) It is important to me that in my legal workplace there is a demonstrated commitment to reconciliation between Indigenous Peoples and non-Indigenous Canadians.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

r) My legal workplace provides suitable opportunities or resources for me to learn about reconciliation.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- I do not know
- I do not wish to answer

s) My legal workplace provides opportunities for (select all that apply):

- Training to support equality, diversity, and inclusion.
- Participation in groups that provide support within my legal workplace.
- Participation in groups that provide support and connect licensees or professionals of similar backgrounds or experiences within my community. *(for example Canadian Association of Black Lawyers (CABL), Federation of Asian Canadian Lawyers (FACL), South Asian Bar Association (SABA), Canadian Muslim Lawyers Association (CMLA), Roundtable of Diversity Associations (RODA), Pride at Work, Women's Law Association of Ontario (WLAO), Indigenous Bar Association (IBA), etc)*
- Sharing of feedback and input about equality, diversity, and inclusion.
- I do not know
- I do not wish to answer

t) My legal workplace conducts inclusion surveys to measure and track its progress on equality, diversity and/or inclusion.

- Yes
- No
- I do not know
- Not applicable
- I do not wish to answer

u) My legal workplace effectively communicates with respect to progress, initiatives, and/or actions, and their status, related to equality, diversity, and inclusion within my organization.

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

v) In my professional experiences, I am treated fairly and respectfully without regard to age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex, sexual orientation, and all other prohibited grounds by the following groups (select all that apply):

*Clients and potential clients*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

*Other licensees*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

*Non legal employees*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

*The administrators of justice*

- Always
- Often
- Sometimes
- Rarely
- Never
- I do not know
- Not applicable
- I do not wish to answer

Appendix B: Sample Diversio Dashboard



Home

Sign out

## Your Inclusion & Diversity Dashboard

### How to Use This Dashboard

This dashboard provides insights and guidance to increasing workplace diversity and improving experiences of underrepresented employees. Your Top Recommendations were identified using Diversio's advanced analytics and matching algorithms. Your Inclusion Scorecard is designed to be tracked over time.

#### Unlock Additional Insights

Opt in for features like advanced analytics, custom recommendations, employee insights, and social media sentiment tracking.

[Start Now](#)

### Show Your Commitment by Getting Certified

Diversio Certification is a trusted seal recognized by industry associations, corporations, regulators and government. Certification signals your performance on diversity as well as your commitment to continued improvement.

[Get Certified](#)



Learn more about Diversio Certification tiers to understand your ranking and set future goals.

[View PDF](#)

### Your Workplace Inclusion Score

Your workplace ranking relative to other legal workplaces in Ontario with 25 or more legal professionals

#### Overall Inclusion Score

# 85/100

Diversity	Experience	Commitment
80/100	72/100	22/100

#### Index Ranking (192 legal workplaces)

# 92<sup>nd</sup>

Diversity	Experience	Commitment
17 <sup>th</sup>	82 <sup>nd</sup>	150 <sup>th</sup>

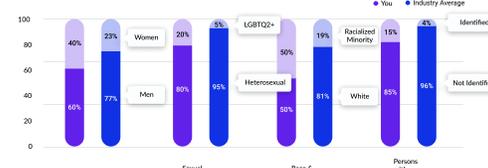
#### What is the Inclusion Index?

The Law Society of Ontario partnered with Diversio to create an Inclusion Index which ranks all legal workplaces with more than 25 lawyers or paralegals. LSO collected data from lawyers and workplaces in the 2019 Annual Report, including demographic, experience, and programming data. Diversio applied its inclusion algorithms to generate an Inclusion Score and ranking for each workplace.

[Learn More](#)

### Diversity Composition

Self-identified demographic responses from legal professionals at your workplace



Category	Identified (You)	Not Identified (You)	Identified (Industry Average)	Not Identified (Industry Average)
Gender	40%	60%	23%	77%
Sexual orientation	20%	80%	4%	96%
Race & ethnicity	19%	81%	50%	50%
Persons with disability	11%	89%	4%	96%

### Inclusion Scorecard

Areas of focus to improve employee experience in your workplace  
Scores calculated based on survey responses

	Inclusive culture	Unbiased feedback & reviews	Access to networks	Flexible working options	Safe work environment
Your KPI score	5.0	6.2	7.5	8.0	5.3
Industry average	7.3	7.0	7.1	7.5	9.0

### Top Recommended Solutions

Customized programs, policies and solutions to improve your Inclusion Score

Solutions

Parental Leave Training

Real-Time Feedback Culture

Rooney Rule

Parental Leave Training

An online resource to help managers support their direct reports' transition to parenthood. Tips include remembering to keep the person on leave in mind for development and team opportunities, and providing resources to working parents, from childcare to mentoring.

Relevant KPI: Inclusive Culture, Flexible Work  
Pain Point(s): Parental Transition

[Learn More](#)

### Diversio Training

Access Diversio & HRPA training for employees and satisfy LSO's new professional development requirements for 2020.

[Click here to join the waitlist](#)

### Update Your Data

Did we miss something in your report? Feel free to leave a message and our team will reach out as soon as possible.

[Let Us Know](#)

## Appendix C: Biographies of the Peer Reviewers



*Sujitha Ratnasingham is the Director of Strategic Partnerships and the Operational Lead of the Indigenous Portfolio at ICES. In her role, she focuses on building partnerships with key stakeholders, with a focus on the integration of intersectoral data, leading to innovative research. In addition, she has significant experience working with a variety of stakeholders including policy makers at various levels of government and Indigenous organizations. At ICES, Sujitha co-chairs the Diversity Committee, is a member of the Race and Ethnicity Data Working Group and has been a guest lecturer at the University of Toronto. Prior to her role at ICES, Sujitha has worked at Public Health Ontario, Toronto Public Health and the World Health Organization. Sujitha also has a Master's degree in Epidemiology from the University of Toronto.*



*Michael Ornstein is Associate Professor of Sociology at York University. He was Director of the University's Institute for Social Research for a decade. The Institute houses the largest academic survey organization in Canada, and provides statistical consulting, data analysis and courses on methods and statistics.*

*Dr. Ornstein has been active in the development, design and execution of numerous large-scale research projects including the first Canadian study on knowledge, behaviour, and attitudes about AIDS. His recent research addresses the decline of the middle class, precarious employment and the transformation of Toronto's gay village.*

*Ornstein's *Politics and Ideology in Canada: Elite and Public Opinion in the Transformation of a Welfare State*, co-authored with H. Michael Stevenson, was the 2001 winner of the Harold Adams Innis Prize for the best SSFC supported book in the Social Sciences and English. He is author of *A Companion to Survey Research*, from Sage and numerous academic articles.*



*Dr. Wortley has been a Professor at the Centre of Criminology and Sociolegal Studies, University of Toronto since 1996. His academic career began in 1993 as a researcher with the Commission on Systemic Racism in the Ontario Criminal Justice System. Over the past twenty-five years Professor Wortley has conducted numerous studies on various issues including youth violence and victimization, street gangs, drug trafficking and substance use, crime and violence within the Caribbean, public perceptions of the police and criminal courts, police in schools, police use of force, and racial bias within the Canadian criminal justice system. In 2007, he was appointed by Metropolis to the position of National Priority Leader for research on Immigration, Justice, Policing and Security. Professor Wortley has also served as Research Director for several government commissions including the Ontario Government's Roots of Youth Violence Inquiry. In 2017 Professor Wortley worked with Ontario's Anti-Racism Directorate to develop standards and guidelines for the collection and dissemination of race-based data within the public sector. Professor Wortley is currently leading three major investigations into possible racial bias within policing for the Nova Scotia, Ontario, and British Columbia Human Rights Commissions. He is also leading an inquiry – with Dr. Akwasi Owusu-Bempah – into bias within the Toronto Transit Commissions enforcement unit. Professor Wortley has published in a wide variety of academic journals and edited volumes and has produced numerous report for all levels of government.*

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# Memorandum

To: Equity and Indigenous Affairs Committee  
From: Reshma Budhwani, Policy Counsel, Equity Initiatives  
Date: June 17, 2022  
Re.: **Summary of Decisions and Directions from Previous Meetings**

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## A. Ongoing Work

### 1. Paralegal Position in the Office of the DHC

In Spring 2021, the Committee approved a proposal to recruit a paralegal alternate to the DHC and provided direction to begin the recruitment process. Over the summer of 2021, a Selection Committee composed of Bencher Rob Burd, Bencher Nancy Lockart and Kate Lamb, Executive Director of People and Client Services, understood the recruitment process and interviewed three candidates for the position. The process did not result in a successful recruitment.

At its November 2021 meeting, the Committee approved a proposal to create a new position of Discrimination & Harassment Educator (“DH Educator”) for the Office of the DHC. The DHC Educator position will be filled by a paralegal licensee and will replace the previously approved paralegal alternate position. The DH Educator will be mentored by the DHCs and work with them to develop educational materials and deliver presentations for paralegal students, licensing candidates and practising paralegals. After two years, the role would be evaluated with a view to determining if the role should expand to contain the other functions of the DHC.

### 2. Indigenous Initiatives

At its June 10, 2021 meeting, the Committee was provided with an update on the implementation of the on the implementation of the recommendations of the Law Society’s Indigenous Framework, Review Panel Report and other Indigenous Initiatives. The Law Society continues to implement the recommendations. The Committee was provided with an additional update at its October 14, 2021 meeting. The Committee will receive a further update on the Indigenous Cultural Training Working Group and the Working with Indigenous Peoples Guide Working Group at the February 10, 2022 meeting.

### 3. Challenges Report Implementation Update

At its November 2021 meeting, the Committee received an update on status of the recommendations in the Challenges Report and an outline of the peer review undertaken to evaluate the implementation of the Challenges Report. At its May 3, 2022 meeting, the Committee received a presentation from the peer review panel on their findings on the Challenges Report and Inclusion Index. At its May 12, 2022 meeting, the Committee continued discussion on the findings of the peer review panel and bringing forward recommendations to Convocation with respect to the Inclusion Index. The Committee will consider the draft report and motion to

Convocation with EIAC's recommendation with respect to the Inclusion Index at the June 17<sup>th</sup> Committee meeting.

#### **4. Update on Competence Task Force / Indigenous Certified Specialist Program**

At its May 12, 2022 meeting, the Committee received an update on the Competence Task Force's recommendations on the Certified Specialist Program and Indigenous Legal Issues Specialization as well as potential opportunities to enhance the program. The Committee and the Indigenous Advisory Group will continue to consider potential enhancements to the Indigenous Certified Specialist Program.

### **B. Completed Work**

#### **1. Reappointment of the DHC Counsel until February 24, 2025**

At its November 24, 2021 meeting, the Committee approved the following recommendations to Convocation on February 24, 2022:

- the reappointment of Acting DHC Fay Faraday and Alternate DHCs Natasha Persaud and Lai-King Hum for a three-year term effective February 24, 2022 to February 23, 2025 with eligibility for reappointment.
- an increase to the DHC hourly fee from \$315.00 to \$345.00 effective February 24, 2022.

#### **2. DHC Semi-Annual Reports for July 1, 2020 to December 31, 2020**

At the February 10, 2022 meeting, the Committee received the submission of the Report of the Activities of the DHC for the period of July 1, 2021 to December 31, 2021. The Report was sent to February Convocation for information.

#### **3. Reappointment of the DHC Counsel until February 24, 2022**

At its November 25, 2021 meeting, the Committee voted to recommend to Convocation the reappoint the DHC Fay Faraday and the two Alternate DHCs, Natasha Persaud and Lai-King Hum, for a three-year term effective February 24, 2022 to February 23, 2025 (5 votes in favour; 4 votes against). Convocation approved the reappointments of the DHCs on February 24, 2022.

#### **4. Appointment of Equity Advisory Group membership for 2021 to 2024**

At the October 14, 2021 meeting, the majority of the Committee (8 votes in favour; 1 vote against; 2 abstentions) approved the appointments of the 12 individual and 12 organizational members of the Equity Advisory Group (EAG) for the term ending in 2024. The Committee's recommendations were sent to October Convocation for information.

#### **5. DHC Semi-Annual Reports for January 1, 2021 to June 30, 2021**

At the September 15, 2021 meeting, the majority of the Committee considered the Report of the Activities of the DHC for the period of January 1, 2021 to June 30, 2021. The report was submitted to Convocation on October 1, 2021 for information.

#### **6. DHC Semi-Annual Reports for July 1, 2020 to December 31, 2020**

At the April 8, 2021 meeting, the Committee approved the submission of the Report of the Activities of the DHC for the period of July 1, 2020 to December 31, 2020 to April Convocation for information.

#### **7. Reappointment of the DHC Counsel until February 24, 2022**

At the January 28, 2021 meeting, the Committee voted to recommend to Convocation the reappoint the DHC Fay Faraday and the two Alternate DHCs, Natasha Persaud and Lai-King Hum, for one-year effective February 25, 2021 to February 24, 2022 (5 votes in favour; 4 votes against). Convocation approved the reappointments of the DHCs on February 25, 2021.

#### **8. DHC Program Review**

At the February 9, 2021 meeting, the Committee was presented with three options to move forward with the recommendations of the DHC Program Review:

- Option 1. Maintain the status quo of the DHC,
- Option 2. Explore making minor changes to the DHC, by enhancing awareness, education, data collection and operational functions of the DHC
- Option 3. Explore making substantive changes to the DHC with respect to investigations and remedial action.

Bencher Fagan brought a motion to add a 4<sup>th</sup> option: Reducing or eliminating the DHC program and replacing it with an adequate substitute. The motion was seconded by Bencher Pineda. The Committee voted against this option (6 votes against; 4 votes in favour).

The Committee voted in favour of Option 2 (6 votes in favour of Option 2; 2 votes against both options; 2 abstentions).

At its May 13, 2021 meeting, the Committee considered the workplan to enhance the awareness and education function (update on website) of the DHC. The majority of the Committee approved the work plan (8 votes in favour).

#### **9. Role of Equity Partners within EIAC**

At the September 10, 2020 meeting, Chair Dianne Corbiere formed the Equity Partners Working Group ("Working Group") to consider the role of the equity partners (IAG, EAG, and AJEFO) within the Committee. The Committee considered the recommendations of the Working Group at the May 13, 2021 meeting and resumed discussions at the June 10, 2021 meeting.

At its June 10, 2021 meeting, the majority of the Committee (7 votes) voted to continue to have the equity partners send representatives to participate in discussions at Committee meetings, except for in camera matters and to give the equity partners an option to send up to two

representatives to Committee meetings. The Committee's recommendations were sent to June Convocation for information.

This is **Exhibit AA** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

## MINUTES OF CONVOCATION

Thursday, 28<sup>th</sup> June, 2022  
9:00 a.m.

## PRESENT:

*In person:* Adourian, Banning, Brown, Burd, Charette, Chiumminto, Corsetti, Epstein, Fagan, Falconer, Klippenstein, Lalji, Lean, Lewis, Lomazzo, Marshall, Painchaud, Rosenthal, Ross, Shin Doi, Shortreed, Siran, Spurgeon, Strosberg, Troister and Wilkinson.

*Via Videoconference/Teleconference:* The Treasurer (Jacqueline Horvat), Alford, Banack, Braithwaite, Conway, Corbiere, Desgranges, Donnelly, Esquega, Ferrier, Goldstein, Graham, Groia, Horgan, Lau, Lesage, Lippa, Lyon, Merali, Minor, Murchie, Parry, Pineda, Poliacik, Pollock, Prill, Sellers, Sheff, Shi, Walker, Wellman, Wilkes, and Wright.

.....

Secretary: James Varro

The Reporter was sworn.

IN PUBLICSECRETARY'S REMARKS

The Secretary announced the results of the election of Treasurer on June 15, 2022 and that Jacqueline Horvat was elected Treasurer for the 2022 – 2023 term in accordance with By-Law 3.

The Treasurer addressed Convocation.

TREASURER'S REMARKS

The Treasurer recognized that Convocation is meeting in Toronto which is a Mohawk word that means "where there are trees standing in the water".

When Convocation meets in Toronto, the Treasurer acknowledges that Convocation meets on the traditional territory of the Mississaugas of the Credit First Nation. She advised that for this Convocation, benchers are participating across the province and perhaps elsewhere, and across many First Nations territories. She recognized the long history of all the First Nations in Ontario and the Inuit and Métis peoples and thanked all Indigenous peoples who lived and live in these lands for sharing them with us in peace.

The Treasurer referred benchers to a number of information reports on the Convocation agenda:

Professional Regulation Committee Report – Consultation Report on Mandatory Succession Planning

Equity and Indigenous Affairs Committee Report – Update on the Law Society’s Indigenous Initiatives and report on Northern Indigenous Communities visit

Technology Task Force Report – Update on Access to Innovation

Access to Justice Committee Report – Calibrate Evaluation of the Civil Society Organization Program Evaluation

The Treasurer addressed the protocol for the hybrid meeting of Convocation being held in the Donald Lamont Learning Centre and via Zoom videoconference.

In response to Mr. Fagan who raised an issue respecting a proposed motion related to the Equity and Indigenous Affairs Committee Report, the Treasurer advised that the matter would be dealt with in the context of the Report.

#### MOTION – CONSENT AGENDA – TAB 1

It was moved by Ms. Murchie, seconded by Mr. Wilkes, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

#### Tab 1.1 – ELECTION OF BENCHER

That Cheryl Siran, having satisfied the requirements contained in subsections 43(1) and 45 of By-Law 3, and having consented to election as bencher in accordance with paragraph 12(1)(d) of the By-Law, be elected by Convocation in accordance with subsection 43(1) of the By-Law as bencher to fill the vacancy in the number of benchers elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, as a result of the election of Jacqueline Horvat as Treasurer, who was elected from the Province of Ontario “B” Electoral Region (Outside the City of Toronto) on the basis of the votes cast by all electors, and being elected as Treasurer on June 15, 2022 and taking office as Treasurer on June 28, 2022, ceased to hold office as an elected bencher in accordance with subsection 25(2) of the *Law Society Act*.

Carried

#### Tab 1.2 – DRAFT MINUTES OF CONVOCATION

The draft minutes of May 26, 2022 Convocation were confirmed.

#### Tab 1.3 – TRIBUNAL APPOINTMENTS

That Thomas Conway and Jay Sengupta be reappointed to the Hearing Division of the Law Society Tribunal upon the expiry of their terms on September 30, 2022 for terms expiring June 28, 2024.

That Teresa Donnelly be appointed to the Hearing Division and the Appeal Division of the Law Society Tribunal for a term expiring June 28, 2024.

Carried

Tab 1.4 – PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORTRe: Articling Term Length

That Convocation approve the continuation of a minimum eight-month term for articling placements for the next two licensing cycles: 2023/24 and 2024/25, to allow the Law Society to gather additional information and feedback from stakeholders while providing certainty to employers and candidates for the next two licensing cycles.

Carried

The Treasurer welcomed Ms. Siran to Convocation.

At the request of Mr. Falconer, the Treasurer agreed to move Convocation in camera to deal with a matter Mr. Falconer wished to raise.

IN PUBLICEQUITY AND INDIGENOUS AFFAIRS COMMITTEE REPORT

Mr. Falconer requested that Mr. Klippenstein recuse himself from the debate and vote on the motion in the Equity and Indigenous Affairs Committee Report on the basis that a statement of claim issued by Mr. Klippenstein against the Law Society puts the issues in the Report directly in issue in the claim, thereby putting Mr. Klippenstein in a conflict of interest as a bencher.

Mr. Klippenstein declined to recuse himself.

Ms. Corbiere presented the Report.

Re: Recommendation Regarding the 2019 Inclusion Index

It was moved by Ms. Corbiere, seconded by Mr. Burd, that Convocation approve recommendations of the Equity and Indigenous Affairs Committee to not publicize the Inclusion Index developed in 2019 pursuant to Recommendation 6 of the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession Report*.

Carried

ROLL-CALL VOTE

Adourian	For
Alford	Abstain
Banning	For
Braithwaite	For
Brown	Against
Burd	For
Charette	Against
Chiumminto	For
Corbiere	For
Corsetti	For
Desgranges	Abstain
Epstein	For
Esquega	For
Fagan	For
Falconer	For
Graham	Abstain
Groia	For
Horgan	For
Klippenstein	Abstain
Lalji	For
Lau	For
Lean	Abstain
Lesage	For
Lewis	For
Lomazzo	For
Lyon	Abstain
Marshall	For

Merali	For
Murchie	For
Painchaud	For
Parry	Abstain
Pineda	For
Poliacik	For
Prill	For
Rosenthal	For
Ross	For
Sellers	For
Sheff	For
Shi	For
Shin Doi	For
Shortreed	For
Siran	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For
Wright	For

Vote: 40 For; 2 Against; 7 Abstain

Mr. Fagan moved, seconded by Mr. Klippenstein, that Convocation direct that no further LSO work shall be done on any sort of Inclusion Index, or protocol for data collection and publication of data pertaining to equity, diversity, and inclusion in legal workplaces, until Convocation has had the opportunity to consider further the questions of whether any sort of Inclusion Index, or any such protocol, should be the subject of any such work, and, if so, how such work should proceed.

Not Put

Mr. Troister moved, seconded by Mr. Falconer, that the Fagan/Klippenstein motion be tabled.

Carried

#### ROLL-CALL VOTE

Adourian	Against
Alford	Against
Banning	For
Braithwaite	For
Brown	Against
Burd	For
Charette	Against
Chiumminto	Against
Corbiere	For
Corsetti	For
Desgranges	Against
Epstein	For
Esquega	For
Fagan	Against

Falconer	For
Graham	Against
Groia	For
Horgan	Against
Klippenstein	Against
Lalji	For
Lau	For
Lean	Against
Lesage	Against
Lewis	For
Lomazzo	For
Lyon	Against
Marshall	Against
Murchie	For
Painchaud	For
Parry	Against
Pineda	Against
Poliacik	Against
Prill	Against
Rosenthal	For
Ross	For
Sellers	For
Sheff	For
Shi	Against
Shin Doi	For
Shortreed	For
Siran	For
Spurgeon	For
Troister	For
Walker	For
Wellman	For
Wilkes	Against
Wilkinson	For
Wright	Against

Vote: 27 For; 21 Against

*For Information:*

- Update on the Law Society's Indigenous Initiatives
- Update on Trip to Northern Indigenous Communities

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Shortreed presented the Report.

Re: Amendments to the *Rules of Professional Conduct* Commentary – Technological Competence

It was moved by Ms. Shortreed, seconded by Mr. Spurgeon, that Convocation adopt amendments respecting technological competence to the Commentary of Rule 3.1-2 of the *Rules of Professional Conduct*, as set out at Tab 2.1.1.

Carried

*For Information:*

- Consultation Report - Mandatory Succession Planning

HUMAN RIGHTS MONITORING GROUP REPORT

Ms. Walker presented the Report.

Re: Request for Intervention

It was moved by Ms. Walker, seconded by Mr. Falconer, that Convocation approve the letter and public statement in the following case:

Dr. Margaret Ng Ngoi-yee, Cyd Ho Sau-lan, Cardinal Joseph Zen Ze-kiun, Dr. Hui Po-keung, and Denise Ho Wan-see – Hong Kong – Letter of intervention and public statement presented at Tabs 3.1 and 3.2.

Carried

ROLL-CALL VOTE

Adourian	For
Alford	For
Banning	For
Braithwaite	For
Brown	For
Burd	For
Charette	Abstain
Chiummiento	For
Corbiere	For
Corsetti	For
Desgranges	For
Epstein	For
Esquega	For
Fagan	Abstain
Falconer	For
Graham	For
Groia	For
Horgan	For
Klippenstein	For
Lalji	For
Lau	Abstain
Lean	For
Lesage	For
Lewis	For
Lomazzo	For
Lyon	Abstain
Marshall	For
Merali	For
Murchie	For
Painchaud	For
Parry	For

Pineda	For
Poliacik	For
Pollock	For
Prill	For
Rosenthal	For
Ross	For
Sheff	For
Shi	Abstain
Shin Doi	For
Shortreed	For
Siran	For
Spurgeon	For
Walker	For
Wellman	For
Wilkes	For
Wilkinson	For

Vote: 42 For; 5 Abstain

#### REPORTS FOR INFORMATION ONLY

##### AUDIT AND FINANCE COMMITTEE REPORT

- LAWPRO Financial Statements for the Quarter ended March 31, 2022
- LiRN Inc. Financial Statements for the Quarter ended March 31, 2022
- Cost of Motions

##### TECHNOLOGY TASK FORCE REPORT

- Update on Access to Innovation

##### TRIBUNAL COMMITTEE REPORT

- 2021 Law Society Tribunal Annual Statistics

##### ACCESS TO JUSTICE COMMITTEE REPORT

- Report on the Civil Society Organization Program Evaluation

CONVOCATION ADJOURNED AT 12:03 P.M.

Confirmed in Convocation this 29<sup>th</sup> day of September 2022.

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Jacqueline Horvat,  
Treasurer

This is **Exhibit BB** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



Tab 2

## **Strategic Planning and Advisory Committee**

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### **LSO Policy for Bencher Information Requests - Report of the Treasurer's Advisory Group on Bencher Information Requests**

September 7, 2023

Authored By:

James Varro, Director, Office of the CEO and Corporate Secretary

[jvarro@lso.ca](mailto:jvarro@lso.ca)

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## Issue

The Committee is asked to approve for Convocation's consideration a policy on bencher requests for information, as set out in this report.

## Background

The Treasurer appointed an Advisory Group of benchers and management to develop a policy for responding to bencher requests for information that is not readily available through the Committee and Convocation process and discussions. Members of the Advisory Group are Robert Adourian, Andrew Spurgeon, Diana Miles and Elliot Spears. Cathy Corsetti and Seymour Epstein, who completed their bencher terms in May and July 2023 respectively, also served on the Group.

The Advisory Group has prepared a policy that defines a process and provides direction to the Law Society for managing these requests. The Committee is asked to review the policy and recommend that Convocation approve it.

## Benchers' Entitlement and Access to Information

Benchers fulfill a number of roles at the Law Society. Under the *Law Society Act*, they are the individuals who govern the affairs of the Law Society, a corporate entity. As such, they fulfill the role of directors and have fiduciary obligations and a duty of care respecting the Law Society. As policy makers, they make decisions for the regulation of the legal professions and create legislation (regulations and by-laws) as part of that work. If they are adjudicators, they fulfill review and decision making functions as members of the Law Society Tribunal.

Benchers require information to perform their roles as governors - directors and policy makers - including their oversight and fiduciary obligations to the organization. Law Society management supports benchers' work to ensure that they receive relevant and appropriate information at the right time and in the right format to perform their duties. The information benchers routinely receive or have access to in this respect includes the following:

- Committee materials;
- Convocation materials (reports for decision and information, both public and *in camera*) including reports from management, typically through the CEO (both in public and *in camera*);
- Convocation minutes and transcripts (both public and *in camera*);
- Additional supporting and educational resources posted in the bencher resource centre;
- Information about major policy or other initiatives through oral or written briefings including at scheduled bencher information sessions

Committee materials include but are not limited to policy development reports, research, the results of surveys or consultation, detailed budgetary information, financial reports and related documents, updates on strategic initiatives, operational division or program reports and updates from stakeholders.

In their oversight role and in the exercise of their fiduciary and duty of care obligations, benchers' entitlement to information is akin to that of a corporate director. Otherwise, in their policy making role, benchers require information to make informed decisions on regulatory and related policy matters. In their adjudicative role, benchers receive information within a hearing process that accords with disclosure of information and procedural rules for administrative tribunal decision making.

The Law Society's governance structure, with committees of the board supporting benchers' oversight and policy making functions, enables the availability of wide-ranging and comprehensive information to benchers. It provides opportunities for benchers to engage in a committee setting, under the leadership of the committee chair, and ask for and discuss information to ensure that they have what they need to fulfill their roles, or to ask questions in Convocation through the Treasurer related to reports before the meeting. It also encourages discipline in deciding what is required for decision making to ensure that Law Society resources and the experienced members of management who support bencher work are utilized appropriately.<sup>1</sup>

## Considerations in Framing a Policy

Based on the above, in framing a policy on how to respond to bencher requests for information, the Advisory Group considered:

- The Law Society's obligations with respect to providing information to benchers;
- The scope of Law Society information that benchers require to do their work and perform their functions;
- The person(s) who should be responsible for dealing with requests and the exercise of discretion under the policy;

<sup>1</sup> The Law Society's Governance Practices and Policies provide:

55. The Chair is to ensure that planning for the meeting's agenda takes into account the time needed by Law Society management to adequately and appropriately prepare materials for the meeting.

...

57. The Chair is responsible for ensuring that

- a. materials for committee deliberations are appropriate for their purpose and include an appropriate level of detail to permit informed discussion;
- b. reports to Convocation are provided at regular intervals;
- c. matters for Convocation's decision include a motion that is clear in its meaning and purpose;
- d. reports include an appropriate level of detail to permit informed decision-making; and
- e. reports include, where appropriate, a range of options for each matter recommended for approval together with the implications thereof.

- Resource implications related to applying the policy in fulfilling requests;
- Circumstances where there is disagreement with how the policy is applied and a process to deal with that;
- Positioning the policy once approved within the Law Society's Governance Practices and Policies.

The Advisory Group referred to one example of a process to address information requests, from the municipal council context, found in the Toronto Municipal Code Chapter 27, Council Procedures, Article 7 - § 27-7.11:

**§ 27-7.11. Administrative inquiries and answers.**

**A. How a Member makes an administrative inquiry.<sup>2</sup>**

(1) A member who wants information about the affairs of the City must:

(a) make an administrative inquiry in writing; and

(b) deliver it to the Clerk at least seven business days before the Council meeting.

(2) The relevant City official answers the administrative inquiry in writing and delivers the answer to the Clerk at least one hour before the Council meeting.

(3) The Clerk distributes the answer to members before the start of the Council meeting or reads the answer to Council.

(4) Despite Subsection A(2), a City official may decide that the answer to an administrative inquiry requires work that exceeds the normal duties of their staff.

(5) If Subsection A(4) applies, the City official informs Council of that decision in a written letter to the Clerk at least one hour before the meeting and the Clerk distributes the letter to members before the Council meeting starts.

**B. How Council responds to an administrative inquiry.**

(1) If, in response to an administrative inquiry, a City official has told Council that the work of answering the inquiry exceeds normal duties, Council, without debate, may vote on whether the City official should answer the administrative inquiry.

<sup>2</sup> Administrative Inquiry - A Member's inquiry seeking information relating to City business.

(2) Council receives, or refers to the appropriate Council Committee, all administrative inquiries and answers, without debate.

## Context for a Policy – Information and Appropriate Purpose

Through its regular and ongoing support of benchers' oversight and policy making functions, as described, management meets benchers' information requirements by utilizing readily available and existing information and information collected through consultation or research at the direction of committees or Convocation. This will encompass relevant operational information that benchers require to assess risks and benefits, costs or other impacts, including those that may arise when reviewing a proposed policy direction or decision. Management is also sensitive and responds to the 'information gap' some benchers may experience given the complexities of the Law Society.

These efforts are necessary and meet two related objectives – ensuring that benchers are able to fulfill their appropriate fiduciary, duty of care, oversight and policy decision making responsibilities as governors of the Law Society, and ensuring that corporate purpose is fulfilled through the leadership of Convocation in accordance with the legislative mandate and Convocation's strategic priorities derived from the mandate. Benchers' and management's responsibilities in this framework help to foster a productive and effective management/board relationship that benefits the work of the organization.

As governors, benchers should understand and respect the line between information that is required for the appropriate purpose of their governance responsibilities and information that is extraneous to that purpose.<sup>3</sup> The proposed policy is intended to help guide and manage bencher

<sup>3</sup> The following from *20 Questions Directors of Not-for-Profit Organizations Should Ask About Director's Duties* published by CPA Canada provides some insight into this issue:

### 10. How knowledgeable do directors have to be in order to discharge their duties?

The law does not require directors to be experts. While directors of not-for-profit organizations owe a duty of care, it is not realistic to expect directors to understand in detail all of the operations, laws and government policies affecting the organization. However, directors *should* be well-informed.

...

The courts recognize that directors must be guided by what is referred to as the "business judgment rule." They look to see that the directors made a *reasonable* decision, not a *perfect* one. In coming to a decision, directors must show that they acted prudently and on a reasonably informed basis.

As a result, directors should:

- have a general knowledge of what laws affect that type of organization
- inform themselves about the governance model and structure of the organization, what the organization does, how it does it and who its beneficiaries are

requests for information other than that actively and regularly provided to benchers to meet the appropriate purpose described. The policy defines a process and provides direction to the Law Society for managing these requests.

## Components of the Policy

The policy would be engaged where a bencher does not receive information, including operational information, requested

- through the committee or Convocation process, or
- through or outside of the committee process where information is unrelated to the mandate of a committee.

The following are the proposed components of a policy and process for dealing with requests for information:

1. Information that is requested by a bencher must be directly related to a bencher's appropriate duty as a governor of the Law Society and reasonably required to fulfill their oversight or policy making responsibilities and be used for such purposes.
2. The request for information is to be made on a form provided by the Law Society and submitted to the Treasurer's office. The request is to include particulars of the information and how the information aligns with the requirements of paragraph 1.
3. The Treasurer will consult with the CEO about the request and make a determination on the request.
4. If responding to the request would exceed the normal duties of employees assigned for this purpose, the Treasurer is to request from the CEO the scope of the work and associated costs reasonably necessary to fulfill the request and Convocation is to decide whether the request should be fulfilled.
5. If the Treasurer denies a request on the basis that it does not meet the requirements of paragraph 1, the bencher may refer the matter to Convocation (*in camera*) and Convocation is to decide whether the request should be fulfilled.
6. Information provided in response to a bencher's request for information will be provided to all benchers.

The following guidelines have been established by the courts:

- Directors are not liable for mere errors of judgment.
- Directors are not required to give continuous attention to the organization's affairs.
- The directors' responsibilities are intermittent and performed at periodic board and committee meetings.
- Directors need not attend all board meetings.
- Directors may entrust certain matters of business to officers of the organization.
- Where there are no grounds for suspicion, directors are justified in trusting that officers of the organization will perform their duties honestly.

7. Information provided in response to a bencher's request for information remains confidential to the Law Society subject to Convocation's authority to make it public.

Once adopted by Convocation, the policy will form part of the Law Society's Governance Practices and Policies.

This is **Exhibit CC** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)

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**From:** Jacqueline Horvat  
**Sent:** September 2, 2022 9:18 AM  
**Subject:** Advisory Group - Information Requests

Benchers:

In consultation with the CEO, I have established an advisory group of benchers and management to assist the organization in the development of a process for benchers to make requests for information that is not readily available through the Committee process and discussions.

There have been a number of these requests recently, and an increasing number of requests in the past few years. Defining a process will assist all of us to manage those requests appropriately. The advisory group will make their recommendation to SPAC and then ultimately to Convocation, for approval.

The members of the group will be: Robert Adourian, Cathy Corsetti, Seymour Epstein, Andrew Spurgeon, Diana Miles and Elliot Spears.

Please let me know if you have any questions.

**Jacqueline Horvat**

Treasurer

Law Society of Ontario | Osgoode Hall

130 Queen St. W.

Toronto, ON M5H 2N6

416-947-3937 | [jhorvat@lso.ca](mailto:jhorvat@lso.ca)

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This is **Exhibit DD** to the Affidavit of Jacqueline Horvat of the City of Windsor, in the Province of Ontario, sworn before me at the City of Toronto, in the Province of Ontario, on September 1, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Alexandra Heine  
(LSO #83514R)



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

SUBMISSION TO THE  
STANDING COMMITTEE ON SOCIAL POLICY  
ON BILL 65,  
*THE NOT-FOR PROFIT-CORPORATIONS ACT*

AUGUST 23, 2010

1. My name is Malcolm Heins. I am the Chief Executive Officer of the Law Society of Upper Canada. The Law Society appreciates this opportunity to comment on Bill 65, the proposed legislation governing not-for-profit corporations.
2. For 213 years, the Law Society of Upper Canada has regulated Ontario's lawyers in the public interest. Since 2007, it has also regulated licensed paralegals in Ontario. Today, the Law Society regulates 40,000 lawyers and 2,700 paralegals.
3. We support the important objectives of the proposed legislation to modernize the legal framework of not-for-profit corporations and charities and strengthen their organizational structure. We recognize that many non-profit organizations lack the kind of corporate governance required to promote accountability and transparency.
4. I am here to express the concerns of the Law Society about the potential application of the proposed legislation to the Law Society as a professional regulator that governs its members in the public interest. Although we are a not-for-profit corporation, many of the provisions of this legislation are antithetical to our mandate to regulate Ontario's lawyers and paralegals in the public interest. These provisions would give our members, the people we regulate, broad powers to veto or curtail regulatory measures adopted by the Law Society in the public interest.

5. The Law Society asks that it be exempted from the application of this legislation except as it may provide otherwise by by-law made under the *Law Society Act*. The Law Society has a clear and comprehensive corporate and organizational structure, the bulk of which is contained in the *Law Society Act* and our by-laws. The governance of the Law Society already meets all of the accountability and transparency objectives of the proposed legislation.
6. The Law Society is subject to the current *Corporations Act*, but is exempt from the application of certain sections. Furthermore, if there is a conflict between a provision of the *Law Society Act* and a provision of the *Corporations Act*, the *Law Society Act* expressly states that the provision of the *Law Society Act* prevails. The current *Corporations Act* co-exists with the *Law Society Act* without difficulty.
7. The legislature has given the Law Society the responsibility, in the *Law Society Act*, to make by-laws in the public interest with respect to many of the matters dealt with in the *Corporations Act*. The Law Society has made many by-laws further to this responsibility. As a result, the provisions in the *Corporations Act* have, over time, come, not to govern the Law Society, but to supplement the *Law Society Act* and the by-laws in areas where the *Law Society Act* and the by-laws are silent.
8. Bill 65 removes the Law Society from the regime of the *Corporations Act* and places it under the *Not-for-Profit Corporations Act*. While the bill includes many of the provisions contained in the *Corporations Act*, it also introduces new features, which when applied to the Law Society, fit poorly with its structure and regulatory mandate.

In some situations, Bill 65 would actually negatively affect the ability of the Law Society to fulfill its public interest mandate.

9. Bill 65 does not exempt the Law Society, nor does it amend the *Law Society Act* to expressly exempt the Law Society from the application of the *Not-for-Profit Corporations Act*. While the bill provides that in a case of conflict between it and another Act or regulation made under that Act, the other Act or regulation prevails, this is not entirely satisfactory for the Law Society for two reasons:
  - a. Firstly, there are many direct conflicts between the provisions of Bill 65 and our by-laws, which set out most of our regulatory requirements.
  - b. Secondly, there is a great deal of overlap between the provisions of Bill 65 and our by-laws and it is always a matter of interpretation whether there is a conflict when our by-law is silent on an issue and Bill 65 speaks to it. Our by-law may be silent, not because the Law Society has failed to deal with an issue, but because it has decided the issue, in the public interest, in a way that requires silence in the by-law.
10. I want to give you just a few examples where the provisions of Bill 65 do not fit well with the Law Society's public interest mandate.
  - a. Section 17 of the bill is the first example. It requires the members to confirm at the annual general meeting all by-laws made by the Law Society.

This is inconsistent with the Law Society's mandate to regulate in the public interest, as members could vote down by-laws that impose requirements on them in the public interest. The Law Society is exempt from the current provision to this effect in the *Corporations Act*. Bill 65 does not continue this exemption.

- b. Secondly, section 26 of the bill permits members to remove directors by resolution. This provision could be invoked by Law Society members who are unhappy with an elected bencher's role in the development of a policy or with the decision of an elected bencher on a hearing panel adjudicating a case involving lawyer or paralegal misconduct.
  - c. Thirdly, subsection 173(2) of Bill 65 would permit a member to apply to the court for an oppression remedy. A lawyer or paralegal unhappy with the result of a discipline or licensing hearing, or the results of a licensing examination, could invoke this section. The *Law Society Act*, together with the regulations and the Rules of Practice and Procedure set out a complete code of procedure for hearings before the Law Society's Hearing Panel, and appeals before the Law Society's Appeal Panel, followed by an appeal to the Divisional Court.
11. These are but a few examples of the provisions of Bill 65 that are inconsistent with the Law Society's mandate to govern its members in the public interest.

There are also a number of other provisions in the bill that are contrary to the governance structure of the Law Society. They relate to the length of a director's term, the means available to a member to dispute an election and the manner in which directors' meetings are conducted.

12. For example, section 45 of the bill allows directors who are not present at a meeting to submit their dissent to any resolution adopted at the meeting within seven days of the meeting. This provision would prevent the immediate announcement of important policy initiatives to the public and the profession once adopted by the Law Society, and could delay implementation of initiatives.
13. As I indicated earlier, Bill 65 provides that where there is a conflict between one of its provisions and the provisions of another Act, the other Act prevails. In the case of the *Law Society Act*, we have been given the authority by the legislature to make by-laws to govern our members in the public interest. If the Law Society has the authority to make a by-law regarding a particular matter that is also the subject of a provision in Bill 65, we consider that to be a conflict between the two acts, and the *Law Society Act* prevails. We assume that the legislature intended to give us unlimited authority to make by-laws in the public interest, not just the authority to make by-laws that are consistent with Bill 65. For the sake of clarity and transparency, a clear exemption from the provisions of Bill 65 is necessary.

14. We suggest that a consequential amendment be made to s. 6 of the *Law Society Act* to state that the *Not-for-Profit Corporations Act* does not apply to the Law Society except as it may provide by by-law made under the Law Society Act. Section 234 of the bill gives a similar exemption to the Health Colleges.
15. Thank you for your attention. I would be pleased to answer your questions.

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

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

Proceeding commenced at TORONTO

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**MOTION RECORD OF THE RESPONDENT**

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