



Addressing Challenges
Faced by Racialized Licensees

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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Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to comment on issues raised in the Law Society of Upper Canada consultation paper “Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees” (the “Consultation Paper”).

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 every area of law and in every type of practice, and provide legal services to a broad range of clients 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.

This submission was prepared by a working group comprised of members of the OBA Equality Committee, Young Lawyers Division, Women Lawyers Forum, Student Division and Sole, Small Firm and General Practice section.

Response to Consultation Paper Issues

General Comments

The purpose of the Law Society’s Consultation Paper is to engage the profession in a consideration of strategies to address the challenges faced by racialized licensees. The Consultation Paper reviews consultation feedback on discrimination and bias experienced by racialized lawyers and poses questions for the profession. The questions present options for Law Society involvement and reference some previous projects as potential models for addressing challenges for racialized licensees. The Law Society conducted a series of meetings in specific cities for licensees to have a brief overview of the findings of the Consultation Paper and to provide feedback.

While there may be beneficial elements to many approaches cited in the Consultation Paper, the OBA’s view is that options should not be determined by the Law Society ahead of an important policy discussion with the profession, without which reform will be either slow or ineffectual. Addressing the challenges faced by equity-seeking groups cannot focus only on the groups. Those



who perpetuate attitudes and barriers must, ultimately, participate in solutions. Throughout our discussions, we have been informed by the voices of those who believe that 'systemic' change is needed. The kinds of initiatives canvassed in the Consultation Paper can only be effective after a critical discussion about how to engage the various parts of the system has occurred. Consequently, the OBA's view is that consideration of the options would benefit from an opportunity for the profession to work collaboratively with the Law Society to ensure all parties understand the complexities of the issues, and share ideas, initiatives or practices that may assist in addressing the challenges faced by racialized licensees.

This opportunity could be undertaken through a targeted event where firms of all sizes and practice types across a variety of geographic locations can share experiences and contribute to the development of initiatives. However, given the breadth and fluidity of issues and considerations, it could also be facilitated through an on-going developmental evaluation process that engages the profession in whether different approaches are working to achieve the objectives.

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. This approach would also allow firms to continually draw-on and adapt positive experiences in the bar to their own context, and avoid having historical "best practices" become a barrier to innovation now and as the challenges facing racialized lawyers evolve over time.

In advance of any such initiative, the following sections of this submission offer the OBA's general comments on some of the themes raised in the Consultation Paper.

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?

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.

Related to the Consultation Paper, 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.

As noted in the Consultation Paper, the Canadian Bar Association (“CBA”) has been actively involved in assisting the profession in these endeavours.¹

In 2007, the CBA released “The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations” (the “Equity and Diversity Guide”).² The guide noted that a rapidly changing domestic market and the opportunities from globalization signaled the need for businesses to recognize that their future must include increased diversity of their employees and consumer base. The premise is that equity and diversity are core business requirements and must be evident in all aspects of the workplace.

The purpose of the Equity and Diversity Guide is to assist and enhance efforts to promote equity and diversity in law firms and other organizations. The guide offers strategies to help law firms become more effective diversity managers, through a systemic approach that looks at leadership (including developing and communicating equity and diversity policies), recruitment, professional development, advancement and retention, and education and training.

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”).³ This guide recognizes that good diversity management means utilizing the differences among employees to create new ways of thinking, spur creativity, reach better decisions, enhance flexibility, and deliver more effective service. This helps organizations use employees’ different perspectives to rethink how they do business and enhance effectiveness, and results in employees from diverse groups feel valued and respected.

The Measuring Diversity Guide also recognizes that measurement is a key component of many successful diversity initiatives and that consequently many law firms have begun, or contemplated, assessing their firm’s current diversity performance.

The Measuring Diversity Guide describes measurement strategies and the major steps involved in measuring diversity for firms that wish to engage in survey measurement of diversity performance. It provides information on how to collect and use two major types of survey data; self-identification

¹ 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.

² http://www.cba.org/cba/equity/pdf/equity_and_diversity_guide_eng.pdf

³ http://www.cba.org/cba/equity/pdf/Measuring_Diversity_Guide.pdf



data, which is used to assess the representation of diverse groups, and diversity climate data, which is used to assess inclusiveness. The Guide also provides some background information on current law firm realities, the role that diversity plays in organizational performance, and the impact of different approaches to diversity management.

The CBA has also published numerous links to additional on-line resources that both large and small firms may find helpful in furthering their diversity and inclusion initiatives.

Collectively these resources provide information and analysis of research and key considerations to assist firms develop, assess and refine a diversity program that is best suited to their practice.

Notably, the guides avoid a “one size fits all” approach and instead provide strategies to develop and refine effective solutions for firms of all sizes, practice types and locations. The guides also recognize that it is essential to have the buy-in of firms for the ongoing development necessary to build a diverse and inclusive profession. The voluntary nature of the initiatives developed through the CBA is one indicator of a firm’s commitment to that development.

The ongoing commitment of senior leadership and the communication of that commitment to firm members are also critical for earning the confidence of racialized lawyers within the firm. This in turn supports the firm’s ability to consistently gather reliable information needed to assess and improve its initiatives, and is ultimately essential to the success of the firm’s ability to build a culture of diversity and inclusion.

The Consultation Paper also refers to increasing efforts by in-house counsel in Ontario to incorporate firm workforce demographic data as part of their corporate procurement processes for law firms. Through its Diversity Committee, the Canadian Corporate Counsel Association (“CCCA”) has been considering the experiences of large multinational corporations who have led the way in other jurisdictions, in order to provide effective tools than can be applied by in-house legal departments of all geographic regions, sectors, industries, and department size in Ontario, including smaller organizations.

As noted above, the Law Society could play a role in facilitating an opportunity for the profession to work collaboratively on the development of options that effectively address the challenges raised in the Consultation Paper.

In addition to that initiative, the Law Society could also play an important role in encouraging the profession to access the materials noted above and make a commitment to developing, assessing, and improving a program that enhances their capacity to address barriers and to support an inclusive environment for racialized lawyers. To the extent that there is already interest in the



profession in addressing the issues raised in the Consultation Paper, it would be helpful for the Law Society to help connect firms to the resources that are available.

With respect to lawyer and law firm data relating to racialized licensees, the Law Society is likely in the best position to comprehensively collect demographic information through the annual filing requirements for all lawyers. The Annual Report requires that the demographic information section must be completed by all licensees but is based on self-identification that permits respondents to indicate for each question that they don't wish to answer. The current format includes a statement that the "questions will help the Law Society 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 profession." The Law Society also indicates that "the information collected will only be available in aggregate form and will not be used to identify the demographic identity of individual lawyers." The Law Society seeks similar demographic information in the application form for those entering the lawyer licensing process.

As noted in the CBA Measuring Diversity Guide, there are many considerations in collecting useful and reliable data. Participation in self-identification surveys must be voluntary and confidentiality must be maintained. The key is not to make assumptions but to develop an approach that asks questions appropriately. Demographic information collected through the Annual Report could provide a useful baseline for the profession to measure progress towards inclusiveness. Information aggregated into categories such as firm types, practice areas, and geographic regions may also be useful as a benchmark for firms who are interested in developing diversity programs.

In conjunction with the profession, the Law Society could review issues such as the most appropriate questions to pose, and the most effective means of communicating with members about the need to collect the data, its future uses, and privacy considerations so as to encourage full and candid participation.

Mentoring, Networking, and Enhancing Cultural Competence in the Profession

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

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

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



The Law Society Scan of Best Practices notes that bar associations are uniquely positioned to impact diversity within the legal profession, through programming, initiatives and research that explore the intersections of diversity and mentoring opportunities.⁴

The OBA has a history of providing these services to members, as well as critical networking opportunities for people from diverse backgrounds, and otherwise supporting licensees through every stage of their career. The CBA/OBA offers substantially discounted membership fees for articling students and lawyers in the first three years of call to a Canadian Bar to facilitate connection to the profession.⁵

In September 2014, the OBA launched its fifth year of a mentoring program that aims to link young/inexperienced lawyer mentees with experienced practitioners, who are able to provide guidance and practice tips to facilitate the mentees' successful integration into the legal profession and community.⁶ The program also allows mentors to share their accumulated knowledge, stay in touch with current legal trends and develop leadership skills.

As part of the OBA's mentorship matching process, lawyers wishing to participate as mentees have the opportunity to indicate the criteria they feel are important for them in the matching process. This allows applicants to express an interest in specific areas of law, large or small firm, city or small town etc. However, it also provides an opportunity for applicants to voluntarily disclose their cultural/ethnic background and to indicate if they seek a mentor with a similar or different cultural/ethnic background. All applications are kept confidential and used only for the mentoring relationship. This encourages applicants to determine the type of mentoring opportunity would be most helpful for them in addressing the intersection of challenges they face, including experiences as a racialized lawyer. The program is only in its fifth year, but finding experienced lawyers willing to serve as mentors can be a challenge and it would be unhelpful for the Law Society to develop additional programs that would disperse the pool of potential participants.

Similarly, the OBA provides a host of unique opportunities for racialized lawyers to network with colleagues through our governing bodies, 37 practice sections, Women Lawyers Forum ("WLF"), Sexual Orientation and Gender Identity Conference ("SOGIC") and the Equality Committee.⁷

⁴ Law Society Studies and Scan of Best Practices (October 30, 2014) at p. 27.

⁵ Lawyers in their first three years of call are eligible for a 60% fee reduction. Articling and bar admission students are eligible for a 75% fee reduction.

⁶ <http://oba.org/Professional-Development-Resources/Mentorship>

⁷ 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.



The OBA also offers high quality professional development programs, developed by our volunteer members and program planning lawyers that responds to current issues of diversity and inclusion. These programs are often offered at low or no cost to members and non-members. Through the involvement of our practice sections, Equality Committee, SOGIC, and WLF, the OBA is uniquely positioned to offer the bar leading edge programming that assists the profession in improving cultural competence, diversity, and inclusion.

The OBA supports the recommendation in the Consultation Paper that the Law Society 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 Consultation Paper notes that many respondents have noted that racialized licensees have much to gain from mentoring but are often unaware of available programs or how to access them. There are similar concerns about the lack of sponsors and role models for racialized licensees.

The OBA initiatives referenced above seek to meet these concerns by providing the broadest possible base of mentoring, networking, and programming opportunities to meet the individual needs of our members, including racialized lawyers. The breadth of these initiatives and the diversity of our membership allow racialized licensees to strengthen their connections to colleagues in the specific ways that respond to their needs – on law practice related issues and issues related to racialization. It also provides the broadest base in which to respond to the intersection of other factors such as gender, gender identity, gender expression, age, sexual orientation, disability, and geographic location.

The Law Society could play a helpful role by promoting awareness and encouraging participation in these mentoring, professional development, and networking opportunities. Increasing participation in these core bar association offerings helps overcome the barriers of exclusion and isolation identified by racialized lawyers and promotes a more inclusive profession.

Discrimination and the Role of the Complaints Process & Diversity at the Law Society

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

Q8: Which initiatives/strategies should the LSUC consider to develop a more diverse and inclusive public image/face?

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. Consequently, the OBA supports cultural competence training for all Law Society staff involved in the complaints process, including tribunal members and the Discrimination and Harassment Counsel. In order to instill confidence in the process, this should be publicly communicated on the relevant Law Society web pages. The Law Society should also mandate follow-up training as appropriate for those involved in the complaints process so that they have access to the most up to date information and approaches.

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 examine making available and communicating more information about the election process and the importance of the work of benchers.