



Law Society of Upper Canada
Challenges Faced by Racialized Licensees Working
Group Final Report

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BAR ASSOCIATION
A Branch of the
Canadian Bar Association

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BARREAU DE L'ONTARIO
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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.¹

¹ 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.² 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.”³ 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.⁴ 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.⁵ 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.⁶ 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.

² 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]

³ CBA Resolution 14-04-M, “Non-Discrimination in Legal Education”, February 22-23, 2014. (<https://www.cba.org/Our-Work/Resolutions>)

⁴ Final Report, p. 14-15.

⁵ Final Report, p. 15.

⁶ 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.⁷ 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."⁸ 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

⁷ See Final Report, p. 10, "Timeline for Implementation of Recommendations."

⁸ 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.⁹ 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.¹⁰

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.¹¹ 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

⁹ [Letter to Members](#) from OBA President David Sterns, October 2015.

¹⁰ See OBA Initial Report, p. 2.

¹¹ 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.¹² 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.¹³

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.

¹² Law Society of Upper Canada, "Law Society Studies and Scan of Best Practices," October, 2014, (<https://www.lsuc.on.ca/racialized-licensees/>) p. 27.

¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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

¹⁴ See OBA Initial Report, p. 8-9.

¹⁵ 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.

¹⁶ 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.¹⁷

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.

¹⁷ See OBA Initial Report, p. 8-9.