

Guide to the Application of Recommendation 3(1)

The Law Society issues this Guide to clarify Recommendation 3(1) in the report *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*.

Recommendation 3(1) provides as follows:

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

The required Statement of Principles sets out standards or criteria developed by the licensee to guide his or her professional conduct taking into account applicable legal and professional obligations. The Statement of Principles need not include any statement of thought, belief or opinion.

This guide explains what licensees need to do to fulfil the requirement set out in Recommendation 3(1) of the Final Report which applies to racialized licensees and equality-seeking groups:

- 1) The requirement reinforces existing obligations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* which establish a lawyer's and paralegal's "special responsibilities" to respect human rights laws and to honour the obligation not to discriminate in their dealings with others.¹
- 2) The requirement applies only to the professional conduct of licensees with each other, with employees, with clients and with the public.
- 3) The requirement calls on licensees to reflect on their professional context and on how they will uphold and observe human rights laws in force in Ontario in their professional relationships and interactions with colleagues, clients, employees and the public.
- 4) 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. The obligation to promote equality, diversity and inclusion generally does not prescribe specific actions that licensees will or must take to avoid, reduce or eliminate barriers faced by racialized licensees or other equality-seeking groups.
- 5) The reference to the obligation to promote equality, diversity and inclusion generally refers to existing legal and professional obligations in respect of human rights including preventing direct, adverse effect and systemic discrimination. Equality, diversity and inclusion are promoted (in other words, advanced) by addressing discrimination in all of its forms.
- 6) To assist the professions, the Law Society has provided two sample templates setting out Statements of Principles that meet the requirement. Licensees are not limited to

these templates and are not required to adopt either of them. The sample templates are intended to assist licensees as they consider an appropriate statement for their professional circumstances in accordance with the requirement.

- 7) Additional resources are available on the Law Society's Equality, Diversity and Inclusion webpage to assist licensees in further understanding this obligation.
- 8) 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.

ⁱ A summary of obligations, including and the obligation not to discriminate and the special responsibility to respect requirements of human rights laws in force in Ontario, in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* is provided below:

Rules of Professional Conduct

Section 6.3.1 Discrimination Special Responsibility

Rule 6.3.1-1 provides: "A lawyer has a special responsibility to respect the requirements of human rights law in force in Ontario and, specifically, to honour the obligation not to discriminate...with respect to professional employment of other lawyers, articulated student, or any other person or in professional dealings with other licensees or any other person".

Commentaries 12 and 13 explain: "Human rights law in Ontario includes as discrimination conduct which, though not intended to discriminate, has an adverse effect on individuals.... 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".

Commentary 3 to Rule 6.3.1-3 adds: "An employer should consider the effect of seemingly 'neutral' rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees...The maintenance of a rule with a discriminatory effect breaches Rule 6.3.1 unless changing or eliminating the rule would cause undue hardship".

Section 2.1 Integrity

See also 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".

Paralegal Rules of Conduct

2.03 Harassment and Discrimination Discrimination

Rule 2.03 (4) provides: "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”.

2.01 Integrity and Civility

Integrity

See also Rule 2.01(2): “A paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions”.