

ARAB CANADIAN LAWYERS ASSOCIATION

Submissions to the Law Society of Upper Canada on the "*Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*" Consultation Paper

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1.0 INTRODUCTION

1.1. About the Arab Canadian Lawyers Association

Founded in 2005, the Arab Canadian Lawyers Association (“**ACLA**”) is a national association committed to providing professional support for the Arab legal community and advocating on behalf of the Arab community in Canada.

Increasing numbers of Arab Canadians are graduating from law schools and making important contributions to domestic and international legal, political, social and economic systems through their work. At the same time, the broader Arab community in Canada has grown steadily along with their need for legal and advocacy services.

ACLA's main purpose is to strengthen the network of Arab Canadian lawyers, support students and junior lawyers, and assist the Arab community in Canada to access vital legal resources.

1.2. Background to the Preparation of ACLA’s Written Submissions

In order to prepare its oral and written submissions to the Law Society of Upper Canada (“**LSUC**”) for the purposes of this consultation, ACLA conducted a confidential written survey of its members in January 2015.

This survey was disseminated to ACLA’s members using email and social media networks.

This survey included questions arising from LSUC’s “*Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*” consultation paper (the “**Consultation Paper**”), including questions on:

- Discrimination and harassment experienced or observed in the legal profession
- Barriers to reporting discrimination and harassment
- Experiences of inclusion and exclusion in the legal profession
- Recommendations contained in the Consultation Paper

In addition to the above, six of ACLA’s members attended an in-person consultation with LSUC on January 19, 2015 to present oral submissions on the experiences of Arab-Canadian members of the legal profession and the results of the Consultation Paper.

The results of the survey and ACLA’s oral submissions made on January 19, 2015 are reflected in this paper.

2.0 OVERALL CONTEXT OF ARAB-CANADIAN COMMUNITIES

2.1 Education and Employment

Arab-Canadian communities are diverse and multi-faceted. The members of ACLA believe it is important, however, to understand the overall social context in which those communities exist, as this context affects ACLA’s members and is reflected in the legal profession.

According to the latest Statistics Canada data, there are 750,925 individuals of Arab-origin residing in Canada. Of this figure, over 300,000 reside in the Province of Ontario.¹

Of Arab-Canadians aged 25 to 64 years old, 74% have a post-secondary certificate, degree or diploma, compared to 64% of the overall Canadian population. Despite this fact, Arab-Canadians face higher rates of unemployment than the overall population. The overall unemployment rate in Canada, according to the 2011 census data, is 8%. For Arab-Canadians, this rate is 13%.²

Arab-Canadians also have lower average incomes when compared to the overall working-age population. In 2010, the average Canadian income was \$40,650 per annum. The average income for Arab-Canadians in the same year was \$32,653.³

2.2 Racism, Stereotyping, Discrimination and Silencing

The findings of ACLA's survey reflect the findings of the Stratcom survey⁴ (see Schedule 1). It is striking to note that all of the participants in ACLA's survey reported being subject to overt acts of discrimination and stereotyping, specifically within the legal profession. As reported through the survey and anecdotally to ACLA members, the bulk of the discrimination experienced by Arab licensees stems from Islamophobic views and Israel-Palestine politics, irrespective of whether the person was Muslim and/or Palestinian.

Acts of discrimination against Arab-Canadians within the legal profession are reflective of negative images of and attitudes towards Arab-Canadians found in the wider Canadian society, including:

- Arab and Muslim communities are often conflated. It is important to resist this conflation and note that the Arab community is nuanced. Arabs identify with many religions aside from Islam, and many sects and denominations exist within the various religious communities of Arabs.
- There is also a perception that Arab and Muslim communities harbour values incompatible with Canadian ones, and a perception that they are broadly associated with terrorism. These negative associations are reinforced through media, policy, and law. One telling example is naming Bill S-7 the *Zero Tolerance for Barbaric Practices Act*. This naming associates violence with immigrant cultures.⁵

¹ Dajani, Ghina. Canadian Arab Institute. (2014, June). 750,925 Canadians Hail from Arab Lands. Retrieved from: <http://www.canadianarabinstitute.org/publications/reports/750925-canadians-hail-arab-lands>.

² Dajani, Ghina. Canadian Arab Institute. (2014, September). A Highly Educated, Yet Under-employed Canadian Arab Community. Retrieved from: <http://www.canadianarabinstitute.org/publications/reports/highly-educated-yet-under-employed-canadian-arab-community>.

³ Dajani, Ghina. Canadian Arab Institute. (2014, October). Income Distribution in the Canadian Arab Community. Retrieved from: <http://www.canadianarabinstitute.org/publications/reports/income-distribution-canadian-arab-community>.

⁴ Stratcom Report: Challenges Facing Racialized Licensees: Final Report. March 11, 2014 http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf

⁵ See for example: South Asian Legal Clinic of Ontario. (2014, November) Perpetuating Myths, Denying Justice: "Zero Tolerance for Barbaric Cultural Practices Act". Retrieved from: <http://www.salco.on.ca/FINALBILLS7STATEMENT%20updated%20nov%202018.pdf>.

- There is a troubling rise of Islamophobia across Canada. It has been particularly acute in recent weeks. In February 2015, a Quebec judge⁶ advised Rania El-Alloul that she was not suitably attired for Court because she was wearing a hijab.⁷ Last week, Federal Minister of Defence Jason Kenney published a highly inflammatory tweet on his official Twitter page and has yet to remove it. Federal Conservative MP John Williamson has also recently made blatantly racist remarks with impunity.⁸ The Prime Minister himself has made generalized statements that target Muslims, stating that the niqab is “rooted in a culture that is anti-women.”⁹ Bill C-51 hearings are providing the cloak of parliamentary privilege for both Federal MPs¹⁰ and “Islamic Watchdog” groups¹¹ to foster fear and smear at least one respected Muslim member of the Canadian legal community. The government of the day and media are legitimizing a discourse that unfairly targets and disproportionately affects Canadian Arabs and Muslims.
- Attempts by Arab-Canadians to engage with political issues, particularly around Israel and Palestine, are routinely met with accusations of anti-Semitism or exclusionary behaviour. Members are questioned at interviews or in the workplace on their views towards Israel and Hamas because they are Arab. Members felt they could not respond to the questions for fear of retaliation or damage to their reputation. One ACLA member reported that when this was raised as an issue of discrimination and double-standards, the response from fellow lawyers was dismissive. These accusations and reactions create a chill, effectively stifling the political voices of Arab-Canadians and Arab-Canadian lawyers. This chilling effect has extended to the work of ACLA, and a sense that the LSUC and other legal associations fear collaborating with our projects.

3.0 BARRIERS FACED BY ARAB-CANADIAN MEMBERS OF THE LEGAL PROFESSION

3.1 General Barriers

Members of ACLA have reported experiencing the following instances of exclusion and/or discriminatory conduct within the legal profession:

⁶ McGregor, Glen. Ottawa Citizen. (2015, March 10) The Gargoyle – Kenney tweets misleading photos of Muslim women in chains. Retrieved from: <http://ottawacitizen.com/news/politics/the-gargoyle-kenney-tweets-misleading-photos-of-muslim-women-in-chains>.

⁷ Rukavina, Steve. CBC News. (2015, February 26) Quebec judge wouldn't hear case of woman wearing hijab. Retrieved from: <http://www.cbc.ca/news/canada/montreal/quebec-judge-wouldn-t-hear-case-of-woman-wearing-hijab-1.2974282>.

⁸ Cheadle, Bruce. Huffington Post. (2015, March 11) John Williamson Must Be Expelled From Tory Caucus After 'Brown People' Remarks: Liberals. Retrieved from http://www.huffingtonpost.ca/2015/03/11/motion-asks-new-brunswick_n_6848108.html.

⁹ Bryden, Joan. Huffington Post. (2015, March 10) Harper: Niqabs 'Rooted in a Culture that is Anti-Women'. Retrieved from http://www.huffingtonpost.ca/2015/03/10/harper-calls-muslim-face-_n_6842768.html.

¹⁰ Kirkup, Kristy. CBC News. (2015, March 13) Bill C-51 hearings: Diane Ablonczy's questions to Muslim group 'McCarthyesque'. Retrieved from <http://www.cbc.ca/news/politics/bill-c-51-hearings-diane-ablonczy-s-questions-to-muslim-group-mccarthy-esque-1.2993531>.

¹¹ Kutty, Faisal. Huffington Post. (2015, March 13) I Am Not a Terrorist, Despite What My Critics Told a Senate Committee. Retrieved from http://www.huffingtonpost.ca/faisal-kutty-/senate-committee_b_6810234.html.

- Arab women reported being exoticized in the workplace and job interviews. This included comments that were intended to be “compliments” by the person making them.
- One member reported hearing a senior lawyer disparage the choice of dress of a woman in hijab interviewing for a job at the same workplace.
- Members reported regularly being asked to comment on their cultural or religious identity in the course of job interviews.
- Members reported feeling like they had to hide or minimize their Arab identity in the workplace, particularly Palestinian licensees.
- Members reported feeling like they had to work harder than their non-racialized colleagues to be taken seriously.
- Members reported feeling excluded from networking events and career opportunities, and underrepresented in the legal profession generally.
- Respondents to ACLA’s survey unanimously submitted that they did not or would not report instances of discrimination or harassment for fear of retaliation or reputational loss. Other reasons for not reporting included a fear that the investigator would not or could not understand the nature of the discrimination and a feeling that reporting would be pointless.

The following systemic barriers were also identified by ACLA’s members as preventing the full and meaningful participation of Arabs in the legal profession:

- Law school tuition is out of reach for most Canadians. This is especially so for Arab Canadians, who experience higher instances of low incomes, as discussed above.
- Members reported self-selecting out of career opportunities because of a perception that there wouldn’t be a “fit” with that firm’s culture. Members felt that “fit” was often code for cultural and class similarity with white male partners at the firm.
- Internationally-trained lawyers often face financial and structural barriers to becoming licensed to practice law in Ontario. Even when licensed, barriers include bias against foreign degrees in hiring and a lack of networks that can provide mentorship and support.
- It is difficult to achieve a work-life balance in the legal profession, especially given the perception of members that they must work harder than their non-racialized counterparts
- Being relegated to sole practice due to a lack of opportunities.

The barriers faced by members of the Arab-Canadian legal profession stem from complex and intersecting factors. Gender, sexual orientation, and religion are often identity traits that, when combined together in various ways, serve as particularly nefarious bases for discrimination. The exoticisation of Arab women, in either complimentary or condescending terms, serves to diminish their independence and undermine their ability as an already disadvantaged group to play a meaningful part in the Canadian legal profession. Implied association between Arab culture and oppression of women

and LGBTQ individuals, further alienates and dissuades members from expressing their cultural identities openly to avoid being asked to comment or explain the status of these two groups in the Middle East.

3.2 Inclusivity in the LSUC

ACLA is of the view that the LSUC is positioned to play a key role in addressing the challenges faced by racialized licensees and Arab members of the Canadian legal profession. ACLA encourages the LSUC to actively seek to include racialized licensees and especially Arab licensees' interests in the inclusivity reform of the profession.

Unfortunately, the LSUC has missed opportunities to work with the ACLA to promote the visibility of Arab-Canadian lawyers. This is a trend that ACLA hopes to change.

ACLA has been working with the Law Society through Equity Advisory Group (“EAG”) since 2006. Despite requests and proposals to partner with the LSUC on an equity event and/or Continuing Professional Development event, this has never taken place. ACLA has been unable, due to prohibitive costs, to host and promote an event of this kind on its own at the Law Society. While the LSUC has donated space and partnered with other groups and associations of racialized groups, such accommodations have not been conferred to ACLA.

The Human Rights Monitoring Group (“HRMG”) has unfortunately been unresponsive to the ACLA. Cases raised to the HRMG are either ignored, or deemed to fall outside the scope of the HRMG’s mandate. The HRMG’s mandate, however, and the criteria used to assess whether a case falls under the mandate, are obscure. This lack of transparency and responsiveness is another unfortunate missed opportunity for the LSUC to increase inclusivity for racialized groups, and specifically the ACLA.

Finally, the process by which nominations for awards by the LSUC are made appears at times to be disconnected from the stated goal of inclusivity of racialized members. Despite the fact that racialized groups are frequently asked to nominate members of their communities for awards, and the calls go heeded (including by ACLA), award nominations are generally in line with the larger trend of exclusion of racialized licensees from full participation and recognition in the legal profession. For instance, ACLA was disappointed to see that the first Human Rights Award conferred by the LSUC went to Irwin Cotler, who is openly hostile to large segments of the Arab community.¹² The nomination either failed to consider or missed entirely the message this controversial nomination sent to the members of the Arab community and the Arab members of the Canadian legal profession.

¹² In a recent op-ed, Mr. Cotler equated the movement for Palestinian human rights and international resolutions holding Israel accountable for violations of international law to virulent anti semitism: <http://news.nationalpost.com/2015/03/05/irwin-cotler-we-are-witnessing-a-new-sophisticated-virulent-and-even-lethal-anti-semitism/>; Mr. Cotler has long been critiqued within the Arab and Palestine human rights communities for advancing a narrative of human rights which exclude Palestinians, and publicly espousing ideas “blind to Palestinian suffering”, see e.g.: <http://www.tadamon.ca/post/567>; <http://www.hrw.org/en/news/2009/08/25/right-reply-dont-smear-messenger>

4.0 ACLA RECOMMENDATIONS

4.1 Discipline

The LSUC has the ability to commence investigations and disciplinary proceedings where cases come to its attention. The ACLA recommends that the LSUC take a serious approach to all violations of the *Rules of Professional Conduct*, including section 6.3.1-1, which imposes a general obligation for all lawyers to respect human rights laws and not discriminate.

ACLA survey respondents unanimously reported an unwillingness to engage any form of complaint process, whether internally with an employer or with the LSUC. Given the widespread reluctance for racialized licensees to formally report overt or systemic discrimination, ACLA recommends that the LSUC investigate blatant instances of discrimination *proprio motu* (on its own accord) when they are aware of a violation of the *Rules of Professional Conduct*¹³ and proceed with disciplinary proceedings where appropriate. ACLA recommends that this be combined with a form of anonymous reporting open to racialized licensees to ensure accurate documentation of discrimination in the legal profession and informal avenues to address discrimination.

4.2 Anti-Discrimination Efforts

ACLA is also in favour of anti-discrimination awareness campaigns spearheaded by the LSUC. A broad reach, with emphasis on the *Rules of Professional Conduct* and the obligations they impose insofar as discrimination is concerned, would be ideal. ACLA supports the idea of linking awareness initiatives to mandatory Continuing Professional Development requirements imposed on all licensees. ACLA is also in favour of the LSUC raising awareness of the challenges faced by racialized licensees before the licensing process begins, a stage at which prospective licensees have already faced barriers. ACLA recommends that the LSUC work closely with law schools in Ontario with a view of addressing these challenges. Licensing qualifications should also have components that reflect the LSUC's commitment to combatting the discrimination racialized licensees face.

4.3 Mandatory Reporting

ACLA is in favour of a form of mandatory reporting by which law firms and lawyers would be obliged to provide data relevant to the challenges faced by racialized licensees to the LSUC. The reporting of these data can be linked to the mandatory reporting obligations to which licensees are already subject and sanctioned in the same manner in case of non-compliance.

4.4 Networking and Mentoring

ACLA is of the view that networking and mentoring opportunities should be offered to junior racialized licensees, but they should be catered specifically to the special challenges they face.

Large receptions and cocktails, the most frequent form of "networking" opportunities, do not work well for newer members of the profession and even less for junior racialized licensees. Food and drink

¹³ For example, this 2008 case was reported in the Law Times: *Abdallah v. Snopce* (2008) 89 O.R. (3d) 771. <http://www.canlii.org/en/on/onscdc/doc/2008/2008canlii6983/2008canlii6983.pdf>. Law Times Article (2008): "Leave denied in "inflammatory" jury address case." <http://digital.lawtimesnews.com/i/50601/2#>. In this case, the lawyer made racist remarks in his closing against an insurance claimant.

offered are often unaccommodating to some members of the community, but, more importantly, the large-scale and informal format does not foster specialized and targeted opportunities for many racialized licensees to “network”. Arab survey respondents preferred smaller events that were goal-oriented and encouraged participants to meet new contacts.

Racialized licensees are generally more likely to work in small firms or as solo practitioners; it makes sense to match them with mentors who can relate to the professional challenges racialized licensees face in the professional setting they currently work or aspire to work in. Mentors to racialized licensees should be sensitive to the issues faced by racialized licensees. Several survey respondents reported feeling alienated by mentors who were condescending in their approaches. One-on-one meetings and smaller events ought to be offered to racialized licensees, and the LSUC should ensure that mentors at all events are equipped to mentor racialized licensees. ACLA also recommends that mentoring be offered to law students, to assist racialized students navigate opportunities and career options. This provides further opportunities for partnerships and cooperations between equity groups and the LSUC.

5.0 CONCLUSION

ACLA applauds the LSUC for undertaking this important consultation. Indeed, it will only strengthen the legal community as a whole to have its leader engage with racialized groups like ACLA in the pursuit of principles for effective reform for inclusivity. The LSUC has an important role to play in using the information gleaned from racialized groups to then effect a leadership role for change. ACLA hopes its submissions will be useful in informing that change.

Schedule 1: Summary of Stratcom Survey findings

- Almost half of racialized respondents (41%) 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 Arab respondents (46%).
- Survey respondents who most frequently identified the types of social activities that they prefer as a barrier to advancement were from several racialized communities including: Arab (33%).
- 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. Racialized groups more likely than average to name all three factors as probable or definite sources of career disadvantage included Arab respondents.
- Racialized licensees who were most likely to cite race/ethnicity as a barrier to entry included Arab respondents (50%).