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VIA E-MAIL

Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Re: Challenges Faced by Racialized Licensees Consultation Paper

Ladies and Gentlemen:

Thirty-five years ago, I articulated on Bay Street. During my entire articles, I did not encounter another Black articling student or a Black lawyer among the Bay Street law firms. When I sought an associate position on Bay Street following a judicial clerkship with the Chief Justice of Ontario, an LL.M. from Harvard, and a stint with a prominent U.S. law firm, I found the doors of the Bay Street firms closed to me.

While the situation is better today than it was back then, the fact is that it could not have gotten much worse. I am heartened that Black lawyers are now among the partner and associate ranks of many Bay Street firms. But until relatively recently, their absence from Bay Street firms was striking.

I commend the Law Society for its thoughtful and comprehensive approach to the challenges faced by racialized licensees. I have been vitally interested in these issues since my Call to the Bar almost 34 years ago. Indeed, I was among the first lawyers who publicly addressed the challenges faced by Black lawyers on Bay Street.¹

Many, if not most, of the challenges that I experienced more than three decades ago, remain. It is especially troubling because the Law Society recognized the problem almost 20 years ago in its Bicentennial Report. At that time, the Law Society accepted the responsibility to take the lead in eliminating discrimination and racism in the profession. Yet, almost two decades later, the same problems persist.

¹ See, e.g., Michael St. Patrick Baxter, "Black Bay Street Lawyers: Looking Back, Looking Ahead" (1994), 28 *Law Society Gazette* 32, and Michael St. Patrick Baxter, "Black Bay Street Lawyers and Other Oxymora" (1998), 30 *Can. Bus. L.J.* 267.

It is not surprising that the Consultation Paper identifies lack of mentoring among the challenges faced by racialized licensees. Mentoring is the single most important factor in associate success in law firms. This is so for all associates, not just racialized licensees. But the lack of mentoring disproportionately affects racialized licensees. They are less likely than their peers to find mentors, and to be mentored. A primary reason for this is the natural affinity we all have for people who remind us of ourselves. Mentors will gravitate towards articling students and associates with whom they identify. These articling students and associates are not likely to be the Black students and associates. Consequently, it is more difficult for racialized licensees to form mentoring relationships; yet these relationships are essential to their training and success.

When the Bay Street firms opened their doors to Black lawyers, they did not open them very wide. The firms focused their recruiting attention almost exclusively on the “superstar” Black law students.² As a result, a few firms added a Black articling student or a Black associate to its ranks. Of the firms that did, many convinced themselves that their work was now done because a single Black articling student or Black lawyer was now among their ranks. When these Black associates did not become partners -- despite their superstar credentials -- the firms focused on replacing them with a Black articling student or another Black lawyer, but continued to fail to devote much attention to their mentoring and retention. Given the importance of mentoring, it is not surprising that Black lawyers continue to be profoundly underrepresented in the Bay Street firms.

Law firms must develop an organized and concerted effort to both recruit and mentor racialized students. As much, if not more, attention must be paid to the mentoring of racialized students, as to their recruitment. Indeed, once in the door, the firm’s real work begins; the work of mentoring, training, developing, and retaining racialized articling students and lawyers.

Of the models suggested in the Consultation Paper, one-on-one mentoring by law-firm partners of their students and associates is probably the most effective mentoring model. These partner/mentors have the unique ability, by virtue of their position in their firms, to provide the best insight and guidance to, and mentoring of, their students and associates. Moreover, many of these partners will care deeply about the development and future of their students and associates. But not all partners have the necessary mentoring skills or the motivation to mentor. As the practice of law has become more businesslike, partners, have become more focused on client development, than on associate development. Consequently, mentoring is often pushed further and further down a partner’s list of priorities.

² This recruiting approach set a bar (or perhaps a barrier) for Black articling students that, in many instances, was higher than their peers’.

I would suggest at least three ways to try to address this challenge. First, law firms should develop a formal mentoring program (if they have not already done so). The program should involve the training of mentors because not all partners have the skills to be a good mentor, and even good mentors can benefit from some training. The program should carefully match racialized articling students and lawyers with partners. A good match is essential to create the rapport necessary to successful mentoring.

Second, partners should be recognized for successful mentoring (or noted for unsuccessful mentoring). Many partners will not be motivated to devote the effort necessary to successful mentoring unless they believe it will have a personal and direct impact on them within their firms. Moreover, firms should recognize that significant partner time and effort is essential to successful mentoring.

Third, to ensure they are working as intended, mentoring relationships should be periodically evaluated from the perspectives of both the mentor and the mentee.

The next-best mentoring models are one-on-one mentoring of racialized licensees by senior lawyers at a firm different from the racialized licensee's or professional one-on-one mentoring. While these mentors will lack the firm-specific insight of the partner-mentor, they will have other relevant law-firm experience helpful to mentoring. Moreover, because they will be an all-volunteer corps, these mentors should be motivated to devote the time and effort necessary to successfully mentor. Again, all mentors should have some training, and there should be careful matching of racialized students and licensees with mentors. In addition, there should be periodic evaluation of the mentoring relationships.

Limited-scope advisor services or a remunerated panel of advisors may be effective mentor models for racialized licensees in solo or small-firm practice. To be effective, however, it will probably have to be at least medium-term rather than short-term. If the relationship is short-term, there may be insufficient time to build the rapport necessary for a good mentoring relationship.³

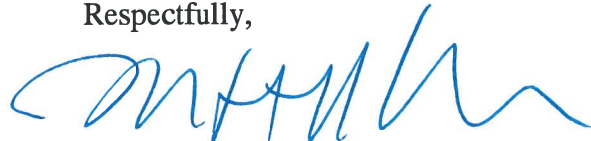
The other mentoring models suggested in the Consultation Paper are probably less effective. Group mentoring may promote only one-way communication from the mentor to the mentees. Because of the quasi-public nature of group mentoring, it may impair meaningful communication from the mentees to the mentor. The same may be true of team mentoring. Distance mentoring may not be conducive to creating the rapport necessary for a good mentoring relationship. Peer mentoring may be the least effective because peer mentors will probably lack the experience, insight, and professional relationships necessary to provide sound counseling and guidance. Nonetheless, mentoring is so essential to young lawyers that, despite these drawbacks, any form of mentoring may be better than no mentoring at all.

³ There may be a potential for client conflicts, which may require greater client disclosure than may be desirable by the mentee.

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Mentoring is the single most important factor in a young lawyer's success. Racialized articling students and licensees are substantially less likely than their peers to be mentored or to develop these critical mentoring relationships. As a result, they are substantially less likely than their peers to succeed in the legal profession. The Law Society should develop effective mentoring models and promote their use among its members.

Respectfully,



Michael St. Patrick Baxter

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cc (via email):
President, Canadian Association of Black Lawyers