



**Canadian Hispanic Bar Association
Consultation Paper in Response to the
Law Society of Upper Canada's
Challenges Faced by Racialized Licensees Report
March 15, 2015**

Introduction

1. The Canadian Hispanic Bar Association (the "CHBA") is a national organization that represents licensees and prospective licensees who self identify as Hispanic, Latin American or who identify as being of Hispanic or Latin American descent. This broad base has resulted in a membership that enjoys diversity in national and cultural origins, political backgrounds, religious and linguistic traditions, sexual orientation, indigeneity and immigrant experiences. Uniting our membership however, is the shared experience of racialization, which manifests itself in both implicit and explicit forms in the daily experiences of our members.
2. This consultation report draws on the lived experiences of our members to inform the below recommendations on the LSUC's Challenges Faced by Racialized Licensees Report ("CFRLR")

Background Information on our Members

3. Racialization is an external process whereby racial identities are ascribed by a dominant group to another group based on, *inter alia*, perceived physical characteristics and social practices. It is thus first important to understand the different ways in which racialization is experienced by our members.
4. Our members may first experience racialization due to their skin colour. Hispanic/Latino's may self-identify as one, or a combination of: mestizo, indigenous, white, black, or Asian. This is due to the fact that several of the countries from which our members draw their heritage also have distinct histories of immigration and/or colonization. These distinctions have led to some members identifying as 'Hispanic', while others prefer the term 'Latin American', and others prefer a term referring to their indigeneity, for various social, linguistic and political reasons.

5. Our members may also experience racialization if they have an accent, or due to their identity as a recent immigrant. Or they may be racialized on the basis of cultural, religious, or familial traditions that differ from the dominant group. And of course, overlaying all of the above distinctions, albeit with different degrees of application, is the racialization of our members based on real or perceived membership in lower socio-economic classes.
6. As can be seen from this brief explanation, the CHBA's membership is a mosaic. Like any mosaic however, the different experiential elements of our members are held together in a larger composite entity. In this case, the larger entity is comprised of the shared and common experiences of characteristics such as the Spanish language, heritage in Latin America, the Caribbean and/or Spain, immigration, and membership in the Canadian legal community.
7. It is in response to both the common and unique experiences of our members that we provide our recommendations below. For the purposes of this paper, we have focused on the experiences of our Ontarian membership, which comprises the majority of our members.

Question 1: How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?

8. The CHBA strongly believes that the LSUC should take a leading role in assisting firms and organizations with in-house counsel ("legal workplaces") to establish diversity programs.
9. We believe in an approach that engages mandatory minimum standards established by the LSUC for all law firms, coupled with further particularized standards developed by each legal workplace in consultation with the LSUC, and mandatory reporting on these measures by each legal workplace.
10. These minimum standards would be process oriented, whereas the particularized standards would be substantive in nature.
11. For example, the CHBA believes that the LSUC should create minimum process-related diversity standards for all legal workplaces that cover creating internal policies for:
 - bias-free assessments of written applications for employment;
 - bias-free interviewing techniques;
 - inclusive social/networking events;
 - mentoring programs;
 - career advancement;

- recognizing and providing training on the intersectionality of race, class, gender and age as manifest in all of the stages of an individual's career.
12. The LSUC would then work with individual legal workplaces to particularize and further develop these standards to the specific workplace. Legal workplaces would then have to report that they have created such policies, and report on an annual basis if their particularized standards were achieved or not. This would be similar to the "comply or explain" program of the Ontario Securities Commission. This would increase the accountability and transparency of legal workplaces in their treatment of racialized licensees, while encouraging a culture of compliance across the province.
 13. The above approach is an appropriate mix of "top-down" minimum standards, with "grassroots" particularization of these standard to each workplaces. We believe that this appropriately reflects the role of the LSUC as regulator of all licensees in Ontario, and the need for minimum standards that are applied consistently across the province, while also acknowledging the highly particularized institutional knowledge of individual law firms in how such standards can be augmented and applied in their particular context.
 14. Noting that this question is geared towards the encouragement of diversity *within* firms, the CHBA would like to highlight that many racialized licensees end up working as sole proprietors, or in very small firms. While the CHBA supports the LSUC establishing programs such as described above, we would caution that this should not be done at the expense of program funding to assist sole proprietors or small firms comprised of racialized lawyers remain competitive in a racialized marketplace.

Question 2: What is the preferred model for the collection of firm demographic data and why?

15. The CHBA believes that the preferred model for the collection of firm demographic data is through the LSUC's Annual Report (LAR) and the Paralegal Annual Report (PAR). Various benefits to the LSUC collecting such data include the fact that a mechanism already exists for this, and that this information can already be cross referenced to characteristics such as gender, year of call, size and type of legal workplace, and area of practice through the annual reports.
16. The CHBA suggests that the LSUC should provide firms with their own demographic data and require that the mandatory reporting of the firms on their diversity standards (as explained in Question 1) be made in reference to this information.

17. Alternatively, the CHBA believes that firms should be required to collect their own demographic data for the purposes of assessing year to year trends and informing the diversity standards referenced in Question 1. Such information would be reported by a given firm to LSUC, but not otherwise shared or publicized. (Individual firms, however, might choose to make their own data public in order to highlight their own efforts and achievements in increasing diversity).

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?

18. It is our view that the LSUC can encourage contract compliance by creating a registry of legal workplaces that have committed to supporting diversity both 1) within their own workplaces and 2) with their own contractors. This registry would be publically available for access by potential clients in deciding who they want to hire for legal services.
19. The idea of promoting diversity within one's own department and also considering diversity in hiring and purchasing decisions is not new and has already been implemented by two organizations that that the LSUC can look to for guidance: Legal Leaders for Diversity ("LLD") and the Canadian Aboriginal & Minority Supplier Council ("CAMSC").
20. We note the LSUC's awareness of LLD and the CFRL Working Group's reference to this organization in its Consultation Paper. As the Working Group knows, LLD was formed by in-house lawyers of large national and multinational organizations and now has 70 organizations that have signed on and are committed to increasing diversity in the legal profession. The organizations that are a part of the LLD are committed to promoting diversity within their own departments and also in their hiring and purchasing decisions.
21. The role of CAMSC is different, but complementary. It acts to link major corporations and institutions with Aboriginal and minority owned businesses that offer various goods and services. CAMSC's members are then encouraged to solicit tenders from these businesses. It also assists Aboriginal and minority owned firms to use the network for the promotion of their products and services to corporate members and to help those firms develop and market their capabilities.
22. Drawing on the above examples, the CHBA believes that there is a large role for legal workplaces to play in their role as either the supplier or purchaser of services in increasing diversity.

23. As a supplier of services, the legal workplace can establish that it is comprised of a minimum proportion of racialized licensees. Potential clients can access this list when considering procuring legal services.
24. As a purchaser of services, legal workplaces can commit to purchasing goods and services (such as office equipment, process servers or couriers) from businesses that can establish that they are majority owned by racialized individuals.
25. In such a manner, firms can promote diversity both by being comprised of racialized individuals to respond to the market demand for diverse legal providers, and by purchasing services from other diverse businesses. It would be the LSUC's role to act as a registry for this kind of information.

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

26. The CHBA believes that both one-on-one mentoring and broader networking events and information sessions are desirable and necessary. One-on-one personal interactions have the potential of allowing racialized licensees to seek advice in a safe and private manner, while larger events allow individuals to build connections and networks.
27. The CHBA recognizes that several diversity associations, (including the CHBA), offer mentoring programs and networking events, but that such programs and events could benefit from logistical and funding support from the LSUC.
28. We can report that there is a strong interest in mentoring both from potential mentors and mentees in the CHBA, but that logistical roadblocks such as finding an affordable space for events often limit the frequency in which mentoring and networking can occur.
29. We acknowledge that some identity based organizations are very well established, however, smaller or newer organizations may need greater assistance in strengthening their networks. We suggest that the LSUC make space available at no cost, to diversity organizations of smaller size or comparatively limited means for networking/mentoring events.
30. With regards to the LSUC's own mentoring program, the CHBA strongly believes that all prospective LSUC mentors should be required to take a module on diversity and equity issues.

31. Whether the mentoring is structured through diversity organizations or the LSUC, the CHBA also supports the concept of “sponsorship”, which can be viewed as an augmentation of the mentoring process.
32. Sponsorship is the process whereby a sponsor/mentor takes an ongoing interest in the career development of the mentee, with a specific focus on exposing the mentee to different types of practice and/or broader networks. This exposure can be effected through attending events together, or the mentee “shadowing” the sponsor.
33. As an example, (and assuming that all requisite confidentiality issues have been assessed), a sponsor could invite a mentee to attend the Annual General Meeting of a client, or to attend the meeting of the Board of an NGO that the sponsor sits on. The sponsor could invite the mentee to networking events that the mentee would not otherwise have access to, or the sponsor and mentee could attend public events together with the goal of increasing the mentee's networks.
34. The CHBA also believes that the LSUC could hold a large mentoring/networking event where it invites influential racialized members of the bar to speak about their experiences, and where racialized licensees can later network with these individuals in a more informal, and perhaps group setting.

Question 5: What are the preferred networking models for racialized licensees?

35. The CHBA's members support both general networking events, as well as those that focus on racialized licensees.
36. We echo our comments above that the CHBA, like many diversity organizations already, hold networking events, which the LSUC should support with no cost, and increased logistical support.
37. We also echo our comments that the LSUC should hold combination mentoring/networking events that focus on racialized licensees, and invite leading practitioners in various fields.
38. However we also believe that the LSUC should engage in more proactive measures to ensure the attendance of racialized licensees at “general” networking events.

39. The CHBA notes that the concept of networking, where strangers “cold” introduce themselves, (instead of being introduced by an acquaintance in common), can be a culturally foreign concept to many licensees. Anecdotal information from our members suggests that licensees may feel awkward about attending such events alone due to cultural or linguistic barriers. We recommend that the LSUC consider providing one free entrance ticket to racialized licensees who would not otherwise attend networking events alone, so that they may feel more comfortable attending with a colleague.
40. The LSUC could also encourage its benchers and senior members to sponsor racialized licensees with whom they are not already acquainted to attend law society events as the benchers/senior members’ guests. Consideration might be given to establishing an event sponsorship program for racialized licensees.
41. As well, given that racialized licensees are over-represented as sole practitioners, the CHBA recommends that the LSUC work with event providers to implement a sliding scale or free-of-charge CPD programs to these individuals so that they do not have to give up extra income solely for the purpose of networking.

Question 6: How could the Law Society enhance the profession’s cultural competence through its Continuing Professional Development (CPD) Programs?

42. The CHBA recommends that the LSUC require that all licensees complete one (1) hour of CPD dealing with cultural competence, diversity issues, and anti-oppression training on an annual basis. These issues should also be part of the professionalism requirement for licensing.
43. The CHBA stresses that the content of the CPD be informed by anti-oppression theory, which invites an exploration of how structures of power, privilege and oppression operate in society. This would involve a complex examination of how the daily manifestations of oppression such as racism, sexism, heterosexism, ableism, and classism affect the dynamics of the legal profession.
44. Such an examination must also encourage self-reflection on those of the dominant group about the ways in which they have been privileged due to the operation of systemic discrimination. An example of a theory that emphasizes self-reflection is that of “White privilege,” which explains that individuals perceived as white enjoy privileges that they do not necessarily perceive, but nonetheless benefit from.
45. These benefits include: cultural affirmation of greater social status, cultural assumptions of professional competence and legitimacy, and the freedom to communicate thoughts and views without being asked ‘othering’ questions about

their ethnic origins, age, or religion. The self-examination required to recognize the privilege of the dominant group, and one's positionality to racialized individuals is crucial to building a culture of diversity in the Ontarian legal community.

46. Given the complexity of the above subject matter, the CHBA also proposes that the LSUC create a mechanism by which to ensure compliance with content delivery during online courses or webcasts that deal with this topic to ensure that the recipients have understand this important information. For example, it may be required that attendees call in for the segment dealing with cultural competence, or that they answer a question via email at the end of the session to demonstrate understanding of the information.
47. The CHBA strongly suggests that the LSUC develop rigorous standards for what content is appropriate to fulfill this mandatory requirement before accrediting content for CPD hours, and that it consult with racialized licensees and identity based/equity seeking legal organizations in developing these standards.

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

48. The CHBA further believes that individuals should have two streams by which to address discrete and individual acts of discriminatory conduct: 1) the traditional approach already offered through the office of the Discrimination and Harassment Counsel and 2) and an anonymous approach that focuses education and restorative justice as described below. The CHBA also suggests the creation of a third stream of complaint resolution that focuses on systemic discrimination.
49. To the first point, the CHBA submits that the LSUC needs to increase awareness of the office of the Discrimination and Harassment Counsel. This may be done through an awareness campaign and/or the delivery of CPD programs.
50. To the second point, the CHBA below presents submissions on the goals and processes that such an alternate anonymous/restorative justice system should embody. The CHBA believes that the LSUC should take these larger picture elements into account, and then consult with stakeholders as to the operational aspects of this system.
51. The CHBA first stresses the importance of anonymity in this alternative mechanism. Both the anecdotal and statistical information gathered both by

Stratcom and the CHBA demonstrate that serious discriminatory actions are taking place annually in the Ontarian legal community with impunity. And yet racialized licensees are not coming forward with complaints.

52. The CHBA's members advise that racialized licensees do not come forward with complaints because of their already vulnerable professional status in the Ontarian legal community, and fear that coming forward with a complaint would negatively affect their career.
53. The CHBA's members also advise that they do not come forward with complaints in the current mechanism since comments such as being asked "what country they are from" or being confused for event staff instead of licensees, or being told that they look like they are in high school, are "not worth" bringing up due to their subtle and singular nature.
54. However, it is the very nature of discrimination as acts of micro-aggressions against individuals, who may be separated by space and time, that has allowed discrimination to continue in the Ontarian legal community. For example, an individual may make a discriminatory comment to a colleague, a stranger at a networking event, and opposing counsel over the course of several months, and yet each victim would be unaware that the 'singular' comment made to them actually comprises a pattern of behaviour by the perpetrator.
55. To this point, the CHBA notes that its younger female members have reported an increased frequency of discriminatory comments- a finding that is consistent with that mentioned in the Stratcom report. These members report being a more frequent target of comments by older male licensees, which focus on their age, ethnic background, or even body size, instead of their professional interests. For example, such members have reported that older male licensees have made comments to them that relate to their body such as "you must be on a diet," or "you should wear heels to look taller in court."
56. As a result of being the recipient of such comments, one of our members has reported a hyper-vigilance amongst younger female racialized lawyers about whether hairstyles (such as voluminous curly hair) or jewellery (such as big earrings) will be perceived as too "ethnic", and thus not "professional" by their colleagues, clients, or the court.
57. As can be seen from the above, the ways in which these licensees feel a need to self-police their appearance as it relates to certain racial or cultural markers to appear "professional", demonstrates the negative effect that discriminatory comments has had on various of our members.
58. It is for this reason that the LSUC should make the creation of an anonymous complaint process its utmost priority in moving forward with the CFRLR, so that discriminatory actions can be reported. If such a mechanism is not established,

the CHBA believes that its members will continue to be the subject of racist, sexist, heteronormative, classist, and other exclusionary comments, which is unacceptable.

59. Indeed, the CHBA would like to be clear that various of its members have advised that they would bring forward complaints relating to the micro-aggressive comments if an anonymous process was available.
60. Once the anonymous complaints are collected by the LSUC, the CHBA suggests that an educational/ restorative justice approach be adopted. This restorative approach would have as one of its tenants that discriminatory actions are an offence both to the individual and the larger Ontarian legal community.
61. It would encourage the perpetrator to understand: why their actions were discriminatory, the effect of such actions on the victim, and why such actions are inconsistent with maintaining a culture of diversity in the Ontarian legal community. This approach could adopt an anti-oppression training module as part of the rehabilitation of the perpetrator, and can encourage licensees to admit wrongdoing without apprehension of discipline by the LSUC and publication of such in the *Gazette*, so long as they comply with the restorative process outlined for them.
62. The CHBA believes that the LSUC should engage in further research and consultation in developing the guidelines as to how this approach would be operationalized at the firm, department, or individual level.
63. In summation of the second point, the CHBA believes that the LSUC should create an alternative complaint system that focusses on anonymity and restorative justice.
64. To the third point, the CHBA believes that singular acts of discrimination and micro-aggressions will never be abolished if the LSUC does not also address the structural barriers faced by racialized licensees in their career advancement. This is due to the fact that it is the systemic practices of legal workplaces, the courts, and the regulator of the profession that contribute to a culture in which *individual* acts of discrimination actions still occur.
65. As such, we also propose that the LSUC create a mechanism whereby complaints of systemic discrimination can be addressed, and that LSUC Discrimination and Harassment Counsel assist individuals in presenting their case. The CHBA believes that the form of this mechanism should be developed with the LSUC in consultation with other diversity organizations.

Question 8: Which Initiatives/strategies should the Law Society consider to Develop a more diverse and inclusive public image/face?

66. The LSUC should make a concerted effort to ensure that its staff, especially those who are tasked with dealing with issues of diversity or discrimination, are themselves racialized.

67. The LSUC should also make an effort to encourage and support racialized lawyers to run for the position of Bencher. The LSUC can also develop a more diverse and inclusive public image by offering logistical and financial support to Diversity organizations who wish to hold CPDs and other events celebrating the heritage of their members at Osgoode Hall.