

CANADIAN MUSLIM LAWYERS ASSOCIATION

SUBMISSIONS ON CONSULTATION PAPER RE:
DEVELOPING STRATEGIES FOR CHANGE: ADDRESSING CHALLENGES
FACED BY RACIALIZED LICENSEES



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SUBMISSIONS ON CONSULTATION PAPER RE: *DEVELOPING STRATEGIES FOR CHANGE: ADDRESSING CHALLENGES FACED BY RACIALIZED LICENSEES*

The Canadian Muslim Lawyers Association (the “CMLA”) applauds the steps taken by the Law Society of Upper Canada (the “Law Society”) to study the challenges faced by racialized licensees and promote equity and diversity in the profession. The CMLA has reviewed the Law Society’s consultation paper *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* (the “Consultation Paper”) and is eager to provide input, in the form of written submissions, on challenges faced by CMLA members and ways to achieve long-term solutions to these challenges. The CMLA remains available to provide further written or oral submissions as required by the Law Society.

Our submissions consist of the following:

1. Background information on the CMLA and its capacity to comment on racialized licensees;
2. General devotional challenges faced by CMLA members;
3. Challenges faced by CMLA members who are internationally trained lawyers; and
4. Specific means by which the Law Society can partner with diversity-based organizations to achieve viable long-term solutions.

1. Background

a. Introduction to the CMLA

The CMLA was founded in 1998 by a small group of Toronto-based Canadian Muslim lawyers. At the time there were few Muslim lawyers in Canada and the founding members merely sought to create a social club that could yield ancillary professional benefits.

The CMLA has grown exponentially since it was founded. It now has over 300 members across Canada and boasts chapters in Ontario and Quebec. Some of the activities the CMLA has engaged in include appearing as an intervener before the Supreme Court of Canada, making submissions to Parliamentary committees on human rights and civil liberties, hosting access to education initiatives in the Greater Toronto Area and Montreal (including free legal education seminars for members of the public) and regular

networking events to connect CMLA members to each other and to members of other legal organizations. Over the next twelve months, the CMLA will be launching its national mentorship program, hosting a French-language CPD in Montreal and assessing the viability of launching additional chapters in western Canada.

b. The CMLA and Racialized Licensees

The CMLA is well-equipped to provide comment on racialized licensees. Canadian Muslims constitute an identifiable social group whose members share a variety of intersecting grounds of common identity. This group is not homogenous and includes individuals of varying levels of faith and practice, as well as those with no faith whose cultural identity is identified at least in part as “Muslim”. Muslim lawyers can face obstacles as a result of simply being “Muslim” or practicing their faith in a specific way. Muslim lawyers may also face obstacles as a result of factors such as race, colour, ethnicity, ancestry or place of origin. As a result, Muslims can be considered a racialized group within Canada according to the description of race and racialization cited in the Consultation Paper.

2. General Devotional Challenges faced by CMLA Members

While challenges faced by Muslim lawyers are diverse, the purpose of this section is to highlight common devotional challenges for those who identify themselves as practicing Muslims. This section also contains ways these challenges can be alleviated, including selected workplace initiatives presented in the Consultation Paper. For a discussion of long-term strategies not included in the Consultation Paper, please see Section 4 (Long-term Solutions: Working with Diversity-Based Legal Organizations) below.

a. Understanding Alcohol

The cultural norms associated with alcohol are well-entrenched at firms and other legal settings. Many social events in the legal profession revolve around alcohol and there is a prevalent “wine and dine” culture present within the profession. This prevalence can be seen in the experience of one CMLA member who described having to attend “good-bye drinks” for himself organized by his firm, even though the organizers knew that he did not drink.

While there are some Muslims who drink alcohol, there are significantly large numbers of Muslim lawyers that do not drink alcohol and are uncomfortable with the central role alcohol plays at professional events. The best way to illustrate the wide range of discomfort is to describe it as a “spectrum of discomfort”. At one end of the spectrum is the discomfort associated with not drinking in settings where the majority of individuals are drinking alcohol. At the other end of the spectrum is the discomfort of not wanting to interact with alcohol in any way. For example, a Muslim lawyer may feel uncomfortable

holding a glass or bottle containing alcohol, paying for alcohol (in the context of taking out a client or splitting a bill), or working for a client that is an alcohol provider. While it may not be difficult for a Muslim lawyer to articulate that he or she does not drink, it often proves more difficult to explain that he or she wants to limit exposure to alcohol as much as possible, since this could potentially “rock the boat” with more senior lawyers. If a Muslim lawyer does attempt to avoid scenarios that put him or her in an uncomfortable position vis-à-vis alcohol, it could ultimately damage career advancement.

The CMLA supports options presented in the Consultation Paper with respect to firms and organizations adopting either a diversity project in conjunction with the Law Society or a self-assessment related to diversity. Such methods will help foster an environment where Muslim lawyers can communicate their discomfort with ease, and firms and organizations can steer away from the over-reliance on alcohol as a social lubricant in professional settings. However, these methods will likely not be as effective in smaller legal settings. The CMLA therefore also supports the Law Society’s recommendation to include a required cultural competence CPD. A CPD of this nature will ensure that lawyers in larger settings also develop an understanding of these types of issues.

b. Friday Prayer and Ramadan

Muslims observe an obligatory congregational prayer every Friday (akin to Sunday church service), which takes place in the early afternoon at a mosque or other facility. Those who regularly attend the prayer are usually able to do so on their lunch break as the service is typically about forty-five minutes in length. While some CMLA members do not feel the need to mention Friday prayer to their employer or other lawyers, problems may arise when a meeting or event is scheduled for a Friday afternoon, or if other work-related obligations require them to stay in the office all afternoon. Some CMLA members expressed concern that telling senior lawyers or an employer about Friday prayer in advance (to avoid any future issues) might make them be seen as unreliable due to the “immense pressure” to be available to work at any hour and without any constraints. In one case, a CMLA member said that when he did mention Friday prayer to a senior lawyer, it was met with indifference.

Similar issues arise during the Islamic month of Ramadan. During this month, Muslims fast for the entire month by refraining from food and drink from sunrise to sunset. While there are typically no work-related impediments for Muslim lawyers who want to observe fasting, the month can become challenging when increased work-related demands are made in the evening, such as receptions and other social events, as well as excessive amounts of work assigned by more senior lawyers. Like Friday prayers, Muslim lawyers may be reluctant to communicate their personal spiritual needs during this month because they do not want to give the impression that they have any sort of constraints on their time.

The CMLA believes that at the heart of these issues is the inability of many employers to foster open environments where lawyers can communicate their spiritual needs. There seems to be a general paranoia among younger Muslim lawyers that not being available to work around the clock will result in not getting work – ultimately to the detriment of their career. The CMLA reiterates its position stated above regarding firms and organizations adopting the diversity project or self-assessment, in addition to the creation of a cultural competence component in a required CPD, as ways to help build an open environment.

c. The Law Society and Religious Holidays for Articling Students

The CMLA would like to see the Law Society officially accommodate religious holidays for articling students. At the moment, if an articling student wishes to take a day off to celebrate a religious holiday, they are forced to either take one of ten allotted vacation days or apply for an Abridgment of the Articling Placement, based on compassionate grounds. Both options are unacceptable considering that employers in Ontario (including many law firms that hire articling students) are increasingly giving their employees days off for religious holidays in addition to existing vacation days. An Abridgment application is unnecessarily bureaucratic and does not reflect our increasingly multicultural and multi-religious society.

d. Challenges Faced by Muslim Women

Some of the most obvious challenges faced by female Muslim lawyers tend to involve wearing the *hijab*, a scarf used to cover a woman's head. While the CMLA members we spoke to did not report any overt discrimination on the basis of wearing *hijab*, one CMLA member reported an incident from 2008 where a judge did not realize she was a lawyer and asked her if she was "self-represented or represented by counsel". Although the judge was very embarrassed and apologetic when the confusion was cleared up, the incident highlights underlying assumptions and lack of understanding regarding the type of women who wear the *hijab*.

The CMLA is concerned with the manner in which female Muslim law students may be treated in job interviews. In the course of a recruiting interview for summer positions, one student reported being asked inappropriate questions about her *hijab* by a senior lawyer. The student reported that the incident occurred during a social event held in the course of the recruiting process. Unfortunately, such incidents are not uncommon and have a profound effect on young lawyers starting out in the profession.

The CMLA encourages the Law Society to work with organizations such as the CMLA and the Canadian Association of Muslim Women in Law to debunk stereotypes associated with Muslim women and those who wear the *hijab*, and prevent discrimination

and assumptions regarding female Muslim lawyers from forming. The CMLA also encourages the Law Society to organize events open to the profession and invite Muslim women to speak on issues related to diversity, faith and practicing law.

3. Internationally Trained Lawyers

The CMLA membership includes a number of internationally trained lawyers. These include experienced practitioners from other jurisdictions that recently immigrated to Canada, as well as Canadians who attended law school in another common law jurisdiction. The purpose of this section is to highlight concerns that have come to the attention of the CMLA from its members that are internationally trained.

a. Mentorship Opportunities

Internationally trained CMLA members are concerned about the lack of mentoring opportunities available to them, in addition to the absence of institutional support from Canadian law schools during the re-qualification process. The CMLA proposes that the Law Society develop robust mentorship delivery mechanisms by partnering with diversity-based associations such as the CMLA, the South Asian Bar Association and the Federation of Asian Canadian Lawyers and building their capacity to provide peer support. For more details on mentorship and peer support, please see Section 4a below.

b. Undervalued Foreign Law Schools

Internationally trained CMLA members also felt that law firms, particularly corporate and business law firms, are very reluctant to consider applicants who have received their legal training outside of Canada. This reluctance stems from a lack of knowledge regarding curriculums in foreign law schools as well as the perception that only those who were unable to get into a Canadian law school decided to pursue law abroad. The different methodology used in foreign law school transcripts complicates matters further. As a result, internationally trained lawyers are frequently unable to get interviews and are not given the opportunity to demonstrate their competence and expertise.

The CMLA requests that the Law Society explore ways of educating the profession in general and law firms in particular regarding the high professional and academic standards possessed by many internationally trained lawyers who decide to re-qualify in Ontario, and the rigorous re-training process internationally trained lawyers must undergo before being called to the Ontario Bar.

c. Internship/Placement Opportunities at Leading Law Firms

Large Canadian law firms typically recruit and make offers to second year law students beginning with the on-campus interview process. The inflexibility of this process is a

huge barrier for internationally trained lawyers who are unable to take advantage of the process for reasons including a mismatch in academic year timing and not technically being “students”. Although the University of Toronto Internationally Trained Lawyer Program is a step in the right direction, internationally trained CMLA members felt that the scope of this program is limited.

The CMLA recommends that the Law Society work with law firms to recruit and provide a significant number of internships and/or placement opportunities to internationally trained lawyers outside of the on-campus interview process. In particular, law firms should be encouraged to offer placement to lawyers who have re-qualified in Ontario, but are unable to find employment due to lack of Canadian experience.

d. Exemption from Articling

The Law Society allows internationally trained lawyers with experience outside Canada in a common law jurisdiction to seek exemption from the articling requirement. However, many of the lawyers who received the exemption were unaware that the law firm recruitment process is heavily dependent on where a person articulated. As a result, these individuals had a significant barrier removed only to have another barrier appear. For some internationally trained CMLA members, it has become clear that associate positions without any articling experience in Canada are even more difficult to come by than articling opportunities.

The CMLA recommends that the Law Society consider ways to fully inform those seeking an exemption about the disadvantages of doing so. One option is to make it mandatory for internationally trained lawyers applying for the exemption to attend an information session, either in-person or through a webcast. The information session would provide full disclosure on the disadvantages of obtaining an exemption, which would ensure that those who do seek the exemption make a fully informed decision.

4. Long-term Solutions: Working with Diversity-Based Legal Organizations

a. Peer Support Beyond Mentorship

The CMLA unreservedly endorses the Law Society's conclusion that racialized licensees have much to gain from mentoring. Nonetheless, the CMLA departs from the view presented in the Consultation Paper in two ways.

First, while the CMLA is launching its own formal mentorship program, the CMLA has consistently undertaken activities related to “peer support” in all of its programming. In the CMLA's view, peer support comprises more than just mentoring. Peer support can be understood as providing CMLA members with a comprehensive network of professional contacts that are able to support the individual lawyer. The comprehensive network may

include a formal senior mentor, but crucially also informal mentors who expand the mentees network of contacts. In addition, a comprehensive network should include peers who share the struggles facing the mentee. Inherent in the notion of peer support is the recognition that a single senior mentor, on his or her own, may be insufficient to support robust career development.

Second, diversity-based legal organizations are ideally positioned to deliver peer support to their members. These organizations, the CMLA, the Canadian Association of Black Lawyers and the Federation of Asian Canadian Lawyers to name a few, are trusted brands and have deep penetration in their respective constituencies. Further, they can offer mentors who, as members of the same racialized community, are intimately familiar with the challenges faced by racialized licensees. The CMLA therefore recommends that the Law Society allocate resources to support the work of diversity-based legal organizations and to build their capacity to provide peer support.

b. Empowering Diversity-Based Organizations

The Law Society can potentially play a transformational role in increasing the participation of racialized licensees in Ontario by empowering the legal organizations with which they most closely identify.

Empowerment takes place at a number of levels. First, and at the most basic level, the Law Society could provide direct financial support to peer support programs of diversity-based legal organizations. Direct financial support could be made in the form of performance-based grants, for example. Financial support may yield some benefit but it is not a complete solution – it is the most basic means of empowerment.

A second, higher level of empowerment comes in the form of providing diversity-based legal organizations with other resources like access to a pool of dedicated support staff. Support staff could provide technical expertise, for example, to enable diversity-based legal organizations to build online infrastructure to manage peer support programming. Other resources that may be helpful are subsidized meeting or event space for diversity-based legal organizations.

The highest level of empowerment would be for the Law Society to create fora to encourage diversity-based legal organizations to interact with each other. These fora can enable the exchange of best practices between administrators of peer support programming. They can also enable networking between the memberships of diversity-based legal organizations in order to increase the networks of racialized licensees beyond their own communities.

The means by which the Law Society can enhance the capacity of diversity-based legal organizations is infinite. The bottom-line, however, is that the Law Society can do more

to support the development of diversity-based legal organizations. If the Law Society's goal is to reduce the barriers faced by racialized licensees, it can start by embracing partnerships with the organizations with which racialized licensees most closely identify. The CMLA submits that embracing these organizations as partners and supporting their work will yield significant benefits to racialized licensees.

Conclusion

The CMLA thanks the Law Society for taking the time to review this submission. If you have any further questions, please feel free to contact us at info@cmla-acam.ca. In addition, you may consult our website at www.cmla-acam.ca.