

The Law Society of
Upper Canada

Barreau
du Haut-Canada

EQUITY INITIATIVES DEPARTMENT

TO: Members of the Challenges Faced by Racialized Licensees Working Group

FROM: Members of the Equity Advisory Group Working Group

DATE: March 3, 2015

RE: Submission by the Equity Advisory Group Working Group in response to the *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper

Members of the Equity Advisory Group (“EAG”) Working Group have carefully considered the seven questions posed in the *Addressing Challenges Faced by Racialized Licensees* consultation paper. The following document offers general comments on the findings of the informal and formal engagements and details the EAG Working Group’s responses to the questions for the profession.

Background

1. The EAG Working Group was created in February 2014 to provide feedback to the Challenges Faced by Racialized Licensees Working Group (“CFRL Working Group”) on the formal and informal engagement processes. The Working Group is comprised of the following individual and organizational members:
 - a. Ranjan Agarwal, on behalf of the South Asian Bar Association;
 - b. Cynthia Aoki, on behalf of the Federation of Asian Canadian Lawyers;
 - c. Eugenia Cappellaro Zavaleta, on behalf on the Canadian Hispanic Bar Association;
 - d. Gordon Cudjoe, on behalf of the Canadian Association of Black Lawyers;

- e. Tamara Johnson, on behalf of the Canadian Association of Black Lawyers;
- f. Dania Majid, on behalf of the Arab Canadian Lawyers Association;
- g. Kim Murray, on behalf of the Truth and Reconciliation Commission of Canada;
- h. Sharan Basran, individual member
- i. Sandra Nishikawa, individual member;
- j. Tariq Remtulla, individual member; and
- k. Paul Saguil, individual member

General Comments

- 2. EAG Working Group members note that the findings of the informal and formal engagements accurately reflect the anecdotal information Working Group members have heard from racialized licensees; however, the EAG Working Group would like to note that voices from the Hispanic community were not included in the informal engagement process. The EAG Working Group is pleased that the CFRL Working Group will be speaking with the Canadian Hispanic Bar Association during the consultation process.
- 3. The EAG Working Group also believes that greater emphasis should have been placed in the consultation paper on the intersectional nature of the experiences of racialized licensees. Although EAG Working Group members understand that the CFRL Working Group sought to analyze challenges in the legal profession through the lens of race – gender identity, gender expression, sexual orientation, creed, class, disability, and other markers of identity intersect to create unique experiences for individual racialized licensees.

Response to Consultation Questions

- 4. EAG Working Group members submit the following feedback to the Challenges Faced by Racialized Licensees Working Group. The EAG Working Group's submissions focus on practical solutions that could assist to eliminate barriers faced by racialized lawyers and paralegals.

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

5. The EAG Working Group believes that the Law Society should require firms and organizations with in-house counsel services over a certain size to adopt standards and resources for the recruitment, retention and advancement of racialized licensees. The Law Society could offer model policies/resources to assist firms and in-house departments. The resources could cover topics such as unconscious bias, bias-free interviews, inclusive social events, transparent promotion, leadership, and business development. Firms and in-house departments could be required by the Law Society to report annually on their progress or explain why they have not adopted the required standards. A model to follow would be the Ontario Securities Commission's recently established "comply or explain" approach with respect to disclosing the representation of women on corporate boards. Individual firm or in-house department information provided to the Law Society would not be publicly reported – firms and in-house departments would report to the Law Society and the Law Society could take remedial actions if they were not satisfied with the contents of the report.

6. In addition to requiring standards and resources, the Law Society could develop mandatory CPD programs directed at all partners in law firms, which raise awareness of challenges faced by racialized licensees, the insidious effect of latent or unconscious biases, and the business, as well as principled, basis for diversity in law firms. The EAG Working Group notes that in order to create an environment of equity and diversity, it is essential to provide education and awareness.

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

7. The EAG Working Group suggests that the Law Society continue to collect demographic data from licensees through the Lawyers Annual Report (LAR) and the Paralegal Annual Report (PAR). The Law Society should provide a clear

explanation as to why licensees are being asked to provide demographic data and how the collected data will be used.

8. The Law Society could publicly report aggregate demographic data based on firm size and region. The Law Society could then provide firms with their own demographic data and, in conjunction with the proposed “comply or explain” approach (outlined in the feedback to Question 1), the Law Society could require firms to comment on their diversity statistics in light of the standards and resources they have adopted.

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?

9. Most EAG Working Group members agree that the Law Society would benefit from partnering with the Legal Leaders for Diversity and Inclusion (LLD) to develop model contract compliance programs. EAG Working Group members note that the implementation of contract compliance programs should be voluntary. Additionally, the Law Society could develop CPD programs for firms and in-house departments focusing on the importance of considering diversity in hiring and purchasing practices.

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

10. EAG Working Group members recommend that the Law Society survey the existing landscape of programs offered by bar associations and equity-seeking legal associations and provide that information to the profession. Many legal associations already offer mentoring programs but experience challenges with organizing and funding mentoring activities. The Law Society could assist the existing mentoring programs through the Roundtable of Diversity Associations (RODA) and reach a larger number of racialized licensees and senior lawyers through RODA’s influence. The Law Society could also develop, with the help of the legal associations, “best practices” toolkits and/or guidelines to improve

existing mentoring programs and assist new organizations to create their own mentorship programs.

11. If the Law Society chooses to restructure its own mentoring programs, mentors could be recruited through the LAR and PAR. Benchers could also be encouraged to mentor licensees.
12. Additionally, EAG Working Group members believe that any Law Society mentoring program should have specific requirements with both mentors and mentees having similar understandings and expectations. Mentors could be required to participate in an equity and diversity CPD. Furthermore, mentoring should not be “one-size-fits-all”; a diversity of options could be provided. Mentoring could be career-related, culturally-related, case-specific, or for other purposes.
13. The EAG Working Group believes that much of the profession is built on ‘who knows who’, therefore Law Society mentoring programs should include successful and well-established members of the bar who can provide not only good quality mentoring and advisory services, but also networking opportunities for racialized licensees. EAG Working Group members also note that junior, racialized licensees can also be mentors to senior, non-racialized licensees.
14. In terms of best practices, the Law Society could look into examples of cross-cultural mentoring programs, established for the express purpose of advancing racialized licensees. Larger institutions and U.S. firms have implemented such programs.
15. Some EAG Working Group members suggest that the Law Society look at speed mentoring events as a possible avenue for racialized licensees to network and obtain advice from more established practitioners.
16. The EAG Working Group also wishes to highlight the importance of sponsorship in the career advancement of racialized licensees. As noted in EAG’s previous submission the Challenges Faced by Racialized Licensees Working Group, the Law Society of British Columbia, in a report titled, *Towards a More Diverse Legal Profession: Better practices, better workplaces and better results*, notes,

“Mentors may not be enough; while mentors can provide access to networks and information, sponsors can be powerful and influential voices at leadership and decision-making tables.”¹

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

17. EAG Working Group members suggest that the Law Society support and work with bar associations and equity-seeking legal associations to continue to provide networking opportunities for racialized licensees. The focus of the networking opportunities should be on ensuring that racialized licensees have an opportunity to network with both racialized and non-racialized licensees.
18. Some EAG Working Group members recommend that financial support through a sliding scale or free-of-charge CPDs would be useful to licensees, particularly those in sole practice who may face the extra financial burden of having to forego income in order to attend networking activities.

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

19. The EAG Working Group recommends that cultural competence training be required for the fulfillment of professionalism CPD hours. The EAG Working Group also believes that cultural competence training should be part of the professionalism requirement for licensing.
20. EAG Working Group members suggest that if cultural competence training is to be a requirement for licensees, programs should be more broadly available (e.g. online courses, webcasts). The Law Society should work with knowledgeable experts to adopt general standards on the appropriate content for these sessions before accrediting them. Refresher sessions should be mandated at appropriate intervals over the course of licensees’ careers.

¹ The Law Society of British Columbia, *Towards a More Diverse Legal Profession: Better Practices, better Workplaces, better results* (June 2012), Online: The Law Society of British Columbia <https://www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf>

21. Some EAG Working Group members also suggest that CPDs be offered that focus on discrimination, harassment and exclusion and what approaches to take if a licensee should find themselves in such a situation.

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

22. The EAG Working Group suggests that all Law Society staff involved in the complaints process, tribunal members and the Discrimination and Harassment Counsel should be required to take cultural competence training in order to be sensitized to, and thus be able to effectively address, the unique issues that arise with complaints of discrimination. Refresher sessions should be mandated at appropriate intervals. In addition, the Law Society should continue and enhance its recruitment and hiring efforts to ensure diversity within and throughout the organization, including on the hearing panel roster.

23. The Law Society could also provide mandatory seminars for lawyers and paralegals on their responsibility to abide by human rights laws in Ontario, as emphasized in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*.

24. EAG Working Group members believe that the majority of racialized licensees do not report experiences of discrimination to the Law Society as a result of a fear of reprisal or damage to their reputations. Some EAG members suggest that the Law Society create a process to receive anonymous complaints. EAG members also suggest that the Law Society could create a new awareness campaign to promote the Discrimination and Harassment Counsel. In considering the DHC program, some EAG members believe that the DHC's capacity should be enhanced to allow for handling of systemic complaints.

Other

25. The EAG Working Group believes that the Law Society should continue and enhance its recruitment and hiring efforts to ensure diversity within and throughout the organization, including at Convocation. Either the Policy

Secretariat or Convocation itself should make a concerted effort to ensure that bench candidates are recruited from equity-seeking groups. More information can be made available and/or better strategies can be adopted to communicate to the profession about the election process and the importance of the work of benchers.

26. EAG Working Group members suggest that the Law Society increase the representation of racialized licensees in the policy development process, including consultations. The EAG Working Group also recommends that the Law Society make a conscious effort to ensure that Law Society CPD panels include practitioners from racialized groups.