

February 28, 2015

VIA EMAIL DELIVERY: jbouchar@lsuc.on.ca

Ms. Josée Bouchard
Director, Equity Initiatives Department
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
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Dear Ms. Bouchard:

Re: *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper

We are writing on behalf of
to provide the firm's input in response to the Law Society of Upper Canada's recent Consultation Paper, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*.

We wish to begin by thanking the Law Society for undertaking so comprehensive and thoughtful a review of this issue, which we consider to be a critically important one for the profession, and for the extensive consultations that have taken place since the Consultation Paper was released to obtain input from the profession. Members of our firm have had the opportunity to attend a number of Law Society presentations on the subject, and we have found them very helpful in formulating our responses to the questions posed in the Consultation Paper.

In preparing our submissions, we have reviewed the material and resources made available by the Law Society, including the Consultation Paper; the Stratcom Final Report; the Community Liaison Report to the Challenges Faced by Racialized Licensees Working Group and the Law Society's Studies and Scan of Best Practices, in addition to other publications and material.

Introductory Comments

At we have a Diversity and Equity policy in place, and we are committed to enhancing diversity and inclusion within our own firm, as well as working towards a more diverse and inclusive legal profession. The firm was a participant in the Justicia Project, and is a member of the Law Firm Diversity and Inclusion Network and the Canadian Centre for Diversity and Inclusion.

As a firm, we acknowledge the challenges faced by racialized licensees in the profession, recognize the vital importance of addressing those challenges in order to create a more diverse and inclusive legal profession, and accept our own accountability for working towards that objective. At the same time, we are very aware of the complexity of the issues involved. We are mindful of the very broad spectrum of firms and other environments in which licensees practice across Ontario and we do not believe that there is a “one size fits all” solution to addressing the challenges faced by racialized licensees in these different environments. We also believe that a strategy for addressing these challenges which is developed by a firm, which is tailored to the specific needs of that firm, and which takes into account its unique culture (and the changes that need to be made to that culture to promote greater diversity and inclusion), is more likely to result in significant and lasting change than one that is externally imposed or mandated. Last, but certainly not least, we are conscious that the term “racialized licensees” encompasses a very wide range of different individuals with very different needs from one another, and with different needs at different stages of their legal careers. As a result of these considerations, we generally favour an approach by the Law Society to this issue which preserves flexibility for law firms and individuals to respond to the issues presented in a manner which is best suited to their individual needs and circumstances.

Response to the Questions for the Profession

A. ENHANCING THE INTERNAL CAPACITY OF ORGANIZATIONS

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

As the Law Society is aware, social and market forces have already begun to act as a catalyst for the establishment of diversity programs within firms. Many law firms have already initiated their own diversity and inclusion programs, in recognition of the many benefits of a more diverse and inclusive workforce. In addition, the in-house legal departments of many client organizations – including but not limited to those organizations who are members of Legal Leaders for Diversity and Inclusion – have already started to engage the law firms they work with in conversations about the need to establish diversity programs, collect demographic data and develop a strategy for addressing any issues identified in the data. Many law firms, including our own, have

already joined organizations like the Law Firm Diversity and Inclusion Network, and have started to collect demographic data, develop our own diversity programs and strategies for addressing diversity and inclusion issues, and work towards implementing those programs and strategies.

Notwithstanding the developments that have already occurred, we believe the Law Society can play a very important and crucial role as a catalyst for addressing diversity and inclusion issues – including but not limited to the issues faced by racialized licensees – within the legal community and profession. We are mindful that the licensees regulated by the Law Society work in a wide range of different work environments. Even if we focus solely on law firm environments, a “law firm” could be anything from a huge organization, with hundreds of lawyers and administrative and support staff and locations across Canada, to 2 or 3 lawyers practicing together in a remote location in Ontario. While many large to mid-size firms in larger centres may have already embarked upon diversity and inclusion initiatives, doing so may be a significantly different undertaking for a very small firm, particularly one in a small town or remote location with a much less diverse candidate pool. There are law firms which devote their practices to particular areas of law – like criminal law or family law – where they do not regularly deal with corporate clients and may not yet have encountered approaches from clients regarding the need to address diversity and inclusion issues, or they may experience different kinds of client demands to address these issues. There are also law firms that have dedicated their practice to serving particular racialized communities or addressing social justice issues faced by those communities, whose members may be largely drawn from those communities, and who may be differently situated than larger law firms where representatives of racialized communities may be in the minority. Thus, even though social and market forces have already converged to act as a catalyst for some law firms to begin to address diversity and inclusion issues, there is still a significant and important role for the Law Society to play in encouraging and supporting all law firms to address these issues and develop diversity and inclusion strategies appropriate to their own individual needs.

Given the wide range of different law firms, and the unique context of each, it is our view at that the Law Society can best fulfill its role as catalyst by communicating to the legal community the vital importance of diversity and inclusion issues, including those relating to racialized licensees, and by providing law firms with resources, information and assistance that they can use to develop initiatives to address these issues. We believe it would be useful to provide a range of resources, so that law firms can draw from the available resources to develop the approach which best suits their own unique circumstances.

In this regard, we believe that a project like the Justicia Project provides an excellent example of how law firms and organizations with in-house legal departments can work together with the Law Society to create valuable resources to address the challenges faced by particular licensee groups. In that instance, members of the Justicia project

worked with the Law Society to develop some very useful resources, which can be accessed on-line by firms and individual members, and thus are of ongoing value to the legal profession. We would support the adoption of a similar model for addressing the challenges faced by racialized licensees.

We would also support the utilization of a self-assessment tool, but we do not believe at this stage that the use of the tool should be mandatory. In our view, such a tool would be most useful as another resource a firm or organization could use in order to evaluate its progress in addressing diversity and inclusion issues. However, given our view that there is no "one size fits all" approach to these issues which will be suitable to every firm, we have some reservations about making the self-assessment mandatory.

Similarly, we have some reservations about the suggestion that the Law Society should develop diversity standards that firms and organizations with legal counsel would then be required to meet.

, we are acutely aware that our needs and challenges differ from those of, for example, a large general service firm with locations across Canada. As we do not believe there is a "one size fits all" solution to diversity and inclusion issues generally, or to the issues faced by racialized licensees in particular, we question the feasibility or effectiveness of an approach that involves imposing a common set of requirements on all firms. In addition, we do not believe that mandatory compliance with externally imposed requirements is the best way to achieve significant and lasting change, and we are concerned that this approach sends a message to the public that the legal profession has to be compelled to comply, which we do not believe is accurate or warranted when so many firms are already engaged in voluntary compliance. Rather, we believe an approach whereby law firms and organizations are allowed to maintain the flexibility to develop diversity and inclusion strategies that are tailored to their own unique needs and circumstances to be a preferable approach and one more likely to yield successful and lasting results.

If the Law Society feels that some additional accountability measures are required, we would suggest an approach similar to the approach which has been adopted by some of the corporate clients with whom we deal. Assuming that Convocation empowers the Law Society to establish regulatory frameworks that apply to some extent to firms, the Law Society could require or request law firms to report on whether they are taking steps to address diversity and inclusion issues, including those faced by racialized licensees, and if so, the process they are following to do so – for example, whether they have a diversity and inclusion plan which addresses the circumstances of racialized licensees, whether they are collecting demographic data, whether they have a diversity strategy in place to address issues arising from the demographic data, and the like. This would provide the Law Society with some oversight over whether firms and organizations are following an appropriate process to address the underlying issues, and follow up could potentially occur with the firm or organization's leadership if this is

not happening, while leaving firms and organizations with flexibility to develop specific strategies that are best suited to their own unique needs and circumstances.

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

agrees that the collection of demographic data is an important step in working towards the goal of increasing diversity and inclusion in the legal profession. We are of the view that the data collection that is currently undertaken by the Law Society on the licensee annual reports is very valuable and should continue. We are also of the view that public reporting by the Law Society on the demographic make-up of the profession as a whole, based on firm size, is a useful source of benchmarking data for firms, and should also continue.

Although the Law Society's process provides some baseline data about a firm's demographics (at least for those members of the firm who are licensees), agrees that additional data collection is also valuable. Indeed, as a firm, we have started collecting our own demographic data, not merely from the members of our firm who are licensees but from our administrative and support staff as well. We are also collecting data about firm members' views about inclusion issues, so that we can use that information in developing our diversity strategy.

We see value in the Law Society supporting the profession to develop a common template or series of templates (based, for example, on the size of the firm) that could be used to ensure demographic data is collected in a standardized manner. If the data is collected in a standardized manner, a law firm would be better able to compare its own data (preferably on an anonymized basis) against the data obtained by relevant comparators. The Canadian Centre for Diversity and Inclusion has developed a survey tool which is already widely in use in the legal community, and is also working towards the development of a tool that would allow data comparisons between firms on an anonymous basis. Benchmarking data of this nature would be immensely valuable, as it would allow law firms to place the results they receive in their appropriate context. Practically speaking, it is difficult at present to know if a particular level of representation of a particular racialized group within the firm is a good result or a bad result unless you also know how that number compares to the representation of that group in the legal profession generally and/or to the numbers achieved by similarly situated firms.

While we have made the decision as a firm to collect our own demographic data, we have reservations at this time about mandatory data collection or mandatory reporting of the data collected to the Law Society. We believe the first step should be to develop standard templates to collect demographic data and mechanisms to engage in meaningful comparison of data between similarly situated law firms. Absent consistency in the manner of data collection and some assurance that other firms with whom their data is compared are appropriate comparators, law firms naturally have some concern that the data may be misleading or misinterpreted, and some

corresponding discomfort with mandatory collection or reporting of their demographic data. In addition, as has been noted by the Working Group, requiring law firms to disclose their internal demographics may lead to the impression that diversity targets are being set by the Law Society, while there appears to be broad consensus that doing so is not appropriate.

Accordingly, we consider voluntary data collection and reporting to be the most appropriate approach at the present time. However, it may be that we would be prepared to revisit this conclusion once the process of data collection and comparison has evolved and become standardized to a greater degree.

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?

As with its role as catalyst with respect to law firm diversity programs, considers that the best way for the Law Society to act as a catalyst in ensuring the challenges faced by racialized licensees are addressed is by providing resources, information and assistance to in-house legal departments which they can use to develop contract compliance programs suited to their particular needs. As many large organizations with in-house legal departments (such as the members of Legal Leaders for Diversity and Inclusion) have already developed approaches to requesting this information from the law firms they work with, active encouragement from the Law Society may not be necessary in all cases. Nevertheless, resources and assistance may still be needed by some and appreciated by all.

B (i). MENTORING AND ADVISORY SERVICES

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

At , we believe it is a mistake to assume that all racialized licensees have the same needs with respect to mentoring or advisory services or will find the same approaches to mentoring or other advisory services useful. Accordingly, we believe that, if and where possible, a variety of mentoring and advisory services and resources should be made available to racialized licensees, such that each may select the method that best suits his or her individual needs.

Having said this, we see the most significant value coming from one-on-one, long-term mentor or sponsor relationships, so that racialized licensees are provided with a consistent, reliable and trustworthy point of contact for support and advice throughout the various stages of their careers. Where possible, we believe formal and informal relationships of this nature should be established with more experienced individuals within the firm, with mentors or sponsors carrying out this responsibility as part of their

professional responsibility to contribute to the professional development of other members of the firm.

In cases where there may be a limited pool within the firm or organization of potential mentors who share the background or life experience of particular racialized licensees, or where the licensee is a sole practitioner, it may be useful to supplement internal mentoring mechanisms with the availability of external mentoring resources drawn from the same or a similar racialized community as the licensee who may be able to provide useful support and guidance from that perspective. While we feel it is useful to ensure these resources are available, ultimately we consider it the licensee's choice whether or not to access them, as we believe mentoring relationships which are imposed on one or both parties are considerably less likely to be successful than consensual mentoring relationships.

We are also of the view that the Law Society can play an important role in providing information and education about different approaches to mentoring and advisory services to all members of the profession, to assist racialized licensees and the law firms and organizations with which they work to make informed choices from among the available options.

B (ii). NETWORKING

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

Again, we believe that it is a mistake to assume that all racialized licensees have the same needs with respect to networking or will find the same approaches to networking useful. Therefore, we believe that a variety of networking models should exist to best ensure that racialized licensees will have access to networking opportunities that they are interested in, and which they feel will be suitable to their needs and beneficial to them. In addition, we believe the Law Society can also play a valuable role in this regard by providing information and education to the profession regarding the various networking options available.

C. ENHANCING CULTURAL COMPETENCIES IN THE PROFESSION

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

considers the integration of cultural competence training into the Professional Responsibility and Practice Program to be appropriate, and particularly well-suited to ensuring a firm foundation of diversity awareness and cultural consciousness is in place from the beginning of an individual's legal career. This approach provides an opportunity for potential licensees to engage with cultural competence and diversity issues as they embark on their legal careers, and is also

appropriate from the perspective of signalling the importance placed on diversity and cultural competence issues by the Law Society and the legal profession.

With respect to existing licensees, considers offering cultural competence training in the form of accredited CPD's to be the most appropriate approach. This allows members to elect to participate based on their needs and particular interests.

The Law Society could also include cultural competence content in its Practice Tips in the Ontario Reports, and other Law Society member communications and publications.

D. DISCRIMINATION AND THE ROLE OF THE COMPLAINTS PROCESS

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

there are – and should be – various avenues for individuals to bring forward concerns they may have about discrimination, including systemic discrimination. The Law Society can and does provide one of those avenues, but should consider its own role and responsibilities in the context of the various other avenues that exist for bringing forward discrimination concerns.

Most organizations and law firms will already have in place an anti-discrimination/anti-harassment policy and complaint procedure. This provides an avenue for individuals to raise concerns if they have been discriminated against or harassed by someone within their own firm or workplace. A racialized licensee may not feel he/she wants to use this process in every case for a variety of different reasons, but it should not be forgotten as a mechanism that exists to bring forward discrimination concerns – including systemic discrimination concerns – and attempt to obtain a resolution from the organization or firm.

In addition, in Ontario, any individual can make a complaint to the Human Rights Tribunal of Ontario if he/she feels he/she has been the subject of discrimination or harassment based on any of the prohibited grounds. The members of the Tribunal have considerable expertise in mediating and adjudicating discrimination and harassment issues, including systemic discrimination issues. They have also been given remedial powers specially designed to enable them to deal with the complexities of some human rights issues, including systemic discrimination issues. This is another process available to a racialized licensee to bring forward a concern about discrimination – including a systemic discrimination concern – and seek a remedy against his/her own firm or organization, another member of the profession, or perhaps even another organization.

The *Rules of Professional Conduct* and *Paralegal Rules of Conduct* also speak to the special responsibility of licensees to respect and uphold human rights law and to refrain

from discrimination and harassment, thus making discrimination and harassment a professional disciplinary issue as well. The Law Society can and does investigate complaints of discrimination, including complaints of systemic discrimination, and plays an important role in protecting licensees from discrimination and harassment by other licensees. If the full scope of the Law Society's activities in this regard is not currently well-known among racialized licensees or otherwise, then certainly a communication plan may be appropriate to ensure that this situation is addressed.

As noted above, in our view, the Law Society should consider its responsibility for addressing discrimination and harassment issues, including systemic discrimination issues, within the broader context of the various remedial avenues available, and the relative availability of remedies that will be effective in addressing the licensee's underlying concerns. In the case of individual complaints (ie, a complaint by one licensee that he/she has been discriminated against by another), it may be that the most effective way of addressing the concern will be some sanction by the Law Society. However, in other cases, it may be that what is needed to address the concern is a financial remedy or some in-kind remedy (like reinstatement) which is a remedy that can best be provided by the Human Rights Tribunal. In the case of systemic discrimination which, by definition, transcends the actions of individuals, it seems likely that in many if not all cases a remedy will be required that transcends an individual – such as a remedy against a firm or organization. Given that the Law Society generally regulates individuals not firms, and its remedial powers are generally limited to imposing sanctions on individual licensees, it may be that there will be many cases where the most effective remedy for a systemic discrimination concern will be more readily available from the Tribunal than from the Law Society.

Accordingly, in our view, while the Law Society plays a very important role in protecting licensees, including racialized licensees, from discrimination and harassment, including systemic discrimination, there may be cases where another entity can provide more effective protection or more suitable remedies. As a result, we believe that one of the most valuable roles the Law Society can play is to act as a resource to ensure potential complainants know what their remedial options are, and to direct them where appropriate to the remedial avenue that is best able to meet their needs. In those cases where it is determined that a concern is most appropriately dealt with through the Law Society process, it may certainly be helpful to have in-house resources or expertise for dealing with such complaints, given that they can be quite complex.

We have noted the concern expressed in the Consultation Report that licensees may fear the implications that making a complaint will have on their legal career, and the suggestion by the Working Group that it may be appropriate to allow a professional or affinity association to file a complaint on a member's behalf to reduce the risk of adverse career impact. In response, we would simply note that, given the fact-based nature of most discrimination complaints, including most systemic discrimination complaints, it is difficult to imagine many circumstances in which the licensee's identity would not have

to be disclosed even if the complaint was filed on his/her behalf by an association. As a result, it is difficult to understand how allowing an association to file a complaint on a licensee's behalf would affect the magnitude of the risk of career repercussions for the licensee. It might be that cases exist where this would be the case, but we expect they would be the exception rather than the rule. Ensuring there are robust remedies available to protect the licensee from the risk of reprisal if they file a complaint with the Law Society might be a more fruitful avenue to pursue in order to address the concern expressed.

In terms of the proposal in the Consultation Report relating to the development of resources to enable the Law Society to support law firms in developing policies and procedures to deal with systemic discrimination, every employer in Ontario has, and has had for a number of years, a legal obligation to have a policy and complaints procedure in place dealing with discrimination and harassment, including systemic discrimination. As such, we would be surprised to learn that there are many firms, beyond perhaps the smallest firms, that do not already have a policy and a complaints mechanism in place that allows them to address complaints of systemic discrimination and includes protections from reprisal. As a result, we question the need for the Law Society to develop resources in this regard or to mandate law firms or organizations to create such a policy. However, we have no objection in principle to a requirement that firms create and adhere to such a policy or procedure, if the Law Society sees a need for such a rule and is empowered by Convocation to create one, or to the development of resources to assist those firms that do not already have such policies and procedures in place.

E. THE OPERATIONS OF THE LAW SOCIETY OF UPPER CANADA

Initiative 1: Enhance the Equity Compliance Program by Requesting Demographic Data from Vendors

This initiative mirrors one of the suggestions set out in question #3 above. If the Law Society elects to encourage in-house counsel to request demographic data from its vendors and service providers, then it would be consistent for the Law Society do so as well. This will allow the Law Society to demonstrate that it is taking a leadership role and to set an appropriate example for the rest of the profession.

Initiative 2: Conduct an Internal Equity Audit of its Services Offered to the Profession

supports the undertaking of an internal equity audit of the Law Society's services offered to the profession. Once again, in order for the Law Society to demonstrate its leadership with respect to diversity and inclusion initiatives, it is appropriate to consider its own services. This is also an important step in identifying what resources are already being offered, where there are gaps, and what additional resources/initiatives are required. Finally, conducting and reporting widely on such an

audit may stimulate consideration by firms and other organizations of conducting their own similar audits.

Initiative 3: Internal Collection of Data on Issues Relating to Racialization in the Regulatory Process

Given that racialized licensees can experience disadvantage at all stages and in all facets of their legal careers, we consider such a review of the regulatory process to be a necessary component of addressing the challenges faced by racialized licensees. Such a review would allow the Law Society to identify and address specific racialization issues that may arise in the regulatory context. Without such a review, systemic impacts of racialization in the regulatory process would only further contribute to negative outcomes for racialized licensees.

Initiative 4: Develop a More Diverse Public Face/Image for The Law Society of Upper Canada

supports this initiative and considers it an important step in addressing and altering preconceptions and stereotypes that are often at the root of racialization, and consequently the negative outcomes that flow therefrom. Altering the image that the profession and the public have of the membership of the legal profession and its regulatory body is an essential part of mitigating the impact and occurrence of racialization.

Yours very truly,

Yours very truly,

Chair, Diversity and Inclusion
Committee

Member, Diversity and Inclusion
Committee