

March 16, 2015

Josée Bouchard, Director, Equity  
The Law Society of Upper Canada  
Osgoode Hall,  
130 Queen Street West  
Toronto, ON  
M5H 2N6

Dear Ms. Bouchard:

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

The South Asian Bar Association provides the following submissions in response to The Law Society of Upper Canada *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees Consultation Paper*.

As an overview, SABA believes that Ontario's legal profession generally and the Law Society of Upper Canada specifically have failed to adequately prepare for the demographic changes in Ontario's legal profession. There is a strong disconnect between the "face" of Ontario and the "face" of Ontario's law firms, courtrooms and boardrooms. Though it is perhaps easy for the Law Society or Ontario lawyers to believe that change will "inevitably" come as an older generation of lawyers and judges retire, SABA believes that failing to act now both imperils Ontarians view of their justice system and risks crippling the profession such that it cannot meet the justice needs of Ontarians.

If racialized individuals refuse to enter the profession because they believe that the legal system will marginalize them or if racialized licensees exit the profession because they have been victims of conscious and unconscious discrimination, it is Canadians who suffer. SABA believes there is a direct connection between the recent denial of justice to Rania El-Alloul and the failure of the profession and the justice system to reflect Canada's diversity.

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

The Law Society should require medium and large firms and organizations with in-house counsel services (>20) to adopt standards for the recruitment, retention, and career advancement of racialized licensees, and require such firms and organizations to report annually on their progress or explain why they have not adopted such standards. An analogous model would be the OSC's recently established "comply or explain" regime regarding disclosing gender diversity on corporate boards.

The Law Society should also implement a recognition program to highlight law firms that have demonstrated compliance with required standards with a view to encourage all firms to embrace necessary change.

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

The Law Society should collect demographic data of licensees through annual reports, publicly report the demographic data based on firm or company size and region, and disclose to firms or companies their own demographic data. With the proposed "comply or explain" regime, the Law Society should require firms or companies to comment on their own demographic data and how it tracks to the standards they have adopted, if applicable.

The demographic data should disclose:

- how many racialized individuals apply for employment with the firm or company
- how many racialized individuals departed the firm or company
- how many racialized individuals are retained as articling students or lawyers
- in firms, (a) how many racialized licensees are promoted to partner; and (b) how many racialized licensees are equity partners, non-equity partners or counsel
- in companies, how many racialized individuals are promoted from legal counsel to senior counsel, associate general counsel or Chief Legal Officer

**Question 3: How could the LSUC work with in-house legal departments to develop model contract compliance programs?**

The Law Society should partner with Legal Leaders for Diversity, Association of Corporate Counsel or Canadian Corporate Counsel Association to come up with appropriate models. The Law Society should also create a position or office to assist in-house legal departments (and law firms) with the creation of diversity policies, practices and model contract compliance programs.

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

The Law Society should survey the existing landscape of mentoring programs offered by other bar associations, and provide that consolidated information to the profession. The Law Society should work to reduce the number of competing mentoring programs in the profession, remembering that membership fees in other professional organizations may be an impediment.

In addition, the Law Society should develop, with the help of the bar associations, "best practices" toolkits/guidelines to improve existing mentoring programs and assist new organizations in adopting their own. It is unnecessary for the Law Society itself to administer its own mentoring program.

The Law Society should incentivize senior licensees (both racialized and non-racialized) to participate in mentoring programs by providing professional CPD hours, CPD credits or discounted CPD programming for volunteering as a mentor.

The Law Society's Medals, Awards and Honours should better reflect the diversity of the profession. SABA notes that *none* of the recipients of the 2014 Law Society Medal, Honorary degrees or awards appear to be racialized.

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

The Law Society may continue to provide (lower cost) CPD programming for members, as an alternative or supplement to offerings by bar associations, and thereby foster networking opportunities for racialized licensees.

The Law Society should actively promote diversity bar associations (such as SABA), including cross-promoting events and news from those associations.

The Law Society should create a panel of advisors to advise sole and small firm practitioners on professional and skills issues. Though the Practice Management Help Line has some utility, racialized licensees in sole and small firm practices are more in need of strategic and soft skills advice to better serve their clients.

But otherwise, it is unnecessary for the Law Society to administer (or regulate) independent networking initiatives.

**Question 6: How could the LSUC enhance the profession's cultural competence through its CPD programs?**

The professionalism component of the annual CPD requirement should be able to be satisfied by sessions focused on cultural competence focused on: (a) providing legal services that are accessible to a diverse range of clients in a culturally-appropriate manner; (b) offering a range of service that respond to the needs of diverse communities; and (c) identify and respond to issue involving bias, discrimination and racism.

The Law Society should work with knowledgeable experts to adopt general standards for the content for these sessions before accrediting them. "Refresher" sessions should be mandated at intervals over the course of licensees' careers.

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

All Law Society staff involved in the complaints process, tribunal members, and the DHC office should be required to take cultural competence training to be sensitized to (and be able to address) the unique issues that arise with complaints of discrimination. "Refresher" sessions should be mandated at 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.

The Law Society should devote more resources to informing lawyers about the DHC office, including community outreach and targeted outreach.

The Law Society should amend the *Rules of Professional Conduct* to prohibit a reprisal of threat of reprisal against any licensee making a claim of discrimination.

**Question 8: Which initiatives/strategies should the LSUC consider to develop a more diverse and inclusive public image/face?**

Convocation does not reflect the diversity of either Ontario or the profession. It cannot rely on the fact that benchers are elected and, therefore, diversity cannot be mandated. Benchers should take the lead in recruiting, mentoring and sponsoring candidates, much like Janet Leiper is doing for the 2015 election. SABA acknowledges that the Law Society, as an institution, cannot require benchers to take such steps but, as the leadership of the Law Society the benchers should themselves consider their role in promoting diversity.

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 try to ensure that bencher candidates are recruited from equality-seeking groups. More information can be provided and/or better strategies can be adopted to communicate to the profession about the election process and the importance of the work of benchers.

\* \* \*

SABA thanks you for considering our submissions. If you have questions, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Jayashree Goswami". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Jayashree Goswami  
President

cc: Ranjan Agarwal, Chair, Advocacy Committee