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The Advocates' Society

PROMOTING EXCELLENCE IN ADVOCACY

PRESIDENT: Peter J. Lukasiewicz

Tel: (416) 862-4328 • peter.lukasiewicz@gowlings.com

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

Dear Ms. Bouchard,

Re: LSUC Consultation Paper “Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees”

At the invitation of The Working Group of The Law Society of Upper Canada (LSUC), The Advocates' Society (TAS) offers the following submissions on strategies for enhanced inclusion and support of racialized licensees in the profession.

TAS is committed to the principles of substantive equality and access to justice, and accordingly supports redressing the challenges faced by racialized licensees.¹ TAS does not collect data on race or ethnicity of its membership. Therefore, the scope of this submission will focus on the important role legal organizations such as TAS can play in promoting mentoring and collegiality in the profession.

In section 1 below, we provide a brief overview of TAS' unique experience in advocacy skills training. In section 2, we set out key learnings from our experience in mentoring. Section 3 addresses networking opportunities and challenges. Section 4 discusses cultural competence, and section 5 describes initiatives that could help address some of the challenges racialized licensees face with respect to discipline and complaints. In each section, we provide recommendations on how the LSUC can support TAS and other legal organizations to make diversity initiatives even more effective in addressing the concerns raised in the Consultation Paper.

Please note that we have focused on the issues discussed in this letter because they fall squarely within TAS's mandate and experience. Our decision not to comment on other issues raised in the Consultation Paper should not be construed in any way as diminishing the importance of all the initiatives that the LSUC is considering.

1. **Background on The Advocates' Society**

TAS was established in 1963 and currently has a membership of more than 5,200 lawyers and judges from across Canada. The Society's mission is to be the authoritative voice of advocates within the justice system and to offer advocates of all levels of experience the opportunity for

¹ For the purposes of this submission, racialized licensees includes Indigenous licensees.

advocacy skills development, mentoring and collegiality, including special opportunities for young advocates. We specialize in skills training through learning by doing.

We are an organization of advocates, such that our experience and services are limited to lawyers who devote a substantial portion of their practice to advocacy before courts or tribunals, and in similar settings. TAS does not offer membership to paralegals at this time (although we do offer advocacy skills training to paralegals), so this submission focuses on initiatives to address the circumstances of racialized lawyers.

2. **Mentoring (Consultation Paper Question 4)**

While TAS does not have particular expertise on the preferred mentoring/advisory service models for racialized licensees, we do have considerable experience offering a variety of mentoring programs and can provide input on the initiatives our young advocate members have found to be beneficial in their professional development. The experience of our young advocates (advocates of 10 years or less call) is valuable because they provide meaningful input as to what is helpful to them in view of their relatively diverse backgrounds. Further, our young advocates work for a wide range of legal organizations (small and large firms, sole practitioners, government, tribunals, companies, etc.).

For TAS, the most successful form of organized mentoring has been Group Mentoring. Group Mentoring offers mentees the opportunity to pose questions to mentors in a safe environment outside the mentees' own firm settings, where they may be reluctant to ask certain questions or otherwise do not have good (or any) internal mentoring networks. Mentees also benefit from hearing the questions posed by their peers, which lets them know they are not alone in their questions or concerns. The social setting can promote diversity and inclusion by demonstrating that a variety of approaches and styles can be used to address challenges and achieve success in the profession. A good dynamic in a mentoring group has the added benefit of leading to new connections for mentees, both with their peers and with the mentors, further building their networks in the profession.

However, informal Group Mentoring events are not meant to be a substitute for one-on-one mentoring relationships that should ideally be developed within a licensee's own practice setting, and we recognize that Group Mentoring has limitations. Mentees may be hesitant to raise more serious issues in a group setting. Some licensees may be intimidated by a group setting and may be reluctant to speak up to express concerns or contribute questions, particularly where there are language or cultural issues. As a result, mentors need to be sensitive to the needs of the "quiet" mentees in the group. Further, many legal organizations lack the resources and/or knowledge to train mentors (on dealing with cultural issues, and/or how to be a good mentor generally). TAS has a guide to good mentoring and requests feedback from mentees to build a roster of trusted mentors, but does not otherwise train mentors.

(a) **Group Mentoring Programs Currently Offered by TAS**

TAS currently offers the following programs:

- **Speed mentoring** events offer informal group mentoring with a small mentor to mentee ratio. Speed mentoring discussions are participant-driven to address concerns raised by mentees. Mentees have the opportunity to develop strong new peer connections through the course of the evening.

- **Mentoring roundtables** for women and young advocates are built into our flagship conferences as dedicated mentoring sessions.
- **Fireside chats** offer young lawyers the opportunity to hear insights from senior mentors in an informal and social setting, with an excellent opportunity for peer networking.
- **Small group advocacy skills workshops** offer hands-on advocacy skills training from specially-trained senior advocates in a small group setting.

We recognize that young advocates in many circumstances face financial constraints. TAS strives to price its programs competitively and to keep its registration fees for mentoring programs as low as possible to ensure accessibility. For example, mentoring events directed at young lawyers are run on a cost recovery basis and are often subsidized by sponsorship.

(b) **Formal Mentoring Programs**

TAS considers Formal Mentoring to be based on a one-on-one relationship that is built over time, often under the structure and guidelines of an organization. A good mentoring relationship can promote more candid questions, advice and guidance, and better overall support in long-term career development.

Formal one-on-one mentoring is the gold standard for mentoring for all the benefits it offers the mentee, typically over time. However, in the experience of TAS and its members, initiatives that attempt to create formal one-on-one mentoring relationships are unfortunately fraught with many challenges, including: demands on the mentor’s time; conflicts of interest; potential insurance coverage issues; lack of mentor training for handling long-term relationships; adherence to guidelines on permitted topics of discussion; and, differences in personality, practice area and styles. These challenges are common for any formal mentoring program. In addition, organizations like TAS typically do not have the resources to pair mentors and mentees in long-term relationships or provide the necessary oversight and guidance to mentors. This is an area where we feel the LSUC can play a central role and add considerable value for racialized licensees, and new lawyers generally, in the profession.

(c) **Other Issues Affecting Mentoring Services**

Based on feedback from members, including members of our Diversity Task Force and our Young Advocates’ Standing Committee (YASC), we offer the following additional comments and recommendations regarding mentoring services.

- **Remuneration of Mentors:** Mentorship should not be remunerated.² TAS mentoring programs are run entirely with volunteer mentors. The spirit of mentorship should be fostered by the LSUC and other legal organizations as an aspect of collegiality and “giving back” in the profession.
- **Professionalism Issues:** While advisory/mentoring programs should be available from the LSUC for both substantive and professionalism issues, mentoring programs are more appropriately focused on professionalism and career development issues. One of the practical challenges in offering mentoring services is that most mentoring relationships outside of law firms are constrained by practical issues. For example, mentors are typically justifiably reluctant to address substantive or file-specific questions for

² We recognize that professional coaching is a form of paid mentorship where remuneration for services and expert guidance may be appropriate.

confidentiality, conflicts and insurance reasons.

- **Limitations of Legal Organizations:** Legal organizations are constrained by their own skill sets, resources and mission statements. For example, while TAS members are not trained or uniquely experienced in cultural issues, TAS members are particularly strong in mentoring respecting aspects of litigation practice (inside and outside the courtroom). This could be useful for racialized licensees who have identified needs or issues related to adjustment to local court systems, the judiciary, and client counseling in respect of litigation.
- **Cultural Competence Training/Diversity Content:** TAS has considerable experience and success with mentoring programs, but, like many specialized organizations, we do not have the resources or institutional expertise to develop diversity content or to mentor specifically on issues facing racialized licensees.
- **Quality of Mentors:** Good mentors can be invaluable to a mentee's career development, work-life balance, and professionalism issues. Some people are naturally good at mentoring. Others are not. Some will be good mentors on certain types of issues, but not on other issues. As a result, it is important to obtain feedback from mentees to offer a suitable roster of mentors.

Recommendations to the LSUC on Issues Affecting Mentoring Services

The LSUC is in the best position, and has a responsibility, to offer comprehensive mentoring/advisory events to the legal community at large, including for racialized licensees. Many legal organizations do not have the resources or specialized training to effectively address unique needs of racialized licensees. TAS recommends the following initiatives:

- (a) **Foster a Culture of Mentoring:** The LSUC should foster a culture of mentoring in the legal profession and improve promotion and awareness of mentoring opportunities in the community. The importance of mentoring should be systematically emphasized in law school and in the bar admission process.
- (b) **Connect Mentoring Relationships:** The LSUC, with access to contact lists for new and established lawyers, is uniquely positioned to implement a program that pairs lawyers with established members of the legal profession in their practice area. If requested, the LSUC should be able to match mentee and mentor by self-identified race or ethnicity, and connect mentors and mentees for advice on particular issues upon request. The LSUC should consider appropriate feedback mechanisms to build a roster of appropriate and reliable mentors.
- (c) **Support Mentoring Relationships:** In addition, the LSUC could outsource, support, promote and/or subsidize enhanced mentoring programs (run by TAS and/or other specialized associations) and provide the information needed to connect mentors and mentees within existing legal organizations in appropriate mentoring relationships. Membership in organizations such as TAS can be of considerable value and assistance in connecting new lawyers (or lawyers new to practice in Ontario) with mentors, networks and support systems within the legal community.
- (d) **Provide Training:** If mentoring programs offered by the LSUC or other organizations are intended to address issues facing racialized licensees, the LSUC would ideally offer training, including cultural competence training, to all mentors who register to participate in the program. Offering training for mentors on

issues of cultural competence would be valuable and, indeed, may be necessary to ensure appropriate guidance is being provided to mentees.

- (e) **Develop Diversity Content:** The LSUC should take the lead on developing cultural/diversity content that organizations such as TAS can incorporate into their mentoring, education and other programs.
- (f) **Alleviate Practical Concerns:** To encourage mentoring relationships, the LSUC must consider ways to alleviate practical concerns for mentors and mentees, such as conflicts of interest, client confidentiality, and insurance risks. For example, the LSUC could consider articulating best practices for addressing confidentiality concerns specifically in the mentoring context.
- (g) **Offer Soft Skills Programming:** Some racialized lawyers (and many others from different types of backgrounds) indicate a feeling of not belonging, and/or being perceived as not belonging, in the “mainstream” legal culture. Some racialized lawyers express a desire to “fit in” so that they can survive/succeed in practice in certain regions or practice areas. The LSUC (and potentially law schools) should offer or otherwise support skills and mentoring programs that deal with navigating corporate culture and acquiring the soft skills that may be critical to surviving/succeeding in certain parts of the legal profession (such as business development, toasts and introductions, dinner etiquette, navigating cocktail parties, etc.).
- (h) **CPD Accreditation:** The LSUC should enhance awareness of CPD credits for mentoring and mentor training, including professionalism credits.

3. **Networking (Consultation Paper Question 5)**

Networking events are essential to building a professional network that a young lawyer or someone new to practice in Canada can approach with questions about problems in practice, work-life balance, business development, etc. Given the particular issues facing racialized licensees, many of whom are sole practitioners, it is important to provide accessible and affordable networking opportunities, connecting sole practitioners from diverse backgrounds with peers and appropriate role models and mentors within the profession in an informal setting.

TAS offers a variety of affordable networking opportunities, including:

- (a) **Family-friendly programs:** run at cost;
- (b) **Brown Bag and Court House** continuing legal education series: run at low cost, short and accessible programs in different cities, often with networking components;
- (c) **Young Advocates’ Pub Nights:** free events offered by YASC; and
- (d) **TAS Practice Group Events:** offer low cost practice-specific networking and education sessions for TAS members. Some programs are made available to non-members at a nominal charge.

Also, many of the mentoring programs discussed in section 2, above, contain a networking component (e.g., during fireside chats, speed mentoring dinners, skills training programs, etc.).

TAS will continue to advertise these events in the normal course, but they could also be promoted through the LSUC and through groups representing racialized licensees to increase diversity of attendance and communication/collaboration among associations. TAS and other legal organizations with broad membership should partner with the Roundtable of Diversity Associations (“RODA”) and RODA-member organizations (CABL, FACL, SABA etc.), as well as the Indigenous Bar Association (IBA), to encourage diverse membership and participation in networking events, and to ensure that events are inclusive, welcoming and accessible to lawyers from diverse backgrounds.

Recommendations to the LSUC regarding Networking

The LSUC is in the best position to consolidate and promote networking opportunities that are available to members of the profession. TAS recommends that the LSUC should:

- (a) Help promote networking events to raise awareness of networking opportunities that are already available in the profession; and
- (b) Develop and/or promote culturally-neutral networking opportunities (i.e. alcohol-free events, events held at breakfast or lunch, etc.). The prevalence of alcohol at many social events may prevent some lawyers/groups from participating (for any number of reasons) and presents various challenges for many, including racialized licensees. The LSUC should work to raise awareness that this may be a barrier to some.

4. Cultural Competence (Consultation Paper Questions 5, 6 and 7)

The issue of cultural competence is raised in the Consultation Paper in the context of networking, CPD, and complaints and discipline. Training on cultural competence is important in the profession generally, including for the judiciary. As part of any program on cultural competence, training should be provided on issues like unconscious bias.

Notably, there is a significant knowledge gap on the part of members of the legal profession, including the judiciary, regarding Indigenous cultures. CPD training aimed to improve cultural competence should include historic causes of systemic discrimination, including the impact of assimilationist policies and residential schools. This is important in light of the recognition accorded to the “aboriginal perspective” in recent Supreme Court of Canada jurisprudence.

The profession should draw on the experience of organizations that have developed comprehensive cultural competence programs. For example, the Human Resources Professionals Association (HRPA), with funding from the Ministry of Citizenship and Immigration Ontario, has developed a Cultural Competency Training program to help Ontario companies attract, retain and promote diverse workforces.

With appropriate support, resources and substantive content from the LSUC, organizations that offer CPD programs could build cultural competence content into their programs (including building it into existing training programs for faculty).

5. Complaints and Discipline (Consultation Paper Question 7)

TAS supports the ideas and concerns expressed in the Consultation Paper and provides the following additional comments and recommendations on the issue of complaints and discipline:

(a) **Mandatory CPD Training on Cultural Competence**

The Consultation Paper's commentary on question 7 appropriately raises the important issue of understanding discrimination. This is a critical threshold issue, so that the focus/responsibility is not on racialized licensees to change systemic issues within the profession through complaints. Cultural competence training is critical for individuals who investigate, prosecute and hear complaints, and for duty counsel.

(b) **Collaborating with Diversity Organizations**

Associations representing racialized groups/licensees ("Diversity Organizations") can be a strong ally for the LSUC in identifying and documenting areas for improvement, including addressing issues of harassment and discrimination. For example, while it may be difficult for racialized licensees to raise complaints of discrimination directly with the LSUC, they may be comfortable speaking to representatives of their trusted Diversity Organizations. Diversity Organizations can also help raise the profile and accessibility of the LSUC Discrimination and Harassment Counsel, and/or the Ombudsman, through mentoring events or otherwise.

As an organization dedicated to advocates who often practice in a courtroom setting, TAS notes that partner organizations like the Court Services Division of the Ministry of the Attorney General and its staff can also make a positive contribution to the LSUC's efforts to address discrimination issues. Court and Tribunal staff may witness discrimination against a licensee. Liaising with Tribunal and Court staff could help bring issues to the attention of the LSUC, if done sensitively to protect Court staff.

(c) **Improving Representation**

TAS currently supports the pro bono duty counsel program at the LSUC Discipline Tribunal but does not have the resources to support a full representation model.

Recommendations to the LSUC regarding Complaints and Discipline

TAS recommends the following:

- (a) The LSUC should develop and implement mandatory CPD training on issues of cultural competence, particularly for individuals who investigate, prosecute and hear complaints, and for duty counsel.
- (b) The LSUC should work with Diversity Organizations to ensure that organizations are trained on where to direct issues of discrimination that are brought to their attention, for example, through LSUC Discrimination and Harassment Counsel.
- (c) The LSUC should raise general awareness about discriminatory practices. This may be particularly helpful to address complaints of systemic barriers to inclusion, where a racialized licensee may not want to self-identify to raise concerns about a particular individual or group.
- (d) The LSUC should ensure that racialized licensees are adequately represented when appearing in disciplinary proceedings, and that they have access to financial aid if needed to ensure adequate representation when facing disciplinary matters. In particular, the LSUC should consider whether the mandatory insurance that licensees obtain from LawPro should also cover part of the cost of legal advice in the context of regulatory and disciplinary investigations and hearings up to a

certain pre-determined limit. This would be of particular assistance to racialized licensees, who work disproportionately in smaller or sole practices.

- (e) The LSUC can work with RODA and other organizations to train and strengthen their capacity to offer representation and/or pro bono legal services to racialized licensees.
- (a) The role of the Ombudsman should be emphasized, and potentially expanded, to improve early and informal reporting and resolution of disputes, which could enhance reporting generally.

6. Closing Remarks

As noted above, TAS has not commented on issues raised in the Consultation Paper that are not squarely within our mandate or experience. This does not detract from the importance of the issues and the value of many of the suggestions made. Among other things, TAS recognizes the valuable initiatives of the LSUC outlined in Section E.

Further, as a general matter, the LSUC could assist organizations like TAS by providing best practices for issues affecting racialized licensees. For example, while we have not made submissions on Question 2 in the Consultation Paper, TAS is seeking guidance on the issue of data collection. As noted earlier, TAS does not currently collect demographic data, such that we are not able to track the diversity of our organization's membership. It would be useful to have guidelines on the propriety of collecting such data from members through voluntary reporting and, if so, what questions to ask and how to word them. The LSUC can also play a valuable role in encouraging licensees to report demographic data.

We would be pleased to answer any questions regarding our submission.

Yours very truly,



Peter Lukasiewicz
President, The Advocates' Society

- c: Miriam Young, Chair, Roundtable of Diversity Associations
Donna Walwyn, President, Canadian Association of Black Lawyers
Koren Lightning-Earle, President, Indigenous Bar Association
Sonia Bjorkquist, Chair, Diversity Task Force, The Advocates' Society