

EQUITY INITIATIVES DEPARTMENT

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

FROM: Members of the Equity Advisory Group Working Group

DATE: April 17, 2014

RE: Submission by the Equity Advisory Group Working Group in response to Stratcom's Challenges Facing Racialized Licensees Draft Report

This document outlines feedback provided by members of the Equity Advisory Group ("EAG") Working Group on the findings detailed in the Challenges Facing Racialized Licensees Draft Report ("the report"), with a focus on proposing practical solutions to address the challenges faced by racialized licensees.

The document is divided into the following sections:

- Background
- Response to Findings
- Practical Solutions
 - Recruitment & Hiring
 - Demographic Data
 - Mentorship
 - Discipline
 - Governance
 - Other
- Moving Forward

Background

1. In February 2014, the Challenges Faced by Racialized Licensees Working Group (the “CFRL Working Group”) requested that interested EAG members provide feedback on the Challenges Faced by Racialized Licensees Project formal consultation findings.
2. EAG members formed a working group 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. Gordon Cudjoe, on behalf of the Canadian Association of Black Lawyers;
 - d. Tamara Johnson, on behalf of the Canadian Association of Black Lawyers;
 - e. Dania Majid, on behalf of the Arab Canadian Lawyers Association;
 - f. Sandra Nishikawa, individual member;
 - g. Tariq Remtulla, individual member;
 - h. Paul Saguil, individual member; and
 - i. Nav K. Singh, on behalf of the Women’s Law Association of Ontario
3. The EAG Working Group agreed to provide written submissions to the CFRL Working Group in response to the report. The EAG Working Group provides submissions that focus on what the Law Society of Upper Canada can do to remove barriers faced by racialized licensees in the legal profession.
4. After signing confidentiality agreements, EAG Working Group members received Stratcom’s Challenges Facing Racialized Licensees Draft Report and met to discuss their initial response on March 10, 2014. The Working Group met to discuss draft submissions on March 26, 2014. They finalized their written submissions on April 15, 2014.
5. The EAG Working Group submits its written feedback to the CFRL Working Group for its consideration at its April 23, 2014, meeting.

Response to Findings

4. EAG Working Group members agree that the findings of the formal consultation are reflective of anecdotal information Working Group members have received from racialized licensees. EAG Working Group members are pleased that the experiences of racialized licensees have been formally measured and the focus can now be placed on finding solutions.

Practical Solutions

5. EAG Working Group members have carefully reviewed the findings and have considered the following proposed solutions to address the challenges faced by racialized licensees. In putting forward these solutions, EAG Working Group members recognize that there is diversity among racialized licensees, including, but not limited to, year of call, lawyer or paralegal status, and location of training. Consequently, different solutions may be required for different groups of racialized licensees.

Recruitment & Hiring

6. EAG Working Group members agree that there must be changes made to ensure that recruitment and hiring processes are fair and inclusive. EAG Working Group members believe that the Law Society could have a role in regulating general recruitment and hiring processes as the Law Society currently regulates summer student and articling recruitment.
7. Some EAG Working Group members suggest that law firms¹ could implement anonymous job application programs in order to avoid implicit bias based on an applicant's name. This solution could result in racialized applicants advancing further in the hiring process.
8. Concerns have been raised by some EAG Working Group members, however, that anonymizing job applications may not be effective as an applicant's cultural or racialized background could be deduced from their work experience and volunteer work. This would place applicants in the position of having to remove items from their CVs, despite the fact that valuable skills may have been gained through these experiences. Additionally, some EAG Working Group members note that applicants should not have to change to fit themselves into the dominant legal culture. They believe that law firms need to change so that they value the attributes that racialized licensees bring to their firms. A focus should be placed on changing corporate culture.
9. EAG Working Group members propose that mandatory training should be provided to all individuals involved in recruitment and hiring of summer students, articling students, licensees and staff at law firms. The training should focus on how to ensure that recruitment and hiring is equitable and should include topics such as how to recruit and hire diverse applicants and the benefits of diversity in the workplace. The training should also include a section on the notion of "fit" and how this concept may actually result in the exclusion of people from racialized groups, and a section on the concept of unconscious bias. All

¹ References to "law firms" in this document encompasses paralegal firms, legal clinics, non-profit organizations, and other professional legal environments.

individuals involved in decisions related to promotion in law firms should also receive similar mandatory training.

10. EAG Working Group members recommend that the Law Society ensure that law firms have equitable hiring and promotion policies and practices.

Demographic Data

11. EAG Working Group members identify the need for statistical information regarding the demographic composition of law firms. EAG Working Group members agree that the Law Society could mandate demographic data reporting and agree that this information should be publicly available.
12. The members of the EAG Working Group note that the Law Society already collects demographic information from licensees through the Lawyer Annual Report and the Paralegal Annual Report. The Law Society also has information regarding where licensees are employed. The Law Society could produce this information if firms are not willing to do so.
13. EAG Working Group members believe that law firms should also track the progression of students and licensees within their workplaces, from the articling student level to the partner/managerial level. Demographic data should also include information that would indicate the number of members of different equity-seeking groups in various positions in law firms – i.e. students, associates, and partners. This may help law firms identify any issues that may exist with retention and may provide some insight as to why there may be a lack of representation of racialized groups. In the same vein, one EAG Working Group member suggests that when licensees change their status with the Law Society, the form they are required to fill out should include a question as to why the licensee changed their status. This would assist in tracking retention and progression.
14. Some EAG Working Group members note that it would be useful for law schools to also collect demographic information about their students. This data may allow the Law Society to examine any discrepancy that may exist between the total number of racialized law school graduates and the number of racialized law school graduates who become licensed. The data could indicate issues with summer student experiences and/or articling experiences.
15. Although the EAG Working Group supports demographic data collection, the Working Group advises that law firms and the Law Society should be transparent about their reasons for collecting the data as, for historical reasons, many licensees may be reluctant to provide this information.

Mentorship and Sponsorship

16. EAG Working Group members identify mentorship as being critical to the success of racialized licensees in the legal profession. Lack of mentors and networks can hinder progress in the profession. Finding mentors and networks is particularly challenging for racialized licensees and internationally-trained lawyers, who may also be racialized.
17. The EAG Working Group understands that in November 2013, Convocation approved the creation of a Mentoring and Advisory Services Proposal Task Force (the “Task Force”). EAG members would like the Task Force to consider mentoring models/programs that would benefit racialized licensees specifically.
18. EAG Working Group members believe that more resources and support are required for the Law Society’s mentoring programs. Working Group members also note that other organizations have mentoring programs that are quite stretched and could benefit from more resources. All of the legal associations that represent licensees from equity-seeking groups have mentoring programs. The Law Society should examine what programs exist and create programs that fill in the gaps.
19. EAG Working Group members suggest that the Law Society could create and adopt a model framework and guidelines for mentorship programs. The model framework and guidelines could be provided to legal associations to adapt for their own use. EAG Working Group members believe that in order to be successful, any mentorship program must have specific guidelines and expectations.
20. EAG Working Group members also note the importance of sponsorship. Catalyst² describes the difference between sponsorship and mentorship in the following manner:

Sponsors are advocates in positions of authority who use their influence intentionally to help others advance, while mentors provide advice, feedback, and coaching. Both are important to advancement as employees navigate the workplace and earn opportunities for growth.³
21. Sponsorship is now widely recognized as the next level of mentorship essential for the success of women and racialized persons. 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

² Catalyst is the leading non-profit organization with a mission to expand opportunities for women and business.

³ Catalyst, *Sponsorship/Mentoring*, online: Catalyst
<<http://www.catalyst.org/knowledge/topics/sponsorshipmentoring> >

enough; while mentors can provide access to networks and information, sponsors can be powerful and influential voices at leadership and decision-making tables.”⁴

Education/Awareness

22. The EAG Working Group believes that it would be helpful in advancing equity in the legal profession if each licensee was required to complete at least one hour of equity-related continuing professional development (“CPD”). This programming could be geared toward different practice areas and/or different types of careers within the legal profession.
23. In order to assist licensees in meeting the CPD requirement, the Law Society could develop a one hour in-person CPD or webinar for licensees that would address equity and diversity in the legal profession. The CPD could include anecdotal evidence and formal research related to challenges faced in the legal profession by equity-seeking groups, discussions regarding unconscious bias and in-group bias, and potential solutions and best practices. The Law Society could consider making this one hour CPD mandatory for all licensees.
24. Additionally, the EAG Working Group suggests that the Law Society design and offer CPD programs that are targeted to racialized licensees, similar to the current programs that have been created for women licensees through the *Justicia Project*. These programs could focus on topics such as leadership, mentorship, sponsorship and business development, addressed within the context of an understanding of the challenges faced by racialized licensees.
25. The EAG Working Group recommends that the Law Society create a document similar to the Law Society of British Columbia’s *Towards a More Diverse Legal Profession: Better Practices, better workplaces and better results* report and distribute it broadly to licensees.⁵ The document provides a helpful summary of issues and solutions related to equity and diversity in the legal profession. Additionally, the document identifies barriers, such as unconscious bias and in-group bias, which are often not acknowledged by legal professionals and law firms. A document of this nature would provide legal employers with a clear outline of issues and available measures. The document could also be provided to articling students as a mandatory component of the licensing process.
26. The EAG Working Group suggests that the Law Society develop an online equity and diversity resource centre, similar to the Law Society’s current

⁴ 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> [*Towards a More Diverse Legal Profession*].

⁵ *Towards a More Diverse Legal Profession* supra note 4.

Women's Online Resource Centre (WORC), which was developed to respond to the needs of women lawyers and paralegals. The resource centre would provide a central place for licensees to access the Law Society's equity-related model policies, publications and reports, in addition to other useful resources.

Discipline

27. The EAG Working Group is pleased with the addition of more non-benchers to the Law Society Tribunal. The Working Group would like to note, however, that adjudicators and others involved in the regulatory process should be representative of diverse communities. Equity and diversity should be considered in the recruitment and hiring process.
28. The EAG Working Group suggests that the Law Society should engage in internal tracking of the rate at which complaints are referred for investigation (as opposed to resolved at an earlier stage in the process) based on race, to determine if a disproportionate number of racialized licensees are investigated in the regulatory process.

Governance

29. EAG Working Group members believe that the Convocation should be more diverse and more reflective of society. EAG Working Group members note that seats are reserved on Convocation for benchers inside Toronto and benchers outside Toronto. The Law Society could have seats reserved for lawyers from equity-seeking groups on Convocation in order have more diverse perspectives on issues facing the legal profession.
30. Additionally, the Law Society could include more diverse voices in Convocation by allowing legal associations that represent licensees from equity-seeking groups to attend Convocation. These associations could have standing with no voting rights. However, EAG Working Group members acknowledge that including equity associations in Convocation would be unnecessary if there were more benchers from diverse groups.
31. Some EAG members note that current benchers should be actively encouraging more diverse candidates to run. In addition, Convocation should have a nominations committee that would identify skill sets needed and gaps that should be filled on Convocation. The nominations committee could then identify and recruit candidates that they would like to see run for a seat on Convocation. Membership in an equity-seeking community should be considered an asset in a candidate.
32. EAG Working Group members recommend that legal associations that represent licensees from equity-seeking groups meet with all benchers as part

of benchers orientation. This could help to educate benchers about issues that licensees from equity-seeking groups are facing.

Other

33. Some EAG Working Group members suggest that the Law Society conduct focus groups with people at the managerial level of law firms. It would be useful to find out the thoughts and concerns of those at the managerial level and it may be helpful to obtain their reactions to proposed solutions.
34. Some members of the EAG Working Group recommend that the CFRL Working Group look to the Justicia Project as a model when crafting solutions. The Justicia Project has the buy-in of law firms and, consequently, has been successful. A similar project could be created to promote the recruitment, retention and advancement of racialized licensees.
35. EAG Working Group members note that the Law Society could provide a best practices guide to legal employers, which would include topics such as diversity training, mentorship, and data collection. The Law Society could ask firms to choose one or two best practices and implement them in their workplaces. The Law Society could develop voluntary reporting guidelines for firms to report on their progress with the particular measure(s) they selected.
36. The EAG Working Group also suggests that the Law Society draft guidelines on selecting more representative panels and speakers for CPD programs and other Law Society events. The Ontario Bar Association (OBA) recently updated its CPD information sheets to encourage conference chairs to consider equality-seeking groups when organizing speakers for CPD programs. Beginning in September 2014, conference speakers will be asked to self-identify their equality status, if any. The Law Society could consider taking a similar measure.

Moving Forward

37. The EAG Working Group appreciates the opportunity to provide feedback on the findings in advance of the public consultation process. EAG looks forward to reviewing the final report of the CFRL Working Group and to working with the Law Society on the implementation and monitoring of the solutions put forward by the CFRL Working Group.