

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

CONSULTATION PAPER



The Law Society  
of Upper Canada

Barreau du  
Haut-Canada



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The Law Society of  
Upper Canada

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du Haut-Canada

## REQUEST FOR INPUT FROM THE PROFESSION

### CHALLENGES FACED BY RACIALIZED LICENSEES CONSULTATION PAPER

As part of its commitment to promoting equity and diversity in the profession, the Law Society created in 2012 The Challenges Faced by Racialized Licensees Working Group.

The Working Group has studied the challenges faced by racialized licensees (lawyers and paralegals) in Ontario and is consulting on strategies for enhanced inclusion at all career stages.

All interested parties are encouraged to review this consultation paper and to comment on the paper as a whole and on any question raised. **We invite suggestions and practical solutions to the issues. We welcome proposals for solutions not identified in this paper.**

**Please submit written submissions before March 1, 2015, to:**

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## EXECUTIVE SUMMARY

*"We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their color."*

Maya Angelou

The Law Society is committed to promoting a profession that is reflective of all peoples of Ontario and that is inclusive and free from discrimination and harassment. The Law Society is also dedicated to facilitating access to justice, as evidenced by the Law Society's recent adoption of a new comprehensive access to justice framework.<sup>1</sup>

This consultation paper is designed to engage the profession in the consideration of strategies to address the challenges faced by racialized licensees.<sup>2</sup> The profession, legal organizations, firms, law schools and any others interested in the issues discussed in this consultation paper are encouraged to provide written comments. The Working Group will consider all of the submissions and prepare a final report with recommendations for Convocation's consideration. The final report will be accompanied by a detailed implementation plan.

### Background

Ontario's legal profession has witnessed a steady increase in the number of racialized lawyers over the last 20 years. Despite this increase, evidence based on statistical data, research results and anecdotal evidence suggests that racialized lawyers continue to face challenges in the practise of law. Very little is known about the challenges faced by racialized paralegals. The public benefits from a strong and diverse Bar. This study

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<sup>1</sup> For more information, see: Treasurer's Advisory Group on Access to Justice Working Group, *Report to Convocation - Report of the Treasurer's Advisory Group on Access to Justice Working Group*, (Toronto: Law Society of Upper Canada, February 27, 2014) online at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2014/convfeb2014\\_TAG\\_fullreport.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf).

<sup>2</sup> The Ontario Human Rights Commission notes that using the terminology "racialized person" or "racialized group" is more accurate than "racial minority", "visible minority", "person of colour" or "non-White". Race is the socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth. Racialization is the "process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life". See Ontario Human Rights Commission, *Racial discrimination, race and racism*, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/racial-discrimination-race-and-racism>.

suggests there are some continued barriers to realizing the fullest capacity for excellence among our Bar.

To explore and address this issue, Convocation created The Challenges Faced by Racialized Licensees Working Group (the Working Group) in August 2012, with a mandate to:

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- b. identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
- c. consider best practices for preventive, remedial and/or support strategies;
- d. if appropriate, design and develop preventive, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees, to address the challenges described above.

Beginning in October 2012, the Working Group undertook a broad-based study which included reviewing available data and literature, meeting with individuals and organizations, and co-ordinating focus groups led by prominent legal professionals.

In 2013, the group launched a formal engagement process which included key informant interviews, focus groups and a survey of the profession as a whole.

Information obtained to date suggests that racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. Racialization intersects with a wide variety of other factors, including language or accent, differences of professional status between lawyers and paralegals and whether licensees are internationally trained.

The intersection of these and other factors such as gender, gender identity, gender expression age, sexual orientation, disability and geographic location, provide a complex pattern of experiences and impacts associated with the challenges of racialization.

## Summary of Engagement Results

The Working Group used several methodologies to gather information and found that common themes related to participants' experiences emerged. The engagement process revealed that overt discrimination and bias are a feature of daily life for many racialized licensees.

Participants offered examples of discriminatory behaviours, interactions, language and assumptions that are common features of their everyday professional experiences.

Some participants felt that racialized licensees are often not offered the same opportunities for advancement. They also described feeling alienated from the dominant culture of the legal profession.

Some also noted that racialized licensees have much to gain from mentoring but are often unaware of available programs or do not have access to them. They also said that many racialized licensees lack a strong network of legal professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace.

A number of participants also said they felt they had been forced to enter sole practice because of barriers they faced in advancing in other practice environments — and some felt ill-equipped and unprepared for the realities of sole practice.

In addition to the aforementioned barriers, participants stated that internationally trained lawyers often face a combination of disadvantages, such as few professional network opportunities; language challenges; a different culture from that of their colleagues; lack of critical transition from law school to a first professional position in Ontario; and lack of mentors and contacts.

According to participants, racialized paralegals also face additional challenges, particularly in the job market. As a group, paralegals reported lower success rates in finding suitable employment, compared to racialized lawyers.

## Questions for the Profession

The Working Group has considered the results and has identified a number of detailed questions for the profession to consider. These questions focus on the following issues:

- Enhancing the internal capacity of organizations – establishing diversity within firms, collecting demographic data, and developing model contract compliance programs
- Mentoring and Networking – identifying preferred models and best practices
- Enhancing cultural competence of the profession – providing accredited CPD Programs
- Discrimination and the role of the complaints process – effectively addressing complaints of discrimination
- The operations of The Law Society of Upper Canada – enhancing the Equity Compliance Program, conducting an internal equity audit and developing a more diverse public face/image for the Law Society

For the complete set of questions, see Appendix 2.

## THE CONSULTATION PAPER

### BACKGROUND

In the last two decades, the Ontario legal profession has seen a steady increase of racialized lawyers<sup>3</sup>, representing 9.2% of the legal profession in 2001 and 11.5% in 2006.<sup>4</sup> The Law Society's Statistical Snapshots of Lawyers and Paralegals showed that by 2010, 17% of lawyers and 28% of paralegals were racialized.<sup>5</sup> This compares to 23% of the Ontario population who indicated in the 2006 Canada Census that they are racialized and the 25.9% of the Ontario population who indicated in the 2011 National Household Survey that they are racialized.<sup>6</sup>

Research results and anecdotal evidence gathered prior to the creation of the Challenges Faced by Racialized Working Group suggested that despite this increase, racialized lawyers still face challenges in the practise of law. Also, very little was known about the challenges faced, if any, by racialized paralegals in the profession.

As a result, in August 2012, Convocation created The Challenges Faced by Racialized Licensees Working Group (the Working Group) to:

- a. identify challenges faced by racialized licensees in different practice environments, including entry into practice and advancement;
- b. identify factors and practice challenges faced by racialized licensees that could increase the risk of regulatory complaints and discipline;
- c. consider best practices for preventive, remedial and/or support strategies;
- d. if appropriate, design and develop preventive, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees, to address the challenges described above.

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<sup>3</sup> This study does not include Aboriginal students, lawyers or paralegals. The Law Society conducted a separate study to identify and address the challenges faced by Aboriginal students, lawyers and paralegals. See *Final Report – Aboriginal Bar Consultation* (Toronto: Law Society of Upper Canada, January 29, 2009), online:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118>.

<sup>4</sup> Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: Law Society of Upper Canada, April 2010), online: [http://www.lsuc.on.ca/media/convapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/convapril10_ornstein.pdf).

<sup>5</sup> Law Society of Upper Canada, *Statistical Snapshot of Paralegals in Ontario: From 2010 Paralegal Annual Report*, online:

<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488152>, and Law Society of Upper Canada, *Statistical Snapshot of Lawyers in Ontario: From 2010 Lawyer Annual Report*, online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488150>.

<sup>6</sup> Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, online: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>.



From October 2012 on, the Working Group undertook the following activities and developed the following reports available at [www.lsuc.on.ca/racialized-licensees](http://www.lsuc.on.ca/racialized-licensees).

- a. Conducted a review of the data and literature available on this topic – report entitled *Law Society Scan and Best Practices*.
- b. Met informally with a number of individuals and organizations to obtain viewpoints on challenges and best practices for racialized licensees – report entitled *Results from Informal Engagement* (“Informal Engagement Report”).
- c. Received valuable input from a working group of the Law Society’s Equity Advisory Group (EAG Working Group).<sup>7</sup> The EAG Working Group identified challenges faced by racialized licensees and suggested options to address these challenges – report entitled *Submissions of the Equity Advisory Group*.
- d. Retained the services of Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign© to formally engage with the profession. This engagement included 20 key informant interviews, 14 focus groups with racialized licensees, two focus groups with non-racialized licensees and a 35-question survey conducted with the profession (lawyers and paralegals) as a whole. The consultants provided their report to the Law Society in March 2014 – report entitled *Challenges Facing Racialized Licensees Final Report* (The “Stratcom report”).
- e. Created a parallel engagement process — the community liaison process — to gather information from racialized licensees who may not have come forward during the formal Stratcom engagement process. Prominent and experienced legal professionals from various racialized communities acted as liaisons and held focus groups with the community – report entitled *Community Liaison Report to the Challenges Faced by Racialized Working Group* (“Community Liaison Report”).
- f. Compiled self-identification data based on firm size and other characteristics, presented at Appendix 1.
- g. Began an analysis of available Law Society data related to the regulatory process. Included in that analysis will be consideration of whether additional or better data or information should be obtained.

Information obtained to date suggests that racialization is a constant and persistent factor affecting licensees during entry into practice and opportunities for career advancement. A majority of participants in the Stratcom engagement process — both racialized and non-racialized — agreed that the challenges faced by racialized licensees have an impact on the reputation of the legal professions, access to justice, and the quality of services provided.<sup>8</sup>

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<sup>7</sup> EAG is comprised of individual and organizational members that are committed to equality and diversity principles and that have experience working with (but not limited to) issues affecting Aboriginal, Francophone and racialized communities, persons with disabilities, gay, lesbian, bisexual, and transgender persons, and women.

<sup>8</sup> Strategic Communications, *Challenges Facing Racialized Licensees Report* (Toronto: Stratcom, 2014) [Stratcom Report] at 57.

This consultation paper is designed to engage the profession and the public in the consideration of options to address the challenges faced by racialized licensees. The profession, legal organizations, firms, law schools and any others interested in the issues discussed in this paper are encouraged to provide written comments. The Working Group will consider all of the submissions and prepare a final report with recommendations that will be brought to Convocation.

Please note that the term “firms” in this report includes lawyer firms and paralegal firms.

## THE ENGAGEMENT PROCESS RESULTS

Although the Working Group used multiple methodologies to gather information about the challenges faced by racialized licensees, the experiences of participants in the informal engagement with licensees and legal associations (“the informal engagement”) and of participants in the community liaison process echoed the experiences of participants in Stratcom’s formal engagement.

Numerous participants depicted a landscape in which racialization is a “consistent and persistent factor” affecting racialized licensees across their careers.<sup>9</sup>

The following challenges emerged:

- a. Discrimination and stereotypes;
- b. Cultural differences and fit;
- c. Lack of mentoring, sponsors, role models and networking opportunities;
- d. Intersecting factors and increased vulnerability;
- e. Race as a factor in entering sole practice;
- f. Barriers to entry into the profession;
- g. Barriers faced in advancing in the profession;
- h. Risk factors in entering the regulatory process;
- i. Additional barriers faced by internationally trained lawyers; and
- j. Additional barriers faced by paralegals.

### Discrimination and Stereotypes

*You work harder to prove yourself. You cannot necessarily do things that your White colleagues can do as there is a different connotation. Generally I have always been told that I have to work harder than my White counterparts, which in some respects is sadly still true in this day and age. I feel that certain lawyers do not give me certain files because of a preconceived notion about my skill set due to the colour of my skin.*

Community Liaison Meeting

The engagement process allowed participants to share their experiences and a number of participants described discriminatory experiences that had serious impacts on their careers, including career opportunities and earnings. Some described experiences of overt discrimination, such as situations of being on the receiving end of racist jokes or racist comments and assumptions.<sup>10</sup>

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<sup>9</sup> *Ibid.* at x. See also the Community Liaison Report and the Informal Engagement Report.

<sup>10</sup> *Ibid* at 8.

A number of participants spoke of having to work against assumptions by legal professionals, clients, opposing counsel and members of the bench that racialized licensees are less competent, skilled and effective. They recounted incidents in which they were subjected to negative stereotypes, and made to work harder or suffer greater consequences for errors than their non-racialized colleagues.

Some also felt that they were not offered the same opportunities for advancement. For example, they spoke of not being brought in on certain files, not being asked to attend client meetings, not being invited to social gatherings with colleagues where files and assignments are discussed, and receiving lower quality of work. Some wondered if race was a factor in the more rapid advancement of non-racialized colleagues of comparable or less merit.<sup>11</sup>

Participants often felt they had to prove themselves to a greater extent than their non-racialized colleagues. They noted that they were often not perceived as credible and felt a lack of respect. A number of participants reported being mistaken for a student, an assistant, a social worker, or a client, instead of a lawyer or paralegal.

Almost half of racialized respondents<sup>12</sup> to the survey reported they had been expected to perform to a higher standard than others, due to racial stereotyping. Ethno-racial groups that named this factor more frequently than average included Black, Chinese, South East Asian, Arab, and South Asian respondents.<sup>13</sup>

## **Socio-economic Cultural Differences and Fit**

*Firm culture is a huge factor on who gets interviewed and hired; both during on campus interviews and as first year associates. The analogy I always use is that you can't fit a square peg in a round hole. Bay Street is a particular culture and if you don't know how to pour your wine, it will be picked up, and as a result, the weaning process serves to exclude a disproportionate number of minority candidates.*

**Community Liaison Meeting**

The concept of “fit” was also mentioned as a barrier for racialized licensees in hiring processes and within their practice. Participants were of the view that the concept of “fit” translated to being “non-racialized” and, consequently, racialized licensees were more likely to face challenges in finding positions and in career advancement.

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<sup>11</sup> *Ibid.* at 12.

<sup>12</sup> 41% of racialized respondents.

<sup>13</sup> Black (54%), Chinese (52%), South East Asian (46%), Arab (46%), and South Asian (45%) respondents.

Many participants described feeling alienated from the dominant culture. For example, some noted that social events centred on alcohol consumption made non-drinkers feel excluded. Other events such as playing golf, going to the cottage, and watching hockey were also identified as points of contact, interaction and social solidarity for non-racialized colleagues, while reinforcing feelings of isolation and “otherness” for racialized licensees.<sup>14</sup>

The Stratcom survey also addressed this issue by asking about the impact of lifestyle and personal beliefs on entry and advancement in the profession. A higher proportion of racialized licensees, compared to non-racialized licensees, considered that their preferences in social activities<sup>15</sup> and their social or political views were barriers to entry into the profession<sup>16</sup> — and even more importantly, barriers to advancement.<sup>17</sup>

Survey respondents who most frequently identified the types of social activities that they prefer as a barrier to advancement were from the following communities: Chinese, Arab, South Asian and South East Asian.<sup>18</sup>

### **Lack of Mentoring, Sponsors, Role Models and Networking Opportunities**

*If we can't get good articles and the mentorship and guidance that goes with it, this impacts the quality of service we can provide as well as opportunities – not giving people the chance to be the best they can impacts our whole society.*

**Community Liaison Meeting**

Many participants noted that racialized licensees have much to gain from mentoring but all too often are unaware of available programs or do not have access to them. They were also of the view that many racialized licensees lack a strong network of legal professionals, mentors or sponsors who can provide guidance and advocate for them in the workplace.

Some key informants noted that this lack of social connections can remain a barrier throughout a career if, for example, licensees begin their practice by building their client base within their own ethnic community where such networks are still sparse.<sup>19</sup>

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<sup>14</sup> Stratcom Report, *supra* note 8 at 13 – 14.

<sup>15</sup> 18% of racialized respondents compared to just 5% of their non-racialized colleagues.

<sup>16</sup> 12% of racialized respondents compared to 5% of their non-racialized colleagues.

<sup>17</sup> 26% of racialized respondents ranked “social activities” as a barrier compared to 12% of non-racialized respondents and 16% of racialized respondents ranked their “social and political views” as a barrier compared to 9% of non-racialized respondents.

<sup>18</sup> At 36%, 33%, 31% and 31% of each community respondent respectively.

<sup>19</sup> Stratcom Report, *supra* note 8 at 8.

The Stratcom survey results showed that a majority of racialized respondents believe that not having access to a network of professional contacts contributes to a career disadvantage.<sup>20</sup> A majority of racialized respondents said that not having the same cultural background as one's colleagues had disadvantaged their careers.<sup>21</sup>

The survey results also showed that a higher proportion of non-racialized<sup>22</sup> respondents, compared to racialized respondents<sup>23</sup>, find it relatively easy to get legal advice on client files from professional colleagues and mentors. Differences between the two groups were not as high on other statements. For example, a slightly higher percentage of non-racialized respondents agreed that mentors had played an important role in their career development.<sup>24</sup> A slightly higher percentage of racialized respondents indicated that social networks had played an important role in their career.<sup>25</sup>

The absence of professional networks, divergent cultural backgrounds and prejudice based on race were identified as the most important sources of career disadvantage for a majority of racialized survey respondents.

Among licensees more likely than average to name these factors as probable or definite sources of career disadvantage are women, sole practitioners, licensees whose first language is not French/English and those who are born outside Canada. Racialized groups more likely than average to name all three factors as probable or definite sources of career disadvantage are Black, South Asian, Chinese and Arab respondents.

### **Intersecting Factors and Increased Vulnerability**

*When you have an accent, you signal that you are not in this place. You won't understand the culture as everyone else. Those who succeed are very good at adapting to other clients. So that's where an accent automatically sets you apart as not from this place.*

**Community Liaison Meeting**

Many participants noted that racialization intersects with a wide variety of other factors including language or accent, differences of professional status between lawyers and paralegals and whether licensees are internationally trained.<sup>26</sup> The intersection of these and other factors such as gender, gender identity, gender expression, age, sexual

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<sup>20</sup> 68% of racialized respondents.

<sup>21</sup> 57% of racialized respondents.

<sup>22</sup> 79% of non-racialized respondents.

<sup>23</sup> 67% of racialized respondents.

<sup>24</sup> 69% of non-racialized respondents compared to 62% of racialized.

<sup>25</sup> 54% racialized respondents compared to 51% non-racialized

<sup>26</sup> Stratcom Report, *supra* note 8 at 14.

orientation, disability, and geographic location yields a complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization.

### **Race and Gender**

*Being female and racialized can be complicated. Women are already struggling in this profession with issues of work/life balance, family commitments, maternity leave, etc.*

*Women are still working to be taken seriously in this profession and being a racialized woman means that you often have even more to prove. It can cause stress, anxiety and may make racialized women work harder, push more and delay some of their personal goals for their work.*

### **Community Liaison Process**

The intersection of race and gender was particularly seen as multiplying the challenges for women. In an environment, described by some participants as a “boys’ club”, where extracurricular social activities are often also avenues to new work opportunities and advancement, many racialized women perceived themselves as doubly disadvantaged.<sup>27</sup>

The Stratcom survey addressed harassment and expectations due to gender stereotypes as factors contributing to career disadvantage. Although survey results indicated that racialized male licensees are not free from harassment or from gender-based stereotyping, a larger proportion of racialized women<sup>28</sup> viewed gender stereotyping as a factor contributing to their having been disadvantaged in hiring, advancement or pursuit of an area of practice.

Further gender differences were noted in the Stratcom survey as barriers to entry. For example, racialized and non-racialized women were both more likely than men to identify the following factors as barriers to their entry into the profession: physical appearance, age (too young) and gender.<sup>29</sup>

The results reinforce the focus group conclusion that, for many racialized women, the experience of gender bias is compounded as a consequence of their racial status. Racialization and gender intersect to amplify barriers associated with each factor.

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<sup>27</sup> *Ibid.* at 14.

<sup>28</sup> Between one quarter and two fifths.

<sup>29</sup> On the issue of physique/appearance, 29% racialized and 12% non-racialized women respondents identified it as a barrier to entry, compared to 19 % racialized and 4% non-racialized men. On gender, 17% of racialized women respondents and 12% of non-racialized women identified it as a barrier to entry, compared to 5% of racialized men and just 1% of non-racialized men. Finally, on the issue of age (too young), 23% of racialized women respondents and 11% of non-racialized women identified it as a barrier to entry, compared to 9% of racialized men and 5% of racialized men.

## Race as a Factor in Entering Sole Practice

*Most of us are sole practitioners because we could not get into large firms because of racial barriers; the ones I know who got into firms ended up leaving because of feelings of discrimination, and ostracizing and alienation – [i.e.] not being invited to firm dinners and outings. Some Black lawyers feel suicidal because of repeatedly running into racial barriers (not academic performance) trying to enter large firms; there are firms that believe if they hire Black lawyers they will lose their clients.*

Community Liaison Meeting

A number of participants stated that they felt they had been forced to enter sole practice because of barriers they had faced in obtaining employment or advancing in other practice environments. Some participants also believed that a number of racialized lawyers become sole practitioners by default and are ill-equipped and unprepared for the realities of sole practice.

Several participants believed that racialized lawyers are more likely to be in sole practice and they highlighted the vulnerability of sole practitioners in the legal profession in the context of professional regulation and discipline.

## Entry into the Profession

The barriers noted above have an impact on racialized licensees' experiences in entering the legal profession. The Stratcom survey results also shed some light on other barriers that impact upon entry into the profession. Racialized and non-racialized survey participants were presented with a list of factors and asked to indicate in each case if they had experienced any of the factors as a barrier or challenge at any time during or after their entry into practice.<sup>30</sup>

Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry into practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees who were most likely to cite race/ethnicity as a barrier to entry included South East Asian, Black, Arab and South Asian respondents, those having a first language other than French/English, women, and those born outside Canada.<sup>31</sup>

Whereas ethnic/racial identity was selected as a barrier to entry by a substantially higher

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<sup>30</sup> Stratcom Report, *supra* note 8 at 36 to 39.

<sup>31</sup> South East Asian (54%), Black (52%), Arab (50%), South Asian (46%), first language neither French/English (46%), female (45%) and born outside Canada (44%).



proportion of racialized respondents than any of the other barriers tested, it ranked among the least important challenge for non-racialized respondents.

The following barriers were also identified by racialized lawyers and to a much lesser extent by non-racialized lawyers:

- a. physical appearance;<sup>32</sup>
- b. socio-economic status;<sup>33</sup>
- c. place of birth and where one is raised;<sup>34</sup>
- d. age (too young);<sup>35</sup>
- e. the way one speaks English/French;<sup>36</sup>
- f. gender identity.<sup>37</sup>

The survey revealed that a significantly smaller percentage of racialized respondents, compared to non-racialized respondents:

- a. found a suitable first job after being licensed;<sup>38</sup>
- b. reported having been offered employment at the firm where they had articulated or had a training placement;<sup>39</sup>
- c. found employment in a suitable practice environment;<sup>40</sup> and
- d. were able to work in their preferred area of practice.<sup>41</sup>

There were wide differences of experience at entry into the profession, and in overall career trajectory. Almost half of racialized licensees “strongly or somewhat agreed” that they had struggled to find an articling position or training placement<sup>42</sup> and a majority “strongly or somewhat agreed” that they had not advanced as rapidly as colleagues with similar qualifications.<sup>43</sup>

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<sup>32</sup> 24% of racialized respondents and 8% of non-racialized respondents.

<sup>33</sup> 19% of racialized respondents and 8% of non-racialized respondents.

<sup>34</sup> 17% of racialized respondents and 4% of non-racialized respondents.

<sup>35</sup> 15% of racialized respondents and 8% of non-racialized respondents.

<sup>36</sup> 12% of racialized respondents compared to just 3% of non-racialized respondents.

<sup>37</sup> 11% of racialized respondents compared to 6% of non-racialized respondents.

<sup>38</sup> 59% of racialized respondents compared to 78% of non-racialized respondents

<sup>39</sup> 43% of racialized respondents compared to 53% of non-racialized respondents

<sup>40</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>41</sup> 66% of racialized respondents compared to 82% of non-racialized respondents

<sup>42</sup> 43% of racialized respondents compared to 25% of non-racialized respondents

<sup>43</sup> 52% of racialized respondents compared to 25% of non-racialized respondents

## Advancement

*I was well liked in my Bay Street firm and was a golden boy. Race [was] not a factor getting in the door as a lawyer but was a factor in partnership. I was never offered partnership though I was at the firm longer than those who were offered partnership. It was common knowledge that I was a favourite at the firm.*

Community Liaison Meeting

The Stratcom survey results also identified barriers to advancement in the profession. Both racialized and non-racialized respondents were asked to identify which factors represented barriers at any time *after* entry into practice.

The greatest difference between the two groups is in the importance of ethnic/racial identity, which is perceived as a barrier/challenge to advancement by 43% of racialized licensees, compared to 3% of the non-racialized licensees.

Intersecting with ethnic/racial identity are physical appearance, family socio-economic status, where you were born/raised and how you speak English/French — all of which have been identified as barriers after entry by at least 15% of racialized licensees.

By contrast, for non-racialized licensees, these issues represent barriers after entry to practice that are comparable or possibly of lesser importance than those associated with sexual orientation, gender, age, lifestyle, and personal beliefs.

Racialized and non-racialized respondents identified time away from work to care for children and other family members as a barrier to advancement after entry.<sup>44</sup> However, the barrier was more significant for racialized and non-racialized women than for men.<sup>45</sup>

The survey found narrower gaps between racialized and non-racialized respondents in the area of career setbacks, as shown below:

- a. agreed they had left one or more positions because they felt they did not belong there – 42% of racialized and 35% of non-racialized respondents;
- b. reported having left one or more positions because they did not feel they would advance commensurate with their performance and ability – 40% of racialized and 31% of non-racialized respondents;

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<sup>44</sup> 25% of racialized respondents and 23% for non-racialized respondents.

<sup>45</sup> 33% of racialized women and 36% of non-racialized women.

- c. they had been refused a promotion to a management position – 13% of racialized and 9% of non-racialized respondents;
- d. their admission to partnership had been delayed – 9% of both racialized and non-racialized respondents; and
- e. they were not made partner, despite meeting known criteria for advancement – 6% of both racialized and non-racialized respondents.

## Regulatory Process

Participants were asked to comment on their perception of the regulatory process. For some, there were concerns about the lack of racial diversity at Convocation and on discipline panels. Others were of the view that, because of their higher likelihood to become sole practitioners, and/or to come from backgrounds where professional life is the exception rather than the rule, racialized licensees often practise with fewer connections to a large or affluent client base and without sufficient education in the business of a legal practice.

Key informants provided anecdotal evidence that many racialized licensees take a community-specific approach when starting their career, appealing to their own local ethnic/cultural community for business, which may (in some instances) expose them to unreasonable expectations about the scope and efficacy of their practice and, ultimately, complaints from clients.

Participants noted factors that could contribute to making racialized licensees more vulnerable to complaints, most frequently citing a comparative lack of resources, training and mentoring opportunities. Both racialized and non-racialized survey respondents placed lack of mentors and professional networks<sup>46</sup> and racial stereotyping by clients<sup>47</sup> at the top of the list of factors that may increase the risk of complaints against racialized licensees.

A majority of racialized and almost half of non-racialized respondents<sup>48</sup> indicated in the survey that miscommunication was “definitely or probably” a factor increasing the risk of complaints. This dovetails with the results of the focus groups, which identified factors of cultural miscommunication often overlapping with miscommunications based in language differences, as factors contributing to the risk of increased complaints.

Racialized and non-racialized licensees had different views on whether issues such as lower quality articling positions and inadequate training<sup>49</sup> and racial stereotyping by other

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<sup>46</sup> 78% of racialized and 63% of non-racialized respondents.

<sup>47</sup> 71% of racialized and 57% of non-racialized respondents.

<sup>48</sup> 57% of racialized and 48% of non-racialized respondents.

<sup>49</sup> 70% of racialized and 51% of non-racialized respondents.

members of the profession or the judiciary<sup>50</sup> increase the risk of complaints and discipline for racialized licensees.

In this regard, the Working Group considered available information regarding the racialized experience in the regulatory process and determined that there is more work to be done. The preliminary work thus far will be continued.

The Working Group also suggests remedial measures, considered below, that are not specifically tied to particular racial groups, but can assist licensees more generally — such as mentoring and networking.

### **Additional Barriers Faced by Internationally Trained Lawyers**

Some participants stated that internationally trained lawyers often face additional challenges because of language barriers, socialization, job readiness and work experience. They believed that the advantages that internationally trained lawyers bring to the profession as a result of the experience of practising in another country, are often discounted or not understood.

Participants identified being born and/or educated outside Canada as potential obstacles for racialized licensees. It was believed that internationally trained lawyers could face a combination of disadvantages, such as few professional network opportunities, language challenges, a different culture than their colleagues, the lack of critical transition from law school to a first professional position in Ontario, and the lack of mentors and contacts.<sup>51</sup>

### **Additional Barriers Faced by Paralegals**

In addition to the barriers identified above that apply to all racialized licensees, some focus group participants noted that racialized paralegals seem to face greater challenges in the job market than racialized lawyers.

Data from the survey reinforced this hypothesis. Overall, paralegals as a group reported lower success rates in finding suitable employment than lawyers.

On the key measure of finding a suitable first job, just 26% of racialized paralegals had found such job, compared to 36% of non-racialized paralegals. On finding employment in their preferred practice environment, 37% of racialized paralegal respondents had found such employment, compared to 57% of their non-racialized counterparts.

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<sup>50</sup> 69% of racialized and 46% of non-racialized respondents.

<sup>51</sup> Stratcom Report, *supra* note 8 at 9.

Similarly, 41% of racialized paralegal respondents said they found employment in their preferred area of practice, compared to 67% of non-racialized paralegals.

## QUESTIONS FOR THE PROFESSION

### Introduction

Based on the results described above<sup>52</sup>, the Working Group identified questions for the profession's consideration and invites input on the questions posed below. The questions are organized under the following themes:

- A. Enhancing the internal capacity of organizations;
- B. Mentoring, advisory services and networking;
- C. Enhancing cultural competence in the profession;
- D. Discrimination and the role of the complaints process;
- E. The operations of The Law Society of Upper Canada.

The Working Group also welcomes additional ideas, initiatives or practices that may assist in addressing the challenges faced by racialized licensees.

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<sup>52</sup> The literature can be found in *Law Society Studies and Scan of Best Practices*.

## A. Enhancing the Internal Capacity of Organizations

The engagement with the profession indicates that some of the barriers faced by racialized licensees exist in recruitment processes and in advancement in their careers. The Working Group proposes that organizations, including firms, enhance their internal capacity to address such barriers by considering approaches under the following three categories:

- a. Establishing diversity programs within firms;
- b. Collecting demographic data;
- c. Establishing contract compliance programs.

### **Establishing Diversity Programs Within Firms**

**Question 1: How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why? Proposed models are presented below, and other proposed models are welcome.**

- **Diversity project**: A project in which firms and organizations with in-house counsel services commit to working with the Law Society to develop and adopt standards and resources for the recruitment, retention and career progression of racialized licensees.
- **Self-assessment**: A project in which firms and organizations with in-house counsel services complete a self-assessment about their diversity performance and use the results to identify and adopt practices and policies to be more equitable and inclusive.
- **Requiring standards**: A project in which firms and organizations with in-house counsel services would be required by the Law Society to adopt standards and resources for the recruitment, retention and career advancement of racialized licensees.

### ***Diversity Project***

The first approach described above is based on the Law Society's Justicia Project model adopted in 2008. The Justicia Project is a gender diversity project in which more than 55 firms signed commitment agreements with the Law Society to work together to develop resources that would assist in retaining and advancing women in private practice.

Participating firms, in partnership with the Law Society, developed templates to track gender demographics and to identify and adopt principles and best practices regarding flexible work arrangements, networking and business development, mentoring programs

and leadership skills development for women. The Justicia resources are now available online to the profession as a whole at: [www.lsuc.on.ca/justicia\\_project/](http://www.lsuc.on.ca/justicia_project/).

Other examples of similar initiatives are the Law Firm Diversity and Inclusion Network (LFDIN) and the Legal Leaders for Diversity (LLD). These are firm and legal organization-based initiatives that try to address challenges related to the retention and advancement of equity-seeking groups by working together and promoting the adoption of best practices.<sup>53</sup>

The Law Society could, just as it did in the Justicia Project, act as a catalyst and work with firms and organizations to develop resources to create the infrastructure for inclusiveness and standards to measure progress. Recently, following a consultation with racialized licensees, the Barreau du Québec developed a three-year action plan that includes using the Justicia model to address issues related to the recruitment, retention and advancement of racialized licensees.<sup>54</sup>

### **Self-Assessment**

The second approach, asking or requiring firms to complete a self-assessment about diversity performance, is based on the Canadian Bar Association's guide *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide*. The document was drafted to "assist lawyers and firms by providing practical guidance on law firm structures, policies

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<sup>53</sup> Similar initiatives have been successful in the U.S. such as the Boston Lawyers Group and the Lawyers Collaborative for Diversity (LCD).

The Boston Lawyers Group is comprised of prominent firms, corporate legal departments and government agencies in Boston that are committed to identifying, recruiting, advancing and retaining attorneys of colour. The group has grown from 13 members at its creation to over 45 members. The Boston Lawyers Group acts as a resource to members by hosting forums, roundtable discussions, educational programs and job fairs, in an effort to promote diversity in Boston's legal community. The Boston Lawyers Group also develops initiatives within law schools, student affinity organizations, city and state governments, bar associations and other professional and business organizations. Members are ultimately responsible for meeting their own diversity and inclusion goals. See The Boston Lawyers Group, *About the BLG*, online: <http://www.thebostonlawyersgroup.com/about/who.htm>.

The LCD operates in a similar manner to the Boston Lawyers Group. The LCD is comprised of firms, corporate law offices, government agencies and state bar/law associations in Connecticut. The current challenge of the LCD is "to increase the recruitment, retention and advancement of lawyers of color, not only as good social policy, but also as exemplary business practice." See Lawyers Collaborative for Diversity, *Who We Are*, online:

<http://www.lcdiversity.com/about/who.htm>

<sup>54</sup> Barreau du Québec, *For a More Inclusive Profession – The Forum Project* (Montreal: Barreau du Québec, May 2014), online:

[http://www.barreau.qc.ca/pdf/publications/Rapport\\_Profession\\_Inclusive\\_4pages-en.pdf](http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf).



and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled.”<sup>55</sup>

The document contains a self-evaluation tool for firms, the *Canadian Bar Association (CBA) Ethical Practices Self-Evaluation Tool*, which outlines 10 key areas of ethical infrastructure and provides questions related to firm policies and procedures under each identified area.<sup>56</sup>

The self-evaluation tool is modelled on the approach used in New South Wales for regulation of incorporated legal practices. Rather than being required to follow specific rules, the firms are required to self-assess whether their practices and policies are effective in ensuring professional conduct and to establish practices and policies that are thought effective in their specific context. The result has been a two-third reduction in client complaints for firms regulated in this way.<sup>57</sup> This approach could be adopted for diversity practices on a voluntary or mandatory basis.

The Law Society of England and Wales has adopted a similar, successful voluntary approach to diversity practices. In 2009, it adopted the *Diversity and Inclusion Charter* to, “help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients.”<sup>58</sup>

To date, over 300 practices have signed the Charter, representing more than a third of all solicitors in private practice. Practices that sign the *Diversity and Inclusion Charter* are required to report annually to show how well they are meeting their commitments and where more work needs to be done. The Charter is accompanied by a set of resources to help practices fulfil their commitments in key areas. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards.

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<sup>55</sup> Canadian Bar Association Ethics and Professional Responsibility Committee, *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide* (Ottawa: The Canadian Bar Association, 2013), online: <http://www.cba.org/CBA/activities/pdf/ethicalinfrastructureguide-e.pdf>.

<sup>56</sup> See Canadian Bar Association Ethics and Professional Responsibility Committee, *CBA Ethical Practices Self-Evaluation Tool* (Ottawa: The Canadian Bar Association, 2013), online: <http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-e.pdf>.

<sup>57</sup> Tahlia Gordon, Steve A. Mark, and Christine Parker, “Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW”, J.L. & Soc. (2010), Legal Studies Research Paper No. 453; Susan Fortney and Tahlia Gordon, “Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation”, Hofstra University School of Law Legal Studies Research Paper No. 13-02 (2013).

<sup>58</sup> The Law Society of England and Wales, *Diversity and Inclusion Charter*, online: <http://www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter/>.

### ***Requiring Standards***

The third approach would require firms and organizations with legal counsel to adopt standards and resources for the recruitment, retention and career advancement of racialized licensees. The Law Society would develop such standards.

### **Collecting Demographic Data**

In addition to implementing diversity programs, the Working Group proposes that firms collect demographic data of their lawyers and paralegals.

There are a number of advantages to collecting demographics, as listed below. It is suggested that such data would be particularly helpful in identifying the types of diversity programming that would best meet the needs of each firm.

**Question 2: What is the preferred model for the collection of firm demographic data and why? Other proposed models are welcome.**

- **Using Law Society data:** The Law Society collects demographic data of licensees through the Lawyer and Paralegal Annual Reports, publicly reports the demographic data based on firm size and discloses to firms their own demographic data.
- **Providing templates:** The Law Society works with firms to develop consistent templates for demographic data collection and encourages firms to collect such data on a regular basis.<sup>59</sup>
- **Requiring firms to report:** The Law Society sets parameters for the voluntary collection of demographic data by firms and requires firms to report either that they are collecting this information or the rationale for not collecting such data.
- **Mandatory collection:** The Law Society sets parameters for the mandatory collection of demographic data by firms.

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<sup>59</sup> In this document, the term “small firms” refers to firms with 5-25 licensees, the term “medium firm” refers to firms with 25-100 licensees, and the term “large firms” refers to firms with 100 or more licensees.

## ***Background Discussion***

Some participants in the engagement process and studies have noted the value of organizational collection of demographic data. For example, some Stratcom key informants indicated that more detailed statistics on racialization within firms would be valuable, similar to approaches in the United States where transparency about firm representation assists in increasing representation within firms.<sup>60</sup> The Stratcom survey results indicated that a majority of racialized licensees favoured measures related to collecting and sharing data. However, some concerns were expressed about measures that might be construed as setting diversity targets.<sup>61</sup>

## ***The Advantages of Data Collection***

The Working Group believes that gathering and maintaining demographic data is a best practice. There are numerous reasons to gather demographic information, including the following:

- a. Such data can be a tool to increase a firm's competitiveness. Numerous large clients in the U.S., and now in Canada, issue requests for proposals (RFPs) to select their legal counsel, requiring firms to produce demographic data of their workforce. For example, the Bank of Montreal's Legal, Corporate & Compliance Group (LCCG) requires disclosure of a firm's diversity statistics as part of its RFP process for legal suppliers.<sup>62</sup>
- b. Diversity, and data on diversity, assists firms to attract a strong talent base. As the pool of law school students is increasingly diverse, so is the pool of legal talent.
- c. Maintaining demographic data allows firms to monitor diversity in recruitment and advancement and to adjust policies and practices accordingly.
- d. Demographic data assist firms to enhance their client services and professional reputation, and to become role models by ensuring representation at all levels.
- e. Demographic data provide background for firms to develop programs that enhance inclusiveness.
- f. The information may assist in developing initiatives to enhance access to justice.

Dean Lorne Sossin and Sabrina Lyon, in their article *Data & Diversity in the Canadian Legal Community*, also underline the importance of data collection, noting that while "collecting and publishing data on diversity will not in and of themselves make the justice community more inclusive, it is difficult if not impossible to see how the justice

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<sup>60</sup> Stratcom Report, *supra* note 8 at 9.

<sup>61</sup> *Ibid.* at 86.

<sup>62</sup> BMO LCCG, *Diversity at BMO: Driving Change from the Inside Out*.

community could become more inclusive without meaningful and reliable data.”<sup>63</sup>

Despite the importance of quantitative demographic data, many employers assess their progress in diversity and inclusion by considering more qualitative measures. Sossin and Lyon believe that “when an organization is comprised of very few diverse members, a firm-wide survey on inclusion will likely lead to misleading results. Qualified and supplemented by quantitative data, the picture becomes much clearer.”<sup>64</sup> Most individuals consulted in the Sossin and Lyon project indicated that, as regulator of the profession, the Law Society is the most appropriate body to lead the effort in calling for the collection and dissemination of demographic data.

### ***Data Collection Practices***

#### The American Experience

Data collection has been an ongoing practice in the U.S. with organizations such as the National Association of Legal Career Professionals (NALP)<sup>65</sup> and Vault<sup>66</sup> collecting and reporting both qualitative and quantitative diversity and inclusion information about U.S. firms or legal organizations. Although not mandatory, the publication of data is an effective recruitment tool for firms and legal organizations, and hundreds participate in the NALP and Vault initiatives. Currently, NALP’s Canadian branch publishes only gender demographic data for firms.

Despite the willingness of many U.S. firms to collect demographic data, there is some dispute as to whether data collection has been effective in increasing the numbers of racialized licensees in U.S. firms<sup>67</sup>. Veronica Root, in her article *Retaining Color*, notes the following:

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<sup>63</sup> Sabrina Lyon and Lorne Sossin, “Data and Diversity in the Canadian Justice Community” Osgoode Legal Studies Research Paper No. 12/2014 2014, online: <http://ssrn.com/abstract=2389410> [*Data and Diversity*].

<sup>64</sup> *Ibid.* at 9.

<sup>65</sup> NALP is a North American non-profit educational association of over 2,500 legal career professionals that was established to meet the needs of participants in the legal employment process. NALP collects and publishes legal employment data.

<sup>66</sup> Vault provides company rankings, ratings and reviews that are sourced from employees and students. In partnership with the Minority Corporate Counsel Association, Vault conducts an annual diversity survey of firms, and publishes a Law Firm Diversity Profile for each firm, which includes a demographic breakdown of a law firm’s lawyers by level, race, gender, sexual orientation, gender identity and disability status. The profiles also include an overview of a firm’s diversity programs, initiatives and strategic plans. In addition, all survey responses are published in the Law Firm Diversity Database, which includes five years of diversity data on over 250 firms.

<sup>67</sup> The racial issues in Canada and the United States are different both in terms of their magnitude and history, which may limit the assessment and applicability of U.S. measures in the Canadian context.

The available data demonstrates that (i) large numbers of persons of color are attending the top 25 law schools, (ii) a much smaller percentage join large firms, and (iii) an even smaller percentage are made partner. This is despite the fact that the American Bar Association and the National Association for Law Placement began questioning and tracking demographic diversity within firms in 1993. Twenty years later, only small gains have been made in efforts to increase large law firm demographic diversity.<sup>68</sup>

Obviously, the lack of demographic diversity is the product of practices and systems other than the collection of data. However, as noted above, the Working Group has identified significant advantages to data collection.

#### The Experience in the U.K.

The Law Society of England and Wales' Solicitors Regulation Authority (SRA) has taken a proactive approach to gathering demographic data. Practices regulated by the SRA are now required to collect, report and publish data annually on the diversity of their workforce. The SRA produces aggregate data annually. The SRA will develop a benchmark to allow firms to assess their progress.<sup>69</sup>

#### The Canadian Experience

In Canada, at least three large firms in Ontario collect, but do not report publicly, self-identification data based on race and ethnicity of their employees and members.<sup>70</sup> A number of other firms are working on developing processes to collect demographic data and numerous Justicia firms already collect gender-based data of their members.<sup>71</sup>

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<sup>68</sup> Veronica Root, "Retaining Color", 47 University of Michigan Journal of Law Reform 575-643, Notre Dame Legal Studies Paper No 1441 2013, online: <http://ssrn.com/abstract=2310027>.

<sup>69</sup> Also noteworthy of mention is the initiative of the United Kingdom's Judicial Appointments Commission (JAC), an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales and for some tribunals that also have jurisdiction in Scotland or Northern Ireland, engages in diversity monitoring. As part of its diversity strategy, the JAC records information about gender, ethnicity, professional background, disability and age at three stages of the judicial appointments process: application, shortlisting and recommendation for appointment. This information is gathered through the JAC's voluntary Application Monitoring Form. The JAC publishes an Official Statistics bulletin, which includes demographic information, twice a year: *Judicial Selection and Recommendations for Appointment Statistics, October 2012 to March 2013 – Judicial Appointments Commission Statistics Bulletin* (London: Judicial Appointments Commission, 2013).

<sup>70</sup> Also, large banks and the federal government are mandated by law to collect workforce self-identification data, and the Ontario government collects and publishes the OPS Inclusion Strategic Plan that includes self-identification data.

<sup>71</sup> For example, the Canadian Institute of Diversity and Inclusion (CIDI), a national non-profit organization that advises workplaces on diversity, inclusion, equity and human rights, is working with a group of large- and medium-sized firms to develop a process to assist them in collecting demographic data.

The requirement for members to report on diversity-related matters has also been considered by other regulatory bodies in Ontario. Recently, the Ontario Securities Commission (OSC) began the final implementation of rule amendments that will, among other things, require companies regulated by the OSC to disclose the following gender related information on an annual basis: policies regarding the representation of women on the board; the board's consideration of the representation of women in the director identification and selection process; consideration of the representation of women in executive officer positions when making such appointments; targets and number of women on the board and in executive officer positions.<sup>72</sup>

The OSC will implement a “comply or explain” approach, which requires companies to either report on their implementation or consideration of items listed above, or explain their reasons for not doing so.<sup>73</sup>

In 2012, the Canadian Bar Association produced a guide to assist firms in refining their approach to diversity and inclusion and to measure their diversity performance.<sup>74</sup> In 2009, the Ontario Human Rights Commission also produced *Count me In! Collecting human rights-based data*, a guide to assist organizations in collecting demographic data.<sup>75</sup>

#### Voluntary vs. Mandatory Data Collection

There are advantages and disadvantages to voluntary and mandatory demographic data collection. Although mandatory reporting would potentially provide more reliable data, currently the Law Society does not directly regulate firms or legal organizations. In addition, Sossin and Lyon note the “resistance and backlash to mandatory reporting requirements” and indicate that voluntary and/or incentivized disclosure of demographic statistics is an important avenue to consider.

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<sup>72</sup> Proposed OSC Amendments to Form 58-1-1F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Government Practices*; Proposed Disclosure Requirements Regarding the Representation of Women on Boards and in Senior Management – Supplement to the OSC Bulletin (2014), 37 OSCB.

<sup>73</sup> Following the OSC proposal, the securities regulatory bodies in Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories and Nunavut published proposed amendments for comment from the public that mirror those put forward by the OSC. These regulatory bodies have also begun final implementation of the rule amendments.

<sup>74</sup> Lorraine Dyke, *Measuring Diversity in Firms – A Critical Tool for Achieving High Performance* (Ottawa: Canadian Bar Association, 2012), online:

[http://www.cba.org/cba/equity/pdf/Measuring\\_Diversity\\_Guide.pdf](http://www.cba.org/cba/equity/pdf/Measuring_Diversity_Guide.pdf).

<sup>75</sup> *Count me In! Collecting human rights-based data* (Toronto: Ontario Human Rights Commission, 2009) at 1, online:

[http://www.ohrc.on.ca/sites/default/files/attachments/Count me in%21 Collecting human rights based data.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/Count%20me%20in%21%20Collecting%20human%20rights%20based%20data.pdf).

Voluntary data collection would allow the Law Society to work with firms and legal organizations in collecting the data, hence increasing the buy-in of the firms to conduct such an exercise. The Justicia Project<sup>76</sup> mentioned above is an example of an initiative in which participating firms agreed to maintain gender-based data and worked with the Law Society in developing a guide and template to gather such data. Since the inception of Justicia, a number of medium and large firms are now collecting gender demographic data.

### ***Using Law Society Data***

As the Law Society already collects demographic data based on race and data on, for example, size of firms, status in a firm, environment, practice area and year of call, it may be advisable for the Law Society to enhance the quality of its data collection and to be the common source of demographic data. This would have the advantage of providing comparable demographic data and likely more efficient data collection. On the other hand, there may be some advantage in firms being involved in collecting and reporting on their own information.

### ***Diversity and Contract Compliance***

**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?**

### ***Background Discussion***

As noted above, a number of U.S. and Canadian businesses, governments and other institutions now require the disclosure of workforce demographic data for consideration during RFP evaluation processes. Some members of the LLD, which comprises over 70 signatories across Canada, are considering diversity in their hiring and purchasing practices by requiring potential legal suppliers to disclose demographic data. Others require that at least one member of a diverse community is working on their file.<sup>77</sup>

Some participants in the engagement process saw a role for the Law Society in encouraging corporate procurement policies. To promote diversity in the profession and ensure that racialized licensees have the opportunity to work on important files, the Law Society could work with organizations such as members of LLD to develop model contract compliance programs that would require potential suppliers to provide diversity statistics during the RFP process.

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<sup>76</sup> See Law Society of Upper Canada, *The Justicia Project*, online: Law Society of Upper Canada [http://www.lsuc.on.ca/justicia\\_project/](http://www.lsuc.on.ca/justicia_project/)

<sup>77</sup> See Legal Leaders for Diversity, *About Us*, online: <http://legalleadersfordiversity.com/about-us/>.

## B. Mentoring, Advisory Services and Networking

Throughout the engagement process, mentoring and networking were identified as crucial elements in promoting inclusivity in the profession. The profession is asked to comment on mentoring, advisory services and networking models.

### **Mentoring and Advisory Services**

**Question 4: What are the preferred mentoring and/or advisory services models for racialized licensees? Other models than those listed below are welcome.**

In November 2013, Convocation approved the creation of the Mentoring and Advisory Services Proposal Task Force (“the Mentoring Task Force”). The terms of reference of the Mentoring Task Force are as follows:

- a. inform itself about the mandatory and optional mentoring and advisory services that are provided to lawyers and other professions by their regulatory bodies and trade or professional associations in Canada and abroad;
- b. develop a set of criteria to assess the effectiveness of these services in addressing the practice needs of the legal profession in Ontario;
- c. determine the range of mentoring and advisory service models, including technology-assisted, virtual advisory and mentoring services, partnering with other organizations, centralizing or establishing mentoring and other resources that could be explored and considered;
- d. consult with external stakeholders on the objectives and best practices for such services;
- e. examine and determine, to the extent possible, the immediate and long-term financial implications to the Law Society.

Mentoring refers to a formal or informal program or relationship in which the mentor provides career and personal advice to the mentee. In a mentoring relationship, there are no specific performance objectives. Alternatively, advisory services are job-focused and performance oriented. The advisor/coach provides advice and assesses and monitors progress. Advisors/coaches assist the advisee with developing specific skills for a defined task or challenge.

The Working Group encourages feedback on what mentoring and advisory services models would be most helpful for racialized licensees. Such feedback may be considered by the Working Group and the Mentoring Task Force. Some proposed models are listed below, but the list is not exhaustive and other proposed models are also welcome.



### **Volunteer Mentor or Advisory Services**

- a. **One-on-one mentoring or advisory services:** One mentor and one mentee would meet regularly. The mentoring relationship would be individualized and personal. Mentors would not be compensated.
- b. **Group mentoring:** One mentor would form a mentoring relationship with a small group of licensees. The mentor and mentees would meet regularly as a group. Mentors would not be compensated.
- c. **Distance mentoring:** Mentoring would be provided by one mentor to one mentee primarily via email and other forms of electronic communication. E-communication could be supplemented by occasional telephone calls and in-person meetings. Mentors would not be compensated.
- d. **Team mentoring:** Several mentors would work with a group of several mentees. The mentors and the mentees would meet together regularly as a team. Mentors would not be compensated.
- e. **Peer mentoring:** Colleagues who are at a similar stage in their careers would be paired to provide advice and guidance to each other.
- f. **Limited-scope advisor services:** An advisor with expertise in a specific area would provide an advisee with guidance on a substantive or procedural legal issue. This relationship would likely be short-term. Advisors would not be compensated.

### **Remunerated Mentor or Advisor Services**

- a. **Professional one-on-one mentoring:** This model would operate similarly to voluntary one-on-one mentoring, however mentees would be able to access a mentor drawn from a pool of compensated mentors.
- b. **Panel of advisors:** A diverse group of trained lawyer and paralegal advisors would be paid to provide specific, targeted support services to those at increased risk of failing to fulfil their professional obligations.

It is important to note that associations such as the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association (SABA) and the Federation of Asian Canadian Lawyers (FACL) provide valuable networking opportunities, mentoring and continuing professional development programs. The Law Society could consider whether there are additional support programs that could be implemented through associations such as those to assist lawyers and paralegals who are in small firms, who are sole practitioners and/or are internationally trained. Proposals to that effect are welcome.

### **Networking**

**Question 5: What are the preferred networking models for racialized licensees? Other models than those listed below are welcome.**

The engagement process indicated that racialized licensees are often more isolated from professional support networks. The majority of both racialized and non-racialized licensees in the Stratcom survey identified the need for racialized licensees to have more access to professional networks.

The Law Society could work with legal organizations and affinity associations to develop more planned and structured networking opportunities, for example, through continuing professional development. These networking opportunities would provide racialized licensees with a forum to interact with racialized and non-racialized licensees from other firms and legal organizations.

It is important to note that some participants have mentioned that associations do not exist for their community. For example, paralegals have noted that they do not have access to an association of racialized paralegals. There is also no association of internationally trained lawyers, notwithstanding the comments that internationally trained lawyers are often isolated and lack the networks that are so important to small firms and sole practitioners.

The University of Toronto's Internationally Trained Lawyers Program has been a valuable program to prepare internationally trained lawyers to enter the legal profession; however, continuous networks while in practice would be valuable.

### C. Enhancing Cultural Competence in the Profession

The Stratcom survey results support the importance of Law Society sponsored professional development seminars on equity, diversity and cultural competence that would be counted toward accreditation.

There are many definitions of cultural competence but Robert Wright<sup>78</sup> has developed the following: “an ability to interact effectively with people of different cultures. Cultural competence comprises four essential capacities:

- a. We must understand our own cultural positions and how they differ from and are similar to others (critical cultural self-analysis).
- b. We must understand the social and cultural reality in which we live and work and in which our clients live and work.
- c. We must cultivate appropriate attitudes towards cultural difference.
- d. We must be able to generate and interpret a wide variety of verbal and non-verbal responses (client centred interviewing).<sup>79</sup>

**Question 6: How could the Law Society enhance the profession’s cultural competence through its Continuing Professional Development (CPD) Programs? Other proposed models are welcome.**

- **Include the topics of cultural competence, diversity and inclusion in the Professional Responsibility and Practice (PRP) Course.**
- **Provide annual voluntary accredited CPD Programs on cultural competence.**
- **Require that licensees complete annually, or less frequently, one hour of cultural competence CPD that would count as part of the three required hours of professionalism.**

The suggested options above are proposed to ensure that licensees are introduced to the concept of cultural competence early in their careers, through the PRP Course, and throughout their careers.

The PRP Course is designed to, “expand the candidates’ knowledge of lawyers’ duties, tasks, and challenges and to provide a suggested approach for analyzing common

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<sup>78</sup> Robert S. Wright is an African Nova Scotia social worker and sociologist. He designs and delivers workshops on cultural competence and has developed an expertise in that area.

<sup>79</sup> Robert S. Wright, *Cultural Competence: Presented to Staff of Legal Aid Nova Scotia AGM*. October 17, 2012, online: <http://www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf>

ethical and practice dilemmas.”<sup>80</sup> Successful completion of the PRP Course is required for admission to the Bar.

It is suggested that professional development programs on cultural competence would be beneficial to the profession as a whole. Rules 2.1-1 and 6.3.1-1 of the *Rules of Professional Conduct*<sup>81</sup> speak to the responsibility of lawyers to recognize the diversity of the Ontario community. Both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*<sup>82</sup> require that lawyers and paralegals protect the dignity of individuals and respect human rights laws in force in Ontario. Cultural competence training could be useful to assist lawyers and paralegals to understand and comply with this rule.<sup>83</sup>

As such, it is proposed that annual CPD programs be made available to the profession and/or that the profession be required to complete one hour of accredited CPD professionalism hours annually or on a less frequent basis.

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<sup>80</sup> <http://www.lsuc.on.ca/articling/#PRP>

<sup>81</sup> See *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, with amendments effective as of 1 October 2014), at Rule 2.1-1 Commentary [4.1] and Rule 6.3.1-1 Commentary [1] and [2], online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>.

<sup>82</sup> *Paralegal Rules of Conduct* (Toronto: Law Society of Upper Canada, with amendments effective as of 1 October 2014) at Rule 2.03, online: <http://www.lsuc.on.ca/uploadedFiles/NEW-PARALEGAL-RULES-INCLUDING-INDEX-EFFECTIVE-OCT2014.pdf>.

<sup>83</sup> The Nova Scotia Barristers' Society (NSBS) recognizes the value of professional development programs on cultural competence and identifies cultural competence as a facet of the overall professional competence of a lawyer. The NSBS offers monthly half day workshops on building cultural competence.

## 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? Additional proposals are welcome.**

- **By updating the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to specifically define and address systemic discrimination and by developing a communication plan for the profession.**
- **By working with associations of racialized licensees to enhance their ability to bring forward complaints.**
- **By assigning an expert group of Professional Regulation staff members to handle complaints of racial discrimination.**
- **By working with associations of racialized licensees to enhance their capacity to offer duty counsel type support to their members who have been the subject of complaints.**

### ***Understanding Discrimination***

The Ontario Human Rights Commission defines systemic discrimination based on race as “patterns of behaviour, policies or practices that are part of the structures of an organization, and which create or perpetuate disadvantage for racialized persons.”<sup>84</sup> The engagement process revealed that those who are impacted by racial discrimination often do not believe that they have an avenue to complain because the discrimination is systemic, or they do not wish to complain for fear that the complaint will impact on their careers.

The *Rules of Professional Conduct* and *Paralegal Rules of Conduct* speak to the special responsibility of lawyers and paralegals to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate. The mandate of the Law Society to investigate complaints of systemic discrimination is not widely known and it is suggested that the Rules be clarified and a communication plan

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<sup>84</sup> Ontario Human Rights Commission, *Racism and Racial Discrimination: Systemic Discrimination (fact sheet)*, online: <http://www.ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet>.

be developed to inform licensees that complaints of systemic discrimination can be made to the Law Society.

### ***Providing Resources for the Profession***

In addition to receiving complaints related to systemic discrimination, the Law Society could develop proactive institutional methods to address systemic discrimination, such as providing firms and legal organizations with best practices, guides and model policies.

The Law Society could also require that firms have policies and procedures in place to address discrimination and harassment and could hold firms accountable for failure to establish and adhere to such policies and procedures.

The Law Society does not now directly regulate firms or legal organizations. In February 2014, however, Convocation approved the development of a proposed framework for the regulation of firms (also known as “entity regulation”) for Convocation’s consideration. This framework could be designed similar to the self-evaluation based approach that has proven successful in New South Wales. This potential change to the Law Society’s regulatory approach could allow the Law Society to require firms to create and adhere to discrimination and harassment policies and procedures.

### ***Addressing the Fear of Filing a Complaint***

The fear of filing a complaint has been raised in the engagement process and currently, the right to complain to the Law Society through professional associations is not widely known. The Law Society may wish to work with affinity associations to enhance their capacity to file complaints of racial and/or ethnic discrimination. The ability to file a complaint through an association may reduce the risk of the complaint having a negative impact on a complainant’s career. The Working Group would welcome additional suggestions on how to enhance policies and practices so that individuals may feel more comfortable coming to the Law Society with complaints of racial discrimination.

Because cases of racial and/or ethnic discrimination are often quite complex, it is suggested that a group of expert Professional Regulation staff members be appointed to handle such cases. This group of experts would attend extensive training programs on cultural competence and racial discrimination to make them sensitive to the nature of these cases and of the parties involved.

### ***Providing Support through the Process***

Focus group participants agreed that there may be factors contributing to making racialized licensees more vulnerable to complaints, most frequently citing a comparative lack of resources and training, and problems associated with poor communication and cultural misunderstanding. Those factors, such as the lack of resources, would likely be

relevant once a licensee is in the regulatory process. As a result, the Working Group suggests that the Law Society could work with legal associations to strengthen their capacity to offer duty counsel type support to those who are the subject of complaints.

## E. The Operations of The Law Society of Upper Canada

The Working Group discussed initiatives that could be implemented internally to address the engagement process results. The Working Group is considering recommending to Convocation the adoption of the following programs. The Working Group would welcome comments about these programs and other internal initiatives that could be considered by the Working Group.

### ***Initiative 1: Enhance the Equity Compliance Program***

**The Law Society would enhance its Equity Compliance Program to include a request for demographic data when retaining vendors, firms or legal counsel to provide services.**

### ***Initiative 2: Conduct an Internal Equity Audit***

**The Law Society would strengthen its policies and programs by conducting an operational equity audit of its services offered to the profession.**

### ***Initiative 3: Internal Collection of Data***

**The Law Society would consider the internal collection of further data on issues relating to racialization in the regulatory process**

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

**The Law Society would consider strategies to develop a more diverse and inclusive public image/face of the Law Society.**

### **Background Discussion**

Currently, as part of its RFP process, the Law Society requires vendors with more than 50 employees and firms with more than 50 lawyers to indicate that they comply with the *Human Rights Code*, the *Occupational Health and Safety Act (OHSA)*, as applicable, and The Law Society of Upper Canada's Harassment and Discrimination Prevention Policy.

The Law Society could strengthen the Equity Compliance Program requirements to include a request for demographic data to be considered during the selection process.

The Law Society of Upper Canada is also committed to ensuring that its policies, programs and practices are inclusive and accessible. In order to make certain that this is



the case, the Law Society could arrange for an outside party to conduct an operational equity audit of the services it provides to the profession. This audit would focus on the Law Society's direct services to the profession or the public. An equity audit would identify any challenges with, or progress in, integrating equity principles and practices into the Law Society's operations.

The Law Society could also examine whether additional or better data or other information should be collected internally relating to regulatory matters, including complaints and investigations, in terms of the incidence and impact of racialization.

A significant number of both racialized and non-racialized participants in the engagement process endorsed the suggestion that the Law Society develop a more diverse and inclusive public image/face. The Law Society could consider initiatives that would make its public image/face more diverse and inclusive. Input could be sought from the Equity Advisory Group, which is comprised of partner associations and individual members with expertise in matters related to equity and diversity. The Governance Issues Working Group could receive staff support and additional input from the Law Society's Equity Initiatives Department, Public Affairs Department and Communications Department.

## CONCLUSION

The Law Society is committed to promoting a profession that is reflective of all peoples of Ontario and that is inclusive and free from discrimination and harassment. The engagement process identified a number of barriers that affect racialized licensees, across their careers.

The Working Group considered those barriers and the challenges faced as a result of discrimination, overt racism, cultural differences, lack of mentoring, sponsors, role models and networking opportunities and other systemic factors. As a result, it has identified a number of potential initiatives that could address some of those challenges.

The proposed initiatives are presented to the profession and your input is invited and most welcome.

**We invite input on the paper as a whole and on any question raised. We also welcome proposals for solutions not identified in this paper.**

**Please submit written submissions before March 1, 2015, to:**

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Appendix 1 - Racialization and Firm Size Based on Law Society Lawyer and Paralegal Data as of April 2014

Chart 1 - Sole Practitioners – In percentages

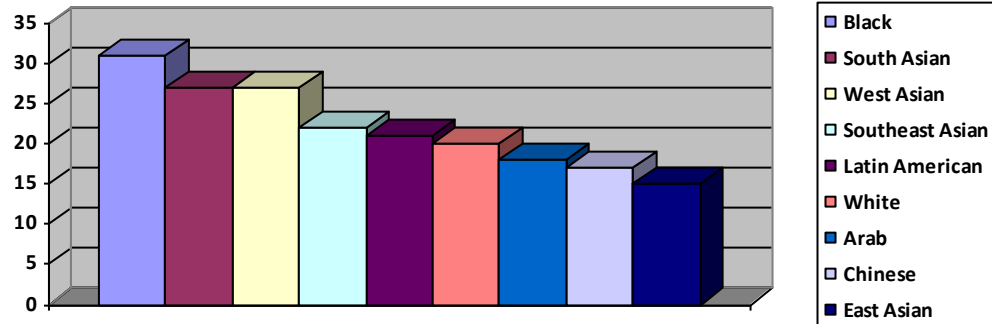


Chart 2 - By Firm Size – In percentages

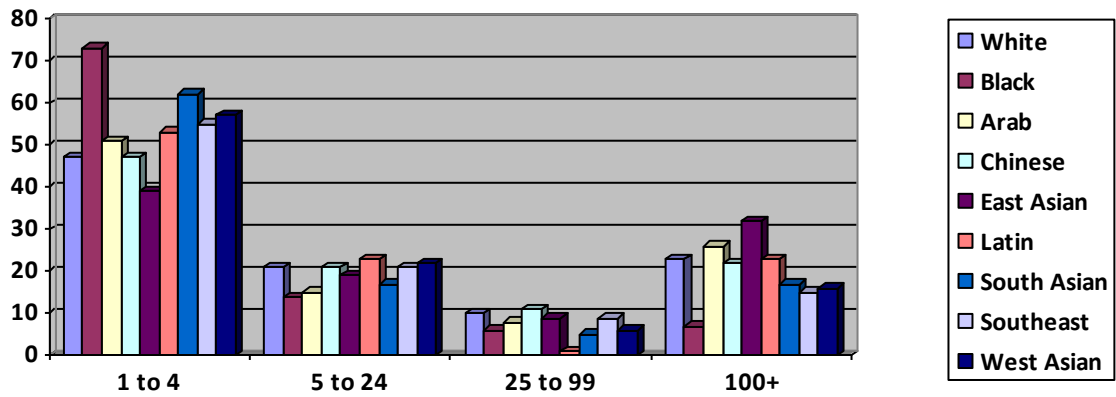


Chart 1 shows that Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice.

Chart 2 shows that Black and South Asian lawyers are proportionately more likely to be in small and sole practices while they are proportionately much less likely to be in medium and large firms.

Chart 2 is difficult to interpret because a number of different groups are compared. In order to assist, Chart 3 below shows the size of firms in which Black, White and South Asian lawyers practice.

Chart 3 - By Firm Size – In percentages

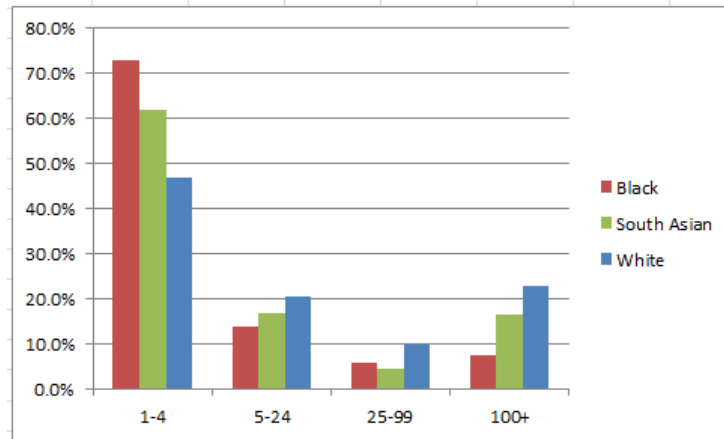


Chart 3 shows more clearly the differential practice patterns of Black, South Asia and White lawyers. Black lawyers, and to a lesser extent South Asian lawyers, disproportionately practise in the smallest firms. Relatively few Black lawyers practise in the largest firms, while the proportions of South Asian and White lawyers in the largest firms are not so different.

## Appendix 2 – Questions for the Profession

### **Establishing Diversity Programs Within Firms**

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

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

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?

### **Mentoring and Advisory Services**

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

### **Networking**

Question 5: What are the preferred networking models for racialized licensees? Other models than those listed below are welcome.

### **Enhancing Cultural Competence in the Profession**

Question 6: How could the Law Society enhance the profession's cultural competence through its CPD Programs?

### **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?

Appendix 3 – Challenges Faced by Racialized Licensees Working Group Engagement Chronology

DATE	ACTIVITY
August 2012	Convocation creates The Challenges Faced by Racialized Licensees Working Group
October 2012	Working Group approves Terms of Reference
October 2012 – January 2014	Working Group meets informally with organizations and individuals to obtain information on challenges and best practices
Early 2013	Working Group retains Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign® to conduct a formal engagement with the profession, including key informant interviews, focus groups and a survey of the whole profession
Early 2013	The Equity Advisory Group creates a working group to provide feedback at various stages of The Challenges Faced by Racialized Licensees Working Group process
July 2013 – September 2013	Community Liaison process takes place
March 2014	Stratcom and Michael Charles provide the final formal engagement report to the Working Group
March 2014 – October 2014	The Working Group reviews the findings of the formal and informal engagement processes and consults with stakeholder organizations



The Law Society  
of Upper Canada

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