



November 14, 2016

The Law Society of Upper Canada
c/o Ekuu Quansah, Policy Counsel
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

racialized.licensees@lsuc.on.ca

Dear Mesdames/Sirs,

RE: Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions dated September 22, 2016

The Toronto Lawyers' Association (**TLA**) is the voice of its 3,200 members who practise law in all disciplines across the Greater Toronto Area. The TLA is pleased to provide its comments to the Law Society of Upper Canada (**LSUC**) on the final report dated September 22, 2016 of the Challenges Faced by Racialized Licensees Working Group (the **Working Group**) entitled *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (the **Report**).

It is indeed unfortunate that despite the progress that has been made by many lawyers and law firms in the elimination of racism and other discrimination within their firms, racism still exists in our profession to the extent that the LSUC is required to mandate policies for lawyers and firms. As a lawyer, I have had the privilege of being a student, associate and now partner at a firm without such barriers. Upon reading the Report, I realize that I may have taken my good fortune for granted, as I believed that my experience was the norm for many firms and lawyers. It is the only firm at which I have worked since articling in 1999. Before and since, my firm has hired students and lawyers with the primary consideration being merit. In the process, without intention or design, we have created a firm of female and male lawyers, students and staff of different backgrounds, races, cultures, religions and sexual orientation, which reflects the wonderful mosaic found in Canada, and specifically Toronto.

As President of the TLA, I can attest to the TLA's dedication to eliminating racism and ensuring that our profession is more inclusive. The TLA, which itself has a diverse board of directors, is also a member of the Roundtable of Diversity Associations (**RODA**).

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KNOWLEDGE • ADVOCACY • COMMUNITY

Apparently, given the Report and the recommendations contained therein, our profession is not moving forward quickly enough on its own and requires a helping hand from the LSUC. However, I am indeed optimistic that with our generation of lawyers, and each successive one that follows, systemic racism and the barriers for racialized lawyers will continue to erode until they no longer exist. The LSUC report contains a similarly optimistic quote from Yolanda King, daughter of Martin Luther King, Jr.:

What we need to do is learn to respect and embrace our differences until our differences don't make a difference in how we are treated.

— Yolanda King

The TLA commends the Working Group for its efforts and, subject to our comments below, recommends that the Report be adopted by Convocation. The TLA recognizes and supports the importance of this initiative and the need to dismantle barriers within the legal profession faced by racialized licensees.

Timeline for Implementation of Recommendations

Page 10 of the Report contains a timeline for implementation of the recommendations in the Report. We note that the implementation dates for recommendations 1, 2, 8, 10, 11, 12(2), 12(3) and 12(4) have yet to be determined. To enhance accountability and ensure that these important recommendations are implemented in a timely way, we encourage the LSUC to adopt at the outset clear dates for the implementation of all of these recommendations.

Recommendation 3 – The Adoption of Equality, Diversity and Inclusion Principles and Practices

The Law Society will:

- 1) *require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behavior towards colleagues, employees, clients and the public;*
- 2) *require a representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement;*
- 3) *require a representative of each legal workplace of at least 10 licensees in Ontario to complete, every two years, an equality, diversity and inclusion self-assessment for their legal workplace, to be provided to the Law Society; and*
- 4) *encourage legal workplaces to conduct inclusion surveys by providing them with sample templates.*

We are concerned that item 1) of Recommendation 3 is overly broad and has the potential to conflict with certain practice areas. For example, could a professional who advocates on behalf of a client find himself or herself offside this item because the client's interests do not "promote equality, diversity and inclusion"? Moreover, we question whether the requirement to adopt and to abide by such a statement of principles is necessary in light of Recommendation 1.

We also have concerns that the requirement in item 2) that each legal workplace of at least 10 licensees in Ontario develop a human rights/diversity policy for their legal workplace by January 1, 2018 could be burdensome to smaller legal workplaces and may result in a lack of uniformity in

such policies. We acknowledge the LSUC's stated intention to guide legal workplaces in the development of policies and to "develop resources, such as templates, guides and model policies." It is the TLA's view that the templates, guides and model policies need to be developed well in advance of the effective date of the requirement.

Similarly, we recommend that the LSUC create a template for the "equality, diversity and inclusion self-assessment" referred to in item 3) of Recommendation 3 to encourage consistency of assessments and avoid placing undue burden on legal workplaces.

Recommendation 8 – Progressive Compliance Measures

The Law Society will consider developing and implementing progressive compliance measures for legal workplaces that do not comply with the requirements proposed in Recommendation 3 and/or legal workplaces that are identified as having systemic barriers to diversity and inclusion.

Recommendation 8 does not provide us sufficient information to provide constructive feedback. We request the opportunity to comment on the development of compliance measures by the LSUC in connection with this recommendation.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

The Law Society, in light of the findings of this project and emerging issues in the professions, will:

- 1) *review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address complaints of systemic discrimination;*
- 2) *revise the Rules of Professional Conduct and the Paralegal Rules of Conduct, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;*
- 3) *create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and*
- 4) *create a specialized and trained team to address complaints of discrimination.*

Items 3) and 4) of Recommendation 12 also do not provide us sufficient information to provide constructive feedback. We request an opportunity to comment on the development of effective ways to address complaints of systemic discrimination and on the creation of a specialized team to address complaints of discrimination.

Furthermore, the TLA supports the motion to be made at Convocation to extend the implementation of recommendations for racialized licensees to all equality-seeking groups while continuing to ensure that the needs of racialized licensees are fully acknowledged and addressed.

The TLA appreciates the opportunity to comment on the Report and looks forward to a continuing dialogue with the LSUC as it continues to address systemic racism in the legal professions.

Yours very truly,



Stephen Mullings
President
Toronto Lawyers Association