



The Law Society of
Upper Canada

Barreau
du Haut-Canada

October 30, 2014
9:00 a.m.

CONVOCATION MATERIAL

PUBLIC COPY

*THIS PAGE CONTAINS
IN CAMERA MATERIAL*

CONVOCATION AGENDA October 30, 2014

Convocation Room – 9:00 a.m.

Treasurer's Remarks

Consent Agenda - [Motion \[Tab 1\]](#)

- **Confirmation of Draft Minutes of Convocation – [September 24, 2014](#)**
- **Report of the Director of Professional Development and Competence - [Deemed Call Candidates](#)**
- **[Audit and Finance Committee Report](#) – J. Shirley Denison Fund Application (in camera)**

[Audit and Finance Committee Report \(C. Bredt, P. Wardle\) \[Tab 2\]](#)

- 2015 LibraryCo Inc. Budget
- 2015 Law Society Budget
- Treasurer Expense Policy

[Professional Regulation Committee Report \(M. Mercer\) \[Tab 3\]](#)

- Amendment to Policy on Law Society Investigations of Benchers, Employees and Adjudicators
- In Camera Item

For Information

- Law Society Statement on Reporting to Law Enforcement and other Regulators
- Licensee Survey

[Priority Planning Committee Report \(S. McGrath\) \[Tab 4\]](#)

- Approval of LAWPRO By-Law # 21

[Tribunal Committee Report \(R. Anand\) \[Tab 5\]](#)

- Proposed Appeal Rule 17 (Summary Orders) – Law Society Tribunal Appeal Division Rules
- Amendment to Rule 29.07 (1) of the Law Society Tribunal Hearing Division Rules

[Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report \(J. Leiper/P. Schabas\) \[Tab 6\]](#)

- Challenges Faced by Racialized Licensees – Request to Consult
- Human Rights Monitoring Group Interventions

For Information

- Public Education Equality and Rule of Law Series Calendar 2014 - 2015

REPORTS FOR INFORMATION ONLY

[Joint Report of the Access to Justice Committee and Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones \(S. Hare\) \[Tab 7\]](#)

- Proposed Vision for the Law Society's Renewal of its Aboriginal Initiatives Strategy

[The Evolution of Legal Information and Library Services in Ontario \[Tab 8\]](#)

Lunch – Benchers' Dining Room

Tab 1

THE LAW SOCIETY OF UPPER CANADA

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 30, 2014

MOVED BY:

SECONDED BY:

THAT Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

DRAFT

MINUTES OF CONVOCATION

Wednesday, 24th September, 2014
9:00 a.m.

PRESENT:

The Treasurer (Janet E. Minor), Anand, Armstrong, Backhouse, Banack, Boyd, Braithwaite, Bredt, Burd, Callaghan (by telephone), Campion, Copeland (by telephone), Corsetti, Dickson, Doyle, Earnshaw, Elliott, Epstein, Eustace (by telephone), Evans, Falconer, Ferrier, Furlong, Go, Goldblatt, Haigh, Hare, Hartman, Horvat, Krishna, Lawrie, Leiper, Lem, Lerner, Lippa, MacLean, Manes (by telephone), Marmur, McDowell, McGrath, Mercer, Murchie (by telephone), Murray, Pawlitza, Porter, Potter, Pustina (by telephone), Rabinovitch, Richardson (by telephone), Richer, Ruby (by telephone), Sandler (by telephone), Scarfone, Schabas, Sheff, Sikand, Silverstein (by telephone), C. Strosberg, H. Strosberg (by telephone), Sullivan, Swaye, Symes, Wardle and Yachetti (by telephone).

.....

Secretary: James Varro

The Reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer thanked elder Waasaanese, Alex Jacobs, and his assistant, Natasha Naveau, who performed a smudging ceremony and pipe ceremony with benchers prior to Convocation.

The Treasurer recounted to Convocation the sunrise ceremony which took place at 6:30 a.m. today.

The Treasurer acknowledged the importance of the eagle feathers which are placed on the Convocation table, and invited bencher Susan Hare to address Convocation on the ceremonies and teaching on the eagle feathers.

Susan Hare addressed Convocation.

The Treasurer advised Convocation of a number of her activities since June 2014.

The Treasurer expressed condolences to the family of former benchers The Honourable John T. Clement, Q.C. who passed away June 24, 2014.

The Treasurer expressed condolences to the family of Purdy Crawford, a lawyer and leading member of the business community, who passed away on August 12, 2014.

The Treasurer expressed condolences to the family, friends and colleagues of Errol Sue, a paralegal member of the Law Society Tribunal, who passed away on September 23, 2014.

The Treasurer congratulated former Chief Justice William Parker on his 100th birthday on August 25, 2014 and his 75th year as a member of the Law Society.

The Treasurer congratulated Kim Pate on receiving an honorary LL.D. at the call to the bar ceremony on September 19, 2014.

The Treasurer updated Convocation on the work of the Real Estate Liaison Group.

The Treasurer announced the appointment of five lay adjudicators to the Law Society Tribunal for a two year term:

Eva Krangle, Toronto
Sabita Maraj, Mississauga
John Spekkens, Toronto
Marilyn Thain, London
Eric Whist, Toronto

The Treasurer updated Convocation on the activities of The Action Group (TAG) on Access to Justice.

With respect to the structure of TAG and Convocation, the Treasurer advised that Howard Goldblatt will be attending the TAG meetings as the Treasurer's designate.

The Treasurer acknowledged Susan Hare's leadership in the work related to updating the Law Society's 2009 Aboriginal Strategy.

The Treasurer was pleased to announce that CEO Robert Lapper was requested to participate in the Aboriginal Justice Advisory Group announced by the Attorney General.

The Treasurer reported on her attendance at the Osgoode Society dinner September 23, 2014 and encouraged benchers to join the Society.

The Treasurer advised that the Attorney General of Ontario, The Honourable Madeleine Meilleur, MPP will be a lunch guest today.

MOTION – CONSENT AGENDA

It was moved by Mr. Earnshaw, seconded by Ms. Strosberg, that Convocation approve the consent agenda set out at Tab 1 of the Convocation Materials.

Carried

DRAFT MINUTES OF CONVOCATION – Tab 1.1

The draft minutes of Convocation of June 26, 2014 and August 13, 2014 were confirmed.

MOTION – APPOINTMENTS – Tab 1.2

THAT Convocation approve the appointments listed in the motion at Tab 1.2.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE – Tab 1.3

THAT the Report of the Director of Professional Development and Competence listing the names of the call to the bar candidates be adopted.

Carried

*THIS PAGE CONTAINS
IN CAMERA MATERIAL*

.....
IN PUBLIC
.....

LAWPRO REPORT

Ms. McGrath presented the Report.

It was moved by Ms. McGrath, seconded by Mr. Evans, that Convocation approve the program of insurance offered by LAWPRO for 2015 as set out in the Report at Tab 2.

Carried

TRIBUNAL COMMITTEE REPORT

Mr. Anand and Mr. David Wright presented the Report.

Re: Amendment to Rule 22 of the Rules of Practice and Procedure

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the amendment to Rule 22 of the Hearing Division Rules of Practice and Procedure as set out in the motion at Tab 3.1.1 of the Report.

Carried

Re: Adjudicator Performance Development Process

It was moved by Mr. Anand, seconded by Ms. Leiper, that Convocation approve the Tribunal Chair's proposal for the adjudicator performance development process, as set out at Tab 3.2.1 of the Report.

Carried

For Information

- Tribunal Quarterly Statistics – First and Second Quarters 2014
- Publication of Notices on the Tribunal Website

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Schabas presented the Report.

Re: Human Rights Monitoring Group Request for Interventions

It was moved by Mr. Schabas, seconded by Mr. Falconer, that Convocation approve the letters and public statements in the following cases:

- a. lawyer Intigam Aliyev – Azerbaijan Republic – letter of intervention and public statement presented at Tab 4.1.1 of the Report; and

- b. lawyer Waleed Abu al-Khair – Saudi Arabia - letter of intervention and public statement presented at Tab 4.1.2 of the Report.

Carried

Mr. Lerner abstained.

Mr. Falconer spoke to the public education equality and rule of law series calendar at Tab 4.2.4 of the Report for information.

For Information

- Discrimination and Harassment Counsel Semi-Annual Report
- Equity Director's Report
- Human Rights Monitoring Group – Information about Interventions
- Public Education Equality and Rule of Law Series Calendar 2014 - 2015

BENCHER ELECTION WORKING GROUP REPORT

Ms. Leiper presented the Report.

Re: Amendments to By-Law 3 Respecting the Bencher Election Process

It was moved by Ms. Leiper, seconded by Mr. Scarfone, that Convocation make the amendments to By-Law 3 [Benchers, Convocation and Committees] as set out in the motion at Tab 5.1 of the Report to implement its decision on June 26, 2014 respecting voting procedures for the lawyer bencher election and to make related clarifying amendments.

Carried

Ms. Leiper invited benchers to advise the Elections Officer for the 2015 bencher election if they wish to join a roster that potential candidates may access as an informal resource for information about running for bencher.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Mr. Goldblatt presented the Report.

Re: Deferral of Application of National Requirement to Joint and Dual Degrees

Mr. Goldblatt introduced the Report.

Ms. Pawlitza presented the Report.

It was moved by Mr. Goldblatt, seconded by Mr. Burd, that Convocation approve deferral of the application of the Federation of Law Societies of Canada National Requirement to joint and dual degree programs until January 2017.

Carried

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

Ms. Pawlitzka provided Convocation with an update on the Federation of Law Societies of Canada's activities.

PRIORITY PLANNING COMMITTEE REPORT

The Treasurer presented the Report.

Re: Priority Planning Committee's Strategic Planning Steering Group

The Treasurer presented the Report for information, noting the membership of the Strategic Planning Steering Group.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Mercer presented the Report.

Re: Entity and Compliance-Based Regulation

Mr. Mercer presented the Report for information.

Re: Alternative Business Structures Working Group

Mr. Mercer spoke to the Working Group's Discussion Paper for information and its proposed publication and distribution for discussion.

AUDIT & FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: Law Society Financial Statements for the Six Months ended June 30, 2014

Mr. Bredt spoke to the financial statements for information.

*THIS PAGE CONTAINS
IN CAMERA MATERIAL*

.....
IN PUBLIC
.....

REPORTS FOR INFORMATION

PROFESSIONAL REGULATION COMMITTEE REPORT

- Alternative Business Structures Working Group Discussion Paper
- Entity and Compliance-Based Regulation
- 2014 Lawyer Annual Report
- Professional Regulation Division Quarterly Report

PRIORITY PLANNING COMMITTEE REPORT

- Strategic Planning Steering Group

AUDIT AND FINANCE COMMITTEE REPORT

- LAWPRO Financial Statements for the Six Months ended June 30, 2014
- Law Society of Upper Canada Financial Statements for the Six Months ended June 30, 2014
- LibraryCo Inc. Financial Statements for the Six Months ended June 30, 2014

FEDERATION OF LAW SOCIETIES OF CANADA UPDATE

PARALEGAL STANDING COMMITTEE REPORT

- 2014 Paralegal Annual Report

HERITAGE COMMITTEE REPORT

- Heritage Committee Project Proposal 2015
- Report on the History of the Ontario Legal Profession - Expanding the Scope of Law Society Information Project

CONVOCATION ROSE AT 12:10 P.M.

Tab 1.2

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, October 30th, 2014

ALL OF WHICH is respectfully submitted

DATED this 30th day of October, 2014

CANDIDATES FOR CALL TO THE BAR
October 30th, 2014

Transfer from another province (Mobility)

Artem Barsukov
David Robert Kenneth Carstairs-Weir
Brynn Marie Enros
James Bernard Kehoe
Robert Hector MacKay-Dunn
Shannon Rose Elizabeth Paine

Transfer (Quebec)

Olivier Marquais

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*



TAB 2

**Report to Convocation
October 30, 2014**

Audit & Finance Committee

Committee Members

Christopher Bredt (Co-Chair)

Peter Wardle (Co-Chair)

Adriana Doyle (Vice-Chair)

John Callaghan

Susan Elliott

Seymour Epstein

Michelle Haigh

Vern Krishna

Judith Potter

James Scarfone

Alan Silverstein

Catherine Strosberg

Purpose of Report: Decision

Prepared by the Finance Department

Wendy Tysall, Chief Financial Officer, 416-947-3322 or wtysall@lsuc.on.ca

TABLE OF CONTENTS

For Decision:

2015 LibraryCo Inc. Budget [TAB 2.1](#)
2015 Law Society Budget [TAB 2.2](#)
Treasurer Expense Reimbursement Policy [TAB 2.3](#)

COMMITTEE PROCESS

1. The Audit & Finance Committee (“the Committee”) met on October 14, 2014. Committee members in attendance were Chris Bredt (co-chair), Peter Wardle (co-chair), Adriana Doyle (vice-chair), Seymour Epstein, Michelle Haigh, Judith Potter (phone), James Scarfone, Alan Silverstein and Catherine Strosberg (phone). Bob Evans also attended.
2. Law Society staff in attendance: Robert Lapper, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

TAB 2.1

FOR DECISION
2015 LIBRARYCO INC. BUDGET

Motion:

3. **That Convocation approve the LibraryCo Inc. budget for 2015 incorporating Law Society funding of \$7.7 million or \$202 per lawyer.**

Rationale

4. The draft 2015 LibraryCo budget is being presented to Convocation under the terms of the Unanimous Shareholders Agreement.
5. The Law Society levies and collects funds for county and district law library purposes and transfers these funds to LibraryCo. Convocation internally restricts these funds for use by county and district law libraries to carry out their annual operations and any special projects approved by Convocation.
6. LibraryCo's draft budget for 2015 is attached.

Key Issues and Considerations

7. At the September Law Society Audit & Finance Committee, the Committee requested that LibraryCo submit a budget maintaining the library levy at \$202, the same as 2014. This increases total funding to \$7.7 million in 2015 from the \$7.5 million in 2014 because of the budgeted increase in the number of lawyers. The LibraryCo budget currently submitted complies with this request. The Law Society's own draft budget for 2015, included for decision in this Report to Convocation, includes the library levy of \$202 per lawyer.
8. With the per-member levy agreed at \$202 providing total revenues of \$7.7 million, the LibraryCo Board has approved \$278,000 allocated to "Electronic Products and Implementation of Business Plan" as a contingency until a future corporate direction is concluded.
9. LibraryCo, a wholly-owned, not-for-profit subsidiary of the Law Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Law Society. The Law Society holds all of the 100 common shares. Of the 100 special shares, 25 are held by the Toronto Lawyers Association ("TLA") and 75 are held by the County and District Law Presidents' Association ("CDLPA"). The Law Society

may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

Budgetary Issues

Electronic Products

10. LibraryCo is facing an operational challenge regarding the provision of the electronic toolkit provided under contract. In years past, the Law Foundation of Ontario (LFO) provided grant funding for the provision of the toolkit. For 2015, the LFO has withdrawn its funding (\$542,000) for the toolkit.
11. The Law Society's Audit & Finance Committee did not agree to LibraryCo's request to make up this shortfall in funding and pay the full cost of the toolkit in 2015 of \$762,000 and notice of cancellation of the contract has been provided.

LibraryCo Staffing

12. LibraryCo's shareholders, the County & District Law Presidents' Association, the Toronto Lawyers Association and the Law Society, have made the decision to discontinue the positions of LibraryCo Board Manager and Assistant and associated costs will be funded from the LibraryCo Reserve Fund in 2014. The 2015 budgeted expenses associated with these two positions have been retained in the LibraryCo budget until a future direction is concluded.

County Library Funding

13. The LibraryCo budget incorporates a 1% increase in funding for county law libraries. The current inflation rate is 2.6% and collection costs are increasing well above the rate of inflation.

Administrative Expenses

14. Expenses for administration and centralized services are decreasing by \$123,000 largely as a result of a reduced Administrative Services fee paid by LibraryCo to the Law Society.

General Fund and Reserve Fund

15. The General Fund accounts for the delivery, management and administration of library services. After the budgeted use of the general fund in 2015 amounting to \$100,000, the General Fund will have a negligible balance. The Reserve Fund is projected to have a balance at the end of 2014 of \$410,000 comprising a general component of \$200,000, a

capital and special needs component of \$150,000, and a staffing and severance component of \$60,000.

Stakeholder Management

16. Stakeholder responses are assessed as part of the ongoing budget and financial reporting cycle.
17. The Treasurer has provided an overview report to benchers, completed in consultation with the shareholders of LibraryCo through the Library Information and Support Services (LISS) Working Group which sets out the principles that the shareholders agree should frame the process for moving forward.



From: Frankie Woods, Chair of LibraryCo Inc on behalf of the Board of LibraryCo Inc.

Date: October 7, 2014

LibraryCo Inc. 2015 Budget

In response to the request from the Law Society's Audit and Finance Committee, LibraryCo is hereby submitting its revised budget for 2015. The only significant change is that resulting from the cancellation of the LexisNexis subscription for 2015 as described below. Over the coming months, LibraryCo will be engaging with shareholders and stakeholders to consider the best allocation of the funds attributed to the Electronic Product / Implementation of Business Plan expense.

The budget includes an expense of \$278,041 for Electronic Product / Implementation of Business Plan. The provision of electronic products was previously significantly financed by a grant from the Law Foundation of Ontario ("LFO"). The LFO is not renewing its grant funding for electronic products in 2015. The contract with the service provider allows the contract to be cancelled in the event of inadequate funding from the LFO at a cost of \$6,888 in liquidated damages and notice of cancellation has been provided. The \$278,041 has therefore been allocated as a contingency amount as LibraryCo transitions to its new business plan, possibly different electronic products and any changes initiated by the Legal Information and Support Services Working Group.

**LIBRARYCO INC. 2015 BUDGET**

	2014	2015	
	Approved	Draft	Change
Expenses	Budget	Budget	
	\$	\$	\$
1 Library System (Attachment A)	6,280,930	6,343,739	62,809
2 Special Needs Grants	45,000	44,400	(600)
3 Electronic Products & Implementation of Business Plan	740,000	278,041	(461,959)
	7,065,930	6,666,180	(399,750)
Delivery of Administrative and Centralized			
4 Services (Attachment B)	1,253,200	1,129,820	(123,380)
5 Total Expenses	8,319,130	7,796,000	(523,130)
Revenue			
6 Law Society Fee Levies	7,498,700	7,696,000	197,300
7 Law Foundation - Electronic Products	542,000	-	(542,000)
8 Use of General Fund	278,430	100,000	(178,430)
9 Total Revenue	8,319,130	7,796,000	(523,130)
10 Surplus / (Deficit)	0	0	(0)

Convocation - Audit and Finance Committee Report

LIBRARYCO INC.		ATTACHMENT A	
GRANTS TO COUNTY LIBRARIES			
	Draft	Approved	
	2015	2014	
	LibraryCo	LibraryCo	
Association	Grant (\$)	Grant (\$)	% Change
Algoma District Law Association	134,266	132,937	1%
Brant Law Association	99,742	98,754	1%
Bruce Law Association	55,630	55,079	1%
County of Carleton Law Association	614,682	608,596	1%
Cochrane Law Association	48,326	47,848	1%
Dufferin Law Association	46,349	45,890	1%
Durham County Law Association	129,443	128,161	1%
Elgin Law Association	75,996	75,244	1%
Essex Law Association	279,630	276,862	1%
Frontenac Law Association	130,556	129,263	1%
Grey Law Association	65,872	65,220	1%
Haldimand Law Association	29,739	29,445	1%
Halton Law Association	138,774	137,400	1%
Hamilton Law Association	446,740	442,317	1%
Hastings Law Association	84,375	83,540	1%
Huron Law Association	75,492	74,745	1%
Kenora Law Association	86,811	85,951	1%
Kent Law Association	70,096	69,402	1%
Lambton County Law Association	74,536	73,798	1%
County of Lanark Law Association	39,069	38,683	1%
Leeds & Greenville Law Association	71,441	70,734	1%
Lennox & Addington Law Association	26,458	26,196	1%
Lincoln Law Association	177,535	175,778	1%
Manitoulin Law Association	2,525	2,500	1%
Middlesex Law Association	360,548	356,979	1%
Muskoka Law Association	64,197	63,561	1%
Nipissing Law Association	85,767	84,918	1%
Norfolk Law Association	70,118	69,424	1%
Northumberland County Law Assoc.	76,504	75,747	1%
Oxford Law Association	70,772	70,071	1%
Parry Sound Law Association	39,179	38,791	1%
Peel Law Association	295,780	292,852	1%
County of Perth Law Association	54,506	53,966	1%
Peterborough Law Association	131,936	130,629	1%
Prescott & Russell Law Association	13,835	13,698	1%
Rainy River Law Association	26,832	26,566	1%
Renfrew County Law Association	123,546	122,323	1%
County of Simcoe Law Association	139,687	138,304	1%
Stormont,D.& G. Law Assoc.	77,168	76,404	1%
Sudbury District Law Association	186,380	184,535	1%
Temiskaming Law Association	42,989	42,563	1%
Thunder Bay Law Association	169,454	167,776	1%
Toronto Lawyers Association	585,114	579,321	1%
Victoria Haliburton Law Association	87,163	86,300	1%
Waterloo Law Association	238,456	236,095	1%
Welland Law Association	93,371	92,447	1%
Wellington Law Association	75,347	74,601	1%
York Region Law Association	231,003	228,716	1%
	6,343,739	6,280,930	1%
<i>2014 Manitoulin Grant approved after budget approved (previous total \$6,278,500)</i>			

**DELIVERY OF ADMINISTRATIVE AND CENTRALIZED SERVICES**

	2014 Approved Budget \$	2015 Draft Budget \$	Percentage Increase / Decrease Over 2014 Budget %
Salaries and Benefits			
1 Salaries and Benefits	155,000	155,000	0.0%
2 County Library Benefit Plan	255,000	250,000	-2.0%
3 Total Salaries and Benefits (A)	410,000	405,000	-1.2%
Head Office			
4 Professional Development & Memberships	9,000	9,000	0.0%
5 Insurance	4,500	4,725	5.0%
6 Publications	9,000	7,500	-16.7%
7 Professional & Consulting Fees	18,000	18,000	0.0%
8 Administrative Services	527,700	430,000	-18.5%
9 Web Initiatives	3,000	3,000	0.0%
10 Board of Directors	12,000	12,000	0.0%
11 Courier and Postage	23,000	20,650	-10.2%
12 Staff & Travel	7,000	7,000	0.0%
13 Printing and Stationery	3,000	3,000	0.0%
14 Miscellaneous	6,000	6,000	0.0%
15 Total Head Office Expenses (B)	622,200	520,875	-16.3%
Law Libraries Centralized Purchasing			
16 COLAL Education and Meetings	60,000	35,600	-40.7%
17 Publications County Libraries	62,000	62,000	0.0%
18 Insurance - Counties	78,000	87,345	12.0%
19 CDLPA Meeting Expense	9,000	9,000	0.0%
20 1-800 Phone Lines	12,000	10,000	-16.7%
21 Total Centralized Expenses (C)	221,000	203,945	-7.7%
22 Total Expenses (Total of A, B and C)	1,253,200	1,129,820	-9.8%

TAB 2.2

FOR DECISION
LAW SOCIETY BUDGET

Motion:

18. That Convocation approve the Law Society's 2015 Budget including the following annual fee amounts.

For lawyers:

General Fee	\$1,370
Compensation Fund	\$225
LibraryCo	\$202
Capital	\$69
Total	\$1,866

For paralegals:

General Fee	\$804
Compensation Fund	\$123
Capital	\$69
Total	\$996

Budget Material

19. A full discussion can be found in the Society's draft 2015 budget materials presented as:
- 2015 Draft Budget Summary
 - 2015 Draft Budget Detail (in camera)
20. The budget is intended to address the established priorities for the 2011 – 2015 bench term.

Law Society of Upper Canada 2015 Draft Budget Summary



October 30, 2014
CONVOCATION

FOR BENCHER USE ONLY

Law Society of Upper Canada 2015 Draft Budget Summary Table of Contents

2015-2017 Budget Planning Scenarios	3
2015 Draft Budget	11
2015 Draft Budget Assumptions	12
2015 Draft Budget Overview	13
2015 Draft Lawyers and Paralegals Budget Summary	19
Professional Regulation, Tribunal and Compliance.....	20
Professional Development and Competence	21
Quality Assurance	22
Competence	23
Convocation, Policy and Outreach.....	24
Services to Members and Public	25
Corporate Services and Administration	26
Client Service Centre.....	27
Facilities Capital	28

This material has two parts – a medium term financial plan comprising budget scenarios for 2015, 2016 and 2017 (pages 3 – 9) and the 2015 Draft Budget Overview (pages 11 – 28).

2015-2017 BUDGET PLANNING SCENARIOS

BUDGET GOALS MET

- Maintain fees for lawyers and paralegals at the 2014 amount for the years 2015-2017
- Comply with the fund balance policies when using fund balances to mitigate annual fees

FINANCIAL OUTCOMES

- i. The financial plan incorporates the use of fund balances to mitigate annual fees for lawyers and paralegals while complying with the fund balance policies. The balance of the lawyer General Fund at the end of 2015 is projected to be \$16.9 million. The balance of the paralegal General Fund at the end of 2015 is projected to be \$1.5 million. The approved fund balance policy requires that a minimum of two months and a maximum of three months operating expenses be maintained in the lawyer General Fund balance.
- ii. The LibraryCo per lawyer levy is maintained at \$202 for a total transfer of \$7.7 million in 2015, \$7.8 million in 2016 and \$8.0 million in 2017. The Law Society remains committed to a viable library system and is exploring potential efficiencies and options to achieve this goal.
- iii. Compensation fund balances remain in a strong position to absorb an extraordinary defalcation and current high profile potential claims are being monitored.
- iv. The capital levy is increased to \$69 from \$50 in 2014 to provide funding for facilities related capital expenditures.

BUDGET SCENARIO SENSITIVITIES

These scenarios, like all budget exercises, include a number of assumptions and variables. Each of these variables and assumptions has the possibility to vary the projected outcome to a lesser or greater degree depending on their individual nature. The major sensitivities in these scenarios are discussed below.

Membership growth

Perhaps the factor with the greatest sensitivity in the scenarios is the projected annual growth in the number of lawyers and paralegals. The current assumption for 2015 is an increase of 900 full fee paying equivalent lawyers and 350 full fee paying equivalent paralegals. For 2016 and 2017 the projection is 700 lawyers and 350 paralegals. For every 100 member variance, the annual fee for lawyers would go up or down by \$5 and for paralegals by \$21.

Salaries and benefit expenses

The single largest category of expenditure in the Society's budget is spending on salaries and benefits. As set out on page 6, salaries and benefits constitute approximately 53% of annual expenditures. The scenarios assume salary and benefit expenditures increase at a rate of 2% annually over the three year period. This assumption incorporates both changes in staffing, increases to benefit costs and merit increases for existing staff. Every 1% change in the cost of salaries and benefits adds or subtracts approximately \$570,000, or \$13 per member to the Society's budget. The increase of 2% is less than the published survey sources which are projected to be between 2.7% and 3.0%.

Other expenses

All other expenses assumed to increase at 1% per year.

Investment returns

The Society's operations are currently supported by the combined investment income of the General Fund and the Compensation Fund. In total, the 2015 budget includes investment income of \$1.9 million. Over the past five years interest rates have been at historic lows and are expected to increase in the coming years. If, as expected, interest rates rise in outlying years, this could have a positive impact on the annual fee requirements for both lawyers and paralegals.

CPD revenue

The 2015 budget reflects a decline in CPD revenues of \$800,000 to reflect trends in 2014 and the revenue is projected to be relatively static for the two years thereafter.

Regulatory Issues

Professional regulation has maintained its provision for outside counsel and expert witness fees at 2014 levels. If a major regulatory issue emerged, like mortgage fraud did in the mid 2000's, the need to engage external counsel and expert witnesses could once again spike and drive costs higher. There are currently some potentially material cost award claims against the Law Society which are too uncertain to include in the financial projections.

BUDGETARY AND FISCAL RISKS

Inflation

The North American economy has experienced a sustained period of low inflation. Since 2009, central banks have been adding liquidity to the world's financial system in an effort to stimulate economic growth. Historically, money supply expansion has been followed by periods of rising inflation. If inflation begins to rise significantly over the period of these scenarios, the pressure to adjust salaries to offset the decline in purchasing power will increase as will the cost of all materials and supplies purchased for operations.

Compensation Fund Claims

The Society has experienced a ten year period of relatively low compensation fund claims. Although the fund is strong, several simultaneous large scale defalcations could strain the fund balance and eventually force the annual levy of \$225 for lawyers higher to meet claim demands and maintain the policy approved fund balance.

New Convocation Initiatives

Convocation could initiate new programming that would require significant new resources to achieve the program objectives. Major new programs generally require additional staff. Some programs such as CPD, also generate revenue that offset the increased costs, however, most programs like the Parental Leave Assistance Plan, do not and directly impact the members' annual fee.

Law Society of Upper Canada
2015-2017 Budget Scenario
Lawyers and Paralegals

	Approved 2014 Budget	Draft 2015 Budget	Projected 2016 Budget	Projected 2017 Budget
1 Annual fee revenue	73,731,300	75,766,315	77,442,900	79,099,200
2 Licensing process	11,398,300	11,618,300	11,534,500	11,563,000
3 CPD and other revenue	18,137,000	18,164,000	17,983,800	18,081,700
4 Total Funding	103,266,600	105,548,615	106,961,200	108,743,900
5 Salaries and benefits	56,830,100	57,454,465	58,673,600	59,846,400
6 Operating and Program	37,220,000	38,252,150	37,466,700	37,798,600
7 General fund	94,050,100	95,706,615	96,140,300	97,645,000
8 Capital fund	2,077,500	2,953,200	1,824,900	3,816,500
9 LibraryCo	7,498,000	7,696,000	7,837,600	7,979,000
10 Compensation Fund Claims	2,647,400	2,658,400	2,658,400	2,658,400
11 Total Expenditures	106,273,000	109,014,215	108,461,200	112,098,900
12 Deficit	(3,006,400)	(3,465,600)	(1,500,000)	(3,355,000)
13 E&O surplus investment income	1,500,000	1,500,000	1,500,000	1,500,000
14 General and Comp Fund Fund Balances	1,506,400	1,965,600	-	1,855,000
15 Total Use of Fund Balances	3,006,400	3,465,600	1,500,000	3,355,000

**Law Society of Upper Canada
2015-2017 Budget Scenario
Lawyers**

	Approved 2014 Budget	Draft 2015 Budget	Projected 2016 Budget	Projected 2017 Budget
1 Annual fee revenue	69,400,100	71,084,640	72,413,100	73,720,800
2 Licensing process	10,091,200	9,766,700	9,864,400	9,963,000
3 CPD	8,567,300	7,743,700	7,500,000	7,500,000
4 Other revenue	8,342,100	8,958,360	9,047,900	9,138,400
5 Total Funding	96,400,700	97,553,400	98,825,400	100,322,200
6 Salaries and benefits	52,416,800	52,429,300	53,478,300	54,547,200
7 Operating	3,544,000	3,555,700	3,591,500	3,627,500
8 Program	31,198,700	31,554,600	31,252,000	31,521,600
9 General fund	87,159,500	87,539,600	88,321,800	89,696,300
10 Capital fund	1,860,000	2,628,900	1,629,600	3,357,500
11 LibraryCo	7,498,000	7,696,000	7,837,600	7,979,000
12 Compensation Fund Claims	2,536,400	2,536,400	2,536,400	2,536,400
13 Total Expenditures	99,053,900	100,400,900	100,325,400	103,569,200
14 Deficit	(2,653,200)	(2,847,500)	(1,500,000)	(3,247,000)
15 E&O surplus investment income	1,500,000	1,500,000	1,500,000	1,500,000
16 General and Comp Fund Fund Balances	1,153,200	1,347,500	-	1,747,000
17 Total Use of Fund Balances	2,653,200	2,847,500	1,500,000	3,247,000
18 General fund	1,376	1,370	1,401	1,362
19 Capital fund	50	69	42	85
20 LibraryCo	202	202	202	202
21 Compensation Fund	238	225	221	217
22 Annual Fee	1,866	1,866	1,866	1,866
23 Full Fee Paying Equivalent Lawyers	37,200	38,100	38,800	39,500

**Law Society of Upper Canada
2015-2017 Budget Scenario
Paralegals**

	Approved 2014 Budget	Draft 2015 Budget	Projected 2016 Budget	Projected 2017 Budget
1 Annual fee revenue	4,331,200	4,681,675	5,029,800	5,378,400
2 Licensing process	1,307,100	1,851,600	1,670,100	1,600,000
3 CPD	709,700	733,300	700,000	700,000
4 Other revenue	517,900	728,640	735,900	743,300
5 Total Funding	6,865,900	7,995,215	8,135,800	8,421,700
6 Salaries and benefits	4,413,300	5,025,165	5,195,300	5,299,200
7 Operating	303,200	343,450	346,800	350,300
8 Program	2,174,100	2,798,400	2,276,400	2,299,200
9 General fund	6,890,600	8,167,015	7,818,500	7,948,700
10 Capital fund	217,500	324,300	195,300	459,000
11 Compensation Fund Claims	111,000	122,000	122,000	122,000
12 Total Expenditures	7,219,100	8,613,315	8,135,800	8,529,700
13 Deficit	(353,200)	(618,100)	-	(108,000)
14 Total Use of Fund Balances	353,200	618,100	-	108,000
15 General fund	796	804	840	804
16 Capital fund	50	69	42	85
17 Compensation Fund	150	123	114	107
18 Annual fee	996	996	996	996
19 Full Fee Paying Equivalent Paralegals	4,350	4,700	5,050	5,400

THE LAW SOCIETY OF UPPER CANADA
Fund Balance Projections
For years 2015-2017
(\$000's)

		General Fund		Compensation Fund		Total		E&O Investment Income
		Lawyer	Paralegal	Lawyer	Paralegal	Lawyer	Paralegal	
1	Projected December 31, 2014	17,500	2,000	24,000	525	41,500	2,525	3,700
	Policy Range - minimum	14,500						
	- maximum	21,800						
2	Investment Income 2015							1,200
3	Proposed 2015 fee mitigation	(641)	(541)	(707)	(77)	(1,348)	(618)	(1,500)
4	Projected December 31, 2015	16,859	1,459	23,293	448	40,152	1,907	3,400
	Policy Range - minimum	14,800						
	- maximum	22,200						
5	Investment Income 2016							1,200
6	Proposed 2016 fee mitigation	-	-	-	-	-	-	(1,500)
7	Projected December 31, 2016	16,859	1,459	23,293	448	40,152	1,907	3,100
	Policy Range - minimum	15,000						
	- maximum	22,500						
8	Investment Income 2017							1,200
9	Proposed 2017 fee mitigation	(1,040)	(108)	(707)	-	(1,747)	(108)	(1,500)
10	Projected December 31, 2017	15,819	1,351	22,586	448	38,405	1,799	2,800

THE LAW SOCIETY OF UPPER CANADA

Budget History

2006-2015

	2015 Draft Budget	2014 Budgeted Expenditures	2013 Budgeted Expenditures	2012 Budgeted Expenditures	2011 Budgeted Expenditures	2010 Budgeted Expenditures	2009* Budgeted Expenditures	2008 Budgeted Expenditures	2007 Budgeted Expenditures	2006 Budgeted Expenditures
1 Total Expenditures (000's)	\$ 109,014	\$ 106,273	\$ 103,444	\$ 99,482	\$ 92,514	\$ 86,615	\$ 81,918	\$ 77,122	\$ 71,593	\$ 66,486
2 Full Time Equivalent Employees	545.9	552.2	558.6	552.2	523.7	493.1	466.0	434.3	419.0	392.0
3 Annual Change	(6.3)	(6.4)	6.4	28.5	30.6	27.1	31.7	15.3	27.0	
4 Accumulated Change	153.9	160.2	166.6	160.2	131.7	101.1	74.0	42.3	27.0	
5 FFE Lawyers	38,100	37,200	36,600	36,000	35,000	34,000	33,600	32,800	32,000	31,000
6 FFE Paralegals	4,700	4,350	4,050	3,400	3,200	2,800	2,400	-	-	-
7 Total FFE Licencees	42,800	41,550	40,650	39,400	38,200	36,800	36,000	32,800	32,000	31,000
8 General Lawyer Fee	\$ 1,370	\$ 1,376	\$ 1,340	\$ 1,326	\$ 1,292	\$ 1,211	\$ 1,212	\$ 1,143	\$ 1,102	\$ 1,015
9 LibraryCo Fee	202	202	205	203	196	203	220	235	224	219
10 Compensation Fund	225	238	221	222	222	257	226	200	200	200
11 Capital Allocation Fund	69	50	85	75	75	65	45	75	75	75
12 Total Other Fees	\$ 496	\$ 490	\$ 511	\$ 500	\$ 493	\$ 525	\$ 491	\$ 510	\$ 499	\$ 494
13 Total Lawyer Fee	\$ 1,866	\$ 1,866	\$ 1,851	\$ 1,826	\$ 1,785	\$ 1,736	\$ 1,703	\$ 1,653	\$ 1,601	\$ 1,509
14 General Paralegal Fee	\$ 804	\$ 796	\$ 758	\$ 693	\$ 711	\$ 685	\$ 710			
15 Compensation Fund	123	150	153	214	171	183	145			
16 Capital Allocation Fund	69	50	85	75	75	65	45			
17 Total Other Fees	\$ 192	\$ 200	\$ 238	\$ 289	\$ 246	\$ 248	\$ 190			
18 Total Paralegal Fee	\$ 996	\$ 996	\$ 996	\$ 982	\$ 957	\$ 933	\$ 900			

2015 Draft Budget Summary

The Law Society of Upper Canada
2015 Draft Budget
Assumptions

- Increase in Full Fee Paying Equivalents members, 900 for lawyers to 38,100 and 350 for paralegals to 4,700
- 2% provision for salary and benefits
- Allocation of \$1.5 million from the accumulated surplus investment income in the E&O Fund to mitigate fee increase for lawyers (2014: \$1.5 million)
- \$641,000 allocated from the General Fund accumulated surplus to mitigate fee increase for lawyers (2014: \$446,000)
- \$541,000 allocated from the General Fund accumulated surplus to mitigate fee increase for paralegals (2014: \$313,000)
- Allocation of \$707,000 (2014: \$707,000) from accumulated surplus in the lawyer Compensation Fund and \$77,000 (2014:\$40,000) from the paralegal Compensation Fund to mitigate fee increases
- Capital levy increased from \$50 to \$69
- LibraryCo funding increased from \$7.5 million to \$7.7 million
- Contingency set at \$1 million (2014: \$1 million)
- The lawyer Licensing Process fee for the 2015-2016 licensing term remains at \$4,710 per candidate for all fees associated with licensing. The paralegal licensing fee is also unchanged at \$1,400. In addition to the \$1 million lawyer subsidy, financial assistance is available to lawyer candidates in the form of repayable allowances. \$100,000 has been provided in 2015 (2014: \$100,000). The projected repayable allowance fund balance at the beginning of 2015 is \$400,000
- A \$400,000 grant from the Law Foundation of Ontario for Access to Justice replaces the 2014 grants for the licensing processes which were \$365,000 for lawyers and \$36,000 for paralegals
- Projected Lawyer General Fund balance and Compensation Fund balance to comply with Convocation's fund balance management policy

2015 Draft Budget Overview

The draft 2015 budget is based on the 2015 – 2017 budget scenario and maintains the fee at the 2014 level for lawyers and paralegals, broken down as follows:

	2014		2015	
	Lawyers	Paralegals	Lawyers	Paralegals
General Fee	\$ 1,376	\$ 796	\$ 1,370	\$ 804
Compensation Fund	238	150	225	123
Capital	50	50	69	69
LibraryCo Inc.	202	0	202	0
Total	\$ 1,866	\$ 996	\$ 1,866	\$ 996

2015 Budget Highlights

While demonstrating fiscal restraint, the draft budget focuses on the organization's core responsibilities of professional regulation, professional development and competence and policy development and facilitating access to justice, while addressing the established priorities for the 2011-2015 bench term.

Growth in the number of lawyers will increase budgeted full fee paying equivalent lawyers by 900 to 38,100. Growth in the number of paralegals will increase the budgeted full fee paying equivalent paralegals by 350 to 4,700. While the "full fee equivalent" is used as a measure for budget purposes, the Law Society will regulate over 50,000 fee paying lawyers and paralegals in 2015.

The primary factors that have played a role in drafting the 2015 budget are:

- focussing on the priorities for the 2011-2015 bench term
- considering the three-year pilot project that will allow lawyer licensing candidates to either article or complete a Law Practice Program, which started in the 2014-15 licensing year
- incorporating sustainable CPD revenues based on a longer history of the mandatory program
- using fund balances to mitigate annual fee increases and complying with the Convocation approved fund balance management policies

- maintaining the LibraryCo levy at the 2014 level of \$202. As the number of lawyers is increasing, LibraryCo funding is increasing by \$198,000
- incorporating a grant of \$400,000 from the Law Foundation of Ontario for access to justice initiatives which replaces Licensing Process grants for a similar amount
- decreasing the number of full-time equivalent employees by seven
- considering potential increases in outside counsel expenses and cost awards
- providing for a 2% increase in salary and benefit costs.

Revenue Summary

As set out on page 19 (row 10), annual fee revenue totals \$75.8 million in 2015 (2014: \$73.7 million).

The budget utilizes a combined total of \$2.0 million (2014: \$1.5 million) from accumulated fund balances to mitigate fee increases comprising \$1.4 million from the lawyer fund balances and \$618,000 from the paralegal fund balances. If these funds were not utilized, lawyers' annual fees would increase by \$35 and paralegals' by \$132. In addition, \$1.5 million (unchanged from 2014) in surplus investment income is being transferred from the Errors & Omissions Insurance Fund to mitigate the annual fee for lawyers. Utilizing accumulated fund balances is a normal practice to fund operations in the short term but is not a sustainable practice in the long term.

It is anticipated that the 21 percent decrease in registrations for full-fee Continuing Professional Development programs experienced in the first half of 2014 compared to the same period in 2013 will continue to the end of the year. It also anticipated that revenue from professionalism programs, for which a nominal fee was introduced in 2014, will continue to be lower than anticipated. As electronic materials are included with the price of the program and members increasingly prefer this format over hard copy materials, expected revenue from publications has been reduced. As a result, the 2015 revenue projection for CPD is \$800,000 lower than in 2014.

The lawyer Licensing Process has undergone major change. The lawyer candidate fee for the 2015-2016 licensing term is proposed to remain at \$4,710 per candidate for all fees associated with licensing, including the costs of the Law Practice Program and the enhanced Articling Program, which have been equalized across all candidates in the process. As the Law Foundation of Ontario grant funding will no longer be available, it is expected that revenues for the Lawyer Licensing Process will decrease by approximately 3.5%. The fee for the paralegal licensing process candidates remains the same at \$1,400 with candidate numbers continuing to increase.

Budgeted investment income has been increased by \$300,000 in total for the General and Compensation funds.

Under an Administrative Services Agreement between LibraryCo Inc. and the Law Society, the Law Society performs the administrative functions for LibraryCo. The fee for these services has been renegotiated to \$430,000 in 2015 (2014 budget: \$520,000), funding the operating expenses of the Law Society necessary to provide these services.

Although the total annual fee for lawyers and paralegals is unchanged for 2015, the Compensation Fund component is budgeted to decrease from a levy of \$238 to \$225 for lawyers and from \$150 to \$123 for paralegals. The Compensation Fund levies have been reviewed by the Compensation Fund Committee and were set after an actuarial assessment of claims and fund balances based on expected requirements to meet future potential claims in excess of routine annual requirements. No change in the provisions for claims is budgeted. Both Funds, lawyer and paralegal, are financially and actuarially sound.

For both lawyers and paralegals, the Capital Allocation levy increases from \$50 to \$69 as part of the financing plan for the acquisition and maintenance of capital assets proposed as part of the 2015 budget. In particular, the Audit & Finance Committee has reviewed the allocation of \$1.3 million in leasehold improvements related to the Ontario Justice Education Network leaving Law Society premises, and the consequent relocation of the Tribunal Office, Equity department and parts of the Information Systems department which will improve processes and efficiencies.

The budget maintains the LibraryCo levy at \$202 per lawyer (2014: \$202 per lawyer), which increases Law Society funding of LibraryCo by \$198,000 to \$7.7 million because of the increase in the number of lawyers. LibraryCo's total revenues are reduced as the Law Foundation of Ontario is no longer providing funding for expenses related to electronic products.

Expense Summary

As set out on page 19, total direct expenses are increasing from \$106.3 million in 2014 to \$109.0 million in 2015.

The draft 2015 budget contains a provision of 2.0% for salaries and benefits for merit increases and any changes to staff levels.

The draft 2015 budget contains a net decrease of 7 full-time-equivalent employees.

The budget request for Professional Regulation, Tribunal and Compliance is at \$28.7 million (page 20). Most areas of the division are projecting increased file volumes of around 2%, in line with long term trends. At 205 full time equivalents, the number of employees

is relatively static with staffing for the new Disclosure and Risk Management Unit being accomplished by internal transfers. The external counsel expense budget remains the same as in 2014 at \$1.6 million.

The budget for Professional Development and Competence is at \$26.7 million (page 21).

- The total expenditures for the lawyer licensing process, which is a cost recovery process that covers its expenses through the payment of fees by licensing candidates, is mitigated by a \$1 million contribution by the profession approved by Convocation for 2014 and continuing. In the paralegal licensing process there is a one-time expense of \$500,000 to develop the new and extended paralegal licensing examination.
- Projected CPD program-related expenses in 2015 have been decreased by \$48,000 to reflect the decrease in costs associated with producing, marketing, and distributing publications and participation in fewer joint programs. The CPD unit will be maintaining the same level of staffing.
- In Legal Information and Library Services, the Great Library's print collection continues to face constraints as small budget increases are outstripped by certain print format costs increasing by over 10%. The staff count is decreasing by 2.
- Pursuant to the business case approved by Convocation in 2013, expenses for the Spot Audit Department will see a further reduction of \$200,000 in 2015 for a total budget reduction of \$500,000 from 2013 to 2015 including 4 fewer FTEs.

The budget request for Convocation, Policy and Outreach is at \$10.7 million (page 24). The major change is the new office of Executive Director, Policy, Equity and Public Affairs which was implemented in 2014. Also included is a provision for an increase of \$5 in the per lawyer levy for the Federation of Law Societies and an increase of 3% in the CANLII levy. Remuneration for benchers in 2014 is well below trends of the past two years with the expanded use of adjudicators and the Tribunal Chair. Bencher remuneration has been reduced by \$250,000 from \$1.1 million to \$850,000. The provision for bencher remuneration is inclusive of an adjustment for anticipated change in CPI of 3%. A provision of \$250,000 has been included to support the planned post-election bencher strategic planning retreat in 2015.

The budget for Services to Members and the Public is at \$16.2 million (page 25). The Parental Leave Assistance Plan fund is expected to end 2014 with a balance in excess of \$350,000. In 2014, the levy raised \$400,000 to top up the fund balance to support the payment of benefits to lawyers on parental leave. Likely attributable to the implementation of the means test in January 2014, payments for 2014 are significantly below previous years, \$101,000 compared to \$243,000 at this time last year. The budget for 2015 will only require a \$300,000 top up to restore the amount available for benefit payments to a total \$650,000 in 2015.

The financial projection includes a rent subsidy of \$75,000 to the Ontario Justice Education Network which declines over 5 years. OJEN previously obtained free accommodation on Law Society premises but as part of their corporate development will be moving to separate premises in 2015.

The budget for Corporate Services & Administration is at \$23.8 million (page 26). Expenses in the office of the general counsel are budgeted to increase by \$250,000 for outside counsel primarily to provide for the anticipated cost of litigation involving TWU.

The Society's contingency allowance to provide funding for unanticipated events or activities that occur throughout the year is maintained at \$1.0 million. For the past two years the Society has maintained a contingency budget of \$1,000,000 primarily to provide for the anticipated costs related to organizational restructuring. The contingency has been maintained at \$1,000,000 in 2015 in anticipation of additional initiatives emerging after the bench election and declines to \$250,000 in subsequent years.

General Fund Balance

In May 2013, Convocation approved policies to manage the size and use of the Law Society's Lawyer General and Compensation Fund balances maintaining the sum of the Lawyer General Fund balance at no less than two, and no more than three months of General Fund budgeted expenses. The projected balance of the lawyer General Fund at the end of 2015 is \$16.9 million, a little below the midpoint of the approved range.

The balance in the Paralegal General Fund balance is projected at \$1,459,000 at the end of 2015. This is viewed as appropriate although no formal fund balance management policies have been adopted due to the size of the balance and limited operational history.

Compensation Fund

The budget for 2014 sets the allowance for claims at \$2.5 million (2014 budget: \$2.5 million) for lawyers and \$122,000 (2014 budget: \$111,000) for paralegals. The Fund's actuary indicates this level of claims experience is consistent with routine, recurring claims levels for lawyers over the past ten years and a reasonable estimate for paralegals given the six years of historical data.

LibraryCo Inc.

LibraryCo will continue to be funded at \$202 per lawyer, for a total of \$7.7 million in 2015. The 2015 Budget, approved by the LibraryCo board and recommended to the Audit & Finance Committee, requests funding of \$7.7 million or \$202 per lawyer compared to the 2014 approved funding of \$7.5 million or \$202 per lawyer. 2015 will be a year of transition for LibraryCo as it deals with the loss of LFO funding for electronic products.

Access to Justice

The Society has applied for and received approval from the Law Foundation of Ontario for a grant related to the development and delivery of Access to Justice initiatives. The grant is for \$400,000 with the associated expenses included in the Policy, Equity and Public Affairs Budget. Hired in 2014, the Policy, Equity and Public Affairs Executive Director has primary responsibility for supporting the Treasurer's Access to Justice Group initiative, and the formation of a stakeholder Reference Group to steer the Access to Justice initiative.

Convocation - Audit and Finance Committee Report

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Budget Summary

	Professional Regulation/ Tribunal and Compliance		Professional Development & Competence		Convocation Policy and Outreach		Services to Members and Public		Corporate Services & Administration		Capital Allocation Fund	2015 Draft Budget		2014 Approved Budget	
1 Total Employees/FTE	211.0	205.5	145.0	136.5	31.0	30.6	38.0	28.0	148.0	145.3		573.0	545.9	577.0	552.2
2 Operating Revenues	1,188,500		20,553,300		445,000		3,595,000		4,000,500		-	29,782,300		29,535,300	
3 Fund Balance Utilized	-		-		-		784,400		2,681,200		-	3,465,600		3,006,400	
Total Operating Revenue and Fund 4 Balance Utilized	1,188,500		20,553,300		445,000		4,379,400		6,681,700			33,247,900		32,541,700	
5 Salaries & Benefits	23,097,000		13,841,495		4,028,800		2,273,800		14,213,370		-	57,454,465		56,754,500	
6 Dept. Operating Expenses	1,748,100		1,001,000		250,900		119,550		779,600		-	3,899,150		3,855,800	
7 Total Sal., Ben. & Oper. Exp.	24,845,100		14,842,495		4,279,700		2,393,350		14,992,970		-	61,353,615		60,107,900	
8 Program Expenses	3,788,300		11,884,400		6,446,400		13,780,100		8,808,200		2,953,200	47,660,600		46,165,100	
9 Total Direct Expenses	28,633,400		26,726,895		10,726,100		16,173,450		23,801,170		2,953,200	109,014,215		106,273,000	
10 Direct Operating Result	(27,444,900)		(6,173,595)		(10,281,100)		(11,794,050)		(17,119,470)		(2,953,200)	(75,766,315)		(73,731,300)	

Convocation - Audit and Finance Committee Report

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Professional Regulation, Tribunal and Compliance

	Executive Director of Professional Regulation		Disclosure Unit		Case Management		Investigations		Complaints Resolution		Complaints Resolution Commissioner		Intake		Monitoring and Enforcement		Trustee Services		Discipline		Complaints Services		Admin Compliance		By-Law Administration		Tribunal		2015 Total	
	6.0	6.0	3.0	3.0	5.0	5.0	57.0	56.6	24.0	23.8	4.0	3.8	10.0	10.0	5.0	4.4	12.0	12.0	36.0	34.8	14.0	13.2	11.0	10.2	10.0	9.2	14.0	13.5	211.0	205.5
1 Total Employees/FTE																														
2 Revenues	-				-		-		-		-		-		400,000		200,600		-		-		522,700		65,200		-		1,188,500	
3 Salaries & Benefits	1,064,400		322,700		574,000		6,256,200		2,608,300		430,700		1,086,200		509,600		1,104,100		4,908,800		1,222,500		823,300		724,700		1,461,500		23,097,000	
4 Dept. Operating Expenses	178,500		234,700		25,800		354,100		162,800		23,800		41,500		21,700		56,600		314,200		79,700		70,300		82,200		102,200		1,748,100	
5 Total Sal., Ben. & Oper. Exp.	1,242,900		557,400		599,800		6,610,300		2,771,100		454,500		1,127,700		531,300		1,160,700		5,223,000		1,302,200		893,600		806,900		1,563,700		24,845,100	
6 Program Expenses	2,030,300		-		102,000		256,000		39,400		173,900		2,500		44,400		140,400		218,700		6,200		13,200		12,900		748,400		3,788,300	
7 Total Direct Expenses	3,273,200		557,400		701,800		6,866,300		2,810,500		628,400		1,130,200		575,700		1,301,100		5,441,700		1,308,400		906,800		819,800		2,312,100		28,633,400	
8 Direct Operating Result	(3,273,200)		(557,400)		(701,800)		(6,866,300)		(2,810,500)		(628,400)		(1,130,200)		(175,700)		(1,100,500)		(5,441,700)		(1,308,400)		(384,100)		(754,600)		(2,312,100)		(27,444,900)	

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Professional Development & Competence

	Licensing Process		Quality Assurance		Competence		2015 Total	
1 Total Employees/FTE	31.0	31.0	50.0	48.8	64.0	56.7	145.0	136.5
2 Revenues	11,618,300		-		8,935,000		20,553,300	
3 Salaries & Benefits	2,763,300		5,562,795		5,515,400		13,841,495	
4 Dept. Operating Expenses	161,800		563,900		275,300		1,001,000	
5 Total Sal., Ben. & Oper. Exp.	2,925,100		6,126,695		5,790,700		14,842,495	
6 Program Expenses	7,928,200		127,900		3,828,300		11,884,400	
7 Total Direct Expenses	10,853,300		6,254,595		9,619,000		26,726,895	
8 Direct Operating Result	765,000		(6,254,595)		(684,000)		(6,173,595)	

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Quality Assurance

	Practice Review		Spot Audit		2015 Total	
1 Total Employees/FTE	16.0	16.0	34.0	32.8	50.0	48.8
2 Revenues	-		-		-	
3 Salaries & Benefits	1,752,400		3,810,395		5,562,795	
4 Dept. Operating Expenses	151,400		412,500		563,900	
5 Total Sal., Ben. & Oper. Exp.	1,903,800		4,222,895		6,126,695	
6 Program Expenses	78,400		49,500		127,900	
7 Total Direct Expenses	1,982,200		4,272,395		6,254,595	
8 Direct Operating Result	(1,982,200)		(4,272,395)		(6,254,595)	

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Competence

	Practice Management		Certified Specialist		Continuing Professional Development		Archives		Great Library		2015 Total	
1 Total Employees/FTE	11.0	9.0	1.0	1.0	30.0	27.0	5.0	3.5	17.0	16.2	64.0	56.7
2 Revenues	-		270,000		8,477,000		-		188,000		8,935,000	
3 Salaries & Benefits	1,309,400		66,300		2,438,500		291,700		1,409,500		5,515,400	
4 Dept. Operating Expenses	75,700		7,100		117,400		14,000		61,100		275,300	
5 Total Sal., Ben. & Oper. Exp.	1,385,100		73,400		2,555,900		305,700		1,470,600		5,790,700	
6 Program Expenses	89,700		51,300		2,132,400		39,800		1,515,100		3,828,300	
7 Total Direct Expenses	1,474,800		124,700		4,688,300		345,500		2,985,700		9,619,000	
8 Direct Operating Result	(1,474,800)		145,300		3,788,700		(345,500)		(2,797,700)		(684,000)	

Convocation - Audit and Finance Committee Report

THE LAW SOCIETY OF UPPER CANADA
Draft Budget Lawyers and Paralegals
For the year ending December 31, 2015
Convocation, Policy and Outreach

	Executive Director PEPA		Policy		Treasurer/ Bencher		Communications		Public Affairs		Federation of Law Societies	Equity		Contingencies	2015 Total	
1 Total Employees/FTE	3.0	3.0	7.0	7.0	1.0	1.0	11.0	11.0	3.0	3.0		6.0	5.6		31.0	30.6
2 Revenues	400,000		20,000		-		-		-			25,000			445,000	
3 Salaries & Benefits	530,600		1,045,500		102,600		1,234,500		385,800			729,800			4,028,800	
4 Dept. Operating Expenses	45,000		49,900		20,000		51,400		35,500			49,100			250,900	
5 Total Sal., Ben. & Oper. Exp.	575,600		1,095,400		122,600		1,285,900		421,300			778,900			4,279,700	
6 Program Expenses	73,500		92,300		2,997,700		395,900		324,000		1,180,000	383,000		1,000,000	6,446,400	
7 Total Direct Expenses	649,100		1,187,700		3,120,300		1,681,800		745,300		1,180,000	1,161,900		1,000,000	10,726,100	
8 Direct Operating Result	(249,100)		(1,167,700)		(3,120,300)		(1,681,800)		(745,300)		(1,180,000)	(1,136,900)		(1,000,000)	(10,281,100)	

Convocation - Audit and Finance Committee Report

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Services to Members and Public

	Catering		LSRS		Compensation Fund		OJEN, ProBono & LCO	Cty. & Dist. Law Presidents Assoc.	CANLII	County Libraries	MAP	PLAP	2015 Total	
1 Total Employees/FTE	29.0	19.0	5.0	5.0	4.0	4.0				0.0	0.0		38.0	28.0
2 Operating Revenues	1,735,000		325,000		1,350,000				-		185,000	-	3,595,000	
3 Fund Balance Utilized	-		-		784,400				-		-	-	784,400	
Total Operating Revenue and Fund Balance Utilized	1,735,000		325,000		2,134,400				-		185,000	-	4,379,400	
5 Salaries & Benefits	1,290,500		467,000		516,300				-		-	-	2,273,800	
6 Dept. Operating Expenses	41,300		57,650		20,600				-		-	-	119,550	
7 Total Sal., Ben. & Oper. Exp.	1,331,800		524,650		536,900				-		-	-	2,393,350	
8 Program Expenses	766,100		23,800		2,658,400	338,000	252,800	1,345,000	7,696,000	400,000	300,000		13,780,100	
9 Total Variable Expenses	2,097,900		548,450		3,195,300	338,000	252,800	1,345,000	7,696,000	400,000	300,000		16,173,450	
10 Direct Operating Result	(362,900)		(223,450)		(1,060,900)	(338,000)	(252,800)	(1,345,000)	(7,696,000)	(215,000)	(300,000)		(11,794,050)	

Convocation - Audit and Finance Committee Report

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Corporate Services and Administration

	CEO/ Finance		Facilities		Client Service Centre		I.S., PMO & Web Content		Human Resources		Corporate Resource Centre		General Counsel		Corporate	2015 Total
1 Total Employees/FTE	30.0	29.2	25.0	24.1	36.0	35.2	38.0	38.0	8.0	7.8	5.0	5.0	6.0	6.0		148.0 145.3
2 Operating Revenues	381,000		-		37,500		12,000		-		-		-		3,570,000	4,000,500
3 Fund Balance Utilized	-		-		-		-		-		-		-		2,681,200	2,681,200
Total Operating Revenue and Fund 4 Balance Utilized	381,000		-		37,500		12,000		-		-		-		6,251,200	6,681,700
5 Salaries & Benefits	3,512,600		1,791,300		2,825,470		3,888,000		836,600		530,900		828,500		-	14,213,370
6 Dept. Operating Expenses	242,900		67,200		177,100		110,900		77,000		26,200		78,300		-	779,600
7 Total Sal., Ben. & Oper. Exp.	3,755,500		1,858,500		3,002,570		3,998,900		913,600		557,100		906,800		-	14,992,970
8 Program Expenses	418,800		3,457,400		35,900		1,517,500		902,800		17,900		383,900		2,074,000	8,808,200
9 Total Direct Expenses	4,174,300		5,315,900		3,038,470		5,516,400		1,816,400		575,000		1,290,700		2,074,000	23,801,170
10 Direct Operating Result	(3,793,300)		(5,315,900)		(3,000,970)		(5,504,400)		(1,816,400)		(575,000)		(1,290,700)		4,177,200	(17,119,470)

THE LAW SOCIETY OF UPPER CANADA
 Draft Budget Lawyers and Paralegals
 For the year ending December 31, 2015
 Client Service Centre

	Administration		Corporate Services		Call Centre		Client & Member Services		2015 Total	
1 Total Employees/FTE	2.0	2.0	3.0	3.0	12.0	12.0	19.0	18.2	36.0	35.2
2 Revenues	-	-	-	-	-	-	37,500		37,500	
3 Salaries & Benefits	290,600		539,370		847,600		1,147,900		2,825,470	
4 Dept. Operating Expenses	27,700		65,900		22,400		61,100		177,100	
5 Total Sal., Ben. & Oper. Exp.	318,300		605,270		870,000		1,209,000		3,002,570	
6 Program Expenses	-		1,200		18,700		16,000		35,900	
7 Total Direct Expenses	318,300		606,470		888,700		1,225,000		3,038,470	
8 Direct Operating Result	(318,300)		(606,470)		(888,700)		(1,187,500)		(3,000,970)	

**The Law Society of Upper Canada
Facilities Capital Fund Proposed Projects
For the year ending December 31, 2015**

Item	Project Description	Budget
1	Carpet replacement - Portrait & Museum Rooms	100,000
2	Window replacement	200,000
3	Heat pump upgrade in North Wing	700,000
4	Lighting retrofit	50,000
5	Museum room ceiling tile replacement	60,000
6	Roof De-icing - East Entrance	35,000
7	Hydraulic lift - loading dock	30,000
8	Accessible lift - Honours Room	30,000
9	Washroom upgrades - various	100,000
10	Historic fence restoration	100,000
11	Historic gate restoration	100,000
12	Improvement to air conditioning unit in Trustee Services	12,000
13	Relocate Tribunal Office / hearing rooms	1,285,000
14	Contingency	150,000
15	TOTAL 2015 CAPITAL REQUEST	2,952,000

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*

TAB 2.3

FOR DECISION
TREASURER EXPENSE REIMBURSEMENT POLICY

Motion:

- 21. That Convocation approve the new Treasurer Expense Reimbursement Policy.**

Rationale

22. An approved, transparent expense reimbursement policy is a critical internal control tool and assists in administering the reimbursement process. Currently, Treasurers are reimbursed for business related expenses under the existing Benchers Expense Reimbursement Policy. In recognition of the unique circumstances of the office of Treasurer, a policy for the reimbursement of expenses incurred by Treasurers in the course of their Law Society business is being proposed.
23. This is a new policy, based on the Benchers Expense Reimbursement Policy. It will come into effect when it is approved by Convocation.

Key Issues and Considerations

24. The policy requires the Treasurer to consult with the Chair, Audit & Finance Committee or the Chief Executive Officer for guidance if the Treasurer has any doubt as to the appropriateness of a specific expense.
25. The policy continues the Audit & Finance Committee's role in overseeing Treasurer expenses by requiring timely, accurate and complete reporting to the Committee.
26. The policy is based on the Benchers Expense Reimbursement Policy and addresses issues often unique to Treasurers such as long term accommodation and the use of business class air travel for flights over four hours.

Financial Impact

27. Expenses reimbursed to, or paid on behalf of, the Treasurer should be within the detailed budget set for Treasurer business expense purposes. In 2014 this budget totals \$305,000.

TREASURER EXPENSE REIMBURSEMENT POLICY

Approved By:	Convocation	Review Date:	October, 2015
Contact:	Chief Financial Officer		

1 POLICY

Under By-Law 3, the Treasurer is entitled to be reimbursed for reasonable expenses incurred in performing his or her duties on behalf of the Law Society. Expenses reimbursed to, or paid on behalf of, the Treasurer should be within the detailed budget set for Treasurer business expense purposes.

The Treasurer should consult with the Chair, Audit & Finance Committee or the Chief Executive Officer (CEO) for guidance related to any expenses which may be considered extraordinary, not within the set budget, and/or if the Treasurer has any doubt as to the appropriateness of a specific expense.

2 PURPOSE

The purpose of this Policy is to:

- set the guidelines for the Treasurer with respect to reimbursable expenses in conducting Law Society business,
- reflect the obligation of the Law Society to be accountable for the expenditure of all funds, and
- assist the Audit & Finance Committee in their role of overseeing Treasurer expenses by providing timely, accurate and complete reporting to the Committee on a regular basis.

3 SCOPE

The Treasurer Expense Reimbursement policy applies to the Treasurer while conducting Law Society business during his/her term.

4 RESPONSIBILITY

4.01 The Treasurer on Law Society business is responsible for:

- Following the guidelines for expenses, or satisfying the Chair, Audit & Finance Committee or CEO, prior to incurring an expense, that an exception is appropriate,
- Ensuring expenses incurred are within the budget approved by Convocation and in keeping with the detailed budget set for Treasurer business expense purposes,
- Retaining and submitting all original receipts along with a completed Law Society Expense Report form.

4.02 The Chair, Audit & Finance Committee is responsible for:

- Approving exceptions to the Treasurer expense reimbursement policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating decisions to the CEO and Chief Financial Officer (CFO).

4.03 The Chief Executive Officer is responsible for:

- Approving all expenses, subsequent to the CFO's review,
- In conjunction with the Chair, Audit & Finance Committee, approving exceptions to the Treasurer expense reimbursement policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating decisions to the CFO,
- Monitoring for compliance with the set policy and raising issues, where appropriate, with the Audit & Finance Committee.

4.04 The Chief Financial Officer is responsible for:

- Providing guidance to the Chair, Audit & Finance Committee and CEO regarding appropriate types and levels of expenses
- Reviewing all expense reports and conference requests submitted by the Treasurer for completeness, accuracy and budget availability
- Providing reporting on Treasurer's expenses to the Audit & Finance Committee.

5 ALLOWABLE BUSINESS EXPENSES

5.01 Travel

The Law Society recognizes the following as reimbursable travel expenses:

- Economy class airfares on commercial flights with business class airfares permitted for flights exceeding four hours
- Train or bus tickets
- Airport fees
- Public transportation costs
- Parking
- Taxi fares or limousine, including gratuity, to and from destinations within a city
- A rental car, including insurance and gasoline costs, in the destination city.
- Use of a Treasurer's personal vehicle for business travel will be reimbursed on a per kilometre basis. The Law Society will update and publish the rate per kilometre for reimbursement purposes periodically.

5.02 Accommodation

In general, the Law Society recognizes the following as reimbursable accommodation expenses:

- Within Toronto and Ottawa, reimbursement will be limited to accommodation expenses equivalent to those at the Law Society's pre-approved hotels at the negotiated rates. The list of pre-approved hotels and rates is to be updated and published by the Law Society periodically.
- When long-term accommodation arrangements are needed in Toronto as a Treasurer's primary residence is outside the Greater Toronto Area, reimbursement will be limited to accommodation expenses comparable to the cost that would be incurred by staying at the Law Society's pre-approved hotels in Toronto.
- Outside of Toronto and Ottawa, reimbursement will be limited to the comparable class of pre-approved hotels in Toronto and Ottawa.

5.03 Meals

The Law Society reimburses reasonable meal expenses incurred while travelling or conducting Law Society business. When travelling or dining independently, the Treasurer should use the Reimbursement Guidelines set for benchers in the Bencher Expense Reimbursement Policy as a guide for reasonable meal and beverage expense per day.

5.04 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- Gratuities/tips
- Communication costs such as fax, long distance charges, teleconferences and cell phone usage
- Childcare and related expenses
- While traveling, internet connection expenses and telephone calls.

5.05 Non-reimbursable Expenses

The Law Society will not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where the Treasurer is hosted by family or friends or stay in their own secondary residence instead of a hotel.

5.06 Conferences

Attendance at a seminar, conference or similar event at Law Society expense must be approved by the CEO in advance of any commitment or reservations being booked.

On occasion, the Treasurer may attend an event which includes a guest invitation. With the prior approval of the CEO, the Law Society will reimburse reasonable travel, accommodation and meal expenses incurred for a guest to attend with the Treasurer.

5.07 Other Costs

The Law Society occasionally hosts functions to which guests are invited. Additional expenses

incurred for a guest to travel to a designated event will be reimbursed in accordance with this Policy.

6 SUBMISSION OF EXPENSE CLAIMS

6.01 Submission of Expense Claims

- Original receipts and boarding passes should be retained and submitted with a completed Law Society Expense Report Form to the attention of the CFO.
- The Expense Report Form should include the purpose for incurring the expense(s) such as attending Federation of Law Societies meeting, business meeting with Committee Chairs to address a given matter, etc.
- Receipts should include the name of the service provider (e.g. restaurant, taxi company, etc.), the date the service was received and the amount paid.
- Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance.
- It is preferred that, at a minimum, claims for reimbursement be submitted on a monthly basis by the 15th business day in the month following the month in which the expense was incurred. Claims submitted more than six months after the date of the expense being incurred may be declined for reimbursement.

7 REPORTING

7.01 Reporting

In accordance with the Law Society's internal control and governance processes, regular reporting on Treasurer's expenses will be submitted to the Audit & Finance Committee along with exceptions to the policy.



TAB 3

Report to Convocation October 30, 2014

Professional Regulation Committee

Committee Members

Malcolm Mercer (Chair)
Paul Schabas (Vice-Chair)
Susan Richer (Vice-Chair)
Robert Armstrong
John Callaghan
John Campion
Cathy Corsetti
Seymour Epstein
Robert F. Evans
Julian Falconer
Patrick Furlong
Carol Hartman
Jacqueline Horvat
Brian Lawrie
Jeffrey Lem
William C. McDowell
Ross Murray
Jan Richardson
Heather J. Ross

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Margaret Drent (416-947-7613))**

TABLE OF CONTENTS

Decision

Amendment to the Policy on Law Society Investigations of Benchers,
Employees, and Adjudicators **TAB 3.1**

In Camera Item **TAB 3.2**

Information

Law Society Statement on Reporting to Law Enforcement and Other Regulators **TAB 3.3**

Survey of Licensees in the Complaints Process **TAB 3.4**

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on October 16, 2014. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), John Campion, Cathy Corsetti, Seymour Epstein, Robert F. Evans, Patrick Furlong, Carol Hartman (by telephone), Jacqueline Horvat, Brian Lawrie, Jeffrey Lem, William C. McDowell, Ross Murray, and Jan Richardson (by telephone).
2. Staff members attending were Zeynep Onen, Grant Wedge, Jim Varro, Naomi Bussin, and Margaret Drent.

TAB 3.1

FOR DECISION

**AMENDMENT TO THE POLICY ON LAW SOCIETY INVESTIGATIONS OF
BENCHERS, EMPLOYEES, AND ADJUDICATORS**

MOTION

3. **That Convocation amend the policy on Law Society Investigations of Benchers, Employees, and Licensee Adjudicators, as set out at [Tab 3.1.1](#).**

Issue for Consideration

4. Convocation is asked to approve an amendment to the 2009 Policy on Law Society Investigations of Licensee Benchers and Staff to provide for the handling of complaints against licensees who are non-bencher adjudicators.
5. Convocation approved a new policy for these investigations in January, 2009. The policy was amended in February 2009 to provide for investigations of the Treasurer, Chief Executive Officer and Director, Professional Regulation.¹
6. The current policy does not explicitly apply to non-Bencher Tribunal adjudicators. It is recommended that the policy be amended to specifically refer to all licensee adjudicators.
7. Since the Law Society's regulatory authority is limited to lawyers and paralegals, the policy would only apply to adjudicators who are licensees.
8. Changes also incorporate the new title of the Executive Director, Professional Regulation, and the fact that all licensed paralegal members of the Paralegal Standing Committee are now benchers.
9. The Professional Regulation and Paralegal Standing Committees approved these changes at their October 2014 meetings. The Tribunal Committee was advised of the proposed changes on October 15, 2014.

¹ The January 2009 report may be accessed online at http://www.lsuc.on.ca/media/convjan09_prc.pdf. The February 2009 report may be accessed at http://www.lsuc.on.ca/media/convfeb09_prc.pdf.

**POLICY FOR THE INVESTIGATION OF COMPLAINTS AGAINST LAWYER AND
PARALEGAL BENCHERS, ~~AND EMPLOYEES, AND PARALEGAL MEMBERS OF~~
~~THE PARALEGAL STANDING COMMITTEE~~ AND LICENSEE ADJUDICATORS**

1. All complaints against benchers, ~~and~~ employees of the Law Society, ~~and~~ licensee adjudicators appointed to the ~~Hearing Division Law Society Tribunal~~ are transferred to Professional Regulation Intake for assessment.
2. Where the complaint is not serious and is unlikely to result in formal or informal sanction, with the Executive Director's investigation instruction, the complaint should be transferred to Complaints Resolution for processing in the normal course.
3. Where in the course of resolution a less serious matter changes in character and may result in a "found"¹ complaint, the Executive Director is to be consulted to determine whether outside counsel should be retained. The Executive Director may decide to retain outside counsel to continue the investigation in consultation with the Treasurer.
4. Where it is determined that the complaint raises more serious allegations which, if supported by the evidence would lead to a "found"² complaint requiring formal proceedings, or a referral to the Proceedings Authorization Committee, the Executive Director will retain an outside investigator in consultation with the Treasurer.
5. On completion of his or her investigation, the outside investigator is required to provide a report to the Treasurer and the Executive Director of Professional Regulation. If the recommendation is that the matter should close without referral to the Proceedings Authorization Committee, and the Treasurer and the Executive Director both agree, the case will be closed. Where any one of the investigator, the Treasurer or the Executive Director are of the view that the case should be reported to the Proceedings Authorization Committee, the investigator is required to prepare and present a report to the PAC.
6. The Executive Director will provide the Treasurer with a regular report on all ongoing benchers, staff, ~~and Tribunal member~~ investigations and their resolution.
7. In the appropriate case, the Executive Director may also refer a complaint to the Complaints Resolution Commissioner for resolution where the matter concerns a complaint of a less serious nature.

¹ "Found" complaints are complaints in which a breach was found as a result of an investigation, and the file was closed by a disposition such as an undertaking or a caution letter.

² See above.

8. All persons involved in application of this policy must be mindful of conflicts of interest and shall not act in the event of a conflict.
9. If a complaint is received about the Executive Director, Professional Regulation, the Chief Executive Officer will assume the role of the Executive Director, Professional Regulation for the purpose of instructing the investigation under By-Law 11.
10. If a complaint is received about the Chief Executive Officer, the Treasurer will refer the complaint to an outside investigator for review, assessment, and or investigation as required, and provide direction to the Executive Director.
11. If a complaint is received about the Treasurer, the Chair of the Audit and Finance Committee will act as Treasurer, in accordance with the provisions of By-Law 3, for the purpose of this policy, and provide direction to the Executive Director.
12. Notwithstanding the provisions of this policy, if a complaint is received about any of the Executive Director, Professional Regulation, the Chief Executive Officer or the Treasurer, the complaint shall not be investigated by Law Society staff and shall be referred to an outside investigator for review, assessment and /or investigation as required.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*

TAB 3.3

FOR INFORMATION

**REPORTING CRIMINAL OR ILLEGAL ACTIVITY TO LAW
ENFORCEMENT AND OTHER REGULATORS**

30. The Committee has reviewed and approved a document that describes current practice at the Law Society for reporting to law enforcement and other regulators, set out at **Tab 3.3.1**.

Background

31. As a regulator acting in the public interest, the Law Society reports criminal or other wrongful activity to the appropriate authority. There are constraints on such reports based on confidentiality provisions in the *Law Society Act* and the solicitor client privileged nature of some of the information obtained during investigations.
32. The Law Society occasionally obtains information about possible criminal and other illegal activity during the course of its investigations. While the Law Society will work with law enforcement and other regulatory bodies with the consent of the complainants, this information is strictly confidential unless and until discipline proceedings are commenced.
33. The Paralegal Standing Committee reviewed this statement at its October 2014 meeting.
34. Information sharing is included in the Federation of Law Societies' National Discipline Standards, which were approved by Convocation in February 2014 as aspirational principles. The relevant standards for all Canadian law societies are as follows:
- a. There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.
 - b. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

Information Disclosure

35. The Law Society is restricted by common law as well as the *Law Society Act* in what can be disclosed about an investigation. The relevant portions of the *Law Society Act* (sections 49.3 – 49.13) may be accessed at the referenced link.¹

¹ The *Law Society Act*, R.S.O. 1990, c. L.8, online at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm.

36. The legislation is structured so as to protect the privilege of clients while at the same time permitting the Society to obtain information necessary to permit regulation in the public interest.

Disclosure prior to the initiation of public proceedings

37. Section 49.12 (1) of the *Act* imposes a strict confidentiality requirement on any information obtained as a result of a Law Society audit, investigation, review, search, seizure or discipline proceeding. The confidentiality provisions are intended to balance the Law Society's broad authority under its investigative powers to obtain information from lawyers and paralegals, including solicitor-client privileged information.
38. Privileged information obtained in the course of an investigation is protected under section 49.8 which provides that privilege is not waived or negated by disclosure to the Law Society and is protected during discipline proceedings.
39. Section 49.12(2) provides exceptions to the general confidentiality requirement.
40. Disclosure of information about investigations can only take place under the exceptions set out in section 49.12(2) or by order of the court under section 49.13.

Disclosure of information after the initiation of public proceedings

41. Disclosure of information required for a discipline proceeding is permitted under section 49.12(2)(b).



Tab 3.3.1

**REPORTING CRIMINAL OR ILLEGAL ACTIVITY
TO LAW ENFORCEMENT AND OTHER REGULATORS**

As part of our mandate to protect the public interest, the Law Society reports to law enforcement about criminal or illegal activity. This document describes the Law Society's process for reporting to law enforcement.

In this document, "law enforcement" refers to police and other regulatory bodies, including another Canadian law society.

1. The Law Society will report to law enforcement where there are reasonable grounds to believe that a licensee or any other person has been involved in criminal or illegal activity.
2. In addition to reports by the Law Society, the Law Society encourages complainants and witnesses to report directly to law enforcement and supports their efforts in doing so.
3. A report is not required if law enforcement is already aware of the alleged illegal activity.
4. The report cannot include information that is subject to the confidentiality provisions of section 49.12 of the *Law Society Act*. As a general rule the report will include a summary of the relevant allegations based on information received with the initial complaint. Consent of the complainant and/or client will ordinarily be obtained before the report is made.
5. The Law Society will disclose additional information under section 49.12(2)(f) of the *Act* if there are reasonable grounds to believe that there is a significant risk of harm and that making the disclosure or report will reduce the risk.
6. The harm to be prevented by disclosure under section 49.12(2)(f) of the *Act* may include physical, psychological or economic harm to a person.
7. On release of decisions of the Law Society Tribunal, any matter that raises issues of criminal or illegal activity will be reported to law enforcement.

TAB 3.4

FOR INFORMATION

SURVEY OF LICENSEES IN THE COMPLAINTS PROCESS

42. The Professional Regulation Division of the Law Society of Upper Canada launched a survey of licensees regarding the complaints process on October 10, 2014. A copy of the survey is provided for Convocation's information at [Tab 3.4.1](#).
43. The purpose of the survey is to obtain capturing qualitative information regarding the professional regulation process.
44. Randomly-selected licensees will receive by email the link to the survey in Survey Monkey. This email and the survey will be available in both official languages.
45. The survey will run for nine months. The Professional Regulation Division intends to send out 800 surveys during this time.

Complaints Process Survey for Licensees
 Sondage sur le processus

The Law Society of Upper Canada is always looking for ways to improve the complaint process. We care about your experience and your views. This survey should take only 5 minutes to complete. Please answer the questions and share your thoughts with us so that we are able to make improvements and changes where appropriate. Your responses are confidential and will remain anonymous. Concerns raised in your response will be reviewed but we will not be responding directly to you about them.

In what language would you prefer to answer the survey?

Le Barreau du Haut-Canada cherche constamment à améliorer son processus de plaintes. Votre expérience et vos opinions comptent pour nous. Le présent sondage ne devrait prendre que 5 minutes. Veuillez répondre aux questions et nous faire connaître vos pensées afin de nous aider à faire les changements nécessaires pour améliorer notre processus. Vos réponses sont confidentielles et demeureront anonymes. Nous examinerons les préoccupations soulevées dans vos réponses, mais nous ne vous répondrons pas directement.

Dans quelle langue préférez-vous répondre à ce sondage?

- ☐ English/Anglais
- ☐ French/Français

Complaints Process Survey for Licensees
 Sondage sur le processus

How did we do?

	Strongly Agree	Agree	Neither Disagree Nor Agree	Disagree	Strongly Disagree
We took the time to listen to your concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We answered your questions in a timely manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We kept you informed of the progress of your complaint	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We gave you enough information to help you understand our complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We gave you enough time to respond to what was asked of you throughout the complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We met timelines that we set for ourselves throughout the complaint process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How did we treat you?

	Strongly Agree	Agree	Neither Disagree Nor Agree	Disagree	Strongly Disagree
With dignity and respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Politely and professionally	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please rate your understanding of the following:

	Very Clear	Clear	Neutral	Unclear	Very Unclear
The allegations you were facing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
What was required of you during the investigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At the end of the investigation, our explanation of the decision and how it was reached	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please rate your satisfaction with the following in terms of clarity and understandability.

	Very satisfied	Satisfied	Neither Satisfied Nor Dissatisfied	Dissatisfied	Very Dissatisfied	N/A
Written communication we sent you	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Telephone communication with us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In-person contact with us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Complaints Process Survey for Licensees
 Sondage sur le processus

The Law Society of Upper Canada is committed to promoting equity and diversity in the legal profession and to understand if commonalities and differences in experience exist within and among the legal profession.

If you wish, please check any of the following characteristics with which you self identify. Please select all that apply:

- ☐ Aboriginal (e.g. First Nation, Status Indian, Non-Status Indian, Métis, Inuk or Inuit)
- ☐ Francophone
- ☐ Person With Disabilities
- ☐ Racialized/Person of Colour (Visible Minority)
- ☐ White
- ☐ I do not identify with any of the aforementioned personal characteristics

Other (please specify)

Please indicate your gender (Voluntary)

- ☐ Male
- ☐ Female
- ☐ Transsexual/Transgender

In what year were you born? (Voluntary)

Do you have any thoughts or suggestions that you want to share with us?

Is there anything specifically that you would like us to know? Did someone at the Law Society go out of his or her way to help you? Do you have any comments on how we could improve the way we dealt with you and how we handled the complaint about you? (Please use point form)

Complaints Process Survey for Licensees
 Sondage sur le processus

Que pensez-vous de nous?

	Tout à fait d'accord	D'accord	Ni d'accord ni en désaccord	Pas d'accord	Pas d'accord du tout
Nous avons pris le temps de vous écouter	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous avons répondu à vos questions rapidement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons tenu informé des progrès de la plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons donné assez d'information pour vous aider à comprendre notre processus de plaintes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous vous avons donné assez de temps pour répondre à ce qui vous était demandé au cours du processus de plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nous avons satisfait aux dates limites que nous nous sommes fixées au cours du processus de plainte	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comment vous avons-nous traité ?

	Tout à fait d'accord	D'accord	Ni d'accord ni en désaccord	Pas d'accord	Pas d'accord du tout
Avec dignité et respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Poliment et professionnellement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Veuillez évaluer votre compréhension de ce qui suit:

	Très claire	Claire	Neutre	Ambigüe	Très ambiguë
Les allégations contre vous	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ce qui était exigé de vous pendant l'enquête	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
À la fin de notre enquête, notre explication de la décision et la logique suivie	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Complaints Process Survey for Licensees
 Sondage sur le processus

Veillez évaluer votre satisfaction de ce qui suit en fonction de la clarté et de la compréhension:

	Très satisfait	Satisfait	Ni satisfait ni insatisfait	Insatisfait	Très insatisfait	Sans objet
Nos communications écrites	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Nos communications par téléphone	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Le contact en personne avec nous	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Le Barreau du Haut-Canada s'est engagé à promouvoir l'égalité et la diversité dans la profession juridique et à comprendre les points communs et les différences d'expériences qui peuvent exister dans la profession juridique.

Si vous le désirez, cochez la ou les caractéristiques suivantes auxquelles vous vous identifiez.

Choisissez tout ce qui s'applique:

- ☐ Autochtone (Première Nation, Indien inscrit, Indien non inscrit, Métis, Inuk (Inuit))
- ☐ Francophone
- ☐ Personne handicapée
- ☐ Personne racialisée ou de couleur (minorité visible)
- ☐ Blanc(he)
- ☐ Je ne m'identifie à aucune des caractéristiques mentionnées ci-dessus

Autre (précisez)

Veillez indiquer votre sexe – facultatif

- ☐ Homme
- ☐ Femme
- ☐ Transsexuel/Transgenre

Année de naissance – facultatif

En quelle année êtes-vous né(e)

Complaints Process Survey for Licensees
 Sondage sur le processus

Désirez-vous nous faire part de vos pensées ou nous donner des suggestions ?

Y a-t-il quelque chose en particulier dont vous aimeriez nous faire part ? Y a-t-il quelqu'un au Barreau qui s'est démené pour vous aider ? Avez-vous des commentaires particuliers ou des suggestions à faire pour que nous améliorions notre façon de communiquer avec les personnes qui font l'objet de plaintes et de traiter les plaintes ? (Veuillez faire une énumération)

Thank you for taking the time to complete this survey and for sharing your experience with us!

Merci d'avoir pris le temps de remplir ce sondage et de partager votre expérience avec nous !



Tab 4

Report to Convocation October 30, 2014

Priority Planning Committee

Committee Members:

**Janet Minor (Chair)
Raj Anand
Marion Boyd
Christopher Bredt
John Callaghan
Cathy Corsetti
Julian Falconer
Howard Goldblatt
Michelle Haigh
Carol Hartman
Jacqueline Horvat
Janet Leiper
William McDowell
Susan McGrathMalcolm Mercer
Julian Porter
Linda Rothstein
Paul Schabas
Peter Wardle**

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Jim Varro 416-947-3434)**

FOR DECISION

APPROVAL OF AMENDMENT TO LAWPRO BY-LAWS

Motion

1. That Convocation instruct the Treasurer to sign the LawPRO's shareholder's resolution to approve By-Law# 21, reproduced at [Tab 4.2](#), which will have the effect of making the Law Society the sole shareholder of LawPRO.

Key Issues, Research, Analysis and Implementation Issues

2. Based on research undertaken by LawPRO management, the LawPRO Board approved By-Law #21 which implements revisions to By-Law #1 to remove all references to directors owning shares. Under By-Law #1, the qualification of a director included holding at the time of his or her election or appointment, and throughout his or her term of office, shares of the capital stock of the company.¹
3. The LawPRO Board agreed that it is no longer necessary for directors to hold shares in the company. Managing these shareholdings created unnecessary work as shares were constantly being transferred on each change of board member.
4. This matter was referred to the Committee's Governance Issues Working Group, which recommended that the Law Society approve the change to LawPRO's By-Laws. The Committee agreed.
5. Attached as [Tab 4.1](#) is the text of By-law #21 as approved by the LAWPRO Board at its meeting on September 3, 2014, implementing the necessary revisions to By-law #1.
6. Implementing this change requires Convocation instructing the Treasurer to sign the resolution attached at [Tab 4.2](#), approving By-law #21. Once all current shareholders, including the Law Society, sign the approval document, LawPRO will implement the transfer of all director shares back to Treasury effective January 1, 2015, at which time the Law Society will be the sole shareholder of LawPRO.

¹ The relevant sections of By-law #1 used to state as follows:

5. **Qualification.** The qualification of a director shall be the holding at the time of his or her election or appointment, and throughout his or her term of office, in his or her own name and for his or her own use and absolutely in his or her own right shares of the capital stock of the Company upon which at least \$500 has been paid in and upon which all calls and instalments due have been paid in cash, and no person is eligible to become or shall be elected or appointed a director unless all liabilities incurred by him or her to the Company are paid in full in cash. Each director shall be at least 18 or more years of age.

8. **Vacation of office.** The office of any director shall ipso facto be vacated (a) if he or she becomes bankrupt or suspends payment or compounds with his or her creditors or makes an authorized assignment or is declared insolvent; (b) if he or she is found to be a mentally incompetent person or becomes of unsound mind; (c) if he or she ceases to hold the number of shares necessary to qualify him or her for his or her office of director; or (d) if by notice in writing to the Company he or she resigns his or her office of director.

TAB 4.1

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

(883121)

BY-LAW No. 21

1. Section 5 of By-Law No. 1 of the Company is hereby deleted in its entirety and replaced with the following:
 5. **Qualification.** Each director shall be at least 18 or more years of age.
2. Section 8 of By-Law No. 1 of the Company is hereby deleted in its entirety and replaced with the following:
 8. **Vacation of office.** The office of any director shall ipso facto be vacated (a) if he or she becomes bankrupt or suspends payment or compounds with his or her creditors or makes an authorized assignment or is declared insolvent; (b) if he or she is found to be a mentally incompetent person or becomes of unsound mind; or (c) if by notice in writing to the Company he or she resigns his or her office of director.

TAB 4.2

Lawyers' Professional Indemnity Company

SHAREHOLDERS' RESOLUTION

WHEREAS pursuant to subsection 68(1)(c) of the Ontario *Corporations Act*, R.S.O., 1990, c.C.38 ("*Corporations Act*"), the directors of Lawyers' Professional Indemnity Company (the "Company") may pass by-laws that regulate the qualifications of the directors of the Company;

AND WHEREAS pursuant to subsection 68(2) of the *Corporations Act* a by-law passed under subsection 68(1) of the *Corporations Act* is effective only until the next annual meeting of the shareholders, when it may be confirmed, unless in the meantime it has been confirmed at a general meeting of the shareholders duly called for the purpose;

AND WHEREAS pursuant to subsection 298(2) of the *Corporations Act* any resolution signed by all the shareholders of the Company is valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose;

AND WHEREAS the directors of the Company passed By-Law No. 21 (attached hereto as **Exhibit "A"**) respecting the qualification of directors owning shares of the Company with effect on January 1, 2015, which By-Law all of the shareholders of the Company wish to confirm;

NOW THEREFORE BE IT RESOLVED THAT:

The shareholders of Lawyers' Professional Indemnity Company hereby approve, sanction and confirm By-Law No. 21, a copy of which is attached hereto as **Exhibit "A"** effective January 1, 2015.

The undersigned, being all the shareholders of the Company, hereby sign the foregoing resolution. This resolution may be signed in counterpart.

The Law Society of Upper Canada

Per:

Janet Minor, Treasurer

Susan T. McGrath (Chair)

Ian D. Croft (Vice-Chair)

George D. Anderson (Director)

Clare A. Brunetta (Director)

Douglas F. Cutbush (Director)

Robert F. Evans, Q.C. (Director)

Frederick W. Gorbet (Director)

Malcolm L. Heins (Director)

Rita Hoff (Director)

Robert G.W. Lapper, Q.C. (Director)

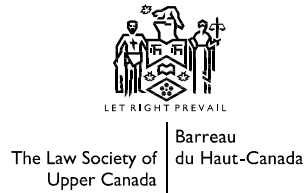
Barbara J. Murchie (Director)

Alan G. Silverstein (Director)

Andrew N. Smith (Director)

John C. Thompson (Director)

Kathleen A. Waters (Director)



TAB 5

**Report to Convocation
October 30, 2014**

Tribunal Committee

Committee Members

Raj Anand (Chair)
Janet Leiper (Vice-Chair)
Larry Banack
Jack Braithwaite
Christopher Bredt
Robert Burd
Adriana Doyle
Lee Ferrier
Alan Gold
Dow Marmur
Barbara Murchie
Linda Rothstein
Mark Sandler
Baljit Sikand
Peter Wardle

Purpose of Report: Decision

**Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)**

TABLE OF CONTENTS

Decision

Proposed Rule 17 (Summary Orders) of the Appeal Division Rules [TAB 5.1](#)

Housekeeping Amendment to Subrule 29.07(1) of the Hearing Division Rules [TAB 5.2](#)

COMMITTEE PROCESS

1. The Committee met on October 15, 2014. Committee members Raj Anand (Chair), Janet Leiper (Vice-Chair), Jack Braithwaite, Robert Burd, Adriana Doyle, Dow Marmur, Barbara Murchie, Mark Sandler, Baljit Sikand and Peter Wardle attended. Tribunal Chair David Wright and staff members David Draper, Grace Knakowski, Lisa Mallia and Sophia Sperdakos also attended.

FOR DECISION

PROPOSED APPEAL RULE 17 (SUMMARY ORDERS)**MOTION**

2. That Convocation approve proposed new English and French Rule 17 and Form 17A of the Appeal Division Rules of Practice and Procedure as set out in the Motion at [TAB 5.1.1: Motion Respecting Appeal Rule 17 and Form 17A](#).

SUMMARY**Issue for Consideration**

3. An Appeal Rule and Form is proposed that would govern appeals from summary orders made pursuant to sections 46 (suspension for failure to pay a fee or levy), 47 (failure to complete or file required documents, reports or certificates with the Society or with an insurer), 47.1(failure to comply with requirements of by-laws respecting indemnity for professional liability), 48 (revocation of license if orders under 46, 47(1)(a) or 47.1 are still in effect more than 12 months after made) and 49 (suspension for failure to comply with CPD requirements) of the *Law Society Act*.

Rationale

4. In the pre-2009 Rules of Practice and Procedure that governed both the Hearing and Appeal Panels there was a Rule governing appeals from summary orders. The provisions respecting summary order appeals were inadvertently omitted from both the 2012 and the recently approved 2014 Appeal Rules.
5. The reason for proposing Rule 17 is both to correct the inadvertent omission and to develop a process that is manageable and effective.
6. Summary orders are made by a summary disposition bench. The process for appeal from these orders is different from the usual appeals, given that the original decision is made on the basis of documentation rather than after an oral hearing and there are no reasons for decision. The appeal is heard by three panelists. Typically the issues are evidentiary ones about how and when notice was given, the communications with the Law Society, etc.
7. The proposed Rule establishes a unique appeal procedure. The matter proceeds by way of affidavit material. The respondent (the Law Society) files its material first, with

the appellant (the licensee) responding. The process is designed to allow for an oral hearing with evidence, but avoid unnecessary complexity and be cost effective. Given that the Law Society is in the best position to set out the basis for the original determination and provide the documentation, the proposed process under the Rule with the Law Society filling first, is sensible.

8. Approving this Appeal Rule and Forms will enhance the Tribunal process and address a gap in the current rules.

KEY ISSUES AND CONSIDERATIONS

9. The proposal is in keeping with Convocation's approval of an enhanced adjudicative model that fosters effective, fair and transparent adjudication.
10. There are no legislative implications in approving a new Rule, which would be approved in French and English.
11. Implementation will likely have an overall positive effect on the Tribunal's operation, particularly if use of the Rule succeeds in narrowing issues or enhancing processes.
12. Law Society Divisions that would be involved with the implementation of the Rule are aware of and in agreement with it.

TAB 5.1.1

THE LAW SOCIETY OF UPPER CANADA

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 30, 2014

MOVED BY

SECONDED BY

THAT the Rules of Practice and Procedure (“the Rules”) applicable to proceedings before the Appeal Division, made by Convocation on March 12, 2014 be amended as follows:

1. The English version of the Rules be amended and the following added:

RULE 17

SUMMARY ORDER APPEALS

Summary order appeals

17.1 (1) Rule 17 applies to appeals from orders under sections 46, 47, 47.1, 48, or 49 of the Act (“summary order appeals”).

(2) Rules 1, 10, 12, 13 and 15 apply with necessary modifications to summary order appeals. Rules 2, 3, 4, 5, 6, 7, 8, 9, 11, 14 and 16 do not apply to summary order appeals.

Commencement of summary order appeal

17.2 (1) An appellant shall commence a summary order appeal by serving on the Society and filing with the Tribunal a notice of summary order appeal (Form 17A).

(2) The notice of summary order appeal shall be served on the Society by personal service or an alternative to personal service.

Time for commencement of summary order appeal

(3) The notice of summary order appeal shall be served on the Society and filed with the Tribunal within 30 days of the date the summary order is deemed to have been received by the appellant.

Extension of time for commencing summary order appeal

(4) A summary order appeal may be commenced beyond this time limit with consent of the Society or leave of the Tribunal. Leave may be sought by filing a motion in accordance with these Rules.

Summary order appeals on consent

17.3 Where a summary order appeal is on consent, the appeal may be heard in writing. The written consent of the parties and a draft order shall be filed with the Tribunal at the time the notice of summary order appeal is filed or as soon thereafter as possible. Despite rule 17.4, where a summary order appeal is on consent no other material need be filed by the parties.

Filing of Affidavits and Hearing

17.4 (1) The Society shall file an affidavit or affidavits that set out the factual basis for making the summary order no later than 30 days after the filing of the Notice of Summary Order Appeal.

(2) The appellant shall file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Summary Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will be heard orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

Pre-hearing conference

17.5 The Tribunal Office shall schedule a pre-hearing conference in every summary order appeal after filing of the affidavits. Rule 22 of the hearing panel rules applies to the pre-hearing conference, with necessary modifications.

FORM 17A - NOTICE OF SUMMARY ORDER APPEAL

(Law Society Tribunal file no.)

LAW SOCIETY TRIBUNAL APPEAL DIVISION

BETWEEN:

(name)

Appellant

and

The Law Society of Upper Canada

Respondent in appeal

APPEAL UNDER subsection 49.32(3) of the *Law Society Act*

NOTICE OF SUMMARY ORDER APPEAL

THE APPELLANT APPEALS to the Appeal Division from the summary order of the summary disposition benchler dated (*date of order*).

THE APPELLANT ASKS that the order be set aside and an order be granted as follows: (*Set out briefly the relief sought.*)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)
(*Date*)

*(Name, address, telephone number, fax number
and e-mail address of appellant
or appellant's representative)*

TO: By-Law Administration Services
Client Service Centre
The Law Society of Upper Canada
130 Queen St. W.
Toronto, ON M5H 2N6

2. The French version of the Rules be amended and the following added:

RÈGLE 17

APPELS DES ORDONNANCES SOMMAIRES

Appels des ordonnances sommaires

17.1 (1) La Règle 17 s'applique aux appels des ordonnances en vertu des articles 46, 47, 47.1, 48 ou 49 de la Loi (« appels des ordonnances sommaires »).

(2) Les règles 1, 10, 12, 13 et 15 s'appliquent avec les adaptations nécessaires aux appels des ordonnances sommaires. Les règles 2, 3, 4, 5, 6, 7, 8, 9, 11, 14 et 16 ne s'appliquent pas aux appels des ordonnances sommaires.

Introduction d'un appel d'ordonnance sommaire

17.2 (1) L'appelant introduit un appel d'ordonnance sommaire en signifiant au Barreau et en déposant auprès du Tribunal un avis d'appel d'ordonnance sommaire (formulaire 17A).

(2) L'avis d'appel d'ordonnance sommaire est signifié au Barreau à personne ou par un autre mode de signification directe.

Délai d'introduction d'un appel d'ordonnance sommaire

(3) L'avis d'appel d'ordonnance sommaire est signifié au Barreau et déposé auprès du Tribunal dans les 30 jours suivant la date à laquelle l'ordonnance sommaire est réputée avoir été reçue par l'appelant.

Prorogation du délai d'introduction d'un appel d'ordonnance sommaire

(4) Un appel d'ordonnance sommaire peut être introduit après ce délai avec le consentement du Barreau ou l'autorisation du Tribunal. L'autorisation peut être demandée en déposant une motion conformément aux présentes règles.

Appels d'ordonnances sommaires sur consentement

17.3 L'appel d'ordonnance sommaire qui est sur consentement peut être entendu sur pièce. Le consentement écrit des parties et un projet d'ordonnance sont déposés auprès du Tribunal au moment du dépôt de l'avis d'appel d'ordonnance sommaire ou le plus tôt possible par la suite. Malgré la Règle 17.4, si un appel d'ordonnance sommaire est sur consentement, les parties ne doivent déposer aucun autre document.

Dépôt d'affidavits et audience

17.4 (1) Le Barreau dépose un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'ordonnance sommaire au plus tard 30 jours après le dépôt de l'avis de l'appel d'ordonnance sommaire.

(2) L'appelant dépose un affidavit ou des affidavits qui énoncent le fondement factuel qui a servi de base à l'appel au plus tard 45 jours après le dépôt de l'avis d'appel d'ordonnance sommaire.

(3) Les contre-interrogatoires des déposants des affidavits et toute contre-preuve seront entendus oralement lors de l'audience de l'appel, à moins d'une ordonnance à l'effet contraire.

(4) Aucun mémoire ne doit être déposé avant l'audience, à moins d'une ordonnance à l'effet contraire.

Conférence préparatoire à l'audience

17.5 Le bureau du Tribunal fixe une conférence préparatoire à l'audience pour chaque appel d'ordonnance sommaire après le dépôt des affidavits. La Règle 22 des règles de la Section de première instance s'applique à la conférence préparatoire à l'audience, avec les adaptations nécessaires.

FORMULAIRE 17A – AVIS D'APPEL D'ORDONNANCE SOMMAIRE

(N^o de dossier du Tribunal du Barreau)

TRIBUNAL DU BARREAU SECTION D'APPEL

ENTRE :

(*nom*)

Appelant

et

Barreau du Haut-Canada

Intimé en appel

APPEL EN VERTU du paragraphe 49.32 (3) de la *Loi sur le Barreau*

AVIS D'APPEL D'ORDONNANCE SOMMAIRE

L'APPELANT INTERJETTE APPEL à la Section d'appel à l'encontre de l'ordonnance sommaire du (de la) conseiller(ère) aux mesures sommaires datée du (*date de l'ordonnance*).

L'APPELANT DEMANDE que l'ordonnance soit annulée et qu'une ordonnance soit rendue comme suit : (*Énoncer brièvement la réparation recherchée.*)

LES MOTIFS DE L'APPEL sont les suivants : (*Énoncer brièvement les motifs de l'appel.*)
(*Date*)

(*Nom, adresse, numéro de téléphone, numéro de télécopieur et adresse de courriel de l'appelant ou de son représentant*)

DEST. : Service de la conformité
aux règlements administratifs
Centre de service à la clientèle
Barreau du Haut-Canada
130, rue Queen Ouest
Toronto ON M5H 2N6

TAB 5.2

FOR DECISION

AMENDMENT TO SUBRULE 29.07(1) OF THE HEARING DIVISION RULES OF PRACTICE AND PROCEDURE

MOTION

13. That Convocation approve the amendment to English subrule 29.07(1) of the Hearing Division Rules of Practice and Procedure set out at [TAB 5.2.1: Motion Amending Subrule 29.07\(1\) HD Rules](#).

SUMMARY

Issue for Consideration

14. Due to an oversight, a word was omitted from the English version of subrule 29.07(1) of the Hearing Division Rules, approved in March 2014.

Rationale

15. The amendment must be made to correct an inadvertent error in the English Rule that affects its meaning.

KEY ISSUES AND CONSIDERATIONS

16. New Hearing Division Rules were approved by Convocation in March 2014. New subrule 29.07(1) (English) should have read as follows:

29.07 (1) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding or the settlement of the decision to be **[made]** and a range of orders that may be made in the conduct proceeding the Society shall...

17. Instead the word [made] in bolded square brackets was omitted. The proposed amendment corrects the inadvertent omission.

TAB 5.2.1

THE LAW SOCIETY OF UPPER CANADA

LAW SOCIETY TRIBUNAL RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 30, 2014

MOVED BY

SECONDED BY

THAT the rules of practice and procedure (“the Rules”) applicable to proceedings before the Hearing Division, made by Convocation on March 12, 2014, and amended by Convocation on May 22, 2014 and September 24, 2014 be further amended as follows:

1. Subrule 29.07(1) of the English version of the Rules be revoked and the following substituted:

29.07 (1) Where a consent resolution conference results in the settlement of the decision and order to be made in the conduct proceeding or the settlement of the decision to be made and a range of orders that may be made in the conduct proceeding the Society shall,

- (a) commence the conduct proceeding; and
- (b) notify the Tribunal in writing of the fact and general nature of the settlement at the consent resolution conference not later than the day on which the conduct proceeding is commenced.



Tab 6

Report to Convocation October 30, 2014

Equity and Aboriginal Issues Committee/ Comité sur l'équité et les affaires autochtones

Committee Members

Julian Falconer, Chair

Janet Leiper, Chair

Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee

Beth Symes, Vice-Chair

Constance Backhouse

Peter Festeryga

Avvy Go

Howard Goldblatt

Jeffrey Lem

Marian Lippa

Dow Marmur

Barbara Murchie

Judith Potter

Susan Richer

Purposes of Report: Decision and Information

**Prepared by the Equity Initiatives Department
(Josée Bouchard – 416-947-3984)**

TABLE OF CONTENTS

For Decision

Challenges Faced by Racialized Licensees Working Group -
Consultation Recommendation **TAB 6.1**

Human Rights Monitoring Group Request for Interventions..... **TAB 6.2**

For Information **TAB 6.3**

Public Education Equality and Rule of Law Series Calendar 2014 - 2015

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") met on October 15, 2014. Committee members Julian Falconer, Chair, Janet Leiper, Chair, Susan Hare, Vice-Chair and Special Liaison with the Access to Justice Committee, Beth Symes, Vice-Chair, Constance Backhouse, Avvy Go, Howard Goldblatt, Jeffrey Lem, Marian Lippa, Dow Marmur, Barbara Murchie and Susan Richer attended. Sandra Yuko Nishikawa, Chair of the Equity Advisory Group, and Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario, also participated. Staff members Josée Bouchard, Ross Gower, Ekua Quansah, Susan Tonkin and Grant Wedge also attended.

TAB 6.1

FOR DECISION

**CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP
CONSULTATION RECOMMENDATION**

MOTION

2. **That Convocation approve the consultation proposed by the Challenges Faced by Racialized Licensees Working Group outlined in this report.**

Rationale

3. From October 2012 to date, the Law Society conducted a formal and informal engagement process and a survey with the profession to identify the challenges faced by racialized licensees. The Challenges Faced by Racialized Licensees Working Group ("RWG") considered the results of the engagement process and developed a Consultation Paper, based on the identified challenges and barriers faced by racialized licensees. The Consultation Paper includes questions to the profession about how best to address the barriers. The Consultation Paper appears at [TABS 6.1.1](#) and [6.1.2](#) in English and French.
4. On October 1, 2014, the Chair and Vice-Chairs of the RWG met with members of the Equity Advisory Group, community liaisons involved in this project and the boards of the Canadian Association of Black Lawyers ("CABL"), the Canadian Association of South Asian Lawyers ("CASAL"), the Federation of Asian Canadian Lawyers ("FACL") and the South Asian Bar Association ("SABA"). They received very helpful and important feedback on the Consultation Paper and consultation methodology.
5. It is recommended that the Law Society consult broadly with the profession, including legal clinics, and members of the judiciary, the academy and the public to identify practical initiatives and solutions to address the challenges outlined in the Consultation Paper. Convocation is asked to approve the proposed consultation.

Key Issues and Considerations

6. This project is of considerable importance to the legal profession. Key equity partners have been consulted in the development of the Consultation Paper. It will be important to fully engage the profession, the judiciary, academics, legal clinics and the public in the consideration of solutions to the barriers faced by racialized licensees. As a result, the proposed consultation methodology aims at ensuring that there are multiple ways to participate in the consultation process. Also, webcasting the Toronto open house sessions will allow those who are unable to attend the meetings in person, to participate online. The

RWG will also invite the participation of regional benchers, as leaders in their communities, when conducting focus groups and meetings.

Budgetary Considerations

7. It is anticipated that the consultation will be completed without the requirement for additional funds. The budget for this consultation will be covered by the Equity Initiatives Department and bencher expense budgets.

Stakeholder Management

8. As mentioned above, equity partners have been instrumental in the development of the Consultation Paper, and the Law Society surveyed the profession as a whole about the barriers faced by racialized licensees and potential solutions.
9. To ensure that the policy recommendations effectively address the challenges faced by racialized licensees, it will be important to engage the profession in the policy development process. It is anticipated that the Law Society will receive thoughtful submissions related to this project.

Key Background Information

10. In August 2012, Convocation created the RWG 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 preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees as appropriate, to address the challenges described above.
11. From October 2012 on, the RWG met informally with a number of individuals and organizations to obtain viewpoints on challenges and best practices for racialized licensees and reviewed the literature available on this topic.
12. In early 2013, the RWG retained the services of Strategic Communications Inc. (Stratcom) and Michael Charles of Change DeZign© to formally engage the profession on this matter. This formal engagement process included key informant interviews, focus groups and a survey. Stratcom and Change DeZign© provided their final report to the Law Society in March 2014.

13. The RWG also engaged in a parallel process, the Community Liaison Process, to garner information from racialized licensees who may not have come forward during the formal engagement process.

The Consultation Paper and the Consultation Methodology

14. Based on the findings of the informal and formal engagement process, the RWG drafted a Consultation Paper for the profession's feedback. In October 2014, the RWG also consulted with members of the Equity Advisory Group, the Community Liaisons, CABL, CASAL, FACL and SABA and received very helpful and important feedback on the Consultation Paper and consultation methodology.
15. Based on the advice received, the RWG proposes to consult lawyers, paralegals, academics, members of the judiciary and the public by using the following methodology:
 - a. Posting the Consultation Paper online and inviting written submissions from the profession, the judiciary, academia and the public;
 - b. Holding meetings where there is a strong representation of racialized licensees. It is anticipated that the meetings would be held in Toronto and surrounding areas such as Hamilton, Brampton, Mississauga, Scarborough, Markham and Oshawa. Some RWG members would also travel to Ottawa, Windsor, London and to Northern regions such as Thunder Bay and Sudbury.
 - c. Holding open house meetings in Toronto. Such meetings would be held at the Law Society and webcast. It is anticipated that two open house meetings will be held.
 - d. Meeting with associations such as the County and District Law Presidents' Association, the Ontario Bar Association, CABL, SABA, CASAL, FACL and the Arab Canadian Lawyers Association. Members of the judiciary and academia would also be included along with associations representing members of the public.
16. The Consultation Paper will be posted in French and English online on October 30, 2014 with a deadline for written submissions of March 1, 2015. Meetings with the profession will be scheduled from November to the end of February 2015.
17. The Equity and Aboriginal Issues Committee approved the consultation methodology and Consultation Paper by consensus.
18. The Committee recommends that Convocation approve the proposed consultation as outlined in this report.
19. A power point presentation prepared by the RWG is also presented at **TAB 6.1.3**.

Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees

CONSULTATION PAPER



The Law Society
of Upper Canada

Barreau du
Haut-Canada



Working Group Members

Janet Leiper, Chair | Julian Falconer, Vice-Chair | Howard Goldblatt, Vice-Chair
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell
Malcolm Mercer | Susan Richer | Baljit Sikand

Report prepared by the Equity Initiatives Department –
Josée Bouchard, Director of Equity and Ekua Quansah, Associate Counsel



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:

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

Tel: 416-947-3984
or 1-800-668-7380 ext. 3984
Fax: 416-947-3983
Email: jbouchar@lsuc.on.ca

Content

<i>EXECUTIVE SUMMARY</i>	5
Background	5
Summary of Engagement Results	6
Questions for the Profession	7
 <i>THE CONSULTATION PAPER</i>	8
BACKGROUND.....	8
THE ENGAGEMENT PROCESS RESULTS	11
Discrimination and Stereotypes	11
Socioeconomic Cultural Differences and Fit	12
Lack of Mentoring, Sponsors, Role Models and Networking Opportunities	13
Intersecting Factors and Increased Vulnerability.....	14
Race as a Factor in Entering Sole Practice.....	16
Entry into the Profession.....	16
Advancement	18
Regulatory Process	19
Additional Barriers Faced by Foreign-Trained Lawyers.....	20
Additional Barriers Faced by Paralegals	20
 QUESTIONS FOR THE PROFESSION.....	22
Introduction.....	22
A. Enhancing the Internal Capacity of Organizations.....	23
Establishing Diversity Programs within Firms.....	23
Collecting Demographic Data	26
Diversity and Contract Compliance.....	31
B. Mentoring, Advisory Services and Networking	32
Mentoring and Advisory Services.....	32
Networking	33
C. Enhancing Cultural Competence in the Profession	35
D. Discrimination and the Role of the Complaints Process	37
E. The Operations of the Law Society of Upper Canada.....	40
 CONCLUSION	42
Appendix 1 - Racialization and Firm Size Based on Law Society Lawyer and Paralegal Data as of April 2014	43
Appendix 2 – Questions for the Profession	45

Appendix 3 – Challenges Faced by Racialized Licensees Working Group	
Engagement Chronology	46

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.¹

This consultation paper is designed to engage the profession in the consideration of strategies to address the challenges faced by racialized licensees.² 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

¹ 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.

² 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>.

face challenges in the practice of law. Very little is known about the challenges faced by racialized paralegals. The public benefits from a strong and diverse bar; this study 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 preventative, 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 lawyers³, representing 9.2% of the legal profession in 2001 and 11.5% in 2006.⁴ The Law Society's Statistical Snapshots of Lawyers and Paralegals showed that by 2010, 17% of lawyers and 28% of paralegals were racialized.⁵ 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.⁶

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 practice 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;

³ 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>.

⁴ 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.

⁵ 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>.

⁶ 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>.

- d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity Committee and other Committees, to address the challenges described above.

From October 2012 on, the Working Group undertook the following activities and developed the following reports available [online](#):

- 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).⁷ 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

⁷ 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.

have an impact on the reputation of the legal professions, access to justice, and the quality of services provided.⁸

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.

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

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.⁹

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.¹⁰

⁹ *Ibid.* at x. See also the Community Liaison Report and the Informal Engagement Report.

¹⁰ *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.¹¹

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 respondents¹² 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.¹³

Socioeconomic 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.

¹¹ *Ibid.* at 12.

¹² 41% of racialized respondents.

¹³ 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 centered 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.¹⁴

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 activities¹⁵ and their social or political views were barriers to entry into the profession¹⁶ — and even more importantly, barriers to advancement.¹⁷

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.¹⁸

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.

¹⁴ Stratcom Report, *supra* note 8 at 13 – 14.

¹⁵ 18% of racialized respondents compared to just 5% of their non-racialized colleagues.

¹⁶ 12% of racialized respondents compared to 5% of their non-racialized colleagues.

¹⁷ 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.

¹⁸ At 36%, 33%, 31% and 31% of each community respondent respectively.

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.¹⁹

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.²⁰ A majority of racialized respondents said that not having the same cultural background as one's colleagues had disadvantaged their careers.²¹

The survey results also showed that a higher proportion of non-racialized²² respondents, compared to racialized respondents²³, 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.²⁴ A slightly higher percentage of racialized respondents indicated that social networks had played an important role in their career.²⁵

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

¹⁹ Stratcom Report, *supra* note 8 at 8.

²⁰ 68% of racialized respondents.

²¹ 57% of racialized respondents.

²² 79% of non-racialized respondents.

²³ 67% of racialized respondents.

²⁴ 69% of non-racialized respondents compared to 62% of racialized.

²⁵ 54% racialized respondents compared to 51% non-racialized

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.²⁶ The intersection of these and other factors such as gender, gender identity, gender expression, age, sexual 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.²⁷

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 women²⁸ 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.²⁹

²⁶ Stratcom Report, *supra* note 8 at 14.

²⁷ *Ibid.* at 14.

²⁸ Between one quarter and two fifths.

²⁹ 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

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.

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.³⁰

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

non-racialized women identified it as a barrier to entry, compared to 9% of racialized men and 5% of racialized men.

³⁰ Stratcom Report, *supra* note 8 at 36 to 39.

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.³¹

Whereas ethnic/racial identity was selected as a barrier to entry by a substantially higher 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;³²
- b. socio-economic status;³³
- c. place of birth and where one is raised;³⁴
- d. age (too young);³⁵
- e. the way one speaks English/ French;³⁶
- f. gender identity.³⁷

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

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 placement⁴² and a majority

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

³² 24% of racialized respondents and 8% of non-racialized respondents.

³³ 19% of racialized respondents and 8% of non-racialized respondents.

³⁴ 17% of racialized respondents and 4% of non-racialized respondents.

³⁵ 15% of racialized respondents and 8% of non-racialized respondents.

³⁶ 12% of racialized respondents compared to just 3% of non-racialized respondents.

³⁷ 11% of racialized respondents compared to 6% of non-racialized respondents.

³⁸ 59% of racialized respondents compared to 78% of non-racialized respondents

³⁹ 43% of racialized respondents compared to 53% of non-racialized respondents

⁴⁰ 66% of racialized respondents compared to 82% of non-racialized respondents

⁴¹ 66% of racialized respondents compared to 82% of non-racialized respondents

⁴² 43% of racialized respondents compared to 25% of non-racialized respondents

“strongly or somewhat agreed” that they had not advanced as rapidly as colleagues with similar qualifications.⁴³

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.⁴⁴ However, the barrier was more significant for racialized and non-racialized women than for men.⁴⁵

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;

⁴³ 52% of racialized respondents compared to 25% of non-racialized respondents

⁴⁴ 25% of racialized respondents and 23% for non-racialized respondents.

⁴⁵ 33% of racialized women and 36% of non-racialized women.

- 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;
- 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 networks⁴⁶ and racial stereotyping by clients⁴⁷ 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 respondents⁴⁸ 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.

⁴⁶ 78% of racialized and 63% of non-racialized respondents.

⁴⁷ 71% of racialized and 57% of non-racialized respondents.

⁴⁸ 57% of racialized and 48% of non-racialized respondents.

Racialized and non-racialized licensees had different views on whether issues such as lower quality articling positions and inadequate training⁴⁹ and racial stereotyping by other members of the profession or the judiciary⁵⁰ 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.⁵¹

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

⁴⁹ 70% of racialized and 51% of non-racialized respondents.

⁵⁰ 69% of racialized and 46% of non-racialized respondents.

⁵¹ Stratcom Report, *supra* note 8 at 9.

in their preferred practice environment, 37% of racialized paralegal respondents had found such employment, compared to 57% of their non-racialized counterparts. 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 above⁵², 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.

⁵² 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/.

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.⁵³

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.⁵⁴

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

⁵³ 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>

⁵⁴ 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.

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

The document contains a self-evaluation tool for firms, the *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.⁵⁶

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.⁵⁷ 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.”⁵⁸

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.

⁵⁵ 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>.

⁵⁶ 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>.

⁵⁷ 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).

⁵⁸ 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.⁵⁹
- **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.

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

⁵⁹ 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.

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.⁶⁰ 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.⁶¹

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.⁶²
- 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 community could become more inclusive without meaningful and reliable data."⁶³

Despite the importance of quantitative demographic data, many employers assess their progress in diversity and inclusion by considering more qualitative measures. Sossin and

⁶⁰ Stratcom Report, *supra* note 8 at 9.

⁶¹ *Ibid.* at 86.

⁶² BMO LCCG, *Diversity at BMO: Driving Change from the Inside Out*.

⁶³ 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].

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.”⁶⁴ 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)⁶⁵ and Vault⁶⁶ 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. firms⁶⁷. Veronica Root, in her article *Retaining Color*, notes the following:

The available data demonstrates that (i) large numbers of persons of color are attending the top twenty-five 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

⁶⁴ *Ibid.* at 9.

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

diversity within firms in 1993. Twenty years later, only small gains have been made in efforts to increase large law firm demographic diversity.⁶⁸

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.⁶⁹

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.⁷⁰ 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.⁷¹

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, amongst other things, require companies regulated by the OSC to disclose the following gender related information on an annual basis: policies regarding the representation of

⁶⁸ 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>.

⁶⁹ 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).

⁷⁰ 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.

⁷¹ 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.

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.⁷²

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.⁷³

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.⁷⁴ 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.⁷⁵

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.

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 project⁷⁶ mentioned above is an example of an initiative in which participating firms agreed to maintain gender-based data and worked with the Law

⁷² 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.

⁷³ 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.

⁷⁴ 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.

⁷⁵ *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.

⁷⁶ See Law Society of Upper Canada, *The Justicia Project*, online: Law Society of Upper Canada http://www.lsuc.on.ca/justicia_project/

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 Legal Leaders for Diversity (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.⁷⁷

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.

⁷⁷ 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 licenses 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 Wright⁷⁸ 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)."⁷⁹

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

⁷⁸ 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.

⁷⁹ 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.”⁸⁰ 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*⁸¹ 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*⁸² 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.⁸³

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.

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

⁸¹ 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>.

⁸² *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>.

⁸³ 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.”⁸⁴ 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

⁸⁴ 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:

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

Tel: 416-947-3984
or 1-800-668-7380 ext. 3984
Fax: 416-947-3983
Email: jbouchar@lsuc.on.ca

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

Chart 1 - Sole Practitioners – In percentages

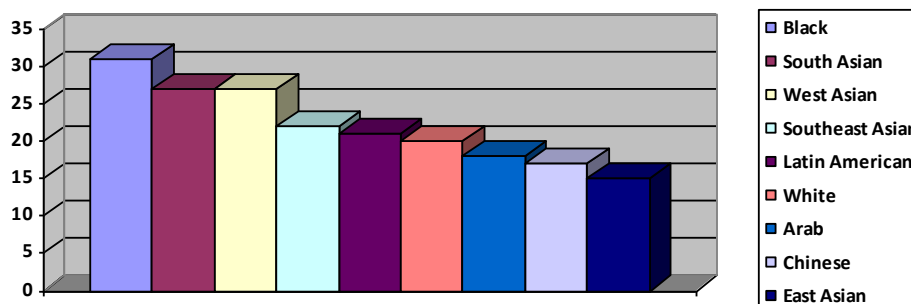


Chart 2 - By Firm Size – In percentages

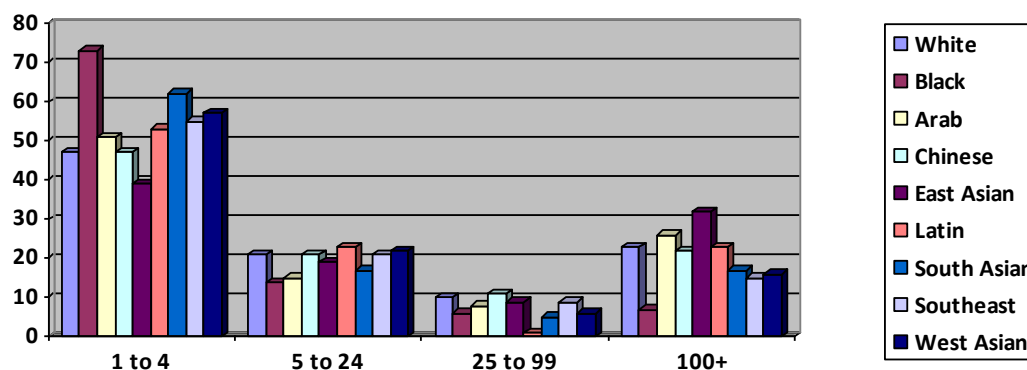


Chart 1 shows that Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice.

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

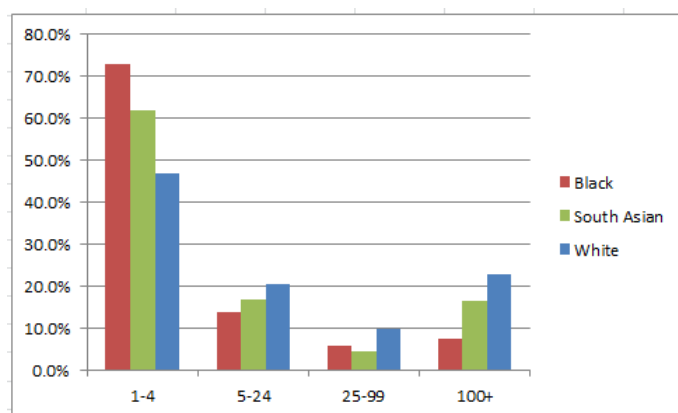


Chart 3 shows more clearly the differential practice patterns of Black, South Asia and White lawyers. Black lawyers, and to a lesser extent South Asian lawyers, disproportionately practise in the smallest firms. Relatively few Black lawyers practice in the largest firms, while the proportions of South 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

Barreau du
Haut-Canada

Développer des stratégies de changement : Éliminer les difficultés auxquelles les titulaires de permis racialisés font face

DOCUMENT DE CONSULTATION



The Law Society
of Upper Canada

Barreau du
Haut-Canada



Membres du Groupe de travail

Janet Leiper, présidente | Julian Falconer, vice-président | Howard Goldblatt, vice-président
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell | Malcolm Mercer
Susan Richer | Baljit Sikand

Préparé par le Service de l'équité –

Josée Bouchard, directrice de l'équité et Ekua Quansah, avocate



APPEL À COMMENTAIRES DE LA PROFESSION

DOCUMENT DE CONSULTATION SUR LES DÉFIS DES TITULAIRES DE PERMIS RACIALISÉS

Dans le cadre de son engagement à promouvoir l'équité et la diversité dans la profession, le Barreau du Haut-Canada a créé le Groupe de travail sur les défis des titulaires de permis racialisés en 2012.

Le Groupe de travail a étudié les défis auxquels font face les avocates et avocats et parajuristes (titulaires de permis) racialisés en Ontario et mène présentement une consultation sur les stratégies visant l'amélioration de l'inclusion à toutes les étapes de leur carrière.

Nous encourageons toutes les parties intéressées à examiner ce document de consultation et à commenter le document global ou toute question qu'il soulève. **Nous vous invitons à présenter des suggestions et des solutions pratiques aux problèmes. Toute proposition de solutions non présentées dans ce document serait appréciée.**

Veillez envoyer vos observations écrites d'ici le 1^{er} mars 2015, à :

Josée Bouchard
Directrice, Équité
Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6

Tél. : 416 947-3984
ou 1-800-668-7380 poste 3984
Télécopieur : 416 947-3983
Courriel : jbouchar@lsuc.on.ca

Table des matières

SOMMAIRE	5
Sommaire des résultats de la mobilisation	6
Questions pour la profession	7
DOCUMENT DE CONSULTATION	8
CONTEXTE	8
LES RÉSULTATS DU PROCESSUS DE MOBILISATION	10
Discrimination et stéréotypes	10
Différences culturelles socioéconomiques et aptitude à s'adapter	11
Manque de mentors, de parraineurs, de modèles et d'occasions de réseautage	12
Croisement de facteurs et vulnérabilité accrue	13
La race en tant que facteur contribuant au choix d'exercer seul	15
Entrée dans la profession	15
Avancement	16
Processus de réglementation	17
Obstacles supplémentaires pour les avocats formés à l'étranger	18
Obstacles supplémentaires pour les parajuristes	19
QUESTIONS POUR LES MEMBRES DE LA PROFESSION	20
Introduction	20
A. L'amélioration des capacités internes des entreprises	21
B. Le mentorat, les services de consultation et le réseautage	30
C. L'amélioration des compétences culturelles dans la profession	33
D. La discrimination et le rôle du processus des plaintes	35
E. Les activités du Barreau du Haut-Canada	37
CONCLUSION	39
Annexe 1 — Racialisation et taille des cabinets selon les données du Barreau sur les avocats et les parajuristes d'avril 2014	40
Annexe 2 – Questions à la profession	42
Annexe 3 – Chronologie de la mobilisation du Groupe de travail sur les défis des titulaires de permis racialisés	43

SOMMAIRE

[Traduction] « Nous devrions toutes et tous savoir que la diversité contribue à la richesse du tissu social et nous devons comprendre que tous les fils de ce tissu sont de valeur égale, peu importe leur couleur ».

Maya Angelou

Le Barreau s'est engagé à maintenir une profession qui tienne compte de toute la population de l'Ontario de manière inclusive et libre de discrimination et de harcèlement. Le Barreau est également déterminé à faciliter l'accès à la justice, tel que démontré dans la récente adoption par le Barreau d'un nouveau cadre d'accès à la justice exhaustif¹.

Le document de consultation a été conçu pour mobiliser les membres de la profession et les amener à envisager des stratégies pour relever les défis auxquels les titulaires de permis racialisés² font face. Nous invitons les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document de consultation à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil. Le rapport final sera accompagné d'un plan de mise en œuvre détaillé.

Contexte

Nous avons observé une augmentation constante du nombre des avocates et avocats racialisés dans la profession juridique en Ontario au cours des 20 dernières années. Malgré cette augmentation, les preuves fondées sur les données statistiques, les résultats des recherches et les preuves anecdotiques suggèrent que les avocates et avocats racialisés continuent à faire face à des défis dans la pratique du droit. Nous en savons très peu sur les défis auxquels les parajuristes racialisés font face.

Pour explorer cette question et répondre aux préoccupations, le Conseil a créé en août 2012 le Groupe de travail sur les défis des titulaires de permis racialisés (le Groupe de travail), avec le mandat suivant :

- a) reconnaître les défis des titulaires de permis racialisés dans différents milieux de pratique, y compris l'entrée dans la pratique et l'avancement,

¹ Pour plus de renseignements, voir : Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice, *Rapport au Conseil – Rapport du Groupe consultatif du trésorier sur le Groupe de travail sur l'accès à la justice* (Toronto : 27 février 2014) en ligne à www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/convfeb2014_TAG_fullreport.pdf.

² La Commission ontarienne des droits de la personne indique que les termes « personnes racialisées » ou « groupes racialisés » sont plus précis que « minorités raciales », « minorités visibles », « personnes de couleur » ou « non-Blancs ». La race est un construit social à partir duquel on établit des différences entre les gens d'après l'accent ou la façon de parler, le nom, les vêtements et l'apparence, le régime alimentaire, les croyances et pratiques, les préférences en matière de loisirs, le lieu d'origine, etc. La racialisation est le « processus par lequel les sociétés assoient la notion que les races sont bien réelles, différentes et inégales, de façons qui importent pour la vie sociale, économique et politique. ». Voir *Discrimination raciale, race et racisme*, en ligne à www.ohrc.on.ca/fr/discrimination-raciale-race-et-racisme-fiche.

- b) reconnaître les facteurs et les difficultés de la pratique des titulaires de permis racialisés qui pourraient augmenter le risque de plaintes liées à la réglementation et les mesures disciplinaires;
- c) tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d) au besoin, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui, aux fins d'étude pas le comité d'équité et d'autres comités, pour traiter les défis décrits ci-dessus.

En octobre 2012, le Groupe de travail a entrepris une étude globale qui comprenait l'examen des données et documents disponibles, des rencontres avec des particuliers et des organismes ainsi que la coordination de groupes de discussion menés par des professionnels juridiques reconnus.

En 2013, le groupe a lancé un processus officiel de mobilisation qui comprenait des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.

Les renseignements obtenus à ce jour suggèrent que la racialisation est un facteur constant et persistant qui touche les titulaires de permis à leur début dans la profession et lors des possibilités d'avancement professionnel. La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger.

Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, un handicap et la région géographique, donne lieu à un profil complexe d'expériences et d'impacts associés aux défis de la racialisation.

Sommaire des résultats de la mobilisation

Le Groupe de travail a utilisé plusieurs méthodologies pour recueillir des renseignements et a établi l'apparition de thèmes communs dans les expériences des participants. Le processus de mobilisation a révélé que la discrimination et les préjugés manifestes font partie de la vie quotidienne de nombreux titulaires de permis racialisés.

Les participants ont fourni des exemples de comportements, d'interactions, de langages et de suppositions discriminatoires qui sont des caractéristiques courantes de leurs expériences professionnelles de tous les jours.

Certains participants estiment que, souvent, on n'offre pas aux titulaires de permis racialisés les mêmes possibilités d'avancement. Ils ont aussi indiqué qu'ils se sentent exclus de la culture dominante de la profession juridique.

Certains ont aussi indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi indiqué que de nombreux titulaires de permis racialisés ont besoin

d'un solide réseau de professionnels juridiques, de mentors ou de parraineurs qui puissent leur fournir des conseils et un soutien dans leur lieu de travail.

Un certain nombre de participants ont aussi indiqué qu'ils ont été obligés de choisir d'exercer seuls en raison des obstacles aux possibilités d'avancement auxquels ils ont fait face dans les autres milieux de la profession. Par ailleurs, certains estiment qu'ils étaient mal équipés ou préparés pour les réalités de l'exercice de leur profession à titre individuel.

En plus des obstacles mentionnés ci-dessus, les participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à une combinaison d'inconvénients, comme le manque de possibilités de réseautage professionnel, les difficultés linguistiques, les différences culturelles par rapport à leurs collègues, un manque de possibilités lors de la transition entre l'école de droit et un premier emploi professionnel en Ontario ainsi que le manque de mentors et de personnes-ressources.

Selon les participants, les parajuristes racialisés font aussi face à d'autres défis, surtout sur le marché du travail. En tant que groupe, les parajuristes ont déclaré obtenir des taux de succès inférieurs lorsqu'il s'agit de trouver un emploi convenable, par rapport aux avocats racialisés.

Questions pour la profession

Le Groupe de travail a examiné les résultats et a cerné pour les professionnels un certain nombre de questions détaillées à étudier. Ces questions portent sur les sujets suivants :

- Améliorer les capacités internes des organismes – intégrer la diversité dans les cabinets, recueillir des données démographiques sur la diversité et élaborer des programmes de conformité des contrats types
- Mentorat et réseautage – déterminer les meilleures pratiques et modèles privilégiés
- Améliorer le savoir-faire culturel dans la profession – fournir des programmes de formation professionnelle continue (FPC) agréés
- La discrimination et le rôle du processus des plaintes – traiter efficacement les plaintes de discrimination
- Les activités du Barreau du Haut-Canada – améliorer le programme de conformité en matière d'équité, mener une vérification interne en matière d'équité et développer une image publique plus diversifiée du Barreau.

Pour obtenir la série complète des questions, veuillez consulter l'annexe 2.

DOCUMENT DE CONSULTATION

CONTEXTE

Au cours des deux dernières décennies, il y a eu en Ontario une augmentation constante du pourcentage des avocates et avocats racialisés³ dans la profession juridique, qui est passé de 9,2 % en 2001 à 11,5 % en 2006⁴. Les aperçus statistiques du Barreau sur les avocats et les parajuristes démontrent qu'en 2010, 17 % des avocats et 28 % des parajuristes étaient racialisés⁵. Ces données se comparent au pourcentage de 23 % de la population de l'Ontario qui s'est identifiée dans le Recensement du Canada comme étant racialisée, ainsi qu'au pourcentage de 25,9 % de la population de l'Ontario qui s'est identifiée dans l'Enquête nationale auprès des ménages comme étant racialisée⁶.

Les résultats des recherches et les preuves anecdotiques recueillis avant la création du Groupe de travail sur les défis des titulaires de permis racialisés suggéraient que malgré l'augmentation du nombre des avocats racialisés, ces derniers faisaient toujours face à des défis dans la pratique du droit. De plus, les défis auxquels les parajuristes racialisés faisaient face dans la profession, le cas échéant, étaient très peu connus.

Par conséquent, en août 2012, les membres du conseil ont créé le Groupe de travail sur les défis des titulaires de permis racialisés (Groupe de travail) afin de :

- a. reconnaître les défis auxquels font face les titulaires racialisés dans différents milieux de la pratique, notamment à leur début dans la profession et lors des possibilités d'avancement;
- b. reconnaître les facteurs et les difficultés de la pratique auxquels les titulaires de permis racialisés sont exposés qui pourraient augmenter le risque de plaintes liées à la réglementation et de mesures disciplinaires;
- c. tenir compte des pratiques exemplaires pour élaborer des stratégies préventives, de recours et d'appui;
- d. s'il y a lieu, concevoir et élaborer des stratégies préventives, de recours, de mise en application, de réglementation ou d'appui à l'intention du Comité sur l'équité et d'autres comités au besoin, afin de relever les défis décrits ci-dessus.

³ Cette étude n'inclut pas les étudiant(e)s, avocat(e)s et parajuristes autochtones. Le Barreau du Haut-Canada a mené une étude distincte visant à cerner et relever les défis auxquels font face les étudiants, avocats et parajuristes autochtones. Voir le rapport de consultation en ligne à www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118.

⁴ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, Toronto, Barreau du Haut-Canada, avril 2010 [rapport Ornstein] en ligne à www.lsuc.on.ca/media/convapril10_ornstein.pdf ou sommaire du rapport en français en ligne à www.lsuc.on.ca/fr/media/june0210_ornsteinreport_frch_exec_summary.pdf.

⁵ Barreau du Haut-Canada, Aperçu des professions en 2010, en ligne à <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488153&langtype=1033> (parajuristes) et <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488151&langtype=1033> (avocats).

⁶ Ministère des Finances de l'Ontario, *Faits saillants de l'Enquête nationale auprès des ménages de 2011 : Fiche d'information 2* en ligne à www.fin.gov.on.ca/fr/economy/demographics/census/nhshi11-2.html

Depuis octobre 2012, le Groupe de travail a entrepris les activités suivantes et préparé les rapports suivants qui sont disponibles [en ligne](#):

- a. Il a mené un examen des données et de la documentation disponible à ce sujet – Rapport intitulé *Law Society Scan and Best-Practices*.
- b. Il a rencontré de façon informelle un certain nombre de particuliers et d'organismes pour obtenir des commentaires sur les défis et les pratiques exemplaires pour les titulaires de permis racialisés – Rapport intitulé *Results from Informal Engagement* (Informal Engagement Report).
- c. Il a obtenu de précieux commentaires d'un groupe de travail du groupe consultatif en matière d'équité du Barreau du Haut-Canada⁷. Le groupe consultatif en matière d'équité a cerné les défis auxquels les titulaires de permis racialisés font face et a suggéré des options pour répondre aux préoccupations — Rapport intitulé *Submissions of the Equity Advisory Group*.
- d. Il a retenu les services de Strategic Communications Inc. (Stratcom) et de Michael Charles de Change DeZign© pour qu'ils s'engagent officiellement auprès de la profession. Cet engagement comprenait des entrevues avec 20 informateurs clés, 14 groupes de discussion formés de titulaires de permis racialisés, 2 groupes de discussion formés de titulaires de permis non racialisés et un sondage de 35 questions mené auprès de la profession globale (avocats et parajuristes). Les consultants ont fourni leur rapport au Barreau du Haut-Canada en mars 2014 – Rapport intitulé *Rapport final sur les barrières des titulaires de permis racialisés* (le rapport Stratcom).
- e. Il a créé un processus de mobilisation parallèle, le processus de liaison communautaire, pour recueillir des renseignements de titulaires de permis racialisés qui n'auraient pas participé au processus de mobilisation officiel de Stratcom. Des professionnels juridiques reconnus et expérimentés de diverses collectivités racialisées ont agi à titre d'agents de liaison et ont mené des groupes de discussion dans la collectivité – Rapport intitulé *Community Liaison Report to the Challenges Faced by Racialized Licensees Working Group* (Community Liaison Report).
- f. Il a également rassemblé des données d'auto-identification concernant la taille des cabinets et d'autres caractéristiques, présentées à l'annexe 1.
- g. Il a entrepris une analyse des données disponibles du Barreau concernant le processus de réglementation. Au cours de cette analyse, on déterminera s'il convient d'obtenir d'autres données ou de meilleures données.

Les renseignements obtenus jusqu'à maintenant suggèrent que la racialisation est un facteur constant et omniprésent affectant les titulaires de permis au moment de leur entrée en pratique et de leurs chances d'avancement professionnel. La majorité des participants au processus de mobilisation de Stratcom et les deux groupes racialisés et non racialisés ont convenu que les défis à relever par les titulaires racialisés ont un impact sur la réputation des professions juridiques, l'accès à la justice et la qualité des services fournis⁸.

L'objectif de ce document de consultation est de mobiliser les membres de la profession et du public et de les inciter à envisager des options pour relever les défis auxquels les titulaires de permis

⁷ Le groupe consultatif en matière d'équité est formé de personnes et de membres d'organismes qui se sont engagés à promouvoir les principes d'égalité et de diversité et qui ont une certaine expérience dans les difficultés auxquelles font face (sans s'y limiter) les collectivités autochtones, francophones ou racialisées, les personnes invalides, gaies, lesbiennes, bisexuelles, les personnes transgenres et les femmes.

⁸ Communications stratégiques, *Rapport sur les barrières des titulaires de permis racialisés*, Toronto, Stratcom, 2014 à la p 57 [le rapport Stratcom].

racialisés font face. Les membres de la profession, les organismes juridiques, les cabinets, les écoles de droit et toute personne intéressée aux questions analysées dans ce document sont encouragés à fournir des commentaires écrits. Le Groupe de travail examinera toutes les observations présentées et rédigera un rapport final proposant des recommandations à l'intention du Conseil.

Veuillez noter que le terme « cabinets » dans le présent rapport désigne les cabinets d'avocats et les cabinets de parajuristes.

LES RÉSULTATS DU PROCESSUS DE MOBILISATION

Même si le Groupe de travail a utilisé plusieurs méthodes pour recueillir les renseignements sur les défis auxquels font face les titulaires racialisés, l'expérience des participants au cours de leurs interactions informelles avec des titulaires et associations juridiques (participation informelle) et celle des participants au processus de liaison communautaire faisaient écho aux expériences des participants du processus de mobilisation officiel de Stratcom.

De nombreux participants ont décrit une situation dans laquelle la racialisation est un « facteur constant et persistant » qui touche les titulaires racialisés tout au long de leur carrière⁹.

Les défis suivants sont apparus :

- a. discrimination et stéréotypes;
- b. différences culturelles et aptitude à s'adapter;
- c. manque de mentors, de parraineurs, de modèles et d'occasions de réseautage;
- d. croisement de facteurs et vulnérabilité accrue;
- e. la race en tant que facteur contribuant au choix d'exercer seul;
- f. obstacles à l'entrée dans la profession;
- g. obstacles aux possibilités d'avancement dans la profession;
- h. facteurs de risque liés à l'entrée dans le processus de réglementation;
- i. obstacles supplémentaires pour les avocates et avocats formés à l'étranger; et
- j. obstacles supplémentaires pour les parajuristes.

Discrimination et stéréotypes

[Traduction] Vous travaillez plus fort pour faire vos preuves. Vous ne pouvez pas nécessairement faire les choses que vos collègues blancs peuvent faire à cause de la différence de connotation. En général, on m'a toujours dit que je devais travailler plus fort que mes homologues blancs, ce qui à certains égards est encore tristement vrai à notre époque. J'ai l'impression que certains avocats ne me donnent pas certains dossiers en se basant sur une notion préconçue concernant mes compétences à cause de la couleur de ma peau.

Community Liaison Meeting

⁹ Ibid. à la p x. Voir également le *Community Liaison Report* et le *Informal Engagement Report*.

Le processus de mobilisation a permis aux participants de partager leurs expériences. Un certain nombre de participants ont décrit des expériences de discrimination qui ont eu de graves répercussions sur leur carrière, notamment sur leurs possibilités de carrière et leur rémunération. Certains ont décrit des expériences manifestes de discrimination, comme des situations où ils ont été la cible de blagues, de propos ou de suppositions racistes¹⁰.

Un certain nombre de participants ont indiqué qu'ils ont dû se défendre contre des suppositions présentées par des professionnels juridiques, des clients, des avocats de la partie adverse et des membres de la magistrature selon lesquelles les titulaires racialisés sont moins compétents, qualifiés et efficaces. Ils ont évoqué des incidents au cours desquels ils ont été la cible de préjugés négatifs et où ils ont dû travailler plus dur ou subir des conséquences plus graves à la suite d'erreurs, que leurs collègues non racialisés.

Certains ont aussi indiqué qu'on ne leur a pas offert les mêmes possibilités d'avancement. Par exemple, ils ont indiqué qu'on les a laissés à l'écart dans certains dossiers, qu'ils n'ont pas été invités à participer aux réunions avec des clients, ni à des rencontres à caractère social avec des collègues où l'on discutait des dossiers et des affectations, et qu'on leur confiait des travaux de moindre importance. Certains se sont demandé si la race a joué un rôle dans l'avancement plus rapide de collègues non racialisés de niveau comparable ou inférieur¹¹.

Les participants ont souvent ressenti qu'ils devaient faire leurs preuves dans une plus grande mesure que leurs collègues non racialisés. Ils ont indiqué qu'ils ont souvent été perçus comme non crédibles et ont ressenti un manque de respect. Un certain nombre de participants ont déclaré qu'on les a pris pour un étudiant, un travailleur social ou un client, au lieu d'un avocat ou un parajuriste.

Près de la moitié des répondants racialisés¹² au sondage ont déclaré que l'on avait des attentes plus grandes à leur endroit en raison de stéréotypes raciaux. Les groupes ethnoraciaux qui ont mentionné ce facteur plus souvent que la moyenne comprenaient les répondants Noirs, Chinois, Asiatiques du Sud-Est, Arabes et Sud Asiatiques¹³.

Différences culturelles socioéconomiques et aptitude à s'adapter

[Traduction] La culture du cabinet est un énorme facteur pour déterminer qui obtient une entrevue et qui est embauché; tant durant les entrevues sur campus que comme avocat débutant. L'analogie que j'utilise toujours est que vous ne pouvez essayer de résoudre la quadrature du cercle. Bay Street est une culture particulière et si vous ne savez pas comment verser votre vin, cela se remarquera et, en fin de compte, le processus de sevrage sert à exclure un nombre disproportionné de candidats issus des minorités.

Community Liaison Meeting

¹⁰ *Ibid.* à la p 8.

¹¹ *Ibid.* à la p 12.

¹² 41 % des répondants racialisés.

¹³ Répondants Noirs (54 %), Chinois (52 %), Asiatiques du Sud-Est (46 %), Arabes (46 %), et Sud Asiatiques (45 %).

La notion de « l'aptitude à s'adapter » a aussi été mentionnée comme étant un obstacle pour les titulaires racialisés en processus d'embauche et dans le cadre de leurs fonctions. Les participants étaient d'avis que la notion « d'aptitude à s'adapter » se traduit par « non racialisé » et que, par conséquent, les titulaires racialisés sont plus susceptibles de faire face à des défis lorsqu'ils sont à la recherche d'un emploi ou de possibilités d'avancement.

De nombreux participants ont indiqué qu'ils se sentent exclus de la culture dominante. Par exemple, certains ont mentionné que lors des activités sociales centrées sur la consommation d'alcool, les personnes qui n'en boivent pas se sentent exclues. D'autres activités, comme jouer golf, aller au chalet et regarder le hockey étaient considérées comme des occasions de rencontre, d'interactions et de solidarité sociale pour les collègues non racialisés, et renforçaient les sentiments d'isolation et d'aliénation chez les titulaires de permis racialisés¹⁴.

Le sondage de Stratcom a également abordé ce sujet en posant des questions sur l'impact du mode de vie et des croyances personnelles sur l'entrée dans la profession et les possibilités d'avancement. Une plus forte proportion de titulaires racialisés, par rapport aux titulaires non racialisés, considéraient que leurs préférences en matière d'activités sociales¹⁵ et que leurs opinions politiques ou sociales étaient des obstacles à l'entrée dans la profession¹⁶ et, davantage encore, à leurs possibilités d'avancement¹⁷.

Les répondants au sondage qui ont le plus souvent mentionné leurs préférences en matière d'activités sociales comme étant un obstacle à leurs possibilités d'avancement provenaient des collectivités suivantes : les Chinois, les Arabes, les Sud-Asiatiques et les Asiatiques du Sud-Est¹⁸.

Manque de mentors, de parraineurs, de modèles et d'occasions de réseautage

[Traduction] Si nous ne pouvons pas trouver de bons stages et le mentorat ainsi que l'encadrement connexe, la qualité des services que nous pouvons offrir est affectée, tout comme les possibilités – ne pas donner aux gens la chance de réaliser leur potentiel affecte toute notre société.

Community Liaison Meeting

De nombreux participants ont indiqué que les titulaires de permis racialisés auraient beaucoup à gagner des programmes de mentorat, mais que souvent ils ne connaissent pas les programmes disponibles ou n'y ont pas accès. Ils ont aussi mentionné que de nombreux titulaires de permis racialisés ont besoin d'un solide réseau de professionnels juridiques, de mentors ou de parraineurs qui peuvent leur fournir des conseils et un soutien dans leur lieu de travail.

¹⁴ Le rapport Stratcom, *supra* note 8 aux pp 13 – 14.

¹⁵ 18 % des répondants racialisés, comparativement à seulement 5 % de leurs collègues non racialisés.

¹⁶ 12 % des répondants racialisés, comparativement à 5 % de leurs collègues non racialisés.

¹⁷ 26 % des répondants racialisés considéraient les « activités sociales » comme un obstacle, comparativement à 12 % des répondants non racialisés, et 16 % des répondants racialisés considéraient leurs « opinions politiques et sociales » comme un obstacle, par rapport à 9 % des répondants non racialisés.

¹⁸ 36 %, 33 %, 31 % et 31 % respectivement pour chaque collectivité.

Certains informateurs clés ont indiqué que ce manque de relations peut représenter un obstacle tout au long d'une carrière si, par exemple, le titulaire de permis commence à établir sa clientèle au sein de sa propre communauté ethnique, où de tels réseaux sont encore faibles¹⁹.

Les résultats du sondage de Stratcom ont révélé que la majorité des répondants racialisés croient que le fait de ne pas avoir accès à un réseau de relations professionnelles nuit à la carrière²⁰. La majorité des répondants racialisés ont indiqué que le fait de ne pas avoir les mêmes antécédents culturels que leurs collègues avait nui à leur carrière²¹.

Les résultats du sondage démontrent également qu'une plus grande proportion de répondants non racialisés²², comparativement aux répondants racialisés²³, trouvent relativement facile d'obtenir de collègues professionnels et de mentors des conseils juridiques concernant des dossiers de clients. Les différences entre les deux groupes n'étaient pas aussi importantes concernant d'autres déclarations. Par exemple, un pourcentage légèrement plus élevé de répondants non racialisés ont convenu que les mentors ont joué un rôle important dans l'avancement de leur carrière²⁴. Un pourcentage légèrement plus élevé de répondants racialisés ont indiqué que les réseaux sociaux ont joué un rôle important dans leur carrière²⁵.

Selon la majorité des répondants racialisés du sondage, les plus importantes sources d'inconvénients pour la carrière sont l'absence de réseaux professionnels, la divergence entre les antécédents culturels et les préjugés fondés sur la race.

Parmi les titulaires de permis qui sont plus susceptibles que la moyenne de mentionner ces facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière se trouvent les femmes, les praticiens exerçant seuls, les titulaires de permis qui ont une langue maternelle autre que le français ou l'anglais ou ceux et celles qui sont nés à l'extérieur du Canada. Les groupes racialisés plus susceptibles que la moyenne de mentionner ces trois facteurs comme étant des sources d'inconvénients probables ou incontestables pour la carrière sont : les répondants noirs, sud-asiatiques, chinois et arabes.

Croisement de facteurs et vulnérabilité accrue

[Traduction] Quand vous avez un accent, vous signalez que n'êtes pas d'ici. Vous ne comprendrez pas la culture comme tous les autres. Ceux qui réussissent savent très bien s'adapter aux autres clients. Et c'est là qu'un accent vous catégorise automatiquement comme étranger.

Community Liaison Meeting

¹⁹ Le rapport Stratcom, *supra* note 8 à la p. 8.

²⁰ 68 % des répondants racialisés.

²¹ 57 % des répondants racialisés.

²² 79 % des répondants non racialisés.

²³ 67 % des répondants racialisés.

²⁴ 69 % des répondants non racialisés comparativement à 62 % des racialisés.

²⁵ 54 % des répondants racialisés comparativement à 51 % des non racialisés.

La racialisation se croise avec une grande variété d'autres facteurs, dont la langue ou l'accent, les différences de statut professionnel entre les avocat(e)s et les parajuristes ainsi que la formation à l'étranger²⁶. Le croisement de ces facteurs avec d'autres, comme le sexe, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'orientation sexuelle, une invalidité et la région géographique, donne lieu à un profil d'expériences complexe et très individuel et à des impacts associés aux défis de la racialisation.

La race et le sexe

[Traduction] Être femme et racialisée peut être compliqué. Les femmes se débattent déjà dans cette profession avec des questions d'équilibre entre la vie professionnelle et la vie personnelle, les responsabilités familiales, les congés de maternité, etc. Les femmes travaillent encore pour se faire prendre au sérieux dans cette profession et être une femme racialisée signifie que vous devez faire vos preuves plus souvent. Cela peut causer du stress, de l'anxiété et peut faire travailler les femmes racialisées plus fort, les pousser davantage et reporter certains de leurs objectifs personnels à cause de leur travail.

Community Liaison Process

Le croisement de la race et du sexe, en particulier, était considéré comme un facteur de multiplication des défis pour les femmes. Dans un milieu, décrit par certains participants comme un « boys club », où les activités paraprofessionnelles sociales sont souvent des avenues vers de nouvelles possibilités de travail et d'avancement, de nombreuses femmes racialisées se considèrent comme doublement désavantagées²⁷.

Le sondage de Stratcom a tenu compte du harcèlement et des attentes liées aux stéréotypes sexuels à titre de facteurs aggravant les inconvénients pour la carrière. Bien que les résultats du sondage aient indiqué que les hommes titulaires racialisés ne sont pas exempts de harcèlement ni de stéréotypes sexistes, une plus grande proportion de femmes racialisées²⁸ considèrent les stéréotypes sexistes comme un facteur contribuant à leurs désavantages en matière d'embauche, d'avancement ou de poursuite d'un domaine de pratique.

Le sondage de Stratcom fait état d'autres différences entre les sexes en ce qui concerne les obstacles à l'entrée dans la profession. Par exemple, les femmes racialisées et non racialisées étaient plus susceptibles que les hommes à souligner les facteurs suivants comme étant des obstacles à leur entrée dans la profession : l'apparence physique, l'âge (trop jeune), et le sexe²⁹.

²⁶ Le rapport Stratcom, *supra* note 8 à la p 14.

²⁷ *Ibid.* à la p 14.

²⁸ Entre un quart et deux cinquièmes.

²⁹ Chez les répondantes, 29 % des racialisées et 12 % des non racialisées ont souligné l'apparence physique, comparativement à 19 % de racialisés et 4 % de non racialisés chez les répondants. En ce qui concerne le sexe, 17 % des répondantes racialisées et 12 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 5 % chez les répondants racialisés et à seulement 1 % chez les répondants non racialisés. Enfin, en ce qui concerne l'âge (trop jeune), 23 % des répondantes racialisées et 11 % des répondantes non racialisées ont souligné qu'il s'agit d'un obstacle à l'entrée dans la profession, comparativement à 9 % chez les répondants racialisés et à 5 % chez les répondants non racialisés.

Les résultats renforcent la conclusion du groupe de discussion selon laquelle, pour de nombreuses femmes racialisées, l'expérience des préjugés sexistes est aggravée par leur statut racial. Le croisement de la racialisation et du sexe amplifie les obstacles associés à chacun des facteurs.

La race en tant que facteur contribuant au choix d'exercer seul

[Traduction] La plupart d'entre nous exercent seuls parce que nous ne pouvions pas entrer dans un grand cabinet à cause de notre race; les seuls que je connais qui ont pu travailler dans un cabinet ont fini par partir parce qu'ils ressentaient de la discrimination, de l'ostracisme et de l'aliénation – comme de ne pas être invités aux diners et aux sorties du cabinet. Certains avocats noirs ont eu des idées suicidaires à force de rencontrer des obstacles raciaux (et non en raison du rendement scolaire) pour essayer d'entrer dans un grand cabinet; certains cabinets croient que s'ils embauchent des avocats noirs, ils perdront des clients.

Community Liaison Meeting

Un certain nombre de participants ont déclaré qu'ils estimaient avoir été obligés de choisir d'exercer seuls en raison des obstacles qu'ils avaient rencontrés dans la recherche d'emplois ou dans les possibilités d'avancement dans d'autres milieux de la pratique. Certains participants estiment également qu'un certain nombre d'avocates et avocats racialisés exercent seuls par défaut et sont mal équipés et mal préparés aux réalités de la pratique à titre individuel.

Plusieurs participants estiment que les avocats racialisés sont plus susceptibles d'exercer seuls et ont mis en évidence la vulnérabilité des personnes qui exercent en cabinet privé dans la profession juridique dans le contexte des plaintes liées à la réglementation professionnelle et les mesures disciplinaires.

Entrée dans la profession

Les obstacles mentionnés ci-dessus ont un impact sur les expériences des titulaires racialisés qui entrent dans la profession juridique. Les résultats du sondage de Stratcom ont également mis en évidence d'autres obstacles qui ont des répercussions sur l'entrée dans la profession. Dans le cadre du sondage, une liste de facteurs a été présentée aux participants racialisés et non racialisés, et on leur a demandé d'indiquer si chacun des facteurs avait constitué un obstacle ou un défi à tout moment avant ou après avoir commencé à exercer³⁰.

Quarante pour cent (40 %) des titulaires racialisés ont déclaré que leur appartenance ethnique/identité raciale était un obstacle à l'exercice de leur profession, alors que seulement 3 % des titulaires non racialisés ont mentionné que leur appartenance ethnique/identité raciale représentait un obstacle. Les titulaires de permis racialisés les plus susceptibles de mentionner la race ou l'ethnicité comme obstacle à l'entrée dans la profession étaient les suivants : les Asiatiques du Sud-Est, les Noirs, les Arabes, les Sud-Asiatiques, les personnes ayant une langue maternelle autre que le français ou l'anglais, les femmes et les personnes nées à l'extérieur du Canada³¹.

³⁰ Le rapport Stratcom, *supra* note 8 aux pp 36 à 39.

³¹ Asiatiques du Sud-Est (54 %), Noirs (52 %), Arabes (50 %), Asiatiques du Sud (46 %), langue maternelle autre que le français ou l'anglais (46 %), femmes (45 %), et personnes nées à l'extérieur du Canada (44 %).

Alors que les répondants racialisés ont sélectionné l'appartenance ethnique/identité raciale à titre d'obstacle à l'entrée dans la profession dans une proportion nettement plus élevée que tous les autres obstacles évalués, ce facteur a été classé parmi les défis les moins importants chez les répondants non racialisés.

Les obstacles suivants ont également été mentionnés par les avocats racialisés et, dans une bien moindre mesure, par les avocats non racialisés :

- a. apparence physique³²;
- b. situation socio-économique³³;
- c. lieu de naissance et lieu où l'on a grandi³⁴;
- d. âge (trop jeune)³⁵;
- e. la façon de parler anglais ou français³⁶;
- f. identité sexuelle³⁷.

Le sondage a révélé qu'un pourcentage bien inférieur des répondants racialisés, comparativement aux répondants non racialisés :

- a. ont trouvé un emploi approprié après avoir obtenu leur permis³⁸;
- b. ont déclaré qu'on leur a offert un emploi au cabinet où ils ont fait un stage ou un stage de formation professionnelle³⁹;
- c. ont trouvé un emploi dans un cabinet approprié⁴⁰; et
- d. été en mesure de travailler dans leur domaine de pratique préféré⁴¹.

Il y a de grandes différences entre les expériences vécues lors de l'entrée dans la profession et dans l'évolution globale de la carrière. Près de la moitié des titulaires racialisés ont été « fortement ou plutôt d'accord » pour dire qu'ils ont eu de la difficulté à trouver un stage ou un stage de formation professionnelle⁴², et la majorité ont été « fortement ou plutôt d'accord » pour dire qu'ils n'avaient pas avancé aussi rapidement que leurs collègues ayant des qualifications semblables⁴³.

Avancement

[Traduction] On m'aimait bien dans mon cabinet de la rue Bay et j'étais l'étoile montante. Par contre, même si la race n'avait pas été un facteur pour entrer là comme avocat, elle a été un facteur pour y être associé. On ne m'a jamais offert de devenir associé même si j'avais été au cabinet plus

³² 24 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

³³ 19 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

³⁴ 17 % des répondants racialisés, comparativement à 4 % des répondants non racialisés

³⁵ 15 % des répondants racialisés, comparativement à 8 % des répondants non racialisés

³⁶ 12 % des répondants racialisés, comparativement à seulement 3 % des répondants non racialisés

³⁷ 11 % des répondants racialisés, comparativement à 6 % des répondants non racialisés

³⁸ 59 % des répondants racialisés, comparativement à 78 % des répondants non racialisés

³⁹ 43 % des répondants racialisés, comparativement à 53 % des répondants non racialisés

⁴⁰ 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

⁴¹ 66 % des répondants racialisés, comparativement à 82 % des répondants non racialisés

⁴² 43 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

⁴³ 52 % des répondants racialisés, comparativement à 25 % des répondants non racialisés

longtemps que d'autres qui le sont devenus. Tout le monde savait que j'étais un des favoris au cabinet.

Community Liaison Meeting

Les résultats du sondage de Stratcom ont aussi permis de cerner des obstacles à l'avancement dans la profession. On a demandé aux répondants racialisés et non racialisés d'identifier quels facteurs ont représenté des obstacles à tout moment *après* avoir commencé à exercer.

La plus grande différence entre les deux groupes était l'importance de l'appartenance ethnique/identité raciale, qui est perçue comme un obstacle ou un défi pour l'avancement chez 43 % des titulaires racialisés, comparativement à 3 % chez les titulaires non racialisés.

Les facteurs de croisement avec l'appartenance ethnique/identité raciale sont l'apparence physique, la situation socio-économique de la famille, le lieu de naissance ou celui où l'on a grandi, et dans quelle mesure on parle bien l'anglais ou le français. Ces facteurs ont tous été identifiés comme des obstacles après l'entrée dans la profession par au moins 15 % des licenciés racialisés.

En revanche, chez les titulaires non racialisés, ces facteurs représentent des obstacles après l'entrée dans la profession qui sont comparables ou éventuellement de moindre importance que ceux qui sont associés à l'orientation sexuelle, le sexe, l'âge, le mode de vie et les croyances personnelles.

Les répondants racialisés et non racialisés ont indiqué que les absences du travail pour s'occuper des enfants et d'autres membres de la famille représentaient un obstacle à l'avancement après l'entrée dans la profession⁴⁴. Cet obstacle était toutefois plus important pour les femmes racialisées et non racialisées que pour les hommes⁴⁵.

Le sondage a révélé des différences moindres entre les répondants racialisés et non racialisés en ce qui concerne les difficultés de carrière, comme le démontrent les renseignements ci-dessous :

- a. ils ont convenu qu'ils avaient quitté un ou plusieurs postes parce qu'ils ne se sentaient pas à leur place (42 % des répondants racialisés, et 35 % des répondants non racialisés);
- b. ils ont déclaré avoir quitté un ou plusieurs postes parce qu'ils estimaient que leurs possibilités d'avancement n'étaient pas proportionnelles à leurs compétences et à leurs capacités (40 % des répondants racialisés, et 31 % des répondants non racialisés);
- c. ils se sont vu refuser une promotion à un poste de gestion (13 % des répondants racialisés, et 9 % des répondants non racialisés);
- d. leur admission à un partenariat a été retardée (9 % des répondants racialisés et non racialisés); et
- e. ils n'ont pas été acceptés comme partenaires, même s'ils remplissaient les critères de promotion (6 % des répondants racialisés et non racialisés).

Processus de réglementation

⁴⁴ 25 % des répondants racialisés, comparativement à 23 % des répondants non racialisés.

⁴⁵ 33 % des répondantes racialisées et 36 % des répondantes non-racialisées.

Les participants ont été priés de faire des commentaires sur leur perception du processus de réglementation. Certains se sont dits préoccupés par l'absence de diversité raciale chez les membres du conseil et des comités de discipline. D'autres étaient d'avis que, en raison de leur plus grande probabilité d'exercer seuls, ou de provenir de milieux où une carrière professionnelle est l'exception plutôt que la règle, les titulaires racialisés ont souvent moins de relations parmi les clientèles riches et fortunées et n'ont pas une formation suffisante en affaires pour gérer un cabinet.

Des informateurs clés ont fourni des preuves anecdotiques selon lesquelles de nombreux titulaires racialisés adoptent une démarche communautaire lorsqu'ils démarrent leur carrière, faisant appel à leur propre collectivité ethnique ou culturelle locale, ce qui peut (dans certains cas) les exposer à des attentes exagérées concernant la portée et l'efficacité de leur pratique et, enfin, à des plaintes de leurs clients.

Les participants ont indiqué que des facteurs peuvent contribuer à rendre les titulaires racialisés plus vulnérables aux plaintes, la plupart citant fréquemment un manque de ressources, de formation et de possibilités de mentorat. Les répondants racialisés et non racialisés au sondage ont classé le manque de mentors et de réseaux professionnels⁴⁶ ainsi que les stéréotypes raciaux des clients au⁴⁷ sommet de la liste des facteurs qui peuvent augmenter les risques de plaintes envers les titulaires racialisés.

La majorité des répondants racialisés et près de la moitié des répondants non racialisés ont indiqué dans⁴⁸ le sondage que les problèmes de communication étaient « certainement ou probablement » un facteur d'accroissement des risques de plaintes, ce qui correspond avec les résultats des groupes de discussion, qui ont souligné que les problèmes de communication culturels chevauchent souvent les problèmes de communication causés par les obstacles linguistiques, et que ces facteurs contribuent à l'augmentation des risques de plaintes.

Les titulaires racialisés et non racialisés avaient des opinions différentes à l'effet que les postes de stagiaire de mauvaise qualité et la formation insuffisante⁴⁹ ainsi que les stéréotypes raciaux par d'autres membres de la profession ou de la magistrature⁵⁰ augmentent les risques de plaintes et de mesures disciplinaires pour les titulaires de permis racialisés.

À cet égard, le Groupe de travail a examiné les renseignements disponibles concernant les expériences des titulaires racialisés dans le processus de réglementation et a déterminé qu'il y a encore du travail à faire. Les travaux préliminaires effectués jusqu'à présent seront poursuivis.

Le Groupe de travail a aussi suggéré les mesures correctives mentionnées ci-dessous, qui ne sont pas liées à certains groupes raciaux, mais qui peuvent aider les titulaires en général, comme le mentorat et le réseautage.

Obstacles supplémentaires pour les avocats formés à l'étranger

⁴⁶ 78 % des répondants racialisés, comparativement à 63 % des répondants non racialisés.

⁴⁷ 71 % des répondants racialisés, comparativement à 57 % des répondants non racialisés.

⁴⁸ 57 % et 48 % respectivement.

⁴⁹ 70 % des répondants racialisés, comparativement à 51 % des répondants non racialisés.

⁵⁰ 69 % des répondants racialisés, comparativement à 46 % des répondants non racialisés.

Certains participants ont déclaré que les avocates et avocats formés à l'étranger font souvent face à des difficultés supplémentaires en raison des obstacles linguistiques, de la socialisation, de la préparation à l'emploi et de l'expérience de travail. Ils estiment que les avantages que les avocats formés à l'étranger amènent dans la profession, grâce à l'expérience de la pratique dans un autre pays, sont souvent sous-estimés ou mal compris.

Les participants ont indiqué que le fait d'être né ou d'avoir fait ses études hors du Canada présente des obstacles potentiels pour les titulaires de permis racialisés. Ils estiment que les avocats formés à l'étranger peuvent faire face à une combinaison d'inconvénients, comme de faibles possibilités de réseautage professionnel, des difficultés linguistiques, une culture différente de celle de leurs collègues, un manque de possibilités lors de la transition entre l'école de droit et un premier emploi professionnel en Ontario, et le manque de mentors et de relations⁵¹.

Obstacles supplémentaires pour les parajuristes

En plus des obstacles mentionnés ci-dessus qui s'appliquent à tous les titulaires de permis racialisés, certains participants aux groupes de discussion ont indiqué que les parajuristes racialisés semblent faire face à plus de difficultés sur le marché du travail que les avocats racialisés.

Les données du sondage renforcent cette hypothèse. Globalement, les parajuristes en tant que groupe ont obtenu des taux de réussite inférieurs que les avocats pour trouver un emploi approprié.

En ce qui concerne l'indicateur-clé que constitue l'obtention d'un premier emploi approprié, seulement 26 % des parajuristes racialisés ont trouvé un tel emploi, comparativement à 36 % des parajuristes non racialisés. En ce qui concerne l'obtention d'un emploi dans leur milieu de pratique préféré, 37 % des parajuristes racialisés ont trouvé un tel emploi, par rapport à 57 % de leurs homologues non racialisés. De la même façon, 41 % ont déclaré avoir trouvé un emploi dans leur domaine de pratique préféré, par rapport à 67 % des parajuristes non racialisés.

⁵¹ Le rapport Stratcom, *supra* note 8 à la p 9.

QUESTIONS POUR LES MEMBRES DE LA PROFESSION

Introduction

À partir des résultats ci-dessus⁵², le Groupe de travail a établi des questions en vue de les soumettre à l'examen des membres de la profession et d'obtenir leurs commentaires. Les questions ci-dessous sont présentées selon les thèmes suivants :

- A. L'amélioration des capacités internes des entreprises
- B. Le mentorat, les services consultatifs et le réseautage
- C. L'amélioration des compétences culturelles dans la profession
- D. La discrimination et le rôle du processus des plaintes
- E. Les activités du Barreau du Haut-Canada

Le Groupe de travail désire obtenir des idées, initiatives ou pratiques supplémentaires qui peuvent contribuer à éliminer les difficultés auxquelles les titulaires de permis racialisés font face.

⁵² La documentation est disponible dans le document *Law Society Studies and Scan of Best-Practices*.

A. L'amélioration des capacités internes des entreprises

Selon l'examen de l'embauche dans la profession, certains des obstacles auxquels font face les titulaires de permis racialisés existent dans les processus de recrutement et dans les possibilités d'avancement dans leur carrière. Le Groupe de travail propose que les organismes, y compris les cabinets, améliorent leurs capacités internes d'éliminer les obstacles en envisageant d'adopter les méthodes présentées dans les trois catégories suivantes :

- a. établir des programmes de diversité au sein des cabinets;
- b. recueillir des données démographiques;
- c. établir des programmes de conformité des contrats.

Établir des programmes de diversité au sein des cabinets

Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire? Des modèles proposés sont présentés ci-dessous, et la proposition d'autres modèles serait appréciée.

- **Projet de diversité** : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes s'engagent à collaborer avec le Barreau pour élaborer et adopter des normes et des ressources pour le recrutement, le maintien en fonction et la progression professionnelle des titulaires de permis racialisés.
- **Auto-évaluation** : Un projet dans le cadre duquel les cabinets et organismes qui offrent des services de conseils internes effectuent une auto-évaluation de leurs résultats en matière de diversité et utilisent ces résultats pour identifier et adopter des pratiques et politiques afin de devenir plus équitables et inclusifs.
- **Normes sur les exigences** : Un projet dans le cadre duquel le Barreau exige des cabinets et organismes qui offrent des services de conseils internes qu'ils adoptent des normes et des ressources pour le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés.

Projet de diversité

La première approche décrite ci-dessus est fondée sur le modèle de projet du Barreau Justicia adopté en 2008. Le projet Justicia est un projet de mixité des sexes dans le cadre duquel plus de 55 cabinets ont signé une entente d'engagement de collaboration avec le Barreau visant à élaborer des ressources pour maintenir les femmes dans la pratique privée et favoriser leur avancement.

Les cabinets participants, en partenariat avec le Barreau, ont mis au point des modèles pour suivre les données démographiques selon le sexe et pour identifier et adopter des principes et des pratiques exemplaires concernant les horaires de travail souples, le réseautage et le développement des activités professionnelles ainsi que le mentorat et le développement des compétences en leadership

pour les femmes. Les ressources de Justicia sont désormais disponibles en ligne pour les membres de la profession dans l'ensemble à www.lsuc.on.ca/projet_Justicia.

Il y a d'autres exemples d'initiatives semblables : le Réseau des cabinets d'avocats pour la diversité et l'inclusion ainsi que les Leaders juridiques pour la diversité. Il s'agit d'initiatives de cabinets et d'organismes juridiques qui tentent d'éliminer les difficultés associées au maintien en fonction et à l'avancement chez les groupes qui font la promotion de l'équité en collaborant et en favorisant l'adoption de pratiques exemplaires⁵³.

Le Barreau pourrait, de la même façon qu'il l'a fait dans le projet Justicia, agir en tant que catalyseur et collaborer avec les entreprises et organismes à développer des ressources pour créer l'infrastructure nécessaire à l'inclusion et élaborer des normes pour mesurer les progrès. Récemment, à la suite d'une consultation auprès des titulaires de permis racialisés, le Barreau du Québec a mis au point un plan d'action de trois ans qui inclut l'utilisation du modèle de Justicia pour remédier aux problèmes liés au recrutement, au maintien en fonction et à l'avancement des titulaires de permis racialisés⁵⁴.

Auto-évaluation

La seconde approche, qui consiste à demander aux entreprises d'effectuer une auto-évaluation de leurs résultats en matière de diversité, ou à les y obliger, est fondée sur le guide de l'Association du Barreau canadien, intitulé *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*. Ce document a été conçu pour « aider les avocats et les cabinets d'avocats en fournissant des conseils pratiques sur la structure, les politiques et les méthodes des cabinets d'avocats de sorte qu'ils remplissent leurs obligations envers leurs clients, les tiers et le public »⁵⁵.

⁵³ Des initiatives semblables ont été réussies aux États-Unis, au Boston Lawyers Group et au Lawyers Collaborative for Diversity (LCD).

Le *Boston Lawyers Group* est composé de grands cabinets, de services juridiques d'entreprises et d'organismes gouvernementaux de Boston qui se sont engagés à trouver et recruter des avocat(e)s de couleur et à favoriser leur maintien en fonction et leur avancement. Ce groupe est passé de 13 membres à sa création à plus de 45 membres. Le *Boston Lawyers Group* offre des sources d'information aux membres en organisant des forums, des discussions en table ronde, des programmes éducatifs et des salons d'emploi dans le but de promouvoir la diversité dans la communauté juridique de Boston. Le *Boston Lawyers Group* conçoit également des initiatives pour les écoles de droit, les organismes desservant les étudiants, la Ville et les gouvernements des États, les associations d'avocats et d'autres organismes professionnels et commerciaux. Les membres ont la responsabilité ultime de répondre à leurs propres objectifs de diversité et d'inclusion. Voir *The Boston Lawyers Group, About the BLG*, en ligne : www.thebostonlawyersgroup.com/about/who.htm

Le *Lawyers Collaborative for Diversity* fonctionne de la même façon que le *Boston Lawyers Group*. Le *Lawyers Collaborative for Diversity* est composé d'entreprises, de cabinets d'avocats, d'organismes gouvernementaux et d'associations juridiques ou d'avocats au Connecticut. Le défi actuel de *Lawyers Collaborative for Diversity* consiste à augmenter le recrutement, le maintien en fonction et l'avancement des juristes de couleur, non seulement à titre de bonne politique sociale, mais également de pratique commerciale exemplaire. *Lawyers Collaborative for Diversity, « Who We Are »* <http://www.lcdiversity.com/about/who.htm>.

⁵⁴ Barreau du Québec, « Pour une profession plus inclusive » – Le projet Forum, Montréal, Barreau du Québec, mai 2014, en ligne à www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages.pdf

⁵⁵ Comité de déontologie et de responsabilité professionnelle de l'Association du Barreau canadien, *Évaluer l'infrastructure déontologique de votre cabinet juridique : Un guide pratique*, Ottawa, Association du Barreau canadien, 2013, en ligne à www.cba.org/CBA/activities/pdf/ethicalselfevaluation-f.pdf

Le document contient un outil d'autoévaluation pour les entreprises, l'*Outil de l'ABC d'autoévaluation des pratiques déontologiques*, qui décrit les dix principaux domaines d'infrastructure déontologique et fournit des questions liées aux politiques et procédures des cabinets pour chacun des domaines en question⁵⁶.

L'outil d'auto-évaluation est calqué sur l'approche utilisée en Nouvelle-Galles-du-Sud pour la réglementation des cabinets d'avocats constitués en personne morale. Plutôt que d'être tenus de suivre des règles précises, les cabinets sont tenus de s'autoévaluer pour déterminer si leurs pratiques et politiques permettent efficacement d'assurer une bonne conduite professionnelle et d'établir des pratiques et des politiques considérées comme efficaces dans leur contexte précis. Les cabinets qui ont adopté cette réglementation ont obtenu une réduction des deux tiers des plaintes de leur clientèle⁵⁷. Cette approche pourrait être appliquée aux pratiques en matière de diversité, sur une base volontaire ou obligatoire.

Le *Law Society of England and Wales* a appliqué aux pratiques en matière de diversité une approche volontaire semblable, avec succès. En 2009, il a adopté la Charte de diversité et d'inclusion afin d'aider les cabinets à orienter leur engagement envers la diversité et l'inclusion vers des gestes concrets et positifs pour leurs entreprises, leur personnel et leurs clients⁵⁸.

À ce jour, plus de 300 cabinets ont signé la Charte, ce qui représente plus d'un tiers de tous les avocats de pratique privée. Les cabinets qui signent la Charte de diversité et d'inclusion sont tenus de présenter chaque année un rapport pour montrer dans quelle mesure ils respectent leurs engagements ainsi que les améliorations nécessaires. La Charte est accompagnée d'un ensemble de ressources visant à aider les cabinets à respecter leurs engagements dans les principaux domaines. Les normes permettent de démontrer dans quelle mesure un cabinet d'avocats se conforme aux lois et règlements en matière d'égalité et aux normes en matière de diversité et d'égalité.

Normes sur les exigences

La troisième approche porte sur l'exigence que les organismes de conseillers juridiques et les cabinets adoptent des normes et des ressources sur le recrutement, le maintien en fonction et l'avancement professionnel des titulaires de permis racialisés. Le Barreau élaborerait de telles normes.

⁵⁶ Voir *L'Outil de l'ABC d'autoévaluation des pratiques déontologiques* de l'Association du Barreau canadien, Ottawa, Association du Barreau canadien, 2013, en ligne à www.cba.org/CBA/activities/pdf/ethicalsevaluation-f.pdf

⁵⁷ Tahlia Gordon, Steve A. Mark et 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 et 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).

⁵⁸ The Law Society of England and Wales, *Diversity and Inclusion Charter*, en ligne : The Law Society of England and Wales www.lawsociety.org.uk/Advice/Diversity-Inclusion/Diversity-Inclusion-Charter

Recueillir des données démographiques

En plus de la mise en œuvre de programmes de diversité, le Groupe de travail propose que les cabinets recueillent des données démographiques sur leurs avocat(e)s et parajuristes.

Il y a un certain nombre d'avantages à recueillir des données démographiques, telles que répertoriées ci-dessous, par rapport à la question 2. On estime que de telles données seraient particulièrement utiles pour établir les types de programmes de diversité qui répondraient le mieux aux besoins de chaque cabinet.

Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi? La proposition d'autres modèles serait appréciée.

- **À l'aide des données du Barreau** : Le Barreau recueille les données démographiques des titulaires en utilisant les rapports annuels des avocats et des parajuristes, déclare publiquement les données démographiques sur la taille des cabinets et divulgue aux cabinets ses propres données démographiques.
- **Fournir des modèles** : Le Barreau collabore avec les cabinets pour élaborer des modèles uniformes de cueillette de données démographiques et encourage les cabinets à recueillir régulièrement de telles données⁵⁹.
- **Exiger des rapports des cabinets** : Le Barreau définit les paramètres pour la cueillette volontaire de données démographiques des cabinets et exige que les cabinets déclarent soit qu'ils recueillent ces renseignements, soit la raison pour laquelle ils ne le font pas.
- **Cueillette de données obligatoire** : Le Barreau pourrait établir des paramètres pour la cueillette obligatoire des données démographiques par les cabinets.

Analyse de base

Certains participants au processus d'études et de mobilisation ont souligné la valeur de la cueillette organisationnelle des données démographiques. Par exemple, certains informateurs clés de Stratcom ont indiqué que des statistiques plus détaillées sur la racialisation au sein des cabinets seraient précieuses, compte tenu d'approches adoptées aux États-Unis, où la transparence de la représentation des cabinets contribue à accroître la représentation au sein des cabinets⁶⁰. Les résultats du sondage de Stratcom indiquent que, bien que la majorité des titulaires de permis racialisés sont en faveur des mesures de cueillette et de partage des données, certains ont exprimé des préoccupations voulant que les mesures puissent servir à établir des cibles en matière de diversité⁶¹.

⁵⁹ Dans le présent document, le terme « petits cabinets » fait référence à des cabinets de 5 à 25 titulaires, le terme « moyens cabinets » fait référence à des cabinets de 25 à 100 titulaires, et le terme « grands cabinets » fait référence à des cabinets de 100 titulaires ou plus.

⁶⁰ Le rapport Stratcom, *supra* note 8 à la p 9.

⁶¹ *Ibid.* à la p 86.

Les avantages de la cueillette de données

Le Groupe de travail croit que la cueillette et le maintien des données démographiques sont des pratiques exemplaires. Il y a de nombreuses raisons de recueillir des renseignements démographiques, entre autres les suivantes :

- a. De telles données peuvent être un outil pour accroître les capacités concurrentielles d'un cabinet. De nombreux clients importants aux États-Unis, et maintenant au Canada, présentent des demandes de propositions pour sélectionner leurs conseillers juridiques en exigeant que les cabinets présentent les données démographiques de leur main-d'œuvre. Par exemple, le Groupe sur les services juridiques, affaires générales et conformité de la Banque de Montréal exige la divulgation des statistiques du cabinet sur la diversité dans le cadre de son processus de demande de propositions à l'intention des fournisseurs de services juridiques⁶².
- b. La diversité et les données sur la diversité aident les cabinets à attirer des employés talentueux. Comme les groupes d'étudiants en droit sont de plus en plus diversifiés, il en est de même pour leurs talents.
- c. Le fait de maintenir des données démographiques permet aux cabinets de surveiller la diversité du recrutement et des promotions et d'ajuster leurs pratiques et politiques en conséquence.
- d. Les données démographiques aident les cabinets à améliorer leurs services à la clientèle et leur réputation professionnelle, et à devenir des modèles en s'assurant une représentation sur tous les plans.
- e. Les données démographiques fournissent aux cabinets un contexte à partir duquel élaborer des programmes pour améliorer l'inclusivité.
- f. Les renseignements contribuent à l'élaboration d'initiatives visant à améliorer l'accès à la justice.

Le doyen Lorne Sossin et Sabrina Lyon, dans leur article *Data & Diversity in the Canadian Legal Community*, soulignent aussi l'importance de la cueillette de données en indiquant que même si le seul fait de recueillir et publier des données sur la diversité ne permettra pas de rendre la justice communautaire plus inclusive, il est difficile, sinon impossible, de voir comment la justice communautaire pourrait devenir plus inclusive sans données fiables et significatives⁶³.

Malgré l'importance des données démographiques quantitatives, de nombreux employeurs évaluent leurs progrès en matière de diversité et d'inclusion en tenant compte de mesures plus qualitatives. Sossin et Lyon pensent que lorsqu'un organisme est composé de membres très peu diversifiés, un sondage sur l'inclusion mené dans tout le cabinet mènera probablement à des résultats trompeurs. Lorsque les données sont complétées par des données quantitatives et qualifiées, le résultat devient beaucoup plus clair⁶⁴. La plupart des personnes consultées au cours du projet de Sossin et Lyon ont indiqué que, en tant qu'organisme de réglementation de la profession, le Barreau du Haut-Canada est l'organisme le plus approprié pour diriger les efforts et demander la cueillette et la diffusion des données démographiques.

⁶² Groupe sur les services juridiques, affaires générales et conformité, BMO, *Diversity at BMO: Driving Change from the Inside Out*.

⁶³ Lyon, Sabrina et Sossin, Lorne, *Data and Diversity in the Canadian Justice Community*. Osgoode Legal Studies Research Paper No. 12/2014, en ligne à <http://ssrn.com/abstract=2389410>

⁶⁴ *Data and Diversity supra* note 63 à la p 9.

Pratiques relatives à la cueillette de données

L'expérience des États-Unis

La cueillette de données est de pratique courante aux États-Unis chez des organismes comme la *National Association of Legal Career Professionals* (NALP)⁶⁵ et Vault⁶⁶, où l'on fait la cueillette de renseignements et la production de rapports qualitatifs et quantitatifs sur la diversité et l'inclusion concernant les cabinets ou les organismes juridiques des États-Unis. Bien que la publication des données ne soit pas obligatoire, elle s'avère un outil de recrutement efficace pour les cabinets et organismes juridiques, qui participent aux initiatives de NALP et Vault par centaines. Actuellement, la filiale canadienne de NALP ne publie que des données démographiques sur le sexe du personnel des cabinets.

Malgré la volonté de nombreux cabinets américains de recueillir des données démographiques, il y a eu certains différends quant à savoir si la cueillette des données a permis d'augmenter efficacement le nombre de titulaires racialisés dans les cabinets américains⁶⁷. Veronica Root, dans son article *Retaining Color*, indique ce qui suit :

Les données disponibles démontrent que i) un grand nombre de personnes de couleur fréquentent les 25 écoles de droit les plus importantes, ii) un pourcentage bien inférieur d'entre elles sont engagées par de grands cabinets, et iii) un pourcentage encore plus inférieur deviennent des partenaires. Ces données persistent malgré le fait que l'American Bar Association (ABA) et le National Association for Law Placement (NALP) ont commencé à examiner et suivre la diversité démographique au sein des cabinets en 1993. Vingt ans plus tard, seuls de petits gains ont été réalisés dans les efforts visant à accroître la diversité démographique dans les grands cabinets d'avocats⁶⁸.

Il est évident que le manque de diversité démographique est le produit de pratiques et de systèmes autres que la cueillette de données. Toutefois, comme on l'a noté ci-dessus, le Groupe de travail a identifié d'importants avantages à la cueillette de données.

⁶⁵ Le NALP est une association nord-américaine éducative à but non lucratif composée de plus de 2 500 professionnels juridiques et a été créée pour répondre aux besoins des participants au processus d'emploi dans le domaine juridique. Le NALP recueille des données sur l'emploi dans le domaine juridique et les publie.

⁶⁶ Vault fournit des classements, évaluations et examens des entreprises, qui proviennent des employés et d'étudiants. En partenariat avec la *Minority Corporate Counsel Association*, Vault mène chaque année un sondage sur la diversité des cabinets et publie un profil de diversité pour chacun des cabinets d'avocats, qui comprend une ventilation démographique des avocat(e)s du cabinet par niveau, race, sexe, orientation sexuelle, identité sexuelle et handicap. Ces profils comprennent également un aperçu des programmes, des initiatives et des plans stratégiques des cabinets en matière de diversité. De plus, toutes les réponses au sondage sont publiées dans la base de données sur la diversité dans les cabinets, qui comprend des données sur la diversité étalées sur cinq ans relatives à plus de 250 cabinets.

⁶⁷ Les problèmes raciaux au Canada et aux États-Unis sont différents, autant du point de vue de leur ampleur que de leur histoire, ce qui peut limiter l'applicabilité et l'évaluation des mesures américaines dans le contexte canadien.

⁶⁸ Root, Veronica, *Retaining Color*, 47 *University of Michigan Journal of Law Reform* 575-643; Notre Dame Legal Studies Paper No. 1441, en ligne à <http://ssrn.com/abstract=2310027>

L'expérience du Royaume-Uni

Le *Solicitors Regulation Authority* (SRA) de la *Law Society of England and Wales* a adopté une démarche proactive en matière de cueillette de données démographiques. Les cabinets réglementés par la SRA sont maintenant tenus de recueillir des données sur la diversité de leurs effectifs, de rédiger un rapport et de le publier chaque année. La SRA publie des données globales chaque année. Elle élaborera un point de référence afin de permettre aux cabinets d'évaluer leurs progrès⁶⁹.

L'expérience canadienne

Au Canada, au moins trois grands cabinets de l'Ontario recueillent des données d'auto-identification sur la race et l'origine ethnique de leurs employés et membres, sans toutefois publier un rapport public⁷⁰. Un certain nombre d'autres cabinets travaillent à l'élaboration de processus de cueillette de données démographiques, et de nombreux cabinets membres de Justicia recueillent déjà des données sur le sexe de leurs membres⁷¹.

D'autres organismes de réglementation de l'Ontario ont aussi envisagé d'imposer à leurs membres l'obligation de présenter des rapports sur des questions liées à la diversité. Récemment, la Commission des valeurs mobilières de l'Ontario (CVMO) a entrepris la mise en œuvre finale des modifications à la règle qui obligera, entre autres, les sociétés qu'elle réglemente à divulguer les renseignements suivants relatifs aux femmes chaque année : les politiques concernant la représentation des femmes au conseil d'administration; l'examen par le conseil de la représentation des femmes dans le processus de sélection des membres du conseil; l'examen de la représentation des femmes aux postes de dirigeants lors de telles nominations; détermination de nombres cibles de femmes au conseil et aux postes de direction⁷².

⁶⁹ Il convient également de mentionner l'initiative de la *Judicial Appointments Commission* (JAC) du Royaume-Uni, une commission indépendante qui sélectionne les candidats aux fonctions judiciaires dans les tribunaux d'Angleterre et du Pays de Galles et qui, dans certains tribunaux qui relèvent aussi de sa compétence en Écosse et en Irlande du Nord, s'engage dans la surveillance en matière de diversité. Dans le cadre de sa stratégie en matière de diversité, la JAC enregistre des renseignements sur le sexe, l'ethnicité, les antécédents professionnels, les invalidités et l'âge à trois étapes du processus de nomination des juges : à la mise en candidature, à la présélection et à la recommandation de nomination. Ces renseignements sont recueillis grâce au formulaire volontaire de surveillance des candidatures de la JAC. Le JAC publie deux fois par an un bulletin statistique officiel qui contient des renseignements démographiques. *Judicial Selection and Recommendations for Appointment Statistics, October 2012 to March 2013 – Judicial Appointments Commission Statistics Bulletin*, London, Judicial Appointments Commission, 2013.

⁷⁰ De plus, de grandes banques et le gouvernement fédéral sont tenus aux termes de la loi de recueillir des données d'auto-identification concernant leurs effectifs. Le gouvernement de l'Ontario recueille aussi des données d'auto-identification et les publie dans son Plan stratégique d'inclusion dans la FPO.

⁷¹ Par exemple, l'Institut canadien de la diversité et de l'inclusion, un organisme national à but non lucratif qui fournit aux lieux de travail des conseils sur la diversité, l'inclusion, l'équité et les droits de la personne, collabore avec un groupe de grandes et moyennes entreprises à l'élaboration d'un processus visant à les aider à recueillir des données démographiques.

⁷² Amendements proposés par la CVMO au formulaire 58-1 -1F1 Divulgence sur la gouvernance d'entreprise du Règlement proposé 58-101 sur la Divulgence des pratiques du gouvernement; Exigences proposées en matière de divulgation concernant la représentation des femmes aux conseils et à la haute direction — Supplément au Bulletin (2014) de la CVMO, 37 OSCB.

La CVMO mettra en œuvre une approche « se conformer ou s'expliquer », qui oblige les entreprises à soit présenter un rapport sur la mise en œuvre ou l'examen des questions indiquées ci-dessus, soit expliquer les raisons pour lesquelles elles ne l'ont pas fait⁷³.

En 2012, l'Association du Barreau canadien a produit un guide pour aider les entreprises à affiner leur approche concernant la diversité et l'inclusion et pour mesurer leurs résultats en matière de diversité⁷⁴. En 2009, la Commission ontarienne des droits de la personne a également produit *Comptez-moi! Cueillette de données relatives aux droits de la personne*, un guide publié pour aider les organismes à recueillir des données démographiques⁷⁵.

Cueillette de données volontaire ou obligatoire

Il y a des avantages et des inconvénients dans la cueillette volontaire et obligatoire de données démographiques. Même si la déclaration obligatoire peut potentiellement fournir davantage de données fiables, le Barreau du Haut-Canada ne régit pas directement les cabinets et organismes juridiques en ce moment. De plus, Sossin et Lyon ont perçu une résistance et une forte opposition à l'exigence de déclarations obligatoires et ont indiqué que la divulgation volontaire de statistiques démographiques ou assortie de mesures d'incitation est une approche importante à envisager.

La cueillette volontaire de données permettrait au Barreau du Haut-Canada de collaborer avec les cabinets et organismes juridiques à la cueillette de données, ce qui augmenterait la participation des cabinets à un tel exercice. Le projet Justicia mentionné⁷⁶ ci-dessus est un exemple d'initiative dans le cadre de laquelle les entreprises participantes ont convenu de maintenir des données sur le sexe et de collaborer avec le Barreau à l'élaboration d'un guide et d'un modèle de cueillette de ces données. Depuis la création de Justicia, un certain nombre de cabinets grands et moyens recueillent maintenant des données démographiques sur le sexe.

Utilisation des données du Barreau

Comme le Barreau recueille déjà des données démographiques sur la race et d'autres données sur, par exemple, la taille des cabinets, le statut des employés dans le cabinet, leur milieu, leur domaine de pratique, l'année de leur admission au Barreau, il pourrait être souhaitable que le Barreau améliore la qualité de ses activités de cueillette de données et devienne la source commune des données démographiques. Cela aurait l'avantage de fournir des données démographiques comparables et,

⁷³ Après la proposition de la CVMO, les organismes de réglementation des valeurs mobilières de la Saskatchewan, du Manitoba, du Québec, du Nouveau-Brunswick, de la Nouvelle-Écosse, de Terre-Neuve et Labrador, des Territoires du Nord-Ouest et du Nunavut ont publié des modifications proposées afin d'obtenir des commentaires du public semblables à celles mises de l'avant par la CVMO. Ces organes de réglementation ont également entrepris la mise en œuvre finale des modifications de la règle.

⁷⁴ Lorraine Dyke, *Mesurer la diversité dans les cabinets d'avocats — Un outil essentiel à un rendement supérieur*, Ottawa, Association du Barreau canadien, 2012, en ligne à www.cba.org/ABC/equity/PDF/measuring-diversity-f.pdf.

⁷⁵ *Comptez-moi! Cueillette de données relatives aux droits de la personne*, Toronto, Commission des droits de la personne de l'Ontario, 2009, à la p 1 en ligne à www.ohrc.on.ca/fr/comptez-moi-collecte-de-donn%C3%A9es-relatives-aux-droits-de-la-personne

⁷⁶ Voir Barreau du Haut-Canada, Le projet Justicia, en ligne à <http://www.lsuc.on.ca/with.aspx?id=635&langtype=1036>

probablement, de rendre la cueillette de données plus efficace. D'autre part, il y a peut-être des avantages à la participation des cabinets à la cueillette de données et à la déclaration de leurs propres renseignements.

Conformité en matière de diversité et de contrats

Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?

Analyse de base

Comme nous l'avons mentionné ci-dessus, un certain nombre d'entreprises, de gouvernements et d'établissements américains et canadiens exigent maintenant la divulgation des données démographiques sur la main-d'œuvre aux fins d'examen pendant le processus d'évaluation des demandes de propositions. Certains membres de Leaders juridiques pour la diversité, association qui comprend plus de 70 signataires partout au Canada, tiennent compte de la diversité à l'embauche d'employés et dans le cadre de leurs pratiques d'approvisionnement en exigeant des fournisseurs juridiques potentiels de divulguer leurs données démographiques. D'autres exigent qu'au moins un membre des communautés diverses travaille sur leur dossier⁷⁷.

Certains participants au processus de mobilisation ont indiqué que le Barreau était tout désigné pour le rôle consistant à favoriser les politiques d'approvisionnement des entreprises. Afin de promouvoir la diversité dans la profession et de veiller à ce que les titulaires racialisés aient la possibilité de travailler sur des dossiers importants, le Barreau du Haut-Canada pourrait collaborer avec des organismes comme les Leaders juridiques pour la diversité à l'élaboration de programmes de conformité des contrats types qui exigeraient que les fournisseurs potentiels présentent des statistiques sur la diversité pendant le processus de demande de propositions.

⁷⁷ Voir Legal Leaders for Diversity, *About Us*, en ligne à <http://legalleadersfordiversity.com/about-us>

B. Le mentorat, les services de consultation et le réseautage

Au cours du processus de mobilisation, on a déterminé que le mentorat et le réseautage sont des éléments cruciaux de la promotion de l'inclusivité dans la profession. Nous avons demandé aux professionnels de fournir leurs commentaires sur les modèles de mentorat, de services de consultation et de réseautage.

Services de consultation et de mentorat

Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.

En novembre 2013, les membres du conseil ont approuvé la création du groupe de travail sur les services consultatifs et le mentorat (groupe de travail sur le mentorat). Le mandat du groupe de travail sur le mentorat est le suivant :

- a. se renseigner sur les services obligatoires et facultatifs de mentorat et de services de consultation fournis aux avocat(e)s et autres professionnels par leurs organismes de réglementation ou leurs associations professionnelles ou commerciales au Canada et à l'étranger;
- b. élaborer un ensemble de critères pour évaluer l'efficacité de ces services à répondre aux besoins en matière de pratique des membres de la profession juridique en Ontario;
- c. déterminer la gamme des modèles de services de mentorat et de services de consultation, y compris ceux qui sont assistés par la technologie, virtuels, en partenariat avec d'autres organismes ainsi que la centralisation ou la mise en œuvre de mentorats et d'autres ressources qui pourraient être explorées et envisagées;
- d. consulter des intervenants externes sur les objectifs et les pratiques exemplaires pour de tels services;
- e. examiner et déterminer l'étendue possible des répercussions financières immédiates et à long terme pour le Barreau du Haut-Canada;

Le mentorat consiste en un programme officiel ou informel ou en une relation dans laquelle le mentor fournit au stagiaire des conseils personnels et sur la carrière. Dans une relation de mentorat, il n'y a aucun objectif précis établi. Toutefois, les services de consultation sont centrés sur le travail et orientés vers les résultats. Le conseiller/aidant fournit des conseils et évalue et surveille les progrès réalisés. Le conseiller/aidant aide l'employé à développer des compétences particulières pour une tâche ou une difficulté définie.

Le Groupe de travail vous invite à fournir des commentaires sur les modèles de mentorat et de services consultatifs qui seraient les plus utiles aux titulaires de permis racialisés. Vos commentaires peuvent être examinés par le Groupe de travail et par le groupe de travail sur le mentorat. Certains modèles proposés sont présentés ci-dessous, mais la liste n'est pas complète, et la proposition d'autres modèles serait appréciée.

Mentor bénévole ou services de consultation

- a. **Mentorat individuel ou services de consultation** : Le mentor et son stagiaire se réuniraient régulièrement. La relation de mentorat serait individualisée et personnelle. Les mentors ne seraient pas rémunérés.
- b. **Mentorat de groupe** : Un mentor formerait une relation de mentorat avec un petit groupe de titulaires. Le mentor et les stagiaires se réuniraient régulièrement en groupe. Les mentors ne seraient pas rémunérés.
- c. **Mentorat à distance** : Le mentorat serait fourni par un mentor à un stagiaire, principalement par courrier électronique et d'autres formes de communication électronique. La communication électronique pourrait être complétée par quelques appels téléphoniques et des réunions en personne. Les mentors ne seraient pas rémunérés.
- d. **Mentorat par équipe** : Plusieurs mentors travailleraient auprès d'un groupe de plusieurs stagiaires. Les mentors et les stagiaires se réuniraient régulièrement en équipe. Les mentors ne seraient pas rémunérés.
- e. **Mentorat par pairs** : Des collègues qui sont à un stade semblable de leur carrière seraient jumelés afin d'échanger des conseils.
- f. **Portée limitée des services de consultation** : Un conseiller possédant une expertise dans un domaine précis fournirait à un stagiaire des conseils sur une question de fond ou de procédure juridique. Cette relation serait vraisemblablement à court terme. Les conseillers ne seraient pas rémunérés.

Mentor rémunéré ou services de consultation

- a. **Mentorat individuel avec un professionnel** : Ce modèle fonctionnerait de la même façon que le mentorat individuel bénévole, mais les stagiaires pourraient accéder à un mentor qu'ils choisiraient dans une liste de mentors rémunérés.
- b. **Comité de conseillers** : Un groupe diversifié d'avocat(e)s et de conseillers parajuristes formés serait payé pour fournir des services de soutien précis à l'intention des personnes qui sont exposées à un risque accru de manquer à leurs obligations professionnelles.

Il est important de souligner que les associations comme l'Association des Avocats Noirs du Canada, la *South Asian Bar Association* (SABA) et la *Federation of Asian Canadian Lawyers* (FACL) offrent de précieuses possibilités de réseautage, de mentorat et des programmes d'éducation continue.

Le Barreau du Haut-Canada pourrait déterminer si d'autres programmes de soutien pourraient être mis en œuvre par l'intermédiaire d'associations comme celles qui aident les avocates et avocats et les parajuristes qui font partie de petits cabinets, qui exercent seuls ou qui ont été formés à l'étranger. Des propositions à ce sujet seraient appréciées.

Réseautage

Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.

Le processus de mobilisation a permis d'indiquer que les titulaires racialisés sont souvent plus isolés des réseaux de soutien professionnels. La majorité des titulaires racialisés et non racialisés qui ont participé au sondage de Stratcom ont souligné la nécessité des titulaires racialisés d'avoir un meilleur accès aux réseaux professionnels.

Le Barreau du Haut-Canada pourrait collaborer avec des organismes juridiques et associations d'affinité pour élaborer des possibilités de réseautage plus structurées et planifiées, par exemple, dans le cadre de la formation professionnelle continue. Ces possibilités de réseautage fourniraient aux titulaires racialisés un forum leur permettant d'interagir avec des titulaires de permis racialisés et non racialisés d'autres cabinets et organismes juridiques.

Il est important de souligner que certains participants ont mentionné que les associations n'existent pas pour leur communauté. Par exemple, des parajuristes ont indiqué qu'ils n'ont pas accès à une association de parajuristes racialisés. Il n'y a également aucune association d'avocats formés à l'étranger, malgré les commentaires selon lesquels les avocat(e)s formés à l'étranger sont souvent isolés et n'ont pas accès aux réseaux qui sont si importants pour les petits cabinets et les praticiens qui exercent seuls.

Le programme de l'Université de Toronto à l'intention des avocats formés à l'étranger s'est avéré très efficace pour préparer ces derniers à entrer dans la profession juridique. Toutefois, des réseaux continus en cours d'exercice seraient précieux.

C. L'amélioration des compétences culturelles dans la profession

Les résultats du sondage de Stratcom soulignent l'importance de séminaires de formation professionnelle sur l'équité, la diversité et les compétences culturelles parrainés par le Barreau qui pourraient faire partie du processus d'agrément.

Il y a de nombreuses définitions du terme « compétence culturelle », mais Robert Wright⁷⁸ a élaboré la définition suivante : « La capacité d'interagir efficacement avec des gens de différentes cultures. La compétence culturelle comprend quatre capacités essentielles :

- a. Nous devons connaître nos propres points de vue culturels et comprendre en quoi ils diffèrent ou ressemblent à d'autres (auto-analyse critique culturelle).
- b. Nous devons comprendre la réalité sociale et culturelle dans laquelle nous vivons et travaillons ainsi que celle dans laquelle nos clients vivent et travaillent.
- c. Nous devons cultiver des attitudes envers les différences culturelles.
- d. Nous devons être capables de générer et d'interpréter une grande variété de réponses verbales et non verbales (entrevues centrées sur le client) »⁷⁹.

Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue? La proposition d'autres modèles serait appréciée.

- **Inclure dans le cours de responsabilité professionnelle et de pratique (RPP) les thèmes de compétence culturelle, diversité et inclusion.**
- **Fournir des programmes de formation professionnelle continue agréés annuels et volontaires sur les compétences culturelles.**
- **Exiger que les titulaires effectuent chaque année, ou, moins fréquemment, une heure de formation professionnelle continue en compétence culturelle qui serait intégrée aux trois heures requises de professionnalisme.**

Les options suggérées ci-dessus sont proposées afin de s'assurer que les titulaires se familiarisent avec la notion de compétence culturelle au début de leur carrière, dans le cadre du cours de responsabilité professionnelle et de pratique (RPP), et tout au long de leur carrière.

Le cours de RPP a été conçu pour « augmenter les connaissances des candidats concernant les devoirs et défis d'un avocat, et pour suggérer une méthode d'analyse des dilemmes éthiques et pratiques »⁸⁰. Il faut réussir le cours de RPP pour être admis(e) au barreau.

⁷⁸ Robert S. Wright est un Néo-Écossais d'origine africaine qui est travailleur social et sociologue. Il conçoit et offre des ateliers de compétence culturelle et a développé une expertise dans ce domaine.

⁷⁹ Robert S. Wright, *Cultural Competence: Presented to Staff of Legal Aid Nova Scotia AGM* le 17 octobre 2012. Disponible en ligne à www.robertswright.ca/CulturalCompetenceNSLA20121017.pdf

⁸⁰ En ligne à www.lsuc.on.ca/articling_fr

On estime que les programmes d'éducation sur la compétence culturelle seraient bénéfiques pour l'ensemble de la profession. Les règles 2.1-1 et 6.3.1-1 du *Code de déontologie* soulignent que les avocat(e)s et les parajuristes ont la responsabilité de reconnaître la diversité de la collectivité de l'Ontario⁸¹. Le *Code de déontologie* et le *Code de déontologie des parajuristes* imposent l'obligation de protéger la dignité des personnes et de respecter les lois relatives aux droits de la personne en vigueur en Ontario⁸². La formation en compétence culturelle pourrait être utile pour aider les avocat(e)s et les parajuristes à comprendre cette règle et à s'y conformer⁸³.

Il est donc proposé que les programmes de FPC soient offerts à la profession et/ou que l'on exige des professionnels qu'ils suivent une heure de FPC dans le cadre des heures de professionnalisme agréé chaque année ou moins fréquemment.

⁸¹ *Code de déontologie*, Toronto, Barreau du Haut-Canada, 1^{er} octobre 2014, règle 2.1-1, commentaire [4.1] et règle 6.3.1-1, commentaires [1] et [2], en ligne à www.lsuc.on.ca/code-avocats.

⁸² *Code de déontologie des parajuristes* à la règle 2.03, en ligne à <http://www.lsuc.on.ca/code-parajuristes/>

⁸³ La Nova Scotia Barristers' Society (article NSBS) reconnaît la valeur des programmes d'éducation sur la compétence culturelle et considère la compétence culturelle comme l'une des facettes de la compétence professionnelle globale d'un avocat. La NSBS offre des ateliers d'une demi-journée chaque mois sur l'accroissement des compétences culturelles.

D. La discrimination et le rôle du processus des plaintes

Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement? D'autres propositions seraient appréciées.

- En mettant à jour le *Code de déontologie* et le *Code de déontologie des parajuristes* afin de définir précisément la discrimination systémique et en la combattant, et en élaborant un plan de communication pour la profession.
- En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités de présenter des plaintes.
- En affectant un groupe de spécialistes de la réglementation professionnelle des membres du personnel au traitement des plaintes de discrimination raciale.
- En collaborant avec les associations de titulaires racialisés afin d'accroître leurs capacités d'offrir à leurs membres qui ont fait l'objet de plaintes un soutien de type avocat de service.

Comprendre la discrimination

Selon la Commission ontarienne des droits de la personne, la discrimination raciale systémique « découle de politiques, pratiques et comportements qui font partie des structures sociales et administratives de l'organisation et dont l'ensemble crée ou perpétue une situation désavantageuse pour les personnes racialisées »⁸⁴. Le processus de mobilisation a révélé que, souvent, les personnes touchées par la discrimination raciale ne croient pas qu'elles ont la possibilité de se plaindre, car la discrimination est systémique ou elles ne veulent pas se plaindre de peur que la plainte ait des répercussions sur leur carrière.

Les règles du *Code de déontologie* et du *Code de déontologie des parajuristes* portent sur la responsabilité particulière des avocats et parajuristes de respecter les exigences des lois relatives aux droits de la personne en vigueur en Ontario et, plus précisément, d'honorer l'obligation de non-discrimination. Le mandat du Barreau d'enquêter sur les plaintes de discrimination systémique n'est pas largement connu. Nous proposons que les règles soient clarifiées et qu'un plan de communication soit élaboré afin d'informer les titulaires que des plaintes de discrimination systémique peuvent être présentées au Barreau du Haut-Canada.

Fournir des ressources à la profession

En plus de recevoir des plaintes relatives à la discrimination systémique, le Barreau pourrait développer des méthodes institutionnelles proactives pour s'attaquer à la discrimination systémique,

⁸⁴ Commission des droits de la personne de l'Ontario. *Racisme et la Discrimination Raciale — Discrimination systémique (fiche)* en ligne à www.ohrc.on.ca/fr/racisme-et-la-discrimination-raciale-discrimination-systémique-fiche

comme offrir aux cabinets et aux organismes juridiques des guides de pratiques exemplaires et des modèles de politiques.

Le Barreau pourrait également exiger que les cabinets adoptent des politiques et procédures pour lutter contre la discrimination et le harcèlement, et pourrait tenir les cabinets comme responsables de l'échec d'établir et de respecter ces politiques et procédures.

Présentement, le Barreau ne réglemente pas directement les cabinets ni les organismes juridiques. En février 2014, toutefois, les membres du conseil ont approuvé l'élaboration d'un cadre de travail relativement à la réglementation des cabinets (aussi connue sous le terme « réglementation des entités (entity regulation) » aux fins d'examen par les membres du conseil. Ce cadre de travail pourrait être conçu de façon semblable à la méthode d'auto-évaluation qui s'est révélée fructueuse en Nouvelle-Galles-du-Sud. Ce possible changement à l'approche réglementaire du Barreau pourrait lui permettre d'exiger des cabinets de créer des politiques et procédures en matière de discrimination et de harcèlement et de les respecter.

Remédier à la peur de représailles lors du dépôt d'une plainte

La crainte de déposer une plainte a été mentionnée au cours du processus de mobilisation et, présentement, le droit de se plaindre auprès du Barreau par l'intermédiaire des associations professionnelles n'est pas largement connu.

Le Barreau pourrait souhaiter collaborer avec des associations d'affinité en vue d'accroître leurs capacités de porter plainte pour discrimination raciale et/ou ethnique. La possibilité de déposer une plainte par l'intermédiaire d'une association peut réduire le risque que la plainte ait un impact négatif sur la carrière du plaignant. Le Groupe de travail souhaiterait obtenir d'autres suggestions sur la façon d'améliorer les politiques et les pratiques de sorte que les personnes puissent se sentir plus à l'aise de s'adresser au Barreau pour se plaindre de discrimination raciale.

Étant donné que les cas de discrimination raciale et/ou ethnique sont souvent très complexes, nous suggérons qu'un groupe de spécialistes de la réglementation professionnelle des membres du personnel soit nommé pour s'occuper de tels cas. Ce groupe de spécialistes participerait à des programmes de formation approfondie sur la compétence culturelle et la discrimination raciale afin de les rendre sensibles à la nature de ces cas et des parties concernées.

Apporter un soutien par le biais du processus

Les participants à un groupe de discussion ont convenu qu'il peut y avoir des facteurs contribuant à rendre les titulaires racialisés plus vulnérables à des plaintes, la plupart citant fréquemment un manque de ressources et de formation ainsi que des problèmes associés à une mauvaise communication et à des malentendus culturels. Ces facteurs, comme le manque de ressources, seraient vraisemblablement pertinents une fois que le titulaire fait partie du processus de réglementation. Par conséquent, le Groupe de travail suggère que le Barreau puisse collaborer avec les associations juridiques pour renforcer leurs capacités d'offrir un soutien de type avocat de service aux personnes qui font l'objet de plaintes.

E. Les activités du Barreau du Haut-Canada

Le Groupe de travail a discuté des initiatives qui pourraient être mises en œuvre à l'interne pour traiter les résultats du processus de mobilisation. Il envisage de recommander aux membres du conseil l'adoption des programmes suivants. Le Groupe de travail souhaiterait obtenir des commentaires concernant ces programmes ainsi que d'autres initiatives internes qui pourraient être examinées par le Groupe de travail.

Initiative 1 : Améliorer le programme de conformité en matière d'équité

Le Barreau améliorerait son programme de conformité en matière d'équité afin d'inclure une demande de données démographiques lorsque l'on retient les services de fournisseurs, de cabinets ou d'avocat(e)s.

Initiative 2 : Mener une vérification interne de l'équité

Le Barreau renforcerait ses politiques et ses programmes en procédant à une vérification opérationnelle de l'équité des services qu'il offre à la profession.

Initiative 3 : Cueillette de données internes

Le Barreau envisagerait la cueillette de données internes complémentaires sur les questions relatives à la racialisation dans le processus de réglementation.

Initiative 4 : Développer une image publique plus diversifiée du Barreau du Haut-Canada

Le Barreau envisagerait des stratégies pour développer une image publique plus diversifiée et inclusive.

Analyse de base

Actuellement, dans le cadre de son processus d'appel d'offres, le Barreau exige que les fournisseurs ayant plus de 50 employés et les cabinets comprenant plus de 50 avocats se conforment au *Code des droits de la personne*, à la *Loi sur la santé et la sécurité au travail* (LSST), s'il y a lieu, et à la *Politique de prévention contre le harcèlement et la discrimination du Barreau du Haut-Canada*.

Le Barreau pourrait renforcer les exigences du programme de conformité en matière d'équité en incluant une demande d'examen des données démographiques au cours du processus de sélection.

Le Barreau du Haut-Canada s'est également engagé à faire en sorte que ses politiques, ses programmes et ses pratiques soient inclusifs et accessibles. Afin de s'en assurer, le Barreau pourrait demander à une tierce partie externe de mener une vérification opérationnelle de l'équité des services qu'elle offre à la profession. Cette vérification se concentrerait sur les employés du Barreau qui offrent des services directement à la profession. Une vérification de l'équité permettrait d'identifier les difficultés et progrès liés à l'intégration des principes et pratiques d'équité dans les activités du Barreau.

Le Barreau pourrait aussi déterminer si des données supplémentaires, de meilleures données ou d'autres renseignements devraient être recueillis à l'interne concernant les questions de réglementation, y compris les plaintes et les enquêtes, relativement à l'incidence et à l'impact de la racialisation.

Un nombre important de participants racialisés et non racialisés au processus de mobilisation approuvent la suggestion que le Barreau développe une image publique plus diversifiée et inclusive. Le Barreau pourrait envisager des initiatives qui rendraient son image publique plus diversifiée et inclusive. On pourrait obtenir des commentaires du Groupe consultatif en matière d'équité, qui est composé d'associations partenaires et de membres individuels qui possèdent une expertise dans les questions liées à l'équité et à la diversité. Le Groupe de travail sur la gouvernance pourrait obtenir le soutien du personnel et des commentaires supplémentaires du Service de l'équité, du Service des affaires publiques et du Service des communications du Barreau.

CONCLUSION

Le Barreau s'est engagé à promouvoir une profession qui est représentative de tous les peuples de l'Ontario et qui est inclusive et exempte de discrimination et de harcèlement. Le processus de mobilisation a cerné un certain nombre d'obstacles qui touchent les titulaires racialisés tout au long de leur carrière.

Le Groupe de travail a examiné ces obstacles et les défis à relever en raison de la discrimination, du racisme flagrant, des différences culturelles, du manque de mentors, de parraineurs, de modèles et de possibilités de réseautage et en raison d'autres facteurs systémiques. Par conséquent, il a cerné un certain nombre d'initiatives possibles qui pourraient relever certains de ces défis.

Les initiatives proposées sont présentées à la profession, et nous vous invitons à nous faire part de vos commentaires.

Nous vous invitons à nous faire part de vos commentaires sur l'ensemble du présent document et sur toute question abordée. De plus, nous souhaitons obtenir des propositions de solutions non présentées dans ce document.

Veillez nous faire parvenir vos observations écrites d'ici le 1^{er} mars 2015, à :

Josée Bouchard
Directrice, Équité
Barreau du Haut-Canada
Osgoode Hall
130, rue Queen Ouest
Toronto (Ontario)
M5H 2N6

Tél. : 416 947-3984
ou 1-800-668-7380 poste 3984
Télécopieur : 416 947-3983
Courriel : jbouchar@lsuc.on.ca

Annexe 1 — Racialisation et taille des cabinets selon les données du Barreau sur les avocats et les parajuristes d'avril 2014

Tableau 1 — Professionnels exerçant seuls — en pourcentages

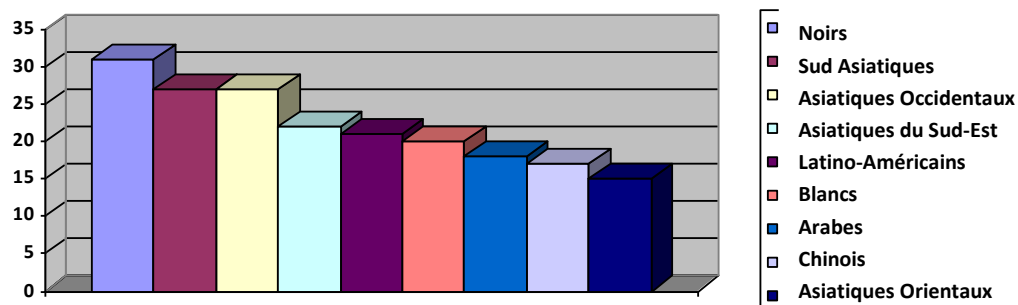
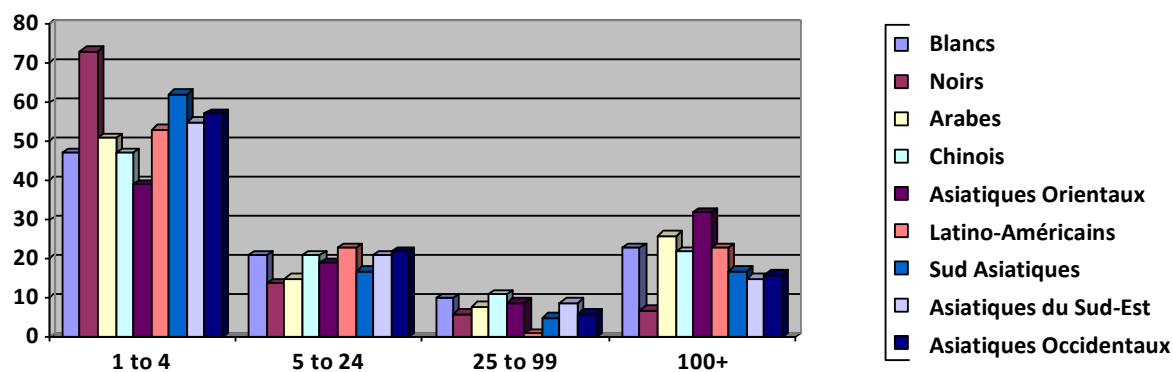


Tableau 2 — Par taille du cabinet — en pourcentages

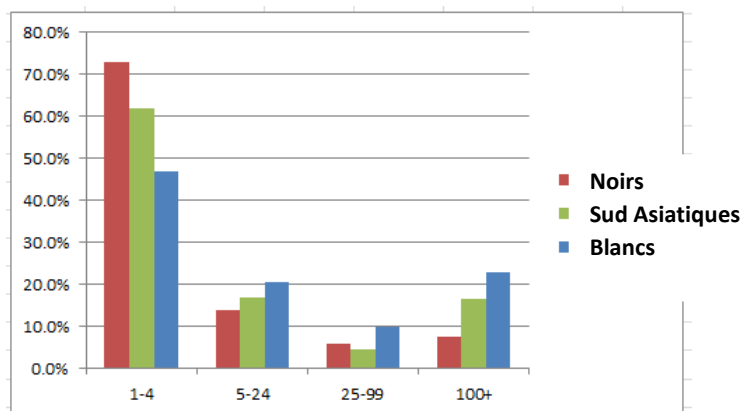


Le tableau 1 montre que les avocates et avocats Noirs, Sud-Asiatiques et Asiatiques Occidentaux sont proportionnellement plus susceptibles d'exercer seuls.

Le tableau 2 montre que les avocates et avocats Noirs et Sud-Asiatiques sont proportionnellement plus susceptibles d'exercer seuls ou dans de petits cabinets et proportionnellement beaucoup moins susceptibles d'exercer dans de grands ou moyens cabinets.

Le tableau 2 est difficile à interpréter, car il comporte une comparaison entre plusieurs groupes. Pour faciliter sa compréhension, le tableau 3 ci-dessous montre la taille des cabinets dans lesquels exercent les avocats Noirs, Blancs et Sud-Asiatiques.

Tableau 3 — Par taille du cabinet — en pourcentages



Le tableau 3 montre plus clairement les différentes tendances des cabinets où exercent les avocats Noirs, Sud-Asiatiques et Blancs. Les avocates et avocats Noirs et, dans une moindre mesure, les Sud-Asiatiques, exercent de façon disproportionnée dans les plus petits cabinets. Il y a relativement peu d'avocats Noirs qui exercent dans les cabinets les plus grands, alors que les proportions d'avocats Sud-Asiatiques et des Avocats Blancs dans les plus grands cabinets ne sont pas si différents.

Annexe 2 – Questions à la profession

Établir des programmes de diversité au sein des cabinets

Question n° 1 : Comment le Barreau du Haut-Canada devrait-il agir à titre de catalyseur dans l'établissement de programmes de diversité dans les cabinets et pourquoi devrait-il le faire ?

Question n° 2 : Quel est le modèle privilégié pour la cueillette de données démographiques et pourquoi?

Question n° 3 : Comment le Barreau pourrait-il collaborer avec des services juridiques internes à l'élaboration de programmes de conformité des contrats types lorsque ces services juridiques internes embauchent des cabinets?

Services de consultation et de mentorat

Question n° 4 : Quels sont les modèles de mentorat et de services de consultation privilégiés pour les titulaires de permis racialisés ?

Réseautage

Question n° 5 : Quels sont les modèles de réseautage privilégiés pour les titulaires de permis racialisés? La proposition de modèles autres que ceux présentés ci-dessous serait appréciée.

L'amélioration des compétences culturelles dans la profession

Question n° 6 : Comment le Barreau pourrait-il améliorer la compétence culturelle dans la profession à l'aide de ses programmes de formation professionnelle continue ?

La discrimination et le rôle du processus des plaintes

Question n° 7 : Comment le Barreau devrait-il s'assurer que les plaintes de discrimination soient portées à son attention et qu'elles soient traitées efficacement?

Annexe 3 – Chronologie de la mobilisation du Groupe de travail sur les défis des titulaires de permis racialisés

DATE	ACTIVITÉ
Août 2012	Le Conseil crée le Groupe de travail sur les défis des titulaires de permis racialisés
Octobre 2012	Le Groupe de travail approuve l'énoncé de mandat
Octobre 2012 – janvier 2014	Le Groupe de travail rencontre officieusement des organisations et des particuliers pour obtenir des renseignements sur les défis et les pratiques exemplaires
Début 2013	Le Groupe de travail retient les services de Strategic Communications Inc. (Stratcom) et Michael Charles de Change DeZign pour mener une mobilisation officielle, qui comprend des entrevues avec des informateurs clés, des groupes de discussion et un sondage sur la profession dans son ensemble.
Début 2013	Le Groupe consultatif en matière d'équité crée un groupe de travail qui donne une rétroaction à diverses étapes du processus de l'étude sur les défis des titulaires de permis racialisés.
Juillet 2013 – septembre 2013	Le processus de liaison communautaire prend place.
Mars 2014	Stratcom et Michael Charles fournissent le rapport officiel final sur la mobilisation au groupe de travail.
Mars 2014 – octobre 2014	Le Groupe de travail passe en revue les processus de mobilisation formel et informel et consulte les organisations concernées.



The Law Society
of Upper Canada | Barreau du
Haut-Canada

Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees

CONSULTATION PAPER



The Law Society
of Upper Canada | Barreau du
Haut-Canada

"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



Questions for the Profession

- Enhancing the internal capacity of organizations
 - Diversity programs within firms
 - Collecting demographic data
 - Contract compliance
- Mentoring, advisory services and networking

Questions for the Profession

- Enhancing cultural competence in the profession through CPD
- Effectively addressing complaints of discrimination
 - Resources for the profession
 - Addressing fear of filing a complaint
 - Providing support through the process

Law Society Operations

- Enhancing the equity compliance program
- Conducting an internal equity audit
- Internal collection of data
- Developing a more diverse public face/image



Consultation Process

- Consultation Paper posted online - October 30, 2014
- Written submissions – deadline March 1, 2015
- Meetings with profession and public between November 1, 2014 and end of February 2015



Consultation Process

Meetings held in areas such as,

- Toronto
- Hamilton
- Brampton
- Mississauga
- Scarborough
- Markham
- Oshawa
- Ottawa
- Windsor
- London
- Thunder Bay



Consultation Process

- Open house meetings in Toronto with webcast
- Meet with associations such as,
 - CDLPA
 - OBA
 - CABL
 - SABA
 - CASAL
 - FACL
 - Arab Canadian Lawyers Association



Consultation Process

- Also included in meetings,
 - Judiciary
 - Academia
 - Legal clinics
 - Members of the public

- Encourage participation of regional benchers





Working Group Members

Janet Leiper, Chair | Julian Falconer, Vice-Chair | Howard Goldblatt, Vice-Chair
Raj Anand | Marion Boyd | Robert Burd | Susan Hare | William McDowell
Malcolm Mercer | Susan Richer | Baljit Sikand

Report prepared by the Equity Initiatives Department –
Josée Bouchard, Director of Equity and Ekuia Quansah, Associate Counsel



The Law Society
of Upper Canada | Barreau du
Haut-Canada

TAB 6.2

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REQUEST FOR INTERVENTIONS

Motion

20. That Convocation approve the letters and public statements in the following cases:
- a. Lawyer Yara Sallam – Egypt – letters of intervention and public statement presented at [TAB 6.2.1](#).
 - b. Lawyer N. Surendran – Malaysia – letters of intervention and public statement presented at [TAB 6.2.2](#).
 - c. Lawyer Gustaf Kawer – Indonesia – letters of intervention and public statement presented at [TAB 6.2.3](#).

Rationale

21. The request for interventions falls within the mandate of the Human Rights Monitoring Group (the “Monitoring Group”) to,
- a. review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
 - b. determine if the matter is one that requires a response from the Law Society; and,
 - c. prepare a response for review and approval by Convocation.

Key Issues and Considerations

22. The Monitoring Group considered the following factors when making a decision about the case of the arrest and detention of human rights lawyer Yara Sallam:
- a. there are no concerns about the quality of sources used for this report;
 - b. the Law Society of Upper Canada recently condemned the detention and sentencing of lawyer Mahienour El-Massry in Egypt, who has now been provisionally released pending appeal;
 - c. in 2008, the Law Society condemned a prohibition of travel imposed on both Hisham Bastawissi, vice-president of the Egyptian Court of Cassation, and Ashraf El-Baroudi, judge at the Alexandria Court of Appeal;
 - d. the arrest and continued detention of Yara Sallam falls within the mandate of the Monitoring Group.
23. The Monitoring Group considered the following factors when making a decision about the case of the arrest, and sedition charges against human rights lawyer N. Surendran:
- a. there are no concerns about the quality of sources used for this report;

- b. in 2010, the Law Society of Upper Canada called on the Malaysian government to protect lawyers and judges, reacting to reports of intimidation and harassment of the Malaysian judiciary due to a High Court decision overturning a government ban on the use of the word 'Allah';
 - c. the arrest and charges against N. Surendran fall within the mandate of the Monitoring Group.
- 24. The Monitoring Group considered the following factors when making a decision about the case of the investigation and intimidation of human rights lawyer Gustaf Kaver:
 - a. there are no concerns about the quality of sources used for this report;
 - b. the Law Society of Upper Canada has not intervened in respect of human rights issues in Indonesia in the past;
 - c. the unlawful investigation and intimidation of Gustaf Kaver fall within the mandate of the Monitoring Group.

KEY BACKGROUND

EGYPT – THE ARREST AND DETENTION OF HUMAN RIGHTS LAWYER YARA SALLAM

Sources of Information

- 25. The background information for this report was taken from the following sources:
 - a. Amnesty International;¹
 - b. International Federation for Human Rights (FIDH);²
 - c. The Huffington Post;³ and,
 - d. The Washington Post.⁴

1 Amnesty International is a non-governmental organization focused on human rights with over 3 million members and supporters around the world. It seeks to uncover the truths about human rights abuses, and mobilizes individuals to take action so that human rights abuses are stopped, individuals and communities are protected, and perpetrators of human rights violations are brought to justice. It is an independent and democratically-run organization. The movement's mission and policies, and its long-term directions, are all set by Amnesty members. Amnesty International's work is always being assessed by its members and staff in the light of changing world circumstances. When major changes in policy and approach are needed, Amnesty members make the final decision.

2 FIDH is an international non-partisan, non-religious, and apolitical non-profit organization based in France, where it has public interest status. It is composed of 178 member organizations from across the globe. FIDH defends the civil, political, economic, social and cultural rights guaranteed by the United Nations' *Universal Declaration of Human Rights*. It acts in both legal and political fields encouraging and advocating for the creation and reinforcement of international instruments for the protection of human rights and for their implementation.

3 The Huffington Post is an international online news publication, founded in 2005. In 2012, The Huffington Post became the first commercially run U.S. digital media organization to be awarded a Pulitzer Prize.

4 The Washington Post, founded in 1877, is an internationally respected news source based in Washington D.C. The Washington Post has won 47 Pulitzer Prizes, including six separate Pulitzer Prizes in 2008 alone.

Background

26. The following information has been reported about Yara Sallam.
27. Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support.⁵ In 2013, Yara Sallam received the North African Shield human rights defender award for her work in Egypt with another leading NGO.⁶
28. Reports indicate that on 21 June 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the “Anti-Protest Law”).⁷ Although Yara Sallam was reportedly not participating in the protest, she was in the vicinity, and was arrested along with over twenty activists.⁸
29. Several days after Yara Sallam’s arrest, she appeared in court, during which time the judge adjourned the misdemeanor trial until September 13, 2014.⁹ Legal experts expected that Yara Sallam and the other detainees would be released on bail; the judge, however, did not grant their release.¹⁰
30. The charges consist of “taking part in an unauthorised demonstration that endangered public order and security; vandalising property; making a show of force in order to terrify and threaten the lives of passers-by; and participating in a gathering of over five people in order to disturb the public order and commit crimes.”¹¹
31. Yara Sallam was eventually moved to Qanater Prison, which has been criticized by human rights groups for violence and abuse towards female prisoners.¹² There is concern for her physical and psychological wellbeing.

5 Brian Dooley, “The Exceptional Egyptian Human Rights Defender Yara Sallam”, *The Huffington Post* (14 August 2014), online: <http://www.huffingtonpost.com/brian-dooley/the-exceptional-egyptian_b_5679301.html> [Dooley].

6 *Ibid.*

7 “Egypt: Continued arbitrary detention and judicial harassment of Ms. Yara Sallam, Ms. Sana Seif and 23 protesters”, *International Federation of Human Rights* (18 September 2014), online: <<http://www.fidh.org/en/north-africa-middle-east/egypt/eu-egypt/16050-egypt-continued-arbitrary-detention-and-judicial-harassment-of-ms-yara>> [FIDH].

8 *Ibid.*

9 Dalia Abd El-Hameed, “Egypt’s Transitional Injustice”, *The Huffington Post* (2 September 2014), online: <http://www.huffingtonpost.com/dalia-abd-elhameed/egypts-transitional-injus_b_5755444.html> [El-Hameed].

10 *Ibid.*

11 “Yara Sallam: From activist’s passion to Egypt’s prisons”, *Urgent Action Network – Amnesty International UK* (19 September 2014), online: <<http://www.amnesty.org.uk/blogs/urgent-action-network/yara-sallam-activists-passion-egypts-prisons>> [Amnesty].

12 Nancy Okail, “My own Egyptian trial was nothing compared with what these women will face tomorrow”, *The Washington Post* (12 September 2014), online: <<http://www.washingtonpost.com/posteverything/wp/2014/09/12/my-own-egyptian-trial-was-nothing-compared-to-what-these-women-will-face-tomorrow/>>.

32. On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers.¹³ Yara Sallam and the other defendants were not permitted to attend,¹⁴ despite requests for their release. Yara Sallam's case has been adjourned again to October 26, 2014 and Yara Sallam remains in custody.¹⁵
33. The Monitoring Group is concerned about reports that indicate a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam.¹⁶ There is also concern that judicial authorities have been mishandling the case by drawing out the unwarranted detention of those involved, and conducting private hearings, infringing upon their right to a fair trial.¹⁷
34. The Monitoring Group is also concerned about the *Anti-Protest Law* under which Yara Sallam and the others have been charged. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention.¹⁸ Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association have condemned the law.¹⁹
35. The *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10.²⁰
36. In addition, Articles 1, 5 and 6 of the *Declaration on human rights defenders*²¹ grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.
37. Yara Sallam's ongoing arbitrary detention also contravenes Principles 16 and 23 of the United Nations *Basic Principles on the Role of Lawyers*.²² Yara Sallam's unlawful detention prohibits her from meaningful human rights work, in violation of Principle 16:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both

13 *FIDH supra* note 7.

14 *Ibid.*

15 "Ettehadia detainees to remain in prison, trial adjourned to Oct 16", Mada Masr (11 October 2014), online: <<http://www.madamasr.com/news/ettehadia-detainees-remain-prison-trial-adjourned-oct-16>>.

16 *FIDH supra* note 7.

17 *Ibid.*

18 *El-Hameed supra* note 9.

19 *Dooley supra* note 5.

20 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), at Articles 9 and 10, online: <<http://www.un.org/en/documents/udhr/#atop>> [*UDHR*].

21 UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* : resolution / adopted by the General Assembly , 8 March 1999, A/RES/53/144, online: <<http://www2.ohchr.org/english/issues/defenders/docs/declaration/declaration.pdf>> [*Declaration on HR Defenders*].

22 United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, online: <<http://www.refworld.org/docid/3ddb9f034.html>> [*UN Basic Principles*].

within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Moreover, Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

38. FIDH and Amnesty International believe that Egyptian authorities continue to detain Yara Sallam and the other human rights defenders to prevent them from carrying out their peaceful human rights activities. These groups are calling for the immediate release of Yara Sallam and her co-defendants.²³

MALAYSIA – THE ARREST AND CHARGES AGAINST HUMAN RIGHTS LAWYER N. SURENDRAN

Sources of Information

39. The background information for this report was taken from the following sources:
- a. ABC Radio Australia;²⁴
 - b. Lawyers for Liberty (“LFL”);²⁵
 - c. Lawyers’ Rights Watch Canada (“LRWC”);²⁶

²³ *Amnesty supra* note 11 and *FIDH supra* note 7.

²⁴ ABC Radio Australia is a respected international radio and online service of the Australian Broadcasting Corporation (ABC), with a rich history as a producer of educational and informative news content. ABC Radio Australia’s news and current affairs content is provided by the ABC Asia Pacific News Centre, which is the biggest newsroom dedicated to Asia Pacific news in Australia. ABC Radio Australia features reports from ABC’s foreign correspondents around the world.

²⁵ LFL is a Malaysian human rights and law reform initiative that challenges unconstitutional, arbitrary and unreasonable decisions and acts perpetrated by its government, its agencies and other public authorities. The NGO monitors, documents, advocates and embarks on strategic, sustained and coordinated legal and non-legal challenges. LFL attempts to influence public policies, laws and human rights standards through the courts, in Malaysian Parliament and in the wider civil society community including youth and community groups and NGOs.

²⁶ LRWC was incorporated as a non-profit organization on 8 June 2000. It is a committee of Canadian lawyers that promotes human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. Their work includes: campaigning for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy; producing legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and, working in cooperation with other human rights organizations.

- d. The Malaysian Insider;²⁷ and
- e. The New York Times.²⁸

Background

40. The following information has been reported about N. Surendran. N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is a member of the three-party opposition in the Malaysian Parliament.²⁹ He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.³⁰
41. N. Surendran is currently defending Mr. Ibrahim against charges of sodomy.³¹ Even if consensual, sodomy is a crime in Malaysia and a conviction is punishable by up to twenty years in prison.³² Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and politically motivated.³³
42. Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison.³⁴
43. The March 2014 conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial on October 28, 2014.³⁵ However, that conviction prohibited Mr. Ibrahim from running in his local election.³⁶
44. As a result of these events, N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy.³⁷ N. Surendran asserted that "the

27 The Malaysian Insider began on 25 February 2008 as a news source covering issues of the day, politics, business, lifestyle, sports and entertainment. The news portal is dedicated to offering objective reporting on events and personalities in Malaysia.

28 The New York Times was established in 1851 and is considered one of the world's great newspapers. By 2011, the Times had won 106 Pulitzer Prizes, more than any other news organization.

29 "Malaysia: Wrongful Prosecution of Lawyer N. Surendran – Letter", *Lawyers' Rights Watch Canada* (8 September 2014), online: <<http://www.lrw.org/malaysia-wrongful-prosecution-of-lawyer-n-surendran-letter/>> [LRWC].

30 *Ibid.*

31 *Ibid.*

32 "Lawyer for Malaysian opposition leader Anwar Ibrahim charged with sedition", *ABC Radio Australia* (20 August 2014), online: <<http://www.radioaustralia.net.au/international/2014-08-19/lawyer-for-malaysian-opposition-leader-anwar-ibrahim-charged-with-sedition/1358628>> [ABC].

33 Joe Cochrane, "Lawyer for Malaysian Opposition Leader Is Charged With Sedition", *The New York Times* (19 August 2014), online: <http://www.nytimes.com/2014/08/20/world/asia/attorney-for-malaysian-opposition-leader-is-charged-with-sedition.html?_r=1> [NYT].

34 LRWC *supra* note 29.

35 *Ibid.* Also see V. Anbalagan, "Anwar's Sodomy II appeal starts on October 28", *The Malaysian Insider* (14 August 2014), online: <<http://www.themalaysianinsider.com/malaysia/article/anwars-sodomy-ii-appeal-starts-on-october-28>>.

36 LRWC *supra* note 29.

37 Lee Shi-lan, "Surendran probed for sedition second time this month", *The Malaysian Insider* (27 August 2014), online: <<http://www.themalaysianinsider.com/malaysia/article/surendran-facing-sedition-probe-for-second-time-this-month>>.

appellate court had given insufficient consideration to defense claims that the sodomy charges stemmed from a plot by Prime Minister Najib Razak's governing coalition to sideline Mr. Anwar [politically]".³⁸

45. In response N. Surendran's statements, authorities charged him with multiple counts of sedition under Malaysia's Sedition Act.³⁹ The Sedition Act criminalizes acts or statements that bring hatred or contempt upon, or "excite disaffection against the administration of justice in Malaysia."⁴⁰ If N. Surendran is found guilty, he faces a fine and/or imprisonment up to three years for a first offence.⁴¹
46. According to reports, Barisan Nasional, the ruling party in the Malaysian government since 1957, has a history of using the sedition law regularly against its critics.⁴²
47. Reports indicate that the allegedly seditious comments made by N. Surendran were in fact the crux of Mr. Ibrahim's legal defence at the court of appeal.⁴³
48. The Monitoring Group is concerned that the sedition charges against N. Surendran, as Mr. Ibrahim's lawyer, will compromise Mr. Ibrahim's right to a fair appeal⁴⁴ violating his Article 10 right under the *Universal Declaration of Human Rights*.⁴⁵
49. Moreover, it is likely that the charges against N. Surendran contravene Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*, reproduced above.⁴⁶
50. N. Surendran has the right to express freely his thoughts and concerns as a lawyer, and as a member of the political opposition, without fear of unlawful prosecution. Lawyers for Lawyers and Lawyers Rights Watch Canada are calling upon the Malaysian Attorney-General to urgently review, and drop the charges against N. Surendran.

INDONESIA – THE INVESTIGATION AND INTIMIDATION OF HUMAN RIGHTS LAWYER GUSTAF KAWER

Sources of Information

51. The background information for this report was taken from the following sources:
 - a. Council of Bars and Law Societies of Europe ("CCBE");⁴⁷

38 *NYT supra* note 33.

39 *Ibid.*

40 *Ibid.*

41 *LRWC supra* note 29.

42 *ABC supra* note 32.

43 "LFL: N. Surendran's Sedition Charges Jeopardises Anwar's Final Appeal" Lawyers For Liberty (12 September 2014), online: <<http://www.lawyersforliberty.org/2014/09/lfl-n-surendrans-sedition-charges-jeopardises-anwars-final-appeal/>> [LFL].

44 *Ibid.*

45 *UDHR supra* note 20 at Article 10.

46 *UN Basic Principles supra* note 22.

- b. Front Line Defenders;⁴⁸
- c. Lawyers for Lawyers ("L4L");⁴⁹ and
- d. TAPOL.⁵⁰

Background

- 52. The following information has been reported about Gustaf Kawer.
- 53. Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He began working for the Papuan Legal Aid Foundation in 2000, and has worked on many cases dealing with workers' rights, land ownership and socio-political rights.⁵¹
- 54. In 2013, he defended five accused individuals in a high-profile treason trial involving the issue of freedom to express political opinion, during which he was threatened with prosecution.⁵²
- 55. It should be noted that Gustaf Kawer and his colleague were third on the Jury's shortlist for the Lawyers for Lawyers Award in 2013.⁵³
- 56. Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for June 12,

47 The CCBE, founded in 1960, represents the bars and law societies of 32 European member States and 13 additional associate and observer countries. It acts as the liaison between the European Union and Europe's national bars, and law societies, representing more than 1 million European lawyers. The CCBE has been at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based.

48 Front Line Defenders is an international charitable organization, founded in Dublin in 2001, with the aim of protecting human rights defenders. The group promotes respect for the UN *Declaration on human rights defenders* and maintains a special consultative status with the Economic and Social Council of the United Nations. Front Line Defenders also maintains partnership status with the Council of Europe and observer status with the African Commission on Human and Peoples' Rights.

49 L4L is an independent and non-political Dutch foundation seeking to promote the proper functioning of the rule of law. L4L provides financial, moral and/or legal support to oppressed lawyers and lawyers' organizations. The organization maintains contact and co-operates with the United Nations, the European Union, governments, embassies, universities, human rights organizations, as well as individual lawyers worldwide. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013.

50 TAPOL was established in 1973 in the UK by Carmel Budiardjo, a former political prisoner in Indonesia. Ms Budiardjo founded TAPOL (which means 'political prisoner' in Indonesian) to campaign for release of the tens of thousands of political prisoners that remained in Indonesia following the massacres of 1965. TAPOL continues to advocate for the victims of one of the twentieth century's worst massacres, but its campaign has broadened. TAPOL also promotes democracy in Indonesia by monitoring major national elections and supporting local campaigns for the right to free expression and the release of political prisoners. The group also supports local peace-building initiatives through diplomacy at the international level.

51 "Indonesia Human rights lawyer Gustaf Kawer at risk of arrest", *Lawyers for Lawyers* (18 September 2014), online: <<http://www.advocatenvooradvocaten.nl/9565/indonesia-human-rights-lawyer-gustaf-kawer-at-risk-of-arrest/>> [L4L].

52 "Urgent Appeal: Stop criminal proceedings against Papuan human rights lawyer", *TAPOL* (4 September 2014), online: <<http://www.tapol.org/briefings/urgent-appeal-stop-criminal-proceedings-against-papuan-human-rights-lawyer>> [TAPOL].

53 *Ibid.*

2014.⁵⁴ The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government.⁵⁵ The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did.⁵⁶ The court reportedly proceeded in the absence of Gustaf Kawer and his client.⁵⁷

57. On August 22, 2014 Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the *Indonesian Penal Code*; the summons contained no information about the suspect.⁵⁸
58. Gustaf Kawer learned several days later that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as second summons, sent to the Indonesian Bar Association (PERADI), dated August 25, 2014.⁵⁹ The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on September 1, 2014.⁶⁰
59. On August 27, 2014, the Chairperson of PERADI communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case.⁶¹ A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.⁶²
60. On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.⁶³ The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time.⁶⁴
61. Gustaf Kawer reportedly left his home for an undetermined period of time due to the fear of possible arrest.⁶⁵ If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.⁶⁶

54 "Re: Concerns regarding an investigation open against Mr. Gustaf Kawer, a human rights lawyer", *President of the CCBE* (18 September 2014), online:

<http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/HR_Letter_Indonesia_1_1411113956.pdf> [CCBE].

55 *Ibid.*

56 CCBE *supra* note 54.

57 *Ibid.*

58 TAPOL *supra* note 52.

59 *Ibid.*

60 "Update: Indonesia – Papuan human rights lawyer Mr. Gustaf Kawer at risk of arrest", *Front Line Defenders* (19 September 2014), online: <<http://www.frontlinedefenders.org/node/27281>> [FLD].

61 CCBE *supra* note 54.

62 *Ibid.*

63 *Ibid.*

64 FLD *supra* note 60.

65 *Ibid.*

66 *Ibid.*

62. The Monitoring Group is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of advocates, and that the charges under which Gustaf Kaver is being investigated are unsubstantiated.
63. TAPOL indicates that "Indonesian Law on Advocates No. 18 / 2003 establishes that a legal advocate shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court."⁶⁷ TAPOL adds that "[t]his provision was recently reaffirmed by the Constitutional Court in its judgement No. 26/PUU-XI/2013."⁶⁸
64. TAPOL also highlights Article 12(2) of the UN *Declaration on human rights defenders* which calls for states to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration".⁶⁹
65. The CCBE notes that the conduct of Indonesian authorities violates Principles 16 (reproduced above), 20 and 28 of the UN *Basic Principles on the Role of Lawyers*.⁷⁰
66. Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
67. TAPOL, Front Line Defenders, Lawyers for Lawyers, as well as the CCBE are calling on Indonesian authorities to cease immediately the police investigations into Gustaf Kaver's conduct, and to take the necessary measures to ensure his physical and psychological well-being.

⁶⁷ TAPOL *supra* note 52.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* See also *Declaration on HR Defenders supra* note 21 at Article 12(2).

⁷⁰ UN *Basic Principles supra* note 22.

FOR INFORMATION

UPDATE ON COMMUNICATIONS FROM INTERESTED ORGANIZATIONS REGARDING PAST CASES

Update – Case of Pu Zhiqiang, China

68. The Monitoring Group received a letter from Andrew Caplen, President of The Law Society of England and Wales, dated September 24, 2014. Mr. Caplen's letter confirmed his receipt of the Law Society's letter of September 11, regarding Pu Zhiqiang's detention in China. Mr. Caplen indicates that their organization was unaware of new information or developments in respect of the Pu Zhiqiang case and welcomed the communication of relevant information received by the Law Society.
69. Mr. Caplen also expressed enthusiasm for future exchange of information with the Law Society of Upper Canada concerning lawyers at risk.
70. The Law Society also received a letter dated October 6, 2014 from Front Line Defenders indicating that they intervened in the cases of Chinese human rights lawyers Mr. Pu Zhiqiang and Tang Jingling. Front Line Defenders issued an Urgent Appeal related to the case of Pu Zhiqiang and other human rights defenders on May 6, 2014 following their detention in connection with their participation in a commemoration of the crackdown on the Tiananmen Square protests in 1989. On June 16, 2014 Front Line Defenders published an update following the arrest and formal pressing of charges against Pu Zhiqiang. Both documents can be found online at <http://www.frontlinedefenders.org/node/25850> (Urgent Appeal) and <http://www.frontlinedefenders.org/node/26215> (Update).
71. Front Line Defenders also intervened in the case of Tang Jingling, by issuing an Urgent Appeal on May 16, 2014 following his detention and an update on June 23, 2014 after he was formally arrested on charges of "inciting subversion of state power". The interventions are available online at: <http://www.frontlinedefenders.org/node/25961> (Urgent Appeal) and <http://www.frontlinedefenders.org/node/26331> (Update).
72. Front Line Defenders commends the actions that the Law Society has taken, or may take, in the cases of lawyers in China.

Update – Case of Mahienour El-Massry, Egypt

73. Reports indicate that on September 21, 2014, the Egyptian Court of Appeal in Alexandria accepted prominent human rights lawyer Mahienour El-Massry's appeal of her prison sentence, and immediately released her from detention.⁷¹

⁷¹ "Egypt: Provisional release of Ms. Mahienour El-Massry", *fidh* (23 September 2014), online: <http://www.fidh.org/en/north-africa-middle-east/egypt/16079-egypt-provisional-release-of-ms-mahienour-el-massry>; "Egypt: Lawyer Mahienour El-Masry released", *Lawyers for Lawyers* (23 September 2014), online: <http://www.advocatenvooradvocaten.nl/9587/egypt-human-rights-lawyer-mahienour-el-masry-released/>.

74. The Law Society had intervened in this matter in June 2014. Mahienour El-Massry and seven others were originally charged after organizing a protest on December 2, 2013. On May 20, 2014, the Misdemeanour Court in Alexandria rejected the objection filed by Ms. El-Massry, regarding the sentence issued against her *in absentia* on January 2, 2014. The court convicted her to two years' imprisonment and a fine of EGP 50,000. She was sentenced for "protest without a permit" and "assaulting security forces". Afterwards, Mahienour El-Massry was immediately detained.
75. The Law Society had released a public statement⁷², and sent a letter to the President of the Arab Republic of Egypt Abdel Fattah El-Sisi⁷³, expressing its grave concern over the detention and sentencing of Ms. El-Massry. The statement and letter urged the Egyptian government to:
 - a. guarantee all the procedural rights that should be accorded to Mahienour El-Massry and other human rights defenders in Egypt;
 - b. guarantee in all circumstances the physical and psychological integrity of Mahienour El-Massry;
 - c. put an end to all acts of harassment against Mahienour El-Massry and other human rights defenders in Egypt;
 - d. ensure that all lawyers can carry out their peaceful and legitimate activities without fear of physical violence or other human rights violations; and
 - e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

72 Law Society of Upper Canada, *Public Statements: Egypt (June 2014)*, online: Law Society of Upper Canada <http://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/News_Archive/2014/PublicStatement-El-Massry-EGYPTJune30.pdf>.

73 Law Society of Upper Canada, *Egypt: El-Massry (June 2014)*, online: <http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Human_Rights_Monitoring_Group/El-Massy_Egypt_June.pdf>.

TAB 6.2.1

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

YARA SALLAM

His Excellency Abdel Fattah el-Sisi
President of the Arab Republic of Egypt
Abedine Palace
Cairo, Egypt

Your Excellency:

Re: arrest and continued detention of human rights lawyer Yara Sallam

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the case of Yara Sallam. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support. In 2013, Yara Sallam received the North African Shield Human Rights Defender Award for her work in Egypt.

Reports indicate that on June 21, 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the "Anti-Protest Law"). It is reported that, although Yara Sallam was not participating in the protest, she was in the vicinity, and was arrested along with over 20 activists.

Several days after Yara Sallam's arrest, she appeared in court. Reports indicate that, at that time, the judge adjourned the misdemeanor trial until September 13, 2014. Legal experts expected that Yara Sallam and the other detainees would be released on bail. The judge, however, did not grant their release, and Yara Sallam was moved to Qanater Prison. The Law Society is concerned for her physical and psychological well-being, since human rights groups have brought attention to problems of violence and abuse towards female prisoners in that detention facility.

On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers. Yara Sallam and the other defendants were not permitted to attend the hearing, despite requests for their release. The Egyptian misdemeanor court has again adjourned the case to October 26, 2014. Yara Sallam remains in custody.

The Law Society of Upper Canada is alarmed about reports indicating a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam. There is also concern that judicial authorities have been mishandling the case by drawing out the

unwarranted detention of Yara Sallam, and conducting private hearings, infringing upon her right to a fair trial.

The Law Society also expresses deep concerns over the *Anti-Protest Law*. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention. Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, have condemned the law.

The Law Society of Upper Canada urges your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

Moreover, the *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10. The Law Society would also like to highlight Articles 1, 5 and 6 of the *Declaration on human rights defenders*. These provisions grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.

The Law Society urges the government of the Arab Republic of Egypt to:

- a. release Yara Sallam immediately, as she is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Yara Sallam;
- c. provide Yara Sallam with regular access to her lawyer and family;
- d. guarantee all the procedural rights that should be accorded to Yara Sallam;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Yara Sallam and in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;

- f. guarantee that adequate reparation be provided to Yara Sallam if she is found to be a victim of abuses;
- g. put an end to all acts of harassment against Yara Sallam;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

Mr. Ibrahim Mehleb
Prime Minister of the Arab Republic of Egypt
Magles El Shaab Street, Kasr El Aini Street
Cairo, Egypt

Mr. Mahmoud Saber
Minister of Justice of the Arab Republic of Egypt
Ministry of Justice
Magles El Saeb Street, Wezaret Al Adl
Cairo, Egypt

Wael Aboul-Magd
Ambassador of the Arab Republic of Egypt
454 Laurier Avenue East
Ottawa, ON, K1N 6R3

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers` Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaut, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Proposed Public Statement

The Law Society of Upper Canada expresses grave concerns about the arrest and ongoing detention of Yara Sallam in Egypt

The Law Society of Upper Canada is gravely concerned about the arrest and ongoing detention of lawyer Yara Sallam in Egypt.

Yara Sallam is a prominent human rights lawyer in Egypt and the head of the Egyptian Initiative for Personal Rights, a human rights organization that strengthens and protects basic rights and freedoms in Egypt through research, advocacy and litigation support. In 2013, Yara Sallam received the North African Shield Human Rights Defender Award for her work in Egypt.

Reports indicate that on June 21, 2014, police in Cairo dispersed, by means of tear gas, a peaceful protest demanding the repeal of Law 107 of 2013, which concerns demonstrations and public rallies (the "*Anti-Protest Law*"). Although Yara Sallam was reportedly not participating in the protest, she was in the vicinity, and was arrested along with over 20 activists.

Several days after Yara Sallam's arrest, she appeared in court, during which time the judge reportedly adjourned the misdemeanor trial until September 13, 2014. Legal experts expected that Yara Sallam and the other detainees would be released on bail. The judge, however, did not grant their release, and Yara Sallam was moved to Qanater Prison. The Law Society is concerned for her physical and psychological wellbeing, since human rights groups have brought attention to problems of violence and abuse towards female prisoners in that detention facility.

On September 13, 2014, the trial was postponed to October 11, 2014 at a private hearing held in deliberation chambers. Yara Sallam and the other defendants were not permitted to attend the hearing, despite requests for their release. The Egyptian misdemeanor court adjourned the case to October 26, 2014. Yara Sallam remains in custody.

The Law Society of Upper Canada is alarmed about reports indicating a lack of evidence and inconsistencies in police reports relating to the charges filed against Yara Sallam. There is also concern that judicial authorities have been mishandling the case by drawing out the unwarranted detention of Yara Sallam, and conducting private hearings, infringing upon her right to a fair trial.

The Law Society also expresses deep concerns over the *Anti-Protest Law*. Since the law was given effect in November 2013, thousands of people have suffered from arrest and detention. Both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association have condemned the law.

The Law Society of Upper Canada urges your Excellency to consider Articles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*.

Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

Moreover, the *Universal Declaration of Human Rights* prohibits arbitrary arrests and detentions under Article 9, and ensures the right of everyone to a fair and public hearing by an independent and impartial tribunal under Article 10. The Law Society would also like to highlight Articles 1, 5 and 6 of the *Declaration on human rights defenders*. These provisions grant individuals and groups the right of peaceful assembly to promote the realization of human rights and fundamental freedoms.

The Law Society urges the government of the Arab Republic of Egypt to:

- a. release Yara Sallam immediately, as she is a prisoner of conscience;
- b. guarantee in all circumstances the physical and psychological integrity of Yara Sallam;
- c. provide Yara Sallam with regular access to her lawyer and family;
- d. guarantee all the procedural rights that should be accorded to Yara Sallam;
- e. conduct a fair, impartial and independent investigation into any allegations of misconduct in the arrest and trial of Yara Sallam in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- f. guarantee that adequate reparation would be provided to Yara Sallam if she is found to be a victim of abuses;
- g. put an end to all acts of harassment against Yara Sallam;
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

Proposed Letter to Lawyers' Associations

Dear [Name],

Re: arrest and continued detention of human rights lawyer Yara Sallam

I write to inform you that on the advice of the Human Rights Monitoring Group*, The Law Society of Upper Canada sent the attached letter to His Excellency Abdel Fattah el-Sisi, President of the Arab Republic of Egypt, expressing our deep concerns over reports of the arrest and continued detention of human rights lawyer Yara Sallam.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to jbouchar@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

TAB 6.2.2

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

N. SURENDRAN

The Honourable Dato' Sri Mohammad Najib Tun Razak, Prime Minister
Prime Minister's Office Malaysia
Main Block, Perdana Putra Building
Federal Government Administrative Centre
62502 Putrajaya Selangor
Malaysia

Your Excellency,

Re: Arrest and charges against human rights lawyer N. Surendran

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the case of N. Surendran. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is a member of the three-party opposition in the Malaysian Parliament. He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.

N. Surendran is currently defending Mr. Ibrahim against charges of sodomy. Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and were politically motivated.

Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison. This conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial in October. The conviction prohibited Mr. Ibrahim from running in his local election.

We understand that N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy. N. Surendran asserted that the appellate court had given insufficient consideration to defense claims that the charges stemmed from a political plot to sideline Mr. Ibrahim politically.

The reports indicated that the local authorities reacted to N. Surendran's statements by charging him with multiple counts of sedition under Malaysia's *Sedition Act*. According to credible sources, the Malaysian government has used the sedition law regularly against its critics. We understand that if N. Surendran is found guilty, he may face a fine and/or imprisonment for up to three years.

The Law Society expresses concern that the sedition charges against N. Surendran are unjustified because the charges stemmed from arguments presented in N. Surendran's legal defence of Mr. Ibrahim. Moreover, the Law Society anticipates that the prosecution of N. Surendran, as Mr. Ibrahim's lawyer, may compromise Mr. Ibrahim's right to a fair appeal, violating his Article 10 right under the *Universal Declaration of Human Rights*.

The Law Society asks your Excellency to consider Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

N. Surendran has the right to express freely his thoughts and concerns acting as a lawyer, and as a member of the political opposition in Malaysia, without fear of unlawful prosecution.

The Law Society urges the government of Malaysia to:

- a. drop the charges of sedition against N. Surendran immediately;
- b. guarantee in all circumstances the physical and psychological integrity of N. Surendran;
- c. guarantee all the procedural rights that should be accorded to N. Surendran, and other human rights defenders in Malaysia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct or ill-treatment in the arrest and charging of N. Surendran, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to N. Surendran if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against N. Surendran, as well as other human rights defenders in Malaysia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

The Honourable Mr. Ahmad Zahid Hamidi,
Minister of Home Affairs,
Blok D1 & D2, Kompleks D,
Pusat Pentadbiran Kerajaan Persekutuan,
62546 Putrajaya, Malaysia

The Honourable Mr. Dato' Sri Anifah Hj. Aman
Minister of Foreign Affairs of Malaysia
Wisma Putra, No 1, Jalan Wisma Putra
Precinct 2, 62602, Putrajaya, Malaysia

High Commissioner Dato' Hayati Ismail
High Commissioner of Malaysia to Canada
60 Boteler Street, Ottawa
Ontario, K1N 8Y7

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers' Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Tan Sri Hasmy Agam, Chairman of the Human Rights Commission of Malaysia

Christopher Leong, President, Malaysian Bar

Proposed Public Statement

The Law Society of Upper Canada expresses grave concern about the arrest and charges against N. Surendran in Malaysia

The Law Society of Upper Canada is gravely concerned about the arrest and charges against lawyer N. Surendran in Malaysia.

N. Surendran is a Malaysian lawyer and a representative for the Padang Serai riding in the People's Justice Party, which is member of the three-party opposition in the Malaysian Parliament. He is also the lawyer for the official leader of the opposition, Anwar Ibrahim.

Mr. Surendran is currently defending Mr. Ibrahim against charges of sodomy. Mr. Ibrahim was imprisoned from 1999 to 2004 on sodomy and corruption charges, which allegations he maintains were untrue and were politically motivated.

Although Mr. Ibrahim was originally acquitted of the current charges, the ruling was overturned by an appellate court in March 2014, resulting in his conviction and a sentence of five years in prison. This conviction was subsequently appealed and Mr. Ibrahim is out on bail awaiting another trial in October. The conviction prohibited Mr. Ibrahim from running in his local election.

We understand that N. Surendran made multiple statements relating to the case, alleging that the overturning of Mr. Ibrahim's acquittal and his consequent conviction by the appellate court was part of a political conspiracy. N. Surendran asserted that the appellate court had given insufficient consideration to defense claims that the charges stemmed from a political plot to sideline Mr. Ibrahim politically.

The reports indicated that the local authorities reacted to N. Surendran's statements by charging him with multiple counts of sedition under Malaysia's *Sedition Act*. According to credible sources, the Malaysian government has used the sedition law regularly against its critics. We understand that if N. Surendran is found guilty, he may face a fine and/or imprisonment for up to three years.

The Law Society expresses concern that the sedition charges against N. Surendran are unjustified because the charges stemmed from arguments presented in N. Surendran's legal defence of Mr. Ibrahim. Moreover, the Law Society anticipates that the prosecution of N. Surendran, as Mr. Ibrahim's lawyer, may compromise Mr. Ibrahim's right to a fair appeal, violating his Article 10 right under the *Universal Declaration of Human Rights*.

The Law Society asks your Excellency to consider Principles 16 and 23 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are

able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 23 states:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the rights to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organisation.

N. Surendran has the right to express freely his thoughts and concerns acting as a lawyer, and as a member of the political opposition in Malaysia, without fear of unlawful prosecution.

The Law Society urges the government of Malaysia to:

- a. drop the charges of sedition against N. Surendran immediately;
- b. guarantee in all circumstances the physical and psychological integrity of N. Surendran;
- c. guarantee all the procedural rights that should be accorded to N. Surendran, and other human rights defenders in Malaysia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct or ill-treatment in the arrest and charging of N. Surendran, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to N. Surendran if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against N. Surendran, as well as other human rights defenders in Malaysia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

Proposed Letter to Associations

Dear [Name],

Re: The arrest and charges against human rights lawyer N. Surendran

I write to inform you that on the advice of the Human Rights Monitoring Group*, The Law Society of Upper Canada sent the attached letter to The Honourable Dato' Sri Mohammad Najib Tun Razak, Prime Minister of Malaysia, expressing our deep concern about N. Surendran's arrest, and the charges laid against him.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to jbouchar@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders
- Vincent Forest, Head of European Union Office, Front Line Defenders

- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Sarah Smith, International Development and Human Rights, The Law Society of England and Wales
- Tan Sri Hasmy Agam, Chairman of the Human Rights Commission of Malaysia
- Christopher Leong, President, Malaysian Bar

TAB 6.3.3

PROPOSED LETTERS OF INTERVENTION AND PUBLIC STATEMENT

GUSTAF KAWER

Dr. H. Susilo Bambang Yudhoyono
President of the Republic of Indonesia
Jl. Alternatif Cibubur Puri Cikeas Indah No. 2
Desa Nagrag Kec. Gunung Putri
Bogor – 16967, Indonesia

Dear President Yudhoyono,

Re: investigation and intimidation of human rights lawyer Gustaf Kawer

I write on behalf of The Law Society of Upper Canada* to voice our grave concern over the case of Gustaf Kawer. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He has worked on many cases dealing with workers' rights, land ownership, and socio-political rights. For example, in 2013, he defended five persons facing treason charges in a case involving the issue of freedom to express political opinion, during which he was threatened with prosecution.

It should be noted that Gustaf Kawer and his colleague were third on the Jury's shortlist for the international Lawyers for Lawyers Award in 2013.

Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for 12 June 2014. The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government. The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did. The court reportedly proceeded in the absence of Gustaf Kawer and his client.

It is reported that on August 22, 2014, Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the Indonesian *Penal Code*. The summons contained no information about the suspect. Several days later, Gustaf Kawer learned that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as a second summons, dated 25 August 2014, sent to the Indonesian Bar Association (PERADI). The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on 1 Sept 2014.

On August 27, 2014, the chairperson of PERADI reportedly communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case. A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.

On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.

The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time. Reports indicate that he stayed away from home for an undetermined period of time due to the fear of possible arrest. If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.

The Law Society is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of lawyers, and that the charges under which Gustaf Kawer is being investigated are unsubstantiated.

The Indonesian Law on Advocates No. 18/2003 establishes that a lawyer shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. The Law Society understands that this provision was recently reaffirmed by the Constitutional Court of Indonesia in its Judgement No. 26/PUU-XI/2013.

In addition, Article 12(2) of the UN *Declaration on human rights defenders* calls upon states to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”

The Law Society asks that you also consider Principles 16, 20 and 28 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

The Law Society urges the government of Indonesia to:

- a. cease the unlawful investigation of Gustaf Kawer immediately;
- b. guarantee in all circumstances the physical and psychological integrity of Gustaf Kawer;
- c. guarantee all the procedural rights that should be accorded to Gustaf Kawer, and other human rights defenders in Indonesia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the investigation of Gustaf Kawer, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Gustaf Kawer if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against Gustaf Kawer, as well as other human rights defenders in Indonesia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours very truly,

Janet E. Minor

Treasurer

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

cc:

Mr. Amir Syamsuddin
Minister of Law and Human Rights of the Republic of Indonesia
Jl. H.R. Rasuna Said Kav. 6-7 Kuningan
Jakarta 12940, Indonesia

Dr. Marty Natalegawa
Minister of Foreign Affairs of the Republic of Indonesia
Jl. Taman Pejambon No. 6
Jakarta Pusat 10110

Dr. Dienne Hardianti Moehario
Ambassador Extraordinary and Plenipotentiary of the Republic of Indonesia
55 Parkdale Avenue, Ottawa
Ontario, K1Y 1E5
Canada

Alex Neve, Secretary General, Amnesty International Canada

Mary Lawlor, Executive Director, Front Line Defenders

Vincent Forest, Head of European Union Office, Front Line Defenders

Kenneth Roth, Executive Director, Human Rights Watch

Adrie van de Streek, Executive Director, Lawyers for Lawyers

David F. Sutherland, Chair, Lawyers Rights Watch Canada

Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders

Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights

Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights

Nicholas Fluck, President, The Law Society of England and Wales

Sarah Smith, International Development and Human Rights, The Law Society of England and Wales

Mr. Hafid Abbas, Commissioner, Indonesian National Commission on Human Rights

Dr. Otto Hasibuan, SH., MM, Chair of the Indonesian Bar Association (PERADI)

Budi Setyanto, S.H., Chair of the Jayapura branch of the Indonesian Bar Association (PERADI)

Proposed Public Statement

The Law Society of Upper Canada expresses grave concern about the investigation and intimidation of Gustaf Kawer in Indonesia

The Law Society of Upper Canada is gravely concerned about the investigation and intimidation of lawyer Gustaf Kawer in Indonesia.

Gustaf Kawer is a prominent human rights lawyer in the Indonesian province of Papua. He has worked on many cases dealing with workers' rights, land ownership, and socio-political rights. For example, in 2013, he defended five persons facing treason charges in a case involving the issue of freedom to express political opinion, during which he was threatened with prosecution.

It should be noted that Gustaf Kawer and his colleague were third on the Jury's shortlist for the international Lawyers for Lawyers Award in 2013.

Reports indicate that Gustaf Kawer was representing a client in a land dispute against the government and had applied to the court to postpone a hearing scheduled for 12 June 2014. The court denied Gustaf Kawer's request for a postponement, following which he protested on the basis of partiality, since the judge had previously granted three postponements requested by the government. The court asked Gustaf Kawer to leave the courtroom if he disagreed, which he did. The court reportedly proceeded in the absence of Gustaf Kawer and his client.

It is reported that on August 22, 2014, Gustaf Kawer received a witness summons relating to a case of coercion and rebelliousness under Articles 211 and 212 of the Indonesian *Penal Code*. The summons contained no information about the suspect. Several days later, Gustaf Kawer learned that he was the suspect of the investigation. This was confirmed through communications with the officer in charge, as well as a second summons, dated August 25, 2014, sent to the Indonesian Bar Association (PERADI). The summons demanded Gustaf Kawer's presence for an interrogation at Papua Regional Police headquarters on September 1, 2014.

On August 27, 2014, the Chairperson of PERADI reportedly communicated to authorities that, in accordance with protocol, Gustaf Kawer would not appear until PERADI carried out its own investigation of the case. A summons related to the work of a lawyer must be directed to PERADI. The results of PERADI's investigation would be communicated to the authorities.

On September 17, 2014, a police person attempted to serve a third summons upon Gustaf Kawer, even though PERADI had not contacted authorities with results of their investigation into his case.

The officer who attempted to serve the third summons tried to do so upon Gustaf Kawer's wife. Gustaf Kawer was not present at his address at that time. Reports indicate that he stayed away from home for an undetermined period of time due to the fear of possible arrest. If Gustaf Kawer is prosecuted and found guilty, he could face up to four years in prison.

The Law Society is concerned that Papua Regional Police are failing to adhere to established Indonesian law in respect to investigating the conduct of lawyers, and that the charges under which Gustaf Kawer is being investigated are unsubstantiated.

The Indonesian Law on Advocates No. 18 / 2003 establishes that a lawyer shall not be subject to criminal or civil action in relation to the performance in good faith of his or her professional duties in defending a client in court. The Law Society understands that this provision was recently reaffirmed by the Constitutional Court of Indonesia in its Judgement No. 26/PUU-XI/2013.

In addition, Article 12(2) of the UN *Declaration on human rights defenders* calls upon states to "take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

The Law Society asks that you also consider Principles 16, 20 and 28 of the United Nations' *Basic Principles on the Role of Lawyers*. Principle 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 20 states:

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Principle 28 states:

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

The Law Society urges the government of Indonesia to:

- a. cease the unlawful investigation of Gustaf Kawer immediately;

- b. guarantee in all circumstances the physical and psychological integrity of Gustaf Kawer;
- c. guarantee all the procedural rights that should be accorded to Gustaf Kawer, and other human rights defenders in Indonesia;
- d. conduct a fair, impartial and independent investigation into any allegations of misconduct in the investigation of Gustaf Kawer, in order to identify all those responsible, bring them to trial and apply to them civil, penal and/or administrative sanctions provided by law;
- e. guarantee that adequate reparation would be provided to Gustaf Kawer if he is found to be a victim of abuses;
- f. put an end to all acts of harassment against Gustaf Kawer, as well as other human rights defenders in Indonesia;
- g. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

**The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

Proposed Letter to Associations

Dear [Name],

Re: Investigation and intimidation of human rights lawyer Gustaf Kawer

I write to inform you that on the advice of the Human Rights Monitoring Group*, the Law Society of Upper Canada sent the attached letter to Dr. H. Susilo Bambang Yudhoyono, President of the Republic of Indonesia, expressing our deep concerns about the unlawful investigation and intimidation of Gustaf Kawer.

We would be very interested in hearing from you concerning the situation noted in the attached letter, whether your organization has intervened in this matter and whether we have any of the facts in the case wrong. Any further information you may have about the case would also be welcome.

Please forward any further correspondence to the attention of Josée Bouchard, Director, Equity, The Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, Canada, M5H 2N6 or to jbouchar@lsuc.on.ca.

I thank you for your time and consideration.

Sincerely,

Paul Schabas
Chair, Human Rights Monitoring Group

* The Law Society of Upper Canada is the governing body for more than 47,000 lawyers and 6,000 paralegals in the province of Ontario, Canada. The Law Society is committed to preserving the rule of law and to the maintenance of an independent Bar. Due to this commitment, the Law Society established a Human Rights Monitoring Group ("Monitoring Group"). The Monitoring Group has a mandate to review information of human rights violations targeting, as a result of the discharge of their legitimate professional duties, members of the legal profession and the judiciary, in Canada and abroad. The Monitoring Group reviews such information and determines if a response is required of the Law Society.

Letter to be sent to:

- Alex Neve, Secretary General, Amnesty International Canada
- Mary Lawlor, Executive Director, Front Line Defenders

- Vincent Forest, Head of European Union Office, Front Line Defenders
- Kenneth Roth, Executive Director, Human Rights Watch
- Adrie van de Streek, Executive Director, Lawyers for Lawyers
- David F. Sutherland, Chair, Lawyers' Rights Watch Canada
- Yves Berthelot, President, Observatory for the Protection of Human Rights Defenders
- Michel Forst, Special Rapporteur on the situation of human rights defenders, Office of the United Nations High Commissioner for Human Rights
- Gabriela Knaul, Special Rapporteur of the Human Council on the independence of judges and lawyers, Office of the United Nations High Commissioner for Human Rights
- Nicholas Fluck, President, The Law Society of England and Wales
- Mr. Hafid Abbas, Commissioner, Indonesian National Commission on Human Rights
- Dr. Otto Hasibuan, SH., MM, Chair of the Indonesian Bar Association (PERADI)
- Budi Setyanto, S.H., Chair of the Jayapura branch of the Indonesian Bar Association (PERADI)

TAB 6.3

**PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES CALENDAR
2014 - 2015**

**CANADIAN ASSOCIATION OF BLACK LAWYERS (CABL) 4TH ANNUAL FALL
CONFERENCE**

Date: October 31, 2014

Location: Donald Lamont Learning Centre

Time: 8:00 a.m.

This is an event organized by CABL. The Law Society is a partner.

LOUIS RIEL DAY - WHAT'S LEFT IN SECTION 91(24)?

Date: November 14

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

Time: 4:00 to 6:00 p.m. – Panel discussion
6:00 to 7:30 p.m. – Reception

In partnership with the Métis Nation of Ontario

With the appeal of *Daniels v. Canada*, additional insight on section 91(24)'s purpose and relevance may soon be before the Supreme Court of Canada. Join us for a panel discussion considering the implications of recent high court decisions on Métis and Aboriginal peoples.

Opening comments from Métis Nation of Ontario President Gary Lipinski and a colleague.

Panelists:

- Jean Teillet, Pape Salter Teillet LLP
- Jason Madden, Partner, Pape Salter Teillet LLP
- Andrew Lokan, Partner, Paliare Roland LLP

**RULE OF LAW EVENT – CELEBRATING 40 YEARS OF HUMAN RIGHTS UNDER THE
RULES OF PROFESSIONAL CONDUCT**

Date: December 10, 2014

Location: Convocation Hall

Time: 4:30 to 7:00 p.m.

Details: Roundtable Discussion followed by networking reception

- Moderator: Cynthia Petersen, Discrimination and Harassment Counsel and Partner at Sack Goldblatt Mitchell LLP
- The Honourable Justice Jurisanz, Court of Appeal for Ontario
- Treasurer Janet Minor E. Minor, Law Society of Upper Canada
- Professor Harry Arthurs, Osgoode Hall Law School, former Dean of Osgoode Hall Law School and President of York University
- Ron Manes, Torkin Manes

BLACK HISTORY MONTH

Date: February 17, 2015
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.
Time: 4:00 p.m. – 6:00 p.m.

HUMAN RIGHTS AWARD PRESENTATION & RECEPTION

Date: February 12, 2015
Location: Donald Lamont Learning Centre and Upper and Barristers' Lounge
Time: 4:30 p.m.

INTERNATIONAL WOMEN'S DAY

Date : March 5, 2015
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.
Time: 4:00 p.m. – 7:00 p.m.

LA JOURNÉE INTERNATIONALE DE LA FRANCOPHONIE

Date : March 19, 2015
Location: Law Society of Upper Canada
Time: 6:00 p.m. – 8:00 p.m.

HOLOCAUST REMEMBRANCE DAY

Date: April 14, 15 & 16, 2015 (TBC)
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.
Time: 4:00 p.m. – 8:00 p.m.

DIVERSE CAREERS FOR WOMEN IN LAW

Date: May 7, 2015
Location: Convocation Hall
Time: TBC

ASIAN AND SOUTH ASIAN HERITAGE MONTH

Date: May 12, 14 or 19, 2015 – TBC
Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.
Time: 4:00 p.m. – 8:00 p.m.

ACCESS AWARENESS FORUM

Date: June 4, 2015
Location: Donald Lamont Learning Centre
Time: 4:00 p.m. – 8:00 p.m.

NATIONAL ABORIGINAL HISTORY MONTH

Date: June 19, 2015

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

Time: 4:00 p.m. – 8:00 p.m.

PRIDE WEEK

Date: June 23, 2015

Location: Donald Lamont Learning Centre for panel discussion followed by Convocation Hall for reception.

Time: 4:00 p.m. – 6:00 p.m.



TAB 7

Report to Convocation October 30, 2014

Access to Justice Committee and Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones

Equity and Aboriginal Issues Committee

Julian Falconer, Co-Chair
Janet Leiper, Co-Chair
Susan Hare, Vice-Chair and Special Liaison
with the Access to Justice Committee
Beth Symes, Vice-Chair
Constance Backhouse
Peter Festeryga
Avvy Go
Howard Goldblatt
Jeffrey Lem
Marian Lippa
Dow Marmur
Barbara Murchie
Judith Potter
Susan Richer

Access to Justice Committee

Cathy Corsetti, Co-Chair
Paul Schabas, Co-Chair
Susan Hare, Vice-Chair and
Special Liaison with the Equity and
Aboriginal Issues Committee
Beth Symes, Vice-Chair
Raj Anand
Marion Boyd
Mary Louise Dickson
Robert Evans
Avvy Go
George Hunter
Brian Lawrie
Michael Lerner
Virginia MacLean
Malcolm Mercer
Susan Richer
Baljit Sikand
Bradley Wright

Purposes of Report: Information

**Prepared by the Equity Initiatives Department
(Marisha Roman – 416-947-3989)**

TABLE OF CONTENTS

For Information

Setting the Platform: A Vision for the Renewal of the Aboriginal Initiatives
Strategy – Powerpoint Presentation (Susan Hare) [TAB 7.1](#)

COMMITTEE PROCESS

1. The Access to Justice Committee and the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committees") met jointly on October 14, 2014. Committee members Cathy Corsetti, co-Chair, Julian Falconer, co-Chair (by telephone), Janet Leiper, co-Chair, Paul Schabas, co-Chair, Susan Hare, Vice-Chair and Special Liaison with the Committees, Beth Symes, Vice-Chair, Raj Anand (telephone), Marion Boyd, Robert Evans, Avvy Go, Brian Lawrie, Michael Lerner, Marian Lippa, Virginia MacLean, Dow Marmur, Susan Richer and Bradley Wright (telephone) attended. Lawrence Eustace also attended. Staff members Julia Bass, Josée Bouchard, Ross Gower, Denise McCourtie (telephone), Zeynep Onen, Marisha Roman and Grant Wedge also attended.

Setting the Platform: A Vision for the Renewal of the Aboriginal Initiatives Strategy

SUSAN HARE

PRESENTATION TO CONVOCAION

OCTOBER 30, 2014

Agenda

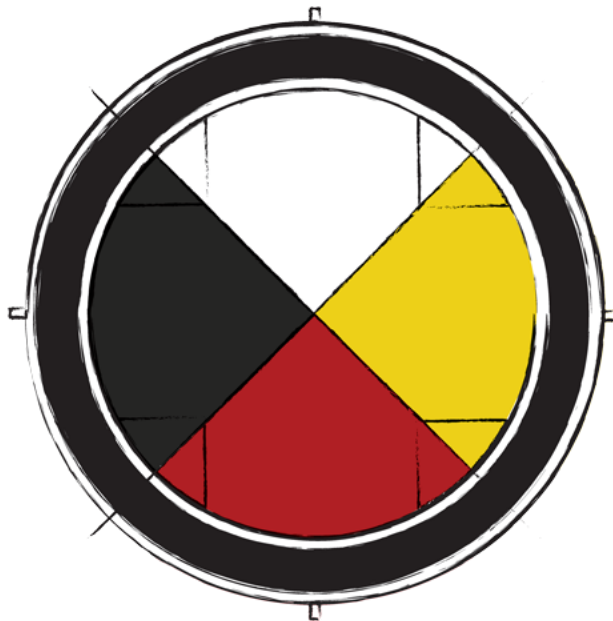
1. Vision for the Guiding Principles for the Renewal Process
2. Model for Understanding these Principles from the Aboriginal Perspective – The Medicine Wheel
3. Applying the Medicine Wheel to the Vision for the Renewal Process for the Law Society's Aboriginal Initiatives Strategy
4. Next steps
5. Conclusion

The Vision

In its relationship with the Aboriginal legal profession, leadership and community, the Law Society should strive to be:

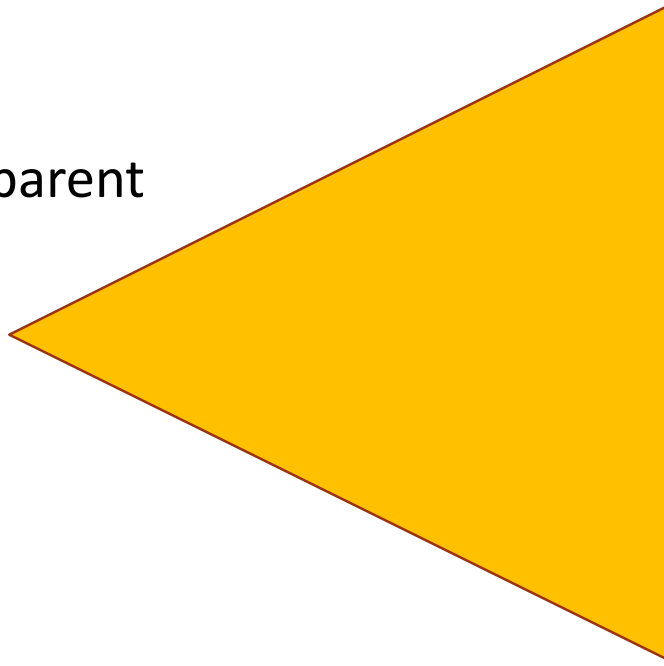
1. Transparent
2. Respectful
3. Proactive
4. Competent

The Medicine Wheel



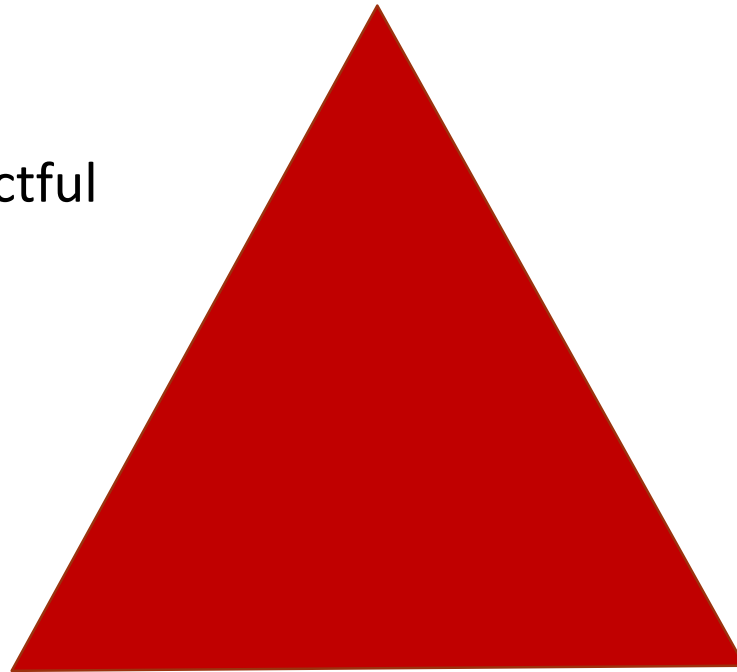
The Medicine Wheel - East

Strive to be Transparent

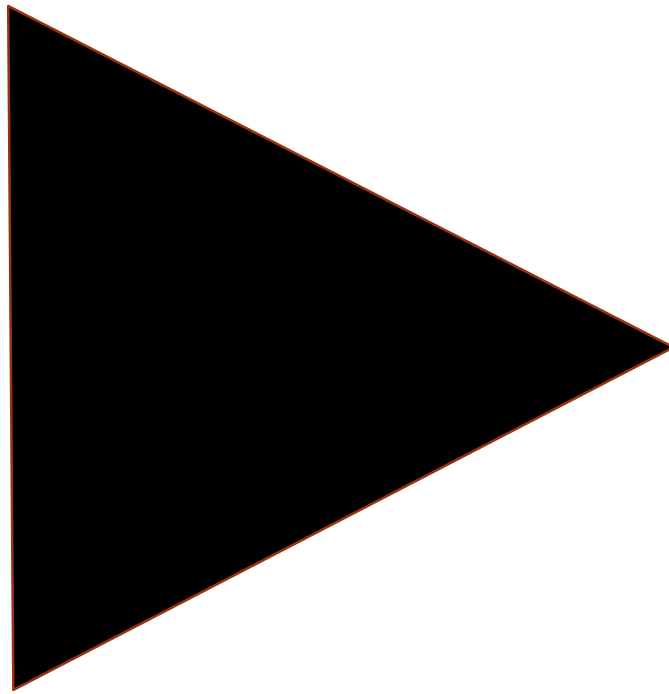


The Medicine Wheel - South

Strive to be Respectful

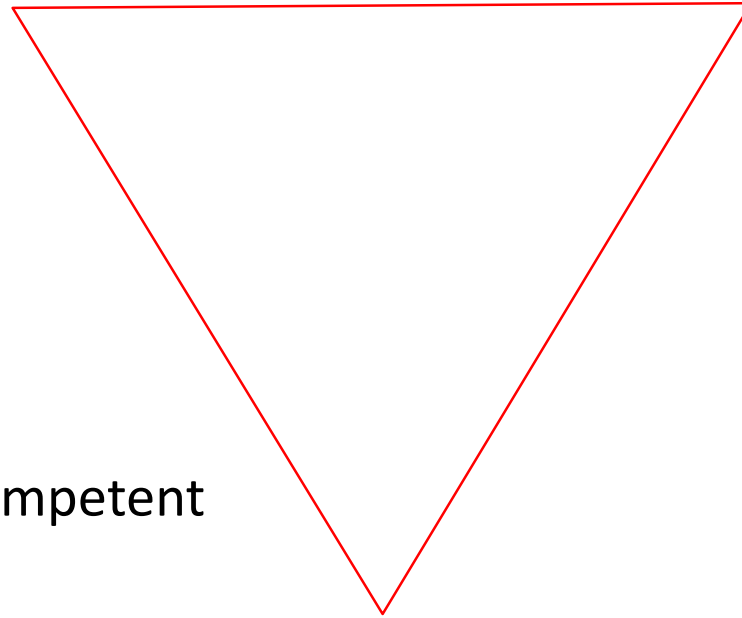


The Medicine Wheel - West



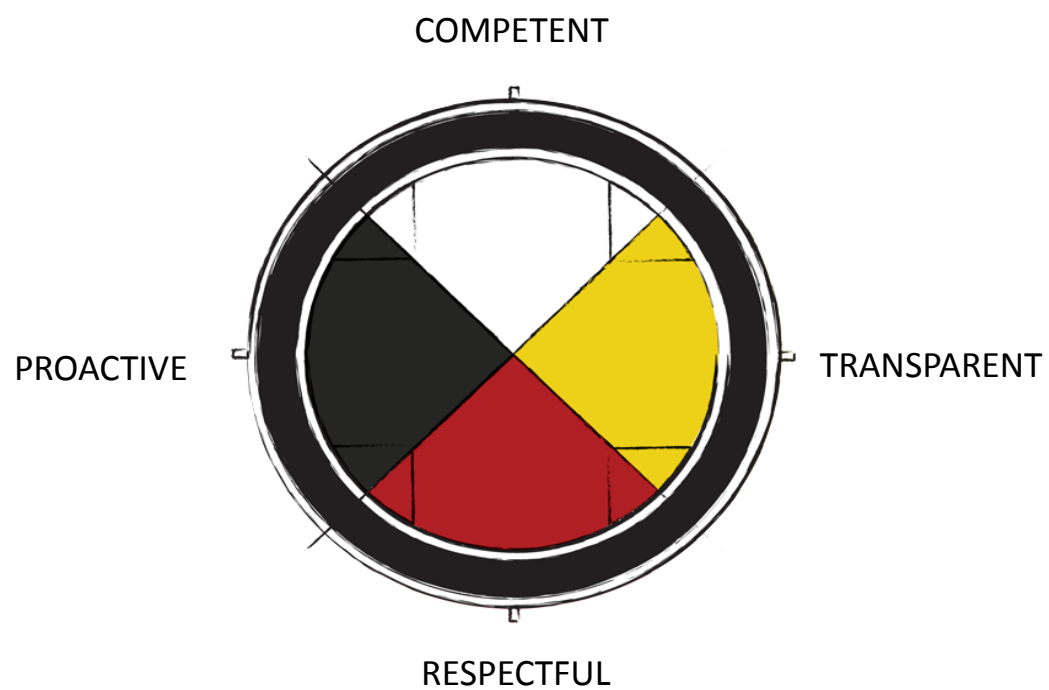
Strive to be Proactive

The Medicine Wheel - North



Strive to be competent

Guiding Principles



Conclusion

“In my experience dealing with Aboriginal issues as a lawyer ... and a judge, too often I have seen evidence or examples of mistrust and disrespect between Aboriginal and non-Aboriginal Canadians, whether the latter are government or private institutions or individuals. Although the evils of racism and discrimination have diminished over time, much more is needed to foster a relationship of harmony and enlightened co-existence between Aboriginals and non-Aboriginals... [R]espect and trust has to be earned not proclaimed.”

Former Justice Frank Iacobucci

Tab 8

**THE EVOLUTION OF LEGAL INFORMATION AND LIBRARY SERVICES
IN ONTARIO**

(October 15, 2014)

The efficient, effective and forward-looking delivery of legal information services is a critical component of a modern and competent legal profession. Almost 15 years ago the delivery of library services was critically examined and significant changes undertaken. No system-wide examination has taken place since then. While those improvements moved the delivery of legal information services forward, rapid changes in the legal landscape, the profession and the public's interaction with the legal system since then, as well as increasing recognition that some of the goals of that earlier reform have not been realized, make it essential to consider the issue further at this time.

Although some aspects of the library system and the delivery of legal information and support services have not changed since the last examination, many others and, in particular the landscape in which library services exist, have. The explosion of technology, changes in the legal publishing field and the development of CanLII, access to justice issues, and library funding changes are all relevant to any consideration of libraries in the 21st century.

The preliminary fact-gathering, issue identification and analysis and advice that the Library Information and Support Services Working Group (the LISS Working Group) has provided to the Treasurer, and with which the shareholders agree, make clear that now is the time to move forward with the examination of the County Courthouse Library System (the Library System).

The work of the LISS Working Group, first and foremost, concluded and affirmed that there is a significant and important role for courthouse libraries in Ontario both in the provision of legal information and for the development and maintenance of professional competence.

The LISS working group also concluded that there was significant room to improve service, find efficiencies and reform the overall system. It finally concluded that any efficiencies or reform should be based on the following principles, which are essential to any successful systemic change:

1. Relationships built on trust, collaboration, cooperation and accountability among the various stakeholders, who include the county courthouse libraries, law associations, the Great Library, the Law Society and its licensees must be at the heart of the process of implementing changes and efficiencies within the Library System.
2. To ensure a library system that works well, there must be a rational process for decision-making, a meaningful and efficient administrative structure and a system-wide examination looking for efficiencies.
3. There is an urgency to moving forward, particularly in view of funding pressures caused by the rising cost of legal information that is outpacing rates of inflation, and a rapidly changing legal landscape that is having an impact on every aspect of the law, including delivery of legal information services.
4. Legal information services play an essential role in the development, maintenance and enhancement of licensee competence and research literacy, which should be more directly and systemically fostered within the Library System.

5. Positive evolution will be achieved by working with a variety of participants and should include the input of experts in the legal information, library and competence fields. Skills-based participation in visioning and planning will add significant value to the evolution effort.
6. There is also an opportunity to better integrate the use of physical library space and library staff into the administration of justice and goals for increased access to justice.
7. Attention should be paid to enhancing the provision of French-language resources within the Library System.
8. Any discussion about library services must include an examination of potential new sources for funding or money, as well as better use of or redeployment of current funding.
9. There are many successes within the Library System where examples of excellent service to lawyers and the public can be emulated and built upon. Ways should be found to share best-practices and to standardize certain components so that there is a consistent level of service across the province.

The LISS Working Group's fact-gathering process and the preliminary advice on next steps to support the goals for a 21st century approach to the Library System have focused on four main areas: governance, physical space, licensee competence and research literacy, and monetary funding and financial efficiencies.

GOVERNANCE

Effective governance of the Library System must include processes that foster trust among the various stakeholders, including the County Courthouse Libraries, the local Law Associations, the Great Library, the Law Society and its licensees. It must balance their often competing interests.

To make the best use of resources and ensure a system that works, there must be systemic efficiencies, rational processes for decision-making, administrative structures that can be justified in operation rather than in theory and certainty for those both working in and using the system. Governance-related discussions must address current administrative structure and operation of LibraryCo, allocation of funding, regional libraries' role in the system and staffing. Building trust among the various players involved in the Library System will need time and a coherent communication and action plan. It will be important to address issues of accountability of all participants within the Library System.

In parallel to an examination of governance and accountability, an examination must be taken into the funding models for libraries. Currently, the funding model is not based on a rational or consistently applied formula. This leads to inefficiency and uncertainty and is itself a barrier to reform. With a "fresh start" on governance and appropriate reassurances regarding the importance of the Library System, trust can be re-built among the stakeholders and opportunities can be pursued to revitalize libraries, provide other benefits to the local bar and contribute to access to justice.

Courthouse Libraries and Great Library staff are invaluable resources within the Library System and provide an important service to the legal profession. Supporting staff professional development and better coordinating the differing roles of regional, area and local libraries would improve their ability to provide assistance to library users.

Next Steps

In the area of governance, the Treasurer and shareholders received the advice provided to,

- continue the dialogue respecting improving governance of the system, rationalizing its cost, updating and confirming financial information, determining what component parts of the current LibraryCo, if any, should be retained and exploring various ways of improving the Library System's integrated components of governance, management and operations;
- engage in a more open dialogue about overall spending on library & legal information services throughout the Library System (with the Great Library);
- consider whether and how regional libraries may play an expanded and enhanced role in improving the delivery of services throughout the Library System, including through better and more creative interaction between the regional libraries and the Great Library; and
- consider systemic professional development and more coherent consideration of differing roles for staff across the system.

PHYSICAL SPACE

The local County Courthouse Libraries occupy physical space in courthouses. For many years, law associations have utilized the space for multiple purposes building on library services with complementary services. At the same time, the space has potential to be an important community resource both for the legal community and the public for the delivery of a broad range of legal services, including researching the law and facilitating access to justice. Going forward, by expanding the way the space is viewed the space could become an important or useful part of any strategy to improve access to justice. At the same time, considerations of security, client confidentiality and the need for private-bar lawyers to "have their own space" inside the courthouse must be weighed and balanced. While it is true that the transition from relatively passive, closed spaces to more vibrant and active space will require extensive consultation, flexibility and planning, if this can occur, the potential results will be important not only to the members of the public who are accessing legal services but also to the local communities in which the libraries are located.

Next Steps

In the area of physical space, the Treasurer and shareholders received the advice provided to,

- undertake a business case analysis of the potential for increased use of the libraries to provide community legal education, resources for self-represented litigants and access to legal information without disrupting the access by licensees who provide core funding for the resources.

LICENSEE COMPETENCE AND RESEARCH LITERACY

The Library System is an integral component of the Law Society's mandate to ensure licensee competence. Its services and their delivery should, therefore, be focused on best practices, particularly as it relates to the development of legal research literacy and skills and lawyer and paralegal competence. The current system has not been designed to advance this systemic approach or to provide education and training to encourage lawyers and paralegals to accomplish these competence goals. Proper research is the foundation of competence and best practices and libraries and library staff are an invaluable aid to that objective. Library staff is well positioned to assist with legal research literacy for both lawyers and paralegals and expand and enhance that role. There is room for such education to become part of licensees' continuing professional development (CPD) landscape.

Any consideration of this area must address, among other issues, research literacy and the role of library staff in fostering it, access to French language resources, the uses for both electronic and paper resources, the libraries' role in fostering networking, collegiality and mentoring as part of competence, marketing and orientation sessions for licensees.

French language resources are important to the overall competent delivery of legal services in Ontario. Such resources should include precedents, legislation, case law and reference materials. Whereas some resources are currently available, others are insufficient. Concerted efforts to enhance the availability and delivery of French language materials should be the subject of specific discussion and analysis.

There is room for greater interaction within the Library System of licensees and the bench, other stakeholder groups and associations operating within the courthouses or local communities. Law associations and libraries provide opportunities for licensees to get to know and support one another. This is an important component of the Library System and it is especially important for recent and internationally-trained Law Society members who might otherwise become isolated.

Discussion should also take place about increasing paralegal access to the county law libraries so that paralegals benefit from and contribute to the Library System and enhanced use of the spaces. Increasing paralegal access, which is inconsistent across different libraries in Ontario, will enhance their opportunities for networking, collegiality and mentorship.

Law Society members are not always aware of the resources for which they pay or to which they have access, and therefore may not appreciate the value they receive for their fees. There are ways to address this gap and to enhance the use of services.

Next Steps

In the area of licensee competence and research literacy, the Treasurer and shareholders received the advice provided to,

- consider the means by which the Law Society could increase materials available in both official languages to licensees and the public, at reasonable cost, such as through Jurisource, CanLII and County Courthouse Libraries;
- ensure that any improvements to the Library System focus on the central role libraries should play in enhancing licensee competence and research literacy; and
- consider the investigation of a CPD requirement, whether for new calls or all licensees, addressing legal research competency.

Monetary Funding / Financial Efficiencies

Effective use of resources is essential to the success of the Library System, never more so than in an environment of scarce resources, such as money. Possibilities for new sources of funding and ways of better utilizing and redeploying existing funding should be explored.

CanLII is an extraordinary success story that is good news for the legal information system of which the County Courthouse Libraries are an integral component. The importance of CanLII and its continued potential for spectacular growth and improvement at relatively little cost compared to the current model using private publishers is a vital consideration for the Library System's future. Further, such improvement could leverage the investment made to date by the Law Society and secure CanLII's position as a viable and acceptable alternative to existing commercial services.

In the face of cuts and other challenges to funding, as well as in the interest of rigorous analysis of the usefulness of services and delivery mechanisms it is important to consider redeploying existing funding, including eliminating approaches that do not produce necessary results. Revitalizing library spaces to provide better public access, *pro bono* programs to assist self-represented litigants and seminars to provide both general education to the public about the law and their rights and obligations as well as tools to search the law could all contribute to access to justice. They could also provide possible new funding from a variety of sources, such as the Law Foundation and other granting bodies interested in improving access to justice.

Next Steps

In the area of monetary funding and financial efficiencies, the Treasurer and shareholders received the advice provided to,

- consider establishing a mechanism by which CanLII is bolstered financially to further enable it to develop into a robust, affordable competitor to the private sector publishers; and
- conduct a comprehensive review of alternate sources of funding and opportunities for better use of existing funds within the Library System.

CONCLUSION

The Library System needs to be revitalized in keeping with the contemporary realities of a world in which clients are increasingly taking a more active role in areas of law such as small claims court, family law and less complex cases. Lawyers and paralegals also require constantly updated resources to provide high quality services.

Physical library space is critical to the local law associations who make good use of it. There is also room to enlarge the activities taking place in the libraries. More education to the public and assistance to self-represented litigants can only serve to increase the benefit of having a library in the courthouse and of lawyers and paralegals assisting with information seminars on the law and documentation to explain court processes. Increased access for the public can be achieved while maintaining appropriate after-hours access and reserving portions of the space for lawyers and paralegals.

This Report outlines the significant issues it considers relevant to any continued consideration of Library System improvements. There is a degree of urgency in addressing efficiencies within the Library System. Next steps must be coordinated and coherent and should embrace a willingness of all stakeholders to be flexible in the interests of a vibrant Library System. Collaboration and partnership can hopefully become part of the overall Library System management by the shareholders, partners and stakeholders. Including the input of experts in legal information, library systems and competence will result in recommendations that will provide a well-defined pathway for the future.

The Treasurer and shareholders received the advice provided to,

- consider extending the mandate and scope of the LISS Working Group to flesh out the most immediately promising areas and develop a plan to prioritize the other areas or, continue such work through other avenues with the benefit of expert participation and advice on the future direction of legal information and library services and best practices.