



November 8, 2016

Via Email: racialized.licensees@lsuc.on.ca

Equity and Aboriginal Issues Committee
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West,
Toronto ON M5H 2N6

Attention: Ekua Quansah, Policy Secretariat

Dear Ms. Quansah,

Re: CCLA comments on the proposed LSUC Motion to approve Challenges Faced by Racialized Licensees Working Group – Final Report

On behalf of the County of Carleton Law Association (CCLA), the CCLA Diversity Committee thanks you for this opportunity to contribute to the discussion on the Final Report of the Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (“the Report”).

The CCLA is Ottawa and Eastern Ontario’s leading association for the professional legal community. It has over 1,598 licensed members from all range of legal practice areas, including paralegals. Close to half of our members practice in firms of 9 licensees or less. While we acknowledge that our legal population is less racialized than the GTA, the racialized licensees in our region often face the same identified challenges but in a more isolated context.¹

The CCLA Diversity Committee was created to assist the Membership Committee in identifying and determining the overall approach / philosophy that the CCLA should adopt to ensure it is inclusive of the entire legal community that the CCLA serves. Its purpose is to foster a culture of diversity and inclusion in the CCLA by enabling the values and principles of equality and equity in its organizational structure, policies, programs, and services.

¹ *Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report* (2014), https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf at p.7.

We commend the Working Group on the work that has been completed to date. The Report makes thirteen recommendations that, in general, we support. However, the Report is noticeably silent on three key issues and two particular recommendations require a different approach. Before this is brought before Convocation for approval, these topics must be addressed.

We provide comments on the following five areas:

1. Racialized sole practitioners and small firms;
2. Economic vulnerability of racialized licensees;
3. Education and training;
4. Using the DHC as a way to address systemic racism; and
5. Monitoring and accountability.

Several of our suggestions should be accommodated at this time and could be undertaken with reasonable effort; other suggestions are intended to guide the LSUC on its next steps in taking action on the issues of systemic racism and bias within the profession.

COMMENTARY

1. Silence surrounding racialized sole practitioners and small firms

In short, the Report does not comment on this group. Many racialized licensees find themselves practicing in small firms or as sole practitioners; this is largely as a result of their lack of ties within the legal community and systemic racism. The Report addresses remedies for firms with over 25 licensees, but fails to address the sole practitioner and small firms who are already a marginalized group.

According to the LSUC's *Statistical Snapshot of Lawyers in Ontario* from the *Lawyer Annual Report (2014)*²:

- 24% of racialized lawyers practice as sole practitioners;
- 14% of racialized lawyers are in house counsel; and
- 14% of racialized lawyers are in government.

²*Ibid* at p. 5

We further note that 33% of racialized lawyers work in firms of fewer than 5 people; 16% of racialized lawyers are in firms of 5-9 people.³ Given that 49% of racialized lawyers work in practices of less than 9 people, this group has to be acknowledged in the Challenges Faced by Racialized Licensees. The Law Society of Upper Canada has this data readily available, therefore, it should be relied upon for the purposes of this Report. The Report fails to address the racism this particular group encounters and ways in which to eliminate the challenges faced by this racialized group.

If the report is approved as it is, we will be essentially failing to address almost half of the racialized lawyers who are encountering various forms of racism within their immediate work environments, the professional organizations they may or may not be a part of, and, within the legal community at large.

2. Economic vulnerability of racialized licensees

The Report does not address the issue of economic barriers for racialized licensees and licensees representing other equity-seeking groups. These begin as economic barriers to the profession and continue on through the licensee's career.

Racialized, first-generation law students, with little or no connections to the profession, often have limited familial financial support to help pay for their legal education. They may already be carrying significant student debt coming into law school. These students rely on government student loans and professional student lines of credit to finance their professional degree. This means that economically-disadvantaged students are graduating with extraordinary debt loads.

This economic stratification is amplified in the licensing process and an ultra-competitive articling system, in which law students vie for a limited number of well-paying articling positions. In order to become licenced, economically-disadvantaged law students may have to choose a low-paying or unpaid articling position with a sole practitioner or small firm or to enroll in the LPP. These low-paid / unpaid articling students and LPP students continue to accumulate debt during the licensing process. Further, licensing fees are the same for all licensing candidates, regardless of articling employer and articling remuneration, or unpaid experiential training through the LPP. These fees become disproportionately onerous when low-paid / unpaid articling students have to pay their licensing fees themselves, while large firms pay for their articling students' licensing fees as standard practice.

³*Ibid* at p. 6

These economic barriers continue on after licensing. Whereas articling students at large firms have the opportunity to be hired back, those who articulated with sole practitioners or came through the LPP are more likely to become sole practitioners themselves or stay on at the small firm where they articulated.⁴ These new practitioners may continue to rely on bank loans and lines of credit to finance the significant costs of opening a sole practice or contributing to the small practice. As sole practitioners, they must bear alone the regular costs of the profession, including law society fees and insurance premiums, law association membership fees, CPD courses and conference fees, etc.

These licensees juggle: the financial burdens of a sole practice, while attempting to build a client base and business; finding a way to support themselves, while paying off their student debt within a reasonable time; and making the pronounced effort to network and seek out mentorship in order to ameliorate the isolation of sole practice. These factors impede their progression in the profession, and hinder their ability to obtain leadership roles within the legal community or to devote time to volunteer positions or appointments on committees.

The Report must recognize that economic barriers disproportionately affect racialized licensees and that this may represent one of the most significant challenges facing racialized licensees.

3. Education and training

We believe that mandatory education and training are foundational to address the challenges faced by racialized licensees. However, the Report is not clear about what CPD programs would meet the criteria for accreditation and does not explain why three hours every three years is an appropriate benchmark. Developing an understanding of diversity does not flow from an intense one-off kind of event; it comes from an internalization of the issues and challenges by way of regular, ongoing and progressive dialogue that is relevant to our day-to-day ways of thinking and acting. The Report needs to require annual CPD/training as well as other means to demonstrate competence and currency in this area. Perhaps this could be part of a no charge professionalism credit.

⁴This is reflected in the 2014 Lawyer Annual Report that showed that 24 percent of racialized respondents were sole practitioners, whereas 19 percent of non-racialized respondents were sole practitioners.

4. Problematic use of the DHC as a way to address systemic racism

While a review of the Discrimination and Harassment Counsel Program (“DHCP”) is laudable, the LSUC should avoid tampering with the complete confidentiality and privacy that complainants currently enjoy. The small numbers of racialized licensees in particular locations make it difficult to remain anonymous should a complaint be acted upon or become public. If the sharing of a discriminatory experience automatically led to a formal investigation or complaint (and how would a particular licensee know they would be hitting a “threshold”), then this would undermine the confidence and trust that has been the key to the DHCP’s current ability to support racialized licensees.

5. Monitoring and Accountability

The Report should address monitoring and accountability. As we have seen from the limited progress made on similar past recommendations on this topic⁵, if there is no ongoing monitoring and reporting on progress, then action is simply not taken. With the evidence before us, we know that the identified challenges are longstanding, ongoing and increasing. There needs to be accountability processes built into the Recommendations right from the start.

One way that this could be done is through having the LSUC produce an annual report card on what progress has been made on each of the Recommendations. This report card should be reviewed by a committee of benchers but also include other stakeholders.

INTERSECTIONAL ISSUES

Amongst other issues that require further attention, we note that at page 4 of the Report, the Engagement Process Results identified the issue of additional intersecting experiences of discrimination, however the Report does not address this topic. The next phase should encompass an in-depth analysis and clear recommendations on intersectional issues.

⁵*Racial Equality in the Canadian Legal Profession*, Working Group on Racial Equality in the Legal Profession, Canadian Bar Association, February 1999.
<https://www.cba.org/getattachment/Sections/Equality-Committee/Resources/Resources/2013/Racial-Equality-in-the-Canadian-Legal-Profession/racialEquality.pdf>

CONCLUSION

Although this Report has been long anticipated and many in the profession are ready to act, it behooves us to step forward with the best foot we can. We are not advocating a complete rewrite of the Report, but believe that the Report should and could be modified within a reasonable timeframe.

On behalf of the CCLA, we urge you to consider expanding the scope, making some modifications and, ultimately, capitalizing on the impact of the Recommendations.

We thank you for your time and consideration of this submission.

Yours very truly,

Asfrah Syed-Emond, Chair, CCLA Diversity Committee
Juliet Knapton, Vice Chair, CCLA Diversity Committee
David Ang, Vice Chair, CCLA Diversity Committee