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## **RE: TLA OPEN LETTER TO LSO TREASURER**

With the start of the New Year, the Toronto Lawyers' Association ("TLA") looks forward to further progress being made by the Law Society with respect to its Equality, Diversity and Inclusion initiative, specifically, in implementing the 13 recommendations approved by Convocation on December 2, 2016 (the "Initiative").

As TLA's President, I am pleased to say that our organization is wholeheartedly committed to promoting equality, diversity and inclusion in the legal profession. We are the voice of our 3,200 members who hail from a diversity of backgrounds and practise law in various disciplines across the Greater Toronto Area. We strive to reflect the diversity of those we represent on our Board of Directors, which currently has close to 40% female representation as well as representation from racialized and other historically marginalized groups. The TLA is part of the Roundtable of Diversity Associations, working with other legal associations to advance diversity, equality and inclusion within the legal community.

## **Takeaway from the Controversy over the Statement of Principles**

The Law Society requires every licensee to "adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public." This Statement of Principles requirement is one of a number of measures to break down barriers faced by racialized licensees that were adopted by Convocation in December 2016, in a 33-0 vote following significant consultation and debate.

Months after its adoption, a very public wrangling over the Statement of Principles requirement took hold. It culminated in a court application to strike it down<sup>1</sup> and a motion before Convocation to institute an exception.

On November 21, 2017, after much controversy and misinformation had been stirred by clamours of "compelled speech" and "compelled belief", the Law Society finally came out with a *Guide to the Application of Recommendation 3(1)* (the "Guide"). The Guide clarified that the requisite Statement of Principles simply reinforces licensees' existing obligations under human rights law and the *Rules of Professional Conduct*, and "does not create any obligation to profess any belief or to seek to persuade anyone about anything."<sup>2</sup>

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<sup>1</sup> *Ryan Alford v. The Law Society of Upper Canada*, Court File No. CV-17-585937

<sup>2</sup> Law Society of Ontario, *Guide to the Application of Recommendation 3(1)*. Available online: [http://www.lsuc.on.ca/uploadedFiles/Application-of-Recommendation-3\(1\).pdf](http://www.lsuc.on.ca/uploadedFiles/Application-of-Recommendation-3(1).pdf)

While the release of the Guide is commendable, it would have served the Law Society to have taken a more proactive approach in preventing and dispelling misinformation that fueled critics of the Initiative, and disheartened supporters. There needs to be more timely and concerted efforts on the part of the Law Society to educate for change. Well in advance of any new regulatory requirements or policies coming into effect, lawyers have to be educated on what is required of them, and importantly, why. Questions or concerns about the requirements should be promptly and definitively addressed by the Law Society. It is what makes for effective regulation, and what lawyers expect of their governing body.

### **The Road Ahead: Balance of the Recommendations**

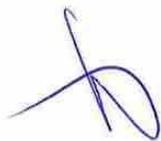
The uncomfortable truth is that the legal profession is not as inclusive and diverse as it should be. Many racialized lawyers experience barriers that their non-racialised peers do not; the discrimination they face is “systemic”.<sup>3</sup> Some of our colleagues have a hard time believing this to be so, as certain views that have been expressed reveal.<sup>4</sup>

In order to foster a more inclusive and diverse legal profession, a cultural change in the way that we understand systemic discrimination, as well as our role and professional responsibilities to combat it, needs to happen. The Law Society can lead and facilitate such cultural change by creating positive awareness through effective communication of the upcoming measures of the Initiative. Indeed, it is arguably incumbent on the Law Society to do so, in view of its obligations under the *Human Rights Code* and the *Law Society Act* to protect the public interest.

Pursuant to the published timeline for the Initiative,<sup>5</sup> some of the 13 adopted recommendations have “TBD” implementation dates. We urge the Law Society to set target completion dates for every one of the adopted recommendations, if it has yet to be done, and request that those target dates be communicated to licensees and made publicly available. It is important that licensees, legal associations like the TLA, and other stakeholders be kept apprised of, and be able to monitor, progress on the Initiative. Transparency enhances accountability, which in turn fosters public confidence.

In closing, the TLA wishes to recognize the Law Society for the progress achieved to date, and to extend our support as the Law Society moves forward with the Initiative.

Yours very truly,



Dirk M. Derstine  
President  
Toronto Lawyers Association

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<sup>3</sup> Challenges Faced by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions*, September 22, 2016. Available online: [http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Working-Together-For-Change-Final-Report-Updated.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Working-Together-For-Change-Final-Report-Updated.pdf)

<sup>4</sup> See e.g., Donald W. Kilpatrick, “Response to the Law Society’s ‘Strategies to Address Issues of Systemic Racism in the Legal Professions’”, *The Middlesex Law Association Mail* (December 2017), at pp. 8-13. Available online: <http://www.middlelaw.on.ca/News/2017DecemberDraft.pdf>

<sup>5</sup> See page 18 of [http://www.lsuc.on.ca/uploadedFiles/Equity\\_and\\_Diversity/Members/Challenges\\_for\\_Racialized\\_Licensees/Working-Together-For-Change-Final-Report-Updated.pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Working-Together-For-Change-Final-Report-Updated.pdf)