



# Working for Lasting Change: How to Hold on to Success



**Litigation with a conscience.**

# Equity Initiatives



- In 2012, LSO created the Challenges Faced by Racialized Licensees Working Group tasked with identifying challenges in practice faced by racialized licensees, and creating preventative, remedial and support strategies

## Consultant Engagement Process

- 20 key informant interviews
- 14 focus groups with racialized licensees
- 2 focus groups with non-racialized licensees
- Survey of the professions

## Community Engagement Process

- Information collected by prominent and experienced racialized legal professionals
- 52 participants

## Consultation Process

- 12 open house learning and consultation programs around the province
- Meetings with representatives from law firms, legal clinics, banks, government and legal associations
- Feedback from over 1,000 racialized and non-racialized licensees from across the province
- Over 40 written submissions to the Working Group

# Equity Initiatives

- The Working Group releases a report in 2016, with the aim of ensuring law firms and legal workplaces work to eradicate systemic racism in the legal profession
- The report contains 13 recommendations, with a timeline for implementation to occur over the next three years
- The December 16, 2016 Convocation in a unanimous decision votes to accept the final report and all 13 recommendations

# Equity Initiatives

- One of the recommendations gives rise to requirement for members of the profession to sign a statement of principles (REC 3(1))
- All licensees are required to adopt and abide by a individual Statement of Principles that acknowledges their obligation to promote equality, diversity and inclusion generally, and in their behaviour toward colleagues, employees, clients and the public
- This is to be a mandatory requirement
- Its *mandatory-ness* quickly came under fire

# Pushback

- Website, *stopsop.ca*
- “It is correct that we have a duty not to discriminate on prohibited grounds, but there is no positive legal duty to *promote* equality, diversity and inclusion”



# Pushback

- Court challenge launched by Professor Ryan Alford:
- “The late Justice Jean Beetz [provided](#) the pithiest explanation why the regulation of thoughts, values and beliefs is considerably more intrusive than the regulation of conduct. He noted that if the government requires us to do something that we disagree with, we can always do it under protest. But forcing us to state our agreement with a statement made by the government deprives us of the power to say or do otherwise.”

## Critics argue rights violated

The statement of principles rule was adopted late last year and implemented this year. Members were recently reminded via email of their obligation to sign it by the end of 2017. They can write their own or use templates provided for them.

The law society has not specified what sanctions members will face if they don't comply.

Alford and other objectors said they don't disagree with the law society's objective of tackling racial discrimination in the profession, it's how the law society is going about it that they find problematic.

"The law society is behaving lawlessly. It is ignoring the limitations in the Law Society Act and that is very alarming to people, probably lawyers more than anyone else," said Alford.

Howard Anglin, a lawyer who is fighting the rule, said even if someone agrees with the values of equity and diversity, being forced to demonstrate that support "crosses a line."

"It starts intruding into the hearts of citizens which is a



# Pushback

“Toronto lawyer Joe Groia, a member of the board of directors (known as “benchers”), said he fully supports efforts to improve equality and diversity in the profession, but takes issue with the fact that the statement is mandatory.”

(From Jacques Gallant, *Toronto Star* “Lawyers challenging part of Law Society of Upper Canada plan to address racism, October 23, 2017)



# Despite Pushback

Statement of Principles Response Rate:

97.64% of lawyers  
98.86% of paralegals

said that they had a Statement of Principles

2017 Lawyer and Paralegal Annual Report



# Lasting v. Temporary

“The challenges faced by racialized licensees are both longstanding and significant...In our view, the Law Society must take a leadership role in giving legal workplaces reasonable deadlines to implement steps that are important to bring about lasting culture change.” [emphasis added] at p. 11

The Working Group believes that requiring licensees to make a clear commitment to equality, diversity and inclusion will encourage licensees to consider their individual roles in creating lasting change. [emphasis added] at p. 29



# Mandatory v. Optional



To satisfy these goals, the Working Group concluded that the Law Society should use a combination of voluntary and mandatory measures, fulfilling its multiple roles in the public interest as change agent, facilitator, resource and regulator. The Law Society's authority to adopt mandatory measures must be interpreted and understood in light of its rights and obligations under the Human Rights Code to protect the public interest balanced with the current explicit authority under the Law Society Act<sup>30</sup> and By-Laws<sup>31</sup> and recent jurisprudence (at p. 24).

“We had a very important issue that has not been addressed — certainly not to this extent by any law society in Canada . . . I don't think there's any law society that has gone to the point of mandatory measures in order to effect culture change.” [quote from Co-Chair Raj Anand, from Jacques Gallant, *Toronto Star* “Law Society Report Proposes changes to Combat Systemic Racism” (Sept 19, 2016)]

# Mandatory Systemic Remedies

The dismal results of voluntary affirmative action programs and the realization that the individual case-by-case approach simply lacked the capacity to fight systemic discrimination created a general dissatisfaction with the current attempts at curbing employment discrimination. That dissatisfaction culminated in the creation of the Royal Commission on Equality in Employment, chaired by Judge Rosalie Silberman Abella. The terms of reference of the Royal Commission on Equality in Employment made explicit reference to mandatory programs:

[T]o inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities on an equal basis by: b) inquiring into means to respond to deficiencies in employment practices, including without limiting the generality of the foregoing means, such as an enhanced voluntary program, possibly linked with mandatory reporting requirements and a mandatory affirmative action program.

# Mandatory Systemic Remedies

After reviewing the unsatisfactory record of voluntary programs, Abella J. concluded that "[g]iven the seriousness and apparent intractability of employment discrimination, it is unrealistic and somewhat ingenuous to rely on there being sufficient public goodwill to fuel a voluntary program. '

Abella J. pointed to three American reports and accompanying statistics which show that enforceable legal requirements are essential to the success of affirmative action programs, and that they encourage the private sector to engage in such programs voluntarily. She concluded that the time for the mere expression of good intentions is past. If the government is serious about ameliorating the position of historically disadvantaged groups, it must legislate positive action to dismantle systemic barriers.

~ from Lubomyr Chabursky, *The Employment Equity Act: An Examination of its Development and Direction*, 1992 Ottawa Law Review; 1992 CanLIIDocs 35

# Action v. Platitudes

- The Working Group report proposes a “gradation of responses,” from meeting with representatives of legal workplaces to discuss concerns, “to disciplinary approaches if there is deliberate non-compliance with requirements, despite multiple warnings, or no efforts are made to address systemic barriers.”
- A number of consultation participants supported the Law Society’s role in setting guidelines for equality, diversity and inclusion in the professions and requiring legal workplaces to report on their progress in this area. As one group of consultation participants noted, “This would increase the accountability and transparency of legal workplaces in their treatment of racialized licensees, while encouraging a culture of compliance across the province.”



# Miigwetch!



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