



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

Tab 3.1

**WORKING TOGETHER FOR CHANGE:
STRATEGIES TO ADDRESS ISSUES OF SYSTEMIC RACISM IN THE LEGAL
PROFESSIONS**

Challenges Faced by Racialized Licensees Working Group

Final Report

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Motion

That Convocation approve the following thirteen recommendations outlined in the *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* report:

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

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

The Law Society will:

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

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

Note: Convocation amended Recommendation 4 by adding the above, underlined content. References to Recommendation 4 have been updated throughout the report.

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress by:

- 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and
- 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>). The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

Recommendation 8 – Progressive Compliance Measures

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

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;
- 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and
- 3) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these

recommendations and one hour per year every year thereafter, which will count towards the licensee's professionalism hours for that year.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

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

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

Recommendation 13 – Leading by Example

- 1) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:
 - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;
 - b) measuring quantitative progress through a census of the workforce or other method;
 - c) measuring qualitative progress by conducting inclusion surveys;
 - d) conducting regular equality, diversity and inclusion self-assessments; and
 - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;
 - f) publishing relevant findings from b), c), d) and e); and
 - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.
- 2) The Law Society will:
 - a) conduct an internal diversity assessment of the bench composition and publicize the results;

b) provide equality and inclusion education programs for Convocation on a regular basis

Overview of Submissions

The Challenges Faced by Racialized Licensees Working Group (“the Working Group”) provided its final report, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* on September 22, 2016 for information. The report is to be before Convocation for decision on December 2, 2016.

Members of the legal professions and the public were invited to provide comments on the recommendations outlined in the report until November 14, 2015. The Law Society received 46 submissions – 23 from individuals and 23 from organizations (see **TAB 3.1.1**). The Working Group has determined that only submissions from organizations are to be public. Many of the individual submissions speak to personal experiences and the Working Group believes that should those individuals wish to make their views public, they should have the option to do so on their own. What follows is a summary of both individual and organization submissions divided by the five interrelated categories outlined in the report: accelerating culture shift; measuring progress; educating for change; implementing supports; and operations of the Law Society.

The Working Group received positive comments from the professions and the public, with many individuals and organizations commending the Law Society for taking steps to address issues of systemic racism in the legal professions. The Working Group is encouraged by the submissions it received.

Many of the comments spoke to the implementation of the recommendations in the report. These comments are not outlined in this document – however, should the recommendations be approved by Convocation, the comments will be considered during the implementation phase.

General comments

All of the submissions from organizations representing licensees from equality-seeking organizations expressed support for the 13 recommendations put forward by the Working Group, with suggestions provided on how to strengthen the recommendations. Generally, no organizations were opposed to the recommendations.

Specifically, the submissions from the Canadian Association of Black Lawyers, the Roundtable of Diversity Associations, the Metro Toronto Chinese & Southeast Asian Legal Clinic, the South Asian Bar Association, the Equity Advisory Group, the Canadian Hispanic Bar Association, and the Federation of Asian Canadian Lawyers stressed that Convocation should vote on the thirteen recommendations as a package and not individually.

In addition, many of the submissions from organizations suggested that the recommendations outlined in the Working Group’s report should apply to all equality-seeking groups and not solely to racialized licensees. Some submissions also noted that the report and the recommendations should recognize

how intersections of gender, race, sexual orientation, disability and other aspects of identity shape the experiences of licensees.

Accelerating culture shift

The Working Group received submissions supporting the need to accelerate cultural change in the legal professions.

The Working Group received a comment about the importance of taking an approach that recognizes the unique barriers faced by Indigenous licensees and the challenges that both racialized and Indigenous licensees face. Additionally, the comment asked that the Working Group make specific mention of the Truth and Reconciliation Commission's final report and the need to address reconciliation between Indigenous and non-Indigenous peoples.

The Working Group is thankful for this comment and has included text that reflects this suggestions in the "Guiding Principles" section of the report.

One comment received by the Working Group advised that the Law Society should require law schools to remove obstacles against racialized licensees. The Working Group notes that the Law Society does not have authority over law schools; however, law schools are encouraged to participate in the Diversity and Inclusion Project outlined in Recommendation 2.

Some submissions suggested that the Law Society, under Recommendation 3, should require all legal workplaces, not just workplaces of at least 10 licensees, to develop, implement and maintain a human rights/diversity policy and complete an equality, diversity and inclusion self-assessment. In determining the size of workplace for this requirement, the Working Group considered balancing burden and benefit. Although the requirement applies to workplaces of at least 10 licensees, workplaces of less than 10 licensees are strongly encouraged to develop policies and complete self-assessments. This encouragement is reflected in the text that accompanies the recommendation.

One submission suggested that legal workplaces' diversity policies should be made publicly available on the workplace website. In considering this suggestion, the Working Group determined that not all legal workplace websites are used as a recruitment tool - some are intended as advocacy tools, for example. The Working Group, however, noted that policies should be available to the public. Consequently, the Working Group has modified Recommendation 3(2) to note that the policies should be available to members of the professions and the public upon request.

An additional submission proposed that an exemption be provided for legal workplaces that have existing human rights/diversity policies provided they satisfy the Law Society's requirements. The text that accompanies Recommendation 3 recognizes that licensees' employers may already have workplace policies that satisfy the requirement under Recommendation 3(2)

Measuring Progress

The Working Group received positive responses to the recommendations regarding data collection.

One submission suggested that the quantitative self-identification data collected by the Law Society should be published in an aggregate manner. The Working Group notes that the Law Society currently provides race-based self-identification data by size of firm in its annual statistical snapshots, which are available at: https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.1%20-%20Snapshot-Lawyers16_apr13.pdf (lawyers) and https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/TAB%207.3.2-%20Paralegal-Snapshot16_apr13.pdf (paralegals).

One comment proposed that equity-seeking legal associations should have access to the data collected by the Law Society and that data should be made public at the law school level. The Working Group is of the view that the data should be disseminated to the public through the annual statistical snapshots and that the inclusion index will provide equity-seeking associations and law schools with insights into diversity and inclusion in various workplaces.

Another submission recommended that legal workplaces should be required to engage in internal collection of data in their workplaces. The Working Group is conscious of the fact that many firms may not have the resources to properly collect data from licensees and that there may be privacy concerns if legal workplaces are collecting data from licensees directly. The Working Group asserts that privacy and confidentiality are essential principles to uphold in collecting quantitative demographic data and qualitative inclusion data from licensees.

One comment suggested that the inclusion index include information for all legal workplaces regardless of their size, not just workplaces of at least 25 licensees. Legal workplaces of less than 25 licensees are encouraged to participate in the inclusion index; however, in balancing benefit with burden, the Working Group has determined that 25 licensees and above is an appropriate number.

In terms of conducting inclusion surveys that are similar to the Stratcom survey, the Working Group received a comment that an interval of four years would not capture the issues the Working Group seeks to identify given the rate at which lawyers leave law firms. The Working Group carefully considered this time interval and notes that four years was seen as an appropriate amount of time for changes to take hold.

The Working Group received questions about the nature of the progressive compliance measures outlined in Recommendation 8. The Working Group notes that the nature of the compliance measures will be carefully considered by the Law Society in due course. The intent of the Working Group is to foster cooperation to the extent possible and engage in reactive measures only when necessary.

Educating for Change

The Working Group is pleased that, from the comments received, the professions and the public are in agreement with the requirement for licensees to complete equality and inclusion Continuing Professional Development hours.

The Working Group received a number of comments that suggested that licensees be required to complete a one hour equality and inclusion program per year instead of three hours once every three years. One submission suggested that the Law Society require licensees to participate in an equality and inclusion program once every year following an initial three hour training program. The Working

Group believes that this is an excellent suggestion as the three hour training program will allow for licensees to develop a foundation in equality and inclusion principles. The annual one hour requirement, following the initial three hour program, will ensure that equality and inclusion principles are top of mind for licensees.

Building Communities of Support

Comments on the final report reiterated the importance of mentoring and networking. Suggestions made included the creation of a mentoring initiative specifically for junior racialized licensees, free mentoring services to all new lawyers of any background and mentoring for law students. One submission also proposed that the Law Society monitor the success of all mentoring and networking initiatives and identify any improvements. The Working Group notes that the Law Society recently launched the [Coach and Advisor Network](#), which will, in addition to providing advisor and coaching services, act “a centralized source of information to the professions on mentorship programs in Ontario.”¹

The Working Group received a submission that noted the importance of employing an approach that addresses the unique experiences of Indigenous licensees and the similar barriers faced by Indigenous and racialized licensees – in addition to a suggestion that mentioned be made of the Truth and Reconciliation Commission’s final report. The Working Group has incorporated this suggestion in the “Guiding Principles” section of the report.

The Working Group notes that in November 2016, Convocation determined that the Law Society will engage in an analysis of the licensing process. The Working Group expects that the principles of equality and inclusion will be considered during this process.

The Law Society received submissions regarding the review of the Discrimination and Harassment Counsel (“DHC”) program outlined in Recommendation 12 – particularly related to the need to maintain the confidentiality and independence of the DHC program. The Working Group notes that the Law Society’s Equity and Aboriginal Issues Committee (“EAIC”) commenced a review of the DHC program in Fall 2016. EAIC is alive to the importance of the DHC’s duty of confidentiality and the arms-length position of the DHC.

Leading by Example

Comments regarding leading by example spoke largely to the bench election process. The Working Group notes that in September 2016, the Law Society established a Governance Task Force to make recommendations in regard to the Law Society’s governance structure.

A suggestion was made that Recommendation 13(1)(a) should include the words “discipline, discharge and revocation”, however, the Working Group points out that the requirement for the Law Society to adopt, implement and maintain a human rights/diversity policy speaks to the need for the policy to address *at the very least* recruitment, retention and advancement. The wording of this recommendation is broad in order to allow for the Law Society to examine various aspects of its operations.

¹ “Coach and Advisor Network: How it Works”, online: The Law Society of Upper Canada <<https://www.lsuc.on.ca/howitworks/>>

Other comments

The Working Group received submissions that outlined the importance of addressing the challenges faced by racialized licensees in law school and upon entry into the profession. The Diversity and Inclusion Project, contemplated in Recommendation 2, is intended to allow for a forum to address these issues. Other submissions suggested that the Working Group should address the pathways to licensing for lawyers. The Working Group notes, again, that Convocation has already approved a review of the licensing process.

One submission noted that the report has been silent on the unique needs of racialized internationally trained lawyers without Canadian education or experience. It is the Working Group's intention that the implementation of the recommendations will consider all racialized licensees and the intersections of their experiences, including the experiences of internationally trained racialized licensees.

Some submissions suggested that the Law Society should consider the economic barriers for racialized licensees and other licensees from equity-seeking groups. The Working Group notes that in the implementation of the recommendations, economic barriers will be considered.

One submission noted that the report had failed to direct the Law Society to develop mental health strategies specific to racialized licensees. The Working Group notes that in April 2016, the Law Society approved a long-term mental health strategy, which "builds on the Law Society's existing mental health initiatives and lays the groundwork to explore additional supports or programs that fall within the organization's mandate."²

One submission suggested that the Report should call upon the Law Society to work with the Roundtable of Diversity Associations (RODA) and other associations serving racialized lawyers across Ontario using a similar approach to [The Action Group on Access to Justice](#). It is contemplated that the Diversity and Inclusion Project under Recommendation 2 will be a forum for the Law Society to work with associations serving racialized licensees.

² "April 2016 Convocation", online: The Law Society of Upper Canada <http://www.lsuc.on.ca/with.aspx?id=2147502412&langtype=1033>

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Executive Summary

“Inclusion is not about bringing people into what already exists; it is making a new space, a better space for everyone.”³

This is the unanimous final report of the Challenges Faced by Racialized Licensees Working Group. The fifteen Benchers on the Working Group have reviewed the written submissions and other input of Benchers and many external stakeholders since the initial presentation of the report to Convocation on September 22, 2016. After discussion and some revisions, the Working Group now presents this Report, unanimous in its 13 recommendations and the rationale supporting them, for approval by Convocation on December 2, 2016.

This Report represents the final stage of a lengthy consultative and study exercise which has led to the conclusion that racialized licensees⁴ face widespread barriers within the professions at all stages of their careers. As the title “Working Together for Change” bears out, the Challenges Faced by Racialized Licensees Working Group is confident that there is a unique opportunity for change, based on collaborative, concrete steps to implement solutions. That said, 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 bringing about lasting culture change. The Working Group has concluded that prescribing minimum standards of equality, diversity and inclusion are consistent with the human rights responsibilities of the profession — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*.

Reform in addressing barriers faced by racialized licensees is an essential component of ensuring a healthy and successful legal profession, and to advancement of the public interest — goals that we all share and must achieve.

Background

1. The Law Society of Upper Canada (The Law Society) has a duty to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario and to protect the public interest. Furthermore, the Law Society is committed to adhering to its obligations under the *Human Rights Code*. In fulfilling its mandate, the Law Society integrates equality and diversity values and principles into all of its policies, practices and programs. The

³ Dei, G.S.N. (2006). Meeting equity fair and square. Keynote address to the Leadership Conference of the Elementary Teachers’ Federation of Ontario, held on September 28, 2006, in Mississauga, Ontario, quoted in “Realizing the Promise of Diversity, Ontario’s Equity and Inclusive Education Strategy”, online: Queen’s Printer for Ontario <http://www.edu.gov.on.ca/eng/policyfunding/equity.pdf>

⁴ 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-andracism>

Law Society works to ensure that the law and the practice of law are reflective of all the people of Ontario, including Indigenous peoples, Francophones and equality-seeking communities. The Law Society also seeks to ensure that its workplace and the legal professions are free of harassment and discrimination.

In 2012, the Law Society 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 preventative, remedial and/or support strategies;
- d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee (“EAIC”) and other committees, to address these challenges.

The Working Group’s Approach

Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

In order to fulfil its mandate, the Working Group gathered information about the challenges faced by racialized licensees using consultant and community engagement processes.⁵ Further information about this part of the Working Group’s activities can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

The Working Group reviewed all of the information gathered through the engagement process and drafted a consultation paper titled *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*.⁶

Convocation approved the consultation paper in November 2014, and the Working Group consulted with over 1,000 racialized and non-racialized lawyers, paralegals, law students, articling students and members of the public throughout the province of Ontario between January and March 2015. The Working Group met with organizational stakeholders and members of the Law Firms Diversity and Inclusion Network. The Working Group also received feedback from 45 individuals and organizations in the form of written submissions.⁷

⁵ Referred to as “the engagement process”.

⁶ Available at: <http://www.lsuc.on.ca/racialized-licensees/>.

⁷ Written submissions for which the Law Society received consent to post publicly are available online at <http://www.lsuc.on.ca/racialized-licensees/>.

Engagement Process Results

The qualitative and quantitative data the Working Group obtained from the engagement process identified widespread barriers experienced by racialized licensees within the legal professions at all stages of their careers. Examples of challenges faced in the legal professions include discrimination and stereotyping, negotiating concepts of “culture” and “fit”, and lack of mentors, networks and role models. Participants also noted that race-based barriers are often complicated by additional intersecting experiences of discrimination based on gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants in the engagement process believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions. Generally, participants noted the vulnerability of racialized licensees in the legal professions in the context of professional regulation and discipline.

Consultation Process Results

The information gathered from the consultation process is summarized as follows:

- Consultation participants expressed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces.
- The Working Group heard a broad range of views on the issue of demographic data collection. However, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”.
- The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity.
- The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees. Generally, the Working Group heard that there is no “one size fits all” model for mentoring.
- Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging.
- A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory Continuing Professional Development (CPD) training on cultural competence, unconscious bias, and anti-racism.

- Participants suggested updating the *Rules of Professional Conduct*⁸ and the *Paralegal Rules of Conduct*⁹ to specifically address systemic discrimination and subtle forms of discrimination.

Objectives

The Working Group has distilled the themes in the consultation into the following three objectives:

1. Inclusive legal workplaces in Ontario;¹⁰
2. Reduction of barriers created by racism, unconscious bias and discrimination; and
3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.

The Working Group makes 13 recommendations in order to meet these objectives. They fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

Recommendations

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

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The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

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The Law Society will:

- 5) require every licensee to adopt and to abide by a statement of principles acknowledging their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public;**

⁸ *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

⁹ *Paralegal Rules of Conduct* The Law Society of Upper Canada available on-line at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

- 6) require a licensee representative of each legal workplace of at least 10 licensees in Ontario to develop, implement and maintain a human rights/diversity policy for their legal workplace addressing at the very least fair recruitment, retention and advancement, which will be available to members of the professions and the public upon request;
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adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

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

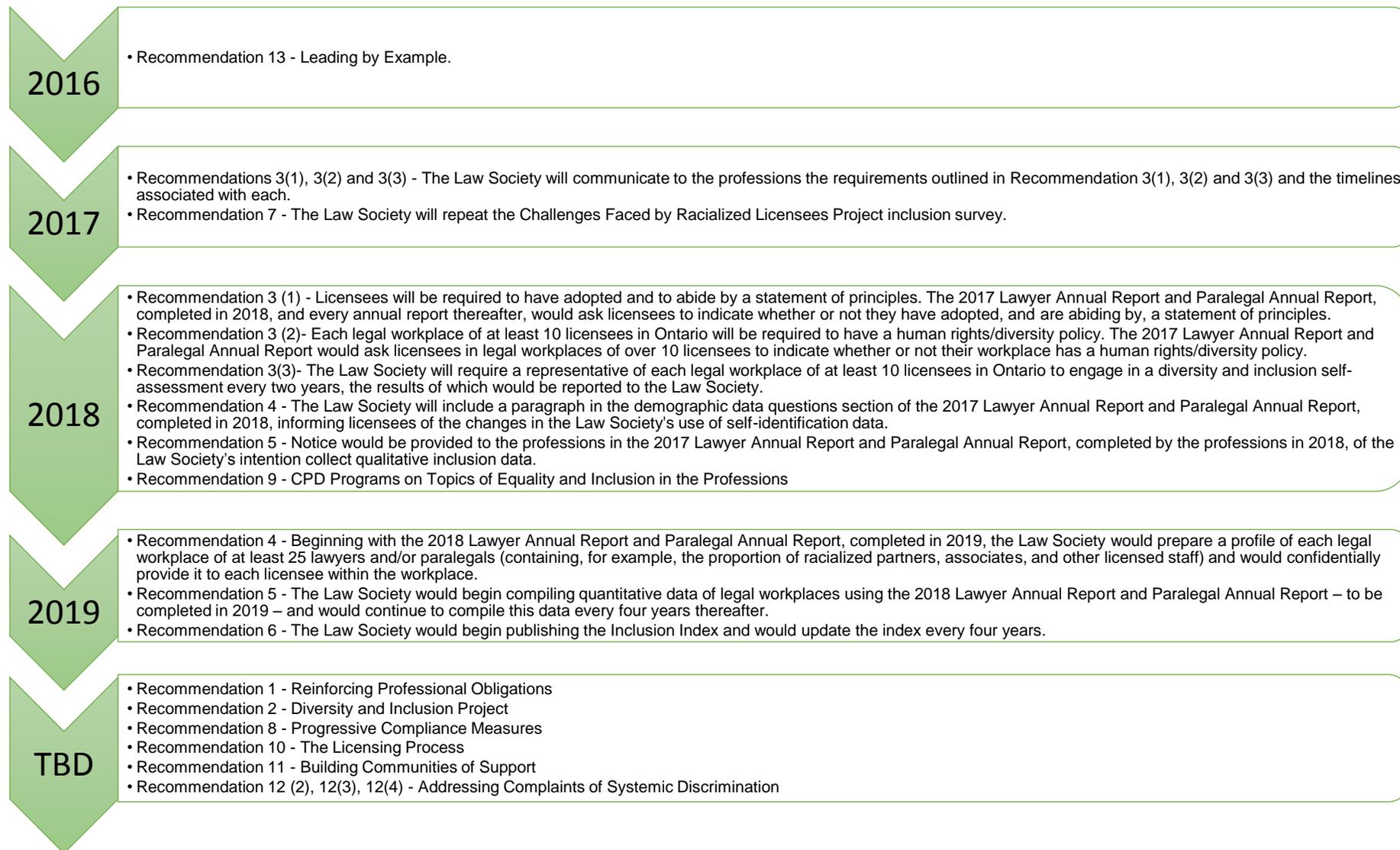
- 5) review the function, processes and structure of the Discrimination and Harassment Counsel Program (DHC), including considering effective ways for the DHC to address issues of systemic discrimination;

- 6) revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*, where appropriate, so that systemic discrimination and reprisal for complaints of discrimination and harassment are clearly identified as breaches of professional conduct requirements;
- 7) create effective ways for the Professional Regulation Division to address complaints of systemic discrimination; and
- 8) create a specialized and trained team to address complaints of discrimination.

Recommendation 13 – Leading by Example

- 3) The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:
 - a) as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;
 - b) measuring quantitative progress through a census of the workforce or other method;
 - c) measuring qualitative progress by conducting inclusion surveys;
 - d) conducting regular equality, diversity and inclusion self-assessments; and
 - e) based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;
 - f) publishing relevant findings from b), c), d) and e); and
 - g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.
- 4) The Law Society will:
 - a) conduct an internal diversity assessment of the bench composition and publicize the results;
 - b) provide equality and inclusion education programs for Convocation on a regular basis.

Timeline for Implementation of Recommendations



Introduction

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

— Yolanda King¹¹

Background

1. The Law Society of Upper Canada (“The Law Society”) is the governing body for more than 50,000 lawyers and 8,000 paralegals in Ontario. The Law Society is committed to advancing equality, diversity and inclusion in the legal professions — a commitment which includes addressing any barriers faced by lawyers and paralegals to full and active participation in the professions. The Law Society’s *Rules of Professional Conduct* and *Paralegal Rules of Conduct* specifically prohibit discrimination and harassment and speak to lawyers’ and paralegals’ responsibility to adhere to human rights laws in Ontario.
2. Since 2001, the proportion of racialized¹² lawyers in the Ontario legal profession has doubled, rising from 9% of the profession in 2001 to 18% in 2014.¹³ This is compared to 23% of the Ontario population who indicated in the 2006 Canada Census that they are racialized and 26% of the Ontario population who indicated in the 2011 National Household Survey that they are racialized.¹⁴ The Law Society’s Statistical Snapshot of Paralegals from the Paralegal Annual Report 2014 also show a high proportion of racialized paralegals at 34% of the paralegal profession.¹⁵ The Law Society’s Statistical Snapshots of Paralegals also indicate that 34% of licensed paralegals in Ontario are racialized.
3. A review of statistical data, research findings and anecdotal evidence suggested that, notwithstanding their increase in representation, racialized lawyers face challenges in the practice of law. The Law Society also noted a lack of information about the challenges faced, if any, by racialized paralegals.
4. In 2012, the Law Society created the Challenges Faced by Racialized Licensees Working Group (“the Working Group”) to:

¹¹ Daughter of Martin Luther King

¹² 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-andracism>.

¹³ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: Law Society of Upper Canada, April 2010) [Ornstein Report] and 2014 Statistical Snapshot of Lawyers from the Lawyer Annual Report 2014 at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-lawyers.html>

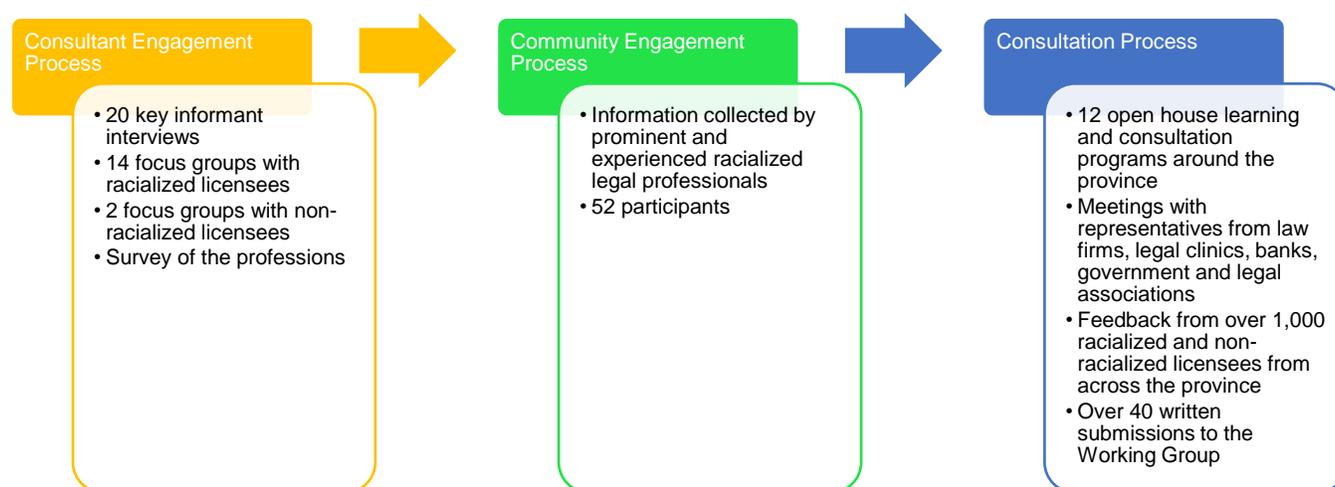
¹⁴ Ontario Ministry of Finance, *2011 National Household Survey Highlights: Factsheet 2*, on-line: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-2.html>

¹⁵ Statistical Snapshot of Paralegals from the Paralegal Annual Report at <http://www.annualreport.lsuc.on.ca/2015/en/the-professions/snapshot-paralegals.html> (paralegals).

- 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;¹⁶
 - c. consider best practices for preventative, remedial and/or support strategies; and
 - d. if appropriate, design and develop preventative, remedial, enforcement, regulatory and/or support strategies, for consideration by the Equity and Aboriginal Issues Committee (“EAIC”) and other committees, to address these challenges.
5. Since 2012, the Working Group has been actively engaged in gathering information about the challenges faced by racialized licensees and developing recommendations to address these challenges.

The Process: Listening and Learning

6. The members of the Working Group began their work by conducting a review of the data and literature available on the challenges faced by racialized licensees. The Working Group then gathered information about the challenges using an engagement process, followed by an extensive consultation process.¹⁷



7. The qualitative and quantitative data obtained from the engagement processes identified **widespread barriers experienced by racialized licensees within the professions at all stages of their careers.**
8. Through the consultation process, the Working Group received rich feedback on questions organized under the following themes:

¹⁶ The Working Group considered available information regarding the experience of racialized licensees in the regulatory process and determined that there is more work to be done. The preliminary work thus far will be continued.

¹⁷ Further information about this part of the Working Group’s work can be found at: <http://www.lsuc.on.ca/racialized-licensees/>.

- Enhancing the internal capacity of organizations;
 - Mentoring, advisory services and networking;
 - Enhancing cultural competence in the profession;
 - Discrimination and the role of the complaints process; and
 - The operations of the Law Society of Upper Canada.
9. A detailed overview of the results of the engagement processes and the consultation process can be found at Appendix A.

Recommendations: Framework to Address the Challenges Faced by Racialized Licensees

On Racism and Initiatives for Change

“Effective responses to racial discrimination and racial profiling start with acknowledging that racism exists.”¹⁸

— Ontario Human Rights Commission

10. The Working Group acknowledges that the legal professions operate in a broader social context in which racism continues to negatively impact the lives of racialized people. During the consultation phase, a participant noted that society could currently be at an inflection point – a point at which there is a significant possibility for change in the way in which the professions engage with equality and diversity principles and practices.
11. Recently, the Ontario government announced the establishment of an Anti-Racism Directorate tasked with “increas[ing] public education and awareness of racism to create a more inclusive province” and “apply[ing] an anti-racism lens in developing, implementing and evaluating government policies, programs and services.”¹⁹ Similarly, in November 2015, the Ontario Public Service (OPS) launched an Anti-Racism Action Plan. This plan focuses on “preventing race-based discrimination and harassment; further diversifying the public service at every level, including senior management; and increasing OPS employees’ awareness of racism and its impacts.”²⁰
12. In the academic sphere, in February 2016, University of Toronto committed to collecting race-based data from its students in an effort to “tackle a lack of representation in the lecture hall among some groups and lend hard numbers to the push for equity in the public realm.”²¹ In the area of child welfare, in June 2016, children’s aid societies agreed to collect race-based data to address concerns that there are a high number of black and Indigenous children in care.
13. On the popular culture front, in early 2016, media attention turned to #OscarsSoWhite²² — Hollywood actors and filmmakers who were speaking up against the lack of diversity in the nominations for the Academy Awards. Those who work in Hollywood note that the lack of

¹⁸*Fishing without fear: Report on the inquiry into assaults on Asian Canadian anglers* (Ontario Human Rights Commission, 2008) available at <http://www.ohrc.on.ca/en/fishing-without-fear-report-inquiry-assaults-asian-canadian-anglers/2-naming-racism>

¹⁹ “Ontario Establishing an Anti-Racism Directorate: Government Working to Advance Equality for All Ontarians”, online: Queen’s Printer for Ontario <https://news.ontario.ca/opo/en/2016/02/ontario-establishing-an-anti-racism-directorate.html>

²⁰ *Ibid.*

²¹ “U of T to track race-based data of its students”, online: *Toronto Star* <https://www.thestar.com/news/gta/2016/02/22/u-of-t-to-track-race-based-data-of-its-students.html>

²² The hashtag was created in 2015 by April Reign, a former attorney who was disappointed by the lack of diversity and inclusion among Oscar nominees. For more information, please see: <http://www.latimes.com/entertainment/envelope/la-et-mn-april-reign-oscars-so-white-diversity-20160114-story.html>

diversity and inclusion goes beyond the Academy Awards, with one director noting, “I was meeting with potential investors, and right away everybody’s like, “It’s an Asian-American cast. It’ll never sell.””²³

14. Race and racism are also at the forefront of issues in the justice system — from the overrepresentation of black and Indigenous peoples in federal prisons²⁴ to police violence to calls for judicial diversity and beyond. In spring 2016, Black Lives Matter Toronto, “a coalition of black Torontonians working in solidarity with communities/individuals seeking justice from state-sanctioned violence”²⁵ occupied the space in front of Toronto Police Headquarters for two weeks to protest police violence against the black community. Acknowledging that racialized communities are “over-represented and subject to different treatment in the justice system as a whole”,²⁶ Legal Aid Ontario is currently developing a strategy to “identify the legal needs and to protect the legal rights of racialized communities in the justice system”.
15. Additionally, the Ontario Human Rights Commission is currently working on a new policy on racial profiling that will “provide guidance on combatting racial profiling in a range of institutional and community settings” and “seek to support and enable Ontario organizations, legal decision-makers and affected community members to better identify, address and prevent racial profiling as a prohibited form of discrimination under the Ontario *Human Rights Code*.”²⁷
16. The information outlined is only a snapshot of the efforts in Ontario and beyond to address racial discrimination. The Working Group is encouraged by these initiatives and is hopeful that implementation of the recommendations listed in this report will lead to systemic change.

Guiding Principle

*“Nothing about Us, Without Us”*²⁸

17. The Working Group’s recommendations stem from an intention to create long lasting systemic change within the professions. The recommendations are put forward in an effort to support the Law Society’s ongoing commitment to ensure that both the law and the practice of law are reflective of all peoples in Ontario and that the professions are free of discrimination and harassment. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* speak to the special responsibility of lawyers and paralegals to adhere to the requirements of human rights laws in Ontario, including the obligation not to discriminate.
18. Although the Working Group’s report does not speak to the experiences of Indigenous licensees, the Working Group recognizes that Indigenous peoples face barriers that are unique to Indigenous licensees and barriers that are shared by both racialized and Indigenous

²³ “What It’s Really Like to Work in Hollywood”, online: *The New York Times*

<http://www.nytimes.com/interactive/2016/02/24/arts/hollywood-diversity-inclusion.html>

²⁴ The Correctional Investigator of Canada, “Annual Report of the office of the Correctional Investigator 2014-2015” available at <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>

²⁵ Please see https://twitter.com/blm_to

²⁶ “Racialized communities strategy”, online: Legal Aid Ontario http://legalaid.on.ca/en/news/newsarchive/2016-06-13_racialized-communities-strategy.asp

²⁷ “Towards a new OHRC policy on racial profiling”, online: Ontario Human Rights Commission http://www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling

²⁸ Saying from the Latin “Nihil de nobis, sine nobis”.

licensees. The Working Group notes the importance of addressing the ongoing colonial violence experienced by Indigenous communities and of working towards reconciliation between Indigenous and non-Indigenous peoples. As expressed in the Truth and Reconciliation Commission's final report, "Reconciliation is not an Aboriginal problem; it is a Canadian one. Virtually all aspects of Canadian society need to be reconsidered."²⁹ The Law Society is currently working on a framework of reconciliation, with the guidance of the Indigenous Advisory Group, comprised of First Nation, Inuit and Métis community representatives, to address unique issues faced by Indigenous peoples in Ontario. The framework of reconciliation is also intended to promote responses to and implementation of the Calls to Action from the [Truth and Reconciliation Commission of Canada's final report](#) and the [First Nations Representation on Ontario Juries](#) report by The Honourable Frank Iacobucci.

19. In working towards achieving the Working Group's overriding objective, establishing partnerships is important. How we do this is integral to what we do, and 'we' are all lawyers and paralegals, not just the Law Society. The Law Society's consultation was successful in part because the Working Group used a spirit of open inquiry. The consultation was also well attended. There was general acceptance that there is a problem and that it is time to address it.
20. The Working Group heard offers to assist with mentoring, that changes are beginning to happen within firms, that the Law Society should support work that is already being done, and that legal workplaces are willing to share best practices and collaborate to create effective models for progressive change in all parts of the professions. Representatives of the Working Group spoke with firms that provide unconscious bias training to all members, firms that have affinity groups in their workplace and firms that are actively participating in the Law Firm Diversity and Inclusion Network. There were requests that the Law Society not impose mandatory hiring targets and timetables, but accelerate a culture change that has already begun as a result of business imperatives, changing demographics and the interests expressed by clients, students, lawyers, paralegals and indeed the public.
21. At the same time, the Working Group heard concerns that the identified challenges were longstanding, and that change would occur very slowly without strong leadership from the Law Society. The Working Group heard generally that the Challenges Faced by Racialized Licensees Project has raised the profile and understanding of these issues, but the Working Group was also urged to use the Law Society's authority to effect change.
22. 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*³⁰ and *By-Laws*³¹ and recent jurisprudence. Within this overarching goal, partnerships with legal workplaces and associations are essential to the success of the proposed measures and projects detailed below.

²⁹ "Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada", online:

http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf

³⁰ R.S.O. 1990, c. L.8 available at <http://www.ontario.ca/laws/statute/90l08>.

³¹ Available at <http://www.lsuc.on.ca/by-laws/>.

Objectives

23. The Working Group has identified the following three objectives:
1. Inclusive legal workplaces in Ontario;³²
 2. Reduction of barriers created by racism, unconscious bias and discrimination; and
 3. Better representation of racialized licensees, in proportion to the representation in the Ontario population, in the professions, in all legal workplaces and at all levels of seniority.
24. The Working Group puts forward the following recommendations in order to meet these objectives. It is anticipated that in order to implement a number of the mandatory recommendations, the Law Society will need to consider appropriate by-law amendments. Additionally, the Law Society will need to invest in information technology that will allow it to effectively record and analyze progress across workplaces. The Working Group has contemplated budgetary considerations in developing these recommendations and it is anticipated that a senior staff implementation working group will be involved in implementing the recommendations.
25. The recommendations fall within four interrelated categories: accelerating culture shift, measuring progress, educating for change and implementing supports. The final recommendation speaks to the operations of the Law Society.

Recommendations

Accelerating Culture Shift

Recommendation 1 – Reinforcing Professional Obligations

The Law Society will review and amend, where appropriate, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and Commentaries to reinforce the professional obligations of all licensees to recognize, acknowledge and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation and the special responsibilities of licensees in the legal and paralegal professions.

26. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the professional and ethical obligations of lawyers and paralegals. The Working Group recommends that in order to ensure that licensees infuse the principles of equality, diversity and inclusion into their everyday practice, the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and/or the Commentaries be reviewed to determine how this objective can be advanced.

Recommendation 2 – Diversity and Inclusion Project

The Law Society will work with stakeholders, such as interested legal workplaces, legal associations, law schools and paralegal colleges to develop model policies and resources to address the challenges faced by racialized licensees.

27. The Working Group recommends that the Law Society engage in a collaboration between, for example, legal associations, government legal departments, the Law Firms Diversity and Inclusion Network (“LFDIN”), Legal Leaders for Diversity and Inclusion (“LLD”), sole practitioners, licensees in private practice, and law schools to develop and support diversity and inclusion policies, programs and practices intended to address the challenges faced by racialized licensees. The project would focus on the following areas:
 - Developing resources on competency hiring, unconscious bias training, barriers to inclusion in the workplace, affinity group development, contract compliance and best practices within firms and workplaces;
 - Considering the assignment of work and career development, particularly understanding the impact of cultural homophily on career development,³³ and
 - Working with law schools to create or provide better sources of information on what is needed to apply, interview and succeed in a larger legal workplace. This could include enhancing or using the On Campus Interview (“OCI”) process for the dissemination of information. This would also include outreach to the National Committee on Accreditation (“NCA”) candidates.
28. The proposed project would build upon the Law Society’s experience with its Justicia Project, created in 2008 with the goal of retaining and advancing women in private practice. The project saw more than 55 law firms voluntarily sign agreements with the Law Society to develop practical resources for law firms and women lawyers. The Justicia resources addressed topics such as: leadership, career advancement, business development, flexible work arrangements and parental leave.
29. A number of participants in the engagement and consultation processes supported the creation of a diversity project similar to the Justicia Project.
30. During the consultation process, the Working Group received feedback from a number of legal workplaces that were actively engaging in work related to enhancing diversity and inclusion in their workplaces. The Working Group also heard from legal workplaces that would benefit from support in developing diversity and inclusion policies and practices.
31. The Working Group concluded that a Justicia-type project would benefit the professions by creating a space where legal workplaces can openly discuss challenges in addressing the barriers faced by racialized licensees in the professions and by creating a forum to document and share best practices. Furthermore, legal workplaces could develop, in advance and with the support of the Law Society, policies that they will be required to have in place under Recommendation 3.

³³ The notion of ‘like’ reaching out to ‘like’ or the tendency of individuals to associate and bond with similar others.

32. Currently, a number of large firms are engaged in a collaborative diversity initiative through the LFDIN and in-house counsel through LLD. Unlike the Justicia Project, which was focused on private practice, the proposed project would bring together legal workplaces from various practice environments and practice areas, in addition to associations and law schools to discuss overlapping concerns and to work on collaborative solutions.
33. In 2009, the Law Society of England and Wales (“LSEW”) created the Diversity and Inclusion Charter (the “Charter”). The LSEW describes the Charter as follows:
- The purpose of the Charter is to help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff and clients. This is achieved by helping practices to record and measure their procedures against a set of diversity and inclusion standards and by providing them with opportunities to share best practice advice and guidance with colleagues from across the profession. To date over 300 practices have signed up to the Charter, representing more than a third of all solicitors in private practice.
- The Diversity and Inclusion Charter is a public commitment by legal practices to promote the values of diversity, equality and inclusion throughout their business. Whether it's through recruitment, retention, career progression or training and development, all our signatories are committed to improving opportunities for people in the legal profession, regardless of their background or circumstances.³⁴
34. Practices that commit to the Charter are required to report biennially and show how well they are meeting their Charter commitments, and where more work needs to be done. Practices complete an online self-assessment report about their progress and performance. The results are published in aggregate by the LSEW and used to identify trends, successes and areas for improvement.
35. The Charter is accompanied by a set of protocols to help practices fulfil their commitments in key areas, such as reporting and monitoring, flexible working and procuring legal services. In addition, checklists, best practice guidance, case studies and toolkits are available.
36. The LSEW has also developed diversity and inclusion standards to help the signatories complete their annual self-assessment form. The standards help to show how well a legal practice is complying with equality legislation, regulation and equality and diversity standards. The Diversity and Inclusion Standards are accompanied by best practice guidance that provide examples of positive diversity and inclusion practices, as well as advice on where to get more help or information.
37. The Barreau du Québec, following a consultation regarding the challenges faced by racialized licensees practising in Québec, developed a three-year action plan, which includes creating Justicia-type project to increase the recruitment, retention and advancement of racialized licensees.³⁵ In June 2016, the Barreau launched *Projet Panorama*, a project aimed at recruiting, retaining and advancing lawyers from ethnocultural groups within law firms and legal

³⁴ “Diversity and Inclusion Charter” online: The Law Society of England and Wales

<http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-inclusion-charter/>

³⁵, “For a More Inclusive Profession – The Forum Project” online: Barreau du Québec

http://www.barreau.qc.ca/pdf/publications/Rapport_Profession_Inclusive_4pages-en.pdf

departments in Québec.³⁶ Participants have committed to compiling demographic statistics, sharing and implementing best practices, measuring progress in terms of hiring, retention and advancement, implementing measures to enhance diversity and inclusion, and publishing annual reports of work accomplished.³⁷

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

The Law Society will:

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

38. Some licensees are employed by non-licensees, including, for example, in-house counsel. Both employers and employees in legal workplaces have obligations under the *Human Rights Code*. Licensees have professional obligations with respect to human rights established by the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct*. For licensees employed by non-licensees, the human rights/diversity policy contemplated by this recommendation is a policy in respect of their individual obligations addressing at the very least fair recruitment, retention and advancement, which may of course be addressed by the employer's policy.

39. To ensure the consistent implementation of this recommendation, the Law Society will guide licensees in the development of statements of principles, and legal workplaces in the development of policies and self-assessment tools. In consultation with legal workplaces, it will develop resources, such as templates, guides and model policies.

40. Recognizing that sole practitioners and small legal workplaces may have limited resources, the Working Group has determined that the requirements under Recommendation 3 (2) and Recommendation 3(3) should apply to legal workplaces of at least 10 licensees; however, legal workplaces comprised of less than 10 licensees are strongly encouraged to develop human rights/diversity policies and complete equality, diversity and inclusion self-assessments.

³⁶ "Project Panorama", online: Barreau du Québec <http://www.barreau.qc.ca/fr/avocats/equite/panorama/>

³⁷ *Ibid.*

41. It is anticipated that the nature of the policies and self-assessment tools will vary based on the size and type of legal workplace. As a result, we propose that the Law Society, through the diversity and inclusion project described in Recommendation 2, develop the templates for the statements of principles, policies and self-assessment tools in collaboration with legal workplaces that wish to participate in the project. We believe that this approach would increase the awareness of legal workplaces, begin the cultural shift, create greater buy-in and allow for the development of resources that take into account the realities of legal workplaces.
42. The Working Group believes that the Law Society should minimize unnecessary burdens, and recognize that many licensees and workplaces have already moved forward proactively with equality measures on their own. Licensees and workplaces will be free to adopt templates and model policies where appropriate to their needs, or to create their own statements of principles and policies that include the elements covered by the Law Society's sample documents, but tailor them to their specific contexts.
43. The stages for the implementation of this recommendation would be as follows:
- Stage 1: In 2017, the Law Society would communicate to the professions the requirements outlined in Stages 1-3.
 - Stage 2: By January 1, 2018, licensees would be required to have adopted and to abide by a statement of principles, and each legal workplace of at least 10 licensees in Ontario would be required to have a human rights/diversity policy as described above.
 - Stage 3: The 2017 Lawyer Annual Report (“LAR”) and Paralegal Annual Report (“PAR”), which would be completed by licensees in early 2018, and every annual report thereafter, would ask licensees to indicate whether or not they have adopted, and are abiding by, a statement of principles. The 2017 LAR and PAR would also ask licensees in designated legal workplaces to indicate whether or not their legal workplace has a human rights/diversity policy.
 - Stage 4: By the end of 2018, and every two years thereafter, the Law Society would require a representative of each designated legal workplace of at least 10 licensees in Ontario to engage in a diversity and inclusion self-assessment. Legal workplaces would then report to the Law Society on whether they had completed the self-assessment and, if not, explain their reasons for not having done so.
44. 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.
45. Section 4.1 of the commentary under section 2.1-1 of the *Rules of Professional Conduct* reads as follows:

A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the

diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.³⁸

46. Similarly, section 2.03 of the *Paralegal Rules of Conduct* state “the principles of the *Ontario Human Rights Code* and related case law apply to the interpretation of this rule [the rule on *Harassment and Discrimination*].”³⁹
47. 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.”⁴⁰
48. The Working Group considered requesting that legal workplaces voluntarily adopt policies. The research and the consultation process, however, made clear that 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, but fixed, deadlines to implement steps that are important to achieve lasting change. Indeed, many of these steps have been taken, or will be taken by legal workplaces voluntarily, because of their acknowledged importance.
49. The Working Group concluded that required minimum standards of equality, diversity and inclusion will reinforce the human rights responsibilities of licensees — obligations already required by the *Rules of Professional Conduct*, the *Paralegal Rules of Conduct* and, more generally, the *Human Rights Code*. Furthermore, as the Ontario Human Rights Commission (“OHRC”) notes:

In addition to addressing obligations under the *Human Rights Code*, the adoption and implementation of an effective anti-racism vision statement and policy has the potential of limiting harm and reducing liability. It also promotes the equality and diversity goals of organizations and institutions and makes good business sense.⁴¹
50. It is the Working Group’s intention that legal workplaces will take this opportunity to implement comprehensive equality, diversity and inclusion policies, and will consider whether progress is being achieved by engaging in periodic self-assessment.
51. Some organizations have adopted a similar approach by creating a “comply or explain” approach. For example, the Ontario Securities Commission (“OSC”) requires companies regulated by the OSC to disclose the following gender-related information: the number of women on the board and in executive positions; policies regarding the representation of women on the board; the board or nominating committee’s consideration of the representation of

³⁸ *Rules of Professional Conduct*, *supra* note 6.

³⁹ *Paralegal Rules of Conduct*, *supra* note 7.

⁴⁰ Participating legal association.

⁴¹ “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination>

women in the director identification and selection process; and director term limits and other mechanisms of renewal on their board.⁴² The OSC requires companies to either report their implementation or consideration of the items listed above, or to explain their reasons for not doing so.

52. The Working Group's recommendation that legal workplaces of at least 10 licensees in Ontario complete a self-assessment about diversity performance, and report the results to the Law Society stems from an intention to have legal workplaces engage in dialogue and reflection on the current state of diversity and inclusion within their workplace, and an intention to encourage legal workplaces to work proactively to advance diversity and inclusion efforts.
53. The Working Group has reviewed the Canadian Bar Association's ("CBA") guide *Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide for Law Firms*.⁴³ The document was drafted to "assist lawyers and firms by providing practical guidance on law firm structures, policies and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled".
54. The document contains a detailed 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.⁴⁴
55. 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 effective in their specific context. The result has been a two-third reduction in client complaints for firms regulated in this way.⁴⁵
56. A similar approach has been used for the assessment of diversity performance. The U.S.-based Minority Corporate Counsel Association has developed the *Diversity Self-Assessment Tool for Law Firms*, in an effort to "stimulate thought and open a dialogue within a firm regarding how to advance its diversity efforts."⁴⁶ Firms are asked to assess diversity performance in the following areas: leadership and commitment, professional development, recruitment and retention, representation/demographics, workplace culture and diversity, and external face of the firm.
57. The Law Society of England and Wales ("LSEW") also asks firms that have signed on to its Diversity and Inclusion Charter to complete a self-assessment (discussed previously in Recommendation 2).

⁴² "Increasing Gender Diversity In Corporate Leadership", online: Queen's Printer for Ontario <http://news.ontario.ca/mof/en/2014/12/increasing-gender-diversity-in-corporate-leadership.html>

⁴³ Canadian Bar Association, "Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide" (Ottawa: Canadian Bar Association, 2014)

⁴⁴ Canadian Bar Association, "CBA Ethical Practices Self-Evaluation Tool" (Ottawa: Canadian Bar Association, 2014)

⁴⁵ Tahlia Ruth Gordon, Steve A. Mark, Christine Parker, "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW" (2010) *Journal of Law and Society*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315.

⁴⁶ "A Diversity Self-Assessment Tool for Law Firms, online: Minority Corporate Counsel Association <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&PageID=996>

58. In addition to the information gathered through the self-assessment, legal workplaces would be encouraged to conduct their own comprehensive inclusion surveys to establish benchmarks and identify and address concerns related to workplace culture. The Law Society has developed a number of model policies and guides to assist law firms in their efforts to ensure that their policies and practices are in keeping with equality and diversity principles. Again, the Law Society would develop sample inclusion survey templates, which would be shared with the profession.

Measuring Progress

59. The Working Group proposes, based on the consultation findings and our review of the literature and best practices on measuring systemic change that both the Law Society and legal workplaces should partner in collecting and analyzing qualitative and quantitative information about diversity. The Law Society would collect demographic data through the annual LAR and PAR, and qualitative information through a periodic questionnaire and a quadrennial province wide cultural inclusion survey similar to the one conducted by Stratcom on behalf of the Law Society in 2013. Legal workplaces of a sufficient size would obtain both quantitative and qualitative information about their workplaces in order to analyze the results, and ultimately an inclusion index would be published by the Law Society.
60. The 2012 CBA guide, *Measuring Diversity in Law Firms: A Critical Tool for Achieving Diversity Performance*, identifies two types of data for measuring a law firm's diversity performance — self-identification data and diversity climate data. Self-identification data is collected “to assess the representativeness of [a] firm's workforce”⁴⁷, whereas diversity climate data is “focus[ed] on the perceptions and attitudes about diversity held about the members of the firm.”⁴⁸
61. The collection of both self-identification data and diversity climate or inclusion data provides a more complete picture of diversity and inclusion in the professions. In *Data & Diversity in the Canadian Legal Community*, Dean Lorne Sossin and Sabrina Lyon, basing their conclusion on extensive interviews, a review of ongoing policy initiatives and a comprehensive analysis, state “generating rigorous and meaningful data, both quantitative and qualitative, would advance a culture of inclusion and accountability in the Canadian justice community.”⁴⁹

Recommendation 4 – Measuring Progress through Quantitative Analysis

Each year, the Law Society will measure progress quantitatively by providing legal workplaces of at least 25 licensees in Ontario with the quantitative self-identification data of their licensees compiled from the Lawyers Annual Report and the Paralegal Annual Report in a manner consistent with the best practices established to protect licensees vulnerable to harm that may

⁴⁷ Canadian Bar Association, “Measuring Diversity in Law Firms: A Critical Tool for Achieving Performance” (Ottawa: Canadian Bar Association, 2012)

⁴⁸ *Ibid.*

⁴⁹ Sabrina Lyon and Lorne Sossin, “Data and Diversity in the Canadian Justice Community”, Vol. 10, No. 5 (2014) Osgoode Legal Studies Research Paper No. 12/2014 at 2, [Data and Diversity] available at <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsrps>.

flow from this disclosure, so they can compare their data with the aggregate demographic data gathered from the profession as a whole through the annual reports.

“...what gets measured can help organizations understand how effective their programs and policies are; where they have issues; and what relevant and reasonable goals they can establish to improve performance.”⁵⁰

— Canadian Institute of Diversity and Inclusion

62. Since 2009, the Law Society has collected demographic data based on race, Indigenous identity, gender, Francophone identity, disability, and lesbian, gay, bisexual, transgender and queer (“LGBTQ”) identity through the Lawyer Annual Report and the Paralegal Annual Report. Self-identification questions were included in the annual reports to inform the Law Society of the extent to which the professions are reflective of the broader community they serve, to help meet the needs of the public, and to develop programs to enhance the diversity of the professions. These demographic data are analyzed and published in aggregated form under the following categories: age, year of call, type of employment, size of firm (for those in private practice), and region.⁵¹
63. In the consultation paper, the Working Group highlighted the importance of gathering and maintaining demographic data, providing the following reasons for engaging in this practice:
 - a. Firms can demonstrate that they value equality, diversity and inclusion in their firm’s culture;
 - b. Maintaining demographic data allows firms to monitor diversity in recruitment and advancement and to adjust policies and practices accordingly;
 - c. Diversity, and data on diversity, assist firms in attracting a strong talent base at all levels. The pool of law students is increasingly diverse, and so is the pool of legal talent. Graduating law students are often interested in the diversity characteristics of the legal workplaces to which they can apply;
 - d. 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;⁵²
 - e. Demographic data assist firms to enhance their client services and professional reputation, and to become role models by ensuring representation at all levels;
 - f. Demographic data provide background and incentives for firms to develop programs that enhance inclusion; and
 - g. The information may assist in developing initiatives to enhance access to justice.

⁵⁰ “What Gets Measured Gets Done: Measuring the ROI of Diversity and Inclusion”, online: Canadian Centre for Diversity and Inclusion <http://ccdi.ca/wp-content/uploads/2016/06/CCDI-Report-What-Gets-Measured-Gets-Done.pdf>

⁵¹ *Supra* note 11 & note 13

⁵² “Diversity metrics will influence what firms BMO’s legal department does business with: Fish”, online: Canadian Lawyer Magazine <http://www.canadianlawyermag.com/5302/Diversity-metrics-will-influence-what-firms-BMOs-legal-department-does-business-with-Fish.html>

64. 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 data.”⁵³
65. The options outlined in the Consultation Paper regarding data collection largely focused on the collection of demographic data, including:
- collecting demographic data of licensees through the LAR and PAR, publicly reporting the demographic data based on firm size and disclosing to firms their own demographic data;
 - working with firms to develop consistent templates for demographic data collection and encouraging firms to collect such data on a regular basis;
 - setting parameters for the voluntary collection of demographic data by firms and requiring firms to report either that they are collecting this information or the rationale for not collecting such data; and
 - setting parameters for mandatory collection of demographic data by firm.
66. Throughout the consultant and community engagements and the consultation process, the Working Group heard concerns from some participants that the information obtained from the Challenges Faced by Racialized Licensees Project would be shelved and the project would not result in meaningful change. By engaging in periodic litmus tests of equality and inclusion in the professions, the Law Society will ensure that its efforts to address the challenges faced by racialized licensees are ongoing and will evolve based on the issues identified by the inclusion surveys. As the OHRC notes, “When data is gathered, tracked and analyzed in a credible way over time, it becomes possible to measure progress and success (or lack of it). Budgets, policies, practices, processes, programming, services and interventions can then be evaluated, modified and improved.”⁵⁴
67. The Legal Services Board (“LSB”), the independent body responsible for overseeing the regulation of lawyers in England and Wales, has taken a proactive approach to gathering demographic data. In 2011, the LSB published statutory guidance outlining its expectation of approved regulators to measure levels of diversity and mobility in the legal workforce. Approved regulators, including the Solicitors Regulation Authority,⁵⁵ now require all practices they regulate to collect, report and publish data annually on the diversity of their workforce. The LSB has cited transparency as the rationale for requiring the publication of diversity data.⁵⁶
68. Information about the demographic composition of legal workplaces would be compiled through the Lawyer Annual Report and Paralegal Annual Report data, which would comprise of the statistical snapshots of the professions as a whole and the data compiled for each firm. This data would be provided to each legal workplace on an annual basis. In considering privacy concerns of individual licensees and the Law Society’s ability to ensure confidentiality, the

⁵³ *Supra* note 47.

⁵⁴ “Count me in! Collecting human rights-based data” at 11, Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2494>.

⁵⁵ “Diversity data collection”, online: Solicitors Regulation Authority <http://www.sra.org.uk/diversitydata/>

Working Group has suggested that this recommendation be applicable only to legal workplaces of at least 25 licensees in Ontario.

69. The Working Group has considered the input received from the engagements and the consultation process and proposes the following stages for the collection of self-identification data by firm:
- Stage 1: The Law Society would continue to measure the representation of racialized licensees using the information in the 2016 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2017, by providing the demographic data in aggregate form to the public as general snapshots of the professions in 2018.
 - Stage 2: The introductory paragraph of the self-identification demographic questions of the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, would be adapted to inform licensees of the change in the Law Society's use of the self-identification data.
 - Stage 3: Beginning with the 2018 LAR and PAR, completed by licensees in 2019, the Law Society would prepare a profile (containing, for example, the proportion of racialized partners, associates and other licensed staff) of each legal workplace of at least 25 lawyers and/or paralegals, and would confidentially provide it to each licensee within the workplace.

Recommendation 5 – Measuring Progress through Qualitative Analysis

The Law Society will measure progress qualitatively by:

- 1) asking licensees to voluntarily answer inclusion questions, provided by the Law Society, about their legal workplace, every four years; and**
 - 2) compiling the results of the inclusion questions for each legal workplace of at least 25 licensees in Ontario and providing the legal workplace with a summary of the information gathered.**
70. In implementing this recommendation, the Law Society would take into account issues of privacy and confidentiality. The qualitative information about legal workplaces would be gathered by asking licensees voluntary inclusion questions about their legal workplace using a tool that would allow for the information to be compiled and provided to each legal workplace. This information would be collected by the Law Society with the purpose of tracking trends over time and refining and developing programs and initiatives to address the challenges faced by racialized licensees and other equality-seeking groups.
71. Licensees would be asked about their experiences in their workplaces, including subjects such as career advancement opportunities, feelings of belonging, and experiences of discrimination. The questions would be drafted with the assistance of stakeholders and experts in the diversity and inclusion field. Much like the current demographic questions in the Lawyer Annual Report and the Paralegal Annual Report, answers would be voluntary. The information would be shared in aggregate form, with legal workplaces of at least 25 lawyers and/or paralegals.
72. The Working Group proposes the following stages for the collection of qualitative data:

- Stage 1: Notice would be provided to the professions in the 2017 Lawyer Annual Report and Paralegal Annual Report, completed by the professions in 2018, of the Law Society's intention collect qualitative inclusion data.
- Stage 2: The Law Society would begin compiling quantitative data of legal workplaces using the 2018 Lawyer Annual Report and Paralegal Annual Report – to be completed in 2019 – and would continue to compile this data every four years thereafter.

Recommendation 6 – Inclusion Index

Every four years, the Law Society will develop and publish an inclusion index that reflects the following information, including, for each legal workplace of at least 25 licensees: the legal workplace's self-assessment information (Recommendation 3(3)), demographic data obtained from the Lawyer Annual Report and Paralegal Annual Report (Recommendation 4) and information gathered from the inclusion questions provided by the Law Society (Recommendation 5).

73. The Working Group has considered a number of options for data collection and has arrived at the recommendations to measure progress outlined in Recommendations 3(3) (self-assessment), 4 and 5. The Working Group also believes that accountability and transparency are key to increasing equality and diversity in the professions. Members of the Working Group have considered a number of methods to ensure that these principles are reflected in the recommendations. The Working Group has decided that in addition to gathering qualitative and quantitative data about legal workplaces, the creation and publication of an inclusion index – an index that would include legal workplaces' assessments of their diversity and inclusion-related achievements and that would allow legal workplaces to demonstrate their performance and progress – would advance the goals of equality, diversity and inclusion. The Law Society would create this index and would determine the categories of information to be included in the index, as well as the weight provided to each category.
74. The Working Group is of the view that a public inclusion index would serve the many objectives cited earlier in relation to the benefits of collecting demographic data. The index would be a valuable tool for legal workplaces and the Law Society to determine whether there is progress in the professions. Legal workplaces could also use the index to attract prospective clients and to recruit talent.
75. A number of consultation participants as well as courts and commentators⁵⁷ have stated that to truly understand the equality and inclusion climate in a workplace, it is necessary to look at both quantitative and qualitative data. Sossin and Lyon exemplify this perspective, noting that “a blended ‘index’ of quantitative and qualitative factors best responds to the need for outcomes to matter (how many diverse lawyers a legal workplace is able to recruit relative to the available pool of candidates) and the need for inputs to matter (a legal workplace's policies, participation in proactive recruitment, establishing an inclusive firm culture, etc.).”⁵⁸

⁵⁷ Raj Anand, “Real Change? Reflections on Employment Equity's Last Thirty Years” in Carl Agócs, *Employment Equity in Canada: The Legacy of the Abella Report* (Toronto: University of Toronto Press, 2014)

⁵⁸ *Supra* note 47.

76. As Sossin and Lyon note, “the process of collecting and disseminating qualitative and quantitative data is not just an end in itself (to promote transparency, accountability, profile, etc.) but a means to developing responsive and effective policies [...] a range of innovations are already in place to build on – from mentorship programs, to career orientation and outreach, to equity and inclusion officers within legal workplaces, to media and public information campaigns.”⁵⁹
77. The LSEW publishes an annual diversity and inclusion report, which includes the results of self-assessments completed by the signatories to the Diversity and Inclusion Charter. According to the LSEW, “all signatories are required to self-assess against a set of standards and report on diversity data across their organisation, with smaller practices responding to a set of questions tailored to the needs of smaller firms”.⁶⁰ Although the data is collected by firm, it is published in aggregate form. In 2015, 341 firms submitted their self-assessment information to the LSEW.
78. For the last 10 years, the Black Solicitors Network (“BSN”), also based in the UK, has published The BSN Diversity League Table, a comprehensive report on diversity and inclusion in the legal profession, on an annual basis. The LSEW is the main sponsor of this initiative. According to the LSEW:
- The Diversity League Table has become an invaluable resource for the legal profession. Each year, the performance of participating law firms and chambers is measured across a range of demographic profiles. This provides an opportunity for firms to compare their performance against peers across key areas. The Diversity League Table also offers an opportunity to monitor the sector as a whole, facilitating a more diverse and transparent profession.⁶¹
79. The LSEW further notes that the LSEW Diversity and Inclusion Charter and the BSN Diversity League Table are complementary initiatives, as they both “provide comprehensive data sets [and] promote collaboration in equality and diversity matters and best practice across a range of key business areas”.⁶²
80. The Diversity League Table includes aggregate demographic data based on gender, ethnicity, LGBTQ and disability status, published by firm. Firms also provide information about policies & practices, specifically addressing the following categories: Monitoring; Leadership and Policy; External Face; Staff Development and Support; and Recruitment, Promotion and Retention. Firms are then given a score and a rank, based on the quantitative and qualitative data obtained. In 2015, 56 firms and chambers participated in the Diversity League Table.⁶³
81. A number of organizations have developed similar inclusion indices, detailing aggregate inclusion information about legal workplaces and workplaces in other industries.⁶⁴

⁵⁹ *Ibid.*

⁶⁰ “Diversity and Inclusion Charter annual report 2015”, at p.9 online: Law Society of England and Wales.

⁶¹ “Diversity League Table 2015”, online: Black Solicitors Network <http://satsuma.eu/publications/DLT2015/>

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ For example see:

Stonewall Top 100 Employers

<http://www.stonewall.org.uk/get-involved/workplace/workplace-equality-index;>

The Canadian Centre for Diversity and Inclusion is currently piloting an Employer Inclusivity Index with employers in Alberta

82. The Law Society believes that stakeholder participation in the development of the inclusion index is important, such as the participation of the LFDIN, LLD and associations with mandates to represent racialized licensees.
83. The Working Group suggests that the Law Society create a similar inclusion index to those described above, which would reflect the demographic information about the composition of each legal workplace and would include scores and rankings based on the presence or lack thereof of equality-related policies and practices. The Law Society would report this information by legal workplace for all legal workplaces with over 25 licensees. The Law Society would begin publishing the inclusion index in 2019 and would update the index every four years.

Recommendation 7 – Repeat Challenges Faced by Racialized Licensees Project Inclusion Survey

The Law Society will conduct inclusion surveys with questions similar to those asked in Appendix F of the Stratcom Challenges Faced by Racialized Licensees Final Report (March 11, 2014) (available online at <http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees-Full-Report.pdf>) The first inclusion survey will be conducted within one year of the adoption of these recommendations, and thereafter every four years, subject to any recommendation by the Equity and Aboriginal Issues Committee to Convocation.

84. The Stratcom survey was sent to all licensees, both racialized and non-racialized, in 2013. The anonymous 35-question survey included questions on topics such as: career opportunities and professional growth; disrespect and disadvantage; career setbacks; barriers to entry and advancement; and stereotyping.
85. In order to evaluate the success of the proposed initiatives and to identify any potential areas where barriers to inclusion may remain, the Working Group proposes repeating the Challenges Faced by Racialized Licensees Project inclusion questions within the abovementioned timeline. The proposed timeline is based on the Working Group's understanding and acknowledgement that systemic change will take time to occur. Four years was seen as an appropriate timespan for changes to take hold.

Recommendation 8 — Progressive Compliance Measures

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

86. The Working Group, having outlined some mandatory initiatives in the aforementioned recommendations, recognizes that there must be mechanisms in place to deal with non-

<http://ccdi.ca/products/workplace-solutions/diversity-data-analytics/>;
Pride at Work Canada's LGBT Inclusion Index
<http://prideatwork.ca/get-involved/index/>

compliance. The Working Group recommends that the Law Society take a progressive compliance approach with legal workplaces that do not meet the requirements outlined in the recommendations. The Working Group envisions a gradation of responses, beginning with remedial approaches, such as meeting with representatives of legal workplaces to discuss concerns with their policies and/or practices, to disciplinary approaches if there is deliberate non-compliance with requirements, despite multiple warnings, or no efforts are made to address systemic barriers.

Educating for Change

Recommendation 9 – Continuing Professional Development (CPD) Programs on Topics of Equality and Inclusion in the Professions

The Law Society will:

- 1) launch a three hour accredited program focused on advancing equality and inclusion in the professions;**
 - 2) develop resources to assist legal workplaces in designing and delivering their own three hour program focused on advancing equality and inclusion in the professions, to be accredited by the Law Society; and**
 - 3) require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter, which will count towards the licensee’s professionalism hours for that year.**
87. The Working Group recommends that the Law Society launch an innovative accredited program focused on topics such as equality and inclusion in the professions to assist licensees with promoting these principles. The Law Society would also support legal workplaces in developing their own programs that could be accredited by the Law Society. This would allow legal workplaces and legal associations to build their capacity in this area while addressing the needs of their membership base. The Law Society would work with associations to develop criteria for accreditation and to assist legal workplaces and legal associations in developing their own accredited courses. Programs could be delivered in any format already approved under the eligible education activities criteria available on the Law Society website.
88. In order to create awareness and engagement of the professions, the Law Society would require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of these recommendations and one hour per year every year thereafter. . These programs count towards professionalism CPD requirements for the year in which the hours were taken. The monitoring of these activities to confirm completion of hours would be the same as any monitoring conducted to confirm completion of professionalism hours. No additional oversight would be required.
89. Training sessions could cover topics such as unconscious bias, the impact of daily verbal, behavioural and environmental indignities, the value of diversity and inclusion, understanding power and privilege and addressing discrimination and harassment.

90. The Working Group also suggests that the Law Society, as part of its commitment to providing accessible education, offer an online program on topics related to equality and inclusion in the professions. Such program could contain a video presentation with best practices and links to resources, for licensees who wish to complete their professionalism requirements in an online environment. If delivered online, the program could consist of integrated learning modules with integrated polling or test questions, as already done in various contexts including the *Accessibility for Ontarians with Disabilities Act* training and existing Law Society CPD programs.
91. The Working Group considered the option that the Law Society provide voluntary accredited CPD programs on topics such as equality and inclusion in the professions. However, the Working Group has determined that participation in equality and inclusion-related education is essential to address the challenges faced by racialized licensees. The OHRC notes, in its *Policy and Guidelines on Racism and Racial Discrimination*, that “mandatory education, training and development initiatives” may be required for an anti-racism policy and program to be effective.⁶⁵
92. The Working Group initially considered training that would focus on “cultural competence”. Ritu Bhasin, a lawyer consultant in this area, defines cultural competence as “how we connect with people who are different than us” or “The ability to relate to others comfortably, respectfully and productively.”⁶⁶ A significant number of consultation participants agreed that mandatory CPD would assist in addressing the challenges faced by racialized licensees. A number of consultation participants emphasized the need for training to be delivered through an anti-discrimination or anti-oppression lens. The same participants noted discomfort with the term “cultural competence” due to the focus on understanding difference or “the other” as opposed to encouraging reflection on power and privilege. Consequently, the Working Group has chosen to focus the training on the principles of equality and inclusion, incorporating concepts of unconscious bias and cultural homophily.
93. The *Rules of Professional Conduct* 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* require that licensees protect the dignity of individuals and respect human rights laws in force in Ontario. Equality and inclusion training will assist licensees in understanding their obligations under the rules.

Recommendation 10 – The Licensing Process

The Law Society will include the topics of cultural competency, equality and inclusion in the professions as competencies to be acquired in the Licensing Process.

94. The Working Group wishes to integrate the topics of cultural competency, equality and inclusion into the Licensing Process, as appropriate, including within the reference materials for licensing, and in any program or course work that is completed during the Licensing Process.

⁶⁵ Policy and Guidelines on Racism, *supra* note 39 at 50.

⁶⁶ Ritu Bhasin is quoted in “Cultural Competence: An Essential Skill in an Increasingly Diverse World”, (Toronto: LawPRO Magazine, 2014, Volume 13, Issue 2), available at http://www.practicepro.ca/LawproMag/Cultural_Competence_Bhasin.pdf

95. A number of consultation participants emphasized the importance of incorporating teachings of equality and inclusion into the Licensing Process. For example, one participant noted that integrating cultural competence training in the Licensing Process would be “well-suited to ensuring that a strong foundation of diversity awareness and cultural consciousness is in place from the beginning of an individual’s legal career.”⁶⁷
96. The Entry-Level Solicitor Competencies and the Entry-Level Barrister Competencies both include the following section under Ethical and Professional Responsibilities:
19. respects human rights (e.g. does not engage in sexual harassment, discrimination or other human rights violations) (Rules 6.3-0 and 6.3.1. (Part of 24)
97. Additionally, under Client Communications, both sets of competencies include the following:
192. recognizes and is sensitive to clients’ circumstances, special needs and intellectual capacity (e.g. diversity, language, literacy, socioeconomic status, disability, health).
98. Similarly, the Paralegal Competencies, under Ethical and Professional Responsibilities, read:
3. Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g. does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).
99. Under section 27(2) of the *Law Society Act* and section 8(1) of By-Law 4, *Licensing*, a recipient of a lawyer or paralegal licence is also required to be of good character. The Law Society has indicated that adherence to human rights and equality principles should be considered in a determination of good character. The November 2013 Submission on The Federation of Law Societies of Canada’s National Suitability to Practise Standard Consultation Report⁶⁸ identifies that “specific reference to respect for and adherence to human rights and equality principles sends an important message to those entering the professions.”
100. The Working Group believes that the integration of equality and inclusion information, presented through an anti-discrimination or anti-oppression lens, will assist in preparing candidates to be competent members of the professions.

Implementing Supports

Recommendation 11 – Building Communities of Support

The Law Society, in collaboration with legal associations where appropriate, will provide support to racialized licensees in need of direction and assistance through mentoring and networking initiatives.

101. In considering this recommendation, the Working Group noted that in November 2013, the Law Society created a Mentoring and Advisory Services Proposal Task Force to consider mentoring

⁶⁷ Law firm representative.

⁶⁸ “Federation of Law Societies of Canada – Suitability to Practise Standard” – Report to Convocation, November 21, 2014 – Professional Regulation Committee, online: The Law Society of Upper Canada http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convnov2013_PRC.pdf

and advisory services models. The Working Group provided input to the Task Force on the development of models to best address the needs and facilitate the success of racialized licensees. The Task Force provided its final report to Convocation in January 2016. Convocation approved the creation of a law practice and advisory services initiative, which, at the outset of its implementation, "...will focus on providing supports for already identified communities of need, namely, sole practice and small firm licensees, new licensees, racialized licensees, those seeking succession planning supports and those within certain defined practice areas."⁶⁹

102. Data gathered through the LAR and PAR show that 24% of racialized lawyers are in sole practice and 33% of racialized lawyers practice in legal workplaces of two to five. Similarly, 25% of racialized paralegals are in sole practice. Engagement and consultation process participants highlighted the vulnerability of racialized sole practitioners in the professions — emphasizing the need for sole practitioners and licensees in small firms to have strong mentors and networks. The Working Group also recognizes that it is essential to be responsive to the needs and challenges of racialized licensees in a broad range of practice/work settings and practice areas, which will require approaches that are not "one size fits all".
103. The Law Society currently offers mentorship initiatives that will be enhanced by the new Law Practice Coach and Advisor Initiative.⁷⁰ Additionally, the Law Society, in partnership with legal associations and community groups, offers educational programs to promote discussion among members of the professions and the public on the challenges and opportunities for Francophone, Indigenous and equality-seeking communities in the legal professions. These Equity Legal Education events are often followed by networking receptions for members of the professions.
104. The Working Group heard that there is a need for increased, and in some cases, revamped, mentoring and networking initiatives to combat the isolation faced by racialized sole practitioners and racialized licensees practising in small firms. In considering potential mentoring and networking initiatives to support racialized licensees, the Working Group has identified the following objectives:
 1. Encourage the development of communities of support in the professions, including facilitating the search for multiple points for direction and assistance (e.g. peers, subject-matter experts, ethics sounding boards);
 2. Increase the capacity of legal associations to reach more licensees for trusted, nonjudgmental advice; and
 3. Foster connections for licensees who feel isolated, recognizing that feeling professionally isolated is not limited to those in small firms and sole practitioners or those in certain practice areas.

⁶⁹"Law Practice Coach and Advisor Initiative" – Final Report to Convocation, January 28, 2016 – Mentoring and Advisory Services Proposal Task Force
https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2016-mentoring.pdf at para 25.

⁷⁰ *Ibid.*

105. The Working Group highlighted the importance of working with legal associations in meeting the abovementioned objectives. The Working Group is also mindful of different types of mentoring, including both advisory services and coaching.⁷¹
106. As a first step, the Working Group proposes the following:
- Enhanced use of technology to facilitate the development of communities of trust;
 - Enhanced networking opportunities.

Enhanced Use of Technology to Facilitate the Development of Communities of Trust

107. The Working Group believes that any successful mentorship initiative should reach racialized licensees across the province. This proposal would involve the robust use of technology to increase the ability of racialized licensees to access information and support, with the goal of enhancing learning, competence and success. For example, the Law Society could work with associations of racialized licensees, where appropriate, to create an online resource centre for racialized lawyers and paralegals. This resource centre could act as a hub to bring together the various mentorship initiatives available around the province. The resource centre could include materials geared toward the needs, concerns and unique situations of licensees in sole practice, associations of sole practitioners and small partnerships. Resources could cover topics such as finding a mentor, action plans for mentor-mentee relationships, networking, and the benefits of joining associations. The resource centre could also include a forum for racialized licensees to discuss topics relevant to their practice environments and a podcast series on a range of topics related to race and racism in the professions and supports for racialized licensees.
108. The Working Group has also considered an initiative that would involve working with stakeholders, existing mentoring groups and others to develop the technology that would allow any licensee (racialized or otherwise) to have access to a diverse group of mentors. It may be helpful to ask licensees to indicate whether they are interested in participating in such a program when they fill out their LAR or PAR or through other methods, such as the Law Society Portal. Alternatively, mentors and mentees could be matched using a mobile application (app) with programmed algorithms to increase the potential of having successful relationships. Similar mobile apps have been created to assist with the search for a mentor or mentee in other industries.⁷² For example, Menteeer, a free, open source online platform,⁷³ works to match job seekers and mentors. Potential mentors and mentees are asked to answer a series of questions about their skills, interests and backgrounds to assist with finding suitable matches to meet their needs. Mentees are provided with a number of mentor profiles, which the algorithm has

⁷¹ Advisory services are shorter and more focused in scope, whereas coaching services address longer term career goals.

⁷² See Menteeer, Glassceiling
<https://www.menteeer.ca/>
<https://www.glassbreakers.co/>

⁷³ Any organization can use the code from this online platform, free of charge. The platform can be customized to meet the specific needs of the organization.

determined would be a good fit. Mentors wait for mentees to communicate with them to ask if they would like to establish a mentor-mentee relationship.⁷⁴

Enhanced Networking Opportunities

109. This project involves reviewing current practices around Law Society events and events co-hosted with equality-seeking legal associations to ensure that networking events are affordable, inclusive and relevant to licensees.

Recommendation 12 – Addressing Complaints of Systemic Discrimination

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

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

Discrimination and Harassment Counsel Program (DHC)

110. The Working Group recommends that the Discrimination and Harassment Counsel Program (DHC) undergo a review of its function, processes and structure. Although the DHC Program does not maintain self-identification information about complainants, it is noteworthy that for the 10-year-period of 2003 to 2012, only 16% of complaints of discrimination were based on race, 3% on ethnic origin, a nominal number on ancestry and place of origin, while 26% and 50% of complaints were based on the grounds of disability and sex, respectively. This is in contrast with the applications received at the Human Rights Tribunal where 22% of applications are based on race, 16% on colour, 17% on ethnic origin, 15% on place of origin and 13% on ancestry with 54% of applications based on disability and 25% based on sex, pregnancy and gender identity.⁷⁵ The lower proportion of race-based complaints to the DHC Program warrants a review of the DHC Program to identify possible barriers to accessing that program, more particularly by members of the racialized, Indigenous and disability communities.
111. In Fall 2016, the Law Society's Equity and Aboriginal Issues Committee commenced a review of the DHC Program. The objective of this review is to identify how this role can be better used to

⁷⁴ "App service Menteeer wants to help you find a mentor", online: CBC Radio <http://www.cbc.ca/radio/spark/277-digital-vellum-reclaiming-ephemera-room-escape-games-and-more-1.2975606/app-service-menteeer-wants-to-help-you-find-a-mentor-1.2975660>

⁷⁵ "Social Justice Tribunals Ontario: 2013-2014 Annual Report, online: Social Justice Tribunals Ontario <http://www.sjto.gov.on.ca/documents/sjto/2013-14%20Annual%20Report.html>

Please note that in both the DHC report and the Human Rights Tribunal Report, many applications and complaints claim discrimination based on more than one ground and as a result there may be double counting.

address discrimination and harassment in the professions, including systemic discrimination, while keeping in mind the independent arms-length position of the DHC and the duty of the DHC to maintain the confidentiality of any individuals who use the Program.

Rules of Professional Conduct and Paralegal Rules of Conduct

112. The *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* outline the responsibility of licensees to respect human rights laws — more specifically, not to engage in discrimination or harassment. The Law Society may investigate complaints of systemic discrimination; however, this is not widely known. The Working Group recommends explicitly stating in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* that systemic discrimination is considered a violation of the rules. The Working Group also recommends that the rules make clear that reprisal for complaints of discrimination and harassment is prohibited.

Specialized Professional Regulation Team

113. The Working Group recognizes that racism is complex and can manifest itself in subtle ways. The Working Group recommends that the Law Society create a specialized team of Professional Regulation staff members to address complaints of racial discrimination. The members of this team would undergo extensive training on issues of race and racism in order to prepare them to effectively handle these types of complaints.

Review Professional Regulation Processes to Effectively Address Systemic Discrimination

114. Along with the creation of a specialized team of Professional Regulation staff members to address complaints of discrimination, including racial discrimination, it is suggested that the Law Society review its complaints process to consider ways to collect data from different sources and identify instances of systemic discrimination. It is recommended that the Law Society consider specific processes to effectively address systemic discrimination.
115. Racialized consultation 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, comments or assumptions.
116. In addition to the barriers identified through the Challenges Faced by Racialized Licensees Project, in its 2009 *Aboriginal Bar Consultation*⁷⁶, the Law Society found that 26% of Indigenous lawyers felt that their Indigenous status was a negative factor in their experiences in the professions and the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.
117. It is clear from the Working Group's engagement and consultation processes that discrimination based on race is a daily reality for many racialized licensees; however, many participants stated that they would not file a discrimination complaint with the Law Society for various reasons, including fear of losing their job, fear of being labeled as a troublemaker, and other reprisal-related concerns. Participants also noted that although racism can be experienced on an

⁷⁶ "Final Report: Aboriginal Bar Consultation", online: The Law Society of Upper Canada <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147487118>

individual basis, racial discrimination can also be institutional or systemic in nature. Participants did not believe that an effective process was available at the Law Society to address systemic complaints. The Working Group heard from a number of participants who stated that a system of anonymous complaints would assist in alleviating some of the concerns about reporting cases of racial discrimination.

118. The Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry, which was mandated to inquire into a significant number of sexist, misogynist, and homophobic remarks and images posted on Facebook by fourth year male dentistry students at Dalhousie University, noted the pressing need for anonymous reporting mechanisms so that victims can protest such conduct without putting themselves at risk. This proposal was raised as a result of many who spoke to the Task Force about the need to be able to make anonymous complaints, especially in cases of sexual harassment and sexual assault. The Task Force notes “The biggest concern about anonymous complaints is that there is no way to effectively assess the merits of a particular complaint. However, a group of anonymous complaints all reflecting the same concern provides a signal that there may be a problem that requires some attention. Soliciting anonymous complaints for this purpose could be very useful.”⁷⁷
119. Princeton University allows for anonymous complaints of discrimination, harassment and other violations of policies and regulations through an independent provider of hotline services. Complainants can submit a report online or by calling a free hotline to speak with a trained specialist.⁷⁸ Similarly, the City of Copenhagen in Denmark has developed an anonymous app for people to report incidents of discrimination. The purpose of the app is “to understand how widespread discrimination is and where and which groups are most likely to be targeted.”⁷⁹
120. In 2010, the Nova Scotia Barristers’ Society (“NSBS”) launched a successful postcard campaign. The purpose of this campaign was “to raise awareness and generate feedback about gender harassment and discrimination in the legal profession.” Licensees were encouraged to share their experiences of gender harassment and discrimination by submitting accounts of their experiences via anonymous postcards.⁸⁰ In 2012, the NSBS noted that over 50 postcards had been received, outlining the experiences and viewpoints of lawyers across Nova Scotia.⁸¹
121. The Working Group envisions a system through which anonymous discrimination complaints can be made to the DHC. If a certain threshold of complaints about a legal workplace is reached, the DHC can speak with the management of the legal workplace regarding the culture of the workplace and systemic issues. The purpose of these discussions would be remedial,

⁷⁷ Constance Backhouse, Donald McRae and Nitya Iyer, “Report of the Task force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry”, June 26, 2015 at 76 available at <http://www.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf>

⁷⁸ Please see <https://secure.ethicspoint.com/domain/media/en/gui/27291/index.html>

⁷⁹ “Fight against discrimination: Copenhagen is for everybody”, online: The City of Copenhagen <https://international.kk.dk/artikel/fight-against-discrimination>

⁸⁰ “It will be our little secret”, online: Nova Scotia Barristers’ Society <http://nsbs.org/sites/default/files/cms/menu-pdf/gecpostcardbooklet.pdf>

⁸¹ *Ibid.*

rather than punitive. Proposed solutions could include implementing or adjusting policies and procedures or delivery of educational programs.

122. A review of the functions, process and structure of the DHC should take into consideration the concerns raised through the engagement and consultation processes and the anonymous complaint models outlined above.
123. In addition to feedback about the DHC Program, the Working Group heard concerns from consultation participants that systemic discrimination and reprisal for filing complaints are not explicitly cited as conduct violations in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*. Although the Law Society may investigate complaints of systemic discrimination and reprisal, the Working Group believes that it is important to state this plainly in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* so that all licensees and members of the public are aware.
124. The Working Group has also heard that a certain level of expertise is essential in dealing with complaints to the Law Society of racial discrimination, particularly systemic discrimination. A trained team of Professional Regulation staff, equipped to deal with racial discrimination complaints, would assist in understanding and addressing the subtleties that often exist in racial discrimination cases.
125. In addition, racial discrimination often has systemic roots. It is suggested that the Law Society review its processes and consider ways to make them more effective in addressing systemic discrimination.
126. The Working Group believes that in order to create a safe space in which licensees can feel comfortable in making complaints of racial discrimination, including complaints related to systemic discrimination, the Law Society should engage in the abovementioned initiatives.

The operations of the Law Society of Upper Canada

Recommendation 13 – Leading by Example

- 1) **The Law Society will continue to monitor and assess internal policies, practices and programs, to promote diversity, inclusion and equality within the workplace and in the provision of services by:**
 - a) **as required, adopting, implementing and maintaining a human rights/diversity policy addressing at the very least fair recruitment, retention and advancement;**
 - b) **measuring quantitative progress through a census of the workforce or other method;**
 - c) **measuring qualitative progress by conducting inclusion surveys;**
 - d) **conducting regular equality, diversity and inclusion self-assessments;**
 - e) **based on the results from b), c) and d), identifying gaps and barriers and adopting measures to address the gaps and barriers;**

- f) publishing relevant findings from b), c), d) and e); and
- g) providing equality and inclusion education programs for staff at the Law Society on a regular basis.

2) The Law Society will:

- a) conduct an internal diversity assessment of the bench composition and publicize the results;
- b) provide equality and inclusion education programs for Convocation on a regular basis.

127. The rationale for the adoption of human rights/diversity policies to address fair recruitment, retention and advancement; for measuring quantitatively and qualitatively progress; and for conducting self-assessments is well articulated in this report. The strength of having diversity at the board level is also well documented. The Maytree Foundation, for example, notes that,

Governance is the top tier of leadership, where ultimate oversight, strategic direction and policy are determined. But equally important is the representational role that boards uphold. A lack of diversity at this level has sweeping implications for how underrepresented groups see themselves, their relevance and their place at the decision-making table.⁸²

128. During the engagement and consultation processes, participants indicated support for an internal equality audit of the Law Society workforce and the development of a more diverse public face/image for the Law Society, including at the governance level. The Working Group is of the view that the Law Society must take a leadership role and model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

129. The Law Society has committed to a number of initiatives to increase diversity and inclusion in the organization:

- **Operational Equity Audit:** In 2015, with the assistance of Canadian Centre for Diversity and Inclusion (CCDI), the Law Society undertook an Operational Equity and Diversity Audit to assess the services provided to licensees and the public and to determine whether there are barriers that are contributing to inequality or perceived inequality in the provision of those services – in particular, involving members of racialized and Aboriginal communities. The Law Society is currently working through the results of this audit to determine where improvements can be made in its operations.
- **Employee Diversity Census and Inclusion Survey:** Earlier this year, the Law Society, also with the assistance of CCDI, launched an employee diversity census and inclusion survey. The purpose was to collect data to help the Law Society better understand the make-up of its organization and how to best serve Law Society staff's needs. There was a 72% response rate, which was excellent, and the results will assist with the Law Society's efforts to promote a diverse and inclusive culture that is supportive to all employees.
- **Employee Engagement and Enablement Survey:** This year the Law Society has also conducted an Employee Engagement and Enablement Survey, assisted by the Hay Group,

⁸² Please see DiverseCity on Board at <http://diversecityonboard.ca/about/>

in order to improve the effectiveness of its organization and enhance communications between management and employees at all levels.

- **Bencher Diversity Survey:** Convocation has identified conducting a diversity survey of the bencher composition as a priority for this term. We are currently working on finalizing this survey.

130. As mentioned above, both the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* provide that licensees have special responsibility to uphold human rights principles, protect the dignity of individuals and recognize diversity and inclusion. The Law Society is committed to identifying barriers and gaps in its workforce and governance and implementing comprehensive equality, diversity and inclusion initiatives to improve equality, diversity and inclusion.

Results

Summary of Community and Consultant Engagement Process Results

“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 at this day and age.”

— Community Liaison Meeting

The qualitative and quantitative data obtained from the engagement processes identified widespread barriers experienced by racialized licensees within the professions at all stages of their careers.

Key informants, focus group participants and survey respondents identified racialization as a significant factor that shapes the experiences and career outcomes of racialized licensees. The consultant engagement results indicated that racialized licensees have a lower success rate in securing job placements, finding first jobs and securing suitable practice environments. Moreover, racialized licensees felt that they were disadvantaged in law school and that they had not advanced in their careers at the same rate as their non-racialized colleagues.

Racial and ethnic barriers were ranked highly among the barriers to entry and advancement. Forty percent (40%) of racialized licensees identified their ethnic/racial identity as a barrier to entry to practice, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees frequently identified physical appearance, socioeconomic status, place of birth and upbringing, age, manner of speaking English/French and gender identity as barriers — more so than non-racialized licensees. Racialized licensees were also more likely to have struggled to find an articling position or training placement.

Similarly, 43% of racialized licensees identified ethnic/racial identity as a barrier/challenge to advancement, while only 3% of non-racialized licensees identified ethnic/racial identity as a barrier. Racialized licensees were more likely than non-racialized licensees to believe they had not advanced as rapidly as colleagues with similar qualifications.

Racialized participants identified a number of specific challenges faced in the professions. Community liaison process participants, key informants and focus group participants provided numerous examples of discrimination and stereotyping faced in the everyday professional experiences of racialized licensees. Some experiences were overt, while others were more subtle. Participants spoke of assumptions by members of the professions and clients that racialized lawyers are unskilled employees, interpreters, social workers, students or clients. Participants also identified situations where racialized licensees were excluded from files and client meetings based on personal characteristics. Some participants stated that in some cases, licensees from certain parts of the world were associated with terrorism. The Working Group heard a number of participants say, “you can’t just be good, you have to be better.”

Racialized participants spoke about challenges linked to cultural differences and fit. Many racialized licensees stated that they felt alienated from the dominant culture of firms. They provided examples of

firm-related social events, which involved playing hockey, playing golf and drinking alcohol. Some racialized licensees indicated that they did not participate in these activities and therefore they did not “fit”, noting that “fit” was important for entry and advancement. Some participants also stated that they were not offered career opportunities because of their “foreign sounding” names.

Participants spoke in detail about the lack of access for racialized licensees to mentors, networks and role models. Racialized participants indicated that they were not aware of programs or resources available to them. They also noted that they did not have the same professional connections and networks as their non-racialized colleagues and lacked role models in their field within their ethnic communities.

Participants noted that race-based barriers are often complicated by the additional experiences of discrimination based on sex, gender identity, gender expression, disability, sexual orientation, class and creed.

Some participants believed that racialized licensees were more likely to go into sole practice as a result of barriers faced in other practice environments. They also noted that internationally trained lawyers and paralegals face additional barriers in the professions.

Generally, participants noted that the challenges faced by racialized licensees impact the reputation of the legal system in Ontario, affect access to justice for Ontarians and affect the quality of legal services for the public.

Summary of Consultation Process

The Working Group received thoughtful oral and written submissions from the professions regarding strategies to address the challenges faced by racialized licensees.

A. Enhancing the internal capacity of organizations

The Working Group posed the following questions related to this theme in the consultation paper:

- How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?
- What is the preferred model for the collection of firm demographic data and why?
- 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?

Diversity Programs

“We need to encourage firms to be champions of diversity.”

— Participant

Consultation participants showed significant support for the creation of diversity programs for the recruitment, retention and advancement of racialized licensees in legal workplaces. Participants reminded the Working Group that a “one size fits all” approach should be avoided — firm size, industry and geographical location should be considered if the Law Society is to develop diversity programs.

A number of participants supported the idea of creating a diversity project modelled on the Law Society of Upper Canada’s *Justicia Project*. Such a project would include the development and adoption of

resources for the fair recruitment, retention and advancement of racialized licensees.⁸³ Participants were divided, however, on whether diversity programs should be mandatory or voluntary. Some participants noted that voluntary programs create buy-in and a willingness to create change. A number of participants stated that it is important to have “diversity champions” who will lead change from the top-down. Participants outside of the Greater Toronto Area (GTA) that work in small firms saw the value of voluntary programs as small firms may lack the resources to implement mandatory programs. Some participants noted that mandatory programs could create backlash.

Participants in favour of mandatory programs argued that mandatory programs create stronger awareness of equality and diversity issues. One participant, who had experience with employment equality programs, said that it is necessary to have an enforcement mechanism in place. Other participants believed that, at the very least, the Law Society should require legal workplaces to have equality and diversity policies in place. Some participants suggested that the Law Society ask licensees to answer questions related to their firm’s policies in the annual report in order to prompt change. Although it was suggested by some that requirements could include mandatory targets for the number of racialized licensees that must be interviewed or hired by legal workplaces; the majority of participants were strongly opposed to the creation of mandatory hiring targets and timelines.

Some participants supported the proposal that firms complete a self-assessment about their diversity performance, which would include more than an analysis of demographic data. One participant stated:

Beyond numbers, look at the ways in which interactions are made, the ways in which people are hired, anti-nepotism policies, mentoring programs. All of these things are bigger pieces of the diversity pie.

The majority of participants interested in this idea indicated that the self-assessment should be voluntary; however, the Law Society could provide incentives for firms to engage in this process. There were some participants who were in support of mandatory self-assessments that would be conducted by employees instead of firm management to garner more valuable results. Additionally, participants stated that the Law Society should provide legal workplaces with self-assessment templates and tools.

Collecting Demographic Data

“Data collection is a humble but important first step.”
— Participant

The Working Group heard a broad range of views on the issue of demographic data collection; however, most participants agreed that the collection of data would be, as one participant noted, “a humble but important first step”. Some participants believed that mandatory data collection is crucial to advancing diversity and inclusion, while others believed that mandatory collection could halt the progress that is already being made by legal workplaces in the area of equality and diversity.

Participants on the side of mandatory collection had a number of suggestions related to the methods of collection and reporting. The majority of participants, including those in small firms and outside of

⁸³ The Justicia Project was launched in 2008 to create a collaboration between medium and large sized firms and the Law Society. The participants signed agreements and committed to develop policies, resources, practices and programs that would address barriers women face in the legal profession in relation to retention and career advancement. The Justicia Project prompted law firms to review policies and practices and to participate in the creation of resources on subjects such as leadership, business development, career advancement, parental leave and flexible work engagements, in order to increase the retention and advancement of women lawyers.

Toronto, were in favour of the Law Society collecting demographic data. Some participants suggested that the Law Society could use the data collected in the annual report to provide legal workplaces with their individual legal workplace demographic data and aggregate demographic data of legal workplaces of similar size and location to provide a benchmark. Participants also noted that it would be useful to capture information about inclusion and advancement in addition to numbers. Some participants in favour of mandatory reporting stated that, in order to encourage change, the demographic information for each firm should be publicly available.

Participants in favour of voluntary data collection noted that a number of large firms are already engaging in demographic data collection and inclusion surveys, and are committed to this work. Should the Law Society mandate data collection, it could have a negative effect on the work already being done. Participants from small firms indicated that they are unsure how mandatory data collection would be enforced. Some participants believed that demographic data should be reported, but on a voluntary basis. A number of participants suggested setting data collection as a criterion of a voluntary diversity program. The Law Society could then incentivize data collection by providing ratings or awards for meeting certain levels of diversity and inclusion.

Contract Compliance

“The case for diversity and inclusion has a business foundation”
— Participant

The Working Group heard that the Law Society could play a facilitative role by encouraging corporate procurement policies that consider suppliers that promote equality and diversity. A number of participants highlighted the Bank of Montreal’s contract compliance program and the work of the Legal Leaders for Diversity (“LLD”) as best practices in this area. Some participants suggested that the Law Society work with LLD, other in-house counsel associations and firms to develop model diversity-related procurement and contract compliance policies.

Some participants noted that they would discourage mandatory contract compliance as often people respond better to incentives rather than punitive consequences. Some participants from small firms pointed out that strict mandatory contract compliance related to diversity could be difficult for small firms and lead to them being unable to compete for work.

B. Mentoring, advisory services and networking

The Working Group posed the following questions related to this theme in the consultation paper:

- What are the preferred mentoring and/or advisory services models for racialized licensees?
- What are the preferred networking models for racialized licensees?

Mentoring and Advisory Services

“Mentoring is not one size fits all.”
— Participant

The majority of participants in the consultation process emphasized the importance of mentoring for racialized licensees; however, ne group of participants noted that, some cases, mentoring “...serves to reproduce institutional inequality and assist white licensees in securing inclusion within social institutions and the professions”.

In November 2013, Convocation created the Mentoring and Advisory Services Proposal Task Force (“Mentoring Task Force”) to consider mentoring, advisor and other support services for lawyers and paralegals. The Working Group worked with the Task Force and shared with the Task Force members the information obtained on mentoring and advisory services from the consultation process. In January 2016, Convocation approved a new law practice coaching and advisory initiative, which “...will assist in the development of competent legal professionals by supporting the growing need in the professions for short-term advisor supports addressing file-specific and substantive/procedural matters, and longer term coaching supports to foster best practices.”⁸⁴

Types of Mentoring and Advisory Services

Generally, the Working Group heard that there is no “one-size-fits-all” model for mentoring. Different types of mentoring may be required at different stages of a person’s career for different purposes. For example, mentoring could be offered to provide assistance on specific cases or it could be related to how to navigate the professions as a racialized licensee.

A number of participants highlighted the importance of providing mentoring for sole practitioners and internationally trained lawyers. Paralegal participants told the Working Group that there is a shortage of mentoring programs in the paralegal community and thus a significant need. Other participants noted that racialized licensees in large firms do not have role models within their firms so would benefit from some assistance to find mentors from outside their firms.

A significant number of participants emphasized that sponsorship⁸⁵ is also essential to the career advancement of racialized licensees, noting that it would be helpful to have sponsors or champions advocating for individual licensees at decision-making tables.

Structure of Mentoring and Advisory Services

Some participants stated that it would be useful to have a panel of mentors who could address different facets of a licensee’s career, including providing advice on navigating barriers, substantive legal issues or career advancement. Participants also noted that mentoring should be provided to students before law school, to address pipeline issues, and in law school.

A number of legal workplaces described their mentoring programs and expressed interest in working collaboratively with the Law Society to help licensees in need of mentoring. One way in which this could take place is using enhanced website services and creating a highly functional and welcoming online mentoring community with links to partner legal workplaces. As many legal workplaces have their own websites, the Law Society could function as a connector to these kinds of services. Participants also suggested that the Law Society develop, in collaboration with legal workplaces, best practices toolkits and/or guidelines on mentoring.

⁸⁴For further information, please see <https://www.lsuc.on.ca/with.aspx?id=2147502150>

⁸⁵ Sponsorship is distinct from mentoring. While a mentor can offer advice and insights to help the protégé achieve her career goals, a sponsor uses his or her clout to give the protégé access to opportunities for advancement. See *Justicia Guide to Women Leadership in Law Firms* (Toronto: The Law Society of Upper Canada, 2013) at 25.

Participants proposed various mentoring models including one-on-one mentoring with various mentors for different purposes, study groups with licensees who have similar challenges and group mentoring to assist with practice management and career advancement. Some participants suggested that junior licensees could also mentor other junior licensees from the same racialized community. In a similar vein, some participants stated that junior racialized licensees could act as effective mentors to senior non-racialized licensees.

Participants noted that it is often difficult to find willing and experienced mentors. One participant for example noted difficulties finding racialized mentors because, “we are not grooming racialized lawyers to become leaders.” Some participants suggested that the Law Society could ask licensees to indicate in the annual report or using another methodology such as the Law Society Portal, their willingness to act as mentors. The Law Society could then create a mentor roster. Similarly, other participants suggested having a web-based registry for mentors, which could include the mentors’ area of law and their time availability. Incentives for mentors could include the receipt of professionalism hours for mentoring services or discounted CPD programming. Some participants believed that the Law Society should compensate mentors, while others believed this would negatively impact the mentor-mentee relationship. Participants suggested that mentors should be culturally competent.

Participants outside of the GTA highlighted specific issues related to mentoring in their regions. A number of participants noted that the majority of professional associations that represent equality-seeking groups do not operate outside of the GTA, which limits access to association-based mentoring programs. One participant stated that if mentoring was to be offered in-person, it should be geographically accessible for licensees in areas across the province.

Networking

“Have more inclusive events.”
— Participant

Many participants stated that associations of racialized lawyers and paralegals are beneficial for fostering collaboration and creating a sense of belonging. Some participants suggested that it would be useful for the Law Society to facilitate collaboration between the various associations and/or to promote already-existing networking opportunities provided by the associations.

Some participants told the Working Group that legal associations are often too costly to join. One group of participants suggested that the Law Society provide subsidies to racialized licensees to assist them to join associations.

Some of the associations also described concern with the cost of holding events for their sectors of the bar at the Law Society and expressed interest in having “in-kind” support and partnership from the Law Society to make those events accessible to diverse communities of lawyers.

Some participants proposed that the Law Society hold regional networking events for licensees. Others noted that CPD programs can be good networking opportunities. However, some participants stated that the cost of CPD programs can be prohibitive and suggested that the Law Society provide low-cost or sliding scale CPD programs. One participant suggested that the Law Society “host planned and structured networking events that are, in location and content, culturally relevant to different groups of racialized licensees.” Some participants noted that hosting alcohol-free events would increase inclusivity.

Participants highlighted the fact that internationally trained lawyers and sole practitioners feel particularly isolated, so networking opportunities should also be targeted to these groups.

C. Enhancing cultural competence in the professions

The Working Group posed the following question related to this theme in the consultation paper:

- How could the Law Society enhance the professions' cultural competence through its CPD programs?

CPD Programs

"We need to be educated about diversity."

— Participant

A large number of participants were in favour of the Law Society requiring licensees to participate in mandatory CPD training on cultural competency, unconscious bias, and anti-racism. Some participants suggested that refresher sessions should be mandated "at intervals over the course of licensees' careers."

Others suggested that this CPD training be provided on a voluntary basis. There was concern expressed that requiring this form of training to be taken by all could be counter-productive. In either case however, participants agreed that professionalism credits should be provided CPD training on these topics.

In terms of content, participants suggested that cultural competency training should go "beyond learning about cultural practices of 'other' cultures and towards an examination of bias, inequality and discrimination". Similarly, one participant noted that the Law Society should "utilize an anti-discrimination, anti-racism and anti-oppression framework focused on deconstructing power structures and privilege — not on cultural competency." Participants also suggested that the Law Society work with associations of racialized licensees and/or with knowledgeable experts to develop content for the training sessions.

Some participants highlighted the importance of requiring licensees involved in recruitment, hiring and promotion decisions to participate in CPDs related to cultural competency and unconscious bias, specifically addressing topics such as bias-free interviews. One participant stated, "If attitudes don't change, the numbers are not going to change." Participants suggested that this CPD programming could be offered via webcast during summer student and articling interview periods. It was also proposed that the Law Society deliver these programs and other cultural competence and anti-discrimination and harassment programs at firms.

A number of participants noted the need to ensure that education on cultural competency, unconscious bias, anti-racism and anti-oppression start at law school and in the Licensing Process. A participant suggested that the Law Society use its seat on the Federation of Law Societies to encourage the inclusion of cultural competency and diversity awareness as part of the core law school curriculum. One group of participants suggested adding a cultural competency course to the college curriculum for paralegal programs. Some participants proposed including cultural competency, diversity and inclusion in the Professional Responsibility and Practice Course that articling students must complete.

It was proposed that all benchers attend cultural competency training in order to enhance awareness at the governance level and ensure that equality, diversity and inclusion are taken into account throughout the policy development process.

Generally, participants stated that CPD programs should be widely available via webcast and recorded. Additionally, some participants suggested that the cost of CPD be reduced, perhaps by working with regional associations.

D. Discrimination and the role of the complaints process

The Working Group posed the following question related to this theme in the consultation paper:

- How should the Law Society best ensure that complaints of discrimination are brought to its attention and effectively addressed?

Complaints of Discrimination

“People have to feel comfortable in accessing policies.”
— Participant

The Working Group heard a range of suggestions on encouraging licensees to bring forward complaints of discrimination.

Participants suggested updating the *Rules of Professional Conduct*⁸⁶ and the *Paralegal Rules of Conduct*⁸⁷ to specifically address systemic discrimination and subtle forms of discrimination. Some participants recommended advertising that complaints of discrimination can be made through the complaints process and devoting more resources to promoting the Discrimination and Harassment Counsel Program.

Participants noted that licensees will often refrain from reporting experiences of discrimination because they fear the negative impact a complaint might have on their careers and reputations. One participant stated, “We don’t want to rock the boat or be considered a troublemaker”.

Some participants were in favour of the Law Society creating an anonymous system of receiving complaints. However, licensees in small firms said this would not be helpful for them as their firms are too small for them to remain anonymous. Some participants that supported an anonymous complaints process recommended that the Law Society investigate firms that have been the subject of a number of anonymous complaints. Participants also suggested amending the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* to include a provision that states that reprisals for complaints of discrimination and harassment are prohibited.

Participants believed that bringing a complaint through an association may not alleviate the issues raised. Some participants suggested that the Law Society ask licensees, using the annual report, whether they have ever experienced discrimination. This information could then be compiled by legal

⁸⁶ *Rules of Professional Conduct*, The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>

⁸⁷ *Paralegal Rules of Conduct* The Law Society of Upper Canada available online at <http://www.lsuc.on.ca/paralegal-conduct-rules/>

workplace and provided to legal workplace management. Other participants proposed that the Law Society audit firms to ensure that they have policies related to equality, diversity, discrimination and harassment.

Regardless of the method taken to receive complaints, participants noted that it is important for the Law Society to advise complainants of what action was taken.

Some participants noted it would be helpful to have a group of diverse expert Professional Regulation staff who are trained in cultural competency and have an understanding of racial discrimination.

E. The operations of the Law Society of Upper Canada

“The best thing the Law Society can do is start to mirror the behaviour they want to see.”

— Participant

The Law Society received support from participants for its proposals to enhance its current equality compliance program, conduct an internal equality audit, collect further data on the regulatory process and develop a more diverse public face/image for the Law Society. A number of participants have emphasized that the Law Society must model the change it is seeking to create in the professions, which would include increasing diversity at both the governance and the staff levels, and engaging in the same initiatives and measures proposed to address the challenges faced by racialized licensees in the professions.

On a few occasions, participants at the meetings and open houses noted the lack of diversity of Working Group presenters. Working Group members attended and presented at open houses and meetings when their schedules permitted, and at some meetings, the group of presenters did not reflect the diversity of racialized licensees at those meetings. That became a point of discussion with participants expressing concern about the overall diversity of Convocation, but also expressing satisfaction that there are non-racialized benchers who are interested in being part of change and in hearing from licensees on these subjects. It is important to note that a bencher election was conducted during the consultation process and the composition of Convocation appears to be more racially diverse than ever and representative of the professions.

White Privilege

Consultation participants spoke of “white privilege”⁸⁸, and expressed the need for all to acknowledge its existence in order to address the challenges faced by racialized licensees. A number of participants noted that it is important for licensees to understand how power operates to produce advantages for some and deny advantages to others.

Daily Verbal, Behavioural and Environmental Indignities

Consultation participants provided descriptions of their experiences of commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate

⁸⁸ The Ontario Human Rights Commission defines “privilege” generally as ‘unearned power, benefits, advantages, access and/or opportunities that exist for members of the dominant group(s) in society. It can also refer to the relative privilege of one group compared to another. “Policy and guidelines on racism and racial discrimination”, online: Ontario Human Rights Commission <http://www.ohrc.on.ca/en/book/export/html/2475>

hostile, derogatory or negative racial slights.⁸⁹ Examples ranged from assumptions that they are not licensees but in fact interpreters or accused, to inappropriate questions regarding their perceived “otherness.” Participants noted that it is important for licensees to understand the impact of such behaviour and for the Law Society to find ways to address these subtle forms of discrimination.

Indigenous Licensees and Racialized Licensees: Historical and Geographical Differences

Open house learning and consultation programs in Northern Ontario yielded interesting information about the similarities and differences between the experiences of Indigenous licensees and licensees that self-identify as racialized. Participants in Thunder Bay noted that, in terms of race and racism, the population in northern areas of the province is often divided into Indigenous and non-Indigenous peoples. Participants identified several examples where they had witnessed racism directed at Indigenous people and where they had observed that racialized people were treated differently from non-racialized people. It was noted that because of the distinctive histories of Indigenous peoples, strategies to respond to racism faced by Indigenous peoples and to racism faced by racialized peoples may need to differ. The Law Society’s policy work reflects this uniqueness, including the work of the EAIC and other initiatives that are outside the scope of this project. The Law Society is also currently developing a framework of reconciliation in consultation with the Indigenous Advisory Group, established in 2016 with the Law Society to guide the Law Society and the legal community towards a better understanding of how to address unique issues faced by Indigenous peoples in Ontario and promote responses to and implementation of the Calls to Action from the [Truth and Reconciliation Commission of Canada’s final report](#) and the [First Nations Representation on Ontario Juries](#) report by The Honourable Frank Iacobucci.

⁸⁹ Such behaviour is sometimes referred to as microaggression. Sue et al. define microaggressions as “the brief and commonplace daily verbal, behavioural, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory or negative racial, gender, sexual orientation and religious slights to the target person or group.” Sue et al. note that “Perpetrators of microaggressions are often unaware that they engage in such communications when they interact with racial/ethnic minorities.” Please see http://www.cpedv.org/sites/main/files/file-attachments/how_to_be_an_effective_ally-lessons_learned_microaggressions.pdf