



November 24, 2017

BY E-MAIL

Mr. Paul B. Schabas
Treasurer
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Dear Treasurer:

Re: Law Society Statement of Principles

As OBA President, I am proud that our association has a strong commitment to actively promoting equality, diversity and inclusion within our organization and throughout the legal profession. It is in that regard that I write to you with respect to the Law Society's ongoing equality, diversity, and inclusion initiatives, and in particular, the requirement for a Statement of Principles.

The reason for this letter is two-fold: first, to reiterate the OBA's unequivocal support for the Challenges Faced by Racialized Licensees Report and the recommendations therein that were adopted by Convocation in December 2016; and second, to identify failures to date in the implementation of the requirement for a Statement of Principles in the hope that going forward, the Law Society takes the necessary steps to ensure that the Statement and the remaining recommendations are successfully implemented.

The Challenges Faced by Racialized Licensees Report ("the Report")

The Challenges Faced by Racialized Licensees Report took 4 years to complete. It involved multiple stages of consultations including feedback from over 1,000 licensees and over 40 written submissions, including two from the OBA. The Report outlined in detail and with clarity that racism is alive and well in the profession and that it isn't going away without mandated action.

The Report contained 13 recommendations in five categories: accelerating culture shift, measuring progress, educating for change, implementing supports, and Law Society operations. The Statement of Principles is one of two requirements from the Report that licensees must meet by the end of 2017.

In December 2016, after significant debate, Convocation adopted the recommendations in the Report by a vote of 33-0.

The Statement of Principles

The Statement of Principles is the language of change. It is a reminder of our duty to each other and the public we serve. It is a step in recognizing that as a profession we have historically excluded racialized lawyers from full participation. The Statement provides an opportunity to do things differently in the future for the benefit of us all – not in a way that hypothesizes outlandish possibilities but that builds on the best traditions of our profession in working together to advance collegiality, fairness and the pursuit of just outcomes.

Moreover, the positive obligation to promote equality, diversity and inclusion reflects our profession's independent and unique role in safeguarding the public interest. As lawyers, this is our most important and valuable role in society, which is fundamental to self-regulation and to be protected at all cost.

The requirement for a Statement should serve as a minimum standard from which to grow, not a threshold to be met. If in due course it doesn't strengthen equality, diversity and inclusion – we must modify or replace it with alternatives that do.

The Communication Gap

The requirement for a Statement of Principles was communicated by the Law Society to all licensees by e-Bulletin in September 2017. Since then, it has been questioned by some as compelled speech or compelled belief. Equality, diversity and inclusion have been dismissed as political ideology, and a Superior Court Application has been launched attacking the requirement as *ultra vires*, disproportionate, inoperable, and unconstitutional.

This should have been anticipated and avoided. Lawyers have a right to understand their professional obligations as much as they have a professional responsibility to uphold them. Licensee uncertainty about the scope and focus of obligations in their practice and in their communities was predictable. The Law Society did not initially address many of the publicly stated questions and criticisms, which were permitted to compound in the ensuing lacuna. Increasingly the entire *raison d'être* of the recommendation has been obscured in the race to 'test the merits' of the Statement.

The Law Society's guide released this week has addressed many of the questions raised by licensees, but not before significant damage to the spirit and intent of the Statement was done – and not before racialized licensees were exposed to yet another indication from the profession that the issue of systemic racism isn't as important as other things. This failure does violence to the hard work and intention underpinning the Report.

The Need to Move Forward

The Law Society's adoption of the Report's recommendations in December 2016 showed commendable leadership in respect of a complex issue that continues to plague racialized licensees and jeopardize the relevance and credibility of the profession.

As implementation continues, the Law Society must take the necessary steps to advance constructively each of the recommendations adopted by Convocation, and it must be prepared to do so before misinterpretation and misinformation undermine the confidence of the profession.

The OBA is pleased to offer its continued support and assistance in this critical endeavour.

Yours truly,



Quinn M. Ross, President
Ontario Bar Association

cc. Raj Anand, Co-Chair, Challenges Faced by Racialized Licensees Working Group
Janet Leiper, Co-Chair, Challenges Faced by Racialized Licensees Working Group
Dianne Corbiere, Co-Chair, Equity and Aboriginal Issues Committee
Julian Falconer, Co-Chair, Equity and Aboriginal Issues Committee