



Advocacy Committee
Canadian Association of Black Lawyers (CABL)
20 Toronto Street
Toronto ON M5C 2B8

November 3, 2017

VIA EMAIL

Treasurer Paul Schabas and
Benchers of the Law Society

Re: CABL's Submission on the Status of the Statement of Principles

Dear Treasurer Schabas and Benchers of the Law Society,

The Canadian Association of Black Lawyers (CABL) is a national network of law professionals with an overall mandate to promote the advancement of black lawyers within the profession by providing support systems, promoting academic and professional excellence and advancing issues of equity and diversity among the bar and the judiciary.

Over the course of 4 years, CABL participated in the consultations of the Racialized Licensees Working Group (the "Working Group") and provided input into the process that gave rise to the Challenges Faced by Racialized Licensees Working Group's report. The Working Group published recommendations (the "Recommendations") to address the challenges communicated by racialized lawyers and paralegals from across the province. At the time, CABL noted that the Recommendations did not go far enough towards effecting change within the legal profession. However, in the spirit of compromise CABL supported the Recommendations as an important step forward. CABL's participation in this process was central to addressing the issue of systemic discrimination in the legal profession, as black lawyers face a

disproportionately high degree of exclusion from law firms and the legal community, as well as a disproportionately high rate of discipline by the Law Society.

Systemic problems are not easy to address. However, the Law Society, as a self-regulating organization, is supposed to govern and regulate licensees in the public interest. Issues of systemic discrimination and unconscious bias can only be challenged if the regulator has the inner fortitude to address systemic problems head on, whether the remedy is popular or not among licensees generally.

The Recommendations were borne out of **extensive** consultations and analysis, not only with CABL, but with other representative organizations, individuals, consultants, and experts in the field of diversity. The Law Society will fail in its mandate to regulate the profession if it dilutes or withdraws from the Recommendations in the face of the first sign of dissent. CABL noted in its past submissions that the Recommendations will not institute immediate change but are only a first step towards change. A few Benchers, citing dissent from the bar or a lack of faith in the Recommendations, seek to re-open the process and dilute the Recommendations by advocating for the right to conscientiously abstain from the new regulatory requirement that every licensee adopt and 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". The reference to freedom of consciousness and freedom of expression/free speech are a means to change the discourse and divert the ship from its ultimate destination.

CABL has very serious concerns as to why the issue is being reopened at this time notwithstanding a very fulsome discussion on this very issue, which took place on December 2, 2016. The motion was defeated on December 2, 2016, by a majority of the Benchers. To permit the same motion to be raised again seems to CABL to be an abuse of the Convocation process.

While the Working Group's Recommendations, including the Statement of Principles are not going to be popular amongst all licensees, they are essential as the bar must come to grips with the reality that a lack of equality, diversity and inclusion in our profession has been, and continues to be, a widespread problem. The Law Society is obligated to initiate change in light of systemic exclusions, and to promote the public interest. The current practices have failed in the past and it is time for new ways of thinking about this problem.

CABL firmly supports the Recommendation made by the Working Group requiring all licensees to adopt a Statement of Principles. CABL is concerned that there is a growing misapprehension with respect to what a Statement of Principles requires of licensees. Unfortunately, some licensees, many of whom were not inclined to participate in the extensive 4-year comprehensive review of the issues facing Racialized Licensees, have chosen to cloud the issue of the Statement of Principles by shrouding it in the cloak of *Charter* rights and conscientious objection. Specifically, there are some licensees who perceive a Statement of Principles to be an affront to their right to freedom of expression/free speech. CABL fully supports freedom of expression and free speech. However, what is being asked of licensees does not engage issues of freedom of expression or free speech.

The effect of a Statement of Principles on the concepts of freedom of speech and expression was contemplated and discussed when convocation voted on the Recommendations in December 2016. The Law Society was provided an opinion on November 16, 2016 on this very issue.¹ In short the conclusion was:

Recommendation 3(1) is consistent with the rights and obligations of the Law Society and its licensees under the *LSA*, the *Code*, and the *Charter*. The Law Society has an obligation to promote human rights in the legal profession and licensees are already bound by human rights equality, diversity and inclusion principles under their respective professional rules of conduct and the *Code*.

¹ Attached please find a copy of the legal opinion provided by the law firm of Pinto Wray James dated November 16, 2016.

What is being asked of licensees in a Statement of Principles is to "**acknowledge**" their **existing** legal and professional obligation to promote equality, inclusiveness and diversity in their interactions with members of the profession, their clients, employees and the public.

The obligation to create and adopt a Statement of Principles is rooted in the *Rules of Professional Conduct* (the "*Rules*") to which all licensees are bound. The Working Group's Recommendations remind us of our obligations as set out in Commentary 4.1 under Section 2.1-1 of the *Rules* 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.

An individual licensee's personal beliefs are immaterial to what is being asked of them in respect to a Statement of Principles. The requirement is a professional not personal obligation. This is about licensees acknowledging that they will not **act** in a certain way i.e. in a manner that undermines equality, inclusiveness and diversity. Conversely, it is about licensees acknowledging that they will **act** in a manner which promotes the Rule of Law, respects the requirements of human rights law in this province and adheres to the "special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario" as provided for in the Commentaries under Section 6.3.1 of the *Rules*, which read as follows:

[1] The Law Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

[2] This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

[3] Rule 6.3.1-1 will be interpreted according to the provisions of the Human Rights Code (Ontario) and related case law.

It is troubling and ironic that the acknowledgment of a Statement of Principles which promotes and respects the dignity of individuals and the provisions of the *Ontario Human Rights Code* (the "*Code*"), is being met by arguments that it is an attack on *Charter* rights. It is also ironic and troubling that to CABL's knowledge, no substantive freedom of expression/free speech objections have been raised by the Benchers bringing the motion, or by any other licensees, to their existing legal obligations under the *Code* or the *Rules* on the basis that they violate their freedom of expression or free speech. To be clear, the effect of granting this motion would be to perversely grant licensees the right to contentiously object to combating discrimination and to promoting diversity, equity and inclusion.

In conclusion, we urge all Benchers, members of the broader legal community and the public, to object to the motion being brought in first instance and further, to support the defeat of the motion and to embrace and promote the Recommendations as a whole, the new Equality, Diversity, and Inclusion initiatives arising therefrom, and in particular, to strongly and vocally support the continued inclusion of a Statement of Principles. The Recommendations and the initiatives arising therefrom have been well thought out and carefully researched, and all members of the bar will be better served by the implementation of these steps as a reasonable, necessary means of working towards a more inclusive profession and better serving our increasing diverse population.

Yours truly,

ADVOCACY COMMITTEE
CANADIAN ASSOCIATION OF BLACK LAWYERS (CABL)