

November 14th, 2016

Submissions to the Law Society of Upper Canada on the Experiences of Racialized Licensees

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It has been providing legal representation, counselling, and interpretation in over 100 languages to women who have experienced all forms of violence, since 1985. The Clinic was established in the memory of Barbra Schlifer, an idealistic young lawyer whose life was cut short by violence on the night of her call to the bar of Ontario on April 11, 1980. The Clinic is not part of the LAO suite of community and specialized clinics. Rather, it is a separately incorporated not-for-profit that supplements the lack of legal services for survivors of violence.

We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals, and clinical education for law students. We work on law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact women survivors of violence. The Clinic serves women from ethno-racially and socio-economically diverse backgrounds, frequently from highly marginalized communities. Our clients often experience multiple social inequalities, including poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability.

On the basis of the experiences of our staff, (among whom are a high number of racialized licensees) we recommend that the Law Society of Upper Canada ("LSUC") allocate resources and provide a platform for racialized licensees to combat systemic racism and ensure a lasting culture of change in the legal profession. In this way, LSUC could move its commitment toward systematically supporting the implementation of concrete initiatives. Racialized licensees in the profession should lead the discussion and planning that will create lasting change. This change is imperative to the ongoing

success of the profession, which numerous reports have called for in response to barriers and an ossified professional culture.¹

Professional Obligations and Practices

Relevant Recommendations: 1, 2, 3, 9, 10

The LSUC must ensure its commitment to reinforcing the professional obligations of its members to recognize and promote principles of equality, diversity and inclusion consistent with the requirements under human rights legislation. This includes, specifically and annually, addressing the lack of focus on diversity and systemic racism in law school curricula. Continuing professional development ("CPD") for lawyers and legal practitioners must also emphasize this priority. To operationalize diversity and

¹ Trevor C. W. Farrow, "Sustainable Professionalism" (2008) 46 Osgoode Hall L.J. 51 at pp. 51 - 55, 63 - 68, 71 - 78, online: SSRN < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1151799 >

Constance Backhouse, "Gender and Race in the Construction of 'Legal Professionalism': Historical Perspectives," pp. 2 - 1 to 2 - 13, 2 - 21 to 2 - 26 ("Barriers to Entry: Something Less than a Warm Welcome?"), paper presented at the Chief Justice of Ontario's Advisory

Michael Ornstein, Racialization and Gender of Lawyers in Ontario, a Report for the LSUC (Toronto: LSUC, April 2010), pp. i - ii ("Executive Summary") and 34 - 36 ("Conclusions"), online: LSUC < www.lsuc.on.ca/media/convapril10_ornstein.pdf > • Sabrina Lyon &

Lorne Sossin, "Data and Diversity in the Canadian Justice System" (2014) Journal of Law & Equality, pp. 3 - 12, 15 - 16, online, Osgoode Digital Commons: < <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1062&context=olsr> >

Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), fact sheet, online: LSUC https://www.lsuc.on.ca/uploadedFiles/s/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/EQ-factsheet-Racialized-Licensees-EN.pdf

David Lepofsky, "Making Courts and Mediations Accessible for People with Disabilities" (2014) video, online: < https://www.youtube.com/watch?v=p3d73L-GpGXY&feature=share&list=PLDGgB77j2ZYrl_rtp32nSjOXfrDAGvnn&index=7 >

Law Society of Upper Canada, Law Society of Upper Canada, Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees (October 2014), pp. 10 - 21, online: LSUC < www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Official%2812%29.pdf >

Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) < https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf >

equality training, the LSUC should develop clear guidelines for delivering relevant, timely, and meaningful educational and CPD programs which address the historic inequalities in Canada for racialized communities and the lack of diversity and plurality that is a persistent problem in the legal profession. These programs should also focus on the experiences of licensees who may experience multiple and intersecting forms of marginalization, including racialized women, religious minorities, sexual and gender expression minorities, or licensees from low-income backgrounds.

Building Communities of Support and Addressing Systemic Discrimination

Relevant Recommendations: 11, 12

The LSUC must actively seek to build sustainable communities of support to recognize the unique experiences of racialized licensees. There is a profound lack of meaningful and ongoing mentorship for racialized licensees in the profession, and very little systematic fostering of natural connections and capacity building between senior and junior counsel. Building communities of support requires recognition of the social location of licensees and their lived experiences as minorities in a very hierarchical profession. Often, the narrative of “firsts” replaces the hard work of substantive and sustainable change, and creates an impression of “progress.”²

The LSUC and employers should also examine practices which reinforce so-called “token diversity,” which can result in the hiring of a few racialized licensees to meet the mandate of diversity and equality, without addressing ongoing oppressive workplace culture and the historical disadvantage faced by minority licensees. Ultimately, the concept of the plurality is useful here, as a commitment to diversity is empty without providing racialized and minority licensees access to meaningful positions of power within the legal profession.

Racialized licensees also experience gaps in employment equity, particularly if they are women. “Men are more likely to be in sole practice and law firm partners, while there is a higher proportion of women in all the other stations, especially in house, in clinics, in

² Laura Beeston, “Canada appoints its first transgender judge” The Globe and Mail (December 18, 2015) <http://www.theglobeandmail.com/news/national/canadas-first-transgender-judge-named/article27876501/>

government and education.”³ As with gender wage gaps in other fields, women lawyers are at a definite economic disadvantage vis-à-vis their male colleagues.⁴

Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women, exemplifying and maintaining women’s subordinate positions in such a material way, contributes to an overall vulnerability to violence and disrespect, including the daily experiences of racialized licensees who are women. The LSUC should commit to employment equity for all its licensees and create meaningful mechanisms to allow licensees to excel in their legal careers while living balanced lives. This commitment includes both an eradication of the gender and racial wage gap, as well as a commitment to providing equitable parental leave for families having children, and not penalizing women for taking time away from their legal practice.

Sexual violence and its impacts in the employment context highlight yet another dimension of the unique experiences of racialized licensees, particularly in a hierarchical profession such as law. In situations that exacerbate unequal power dynamics, such as employment contexts, women, particularly visible minorities, continue to be deterred from reporting sexual assault and adequate state protection mechanisms are often not available, especially when negative repercussions on one’s reputation or employment are at stake.⁵

³ Statistical Snapshot of Lawyers in Ontario, 2013 (LSUC) <
https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members2/2013_Snapshot_Lawyers.pdf>

⁴ Statistics Canada. 2011. “Average female and male earnings.” Online:
<http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>
United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCA%2FAN%2FCO%2F6&Lang=en

OECD. 2014. “Gender Wage Gap.” Online: <http://www.oecd.org/gender/data/genderwagegap.htm>

See for example, Sheila Block and Grace-Edward Galabuzi. 2011. Canada’s Colour Coded Labour Market: The gap for racialized workers. Online: http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf; Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:
http://ywccanada.ca/data/research_docs/00000140.pdf

Sheila Block, 2010. ONTARIO’S GROWING GAP The Role of Race and Gender, online:
http://ywccanada.ca/data/research_docs/00000140.pdf

⁵ Alice Woolley, <http://www.slaw.ca/2014/06/10/yesallwomennotallmen-sexual-harassment-in-the-legal-profession/>

The power dynamics inherent in the practice of law also exacerbate daily microaggressions experienced by racialized licensees in the workplace, such as when interacting with court staff, or with the judiciary. Our students report ongoing struggles with sexualized work environments throughout the profession. These power dynamics are also inherent in the employment opportunities, and the experiences of racialized licensees during interview processes, both at the entry-level during the law school On-Campus Interview (“OCI”) processes, as well as during individual interviews at law firms, clinics, and the government. Comments about a candidate’s ethnic background or chosen hairstyle may seem minimal, yet they underscore their minority status in a profession still mostly populated by white, male, Anglo-Saxon legal practitioners, particularly in positions of power such as partners, CEOs, or judges.

If the goal of the LSUC is to foster an inclusive profession responsive to the increasing diversity of the Canadian population, there must be a sustained commitment to address the root causes of discrimination and racism still inherent in the legal profession. This commitment must include law school initiatives as well as CPD initiatives for all members of the profession, including students, in a climate of careful monitoring and compliance within the profession to professional obligations of equity. It must also include profession-wide community building and meaningful solutions to the ongoing systemic inequality of racialized licensees, such as combating pay inequity, sexual violence in the workplace, and the inherent power imbalances. These goals are especially pertinent in a profession committed to providing justice and protecting the public interest.

Barbra Schlifer Commemorative Clinic
Per:



Amanda Dale, Executive Director
Deepa Mattoo, Legal Director
Petra Molnar, Articling Student

