

March 15, 2015



## **Canadian Association of Muslim Women in Law**

### **Submissions in Response to Law Society of Upper Canada's Consultation Paper on the Challenges Faced by Racialized Licensees**

#### **A. Background**

The Canadian Association of Muslim Women in Law (“CAMWL”) is an organization comprised of women licensees, prospective licensees, and legal academics who identify as Muslim. CAMWL’s membership is racially, ethnically, culturally, and linguistically diverse and embodies a plurality of religious beliefs and practices. CAMWL’s mandate is to (a) advance the rights and interests of Muslim women in Canada, as well as other marginalized and equity-seeking groups, including through education and direct advocacy; and (b) promote mentorship and camaraderie between Muslim women engaged in the practice or study of law.

Given the racial, ethnic, cultural, and linguistic diversity of CAMWL’s membership, we believe we are well-situated to speak to the issues raised in the Law Society’s consultation paper, “Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees” (“Consultation Paper”). These submissions are driven by our members’ experiences as racialized persons, as women, and as Muslims – a religious identity which has, in many ways, been made a racial one as well. While the Consultation Paper focuses on race, CAMWL recognizes and emphasizes that this intersectionality – between race, gender, and religion – must be taken into account in order to understand, and respond to, the lived experiences not only of Muslim women, but of other racialized groups.

CAMWL highlights the fact that these submissions are coming at a time of heightened Islamophobia, and of increased preoccupation by lawmakers with the religious attire of Muslim women. The recent experience of Rania El-Alloul, a Muslim woman who was denied her day in



court because she wore a headscarf, speaks to the way in which power structures, including the very spaces within which law is practiced, discriminate against Muslim women.

## **B. Responses to Consultation Paper’s “Questions for the Profession”**

At the outset, CAMWL notes that our responses to the questions below are restricted to mid-sized and large legal employers.<sup>1</sup> This is because we are concerned that some of the Law Society’s “models” or “initiatives” would impose strenuous and costly record-keeping and reporting requirements which would disparately affect sole practitioners and/or small firms. We are cognizant of the fact that many racialized licensees enter into sole practice because of the barriers they face in large firms; as such, it is important to ensure that any proposed solutions do not exacerbate or increase the existing challenges faced by these licensees.

### **1. How should the Law Society act as a catalyst for the establishment of diversity programs within firms and why?**

Of the three proposed models, CAMWL advocates for Model 3, “Requiring Standards,” which would involve the Law Society requiring legal employers to adhere to standards for recruitment, retention, and career advancement of racialized licensees. We are concerned that Model 2, “Self-Assessment,” relies too heavily on the ‘good faith’ of legal employers to assess and establish effective diversity policies and recruitment and retention practices. We are also concerned that Model 1, “Diversity project,” is insufficient: Many Ontario law firms have diversity committees and sophisticated equity and diversity policies, and yet, as workplaces, continue to present significant barriers to racialized licensees in terms of recruitment, retention, and advancement.

Hiring standards: In order to achieve a greater level of diversity within the legal profession, the Law Society should require legal employers to adhere to proactive and transparent hiring practices. One such practice the Law Society should require is for firms and other organizations hiring licensees to have a diverse hiring committee. A racially/ethnically

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<sup>1</sup> Legal employers include law firms, government offices, legal clinics, and other organizations hiring licensees.



diverse hiring committee may be better able to identify and advocate for qualified racialized candidates. In addition, a diverse hiring committee may help prevent candidates from being passed over for lack of “fit” in the firm. We are concerned that the concept of “fit” is used, whether directly or indirectly, as an added barrier to entry for racialized licensees.

In addition, the Law Society should require legal employers to apply a “diversity” lens at each stage of the hiring process. The hiring stages may include the initial screening of applications, the first round interviews, and in some cases, second round interviews. Applying a diversity lens would mean that recruiters would be required to proactively examine equally qualified applicants such that the narrowed down pool of interviewees is diverse in terms of race/ethnicity. Just as it would raise concerns if a firm selected only, or overwhelmingly, male candidates for interviews out of a gender diverse pool of applicants, it would also be concerning for a firm to select only, or overwhelmingly, white candidates for interviews out of a racially diverse applicant pool. To ensure diversity in the candidate pool, a hiring committee may decide to review application materials for an individual’s involvement in racial, cultural or religious associations, such as the Black Law Students’ Association or the Muslim Law Students’ Association. This approach is imperfect, but is an example of one way legal employers can apply a diversity lens.

Retention and advancement standards: The Law Society should also work with employers to develop standards to monitor the retention and advancement of racialized licensees once they are hired. It is not sufficient for employers to hire diverse articling students or young associates, when at the hire back or promotion stage, those individuals – for reasons of “fit” or other structural barriers – do not advance.

## **2. What is the preferred model for the collection of firm demographic data and why?**

CAMWL advocates for a combination of Models 1 (“Using Law Society Data”) and 4 (“Mandatory Collection”). We also advocate for this data to be made public to the legal profession.



In addition to the Law Society data already collected, we believe that legal employers should be required to collect and submit the following data to the Law Society:

- Number of racialized vs. non-racialized licensees at the associate level
- Number of racialized vs. non-racialized licensees at the partner level
- Of new hires per year, the number of racialized licensees vs. non-racialized hired
- Number of racialized vs. non-racialized articling students and/or LPP students (if applicable)
- Number of racialized vs. non-racialized summer students (if applicable)

The Law Society should then analyze this data, in addition to the data it already collects, and produce, over regular time periods, reports on the hiring, promotion, and retention of racialized licensees. Indeed, collecting data alone is insufficient; an analysis of that data will be needed.

CAMWL believes that voluntary reporting, even with the Law Society's encouragement, is simply not enough. The lack of racial diversity in the legal profession in general, and at the partnership and senior levels in particular, is a problem for the entire profession. By establishing mandatory data collection requirements, the Law Society will enable the profession as a whole to gain a consistent and more representative view of this problem.

**3. 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?**

CAMWL takes no position on this question.

**4. What are the preferred mentoring and/or advisory services models for racialized licensees?**

CAMWL is especially concerned that sole practitioners, licensees working in small firms, internationally trained lawyers, and students in the LPP program are not provided with sufficient mentorship at various stages of their legal career. As noted in the Consultation Paper, racialized licensees are proportionately more likely to be in sole practices and small firms. Although there



is insufficient data analysis on the LPP program, we are concerned to hear from our members and colleagues in the profession that the LPP program is disproportionately comprised of racialized students who were unable to find articling positions. CAMWL believes that the Law Society has an important role to play in supporting these individuals through mentorship programs. We believe the Law Society can fulfill this role in two ways: (1) by providing mentorship programs to racialized licensees based on professional interests, and (2) by supporting existing mentorship programs provided by associations such as the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association (SABA), the Federation of Asian Canadian Lawyers (FACL) and the Canadian Muslim Lawyers Association (CMLA).

(1) Mentorship based on interest area: We do not believe there is a need for the Law Society to develop mentorship programs that connect mentors and mentees on their shared racial/ethnic background. Associations like CABL, SABA, FACL, CMLA, and others can provide this mentorship. We believe instead that racialized licensees are in need of ‘upward moving’ mentorship on the basis of shared professional interests. This means providing mentorship that can connect racialized licensees at more junior levels to other licensees (regardless of race/ethnicity) at more senior levels within the same interest area.

(2) Supporting existing associations: The Law Society can support existing mentorship programs provided by associations such as CABL, SABA, FACL, CMLA, and others by a variety of methods, including:

- Advertising the associations’ mentorship programs on the Law Society website
- Providing meeting spaces or other financial support to host mentorship events
- Informing all new licensees about the mentorship programs provided by these associations via email



## **5. What are the preferred networking models for racialized licensees?**

CAMWL supports the idea of the Law Society developing more planned and structured networking opportunities, however, we emphasize that these events must be financially accessible and inclusive. Our members expressed the view that the isolation from professional networks does not exist because of a lack of networking events alone, but rather, a lack of *affordable and inclusive* networking events. For example, a number of our members who are sole practitioners expressed frustration with the high cost of popular Continuing Professional Development (CPD) programs. By failing to take into account the intersection of socioeconomic status and race, and the reality of racialized licensees disproportionately working in sole practices or small firms, these cost barriers become very real racial barriers. Providing CPD programs that are priced according to practice size or area can help reduce those barriers. In addition, many of our members also expressed feeling isolated because many (if not most) social networking events are centred on alcohol consumption. In developing networking events, the Law Society should consider how it can move towards building more inclusive spaces.

## **6. How could the Law Society enhance the profession's cultural competence through its continuing professional development (CPD) Programs?**

CAMWL is apprehensive about the Law Society's proposal to address the systemic barriers faced by racialized licensees through cultural competency programs. We preface our comments here by saying that the Law Society does not provide enough specifics about its envisioned cultural competency program for us to provide a meaningful or fulsome critique. With that said, our concern is that by invoking the idea of "cultural competency," the root problem has been recast from one grounded in systemic racial barriers in the legal profession to one grounded in our different "cultural" backgrounds. Race and culture do overlap and intersect, but not necessarily so. One may be culturally in the majority (e.g., culturally Canadian), but racially in the minority (e.g., non-white). Thus, even if you are fluent in "Canadian culture" as a non-white, you may still face barriers to entry and advancement in the profession based on your race/ethnicity. In this sense, cultural competency is not a solution, because the problem is racial and not cultural exclusion. We instead advocate for the Law Society to utilize an anti-



discrimination, anti-racism, and anti-oppression framework focused on deconstructing power structures and privilege – not on cultural competency.

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

CAMWL believes strongly in the need for a robust anonymous complaint process. Racialized licensees, especially those who work in an environment where there is very little racial diversity, are in a precarious position. If they raise a complaint, they may be easily identifiable. In addition, especially for those in junior positions, there is a real concern that bringing a complaint may hinder their future career prospects. Some of our members have informed that they were advised by career development offices at their law schools that making a complaint about racist comments during the hiring process may harm their prospects of getting a job altogether. Given the vulnerability of these licensees in coming forward with a complaint, it is critical that the Law Society provide anonymous mechanisms for reporting, which may include a structure for associations to bring complaints on behalf of an individual.

In addition to enhancing the complaint mechanism itself, CAMWL believes that accountability and remedial measures for legal employers must also be implemented. For instance, where the Law Society receives multiple complaints about a certain workplace, it could subject that employer to special investigation, or to anti-discrimination training requirements.

**C. Conclusion**

CAMWL thanks the Law Society for considering these submissions. We look forward to continuing our engagement with the Law Society and other organizations as we collectively work towards creating a profession that is more equitable, inclusive, and representative of Ontario's diverse population.

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