



Tab 12

**Correspondence Received
by the Law Society
with respect to Fagan/Brown Motions
for Convocation on February 27, 2020**



Women's Legal
Education and
Action Fund

Fonds d'action et
d'éducation juridiques
pour les femmes

180 Dundas Street West, Suite 1420 | Toronto, ON | M5G 1Z8

Malcolm M. Mercer
Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

DELIVERED BY E-MAIL

February 25, 2020

Dear Mr. Mercer:

I am writing in my capacity as the Executive Director and General Counsel at LEAF to express our disappointment and concern about the two recent notices of motion proposed by Benchers John Fagan and Jared Brown regarding the role of the Equity Advisory Group (EAG) of the Law Society of Ontario (LSO). The first motion, dated February 5, 2020, seeks to limit the role of non-benchers and "unelected advisors such as the EAG"; and the second calls on Convocation to censure an EAG representative and Discrimination and Harassment Counsel (DHC) for their tweets on Twitter. Both motions risk seriously undermining the important role of equality-seeking groups and individuals in the work of the LSO and seem entirely inconsistent with the public interest, which is the LSO's core responsibility.

Indeed, as you are well aware, the LSO is responsible for governing Ontario's lawyers and paralegals "in the public interest". As clearly stated on the "about LSO" section of your website:

The Law Society has a duty to protect the public interest, 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 act in a timely, open and efficient manner.¹

The duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, and to facilitate access to justice for the people of Ontario requires meaningful participation and input from the broader public, not just the elected Benchers. Equality-seeking organizations have an essential role to play in ensuring that the unique concerns and challenges facing the diverse communities they represent are brought to the attention of the LSO, including the elected benchers. The LSO must prioritize voices that are often excluded or marginalized in the legal profession. The first motion is entirely dismissive of the equality-seeking voices, in the legal profession and in the general public. Indeed, it explicitly seeks to exclude the attendance of "unelected persons" from the Equity & Indigenous Affairs Committee, apparently before the issue has even be "studied".

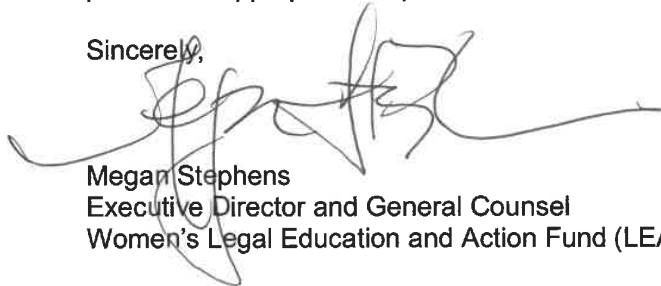
¹ See LSO Website: <https://lso.ca/about-lso>

The second motion calls on Convocation to express its censure for the “serious and highly damaging Twitter allegation” made by an EAG representative and then retweeted by DHC. We fail to understand how a motion of this sort is consistent with the LSO’s duty to protect the public interest or to act in an open manner. As you and I have recently discussed, elected Benchers have posted degrading and offensive content from their Twitter accounts, without public censure from Convocation. Although this motion is framed as necessary in part because the tweets are said to have “seriously impugn[ed] the integrity of all benchers and Convocation”, the same is certainly true of the tweet posted by Mr. Goldstein in the fall. If this motion were to pass, it would suggest that Benchers are subject to one standard in their social media posts, but those outside of Convocation who call their conduct into question on their social media accounts are subject to another.

Furthermore, we are troubled by the short timeline of the motion, which undermines procedural fairness underlying LSO’s governance. We only learned about this motion during the weekend of February 22-23, which we understand is also true of many LSO members outside of Convocation. Given that this is scheduled to be discussed at Convocation on February 27th, this does not provide equality-seeking groups a meaningful opportunity to respond or provide feedback on a motion that could profoundly impact their ability to participate in LSO governance.

As LSO’s Treasurer, you are responsible for strategic leadership of the LSO and chairing Convocation.² We urge you to exercise your leadership in fulfilling the LSO’s mandate of protecting the public interest by speaking out against these motions, inviting feedback from equality-seeking groups, and ensuring that there is sufficient time provided for these groups to provide an appropriate response.

Sincerely,



Megan Stephens
Executive Director and General Counsel
Women’s Legal Education and Action Fund (LEAF)

cc. Diana Miles, CEO, LSO

² *Bencher Code of Conduct*, ss. 24-25.



Canadian Association of
Black Lawyers (CABL)
20 Toronto Street
Suite 300
Toronto, ON M5C 2B8

February 25, 2020

Delivered via e-mail

Convocation
c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation,

Re: Fagan motions to eliminate EIAC and EAG - February 27, 202 Convocation

The Canadian Association of Black Lawyers (CABL) is a national network of law professionals (students, lawyers and the judiciary) 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 judiciary.

The Canadian Association of Black Lawyers (CABL) is in receipt of the two Notice of Motions, dated February 5 and 6, 2020, respectively, for the Law Society of Ontario's Convocation on February 27, 2020. These motions relate to two separate incidents, both involving an Equity and Indigenous Affairs Committee (EIAC) event on January 16, 2020. The outcome sought in these motions are to censure a specific EIAC member and LSO's Discrimination and Harassment Counsel and examine the role of the Equity Advisory Group (EAG), with the express intent of limiting or excluding their involvement in future governance activities at the law society.

Brief Historical Background

In May 1997, the Law Society of Ontario unanimously adopted the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (the "Bicentennial Report"). The

adoption of the Bicentennial Report led to a series of systemic changes to promote equality and diversity within the legal profession and within the Law Society.

Previously, in 1989, the Equity in Legal Education and Practice Committee was created. In the mid-1990s, the Law Society created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (the "Equity Committee").

In 1996, two committees (the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee) were merged into the Admissions and Equity Committee, which later became EAIC. EAIC's mandate was to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice or provision of legal services in Ontario and for addressing matters related to Aboriginal peoples and Francophones; and to consult with Aboriginal, Francophone and other equality-seeking communities in the development of such policy option.

It also created the Equity Initiatives Department, with five permanent staff members and one articling student; and the advisory group EAG¹, consisting of expert lawyers in the area of equality rights and legal associations that promote equality and diversity.

Mandate of EAG

CABL is but one a long-standing member of EAG. All members serve on a volunteer basis and meet at least once a month.

The mandate of EAG is to assist the Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones (EAIC), in the development of policy options for the promotion of equity and diversity in the legal profession by:

- Identifying and advising the Committee on issues affecting equity communities, both within the legal profession and relevant to those seeking access to the profession;
- Providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession; and
- Commenting to the Committee on Law Society reports and studies relating to equity issues within the profession. Members of the Equity Advisory Group

¹ formerly known as the treasurer's advisory group

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CABL's Position on the Proposed

CABL finds it extremely unfortunate that interpersonal conflicts are being used by a few Benchers as a basis eliminate a robust and long-standing relationship between the Law Society and diverse members of the profession.

Equity issues cannot be determined or evaluated on a majoritarian basis. Even elected Benchers can invariably benefit from the specialized experience and backgrounds of representatives from communities who have the knowledge that diverges from those of many mainstream lawyers. These insights may not always be positively received by the legal community, or be easy to hear, but they have intrinsic value and worth because they are perspectives that are far too frequently ignored and overlooked.

Finally, we repeat our comments from our letter dated June 25, 2019: to strive for equity, diversity and inclusion should be uncontroversial for as a profession that serves a diverse public.

In the interest of fostering greater cooperation and collaboration, and in reaffirming the Law Society's commitment to creating a more inclusive legal community, CABL calls on members of Convocation to reject both of these motions, and instead seek to resolve these individuals, interpersonal conflicts in a private venue.

CABL further endorses and adopts the open letter from the Members of the Equity Advisory Group, dated February 25, 2020.

Yours truly,



Lori Anne Thomas
President on behalf of the Canadian Association of Black Lawyers (CABL)

LSO - Equity Advisory Group

To: Convocation of the Law Society of Ontario (LSO)
FROM: Members of the Equity Advisory Group (EAG)
DATE: February 25, 2020
Re: Open Letter on Motion to Exclude the LSO's Equity Partners

A. Executive Summary

1. The Law Society of Ontario (LSO) is governed by the *Law Society Act*, R.S.O. 1990, c. L.8.¹ The LSO is charged with maintaining the integrity of the legal professions and it must protect the public interest in carrying out all of its functions, duties and powers. The Supreme Court has recognised that as a public actor, the LSO has an overarching interest in protecting the values of equality and human rights in carrying out its function.² Accordingly, ensuring a diverse legal profession furthers access to justice and promotes the public interest.³ The LSO's mandate has been facilitated by the volunteer work of its equity partners, work that has made significant contributions to addressing ongoing systemic issues that threaten to perpetuate existing barriers in the legal professions. Silencing that work would frustrate the fulfillment of the LSO's duties.

B. Institutional Background

2. The LSO's Equity Advisory Group (EAG) is a volunteer group of lawyers, paralegals, legal organisations, law students, and licensing candidates with expertise in the area of equality, diversity, and inclusion. EAG's mandate is to assist the Equity and Indigenous Affairs Committee/Comité sur l'équité et les affaires autochtones (EIAC) in the development of policy options for the promotion of equity and diversity in the legal profession by:
 - Identifying and advising the Committee on issues affecting equity communities, both within the legal profession and relevant to those seeking access to the profession;
 - Providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession; and
 - Commenting to the Committee on Law Society reports and studies relating to equity issues within the profession.⁴

¹ *Law Society Act*, R.S.O. 1990, c. L.8 : <https://www.ontario.ca/laws/statute/90l08#BK2>

² *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para 21.

³ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para 23.

⁴ <https://lso.ca/lawyers/practice-supports-resources/equity-supports-resources/equity-advisory-group>

LSO - Equity Advisory Group

3. The members of EAG are volunteers who serve three-year terms. They are appointed by EIAC following an open invitation by the LSO.⁵ EAG's current membership includes 12 organizational members: Arab Canadian Lawyers' Association, L'Association des juristes d'expression française de l'Ontario, ARCH Disability Law Centre, Canadian Association of Black Lawyers, Canadian Association of Somali Lawyers, Canadian Hispanic Bar Association, Canadian Muslim Lawyers Association, Federation of Asian Canadian Lawyers, Law Students' Society of Ontario, Ontario Paralegal Association, Roundtable of Diversity Associations, and South Asian Bar Association; and 12 individual members: Nima Hojjati (Chair), Jacqueline Beckles (Vice-Chair), Jonathan Davey (Vice-Chair), Jeffrey Adams, Krishna Badrinarayan, Lisa Borsook, Leonard Kim, Sudevi Mukherjee-Gothi, Beatriz Corona, Shibil Siddiqi, Moya Teklu, and Brenda Young.⁶
4. In the last three years, EAG has participated extensively at the LSO and provided feedback on various reports including submissions to the access to justice call for comments, the governance task force, the changes to the Tribunal rules, and the Dialogue on Licensing.
5. Pursuant to section 122 of By-Law 3, the mandate of EAIC is:
 - (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Indigenous peoples and French-speaking peoples; and
 - (b) to consult with Indigenous, Francophone and other equality-seeking communities in the development of such policy options.⁷
6. As a result of section 122(b), EAG is a non-voting participant on EIAC alongside the Indigenous Advisory Group (IAG) and the Association des juristes d'expression française de l'Ontario (AJEFO).
7. Section 115(2)(3) of By-Law-3 provides any person with the right to attend any standing committee with the permission of the chair. EAG attends the meetings of EIAC by invitation.
8. EAG provides the following information to members of Convocation in response to a motion scheduled for February 27, 2020 to:
 - (i) exclude "unelected persons" from the Equity and Indigenous Affair Committee (thereby excluding EAG, IAG, and the AJEFO); and
 - (ii) study the advisability of maintaining unelected advisors such as EAG.

⁵ <https://lso.ca/about-lso/careers/working-with-the-law-society/call-for-expressions/invitation-to-apply-equity-advisory-group>

⁶ <https://lso.ca/lawyers/practice-supports-resources/equity-supports-resources/equity-advisory-group>

⁷ <https://lawsocietyontario.azureedge.net/media/lso/media/about/governance/by-laws/by-law-3.pdf>

C. Statutory and Legal Background

9. The motion to exclude “unelected persons” relies on the *Law Society Act*, R.S.O. 1990, c. L.8,⁸ and the *Corporations Act*, R.S.O. 1990, c. C.38,⁹ without recognising the effect on sections 122 and 115(2)(3) of By-Law 3.
10. Section 2 of the *Law Society Act* establishes the LSO as a corporation without share capital whose members are: (a) the Treasurer, (b) Benchers, (c) all lawyer licensees, and (d) all paralegal licensees.
11. Section 6 of the *Law Society Act* limits the application of the *Corporations Act*. Section 6(1) explicitly excludes certain provisions of the *Corporations Act* including section 126.1 which grants corporations “natural personhood”. The LSO is not a corporation with the capacity, rights, powers, and privileges of a natural person.
12. Section 6(2) further states that the provisions of the *Law Society Act* prevail over the *Corporations Act* in the event of a conflict.
13. Section 10 of the *Law Society Act* tasks Benchers with governing the affairs of the LSO.
14. In carrying out their functions, Benchers are required by section 4.2 of the *Law Society Act* to have regard to the following principles:
 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
 3. The Society has a duty to protect the public interest.
 4. The Society has a duty to act in a timely, open and efficient manner.
 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.
15. In 2018, the Supreme Court of Canada confirmed that “by the clear terms of s. 4.2 of the [*Law Society Act*], the [LSO] must have regard to the principles set out in that section — including its duty to protect the public interest — in carrying out all of its “functions, duties and powers” under the [*Law Society Act*]”.¹⁰

⁸ *Law Society Act*, R.S.O. 1990, c. L.8 : <https://www.ontario.ca/laws/statute/90l08#BK2>

⁹ *Corporations Act*, R.S.O. 1990, c. C.38: <https://www.ontario.ca/laws/statute/90c38#BK146>

¹⁰ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para 18.

16. The majority of the Supreme Court further noted that:

Access to justice is facilitated where clients seeking legal services are able to access a legal profession that is reflective of a diverse population and responsive to its diverse needs. Accordingly, ensuring a diverse legal profession, which is facilitated when there are no inequitable barriers to those seeking to access legal education, furthers access to justice and promotes the public interest. (emphasis added) ¹¹

17. In 1991, the LSO adopted the following Statement of Policy with respect to governance and the protection of the public interest:

(i) The Law Society of Upper Canada is responsible for governing the legal profession in the public interest. Matters which relate to the professional careers of lawyers and their personal well-being inevitably affect the public interest: they are matters which have a direct impact upon the quality of legal services in Ontario. The Law Society has a responsibility to undertake research and to provide leadership in these areas.

(v) Where there is evidence of significant dissatisfaction with the practice of law among members of the profession, the Law Society has a responsibility, both to the public and to its members, to study the issue and to propose solutions.

(vi) The Law Society has a responsibility to work towards the amelioration of conditions within the profession which lead to dissatisfaction with the practice of law.

(xii) The Law Society acknowledges that there are members of the profession, particularly women, who perceive themselves or their colleagues to be subject to discrimination. The findings of the [Transitions Report] lead the Law Society to conclude that discrimination (whether it be individual or systemic, intentional or unintentional) continues to exist within the profession.

(xiii) Lawyers have a responsibility to take a lead in eliminating discrimination. The Law Society will intensify its efforts to eradicate discrimination in the profession. ¹² (emphasis added)

18. For over 20 years, the LSO's equity partners, including EAG, have provided evidence of significant dissatisfaction with respect to systemic discrimination and racism. In fulfilling its statutory mandate, the LSO must address these concerns and work towards ameliorating conditions relating to the professional careers of lawyers and paralegals.

19. As non-voting members of EIAC, the volunteer work of the LSO's equity partners advances the protection of the public interest. Their only power is persuasion.

D. History of Equity Initiatives

20. EAG has previously written to Convocation outlining the history of equity initiatives.

¹¹ Trinity Western University v. Law Society of Upper Canada, 2018 SCC 33 at para 23.

¹² *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*, 1997:

<https://lawsocietyontario.azureedge.net/media/lsos/media/legacy/pdf/b/bicentennial.pdf> [Bicentennial Report] at para 26.

21. In 1996, the LSO adopted a commitment to combating racism and systemic discrimination.¹³
22. In 1996, the LSO conducted a follow-up study of over 1,500 lawyers over a 6-year period the results of which were reported in a document titled *Barriers and Opportunities Within Law: Women in a Changing Legal Profession* (the Barriers and Opportunities Report).¹⁴ The Barriers and Opportunities Report once again confirmed the existence of systemic discrimination and inequality within the legal profession.
23. In May 1997, the LSO unanimously adopted all 16 Recommendations in the Bicentennial Report which have since guided the LSO as it seeks to advance the goals of equity and diversity within the legal profession.¹⁵ The Bicentennial Report had noted that despite the LSO's commitments and changes to policy, "all the information received to date indicates that members of our profession continue regularly to face barriers because of personal characteristic unrelated to competence".¹⁶

The Stratcom Report

24. The Bicentennial Report led to a significant legacy of research and policy at the LSO.
25. In September 2011, the LSO identified the priority to "consider the development of programs to encourage law firms to enhance diversity within firms, based on identified needs, and create reporting mechanisms".¹⁷
26. The Stratcom study had a mixed method design, which means it was comprised of both qualitative (interviews/focus groups) as well as quantitative (survey) methods.¹⁸
27. Through the focus groups, participants described experiences in which the challenges of racialization appeared as barriers to entering practice, finding and maintaining secure employment, career advancements, and a competitive disadvantage in relation to their non-racialized colleagues.¹⁹
28. Many racialized licensees also described experiences of being alienated from the dominant culture of firms or companies.²⁰ Stratcom noted that the experiences of being out of place in

¹³ Bicentennial Report at para 28.

¹⁴ Bicentennial Report at paras 30-32.

¹⁵ Report of the Director, Equity, September 2014:

https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/t/tab_4.1_equity_director's_report_official_sept_2014.pdf (Equity September 2014 Report) at para 1.

¹⁶ Bicentennial Report at para 70.

¹⁷ Stratcom Report : http://www.stratcom.ca/wp-content/uploads/manual/Racialized-Licensees_Full-Report.pdf [Stratcom Report], page 1.

¹⁸ Stratcom Report at page 2.

¹⁹ Stratcom Report at page 10.

²⁰ Stratcom Report at page 13.

one's surroundings also extends to the courtroom.²¹ Racialized lawyers shared experiences of being mistaken as interpreters or as clients when representing non-racialized clients.²²

29. The focus groups results demonstrated to Stratcom that racialization intersects with a wide variety of other factors.²³

The intersection of these and other factors – age, sexual orientation, disability, geographic location – yields an incredibly complex and highly individuated pattern of experiences and impacts associated with the challenges of racialization. [...] The intersection of race and gender multiplies the challenges for women.²⁴

30. At the end of an extensive 78 page report, Stratcom concluded:

Findings of the survey research demonstrated the extent to which racialization establishes a measurable constellation of career challenges for racialized licensees that are distinct from those of their non-racialized colleagues; challenges that are rooted in their racialized status as well as many related challenges that are compounded and amplified as a consequence of the racialization process. In comparison with their non-racialized colleagues, racialized licensees and specific sub-groups, encounter qualitatively more severe challenges during and after entry into practice, yielding measurably greater negative impacts throughout their careers.²⁵

The Challenges Report

31. The Stratcom Report was one of the foundations for the “*Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions – Challenges Faced by Racialized Licensees Working Group Final Report*” (the Challenges Report).²⁶
32. The Challenges Report included 13 Recommendations which were all adopted by Convocation in December 2016.²⁷ The Challenges Report was the final stage of a lengthy consultation process.
33. In 2012, the LSO created the Challenges Faced by Racialized Licensees Working Group (the Challenges Working Group) to identify challenges faced by racialized licensees and design preventative, remedial, enforcement, regulatory and/or support strategies for consideration by EIAC and other committees to address these challenges.²⁸ In April 2014, EAG provided

²¹ Stratcom Report at page 14.

²² Stratcom Report at page 14.

²³ Stratcom Report at page 14.

²⁴ Stratcom Report at page 14.

²⁵ Stratcom report at pages 77-78.

²⁶ *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions – Challenges Faced by Racialized Licensees Working Group Final Report*: <https://lawsocietyontario.azureedge.net/media/lsso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf> [Challenges Report].

²⁷ <http://www.lawsocietygazette.ca/news/equity-diversity-and-inclusion/>

²⁸ Challenges Report at page 12.

submissions to the draft Challenges Report and continued to remain engaged with the Challenges Working Group.²⁹

34. In 2014, Convocation approved the Challenges Working Group's Consultation paper (following another engagement process) and between January and March 2015, the Working Group consulted with over 1,000 lawyers, paralegals, law students, articling students, and members of the public.³⁰ The Challenges Working Group also received written submissions from 45 individuals and organisations.³¹
35. As a result of its consultations, the Challenges Working Group identified three objectives: (1) inclusive legal workplaces in Ontario; (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.³²

E. Conclusion

36. The LSO is not simply a corporation, it is governed by the *Law Society Act* and it must protect the public interest.
37. In protecting the public interest, the LSO has a statutory duty to ensure diverse legal professions with no inequitable barriers.³³
38. For over 20 years, the Law Society's volunteer equity partners have extensively contributed to addressing systemic racism, systemic discrimination, and systemic barriers in the legal professions.
39. The LSO benefits from the volunteer work of its equity partners. This work should be encouraged and promoted, not silenced.

²⁹ Submission by the Equity Advisory Group Working Group in response to Stratcom's Challenges Facing Racialized Licensees Draft Report, dated April 17, 2014:

<https://lawsocietyontario.azureedge.net/media/lsos/media/legacy/pdf/s/submission-by-equity-advisory-committee-to-stratcom-challenges-report.pdf>

³⁰ Challenges Report at page 12.

³¹ Challenges Report at page 12.

³² Challenges Report at page 26.

³³ *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para 23.

AJEFO REACTS TO THE PROPOSITION OF ITS EXCLUSION FROM THE EQUITY & INDIGENOUS AFFAIRS COMMITTEE OF THE LAW SOCIETY OF ONTARIO

Ottawa, February 25, 2020 – The Association des juristes d’expression française de l’Ontario (AJEFO) expresses its astonishment at the [notice of motion](#) made public on February 24 to ban AJEFO from the Equity and Aboriginal Affairs Committee (“EAIC Committee”) from the Law Society of Ontario (“Law Society”). The motion will be presented at the [meeting](#) of Convocation this February 27.

AJEFO has been sitting for several years on the EAIC Committee. The EAIC Committee mandate includes, among others, addressing all issues affecting French-speaking people and consulting with Francophone groups when developing policies. The content of the files and discussions of the EAIC Committee are of very great importance to AJEFO, as well as to francophone litigants and the francophone legal community. AJEFO is of the opinion that it is essential that the interests of Francophones be represented in the discussions of the EAIC Committee so that the Committee can fulfil its mandate. Our organization is committed to the principles of equality and diversity and wishes to continue to represent the interests of the francophone communities within this Committee.

“AJEFO has always maintained an excellent working relationship with the Law Society and the EAIC Committee,” says Nadia Effendi, President of AJEFO. “AJEFO is therefore surprised to see that a motion to exclude it from the Committee will be presented on February 27. We wish to continue our collaboration with the Law Society and the EAIC Committee in order to share our perspectives on access to justice in French in Ontario and, ultimately, to ensure that the Law Society respects its mandate to offer its services in both official languages”.

In fact, in 2015, the Law Society of Ontario has adopted a [French Language service policy](#) that enhances the Law Society’s commitment and obligations to provide services in French under Part V of [By-Law 2](#).

“We wish to continue to collaborate with the Law Society in order to ensure fairness in all the matters at stakes whether they involve Francophone communities or any other group,” adds Ms. Effendi.

AJEFO has not been consulted on this motion to exclude it from the EAIC Committee and would like to be consulted before a decision is made by Convocation. In the meantime, AJEFO will ensure that its position is heard and encourages its members to share their concerns with members of the legal community.

The Association des juristes d'expression française de l'Ontario facilitates equal access to justice in French for everyone throughout Ontario.

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Information:

Mrs. Charlotte Calen

Communications manager

Association des juristes d'expression française de l'Ontario (AJEFO)

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L'AJEFO RÉAGIT À LA PROPOSITION DE SON EXCLUSION DU COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES DU BARREAU DE L'ONTARIO

Ottawa, le 25 février 2020 – L'Association des juristes d'expression française de l'Ontario (AJEFO) exprime son étonnement quant à [l'avis de motion](#) rendu public le 24 février visant à bannir l'AJEFO du Comité sur l'équité et les affaires autochtones (« Comité EAIC ») du Barreau de l'Ontario (« Barreau »). La motion sera présentée à la [réunion](#) du Conseil du Barreau du 27 février prochain.

L'AJEFO siège depuis plusieurs années au Comité EAIC. Le mandat du Comité EAIC inclut, entre autres, aborder toutes les questions touchant les personnes d'expression française et consulter les groupements francophones lors de l'élaboration de politiques. La teneur des dossiers et discussions du Comité EAIC sont d'une très grande importance pour l'AJEFO, ainsi que pour les justiciables et la communauté juridique francophones. L'AJEFO est d'avis qu'il est primordial que les intérêts des francophones soient représentés dans les discussions du Comité EAIC afin que le Comité puisse remplir son mandat. Notre organisme est engagé envers les principes d'égalité et de diversité et désire continuer à représenter les intérêts des communautés francophones au sein de ce Comité.

« L'AJEFO a toujours entretenu d'excellentes relations de travail avec le Barreau et le Comité EAIC », indique Me Nadia Effendi, présidente de l'AJEFO. « L'AJEFO est donc surprise de voir qu'une motion visant à l'exclure du Comité sera présentée le 27 février. Nous désirons poursuivre notre collaboration avec le Barreau ainsi que le Comité EAIC afin d'y partager nos perspectives relatives à l'accès à la justice en français en Ontario et, ultimement, assurer que le Barreau respecte son mandat d'offrir ses services dans les deux langues officielles ».

En effet, en 2015, le Barreau de l'Ontario a adopté une [Politique sur les services en français](#) qui bonifie l'engagement et les obligations du Barreau de fournir des services en français en vertu de la Partie V du [Règlement administratif no 2](#).

« Nous souhaitons continuer à collaborer avec le Barreau afin d'assurer l'équité au sein de tous les dossiers étudiés que ce soit des dossiers touchant les communautés francophones ou tout autre groupe », rajoute Me Effendi.

L'AJEFO n'a pas été consultée quant à cette motion visant à l'exclure du Comité EAIC et souhaiterait l'être avant qu'une décision soit prise par le Conseil du Barreau. Entre temps, l'AJEFO s'assurera que sa position soit entendue et encourage sa membricité à partager leurs préoccupations avec les membres de la communauté juridique.

L'Association des juristes d'expression française de l'Ontario facilite un accès égal à la justice en français pour tous et partout en Ontario.

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Renseignements :

Mme Charlotte Calen

Gestionnaire des communications

Association des juristes d'expression française de l'Ontario (AJEFO)

ccalen@ajefo.ca



Delivered via Email

February 25, 2020

Convocation
Law Society of Ontario
C/o Treasurer Malcolm M. Mercer
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear: Members of Convocation

Re: Motions to be heard February 27, 2020 re EIAC and EAG

The Women's Law Association of Ontario is a not-for-profit corporation dedicated to advancing issues and causes relevant to women in the legal profession through education and awareness programs. The association has existed since 1919 as a vibrant, active voice for women in the profession and a vital resource to members in their pursuit of fulfilling and successful careers in law.

For over 20 years, the Law Society's equity partners have extensively contributed to addressing systemic racism, discrimination, and barriers in the legal professions. Equity partners play a vital role in developing policies that protect the public and advance the interests of the legal profession. Equity partners have worked cooperatively over the years with the LSO. Our shared work has shown that a rule of law society thrives when minority and marginalized voices participate in policy forming debate.

Regrettably, the LSO will decide on two critical motions on 27 February 2020 that would undermine the long recognized benefit of dialogue between equity seeking groups and the LSO. Each motion seeks to limit debate and freedom of expression on issues affecting all members of the profession. The first motion seeks to censure an Equity Advisory Group representative for taking issue with a Benchers' remarks that disparaged his country of birth. The second motion is a systemic effort to cut out the role of equity seeking groups at Convocation, despite the LSO's duty to ensure a diverse legal profession that serves and protects a diverse public interest.

The WLAO joins other equity seeking groups and members of the LSO in denouncing the proposed motions as regressive and aimed at limiting the very speech that lawyers are duty bound to protect.

The WLAO supports and adopts the open letter from Members of the Equity Advisory Group.

Yours truly,

A handwritten signature in blue ink, appearing to read "J. Stevens".

Jacquelyn Stevens
President, Women's Law Association of Ontario



Women's Law Association of Ontario
1 Toronto Street • Suite 900 • Toronto, ON • M5C 2V6
Telephone: 416-410-7267 • Email: president@wlaao.on.ca



February 26, 2020

Convocation
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation:

Re: Motions to Exclude Unelected Advisors and Study the Advisability of Maintaining EAG

I write to you on behalf of the South Asian Bar Association ("SABA"), which is one of the largest diversity organizations of legal professionals in Ontario.

SABA is concerned about two motions tabled by Mr. Fagan for consideration by Convocation on February 27, 2020. The motions relate to the participation by members of the LSO's Equity Advisory Group ("EAG") in the Equity and Indigenous Affairs Committee ("EIAC"). Further, one of the motions seeks to strike a committee to consider the utility of the EAG in the first place.

In particular, SABA is concerned that these motions seek to undermine important work that is done by members of the EAG. The EAG's mandate is to assist the EAIC in the development of policy options for the promotion of equity and diversity in the legal profession. It is made up of volunteers with expertise in the area of equality, diversity, and inclusion. It therefore serves an important function in identifying and advising the EAIC on issues affecting equity communities in the province, including diverse communities within the legal profession.

It is important for elected benchers to have the benefit of experience and expertise of those from different backgrounds and communities. The diverse makeup of the EAG – which currently consists of diversity organizations as well as individuals – makes it uniquely placed to comment on and provide insight into initiatives being considered by the EAIC.

Taking away the ability of members of the EAG to meaningfully participate in the EAIC sends a message that their input is not valuable. SABA cautions the LSO against voting in favour of motions that will have the effect of silencing input from diverse groups. This is not a message that the LSO should send.

It is incumbent on the LSO to not alienate diverse voices and perspectives from its decision-making processes. SABA therefore encourages members of Convocation to reject these motions at the February 27th Convocation.

Sincerely,

A handwritten signature in black ink, appearing to read "Aarondeep S. Bains", written in a cursive style.

Aarondeep S. Bains
President
SOUTH ASIAN BAR ASSOCIATION OF TORONTO
39024913.1

South Asian Bar Association of Toronto
300-20 Toronto Street
Toronto, ON, M5C 2B8
sabatoronto@gmail.com



February 26, 2020

Convocation
Law Society of Ontario
Osgoode Hall
130 Queen St West
Toronto, ON M5H 2N6

Dear Members of Convocation,

Re: February 27 2020 Convocation – Motions regarding EIAC and Equity Partners

The Roundtable of Diversity Associations (RODA) is an umbrella organization that brings together a coalition of 20 equity-seeking Canadian legal associations* with a mandate which includes monitoring and providing input on policy developments within the profession and legal system.

RODA has reviewed two Notices of Motion dated February 5 and 6, 2020 which were posted publicly by the Law Society of Ontario (the Law Society) on Monday, February 24, 2020. The motions seek to censure an Equity and Indigenous Affairs Committee (EIAC) member as well as the Law Society's Discrimination and Harassment Counsel. They also push for a review of the role of the Equity Advisory Group (EAG) in order to limit or exclude equity partners' involvement in future governance activities of the Law Society. This includes EAG, the Indigenous Advisory Group (IAG) and l'Association des juristes d'expression française de l'Ontario (AJEFO).

We are troubled by the subject matter of the motions and by the publication of these Notices three days before Convocation. We encourage the Law Society to provide more notice to the public on such matters in order to ensure that important stakeholders have the opportunity to provide meaningful input before such matters are to be voted upon. We suggest that this is not only a matter of good governance, but it is part of the procedural fairness that one would expect from the country's largest and most sophisticated law society.

We urge the Benchers to reject these motions. Rather than exclude equity partners, we call on Benchers to strengthen the long-standing relationship between the Law Society and diverse members of our profession. We endorse the letters already delivered to Convocation by EAG and CABL on February 25, 2020, and by FACL, SABA, CHBA and WLAO on February 26, 2020 in regards to these motions.

RODA stands in solidarity with EAG, IAG, AJEFO and the Law Society's equity partners.

Sincerely,

Dina Awad, Chair

Adrian Ishak, Vice-Chair



***Roundtable of Diversity Associations:**

Arab Canadian Lawyers' Association
Association of Chinese Canadian Lawyers of Ontario
Canadian Association of Black Lawyers
Canadian Association of Muslim Women in Law
Canadian Association of Somali Lawyers
Canadian Association of South Asian Lawyers
Canadian Hispanic Bar Association
Canadian Italian Advocates Organization
Canadian Muslim Lawyers Association
Federation of Asian Canadian Lawyers
Hellenic Canadian Lawyers Association
Indigenous Bar Association
Iranian Canadian Legal Professionals
Korean Canadian Lawyers Association
Macedonian Canadian Lawyers Association
OBA Sexual Orientation and Gender Identity Law Section
OBA Equality Committee
South Asian Bar Association
Toronto Lawyers Association
Women's Law Association of Ontario

Cc. Benchers of the Law Society of Ontario

February 26, 2020

Arleen Huggins *

* Practicing through a professional corporation

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Via Email

Convocation c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

Re: Fagan Motions Relating to EIAC and EAG

I wish to add my name personally in support of the Submissions made by Equity Advisory Group (EAG), the Roundtable of Diversity Associations (RODA), the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association of Toronto (SABA), the Federation of Asian Canadian Lawyers (FACL), and so many other organizations and individuals, in response to the motions returnable on February 27, 2020 to censure certain individuals and to limit or exclude the involvement of EAG, as well as the Indigenous Advisory Group (IAG) and the Association des juristes d'expression française de l'Ontario (AJEFO) in Law Society of Ontario (LSO) activities.

I am a former President of CABL, and was the CABL representative on EAG for the two years of my Presidency. I saw first-hand the value that EAG and similar constituencies brought to the Equity and Indigenous Affairs Committee (EIAC).

I will not repeat the able submissions of all of the organizations who have wholeheartedly stated their opposition to such motions and the clear harm which will be caused, both to the LSO, and to the profession at large, if either is passed. It is most ironic that such motions are being brought before Convocation almost simultaneously with the LSO's joint celebration of Black History Month with CABL, within the LSO's premises, which I attended. This also extremely concerning given that the topic of the LSO/CABL Black History Month Plenary was "micro-aggressions". In fact, myself and many other Licencees and members of the public feel that these motions are themselves "**macro**-aggressions" towards Black and other racialized/equity seeking Licencees, and members of the public who identify as such, all of whose interests the LSO is charged to serve. Access to justice is clearly not going to be served without the voice of EAG at the table to inform, advise and be a resource to the LSO on equity and access to justice issues.

Systemic racism exists in the world, in Canada, in Ontario in the legal profession, as well as in the legal system as a whole. We know that (contrary to recent Benchers suggestions to the contrary). The Supreme Court of Canada has recognized this fact repeatedly. Attempting to deny it through the eliminating of EAG, IAG and AJEFO, and censuring those who speak "truth to power", does not serve the LSO or the public.

The effect of passing these motions will be to discredit both the LSO and our profession with Licencees (both racialized/equity seeking and non-racialized/non-equity seeking) and with the public.

I sincerely hope that all Benchers give very serious thought to the repercussions and consequences to passing these motions and the irreparable damage which will ensue.

Yours truly,

A handwritten signature in black ink, appearing to read 'Arleen Huggins', with a long horizontal flourish extending to the right.

Arleen Huggins
Partner, Koskie Minsky LLP
AH:me

- c. Malcolm Mercer, Treasurer, LSO
Diana Miles, Chief Executive Officer, LSO
Nima Hojjati, Chair, EAG
Jim Varro, Corporate Secretary
Dianne Corbiere, Chair of EIAC
Marie-Andrée Vermette, AJEFO
Andrée-Anne Martel, General Director, AJEFO



February 26, 2020

DELIVERED BY E-MAIL

Convocation
Law Society of Ontario
Osgoode Hall - 130 Queen Street West Toronto
Ontario M5H 2N6

Dear Treasurer and Members of Convocation:

RE: CHBA Opposition to the Fagan/Brown Motions Involving EIAC & EAG (Feb. 27/20 Convocation)

The Canadian Hispanic Bar Association (“CHBA”), an organizational member of the Law Society of Ontario’s Equity Advisory Group (“EAG”), would like to express its opposition to the motions brought by John Fagan and seconded by Jared Brown (the “Motions”).

As you know, the EAG’s mandate is to assist the Equity and Indigenous Affairs Committee/Comité sur l’équité et les affaires autochtones (“EAIC”), in the development of policy options for the promotion of equity and diversity in the legal profession by: i) identifying and advising the EAIC on issues affecting equity communities, both within the legal profession and relevant to those seeking access to the profession; ii) providing input to the EAIC on the planning and development of policies and practices related to equity, both within the Law Society and the profession; and iii) commenting to the EAIC on Law Society of Ontario reports and studies relating to equity issues within the profession.

The need for such an advisory group was identified in the 1997 Bicentennial Report on Equity Issues in the Legal Profession. Since then, the EAG has been working collaboratively with the Law Society to address issues that affect all of us in the legal profession. Some of the reports that the EAG has participated in and which have led to positive changes in the profession include: the Career Choices Survey and Articling Reports, the Mental Health Report, Indigenous Initiatives, the Professor Fiona Kay Reports, the Retention of Women in Private Practice Consultation reports, etc.

Specifically, the CHBA is concerned that, rather than contributing to the goals of inclusion and diversity in the profession and recognizing the important role of the EAG in the EAIC, the Motions attempt to address a perceived problem in the internal workings of the EAIC --which is outside the control of the EAG-- as justification to censure the EAG and challenge its existence altogether. As

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canadian.hispanic.bar.assoc@gmail.com

such, the CHBA respectfully submits that any issues concerning the internal workings of the EAIC do not reasonably justify the elimination of the EAG, which has been contributing to the betterment of the profession for the last 23 years. We continue to believe that it is important for licensees and the public to see that the legal profession is making efforts to better reflect the increasing diversity of Ontario's population. To that end, we ask that Convocation once again stand on the side of continuing to work collaboratively with our equity partners and communities towards the promotion of diversity and inclusion in our profession.

Yours very truly,

The Canadian Hispanic Bar Association

Cc. Equity Advisory Group, eag@lso.ca, CHBA Membership



February 26, 2020

VIA EMAIL

Convocation
c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen St W
Toronto, ON M5H 2N6

Dear Members of Convocation:

Re: Fagan motion to eliminate EIAC and EAG - February 27, 2020 Convocation

The Federation of Asian Canadian Lawyers, Ontario (“FACL Ontario”) is an association of hundreds of Asian Canadian legal professionals with a mandate to pursue equity, justice and opportunity for our members and the wider community. As President of FACL Ontario, I write to express our deep concern about the motion being brought by John Fagan (and seconded by Jared Brown) to immediately exclude the Equity Advisory Group (“EAG”) from meetings of the Equity & Indigenous Affairs Committee (“EIAC”) and to potentially eliminate EAG altogether.

Along with other equality-seeking groups, FACL Ontario is a longstanding member of EAG. The history and background of EAG is set out in the letter of EAG dated February 25, 2020, which FACL Ontario endorses. I will not repeat that history here. Suffice it to say, EAG has played an integral role in the promotion of equity and diversity in the legal profession by providing racialized lawyers, among others, with a voice when it comes to EIAC’s work. This function is entirely consistent with EIAC’s mandate as defined in Bylaw 3, which is to “develop for Convocation’s approval, policy options for the promotion of equity and diversity” and to “consult with Indigenous, Francophone and other equality-seeking communities” in doing so.

It is unthinkable that EIAC could fulfill its mandate without consulting with those most affected by equity and diversity issues: Indigenous, Francophone, and other equality-seeking communities such as the racialized lawyers that make up the membership of FACL Ontario (which in turn is a member of EAG). And yet that is what the motion proposes.

While the Members of Convocation may be elected by licensees, they are elected to serve the public interest. As the Supreme Court of Canada has explained, this includes the pursuit of a more inclusive and diverse bar.¹ This goal cannot be achieved if Convocation shuts out the voices of those most affected by the Law Society’s equity and diversity policies. EIAC’s very purpose demands the participation of EAG in its work.

¹ *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 43.

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It is especially concerning that the Fagan-Brown motion — which was brought on short notice and which proposes to make serious, systemic changes to the way that the Law Society considers equity and diversity issues — appears to have been prompted by a conflict between two individuals (the Chair of EAG and a Benchers). Serious systemic changes should be the product of extensive study and consultation, not a reaction to a personal dispute.

For all of these reasons, FACL Ontario urges Convocation to reject the Fagan-Brown motion when it meets on February 27, 2020.

Yours truly,

A handwritten signature in black ink, appearing to be 'G. Chan', followed by a long horizontal line extending to the right.

Gerald Chan
President
FACL Ontario



CRIMINAL LAWYERS' ASSOCIATION
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February 26, 2020

BY EMAIL ONLY

Convocation
c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Dear Members of Convocation of the Law Society of Ontario:

Re: Fagan/Brown Motions - February 27, 2020 Convocation

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1500 members. We are a voice for criminal justice in Ontario. We are often called upon to provide our advice and perspective to all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice.

We write to you on behalf of the Criminal Lawyers' Association to express our concern in relation to the motions brought by Benchers John Fagan and Jared Brown which are scheduled to be heard at the February 27, 2020 sitting of convocation.

It is understood that the ostensible genesis of these motions was an exchange between a member of the Equity Advisory Group (EAG) and a "STOP SOP" Bencher at the conclusion of a talking circle with The Equity & Indigenous Affairs Committee (EIAC), of which the Bencher is not a member. Both the member of the EAG and the Bencher in question have made public their accounts of this exchange. While these accounts vary, there is agreement that the exchange occurred only after the meeting of the committee and concerned the propriety of the Equity Advisory Group providing assistance to the EIAC committee.

The Fagan/Brown motions set to be heard by Convocation seek two primary outcomes:

1. The censure of the member of the EAG for publicly commenting on what had occurred.

2. The immediate exclusion of EAG members from attending EIAC meetings and the striking of a committee to “study” whether EAG or similar groups ought to ever be allowed to attend such meetings in the future.

It is the view of the Criminal Lawyers’ Association that these motions are a transparent effort to exclude racialized and diverse voices from the Equity & Indigenous Affairs Committee and therefore from Law Society policy writ large.

The Criminal Lawyers’ Association has long recognized the importance of addressing issues related to equity, diversity and inclusion (EDI) within the justice system and the legal community. Although there has been progress, discrimination pervades the justice system at every level and affects the clients of our members on a daily basis. Further, there can be no doubt that systemic racism within the legal profession negatively impacts the careers and lives of many of our members. The response to these injustices must be comprehensive and sustained.

The Criminal Lawyers’ Association further recognizes that any effort to counteract discrimination and systemic racism must include ongoing and robust input from diverse voices, especially those from racialized backgrounds. It is a tautology that no governmental or regulatory body can produce just policy without input from stakeholders - in this case, the diverse and valuable voices provided by the Equity Advisory Group.

The Criminal Lawyers’ Association was disturbed and disappointed with the “STOP SOP” slate’s efforts to roll back hard-fought EDI gains with the repeal of the Statement of Principles. Our Association is now extremely alarmed with the Fagan/Brown motions which go further insofar as they are aimed at not just rolling back progress but silencing diverse voices to ensure that no future progress can be made.

It is, therefore, the hope of the Criminal Lawyers’ Association that the Fagan/Brown motions be defeated and condemned in the strongest terms.

Yours truly,



On Behalf of the Executive of
The Criminal Lawyers’ Association

Indigenous Advisory Group

TO: Convocation of the Law Society of Ontario (LSO)

FROM: Members of the Indigenous Advisory Group

DATE: February 26, 2020

Re: Open Letter on two Motions to Exclude and Censure the Law Society's Equity Partners

The Indigenous Advisory Group strongly urges Convocation to reject the two motions put forth by John Fagan and Jared Brown. These motions represent an attack on equity and equity initiatives at the Law Society.

The Indigenous Advisory Group regards an attack on Equity Advisory Group as an attack on all Equity Partners.

Further, the Indigenous Advisory Group is of the view that these motions represent an attempt to undermine and silence Indigenous laws and protocols by directing a Chair of a Standing Committee's autonomy as Chair to call a Special Meeting as required.

The Indigenous Advisory Group was established following the release of the Truth and Reconciliation 94 Calls to Action in 2015. The Indigenous Advisory Group is comprised of Indigenous Lawyers, Paralegals and Elders, all of whom volunteer their time to contribute their knowledge and expertise to assist the Law Society.

In 2016, the Law Society announced that a partnership between the Indigenous Advisory Group and the Law Society had begun for the purpose of advancing reconciliation and guiding the Law Society on issues facing Indigenous peoples. This partnership was formalized by the Treasurer in 2016 directing the Chairs of the Equity and Indigenous Affairs Committee to fulfil the committee's mandate as set out in By-Law 3 by working in partnership with the Indigenous Advisory Group in,

"...developing and implementing the Law Society's Indigenous Strategy to work towards fulfilment of the Law Society's mandate, and the equity and other principles by which it regulates, in relation to Indigenous issues."¹ [emphasis added]

The Indigenous Advisory Group has been working with the Law Society and Equity and Indigenous Affairs Committee as Equity Partners with the full support of Convocation. These two motions are not representative of the relationship that has been established between the Indigenous Bar and the Law Society.

Thank you,

Indigenous Advisory Group

¹ Office of the Treasurer Memorandum, September 26, 2016 p. 2



February 26, 2020

Convocation
Law Society of Ontario
Osgoode Hall
131 Queen St West
Toronto, ON
M5H 2N6

Dear Members of Convocation,

RE: February 27, 2020 Motion to Exclude Equity Partners from the Equity and Indigenous Affairs Committee

The Indigenous Bar Association (“IBA”) would like to express its deep concern for the upcoming motion to exclude “unelected persons” from participating in the LSO’s various committees and calls on the Law Society of Ontario (“LSO”) to maintain these essential groups to ensure diverse voices are formally included at the LSO.

The IBA is a national non-profit association comprised of Indigenous lawyers (practicing and non-practicing), legal academics and scholars, articling clerks and law students, including approximately 80 members who are from Ontario. Our mandate is to promote the advancement of legal and social justice for Indigenous Peoples in Canada and the reform of laws and policies affecting Indigenous Peoples, including for those who are living and working in Ontario.

It is beyond dispute that for the past several centuries the legal system in Canada has aided the Canadian government in their effort to assimilate Indigenous people. Just one example of many, is the prohibition on Indigenous people hiring or becoming lawyers until 1951. This difficult relationship between Indigenous people and the legal system continues today – with a disproportionate number of Indigenous people incarcerated and Indigenous children in the child welfare system. Lawyers with a lack of cultural competence regarding Indigenous people and perspectives contribute to these overrepresentations. Reconciling with Indigenous peoples for past wrongs and remedying current injustice perpetuated by the legal system is directly within the ambit of the LSO’s regulatory mandate.

The IBA became aware of the Fagan motion of February 5, 2020 through social media and concerned IBA members who are also members of the LSO. We understand that this motion will be brought at the LSO’s February 27, 2020 Convocation. The motion seeks to exclude “unelected persons,” such as standing groups of unelected advisors and non-benchers that have privileges to attend meetings and other events. The existence of this motion calls into question the commitment of the Law Society of Ontario to

the meaningful recognition and implementation of UNDRIP and the TRC Calls to Action. It also calls into question the principles of reconciliation the LSO has committed to uphold.

This proposed exclusion of “unelected persons” includes the Equity Advisory Group (“EAG”), the Indigenous Advisory Group (“IAG”) and the Association des juristes d’expression française de l’Ontario (“AJEFO”). These groups are comprised of respected and knowledgeable community partners who provide essential perspectives, insight, and advice to the LSO’s Equity & Indigenous Affairs Committee. While the exclusion of each of these groups is reason for alarm, the IBA is particularly concerned about the exclusion of the IAG.

The IAG is made up of respected Indigenous Elders. Since 2016, the IAG has played a critical role in advising the Law Society on matters impacting First Nations, Inuit and Métis lawyers and paralegals as well as Indigenous community members in the province of Ontario. The stated purpose of the IAG is:

Adopting the *United Nations Declaration on the Rights of Indigenous Peoples* [“UNDRIP”] as its framework, the Indigenous Advisory Group (Advisory Group) will advance and encourage the reconciliation of Indigenous Peoples and Indigenous legal systems within the Canadian legal system (Constitution, laws and legal framework) and promote the development of the relationships between Indigenous Peoples and Canadian legal structures and institutions in a manner that respects Indigenous values, beliefs and legal systems.

The IAG is mandated to promote the implementation of recommendations and calls to action from reports generated regarding Indigenous Peoples and Canada’s legal system, including the Truth & Reconciliation Commission (“TRC”) of Canada’s Final Report and Calls to Action and to partner with the LSO on all issues affecting Indigenous Peoples in relation to the Law Society.

The TRC of Canada documents these failures, and specifically addresses the legal profession in the Commission’s Calls to Action. TRC Call to Action #27 states:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Senator Sinclair, Chief Commissioner of the TRC, has clarified that TRC Call to Action #27 includes a call to provincial law societies and legal organizations.

Against this backdrop, it is counterproductive for Benchers, who are mandated to serve in the public interest, to exclude Indigenous voices from more active participation in the regulation of the legal profession, particularly since it is harmful to propose that any meaningful attempt regarding reconciliation initiatives can happen in the absence of Indigenous people.

Canada’s legal institutions, including the LSO, must be accountable and receptive to Indigenous Peoples and their unique lived experiences. As stated by the Supreme Court of Canada in the *Quebec Secession Reference*,

“to be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of and accountability to the people, through public institutions created under the Constitution.” (emphasis added)

The LSO must commit itself to maintain and enhance the legitimacy of its legal institution with Indigenous communities, and Ontario as a whole. The current Wet’suwet’en dispute highlights the need for LSO to take immediate action to re-envision reconciliation within the legal profession and create space for the operation and respect of Indigenous laws and legal orders. In doing so, the LSO must remember the TRC and UNDRIP requires work, to implement these processes, must be in partnership with Indigenous rights holders.

For further discussion, please contact Drew Lafond, President of the Indigenous Bar Association at dlafond@mltaikins.com.

Respectfully,

The Indigenous Bar Association’s Board of Directors

February 26, 2020

Gerri Sanson
416 627 5487
geri.sanson@bell.net

By Email

Convocation c/o Treasurer
Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6

Re: Fagan Motions Relating to EIAC and EAG and Benchers Conduct Giving Rise to the Motions

While there are a number of governance documents that specify the high degree of accountability and conduct required of elected benchers, the *Governance Practices and Policies* adopted by Convocation February 28, 2019 captures most of them.

In keeping with the Law Society's governing statutory principles, Convocation is specifically committed to governing the practice of law and the provision of legal services in a manner that will:

- a. achieve a reduction of barriers created by racism, unconscious bias and discrimination;
- b. achieve better representation of Indigenous licensees, racialized licensees and licensees from all equality seeking groups in the legal professions; and
- c. advance reconciliation, acknowledging a collective responsibility to support improved relationships between Indigenous and non-Indigenous peoples in Ontario and Canada.

Convocation decision making is also governed by its strategic plan - which for 2015-2019 - includes a commitment to consult broadly, to increase access to justice by collaborating with justice partners and other stakeholders and to serve as regulator to advance the public interest which includes equity obligations.

The plan further commits to greater accountability and transparency of the LSO than in the past. This can only occur if there is dedicated time, resources, public notice and consultation on all equity matters, especially any proposed actions that contradict, conflict or seek to reduce the LSO's commitment and public accountability to its equity mandate and established initiatives.

At a minimum, all benchers are obliged to conform to the LSO's governance policies, including a specific code of conduct which includes a signed declaration by the individual bencher that they have read, understood and accept their commitments as benchers.

Part of the benchers' role also includes sitting - where appointed - on specific committees and sub-committees in order to report back to convocation as a whole where non-committee benchers can then participate and fulfil their role.

In particular, two of the LSO Equity committees were specifically created for the purpose of consulting and collaborating with, and seeking advice from, diverse and numerous individuals and identified equity-seeking organizations. All of these individuals and organizations volunteer their scarce time because they believe it is important that the LSO collaborate with them and inform its equity mandate and legal obligations through this collaboration, in trust that the LSO will, as promised, be an equity leader.

Separate and apart from the bencher and convocation process, the CEO is expressly designated with wide-ranging authority to carry out all of the day-to-day business of the LSO including employment, contractual matters and the implementation of equity initiatives and programs.

Your leadership as Treasurer in navigating, guiding and, when necessary, deciding, is our most significant safeguard. It's only through strong leadership that all licensees can be confident that our self-regulated profession stays on the rails, does what it is meant to do, and is respectful of the LSO's core mandate and legal obligations.

It is in this vein that I am writing to you to express my deep and growing concern about the LSO's equity path, and in particular with the decisions and actions of some benchers, and to call on you as Treasurer to take a necessarily strong leadership role.

My concerns have crystallized around the following information that I have gleaned from the public record:

1. The LSO has eliminated three equity positions in its last budget. Overall, 6 jobs were eliminated - half of them in equity.
2. A number of (self-defined) "Stop SOP" benchers crashed a recent EAG Committee Meeting and then insisted on actively participating in that meeting. These members are not appointed to this committee as part of their bencher work.
3. These same members declined to respect the direction of the EAG-appointed Chair or the mandate of the committee. Without knowing more, it is difficult not to come to the conclusion that they were endeavouring to demean, disrespect and disrupt the committee and diminish their work.

4. Allegedly, one of these benchers went so far as to demand the resignation of the EAG Chair, stating words to the effect that the Chair doesn't look like democracy.
5. The EAG Chair is a member of a racialized community.
6. The EAG Chair has since filed a conduct complaint with the Treasurer regarding the allegations of his treatment by the bencher(s). I have no idea of the breadth, degree or detail of this complaint. However, the stated allegation is serious and could constitute racial discrimination by one or more of the attending benchers. This complaint requires investigation.
7. The EAG Chair formerly worked at the law firm of one of the Stop SOP benchers who has come out very publicly by writing to the press in an effort to criticize, dismiss and deny the work of past equity initiatives, reports and recommendations. This Stop SOP bencher goes so far as to deny that racism and systemic racism currently exist within the LSO and legal community generally.
8. This additional bencher connection exacerbates and heightens the seriousness of the issues and concern about disrespectful conduct by those benchers who crashed the EAG meeting and the potentially toxic and silencing effect on the community members involved in the equity advisory groups.
9. Another Stop SOP bencher, who was apparently one of the people who crashed the EAG meeting, has since written an op-ed piece. On its face, this article appears to be completely contrary to the Governance Practices and Policies, including the code of conduct.
10. On the day of the Black History Equity Event co-hosted by CABL and the LSO, two Stop SOP bencher motions were tabled on short notice which seek to:
 - publicly censure equity appointees
 - silence rather than encourage and collaborate with equity seeking groups, contrary to the core responsibility and mandate of the LSO and the specific mandate of the equity community roles on these advisory committees
 - reprise and retaliate against equity-identified licensees, creating a toxic/poisoned legal services environment - and especially for the EAG chair who is known to them to have made a conduct complaint to the Treasurer
 - obstruct equity-related processes and tarnish the LSO's ability to self-regulate, especially when it comes to human rights obligations and responsibilities
 - distract from the core issue of allegations about these rogue benchers whose conduct appears on its face contrary to stated governance practices and policies of the LSO
 - driving in the wrong lane -ie the motions reflect an inherent misunderstanding of bencher roles and responsibilities vis a vis the various other delineated

roles and responsibilities of the LSO

I have committed my entire legal career to the protection, promotion, education and development of human rights in this province. I am recognized by my peers as an expert in workplace human rights (through L'expert) by both labour and employer side communities. Early on in my legal career, I was the surprised and honoured recipient of Law Society Medal for my work in human rights. I have worked with public and private institutions including the LSO in assisting them with a variety of process and substance related equity issues.

It is because of my background, experience, dedication and commitment that I urge you to show strong leadership at this very critical juncture.

The Treasurer has specific authority to deal with abusive, bad faith and improper motions, and/or motions that in their substance involve core responsibilities that are not within the mandate of the benchers. I urge you to exercise this authority to prevent these motions from going forward.

I also urge you to initiate a full and impartial third-party investigation into the conduct complaint because it involves *Human Rights Code* allegations which are quasi-constitutional in nature. Leadership of the LSO and satisfying the LSO's human rights obligations require nothing less.

Yours truly,



Geri Sanson

- c. Malcolm Mercer, Treasurer, LSO
- Diana Miles, Chief Executive Officer, LSO
- Jim Varro, Corporate Secretary