

Court File No.: CV-22-00682844-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MURRAY KLIPPENSTEIN

Plaintiff/Moving Party

- and -

LAW SOCIETY OF ONTARIO

Defendant/Respondent

**MOTION RECORD OF THE PLAINTIFF/MOVING PARTY
(Motion for Summary Judgment)
Returnable June 20, 2024
Volume Three**

March 30, 2023

KENNY LAW

Bell Tower, Suite 2603
10104 103 Ave NW
Edmonton AB T5J 0H8

W.J. Kenny, K.C.

Direct: 780.752.1113

Email: wkenny@wjkenneylaw.com

Julian V. Savaryn

Direct: 780.752.1114

Email: jsavaryn@wjkenneylaw.com

Lawyers for the Plaintiff,
Murray Klippenstein

TO

STOCKWOODS LLP

Barristers
TD North Tower
Suite 4130
77 King Street West
Toronto ON M5K 1H1

Paul Le Vay

Tel: 416.593.2493
Email: paullyv@stockwoods.ca

Yadesha Satheaswaran

Tel: 416.593.7200
Email: yadeshaS@stockwoods.ca

Lawyers for the Defendant,
Law Society of Ontario

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EXHIBIT 12

Prior Stratcom Survey, circa 2014

This is Exhibit "12" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th
day of March A.D., 2023.



Commissioner for Taking Affidavits
Jorge Pineda
#65305B



The Law Society of
Upper Canada

Barreau
du Haut-Canada

**May 24, 2012
9:00 a.m.**

CONVOCATION MATERIAL

**Dial-in numbers: 416 883 0133 or 1 877 385 4099
Participant access code: 9477488**

May 18, 2012



The Law Society of
Upper Canada

Barreau
du Haut-Canada

**REPORT TO THE
ATTORNEY GENERAL OF ONTARIO
PURSUANT TO SUBSECTION 63.1 (1)
OF THE *LAW SOCIETY ACT***

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**Five Year Review of Paralegal Regulation:  
Research Findings**

**Final Report**

**For The Law Society of Upper Canada**

**Submitted:  
May 6, 2012**

**Prepared by:  
David Kraft, John Willis, Stephanie Beattie and Armand  
Cousineau**

**Toronto: 200-3 Macdonell Avenue Toronto ON M6R 2A3 PH 416.537.6100 FX 416.588.3490  
Vancouver: 305-1770 West 7<sup>th</sup> Avenue Vancouver BC V6J 4Y6 PH 604.681.3030 FX 604.681.2025**

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## 1.0 Introduction

The Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2006, as a result of amendments to the *Law Society Act*. Under the amended *Law Society Act*, the Law Society is required to conduct a review of the regulation of paralegals five years after regulation went in to effect on May 1 2007.

This research project was designed to review the manner in which paralegals have been regulated during the five year review period and the effect that such regulation has had on paralegals and members of the public.

With respect to paralegals, research explored:

- Impressions of the impact of regulation on the paralegal profession and the impact of regulation on the public.
- Opinions regarding the manner in which the process of regulation was introduced and the extent to which regulation of paralegals has established:
  - Fair and transparent processes for applicants to obtain a paralegal license;
  - Reasonable standards of competence and conduct for paralegal members of the Law Society; and
  - Fair and transparent discipline processes for situations where it is alleged that licensed paralegals have failed to observe Law Society standards.
- Opinions regarding the role of the Law Society as the regulator of the paralegal profession.

With respect to the public, research explored:

- Awareness and knowledge of paralegal regulation and paralegal services.
- The experience of using paralegal services and impressions regarding the impact of regulation on individuals seeking and using the service of paralegals.
- The extent to which Law Society regulation has succeeded in establishing:



**Law Society of Upper Canada  
Research Findings  
May 6, 2012**

- Reasonable standards of competence such that the public has access to competent services.
- Accessible information about legal services available in Ontario.
- Fair and transparent complaint procedures for the use of members of the public who have concerns about the conduct or competence of paralegals.
- An accessible, transparent discipline process to address breaches of Law Society standards.

This report presents the findings of an online survey of licensed paralegals and an online survey with members of the public who use paralegal services. Where appropriate the report also references findings from two earlier phases of research: key informant interviews (fall 2011) and nine focus groups (January, 2012).

## 2.0 Methods

### Key Informant Interviews

The first phase of the research component of the Law Society's five year review of paralegal regulation was an organized scan of the context, issues and perspectives associated with the regulation of paralegals. Interviews were conducted with seven individuals, selected for their knowledge of the history, design and implementation of paralegal regulation, and their insight into the issues associated with paralegal regulation. A focus group with 12 members of the Law Society's Paralegal Standing Committee explored the purpose and objectives, design, and impact of paralegal regulation. A final round of interviews was conducted with eight judges, Justices of the Peace and adjudicators in Ontario courts and tribunals where paralegals appear. Findings from this research were presented in an interpretive memorandum ('Review of Paralegal Regulation: Summary of Interviews,' January 16, 2012).

### Focus Group Research

In January 2012, nine focus groups were conducted in Toronto (3), London (2), Sudbury (2) and Ottawa (2), including five groups comprised of paralegals and four with individuals who reported having used the services of a paralegal during the past two years. Focus groups with

licensed paralegals explored impressions of the impact of regulation on the paralegal profession and the public who use paralegal services, and the experience of regulation by the Law Society, including licensing requirements, competence and conduct, discipline and other issues. Focus groups with members of the public explored knowledge of paralegals and awareness of regulation, experiences using paralegal services and impressions of the impact of regulation on the public. Results of focus group research were presented in a final report (*Review of Paralegal Regulation: Focus Group Research Findings*, April 4, 2012).

## Online Survey of Paralegals and the Public

Based on the issues identified and hypotheses generated in the first two phases of research, two survey questionnaires were drafted for online administration to paralegals and members of the public who use paralegal services.

The paralegal survey questionnaire was comprised of 29 questions which identified practice characteristics, explored general impressions of the impact of regulation for paralegals and the public, the licensing process, competence and conduct, discipline and the role of the Law Society as regulator. The online survey was promoted on the Law Society website and by regular email communications to all licensed paralegal members of the Law Society. The survey was fielded from March 10 to 29, 2012 and was completed by 1,320 licensed paralegals or 32% of the 4,158 paralegal members of the Law Society. Final results, including three open-ended questions, were coded and analyzed using SPSS 12.0. Results are accurate within +/- 1.8%, 19 times out of 20.

The survey questionnaire administered to members of the public who use paralegal services was comprised of 30 questions which identified demographic characteristics, explored awareness and contact with paralegals, experience using paralegal services and impressions regarding the impact of paralegal regulation. This survey was fielded online using a proprietary panel from March 12 to 21, 2012, resulting in 1,001 completed surveys across Ontario.<sup>1</sup> Final results, including two open-ended questions, were coded and analyzed using SPSS 12.0.

<sup>1</sup> Survey participants were screened for participation with the following question:

Paralegals in Ontario independently represent clients in provincial offences court, summary conviction criminal court, small claims court and administrative tribunals such the Financial Services Commission of Ontario or the Workplace Safety and Insurance Board. Have you used the services of a paralegal in the past two years for personal or business purposes?


# EXHIBIT 13

**Working Group Agenda and Materials  
(May 30, 2013)**

**This is Exhibit "13" referred to in the Affidavit of**

**MURRAY KLIPPENSTEIN**

**Sworn before me this 16th  
day of March A.D., 2023.**



---

**Commissioner for Taking Affidavits**

*Jorge Pineda*  
*# 65305B*



**Agenda and Materials**  
**May 30, 2013**  
**Convocation Room**  
**3:00 to 4:45 p.m.**

Conference number:  
 Toronto 416-883-0133  
 Ottawa 613-212-4220  
 Toll free number: 1-877-385-4099  
 Participant Code: 3842751#

**Challenges Faced by Racialized Licensees Working Group**

**Working Group Members**

**Raj Anand, Chair**  
**Marion Boyd**  
**Robert Burd**  
**Julian Falconer**  
**Howard Goldblatt**  
**Susan Hare**  
**Janet Leiper**  
**William McDowell**  
**Malcolm Mercer**  
**Janet Minor**  
**Susan Richer**  
**Baljit Sikand**

**Purposes of Report: Information and Discussion**

**Prepared by the Equity Initiatives Department**  
**(Josée Bouchard – 416-947-3984)**

**Also participating: Ekua Quansah, Associate Counsel, Equity and Swathi Sekhar,**  
**Articling Student**

## **CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP**

### **AGENDA**

---

|                                                                                      |              |
|--------------------------------------------------------------------------------------|--------------|
| Review of minutes of April 25, 2013 and May 8, 2013 meetings (Anand: 5 minutes)..... | <b>TAB 1</b> |
| Meeting with government representatives (Anand: 45 minutes).....                     | <b>TAB 2</b> |
| Proposal for a broadened consultation (Anand: 45 minutes).....                       | <b>TAB 3</b> |
| Review of timeline .....                                                             | <b>TAB 4</b> |
| List of key informants.....                                                          | <b>TAB 5</b> |
| Official Workplan .....                                                              | <b>TAB 6</b> |

**FOR INFORMATION****CHALLENGES FACED BY RACIALIZED LICENSEES WORKING GROUP****Minutes****May 8, 2013**

9:30 a.m. – 10:30 a.m.

Lower Barristers Lounge

- Chair:** Raj Anand
- Present:** Marion Boyd, Julian Falconer, Howard Goldblatt, Susan Hare, Janet Leiper, Janet Minor, Susan Richer, Baljit Sikand
- Staff:** Josée Bouchard, Ekua Quansah, Swathi Sekhar
- Guests:** Strategic Communications Inc. (Stratcom) – Project Consultants:
- Michael F. Charles, Principal, Change DeZign
  - David Kraft, Senior Associate, Stratcom
  - John Willis, Director of Campaigns and Research, Stratcom
  - Angela Lee, researcher

The purpose of this meeting was to have a discussion between the retained consultants from Strategic Communications and the Working Group about the role of key informants and the possibility of altering the proposed consultation methodology.

**Discussion regarding Consultation Methodology**

Prior to the meeting, Julian Falconer submitted a memo to the Chair regarding the possibility of conducting a parallel consultation along with the consultants' proposed methodology. This parallel process would involve community conveners, a small number of credible individuals who are trusted in the community and work at the grassroots level, convening small focus groups in their communities and reporting their discussions and findings to the working group. This method was proposed as a way to hear the voices of the most vulnerable people.

Howard Goldblatt responded to this proposal, noting that he is not wedded to the concept of the community convener process; however, he is concerned that a formal process may not reveal the kinds of concerns that the working group is trying to identify. It is necessary to go below the

surface and identify the real issues. Janet Leiper agreed that it is necessary to hear from people from the frontline and the most marginalized people in order to get the best product.

In response, it was noted that in the workplan there is a public consultation process scheduled for 2014 once the final report is issued and approved by Convocation – this may be an opportunity to gather further information.

The consultants were asked to respond to the abovementioned suggestions/concerns.

Strategic Communications' response:

- It is not the role of the consultants to determine whether there is confidence in the process, but generally, in the experience of the consultants, the methods of key informant interviews, focus groups and surveys, allow people to speak their minds.
- The key informant method is a way of opening the door for deeper investigation in focus groups. Key informants allow the consultants to scan the profession and gather a range of perspectives. The consultants do not judge these perspectives to be true or false, partial or comprehensive. The perspectives are gathered to find comparisons, similarities and/or contradictions. This is all fodder for the focus groups.
- The questions for the focus groups are open-ended. By the time the consultants get to the focus groups, they will have issues, ideas and questions that they want to answer and themes specific to different work environments. The consultants will conduct 15 focus groups with approximately 130 participants. The focus groups will provide a range of opinions but will not be statistically representative. The focus groups will be open to all qualified participants (with some demographic targets). They will provide a storyline that will be used to determine whether or not the consultants can generate a hypothesis/hypotheses and test it/them with the population.
- Regarding anonymity, the key informants will be aware that the Law Society knows who they are; however, the consultants will not report anything back that they think can be traced to any individuals – the same rule applies to focus groups. For focus groups, there is a one way window and representatives from the Law Society can observe the conversations.
- The challenge the consultants have is budget and timeframe. The community consultation process is not a bad idea, but it has its place – perhaps subsequent community consultation can be used to validate people's perceptions and enrich the dialogue. The Law Society can bring forward findings without overstating the absolute truth and can see if the findings ring true. It is also important to note that this research package will not be the last work done on this topic and will not answer every question.

- The consultants have to make sure that the research process is building a robust framework – understand where the gaps are, fill them in and validate.
- The consultants are interested in talking to law firms about procedures and practices. They will ask the firms for official stories. For example, they want to speak with people involved in recruitment. They need to sample perceptions and experiences at all levels of the profession. They will not leave out racialized individuals – but they also need to talk to non-racialized people to look at the profession as the whole because you need to look at issues of impact. In the focus groups, the consultants can ask about the policies and practices in place and what people's real life experiences are in relation to these policies and practices.

**Further discussion regarding use of community conveners:**

- An issue was raised regarding the community convener process - when you work within the community and people depend on you, people may tell you what they think you want to hear.
- The proposed community convener process would be a supplementary, independent process. The information gathered would be made available to the consultants.
- The consultants noted that recruitment for the focus groups would include e-blasts and ads. Questions would be asked to potential participants about their practice areas, racial identity, location, etc. Potential participants would then be contacted by phone. The consultants are looking for a diversity of experiences – that is what they are looking for when they are screening participants. Community conveners could be used to advertise focus group participation because not all people will be reached through the Law Society. If there is to be a community convener process, the consultants could assist by drafting questions or providing the conveners with a briefing.



## Challenges Faced By Racialized Licensees Project

### Re: Proposal for Broadened Consultation

1. During the April 25, 2013, Working Group meeting, concerns were raised regarding the proposed methodology brought forward by Strategic Communications Inc. ("Stratcom"). More specifically, some members of the Working Group noted that although they agree with the methodology recommended by Stratcom, it could be useful to include an additional method of gathering information in order to hear the voices of those racialized lawyers and paralegals who are the most marginalized.
  2. Bencher Julian Falconer proposed a community consultation model, in which community liaisons, trusted individuals who work at the grassroots level in various communities, would convene small focus groups in their community and would report back to the Working Group and the consultants about their discussions and findings from these focus groups. Bencher Howard Goldblatt responded to this proposal by noting that while it is important to consult with legal organizations about their policies, it is equally as important to talk to lawyers and paralegals about how/if these policies are being applied. Additionally, Bencher Goldblatt noted that he is not satisfied that the focus groups alone will attract a sufficient and diverse number of individuals in order to hear from those who are actually experiencing challenges.
  3. A meeting with the Working Group and the consultants took place on May 8, 2013, for the purpose of exploring changes or additions to the consultation methodology. The following is a summary of Stratcom's proposed methodology, the additional informal consultation method adopted by the Working Group and an articulation of the proposed broadened consultation.
- I. **Strategic Communications Inc.'s Proposed Methodology**
  4. Stratcom's first meeting with the Working Group took place in March 2013. During the March meeting, Stratcom proposed the methodology outlined below.<sup>1</sup>

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<sup>1</sup> Note: The timeline has changed slightly, however the proposed methodology remains the same.

5. *Literature review and planning session* (March 2013) – Stratcom will analyse existing data to create an issue matrix identifying what is already known, the gaps, the priorities for further research, and where tracking or integration with previous/other studies is possible or desirable. Deliverables include an issue matrix and refined methodology for discussion with the Society. A formal brief and half-day planning session with Society staff and members of the Challenges Faced by Racialized Licensees Working Group to review the proposal and issue matrix, clarify goals and objectives, agree on priorities and outcomes, fill in gaps, and refine the strategy and approach. Deliverables include a revised methodology and approach for approval by the Society along with an updated issue matrix and analytical frame to guide the development of the first phase of the research.
6. *Key informant interviews with stakeholders* (April – May 2013) – Stratcom will conduct a series of one-on-one key informant interviews with a cross section of external stakeholders who have insights and a professional role to play on the issues under consideration. In total, between 19 and 25 interviews will be conducted.
7. *Focus Groups with Licensees* (May – June 2013) – Stratcom will undertake a series of focus groups among racialized licensees. This will include both paralegals and lawyers in at least three regions of the province (Toronto, Ottawa and London). In total, 15 focus groups will be conducted.
8. *Survey* (June – August 2013) – Stratcom will conduct an online survey among all licensees. It is anticipated the survey will have roughly 30 questions, including the demographics questions. For racialized groups of licensees, there will be approximately 15 additional questions. In order to statistically analyse the data more fulsomely across different ethno-racial groups and get at the wide variation of experiences within those groups, Stratcom will develop an additional oversample of just racialized licensees, as necessary, in order to get a larger, more statistically reliable sample.
9. *Final report* (November – December 2013) - Based on all the phases of the research and the analytical framework developed and honed throughout, Stratcom will present a final report of findings that will include both the directional qualitative findings from the interviews and groups as well as a in-depth analysis of quantitative findings from the survey. The final report will include an executive summary, in-depth methodology, key findings, detailed findings with tables and charts, conclusions and recommendations, as well as appendices with all research instruments attached.

## II. The Working Group's informal consultation process

10. In addition to the consultation methods outlined by Stratcom, the Working Group decided to meet with various stakeholders in order to obtain informal input on the challenges faced by racialized licensees and best practices. To date, the Working Group has met with the following stakeholders:

- January 2013 Working Group meeting
  - Sharan Basran (member of Equity Advisory Group), Qadira Jackson (Canadian Association of Black Lawyers), Dania Majid (Arab Canadian Lawyers Association), Paul Saguil (Vice-Chair of Equity Advisory Group), Jason Tam (Federation of Asian Canadian Lawyers), John Tzanis (Paralegal Society of Ontario), Sandra Yuko Nishikawa (Chair of EAG), Anna Wong (Federation of Asian Canadian Lawyers)
- February 2013 Working Group meeting
  - Dean Flanagan (President of the Canadian Council of Law Deans), Dean Sossin, (Chair of the Ontario Law Deans), Level Chan (Chair, Equality Committee of Canadian Bar Association), Kerri Froc (Staff Liaison, Equality Committee, Canadian Bar Association), Juliet Knaption (Chair, Equality Committee, Ontario Bar Association), Victoria Starr (Chair, Family Lawyers' Association), Janet Whitehead (Chair of County & District Law Presidents' Association), Sheryl Goldhart (The Advocates' Society), Jane Price (International Trained Lawyers Program, University of Toronto), Deborah Wolfe (Managing Director of the National Committee on Accreditation, Federation of Law Societies)
- April 2013 Working Group meeting
  - Avvy Go (Executive Director, Metro Toronto Chinese & Southeast Asian Legal Clinic) Shalini Konanur (Executive Director, South Asian Legal Clinic of Ontario)

11. The Working Group is scheduled to meet in May 2013 with Malliha Wilson, Assistant Deputy Attorney General, Legal Services, from the Ministry of the Attorney General to discuss challenges faced by racialized licensees in the government context.

## III. Proposed Broadened Consultation

12. The proposed broadened consultation method (the community liaison method) would operate in tandem with the methodology already proposed by the consultants. Five or six racialized licensees who are trusted by their communities would meet with racialized

licensees in their communities to discuss challenges and potential solutions. Stratcom would assist in developing discussion guides for them. The information gathered through these community discussions would be provided to the consultants and to the Working Group with the goal of enriching the findings.

13. The names of potential community liaisons provided to date are as follows:

- African Canadian/Black Bar
  - Sandy Thomas, Counsel, Public Prosecution Service of Canada
  - Roger Rowe, Sole Practitioner, Law Offices of Roger Rowe
  - Donald F. McLeod, Senior Partner, the McLeod Group, Barristers & Solicitors
  - Arleen Huggins, Partner, Koskie Minsky LLP
- South Asian Bar
  - Shalini Konanur, Executive Director, South Asian Legal Clinic of Ontario (SALCO)
  - Sharan Basran, Legal Counsel, Human Rights Legal Support Centre
  - Ranjan Agarwal, Partner, Bennett Jones
  - Zahra Dhanani, Commission Member/Adjudicator, Ontario Civilian Police Commission & Duty Counsel, College Park Provincial Criminal Court
- East Asian Bar
  - Justice Maryka Omatsu, former Ontario Court of Justice judge (retired from the bench in 2012)
  - Paul Saguil, Counsel, TD Bank Legal Department
  - Jason Tam, Counsel, Ministry of Labour


# EXHIBIT 14

**Measuring Diversity in Law Firms Report by  
Dr. Lorraine Dyke**

**This is Exhibit "14" referred to in the Affidavit of**

**MURRAY KLIPPENSTEIN**

**Sworn before me this 16th day of  
March A.D., 2023.**

  
\_\_\_\_\_  
**Commissioner for Taking Affidavits**  
Jorge Pineda  
#05305B



**Agenda and Materials**  
**June 27, 2013**  
**Lower Barristers Lounge**  
**3:00 to 5:00 p.m.**

Conference number:  
 Toronto 416-883-0133  
 Ottawa 613-212-4220  
 Toll free number: 1-877-385-4099  
 Participant Code: 3842751#

**Challenges Faced by Racialized Licensees Working Group**

**Working Group Members**

**Raj Anand, Chair**  
**Marion Boyd**  
**Robert Burd**  
**Julian Falconer**  
**Howard Goldblatt**  
**Susan Hare**  
**Janet Leiper**  
**William McDowell**  
**Malcolm Mercer**  
**Janet Minor**  
**Susan Richer**  
**Baljit Sikand**

**Purposes of Report: Information and Discussion**

**Prepared by the Equity Initiatives Department**  
**(Josée Bouchard – 416-947-3984)**

**Also participating: Ekua Quansah, Associate Counsel, Equity**

## Appendix 2

## List of Resources

**Canadian Bar Association, "Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance", online: Canadian Bar Association**  
[http://www.cba.org/CBA/equity/pdf/Measuring\\_Diversity\\_Guide.pdf](http://www.cba.org/CBA/equity/pdf/Measuring_Diversity_Guide.pdf)

The purpose of this Guide is to assist law firms in measuring their diversity performance. The Guide describes measurement strategies and the major steps involved in measuring diversity for firms that wish to engage in survey measurement of diversity performance. This Guide also provides some background information on current law firm realities, the role that diversity plays in organizational performance, and the impact of different approaches to diversity management.

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**Diversity Institute, Ted Rogers School of Management, Ryerson University, "DiverseCity Counts 3: A Snapshot of Diverse Leadership in the GTA 2011", online: DiverseCity**  
<http://diversecitytoronto.ca/wp-content/uploads/CountsReport3-full.pdf>

DiverseCity Counts is the third annual research report measuring diversity among leaders with a new focus on the legal sector.

---

**F.M. Kay, C. Masuch & P. Curry, "Diversity and Change: The Contemporary Legal Profession in Ontario – A Report to the Law Society of Upper Canada" (September 2004), online: The Law Society of Upper Canada**  
<http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf>

This report is the culmination of two years of intensive research design, analysis, writing and discussion. The study is based on a social survey of the Ontario legal profession conducted in the spring of 2003.

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**Michael Ornstein, "Racialization and Gender of Lawyers in Ontario: A Report for the Law Society of Upper Canada" (April 2010), online: The Law Society of Upper Canada**

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THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

# Measuring Diversity in Law Firms

## A Critical Tool for Achieving High Performance

Dr. Lorraine Dyke  
Carleton University

for the Equality Committee  
Canadian Bar Association



**Author:** Dr. Lorraine Dyke

**Editor:** Vicki Schmolka

**Staff Liaison:** Kerri Froc

**Measuring Diversity Subcommittee Members:**

Katherine Broer

Laleh Moshiri

Level Yau Yan Chan

Milé Komlen

Nafisah Chowdhury

Raj Anand

Sandy Delayen

Sarah Jane King-D'Souza

Vincent de l'Etoile

Indra Thind

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Mark L. Berlin

Roch-A. Fournier

Kelly Hynes

Sarah Jane King-D'Souza, Q.C.

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500 – 865 Carling Avenue, Ottawa, ON K1S 5S8

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August 2012

# **Measuring Diversity in Law Firms**

## **A Critical Tool for Achieving High Performance**

**Dr. Lorraine Dyke  
Carleton University**

**for the Equality Committee  
Canadian Bar Association**

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## Overview

The increasing diversity of the Canadian labour force and Canadian law school graduates means that many law firm managers have incorporated diversity and inclusion initiatives in their talent management processes. Measurement is a key component of many successful diversity initiatives and consequently many law firms have begun, or contemplated, assessing their firm's current diversity performance.

The purpose of this Guide is to assist law firms in measuring their diversity performance. The Guide describes measurement strategies and the major steps involved in measuring diversity for firms that wish to engage in survey measurement of diversity performance. There are two major types of survey data used to assess an organization's diversity performance:

- self-identification data, which is used to assess the representation of diverse groups, and
- diversity climate data, which is used to assess inclusiveness.

For each type of data, the Guide provides information on how to collect and use them.

This Guide also provides some background information on current law firm realities, the role that diversity plays in organizational performance, and the impact of different approaches to diversity management. Understanding the context can help organizations to link their diversity measurement initiatives to their strategic plan. Even firms that do not wish to engage in surveying to measure diversity performance may find this background information helpful in their efforts toward inclusiveness.

We hope that law firms will use this Guide to become more effective diversity managers, because a more inclusive approach can lead to greater success.

## Measuring Diversity in Law Firms

### A Note to Smaller Firms

We recognize that in smaller firms, employee numbers may not warrant survey efforts. Nevertheless, given the changing demographics of the legal talent pool and the globalized nature of legal practice today, firms of all sizes are thinking about their diversity strategy development.

Smaller firms may find the Guide's information on current law firm realities, the role of diversity and different approaches to diversity management helpful. Further, while small firms may not feel the need to employ a survey to determine the representation of diverse groups in their workforce, a survey on diversity climate may be helpful to assess inclusiveness. Valid conclusions can be drawn from survey data with as few as 25 respondents.

The Canadian Bar Association has compiled an [online list of additional resources](#) that both large and small firms may find helpful in furthering their diversity and inclusion initiatives.

## Measuring Diversity in Law Firms

## Key Terms

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**Diversity** – differences between people with respect to characteristics such as gender identity, age, membership in racialized communities, language, religion, sexual orientation, and ability.

**Diversity climate** – aggregate perceptions of members of an organization about its stance on diversity as well as their own views regarding the value of diversity.

**Employment equity designated groups** – the four specific groups recognized under federal employment equity legislation as experiencing employment disadvantage, are:

- women
- visible minorities\*
- Aboriginal peoples
- people with disabilities

**LGBTQ** – lesbian, gay, bisexual, transgendered/transsexual, queer/questioning.

**Racialized community** – refers to a group whose members have had individual experiences of racism and whose members are vulnerable to racism because of the way members of that group are defined and treated. The term “member of a racialized community” has replaced the term “visible minority” in many settings because it expresses race as a social category rather than as a biological trait.<sup>1</sup>

**Self-identification** – a voluntary process whereby members of an organization’s workforce indicate their membership in specific diversity groups, enabling the organization to determine the representation of these groups.

\* Note: This Guide uses the term “visible minority” when referring to the *Employment Equity Act* and Statistics Canada census data to be consistent with their definition. Otherwise, we use the term “racialized community” to be consistent with current usage.

## Measuring Diversity in Law Firms

## Part 1 – Context

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### A. Why diversity is mission critical for your law firm

In May 2011, Canadian Legal Leaders for Diversity issued an important “statement of support for diversity and inclusion.”<sup>2</sup> In-house counsel from over 50 major corporations – from Bombardier and Bell to Shell and Xerox – have signed it, stating their commitment to diversity in their own businesses and to “encouraging Canadian law firms to follow” their example.

These leaders have read the research and understand the new realities. If you want to be successful in the future, you need a diverse and inclusive workplace.

Executives identify five key reasons why diversity management affects business results.<sup>3</sup>

1. **Diversified markets** When an organization’s clients are diverse, having a workforce that mirrors that diversity can help to build client relationships and draw in new clients.
2. **Global business relationships** When organizations engage in global business, multicultural competencies, enhanced by a diverse workforce, are crucial to success.

## Measuring Diversity in Law Firms

*Davis LLP has had a longstanding commitment to diversity, which reflects its ethical and cultural values, and which has led to commercial success. After World War II, the firm championed the cause of Japanese-Canadians who had lost their property when they were forced to resettle in the B.C. interior. This was followed in 1957 by the hiring of one of the first Japanese-Canadians to be called to the bar in British Columbia. George Fujisawa became an extremely successful commercial lawyer, drawing to Davis the business of virtually all of the Japanese trading companies doing business in B.C. This legacy has continued with Davis LLP maintaining a very strong relationship with its Japanese clientele and being the only Canadian law firm to have an office in Tokyo.*

*Davis' commitment to diversity has endured in other ways, as well. It is the only national firm to serve all three Northern Territories from offices North of 60. It also has a strong relationship with many Aboriginal clients, on whose behalf Davis has obtained several ground-breaking decisions and assisted in commercial and social-enterprise development.*

*Rod Snow  
Partner, Davis LLP*

3. **Productivity** Managing diversity well can pay dividends in terms of productivity. Employees who feel valued and supported by their employer typically exhibit stronger organizational commitment, greater creativity, and higher performance. Diverse teams can increase productivity, particularly on projects with a longer duration where people have the opportunity to learn from each other.<sup>4</sup> Diversity also contributes to better decisions. After all, when six people are making a decision and they all think alike, five of them are redundant!
4. **Attracting top talent** Organizations that manage diversity well are often seen as employers of choice and are able to recruit the best candidates from a broader pool of talent.
5. **Talent management** When organizations have good diversity practices, they typically experience lower turnover, reduced absenteeism, and fewer human rights complaints.

Overall, the research shows that a positive diversity climate, that is a workplace where diversity is supported and valued, is associated with:

- increased job satisfaction
- higher organizational commitment



## Measuring Diversity in Law Firms

- lower turnover intentions
- higher revenue.<sup>5</sup>

The research shows what many law firms have already recognized – creating an inclusive workplace contributes to organizational success.

*All members of the Air Canada team are proud of the company's diversity record to date. To us, self-identification surveying to determine the composition of our workforce is a part of doing business. As we expand our services into foreign markets, we recognized the need to expand our workforce to reflect today's changing reality. With service to 177 cities worldwide, we serve people of all backgrounds on a daily basis. We strive to be reflective of the public we serve and to ensure we are benefitting from the talents of a diverse workforce.*

*As Vice-President and General Counsel at Air Canada, I've seen first-hand how diversity can help strengthen a legal team. By seeking talent and experience from wherever it may arise, we now benefit from the perspectives and knowledge of a diverse group of lawyers. This diversity adds to our strength not only in identifying creative legal solutions, but also in facilitating working with clients, suppliers and lawyers around the globe.*

*David Shapiro  
Vice-President and General Counsel  
Air Canada Corporation*

## B. Law firm realities

### 1. Demographics and barriers to inclusion

The legal profession, like the Canadian workforce in general, is becoming more diverse. Statistics Canada census data from 2006 shows that among Canadian lawyers and Quebec notaries:

- 39% are women
- 14% are immigrants
- 9% identify with a specific visible minority.

## Measuring Diversity in Law Firms

Research has identified barriers to inclusion for various groups in the legal profession including:

- Women
  - gender bias
  - restricted access to senior roles
  - limited accommodation for family responsibilities
  - sexual harassment<sup>6</sup>
- Lawyers from racialized communities
  - exclusion from networks
  - bias in recruiting, remuneration, and advancement<sup>7</sup>
- Aboriginal lawyers
  - racist comments, exclusion, and isolation.<sup>8</sup>

Many of these same barriers can affect non-lawyer staff as well.

## 2. Government requirements

Like other employers, law firms are subject to human rights legislation requiring firms to maintain a discrimination-free workplace.

Law firms appointed as agents of the Attorney General of Canada are subject to the Workplace Equity Policy for Legal Agents issued by the Department of Justice Canada.<sup>9</sup> This policy requires participating law firms to provide a written commitment that they will respect workplace equity principles and, at the request of the Department, report on the representation of designated group members, specifically, women, visible minorities, people with disabilities, and Aboriginal peoples. Some provinces also have employment equity requirements for Crown agents.

## Measuring Diversity in Law Firms

### 3. Market pressures

Some law firm clients are now issuing requests for proposals (RFPs) to select their legal representatives. Some international RFPs ask for data on the representativeness of the law firm's workforce and that information is used in the proposal evaluation process. This practice is becoming more common in the United States and some Canadian law firms have already encountered RFPs including this requirement.

The May 2011 "Legal Leaders for Diversity" pledge by Canadian in-house counsel not only commits participating companies to promoting diversity in their workplaces but also encourages these companies to "Support vendors and suppliers whose ownership or employee base reflects a commitment to diversity and inclusion." When these counsel outsource work for their corporations, they will be looking to hire law firms that demonstrate a commitment to diversity.

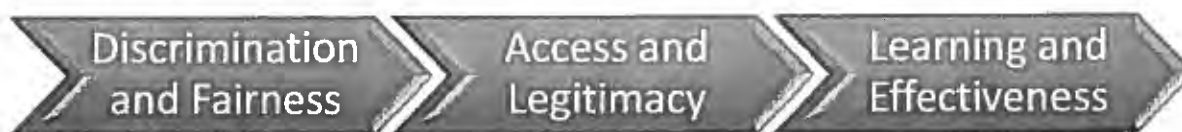
### 4. The way ahead

Creating diverse and inclusive workplaces is in everyone's best interests. Law firms can use this Guide to refine their approach to diversity and inclusion and measure their diversity performance.

## C. Approaches to diversity management

What is your approach to diversity management?

Research on organizational approaches to diversity<sup>10</sup> has identified a continuum of three main approaches to diversity management.



### 1. Discrimination and Fairness

Approach characteristics include:

- actions are motivated by legislative compliance

## Measuring Diversity in Law Firms

- the focus is on ensuring non-discrimination
- differences between diverse groups are assumed to be irrelevant to the workplace
- little concern for the diversity climate
- promotes a culture of assimilation

The result: Employees from diverse groups often feel marginalized and are not comfortable sharing their unique experiences. Organizations miss out on the opportunity to learn from the diversity of employee perspectives.

## 2. Access and Legitimacy

Approach characteristics include:

- recognition that cultural differences matter to clients
- differences are used to reach out to different segments of client base
- employees from diverse groups are slotted into specific roles related to that group, such as assigning an employee from a diverse group to clients from the same group
- focus is on linkages with niche markets
- limited interest in the diversity climate
- promotes a culture of differentiation

The result: Employees from diverse groups often feel exploited and may find their roles career-limiting. With the focus on differentiation, learning is limited as different points of view are typically not shared throughout the organization.

## 3. Learning and Effectiveness

Approach characteristics include:

- recognition that cultural differences are an important source of organizational learning

## Measuring Diversity in Law Firms

- differences are acknowledged and incorporated into core business processes
- open discussion and respect for differences
- the goal is a positive diversity climate
- promotes a culture of integration

The result: Organizations use employees' different perspectives to rethink how they do business and enhance effectiveness. Employees from diverse groups feel valued and respected.

### **D. Good management includes diversity management**

A good manager treats people fairly and creates an environment supportive of high performance.

A good manager of diversity recognizes that organizational goals can only be fully achieved when cultural differences are recognized, respected, and leveraged.

Good diversity management means more than following good management practices. Good diversity management means utilizing the differences among employees to create new ways of thinking, spur creativity, reach better decisions, enhance flexibility, and deliver more effective service.

## Measuring Diversity in Law Firms

## Part 2 – Measurement Strategies

The first step in measuring diversity performance is to develop a measurement strategy which reflects your firm's diversity plan. As discussed below, two main types of diversity performance data can be collected. Other considerations include from whom to collect data and how it will be used.

### A. Two types of diversity performance data

Two types of data can be helpful in understanding your firm's diversity performance:

- employee and partner membership in specific diversity groups
- the diversity climate

#### 1. Membership in a specific diversity group: self-identification

The key purpose in collecting self-identification data is to assess the representativeness of your firm's workforce, and to identify gaps in recruitment, retention, and promotion efforts. Individuals self-identify as belonging to specific groups to enable the firm to assess the representativeness of their workforce. Some law firms are already collecting data on gender representation for the Justicia project (see the [online list of additional resources](#) for a current list of Justicia jurisdictions). This approach can be extended to other relevant workforce groups.

There are several sources of data on the representation of various groups in the legal profession and general workforce to use to benchmark self-identification results (see the online list of [benchmarking resources](#)). You can compare the information you collect with these external benchmarks to assess your firm's performance.

By examining the representation of various groups across organizational levels, it is possible to identify where barriers may exist for various groups. For instance, do lawyers from some groups face barriers which prevent them from making the transition from associate to partner? Are the barriers the same for lawyers as for senior and support staff from the same diversity group?

## Measuring Diversity in Law Firms

Repeating the data collection on a periodic basis helps to assess trends over time. For instance, has the retention of diverse groups increased or decreased since data were last collected?

Comparing changes in representation data over time can also indicate what diversity management strategies have been successful and where additional diversity initiatives may be required. Have recruiting outreach efforts in various communities worked? Are certain practice areas more diverse than others? Are diversity initiatives directed at recruiting lawyers versus senior and support staff equally successful? To what goals should future diversity efforts be directed?

**To collect data on membership in a diversity group it is up to each individual to identify himself/herself. The key is not to make assumptions. The best approach is to ask appropriately.**

*Canada Lands Company is an employer who values an inclusive and diverse workforce that mirrors the Canadian population. As the VP responsible for Human Resources and Legal Affairs, I want to ensure that we have the right tools to identify and eliminate systemic barriers that undermine diversity, inhibit inclusion or prevent employees from maximizing their contribution. Self-identification is key to the Company achieving diversity and inclusion in the workplace through our hiring, promotion and employment practices. As an Employment Equity employer, all of our candidates are encouraged to self-identify as part of the recruitment process. Once hired, employees are invited to complete an employment equity survey and provide comments and suggestions for improvements to the Company's program. The Company and its divisions, including the CN Tower, are guided by the principle that employment equity means more than treating people in the same way; it means enabling measures to accommodate differences equitably and to foster dignity and self-esteem of individuals at all levels.*

*Antoinette Bozac, Vice President  
Human Resources and Legal Affairs  
Canada Lands Company*

## 2. The diversity climate

Diversity climate data focus on the perceptions and attitudes about diversity held by members of a firm. They are an important indicator of the inclusiveness of the workplace.

## Measuring Diversity in Law Firms

These data are central to identifying and responding to diversity issues. They may indicate, for example, whether people have experienced discrimination or feel they have been treated fairly.

These data can help to diagnose the source of a problem and the specific policies that could be amended to address it. For instance, diversity climate data may indicate that senior management is committed to diversity but that other members of the firm do not set a positive example of managing diversity. Or, data may indicate that the recruiting process is generally free of bias but that barriers to promotion exist for some groups.

Diversity climate data may also identify differences in perceptions between groups, with some groups noting challenges not faced by others. For example, one faith group may feel that they are experiencing workplace barriers while another faith group does not report this concern. However, if you wish to compare different groups, be sure that they are large enough for a statistically valid comparison – at least 25 people in each group. Where numbers warrant, it may be helpful to consider whether different patterns are apparent for lawyers, senior staff, and support staff.

In some organizations, diversity climate data are used to evaluate the diversity management performance of individual managers, and may be tied to compensation and promotion. In these organizations, diversity climate assessments are often integrated into 360-degree feedback processes.

Finally, diversity climate data can be used to help to build a more inclusive firm culture. Aggregate results can be shared and used to spark a dialogue, raising awareness of diversity issues. For example, if most firm members have positive attitudes toward diversity but some people report experiencing social isolation, these data can encourage participation in appropriate training and a commitment to solve the problem.

**A diversity climate survey assembles aggregate perceptions of how well a firm is integrating differences.**



## Measuring Diversity in Law Firms

*Commitment to diversity forms a pillar of Miller Thomson's strategic plan. In autumn of 2008, the firm's Diversity Policy was launched in every office across Canada. The policy reflects the firm's continued commitment both internally and externally to expanding in ways that reflect its evolving national fabric. In furtherance of this commitment, in 2009, the firm conducted a voluntary firm-wide survey for internal purposes. One of the overarching objectives of the survey was to assist the firm in implementing effective diversity programs and strategies to ensure that diversity goals were uniformly embedded in recruitment, retention and promotion efforts. Another very important objective was to identify areas for improvement within the firm, so that the firm's diversity programs could specifically address its diversity needs. One of the major benefits of conducting such a survey was that it caused the entire firm – partners, associates and staff – to talk and think about diversity at Miller Thomson. Miller Thomson is taking steps to build upon the success of its internal survey for its current and future diversity initiatives.*

*Gita Anand  
Chair, Diversity Committee  
Miller Thomson LLP*

### 3. Self-Identification versus Diversity Climate Measurement

Many organizations consider self-identification surveying to be the first step in building a diversity program. Data on employee representation in diverse groups can be helpful in determining the focus of diversity initiatives and also provides a baseline against which to measure progress towards inclusiveness. On the other hand, some employees may be uncomfortable being asked questions about their membership in underrepresented groups, particularly if their employer has not been visibly engaged in diversity issues in the past. For many employees, questions about the diversity climate may seem less personally threatening and more relevant to diversity initiatives than self-identification data.

Ultimately the choice of which type of data to collect or which data to collect first will depend on the firm's previous diversity initiatives and its diversity goals. Some firms will already have a diversity strategy in place and a workforce that is comfortable with discussions of differences. Others firms will be at the beginning of this process and need to convince a sceptical workforce of the value of collecting diversity data. Your approach to surveying your workplace will need to be tailored to the situation in your firm.

## Measuring Diversity in Law Firms

### B. Other Considerations before collecting data

#### 1. General considerations

- There is no one-size-fits-all approach to collecting data about diversity in a law firm. Some adaptation of the recommendations contained in this Guide will typically be required. These general principles, however, apply in every case:
  - Be clear about the purpose of your data collection initiative. Your purpose should reflect the context in which your firm operates, the firm's diversity goals and the firms' past experience with diversity initiatives. Firms with well developed diversity initiatives may be looking for data to compare to previous measurements or data regarding specific issues that may be considered potentially problematic. Firms that are just launching their diversity strategy may be looking for more general information on workforce representation or attitudes toward diversity.
  - Think about what information you need to know to achieve your goals and only ask for information relevant to your purpose.
  - Decide who the data will be collected from – lawyers and/or senior and support staff. More inclusive survey initiatives are generally met with greater acceptance.
  - For each question in a survey, be sure you know how you will analyze and use the data that is collected.
  - Consider which benchmarks you may wish to compare your data to and ensure comparability in the way in which questions are asked (i.e. consistent use of categories).
  - Set up surveys to maintain confidentiality and respect privacy.
  - Follow good survey design and administration practices as described in Part 3 of this Guide.
  - Recognize that participation in any survey is voluntary and that you need to build trust to increase response rates.
  - Plan to respond to any survey results by taking action to address gaps in workforce representation, remove workplace barriers, and create a more inclusive climate.

## Measuring Diversity in Law Firms

### 2. Privacy issues and confidentiality

Collecting self-identification data is not a violation of privacy. Collecting this data is consistent with privacy rights and human rights legislation when the data are collected appropriately and will be used to minimize employment disadvantage, a purpose consistent with the legislation. See [Appendix A](#) for more information on the legal issues.

To comply with the law, participation in self-identification surveys must be voluntary and confidentiality must be maintained.

In some organizations, self-identification data are collected anonymously. In others, participants are identified with their responses. Organizations subject to the federal *Employment Equity Act* typically collect self-identification data in a non-anonymous (but confidential) way as they are required to report regularly on the representativeness of their workforce. The advantage of non-anonymous data is that it facilitates ongoing tracking of representation; however, be sure to check the human rights requirements of your jurisdiction to ensure that your survey is in compliance.

Many organizations collecting self-identification data have found anonymous collection of data more appropriate as ongoing analysis is typically not required and anonymity offers greater privacy protection to respondents. The advantage of collecting these data anonymously is that it may encourage more people to respond. Hiring an outside firm to collect, store and summarize the data may help some respondents to feel more comfortable about sharing personal information. This is the approach that appears to be preferred by law firms collecting self-identification data in Canada.

Diversity climate data is typically collected anonymously with some demographic questions added to the survey to facilitate group comparisons. Diversity climate data could be collected in conjunction with anonymous self-identification data but would typically not be collected using the same form as non-anonymous self-identification data.

When considering what information to collect, note that asking about membership in a specific group may create expectations that the firm will do more to address the specific concerns of that group. For instance, asking about religious affiliation could create expectations that once numbers are known there will be more support for religious practice in the workplace. In some cases, respondents may have concerns about the relevance of certain questions.

## Measuring Diversity in Law Firms

## Part 3 – Steps to Follow to Measure Diversity

### A. Step One: Design and pre-test the survey

Once you have reviewed the considerations discussed in Part 2 above and chosen a measurement strategy, you will need to design the survey by choosing the questions you want to ask. This Guide offers a sample self-identification survey in [Appendix B](#) and different options for measuring the diversity climate in [Appendix C](#). The surveys can be done separately, combined into one, or questions from the diversity surveys can be integrated into other surveys. Diversity climate questions are sometimes included, for instance, in employee engagement surveys.

Remember that people are more likely to respond to short surveys with clear questions that they see as relevant to the stated purpose.

#### Pre-testing the survey

Pre-testing is critical because research on survey design shows that even subtle changes in question wording, sequencing, or instructions can influence respondents' answers or cause them to opt out of completing the survey.<sup>11</sup> The more you tailor the survey to your firm's needs, the more important it is to pre-test.

Pre-test the draft survey with a small sample of intended respondents. Ideally, ask six to ten people with various responsibilities in the firm to complete the survey. If your firm has a Diversity Committee, members of that Committee may be a good pre-test group. Smaller firms will typically pre-test their survey with a smaller group, such as the firm's senior managers.

The pre-test reviewers should read the material and pretend to answer the questions as if they were completing the questionnaire "for real," while noting any ambiguous wording or concerns about how a question is phrased.

At the pre-test stage, you do not need to see anyone's answers to the questions. You want feedback on the survey wording and design so that you can fix any problems.

Modify the survey in response to comments, particularly when several people have the same reaction. If the scope of the changes is extensive, you may want to pre-test the

## Measuring Diversity in Law Firms

revised survey. Time spent on pre-testing a survey is never wasted as it improves the quality of the data collected and enhances the interpretability of the results.

Make sure that people who participated in the pre-test know that they should answer the final survey when it is available. Their pre-test answers will not be counted.

### Reaching respondents

Ideally, everyone in the firm – partners, associate lawyers, articling students, senior staff, support staff, and part-time workers – will be asked to respond.

Online surveys may be most convenient for respondents but can lead to concerns about confidentiality when data is located on a third-party computer. Paper surveys require more handling but can facilitate greater control.

Think through distribution logistics early in the process so that everything will be ready for the survey launch date. Consider whether the survey needs to be in an alternate format to accommodate some respondents.

You will also need to take note of the exact number of people receiving surveys in order to calculate the response rate after the data have been collected.

## B. Step Two: Develop a communications plan

A good communications plan will enhance the survey response rate. The plan should cover the key messages that need to be shared, who the key communicators should be and the timing of the messages.

The main goal is to motivate participation so that the data are as complete as possible. People need to be given a reason to invest their time in answering the survey and they need to trust in the survey process, especially as they are being asked about sensitive issues.

A good communications plan may also raise awareness of diversity issues and spark a dialogue that may help to enhance workplace inclusiveness.

## Measuring Diversity in Law Firms

The four key messages that should be included in the communications plan are:

- senior management's commitment to diversity
- the importance of the survey
- the plans for using the data collected
- the details of survey logistics, including how confidentiality and privacy will be protected.

**Demonstrate senior management's commitment to diversity** The most effective way to establish the importance of a diversity survey is to demonstrate senior management's commitment to, and involvement in, diversity initiatives. When people know that an initiative is a strategic priority for the firm's leaders, they are more likely to make it a priority themselves.

To be credible, statements of senior management's commitment to diversity need to be matched by actions over time. Therefore, it is best to begin communications about diversity well ahead of the survey initiative. Communications regarding the value of diversity, the firm's diversity strategy, and planned diversity initiatives, which precede the survey by six or more months, can go a long way toward convincing people of the importance of the survey and the potential of the results to influence the firm's diversity strategy.

Firm leaders who repeatedly talk about the importance of inclusion, participate in events intended to highlight the value of diversity, and behave in ways that are consistent with this messaging are more likely to build momentum toward a successful survey initiative and a successful diversity program. These efforts would typically intensify in the month or two prior to the survey launch.

The survey – and diversity initiatives generally – benefit from having a designated champion. This person, often the chair the Diversity Committee, should be a senior leader with a proven track record and high credibility throughout the firm.

**Promote the importance of the survey** To build trust and enhance response rates, the firm needs to explain clearly why the data are being collected and how they will be used. People will want to know why they are being asked questions about their membership in diverse groups or their attitudes toward diversity. They will want to know how the information that they provide will be used.

## Measuring Diversity in Law Firms

Everyone needs to be reassured that providing personal information or replying to diversity climate questions will not affect evaluations, relationships, pay raises, or employment. Respondents need to be informed that the purpose of collecting the data is to gain a better understanding of the workforce and to create a more inclusive workplace, which will help the firm to be more successful.

**Describe plans for using the data collected** A strong incentive to survey participation is an understanding of how the data will be used to bring about positive change. For instance, your firm may plan to use the survey to revise firm policies to make them more inclusive. When survey efforts are clearly linked to other positive initiatives, potential respondents will feel that their participation is more valuable and will feel more comfortable answering questions.

**Explain survey logistics** Communications should include details of the survey distribution. Make sure everyone knows how to access the survey and provide a target completion date. Give respondents a short window such as a week or two to answer. If the window is too long, people will put it aside and forget. If the window is too short, they might not get to it. Send a reminder notice midway through the response window, and a last call on the last day. Send all the messages to everyone, expressing a general thank you to those who have already replied. Adjust the messages and the approach depending on the response rate.

Be sure to include information regarding the safeguards in place to protect privacy and confidentiality. Respondents need to be reassured that their privacy and the confidentiality of the information they provide will be protected.

### **After the survey, communicate results**

Once the response date has passed, you need to thank people and report back on the response rate and plans for compiling the data. Ideally, you will be surveying periodically and you want people to feel that their participation was worthwhile. Senior management should express their appreciation to those who participated and their openness to working with the results.

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*Although at Fraser Milner Casgrain LLP we have always done our best to attract a diverse population and provide a work environment which embraces individuals from varied backgrounds, in 2006 we decided to take a more strategic approach to our diversity and inclusion efforts and developed the FMC Diversity and Inclusion Initiative. We were the first law firm in Canada to conduct a comprehensive diversity climate and self-identification survey, asking questions about employees' gender, disability, visible minority, lesbian, gay, bisexual, or transgender, and aboriginal status. A critical element in the success of our survey was to precede it with an education campaign that emphasized the importance of the survey for everyone in the firm. We took time to explain the steps we were taking to ensure confidentiality and anonymity of responses including use of a third-party survey provider and de-activating "cookies" in the firm's computers so that responses could not be traced back to individuals' computers. We worked to generate a sense of excitement and anticipation. The survey initiative was given strong support by the firm's leadership, who participated in the survey and encouraged others to do so. These factors contributed to the survey's success. Our response rate was 78% which is extremely high, particularly for a first time survey. In 2012, we will embark on our second Engagement and Inclusion survey which will provide us with a measure of how far we have come and signal where we need to go from here.*

*The survey data have helped us to fine tune recruitment, retention and promotion efforts and work toward making these processes more inclusive. We also have focused on developing new initiatives, such as the FMC Legal Professional Internship which provides hands-on experience to a foreign-trained lawyer new to Canada through a six-month paid position with the firm – the first program of its kind in Canada. Our efforts have resulted in FMC being honoured as one of Canada's Best Diversity Employers in 2011. We know that expanding the diversity of our workforce broadens our insight and perspective, which in turn enhances our ability to provide our clients with the best possible advice and service. Surveying is critical to ensuring that we are continuing to meet our strategic goals in this area.*

*Kate Broer, Partner  
Co-Chair National Diversity and Inclusion  
Fraser Milner Casgrain LLP*



## Measuring Diversity in Law Firms

### A sample communications plan

Here is a sample communications plan which your firm can adapt to your specific circumstances. In some firms, many of the key communicators roles will be filled by the same individual(s).

| Timing                                         | Key communicators                                 | Focus of communications                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>6 or more months prior to survey launch</b> | Senior leaders                                    | <ul style="list-style-type: none"> <li>Initiate or enhance communications regarding the value of diversity and the firm's diversity strategy</li> <li>Engage leaders visibly in diversity initiatives</li> </ul>                                                                                                           |
| <b>1-2 months prior to survey launch</b>       | Diversity champion                                | <ul style="list-style-type: none"> <li>Intensify communication efforts</li> <li>Inform employees about upcoming survey</li> </ul>                                                                                                                                                                                          |
| <b>2 weeks prior to survey launch</b>          | Diversity champion with support of senior leaders | <ul style="list-style-type: none"> <li>Communicate extensively regarding:               <ul style="list-style-type: none"> <li>the purpose of the survey</li> <li>the logistics for the survey</li> <li>privacy and confidentiality safeguards</li> </ul> </li> <li>Build enthusiasm through positive messaging</li> </ul> |
| <b>During survey response window</b>           | Diversity champion                                | <ul style="list-style-type: none"> <li>Encourage participation through reminders at:               <ul style="list-style-type: none"> <li>The mid-point in the window</li> <li>The last day</li> </ul> </li> <li>Reinforce purpose and safeguards</li> </ul>                                                               |
| <b>After survey completion</b>                 | Diversity champion plus senior leaders            | <ul style="list-style-type: none"> <li>Thank all employees for participation</li> <li>Communicate response rate</li> <li>Celebrate success</li> </ul>                                                                                                                                                                      |

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### C. Step Three: Administer the survey

#### Following ethical practices

All survey undertakings, whether by researchers or employers, should conform to ethical guidelines for conducting research with human participants. There are many consultants specializing in workplace surveys who are well aware of these guidelines; however, even if you are hiring a consultant, it is important to be knowledgeable about the survey process so that you can ask informed questions and ensure that the right steps are being taken to protect employees of your firm.

The three key ethical principles you must observe are:

#### **1. Protect respondents' well-being.**

When collecting survey data on sensitive topics, respondents may experience discomfort. For example, a respondent may feel humiliated or embarrassed, or lose trust in others if asked very sensitive questions. In the workplace setting, respondents may be concerned that revealing sensitive information could lead to unfavourable performance reviews or even job loss. Disclosure of employees' confidential data could be damaging to an employee's reputation. Non-respondents may fear that their decision not to participate could become known and viewed negatively.

It is vital to understand the potential risks respondents face and to take all necessary steps to protect respondents from any discomfort or loss of status. This includes special consideration for respondents who may be particularly vulnerable. For example, messages directed to articling students could reassure them that their decision not to respond, or the responses they provide, will have no effect on their evaluation or hire-back opportunities. Of course, you need to make sure that this is in fact the case.

Other steps to protect respondents' well-being include thorough vetting and pre-testing of the questions, ensuring that participation is voluntary and not coerced, and rigorously protecting the privacy of data.

#### **2. Obtain informed consent.**

Participants have a right to know why personal data is being collected and how it will be used. In completing surveys, respondents should be able to read all the questions before submitting any answers. They must be able to refuse to answer a question and to withdraw at any point before submitting their answers.

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This information needs to be provided to respondents at the outset and supported in the survey design. For instance, an online survey tool should allow respondents to navigate forwards and backwards through the survey while completing it, and to submit a survey with some questions unanswered.

### **3. Protect respondents' privacy.**

Protection of privacy involves many different elements. It is easier to safeguard privacy when responses are anonymous than when they can be attributed to individuals. Both anonymous and non-anonymous responses must be kept in secure storage to which only a limited number of designated personnel have access.

When surveys are offered online or via email, safeguards are needed to prevent potential tracing of responses. For instance, there should be controls on "cookies", the information that is cached in the host system.

If you decide to offer hard copies of the survey, these can be delivered to individuals through internal mail. A return envelope should be provided which does not identify the respondent. In some cases, surveys may be returned to a firm hired to analyze the data. Otherwise, survey responses should be addressed to the Chair of the Diversity Committee or the survey champion.

Survey reports must aggregate results in ways that ensure respondents cannot be identified through a combination of information. Results should not be published when they concern only a small number of respondents who could potentially be identified. To protect confidentiality, firms should not report data on small groups (less than 5 or 10 persons); however, you should be cautious about drawing definitive conclusions from groups smaller than 25 as small groups may not provide a statistically valid representation.

Note that online survey companies may store data in jurisdictions where privacy is not guaranteed. For example, United States government departments and law enforcement agencies can access data stored in the United States under the *USA Patriot Act*.

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### Increasing the response rate

Here are three suggestions to increase survey response rates:

#### **1. Choose the best time.**

Law firms are busy work environments and people may be asked to reply to surveys on a regular basis for a variety of reasons. Response rates are normally higher when there are fewer competing priorities so give some thought to the best time to send out the survey.

Recognizing survey participation as a valid use of work time is also helpful. For instance, offering a billable time credit may be a good incentive for some respondents.

#### **2. Generate interest in the survey.**

In addition to communicating the purpose of the survey, law firms can increase interest in the survey through good communications, special events, and incentives. Find creative ways to generate enthusiasm and maximize response rates. For example, Citibank created several "Diversity Week" activities which resulted in a strong response rate.

#### **3. Encourage participation.**

Research shows that most people who are going to complete a survey will do so within the first few days. Try to maintain a focus on the survey after the invitation to participate has gone out. For example, send out status updates to encourage participation. Sending out reminder e-mails before the survey answers are due and a "last call" e-mail will remind people of the survey request.

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*"After weeks of planning and preparation, Citibank held a "Diversity Week" event to communicate crucial information to all employees. A theme depicting the four designated groups was used on all print communications so employees could associate a visual with the employment equity initiative. The event . . . was highly publicized through posters and other written and verbal communications to employees which created anticipation and excitement throughout the organization.*

*Diversity Week opened with a message from the Chairman and CEO, Ken Quinn, who expressed Citibank's commitment to the event and the importance of employment equity. Each morning during the week, employees received a new Fact Sheet with information regarding a different designated group . . . On the final day, all employees had a free luncheon with the CEO . . . With every single departmental manager in attendance to support the effort, employees truly felt the organization's commitment to the matter.*

*The self-identification survey was distributed to all employees the following week with the same theme used for Diversity Week correspondence. An opening letter from the CEO as well as a 'Questions & Answers' document accompanied the survey to provide employees with additional comfort by explaining the objectives of the survey. Citibank was successful in increasing education as well as comfort among employees which resulted in a much higher response rate and also a significant increase in internal statistics on designated group representation."*

*From: Employment Equity Act: Annual Report 2006  
Human Resources and Skills Development Canada*

### D. Step Four: Analyze the Results

Once the time to answer the survey has passed, compile and analyze the results. It is often helpful for a group of people to look at the results independently and then to compare their interpretation. Different people may pick up on different patterns. If you would like help in compiling or interpreting results, you can hire a consultant with expertise in data analysis to assist you.

#### Self-identification survey

Here are some basic questions to address when you look at the data from a self-identification survey.

- What groups are represented in the firm?
- Are these groups equally distributed among job categories?

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- How does this representation compare with the applicable benchmarks?
- Where are the gaps in representation, if any?

### Diversity climate survey

Here are some basic questions to address when you look at the data from a diversity climate survey.

- How do respondents assess the firm's diversity climate overall – generally good or generally in need of development?
- What aspects of the diversity climate elicit the strongest positive responses? The strongest negative responses?
- What questions have the most consistent answers across all respondents?
- How greatly do answers to a question diverge, for example, do half the respondents strongly agree and the other half strongly disagree with the question?
- In what ways do answers from different groups in the firm vary?

Write up the results of the analysis to present to senior management and to keep for comparison purposes. Where possible, share the results and the resulting actions with respondents.

## E. Step Five: Take action

Measuring diversity is a central component of effective diversity management and consequently of law firm performance.

The data collected can inform the firm's diversity policies and strategy, and be used to decide on the actions to take to address gaps in workforce representation, to remove barriers to inclusion, and to improve diversity management.

A first step may be to report back to everyone in the firm on the survey results generally. This will demonstrate appreciation for those who participated in the survey and the firm's openness to responding to employee concerns. Respecting the survey process will also encourage participation in future surveys, which will allow the firm to assess progress over time.

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In some cases, firms may want to invite employees to participate further in defining issues or coming up with solutions to diversity challenges. Many organizations hold focus groups with employees from specific diverse groups or create employee resource groups that provide input into the firm's diversity strategy. Employees are sometimes asked to indicate their interest in participating in these ongoing activities on the diversity survey itself; however, this eliminates anonymity for those selecting this option so the risks and responsibilities related to collecting non-anonymous data must be taken into account. Alternatively, firms can solicit participation in these forums outside of the survey process.

The other steps that are required to address the results of a diversity survey will vary depending on the nature of the firm's workforce and its diversity climate. Areas that may require attention include recruiting, promotion practices, compensation, and organizational culture.

For more information on the steps that law firms can take to remove barriers and increase inclusiveness, please consult "The CBA Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations," and our online list of additional resources.

## Measuring Diversity in Law Firms

## Endnotes

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- <sup>1</sup> Ontario Human Rights Commission. (2010). Count Me In: Collecting Human Rights-Based Data. Toronto, ON.
  - <sup>2</sup> Available at  
<http://www.ryerson.ca/about/generalcounsel/pdfs/LLD%20PosterJune%2082011.pdf>
  - <sup>3</sup> Based on research by Wheeler, M. (1995). *Diversity: Business Rationale and Strategies – A Research Report* (Report No. 1130-95-RR). New York: The Conference Board.  
 Other useful sources regarding the business case for diversity include:  
     Gandz, J. (2001). *A Business Case for Diversity*. Available at  
     [http://www.hrsdc.gc.ca/eng/labour/equality/racism/racism\\_free\\_init/business\\_case-e.shtml](http://www.hrsdc.gc.ca/eng/labour/equality/racism/racism_free_init/business_case-e.shtml)  
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     Wilson, T (1997). *Diversity at Work: The Business Case for Equity*. Toronto: Wiley.
  - <sup>4</sup> Watson, W.E., Kumar, K., & Michaelsen, L.K. (1993). Cultural diversity's impact on interaction process and performance: Comparing homogeneous and diverse task groups. *Academy of Management Journal*, 36(3). 590-602.
  - <sup>5</sup> See for example:  
     Gonzalez, J. A., & DeNisi, A. S. (2009). Cross-level effects of demography and diversity climate on organizational attachment and firm effectiveness. *Journal of Organizational Behavior*, Vol. 30 No.1, pp. 21-40.  
     McKay, P. F., Avery, D. R., & Morris, M. A. (2008). Mean racial-ethnic differences in employee sales performance: The moderating role of diversity climate. *Personnel Psychology*, Vol. 61 No.2, pp. 349-374.  
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6 Canadian Bar Association. (1993). *Touchstones for Change – Equality, Diversity and Accountability: The Report on Gender Equality in the Legal Profession*. Ottawa, ON.

7 Canadian Bar Association. (1999). *Racial Equality in the Canadian Legal Profession*. Ottawa, ON. Also: Cukier, W., Yap, M., Aspevig, K. & Lejasisaks, L. (2011). *DiverseCity Counts 3: A Snapshot of Diverse Leadership in the GTA*. Toronto, ON: Diversity Institute, Ryerson University.

8 Canadian Bar Association. (1999). *Racial Equality in the Canadian Legal Profession*. Ottawa, ON.

9 See <http://www.justice.gc.ca/min-la/workplaceequitypolicy-politiquesurlequiteautravail-eng.asp>

10 Thomas, D.A. & Ely, R.J. (1996). Making Differences Matter: A New Paradigm for Managing Diversity. *Harvard Business Review*, 74(5), 79-90.

11 For more information on survey design see:

Dillman, D. A., Smyth, J. D., & Christian, L. M. (2009). *Internet, mail, and mixed-mode surveys: The tailored design method*. (3rd ed.). Hoboken, NJ: Wiley.

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## Measuring Diversity in Law Firms

## Appendix A

### Legal Issues Surrounding Diversity Surveys

#### How do human rights laws apply to self-identification and diversity climate surveys?

Law firms may collect and use self-identifying information when the purpose and means of collecting the information is compliant with human rights legislation.

At the time of writing this Guide, explicit endorsements of self-identification surveying have not been included in provincial and territorial human rights codes, though many explicitly permit special programs to ameliorate disadvantage, and all require evidence of adverse consequences based on a listed ground for an action to constitute discrimination.

Many human rights commissions have issued guidelines that employers refrain from asking questions related to prohibited grounds during the hiring process unless they relate to "*bona fide* occupational requirements".

To meet human rights legislative requirements, self-identification surveys should:

- focus on existing employees
- be voluntary
- ensure anonymity (unless confidential, but not anonymous survey results are permitted in your jurisdiction)
- avoid any connection with employment records
- ensure that responses do not influence future employment decisions and that there is no perception that they might. This is particularly important for those being considered for future employment opportunities beyond their current contract, such as summer students, articling student and associate lawyers.

Should a law firm wish to conduct confidential, but not anonymous self-identification surveying of both prospective and existing personnel (for example, to engage in an affirmative action or employment equity hiring program), it should consult with the

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appropriate provincial or territorial human rights commission to ensure that its surveying complies with the law.

### **How do privacy laws apply to self-identification and diversity climate surveys?**

The collection, use, or disclosure of self-identification information is not in violation of privacy rights, if done appropriately.

For private law firms, privacy in relation to the collection of personal information is governed by provincial or, in the case of the territories, federal law.

Some provinces, such as Ontario and Saskatchewan, do not have privacy legislation which applies to employees in private businesses while others have robust schemes, for example, Quebec's *An Act Respecting the Protection of Personal Information in the Private Sector* and British Columbia's and Alberta's *Personal Information Protection Acts*.

The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) applies to the collection of personal information in the territories and in relation to federal works and undertakings. So, PIPEDA applies to businesses, including law firms, in the Northwest Territories, Nunavut, and the Yukon.

Apart from legislation, however, there may be liability for failure to respect an employee's privacy, with a possibility of a claim arising under human rights laws (as in Quebec) or the law of negligence.

### **What steps can a law firm take to respect human rights and privacy rights in self-identification and diversity climate surveying?**

The Ontario Human Rights Commission document, "Guidelines for Collecting Data on Enumerated Grounds under the Code", provides useful guidance on the collection of personal information. Main points in the Guidelines that are applicable to law firms include:

- Articulate clearly the purpose for which you are collecting the information. To be consistent with the Guidelines, an appropriate purpose would be, for example,

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promoting substantive equality in areas of employee recruitment, retention and advancement, and, in particular, identifying and eradicating any systemic barriers for underrepresented groups within the firm.

- Inform those from whom data is being collected why the data is being collected and its potential uses.
- Use the least intrusive means that most respects individuals' dignity and privacy. Voluntary participation in self-identification surveying is suggested as one means to do so.
- Assuring anonymity may be required to address privacy and confidentiality concerns, particularly where collective results are so small that reporting them could reveal a respondent's identity.
- Ensure that there is a rational and objective connection between the nature of the information being collected and its intended use. The information should be separated from other records that contain identifying information, such as employment records. Carefully control data collection, retention, access, and disclosure with a view to respecting respondents' confidentiality and dignity.
- Comply with freedom of information and privacy protection legislation.

The [Canadian Standards Association's Model Privacy Code](#) is considered the "gold standard" for privacy compliance in the private sector (and is incorporated into PIPEDA as Schedule 1). Your firm may wish to follow its principles when collecting and using self-identification information.

Explaining the measures adopted to respect respondents' privacy will promote good response rates.

### Where should survey information be stored?

On-line storage systems that are located outside Canada may not be fully privacy-protected. For example, under some circumstances the *USA Patriot Act* allows government and police access to personal information stored in the United States. Self-identification information should either be stored in Canada or in a jurisdiction which has similar privacy protection, or respondents should be informed about the risk to their personal information before participating in self-identification surveys.

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## Appendix B

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### Sample Self-Identification Survey

#### Survey considerations

Self-identification surveys most often seek to identify women, visible minorities, people with disabilities, and Aboriginal peoples because they are designated in the federal *Employment Equity Act* as facing employment disadvantage. But in many workplaces, other groups may also be under-represented or face barriers to inclusiveness. Firms may choose to collect data on other groups such as linguistic groups, religious groups, or members of the LGBTQ community.

One of the challenges of collecting self-identification data is that some people do not define themselves in those terms. For instance, even though a person may require workplace accommodation for a physical impairment, she may not see herself as having a disability and thus not include herself in that category. Other people may resist self-identification because they fear that identifying themselves with a specific group may lead to negative treatment. For example, as a result of previous negative experiences with some government policies, some Aboriginal respondents may be reluctant to share information about their heritage in a survey. Another group that may be particularly reluctant to self-identify is articling students who may fear that disclosing their personal characteristics may undermine their chances of permanent employment.

Anonymous data collection, effective pre-survey communications, and good survey administration practices can help to reduce resistance to self-identification.

Be sure to include clear information about the survey purpose and intended use.

#### Sample Introduction

We are asking you to complete this survey because we want to understand our workforce better. Our goal is to ensure that every member of our firm enjoys a supportive work environment.

We are committed to protecting individual privacy rights and to safeguarding the personal information that you provide.

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Your responses are anonymous and will remain confidential. Only aggregate results will be reported. No individual results will ever be reported and care will be taken to ensure that respondents cannot be identified through a combination of responses. If there are only a small number of people in a particular group, responses for that group may not be reported separately in order to protect the privacy of group members.

Please be assured that your participation in this survey is completely voluntary and choosing not to participate will have no employment consequences. Feel free to skip any question which you would prefer not to answer.

Thank you.

### The questions

The questions below draw on questions developed by Statistics Canada and Human Resources and Skills Development Canada with adaptations by the Canadian Bar Association. They are similar to questions used on the membership forms of some provincial law societies. Firms that intend to benchmark against provincial data may wish to mirror the questions of the relevant law society. In addition, provincial human rights legislation in different jurisdictions use different definitions of some terms, such as disability. Firms may wish to adopt the terminology used in the relevant human rights legislation for consistency.

As noted throughout this Guide, it is important to think strategically about which groups you wish to include in the self-identification survey and make sure there is a purpose for your questions.

1. Gender self-identification: With which gender do you identify?

☐ Female    ☐ Male    ☐ Neither

2. Age: To which of the following age groups do you belong?

☐ 29 years or younger  
☐ 30 to 39 years  
☐ 40 to 49 years  
☐ 50 to 59 years  
☐ 60 years or older

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3. Persons with Disabilities: A person with a disability has a long-term or recurring physical, mental, sensory, psychiatric or learning impairment.

Are you a person with a disability?

☐ Yes    ☐ No

4. Aboriginal Peoples: Aboriginal peoples includes persons that identify as Indian (as defined by the *Indian Act*), Métis, Inuit, members of a First Nation or persons identifying as non-status Indians, aboriginal or indigenous.

Are you an Aboriginal person?

☐ Yes    ☐ No

5. Member of a racialized community: A member of a racialized community is a person, other than an Aboriginal person, who belongs to a group whose members have had individual experiences of racism and who is vulnerable to racism because of the way members of that group are defined and treated.

Do you identify with one or more racialized community?

☐ Yes    ☐ No

If you are a member of one or more racialized communities, please select the box(es) that best describe your origin:

- ☐ Arab
- ☐ Black (i.e. African-Canadian, African, Caribbean)
- ☐ Chinese
- ☐ East-Asian (i.e. Japanese, Korean)
- ☐ Latin American, Hispanic
- ☐ South Asian (i.e. Indo-Canadian, Indian subcontinent)
- ☐ South-East Asian (including Burmese, Cambodian, Laotian, Thai, Vietnamese, Filipino)
- ☐ West Asian (i.e. Iranian, Afghan)
- ☐ Other

6. First language: What is the language you first learned and still speak regularly?

- ☐ English
- ☐ French
- ☐ Neither English nor French

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7. Religion: Do you have a religion or creed?

☐ Yes   ☐ No

If yes, please select the box that best describes your religion or creed:

- ☐ Buddhism
- ☐ Christianity
- ☐ Islam
- ☐ Judaism
- ☐ Hinduism
- ☐ Sikhism
- ☐ Other

8. Sexual Orientation: Do you identify as lesbian, gay, or bisexual?

☐ Yes   ☐ No

9. Do you identify as transgender or transsexual?

☐ Yes   ☐ No

10. Position in the Firm: What is your position within the firm?

- ☐ Partner
- ☐ Associate
- ☐ Articling student or summer student
- ☐ Senior staff
- ☐ Support staff

Note: Larger firms may wish to include more specific categories of positions, possibly including areas of practice. If you do so, ensure that the list of categories is exhaustive and mutually exclusive.



## Measuring Diversity in Law Firms

## Appendix C

### Options for Measuring Diversity Climate

There are two major approaches to measuring diversity climate:

- Using general employee survey data to examine group differences in employee satisfaction or engagement, or
- Using specific measures designed to measure diversity climate.

Large organizations sometimes assess diversity climate by examining responses to employee satisfaction or engagement surveys to determine whether or not there are group differences in the responses. For example, finding that a particular group is less satisfied in their work might indicate a potential diversity concern. This approach, however, does not capture the full complexity of attitudes toward diversity and is not appropriate for smaller workplaces where the number of employees in different comparison groups is likely to be smaller than 25 employees. Generally, firms of fewer than about 150 employees will not have sufficient numbers of respondents from many diversity groups to facilitate a valid examination of group differences through general employee satisfaction or engagement surveys.

Diversity climate is best measured by direct measures designed for this purpose. These measures can be used by both larger and smaller firms to assess the diversity climate. This Appendix provides suggested questions for each of nine possible measures of diversity climate. Each measure addresses different aspects of diversity and can be useful under different circumstances.

Not all firms will choose to include all nine measures, nor is this necessary. The goals of the survey initiative should determine the selection of measures and questions. A brief introduction outlining the uses of each measure is provided below along with the suggested questions to facilitate the choice of measures to include.

To ensure valid results, for each measure chosen for inclusion (e.g. perceived fairness or resistance to diversity), the survey should include at least three, or preferably, more questions for that measure. That way, when the results are compiled, responses can be averaged across the three or more questions for each measure. This averaging will provide a more accurate reflection of attitudes.

## Measuring Diversity in Law Firms

Once the choice of measures and questions has been made, the survey should be compiled by mixing up the selected questions. Only the questions – without the labels or other background information – should be included. For example, if the questions on resistance to diversity are included, they would not be labelled as resistance as this may bias the answers. Instead all of the selected questions should be randomly sequenced in one section with only a brief introductory sentence such as:

**Please indicate your agreement or disagreement with the following statements about your workplace experience.**

Respondents should be provided with the following grid for their answers:

|                      |          |         |       |                   |
|----------------------|----------|---------|-------|-------------------|
| Strongly<br>Disagree | Disagree | Neutral | Agree | Strongly<br>Agree |
| 1                    | 2        | 3       | 4     | 5                 |

A sample introduction to the survey is provided below.

Note that diversity climate questions can be added to other surveys your law firm does or combined with the self-identification survey if that data is to be collected anonymously. If the diversity climate survey is not combined with another survey that includes self-identification questions, you may wish to include some demographic questions such as role in the firm and a few basic self-identification questions such as age, gender, Aboriginal status and membership in racialized communities, in order to facilitate analysis of group differences.

### Sample Introduction

We are asking you to complete this survey because we want to understand our workplace better. Our goal is to ensure that every member of our firm enjoys a supportive work environment.

We are committed to protecting individual privacy rights and to safeguarding the personal information that you provide.

Your responses are anonymous and will remain confidential. Only aggregate results will be reported. No individual results will ever be reported and care will be taken to ensure that respondents cannot be identified through a combination of responses. In order to protect privacy further, group differences in answers will not be reported when the groups include only a small number of respondents.

## Measuring Diversity in Law Firms

While we would appreciate your participation very much, please be assured that your participation in this survey is completely voluntary and choosing not to participate will have no employment consequences. Feel free to skip any question which you would prefer not to answer.

Thank you.

### The Measures

#### Perceived fairness

Uses: Perceived fairness is a good general measure of the diversity climate. However, moderately high average scores may be deceptive when some workplace groups view the workplace as very fair and others view it as not fair at all. Also, additional measures are required to help to identify specific diversity problems such as social exclusion. Perceived fairness questions combined with other measures such as perceived organizational support of diversity, personal attitudes towards diversity, and attitudes towards diverse groups would create a well rounded diversity survey.

#### Questions:

- This firm has a track record of hiring and promoting employees objectively, regardless of their race, sex, religion, or age.
- Performance feedback and evaluations are fair, regardless of the person's ethnicity, gender, age, or social background.
- Firm policies (such as sick leave) are applied fairly to all employees.
- I trust this firm to treat me fairly.

Source: Q1, Q2, Q3 – Mor Barak et al; Q4 – McKay et al

#### Experience of discrimination

Uses: Measuring experiences of discrimination can be helpful in determining whether or not discrimination has occurred in the workplace. In an organizational climate where trust has been undermined, however, people may feel uncomfortable sharing their experiences of discrimination and may simply give the answer that they believe is most acceptable. Asking explicit questions about personal experiences of discrimination may

## Measuring Diversity in Law Firms

make some people uncomfortable. If questions about experiences of discrimination are included, extra care needs to be taken to build trust in the survey process.

### Questions:

- Discrimination takes place in my work group.
- I have sometimes been unfairly singled out because my background is different.
- At work I feel socially isolated because of discrimination.
- I have experienced discrimination in this firm.

Source: Q1, Q2, Q3 – adapted from James et al; Q4 – Hegarty & Dalton

### Perceived Organizational Support of Diversity

Uses: Perceived organizational support of diversity can help to determine whether the firm's commitment to diversity is being adequately communicated.

### Questions:

- This firm maintains a diversity friendly work environment.
- This firm respects the views of people from different backgrounds
- Top leaders demonstrate commitment to diversity.
- Most leaders in the firm set a positive example of how to effectively manage diversity.

Source: Q1, Q2, Q3 -- adapted from McKay et al; Q4 – Soldan

### Personal Attitudes Towards Diversity

Uses: Personal attitudes towards diversity indicate people's views of diversity and can be used to assess potential support for, or resistance to, diversity initiatives. This information can also be used as an indicator of whether or not the firm's past communications and training regarding the value of diversity have had an impact on partners and employees' views.

## Measuring Diversity in Law Firms

### Questions:

- Diversity is good for the workplace.
- I support the diversity efforts in this firm.
- I think that diverse viewpoints add value.
- I personally find diversity enriching.

Source: Q1, Q2, Q4 - adapted from De Meuse & Hostager ; Q3 – Mor Barak et al

### Attitudes toward diverse groups

Uses: Attitudes toward diverse groups is a measure used to assess attitudinal barriers related to specific groups. Questions pertaining to women, racialized communities, people with disabilities, Aboriginal peoples, members of the LGBTQ community, different faiths, linguistic minorities, and older employees are included. Additional groups of interest could be added to this list or groups may be eliminated based on relevance to the specific firm context.

### Questions:

- Many people in my firm have biases against racialized communities.
- I have frequently heard comments at work that are disrespectful of women.
- Some people in my firm are not comfortable with people who are lesbian, gay, bisexual, transgendered, transsexual, queer or questioning their sexuality.
- Prejudices against people of different faiths are common in this firm.
- Many people in this firm do not take people with disabilities seriously.
- I have frequently heard comments at work that are disrespectful of Aboriginal peoples.
- Linguistic minorities are often viewed negatively by people in this firm.
- I have frequently heard comments at work that are disrespectful of older employees.

Source: all questions adapted from Hegarty & Dalton

## Measuring Diversity in Law Firms

### Resistance to Diversity

Uses: The measures regarding resistance to diversity can be used to assess the culture of specific workgroups.

#### Questions:

- In my work group, pressures for diversity are viewed as a threat to the culture of the firm.
- In my work group, discussions about diversity are considered irrelevant.
- In my work group, diversity is seen as a problem.
- In my work group, the costs of addressing diversity are believed to outweigh its benefits.

Source: all questions adapted from Nancarrow, Dyke & Rasouli

### Discrimination and Fairness Approach to Diversity Management

Uses: This measure and the next two concern the three approaches to diversity management – discrimination and fairness, access and legitimacy, and learning and effectiveness – and help to identify the stage of development of the firm's diversity culture.

#### Questions:

- In my work group, differences between people are ignored.
- In my work group, people believe the best way to maintain harmony is by ignoring differences.
- In my work group, people feel that diversity management should create a firm that does not take notice of race, gender and ethnicity.
- In my work group, people believe fairness means treating everyone the same way.

Source: all questions adapted from Nancarrow, Dyke & Rasouli

### Access and Legitimacy Approach to Diversity Management

Uses: This measure and the one before and after it concern the three approaches to diversity management – discrimination and fairness, access and legitimacy, and learning

## Measuring Diversity in Law Firms

and effectiveness – and help to identify the stage of development of the firm's diversity culture.

### Questions:

- In my work group, views from diverse groups are seen as irrelevant to the firm's core business.
- In my work group, people believe that clients want to look inside the company and see people like themselves.
- In my work group, people believe that the only asset a diverse workforce brings to the workplace is knowledge about clients from diverse groups.
- In my work group, people from different groups are often slotted into roles specific to their group (e.g. an employee from a diverse group assigned to a client from the same group).

Source: all questions adapted from Nancarrow, Dyke & Rasouli

## Learning and Effectiveness Approach to Diversity Management

Uses: This measure and the two before it concern the three approaches to diversity management – discrimination and fairness, access and legitimacy, and learning and effectiveness – and help to identify the stage of development of the firm's diversity culture.

### Questions:

- In my work group, people are encouraged to recognize and value differences between people equally.
- In my work group, differences between people are shared and celebrated.
- In my work group, differences between people are used as a source of new ideas.
- In my work group, people learn from the perspective and experience of others.

Source: all questions adapted from Nancarrow, Dyke & Rasouli

## Measuring Diversity in Law Firms

## Measurement Sources

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De Meuse, K. & Hostager, T. (2001). Developing an Instrument for Measuring Attitudes Toward and Perceptions of Workplace Diversity: An Initial Report. *Human Resource Development Quarterly*, 12, 1, 33-51.

Hegarty, W. H., & Dalton, D. R. (1995). Development and psychometric properties of the Organizational Diversity Inventory (ODI). *Educational and Psychological Measurement*, 55, 1047-1052.

James, K., Lovato, C., & Cropanzano, R. (1994). Correlational and known-group comparison validation of a workplace prejudice/discrimination inventory. *Journal of Applied Social Psychology*, 24, 1573-1592.

McKay, P.F., Avery, D.R., & Morris, M.A. (2008). Mean racial-ethnic differences in employee sales performance: The moderating role of diversity climate. *Personnel Psychology*, 61, 349-374.

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Soldan, Z (2009). A critical evaluation of the receptivity to diversity management (RDM) scale in Australian public sector organization. *International Journal of Business Research*, 9, 1, 140-146.



# EXHIBIT 15

Email to EIA Committee (September 9, 2020)

This is Exhibit "15" referred to in the Affidavit of

**MURRAY KLIPPENSTEIN**

Sworn before me this 16th day of  
March A.D., 2023.



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Commissioner for Taking Affidavits

Jorge Pineda  
#65305B

## Comments for Sept 10 EIAC meeting on the Inclusion Index

Murray Klippenstein <murray.klippenstein@klippensteins.ca>

Wed, Sep 9, 2020 at 8:50 AM

To: "Dianne Corbiere (dgcobiere@nncfirm.ca)" <dgcobiere@nncfirm.ca>, "Lewis, Atrisha S" <alewis@mccarthy.ca>, "Jorge E. P." <j.pineda84@gmail.com>, "Robert Burd (robertburd@hotmail.com)" <robertburd@hotmail.com>, "Etienne Esquega (Etienne Esquega <ee@esquegalaw.com>) <Etienne Esquega" <ee@esquegalaw.com>, John Fagan <johnffagan@gmail.com>, Julian Falconer <julianf@falconers.ca>, Nancy Lockhart <lockhart@nancylockhart.ca>, "Tanya Walker (tanya@tcwalkerlawyers.com)" <tanya@tcwalkerlawyers.com>, "Megan Shortreed (Megan.Shortreed@paliarerland.com)" <Megan.Shortreed@paliarerland.com>, Alexander Wilkes <alexander@wilkeslaw.ca>

Cc: Teresa Donnelly <tdonnelly@lso.ca>, Reshma Budhwani <rbudhwan@lso.ca>, Diana Miles <DMiles@lso.ca>

Bcc: Murray Klippenstein <murray.klippenstein@klippensteins.ca>

Dear Committee Chairs and Committee members,

I am writing to convey a number of concerns regarding a matter to be considered at tomorrow's EIAC meeting.

I have reviewed the Treasurer's "mandate memo" to the EIA Committee dated September 4, which states that "Prior to the [Committee] meeting, if a benchner ... has issues or questions about the work of the committee, that benchner should communicate with the chairs of the committee in advance of the meeting". I am writing to provide to the Committee Chairs and the Committee members ahead of tomorrow's Committee meeting my serious concerns regarding the issue of the "Inclusion Index" mentioned in the Treasurer's memo. In her memo the Treasurer states that it is a priority for the Committee to "prepare for the fall release of the Inclusion Index as per recommendation six of the Working Together for Change [Report]".

On reflection, I in fact have some broader concerns with the basic idea of a "mandate memo", since it seems to me to create new and unprecedented powers in the position of the Treasurer, and severely restricts the role of elected Benchers in committees. However, I will set aside the details of those concerns for now and focus on the Inclusion Index.

The planned Inclusion Index is a momentous and unprecedented public interference in the internal operations of more than 100 of Ontario's largest law firms. And yet it appears that the planned Inclusion Index has received no significant review or scrutiny by the EIA Committee or Benchers in general.

1. The Inclusion Index will publicly identify by name, and then rank (by categories), more than 100 of Ontario's law firms, based on a complex and detailed matter of internal firm operations. This is a public and detailed intrusion into the management of Ontario's law firms of unprecedented scope.
2. The basis for this unprecedented interference is an extremely complex but untested and never-before used method of evaluation. It is, according to the consulting firm's website, the "first of its kind". This is apparently a worldwide first.
3. The methodology of the Inclusion Index has received no scrutiny by the EIA Committee or by Benchers in general, despite its unprecedented nature and momentous implications. There is considerable irony in the fact that the consulting company is trumpeting this Inclusion Index on its public promotional website when it has received no actual serious review by the sponsoring organization.
4. The consulting company states on its website that it uses "advanced analytics" and its own "proprietary Inclusion Score technology". That suggests that its methodology is confidential, and that the actual way that it operates will not be allowed to be reviewed by anyone, including Benchers. Further, this apparently complex technology has, it would seem, not been the subject of any outside professional scrutiny or testing or peer review (as in the academic field of statistics or data management). It is a complete secret to everyone.
5. It appears that the project of the Inclusion Index has for the last almost two years been "managed" entirely by four (now three) Benchers, and presumably some LSO staff members, with no significant reporting to anyone else, and no significant input or oversight from anyone else.

27. Marian MacGregor also provided an update on Recommendation 6 – the Inclusion Index. She noted that the EIAC executive has agreed to the creation of a Steering Committee. The Steering Committee will review the vendor proposals and make a decision on the provider for the project. The Steering Committee will update EIAC at regular intervals.

29. Vice-Chair of EIAC, Isfahan Merali, will chair the Steering Committee. Benchers Robert Burd, Julian Falconer and Avvy Go will also sit on the Steering Committee.

Then, at the February 14, 2019 meeting of EIAC, a report “For Information” (that is, not for consideration for approval by vote) at Tab 3.1 was included about “Implementation of ... Inclusion Index”. The report includes the following:

7. The Steering Committee has reviewed and selected the Inclusion Index provider from the proposals provided in response to the RFQ. The Steering Committee will provide oversight, with the support of staff, as the development of the Inclusion Index unfolds. The steering committee will also provide updates to EIAC at appropriate intervals.

It should be noted that according to the above, it seems that the EIA “executive” appointed a powerful four person Steering Committee, without an actual vote by the Committee, which Steering Committee has now been “managing” this extremely important Inclusion Index project, which will constitute an unprecedented public interference in the internal management of Ontario’s law firms, “behind the scenes” for the last almost two years, with no reporting or oversight.

6. Former Treasurer Mercer recently announced, in a public letter dated June 25, 2020, that “We expect to release the Inclusion Index this fall.”

7. The forthcoming Inclusion Index is based on seriously invalid and misleading previous research, that is, the Challenges report of 2014 prepared by Stratcom Communications.

The consulting company’s website states that the “Regulatory body study found evidence of systemic racism and sexism within the sector”. The website then quotes three specific data points from the Stratcom Report, stating that 52%, 52%, and 43% of “racialized members” experienced certain disadvantages.

The Stratcom report was critiqued in my Critical Review dated January 8, 2020, which was distributed to all Benchers and became publicly available. The Critical Review showed how the report’s stark proclamations about how specific percentages of members in the legal professions felt a certain way had no valid statistical foundation. The conclusion of the Critical Review was that: “the *Challenges* Report ... is methodologically invalid, seriously misleading and driven by a particular political ideology, and was and is an unacceptable basis for serious policy-making by the Law Society ...”.

Despite its detailed and harsh and public critique, the Critical Review has not received any rational rebuttal from anyone. The conclusions of the Critical Review stand.

In addition to relying on the invalid Stratcom report, the Inclusion Index appears, like the Stratcom report, to be basing all its work on a statistically invalid self-selected and skewed data base (derived from the voluntary questions in an annual Law Society filing by all licensees).

8. The problem of survey sample self-selection bias could possibly, and indeed is likely to, exist in the Inclusion Index because persons-of-colour (or of other so-called “equity seeking groups”) who in fact feel “included” in their firms are less likely to voluntarily answer the survey questions because they have less motivation to do so, or perhaps because they find the questions personally insulting or offensive as a matter of principle. Such a sample self-selection bias would potentially be a very serious issue for two reasons.

First, the Inclusion Index would, quite simply, be inaccurate. That in itself is a serious issue. Second, since the survey results will be made public by firm name (in ranked groupings), individual firms are vulnerable to public disparagement by name, in effect by the Law Society, based on methodologically invalid data.

Consider an example. Firm A employs ten persons of colour, and three feel motivated to complete the survey questions because they are not satisfied with their situation (while seven are more or less satisfied with their situation and decide not to bother with the questions). Firm B, on the other hand, employs ten persons of colour but seven are unhappy and say so in survey answers.

MR636  
The survey data analyst, it would appear, has no way to account for the seven in Firm A who chose not to answer – because of a reason that is “good” in terms of the goals of the survey (that is, they feel “included”). In particular, the survey data analyst, it would appear, has no way to “adjust” for those non-reporting “contented” individuals for reporting purposes, for the simple reason that the analyst doesn’t know that they exist. Will the data analyst treat the three responders from Firm A as being equivalent to the seven responders from Firm B, when clearly they are not?

There is an additional important factor which it appears that the Inclusion Index will not, and indeed cannot, account for. Not all legal work is equal. Firm B may be a “higher end” firm, that does more advanced, more difficult, and more stressful legal work. That is, persons in Firm B may simply be under more day-to-day work pressure than persons in Firm A – because of the nature of the Firm’s work. That factor, while in a sense laudable from a professional point of view, may result in persons in the firm sometimes feeling less content in certain ways. The rewards of high achievement, while real, do not always manifest themselves in day-to-day cheerfulness. The result of not accounting for this factor may be that the survey, and the Inclusion Index, in effect “punishes” those firms who aim for high professional achievement.

These are serious and important questions. Do the Steering Committee and the consultant have answers? I am asking.

9. According to the consultant’s original proposal, the project was expected to cost \$225,000 in consultant fees, plus \$15,000 in expenses. These funds, of course, come out of our membership’s pocket by way of compulsory annual license fees. How much has been spent to date? How much more expenditure is expected?

10. The entire Inclusion Index project is clearly centred on advancing a particular political ideology under the rubric of “diversity and inclusion”. That ideology throws out the window the basic ideas and principles of equality and non-discrimination, and openness and opportunity, which have been the core of Ontario’s human rights policy for more than half a century (and which have resulted in a great deal of social progress, in my opinion), and puts in their place a general rule of discrimination and across-the-board preferential treatment based on the skin colour, facial features, and sex chromosomes that a person was born with, rather than relying on principles of competence, smarts, skills, effort, and contribution.

This ideology assumes that persons with certain categories of birth characteristics should be hired, promoted, and appointed “in all legal workplaces, at all levels of seniority” based on the proportion of those birth features in the general population (see the *Working Together* report, p. 14). This idea of “entitlement by population percentage” is a radical idea with no serious intellectual foundation and with serious pernicious effects, in my opinion.

That ideology is currently fashionable in many circles, but it is inappropriate for a regulatory body with the serious responsibilities of the Law Society to engage in the massive intrusion into its membership’s business affairs (as represented by the Inclusion Index) based on a particular political ideology (the Law Society intrudes into the business affairs of its licensees on a significant number of important matters, such as the management of trust funds, but those are in an entirely different category).

11. The current pushing ahead of the Inclusion Index without meaningful input or oversight ignores the results of the last Benchers election. I was elected as Regional Benchers on a platform explicitly based on concerns such as those expressed above. Twenty-one other Benchers were similarly elected. Those views and those results are being ignored.

Given that this Inclusion Index appears to be a runaway freight train, I am doubtful that my concerns will be addressed. I hope that they are.

Sincerely,

Murray Klippenstein


# EXHIBIT 16

Email to EIA Committee (September 15, 2020)

This is Exhibit "16" referred to in the Affidavit of

**MURRAY KLIPPENSTEIN**

Sworn before me this 16th day of  
March A.D., 2023.



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Commissioner for Taking Affidavits

Jorge Pineda  
#65305B

KLIPPENSTEINS

BARRISTERS &amp; SOLICITORS

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

## Concerns about the upcoming "Inclusion Index"

49 messages

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

Tue, Sep 15, 2020 at 10:56 AM

To: "Dianne Corbiere (dgcobriere@nncf.ca)" <dgcobriere@nncf.ca>, Jared Brown <jbrown@brownlaw.ca>, Alexander Wilkes <alexander@wilkeslaw.ca>, "Andrew Spurgeon (aspurgeon@rossmccbride.com)" <aspurgeon@rossmccbride.com>, "Lewis, Atrisha S" <alawis@mcCarthy.ca>, "Jack Braithwaite (jbraithwaite@weaversimmons.com)" <jbraithwaite@weaversimmons.com>, Brian Prill <bprill@blplaw.ca>, "Robert Burd (robertburd@hotmail.com)" <robertburd@hotmail.com>, Scott Marshall <marshall@tnt21.com>, Cecil Lyon <cecil@lyonfamilylaw.ca>, Cheryl Lean <cherylleanlaw@gmail.com>, Chi-Kun Shi <cks@chikunshi.ca>, "Claire Wilkinson (Claire.Wilkinson@mhalaw.ca)" <Claire.Wilkinson@mhalaw.ca>, "Cathy Corsetti (cathy@corsetti.ca)" <cathy@corsetti.ca>, "Etienne Esquega (Etienne Esquega <ee@esquegalaw.com>)" <Etienne Esquega <ee@esquegalaw.com>, Gary Graham <gary.graham@grahamstephensonllp.com>, Geoff Pollock <Geoff@geoffpollock.com>, "Jacqueline Horvat (jacqueline@spark.law)" <jacqueline@spark.law>, "Jean-Jacques Desgranges (DesgrangesLaw@ncf.ca)" <DesgrangesLaw@ncf.ca>, John Fagan <johnffagan@gmail.com>, Jonathan Rosenthal <jrosenthal@bondlaw.net>, "Jorge E. P." <j.pineda84@gmail.com>, "Julia Shin Doi (julia.shindoi@ryerson.ca)" <julia.shindoi@ryerson.ca>, Julian Falconer <julianf@falconers.ca>, "Marian Lippa (lippalegal@gmail.com)" <lippalegal@gmail.com>, Lubomir Poliacik <lubomir.poliacik@ceplaw.ca>, "Megan Shortreed (Megan.Shortreed@paliaroland.com)" <megan.shortreed@paliaroland.com>, "Isfahan Merali (isfahanmerali@gmail.com)" <isfahanmerali@gmail.com>, "Michelle Lomazzo (michelle@lomazzoappeals.com)" <michelle@lomazzoappeals.com>, Nick Wright <nick@wrightbusinesslaw.ca>, Philip Horgan <phorgan@cartonlaw.ca>, Bob Adourian <Bob.Adourian@devrylaw.ca>, Ryan Alford <ralford@lakeheadu.ca>, Sam Goldstein <sam@samgoldstein.ca>, "Shelina Lalji (shelina@slpc.legal)" <shelina@slpc.legal>, "Sidney H. Troister, LSM" <stroister@torkinmanes.com>, "Tanya Walker (tanya@tcwalkerlawyers.com)" <tanya@tcwalkerlawyers.com>, Trevor Parry <trevor@trevorparry.com>, "Charette, Gerard P." <charette@millercanfield.com>, Joseph Groia <jgroia@groia.co>, "Benson Lau (drpslau@yahoo.ca)" <drpslau@yahoo.ca>, Clare Sellers <clare\_sellers@outlook.com>, "Doug Wellman (dougwellman@gmail.com)" <dougwellman@gmail.com>, "Epstein, Seymour" <seymour@epsteinenterprises.com>, Genevieve Painchaud <genevievepainchaud@hotmail.com>, Nancy Lockhart <lockhart@nancylockhart.ca>, Gerald Sheff <gsheff@rager.com>, "Minor, Janet" <janet.minor@bell.net>, "Pawlitza, Laurie" <pawlitza@torkinmanes.com>, "Thomas G. Conway (tconway@conway.pro)" <tconway@conway.pro>, "Ferrier, Lee K." <lferrier@amicuschambers.com>, "Robert Armstrong (ramstrong@arbitrationplace.com)" <ramstrong@arbitrationplace.com>, "Rock, Allan" <allan.rock@uottawa.ca>, "Harvey T. Strosberg Q.C." <harvey@strosbergco.com>, Vem Krishna <vkrishna@uottawa.ca>, Derry Millar <dmmillar@weirfoulds.com>, georgehunter1@icloud.com, ascase@mcCarthy.ca, j.k.spence@sympatico.ca, Bob Aaron <bob@aaron.ca>, Larry Banack <larry@banackresolutions.com>, chris.bentley@ryerson.ca, "Boyd, Marion" <marion@marionboyd.ca>, Michael Bryant <mbr Bryant@ccla.org>, Paul Copeland <paulcopes9@yahoo.com>, feinstea@solowaywright.com, pglawyer@gmail.com, glgccc@interlog.com, jground@amicuschambers.com, hghampton5@gmail.com, charnick@counseelpa.com, manes@torkinmanes.com, alanwpope@hotmail.com, julian.porter@julianporterqc.com, Judith Potter <jpotter@start.ca>, ruby@rubyskiller.com, nomsterling@gmail.com, gswaye@swaye.ca, jwardlaw@rogers.com, bradley@wrightlawfirm.com, dyoung@bensonpercival.com, Diana Miles <dmiles@lso.ca>, Mirka Adamsky-Rackova <madrackova@lso.ca>, Jim Varro <jvarro@lso.ca>, Cara-Marie O'Hagan <cohagan@lso.ca>, Teresa Donnelly <tdonnelly@lso.ca>, Joseph Chiummiento <joseph@chiummiento.com>, Malcolm Mercer <mmercer@lso.ca>, malcolm@malcolmmarcel.ca, Paul Cooper <paul@pmc-law.ca>, Michael <michael@michaelsfirm.ca>, Barbara Murchie <barbara@murchielaw.ca>, Ross Murray <ross.murray.qc@gmail.com>, Reshma Budhwani <rbudhwan@lso.ca>, mdrent@lso.ca

Dear colleagues,

I am writing to convey my concerns about developments at the Equity and Indigenous Affairs Committee regarding the upcoming "Inclusion Index".

The Treasurer's recent mandate letter to Committees suggested that if Committee members had issues or concerns about a topic in an upcoming meeting, they should raise them with Committee chairs before the meeting. Accordingly, prior to the EIAC meeting of September 10, I wrote to EIA Committee chairs and members outlining some specific and (I believe) important concerns about the Inclusion Index which, it is said, will be publicly released by the Law Society "this fall".

I reproduce the text of my email to the Committee below, in case you are interested.

At the meeting there was no effort to address my concerns – quite the opposite. I was told that my concerns 1) dealt with "operational" matters and therefore were not the purview of Committee members, 2) were out of place because they dealt with "implementation" of a previous Convocation decision, and 3) that I and others would receive further information when the Inclusion Index was ready to be released (that is, when it is more or less a "fait accompli").

The Committee, in my view, is deliberately turning a blind eye to what I would suggest are some serious problems.

The Inclusion Index seems to be part of the current movement at the Law Society towards prioritizing birth characteristics such as skin colour and facial features and sex chromosomes over competence. This radical identity politics is, in my opinion, not progressive, and not progress, and will drag us all backwards and downwards.

One of the lessons I believe I have learned in life is that problems are of two kinds: first, those problems that, if ignored, go away, and second, those problems that, if ignored, get worse. I believe that the problems described in my email are of the second type.

Respectfully,

Murray Klippenstein

## TEXT OF MY EMAIL OF SEPT 9 2020

Dear Committee Chairs and Committee members,

I am writing to convey a number of concerns regarding a matter to be considered at tomorrow's EIAC meeting.

I have reviewed the Treasurer's "mandate memo" to the EIA Committee dated September 4, which states that "Prior to the [Committee] meeting, if a benchner ... has issues or questions about the work of the committee, that benchner should communicate with the chairs of the committee in advance of the meeting". I am writing to provide to the Committee Chairs and the Committee members ahead of tomorrow's Committee meeting my serious concerns regarding the issue of the "Inclusion Index" mentioned in the Treasurer's memo. In her memo the Treasurer states that it is a priority for the Committee to "prepare for the fall release of the Inclusion Index as per recommendation six of the Working Together for Change [Report]".

On reflection, I in fact have some broader concerns with the basic idea of a "mandate memo", since it seems to me to create new and unprecedented powers in the position of the Treasurer, and severely restricts the role of elected Benchers in committees. However, I will set aside the details of those concerns for now and focus on the Inclusion Index.

The planned Inclusion Index is a momentous and unprecedented public interference in the internal operations of more than 100 of Ontario's largest law firms. And yet it appears that the planned Inclusion Index has received no significant review or scrutiny by the EIA Committee or Benchers in general.

1. The Inclusion Index will publicly identify by name, and then rank (by categories), more than 100 of Ontario's law firms, based on a complex and detailed matter of internal firm operations. This is a public and detailed intrusion into the management of Ontario's law firms of unprecedented scope.
2. The basis for this unprecedented interference is an extremely complex but untested and never-before used method of evaluation. It is, according to the consulting firm's website, the "first of its kind". This is apparently a worldwide first.
3. The methodology of the Inclusion Index has received no scrutiny by the EIA Committee or by Benchers in general, despite its unprecedented nature and momentous implications. There is considerable irony in the fact that the consulting company is trumpeting this Inclusion Index on its public promotional website.

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when it has received no actual serious review by the sponsoring organization.

4. The consulting company states on its website that it uses "advanced analytics" and its own "proprietary Inclusion Score technology". That suggests that its methodology is confidential, and that the actual way that it operates will not be allowed to be reviewed by anyone, including Benchers. Further, this apparently complex technology has, it would seem, not been the subject of any outside professional scrutiny or testing or peer review (as in the academic field of statistics or data management). It is a complete secret to everyone.

5. It appears that the project of the Inclusion Index has for the last almost two years been "managed" entirely by four (now three) Benchers, and presumably some LSO staff members, with no significant reporting to anyone else, and no significant input or oversight from anyone else.

According to the Minutes of the November 15, 2018 EIAC meeting (emphases added):

27. Marian MacGregor also provided an update on Recommendation 6 – the Inclusion Index. She noted that the EIAC executive has agreed to the creation of a Steering Committee. The Steering Committee will review the vendor proposals and make a decision on the provider for the project. The Steering Committee will update EIAC at regular intervals.

29. Vice-Chair of EIAC, Isfahan Merali, will chair the Steering Committee. Benchers Robert Burd, Julian Falconer and Avvy Go will also sit on the Steering Committee.

Then, at the February 14, 2019 meeting of EIAC, a report "For Information" (that is, not for consideration for approval by vote) at Tab 3.1 was included about "Implementation of ... Inclusion Index". The report includes the following:

7. The Steering Committee has reviewed and selected the Inclusion Index provider from the proposals provided in response to the RFQ. The Steering Committee will provide oversight, with the support of staff, as the development of the Inclusion Index unfolds. The steering committee will also provide updates to EIAC at appropriate intervals.

It should be noted that according to the above, it seems that the EIA "executive" appointed a powerful four person Steering Committee, without an actual vote by the Committee, which Steering Committee has now been "managing" this extremely important Inclusion Index project, which will constitute an unprecedented public interference in the internal management of Ontario's law firms, "behind the scenes" for the last almost two years, with no reporting or oversight.

6. Former Treasurer Mercer recently announced, in a public letter dated June 25, 2020, that "We expect to release the Inclusion Index this fall."

7. The forthcoming Inclusion Index is based on seriously invalid and misleading previous research, that is, the Challenges report of 2014 prepared by Stratcom Communications.

The consulting company's website states that the "Regulatory body study found evidence of systemic racism and sexism within the sector". The website then quotes three specific data points from the Stratcom Report, stating that 52%, 52%, and 43% of "racialized members" experienced certain disadvantages.

The Stratcom report was critiqued in my Critical Review dated January 8, 2020, which was distributed to all Benchers and became publicly available. The Critical Review showed how the report's stark proclamations about how specific percentages of members in the legal professions felt a certain way had no valid statistical foundation. The conclusion of the Critical Review was that: "the Challenges Report ... is methodologically invalid, seriously misleading and driven by a particular political ideology, and was and is an unacceptable basis for serious policy-making by the Law Society ...".

Despite its detailed and harsh and public critique, the Critical Review has not received any rational rebuttal from anyone. The conclusions of the Critical Review stand.

In addition to relying on the invalid Stratcom report, the Inclusion Index appears, like the Stratcom report, to be basing all its work on a statistically invalid self-selected and skewed data base (derived from the voluntary questions in an annual Law Society filing by all licensees).

8. The problem of survey sample self-selection bias could possibly, and indeed is likely to, exist in the Inclusion Index because persons-of-colour (or of other so-called "equity seeking groups") who in fact feel "included" in their firms are less likely to voluntarily answer the survey questions because they have less motivation to do so, or perhaps because they find the questions personally insulting or offensive as a matter of principle. Such a sample self-selection bias would potentially be a very serious issue for two reasons.

First, the Inclusion Index would, quite simply, be inaccurate. That in itself is a serious issue. Second, since the survey results will be made public by firm name (in ranked groupings), individual firms are vulnerable to public disparagement by name, in effect by the Law Society, based on methodologically invalid data.

Consider an example. Firm A employs ten persons of colour, and three feel motivated to complete the survey questions because they are not satisfied with their situation (while seven are more or less satisfied with their situation and decide not to bother with the questions). Firm B, on the other hand, employs ten persons of colour but seven are unhappy and say so in survey answers.

The survey data analyst, it would appear, has no way to account for the seven in Firm A who chose not to answer – because of a reason that is "good" in terms of the goals of the survey (that is, they feel "included"). In particular, the survey data analyst, it would appear, has no way to "adjust" for those non-reporting "contented" individuals for reporting purposes, for the simple reason that the analyst doesn't know that they exist. Will the data analyst treat the three responders from Firm A as being equivalent to the seven responders from Firm B, when clearly they are not?

There is an additional important factor which it appears that the Inclusion Index will not, and indeed cannot, account for. Not all legal work is equal. Firm B may be a "higher end" firm, that does more advanced, more difficult, and more stressful legal work. That is, persons in Firm B may simply be under more day-to-day work pressure than persons in Firm A – because of the nature of the Firm's work. That factor, while in a sense laudable from a professional point of view, may result in persons in the firm sometimes feeling less content in certain ways. The rewards of high achievement, while real, do not always manifest themselves in day-to-day cheerfulness. The result of not accounting for this factor may be that the survey, and the Inclusion Index, in effect "punishes" those firms who aim for high professional achievement.

These are serious and important questions. Do the Steering Committee and the consultant have answers? I am asking.

9. According to the consultant's original proposal, the project was expected to cost \$225,000 in consultant fees, plus \$15,000 in expenses. These funds, of course, come out of our membership's pocket by way of compulsory annual license fees. How much has been spent to date? How much more expenditure is expected?

10. The entire Inclusion Index project is clearly centred on advancing a particular political ideology under the rubric of "diversity and inclusion". That ideology throws out the window the basic ideas and principles of equality and non-discrimination, and openness and opportunity, which have been the core of Ontario's human rights policy for more than half a century (and which have resulted in a great deal of social progress, in my opinion), and puts in their place a general rule of discrimination and across-the-board preferential treatment based on the skin colour, facial features, and sex chromosomes that a person was born with, rather than relying on principles of competence, smarts, skills, effort, and contribution.

This ideology assumes that persons with certain categories of birth characteristics should be hired, promoted, and appointed "in all legal workplaces, at all levels of seniority" based on the proportion of those birth features in the general population (see the *Working Together* report, p. 14). This idea of "entitlement by population percentage" is a radical idea with no serious intellectual foundation and with serious pernicious effects, in my opinion.

That ideology is currently fashionable in many circles, but it is inappropriate for a regulatory body with the serious responsibilities of the Law Society to engage in the massive intrusion into its membership's business affairs (as represented by the Inclusion Index) based on a particular political ideology (the Law Society intrudes into the business affairs of its licensees on a significant number of important matters, such as the management of trust funds, but those are in an entirely different category).

11. The current pushing ahead of the Inclusion Index without meaningful input or oversight ignores the results of the last Benchers election. I was elected as Regional Benchers on a platform explicitly based on concerns such as those expressed above. Twenty-one other Benchers were similarly elected. Those views and those results are being ignored.

Given that this Inclusion Index appears to be a runaway freight train, I am doubtful that my concerns will be addressed. I hope that they are.

Sincerely,

Murray Klippenstein




# EXHIBIT 17

**Memo re: LSO Follow-up Questions on the  
Inclusion Index Methodology (April 22, 2020)**

**This is Exhibit "17" referred to in the Affidavit of**

**MURRAY KLIPPENSTEIN**

**Sworn before me this 16th  
day of March A.D., 2023.**

  
\_\_\_\_\_  
**Commissioner for Taking Affidavits**

*Jorge Pineda*  
*#65305B*

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## Memo re: LSO Follow-up Questions on the Inclusion Index methodology

04/22/2020

### A) GENERAL QUESTIONS

#### 1. Can Diversio provide a summary of its methodology?

Diversio's methodology involves collecting and analyzing data from three sources: employee demographic information, employee responses to experience- and inclusion-related questions, and information about a particular organization's programs and policies. Diversio has applied this methodology in several industries across enterprise & SMEs, including Financial Services, Asset Management, Technology, Venture Capital and more. Diversio developed this methodology with input from over 100 industry experts, academics and business leaders, and has used it to assess more than 600 organizations. It has been tested, validated and endorsed by organizations such as the Human Resources Professional Association, Women in Capital Markets, Institutional Limited Partner Association, City of Toronto and Natural Resources Canada.


Diversio's methodology was adapted to the LSO context through input and consultations with the LSO. Advisors on the project included experts such as Hadiya Roderique (JD, Ph D Candidate in Organizational Behaviour), Josh Lokko (JD Candidate, President of the Black Law Students' Association of Canada), and Amy Hepburn, PhD (Professor at Duke University).

Diversio obtained three datasets from the LSO: licensee self-identified [demographic data](#), licensee responses to [inclusion questions](#), and [self-assessment](#) information regarding diversity and inclusion programming submitted by legal workplaces (LWPs).

We started by aligning these three data sources to our standard methodology, which includes three core metrics that are aggregated to create an overall score (see "Exhibit A" and "Exhibit B"). Following a joint decision with the LSO, only LWPs with more than 10 respondents were included in the final Index for a total sample set of 192 LWPs.

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The resulting Inclusion Index includes an overall score for each LWP, referred to as the **Diversio Score**, which is composed of three metrics: A **Diversity Score** (25% of the Diversio Score), an **Inclusion Score** (50% of the Diversio Score), and a **Commitment Score** (25% of the Diversio Score).

The **Diversity Score** reflects how diverse an LWP is from a demographic perspective. This metric incorporates gender, race/ethnicity (including Indigenous and Francophone identity), sexual orientation and disability. It was calculated from self-identified demographic information submitted by licensees in their Annual Reports. Race/ethnicity and gender were weighted based on regional averages, using Statistics Canada Census Economic Regions (more information below). Sexual orientation was weighted using Diversio's proprietary benchmarking data, and disability was weighted using national averages.

The **Commitment Score** reflects self-reported programming and policies the LWP indicated having in place, as well as licensee acknowledgement of this programming (i.e., licensees indicating that diversity-related programming is in place at their firm, as reported in the Inclusion Questions).<sup>1</sup> LWPs with the most implemented programming received top scores, and LWPs with less programming received lower scores.<sup>2</sup>

The **Inclusion Score** was generated by first aligning each of the LSO Inclusion Questions to one of Diversio's five sub-metrics: Inclusive Culture, Access to Networks, Unbiased Feedback and Reviews, Safe Work Environment, and Flexible Work Options. To create the Inclusion Score for each LWP, we compared the average score on each metric for the dominant group to the average score for the non-dominant group. The average response of the dominant group was weighted at 30% of the score, and the average response of the non-dominant group was weighted at 70%. (See Exhibit B for an illustrative example).

As described above, each LWP's overall Diversio Score is a composite of these three metrics. The Inclusion Index is a simple ranking of 192 LWPs in order of their overall Diversio Score, from highest (most diverse, inclusive and committed) to lowest (least diverse, inclusive and committed).

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<sup>1</sup> Note that 14 out of 192 LWPs did not complete the Self-Assessment. In this case, a Commitment score was generated using licensee responses regarding the presence of programming at their LWP.

<sup>2</sup> All programming was self-reported and not independently verified by the LSO. The robustness of the Commitment Score is reliant on the competency, knowledge and integrity of the individuals designated by each LWP to complete the Self-Assessment.

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**Exhibit A**

**The formula: How each legal workplace was scored**

| Diversio Score      | = | Diversity Score<br>25%                                                                                                                                                                                                                                         | Inclusion Score<br>50%                                                                                                                                                                                                 | Commitment Score<br>25%                                                  |
|---------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>Key question</b> |   | How reflective is LWP of the local population?                                                                                                                                                                                                                 | How inclusive is LWP of under-represented groups?                                                                                                                                                                      | How effective is LWP's efforts to promote inclusion through programming? |
| <b>Data sources</b> |   | Self-identification questions, municipality data from National Household Survey and Census                                                                                                                                                                     | Self-identification questions; inclusion questions                                                                                                                                                                     | Self-assessment questions; programming questions                         |
| <b>Calculation</b>  |   | Determine which region each LWP is primarily based in and the proportion of underrepresented persons (gender, race, Indigenous identity, disability, LGBTQ2+, Francophone) in that region<br><br>Assign score out based on how reflective LWP is of its region | Group Inclusion Questions into five Inclusion KPIs<br><br>Compare each LWP's response variation to identify areas of systemic exclusion or bias<br><br>Score is based on overall sentiment and variance between groups | Assign score based on number of programs and policies adopted            |

METHODOLOGY

**Exhibit B**

**Inclusion Score Methodology**

- Identify the dominant and non-dominant groups within the sample set
  - The dominant group across LSO respondents is white heterosexual, Anglophone men without a disability
  - The non-dominant group includes respondents who differ from the dominant group on any demographic trait
- For each question or metric:
  - Determine the average response of the dominant group (e.g. 8/10) for 30% of the Score
  - Determine the average response of the non-dominant group (e.g. 4/10) for 70% of the Score
  - Combine the average response of each for an overall Score (e.g.  $((0.8 \times 0.3) + (0.4 \times 0.7)) = 5.2/10$ )
- Combine scores for the overall Inclusion Score

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## 2. Why is the Inclusion Score given more weight than the Commitment and Diversity Scores?

The stated intention of the "Inclusion Index" is to reflect the inclusivity of LWPs, and the presence or absence of bias, systemic barriers and exclusion. The Index is additional to demographic snapshots and self-identification data which is published separately. In addition, this weighting hedges against the possibility of assigning a high ranking to an LWP in a scenario where an LWP is highly diverse but employees from underrepresented backgrounds are subject to racism, bias or harassment. Focusing on inclusion provides a clear incentive for companies to strive for real systemic change rather than "tokenism".

It is also worth noting that the experiences of diverse employees are accorded more weight, constituting 70% of the Inclusion Score.

## B) DETAILED EXPLANATION OF THE METRICS

### 3. How was the Diversity Score calculated?

The Diversity Score was calculated by first establishing a baseline against which LWPs would be measured for each demographic trait identified by the LSO. Diversio implemented the following benchmarks:

- Set representation for ethnicity, Indigenous identity, gender, and Francophone background based on Statistics Canada Census Economic Regions data, subdividing Ontario into 9 regions
- Set LGBTQ2+ representation at 10% for LWPs within Toronto and 5% for all LWPs outside of Toronto. Since detailed Statistics Canada data was not available for LGBTQ2+ representation, benchmarks were set using a combination of 1) U.S. government data on LGBTQ2+ representation in major U.S. metropolitan areas most comparable to Toronto and 2) proprietary Diversio data collected on LGBTQ2+ representation across Ontario
- Set representation of persons with a disability at 20% for all LWPs, based on Statistics Canada Census data

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After setting the baseline, Diversio compared the representation of each LWP to the demographics of the region in which they were located. LWPs with multiple offices were compared against the demographics of their primary region(s) of operation. Ontario-wide entities were compared to province-wide demographics.

LWPs were awarded points for each of the identified demographic traits (gender, ethnicity, Indigenous identity, disability, LGBTQ2+, Francophone background). Full points were given if an LWP's demographics were at or above the regional population benchmark (no additional points were awarded for being more representative). If LWPs had lower representation than their regional population, points were deducted proportionately to the LWP's deviation from the standard.

Each demographic trait was assigned equal importance and thus weighted equally.


#### 4. How was the Inclusion Score calculated?

LSO Inclusion Questions were bucketed into five sub-metrics that are typically used by Diversio to assess experience in the workplace: Inclusive Culture, Unbiased Feedback, Access to Networks, Flexible Work Options, and Safe Work Environment. These metrics were developed through extensive research and consultation with subject matter experts, and are consistent with assessments Diversio has carried out in other sectors.

- **Inclusive Culture** refers to an environment where all employees can share their perspective regardless of their background or identity. Research shows that diverse employees often feel they need to compromise their authenticity to fit into company norms ([Harvard Business Review](#))
- **Unbiased feedback and Reviews** refers to a review and promotion process that perceived as objective, fair and free from unconscious bias. For example, research shows that women, who are part of the non-dominant group, are 1.4 times more likely to receive critical, subjective feedback ([Harvard Business Review](#))
- **Access to Networks** refers to all employees having a mentor and/or feeling that someone is invested in their growth and professional development. Research shows that equal access to mentors and sponsors boosts the number of ethnic minorities in management by 9-24% ([Harvard Business Review](#))

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- **Flexible Working Options** refers to a workplace that enables all employees to balance work and family care obligations. Research shows that women and other non-dominant employees (including New Canadians) are more likely to struggle when it comes to establishing sustainable a work-life balance ([American Psychological Association](#))
- **Safe Work Environment** refers to a workplace that is free from sexual, physical and mental harassment. Research shows that 30% of minorities and 39% of women have witnessed or experienced harassment in the workplace ([Financial Times](#), [UN Women](#))

Respondents were categorized into either the “dominant” or “non-dominant” group according to their self-identified demographic profile. The dominant group within the LSO sample set was identified as white, heterosexual, Anglophone men without a disability. Respondents who identified as not sharing any of these traits were categorized into the non-dominant group.<sup>3</sup>

- Sub-metric scores were generated for each LWP based on the combined answers of all respondents
- The formulas used to create these scores implemented the 70/30 weighting of nondominant/dominant groups described above
- Once the ranking of each LWP was established, all Inclusion Scores were scaled to generate a meaningful, proportionate Index

### 5. How was the Commitment Score calculated?

The Commitment Score was calculated based on each LWP's self-reported implementation of diversity & inclusion programs and policies as well as licensee acknowledgement of this programming. Points were awarded to LWPs according to how many programs and policies they reported having implemented, as indicated on their LSO Self-Assessment Questionnaire, and licensee acknowledgement of this programming, as indicated in the Inclusion Questions.

Once the ranking of each LWP was established, all Commitment Scores were scaled to generate a meaningful, proportionate Index

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<sup>3</sup> Respondents who provided “Prefer Not to Answer” responses were categorized into a separate Prefer Not to Answer (PNA) category.

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## C) CROSS-SECTOR COMPARISON

### 6. What is the state of inclusion in the finance, public and technology sectors? How do these compare to the legal profession?

Diversio has conducted broad-based diversity & inclusion assessments of six Canadian sectors: technology, financial services, asset management, the Ontario public service, and small- and medium-sized businesses.

A few observations from Diversio's proprietary benchmarking data:

- The Legal sector is less diverse than the **technology sector** when it comes to racialized minorities. Our benchmarking data of 100+ Canadian technology companies includes 36% self-identified racialized minorities, compared to 16% in the LSO dataset. The Legal sector is more gender diverse, with 49% of respondents identifying as female compared to 35% of technology sector employees.
- The Legal sector is significantly less diverse than the **asset management sector** when it comes to racialized minorities (16% v. 37%), individuals with a disability (3% v. 8%) and LGBTQ+ (3% v. 14%)
- The Legal sector is roughly on-par with the **technology sector** when it comes to inclusion:

*Table 1: Inclusion Comparison: Legal v. Technology Sectors*

|                             | Legal Sector | Technology Sector |
|-----------------------------|--------------|-------------------|
| Inclusive Culture           | 7.9          | 7.6               |
| Unbiased Feedback & Reviews | 7.7          | 7.3               |
| Flexible Work Options       | 7.0          | 7.4               |
| Access to Networks          | 6.5          | 7.0               |
| Safe Work                   | 8.4          | 8.7               |

- The Legal sector is more inclusive across each of the five Inclusion sub-metrics than the **asset management sector**

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**Table 1: Inclusion Comparison: Legal v. Asset Management Sectors**

|                             | Legal Sector | Asset Management Sector |
|-----------------------------|--------------|-------------------------|
| Inclusive Culture           | 7.9          | 5.1                     |
| Unbiased Feedback & Reviews | 7.7          | 5.2                     |
| Flexible Work Options       | 7.0          | 4.9                     |
| Access to Networks          | 6.5          | 5.6                     |
| Safe Work                   | 8.4          | 6.9                     |

**D) RESPONSE RATES**

**7. What are the overall response rates?**

Altogether, 192 LWP's met the threshold necessary to receive scores and be included in the Inclusion Index (25+ licensees, more than 10 responses to the 2018 Lawyer Annual Report).<sup>4</sup> 87.5% of these LWP's had a Diversity Response Rate (DRR) of at least 50% (i.e. self-identified demographic traits). 81.2% of LWP's had an Inclusion Response Rate (IRR) of at least 50% (i.e. Inclusion Questions).

The Average Diversity Response Rate (ADRR) across 192 LWP's was 78%, while the Average Inclusion Response Rate (AIRR) was 68%. The Overall Response Rate across LSO licensees was 80%. The Overall Response Rate is higher than ADRR and AIRR due large concentration of licensees within a subset of LWP's (i.e. over half of all licensees are employed by 30 biggest LWP's)

<sup>4</sup> The LSO provided 3 Files at the beginning of this project, the third of which was a listing of the number of licensees at each LWP. Discussions were had with the LSO to ensure understanding of the File and the process by which it was constructed. The figures in File 3 were used as the denominator. The numerator for this calculation was the sum of licensees from the Individual Record File tagged to or identifiable as working at a given LWP who also submitted a completed Annual Report. This included respondents who responded with at least 1 answer that was not "Prefer Not to Answer" or equivalent. The act of choosing a single affirmative response is sufficient evidence of answering the survey in good faith and is consistent with industry best practice.

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Response rates were significantly higher for law firms (90% ADRR, 78% AIRR) than corporate legal departments (65% ADRR, 56% AIRR) and public organizations (61% ADRR, 54% AIRR).

Large LWP (150+ licensees) tended to have higher response rates (82% ADRR, 72% AIRR) than medium LWP (50-149 licensees, 72% ADRR, 63% AIRR) or small LWP (<50 licensees, 79% ADRR, 69% AIRR).

NB: These response rates are significantly higher than typical employee engagement survey results, which average between 30% and 40%. Given the sensitive nature of the information being collected, employees are often hesitant to self-identify as belonging to a certain group or having certain experiences. This suggests that LSO is more trusted by lawyers/paralegals than their firms would be to collect this data without repercussion.

#### **8. How does the voluntary nature of questions impact results from an analytics perspective?**

According to Kiess & Bloomquist (1985), a threshold of 60% is "rule of thumb" to avoid bias by the most happy/unhappy respondents only. The American Journal of Pharmaceutical Education supports the 60% threshold (2008) as a benchmark for academically robust findings. For context, 40 LWPs had a DRR below 60%. 55 LWPs had an IRR below 60%.

#### **9. What are the average response rates for other industries/sectors and other Diversio projects?**

Average response rates tend to vary by organization size as well as whether data is being collected for the first time. Typically, smaller organizations (<50 people) have higher average response rates (80-90%) than large organizations (1,000+ people, 65-80%). The first time a survey is deployed, organizations tend to have a lower response rate (40-60%), as employees have concerns about anonymity and confidentiality of their information. Successive instances of surveying yield a higher response rate (70-90%) as employee trust grows and they see the process as an effective way to steer company culture and improve their experience. There is no significant difference in response rate by sector.

### **E) MISCELLANEOUS**





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**10. Can Diversio provide more detail on how geographic location of an organization impacts results (particularly Diversity score)? Explain the level of specificity for each diversity dimension.**

For most LWPs<sup>5</sup>, we used the region in which they operate (as indicated on their website) as their benchmark. If an LWP operates in more than one region, we used an average of these regions. The rationale for this decision is that the Inclusion Index is designed to incentivize each LWP to become more reflective of the market they serve.

**Gender:** Gender was categorized as either 1) men or 2) women and other genders. LWPs were compared against the gender demographic breakdown of the Census Economic Region(s) in which they operate. For context, every region had an equal or near-equal split.

**Francophone:** Francophone background was measured on a binary scale (yes/no). LWPs were compared against the linguistic demographic breakdown of the Census Economic Region(s) in which they operate. LWPs operating in Francophone-heavy regions, such as Ottawa, were held to a higher standard, reflecting the larger pool of Francophone lawyers from which to hire.

**Indigenous, Ethnicity:** Indigenous identification was measured on a binary scale (yes/no). Ethnicity was subdivided into 12 categories; respondents could indicate that they identified with one or more of these categories<sup>6</sup>. LWPs were compared against the ethnic demographic breakdown of the Census Economic Region(s) in which they operate. LWPs operating in more ethnically diverse regions, such as Toronto, were therefore expected to be more diverse to achieve a high score.

**LGBTQ2+:** LGBTQ2+ identity was measured on a binary scale (yes/no). There were two benchmarks used in this project: one for LWPs located in Toronto, and one for LWPs located outside of Toronto. The Toronto benchmark reflects the higher proportion of LGBTQ2+ individuals in the local community (estimated at 10%, compared to 5% outside of Toronto).

**Disability:** Presence of a disability was measured on a binary scale (yes/no). As no statistics on disability are available by region, we used the Statistics Canada nation-wide benchmark, finding that 20% of working-age Canadians (25-64 years old) have at least one disability. All LWPs (regardless of Economic

<sup>5</sup> LWPs with a province-wide mandate (e.g. Department of Justice) were assigned the overall Ontario demographic rates as their baselines rather than any particular Census Economic Region(s), using the rationale that these organizations should reflect the province as a whole.

<sup>6</sup> Black, Arab, Chinese, Filipino, Japanese, Korean, Latin American, South Asian, Southeast Asian, West Asian, White, Other



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Region) were compared to this baseline with the assumption that persons with a disability are relatively consistently distributed across Canada

### **11. Can LWPs identify their problems based on results?**

Yes. LWPs will be able to easily understand their opportunity areas from a Diversity, Inclusion, and Commitment perspective.

In addition, Diversio has taken further steps to provide tactical recommendations to LWPs based on their individual scores, free of charge. LWPs will also have the option to upgrade for more detailed analytics and customized recommendations, as well as access to an expert community (see attachment: Exhibit C: Diversio Dashboard)

### **12. Clarify the transition from diversity questions to inclusion questions. Who answered these questions?**

Diversity questions are the questions answered by legal professionals in the [Self-identification](#) section of their Annual Reports. Inclusion questions were answered by legal professionals in the [Inclusion Survey](#) section of their Annual Reports. Commitment questions were answered by an LWP representative in the [Self-Assessment](#) and by legal professionals in the Inclusion Survey section of their Annual Reports

### **13. Is a heat map still a way to present the data publicly in an anonymized way?**

We would propose an anonymized ranking as a way to publish results while maintaining LWP confidentiality.

### **14. Can Diversio speak to the notion that someone with more experience in EDI completed commitment questions and therefore could skew results?**

We believe it is a fair assumption that LWPs would nominate their most experienced EDI representative to answer these questions. In the alternative, we believe that a responsible respondent would seek guidance from an experienced EDI colleague. Diversio also assumed that respondents answered honestly and did not embellish their programs and policies.

More importantly, the Commitment Score also factors in employee responses about the presence of programming at their LWP, as indicated in the Inclusion Questions. Firms that failed to submit a Self-



Current Books Equity and Indigenous Affairs Committee May 3, 2022 PRESENT FOLLOW


Diversio Inc.  
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Assessment were not therefore automatically penalized; rather, their Commitment Score reflects employees' reported experience of programming in their LWP.

To mitigate any risks associated with the Self-Assessment Diversio will include a section on the LWP Dashboard that will allow respondents to update their commitment data.

## OTHER INDUSTRIES

### 15. What protocol have other industries used for releasing data? Who has implemented/endorsed Certification and how?

The [Human Resources Professional Association](#), Ontario's HR industry association, chose to endorse Diversio Certification, provide access to Diversio services through its website, and deploy an industry survey to create a baseline report of diversity & inclusion within the HR profession.

The [City of Toronto](#) has publicly endorsed Diversio Certification, committed to getting itself Certified, plans to use the program widely throughout its processes.

The [Business Development Bank of Canada](#) has rolled out Diversio's technology to assess diversity & inclusion across its portfolio investments, rank companies based on performance, and provide supplementary assistance/recommendations to those companies at risk of developing a toxic culture.

[Fintech Alliance](#), a U.K. government-backed platform for the Fintech industry, has formally endorsed Diversio Certification and provides access to Diversio's services through its website.

The [Institutional Limited Partner Association](#), the global industry body for Asset Managers, chose to [endorse](#) Diversio as a tool for measuring progress from a Diversity & Inclusion perspective.


[Women in Capital Markets](#), Canada's leading industry association dedicated to diversity in finance, chose to roll out Diversio's Inclusion Assessment to the six major Canadian banks (Big Five and HSBC) and 5 of its largest pension affiliates. They created an anonymous industry-wide report and delivered company-specific results privately to banks/pensions.

The [Canadian Venture Capital Association](#) and [Diversity VC](#) chose to [endorse](#) Diversio Certification and roll-out a voluntary Inclusion Project with its members. Members are encouraged to deploy Diversio's Inclusion Assessment and privately receive their results, with the option to publicize their involvement. They plan to promote early adopters who publish their results.

12

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[OneEleven](#), Toronto's leading technology accelerator, chose to roll out an Inclusion Assessment to all 50 of its member companies. OneEleven published a baseline report and companies had the option to privately access their Diversio dashboard with their results.

**16. Attach materials from the Human Resources Professions Association (HRPA)'s endorsement of Diversio's Certification**

See Exhibit D: HRPA Diversio Certification or visit their [website](#).

CONFIDENTIAL

Back To Page 123 Agenda 116 / 161 Activate Windows Go to Settings to activate Windows


# EXHIBIT 18

LSO Press Release (June 23, 2022)

This is Exhibit "18" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th day of  
March, A.D., 2023.



---

Commissioner for Taking Affidavits

Jorge Pineda  
#65305B



## News Releases

# Committee proposes updates to Inclusion Index approach

June 23, 2022

**TORONTO, ON** — The Law Society's Equity and Indigenous Affairs Committee (EIAC) is bringing forward a report to the June 28 meeting of Convocation that reaffirms its commitment to strengthening equity, diversity and inclusion (EDI) in Ontario's legal workplaces. The report proposes the continued development of a protocol for collection and publication of data pertaining to EDI in legal workplaces. **It also recommends that the 2019 Inclusion Index, which was delayed by the onset of the pandemic, not be publicly released.**

The Committee's recommendation follows a peer review of the 2019 Inclusion Index undertaken by a panel of three independent experts. The panel was asked to help determine the appropriate use and application of the data and the Inclusion Index, which had been developed by an external consultant using data gathered from the 2018 Annual Report filings submitted by Ontario lawyers and paralegals.

The panel strongly supports the concept of data collection and publication to show progress towards equity, diversity and inclusion in the legal professions, however, it found that in its current form, and **given the passage of time, the release of the 2019 Inclusion Index is not an effective means to achieve the Law Society's equity goals.**

In addition to reiterating its commitment to the overarching goals of the Law Society's 2016 Challenges Report — Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Profession, the Committee notes that when the recommendations of the Challenges Report were adopted by Convocation, the Law Society was a pioneer in addressing equity, diversity and inclusion in the legal professions.



If the report now before Convocation is adopted, Law Society stakeholders will be engaged in dialogue over the coming months in the continued development of a protocol for data collection, and the publication of data pertaining to equity, diversity and inclusion in legal workplaces in future. MR654

*The Law Society regulates lawyers and paralegals in Ontario in the public interest. The Law Society has a mandate 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.*

-30-

**Media contact:** Jennifer Wing, Senior Communications Advisor, External Relations and Communications, [jwing@lso.ca](mailto:jwing@lso.ca). Follow us on [LinkedIn](#), [Instagram](#), [Twitter](#) and [Facebook](#).

# EXHIBIT 19

**M. Klippenstein's Correspondence (November 22, 2021)**

**This is Exhibit "19" referred to in the Affidavit of**

**MURRAY KLIPPENSTEIN**

**Sworn before me this 16th  
day of March A.D., 2023.**

  
\_\_\_\_\_  
**Commissioner for Taking Affidavits**

*Jorge Pineda*  
*#65305B*

**KLIPPENSTEINS**

BARRISTERS &amp; SOLICITORS

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

**Serious concerns about new (secret) expert hires at LSO EIA Committee**

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

Mon, Nov 22, 2021 at 2:31 PM

To: Teresa Donnelly <tDonnelly@lso.ca>, Bob Adourian <Robert.Adourian@devrylaw.ca>, Ryan Alford <ralford@lakeheadu.ca>, "Jack Braithwaite (jbraithwaite@weaversimmons.com)" <jbraithwaite@weaversimmons.com>, Jared Brown <jbrown@brownlaw.ca>, "Robert Burd (robertburd@hotmail.com)" <robertburd@hotmail.com>, "Charette, Gerard P." <charette@millercanfield.com>, Joseph Chiumminto <joseph@chiumminto.com>, "Dianne Corbiere (dgcorbiere@nncfirm.ca)" <dgcorbiere@nncfirm.ca>, "Cathy Corsetti (cathy@corsetti.ca)" <cathy@corsetti.ca>, "Jean-Jacques Desgranges (DesgrangesLaw@ncf.ca)" <DesgrangesLaw@ncf.ca>, "Etienne Esquega (Etienne Esquega <ee@esquegalaw.com>)" <Etienne Esquega" <ee@esquegalaw.com>, John Fagan <johnffagan@gmail.com>, Julian Falconer <julianf@falconers.ca>, Sam Goldstein <sam@samgoldstein.ca>, Gary Graham <gary.graham@grahamstephensonllp.com>, Joseph Groia <jgroia@groia.com>, Philip Horgan <phorgan@carltonlaw.ca>, "Jacqueline Horvat (jacqueline@spark.law)" <jacqueline@spark.law>, Murray Klippenstein <Murray.Klippenstein@klippensteins.ca>, "Shelina Lalji (shelina@slpc.legal)" <shelina@slpc.legal>, Cheryl Lean <cherylleanlaw@gmail.com>, Michael <michael@michaelsfirm.ca>, "Lewis, Atrisha S" <alewis@mccarthy.ca>, "Marian Lippa (lippalegal@gmail.com)" <lippalegal@gmail.com>, "Michelle Lomazzo (michelle@lomazzoappeals.com)" <michelle@lomazzoappeals.com>, Cecil Lyon <cecil@lyonfamilylaw.ca>, scottmlaw2002@yahoo.com, Scott Marshall <marshall@tnt21.com>, "Isfahan Merali (isfahanmerali@gmail.com)" <isfahanmerali@gmail.com>, Barbara Murchie <barbara@murchielaw.ca>, Trevor Parry <trevor@trevorparry.com>, "Jorge E. P." <j.pineda84@gmail.com>, Lubomir Poliacik <lubomir.poliacik@ceplaw.ca>, Geoff Pollock <Geoff@geoffpollock.com>, Brian Prill <bprill@blplaw.ca>, Jonathan Rosenthal <jrosenthal@bondlaw.net>, gmross@rossfirm.com, Chi-Kun Shi <cks@chikunshi.ca>, "Julia Shin Doi (julia.shindoi@ryerson.ca)" <julia.shindoi@ryerson.ca>, "Megan Shortreed (Megan.Shortreed@paliaroland.com)" <megan.shortreed@paliaroland.com>, "Andrew Spurgeon (aspurgeon@rossmcbride.com)" <aspurgeon@rossmcbride.com>, "Sidney H. Troister, LSM" <stroister@torkinmanes.com>, "Tanya Walker (tanya@tcwalkerlawyers.com)" <tanya@tcwalkerlawyers.com>, Alexander Wilkes <alexander@wilkeslaw.ca>, "Claire Wilkinson (Claire.Wilkinson@mhalaw.ca)" <Claire.Wilkinson@mhalaw.ca>, bencher <bencher@wrightbusinesslaw.ca>, Nick Wright <nick@wrightbusinesslaw.ca>, cathy@maawandoon.ca, "Epstein, Seymour" <seymour@epsteinenterprises.com>, "Benson Lau (drpslau@yahoo.ca)" <drpslau@yahoo.ca>, Nancy Lockhart <lockhart@nancylockhart.ca>, Genevieve Painchaud <genevievepainchaud@hotmail.com>, Clare Sellers <clare\_sellers@outlook.com>, Gerald Sheff <gsheff@irager.com>, "Doug Wellman (dougwellman@gmail.com)" <dougwellman@gmail.com>, "Robert Armstrong (rarmstrong@arbitrationplace.com)" <rarmstrong@arbitrationplace.com>, "Thomas G. Conway (tconway@conway.pro)" <tconway@conway.pro>, "Ferrier, Lee K." <lferrier@amicuschambers.com>, georgehunter1@icloud.com, Malcolm Mercer <mmercer@lso.ca>, malcolm@malcolmmccarthy.ca, Vern Krishna <vkrisna@uottawa.ca>, Derry Millar <dmillar@weirfoulds.com>, lpawlitza@torinmanes.com, "Rock, Allan" <allan.rock@uottawa.ca>, j.k.spence@sympatico.ca, "Harvey T. Strosberg Q.C." <harvey@strosbergco.com>, Bob Aaron <bob@aaron.ca>, Larry Banack <larry@banackresolutions.com>, chris.bentley@ryerson.ca, Michael Bryant <mbryant@ccla.org>, Paul Copeland <paulcope9@yahoo.com>, pglawyer@gmail.com, glggc@interlog.com, jground@amicuschambers.com, rmanes@torkinmanes.com, Ross Murray <ross.murray.qc@gmail.com>, alanwpope@hotmail.com, julian.porter@julianporterqc.com, Judith Potter <jpotter@start.ca>, ruby@rubyskiller.com, normwsterling@gmail.com, gswaye@swaye.ca, jwardlaw@rogers.com, Bradley Wright <bradley@wrightlawfirm.ca>, dyoung@bensonpercival.com, Diana Miles <dmiles@lso.ca>, Mirka Adamsky-Rackova <madamsky@lso.ca>, Jim Varro <jvarro@lso.ca>, Cara-Marie O'Hagan <cohagan@lso.ca>, Reshma Budhwani <rbudhwan@lso.ca>, Ada Maxwell-Alleyne <amaxwell@lso.ca>

Chair and Members of EIA Committee (with copy to all Benchers, and some senior staff),

I am writing as a member of EIAC to express my most serious concerns about being advised, for the first time, in the briefing memo received on Nov. 19 in preparation for the upcoming EIA Committee meeting on Thursday, that "someone" (I don't know who) has, without any prior notice to or involvement of the Committee, already selected and retained three unnamed "experts" to perform major (and no doubt expensive) work on a fundamental issue pertaining to this Committee's and Convocation's work.

None of the important (and controversial) work, or the expenditures, that this involves has, as far as I can tell, been discussed with, or been authorized by, the Committee or Convocation.

The gist of things seems to be that the Law Society a few years ago spent close to half a million dollars on some seriously unprofessional and extremely misleading consultants reports, which were then used and are still being used

on important policy matters, and now a small group of Law Society staff and Benchers have, in secret, decided to spend probably hundreds of thousands of dollars more to try to cover up and clean up the previous (and continuing) mess, without letting on that that is what they are doing. All without any authorization from the Committee or Convocation.

I regret feeling that I have to send this to all Benchers, but as Benchers, we are also each a director of the Law Society corporation, with individual fiduciary duties, and I believe that the issues herein raise serious issues of financial management, good governance, and quite simply, honesty and integrity at the Law Society, of which I believe each of us needs to be aware in order to carry out our due diligence.

For the reasons and in the context summarized below, I am therefore formally requesting that I promptly be provided (by the appropriate staff member) with:

1. The names of the three experts who have been retained;
- 2.. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of this process);
3. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of this process);
4. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them; and
- 5 The amounts already paid to those experts, and the amounts agreed to be paid to them in the future.

Please note that this is a formal request as a director of the Law Society corporation for information to which I believe I am legally entitled under s. 302 (a), (b) and (d) and s. 304(1) of the Ontario *Corporations Act*, and under the common law rights of a corporate director (see also *Tyler v. Envacon Inc.*, 2012 ABQB 631). Further, given the circumstances, I believe that I need the above information to properly carry out my due diligence role as a director of the Law Society corporation.

For context, the memo dated November 17, 2021 (and posted to members of the Committee on November 19) states regarding the retaining of the three experts:

Given [the above] context, a peer review of the Challenges Report has been undertaken. A decision on how to move forward with the Inclusion Index data will be made once the review is completed. The review will explore whether the implementation of the Challenges Report provides effective requirements, incentives and information that assist in reducing barriers faced by racialized and Indigenous licensees. ... The review will also provide recommendations for further enhancement of EDI within the legal community. (p. 3)

...

The peer review is being conducted by a panel of experts and will be completed in April 2022. The three experts who have been retained possess significant knowledge in survey methodology, research, and equity, diversity and inclusion. Care was taken to compile a list of experts who can provide neutral and objective commentary. A summary of the review will be presented to the Committee and Convocation in May or June 2022. (p. 3)

What is omitted from this memo is any mention of the reality that the Challenges/Stratcom report (and the Inclusion Index which was recommended as an eventual offshoot) were both simply appallingly bad, in terms of the quality of the surveying and statistical methodology, interpretation, and presentation. One would get no hint of that reality in reading this memo. What seems to be going on here is that "someone" has secretly hired several experts basically to try to re-do the work that was originally completely bungled (at great expense to the Law Society). It seems like a small secret cabal of Benchers and staff, presumably with the knowledge and approval of the CEO, is unilaterally spending large amounts of our members' licensing dues to try to repair a massive and expensive previous mistake - without hinting that there is any problem.

A central and key part of the Challenges report by Stratcom was what they called a "survey" involving all (approximately 52,000, at that time) of the members of the lawyer and paralegal professions in Ontario. However, the survey had no element of random sampling (which is critical), the response rate was extremely low (about 6% overall, and about 10% from the key visible minority segment of the target population), there was no recognition or discussion whatsoever of the enormous potential for non-response bias and self-selection bias, and the survey questions were incompetently worded. Nor were many of the critical data points actually presented in the report, thus breaching fundamental principles of disclosure that are basic to survey professionalism - perhaps because clearly presenting that data would have exposed the incompetence of the "survey" and would have made clear some "real" results that did not fit the preexisting political purpose of the project.

Yet the Stratcom consultants stated that the survey had resulted in a sample "that produces representative, unbiased estimates of the views and opinions of Law Society licensees." It beggars the imagination as to how Stratcom could make that pronouncement. As I have repeatedly stated in meetings, the consultant was either seriously unprofessional, or seriously dishonest, or both.

Furthermore, the Challenges/Stratcom report was partly based on interviews with 27 so-called "experts", whose identity, and whose basis for the asserted expertise, was never provided. Nor were their actual views described, other than in a short summary by an unknown LSO staff member. The result was that a reader had no way at all of assessing whether this so-called "expert" evidence actually meant anything at all.

Finally, the Challenges/Stratcom report itself was never actually provided to or presented to Benchers or Convocation for their review (as is the almost universal practice for important documents at the LSO), which made it very difficult for the Benchers at the time to carry out any sort of proper due diligence check.

And yet the subsequent use made of this appallingly poor-quality report was immense. It served as the foundation for a massive suite of policy initiatives implementing sweeping changes within the Law Society and throughout the legal professions in Ontario. Its results were trumpeted in the media, and have been cited in at least one court decision. At least one of its (false) statistical "findings" found its way into the EDI CPD videos which all licensees are required to watch, so the misrepresentations of the Stratcom report have been disseminated far and wide, seemingly backed up by the authority of the Law Society.

One example of the extreme distortion resulting from the grossly unprofessional Challenges/Stratcom report is that no one has mentioned a critically important fact revealed by the survey: that when every single member of the legal professions in Ontario was directly and repeatedly invited to anonymously fill out a major survey on the topic of discrimination in the professions, about 90% of visible minority licensees simply decided to not bother at all. Furthermore, and importantly, of the extremely small percentage that did answer, in response to one oft-cited question (Question 17) regarding whether they had experienced their race as a barrier, the majority of visible minority respondents answered "no" (or some other answer, but not "yes"). That is, given the opportunity, only about 4% of visible minority members of the legal professions as a whole answered "yes" – not the 40% that is frequently repeated and broadcast.

Similarly, the Inclusion Index plan that was adopted based on the Challenges/Stratcom report suffered from severe (and fatal) survey methodological errors (including a critical error that was expressly warned against by the very expert who was cited in support of the Inclusion Index).

These various fundamental and egregious errors have been repeatedly pointed out by me, including in a *Critical Review* distributed by me on January 8, 2020, and in detailed emails to all Benchers (see my emails to all Benchers dated Sept. 15, 2020 and Sept. 29, 2020). One would have thought that if my critiques were misplaced, someone - the experts whom I criticized, or LSO staff - would have pointed out my mistakes and defended the Report and the Index. That has not happened. Not a single point of my critiques has ever been rebutted or even addressed. They have been met with a "wall of silence" from the majority of Benchers and from all staff, probably because the Challenges/Stratcom report, and the planned Inclusion Index, are so bad that they are simply indefensible (almost the only response received was a "reply-all" from Bencher Falconer, who tersely stated only that my critiques were "meritless", without any elaboration. Presumably these three new "secret" experts are now needed because it has dawned on some that my critiques were not, indeed, "meritless").

I suppose one might ask whether someone concerned about the Stratcom report and the Inclusion Index, or a critic of them such as myself, should not draw some comfort from the fact that they are now going to be reviewed by "a panel of experts". I wish that that were the case, but it is not. The current process of selecting these experts, and of instructing them, has been conducted so far in complete secrecy (for almost a year (?) - without most of us even being aware that any of this was going on), and based on the memo, that secrecy appears to be the plan for the rest of their work, for the next six or so months - all seemingly under the guidance of some individuals who already have been heavily involved from the start in what I call "the ideologically-driven train-wreck" in which we now find ourselves.

Finally, I would quote from the Law Society's "Business Conduct Policy", which states: "The Law Society's reputation for integrity is one of its most valued assets and essential to the fulfillment of its mission of governing the profession and protecting the public interest. It is imperative that honesty and fair dealing characterize all of the Law Society's activities both with the public and the profession."

It is time for the Law Society to be frank and transparent about what has happened, both financially and substantively, with the Challenges/Stratcom report and the Inclusion Index.

I look forward to the prompt delivery of the requested information.

1/19/22, 2:25 PM

Klippensteins, Barristers & Solicitors Mail - Serious concerns about new (secret) expert hires at LSO EIA Committee

MR639

Sincerely,

Murray Klippenstein

Toronto Regional Benchers



**MK draft email to EIAC and Benchers re three experts - 10VW1.docx**

25K

MK639


## EXHIBIT 20

**M. Klippenstein's Correspondence (November 29, 2021)**

This is Exhibit "20" referred to in the Affidavit of

**MURRAY KLIPPENSTEIN**

Sworn before me this 16th  
day of March A.D., 2023.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Jorge Pineda  
# 65305B

**KLIPPENSTEINS**

BARRISTERS &amp; SOLICITORS

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

**Benchers/Director request for information**

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

Mon, Nov 29, 2021 at 3:20 PM

To: Teresa Donnelly &lt;tdonnelly@lso.ca&gt;, "Dianne Corbiere (mail@nncfirm.ca)" &lt;mail@nncfirm.ca&gt;, Joseph Groia &lt;jgroia@groia.com&gt;, Diana Miles &lt;DMiles@lso.ca&gt;, Cara-Marie O'Hagan &lt;cohagan@lso.ca&gt;

Bcc: Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

Dear Treasurer, Benchers Corbiere and Groia, and Ms. Miles and Ms. O'Hara,

I am writing to follow up on and repeat my request for certain LSO documents, as set out in my email of Nov. 22, and to additionally request two more items, on the same basis as my Nov. 22 requests.

For convenience, I have copied the relevant parts of my earlier email:

For the reasons and in the context summarized below, I am therefore formally requesting that I promptly be provided (by the appropriate staff member) with:

1. The names of the three experts who have been retained;
2. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of this process);
3. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of this process);
4. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them; and
5. The amounts already paid to those experts, and the amounts agreed to be paid to them in the future.

Please note that this is a formal request as a director of the Law Society corporation for information to which I believe I am legally entitled under s. 302 (a), (b) and (d) and s. 304(1) of the Ontario *Corporations Act*, and under the common law rights of a corporate director (see also *Tyler v. Envacon Inc.*, 2012 ABQB 631). Further, given the circumstances, I believe that I need the above information to properly carry out my due diligence role as a director of the Law Society corporation.

Please also note that I am adding the following two items to my above requests, based on the same context summarized and partly set out in my earlier email (I also made a request for the first item below in the Nov. 25 Committee meeting):

6. A copy of the full Stratcom survey data set (that is, all the raw data from the survey of lawyers and paralegals) on which the *Challenges* report by Stratcom is based. According to the Stratcom report (p. 33, note 8), this was provided to the Law Society with the report. In addition, I would request a copy of any spreadsheets or models using that data, which were received by the Law Society; and
7. A copy of the draft Inclusion Index report provided to the Law Society by Diversio in the fall of 2019, as mentioned in the EIA Committee memo of November 25 ("Update on the Implementation of the Challenges Report") on p. 2

I look forward to receiving this information as soon as possible.

Sincerely,

Murray Klippenstein

MK641



1/19/22, 2:24 PM

Klippensteins, Barristers & Solicitors Mail - Benchers/Director request for information

MR662

Toronto Regional Benchers

MK642


# EXHIBIT 21

M. Klippenstein's Correspondence (December 17, 2021)

This is Exhibit "21" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Jorge Pineda  
#06305B

**KLIPPENSTEINS**

BARRISTERS &amp; SOLICITORS

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

## Bencher Klippenstein director's information request -- possible legal proceedings against the Law Society

Murray Klippenstein &lt;murray.klippenstein@klippensteins.ca&gt;

Fri, Dec 17, 2021 at 10:31 AM

To: Teresa Donnelly <tDonnelly@lso.ca>, Bob Adourian <Robert.Adourian@devrylaw.ca>, Ryan Alford <ralford@lakeheadu.ca>, "Jack Braithwaite (jbraithwaite@weaversimmons.com)" <jbraithwaite@weaversimmons.com>, Jared Brown <jbrown@brownlaw.ca>, "Robert Burd (robertburd@hotmail.com)" <robertburd@hotmail.com>, "Charette, Gerard P." <charette@millercafield.com>, Joseph Chiumminto <joseph@chiumminto.com>, "Dianne Corbiere (dgcobiere@nncfirm.ca)" <dgcobiere@nncfirm.ca>, "Cathy Corsetti (cathy@corsetti.ca)" <cathy@corsetti.ca>, "Jean-Jacques Desgranges (DesgrangesLaw@ncf.ca)" <DesgrangesLaw@ncf.ca>, "Etienne Esquega (Etienne Esquega <ee@esquegalaw.com>)" <Etienne Esquega" <ee@esquegalaw.com>, John Fagan <johnffagan@gmail.com>, Julian Falconer <julianf@falconers.ca>, Sam Goldstein <sam@samgoldstein.ca>, Gary Graham <gary.graham@grahamstephensonllp.com>, Joseph Groia <jgroia@groiacom.com>, Philip Horgan <phorgan@carltonlaw.ca>, "Jacqueline Horvat (jacqueline@spark.law)" <jacqueline@spark.law>, Murray Klippenstein <Murray.Klippenstein@klippensteins.ca>, "Shelina Lalji (shelina@slpc.legal)" <shelina@slpc.legal>, Cheryl Lean <cherylleanlaw@gmail.com>, Michael <michael@michaelsfirm.ca>, "Lewis, Atrisha S" <alewis@mccarthy.ca>, "Marian Lippa (lippalegal@gmail.com)" <lippalegal@gmail.com>, "Michelle Lomazzo (michelle@lomazzoappeals.com)" <michelle@lomazzoappeals.com>, Cecil Lyon <cecil@lyonfamilylaw.ca>, Scott Marshall <scottmlaw2002@yahoo.com>, Scott Marshall <marshall@int21.com>, "Isfahan Merali (isfahanmerali@gmail.com)" <isfahanmerali@gmail.com>, Barbara Murchie <barbara@murchielaw.ca>, Trevor Parry <trevor@trevorparry.com>, "Jorge E. P." <j.pineda84@gmail.com>, Lubomir Poliacik <lubomir.poliacik@ceplaw.ca>, Geoff Pollock <Geoff@geoffpollock.com>, Brian Prill <bprill@blplaw.ca>, Jonathan Rosenthal <jrosenthal@bondlaw.net>, gmross@rossfirm.com, Chi-Kun Shi <cks@chikunshi.ca>, "Julia Shin Doi (julia.shindoi@ryerson.ca)" <julia.shindoi@ryerson.ca>, "Megan Shortreed (Megan.Shortreed@paliaroland.com)" <megan.shortreed@paliaroland.com>, "Andrew Spurgeon (aspurgeon@rossmcbride.com)" <aspurgeon@rossmcbride.com>, "Sidney H. Troister, LSM" <stroister@torkinmanes.com>, "Tanya Walker (tanya@tcwalkerlawyers.com)" <tanya@tcwalkerlawyers.com>, Alexander Wilkes <alexander@wilkeslaw.ca>, "Claire Wilkinson (Claire.Wilkinson@mhalaw.ca)" <Claire.Wilkinson@mhalaw.ca>, bencher <bencher@wrightbusinesslaw.ca>, Nick Wright <nick@wrightbusinesslaw.ca>, cathy@maawandoon.ca, "Epstein, Seymour" <seymour@epsteinenterprises.com>, "Benson Lau (drpslau@yahoo.ca)" <drpslau@yahoo.ca>, Nancy Lockhart <lockhart@nancylockhart.ca>, Genevieve Painchaud <genevievepainchaud@hotmail.com>, Clare Sellers <clare\_sellers@outlook.com>, Gerald Sheff <gsheff@irager.com>, "Doug Wellman (dougwellman@gmail.com)" <dougwellman@gmail.com>, "Robert Armstrong (rarmstrong@arbitrationplace.com)" <rarmstrong@arbitrationplace.com>, "Thomas G. Conway (tconway@conway.pro)" <tconway@conway.pro>, "Ferrier, Lee K." <lferrier@amicuschambers.com>, georgehunter1@icloud.com, malcolm@malcolmmccarthy.ca, Vern Krishna <vkrishna@uottawa.ca>, Derry Millar <dmillar@weirfoulds.com>, "Pawlitza, Laurie" <lpawlitza@torkinmanes.com>, "Rock, Allan" <allan.rock@uottawa.ca>, j.k.spence@sympatico.ca, "Harvey T. Strosberg Q.C." <harvey@strosbergco.com>, Bob Aaron <bob@aaron.ca>, Larry Banack <larry@banackresolutions.com>, chris.bentley@ryerson.ca, Michael Bryant <mbryant@ccla.org>, Paul Copeland <paulcope9@yahoo.com>, pglawyer@gmail.com, glggc@interlog.com, jground@amicuschambers.com, rmanes@torkinmanes.com, Ross Murray <ross.murray.qc@gmail.com>, alanwpope@hotmail.com, julian.porter@julianporterqc.com, Judith Potter <jpotter@start.ca>, ruby@rubyskiller.com, normwsterling@gmail.com, gswaye@swaye.ca, jwardlaw@rogers.com, Bradley Wright <bradley@wrightlawfirm.ca>, dyoung@bensonpercival.com, Diana Miles <dmiles@lso.ca>

Colleagues,

I have previously and repeatedly expressed my concerns about the Stratcom/Challenges report and the Inclusion Index report which underlie a great many far-reaching EDI programmes at the LSO and I will not repeat those concerns here. The recent secretive hiring by staff (outside of normal LSO governance procedures) of three experts to review those reports, a process to be managed by the CEO and staff who, I regret to say, themselves have an interest in defending, or minimizing the problems with, that past work, does not ameliorate my concerns. In fact, it seems to me to be shaping up as a cover-up and whitewash of serious pre-existing problems.

I have therefore requested from the CEO details of the hiring and instructing process of those experts, as well as a copy of the original Stratcom survey dataset, and of the draft Inclusion Index report prepared by the Diversio consultants which was delivered to staff in the fall of 2019 (and of which we were not informed).

I have received no response to my information request.

This is to advise you as my fellow Benchers and directors of the Law Society corporation that if I do not receive the above information reasonably promptly I believe that I will have no choice, based on my rights and duties, to

director, but to commence legal proceedings against the Law Society for a court order that that information and those documents be provided to me.

I may also request a Special Convocation to have Convocation direct the provision of that information to me, although as I understand it I have an individual legal right to that information independently of any decision by Convocation.

I recognize that the holiday season is upon us, and I regret imposing on you at this time, but I am sending this now so that you will have some time for reflection, if you choose, and I will review the status of this request in early January.

I am sending this to all active and semi-active Benchers (I do not want to impose on clearly non-active Benchers), and to CEO Miles.

Sincerely,

Murray Klippenstein

Toronto Regional Bencher

#### APPENDIX

For your background information, I am reproducing below the text of my earlier formal information request emailed on Nov. 29. I have received no response addressing this request.

Dear Treasurer, Benchers Corbiere and Groia, and Ms. Miles and Ms. O'Hara,

I am writing to follow up on and repeat my request for certain LSO documents, as set out in my email of Nov. 22, and to additionally request two more items, on the same basis as my Nov. 22 requests.

For convenience, I have copied the relevant parts of my earlier email:

For the reasons and in the context summarized below, I am therefore formally requesting that I promptly be provided (by the appropriate staff member) with:

1. The names of the three experts who have been retained;
2. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of this process);
3. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of this process);
4. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them; and
5. The amounts already paid to those experts, and the amounts agreed to be paid to them in the future.

Please note that this is a formal request as a director of the Law Society corporation for information to which I believe I am legally entitled under s. 302 (a), (b) and (d) and s. 304(1) of the *Ontario Corporations Act*, and under the common law rights of a corporate director (see also *Tyler v. Envacon Inc.*, 2012 ABQB 631). Further, given the circumstances, I believe that I need the above information to properly carry out my due diligence role as a director of the Law Society corporation.

Please also note that I am adding the following two items to my above requests, based on the same context summarized and partly set out in my earlier email (I also made a request for the first item below in the Nov. 25 Committee meeting):

6. A copy of the full Stratcom survey data set (that is, all the raw data from the survey of lawyers and paralegals) on which the *Challenges* report by Stratcom is based. According to the Stratcom report (p. 33, note 8), this was provided to the Law Society with the report. In addition, I would request a copy of any spreadsheets or models using that data, which were received by the Law Society; and

MK645

7. A copy of the draft Inclusion Index report provided to the Law Society by Diversio in the fall of 2019, as mentioned in the EIAC Committee memo of November 25 ("Update on the Implementation of the Challenges Report") on p. 2

I look forward to receiving this information as soon as possible.

Sincerely,

Murray Klippenstein

Toronto Regional Bencher


## EXHIBIT 22

Correspondence from Plaintiff's Counsel to the LSO  
(April 26, 2022)

This is Exhibit "22" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.



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Commissioner for Taking Affidavits  
Jorge Pinoda  
# 6530513

Our File: 7009.001

Your File:

April 26, 2022

**VIA E-MAIL: treasurer@lso.ca**

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

**Attention: Teresa Donnelly, Treasurer**

Dear Madam:

**RE: Re: Director/Bencher Klippenstein's Request for Information**

We have been retained by Bencher Murray Klippenstein in connection with his repeated requests as a Bencher of the Law Society of Ontario ("LSO") for information, which have gone unanswered.

As you know, Mr. Klippenstein was elected a bencher in April of 2019. Pursuant to s 10 of the *Law Society Act*, RSO 1990, c L.8, the benchers are mandated to "govern the affairs of the Society." It is perhaps axiomatic, but nonetheless worth stating, that benchers are therefore the directors of the LSO. Section 283 of the *Corporations Act*, RSO 1990, c C.38 ("**Corporations Act**"), provides that the "affairs of every corporation shall be managed by a board of directors howsoever designated." In the case of the LSO, benchers are the designated directors of the corporation. Tribunals and courts across Canada have recognized this self-evident equivalency of benchers and directors.<sup>1</sup>

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<sup>1</sup> *Halsbury's Laws of Canada – Legal Profession* (2021 Reissue), R. Anand and J. Adamski explain that law societies "act through their directors generally known as benchers, who are given the statutory power to govern and administer the affairs of their law societies." See *Law Society of Upper Canada v Polisuk*, 2017 ONLSTH 171 at para 35ff, in which the Law Society Tribunal of Ontario recognized the equivalency of benchers and directors. See *Gichuru v The Law Society of British Columbia*, 2009 BCHRT 360 at para 18, in which the BC Human Rights Tribunal found that "the Board of Directors of the Law Society are called the Benchers." See also *Law Society of Saskatchewan v Peet*, [2004] LSDD No 54 at para 13, in which the LSS Discipline Committee rehearsed the platitude that the Law Society of Saskatchewan's "Board of Directors, called Benchers, consists of 17 persons." Similar language is found in other reasons of the LSS Discipline Committee, including *Law Society of Saskatchewan v Armitage*, [2009] LSDD No 147 at para 1.

As a Bencher and therefore director of the LSO, Mr. Klippenstein has both statutory and common law rights to information, to enable him to properly discharge his duties and responsibilities *qua* director. Under ss 302 and 304 of the *Corporations Act*, the LSO is required to keep proper books of account and make them available for inspection by any director during normal business hours. At common law, directors have robust and sweeping entitlement to information, as set out in the jurisprudence dating back to *Burn v London and South Wales Coal Co*, [1890] 7 TLR 118 (Eng).<sup>2</sup> A director has an unconditional right to access all records and information held by the corporation for the purpose of performing his duties, and need not provide explanation or reason for the request for inspection.<sup>3</sup> Importantly, there is a presumption that a director will “use his knowledge for the benefit of the company” in the absence of “clear proof to the contrary.”<sup>4</sup>

Regardless of any legal presumption, there can be no doubt that Mr. Klippenstein’s purpose in requesting information is to fulfill his obligations as director, for the benefit the LSO. In order to satisfy himself as to the propriety of certain decisions, policies, and expenditures, Mr. Klippenstein requires additional information and records that are being withheld from him. Accordingly, we demand that the following records be provided to Mr. Klippenstein for his use as director/bencher of the LSO. In some cases, brief explanatory notes are provided as to the significance of the record being sought, though as noted, no explanation is strictly necessary.

#### **Stratcom Report: dataset and background**

1. A copy of the full Stratcom Communication Inc. (“**Stratcom**”) survey dataset (that is, all the raw data from the survey of lawyers and paralegals), which was used to generate the report entitled *Challenges Facing Racialized Licensees: Final Report*, dated March 11, 2014, and submitted to the LSO in March of 2014 by David Kraft, John Willis, and Michael Charles on behalf of Stratcom (“**Stratcom Report**”). According to the Stratcom Report (p 33, note 8), the full survey dataset was provided to the LSO in conjunction with the report. Additionally requested is a copy of any spreadsheets or models using that data, which were received by the LSO. Mr. Klippenstein requested these materials by email dated November 29, 2021, with a follow-up request by email dated December 17, 2021. The LSO offered no response. Mr. Klippenstein requires this dataset in order to properly analyze the merits of the Stratcom Report, and to assess conclusions drawn within it or based upon it. This dataset is particularly necessary given that Stratcom performed a non-random sample survey, received a low response rate, and extrapolated the results of the non-random survey to the entire population of licensees in Ontario.

<sup>2</sup> See also *Edman v Ross*, [1922] 22 SR (NSW) 351 [New South Wales]; *Conway v Petronius Clothing*, [1978] 1 WLR 72 [England]; *Tyler v Envacon*, 2012 ABQB 631; *Leggat v Jennings*, 2013 ONSC 903, *Dilato Holdings v Learning Possibilities*, [2015] EWHC 592 (Ch) [England]; *Global Gaming Ventures*, [2017] EWHC 2381 (Ch) [England Court of Appeal].

<sup>3</sup> *Canadian Business Corporations Law*, 3<sup>rd</sup> ed (McGuiness), “Inspection of Corporate Records.”

<sup>4</sup> *Oxford Legal Group v Sibbasbridge Services*, [2008] EWCA Civ 387 [England Court of Appeal], at paras 27 and 30, *inter alia*, citing *Burn* and *Conway*, *supra*.



2. A copy of the Challenges Faced by Racialized Licensees Working Group's ("**Working Group**") "Request for Proposal" of December, 2012 regarding the consultant work eventually carried out by Stratcom.
3. A copy of the proposal submitted by Stratcom in response to the "Request for Proposal" of December, 2012.
4. A copy of the written agreement entered into between the LSO and Stratcom, circa March 15, 2013.

#### **Stratcom and the Working Group**

5. A copy of the memo provided to the Working Group Chair by Bencher Falconer prior to the May 8, 2013 Working Group meeting and considered at the meeting. This memo apparently expressed discontent with Stratcom's methodology.
6. Materials for the May 8, 2013 Working Group meeting. The materials for this contentious meeting are not posted as is normal in the bencher archives.
7. Copies of all financial records showing payments made by the LSO to Stratcom (related to the Stratcom Report) subsequent to the retainer agreement of March 15, 2013, and up to the present.
8. A copy of the draft Stratcom Report delivered to LSO staff in January of 2014.
9. Copies of minutes or meeting materials of Working Group meetings in the period between the meeting of June 27, 2013 and the meeting of October 15, 2014. The bencher record files contain no materials relating to any Working Group meeting over that one year and four-month period, contrary to usual practice. The Working Group must have met during this important and lengthy period, during which the Stratcom draft and final reports were received, and an important public consultation paper and consultation plan was prepared for presentation to Convocation on October 30, 2014.

#### **The Kay Report on Diversity in the legal profession – missing key data**

10. A copy of missing p 53 of the Kay Report. The Kay Report was a major earlier survey and study on diversity in the legal professions which was important background for Stratcom and the Working Group. The Kay Report's List of Tables refers to Table 4.19, on the important topic of "Partnership by Racial/Cultural Community, Controlling for Year of Call to the Bar", as being on p 53 of the Report, but p 53 is missing from copies provided to the Working Group, and from all available copies.

#### **Responses to Mr. Klippenstein's *A Critical Review of the Law Society's Challenges Report*, dated January 8, 2020**

11. Copies of any memos or staff notes or communications (including emails between staff and between staff and benchers), which address the detailed methodological and other critiques in Mr. Klippenstein's *A Critical Review of the Law Society's Challenges Report*, dated January 8, 2020, and distributed to senior staff and all benchers on January 8, 2020.

#### **Inclusion Index, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group Final Report* ("Working Together Report"), Recommendation 6**

12. A copy of the consulting agreement between the LSO and Diversio consultants for purposes of preparing the Inclusion Index, date unknown.

13. Copies of all records showing payments made by the LSO to Diversio (related to the Inclusion Index) after the retainer or consultation agreement (date unknown), and up to the present.
14. A copy of the draft Inclusion Index report by Diversio delivered to Law Society staff in the fall of 2019. Mr. Klippenstein requested a copy of this draft report by email dated December 17, 2021.

**Changes to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* related to the prohibition of “systemic discrimination” by any licensee (Working Together Report, Recommendation 12(2))**

15. Copies of any proceedings by the Professional Regulation Committee of the LSO, including briefing memoranda and staff communications to this Committee, related to amending the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct* so as to prohibit “systemic discrimination”, as set out in the Working Together Report, Recommendation 12(2).

**Enforcement and compliance measures (Working Together Report, Recommendation 8)**

16. Copies of all financial records documenting resources spent on the types of investigations described in a memo from the LSO “Senior Management Team” dated April 25, 2016, entitled “Operationalizing RWG Draft Recommendations” (“**RWG Memo**”), since the adoption of the Working Together Report. Also requested are copies of records indicating how many of the types of investigations described in the RWG Memo have been initiated since the adoption of the Working Together Report. By way of background, the RWG Memo addresses the “operational considerations” in implementing aspects of the draft Working Together Report. The RWG Memo states that “[i]nvestigations and prosecutions of failures by licensees to abide by articulated principles or failures by firms to implement human rights/diversity policies will likely be resource intensive, potentially involving interviews of and evidence from everyone in the office or firm, and perhaps others.” Further, the RWG Memo provides that “a reasonable estimate of the cost for the first few investigations and prosecutions” is \$350,000 of external investigator and prosecutorial time, plus 1,000 hours of internal investigative and prosecutorial time “per prosecution”.

**Addressing Complaints of Systemic Discrimination (Working Together Report, Recommendation 12(4))**

17. Any records describing “the specialized team that has been established,” and records providing “details related to [the] training plan,” as referred to in materials for the LSO Equity and Indigenous Affairs Committee meeting of June 8, 2017. These materials touch upon the process of how complaints of discrimination (under the heading of “systemic discrimination”) will be dealt with, and state (at p 97) that “Karen Manarin, Executive Director, Professional Regulation, will attend to discuss the specialized team that has been established and details related to a training plan for this item, in support of the implementation of Recommendation 12(4) of the Challenges Final Report.”

**Cultural Competency training in bar admission course materials (Working Together Report, Recommendation 10)**

18. A copy of the bar admission course materials pertaining to “cultural competency”, as referred to in Recommendation 10 of the Working Together Report, for the years 2017 and each year thereafter. Other benchers have also requested copies of those bar admission course materials, but have been denied such copies despite their right to information as directors. Any concern of confidentiality cannot be a ground to prevent benchers having access to this information, and could in any event be addressed if only the LSO would respond.

**Consultant panel (of three experts) retained by the Law Society in or about November, 2021 to review the Stratcom Report and the Inclusion Index and other matters.**

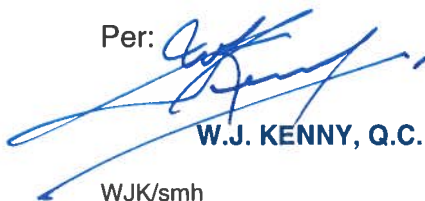
19. A copy of any Request for Proposal or equivalent that was delivered to the three experts (or to any other experts as part of the process).
20. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of the process).
21. A copy of any contracts, agreements, or retainers entered into with those three experts, and of any directions given to them.
22. Copies of all records showing amounts already paid to those experts, and the amounts agreed to be paid to them in the future. Mr. Klippenstein requested these records (items 19-22) by email dated November 22, 2021, sent to senior staff and all benchers.
23. Copies of any materials submitted by the three consultants showing their qualifications for the review (including in relations to survey and statistical methodology).

Mr. Klippenstein requires the records described above in order to discharge his duties as director/bencher of the LSO. We ask that you provide them on or before May 20, 2022, failing which we have instructions to commence legal proceedings to compel production.

Yours truly,

**KENNY LAW**

Per:



**W.J. KENNY, Q.C.**

WJK/smh

cc: Diana Miles (dmiles@lso.ca)  
Chief Executive Officer  
Law Society of Ontario

Murray Klippenstein (murray.klippenstein@klippensteins.ca)  
Bencher  
Law Society of Ontario


## EXHIBIT 23

Correspondence from Plaintiff's Counsel to the LSO  
(May 20, 2022)

This is Exhibit "23" referred to in the Affidavit of

MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Jorge Pineda  
#65305B

Our File: 7009.001

Your File:

May 20, 2022

**VIA E-MAIL: [treasurer@lso.ca](mailto:treasurer@lso.ca)**

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

**Attention: Teresa Donnelly, Treasurer**

Dear Madam:

**RE: Re: Director/Bencher Klippenstein's Request for Information**

We have not yet received your response to our correspondence of April 26, 2022. Frankly, we find it rather impertinent that a serious and formal legal request to the LSO by one of its Benchers would merit no response whatsoever from the LSO.

In the meantime, Bencher Klippenstein has apprised us of the two meetings of the Equity and Indigenous Affairs Committee (“**EIAC**”) that took place on May 3 and 12. We are advised that at the May 3 meeting three consultants retained by the LSO (Michael Ornstein, Sujitha Ratnasingham, and Scot Wortley), referred to by LSO staff as a “**Peer Review Panel**,” presented their assessments of the Stratcom Report and the draft Inclusion Index.

We are advised that, among other criticisms, the three consultants confirmed that there was a serious lack of transparency in the Stratcom Report. Some of the areas in which Stratcom failed to be forthright include the survey response rate, reporting in general, and analysis of the dataset. With respect to the Inclusion Index, the methodology of the consultant Diversio was similarly characterized as non-transparent in a number of respects.

Nevertheless, notwithstanding the many criticisms regarding lack of transparency, and other substantive criticisms, that the so-called Peer Review Panel leveled against the Stratcom Report and the Inclusion Index, these were described as “water under the bridge” by one consultant, and the three consultants opined that many of the policy measures based on the Stratcom Report should be continued with by the LSO. It therefore appears that Bencher

Klippenstein's longstanding and previously expressed concerns about the Stratcom Report and the Inclusion Index have been, on the one hand, validated, and on the other hand, brushed aside.

All of the foregoing strongly supports Bencher Klippenstein being provided on an urgent basis the information he has requested. If on the one hand the Peer Review Panel regards Stratcom's process and analysis as lacking transparency and integrity, but on the other hand considers such deficiencies to be merely "water under the bridge", then Mr. Klippenstein is all-the-more justified in having continuing serious concerns about these reports and the whole process, and as a director of the LSO must be furnished with all pertinent records in order to perform the detailed independent due diligence analysis necessary to discharge his duties to the LSO.

It should not be surprising that a fundamental breakdown of trust occurs in this situation that is proportional to the lack of transparency in the process that Stratcom and the LSO have undertaken with respect to the Stratcom Report, the Inclusion Index, and the Working Together Report. It takes some effort to rebuild trust. The most obvious avenue to building trust in these circumstances is to open to full scrutiny the research and analysis that have been conducted. If there is nothing to hide, full disclosure could dispel the concerns of a conscientious director, not to mention the legal profession(s) at large. On the other hand, if there is something that ought to be remedied, transparency and the shedding of light would offer the possibility of resolution of any latent issues and the reestablishment of trust.

As a result of these developments, Bencher Klippenstein requires, in addition to the records that we requested in our correspondence dated April 26, 2022, the following record:

The full dataset of answers (redacted as necessary to protect the confidentiality of the respondents) to the demographic and "inclusion" questions distributed to all lawyer licensees as part of the 2018 LSO Annual Filing required of all lawyer licensees. In that Annual Filing, answering the demographic and inclusion questions was mandatory for all individual licensees. This disclosure is required for adequate transparency, due to the possibility of misuse of these numbers, in the past and in the future, in terms of response rate and sample size, as has already occurred in a preliminary Inclusion Index analysis.

Be advised that we have instructions to issue a Statement of Claim without delay in the event that the LSO does not reply by May 27, providing the records that Bencher Klippenstein has requested.

Yours truly,

**KENNY LAW**

Per:



**W.J. KENNY, Q.C.**

WJK/smh

cc: Diana Miles (dmiles@lso.ca)  
Chief Executive Officer  
LSO of Ontario

Murray Klippenstein (murray.klippenstein@klippensteins.ca)  
Bencher  
LSO of Ontario

## EXHIBIT 24

Correspondence from the Treasurer (May 27, 2022)

This is Exhibit "24" referred to in the Affidavit of  
MURRAY KLIPPENSTEIN

Sworn before me this 16th  
day of March A.D., 2023.



Commissioner for Taking Affidavits

Jorge Pineda  
#653058





Law Society  
of Ontario

Barreau  
de l'Ontario

May 27, 2022

**Sent by email to [murray.klippenstein@klippensteins.ca](mailto:murray.klippenstein@klippensteins.ca)**

**Office of the Treasurer**

Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5H 2N6  
416 947 3300  
[tdonnelly@lso.ca](mailto:tdonnelly@lso.ca)

Murray Klippenstein  
Klippensteins  
Barristers & Solicitors  
160 John St., Suite 300  
Toronto, ON M5V 2E5

Dear Mr. Klippenstein:

I am writing to you as the Treasurer in your capacity as a Bencher to respond to two letters, one dated April 26, 2022, and another dated May 20, 2022, received from W. J. Kenny, an Alberta lawyer, requesting, on your behalf, that I provide to you information specified in the letters.

In the April 26, 2022, letter, the following information was requested:

1. A copy of the full Stratcom Communication Inc. survey dataset (that is, all the raw data from the survey of lawyers and paralegals), which was used to generate the report entitled *Challenges Facing Racialized Licensees: Final Report*, date March 11, 2014, and submitted to the Law Society of Ontario in March 2012 by David Kraft, John Willis, and Michael Charles on behalf of Stratcom Communications Inc.
2. A copy of the Challenges Faced by Racialized Licensees Working Group's Request for Proposal (dated December 2012) regarding the work eventually carried out by Stratcom Communications Inc.
3. A copy of the proposal submitted by Stratcom Communications Inc. in response to the aforementioned Request for Proposal.
4. A copy of the written agreement entered into between the Law Society of Ontario and Stratcom Communications Inc. in or about March 15, 2013.
5. A copy of a memorandum from bencher Julian Falconer to the Challenges Faced by Racialized Licensees Working Group prior to its meeting on May 8, 2013.

6. Materials for the May 8, 2013, meeting of the Challenges Faced by Racialized Licensees Working Group.
7. Copies of all financial records showing payments made by the Law Society of Ontario to Stratcom Communications Inc. after the March 15, 2013, agreement and up to the present.
8. A copy of the draft report delivered to the Law Society of Ontario by Stratcom Communications Inc. in January 2014.
9. Copies of minutes or meeting materials for meetings of the Challenges Faced by Racialized Licensees Working Group held in the period starting June 27, 2013, and ending October 15, 2014.
10. A copy of page 53 of the "Kay Report".
11. Copies of any memos or staff notes or communications (including emails between staff and between staff and benchers) that address the detailed methodological and other critiques in Murray Klippenstein's *A Critical Review of the Law Society's Challenges Report* dated January 8, 2020.
12. A copy of the consulting agreement between the Law Society of Ontario and Diversio for purposes of preparing the inclusion index.
13. Copies of all records showing payments made by the Law Society of Ontario to Diversio, related to the inclusion index, subsequent to the agreement and up to the present.
14. A copy of the draft inclusion index report by Diversion delivered to the Law Society of Ontario in Fall 2019.
15. Copies of any "proceedings" by the Professional Regulation Committee, including memoranda and staff communications to the Committee, related to amending the Rules of Professional Conduct or the Paralegal Rules of Conduct so as to prohibit "systemic discrimination", as set out in the Working Together Report, Recommendation 12 (2).
16. Copies of all financial records documenting resources spent on the types of investigations described in a memo from the Law Society of Ontario's Senior Management Team, dated April 25, 2016, entitled "Operationalizing RWG Draft Recommendations" since the adoption of the Working Together Report. Also, copies of records indicating how many of the types of investigations described in the memorandum have been initiated since the adoption of the Working Together Report.
17. Copies of any records describing "the specialized team that has been established" and records providing "details related to [the] training plan", as

referred to in the materials for the meeting of the Equity and Indigenous Affairs Committee on June 8, 2017.

18. A copy of the bar admission course materials pertaining to cultural competency, as referred to in Recommendation 10 of the Working Together Report, for the year 2017 and for each year thereafter.
19. A copy of any Request for Proposal or equivalent that was delivered to the three experts retained by the Law Society of Ontario in or about November 2021 to review the report referenced in paragraph 1 above.
20. A copy of any proposal or similar materials that was received from the three experts (or any other expert that was part of the process).
21. A copy of any contracts, agreements or retainers entered into with the three experts, and of any directions given to them.
22. Copies of all records showing amounts already paid to the three experts and the amounts agreed to be paid to them in the future.
23. Copies of any materials submitted by the three consultants showing their qualifications for the review (including in relation to survey and statistical methodology).

In the May 20, 2022, the following additional information was requested:

1. The full dataset of answers (redated as necessary to protect the confidentiality of the respondents) to the demographic and inclusion questions contained on the 2018 lawyer annual report required to be filed by all lawyer licensees.

Following the receipt of the April 26, 2022 letter, there were two meetings of the Equity and Indigenous Affairs Committee (EIAC) held May 3 and May 12, which you attended. As you know, in support of the May 3, 2022, EIAC meeting, 161 pages of supporting materials were made accessible for Benchers relating to the Inclusion Index, Stratcom Report and the Challenges Report. Until receiving your letter dated May 20, 2022, I did not understand that you were continuing to request information related to the Inclusion Index, Stratcom Report or Challenges Report.

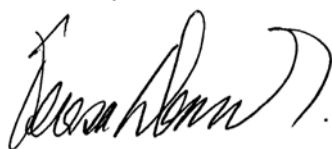
Let me address your requests for information.

With respect to information that is confidential to the Law Society of Ontario, under the current legislative framework governing the Law Society of Ontario, the Treasurer has no unilateral authority to decide on a request for information from a bencher. Convocation must be engaged in considering the request and providing directions on a response. With respect to information that is not confidential to the Law Society (information that is publicly available), in the first instance, a bencher's request for such information falls within the authority of the Chief Executive Officer to respond to. However, if the work of

responding to the request would exceed the normal duties of staff, the CEO would ordinarily seek directions from Convocation on proceeding with a response. Information that is regulatory in nature, obtained by the Law Society of Ontario further to its regulatory powers and, as such, intended solely for regulatory use and disclosure, cannot be provided to a bencher other than if the bencher is engaged in the regulatory process for which the information was obtained. None of the CEO, the Treasurer or Convocation has authority to decide otherwise.

I will be referring your requests for information to the Strategic Planning and Advisory Committee. I will ask the Committee to consider the requests and to recommend to Convocation whether it should refuse or accede to them, in whole or in part.

Yours truly,

A handwritten signature in black ink, appearing to read 'Teresa Donnelly', with a stylized flourish at the end.

Teresa Donnelly  
Treasurer

Copy: W.J. Kenny, Q.C.  
Kenny Law  
The Phipps-McKinnon Building  
Suite 980, 10020 101A Ave NW  
Edmonton, AB T5J 3G2  
[wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF MURRAY JOHN KLIPPENSTEIN  
SWORN ON MARCH 16, 2023****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8  
Tel: 780.752.1112

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: [wkenny@wjkennylaw.com](mailto:wkenny@wjkennylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: [jsavaryn@wjkennylaw.com](mailto:jsavaryn@wjkennylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

E-mail Address for  
Service of Defendant:  
[paullv@stockwoods.ca](mailto:paullv@stockwoods.ca)

**Court File No. CV-22-00682844-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MURRAY KLIPPENSTEIN**

**Plaintiff  
(Moving Party)**

**and**

**LAW SOCIETY OF ONTARIO**

**Defendant  
(Responding Party)**

**AFFIDAVIT OF RYAN PATRICK ALFORD**

I, Ryan Patrick Alford, of the City of Thunder Bay, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a bencher of the Law Society of Ontario ("LSO"), and as such have knowledge of the matters to which I depose herein.
2. I have personal knowledge of all facts stated in this Affidavit, except where I have been informed of such facts, in which case I have stated the source of such facts and hereby state that I believe such facts to be true.

**BACKGROUND**

3. I am an Ontario lawyer, called to the bar in Ontario in 2015 and prior to that called to the bar in New York in 2006, and was elected bencher of the Law Society and director of the Law Society corporation in 2019.
4. I am presently a full professor at the Bora Laskin Faculty of Law in Thunder Bay, Ontario. Currently I teach Constitutional Law and Professional Responsibility. In the past I have taught Administrative Law and seminars on the rule of law. I have written and published a number of books on legal history and constitutional law. These subject areas, along with my general background in the study of law, provide me with considerable background and perspective on professional governance issues at the Law Society of Ontario.

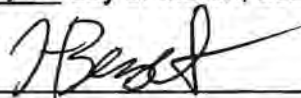
**REASONABLE REQUEST FOR INFORMATION BY BENCHER KLIPPENSTEIN**

5. I have reviewed the Statement of Claim filed in this action, together with Schedule "A," which sets out the requested Information, as defined therein. I have also reviewed the Affidavit of Murray Klippenstein, affirmed in this action on March 16, 2023. As a fellow bencher, I have general knowledge of the circumstances and events described in these aforementioned documents.

6. Like Bencher Klippenstein, as a fellow bencher I consider the requested Information to be:

- a. of current relevance to the LSO's ongoing adherence to and implementation of various major policies;
- b. reasonably proportionate in scope, given the gravity of the LSO policies that are at issue;
- c. necessary or useful to me as a bencher and director of the LSO, to enable me to be sufficiently informed to participate in the governance of the LSO in accordance with the requisite standards;
- d. consistent with the types of records that a bencher and director requires to fulfill his/her duties of office;
- e. specifically useful to me as a bencher under the circumstances to which Bencher Klippenstein deposes, including the lack of consultation by LSO staff with benchers on important matters and the belated or non-disclosure of relevant documents.

SWORN BEFORE ME at the City of )  
~~Toronto~~, in the Province of Ontario, this )  
 Thunder Bay 18 day of March, 2023. )



~~Commissioner for Taking Affidavits~~  
 Barrister and Solicitor  
 (LSO #51901V)

  
 RYAN PATRICK ALFORD



MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF RYAN PATRICK ALFORD  
SWORN ON MARCH 18, 2023****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: wkenny@wjkennylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkennylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MURRAY KLIPPENSTEIN**

Plaintiff  
(Moving Party)

and

**LAW SOCIETY OF ONTARIO**

Defendant  
(Responding Party)

**AFFIDAVIT OF CHI-KUN SHI**

I, Chi-Kun Shi, of Gores Landing, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a benchler of the Law Society of Ontario ("**LSO**"), and as such have knowledge of the matters to which I depose herein.
2. I have personal knowledge of all facts stated in this Affidavit, except where I have been informed of such facts, in which case I have stated the source of such facts and hereby state that I believe such facts to be true.

**BACKGROUND**

3. I am an Ontario lawyer, called to the bar in 1991, and was elected bencher of the Law Society and director of the Law Society corporation in 2019. I have been in private practice in Ontario for decades in the fields of civil litigation and mediation.
4. Prior to my legal career I received a Bachelor of Applied Science and Engineering degree and worked at a Canadian aerospace firm, and that mathematical and engineering perspective gives me a useful understanding of the issues of statistical mathematics raised by Bencher Klippenstein in this matter regarding surveys at the Law Society of Ontario, in addition to my extensive general background in the legal profession.

**REASONABLE REQUEST FOR INFORMATION BY BENCHER KLIPPENSTEIN**

5. I have reviewed the Statement of Claim filed in this action, together with Schedule "A," which sets out the requested information, as defined therein. I have also reviewed the Affidavit of Murray Klippenstein, affirmed in this action on March 16, 2023. As a fellow bencher, I have general knowledge of the circumstances and events described in these aforementioned documents.



MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF CHI-KUN SHI  
SWORN ON MARCH 20, 2023****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: wkenny@wjkennylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkennylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MURRAY KLIPPENSTEIN**

Plaintiff  
(Moving Party)

and

**LAW SOCIETY OF ONTARIO**

Defendant  
(Responding Party)

**AFFIDAVIT OF GARY GRAHAM**

I, Gary Graham, of the City of Burlington, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a benchler of the Law Society of Ontario ("**LSO**"), and as such have knowledge of the matters to which I depose herein.
2. I have personal knowledge of all facts stated in this Affidavit, except where I have been informed of such facts, in which case I have stated the source of such facts and hereby state that I believe such facts to be true.

**BACKGROUND**

3. I am an Ontario lawyer, called to the bar in 1982, and was elected bencher of the Law Society and director of the Law Society corporation in 2019.
4. Prior to becoming a bencher, I worked for more than two decades as a partner in a national Canadian law firm, focusing on business law, including in corporate governance, in both the private sector (e.g. manufacturers and distributors) and the public sector (e.g. hospitals, universities, municipal electrical utilities, trade associations). I have served on many corporate boards, including both business and non-profit boards. I also had personal experience in executive management as the President of the Canadian subsidiary of a global corporation and as its in-house General Counsel. I am a shareholder in an SME in the steel industry. I therefore have considerable experience in corporate governance, in terms of general legal principles and rules, in terms of practical experience and, in the context of policy making, in terms of the roles of management and the board.

**REASONABLE REQUEST FOR INFORMATION BY BENCHER KLIPPENSTEIN**

5. I have reviewed the Statement of Claim filed in this action, together with Schedule "A," which sets out the requested Information, as defined therein. I have also reviewed the Affidavit of Murray Klippenstein, affirmed in this action on March 16, 2023. As a fellow bencher, I have general knowledge of the circumstances and events described in these aforementioned documents.

6. Like Bencher Klippenstein, as a fellow bencher I consider the requested Information to be:

- a. of current relevance to the LSO's ongoing adherence to and implementation of various major policies;
- b. reasonably proportionate in scope, given the gravity of the LSO policies that are at issue;
- c. necessary or useful to me as a bencher and director of the LSO, to enable me to be sufficiently informed to participate in the governance of the LSO in accordance with the requisite standards;
- d. consistent with the types of records that a bencher and director requires to fulfill his/her duties of office;
- e. specifically useful to me as a bencher under the circumstances to which Bencher Klippenstein deposes, including the lack of consultation by LSO staff with benchers on important matters and the belated or non-disclosure of relevant documents.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
21 day of March, 2023.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
604256

  
\_\_\_\_\_  
GARY GRAHAM



MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF GARY GRAHAM  
SWORN ON MARCH 21, 2023****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: wkenny@wjkennylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkennylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein



Court File no.

ONTARIO  
 SUPERIOR COURT OF JUSTICE

MURRAY KLIPPENSTEIN

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

**STATEMENT OF CLAIM****TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date ..... Issued by .....

Local registrar

Address of court office: Superior Court of Justice  
 330 University Avenue, 7th Floor  
 Toronto ON M5G 1R8

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

### CLAIM

1. The Plaintiff claims:
  - a. an order compelling the Defendant, the Law Society of Ontario ("LSO"), to provide him with the information and records set out in Schedule "A" ("Information"); and
  - b. costs of this action on a full indemnity basis.

### THE PLAINTIFF

2. The Plaintiff, Murray Klippenstein, is licensed to practice law in Ontario, is an elected bencher of the LSO, and resides and carries on the practice of law in the City of Toronto, in the Province of Ontario.
3. The Plaintiff was elected a bencher of the LSO on or about April 30, 2019, for the electoral region of the City of Toronto, and, having received the most votes of any Toronto candidate, was designated as Toronto Regional Bencher.

### THE DEFENDANT

4. The Defendant, LSO, is a corporation without share capital, whose members at any point in time consist of the Treasurer, the benchers, all Ontario licensed barristers and solicitors, and all Ontario licensed paralegals.
5. A function of the LSO is to ensure that all individuals who practice law or provide legal services in Ontario meet the appropriate standards of learning, professional competence, and professional conduct. Knowledge, competence, and professionalism have always been cornerstones of the legal profession in Ontario.
6. In carrying out its functions, duties, and powers the LSO is statutorily mandated to have regard to the following, among other, principles:
  - a. The LSO has a duty to protect the public interest;
  - b. The LSO has a duty to act in a timely, open, and efficient manner;
  - c. 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.

**BENCHERS ARE DIRECTORS OF THE LSO CORPORATION, WITH RIGHTS TO CORPORATE INFORMATION**

7. The *Law Society Act*, RSO, 1990 c L8, s 10 ("***Law Society Act***"), statutorily mandates that benchers, of which the Plaintiff is currently one, "shall govern the affairs of the Society". Section 283 of the *Corporations Act*, RSO 1990, c C.38 ("***Corporations Act***"), which applies to the LSO as a corporation without share capital, provides that the "affairs of every corporation shall be managed by a board of directors howsoever designated." In the case of the LSO, benchers are the designated directors of the corporation. The official website of the LSO states that the "Law Society is governed by a board of directors, who are referred to as benchers."
8. Benchers have the right, both collectively and individually, of necessity and as recognized by statute and common law, to have access to and obtain any and all documents, records, and information of the corporation that are necessary or useful to them in fulfilling their duties to govern the LSO and manage the affairs of the corporation.

**THE STRATCOM REPORT, THE CONSULTATION PAPER, AND THE WORKING TOGETHER REPORT**

9. In March of 2013, a bencher Working Group created by LSO Convocation to study "challenges faced by racialized licensees" commissioned consulting firm Stratcom Communications Inc. ("***Stratcom***") to carry out an extensive study of the legal professions (lawyers and paralegals) in Ontario related to that issue, which study was to include, among other elements, a survey of lawyers and paralegals in Ontario.
10. At the commencement of Stratcom's work, LSO staff provided to Stratcom a memorandum entitled *Challenges Facing Racialized Licensees: Best Practices*, which appeared to set out the LSO staff's expectations or desired outcome of Stratcom's study. This memorandum stated, *inter alia*:
  - a. That there must be a massive cultural shift within legal environments that involves shaking long held beliefs;
  - b. That the creation and implementation of comprehensive diversity plans and strategies in legal workplaces is a necessary best practice to ensure inclusivity; and
  - c. That diversity efforts must be integrated into all aspects of the structure of organizations such as law firms, from recruiting and marketing to professional development and performance management.

11. In the fall of 2013, Stratcom conducted the survey component of its study on "challenges faced by racialized licensees" by sending a questionnaire to all Ontario lawyers and paralegals. Stratcom's survey dataset and analysis were then used to generate a report entitled *Challenges Facing Racialized Licensees: Final Report*, dated March 11, 2014, which was submitted to the Working Group and LSO staff by Stratcom in March of 2014 ("**Stratcom Report**").
12. After the receipt of the Stratcom Report, members of the Working Group and LSO staff relying thereon prepared a major report on the issue, in the form of a 45-page consultation paper ("**Consultation Paper**") to be distributed to the membership of the legal and paralegal professions at large. The Consultation Paper was largely based on the Stratcom Report (and contained dozens of footnoted references to specific purported findings of the Stratcom survey of the legal professions). The Consultation Paper, along with a proposal and plan for extensive distribution of the Consultation Paper in the professions, was presented at a Convocation meeting of the benchers of the LSO on October 30, 2014, at which the benchers in Convocation approved the Consultation Paper and the consultation plan, which was then implemented.
13. Although the Consultation Paper was largely built on the Stratcom Report, and included more than 40 specific footnoted references to the Stratcom Report, the Consultation Paper did not include a link to a posting of the Stratcom Report itself, making it less than convenient for licensees to review the actual Stratcom Report itself. Further, the Consultation Paper did not ask for any input on the Stratcom Report itself, but rather only asked for opinions on possible policies going forward, taking the Stratcom Report, as described in the Consultation Paper, as a given.
14. After the release of the Consultation Paper in or about October, 2014, the LSO received extensive responses from members and organizations in the legal professions in response to the questions posed in the Consultation Paper.
15. After receiving responses to the Consultation Paper, the Working Group and LSO staff prepared a major policy paper entitled, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions, Working Group Final Report* ("**Working Together Report**"). The Working Together Report relied heavily on the Stratcom Report, and also adopted input from the consultations.
16. The Working Together Report included a list of 13 recommendations for Convocation's consideration, which it recommended be adopted together in one omnibus motion, as a single package. The benchers in Convocation voted to adopt the 13 recommendations set out in the Working Together Report on December 2, 2016.



17. The 13 recommendations as adopted included the following:

- a. That the LSO require every licensee to adopt and abide by a statement of principles acknowledging their obligation to promote equality, diversity, and inclusion generally, and in their behaviour towards colleagues, employees, clients, and the public. This particular recommendation and requirement was later repealed by the benchers in Convocation, on September 11, 2019;
- b. That the LSO require all legal workplaces of at least 10 licensees to develop, implement and maintain a diversity policy, and to complete an equality, diversity, and inclusion self-assessment every two years, to be provided to the LSO;
- c. That the LSO measure progress regarding equality, diversity and inclusion through qualitative analysis, by requesting all lawyers and paralegals to answer questions about inclusion in their workplace every four years, and compiling the results of the inclusion questions for each legal workplace of at least 25 licensees;
- d. That the LSO develop and publish every four years an inclusion index ("**Inclusion Index**") that reflects, and makes public for each individual workplace in Ontario of at least 25 licensees, demographic data and information gathered from the inclusion questions;
- e. That the LSO consider and enact, as appropriate, progressive compliance measures for legal workplaces that do not implement diversity policies, do not report their inclusion self-assessment to the LSO, or are identified as having systemic barriers to diversity and inclusion;
- f. That the LSO require each licensee to complete three hours of an accredited program focused on equality and inclusion within the first three years following the adoption of the recommendations;
- g. That the LSO include the topics of cultural competency, equality, and inclusion in the professions as competencies to be acquired in the licencing process;
- h. That the LSO revise the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* so that "systemic discrimination" is clearly identified as a breach of professional conduct requirements; and
- i. That the LSO create a specialized and trained team to address complaints of discrimination.

18. After the adoption of the 13 recommendations in December of 2016, the LSO embarked on an extensive and far-reaching long-term process to implement the various recommendations throughout the legal professions in Ontario, which continues to the present. All of the 13 recommendations were premised on the purported findings of the Stratcom Report, which, according to the Working Together Report, are evidence of extensive "systemic racism" in the legal professions, which requires the sweeping scope of the 13 recommendations.

**CONCERNS REGARDING THE VALIDITY OF THE STRATCOM REPORT AND THE INCLUSION INDEX**

19. The Plaintiff was concerned by what he saw as irregularities in the Stratcom Report, and in particular in the survey. This concern was increased by the foundational and continuing role that the Stratcom Report and the Stratcom survey had in justifying the major package of far-reaching policies applicable to the professions of law throughout Ontario as adopted by Convocation in December of 2016.
20. The Plaintiff's concerns included the failure by Stratcom to follow established, accepted, and standard statistical and other methods in gathering data, information, and background and in the presentation of such information in the Stratcom Report. The Plaintiff also became aware of apparent irregularities in the process by which the Stratcom Report was dealt with at the LSO and in how the policies derived from it were eventually brought to Convocation.
21. These deficiencies and concerns include the following:
- a. Despite being heavily promoted by public announcements, and by repeated individual emails to all lawyers and paralegals, the Stratcom survey had an extremely low response rate, in the order of 6%. Contrary to normal professional surveying practice, and in contrast to several previous survey reports prepared for the Law Society by the same consultant on other topics, the Stratcom Report nowhere indicated or reported the actual number of persons surveyed, or the survey response rate (either for the overall population of lawyers and paralegals, or for the special study population of ethnic minority lawyers and paralegals). This important omission deprived Benchers and other readers of the report of a basic tool for assessing the validity or significance, or the lack of validity or significance, of the survey results;
  - b. Despite the fact that the survey respondents were not a random sample, and were all entirely self-selected, and despite the extremely low response rate, the Stratcom Report stated, contrary to basic surveying principles in such circumstances, that the survey results were accurately representative of the views of the entire population of lawyers and paralegals;
  - c. Despite very large differences in the nature of the lawyer licensee population as compared to the paralegal licensee population, the Stratcom Report did not break out the survey responses of lawyers and paralegals;

- d. Contrary to normal professional surveying practice, the Stratcom Report made no assessment of, and made no reference to, the significance of non-response, that is, the fact that an overwhelming majority of survey invitees chose not to respond at all, and in particular the Stratcom Report did not address the possibility that the majority of licensees had views that differed significantly from the relatively very small number of self-selected actual respondents;
  - e. Contrary to past practice at the Law Society in the case of major policy-making studies, and contrary to good governance practice, the critically important Stratcom Report was never distributed to or provided to or presented to all Benchers, or to Convocation, in the entire almost three year period from the receipt of the report to the adoption of the Working Together recommendations (or thereafter), thus depriving Benchers of an opportunity for a basic due diligence review of the foundational Report; and
  - f. The available Law Society records contain no materials for any Working Group meeting between June 27, 2013 and October 15, 2014, a period of well over a year. During that period the Law Society received a draft of the Stratcom Report for review and then the final Stratcom Report, and during that period a very substantial and important Consultation Paper and consultation plan based on the Stratcom Report was prepared for presentation to Convocation on October 30, 2014. There is no indication that the Working Group actually met to discuss the important issues and work that was being dealt with during that period, or if it met, appropriate records were not kept.
22. The Inclusion Index adopted by Convocation as one of the 13 recommendations in the Working Together report was to be a firm-by-firm public ranking of all law firms in Ontario with more than 25 licensees, officially published by the Law Society. The Inclusion Index would publicly rate all such firms based on survey answers from licensees obtained through questions in the Law Society's annual filing required of all lawyers.
23. The annual filing questions asked for information about individual licensee's demographics, and about very personal characteristics, including sexual orientation. The other "inclusion questions" asked how licensees felt about their work and their workplace. The ranking number for each firm in the Inclusion Index would be calculated based on these answers using an undisclosed mathematical formula.
24. Furthermore, the Inclusion Index seemed to the Plaintiff to be attempting to draw conclusions about each firm based on sample sizes from each firm that would be so small as to make such conclusions unsupportable and invalid, and then to make those invalid conclusions public, with potentially great harm to the reputation of many law firms.



## **DIRECTOR'S RIGHT TO INFORMATION**

25. The Plaintiff has repeatedly raised his concerns about the Stratcom Report, the Working Together Report, and the Inclusion Index, as described above, for several years, beginning in January of 2020, through detailed emails distributed to all benchers and to senior LSO staff, and at various meetings, but has received no significant response and his concerns have been ignored.
26. The Plaintiff has repeatedly requested the Information to enable him to further consider and analyse these issues, and to further communicate with fellow benchers, including on the questions of whether, and to what extent, the Stratcom Report, and the Working Together Report, should continue to be used in the development, implementation, and enforcement of policy by the LSO.
27. On November 25, 2021, the LSO's Equity and Indigenous Affairs Committee ("**Committee**"), of which the Plaintiff is a member, was advised that three outside consultants with purported statistical expertise had been retained by the LSO to review some of the statistical and survey work contained in past reports. However, in that announcement, no reference was made to the concerns and critiques that the Plaintiff had been raising in detail since January, 2020.
28. The Plaintiff requested a significant portion of the Information in Schedule "A" by correspondence to the LSO on November 22, 2021 and November 29, 2021.
29. At a meeting of the Committee on May 3, 2022, three outside consultants delivered oral reports to the Committee, the substance of which validated the Plaintiff's concerns with the Stratcom Report and the Inclusion Index. In fact, although no reference was made to the Plaintiff having raised his concerns in the past, most or all of the Plaintiff's concerns and criticisms set out above regarding the Stratcom Report and the Inclusion Index were identified by the LSO's three outside consultants as having considerable validity. Notwithstanding this validation, the LSO continues to implement and advance policies, whose origins can be traced to the Stratcom Report, confirming the Plaintiff's need for the Information as bencher and director.
30. The Plaintiff made formal written demands of the LSO through counsel on April 26, 2022 and May 20, 2022, addressed to the Treasurer, seeking all of the Information for his use as a bencher and director of the LSO, and to enable his further review and assessment of the Stratcom Report, the Working Together Report, the Inclusion Index, and the general consideration of LSO policy regarding challenges faced by racialized licensees of the LSO. The LSO has failed to provide the requested Information.

31. In particular, in her response dated May 27, 2022, the Treasurer stated:

With respect to information that is confidential to the Law Society of Ontario, under the current legislative framework governing the Law Society of Ontario, the Treasurer has no unilateral authority to decide on a request for information from a bencher. Convocation must be engaged in considering the request and providing directions on a response. ...

Information that is regulatory in nature, obtained by the Law Society of Ontario further to its regulatory powers and, as such, intended solely for regulatory use and disclosure, cannot be provided to a bencher other than if the bencher is engaged in the regulatory process for which the information was obtained. None of the CEO, the Treasurer or Convocation has authority to decide otherwise.

32. The Plaintiff, as a bencher and director of the LSO, is entitled to all of the Information in order to discharge his duties as bencher and director of the LSO. That entitlement is based on his legal rights as a director, in statute and at common law, and is not dependent on any decision of Convocation. The Plaintiff believes that all of the Information would be necessary and useful to him in discharging his duties as bencher and director.

June 17, 2022

**KENNY LAW**

The Phipps-McKinnon Building  
Suite 980  
10020 101A Ave NW  
Edmonton AB T5J 3G2

**W.J. Kenny, Q.C.**

Tel: 780.752.1114

Email: [wkenny@wjkennylaw.com](mailto:wkenny@wjkennylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

### Schedule "A"

#### **Stratcom Report: dataset and background**

1. A copy of the full Stratcom survey dataset (that is, all the raw data from the survey of lawyers and paralegals), which was used to generate the Stratcom Report. According to the Stratcom Report (p 33, note 8), the full survey dataset was provided to the LSO in conjunction with the report. Additionally requested is a copy of any spreadsheets or models using that data, which were received by the LSO. Mr. Klippenstein requested these materials by email dated November 29, 2021, with a follow-up request by email dated December 17, 2021. The LSO offered no response. Mr. Klippenstein requires this dataset in order to properly analyze the merits of the Stratcom Report, and to assess conclusions drawn within it or based upon it. This dataset is particularly necessary given that Stratcom performed a non-random sample survey, received a low response rate, and extrapolated the results of the non-random survey to the entire population of licensees in Ontario.
2. A copy of the Challenges Faced by Racialized Licensees Working Group's ("**Working Group**") "Request for Proposal" of December, 2012 regarding the consultant work eventually carried out by Stratcom.
3. A copy of the proposal submitted by Stratcom in response to the "Request for Proposal" of December, 2012.
4. A copy of the written agreement entered into between the LSO and Stratcom, circa March 15, 2013.

#### **Stratcom and the Working Group**

5. A copy of the memo provided to the Working Group Chair by Bencher Falconer prior to the May 8, 2013 Working Group meeting and considered at the meeting. This memo apparently expressed discontent with Stratcom's methodology.
6. Materials for the May 8, 2013 Working Group meeting. The materials for this contentious meeting are not posted as is normal in the bencher archives.
7. Copies of all financial records showing payments made by the LSO to Stratcom (related to the Stratcom Report) subsequent to the retainer agreement of March 15, 2013, and up to the present.
8. A copy of the draft Stratcom Report delivered to LSO staff in January of 2014.
9. Copies of minutes or meeting materials of Working Group meetings in the period between the meeting of June 27, 2013 and the meeting of October 15, 2014. The bencher record files contain no materials relating to any Working Group meeting over that one year and four-month period, contrary to usual practice. The Working Group must have met during this important and lengthy period, during which the Stratcom draft and final reports were received, and an important public consultation paper and consultation plan was prepared for presentation to Convocation on October 30, 2014.

#### **The Kay Report on Diversity in the legal profession – missing key data**

10. A copy of missing p 53 of the Kay Report. The Kay Report was a major earlier survey and study on diversity in the legal professions which was important background for Stratcom and the Working Group. The Kay Report's List of Tables refers to Table 4.19, on the important topic of "Partnership by Racial/Cultural Community, Controlling for Year of Call to the Bar", as being on p 53 of the Report, but p 53 is missing from copies provided to the Working Group, and from all available copies.

**Responses to Mr. Klippenstein's *A Critical Review of the Law Society's Stratcom Report*, dated January 8, 2020**

11. Copies of any memos or staff notes or communications (including emails between staff and between staff and benchers), which address the detailed methodological and other critiques in Mr. Klippenstein's *A Critical Review of the Law Society's Stratcom Report*, dated January 8, 2020, and distributed to senior staff and all benchers on January 8, 2020.

**Inclusion Index, Working Together Report, Recommendation 6**

12. A copy of the consulting agreement between the LSO and Diversio consultants for purposes of preparing the Inclusion Index, date unknown.
13. Copies of all records showing payments made by the LSO to Diversio (related to the Inclusion Index) after the retainer or consultation agreement (date unknown), and up to the present.
14. A copy of the draft Inclusion Index report by Diversio delivered to Law Society staff in the fall of 2019. Mr. Klippenstein requested a copy of this draft report by email dated December 17, 2021.
  - a. The full dataset of answers (redacted as necessary to protect the confidentiality of the respondents) to the demographic and "inclusion" questions distributed to all lawyer licensees as part of the 2018 LSO Annual Filing required of all lawyer licensees. In that Annual Filing, answering the demographic and inclusion questions was mandatory for all individual licensees. This disclosure is required for adequate transparency, due to the possibility of misuse of these numbers, in the past and in the future, in terms of response rate and sample size, as has already occurred in a preliminary Inclusion Index analysis.

**Changes to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* related to the prohibition of "systemic discrimination" by any licensee (Working Together Report, Recommendation 12(2))**

15. Copies of any proceedings by the Professional Regulation Committee of the LSO, including briefing memoranda and staff communications to this committee, related to amending the *Rules of Professional Conduct* or the *Paralegal Rules of Conduct* so as to prohibit "systemic discrimination", as set out in the Working Together Report, Recommendation 12(2).

**Enforcement and compliance measures (Working Together Report, Recommendation 8)**

16. Copies of all financial records documenting resources spent on the types of investigations described in a memo from the LSO "Senior Management Team" dated April 25, 2016, entitled "Operationalizing RWG Draft Recommendations" ("**RWG Memo**"), since the adoption of the Working Together Report. Also requested are copies of records indicating how many of the types of investigations described in the RWG Memo have been initiated since the adoption of the Working Together Report. By way of background, the RWG Memo addresses the "operational considerations" in implementing aspects of the draft Working Together Report. The RWG Memo states that "[i]nvestigations and prosecutions of failures by licensees to abide by articulated principles or failures by firms to implement human rights/diversity policies will likely be resource intensive, potentially involving interviews of and evidence from everyone in the office or firm, and perhaps others." Further, the RWG Memo provides that "a reasonable estimate of the cost for the first few investigations and prosecutions" is \$350,000 of external investigator and prosecutorial time, plus 1,000 hours of internal investigative and prosecutorial time "per prosecution".



**Addressing Complaints of Systemic Discrimination (Working Together Report, Recommendation 12(4))**

17. Any records describing "the specialized team that has been established," and records providing "details related to [the] training plan," as referred to in materials for the Committee meeting of June 8, 2017. These materials touch upon the process of how complaints of discrimination (under the heading of "systemic discrimination") will be dealt with, and state (at p 97) that "Karen Manarin, Executive Director, Professional Regulation, will attend to discuss the specialized team that has been established and details related to a training plan for this item, in support of the implementation of Recommendation 12(4) of the Challenges Final Report."

**Cultural Competency training in bar admission course materials (Working Together Report, Recommendation 10)**

18. A copy of the bar admission course materials pertaining to "cultural competency", as referred to in Recommendation 10 of the Working Together Report, for the years 2017 and each year thereafter. Other benchers have also requested copies of those bar admission course materials, but have been denied such copies despite their right to information as directors. Any concern of confidentiality cannot be a ground to prevent benchers having access to this information, and could in any event be addressed if only the LSO would respond.

**Consultant panel retained by the Law Society in or about November, 2021 to review the Stratcom Report and the Inclusion Index and other matters.**

19. A copy of any Request for Proposal or equivalent that was delivered to the three consultants (or to any other consultants as part of the process).
20. A copy of any proposal or similar materials that was received from the three consultants (or any other consultant that was part of the process).
21. A copy of any contracts, agreements, or retainers entered into with those three consultants, and of any directions given to them.
22. Copies of all records showing amounts already paid to those consultants, and the amounts agreed to be paid to them in the future. Mr. Klippenstein requested these records (items 19-22) by email dated November 22, 2021, sent to senior staff and all benchers.
23. Copies of any materials submitted by the three consultants showing their qualifications for the review (including in relations to survey and statistical methodology).

Court File No. CV-22-006828844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MURRAY KLIPPENSTEIN

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

**STATEMENT OF DEFENCE**

1. Except as expressly admitted below, the Defendant, Law Society of Ontario (“**LSO**” or the “**Society**”), denies or has no knowledge of all the allegations contained in the Statement of Claim (the “**Claim**”).

***Parties***

2. The Law Society of Ontario (the “**LSO**”) is a corporation without share capital created pursuant to the *Law Society Act*, R.S.O. 1990, c. L.8 (“**LSA**”). Its members at a point in time are its Treasurer, its benchers, the persons licensed to practice law in Ontario and the persons licensed to provide paralegal services in Ontario.

3. It is a function of the LSO to ensure that persons who practice law or who provide legal services in Ontario meet appropriate standards of learning, professional competence and conduct

and that standards of learning, professional competence and conduct for the provision of legal services apply equally to those who practice law and provide legal services in Ontario.

4. The LSA sets out certain principles to which the LSO shall have regard in carrying out its functions, duties and powers, including a duty to maintain and advance the cause of justice and the rule of law, to facilitate justice for Ontarians, to protect the public interest, to act in a timely, efficient and open manner and to apply standards of learning and professional conduct and competence for licensees that are proportionate to the significance of the regulatory objectives sought to be realized.

5. The Plaintiff is a lawyer licensed to practice law in Ontario and an elected benchers of the Society.

***Convocation governs the Affairs of the LSO***

6. Elected benchers are elected by the licensee members of the LSO. Section 10 of the LSA provides that benchers shall govern the affairs of the LSO. The primary forum for their doing so is Convocation, which the LSA defines as a regular or special meeting of the benchers convened for the purpose of transacting business of the Society. The LSA also provides that Convocation through by-laws may create committees of benchers and delegate such powers and duties of Convocation as may be considered expedient.

7. Various other elements of the LSA reinforce and clarify this governance structure. For example, Section 8(1) of the LSA which provides that the Chief Executive Officer of the Society (“CEO”) shall, under the direction of Convocation, manage the affairs and functions of the LSO

and paragraph 61 of the Law Society's Governance Practices and Policies which provides that the CEO reports to Convocation and that Convocation instructs the CEO through the Treasurer.

### **Rights of benchers to information**

8. Whether or not the *Corporations Act*, R.S.O. 1990 c. C.38 applies to the LSA does not assist the Plaintiff. Section 304 that Act provides that certain specifically prescribed types of records shall be open for inspection by directors during normal business hours. None of the documents sought by the Plaintiff fall within the categories of records listed in section 304 that a director has a statutory right to inspect.

9. Beyond any statutory right a bencher may have, the right of an individual bencher to information is a function of what is required to fulfill his or her role as one of the collective of benchers meeting in Convocation for the purpose of transacting the business of the Society, or in a committee created pursuant to a By-law for the purpose of transacting the business delegated to it by Convocation.

10. That is a question for Convocation to decide within the governance structure set out in the LSA and By-laws pleaded above. Thus, a bencher may bring a request for information or documents which he or she believes are required either to the chair of the relevant committee (if the request relates to committee business) so that the chair may deal with the request within the context of the powers delegated to the committee by Convocation, or directly to Convocation itself. Convocation is the body which has the authority to determine whether to provide the information.



### **The Plaintiff's request for documents**

11. The Plaintiff has requested the documents set out in Schedule "A" to the statement of claim. He chose to seek disclosure of the documents by writing letters of demand to the Treasurer of the LSO through his counsel dated April 26 and May 20, 2022. On May 27, 2022, the Treasurer responded to this correspondence. She reminded the Plaintiff that 161 pages of supporting materials relating to the issues raised by the Plaintiff, including materials relating to the Inclusion Index, the Stratcom Report and the Challenges Report, had been made accessible to benchers dealing with these issues within the mandate of the Equity Indigenous Affairs Committee ("EIAC"), of which the Plaintiff is a member.

12. The Treasurer's response went on to point out the following:

- (a) The Treasurer has no unilateral authority to decide on a request for information from a bencher. Convocation must be engaged to consider the request and provide directions on a response.
- (b) If the information is confidential, Convocation must be engaged.
- (c) If the information is not confidential, but would exceed what is normally provided to benchers by staff, Convocation must be engaged.
- (d) Information that is regulatory in nature and obtained by the LSO pursuant to its regulatory powers is intended solely for regulatory use and disclosure cannot be provided to a bencher other than if the bencher is engaged in the regulatory process for which the information was obtained.

13. The Treasurer advised that she would be referring the Plaintiff's requests for information to the Strategic Planning and Advisory Committee ("SPAC") and would be asking that Committee to consider the requests and to recommend to Convocation whether it should accede to them, in whole or in part.

14. The Defendant pleads that it is Convocation that has the power to determine whether the documents requested by the Plaintiff are reasonably required by him in order to fulfill his role and obligations as a bencher. Thus he must either by motion raise the matter before Convocation himself, something which he has not done, or await the report of SPAC to Convocation.

15. The Defendant asks that the claim be dismissed with costs.

August 5, 2022

**STOCKWOODS LLP**

Barristers  
Toronto-Dominion Centre  
TD North Tower, Box 140  
77 King Street West, Suite 4130  
Toronto ON M5K 1H1

Paul Le Vay (28314E)

Tel: 416-593-2493  
[paulv@stockwoods.ca](mailto:paulv@stockwoods.ca)

Yadesha Satheaswaran (80242E)

Tel: 416-593-5161 (Direct Line)  
[Yadeshas@stockwoods.ca](mailto:Yadeshas@stockwoods.ca)

Tel: 416-593-7200

Fax: 416-593-9345

Lawyers for the Defendant

TO: **KENNY LAW**  
The Phipps-McKinnon Building  
Suite 980  
10010 101A Ave NW  
Edmonton, AB T5J 3G2  
  
W.J. Kenny, Q.C.  
Tel: 780-752-1114  
Email: [wkenny@wjkennylaw.com](mailto:wkenny@wjkennylaw.com)  
  
Lawyers for the Plaintiff

## Lawyers for the Defendant

**Court File No. CV-22-00682844-0000**

FORM 51A  
*Courts of Justice Act*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MURRAY KLIPPENSTEIN**

Plaintiff

and

**LAW SOCIETY OF ONTARIO**

Defendant

**PLAINTIFF'S REQUEST TO ADMIT**

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts:

1. The Plaintiff, Murray Klippenstein, is a director of the Law Society of Ontario corporation.

YOU MUST RESPOND TO THIS REQUEST by serving a response to request to admit in Form 51B prescribed by the Rules of Civil Procedure WITHIN TWENTY DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above.

August 9, 2022

**KENNY LAW**

The Phipps-McKinnon Building  
Suite 980  
10020 101A Ave NW  
Edmonton AB T5J 3G2

**W.J. Kenny, Q.C.**

Direct: 780.752.1113

Email: [wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114

Email: [jsavaryn@wjkenneylaw.com](mailto:jsavaryn@wjkenneylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

TO

**STOCKWOODS LLP**

Barristers  
TD North Tower  
Suite 4130  
77 King Street West  
Toronto ON M5K 1H1

**Paul Le Vay**

Tel: 416.593.2493

Email: [paullv@stockwoods.ca](mailto:paullv@stockwoods.ca)

**Yadesha Satheaswaran**

Tel: 416.593.7200

Email: [yadeshaS@stockwoods.ca](mailto:yadeshaS@stockwoods.ca)

Lawyers for the Defendant,  
Law Society of Ontario

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-006828844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**PLAINTIFF'S REQUEST TO ADMIT****KENNY LAW**

The Phipps-McKinnon  
Building  
Suite 980  
10020 101A Avenue NW  
Edmonton AB T5J 3G2

**W.J. Kenny, Q.C.**

Direct: 780.752.1113  
Email: wkenny@wjkenneylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkenneylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein

**Court File No. CV-22-00682844-0000**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MURRAY KLIPPENSTEIN**

Plaintiff

and

**LAW SOCIETY OF ONTARIO**

Defendant

**REPLY TO STATEMENT OF DEFENCE**

1. Terms herein will be used as defined in the Statement of Claim.
2. Except as expressly admitted, the Plaintiff does not admit any of the allegations contained in the Statement of Defence.
3. The Plaintiff admits the allegations contained in paras 3, 4, 5, and 6.



**THE PLAINTIFF IS A DIRECTOR OF THE LSO CORPORATION, WITH AN INDIVIDUAL RIGHT TO INFORMATION**

4. In partial reply to the Defendant's general denial and lack of knowledge expressed in para 1 of its Statement of Defence, and in particular as it relates to the Plaintiff's assertion that benchers are the designated directors of the corporation, the LSO has filed a corporate information report with the Ontario government pursuant to the *Corporations Information Act*, RSO 1990, c C39, reporting, confirming, and publishing that the Plaintiff, Murray Klippenstein, is a director of the LSO corporation.
5. In reply to para 2 of the Statement of Defence, the Plaintiff asserts that while the LSO corporation exists and was continued under the *Law Society Act*, the corporation has existed since 1822 and the LSO's benchers have been the corporation's directors since at least the passage in 1953 of the *Corporations Act*, SO 1953, c 19.
6. In reply to para 6 of the Statement of Defence, the Plaintiff asserts that while Convocation may be the primary forum for benchers to govern the affairs of the LSO, a bencher's role in governance extends beyond the confines of Convocation. Discussion, deliberation, debate, and critique take place both in and outside of Convocation meetings, and are predicated upon adequate, accurate, and timely information being available to benchers on the issues before the LSO and Convocation.
7. In reply to para 8 of the Statement of Defence, some of the documents sought by the Plaintiff do fall within the categories of records listed in s 304 of the *Corporations Act*. In particular, Information items 7, 13, 16, and 22 of Schedule "A" fall within the category of accounting records under s 304 of the *Corporations Act*. Moreover, the categories of information identified by statute in no way derogate from a director's common law right to information, which is more extensive.

8. In reply to paras 9 and 10 of the Statement of Defence, the Plaintiff asserts that he has an individual right to information as a director of the LSO corporation. This is a long-standing and foundational principle of common law. Convocation cannot by majority vote determine or restrict the right of a bencher or a minority of benchers to information considered by them as appropriate and necessary to fulfill their role in the governance, management, and direction of the LSO. As a director, the Plaintiff is presumptively entitled to the information he considers necessary to carry out that role and in discharging his duty to maintain and advance the cause of justice and the rule of law, to facilitate justice for Ontarians and to protect the public interest. Further, the limiting of information to an individual director inhibits the full discussion, deliberation, debate, and critique of policies, decisions, and management of the LSO in Convocation.
9. In reply to para 11 of the Statement of Defence, the 161 pages of materials provided to EIAC do not contain the Information sought.
10. In reply to para 12 of the Statement of Defence, the Treasurer or a delegate is indeed obligated to grant a director's request for information. Further, the Information is neither of a confidential nor regulatory nature that would prevent disclosure to a director.
11. In reply to para 14 of the Statement of Defence, it is *ultra vires* Convocation to deny individual director's requests for information. The Plaintiff's request for the Information has in fact already been improperly denied by the LSO. The appropriate forum to grant the relief sought in the Statement of Claim is This Honourable Court.

August 15, 2022

**KENNY LAW**

The Phipps-McKinnon Building  
Suite 980  
10020 101A Ave NW  
Edmonton AB T5J 3G2

**W.J. Kenny, Q.C.**

Direct: 780.752.1113

Email: [wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114

Email: [jsavaryn@wjkenneylaw.com](mailto:jsavaryn@wjkenneylaw.com)

Lawyers for the Plaintiff,  
Murray Klippenstein

TO

**STOCKWOODS LLP**

Barristers  
TD North Tower  
Suite 4130  
77 King Street West  
Toronto ON M5K 1H1

**Paul Le Vay**

Tel: 416.593.2493

Email: [paulv@stockwoods.ca](mailto:paulv@stockwoods.ca)

**Yadesha Satheaswaran**

Tel: 416.593.7200

Email: [yadeshaS@stockwoods.ca](mailto:yadeshaS@stockwoods.ca)

Lawyers for the Defendant,  
Law Society of Ontario

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-006828844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**REPLY TO STATEMENT OF DEFENCE****KENNY LAW**

The Phipps-McKinnon  
Building  
Suite 980  
10020 101A Avenue NW  
Edmonton AB T5J 3G2

**W.J. Kenny, Q.C.**

Direct: 780.752.1113  
Email: wkenny@wjkennylaw.com

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: jsavaryn@wjkennylaw.com

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein

Court File No. CV-22-00682844-0000

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MURRAY KLIPPENSTEIN

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

**RESPONSE TO REQUEST TO ADMIT**

In response to your request to admit dated August 9, 2022, the Defendant:

1. Refuses to admit the truth of the fact set out at paragraph 1, for the following reasons:

The Plaintiff, Murray Klippenstein, is an elected benchers of the Defendant Law Society of Ontario (“LSO”). The LSO is an Ontario corporation without share capital. It was originally created in 1822. It was continued by the *Law Society Act*, R.S.O. 1990, C. L 8 as amended (the “LSA”) and is currently defined in s. 2(2) of the LSA as a corporation without share capital whose members at a point in time are the person who is Treasurer, the persons who are benchers, the persons who are licensed to practise law in Ontario as barristers and solicitors, and the persons who are licensed to provide legal services in Ontario as paralegal members. Section 10 of the LSA provides that the benchers shall govern the affairs of the Society. Thus

-2-

benchers, not directors, govern the affairs of the LSO. The filings which the LSO has made under the *Corporations Information Act* R.S.O. 1990, C C 39 as amended (the “CIA”) are consistent with the foregoing.

**DATED:** August 17, 2022

**STOCKWOODS LLP**

Barristers  
Toronto-Dominion Centre  
TD North Tower, Box 140  
77 King Street West, Suite 4130  
Toronto ON M5K 1H1

Paul Le Vay (28314E)

Tel: 416-593-2493  
paullv@stockwoods.ca

Yadesha Satheaswaran (80242E)

Tel: 416-593-5161  
Fax: 416-593-9345  
YadeshaS@stockwoods.ca

Tel: 416-593-7200

Fax: 416-593-9345

Lawyers for the Defendant

**TO:**

**KENNY LAW**

The Phipps-McKinnon Building  
Suite 980  
10020 101A Ave NW  
Edmonton AB T5J 3G2

W.J. Kenny Q.C.

wkenny@wjkennylaw.com

Julian V. Savaryn

Tel: 780-752-1114  
jsavaryn@wjkennylaw.com

Tel: 780-752-1114

Lawyers for the Plaintiff

KLIPPENSTEIN

and LAW SOCIETY OF ONTARIO  
Plaintiff Defendant

Court File No. CV-22-00682844-0000

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**RESPONSE TO REQUEST TO ADMIT****STOCKWOODS LLP**

Toronto-Dominion Centre  
TD North Tower, Box 140  
77 King Street West, Suite 4130  
Toronto ON M5K 1H1

Paul Le Vay (28314E)

Tel: 416-593-2493  
paullyv@stockwoods.ca

Yadesha Satheaswaran (80242E)

Tel: 416-593-5161  
Fax: 416-593-9345  
YadeshaS@stockwoods.ca

Tel: 416-593-7200

Lawyers for the Defendant

Email for party served:

W.J. Kenny Q.C.: [wkenny@wjkenneylaw.com](mailto:wkenny@wjkenneylaw.com)

**SUPERIOR COURT OF JUSTICE  
CIVIL SCHEDULING UNIT  
REQUISITION TO ATTEND CIVIL PRACTICE COURT**

330 University Avenue, 8<sup>th</sup> Floor  
Toronto ON M5G 1R7  
Email: [civilpracticecourt@ontario.ca](mailto:civilpracticecourt@ontario.ca)

☒ **Requisition to Attend Civil Practice Court before a Judge to Schedule (select one of the following):**

☐ **Urgent Hearing**   ☐ **Long Motion or Application**   ☒ **Summary Judgment Motion**   ☐ **Request for Case Management**   ☐ **Constitutional Question**   ☐ **Appeal from the Consent and Capacity Board**

\*\*\* To book a date through Civil Practice Court, please return this completed form in **Microsoft Word** format by email to: [civilpracticecourt@ontario.ca](mailto:civilpracticecourt@ontario.ca).

**Court File Number: CV-22-00682844-0000**

**Full Title of Proceeding (List all Parties in the Title of Proceeding):**

**Murray Klippenstein v. Law Society of Ontario**

**Moving Party Is:**

- ☒ **Plaintiff/Applicant/Appellant: Plaintiff**  
☐ **Defendant/Respondent**  
☐ **Other**

|                                                                                                                                                                        |                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1. Estimated time for oral argument by all parties:                                                                                                                    | <b>2-3 hours</b>                    |
| 2. Nature of the action or application (e.g., personal injury, specific tort, contract or other case type identified on Form 14F):                                     | <b>Corporate law</b>                |
| 3. Rule(s) or statutory provisions under which the motion / application is brought:                                                                                    | <b>Rules 20.01(1), 20.04</b>        |
| 4. May the motion be heard by an associate judge or must it be heard by a judge?                                                                                       | <b>Must be heard by a judge</b>     |
| 5. Whether a particular judge or associate judge is seized of all motions in the proceeding or of the particular motion?                                               | <b>No judge is currently seized</b> |
| 6. If the proceeding is governed by the Simplified Procedure Rule (Rule 76), does the motion concern undertakings given or refusals made on examination for discovery? | <b>n/a</b>                          |
| 7. Is the motion seeking summary judgment?                                                                                                                             | <b>Yes</b>                          |
| 8. Is the application or motion urgent?                                                                                                                                | <b>No</b>                           |
| 9. Is any party self-represented?                                                                                                                                      | <b>No</b>                           |
| 10. Is this proceeding under case management?                                                                                                                          | <b>No</b>                           |
| 11. Does the motion or application require a bilingual Judge or Associate Judge?                                                                                       | <b>No</b>                           |

**Name of Party and Lawyer Scheduling the Motion:**

**Murray Klippenstein, Plaintiff / Moving Party**  
**W.J. Kenny, K.C. and Julian V. Savaryn, Kenny Law**  
Name and Firm (please type or print clearly)

**2023-03-29**

Date

**780.752.1112, [wkenny@wikennylaw.com](mailto:wkenny@wikennylaw.com)**

Telephone Number and Email Address



Court File No:

**Name of Party and Lawyer Responding:**

**Law Society of Ontario, Defendant / Responding Party**  
**Paul Le Vay and Yadesha Satheaswaran, Stockwoods LLP**  
Name and Firm (please type or print clearly)

**416.593.2493, [paullv@stockwoods.ca](mailto:paullv@stockwoods.ca)**  
Telephone Number and Email Address

**Name of Party and Lawyer Responding:**

Name and Firm (please type or print clearly)

Telephone Number and Email Address

**Name of Party and Lawyer Responding:**

Name and Firm (please type or print clearly)

Telephone Number and Email Address

**Name of Party and Lawyer Responding:**

Name and Firm (please type or print clearly)

Telephone Number and Email Address

**Name of Party and Lawyer Responding:**

Name and Firm (please type or print clearly)

Telephone Number and Email Address

**ONTARIO SUPERIOR COURT OF  
JUSTICE (TORONTO REGION)****CIVIL PRACTICE COURT ENDORSEMENT**  
Court File No.: CV-22-00682844-0000**Presiding Judge:****JUSTICE CHALMERS****CPC#: 7****DATE: 2023-03-29**

Counsel attending (if different than listed above):

Plaintiff:

Defendant: **K. Bernofsky**

Other:

**ENDORSEMENT**

This matter involves a corporate governance matter. The issue involves the entitlement of a director of a corporation to receive certain information. The parties seek a date for a summary judgment motion.

Based on the submissions made on CPC, I am satisfied that the summary judgment motion should be scheduled. I schedule the motion for June 20, 2024 for a full day. The timetable set out below is ordered.

[delete if inapplicable] The schedule set out on the next page is ordered.

**DATE: 2023-03-29****Judge's Signature****X**

**SCHEDULE****TIMETABLE**

- **MOVING PARTY'S MOTION RECORD, APPLICATION RECORD, OR APPEAL BOOK TO BE DELIVERED<sup>1</sup> BY: April 6, 2023**
- **RESPONDING PARTY RECORD TO BE DELIVERED BY: August 31, 2023**
- **REPLY RECORD, IF ANY, TO BE DELIVERED BY: September 30, 2023**
- **CROSS-EXAMINATIONS TO BE COMPLETED BY: November 30, 2023**
- **UNDERTAKINGS TO BE ANSWERED BY: December 31, 2023**
- **MOTION FOR REFUSALS BY: January 15, 2024**
- **CASE CONFERENCE TO BE CONDUCTED BY:**
- **MOVING PARTY OR APPLICANT'S FACTUM TO BE DELIVERED BY: January 31, 2024**
- **RESPONDING PARTY FACTUM TO BE DELIVERED BY: March 31, 2024**
- **REPLY FACTUM, IF ANY, TO BE DELIVERED BY: April 30, 2024**
- **APPROVED HEARING DATE: June 20, 2024**
- **ANY ADDITIONAL TIMETABLE ITEMS:**

**THE PARTIES SHALL COMPLY WITH ALL PRACTICE DIRECTIONS ISSUED FOR THE TORONTO REGION APPLICABLE TO THIS MOTION OR APPLICATION, INCLUDING THE REQUIREMENTS FOR FILING DOCUMENTS AND UPLOADING THEM TO CASELINES AS SUMMARIZED IN THE TABLE BELOW.**

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<sup>1</sup> *Rule* 1.01: "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning.

## REQUIRED STEPS CHECKLIST

| STEP                                                                                                                                                                                                                                                                                                                                    | HOW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | CHECK IF DONE            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| File documents and pay all fees                                                                                                                                                                                                                                                                                                         | <p>File your documents and pay fees using the Civil Submissions Online portal<br/> <a href="https://www.ontario.ca/page/file-civil-claim-online">https://www.ontario.ca/page/file-civil-claim-online</a>. <b>If your matter is urgent or you are filing documents for a court date or deadline that is fewer than 5 business days away</b>, email your documents to the court office at : Civil Urgent Matters-SCJ-Toronto &lt;<a href="mailto:CivilUrgentMatters-SCJ-Toronto@ontario.ca">CivilUrgentMatters-SCJ-Toronto@ontario.ca</a>&gt;</p> <p>Documents submitted to the court in electronic format must be named in accordance with the Superior Court's Standard Document Naming Protocol, which can be found in section C.8 of the <i>Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media</i> at:<br/> <a href="https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/#8">https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/consolidated-notice/#8</a> <u>Standard document naming protocol</u>.</p> <p>See new Rule 4.05.2.</p> <p>Ensure your email address is on all documents filed.</p> | <input type="checkbox"/> |
| <b>30 DAYS BEFORE HEARING</b>                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                          |
| Email Motions Coordinator 30 days prior to the motion or application hearing date about the status of the motion or application including names, telephone numbers, and email addresses of all counsel and/or self-represented parties. After this is done, the parties will receive an email from CaseLines saying it is ready to use. | <p>Send email to:<br/> <a href="mailto:LongMotionsStatus.Judge@ontario.ca">LongMotionsStatus.Judge@ontario.ca</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> |
| <b>AT LEAST ONE WEEK BEFORE HEARING</b>                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                          |
| <p>Upload materials to CaseLines including all Motion Records, Factums, and the requested Draft Order or Judgment.</p> <p>Upload your factum and draft Order or Judgment in WORD format.</p>                                                                                                                                            | <p>See new Rule 4.05.3.</p> <p>Ensure you email address is on all documents filed.</p> <p>For more information about CaseLines, including answers to frequently asked questions, refer to <i>Supplementary Notice to the Profession and Litigants in Civil and Family Matters – Including Electronic Filings and Document Sharing (CaseLines Pilot)</i> September 2, 2020; updated December 17, 2020 found at <a href="https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/">https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <input type="checkbox"/> |

Court File No:

|                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                         |                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Confer with opposing counsel and email Motion Confirmation form to Motions Coordinator.                                                                                                                                                                                                                                                                                                                                        | For motions, see: Rule 37.10.1 and Form 37B.<br><br>For applications, see: Rule 38.09.1(1) and Form 38B.<br><br>Send email to:<br><br><a href="mailto:LongMotionsStatus.Judge@ontario.ca">LongMotionsStatus.Judge@ontario.ca</a> .                                                                                                      | <input type="checkbox"/> |
| <b>SHORTLY BEFORE HEARING</b>                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                         |                          |
| Upload Compendiums. For all oral motions and applications upload a Compendium to CaseLines at any time before the hearing which contain the excerpted portions of the cases and evidence which the parties intend to rely upon.<br><br>Counsel and self-represented parties should familiarize themselves with the CaseLines-generated page numbering on uploaded documents for ease in directing the judge to specific pages. | See email from CaseLines.                                                                                                                                                                                                                                                                                                               | <input type="checkbox"/> |
| Upload any amended requested Draft Order or Judgment into CaseLines.                                                                                                                                                                                                                                                                                                                                                           | See uploading instructions in the Frequently Asked Questions About CaseLines at:<br><a href="https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/faq-caselines/">https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/supplementary-notice-september-2-2020/faq-caselines/</a> . | <input type="checkbox"/> |
| Exchange costs outlines not exceeding 3 pages in length.                                                                                                                                                                                                                                                                                                                                                                       | See Rule 57.01(6) and Form 57B.                                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> |
| <b>AFTER THE HEARING</b>                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                         |                          |
| Upload the costs outlines to CaseLines <u>if there have been no Rule 49 Offers to Settle</u> . If there have been Rule 49 Offers to Settle, then costs outlines should be dealt with in the manner directed by the Motions or Applications Judge.                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> |

MURRAY KLIPPENSTEIN

Plaintiff

and LAW SOCIETY OF ONTARIO

Defendant

Court File No. CV-22-00682844-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE PLAINTIFF/  
MOVING PARTY  
(Motion for Summary Judgment)  
Returnable June 20, 2024****KENNY LAW**

Bell Tower  
Suite 2603  
10104 103 Avenue NW  
Edmonton AB T5J 0H8

**W.J. Kenny, K.C.**

Direct: 780.752.1113  
Email: [wkenny@wjkennylaw.com](mailto:wkenny@wjkennylaw.com)

**Julian V. Savaryn**

Direct: 780.752.1114  
Email: [jsavaryn@wjkennylaw.com](mailto:jsavaryn@wjkennylaw.com)

Tel: 780.752.1112

Lawyers for the Plaintiff,  
Murray Klippenstein