

Racial Equality in the Legal Profession

WHEREAS the CBA is dedicated to promoting equality in the legal profession by assisting in the elimination of discrimination within the profession;

WHEREAS at the 1994 Mid-Winter meeting in Jasper, CBA Council adopted recommendation 13.3 of *Touchstones for Change: Equality, Diversity and Accountability*, directing the CBA to conduct a full inquiry into racial equality in the legal profession;

WHEREAS the Working Group on Racial Equality in the Legal Profession was formed in 1995 to conduct an extensive study into the experiences of members of racialized communities within the Canadian legal community; and the Working Group tabled its report at the 1999 Mid-Winter meeting in Montebello;

WHEREAS the Working Group report refers to “people from racialized communities”, who are persons vulnerable to racism and who may experience different treatment or the denial of rights or privileges by individuals and institutions because of policies, practices or decisions that reflect racial or cultural stereotypes of their communities;

WHEREAS the Working Group report notes that “critical race theory” focuses on the social and historical construction of race and its impact on the evolution of social and political struggles for equality of racialised peoples. Critical race theory focuses on eliminating racism and developing a inclusive democracy. It also examines how experiences of persons who invert race to serve as a positive self-identifier can contribute to the transformation of social institutions;

WHEREAS the Working Group on Racial Equality has adopted the term “racialized communities” to focus on the experiences of vulnerable individuals and communities and on how individual conduct, organizational policies and informal practices reflect societal values which can contribute to systemic and individual racism;

WHEREAS the Working Group on Racial Equality has adopted the term “critical race theory” as a valuable strategic framework to use in working towards the elimination of racial discrimination in law and in society;

BE IT RESOLVED THAT:

LAW SCHOOLS

1. The CBA and the Canadian Council of Law Deans (CCLD) create a liaison committee to monitor implementation of the law school resolutions which follow, and that this committee provide an annual report to the CBA for inclusion in its annual *Progress Towards Equality Report*.
2. The CBA urge each law school to develop a strategic plan which should incorporate each of

the following activities:

- (a) Review admissions criteria and the admissions process to remove systemic barriers to the full participation of equality-seeking communities in the law school;
- (b) Establish an internal results-based monitoring process to ensure that Aboriginal students and students from racialized communities are fairly treated at all points in the admissions process;
- (c) Diversify perspectives of decision-making by admissions committees by including representation of third-year students from equality-seeking communities;
- (d) Conduct a curriculum review which includes the participation of law faculty members with expertise in critical race theory and feedback from students from racialized communities;
- (e) Ensure that all students are exposed to human rights principles and application, professional ethics, critical race theory and Aboriginal law;
- (f) Apply human rights code guidelines on accommodation for persons with disabilities to ensure that buildings, classrooms, course materials and evaluation methods are accessible to all students;
- (g) Develop a strategic hiring plan to diversify the faculty at the tenure-track, sessional and contract levels;
- (h) Require the Dean to take proactive steps and ultimate responsibility to ensure that student associations and activities under the auspices of law school conform to their province's human rights legislation;
- (i) Invite a Bencher (who is a member of the law society¹ Equality Committee, wherever possible) to serve as a liaison/observer on faculty administrative committee responsible for equity issues;
- (j) Develop bursaries and scholarships to increase and encourage representation from students from racialized communities at the graduate and undergraduate levels;
- (k) Establish advisory committees to promote law school public education initiatives to increase awareness of issues of concern to Aboriginal and racialized faculty and students. These committees must include representation from Aboriginal and racialized faculty, students, lawyers and community organizations.

¹ "Bencher" refers throughout to any member of the governing body of the Law Society. "Law Society" refers throughout to all provincial and territorial governing bodies, including the Barreau du Québec and the Chambre des notaires.

3. The CBA urge the Canadian Access to Legal Education Group (CALEG) to take lead responsibility and work in cooperation with the CCLD and the CBA to develop:
 - (a) model guidelines for the establishment and monitoring of equity initiatives in Canadian law schools;
 - (b) a national review of equality measures and attitudes towards equality in Canadian law schools, to be undertaken every two years, to monitor progress towards the elimination of racism in law schools;
 - (c) a national system for tracking the access of students from racialized communities to law schools;
 - (d) a model policy of anti-discrimination focusing on issues relating to the law school milieu.
4. The CBA create a mentoring program, where its members offer their services to law schools in support of students from racialized communities, and that the CBA recognize the contribution of mentors at its Annual Conference and through its publications.
5. The CBA urge the Canadian Association of Law Teachers (CALT) to conduct a follow-up report to its report *Creating the Pathways ... Widening the Circle*, with a particular focus on issues of curriculum, pedagogy and law school environment, and that this report be forwarded to the CCLD for discussion and appropriate action.
6. The CBA urge the CALEG to take lead responsibility to establish a curriculum committee, working in cooperation with the CCLD and the CBA. The committee would develop and serve as a clearinghouse for course offerings, legal aid programs and practicums which incorporate Aboriginal legal issues and critical race theory as an integral part of every law student's program of study. The committee should include representation from the Indigenous Bar Association, the CBA National Aboriginal Law Section, faculty members and students from racialized communities, and associations representing lawyers or law students from racialized communities.
7. The CBA urge the CALEG to take lead responsibility and work in cooperation with the CCLD and the CBA to identify individuals and associations who could provide independent and confidential counseling, support, and mediation services to faculty and students and ensure that such information was kept current and readily accessible.
8. The CBA request annual reports from law schools on faculty composition and retention from Aboriginal and racialized communities for inclusion in the CBA's annual *Progress Towards Equality Report*.
9. The CBA urge the CALEG to take lead responsibility and work in cooperation with the CCLD and the CBA to establish an Aboriginal Advisory Committee with representatives of the Indigenous Bar Association, the CBA National Aboriginal Law Section, the Native Law Centre

and the national Indigenous Law Students Association to address all matters related to the Native Law Centre law program and its use by law schools and the expansion of pre-law programs for Aboriginal peoples.

10. The CBA, and federal, provincial and territorial Attorneys General and Departments of Justice jointly develop a scholarship and bursary fund for students from racialized communities in three distinct areas: law school, Bar Admissions and graduate programs.

THE PRACTICE OF LAW

11. The CBA adopt and promote the following intrinsically linked strategic plan and urge providers of legal services, such as law societies, Justice departments, law firms and legal departments to:
 - (a) ensure that all marketing initiatives are consistent with equality principles;
 - (b) adopt non-discriminatory criteria for hiring articling and other students, associates, and staff;
 - (c) develop clear non-discriminatory criteria for the evaluation of legal work, publicize the criteria to their lawyers and other staff, and consistently apply them in a reviewable performance appraisal process;
 - (d) ensure that internal discrimination complaints policies and procedures provide remedies equivalent to those available under the human rights legislation for the jurisdiction;
 - (e) ensure that clients have knowledge of and access to internal firm or department policy on equity, giving clients and lawyers a procedure to deal with discrimination in the lawyer-client relationship;
 - (f) conduct exit interviews with departing lawyers and staff to identify patterns of direct or systemic discrimination which may exist and effect remedial action;
 - (g) participate in or develop continuing education programmes which permit firm or department lawyers to keep pace with the changes arising from diversity in the content and practice of law;
 - (h) adopt enforceable workplace equity policies and procedures which include non-discriminatory recruitment, hiring and promotion guidelines for racialized and Aboriginal communities.
12. The CBA recommend the establishment of permanent equity-in-practice committees at law societies, the CBA and law schools, which should include members of the Indigenous Bar Association and associations representing lawyers and students from racialized communities, to coordinate and develop initiatives to ensure equitable entry into the profession, including:

- (a) identifying the requisite skills and abilities required for entry to the Bar Admission Courses;
 - (b) undertaking a curricular and pedagogical review of Bar Admission Courses (and those to become a notary in Quebec) to ensure that they include the development of the professional skills to serve diverse communities;
 - (c) publicizing successful equity initiatives undertaken by law firms within their jurisdiction;
 - (d) conducting a longitudinal study of students from racialized communities to determine their pattern of participation in the profession from law school, through articles, Bar Admission, practice and retirement or departure from the profession;
 - (e) facilitating the exchange of information on equality issues between law schools, law firms and individual lawyers.
13. The CBA and the Federation of Law Societies develop a definition of competence which eliminates systemic barriers to equality, giving consideration to the definition adopted by the Law Society of Upper Canada in 1997, and in its November 1998 *Interim Report on Competence*.
 14. The CBA urge law societies to review and revise their Codes of Professional Conduct to ensure that their members are subject to consistent standards and sanctions regardless of jurisdiction, and recommend that the reviews be undertaken in consultation with representatives of human rights commissions, where possible, so that positive remedies such as training and education are given prominence equal to punitive disciplinary measures.
 15. The CBA co-operate with the Federation of Law Societies to develop model employment guidelines regarding interviewing, hiring, and retention processes in law firms and legal departments, to be incorporated into Codes of Professional Conduct.
 16. The CBA, through its provincial and territorial branches, work with law societies and human rights commissions to develop programs for the identification and elimination of systemic barriers to the participation of Aboriginal lawyers and lawyers from racialized communities within law firms.
 17. The CBA urge law societies to create appropriate outreach committees to enhance the participation of Aboriginal lawyers and lawyers from racialized communities as Benchers, and to identify and remove barriers to such participation.
 18. The CBA urge the Canadian Corporate Counsel Association to meet regularly with the Indigenous Bar Association and associations representing lawyers from racialized communities, to develop strategies which would utilize corporations' leadership role as important clients of law firms to advance equality for lawyers from racialized communities, and encourage the increased participation of members of racialized communities in the profession.

19. The CBA urge federal, provincial, and territorial Attorneys General and Departments of Justice to adopt contract compliance programs, under which only those law firms demonstrating a commitment to equality, through appropriate hiring, retention and promotion policies and practices, would be granted government contracts, and urge Attorneys General to report on the awarding of contracts under this contract compliance process to the CBA, for inclusion in its annual *Progress Towards Equality* Report.
20. The CBA offer to join with the Indigenous Bar Association and associations representing lawyers from racialized communities to establish an advisory committee to provincial and territorial Attorneys General and Departments of Justice who have not yet instituted a contract compliance program.
21. The CBA urge federal, provincial, and territorial Attorneys General and Departments of Justice to acknowledge the expertise and experience of Aboriginal and racialized lawyers, particularly in matters directly affecting their communities, by ensuring their inclusion on legal teams, where appropriate.
22. The CBA offer to join with the Indigenous Bar Association and associations representing lawyers from racialized communities in setting up semi-annual meetings with federal, provincial and territorial Attorneys General and Departments of Justice, to discuss progress towards the eradication of systemic barriers to full participation of Aboriginal lawyers and lawyers from racialized communities in providing government legal services.
23. The CBA urge federal, provincial and territorial Attorneys General and Departments of Justice to prepare workplace profiles annually, indicating numbers, levels and retention rates for Aboriginal lawyers and lawyers from racialized communities, for the CBA to include in its *Progress Towards Equality* Report.
24. The CBA urge federal, provincial and territorial Attorneys General and Departments of Justice, the Federation of Law Societies, and the CCLD to work together to establish consistent criteria for the categories used by them to identify communities for monitoring workforce and education participation, and experiences of Aboriginal and racialized students and lawyers, to facilitate comparison of data.
25. The CBA offer to join with the Federation of Law Societies and federal, provincial and territorial Attorneys General and Departments of Justice to work with major financial institutions to develop a funding strategy to assist any lawyer, particularly Aboriginal lawyers and lawyers from racialized communities to establish law practices.
26. The CBA urge the federal government to join with the CBA to provide leadership to each province and territory to establish a committee (under the auspices of the Attorney General and comprised of Crown Attorneys, policy analysts, representatives from community justice organizations, and lawyers from racialized communities) to review Crown policies, practices regulating the Crown's exercise of discretion, and legal analysis to identify systemic discrimination which limits access to justice or availability of service to racialized communities.

27. The CBA offer to join with the Federation of Law Societies and associations representing foreign-trained lawyers to establish a committee to discuss barriers to the participation of foreign-trained lawyers in the Canadian legal profession, and devise strategies to eliminate those barriers, including the development of a learning assessments tool to assist in the fair evaluation of their credentials.
28. The CBA urge federal, provincial, and territorial governments to establish permanent Cabinet Committees on Equality Issues, and recommend that such Committees meet regularly with lawyers from racialized communities and representatives of racialized communities to discuss justice issues.

COURTS

29. The CBA, together with the Indigenous Bar Association and associations representing lawyers from racialized communities, meet annually with the Canadian Judicial Council and its provincial and territorial equivalents to discuss issues of mutual concern regarding the courtroom environment and issues of access to the courts for Aboriginal and racialized communities.
30. The CBA urge the Canadian Judicial Council and its provincial and territorial equivalents, through their respective Equality Committees where they exist, to establish the position of a non-judge advocate to facilitate and assist in the mediation of concerns expressed by lawyers or members of the public regarding issues of discrimination by judges. The advocate would provide an annual report to the Canadian Judicial Council. A report on the progress of this initiative would be provided annually to the CBA for its annual *Progress Towards Equality* Report.
31. The CBA urge federal, provincial and territorial Attorneys General and Departments of Justice to establish committees to develop the terms of reference for an advocate to facilitate and assist in the mediation of concerns expressed by lawyers or members of the public regarding issues of discrimination by Crown attorneys, court staff and staff lawyers. The advocate would provide an annual report to the CBA for its annual *Progress Towards Equality* Report.
32. The CBA urge the Canadian Association of Provincial Court Judges to expand provincial judges' training programs to include education on social context issues, considering the National Judicial Institute program as a model to ensure that resource persons have a solid theoretical and experiential background in critical race theory.
33. The CBA and the Federal Department of Justice review the criteria for judicial appointments to identify and eliminate systemic barriers in the current appointment process. Particular focus should be given to having Aboriginal judges and judges from racialized communities at appellate levels.
34. The CBA request that federal, provincial and territorial governments provide an annual report to the CBA setting out the profile of the judiciary including representation from Aboriginal

lawyers and lawyers from racialized communities.

ABORIGINAL PEOPLES

35. The CBA urge the Federal Department of Justice to establish a permanent committee with representatives from the Indigenous Bar Association, the CBA National Aboriginal Law Section, Aboriginal governments and legal scholars to evaluate the feasibility of, and, if appropriate, to develop a strategic plan for the design and establishment of an Aboriginal law school.
36. The CBA urge the CALEG to take lead responsibility and work in cooperation with the CCLD and the CBA to establish an Aboriginal Advisory Committee, with representatives from the Indigenous Bar Association, the CBA National Aboriginal Law Section, the Native Law Centre and the indigenous law students associations, to promote the recognition and increase the availability of pre-law programs while monitoring and evaluating their capacity to increase accessibility for Aboriginal peoples to law school.
37. The CBA urge the federal, provincial and territorial Attorneys General and Departments of Justice to fund and develop roundtables to meet quarterly with the Indigenous Bar Association to discuss issues of concern as identified by the Indigenous Bar Association.
38. The CBA urge the Federal Department of Justice to take lead responsibility for establishing a strategic planning committee with representatives from the CBA, Aboriginal governments and the Indigenous Bar Association to develop a comprehensive funding protocol for community-focused Aboriginal law firms.
39. The CBA urge the Federation of Law Societies to work with the Indigenous Bar Association, the CBA National Aboriginal Law Section and Aboriginal legal scholars to examine current Bar Admission Courses and develop a model program to include Aboriginal perspectives in courses of general application and a specific examinable course of Aboriginal law, considering the model of the Law Society of Upper Canada course in this context.

ACCESS TO JUSTICE

40. The CBA urge the Federal Department of Justice to work with the Indigenous Bar Association to adequately fund legal, court support and cultural interpretation services for Aboriginal and racialized accused and inmates.
41. The CBA coordinate an immediate review of funding cutbacks in provincial and territorial legal aid programs, by a committee comprised of provincial and territorial legal aid program representatives, legal aid lawyers and representatives from Aboriginal and racialized communities, to examine whether there is a disproportional under-servicing of Aboriginal clients from racialized communities resulting from the cutbacks. The results of this review could form the basis of a *Charter* challenge.

42. The CBA take a leadership role, working with law societies, the federal, provincial and territorial Attorneys General and Departments of Justice, the Indigenous Bar Association and associations representing lawyers from racialized communities to evaluate current legal aid programs and develop a strategic plan for the maintenance of adequate funding levels. This plan will include the expansion of specialized legal clinics to serve racialized and Aboriginal communities and the provision of services to refugee claimants.
43. The CBA and the Federation of Law Societies develop a document to inform clients of their rights and methods of seeking redress should they experience discrimination in access to or quality of service by a lawyer or Quebec notary, which would be provided to all clients at the time of the retainer.
44. The CBA and the federal, provincial and territorial Attorneys General and Departments of Justice develop guidelines for the training and role of court interpreters. Participation should be sought from law societies, Ministries of Education, lawyers from racialized communities, community justice advocates working with clients from racialized communities and workers in community-based interpretations services, to develop criteria for an interpreters' certification program to discuss guidelines for training, certification and confidentiality protocols for interpreters.
45. The CBA, together with specialty legal aid clinics serving racialized communities, lawyers from racialized communities, their associations and legal academics, participate in the development of a research protocol and a review of the jurisprudence and litigation strategies applied in cases involving issues of racism and culture. They should also establish guidelines for the inclusion and application of a *Charter* analysis based upon a critical race theory framework for federal, provincial and territorial Attorneys General and Departments of Justice.
46. The CBA acknowledge the contributions which organizations such as the Indigenous Bar Association, the Metis Lawyers Association, the South Asian Lawyers and the African-Canadian Legal Clinic have made to advance equality.
47. The CBA, the Indigenous Bar Association and associations representing lawyers from racialized communities assist the Privy Council Office and its provincial and territorial equivalents to create an annual fully funded training program for members of administrative tribunals which would provide orientation on basic law and education on social context and the *Canadian Charter of Rights and Freedoms* for all appointees at regular intervals during their tenure in office.
48. *Omitted.*

CANADIAN BAR ASSOCIATION

49. The CBA, through the implementation sub-committee of the Standing Committee on Equality, develop a strategic plan which will include the following activities:

- (a) surveying lawyers from racialized communities who are not CBA members to identify ways to increase their participation in the CBA;
 - (b) establishing a public policy advisory committee, including lawyers from diverse backgrounds with expertise on equality issues and associations representing lawyers from racialized communities, to ensure that the public positions and briefs and interventions of the CBA reflect broad equality perspectives, with an anti-racist analysis;
 - (c) reviewing its informal criteria for membership in national and branch structures and committees to remove systemic barriers to the participation of lawyers from racialized communities;
 - (d) developing an orientation program on the impact of equality issues on the CBA's work, for incoming committee members, other volunteers and staff, to take place at each annual meeting;
 - (e) increasing contact between organizations representing lawyers from racialized communities and the CBA branches and general membership.
50. The CBA develop a public awareness campaign for the profession and the general public, confirming its commitment to equality and to the development of a diverse profession, which campaign should involve law schools, law societies, branches, and associations representing lawyers from racialized communities.
51. The CBA provide public support to local bar associations, law societies, and law schools which find their equality initiatives subject to attacks based on stereotypes and misinformation.
52. The CBA offer an annual symposium on issues affecting the legal profession's capacity to deliver appropriate services to racialized communities, at the annual conference, and that outside funding be sought for the symposium.
53. CBA's Standing Committee on Equality establish a sub-committee to implement the recommendations of this report adopted by Council, which should reflect the diverse stakeholders who participated in the consultations of the Working Group on Racial Equality.
54. The CBA publish an omnibus report entitled *Progress Towards Equality* containing the annual report recommended by the Working Group and other materials selected by the implementation sub-committee, with highlights to be presented as a standing agenda item at the annual meeting of Council.
55. The implementation sub-committee identify and publish a list of research requirements (such as empirical studies, analyses of equality issues to facilitate discussions amongst jurists, case studies needed for training, models for an environmental scan of the legal profession's attitudes to racial equality, and major research projects) to be included in the annual *Progress Towards Equality* Report.

56. The CBA urge the Federal Department of Justice to undertake a critical analysis of Statistics Canada's data on the legal profession every five years, and to make it publicly available to all interested parties in the *Progress Towards Equality* Report.
57. The CBA employ a full-time Senior Advisor on Equality subject to funding being available (reporting to the Executive Director), establishing the mandate through discussions with the implementation sub-committee after review of similar positions at law societies, by December 31, 2000. The mandate should include:
 - providing advice to the CBA national office, officers, branches and staff on all issues raised in the *Touchstones for Change*, the Report of the Working Group on Racial Equality and other equality issues;
 - supporting the CBA's efforts to eliminate systemic racism and other discrimination; and
 - increasing the participation of lawyers from racialized communities and equality-seeking communities in the legal profession.
58. The CBA, in consultation with law students and lawyers from Aboriginal and racialized communities, develop a recruitment strategy and explore changes to its fee structure which would attract more members from racialized communities.
59. The CBA continue to expand the scope of its continuing legal education programs to include more courses on human rights law, equality theory, and anti-racist legal practice.
60. The CBA implement its commitment in Resolution 96-05-M to ensure that all persons in voluntary and staff positions in the CBA national office, branches, and committees, participate in orientation and training courses which address the issues of systemic discrimination and harassment, particularly as they pertain to their work for the CBA.
61. The CBA conduct a survey to identify the prevalence of workplace equity policies in firms with more than ten associates, and publish the results in its annual *Progress Towards Equality* Report.

Certified true copy of a resolution carried as amended by the Council of the Canadian Bar Association at the Annual Meeting held in Edmonton, AB, August 21-22, 1999 (Recommendations 49 to 61) and at the Mid-Winter Meeting held in Brandon, MB, February 18-20, 2000 (Recommendations 1 to 47).



John D.V. Hoyles
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