

Criminal Lawyers' Association
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From the office of the President

November 23, 2017

BY EMAIL ONLY

Mr. Paul Schabas,
Treasurer
Law Society of Upper Canada
(Law Society of Ontario)
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N6

treasurer@lsuc.on.ca

Dear Treasurer Schabas and Benchers:

Re: CLA Position on Motion to Revise Recommendation Regarding Statement of Principles

The Criminal Lawyers' Association ("CLA") is a group that represents the collective interests of approximately 1200 lawyers that practice across the Province of Ontario. The organization has a proud history of advancing the interests of lawyers who practice primarily in the area of criminal law and in advocating, as an organization, in support of issues that are important to criminal lawyers generally and also the clients we represent. This includes intervening in litigation where issues that are relevant to the practice of criminal law are being considered. For example, we intervened in the litigation involving Joseph Groia and the Law Society and also the litigation involving Trinity Western University and the Law Society. Our Association is comprised of an eclectic membership from varying social, economic and racial backgrounds.

Criminal lawyers have a longstanding and proud tradition of fighting for equality and human rights. We zealously advocate both in court and otherwise for the clients we represent. Often that advocacy is not in respect of popular or "politically correct" causes. Among the people we represent are the most disenfranchised and marginalized of society, many of whom are racialized.

We understand Convocation will be considering amendments to current Recommendation 3(1) of the *Challenges Faced by Racialized Licensees Working Group: Final Report* (the "Working Group

Report”). Given the size of our membership and the importance of this issue, we wanted to correspond with you with a view to providing our collective perspective to share with Convocation.

I became the President of our Association in late October of this year. When the LSUC released the Recommendation and initiative it received a mixed reaction from our membership. Many questioned whether it was “compelled” speech. Others questioned the purported Orwellian nature of what was being proposed. The issue gave the Governing Board of the CLA significant pause for consideration. To that end, we convened a special meeting of the Board to consider the Statement of Principles and also the proposed amendments. We invited submissions from our membership. We also invited input from various groups that some of our members are also members of including: the Canadian Association of Black Lawyers (CABL), the South Asian Bar Association (SABA, and the Federation of Asian Canadian Lawyers (FACL).

One recurring concern for our membership was the potential impact of the requirement to have a Statement of Principles on our role as advocates for the criminally accused and the duty of loyalty to our clients. Another concern had to do with the definition of “promoting” in the Statement. The CLA Board recognizes that reasonable people who are neither racist nor sexist, including members of our association, oppose the initiative for principled reasons. Notwithstanding the lack of complete consensus among our membership, the elected members of our Board (31 members of the 36 were in attendance at our teleconference) unanimously decided as follows:

1. That we support, without reservation, the requirement that each regulated legal professional in Ontario comply with the recommendation and adopt a Statement of Principles; and
2. That we do not support any amendment to the requirement that would allow an exemption for conscientious reasons or that would exempt licensees from the requirement to “promote” diversity and inclusion.

We support the Law Society initiative on the basis that it is an attempt to clarify existing legal and professional obligations regarding human rights and the prevention of systemic racism and discrimination consistent with the Rule of Law and oath that all lawyers take when they become members of the regulated legal profession in Ontario. However, we wish to make it clear that the CLA feels more can be done and should be done to attempt to eradicate systemic racism in our profession. The requirement of a Statement of Principles is, in our view, insufficient to affect real change. Actions speak louder than words particularly in this context.

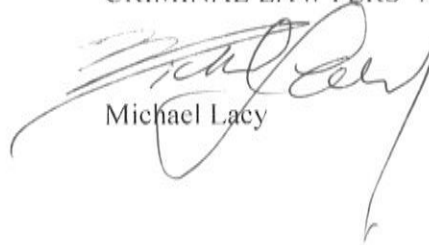
The CLA supports Recommendation 3(1) as a first step towards addressing systemic and implicit racism in our profession. We encourage the Law Society to remain steadfast in the face of opposition to the implementation of Recommendation 3(1).

We wish to note that our support for this initiative does not, from our perspective, detract in any way from our obligation to zealously defend the interests of our clients particularly when they come into conflict with the state, including representing persons who have political, theological, racial or other viewpoints that are either expressly or implicitly inconsistent with the Statement of Principles.

Finally, we have advised our membership of the Board's decision and the intention to write to you to express the same. We have also encouraged individual members who take a different personal view from the collective position to communicate with you and other Benchers directly to share their views.

We look forward to working with the Law Society on creating a more equitable terrain for lawyers throughout this Province.

Sincerely,
CRIMINAL LAWYERS' ASSOCIATION

A handwritten signature in black ink, appearing to read "Michael Lacy", written over the printed name. The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.