



LEGAL CONVOCATION COMPENSATION FUND

LEGAL PROFESSIONS AFFIRMATIVE EQUITY INITIATIVES

CHALLENGING THE CHALLENGES REPORT

A 2015 report addressing Challenges Facing Racialized Licensees (Challenges Report) ultimately inspired the Law Society to take action against discrimination through the recently abolished Statement of Principles. Not satisfied with simply fulfilling an election promise, Bencher Murray Klippenstein has since closely scrutinized the underlying Challenges Report. Klippenstein's review raises a significant number of questions with the Challenges Report, including the low response rate from legal professionals generally and from racialized licensees, the use of leading questions, and a questionable survey sample and consultation methodology. He concluded that the report was "methodologically invalid, seriously misleading, driven by a particular political ideology, and an unacceptable basis for serious policy-making...". His analysis is posted online. (stopsop.ca).

Whether the underlying analysis is as deeply flawed as suggested by Mr. Klippenstein, or not, many others hold tight to their view supported by other reports in Ontario and elsewhere, that racialized members of the legal profession in fact face the same discrimination and harassment issues as occur generally in our society; hence Law Society affirmative equity action is arguably required to help current and future colleagues and provide leadership to other professions.

The Klippenstein analysis and views have been both praised and criticized representing the highly charged and politicized issues surrounding Law Society equity initiatives. The most recent and comprehensive rebuttal has been advanced by Joshua Sealy-Harrington. It can be viewed on line at <https://ablawg.ca/2020/02/20/disproving-racism-a-rebuttal-to-klippensteins-critical-review-of-the-law-society-of-ontarios-report-on-challenges-facing-racialized-licensees/>

What happens next may be up to the Equity and Indigenous Affairs Committee (of which Mr. Klippenstein is a member) should it wish to bring the matter back to Convocation. In any event Convocation is already being asked to determine which if any prior equity initiatives are to be maintained or scrapped. Stay tuned.

EQUITY BEGINS AT HOME

At a January meeting of the Equity & Indigenous Affairs Committee several elected Benchers who were not committee members, attended but were not permitted to speak; yet invited members of the Equity Advisory Group were permitted to do so. The denial of the opportunity to speak was considered an affront to the Benchers' statutory duties as a director. As a result Benchers Fagan and Brown tabled a Motion seeking to affirm the rights of Benchers to participate and speak at future committee meetings.

Recognizing this issue could arise in every other committee of Convocation it was also suggested that a study should be undertaken to consider the participation of non-benchers at Convocation committees and the advisability of establishing a standing advisory group such as the Equity Advisory Group. This motion was tabled and debate deferred.

A BUN FIGHT

Arising from the same January meeting, a member of the Equity Advisory Group published on twitter an allegation of a serious question relating to the conduct of an elected bencher, who is claimed to have said that the Chair hates "democracy by looking at me." Surprisingly the tweet was re-published by the Law Society Discrimination & Harassment Counsel ("DHC"). Consequently, Benchers Fagan and Brown asked Convocation to censure the unnamed member of the Equity Advisory Group and the DHC. These equity concerns attracted the attention of both the Equity Advisory Group and LEAF which delivered submissions to Benchers about the need for careful consideration of the implications of the proposals in light of the Law Society's statutory obligation to regulate the profession in the public interest. The censure motion was ruled out of order. Hopefully there can be broad based consultation to arrive at a consensus of the role of equity initiatives as a component of the right to retain self regulation.

SPECIAL CONVOCATION-COMPENSATION FUND

An issue has been percolating concerning the compensation fund (created to partially compensate clients for an unrecoverable loss caused by a dishonest lawyer or paralegal) since October 2019. A report provided to Convocation that month and further analyzed by Bencher Lubomir Poliacik concluded that a significant percentage of the Fund from 2009 (69.5%), to 2013 (92.7%) and up to 2017 was used for purposes other than permissible compensation fund grants or fund administration. However, since 2018 and 2019 all of the collected levy has been correctly allocated for compensation fund purposes. There have been differences of opinion as to whether the allocation of such expenses to the compensation fund was in strict compliance with the Law Society Act (the "Act").

A group of 10 elected Benchers delivered a notice in November, requiring the Treasurer to convene a special meeting to consider measures to be implemented to ensure that the future use of compensation funds raised by levies are not used for unrelated Law Society activities. The notice addressed issues of fiduciary duties and ultra vires actions of Convocation. The Treasurer's deft stick handling avoided the Special Convocation and resolved the issue by a resolution of Convocation implementing a policy in regard to the allocation of expenses to the compensation fund. The newly minted policy, to avoid any future ambiguities provides that:

1. only direct costs, salaries and expenses be allocated to the compensation fund ;
2. the LSO audited financial statements shall disclose whether any costs have been allocated differently which shall be reported to Convocation annually; and
3. an external legal opinion be obtained prior to any subsequent amendment to the policy which would have the effect of allocating any indirect costs, salaries or

expenses to the compensation fund.

It is unfortunate that a group of Benchers found it necessary to wield the club of a notice to convene a Special Convocation to move the issue forward. It is noteworthy that notices of motion were delivered seeking to amend the negotiated resolution, which were rejected by Convocation. However, it is heartening that it was possible to achieve a consensual outcome dealing with differences of opinion and to minimize the risk of any future similar problem. The matter may yet be raised again at the Law Society Annual General Meeting on May 13, 2020.

TREASURER FATIGUE?

Convocation did not sit in December, 2019 and the Treasurer cancelled January Convocation. He has previously cancelled a Convocation as a cost saving measure where there did not appear to be sufficient reason for the meeting. However, perhaps the most recent cancellations might also reflect an onset of weariness. As well Convocation does not traditionally sit in March. Bear in mind that "silly season" has already begun for those elected Benchers who are trying to position themselves for a spring electoral run for the Treasurer's job.

HONOURARY DEGREE

The Law Society presented a degree of Doctor of Laws, honoris causa (LLD), to former Treasurer Janet E. Minor, at the Call to the Bar ceremony on January 31st. Each year, the Law Society awards honorary doctorates to distinguished individuals in recognition of outstanding achievements in the legal profession, the rule of law, or the cause of justice. Recipients such as Ms. Minor, serve as inspirational keynote speakers for the new lawyers.

DUE DATE

March 31st is the date for filing our Law Society annual report. But surprisingly there are no consequences of delayed filing until May 30, 2020 after which a \$200 late filing fee is charged and an administrative suspension imposed.

LAW SOCIETY TRIBUNAL

A new website has been launched (lawsocietytribunal.ca) to provide important information including notices, orders, rules, guides, searchable documents and user friendly forms. This is a key tool to advance the transparency and accessibility of the Tribunal.

HOLOCAUST REMEMBRANCE DAY EVENT

Will be held at Osgoode Hall on April 21, 2020 at 5:00 p.m.

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