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SUMBISSIONS TO THE CHANGING WORKPLACES REVIEW
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1 INTRODUCTION

These submissions are being made by the Legal Aid Ontario Lawyers Campaign to Secure Collective Bargaining Rights. We are a committee of Staff Lawyers who are employees of Legal Aid Ontario (LAO), an agency of the Government of Ontario.

We will be addressing the following question, *“In the context of the changing nature of employment, what do you think about who is and is not covered by the LRA? What specific changes would you like to see?”* Our response is simple; the definition of “employee” should be amended in the *Labour Relations Act (LRA)* to include those in the legal profession.

The demographics of lawyers in Ontario are changing. More racialized lawyers and female lawyers are joining the profession each year. Despite the changing demographics of the lawyers who are joining the legal profession, senior lawyers in management positions remain predominantly white and male. The power imbalance between the partners and associates or managers and employees in these situations is amplified by the pre-existing systemic power imbalances that already exist in society.

The days of firms with four or five partners, each with equal footing, making collaborative decisions about the way their firm should be managed is no longer the reality for many lawyers in Ontario today. Many lawyers find themselves stuck in the power imbalance of a traditional employer-employee relationship. Furthermore, many of us lack the mechanisms to influence our wages, working conditions, or file grievances if we feel that we are being mistreated by our employer.

Staff lawyers and associates need a mechanism to address the issues that they are facing with their employers. One strategy is through collective bargaining. However, exclusion from the *LRA* prevents many lawyers from doing so. Although voluntary recognition of a bargaining representative by an employer is technically possible, as we as employees of LAO have experienced, voluntary recognition from an employer can be practically impossible to achieve without legislative protections.

2 HOW HAS LAWYERING CHANGED IN ONTARIO?

2.1 Increasing Racialization of the Profession

The demographics of lawyers in Ontario are changing. The profession is becoming increasingly racialized from 9.2% of lawyers identifying as racialized in 2001, to 11.5% in 2006, to 17.0% in 2010.¹ In 2012, 24.0% of total candidates enrolled in the licensing admission process identified as racialized.²

A 2004 study showed that racialized lawyers tended to work as sole practitioners, for the government, or in-house for corporations, trade unions, or associations at a higher rate than non-racialized lawyers.³ They are less likely to be partners in a law firm.⁴

In 2012, the Law Society of Upper Canada (LSUC) put out a consultation paper that identified many workplace challenges faced by racialized lawyers. Racialized participants in the consultation expressed concerns that they had less access to career opportunities and earned less than their non-racialized peers.⁵ Other participants pointed to barriers that they faced due to factors that intersected with their racialization such as physical appearance, age, gender,⁶ or place of education⁷.

LSUC's consultation paper highlighted a number of initiatives that could be taken by employers at law firms or by LSUC itself to address the disadvantages faced by racialized lawyers in Ontario.⁸ However, all of these initiatives were dependent on engagement by those already in power, the partners at law firms and LSUC. None of the initiatives provided tools for racialized lawyers improve their own situation.

2.2 Increasing Numbers of Women in the Profession

In 2004, Michael Ornstein released a report for LSUC that found that women were increasingly entering the legal profession.⁹ Although LSUC has not released current statistics on the

¹ Law Society of Upper Canada, *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees*, online: Law Society of Upper Canada <[https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical\(12\).pdf](https://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Members/Challenges_for_Racialized_Licensees/Consultation_Paper_Offical(12).pdf)> at 8 [*Developing Strategies*].

² Law Society of Upper Canada, *The Changing Face of the Legal Profession*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491913>> [*The Changing Face*].

³ Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001*, online: Law Society of Upper Canada <<http://rc.lsuc.on.ca/pdf/equity/ornsteinReport.pdf>> at iii [*The Changing Face of the Ontario Legal Profession, 1971-2001*].

⁴ Michael Ornstein, *Racialization and Gender of Lawyers in Ontario*, online: <http://www.lsuc.on.ca/media/convapril10_ornstein.pdf> at ii [*Racialization and Gender of Lawyers in Ontario*] at 35.

⁵ Law Society of Upper Canada, *Developing Strategies*, *supra* note 1 at 11.

⁶ *Ibid* at 15.

⁷ *Ibid* at 20.

⁸ *Ibid* 40.

⁹ Ornstein, *The Changing Face of the Ontario Legal Profession* *supra* note 3 at ii.

percentage of female lawyers in Ontario, in 2012, 50.0% of the total candidates in the LSUC admission process identified as female.¹⁰

As with racialized lawyers, female lawyers are more likely to work as sole practitioners, for the government, as in-house counsel, for trade unions, or for associations at a higher rate than other lawyers.¹¹ Women are less likely to be partners in law firms.¹²

In a study by the LSUC, more female lawyers than male lawyers express concerns about being assigned tasks beneath their level of experience, not being invited to work with senior lawyers, and experiencing discriminatory comments.¹³ Female lawyers have also pointed to concerns about the difficulties of raising children and meeting the demands of their law firms as well as dissatisfaction with maternity leave policies.¹⁴

Although LSUC has programs such as the Justicia project and the Parental Leave Assistance Program, many women in the legal profession still lack a strong mechanism to have their voices heard in their workplaces.

2.3 Alternative Business Structures

There are a number of efforts to modernize the legal profession in Ontario. One such effort is the introduction of Alternative Business Structures (ABS). ABS covers all forms of traditional legal practices and “alternative” ones including having non-lawyer and non-paralegal investment and ownership in law firms (corporation model), joint services firms, and technological legal services (such as automated legal forms).¹⁵

The LSUC has not made a decision with respect to this model, but is in extensive consultations with the Bar, and other stakeholders. Without debating the merits of the ABS proposal, the idea of a corporate non-lawyer owner further removes the profession from the “traditional” protections available in a partnership-only model.¹⁶ If this is the future of the legal practice, and as members of the Bar, we fully expect the *LRA* will be updated to reflect this changing environment.

3 WHAT EFFORTS HAVE WE MADE TO SECURE COLLECTIVE BARGAINING?

The beginnings of the Legal Aid Lawyers Campaign to Secure Collective Bargaining date back to 2006 when a previous group of LAO lawyers joined together to address working conditions and compensation at LAO. Unfortunately, without an established bargaining agent, the process was too costly and was abandoned.

¹⁰ The Law Society of Upper Canada, *The Changing Face of the Legal Profession*, *supra* note 2.

¹¹ Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001*, *supra* note 3 at iii.

¹² Ornstein, *Racialization and Gender of Lawyers in Ontario*, *supra* note 4 at ii.

¹³ Fiona M. Kay et al., *Diversity and Change: The Contemporary Legal Profession in Ontario, A Report to the Law Society of Upper Canada*, online: <<http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf>> at 63.

¹⁴ *Ibid* at 79.

¹⁵ The Law Society of Upper Canada, *Alternative business Structures and the Legal Profession in Ontario*, online: <<http://www.lsuc.on.ca/uploadedFiles/abs-discussion-paper.pdf>> at 9.

¹⁶ The Law Society of Upper Canada, *Alternative Business Structures*, online: <<http://www.lsuc.on.ca/ABS/>>

Efforts were re-ignited in 2011 when another group of LAO staff lawyers (the “Committee”) began to discuss a campaign to establish collective bargaining rights at LAO. Issues of concern included LAO’s Lawyer Workforce Strategy, which required lawyers to participate in mandatory practice rotations and relocations; fairness and transparency in compensation; and consultation in decision-making on issues affecting staff lawyers’ working conditions. It was felt the net effect of the forced rotations in particular would have an immediate impact on client service. The group of staff lawyers determined, based on the failure of the previous efforts to address concerns at LAO, that they required an experienced and well-resourced association/union to mount an effective organizing campaign. The group of staff lawyers lacked the resources to form a stand-alone association/union, and associations representing other lawyers employed as Crown Attorneys or at governmental ministries were unwilling to commit the necessary resources to mounting an organizing campaign at LAO.

Eventually, the Committee joined the Society of Energy Professionals (The Society) to gain the support of an established bargaining agent. The Committee worked with the Society to organize the LAO staff lawyers. They developed a petition to be used by staff lawyers to indicate that they wished to be represented by the Society in their employment with LAO. The campaign began in approximately mid-November 2012, and by the spring of 2013, over 80% of the staff lawyers had signed the petition.

Since then, the Committee has been working tirelessly to seek voluntary recognition as a bargaining unit from LAO. We have made multiple attempts to schedule meetings with Bob Ward, CEO of Legal Aid Ontario, tried to speak with other members of the Board of Directors, written letters, and have also reached out to the Ministry of the Attorney General and Members of Provincial Parliament. Yet to this day, LAO has refused to sit down with our Committee and recognize the Society of Energy Professionals as the independent and democratically selected bargaining agent of the staff lawyers at LAO. As a result, staff lawyers at LAO lack a mechanism through which they can meaningfully voice their concerns to management.

4 WHAT IS OUR LEGAL ARGUMENT?¹⁷

As a result of multiple failed attempts to gain recognition from LAO, we have made a legal application pursuant to section 2(d) of the *Canadian Charter of Rights and Freedoms*. Following the case of *Mounted Police Association of Ontario v Canada (Attorney General)* 2015 SCC 1, we are arguing that pursuant to s. 2(d) of the Charter, the staff lawyers at LAO have the right to choose their own democratically selected and independent bargaining representative, and to engage in meaningful collective bargaining through that democratically chosen and independent bargaining agent. Furthermore, we submit that pursuant to s. 2(d) of the Charter, LAO as a governmental body has a corresponding obligation to recognize the democratically independent association freely chosen by its employees and to enter into a process of meaningful collective bargaining with that association. Our legal application will also challenge the constitutionality of the exclusion of lawyers from the *LRA*.

¹⁷ For the full text of our notice of application, please see <<http://laolawyers.ca/wp-content/uploads/2015/06/Notice-of-Application-issued-June-4-2015-CV-15-529588-00762281.pdf>>.

5 STATEMENTS FROM OUR COMMITTEE MEMBERS

“I have personally spoken to both the CEO and the Vice-President of Policy at Legal Aid Ontario (LAO) when I had concerns about new policy and directives that I believed negatively effected client service, and raised professionalism issues. Specifically I spoke to Bob Ward, CEO and suggested that the organization was valuing a breadth of various corporate interest experiences over a depth of experience as a lawyer. I was informed that if I wanted to become a more proficient criminal lawyer, LAO might not be the place for me.

I disagreed with that response from Mr. Ward, and had a different expectation for the type of lawyers LAO wanted to keep as staff. It seemed like the organization was trying to create managers and not create better lawyers. I understood LAO as a front-line service to protect the rights of marginalized Ontarians, and my concerns were dismissed. As a result, I believed a collective approach was necessary, as I knew my colleagues shared my concerns. I helped in the founding of the Committee of LAO Lawyers for Collective Bargaining Rights to try and assist the staff and the clients of Legal Aid Ontario.”

- Haran Aruliah, Lawyer, Legal Aid Ontario

“After almost a decade in the community sector, I’ve switched course and started a career in law. It was a perfect fit to land at Legal Aid Ontario, helping low income families as duty counsel. As in the community sector, my colleagues are still overwhelmingly female, queer or racialized. Many of them are balancing family and work responsibilities.

As a single mother, I’d like to have work place security, some control over work conditions, and I want reassurance that my complaints to management will be handled fairly. Of course I have professional obligations. But I don’t believe bargaining collectively or unionizing would threaten them. Quite the opposite – I would have even more leverage to assert myself if ever my responsibility to my profession conflicts with my employer’s directives.”

- Lainie Basman, Lawyer, Legal Aid Ontario

“I am concerned with LAO management's disconnect with the realities of delivering front line, high stakes legal services for vulnerable Ontarians. The challenges faced by our clients and by front line staff are complex and evolving constantly; these issues do not appear to be considered in the increasingly stream lined approach of LAO's service delivery. As a lawyer, I am subject to professional regulation of the Law Society. The demands of my employer has put me at odds with these obligations, for example managing conflicts and serving clients best interests at a very high volume courthouse.

In the various courthouses where I have worked as a LAO lawyer, the initiatives, practices, and procedures of each courthouse are negotiated at the management level which excludes my meaningful participation or my input. The results however, have a great impact on my ability to serve my clients and ability to meet my professional obligations. While management periodically holds consultations and solicits feed back, these offers relate to limited issues of management's choosing; such attempts fail to address our concerns in a genuine and inclusive way.

I know many colleagues who share my frustrations. However, many of us are reluctant to voice them due to fear of reprisal. In a workforce comprising predominantly of women and visible minorities reporting to a more traditional power structure, there is an overwhelming sense of power imbalance.

As a front line lawyer working with the most marginalized members of our society, I believe that collective bargaining is the only way to have a meaningful dialogue with our employer about these important issues.”

- Ada Chan, Lawyer, Legal Aid Ontario

“I can say that one of the biggest challenges of not having the protection of the OLRA is the absence of any grievance procedure. As a staff lawyer at a large government agency, I have no one to protect my interests as a professional or as an employee. The legal field has changed such that large branches of government now employ lawyers directly as staff - often, in front-line service, and stressful environments. Recently, there has been a spate of

incidents involving our staff and those of another government department. Our staff have been asking for more support and protection from the behaviour of these lawyers. At the very least, we would like a mature and open discussion about professional conduct. But nothing is being done. We continue to be subject to unprofessional, demeaning, and hostile conduct on a daily basis. If we had the protection of a union, we could grieve this, and force our managers to address this as an occupational health and safety issue. Unfortunately, there is no one within our management who is willing to take this on because our organization is more concerned with stakeholder relations than with human resources.”

- Immanuel Lanzaderas, Lawyer, Legal Aid Ontario

“My career at Legal Aid Ontario has been unpredictable and difficult to navigate. This has been particularly stressful for me as a new lawyer. When I was hired as a new call with Legal Aid, I was not even told where in the province I would be assigned. I have interviewed for my current position in Toronto three times, thankfully being hired back each time, despite being classified as a “permanent employee”. However, before each interview I have felt a feeling of uncertainty. If I wasn’t hired back, would I be expected to move across the province the next month? Would it be in criminal law, which is the area of law that I practice in now? Or would I be expected to learn a new area of the law? Would there be anyone to train me if I was sent to a remote location? I had heard about some Duty Counsel offices that were chronically short-staffed and lacked senior lawyers to act as mentors. Would I be sent to one of those offices?

In addition, I have a number of concerns about some of Legal Aid Ontario’s policy and funding decisions that are informed by my perspective as a lawyer on the front lines. But who can I voice them to? I doubt that any letters that I send to the Board of Directors as an individual employee would have much impact, especially given that they have refused to acknowledge the concerns brought forward by the Legal Aid Lawyers Campaign to Secure Collective Bargaining Rights in the past. My efforts to speak to my manager about my concerns about Legal Aid policies or programs have not been fruitful. I often have to send multiple e-mails and leave numerous messages before I even receive a response when I try to contact human resources.”

- Kendall Yamagishi, Lawyer, Legal Aid Ontario

6 CONCLUSION

Increasingly, we are seeing lawyers from socially marginalized groups entering the legal profession. Unfortunately, this marginalization is following them into their workplaces, resulting in fewer career opportunities, discrimination, and additional work-life stresses.

Many lawyers are left with no meaningful mechanism to address these problems. One way that lawyers can take these issues into their own hands is through collective bargaining. However, as a result of their exclusion from the *Labour Relations Act*, it is up to their employer to allow them to do so. The introduction of an ABS-model to Ontario will further marginalize those excluded from the *LRA*.

For the past nine years, LAO lawyers have been struggling to attain collective bargaining. We have many issues that we would like to address such as working conditions, a lack of consultation when it comes to policy decisions, a lack of transparency around compensation and human resources policies, and the lack of a grievance mechanism. However, without the protections of the *LRA*, we have been effectively shut out of the opportunity to engage in a collective bargaining process. As staff members without a collective voice in a large governmental organization, we lack the bargaining power to affect meaningful changes in our workplace. We need and deserve the protections of the *LRA* and we ask that the *LRA* be amended to afford us those protections.