



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

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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).