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Part of Law Society's plan to address racism challenged in court

Statement of principles indicating a duty to promote inclusion and diversity infringes on free speech, says Lakehead law professor, who is seeking injunction to stop its imposition.



The Law Society of Upper Canada, in Osgoode Hall, is the self governing body for Ontario's lawyers. (DALE BRAZAO / TORONTO STAR FILE PHOTO)

By **JACQUES GALLANT** Legal Affairs Reporter

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A Law Society requirement meant to help combat systemic racism in the legal profession is facing major push-back.

Lakehead University law professor Ryan Alford filed paperwork in court Monday seeking an injunction to stop Ontario's legal regulator from mandating that all lawyers and paralegals adopt a statement of principles indicating an obligation to promote inclusion and diversity.

In a notice of application filed in Superior Court, Alford said he is seeking a declaration from the court that the requirement is “contrary to the rule of law in that it lacks a proper legal foundation,” and is also not supported by the Law Society of Upper Canada's own rules of professional conduct.

This move follows the announcement last month that [Toronto lawyer Joe Groia](#), a member of the Law Society's board of directors, would be bringing a motion at the December board meeting seeking an exemption for “conscientious objectors” to the requirement.

Both Alford and Groia have argued that the requirement is “compelled speech,” although they state that they believe in the values communicated by the statement of principles.

Alford said in court documents that he believes making the statement mandatory is a violation of a lawyer's freedom of expression, and, therefore, is unconstitutional.

“The core of this case is the limits of governmental power,” Alford told the Star in an interview. “Because once the Law Society enacts regulations backed by sanctions, it is acting as the government.”

He said he hopes the Law Society voluntarily suspends the statement requirement until a court can rule on its constitutionality.

“I don't think anyone can say these are frivolous concerns,” he said.

A Law Society spokesperson said they were reviewing Alford's notice of application and will be responding to it.

For lawyer Julian Falconer, co-chair of the Law Society's equity and Indigenous affairs committee, the growing opposition to the statement of principles is distressing, as he points to stories that continue to be shared of racialized lawyers and paralegals facing barriers in their profession.

“What I fear from this inexplicable navel-gazing and wordsmithing is that it's undermining the confidence and trust we were finally starting to build,” Falconer told the Star, speaking generally, not specifically, on the action before the court.

Falconer was also vice-chair of the Law Society's racialized licensees working group, whose recommendations, including the requirement for a statement of principles, were passed unanimously by the regulator's board last December.

The opposition to the statement began to emerge in September, when the Law Society reminded all licensees by email that they must indicate on their annual report, to be filed by March 31 to the regulatory body, that they have adopted a statement of principles showing an obligation to promote diversity, inclusion and equality.

They can either use a template provided by the regulator, or come up with their own statement, which does not need to be approved by the law society.

Treasurer Paul Schabas, the elected head of the regulator, told the Star last month that those who do not comply will simply be told that they are not in compliance, but that penalties may be imposed in the future.

In an open letter sent to Schabas and the members of the Law Society's board last week, the advocacy committee of the Canadian Association of Black Lawyers urged the regulator not to move away from the recommendation for the statement of principles, or any other recommendation from the working group.

"While the working group's recommendations, including the statement of principles, are not going to be popular amongst all licensees, they are essential, as the bar must come to grips with the reality that a lack of equality, diversity and inclusion in our profession has been, and continues to be, a widespread problem," says the letter.

"The Law Society is obligated to initiate change in light of systemic exclusions, and to promote the public interest.

"The current practices have failed in the past and it is time for new ways of thinking about this problem."



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