

Quick Guide to the Statement of Principles

Text

...require every licensee to adopt and to 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

What are licensees' obligations?

- Rules of Professional Conduct, Rule 2 and Commentary 4.1 and Rule 6
- Paralegal Rules of Conduct, Rule 2.03
- CPD requirement for EDI credit hours
- obedience to the law of Ontario and Canada, including human rights codes

Law Society statement requirements

- interprets the requirement as calling on licensees to reflect on their professional context and how they will *uphold and observe* human rights law
- relates to conduct, and does not include thought, belief or opinion
- applies only to professional relationships
- licensees are not required to make the statement public
- licensees are not required to disclose the contents of the statement to the LSO
- licensees may use their own language to compose the statement, though templates are available for assistance
- licensees must advise the LSO on their annual return of the existence of the statement
- failure to prepare a statement carries no penalty, but the licensee is requested to explain the omission

How the STOP SOP group has described the Statement

Compares it to situation where the Labour Board ordered a party to distribute publicly, as its own opinion, a letter composed by the Labour Board, expressing views which the party did not agree with, under threat of penalty

Says that licensees are required to state their concurrence with the political aims of the Society.

Is the requirement an example of "mission creep", as alleged by STOP SOP?

- *Law Society Act*: 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
 1. The Society has a duty to maintain and advance the cause of justice and the rule of law;
 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario;
 3. The Society has a duty to protect the public interest.
- Supreme Court of Canada: "as a public actor, the LSUC has an overarching interest in protecting the values of equality and human rights in carrying out its functions"
- Supreme Court of Canada: "The LSUC was also entitled to interpret the public interest as being furthered by promoting a diverse bar"
- Supreme Court of Canada: "The LSUC's determination that it was entitled to promote equal access to and diversity within the bar is supported by the fact that it has consistently done so throughout its history."

Is the Statement an Interference with the Independence of the Bar, as alleged?

- International Commission of Jurists: "The principles that comprise the Rule of Law include the protection of human rights and the independence of judges and lawyers as well as their accountability"
- International Commission of Jurists: "To ensure public confidence and promote human rights values, judiciaries, the legal profession and

prosecution services should reflect the diversity of the societies they serve. All forms of discrimination in the composition of judiciaries, legal profession and prosecution services, as well as in the administration of justice, must be eliminated."

- Supreme Court of Canada: deference to the profession by way of permitting self-regulation promotes the independence of the bar

Is the requirement of a Statement "unjustified", as alleged?

- On the basis of the case about the Labour Board, the Stop SOP group alleged that the Statement requirement is tyrannical, but that case did not include any *Charter* analysis. STOP SOP has not presented any *Charter* analysis of its own.
- If there is a violation of freedom of expression rights under section 2(b) of the *Charter*, section 1 of the *Charter* requires that the instrument causing it must be shown to be a reasonable limit imposed by law demonstrably justifiable in a free and democratic society.
- To meet the section 1 test, it must be shown that the objective of the measure is "pressing and substantial".
- One objective is to *fulfil the Society's regulatory mandate*: to ensure that all persons who practise law or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide.
- Supreme Court of Canada: "Eliminating inequitable barriers to legal training and the profession generally promotes the competence of the bar as a whole. The LSUC is not limited to enforcing minimum standards with respect to the individual competence of the lawyers it licenses."
- Supreme Court of Canada: "Limiting access to membership in the legal profession on the basis of personal characteristics, unrelated to merit, is inherently inimical to the integrity of the legal profession."
- Another objective is fulfilling the Society's objective of promoting equity, diversity and inclusiveness, which has been validated by the Supreme Court.

- The next stage in determining justification is to inquire whether the means chosen are rationally connected to the objective, and impair as little as possible the rights in question (minimal impairment). The last stage is to determine whether the positive effects of the measure are in proportion to any negative effects it may have.
- The requirement is rationally connected to its objective in both cases, since it is intended to encourage licensee reflection on their own conduct in the domain of human rights. The impact on freedom of speech is modest, since no public statement is required and licensees have choice of language and sentiments expressed. The Society does not inspect or judge the Statements, and does not punish omission to file.
- There is overall proportionality between the positive and negative effects of the measure. To the extent that licensees may complain that the Statement requires them to adhere to human rights law, they are incorrect: it is the law itself and the Rules of Professional Conduct which do that. Nor is human rights law simply the "political aims" of the Society. It is the law of the state, applicable to them in both their personal and their professional capacity.

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June 25, 2019

*The sources of the material quoted in this document can be determined by reference to the essay "Not Tyranny: Reflections on the Law Society of Ontario Statement of Principles".