The professionalism series: The changing landscape of human rights in Ontario

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This two-part series brought a panel of human rights specialists and legal professionals together to explore the future of human rights law and policy, which appears to be moving toward granting every person the ability to enjoy equal rights and opportunities without discrimination as well as advance diversity, equity and inclusion (DEI).

In part 1, Patricia DeGuire, Chief Commissioner of the Ontario Human Rights Commission (OHRC) provided an overview of the history of human rights and the evolution of human rights protections in Ontario, and outlined the OHRC's strategic plan for fostering a human rights culture in Ontario and its impact on advancing DEI.

In part 2, Patricia returned alongside Marsha Lindsay, Vice President of Legal, Labour, Employment, and Human Rights at Loblaws Inc. and Harrison Brown, a senior associate in BLG's Labour and Employment group. They discussed the ongoing progress in Ontario's human rights legislative landscape and provided valuable insights for professionals, highlighting the significance of transparency in achieving equitable outcomes within organizations.

Below is an overview of the two-part series. For more information, watch the full webinar or read the transcript*.

**Webinar and transcript are available in English only.*

Part 1 – The evolution of human rights in Ontario

The history of human rights protections in Ontario is often entrenched in grassroots pressure that gradually evolves over time. These movements have helped expand human rights protections to include various grounds of discrimination, including race, nationality, sex, disability, sexual orientation, gender identity, gender expression and more.

The Ontario Human Rights Code

In 2022, Ontario marked the 60th anniversary of the Ontario *Human Rights Code* (*Code*) which was the first legislation of its kind in Canada.

The primary goals of the *Code* are to protect the dignity and worth of every person, ensure equal rights and opportunities, and create a climate of respect and mutual understanding. The *Code* takes priority over other provincial legislation, is remedial (not penal), and considers the effect rather than the intent of actions.

The Ontario Human Rights Commission

The OHRC was established in 1961 and has since played a significant role in advancing human rights in Ontario. In 2008, Bill 107 reformed the Ontario human rights system, leading to the creation of the three pillars of the system: the OHRC, the Human Rights Tribunal of Ontario, and the Human Rights Support Centre.

Today, the OHRC focuses on addressing systemic discrimination and advocating for systemic changes. Among other tools, it uses strategic litigation to intervene in cases before tribunals and courts to establish important precedents and advance the interpretation of the *Human Rights Code*.

The OHRC's strategic plan for 2023-2025 aims to create a strong human rights culture in Ontario by working with various institutions to address the increase in hate expression, emphasizing the importance of countering hate with a multi-faceted approach.

DEI in the workplace

DEI initiatives should be carefully articulated and transparent, as well as integrated into business plans, strategic plans and key performance indicators. Patricia urged that DEI be used as a strategic tool to dismantle anti-Black racism and other forms of discrimination in the workplace, and not merely as "window dressing".

To follow DEI leading practices, workplaces must firstly recruit and retain employees from diverse backgrounds – including 2SLGBTQI+, Indigenous, Black and other racialized individuals – and actively develop and execute policies that promote diversity and inclusion. This requires cultural awareness, humility, mindfulness and taking intentional steps towards change.

The four pillars of a successful DEI strategy include:

1. Fairly defined policies and processes.
2. Data collection to inform decisions.
3. Specific plans for hiring, onboarding, training and promoting inclusivity.
4. Accountability and transparency, with leadership commitment.

Progress and challenges in DEI

There is growing demand for diversity in corporate governance, driven by investors and initiatives. Patricia acknowledged that progress has been made in terms of gender

diversity on boards and in executive roles, and representation of racialized people has also increased. That being said, representation of 2SLGBTQI+ individuals remain low.

Part 2 – Panel discussion: Equitable outcomes

In part 2, the panel participated in a Q&A style conversation that touched on the importance of data-driven initiatives, transparency, and promoting DEI in the workplace. They also examined the significance of complying with the *Human Rights Code* and accommodating employees' needs.

Here are some key takeaways from the discussion:

- Employers can use the *Human Rights C*ode as a guide to introduce programs that promote diversity and inclusion. For example, Marsha outlines how Loblaws has developed a coaching program for Black colleagues to enhance their leadership skills and representation in management roles, using human rights legislation to support such initiatives.
- DEI initiatives should be integrated into business plans, budgets and key performance indicators.
- Collecting data is essential for understanding an organization's DEI landscape, identifying gaps and creating effective initiatives. Building trust in data collection requires transparency and demonstrating the positive impact of data-driven programs.
- Organizations, such as Loblaws, are adopting hybrid work models with greater flexibility – balancing the need for accommodation with necessary business requirements. It is crucial that organizations assess individual accommodation needs and treats them with respect and empathy.
- The *Human Rights Code* imposes a legal obligation on employers to accommodate Code-related needs, with the only limit being "undue hardship." Individual accommodations can benefit not only the individual but also promote a more inclusive design.
- Organizations should have an accommodation process in place to ensure fairness and compliance. HR professionals are encouraged to document the steps taken in the accommodation process to demonstrate transparency and accountability.
- Strategies for early resolution of discrimination issues include:
    - An integrity action line for anonymous reporting of complaints.
    - Data collection and analysis to identify trends and areas requiring attention.
    - Non-adversarial approaches to conflict resolution, such as mediation.
    - Prioritizing internal resolution over escalation to external bodies.

Transcript of Part 1

Cindy Clarke	All right. Well, mindful of our time, I think I will begin, although I know that we still have some who are who are joining, as we do, the introduction

	here. So. Good afternoon. Colleagues and friends and alumni, we're just delighted to have you join us today for this very important conversation. My name is Cindy Clarke and I'm the Regional Managing Partner of the BLG's Toronto office, and I am also a practitioner and partner in our Health Law Group. On behalf of all of us at the BLG I'm so pleased to welcome you all here and to have you as part of our Fall In-house Counsel Professionalism Series. We have an excellent two-part program for you this fall, featuring a total of 2 hours of Law Society of Ontario accredited professionalism, continuing professional education. While each part independently qualified for one hour of CPD we of course, sincerely hope that you join us for both parts as one builds on the other, and we know it's a fulsome conversation that will bring the most benefit to all of us as we participate in this program. Certainly want to extend my sincere appreciation to all of you for taking the time to join us today and so delighted that we have such a cross-section of interest. So we have representatives from the health and life sciences sector, finance, banking, infrastructure, technology right across all of the important industries in our economy. So no doubt that will lead to a robust discussion and we welcome you all here. Today's and our program for this fall is really focusing on the changing landscape of human rights in Ontario. We are going to dive into what has become unfortunately, I would suggest, a polarizing topic around the world, more so recently than we ever even imagined when we put this program together. Of course, these issues are also fresh right here at home, and we will learn today and in our next session about where there might be a new direction for human rights law and policy and an opportunity to recognize the dignity and worth of every person at law where people are able to enjoy equal rights and opportunities without discrimination and to advance rights and equity. I am so pleased that to help us learn and guide our discussion is our keynote speaker for today, Patricia DeGuire the Chief Commissioner for the Ontario Human Rights Commission. Patricia, we're simply delighted to have you with us. Patricia DeGuire is a black woman who pushes the boundaries to ensure access to justice, equality and equity. Before being appointed Chief Commissioner of the Ontario Human Rights Commission in August 2021, and I note that term

	you've just been extended again. Patricia served as a deputy judge with the Ontario Superior Court of Justice and on numerous tribunals and boards. Also, Patricia is known as a very impactful and effective mediator. Patricia's played a leading role in many equity organizations, particularly focused on racism, anti-black racism, gender equity and equality and the well-being of youth. This is evident yet to my mind in spades Patricia, in your commitment to work with the police force of Peel in addressing their systemic racism challenges. I think it's a recognition of the high regard in which you're held across our society. Patricia is a constitutional law scholar, an avid mentor and a coach for young people and adults in the legal, medical and other professionals. A recipient of many awards for mentorship and public service and, as I just explained, so actively involved in addressing very real issues to tackle systemic racism. We're so delighted Patricia that you're here and that, as I've already mentioned, you'll be talking to us today about the Human Rights Commission strategic plan towards growing a human rights culture in Ontario and how you hope to strengthen that culture through education and engagement. Just before we get started and I pass it over to Patricia, I want to encourage all of our guests to put comments in. There's a Q&A box and feel free to comment that during the presentation. What we will do is have questions at the end. So we're we'll all take the opportunity to hear from Patricia and then we'll have an opportunity for questions at the end and if we don't get to them today, we will seek to find other ways to make sure that we get back to you and respond and just a quick note with your question, you can either have it sent out to everybody if you do that, or of course, you can indicate that you only want the question to come to participants. So I think that concludes my housekeeping and now really looking forward, Patricia, to hear your remarks today and we thank you again for joining us and taking the time to put together your presentation for us today.
Patricia DeGuire	Thank you so much Cindy for the warm introduction into BLG for inviting me to share my point of view about the Ontario Human Rights Code and a jolly good afternoon to everyone else. Just to give you an overview of the presentation today, I shall share a short story of the human rights in Ontario and in Canada. A brief discussion

	on previous human rights related legislation and how they contribute to the Code and how the court frames the work of the OHRC. How you can use it as a guide to build your work and a discussion on equity, diversity and inclusion in the workplace and how you can place human rights at the center of your work. A discussion on key emerging and current issues at the OHRC and how we are moving forward. But let me begin with a personalized land acknowledgment. As the agent of the Interior Human rights Commission I begin by acknowledging that the Commission's office is in what is now known as Toronto. So we are guests on the treaty lands and territory of the Mississauga's of Credit First Nation and I recognize this land is the traditional territory of many First Nations, including the Mississauga's of the Credit First Nation, the Haudenosaunee, the Chippewa and the Rendered Peoples. Further, I acknowledge that Toronto is now home to many diverse First Nation, Inuit and Metis people, and I am mindful that Toronto is covered by the by Treaty 13, the Williams Treaty, and the Dish with One Spoon Wampum. It is important to acknowledge the land. Why? It is easy to deny Indigenous people their right if we historicize your struggles and simply pretend that they do not exist. So I ask where was Mary March of Newfoundland. That woman, born in 1796, died in eight in January 1820. I black thick woman who was captured by John Payton, died alone. She was the last of the Beothuk people. Her correct name was Demasduwit. Her name Mary March was given to her because Mary the Virgin Mary, she was found in March and so she was erased by colonialism. So until my extensive studies in Indigenous rights and land claims, I did not hear about the traditional names of territories, Indigenous peoples and all the struggle the face was spoken about in the past tense. So as a displaced person of the African-Caribbean diaspora, I take this opportunity to commit to the struggles against the systems of oppression which has dispossessed Indigenous people of their land and denied their rights of self-determination. Something that is essential to human rights around the world today. I am grateful to the Indigenous peoples who have cared for and continued to care for the land across Turtle Island. So I'm going to begin by sharing with you human rights milestones in Ontario, in Canada and so my point of view is positioned in the history, in

	Canada's history as a colony of England, which began with the overseas story, [coughing] which began with the overseas plundering and possession and trading post established by England in the 16th and early 17th centuries, evolved into the British Empire and gradually became the Commonwealth now a free association of foreign sovereign states comprising Canada, the United Kingdom and many of its former dependencies that acknowledge the British monarch as the association's symbolic head. Also, centered in that space is Canada's history of human rights violation with a culture of life colonialism, which extends across every province and territory until now. Ontario's history of enacting protections for human rights. Although, the longest in Canada is nascent and really began right here in Ontario. In 2022, last year, Ontario marked the 60th anniversary of the Ontario Human Rights Code. The first legislation of its kind in Canada. The Ontario Human Rights Commission was established in 1961 and the Code enacted in December 1961, but effective on March, oh sorry, on June 15, 1962. With a vision of making Ontario a place that recognized the dignity and worth of every person where people can enjoy equal right and opportunities without discrimination. I must note, though, that the hard work to create legislation and social change in Ontario began much earlier. So before the Code, like before the Code was enacted in 1962, was not good for many people and groups. For example, in Ontario in 1940s and the 1950s, Blacks, Asians and Jews experienced overt and covert forms of discrimination and harassment. It was not unusual to see signs stating no Jews or dogs allowed. Blacks were not people, so they were not mentioned. Indigenous children and their families were living in the horrors of Canada's colonial residential school and the path of Canada's first human rights Code here in Ontario had not begun. But how did it begin? It started with grassroots pressure as individuals and communities banded together to push for a better way forward. Then, Canadians largely defined whites as civil liberties, which were the freedom of speech, association, assembly, religion, press, due process and voting. Public discourse was largely about racial, religious and ethnic discrimination but those it led to a variety of legislation being enacted in the mid 1940s and fifties, including the racial

	Discrimination Act in 1944. As the world began to recover from the horrors and trauma of World War II, people sorry people came to realize, albeit slowly, that inequity and intolerance were not the way forward. The response to the global dilemma was the 1948 launch of the United Nations Universal Declaration of Human Rights, which paved the way for countries and Canadian provinces like Ontario to consider the human rights approach and you will note from the preamble of the Code is borrowed from the UN declaration. After that period Ontario enacted other legislation. For example, in 1952 we had the female Employees Fair Renumeration Act, which protected a woman's right to equal pay. Then in 1954, we had the Fair Accommodation Practice Act to prevent discrimination in services, facilities and accommodation in public spaces and the creation of the Anti-Discrimination Commission in 1958 but alas, the Commission had no staff. That was rectified somewhat in 1961 when the Human Rights Commission was created with a small staff led by Director Dr. Daniel G. Hill. He called human rights legislation and I quote "the scapegoat for a blending of educational and legal techniques in the pursuit of social justice." After the Code was enacted, all the existing laws were joined into one Human Rights Code for Ontario and that became effective on June 15, 1962, the anniversary of the Magna Carta. The first document to reduce into waiting the principle that the King and his government were not above the law. On that day, June 15,1962, Ontario became the first jurisdiction in Canada to establish a legally mandated human rights complaints system. So the commission would review complaints and if there were not resolved, a formal board of inquiry would be set up to decide the issue. Boards of inquiry evolved into the now Human Rights Tribunal of Ontario. So the Interior Human Rights Code, a more granular history. In 1962, the Code that was enacted then was limited in scope compared to today's Code. It prohibited discriminating discrimination regarding signs, services, facilities, public accommodation, employment and trade union membership on the grounds of race, creed, color, nationality, ancestry and place of origin but problems still persisted. For example, in 1962, there was the Amherst Burger riot, The site where you have five days of racial incidents, including across Birmingham and the facing of the Black Baptist Church. Someone even

	sprayed paint on the town's buildings indicating home of the KKK. The commission stepped in to de-escalate the racial tension, but no arrests were made. Throughout the 1960s and early 1970s though, communities were becoming more familiar with the concept of discrimination and what to do about it and so the second wave of the women's liberation movement gathered steam and that amplified the plight of women. For example, the lack of human rights, protection for women, families providing the necessaries as basic as finding housing, women with children, or being pregnant and older Ontarians, especially in the workplace, were often treated as disposable citizens without rights. So once again, the grassroots rallied and called for changes and in response, on June 30th, 1972, the government expanded the Code to include sex, marital status and age. Although age protection was only extended to people 40 years and over. The next milestone, which was very important, happened in July 1977. The Commission released its report, Life Together, following a two-year provincial consultation and so Life Together called for sweeping changes to the Code, and many would become law in the following years. The recommendations included giving the Code primacy unless a law specifically says otherwise. The Code takes precedent over all laws in Ontario and extending protection to contracts and by association who can make a human rights complaint and for a single person to a class of persons and adding the ability to deal with systemic discrimination. The government was called upon to add the grounds of marital status and age and housing. The law age provisions from 14 to 18 are over and add the new ground of disability, sexual orientation and record of offenses. In 1982, the Code continued to evolve when the grounds of disability was added and the human rights system was given the capacity to expand individual discrimination and investigate systemic discrimination but alas, the ground of sexual orientation faced much more resistance before being included in the Code in 1986. Since 1999, the Ontario Human Rights Commission recommended that gender identity be listed as a separate ground to provide greater clarity that transgender people are equally protected under the Code. On June 15, 2012, after years of calls from the Commission, the Government of Ontario,

	added gender identity and gender expression in the Code. Today, hate action is increasing exponentially. Statistics Canada's latest report came from the police indicated hate crimes have increased 27%, with an uptick in hate crime targeting com 2SLGBTQ+ communities. Most of the reported increase in 2021 took the form of hate crime targeting given religion. That was up 67%. Sexual orientation increased by 64% and race or ethnicity up by 6% and following previous trend, anti-Semitism is the leading factor of hate crimes motivated by religion once again. This data is disturbing but can be attributed to growing social polarization and greater awareness about discrimination and reporting. So let me take you to the primary goals and parameters of the Code. So the goal of the Code or to protect the dignity and worth of every person, ensure equal rights and opportunities, create a climate of respect and mutual understanding, ensure that everyone can take part fully in society. It has primacy over other provincial legislation. It is remedial, not penal. It considers the effect not intent of one's action. It applies to only to Ontario, and it offers protection based on 17 personal characteristics we refer to as ground. It provides protection in only five social areas, employment, housing contracts, vocational training and union and we know from the Supreme Court of Canada, Mr. Justice Dickson, the late Mr. Justice Dickson was clear to say that human rights legislation must be given a fair, large and liberal interpretation to advance and fulfill its purpose or a narrow interpretation where the goal is to limit a right and that came from CN vs Canada or the Canadian Human Rights Commission in 1987. Canada's Board of Human Rights Framework, which is integral to the Code. In addition to the Code, the Commission works is impacted by the decision of tribunals, courts, domestic constitutional texts and international human rights instruments, including the Canadian Constitution, the Charter of Rights and Freedom 1982, the 1965 International Convention of the Elimination of All Forms of Racial Discrimination, 1989. The Convention on the Rights of the Child, 2007, the Declaration of the Rights of Indigenous People, 2008, the Convention of the Rights of Persons with Disabilities. Historically, the Ontario Human Rights Commission relies on Canada's domestic and international human rights instruments and the experiences of other jurisdictions in Canada to

	help guide its research, policy, development and litigation to advance an understanding and compliance with the *Code* and broader human rights obligations. So what is the changing role of the Interior Human Rights Commission? As the makeup of Ontario changes, the *Code* and Canada's broader human rights framework continue to evolve, and so has the focus of the Commission. A big shift in Ontario's human rights framework came in 2008 with the enactment of Bill 107 with major reform of the Ontario human rights system, which included creating a three-pillar institution and thus stripping the Ontario Human Rights Commission of its gatekeeping role and not having carriage of individual human rights complaints. Instead, it was ordered to focus on systemic discrimination. It also allowed people to make complaints directly to the Human Rights Tribunal of Ontario and those are called application, creating a new organization, the Human Rights support centre, which provides legal advice and sometimes legal representation to people making complaints. So these three institutions are now known as the three pillars of the Ontario human rights system. The changes the Commission experienced change its ability to focus on and to address root cause of discrimination and advocate for systemic changes. It is a recognition that some issues are unlikely to be resolved through individual complaints alone. Issues such as reconciliation with first Nations, Métis and Inuit peoples and the racial profiling in policing or piloting more humane practices in all correctional institutions. Also, the Commission uses the tool of strategic litigation to intervene in matters before the tribunal and courts at all levels. The tactic is to intervene in those cases, which have the potential to establish an expansive interpretation of the *Code* or would set important precedent, like an appropriate understanding of how different rights are reconciled or the proper test for prima facie discrimination. So, since the Commission no longer investigates individual cases, it is more difficult to get on-the-ground information on emerging human rights issues. So how do we do that?

	We have daily internal monitoring and we receive requests, intervenes from lawyers, organizations and members of the public. We have request from the Human Rights Legal Support Centre and as the chief commissioner of Ontario, I used the exclusive statutory power to create advisory groups to assist in carryout the Commission's mandate and the groups bring community expertise and knowledge to assist the Commission. Recently, the Commission has used its inquiry investigatory tool to tackle systemic discrimination and it did so by launching inquiries. We have the two 2017 inquiries into the Toronto Police and the Toronto Police Services Board practice of racial profiling of blacks and indigenous people and other people of colour. That report is currently pending and in February 2020, the Commission released the Right to Read Report, an inquiry which focused on children's human rights to learn to read, and in particular whether students with reading disabilities have meaningful access to education as required under the Code. And the report received international recognition and ongoing excellent reception from the public, stakeholders and the Ministry of Education, and the work continues as we work to implement a 157 recommendation and key to those recommendations are screening, early intervention in reading and back-to-basics teaching phonics. The success of the Right to Read has resulted in many more requests for inquiries or intervention at the Commission. I am unable to authorize such inquiries anyway, whether it has resources, there are many considerations that guide involvement in a case or inquiry. So, to that end, the Commission has developed assessment criteria. One general criterion is whether a case raises issues within the priorities of the strategic plan, and we have to stick to the plan that is pretty new – from 2023 to 2025. So, relying on advisory groups, monitoring and public consultation, the Commission has developed five (5) priorities, namely Indigenous reconciliation, criminal justice, the education system, building a human rights culture and health and wellbeing with the continued focus on poverty and homelessness…

	are the critical criteria in assessing how we conduct our work, include whether a case raises vital human rights issues, a public policy of public interest. If the issues will affect vulnerable or marginalized people protected by the *Code* or raises issues that are sufficiently serious or complex that the Commission's involvement is needed, and whether the Commission's intervention or other involvement can be done within current Commission resources. The Commission is a small agency with approximately 33 employees, the size of a high school classroom, if you will, which has a budget of $ 5 million, of which 4.9 million goes to salaries and expenses. And as noted earlier, the Commission has a broad mandate covering 17 grounds and 5 service areas. So, an intervention can range from as simple as filing a letter to being involved as a fully party at a mediation or a hearing. Indeed, the advent of the Code has helped Ontarians in becoming a better society reflective of our diversity and talent. The Commission must continue to imagine the future of the Ontario Human Rights Commission and the future of the Code, and as you know, Ontario's model is "diversity is our strength". In the – brief indulgence. My room is very hot and my thought is drying up as quickly as the heat has it. In the inevitable cultural and social dislocation, newcomers are relying on families for inculturation. Still, as a basic and essential building block of society, families have a crucial role in societal development. They bear the primary responsibilities of education and socialization of children and to instill the values of citizenship and belonging in a society. So, we imagine, and guiding the future of Ontario is not the work of the Commission alone. It is the duty of every one of you. Human rights issues continue to evolve and transform, and as we enter new eras and deal with unprecedented issues, different approaches must be created to achieve results that past practices have not addressed or met. Reimagining and a transformative approach are key to progress.

	Immigration refugees and statistics on Canada at IRCC data reveal that Ontario welcomed 184,725 new permanent residents in 2022, or almost 42.3% of the total and record and – sorry – of that total, which is a record-breaking 437,000 new permanent in Ontario in 2022. And Ontario boasts a multitude of cultures and over 200 nationalities. It is said to be the most multicultural place on the planet. This is – if necessary follows therefore, that we will have the same responsibilities but different rights and interests. And it is inevitable that at some point, the people asserting those rights will result in conflict. The Commission is responsible for giving guidance on how individuals or groups enjoy rights, but guidance is not a panacea or an antidote for systemic discrimination. Ontario cannot continue to take a single access approach to addressing human rights issues as Aristotle, Audre Lorde and further amplified by Dr. Kim–Kimberlé Crenshaw, “the whole is greater than the sum of its parts”, no one lives a single access or monochromic lifestyle. The intersection of its parts add a different characteristic that is often unique. Ontario’s unique population situationship requires human rights to consider the historical sociopolitical context and recognize that the unique experiences of individual based on the intersection of all relevant grounds. Going forward, everyone must add both human rights-based approach founded upon the Code to their strategic toolkits. And I am proud to inform you that the later months of this year, the Commission will be launching a tool, the Human Rights Based Approach, or the HRBA to help in this process. The Human Rights Based Approach framework is a new web-based educational tool that supports the public government service providers and employers across the province to design and develop policies and programs which meet the obligation under the Code. The framework can be used by advocates and researchers as well to help bring human rights approaches to their campaigns and projects. So, the Ontario Human Rights Commission’s work over the past few years, especially during the Covid-19 pandemic has looked closer at the disability and the duty to accommodate the importance of collecting human rights-based date, racial profiling, mental health,

	solitary confinement, and Ontario's child welfare system, just to name a few. Also, the Commission is working more closely with First-nation, Métis and Inuit people and communities to re-envision to human rights system that acknowledges the trauma of colonialism and to better reflect indigenous experiences and worldviews. Equity, diversity, inclusion in the workplace. There is a surge in public discourse of racism and other systemic discrimination throughout all sectors, including business and legal sectors. The overt and callous murder of George Floyd and other black people gave rise to worldwide outpouring of grief and anger. And like the rest of the world, Ontario has had to grapple with Covid-19. The intersection of those pandemics laid bare the inequities that plague our society. Yet, they have created an epoch, an opportunity to pivot to image practical ways to combat anti-black racism, anti-Indigenous racism and other forms of discrimination. This racism and prejudice have been manifesting against different racialized and affected communities in different ways. Also, since those ordeals, we have seen surges in hate: anti-Asian discrimination throughout the pandemic, a significant rise in anti-LGBTQ1+A+ activities throughout Ontario and unfortunately a rise in anti-Semitism and Islamophobia around the world and here at home, further heightened by the wars in Israel and Gaza and the Ukraine. I return to why it is essential to imagine ways to advance and promote human rights principles towards inclusion and to create a sense of belonging. Many organizations use the concept of EDI as a tool to integrate human rights principles in their workplace. Idea is not new. It evolved from an affirmative action that was introduced in the United States during the Civil rights movement in the 1960s, but recently it has grown exponentially post-Covid-19 and the Floyd Uprising. To briefly define EDI, it's an acronym that consists of three words which have nothing to do with one another. Equity is different from equality, as you know, and it is different in the way that not everyone has the same access to employment or education as the other, and in that case, to allow

	someone the chance to benefit from their full potential, one must do extra things to earn the opportunity to attain their full potential. Measures of equity is to have equal chances in those spaces to live one's potential to its fullest. Equity or substantive equality posit that right's entitlement, opportunities and access are not equally distributed throughout our society, thus, treating everyone the same will not achieve equality. That was the view that was held by the Supreme Court of Canada in the case of Andrews v. The Law Society in B.C. Diversity: the term is almost ubiquitous at this point. Ensuring workplaces are representative of communities in which they operate and live. And inclusion in a workspaces and feeling a sense of belonging. Participating in activities at work and being included and contributing to building workplace policies and processes covers inclusion. Recently, change agents and thought leaders look to equity, diversity and inclusion as a formal framework or strategic tool to dismantle all forms of this systemic discrimination in the workplace, but to be clear, institutional human rights have not embraced EDI as a component of human rights. And so EDI has become a buzzword of the century, and we saw employers wanting to include diversity and inclusion policies for the wrong reasons. It should– It was a shield to mitigate lawsuits used by corporations who were concerned about being sued. Questions we should ask and continue to raise when thinking about EDI whether all protected groups under the Code benefit from EDI. So, we should ask ourselves that question: are these groups that are protected under the Code benefiting from EDI? And so, who are the beneficiaries? Is EDI a panacea for systemic racial inequality, or does it perpetuate the status quo? Is there data to back up decisions taken? Is there data to back up decisions taken? What does that data say? How could EDI be an effective tool to enable everyone to reach their potential equitable or protect the dignity of the person? So I'd say that an authentic EDI framework has four distinct pillars which enable positive impact and sustainability. Fairly defined policies and processes, data collection, specific plans for hiring,

	onboarding, training, promoting consulting with employees and stakeholders, and accountability and transparency. It means leadership, an active and strong tone from the top versus being a human right. Ah, sorry, other than being a human resource sidekick. So creating an EDI framework that will dismantle systemic, anti-black discrimination is a Herculean feat. If it is doable at all. It can be a helpful tool, though, and so I urge you to use it. One way is to use our histories to pave positive resources, to re-imagine impactful ways to tackle anti-Black and anti-indigenous systemic discrimination. If we are to build a successful future for BIPOC people. EDI can be part of this wave of transformation. Center. Centimeter by centimeter across all sectors, creating inclusive spaces garnished with a strong sense of belonging and EQ creating pathways to black joy along the way. Successful EDI requires allies, collaborators, and partners to avoid using the master's tool to transform the master's house. Indeed, EDI has grown exponentially around the world, across all sectors. Even in Parliament, we hear that the Canada Business Corporation Act was amended to enact a requirement that corporations be governed by... I am sorry, that corporations governed by it with publicly traded securities to improve disclosure regarding women, Indigenous people, BIPOC people and persons with disabilities on boards and senior management. The Osler Media results for 2023 Diversity Disclosure Practices show that the Canadian public companies or disclose reported that among the 532 board positions which were newly created or vacated, a woman was chosen to fill the position 45.3% of the time. Women held 20.8 executive officer offices, compared to 19.8% in 2022. And this year, visible minority BIPOC and BIPOC directors held 10.2 of board seats among all CBA corporations providing disclosure compared to 8.3 in 2022 and 6.8 in 2021; however, the proportion of Indigenous directors and directors who are persons with disability has essentially been unchanged since last year. Osler states that this progress reflects a growing demand by investors for people of color representation on boards and is consistent with initiatives to increase ethnic diversity on the boards and also consistent with NASDAQ requirements. Further, Osler reports that while women are making increasing inroads into C-SUITES, although at a slow rate, in April

	2023 reports found that of the Fortune 1000 companies, only 0.8% were 2SLGBTQ+ directors. The report also found that there have been rapid adoption of 2SLGBTQ plus Q inclusive board diversity policies and 23.2% of Fortune 1000 companies now have one. Yes, there is improvement, but there is still a far, far way to go. I'm looking at the time here and wondering, Cindy, how I am for time.
Cindy Clarke	You're doing very well, Patricia. I think you have another 5 minutes or so and then we'll ask some questions. Although what you're providing is so helpful and practical that I encourage you to carry on. So…
Patricia DeGuire	So and thank you so much. I'm still sweltering from my room. EDI should be used as a tool to dismantle anti-black racism in the employment spaces. It should be carefully thought out and be transparent. It includes, it should be included in your business plan, in your strategic plan and your KPIs. It should not just become window dressing. The people who are being included, the employees who are 2SLGBTQ1++, indigenous, blacks or other racialized people must participate in whatever policies the employer intends to introduce to create that culture of diversity and inclusion. This requires cultural awareness, cultural humility, mindfulness, taking intentional steps towards change. Not just a few flippant policies or words strung together to tick the diversity and inclusion box. Collaboration with the people being included should be a significant part of building a policy. The Commission's policy and guidelines on racism, on racial discrimination, set out proactive steps that can be used to monitor and respond to allegations of racial discrimination in the workplace. And so I encourage you to visit our website to take a look at those guidelines to ensure that your policies are centered in a human rights based framework. Ontario's ongoing emerging human rights issues today. I will now turn to the work of the Commission and our current priorities. For over 60 years the Commission has been working to protect, promote and advanced human rights in the province through education, policy development, public inquiries and litigation. The Commission, the HRLSC, the HRTO are the backbone of Ontario's human rights system and play an important role in the progressive realization

	of human rights. Major areas that the Commission is working on include, as I mentioned earlier, the Right to Read Inquiry Report, the first of its kind in Canada, called for the critical changes to Ontario's approach to teaching early reading. The Commission has already seen several concrete steps arising from this inquiry, and examples include the Ministry of Education revised the elementary language curricular for the September 2023 year. The Commission also had migrant workers seek justice through an intervention, a case called Logan v. Ontario. The Human Rights Tribunal of Ontario found that the OPP discriminated against migrant workers based on race, color and place of origin when it concluded a DNA sweep of migrant workers. In its decision, the HRTO relied in part on the Commission's policy on eliminating racial profiling in law enforcement. The OPP has now destroyed the DNA samples that they collected. The Commission intervened in the *Ontario* v. *The Association of Ontario Midwives* case and the Court of Appeal confirmed that the Human Rights Tribunal decision was the correct approach. Later, Ontario decided to abandon the appeal to the Supreme Court of Canada. The Commission has made health and well-being a priority focus area in its work. Research has shown two issues which significantly impact health and well-being are the inability to exercise the right to housing, a crisis right now, and the inability to exercise the right to mental health and addiction disability care. These issues combined cause and sustain poverty. On March 14, 2013, the Commission released an interim report titled Poverty P.O.V.. What we are hearing that highlighted and summarized some of the responses received from its survey concerning poverty and these are experiencing discrimination based on core grounds, such as race, disability and receipt of social assistance, among others, lack of deeply affordable housing, including housing with support and an increase in homelessness, inadequate income support, inability to access mental health and addiction care in a timely way, and the lack of social demographic data collection. The final report slated for 2024, will provide practical and concrete recommendation. The Commission plans to work with communities and partners to track progress and with duty holders to help them adhere to their human rights obligations. In February 2023, the Commission

	released a statement calling for meaningful and timely action to address systemic anti-indigenous discrimination in policing. The Commission's statement followed reports of delayed charges against officers in two separate instances involving serious police misconduct. The event highlighted the pressing need for a broader shift towards accountability in policing. The disproportionate impact of these incidents on indigenous people's families and communities underlines the need for timely and meaningful action towards justice and reconciliation for indigenous people. The Commission will also work on it's inquiry into racial profiling and racial discrimination of black person by the Toronto police and plans to release its final report later this year. Also, we continue to work with Peel Regional Police on its human right project to address systemic racism and discrimination. And in June we jointly announce the development of initial recommendation that was shared with the PR peace community lead anti-racism advisory committee. The aim is to finalize binding recommendations later this year. In May 2023 the Information and Privacy Commissioner of Ontario and the Orange RC announce their collaboration to provide Ontario the better understanding of their privacy right concerning artificial intelligence technologies through a broader human rights approach. The Commission and the IPC recognize the significant opportunities presented by new AI technologies to benefit our society by delivering public service more efficiently and effectively. However there continues to be examples of public bodies implementing AI technologies with various unintended consequences that infringe on people's human right, including their right to privacy. Public and private sector organizations have told us the privacy and discrimination concerns are key issues for their development and use of AI. So the Commission and the IPC are ready to work with the government for further development to create trustworthy AI framework so that it is centred on respect for people's fundamental rights. Earlier this month the Commission intervened in the case Ontario Teachers Candidate Council versus Ontario. At issue in this appeal is whether the mathematical proficiency test and related legislation established by Ontario for teachers

	accredited discriminates because, sorry, and so the question is whether the proficiency test and related legislation established by the Ontario for Teachers accreditation discriminates because of ways contrary to section 15 of the Charter. The division of Court had determined that the test and related legislation has disproportionate impact on blacks, indigenous and other racialized teachers candidates and are therefore unconstitutional. We now wait to hear from the from the Court of Appeal. On October 18, the Ontario Human Rights Commission began its province wide community engagement sessions in its ongoing work to address anti-black racism in Ontario's public education system. This work will help to identify concrete and practical solutions to combat anti-black racism and hold duty holders accountable. And in 2022 the Commission was engaging over 360 meetings and 70 speaking engagements towards creating a human rights culture in Ontario. And I say this in closing, although I am pleased with the work that the Ontario Human Rights Commission had done this past year, I recognize there is work that the Commission cannot do because of lack of resources. The revitalized strategic plan of 2023-2025 have direct the Commission to create a human rights culture in Ontario. As part of culture, the Commission is committed to work with other institutions to challenge and address the increased in hate expression and help ensure public institution, individuals and groups know how to use the human rights system to respond hate. Hate is an epidemic right now. The rise in hate activities is a critical issue that requires multi-faceted approach to tackle it. And this includes government, public and private organization, civil society and every one of you. As a reminder, especially with current events in the world, everyone has the right to express an opinion and share information and ideas, but no one has the right to hate speech or to treat others with a discriminatory way in employment, in service, in housing and in any other area covered by the Code. I encourage you to look into your own organization and see how you can continue to build the policies that promote a climate of understanding and

	mutual respect so that everyone feels welcome. Democracy is now in a delegate season, and so I entreat Ontarians and all of you here today to join me in creating a place where everyone feels a sense of belonging. As a servant leader of a dedicated team at the Ontario Human Rights Commission, it is an honour to serve Ontarians. Thank you again for the opportunity to speak with you today. God bless.
Cindy Clarke	Oh my goodness, thank you Patricia for those fabulous remarks, I can see our audience clapping and I am cheering too. I am so pleased for Ontario to see you in this leadership role and to see the vary practical, direct, forthright, honest approach that you are bringing to this. I encourage our audience, now that we have had the benefit of understanding its context, I would suggest to you can see the website is replete with resources, opportunities to engage education for all of us and really I think that was an invitation to all of us on the line to really partner with and support the commission and all of its work. So, I am mindful of time so we'll save our follow-up for our panel. Any questions any of our audience wishes us to discuss you can reach out and we'll aim to tackle it at our next session. But I want to, on behalf of all of us and all of Ontario, thank you and your entire team Patricia. We are grateful for your work and it's very obvious that we are going to benefit from it. So really really appreciate it.
Patricia	Thank you so very much Cindy. As I said its really an honour. You heard about my tender spot for BLG and I hope what we imparted today will become part of the fabricate and the culture of BLG as you continue to serve your clients/your stakeholders and your employees.
Cindy	Mercie, make a wish and I will do my best to bring that to fruition. So thank you all and wishing everyone a wonderful day.
Patricia	Thank you.
Cindy	Bye bye.

Transcript of Part 2

Cindy Clarke	All right. I think that's a good little start. So good afternoon again. Welcome. I am Cindy Clark and I am the regional managing partner for BLG's Toronto office and a partner in our health law group. It's my pleasure to invite all of you with us today to the second installment in our two part program. And as I just noted, the changing landscape of Human Rights in Ontario. Certainly the first session was fascinating, and I know that this conversation will be a wonderful continuation of that great discussion. Just a few technical notes by way of reminder, if you attend both sessions, it's 2 hours of accredited professionalism program, but each session is also accredited for an independent hour. So if you're only joining us today, we will encourage you to have a look at the other session online when it's available. But for now, you can certainly claim the one hour. During part one, we heard from the amazing Patricia Patricia DeGuire, Chief Commissioner of Ontario Human Rights Commission, and we learned about the Commission's strategic plan, its effort to provide practical and important advice for everyone in Ontario and really importantly, for business leaders really committed to growing a human rights culture in Ontario. We talked about how human rights' law and policy has advanced over the years and how it can impact and advance equality, diversity and inclusion in all of our workplaces and in our entire society. Patricia, delighted to have you back with us today to continue the discussion. And joining us this afternoon, we also have Marsha Lindsay. Marsha, welcome. Marsha is the Vice President, Legal, Labor, Employment and Human Rights with Loblaws Inc. Marsha oversees a legal team that supports the organizations, and it is a vast organization, Human Resources and Labor Relations team. Marsha joined Loblaw in 2019. Prior to this, was employed with Purolator working as its first in-house labor and employment counsel, and prior to that had a private practice with Lang Michener, of course, specializing in labor and employment. All makes good sense. Marsha Lindsay is a recipient of numerous awards, including the very prestigious National Bar Association Award for In-house Counsel. I understand that Marsha has also appeared on radio and television discussing these important matters. So we're really delighted to have you with us today and also really happy to introduce my colleague, Harrison Brown. Harrison is a senior

	associate in our Labor and Employment group in Toronto. Harrison's a skilled investigator and is involved in working on many complex multi-party investigations and dealing with these issues of harassment, discrimination and other potential breaches of corporate policy and the Human Rights Code. Both a management advisor and advocate in unionized and non-unionized workplace. So welcome, Harrison. And this afternoon Harrison will be leading a discussion. Patricia will begin with a brief recap of the conversation from last week to get us all up to speed and then it'll pass to Harrison. And then just before I close out, my last housekeeping note is with respect to the Q&A. So should you have questions for the panel, the question and answer box is available on the website or it should be available on your panel, when you click on the Q&A, you can either put your question so that everyone can see it or you can send it privately, in which case it will only be viewed by the panelists. So up to you as to how you wish to pose a question, we welcome all of your questions. And if there aren't any, we're able to answer due to time or otherwise then we'll seek to do that after the session. So thank you all for joining us. Really pleased to have you here. And with that, I'm going to pass it to Harrison to get us going, and then I think it'll be over to Patricia. Thank you.
Harrison Brown	Thanks Cindy. So let me start off by saying welcome again to Marsha and Patricia. We're delighted to have you with us today. I thought it would make sense to start off this afternoon session with a very brief overview of your keynote from last week, Patricia. And that way we can get everyone who's joined us up to speed on some of the context for our discussion today. And they also get the benefit of an abbreviated version of your talk from last week. So, Patricia, if you don't mind?
Patricia DeGuire	Thank you so much, Harrison. It's always a joy to see you. I hope you enjoy Cable's party the other night out. And thank you so much to BLG for asking me back. There is some kind of affinity between myself and BLG. And so it's a double pleasure and an honor to be here. Now, last week I spoke about the history of the Ontario *Human Rights Code*, and I touched upon the Commission's strategic plan driving the human rights culture in Ontario. And I really want to go

	back on that. When I took office in 2021, the Ontario Human Rights Commission was coming up to its 2017 / 2022 strategic plan. And of course, you know that we were in the midst of a global pandemic, the intersection of health flowing from COVID 19 and the George Floyd uprising. And what it did tell us that the Ontario Human Rights Commission, that we had to be intentionally proactive about strengthening human rights culture in Ontario, and we chose to do that through the vehicle of using the tools of education and community engagement. It's very important to be as servants of the public that we are serving people and we must be familiar or know the public interest and not just provide service of things that we think that they need. So still very challenging times for us. And you are aware that recently, and I believe a lot of it ensues from COVID, the surge of hate globally in our communities and schools everywhere. And we see this very strong presence of, you know, racism and xenophobia. And so we thought to address that as well by fostering a culture that puts human rights, right at the center of what we do. And so you ask, how did we do that? And so we did that by engaging public awareness and access to human rights information, education. And I pause on education. So you're probably aware that we had the Right to Read inquiry, which the Minister of Education, has really embraced and sought to implement major recommendations by transforming the curricula in schools. And we also use education as an action where we educate the public about human rights, providing guidance and applying human rights principles in everything we do. And by so doing, we're empowering people to exercise their rights and demand accountability from duty holders. I'm going to pause about exercising their rights. Everyone in Ontario should enjoy human rights, but everyone in Ontario is accountable for his or her conduct or their conduct of accountability and ensuring that when he or she enjoys their rights, it's not done to the exclusion of someone. And that's a significant component of creating a human rights culture in Ontario. And we want to raise public awareness of the risk to human rights resulting from the rapidly increase of AI, also because they also want to bring a stronger human rights culture in Ontario, and this means the public becoming more aware. You have this self awareness of the values and the minimum standards for full equality and dignity. People are

	better able to exercise and advocate for their human rights with duty holders. And that's part of empowerment as well. So we're also building support to enhance organization, institutions and government to respond to human rights. And the public has an increased understanding of hate that is very important. Hate and knows how to use a human rights system to respond to the manifestations of hate. And the public has increased understanding, as I mentioned earlier, of artificial intelligence and the implications of human rights. And you might have heard that some time ago, the Commission of the IPC and myself, we issued a statement about AI. It's not to say AI is dangerous. We're focusing on the people who use AI and may do so at the disadvantage of the public. And so the human rights issues addressed by the Commission is, you know, the issues are rather complex. There are layers and layers and sometimes in compartments. And so the strategies of the Commission uses to affect systemic change are long term and involve many stakeholders and partners. And so we believe to enhance the opportunities we seek out institutions, government, duty holders, where we align interests and we work with them from there and bring us to that point where we want to land. And I know we all want to land in having a human rights culture where everyone can enjoy their rights and that the dignity of the person is reinforced. And just to give you a brief recap of the things that we've doing lately, in fact, today we released what we call the HRBA, a human rights based approach to everything we do. I like to be a person who uses preventative methods as opposed to curing a problem. As a child, I remember my father used to say 'an ounce of prevention is better than a whole pound of cure', and I bring this to my work. And so we look at testing the temperature of our societies and envisioning where things would lead and create programs or take steps to mitigate or alleviate the challenges. And so some of our work includes the rights to read, as I mentioned before, the engagement, the education, the education sectors, and the engaging with children from K right up to grade 12. We issued a Policy Statement that to call on and remind duty holders of their obligation under the Ontario *Human Rights Code*. To continue engagement at various public and private

	sector organizations to educate, discuss rights and the responsibilities under the *Code*. So in a nutshell, that's what I mentioned last time. So if I left anything out?
Harrison Brown	I don't think so. Thank you so much, Patricia. So just to build on Patricia's comments a bit, I think it makes sense for us to start off today discussing how employers and service providers can leverage the Human Rights Code to advance some of their equity, diversity and inclusion or EDI objectives. And we know that EDI has become a really hot button issue, particularly for employers in terms of attracting and retaining talent. Marsha, let's begin with you. Can you provide us with some examples of how you've been able to leverage the *Code* in your role at Loblaw's to advance EDI initiatives?
Marsha Lindsay	So Loblaws is very -- thanks Harrison -- Loblaws is very committed to the DEI. We call it DE&I. So diversity, equity and inclusion. And we've got a team that is responsible for overseeing some of our objectives and our goals for the organization from a D, E and I perspective. One of the things that we've identified is a gap in our racialized groups at Loblaws, in particular with our black colleagues. And as a result of that, we've had to determine, you know, we've determined that we've had to develop programs to try to get our black colleagues -- increase our representation of black colleagues in certain areas of the business. And in particular, a management area is where we saw ourselves lacking in representation in that area. So we developed a program which, you know, human rights allows for programs specifically to address historically marginalized or underrepresented groups. So we developed a program, a coaching program that was specifically geared towards black colleagues to provide them with six months of coaching, to get them to the next level of the leadership in the organization. You know, you're going to get some backlash from folks when you're focusing on one particular group. And for good reason we're focusing on that group, because our data told us that we were underrepresented. But you know that human rights legislation allows us to introduce programs like that to serve colleagues, we call our employees 'colleagues'. So you'll hear me say 'colleagues' from time to time. So my

	apologies. To help our colleagues in the organization, you know, reach they're full potential. And so we're constantly looking at such programs to address specific areas of underrepresentation or specific areas where we find there's a need, from a diversity and inclusion perspective, to be better as an employer and to be better as an organization. So I think it's helpful to have the human rights legislation on your side. To be able to introduce those programs, even though you're going to get backlash from certain segments of the population and the colleagues, because why do you have a program, you know, specifically for black colleagues? There are white colleagues that might be also from, you know, disadvantaged backgrounds that may need a leg up as well. But that's the way we've used it at Loblaws. We use it to create programs to help us accomplish our goals and objectives from and DE&I perspective.
Harrison Brown	Thank you. I mean that sounds great. When you when you say 'programs', I'm assuming you're referring to special programs or special employment under the *Code*. And so for those who are joining today and may not be familiar with that, the special program provisions of the *Code* are under Section 14 and they are designed to relieve hardship or economic disadvantage to help disadvantaged people or groups to achieve, or try to achieve equal opportunity or to help eliminate discrimination so they could fall under any one of those categories. The Commission also has really excellent resources around developing special programs on the Commission's website, which leads me back to Patricia again. So, Patricia, what would you suggest to employers or service providers more generally when it comes to leveraging the *Code* to advance their equity based initiatives?
Patricia DeGuire	Thank you so much for that question and thank you so much for your comments. Marsha, you mentioned about pushback, and that's very important, especially when you work in a diverse workplace. Diversity doesn't always mean inclusion, but you've got to have diversity and you've got to have inclusion for it to work, right, for it to be an impactful tool. And its very important because I go back to the *Code* and I'm going to come to the very important point you made Harrison, because when we talk about diversity,

	you look at the *Code*, and the *Code* highlights many things, the various ways employees are different in the workplace, including look at the 17 grounds that are protected under the *Code*. It's like a Herculean task for us at the Commission to look at things like ethnicity, nationality, gender, sexual orientation, gender expression, physical disability, non visible disability, you know, and I could go on, but when they all operate in a workspace, we must acknowledge them and be inclusive of them. I am going to digress to say, though, that at this point Human Rights Institutions have not accepted EDI as a human right, an element of human right. But it is an impactful tool that one can use and how so? While we have that, we look at the EDI and as a helpful tool in dismantling systemic discrimination, and I'm focused on systemic discrimination because that is within the mandate of the *Code*. Section 14 of the *Code* and section 52 of the Charter allow these special programs, if the individual is to achieve inclusion and really meet his or her full potential. And so we take the approach of reimagining the impactful ways that we have done in the past to tackle discrimination and use those to build our future. And we look at the temperature of society and see by consultation and see where the problems are at the highest, or more needed to be addressed. And currently we have the 2SLGBTQ1A+, indigenous, blacks and other people of color and others. And so EDI is used as a part of this wave of transformation. As a successful EDI requires allies, collaborators and partners. We hear Marsha speak about creating special programs. But I say when you are creating these special programs, it's very important to include the people for whom you are creating these programs. It's almost like, you know, without that, you're like, you invite me to dinner and you come to dinner and you said, and then you push something in someone's face, and you know if they are allergic to it or the eat it or not. So to have the inclusion of employees, you know, to have that inclusion is very important. And as I said, it requires allies, it requires collaborators and partners, and know the difference between a collaborator and a partner. They're not the same. And we have to be mindful of not using the master's tools to transform the master's house. You do that in particular, you talk about indigenous people, and rightfully they're concerned about colonialism. And a lot of the roles we depend on

	today are very colonial in their operations, and we need to have indigenous centric tools or Afrocentric tools to be able to address the concerns that we are trying in the work spaces. It's not, believe me, it's not that difficult once you see people are included. They get all excited and they want to participate. And it also requires cultural awareness and cultural humility. We must be mindful, taking intentional steps towards change, and everyone must, at a human rights based approach, found it on the *Code* to be a strategic toolkit. And when I say that, I say 'you've got to make it part of your OKRs and your PKIs'. What do I mean by that? Your performance key indicators, and your objective key results. You need to incorporate that, and it must be part of your business plan. And so you've got to set out a budget. We at the Institution of Human Rights, when we're doing investigation, we look at the budget that's assigned, and if it's a itty bitty budget, you're likely to say, 'yes, you're in trouble, you don't take it very seriously'. So this framework can be used to, as well, advocate and research. And I'm talking about this being 'taking a human rights approach', and help to bring human rights approach to your advocacy and your projects that you have. And so it's really critical to note that while EDI is an important tool to dismantle systemic discrimination, the foundation of all EDI work must be embedded in human rights. And so again, I will just release our human rights based approach framework, and I'm going to ask you to flock to our website. It's right there. It's great news. It's helpful. And if you have problems about using it, you can ring up the Human Rights Commission and we are happy to help you. Last, I want to say that there is a massive push on data collection. Data is a form of employee engagement, which is important because it's linked to profitability, productivity and employee well-being. And I'd say that any organization that does not use data collection, and be mindful of who collected the data, the purpose of the data, I think that they're heading for trouble, not only with the *Code*, but within their employee. I'll end it there. Thank you.

Harrison Brown	Thank you, Patricia. A lot of really great points there. And so staying with EDI for a moment, and in particular when we're talking about EDI related data, the how and the why, when it comes to an organization collecting this type of data is critically important. We know this type of information is personal information under both provincial and federal privacy legislation, which engages employees privacy interests directly. So we know it's difficult to effect structural change when you don't have a reference point from where you began as an organization. Marsha, maybe you can talk to us a little bit about what you and Loblaws are doing with respect to collecting this type of data and then what you're doing with that information.
Marsha Lindsay	So as you've indicated to Harrison, the data is key to making structural changes and to understand where you are currently at in an organization. Where are your gaps, that's what you're looking for, right? And you know, so you can set appropriate goals for where you want to be in the future. So we are very passionate about collecting data. We try to do that twice a year through our engagement survey that we do in the spring, and we do one in the fall. We ask people to self-identify in the survey as a way to collect that data. And we also ask applicants, people who are applying for jobs to self-identify as well, because we want to know, 'are we attracting the candidates that we want in the organization to increase our representation in the areas that we've identified gaps'. So you're not going to know what your gap is. You're not going to know what programs to put in place, you know, what areas you need to address to be better, from a diversity and inclusion front. The challenge is, as you've indicated, is personal data. And there's a lot of distrust, you know, from over the years. Providing that information, they think that it's going to be used in a negative way to perhaps, you know, leave them out of the hiring process or, you know, negatively impact their ability to advance in an organization. And so it's years of that distress, that we're trying to break that will wall down. And so what we've learned is that it's going to take time. We've been doing this for many years now, and we still are not at the level, the amount of people that, colleagues that have responded, is still not at the level that we want. And so, you know, in order to get the best data, we want everybody to be able to respond.

	We've got lots of people completing the survey, but not everybody self-identifying. And so we've realized it takes time. And what we also realize is that we have to tell people what we're doing with that data. They need to see the evidence of what that data can do for an organization. And so we are very, you know, we try very hard to, you know, when we do something like creating a program, to show that it's based on that data. We would normally have underrepresentation, black colleagues in our management level, if we didn't have that data. We wouldn't be able to create the programs that we create if we didn't have that data. And so it's all about making the organization the best it can be as an employer. And it means that we need to have, you know, accurate data to be able to put in place the most impactful and meaningful programs that's going to move the needle for Loblaws on DE&I. So we're working, we're working hard, and we are constantly talking. You know, we're using colleagues across the organization from diverse groups to encourage others to come forward. I put out a video out there saying, 'I've self-identified'. And, you know, I'm in a position in an organization where I have some influence. So I'm trying to use that influence, and we are asking colleagues to use the influence to make people feel more comfortable being able to self-identify. But it's important that they understand what you're doing with that data. And it's important to understand … to show them how that data is creating positive change in an organization.
Harrison Brown	Thank you for that. Trust is so central to, you know, increasing employee engagement on these types of issues. And without engagement, we know that a lot of equity-based programs just aren't effective. And similarly, though, you know, you don't have … you don't have measurable outcomes in place, it's very difficult to know what your progress has been beyond just speculation. Patricia, you talked a little bit about why it's important to be collecting this type of data. Can you share with us your thoughts from the Commission's perspective on why this is sort of the next frontier when it comes to using tools to advance equity objectives in workplaces?

Patricia DeGuire	Thank you for the question, Harrison. Thank you so much Marsha for your comments. And I'm just going to add to it, not only the collection of data identify disparities in your organizations, you've got to jazz it up a little to deal with that element of trust. It's a big element. How do you do that? So, for example, if you're doing race, you use race based data to inform recruitment efforts and diversity in the candidate pool. You let them know and this is this is not a panacea. I do not offer a panacea because it's very difficult to win the hearts of doubting Thomases, if you will. But, and as Marsha rightfully said, it will take time. But if you follow this sort of mundane way, it will take a bit longer. So, for example, as I said, the aggregate racial data to preserve anonymity without losing ground level insight. And so you draw upon that racial data to identify racial inequities and disparities in the organization. You use it, and there is always someone in there who belongs to a group who wants to be that person to communicate. And you end, you know, using that person as a champion. And you got to be careful because somebody said, 'she's a sellout' or 'he's a sellout'. You've got to be careful about that, too. You pick the candidate who is measured, and who has integrity and credibility, who's been building relationships all along during the organization. And so when you're doing things that are making efforts to remove barrier or to correct discrimination, like those who might say, 'this is reverse discrimination', you show them how that has, you know, taking these measures, improved the organization and how it improves them. People do not complain when they see that they benefit from it. Every time, and I can tell you, every time you take a decision or take action to improve racial discrimination, every single person benefits from it. And it's important to show them that, that that is the case. And again, it's important to show how these different alternatives bring benefit to the community as well, and not just within. Also that it requires a degree of compliance with the *Code*. It also shows, maybe you have to persuade the top, the leaders, why you need this information, although I think that we've long gone past making the business case for diversity. Sometimes people are still in the dark ages and so you need to introduce them that good data reduce exposure to

	possible legal action and human rights complaint. And to say that 'to get there we've got to have evidence based information to move forward'. And then you've got to make sure, too, that the persons or person who is, or the system that's collecting this data are people that you can trust, people who are really committed to that, not corporate governance standards, who just want to do this, to tick the box, to say I was involved. So it's a delicate dance. Sometimes it's like dancing the waltz on a pinhead. But at the end of the day, I assure you that it's beneficial, it works. And all you're going to be doing by doing this is creating a healthy work environment for everyone in the organization, even the naysayers, they'll come around singing your praise when they get the extra zeal at the end of their bonuses. You know what I mean? Kind of thing, or they have or something extra that they were not receiving from the organization until you implemented this program. And lastly, I just want to say to you that data collection and analysis has figured prominently in public interest remedies sought by the Commission in recent years. So just do it!
Marsha Lindsay	One thing I want to add, Harrison, is that what's important because you mentioned something that made me think of another thing that creates the trust is, you know, making sure that you've got tight controls over who has access to that information because we're collecting that information about individuals. And so we tell people we keep it very, very tight. Only those people that need to know for the purposes of being able to hold us accountable for the goals that we set for the organization. And so you should be really upfront with people about that. Not only that, why are you collecting the data, what you're doing with the data, but who has access to the data as well to create that trust.
Harrison Brown	That's an excellent point. Yeah, I was also going to say that, you know, ensuring that you're collecting the data in a way that's inclusive. So the example I was thinking of is, you know, if you leave off a particular gender identity when you're looking for responses on different gender identities without, you know, providing an option for someone to self-identify, you know, that's at the very initial stage of trying to engage with that group of employees, and

	there's a message that's being delivered to those employees by not seeking the information in a way that's inclusive. I also think transparency and accountability are really important in this type of work as well. And, you know, it's uncomfortable for a lot of employers to be transparent about what is happening with that information, whether that information is going off into an abyss or it's coming back to be shared with employees as sort of a starting point for where the work needs to be. And I think that sort of naturally leads to the culture of accountability around EDI. So thank you to both of you for sharing your thoughts on that.
Patricia DeGuire	And just a last comment on that bit about transparency and what you use with the data, you also got to know the form in which you release it though, we would prefer aggregated data as opposed to anything else because, you know, again, we have those as privacy issues, as Marsha aptly pointed out.
Harrison Brown	Yeah, absolutely. And so we know that there's… just to shift gears a little bit from data collection more towards organizational responses to that data, I want to talk a little bit about accommodation. And we know that accommodation under the *Code* is inherently individualized, but sometimes employers recognize that individual accommodations actually have broader benefits for the workplace. The most obvious example being probably hybrid or flexible work arrangements, which we know are really important to employees generally and tend to ameliorate some of the disadvantage that employees with disabilities and family care obligations experience. We know there's a tension here, though, between employers, you know, extending these types of flexible arrangements and the benefits that are associated with DEI and being able to manage the workplace effectively. So, Marsha, I'm interested to know how are you and your team balancing the need for greater flexibility and workplace accommodation with you know, the expectations around being able to engage with employees as needed and the continuing need to meet business needs?

Marsha Lindsay	Absolutely. Well, from the hybrid perspective, we are three and two, so we've got three days in the office and two days. So we're you know, employees have an opportunity to be home. And obviously during COVID, people enjoyed being home and being able to, you know, have that greater work life balance that we all crave to a certain extent. The flexibility that we're creating, obviously, I've told, you know, our H.R. professionals that deal with the accommodation issue, that we should treat accommodation with respect to hybrid because there is, I think, a more heightened sense of skepticism for people saying that they can't come into the workplace. And so there's, you know, an inclination not to believe if somebody says that they thought, you know, reasons, family status or if it's disability, that they are not able to come to the office. And I say it's no different than any other accommodation. They go through the same process that we go through, which is to gather the information to determine if there is a need here as opposed to a want, and to figure out how we can work with the employee to accommodate. So the flexibility is around, as you said, it's an individual accommodation, it is an individual assessment and an individual process. So everybody's, not everyone's needs is or need is the same, or the accommodation is not the same for everybody. So we try to remain as flexible as we possibly can in these circumstances. But it's really important, given the level of skepticism that I'm seeing in the flexible work arrangements, that we remain very vigilant to follow the process. It is no different. We collect the information that we need, we make the assessment. And we, as I said, we work with the employee. If an accommodation is required, we work with the employee to see what we can do. I think that what COVID has shown us with the folks working from home is that before COVID we were less willing to allow people to work at home, or to provide a more flexible working environment. But COVID has shown us that people can be as productive and can be as engaged and, you know, can do a great job even if they're doing it from their home. And so that has opened up the door for us to think more along the lines of being able to, you know, not argue that it's undue hardship, that they must be in the office. There are certain jobs, obviously, our colleagues in stores, you can't do that from home. But the jobs that we have been shown that can be done from home. It

	makes us more open to these arrangements, and more willing to discuss that with the employees as needed.
Harrison Brown	Yeah, accommodation, you know, as it relates to any policy is a critical consideration. So I do want to get your thoughts, Patricia. So at times, you know, accommodation requests can look more like an expression of preference or a unilateral demand of an employer or a service provider, to give the requester for accommodation, exactly what they're asking for. Can you tell us a little bit about what the *Code* requires in the situation where an employee requests accommodation. What are employers or service providers required to do in those circumstances?
Patricia DeGuire	That's really an excellent question. You know, all your questions are excellent questions Harrison. But it's excellent because we are dealing with some of the most vulnerable in our community and they probably need more of that buoyancy with respect to the dignity of the person, because they're already disabled. So it's very important in that respect. And so there's no question it's not a preference. The duty to accommodate is a legal obligation. It's not that you're doing someone a favor, and just not about balance or limiting a risk of setting unrealistic expectations. Again, the *Code* cannot be clearer. And the jurisprudence that we have and the cases that's flowing from the courts and the tribunal, it's very important if you're an individual and you seeking accommodation and you demonstrate that you have a *Code* related need, you must be given accommodation. And the only limit to that is not just hardship. I would expect to undergo some degree of hardship. It is undue hardship and it is up to the duty holder to provide that evidence. And so the exceptions that the law allows is based on cost, again, undue hardship or health and safety. And the courts have set a very high bar to meet that onus. And so if the accommodation would significantly interfere with one's use of someone else's rights or would bankrupt an organization, yeah. And so organizations should be embracing the benefit that some individual accommodation can bring to many

	others. And this is how we get to have this inclusive design and the respect for the principles of inclusion and full participation. And it's very important to know as well that it's not an … although an employee is required to request accommodation, for example, if you show up at work one day in a cast and you're barely there and the employer made that note, the employee has an obligation to ask, 'How can I accommodate you?' So you've already seen it. So it's not enough that you, that the person that you see hopping in and out, he or she might have used up all the sick time, etc., diligent worker and just wants to go to work. So he or she comes in and we know if you mess around the leg, you can end up with a clot and the life threatening, the person wants to be there or the person is to engage in the organization. It is up to the employer to step forward and say, 'Jane, John, or how can I help you to be comfortable in the workplace?' So that is accommodation in its shortest form. It's a must. And it's also it's a how, you must be kind when you're doing it as well.
Harrison Brown	Good business practice, good human rights law compliance. Marsha, maybe I can turn it over to you. So where you receive a request for accommodation that looks like a very specific request for accommodation, or perhaps borders on an expression of an employee's preference, how do you handle those types of requests, particularly where, for example, maybe you as the employer, have a process in place that is responsive to the need that's being communicated?
Marsha Lindsay	So I've made it clear that, you know, accommodation is based on … the simplest way I can explain it is based on a 'need' as opposed to a 'want'. And so the process is there to identify the need and making sure that the need is there. And so that's part of the process is, you know, collecting the information with respect to the accommodation that's being requested or the purpose for the accommodation being requested. So that's the way I've explained it to the folks that I support across the organization. We've got a process in place that kind of takes that, what I

	would say the personal aspect out of the process. You know, if you don't like an employee, if you like an employee, you might be more willing to accommodate that person. So the process is there, that it works. It meets our substantive and our substantive obligation, as well as our procedural obligation. Procedural obligation is collecting the information and determining whether or not, you know, you can accommodate that person to the point of undue hardship. And the substantive is at the end of the day, making that accommodation if you are able to do so. But we've got a process in place to make sure that in every single case we are doing the right thing. We are complying with the law and we are, what I say to my HR folks, is 'show your work as well. I want to see, you know, what steps … show your work'. It's not a matter of, 'Well, I've looked and I can't accommodate'. I want to see what the steps were that you've gone through in order to be able to, you know, satisfy me at the end of the day, because I know at the end of the day, if we're not able to accommodate that person, they may be facing a challenge. So 'show me your work, where have you looked'? 'What have you looked at'? 'Have you looked at the person skillset and so forth'. And, you know, to see if there are any other jobs. We're a larger organization, so more is expected of us. We're not a small employer. We've got more jobs available, we've got more locations available and more opportunities for folks. So we've got, I think a greater obligation just because of the size and the ability, and obviously our financial wellbeing to be able to do more for our employees on an accommodation front. And so, you know, the process, as I said, doesn't change based on who you are. It doesn't change based on what the nature of the accommodation is. It's the same process that we're following. It doesn't change based on your personal view of the employee. Follow the process and show your work.
Harrison Brown	Yeah that's great advice. And we also know that the standard is not perfection for accommodation under the *Code* right?
Marsha Lindsay	Absolutely not, absolutely.
Harrison Brown	Making reasonable efforts towards accommodation, and in some cases an employee might approach their employer knowing what they

	need. And in other cases that's something that the parties come to as a result of the procedural aspect of the duty to accommodate.
Marsha Lindsay	Absolutely. Harrison, I find that we're finding more and more people are coming, you know, insisting on a form of accommodation. And as you said, that you don't have to accommodate them in the way that they want to be accommodated, if you accommodate them in a way that meets their needs and meets their restrictions, whatever the case may be. And so that's what we're finding, a lot of the challenges people are insisting, if they're not getting the accommodation in the way that they want the accommodation, it's causing friction and its causing problems in the organization. And so people need to be educated, that it is not perfection, it's not based on what you want. It's based … if an employer can accommodate you in a way that's different from what you want, but still meets your needs, then that's fine as well.
??	Excellent. Excellent.
Patricia DeGuire	At this point, let me refer you to policy, the OHTC's policy of ableism and discrimination based on disability. You go on the website … I'm sending you on to the website, go to the website. It is key. It's very important in this aspect of preference. If the person preferred to have, 'I want to … really significant back issues, sciatica, you know, you name it, and 'you'll have two different chairs that could accommodate', and one chair is $500 and the other chair is $250, but they both can do the same work. You get the $250 mate. That's what you get. Because the *Code*, the purpose of the *Code* is to accommodate the need, not your idiosyncratic feeling, not fancy or anything like that. You just got to provide the need and be nice to it.
Harrison Brown	Absolutely. So I'm just conscious that we're approaching the end of our time together today. But I did want to ask, both from sort of the Commission perspective and a practical perspective, what strategies are there for early resolution that organizations can consider apart from mediation, when they're faced with potential issues related to discrimination? Are there any other strategies that come to mind, from either of your perspectives. I know certainly from my perspective, workplace audits are a great tool that

	are sometimes underutilized, and they can really be diagnostic when there's an issue related to discrimination in the workplace. Sometimes they disclose larger issues from a systemic level. And again, that provides you with a starting point for change. But Marsha, can you share your thoughts with us?
Marsha Lindsay	So we've got an integrity action line, which is a third party whistleblower run program to allow people to complain. It could be members of the public, it could be employees, it could be anybody to call in and complain. And we find that effective, because I think a lot of people find it difficult to come forward and, you know, complain about harassment and discrimination, even if you're not the subject of that harassment and discrimination, if you've witnessed it. And so we provide a way that can be anonymous. You don't have to identify yourself. You just tell us about the situation. We investigate. If you give us enough information for us to be able to do that, we investigate every single complaint that comes in. We've got an investigation team who's dedicated to investigating these complaints. We've got a compliance team that reviews all of the information that comes in. We find that's a good way to identify issues in your organization because people are willing to speak if they're not going to be identified, but they can at least alert us to the fact that there are problems going on in the environment. So I think it's always good to have … because you can have your policies and you can them to go to HR. You can tell them to go to managers, but people sometimes just don't feel comfortable going that route. So if you've got a process where they can lodge a complaint through a third party, or at least you're, you know, you're going to get some early awareness of something going on in your organization. We also analyze our data that's coming in as well to show us that there are pockets. Are there any trends that we're seeing in certain areas based on all the complaints that we're getting that we need to address? We need to send HR out. We need to do more training and we need to do more sensitivity training or whatever the case may be. I find that useful. We also ask a lot of times when we get the complaints, if somebody does come forward, what

	resolution are you looking for? Because it would be helpful that we know what they're looking for. In most of the cases they are not looking for someone to be terminated. They're just looking for the matter, the issue, to stop. And in some cases it's a misunderstanding. So in appropriate cases, we will try to see if we can get the parties together with a neutral third party to see if it helps to sit down and discuss, you know, the person, you know, both parties have to be willing and it has to be appropriate, in appropriate circumstances. If you've offended somebody and you didn't mean to do that in the way, you apologize and you have them listened to how it made them feel, and the impact it has on them. And hopefully they can at the end of that meeting, you know, come to an understanding and hopefully part as friends, especially when colleagues have to keep working together. We find it's not the adversarial way, is not the best way. So at the Human Rights Commission Tribunal, that's not where we want to be, especially if there's a continuing employment relationship. We want to see if we can resolve it internally and hopefully we have enough processes in place to make people feel comfortable that they can come forward, that it will be investigated, that it will be addressed, and we will do it as quickly as we possibly can.
Harrison Brown	That's great. I heard, you know, some reference there to restorative processes, which I think are really important, particularly in the context of discrimination allegations. Patricia, any thoughts from you?
Patricia DeGuire	Yes, I , as a die hard mediator, mediation doesn't have to begin at a formal stage. And so part of the culture within an organization should be a mediated culture as well. That's part of the culture. It's so important to keep on building that culture in the workplace because it's easy when things go wrong to jump in and rectify it quickly. Quick, quick, quick. Don't wait for the day, as Marsha ably pointed out, that maybe the person just wants a simple apology, and quickly and fairly, and especially in matters of harassment or any kind, any form of discrimination. And so at a very minimum, the employer must respond to the internal discrimination complaint. They've got to

	have a mechanism. And I go back to a case, old case, from the Supreme Court of Canada, called *Wewaykum v. Canada*, where it sets out the things that you do and for me, it's like if you use that element, and you have it embedded before you do anything, that too in itself is a way to resolve problems. To talk about, be quick and going back to the employee to report what you have investigated. It means, therefore that you've got to have proper staff who understand what discrimination is all about, but can act quickly when a complaint is made, right. And that person who has a rapport in the organization. Not somebody who would look and say, 'oh my goodness', not that. Some oppose and be afraid to go and speak to that person. You've got to have somebody … and not a pushover either, a measured person, someone who you can really trust, who is accountable, who knows how to be transparent, when transparency is important. And you need data collection within the organization and also externally to look at what you're doing. Every now and then, look at your system to see, 'am I following leading practices in this case'? And you're forever doing that audit and you've got to be active. But it's worth being active because what you're doing within your organization, you are helping to create the human rights culture in Ontario. I don't want to burden you down to tell you why it's so important. Ontario is known as the diversity capital of the world. We have over 200 languages and cultures, and just last year alone we had over 453,000 permanent residents coming into Ontario, coming in from different places … war torn, and they come to Ontario because they see it as a place of … a haven of rest, if I may say. And so individually, we have that responsibility to create a culture of human rights where everyone can flourish, where everyone can feel included in a sense of belonging. And when people see that, they would say, 'well, you know, we assure that the efforts in the courts, etc., that it maintain the rule of law', and that is so key to our democracy. We're on good ground. So they are all connected, interconnected. Thank you.

Harrison Brown	Absolutely. And that goes back to establishing a culture of trust too, which sort of nicely rounds out our discussion. And so thank you again to both of you for sharing your thoughts with us today. And I'll turn it back over to Cindy.
Cindy Clarke	Yes. Well, I just want to add my thanks, Patricia and Marsha and Harrison. It was a very interesting and very practical discussion. So thank you very much for your guidance. I know that we're all struggling with these issues and really bringing it to the fore. The whole data conversation, everything you've spoken about, is just so relevant to all of us. So really appreciated those insights. And loved the notion of being proactive, addressing these things early. Sometimes the temptation is to try to … 'they're difficult, they're complex, and one hopes they'll go away', and they rarely do. And running into the fire is usually the right answer. So thank you all so very much for such an insightful conversation. Thank you to all for joining us this afternoon. We will make sure that you receive confirmation of your attendance and confirmation that you can claim this as part of your CPD credits. I know that all of you found it as informative as I do, and on behalf of everyone attending, really, again, Patricia and Marsha and Harrison, thank you so very much and enjoy the rest of the day.
Patricia DeGuire	Thank you. One last note. Go read the HIPAA policy that was released today and follow us on Twitter.
Cindy Clarke	Okay, Very good.
?	Hot off the press.
Patricia DeGuire	Thank you so much for the honor and privilege being here.
Cindy Clarke	Thank you.
?	Bye bye

By

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