Respectful Language in CBA Publications and Communications in Touchstones

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Respectful language in CBA publications and communications

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Are respectful language guidelines needed to ensure that CBA publications and communications use language that reflects the CBA’s commitment to enhancing diversity within the legal profession?

Some might question the need for such guidelines. Absent evidence of non-respectful language in CBA publications and communications, might such guidelines be solution in search of a problem? Perhaps it would be better to rely on the good judgment of those who prepare CBA publications and communications, rather than spending time and energy developing unnecessary guidelines?

An experience that we had earlier this year, however, suggests that the CBA would benefit from developing respectful language guidelines, particularly with regard to racialized language.

Guidelines on respectful language for CBA publications and communications should include, among other things, suggestions about avoiding unnecessarily racialized language.

That experience began when we read an article by Mitch Kowalski, entitled “Surviving Process”, which was published in the CBA National Magazine's Student 2013 edition. The article uses the term “gypsy lawyer” to refer to “lawyers who don't work full time but rather, work on a project-by-project basis -- giving greater flexibility for those who want a different work/life balance.”

We were troubled by this use of the term “gypsy lawyer,” and we wrote an opinion piece articulating our concerns. We argued that the term reflects negative and misinformed stereotypes that are closely tied to longstanding and devastating discrimination against the Roma in Canada and abroad. We emphasized that the use of such a term in a magazine published by the leading professional organization of lawyers in Canada – particularly in a publication explicitly aimed at law and pre-law students – could negatively impact the Roma community, including Roma law and pre-law students. While we took care to note that we were not implying any ill-intention on the part of the author or the magazine, we nonetheless suggested that unnecessarily racialized language of this kind should be avoided to ensure that the CBA and the legal profession are welcoming to lawyers from a wide variety of backgrounds, including current and future Roma lawyers.

We sent the piece to the Editor-in-Chief of the magazine, Beverly Spencer, along with several people involved in CBA governance, asking the magazine to publish our article. The magazine declined to publish our piece (a revised version was later published in the Law Times). Instead, the magazine posted this addendum to the online version of the original article:

“It has been brought to our attention that some individuals might be offended by use of the term ‘gypsy lawyers.’ The author used the meaning set out in the Second Edition (2005) Oxford English Dictionary which defines a gypsy as ‘a nomadic or free-spirited person.’”

We were saddened by this initial response.
The primary definition of “gypsy” in the Oxford English Dictionary refers to the Roma. The secondary definition, i.e. “a nomadic or free spirited person,” is based on misinformed and offensive stereotypes about the Roma. These stereotypes, at best, reflect a romanticized understanding of the Roma as carefree musicians travelling in nomadic caravans. At worst, they track onto racist views about the Roma being unwilling to work, preferring instead to live off charity and petty crime. Either way, the secondary definition is predicated on centuries of discrimination and persecution that have pushed – and that continue to push – far too many Roma to lives on the margins.

It is, moreover, not unusual for the OED to include problematic meanings of terms associated with particular groups. For example, the OED notes a secondary use of the term Jew as a verb: to “bargain with someone in a miserly or petty way.” It goes without saying that this secondary usage is completely inappropriate. Similarly, the OED defines the phrase “go Dutch” to mean “share the costs of something, especially a meal, equally.” Yet the Law Society of British Columbia’s Respectful Language Guideline (2007) uses this phrase as an example of exclusionary language that should be avoided in legal writing.

After we raised this point with the magazine, Nola Crewe, Chair of the magazine’s Editorial Board, sent us a letter indicating that the Editorial Board took our concerns seriously. The letter went on to say:

We appreciate the care you have taken to illustrate the importance of remaining sensitive to unintended nuances of language. Furthermore, we deeply regret any hurt or offence that may have been caused by the use of the term “gypsy lawyers” in the magazine, and want to assure you that the term won’t be used in future. This experience has been a valuable reminder of the importance of being mindful about the nuance of language and about the wide spectrum of our readership and the correspondingly wide viewpoints, experiences and perspectives it represents.

We are encouraged by this letter from the magazine’s Editorial Board. Our primary concern throughout this process was not merely that the term “gypsy lawyer” appeared once in the magazine. We acknowledge that “gypsy” is commonly used in popular culture and that most people who use the word are not aware that it is problematic. We can, therefore, understand that the term slipped into the article, and that it was not caught in the editing process. We did, however, find it difficult to understand why the magazine, once informed about our concerns, initially failed to take steps to ensure that this would not happen again – and why, instead, the language was defended. The letter from the magazine’s Editorial Board fully addresses these concerns, and, for that, we are grateful.

That having been said, we think that this experience points to the need for guidelines on respectful language for CBA publications and communications, guidelines that should include, among other things, suggestions about avoiding unnecessarily racialized language.

Such guidelines would be helpful on various levels. They would help to reduce potential conflicts by providing guidance to authors and editors about exclusionary language. They would also help members of the public who have concerns about language used in CBA communications or publications to articulate those concerns effectively (we found the Law Society of British Columbia’s Respectful Language Guideline particularly useful in this regard). And, perhaps most importantly, at the symbolic level, they would reinforce other initiatives that the CBA is undertaking to ensure that the legal profession is more welcoming to lawyers from diverse backgrounds.

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